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WEBSTER'S NEW WORLDTM

Law Dictionary

by Susan Ellis Wild, Legal Editor



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Dedication

To my mother, an original Webster, who gave me my love of words.

About the Author

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Part I

DICTIONARY

A

AAA *abbr.* See **American Arbitration Association.**

AALS *abbr.* See **Association of American Law Schools.**

ABA *abbr.* See **American Bar Association.**

abandon *v.* **1** To intentionally give up for all time an assertion or a claim of an interest in property or in a right or privilege. **2** To repudiate, withdraw from, or otherwise disassociate oneself from a duty or responsibility. **3** To intentionally fail to complete.

abandoned property See **property.**

abandonee *n.* A person or party to whom property or a right has been abandoned or relinquished.

abandonment *n.* **1** The act of abandoning property or a right with no intent of reclaiming it or of later giving it away or selling it. See also **forfeiture, relinquishment, renunciation, surrender, and waiver.** **2** The act of abandoning a person with the intent of terminating the duties or him or her. For example, the intentional failure by a parent to communicate with or to provide financial or other support to his children. See also **desertion.**

abate **1** *v.* To end, eliminate, do away with, or make null and void. **2** *v.* To diminish, decrease, or lessen in degree or amount. **3** *n.* The reduction of a bequest or devise made in a will because

the combined value of all bequests and devises, and/or the debts owed by a testator, exceed the assets in the testator's estate. **4** *n.* The rebate or reduction of taxes already assessed and/or paid.

abatement *n.* **1** The act of abating. **2** The process of, or the state of, being abated. **3** The amount abated.

abatement clause *n.* A contractual provision releasing the tenant of a lease from the obligation to pay rent when an act of God prevents the occupancy of the premises.

abator *n.* A person who diminishes or eliminates a nuisance.

ABC test *n.* A rule of law that allows employers not to provide unemployment compensation to independent contractors. The test for whether an individual is an independent contractor as opposed to an employee is threefold: 1) does the individual work independently of the employer's control (A = alone); 2) does the individual maintain his own place of business (B = business); and 3) does the individual practice or work at an established trade, and exercise control over his own schedule and method of operation (C = control)? The name derives from the letters normally used to designate the three parts of the test. See **contractor.**

abdication *n.* The act of a person or branch of government renouncing or abandoning an office, trust, sovereignty, privileges, or duties to which he or she is entitled, holds, or possesses by law.

abduct *v.* **1** To carry or lead a person away from where he wants to be or wants to go by use of force, threats, or deception. **2** To restrain or conceal a person in order to prevent his escape or rescue. See also **kidnapping.**

abet *v.* To actively, knowingly, and/or intentionally aid, encourage, incite, instigate, or otherwise support the commission of an act.

abeyance *n.* 1 An indefinite or temporary state of inactivity or suspension. 2 An incomplete or undetermined state of existence. 3 The status of real property or of a position or title when its ownership or occupancy is not vested in any existing person or party.

abide *v.* 1 To await. 2 To accept or submit to. 3 To tolerate or withstand. 4 To adhere, execute, obey, perform, or otherwise act in conformity with. 5 To dwell, remain, reside, or stay.

abiding *adj.* Certain; indestructible; permanent; steadfast; unaltering; unfaltering; unshakeable.

ab initio *adv. Latin.* From the first act. From the beginning; back to one's creation or inception.

abnormally dangerous activity *n.* An undertaking so dangerous that, even if precautions and reasonable care are used, it cannot be safely performed and anyone who engages in it is strictly liable for any resulting injuries and damage, especially if 1) there is a risk of serious harm to people or property, 2) the activity cannot be performed in some other way that avoids those risks, and 3) the undertaking does not normally occur at the location where it is to take place. See also **liability**.

abode 1 *n.* A dwelling, home, or other fixed place where a person resides. 2 *v.* Past tense and past participle of **abide**.

abolish *v.* To abrogate, annul, cancel, eliminate, put an end to, recall, repeal, or revoke, especially things of a seemingly permanent nature, such as customs, institutions, and usages.

abolition *n.* 1 The act of abolishing. 2 The legal abolition and prohibition of slavery. 3 The abolition of slavery in the United States by the Thirteenth Amendment to the United States Constitution.

abortion *n.* 1 The premature termination of a pregnancy. 2 The intentional and artificial termination of a pregnancy that destroys an embryo or fetus. 3 The spontaneous expulsion of an embryo or fetus before it is capable of living outside the womb.

above *adv.* 1 Previously in the same chapter, document, or text. For example, a reference to a court case cited earlier in the same document. 2 Having the power to review the decisions regarding questions of fact and/or law made in a court. For example, appellate courts, such as the United States Supreme Court, are above, or can review, the decisions made by one or more trial courts. See **jurisdiction**, **question of fact**, and **question of law**.

abridge *v.* 1 To diminish, lessen, or restrict a legal right. 2 To condense or shorten the whole of something, such as a book, and not merely a portion of it.

abrogate *v.* 1 To annul, cancel, destroy, overturn, repeal, revoke, set aside, supercede, or otherwise do away with or put an end to. 2 To abolish a custom or law by some authoritative, formal, legislative, or other legally effective method.

abscond *v.* 1 To secretly or suddenly leave a place or to go into hiding, especially to avoid arrest, prosecution, the service of a summons or other legal process, or an action by a creditor. 2 To leave a location, often in a hurry, with money or property of another.

absent without leave *n.* The act of being away from one's military duties or post without permission but with no intent of deserting. Abbreviated as AWOL. See also **desertion**.

absentee *n.* A person who is not where he or she would normally be found, such as a place of residence or work.

absentee landlord *n.* A landlord who resides so far from the leased real property that his is not, or is not expected to be, readily available to personally address any problems concerning the property.

absentee voting See **voting**.

absentia See in **absentia**.

absolute *n.* **1** Without any conditions, encumbrance, qualification, or restriction. See also **discretion**, **divorce**, **immunity**, **privilege**, and **fee**. **2** Not liable or subject to revisions; conclusive. **3** Free from any restraint or restriction in the exercise of government power.

absolute law See **natural law**.

absolute liability See **strict liability**.

absolve *v.* **1** To forgive misconduct. **2** To free from guilt or suspicion; for example, when evidence proves that a suspect is innocent of a crime. **3** To free from the penalties imposed as a result of misconduct. **4** To free from a debt, duty, obligation, or responsibility.

abstention *n.* **1** The act of voluntarily refraining from taking some action, such as casting a vote or participating in a decision or deliberation. **2** A federal court's act of declining to exercise its jurisdiction while awaiting or deferring to a decision by a state court. In doing so, the federal court retains jurisdiction of the legal issues at hand and may decide those issues if the plaintiff is not satisfied with the state court's decision. See also **comity** and **relinquishment**. Several rationales for a federal court's abstention are named for the United States Supreme Court decision in which the rationale was first applied. These include:

Burford abstention. The refusal of a federal court to consider a challenge to a state's administrative regulations and proceedings or to review a

state court's decision involving those regulations and proceedings when they involve a substantial or sensitive area of state concern. *Burford v. Sun Oil Co.* (1943).

Colorado River abstention. A federal court's act of declining to exercise its jurisdiction when there is underway a state court proceeding involving the same parties and questions. *Colorado River Water Conservation Dist. v. United States* (1976).

Pullman abstention. A federal court's decision to await the interpretation of a state law by that state's court before deciding a federal constitutional question that is dependant upon how that law is interpreted. *Railroad Commission of Texas v. Pullman Co.* (1941).

Rooker-Feldman abstention. A federal court's declining to consider the argument that a state court judge violates a party's federal rights for the reason that the proper venue to challenge that judge is that state's court system. *Rooker v. Fidelity Trust Co.* (1923) and *District of Columbia Court of Appeals v. Feldman* (1983).

Thibodaux abstention. A federal court's act of declining to exercise its jurisdiction to allow a state court to decide difficult issues if importance in order to avoid unnecessary friction between federal and state authorities. *Louisiana Power & Light Co. v. City of Thibodaux* (1959).

Younger abstention. **1** A federal court's decision to halt or interfere with a state court's criminal proceeding unless the prosecution has been brought in bad faith or harassment. **2** A federal court's decision to halt or interfere with a state court proceeding on the grounds that the arguments of the party seeking the federal courts involvement can be raised and fairly deter-

mined in the state court. *Younger v. Harris* (1971).

abstract *n.* A concise summary of a text. See also **abstract of judgment**, **abstract of record**, and **abstract of title**.

abstract of judgment *n.* A copy or summary of a court's judgment. When it is filed with the appropriate authorities, a lien is created on the judgment debtor's nonexempt property in favor of the judgment creditor.

abstract of record *n.* A summary of the record of a case advising an appellate court of the underlying facts, all the steps taken to-date in the case, the decision of the trial court, and the legal issues to be decided.

abstract of title *n.* A short history or summary of the ownership of a parcel of land. The abstract includes a list of all conveyances, transfers, and other evidence of title; all grants, conveyances, wills, records, and judicial proceedings that may affect title; and a list of encumbrances and liens of record on the land, along with a statement whether the encumbrances and liens still exist. A company whose business is to obtain such information from public records usually does such an abstract for the mortgagee or buyer of real property in connection with a proposed sale of land. See also **chain of title**.

abstraction *n.* **1** The act of separating, taking away, or withdrawing. **2** The act of taking with the intent to injure or defraud. **3** The unauthorized taking of financial statements or funds with the intent of misappropriating them.

abuse **1** *v.* To mistreat or neglect a person, particularly as to one for whom the actor has special responsibility by virtue of a relationship, e.g., spouse, child, elderly parent, or one for whom the actor has undertaken a duty of care,

e.g., nurse-patient; **2** *v.* to use an object in an illegal or unreasonable manner. **3** *n.* The mental or physical mistreatment of a person, frequently resulting in serious emotional, mental, physical, and/or sexual injury.

child abuse. **1** The intentional or neglectful abuse, which includes sexual mistreatment, inflicted on a child. **2** A parent or caregiver's intentional or neglectful act or failure to act that results in a child's abuse, exploitation, or death. **3** An act or failure to act that results in a possibility of immediate and serious harm to a child. See also **battered person syndrome** and **child neglect**.

elder abuse. The abuse of an elderly person by his or her child or caregiver, that may include battery, verbal abuse, isolation, and the denial or deprivation of food.

sexual abuse. **1** An illegal sexual act. **2** Unlawful sexual activity or contact with a person without her consent. The activity or contact is usually imposed by the use of force or threats of violence. The application of the term varies, but it is usually applied to activities or contact that do not amount to **rape**, but sometimes the term includes rape. Also called carnal abuse and sex abuse.

spousal abuse. The abuse inflicted on a person by his or her spouse. See also **battered person syndrome** and **cruelty**.

abuse excuse *n.* A courtroom tactic whereby a criminal defendant claims that mental or physical abuse either explains the defendant's conduct, especially in cases involving violence against the alleged abuser, or makes the defendant incapable of telling right from wrong. The phrase is almost exclusively used as a term of derision by those unsympathetic to such claims.

abuse of discretion *n.* A trial court or administrative agency's ruling on a matter within its discretion that, in light of the relevant facts and law, is arbitrary, capricious, unconscionable, unfair, unreasonable, or illegal. An appellate court will not reverse a ruling that was within the discretion of the trial court or administrative agency merely because the appellate court would have reached a different decision. Instead, the trial court or administrative agency's decision must be wholly inconsistent with the facts and the law and with any reasonable deductions that can be made therefrom.

abuse of process *n.* The tort of beginning or otherwise using the judicial civil or criminal process for an improper purpose. There may be a legitimate basis for instituting or using the judicial process, but the actual intent behind the action is improper. See also **malicious prosecution**.

abut *v.* To adjoin; to border on; to cease at the point of contact; to connect or join at a border; to share a common border with.

abuttal *n.* The border of a parcel of land in relation to adjoining lands.

academic freedom *n.* **1** The right of a teacher or student, especially at the college or university level, to discuss or investigate any issue, or to express opinions, on any topic without interference or fear of penalty or other reprisal from either the school or the government. **2** A school's freedom to control its own policies without government interference, penalty, or reprisal. The extent to which academic freedom exists depends on many facts, including whether the school is a private or public institution and whether it is a primary or secondary school or a college or university.

acceleration *n.* **1** The shortening of the time, or the immediate creation or

vesting, of a legal duty, interest, or right that was to arise or vest in the future. See also **acceleration clause**. **2** The hastening of a real property owner's enjoyment, or the vesting, of his remainder interest in an estate because of the failure or premature termination of a preceding estate.

acceleration clause *n.* A provision in a contract or in a testamentary or other legal document that, upon the occurrence of specific events, a party's future interest in certain property will prematurely vest. For example, in many loan or mortgage agreements, provision is made that if some specified event occurs, such as the debtor's failure to pay an installment, the creditor may declare the entire outstanding balance to be immediately due.

acceptance **1** *n.* The act of voluntarily agreeing, expressly or by implication, to the terms of an offer, thereby creating a contract. However, if the act modifies or adds to the terms of the offer, it is not an acceptance, but a counteroffer. See also **offer**. **2** *v.* To accept delivery of property or to otherwise agree, expressly or by implication, to become its owner, either in exchange for the performance of a contractual obligation or the completion of an inter vivos gift. See also **contract** and **gift**. **3** *n.* The receipt of a check or other negotiable instrument by a bank or another drawee.

access *n.* The ability, opportunity, permission, or right to approach, communicate, enter, pass to and from, or view without interference or obstruction. See also **easement** and **visitation rights**.

accession *n.* **1** The act of acceding or agreeing, especially when it involves the yielding of part or all of one's own position. **2** The act of acceding to, or coming into possession of, an office, right, or title. **3** In international law, the formal assent by one county to a treaty between

other countries. By doing so, the country becomes a party to the treaty. **4** The acquisition of title to personal property by applying labor that converts it into an entirely different thing (such as turning leather into shoes) or incorporates it into other property. **5** An artificial or natural addition or improvement to property. **6** A real property owner's right to all that the property produces and to all that is artificially or naturally added to it, such as land reclaimed by the use of dams or the construction of buildings and other improvements. See also **annexation**.

accessory *n.* **1** Additional; aiding the principal design; contributory; secondary; subordinate; supplemental. **2** One who aids or contributes to the commission or concealment of a crime or assists others in avoiding apprehension for the crime but not present when the crime was committed. Mere silence or approval of the crime is insufficient to make one an accessory; the person must take steps to facilitate the commission or concealment of the crime or the avoidance of the criminal's capture. See also **misprision of felony, accomplice, aid and abet, conspiracy, and principal**.

accessory after the fact. One who was not at the scene of a crime but knowingly assists, comforts, or receives a person known to have committed a crime or to be sought for the commission or attempted commission of a crime, in an attempt to hinder or prevent the felon's arrest or punishment. Such a person is normally regarded as less culpable than the criminal and is subject to prosecution for **obstruction of justice**.

accessory before the fact. One who assists, commands, counsels, encourages, or procures another to commit a crime, but is not present

when the crime is committed. Such a person, known as an aider and abettor, is normally considered as culpable as the person who actually commits the crime and is normally treated by the law as an **accomplice**. See also **aid and abet**.

accident *n.* **1** An unintended, unforeseen, and undesirable event, especially one that causes harm, injury, damage, or loss. **2** An unintended and unexpected event, especially one that is undesirable or harmful, that does not occur in the usual course of events under the circumstances in which it occurred, or that would not be reasonably anticipated. **3** In equity, an unexpected and injurious event not caused by misconduct, mistake, or negligence. **4** In many automobile insurance policies, any unintentional event including those caused by misconduct, mistake, or negligence.

unavoidable accident. An accident that is not caused by the negligence or other fault of anyone involved.

accidental death *n.* Death resulting from an accident from an unusual event that was unanticipated by everyone involved. A death may be considered "accidental" even if it was intentional or expected. For example, an insurance policy may provide that its accidental death benefit will be paid if the insured is murdered (although generally not if the beneficiary committed the murder).

accidental death and dismemberment insurance *n.* Insurance that pays the insured or his beneficiaries specified amounts, in addition to or in substitution for compensation for injuries suffered by the injured, for the loss of specific body parts, body functions, or death resulting from an accident.

accidental death benefit *n.* A payment, in addition to the compensation received by the beneficiaries of an

accident insurance or life insurance policy, to be made paid if the insured suffers an accidental death. See also **double indemnity**.

accident insurance See **insurance** (*casualty insurance*).

accommodated party See **accommodation party**.

accommodating party See **accommodation party**.

accommodation *n.* **1** Something done, such as providing a loan or signing an accommodation paper as a surety for another, that is done as a favor without any direct or indirect benefit, compensation, or consideration. **2** The act of making a change or provision for someone or something.

accommodation maker See **accommodation party**.

accommodation paper *n.* A negotiable instrument that one co-signs as a surety as an accommodation to another party, who remains primarily liable without receiving any benefit, compensation, or consideration. See also **accommodation party**.

accommodation party *n.* A person who, without any direct or indirect benefit, compensation, or consideration, co-signs a negotiable instrument as a favor to the person who owes the money and, thus, becomes liable on it to all parties except the accommodated party who, by implication, agrees to pay the instrument and to indemnify the accommodation party for any losses incurred in paying it. This is frequently done when the creditworthiness of the accommodated party does not satisfy the person taking the negotiable instrument or extending the credit. Also called, in the case of a promissory note, an **accommodation maker**.

accomplice *n.* One who knowingly, voluntarily, or intentionally, and with common intent and criminal purpose shared with the principal offender, solicits or encourages another to commit a crime or assists or attempts to assist in its planning and execution. Normally, one's mere presence while knowing the crime is about to be committed, without any contribution to the commission of the crime, does not make a person an accomplice. However, in some situations, knowledge combined with the failure to make an attempt to prevent the crime will make one an accomplice. An accomplice is normally regarded as just as culpable as the person who actually commits the crime. See also **accessory, aid and abet**, and **conspiracy**.

accord *n.* **1** An agreement to satisfy a claim by some form of discharging the obligation other than what the obligee is, or considers himself, entitled to. See also **accord** and **satisfaction**. **2** In legal citation, the identification of one case that clearly supports the proposition for which another case is being quoted.

accord and satisfaction *n.* An accord that has been satisfied by the completion of the agreed upon payment or performance. The satisfaction (that is, completion) of the accord extinguishes the original obligation that the obligee was, or considered himself, entitled to. Once satisfied, the subject of the accord can never be raised in any future legal action. See also **novation** and **settlement**.

account *n.* **1** A detailed record of a financial transaction, indicating the debits and credits between the parties to a contract or a fiduciary relationship. **2** The debt remaining to be paid, or the credit to be refunded, as indicated in such a record. **3** A detailed record of the financial transactions, business

dealings, and other relations for which records must be kept. **4** In the Uniform Commercial Code, a right to payment for goods whose sale or lease, or for services whose performance, are not evidenced by a negotiable instrument or **chattel** paper. **5** A business relationship involving the management of money or the availability and use of credit. **6** In the common law, a legal action to require a person to account for money or property. See also **accounting**. **7** A statement by which someone explains, or attempts to explain, an event. **8** In business, a particular client or customer. See also **joint account**.

accountant-client privilege See **privilege**.

account creditor *n.* One to whom the balance of an account is owed. See also **account debtor**.

account debtor *n.* **1** One who owes the balance of an account. **2** In the Uniform Commercial Code, one who owes an obligation on an account, chattel paper, or intangible property. See also **debtor** and **account creditor**.

account payable *n.* The balance owed to a creditor as indicated by an account. See also **account receivable**.

account receivable *n.* The balance owed by a debtor as indicated by an account. See also **account payable**.

accounting *n.* **1** The act or a system of establishing how the assets of a business, estate, trust, or other similar entity were managed and disposed of. **2** In equity, a legal action to require one, usually a fiduciary or a constructive trustee, to account for and pay over funds held by them but owed to another. See also **account**. **3** In equity, a legal action for the recovery of funds owed for

services performed, property sold, money loaned, or for damage for the incomplete performance of minor contracts. See also **account**. **4** A legal action to complete or settle all of a partnership's affairs. Usually done in connection with the dissolution of the partnership or with allegations of a partner's misconduct. See also **winding up**.

accounting for profits See **accounting**.

accounting method *n.* The accepted method by which a person or business consistently determines his income and expenses and allocates them to an accounting period in order to determine his taxable income. See **accrual method**, **cash method**, and **contract**.

accounting period *n.* The regular span of time used for accounting purposes. For example, the period used by a taxpayer to calculate her income and to determine her tax liability.

accretion *n.* **1** In property law, the gradual increase in land through natural processes; for example, the creation of land caused by the deposit of sediment on a shoreline of a river or ocean. The new land becomes the property of the owner of the property to which it is attached. See also **alluvion**, **reliction**, and **avulsion**. **2** In succession law, the increase in an heir or legatee's interest in property when a co-heir or co-legatee dies before the property vests, rejects his inheritance or legacy, fails to comply with a condition to be met before vesting, or otherwise becomes incapable of taking the property.

accrual method *n.* An accounting method that records income and expenses when they are earned or incurred rather than when they are received or paid. See also **cash method** and **completed contract method**.

accrue *v.* **1** To come into existence or mature as an enforceable claim or right. For example, a cause of action may be sued upon once it is an enforceable claim. Likewise, the interest on a sum owed accrues on the date the interest becomes due. **2** To accumulate.

accumulated depreciation *n.* The total depreciation currently recorded against either a single or all productive assets.

accusation *n.* **1** A formal charge of criminal wrongdoing against a person or corporation. See also **indictment**, **information** and **presentment**. **2** An informal charge that one has committed an illegal, immoral, or otherwise wrongful act.

accusatorial system See **adversary system**.

accuse *v.* **1** To make an accusation against. **2** To prosecute. **3** To formally institute a legal action against a person or corporation wherein they are charged with committing a crime. **4** To judicially or publicly charge one with a criminal offense.

accused *n.* **1** A person who is blamed for a wrongdoing. **2** A person who has been arrested or formally charged by an indictment, information, or presentment with a crime.

acknowledgment *n.* **1** The recognition of a fact or the existence of an obligation and the acceptance of the accompanying legal responsibility. For example, a putative father may acknowledge a child as his during a paternity proceeding. **2** One's formal declaration in the presence of a notary public or other authorized individual that she has signed a deed or other document and that the signature is authentic.

ACLU *abbr.* See **American Civil Liberties Union**.

acquaintance rape See **rape**.

acquiescence *n.* Tacit or passive conduct that implies agreement or consent. For example, if one makes a statement and another is silent when an objection should be forthcoming, the second person's acquiescence to the statement may be inferred.

acquit *v.* **1** In criminal law, to clear a person, to release or set him free, or to discharge him from an accusation of committing a criminal offense after a judicial finding that he is not guilty of the crime or after the court or prosecution determines that the case should not continue after the criminal trial has started. See also **autrefois acquit** and **double jeopardy**. **2** In contract law, to pay or discharge a debt, duty, or a claim.

acquittal *n.* **1** In criminal law, the legal finding, by judge or jury, that an accused person is not guilty of the crime he is charged with. Once the acquittal is reached, the defendant may not be prosecuted again for the same criminal act or transaction. **2** In contract law, the release or discharge from a debt or other contractual obligation.

act **1** *n.* A statute. **2** *n.* Something done or performed. **3** *v.* The process of doing or performing. See also **actus reus**, **overt act** and **omission**.

action *n.* **1** Any behavior, conduct, or series of acts by a person. **2** A civil or criminal judicial proceeding intended to resolve a legal dispute, claim, or accusation.

civil action. An action brought to enforce, protect, or redress a civil or private right or to compel a civil remedy; any action brought other than a criminal action.

class action. **1** An action brought by a person or a group of people as representatives of a larger group