

L. B. Curzon

# **A Dictionary of Law**

# A DICTIONARY OF LAW

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## Preface

This dictionary has been compiled primarily for the use of students at home and abroad as a guide to the specialised vocabulary of the principles, practices and procedures of English law. It is hoped that general readers will also find it of interest and use.

The basic vocabularies of those subjects constituting the foundation of legal studies—criminal law, land law, contract, law of torts, equity and the law of evidence, for example—have been combed so as to extract the fundamental language of our law. Other vital areas, such as jurisprudence, legal history and EEC law, have also been searched and a selection of their most important words and phrases has been made.

The words and phrases which make up the dictionary are explained in a variety of ways, including straightforward definition, reference to the reports and other legal literature. In many entries references to statutes and cases are given so that students may be led to explore further the use of words in the context of the living law.

English law is a living and, therefore, a changing thing. Recording its vocabulary at any moment is analogous to attempting to record the motion of a mountain torrent by the use of a still camera; one can record the object only at one "frozen moment in time". In general, this dictionary has attempted to record legal terminology as it was in mid-1978; some later material was added at proof-reading stages.

I wish to record my thanks to Miss Hilary Salter of the editorial staff of Macdonald & Evans for her help in the preparation of the text.

January 1979

L.B.C.

## How to use this Dictionary

1. The entries in this dictionary are arranged invariably in strict alphabetical order. This may be illustrated by the following example of a series of entries:

**privilege**  
**privilege, absolute**  
**privilege, claim of**  
**privileged communication**  
**privileged will**  
**privilege, legal professional**  
**privilege of witness**  
**privilege, parliamentary**  
**privilege, qualified**  
**Privileges, Committee of**  
**privileges, marital**

2. The titles of some Acts which are referred to repeatedly are abbreviated in accordance with the list below. In every case the abbreviation is followed by the appropriate date of the Act, thus: B.A. 1914; Th.A. 1968.

Abbreviations used for titles of some Acts:

A.E.A.	Administration of Estates Act
A.J.A.	Administration of Justice Act
B.A.	Bankruptcy Act
B.Ex.A.	Bills of Exchange Act
C.C.A.	Consumer Credit Act
Ch.A.	Children Act
C.J.A.	Criminal Justice Act
C.L.A.	Criminal Law Act
Cos.A.	Companies Act
County C.A.	County Courts Act
C. & Y.P.A.	Children and Young Persons Act
E.P.A.	Employment Protection Act
F.L.R.A.	Family Law Reform Act
H.S.W.A.	Health and Safety at Work, etc., Act
J.A.	Judicature Act
L.C.A.	Land Charges Act
L.G.A.	Local Government Act

Lim.A.	Limitation Act
L.P.A.	Law of Property Act
L.R.A.	Land Registration Act
Mat. C.A.	Matrimonial Causes Act
M.C.A.	Magistrates' Courts Act
M.H.A.	Mental Health Act
O.P.A.	Offences against the Person Act
P. & A.A.	Perpetuities and Accumulations Act
P.C.C.A.	Powers of Criminal Courts Act
S.G.A.	Sale of Goods Act
S.L.A.	Settled Land Act
S.O.A.	Sexual Offences Act
S.S.A.	Social Security Act
T.C.P.A.	Town and Country Planning Act
Th.A.	Theft Act
Tr.A.	Trustee Act
T.U.L.R.A.	Trade Union and Labour Relations Act
W.A.	Wills Act

3. The abbreviation "O" stands for "Order" and refers to grouping in the form of Orders of the Rules of the Supreme Court; "r" refers to "rules"; thus: O. 88, r. 7.

4. Cross-reference is achieved by the use of the abbreviation *qv*, which appears in brackets following words that are further explained elsewhere, and by words in capital letters which stand at the conclusion of the particular entry. Thus, consider the following entry:

**life estate.** An estate for the life of the tenant (eg, by express limitation, such as a grant "to X for life") or by operation of law (as in *curtesy* (*qv*)) or *autre vie* (*qv*). See ESTATE.

After studying the entry above, further reference ought to be made to *curtesy*, *autre vie* and, finally, *estate*.

5. Many entries contain references to cases, statutes, orders, statutory instruments, Law Commission Reports, etc. They have been included for those who wish to make an intensive study of the subject-matter of the entries.

## A

**A1.** A classification of Lloyd's Register of Shipping of a Ship, the hull and equipment of which are considered first-class. See LLOYD'S.

**A and B lists.** In the event of the winding-up of a company (qv), those on the "A" list, which is a list of present members, are liable in accordance with any guarantee, or in so far as their shares are unpaid. Those on the "B" list, which is a list of persons who have ceased to be members within one year preceding winding-up, are liable (if the contributions of those on the "A" list are insufficient) to the extent unpaid on their shares in respect of debts incurred while they were members. See *Cos.A.* 1948, s. 212; *Helbert v Banner* (1871) LR 5 HL 28. See WINDING-UP.

**abandonment.** 1. Surrender or relinquishing of a chattel, right or claim, with the intention of not reclaiming it. 2. An action in the High Court is considered abandoned when a notice of discontinuance (qv) is served: see O. 21. 3. In the case of a constructive total loss (qv) in marine insurance, the assured may abandon the subject-matter to the insurer and treat the loss as if it were an actual total loss, after giving notice of abandonment. 4. Abandonment of a child means leaving it to its fate: *Watson v Nikolaisen* [1955] 2 QB 286. See C. & Y.P.A. 1963; Ch.A. 1975, Sch 4.

**abatement.** 1. Abatement of action is the bringing to an end or the suspending of an action: see O. 15, r. 7. 2. Abatement of debts refers to proportionate reduction of payments where a fund cannot meet claims. 3. Abatement of legacies (qv) refers to receipt by legatees of only a fraction, or none, of their legacies when assets are insufficient to pay legacies in full. Pecuniary or general legacies abate proportionately before specific legacies. 4. Abatement of nuisances (qv) refers to their removal. Abatement notices may be served by

a local authority in respect of a statutory nuisance. See Public Health Act 1936, s. 93; Public Health (Recurring Nuisances) Act 1969; *Roberts v Rose* (1865) LR 1 Ex 82; *Lemon v Webb* [1895] AC 1; *Salford CC v McNally* [1975] 2 All ER 860.

**abdication.** Voluntary renunciation of an office. See, concerning Royal abdication, Declaration of Abdication Act 1936.

**abduction.** Wrongful leading away of a person. It is an offence under S.O.A. 1956, s. 20, to abduct an unmarried girl under 16 from her parent or guardian.

**abet.** To assist in the commission of an offence when one is present actively or constructively. See ACCESSORY; ACCOMPLICE; AID OR ABET.

**ab extra.** From outside.

**abeyance.** An estate is in abeyance when there exists no person in whom it can vest.

**abeyance of seisin.** See SEISIN, ABEYANCE OF.

**ab initio.** From the beginning. 1. A trespasser *ab initio* is one who, being entitled by law to perform an act, abuses his authority, so that his act becomes wrongful from the very beginning. See *The Six Carpenters' Case* (1610) 8 Rep 146a; *Chic Fashions Ltd v Jones* [1968] 2 QB 299 (in which continuing existence of doctrine was doubted). 2. A marriage is void *ab initio* if, eg, either party was under 16 at the date of marriage. See Nullity of Marriage Act 1971.

**ab intestato.** From an intestate. Succession *ab intestato* refers to succession to property of a person who has not disposed of it by will. See INTES-TACY.

**abjuration.** Renunciation by oath, eg, as in an oath to leave the realm. See Promissory Oaths Act 1871.

**abode.** A place of residence (qv). Usually a question of fact rather than law: *Courtis v Blight* (1862) 31 LJCP 48. "A man's residence, where he

lives with his family and sleeps at night, is always his place of abode in the full sense of that expression": *R v Hammond* (1852) 17 QB 772. See *R v Bundy* [1977] 2 All ER 382.

**abominable crime.** Phrase used in the O.P.A. 1861, s. 61, to refer to sodomy (qv) and bestiality (qv).

**abortion.** Expulsion of a human foetus before gestation is completed. Procuring an abortion was a felony, but under the Abortion Act 1967, a person is not guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner, if two registered medical practitioners are of the bona fide opinion that continued pregnancy would involve risk to the woman's life, or injury to the physical or mental health of the woman or existing children of her family, or that there is a substantial risk that if the child were born it would be seriously handicapped by physical or mental abnormalities. See also O.P.A. 1861, ss. 58, 59.

**abrogate.** To repeal, annul, cancel, abolish. Principle of abrogation of contract by war refers only to further performance of the contract, not to the part completed. Accrued rights under the contract are not destroyed. See *Schering v Stockholms Enskilda Bank* [1946] 1 All ER 36.

**abscond.** To depart secretly or to hide oneself from the jurisdiction of the court so as to avoid legal process. It may amount to an act of bankruptcy (qv): B.A. 1914, ss. 1, 23.

**absconding by person released on bail.** Failure, without reasonable cause, by one who has been released on bail in criminal proceedings, to surrender to custody. An offence under the Bail Act 1976, s. 6(1). A warrant (qv) for his arrest may be issued: s. 7(1).

**absence.** 1. Non-appearance by a party to a writ or subpoena (qv). 2. Continuous absence of a spouse for seven years may be a defence to a charge of bigamy. See *R v Curgerwen* (1865) 29 JP 820. 3. Absence "beyond the seas" (qv) refers to absence from the UK and those adjacent islands belonging to the Sovereign.

**absolute.** Without conditions, complete, as in decree absolute (qv).

**absolute assignment.** Assignment of the entire interest of a chose in action (qv) so that it is transferred unconditionally to the assignee. It includes an assignment by way of mortgage: *Hughes v Pump House Hotel Co* [1902] 2 KB 190. See L.P.A. 1925, s. 136.

**absolute decree.** See DECREE.

**absolute discharge.** Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging him absolutely: P.C.C.A. 1973, s. 7.

**absolute liability.** See STRICT LIABILITY IN CRIMINAL LAW.

**absolute title.** In the case of a freehold (qv) registered with absolute title, the registered proprietor has a guaranteed title subject only to, eg, entries on the register. In the case of a leasehold (qv) absolute title guarantees that the registered proprietor is the owner of the lease and that it was validly granted. See LAND REGISTRATION.

**abstract and epitome of title.** Narrative summary, which must be supplied by a landowner to a purchaser under contract of sale, of documents and events affecting title. The abstract states the history of title; the epitome is a schedule of documents going back to the root of title (qv). See L.P.A. 1925, s. 10.

**abuse.** Words of vituperation, insult, invective. It does not generally amount to defamation (qv): *Thorley v Kerry* (1812) 4 Taunt 355. See, however *McGregor v Gregory* (1843) 11 M & W 287; *Thaarup v Hulton Press Ltd* (1943) 169 LT 309; *Lane v Holloway* [1968] 1 QB 379.

**abuse of distress.** Use of an animal or chattel that has been distrained. It renders distrainor liable for conversion (qv). See DISTRESS.

**abuse of process.** Tort based on



damage caused by use of a legal process for some purpose other than that for which it was designed. See O. 18, r. 19; *Grainger v Hill* (1838) Bing NC 212; *Gibbs v Pike* (1842) 9 M & W 351; *Goldsmith v Sperrings* [1977] 1 WLR 478.

**A.C.A.S.** Advisory, Conciliation and Arbitration Service (qv).

**acceleration clause.** Provision in an agreement for repayment of a loan by instalments whereby if a stated number of instalments are not paid, all outstanding payments become due at once.

**acceleration, doctrine of.** Where interests in property have been conferred by a testator in succession, eg, "to X for life, remainder to Y" and the gift to X is determined before the time envisaged by the testator, Y's interest is accelerated. If it is discovered that, eg, X cannot take under the will (because he witnessed it), Y's interest becomes immediate. The doctrine does not apply to a contingent gift: *Re Scott* [1975] 2 All ER 1033. See *Re Hodge* [1943] Ch 300; *Re Davies* [1957] 1 WLR 922.

**acceptance.** 1. Acceptance of an offer to create a contract (ie, an assent to all the terms of the offer) must be unqualified, and may be by words or conduct. It must generally be communicated to the offeror and must conform with the offer. See *Adams v Lindsell* (1818) 1 B & Ald 681; *Hyde v Wrench* (1840) 3 Beav 334; *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256. Acceptance "subject to contract" means that the parties intend to be bound only when a formal contract is prepared and signed: *Chillingworth v Esche* [1924] 1 Ch 97. 2. Acceptance of goods under S.G.A. 1893, s. 35, is deemed to have taken place when a person indicates to the seller that he has accepted them, or when they have been delivered to him and he does an act in relation to them which is inconsistent with the seller's ownership, or when he retains them without informing the seller after a reasonable time that he has rejected them. See CONTRACT; OFFER.

**acceptance of a bill.** Written signature by the drawee of a bill of ex-

change and the word "accepted" across the bill: B.Ex.A. 1882, ss. 17-19. He thereby undertakes to pay bill when due. Acceptance *supra protest* (or "acceptance for honour") is acceptance of a bill when it has been dishonoured by one who has no interest in the bill so as to safeguard the drawee's good name: B.Ex.A. 1882, ss. 65-68. Acceptance may be general or qualified (qv). See BILL OF EXCHANGE.

**acceptance of service.** Statement by a solicitor, written on a writ of summons, accepting service and undertaking to appear. Failure to appear may render the solicitor liable in negligence to his client. See O. 10, r. 1.

**acceptance, special.** See SPECIAL ACCEPTANCE.

**access.** 1. The existence of opportunity of sexual intercourse between husband and wife. Evidence of impossibility of access may be given to rebut the presumption of legitimacy (qv). See Mat.C.A. 1973, s. 48, 2. Where one parent has been granted care and control of a child, the other parent or grandparent may be entitled to visit or look after child for periods—right of access. See *S. v S.* [1962] 1 WLR 445; *M. v M.* [1973] 2 All ER 81. 3. The owner of adjoining land has right of access to a highway: *Rowley v Tottenham UDC* [1914] AC 95.

**accession.** Procedure whereby property belonging to X becomes property of Y because it has been affixed to or annexed with that which belongs to Y. See FIXTURES.

**accessory.** One who is concerned in the commission of an offence otherwise than as principal. An accessory *before* the fact was one who "being absent at the time of the felony committed doth yet procure, counsel, command or abet to commit [it]": 1 Hale PC 615. An accessory *after* the fact was one who, knowing that a felony had been committed, subsequently harboured or relieved the felon or in any way secured or attempted to secure his escape. See Accessories and Abettors Act 1861; M.C.A. 1952, s. 35; C.L.A. 1967, ss. 1, 2, 4; C.L.A. 1977, Sch. 12; *R v Fisher* [1969] 1 WLR 8. See PRINCIPAL.

**accident.** "An unlooked for mishap, or an untoward event which is not expected or designed" by the person injured: *Boyle v Wright* [1969] VLR 699. "The word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss": per Lord Linley in *Fenton v Thorley* [1903] AC 443. See INEVITABLE ACCIDENT.

**accommodation bill.** A bill of exchange (qv) to which a person who has not received value for it (the "accommodation party") has given his name, thus accepting liability and becoming, in effect, a surety for the person accommodated. See B.Ex.A. 1882, s. 28.

**accommodation, priority need for.** See HOMELESS PERSON.

**accomplice.** One person associated with another, whether as principal or accessory (qqv), in the commission of an offence. Evidence of an accomplice may be admissible, but it is the judge's duty to warn the jury that it should be corroborated: *Davies v DPP* [1954] AC 378.

**accord and satisfaction.** This occurs where, following the conclusion of a contract, one party obtains release from his obligation by promising or giving consideration (qv) other than that which the other party has to accept under the contract. The agreement is the accord; the consideration is the satisfaction. See *British Russian Gazette v Ass. Newspapers* [1933] 2 KB 616; *D. & C. Builders Ltd v Rees* [1966] 2 QB 617.

**account.** Record of debts and credits, or items to be balanced.

**accounting, false.** An offence under the Th.A. 1968, s. 17(1) "where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another, (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or (b) in furnishing information for any purpose produces or makes use of any ac-

count, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular." See *R v Solomons* [1909] 2 KB 980—falsification of taximeter reading; *R v Mallett* [1978] 1 WLR 820.

**accounting records.** Records kept in accordance with Cos.A. 1976, s. 12, containing details of company's liabilities and assets and entries from day to day of receipts and expenditure and matters in respect of which the receipts and expenditure take place.

**accounting reference periods.** Company directors have a duty to prepare, lay and deliver accounts by reference to accounting reference periods (usually 12 and, exceptionally, not more than 18 months), as set out in Cos.A. 1976, s. 2.

**account, order for.** Order made by the court so that sums due from one party to another resulting from transactions between parties may be investigated, eg, as between principal and agent. See O. 43, r. 2; *O'Connor v Spaight* (1804) S & L 305; *Neilson v Betts* (1871) 19 WR 1121.

**account, settled.** Statement of accounts between parties, in writing, agreed and accepted by them as correct. A defence to a claim for an account. See *Re Webb* [1894] 1 Ch 83.

**account stated.** An admission of a sum of money due from one person to another where neither is under a duty to account to the other. Accounts stated with infants (qv) are generally void: Infants Relief Act 1874, s. 1. See *Joseph Evans & Co v Heathcote* [1918] 1 KB 434; *Siqueira v Noronha* [1934] AC 332.

**accumulation.** Process whereby interest is invested as it accrues. By the L.P.A. 1925, s. 164(1) no person may direct accumulation of income for any longer period than the grantor's or settlor's life, or a term of 21 years from the death of the grantor, settlor or testator, or duration of minority of a person living or *en ventre sa mère* (qv) at death of grantor, settlor or testator, or duration of minority of person(s) who under limitations of instrument directing accumulation

would, for the time being, if of full age, be entitled to income directed to be accumulated. Under the P. & A.A. 1964, s. 13(1) additional periods are: 21 years from the date disposition was made; duration of minority of any person in being at that date. The rule does not extend to accumulation of produce of timber or wood, provisions for payment of debts and raising of portions (qv).

**accumulation and maintenance settlement.** Settlement (qv) in which there is no interest in possession, but one or more beneficiaries will become entitled to an interest in possession on attaining a specified age not exceeding 25 years. See Finance Act 1975, Sch 5.

**accusatorial procedure.** System in most common law countries whereby parties and their representatives have primary responsibility for finding and presenting evidence. The judge does not investigate the facts. See INQUISITORIAL PROCEDURE.

**accused.** One charged with an offence.

**ac etiam.** And also. Phrase used to precede statement of real, as distinct from fictitious, cause of action.

**acknowledgment.** Avowal or assent to. 1. Acknowledgment of debt. Where right of action has accrued to recover a debt and the person liable acknowledges claim, the right is deemed to have accrued on and not before the date of acknowledgment: Lim.A. 1939, s. 23(4). 2. Acknowledgment of signature to will (qv). Testator's signature must be made or acknowledged in the presence of two witnesses. See W.A. 1837, s. 9; *Gaze v Gaze* (1843) 3 Curt 451; *Re Groffman* [1966] 2 All ER 108; *Re Colling* [1972] 3 All ER 729.

**acquiescence.** Consent which is expressed or implied from conduct. "Quiescence under such circumstances as that assent may be reasonably inferred from it": *De Bussche v Alt* (1880) 8 Ch D. 314.

**acquittal.** Discharge from prosecution following verdict of not guilty or successful plea in bar (qv), etc. There is generally no appeal against acquittal unless under the appropriate statutory authority.

**acquittance.** "A discharge in writing of a sum of money or other duty which ought to be paid or done": *Termes de la Ley*.

**act.** 1. Act of Parliament (qv). 2. That which is done by a person, generally consequent on volition. It may include a deliberate omission: see, eg, Sex Discrimination Act 1975, s. 82.

**action.** Formal exercise of a right of suing for that which is due. Usually commences by writ (qv) or other mode as prescribed by the Rules of Court. The term does not include criminal proceedings instituted by the Crown: J.A. 1925, s. 225.

**action, cause of.** "A factual situation the existence of which entitles one person to obtain a remedy against another person": *Letting v Cooper* [1965] 1 QB 232.

**action, collusive.** See COLLUSIVE ACTION.

**action, discontinuance of.** See DISCONTINUANCE OF ACTION.

**action, dismissal of.** See DISMISSAL OF ACTION.

**action on the case.** Remedy for wrongs first given by Statute of Westminster II 1285, whereby in a case in which a writ was found and in a similar case (*in consimili casu*) "falling under like law and requiring like remedy is found none", the clerks of Chancery could agree to make a new writ, or consult Parliament. *Assumpsit* (qv) is an example.

**action, removal of.** See REMOVAL OF ACTION.

**actions civil and penal.** An action brought to enforce civil rights is a *civil action*. A *penal action* is aimed at the punishment of the party sued, eg, by monetary penalty; the term is also used of an action for the recovery of a penalty given by statute.

**actions, consolidation of.** See CONSOLIDATION OF ACTIONS.

**action, setting down for.** See SETTING DOWN FOR ACTION.

**action, settlement of.** See SETTLEMENT OF ACTION.

**actions real and personal.** *Real actions* (*res* = thing) were brought at common law for the recovery of his land by a freeholder. See Real Property Limitation Act 1833 by

which they were, in general, abolished. *Personal* actions, eg, actions on contracts, derive from those relating to the enforcement of remedies against persons, in contrast to the recovery of things in real actions. See PROPERTY.

**actio personalis moritur cum persona.** A personal action dies with a party to the cause of the action. The rule was reversed by the Law Reform (Misc. Provs.) Act 1934: "On the death of any person . . . all causes of action . . . vested in him shall survive for the benefit of his estate." Thus, all causes of action in tort, save for defamation (qv) survive the deceased.

**active trust.** A trust (qv) which requires the trustee, known as an "active trustee" to perform active duties, eg, to collect rent and profits and transfer proceeds to the beneficiary (qv). See BARE TRUST.

**act, juristic.** Act whereby legal persons create, alter or destroy rights and duties and, as a consequence, affect legal relationships between legal persons. A juristic act may be *unilateral* (eg, disposing of property by will) or *bilateral* (eg, agreement by contract). Elements of a juristic act are: actor (A) must direct his will to an end; A's will must be made manifest; A must have capacity in law to achieve desired result; A's aim must be legal.

**act of God.** "An extraordinary circumstance which could not be foreseen, and which could not be guarded against": *Pandorf v Hamilton* (1886) 17 QBD 675. "Something in opposition to the act of man": *Forward v Pittard* (1785) ITR 27. See *Nichols v Marsland* (1875) LR 10 Ex 255—extraordinary rainfall; *Nugent v Smith* (1876) 1 CPD 423—unusually bad weather at sea. See VIS MAJOR.

**Act of grace.** A free, general pardon granted by an Act of Parliament, usually originated by the Sovereign, eg, at the commencement of a reign.

**Act of indemnity.** An Act legalising certain activities which were illegal at the time they were carried out, or exempting certain persons from particular penalties following on breaches of the law. See, eg, 4 Hen VIII c. 8; Indemnity Act 1920.

**act of law.** An event, eg, acquisition of title (qv), resulting other than from an act of the parties. See PURCHASER.

**Act of Parliament.** The will of the legislature, ie, law made by the Queen in Parliament (ie, Queen, Lords and Commons). Concurrence of the Lords may be dispensed with under certain circumstances: see Parliament Acts 1911 and 1949. An Act comes into force on the day it receives the Royal Assent (qv), unless otherwise stated. Acts may be public or private, local, general or personal. In construing an Act, the intention of the legislature predominates: *A-G for Canada v Hallett & Carey Ltd* [1952] AC 427.

**Act of Parliament, citation of.** See STATUTE, CITATION OF.

**Act of Settlement.** This was passed in 1701. Its important provisions included: "that whosoever shall hereafter come to the possession of the Crown shall join in communion with the Church of England as by law established", and, "that judges' commissions shall be made *quamdiu se bene gesserint*" (qv) (as long as they conduct themselves properly).

**act of state.** An act of the executive, ie, the sovereign power of a country, that "cannot be challenged, controlled or interfered with by municipal courts. Its sanction is not that of Law, but that of Sovereign power and, whatever it may be, municipal courts must accept it as it is, without question": *Salaman v Sec of State for India* [1906] 1 KB 639. See *Nabob of the Carnatic v E India Co* (1792) 2 Ves Jun 56; *Buron v Denman* (1848) 2 Ex 167; *A-G v Nissan* [1970] AC 179; *Buttes Gas and Oil Co v Hammer* [1975] QB 557. See PREROGATIVE, ROYAL.

**acts of bankruptcy.** See BANKRUPTCY, ACTS OF.

**Act, structure of.** Constituent elements of a statute, including: long title; preamble; enacting words; short title; principal, subsidiary, administrative and transitional provisions; interpretation and definitions; repealing clause; date of coming into operation; area of operation clause (eg, "This Act shall not extend to Scotland"); schedules.

**actual military service.** Phrase referring to a privileged will (qv) which allows, eg, a soldier or airman "in actual military service" to make an informal will. It has been given a wide meaning so as to include, eg, an airman undergoing training in Canada (*Re Wingham* [1943] P 187), a member of the Home Guard on duty (*Blyth v Lord Advocate* [1945] AC 32), a minor serving in the BAOR nine years after the end of the war (*Re Colman* [1958] 2 All ER 35). The phrase was reviewed extensively in *Re Wingham*.

**actual notice.** See NOTICE.

**actus non facit reum nisi mens sit rea.** An act does not itself constitute guilt unless the mind is guilty. The maxim contains a cardinal doctrine of English criminal law. See *Fowler v Padget* (1798) 7 TR 509; *Youngusband v Luftig* [1949] 2 KB 354.

**actus reus.** A phrase referring to elements of the definition of an offence, save those which concern the condition of the mind of the accused, eg, his conduct, its results and surrounding circumstances. Thus, the *actus reus* of false imprisonment (qv) is X's unlawful restraint of Y. Should any element of the *actus reus* not be present, the offence has not been committed. The phrase derives from "a mistranslation of the Latin aphorism . . . Properly translated, this means, 'an act does not make a man guilty of a crime unless his mind be also guilty'. It is thus not the *actus* which is *reus*, but the man and his mind respectively": *per* Lord Hailsham in *Haughton v Smith* [1973] 3 All ER 1109. See CRIME.

**ad colligenda bona.** To collect the goods. Grant of administration made to preserve property when no next of kin, creditor or other person applies for administration and the property is in danger of perishing. See GRANT.

**ad diem.** On the appointed day.

**address.** Desires or opinions of either House of Parliament made known to the Sovereign.

**address for service.** Address where writs and summons may be delivered. See O. 6, r. 5.

**ademption.** A specific legacy is said

to be adeemed when, as result of implied revocation by testator, it is withheld or extinguished, wholly or in part. There is ademption in the following cases: 1. Testator makes a gift of "my gold watch" and sells it before his death: *Re Dowsett* [1901] 1 Ch 398. 2. Father or person *in loco parentis* (qv) may bequeath a legacy to a child and later make other provisions which, in effect, constitute a portion (qv): *Earl of Durham v Wharton* (1836) 10 Bli NS 526. See LEGACY.

**ad hoc.** For this purpose.

**ad hoc settlements.** See SETTLEMENTS, AD HOC.

**ad hoc trust for sale.** Where trustees for sale of land are either two or more persons approved or appointed by the Court, or their successors in office, or a trust corporation (qv), a sale overreaches certain prior interests: L.P.A. 1925, s. 2(2). The sale is known as an *ad hoc*, or special, trust for sale.

**ad idem.** Of the same mind; similar in essential matters. A binding contract, for example, requires *consensus ad idem* (agreement as to the same thing) by both parties. See *Raffles v Wichelhaus* (1864) 2 H & C 906.

**adjacent.** ". . . Is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining, and it includes places close to or near. What degree of proximity could justify the application of the word is entirely a question of circumstances": *Wellington Corporation v Lower Hutt Corporation* [1904] AC 773. "Means close to or nearby or lying by: its significance or application in point of distance depends on the circumstances in which the word is used": *English China Clays v Plymouth Corporation* [1974] 2 All ER 239.

**adjective law.** That portion of the law dealing with procedure and practice in the courts. See SUBSTANTIVE LAW.

**adjourn.** To postpone or suspend the hearing of a case until a further date. An adjournment *sine die* (without day) is for an indefinite time. "Adjournment of the House" refers

to suspension of a sitting of the Lords or Commons until the following or a later day.

**adjournment of trial.** The postponing of a trial of action by a judge who thinks it expedient "in the interest of justice" to adjourn "for such time, and to such place, and upon such terms, if any, as he thinks fit": O. 35, r. 3. See *Re Yates' Settlement Trusts* [1954] 1 WLR 564.

**adjudication.** Formal judgment or decision given by the court. In proceedings for bankruptcy an adjudication order declares the debtor bankrupt, so that he becomes subject to disabilities attaching to that status. It is usually made, eg, when creditors pass a resolution. It can be annulled in the court's discretion, when, eg, debtor has paid debts in full. See B.A. 1914, s. 29. See BANKRUPTCY.

**adjustment.** Determining or settling of an amount entitled to be received by the assured under a policy of marine insurance. See AVERAGE.

**Adler clause.** Clause in a lease relating to a covenant (qv) against the assignment by a tenant without the landlord's consent, and containing the proviso "... that should tenant desire to assign or underlet ... he shall before doing so offer in writing to landlord to surrender the lease ... without any consideration, and the landlord may accept such offer at any time within 21 days from receipt thereof." See *Adler v Upper Grosvenor St Investment Ltd* [1957] 1 WLR 227; *Greene v Church Commissioners* [1974] Ch 467; *Re Hennessy's Agreement* [1975] 1 All ER 60.

**ad litem.** For the suit. A *guardian ad litem* may be appointed by the court to defend an action on behalf of an infant (qv): Ch.A. 1975, s. 20; O. 80, rr. 2, 3. *Grant ad litem* is made where representatives will not act and estate must be represented in proceedings: *Re Simpson* [1936] P 40.

**administer.** Under the Medicines Act 1968, s. 130(9), to give to a person or animal, orally, by injection or by introduction into the body in any other way, or by external application, whether by direct contact with the body or not.

**administration.** 1. Process of managing affairs of a bankrupt by a trustee, or those of an absent person by an attorney or agent. 2. Process of collecting assets of a deceased person, paying debts and distributing surplus to those entitled. See A.E.A. 1925, s. 34 and Sch 1.

**administration bond.** As a condition of granting administration to a person, the court may require one or two sureties to guarantee that they will make good any loss suffered by a person interested in the estate, following the breach of duties by administrator. See J.A. 1925, s. 167; A.E.A. 1971, s. 8.

**administration, limited.** See LIMITED ADMINISTRATION.

**administration of assets.** See ESTATES, ADMINISTRATION OF.

**administration of estates.** See ADMINISTRATION; ESTATES, ADMINISTRATION OF.

**administration order.** An order providing for the administration by the court of a debtor's estate. Any creditor, on proof of his debt, may be scheduled as a creditor of the debtor for the amount of his proof when the order has been made. See County C.A. 1959, s. 148, as amended. Order relating to bankruptcy (qv) may be replaced by a receiving order (qv): Insolvency Act 1976, s. 11.

**administration, special.** See LIMITED ADMINISTRATION.

**administration suit.** An action for the administration of the estate of a deceased person.

**administrative action.** Action to obtain administration of the estate of a deceased person. Personal representative or any other person interested in the estate may bring proceedings by originating summons or writ. See J.A. 1925, s. 56; O. 85.

**administrative tribunals.** Tribunals outside the hierarchy of courts exercising jurisdiction conferred by Parliament, eg, Rent Tribunals. Chairmen are generally selected from a panel and are appointed by the Lord Chancellor: Tribunals & Inquiries Act 1971, s. 7. Council on Tribunals reviews their working. They are controlled generally by the

issue of prerogative orders, ie, certiorari, mandamus, prohibition (qv).

**administrator.** One appointed by the court to manage the property of a deceased person in the absence of an executor (qv). (Fem: administratrix.) See GRANT.

**Admiralty Court.** Created under A.J.A. 1970, s. 2. A part of the QBD, consisting of puisne judges (qv) of the High Court, assisted by nautical assessors (the Elder Brethren of Trinity House). See O. 75. It has instant jurisdiction (concerning civil cases arising, eg, out of collisions) and prize jurisdiction (concerning seizure of enemy ships and cargoes).

**admissibility, conditional.** See CONDITIONAL ADMISSIBILITY.

**admissibility, multiple.** See MULTIPLE ADMISSIBILITY.

**admissibility of evidence.** Evidence is receivable by the court only if both relevant and admissible. In general, all evidence relevant to an issue is admissible; all that is irrelevant or insufficiently relevant ought to be excluded. See, eg, *Hollington v Hawthorn & Co Ltd* [1943] 1 KB 587. Must be distinguished from relevance (qv), which is based on that which is logically probative whereas admissibility refers to that which is legally receivable whether logically probative or not. "[The terms relevance and admissibility] are frequently and in many circumstances legitimately, used interchangeably; but I think it makes for clarity if they are kept separate, since some relevant evidence is inadmissible and some admissible evidence is irrelevant..."; per Lord Simon in *DPP v Kilbourne* [1973] AC 729. See EVIDENCE.

**admissions.** 1. In civil proceedings, those facts admitted, or taken to be admitted by parties to an action. A *formal admission* is made in answer to interrogatories (qv) or by the pleadings (qv); an *informal admission* may be made before or during proceedings. See O. 27; Civil Evidence Act 1968, s. 9. 2. In criminal proceedings, statements made voluntarily by the accused admitting the offence, eg, by plea of guilty or confession. See

C.J.A. 1967, s. 10 (provision for formal admissions at or before trial); *R v Best* [1909] 1 KB 692. 3. "Admissions by conduct" may be implied from a party's conduct. See, eg, *R v Cramp* (1880) 14 Cox CC 390. See CONFESION.

**admissions by privies.** Statements by persons who were, at the time of their making, in privy with a party (eg, proprietor and predecessor in title, principal and agent). They may be used against that party as admissions. See, eg, *Woolway v Rowe* (1834) 1 A & E 114.

**adopted children register.** A register maintained by the Registrar-General at the General Register Office in which entries relating to adoption orders (qv) are made. Any person is entitled to search an index of the register: Adoption Act 1976, s. 50. See also Adopted Persons (Birth Records) Regulations (1976) (SI 1976/1743).

**adoption.** 1. Incorporation of international law into municipal law, eg, by custom. 2. Process, effected by a court order, whereby rights and duties of a parent in relation to a child are vested in some other person(s), ie, the adopter(s). Recognised only after the Adoption of Children Act 1926. Regulated by the Adoption Acts 1958-76 and the Ch.A. 1975. A person other than an adoption agency (qv) shall not make arrangements for the adoption of a child or place a child for adoption unless the proposed adopter is a relative of the child or he is acting in pursuance of a High Court order: 1976 Act, s. 11(1). See Adoption (High Court) Rules (1976) (SI 1976/1645).

**adoption agency.** An organisation arranging adoption. Approval of agencies, granted for three years, rests with the Secretary of State. See Ch.A. 1975, ss. 4-7; Adoption Act 1976, s. 72(1); Adoption Agencies Regulations (1976) (SI 1976/1796); C.L.A. 1977, Sch 12.

**adoption, freeing child for.** Where on the application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that he freely

and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or his agreement to the making of the order can be dispensed with, the court may make an order declaring the child free for adoption: Adoption Act 1976, s. 18(1).

**adoption order.** An order vesting parental rights and duties relating to a child in the adopters, made on their application by an authorised court: Adoption Act 1976, s. 12(1). It may be made by the Family Division, county court or magistrates' court. The court must give prime consideration to the child's long-term welfare before making an order: s. 6. An order is not generally made unless the child is free for adoption: s. 16(1). See PARENTAL RIGHTS AND DUTIES.

**adoption order, British.** "An adoption order, an order under s. 8 of Ch.A. 1975, or any provision for the adoption of a child effected under the law of N Ireland or any British territory outside UK": Adoption Act 1976, s. 72(1).

**adoption order, convention.** An adoption order made by the High Court under the Adoption Act 1976, relating to the Hague Convention on the Adoption of Children (Cmnd 2613).

**adoption order, the status conferred by.** An adopted child is treated in law, where the adopters are a married couple, as if he had been born as a child of the marriage and, in any other case, as if he had been born to the adopter in wedlock, and as if he were not the child of any person other than the adopter(s): Adoption Act 1976, s. 39. The section prevents an adopted child from being illegitimate: s. 39(4).

**adoption probationary period.** Where the applicant or one of the applicants (for adopting a child) is a parent, step-parent or relative of the child, or the child was placed with the applicants by an adoption agency or in pursuance of a High Court order, an adoption order will not be made unless the child is at least 19 weeks old and at all times during the

preceding 13 weeks had his home with the applicants or one of them: Ch.A. 1975, s. 9(1). See also 1975 Act, ss. 9(2), 18(1), 87(3); Adoption Act 1976, s. 13.

**adoption, removal of children pending.** A parent or guardian who has agreed to the adoption of his child may not remove the child from the applicants while an adoption order is pending, without a court order: Adoption Act 1976, s. 27.

**adoption service.** A service established and maintained by a local authority to meet needs, in relation to the adoption of children who have been or may be adopted, their parents or guardians, persons who may have adopted or may adopt a child: Adoption Act 1976, s. 1.

**adoption society.** "A body of persons whose functions consist of or include the making of arrangements for the adoption of children": Adoption Act 1976, s. 72(1).

**adoptive Acts.** Acts which become effective in a local authority's area only after formal adoption by that authority. See, eg, provisions relating to licensing systems in the Private Places of Entertainment (Licensing) Act 1967.

**adoptive relationship.** Relationship existing by virtue of the Adoption Act 1976, s. 39. A male adopter is known as the adoptive father, a female adopter as the adoptive mother: 1976 Act, s. 41.

**adulteration.** An offence under, eg, the Food and Drugs Act 1955, resulting from the adding of a substance to food which renders it dangerous to health, if done with the intention that it should be sold in that state for human consumption.

**adultery.** An act of voluntary sexual intercourse (which need not be completed) between two persons not married to each other, but one or both of whom are married at the time of the act to a third person. See *Sapsford v Sapsford* [1954] 2 All ER 373. If the respondent has committed adultery and the petitioner finds it impossible to live with the respondent, it may be evidence of irretrievable breakdown of a marriage, which is now the sole



ground for the presentation of a divorce petition: *Mat.C.A. 1973, s. 1*. Adultery by a wife which has not been condoned or connived at, is a bar to an application for maintenance under *Mat.C.A. 1973, s. 27*. See *Gray v Gray* [1976] Fam 324. Onus of proof is on petitioner. Damages for adultery cannot now be claimed: Law Reform (Misc. Provs.) Act 1970. See *Practice Direction* [1973] 1 WLR 1052.

**ad valorem.** In proportion to the value. In the case of an *ad valorem* tax, the amount paid is proportionate to the value of the article taxed.

**advance freight.** See FREIGHT.

**advancement.** 1. Power of advancement allows a trustee (qv) to apply capital for the advancement or benefit of any person entitled to capital of the trust property or any share in it: *Tr.A. 1925, s. 32*. 2. Presumption of advancement, ie, that a gift was intended, arises where a voluntary conveyance has been made to the wife or child of the donor or to a person to whom he stands in *loco parentis* (qv). See *Tucker v Burrow* (1865) 2 H & M 515; *Bennet v Bennet* (1879) 10 ChD 474. See PORTION.

**adversary procedure.** Accusatorial procedure (qv).

**adverse occupation of residential premises.** It is an offence for a person who is on premises as a trespasser, after having entered as such, to fail to leave on being required to do so by or on behalf of a displaced residential occupier of the premises or a protected intending occupier (ie, one who has in those premises a freehold interest or leasehold interest with not less than 21 years still to run who acquired the interest for money or money's worth, who requires the premises for his own occupation as a residence and is excluded by the trespasser): *C.L.A. 1977, s. 7(1)(2)*. For defences available to the accused, see s. 7(6)-(8).

**adverse possession.** Refers to one person's ownership of land which is inconsistent with the right of another who claims to be the true owner. Minor acts of trespass do not constitute adverse possession: *Leigh v*

*Jack* (1879) 5 Ex D 264. It is not necessary to establish inconvenience to the owner in order to establish adverse possession: *Treloar v Nute* [1976] 1 WLR 1295.

**adverse witnesses.** Witnesses who disappoint the party calling them, ie, they are unfavourable and hostile witnesses.

**advertisement.** Public announcement or notice. Includes, under the *C.C.A. 1974, s. 189(1)* "every form of advertising, whether in a publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way . . .". Public advertisement of a reward for the return of stolen or lost goods "to the effect that no questions will be asked" is an offence under *Th.A. 1968, s. 23*.

**advertisement subject to control.** Advertisement published for the purpose of a business carried on by the advertiser indicating that he is willing to supply credit: *C.C.A. 1974, s. 43*.

**advertiser.** In relation to an advertisement, this means any person indicated by the advertisement as willing to enter into transactions to which the advertisement relates: *C.C.A. 1974, s. 189(1)*.

**advertising relating to consumer credit.** Advertising controlled in part by *C.C.A. 1974*, so that it is an offence to carry information in an advertisement, relating to certain matters covered by the Act, which is false or misleading in any material respect.

**advice on evidence.** Document prepared by counsel following the close of pleadings (qv), on instructions by a party's solicitor. It surveys the dispute, enumerates facts in issue and how they should be dealt with, and expresses an opinion concerning the possibility of success and the appropriateness of a settlement.

**Advisory, Conciliation and Arbitration Service.** A body set up under *E.P.A. 1975, s. 1*, charged with general duty of promoting improvement of industrial relations,