STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES

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VOLUME 3

P-Z

SWEET & MAXWELL

STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES

EIGHTH EDITION

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P–Z

P

P. See PER PRODUCTION.

PPI. "PPI" policy: see HONOUR.

PACIFIC. In a SLIP, "the Pacific" does not mean all ports on the west coast of North, Central, or South America; what it means in any particular case depends on the circumstances and course of dealing (*Royal Exchange Assurance v Tod*, 8 T.L.R. 669, where it meant all the ports on the west coast of South America).

PACK. "Pack of cards": see CARDS.
"Packing-up" goods: see POLISH.
See PRE-PACKED.

PACK OF HOUNDS. See *Burton v Atkinson*, 24 T.L.R. 498.

PACKAGE. See PARCEL.

Food and Drugs, etc. Act 1928 (c.31) s.6, which regulated a "package", "is irrespective of sale, or exposure for sale, and contemplates wholesale dealing or disposition of the entire package" (per Gibson J., *Maguire v Porter* [1905] 2 I.R. 151, cited also PARCEL); but tubs of margarine, open at the top and from which customers were served, were such "packages" (*McNair v Horan*, 91 L.T. 555). See hereon BRAND.

There have been a number of cases in recent years in which there has been argument as to the meaning of the word "package" where bills of lading have incorporated clauses, from the Hague Rules or from national Acts governing the carriage of goods by sea, limiting liability for loss or damage to a maximum sum in respect of each "package". In general, in the absence of any evidence of contrary intention, containers, rather than the individual parcels or cartons making up their contents, have been held to be packages (*The Alex* [1974] 1 Lloyd's Rep. 106; *The Kulmerland* [1973] 2 Lloyd's Rep. 428; *The Bischofstein* [1974] 1 Lloyd's Rep. 122; *The Container Forwarder* [1974] 1 Lloyd's Rep. 119). But where cartons of shoes were packed into containers it was held that the cartons rather than the containers were the packages because that seemed to be the intention of the parties (*The Tindefjell* [1973] 2 Lloyd's Rep. 253). Similarly, and for the same reason, where cartons of tins of ham were packed into a container, the cartons were the "packages" (*The American Legion* [1975] 1 Lloyd's Rep. 295), and, in a later case, it has been held that "package" must be given its ordinary meaning, and where cartons of electrical video and audio equipment were carried in containers, it was the cartons which were the "packages" (*The Aegis Spirit* [1977] 1 Lloyd's Rep.

93). An electrical transformer on wooden skids was not a "package" (*The Pacific Bear* [1974] 1 Lloyd's Rep. 359), nor was a yacht described as "unpacked" (*The Prinses Margriet* [1974] 1 Lloyd's Rep. 599). Tanks of latex were not "packages" (*The Pioneer Moon* [1975] 1 Lloyd's Rep. 199). Bundles of ingots of tin were "packages" (*The Fernland* [1975] 1 Lloyd's Rep. 461). Cartons of sewing machine heads were "packages" rather than the pallets to which they were strapped (*The Aleksander Serafimovich* [1975] 2 Lloyd's Rep. 346).

Where parcels of cargo were loaded in containers, it was the parcels and not the containers which constituted the relevant "packages" (*The River Gurara* [1997] 4 All E.R. 498).

Stat. Def., Weights and Measures Act 1985 (c.72) s.68.

Stat. Def., Medicines Act 1968 (c.67) s.133; Weights and Measures Act 1979 (c.45) s.14.

PACKAGING. " . . . the plastic carrier bags handed to customers in shops, whether free of charge or not, constitute packaging within the meaning of [Directive 94/62]" (*Plato Plastik v Caropack* [2004] 3 C.M.L.R. 661, ECJ, para.59).

PACKINGS. In the Annex to EEC Council reg.950/68 as amended by reg.333/83, "packings" included beer barrels, beer bottles and plastic crates for beer barrels, and this was held to apply even where those containers were to be returned to the seller of the beer in a non-EEC country (*Firma Albert Schmid v Hauptzollamt Stuttgart-West (No.357/87)* [1990] 1 C.M.L.R. 605).

PACKER. "This is a term well understood in London, and means a person employed by merchants to receive, and (in some instances) to select, goods for them from manufacturers, dyers, calenderers, etc. and pack the same for exportation" (Arch. Bank., (11th edn), 37).

PACKET. See LETTER; PACKAGE; PARCEL.

PACTIONAL. Pactional damage is the amount which, by their pact or agreement, the parties have agreed to as the compensation to be paid for the breach of the agreement between them—otherwise called liquidated damages; "pactional damage", as used by Halsbury C.: see *Clydebank Co v Yzquierdo y Castaneda* [1905] A.C. 6, cited LIQUIDATED DAMAGES.

PAID. "Paid", like "payment", is generally satisfied by something being given or done which is money's worth, e.g. of the payment of a legacy as in *Coombe v Trist* (1 My. & C. 69), and *Att-Gen v Loscombe* (29 L.J. Ex. 305); or of an "estate" for which at least 30 shall be "bona fide paid" so as to obtain a pauper settlement (Poor Relief Act 1722 (c.7) s.5) (*R. v Belford*, 32 L.J.M.C. 156).

But payment by settlement of account was not the kind of payment contemplated by Income Tax Act 1853 (c.34) s.53; life insurance premiums

deductible from income tax under that section had to be "paid" in the ordinary sense of that word, i.e. in cash; an allowance by an insurance company that part of a premium was to remain on credit on which the insurer was to pay interest, was not "paid" by the insurer, within the section, although as between him and the company it might be equivalent to payment (*Hunter v Att-Gen* [1904] A.C. 161).

Duties or other sums "really and bona fide paid and borne by the party to be charged" (Income Tax Act 1842 (c.35) Sch.E r.1): see *Hudson v Gribble*, 72 L.J.K.B. 247, cited DUTIES.

"Paid" (Prices and Incomes Act 1966 (c.33) ss.28(2), 29(4)) held to mean contracted to be paid as opposed to actually paid before the dates when the Act came into operation (*Allen v Thorn Electrical Industries* [1968] 1 Q.B. 487).

"Price paid" (Land Registration Rules 1925 (No.1093) r.247(1)) means the price which is payable and not the money which has actually been received by the transferor (*London and Cheshire Insurance Co v Laplagrene Property Co* [1971] 1 Ch. 499).

A cheque is only payment if duly honoured; therefore, allotment money on shares was not "paid to and received by the company" within Companies Act 1900 (c.48) s.4(1) by a cheque not paid on presentation, though afterwards made good (*Mears v Western Canada Pulp Co* [1905] 2 Ch. 353, discussing and distinguishing *Glasgow Pavilion v Motherwell*, 41 S.L.R. 73); cheques should be cleared before the allotment is made (*Mears*). See also *Re National Motor Mail Coach Co No.2* [1908] 2 Ch. 228, cited VOIDABLE, as to the remedy where s.4 had been disregarded and allotment had proceeded. See also *Burton v Bevan* [1908] 2 Ch. 240; *Re Orleans Motor Co* [1911] 2 Ch. 41, cited FLOATING SECURITY.

Interest on an overdraft added to the principal half-yearly in accordance with the usual practice of bankers was not "paid" to the bank within s.36(1) of the Income Tax Act 1918 (c.40), unless something was paid in to the account during the relevant period (*Paton v Inland Revenue Commissioners* [1938] A.C. 341, overruling to this extent *Inland Revenue Commissioners v Holder* [1931] 2 K.B. 81).

"Paid to the settlor by way of loan" (Finance Act 1938 (c.46) s.40(5)(a)): see *Potts' Executors v Inland Revenue Commissioners* [1951] A.C. 443 (money paid out by company on behalf of a settlor who was the sole governing director).

A testamentary direction that all legacies are to be "paid" free of legacy duty will be read as including the idea of satisfaction, transfer, or delivery, so that chattels, stock, or shares, the subject of a specific legacy, will, like payment of a pecuniary legacy, have to be delivered or transferred free of duty to the legatee (*Ansley v Cotton*, 16 L.J. Ch. 55; *Re Johnston, Cockerell v Essex*, 26 Ch. D. 538).

A testamentary direction that debts are to be "paid" (whether legacies are also mentioned or not) prevents the presumption that a legacy to a creditor is

in satisfaction of his claim (*Re Huish, Bradshaw v Huish*, 43 Ch. D. 260; disapproving *Edmunds v Low*, 26 L.J. Ch. 432).

Articles of a company which empower the declaration of dividends "to be paid" to members, do not authorise the issue of bonds for dividends (*Wood v Odessa Water Works Co*, 42 Ch. D. 636; *Hoole v Great Western Railway*, 3 Ch. 262).

A bill of sale "truly sets forth its consideration" (Bills of Sale Act (1878) Amendment Act 1882 (c.43) s.8) if the money therein stated to be "paid" did not actually pass in cash, but was a sum owing by the grantor to the grantee for unpaid purchase-money of the chattels therein comprised (*Ex p. Bolland*, 21 Ch. D. 543). See TRULY SET FORTH; NOW.

In a charter-party agreeing to pay the highest sum proved to have been paid, "paid" should be read as meaning "contracted to be paid" (*Gether v Capper*, 15 C.B. 701; see also PROVE).

So, in a re-insurance policy, "to pay as may be paid thereon" does not imply an actual payment by the re-insurer as a condition precedent, but means that payment under such re-insurance is to be regulated by that to be made on the original policy (*Re Eddystone Insurance* [1892] 2 Ch. 423, cited PAY).

"The proposer or his paid driver" in a third party policy of insurance meant that the driver was paid and driving for the proposer and not that the proposer paid him (*Bryan v Forrow* [1950] 1 All E.R. 294).

Stamp on security for money to be "lent, advanced, or paid" (Stamp Act 1815 (c.184) Sch.): see *Wroughton v Turtle*, 13 L.J. Ex. 57.

Section 338 of the Income and Corporation Taxes Act 1988 allows a company to deduct yearly interest "paid" by the company in an accounting period from its profits for the period for the purposes of determining liability to corporation tax. Company A lent money to a subsidiary Company B for the purpose of paying arrears of interest on a loan from A to B, so that the payments could be deducted from profits by a purchaser. The Revenue argued that the arrears of interest were not really "paid" since the only purpose of the series of circular transactions was to produce an allowable deduction for corporation tax. The House of Lords held that money was paid by B to A despite being paid out of money lent by A to B for that purpose. The *Ramsay* principle (*WT Ramsay Ltd v IRC* [1981] 1 All E.R. 865), which required courts in fiscal matters to take an overall view of the facts and not to be constrained by the apparent nature of individual parts of a pre-planned series of transactions, did not prevent "paid" from being given its ordinary legal meaning here (*Westmoreland Investments v MacNiven* [2001] 1 All E.R. 865, HL).

"Money paid" (Gaming Act 1892 (c.9) s.1) (see GAMING CONTRACT) did not apply to a revocable deposit (*O'Sullivan v Thomas* [1895] 1 Q.B. 698; *Burge v Ashley* [1900] 1 Q.B. 744; *Levy v Warburton*, 70 L.J.K.B. 708, cited GAMING CONTRACT). See IN RESPECT OF.

"Paid in full": see *Re Keet* [1905] 2 K.B. 666.

Compensation "paid under the Act": see *Thompson v North Eastern Marine Engineering Co* [1903] 1 K.B. 428, cited UNDER.

For the meaning of the phrase "to be paid in full by the K Coal Co" in a charterparty, see *Kimber Coal Co Ltd v Stone & Rolfe Ltd*, 95 L.J.K.B. 601.

"Commission paid by the client": see BY.

"Unless he shall have paid all such rates": see UNLESS.

"Valuable consideration actually paid": see VALUABLE; TENDER; PUNCTUAL.

"Paid his fare": see FARE.

"Paid by the intestate": see ADVANCEMENT.

See PAY; PAYABLE; PAYMENT; DULY PAID; I WILL SEE YOU PAID; RECEIPT; TO BE PAID; PUNCTUAL; TENDER.

PAID; PAYABLE. "As Lord Mustill pointed out in Charter Reinsurance Co Ltd v Fagan [1997] AC 313 at 384, the word 'paid' can be slippery. In the same case Lord Hoffmann demonstrated graphically the different uses to which the words 'pay' or 'paid' can be put: see page 391. Lord Hoffmann also emphasised that the meaning of a word will often depend on its context and, in some cases, the notion of a word having a 'natural' meaning is not very helpful. In paragraph [5] 'will be paid to you' can and probably does mean, in relation to the cash bonuses, that the relevant sum is to be credited to Mr Hopkin's bank account when it becomes 'payable' in accordance with paragraph [4]. But 'will be paid to you' cannot mean the same in relation to the Performance Shares, because there could be no payment of shares or cash until the end of the performance cycles. So Mr Leiper has to say that 'will be paid to you' in paragraph [5] means, in relation to the Performance Shares 'will be vested in you there and then', subject only to the conditions that follow. But there can be no warrant for that meaning, given the terms of paragraph [4], which specifically stipulates that the Performance Shares will vest over two sequential three-year performance cycles, in conformity with the pro-forma Awards and the terms of the EPP." (*Hopkin v Financial Security Assurance (UK) Ltd* [2011] EWCA Civ 243.)

See NET RENT PAYABLE.

PAID ANNUAL LEAVE. For a discussion of the implications of a requirement for paid annual leave, see *Robinson-Steele v RD Retail Services Ltd* (C-131/04) ECJ.

PAID BY THE EMPLOYER. For the purposes of the National Minimum Wage Regulations 1999, shares of a common fund of tips were not payments "paid by the employer" (*Annabel's (Berkeley Square) Ltd v Revenue and Customs Commissioners* [2009] EWCA Civ 361).

PAID OFFICE. "Paid office under the . . . District Council" (Local Government Act 1894 (c.73) s.46): see *Greville-Smith v Tomlin* [1911] 2 K.B. 9.

(Local Government Act 1933 (c.51) s.122.) The appointment of a person may be to a "paid office" notwithstanding that for twelve months after the appointment he has agreed to act without salary (*Att-Gen v Ulverston Urban DC* [1944] K.B. 242).

PAID UP. "Paid-up capital": see *Re Chelsea Water Works Co and Metropolitan Water Board* [1904] 2 K.B. 80, cited CAPITAL.

"Paid-up shares": see FULLY PAID UP.

PAIN. "Under pain of forfeiting body and goods": see FELONY.

" 'Paine fort et dure' is an especiall punishment for such as being arraigned for felony, refuse to put themselves upon the common tryall of God and the Countrey, and thereby are mute, or as mute in law" (Termes de la Ley); see 4 Bl. Com. 325–329, where the phrase is "Peine forte et dure". Abolished by Felony and Piracy Act 1772 (c.20).

" 'Pains of the law' is a well-known expression referring to common law pains—the pains which the law prescribes, and which the court, in its discretion, may impose in greater or less degree. But in the case of a statute, where the penalties are specifically described, it is certainly not a fair way to describe a penalty to ask that the 'pains of the law' shall be inflicted" (per Macdonald L.J.C., *Chisholm v Mackenzie*, 30 S.L.R. 604; see also *M'Leod v Tarras*, 30 S.L.R. 36; per Lord Wellwood, *M'Ewen v Abinger*, 31 S.L.R. 329).

PAINT. A convenant to "paint" premises at the end of a period does not include distempering (per Cave J., *Perry v Chotzner*, 9 T.L.R. 488). See *Reddy v Brodrick* [1901] 2 I.R. 328; REPAIR.

PAINTING. A "painting" is a pictorial work in colours the object and value of which are artistic. Hence original trade models and working designs, though carefully painted by hand and skillfully designed, were not "paintings" within the Carriers Act 1830 (c.68) (*Woodward v London & North Western Railway*, 3 Ex. D. 121). Nor (per Hawkins J., *Woodward*) would such models or designs have been "original paintings" within the Fine Arts Copyright Act 1862 (c.68); but see *Hildesheimer v Dunn*, 64 L.T. 452.

See PICTURE; ENGRAVING; COPY; PLATE.

PAIR. The word "pair" in a patent did not denote that there were identical members, rather that there were two members which suited or complemented each other (*Warheit v Olympia Tools Ltd* [2002] EWCA Civ 1161, CA).

PAIS. Assurance of land "by matter *in pais*, or deed; which is an assurance transacted between two or more private persons *in pais*, in the country; that is (according to the old common law) upon the very spot to be transferred" (2 BL. COM. 294).

Estoppel "by matter *in paiis*, as by liverie, by entry, by acceptance of rent, by partition, and by acceptance of an estate, as here in the case that Littleton

putteth (s.667); whereof Littleton maketh a special observation that a man shall be estopped by matter in the countrey, without any writing" (Co. Litt. 352A).

Trial by jury, "called also the trial *per pais*, or by the country" (3 Bl. Com. 349; 4 Bl. Com. 341).

PALACE. "Her Majesty's new palace at Westminster, commonly called the Houses of Parliament" (preamble to Houses of Parliament Act 1867 (c.40)) is not a royal residence, although the throne is in the House of Lords (*Coombe v De la Bere*, 22 Ch. D. 331–336).

PALE-BOTE. A synonym for hedge-bote (*Jenkins v Jenkins*, Noy 23); see BOTE.

PALLET. Stat. Def., Transport Act 1968 (c.73) s.71(8).

PALM. "Palm tree justice": "I understand that to be justice which makes orders which appear to be fair and just in the special circumstances of the case" (per Bucknill L.J., in *Newgrosh v Newgrosh*, 100 L.J. 525; see *Rimmer v Rimmer* [1953] 1 Q.B. 63).

PALMISTRY. "Is a kind of divination, practised by looking upon the lines and marks of the hands and fingers" (Jacob). See hereon *Monck v Hilton*, 2 Ex. D. 268. See also GYPSIES.

Cp. DECEIVE; FORTUNES.

PANEL. " '*Pannell*' is an English word, and signifieth a little part; for a pane is a part, and a pannell is a little part; as a pannell of wainscot, a pannell of a saddle, and a pannell of parchment wherein the jurors names be written and annexed to the writ. And a jury is said to be impannelled, when the sherife hath entered their names into the pannell, or little peece of parchment, *in pannello assisæ*" (Co. Litt. 158B). See also Termes de la Ley, *Pannell*; Cowel, *Panell*.

PANNAGE. All the definitions "agree that the right of pannage is simply a right granted to an owner of pigs (he is generally entitled to some land; as a rule it was granted to the owners of land of some kind who kept pigs) to go into the wood of the grantor of the right, and to allow the pigs to eat the acorns or beech mast which fell upon the ground. That is what the right has always been defined to be. The pigs have no right to take a single acorn or any beech mast off the tree, either by themselves or by the hands of those who drive them, who might reach them or knock them down. There is not even a right to shake the tree. It is only a right to eat those things which fell" (per Jessel M.R., *Chilton v London*, 7 Ch. D. 562; see also Termes de la Ley; Cowel; Jacob; Elph. 606). See PASTURES.

Pannagium, it has been said, sometimes means "a toll for the paving of a city or a causey, or a way" (*Webb's Case*, 8 Rep. 47 a).

"Pannagium is also money taken for the pawnage, or the pawnage itself" (*Shrewsburies Case*, 1 Bulst. 7).

As to the rateability of herbage and pannage, see *Bute v Grindall*, 1 T.R. 338; *Jones v Maunsell*, 1 Doug. 302.

PANNELL. See PANEL.

PANTOMIME. See *Wigan v Strange*, L.R. 1 C.P. 175, cited STAGE PLAY; DRAMATIC.

PAPER. "Paper" is a manufactured substance composed of fibres—whether vegetable or animal—adhering together, in from consisting of sheets of various sizes and of different thicknesses, used for writing or printing or other purposes to which such sheets are applicable (*Att-Gen v Barry*, 28 L.J. Ex. 211; see also *Coles v Dickinson*, 16 C.B.N.S. 604). Paper can generally be now used as a substitute for parchment (*Ex p. Carr*, 5 C.B. 496); and on and from January 1, 1901, paper (of a special kind) has been substituted for parchment for engrossments of wills for probate (45 S.J. 91).

"Nomination paper": see NOMINATION.

See SHIP PAPERS.

PAR VALUE. This phrase in a will meant par value at the time of the testator's death (*Re Fison's Will Trusts* [1950] Ch. 394).

PARALLEL. In the specification of a patent for a horse-clipping machine, "parallel" was construed in its popular sense of going side by side, and not in its purely mathematical sense (*Clarke v Adie*, 2 App. Cas. 423).

PARALYSIS. A declaration (founding a policy of accident insurance) that the assured has not had "paralysis, or fit of any kind", has been construed as meaning that kind of paralysis which is the result of disease and not of accident; and that therefore a local paralysis resulting in lameness and caused by a fall in infancy, was not meant (*Cruikshank v Northern Accident Insurance*, 33 S.L.R. 134, cited SLIGHT).

PARAMOUNT. " 'Paramount' is a word compounded of two French words (*par* and *monter*), and it signifies in our law, the highest Lord of the Fee" (Termes de la Ley, referring to Fitz. N.B. 135). See also Cowel; 2 BL. COM. 59, 91.

"I do not for my own part care about the expressions 'paramount intention' and 'the truth and honour of the settlement', or words of that character. To my mind, those expressions are not much more definite than a good many other propositions with regard to the construction of documents" (per Halsbury C., *Law Union & Crown Insurance v Hill*, [1902] A.C. 265).

The incorporation of "Paramount clause" into a charterparty brings into it all the accepted Hague Rules (*Nea Agrex SA v Baltic Shipping Co* [1976] Q.B. 933).

PARAPHERNALIA. A wife's paraphernalia (in which she takes a qualified ownership, see Wms. P.P. (18th edn) 611, 612) consist of her apparel and ornaments suitable to her station (2 Bl. Com. 435, 436; *Mangey v Hungerford*, 2 Eq. Ca. Abr. 156), including gifts from her husband (*Graham v Londonderry*, 3 Atk. 393; *Jervoise v Jervoise*, 17 Bea. 566). Such gifts were not affected by the Married Women's Property Act 1882 (c.75), but it was a question of fact whether gifts of ornaments from a husband to his wife were absolute or only as paraphernalia (*Tasker v Tasker* [1895] P. 1).

Cp. Separate Property; Separate Use; Pin Money.

PARAVAIL. " 'Paravaile' . . . signifies in our law, the lowest tenant of the fee, who is tenant to one that holdeth over of an other" (Termes de la Ley).

PARCEL. Paintings, exceeding the value of £10, laid upon one another without any covering or tie in a waggon which had sides but no top, were a "parcel or package" within Carriers Act 1830 (c.68) ss.1, 2 (*Whaite v Lancashire & Yorkshire Railway*, L.R. 9 Ex. 67).

"Packed parcel" as contrasted with "enclosure" or "enclosed parcel", for the purpose of carriage: see *Crouch v Great Northern Railway*, 11 Ex. 742.

"Parcel rates" of carriage: see *Parker v Great Western Railway*, 11 C.B. 545.

"Parcel" of margarine, within Food and Drugs, etc. Act 1928 (c.31) s.6 was synonymous with "portion" (per Madden J.), and included a slice cut off, in the purchaser's presence, from a duly branded "package" of margarine, e.g. a butt, and should have had its proper label (*Maguire v Porter* [1905] 2 I.R. 147). Several and separate pounds of margarine, each partially covered with paper, placed together in a shop window in a pyramidal group and touching each other, formed one "parcel", and were sufficiently labelled by a single label placed at the base of the pyramid so as to extend across the whole of the bottom portion of the lowest pieces (*Parkinson v McNair*, 93 L.T. 553). Cp. *McNair v Horan*, 91 L.T. 555, cited Package.

"Parcel" (Fertilisers and Feeding Stuffs Act 1926 (c.45) s.4(3)). Where fertiliser is kept by the manufacturers in one-cwt. bags arranged 20 at a time on pallets, then each full pallet is a "parcel" for the purposes of this section, and not each individual bag (*Soil Fertility v Breed*, 67 L.G.R. 162).

The "parcels" of a conveyance usually begin with the words "all that", and contain a description of the property conveyed: see 2 Bl. Com. Appendix ii.

" 'Parcella terræ', a small piece of land" (Cowel).

A declaration in a will that subsequent testamentary writings "shall be held and taken to be part and parcel" of the will is insufficient to extend to gifts in a codicil an exemption from duties which the will contains as regards the gifts in it (*Brown's Trustees v Gow*, 40 S.L.R. 62).

Stat. Def., Post Office Act 1953 (c.36) s.87(1).
See PACKAGE.

PARCEL OF LAND. "Parcel of land either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral", in Agricultural Holdings Acts: see *Re Lancaster and Macnamara's Arbitration* [1918] 2 K.B. 472; *Re Russell & Harding's Arbitration*, 67 S.J. 123; *Re Joel's Lease* [1930] 2 Ch. 359.

PARCENERS. "Many times parceners are called coparceners" (Co. Litt. 164B). As to description and division of parceners, see Co. Litt. 163A, et seq.; Termes de la Ley; Jacob.

"None are called parceners by the common law but females, or the heires of females, which come to lands or tenements by descent; for if sisters purchase lands or tenements, of this they are called joyntenants, and not parceners" (Litt. s.254); and co-heiresses who take as such under words of purchase are joint tenants (*Berens v Fellowes*, 56 L.T. 391; *Re Baker, Pursey v Holloway*, 79 L.T. 343; see also HEIR; RIGHT HEIRS).

Parceners take as tenants in common (2 Bl. Com. 188). But see Administration of Estates Act 1925 (c.23). See also *Owen v Gibbons* [1902] 1 Ch. 646, cited RIGHT HEIRS.

PARDON. Pardon is the remitting or forgiving of a crime; and is ex gratia Regis (Cowel; Jacob). See also *R. v Harrod*, 2 C. & K. 294; *Re Mosely* [1893] A.C. 138, cited CRIME.

A pardon is a remission of guilt; an amnesty is oblivion (*Ex p. Law*, 35 Georgia 296).

See FREE PARDON; THINK FIT.

PARENT. The ordinary sense of the word "parent " is father or mother (*Sibley v Perry*, 7 Ves. 530; see also ISSUE; 3 Jarm., (7th edn), 1568–1572); but it may mean any lineal ancestor (*Ross v Ross*, 20 Bea. 645: "I have tried hard to understand that part of the judgment in *Ross v Ross* that deals with the shifting meaning of the word 'parent' "; per Brett L.J., *Ralph v Carrick*, 48 L.J. Ch. 809). But "parent" in s.2 of the Intestates Moveable Succession (Scotland) Act 1855 (c.23) meant father, and did not include grandfather: see *Adams' Executrix v Maxwell* [1921] S.C. 418.

But see now the Family Law Reform Act 1987 (c.42) s.1, which lays down as a rule of construction that references to relationships such as parent and child, brother and sister are to be construed, unless a contrary intention appears, without regard to whether or not any person's mother or father were married to each other at any particular time. See also Legitimacy Act 1976 (c.31) s.1(1).

Where there is a condition in restraint of marriage without the consent of "parents", a surviving parent may give the consent (*Dawson v Oliver-Massey*,

2 Ch. D. 753; *Booth v Meyer*, 38 L.T. 125). See hereon *Re Brown*, 18 Ch. D. 61; CONSENT.

"The use of the word 'parent' in connection with 'issue' does not necessarily have the effect of cutting down the word 'issue' so as to mean 'children' " (per Lord Greene M.R., *Re Hipwell* [1945] 2 All E.R. 476).

The use of the words "parents share only" in a provision in a settlement imports a stirpital division (*Re Earle's Settlement Trusts, Reiss v Merryweather* [1971] 1 W.L.R. 1118).

"Parental dominion": parental dominion (influence) does not necessarily cease when the child marries and leaves home (*Lancashire Loans Ltd v Black* [1934] 1 K.B. 380).

As to gifts from a child to his parent, see UNDUE INFLUENCE. As to construction of parent in a will, see *Re Timson* [1916] 2 Ch. 362.

"Parent" (Immigration Act 1971 (c.77) s.2(1)(b)) does not include the father of an illegitimate child (*R. v Immigration Appeals Adjudicator, Ex p. Crew*, [1982] Imm. A.R. 94).

"Parent" (Social Security Act 1975 (c.14) s.38(6)). The natural mother of a child adopted by its grandmother is not the "parent" of the child for the purpose of this Act, even when, on the death of the grandmother, she takes the child into her home (*Secretary of State for Social Services v Smith* [1983] 1 W.L.R. 1110).

The unmarried cohabitee of a mother was not a "parent" for the purposes of the financial provisions for children contained in Sch.1 to the Children Act 1989 (c.41) (*J. v J. (A Minor, Property Transfer)* [1993] 2 F.L.R. 56). A person who had had his or her parental rights removed remained a parent for the purposes of the Children Act 1975 (c.72) until an adoption order was pronounced (*D. v Grampian Regional Council*, 1994 S.L.T. 1038).

(Adoption Act 1976 (c.36) s.16.) A putative father is not a "parent" for the purposes of this Act (*Re L. (a Minor) (Adoption)* [1991] 1 F.L.R. 171).

Once an adoption order has been made a natural parent is no longer a "parent" for the purposes of s.10 of the 1989 Act and accordingly would require leave to apply for a contact order under s.8 (*Re C. (A Minor) (Adopted Child: Contact)* [1993] 3 W.L.R. 85).

(Adoption Act 1976 (c.36) s.72 as amended by Children Act 1989 (c.41) Sch.10.) "Parent" under s.72(1) of the 1976 Act meant a parent with parental responsibility for the child under the Children Act 1989 unless the context otherwise required (*Re C. (A Minor) (Adoption: Parties)* [1995] 2 F.L.R. 483).

"Parent" meant biological parent rather than someone exercising a parental role (*R. v Governors of La Sainte Union Convent School, Ex p. T.* [1996] E.L.R. 98).

Before the enactment of the Human Fertilisation and Embryology Act 1990 (c.37), a male parent meant a biological parent (*Re M. (Child Support Act: Parentage)* [1997] 2 F.L.R. 90).

(Education Act 1993 (c.35) s.169.) A parent was one who had full-time care on a settled basis for a child so that a foster parent could be included in

the definition even though the local authority exercised parental responsibility for the child (*Fairpo v Humberside CC* [1997] 1 All E.R. 183).

Stat. Def., the term "parent" is now usually, although not exclusively, defined in statute by reference to the concept of parental responsibility under the Children Act 1989 (c.41) (particularly ss.2 and 3): see, for example, the Adoption Act 1976 (c.36) s.72.

Note also that "child" is sometimes defined as including adopted child, glossing the meaning of "parent" accordingly: see, for example, the Income and Corporation Taxes Act 1988 (c.1) s.832(5).

For a wide definition of "parent" (dealing expressly with the possibility of institutional parents) see Education Act 1996 (c.56) s.576.

In Acts pre-dating 1989, the term was commonly defined by way of including references to guardians and persons with custody: see, for example, the Education Act 1944 (c.31) s.114. And it was common to find references to illegitimate relationships, something which is not now necessary as a result of the Family Law Reform Act 1987 (c.42) s.1.

Difficult questions about parentage arise in relation to artificial insemination and other recent medical advances. For an early attempt to define "father" and mother" with this in mind, see the Human Fertilisation and Embryology Act 1990 (c.37) s.27 and 28.

Stat. Def., including a father not married to the mother at the time of birth but who has a residence order in respect of the child (s.67(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6)).

Stat. Def., including any person looking after a child (s.4(2) of the Care Standards Act 2000 (c.14)).

"The Children Act 1989 does not define the term 'parent' used in section 10(4)(a). There is also no definition of 'father' in CA 1989. We therefore have to look elsewhere for an applicable statutory definition. In this context, I respectfully agree (as did the judge) with the observations of Butler-Sloss LJ, as she then was, in a quite different context in *M v C and Calderdale MBC* [1993] 1 FLR 505, 509 that the natural and ordinary meaning of the word 'parent' is not fixed, but changes according to the context in which it is used. Mr. J is manifestly not E's natural parent. It is therefore necessary to see if he comes within the relevant statutory definition of parent contained in the relevant Act of Parliament. . . . Two Acts of Parliament define parenthood in the context of AID. The first is the Family Law Reform Act 1987 (FLRA 1987). The second is the Human Fertilisation and Embryology Act 1990 (HFEA 1990). The judge was addressed, and decided the case, on the basis that section 28 of HFEA 1990 applied. He was not invited to consider FLRA 1987, section 27. In this court, however, the consensus amongst counsel was that FLRA 1987 applied to the facts of this case, given the date on which AID must have occurred. In my judgment, for the reasons which follow, HFEA section 28 does not apply, and this case is governed by FLRA 1987." (*J. v C.* [2006] EWCA Civ 551 per Wall L.J. at [17]–[18].)

See *Re G. (Children)* [2006] UKHL 43 and [2007] CLJ 30–32.

Stat. Def., "means a parent of a young child, and includes any individual who—(a) has parental responsibility for a young child, or (b) has care of a young child" (Childcare Act 2006 s.2(2)).

Stat. Def., Child Poverty Act 2010 s.27; Equality Act 2010 s.212.

See CHILD; FATHER; MOTHER.

PARENT COMPANY. Stat. Def., Companies Act 1989 (c.40) s.21.

PARENTAL DOMINION. See PARENT.

PARENTAL DUTY. "Unmindful of his parental duties" (Custody of Children Act 1891 (c.3) s.3): see *Re O'Hara* [1900] 2 I.R. 244, cited ABANDONMENT.

PARENTAL RESPONSIBILITY. An order remanding a young person to local authority accommodation under the Children and Young Persons Act 1969 (c.54) s.23 did not confer parental responsibility on a local authority (*North Yorkshire CC v Selby Youth Court Justices* [1995] 1 W.L.R. 1).

PARENTAL RIGHTS. A stepfather of two children did not acquire "parental rights" within the meaning of the Guardianship of Minors Act 1971 (c.3) s.5(1) (*Re N. (Minors)* [1974] Fam. 40).

"Parental rights and duties": Stat. Def., Children Act 1975 (c.72) s.85; Child Care Act 1980 (c.5) s.3.

PARENTING ORDER. Stat. Def., Anti-social Behaviour Act 2003 s.26A inserted by Police and Justice Act 2006 s.24.

PARI PASSU. "Save as aforesaid, all debts provable under the bankruptcy shall be paid *pari passu*" (Bankruptcy Act 1869 (c.71) s.32—see now Bankruptcy Act 1914 (c.59) s.33(7)): includes bona fide volunteer debts, as well as those for valuable consideration (*Re Stewart, Ex p Pottinger*, 8 Ch. D. 621).

Although Companies Act 1862 (c.89) s.133(1)—see Companies Act 1948 (c.38) s.302—says that the assets of a company in voluntary liquidation are to be "applied in satisfaction of its liabilities *pari passu*", yet, as the Crown is not mentioned, its right to priority is not affected (*Re Henley*, 9 Ch. D. 469; *Re Oriental Bank*, 28 Ch. D. 643; but see *Re Regent Stores*, 38 L.T. 130).

As to the prerogative right of the Crown in a winding-up to payment of its debt in priority to all other creditors of the company, see *Re Webb & Co* [1922] 2 Ch. 369; affirmed, [1923] A.C. 647; *Re Winget Ltd*, 131 L.T. 240.

Since the passing of the Preferential Payments in Bankruptcy Act 1888 (c.62)—see Bankruptcy Act 1914 (c.59) s.33—*Re Henley & Co* has ceased to be directly applicable to the case of a winding-up of a company. See *Food Controller v Cork* [1923] A.C. 647. Debentures purchased or paid off, or (on paying off a loan thereon) re-acquired, by the company issuing them and re-issued by such company, are not entitled to rank "pari passu" with the