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BLACK'S LAW DICTIONARY®

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

By

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SIXTH EDITION

BY

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civiles. These were found so beneficial in practice that they eventually supplanted the old remedies, of which in the time of Justinian hardly a trace remained.

Actio in factum /ækshiyow in fæktəm/. An action adapted to the particular case, having an analogy to some *actio in jus*, the latter being founded on some subsisting acknowledged law. The origin of these actions is similar to that of actions on the case at common law.

Actio in personam /ækshiyow in pərsównəm/. In the civil law, an action against the person, founded on a personal liability; an action seeking redress for the violation of a *jus in personam* or right available against a particular individual. *See* In personam.

Actio in rem /ækshiyow in rém/. In the civil and common law, an action *for a thing*; an action for the recovery of a thing possessed by another. An action for the enforcement of a right (or for redress for its invasion) which was originally available against all the world, and not in any special sense against the individual sued, until he violated it. *See* In rem.

Actio judicati /ækshiyow jùwdékéytay/. In the civil law, an action instituted after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards; and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and if, at the end of two months, the debt was not paid, the land was sold.

Actio legis aquiliæ /ækshiyow líyjes ækwíliyy/. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another. Otherwise called *damni injuriæ actio*.

Actio mandati /ækshiyow mændéytay/. In the civil law, term included actions to enforce contracts of mandate or obligations arising out of them.

Actio mixta /ækshiyow míkstə/. A mixed action, an action brought for the recovery of a thing, or compensation for damages, and also for the payment of a penalty; partaking of the nature both of an *actio in rem* and in *personam*.

Action. Conduct; behavior; something done; the condition of acting; an act or series of acts.

Term in its usual legal sense means a lawsuit brought in a court; a formal complaint within the jurisdiction of a court of law. *Pathman Const. Co. v. Knox County Hospital Ass'n*, Ind.App., 326 N.E.2d 844, 853. The legal and formal demand of one's right from another person or party made and insisted on in a court of justice. An ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. It includes all the formal proceedings in a court of justice attendant upon the demand of a right made by one person of another in

such court, including an adjudication upon the right and its enforcement or denial by the court.

See also Case (*Cases and Controversies*); Cause of action; Civil action; Collusive action; Counterclaim; Controversy; Cross-claim; Direct action; Forms of action; Penal action; Petitory action; Plenary action; Proceeding; Suit; Transitory action.

Merger of law and equity. In the federal courts, and most state courts, there is only one form of action—civil action—which embraces all actions formerly denominated suits in equity and actions at law. While there has been a merger of law and equity for procedural purposes, substantive principles of equity still govern. *Fed.R.Civ.P. 2*.

Types of action. Such term was formerly used to describe action for damages as distinguished from suit in equity for equitable relief. This distinction however has been abolished under *Fed. Rules of Civil Procedure* and in those states which have adopted court rules tracking the *Federal Rules*. *Fed.R.Civ.P. 2*.

Action for death. *See* Wrongful death action.

Action in equity. Action in which person seeks equitable relief as distinguished from damages; *e.g.* injunction or specific performance of real estate agreement. Term has been abolished by *Fed. Rules of Civil Procedure* (Rule 2) in favor of single form of action—civil action—which embraces both law and equity actions.

Action in personam. *See* In personam.

Action in rem. *See* In rem.

Action on account. An action of assumpsit or debt for recovery of money only for services performed, property sold and delivered, money loaned, or damages for the non-performance of simple contracts, express or implied, when the rights of the parties will be adequately conserved by the payment and receipt of money. *Northwest Foundry & Furnace Co. v. Willamette Mfg. & Supply Co., Inc.*, 268 Or. 343, 521 P.2d 545, 549.

Action quasi in rem. *See* In rem.

Civil actions are such as lie in behalf of persons to enforce their rights or obtain redress of wrongs in their relation to individuals. *Fed.R.Civ.P. 2*.

Class actions. *See* Class or representative action; Derivative action.

Common law actions are such as will lie, on the particular facts, at common law, without the aid of a statute. Actions are called, in common-law practice, *ex contractu* when they arise out of a contract, and *ex delicto* when they arise out of a tort. If a cause of action arises from a breach of promise, the action is "ex contractu", and, if it arises from breach of duty growing out of contract, it is "ex delicto".

Criminal actions are such as are instituted by the sovereign power (*i.e.* government), for the purpose of punishing or preventing offenses against the public. **Local action.** *See* Local actions.

Mixed actions partake of twofold nature of real and personal actions, having for their object the demand

intended as security for a loan of money, and by it he agrees to reconvey the property on payment of a specified sum. The two instruments, taken together, constitute what is known in Louisiana as an "*antichresis*" (q.v.).

Counter-mark. A sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.

Counter-plea. See Plea.

Counter-security. A security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

Counterclaim. A claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. Fed.R. Civil P. 13. If established, such will defeat or diminish the plaintiff's claim. Under federal rule practice, and also in most states, counterclaims are either compulsory (required to be made) or permissive (made at option of defendant).

A counterclaim may be any cause of action in favor of one or more defendants or a person whom a defendant represents against one or more plaintiffs, a person whom a plaintiff represents or a plaintiff and other persons alleged to be liable. New York C.P.L.R. § 3019(a).

For requisite content of counterclaim under Federal Rules of Civil Procedure, see Complaint. Compare Cross-claim. See also Offset; Recoupment; Set-off; Transaction or occurrence test.

Compulsory counterclaim. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim. Fed.R. Civil P. 13(a).

For claim to constitute a compulsory counterclaim, it must be logically related to original claim and arise out of same subject matter on which original claim is based; many of same factual legal issues, or offshoots of same basic controversy between parties must be involved in a compulsory counterclaim. *Tasner v. Billera*, D.C.Ill., 379 F.Supp. 809, 813. See also Transaction or occurrence test.

Permissive Counterclaim. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. Fed.R. Civil P. 13(b).

Counterfeit /káwntərfit/. To forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Most commonly applied to the fraudulent and criminal imitation of money or securities. 18 U.S.C.A. § 471 et seq. Counterfeit in common parlance signifies fabrication of false image or representation; counterfeiting an instrument means falsely making it; and in its broadest sense means making of copy without authority or right and with view to deceive or defraud by passing copy as original or genuine. *Smith v. State*, 7 Md.App. 457, 256 A.2d 357, 360, 361. See also Bootlegging; False making; Falsify; Forgery; Gray market goods; Imitation.

Counterfeit coin. Coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, including genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination.

Counterfeiter. One who unlawfully makes base coin in imitation of the true metal, or forges false currency, or any instrument of writing, bearing a likeness and similitude to that which is lawful and genuine, with an intention of deceiving and imposing upon another.

Counter-feisance. The act of forging.

Counter letter. An agreement to reconvey where property has been passed by absolute deed with the intention that it shall serve as security only.

Countermand. A change or revocation of orders, authority, or instructions previously issued. It may be either express or implied; the former where the order or instruction already given is explicitly annulled or recalled; the latter where the party's conduct is incompatible with the further continuance of the order or instruction, as where a new order is given inconsistent with the former order.

Counteroffer. Statement made by the offeree to the offeror relating to the same matter as the original offer and proposing a substituted bargain differing from that proposed by the original offer. *Thurmond v. Wieser*, Tex.App. 10 Dist., 699 S.W.2d 680, 681. A statement by the offeree which has the legal effect of rejecting the offer and of proposing a new offer to the offeror. Restatement, Second, Contracts, § 59. However, the provisions of U.C.C. § 2-207(1)(2) modifies this principle of contract law as regards sales of goods by providing that the "additional terms are to be construed as proposals for addition to the contract."

Counterpart. In conveyancing, the corresponding part of an instrument; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the "original," and the rest are "counterparts"; although, where all the parties execute every part, this renders them all originals. See Duplicate.

Counterpart writ. A copy of the original writ, authorized to be issued to another county when the court has

Critical evidence. Material evidence of substantial probative force that could induce a reasonable doubt in the minds of enough jurors to avoid a conviction. *Gray v. Rowley*, C.A.La., 604 F.2d 382, 383.

Critical stage. Critical stage in a criminal proceeding at which accused is entitled to counsel is one in which a defendant's rights may be lost, defenses waived, privileges claimed or waived, or in which the outcome of the case is otherwise substantially affected. See *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254. Test of "critical stage" of criminal proceeding as it relates to right to counsel is whether proceeding either requires or offers opportunity to take procedural step which will have prejudicial effects in later proceedings, or whether events transpire that are likely to prejudice ensuing trial. *Miller v. State of S. C.*, D.C.S.C., 309 F.Supp. 1287, 1290. See also Counsel, right to; Custodial interrogation.

Crocia /króws(h)iyə/. The *crozier*, or pastoral staff.

Crociarius /kròwsiyériyəs/. A cross-bearer, who went before the prelate.

Croft. A little close adjoining a dwelling-house, and inclosed for pasture and tillage or any particular use. A small place fenced off in which to keep farm-cattle. The word is now entirely obsolete.

Croises /króyzəz/krózyziy/. Pilgrims; so called as wearing the sign of the cross on their upper garments. The knights of the order of St. John of Jerusalem, created for the defense of the pilgrims.

Croiteir. A crofter; one holding a croft.

Crook. A person given to crooked or fraudulent practices; a swindler, sharper, thief, forger, or the like. Term has been defined as a professional rogue; a criminal; or one consorting with criminals; a person recognized by the authorities as belonging to the criminal class.

Crooked. Deviating from rectitude or uprightness; not straightforward; dishonest; wrong; perverse. A "crook" is a dishonest person; one who is crooked in conduct; a tricky or underhand schemer; a thief or swindler.

Crop. Products of the soil, as are annually grown, raised, and harvested. Growing crops are considered "goods" under U.C.C. § 2-105(1). Term includes fruit grown on trees, and grass used for pasturage. See also Basic crops; Growing crop.

Crop insurance. See Insurance.

Cropper. See Sharecropper.

Cross. A mark made by persons who are unable to write, to stand instead of a signature. A mark usually in the form of an X, by which voters are commonly required to express their selection. There are four principal forms of the cross: The St. Andrew's cross, which is made in the form of an X; the Latin cross, †, as used in the crucifixion; St. Anthony's cross, which is made in the form of a T; and the Greek cross, +, which is made by the intersection at right angles of lines at their center point.

As an adjective, the word is applied to various demands and proceedings which are connected in subject-matter, but opposite or contradictory in purpose or object.

As a verb it means to pass or extend from one side to the other, as to cross a stream. *People v. Hawkins*, 51 Cal.App.2d Supp. 781, 124 P.2d 691, 692.

Cross-action. An action brought by one who is defendant in a suit against the party who is plaintiff in such suit, or against a co-defendant, upon a cause of action growing out of the same transaction which is there in controversy, whether it be a contract or tort. An independent suit brought by defendant against plaintiff or co-defendant. See also Counterclaim; Cross-claim; Cross-complaint.

Cross appeal. An appeal by the appellee. In the federal courts a cross appeal is argued with the initial appeal of the appellant. Fed.R.App.P. 34(d). See also Appeal.

Cross-claim. Cross-claims against co-parties are governed in the federal district courts and in most state trial courts by Rule of Civil Procedure 13(g): "A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant." See also New York C.P.L.R. § 3019(b).

For requisite content of cross-claim under Rules of Civil Procedure, see Complaint. See also Cross-complaint; Transaction or occurrence test.

Counterclaim distinguished. "Cross-claims" are litigated by parties on the same side of the main litigation, while "counterclaims" are litigated between opposing parties to the principal action. *Resource Engineering, Inc. v. Siler*, 94 Idaho 935, 500 P.2d 836, 840.

Cross collateral. Security given by both parties to a contract or undertaking for performance or payment.

Cross-complaint. A defendant or cross-defendant may file a cross-complaint setting forth either or both of the following: (a) Any cause of action he has against any of the parties who filed the complaint against him. (b) Any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in his cross-complaint, (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him. Calif. Code of Civil Proc. § 428.10. See also Cross-claim.

Cross-demand. Where a person against whom a demand is made by another, in his turn makes a demand against that other, these mutual demands are called