

BLACK'S LAW DICTIONARY

11th Edition

Bryan A. Garner
Editor in Chief



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Black's Law Dictionary

Eleventh Edition

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President, LawProse Inc.

*Distinguished Research Professor of Law
Southern Methodist University
Dallas, Texas*

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► **commodati actio.** See *actio commodati*.

► **legis actio.** See LEGIS ACTIO.

action. (14c) 1. The process of doing something; conduct or behavior.

► **concerted action.** See CONCERTED ACTION.

2. A thing done; ACT (1). 3. *Patents.* OFFICE ACTION.

► **advisory action.** *Patents.* See *advisory office action* under OFFICE ACTION.

4. A civil or criminal judicial proceeding.

"An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. But in some sense this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment." 1 Morris M. Estee, *Estee's Pleadings, Practice, and Forms* § 3, at 1 (Carter P. Pomeroy ed., 3d ed. 1885).

"The terms 'action' and 'suit' are nearly if not quite synonymous. But lawyers usually speak of proceedings in courts of law as 'actions,' and of those in courts of equity as 'suits.' In olden time there was a more marked distinction, for an action was considered as terminating when judgment was rendered, the execution forming no part of it. A suit, on the other hand, included the execution. The word 'suit,' as used in the Judiciary Act of 1784 and later Federal statutes, applies to any proceeding in a court of justice in which the plaintiff pursues in such court the remedy which the law affords him." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3 (2d ed. 1899).

"'Action' in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined." UCC § 1-201(b)(1).

► **action at law.** (17c) A civil suit stating a legal cause of action and seeking only a legal remedy. See *suit at law* and *suit in equity* under SUIT.

► **action de die in diem** (dee di-ee in di-em). [Law Latin "from day to day"] *Hist.* 1. An action occurring from day to day; a continuing right of action. 2. An action for trespass for each day that an injury continues.

"That trespass by way of personal entry is a continuing injury, lasting as long as the personal presence of the wrongdoer, and giving rise to actions *de die in diem* so long as it lasts, is sufficiently obvious." R.F.V. Heuston, *Salmond on the Law of Torts* 42 (17th ed. 1977).

► **action de in rem verso** (dee in rem vær-soh). [Latin "action for money applied to (the defendant's) advantage"] (18c) 1. *Roman & civil law.* An action for unjust enrichment, in which the plaintiff must show that an enrichment was bestowed, that the enrichment caused an impoverishment, that there is no justification for the enrichment and impoverishment, and that the plaintiff has no other adequate remedy at law, including no remedy under an express or implied contract. 2. *Roman law.* An action brought against a paterfamilias or a slaveowner who benefited from the transaction of a child or slave. — Also termed (in both senses) *actio de in rem verso*.

► **action en declaration de simulation.** (1850) *Louisiana law.* An action to void a contract. See *simulated contract* under CONTRACT.

► **action en desaveu** (ak-shən on des-ə-vuu). (1841) *Louisiana law.* A lawsuit to disavow paternity brought by

a man who is legally presumed to be the father of the child.

► **action ex contractu** (eks kən-trak-t[y]oo). (18c) A personal action arising out of a contract.

"Actions *ex contractu* were somewhat illogically classified thus: *covenant, debt, assumpsit, detinue, and account.* The *action of covenant* lay where the party claimed damages for a breach of contract or promise under seal. The *writ of debt* lay for the recovery of a debt; that is, a liquidated or certain sum of money alleged to be due from defendant to plaintiff. The *writ of detinue* was the ancient remedy where the plaintiff claimed the specific recovery of goods, chattels, deeds, or writings detained from him. This remedy fell into disuse by reason of the unsatisfactory mode of trial of 'wager of law,' which the defendant could claim; and recourse was had to the action of replevin. In the American States an action of replevin founded upon statute provisions is almost universally the remedy for the recovery of specific personal property." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 5 (2d ed. 1899).

► **action ex delicto** (eks də-lik-toh). (1816) A personal action arising out of a tort.

"The actions *ex delicto* were originally the action of *trespass* and the action of *replevin.*" Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 5 (2d ed. 1899).

► **action for mesne profits.** See ACTION FOR MESNE PROFITS.

► **action for money had and received.** (18c) At common law, an action by which the plaintiff could recover money paid to the defendant, the money usu. being recoverable because (1) the money had been paid by mistake or under compulsion, or (2) the consideration was insufficient. — Often shortened to *money had and received*.

"The *action for money had and received* lay to recover money which the plaintiff had paid to the defendant, on the ground that it had been paid under a mistake or compulsion, or for a consideration which had wholly failed. By this action the plaintiff could also recover money which the defendant had received from a third party, as when he was accountable or had attorned to the plaintiff in respect of the money, or the money formed part of the fruits of an office of the plaintiff which the defendant had usurped." Robert Goff & Gareth Jones, *The Law of Restitution* 3 (3d ed. 1986).

"Money had and received lies where a payment has been made on a contract which is put an end to; as, where by the express terms of the contract, it is left in the plaintiff's power to rescind it by any act of his, and he rescinds it accordingly; or where the defendant assents to its being rescinded by the plaintiff, without any stipulation in the contract to enable him to do so of himself." Edward Lawes, *A Practical Treatise on Pleading in Assumpsit* 22 (Joseph Story ed., 1811).

► **action for money paid.** (18c) At common law, an action by which the plaintiff could recover money paid to a third party — not to the defendant — in circumstances in which the defendant had benefited.

"The *action for money paid* was the appropriate action when the plaintiff's claim was in respect of money paid, not to the defendant, but to a third party, from which the defendant had derived a benefit. Historically, the plaintiff had to show that the payment was made at the defendant's request; but we shall see that the law was prepared to 'imply' such a request on certain occasions, in particular where the payment was made under compulsion of law or, in limited circumstances, in the course of intervention in an emergency on the defendant's behalf, which in this book we shall call *necessitous intervention.*" Robert Goff & Gareth Jones, *The Law of Restitution* 3 (3d ed. 1986).

- ▶ **action for pointing.** (17c) *Hist.* A creditor's action to obtain sequestration of the land rents and goods of the debtor to satisfy the debt or enforce a distress.
- ▶ **action for the loss of services.** (1809) *Hist.* **1.** A lawsuit by a master for the loss of his servant's services, filed against a third party who has (it is alleged) wrongfully prevented the provision of those services. **2.** A husband's lawsuit against one who has taken away, imprisoned, or physically harmed his wife in circumstances in which (1) the act is wrongful to the wife, and (2) the husband is deprived of her society or services.
- ▶ **action for the recovery of land.** See EJECTMENT.
- ▶ **action for the recovery of mesne profits.** See ACTION FOR MESNE PROFITS.
- ▶ **action in equity.** (18c) An action that seeks equitable relief, such as an injunction or specific performance, as opposed to damages. See *suit in equity* under SUIT.
- ▶ **action in personam** (in pər-sōh-nəm). (1800) **1.** An action brought against a person rather than property.
 - An *in personam* judgment is binding on the judgment-debtor and can be enforced against all the property of the judgment-debtor.**2.** An action in which the named defendant is a natural or legal person. — Also termed *personal action*; (in Roman and civil law) *actio in personam*; *actio personalis*. See IN PERSONAM. Pl. *actiones in personam*; *actiones personales*.
- ▶ **action in rem** (in rem). (18c) **1.** An action to determine the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in that property; a real action. **2.** *Louisiana law.* An action brought to protect possession, ownership, or other real rights in immovable property. La. Civ. Code arts. 3651 et seq. **3.** *Louisiana law.* An action to recover possession of immovable property. La. Civ. Code art. 526. — Also termed (in Roman law) *actio in rem*; *actio realis*; *real action*. See IN REM. Pl. *actiones in rem*. **4.** An action in which the named defendant is property, either real or personal.
- ▶ **action of account.** See ACCOUNTING (3).
- ▶ **action of assize.** (1804) *Hist.* A real action by which the plaintiff proves title to land merely by showing an ancestor's possession. See ASSIZE.
- ▶ **action of book debt.** See ACCOUNTING (4).
- ▶ **action of covenant.** (16c) *Archaic.* A lawsuit seeking damages or the specific performance of a contract under seal; COVENANT (3). See *contract under seal* under CONTRACT.
- ▶ **action of debt.** See CONDUCTIO.
- ▶ **action of declarator.** (17c) *Scots law.* An action brought in the Court of Session to establish a legal status or right. — Also termed *declarator*; *action for declaratory*.
- ▶ **action of ejectment.** See EJECTMENT (3).
- ▶ **action of reprobator.** See REPROBATOR.
- ▶ **action of trespass for mesne profits.** See ACTION FOR MESNE PROFITS.
- ▶ **action on account.** See ACCOUNTING (4).
- ▶ **action on expenditure.** (1833) An action to require the principal debt be paid by a personal surety.
- ▶ **action on the case.** See *trespass on the case* under TRESPASS.
- ▶ **action per quod servitium amisit** (pər kwod sər-vish-ee-əm ə-mī-sit). [Latin] (18c) *Hist.* An action to recover for the loss of a servant's services. See *action for the loss of services*.
- ▶ **action quasi in rem** (kway-sī in rem or kway-zī). (1883) An action brought against the defendant personally, with jurisdiction based on an interest in property, the objective being to deal with the particular property or to subject the property to the discharge of the claims asserted. See *quasi in rem* under IN REM.
- ▶ **action to quiet title.** (1837) A proceeding to establish a plaintiff's title to land by compelling the adverse claimant to establish a claim or be forever estopped from asserting it. — Also termed *quiet-title action*.
- ▶ **action to review judgment.** (1853) *Rare.* **1.** MOTION FOR NEW TRIAL. **2.** A request for judicial review of a nonjudicial body's decision, such as an administrative ruling on a workers'-compensation claim. • The grounds for review are usu. similar to those for a new trial, esp. patent errors of law and new evidence.
- ▶ **amicable action.** See *test case* (1) under CASE (1).
- ▶ **civil action.** (16c) An action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation. — Also termed (if brought by a private person) *private action*; (if brought by a government) *public action*.

“The code of New York, as originally adopted, declared, ‘the distinctions between actions at law and suits in equity, and the forms of all such actions and heretofore existing, are abolished; and there shall be in this State hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action.’ With slight verbal changes the above provision has been enacted in most of the States and Territories which have adopted the reformed procedure.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 106 (2d ed. 1899).
- ▶ **class action.** See CLASS ACTION.
- ▶ **collusive action.** (18c) An action between two parties who have no actual controversy, being merely for the purpose of determining a legal question or receiving a precedent that might prove favorable in related litigation. — Also termed *fictional action*.
- ▶ **common-law action.** (18c) An action governed by common law, rather than by constitutional, statutory, equitable, or civil law.
- ▶ **criminal action.** (16c) An action brought by the government to punish an offense against the public.
- ▶ **cross-action.** (18c) An action brought by the defendant against the plaintiff based on the same subject matter as the plaintiff's action. See CROSS-CLAIM.
- ▶ **derivative action.** See DERIVATIVE ACTION.
- ▶ **direct action.** See DIRECT ACTION.
- ▶ **fictional action.** See *collusive action*.
- ▶ **fictitious action.** (17c) An action, usu. unethical, brought solely to obtain a judicial opinion on an issue of fact or law, rather than for the disposition of a controversy.
- ▶ **formed action.** A lawsuit fitting into a known category with specific possible remedies. See FORM OF ACTION.

- ▶ **Good Samaritan action.** See GOOD SAMARITAN ACTION.
- ▶ **guardianship action.** (1931) *Family law.* An action brought for the purpose of asking a court to appoint a temporary or permanent guardian to care for property or for a person who is underage or incapacitated. See *guardian of the estate & guardian of the person* under GUARDIAN (1).
- ▶ **hypothecary action** (hi-poth-ə-ker-ee). (1815) *Roman & civil law.* An action to enforce a mortgage (*hypotheca*); a lawsuit to enforce a creditor's claims under a hypothec or hypothecation. — Also termed *actio hypothecaria*.
- ▶ **informal action.** (1963) *Administrative law.* An executive-branch action that does not fall under rulemaking or formal adjudication procedures in the Administrative Procedure Act. • Informal actions are not subject to specific notice and procedural requirements mandated by the APA for rulemaking and formal adjudications. See ADMINISTRATIVE PROCEDURE ACT.
- ▶ **innominate action** (i-nom-i-nət). (1903) An action that has no special name by which it is known. Cf. *nominate action*.
- ▶ **joint action.** (17c) **1.** An action brought by two or more plaintiffs. **2.** An action brought against two or more defendants.
- ▶ **local action.** (18c) An action that can be brought only in the jurisdiction where the cause of action arose, as when the action's subject matter is real property.
- ▶ **matrimonial action.** (1881) An action relating to the state of marriage, such as an action for separation, annulment, or divorce.
- ▶ **mixed action.** (15c) An action that has some characteristics of both a real action and a personal action.

"In early times the only mixed actions were those for the partition of lands, for which a writ was provided in the common-law courts. The remedy was further enlarged by the statute of 31 Hen. VII c. 1, and 32 Hen. VIII c. 32, which gave compulsory partition, by writ at common law. These statutes formed the basis of partition in the American States; but in England and here courts of Chancery have been found most convenient, and their procedure most favorable for the division of estates in land. The statutes at the present time, in most of the States, prescribe a procedure which is quite similar to that in equity practice." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 10-11 (2d ed. 1899).
- ▶ **nominate action** (nom-i-nət). (1993) An action that is known by a name, such as a confessional action, a petitory action, or a possessory action. Cf. *innominate action*.
- ▶ **nonpersonal action.** (1971) An action that proceeds within some category of territorial jurisdiction other than in personam — that is, jurisdiction in rem, quasi in rem, or over status.
- ▶ **penal action.** (16c) **1.** A criminal prosecution. **2.** A civil proceeding in which either the state or a common informer sues to recover a penalty from a defendant who has violated a statute. • Although civil in nature, a penal action resembles a criminal proceeding because the result of a successful action is a monetary penalty intended, like a fine, to punish the defendant. See COMMON INFORMER.

"At one time it was a frequent practice, when it was desired to repress some type of conduct thought to be harmful, to do so by the machinery of the civil rather than of the criminal law. The means so chosen was called a penal

action, as being brought for the recovery of a penalty; and it might be brought, according to the wording of the particular statute creating the penal action, either by the Attorney-General on behalf of the state, or by a common informer on his own account. A common informer was anyone who should first sue the offender for the penalty. Penal actions are still possible in a few cases, and their existence renders invalid several suggested distinctions between civil wrongs and crimes." John Salmond, *Jurisprudence* 107 (Glanville L. Williams ed., 10th ed. 1947).

"For in 'penal actions,' unless the statute expressly authorizes private persons to act as informers, the State alone can sue and recover the penalty; and yet there is full authority for ranking such suits by it as merely civil proceedings." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 538 (16th ed. 1952).

- 3. A civil lawsuit by an aggrieved party seeking to recover a statutory fine or a penalty, such as punitive damages.

"[T]here exists a well-known class of proceedings called 'penal actions,' by which pecuniary penalties can be recovered — in some cases by any person who will sue for them — from the doers of various prohibited acts; these acts being thus prohibited, and visited with penalties, solely on account of their tendency to cause evil to the community at large, 'considered as a community.' For example, a person who, in advertising a reward for the return of lost property, adds that 'no questions will be asked' incurs by the Larceny Act, 1861, a penalty of £50 recoverable by anyone who will sue for it." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 533-34 (16th ed. 1952).

- ▶ **personal action.** (17c) **1.** An action brought to recover debts, personal property, or damages arising from any cause. — Also termed *remedial action*.

"Personal actions are subdivided into those brought for the recovery of a debt or of damages for the breach of a contract, or for tort, or some injury to the person or to relative rights or to personal or real property. The most common of these actions are debt, covenant, assumpsit, detinue, trespass, trespass on the case, trover, and replevin." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 34, at 65 (Henry Winthrop Ballantine ed., 3d ed. 1923).

- 2. See *action in personam*.

- ▶ **petitory action** (pet-ə-tor-ee). (17c) **1.** *Roman & civil law.* An action to establish and enforce title to property independently of the right to possession. **2.** *Civil law.* An action to recognize ownership or other real right in immovable (or sometimes movable) property. • In civil-law systems, the petitory action (revendication) is a much broader and more effective remedy than the *rei-vindicatio*, the Roman prototype. This action is based on, and tends to protect, real rights, that is, ownership and its dismemberments. It is therefore a real action, distinguishable from personal actions based on (and tending to protect) personal rights. Generally, the petitory action is available for the protection of the ownership of both movables and immovables. In Louisiana, however, the petitory action is for the recognition of ownership or other real right in immovable property, brought by a person who is not in possession of it. La. Code Civ. Proc. art. 3651. An action to recognize such a right in movable property is an innominate real action, known as a *revendicatory action*. — Also termed *petitory suit*; *petitorium*; *revendication*.

- ▶ **plenary action** (plee-nə-ree or plen-). (1837) A full hearing or trial on the merits, as opposed to a summary proceeding. Cf. *summary proceeding* under PROCEEDING.

► **possessory action** (pə-zēs-ə-ree). (17c) **1.** An action to obtain, recover, or maintain possession of property but not title to it, such as an action to evict a nonpaying tenant. — Also termed *possessorium*.

"The possessory action is available for the protection of the possession of corporeal immovables as well as for the protection of the *quasi-possession* or real rights in immovable property. It is distinguished from the *petitory* action which is available for the recognition and enforcement of ownership or of real rights in another's immovable, such as a usufruct, limited personal servitudes, and predial servitudes." A.N. Yiannopoulos, *Property: The Law of Things — Real Rights — Real Actions* § 333, at 653 (4th ed. 2001).

2. Maritime law. An action brought to recover possession of a ship under a claim of title.

► **private action.** See *civil action*.

► **public action.** See *civil action*.

► **real action.** (16c) **1.** An action to recover land or other real property; specif., an action to recover the possession of a freehold estate in real property, or seisin. **2. Civil law.** An action based on, and tending to protect, a real right, namely, the right of ownership and its dismemberments. • It is distinguishable from a personal action, which is based on (and tends to protect) a personal right. **3. Louisiana law.** An action brought to protect possession, ownership, or other real rights in immovable property. La. Code Civ. Proc. arts. 3651 et seq. — Also termed *action in rem*; *actio in rem*; *actio realis*. See SEISIN.

"If the question be asked why it was that a large part of the really English law which Bracton undertook to expound is found in connection with the subject of real actions, while in Blackstone's treatise only the personal actions are deemed worthy of attention, the answer must be that the former were dying out. When Chitty wrote (1808) the old real actions were practically obsolete, and in the succeeding generation such vestiges of them as remained were abolished by statute." Hannis Taylor, *The Science of Jurisprudence* 574 (1908).

"The principal real actions formerly in use were (1) the writs of right; (2) the writs of entry; (3) the possessory assizes, such as novel disseisin and mort d'ancestor. Real actions are those in which the demandant seeks to recover seisin from one called a tenant, because he holds the land. They are real actions at common law because the judgment is in rem and awards the seisin or possession." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 32, at 63 (Henry Winthrop Ballantine ed., 3d ed. 1923).

► **redhibitory action.** (18c) *Civil law.* An action brought to void a sale of a thing having a defect that renders it either useless or so flawed that the buyer would not have bought it in the first place. See REDHIBITION.

► **relator action.** (1943) A civil lawsuit brought by an attorney general at the request or instigation of a private citizen who relates the facts but lacks standing to bring the suit on his or her own behalf. See RELATOR (1); EX REL.

► **remedial action.** **1.** See REMEDIAL ACTION. **2.** See *personal action* (1).

► **removed action.** (1859) A lawsuit that has been transferred from state to federal court. See Fed. R. Civ. P. 81(c).

► **representative action.** **1.** CLASS ACTION. **2.** DERIVATIVE ACTION (1).

► **rescissory action.** (18c) *Scots law.* An action to set aside a deed.

► **revendicatory action** (ree-ven-di-kə-tor-ee). See *petitory action*.

► **sacramental action.** See SACRAMENTO.

► **separate action.** (18c) **1.** An action brought alone by each of several complainants who are all involved in the same transaction but either cannot legally join the suit or, not being required to join, choose not to join it. **2.** One of several distinct actions brought by a single plaintiff against each of two or more parties who are all liable to a plaintiff with respect to the same subject matter. — Also termed *several action*.

► **several action.** See *separate action*.

► **sham action.** (17c) An objectively baseless lawsuit the primary purpose of which is to hinder or interfere with a competitor's business relationships. See *Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 113 S.Ct. 1920 (1993). — Also termed *sham lawsuit*; *sham suit*. See SHAM EXCEPTION.

► **statutory action.** (18c) An action governed by statutory law rather than equitable, civil, or common law.

► **test action.** See *test case* (2) under CASE (1).

► **third-party action.** (1872) An action brought as part of a lawsuit already pending but distinct from the main claim, whereby a defendant sues an entity not sued by the plaintiff when that entity may be liable to the defendant for all or part of the plaintiff's claim. • A common example is an action for indemnity or contribution.

► **transitory action.** (17c) An action that can be brought in any venue where the defendant can be personally served with process.

"Transitory actions are universally founded on the supposed violation of rights which, in contemplation of law, have no locality. They are personal actions, that is, they are brought for the enforcement of purely personal rights or obligations. If the transaction on which the action is founded could have taken place anywhere, the action is generally regarded as transitory; but if the transaction could only have happened in a particular place . . . the action is local. Some authorities, considering the effect of the distinction, define transitory actions as actions which may be tried wherever defendant may be found and served." 92 C.J.S. *Venue* § 8, at 678-79 (1955).

Action. A former independent federal agency that administered various volunteer-services programs including Foster Grandparents, Retired Senior Volunteers, Senior Companions, Volunteers in Service to America, and Student Community Service Projects. • Its functions were transferred to the Corporation for National and Community Service in 1995. See CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

action, cause of. See CAUSE OF ACTION.

action, form of. See FORM OF ACTION.

action, right of. See RIGHT OF ACTION.

actionable, adj. (16c) **1.** Furnishing the legal ground for a lawsuit or other legal action <intentional interference with contractual relations is an actionable tort>.

► **actionable per quod** (pər kwod). (1916) (Of potentially defamatory words) not inherently defamatory and therefore requiring allegation and proof of special damages. • For example, if the defendant says, "The plaintiff is crazy," the utterance is actionable per quod. That is, the plaintiff must prove, in addition to the

► **phone count.** (1990) A count in an indictment based on using a "communication facility" in the commission of a felony. • The phrase *communication facility* includes various types of electronic means of communicating with others. See 21 USCA § 843(b).

► **separate count.** (18c) One of two or more criminal charges contained in one indictment, each charge constituting a separate indictment for which the accused may be tried.

► **several count.** (18c) One of two or more counts in a pleading, each of which states a different cause of action.

► **special count.** (18c) A section of a pleading in which the plaintiff's claim is stated with great particularity — usu. employed only when the pleading rules require specificity.

3. A canvassing. See *CANVASS* (2). 4. *Hist.* The plaintiff's declaration, or initial pleading, in a real action. See *DECLARATION* (7). 5. *Patents.* The part of a patent application that defines the subject matter in a priority contest (i.e., an *interference*) between two or more applications or between one or more applications and one or more patents. See *INTERFERENCE* (3).

count, vb. (17c) 1. In pleading, to declare or state; to narrate the facts that state a claim. 2. *Hist.* To plead orally; to plead or argue a case in court.

count bargain. See *charge bargain* under *PLEA BARGAIN*.

counted vote. See *VOTE* (4).

counter. (14c) 1. *Hist.* An advocate or professional pleader; one who counts (i.e., orally recites) for a client. • Counters had coalesced into an identifiable group practicing before the Common Bench by the beginning of the 13th century. They were the leaders of the medieval legal profession, and over time came to be known as *serjeants at law*. — Also spelled *countor*; *contor*; *counteur*. See *SERJEANT-AT-LAW*.

"No English reference to a countor has been found before the thirteenth century. But the advantage of having a third person to recite the count must have become evident soon after 1200 if not before. Not only might an independent and learned friend be less liable to blunder, but, given the principle that an advocate might be disavowed (*deadvocatus*), his blunders would be harmless." J.H. Baker, *The Order of Serjeants at Law* 9 (1984).

2. COMPTEER.

counteraction. See *COUNTERCLAIM*.

counteraffidavit. See *AFFIDAVIT*.

counterbalance, vb. (17c) To have a more or less equal and opposite effect on (something); to counteract the power or effect of <remote housing is counterbalanced by significantly lower rents>.

counterbond. See *BOND* (2).

countercharge, n. (18c) 1. An opposing charge or onslaught; esp., an opposing accusation. 2. A responsive allegation of wrongdoing.

counterclaim, n. (18c) A claim for relief asserted against an opposing party after an original claim has been made; esp., a defendant's claim in opposition to or as a setoff against the plaintiff's claim. — Also termed *counteraction*; *countersuit*; *cross-demand*. Cf. *CROSS-CLAIM*. — **counterclaim, vb.** — **counterclaimant, n.**

"Under [Fed. R. Civ. P.] Rule 13 the court has broad discretion to allow claims to be joined in order to expedite the resolution of all controversies between the parties in one

suit. Rule 13(c) specifically provides that the counterclaimant is not limited by recovery sought by the opposing party but may claim relief in excess of that amount. Further, the general legal rule is that it is immaterial whether a counterclaim is legal or equitable for purposes of determining whether it properly is brought under Rule 13. . . . The expectation is that this liberal joinder policy will further the elimination of circuity of action and multiple litigation." 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1403, at 15–16 (2d ed. 1990).

► **compulsory counterclaim.** (1938) A counterclaim that must be asserted to be cognizable, usu. because it relates to the opposing party's claim and arises out of the same subject matter. • If a defendant fails to assert a compulsory counterclaim in the original action, that claim may not be brought in a later, separate action (with some exceptions). See *Fed. R. Civ. P.* 13(a).

► **permissive counterclaim.** (1924) A counterclaim that need not be asserted to be cognizable, usu. because it does not arise out of the same subject matter as the opposing party's claim or involves third parties over which the court does not have jurisdiction. • Permissive counterclaims may be brought in a later, separate action. See *Fed. R. Civ. P.* 13(b).

counter-complaint. See *COMPLAINT*.

counterdeed. See *DEED*.

counterespionage. See *ESPIONAGE*.

counterfeisance (kown-tər-fee-zənts). (16c) *Archaic.* The act of counterfeiting.

counterfeit, adj. (14c) Made to look genuine in an effort to deceive; produced by fakery, esp. with an intent to defraud.

counterfeit, vb. (14c) To unlawfully forge, copy, or imitate an item, esp. money or a negotiable instrument (such as a security or promissory note) or other officially issued item of value (such as a postage stamp or a food stamp), or to possess such an item without authorization and with the intent to deceive or defraud by presenting the item as genuine. • Counterfeiting includes producing or selling an item that displays a reproduction of a genuine trademark, usu. to deceive buyers into thinking they are purchasing genuine merchandise. See 18 USCA §§ 470 et seq. — **counterfeiting, n.** — **counterfeit, n.**

"Literally a *counterfeit* is an imitation intended to pass for an original. Hence it is spurious or false, and *to counterfeit* is to make false. For this reason the verbs *counterfeit* and *forge* are often employed as synonyms and the same is true to some extent of the corresponding nouns. No error is involved in this usage but it is important to distinguish between the words as far as possible when used as the labels of criminal offenses. In the most restricted sense, [c]ounterfeiting is the unlawful making of false money in the similitude of the genuine. At one time under English statutes it was made treason. Under modern statutes it is a felony." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 431–32 (3d ed. 1982).

Counterfeit Access Device and Computer Fraud and Abuse Act of 1984. A federal statute that criminalizes various computer-related activities such as accessing without permission a computer system belonging to a bank or the federal government, or using that access to improperly obtain anything of value. 18 USCA § 1030.

counterfeit document. See *DOCUMENT* (2).

counterfeiter. (15c) Someone who forges or otherwise makes a copy or an unauthorized imitation of something