

# A CONCISE DICTIONARY OF LAW



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# Editor

Elizabeth A. Martin MA (Oxon)

## Contributors

Martin R. Banham-Hall LLB *Solicitor*

Bernard Berkovits LLB *Lecturer in Law, University of Buckingham*

P. J. Clarke BCL, MA *Barrister; Fellow and Tutor in Law, Jesus College, Oxford*

Letitia Crabb LLB (Wales), LLM (London) *Solicitor; Lecturer in Law, University College of Wales, Aberystwyth*

J. W. Davies LLB, MA, BCL *Fellow of Brasenose College, Oxford*

B. Russell Davis MA, LLB *Barrister*

J. D. Feltham BA (Melb.), MA (Oxon) *Fellow of Magdalen College, Oxford*

Judith Lewis LLB *Solicitor*

Keith Uff MA, BCL (Oxon) *Lecturer in Law, University of Birmingham*

## Preface

This dictionary, which is an entirely new compilation, has been written by a distinguished team of academic and practising lawyers. It is intended primarily for those without a qualification in law, who nevertheless require some legal knowledge in the course of their work; chartered surveyors and accountants, civil servants and local-government officers, social workers and probation officers, as well as businessmen and legal secretaries are typical examples of those whose work often calls for a knowledge of the precise meaning (and spelling) of a legal term.

Each article, therefore, begins with a clear definition of the entry word (or words) and, in most cases, is followed by a more detailed explanation or description of the concepts involved.

Written in concise English, uncluttered with technical jargon, the book will also be of considerable value to members of the public who come into contact with the law and lawyers—house buyers, motorists, and hire purchasers are among those who cannot escape the effects of legislation or the unique prose style in which it is usually expressed.

This dictionary reflects many recent changes in the law, notably the impact of the law of the EEC and changes in UK legislation up to and including the effects of the Criminal Justice Act 1982. However, since many provisions of this Act (and of certain other new Acts) were not in force at the time of publication, the entries to which they apply can only indicate the direction of the proposed changes.

To simplify the use of this dictionary no abbreviations are used in the text. An asterisk (\*) placed before a word in a definition indicates that additional relevant information will be found under this article. Some entries simply refer the reader to another entry, indicating either that they are synonyms or that they are most conveniently explained, together with related terms, in one of the dictionary's longer articles.

Finally, I would like to thank all the contributors to this dictionary for their scholarship, industry, and patience, which has greatly simplified the task of editing their work. I am particularly grateful to Mr. Bernard Berkovits for his assistance in compiling the entry list.

E.A.M.  
1983

**abandonment** *n.* **1.** The act of giving up a legal right, particularly a right of ownership of property. Property that has been abandoned is *res nullius* (a thing belonging to no one), and a person taking possession of it therefore acquires a lawful title. In marine insurance, abandonment is the surrender of all rights to a ship or cargo in a case of \*constructive total loss. The insured person must do this by giving the insurer a *notice of abandonment*, by which he relinquishes all his rights to the ship or cargo to the insurer and can treat the loss as if it were an actual total loss. **2.** In civil litigation, the relinquishing of the whole or part of the claim made in an action or of an appeal. In the High Court a claim is abandoned by serving a \*notice of discontinuance. In the county courts, a plaintiff may abandon part of his claim at the start of the proceedings in order to bring the case within the limits of the court's jurisdiction. If he does so, however, any judgment obtained is a full discharge of all demands in respect of his cause of action. **3.** The offence of a parent or guardian leaving a child under the age of 16 to its fate. A child is not regarded as abandoned if the parent knows and approves steps someone else is taking to look after it. The court may allow a child to be adopted without the consent of its parents if they are guilty of abandonment.

**abatement** *n.* **1.** (of debts) The proportionate reduction in the payment of debts that takes place if a person's assets are insufficient to settle with his creditors in full. **2.** (of legacies) The reduction or cancellation of legacies when the estate is insufficient to cover both the deceased's debts and all the legacies provided for in the will or on intestacy. The Administration of Estates Act 1925 provides that general legacies, unless given to satisfy a debt or for other con-

sideration, abate in proportion to the amounts of those legacies; specific and demonstrative legacies abate if the estate is insufficient to pay all debts, and a demonstrative legacy also abates if the specified fund is insufficient to cover it. For example, A's estate may comprise a painting, £300 in his savings account, and £700 in other money; there are debts of £100 but his will leaves the painting to B, £500 from the savings account to C, £800 to D, and £200 to E. B will receive the painting, C's demonstrative legacy abates to £300, and after the debts are paid from the remaining £700, D's and E's general legacies abate proportionately, to £480 and £120 respectively. **3.** (in land law) Any reduction or cancellation of money payable. For example a lease may provide for an abatement of rent in certain circumstances, e.g. if the building is destroyed by fire, and a purchaser of land may claim an abatement of the price if the seller can prove his ownership of only part of the land he contracted to sell. **4.** (of nuisances) The termination, removal, or destruction of a nuisance. A person injured by a nuisance has a right to abate it. In doing so, he must not do more damage than is necessary and, if removal of the nuisance requires entry on to the property from which it emanates, he may have to give notice to the wrongdoer. **5.** (of proceedings) The termination of civil proceedings by operation of law, caused by a change of interest or status (e.g. bankruptcy or death) of one of the parties after the start but before the completion of the proceedings. An abatement did not prevent either of the parties from bringing fresh proceedings in respect of the same cause of action. Pleas in abatement have been abolished; in modern practice any change of interest or status of the parties does not affect the validity

## abduction

of the proceedings, provided that the cause of action survives.

**abduction** *n.* The offence of taking an unmarried girl under the age of 16 from the possession of her parents or guardian against her will. It is no defence that the girl looked and acted as if she was over 16. It is also an offence to abduct an unmarried girl under the age of 18 or a mentally defective woman (married or unmarried) for the purpose of unlawful sexual intercourse. In this case a defendant can plead that he had reasonable grounds for believing that the girl was over 18, or that he did not know the woman was mentally defective, respectively. It is also an offence to abduct any woman with the intention that she should marry or have unlawful sexual intercourse with someone, if it is done by force or for the sake of her property. *See also* child stealing; kidnapping.

**abet** *vb.* *See* aid and abet.

**abortion** *n.* The termination of a pregnancy at a stage when the fetus is incapable of independent survival (i.e. any time between conception and the 28th week of pregnancy). It is an offence to induce or attempt to induce an abortion unless the terms of the Abortion Act 1967 are complied with. Under this Act the pregnancy can only be terminated by a registered medical practitioner, and two registered medical practitioners must agree that it is necessary. Grounds for agreeing to an abortion are either (1) that continuation of the pregnancy would involve a risk to the life or physical or mental health of the pregnant woman (or of other children of hers) that is greater than the risk of terminating the pregnancy, or (2) that there is a substantial risk that the child will be born with a serious physical or mental handicap. Doctors are not obliged to perform abortions, however, if they can prove that they have a conscientious objection to so doing. A husband cannot prevent his wife having a

legal abortion if she so wishes. *Compare* child destruction.

**absconding** *n.* The failure of someone charged with a criminal offence, who has been released on bail, to \*surrender to custody. Absconding is an offence punishable summarily by up to three months' imprisonment and a fine of up to £400 or upon indictment by up to 12 months' imprisonment and an unlimited fine. It may result in the issue of a warrant for arrest.

**absence** *n.* (in court procedure) The nonappearance of a party to litigation or a person summoned or subpoenaed to attend as a witness. *See also* beyond the seas.

**absolute assignment** *See* assignment.

**absolute discharge** *See* discharge.

**absolute liability** *See* strict liability.

**absolute privilege** The defence that a statement cannot be made the subject of an action for \*defamation because it was made in Parliament, in papers ordered to be published by either House of Parliament, in judicial proceedings or a fair and accurate newspaper or broadcast report of judicial proceedings, or in an official communication between certain officers of state. *Compare* qualified privilege.

**absolute title** Ownership of a \*legal estate in registered land with a guarantee by the state that no one has a better right to that estate. The title may, however, be subject to minor or overriding interests or to other encumbrances noted in the register. Absolute title to leasehold property guarantees that the lease was validly granted but not that the landlord's title is free from defect. *Compare* good leasehold title; possessory title; qualified title. *See also* land registration.

**abstraction of water** The taking of water from a river or other source of supply. It normally requires a water au-

thority licence but there are exceptions; for example when less than 1000 gallons are taken, when the water is for domestic or agricultural use (excluding spray irrigation), or when it is removed in the course of fire-fighting or land drainage.

**abstract of title** Written details of the \*title deeds and documents that prove an owner's right to dispose of his land. An owner usually supplies an abstract of title to an intending purchaser or mortgagee, who compares it with the original title deeds when these are produced or handed over on completion of the transaction. An abstract of title to registered land consists of a copy of the entries in the register and details of any other documents necessary to prove the owner's title, such as a marriage certificate proving a woman's change of surname. For unregistered land, the abstract of title must usually trace the history of the land's ownership from a document at least 15 years old (the \*root of title) and give details of any document creating encumbrances to which the land is subject. An abstract of title may comprise extracts, often in abbreviated note form, or an *epitome* (i.e. duplicate copies) of the relevant documents.

**abuse of process** A tort involving the abuse of a legal process. It is a tort to prosecute someone (see malicious prosecution) or to institute some legal process less than prosecution, such as obtaining a warrant for the plaintiff's arrest, if this is done maliciously and without reasonable and probable cause. Other actions that are obviously frivolous, vexatious, or in bad faith can be stayed or dismissed by the court as an abuse of process.

**ACAS** Advisory Conciliation and Arbitration Service: a statutory body established under the Employment Protection Act 1975 to promote the improvement of industrial relations and the development of \*collective bargain-

ing. In its conciliation function it may intervene, with or without the parties' consent, in a \*trade dispute to offer facilities and assistance in negotiating a settlement. It employs conciliation officers who may assist parties to an application to an industrial tribunal to reach a settlement. Generally, an employee's right to complain to an industrial tribunal of unfair dismissal cannot be excluded except by an agreement recorded by ACAS after the intervention of a conciliation officer.

ACAS does not itself arbitrate in trade disputes, but with the consent of both parties it may refer a dispute to the \*Central Arbitration Committee or to an independent arbitrator. ACAS may give free advice to employers, employees, and their respective representatives on matters of employment or industrial relations. It issues \*codes of practice giving guidance on such matters as disciplinary procedures and \*disclosure of information to trade unions. It may also conduct inquiries into industrial relations problems, either generally or in relation to particular businesses, and publish the results after considering the views of parties directly affected.

**acceleration** *n.* The coming into possession of a \*future interest in any property at an earlier stage than that directed by the transaction or settlement that created the interest. For example, a landlord's interest in \*reversion is accelerated if the tenant surrenders the lease before it has expired. When a will bequeaths an interest for life that lapses (e.g. because the legatee dies before the testator), the interest of the person entitled in \*remainder is accelerated and takes effect immediately the testator dies.

**acceptance** *n.* Agreement to the terms of an \*offer that, provided certain other requirements are fulfilled, converts the offer into a legally binding contract. If the method by which acceptance is to



## acceptance of a bill

be signified is indicated by the offeror, that method alone will be effective. If it is not, acceptance may be either express (by word of mouth or in writing) or inferred from the offeree's conduct; for example, if he receives goods on approval and starts to make use of them. The acceptance must always, however, involve some action on the part of the person to whom the offer was made: the offeror cannot assert that his offer will be treated as accepted unless the offeree rejects it. The validity of an acceptance is governed by four principal rules. (1) It must take place while the offer is still in force, i.e. before it has lapsed (*see* lapse of offer) or been revoked (*see* revocation of offer). (2) It must be on the same terms as the offer. An acceptance made subject to any variation is treated as a counteroffer. (3) It must be unconditional, thus an acceptance *subject to contract* is not a valid acceptance. (4) It must be communicated to the offeror. Acceptance by letter is treated as communicated when the letter is posted, but telex is equated with the telephone, so that communication takes place only on receipt. However, when the offer consists of a promise to confer a benefit on whoever may perform a specified act, the offeror waives the requirement of communication as a separate act. If, for example, he offers a reward for information, a person able to supply the information is not expected to accept the offer formally. The act of giving the information itself constitutes the acceptance, the communication of the acceptance, and the performance of the contract.

**acceptance of a bill** The written agreement by the person on whom a \*bill of exchange is drawn (the *drawee*) that he will accept the order of the person who draws it upon him (the *drawer*). The acceptance must be written on the bill and signed. The signature of the drawee without additional words is sufficient, although generally

the word "accepted" is used as well. Upon acceptance the drawee becomes the acceptor and the party primarily liable upon the bill. *See also* qualified acceptance.

**acceptance of charge** A police procedure empowering a senior officer to accept the facts reported to him by a constable and to press criminal charges against a suspect.

**acceptance of service** An endorsement on a writ by a defendant's solicitor that he accepts service of the writ on behalf of the defendant. The writ is then deemed to have been duly served on the defendant on the date of the endorsement.

**acceptance *supra protest* (acceptance for honour)** A form of \*acceptance of a bill of exchange to save the good name of the drawer or an endorser. If a bill of exchange has been either the subject of a \*protest for dishonour by non-acceptance or protested for better security, and it is not overdue, any person who is not already liable on the bill may, with the consent of the holder, accept the bill *supra protest*. Such an acceptance must be written on the bill to indicate that it is an acceptance for honour and be signed. The acceptor for honour engages that he will pay the bill on due presentment if it is not paid by the drawee, provided he has received notice that it has been presented for payment and protested for nonpayment. He is liable to the holder and to all parties to the bill subsequent to the party for whose honour he accepted.

**accepted accounting standards** Statements of standard accounting practice that define the principles upon which a company's assets and liabilities should be valued and its profits and losses computed. They are published by the Accounting Standards Committee and are not (with the exception of those that have become incorporated into the Companies Acts) legally binding. How-

ever, professional accounting bodies expect members to observe them. *See also* accounts.

**access** *n.* 1. The opportunity to visit a child for a short period (*visiting access*) or for a longer period (*staying access*) that may be granted to its parent (and sometimes grandparents) when the other parent has the \*care and control of the child after divorce or when a \*custodianship order is in force. The granting of access and the terms of access are within the discretion of the court. Access is usually considered a parental right, but in recent years it has come to be seen as a right of the child. 2. The opportunity for sexual intercourse between husband and wife. If it can be demonstrated that there was no such opportunity, and a child has been born to the wife, this may be evidence that the child is not legitimate.

**accessory** *n.* One who is a party to a crime that is actually committed by someone else (the *perpetrator*). An accessory is one who either successfully incites someone to commit a crime (*counsels or procures*) or helps him to do so (\*aids and abets). The accessory is normally subject to the same maximum penalty as the perpetrator, with the following differences: (1) strict liability does not apply to accessories: criminal intention (\**mens rea*) on the part of the accessory must be proved even in crimes normally described as strict-liability crimes; (2) one cannot be an accessory to an attempted crime, although the perpetrator may be guilty of attempt; (3) duress is a defence to an accessory in murder, but not to a perpetrator.

Before 1967 an accessory was defined as one who incited a felony (*accessory before the fact*) or assisted someone who had committed a felony (*accessory after the fact*), but these definitions have now been abolished. The term "accessory" is now not a specific legal term. *See also* impeding apprehension or prosecution.

**accommodation bill** A bill of exchange accepted by an *accommodation party*, i.e. a person who signs without receiving value and for the purpose of lending his name (i.e. his credit) to someone else. An accommodation party is liable on the bill to a \*holder for value.

**accomplice** *n.* One who is a party to a crime, either as a perpetrator or as an \*accessory. The evidence of an accomplice must be corroborated.

**accord and satisfaction** The purchase by one party to a contract of a release from his obligations under it when the other party has already performed his side of the bargain. A release of this one-sided nature constitutes a *unilateral discharge* of the contract; unless granted by deed, it can at common law be effected only by purchase, i.e. by a fresh agreement (accord) for which new consideration (satisfaction) is given. If, for example, A is due to pay £1000 on a particular date to B for contractual services rendered, B might agree to accept £900 paid on an earlier date, the earlier payment constituting satisfaction. *Compare* bilateral discharge. *See also* (promissory) estoppel.

**account** *n.* A right at common law and later (more importantly) in equity, calling one party to a relationship (e.g. a partnership) to account to the other for moneys received or due.

**account of profits** A remedy that a plaintiff can claim as an alternative to damages in certain circumstances, e.g. in an action for breach of \*copyright. A successful plaintiff is entitled to a sum equal to the monetary gain the defendant has made through wronging the plaintiff.

**accounts** *pl. n.* A statement of a company's financial position. All registered companies must present accounts annually to company members at a \*general meeting. Accounts consist of a \*balance sheet and a \*profit-and-loss account

## accumulation

with \*group accounts (if appropriate) attached. They are accompanied by a directors' report and an auditor's report. All limited companies must deliver copies of their accounts to the \*Companies Registry, where they are open to public inspection.

**accumulation** *n.* The continual addition of the interest of a fund to the capital, so that the fund grows indefinitely. Before the Accumulation Act 1800 accumulation was permitted for the length of the perpetuity period (i.e. lives in being plus 21 years: *see* rule against perpetuities). The periods for which accumulation is now permitted are shorter; they are listed in the Law of Property Act 1925 and the Perpetuities and Accumulations Act 1964 and include a period of 21 years from the date of the disposition, the period of the life of the settlor, and the duration of the minority of any person mentioned in the disposition.

**accusatorial procedure (adversary procedure)** A system of criminal justice in which the truth is revealed by the process of prosecution and defence. It is the primary duty of the prosecutor and defence to press their respective viewpoints while the judge acts as an impartial umpire, who allows the facts to emerge from this procedure. Common-law systems, as in England, adopt an accusatorial procedure. *Compare* inquisitorial procedure.

**acknowledgment** *n.* 1. The admission that a debt is due or a claim exists. Under the Limitation Act 1939, a written acknowledgment by a debtor or his agent causes the debt to be treated as if it had accrued on the date of the acknowledgment. The result is that the limitation period of six years for bringing an action to recover the debt runs from the date of acknowledgment, rather than the date on which the debt in fact arose. *See also* limitation of actions. 2. Confirmation by a testator in the presence of two witnesses that the

signature on his will is his own. The Wills Act 1837 requires that the testator's signature be made or acknowledged in the presence of two witnesses.

**acknowledgment and undertaking** Confirmation in a \*title deed that a person may see and have copies of relevant deeds not in his possession, with a promise from the holder of them to keep them safely. Thus when part of an owner's land is sold, he keeps his deeds to the whole but in the conveyance gives this acknowledgment and undertaking to the purchaser, who can then prove his title to the part from copies of the earlier deeds and by calling for production of the originals.

**acknowledgment of service** A stage in proceedings begun by \*writ of summons or \*originating summons in the High Court in which the defendant states that the writ or originating summons has been served upon him. The appropriate form must be served upon the defendant with the originating process; it includes a section giving the defendant the opportunity to give \*notice of intention to defend. This procedure was introduced to replace the entering of an \*appearance, which was abolished in 1979. Unlike appearance, acknowledgment of service does not constitute a submission to the jurisdiction of the court or a waiver of any irregularity in the originating process.

**acquittal** *n.* A decision by a court that a defendant accused of a crime is innocent. A court must acquit a defendant following a verdict of \*not guilty or a successful plea of \**autrefois acquit* or \**autrefois convict*. Once acquitted, a defendant cannot be tried again for the same crime on fresh evidence, but an acquittal in a criminal court does not bind civil courts (for example, in relation to a libel charge against someone alleging the defendant's guilt).

**action** *n.* 1. A proceeding in which a party pursues a legal right in a civil

court. *See also in personam; in rem.* 2. In the High Court, a civil proceeding initiated by writ. In this sense, actions are distinguished from *matters*, which are proceedings initiated by other means.

**active trust (special trust)** A trust in which the trustee has duties other than handing over the trust property to the person entitled to it (*compare* bare trust). Obligations (for example to sell the property or to maintain it) may have been imposed on the trustee or discretions may be given to him. Alternatively the beneficiary may be a minor or under a disability and therefore not immediately entitled to the property.

**act of God** An event due to natural causes (storms, earthquakes, floods, etc.) so exceptionally severe that no one could reasonably be expected to anticipate or guard against it.

**Act of Parliament (statute)** A document that sets out legal rules and has (normally) been passed by both Houses of \*Parliament in the form of a \*Bill and agreed to by the Crown (*see* royal assent). Under the Parliament Acts 1911 and 1949, however, passing of public Bills by the House of Lords can be dispensed with, except in the case of Bills to extend the duration of Parliament or to confirm provisional orders. Subject to these exceptions, the Lords can delay Bills passed by the House of Commons; it cannot block them completely. If the Commons pass a money Bill (for example, one giving effect to the Budget) and the Lords do not pass it unaltered within one month, it may be submitted direct for the royal assent. Any other Bill may receive the royal assent without being passed by the Lords if the Commons pass it in two consecutive sessions and at least one year elapses between its second reading in the first session and its third reading in the second.

Every modern Act of Parliament begins with a *long title*, which summarizes

its aims, and ends with a *short title*, by which it may be cited in any other document. The short title includes the calendar year in which the Act receives the royal assent (e.g. The Unfair Contract Terms Act 1977). An alternative method of citation is by the calendar year together with the Chapter number allotted to the Act on receiving the assent or, in the case of an Act earlier than 1963, by its regnal year or years and Chapter number. Regnal years are numbered from the date of a sovereign's accession to the throne, and an Act is attributed to the year or years covering the session in which it receives the royal assent. (*See also* enacting words.) An Act comes into force on the date of royal assent unless it specifies a different date or provides for the date to be fixed by ministerial order.

Acts of Parliament are classified by the Queen's Printer as public general Acts, local Acts, and personal Acts. *Public general Acts* include all Acts (except those confirming provisional orders) introduced into Parliament as public Bills. *Local Acts* comprise all Acts introduced as private Bills and confined in operation to a particular area, together with Acts confirming provisional orders. *Personal Acts* are Acts introduced as private Bills and applying to private individuals or estates. Acts are alternatively classified as public or private according to their status in courts of law. A *public Act* is judicially noticed (i.e. accepted by the courts as a matter of general knowledge). A *private Act* is not, and must be expressly pleaded by the person relying on it. All Acts since 1850 are public unless they specifically provide otherwise.

**act of state** An act committed by an agent of a sovereign power with its prior approval or subsequent ratification that affects adversely a person who does not owe allegiance to that power. The courts have power to decide whether or not particular conduct con-

## actual military service

stitutes such an act, but if it does, they have no jurisdiction to award any remedy.

**actual military service** *See* privileged will.

### **actual total loss** (in marine insurance)

A loss of a ship or cargo in which the subject matter is destroyed or damaged to such an extent that it can no longer be used for its purpose. If the ship or cargo is the subject of a \*valued policy, the measure of indemnity is the sum fixed by the policy; if the policy is unvalued, the measure of indemnity is the insurable value of the subject insured. *Compare* constructive total loss.

**actus reus** [Latin: a guilty act] The essential element of a crime that must be proved to secure a conviction, as opposed to the mental state of the accused (*see mens rea*). In most cases the *actus reus* will simply be an act (e.g. appropriation of property is the act of theft) accompanied by specified circumstances (e.g. that the property belongs to another). Sometimes, however, it may be an \*omission to act (e.g. failure to prevent death may be the *actus reus* of manslaughter) or it may include a specified consequence (death resulting within a year and a day being the consequence required for the *actus reus* of manslaughter or murder). In certain cases the *actus reus* may simply be a state of affairs rather than an act (e.g. being unfit to drive through drink or drugs when in charge of a motor vehicle on a road). *See also* automatism.

**ad colligenda bona** [Latin] To collect the goods. The court may grant \*letters of administration *ad colligenda bona* to any person to deal with specified property in an estate when that property might be endangered by delay. For example, if part of the estate consists of perishable goods the court may grant administration *ad colligenda bona* to any suitable person to allow him to sell or otherwise deal with those goods for

the benefit of the estate, pending a full grant of representation to the persons entitled to deal with the whole estate.

**address for service** The address, which a party to court proceedings gives to the court and/or the other party, to which all the formal documents relating to the proceedings should be delivered. Notices delivered at that address (which may be, for example, the address of his solicitors) are binding on the party concerned.

**ademption** *n.* The cancellation or reduction of a legacy by an act of the testator during his lifetime other than revocation of his will. For example, if the will bequeaths a particular house that the testator sold during his lifetime, or if after making a will giving a legacy to his child the testator gives the child property constituting a \*portion, the legacy is in each case adeemed. The gift of the house is cancelled and the child's legacy is reduced by the amount of the portion.

**ad hoc settlement** A special form of settlement that, under the Settled Land Act 1925, enables the owner in possession of a legal estate in land to \*overreach, on sale, certain equitable interests. The owner executes a deed declaring that he holds the land on trust to give effect to the equitable interests and appointing trustees (who must be two individuals approved by the court or a \*trust corporation) to receive the sale proceeds. *Ad hoc* settlements are extremely rare: the relevant equitable interests normally arise only where the land is already settled (and they can be overreached in any event) or under an *ad hoc* trust for sale.

**ad hoc trust for sale** Any \*trust for sale of land under which the trustees are two individuals approved by the court, their successors in office, or a trust corporation. Under the Law of Property Act 1925 a sale of land subject to such a trust \*overreaches equitable

interests that would not be overreached if the trustees were not thus qualified.

**ad idem** [Latin: towards the same] Indicates that the parties to a transaction are in agreement. *See consensus ad idem.*

**adjective law** The part of the law that deals with practice and procedure in the courts. *Compare* substantive law.

**adjournment** *n.* (in court procedure) The postponement or suspension of the hearing of a case until a future date. The hearing may be adjourned to a fixed date or *sine die* (without day), i.e. for an indefinite period. If an adjournment is granted at the request of a party the court may attach conditions, e.g. relating to the payment of any \*costs thrown away.

**adjudication** *n.* 1. The formal judgment or decision of a court or tribunal. 2. A decision by the Commissioners of Inland Revenue as to the amount (if any) of \*stamp duty payable on a written document.

**adjudication order** A court order that makes a debtor bankrupt. When the order is made, ownership of all the debtor's property is transferred either to a court officer known as the \*official receiver or to a trustee appointed by the creditors. *See also* bankruptcy.

**adjustment** *n.* 1. The determination of the amount due under a policy of insurance. 2. The working out by an average adjuster of the rights and liabilities arising in a case of general \*average.

**ad litem** [Latin] For the suit. A guardian *ad litem* is one that may be appointed by the court to protect a minor's interests in proceedings affecting his interests (such as adoption or wardship proceedings). A grant *ad litem* is the appointment by a court of a person to act on behalf of an estate in court proceedings, when the estate's proper representatives are unable or unwilling to act.

**administration** *n.* 1. The collection of assets, payment of debts, and distribution to the beneficiaries of property in the estate of a deceased person. *See also* grant of representation. 2. The granting of \*letters of administration to the estate of a deceased person to an \*administrator, when there is no executor under the will. 3. The process of carrying out duties imposed by a trust in connection with the property of a person of unsound mind or a bankrupt.

**administration action** Proceedings instituted in court by a personal representative or any other person interested in the estate of a deceased person to obtain a \*grant of representation.

**administration bond** A guarantee by a third party, often an insurance company, to make good any loss arising if a person to whom letters of administration are granted fails to deal properly with the estate. The court usually requires an administration bond as a condition of granting letters of administration only when the beneficiaries are considered to need special protection, e.g. when the administrator lives abroad or when there has been a dispute as to who should administer the estate.

**administration order** An order made in a county court for the administration of the estate of a judgment debtor. The order normally requires the debtor to pay his debts by instalments: so long as he does so, the creditors referred to in the order cannot enforce their individual claims by other methods without the leave of the court. Administration orders are issued when the debtor has multiple debts but it is thought that his bankruptcy can be avoided.

**administrative powers** Discretionary powers of an executive nature that are conferred by legislation on government ministers, public and local authorities, and other bodies and persons for the purpose of giving detailed effect to

## administrative tribunal

broadly defined policy. Examples include powers to acquire land compulsorily, to grant or refuse licences or consents, and to determine the precise nature and extent of services to be provided. Administrative powers are found in every sphere of public administration, including town and country planning, the regulation of public health and other environmental matters, the functioning of the welfare services, and the control of many professions, trades, and other activities. Their exercise is subject to judicial control by means of the doctrine of *\*ultra vires*.

**administrative tribunal** A body established by or under Act of Parliament to decide claims and disputes arising in connection with the administration of legislative schemes, normally of a welfare or regulatory nature. Examples are *\*supplementary benefit appeal tribunals*, *\*industrial tribunals*, and *\*rent assessment committees*. They exist outside the ordinary courts of law, but their decisions are subject to judicial control by means of the doctrine of *\*ultra vires* and in cases of *\*error of law on the face of the record*. Compare domestic tribunal. See also Council on Tribunals.

**administrator** *n.* A person appointed by the court to collect and distribute a deceased person's estate when he died intestate, his will did not appoint an executor, or the executor refuses to act. An administrator's authority to deal with the estate does not begin until the court has granted *\*letters of administration*. Compare executor.

**Admiralty Court** A court forming part of the *\*Queen's Bench Division* of the High Court whose jurisdiction embraces civil actions relating to ships and the sea. The court's work includes cases about collisions, damage to cargo, prizes (see prize court), and salvage, and in some cases *\*assessors* may be called in to sit with the judge. The distinctive feature of the court's procedure

is the action *\*in rem*, under which the property that has given rise to the cause of action (usually a ship) may be "arrested" and held by the court to satisfy the plaintiff's claim. In practice, it is usual for the owners of the property to give security for its release while the action is proceeding. If the claim is successful, the property held or the sum given by way of security is available to satisfy the judgment. Until 1971 the Admiralty Court was part of the *\*Probate, Divorce and Admiralty Division* of the High Court.

**admissibility of evidence** The principles determining whether or not particular items of evidence may be received by the court. The central principle of admissibility is *\*relevance*. All irrelevant evidence is inadmissible, but evidence that is relevant may also be inadmissible if it falls within the scope of one of the *\*exclusionary rules*. See also conditional admissibility; multiple admissibility.

**admissibility of records** In civil cases documents containing information (records) are admissible as evidence of the facts stated in them under the Civil Evidence Act 1968. The person who compiled the record must have been acting under a duty to do so, but this does not necessarily apply to the person who supplied the information to him. In criminal cases certain business records are admissible as evidence of the facts stated in them under the Criminal Evidence Act 1965 if the person supplying the information had personal knowledge of the matters recorded and either cannot be called to testify or would be unlikely to remember the facts in question.

**admission** *n.* 1. In civil proceedings, a statement by a party to litigation or by his duly authorized agent that is adverse to the party's case. Admissions may be *informal* (i.e. in a document or by word of mouth) or *formal* (i.e. made in a pleading or in reply to an interro-

gatory). An admission may be related to the court by someone other than the person who made it under an exception to the rule against \*hearsay evidence. 2. In criminal proceedings, a statement admitting an offence or a fact that constitutes legally acceptable evidence of the offence or fact. All admissions must be made voluntarily: if they are not, they are inadmissible as evidence. Admissions may be informal or formal. An informal admission made to a person in authority over the prosecution (e.g. a police officer) is called a \*confession. Informal admissions should be viewed with caution by the judge, who has discretion whether or not to allow them. If made to a person in authority, the defence may challenge the prosecution to prove that they were made voluntarily. A formal admission may be made either before or at the court proceedings, but if not made in court, it must be in writing and signed by the defendant or his legal adviser. An admission may be made in respect of any fact about which \*oral evidence could be given in court proceedings and is \*conclusive evidence of the fact admitted at all criminal proceedings relating to the matter, although it may be withdrawn at any stage with the permission of the court. A plea of guilty to a charge read out in court is a formal admission. *See also* Judges' Rules.

**adoption** *n.* 1. The process by which a parent's legal rights and duties in respect of an unmarried minor are transferred to another person or persons. Adoption can only take place by means of an *adoption order* made by a magistrates' court, county court, or the High Court (Family Division). Adoption differs from fostering, custody, and \*custodianship in that it affects *all* the parent's rights and duties and it is a permanent change. After adoption the natural parents are (except for the rules relating to \*affinity and \*incest) no longer considered in law to be the parents of the child, who is henceforth re-

garded as the legal child of the adoptive parents (*see also* adoptive relationship).

The first (but not the only) consideration in deciding whether or not a child should be adopted is whether the adoption would safeguard and promote the welfare of the child. The court must, if possible, try to ascertain the child's wishes and in addition take account of all the circumstances. This may involve consulting expert opinion (e.g. of psychiatrists or social workers). The court may also appoint a guardian \**ad litem* to act in the child's interests. There are many statutory provisions (in the Children Act 1975 and Adoption Act 1976) designed to make sure that an adoption would be in the child's best interests (although not all of these provisions are in force yet). Every local authority must set up an \*adoption service, and \*adoption societies are carefully controlled. There are rules as to who may adopt and who may be adopted and provisions for a probationary period, during which the child lives with the would-be adopter(s) and the court assesses whether he gets on well with them.

Normally a child cannot be adopted without the consent of each of its parents or guardians, but in some cases the court may make an adoption order without the parents' consent (e.g. if they cannot be found or have ill-treated the child). If the court thinks that the parents are refusing unreasonably to agree to an adoption that would be in the child's best interests, it may make an adoption order against the parents' wishes. A parent may consent either to a specific adoption or to an order \*freeing for adoption by whomever the court eventually decides is best suited to adopt the child.

The Registrar General must keep a register containing details of all adoption orders, which any member of the public may consult. An adopted child over the age of 18 has a right to see a copy of his original birth certificate in



## adoption agency

order to find out who his natural parents are.

2. Reliance by a court on a rule of international law that has not been expressly made part of the law of the land but is not inconsistent with it.

3. (in constitutional law) The decision of a local authority or similar body to bring into force in their area an Act of Parliament conferring powers on them at their option.

**adoption agency** A local authority or an approved \*adoption society. Usually only adoption agencies may make arrangements for adoption.

**adoption order** See adoption.

**adoption service** Under the 1975 Children Act, the different services, collectively, that local authorities must provide within their area in order to meet the needs of \*adoption. These services include provision of accommodation for pregnant women and mothers, making arrangements for placing children with prospective adopters, and advising people with adoption problems.

**adoption society** A group of people organized to make arrangements for the \*adoption of children. Adoption societies must be approved by the Secretary of State before acting as such.

**adoptive relationship** A legal relationship created as a result of an adoption order (see adoption). A male adopter is known as the *adoptive father*, a female adopter as the *adoptive mother*, and other relatives as *adoptive relatives*. The laws of \*affinity are, however, not altered by the new adoptive relationship.

**adulteration** *n.* The mixing of other substances with food. It is an offence of \*strict liability to sell any food containing a substance that would endanger health. It is also an offence to mix dangerous substances into food with the intention of selling the mixture.

**adultery** *n.* An act of sexual intercourse between a male and a female not mar-

ried to each other, when at least one of them is married to someone else and the intercourse is not by force. Intercourse for this purpose means penetration of the vagina by the penis. Adultery may be evidence of \*breakdown of marriage and under certain circumstances entitles a spouse to \*divorce the adulterer.

**advance corporation tax (ACT)** A form of \*corporation tax payable by a company on its qualifying distributions (see imputation system).

**advancement** *n.* 1. The power, in a trust, to provide capital sums for the benefit of a person who is an infant or who may (but is not certain to) receive the property under a settlement. The term is a shortened form of *advancement in the world* and has the connotation of providing a single sum for a specific purpose of a permanent nature; examples include sums payable on marriage, to buy a house for the beneficiary, or to establish the beneficiary in a trade or profession. Before 1926, a power of advancement had to be specifically included in any settlement; since 1925 a statutory power exists, subject to contrary intention. No person may receive by way of advancement more than half that to which he could ever become entitled.

2. A presumption, arising in certain circumstances, that if one person purchases property in the name of another, the property will be held beneficially by that other person and not on \*resulting trust for the person who purchases it. The presumption of advancement arises when a father or other person in the position of a parent purchases property for a child. The presumption does not automatically arise in the case of a mother because until 1882 a married woman could not, during marriage, own property; her automatic exclusion from the presumption now seems nonsensical, although she will in many cases be found to be "in