



abandonment *n.* **1.** The act of giving up a legal right, particularly a right of ownership of property. Property that has been abandoned is *res nullius* (a thing belonging to no one), and a person taking possession of it therefore acquires a lawful title. An item is regarded as abandoned when it can be established that the original owner has discarded it and is indifferent as to what becomes of it: such an item cannot be the subject of a theft charge. However, property placed by its owner in a dustbin is not abandoned, having been placed there for the purpose of being collected as refuse. In marine insurance, abandonment is the surrender of all rights to a ship or cargo in a case of *constructive total loss. The insured person must do this by giving the insurer within a reasonable time a **notice of abandonment**, by which he relinquishes all his rights to the ship or cargo to the insurer and can treat the loss as if it were an actual total loss. **2.** In civil litigation, the relinquishing of the whole or part of the claim made in an action or of an appeal. Any claim is now considered to be abandoned once a *notice of discontinuance is served, under Part 38 of the *Civil Procedure Rules. **3.** The offence of a parent or guardian leaving a child under the age of 16 to its fate. A child is not regarded as abandoned if the parent knows and approves steps someone else is taking to look after it. The court may allow a child to be adopted without the consent of its parents if they are guilty of abandonment.

abatement *n.* **1.** (of debts) The proportionate reduction in the payment of debts that takes place if a person's assets are insufficient to settle with his creditors in full. **2.** (of legacies) The reduction or cancellation of legacies when a solvent estate is insufficient to cover all the legacies provided for in the will or on intestacy after payment of the deceased's debts. The Administration of Estates Act 1925 (Sch 1 Pt II) provides that general legacies, unless given to satisfy a debt, abate in proportion to the amounts of those legacies; specific and demonstrative legacies then abate if the estate is still insufficient to pay all debts, and a demonstrative legacy also abates if the specified fund is insufficient to cover it. For example, A's estate may comprise a painting, £3,000 in his savings account, and £7,000 in other money; there are debts of £1,000 but his will leaves the painting to B, £5,000 from the savings account to C, £8,000 to D, and £2,000 to E. B will receive the painting, C's demonstrative legacy abates to £3,000, and after the debts are paid from the remaining £7,000, D's and E's general legacies abate proportionately, to £4,800 and £1,200 respectively. When annuities are given by the will, the general rule is that they are valued at the date of the testator's death, then abate proportionately in accordance with that valuation, and each annuitant receives the abated sum. All these rules are subject to any contrary intention being expressed in the will. **3.** (in land law) Any reduction or cancellation of money payable. For example a lease may provide for an abatement of rent in certain circumstances, e.g. if the building is destroyed by fire, and a purchaser of land may claim an abatement of the price if the seller can prove his ownership of only part of the land he contracted to sell. **4.** (of nuisances) The termination, removal, or destruction of a *nuisance. A person injured by a nuisance has a right to abate it. In doing so, he must not do more damage than is necessary and, if removal of the nuisance requires entry on to the property from which it emanates, he may have to give notice to the wrongdoer. A local authority can issue an abatement notice to control statutory nuisances. **5.** (of proceedings) The termination of civil proceedings by operation of law, caused by a change of interest or status (e.g. bankruptcy or death) of one of the parties after the start but before the completion of the proceedings. An abatement did not prevent either of the parties from bringing fresh

abduction

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proceedings in respect of the same cause of action. Pleas in abatement have been abolished; in modern practice any change of interest or status of the parties does not affect the validity of the proceedings, provided that the cause of action survives.

abduction *n.* Wrongfully taking away or detaining another person, usually by force or fraud. *See* CHILD ABDUCTION; FALSE IMPRISONMENT; KIDNAPPING.

abet *vb.* *See* AID AND ABET.

ABH *See* ACTUAL BODILY HARM.

ab initio [Latin] From the beginning. If a contract is void (say for *mistake) *ab initio*, this has the consequence that no innocent third parties can acquire rights under any subsequent contract (*Bell v Lever Bros* [1932] AC 161 (HL) (Lord Atkin)).

ab intestato [Latin: from an intestate] Describing an inheritance from someone who dies without leaving a valid will.

abortion *n.* The removal of an embryo or foetus from the uterus at a stage in the pregnancy when it is deemed incapable of independent survival (*see* VIABLE). Under the Offences Against the Person Act 1861 (s 58) abortion is a criminal offence unless carried out in accordance with the provisions of the Abortion Act 1967, which sets out the grounds upon which a termination is legal (s 1). Generally, a termination is lawful if the pregnancy has not exceeded 24 weeks and if the continuance of the pregnancy would involve a greater risk to the physical or mental health of the pregnant woman than having an abortion. In some circumstances a termination is permitted after 24 weeks, for example if there is a substantial risk that the child if born would be seriously handicapped or if the continuance of the pregnancy would involve grave permanent injury to the physical or mental health of the pregnant woman. The abortion must be carried out in an approved hospital or clinic and two medical practitioners must certify that the termination is necessary for one of the reasons set out in the Act. The distinction between abortion and contraception is a crucial one. A recent case, *R (Smeaton on behalf of SPUC) v Secretary of State for Health* [2002] EWHC 610 (Admin), [2002] 2 FLR 146, ruled that use of the "morning after pill", which prevents the implantation of the fertilized egg in the womb, did not constitute an abortion. Doctors are not obliged to perform abortions if they can prove that they have a conscientious objection to so doing. A husband cannot prevent his wife having a legal abortion if she so wishes. *Compare* CHILD DESTRUCTION.

absconding *n.* The failure of a person to surrender to the custody of a court in order to avoid legal proceedings. *See also* SURRENDER TO CUSTODY.

absence *n.* (in court procedure) The nonappearance of a party to litigation or a person summoned to attend as a witness. Part 39 of the *Civil Procedure Rules sets out the consequences of a party's failure to attend the trial in civil proceedings. In criminal proceedings a summary trial may take place in the absence of the accused under the Magistrate Courts Act 1980. The accused may also plead guilty by post for any summary offence under sections 12 and 308 of the Criminal Justice Act 2003.

absente reo [Latin] The defendant being absent.

absent-mindedness *n.* *See* NON-INSANE AUTOMATISM.

absent parent *See* NON-RESIDENT PARENT; CHILD SUPPORT MAINTENANCE.

absolute *adj.* Complete; unconditional; not relative or qualified. A **rule absolute** is an order that can be enforced at once, in contradistinction to a **rule nisi**, which commands the opposite party to appear on a day therein named and show cause why he should not perform the act or submit to the terms therein set forth. In default of his appearance or showing good cause, the rule is made absolute. *See* DECREE ABSOLUTE; DECREE NISI.

absolute assignment *See* ASSIGNMENT.

absolute discharge See DISCHARGE.

absolute interest In ascertaining the income tax treatment of a beneficiary's entitlement to the estate of a deceased person it is first necessary to determine whether the beneficiary has an absolute interest or a **limited interest**. The beneficiary has an absolute interest in the *residuary estate if that residue is payable to him, of right, as soon as the residue has been ascertained (Income Tax (Trading and Other Income) Act 2005 s 650(1)). He has a limited interest if his right to the estate, once ascertained, is only to the income arising from the residue (s 650 (2)).

absolute privilege The defence that a statement cannot be made the subject of an action for *defamation because it was made in Parliament, in papers ordered to be published by either House of Parliament, in judicial proceedings or a fair and accurate newspaper or broadcast report of judicial proceedings, or in an official communication between certain officers of state. Under the Defamation Act 1996, the defence is also available for those reporting proceedings of the European Court of Justice. Under certain circumstances defined by the 1996 Act the absolute privilege accorded to statements or proceedings in Parliament may be waived (**waiver of privilege**) to permit evidence to be adduced in an action for defamation. Compare QUALIFIED PRIVILEGE.

absolute right A right set out in the European Convention on Human Rights that cannot lawfully be interfered with, no matter how important the public interest in doing so might be. Absolute rights include *freedom of thought, conscience, and religion and the prohibitions on *torture, *inhuman treatment or punishment, and *degrading treatment or punishment. Compare QUALIFIED RIGHT.

absolute theory of sovereign immunity A theory that long prevailed, particularly in the UK, that a foreign state could not be impleaded (i.e. sued) before a municipal tribunal in any circumstances. The doctrine of *sovereign immunity was originally devised to uphold mutual respect between monarchs by according immunity to the exercise of their state functions within foreign jurisdictions. However, the 20th century saw the rise of industrial enterprises funded and controlled by the state: to accord immunity to such enterprises gave them an unfair commercial advantage and the absolute view of state immunity was gradually abandoned by the international community. The UK was one of the last states to respect the traditional view. The common-law position was altered to as to conform to the new world norm by the Court of Appeal in *Trendtex Trading Corp v Central Bank of Nigeria* [1977] QB 529 (CA). The statutory position was altered by the State Immunity Act 1978. An additional restriction on state immunity arose out of the case of *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No. 3)* [1999] 2 WLR 827 (HL). Here it was held by the House of Lords that the Criminal Justice Act 1988 removed immunity from a former head of state with regard to acts carried out in the exercise of his official functions if such acts were a breach of **jus cogens* (e.g. acts of torture and genocide).

absolute title Ownership of a *legal estate in registered land with a guarantee by the state that no one has a better right to that estate. An absolute title to freehold land is equivalent to an estate in fee simple in possession in unregistered land. **Absolute leasehold title**, unlike *good leasehold title, guarantees that the lessor has title to grant the lease. (Compare POSSESSORY TITLE; QUALIFIED TITLE.) The title may be subject to:

- *encumbrances and other entries noted on the register by means of substantive registration (e.g. a registered legal charge or land charge);
- noted interests, such as that of a beneficiary under a trust, which may be protected by means of a *notice or *restriction on the register rather than by substantive registration;
- *overriding interests (which by their nature do not appear on the register and must be ascertained by search and enquiry).

See also LAND REGISTRATION.

abstracting electricity

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abstracting electricity The offence, punishable with up to five years' imprisonment and/or a fine, of dishonestly using, wasting, or diverting electricity. This offence may be committed by someone who bypasses his electricity meter or reconnects a disconnected meter or who unlawfully obtains a free telephone call (though there is a more specific and potentially less serious offence to deal with this). Bypassing a gas or water meter could constitute *theft of the gas or water. In *Low v Blease* [1975] Crim LR 513 it was held that electricity could not be stolen as it is not property within the meaning of section 4 of the Theft Act 1968. Computer hackers were formerly charged with offences of abstracting electricity until the Computer Misuse Act 1990 made *hacking a specific criminal offence.

abstraction of water The taking of water from a river or other source of supply. It normally requires a licence from the *Environment Agency but there are exceptions; primarily, when less than 20 cubic metres of water per day are taken, when the water is for domestic or agricultural use (excluding spray irrigation), or when it is removed in the course of fire-fighting or land drainage. The legislative framework for water abstraction is contained primarily in the Water Resources Act 1991 as amended by the Water Act 2003.

abstract of title Written details of the *title deeds and documents that prove an owner's right to dispose of his land or an interest in this. An abstract generally deals only with the *legal estate and any equitable interests that are not *overreached. An owner usually supplies an abstract of title before *completion to an intending purchaser or mortgagee, who compares it with the original title deeds when these are produced or handed over on completion of the transaction. An abstract of title to registered land consists of *official copies of the entries in the register and details of any other documents necessary to prove the owner's title, such as a marriage certificate proving a woman's change of surname. For unregistered land, the abstract of title must usually trace the history of the land's ownership from a document at least 15 years old (the *root of title) and give details of any document creating encumbrances to which the land is subject. An abstract of title formerly comprised extracts, often in abbreviated note form, but now generally comprises duplicate copies of the relevant documents (an **epitome of title**). An abstract or epitome, with each copy document marked as examined against the original, may be sufficient in itself to deduce title; for instance, when a title is split into lots, the purchaser of each lot may be required to accept an examined abstract or epitome in lieu of the original title deeds, accompanied by an *acknowledgment and undertaking.

abuse of a dominant position Unlawful activities by large businesses, i.e. usually those having a market share of at least 40% in at least one EU state. Examples of such activities, which are contrary to *Article 82 of the Treaty of Rome and the UK Competition Act 1998, include refusing to supply an existing customer and engaging in *predatory pricing. The European Commission and the *Office of Fair Trading can fine businesses up to 10% of annual worldwide group turnover for breach of Article 82. High fines include €497M against Microsoft in 2004, €280.5M for continued breach in 2006/07, and a final record additional €899M in 2008 for continued lack of compliance. In the UK Napp Pharmaceuticals was fined £3.21M for abuse of a dominant position contrary to the Competition Act 1998 but this was reduced to £2M on appeal.

abuse of a position of trust It is an abuse of a position of trust for a person over the age of 18 years (A) to engage in sexual activity with a person under the age of 18 (B), where A looks after B in a care institution wherein B is accommodated and cared for, including a hospital, independent clinic, care home, residential care home, private hospital, community home, voluntary home, children's home, a home provided under section 82(5) of the Children Act 1989, or a residential family care centre. Four criminal offences under the Sexual Offences Act 2003 involve an abuse of a position of trust: sexual touching (s 16), engaging in sexual activity in a child's presence (s 17), causing or inciting a child to engage in sexual activity (s 18), and causing a child to watch a sexual

act (s 19). The maximum sentence for committing a sexual offence involving an abuse of trust is five years' imprisonment.

abuse of process A tort where damage is caused by using a legal process for an ulterior collateral purpose. (*See also* MALICIOUS PROSECUTION.) Actions that are obviously frivolous, vexatious, or in bad faith can be stayed or dismissed by the court as an abuse of process.

abusive behaviour *See* THREATENING BEHAVIOUR.

abutter *n.* The owner of premises adjoining the property of another.

ABWOR Assistance by way of representation: assistance formerly given to a person by taking on his behalf any step in the institution or conduct of any proceedings before a court or tribunal under the provisions of the legal advice and assistance scheme. The legal aid scheme under which ABWOR was created was replaced by the *Community Legal Service from 1 April 2000. Under the new scheme, the authorization of legal representation for the purposes of a particular hearing is now in a form called **help at court**.

ACAS Advisory Conciliation and Arbitration Service: a statutory body established under the Employment Protection Act 1975; the composition and functions of ACAS are now governed by Parts IV and VI of the Trade Union and Labour Relations (Consolidation) Act 1992. ACAS was set up to promote the improvement of industrial relations and the development of *collective bargaining. In its conciliation function it may intervene, with or without the parties' consent, in a *trade dispute to offer facilities and assistance in negotiating a settlement. It employs **conciliation officers** who may assist parties to an application to an employment tribunal to reach a settlement. Earlier legislation removed the necessity for binding settlements of employment disputes to involve an ACAS conciliation officer: settlements can now be made when the individual has had independent legal advice from a qualified lawyer.

ACAS does not itself arbitrate in trade disputes, but with the consent of both parties it may refer a dispute to the *Central Arbitration Committee or to an independent arbitrator. ACAS may give free advice to employers, employees, and their respective representatives on matters of employment or industrial relations. It issues codes of practice giving guidance on such matters as disciplinary procedures and *dismissal procedures and *disclosure of information to trade unions. It may also conduct inquiries into industrial relations problems, either generally or in relation to particular businesses, and publish the results after considering the views of parties directly affected. ACAS can charge for its services when it considers that this is appropriate. The law on conciliation generally is contained in the Employment Tribunals Act 1996.

The **ACAS Arbitration Scheme** is a scheme set up the Employment Rights (Dispute Resolution) Act 1998 to encourage the resolution of employment disputes between employer and employee by arbitration rather than in an *employment tribunal. An ACAS appointed arbitrator gives a decision binding on the parties as to whether the dismissal was fair or unfair. The scheme is voluntary and take-up has been low.

 **SEE WEB LINKS**

- Website of ACAS

acceleration *n.* The coming into possession of a *future interest in any property at an earlier stage than that directed by the transaction or settlement that created the interest. For example, a landlord's interest in *reversion is accelerated if the tenant surrenders the lease before it has expired. When a will bequeaths an interest for life that lapses (e.g. because the legatee dies before the testator), the interest of the person entitled in *remainder is accelerated and takes effect immediately the testator dies.

acceptance *n.* Agreement to the terms of an *offer that, provided certain other

acceptance of a bill

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requirements are fulfilled, converts the offer into a legally binding contract. If the method by which acceptance is to be signified is indicated by the offeror, that method alone will be effective (*Holwell Securities Ltd v Hughes* [1974] 1 WLR 155 (CA)). If it is not, acceptance may be either express (by word of mouth or in writing) or inferred from the offeree's conduct; for example, if he receives goods on approval and starts to make use of them (*Beta Computers (Europe) Ltd v Adobe Systems (Europe) Ltd* [1996] FSR 367). The acceptance must always, however, involve some action on the part of the person to whom the offer was made: the offeror cannot assert that his offer will be treated as accepted unless the offeree rejects it (*Felthouse v Bindley* (1862) 11 CBNS 869). The validity of an acceptance is governed by four principal rules:

- (1) It must take place while the offer is still in force, i.e. before it has lapsed (*see* LAPSE OF OFFER) or been revoked (*see* REVOCATION OF OFFER).
- (2) It must be on the same terms as the offer. An acceptance made subject to any variation is treated as a *counteroffer.
- (3) It must be unconditional, thus an acceptance **subject to contract** is not a valid acceptance.
- (4) It must be communicated to the offeror. Acceptance by letter is treated as communicated when the letter is posted (*Adams v Lindsell* (1818) 1 B & Ald 681, 106 ER 250), provided that both parties are aware that communication is to be by post (*Henthorn v Fraser* [1892] 2 Ch 27 (CA)). Telex, and therefore probably e-mail, is equated with the telephone, so that communication takes place only on receipt (*Entores Ltd v Miles Far East Corp* [1955] 2 QB 327).

However, when the offer consists of a promise to confer a benefit on whoever may perform a specified act, the offeror waives the requirement of communication as a separate act. If, for example, he offers a reward for information, a person able to supply the information is not expected to accept the offer formally. The act of giving the information itself constitutes the acceptance, the communication of the acceptance, and the performance of the contract (*New Zealand Shipping Co Ltd v Satterthwaite (AM) & Co Ltd* [1975] AC 154 (PC)).

acceptance of a bill The written agreement by the person on whom a *bill of exchange is drawn (the **drawee**) that he will accept the order of the person who draws it upon him (the **drawer**). The acceptance must be written on the bill and signed. The signature of the drawee without additional words is sufficient, although generally the word "accepted" is used as well. Upon acceptance the drawee becomes the acceptor and the party primarily liable upon the bill. *See also* QUALIFIED ACCEPTANCE.

acceptance supra protest (acceptance for honour) A form of *acceptance of a bill of exchange to save the good name of the drawer or an endorser. If a bill of exchange has been either the subject of a *protest for dishonour by nonacceptance or protested for better security, and it is not overdue, any person who is not already liable on the bill may, with the consent of the holder, accept the bill *supra protest*. Such an acceptance must be written on the bill, indicate that it is an acceptance for honour, and be signed. The acceptor for honour engages that he will pay the bill on due presentment if it is not paid by the drawee, provided that it has been duly presented for payment and protested for nonpayment and that he receives notice of these facts. He is liable to the holder and to all parties to the bill subsequent to the party for whose honour he accepted.

access *n.* Formerly, the opportunity to visit a child that was granted (at the discretion of the court) to its parent when the other parent had the care and control of the child after divorce or when a custodianship order was in force. Since the Children Act 1989 came into force the concept of access has been replaced by that of *contact. *See also* SECTION 8 ORDERS.

accession *n.* 1. The formal agreement of a country to an international *treaty. The term is applied to the agreement of a country to become a member state of the European

Union. Member states accede to the Treaty of Rome or any other EU treaty by signing **accession agreements**. **2.** The process of a member of the royal family succeeding to the throne, which occurs immediately on the death or abdication of the previous sovereign. **3.** The right to all that one's own property produces, e.g. the fruit of trees or the young of animals, and to all that becomes added to or incorporated with it either naturally or artificially, e.g. land formed by gradual deposits of soil (*see* ALLUVION) or buildings erected on, or trees, vines, etc., planted in one's ground.

access land Land to which the public has or will have access for the purposes of open-air recreation under the Countryside and Rights of Way Act 2000. It includes land shown as open country (mountain, moor, heath, or down) on a map in conclusive form issued by an appropriate countryside body (the Countryside Agency or the Countryside Council for Wales) or as common land, or land situated more than 600 metres above sea level, or land that has been dedicated as access land. *See* RIGHT TO ROAM.

accessory *n.* **1.** One who *aids and abets or *counsels or *procures someone else to commit a crime. A secondary party to an offence – i.e. one who participates in it but does not bring about the *actus reus directly – may still be regarded by the law as liable. Section 8 of the Accessories and Abettors Act 1861 (as amended by the Criminal Law Act 1977) states: "Whosoever shall aid, abet, counsel or procure the commission of any indictable offence.... shall be liable to be tried, indicted and punished as the *principal offender." Similar provision is made in respect of summary offences under section 44 of the Magistrates' Courts Act 1980. **2.** One who knowingly assists a person who has committed an indictable offence with the intention of *impeding apprehension or prosecution.

accessory liability in breach of trust If a stranger knowingly and dishonestly assists a trustee in a *breach of trust he will be liable as an accessory (*Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 (PC)). He will not usually have received any trust assets; however, in consequence of his **dishonest assistance** in the breach he will be personally liable to account to the trust for any losses arising from his actions. Such a person is sometimes referred to as a *constructive trustee, but this terminology is problematic and best avoided. *See also* LIABILITY FOR RECEIPT.

accident *n.* *See* FATAL ACCIDENTS; MISTAKE; ROAD TRAFFIC ACCIDENTS.

accident record book A record kept by the police of details of the accidents they have investigated. Access to this is usually requested by solicitors acting in subsequent litigation relating to *road traffic accidents. The Association of Chief Police Officers Traffic Committee has issued guidelines on charges for such reports.

acomenda *n.* A contract made by an individual with the master of a vessel, to whom he entrusts personal property to be sold for their joint account.

accommodation bill A bill of exchange accepted by an **accommodation party**, i.e. a person who signs without receiving value and for the purpose of lending his name (i.e. his credit) to someone else. An accommodation party is liable on the bill to a *holder for value.

accomplice *n.* One who is a party to a crime, either as a *principal or as an *accessory. *See also* CORROBORATION.

accord and satisfaction The purchase by one party to a contract of a release from his obligations under it when the other party has already performed his side of the bargain. A release of this one-sided nature constitutes a **unilateral discharge** of the contract; unless granted by deed, it can at common law be effected only by purchase, i.e. by a fresh agreement (accord) for which new consideration (satisfaction) is given. If, for example, A is due to pay £1000 on a particular date to B for contractual services rendered, B might

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agree to accept £900 paid on an earlier date, the earlier payment constituting satisfaction. *Compare* BILATERAL DISCHARGE. *See also* ESTOPPEL.

account *n.* A remedy at common law and (more importantly) in equity requiring one party to a relationship (e.g. a partner or trustee) to account to the other(s) for moneys received or due. It may be pursued in addition to a claim for another remedy, such as damages, or as a substantive remedy in its own right. An **order to account** can fulfil two functions: firstly, it can quantify the amount of the profit or loss being pursued; secondly, it can impose liability to make payment. An order to account may be made where a fiduciary makes unauthorized profits or receives a bribe, for example. Cases: *Boardman v Phipps* [1967] 2 AC 46 (HL); *AG for Hong Kong v Reid* [1994] 1 AC 324 (PC).

accounting period The period for which a company makes up its accounts.

*Corporation tax is imposed on the profits measured for an accounting period (Taxes Act 1988 s 12). For this purpose, an accounting period cannot exceed 12 months. Certain events, notably a company ceasing to trade, are specified by statute as causing the end of an accounting period, even though the company may not make up its accounts to that date. *See also* FINANCIAL YEAR.

accounting practice The financial reporting of any enterprise necessitates a measure of the profit (or loss) generated during the period covered by the report and, usually, also a balance sheet showing assets minus liabilities at the reporting date. The manner in which profits, assets, and liabilities are measured is the accounting practice of the enterprise. The Accounting Standards Board and the International Accounting Standards Board issue *Financial Reporting Standards, which specify the accounting practices to be adopted by a company. These statements are commonly referred to as **generally accepted accounting practice (GAAP)**. It is of the essence of the income tax charge (and the corporation tax charge for companies) that tax is levied on the profit of a business. Increasingly, tax law has taken accounting practice as the rule to determine the amount of profit on which tax is imposed. This is far from the approach of judges in the 19th century, who considered the court as arbiter of the measure of profit for tax purposes. A modern judgment that would appear to assert the supremacy of accounting practice is that of Lord Millet, who in 2000 ruled that: "There was no basis on which a taxpayer could challenge an assessment based on its own financial statements as long as these were prepared in accordance with ordinary accounting principles, showed a true and fair view of its affairs, and were not inconsistent with the statute" (*IRC v Secan Ltd* (2000) 74 TC 1). This is a substantial move away from the view expressed by Lord Denning in 1972: "A judge may reject the accountant's evidence, or he may accept it" (*Heather v C-E Consulting Group Ltd* (1972) 48 TC 293, 323E-H).

In the Finance Act 2000, statute, for the first time, used the concept of normal accounting practice to enact anti-avoidance legislation. A company is prohibited from obtaining a tax advantage by triggering a capital gain on the sale of its future rents. The prohibition is effected by requiring companies to draw up accounts for tax purposes in accordance with "normal accounting practice", which is considered to outlaw such accounting treatment (s 110). Intriguingly, the way in which the statute is worded has the effect that future pronouncements by the Accounting Standards Board (or the International Accounting Standards Board) in this area are automatically given statutory effect. Thus, a manner of measuring profit for tax purposes that is permitted in one year may be outlawed the following year, without there being any statutory change.

 **SEE WEB LINKS**

- Website of the Accounting Standards Board: includes a list of standards currently in issue

accounting records *See* BOOKS OF ACCOUNT.

account monitoring order An order of the court requiring a financial institution to provide certain information held by them relating to a customer for the purposes of an

investigation (Glossary to the Criminal Procedure Rules). *Compare* CUSTOMER INFORMATION ORDER.

account of profits A remedy that a claimant can claim as an alternative to damages in certain circumstances, e.g. in an action for breach of *copyright. A successful claimant is entitled to a sum equal to the monetary gain the defendant has made through wronging the claimant.

accounts *pl. n.* Statements of a company's financial position prepared annually. A company is under a duty to "keep adequate accounting records" in order to show the day-to-day entries of money received and expended by the company and the extent of its assets and liabilities (Companies Act 2006 s 386). The annual accounts consist of a *balance sheet, a *profit and loss account, a statement of total recognized gains and losses and, if required, a cash-flow statement. The accounts must present a "true and fair view" of the company's financial position (Companies Act 2006 s 393) and, where appropriate, are to be kept in a form prescribed by the Act. Depending on the type of company, the accounts are accompanied by a directors' report, a directors' remuneration report, and an auditor's report. A private company has nine months after the end of the company's accounting reference period to file its accounts: a public company has six months after the end of that period (Companies Act 2006 s 442). Section 437 of the Companies Act 2006 requires the directors of a public company to lay the accounts before a *general meeting of the company. As a private company is not obliged under the Companies Act 2006 to hold an annual general meeting, there is no general requirement to lay the accounts before a general meeting of a private company. Listed companies are additionally required to ensure the accounts (and reports) are available on a website (Companies Act 2006 s 430). Small and medium-sized companies can avoid the filing requirements relating to the accounts if they are exempt from audit and deliver abbreviated accounts (Companies Act 2006 s 444–45). Members are entitled to be sent copies of the accounts. *See also* BOOKS OF ACCOUNT; SUMMARY FINANCIAL STATEMENT.

accreditation *n.* The process by which diplomats are exchanged between nation states. Diplomats present their own credentials (hence the word) to the host government's appropriate representative.

accretion *n.* The process by which new land formations are legally assimilated to old by a change in the flow of a water channel. In contrast to *avulsion, this process involves a very slow, near imperceptible, natural action of water and other elements. It would include, for example, the natural diversion of a boundary river leaving an island, sandbank, or dry land where it previously flowed, the formation of islands at a river mouth, and additions to a delta by the deposit of sand and soil upon the shoreline. Accretion will allow the beneficiary state to legitimately claim title to the new land so created. *See also* THALWEG, RULE OF THE.

For cases in which acquisition of territory by accretion has arisen, see *The Anna* (1805) 5 C Rob 373 (Lord Stowell) and *Secretary of State for India v Chellikani Rama Roa* (1916) 32 TLR 652 (PC). There is a large volume of US decisions concerning accretion; the classic illustration of a finding of both accretion and *avulsion can be found in the *Chamizal Arbitration* 5 AJIL 785 (1911) concerning the path of the Rio Grande.

accruer *n.* A provision in a will under which the subject matter of a failed gift accrues or is added to some other gift that has an independent effect under the terms of the will. An example would be a legacy in a will of "£10,000 to such of my brothers as shall survive me and if more than one in equal shares". If one brother predeceases the testator, his share will be added or accrue to the surviving brothers' shares. *Compare* SUBSTITUTIONAL LEGACY.

accumulation *n.* The continual addition of the income of a fund to the capital, so that the fund grows indefinitely. Before the Accumulation Act 1800 accumulation was

accumulation and maintenance settlement

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permitted for the length of the perpetuity period (i.e. lives in being plus 21 years: *see* RULE AGAINST PERPETUITIES). The periods for which accumulation is now permitted are shorter; they are listed in the Law of Property Act 1925 and the Perpetuities and Accumulations Act 1964 and include a period of 21 years from the date of the disposition, the period of the life of the settlor, and the duration of the minority of any person mentioned in the disposition. Income is often directed to be accumulated if (for example) the beneficiary is a minor, or the interest in his favour is protected or contingent, or if the terms of a trust are discretionary.

accumulation and maintenance settlement (A and M settlement) A

*discretionary trust that fulfils three conditions: (1) the terms of the settlement require that beneficiaries obtain an *interest in possession at a specified age, not exceeding 25; (2) whilst under the specified age, any income not advanced to the beneficiary must be accumulated; (3) either (a) the period from the creation of the trust to the creation of the interest in possession is less than 25 years or (b) all beneficiaries are children of a common grandparent. Formerly, a transfer of property into such a settlement was a *potentially exempt transfer and there was no immediate charge to *inheritance tax. However, following the changes made by the Finance Act 2006 (Sch 20) it is no longer important to determine whether or not a settlement satisfies these conditions. Inheritance tax is, in general, charged on the transfer of property into any type of settlement, unless the trust is for the benefit of a disabled person or a bereaved minor. From April 2008 all existing A and M settlements were reclassified for tax purposes as either *18–25 trusts or *relevant property trusts.

accusare nemo se debet [Latin] No one is bound to accuse himself or herself.

accusatorial procedure (adversary procedure) A system of criminal justice in which conclusions as to liability are reached by the process of prosecution and defence. It is the primary duty of the prosecutor and defence to press their respective viewpoints within the constraints of the rules of evidence while the judge acts as an impartial umpire, who allows the facts to emerge from this procedure. Common-law systems usually adopt an accusatorial procedure. *See also* BURDEN OF PROOF. *Compare* INQUISITORIAL PROCEDURE.

acknowledgment *n.* 1. The admission by a debtor that a debt is due or a claim exists. 2. Confirmation by the signatory to a document that the signature on the document is his own.

acknowledgment and undertaking Confirmation in a *title deed that a person may see and have copies of relevant deeds not in his possession (acknowledgment), with a promise from the holder of them to keep them safely (undertaking). Thus when part of an owner's land is sold, he keeps his deeds to the whole but in the conveyance gives this acknowledgment and undertaking to the purchaser, who can then prove his title to the part from copies of the earlier deeds and by calling for production of the originals. In the majority of cases the vendor gives the purchaser all title documents relating solely to the land conveyed, and an acknowledgment and undertaking is only necessary when this does not happen. Note that personal representatives and fiduciary owners will normally give only an acknowledgment, no undertaking. Breach of an undertaking gives rise to an action in damages.

acknowledgment of service A defendant who intends to contest proceedings brought against him by a claimant must respond to the claim by filing an acknowledgment of service under Part 10 of the *Civil Procedure Rules (CPR) and/or by filing a *defence under Part 15 of the CPR. Acknowledgments of service are used if the defendant is unable to file a defence within the required time or if the defendant intends to dispute the jurisdiction of the court under Part 11 of the CPR. By acknowledging service a defendant is given an extra 14 days for filing the defence. In effect this means that the defendant has a 28-day period after *service of the claim before the defence must