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|---|---|---|
| Webster | Webster, Patent Cases | 1601–1855 |
| Wend. | Wendell's New York Reports. | |
| Wheaton | Wheaton's United States Supreme Court Reports. | |
| White and Tudor | White & Tudor's Leading Cases in Equity. | |
| Wight. | Wightwick | 1810–1811 |
| Wilberforce | Wilberforce on Statute Law. | |
| Willes | Willes | 1737–1758 |
| Wils. Ch. | Wilson's Chancery Reports | 1818–1819 |
| Wils. Ex. | Wilson's Exchequer Reports | 1805–1817 |
| Wils. K.B. | Wilson's King's Bench Reports | 1742–1774 |
| Wilson & Shaw | Wilson and Shaw's Scottish Appeals | 1825–1834 |
| Winch | Winch | 1621–1625 |
| Wis. | Wisconsin Reports. | |
| Wms. Bank. | Williams on Bankruptcy. | |
| Wms. Exs. | Williams on Executors and Administrators. | |
| Wms. P.P. | Williams on Personal Property. | |
| Wms. R.P. | Williams on Real Property. | |
| Wms. Saund. | Saunder's Reports, with notes by Williams | 1666–1672 |
| Wms. & Bruce | Williams and Bruce's Admiralty Practice. | |
| Wood | Wood on Mercantile Agreements. | |
| Wood | Wood, Tithe Cases | 1650–1798 |
| Woodf. | Woodfall on Landlord and Tenant. | |

## Y

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| Y.B. | Year Books of Reports of Cases | 1307–1537 |
| Y. & C. Ch. | Younge and Collier, Chancery Cases | 1841–1843 |
| Y. & C. Ex. | Younge and Collier, Exchequer Cases | 1834–1842 |
| Y. & J. | Yannge and Jervis | 1826–1830 |
| Yate Lee | Yate Lee, on Bankruptcy. | |
| Yelv. | Yelverton | 1602–1613 |
| Younge | Younge | 1830–1832 |



# A

**A.** Despite s.6(c) of the Interpretation Act 1978 (c.30) ("In any Act, unless the contrary intention appears, . . . words in the singular include the plural and words in the plural include the singular") the word "a" used in a statute will sometimes be allowed to carry with it an implication of singularity. Hence—

> "The claimant's construction of the first sentence of paragraph (2) (the first covenant) essentially involves reading the words 'other than those of or in connection with a private dwelling house' as meaning 'other than for residential purposes'. The defendant's reading of the first covenant means that the plot as a whole cannot be used other than for or in connection with a single private dwelling house. . . . I have reached the conclusion that the defendant's interpretation of the first covenant is to be preferred. First, as a matter of ordinary language, the indefinite article 'a' tends to carry with it the concept of singularity as opposed to plurality. Restriction to use as 'a private dwelling house' appears to me, at least in the absence of contextual or factual contra-indications, to mean restriction to a single dwelling house." (*Crest Nicholson v McAllister* [2003] 1 All E.R. 46 at 51, Ch.)

(Note that the first instance judgment in *Crest Nicholson* was overturned by the Court of Appeal [2004] EWCA Civ 410 but that Chadwick L.J.'s judgment expressly confirmed (para.53) the first instance judge's approach to the construction of the covenant.)

License to fish with *a* rod and line does not justify the use of more than one rod (*Cambridge v Harrison* 64 L.J.M.C. 175). See also *Re Whitely, Bishop of London v Whitely* [1910] 1 Ch. 600.

A house in multiple occupation in several parts is still *a* house within Housing Act 1985 (c.50) ss.352 and 398 (*Okereke v Brent LBC* [1967] 1 Q.B. 42).

A grant of a right of sporting on land gives only a concurrent right but the right would give it exclusively (*Sutherland v Heathcote* [1892] 1 Ch. 475).

Does not usually mean all (*Burt v Gray* [1891] 2 Q.B. 98).

A trustee does not mean an express trustee for the purposes of the Administration of Estates Act 1925 (c.23) s.49 (*Re Lacey* [1899] 2 Ch. 149).

Meaning some (*R. v Riley,* 59 L.J.M.C. 122).

Meaning any (*Re Sanders, Ex p. Sergeant,* 54 L.J.Q.B. 331). See also *King v Smith* [1900] 2 Ch. 425.

Meaning the (*R. v Snagg* [1894] 2 Q.B. 440 and *Wrigley v Whitaker & Sons* [1902] A.C. 299).

See also AN; ANY; EVERY; ONE; THE.

**AWAY.** See LEAD AWAY; TAKE AWAY.

**AWAY-GOING.** A landlord's obligation to take over, e.g. sheep, at his tenant's "away-going", refers to the expiry of the tenancy by effluxion of time, and is not operative if the tenancy be rightfully determined under a clause of forfeiture (*Stewart v Breadalbane*, 41 S.L.R. 373; nom. *Breadalbane v Stewart* [1904] A.C. 217, commenting on *Pendreigh's Trustees v Dewar*, 8 S.L.R. 671).

See EXPIRATION.

**AXLE.** Stat. Def., Finance Act 1982 (c.39) Sch.5 para.15(1).

# B

**BACCARAT.** "Baccarat, as ordinarily understood in England in 1894, comprised baccarat in both forms", i.e. (1) baccarat *chemin de fer*, and (2) baccarat *banque*—and either is a breach of an agreement prohibiting "baccarat" (*Fairtlough v Whitmore*, 64 L.J. Ch. 386).

**BACHELOR.** A divorced man should not be described as a "bachelor" (*Gallaghan v Gallaghan*, 9 F.L.R.).

**BACK FREIGHT.** See *The Cargo ex Argos*, L.R. 5 P.C. 134. See thereon 1 Maude & P. 364, n. (c) (*Gunnsstad v Price*, L.R. 10 Ex. 65).

**BACK ROAD.** Paving notices served on owners of property on "back roads" was held to be valid although two of the roads concerned were "cross roads" (*Blackburn v Sanderson* [1902] 1 K.B. 794).

**BACK STREET.** See *Shiel v Sunderland*, 30 L.J.M.C. 215.

**BACK TO BACK.** "Back-to-back houses" (Housing Act 1957 (c.56) s.5(1)) mean houses built in back-to-back terraces so that each house, other than those at the end, have only one outside wall. Thus houses built in blocks of four, both back-to-back as well as side-to-side, but each having two outside walls, were held not to be "back-to-back" within the meaning of this section (*Chorley BC v Barratt Developments* [1979] 3 All E.R. 634).

**BACKBARE.** An offender against the Forest Laws taken "with the manner", e.g. "back-bare", was "where a man hath killed a wild-beast in the forest and is found carrying him away" (Manwood, *Hunting*).

**BACKBERIND.** " 'Backberind theefe' is a theefe that is taken with the manner, i.e. having that found upon him (being followed with the hue and crie) which he hath stolen, whether it be mony, linnen, woollen, or stuffe" (Termes de la Ley). See further Cowel.

**BACKWARDATION.** The opposite of CONTINUATION.

**BACKWARDS.** "Forwards and backwards": see FORWARD.

**BAD.** A "bad title" is a title which a purchaser cannot be compelled to take (*Scott v Alvarez* [1895] 2 Ch. 603).

**BAD CHARACTER.** As to the nature and admissibility of evidence as to bad character in relation to criminal proceedings, see now Ch.1 of Pt 11 of

the Criminal Justice Act 2003, replacing the earlier common law (see s.99(1)—"The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished"). As to the application of the new rules, see *R v Bradley* [2005] EWCA Crim 20.

Stat. Def., Criminal Justice Act 2003 (c.44) s.98.

Circumstantial evidence of involvement in offences can amount to evidence of bad character for the purposes of s.101 of the Criminal Justice Act 2003 (*R v Wallace* [2007] EWCA Crim 1760).

See To Do With The Alleged Facts Of The Offence.

**BAD FAITH.** "Bad faith" means dishonesty, though not necessarily for a financial motive, and did not cover an honest, though mistaken, taking into consideration of a factor which was in law irrelevant (*Cannock Chase DC v Kelly* (1977) 36 P. & C.R. 219).

The concept of bad faith is more appropriate in the commercial context than in criminal matters, where it is likely to confuse (*Att-Gen's Reference (No.3 of 2003)* [2004] 3 W.L.R. 451, CA).

In determining whether an application to register a trade mark was made in bad faith for the purposes of s.3(6) of the Trade Marks Act 1994, the court has to consider all the relevant circumstances including the applicant's mental state. The test is a combination of the subjective and the objective, resulting in a standard of acceptable commercial behaviour amongst unreasonable and relevantly experienced persons (*Harrison v Teton Valley Trading Co* [2004] 1 W.L.R. 2577, CA).

**BADGER.** Stat. Def., Protection of Badgers Act 1992 (c.51), s.14.

**BADGER SETT.** Section 14 of the Protection of Badgers Act 1992 (c.51) defines a badger sett as "any structure or place which displays signs indicating current use by a badger". The Divisional Court found that in the context of a penal provision the term badger sett and its statutory definition was to be given a confined meaning. In particular, a badger sett was not to be regarded as including all the area up to and including the surface area above the system of tunnels and chambers. It included the tunnels and chambers themselves and the areas immediately outside the entrance holes to those tunnels and chambers, and it might also apply in other circumstances such as where badgers occupied coverts or disused sheds as a shelter or refuge (*DPP v Green* [2001] 1 W.L.R. 505, QBD).

**BAG.** A cargo of grain in bags which had split in the hold is a bag cargo and not a bulk cargo (*The Aldington Court* [1932] P. 21).

**BAGGAGE.** Baggage, means such articles of necessity, or personal convenience, as are usually carried by passengers for their personal use (*Boman v Maxwell*, 9 Humph. 624) and is, semble, synonymous with personal luggage, and, in the United States, is the word generally used for what in England is more frequently called personal luggage. "By 'luggage' we are to understand such articles of necessity or personal convenience as are usually carried by passengers for their personal use; and not merchandise or other valuables, although carried in the trunks of passengers, which are not designed for any such use but for other purposes, such as sale and the like" (Story on *Bailments*, s.499, which is acutely examined by E. H. Bennett in a note to the 5th edn; the note is appended to *Phelps v London & North Western Railway*, 19 C.B.N.S. 326–330, where and at 475 of 9th edn of Story the American decisions on "baggage" will be found).



"Baggage of passengers" (Customs Consolidation Act 1876 (c.36) s.66) did not include merchandise (*Buckland v R.* [1933] 1 K.B. 767).

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

**BAGGAGE CHECK.** A small box on a document issued as a combined passenger ticket and baggage check, in which the carriers can enter the number of packages concerned, is a "baggage check" within the meaning of the Carriage by Air Act 1961 (c.27) Sch.1 art.4(1)(2), notwithstanding that it is left blank. The fact that it was left bank was no more than an "irregularity" within art.4(2) (*Collins v British Airways Board* [1982] 2 W.L.R. 165).

**BAIL.** "The usual meaning of bail, whether in ordinary language or in statute. . ., is the temporary release of a person pending a further decision of a court (or administrative body)" (*G v Home Secretary* [2004] 1 W.L.R. 1349 at 1356, CA per Pill L.J.).

" 'Baile' is when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law baileable, offereth surety to those which have authority to baile him, which sureties are bound for him to the Kings use in a certaine summe of money, or body for body, that he shall appeare before the Justices of Goale-delivery at the next Sessions, &c. Then upon the bonds of these sureties, as is aforesaid, he is bailed—that is to say, set at liberty untill the day appointed for his appearance.

"Master Manwood (Pt 1, of his Forest Law, 167), maketh a great difference between baile and mainprise, in these words—'And note, that there is a great diversity betweene baile and mainprise, for hee that is mainprised is alwayes said to be at large and to goe at his owne liberty out of ward, after hee is put to mainprise, untill the day of his appearance, by reason of common summons, or otherwise. But it is not so where a man is put to baile by foure or two men, . . . for there hee is alwayes accounted by the law to bee in their ward and custody for the time; and they may, if they will, hold him in ward or in prison till that time, or otherwise at their will: so that he that is bayled shall not be said, by the law, to be at large or at his owne liberty' " (Termes de la Ley). See further 2 Hale P.C., c.15. Cp. Mainprize.

An agreement to indemnify one who "bails" another is invalid (*Consolidated Exploration Co v Musgrave* [1900] 1 Ch. 37).

"Court decided not to grant . . . bail" (Bail Act 1976 (c.63) Sch.1 Pt IIA para.2 as substituted by the Criminal Justice Act 1988 (c.33) s.154). Where justices, in accordance with Sch.1 Pt I para.5 of the 1976 Act, came to the conclusion that the defendant "need not be granted bail" because it had not been practicable to obtain sufficient information to enable them to decide whether or not to grant it, that was not a decision "not to grant bail" within the meaning of para.2 (*R. v Calder Justices, Ex p. Kennedy, The Times*, February 18, 1992).

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

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

"Bailee", "Bailor": Stat. Def., Supply of Goods and Services Act 1982 (c.29) s.18; Police and Criminal Evidence Act 1984 (c.60) s.47.

**BAILIFF.** " 'Baylife', is an officer that belongeth to a manor, to order the husbandrie, and hath authority to pay quit rents issuing out of the manor, fell trees, repair houses, make pales, hedges, distrain beasts doing hurt upon the ground, and divers such like. This officer is he whom the ancient Saxons called a reeve" (Termes de la Ley).

" '*To the bailife* (a le baily)', s.79, Litt. This word bailie, as some say, commeth of the French word *baylife*, in Latin, *ballivus*; but in truth baily is an old Saxon word, and signifieth a safe keeper or protector, and *baile* or *ballium* is safe keeping or protection: and thereupon we say, when a man upon surety is delivered out of prison, *traditur in ballium*, he is delivered into bayle, that is, into their safe keeping or protection from prison; and the sheriffe that hath *custodiam comitatus* is called *ballivus*, and the county *balliva sua*" (Co. Litt. 61B). See BAIL; Cowel; Jacob.

"Bailiff" of a court (Inferior Courts Act 1844 (c.19) s.8) means one who receives his appointment from the judge of the court (*Warrant v Baker*, 14 C.B. 199).

In another sense, similar to its primary meaning, "bailiff" means, a person having the care of property and accountable for the uncertain profits thereof (Co. Litt. 172A; Com. Dig. "Accompt" A 3, E 4).

Bailiff to distrain for rent must now be authorised by a certificate of a county court judge (Law of Distress Amendment Act 1888 (c.21) s.7, on which see *Hogarth v Jennings* [1892] 1 Q.B. 907; *Perring v Emmerson* [1906] 1 K.B. 1). See further A.

Stat. Def., County Courts Act 1888 (c.43) s.186; Civil Bill Courts Procedure Amendment (Ireland) Act 1864 (c.99) s.3; County Courts Act 1934 (c.53) s.191.

**BAILMENT.** " 'Bailement' is a delivery of things, whether it be of writings, goods, or stuffe to another—sometimes to be delivered backe to the baylor, i.e. to him that so delivered it—sometimes to the use of the baylee, i.e. of him



to whom it is delivered; and sometimes also it is delivered to a third person" (Termes de la Ley).

"When one person delivers, or causes to be delivered, to another any moveable things in order that it may be kept for the person making the delivery, or that it may be used, gratuitously or otherwise, by the person to whom the delivery is made, or that it may be kept as a pledge by the person to whom delivery is made, or that it may be carried, or that work may be done upon it by the person to whom delivery is made gratuitously or not, and when it is the intention of the parties that the specific thing so delivered, or the article into which it is to be made shall be delivered either to the person making the delivery or to some other person appointed by him to receive it, the person making the delivery is said to bail the thing delivered; the act of delivery is called a bailment; the person making the delivery is called the bailor; the person to whom it is made is called the bailee" (Steph. Cr.).

The term "bailment", according to its ordinary legal sense, "relates to something which is in the hands of a person who is to return it in specie", e.g. as regards larceny or theft, by a bailee (per Cockburn C.J., *R. v Hassall*, 30 L.J.M.C. 175; *R. v Ashwell*, 16 Q.B.D. 190; but see *R. v Flowers*, 16 Q.B.D. 643; *R. v De Banks* 13 Q.B.D. 29; *R. v Holloway*, 66 L.J.Q.B. 830). When the finder of a chattel elected to assume possession of it he was held not to be a "bailee' within the proviso to s.1(1) of the Larceny Act 1916 (c.50) (*Thompson v Nixon* [1966] 1 Q.B. 103). But see now s.3(1) of the Theft Act 1968 (c.60).

As to the distinction between a bailment and a sale, see *South Australian Insurance v Randell*, L.R. 3 P.C. 101.

See further *Coggs v Bernard*, 1 Sm. L.C. (12th edn), 191.

As to the duty of a bailee when title to a bailment is claimed adverse to the bailor, see *Ranson v Platt* [1911] 2 K.B. 291. As to the duty of the bailee when the goods bailed are lost or stolen, see *Coldman v Hill* [1919] 1 K.B. 443.

In the Consumer Credit Act 1974 s.15 "bailment" is confined to bailment for hire (*TRM Cope Centres (UK) Ltd v Lanwall Services Ltd* [2009] UKHL 35).

**BAINES' ACTS.** The Criminal Procedure Act 1848 (c.46).

The Quarter Sessions Act 1849 (c.45).

**BAITING.** Coursing rabbits with dogs in an enclosure from which they cannot escape was not "bating" within s.3 of the Cruelty to Animals Act 1849 (c.92) (*Pitts v Millar*, L.R. 9 Q.B. 380). In that case, Cockburn C.J. said, "The word has usually been understood to apply to the case of an animal which is tied to a stake or peg, or so confined as not to be able to get away".

**BAKEHOUSE.** Place "let as a bakehouse" (Factory and Workshop Act 1901 (c.22), s.101(8)): see *Horner v Franklin* [1905] 1 K.B. 479, and *Stuckey v Hooke* [1906] 2 K.B. 20, cited OUTGOING. See now Factories Act 1961 (c.34) s.70.

was not a "cut", because the Act uses the words "stab or cut" so as to distinguish between them (*R v McDermot*, Russ. & Ry. 356).

"Cut as underwood": see *Dashwood v Magniac* [1891] 3 Ch. 306, cited TIMBER.

Maliciously to "cut down, or otherwise destroy", any tree (Criminal Law Act 1723 (c.22)) was an offence that was committed by cutting down without totally destroying the tree (*R. v Taylor*, Russ. & Ry. 373).

The water supply to an inhabited dwelling-house was not "cut off" (Public Health (London) Act 1891 (c.76) s.49) by the water being temporarily stopped from flowing into the house, if this be done for good cause, e.g. a leak in the servicepipe (*Young v Southwark and Vauxhall Waterworks Co*, 37 S.J. 509).

To cut off a water supply from a house means to do something to prevent any water from entering the house through a supply pipe (*Watson v Sutton District Water Co*, 56 T.L.R. 979).

Cutting off a supply of gas was not the realisation of a security within the meaning of s.1(2)(a)(v) of the Courts (Emergency Powers) Act 1943 (c.19) (*Perry v South Metropolitan Gas Co* [1940] 1 All E.R. 591).

"Cutting"(Income Tax Act 1945 (c.32) s.14(1)(b), proviso) in relation to land meant digging the land or making an incision into the land and not "making a cutting in the land" (*McIntosh v Manchester Corp* [1952] 2 All E.R. 444).

"Cutting" (Building (Safety, Health and Welfare) Regulations 1948 (SI 1948/1145) reg.84 Sch.II para.(2)) includes drilling holes in a concrete wall (*Fallaize v Troughton and Young* [1956] 1 W.L.R. 10790).

**CYCLE.** Stat. Def., "a bicycle, a tricycle or a bicycle having four or more wheels, not being in any case a motor vehicle" (Road Traffic Act 1988 (c.52) s.192).

**CYCLE TRACK.** Stat. Def., Highways Act 1980 (c.66) s.329; Cycle Tracks Act 1984 (c.38) s.1; Countryside and Rights of Way Act 2000 (c.37) s.60(5).

**CY-PRES.** The cy-près doctrine is one of construction, and is this: where there is a gift or trust for a charity which can be substantially, but not literally, fulfilled, it will be effectuated by moulding it so that as nearly as practicable the intention of the benefactor may be carried out. Law of Property Act 1925 (c.20) s.130(1), abolished the doctrine as regards wills coming into operation after 1925. See *Re Robinson* [1931] 2 Ch. 122 at 128; *Re Goods Will Trusts* [1950] 2 All E.R. 653.

# D

**D.N.A.** See NUCLEAR D.N.A.

**DAILY.** The prima facie meaning of daily is "every day" inclusive of Sunday; and that meaning applies to the obligation of a gas company to provide for the daily testing of their gas in respect of its illuminating power, pressure and purity (per Joyce, J., *London CC v South Metropolitan Gas Co* [1903] 2 Ch. 532).

"Daily newspaper" is one published day by day, rather than periodically (*Foster v Howard* [1949] A.L.R. 779).

**DAILY PENALTY.** Generally a prospective order for daily penalties is bad "as imposing penalties for offences not then committed" (*R. v Struve*, 59 J.P. 554).

Stat. Def., Public Health Acts Amendment Act 1890 (c.59) s.11(3); Electric Lighting Clauses Act 1899 (c.19) Sch. s.1 (see *Chepstow Gas Co v Chepstow Electric Light Co* [1905] 1. K.B. 198; ELECTRIC); Thames Conservancy Act 1894 (c. clxxxvii); London Building Act 1930 (c. clviii) s.5.

**DAIRY.** "Dairyman" in the same Acts and by the same sections includes any cowkeeper, purveyor of milk or occupier of a dairy. A farmer who keeps cows as incidental to his farming business is not a "cowkeeper" within that definition (*Umfreville v London CC*, 75 L.T. 550). In that case Wills J., adopted a dictionary definition of "cowkeeper" as one whose business it is to keep cows and added "the business of a cowkeeper is a special business of its own."

"Dairy farm": see *Cloncurry v Henston* [1901] 1 Ir. R. 152.

"Dairy"; "dairy farm"; "dairy farmer"; "dairyman": Stat. Def., Food and Drugs Act 1955 (c.16) s.28.

**DALHOUSIE'S (LORD) ACT.** 9 & 10 Vict. c.28.

**DAM.** A dam is a portion of the flowing water of a river which has been temporarily arrested, and a disposition of a dam does not necessarily give an exclusive right to all the water in it. I rather think it means a right to use the dam as a dam, but not necessarily an exclusive right (per Kincairney L.O., *White v White*, 42 S.L.R. 333—see also in appeal per Lord Robertson [1906] A.C. 72 at 83).

Stat. Def., Salmon and Freshwater Fisheries Act 1975 (c.51) s.41.

**DAMAGE.** Notwithstanding St Paul's fear of damage to "lives" on his voyage to Caesar (Acts, xxvii, 10), and after many conflicting judicial opinions,

"damage" within the Admiralty Court Act 1861 (c.10) s.7 was held to apply only to property and not to personal injury or loss of life (*Seward v The Vera Cruz*, 10 App. Cas. 59).

However, "damage" is often controlled by the context, thus it may mean personal injury in the context of carriage of passengers (*Haigh v Royal Mail Steam Packet Co*, 52 L.J.Q.B. 395) and was limited to personal injury under the Road Traffic Act 1930 (c.43) s.22(1) (*Pagett v Mayo* [1939] 2 K.B. 94). It can extend to feelings of anxiety (*Trent-Stoughton v Barbados Water Co* [1893] A.C. 52 and *Bond v Chief Constable of Kent* [1983] 1 All E.R. 456).

Where "damage" does not extend to personal injury it is capable of many shades of meaning. Thus "damage done by a ship" under the Administration of Justice Act 1956 (c.46) s.1(1)(d) means physical damage of which the ship was the immediate instrument and not pollution escaping from the ship when it was beached for salvage (*The Eschersheim* [1975] 1 W.L.R. 83). See also *MacMillan Bloedel v Can. Stevedoring Co* [1969] 2 Ex.C.R.375. Within the meaning of the Carriage by Air Act 1961 (c.27) Sch.1 art.26 "damage" included baggage *and* its contents (*Fothergill v Monarch Airlines* [1980] 3 W.L.R. 209).

In *Horbury v Craig Hall & Rutley* [1991] E.G.C.S. 74 the court held that it was essential to distinguish between "damage" and "damages" in respect of the Limitation Act 1980 (c.58) s.14A and "damage" meant physical damage and not economic loss (*Kensington and Chelsea and Westminster Area Health Authority v Western Composites* [1985] 1 All E.R. 346); see also under the Nuclear Installations Act 1965 (c.57) s.7 (*Merlin v British Nuclear Fuels* [1990] 3 W.L.R. 383). But under the Public Health Act 1936 (c.49) s.278(1) as amended by the Water Act 1973 (c.37) s.14 "damage" included loss of profit (*Leonidis v Thames Water Authority* (1979) 77 L.G.R. 722).

Bending nails during the removal of corrugated iron from a derelict building did not amount to "damage" (*R. v Woolcock* [1977] Crim. L.R. 104); nor did the application of a wheel clamp amount to "damage" under the Theft Act 1968 (c.60) s.12A(20)(d) (*Dawes v DPP* [1994] R.T.R. 209).

"Damage" may require intent or recklessness (*R. v Webster*; *R. v Warwick* [1995] 2 All E.R. 168).

"[Damage—in the Civil Proceedings Rules r.6.20(8)(a))] should be given its ordinary and natural meaning, namely, harm which has been sustained by the claimant, whether physical or economic" (*Booth v Phillips* [2004] 1 W.L.R. 3292 at 3298, Q.B.D.).

Criminal Damage: "Damages any property" (Criminal Damage Act 1971 (c.48) s.1(1)). Washing away pavement paintings amounted to damage (*Hardman v The Chief Constable of Avon and Somerset* [1986] Crim. L.R. 330) and anything which impairs the value of a computer disc to its legitimate user amounts to damage(*R. v Whitley* (1991) 93 Cr.App.R. 25).

Stat. Defs, Income Tax Act 1952 (c.10) Sch.19 para.1(1); Gas Act 1965 (c.36) s.14(4); Health and Safety at Work Act 1974 (c.37) ss.47, 71; Merchant Shipping Act 1974 (c.43) s.1; (c.55) s.38(4); Water Industry Act 1991 (c.56) s.219; Water Resources Act 1991 (c.57) s.221.



A contingent liability is not actionable damage unless and until the contingency occurs (*Law Society v Sephton & Co* [2006] UKHL 22).

In Directive 95/46, and therefore its implementing legislation the Data Protection Act 1998, "damage" does not go beyond pecuniary loss and in particular does not encompass damage to reputation (*Johnson v Medical Defence Union Ltd* [2007] EWCA Civ 262).

Something may be an injury or a disease without causing damage (*Rothwell v Chemical & Insulating Co Ltd, Re Pleural Plaques Litigation* [2007] UKHL 39 (see, in particular, per Lord Hoffmann at [18]).)

For the meaning of "damage" in the Civil Liability (Contribution) Act 1978, see *Nationwide Building Society v Dunlop Haywards Ltd* [2009] EWHC 254 (Comm).

See THE SAME DAMAGE.

See LOSS OR DAMAGE.

**DAMAGE BY COLLISION.** The jurisdiction given to county courts, by the County Courts Admiralty Jurisdiction Act 1868 (c.71) s.3(3), as extended by the County Courts Admiralty Jurisdiction Amendment Act 1869 (c.51) s.4, in cases of "damage by collision or otherwise", included damage by a ship coming into contact with a fixed object, as well as damage by collision of ships (*Mersey Docks v Turner* [1893] A.C. 468; overruling *Everard v Kendall*, L.R. 5 C.P. 428, and *Robson v Owners of "Kate"*, 21 Q.B.D. 13). See also COLLISION; ADMIRALTY CAUSE; DAMAGE. See County Courts Act 1959 (c.22) s.56.

But, semble, if it is the fixed object that is damaged by the striking of a ship against it, that is not "damage by collision, or otherwise" so as to give the jurisdiction (*The Normandy* [1904] P. 187, in which case *Everard v Kendall* and *Robson v Owners of "Kate"* and *Gartland SS Co and Leblane v R.* [1960] 1 Lloyd's Rep. 388 were treated as existing authorities). See further COLLISION. See also *The Upcerne* [1912] P. 160.

**DAMAGE BY FIRE EXCEPTED.** See REPAIR.

**DAMAGE FEASANT.** " 'Damage Feasant' is when a stranger's beasts are in another man's ground, without lawfull authority or licence of the tenant of the ground, and there doe feed, tread, or otherwise spoile the Corn, Grasse, Woods, or such like: In which case the tenant, whom they hurt, may therefore take, distraine, and impound them, as well in the night as in the day" (Termes de la Ley). It is not confined to damage to the freehold but includes injuries to other animals (*Boden v Roscoe* [1894] 1 Q.B. 608). See Bullen on Distress, 2nd edn, 257–276; DISTRESS.

**DAMAGE IN FACT.** See SPECIAL.

**DAMAGE TO CARGO.** See DAMAGE.

**DAMAGE TO GOODS.** See DAMAGE.

**DAMAGE TO LANDS.** See DAMAGE.

**DAMAGED VALUE.** The "damaged value" of a ship, as a constructive total loss, is "the price which can be got for her as she lies unrepaired" (per Williams L.J., *Angel v Merchants' Marine Insurance* [1903] 1 K.B. 816).

**DAMAGES.** Of all the various remedies available at Common Law, damages are the remedy of most general application at the present day, and they remain the prime remedy in actions for breach of contract and tort. They have been defined as "the pecuniary compensation obtainable by success in an action . . . " (per Lord Hailsham in *Broome v Cassell & Co* [1972] A.C. 1027).

Actions for the recovery of money under statutes, made independently of the wrong complained of do not constitute damages, e.g. claims for unfair dismissal under the Employment Rights Act 1996 (c.18).

"By way of damages for breach of . . . contract" (Employment Protection Act 1975 (c.71) s.102(3)). This phrase is to be construed broadly to enable the gross rather than the net amount of any payment to be set off against the protective award made under this Act (*Vosper Thornycroft UK v Transport and General Workers Union* [1988] L.S.Gaz., March 2, 469).

(Civil Liability (Contribution) Act 1978 s.1(1).) The relevant damage was the alleged wrong which caused injury and death rather than the damages which the deceased could have recovered for his injury for the purposes of s.1(1) with the result that a concurrent tortfeasor could be liable to a plaintiff notwithstanding a settlement with the other tortfeasor (*Jameson v CEGB* [1997] 4 All E.R. 38).

A claim for an award of damages was a prerequisite to a claim for "additional damages" under the Copyright, Designs and Patents Act 1988 (c.48) s.97(2) (*Redrow Homes Ltd v Bett Brothers Plc* [1998] 2 W.L.R. 198).

See also *McGregor on Damages* for "measure of damages".

See DAMAGE; CREDITOR; DEBTS; ANTICIPATORY; LOSS DEFECT; LIQUIDATED DAMAGES.

**DAMAGES FOR PERSONAL INJURY.** (Limitation Act 1980 s.11(1).) An unwanted conception whether as a result of negligent advice or negligent surgery was a "personal injury" in the sense of an "impairment" in the illustrative definition in s.38(1) of the 1980 Act (*Walkin v South Manchester Health Authority* [1995] 1 W.L.R. 1517).

**DAMAGING (CREDIBILITY).** In the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s.8(1), the word "damaging" is to be construed as if it were "potentially damaging" (*JT (Camaroon) v Home Secretary* [2008] EWCA Civ 878).

**DAMNUM ABSQUE INJURIA.** See INJURY.



**DANCING.** Stat Def., "includes any movement apparently to the accompaniment of music" (Licensing (Scotland) Act 1976 (c.66) s.18A(9) inserted by Licensing (Amendment) (Scotland) Act 1996 (c.36) s.1(1)).

See MUSIC.

**DANGER.** A lessee's covenant, in a lease of a public-house, that he will not do or suffer anything whereby the licence "may be in any danger of being suspended, discontinued, or forfeited", is not broken by his being convicted of selling drink after hours, if the conviction is not endorsed on the licence (per Charles J., *Fleetwood v Hull*, 23 Q.B.D. 35). The learned judged added: "If the conviction had been endorsed on the licence, a question might have arisen whether the licence was or was not endangered. If two convictions had been endorsed, then the licensee would no doubt have been in danger, because a third conviction would, by s.30 of the Licensing Act 1872 (c.94), forfeit the licence". See further *Mumford v Walker*, 71 L.J.Q.B. 19, cited ASSIGNS, also for when such a covenant is absolute. Cp. "Liable to be deprived", under LIABLE. See also AFFECT; IMPERIL.

So, semble, a solitary conviction of the licensee for drunkenness does not "endanger" the licence, even though one of the convicting magistrates should say that, if such offence occurred again, the licence might probably be taken away (*Noble v Hart*, 34 S.L.R. 151).

But where a power to determine the lease is given to the landlord if, in his "opinion" the tenant "is so misconducting himself, or neglecting the business, as to endanger the licence", such power may be exercised on the bare (if not mala fide) averment of such an opinion without stating its grounds (*Guild v Maclean*, 35 S.L.R. 97).

The offences prescribed by the Highway Act 1835 (c.50) s.72, which were thereby limited to those which are "to the injury, interruption, or personal danger, to any person travelling" on a highway, involved the idea of injury, interruption, or personal danger, to some actual passenger (*Stinson v Browning*, L.R. 1 C.P. 321; *Hill v Somerset*, 51 J.P. 742; see also *Smith v Perry* [1906] 1 K.B. 262); but a motor, or other light locomotive, might offend against a light locomotive order not to go "at any speed greater than is reasonable and proper having regard to the traffic on the highway, or so as to endanger the life or limb of any person, or to the common danger of passengers", without its being shown that there was any passenger actually using the highway at the time (*Mayhew v Sutton*, 71 L.J.K.B. 46; see further *Smith v Boon*, 34 L.T. 593, cited TRAFFIC).

"Danger" (Merchant Shipping Act 1894 (c.60)): see *San Onofre* [1922] P. 243.

"Danger or apprehended danger" (Coal Mines Regulation Act 1908 (c.57)) meant danger arising out of some abnormal occurrence (*Thorneycroft v Archibald* [1913] S.C. (J.) 45). See also LIKELY TO CAUSE DANGER.

In considering whether "danger is likely to arise" on a railway within the meaning of reg.9 of the Prevention of Accidents Rules 1902 (No.616) the estimate must be made according to common sense and experience, and in