THE WOLTERS KLUWER

BOUVIER LAW DICTIONARY

DESK EDITION
Volume I

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General Editor

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Desk Edition

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Welcome to the Bouvier Law Dictionary

The world of law is a world of words. To understand law requires understanding each word and each phrase by which it is employed. More importantly, understanding these words and phrases requires understanding the nuance, variation, complexity, and controversy affecting the meaning of each term in different contexts.

This dictionary is based on the first major dictionary of American law, the great dictionary of John Bouvier. He defined each term with more than a brief statement, giving a long narrative of the term's meaning in context, based on illustrations of the terms defined chosen from current and classic treatises, statutes, and cases as well as the usage of the lawyers of his time. Not only did he draw from U.S. law but also from English, Scots, French, Spanish, Dutch, German, and other national sources, which were the source of law governing many questions before the American courts of the early republic.

The *Bouvier Law Dictionary* is an entirely new book, with all new definitions, based on quotations and entries from tens of thousands of new cases, books, and statutes, as well as Bouvier's final text and other classic materials. The plan follows his lines, with terms organized both by their relationship in the law and by the alphabet. More, it has longer entries than has become typical of dictionaries, often including discussions of concepts and sub-entries. Thus, this dictionary gives more information about most terms than other modern U.S. dictionaries, though it may not include every possible term from history or practice.

This desk edition incorporates much more information than the definitions alone. For nearly every term, it presents a selection of quotations from legal materials that provides additional information about the term defined, illustrating the origin of the term or its modern derivation, its usage or shades or conflicts in its meaning. The quotations are selected from the much larger collection of quotations employing or illustrating each term reviewed by the editor while drafting its definition. The incorporation of these selected quotations into the entry after the definition gives the reader a concrete sense of the meaning of the word in the legal materials and other writings, as legislators, lawyers, judges, and sometimes novelists, poets, and playwrights use it.

Caveat Lector ("Let the Reader Beware")

A legal dictionary is a useful tool, but like all tools it must be used wisely. The *Bouvier* team has worked for nearly a decade to research, draft, and refine these definitions in order to help the reader understand what each word or phrase means in general and in some context of the role it plays in the law. The collection and careful selection of the quotations presented as derivations and usages following each definition have been cite-checked and worried so that they present both illustration and nuance to better understand each term.

Many words — in law as in all speech and writing — vary in their meanings in different contexts. Different fields of law, different jurisdictions, even different sources of law in the same field and venue, may all use terms differently. The statements of the law that are incorporated into these definitions and quotations are intended to give light to the meaning of the word or phrase being defined, but they might not be accurate statements of the law in a given jurisdiction in a given moment.

John Bouvier and His Law Dictionary

In 1839, John Bouvier published *A Law Dictionary, Adapted to the Constitution and Laws of the United States of America, and of the Several States of the American Union; with References to the Civil and Other Systems of Foreign Law.* For the next hundred years, the *Bouvier* was the essential legal reference work in the United States. It was the dictionary of Daniel Webster, Abraham Lincoln, and Justice Oliver Wendell Holmes, Jr. It remained important in the twentieth century, being a reference of choice for the likes of Karl Llewellyn, John Henry Wigmore, and E. Allan Farnsworth.

Bouvier was born in France in 1787, immigrating with his family to Philadelphia when he was fifteen. His father died while John was a teenager, and he became apprenticed to a Philadelphia printer, opening his own press in 1808. He ran *The American Telegraph*, a weekly newspaper, and began studying law, becoming a lawyer in 1818 and a judge in 1836. An excellent writer, Bouvier wrote several law books, including the *Institutes of American Law*, but he is best remembered for the book to which he dedicated the remainder of his life, his dictionary.

The first law dictionary written for American lawyers, Bouvier's *Law Dictionary* included many terms from other legal systems, which he believed were necessary for a lawyer to understand and to practice law in the United States. It was encyclopedic, with long entries noting subtle differences in meaning and application, and it cited great numbers of opinions and other authorities, sometimes quoting them at length both to illustrate a term and to encourage readers to examine the original source.

John Bouvier collected new material throughout his life, overseeing a second and a third edition. The 1853 edition, released posthumously, incorporates the final notes left in his papers and some additional matter added under the supervision of his wife.

Bouvier's dictionary was maintained and revised by later editors, including Francis Rawle (1846–1930), Daniel Angell Gleason (1836–1908), and William Edward Baldwin (1883–1966). Many publishers have presented different editions of the work, including the 1880 edition published by Little, Brown, a predecessor company to the Aspen Publishers division of Wolters Kluwer Law & Business.

Scope of the 2011-2012 Editions

The Bouvier Law Dictionary is published in five forms: this desk edition, a compact edition, a quick reference, electronic applications, and a chapbook of the epigraphs. The desk and compact editions and apps. all include the complete definition for each term that appears in the other editions. The quick reference has all the terms but only summary definitions. Each has more than 8,000 entries defining over 10,000 terms. This compares well with the 6,600 terms of John Bouvier's great dictionary. The terms defined

are selected because they are essential for the general study and practice of law. Added to these are a few terms to illustrate other ideas and concepts that a well-rounded lawyer should know or might find interesting. For example, this edition includes some essential terms of legal slang, including a number of Yiddish terms often used by lawyers.

The desk edition includes a complete and authoritative transcription of the Declaration of Independence and the U.S. Constitution. It also includes short biographies of over 2,000 individuals who have influenced the law, both throughout history and in the present United States. This list incorporates the biographies of justices of the U.S. Supreme Court that appear also in the compact edition, as well as hundreds of judges, lawyers, professors, thinkers, writers, advocates, and leaders—even a few fictional characters.

How to Use the Bouvier Law Dictionary Desk Edition

The Idea of a Common-Place Book

The inclusion of quotations is a customary feature of great dictionaries. In his influential *Dictionary of the English Language* Dr. Samuel Johnson included many entries to illuminate the historical development of the meaning of each of the terms he defined. The *Oxford English Dictionary* continues the tradition of incorporating a chronologically selected list of quotations to illustrate the etymology, or linguistic evolution, of the terms it defines.

Yet the collection and reference of quotations serves many more purposes than just to depict the history of a word or phrase. Impulses from the noble to the mundane have led people to collect quotations from before the mishlei, or proverbs of the ancient Hebrews, to the modern jokebook. Through this history, scholars and readers have collected the finer thoughts they have had or have encountered as an aid to later memory.

Lawyers are especially prone to this habit, having long used quotations to represent legal concepts, to explore their applications, and to apply them to facts. Indeed, the common-place book was once a mainstay of legal education and of the legal profession. Students were required to collect gobbets — finely selected and perfect quotes — from standard legal texts. (Though with varying effect: the common-place book John Marshall was preparing under George Wythe's supervision was left half done when Marshall left the College of William and Mary to wed and to enter the bar.) The best common-placers were highly selective, not gathering every quotation but collecting the best they found throughout their careers and replacing some with others as better gobbets presented themselves. For more information, see Michael Hoeflich, *The Lawyer as Pragmatic Reader: The History of Legal Common-Placing*, 44 Arkansas Law Review (2002).

This desk edition has not attempted to produce a comprehensive etymology for every entry. That task, while worthy in principle, would have taken far longer than the decade spent on the project. Rather, this edition presents a limited common-place collection for every entry, divided between gobbets that provide information related to the derivation of the term and its meaning and gobbets that illustrate the meaning through its usage. Given the influences on this project, pride of place has gone to the work of John Bouvier himself, in part because of the clarity and detail of his entries and in part because his work was based on considerable historical research, which is nicely illuminated by his examples and citations. Other derivations come from ancient and modern references, particularly old Latin, Greek, French, German, and English dictionaries but also old and new treatises, articles, judicial opinions, and statutes, which often set forth a meaning for a term for use in a given context. Usages range even more widely among the customary legal archive and non-legal texts employing legal language, such as novels, speeches, plays, news articles, and now web sites.

Great effort has been made to ensure the accuracy of these quotations in their edited forms here, which are used either as fair use or public domain. Even so, their citations and authorship are included to encourage the reader to search out the origins of the gobbets, not only to place the quotation in a broader context but also to gain a greater understanding of the significance of the term in that context than a brief gobbet may allow. In a few cases, citations are given, or several citations given, without a gobbet, owing to the greater utility of sending the reader directly to the source.

The Order of Words and Phrases

The *Bouvier Law Dictionary* is organized by idea and topic as well as by alphabet. Many words and phrases are organized in the manner of genus and species and only alphabetized within the grouping. There are many phrases that are therefore not in their strict alphabetical order.

Locating Terms by Topic or Idea

Finding a legal phrase in a reference can be difficult. Do lawyers think of "crime of passion" as more about the crime or more about the passion, or do they think of it more as about homicide, or manslaughter, or criminal defenses? This difficulty is compounded by the variation common in the usage of common legal phrases. Is "Inferential Fact" or "Inference of Fact" the more appropriate label for this phrase? For that matter, which labels are best for "Question of Fact and Law" or "Issue of Fact and Law" or "Mixed Issue" or even "Mixed Fact"? This dictionary locates such terms not according to alphabet but according to the topic that is customarily or logically associated with the terms. So in the *Bouvier Law Dictionary*, **Inferential Fact** is a sub-entry of **Fact**. All of the other examples above are sub-entries of **Issue**, and to make them easier to read together, they are sub-issues of **Issue Before the Court**.

The approach of this reference is to organize most terms according to alphabet, but to place some terms (both words and phrases) that are essential to understanding a topic and also that are likely to be unknown to a person familiar to the topic as sub-entries under that topic. Thus, **Non-Attainment Zone** is under **Air Pollution**, a sub-entry of **Pollution**. Non-attainment zone is more likely to matter in the context of the Clean Air Act than in any other context, and the term is more likely to be noticed by a reader there and less likely to be sought either under "N," "A," or "Z." For the reader who would look for the entry under N or Z, suitable cross-references will redirect the reader to the correct location in P.

Rules for Alphabetization

The *Bouvier Law Dictionary* is alphabetized word by word, which is the organization of many library catalogs and other resources that index both phrases and single words. In word-by-word alphabetization, entries are first arranged according to the letters in the word and then, if a space or a hyphen follows, with the letters in each succeeding word. Put another way, the order of all the words and phrases follows the alphabet within words, but it starts over at the end of each word in a phrase.

Word-by-word alphabetization was the technique of word order selected by John Bouvier, and it allows all

phrases beginning with the same word to stay in order. Thus, most series of phrases based on a single root word are clustered together and uninterrupted by a word in a different phrase or by words that have odd suffixes. The reader is warned that this is not the same mechanism used by many current dictionaries, but the current editor has retained John Bouvier's approach as more suitable to a dictionary that contains many phrases, as law dictionaries must.

There are many phrases, however, that Bouvier alphabetized according to their nouns or the objects of prepositions, not the first word in the phrase. This forced alphabetization allows the reader to look for a term where the term seems more important than according to the word that happens to be first. Thus **Implied Acceptance** is under **Acceptance** not under **Implied. Burden of Proof** is under **Proof** not **Burden**. Latin phrases, however, are alphabetized and organized by the first word customarily used, so, for example, **Habeas Corpus** is in **H** for **Habeas** rather than **C** for **Corpus**.

The Structure of Entries

Using this organization, many entries are collected with similar entries in an encyclopedic structure. For example, the entry for **Capacity** has a variety of forms organized under **Criminal Capacity**, **Legal Capacity**, **Mental Capacity**, and **Testamentary Capacity**. Terms, such as **Insane Delusion,** that arise customarily as evidence of lost capacity in one sense are placed there, as it is under **Testamentary Capacity**. The whole of all of these terms thus provides a very rich context for understanding and applying aspects of the broad term, **Capacity.**

Each entry includes the word or phrase being defined, followed by a set of parentheses with variant forms of the word or phrase that are explained or defined by the definition. The definition follows, commencing with a brief sentence or phrase that summarizes the definition. The fuller narrative definition continues, often with one or more illustrations from case law or other materials for context. Many entries conclude with a note regarding grammar and usage. Longer entries include concepts that emphasize distinct questions that are often subject to more focused litigation, controversy, or variation among jurisdictions. Many entries conclude with cross-references for further comparison.

Homonym Entries

Many words have several meanings that are very distinct from one another. The various different words with the same letters are homonyms of one another. In this edition, many words are given several entries, so that homonyms are separately defined. In some references, homonyms are defined as alternative definitions within a single entry, and this is done here occasionally. More often, though, homonyms are disambiguated so that the development of each word may be more fully explored with a longer, separate entry and, in the Desk Edition, more illustrations.

Common-Placing: Derivations and Usages

Following the definition is a series of quotations. For nearly all entries the definition is followed by one or more derivations and then by one or more usages. For many entries, the essential derivation is the entry from the 1853 edition of the *Bouvier Law Dictionary*, which was the last edition to incorporate John Bouvier's changes and not to reflect the influence of later editors. The citations Bouvier employed are decoded in a table in the third appendix to this book, at the end of volume two.

In general, derivations are statements of the meanings of the term; usages are statements that employ the term as a part of some other purpose. A few entries have citations or lists of citations alone for reference. The reader will quickly understand that the derivations and usages are intended not to justify or illustrate the definitions. Rather they are intended to extend the information provided in the definition and illustrate the concept of the term defined.

Cross-References

To help the reader locate a reference quickly, cross-references are written using the entries and sub-entries needed to find the desired term. If a reference is to a sub-entry, the reference will contain the entry, followed by the sub-entry. Because sub-entries are often organized under other sub-entries, the reference will include any sub-entries needed to find the desired entry. For example, to find the meaning of "feasibility" not in the general sense but in the sense of compulsory joinder of parties, the entry for **Feasibility** directs the reader to **Joinder, Joinder of Parties, Compulsory Joinder,** and **Feasibility.** Thus, the reader turns to J, then runs down to **Joinder**, and then through the sub-entries of **Joinder of Parties** and then **Compulsory Joinder** until the reader reaches **Feasibility**. The few extra steps here make possible a more ready understanding of feasibility when reading the entry for compulsory joinder, which is the sense of feasibility in which in this edition the word is defined.

Some entries contain concepts, which as discussed above are components of the definition of an entry that are subject to particular elaboration or definition in the legal materials. These are signaled in cross-references with a thin vertical line (|) following the entry or sub-entry in which they occur. Thus a cross-reference might be focused not just on an entry but on a concept within an entry, which would direct the reader to that part of the definition specifically. For example, a reference to the condemnation of an equitable servitude directs the reader to **Servitude, Equitable Servitude | Condemnation**, which is a part of the definition of equitable servitude. Condemnation in general is defined as a sense of condemnation, **Condemnation, Condemnation through Eminent Domain**.

Occasional Suspension of the Rules

Lexicography is an art and not a science. There are a few places where the usage of a term or its relationship to other terms suggests a location that does not perfectly fit the rules above. So it was in 1853 and so it remains with many references in these editions. In such cases, cross-references have been placed to ease location of the term by a reader who did not search for it as expected based on usage or relationships.

The Bouvier Law Dictionary Project

This edition was created very much the way dictionaries have been made since before Dr. Johnson's great *Dictionary of the English Language* of 1755. Lists of terms were assembled from many sources and organized into one long list. Several older references were frequently consulted, in our case primarily the 1853 edition of John Bouvier's dictionary, as well as nineteenth-century dictionaries of Latin, Greek, and old English. New references, both older and much younger, were collected to form a corpus of reference for every term. The full definition was then drafted and edited and the first line was written last of all. All of this work, like that of Dr. Johnson, was coordinated by one person in one place.

The general editor and the publisher expect future editions to take advantage of the expertise of the legal community, inviting a select community of experts and hobbyists to join in the evolution of the *Bouvier Law Dictionary*. For further information, see www.bouvieronline.com.

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Support for my work was provided by the dean's fund for summer research at the University of Arkansas School of Law and by the Judge William Enfield Professorship. As ever, my greatest support has come from my family: Christine, Bill and Martha, Maggie, Katie, and William.

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My sincere thanks go to each of you, and I remind all of you who haven't returned some of my books that is it never too late to do so. Many more people have been helpful, but I fear my correspondence records have been a shambles, and for any to whom I owe thanks, please let me know so that I may include you in later editions.

–S.S.

Contents

Words are the only tools lawyers have. Just as a skilled carpenter wouldn't drive a nail with a screwdriver, skilled legal writers don't use *fortuitous* when they mean *fortunate*, or *infer* when they mean *imply*.

Bryan A. Garner, *The Word on the Street*, in *Garner on Language and Writing* 215, 218 (ABA 2009) (in homage to Charles Alan Wright).

A

A The first letter of the modern English alphabet. "A" signifies a variety of functions as a symbol, as a designation of status, and as a word in English and in Latin. It is sometimes invoked by alpha, the word for the first letter in Greek. It is also translated into Alpha (or Alfa) for radio signals and NATO military transmissions, into Adam for some police radio traffic, and into dot, dash in Morse Code.

A AS AN ABBREVIATION A word commencing in A. When used as the sole letter of an abbreviation, A may stand for the Atlantic Reporter. As a component of other abbreviations, A can stand for any word commencing with that letter, particularly able, abridgment, abstract, academy, accident, account, accountants, accounting, acquired, acts, ad, adjustment, administrator, administrative, admiralty, advanced, advisory, Africa, against, age, agency, agricultural, agriculture, aid, air, Alabama, Alaska, Albany, Alberta, alliance, all, alternative, American, analysis, and, annual, anno, annotated, answer, ante, anti-, appeals, appellant, appellate, appellee, arbitration, Arizona, Arkansas, army, art, arts, asbestos, Asian, association, atomic, attorneys, average, aviation, Australia, authority, and automatic. It may also stand for the initial of the name of an author or case reporter, such as Abbot and Angell. In the transcript of a trial or deposition, "a" designates an answer.

A AS A FRENCH WORD After, at, by, for, from, have, to, or in. A may be either a preposition or a verb in Law French. As a preposition, it has a variety of quite different meanings from the Latin: "A la mode" is "after the fashion." "Tenant a volunt" is "tenant at will." "A tort" is "by wrong." "A causa de cy" is "for this reason," and "profit a prendre" is "rights in property from another." A is also the third person form of many verbs, so "il a" is "he has."

Derivation: A, to, a scavoir, to know; a dire, to say.

A, by, a Tort, by wrong; and from, a cestuy, from him.

A, at, Tenant a volunt, Tenant at will. A for, a causa de cy, for this reason, Covient a eux, it is necessary for them. . . . The Law-French Dictionary, qq.v. (E. Nutt and H. Gosling, 1718).

See also J.H. Baker, Manual of Law French (Scolar Press, 1990).

Usage: A demain. . . . That means until tomorrow. Christina Dodd, That Scandalous Evening (1998).

A AS A LATIN ABBREVIATION A vote signalled by the letter a. A was an abbreviation with two senses in Roman law: the sign in the questiones, or criminal tribunals, for absolvo, a vote for acquittal, as opposed to C for condemno. In the comitia, or popular assembly, A was the mark for rejecting new legislation, the sign for antiquo, a vote to leave the old law intact, as opposed to UR for uti rogas, or as you propose, a vote for the new legislation.

Derivation: Again, the Roman assembly had no power of initiative, none of criticism and none of amendment. It could only say "yes" or "no" to a question addressed to it by a magistrate, and was bound to accept or reject in toto his proposition, however complicated it might be. John Edwin Sandys, A Companion to Latin Studies 254 (Cambridge University Press, 1913). See also Adolf Berger, Encyclopedic Dictionary of Roman Law (1953).

Usage: The successive laws, which established vote by ballot in various cases were called Leges Tabellariae, or ballot-ticket, on which the vote was inscribed . . . U.R. for the affirmative (i.e. uti rogas, as you move) and A. (i.e. antiquo, I vote for the old law) for the negative; in a public trail it was C. (condemno) for guilty, A. (absolve) for not guilty and N.L. (no liquiet, i.e. it is not clear) for a neutral verdict. Philip Smith, A History of the Ancient World (1873).

A AS A LATIN WORD From. A is a form of the Latin preposition ab, which can mean in English from, as well as out of, away from, down from, since, after or other words that describe the derivation of one thing from another, as in a priori (from the cause is derived the result) or a posteriori (from the result is derived the cause). Note: the idea of "from" is a bit clunky in these translations, because it often stands in for the reasoning implied in the Latin word "a" in the phrase.

Derivation: ăb, ā, abs, prep. with abl. This IndoEuropean particle (Sanscr. apa or ava, Etr. av, Gr. upo, Goth. af, Old Germ. aba, New Germ. ab, Engl. of, off) has in Latin the following forms: I. ap, af, ab (av), au-, ā, ă; aps, abs, as-. The existence of the oldest form, ap, is proved by the oldest and best MSS. analogous to the prep. apud, the Sanscr. api, and Gr. epi, and by the weakened form af . . . The second form of this preposition, changed from ap, was ab, which has become the principal form and the one most generally used through all periods . . . Finally, by dropping the b of ab, and lengthening the a, ab was changed into á, which form, together with ab, predominated through all periods of the Latin language, and took its place before all consonants in the later years of Cicero . . . The fundamental signification of ab is departure from some fixed point (opp. to ad. which denotes motion to a point). Charlton T. Lewis and Charles Short, A Latin Dictionary q.v. (Clarendon Press, 1879).

Usage: His absence encouraged the drivers' ed class to engage in a brief but successful game of strip poker in the backseat of the Buick; an anonymous young lady was rumored to have lost a capite ad calcem — from head to heel. Joan Hess, Dear Miss Demeanor (2000).

A AS A RATING Of the highest grade. A is used in a variety of forms for rating the quality of specific products. Many regulatory definitions depend on an alphabetic listing, with A the highest tier. For instance, Grade A beef signals meat from the least mature animal, a cow having a physiological maturity of 9-30 months, as opposed to older animals with coarser meat. Many private ratings also use A as the highest recommendation. For example, bonds are rated by Moody's and other rating services on a three-tier scale, with A bonds the

highest quality, and that tier being divided among AAA, AA1, AA2, AA3, A1, A2, A3 (prior to 1996 being A, AA, and AAA), the more letters and the lower the number signal the least risk and highest quality.

Usage: Maturity refers to the physiological age of the animal rather than the chronological age. Because the chronological age is virtually never known, physiological maturity is used; and the indicators are bone characteristics, ossification of cartilage, color and texture of ribeye muscle. Cartilage becomes bone, lean color darkens, and texture becomes coarser with increasing age. Cartilage and bone maturity receives more emphasis because lean color and texture can be affected by other postmortem factors. Cartilage evaluated in determining beef carcass physiological maturity are those associated with the vertebrae of the backbone, except the cervical (neck). Thus the cartilage between and on the dorsal edges of the individual sacral and lumbar vertebrae as well as the cartilage located on the dorsal surface of the spinous processes of the thoracic vertebrae (buttons). Cartilage in all these areas are considered in arriving at the maturity group. The buttons are the most prominent, softest and least ossified in the younger carcasses. As maturity proceeds from A to E, progressively more and more ossification becomes evident. Ribs are quite round and red in A maturity carcasses, whereas E maturity carcasses have wide and flat ribs. Redness of the ribs gradually decreases with advancing age in C maturity, and they generally become white in color because they no longer manufacture red blood cells and remain white thereafter. Color and texture of the longissimus muscle are used to determine carcass maturity when these characteristics differ sufficiently from normal. Dan S. Hale, Kyla Goodson, and Jeff W. Savell, Beef Quality and Yield Grades, at http://meat.tamu.edu/beefgrading.html (last visited Mar. 18, 2010).

Aaa Bonds that are rated Aaa are judged to be of the best quality. They carry the smallest degree of investment risk and are generally referred to as "gilt edge." Interest payments are protected by a large or by an exceptionally stable margin and principal is secure. While the various protective elements are likely to change, such changes as can be visualized are most unlikely to impair the fundamentally strong position of such issues. Aa Bonds rated Aa are judged to be of high quality by all standards. Together with the Aaa group they comprise what are generally known as high grade bonds. They are rated lower than best bonds because margins of protection may not be as large as in Aaa securities or fluctuation of protective elements may be of greater amplitude or there may be other elements present that make the long-term risks appear somewhat larger than in Aaa securities. A Bonds that are rated A possess many favorable investment attributes and are to be considered as upper medium grade obligations. Factors giving security to principal and interest are considered adequate, but elements may be present that suggest a susceptibility to impairment some time in the future. PFD — Moody's Definitions of Bond Ratings, http://www.treasurer.ca.gov/ratings/moodys.asp (last visited Mar. 18, 2010).

See also: C, C AS A RATING.

A AS AN ENGLISH WORD An unspecified one among others. When used as a word, A is an indefinite article, usually meaning one but not a specific one out of a group. It might also mean one of an indeterminate group. The context of the word's use is essential in determining its degree of intended specificity.

Derivation: *Bouvier, 1853,* A, the first letter of the English and most other alphabets, is frequently used as an abbreviation, (q.v.) and also in the marks of schedules or papers, as schedule A, B, C, etc. Among the Romans this letter was used in criminal trials. The judges were furnished with small tables covered with wax, and each one inscribed on it the initial letter of his vote; A, when he voted to absolve the party on trial; C, when he was for condemnation; and NL, (non liquet) when the matter did not appear clearly, and he desired a new argument.

Usage: Ebco asserts that the normal, accepted meaning of the use of the articles "a" and "an" requires that the above-quoted limitation be construed as describing a single feed tube with a single path for both air and water. This contention goes too far. While the article "a" or "an" may suggest "one," our cases emphasize that "a" or "an" can mean "one" or "more than one," depending on the context in which the article is used. . . . [T]he article "a" suggests a single chamber. However, patent claim parlance also recognizes that an article can carry the meaning of "one or more," for example in a claim using the transitional phrase "comprising." KCJ Corp. v. Kinetic Concepts, Inc., 223 F.3d 1351, 1356 (Fed. Cir. 2000) (Rader, J.).

A AS CRIMINAL LABEL A brand for adultery. A was the brand for those found guilty of adultery who were not executed. It is depicted as a cloth letter A worn for life in Nathaniel Hawthorne's novels, which is perhaps not historically accurate. The punishment for adultery in colonial Massachusetts was death, or whipping followed by a requirement to wear an AD for a time.

Derivation: There was likewise a young woman, with no mean share of beauty, whose doom it was to wear the letter A on the breast of her gown, in the eyes of all the world and her own children. And even her own children knew what that initial signified. Sporting with her infamy, the lost and desperate creature had embroidered the fatal token in scarlet cloth, with golden thread, and the nicest art of needlework; so that the capital A might have been thought to mean Admirable, or any thing rather than Adulteress. Nathaniel Hawthorne, Endicott and the Red Cross, in 2 Twice-Told Tales (1837). See also Nathaniel Hawthorne, The Scarlet Letter (1850). For comparison to the actual sentences, see Laura Hanft Korobkin, The Scarlet Letter of the Law: Hawthorne and Criminal Justice, 30 NOVEL: A Forum on Fiction 204 (1997).

Usage: A hundred years ago Hester Prynne of The Scarlet Letter was given an A for Adultery; today she would rate no better than a C+. Peter De Vries, Reuben, Reuben (1964).

See also: PUNISHMENT, SHAMING PUNISHMENT, SCARLET LETTER.

A AS IN HYPOTHETICALS The first character, or sometimes the second, in the story. When used as the sole letter of an abbreviation, A often stands for a person in the story of a law school hypothetical. In property stories, A is usually the second character, receiving property from O, the owner (as in O to A for life then B.) In most other stories, A is the first character in the plot of the story (as in A enters K with B).

Usage: A joined with B in making a promissory note for the accommodation of B. Joseph Doddridge Brannan, The Negotiable Instruments Law Annotated (1919).

A COELO USQUE AD CENTRUM *See:* COELUM, A COELO USQUE AD CENTRUM.

A FORTIORI An argument based on an even stronger argument. A claim a fortiori is one based on another argument or a principle that is so strong as to be unanswerable, or nearly so. Arguments a fortiori are generally offered as a rhetorical flourish in the expectation that no one can stand against them, but they are also vulnerable to the rebuttal that the argument made is not necessarily a conclusion to be derived from the principle that supposedly underlies it.

Derivation: I. strong, powerful. . . . II. Mentally, strong, powerful, vigorous, firm, steadfast, stout, courageous, brave, manly, etc. Charlton T. Lewis and Charles Short, A Latin Dictionary, q.v. (Clarendon Press 1879).

Bouvier, 1853, FORTIORI or A FORTIORI. An epithet for any conclusion or inference, which is much stronger than another. "If it be so,

in a feoffment passing a new right, a fortiori, much more is it for the restitution of an ancient right." Co. Litt. 253, 260.

Usage: Undeniably, Hamdi has been deprived of a serious interest, one actually protected by the Due Process Clause. Against this, however, is the Government's overriding interest in protecting the Nation. If a deprivation of liberty can be justified by the need to protect a town, the protection of the Nation, a fortiori, justifies it. Hamdi v. Rumsfeld, 542 U.S. 507, 598 (2004) (Thomas, J., dissenting).

A POSTERIORI (A POSTIORI) From subsequent understanding. A postiori knowledge arises from observation, measurement, comparison, or testing of the evidence. It is what is known after investigation. Thus, a statement of truth a postiori is roughly equivalent to a statement of what one observes. It is the opposite of a priori, or what is known by reason alone without the use of observation. Statements a postiori are vulnerable to claims that the observations that underly them are faulty or that the reasoning leading from the thing observed to the statement derived is faulty. A posteriori is the accepted modern spelling, although the concept is sometimes written a postiori.

Derivation: The argument makes the classical error in the field of logic of assuming that the occurrence of future events can be logically deduced from observations rooted in the past. Empirical knowledge, as David Hume and Bertrand Russell teach, can only be a postiori, not a priori. United States v. Hubbell, 167 F.3d 552, 570 (1999) (Per Curiam).

postĕrus or poster. I. nom. sing. masc.), a, um, adj. — Comp: posterior, us. — Sup.: postremus or postumus, a, um [post], coming after, following, next, ensuing, future. . . . II. Comp.: postĕ-rĭor, postĕrĭus. A. Lit., that comes or follows after, next in order, time, or place, latter, later, posterior . . . Charlton T. Lewis, Ph.D. and. Charles Short, LL.D. A Latin Dictionary, q.v. (Clarendon Press 1879).

Usage: Representatives at the WARC-BS-77 equitably assigned the space service frequencies and orbital positions on an a priori basis among all ITU members, a reversal of the previous a postiori method. Paul B. Larsen, DBS Under FCC and International Regulation, 37 Vand. L. Rev. 67, 101 (1984).

Some courts even allow a jury to reason a posteriori, to decide from the nature and result of the attack on a plaintiff, whether an animal had vicious propensities. . . . This is not the law in South Dakota. Tipton v. Town of Tabor, 567 N.W.2d 351, 361 (S.D. 1997) (Konenkamp, J.).

See also: A, A PRIORI; PRIOR.

A PRENDRE *See:* PROFIT, PROFIT A PRENDRE (PROFITS A PRENDRE).

A PRIORI From an earlier understanding. A priori knowledge arises from intuition or understanding, prior to investigation. It is what is known before research is conducted. Thus, a statement of a priori truth is equivalent to a hypothesis. It is an assertion from untested assumptions, and the opposite of a postiori. Both terms are statements of legal epistemology.

Derivation: In the a priori procedure, we analyze cases based on those factors that experience has shown influenced the decision whether to sentence capitally. State v. DiFrisco, 662 A.2d 442, 450 (N.J. 1995) (Garibaldi, J.).

Usage: An a priori answer is unreliable because balancing regulatory goals and costs is like comparing apples and oranges. Steven L. Schwarcz, Private Ordering, 97 Nw. U. L. Rev. 319, 342 (2002).

See also: A, A POSTERIORI (A POSTIORI).

A QUO From which. A quo signals the starting time or day, especially the beginning of the running of a period, such as a time for filing an appeal or the running of a statute of limitations. That day is generally within the time calculated.

Derivation: *Bouvier, 1853*, A QUO, A Latin phrase, which signifies from which; example, in the computation of time, the day *a quo* is not to be counted, but the day *ad quem* is always included. 13 Toull. n. 52; 2 Duv. n. 22. A court *a quo*, the court from which an appeal has been taken; a judge *a quo* is a judge of a court below. 6 Mart. Lo. R. 520; 1 Har. Cond. L.R. 501. See *Ad quem*.

Usage: This case is congruent with [Griffith v. Bogert, 59 U.S. (18 How.) 158 (1855) (Grier, J.)]. As in that case, the first legally significant date, the terminus a quo, is included. As Black's and Coke clearly explain, and Griffith holds, a year runs from one date to the prior date in the next year — 365 days, the equivalent of the period from January 1 to December 31, and not that from January 1 to the next January 1, which would be 366 days, or a year and a day. See, e.g., Irving v. Irving, 209 Ill. App. 318 (1918). Note 11: For some purposes, we do exclude the date of an event from the calculation of a period of time running from that event. But that is so when the relevant rule explicitly so states. For example, Federal Rule of Civil Procedure 6(a) provides: "In computing any period of time . . . the day of the act, event, or default from which the designated period of time begins to run shall not be included." See generally J.A. Bock, Inclusion or Exclusion of First and Last Days in Computing the Time for Performance of an Act or Event Which Must Take Place a Certain Number of Days Before a Known Future Date, 98 A.L.R.2d 1331 at § 8 (1964). Lagandaon v. Ashcroft, 383 F.3d 983 (9th Cir. 2004) (Berzon, J.).

As the absolute existential value, it is the terminus a quo. Roy C. Amore, Developments in Buddhist Thought (1979).

See also: AD, AD QUEM.

A.A.A. OR AAA *See:* ARBITRATION, AMERICAN ARBITRATION ASSOCIATION (A.A.A. OR AAA); AGRICULTURE, AGRICULTURAL ADJUSTMENT ACT (A.A.A. OR AAA).

A.A.L.S. OR AALS *See:* LAW, LAW SCHOOL, ASSOCIATION OF AMERICAN LAW SCHOOLS (A.A.L.S. OR AALS).

A.B.A. OR ABA *See:* BAR, BAR ORGANIZATION, AMERICAN BAR ASSOCIATION (A.B.A. OR ABA).

A.C.L.U. OR ACLU *See:* CIVIL RIGHTS, CIVIL RIGHTS ORGANIZATION, AMERICAN CIVIL LIBERTIES UNION (A.C.L.U. OR ACLU).

A.C.O. OR ACO *See:* ORDER, ADMINISTRATIVE ORDER, ADMINISTRATIVE COMPLIANCE ORDER (A.C.O. OR ACO).

A.C.T.L. OR ACTL *See:* BAR, BAR ORGANIZATION, AMERICAN COLLEGE OF TRIAL LAWYERS (A.C.T.L. OR ACTL).

A.D. *See:* ANNO DOMINI (A.D.).

A.D.A. OR ADA *See:* DISABILITY, PERSONAL DISABILITY, AMERICANS WITH DISABILITIES ACT (A.D.A. OR ADA).

A.D.E.A. OR ADEA *See:* DISCRIMINATION, AGE DISCRIMINATION IN EMPLOYMENT ACT (A.D.E.A. OR ADEA).

A.D.R. OR ADR *See:* ALTERNATIVE DISPUTE RESOLUTION (A.D.R. OR ADR).

A.I.A. OR AIA *See:* INJUNCTION, ANTI-INJUNCTION ACT (A.I.A. OR AIA).

A.I.D.S. OR AIDS *See:* ACQUIRED IMMUNE DEFICIENCY SYNDROME (A.I.D.S. OR AIDS).

A.K.A. OR A/K/A OR AKA *See:* ALSO KNOWN AS (A.K.A. OR A/K/A OR AKA).

A.L.I. OR ALI *See:* REFORM, LAW REFORM, AMERICAN LAW INSTITUTE (A.L.I. OR ALI).

A.L.J. OR ALJ *See:* JUDGE, ADMINISTRATIVE LAW JUDGE (A.L.J. OR ALJ).

A.L.W.D. CITATION MANUAL OR ALWD CITATION MANUAL *See:* CITATION, CITATION MANUAL, ASSOCIATION OF LEGAL WRITING DIRECTORS CITATION MANUAL (A.L.W.D. CITATION MANUAL OR ALWD CITATION MANUAL).

A.M.A. OR AMA *See:* MEDICINE, MEDICAL ASSOCIATION, AMERICAN MEDICAL ASSOCIATION (A.M.A. OR AMA).

A.M.E.X. OR AMEX *See:* SECURITY, SECURITIES, SECURITIES EXCHANGE, AMERICAN STOCK EXCHANGE (A.M.E.X. OR AMEX).

A.M.T. OR AMT *See:* TAX, INCOME TAX, ALTERNATIVE MINIMUM TAX (A.M.T. OR AMT).

A.R.M. OR ARM *See:* MORTGAGE, ADJUSTABLE-RATE MORTGAGE (A.R.M. OR ARM).

A.T.L.A. OR ATLA *See:* BAR, BAR ORGANIZATION, AMERICAN TRIAL LAWYERS ASSOCIATION (A.T.L.A. OR ATLA).

A.W.O.L. OR AWOL *See:* ABSENCE, ABSENT WITHOUT LEAVE (A.W.O.L. OR AWOL).

AAJ OR ASSOCIATION OF TRIAL LAWYERS OF AMERICA OR ATLA *See:* BAR, BAR ORGANIZATION, ASSOCIATION FOR AMERICAN JUSTICE (AAJ OR ASSOCIATION OF TRIAL LAWYERS OF AMERICA OR ATLA).

AB From. The Latin preposition ab, which can mean in English "from" as well as "out of," "away from," "down from," "since," "after" or other words that describe the derivation of one thing from another.

Derivation: ăb, ā, abs, prep. with abl. I. In space, and, II. in time and other relations, in which the idea of departure from some point, as from source and origin, is included; Engl. from, away from, out of; down from; since, after; by, at, in, on, etc. Charlton T. Lewis and Charles Short, A Latin Dictionary q.v. (Clarendon Press, 1879).

Usage: Although the doctrine of trespass ab initio has been widely criticized and has been rejected in the Restatement of Torts . . . and although, as the citations in the text testify, the caselaw in Indiana defining the doctrine is old, we have found no decisions overruling the doctrine. Turner v. Sheriff of Marion Cty., 94 F. Supp. 2d 966, 984 (S.D. Ind. 2000) (Foster, J.).

See also: TRADE, INTERNATIONAL TRADE, WORLD TRADE ORGANIZATION, STANDING APPELLATE BODY (AB).

AB INITIO From the beginning. To say that something has an aspect ab initio is to say that the aspect has been present in something from the beginning of the relevant time, which is usually since the creation of the thing in question. The statement X is Y ab initio is usually made following a discovery of an effect unknown before, a discovery about X that leads to the conclusion Y. A contract the parties thought was good but that was made for what became known to be an illegal purpose was void ab initio, or void from the start, even if it was only later discovered to be illegal.

Derivation: *Bouvier, 1853,* AB INITIO, from the beginning.

2. — When a man enters upon lands or into the house of another by authority of law, and afterwards abuses that authority, he becomes a trespasser *ab initio.* Bac. Ab. Trespass, B.; 8 Coke, 146; 2 Bl. Rep. 1218; Clayt. 44. And if an officer neglect to remove goods attached within a reasonable time and continue in possession, his entry becomes a trespass *ab initio.* 2 Bl. Rep. 1218. See also as to other cases, 2 Stra. 717; 1 H. Bl. 13; 11 East, 395; 2 Camp. 115; 2 Johns. 191; 10 Johns. 253; Ibid. 369.

3. — But in case of an authority *in fact,* to enter, an abuse of such authority will not, in general, subject the party to an action of trespass, Lane, 90; Bac. Ab. Trespass, B; 2 T.R. 166. See generally 1 Chit. Pl. 146. 169. 180.

Usage: That said, what we believe the district court failed adequately to consider is the possibility that, taken together, American Hardware's apparent failure to act promptly and Theibert's later representations that the binder remained in effect were from BIM's perspective so unreasonable that they could now be found by a trier-of-fact to have constituted an affirmative waiver or estoppel of the insurer's presumptive right to claim that all interim coverage was void ab initio. Am. Hardware Mut. Ins. Co. v. BIM, Inc., 885 F.2d 132, 140 (4th Cir. 1989) (Phillips, J.).

See also: VOID (VOIDABILITY, VOIDABLE); AB; INITIO.

ABANDONMENT (ABANDON) To give up something forever. Abandonment, the act of letting go of any claim of right or potential claim of right in property or other interests, is based on an intent to completely disconnect oneself from someone or something. This intent may be implied from circumstances, as in child abandonment, but it usually must be proven from affirmative acts. Abandonment is sometimes used to describe the condition of having been abandoned.

Derivation: Generally, abandonment is the act of intentionally relinquishing a known right absolutely and without reference to any particular person or for any particular purpose. Abandoned property is that to which the owner has voluntarily relinquished all right, title, claim and possession, with the intention of terminating his ownership, but without vesting it in any other person and with the intention of not reclaiming future possession or resuming its ownership, possession or enjoyment. In order to establish an abandonment of property, actual relinquishment accompanied by intention to abandon must be shown. The primary elements are the intention to abandon and the external act by which that intention is carried into effect. Although an abandonment may arise from a single act or from a series of acts the intent to abandon and the act of abandonment must conjoin and operate together, or in the very nature of things there can be no abandonment. The intention to abandon is considered the first and paramount inquiry, and actual intent to abandon must be shown; it is not enough that the owner's acts give reasonable cause to others to believe that the property has been abandoned. Mere relinquishment of the possession of a thing is not an abandonment in a legal sense, for such an act is not wholly inconsistent with the idea of continuing ownership; the act of abandonment must be an overt act or some failure to act which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. It is not necessary to prove intention to abandon by express declarations or by other direct evidence; intent to abandon property or rights in property is to be determined from all the surrounding facts and circumstances. It may be inferred from the acts and conduct of the owner and from the nature

and situation of the property. Mere nonuse of property, lapse of time without claiming or using property, or the temporary absence of the owner, unaccompanied by any other evidence showing intention, generally are not enough to constitute an abandonment. However, such facts are competent evidence of an intent to abandon and as such are entitled to weight when considered with other circumstances. Riverside Drainage Dist. of Sedgwick Cty. v. Hunt, 99 P.3d 1135 (Kan. Ct. App. 2004) (McAnany, J.).

Abbandon, leaving, abbandeure ascun, to desert or leave one, abandonaunts, idem.

Bandoner, to leave, to abandon. The Law-French Dictionary, qq.v. (2d ed.) (E. Nutt and H. Gosling, 1718).

Usage: I am ready to concede that the rule of adherence to precedent, though it ought not to be abandoned, ought to be in some degree relaxed. I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment. Benjamin N. Cardozo, The Nature of the Judicial Process (1921).

See also: ABSCONDMENT (ABSCOND OR ABSCONDING); ABANDONMENT, ABANDONMENT AS NON-SUPPORT; VESSEL, ABANDONMENT OF A VESSEL; DERELICTION; PATENT, ABANDONMENT OF A PATENT; ABANDONMENT, MEDICAL ABANDONMENT (ABANDONMENT OF A PATIENT).

ABANDONMENT OF A PATENT *See:* PATENT, ABANDONMENT OF A PATENT, EXPRESS ABANDONMENT (FORMAL ABANDONMENT); PATENT, ABANDONMENT OF A PATENT, CONSTRUCTIVE ABANDONMENT OF A PATENT (STATUTORY FORFEITURE OR PRIOR PUBLIC USE BAR); PATENT, ABANDONMENT OF A PATENT.

ABANDONMENT OF A PRIVACY INTEREST *See:* INTEREST, PRIVACY INTEREST, ABANDONMENT OF A PRIVACY INTEREST.

ABANDONMENT OF A VESSEL *See:* VESSEL, ABANDONMENT OF A VESSEL.

ABANDONMENT OF AN EQUITABLE SERVITUDE *See:* SERVITUDE, EQUITABLE SERVITUDE, ABANDONMENT OF AN EQUITABLE SERVITUDE.

ABANDONMENT OF SPOUSE *See:* DIVORCE, ABANDONMENT OF SPOUSE.

ABANDONEE One to whom property is abandoned. An abandonee is the recipient of abandoned property. The term is rarely heard outside of admiralty, which has rules such as salvor's and underwriter's rights dedicating particular interests once abandoned. In general abandonment does not allow an act of will to vest ownership in another person. An act of surrender of property under the common law to the ownership of a particular person is usually a donation or a grant, not an abandonment.

Usage: It was held that the abandonees of the ship were entitled to be allowed at the current rate of freight for the carriage of that part of the cargo taken by the ship into port. Mason v. Marine Ins. Co., 110 F. 452 (6th Cir. 1901) (Severens, J.).

See also: SALVAGE.

ABANDONMENT AS CONTRACT RESCISSION Mutual avoidance of a contract by all of the parties to it. Abandonment modifies a contract when the actions or inaction of all parties to the contract indicate they no longer wish to be bound by its terms. The result is to avoid the contract and make it void.

Derivation: Generally, contract abandonment occurs when both parties depart from the terms of the contract by mutual consent. This consent may be express, or it may be implied by the parties' actions, such as when the acts of one party inconsistent with the contract's existence are acquiesced in by the other. J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc., 89 P.3d 1009, 1019 (Nev. 2004) (Per Curiam).

For the acts of a party to a contract to constitute abandonment, the acts must be positive, unequivocal, and inconsistent with the existence of the contract. Law Offices of Windle Turley, P.C. v. French, 140 S.W.3d 407, 411 (Tex. App. Div. 2004) (Cayce, C.J.).

Usage: Entering into a new oral contract under these circumstances would have effected an abandonment of the contract. Fanucchi & Limi Farms v. United Agri Prods., 414 F.3d 1075, 1084-1085 (9th Cir. 2005) (Fletcher, J.).

Perhaps under normal circumstances in the construction business, a myriad of changes may not so transform a project as to reflect an abandonment of the contract by the parties. O'Brien & Gere Tech. Servs. v. Fru-Con/Fluor Daniel Joint Venture, 380 F.3d 447, 455 (8th Cir. 2004) (Bye, J.).

See also: BREACH.

ABANDONMENT AS NON-SUPPORT Non-performance of a familial or legal duty to support another. Abandonment is the failure to provide the support that is required in a customary or legal relationship between two people. The support required at least includes shelter, food, and health care but may also include the care usually expected in the relationship, such as educational and developmental activities for children, monogamy for spouses, and company for adults. At common law and in equity, abandonment has included an array of criminal and civil penalties. These persist in a variety of forms of action, including actions for criminal abandonment, actions for the loss of parental rights or for the termination of guardianship, and actions for divorce for cause.

Derivation: As employed in the section before us, the abandonment contemplated means neglect and refusal to perform the natural and legal obligations of care and support. In re Asterbloom's Adoption, 165 P.2d 157, 161 (Nev. 1946) (Ducker, J.). Abandonment has been defined as either "a voluntary and intentional relinquishment of the custody of the child to another, with the intent to never again claim the rights of a parent or perform the duties of a parent; or . . . an intentional withholding from the child, without just cause or excuse, by the parent, of his presence, his care, his love, and his protection, maintenance, and the opportunity for the display of filial affection." In re E.F.B.D., 245 S.W.3d 316, 324 (Mo. App. S.D. 2008) (Bates, J.). A child is considered abandoned when a parent has not provided support or maintained contact for a statutory period of time, when the parent cannot be found, or when the parent has left the child in circumstances that cause him or her harm. D. Kelly Weisberg and Susan Frelich Appleton, Modern Family Law (Aspen Publishers 2006).

Usage: It will be noted that the section quoted makes wife abandonment a misdemeanor by fixing the punishment at jail imprisonment not exceeding one year or at a maximum fine of $1,000, or at both such fine and imprisonment. State v. Bressie, 262 S.W. 1015 (Mo. 1924) (Blair, J.). Minimal, sporadic and unsubstantial contacts with the child do not defeat petitioner's claim of abandonment . . . [but] . . . [t]his lack of contact "evinces an intent to forego [respondent's] parental rights." In re Peter F, 281 A.D.2d 821, 823 (N.Y.A.D. 2001) (Lahtinen, J.).

See also: DIVORCE, ABANDONMENT OF SPOUSE; ABANDONMENT, CHILD ABANDONMENT.

ABANDONMENT AS RENUNCIATION OF CRIME Relinquishment of the intent to commit a crime before its commission. Abandonment usually requires a person planning to commit or to assist in a crime to voluntarily exhibit some objective physical manifestation of the lack of intent to commit the crime. In other words, the person

who was going to act in a criminal manner must willingly do something that would be interpreted by most people as evidence that person no longer wanted to participate in the criminal activity. If the abandonment of intent is the direct result of actions by the police, the loss of intent will not usually be abandonment.

Derivation: An abandonment occurs when an individual voluntarily forsakes his or her criminal plan prior to committing an overt act in furtherance of that plan. State v. Miller, 477 S.E.2d 915, 922 (N.C. 1996) (Lake, J.).

On appeal, he argues that he should not have been convicted of the crime because the evidence showed that he abandoned the attempt. Abandonment under OCGA § 16-4-5 is an affirmative defense that requires a voluntary and complete renunciation of criminal purpose. As the statute makes clear, "[a] renunciation of criminal purpose is not voluntary and complete if it results from . . . a belief that circumstances exist which [will] increase the probability of detection or apprehension of the person or which render more difficult the accomplishment of the criminal purpose." Allen v. State, 648 S.E.2d 677, 679 (Ga. Ct. App. 2007) (Ruffin, J.).

Usage: The fact that the defendant did not shoot Mrs. Chaney a second time does not provide any evidence of abandonment for the overt act in furtherance of the criminal intent had already occurred. Chaney v. State, 417 So. 2d 625 (Ala. Ct. App. 1982) (Bowen, J.).

[A]bandonment occurs where, through the verbal urging of the victim, but with no physical resistance or external intervention, the perpetrator changes his mind. Kizart v. State, 795 So. 2d 582, 584 (Miss. Ct. App. 2001) (Myers, J.).

See also: ABDICATION.

ABANDONMENT BY DEBTOR Offering of property by a debtor for satisfaction of debt. Abandonment of property (usually the collateral for a debt) is sometimes preferable to liquidating the collateral and paying creditors. For example, if the cost of liquidating the collateral would be excessive, or if it would take a considerable amount of time to liquidate the collateral, or if the collateral is worth more in its non-liquidated state, abandonment is more efficient than liquidation. There is no great difference in the word "abandon" as used here and the word "transfer" as used in other contexts.

Derivation: Bouvier, 1853, ABANDONMENT, *contracts.* In the French law, the act by which a debtor surrenders his property for the benefit of his creditors. Merl. Rèp. mot Abandonment.

[A] borrower who can never repay his secured debt out of operations can establish, by appraisal, that his land has a value substantially in excess of existing debt. Once bankruptcy intervenes, choices are very limited. No new borrowing is possible even if land values would support it since payment history on existing debt is likely to be bad, because operations will not support even the current debt level, and because lenders are skeptical. . . . Selling the property, or a portion of it, to realize the value and liquidate the debt is often . . . a time consuming process. . . . If the borrower is not in bankruptcy he is likely to be dismembered by his creditors while attempting to sell his property. If bankruptcy is utilized to stop the foreclosure process, the court may not be patient long enough to permit the debtor a realistic opportunity to market the property. . . . Abandoning a portion of the collateral to the secured lender will often be very attractive to a debtor. . . . The lender to whom the property is abandoned . . . can, if necessary, hold the property for some time in order to assure that something approximating true value is realized. Darrell G. Waas, Letting the Lender Have It: Satisfaction of Secured Claims by Abandoning a Portion of the Collateral, 62 Am. Bankr. L.J. 97, 101-102 (1988).

The purpose of the August 26 hearing was to determine the value of NationsBank's collateral in light of Debtor's proposal to abandon it to NationsBank in "full satisfaction" of NationsBank's claim. In re Hock, 169 B.R. 236, 239 (Bankr. D. Ga. 1994) (Davis, Jr., C.J.).

Usage: With respect to some of the nonaccepting classes, the Debtors propose to abandon collateral in satisfaction of part of the indebtedness and to pay the remainder either in installments or in a lump sum. In re Arnold, 80 B.R. 806, 808 (Bankr. D. La. 1987) (Steen, J.).

ABANDONMENT BY INSURED Surrender of insured property from the insured to the insurer. Abandonment takes place under an insurance policy, when a claim amounts to a total loss or a constructive total loss, and the assured accepts the insurer's payment in satisfaction of the whole claim, in return for abandonment of the property. In marine insurance, the ship and the cargo are both surrendered.

Derivation: Bouvier, 1853, ABANDONMENT, *contracts.* In insurances the act by which the insured relinquishes to the assurer all the property to the thing insured.

2. — No particular form is required for an abandonment, nor need it be in writing; but it must be explicit and absolute, and must set forth the reasons upon which it is founded.

3. — It must also be made in reasonable time after the loss.

4. — It is not in every case of loss that the insured can abandon. In the following cases an abandonment may be made; when there is a total loss; when the voyage is lost or not worth pursuing, by reason of a peril insured against; or if the cargo be so damaged as to be of little or no value; or where the salvage is very high, and further expense be necessary, and the insurer will not engage to bear it; or if what is saved is of less value than the freight; or where the damage exceeds one half of the value of the goods insured; or where the property is captured, or even detained by an indefinite embargo; and in cases of a like nature.

5. — The abandonment, when legally made, transfers from the insured to the insurer the property in the thing insured, and obliges him to pay to the insured what he promised him by the contract of insurance. 3 Kent, Com. 265; 2 Marsh. Ins. 559; Pard. Dr. Com. n. 886 et seq.; Boulay Paty, Dr. Com. Maritime, tit. 11, tom. 4, p. 215.

Usage: On July 6, 2000, as a result of this casualty, and based on Sealink's opinion that the cost of repairs of the vessel would exceed the insurance value, the Sealink Express was declared a constructive total loss and a Notice of Abandonment of the vessel to the underwriters was issued. Sealink, Inc. v. Frenkel & Co., Inc., 441 F. Supp. 2d 374 (D.P.R. 2006) (Dominguez, J.).

ABANDONMENT OF PROPERTY Giving up property forever. Abandonment of property is the act of relinquishing forever an interest in property, whether the interest is one of ownership, possession, use, claim, or something else. The essential element is one of intent to have nothing to do with the property, rather than intent for something to be done with the property. If, for example, the intent is for the property to go to someone else, it is not abandonment. Intent to abandon might be imputed from certain forms of neglect over a very long period of time, so long as there is no evidence to the contrary.

Derivation: Bouvier, 1853, ABANDONMENT, *rights.* The relinquishment of a right; the giving up of something to which we are entitled.

2. — Legal rights, when once vested, must be divested according to law, but equitable rights may be abandoned. 2 Wash. R. 106. See 1 H&M. 429; a mill site, once occupied, may be abandoned. 17 Mass. 297; an application for land, which is an inception of title, 5 S.&R. 215; 2 S.&R. 378; 1 Yeates, 193, 289; 2 Yeates, 81, 88, 318; an improvement, 1 Yeates, 515; 2 Yeates, 476; 5 Binn. 73; 3 S.&R. 319; Jones' Syllabus of Land Office Titles in Pennsylvania, chap. xx; and a trust fund, 3 Yerg. 258, may be abandoned.

3. — The abandonment must be made by the owner without being pressed by any duty, necessity or utility to himself, but simply because he wishes no longer to possess the thing; and further it must be made without any desire that any other person shall acquire the same; for if it were made for a consideration, it would be a sale or barter, and if without consideration, but with an intention that some other person should become the possessor, it would be a gift; and it would still be a gift though the owner might be indifferent as to whom the right should be transferred; for example, he threw money among a crowd with intent that some one should acquire the title to it.

An abandonment of the leased property by the tenant occurs when he vacates the leased property without justification and without any present intention of returning and he defaults in the payment of rent. Restatement (Second) of Property, Landlord and Tenant, supra, § 12.1, Comment i, at 392.

Usage: Abandonment of property does not strictly constitute alienation, because, if it operates at all, it merely divests a person of rights to property but does not confer rights of property on any other person. Susan Farran & Don Paterson, South Pacific Property Law 183 (2004).

Thus, while abandonment in the property law context looks to whether the person relinquished his ownership interest in the property, abandonment under the Fourth Amendment inquires whether "the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy [in it]." Michigan v. Henry, 730 N.W.2d 248 (Mich. 2007) (Per Curiam).

See also: PROPERTY, FOUND PROPERTY, ABANDONED PROPERTY.

ABANDONMENT OF AN EASEMENT An easement holder's conduct demonstrating the easement has been given up forever. Abandonment of an easement occurs when a party has had an easement to use another's property, and the easement holder manifests intent to destroy this interest. Abandonment is usually claimed by the owner of the servient tenement, the land over which the easement runs. It requires proof of both non-use, usually for the length of time needed to prove prescription or adverse possession, as well as other actions or inaction that would support a finding of intentional neglect that amounts to an intent by the easement holder to give up the easement forever. Abandonment of public streets or roads is usually done by the government that maintained them by a decree, which would extinguish any public ways that had not pre-existed the public street or road.

Derivation: To establish an abandonment of an easement, it must be shown by the party asserting the abandonment that there were affirmative acts manifesting an intention on the part of the owner of the dominant estate to abandon the easement. Allen v. Nickerson, 155 P.3d 595, 601 (Colo. Ct. App. 2006) (Taubman, J.).

While nonuse for a period equal to or exceeding the 21-year prescriptive period for adverse possession may give rise to an inference of intention to abandon an easement, such nonuse may be accompanied by other facts and circumstances which either weaken or strengthen it. Bauerbach v. LWR Ents., Inc., 861 N.E.2d 864 (Ohio App. 2006) (Kline, J.).

Usage: If railway use is simply abandoned, the easement is extinguished, the property is unburdened, and no taking occurs. Barclay v. United States, 443 F.3d 1368, 1378 (Fed. Cir. 2006) (Dyk, J.).

ABANDONOR One who has abandoned something or someone. The abandonor is the person who gives up forever something or a relationship with someone. In the context of property, the abandonment is irrevocable, though the abandonor could reclaim the property abandoned with the same license that anyone else could do so. In the context of family law, an abandonor who renounces the abandonment may be entitled to restoration of the familial privileges once lost, although as to a child or adult requiring care the renunciation must be credible and reflect both readiness and ability to resume the familial responsibility, without dispossessing someone who has achieved a greater claim to that responsibility during the abandonment.

Usage: If, in fact, the abandoning spouse returned home, it was the duty of the nonabandoning spouse to receive him (her) provided the abandonor in good faith repented of the wrongful abandonment; otherwise, the refusing spouse became the deserter. 11 Frank W. Elliott, Tex. Methods of Practice § 18.14 (2d ed. 2007).

CHILD ABANDONMENT Action or inaction demonstrating a surrender of parental rights. Child abandonment occurs when the action or inaction of a parent toward the parent's child or children indicates that the parent is not carrying out the obligations of parenthood to provide support for the child, from which the law implies the parent's failure of intention to exercise the rights of a parent.

Derivation: There is no statutory definition of "abandonment" as it relates to the UCCJA, but our common law provides that abandonment exists when there is such conduct on the part of a parent which evidences a settled purpose to forego all parental duties and relinquish all parental claims to the child. Here, Lowe requested that the Whites take M.L.L. to live with them in Indiana, signed a consent to guardianship and a consent to adopt, and helped them pack M.L.L.'s belongings, including M.L.L.'s birth certificate and social security card. That evidence is sufficient to show that Lowe intended to forego her parental duties and relinquish her parental rights. In re Adoption of M.L.L., 810 N.E.2d 1088, 1092 (Ind. Ct. App. 2004) (Najam, J.).

While we have observed the difficulty of formulating a uniform definition of the term, we have explained "abandonment" of a child as willful or intentional conduct on the part of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child. . . . Abandonment has also been defined as willful neglect and refusal to perform the natural and legal obligations of parental care and support. It has been held that if a parent withholds his presence, his love, his care, the opportunity to display filial affection, and willfully neglects to lend support and maintenance, such parent relinquishes all parental claims and abandons the child. McKinney v. Richitelli, 586 S.E.2d 258, 263 (N.C. 2003) (Edmunds, J.).

Usage: Abandonment does not necessarily refer to some overall course of conduct as "desertion" would, but rather "abandonment" may result from a single decision by a parent, at a particular point in time, where that parent decides to relinquish parental claims. In re Adoption of D.N.T., 843 So. 2d 690, 707 (Miss. 2003) (Carlson, J.).

See also: ABANDONMENT, ABANDONMENT AS NON-SUPPORT; ABANDONMENT, CRIMINAL ABANDONMENT.

CONSTRUCTIVE ABANDONMENT Abandonment inferred from circumstances. Constructive abandonment is a condition in which other parties than the owner or claimant are entitled to infer that the owner or claimant has abandoned some property, claim, or defense. Constructive abandonment may arise from long disuse, from conditions that would be a reasonable sign of an intent to abandon, from conduct by the owner or claimant that is inconsistent with ownership or a continued assertion