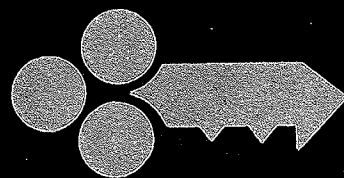


BLACK'S  
LAW  
DICTIONARY

*With Pronunciations*

Fifth Edition



# BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of  
American and English Jurisprudence,  
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,  
Bankruptcy, Mortgages, Constitutional Law, Interpretation  
of Laws, Rescission and Cancellation of Contracts, Etc.

FIFTH EDITION

BY

THE PUBLISHER'S EDITORIAL STAFF

Contributing Authors

JOSEPH R. NOLAN

Associate Justice, Massachusetts Supreme Judicial Court  
and

M. J. CONNOLLY

Associate Professor of Linguistics  
and Eastern Languages, Boston College

ST. PAUL MINN.  
WEST PUBLISHING CO.  
1979

procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; when they are subjected to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; when they are liable to no other or greater burdens and charges than such as are laid upon others; and when no different or greater punishment is enforced against them for a violation of the laws.

"Equal protection," with respect to classification for taxation purposes, does not require identity of treatment, but only (1) that classification rests on real and not feigned differences, (2) that the distinction have some relevance to purpose for which classification is made, and (3) that the different treatments be not so disparate, relative to difference in classification, as to be wholly arbitrary. *Walters v. City of St. Louis, Mo.*, 347 U.S. 231, 74 S.Ct. 505, 509, 98 L.Ed. 660.

**Equal Rights Amendment.** Proposed amendment to U.S. Constitution which provides that: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

**Equal Time Act.** If licensee of broadcasting facility permits a legally qualified candidate for public office to use facility for broadcasting, he shall afford equal opportunities to all other such candidates for that office. 47 U.S.C.A. § 315.

**Eques** /iykwiyz/. Lat. In Roman and old English law, a knight.

**Equilocus** /èkwalówkəs/. An equal.

**Equinoxes** /iykwónòksəz/ékw°. The two periods of the year (vernal equinox about March 21st, and autumnal equinox about September 22d) when the time from the rising of the sun to its setting is equal to the time from its setting to its rising.

**Equip.** To furnish for service or against a need or exigency; to fit out; to supply with whatever is necessary to efficient action in any way. Synonymous with furnish.

**Equipment.** Furnishings, or outfit for the required purposes. Whatever is needed in equipping; the articles comprised in an outfit; equipment. *Department of Treasury, Gross Income Tax Division v. Ranger-Cook, Inc.*, 114 Ind.App. 107, 49 N.E.2d 548, 550; *Farm & Home Saving & Loan Ass'n of Missouri v. Empire Furniture Co.*, Tex.Civ.App., 87 S.W.2d 1111, 1112.

Under U.C.C., goods include "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods. U.C.C. § 9-109(2).

**Equipment trust.** Financing device commonly used by railroads by which equipment is purchased from the manufacturer by a trustee who provides a substantial portion of the purchase price, the railroad providing the balance. The trustee then leases the equipment to the railroad which pays a rental fee consisting of

interest, amortization for serial retirement and trustee's fee.

**Equipment trust certificate.** A type of security, generally issued by a railroad, to pay for new equipment. Title to the equipment, such as a locomotive, is held by a trustee until the notes are paid off. An equipment trust certificate is usually secured by a first claim on the equipment.

**Equitable.** Just; conformable to the principles of justice and right. Existing in equity; available or sustainable in equity, or upon the rules and principles of equity.

As to equitable Assets; Construction; Conversion; Easement; Ejectment; Estate; Garnishment; Levy; Mortgage; Title, and Waste, see those titles.

**Equitable abstention doctrine.** A court may refrain from exercising jurisdiction which it possesses in the interest of comity between courts and between states as in the case of actions involving the affairs of a foreign corporation or foreign land. Doctrine also applies to case of Federal court's refraining from interfering with decision of state administrative agency's decision on a local matter. *Allegheny Airlines, Inc. v. Penn. Public Utility Comm.*, D.C.Pa., 319 F.Supp. 407.

**Equitable action.** One seeking an equitable remedy or relief; though in the federal and most state courts, with the procedural merger of law and equity, there is now *procedurally* only one type of action—a "civil action." Fed.R. Civil P. 2.

**Equitable adjustment theory.** In settlement of federal contract disputes, contracting officer should make fair adjustment within a reasonable time before contractor is required to settle with his subcontractors, suppliers and other creditors. *Roberts v. U. S.*, 174 Ct.Cl. 940, 357 F.2d 938.

**Equitable adoption.** "Equitable adoption" refers to situation involving oral contract to adopt child, fully performed except that there was no statutory adoption, and in which rule is applied for benefit of child in determination of heirship upon death of person contracting to adopt. *Barlow v. Barlow*, 170 Colo. 465, 463 P.2d 305, 308. In certain jurisdictions, a child has rights of inheritance from person who has contracted to adopt him but has not done so. *Dunn v. Richardson*, D.C.Ark., 336 F.Supp. 649, 654.

**Equitable assignment.** An assignment which, though invalid at law, will be recognized and enforced in equity; e.g., an assignment of a chose in action, or of future acquisitions of the assignor. *Stewart v. Kane*, Mo.App., 111 S.W.2d 971, 974. In order to work an "equitable assignment", there must be an absolute appropriation by the assignor of the debt or fund sought to be assigned. *Sneesby v. Livingston*, 182 Wash. 229, 46 P.2d 733, 735.

**Equitable conversion.** A doctrine commonly applied when death intervenes between the signing of an agreement to sell real estate and the date of transfer of title resulting in treating land as personality and personality as land under certain circumstances. It takes place when a contract for sale of realty be-

is so palpably wrong as to shock the moral sense. See also **Miscarriage of justice**.

**Failure of proof.** A "failure of proof" consists in failure to prove the cause of action or defense in its entire scope and meaning. *Breslin-Griffitt Carpet Co. v. Asadorian*, Mo.App., 145 S.W.2d 494, 496.

Where evidence is such as would support either of two contradictory inferences, or presumptions, respecting the ultimate facts, there is a "failure of proof". *Muesenfechter v. St. Louis Car Co.*, Mo. App., 139 S.W.2d 1102, 1106.

See **Directed verdict**; **Failure to state cause of action**; **Non obstante verdicto**; **Summary judgment**.

**Failure of record.** Failure of the defendant to produce a record which he has alleged and relied on in his plea.

**Failure of title.** The inability or failure of a vendor to make good title to the whole or a part of the property which he has contracted to sell. See also **Cloud on title**; **Curing title**; **Marketable title**.

**Failure of trust.** The lapsing or nonefficiency of a proposed trust, by reason of the defect or insufficiency of the deed or instrument creating it, or on account of illegality, indefiniteness, or other legal impediment.

**Failure otherwise than upon merits.** Phrase imports some action by court by which plaintiff is defeated without a trial upon the merits; e.g. judgment on pleadings, summary judgment.

**Failures in revenue.** Terms "casual deficits" and "failures in revenue," within provision authorizing legislature to contract debt to meet such deficits, are synonymous. *State Budget Commission v. Lebus*, 244 Ky. 700, 51 S.W.2d 965.

**Failure to bargain collectively.** An employer's refusal to discuss with union, as employees' bargaining agency, questions involving conditions of employment and interpretation of contract constitutes a "failure to bargain collectively" with union. *Rapid Roller Co. v. National Labor Relations Board*, C.C.A.7, 126 F.2d 452, 459.

**Failure to make delivery.** Misdelivery or nondelivery. This phrase is fully adequate to cover all cases where delivery has not been made as required. *Georgia, F. & A. Ry. Co. v. Blish Milling Co.*, 241 U.S. 190, 36 S.Ct. 541, 543, 60 L.Ed. 948.

**Failure to meet obligations.** Bank's failure to pay depositors on demand constitutes "failure to meet obligations" in most cases. Where bank closed its doors and ceased to transact business or make transfers of capital stock, and thereafter ordinary deposits could not be drawn out and checks in process of collection were dishonored, returned unpaid, was "failure to meet obligations". *State of Ohio ex rel. Squire v. Union Trust Co. of Pittsburgh*, 137 Pa.Super. 75, 8 A.2d 476, 480. See also **Failing circumstances**; **Insolvency**.

**Failure to perform.** As regards reciprocal promises, allegation of defendant's "failure to perform" when demanded is equivalent to allegation of "refusal to perform," unless performance by plaintiff is condition precedent to cause of action. *Brooks v. Scoville*, 81 Utah 163, 17 P.2d 218, 220.

**Failure to state cause of action.** Failure of the plaintiff to allege enough facts in the complaint. Even if the plaintiff proved all the facts alleged in the complaint, the facts would not establish a cause of action entitling the plaintiff to recover against the defendant. The motion to dismiss for failure to state a cause of action is sometimes referred to as (a) a demurrer (e.g. California) or (b) a failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b). See also **Directed verdict**; **Summary judgment**.

**Failure to testify.** In criminal trial, defendant is not required to testify and such failure may not be commented on by judge or prosecution because of protection of Fifth Amendment, U.S.Const. *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106. See also **Self incrimination**.

**Faint (or feigned) action.** In old English practice, an action was so called where the party bringing it had no title to recover, although the words of the writ were true. See also **Feigned action**.

**Faint pleader.** A fraudulent, false, or collusive manner of pleading to the deception of a third person.

**Fair.** Having the qualities of impartiality and honesty; free from prejudice, favoritism, and self-interest. Just; equitable; even-handed; equal, as between conflicting interests. See also **Equitable**; **Reasonable**.

A gathering of buyers and sellers for purposes of exhibiting and sale of goods; usually accompanied by amusements, contests, entertainment, and the like.

In England, a greater species of market; a privileged market. It is an incorporeal hereditament, granted by royal patent, or established by prescription presupposing a grant from the crown. A public mart or place of buying or selling. 1 Bl.Comm. 274. In the earlier English law, the franchise to hold a fair conferred certain important privileges; and fairs, as legally recognized institutions, possessed distinctive legal characteristics. Most of these privileges and characteristics, however, are now obsolete. In America, fairs, in the ancient technical sense, are unknown, and, in the modern and popular sense, they are entirely voluntary and nonlegal, and transactions arising in or in connection with them are subject to the ordinary rules governing sales, etc.

**Fair and impartial jury.** Means that every member of the jury must be a fair and impartial juror. *City of San Antonio v. McKenzie Const. Co.*, 136 Tex. 315, 150 S.W.2d 989, 993. See **Fair and impartial trial**.

**Fair and impartial trial.** One where accused's legal rights are safeguarded and respected. *Raney v. Commonwealth*, 287 Ky. 492, 153 S.W.2d 935, 937, 938. A fair and impartial trial by a jury of one's peers contemplates counsel to look after one's defense, compulsory attendance of witnesses, if need be, and a reasonable time in the light of all prevailing circumstances to investigate, properly prepare, and present the defense. One wherein defendant is permitted to be represented by counsel and neither witnesses nor counsel are intimidated. One wherein no undue advantage is taken by the district attorney or any one else. *People v. Nationwide News Service*, 172 Misc. 752, 16 N.Y.S.2d 277, 279. One wherein witnesses of litigants are permitted to testify under rules of court