

M&E PROFESSIONAL DICTIONARIES

---

# A DICTIONARY OF LAW

Second Edition

**L.B. Curzon**

quity. *Aequus* = fair. 1. Impart  
2. "Any body of rules existing  
side of the original civil law, fo  
on distinct principles and cla  
incidentally to supersede the civ  
in virtue of a superior sanctity  
ent in those principles": Maine  
system of doctrines and proce  
which developed side by side wi  
Common law and statute law, h  
originated in the doctrines and  
endures evolved by the Cou  
advancery in its attempts to re

Macdonald & Evans

M & E PROFESSIONAL DICTIONARIES

# A DICTIONARY OF LAW

L. B. Curzon  
*Barrister*

SECOND EDITION

*In verbis non verba sed res et  
ratio quaerenda est: Jenk. Cent. 132*



MACDONALD AND EVANS

Macdonald & Evans Ltd  
Estover, Plymouth PL6 7PZ

First published 1979  
Second edition 1983

© Macdonald & Evans Ltd 1983

British Library Cataloguing in Publication Data

Curzon, L.B.

A dictionary of law.—2nd ed.—(M&E  
professional dictionaries)

1. Law—England—Dictionaries

I. Title

344.208'6      KD313

ISBN 0-7121-0440-2

ISBN 0-7121-0439-9 Pbk

This book is copyright  
and may not be reproduced in whole  
or in part (except for purposes of review)  
without the express permission  
of the publishers in writing

Phototypesetting by Brian Robinson,  
North Marston, Bucks  
Printed in Great Britain by  
Richard Clay (The Chaucer Press) Ltd,  
Bungay, Suffolk

## Preface to the Second Edition

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

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

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

English law is a living, and, therefore, a changing, thing. Recording its vocabulary at any moment is analogous to attempting to record the motion of a mountain torrent by the use of a still camera; one can record the object only at one “frozen moment in time”. In general, this dictionary has attempted to record legal terminology as it was in September, 1983; some later material was added at proof-reading stages. Parliament has increasingly allowed the use of delayed commencement provisions; so far as possible the text contains the law as it would be if all the affected statutes were fully in force.

I wish to record my thanks to Peter Drew of the editorial staff of Macdonald & Evans for his help in the preparation of the text, to Emlyn Williams, LL.B., for his careful perusal of the manuscript, and to the law teachers and students whose constructive criticisms of the first edition were extremely valuable.

## How to use this Dictionary

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

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

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

Abbreviations used for the titles of some Acts:

A.E.A.	Administration of Estates Act
A.J.A.	Administration of Justice Act
B.A.	Bankruptcy Act
B.Ex.A.	Bills of Exchange Act
B.N.A.	British Nationality Act
C.C.A.	Consumer Credit Act
Ch.A.	Children Act
C.J.A.	Criminal Justice Act
C.J.J.A.	Civil Jurisdiction and Judgments Act
C.L.A.	Criminal Law Act
Cos.A.	Companies Act
County C.A.	County Courts Act
C. & Y.P.A.	Children and Young Persons Act
D.P.A.	Domestic Proceedings and Magistrates' Courts Act
E.P.A.	Employment Protection Act
E.P.(C.)A.	Employment Protection Consolidation Act

F.L.R.A.	Family Law Reform Act
H.A.	Housing Act
H.S.W.A.	Health and Safety at Work, etc., Act
I.A.	Interpretation Act
J.A.	Judicature Act
L.C.A.	Land Charges Act
L.G.A.	Local Government Act
L.G.P.L.A.	Local Government Planning and Land Act
Lim.A.	Limitation Act
L.P.A.	Law of Property Act
L.R.A.	Land Registration Act
Mat. C.A.	Matrimonial Causes Act
M.C.A.	Magistrates' Courts Act
M.H.A.	Mental Health Act
O.P.A.	Offences against the Person Act
P. & A.A.	Perpetuities and Accumulations Act
P.C.C.A.	Powers of Criminal Courts Act
S.C.A.	Supreme Court Act
S.G.A.	Sale of Goods Act
S.L.A.	Settled Land Act
S.O.A.	Sexual Offences Act
S.S.A.	Social Security Act
T.C.P.A.	Town and Country Planning Act
Th.A.	Theft Act
Tr.A.	Trustee Act
T.U.L.R.A.	Trade Union and Labour Relations Act
W.A.	Wills Act

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

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

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

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

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

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

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

**abandonment.** 1. Surrender or relinquishing of a chattel, right or claim, with the intention of not reclaiming it. 2. An action in the High Court is considered abandoned when a notice of discontinuance (qv) is served: see O. 21. 3. In the case of a constructive total loss (qv) in marine insurance, the assured may abandon the subject-matter to the insurer and treat the loss as if it were an actual total loss, after giving notice of abandonment. 4. Abandonment of a child means leaving it to its fate: *Watson v Nikolaisen* [1955] 2 QB 286. See the C. & Y.P.A. 1963; Ch.A. 1975, Sch 4. 5. Abandonment of appeal is the withdrawal of appeal by leave of the court or on notice. See O. 59, r. 5; *R v Keating* [1982] Crim LR 228.

**abatement.** 1. Abatement of action is the bringing to an end or the suspending of an action: see O. 15, r. 7; O. 28, r. 11; O. 34, r. 9. 2. Abatement of debts refers to proportionate reduction of payments where a fund cannot meet claims. 3. Abatement of legacies (qv) refers to receipt by legatees of only a fraction, or none, of their legacies when assets are insufficient to pay legacies in full. Pecuni-

ary or general legacies abate proportionately before specific legacies.

4. Abatement of nuisances (qv) refers to their removal. Abatement notices may be served by a local authority in respect of a statutory nuisance. See the Public Health Act 1936, s. 93; Public Health (Recurring Nuisances) Act 1969; *Salford CC v McNally* [1975] 2 All ER 860.

**abdication.** Voluntary renunciation of an office. See, concerning Royal abdication, the Declaration of Abdication Act 1936 (concerning Edward VIII).

**abduction.** Wrongful leading away of a person. It is an offence under the S.O.A. 1956, s. 20, to abduct an unmarried girl under 16 from her parent or guardian. See *Fam Div Practice Note*, 22.7.80. See *R v Tegerdine* (1982) 75 Cr App R 298.

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

**ab extra.** From outside.

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

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

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

**ab intestato.** From an intestate. "Succession *ab intestato*" refers to succession to property of one who has not disposed of it by will. See INTESTACY.

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

**abode.** A place of residence (qv). Usually a question of fact rather than law; *Courtis v Blight* (1862) 31 LJCP 48. "A man's residence, where he lives with his family and sleeps at night, is always his place of abode in the full sense of that expression": *R v Hammond* (1852) 17 QB 772. See *R v Bundy* [1977] 2 All ER 382 and *R v Barnet LBC ex p Shah* [1983] 2 WLR 16.

**abode in UK, right of.** A person has such a right if he is a British citizen or a Commonwealth citizen who immediately before the commencement of the B.N.A. 1981 was a Commonwealth citizen having the right of abode in the UK by virtue of the Immigration Act 1971, s. 2(1)(d) and has not ceased to be a Commonwealth citizen in the meanwhile: Immigration Act 1971, s. 2, as substituted by the B.N.A. 1981, s. 39.

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

**abortion.** Expulsion of a human foetus before gestation is completed. Procuring an abortion was a felony, but under the Abortion Act 1967, a person is not guilty of an offence relating to abortion when a pregnancy is terminated by a registered medical practitioner, if two registered medical practitioners are of the bona fide opinion that continued pregnancy would involve risk to the woman's life, or injury to the physical or mental health of the woman or existing children of her family, or that there is a substantial risk that if the child were born it would be seriously handicapped by physical or mental abnormalities. See also the O.P.A. 1861, ss. 58, 59; *Royal College of Nursing v DHSS* [1981] AC 800. A husband has no enforceable right to prevent wife having a legal abortion: *Paton v Trustees of BPAS* [1978] 2 All ER 987.

**abrogate.** To repeal, annul, cancel, abolish.

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

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

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

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

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

**absolute decree.** See DECREE.

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

**absolute duties.** Duties to which there are no corresponding rights (eg, according to Austin, a subject's duties to the Crown).

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

**absolute privilege.** See PRIVILEGE, ABSOLUTE.

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



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

**abstracting electricity.** See ELEC-TRICITY, DISHONEST ABSTRACTION OF.

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

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

**abuse of process.** Tort based on damage caused by use of a legal process for some purpose other than that for which it was designed. See O. 18, r. 19; *R v Brentford Justices ex p Wong* [1981] QB 445; *Hunter v Chief Constable of W. Midlands* [1982] AC 529.

**ACAS.** Advisory, Conciliation and Arbitration Service (qv).

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

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

**acceptance.** 1. Acceptance of an offer to create a contract (ie, an assent to all the terms of the offer) must be unqualified, and may be by words or conduct. It must generally be com-

municated to the offeror and must conform with the offer. See *Adams v Lindsell* (1818) 1 B & Ald 681; *Hyde v Wrench* (1840) 3 Beav 334; *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256. Acceptance "subject to contract" means that the parties intend to be bound only when a formal contract is prepared and signed: *Chillingworth v Esche* [1924] 1 Ch 97. 2. Acceptance of goods under the S.G.A. 1979, s. 35, is deemed to have taken place when a person indicates to the seller that he has accepted them, or when they have been delivered to him and he does an act in relation to them which is inconsistent with the seller's ownership, or when he retains them without informing the seller after a reasonable time that he has rejected them. See CONTRACT; OFFER.

**acceptance, conditional.** 1. Acceptance of offeror's offer by offeree, subject to a stipulation being met. 2. In relation to a bill of exchange (qv), where payment by the acceptor is made subject to a condition. See the B. Ex. A. 1882, s. 19.

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

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

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

**access.** 1. The existence of opportunity of sexual intercourse between husband and wife. Evidence of impossibility of access may be given to rebut the presumption of legitimacy (qv). See the Mat.C.A. 1973, s. 48. 2.

Where one parent has been granted care and control of a child, the other parent or grandparent may be entitled to visit or look after child for periods as part of the right of access. See D.P.A. 1978, s. 14; *S. v S.* [1962] 1 WLR 445; *M. v M.* [1973] 2 All ER 81. For supervised access, see *Practice Direction* [1980] 1 All ER 1040. 3. The owner of adjoining land has right of access to a highway: *Rowley v Tottenham UDC* [1914] AC 95.

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

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

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

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

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

**accomplice.** One person associated with another, whether as principal or accessory (qqv), in the commission of an offence. Evidence of an accomplice may be admissible, but it is the judge's duty to warn the jury that it should be corroborated: *Davies v DPP* [1954] AC 378. See *R v Beck* [1982] 1 All ER 807.

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

**account.** Record of debts and credits, or items to be balanced. See the Cos.A. 1981, Sch. 1.

**accounting, false.** An offence under the Th.A. 1968, s. 17(1) "where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another, (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or (b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular." See *R v Solomons* [1909] 2 KB 980 for the falsification of taximeter reading; *R v Mallett* [1978] 1 WLR 820. See *A.-G.'s Ref. (No. 1 of 1980)* [1981] 1 WLR 34 and *Edwards v Toombs* [1983] Crim LR 43.

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

**accounting reference periods.** Company directors have a duty to prepare, lay and deliver accounts by reference to accounting reference

periods (usually 12 and, exceptionally, not more than 18 months), as set out in the Cos.A. 1976, s. 2.

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

**accounts, company.** See COMPANY ACCOUNTS.

**accounts, company, publication of.** See COMPANY ACCOUNTS, PUBLICATION OF.

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

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

**accretion.** Growth of land resulting from gradual and imperceptible accumulation by natural causes. See *A.-G. for S. Nigeria v John Holt & Co* [1915] AC 613; *Southern Centre of Theosophy v State of S. Australia* [1982] AC 706. See AVULSION.

**accumulation.** Process whereby interest is invested as it accrues. Under the L.P.A. 1925, s. 164(1) no person may direct accumulation of income for any longer period than the grantor's or settlor's life, or a term of 21 years from the death of the grantor, settlor or testator, or duration of minority of a person living or *en ventre sa mère* (qv) at the death of the grantor, settlor or testator, or duration of minority of person(s) who under limitations of the instrument directing accumulation would, for the time being, if of full age, be entitled to income directed to be accumulated. Under the P. & A.A. 1964, s. 13(1) additional periods are: 21 years from the date disposition was made; duration of minority of

any person in being at that date. The rule does not extend to accumulation of produce of timber or wood, provisions for payment of debts and raising of portions (qv).

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

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

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

**accused, non-appearance of.** If the prosecutor appears, but the accused does not, the court may proceed in his absence: M.C.A. 1980, s. 11(1). Where a summons has been issued, the court must be satisfied that it was served on the accused a reasonable time before the trial: s. 11(2). A person may not be sentenced to imprisonment in his absence: s. 11(3). See POST, PLEA OF GUILTY BY; PROSECUTOR, NON-APPEARANCE OF.

**accused, self-incrimination of.** See SELF-INCRIMINATION.

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

**acknowledgment.** Avowal or assent to. 1. Acknowledgment of debt. Where right of action has accrued to recover a debt and the person liable acknowledges claim, the right is deemed to have accrued on and not before the date of acknowledgment: Lim.A. 1980, s. 29(5). 2. Acknowledgment of signature to will (qv). Testator's signature must be made or acknowledged in the presence of two witnesses. See the W.A. 1837, s. 9; *Gaze v Gaze* (1843) 3 Curt 451; *Re Colling* [1972] 3 All ER 729.

**acquiescence.** Consent which is expressed or implied from conduct. "Quiescence under such circumstances as that assent may be reasonably inferred from it": *De Bussche v*

*Alt* (1880) 8 Ch D. 314. See LACHES.  
**acquittal.** Discharge from prosecution following verdict of not guilty or successful plea in bar (qv), etc. There is generally no appeal against acquittal unless under the appropriate statutory authority.

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

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

**action.** Formal exercise of a right of suing for that which is due. Usually commences by writ (qv) or other mode as prescribed by the Rules of Court. See the S.C.A. 1981, s. 151(1).

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

**action, circuity of.** See CIRCUITY OF ACTION.

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

**action, derivative.** See DERIVATIVE ACTION.

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

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

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

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

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

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

**actions, county court.** Under the County Court Rules 1981, the "ordinary action" was abolished. The two main classes of action are the "fixed date" action (in which a claim is made for any relief other than payment of money) and the "default" action (ie, any action that is not a "fixed date" one). See O. 3, r. 2.

**action, setting down of.** See SETTING DOWN OF ACTION.

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

**actions real and personal.** *Real* actions (*res* = thing) were brought at common law for the recovery of his land by a freeholder. See the Real Property Limitation Act 1833 by which they were, in general, abolished. *Personal* actions, eg, actions on contracts, derive from those relating to the enforcement of remedies against persons, in contrast to the recovery of things in real actions. See PROPERTY.

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

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

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

achieve desired result; A's aim must be legal.

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

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

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

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

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

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

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

[1970] AC 179; *Cubazucar v IANSA* [1983] Com LR 58. See PREROGATIVE, ROYAL.

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

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

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

**actual notice.** See NOTICE.

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

**actus reus.** A phrase referring to elements of the definition of an offence (save those which concern the condition of the mind of the accused) eg, his conduct, its results and surrounding circumstances. Thus, the *actus reus* of false imprisonment (qv) is X's unlawful restraint of Y. Should any element of the *actus reus* not be present, the offence has not been committed. The phrase derives from "a mistranslation of the Latin aphorism . . . Properly translated, this means, 'an act does not make a man guilty of a crime unless his mind be also guilty'. It is thus not the *actus* which is *reus*, but the man and his mind respectively": per Lord Hailsham in *Haughton v Smith* [1973] 3 All ER 1109. See *R v Miller* (1983) (*The Times*, 18.3.1983). See CRIME.

**ad colligenda bona.** To collect the goods. Grant of administration made to preserve property when no next of kin, creditor or other person applies for administration and the property is in danger of perishing. See *Re Clore* [1982] Ch 456. See GRANT.

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

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

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

**adduce.** To present, or bring forward, eg, evidence in support of some proposition or statement already made.

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

**ad hoc.** For this purpose.

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

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

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

**adjacent.** "Means close to or nearby or lying by: its significance or application in point of distance depends on the circumstances in which the word is used": *English China Clays v Plymouth Corporation* [1974] 2 All ER 239.

**adjective law.** That portion of the law

dealing with procedure and practice in the courts. See SUBSTANTIVE LAW.

**adjoining.** Touching. Includes "abutting on": Highways Act 1980, s. 329(1). See *Bucks CC v Trigg* [1963] 1 WLR 155.

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

**adjournment of trial.** The postponing of a trial of action by a judge who thinks it expedient "in the interest of justice" to adjourn "for such time, and to such place, and upon such terms, if any, as he thinks fit": O. 35, r. 3. See *Re Yates' Settlement Trusts* [1954] 1 WLR 564. For adjournment of a preliminary enquiry or a summary trial, see the M.C.A. 1980, ss. 5, 10.

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

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

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

**ad litem.** For the suit. A *guardian ad litem* may be appointed by the court

to defend an action on behalf of an infant (qv): Ch.A. 1975, s. 20; O. 80, rr. 2, 3; see the Child Care Act 1980, s. 7. A *grant ad litem* is made where representatives will not act and the estate must be represented in proceedings: *Re Simpson* [1936] P 40.

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

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

**administration action.** Action to obtain administration of the estate of a deceased person. Personal representative or any other person interested in the estate may bring proceedings by originating summons or writ. See the S.C.A. 1981, s. 117.

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

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

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

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

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

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

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

**administrative tribunals.** Tribunals outside the hierarchy of courts exercising jurisdiction conferred by Parliament, eg, Rent Tribunals. Chairmen are generally selected from a panel and are appointed by the Lord Chancellor: Tribunals & Inquiries Act 1971, s. 7. The Council on Tribunals reviews their working. They are controlled generally by the issue of prerogative orders, ie, certiorari, mandamus, prohibition (qqv).

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

**administrator of an estate, duties of.** To collect, get in and administer real and personal estate of the deceased; to exhibit on oath a full inventory of the estate and render an account of its administration to the court; to deliver up to the High Court, when required to do so, the grant of probate or administration: A.E.A. 1925, s. 25, as substituted by the A.E.A. 1971.

**Admiralty Court.** A part of the QBD, consisting of puisne judges (qv) of the High Court, assisted by nautical assessors (the Elder Brethren of Trinity House). See the S.C.A. 1981, ss. 6, 20-24; O. 75; and the C.J.J.A. 1982, s. 26. It has instant jurisdiction (concerning civil cases arising, eg, out of collisions) and prize jurisdiction (concerning seizure of enemy ships and cargoes).

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

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

**admissibility of evidence.** Evidence is receivable by the court only if both relevant and admissible. In general, all evidence relevant to an issue is admissible; all that is irrelevant or insufficiently relevant ought to be excluded. See, eg, *Hollington v Hawthorn & Co Ltd* [1943] KB 587. Must be distinguished from relevance (qv), which is based on that which is

logically probative whereas admissibility refers to that which is legally receivable whether logically probative or not. "[The terms relevance and admissibility] are frequently, and in many circumstances legitimately, used interchangeably; but I think it makes for clarity if they are kept separate, since some relevant evidence is inadmissible and some admissible evidence is irrelevant . . .": *per* Lord Simon in *DPP v Kilbourne* [1973] AC 729. *See* EVIDENCE.

**admissions.** 1. In civil proceedings, those facts (or part of a case) admitted, or taken to be admitted by parties to an action. An admission may be made in answer to interrogatories (qv) or by the pleadings (qv); or on special application made during proceedings. *See* O. 27; Civil Evidence Act 1968, s. 9. 2. In criminal proceedings, statements made voluntarily by the accused admitting the offence, eg, by plea of guilty or confession. *See* the C.J.A. 1967, s. 10 (provision for formal admissions at or before trial); *R v Best* [1909] 1 KB 692. 3. "Admissions by conduct" may be implied from a party's conduct. *See*, eg, *R v Cramp* (1880) 14 Cox CC 390. *See* ADMISSIONS OF FACT, JUDGMENT ON; CONFESSION.

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

**admissions of fact, judgment on.** Where, by his pleadings, a party makes admissions of facts, any other party may make an application to the court for judgment on those admissions: *see* O. 27, r. 3.

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

**adoption.** 1. Incorporation of international law into municipal law, eg,

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

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

**adoption, freeing child for.** Where on the application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that he freely and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or his agreement to the making of the order can be dispensed with, the court may make an order declaring the child free for adoption: Adoption Act 1976, s. 18(1).

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

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



**adoption order, convention.** An adoption order made by the High Court under the Adoption Act 1976, relating to the Hague Convention on the Adoption of Children (Cmnd 2613). See the D.P.A. 1978, s. 74.

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

**adoption probationary period.** Where the applicant or one of the applicants (for adopting a child) is a parent, step-parent or relative of the child, or the child was placed with the applicants by an adoption agency or in pursuance of a High Court order, an adoption order will not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them: Ch.A. 1975, s. 9(1). See also the 1975 Act, ss. 9(2), 18(1), 87(3); and the Adoption Act 1976, s. 13.

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

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

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

**adoptive Acts.** Acts which become effective in a local authority's area only after formal adoption by that authority. See, eg, the provisions

relating to licensing systems in the Private Places of Entertainment (Licensing) Act 1967.

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

**adult.** Person of full age (18). See *R v Tottenham Juvenile Court, ex p ARC* [1982] 2 WLR 945. See MAJORITY.

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

**adultery.** An act of voluntary sexual intercourse (which need not be completed) between two persons not married to each other, but one or both of whom are married at the time of the act to a third person. See *Sapsford v Sapsford* [1954] 2 All ER 373. If the respondent has committed adultery and the petitioner finds it impossible to live with the respondent, it may be evidence of irretrievable breakdown of a marriage, which is now the sole ground for the presentation of a divorce petition: Mat.C.A. 1973, s. 1. Adultery by a wife which has not been condoned or connived at, is a bar to an application for maintenance under Mat.C.A. 1973, s. 27, as amended. See *Gray v Gray* [1976] Fam 324. The onus of proof is on the petitioner. Damages for adultery cannot now be claimed: Law Reform (Misc. Provs.) Act 1970.

**adultery, proof of.** Modes of proof include: confessions; respondent's previous convictions (see the Civil Evidence Act 1968, s. 11); finding of adultery and paternity in earlier civil proceedings; results of blood tests concerning paternity (see the F.L.R.A. 1969, s. 20(1)). The standard proof for adultery seems to be proof on the balance of probabilities.

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