



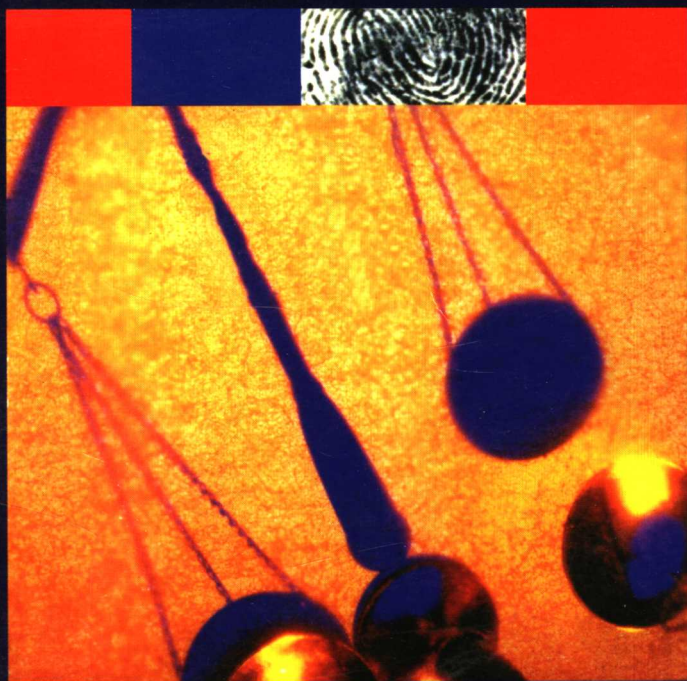
牛津英语百科分类词典系列

Oxford

DICTIONARY OF

LAW

牛津法律词典



上海外语教育出版社

外教社 SHANGHAI FOREIGN LANGUAGE EDUCATION PRESS

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Oxford Dictionary of

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Edited by

ELIZABETH A. MARTIN



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本社编辑部

Preface

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

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

Written in concise English, without the unnecessary use of legal jargon, the book will also be of considerable value to members of the public who come into contact with the law and lawyers – house buyers, motorists, and hire purchasers are among those who cannot escape the effects of legislation or the unique prose style in which it is usually expressed.

In the five years since the last edition of the dictionary was published there have been radical changes in the English legal system, most notably in the areas of civil procedure (resulting from the Access to Justice Act 1999 and the Civil Procedure Rules – the so-called ‘Woolf Reforms’) and human rights law (brought about by the Human Rights Act 1998). The new edition reflects these and many other changes. If any provisions of new legislation were not in force at the time of publication, the entries to which they apply will indicate the direction of the proposed changes.

An asterisk (*) placed before a word in a definition indicates that additional relevant information will be found under this article. Some entries simply refer the reader to another entry, indicating either that they are synonyms or abbreviations or that they are most conveniently explained, together with related terms, in one of the dictionary’s longer articles. The use of the pronoun ‘he’ (rather than ‘he or she’) in entries has been adopted to simplify the construction of sentences; it does not imply that the subject matter relates exclusively to males.

E.A.M.
2001

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A

abandonment *n.* **1.** The act of giving up a legal right, particularly a right of ownership of property. Property that has been abandoned is *res nullius* (a thing belonging to no one), and a person taking possession of it therefore acquires a lawful title. An item is regarded as abandoned when it can be established that the original owner has discarded it and is indifferent as to what becomes of it: such an item cannot be the subject of a theft charge. However, property placed by its owner in a dustbin is not abandoned, having been placed there for the purpose of being collected as refuse. In marine insurance, abandonment is the surrender of all rights to a ship or cargo in a case of *constructive total loss. The insured person must do this by giving the insurer within a reasonable time a **notice of abandonment**, by which he relinquishes all his rights to the ship or cargo to the insurer and can treat the loss as if it were an actual total loss. **2.** In civil litigation, the relinquishing of the whole or part of the claim made in an action or of an appeal. Any claim is now considered to be abandoned once a *notice of discontinuance is served, according to rule 38(1) of the *Civil Procedure Rules. **3.** The offence of a parent or guardian leaving a child under the age of 16 to its fate. A child is not regarded as abandoned if the parent knows and approves steps someone else is taking to look after it. The court may allow a child to be adopted without the consent of its parents if they are guilty of abandonment.

abatement *n.* **1.** (of debts) The proportionate reduction in the payment of debts that takes place if a person's assets are insufficient to settle with his creditors in full. **2.** (of legacies) The reduction or cancellation of legacies when the estate is insufficient to cover all the legacies provided for in the will or on intestacy after payment of the deceased's debts. The Administration of Estates Act 1925 provides that general legacies, unless given to satisfy a debt or for other consideration, abate in proportion to the amounts of those legacies; specific and demonstrative legacies then abate if the estate is still insufficient to pay all debts, and a demonstrative legacy also abates if the specified fund is insufficient to cover it. For example, A's estate may comprise a painting, £300 in his savings account, and £700 in other money; there are debts of £100 but his will leaves the painting to B, £500 from the savings account to C, £800 to D, and £200 to E. B will receive the painting, C's demonstrative legacy abates to £300, and after the debts are paid from the remaining £700, D's and E's general legacies abate proportionately, to £480 and £120 respectively. When annuities are given by the will, the general rule is that they are valued at the date of the testator's death, then abate proportionately in accordance with that valuation, and each annuitant receives the abated sum. All these rules are subject to any contrary intention being expressed in the will. **3.** (in land law) Any reduction or cancellation of money payable. For example a lease may provide for an abatement of rent in certain circumstances, e.g. if the building is destroyed by fire, and a purchaser of land may claim an abatement of the price if the seller can prove his ownership of only part of the land he contracted to sell. **4.** (of nuisances) The termination, removal, or destruction of a *nuisance. A person injured by a nuisance has a right to abate it. In doing so, he must not do more damage than is necessary and, if removal of the nuisance requires entry on to the property from which it emanates, he may have to give notice to the wrongdoer. A local authority can issue an abatement notice to control statutory nuisances. **5.** (of proceedings) The

termination of civil proceedings by operation of law, caused by a change of interest or status (e.g. bankruptcy or death) of one of the parties after the start but before the completion of the proceedings. An abatement did not prevent either of the parties from bringing fresh proceedings in respect of the same cause of action. Pleas in abatement have been abolished; in modern practice any change of interest or status of the parties does not affect the validity of the proceedings, provided that the cause of action survives.

abduction *n.* The offence of taking an unmarried girl under the age of 16 from the possession of her parents or guardians against their will. It is no defence that the girl looked and acted as if she was over 16 or that she was a willing party. No sexual motive has to be proved. It is also an offence to abduct an unmarried girl under the age of 18 or a mentally defective woman (married or unmarried) for the purpose of unlawful sexual intercourse. In this case a defendant can plead that he had reasonable grounds for believing that the girl was over 18, or that he did not know the woman was mentally defective, respectively. It is also an offence to abduct any woman with the intention that she should marry or have unlawful sexual intercourse with someone, if it is done by force or for the sake of her property. It is also an offence for a parent or guardian of a child under 16 to take or send him out of the UK without the consent of the other parent or guardians. Belief that the other person has or would have consented is a defence. It is also an offence for any other person to remove or keep such a child, without lawful authority or reasonable excuse, from the person with lawful control of him. Proof of belief that the child was 16 is a defence here. *See also* KIDNAPPING.

abet *vb.* *See* AID AND ABET.

abortion *n.* The termination of a pregnancy: a miscarriage or the premature expulsion of a foetus from the womb before the normal period of gestation is complete. It is an offence to induce or attempt to induce an abortion unless the terms of the Abortion Act 1967 and the Abortion Regulations 1991 are complied with. The pregnancy can only be terminated by a registered medical practitioner, and two registered medical practitioners must agree that it is necessary, for example because (1) continuation of the pregnancy would involve a risk to the life or physical or mental health of the pregnant woman (or of other children of hers) that is greater than the risk of terminating the pregnancy, or (2) that there is a substantial risk that the child will be born with a serious physical or mental handicap. However, doctors are not obliged to perform abortions if they can prove that they have a conscientious objection to so doing. A husband cannot prevent his wife having a legal abortion if she so wishes. *Compare* CHILD DESTRUCTION.

absconding *n.* The failure of a person to surrender to the custody of a court in order to avoid legal proceedings. *See also* SURRENDER TO CUSTODY.

absence *n.* (in court procedure) The nonappearance of a party to litigation or a person summoned to attend as a witness.

absent-mindedness *n.* *See* AUTOMATISM.

absent parent *See* NONRESIDENT PARENT; CHILD SUPPORT MAINTENANCE.

absolute assignment *See* ASSIGNMENT.

absolute discharge *See* DISCHARGE.

absolute privilege The defence that a statement cannot be made the subject of an action for *defamation because it was made in Parliament, in papers ordered to be published by either House of Parliament, in judicial proceedings or a fair and

accurate newspaper or broadcast report of judicial proceedings, or in an official communication between certain officers of state. Under the Defamation Act 1996, the defence is also available for those reporting proceedings of the European Court of Justice. Under certain circumstances defined by the 1996 Act the absolute privilege accorded to statements or proceedings in Parliament may be waived (**waiver of privilege**) to permit evidence to be adduced in an action for defamation. *Compare* QUALIFIED PRIVILEGE.

absolute right A right set out in the European Convention on Human Rights that cannot be interfered with lawfully, no matter how important the public interest in doing so might be. Absolute rights include *freedom of thought, conscience, and religion and the prohibitions on *torture, *inhuman treatment or punishment, and *degrading treatment or punishment. *Compare* QUALIFIED RIGHT.

absolute title Ownership of a *legal estate in registered land with a guarantee by the state that no one has a better right to that estate. An absolute title to freehold land is equivalent to an estate in fee simple in possession in unregistered land.

Absolute leasehold title, unlike *good leasehold title, guarantees that the lessor has title to grant the lease. (*Compare* POSSESSORY TITLE; QUALIFIED TITLE.) The title may be subject to (1) *encumbrances and other entries noted on the register by means of substantive registration (e.g. a registered legal charge or land charge); (2) minor interests, such as that of a beneficiary under a trust, which may be protected by means of "entry" on the register rather than by substantive registration; and (3) *overriding interests (which by their nature do not appear on the register and must be ascertained by search and enquiry). *See also* LAND REGISTRATION.

abstracting electricity The *arrestable offence, punishable with up to five years' imprisonment and/or a fine, of dishonestly using, wasting, or diverting electricity. This offence may be committed by someone who bypasses his electricity meter or reconnects a disconnected meter or who unlawfully obtains a free telephone call (though there is a more specific and potentially less serious offence to deal with this). Bypassing a gas or water meter could constitute *theft of the gas or water. Joyriding in a lift (or some similar abuse) might also constitute wasting electricity. Computer hackers were formerly charged with offences of abstracting electricity until the Computer Misuse Act 1990 made *hacking a specific criminal offence.

abstraction of water The taking of water from a river or other source of supply. It normally requires a water authority licence but there are exceptions; for example when less than 1000 gallons are taken, when the water is for domestic or agricultural use (excluding spray irrigation), or when it is removed in the course of fire-fighting or land drainage. It has been held not to include gravitational loss from a canal replacing water drawn from a connecting outfall channel.

abstract of title Written details of the *title deeds and documents that prove an owner's right to dispose of his land or an interest in this. An abstract generally deals only with the *legal estate and any equitable interests that are not *overreached. An owner usually supplies an abstract of title before *completion to an intending purchaser or mortgagee, who compares it with the original title deeds when these are produced or handed over on completion of the transaction. An abstract of title to registered land consists of *office copies of the entries in the register (together with an *authority to inspect the register) and details of any other documents necessary to prove the owner's title, such as a marriage certificate proving a woman's change of surname. For unregistered land, the abstract of title must usually trace the history of the land's ownership from a document at least 15 years old (the *root of title) and give details of any document creating encumbrances to

which the land is subject. An abstract of title formerly comprised extracts, often in abbreviated note form, but now generally comprises duplicate copies of the relevant documents (an **epitome of title**). An abstract or epitome, with each copy document marked as examined against the original, may be sufficient in itself to deduce title; for instance, when a title is split into lots, the purchaser of each lot may be required to accept an examined abstract or epitome in lieu of the original title deeds, accompanied by an *acknowledgment and undertaking.

abuse of a dominant position Unlawful activities by large businesses, i.e. usually those having a market share of at least 40% in at least one EU state. Examples of such activities, which are contrary to *Article 82 of the Treaty of Rome and the UK Competition Act 1998, include refusing to supply an existing customer and engaging in *predatory pricing. The European Commission and the Office of Fair Trading can fine businesses up to 10% of annual worldwide turnover for breach of Article 82. The record individual fine, of 102M ECUs (now euros), was against Volkswagen in 1998; it was upheld on appeal in July 2000. Under the UK Competition Act 1998 a £3.21M penalty was imposed on Napp Pharmaceuticals. See ANTICOMPETITIVE PRACTICE.

abuse of process A tort where damage is caused by using a legal process for an ulterior collateral purpose. (See also MALICIOUS PROSECUTION.) Actions that are obviously frivolous, vexatious, or in bad faith can be stayed or dismissed by the court as an abuse of process.

abusive behaviour See THREATENING BEHAVIOUR.

ABWOR Advice by way of representation: assistance formerly given to a person by taking on his behalf any step in the institution or conduct of any proceedings before a court or tribunal under the provisions of the legal advice and assistance scheme. The legal aid scheme under which ABWOR was created was replaced by the *Community Legal Service from 1 April 2000. Under the new scheme, the authorization of legal representation for the purposes of a particular hearing is now in a form called **help at court**.

ACAS Advisory Conciliation and Arbitration Service: a statutory body that was established under the Employment Protection Act 1975; the composition and functions of ACAS are now governed by Parts IV and VI of the Trade Union and Labour Relations (Consolidation) Act 1992. ACAS was set up to promote the improvement of industrial relations and the development of *collective bargaining. In its conciliation function it may intervene, with or without the parties' consent, in a *trade dispute to offer facilities and assistance in negotiating a settlement. It employs **conciliation officers** who may assist parties to an application to an employment tribunal to reach a settlement. Earlier legislation removed the necessity for binding settlements of employment disputes to involve an ACAS conciliation officer: settlements can now be made when the individual has had independent legal advice from a qualified lawyer.

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

can charge for its services when it considers that this is appropriate. The law on conciliation generally is contained in the Employment Tribunals Act 1996.

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

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

acceptance of a bill The written agreement by the person on whom a *bill of exchange is drawn (the **drawee**) that he will accept the order of the person who draws it upon him (the **drawer**). The acceptance must be written on the bill and signed. The signature of the drawee without additional words is sufficient, although generally the word "accepted" is used as well. Upon acceptance the drawee becomes the acceptor and the party primarily liable upon the bill. See also QUALIFIED ACCEPTANCE.

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

access *n.* Formerly, the opportunity to visit a child that was granted (at the

discretion of the court) to its parent when the other parent had the care and control of the child after divorce or when a custodianship order was in force. Since the Children Act 1989 came into force the concept of access has been replaced by that of *contact. See also SECTION 8 ORDERS.

accession *n.* 1. The formal agreement of a country to an international *treaty. The term is applied to the agreement of a country to become a member state of the European Union. Member states accede to the Treaty of Rome or any other EU treaty by signing **accession agreements**. 2. The process of a member of the royal family succeeding to the throne, which occurs immediately on the death or abdication of the previous sovereign.

access land Land to which the public will have access for the purposes of open-air recreation under the Countryside and Rights of Way Act 2000. It includes land shown as open country (mountain, moor, heath, or down) on a map in conclusive form issued by an appropriate countryside body (the Countryside Agency or the Countryside Council for Wales) or as common land, or land situated more than 600 metres above sea level, or land that has been dedicated as access land.

accessory *n.* One who is a party to a crime that is actually committed by someone else. An accessory is one who either successfully incites someone to commit a crime (**counsels or procures**) or helps him to do so (*aids and abets). The accessory is subject to the same punishments and orders as the principal (see also COMMON DESIGN). It is an offence to assist a person whom one knows has committed an arrestable offence with the intention of impeding his apprehension or prosecution. See also IMPEDING APPREHENSION OR PROSECUTION.

accessory liability If a stranger knowingly and dishonestly assists a trustee in a breach of trust he will be liable as an accessory. He will not usually have received any trust assets; however, in assisting in the breach he will be personally liable to account to the trust for any losses arising from his actions.

accident *n.* See FATAL ACCIDENTS; MISTAKE; ROAD TRAFFIC ACCIDENTS.

accident record book A record kept by the police of details of the accidents they have investigated. Access to this is usually requested by solicitors acting in subsequent litigation relating to *road traffic accidents. The Association of Chief Police Officers Traffic Committee has issued guidelines on charges for such reports.

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

accomplice *n.* One who is a party to a crime, either as a *principal or as an *accessory. See also CORROBORATION.

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

account *n.* A right at common law and later (more importantly) in equity,