WORDS AND PHRASES LEGALLY DEFINED

Volume 3: I-N

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I

I.O.U.

"In England the purpose of an I.O.U. is to 'state the accounts' as between parties, while in Scotland it has been repeatedly observed that its purpose is to give an acknowledgment of debt and an implied undertaking to repay it." *Winestone* v. *Wolifson*, [1954] S. L. T. 153, *per* the Lord President (Cooper) at p. 154.

ICE-BOUND

[The rules of a marine insurance association provided that an "ice-bound" ship should not be considered as lost unless and until there should have been a specified period of open water after the disaster.] "Ice-bound is a well-known phrase. It is a phrase applicable to the navigation of a ship. It means that ice has so got round the ship that the ship cannot navigate by reason thereof. It does not mean that the ship cannot move. It means that, though the ship may be able to move, she cannot get out of the ice. In other words, it applies if the ice is so close round the ship that she cannot get out of it. A ship is relieved from that position when the water is open—that is, when she can get out of the ice. That being so, the ship will cease to be 'ice-bound' within the meaning of this rule the moment there is open water in which she can navigate, though the ice may still produce difficulties, as, for instance, if the ice breaks up in a storm." *Re Sunderland S.S. Co. & North of England Iron S.S. Insurance Assocn.* (1894), 11 T. L. R. 106, C. A., *per* Lord Esher, M.R., at p. 107.

[Clause 16 of a charterparty provided that a steamer should not be ordered to any "ice-bound" port.] "The shipowners . . . sued the charterers alleging: (1) that they had ordered her [the ship] to an ice-bound port contrary to clause 16 of the charterparty, and that in consequence she was damaged. . . . The judge below has found, and I agree with him, that Abo was not an ice-bound port. It would be if no artificial measures were taken, but in fact by the use of icebreakers a channel for entrance is kept open from the Aland Islands to Abo. The captain admitted it was kept open the whole year and the defendants' witnesses proved that steamers were running six voyages a week between Stockholm and Abo the whole winter. Such a port kept artificially open the whole winter cannot be said to be ice-bound." *Limerick S.S. Co., Ltd.* v. *Stott & Co., Ltd.*, [1921] 2 K. B. 613, C. A., *per* Scrutton, L.J., at p. 620.

IDENTITY

Australia. — [Section 30 (2) (*a*) of the Motor Vehicles (Third Party Insurance) Act 1942–1965 (N.S.W.) authorises the enforcement of a claim against the nominal defendant only where the "identity" of the motor vehicle cannot be established.] "The question here is, what is meant in this context by not being able to establish 'the identity' of the motor vehicle. Surely it means not being able to provide sufficient descriptive information about the vehicle to distinguish it from every other vehicle. If the collected information is not sufficient to exclude every vehicle in existence but one, as being the vehicle the use of which caused or gave rise to the relevant death or bodily injury, then you cannot point to any vehicle as being the one you want to identify. How can it matter whether the deficiency of information leaves unexcluded many vehicles, or a few, or only two? So long as the number of unexcluded vehicles is not reduced to one, identity is not established between, on the one hand, the vehicle which caused or gave rise to the death or injury in respect of which you desire to sue and, on the other hand, a vehicle the owner or driver of which as such, you wish to make a defendant." *Howell* v. *Nominal Defendant* (1962–1963), 108 C. L. R. 552, *per* Kitto, J., at pp. 555, 556.

IDIOT. *See also* MENTAL DISORDER

"An idiot is known by his perpetual infirmity of nature, *a nativitate*, for he never had any sense or understanding to contract with any man; but he who was of good memory and understanding, and able to make a contract, and afterwards becomes by infirmity or casualty of unsound memory, is not so well known to the world as an idiot natural." *Beverly's Case* (1603), 4 Co. Rep. 123b, *per cur.*, at p. 124b.

"The Act [Criminal Law Amendment Act 1885 (repealed)] includes the 'idiot' or person who from birth has no mind, and the 'imbecile' or person who, having once had a mind of some kind, owing to decay or other mental or physical causes, ceases to have a mind." *R.* v. *F*—— (1910), 74 J. P. 384, *per* Grantham, J., at p. 384.

[The use of the terms "idiot" and "imbecile", which were formerly statutorily defined by the Mental Deficiency Act 1913 (repealed), and which appeared in a statute as recent as the Sexual Offences Act 1956 (now, however, amended on this point), have, since the coming

into force of the Mental Health Act 1959, been discontinued. The term "imbecility" is used in the Crimes Act 1961 (N.Z.), s. 23 (2). *See* MORALLY WRONG].

IDLE AND DISORDERLY

Every petty chapman or pedlar wandering abroad, and trading without being duly licensed, or otherwise authorised by law; every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner; and every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do; shall be deemed an idle and disorderly person within the true intent and meaning of this Act . . . (Vagrancy Act 1824, s. 3).

Every common prostitute and night-walker, found wandering in any public walk, street or highway, within the precincts of the . . . University of Oxford, and not giving a satisfactory account of herself, shall be deemed an idle and disorderly person, within the true intent and meaning of [the Vagrancy Act 1824 (*supra*)] (Universities Act 1825, s. 3).

"It seems to me that the proper conclusion to be drawn [from s. 3 of the Vagrancy Act 1824, *supra*] is that the statute was directed against a particular habit and mode of life, and that if persons making it their habit and mode of life to wander abroad or place themselves in public places to beg, do wander abroad and beg and gather alms, they fall within the words of the statute." *Pointon* v. *Hill* (1884), 12 Q. B. D. 306, *per* Cave, J., at p. 308.

"An idle and disorderly person is a person who has been convicted of any of the offences mentioned in s. 3 of the Vagrancy Act 1824 [*supra*], one of which is begging." *R.* v. *Johnson*, [1909] 1 K. B. 439, C. C. A., *per cur.*, at p. 443.

"I think that the Vagrancy Act 1824, which enacts that a person infringing its provisions is to be deemed to be an idle and disorderly person, is aimed not at persons collecting for an object of a charitable nature in which possibly they themselves have an interest, but that it is directed at persons of a different type. . . . In my opinion it would be a misuse of language to say that the respondent, simply because he stood in the street and asked for contributions to a fund from which he and others were to profit, they being temporarily out of work, had become an idle and disorderly person. The words of the statute are obviously aimed at persons . . . who are wandering abroad, who are placing themselves at the corners of streets and begging or soliciting alms, such persons as are described in the judgment of Cave, J., in *Pointon* v. *Hill* [*supra*] . . . as having given up work and adopted begging as a habit or mode of life. Those persons are clearly, I think, within the statute." *Mathers* v. *Penfold*, [1915] 1 K. B. 514, D.C., *per* Darling, J., at pp. 519–521.

See, generally, 10 Halsbury's Laws (3rd Edn.) 698.

IF AND WHEN

[A testator, by a codicil to his will, directed that certain money should be paid to his five grandchildren "if and when" they should respectively attain the age of twenty-one years.] "As regards the legacies to the five grandchildren, there is a direction that they are to be paid 'if and when' the grandchildren respectively attain the age of twenty-one years. It is conceded by counsel for the residuary legatee that, in the absence of the word 'if', a direction as to payment of a legacy when the legatees attain twenty-one would not prevent the legacies from vesting immediately, because the direction in that case would relate only to the time of payment and would not affect the original gift of the legacy. . . . I think that the hypothesis of attaining twenty-one, introduced by the word 'if' in the direction as to payment, is not merely personal to the legatee, but affects the original gift of the legacy. It is impossible, in my judgment, to hold that a legacy which would not, owing to an express condition attached to it, though in a direction to pay, be payable to the legatee, except contingently on his attaining twenty-one, might yet be paid to the personal representative of the legatee even though the legatee died under twenty-one." *Re Kirkley*, *Halligey* v. *Kirkley* (1918), 87 L. J. Ch. 247, *per* Sargant, J., at pp. 247, 248.

IGNORANCE

Of law

"It is said '*Ignorantia juris haud excusat*'; but in that maxim the word '*jus*' is used in the sense of denoting general law, the ordinary law of the country. But when the word '*jus*' is used in the sense of denoting a private right, that maxim has no application." *Cooper* v. *Phibbs* (1867), L. R. 2 H. L. 149, *per* Lord Westbury, at p. 170.

"With regard to the objection, that the mistake (if any) was one of law, and that the rule '*Ignorantia juris neminem excusat*' applies, I would observe upon the peculiarity of this case, that the ignorance imputable to the party was of a matter of law arising upon the doubtful construction of a grant. This is very different from the ignorance of a well-known rule of law. And there are many cases to be found in which equity, upon a mere mistake of the law, without

the admixture of other circumstances, has given relief to a party who has dealt with his property under the influence of such mistake." *Beauchamp (Earl)* v. *Winn* (1873), L. R. 6 H. L. 223, *per* Lord Chelmsford, at p. 234.

ILLEGAL CONTRACT. *See* CONTRACT

ILLEGAL PRACTICE.
See CORRUPT PRACTICE

ILLEGAL PURPOSE

[By s. 77 of the Friendly Societies Act 1896 the Chief Registrar may cancel the registry of any society if that society exists for an "illegal purpose".] "If a society, the rules of which are on the face of them perfectly legal, has as its real object the doing of something unlawful under the cloak of lawful rules, I think that may well be said to be a society existing for an illegal purpose." *Re Middle Age Pension Friendly Society*, [1915] 1 K. B. 432, D. C., *per* Lush, J., at p. 437.

ILLEGITIMATE. *See also* LEGITIMATE

"The testatrix was living with the plaintiff, and if I find, when she talks of illegitimate children, persons in existence to answer the description as objects of her bounty, I cannot do less than give the property to them. The law will not contemplate the notion that there can be future illegitimate children, and therefore I must consider that the testatrix meant to give her property to the children which she has had by the plaintiff. . . ." *Bentley* v. *Blizard* (1858), 4 Jur. N. S. 652, *per* Stuart, V.-C., at p. 652.

New Zealand. — [Section 3 of the Legitimation Act 1939 (N.Z.), is as follows: "(1) Every illegitimate person whose parents have intermarried, whether before or after the passing of this Act, shall be deemed to have been legitimated by the marriage from birth. (2) The provisions of this section shall apply whether or not the illegitimate person was living at the date of the marriage and whether or not his parents were domiciled in New Zealand at the time of their marriage or at the time of his birth."] "The New Zealand Legitimation Act 1939, adopts the principle of the English Act [the Legitimacy Act 1936 (repealed; see now Legitimacy Act 1959)], by abandoning the method of registration and making legitimation automatic on subsequent marriage. . . . The Legislature seems to have recognised that legitimation was now open for any child whether or not its mother was at the time of its birth married to some person other than the father of the child; and accordingly to have recognised that inquiry might be necessary. . . . I am therefore of opinion that the phrase 'illegitimate person' in s. 3 of the Act of 1939 refers to a person who is illegitimate in fact, whether presumed to be legitimate at birth or not, and has the same meaning as the phrase 'any child born before the marriage of his or her parents' in the Acts of 1894 and 1908 [Legitimation Act 1894 (N.Z.) and Legitimation Act 1908 (N.Z.)]." *Taylor* v. *Harley*, [1943] N. Z. L. R. 68, *per* Smith, J., at pp. 72, 73, 74.

ILLNESS

"Illness" includes mental disorder within the meaning of the Mental Health Act 1959 and any injury or disability requiring medical or dental treatment or nursing (National Health Service Act 1946, s. 79; as amended by the Mental Health Act 1959).

Australia. — "The meaning of the word 'illness' is not susceptible of proof by medical evidence, and a failure to appreciate this has complicated the matter. The word 'illness' is not synonymous with 'disease'. In its primary meaning it refers to a bad moral quality, and includes a bad or unhealthy condition of the body." *Burgess* v. *Brownlow*, [1964] N. S. W. R. 1275, *per* Manning, J., at pp. 1278, 1279.

New Zealand. — [Section 5 of the Shipping and Seamen's Act Amendment Act 1894 (repealed; see now s. 67 of the Shipping and Seamen Act 1952) dealt with the discharge of any seaman by reason of "illness" or accident.] "In its widest sense 'illness' covers all cases of sickness and suffering, even from accidents. It cannot be said it is used in its widest sense here, for if it were there was no need of using the word 'accident'. 'Illness' must therefore have a limited meaning. A contrast is made between 'illness and accident' in the statute, and were I to hold that 'illness' was used in its widest sense, then the use of the word 'accident' was unmeaning." *Minister of Marine* v. *Briscoe, MacNeil & Co.* (1899), 18 N. Z. L. R. 722, *per* Stout, C.J., at pp. 724, 725; also reported, 2 G. L. R. 161, at p. 162.

ILL-TREATMENT. *See* CRUELTY

ILL-USAGE

"As to 'ill-usage' [of members of the crew of a ship], that is a very undefined term, depending much upon the opinion of the person who uses it, and taking its character out of the provocation given, and the relation in which the parties stand to each other. What in one instance may be the just exercise of authority, or may be moderate correction, or even justifiable defence, may, in another, be intemperate passion, or wanton cruelty. . . . Although it is necessary that the master should be supported in enforcing due sub-ordination and discipline in his ship, yet the law will not countenance his

giving way to intemperate passion; for that is not only unjustifiable, but certainly is not the most effectual mode of maintaining proper authority." *The Lima* (1837), 3 Hag. Adm. 346, *per* Nicholl, J., at p. 353.

IMBECILE. *See* IDIOT

IMITATION. *See* FRAUDULENT IMITATION

IMITATION FIREARM. *See* FIREARM

IMMATURE

Salmon

The expression "immature" in relation to salmon means that the salmon is of a length of less than twelve inches, measured from the tip of the snout to the fork or cleft of the tail, and in relation to any other fish, means that the fish is of a length less than such (if any) as may be prescribed by the byelaws applicable to the water in which the fish is taken (Salmon and Freshwater Fisheries Act 1923, s. 92 (1)).

Whale

For the purposes of this section [protection for certain classes of whales] a whale of any description shall be deemed to be immature if it is of less than such length as may be prescribed for whales of that description: Provided that the length prescribed for the purposes of this section in relation to blue whales shall not be less than sixty feet, and the length so prescribed in relation to fin whales shall not be less than fifty feet (Whaling Industry (Regulation) Act 1934, s. 3 (2)).

[Whaling Industry (Ship) Regulations have been made under this section prescribing minimum maturity lengths for blue whales, fin whales, sei whales, humpback and sperm whales. For a complete classified list of whales see the Schedule to the Act of 1934.]

IMMEDIATE

[Regulation 6 of the Building (Safety, Health and Welfare) Regulations 1948 (revoked; see now the Construction (Working Places) Regulations 1966, S.I. 1966 No. 94), provided that no scaffold should be erected, etc., except under the "immediate" supervision of a competent person.] "I accept counsel for the defendants' submission that, though there must be supervision, the proper extent of that supervision must be a question of degree related to the structure being built, the difficulties and dangers involved. There must be some person—not the workman himself—who is 'immediately' responsible. The word 'immediate' is, I think, directed to this relationship rather than intended to indicate that every act must be closely supervised. In some cases the supervision may have to be constant and relate to every act that is done—where, for instance, great danger and difficulty are involved. In other cases, where there is no risk and the men are competent, the supervision may be less intensive." *Moloney* v. *A. Cameron, Ltd.*, [1961] 2 All E. R. 934, C. A., *per* Holroyd Pearce, L.J., at p. 936.

[Regulation 79 (5) of the Building (Safety, Health and Welfare) Regulations 1948 (revoked; see *supra*), provided that certain operations should be carried out only under the "immediate" supervision of a competent foreman or chargehand, etc.] "What is meant by 'immediate'? It has been submitted that 'immediate' must mean constant, unremitting supervision of work of this kind. That is not my view of the proper construction of this regulation. The word 'immediate', in my judgment, carried no limitation of supervision, other than it must be a direct supervision. There must not be any intermediary between the person supervising and the person being supervised. That, I think, is the meaning of the word 'immediate'. It means 'direct'." *Owen* v. *Evans and Owen (Builders), Ltd.*, [1962] 3 All E. R. 128, C. A., *per* Ormerod, L.J., at p. 131.

"The word 'immediate' does not mean 'constant'; it means 'immediate' in the sense of being opposed to delegated; or, put in another way, 'immediate' in the sense of 'direct'. In other words, the supervision must be by the competent foreman or chargehand himself, and not by anyone else, and it cannot be delegated." *Ibid.*, *per* Upjohn, L.J., at p. 133.

Immediate binding trust for sale

[Section 20 (1) (viii) of the Settled Land Act 1925, provides that a person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, etc., shall, unless the land is subject to an "immediate binding trust for sale", have the powers of a tenant for life under the Act.] "The expression 'unless the land is subject to an immediate binding trust for sale' must I think mean unless the land that is the total subject-matter of the settlement is subject to a trust for sale which operates in relation to the whole subject-matter of the settlement and is immediately exercisable, although possibly with the limitation, that it is treated as immediately exercisable 'whether or not exercisable at the request or with the consent of any person and with or without a power at discretion to postpone the sale'." *Re Leigh's Settled Estates*, [1926] Ch. 852, *per* Tomlin, J., at p. 859.

IMMEDIATE APPROACHES. *See* APPROACH

IMMEDIATELY (Place)

[The question on a case stated was whether the appellant had erected a stall "immediately" in front of his house, contrary to the provisions

in a section of a local market Act.] "'Immediately', in this section means without any considerable space intervening." *R.* v. *Durham Market Co.* (1857), 29 L. T. O. S. 247, *per cur.*, at p. 247.

[Section 21 of the Crystal Palace Act 1881 enacted that the main building, conservatories, and waterworks of the Crystal Palace Company, and the conveniences and other works "immediately" connected therewith should be exempted from the operation of Part I of the Metropolitan Building Act 1855 (repealed).] "'Works immediately connected therewith' means works connected with the main building—that is to say, the physical structure, not the objects of the appellant company. The polo pony stables being a quarter of a mile away from the main building are not connected with it in the sense intended in the Crystal Palace Act, and are, accordingly, not exempted from the provisions of the London Building Act." *Crystal Palace Co.* v. *London County Council* (1900), 16 T. L. R. 184, D. C., *per* Channell, J., at p. 185.

IMMEDIATELY (Time).

See also AT ONCE; FORTHWITH; ON DEMAND

There appears to be no material difference between the terms "immediately" and "forthwith". A provision to the effect that a thing must be done "forthwith" or "immediately" means that it must be done as soon as possible in the circumstances, the nature of the act to be done being taken into account (37 Halsbury's Laws (3rd Edn.) 103).

"The only material word remaining, is the word immediately. . . . It was said that that word excludes all intermediate time and actions; but it will appear that it has not necessarily so strict a signification: Stevens in his Thesaurus expounds the word, immediate, by *cito et celeriter*; so Cooper's Dictionary renders in English immediately, forthwith, by and by; and Minshew gives it as various meanings, and refers it to the word presently; nor is its signification more confined in legal proceedings, as appears even from 2 Lev. 77, in the case of *Pibus* and *Mitford* [*Pybus* v. *Mitford* (1672), 2 Lev. 75], which was cited to the contrary, which says thus, though the word immediately, in strictness, excludes all mesne time, yet to make good the deeds and intents of parties it shall be construed such convenient time as is reasonably requisite for doing the thing." *R.* v. *Francis* (1735), Lee *temp.* Hard. 113, *per* Lord Hardwicke, C.J., at p. 114.

[Stat. (1840) 3 & 4 Vict. c. 24, s. 2 (repealed), enacted that costs should not be recovered in certain actions, where the damages recovered were less than 40*s.*, unless the judge before whom the verdict should be obtained should "immediately afterwards" certify that the action was brought to try a right, or that the grievance in respect of which the action was brought was wilful and malicious. The judge having adjourned on the finding of a verdict to his lodgings, counsel went to him there, and the judge granted a certificate within a quarter of an hour after the delivery of the verdict.] "In strict construction, the words 'immediately afterwards' exclude the lapse of any interval of time, but their meaning, with reference to a case like the present, must be, that the certificate shall be granted as speedily as conveniently can be. Then I agree that that was done here." *Thompson* v. *Gibson* (1841), 8 M. & W. 281, *per* Rolfe, B., at p. 289.

"It has already been decided, and necessarily so, that the words 'immediately afterwards', in the statute [Stat. (1840) 3 & 4 Vict. c. 24, s. 2 (repealed)] cannot be construed literally; and if you abandon the literal construction of the words, what can you substitute but 'within a reasonable time'? . . . And when the act says only that the judge shall certify immediately after the trial, and does not more especially define the time, it must mean that it is sufficient if it be done within a reasonable time." *Page* v. *Pearce* (1841), 8 M. & W. 677, *per* Lord Abinger, C.B., at pp. 678, 679.

[Stat. (1750) 24 Geo. 2 c. 18 (repealed), and the Juries Act 1825, s. 34, relate to the certifying of the costs of a special jury "immediately after the verdict."] "We think that as the words 'immediately after the verdict' in both Acts are similar, they ought to receive a similar construction, and the Courts having held that the words, that the judge shall certify immediately, may be constructed to mean within a reasonable time, we ought to decide it to be so by analogy in the present case." *Christie* v. *Richardson* (1842), 10 M. & W. 688, *per cur.*, at p. 689.

"The word 'immediate' occurring in a statute is not to be construed in its strictest sense 'on the instant', but . . . it means with reasonable promptness, having regard to all the circumstances of the particular case." *R.* v. *Aston* (1850), 19 L. J. M. C. 236, *per cur.*, at p. 239.

"When a statute requires an act to be done immediately, I do not see how we can construe it to mean that the act may be done some weeks afterwards." *Leech* v. *Lamb* (1855), 11 Exch. 437, *per* Pollock, C.B., at pp. 439, 440.

"The great question is, whether the condition in this contract, that the goods shall be taken from the vessel immediately she was ready to discharge, has been satisfied or not. . . . The first point is, what is the effect of the word 'immediately' here? Under ordinary circumstances, when a man is called upon by a contract to do an act, and no time is specified, he is

allowed a reasonable time for doing it; and what is a reasonable time may depend on all the circumstances of the case. But here the word used being 'immediately', it implies that there is a more stringent requisition than what is ordinarily implied in the word 'reasonable'. Still, it must receive a reasonable interpretation, so far that it cannot be considered as imposing an obligation to do what is impossible." *Alexiadi* v. *Robinson* (1861), 2 F. & F. 679, *per* Cockburn, C.J., at pp. 683, 684.

[Section 103 of the Larceny Act 1861 (repealed by the Theft Act 1968) enacted that any person found committing any offence punishable, either upon indictment or summary conviction, by virtue of the Act, might be "immediately" apprehended by any person without a warrant.] "When an offence within the statute is committed, any person found committing the offence may be apprehended at once by any person without warrant—if it be done on the spot or 'immediately'—and at once taken before a magistrate. But although 'immediately' is a strong word, and must, I think, be taken to mean 'then and there', still it must receive a reasonable construction, and if arrest on the spot is impossible, and can only be effected by pursuit, if the pursuit is immediately set on foot and so the party is arrested, then I think he would be 'immediately apprehended' within the meaning of the section, although the apprehension took place not on the spot but at some distance from it." *Griffith* v. *Taylor* (1876), 2 C. P. D. 194, C. A., *per* Cockburn, C.J., at p. 202.

"It is impossible to lay down any hard and fast rule as to what is the meaning of the word 'immediately' in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time', and imply prompt, vigorous action, without any delay." *R.* v. *Berkshire JJ.* (1878), 4 Q. B. D. 469, *per* Cockburn, C.J., at p. 471.

[A condition of sale provided that the vendor should "immediately" after the sale (which took place on the 30th of December) furnish to the purchaser or his solicitor an abstract of title to the premises.] "I accede to the purchaser's argument that 'immediately' means 'forthwith', 'instanter', and that the purchaser's solicitor might with reason say that he expected the abstract at latest on the 1st of January." *Re Todd & M'Fadden's Contract*, [1908] 1 I. R. 213, *per* Kenny, J., at p. 220.

"Now the word in the statute [Juries Act 1825, s. 34 (see *supra*)] is 'immediately'; but there is no doubt that the word 'immediately' has been construed and may in my judgment be construed to mean as immediately as the circumstances permit." *Barker* v. *Lewis & Peat*, [1913] 3 K. B. 34, C. A., *per* Kennedy, L.J., at pp. 37, 38.

New Zealand. — "Whether something is or is not done immediately is a question of fact. As was said in *Ex p. Lamb, Re Southam* [(1881), 19 Ch. D. 169], dealing with the word 'forthwith', it must be construed with reference to the object of the rule and the circumstances of the case." *Wightman* v. *Land Board of Canterbury & Quirk* (1912), 31 N. Z. L. R. 799, *per* Denniston, J., at p. 806; also reported, 14 G. L. R. 518, at p. 521.

IMMEMORIAL USAGE.

See TIME IMMEMORIAL

IMMORAL PURPOSES

[Section 32 of the Sexual Offences Act 1956 makes it an offence for a man persistently to solicit or importune in a public place for "immoral purposes".] "In my judgment the words 'immoral purposes' in their ordinary meaning connote in a wide and general sense all purposes involving conduct which has the property of being wrong rather than right in the judgment of the majority of contemporary fellow citizens. In that sense . . . the words are, at least arguably, apt to cover the conduct [soliciting] alleged against the respondent in the present case. However I am convinced at least of this. That Parliament cannot be supposed to have used those words in their general sense, as comprising all wrong conduct, in a statute relating solely to sexual offences; soliciting persons to commit non-sexual crime is dealt with by the law relating to accessories before the fact or specifically by statute, e.g. in respect of mutiny, breach of security or Post Office offences. It seems to me to follow that the 'immoral purposes' here in question must be immoral in respect of sexual conduct." *Crook* v. *Edmondson*, [1966] 1 All E. R. 833, *per* Winn, L.J., at p. 835.

IMMOVABLE. *See also* MOVABLE PROPERTY

Canada. — [Article 375 of the Quebec Civil Code provides that property is "immovable" either by its nature, or by its destination, or by reason of the object to which it is attached, or lastly by determination of law, and, by art. 376, that lands and buildings are "immovable" by their nature.] "The word 'immovable' in s. 521 of the Cities and Towns Act [R. S. Q., 1925] must, in their Lordships' view of the construction of that Act, bear the meaning given to it by the Quebec Civil Code. . . . What then is an 'immovable' under the Civil Code? A gas main laid in the earth is an 'immovable' in the sense that it is physically a construction fixed in the earth, though the individual pipes of which it is made up were movable before they came to

form part of the construction. . . . Gas mains . . . must be regarded as immovable by their nature in the territory in which they are physically situate." *Montreal Light, Heat & Power Consolidated* v. *Outremont* (*City*), [1932] A. C. 423, *per cur.*, at pp. 435–437.

Canada. — "The existence of a building which is immovable by its nature under art. 376 [of the Quebec Civil Code (see *supra*)] involves two things, namely, that you have a structure and that such structure is incorporated with or adherent to, the soil." *Bell Telephone Co. of Canada* v. *St. Laurent* (*Ville*), [1936] A. C. 73, P. C., *per cur.*, at pp. 83, 84.

IMMUNITY

Diplomatic immunity

"Diplomatic immunity" means immunity from suit and legal process which is accorded by law to an envoy or other public minister of a foreign sovereign power accredited to Her Majesty, or to the family or official or domestic staff of such an envoy or minister or to the families of any such staff, and includes any like immunities and any exemption or relief from rates which is conferred on any person or organisation by or under the Diplomatic Privileges Act 1964 (General Rate Act 1967, s. 60).

[The main effect of the Diplomatic Privileges Act 1964 is to give the force of law to those provisions of the Vienna Convention on Diplomatic Relations (Cmd. 1368), which required implementation by legislation, and thus to provide in a single statute for the privileges and immunities of diplomatic representatives which had theretofore existed partly by statute and partly by common law. *See*, generally, as to the Crown in foreign relations, 7 Halsbury's Laws (3rd Edn.) 263 *et seq.*]

IMPACT

"I will now state shortly the material provisions of the Personal Injuries (Emergency Provisions) Act 1939, which, we were told, was carried into effect by a scheme under s. 1 (1), conferring on persons injured within its provisions the right to compensation through the Minister of Pensions. The provisions are as follows: . . . 8 (1) 'War injuries' means physical injuries . . . (b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of or for the benefit of, His Majesty or any allied power, or any part of, or anything dropped from, any such aircraft. . . . The 'impact' primarily contemplated is that caused by an aircraft or other thing in motion striking a person—whatever be the force which has produced the motion; whether of gravity or an explosive. A delayed time-fuse bomb might come within the language used—or even a deliberately conceived 'bobby trap' dropped from an aeroplane; but there must be some definite causal *nexus* between the enemy act and the final effect of an injury resulting from the explosion. Where intention can be inferred, as in the two illustrations I have just mentioned, there might be such a continuing chain of causation as would bring the injury within the definition; but where, as here, the effect is not only remote from the cause but the chain of causation is definitely severed by a series of fortuitous interventions by curious boys or men acting for their own purposes, the injury is outside the Act altogether." *Smith* v. *Davey, Paxman & Co.* (*Colchester*), *Ltd.*, [1943] 1 All E. R. 286, C. A., *per* Scott, L.J., at pp. 287, 288.

IMPEDE

[Section 13 (2) of the Mining Industry Act 1926 (repealed; see now the Mines (Working Facilities and Support) Act 1966, s. 1), enabled the Railway and Canal Commission to grant legal rights, and to modify existing rights, in cases where the working of coal was "impeded" by restrictions, etc.] "The sub-section speaks of the working of any coal or of the working of any coal in the most efficient and economical manner being impeded by restrictions, terms or conditions contained in a mining lease. The word 'manner' which is to be the subject of the impediment points very much in favour of the impediment of a restrictive method in the process of working or carrying away the coal; something in the nature of a physical and not a financial impediment." *Consett Iron Co., Ltd.* v. *Clavering Trustees*, [1935] 2 K. B. 42, C. A., *per* Slesser, L.J., at pp. 69, 70.

See, generally, 26 Halsbury's Laws (3rd Edn.) 463)

IMPEDIMENT

[The Ordination Service contains the words: "But yet if there be any of you who knoweth any impediment or notable crime in any of them for which he ought not to be received into this Holy Ministry, let him come forth in the name of God and shew what the crime or impediment is". The appellant had accordingly come forth and objected to one of the deacons presenting himself for ordination at a service in St. Paul's Cathedral on the ground that he had taken part in certain services, and being overruled he persisted and was convicted and fined at petty sessions for an offence under s. 2 of the Ecclesiastical Courts Jurisdiction Act 1860.] "The word 'impediment' related originally to a number of matters, some of which can no longer be regarded as such—as, for instance, bastardy,

and certain physical defects as the loss of a limb or eye—but included impediments which would still be considered as a bar to ordination, such as the fact that the candidate was an unbaptised person or was not of the requisite age for the orders to which he proposed to be ordained. Without attempting in this judgment to give an exhaustive enumeration of what may be regarded as 'notable crimes' or 'impediments', there is not a trace to be found in any of the authorities that a mere allegation that a candidate has been a party to, or taken part in, the service in a church in which breaches of prescribed ritual have taken place comes within those words." *Kensit* v. *St. Paul's* (*Dean & Chapter*), [1905] 2 K. B. 249, *per cur.*, at pp. 256, 257.

IMPERCEPTIBLE

"The defendant has pleaded, that the land in question, by the slow, gradual, and imperceptible projection, alluvion, subsidence, and accretion of ooze, soil, sand, and other matter, being slowly, gradually, and by imperceptible increase, in long time cast up, deposited, and settled by and from the flux and reflux of the tide and water of the sea in upon and against the outside and extremity of the demesne lands of the manor, hath been formed, and hath settled grown and accrued upon against and unto the said demesne lands. . . . Considering the word 'imperceptible' in this issue, as connected with the words 'slow and gradual', we think it must be understood as expressive only of the manner of the accretion, as the other words undoubtedly are, and as meaning imperceptible in its progress, not imperceptible after a long lapse of time." *R.* v. *Yarborough* (*Lord*) (1824), 3 B. & C. 91, *per cur.*, at pp. 105, 107.

IMPERIAL STANDARD.

See also MEASURE

A bronze bar and a platinum weight are the two imperial standards of measure and weight, respectively, for the United Kingdom, namely (1) the imperial standard yard, which is the only unit or standard measure of extension, from which all other measures of extension, whether linear, superficial, or solid, must be ascertained; (2) the imperial standard pound, which is the only unit or standard measure of weight and of measure having reference to weight, from which all other weights and all measures having reference to weight must be ascertained. . . .

The imperial standard yard is a solid square bar 38 inches long and 1 inch square of bronze or gun metal; near to each end of the bar a cylindrical hole is sunk (the distances between the centres of the two holes being 36 inches) to the depth of half an inch, at the bottom of each hole is inserted in a smaller hole a gold plug or pin, about one-tenth of an inch in diameter; upon the surface of these pins are cut three fine lines at intervals of about one hundredth part of an inch transverse to the axis of the bar, and two lines at nearly the same interval parallel to the axis of the bar; the measure of the length of the imperial standard yard is given by the interval between the middle transversal line at one end and the middle transversal line at the other end, the part of each line which is employed being the point midway between the longitudinal lines. The straight line or distance between the centres of the two gold pins in the bronze bar is to be measured when the bar is at a temperature of 62° Fahrenheit and is supported on bronze rollers placed under it in such a manner as best to avoid flexure of the bar, and to facilitate its free expansion and contraction from variations of temperature. . . . The instrument for determining the imperial standard pound is a cylinder of platinum, nearly 1·35 inches in height and 1·15 inches in diameter, with a groove or channel round it, the middle of which is about 0·34 inch below the top of the cylinder, for the insertion of the points of an ivory fork by which it is lifted. The weight *in vacuo* of this cylinder is the legal standard measure of weight and of measure having reference to weight (39 Halsbury's Laws (3rd Edn.) 793, 793n.).

[*See*, generally, as to definitions of units of measurement, Sch. 1 to the Weights and Measures Act 1963.]

IMPLEMENT.

See also COIN; INSTRUMENT

Of housebreaking

[The Prevention of Offences Act 1851, s. 1 (repealed; cf. now Theft Act 1968, s. 25), made it an offence to be found by night with an "implement of housebreaking". The accused had been found in possession of ordinary house door keys and a pair of pincers.] "Every instrument that may be used for housebreaking, and is intended to be so used, is, I think, an implement of housebreaking within the Act of Parliament." *R.* v. *Oldham* (1852), 3 Car. & Kir. 249, C. C. R., *per* Erle, J., at p. 251.

New Zealand. — [Section 52 (1) (*f*) of the Police Offences Act 1955, makes it an offence to have in one's custody and possession without lawful excuse any "implements of housebreaking".] "In our opinion, having regard to the purpose of the legislation, the words 'implements of housebreaking' must receive that wide construction consistent with a wide meaning of the word 'house', which comprehends implements which are capable of being used for the purpose of 'breaking' into or out of all types of buildings. . . . We are satisfied that if

gelignite, fuse, and detonators may be employed in executing the work of breaking into a building of any description, then plainly they comprise apparatus which may be so employed; and they are fairly within the meaning of the word 'implements' as used in the section." *R.* v. *Dyer*, [1956] N. Z. L. R. 519, C. A., *per cur.*, at pp. 520, 521.

New Zealand. — "In the direction in the summing-up the learned trial judge refers to implements capable of being used for burglary and includes in such category implements advantageous to the burglar for the purpose of his criminal activities after he has effected an entry into premises. Whatever the position may be when a charge is laid under s. 244 of the Crimes Act, we do not think such considerations are pertinent in considering what may be instruments of housebreaking. 'Housebreaking' is not in itself a definitive offence, and it must be regarded as having the meaning attributed to it when the section was originally enacted in 1866, the breaking in or out of buildings (including the breaking of interior doors), and cannot include acts in the interior of the premises which are connected only with the commission of another offence." *R.* v. *Hodges*, [1965] N. Z. L. R. 676, C.A., *per cur.*, at p. 677.

Of trade

[The County Courts Act 1888, s. 147 (repealed; see now County Courts Act 1959, s. 124), provided that, in levying distress on a person's goods and chattels, the "implements of his trade" to the value of £5 (now £50) should be exempt.] "We have to decide . . . whether the county court judge was right in taking the view that the cab which was at the time in the possession of, and was being used by, the person who was owing rent for this stable comes within the words of the exception in s. 147 . . . as being an implement of his trade. . . . It is contended that it was not an implement of the cabman's trade because he . . . was not necessarily bound to use this particular cab, but could go elsewhere and continue to carry out his business or trade as a cab-driver by hiring a cab from a cab-proprietor. I do not think that that is a good argument. The case of *Fenton* v. *Logan* [(1833), 9 Bing. 676] in my opinion supports the view we are taking. I think this cab which the man had hired by the week and was using was properly regarded by the county court judge as being an implement of his trade." *Lavell* v. *Richings*, [1906] 1 K. B. 480, D. C., *per* Lord Alverstone, C.J., at pp. 481, 482.

[*Fenton* v. *Logan*, referred to above, decided that an implement of trade is only privileged from distress if it is in use.]

"What we have to decide is whether a typewriter taken on his rounds by a commercial traveller as a sample of the goods which he is employed to sell comes within the words 'the tools and implements of his trade' [within the County Courts Act 1888, s. 147 (repealed; see *supra*)]. In my opinion it does not. I have much doubt whether the trade of a commercial traveller is one which involves the use of any tools or implements at all. . . . Here the typewriter no doubt assists the traveller in earning his living, but it is not essential. He could earn his living as a traveller in typewriters without having a sample with him." *Addison* v. *Shepherd*, [1908] 2 K. B. 118, D. C., *per* Lord Alverstone, C.J., at p. 120.

See, generally, 12 Halsbury's Laws (3rd Edn.) 102 *et seq.*

IMPLICATION

Necessary implication

"Sometimes the rule is stated that the Crown, in order to be bound [by a statute which does not expressly so provide], must be included by necessary implication. But what is 'necessary implication' in the construction of a statute? I may cite the words of Lord Eldon in *Wilkinson* v. *Adam* [(1813), 1 Ves. & B. 422, at pp. 465, 466] where, after stating that in construing a will, a particular intention must appear by necessary implication upon the will itself, he continues: 'With regard to that expression "necessary implication", I will repeat what I have before stated from a Note of Lord Hardwicke's judgment in *Coriton* v. *Hellier* [(1745), 2 Cox, Eq. Cas. 340], that in construing a will, conjecture must not be taken for implication, but necessary implication means not natural necessity, but so strong a probability of intention, that an intention contrary to that which is imputed to the testator cannot be supposed'." *Cork County Council & Burke* v. *Public Works Comrs.*, [1945] I. R. 561, *per* Murnaghan, J., at p. 573.

IMPLIED COVENANT. *See* COVENANT

IMPLIED TERM

In construing a contract, a term or condition not expressly stated may, under certain circumstances, be implied by the court, if it is clear from the nature of the transaction or from something actually found in the document that the contracting parties must have intended such a term or condition to be a part of the agreement between them. Such an implication must in all cases be founded on the presumed intention of the parties and upon reason, and will only be made when it is necessary in order to give the transaction that efficacy that both parties must have intended it to have, and to prevent such a failure of consideration as could not have been within the contemplation of the parties (8 Halsbury's Laws (3rd Edn.) 121, 122).

"The expression 'implied term' is used in different senses. Sometimes it denotes some term which does not depend on the actual intention of the parties but on a rule of law, such as the terms, warranties or conditions which, if not expressly excluded, the law imports, as for instance under the Sale of Goods Act [1893] and the Marine Insurance Act [1906]. The law also in some circumstances holds that a contract is dissolved if there is a vital change of conditions. . . . There have been several general statements by high authorities on the power of the Court to imply particular terms in contracts. . . . The general presumption is that the parties have expressed every material term which they intended should govern their agreement, whether oral or in writing. But it is well recognised that there may be cases where obviously some term must be implied if the intention of the parties is not to be defeated. . . . The implications must arise inevitably to give effect to the intention of the parties." *Luxor (Eastbourne), Ltd.* v. *Cooper*, [1941] A. C. 108, *per* Lord Wright, at p. 137.

"Strictly speaking, I think that an implied term is something which, in the circumstances of a particular case, the law may read into the contract if the parties are silent and it would be reasonable to do so; it is something over and above the ordinary incidents of the particular type of contract. . . . But the phrase 'implied term' can be used to denote a term inherent in the nature of the contract which the law will imply in every case unless the parties agree to vary or exclude it." *Sterling Engineering Co., Ltd.* v. *Patchett*, [1955] 1 All E. R. 369, H. L., *per* Lord Reid, at p. 376; see also [1955] A. C. 534.

IMPLIED TRUST. *See* TRUST

IMPORT

Australia. — "The Customs Tariff . . . imposes the duties [import duties] on 'all goods dutiable . . . imported into Australia', etc. . . . Importation does not necessarily include landing the goods. They may be transhipped direct from the ship in which they arrive into the ship or aircraft into which they are to be transhipped, and still be 'imported goods'. Section 68 [of the Customs Act 1901–1967] says: 'All imported goods shall be entered either (*a*) for home consumption; or (*b*) for warehousing; or (*c*) for transhipment'. Consequently 'imported goods' as there used is an expression not confined to goods landed or even to goods to be consumed in Australia. On the other hand it does not include all goods in fact arriving by ship in an Australian port. A vessel, say, with a cargo destined for New Zealand may call in at Melbourne or Sydney and may continue her voyage without it being said that the goods it carries are 'imported goods' within the meaning of s. 68. . . . In my opinion, having regard to the various sections of the Act—and needless to say the question must be solved by reference to that Act and not to other Acts—the expression 'imported goods', in s. 68, means goods which in fact are brought from abroad into Australian territory, and in respect of which the carriage is ended or its continuity in some way in fact broken." *Wilson* v. *Chambers & Co. Proprietary, Ltd.* (1926), 38 C. L. R., *per* Isaacs, J., at pp. 138, 139.

Canada. — [Section 4 of the Customs Tariff Act 1894 (Can.), provided that duty should be paid on raw sugar when such goods were "imported into Canada" or taken out of warehouse for consumption therein. Section 150 of the Customs Act 1886 (see now Customs Tariff Act, R. S. C. 1952, c. 60) (Can.), directed that the precise time of the importation of goods should be deemed to be the time when they came within the limits of the port at which they ought to be reported.] "The words 'when such goods are imported into Canada' express the time at which the duties are to be paid. If therefore the goods are imported into Canada when the vessel enters a port of call on her way to her ultimate destination, the duties would be payable at that date, which is highly improbable, and contrary to the express provisions of s. 31. . . . The words 'imported into Canada' must, in order to give any rational sense to the clause, mean imported at the port of discharge. . . . The object of the definition in s. 150 is not to define the port of importation, or the meaning of 'imported', but the time when the goods are to be deemed to be first imported. The words in question apply equally to importation coastwise or by inland navigation in any decked vessel. If made by land or by inland navigation in any undecked vessel, then the time is when such goods are brought within the limits of Canada." *Canada Sugar Refining Co.* v. *R.*, [1898] A. C. 735, P. C., *per cur.*, at pp. 740–742.

IMPORTER

"Importer" in relation to any goods at any time between their importation and the time when they are delivered out of customs charge, includes any owner or other person for the time being possessed of or beneficially interested in the goods (Customs and Excise Act 1952, s. 307).

"Importer", in relation to an imported article, includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of the article or in any way entitled to the custody or control of it (Food and Drugs Act 1955, s. 135 (1)).

"The importer of goods is the consignor, who sets the adventure afloat, who directs the port to which, and the person to whom it is to be delivered, and who can stop the goods *in transitu*." *The Matchless* (1822), 1 Hag. Adm. 97, *per* Lord Stowell, at p. 102.

IMPORTUNE

"The appeal committee find that, on the day on which it was alleged that he [the appellant] committed a breach of the by-law, 'as a man walking along the said pavement approached the appellant, the appellant stood in front of the man, spoke to the man, and raised his camera to his, the appellant's eye, as if to take a photograph of the man. The appellant was then two or three yards away from the man, and, by his aforesaid actions, caused the man to walk round him as the man passed him by and walked on. Shortly afterwards, as two women walking along the said pavement approached the appellant, the appellant stepped in front of them, spoke to them and raised his camera to his eye as if to take a photograph. The two women passed him by and walked on. Shortly afterwards another woman walking along the said pavement approached the appellant, and, as she did so, the appellant repeated the same procedure. The said woman passed him by and walked on. Apart from the fact that the appellant stood in front of the persons referred to above and thereby caused them to walk round him, in none of these cases did the appellant make any endeavour to bar the progress of these persons or to continue speaking to them, nor did he follow them after they had passed by.' Then the committee set out the case of a soldier who did stop to have his photograph taken. The committee came to the conclusion that, on the true construction of this by-law, 'the word "importune" must involve something more than just offering an invitation—that it must mean exercising some kind of pressure, whether that pressure takes the form of words, or expansive gestures, or obstruction in the sense of getting in another person's way, or following a person after that person had passed by'. In my opinion, even if that is the true meaning to put on the word 'importune', there is abundant evidence that the appellant did importune, did get in people's way, and did use expansive gestures—which is a question of degree—and that he was doing this persistently to everybody who came by. If that is not importuning, I do not know what is." *Waite* v. *Marylebone Borough Council* (1953), 117 J. P. 447, D. C., *per* Lord Goddard, C.J., at p. 448.

IMPORTUNITY

"As all these instruments [a will and codicils], upon the face of them, are regularly executed and attested, and are admitted to have been signed by the testator, and witnessed by the several persons whose names are subscribed to them, it may appear proper to examine, in the first place, the grounds upon which the execution of them is to be impeached, before the Court can well estimate the weight and force of the evidence which is offered in support of the execution. The grounds of opposition are of two sorts: the first, that the deceased laboured under mental imbecility, so as to be utterly incapable of any testamentary act whatever; the second is (but which applies to the two codicils only) that they were obtained from the deceased by fraud, and circumvention, and importunity. . . . I may, perhaps, preliminarily observe, that importunity, in its correct legal acceptation, must be in such a degree as to take away from the testator free agency;—it must be such importunity as he is too weak to resist;—such as will render the act no longer the act of the deceased;—not the free act of a capable testator, in order to invalidate an instrument." *Kinleside* v. *Harrison* (1818), 2 Phillim. 449, *per* Sir John Nicholl, at pp. 453, 454, 551, 552.

IMPOSE. *See also* IMPRISONMENT

[By a covenant in a lease the lessor covenanted with the lessees to pay all rates, taxes and impositions "imposed" by the corporation of the city of London.] "The words here are 'all rates, taxes, and impositions whatsoever . . . imposed by the corporation of the city of London or otherwise howsoever'. The question appears to me to be whether this water-rate can be said to be a rate or imposition 'imposed', within the meaning of those words. I do not think that it can. I do not think that a charge to which a person can only be made liable with his own consent can be said to be imposed upon him within the meaning of this covenant. . . . Furthermore, I think that the words 'imposed otherwise howsoever' must be construed according to the rule of construction applicable when general words follow specific words, and that therefore they can only include rates or impositions . . . imposed compulsorily upon the person charged." *Badcock* v. *Hunt* (1888), 22 Q. B. D. 145, C. A., *per* Lord Esher, M.R., at p. 148.

"In my judgment it [the water-rate] is not imposed at all within the meaning of the covenant; it becomes payable by the voluntary action of the person who chooses to take the water and thereby incurs the legal liability to pay for it; it is not, like the rates and charges previously mentioned in the covenant, an imposition by some superior authority which a man becomes liable to pay whether he will or no." *Ibid.*, *per* Fry, L.J., at p. 149.

IMPOSITION

[A lessee covenanted to pay and discharge all taxes, rates, etc., and all "impositions" whatsoever charged or imposed upon the premises. Notice was given to the lessor by the sanitary authority of the district to abate a nuisance caused by a privy, by removing the privy and constructing a water-closet. The lessor did the work and subsequently sued the lessee to recover his expenses.] "What . . . is an 'imposition' within the meaning of this covenant? I should say, apart from authority, that in this covenant it means a sum of money payable by the landlord or tenant in respect of an imposition. A duty imposed appears to me to be an imposition, and I should say that the word 'imposition' is, if anything, rather larger than the word 'duty'. Therefore I do not think that we ought to treat it as bearing a narrower meaning. I agree that it ought not to be treated as covering a matter which would be beyond anything that the parties to the lease could reasonably be supposed to have contemplated, but I cannot say that the expense incurred by the landlord in this case was something which clearly was not intended to be covered by the covenant." *Foulger* v. *Arding*, [1902] 1 K. B. 700, C. A., *per* Romer, L.J., at pp. 710, 711.

"The question I have to determine is whether the tenant can prove against her landlord's estate for a sum of £118 expended by her on the reconstruction of drains in compliance with a notice from the sanitary authority. . . . I am of opinion that the tenant is not entitled to recover. She covenanted to pay the rent 'free and clear . . . from all deductions . . .' and to 'pay and discharge all . . . impositions. . . .' In my view the duty of complying with the notice . . . and the payment of the costs of the necessary works constituted an 'imposition'." *Re Warriner, Brayshaw* v. *Ninnis*, [1903] 2 Ch. 367, *per* Swinfen Eady, J., at pp. 369–371.

IMPOSSIBLE. *See also* FRUSTRATION; IMPRACTICABLE

"In the language of everyday life a thing is impossible when, according to the ordinary course of human events, no expectation can be entertained that it will happen." *Shepherd* v. *Kottgen* (1877), 2 C. P. D. 585, C. A., *per* Cotton, L. J., at p. 591.

"The only criterion of cruelty which I have heard suggested as warranting a judgment for the appellant [entitling him to a judicial separation] is whether the discharge of the duties of married life has become impossible owing to the conduct of the respondent. How is the word 'impossible' to be interpreted in the proposition thus stated? Obviously not as confined to physical impossibility, or it would not cover the present case. If it be extended to what is sometimes called 'moral' impossibility' a proposition could scarcely be conceived more elastic. It would afford no sort of guide, but would, in my opinion, unsettle the law and throw it into hopeless confusion." *Russell (Earl)* v. *Russell (Countess)*, [1897] A. C. 395, *per* Lord Herschell, at p. 460.

IMPOTENCE

A party is impotent if his or her mental or physical condition makes consummation of the marriage a practical impossibility. The condition must be one which existed at the time of the marriage (12 Halsbury's Laws (3rd Edn.) 228).

"The charge made [of impotence *quoad hanc*], though physical and not moral, is nevertheless a grave and wounding imputation that the respondent is lacking, at least *quoad hanc*, in the power of reproducing his species, a power which is commonly and rightly considered to be the most characteristic quality of manhood. The allegation made in the present case is not that the respondent completely lacks the capacity of reproduction. As in many other cases, it is urged that he is incapable of consummating this particular marriage with this particular woman." *C. (otherwise H.)* v. *C.*, [1921] P. 399, *per* Lord Birkenhead, L.C., at p. 400.

Canada. — "Impotence in my understanding of the word is physical disability for sexual connection. I have not been referred to nor have I been able to find any judicial definition of the word. The cases seem to have arisen entirely upon the existence of some defect or malformation making carnal intercourse impossible and either proved as a physical fact or inferred from a refusal on the part of the alleged impotent to consummate." *Hale* v. *Hale*, [1927] 2 D. L. R. 1137, *per* Walsh, J., at p. 1138; *affd.*, [1927] 3 D. L. R. 481.

IMPOUND

"By the 11 Geo. 2, c. 19 [Distress for Rent Act 1737], s. 10, persons making distresses for rent 'may impound or otherwise secure the distress, of whatever nature it may be, on such place, or on such part of the premises chargeable with the rent, as shall be most fit and convenient, and may appraise, sell, and dispose of the same upon the premises'. The words 'or otherwise secure' appear to me to enlarge 'impound', and to give a wider meaning to it than if the latter well known term, implying an inclosed place, had alone been used." *Thomas* v. *Harries* (1840), 1 Man. & G. 695, *per* Tindal, C.J., at p. 703.

"In order to 'impound or otherwise secure' the goods there must be some distinct act manifesting it. Words alone are not enough.

To prove the point, it is as well to remember the offence of pound-breach. As soon as the distress is impounded, whether on or off the premises, it is in the custody of the law: and anyone who breaks the pound (as by forcing the lock) or takes the goods out of the pound, is guilty of pound-breach. He is indictable for a misdemeanour for which he can be sent to prison, and is also liable to an action which carries penal consequences, namely, for treble damages [under Stat. 2 Will. & M. c. 5 (1689), s. 3]. On principle, a man is not to be held guilty of this offence unless he has a guilty mind. He must know that the goods have been impounded or otherwise secured, on or off the premises. How can a stranger be expected to know this unless there is some open and manifest act so as to show it? I am prepared to hold, therefore, that, as against strangers, goods are not validly impounded unless they are locked up in a room or otherwise secured in such a way that it is manifest that they are not to be taken away. 'Walking possession' may be sufficient as against the tenant who agrees to it, but not as against a stranger who knows nothing of it." *Abingdon R.D.C.* v. *O'Gormon*, [1968] 3 All E. R. 79, C. A., *per* Lord Denning, M.R., at p. 83.

New Zealand. — [Section 11 of the Impounding Act 1884 (N.Z.) (repealed; see now s. 45 of the Impounding Act 1955), provided that any person by whom cattle were sent to the pound should specify in writing to the poundkeeper certain particulars—e.g. brands and ear-marks, name of owner, etc.] "A lawful impounding consists not merely of a delivery of the impounded cattle to the poundkeeper, but of a delivery accompanied by the written particulars required by the statute. The two acts are to be consecutive so as to form the one act of a lawful impounding, and if the first act is not immediately followed by the second, the act of a lawful impounding does not become complete, and the delivery of the cattle to the poundkeeper becomes consequently an illegal impounding within the meaning of s. 10 of the Act." *Mehaffy* v. *Jury* (1906), 25 N. Z. L. R. 867, *per* Edwards, J., at p. 868; also reported 8 G. L. R. 553, at p. 554.

IMPRACTICABLE

"In matters of business, a thing is said to be impossible when it is not practicable; and a thing is impracticable when it can only be done at an excessive or unreasonable cost. A man may be said to have lost a shilling, when he has dropped it into deep water; though it might be possible, by some very expensive contrivance, to recover it." *Moss* v. *Smith* (1850), 9 C. B. 94, *per* Maule, J., at p. 103.

"The trustees have to form an 'opinion' that the sharing of a particular institution in the testator's residue is either impracticable or inequitable. What does 'impracticable' mean? It means that something cannot be done.... What does 'inequitable' mean?... In this court the word 'equitable' is a word of the highest importance. The word 'inequitable', which is the contrary of it, is that against which this court, by its ancient constitution, and, I hope, by its application of legal principles, is bound to strive. The trustees here have to form an opinion that something is 'impracticable', i.e. it cannot be done, or is 'inequitable', in the sense of being unfair or unjust." *Re Hayes' Will Trusts, Dobie* v. *National Hospital Board of Governors*, [1953] 2 All E. R. 1242, *per* Vaisey, J., at p. 1245.

"The first point of law which arises involves the construction of s. 135 (1) [of the Companies Act 1948], the examination being directed to consider the scope of the phrase: 'If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act....' It is to be observed that the subsection opens with the words 'If for any reason', and, therefore, it follows that the subsection is intended to have, and, indeed, has by reason of its language, a necessarily wide scope. The next words being 'it is impracticable to call a meeting of a company', the question arises, what is the scope of the word 'impracticable'? It is conceded... that the word 'impracticable' is more limited than the word 'impossible', and it appears to me that the question necessarily raised by the introduction of the word 'impracticable' is merely this: Examine the circumstances of the particular case and answer the question whether, as a practical matter, the desired meeting of the company can be conducted, there being no doubt, of course, that it can be convened and held. On the face of s. 135 (1), there is no express limitation which would operate to give those words 'is impracticable' any less meaning than that which I have stated, and I can find no good reason in the arguments which have been addressed to me on behalf of the respondents for qualifying in any way the force of the word 'impracticable' or the interpretation which I have placed on it." *Re El Sombrero, Ltd.*, [1958] 3 All E. R. 1, *per* Wynn-Parry, J., at p. 4; also reported [1958] Ch. 900, at pp. 903, 904.

[Regulation 97 of the Building (Safety, Health and Welfare) Regulations 1948 (revoked; see now the Construction (Working Places) Regulations 1966, S.I. 1966 No. 94), dealt with circumstances where the special nature, etc., of any work rendered it "impracticable" to comply with safety regulations.] "'Impracticable' in reg. 97 is a strong word. It