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PREFACE TO THE FIRST SUPPLEMENT TO THE FOURTH EDITION

THIS supplement, of necessity, follows the same general arrangement as the main work. Any improvements—and I have become increasingly aware that a number could be made—will have to wait on the editor of the fifth edition.

Numbers before paragraphs correspond to those in the main work which they directly follow.

As before I have attempted to include all relevant new case material from English sources, and I have again been severely selective in references to statutory definitions.

J.S.J.

A

ABATE. Stat. Def., Trade Union and Labour Relations Act 1974 (c. 52), s. 21.

ABNORMAL. “Abnormal indivisible load” (Motor Vehicles (Authorisation of Special Types) General Order 1969, art. 19), see **INDIVISIBLE**.

ABSOLUTE ASSIGNMENT. “Absolute assignment” (Law of Property Act 1925 (c. 20), s. 136 (1)). The assignment by the trustee in bankruptcy to the bankrupt of a cause of action was an absolute assignment within the meaning of this section, even though it contained a covenant that the bankrupt, if successful, would pay over 35 per cent. of the proceeds to the trustee (*Ramsey v. Hartley* [1977] 1 W.L.R. 686).

ABSOLUTELY ENTITLED. (5) “Absolutely entitled as against the trustee” (Finance Act 1965 (c. 25), s. 22 (5); Finance Act 1969 (c. 32), Sched. 19, para. 9). It was held that the residuary legatee was at no time “absolutely entitled, as against the trustees” of a will, to those assets which had been sold to satisfy specific bequests antecedent to the conveyance of the residue (*Cochrane v. I.R.C.* [1974] S.T.C. 335). Two or more beneficiaries can become jointly “absolutely entitled as against the trustee” within the meaning of this section (*Stephenson v. Barclays Bank Trust Co.* [1975] 1 W.L.R. 882).

It was held that, under a complicated scheme for appointing shares through non-resident trustees (and involving a Jersey company) made in order to avoid capital gains tax, the beneficiaries were still “absolutely entitled” within the meaning of the Finance Act 1965 (c. 25), s. 25 (3), and the scheme therefore failed (*Chinn v. Hochstrasser*, *Chinn v. Collins* [1977] 1 W.L.R. 1337).

“Absolutely and indefeasibly entitled” (Finance Act 1954 (c. 44), s. 33 (2)) means an absolute and indefeasible interest to which a person is entitled, and not an absolute and indefeasible title to any interest, be that interest contingent or defeasible. The word “absolute” is wider than “indefeasible,” and it is possible for an interest to be indefeasible but not absolute (*Elliott v. I.R.C.* [1974] S.T.C. 80).

“Entitled to the property . . . absolutely” (Trustee Act 1925 (c. 19), s. 31 (2) (i) (b)). The word “absolutely” in relation to personalty denoted an interest which was not merely a vested interest in the entire capital and income of the property, but was so vested free from any power or condition which might in the future defeat it (*Re Sharp's Settlement Trusts*, *Ibbotson v. Bliss* [1973] Ch. 331).

ACCESS. As to the degree of public access sufficient to satisfy the definition of “road” in the Road Traffic Act 1972 (c. 20), s. 196, see *R. v. Shaw* [1974] R.T.R. 225; *Deacon v. A.T. (A Minor)* [1976] R.T.R. 244; *Cox v. White* [1976] R.T.R. 248; cited **ROAD**.

Stat. Def., Criminal Law Act 1977 (c. 45), s. 12 (1) (b).

ACCIDENT. “Injury . . . caused by accidents.” These words in an indemnity clause in an insurance policy were held not to cover accidental shooting, in circumstances

where the defendant was using the gun to scare the injured party, even though the defendant had previously been acquitted of murder and manslaughter (*Gray v. Barr (Prudential Assurance Third Party)* [1971] 2 Q.B. 554).

In the Road Safety Act 1967 (c. 30), s. 2 (2) "accident" means an unintended occurrence which has had an adverse physical result (*R. v. Morris* [1972] 1 W.L.R. 228); such as hitting a gate post as a result of faulty steering (*R. v. Pico* [1971] R.T.R. 500).

Stat. Def., Oil in Navigable Waters Act 1971 (c. 21), s. 8; Prevention of Oil Pollution Act 1971 (c. 60), s. 12.

See IN THE COURSE OF.

ACCUSED. Stat. Def., Road Traffic Act 1972 (c. 20), Sched. 1.

ACQUIRE. Stat. Def., Unsolicited Goods and Services Act 1971 (c. 30), s. 6.

ACT. A wife who approached a foreign power with a view to getting them to buy information from her naval officer husband was guilty of an "act preparatory to the commission of an offence" under the Official Secrets Acts, contrary to the Official Secrets Act 1920 (c. 75), s. 7, even though her intention was that worthless information should be passed (*R. v. Bingham* [1973] Q.B. 870).

Stat. Def., Sex Discrimination Act 1975 (c. 65), s. 82.

ACT OF STATE. The doctrine of "act of state" should not be extended so as to prevent a person defending a libel action, even though it might mean that the court will have to inquire into acts done by a foreign power (*Buttes Gas and Oil Co. v. Hammer* [1975] Q.B. 557).

ACTION. "Action for foreclosure or sale in which a claim for possession . . . is also made" (Administration of Justice Act 1970 (c. 31), s. 37 (2)). This subsection was held not to cover the case where mortgagees did in fact claim both possession and foreclosure but in reality required possession only (*Trustees of Manchester Unity Life Insurance Collecting Society v. Sadler* [1974] 1 W.L.R. 770).

Stat. Def., Trade Union and Labour Relations Act 1974 (c. 52), s. 30; Limitation Act 1975 (c. 54), s. 3; National Health Service Act 1977 (c. 49), s. 120.

ACTIVE. "Active Service." Stat. Def., Armed Forces Act 1971 (c. 33), s. 74.

ACTUAL OCCUPATION. See OCCUPATION.

ADJACENT. "Adjacent to . . . a quarry" (Town and Country Planning General Development Order 1963 (No. 709), Sched. 1, Class XVIII, para. 2). A processing site, to which china clay was piped a distance of three or four miles from the place where it was extracted, was not "adjacent to" that place (*English Clays Lovering Pochin & Co. v. Plymouth Corporation* [1974] 1 W.L.R. 742).

ADJOIN: ADJOINING. "Adjoining land" (Housing Act 1957 (c. 56), s. 43 (2)). Any area of land which is continuous, and some part of which is contiguous with a clearance area may properly be described as adjoining land within this section. It does not depend upon any accident of ownerships and boundaries (*Bass Charrington (North) v. Minister of Housing and Local Government* (1971) 22 P. & C.R. 31).

ADOPTED. Stat. Def., Matrimonial Causes Act 1973 (c. 18), s. 52.

ADOPTION. Stat. Def., Children Act 1975 (c. 72), Sched. 1, para. 1; Adoption Act 1976 (c. 36), s. 38.

ADOPTION ORDER; ADOPTION SOCIETY. Stat. Def., Children Act 1975 (c. 72), s. 107; Adoption Act 1976 (c. 36), s. 72.

ADULT. Stat. Def., Criminal Law Act 1977 (c. 45), s. 47 (6).

ADVANCEMENT. "Advancement" within the meaning of the Administration of Estates Act 1925 (c. 23), s. 47 (1) (iii) includes any gift by a parent to a child of any age which may fairly be described as permanent provision (*Hardy v. Shaw* [1976] Ch. 82, following *Taylor v. Taylor* (1875) L.R. 20 Eq. 155, and *Re Hayward* [1957] Ch. 528; see main work pages 74 and 75).

ADVANTAGE. The "advantage" to creditors (Bankruptcy Act 1914 (c. 59), s. 89 (2)) which would enable a trustee to open an account with a local bank relates to questions of administrative convenience rather than to financial advantage (*Re Walker Deceased (In Bankruptcy)* [1974] Ch. 193).

ADVENTURE. "Adventure in the nature of trade" (Income Tax Act 1952 (c. 10), s. 526 (1); Income and Corporation Taxes Act 1970 (c. 10), s. 526 (5)), see **TRADE**.

ADVERSE. (3) "Adverse possession" (Limitation Act 1939 (c. 21), s. 10) was held to mean something in the nature of an ouster of the true owner. Entering on land and using it for some temporary seasonal purpose at a time when the true owner has no immediate use for it was not "adverse possession" (*Wallis's Cayton Bay Holiday Camp v. Shell-Mex and B.P.* [1975] Q.B. 94). But in *Treloar v. Nute* [1976] 1 W.L.R. 1295 it was held that to establish "adverse possession" within the meaning of this section it is not necessary that the owner shall have been inconvenienced or otherwise affected by the possession.

A listing as an historic building in the local land charges register was an "adverse entry" within the meaning of a clause in a contract of sale, where the contract was subject to there being no such entry (*Aquis Estates v. Minton* [1975] 1 W.L.R. 1452).

ADVERTISEMENT. Stat. Def., Town and Country Planning Act 1971 (c. 78), s. 290; Town and Country Planning (Scotland) Act 1972 (c. 52), s. 275; Hallmarking Act 1973 (c. 43), s. 1; Sex Discrimination Act 1975 (c. 65), s. 82; Race Relations Act 1976 (c. 74), s. 78.

AERODROME. Stat. Def., Civil Aviation Act 1971 (c. 75), s. 64; Protection of Aircraft Act 1973 (c. 47), s. 26; Airports Authority Act 1975 (c. 78), s. 23.

AFFECT. "Such regulations as affect him or any workmen employed by him" (Construction (Working Places) Regulations 1966 (No. 94), reg. 3 (1) (a)). These words do not extend the duties of a main contractor under these Regulations to a sub-contractor's employees (*Taylor v. Sayers* [1971] 1 W.L.R. 561; *Smith v. Wimpey (George) & Co.* [1972] 2 Q.B. 329; *Clare v. Whittaker (L.) & Son* [1976] I.C.R. 1). Although the contrary view was taken in *Baron v. French (B.)* [1971] 3 All E.R. 1111.

AFFRAY. A display of force by one or more persons without actual violence is sufficient to constitute an affray, when reasonable persons might be frightened or intimidated thereby (*R. v. Summers* (1972) 56 Cr. App. R. 604). It is not necessary to show that more than one person was fighting unlawfully. A person participating unlawfully can properly be convicted of an affray without inquiry as to whether others were acting lawfully or unlawfully (*Taylor v. D.P.P.* [1973] A.C. 964).

AFTER. Where charterers had under the terms of the charter an option to redeliver the vessel "after 12 months' trading," subject to three months' notice, it was held, on the evidence of the precontractual exchanges, that "after 12 months' trading" here meant "on the expiry of" (*Partenreederei. M.S. Karen Oltmann v. Scarsdale Shipping Co.; The Karen Oltmann* [1976] 2 Lloyd's Rep. 708).

"After the beginning of the trial." See **BEGINNING**.

AGAINST. Evidence against, see **EVIDENCE**.

AGENT. "Agent" in the Limitation Act 1939 (c. 21), s. 26 was held to include an independent contractor employed by the defendant builder (*Applegate v. Moss; Archer v. Moss* [1971] 1 Q.B. 406).

AGGRIEVED. See **PERSON AGGRIEVED**.

AGREE. "Such terms as may be agreed between the landlord and the tenant" (Landlord and Tenant Act 1954 (c. 56), s. 33). Terms for the grant of a new business tenancy agreed "without prejudice" and "subject to contract" were held not to have been "agreed" within the meaning of this section (*Derby & Co. v. I.T.C. Pension Trust* (1977) 245 E.G. 569).

AGREEMENT. An "agreement" made by two parties "subject to the approval in due course of the court" became a binding agreement at the time it was made; the operation of which was suspended until the court approved it (*Smallman v. Smallman* [1972] Fam. 25).

"By agreement with the employee" (Redundancy Payments Act 1965 (c. 62), s. 13 (2)). Express agreement is not necessary; agreement implied from conduct will suffice (*Ubsdell v. Paterson* [1973] I.C.R. 86).

Stat. Def., Fair Trading Act 1973 (c. 41), s. 137; Restrictive Trade Practices Act 1976 (c. 34), s. 43.

Agreement for sale, see **SALE**.

"Agreement relating to the use or hire of a ship," see **USE**.

AGRICULTURAL. (7) (c) "Agricultural Building," (Rating Act 1971 (c. 39), s. 5). Two buildings used for sorting and packaging eggs were held to be agricultural buildings on the grounds that they were used in connection with the agricultural purpose of producing eggs (*Ayrshire Assessor v. Macster Poultry*, 1977 S.L.T. 158).

Stat. Def., Rating Act 1971 (c. 39), s. 1.

(16) "Agricultural land." Stat. Def., Land Drainage Act 1976 (c. 70), s. 116.

"Agricultural work" (Vehicles (Excise) Act 1971 (c. 10), Sched. 3, Pt. 1, para. 2 (1) (d)). Towing a trailer laden with bricks and other materials, to be used in the construction of a water piping system on a farm, was agricultural work within the meaning of this paragraph (*Bullen v. Picking* [1974] R.T.R. 46).

AGRICULTURE. Stat. Def., Finance Act 1974 (c. 30), Sched. 3, para. 10 (1); Health and Safety at Work Act 1974 (c. 37), s. 53; Rent (Agriculture) Act 1976 (c. 80), s. 1.

AID OR ABET. "Aid, abet, counsel or procure" (Accessories and Abettors Act 1861 (c. 94), s. 8). A person who knew that a motorist was going to drive and surreptitiously added alcohol to his drink, was guilty of "procuring" the offence of driving with excessive blood-alcohol (*Att.-Gen.'s Reference (No. 1 of 1975)* [1975] Q.B. 773).

"Aids, abets, counsels or procures" (Magistrates' Courts Act 1952 (c. 55), s. 35). An employer who fails to enforce his driver's compliance with the requirement to deliver record sheets under reg. 5 (8) of the Drivers' Hours (Goods Vehicles) (Keeping of Records) Regulations 1970 (No. 123), does not, in the absence of positive encouragement or assistance, aid, abet, counsel or procure the commission of the offence (*Cassady v. Reg Morris (Transport)* [1975] R.T.R. 470).

AIRCRAFT. Stat. Def., Immigration Act 1971 (c. 77), s. 33; Finance (No. 2) Act 1975 (c. 45), Sched. 7, Group 3; Aircraft and Shipbuilding Industries Act 1977 (c. 3), Sched. 1, para. 2.

AIRPORT. Stat. Def., Immigration Act 1971 (c. 77), s. 33.

ALL. (16) (17). See also *Helfand v. Royal Canadian Art Pottery* (1970) 11 D.L.R. (3d) 404, where it was held that in an indemnity to protect the buyer of goods against "all claims" the use of the word "protect" narrowed the meaning of "all claims" so as to exclude unmeritorious claims and to cover only claims arising from breaches of the implied conditions of merchantability.

The words "all claims or demands whatsoever" in clause 3 (4) of the Road Haulage Association's Conditions of Carriage (1967 rev.) constitute an agreement in express terms that the trader will indemnify the carrier against all claims without exception, including any that may arise as the result of the negligence of the carrier himself or his servant (*Gillespie Brothers & Co. v. Roy Bowles Transport; Rennie Hogg (Third Party)* [1973] Q.B. 400).

Similarly in a contract for hire of machinery, a term that the hirer will indemnify the owner for "all claims, demands, proceedings, damages, costs and expenses in connection with or arising out of the use of the plant" includes claims arising out of the negligence of the owner's servant whilst using the machinery on behalf of the hirer (*Blake v. Richards and Wallington Industries and Fram Siegwart* (1974) 16 K.I.R. 151).

ALLOT. Land "allotted" for exercise or recreation within the Commons Registration Act 1965 (c. 64), s. 22 (1) means allotted by the Enclosure Acts. Land, previously acquired by a local authority, which was designated by a local private Act for recreational use, was held not to have been "allotted" for recreational purposes by the local private Act so as to bring it within the meaning of s. 22 (1) (*Re The Rye, High Wycombe, Bucks* [1977] 1 W.L.R. 1316).

AND. "And ... finds it intolerable" (Divorce Reform Act 1969 (c. 55), s. 2 (1) (a)). It has been held that "and" here means "and in addition to the adultery but not necessarily in consequence of it" (*Goodrich v. Goodrich* [1971] 1 W.L.R. 1142; *Cleary*

v. *Cleary and Hutton* [1974] 1 W.L.R. 73; *Carr (M.) v. Carr (A. K.)* [1974] 1 W.L.R. 1534). It has also been held that “and” here means “and as a result of the adultery” (*Roper v. Roper and Porter* [1972] 1 W.L.R. 1314).

ANIMAL. Stat. Def., Road Traffic Act 1972 (c. 20), s. 25; Finance Act 1972 (c. 41), Sched. 4.

ANNUAL PAYMENTS. The expression “annual payments” in Sched. 7, para. 12 (c) of the Finance Act 1965 (c. 25) must be construed in accordance with the Income Tax Act 1952 (c. 10), s. 169 (3) (now Income and Corporation Taxes Act 1970 (c. 10), s. 52), and did not cover patent royalties paid under a licence (*Rank Xerox v. Lane* [1978] Ch. 1).

ANNUAL PROFITS. “Annual profit” (Income Tax Act 1952 (c. 10), s. 122, now Income and Corporation Taxes Act 1970 (c. 10), s. 108). Receipts from the sale of turves were held to be annual profits on the grounds that, although there was a “once and for all” element in the cutting of turves, there were also strong elements of repetition since the land was capable of producing further turves (*Lowe v. J. W. Ashmore* [1971] Ch. 545).

ANNUAL VALUE. Stat. Def., Town and Country Planning Act 1971 (c. 78), s. 207; Town and Country Planning (Scotland) Act 1972 (c. 52), s. 196; Land Compensation Act 1973 (c. 26), ss. 2, 46; Land Compensation (Scotland) Act 1973 (c. 56), ss. 2, 43.

ANNUITY. Stat. Def., Land Charges Act 1972 (c. 61), s. 17.

ANOTHER. “Another offence” (Backing of Warrants (Republic of Ireland) Act 1965 (c. 45), s. 2 (1)) meant an offence which was alleged to have been already committed, not a possible future one (*Keane v. Brixton Prison Governor* [1972] A.C. 204).

ANOTHER PERSON. “Another person” (Trade Descriptions Act 1968 (c. 29), s. 24 (1) (a)). A servant of a company, unless a director, manager, secretary or similar officer was not the company itself, and was therefore “another person” for the purposes of this section (*Tesco Supermarkets v. Natrass* [1972] A.C. 153; *Coupe v. Guyett* [1973] 1 W.L.R. 669; *Butler v. Keenway Supermarkets* [1974] Crim. L.R. 560).

ANTECEDENT. “Antecedent negotiations.” Stat. Def., Consumer Credit Act 1974 (c. 56), s. 56.

ANTIQU. “Antique firearm” (Firearms Act 1968 (c. 27), s. 58 (2)). A modern replica of an antique firearm was not an “antique firearm” within the meaning of this section (*R. v. Howells* [1977] Q.B. 614). Two 85 year-old revolvers hung as ornaments were held to be “antique” even though one could be fired and the other could have been rendered capable of being fired (*Richards v. Curwen* [1977] 1 W.L.R. 747).

ANY. “Any person” (Rent Act 1968 (c. 23), s. 85) is not restricted to the landlord, and includes potential landlords, tenants, agents and middlemen (*Farrell v. Alexander* [1976] 3 W.L.R. 145, overruling *Zimmerman v. Grossman* [1972] 1 Q.B. 167).

ANY OTHER. “Any other indecent or obscene articles” (Customs Consolidation Act 1876 (c. 36), s. 42). The ejusdem generis rule does not apply to these words so as to exclude cinematograph films (*Derrick v. Commissioners of Customs and Excise* [1972] 2 Q.B. 28).

The words “and any other civil or constructional engineering works of a similar nature to any of the foregoing works” in reg. 3 of the Engineering Construction (Extension of Definition) Regulations 1960 (No. 421) include not only sea defence works and river works but also everything that has gone before which when completed can be looked upon as works, namely road, airfield and steel or reinforced concrete structures (*British Transport Docks Board v. Williams* [1970] 1 W.L.R. 652).

“Any other like right” (Land Charges Act 1925 (c. 22), s. 10 (1) (iv); Land Charges Act 1972 (c. 61), s. 2 (4) (iv)). A right of re-entry is an equitable right and is not registrable as “any other like right” under these sections (*Shiloh Spinners Ltd. v. Harding* [1973] A.C. 691). But a proviso in a lease requiring a lessee who wishes to assign first to offer a surrender of the lease to the lessor is an estate contract and registrable under this section (*Greene v. Church Commissioners for England* [1974] Ch. 467).

A doctor can be “any other person” within the meaning of the Road Traffic Act 1972 (c. 20), s. 168 (2) (b) and his duty, as such, to divulge information under this section overrides his professional duty of confidence (*Hunter v. Mann* [1974] Q.B. 767).

“Any other reason” (Bankruptcy Act 1914 (c. 59), s. 89 (2) (a)). These words, in the context of this section, do not cover the obtaining of interest for creditors by opening an account at a local bank (*Re Walker, Deceased* [1974] Ch. 193).

ANYTHING. “Anything which is his trade to provide” (Finance Act 1965 (c. 25), s. 15; now Income and Corporations Taxes Act 1970 (c. 10), s. 98). In this section “anything” must be construed in the light of the preceding subsections to mean anything in the way of entertainment, and had no application to a newspaper proprietor whose trade was to provide newspapers (*Associated Newspapers Group v. Fleming* [1973] A.C. 628).

“Anything shown ... to relate to the offence” (Misuse of Drugs Act 1971 (c. 38), s. 27 (1)). The proceeds of sale of illegally imported drugs are covered by these words and may, therefore, be ordered to be forfeited (*R. v. Beard (Graham)* [1974] 1 W.L.R. 1549).

APPARATUS. Stat. Def., Merchant Shipping Act 1974 (c. 43), s. 16.

APPEAL. “Appeal” (House to House Collections Act 1939 (c. 44), s. 5) is not limited to an appeal by way of house-to-house collections, but covers any appeal made to the public in association with a representation that the appeal was for a charitable purpose (*R. v. Davison* [1972] 1 W.L.R. 1540).

APPELLANT. Stat. Def., Immigration Act 1971 (c. 77), Sched. 2.

APPLICATION. “Application ... made under the said ... Part II” (Landlord and Tenant Act 1954 (c. 56), s. 64 (1)). An application under this Act which is made out of time is nonetheless “an application” so that the tenancy continues until three months after the proceedings on it are disposed of (*Zenith Investments (Torquay) v. Kammins Ballrooms Co. (No. 2)* [1971] 1 W.L.R. 1751).

APPLICANT. Stat. Def., Legal Advice and Assistance Act 1972 (c. 50), s. 7.

APPLY. “To apply” (Matrimonial Proceedings and Property Act 1970 (c. 45), s. 7 (4)) refers to the initiation of the proceedings and not to when the court hears the application (*Jackson v. Jackson* [1973] Fam. 99; *B. v. B.* (1974) 4 Fam. Law 151).

“Applies a false trade description” (Trade Descriptions Act 1968 (c. 29), s. 1) means applies at the time of supply or has been applied in the course of negotiations leading to such supply (*Norman v. Bennett* [1974] 1 W.L.R. 1229).

APPORTIONMENT. Stat. Def., Rentcharges Act 1977 (c. 30), s. 13.

APPREHENSION. (2) “Apprehension” (Extradition Act 1870 (c. 52), s. 8) of an extraditable fugitive occurs upon his arrest pursuant to the extradition treaty and not upon his earlier arrest on a provisional warrant (*Government of the Federal Republic of Germany v. Sotiriadis* [1975] A.C. 1). A person arrested on a previous extradition warrant may be “apprehended” a second time for the purposes of this section while in custody (*R. v. Governor of Pentonville Prison, ex p. Ecke* [1974] Crim. L.R. 102).

APPROPRIATE. A Deeds Registry is not an “appropriate register” for the purposes of the Land Charges Act 1925 (c. 21), s. 13 (2) (*Kitney v. M.E.P.C.* [1977] 1 W.L.R. 981).

APPURTENANCES. (8) “Appurtenances belonging thereto” (Housing Act 1957 (c. 56), s. 189 (1)) do not cover rights of way and other ancillary rights (previously non-existent) necessary for the reasonable enjoyment of the land to be compulsorily acquired (*Sovmots Investments v. Secretary of State for the Environment* [1977] 2 W.L.R. 951).

ARBITRATION. “Arbitration agreement.” Stat. Def., Arbitration Act 1975 (c. 3), s. 7.

ARE. “Are supplied,” see **SUPPLY**.

ARISING. “Arising out of this contract.” For a discussion of the effect of these words when used in the arbitration clause of a charterparty, see *The Union of India v. E. B. Aaby's Rederi A/s* [1975] A.C. 797.

Arising out of and in the course of employment, see **IN THE COURSE OF**.

ARMED FORCES. Stat. Def., Race Relations Act 1976 (c. 74), s. 76 (10).

ARRANGEMENT. (11) “Arrangement” (Restrictive Practices Act 1956 (c. 68), s. 6). Where parties in the course of negotiating a contract come to an understanding on a term which embraces a restriction within this section, there is no “arrangement” if, subsequently, that term is not incorporated into the contract, and it has been agreed that everything which will affect their relationship is to be recorded in the contract (*Registrar of Restrictive Trading Agreements v. Schweppes (No. 2)* [1971] 1 W.L.R. 1148).

A complicated scheme for appointing shares through non-resident trustees (and involving a Jersey company), made in order to avoid capital gains tax, was held to

be an "arrangement" within the meaning of the Finance Act 1965 (c. 25), s. 42 (7), and therefore failed (*Chinn v. Hochstrasser*, *Chinn v. Collins* [1977] 1 W.L.R. 1337).

"Compromise or arrangement." See COMPROMISE.

ARREST. Voluntary attendance at a police station, followed by the appropriate preliminaries to a charge of theft, did not constitute "arrest" so as to justify the use of force to prevent the person concerned leaving the station (*R. v. Inwood* [1973] 1 W.L.R. 647).

"Arrested" (Road Safety Act 1967 (c. 30), s. 3 (1), now Road Traffic Act 1972 (c. 20), s. 9 (1)). A deaf person who did not hear the constable tell him he was being arrested, and only discovered it after arrival at the police station, was nevertheless "arrested" within the meaning of these sections (*Wheatley v. Lodge* [1971] 1 W.L.R. 29). "Arrested" in this section means lawfully arrested and does not apply to a person who has been unlawfully arrested or whose arrest was not valid (*Spicer v. Holt* [1977] A.C. 987).

ARRIVE. (2) (g) A ship is an "arrived ship," for the purposes of a charterparty, when she has come to rest *within* the nominated port and is waiting at some place within the port where waiting ships usually lie, as for instance the Mersey Bar for the port of Liverpool. The essential feature is that the voyage shall have ended, and the vessel be waiting at the disposition of the charterer (*E. L. Oldendorff & Co. v. Tradax Export S.A.* [1974] A.C. 479). In *Federal Commerce and Navigation Co. v. Tradax Export S.A.* [1977] Q.B. 324, the Court of Appeal held that the commercial limits of a port may be wider than they were thought to be in earlier times and that a ship was an "arrived ship" from the time of arrival at the usual waiting place for ships destined for the designated port, even though that waiting place was *outside* the designated port. This decision was, however, reversed by the House of Lords who applied the "Reid test" laid down in the *Oldendorff* case, supra (*The Times*, July 4, 1977).

ARTICLE. Stat. Def., Town and Country Planning Act 1971 (c. 78), s. 66; Town and Country Planning (Scotland) Act 1972 (c. 52), s. 64.

ARTICULATED. "Articulated goods vehicle." Stat. Def., Road Traffic (Drivers' Ages and Hours of Work Act 1976 (c. 3), Sched. 1, para. 5.

ARTISTIC. "Artistic craftsmanship" (Copyright Act 1956 (c. 74), s. 3 (1) (c)). In determining whether a work is one of "artistic craftsmanship" the court is not required to make an aesthetic judgment. After viewing the matter generally, and considering all the evidence, it held that the prototype of a suite of furniture, although of an original and distinctive design, did not come within this section (*Hensher (G.) v. Restawile Upholstery (Lancs.)* [1976] A.C. 64).

AS AFFECT HIM. See AFFECT.

AS SOON AS. "As soon as reasonably practicable" (Road Traffic Act 1972 (c. 20), s. 8 (1)). This is a question of fact and degree properly left to the jury. In this case seven minutes from the first contact to the constable's request for a breath specimen, was held to be soon enough (*R. v. Pearson (Donald)* [1974] R.T.R. 92).

ASSET. Stat. Def., Industry Act 1972 (c. 63), s. 6.

ASSIGNED. The words “which is assigned for the time being to the Chancery Division” in the County Courts Act 1959 (c. 22), s. 54 (2) include not only causes or matters specifically assigned under the Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 56 (1) but also causes or matters assigned under s. 58 of that Act by the person commencing the proceedings (*Saunders v. Beevor* [1971] 1 W.L.R. 383).

ASSIGNMENT. Stat. Def., Finance Act 1972 (c. 41), s. 46; Fair Trading Act 1973 (c. 41), s. 137; Housing Act 1974 (c. 44), s. 122.

ASSIST. “Assists in ... the commission ... of an offence” (Misuse of Drugs Act 1971 (c. 38), s. 20) does not import an offence of strict liability. A person who conveyed containers from England to Italy, knowing that they would then be used to smuggle cannabis into the U.S.A. was guilty of assisting in the commission of an offence punishable by American law (*R. v. Vickers* [1975] 1 W.L.R. 811).

ASSOCIATE. (4) “Associated company” (Redundancy Payments Act 1965 (c. 62), s. 48 (4)) is one whose common shareholding is that of companies, as opposed to individuals, so that two companies each owned by the same two individual shareholders are not associated companies (*Spanlite Structures v. Jarrett* [1973] I.C.R. 465).

“Associate” (Finance Act 1965 (c. 25), Sched. 11, para. 9 (1); now Income and Corporation Taxes Act 1970 (c. 10), s. 285). A testator who left his shares in a close company on certain family trusts had also loaned money to the company. One of the executors of the will was also a director of the company, and was held to be an “associate” of himself for the purposes of these Acts, so that the interest on the loan paid to the executors was a “distribution” (*Willingale v. Islington Green Investment Co.* [1972] 1 W.L.R. 1533).

Stat. Def., Finance Act 1972 (c. 41), s. 80; Insurance Companies Amendment Act 1973 (c. 58), s. 2; Consumer Credit Act 1974 (c. 39), s. 184.

“Associated company.” Stat. Def., Finance Act 1972 (c. 41), s. 95.

AT. “At a hospital” (Road Traffic Act 1972 (c. 20), s. 8 (2)). A person being conveyed to hospital in an ambulance is not “at” a hospital (*Hollingsworth v. Howard* [1974] R.T.R. 58). A person visiting a hospital for treatment is “at a hospital as a patient” for the purposes of this section only until the treatment contemplated for that visit is concluded; thereafter the consent of the doctor to the requirement of a specimen is not necessary (*Att.-Gen.’s Reference (No. 1 of 1976)* [1977] 1 W.L.R. 646).

AT THE TIME. See TIME.

ATOMIC ENERGY. Stat. Def., Atomic Energy Act 1946 (c. 80).

ATTEMPT. “Attempting to drive a motor vehicle on a road” (Road Traffic Act 1972 (c. 20), s. 100). The act of wheeling a motor cycle in a car park towards the exit to the road, was held to indicate an intention to ride it on the road and, therefore, an attempt within the meaning of this section (*Shaw v. Knill* [1974] R.T.R. 142).

“Prevention or attempted prevention of an offence” (Compensation for Victims

of Crimes of Violence Scheme 1964 (1969 revision), para. 5). In order to establish that the deceased's death was directly attributable to the "attempted prevention" it is not necessary to show that an offence was in fact being or about to be committed, so long as the deceased genuinely thought it was (*R. v. Criminal Injuries Compensation Board, ex p. Ince* [1973] 1 W.L.R. 1334).

ATTRIBUTABLE. "Attributable to" (Local Government (Compensation) Regulations 1974 (No. 463), regs. 7 (1) (a), 11 (1) (a)). The loss of employment of a local government officer resulting from a change of policy by the new council formed under the Local Government Act 1972 (c. 70) was held not to be "attributable to" the provisions of the Act, even though the old council would have ensured the continuance of the officer's employment (*Mallett v. Restormel B.C.* (1978) 122 S.J. 178).

"Attributable to that part" (Legal Aid Act 1974 (c. 4), s. 14 (5)). Costs incurred by a successful unassisted father in custody proceedings before the date on which the mother's legal aid was granted were not 'attributable to that part' of the proceedings in connection with which legal aid was paid (*S. v. S.* (1977) 121 S.J. 775).

AUTHORISE. "Authorises" (Copyright Act 1968 (Com.), s. 36 (1)). A person who had under his control the means by which an infringement of copyright may be committed—such as a photocopying machine—and who makes it available to other persons knowing that it could be used for the purpose of committing an infringement and omits to take reasonable steps to limit its use to legitimate purposes, "authorises" any infringement that results from its use (*Moorhouse and Angus and Robertson v. University of N.S.W.* [1976] R.P.C. 151).

AVAILABLE. "Assets available for distribution by way of dividend" (Finance Act 1960 (c. 44), s. 28 (2), now Income and Corporation Taxes Act 1970 (c. 10), s. 461 (c)) mean assets legally as opposed to commercially available, and can include a sum of money which a company borrows from a bank in order to purchase controlling interest in five other companies (*I.R.C. v. Brown* [1971] 1 W.L.R. 1495).

B

BAGGAGE. "Baggage" (Administration of Justice Act 1956 (c. 46), s. 8 (1)) refers to passengers' baggage and not to the belongings of the master and crew (*The Eschersheim* [1975] 1 W.L.R. 83).

BAIL. Stat. Def., Bail Act 1976 (c.63), s. 1.

"Bail in criminal proceedings." Stat. Def., Bail Act 1976 (c. 63), s. 1.

BALLOT. "Formal ballot" (Employment Protection Act 1975 (c. 71), s. 14 (1)) means "the canvas of group opinion by setting a pre-determined question or questions to each member of the group, to be answered secretly, and then studying the results. The main object of the reference to 'formal ballot' in the context of the section was to exclude recording of opinion by a mass meeting or show of hands" (*Grunwick Processing Laboratories v. Advisory Conciliation and Arbitration Service, The Times*, July 13, 1977).

BANK. Stat. Def., Solicitors Act 1974 (c. 47), s. 87; Land Drainage Act 1976 (c. 70), s. 116.

BAR. Every bar counter over which intoxicating liquor is sold direct to customers is a "bar" within the Licensing Act 1964 (c. 26), s. 76 (5) (*Carter v. Bradbeer* [1975] 1 W.L.R. 1204).

BARGAINING UNIT. A "bargaining unit" within the meaning of the Industrial Relations Act 1971 (c. 72), s. 51 was held to relate only to employees for whom collective bargaining was in fact carried on (*Koppel v. Guardian Royal Exchange Assurance* [1974] I.C.R. 216).

BARGE. Stat. Def., Prevention of Oil Pollution Act 1971 (c. 60), s. 29.

BASE METAL. Stat. Def., Hallmarking Act 1973 (c. 43), Sched. 2.

BASIS. "Basis period." Stat. Def., Finance Act 1976 (c. 40), Sched. 5, para. 5 (2) (a).

BEAUTIFUL. "Beautiful" it seems can cover more than just the appearance of an article. It is a breach of the Trades Descriptions Act 1968 (c. 29), s. 1 (1) to advertise as a "beautiful car" a vehicle which, although its appearance was excellent, was in fact unroadworthy and unfit for use (*Robertson v. Dickey* [1972] R.T.R. 431).

BECOME. Becomes due, see DUE.

BEGINNING. "After the beginning of the trial" (Matrimonial Proceedings and Property Act 1970 (c. 45), s. 3 (1) (b)). Where a petition in a divorce suit was dismissed immediately after it was called, it was dismissed "after the beginning of the trial" within the meaning of this section, for the trial began at the moment the suit was called (*P. (L. E.) v. P. (J. M.)* [1971] P. 318).

BEHAVE. "Behaved in such a way" (Matrimonial Causes Act 1973 (c. 18), s. 1 (2) (b)). Passive behaviour such as that caused by medical illness may be capable of amounting to behaviour within the meaning of this section (*Thurlow v. Thurlow* [1976] Fam. 32).

BEHAVIOUR. "Behaviour" in the Divorce Reform Act 1969 (c. 55), s. 2 (1) (b) means conduct by one spouse which affects the other, and which has some reference to the marriage. Where the respondent was, through mental illness, incapable of forming any intention, the test was whether his behaviour had made him impossible to live with, and not whether it had amounted to a breach of his matrimonial obligations (*Katz v. Katz* [1972] 1 W.L.R. 955; *Richards v. Richards* [1972] 1 W.L.R. 1073).

BELIEVE. "Believing them to be stolen" (Theft Act 1968 (c. 20), s. 22 (1)). See *R. v. Smith (Albert)* (1976) 64 Cr. App. R. 217.

BELONGING. "Land ... belonging to a quarry" (Town and Country Planning General Development Order 1963 (No. 709), Sched. 1, Class XVIII, para. 2). The words "belonging to" indicate that the land on which it is proposed to build is or

is to be dedicated to the service of the mine in, or adjacent to which it is, and not to the service of some distant mine (*English Clays Lovering Pochin & Co. v. Plymouth Corporation* [1974] 1 W.L.R. 742).

“Belonging to” (Theft Act 1968 (c. 60), ss. 1 (1), 5 (3)). Money taken by a travel agent as a deposit for trips which do not materialise is not, in the absence of any special arrangement, subject to an “obligation” to retain and deal with it in a particular way, and does not therefore “belong” to the client (*R. v. Hall* [1973] Q.B. 126). But property may be subject to such an “obligation,” and therefore belong to another within the meaning of these sections, despite the fact that the obligation could not be legally performed or enforced (*R. v. Meech* [1974] Q.B. 549).

BENEFICE. Stat. Def., Repair of Benefice Buildings Measure 1972 (No. 2), s. 31; Benefices Measure 1972 (No. 3), s. 1.

BENEFICIAL. (26) “Beneficial ownership” (Finance Act 1954 (c. 44), s. 17 (6) (a)). The effect of a winding-up order is to divest a company of “beneficial ownership” of its assets despite its continuance as legal owner (*Ayerst v. C. & K. (Construction)* [1976] A.C. 167).

BENEFICIALLY OWNED. “Beneficially owned as respects the shares therein” (Administration of Justice Act 1956 (c. 46), s. 3 (4)). The expression “beneficially owned” here includes not only a demise charterer but any other person with similar complete possession and control who might thereby become liable on a claim within paragraphs (d) to (r) of s. 1 (1) of the Act (*Medway Dry Dock and Engineering Co. v. M.V. Andrea Ursula* [1973] 1 Q.B. 265). “Beneficially owned” in this section refers only to equitable ownership (*The I. Congresso del Partido* [1978] 1 All E.R. 1169).

BENEFICIARY. Stat. Def., Social Security Act 1973 (c. 38), Schedules 21, 25; National Insurance Act 1974 (c. 14), s. 5; Inheritance (Provision for Family and Dependents) Act 1975 (c. 63), s. 25; Development Land Tax Act 1976 (c. 24), s. 47.

BENEFIT. In relation to a charge under the National Insurance Act 1965 (c. 51), s. 93 (1) (c) of making a false statement or representation for the purpose of obtaining a benefit or payment under the Act, the term “benefit” means the actual payment of the benefit, not the mere decision to pay the benefit (*Tolfree v. Florence* [1971] 1 W.L.R. 141).

“Benefits and privileges” (Legal Aid (Assessment of Resources) Regulations 1960 (No. 1471), reg. 1 (2)). Gifts and loans from relatives are not “benefits and privileges” within the meaning of this regulation as they do not display the essential element, that of periodic recurrence (*R. v. Supplementary Benefits Commission, ex p. Singer* [1973] 1 W.L.R. 713).

Stat. Def., National Insurance and Supplementary Benefit Act 1973 (c. 42), s. 4; Social Security Act 1975 (c. 14), s. 92.

BEQUEST. (2) A will which confers no positive rights is not a “bequest” within the meaning of the Wills Act 1837 (c. 26), s. 27 (*Re Fenston's Settlement; Max-Muller v. Simonsen* [1971] 1 W.L.R. 1640).

BET. Stat. Def., Betting and Gaming Duties Act 1972 (c. 25), ss. 6, 12; Lotteries Act 1975 (c. 58), Sched. 3.