THE OXFORD COMPANION TO LAW

BY

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PREFACE

My object in compiling this book has been to make available as concisely as possible information about some of the principal legal institutions, courts, judges and jurists, systems of law, branches of law, legal ideas and concepts, important doctrines and principles of law, and other legal matters which not only a reader of legal literature but readers in other disciplines and indeed any person whose work or reading in any way touches on legal matters may come across. As the book has been compiled and published in Britain it naturally has regard mainly to legal subjects as these are found in the legal systems of the United Kingdom, but I have tried also to take account of the major topics of legal history generally, of jurisprudence and legal theory, comparative law, international law, European Communities Law, and of the major topics, on the one hand, of those legal systems which have developed in other English-speaking parts of the world and which have been substantially influenced by and have strong links with United Kingdom systems of law, and, on the other hand, of the legal systems of the Western European countries with which the United Kingdom has long had, and now increasingly has, links. I have included entries on a few matters outside these limits where they have been frequently referred to in Western legal literature.

I have tried to complement rather than to duplicate existing legal works of reference, such as general textbooks, legal dictionaries, collections of legal maxims, and the treatises, commentaries, and textbooks on particular branches of legal science and on the law of particular jurisdictions on particular matters. Practically every entry could, with advantage, have been greatly expanded and none can be taken to deal fully with its subject. To have done so would have been quite impossible. I have necessarily on many matters excluded points of detail and qualifications of and exceptions to the broad statements. The references at the end of some articles and the Bibliographical Note (Appendix II) may give a lead to the major sources of further and detailed information. In particular I have not sought to compile a concise legal encyclopaedia of the law of any country, and readers desiring detailed information on rules of law must look in the textbooks of the particular system with which they are concerned. Still less is this book intended as a Layman's Home Lawyer. I have deliberately not given references to authority for many statements, as this would have taken up much space and been subject to frequent alteration. It is necessary also to emphasize that not only details but major institutions and doctrines of law differ in every jurisdiction and everywhere are constantly developing and being changed so that any statement may be superseded within quite a short time.

In compiling this book I have been greatly indebted for assistance and information to the Deputy Keeper of the Public Records, the Keeper of the Records of Scotland and the staff of the Scottish Record Office, the Librarian and staff of the National Library of Scotland, the Keeper and staff of the Advocates' Library, the Librarian and staff of the Institute of Advanced Legal Studies, the Librarian and staff of the Middle Temple, and the Librarian and staff of Glasgow University Library. I am grateful to several scholars who commented on various articles in draft but, above all, to Professor O. Hood Phillips, Q.C., D.C.L., who read the entire text in typescript and made many very valuable suggestions for improvements.

I also owe a large debt of thanks to the secretaries of the Faculty of Law, Glasgow University, namely Mrs. M. Buchanan, Mrs. D. Cameron, Mrs. D. Campbell, Mrs. D.

Hunt, Mrs. V. Jack and Mrs. A. Simpson, who over the years typed and retyped manuscript entries.

I am deeply indebted to the Delegates of the Clarendon Press for having encouraged me to proceed with compiling the book, and to the staff of the Press, and particularly Mr. P. H. Sutcliffe, for their interest in the work and their constant attention to all the problems of publication.

It is beyond possibility that I have included or dealt adequately with every point on which some enquirer might seek information or that I have avoided all errors or inaccuracies. For these faults I accept sole responsibility.

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ABBREVIATIONS

A.C.	Appeal Cases (House of Lords and Privy Council), 1865–
A.G.	Attorney-General
Adm.	Admiralty
All E.R.	All England Reports, England and Wales, 1936–
B.	Baron (judge), Court of Exchequer, England and Wales
C.A.	Court of Appeal, England and Wales, 1875–
C.B.	Chief Baron, Court of Exchequer, England and Wales; also Court of Common Bench (Common Pleas)
Ch.	Chancery Division, High Court, England and Wales
C.J.	Chief Justice
C.J.E.C.	Court of Justice of the European Communities
C.L.J.	Cambridge Law Journal, 1921–
C.P.	Court of Common Pleas; also Common Pleas Division, High Court, 1875–80
D.P. or Dom. Proc.	*Domus procerum* (the House of Lords)
D.P.P.	Director of Public Prosecutions, England and Wales
E.C.S.C.	European Coal and Steel Community
E.E.C.	European Economic Community
Exch.	Court of Exchequer; also Exchequer Division, High Court, 1875–80
Fam.	Family Division, High Court, England and Wales, 1972–
Foss	E. Foss, *The Judges of England*, 9 vols., 1848–64, or *Biographia Juridica*, 1 vol., 1870.
G.A.T.T.	General Agreement on Tariffs and Trade
High Court	The High Court of Justice, England and Wales, 1875–
H.L.	House of Lords
Holdsworth	Sir W. S. Holdsworth, *History of English Law*, 17 vols., 1922–66
I.C.J.	International Court of Justice
I.L.O.	International Labour Organization
J., JJ.	Justice(s), i.e. judges of the High Court, England and Wales; also Justice of the Supreme Court of the U.S.A.
J.P.	Justice of the Peace
J.R.	Juridical Review, 1889–
K.B.	Court of King's Bench; also King's Bench Division of the High Court, 1901–52
K.C.	King's Counsel
L.A.	Lord Advocate of Scotland
L.C.	Lord High Chancellor of Great Britain
L.C.J.	Lord Chief Justice of England
L.J., L.JJ.	Lord(s) Justice(s), i.e. judge(s) of the Court of Appeal, England and Wales, 1875–
L.J.C.	Lord Justice-Clerk of Scotland
L.J.G.	Lord Justice-General of Scotland
L.K.	Lord Keeper of the Great Seal
L.P.	Lord President of the Court of Session, Scotland

L.Q.R.	Law Quarterly Review, 1885–
L.R.	Law Reports, 1865–
M.L.R.	Modern Law Review, 1937–
M.P.	Member of Parliament, United Kingdom
M.R.	Master of the Rolls, England and Wales
N.A.T.O.	North Atlantic Treaty Organization
N.I.	Northern Ireland
O.E.C.D.	Organization for Economic Co-operation and Development
O.E.E.C.	Organization for European Economic Co-operation
P.	Probate, Divorce, and Admiralty Division, High Court, England and Wales, 1875–1971; also President of that Division or now of the Family Division, High Court.
P. & M.	Sir F. Pollock and F. W. Maitland, *History of English Law before the Time of Edward I*, 1898
P.C.	Privy Council or Privy Councillor
P.C.I.J.	Permanent Court of International Justice
P.D.A.	Probate, Divorce, and Admiralty Division, High Court, England and Wales, 1875–1971
Q.B.	Court of Queen's Bench; also Queen's Bench Division, High Court, England and Wales, 1875–1901 and 1952–
Q.C.	Queen's Counsel
q.v.	*quod vide*, which see
qq.v.	*quae vide*, which (pl.) see
R.	*Rex* (the King) or *Regina.* (the Queen)
R.S.C.	Rules of the Supreme Court, England and Wales
S.C.	Session Cases, Court of Session, Scotland
S.G.	Solicitor-General
S.I.	Statutory Instrument
S.L.R.	Statute Law Revision
S.R. & O.	Statutory Rules and Orders
Supreme Court	The Supreme Court of the U.S.A.
s.v.	*sub voce* (under the heading)
U.K.	United Kingdom of Great Britain and Northern Ireland
U.N.	United Nations
U.N.E.S.C.O.	United Nations Educational, Social, and Cultural Organization
U.N.O.	United Nations Organization
U.S.	United States; United States Reports (U.S. Supreme Court)
U.S.A.	United States of America
v.	*versus*, against
V-C	Vice-Chancellor
W.S.	Writer to the Signet
Y.B.	Year Book; Y.BB. Year Books

CONTENTS

A

A and B lists. In British company law, lists made up when a company is being wound up, of contributories, that is of persons liable, in so far as their shares were unpaid or in accordance with their guarantees, to contribute to the discharge of the company's liabilities. The A list includes those holding shares at the date of winding up, and the B list those who were members within the past year but have ceased to be so; the latter are not liable to contribute in respect of debts and liabilities incurred after they ceased to be members.

***A fortiori*, argument** (by the stronger, so much the more). The argument that if rule A applies to case X, the present case is a stronger case for its application than case X, and accordingly rule A should apply to the present case also. It is not a logically compelling argument because whether the present case is truly stronger than case X may be open to argument, and there may be reasons why one rule should apply to one case and a different rule to a stronger case.

A mensa et thoro (from board and bed). A term adopted from canon law indicating the scope of a decree of divorce in the ecclesiastical courts which enjoined the separation of the spouses and the discontinuance of matrimonial cohabitation, but did not dissolve the marriage, nor permit the remarriage of either spouse. It is now represented by judicial separation, in which context the phrase is still used.

A posteriori (from the logically subsequent). A term used of reasoning from experience and not from axioms or postulates, from effects to causes, empirically or inductively. See also *a priori*.

A priori (from the logically prior). A term used of reasoning from abstract ideas to their consequences, from assumed axioms or postulates rather than from experience or particular instances, deductively.

***A priori* theories of law and justice.** A general descriptive term for those theories of law and justice, sometimes called 'metaphysical', developed by deduction from one or more assumed fundamental postulates. Thus Kant (q.v.) took as his basic postulate the free human will, because morality and justice are meaningless unless it be supposed that the subject is free to direct his will to one choice rather than another. Any principles derived from the categories are universally valid, independently of person, time, and place. From this pure categorical imperative, Act, according to a maxim which can be adopted at the same time as a universal law, Kant derived what he termed 'natural laws' drawing their validity from the category of free will, whereas positive law draws its validity from the expression of an authoritative will. The principles of justice are all derived from the basic idea of freedom. Fichte (q.v.) and Ahrens (q.v.) adopted a generally similar standpoint. Such theories stand in sharp contrast to empirical theories of law and justice which claim to impose obligation by virtue of derivation from the social facts and also to relativist theories, such as of Bentham (q.v.) or Pound (q.v.) which emphasize the unique nature of the judgment as to justice in every particular situation.

A vinculo matrimonii (from the bond of matrimony). A term derived from canon law indicating the effect of a decree for total dissolution of marriage. Divorce *a vinculo matrimonii* was obtainable from ecclesiastical courts prior to the Reformation only if the marriage was void by reason of a pre-existing canonical impediment, but after the Reformation such a divorce was obtainable in England on the ground of adultery only by private Act of Parliament, until divorce by judicial process was introduced in 1857. In Scotland after the Reformation the courts obtained powers to grant such divorce on the ground of adultery (at common law) or of desertion (under a statute of 1573).

Abandonment. The relinquishment of an interest or claim or of possession of property with intent to terminate proprietary interests therein, as by throwing away, or leaving and not seeking to retrieve it. In marine insurance the term is used of surrendering a ship or cargo to the underwriters on their paying its value as a constructive total loss; it then becomes their property for any scrap value obtainable.

Abandonment of action. The discontinuance of an action in court, normally because the plaintiff sees no chance of success.

Abandonment of domicile. The departure of a person from the country in which he has his domicile (q.v.) with the intention of acquiring a domicile in another country. Whether abandonment should be inferred has normally to be determined by reference to intention apparently disclosed by the circumstances of the case.

Abatement. Interruption of legal proceedings on a defendant's plea to a matter which prevented the plaintiff proceeding at that time or in that form, such as objections to the place, mode, or time of the plaintiff's claim. The modern rule is that an action does not abate by reason of marriage, death, or bankruptcy of a party if the cause of the action survives or continues. Criminal proceedings are not abated by the death of the sovereign or of the prosecutor, but are by the death of the accused.

Abatement of debts. The proportionate reduction of payments where a fund is insufficient to meet all debts in full.

Abatement of freehold. This arose where, on the death of a person seised of land, a stranger entered before the entry of the heir or devisee and kept the latter out. It is now obsolete since real estate vests in the deceased's administrator, not his heir, and pending a grant of administration, in the President of the Family Division of the High Court.

Abatement of legacies. Where the fund for the payment of legacies (q.v.) bequeathed by a will is insufficient to pay them all in full, they must abate, i.e. be cut down. Residuary legacies abate first, then general legacies, unless there is an apparent intention that any particular legacy is to be paid in full, or an order of priority is prescribed, then specific legacies, which abate only if the assets are insufficient to pay the deceased's debts. Demonstrative legacies do not abate, unless the assets are insufficient to pay the deceased's debts, until the funds from which payment is directed to be made is exhausted, when they abate along with general legacies. Within each class all legacies abate in the same proportion.

Abatement of nuisances. In England a public nuisance (q.v.) may be abated, i.e. stopped, destroyed, or removed, by anyone to whom it does a special injury, but to the extent necessary to prevent that injury only, and provided that the abator does not commit a breach of the peace in so doing.

A private nuisance may be abated by any person aggrieved on giving reasonable notice, but without causing a breach of the peace and without causing any greater damage than is essential. Notice is not necessary if the nuisance can be abated without entry on the wrongdoer's land, nor in case of emergency. In Scotland a common law nuisance may be abated under similar conditions to an English private nuisance.

Abbas modernus (or *abbas siculus*). The mediaeval title given to Nicolaus de Tudeschis (q.v.).

Abbott, Benjamin Vaughan (1830–90). U.S. lawyer, secretary of the New York Code Commission 1864 and draftsman of its penal code, a commissioner to revise the statutes of the U.S., 1870–72, and author with his brother Austin of many volumes of reports, forms of pleadings, and of the *United States Digest* (1879) and other Digests.

Abbott, Charles, Lord Tenterden (1762–1832). Practised first as a special pleader before being called to the bar by the Inner Temple in 1796 and built up a large practice. In 1802 he published his book on *Law relative to Merchant Ships and Seamen*, a long-neglected subject, which won him briefs and high praise. He never took silk but became a puisne judge of the Common Pleas in 1816, but was shortly thereafter transferred to the King's Bench and in 1818 succeeded Ellenborough as Chief Justice. As such he presided at the trial of the Cato Street Conspirators. His judgments were distinguished by their clarity of reasoning and perspicacity. In 1827 he was made a peer as Lord Tenterden, but took little part in politics in the House of Lords. Though not a great or learned judge, he was sensible and reasonable, and a master of legal principles, and his textbook has survived in successive editions to the present time as a work of great value. Some of his judgments are important, and in his last years he contributed to reforming statutes.

Abbreviate. In Scottish bankruptcy proceedings, a brief notice in statutory form, of the petition for sequestration of the bankrupt and of the court's deliverance thereon, which must be recorded in a statutory register within two days and prevents the bankrupt disposing of his estate.

Abbreviatio Placitorum. A volume consisting of a number of pleas abstracted from the rolls of proceedings in the *Curia regis*, King's Council, Parliament, and common law courts, in the period Richard I to Edward II, said to have been made by Arthur Agarde, Deputy Chamberlain of the Exchequer, and others in the times of Elizabeth I and James I, but in part made rather later, and printed by the Record Commissioners in 1811. Though only an abridgement and containing many errors, it is a useful source as containing the only first-hand information available of the working of the *Curia Regis* in its early days, and the earliest illustrations of the working of and earliest authoritative statements of the common law.

Abdication. The voluntary renunciation or abandonment of his office by a king or superior magistrate, as distinct from resignation, whereby an inferior restored his office into the hands of him from whom he received it. On the flight of James II in 1688 it was declared in England by the Bill of

Rights that he had abdicated the government and that the throne was thereby vacant. It is now thought that the sovereign's abdication can be effected by statute only and this was the course adopted when Edward VIII abdicated in 1936: see His Majesty's Declaration of Abdication Act, 1936. Abdication may be purely voluntary, as by reason of age, as in the case of Queen Wilhelmina of the Netherlands in 1948, or forced by circumstances, as in the cases of Nicholas II of Russia in 1917 and William II of Germany in 1918.

A'Beckett, Sir William (1806–69). English lawyer who migrated to New South Wales, became solicitor-general, a judge of the Supreme Court, and in 1853 Chief Justice of Victoria. He wrote various legal biographies and other works.

Abduction. The crime in English law of taking a girl under 16 from the possession of her parent or guardian, or a girl under 18 or a defective woman of any age from such possession for the purpose of unlawful sexual intercourse, or a girl under 21 with property or expectations of property from such possession to marry or have unlawful sexual intercourse, or of taking away and detaining any woman with the intention that she shall marry or have unlawful sexual intercourse with a person, by force or for the sake of her property or expectations of property. Abduction or kidnapping of any child is also an offence. Abduction of voters is also criminal.

In international law it is an infringement of the sovereignty of one state for agents of another state to abduct a person from the former state to the latter for trial and punishment there.

Abercromby, James, First Lord Dunfermline (1776–1858). Third son of General Sir Ralph Abercromby, was called to the English Bar in 1800 and later became a commissioner in bankruptcy and, in 1827, Judge-advocate-general. He was an M.P. from 1807 to 1830, in which year he became Chief Baron of Exchequer in Scotland. When the office was abolished in 1832 he re-entered Parliament and was elected Speaker in 1835. He retired in 1839, being then created Baron Dunfermline. Thereafter till his death he interested himself in public affairs in Edinburgh.

Abershaw or Avershawe, Louis Jeremiah (?1773–95). A notorious highwayman who terrorized the roads between London, Kingston, and Wimbledon until captured and hanged.

Abet. To encourage, incite, or assist another, especially to commit crime, usually found in the phrase 'aid and abet'. The act is called abetment or abetting and a person who instigates an abettor. An abettor, unlike the accessory, must be present at the commission of the crime, encouraging or assisting the principal. Assistance before the offence is counselling and procuring, and after the offence, e.g. to escape, is not abetting. Mere presence at the scene of a crime and failure to prevent it do not amount to abetting. An abettor was formerly, in the case of felonies, liable as a principal in the second degree, and now in all cases he is liable as a principal offender.

Abeyance. The situation where a right is not presently vested in anyone. It was formerly a fundamental rule of English real property that there must be no abeyance of seisin (q.v.) and any disposition of land contravening this rule was void, but this rule has been superseded since 1925. In certain exceptional cases abeyance persists, as in the principle that the fee simple of the glebe of a church is in perpetual abeyance, and that the freehold of the glebe is in abeyance between the death of one incumbent and the admission of the next one. The commonest modern case is where a peerage is in abeyance when there is no person presently entitled to it, though it has not lapsed.

Abingdon law. A phrase for summary justice, it being said that during the Commonwealth, Maj. Gen. Browne hanged his prisoners and then tried them. Cf. Jeddart justice.

Abinger, Lord Chief Baron. See SCARLETT, J.

Abjuration. Retracting or renouncing by oath. At common law in England it was the oath, taken by one who had claimed sanctuary, to leave the realm for ever. This disappeared with the abolition of sanctuary in 1624. Later statutes imposed abjuration as one of the penalties on Popish recusants. By the Abjuration Act, 1701, every person entering on public life had to be tendered an oath, known as the oath of abjuration, to the effect that he renounced the title of the pretended Prince of Wales (the son of James II) to the English throne, and recognized the rights of the dynasty established under the Act of Settlement; but all oaths of abjuration were abolished by the Promissory Oaths Act, 1871. It has been superseded by the oath of allegiance.

Ableman* v. *Booth (1859), 21 Howard 506. The Wisconsin courts freed Booth, an abolitionist, who had been convicted of violating one of the fugitive slave laws, in reliance on a state personal liberty law directed against the enforcement of the fugitive slave laws. The Supreme Court affirmed federal supremacy and denied the right of a state judiciary to interfere in federal cases, and the federal

government rearrested and imprisoned Booth. The decision led the Wisconsin legislature to defend state sovereignty by adopting resolutions similar to the Kentucky and Virginia resolves.

Abolition Acts. Acts passed 1807–38 by the British Parliament on overseas possessions dealing with slavery. The Act of 1807 made it illegal for British subjects to engage in the slave-trade, that of 1811 made slave trading a felony, that of 1824 made it a capital offence, and that of 1833 abolished slavery and emancipated slaves after an apprenticeship period of four to six years. Amendment of the Act in 1838 improved the conditions of apprentices.

Abominable crime. In older legislation the euphemism for the crimes of buggery and bestiality (qq.v.).

Abortion. Expulsion of the human foetus from the womb before it has reached a state of development sufficient to permit it to survive independently, a state reached between the 21st and 28th weeks of pregnancy. It may occur accidentally or spontaneously (when it is usually called miscarriage) or be induced. Induced or artificial abortion has extensive legal implications. Most religions have long condemned it, but in the nineteenth century it was commonly made subject to heavy criminal penalties with exceptions occasionally recognized for therapeutic reasons, particularly the preservation of the life of the mother. The general illegality of abortion, however, gives rise to unauthorized criminal abortions, frequently performed by unskilled persons, with heavy mortality and risk. In 1920 the government of the U.S.S.R. authorized abortion on demand, and since 1945 moves to legalize abortion have been widespread. At common law in England it was criminal to procure abortion, unless done in good faith to save the life of the mother: *R.* v. *Bourne*, [1939] 1 K.B. 687. Apart from that it is criminal for a pregnant woman to take any drug or use any instrument with intent to procure her own miscarriage, or for any person to cause a woman to take anything or use any means on her with that intent. Alternatively a conviction may be secured for killing a child capable of being born alive. In Scotland abortion is criminal at common law, unless, probably, if carried out for therapeutic purposes; attempted abortion is criminal, if the woman is pregnant.

The Abortion Act, 1967 (Eng. and Scot.) permits the termination of a pregnancy by a medical practitioner if two medical practitioners are of the opinion, formed in good faith, that continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the physical or mental health of her or any existing children of her family, greater than if the pregnancy were terminated, or that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. The operation must, save in emergency, be carried out in a hospital managed under the National Health Service Acts. This Act gave rise to a steep rise in the number of abortions in the U.K. and to acute controversy on social, ethical, and medical grounds, but an inquiry in 1973–74 recommended no change in the law.

Abridgement of All Sea Laws. *See* Welwod.

Abridgement of the Book of Assises. An anonymous alphabetical abridgement of matter from the Year Books, printed by Pynson in 1509 or 1510 and by Tottel in 1555. It is sometimes called *Liber Assisarum*, which confuses it with that work (q.v.). About a quarter of the 1,000 cases abridged comes from the *Liber Assisarum*, the rest from all reigns between Edward I and Edward IV, and they are arranged under 76 alphabetical titles, the chief topics being criminal law, land law, and procedure. It draws heavily on Statham's *Abridgement*.

Abridgements of the Statutes. The great quantity of statutes passed by the mediaeval English Parliaments gave rise to abridgements of the statutes. The earliest was a *Vieux Abridgment des Statutes*, including statutes down to 1455 in alphabetical order and published in French by Letton and Machlinia in 1481. There were later editions by Pynson. This was followed by Guillaume Owein's *Le Bregement de Toutes les Estatutes* of 1521, *The Statutes: The Abbreviation of Statutes translated out of French into English by John Rastall*, published in 1519 and 1527, in which the statutes are distributed under alphabetical titles and given both in the original language and in English, and F. Pulton's *Kalender or Table, comprehending the effect of all the Statutes, Magna Carta untill 7 Jacobi with an abridgment of all the statutes whereof the whole or any part is generall, in force and use*, published in 1560 and in later editions. There were also some less important works.

Later similar works include Edmund Wingate's *Exact Abridgement of all Statutes in force and use from the beginning of Magna Carta untill 1641*, published first in 1642 and later continued several times to later dates; T. Manby's *Exact Abridgment of all the Statutes made in the reigns of Charles I and Charles II to 1673* (1674); and Keble's and J. Cay's *Abridgment of the Publick Statutes in force from Magna Charta* (1739), continued in later editions to 1760 (1766). Later still were T. W. Williams' *Compendious Digest of the Statute Law* (1787) continued in later editions, and J. Gabbett's *Digested Abridgment and Comparative*

View of the Statute Law of England and Ireland to 1811 (1812).

In Scotland Lord Kames (q.v.) published a *Statute Law of Scotland Abridged with Historical Notes* in 1757, and John Swinton published an *Abridgment of the Public Statutes in Force relative to Scotland from 1707 to 1754* (1755) and an *Abridgment of Statutes in Force relative to Scotland from 1707 to 1787* (1788) which was continued by W. Forsyth to 1827. Forsyth also compiled a *Dictionary of the Statute Laws of Scotland*, 1424–1707, and the whole of the *British Statutes in force relative to Scotland from 1707 to 1839*. There were also Abridgements by Alexander and Bruce.

Abridgements of the Year Books. Shortly after the first abridgement of the statutes came abridgements of the Year Books (q.v.). The first extant, attributed to Nicholas Statham in *Epitome Annalium Librorum tempore Henrici Sexti*, published about 1495, contains an abridgement in Norman French under titles in roughly alphabetical order of cases from Edward I to the end of Henry VI, and includes some cases not found in the Year Books. It is an excellent mirror of fifteenth-century law.

The next abridgement is the anonymous *Abridgement of the Book of Assizes* published by Pynson in 1509 or 1510 and reprinted by Tottell in 1555. It is an alphabetical arrangement of matter taken principally from the Year Books on the same plan as Statham's *Abridgement*.

Much more important is Sir Anthony Fitzherbert's *La Grande Abridgement*, first printed in 1514, and remarkable not only for accuracy but for its research. It contains extracts from Bracton's Note Book and from many unprinted Year Books, and was a model for future compilers of abridgements. It was extensively used by Staunford for his treatise on the prerogative.

The last was Sir Robert Brooke's *La Grande Abridgement* published in 1568; though based on Fitzherbert's, it contains much new material and draws on sources other than the Year Books.

These abridgements are almost entirely digests of case-law and ancestors of the modern Digests.

The later abridgements

In the seventeenth century there began to appear the later abridgements in which topics are divided under headings and the sources drawn on are Parliamentary records and statutes as well as cases, and which accordingly foreshadow modern legal encyclopaedias and collections of treatises on branches of the law.

The first of these is William Hughes' *Abridgement of the common law with the cases thereof drawn out of the old and new books of law* (1657) and *Grand Abridgement of the Law continued: or Collection of the Principal Cases and Points of the Common Law of England in the Reports, from the First of Elizabeth to the present time* (1660–63).

Much more important is Sir Henry Rolle's *Abridgement des Plusieurs Cases et Resolutions del Common Ley*, in law French, published, with an introduction by Sir Matthew Hale, in 1668, which contains many cases not elsewhere discoverable and seeks to make some arrangement of them within each title.

These were followed by Knightley D'Anvers's *General Abridgement of the Common Law* (1705–37), which was a translation of Rolle down to the title 'Extinguishment' with additional cases, by W. Nelson's *Abridgement of the Common Law; The Principal Cases argued and adjudged in the Courts of Westminster Hall* (1725–26), a poor work, by *A General Abridgement of Cases in Equity. By A Gentleman of the Middle Temple* (1732) which collects equity cases and adds some from manuscript sources, and finally Charles Viner's *General Abridgement of Law and Equity: Alphabetically digested under Proper Titles with Notes and References* in 23 volumes (1741–53). There was a second edition in 1791 and a supplement in 1799. This huge work was based on Rolle, but was built up from all other accessible materials, and is a most valuable compilation.

The transition to the modern encyclopaedia

The transition to the modern encyclopaedia, to the alphabetically arranged collection of systematic treatises and articles on all the branches of the law, is marked first by William Sheppard's *Epitome of all the Common and Statute Laws of this nation in force* (1656) and his *Grand Abridgement of the Common and Statute Law of England* (1675) which was based on *Coke upon Littleton* and *Coke's Institute*. But a great advance is seen in Sir John Comyn's *Digest of the Laws of England* (1762–67) frequently re-edited and extended down to 1882, in which the logical character of the work is more apparent, and the transition was completed in Matthew Bacon's *New Abridgement of the Law* (1736–66) which expanded and went through editions down to 1832. It combines a digest of the law with exposition of it and remains of value. William Cruise's *Digest of the Laws of England respecting Real Property* (1804) expounds the theory of the rules digested and also adopted a scientific classification, largely based on Blackstone, instead of alphabetical arrangement. Finally there came Charles Petersdorff's *Practical and Elementary Abridgement of Cases argued in the Courts of King's Bench, Common Pleas, Exchequer and at Nisi Prius; and of the Rules of Court from 1660* in 15 volumes (1825) with supplements down to 1870, which closely approaches a modern encyclopaedia in being arranged both alphabetically and analytically.

J. D. Cowley, *Bibliography of Abridgements, Digests,*

Indexes and Dictionaries of English Law to 1800; P. H. Winfield, *Chief Sources of English Legal History*.

Abrogation. The annulling of a rule by usage or contrary legislation. In the case of statute it is normally called repeal (q.v.). See also DESUETUDE.

Absence of accused. In cases of treason, an accused must be present at the preliminary enquiry and at the trial. In other indictable offences his presence at the trial is not essential. In summary offences the court may accept a plea of guilty in writing.

Absolute discharge. In Britain, a mode of dealing with a person convicted of an offence where the court, having regard to the circumstances, the nature of the offence, and the character of the offender, regards punishment as inexpedient and discharges him unconditionally.

Absolute dispositions, *ex facie*. In Scots law, an almost obsolete mode of creating security over land by conveyance of land which is *ex facie* outright but which is truly a transfer in security only, the fact that it is so qualified, the terms of the conveyance, and the undertaking to reconvey on the debt being discharged being contained in a separate deed, a back-letter or back-bond.

Absolute duties. Duties to which, according to Austin (q.v.), no rights corresponded. The category included duties not to persons but to God or to animals, duties to persons indefinitely or to the community, self-regarding duties, and duties owed to the sovereign. The first are not legal but religious or moral duties, the second are the aggregate of duties to many individuals, the third are probably impossible, and the fourth depend on Austin's view that there can be no legal relationship between subject and sovereign. These are no doubt of a special nature and the relations between subject and sovereign depend on the view adopted of the legal nature of the state.

Absolute, fee simple. An estate in land inheritable by heirs general, not defeasible nor determinable nor subject to condition. A fee simple absolute in possession is, since 1925, the only freehold interest capable of existing as a legal estate and is the largest interest in land known to the law.

Absolute interest. Full and complete ownership of property, liable to be determined only by the failure of successors in title.

Absolute liability. In the law of tort and delict, liability in damages, imposed under certain statutory provisions, and incurred by reason of the mere occurrence of an accident of a kind deemed prohibited, without regard to care or precautions taken and without need for proof of negligence or fault. It is sometimes confused with strict liability (q.v.), which is a slightly lower standard of liability. Similarly in criminal law absolute liability is liability for specified conduct or results independently of intention or other mental factor.

Absolute owner. A phrase in contracts for the sale of land meaning that the vendor will convey as beneficial owner.

Absolute privilege. In the law of defamation (q.v.) the privilege or legal entitlement to make a statement defamatory of another with complete immunity from liability to be sued, whatever the circumstances, as contrasted with qualified privilege (q.v.) where the freedom is conditional on the statement complained of not having been made maliciously. Absolute privilege attaches to statements made in parliamentary proceedings, in reports published by order of either House of Parliament, statements made in judicial proceedings, or documents made in such proceedings, statements made by an officer of state to another in the course of his duty and in a few other cases. The justification is the need for complete frankness of speech, even though it may be defamatory.

Absolute responsibility. The doctrine in international law whereby state responsibility may arise even though no intention or negligence can be imputed to the state.

Absolute, rule or order. A rule or order which is immediately of full effect and complete, as distinct from a rule or order *nisi*, which is made *ex parte*, on the application of one party only without notice to the other and which does not become absolute until the other party has had an opportunity of being heard and of showing cause why it should not be made absolute. If he shows cause the rule or order *nisi* is discharged, but if he does not it becomes absolute.

Absolute, term of years. A leasehold for a term which is to last for a certain fixed period, though liable to come to an end before the expiry of that period by re-entry by the landlord or on certain other events. It includes a term for less than a year, for a year, for years and for fractions of a year or from year to year. If a leasehold satisfies the requirements of a term of years absolute, it is a legal estate; if not, it is an equitable interest.

Absolute title. Registration of title under the Land Registration Act, 1925 as first proprietor of a freehold estate in land with absolute title vests in

the person so registered an estate in fee simple in possession in the land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, but (a) subject to the incumbrances and other entries, if any, appearing on the register, (b) unless the contrary is expressed on the register, subject to such overriding interests, if any, as affect the registered land, and (c) where the first proprietor is not entitled for his own benefit to the registered land, subject as between himself and the persons entitled to minor interests, to any minor interests of such persons of which he has notice. Registration as first proprietor of a leasehold interest has a similar effect but is also subject to all implied and express covenants, obligations, and liabilities incident to the registered land.

Absolute warrandice. In Scots law a warranty that the grantee's title to land will not be reduced by anyone at all, implied in and normally also expressed in a conveyance of land for a full price.

Absolvitor. Decree in Scots law, absolving the defender from the claims made against him in a civil action. See *Assoilzie.*

Abstention. The deliberate refraining from doing, or the not-doing, some act, as distinct from inadvertent omission or failure to do it. Legal liability attaches in general for abstentions only where there was a positive legal duty to do the act which has not been done.

Abstract of title. In English real property law, a statement in chronological order of all the instruments and events under which a person is entitled to particular unregistered land, showing the history of the title and all incumbrances to which it is subject, prepared by the vendor's solicitor and delivered to the purchaser's solicitor, examined by him and checked by reference to the original deeds. The latter may make requisitions to ascertain any relevant fact undisclosed, to dispel doubts, or to remedy defects. The object is to enable the purchaser or mortgagee to judge the evidence deducing the vendor's title and any incumbrances affecting it. A contract for the purchase of land implies a right to an abstract unless this is expressly renounced. An abstract is also usually given in the case of a mortgage. In the absence of contrary stipulation a vendor must deduce his title from a good root of title at least fifteen (formerly thirty) years old, though in certain cases a longer title may be demanded.

In the case of registered land the vendor must supply the purchaser with authority to inspect the register and, if required, with a copy of the subsisting entries and of the plan, and also with copies, abstracts, and evidence in respect of any subsisting rights and interests relative to the registered land as to which the register is not conclusive and of any matters excepted from the effect of registration as the purchaser would have been entitled to if the land had not been registered, but beyond these requirements the vendor is not bound to supply written evidence of title.

Aburnius Valens. A Roman jurist of the Sabinian school, named by Hadrian to be *praefectus urbi feriarum Latinarum* and a pontiff and author of a *De fideicommissis libri vii.*

Abuse of civil proceedings, or of process. The tort or delict of initiating, and carrying through, civil proceedings against another, involving interference with liberty, or property, or liable to affect reputation, not only unsuccessfully or unjustifiably, but maliciously and without reasonable or probable cause. The plaintiff must show that the action was unsuccessful and that he sustained damage, and that the proceedings were taken in bad faith or in circumstances yielding an inference that they were taken maliciously and without probable cause. There is no liability merely because proceedings fail, or a judgment is reversed on appeal, nor because stringent measures are adopted unnecessarily, if they were legally justifiable. An action clearly frivolous or contrary to good faith may be stayed as an abuse of the process of the court, and a court has an inherent jurisdiction to protect itself from abuse of its own process.

Abuse of rights. The principle that in certain circumstances a person will not be permitted by law to exercise a right which he has by that law, on the basis that the right is conferred for certain purposes and may not be exercised for purposes foreign to these. The question arises particularly where a right is exercised with the sole or predominant purpose of harming another, e.g. A sinking a well on his land to abstract underground water beneath B's land. The doctrine of abuse of rights is recognized in most European legal systems, but without any very definite content or settled formulation, but is very inadequately recognized in common law systems. There is some support for it in some decisions of international tribunals. The doctrine has dangers because hardly any exercise of a power could not be challenged on this ground.

***Ac etiam* clause.** A clause, introduced by *ac etiam* (and also) stating the real cause of action in old cases where a fictitious cause was first stated in order to give the court jurisdiction. In the King's Bench in the Bill of Middlesex an allegation of trespass in Middlesex was necessary for jurisdiction, and this was followed by (*ac etiam*), a statement of the true cause of action, which might not have arisen

in Middlesex. In the Common Pleas in the Writ of trespass *quare clausum fregit* a clause commencing *ac etiam* similarly gave the true cause of action and allowed that court to assume jurisdiction and thereby to capture business from the King's Bench. In both cases the initial allegation was fictitious and only the *ac etiam* clause disclosed the real cause of action. These forms were abolished in 1832. See *Latitat*; Bill of Middlesex.

Academic jurists. See JURISTS.

Acceleration. Where an interest in property in remainder or in reversion falls into possession earlier than it would otherwise have done, because the preceding interest is void or extinguished, as by surrender, merger, or lapse. Where a peerage has been disclaimed under the Peerage Act, 1963, a writ of acceleration, passing the peerage to the next heir, may not be issued.

Acceptance. In general, an act whereby a party agrees to a proposal, terms, or offer made to him, or undertakes a trust, office, or duty. In contract it is the indication by a person to whom an offer has been made by mode or conduct that he assents to the offer made to him. If unqualified, a binding contract is thereupon concluded.

Acceptance of bill. Acceptance of a bill of exchange is an indication that the drawee of the bill assents to the order of the drawer to pay the bill according to the tenor of his acceptance. It must be written on the bill and signed by the drawee, his signature alone being sufficient, and must not express that the drawee will perform his promise by any other means than the payment of money. It may be general, or qualified, i.e. conditional, partial, local, qualified as to time, or having the acceptances of some one or more of the drawees, but not of all.

Acceptance of goods. Where goods are delivered to a buyer which he has not previously examined, he is not deemed to have accepted them in performance of the contract of sale unless and until he has had a reasonable opportunity of examining them to ascertain whether they are in conformity with the contract. A buyer is deemed to have accepted goods tendered in performance of a contract of sale when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, such as using or reselling them, or (except where otherwise provided) when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Acceptance of service. Where a solicitor, acting for a defendant or defender and with his authority, accepts a writ or summons on the latter's behalf, it has the same effect as if served on the defendant or defender personally. It is effected by writing on the principal writ or summons words clearly indicating acceptance of service on behalf of the defendant or defender.

Acceptilatio. In the civil and Scots laws, the verbal extinction of a verbal contract but without payment or performance, or with the acceptance of merely nominal satisfaction of the contractual undertaking.

Access. Approach or means of approach. In matrimonial law, it is the possibility of having intercourse with a spouse. Hence the presumption that a woman's husband was the father of her child may be rebutted by clear evidence of non-access by the husband at or about the time of conception.

Where spouses have separated and custody of a child has been awarded to one, the other is normally allowed access, i.e. opportunity to see and visit the child.

In land law an owner of land adjoining a highway has a right of access to it for any traffic required for the reasonable use of his property, and an owner of land fronting on water has a right of access to and from the water.

Access to the countryside for purposes of recreation is now secured by legislation.

Accessio. A mode of acquiring ownership of property. An owner of real or heritable property becomes owner of what is attached to it, as when a building is erected on land, or fixtures attached to a building: *quicquid plantatur solo, solo cedit.* An owner of personal or moveable property is owner of accessions to it, such as of accessories to his car, or what naturally accrues to it, as by the birth of young to his animals: *accessorium sequitur principale.* Artificial or industrial accession is the addition to the value of a subject by human art or labour exercised thereon, as by trees planted or buildings erected, as distinct from natural accession.

Accession. In international law the unconditional acceptance by one state of a treaty concluded between others.

Accession council. As soon as conveniently possible after the death of a monarch of the United Kingdom, an Accession Council meets, composed of the Lords Spiritual and Temporal, members of the late monarch's Privy Council, the Lord Mayor and aldermen of London and, in recent instances, the High Commissioners in London of Commonwealth countries. The new monarch then takes the oath for the security of the Church of Scotland prescribed by the Act incorporated in the Act of Union with England, 1706.

Accession declaration. A new monarch of the United Kingdom must before the first opening of Parliament or at his coronation declare that he is a Protestant and promise to uphold the statutes securing the Protestant succession to the throne: Accession Declaration Act, 1910.

Accession, deed of. A deed by a bankrupt's creditors approving of a trust secured by the debtor for the behoof of creditors generally.

Accession of the sovereign. On the death of a sovereign of the United Kingdom, his or her heir immediately and automatically becomes sovereign, and neither proclamation nor the making of the declaration required by the Accession Declaration Act, 1910, nor coronation, is necessary to his becoming sovereign for all purposes.

Accessorium sequitur principale. The accessory thing goes with the principal thing, the rule that fixtures or crops go with land, the young of animals with their mother.

Accession Treaty. The Treaty of Brussels of 1972 providing for the accession of the United Kingdom, Ireland, and Denmark to the European Communities. (Norway was also a party but did not ratify the treaty.) Under it the new members acceded to the existing Communities and accepted all their rules and became entitled to full membership on 1 January 1973 conditionally on incorporation of the Community law into their municipal laws. There was annexed to the Treaty an Act of Accession laying down the conditions of accession and making necessary modifications to earlier treaties and subsidiary instruments. It provided for a transitional period, expiring in 1977, for tariff reductions on trade between the U.K. and the original members.

Accessory. In English criminal law a distinction was formerly drawn in cases of felony (q.v.) between principals and accessories, the latter being divided into accessories before the fact, any who directly or indirectly by any means counselled or procured the commission of the felony but who were not actually present at or aiding in the commission of the felony, who were liable to the same punishment as the principal felon, and accessories after the fact, any who with knowledge that a felony had been committed, and, not being the wife of the felon, in any way secured or attempted to secure the escape of the felon by harbouring him or otherwise, who were themselves guilty of felony. In treasons (q.v.) all participants in any way are deemed principals. In misdemeanours (q.v.) all who would have been deemed accessories before the fact if the crime had been felony were deemed principals and punishable as such, and all who would have been deemed accessories after the fact were not guilty of any offence, unless the facts disclosed a substantive offence such as conspiracy to defeat the ends of justice. The distinction between felonies and misdemeanours was abolished by the Criminal Law Act, 1967, and all offences are governed since then by the rules relating to misdemeanours, so that the distinction between principal and accessory has virtually vanished. All who aid, abet, counsel, or procure the commission of any offence are liable as principal offenders.

As to Scotland see ACTOR OR ART AND PART.

Accessory obligation. In Scots law, an obligation additional and subordinate to another obligation and undertaken as security for the fulfilment of the primary obligation.

Accident. Colloquially, any undesired and unintended happening, especially involving harm or injury. In legal contexts such a happening entails no legal liability only if it was an inevitable accident, such an event as no normal human foresight or reasonable precautions could have avoided or prevented, e.g. damage by an earthquake. Legal liability, however, attaches if the accident was one of the kinds of happenings which, though unintended, should reasonably have been foreseen and by the exercise of reasonable precautions not allowed to happen, e.g. a vehicle collision, while in particular circumstances there may be strict liability (q.v.) if such a thing happens, or even absolute liability (q.v.) for the happening, whatever care and precautions may have been taken. In equity (q.v.) accident means an unforeseen event, misfortune, loss, act, or omission which is not the result of negligence or misconduct.

Accioly, Hildebrando Pompeo Pinto (1888–). Brazilian jurist and diplomat, author of *Tratado de Direito internacional público* (1933–35) and other works on international law and relations.

Accolade. The ceremony traditional in creating a knight, formerly by the king putting his hand on the knight's neck or shoulder or even striking him with his fist, and latterly by the king touching him on the shoulder with the flat of a sword.

Accolti, Francesco (Franciscus de Accoltis) (*c.* 1416–84). An Italian commentator, professor at Ferrara and Siena, author of *Commentaria super Lib. II Decretalium* (1481) and *Consilia seu Responsa* (1481).

Accommodation Bill. A bill of exchange signed by a party, as drawer, acceptor, or indorser, without receiving value therefor and for the purpose