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STATE OF WASHINGTON

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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PERRY MILLS, Petitioner

v.

WESTERN WASHINGTON UNIVERSITY, Respondent

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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ROBERT M. MCKENNA  
Attorney General

Derek Edwards, WSBA #18889  
Senior Counsel  
Assistant Attorney General  
800 5th Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 389-2054

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## I. INTRODUCTION

The Legislature authorized universities to promulgate “rules . . . involving . . . employment relationships” without using the rulemaking process in the Administrative Procedure Act (APA). RCW 28B.35.120(12); RCW 34.05.010(16)(iv). Western Washington University properly negotiated employment and internal employment hearing rules with its faculty, exercised its statutory authority in enacting the negotiated rules in its *Faculty Handbook*, and complied with the closed hearing rule in Mills’ disciplinary proceeding. Since rules promulgated under a legislative delegation of authority have the force and effect of law, the disciplinary proceeding complied with the applicable law.

Even if the negotiated employment rules in the *Faculty Handbook* had not been statutorily authorized rules with the force of law, Mills’ argument would fail. To obtain relief on judicial review, petitioners must show substantial prejudice before asserting that an agency committed a procedural violation of the APA.

Article 1, section 10 of the state constitution does not relieve petitioner of the statutory duty to establish standing by showing substantial harm. Article 1, section 10 requires that justice in all cases be administered openly. The provision applies to court cases, not executive branch proceedings addressing employee discipline.

## II. STATEMENT OF THE CASE

Western Washington University and its Faculty Senate negotiated the *Faculty Handbook* to govern all aspects of faculty rights and responsibilities. CP 175 (Handbook, Section I.A.). The Handbook contains the rules the University is required to promulgate for its peer review proceedings under RCW 28B.10.648(2) (“Peer review proceedings shall be pursuant to rules and regulations promulgated by the respective institutions of higher education”). RCW 34.05.010(16)(iv). Under the University’s model of shared governance, the rules are negotiated with the faculty, rather than through the APA public notice and comment procedure other agencies are required to follow. CP 176 (Handbook Section II.B.1.).

The University commenced a disciplinary hearing for Perry Mills, to determine whether his verbal abuse and intimidation of students and colleagues violated the Code of Ethics in the *Faculty Handbook*. CP 1356. A panel of faculty peers convened to hear the matter. The University closed Mills’ disciplinary proceeding pursuant to Section XVII.2.d of the *Faculty Handbook*, which provides that “[t]he hearing will be private, unless the Hearing Panel, in consultation with the Provost and only with the agreement of the faculty member, decides that the hearing should be public.” CP 207.

Mills requested that the hearing be open, citing the Open Public Meetings Act and article 1, section 10 of the Washington Constitution. CP 324-25. The Provost argued that the hearing is an internal University matter and should be closed as required by the negotiated rule contained in Section XVII.2.d of the *Faculty Handbook*. CP 326-29. The panel ruled that the hearing should be closed, based on the Handbook. CP 331, 405-06. The panel found that Mills' behavior was intentional and reckless and imposed a two-quarter suspension without pay. CP 1171-73.

The Provost and Mills appealed the panel's decision to the President. The Provost sought Mills' dismissal. CP 175. Mills argued that RCW 34.05.449(5) and article 1, section 10 required that the hearing be open. The President affirmed the panel's decision. CP 1249.

Mills next appealed to the Board of Trustees. The Board remanded the matter to the panel to determine whether Mills should be dismissed for cause. CP 1400-41 (Board Order on Remand). The panel on remand found that Mills did not act with malice so as to warrant dismissal. CP 1433 (Decision on Remand).

The Board affirmed the panel's recommendation that Mills be suspended for two quarters without pay. CP 1487. In response to Mills' argument that the hearing should have been open, the Board held that Section XVII.2.d. of the *Faculty Handbook* is a provision of law that

authorized the hearing panel to close the hearing under RCW 34.05.449(5). CP 1487; Final Order, CL 47. The Board also noted that the hearing could have been closed under a protective order because the record is replete with federally protected education records and confidential health information. CP 1487; Final Order, CL 68 (citing 20 U.S.C. § 1232g and RCW 70.02). The Board *sua sponte* issued its own protective order to govern the proceedings. CP 1487; Final Order, CL 68.

On appeal, the Court of Appeals held that Mills violated his terms of employment by verbally abusing faculty colleagues with discriminatory and sexual innuendo; harassing, intimidating, demeaning, and insulting students; verbally abusing staff and student assistants; brandishing weapons; and threatening others with bodily harm or death. *Mills v. Western Wash. Univ.*, 150 Wn. App. 260, 274, 208 P.3d 13 (2009). Since he had no pedagogical purpose for the behavior, the court rejected Mills' argument that First Amendment academic freedom analysis should be applied to his misconduct. *Mills*, 150 Wn. App. at 274-75.

The Court of Appeals held that the University's employment rules governing Mills' proceeding do not comply with APA rulemaking requirements, and therefore lack the force and effect of law. The court stated that the University rules are "simply internal policies." *Id.* at 277. The court noted that if the University had properly promulgated its rules,

closure of the hearing would have been permissible. *Id.* at 277-79. Finally, the court ruled that Mills was not required to establish standing by showing that he was substantially prejudiced. *Id.* at 279.

### III. ARGUMENT

#### A. **Closure of the Proceeding Complied With The APA And The Employment Rules The University Is Statutorily Authorized To Promulgate.**

RCW 34.05.449(5) authorizes presiding officers to close hearings “under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules.” The Legislature specifically delegated rulemaking authority to the University to “promulgate such rules and regulations . . . as the board of trustees in its discretion deem necessary or appropriate to the administration of the regional university.” RCW 28B.35.120(12).

In RCW 34.05.010(16)(iv), the Legislature expressly reiterated the exclusion of the universities from the rulemaking requirements of the APA. Procedures relating to agency hearings are generally “rules” under RCW 34.05.010(16)(b). However, the APA specifically exempts from the definition of the term “rule” the “rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, *employment relationships*, or fiscal processes.” RCW 34.05.010(16)(iv)(emphasis added).

1. **The rule closing the proceeding has the effect and force of law since it was properly promulgated under a legislative delegation of authority.**

Properly promulgated agency rules adopted pursuant to a legislative delegation of authority have the force of law. *Joyce v. Dep't of Corrections*, 155 Wn.2d 306, 323, 119 P.3d 825 (2005); *Champagne v. Thurston County*, 163 Wn.2d 69, 80, 178 P.3d 936 (2008) (citation omitted) (agency regulations carry the force of law). “ ‘A legislative rule has the force and effect of law, if promulgated in accordance with a legislative delegation.’ ” 2 Am. Jur. 2d, *Administrative Law* § 160, at 182 (1994). (quoted with approval in *Manor v. Nestle Food Co.*, 131 Wn.2d 439, 445, 932 P.2d 628 (1997)). The Court of Appeals decision directly conflicts with the holdings of this Court by failing to recognize that the rules promulgated by the University, pursuant to a legislative delegation of authority, have the force and effect of law.

In *McDonald v. Hogness*, 92 Wn.2d 431, 598 P.2d 707 (1979), this Court recognized that the Legislature delegated authority to the University of Washington to promulgate regulations and policies relating to admission. The University's promulgation of the admission regulations and policies was exempt from the rulemaking provisions of the former State Higher Education APA. *Id.* at 446 n.11, 451 (citing former RCW 28B.19.020(2)). The Court noted that although the rules were not subject

to public notice and comment, decisions made pursuant to the rules were subject to judicial review. *Id.* at 446.

In a case consistent with this Court's ruling in *McDonald*, the Court of Appeals considered the application of the University of Washington's *Faculty Handbook* to a denial of tenure. *Allard v. Bd. of Regents of the Univ. of Wash.*, 25 Wn. App. 243, 246-47, 606 P.2d 280 (1980). Allard claimed the tenure provisions in the *Faculty Handbook* were invalid because the rules were not adopted through the formal rulemaking procedures in the former Higher Education APA. The court held that "rules relating to employment relationships, which include tenure, are specifically exempted from the procedural requirements of the Act." *Id.* at 245-47 (citing former RCW 28B.19.020(2)).

Like the tenure procedures discussed in *Allard*, Western Washington University's rules governing faculty discipline involve employment relationships, and they were properly promulgated in the *Faculty Handbook* pursuant to a legislative delegation of authority. As in *McDonald* and *Allard*, the rules promulgated by the University have the force and effect of law, and as such were provisions of law.

**2. The employment rules contained in the *Faculty Handbook* were negotiated by the University and its faculty.**

The Court of Appeals' decision that the University's rule authorizing closure of the hearing lacked the force of law impacts all of higher education. RCW 28B.10.648(2) requires that peer review proceedings, like the one at issue here, "shall be pursuant to rules and regulations promulgated by the respective institutions of higher education." RCW 28B.10.648(2), (3). Institutions that collectively bargain with their faculty should promulgate their rules involving peer review proceedings in the collective bargaining agreements. Rules involving the disciplinary hearings are mandatory subjects of bargaining and must be negotiated and placed in the collective bargaining agreements. *City of Pullman*, Decision 8086 (PECB 2003) 2003 WL 21419640 at \*6 (citations omitted); *see also* RCW 41.76.070 and RCW 28B.52.100 (provisions of collective bargaining agreements involving faculty "are not affected by or subject to chapter 34.05. RCW").

At the time of Mills' proceeding, the University did not collectively bargain with its faculty. However, the University similarly negotiated the hearing procedures directly with the Faculty Senate because these rules primarily affect the faculty. These rules reside in the *Faculty Handbook*, which is a guide by which the Board, the administration, and

faculty “conduct their relations with each other in matters of faculty employment, welfare, rights, and responsibilities.” CP 175 (Handbook Section I.A.). The Legislature authorized the University to forego public notice and comment in regard to rules involving employment relationships to allow faculty the fullest participation in determining the conditions of employment which affect them. *C.f.*, RCW 41.76.001.

**3. There are sound policy reasons for closing faculty disciplinary proceedings that involve student testimony.**

In the higher education setting, education records maintained by a university are confidential if they directly relate to a student. 20 U.S.C. § 1232g(a)(4), (b)(1) (The Family Educational Rights & Privacy Act). The purpose of the Act is to protect students’ privacy in their education records. In the underlying proceeding, a number of students testified that Mills’ misconduct humiliated or adversely affected them. CP 1451-1460, Final Order, FoF 35-61. Section XVII.2.d. of the *Faculty Handbook* furthers this interest of protecting confidential student information.

Section XVII.2.d also fosters good labor relations insofar as the Board and Faculty Senate recognized that reputations might be damaged going into these hearings if the claims are unsubstantiated. *See e.g., Doe v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 189 P.3d 139 (2008)

(holding that instructors have a right to privacy under the Public Records Act if disciplinary charges are unsubstantiated).

In this proceeding, the allegations of Mills' misconduct were substantiated. Mills' assertion that the University's disciplinary proceedings are "secret," however, is not entirely correct. The University was required to record the hearing. RCW 34.05.449(4). If the hearing had taken place by telephone, the University would have been required to make the record and tapes available to the public. RCW 34.05.449(5). The transcript in Mills' proceeding was made available under the Public Records Act, subject to redaction of information identifying and directly relating to students. RCW 42.56.070; 20 U.S.C. § 1232g(a)(4). Upon appeal to the superior court, the redacted transcript became part of a court record, and was therefore available as required by *Cohen v. Everett City Council*, 85 Wn.2d 385, 388-89, 535 P.2d 801 (1975).

**4. Compliance with statutorily authorized rules is not comparable to agency application of internal policy statements, such as those at issue in *Joyce*.**

The Court of Appeals erred when it compared the Department of Corrections' statements concerning internal management of the agency with the rules of institutions of higher education involving employment relationships. *Mills*, 150 Wn. App. at 276-78 (citing *Joyce*, 155 Wn.2d at 323 (2005)).

In *Joyce*, a convicted felon on community supervision ran a red light in a stolen vehicle and killed Joyce. The felon's community corrections officers were aware that he had committed numerous violations of the terms of his community supervision. The Department of Corrections had an internal policy that required community correction officers to report such violations within 30 days of learning of the violation. The Court held that the internal policy statement did not have the force of law: "Unlike administrative rules and other formally promulgated agency regulations, internal policies and directives do not create law," but "where a policy directive is the equivalent of a liability-creating administrative rule, such status may endow the directive with the force of law." *Joyce*, 155 Wn.2d at 323 (citing *Melville v. State*, 115 Wn.2d 34, 39-40, 793 P.2d 952 (1990)).

Unlike the rules at issue in *Mills*' case, the policy directives at issue in *Joyce* were not promulgated pursuant to legislative delegation, and therefore did not have the force of law. *Id.* (citing *State v. Brown*, 142 Wn. 2d 57, 62, 11 P.3d 818 (2000)). Further, since the Department's policy affected public safety, it was not exempt from rulemaking under RCW 34.05.010(16)(i) (the term "rule" does not include "statements concerning only the internal management of an agency and not affecting the private rights or procedures available to the public"). In sharp

contrast, RCW 34.05.010(16)(iv) pointedly exempts from the APA “rules of institutions of higher education involving . . . employment relationships.”

In *Melville*, a similar policy directive was considered. The facts of the case involved a former prisoner who killed his ex-wife and her daughter three months after his release. The issue was whether an internal policy created a duty to provide mental health treatment prior to the inmate’s release. The Department of Corrections had an internally conflicting policy directive that mandated mental health counseling, but allowed voluntary participation. The Court held that policy directives, unlike agency rules and regulations, do not have the force of law. Neither party cited former RCW 34.04.010(2)(e)(1987)(recodified at RCW 34.05.010(16)(i)), which exempted “statements concerning internal management of an agency and not affecting private rights or procedures available to the public.” Since the plaintiff had not established that the policy directive was equivalent to an administrative rule with the force of law, the Court denied plaintiff’s claim and took no position on the effect of policy statements adopted pursuant to former RCW 34.04.010(2)(e)(1987). *Melville*, 115 Wn.2d at 39-40.

Here, unlike *Joyce* and *Melville*, the University was acting pursuant to a legislative delegation of authority to promulgate rules

involving employment relationships. *Melville*, upon which *Joyce* stands, did not express an opinion on whether statements adopted pursuant to RCW 34.05.010(16)(i) have the force of law. *Joyce* does not stand for the proposition that institutions of higher education with rulemaking authority cannot promulgate their rules involving employment relationships in faculty handbooks or collective bargaining agreements. The Court of Appeals erred when it held that Section XVII.2.d of the *Faculty Handbook* was not a provision of law that expressly authorized closure of the hearing.

**B. If The University's Rule Does Not Constitute A Provision Of Law, Mills Must Show That He Was Substantially Prejudiced.**

As discussed above, closure of the proceeding was authorized by law. However, even if the closure had been improper, Mills would be statutorily required to show he was substantially prejudiced by the closure. RCW 34.05.570(1)(d) states that a "court shall grant relief *only if* it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of." RCW 34.05.570(1)(d) (emphasis added). The Court of Appeals erred in holding that Mills need not satisfy this statutory requirement. *Mills*, 150 Wn. App. at 279 (citing RCW 34.05.570(3)(c)).

This Court has held that as a threshold matter, the party seeking relief must show substantial prejudice before the court can grant relief for a violation of RCW 34.05.570(3)(c). *Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 226, 173 P.3d 885 (2007) (citing RCW 34.05.570(1)(d)). In *Densley*, the petitioner claimed a final order should have been set aside pursuant to RCW 34.05.570(3)(c), due to improprieties in the administrative review process. The Court noted that under RCW 34.05.570(3)(c), the court shall grant relief only if “(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure.” *Id.* at 226. Accordingly, the Court held that Densley was required to show how he had been substantially prejudiced before the Court could set aside an order based on a procedural violation under RCW 34.05.570(3)(c). *Densley*, 162 Wn.2d at 226.

Mills makes the same error. He contends that the Board's order must be set aside based on his speculation that had the hearing been open, he would not have been disciplined.<sup>1</sup> CP 1237. Mills allegation is baseless. The Board also held that a protective order could have been issued to close the hearing. *See* WAC 516-108-070 and WAC 10-08-200(7) (authorizing closure under a protective order for good cause). Like

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<sup>1</sup> At the Court of Appeals, Mills relied “solely upon the harmless error-style analysis applied in the context of cases examining the *constitutional* open justice guarantee” to show substantial prejudice. *Mills*, 150 Wn. App. at 279 (citing *State v. Easterling*, 157 Wn.2d 167, 180, 137 P.3d 825 (2006)).

*Densley*, Mills has failed to show substantial prejudice. Therefore, he is not entitled to relief.

The Court of Appeals decision holds agencies strictly liable for noncompliance with the procedural requirements of the APA, regardless of whether substantial prejudice is suffered. This is directly contrary to the statutory requirements set forth in the APA.

RCW 34.05.570(1)(d) is a standing provision. William R. Andersen, *The 1988 Washington Administrative Procedure Act – An Introduction*, 64 Wash. L. Rev 781, 824 (1989) (“At a later stage of the review, a court is told to limit relief to those who have proven substantial prejudice from the action.”). As was the case under former RCW 34.04.130(6), “relief cannot be granted unless the complainant has shown substantial prejudice from the agency action complained of.” *Id.* at 833. Thus, in *Rauch v. Fisher*, 39 Wn. App. 910, 914, 696 P.2d 623 (1985), the Court held under former RCW 34.04.130(6) that the petitioner could not challenge an ALJ’s decision to deny a party standing or assert error of the law without first showing how he had been substantially prejudiced by the decision. Presumably, Rauch could have made the same argument that had another party been allowed standing, the ALJ might have decided the case differently. Allowing such speculation to substitute for a showing of substantial prejudice would render RCW 34.05.570(1)(d) superfluous.

The standing requirement frees the court's limited resources for those who truly have meritorious claims. In addition, it prevents requiring agencies to retrace their steps to cure a procedural defect that did not affect the outcome of a proceeding. The Court of Appeals decision to negate the standing requirement imposed by RCW 34.05.570(1)(d) defeats the policy objectives served by the Legislature's decision.

Mills never challenged the Board's findings that he engaged in misconduct. Given the extreme nature of his abuse of students and staff, and the lenient sanction, it is nearly impossible to imagine that opening the hearing would have changed the outcome in Mills favor. Since Mills cannot establish substantial prejudice, relief is not permitted by the APA.

**C. University Disciplinary Hearings Under The APA Are Not Subject To Article 1, Section 10 Of The State Constitution.**

The Court of Appeals did not reach Mills' argument that the University's disciplinary hearing was subject to article 1, section 10 of the state constitution, and he did not present the issue in his petition. *Mills*, 150 Wn. App. at 280 n.8. Therefore, the issue is not before this Court. If, however, the Court decides to examine the constitutional provision, the plain language of article 1, section 10 and the case law establish that it applies to judicial proceedings, rather than to disciplinary proceedings

held pursuant to the negotiated terms enacted as rules in the University's *Faculty Handbook*.

Article 1, section 10 provides: "Administration of Justice. Justice in all cases shall be administered openly, and without unnecessary delay." A "case" means: (1) "In law: a cause or suit in court; any instance of litigation; as the case was tried last term." 1 *The Century Dictionary* 840 (1889); (2) "Law. (a) A cause of action, a suit, an action. (b) A state of facts constituting a cause of action submitted for judicial decision." *A Standard Dictionary of the English Language* 292 (Isaac K. Funk et al. eds. 1897); and (3) "1. A general term for an action, cause, suit, or controversy, at law or in equity. A question contested before a court of justice." 1 *Henry Campbell Black, A Dictionary of Law* 175 (1891). "Justice" is "[t]he constant and perpetual disposition to render every man his due. The conformity of actions and our will to the law." *Id.* at 672. See *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 481, 90 P.3d 42 (2004) (applying contemporaneous dictionary definitions to determine the plain meaning of constitutional provisions). Based on the plain language of article 1, section 10, the Framers could only have been referring to courts of the judicial branch when they used the phrase "justice in all cases."

In *Seattle Times Co. v. Eberharter*, 105 Wn.2d 144, 713 P.2d 710 (1986), this Court found that the constitutional history of article 1, section 10 was of no assistance in delineating the term “justice in all cases,” but held that the case law provided guidance in defining the contours of this provision: “Article 1, section 10 provides for a right of access to (1) trials, (2) pretrial hearings, (3) transcripts of pretrial hearings or trials, and (4) exhibits introduced at pretrial hearings.” *Eberharter*, 105 Wn.2d at 155 (citations omitted). The plain text of article 1, section 10 “is not limited to trials but includes all judicial proceedings.” *Federated Publ’ns, Inc. v. Kurtz*, 94 Wn.2d 51, 59, 615 P.2d 440 (1980).

In *Cohen v. Everett City Council*, the Court held that only when a court reached the merits of the controversy by reviewing the transcript of an administrative proceeding, did the court “administer” justice within the meaning of article 1, section 10. *Cohen*, 85 Wn.2d at 388-89. The case law confirms that the plain language of article 1, section 10 does not apply to executive or legislative branch agencies and offices. Only the judicial branch engages in the administration of justice.

Washington’s article 1, section 10 was drawn from similar provisions in Oregon and Indiana. Quentin Shipley Smith, *Journal of Washington State Constitution 1889*, at 499 n.18 (1962) (Ore. Const. art. I, § 10; Ind. Const. art. I, § 12). Oregon and Indiana have not applied their

open courts provision to administrative hearings. Nor has Arizona, which has an identical open courts provision. Ariz. Const. art. I, § 10.

The Framers could not have intended article 1, section 10 to apply to executive branch employer disciplinary proceedings, since there were no procedures for conducting such proceedings in 1889. The first Administrative Procedure Act was not adopted until 1959. Laws of 1959, ch. 234, former RCW 34.04. The Legislature did not provide for public access to administrative hearings until 1988 when it adopted RCW 34.05.449(5). The term “justice in all cases shall be administered openly without unnecessary delay” could not have referred to executive or legislative branch employer disciplinary hearings, since employers do not administer justice and they do not hear cases.

#### IV. CONCLUSION

For the foregoing reasons, the Court should reverse the Court of Appeals and affirm the Final Order of the Board of Trustees. Since Mills

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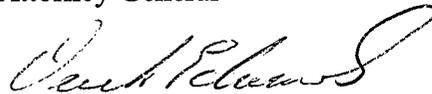
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has not prevailed and the hearing closure was substantially justified under RCW 4.84.350, the Court of Appeals' award of attorney's fees should also be reversed.

RESPECTFULLY SUBMITTED this 8th day of March, 2010.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in cursive script, appearing to read "Derek Edwards".

DEREK EDWARDS, WSBA #18889  
Senior Counsel, Assistant Attorney General  
800 5<sup>th</sup> Avenue, Suite 2000  
Seattle, WA 98104-3188  
Phone: (206) 389-2054

## APPENDIX A

### Revised Code of Washington

#### RCW 4.84.350

##### **Judicial review of agency action — Award of fees and expenses.**

(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

2) The amount awarded a qualified party under subsection (1) of this section shall not exceed twenty-five thousand dollars. Subsection (1) of this section shall not apply unless all parties challenging the agency action are qualified parties. If two or more qualified parties join in an action, the award in total shall not exceed twenty-five thousand dollars. The court, in its discretion, may reduce the amount to be awarded pursuant to subsection (1) of this section, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter in controversy.

[1995 c 403 § 903.]

#### RCW 28B.10.648

##### **Employees — Peer review committees — Members' immunity — Proceedings — Statement of reasons — Legal representation of members.**

(1) Employees, agents, or students of institutions of higher education serving on peer review committees which recommend or decide on appointment, reappointment, tenure, promotion, merit raises, dismissal, or other disciplinary measures for employees of the institution, are immune from civil actions for damages arising from the good faith performance of their duties as members of the committees. Individuals who provide written or oral statements in support of or against a person reviewed are also immune from civil actions if their statements are made in good faith.

(2) Peer review proceedings shall be pursuant to rules and regulations promulgated by the respective institutions of higher education.

(3) Upon the request of an evaluated person, the appropriate administrative officer of the institution shall provide a statement of the reasons of the peer review committees and of participating administrative officers for a final unfavorable decision on merit, promotion, tenure or reappointment. In the case of a disciplinary or dismissal proceeding, a statement of reasons shall be provided by the reviewing committee to the evaluated person for any decision unfavorable to such person.

(4) The institutions of higher education shall provide legal representation for any past or current members of the peer review committee and for individuals who testify orally or in writing in

good faith before such committee in any legal action which may arise from committee proceedings.

[1984 c 137 § 1.]

### **RCW 28B.35.120**

#### **Trustees — General powers and duties of board.**

In addition to any other powers and duties prescribed by law, each board of trustees of the respective regional universities:

- (1) Shall have full control of the regional university and its property of various kinds, except as otherwise provided by law.
- (2) Shall employ the president of the regional university, his assistants, members of the faculty, and other employees of the institution, who, except as otherwise provided by law, shall hold their positions, until discharged therefrom by the board for good and lawful reason.
- (3) With the assistance of the faculty of the regional university, shall prescribe the course of study in the various schools and departments thereof and publish such catalogues thereof as the board deems necessary: PROVIDED, That the Washington professional educator standards board shall determine the requisites for and give program approval of all courses leading to teacher certification by such board.
- (4) Establish such divisions, schools or departments necessary to carry out the purposes of the regional university and not otherwise proscribed by law.
- (5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the regional university.
- (6) May acquire real and other property as provided in RCW 28B.10.020, as now or hereafter amended.
- (7) Except as otherwise provided by law, may purchase all supplies and purchase or lease equipment and other personal property needed for the operation or maintenance of the regional university.
- (8) May establish, lease, operate, equip and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.
- (9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to regional university purposes.
- (10) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from whatsoever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the regional university programs; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and

income thereof except as limited by the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof.

(11) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(12) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the regional university.

[2006 c 263 § 824; 2004 c 275 § 54; 1985 c 370 § 94; 1977 ex.s. c 169 § 48. Prior: 1969 ex.s. c 223 § 28B.40.120; prior: 1909 c 97 p 252 § 4; RRS § 4607; prior: 1905 c 85 § 1; 1897 c 118 § 215; 1893 c 107 § 4. Formerly RCW 28B.40.120, part; 28.81.050.]

### **RCW 28B.52.100**

#### **State higher education administrative procedure act not to affect.**

Contracts or agreements, or any provision thereof entered into between boards of trustees and employees organizations pursuant to this chapter shall not be affected by or be subject to chapter 34.05 RCW.

[1971 ex.s. c 196 § 9.]

### **RCW 34.05.010(16)**

#### **Definitions.**

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

.....

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission,

academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

**RCW 34.05.449**

**Procedure at hearing.**

(1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency. [1989 c 175 § 18; 1988 c 288 § 414.]

**RCW 34.05.570**

**Judicial review.**

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

[2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

**RCW 41.76.001**

**Findings — Declarations — Intent.**

The legislature finds and declares that:

(1) The people of the state of Washington have a fundamental interest in developing harmonious and cooperative labor relations within the public four-year institutions of higher education.

(2) Teachers in the public school system and instructors in the community colleges in the state have been granted the opportunity to bargain collectively. It is desirable to expand the jurisdiction of the public employment relations commission to cover faculty in the state's public four-year institutions of higher education.

(3) It is the purpose of this chapter to provide the means by which relations between the boards of regents and trustees of the public four-year institutions of higher education of the state of Washington and their faculty may assure that the responsibilities and authorities granted to these institutions are carried out in an atmosphere that permits the fullest participation by faculty in determining the conditions of employment which affect them. It is the intent of the legislature to accomplish this purpose by providing a uniform structure for recognizing the right of faculty of the public four-year institutions of higher education to engage in collective bargaining as provided in this chapter, if they should so choose.

(4) It is the further purpose of this chapter to provide orderly and clearly defined procedures for collective bargaining and dispute resolution, and to define and prohibit certain practices that are contrary to the public interest.

[2002 c 356 § 1.]

**RCW 41.76.070**

**Certain contracts or agreements — Chapter 34.05 RCW does not apply.**

Contracts or agreements, or any provision thereof, entered into between boards of regents or trustees and exclusive bargaining representatives pursuant to this chapter are not affected by or subject to chapter 34.05 RCW.

[2002 c 356 § 17.]

**Washington Administrative Code**

**WAC 10-08-200**

**Adjudicative proceedings — Presiding officer.**

The presiding officer shall have authority to:

(7) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

**WAC 516-108-070**

**Procedure for closing parts of the hearings.**

A party may apply for a protective order to close part of a hearing. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed, and state the reasons therefor in writing within twenty days of receiving the request.

[Statutory Authority: RCW 28B.35.120(12), 34.05.220 (1)(b), 34.05.250, 28B.15.600, 42.17.310, 42.30.070 - 42.30.075, chapters 69.41 and 43.21C RCW. 90-10-042, § 516-108-070, filed 4/27/90, effective 5/1/90.]

**United States Code**

**20 U.S.C. § 1232g. Family educational and privacy rights**

.....  
(a)(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

.....  
(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required; . . .

this end any section, sentence, or word is declared to be severable. [1969 ex.s. c 36 § 28. Formerly RCW 28.75.930.]

Reviser's note: See note following RCW 28B.16.010.

### Chapter 28B.19

## STATE HIGHER EDUCATION ADMINISTRATIVE PROCEDURE ACT

#### Sections

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 28B.19.200 Parts of chapter conflicting with federal requirements deemed inoperative.  
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*College work-study program, rules and regulations promulgated under: RCW 28B.12.060.*

*Institutions of higher education considered state agencies for certain purposes: RCW 34.08.050.*

**28B.19.010 Purpose.** The interest of state institutions of higher education, those students and other citizens whom the institutions serve, employees, and the

public generally, will be furthered by providing a uniform framework for the adoption, identification, and enforcement of rules and regulations governing aspects of institutional operation which affect substantial rights of individuals. The general purpose of this chapter is to provide a uniform framework for promulgation of certain administrative rules and regulations and the conduct of hearings where contested cases arise in connection with those rules and regulations, consistent with the particular needs of institutions of higher education and the people they serve. [1971 ex.s. c 57 § 1.]

**Severability—1971 ex.s. c 57:** "If any provision of this 1971 amendatory act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end any section, sentence, or word is declared to be severable." [1971 ex.s. c 57 § 19.] For codification of 1971 ex.s. c 57, see Codification Tables, Volume 0.

**Effective dates—1971 ex.s. c 57:** "Sections 1 through 20 of this 1971 amendatory act shall become effective September 1, 1971: *Provided*, That institutions of higher education are authorized and empowered to undertake to perform duties and conduct activities necessary to comply with sections 1 through 16 of this 1971 amendatory act immediately: *Provided further*, That section 21 of this 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, and the support of the state government and its existing public institutions and shall take effect immediately." [1971 ex.s. c 57 § 22.]

**28B.19.020 Definitions.** The words used in this chapter shall have the meaning given in this section, unless the context clearly indicates otherwise.

(1) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions." The various state community colleges are sometimes referred to in this chapter as "community colleges."

(2) "Rule" means any order, directive, or regulation of any institution of higher education which affects the relationship of the general public with the institution, or the relationship of particular segments of the particular educational community such as students, faculty, or other employees, with the institution or with each other, (a) the violation of which subjects a person to a penalty or administrative sanction; or (b) which establishes, alters, or revokes any procedures, practice, or requirement relating to institutional hearings; or (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law. The term includes the amendment or repeal of a prior rule but does not include rules, regulations, orders, statements, or policies relating primarily to the following: Standards for admission; academic advancement, academic credits, graduation and the granting of degrees; tuition and fees, scholarships,

financial aids, and similar academic matters; employment relationships; fiscal processes; or matters concerning only the internal management of an institution and not affecting private rights or procedures available to the general public; and such matters need not be established by rule adopted under this chapter unless otherwise required by law.

(3) "Contested case" means a formal or informal proceeding before an institution of higher education, division, department, office, or designated official or representative thereof in which an opportunity for hearing is required by law, constitutional rights, or institutional policy, prior or subsequent to the determination by the institution of the legal rights, duties, or privileges of specific parties.

(4) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.04.210 for the purpose of selectively reviewing existing and proposed rules of institutions of higher education. [1981 c 324 § 11; 1977 ex.s. c 169 § 42; 1971 ex.s. c 57 § 2.]

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.04.010.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.19.030 Notice of intended action, filing, contents—Oral hearing, when—Proceedings on rule barred until twenty days after register distribution—Questioning procedural validity of rule, estoppel—Rule ineffective on failure to file notice.** (1) Prior to the adoption, amendment, or repeal of any rule adopted under this chapter, each institution, college, division, department, or official thereof exercising rule-making authority delegated by the governing board or the president, shall:

(a) File notice thereof with the code reviser in accordance with RCW 34.08.020(1) for publication in the state register, and with the rules review committee, and mail the notice to all persons who have made timely request of the institution or related board for advance notice of its rule-making proceedings. Such notice shall also include (i) reference to the authority under which the rule is proposed, (ii) a statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved, and (iii) the time when, the place where, and the manner in which interested persons may present their views thereon;

(b) Provide notice to the campus or standard newspaper of the institution involved and to a newspaper of general circulation in the area at least seven days prior to the date of the rule-making proceeding. The notice shall state the time when, place where, and manner in which interested persons may present their views thereon and the general subject matter to be covered;

(c) Afford all interested persons reasonable opportunity to submit data, views, or arguments; orally or in writing. An opportunity for oral hearing must be granted if requested by twenty-five persons or by the rules review committee.

(2) The institution shall make every effort to insure that the information on the proposed rule circulated pursuant to subsection (1)(a) of this section accurately reflects the rule to be presented and discussed at any oral hearing on such rule. Where substantial changes in the draft of the proposed rule are made after publication of notice in the register which would render it difficult for interested persons to properly comment on the rule without further notice, new notice of the institution's intended action as provided in subsection (1)(a) of this section shall be required.

(3) The institution shall consider fully all written and oral statements respecting the proposed rule including those addressing the question of whether the proposed rule is within the intent of the legislature as expressed by the statute which the rule implements, and may amend the proposed rule at the oral hearing or adopt the proposed rule, if there are no substantial changes, without refileing the notice required by this section.

(4) No proceeding may be held on any rule until twenty days have passed from the distribution date of the register in which notice thereof was contained. The code reviser shall make provisions for informing an institution of higher education giving notice under subsection (1) of this section of the distribution date of the register in which such notice will be published.

(5) No rule adopted under this chapter is valid unless adopted in substantial compliance with this section, unless it is an emergency rule designated as such and is adopted in substantial compliance with RCW 28B.19.040, as now or hereafter amended. In any proceeding a rule cannot be contested on the ground of noncompliance with the procedural requirements of RCW 34.08.020(1), of this section, or of RCW 28B.19.040, as now or hereafter amended, after two years have elapsed from the effective date of the rule.

(6) When twenty days notice of intended action to adopt, amend, or repeal a rule has not been filed with the code reviser, as required by subsection (4) of this section, the code reviser may not publish such rule, and such rule may not be effective for any purpose. [1982 c 221 § 7; 1981 c 324 § 12; 1977 ex.s. c 240 § 10; 1971 ex.s. c 57 § 3.]

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.04.010.

**Effective date—Severability—1977 ex.s. c 240:** See RCW 34.08.905 and 34.08.910.

*Institutions of higher education considered state agencies for certain purposes: RCW 34.08.050.*

**28B.19.033 Statement of proposed rule's purpose and how implemented—Contents—Distribution by institution.** (1) For the purpose of legislative review of institution rules filed pursuant to this chapter, any new or amendatory rule proposed after June 12, 1980, shall be accompanied by a statement prepared by the adopting institution which generally describes the rule's purpose and how the rule is to be implemented. Such statement shall be on the institution's stationery or a form bearing the institution's name and shall contain, but is not limited to, the following:

[Title 28B RCW—p 79]

## CHAPTER 57

[Engrossed Senate Bill No. 469]

## STATE HIGHER EDUCATION ADMINISTRATIVE PROCEDURE ACT

AN ACT Relating to state institutions of higher education; establishing an administrative procedures act for state institutions of higher education; authorizing the delegation of powers; amending section 15, chapter 234, Laws of 1959 as last amended by section 1, chapter 21, Laws of 1971 and RCW 34.04.150; adding new sections to chapter 223, Laws of 1969 ex. sess. and to Title 28B RCW as a new chapter thereof; adding a new section to chapter 223, Laws of 1969 ex. sess. and to chapter 28B.10 RCW; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. The interest of state institutions of higher education, those students and other citizens whom the institutions serve, employees, and the public generally, will be furthered by providing a uniform framework for the adoption, identification, and enforcement of rules and regulations governing aspects of institutional operation which affect substantial rights of individuals. The general purpose of this chapter is to provide a uniform framework for promulgation of certain administrative rules and regulations and the conduct of hearings where contested cases arise in connection with those rules and regulations, consistent with the particular needs of institutions of higher education and the people they serve.

NEW SECTION. Sec. 2. The words used in this chapter shall have the meaning given in this section, unless the context clearly indicates otherwise:

(1) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington State College, Eastern Washington State College, Western Washington State College, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions." The various state community colleges are sometimes referred to in this chapter as "community colleges."

(2) "Rule" means any order, directive, or regulation of any institution of higher education which affects the relationship of the general public with the institution, or the relationship of particular segments of the particular educational community such as students, faculty, or other employees, with the institution or with

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each other, (a) the violation of which subjects a person to a penalty or administrative sanction; or (b) which establishes, alters, or revokes any procedures, practice, or requirement relating to institutional hearings; or (c) which establishes, alters or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law. The term includes the amendment or repeal of a prior rule but does not include rules, regulations, orders, statements, or policies relating primarily to the following: Standards for admission; academic advancement, academic credits, graduation and the granting of degrees; tuition and fees, scholarships, financial aids, and similar academic matters; employment relationships; fiscal processes; or matters concerning only the internal management of an institution and not affecting private rights or procedures available to the general public; and such matters need not be established by rule adopted under this chapter unless otherwise required by law.

(3) "Contested case" means a formal or informal proceeding before an institution of higher education, division, department, office, or designated official or representative thereof in which an opportunity for hearing is required by law, constitutional rights, or institutional policy, prior or subsequent to the determination by the institution of the legal rights, duties, or privileges of specific parties.

NEW SECTION. Sec. 3. (1) Prior to the adoption, amendment, or repeal of any rule adopted under this chapter, each institution, college, division, department, or official thereof exercising rule-making authority delegated by the governing board or the president, shall:

(a) Give at least twenty days' notice of its intended action by filing the notice with the code reviser and by mailing the notice to all persons who have made timely request of the institution or related board for advance notice of its rule-making proceedings. Such notice shall include (i) reference to the authority under which the rule is proposed, (ii) a statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved, and (iii) the time when, the place where, and the manner in which interested persons may present their views thereon.

(b) Provide notice to the campus or standard newspaper of the institution involved and to a newspaper of general circulation in the area at least seven days prior to the date of the rule-making proceeding. The notice shall state the time when, place where and manner in which interested persons may present their views thereon and the general subject matter to be covered.

(c) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. An

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# Title 34

## ADMINISTRATIVE LAW

### Chapters

- 34.04 Administrative Procedure Act.**
- 34.08 Washington State Register Act of 1977.**
- 34.12 Office of administrative hearings.**

*Higher Education Administrative Procedure Act: Chapter 28B.19 RCW.*

*Open Public Meetings Act: Chapter 42.30 RCW.*

*Regulatory Fairness Act: Chapter 19.85 RCW.*

*State economic policy: Chapter 43.21H RCW.*

*State publications in gender-neutral terms: RCW 43.01.160.*

### Chapter 34.04

#### ADMINISTRATIVE PROCEDURE ACT

#### Sections

- 34.04.010 Definitions.
- 34.04.020 Adoption of rules of practice and procedure—Organizational description—Records of decisions, orders, and opinions open to public—Exceptions—Effect of failure to comply.
- 34.04.022 Uniform procedural rules—Application—Conduct of contested cases.
- 34.04.025 Notices of intention to adopt rules—Opportunity to submit data—Proceedings on rule barred until twenty days after register distribution—Noncompliance, effect.
- 34.04.026 Specific reference to rule-making authority to be included—Alternatives—Format—Request for more specific reference.
- 34.04.027 Failure to give twenty days notice of intended action—Effect.
- 34.04.030 Emergency rules and amendments.
- 34.04.040 Rules filed with code reviser—Register—Effective dates.
- 34.04.045 Statement of proposed rule's purpose and how implemented—Contents—Distribution by agency.
- 34.04.048 Withdrawal of proposed rules.
- 34.04.050 Code reviser to compile and edit rules, publish register—Removal of unconstitutional rules—Distribution of registers and codes—County law library trustees to maintain set—Judicial notice of rules.
- 34.04.052 Scope of editing and revision of rules.
- 34.04.055 Regulations on filing and form of rules and notices.
- 34.04.057 Style, format, and numbering of rules—Agency compliance.
- 34.04.058 Format and style of rules amending existing sections, adding new sections—Effect of failure to comply.
- 34.04.060 Petition for adoption, amendment, repeal of rule—Agency action.
- 34.04.070 Declaratory judgment on validity of rule—Small business economic impact statement action as part of record.
- 34.04.080 Declaratory ruling by agency—Petition—Court review.
- 34.04.090 Contested cases—Notice—Hearing—Summary orders—Informal disposition—Record—Findings of fact—Agency's powers.
- 34.04.100 Contested cases—Rules of evidence—Cross-examination.
- 34.04.105 Agency hearings and contested cases—Hearings, oaths, subpoenas, evidence, witnesses—Contempt.

- 34.04.110 Contested cases—Procedure when deciding officials have not heard or read evidence.
- 34.04.115 Consultation by agency officer as to issues.
- 34.04.120 Contested cases—Adverse decisions and orders—Findings and conclusions.
- 34.04.130 Contested cases—Judicial review.
- 34.04.133 Contested cases—Direct review by court of appeals.
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- 34.04.150 Exclusions from chapter or parts of chapter.
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- 34.04.220 Review of proposed rules—Notice.
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- 34.04.280 Reports by agency to office of financial management—Compilation.
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- 34.04.900 Severability—1959 c 234.
- 34.04.901 Severability—1967 c 237.
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- 34.04.920 Effective dates—1959 c 234.
- 34.04.921 Effective date—1967 c 237.
- 34.04.930 Operation of chapter if in conflict with federal law.
- 34.04.931 Operation of 1967 amendatory act if in conflict with federal law.
- 34.04.940 Savings—Authority of agencies to comply with chapter—Effect of subsequent legislation.
- 34.04.950 Exemption—Review of hazardous waste settlement offers.

*Hearings, procedures, rule making by various agencies to be in accordance with Administrative Procedure Act: Cf. the pertinent statute under which the particular agency is established.*

**34.04.010 Definitions.** The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Agency" means any state board, commission, department, or officer, authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

(2) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which

establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.04.080, as now or hereafter amended, or (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices.

(3) "Contested case" means a proceeding before an agency in which an opportunity for a hearing before such agency is required by law or constitutional right prior or subsequent to the determination by the agency of the legal rights, duties, or privileges of specific parties. Contested cases shall also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law or agency rules.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or any form of permission required by law, including agency rule, to engage in any activity, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes the agency process respecting the or modification of a license.

(6) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.04.210 for the purpose of selectively reviewing existing and proposed rules of state agencies. [1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1.]

**Severability**—1982 c 10: See note following RCW 6.13.080.

**Legislative affirmation**—1981 c 324: "The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act." [1981 c 324 § 1.]

**Severability**—1981 c 324: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 324 § 18.]

The above two annotations apply to 1981 c 324. For codification of that act, see Codification Tables, Volume 0.

**34.04.020 Adoption of rules of practice and procedure—Organizational description—Records of decisions, orders, and opinions open to public—Exceptions—Effect of failure to comply.** In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions: *Provided*, That rules for the conduct of contested cases shall be those which are promulgated by the chief administrative law judge pursuant to RCW 34.04.022, as now or hereafter amended.

(2) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(3) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in contested cases and any digest or index to those orders, decisions, or opinions prepared by the agency for its own use. No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection as herein required. This provision is not applicable in favor of any person who has actual knowledge thereof. [1981 c 67 § 13; 1967 c 237 § 2; 1959 c 234 § 2.]

**Effective dates—Severability**—1981 c 67: See notes following RCW 34.12.010.

**34.04.022 Uniform procedural rules—Application—Conduct of contested cases.** On or before July 1, 1967, the code reviser shall add to Title 1 of the Washington Administrative Code a new chapter to be known as chapter 1-08 WAC—Uniform Procedural Rules, which shall become effective July 1, 1967, and shall govern the administrative practice and procedure in and before all agencies which have not adopted comprehensive rules of practice and procedure prior to that date. Except for the numbering thereof, such rules shall be identical with the rules contained in WAC 308-08-010 through 308-08-590 as the same existed on January 3, 1966: *Provided*, That in publishing chapter 1-08 WAC the reviser may revise such terms as are used in chapter 308-08 WAC to describe "agency", "department", "board", "commission", and like terms, so as to enable the use of such rules by multiple agencies.

The chief administrative law judge shall promulgate uniform procedural rules governing the conduct of contested cases. The rules may consist of, may be based upon, or may completely replace the rules codified in chapter 1-08 WAC as of June 30, 1981. From time to time thereafter the chief administrative law judge may modify the uniform procedural rules.

The chief administrative law judge may adopt rules with variations from the uniform rules for an agency if the chief administrative law judge determines there are sufficient demonstrable needs for variations. Variations shall, to the greatest practicable extent, embody the uniform rules of practice and procedure. [1981 c 67 § 14; 1967 c 237 § 12.]

**Effective dates—Severability**—1981 c 67: See notes following RCW 34.12.010.

**34.04.025 Notices of intention to adopt rules—Opportunity to submit data—Proceedings on rule barred until twenty days after register distribution—**

outstanding obligations guaranteed by the fund, or (2) the total amount of delinquent assessments and interest accumulated on the delinquent assessments before the levy as of September 1.

The taxes levied for the maintenance of the local improvement guaranty fund shall be additional to and, if need be, in excess of all statutory and charter limitations applicable to tax levies in any city or town.

Sec. 8. Section 35.54.090, chapter 7, Laws of 1965 and RCW 35.54.090 are each amended to read as follows:

Warrants drawing interest at a rate (~~not to exceed six percent~~) established by the issuing officer under the direction of the legislative authority of the city or town shall be issued against the local improvement guaranty fund to meet any liability accruing against it. The warrants so issued shall at no time exceed five percent of the outstanding obligations guaranteed by the fund.

Passed the Senate March 30, 1981.

Passed the House April 20, 1981.

Approved by the Governor May 19, 1981.

Filed in Office of Secretary of State May 19, 1981.

#### CHAPTER 324

[Engrossed Substitute Senate Bill No. 3386]  
LEGISLATIVE RULES REVIEW

AN ACT Relating to state government; amending section 1, chapter 234, Laws of 1959 as amended by section 1, chapter 237, Laws of 1967 and RCW 34.04.010; amending section 3, chapter 237, Laws of 1967 as last amended by section 7, chapter 240, Laws of 1977 ex. sess. and RCW 34.04.025; amending section 3, chapter 234, Laws of 1959 as amended by section 8, chapter 240, Laws of 1977 ex. sess. and RCW 34.04.030; amending section 2, chapter 57, Laws of 1971 ex. sess. as amended by section 42, chapter 169, Laws of 1977 ex. sess. and RCW 28B.19.020; amending section 3, chapter 57, Laws of 1971 ex. sess. as amended by section 10, chapter 240, Laws of 1977 ex. sess. and RCW 28B.19.030; amending section 4, chapter 57, Laws of 1971 ex. sess. as last amended by section 11, chapter 240, Laws of 1977 ex. sess. and RCW 28B.19.040; adding new sections to chapter 28B.19 RCW; adding new sections to chapter 34.04 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act.

Sec. 2. Section 1, chapter 234, Laws of 1959 as amended by section 1, chapter 237, Laws of 1967 and RCW 34.04.010 are each amended to read as follows:

((For the purpose of this chapter:)) The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Agency" means any state board, commission, department, or officer, authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

(2) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.04.080, as now or hereafter amended, or (iii) speed restrictions for motor vehicles established by the state ((highway)) transportation commission.

(3) "Contested case" means a proceeding before an agency in which an opportunity for a hearing before such agency is required by law or constitutional right prior or subsequent to the determination by the agency of the legal rights, duties, or privileges of specific parties. Contested cases shall also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law or agency rules.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or any form of permission required by law, including agency rule, to engage in any activity, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or modification of a license.

(6) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to section 5 of this 1981 act for the purpose of selectively reviewing existing and proposed rules of state agencies.

Sec. 3. Section 3, chapter 237, Laws of 1967 as last amended by section 7, chapter 240, Laws of 1977 ex. sess. and RCW 34.04.025 are each amended to read as follows:

(1) Prior to the adoption, amendment, or repeal of any rule, each agency shall:

witness shall be dealt with as for contempt of court. [1967 c 237 § 10.]

**34.04.110 Contested cases—Procedure when deciding officials have not heard or read evidence.** Whenever in a contested case a majority of the officials of the agency who are to render the final decision have not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law has been served upon the parties, and an opportunity has been afforded each party adversely affected to file exceptions and present written argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties. Oral arguments may be heard in the discretion of the agency. [1959 c 234 § 11.]

**34.04.115 Consultation by agency officer as to issues.** Except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law, no hearing examiner or agency or member of an agency presiding in a contested case or preparing a decision, or proposal for decision shall consult with any person or party on any issue of fact or law in the proceeding, except that in analyzing and appraising the record for decision any agency member or hearing examiner may (1) consult with members of the agency making the decision, (2) have the aid and advice of one or more personal assistants, (3) have the assistance of other employees of the agency who have not participated in the proceeding in any manner, who are not engaged for the agency in any investigative functions in the same or any current factually related case and who are not engaged for the agency in any prosecutory functions. [1967 c 237 § 11.]

**34.04.120 Contested cases—Adverse decisions and orders—Findings and conclusions.** Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed to each party and to his attorney of record, if any. [1975 c 12 § 1; 1959 c 234 § 12.]

**34.04.130 Contested cases—Judicial review.** (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof only under the provisions of \*this 1967 amendatory act, and such person may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere by a special statute or a statute of general application. Where the agency's rules

provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon.

(2) Proceedings for review under this chapter shall be instituted by filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located. The petition shall be served and filed within thirty days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency and all parties of record. If a timely petition is filed any party of record not filing or joining in the first petition who wants relief from the decision must join in the petition or serve and file a cross-petition within twenty days after service of the first petition or thirty days after service of the final decision of the agency, whichever period of time is longer. The court, in its discretion, may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the agency decision. Where other statutes provide for stay or supersedeas of an agency decision, it may be stayed by the agency or the reviewing court only as provided therein; otherwise the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or
- (f) arbitrary or capricious. [1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13.]

to testify, and shall have evidence.

authorized agents, may nizable facts and in ad- general, technical, or specialized knowledge. ither before or during preliminary reports or noticed, and they shall to contest the facts so authorized agents, may hnical competence, and e evaluation of the evi-

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and accompanying findings and conclusions shall be delivered or mailed to each party or to his attorney of record.

SEC. 13. (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof only under this act. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon.

Judicial review (only under act). Procedure.

(2) Proceedings for review under this act shall be instituted by filing a petition in a superior court. In cases where review by the superior court for Thurston county was previously or hereafter is specifically provided by statute, the petition shall be filed in that court. In all other cases the petition shall be filed in the superior court for the county of the petitioner's residence or principal place of business, or in the absence of a residence or principal place of business, for Thurston county. All petitions shall be filed within thirty days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the agency decision. Where other statutes provide for stay or supersedeas of an agency decision, it may be stayed by the agency or the reviewing court only as provided therein; otherwise the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by

stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by material and substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

SEC. 14. An aggrieved party may secure a review of any final judgment of the superior court under this act by appeal to the supreme court. Such appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases.

SEC. 15. This act shall not apply to the state militia, the liquor control board, or the board of prison terms and paroles. The provisions of section 9 through 13 of this act shall not apply to the board

Appeal to  
supreme  
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State agencies  
excepted  
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of industrial insurance a equalization or the insur state tax commission. 7 6, 7 and 8 of this act sha ment of public assistance.

SEC. 16. If any provi plication thereof to any held invalid, such invali provisions or applications given effect without the ir tion, and to this end the declared to be severable.

SEC. 17. All acts or p consistent with the provis repealed, but such repea proceedings.

SEC. 18. Sections 2, 3 take effect upon the elaps of its enactment. The oth take effect upon the elap date of its enactment.

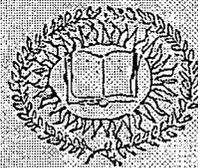
SEC. 19. If any part to be in conflict with fe are a condition precedent funds to the state, such is hereby declared to be extent of such conflict agencies directly affecte termination shall not aff mainder of this act in its concerned.

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Approved by the Gov

THE  
CENTURY DICTIONARY  
AND  
CYCLOPEDIA

AN ENCYCLOPEDIA LEXICON OF THE  
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MYTHOLOGY, HISTORY, ART, ETC., ETC.

IN TEN VOLUMES



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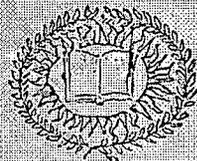
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THE  
CENTURY DICTIONARY

AN ENCYCLOPEDIC LEXICON  
OF THE ENGLISH LANGUAGE

PREPARED UNDER THE SUPERINTENDENCE OF  
WILLIAM DWIGHT WHITNEY, PH. D., LL. D.  
PROFESSOR OF COMPARATIVE PHILOLOGY AND SANSKRIT  
IN YALE UNIVERSITY

VOLUME I



PUBLISHED BY  
**The Century Co.**  
NEW YORK

dry indehiscent fruit, in which the thin seed-coat is adherent throughout to the very thin pericarp, as in wheat and all other cereal grains. Also spelled *caryopsis*.

**Caryota** (kar-i-ō'tā), n. [NL. (L. in Gr. sense) < Gr. *caryote*, < Gr. *caryon* or *caros*, a palm with walnut-like fruit, lit. nut-like palm; *caros*, palm, nut-like. < *caros*, a nut, walnut; *caros*, palm, see *phoenix*.] A genus of large palms, natives of India and the Malay archipelago, with bipinnate leaves and wedge-shaped leaflets, strongly toothed at the extremity. The best known species, *C. urens*, called the *lady's palm*, is a native of India, and is of great value. By severing the ends of the successive flowering stems a sweet sap is obtained, which is either diluted down into syrup and sugar, or made by fermentation into toddy, which yields crack by distillation. The soft pulp abounds in saccharine farina, which is made into bread or eaten as a fruit. The outer part of the stem is hard, strong, and fibrous, and is much used for building and for agricultural implements; and the sheaths of the leaves yield a very strong fiber, known as *kitul fiber*, which is said to be indestructible.

**cast**, n. A Middle English form of *case*.  
**case** (ka's), n. [L. a cottage, but, euhem. siled, ML. also a house in general (> It. Sp. Pg. *casa*, a house, = (as if < L. neut. *casum*) F. *case*, in prep. *chez*, abbr. of *chez*, = OSp. *cas* = It. in *case* or *a casa*, in the house (ot); at (my, his, etc.) house, with); prob. akin to *castrum*, a castle, fort, pl. a camp (see *castrum*, *chester*), and to *casus*, a helmet, orig. a cover or shelter; cf. Skt. *śchhad*, cover, cover over. Hence ult. *casale*, *cassock*, *casula*, *casualty*, etc.] A house.

**ca. sa.** In *law*, the usual abbreviation of *caput ad satisfactionem*. See *caput*.  
**casal** (ka'sal), n. [C. *casal*, G. + *al*.] In *gram.*, of or belonging to ease. [Rare.]

The *casal* termination of the *Latin* possessive is *us* or *is*, as appears in such phrases as "God's sight," "King's crown." J. M. McCutcheon.

**casale**, n. [It. *casale*, a hamlet, village, formerly also a farm-house, manor-house, dairy, = Sp. Pg. *casal*, a farm-house, < ML. *casale*, also *casalis*, a farm-house, villa, hamlet, village, < L. *caesa*, a house.] A hamlet; a village.

And Saturday in ye morning we landyd there, and wente to suche *casales* as we founde and refreshed vs. Syr R. Guylford, *Pylgrimage*, p. 56.

**casarca** (ka-sar'ka), n. [NL. < Russ. *caurarka*, the sea-swallow.] A name, specific or generic (in this case with a capital) of the ruddy sheldrake, *Anas casarca* or *Casarca rutila*, a bird of the family *Anatidae* and subfamily *Anatinae*, inhabiting Europe, Asia, and Africa. As a generic term it includes several other species, as *C. tadornoides*, *C. eurycarpa*, etc.

**casava**, **casayo** (ka-sa'ya-vo), n. See *cassava*.  
**casbald**, n. [Late ME. also *casballe*; origin uncertain.] A term of contempt. *York Plays*.

**casban** (kas'ban), n. A cotton fabric similar to jacquet, but stouter, sometimes having a glossy surface like satin, and used chiefly for linings.

**casabel** (kas'ku-bel), n. [Sp., a little bell, the button at the breech of a cannon, also *casaballo*, = Pg. Pr. *casacell*; origin uncertain.] That part of a cannon which is behind the base-ring, including the base and knob.

**cascade** (kas-kād'), n. [Ct. *cascaide* = Sp. *cascaida* = Pg. *cascaida*; < It. *cascaia*, a waterfall; < *cascare*, fall, appar. associated in thought with L. *cadere*, pp. *caesus*, fall; but prob. (like Sp. *cascar*, break in pieces, beat, strike, = Pg. *casar*, strike) an extension of L. *casare*, *casare*, variant of *quassare*, shake, shatter, shiver, from *quaker*, pp. *quassum*, shake; see *quash*, *cas-cass*, *discuss*, etc.] 1. A fall or flowing of water over a precipice or steep rocky declivity in a river or other stream; a waterfall, whether natural or artificial, but smaller than a cataract.

The river Teverone throws itself down a precipice, and falls by several *casades* from one rock to another. Addison, *Travels in Italy*.

2. In *cloth*, a peculiar arrangement of L. woven yarn in which the outer coating of the first jar which receives the charge is connected to the inner coating of the second, and so on. — 3. A trimming of lace or other soft material, folded in a zigzag fashion so as to make a broken or irregular band, as down the front of a gown. *Dict. of Needlework*. — 4. The falling water in the condensation Aquinians. See *Aquinians*. Charged or discharged in cascade. See *battery*. — Syn. 1. *Cascade*, *cataract*. A *cataract* is greater than a *cascade*, but may not be so steep; one descent of water may be by several *casades*, as in the quotation above from Addison. The distinguishing marks of a *cataract* are volume of water and rapidity of descent.

**cascade** (kas-kād'), v. t.; pret. and pp. *cas-caded*, ppr. *cascaiding*. [C. *cascaide*, n.] To form cascades; fall in cascades.

In the middle of a large octagon piece of water stands an obelisk of near seventy feet, for a Jet-d'Eau to cascade from the top of it. De la Roche, *Tour thro' t. Britain*, II, 218.

The town [of Sulimacoi] is built on a kind of cone rising from the midst of a valley, with a superb mountain horizon around it, and the green Anio cascading at its feet. Lowell, *Fire-side Travels*, p. 271.

**cascade** (kas-kād'), v. i.; pret. and pp. *cas-caded*, ppr. *cascaiding*. [Ampar. a perverted use of *cascaide*. Cf. E. dial. *cast*, vomit.] To vomit. [Collog.]

**cascalho** (kas-kal'yo), n. [Pg. (= Sp. *cascajo*), pebbles, gravel, < *cascaer*, strike, Sp. break in pieces, shatter; see *cascaide*, n., and *cascailla*, and as to meaning cf. *brash*, *breccia*, *debris*.] Gravel, coarse or fine, mixed with more or less sand; detrital material in general; the material in which Brazilian diamonds are found, as also gold to some extent.

**cascan**, **cascan** (kas-kan', -kän'), n. [F. *cas-can*.] In *fort.*, a hole or cavity, resembling a well, made near a rampart, from which an underground gallery extends, or which serves to give vent to an enemy's mine and diminish its destructive effect.

**cascara amarga**, **sagrada**. See *bark*?

**cascarilla** (kas-ka-ri'l'a), n. [= F. *cascarilla*, *cascarilla* = It. *cas-carilla*, *cascariglia*], dim. of *cascaer*, bark, rind, peel, husk (cf. *casca*, husks, bark, *casco*, a skull, shard, helmet, cask, etc.) > E. *cask*], < *cascaer*, break, burst open; see *cascaide*, n., and *cask*.] The aromatic bitter-bark of *Croton Eluteria*, a West Indian shrub or small tree of the natural order *Euphorbiaceae*, and a native of the Bahama islands. It occurs in small thin fragments and brittle rolls like



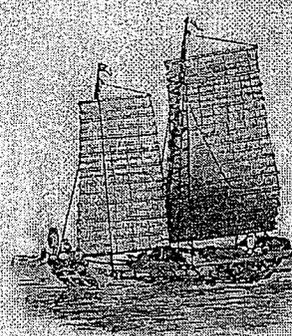
Cascarilla-plant (*Croton Eluteria*). a, male flower; b, female flower; c, fruit.

mills, and is used in medicine for its mild stimulating, tonic properties. Also called *Elutheria* or *sweet wood bark*.

**cascarillin**, **cascariline** (kas-ka-ri'l'in), n. [C. *cascarilla* + *-in*, *-ine*.] A white, crystalline, odorless, bitter substance (C<sub>12</sub>H<sub>18</sub>O<sub>4</sub>) obtained from *cascarilla*.

**caschrom** (kas'krom), n. [Also impure, written *gascrom*]; Gael. *caschrom*; cas, a foot, leg, shaft, haft, handle, + *chrom*, crooked; see *non-techn*.] A long pick with a cross-handle and projecting foot-piece — a foot-pick; used in the Scottish Highlands for digging in stony ground where no other instrument can be introduced.

**casco** (kas'ko), n. [Pg. prop. the keel or bottom of a ship, = Sp. *casco*, the hull of a ship, same as Pg. Sp. It. *casco*, helmet, casque, cask; see *cask*, *casque*.] A boat of the Philippines, used



Casco of Manila.

chiefly on the river at Manila almost rectangular in form, very flat and very durable, and much used for conveying cargoes to and from ships.

**case** (kas), n. [C. ML. *cas*, *casus*, *casus*; < OPr. *cas*, F. *cas* = Pr. *cas* = Pg. Sp. It. *caso*, circumstance, event, hap, chance; < L. *casus* (*casus*), a falling, change, event, accident, misfortune; < *cadere*, pp. *casus*, fall (> also *cadent*, *cadence*, *chance*, *accident*, etc.); see *cadent*.] 1. Literally, that which happens or befalls. (a) *Hap*; contingency; event; chance.

Than he tolde hem alle wordes for wordis how the cas was be-fallen. *Wyclif* (E. T. S.), III, 50.

Wisham hehouth to lette go and passe. Which that men nowight aimed in no cas. *Boon of Partonay* (E. T. S.), I, 623.

(b) *State*; condition; state of circumstances.

Comforteth him in his casis, comforteth in his goodis. *Viera Placencia* (A.), VII, 62.

Like Angels life was then men hapny case. *Spenser*, I, Q, II, VII, 16.

Th. I come to have thee walk. *Quid*, No, good Tibullus, I'm not now in case. *B. Johnson*, *Poetaster*, I, 1.

They lay, therefore, all day on Saturday, in lamentable case, as before. *Bunyan*, *Pilgrim's Progress*, p. 177.

2. A particular determination of events or circumstances; a special state of things coming under a general description or rule.

The ceremonies attendant upon death and burial are nearly the same in the cases of men and women. E. J. Lake, *Modern Egyptians*, II, 250.

3. In *med.*, an instance of disease under or requiring medical treatment, or the series of occurrences or symptoms which characterize it; as, the doctor has many cases of fever in hand; the patient explained his case. — 4. A state of things involving a question for discussion or decision.

Tell him how the case stand all as it is. *Martin* (E. T. S.), III, 491.

Acres, I don't choose to mention names, but look on me as on a very ill-used gentleman.

Sir Luc. Pray, what is the case? *Sheridan*, *The Rivals*, III, 4.

The plainest case in many words entangling. *J. Ballie*.

Specifically — 5. In *law*: (a) A cause or suit in court; any instance of litigation; as, the case was tried at the last term. In this sense *case* is nearly synonymous with *cause*, which is the more technical term. *Case* includes special proceedings, as well as actions at law, suits in equity, and criminal prosecutions; and it implies not only a controversy, but also legal proceedings. More loosely, however, it is used for cause of action; as, he has a good case.

This *Case* juror . . . sat in his Consistorie. And gaf his doomes upon sondry cas.

*Chaucer*, *Doctors Tale*, l. 163.

Force a composition, or wrangle out some lock on title, or breake the necke of the Case with a bulldozing.

*Archelus*, *Pilgrimage*, p. 132.

(b) The state of facts or the presentation of evidence on which a party to litigation relies for his success, whether as plaintiff or defendant; as, in cross-examining plaintiff's witness, defendant has no right to go beyond the limits of the direct examination, for such inquiries are part of his own case. (c) Under American procedure, a document prepared by the appellant on an appeal, containing the evidence, or the substance of it, and the proceedings on the trial in the court below. It is intended to enable the appellate court to review the evidence and the facts, as well as to pass upon alleged errors of law, and in this differs from a *bill of exceptions*, which presents only alleged errors of law. Called specifically *case wrapped*.

6. In *gram.*, in many languages, one of the forms having different offices in the sentence which together make up the inflection of a noun; as, the *nominative case*, that of the subject of the verb, as *he, domine* (Latin); the *accusative* or *oblique case*, as *him, dominum*; the *genitive* or *possessive case*, as *his* (John's); *domini*. These are the only cases in modern English, and the objective is not distinguished in form from the nominative except in a few pronouns. In addition to the three cases found in English, Greek and Latin have a dative, Latin has a dative in the infinitive and a vocative, and Sanskrit further an *instrum. case*, and a *locative*. The French has lost all case inflections in nouns. Some languages, as the Polish and Hungarian, have many more cases, even fifteen or twenty. All the cases but the *nominative* are called *oblique cases*.

7. A person who is peculiar or remarkable in any respect; as, a queer case; a hard case; sometimes used without qualifications; as, he is a case. [Collog.]

"Well, the General can tell you," says the hunter glancing at that individual, "what a terrible hard case I've been." *W. H. Baker*, *New Monthly*, p. 114.

8. In *logic*, a proposition stating a fact coming under a general rule; a subsumption. Action on the case, in *law*, a general form of action (the phrase being originally equivalent to *action on the case*) adapted to embrace the legal remedies and forms of action existing for trespass and other wrongs for debts resting in bond, but no form had been provided for wrongs without specific action, negligence, or fraud or implied promise. It is the most widely used of all common-law forms, and equally applicable in case, judicial inquiry, to the case of personal property and to the personal liability of the party by whom it was brought. An *action on the case* is a special case in the courts of the United States, in which standards claimed as their slaves negroes who had been kidnapped in Africa, and who while

being carried to Cuba (in 1830) rose against their captors, took possession of the vessel, and after changing her course were taken by a United States vessel off the American coast. The courts held that they were free, and not pirates or robbers.

**Bankers' case, or case of the bankers,** the petition of Hombler and others to the barons of the exchequer in 1691 (14 How. St. Tr., 1) for the payment of certain annuities granted by Charles II. to repay money originally loaned to him on the security of the revenues. On appeal, the House of Lords decided that the grant was binding upon his successor, and continued a charge upon the revenue. — **Bates's case,** an English prosecution (1606) of a merchant in which the claim of James I. to impose duties as a personal prerogative was sustained; a question afterward settled the other way under Cromwell. Also called the *case of the impostors*. — **Bradlaugh's case,** a prolonged controversy (1851-60) over the claim of Charles Bradlaugh (a) to take a seat in the House of Commons without taking the oath required of members, he declaring that he did not acknowledge or believe in its obligation; and later (b) to have the oath administered. Two notable legal decisions were reached in the course of the controversy. — In 1854 (12 Law Rep., Q. B. D., 571), in the case of Charles Bradlaugh v. Francis R. Gossett, serjeant-at-arms of the House of Commons, arising out of a resolution excluding plaintiffs from the House, until he should engage not to disturb its proceedings by demanding to take the oath as a member, it was held that courts cannot control the House in its administration of laws relating merely to its internal procedure; nor inquire into the propriety of a resolution restraining a member from taking the oath, who he had a lawful right to do, and that action will not lie against the serjeant-at-arms for obeying such resolution. — In 1855 (14 Law Rep., Q. B. D., 663), in the Court of Appeal, the case of the Attorney-General v. Bradlaugh, for penalties under the Parliamentary Oaths Act, for voting in the House without having been sworn as a member, it was decided that a member who does not believe in a Supreme Being, and upon whom an oath is binding only as a promise, is incapable of taking the prescribed oath; but if he goes through the form of taking it (as Bradlaugh did by administering the oath to himself at the bar of the House), he is liable for violation of the act. — **Burr's case,** the prosecution of Aaron Burr for treason against the United States, tried before Chief Justice Marshall in 1807. — **Calvin's case,** also called the *case of the postest*, in 1608 (8 How. St. Tr., 559; 7 Coke, 1), an action at law on questions of allegiance and naturalization. It was brought to recover debts by Robert Calvin against Richard and Nicholas Smith, to which defendants pleaded that the plaintiff was an alien, and incapable of bringing the action, because he was born in Scotland, though after the crown of England descended to James I., who was also king of Scotland. It was argued by lawyers and judges of the greatest renown, including Lords Bacon, Coke, Ellesmere, Yelverton, and Warburton, and was decided in favor of the plaintiff. — **Case agreed, or case stated, in law,** a statement of facts agreed on by the parties, or made by another court, to be submitted merely for decision of a point of law. — **Case law.** See *law*. — **Case of outscience.** See *conscience*. — **Case of the Caroline,** a name given to the case of the *People v. McLeod*. See *McLeod case*, below. — **Case of the claimant.** See *Tichborne case*, below. — **Case of the seven bishops.** See *bishop*. — **Case reserved, case made,** a statement presenting points of law reserved by the judge or parties for decision by the full court. — **Civil rights cases.** See *rights*. — **Clinton bridge case,** an important litigation in the United States Supreme Court (1870), in which the doctrine by which railroad bridges may be said to have gained clear recognition of their rights of way in preference to the navigable waters crossed by them, through the power of Congress to regulate interstate commerce. — **Criminal cases.** See *criminal*. — **Crown cases reserved.** See *crime*. — **Darnell's case,** a noted case in English constitutional law (1627), involving the imprisonment of Sir Thomas Darnell and four others, for refusing to subscribe to a forced loan, was sanctioned, the agitation resulting from which was followed by the granting of the Petition of Right. — **Dartmouth College case,** the leading American case (1819) on the vested rights of corporations, reported as Trustees of Dartmouth College v. Woodward (4 Wheaton, 515), deciding that a corporate charter, even though it be a British charter granted before the revolution, cannot be materially altered by a State legislature, it being a contract within the meaning of the provision of the United States Constitution which deprives the States of the power to impair the obligation of a contract. — **Dr. Bonham's case,** an important case on the limits of the power of Parliament, reported in the case of Thomas Bonham v. the College of Physicians (8 Coke, 107), for false imprisonment. It was held that an act of Parliament which is against common right and reason, or is impossible to be performed, is void by the common law; also, that where the power to commit to prison is vested by patent or act of Parliament in parties not being a court, their proceedings ought to be of record, and the facts upon which such power is exercised are traversable. — **Dred Scott case,** a case of great historical importance among the events which preceded the abolition of slavery in the United States, in which the Supreme Court held (in 1857) that a free negro of slave ancestry was not a citizen, and could not sue or be protected as such in the United States courts. The statement that the African in America had long been considered a subordinate race having "no rights which the white man is bound to respect," which was contained in the opinion of the chief justice, gained universal attention as a point of attack in the controversy about slavery. — **Five per cent. cases,** a decision of the United States Supreme Court in 1854 (110 U. S., 571) holding that an act of Congress by which a percentage of the proceeds of land sold by Congress is reserved to certain public uses of a State does not include lands disposed of by the United States in satisfaction of military land warrants. — **General case, in math,** that special state of things which is considered when, in studying an arithmetical expression, it is assumed that there is no peculiar relation between the constants denoted by letters. The general case may be very exceptional. Thus, in linear associative algebra, in the general case the vanishing of a product implies the vanishing of one of the factors, yet among the unnumerable possible algebras there are but three in which such an inference is

valid. — **Hampden's case.** See *case of ship-money*, under *ship-money*. — **In case,** in the event of contingency; if it should so fall out or happen that; supposing.

A squire retreat to his forces, in case they should have an ill day, or of an unlucky chance in the field.  
Iacon, Hist. Hen. VII.

**Irreducible case, in math,** the case in which a cubic equation has three real roots, when Cardan's method of solution involves imaginaries. — **Kendall's case,** a decision of the United States Supreme Court (1858), noted in American constitutional law, that the court may compel a cabinet officer to perform a ministerial duty. — **Koztza's case,** the facts and resulting diplomatic correspondence (1853) by which the United States government maintained the claim that Martin Koztza, a native of Hungary, was entitled to protection as an American citizen from seizure by the Austrian government while in Turkish jurisdiction, he having previously legally declared his intention to become an American citizen. — **Marbury's case,** a decision of the United States Supreme Court (1803) noted in American constitutional history, which established the power of that court to declare an act of Congress void for contravening the United States Constitution, and defined the extent to which members of the cabinet are amenable to the courts. — **McLeod case,** a controversy between the United States and Canada, arising out of the incident of the destruction of the American steamer *Caroline* by the Canadian authorities (1837), in the course of which a man was killed. McLeod was arrested as one of the attacking party, and was indicted (1841) in New York State for murder; but he proved an alibi, and was acquitted. Also called the *case of the Caroline*. — **Negro case.** See *Sommersett's case*, below. — **Shielley's case,** the decision in 1781 (1 Coke, 39-106), by all the judges of England, of the case of Nicholas Wolfe against Henry Shielley, in a bequest, involving questions upon the law of common recoveries. It is chiefly celebrated for a precise and clear statement by defendant's counsel of a previously well-established rule of law concerning the effect of the word "heirs" in certain conveyances, since known as the rule in Shielley's case, in a rule which is now regarded as a rule of interpretation rather than a rule of law, is to the effect that wherever there is a limitation to a particular estate of freehold, followed by a limitation to his heirs, or to the heirs of his body (or equivalent expressions), either immediately or after the interposition of one or more particular estates, the apparent gift to the heir or heirs of the body is to be construed as a limitation of the estate; that is to say, not a gift to the heir, but a gift to the person first named of an estate of inheritance, such as his heir may take by descent. — **Sommersett's case,** a famous habeas corpus case in England in 1772, before Lord Mansfield, brought on behalf of Thomas Sommersett, a negro. It established the principle that a slave brought upon English soil became thereby free. Also called the *negro case*.

— **Special case,** a statement of facts agreed to on behalf of two or more litigant parties, and submitted for the opinion of a court of justice as to the law bearing on the facts so stated. In Scots law, in civil jury cases, a special case differs from a special verdict only in this, that the special verdict is returned by the jury, whereas the special case is adjusted by the parties themselves, or by their counsel, and set forth the special facts on which they are agreed without the evidence. — **Taltarum's case,** a noted decision in the English courts in 1473, establishing the power of a tenant in tail to convert the estate into a fee simple absolute by suffering a common recovery. — **Tennessee bond cases,** a name given to seventeen causes decided by the United States Supreme Court in 1855 (114 U. S. Sup. Ct., 603), wherein it was held that the statutory lien upon railroads created by act of the Tennessee Legislature, Feb. 11th, 1852, was for the benefit of the State, and not of the holders of State bonds issued under that act. — **Tichborne case,** also called the *case of the claimant*, the name given to the history and proceedings of Thomas Castro, otherwise Arthur Orton, in his claim to be Sir Roger Tichborne, and heir to the estate and baronetcy of Tichborne in England (1868-74), which he pursued by suits in Chancery and in the courts of Probate and Common Pleas, and which ended in his trial and sentence to fourteen years' imprisonment for perjury. The case is celebrated for the conflicting nature of the testimony as to his identity, and for the great public interest excited by it. — **To put the case,** to suppose the event or a certain state of things, state a question, especially in a manner to invite decision. — **Twedd's case,** the proceedings against William M. Twedd and others known as the Twedd Ring, for frauds perpetrated while they were municipal officers of New York, by which they obtained over six million dollars from the county of New York. In a civil case it was decided by the Court of Appeals of New York in 1874 (People v. Twedd, 58 N. Y., 1) that an action for money fraudulently obtained from a county could not be brought in the name of the people of the State. This was subsequently remedied by statute, and a judgment obtained. In a criminal case, Twedd was convicted on twelve counts for similar offenses by one indictment, and was separately sentenced to one year's imprisonment on each, with the direction that service of one sentence should not begin until the completion of service of the other sentence. After a conviction in a term of his first sentence, the Court of Appeals in 1878 (People ex rel. Twedd v. Lescum, 60 N. Y., 552) decided that, under the statute conferring the power to sentence cumulative sentences in such cases, were not lawful, and discharged him, but he was immediately imprisoned in default of bail in preceding civil suits. Other minor decisions on questions of procedure are also included under this term. — **Twyne's case,** the leading case in English law (1601) holding that a conveyance intended to defraud creditors is void as against them, if not taken in good faith and for valuable consideration. — **Tyrral's case,** a noted decision in English law (1553), in which after Parliament, by the statute of uses, had thought to put an end to the holding of land in the name of one person to the use of another, the courts introduced the doctrine of a use upon a use, leading to the present law of trusts. — **Virginia coupon cases,** the generic name under which are known a number of suits determined by the United States Supreme Court in 1854, enforcing a Virginia statute which declared coupons on bonds of that State receivable in payment of state taxes, notwithstanding

the repeal of that statute. — **Wheeling bridge case,** the case of Pennsylvania v. Wheeling and Belmont Bridge Co., decided by the United States Supreme Court (in 1851 and 1855), concerning a bridge across the Ohio river at Wheeling, Virginia. After holding in 1851 (13 How., 518), by a divided court, that a bridge, though entirely within the jurisdiction of the State that authorized its construction, could be enjoined as a nuisance by the courts of the United States if it obstructed interstate navigation, the court held in 1855 (18 How., 421) that Congress, under the constitutional power to regulate commerce between the States, may determine what shall or shall not be deemed an obstruction to navigation, and may declare a bridge, when erected, to be a lawful structure so as to avoid the effect of its having been judicially declared a nuisance. — **Wild's case,** an English decision in 1592 (6 Co. Rep., 16 b), in the case of Richardson v. Worsley, in government, so called because involving a devise to one Rowland Wild, which established the rule for the construction of wills known as the rule in Wild's case, viz., "that if a devisee his lands to him and his children or issues, and he hath not any issue at the time of the devise, that the same is an estate tail." = *Syn.* Situation, condition, state, circum-stances, plight, predicament.

**case!** (käs), v. t. [*case!*, n.] To put cases; bring forward propositions.

They fell presently to reason and *casuing* upon the matter with him, and laying distinctions before him.  
Sir R. B. Estlin.

**case** (käs), n. [*ME. casse, kace* = *D. kas* = *G. kasse* = *Sw. kassa* = *Dan. kasse*, < *OF. casse* (F. *casse*, a chace, *casse*, a case, also *chasse*, a chace, *shrine*) = *It. cassata*, *cassa* = *Cat. cassa* = *Sp. caja*, obs. *caxa* = *Pr. caixa*, obs. *caxa* = *It. cassa*, < *L. capsa*, a chest, box, receptacle, < *capere*, receive, contain, hold; see *capable*, *capacious*. The same word, in later forms, appears as *cash*, and *chase*.] 1. That which incloses or contains; a covering, box, or sheath; as, a case for knives; a case for books; a watch-case; a pillow-case. Specifically — 21. A quiver.

The arrows in the case.  
Of the goddesse elstern fuste and ryng.  
Chaucer, Knight's Tale, l. 1500.

3. The skin of an animal; in *her*, the skin of a beast displayed with the head, feet, tail, etc.

O, thou dissembling cub! what wilt thou be,  
When time hath sow'd a grizzle on the case?  
Shak., T. N., v. 1.

Thus wisd men  
Repair the hurts they take by adilsceace,  
And piece the lion's with the fox's case.  
Pletcher, Deacons' Bush, iii. 1.

4. The exterior portion of a building, an outer coating for walls.

The case of the holy house is nobly designed and executed by great masters.  
Addison, Travels in Italy.

5. A box and its contents; hence, a quantity contained in a box. Specifically — (a) A pair, a set.

Pray thee, corporal, stay; the knocks are too hot, and for mine own part, I have not a case of lives.  
Shak., Hen. V., iii. 2.

Lictors, gar him! do,  
And put a case of yards o'er his head,  
That he may look brofuted, as his spears.  
De Jonson, Tommaso, 1.

An inseparable case of excoombs, — the helmet of twos of tophery.

B. Jonson, Pref. to Every Man out of his Humour.

(b) Among glaziers, 225 square foot of crown-glass; also, 120 feet of Newcastle or Normandy glass. — 6. In printing, a shallow tray of wood divided by partitions into small boxes of different sizes, in which the characters of a font of printing-types are placed for the use of the compositor. The ordinary case is about 16 inches wide, 32 inches long, and has boxes 1 inch deep. Two forms of case are required for a full font of Roman type; the *upper case* (so called from its higher position on the inclined composing-frame) of 68 boxes, which contains the capitals, small capitals, reference-marks, fractions, and other types in small request; and the *lower case*, of 66 boxes of unequal size, which contains the small text types, spaces, and points most frequently required. The cases and boxes are arranged so that the types oftenest used are most easily reached by the compositor. For music, Greek, and Hebrew, as well as for display or jobbing type, or for any font of printing-types that has more or fewer characters than those of Roman text type, cases of special form are made. — 7. In bookbinding, a book-cover made separately from the book it is intended to inclose. — 8. A triangular sac or cavity in the right side of the nose and upper portion of the head of a sperm-whale, containing oil and spermaceti, which are together called head-matter. — 9. In *valut. origin.*, a square or rectangular frame made from four pieces of plank joined at the corners, used (in juxtaposition to similar frames) to form a lining for a gallery or branch. — 10. In *form-molding*, the outer portion of a mold. Also called *cope*. — 11. In *porcelain-making*, same as *saggar*. — 12. *Milit.*, same as *case-shot*. — 13. In *mining*, a fissure through which water finds its way into a mine. [Cornwall. Rarely used.] — 14. The wooden frame in which a door is hung. Also called *casings*. — 15. The wall surrounding a staircase. Also called *casings*.

THE  
CENTURY DICTIONARY

AN ENCYCLOPEDIA LEXICON  
OF THE ENGLISH LANGUAGE



PREPARED UNDER THE SUPERINTENDENCE OF  
WILLIAM DWIGHT WHITNEY, PH. D., LL. D.  
PROFESSOR OF COMPARATIVE PHILOLOGY AND SANSKRIT  
IN YALE UNIVERSITY

VOLUME IV



PUBLISHED BY  
**The Century Co.**  
NEW YORK

**just<sup>2</sup>, joust<sup>1</sup>** (just or joust), *v. i.* [Early mod. E. also *juist* (after It.); < ME. *justen*, *justien*, < OF. *juster*, *juster*, *juster*, bring together, come together, touch, strike with a lance, tilt, just, *F. jouter*, tilt, just, contend, = Fr. *juster*, *juster* = Sp. *Pg. jostar* = It. *giostare* (for *giostare*), tilt, < ML. *justare*, approach, come together, tilt, just, < L. *justa* (> OF. *justa*, *juste*, *juste*), close to, hard by, prob. orig. *\*jugista*, abl. fem. superl. of *jugis*, continual, < *jugere* (> *\*jug*), join: see *joli*. Cf. *adjust*.] To engage in a tournament or just; tilt.

Then seyde Belyse to Tarry,  
Wyll we to-morrow jousty.  
MS. Cantab. B. II. 33, l. 121. (Halliwell.)

There are princes and knights come from all parts of the world to just and tourney for her love.

Shak., Pericles, II. 1, 116.

**just<sup>2</sup>, joust<sup>1</sup>** (just or joust), *n.* [Early mod. E. also *juist* (after It.); < ME. *juste*, < OF. *juste*, *juste* (> *F. joute*), also *justee* = It. *giostre* (for *giostre*), a just; from the verb.] A military contest or spectacle in which two adversaries attacked each other with blunted lances, rarely with sharp weapons as in war; a knightly tilt. The just was sometimes held at the barrier; that is, the charging knights were separated by a solid structure of wood, which each kept on his left hand, the lance being held diagonally across the neck of the horse. The shield was hung from the neck, leaving the left hand free to manage the horse and the right to direct the lance. The shock of the lances was sometimes received on the helmet, and on this account the tilting-helmet had commonly the openings for air on the right side. From the beginning of the fourteenth century the armor for the just differed from the armor for war, and became more and more heavy and unwieldy, the tilter being almost immovable in his saddle, in which he was secured by high pommel and cantle, and often by a garde-cuisse completely covering the left thigh and leg. The sport was usually declared to be in honor of one or more ladies who presided as judges and awarded the prizes.

Lift up thy selfe out of the lowly dust,  
And sing of bloody Mars, of wars, of glusts.  
Spenser, Shep. Cal. October.

Some one might show it at a joust of arms,  
Saying, "King Arthur's sword, Executioner."  
Tennyson, Morte d'Arthur.

**just<sup>3</sup>, joust<sup>2</sup>** (just or joust), *n.* [OF. *juste*, *justate*, *juste*, *juste*, a sort of pot or pitcher of tin, silver, or gold, with handles and a lid.] A pot or jug, made of earthenware or metal, with large body and straight neck, for holding liquids.

**justacorporat**, *n.* See *juste-au-corps*.

**just-borne** (just'born), *n.* Justly borne; borne in a just cause.

By this hand I swear, . . .  
Before we will lay down these just-borne arms,  
We'll put thee down, against whom these arms we bear.  
Shak., K. John, II. 2, 246.

**juste-au-corps** (zhüst'ô-kôrs'), *n.* [F., < *juste*, close, + *au*, to the (< à, to, + *le*, the), + *corps*, body.] In B. (Sc.) *juste-au-corps*, corrupted to *justicout*, *justicout*, etc. 1. A close body-coat with long skirts, worn at the close of the seventeenth century and early in the eighteenth by men of different classes, as by noblemen on journeys or when hunting, and by the coachmen in Paris. — 2. An outer garment worn by women about 1650, resembling the hangerin, which it succeeded.

Give her out the flower'd *Justacorps*, with the Petticoat  
belonging to it.  
Dryden, Limberham, IV. 1.

**justement**, *n.* An obsolete aphetic form of *agistment*.

**juste milieu** (zhüst mē-lyô'), [*F.*: *juste*, just; *milieu*, the medium.] The true mean; a just medium or balance between extremes; specifically, judicious moderation, as between extremes of opinion or conduct; defined as a political term by Montesquieu, but first brought into common use by Louis Philippe in 1831 in characterizing his own system of government.

For me, the *juste milieu* I seek;  
I fain would leave alone  
The girl who rudely slaps my cheek,  
Or volunteers her own.  
J. G. Saxe, tr. of Martial's Epigrams.

**juster, jouter** (jus'ter or jus'tar), *n.* 1. One who justs or takes part in a just. — 2. A horse for tilting. Halliwell.

**justicia** (jus'tis), *n.* [< ME. *justice*, < OF. *justice*, *justice*, *justice*, *F. justice* = Fr. Sp. *justicia* = Pg. *justiça* = It. *giustizia*, < L. *justitia*, *justitudo*, < *justus*, just; see *just<sup>1</sup>*.] 1. Justness; the quality of being just; just conduct. (a) Practical conformity to the laws and principles of right dealing; the rendering to every one of that which is his due; honesty; rectitude; uprightness; also, the chief idea of just conduct, either of individuals or of communities; the moral principle which determines such conduct.

This was the trouble that the kynge feodogon was a noble knight, and kepte well Justice and Right.  
Mortin (E. E. T. S.), III. 462.

*Justice* is the end of government. It is the end of civil society. If ever has been, and ever will be pursued, until it is obtained, or until liberty be lost in the pursuit.

A. Hamilton, Federalist, No. 61.

(b) Conformity to truth; right representation and sound conclusion; impartiality; fairness; trustworthiness.

When we approached Sicily, . . . I had a view of the cities and places on the shore, I could not but observe the justice and peaceful beauties of the descriptions of the great master of the Latin Epic poetry.

Pocock, Description of the East, II. li. 124.

(c) Agreeableness to right; rightfulness; moral soundness; as, he proved the justice of his claim.

Ye sons of Mars! partake your leader's care,  
Heroes of Greece, and brothers of the war!  
Of partial force with justice I complain,  
And heav'n my oracles better'd in vain.  
Pope, Iliad, II. 241.

2. Vindication of right; requital of desert; the assignment of merited reward or punishment; specifically, execution or vindication of law.

Barthly power doth then show likest God's  
When mercy seasons justice.  
Shak., M. of V., IV. 1, 107.

This reasonable moderator, and equal piece of justice,  
Siv T. Brown, Meligio Medici, l. 22.

3. Rights of jurisdiction.—4. Jurisdiction; authority.

The six kynges . . . commanded alle hem that were  
vnter their Justice, that echy man shold be redy  
and make gode wache.  
Merlin (E. E. T. S.), III. 376.

5. Precision; justness; exactness.

Much less in blood than virtue, yet a princess  
To equal any single crown & the earth  
I the justice of compare!  
Shak., Pericles, IV. 3, 2.

6. A person commissioned to hold court for the purpose of hearing complaints, trying and deciding cases, and administering justice; a judge or magistrate; generally in specific uses: as, a justice of the peace; the justices of the Supreme Court.

Though sentence of this justice Aplus,  
Ckauer, Doctor's Tale, l. 224.

**Bed of justice.** See *bed*. — **Bureau of Military Justice.** See *bureau*. — **Chief Justice.** The highest in rank of the judges of a court; particularly, the presiding judge in the King's (or Queen's) Bench and Common Pleas divisions of the English High Court of Justice, in the United States Supreme Court, and in the supreme courts of the States. Often abbreviated C. J. — **College of Justice.** See *colleges*. — **Department of Justice.** See *department*. — **Fugitive from justice.** See *fugitive*. — **Gate of justice.** See *gate*. — **Jeddart or Jedwood justice.** executing a prisoner and trying him afterward: an expression referring to Jedburgh, a Scotch border town, where many of the border ruffians are said to have been hanged without the formality of a trial. (Scotch.)

We will have *Jedwood justice* — hang in haste, and try at leisure.  
Scott, Fair Maid of Perth, xxvii.

**Justice of the peace,** an inferior or local judge chosen in each county or town or other district, to preserve the peace, to try minor causes, and to discharge other functions, as the legitimizing of papers for record. Abbreviated J. P.

Thou hast appointed *justices of peace*, to call poor men before them about matters they were not able to answer.  
Shak., 2 Hen. VI., IV. 7, 45.

**Justice of the quorum,** a distinction conferred upon some, and sometimes on all, the justices of the peace of a county in England, by directing, in the commission authorizing the holding of quarter sessions, that among those holding the court must be two or more of several specially named. — **Justices in eyre.** See *eyre*. — **Justices' justice,** the kind of justice administered by the unpaid magistracy: in earlier reference to the disproportionate sentences and extraordinary decisions of some of these officials. (Eng.) — **Justice's warrant.** See *warrant*. — **Lord Chief Justice,** the title given in England to the chief judge of the Court of King's (Queen's) Bench: in full, the Lord Chief Justice of England. The title of Lord Chief Justice of the Court of Common Pleas lapsed with the abolition of that court. — **Lord Justice Clerk,** the Scottish judge who ranks next to the Lord Justice-General. He presides over the Outer House or Second Division of the Court of Session, and is vice-president of the High Court of Justiciary. — **Lord Justice General,** the highest judge in Scotland; also called the Lord President of the Court of Session. — **Lords Justices,** persons formerly appointed by the English sovereign to act for a time as his substitutes in the supreme government, either of the whole kingdom or of some part of it. — **To do justice to,** to appreciate; treat in a manner showing appreciation of: as, he never did justice to his son's ability. — **Trial justice,** a justice assigned to hold court for the trial of causes, usually before jury. (U. S.) = Syn. 1. Right, Justice, Equity, Law; *Justness, Justice.* Right is the standard word for what ought to be. Justice and equity are essentially the same, expressing the working out of the principles of right under law, but law is often contrary to justice or equity; hence the occasional remark, "That may be law, but it is not justice." Law in such a case means the interpretation of written law by the courts. A court of equity deals with and corrects the injustice of the working of the law. Equity more expressively represents the idea of fairness and justice that of sacred rights. (See *just* and *equity*.) Justice has a field of meaning peculiar to itself, by which we speak of the justice of observations, criticisms, etc. — that is, their conformity to admitted principles. As to conformity to right, we use justice for the abstract quality, justice of the person, and justice of the thing. We speak of the justice of a cause, a claim, a plea, etc.

**justice** (jus'tis), *v. t.* [< *justice*, *n.*] To administer justice to; deal with judicially; judge.

Ill watz sen in that eythe that zedethyas *Justidialdy* reigned,  
In Iuda, thas *justed* the Inrus kynges.

Alliterative Poema (ed. Morris), II. 1170.

The next inventor to the crown . . . had no sooner his mistress in captivity but he had usurped her place. . . but, which is worse, had sent to Araxia, persuading the justifying her, because that injustice might give his title the name of justice.

Sir P. Sidney, Arcadia, II.

**justiceable** (jus'tis-ə-bl), *a.* [< OF. *justiciable*, *justiciable*, *justiciable*, < *justice*, law; see *justice* and *-able*. Cf. *justifiable*.] Amenable to law; subject to judicial trial: as, a justiceable offender. Sir J. Heywood.

**justice-broker** (jus'tis-brô'kêr), *n.* A magistrate who sells his judicial decisions.

The devil takes all *justice-brokers*.  
Dryden, Amphitruon, IV. 1.

**justiceship** (jus'tis-hîp), *n.* [< *justice* + *-ship*.] The office or dignity of a justice; justiceship. [Rare.]

Should but the king his *justice-hood* employ  
In setting forth of such a solemn toy.  
H. Jonson, Expedition with Inigo Jones.

**Justicement** (jus'tis-mênt), *n.* [< *justice* + *-ment*.] Administration of justice; procedure in courts. E. Phillips, 1706.

**justicer** (jus'tis-er), *n.* [< ME. *justicer*, < OF. *justicier*, also *justicior*, < ML. *justiciarius*, one who administers justice, < L. *justitia*, justice; see *justiciary*.] An administrator of justice; a justice or judge.

Vnto the which *Justicers* . . . we give and grant especial power and authority to sitte and assist in court.  
Halsbury's Papeyes, l. 209.

**Justiceship** (jus'tis-shîp), *n.* [< *justice* + *-ship*.] The office or dignity of a justice. Howell, tr. of Ammianus, p. 51.

**Justicia** (jus-tish'i-ā), *n.* [NL. (Linnaeus), named after J. Justice, a noted Scotch horticulturist and botanist. The surname Justice is derived from *justicia*, a judge: see *justice*.] A genus of plants of the natural order *Scrophulariaceae*, the type of the tribe *Justicieae*. Its corolla-tube is enlarged above and mostly shorter than the bilabiate limb; the upper lip is interior in extension, concave, and entire or slightly 2-toothed, the lower spreading and 2-toothed. The stamens are two, adnexed in the throat. The two anther-cells are separated, the lower with a small white spur; there are two ovaries in a cell. These plants are herbs or rarely shrubs, with the leaves entire, and the flowers middle-sized or small, colored white, violet, pink, or red, and variously disposed. There are about 110 species, belonging to the warmer parts of the globe, many being horticult in cultivation. J. *Ataboda*, called *Mahabar nut*, is reported to have the properties of an anti-sputteric and febrifuge.

**Justiciable** (jus-tish'i-ə-bl), *a.* [< OF. *justiciable*, *F. justiciable*, pertaining to justice or law, also just; see *justiciable*.] Proper to be brought before a court of justice, or to be judicially disposed of.

A person is said to be *justiciable* in a country when liable to be tried therein, or to be brought under the operation of its laws; a thing, when the rights and incidents of its ownership may be settled by the courts of that country.  
J. N. Fowcroy.

**Justiciar** (jus-tish'i-ār), *n.* [Also *justiciar*; < ML. *justiciarius*, *justicior*; see *justice*, *justiciary*.] Same as *justiciary*, 2.

**Justiciarship** (jus-tish'i-ār-shîp), *n.* [< *justiciar* + *-ship*.] The office of justiciar.

The unpopularity of Longchamps enabled John, aided by the archbishop of Reims, to lead a revolutionary movement by which Longchamps was deprived of the *justiciarship*, and John recognized as *sacramus rector* of the kingdom.  
Encyc. Brit., XIII. 723.

**Justiciary** (jus-tish'i-ār-ri), *a.* and *n.* [< ML. *justiciarius*, one who administers justice, < L. *justitia*, justice; see *justice*. Cf. *justicer*, *justiciable*, n. < ML. *justiciarius*.] 1. A. Pertaining to the law; legal; relating to the administration of justice.

He was brought into the *justiciary* court, upon an indictment for the crime to which it was expected he should plead guilty.  
Stowe, Memorials, K. Charles, an. 1272.

**Justiciary power,** the power of judging in matters of life and death. (Scotch.)

II. *n.*; pl. *justiceries* (-rîz). 1. An administrator of justice; a justice or judge. Burke. [Rare.] — 2. In early Eng. hist., the chief administrator of both government and justice. The justiciary or chief justiciary was the king's deputy from the time of William the Conqueror to that of Henry III., presiding in the king's court and the exchequer, supervising all departments of government, and acting as regent in the king's absence. His functions were afterward divided between his lord chancellor, the chief justices, the lord high treasurer, etc. Also *justicior*.

His (Stephen's) brother had been made Bishop of Winchester, and by adding to it the place of his chief *justicior*.

A  
STANDARD DICTIONARY  
OF THE  
English Language

UPON ORIGINAL PLANS

DESIGNED TO GIVE, IN COMPLETE AND ACCURATE STATEMENT, IN THE LIGHT OF THE MOST  
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SPEECH AND LITERATURE OF THE ENGLISH-  
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VOLUME I.

New York  
Funk & Wagnalls Company  
London and Toronto  
1895

PRINTED IN THE UNITED STATES





A

# DICTIONARY OF LAW

CONTAINING

DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE,  
ANCIENT AND MODERN

INCLUDING

THE PRINCIPAL TERMS OF INTERNATIONAL, CONSTITUTIONAL, AND COMMERCIAL LAW; WITH A COLLECTION OF LEGAL MAXIMS AND NUMEROUS SELECT TITLES FROM THE CIVIL LAW AND OTHER FOREIGN SYSTEMS

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156  
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1891

BY HENRY CAMPBELL BLACK, M. A.

Author of Treatises on "JUDGMENTS," "TAX-TITLES," "CONSTITUTIONAL PROHIBITIONS," etc.

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ST. PAUL, MINN.  
WEST PUBLISHING CO.  
1891

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THE dictionary now offered to prepare a concise and yet and maxims used in America the working lawyer and jurist history or comparative jurisprudence. It is a compilation of the body of the law, and does not attempt to supersede the field of the English dictionary as construed by the courts, a cyclopædic in its character and comprehensive. Its value is sought between its covers is (within the compass of a law) to the true function of a law to contain nothing but the legitimate and necessary terms. This edition of the present work will be found to contain more than other. None is quite complete, but it includes all these terms and

For the convenience of the student, as well as in its relation to the law, it is found for numerous titles in the law, and for the history of the modern interest in the law. It seemed necessary to introduce Spanish, Scotch, and Mexican law into the work to the advantage of political or public law, and commerce, as also law and forensic medicine from the vernacular, which in statutes, have acquired a new meaning in laws or private documents. But the main body of the work is the phrases used in modern American law.

In searching for definitions, the author has carefully examined the laws of various states, and from these definitions thus enacted by the legislature. Most, if not all, will be found under their original definitions formulated

n indictments for  
Hale, P. C. 637-

In pleading. A  
n an indictment  
with the crime of

sh law. An im-  
-ill.

h law. A license  
n to keep a cart.

i made in the  
of a coarse kind,  
. Jacob.

sh law. A car-  
riage-way. Las

e used for the  
ther for pleasure  
horses or other  
ordinary streets  
y; not including  
ailroads or street  
bed for the use of  
N. W. Rep. 425;  
N. H. 528; 5 Q.

ontract for trans-  
s.

s a contract for  
persons, or mes-  
her. Civil Code  
§ 1208.

ACLE. A ship

undertakes to  
lace to another.

es to carry the  
place to another,

ion or private.  
who undertake  
ticular instance  
ation, nor hold-  
-olic as ready to  
rvice.

re description of  
xercise it as a  
t undertake to  
erally; and he  
ly to transport  
not as a casual

"CARRY AWAY." A technical phrase  
in an indictment for larceny, translating the  
Lat. *asportavit*. 7 Gray, 45.

CARRYING AWAY. In criminal law.  
The act of removal or asportation, by which  
the crime of larceny is completed, and which  
is essential to constitute it.

CARRYING AWAY INFANT FE-  
MALES. See ABDUCTION.

CARRYING COSTS. A verdict is said  
to carry costs when the party for whom the  
verdict is given becomes entitled to the pay-  
ment of his costs as incident to such verdict.

CART. A carriage for luggage or burden,  
with two wheels, as distinguished from a  
wagon, which has four wheels. The vehicle  
in which criminals are taken to execution.

This word, in its ordinary and primary ac-  
ceptation, signifies a carriage with two  
wheels; yet it has also a more extended sig-  
nification, and may mean a carriage in gen-  
eral. 22 Ala. 624.

CART BOTE. Wood or timber which a  
tenant is allowed by law to take from an es-  
tate, for the purpose of repairing instru-  
ments, (including necessary vehicles,) of hus-  
bandry. 2 Bl Comm. 35.

CARTA. In old English law. A char-  
ter, or deed. Any written instrument.

In Spanish law. A letter; a deed; a  
power of attorney. Las Partidas, pt. 3, tit.  
18, l. 30.

CARTA DE FORESTA. In old Eng-  
lish law. The charter of the forest. More  
commonly called "*Charta de Foresta*," (q. v.)

CARTE. In French marine law. A  
chart.

CARTE BLANCHE. A white sheet of  
paper; an instrument signed, but otherwise  
left blank. A sheet given to an agent, with  
the principal's signature appended, to be  
filled up with any contract or engagement as  
the agent may see fit. Hence, metaphorical-  
ly, unlimited authority.

CARTEL. An agreement between two  
hostile powers for the delivery of prisoners  
or deserters. Also a written challenge to  
fight a duel.

CARTEL-SHIP. A vessel commissioned  
in time of war to exchange the prisoners of  
any two hostile powers; also to carry any  
particular proposal from one to another. For  
this reason, the officer who commands her is

particularly ordered to carry no cargo, am-  
munition, or implements of war, except a  
single gun for the purpose of signals. Enc.  
Lond.

CARTMEN. Carriers who transport  
goods and merchandise in carts, usually for  
short distances, for hire.

CARTULARY. A place where papers  
or records are kept.

CARUCA, or CARUA. A plow.

CARUCAGE. In old English law. A  
kind of tax or tribute anciently imposed upon  
every plow, (*carus* or plow-land,) for the  
public service. Spelman.

CARUCATA. A certain quantity of land  
used as the basis for taxation. As much  
land as may be tilled by a single plow in a  
year and a day. Also, a team of cattle, or a  
cart-load.

CARUCATARIUS. One who held lands  
in *caruage*, or plow-tenure. Cowell.

CARUE. A carve of land; plow-land.  
Britt. c. 84.

CARVAGE. The same as carucage, (q.  
v.) Cowell.

CARVE. In old English law. A caru-  
cate or plow-land.

CAS FORTUIT. Fr. In the law of in-  
surance. A fortuitous event; an inevitable  
accident.

CASATA. In old English law. A house  
with land sufficient for the support of one  
family. Otherwise called "*hida*," a hide of  
land, and by Bede, "*familla*." Spelman.

CASATUS. A vassal or feudal tenant  
possessing a *casata*; that is, having a house,  
household, and property of his own.

CASE. 1. A general term for an action,  
cause, suit, or controversy, at law or in equity.  
A question contested before a court of jus-  
tice.

The primary meaning of "case" is "cause."  
When applied to legal proceedings, it imports a  
state of facts which furnishes occasion for the ex-  
ercise of the jurisdiction of a court of justice. In  
its generic sense, the word includes all cases, spe-  
cial or otherwise. 12 N. Y. 592, 596.

2. A statement of the facts involved in a  
transaction or series of transactions, drawn  
up in writing in a technical form, for sub-  
mission to a court or judge for decision or  
opinion. Under this meaning of the term  
are included a "case made" for a motion for  
new trial, a "case reserved" on the trial of

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a cause, an "agreed case" for decision without trial, etc.

3. A form of action which lies to recover damages for injuries for which the more ancient forms of action will not lie. Steph. Pl. 15. See TRESPASS ON THE CASE.

**CASE AGREED ON.** A formal written enumeration of the facts in a case, assented to by both parties as correct and complete, and submitted to the court by their agreement, in order that a decision may be rendered, without a trial, upon the court's conclusions of law upon the facts as stated.

**CASE FOR MOTION.** In English divorce and probate practice, when a party desires to make a motion, he must file, among other papers, a case for motion, containing an abstract of the proceedings in the suit or action, a statement of the circumstances on which the motion is founded, and the prayer, or nature of the decree or order desired. Browne, Div. 251; Browne, Prob. Pr. 295.

**CASE LAW.** A professional name for the aggregate of reported cases as forming a body of jurisprudence; or for the law of a particular subject as evidenced or formed by the adjudged cases; in distinction to statutes and other sources of law.

**CASE ON APPEAL.** In American practice. Before the argument in the appellate court of a case brought there for review, the appellant's counsel prepares a document or brief, bearing this name, for the information of the court, detailing the testimony and the proceedings below.

In English practice. The "case on appeal" is a printed statement prepared by each of the parties to an appeal to the house of lords or the privy council, setting out methodically the facts which make up his case, with appropriate references to the evidence printed in the "appendix." The term also denotes a written statement, prepared and transmitted by an inferior court or judge, raising a question of law for the opinion of a superior court.

**CASE RESERVED.** A statement in writing of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial, and could not then be satisfactorily decided, determined upon full argument before the court in *banc*. This is otherwise called a "special case;" and it is usual

for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a case to be made, instead of obtaining from the jury a special verdict. 3 Bl. Comm. 378; 3 Steph. Comm. 621; Steph. Pl. 92, 93; 1 Burrill, Pr. 242, 463.

**CASE STATED.** In practice. An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as therein agreed upon and set forth. 3 Whart. 143. A case agreed upon. See CASE AGREED ON.

**CASE TO MOVE FOR NEW TRIAL.** In practice. A case prepared by the party against whom a verdict has been given, upon which to move the court to set aside the verdict and grant a new trial.

**CASH.** Ready money; whatever can be used as money without being converted into another form; that which circulates as money, including bank-bills.

Cash payment means the opposite of credit. 6 Md. 37; 24 N. J. Law, 96.

**CASH-ACCOUNT.** A record, in book-keeping, of all cash transactions; an account of moneys received and expended.

**CASH-BOOK.** In book-keeping, an account-book in which is kept a record of all cash transactions, or all cash received and expended. The object of the cash-book is to afford a constant facility to ascertain the true state of a man's cash. Pardessus, n. 87.

**CASH-NOTE.** In England. A bank-note of a provincial bank or of the Bank of England.

**CASH-PRICE.** A price payable in cash at the time of sale of property, in opposition to a barter or a sale on credit.

**CASHIER, n.** An officer of a moneyed institution, or commercial house, or bank, who is intrusted with, and whose duty it is to take care of, the cash or money of such institution or bank.

The cashier of a bank is the executive officer, through whom the whole financial operations of the bank are conducted. He receives and pays out its moneys, collects and pays its debts, and receives and transfers its commercial securities. Tellers and other subordinate officers may be appointed, but they are under his direction, and are, as it were, the arms by which designated portions of his various functions are discharged. The

directors may limit proper, but this whom the limitat 650.

**CASHIER, v.** To deprive a military c

**CASHLITE.** mulct.

**CASSARE.** to break.

**CASSATION** ling; reversal; t lidity of a judgm from the sovereign cree or judgment broken or annull

**CASSATION de cassation.)** T so termed from pe (*casser*) the decre a court of appeal cases.

**CASSETUR I** be quashed.) In judgment for the ment, where the bill, (*billā.*) 3 : 128, 131. The f plaintiff on the re ment, where he fe be confessed and demurred to; am tinuance of the 3, 236; 1 Tidd, F

**CASSETUR** writ be quashed.) the judgment for abatement, where by original writ, Steph. Pl. 107, 10

**CASSOCK,** or worn by a priest.

**CAST, v.** In allege, offer, or p excuse, (as to "ca

This word is n er than a technic overcome, overtk tion at law.

**CAST, p. p.** fealed in an actio

**CASTEL,** or town; the princi; 3 Inst. 31.

AM. DICT. L

**JUSTICE, v.** In old English practice. To do justice; to see justice done; to summon one to do justice.

**JUSTICE, n.** In jurisprudence. The constant and perpetual disposition to render every man his due. Inst. 1, 1, pr.; 2 Inst. 56. The conformity of our actions and our will to the law. Toull. Droit Civil Fr. tit. pré. no. 5.

In the most extensive sense of the word, it differs little from "virtue;" for it includes within itself the whole circle of virtues. Yet the common distinction between them is that that which, considered positively and in itself, is called "virtue," when considered relatively and with respect to others has the name of "justice." But "justice," being in itself a part of "virtue," is confined to things simply good or evil, and consists in a man's taking such a proportion of them as he ought. Bouvier.

*Commutative* justice is that which should govern contracts. It consists in rendering to every man the exact measure of his dues, without regard to his personal worth or merits, *i. e.*, placing all men on an equality. *Distributive* justice is that which should govern the distribution of rewards and punishments. It assigns to each the rewards which his personal merit or services deserve, or the proper punishment for his crimes. It does not consider all men as equally deserving or equally blameworthy, but discriminates between them, observing a just proportion and comparison. This distinction originated with Aristotle. (Eth. Nic. V.) See Fonbl. Eq. 3; Toull. Droit Civil Fr. tit. pré. no. 7.

In Norman French. Amenable to justice. Kelham.

In feudal law. Jurisdiction; judicial cognizance of causes or offenses.

In common law. The title given in England to the judges of the king's bench and the common pleas, and in America to the judges of the supreme court of the United States and of the appellate courts of many of the states. It is said that this word in its Latin form (*justitia*) was properly applicable only to the judges of common-law courts, while the term "*judex*" designated the judges of ecclesiastical and other courts. See Leg. Hen. I. §§ 24, 63; Co. Litt. 71b.

The same title is also applied to some of the judicial officers of the lowest rank and jurisdiction, such as police justices and justices of the peace.

**JUSTICE AYRES, (or AIRES.)** In Scotch law. Circuits made by the judges of the justiciary courts through the country, for the distribution of justice. Bell.

**JUSTICE IN EYRE.** From the old French word "*eyre*," *i. e.*, a journey. Those justices who in ancient times were sent by commission into various counties, to hear more especially such causes as were termed "pleas of the crown," were called "justices in eyre." They differed from justices in oyer and terminer, inasmuch as the latter were sent to one place, and for the purpose of trying only a limited number of special causes; whereas the justices in eyre were sent through the various counties, with a more indefinite and general commission. In some respects they resembled our present justices of assize, although their authority and manner of proceeding differed much from them. Brown.

**JUSTICE OF THE PEACE.** In American law. A judicial officer of inferior rank, holding a court not of record, and having (usually) civil jurisdiction of a limited nature, for the trial of minor cases, to an extent prescribed by statute, and for the conservation of the peace and the preliminary hearing of criminal complaints and the commitment of offenders.

In English law. Judges of record appointed by the crown to be justices within a certain district, (*e. g.*, a county or borough,) for the conservation of the peace, and for the execution of divers things, comprehended within their commission and within divers statutes, committed to their charge. Stone, J. Pr. 2.

**JUSTICE SEAT.** In English law. The principal court of the forest, held before the chief justice in eyre, or chief itinerant judge, or his deputy; to hear and determine all trespasses within the forest, and all claims of franchises, liberties, and privileges, and all pleas and causes whatsoever therein arising. 3 Bl. Comm. 72; 4 Inst. 291; 3 Steph. Comm. 440.

**JUSTICEMENTS.** An old general term for all things appertaining to justice.

**JUSTICER.** The old form of *justice*. Blount.

**JUSTICES' COURTS.** Inferior tribunals, not of record, with limited jurisdiction, both civil and criminal, held by justices of the peace. There are courts so called in many of the states.

**JUSTICES OF APPEAL.** The title given to the ordinary judges of the English court of appeal. The first of such ordinary judges are the two former lords justices of appeal in chancery, and one other judge ap-

pointed by the crown Act 1875, § 4.

**JUSTICES OF** or, as they are sometimes called "*nisi prius*," are English courts, who in various counties of England have the purpose of disposing ready for trial at the

**JUSTICES OF** Those justices who are sent to hear and determine to person have been cast into prison by law, and they are sent into the county, but afterwards they given them a Brown.

**JUSTICES OF** English law. Justices of the peace either be idle or Blount.

**JUSTICES OF** English law. This title is given to the superior courts both these capacities

**JUSTICES OF** **MINER.** Certain king's commissions are given to two judges of the county of the king, (Middlesex,) and the "assizes," hear cases, felonies, and

**JUSTICES OF** justices of the common pleas.

**JUSTICES OF** English law. Of these justices sat was called the "justices in eyre of the for

**JUSTICES** Hundredors; for who had the hundred held the hundred AM.DICT.L.

A

# LAW DICTIONARY,

ADAPTED TO THE

CONSTITUTION AND LAWS

OF THE

UNITED STATES OF AMERICA,

AND OF THE

Federal States of the American Union:

WITH

REFERENCES TO THE CIVIL AND OTHER SYSTEMS OF FOREIGN LAW.

BY

JOHN BOUVIER.

---

Ignoratis terminis ignoratur et ars.—Co. Litt. 2 a.

Je sais que chaque science et chaque art a ses termes propres, inconnu au commun des hommes.—FLEURY.

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FIFTEENTH EDITION, THOROUGHLY REVISED AND GREATLY ENLARGED.

VOL. I.

PHILADELPHIA:

J. B. LIPPINCOTT COMPANY.

1889.

They are either *common* or *private*. Private carriers incur the responsibility of the exercise of ordinary diligence only, like other bailees for hire; Story, Bailm. § 495; 13 Barb. 481; 1 Wend. 272; 1 Hayw. 14; 2 Dana, 480; 4 Taunt. 787; 6 *id.* 577; 2 B. & P. 417; 2 C. B. 877. See COMMON CARRIER.

**CARRYING AWAY.** In Criminal Law. Such a removal or taking into possession of personal property as is required in order to constitute the crime of larceny.

The words "did take and carry away" are a translation of the words *cepit et asportavit*, which were used in indictments when legal processes and records were in the Latin language. But no single word in our language expresses the meaning of *asportavit*. Hence the word "away," or some other word, must be subjoined to the word "carry," to modify its general signification and give it a special and distinctive meaning; 7 Gray, 45.

Any removal, however right, of the entire article, which is not attached either to the soil or to any other thing not removed, is sufficient; 2 Bishop, Crim. Law, § 699; 1 Mood. 14; 1 Dears. 421; Coxe, 489. Thus, to snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair; 1 Leach, 320; to remove sheets from a bed and carry them into an adjoining room; 1 Leach, 222, n.; to take plate from a trunk, and lay it on the floor with intent to carry it away; *id.*; to remove a package from one part of a wagon to another, with a view to steal it; 1 Leach, 236; have respectively been holden to be felonies. But nothing less than such a severance will be sufficient; 2 East, Pl. Cr. 556; 1 Leach, 4th ed. 236, 321; 1 Hall, Pl. Cr. 508; 1 Ry. & M. 14; 4 Bla. Com. 231; 2 Russell, Cr. 96.

**CART.** A carriage for luggage or burden, with two wheels, as distinguished from a wagon, which has four wheels. Worcester, Dict.; Brande. The vehicle in which criminals are taken to execution. Johnson.

The term has been held to include four-wheeled vehicles, to carry out the intent of a statute; 22 Ala. n. s. 621.

**CART BOTE.** An allowance to the tenant of wood sufficient for carts and other instruments of husbandry. 2 Bla. Com. 35.

**CARTA.** A charter, which title see. Any written instrument.

In Spanish Law. A letter; a deed; a power of attorney. Las Partidas, pt. 3, t. 18, l. 30.

**CARTE BLANCHE.** The signature of one or more individuals on a white paper, with a sufficient space left above it to write a note or other writing.

In the course of business, it not unfrequently occurs that, for the sake of convenience, signatures in blank are given with authority to fill them up. These are binding upon the parties. But the blank must be filled up by the very person authorized; 6

Mart. La. 707. See Chitty, Bills, 70; 2 Penn. 200.

**CARTEL.** An agreement between two belligerent powers for the delivery of prisoners or deserters, and also a written challenge to a duel.

**Cartel ship.** A ship commissioned in time of war to exchange prisoners, or to carry any proposals between hostile powers: she must carry no cargo, ammunition, or implements of war, except a single gun for signals. The conduct of ships of this description cannot be too narrowly watched. The service on which they are sent is so highly important to the interests of humanity that it is peculiarly incumbent on all parties to take care that it should be conducted in such a manner as not to become a subject of jealousy and distrust between the two nations; 4 C. Rob. Adm. 357. See Merlin, *Répert.*; Dane, Abr. c. 40, a. 6, § 7; 1 Kent, 68, 69; 3 Phill. Int. Law, 161-163; 1 Pet. C. C. 106; 3 C. Rob. Adm. 141; 6 *id.* 386; 1 Dods. Adm. 60.

**CARTMEN.** Persons who carry goods and merchandise in carts, either for great or short distances, for hire.

Cartmen who undertake to carry goods for hire as a common employment are common carriers; 3 C. & K. 61; Story, Bailm. § 496. And see 2 Wend. 327; 2 N. & M.C. 88; 1 M'Cord, 444; 2 Bail. 421; 2 Vt. 92; 1 Murph. 417; Bacon, Abr. Carriers, A.

**CARUCAGE.** A taxation of land by the *caruca* or *carue*.

The *caruca* was as much land as a man could cultivate in a year and a day with a single plough (*caruca*). *Carucage*, *carucage*, or *caruage* was the tribute paid for each *caruca* by the *carucarius*, or tenant. Spelman, Gloss.; Cowel.

**CARUCATA.** A certain quantity of land used as the basis for taxation. As much land as may be tilled by a single plough in a year and a day. Skene, *de verb. sig.* A team of cattle. A cartload.

It may include houses, meadow, woods, etc. It is said by Littleton to be the same as *soca*, but has a much more extended signification. Spelman, Gloss.; Blount; Cowel.

**CASE.** In Practice. A question contested before a court of justice. An action or suit at law or in equity. 1 Wheat. 352.

A *case arising under a treaty* (U. S. Const. art. 3, sect. 2) is a suit where is drawn in question the construction of a treaty and the decision is against the title set up by either party under such treaty; Story, J.; 1 Wheat. 356. And see also 6 Cra. 286; 9 Wheat. 819; 11 How. 529; 12 *id.* 111.

In Practice. A form of action which lies to recover damages for injuries for which the more ancient forms of action will not lie. Steph. Pl. 15.

Case, or, more fully, action upon the case, or trespass on the case, includes in its widest sense *assumpsit* and *trover*, and distinguishes a class of actions in which the writ is framed according to the special circumstances of the case, from the

ancient actions, the writs *formata*, are collected in t.

By the common law, and 2d, 13 Edw. I. c. 24, if an for which no remedy had writ was to be formed, and in existence which were of of action. The writ of *tr* writ most commonly rec and in process of time t to have been so extend species of wrong causing was *malfeasance*, *misfea* apparently for the purpos on the case to be broug It thus includes actions o a parol undertaking, nov ASSUMPSIT, and actions and subsequent unlawful now called *trover* (see Tr other actions upon the c been derived from other of trespass, as nuisance, )

And, as the action had character of a technical to a great extent droppe character came to be kn case.

As used at the present d from *assumpsit* and *coe* founded upon any contra from *trover*, which lies on sion; from *detinue* and : only to recover damages that it lies for injuries co or for forcible injuries w tiff consequentially only. See 3 Reeves, Eng. Law; 237-243; 1 Chitty, Pl. 12.

A similar division exist which upon nominate cor gushed by the name of t Upon innominate contrac *prescriptis verbis* (which l was one already recogniz but to which no name h *factum* (which was found particular case), might b

The action lies for:

Torts not committed implied; 2 Ired. 38; 2 151; 3 Ga. 190; as, f tion; 6 Munf. 27, 113; Monr. 545; 21 Ala. N CIOUS PROSECUTION; sales; 5 Yerg. 290; 1 Wend. 193; 7 Ala. 185; 356; 3 Cush. 407; 17 69; 15 Ark. 109; 18 Il

Torts committed forc affected was not tangible 68; as, for obstructing Johns. 383; 5 H. & J. 4 Penn. 436; 23 *id.* 348; turbing the plaintiff in Chitty, Pl. 43; injury t

Torts committed forc is consequential merely, 6 S. & R. 348; 6 H. & J as, special damage fro Willes, 71; 5 Blackf. 95 3 Barb. 42; 3 Cush. 3 12 Penn. 81; 3 Md. 4: defendant's land which quence injure the plaintiff

Chitty, Bills, 70; 2

reement between two  
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1 Dods. Adm. 60.

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Abr. Carriers, A.

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ty; Story, J.; 1 Wheat.  
6 Cra. 286; 9 Wheat.  
12 *id.* 111.

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action upon the case, or  
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ancient actions, the writs in which, called *brevia  
formata*, are collected in the *Registrum Brevium*.

By the common law, and by the statute Westm.  
2d, 13 Edw. I. c. 24, if any cause of action arose  
for which no remedy had been provided, a new  
writ was to be formed, analogous to those already  
in existence which were adapted to similar causes  
of action. The writ of trespass was the original  
writ most commonly resorted to as a precedent;  
and in process of time the term trespass seems  
to have been so extended as to include every  
species of wrong causing an injury, whether it  
was *malfeasance*, *misfeasance*, or *nonfeasance*,  
apparently for the purpose of enabling an action  
on the case to be brought in the king's bench.  
It thus includes actions on the case for breach of  
a parol undertaking, now called *assumpsit* (see  
*ASSUMPSIT*), and actions based upon a finding  
and subsequent unlawful conversion of property,  
now called *trover* (see *TROVER*), as well as many  
other actions upon the case which seem to have  
been derived from other originals than the writ  
of trespass, as nuisance, deceit, etc.

And, as the action had thus lost the peculiar  
character of a technical trespass, the name was  
to a great extent dropped, and actions of this  
character came to be known as actions on the  
case.

As used at the present day, *case* is distinguished  
from *assumpsit* and *covenant*, in that it is not  
founded upon any contract, express or implied;  
from *trover*, which lies only for unlawful conver-  
sion; from *detinue* and *replevin*, in that it lies  
only to recover damages; and from *trespass*, in  
that it lies for injuries committed without force,  
or for forcible injuries which damage the plain-  
tiff consequentially only, and in other respects.  
See 3 Reeves, Eng. Law, 84; 1 Spence, Eq. Jur.  
237-243; 1 Chitty, Pl. 123; 3 Bla. Com. 41.

A similar division existed in the civil law, in  
which upon nominate contracts an action distin-  
guished by the name of the contract was given.  
Upon innominate contracts, however, an action  
*præscriptis verbis* (which lay where the obligation  
was one already recognized as existing at law,  
but to which no name had been given), or *in  
factum* (which was founded on the equity of the  
particular case), might be brought.

The action lies for:

*Torts not committed with force*, actual or  
implied; 2 Ired. 38; 2 Gratt. 866; 20 Vt.  
151; 8 Ga. 190; as, for malicious prosecution;  
6 Munf. 27, 113; 11 G. & J. 80; 7 B.  
Monr. 545; 21 Ala. n. s. 491; see MALI-  
CIOUS PROSECUTION; fraud in purchases and  
sales; 5 Yerg. 290; 1 T. B. Monr. 215; 17  
Wend. 193; 7 Ala. 185; 22 *id.* 501; 11 Metc.  
356; 3 Cush. 407; 17 Penn. 293; 4 Strobb.  
69; 15 Ark. 109; 13 Ill. 299.

*Torts committed forcibly* where the matter  
affected was *not tangible*; 2 Conn. 529; 2 Vt.  
68; as, for obstructing a private way; 14  
Johns. 383; 5 H. & J. 467; 18 Pick. 110; 4  
Penn. 486; 23 *id.* 348; 2 Dutch. 308; dis-  
turbance of the plaintiff in the use of a pew; 1  
Chitty, Pl. 43; injury to a franchise.

*Torts committed forcibly* when the injury  
is consequential merely, and not immediate;  
6 S. & R. 343; 6 H. & J. 230; 4 D. & B. 146;  
as, special damage from a public nuisance;  
Willes, 71; 5 Blackf. 35; 1 Rich. So. C. 444;  
3 Barb. 42; 3 Cush. 300; 4 McLean, 333;  
12 Penn. 81; 3 Md. 431; acts done on the  
defendant's land which by immediate conse-  
quence injure the plaintiff; Stra. 634; 2 Green,

472; 21 Pick. 378; 8 Cush. 595; 7 Monr.  
325; 8 B. Monr. 453; 18 Me. 32; 35 *id.* 271;  
2 Barb. 165; 2 N. Y. 159, 163; 17 Ohio,  
439; 18 *id.* 229; 1 N. J. 5; 12 Ill. 20; 22  
Vt. 38; 21 Conn. 213; 3 Md. 431. See 20  
Vt. 302; 4 N. Y. 195; 5 Rich. So. C. 583.

*Injuries to the relative rights*; 1 Halst. 322;  
1 M'Cord, 207; 3 S. & R. 215; 2 Murph. 61;  
7 Ala. 169; 6 T. B. Monr. 296; 7 Blackf.  
578; 3 Denio, 361; enticing away servants  
and children; 1 Chitty, Pl. 137; 4 Litt. 25;  
15 Barb. 439; seduction of a daughter or  
servant; 5 Me. 546; 2 Greene, 520. See 6  
Munf. 587; 1 Gilm. 33; SEDUCTION.

*Injuries which result from negligence*; 7  
Mass. 169; 1 Cush. 475; 23 Me. 371; 1  
Denio, 91; 2 Ired. 198; 9 *id.* 78; 18 Vt.  
620; 21 *id.* 102; 2 Strobb. 356; 4 Rich. 228;  
9 Ark. 85; 24 Miss. 93; 20 Penn. 387; 13  
B. Monr. 219; 15 Ill. 366; 3 Ohio St. 172;  
see 5 Denio, 255; 20 Vt. 529; 19 Conn. 507;  
29 Me. 307; 16 Penn. 463; 2 Mich. 259;  
though the direct result of actual force; 10  
Bingh. 112; 4 B. & C. 223; 14 Johns. 432;  
17 *id.* 92; 17 Barb. 94; 3 N. H. 465; 11  
Mass. 137; 2 Harr. Del. 443; 2 Ired. 206;  
18 Vt. 605; 7 Blackf. 342; 1 R. I. 474.

*Wrongful acts* done under a legal process  
regularly issuing from a court of competent  
jurisdiction; 2 Conn. 700; 9 *id.* 141; 11  
Mass. 500; 6 Me. 421; 1 Bail. 441; 19 Ala.  
760; 21 *id.* 491; 2 Litt. 234; 6 Dana, 321;  
3 G. & J. 377; 13 Ga. 260; 6 Cal. 399. See  
3 S. & R. 142; 12 *id.* 210.

*Wrongful acts* committed by the defend-  
ant's servant without his order, but for which  
he is responsible; 17 Mass. 246; 1 Pick. 66;  
3 Cush. 300; 8 Wend. 474; 9 Humphr. 757;  
13 B. Monr. 219; 2 Ohio St. 536; 17 Ill. 580.

*The infringement of rights given by statute*;  
15 Conn. 526; 7 Mass. 169; 23 Me. 371; 9  
Vt. 411; 2 Woodb. & M. 337.

*Injuries committed to property* of which the  
plaintiff has the reversion only; 8 Pick. 235;  
4 Gray, 197; 7 Conn. 328; 24 *id.* 15; 2  
Green, 8; 1 Johns. 511; 3 Hawks, 246; Busb.  
30; 2 Murph. 61; 2 N. H. 490; 3 *id.* 103;  
5 Penn. 118; 3 *id.* 523; 2 Dougl. 184; 4  
Harr. Del. 181; 21 Vt. 108; 1 Dutch. 97,  
255; 41 Me. 104; see 1 N. Y. 523; as where  
property is in the hands of a bailee for hire;  
3 Campb. 187; 3 East, 593; 3 Hawks, 246;  
3 B. Monr. 615.

As to the effect of intention, as distinguish-  
ing case from trespass, see 1 M'Mull. 364; 7  
Blackf. 342; 4 Denio, 464; 4 Barb. 225; 30  
Me. 173; 13 Ired. 50; 26 Ala. n. s. 633.  
In some states the distinction is expressly  
abolished by statute; 25 Me. 86; 8 Blackf.  
119; 3 Sneed, 20; 1 Wisc. 352.

The declaration must not state the injury  
to have been committed *vi et armis*; 3 Conn.  
64 (yet after verdict the words *vi et armis*  
(with force and arms) may be rejected as sur-  
plusage; Harp. 122); and should not con-  
clude *contra pacem*. Comyns, Dig. *Action  
on the Case*; (C, 3).

Damages not resulting necessarily from the



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PERRY MILLS,

Petitioner,

v.

WESTERN WASHINGTON  
UNIVERSITY,

Respondent.

CERTIFICATE OF  
SERVICE

I certify that I served a copy of the Supplemental Brief of Respondent all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of March, 2010.

  
Tammy Balliett