

BLACK'S
LAW DICTIONARY

By

HENRY CAMPBELL BLACK. M. A.

FIFTH EDITION

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,
Bankruptcy, Mortgages, Constitutional Law, Interpretation
of Laws, Rescission and Cancellation of Contracts, Etc.

FIFTH EDITION

BY

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PREFACE

In the period since the Fourth Edition of Black's Law Dictionary, most all areas of the law have undergone substantial change and development. The vocabulary of the law has shown corresponding change and growth, particularly in the areas of commercial and constitutional law, civil and criminal procedure, taxes, finance, uniform laws, and federal legislation. In addition, many common law doctrines and concepts have been replaced or modified with new statutory rights and remedies. These major developments have occasioned the need to not only greatly expand the legal words and terms included in Black's Law Dictionary, but also to reexamine all existing entries for currentness of legal usage. This thorough review has resulted in the inclusion of over 10,000 new or revised entries, as well as numerous new usage examples, in this Fifth Edition. It should also be mentioned however, that, while this new edition reflects the very latest changes and developments in law and practice, old English, European and feudal law words and terms have been retained in that such continue to form the foundation for much of our modern jurisprudence.

A considerable effort has been made in this Fifth Edition to provide more than basic definitions of legal words and terms. In those instances where traditional legal concepts and doctrines have over the years been either superseded, modified or supplemented by court decisions or legislation, such developments and changes are fully reflected. Additionally, because so many areas of law and practice are now governed by uniform or model acts and rules, such major sources of law as the Uniform Commercial Code, Restatements of the Law, and Federal Rules (Civil, Criminal, Appellate, and Evidence) are fully reflected. Similarly, the growth and importance of federal legislation and agencies, with their impact on matters that were traditionally state or local in nature, is evidenced with a considerable number of new entries covering federal acts, agencies, departments and officials. Likewise, the ever expanding importance of financial terminology has necessitated the inclusion of numerous new tax and accounting terms.

Because of the inter-relationship of so many legal words and terms, the number of internal cross-references has been greatly increased. The number of abbreviation entries has also been substantially expanded, as has the Table of Abbreviations. The following new Appendices have also been added: Constitution of the United States; Listing of Justices and Terms of U.S. Supreme Court; and U.S. Government Organizational Chart.

A major new feature in this Fifth Edition is the inclusion of pronunciation guides after all entries which pose pronunciation difficulties. A comprehensive explanation of these guides is set forth on pages VII-XIV with a shorter pronunciation Key appearing on the inside front cover.

PREFACE

New and revised words and terms for this Fifth Edition were contributed by Joseph R. Nolan, Associate Justice, Massachusetts Superior Court. The pronunciation transcription system and guides were prepared by M. J. Connolly, Associate Professor of Linguistics and Eastern Languages, Boston College.

For additional definitions of legal words, terms and phrases, reference should be made to "Words and Phrases."

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THE PRONUNCIATION OF LATIN

A majority of the Latin terms in this revised edition of *Black's Law Dictionary* and also occasional English and foreign terms have been provided with pronunciation entries. The pronunciations follow a *descriptive* scheme and are based on actual usage rather than on any attempt to *prescribe* a uniform pronunciation. Where alternate pronunciations exist the philologically more 'appropriate' pronunciation generally receives first listing, however. The entries provide an acceptable pronunciation in a transcription system compatible with the major varieties of North American English and extendable to other pronunciations.

Despite its continuing decline as a working language of scholarship and jurisprudence, Latin still supplies a formidable stock of legal terms and phrases. The ability to use a Latin phrase correctly and pronounce it with authority and consistency belongs to the equipment of a well-rounded jurist. Those who actually study Latin today, however, will in all probability learn a pronunciation (either the reformed philological or the Italianate) at variance with the Anglo-Latin system which prevails in legal and medical spheres. Injection of the 'newer' school pronunciations actually serves to increase confusion and uncertainty: Where masculine plural *alumni* and feminine plural *alumnae* were once differentiated in speech as /ə'ləmnay/ and /ə'ləmnīy/ respectively, one widespread variant of the philological pronunciation actually *reverses* the opposition with masculine /ə'ləmnīy/ and feminine /ə'ləmnay/. The status of *amicus curiae*, traditionally pronounced /ə'māykəs kyúriyiy/, now has variants /ə'mīykəs kúriyây/ (adapted philological), /ə'mīyus kúriyèy/ (Italianate), and numerous hybrids. A parliamentarian of the old school, perhaps even well versed in Latin, adjourns a meeting *sine die* /sāyniy dāyiy/ only to have a junior colleague suggest that the 'correct' pronunciation is /sīney dīyey/.

Strictly speaking, of course, any attempt at 'correct' pronunciations of foreign terms can at best be only weak approximations. The linguistic contortions of a purist attempting to weave foreign sounds and intonations into the texture of an English sentence usually strike us as pedantic or affected. Although Julius Caesar may have pronounced his name something like /yúwliyus káysar/ and later Romans may have called him /chéyzar/, few speakers of English have place for anything other than the Anglo-Latin /júwl(i)yəs sízər/.

Three major systems of Latin pronunciation, outlined below, coexist in the English-speaking world. Each has its proper cultural and scholarly context. The *reformed* (or *new*, or *philological*, or *Roman*) pronunciation represents a modification to English speech habits of the reconstructed sounds of Latin as it must have been in the classical period. Philologists, classical historians, and most teachers of Latin employ this pronunciation in their professional activity. *Anglo-Latin* (or English) pronunciation, the form most commonly encountered in law, medicine, the natural sciences,

PRONUNCIATION OF LATIN

and in general usage, reflects the centuries of sound change that English has undergone. Although it may not possess the authenticity of linguistic reconstruction, the Anglo-Latin system enjoys the authority of a persevering and distinct cultural tradition. The *Italianate* pronunciation is derived from the pronunciation of Later Latin and is viewed as the standard in Roman Catholicism (including canon law), in music, in art history, and in medieval studies. Thus, a school master may leave the classroom, where he has just taught his pupils Latin imperatives including *venite* 'come' /weníyte/, go to chapel to rehearse with the choir the *Venite* /vənáydiy/ (Psalm 95 in Anglican morning prayer), and then sing the text in a Latin setting as /veyníytey èksultéymus . . ./. Each pronunciation is correct in its own context.

OUTLINE OF LATIN PRONUNCIATIONS

Letter	Reformed Philological	Italianate	Anglo-Latin
a	/a/		/a, æ, ə, o/
b	/b/		
c	/k/	/ch/ before /i, e/ /k/ elsewhere	/s, sh, z, k/
d	/d/		
e	/ey, e/		/e, ey, ə, i, iy/
f	/f/		
g	/ŋ/ before <i>n</i> /g/ elsewhere	/j/ before /i, e/ /g/ elsewhere /gn/ pronounced /ny/	/j, g/
h	/h/	/h/ or silent /k/ in <i>nihil, mihi</i>	/h/ or silent
i	/i, iy/		/i, iy, ay, ə/
j	/y/		/j/
k	/k/		
l	/l/		
m	/m/		
n	/n, ŋ/		
o	/o, ow/		/o, ə, ə, ow/
p	/p/		
qu	/kw/		
r	/r/		
s	/s/	/z/ between vowels /s/ elsewhere	/s, z, sh, zh/
t(h)	/t/	/ts/ before <i>i</i> plus vowels except after <i>s, t, x</i> /t/ elsewhere	/t, d, sh, ch/ <i>th</i> as /θ/
u	/u, uw, w/	/w/ after <i>q</i> or <i>ng</i> /uw/ elsewhere	/yuw, uw, u, yə, ə, i, w/

OUTLINE OF LATIN PRONUNCIATIONS

Letter	Reformed Philological	Italianate	Anglo-Latin
v	/w/		/v/
x		/ks/ x + /ch/ = /ksh/	/ks, gz, z, s/
y	/i, iv/	/iy/ or Gmn ü	/ay, iy, i, y/
z	/z/	/z, dz/	/z/

Attested forms in Anglo-Latin pronunciation sometimes fail to correspond in qualitative or accentual details with the forms we might expect on an etymological or systematic basis. Thus,

bona fide appears as /bównə fáydiy/ instead of */bónə fidiy/

industry appears as /índəstriy/ instead of */indástriy/

minor appears as /máynər/ instead of */mínər/, etc.

Numerous developments in the sound system of English have tended to override the expected forms. Analogies with sibling or quasi-sibling forms often keep doublets flourishing side by side:

licet 'it is permitted' as /láysət/ (cf. *license*) or /lísət/ (cf. *licit*)

debet 'one must' as /díybət/ or /débət/ (cf. *debit and credit*)

capias 'thou shouldst seize' as /kéypiyəs/ (cf. *cape*) or /kæpiyəs/ (cf. *capture*)

Language traditions usually resolve such conflicts in good time, favoring 'usage' over 'correctness', and then promptly create new conflicts.

TRANSCRIPTION

The transcription system employed for these listings is derived from one of the traditional phonemic analyses of American English (Trager-Smith). The values of the symbols vary with context, i.e., their specific pronunciations depend on the nature of the surrounding sounds. The pronunciation habits of a normal speaker of English will, however, in practically all cases supply the accustomed variants for that speaker's usage if the elements presented in the key are substituted in accordance with the sample indications. This system enables the speakers of a range of dialects to use one and the same transcription and yet produce a pronunciation natural to their speech. For this reason, in addition to the considerations given above concerning the treatment of foreign terms in English, sounds foreign to English have been represented by the customary English substitutes. Thus, for example, the voiceless velar fricative of German *Bach* would be rendered with a simple stop /k/ and French front rounded *eu* with /yuw/. Readers who wish to affect the foreign sounds will find guidance in their own linguistic experience or in the appropriate grammars and dictionaries. Similarly, readers who prefer pronunciations closer to the spelling than those presented here should feel free to substitute their preferences, e.g., /t/ for intervocalic, post-tonic *t*, various changes for unaccented /ə/, even to restoring the *t* in *often*. Finally, readers who already feel secure (or even superior) in their own renderings of words and phrases should retain these. The editors will always appreciate information on local variants and will welcome suggestions for improving the transcriptions.

The rubrics (sets of examples) under any given major symbol should always be applied *in order*. The earlier, more specific contexts take preference over the later, 'elsewhere' variant.

The special symbols

/æ/ (ash) /ð/ (edh) /ə/ (schwa) /ŋ/ (angma) /θ/ (theta)

appear respectively after

/a/ /d/ /e/ /n/ /t/

The reader will, of course, be aware that the transcription symbols do not necessarily have the same alphabetic values as in English. Rather, the symbols must be viewed as arbitrary signs, although in many cases their forms will aid the user in remembering and associating the key sounds and symbols.

GUIDE TO PRONUNCIATION SYMBOLS

a

/ay/ as in the bold portions of **aye, eye, I** /áy/ **lie** /láy/
buy, by, bye /báy/ **high** /háy/ **aisle, isle, I'll** /áyl/
idea /aydíə/

/aw/ as in **out** /áwt/ **how** /háw/

/ar/ as in **bark** /bárk/ **car** /kár/

/a/ elsewhere as in **father** /fáðər/. In many dialects identical with /o/.

æ

/æ/ as in **cat** /kæt/

b

/b/ as in **bill** /bīl/

ch

/ch/ as in **chill** /chīl/ **church** /chárch/ **nature** /néychər/
question /kwés(h)chən/

d

/d/ as in **dill** /dīl/ **odor** /ówdər/. In many dialects *better, bedder* may both appear as /bédər/.

ð

/ð/ as in **this** /ðís/ **smooth** /smúwð/ **thou** /ðáw/ not to be confused with /θ/

e

/ey/ as in **they** /ðéy/ **make** /méyk/ **sail, sale** /séyl/ **neigh, nay** /néy/
ehr/ as in **error** /éhrər/ **merry** /méhriy/. In dialects where **ehr/** is not distinct from **er/** the diacritic /h/ may be ignored.

/er/ as in **there, their** /ðer/ **air, e'er** /ér/

/e/ elsewhere as in **dell** /dél/ **bet** /bét/

ə

/əhr/ as in **current** /káhrənt/. In dialects where /əhr/ is not distinct from /ər/ the diacritic /h/ may be ignored.

/ər/ as in **murder** /márdər/ **were** /wár/ **mother** /máðər/
world /wárlð/ **whirr** /wír/

/ə/ /ə/ (with either primary or secondary stress) as in **but, butt** /bát/
blood /bléd/ **above** /əbáv/

/ə/ elsewhere (unstressed) as in **sofa** /sówfa/ **another** /ənəðər/

f

/f/ as in **fill, Phil** /fīl/ **rough** /réf/

GUIDE TO PRONUNCIATION SYMBOLS

g

/g/ always 'hard' as in **gall** /gól/ **Gaul** /góe/ **lag** /læg/

h

/h/ as silent diacritic in combinations /ehr, əhr, ihr, ohr/ and /ch, sh, zh/ otherwise as in **hill** /híl/ **mousehole** /máws-höwl/

i

/iy/ as in **machine** /məshíyn/ **be, bee, Bea** /bíy/ **each** /íych/
/ihr/ as in **irrigate** /íhrəgeyt/ **spirit** /spíhrət/. In dialects where
/ihr/ is not distinct from /ir/ the diacritic /h/ may be ignored.
/ir/ as in **pier, peer** /pír/ **hear, here** /hír/
/i/ elsewhere as in **si** /sít/ **pretty** /prídíy/ (or /párdíy/)

j

/j/ as in **Jill** /jíl/ **general** /jén(ə)rəl/ **edge** /éj/ **soldier** /sówljər/
carriage /kærəj/

k

/k/ as in **kill** /kíl/ **cool** /kúwl/

l

/l/ as in **Lill** /líl/

m

/m/ as in **mill** /míl/

n

/n/ as in **nil** /níl/
/ŋ/ as in **thing** /θíŋ/ **singer** /sínər/ **finger** /fíŋər/

o

/oy/ as in **boy** /bóy/ **noise** /nóyz/
/ow/ as in **know** /nów/ **sew, so, sow (seed)** /sów/
/ohr/ as in **foreign** /fóhrən/ **borrow** /bóhrow/. In dialects where
/ohr/ is not distinct from /or/ the diacritic /h/ may be ignored.
/or/ as in **bore, boar** /bór/ **course, coarse** /kórs/
/o/ elsewhere as in **rot, wrought** /rót/ **wall** /wól/ **ought, aught** /ót/
law /ló/. Some dialects merge /o/ and /a/ while others treat diphthongal spellings as /o/ but others as /a/.

p

/p/ as in **pill** /píl/ **lip** /líp/

r

/r/ as in **rill** /ríl/. See also the coloring function of /r/ in diphthongs
/ar, e(h)r, ə(h)r, i(h)r, o(h)r, ur/.

GUIDE TO PRONUNCIATION SYMBOLS

s

/sh/ as in **shill** /shīl/ **sugar** /shúgar/ **issue** /íshyuw/
/s/ as in **sill** /sīl/ **city** /sidiy/

t

/t/ as in **till** /tīl/ **hit** /hīt/

θ

/θ/ as in **thin** /θīn/ **thought** /θót/ not to be confused with /ð/:
ether /íyθər/
either /íyðər/

u

/uw/ as in **too, two** /túw/ **through, threw** /θrúw/ **crude** /krúwd/
/ur/ as in **jury** /júriy/ **poor** /púr/
/u/ elsewhere as in **put** /pút/ **good** /gúd/ **could** /kúd/

w

/w/ as in **will** /wīl/ **weather** /wéðər/. See also the function of /w/
in diphthongs /aw, ow, uw/.

y

/y/ as in **yes** /yés/ **union** /yúwnyən/. See also the function of /y/
in diphthongs /ay, ey, iy, oy/.

z

/zh/ as in **Doctor Zhivago** /dókdər zhəvágow/ **pleasure** /plézhər/
garage /garázh/ (in some dialects /°áj/)
/z/ as in **zoo** /zúw/ **rose, rows (lines)** /rówz/ **Xenophon** /zénəfòn/

primary (strong) stress secondary (weaker) stress
telegraphic /téləgráfək/
telegram /téləgrēm/

() 'may include or exclude'; optional elements

e.g. *new* /n(y)úw/ pronounced either /nyúw/ or /núw/
ratio /réysh(iy)ow/ pronounced /réyshiyow/ or /réyshow/

'and the rest that precedes/follows'; replaces identical parts of variant pronunciations

e.g. *alumni* /əlámny/°niy/ = /əlámny/ or /əlámniy/
inter alios /íntər éyl(i)yows/°æł°/
= /íntər éyl(i)yows/ or /íntər æł(i)yows/
habeas corpus /héybiyəs kórpəs/heybiyz°/
= /héybiyəs kórpəs/ or /héybiyz kórpəs/.

CONTENTS

	Page
Preface.....	III
The Pronunciation of Latin.....	VII
Outline of Latin Pronunciations.....	IX
Transcription.....	XI
Guide to Pronunciation Symbols.....	XII
Text of Definitions	1
Appendices	
Table of Abbreviations.....	1455
Constitution of the United States.....	1491
Time Chart of the United States Supreme Court.....	1505
U.S. Government Organizational Chart.....	1509
Table of Abbreviations.....	1455

BLACK'S DICTIONARY OF LAW FIFTH EDITION

A

A. The first letter in the English and most other alphabets derived from the Roman or Latin alphabet, which was one of several ancient Italian alphabets derived from the Greek, which was an adaptation of the Phoenician. The first letter in the Phoenician alphabet was called *aleph*, meaning "ox", which is also the meaning of the first letter in the Greek alphabet, *alpha*. *Alpha* and the second letter of the Greek alphabet, *beta*, were combined to form "alphabet," which is largely the same in different languages.

A in Latin and law Latin. Anglo-American law abounds in Latin and French words and phrases, and the use of A in these languages is important to the English-speaking lawyer. In Latin "A" was used both as an abbreviation and as a symbol. For example "A" was an abbreviation for "Aulus," a praenomen, or the first of the usual three names of a person by which he was distinguished from others of the same family; also for "ante" in "a.d.," *ante diem* (before the day), and for "anno" (year) in a.u.c., *anno urbis conditae* (the year of the building of the city) and in *anno ab urbe condita* (from the year of the building of the city). As a preposition, the form was either A, AB or ABS. A was used before consonants; ab was usually used before vowels, but sometimes before consonants, whereas abs was used before "c" or "t." The meaning was "from," "away from," "on the side of," "at," "after," "since," "by," "by means of," "out of," "with reference to," "in regard of," "near by," and "along." For example, *A fronte* in front; *ab tergo*, from behind; *a puertitia*, from youth; *ab sole orbe*, from or at sunrise; *ab intestato*, without a will, intestate. In law Latin, "a" means "by," "with," "from," "in," "of," and "on," and AB means "by," "from," and "in".

A in French and law French. In French A is a preposition, the meaning of which largely depends on context. It is usually translated as "into," "at," "to," "in," "by," "of," "with," "on," "from," "for," "under," "till," "within," "between," etc. It also changes into *au* and *aux* when combined with "the." A is also the third person, singular number, present tense, indicative mood of the verb *avoir*, (to have): *Il a* (he has). In law French "a" is used as a preposition meaning "at," "for," "in," "of," "on," "to," and "with."

The word "a" has varying meanings and uses. "A" means "one" or "any," but less emphatically than either. It may mean one where only one is intended, or it may mean any one of a great number. It is placed before nouns of the singular number, denoting an individual object or quality individualized.

The article "a" is not necessarily a singular term; it is often used in the sense of "any" and is then applied to more than one individual object. *Lewis v. Spies*, 43 A.D.2d 714, 350 N.Y.S.2d 14, 17. So under a statute providing that the issuance of "a" certificate to one carrier should not bar a certificate to another over the same route, a certificate could be granted to more than two carriers over the same route. *State ex rel. Crown Coach Co. v. Public Service Commission*, 238 Mo.App. 287, 179 S.W.2d 123, 127. But the meaning depends on context. For example, in *Workmen's Compensation Act*, on, or in or about "a" railway, factory, etc., was held not to mean any railway, factory, etc., but *the* railway, factory, etc., of the employer. Where the law required the delivery of a copy of a notice to husband and a copy to wife, the sheriff's return that he had delivered "a copy" to

husband and wife was insufficient. *State v. Davis*, Tex.Civ.App., 139 S.W.2d 638, 640.

AAA. Agricultural Adjustment Act; American Accounting Association; American Arbitration Association.

A.A.C. *Anno ante Christum*, the year before Christ.

A.A.C.N. *Anno ante Christum natum*, the year before the birth of Christ.

AALS. Association of American Law Schools.

A aver et tener /əy éyvar et ténər/. L. Fr. (L. Lat. *habendum et tenendum*.) To have and to hold. *A aver et tener a luy et a ses heires, a tous jours*,—to have and to hold to him and his heirs forever.

Ab. The eleventh month of the Jewish civil year, and the fifth of the sacred year. It answers to the moon that begins in July, and consists of thirty days. On the 24th is observed a feast in memory of the abolishment of the Sadducean law, which required sons and daughters to be equal heirs and heiresses of their parents' estates.

Ab, at the beginning of English-Saxon names of places, is generally a contraction of abbot or abbey; whence it is inferred that those places once had an abbey there, or belonged to one elsewhere, as Abingdon in Berkshire.

A.B. Able-bodied seaman. In English law a seaman is entitled to be rated A. B. when he has served at sea three years before the mast. In the United States the term "Able Seaman" is used. For the requirements of able seaman, see 46 U.S.C.A. § 672. Also *artium baccalaureus*, bachelor of arts. In England, generally written B. A.

A.B.A. American Bar Association.

Ab; Abr. Abridgment.

Ab abusu ad usum non valet consequentia /æb əbyúwz(y)uw əd yúwzəm non vələt kɔnsəkúwəns(ɪ)yə/. A conclusion as to the use of a thing from its abuse is invalid.

Abacist or abacista /æbəsístə/. A caster of accounts, an arithmetician.

Abaction /əbækshən/. A carrying away by violence.

Ab actis /æb əktəs/. Lat. An officer having charge of *acta*, public records, registers, journals, or minutes. An officer who entered on record the *acta* or proceedings of a court; a clerk of court; a notary or actuary. See "Acta." This, and the similarly formed epithets *à cancellis*, *à secretis*, *à libellis*, were also anciently the titles of a chancellor (*cancellarius*) in the early history of that office.

Abactor /əbæktər/. A stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from a person who steals a single animal or beast. Also called *abigeus*, *q.v.*

Ab agendo /æb ejéndow/. Disabled from acting; unable to act; incapacitated for business or transactions of any kind.

A.B.A.J. American Bar Association Journal.

Abalienate /əbéyliyəneyt/. To transfer interest or title.

Abalienatio /əbéyliyənéysh(ɪ)yow/. In Roman law, the perfect conveyance or transfer of property from one Roman citizen to another. This term gave place to the simple *alienatio* which is used in the Digest and Institutes, as well as in the feudal law, and from which the English "alienation" has been formed.

Abalienation /əbéyliyənéyshən/. In the civil law, a making over of realty, or chattels to another by due course of law.

Abamita /əbæmədə/. In the civil law, a great-great-grandfather's sister (*abavi soror*). Called *amita maxima*.

Abandon. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. To give up or to cease to use. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. It includes the intention, and also the external act by which it is carried into effect.

Abandonee. A party to whom a right or property is abandoned or relinquished by another. Applied to the insurers of vessels and cargoes.

Abandonment. The surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it. *State v. Bailey*, 97 N.J.Super. 396, 235 A.2d 214, 216. The giving up of a thing absolutely, without reference to any particular person or purpose, as vacating property with the intention of not returning, so that it may be appropriated by the next comer or finder. Intention to forsake or relinquish the thing is an essential element, to be proved by visible acts. The voluntary relinquishment of possession of thing by owner with intention of terminating his ownership, but without vesting it in any other person. *Dober v. Ukase Inv. Co.*, 139 Or. 626, 10 P.2d 356, 357. The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property.

"Abandonment" includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon. *Roebuck v. Mecosta County Road Commission*, 59 Mich.App. 128, 229 N.W.2d 343, 345. Generally, "abandonment" can arise from a single act or from a series of acts. *Holly Hill Lumber Co. v. Grooms*, 198 S.C. 118, 16 S.E.2d 816, 821.

Time is not an essential element of "abandonment", although the lapse of time may be evidence of an intention to abandon, and where it is accompanied by acts manifesting such an intention, it may be considered in determining whether there has been an abandonment. *Ullman ex rel. Eramo v. Payne*, 127 Conn. 239, 16 A.2d 286, 287.

"Abandonment" differs from surrender in that surrender requires an agreement, and from forfeiture, in that forfeiture may be against the intention of the party alleged to have forfeited.

See also **Desertion**; **Discharge**; **Release**; **Waiver**.

Actions, in general. Failure to prosecute or bring action within statutorily prescribed period (see **Statute of limitations**); failure to object to or submit jury instructions (Fed.R. Civil P. 51); failure to demand jury trial (Fed.R. Civil P. 38).

Adverse possession. To destroy continuity of adverse claimant's possession, there must be an intent to relinquish claim of ownership as well as an act of relinquishment of possession and mere temporary absence is not sufficient. *Bruch v. Benedict*, 62 Wyo. 213, 165 P.2d 561.

Assignment of error. Failure to object at trial. *Meyer v. Hendrix*, 311 Ill.App. 605, 37 N.E.2d 445, 446. Error not presented in brief. *Rouby v. United States*, C.C.A.Cal., 115 F.2d 49, 50. Error not supported by point, argument or authority. *Cone v. Ariss*, 13 Wash.2d 650, 126 P.2d 591, 593.

Children. Desertion or willful forsaking. Foregoing parental duties. *Wright v. Fitzgibbons*, 198 Miss. 471, 21 So.2d 709, 710. See also **Desertion**.

Contracts. To constitute "abandonment" by conduct, action relied on must be positive, unequivocal, and inconsistent with the existence of the contract. Abandonment is a matter of intent, *Lohn v. Fletcher Oil Co.*, 38 Cal.App.2d 26, 100 P.2d 505, 507, and implies not only nonperformance, but an intent not to perform which may be inferred from acts which necessarily point to actual abandonment.

Copyright. "Abandonment" of a copyright turns on state of mind of copyright proprietor and occurs whenever he engages in some overt action which manifests his purpose to surrender his rights in the work and to allow the public to enjoy it. *Rexnord, Inc. v. Modern Handling Systems, Inc.*, D.C.Del., 379 F.Supp. 1190, 1199.

Easements. To establish "abandonment" of an easement created by deed, there must be some conduct on part of owner of servient estate adverse to and inconsistent with existence of easement and continuing for statutory period, or nonuser must be accompanied by unequivocal and decisive acts clearly indicating an intent on part of owner of easement to abandon use of it. Permanent cessation of use or enjoyment with no intention to resume or reclaim. Intention and completed act are both essential. A mere temporary or occasional obstruction or use of an easement by the servient owner is not an "abandonment". *Gerber v. Appel*, Mo.App., 164 S.W.2d 225, 228.

Ground for divorce. Abandonment as cause for divorce must be willful and intentional without intention of returning, and without consent of spouse abandoned. This ground is commonly termed "desertion" in state divorce statutes. See also **Desertion**.

Inventions. The giving up of rights by inventor, as where he surrenders his idea or discovery or relinquishes the intention of perfecting his invention, and so throws it open to the public, or where he negligently postpones the assertion of his claims or fails to apply for a patent, and allows the public to use his invention. *Electric Storage Battery Co. v. Shimadzu, Pa.*, 307 U.S. 5, 613, 616, 59 S.Ct. 675, 681, 83 L.Ed. 1071.

Leases in general. To constitute an "abandonment" of leased premises, there must be an absolute relin-

quishment of premises by tenant consisting of act and intention.

Mineral leases. "Abandonment" consists of an actual act of relinquishment, accompanied with the intent and purpose permanently to give up a claim and right of property. A distinction exists between "abandonment" and "surrender" which is the relinquishment of a thing or a property right thereto to another, which is not an essential element of abandonment. Distinction also exists between elements of "abandonment" and those of estoppel. Neither formal surrender of oil and gas lease nor release is necessary to effectuate "abandonment; for example, failing to start work under the lease for more than 40 years, *Chapman v. Continental Oil Co.*, 149 Kan. 822, 89 P.2d 833, 834; breach of implied obligation to proceed with search and development of land with reasonable diligence, *Wood v. Arkansas Fuel Oil Co.*, D.C.Ark., 40 F.Supp. 42, 45; no drilling on leased land for more than two years, and failure to pay rentals, *Rehart v. Klossner*, 48 Cal.App.2d 40, 119 P.2d 145, 147; drawing of casing from well with no intention of replacing it, have all been held to constitute "abandonment". But there must be an intention by lessee to relinquish leased premises, *Carter Oil Co. v. Mitchell*, C.C.A.Okl., 100 F.2d 945, 950, 951; or an intention not to drill, *Carter Oil Co. v. Mitchell*, C.C.A.Okl., 100 F.2d 945, 950, 951. And ceasing of operations is not alone sufficient. *Fisher v. Dixon*, 188 Okl. 7, 105 P.2d 776, 777.

Office. Abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal relinquishment, while abandonment is a voluntary relinquishment through nonuser. It is not wholly a matter of intention, but may result from the complete abandonment of duties of such a continuance that the law will infer a relinquishment. It must be total, and under such circumstances as clearly to indicate an absolute relinquishment; and whether an officer has abandoned an office depends on his overt acts rather than his declared intention. It implies nonuser, but nonuser does not, of itself constitute abandonment. The failure to perform the duties pertaining to the office must be with actual or imputed intention on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Abandonment may result from an acquiescence by the officer in his wrongful removal or discharge, but, as in other cases of abandonment, the question of intention is involved. *McCall v. Cull*, 51 Ariz. 237, 75 P.2d 696, 698.

Patents. There may be an abandonment of a patent, where the inventor dedicates it to the public use; and this may be shown by his failure to sue infringers, sell licenses, or otherwise make efforts to realize a personal advantage from his patent. *Sandlin v. Johnson*, C.C.A.Mo., 141 F.2d 660.

Property. "Abandoned property" in a legal sense is that to which owner has relinquished all right, title, claim, and possession, with intention of not reclaiming it or resuming its ownership, possession or enjoyment. *Jackson v. Steinberg*, 186 Or. 129, 200 P.2d 376, 377, 378. There must be concurrence of act and intent, that is, the act of leaving the premises or