

HOW TO USE THIS DICTIONARY ...

BECAUSE IT'S A BIT DIFFERENT

This dictionary is not repetitive: you won't find the same information in different places, even though there is a lot of overlap in legal terminology. So you need to follow cross-references to get a rounded picture. Here are a few (very few) tips on how to use the dictionary.

UNDERSTANDING TOPICS

To get the gist:

- For the gist of a word, read the first sentence. That might be enough as a memory jogger.
- For more information, read through to the end.

For understanding in depth:

- Read through to the end.
- To fully grasp context and interlinking of information, follow the cross-referenced terms (given in small capitals). This can be helpful even if you feel you understand the term.
- Follow the *see also* related references at the end of the entry.
- Find the cases cited and read them (or, online, search for the key word within the case to pinpoint the discussion).
- Search for the case name or legislation to find further related commentary.

To get a subject overview:

There are several ways to get the gist of a subject area:

- **Read the summary**, if it is in the **Priestley Eleven** core subjects list. (You will find a full-page summary box next to the spot where it occurs in alphabetical order.) If you are unsure whether it is a Priestley Eleven subject or not, check the Priestley Eleven entry.
- **Start with a word**: If it is a Priestley Eleven subject, look up any of the key topics listed, or any of the other words that seem significant from the description. If it is not a Priestley Eleven subject, or if you feel you have a handle on the subject area, start with a general-level word you think might be a key term (e.g. **will** or **probate**).

- **Chase word links:** Keep following the cross-references until you exhaust the topic. Or start again with another word whenever you like.

Understanding our system (it's very simple)

- **Parts of speech and obsolete terms:** As most entries are nouns, we don't make a special point of saying (*n*) each time. But if it's another part of speech, we mark it: (*v*) for verb; (*adj*) for adjective; and (*obs*) for obsolescent or obsolete.
- **Etymology:** If the Latin or Old French derivation is interesting, or it seems helpful to know how the meaning arose, we list it. Otherwise we don't.
- **Latin phrases:** If a Latin or foreign phrase is still *commonly* used by lawyers, or is genuinely something any lawyer worth their salt would know, we list it. That is why *cum grano salis* is there. But we don't list legal phrases that make little sense in current practice.
- **Islamic terms:** Sharia has become relevant for lawyers in the fast-growing area of Islamic banking and also in laws about face covering, so we have included some terms that might be unfamiliar non-Muslims.
- **Pronunciation:** If you might embarrass yourself by mispronouncing a word, we warn you (it's *best*-iality not *beast*-iality), but we don't usually give pronunciation guides. And when we do, it isn't in phonetics, because our research suggests that people find the phonetic help harder than the word itself.
- **Citations:** To fit in as many cases and examples of legislation as we could, we reluctantly had to trim them. They take a lot of room, and they are easy enough now to locate online, so we give only one citation for a case, even if it appears in multiple reports, and we only give a pinpoint reference if we have used a direct quote; even then, it is only a page number, instead of 'per Dixon CJ at p 49'. We ask for readers' indulgence here – and remind students that formal writing requires more detailed quoting and more extensive pinpoint referencing.
- **Academic references:** Because this is a dictionary, not an academic text, entries are not treated as mini-journal articles with references and a bibliography. We try to explain a term as clearly as we can, but it is not the task of a dictionary to provide lists of distinguished writers in the field, or to discuss terms in a scholarly way. Where a particular term is noticeably associated with a specific author and publication, we have indicated that briefly (author's name and year). That serves the purpose of alerting the reader and giving a starting point for further academic enquiry without taking the dictionary beyond its purpose. At the level of generality of this dictionary, most terms don't fall into that category.
- **Websites:** If there is a useful website with a lot of information, we give the website in the entry. We also list websites in the Abbreviations section (pages xxix–xxxviii).
- **Abbreviations:** Titles of organisations are set out in full in the entry headword. Be aware that that changes the way the entries sort. In other entries that refer to organisations that commonly have abbreviations, we use the abbreviated form to save space (e.g. ATO). If you need to check an abbreviation, look in the Abbreviations section. Where an organisation has a long title starting with an unexpected word and is strongly associated with a more helpful key word, we list it under that word: e.g. the Office of the United Nations High Commissioner for Refugees (UNHCR) appears under refugees (UN office) rather than under Office; Australian Privacy Principles are under Privacy Principles.

Helping us (we are keen to improve)

- We have had to be selective to keep the dictionary to a manageable size, and there will be things we have missed, or decisions we have made that you disagree with. And we would really like to know about them.
- Also, if you find something missing, unclear, or wrong, please let us know. This dictionary was built with the help of many people. We hope that you, too, will contribute to the excellence of future editions by letting us know where you think this one falls short. Just email with ALD in the subject line.

A

a coeli usque ad centrum (Latin, from heaven to the centre of the earth)

A phrase used in property law to describe an owner's interest in land as extending above and below the surface.

a mensa et thoro *see* DIVORCE.

a vinculo matrimonii *see* DIVORCE.

ab initio (Latin) From the beginning.

After the fact, subsequently. A term used particularly in the construction of a void instrument (e.g. contract, encumbrance or other legal instrument) as a statement about when it became void: from the beginning (*ab initio*), so that it has never had legal effect, or *EX POST FACTO* (becoming void later). The question has particular relevance for a plaintiff seeking a remedy in reliance on the instrument. See e.g. *Victoria v Sutton* [1998] 195 CLR 291.

ab intestato (Old French *intestat*; Latin *ab-*, from + *intestatus*) Having made no will. An inheritance from a person who has died *INTESTATE*.

abandonment Giving something up absolutely, throwing it, or the right to it, away; relinquishing it. Abandonment is subjective rather than objective;

it reflects one's attitude and present intentions, which may change. For parents to leave a child unprotected is to **abandon** the child, but they may later reclaim their parental rights. A legal claim may be abandoned (in one's own mind) without relinquishing the right to pursue it at a later time. Without something more, abandonment of a claim is not *ABROGATION*. Confirmation of relinquishment is required in some form (e.g. a **declaration of abandonment** under *Residential Tenancies Act 1987* (NSW) s 78; a **notice of abandonment** as required by *Marine Insurance Act 1909* (Cth) s 68; compromise of the claim in a negotiated settlement (*see also* *CONSIDERATION*); expiration of some contractual term or *LIMITATION PERIOD*, or *DELAY*). To divest *OWNERSHIP* of property, abandonment requires both a physical act of dispossession and an unequivocal mental *intent to abandon* any right, title or interest in the property abandoned: *Re Jigrose Pty Ltd* [1994] 1 Qd R 382. An **abandoned mine** is a site where mining has been carried out but that is not currently the subject of a licence: see e.g. *Mineral Resources Act 1989* (Qld) s 344. Property reasonably thought or deemed to be abandoned or lost may be seized or collected, but reclamation by the true owner is possible prior to sale by

public auction (usually after six months). Legal costs may be abandoned as a consequence of the way one conducts a case (called wasted costs or COSTS THROWN AWAY). In court a judge may enquire whether a party 'is to be taken to have abandoned' some aspect of a claim, seeking confirmation of an assumed intention. *See also* ADVERSE POSSESSION; FLOTSAM, JETSAM, LAGAN; PUBLIC DOMAIN; RES NULLIUS; TERRA NULLIUS.

abatement Relief from or lessening of some impost or obligation. (1) In commercial and testamentary contexts an insufficiency of estate assets may force an **abatement of legacies** (reduction in the claims of legatees after payment of debts). (2) LITIGATION or criminal proceedings may **abate** by reason of the death of a party or by ORDER of the court. In TORTS LAW, the right of abatement of nuisance allows the person suffering a nuisance to take reasonable action to end it, even if the remedial action involves a wrong such as trespass. And where leased premises are destroyed or damaged, rent *abates* until the lessee can reoccupy. (3) In torts law, **abatement of nuisance** is a self-help remedy permitting a landowner suffering a private nuisance to enter on the land from which the nuisance is emanating in order to stop it. A person with a right of abatement does not incur liability in trespass. However, very good reason will be required; the onus of proving abatement is on the trespasser: *Traian v Ware* [1957] VR 200, 207. Legal action rather than personal intervention will generally carry less risk. (4) In criminal law, proceedings that lapse before they have reached a determinative conclusion (conviction or judgment) are said to have **abated**. *See also* EXTRA-JUDICIAL DETERMINATION; PRIVATE NUISANCE.

abdication Voluntary renunciation of power or high office, especially of the throne by the sovereign, effected by statute. Thus to marry Wallis Simpson, Edward VIII abdicated through *His Majesty's Declaration of Abdication Act 1936* (UK). By extension, any improper failure to exercise proper power, or abandonment of duty. Examples are a state parliament's abdication of legislative power in purporting to convert offences against state law into offences against federal law; or a tribunal's uncritical application of government policy to the facts of a particular case (*Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577), or abdication of proper responsibility by police (e.g. *Peter Eric Dunesky & Anor v Commonwealth of Australia & Ors* [1996] FCA 624). An allegation that the head of a department is responsible for a 'gross abdication' of the department's duty to safeguard children is a defamatory imputation (*Matchett v Queensland Newspapers Pty Ltd & Anor* [2004] QSC 223). From Latin *ab*, away from + *dicare*, to proclaim. *Cf* resignation from lower offices.

abduction (Latin *ab-*, away + *ducere*, to lead) (1) Abductive reasoning, 'inference to the best explanation'. Inferential reasoning that starts with a set of accepted FACTS and infers the best (most likely) explanation for them. Abduction moves from data describing what happened to the hypothesis that best explains the data. It is the kind of reasoning used in law when a BARRISTER constructs a CASE THEORY and presents it to the court, through EVIDENCE, to explain allegedly CRIMINAL conduct and argue about its guilt status. The ADVERSARIAL LEGAL SYSTEM depends on opposing theories of the case being argued persuasively in order to discern

the stronger abductive case. (2) Stealing a person away (*see* CHILD ABDUCTION; KIDNAPPING; SEDUCTION).

abet (*v*) (**aid, abet, counsel, procure**) To assist or encourage the commission of an offence; it may be minor assistance such as keeping a lookout, but it must be knowing assistance (being present is not enough). **Abetting** is a form of secondary criminal liability as an ACCESSORY of a principal offender, in COMMON LAW terminology. **Aiding** usually refers to provision of material assistance. The criminal codes refer to *counsellors, procurers, aiders* and *abettors*. Apart from accessories after the fact, all participating offenders are COMPLICIT in the offence and may be punished as principal offenders: *see e.g. Crimes Act 1958* (Vic) s 323. *Criminal Code 1995* (Cth) s 11.2(1) provides: 'A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.' *See also* CONNIVE.

abeyance (Anglo-French *abeiance, abeyance*, Old French *abeance, abaence*, to gape after or aspire (breathe into), open mouth wide, agape) In Old French the condition of the heir or other aspirant, in whose abeyance or aspiration a title or property stood; hence in English law applied to the condition of the property, the ownership of which is thus claimed, or is merely liable to be claimed by someone. In ownership limbo. More generally, something that is only within legal expectation or contemplation, not actually vested in a person; the position of waiting for an owner or being without a claimant or owner (OED). Thus **abeyance of seisin**, a gap in the right of possession of land.

abnormal Unusual, out of the ordinary, given the particular context. Thus in tax and finance, an abnormal item (loss, expense, gain, profit) is beyond the normal range of expectations for the business. In torts, a plaintiff may have an abnormality that makes him or her particularly vulnerable (*see* EGGSHELL SKULL RULE).

abode Dwelling-place. *Income Tax Assessment Act 1936* (Cth) s 6 defines residency in terms of 'usual' or 'permanent' place of abode. *See also* DEEMED DOMICILE; DOMICILE.

abominable crime *see* UNNATURAL OFFENCE.

Aboriginal and Torres Strait Islander Corporations Culturally specialised Indigenous corporations administered by an independent statutory body, the Office of the Registrar of Indigenous Corporations (ORIC) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) within the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). www.oric.gov.au

Aboriginal community (1) In general terms, a community of Aboriginal people who have a traditional and customary connection or AFFILIATION with the land; may include others whose connection is based on historical association. (2) Incorporated Aboriginal communities to which community legislation is declared to apply by proclamation. In WA, under the *Aboriginal Communities Act 1979* (WA) s 3, an Aboriginal community is defined as a 'community or association wholly or principally composed of persons who are of Aboriginal descent within the meaning of the *Aboriginal Affairs Planning Authority Act 1972* (WA)'.

A In Queensland, an Aboriginal community may by request be declared to be an Aboriginal Community to which the *Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978* (Cth) applies, with a regime of reserves and councils. Communities are the subject of Queensland legislation (*Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld) and *Aboriginal Communities (Justice and Land Matters) Act 1984* (Qld)) but are defined only in terms of community government areas in the shires of Aurukun and Mornington and other areas proclaimed under the *Local Government (Community Government Areas) Act 2004* (Qld). See also TRADITIONAL OWNER.

Aboriginal cultural heritage Any place or object, including human remains, that is significant, secret or sacred to the Aboriginal people because of traditional or family links or history. See e.g. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth); *Aboriginal Cultural Heritage Act 2003* (Qld); *Aboriginal Heritage Act 2006* (Vic). Terminology and protections vary between statutes.

Aboriginal customary law The body of rules, customs and traditions of an Aboriginal society that established standards of behaviour to be followed by the members of that society and recognised by them. In *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141 Blackburn J found ‘a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called “a government of laws, and not of men”, it is that shown in the evidence before me’. Aboriginal

customary law may describe a way of life and incorporate religious beliefs, and therefore narrow definitions are inappropriate (ALRC, *The Recognition of Aboriginal Customary Laws*, Report No. 31 (1986) [98]–[101]).

The NTLRC has cautioned against distinguishing between ‘custom’ and ‘law’, describing Aboriginal tradition as ‘an indivisible body of rules laid down over thousands of years and governing all aspects of life, with specific sanctions if disobeyed’ (NTLRC, *Report into Aboriginal Customary Law* (2003) [3.9]).

Aboriginal customary law may be, but is not always, enforced by Elders. The content of Aboriginal customary law varies throughout Australia. It may also evolve over time. A contemporary manifestation of customary law is circle sentencing, which enables Elders to have input into the sentencing of Aboriginal offenders.

Contrary to popular stereotypes, Aboriginal customary law does not condone family violence (WALRC, *Aboriginal Customary Laws*, Report No. 94 (2006) 18–30).

The High Court has rejected the argument that Aboriginal customary criminal law in some way survived British settlement. ‘It is a basic principle that all people should stand equal before the law. A construction which results in different criminal sanctions applying to different persons for the same conduct offends that basic principle ... The general rule is that an enactment applies to all persons and matters within the territory to which it extends ... the entirety of Imperial law was in force in Australia’ (as introduced by the *Australian Courts Act 1828* (Imp)); *Walker v NSW* (1994) 182 CLR 45, upholding the power of the NSW legislature to enact criminal statutes of application to all persons, Aboriginal and non-Aboriginal. Recognition of NATIVE

TITLE is in a special position and does not give rise to a wider recognition of customary law.

Aboriginal deaths in custody In 1987 the Royal Commission into Aboriginal Deaths in Custody was established to investigate the deaths of 99 Aboriginal and Torres Strait Islanders who had died in custody between 1980 and May 1989. The Royal Commission found that Aboriginal people were not more likely to die, once in custody, than non-Aboriginal prisoners, but that they were grossly over-represented within the criminal justice and prison systems. Among the Commission's key recommendations were that imprisonment should be used only as a sanction of last resort (recommendation 92). The Commission also recommended that arrest be used as a last resort (recommendation 87), since of the 99 deaths investigated, 60% occurred not in prison but in police custody. Since the Royal Commission reported in 1991, the problems of Indigenous over-representation in prisons and of deaths in custody have remained unchanged or have deepened, depending on jurisdiction. *See also* BRINGING THEM HOME REPORT; DEATH IN CUSTODY.

Aboriginal land rights Statutory rights of Indigenous Australians to acquire non-transferable freehold title to traditional lands over which the crown had claimed legal title during the white colonisation of Australia (e.g. under *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth); *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) or *Aboriginal Land Rights Act 1983* (NSW)). Enacted land rights have given limited recognition to Aboriginal AFFILIATION with particular land for which title has been sought. These land rights are distinguishable from NATIVE TITLE to Indigenous lands, which

pre-existed and survived colonisation and is recognised at COMMON LAW.

Aboriginal person In Australia, being an Aboriginal person has three aspects: being a member of the Aboriginal race of Australia (being the communities of original inhabitants of what is now Australia before British colonisation); identifying as an Aboriginal person; and being accepted by the Aboriginal community as an Aboriginal person: see e.g. *Aboriginal Land Rights Act 1983* (NSW) s 4(1). Communities with different AFFILIATIONS use different terms: *Wangkayi*, *Nyungar*, *Anangu* and *Mardu* all mean 'Aboriginal person' to the people who use those terms: *Harrington-Smith on behalf of the Wongatha People v State of Western Australia* (No. 9) [2007] FCA 31. *See also* KOORI COURT.

aborted trial A TRIAL that has been terminated early, by stopping it and discharging the jury, at any stage before the usual conclusion reached at the point of verdict. The trial will usually be aborted on application by one or more parties, on the basis that it is no longer possible to conduct the trial fairly (at that time, or before those jurors), e.g. because prejudicial material has been published in the media after the jury has been empanelled. *See also* MISTRIAL.

abortion (unlawful) Termination of a pregnancy by causing the exit of a foetus and associated products of conception from the uterus using surgical or other means (drugs or instruments). A **miscarriage** is a spontaneous abortion before the foetus can survive. By itself, abortion is a neutral medical term; it implies nothing about why the pregnancy was aborted, whether spontaneously or intentionally induced. In law, **induced abortion** is a criminal offence in certain

circumstances, which vary among the Australian jurisdictions. Although abortion is now legal in Victoria when carried out by a relevant health professional (see *Abortion Law Reform Act 2008* (Vic)), it is a criminal offence in other circumstances: *Crimes Act 1958* (Vic) s 65. In most states a defence is available where a doctor can show that the abortion was carried out in good faith and with reasonable skill for the preservation of the mother's life. However, there are also slight variations in relation to the operation of this defence. In COMMON LAW CRIMINAL JURISDICTIONS where the offence of unlawful abortion is modelled on the *Offences Against the Person Act 1861* (UK) (see *Crimes Act 1900* (ACT) ss 42–43; *Crimes Act 1900* (NSW) ss 82–83, and formerly also in Victoria) it is modified by the MENHENNITT RULING as to necessary and proportionate termination. Queensland and Tasmanian codes contain three offences: *Criminal Code 1899* (Qld) ss 224–225 (defence in s 282); *Criminal Code 1924* (Tas) ss 134–135 (defence in s 51(1)). In NT, SA and WA unlawful abortion is a criminal offence but legislation provides for lawful medical terminations: *Criminal Code Act* (NT), ss 172–173 (lawful terminations under s 174); *Criminal Law Consolidation Act 1935* (SA), ss 81–82 (lawful terminations under s 82A); and *Criminal Code 1913* (WA) s 199. A related offence is **child destruction**.

abridgment Truncation (shortening) of the period allowed for completion of some procedural step. Subject to principles of PROCEDURAL FAIRNESS, judicial officers generally have DISCRETION to **abridge** the time prescribed in court orders or RULES OF COURT. Cf EXTENSION of time allowed.

abrogation Formal nullification or cancellation. To **abrogate** a law, or

the continuing effect of an agreement, obligation, instrument or right, is to formally put an end to it. Abrogation by government occurs in different ways depending on the branch concerned. The LEGISLATURE abrogates previous law by repeal or abolition; the EXECUTIVE abrogates rights or duties by administrative action such as cancellation; and the JUDICIARY does so by invalidation or nullification.

abscond (v) (Latin *abscondere*, to hide or conceal) To flee (fly from) the law in order to avoid one's creditors, or some legal proceeding. Often (but not necessarily) has the sense of **fleeing the jurisdiction** (the geographical area in which a legal regime operates): thus a defendant might **abscond** from Queensland to avoid a state criminal charge, or abscond from Australia to avoid a family law proceeding. **Deemed absconding** may be very broad: e.g. the *Confiscation Act 1997* (Vic) s 5(a), (b) DEEMS a person who has been charged with an offence but dies prior to its determination, or who cannot be found for six months after a warrant is issued, to have absconded. The *Australian Federal Police Act 1979* (Cth) s 42A defines absconding in connection with an OFFENCE in terms of the defendant having been charged, a warrant having been issued, and after six months the person cannot be found (or is outside Australia, in which case EXTRADITION proceedings become relevant). The *Proceeds of Crime Act 2002* (Cth) s 334 is cast in similar terms.

absence (1) The state of being away, generally from a place, sometimes but not always with a pejorative sense (e.g. an **absentee landowner** who is away or out of the jurisdiction). An **absentee vote** (or **absent vote**) is cast from outside the electorate by an **absentee voter**

(**absent voter**). (2) Failure to attend when required (e.g. absence from court of a party expected or required to appear at a hearing, or of a witness to appear on summons). Courts may make orders in default of appearance (see **DEFAULT JUDGMENT**). (3) A party may be absent by reason of being unaware of a proceeding (see **EX PARTE**).

absente reo (Latin) The person accused (defendant) being absent.

absolute (*adj*) (1) Definite and incontrovertible, with 100% certainty; full, complete, and lacking nothing. The law imposes **absolute liability** for some **OFFENCES** and for **BREACH OF STATUTORY DUTY**, and provides for **absolute discharge** (unconditional release) from **CUSTODY** (*cf* conditional release). In **CONTRACT LAW** **absolute acceptance** of an **OFFER** is full acceptance of all its terms (*cf* conditional acceptance); **absolute delivery** delivers completely and finally; **absolute discharge** completes the contract in full. However, the law does not make absolute findings of fact; in criminal law ‘**NOT GUILTY**’ is as close as the law comes to **INNOCENCE**, and juries are asked to find guilt ‘**BEYOND REASONABLE DOUBT**’, not to look for **absolute proof** of guilt.

(2) Also used in the sense of being *foundational* or *fundamental*, e.g. in contract law, for **absolute breach** (fundamental breach) of a **CONDITION**. Similarly, Kelsen (see **GRUNDNORM**) proposed **absolute duty** for the kinds of duties matched by fundamental **RIGHTS** (e.g. **HUMAN RIGHTS** protected by the **CHARTER OF FUNDAMENTAL RIGHTS**).

absolute liability In **CRIMINAL LAW** and **TORTS LAW**, the liability of a defendant irrespective of a mental element (the plaintiff need not prove **NEGLIGENCE** or a

FAULT ELEMENT in order to establish a cause of action). No defence apart from **FORCE MAJEURE** is available (even honest and reasonable mistake: *cf* **STRICT LIABILITY**).

absolute majority In any matter put to a vote, a group of more than half (51% or more) of all voters *entitled* (eligible) to vote. *Cf* 50 per cent of the members who actually vote (a simple **MAJORITY**).

absolute privilege see **PRIVILEGE IN DEFAMATION**.

abstract of title In old system conveyancing, a chronological list of the **CHAIN OF TITLE** with documents attached. This form succeeded an earlier style of abstract of title which contained recitals of documents (extracts from the wording of the relevant parts in accordance with detailed rules), and of all other relevant facts and events. An abstract of title must start with a good **ROOT OF TITLE** at least 30 years before the contract date; it can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document shows its date, general nature, names of parties and any registration number; and has attached a legible photocopy or an official or registration copy of itself. See e.g. *Conveyancing Act 1919* (NSW) s 183 and *NSW Contract for the Sale of Land—2005 Edition*, cl 25, which applies to land under **QUALIFIED TITLE**, **LIMITED TITLE** and **OLD SYSTEM TITLE**. A **perfect abstract** specifies each link in a chain of title, from a good root of title to the present owner (vendor), with no gaps or errors in the abstract itself (not the same thing as a perfect title).

abuse Criminal mistreatment of others with whom one has, or has had, a continuing relationship of some kind. Abuse arises in

four categories: **physical abuse, sexual abuse, emotional abuse** and **neglect** and is regulated by CHILD protection laws and other state laws including mandatory reporting of suspected cases. Verbal abuse directed against another person may be actionable if defamatory (*see* DEFAMATION) or vilifying (**vilification**). *See also* BATTERED WOMAN; FAMILY VIOLENCE. Abuse is also relevant to determining the child's best interest for the purpose of making parenting orders and granting injunctions under the *Family Law Act 1975* (Cth).

abuse of power In administrative law and trusts, improper use (misuse) of a discretionary power (e.g. to decide claims, allocate rights): *Administrative Decisions (Judicial Review) Act 1977* (Cth). In trade practices, abuse of market power is misuse of a dominant position to undertake unlawful activities such as PREDATORY PRICING. Abuse of power is at the heart of breaches of FIDUCIARY DUTY. In COMPANY LAW, general meetings must be conducted within the powers set out in the company's constitution and the *Corporations Act 2001* (Cth); fraud or oppression on a minority of shareholders by the majority may be challenged using the oppression and unfairness provisions (ss 232–235). Otherwise, the Act is structured in terms of duties and breaches of duty rather than power. *See also* MISFEASANCE.

abuse of process Making improper use of the legal system, e.g. by taking civil or criminal proceedings against another person maliciously and without a proper cause (e.g. a contributory who applies for the winding up of a company as a strategic manoeuvre to help an applicant in other litigation against the company is attempting to obtain an improper advantage amounting to an abuse of

process: *Technomin Australia NL v Kollack Group Ltd* (1991) 9 ACLC 511). *See* ACTION ON THE CASE; MALICIOUS PROSECUTION; VEXATIOUS LITIGANT. *See also* CONTEMPT; ESTOPPEL BY RECORD.

abuse of rights (*abus de droit*) An old term with origins in Roman law and national law, and reduced scope for application in international law, since sovereignty is now limited. In its most usual meaning, a state abuses rights when it uses its sovereign rights in a manner different from that for which the right was created, or adversely affects other states in exercising their own rights. In national civil law systems, the concept may be avoided, read narrowly, or confined to economic contexts. The principle is less obviously relevant in common law systems, although some scholars claim it to be the basis upon which tort law developed. Some scholars argue that abuse of rights is redundant as a more specific expression of the broader principle of good faith. Others think it could be important in the ongoing evolution of the international legal system, particularly in normative disputes (*see* Byers 2002).

abuttal (of land) Adjoining other land, with which it touches boundaries (**abuts**). An abutting property is necessarily ADJACENT but not vice versa.

academic misconduct Any breach of academic conduct rules set out in the institution's handbooks, in particular PLAGIARISM or other forms of cheating. Established procedures for handling breaches may include sanctions by the institution (e.g. the student being called upon to show cause why he or she should not fail or be dismissed from the institution). Although academic misconduct is not a criminal matter or breach of law, for law students it is

particularly serious as an adverse finding must be disclosed on an application for admission to practise law, and may result in refusal of admission.

accede (*v*) *see* ACCESSION.

acceleration The process by which a future interest comes into effect faster than provided for in the instrument that created the interest. In PROPERTY LAW and the law of SUCCESSION a reversionary interest is **accelerated** if the estate which must expire before it takes effect does so earlier than provided for or expected (e.g. a lease for a FIXED term ends early, so the landlord's interest is accelerated; a beneficiary granted a life interest under a will dies before the remainderman, so the remainder is accelerated: *see* LIFE ESTATE). More generally, in law and accounting, acceleration is the speeding-up of any process that occurs over an extended period. Thus **accelerated depreciation** of a business asset reduces its book value faster than the standard or usual rate of depreciation, which is based on the expected decline in its value.

acceptable quality A condition implied by statute in all sales of goods bought by description. May be expressly excluded by contract or if the goods were examined by the buyer (CCA Schedule 2 ACL Ch 3 Part 3-2 s 54). 'Acceptable quality' has replaced the common law term 'merchantable quality'. While merchantable quality was not defined in the *Trade Practices Act 1974* (Cth) and the state Fair Trading Acts, acceptable quality is defined as 'fit for all the purposes for which goods of that kind are commonly supplied; acceptable in appearance and finish; free from defects; safe; and durable'. The definition is subject to a 'reasonable consumer' test: 'goods are

considered to meet those standards if a reasonable consumer, who is fully acquainted with the state and condition of the goods, would regard them as acceptable': Schedule 1, item 1: Ch 3, Part 3-2, Division 1, s 54(2). Relevant matters to be taken into account in deciding acceptable quality include the nature and price of the goods, any statements made about them on packaging and labels, or by representation by supplier or manufacturer, and 'any other relevant circumstances' relating to supply: s 54(3).

acceptance Agreement or assent; consent to receive something offered. In **contract** law, full acceptance by one party, without qualification, of an offer made by the other party, creates a binding contract. In sales of goods, the goods are accepted when the buyer indicates to the seller that they have been accepted (by claiming them, taking (accepting) delivery, or keeping them for some period of time sufficient to indicate that the buyer does not intend to return them). Acceptance of a BILL OF EXCHANGE is the act of an acceptor assenting to a drawer's order.

access (property law) (1) A statutory or common law right to go onto property for any of a wide range of particular purposes, established through case law or by statute. Examples occur in mining: *Mining Act 1992* (NSW)); in the context of reaching other land that is accessible only in that way (*see* RIGHT OF WAY); and in exercising USUFRUCTUARY RIGHTS. The EASEMENT is an established method of ensuring access to amenity as between property owners. The old issue of access to light (*Commonwealth v Registrar of Titles for Victoria* (1918) 24 CLR 348) is of new relevance because of solar technology, which requires

direct sunlight. Wind is similarly a new resource that raises legal access issues. (2) (family law) An old term for a parent's right to see (spend time with) a child in the care of another person. Now dealt with in a PARENTING ORDER OR PARENTING PLAN.

access to the courts One of three perennial, and overlapping, issues in judicial administration (*access, cost, delay*) that affect the quality of justice available to citizens. The public's confidence in courts is frequently related to these three core issues, together with SENTENCING. In September 2014 the PRODUCTIVITY COMMISSION delivered its Report No 72, *Access to Justice Arrangements*, under *Productivity Commission Act 1998* (Cth) s 11. The three major dispute resolution mechanisms are named as ombudsmen and complaint bodies; tribunals; and courts. In terms of relative numbers and cost, there were: (1) 542,000 complaints to ombudsmen and complaint bodies (2011–12), costing \$887 each in funding (from government and industry); (2) 395,000 tribunal matters costing \$1286 each; and (3) 673,395 court matters costing \$1227 each (2012–13). In each case funding costs are exclusive of disputant's costs, although Ombudsman services are free. Disputants pay fees and charges to courts and tribunals as well as any lawyers' fees and charges. It is generally agreed that many if not most ordinary Australians could not afford litigation, but the PC report defines 'promoting access to justice' as simply 'making it easier for people to resolve their disputes'. This makes the question of access to the courts (or to any other body) almost incidental to the inquiry by substituting 'easiness' for 'access'. Thus the Report's claim that 'Improving accessibility would generate social and economic benefits' means only 'making it

easier for people to resolve their disputes would generate benefits'. However, for access (rather than 'easiness') there is a countervailing argument that the cost of access to justice is a strong deterrent to litigation, and that reducing overall litigiousness is a public good, since only serious cases are worth pursuing. This makes 'access to courts' a two-edged sword rather than simply and only a public good; access and cost are intimately related in complex ways. There is no guarantee that increased litigiousness and a ready ability to take disagreements to court will improve either the state of the economy or social relations (e.g. between doctors, hospitals and patients, if litigation is the norm, and doctors have many 'crazy lawsuit' anecdotes: see e.g. Gawanda 2005, *The Malpractice Mess*: in the USA, the average doctor in a high-risk practice like surgery or obstetrics is sued about once every six years; the cost of defence is high, and awards average \$500,000; against the medical practitioner's wishes, insurance companies often settle for 'nuisance money' rather than defending speculative claims, and the psychological impact on a practitioner whose professional motto is 'above all, do no harm' can be heavy). In Australia judges and magistrates routinely use the cost of litigation as a way to encourage parties to settle before trial, and the pretrial conference focuses on the advantages of early compromise. See also COST OF JUSTICE; DELAY.

access to information Knowledge (including information) is intimately linked to POWER and LEGITIMACY. When information is freely available there is a high degree of procedural TRANSPARENCY and confidence in processes (*cf* secrecy and confidentiality). The principle of OPEN

JUSTICE depends on access to information. However, openness of information is in tension with a right to PRIVACY. Laws concerning access to information apply in many contexts.

(1) Government agencies are subject to a general public right of access to information in documentary form (*see* FREEDOM OF INFORMATION (FOI)), which gives the Opposition, the investigative press, and other interested parties material on which to assess the legitimacy of government actions. In this context *see also* EXPLANATORY MEMORANDUM (re legislative intent); JUDGMENT (re judicial intent); LOBBYING and WHISTLEBLOWING.

(2) Access to information about oneself is obtainable through FOI (for government agency records). Access to **medical records** is regulated by the privacy regime (at www.privacy.gov.au; *see* information sheets 4 and 21). The *Privacy Act 1988* (Cth) also restricts the release of information held by **credit reporting** agencies, the information that can be held, and the period for which it can be held. Details of credit records can be released to the subject or to a credit provider under the subject's authorisation. Access is available through agencies (e.g. Veda Advantage at www.mycreditfile.com.au); *see also* CONSUMER CREDIT.

(3) Access to information held by other parties in litigation, or by the Crown in committal proceedings, is effected through the procedure of DISCOVERY and the BRIEF OF EVIDENCE and HAND-UP BRIEF.

(4) Access to information is legislated in contractual disclosure requirements (e.g. in the VENDOR'S STATEMENT required upon a sale of land, in CONSUMER legislation). Under succession legislation beneficiaries have a statutory entitlement to see and obtain a copy of a will. Similar

provisions are found across a wide range of statutes.

(5) Access to information protected by INTELLECTUAL PROPERTY rights is restricted by the licensing regime, which enables owners of IP to exploit their creativity by charging for its reproduction (e.g. COPYRIGHT) or application (e.g. PATENTS and DESIGNS). Here OPEN ACCESS is in tension with MONOPOLY rights. A **compulsory licence scheme** ameliorates the effect of locking up the fruits of intellectual effort to some extent (*but see* EVERGREENING).

(6) Access to matters of NATIONAL SECURITY and SECURITY-SENSITIVE INFORMATION OF CLASSIFIED INFORMATION, including criminal intelligence, is restricted on public interest grounds to those with SECURITY clearances, but may be disclosed to judges and courts (in some cases after REDACTION) where necessary, e.g. when reviewing a security-sensitive decision made by ASIO: *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth).

accession (Latin *accedere*, to go to or approach) (1) A process by which sovereign states become parties to an INTERNATIONAL TREATY or become Member States of the EUROPEAN UNION. The process generally applies where the deadline for signature has passed, and a state that did not originally sign or ratify the treaty later expresses its consent to becoming a party by depositing an **accession agreement**; EU member states **accede** to the Treaty of Rome or any other EU treaty in the same way. For all treaty and legislative instruments the **date of accession** is the date on which the particular member state signed; the date on which the treaty or other instrument enters into force is its **commencement date**.

(2) The process by which a member of the royal family becomes entitled to succeed to the throne, which occurs immediately on the death or abdication of the previous sovereign, not upon coronation.

(3) A way of acquiring ownership of something that increases naturally as the product of one's own property (e.g. the fruit of trees on one's land (*see also* USUFRUCTUARY RIGHTS) or the natural increase in ANIMALS), along with improvements to it that are incorporated naturally or artificially, by planting trees or building fixtures on it, or by increases to the land itself, as by ALLUVION.

accessory A person who assists, enables, aids, counsels or procures another person in the commission of a crime without being the principal offender (*see* ABET). Being an accessory is not an OFFENCE in itself. An accessory is regarded as a party to the principal offence, and may be tried and sentenced for that offence as a principal offender.

Also a person who does not actually do the act or make the omission that constitutes the principal offence. General term for secondary liability.

Aiding applies to situations where the accused is present at the commission of the principal offence, whereas 'counselling or procuring' applies where the accused is absent: *Ferguson v Weaving* [1951] 1 KB 814, 818, 819. **Constructive presence** refers to a situation where the accused is sufficiently near as to be able readily to go to the assistance of the principal offender, should the occasion arise: *McCarthy and Ryan* (1993) 71 A Crim R 395, 409, for example standing guard. In the code jurisdictions (*see* GRIFFITH CODE and MODEL CRIMINAL CODE) 'aiding' means 'knowingly aiding': *R v Jervis* [1993] 1 Qd R 647.

'Counselling' and 'procuring' also require knowledge of the principal offence: *Carden v R* (1992) 8 WAR 296. In common law, the fault element required is intention to aid, counsel or procure: *Giorgianni v R* (1985) 156 CLR 473. 'Aiding' is given its ordinary meaning of giving support to, helping, assisting: *R v Beck* [1990] 1 Qd R 30, e.g. by providing the murder weapon.

Being an **accessory before the fact** indicates secondary liability before the commission of the principal offence, where the accused is absent at the time the offence is committed.

'Counselling' involves advice or encouragement before the commission of the principal offence. It has been interpreted to mean 'urge or advise': *Stuart v R* (1974) 134 CLR 426, or 'advise or solicit': *R v Oberbillig* [1985] QB 808, 813.

'Procuring' (e.g. offering money for commission of the principal offence) is conduct that goes beyond merely encouraging the commission of the principal offence and actually 'causes' its commission: *R v Beck* [1990] 1 Qd R 30.

An **accessory after the fact** is an accused who helps a principal offender to escape justice knowing that a principal offence has been committed. The relevant conduct occurs after the commission of the principal offence. *See also* CO-ACCUSED.

accommodation bill (accommodation note, accommodation paper) A BILL OF EXCHANGE indorsed (guaranteed), as a favour, by an **accommodation party**: 'a person who has signed the bill as drawer, acceptor, or indorser, without receiving value therefore, and for the purpose of lending his or her name to some other person'. The accommodation party is liable on the bill to a HOLDER FOR VALUE; and

it is immaterial whether, when such holder took the bill, he or she knew such party to be an accommodation party or not: *Bills of Exchange Act 1909* (Cth) s 33. Called a *windbill* in the UK.

accommodation bond A means-tested payment or series of payments made under an accommodation bond agreement to secure a place at an aged-care facility: *Aged Care Act 1997* (Cth) s 57.2. Bonds are regulated by that Act as well as by the *Aged Care (Bond Security) Act 2006*, the *Aged Care (Bond Security) Levy Act 2006* and the User Rights Principles made by the Minister from time to time under s 96.1 of the *Aged Care Act*. See also AGED-CARE FACILITIES; ELDER LAW.

accomplice A general expression for one who is COMPLICIT in crime and participating in some way (e.g. as ACCESSORY) with a principal offender. In a narrow sense an accomplice is a person also chargeable with an offence (not necessarily the *same* offence), in relation to the same events as those upon which the charge against the accused is founded, who if convicted would be liable to punishment, and might therefore be tempted to exaggerate or fabricate evidence of the guilt of the accused. An accessory after the fact is not an accomplice: *R v Ready and Manning* [1942] VLR 85.

An **accomplice direction** is a warning to the jury that there is a danger in accepting the uncorroborated evidence of an accomplice because they may be tempted to minimise their own role, or exaggerate the role of the accused. It is a mandatory direction that cannot be overridden by argument from counsel: *R v Minaoui* [2004] VSCA 126.

account of profits (account) An equitable monetary remedy that is measured according to the gain made by

the defendant through wrongful use of the plaintiff's property, rather than according to the loss suffered by the plaintiff. It is most useful as a remedy in INTELLECTUAL PROPERTY (e.g. for breach of COPYRIGHT or a PATENT). Because the remedy is an *alternative* to damages, plaintiffs need to ascertain, usually through the process of DISCOVERY, how much a defendant profited by wrongful exploitation of the plaintiff's property. If that amount is larger than the expected damages (loss suffered by the plaintiff) the plaintiff will seek the remedy of account of profits rather than damages.

account stated A cause of action at common law for breach of contract, derived from the early COMMON COUNTS. The claim is that an account has been delivered for a liability duly incurred under a contract, but remains unpaid. If established, it entitles the plaintiff to damages.

accountability Responsibility OF LIABILITY; a requirement to answer to someone. In relation to the performance of public functions, the requirement to **account** for the manner in which those functions are exercised. In relation to persons acting in a private capacity, accountability includes, e.g., liability for performing a contractual obligation. Accountability ensures that the exercise of power is within the legal limits of public law, and the political limits of community expectations. ADMINISTRATIVE LAW is an 'accountability mechanism', ensuring that executive power is exercised according to the purpose for which it was given, within the scope of authority, and not in a biased or arbitrary fashion. LEGISLATIVE POWER must be within constitutional limits, accountable in the courts. See also CORRUPTION; JUDICIAL POWER; OMBUDSMAN; WHISTLEBLOWING.

accounting period The period of 12 months for which a company makes up its accounts. Company tax is assessable on the accounting period, which may end on a day other than 30 June, with leave of the Commissioner for Taxation: *Income Tax Assessment Act 1936* (Cth) s 18. Under s 18A an accounting period will end before 12 months has expired, and a new accounting period will start, when particular types of partnerships change by becoming, or ceasing to be, a VCLP, an ESVCLP, an AFOF or a VCMP (see PARTNERSHIPS). See also FINANCIAL YEAR.

accounts see BOOKS OF ACCOUNT; FINANCIAL STATEMENTS.

accredited specialist A LEGAL PRACTITIONER who practises in a particular area (e.g. family law) and claims particular expertise in it. Practitioners may not claim specialist status unless they have gained accreditation through their Law Society by examination. They are then listed on the society's Accredited Specialists Directory (e.g. www.liv.asn.au).

accretion Gradual and imperceptible increase or accumulation over time, as in the increased worth of assets that are periodically revalued (an accretion to capital), as in the accumulation of capital in a trust, or as in the enlargement of a parcel of land over time due to natural occurrences such as the build-up of sediment from a lake or river, or a receding water line (cf AVULSION). The **doctrine of accretion** provides that the boundary moves in accordance with the mean high-water mark. From Latin *accrescere*, to grow, *accretionem*, a growing larger.

accruals accounting (also called **earnings basis** or **accruals basis**

accounting) A method of accounting that shows expenses in the books of account not as and when they occur (as in a time-based CASH ACCOUNTING system) but by allocation of payments and expenses to the periods to which they are applicable, irrespective of when the actual payment or receipt occurred. Expenses are recorded when incurred (when the *liability* to pay them arises) rather than when they are paid; revenue is recorded when it has been *earned*, rather than when payment is received. This spreads gains and losses over the period to which they relate, and irons out distortions (and misleading accounting), especially for transactions close to the end of a financial year, where delays between goods sold or work done and payment received can result in expenses occurring in one reporting period while receipts fall into the next. Tax legislation requires most businesses except SMALL BUSINESS ENTERPRISES (SBEs) to use accruals accounting for income reporting. See also GOODS AND SERVICES TAX (GST).

accumulation Return of amounts earned as income to the capital of a fund so that the amount of capital is increased, and its value is preserved (it matches inflation) or increased (the growth in value exceeds inflation). Income may be directed to be accumulated if the beneficiary is a minor, or beneficial interests are CONTINGENT, or if the terms of a trust are discretionary. The law of PERPETUITIES and accumulations constrains indefinite accumulation of capital in trust funds settled by will or INTER VIVOS (e.g. 80 years under *Perpetuities and Accumulations Act 1985* (ACT) s 8).

accusatorial procedure A system of criminal litigation where the accuser (police or DPP) carries the legal burden of proving all elements of the alleged

offence. The defence has no legal burden of proving innocence and has the right to remain silent before trial and at trial without any adverse inference being drawn. The role of the parties, the PRESUMPTION OF INNOCENCE and JUDICIAL INDEPENDENCE are key concepts. See e.g. discussion in *Azzopardi v R* (2001) 205 CLR 50. See also ADVERSARIAL LEGAL SYSTEM; BURDEN OF PROOF.

accused (accused person or DEFENDANT) a person who is charged with an offence (see INDICTMENT) or against whom criminal proceedings have been commenced in some other way (e.g. by judicial direction that a person be tried for PERJURY). **Accused's evidence** see EVIDENCE.

achronogenesis (mental disorder) see CONFABULATION.

acknowledgment Confirmation of the existence of a state of affairs, such that one is prepared to be bound by its acceptance. See also EARNEST. An acknowledgment of **debt** is a signed admission in writing by a debtor that the claim made by a creditor of some amount owing and due to be paid is well founded. An acknowledgment by the signatory to a **document** is confirmation that a signature already on the document (i.e. that the witnesses did not see being made) is the signer's own. Similarly, acknowledgment of a **will** is the testator's confirmation to witnesses that a signature already on the will (i.e. that the witnesses did not see being made) is the testator's own. Acknowledgment of **service** is a form of notice to a court that a person who was required to have been served with documents has received them (e.g. *Federal Magistrates Court Rules 2001* (Cth) reg 25.04). An acknowledgment of service may be signed by the person on whom

the document was served, or by his or her lawyer. Unless the recipient of an ORIGINATING PROCESS is content to let the matter go through the court uncontested, resulting in a default judgment to the plaintiff, the notice acknowledging service (or a full defence) must generally be filed within the time allowed by the rules of the particular court. Auctioneers acknowledge individual **bids** during the bidding process in order to increase the price being offered from the floor by potential purchasers; it is an offence to falsely acknowledge a bid ('taking bids from the trees'): e.g. *Motor Car Traders Act 1986* (Vic) s 50E.

acquiescence Consenting to another person infringing one's legal rights. Acquiescence may be EXPRESS or implied by continuing restraint in abstaining from seeking a remedy in full knowledge that the infringement is occurring. Although mere knowledge of a situation does not imply consent, allowing it to continue may result in refusal of relief on the ground of LACHES acquiescence (see ESTOPPEL). Acquiescence is 'passive inactivity', which is not the same as, nor does it have the same effect as, communicated permission: *R (Beresford) v Sunderland City Council* [2004] 1 AC 889. See also VOLENTI NON FIT INJURIA.

Acquis Communautaire (French *acquis*, that which has been acquired + *communautaire*, of the community) The entire body of European Union Law acquired to date, including treaties, regulations, directives, and judgments of the European Union courts.

acquisition The action of obtaining or getting something, particularly property; also the thing itself. The term is broad, covering all means of obtaining, e.g. by conquest, purchase, bequest, or gift.

A (1) (territory) Gaining of territory by some means. A traditional fivefold doctrine of acquisition (discovery, symbolic activity, contiguity, and occupation). The acquisition of title to territory by newly emerging states is now most commonly achieved by transfer of sovereignty or upon self-determination, according to principles of international law.

(2) (property law) **Compulsory acquisition** of land is made by governments to enable construction of new infrastructure (such as roads, road widening, dams) e.g. under *Land Acquisition Act 1993* (Tas) or *Lands Acquisition Act* (NT); a **notice of compulsory acquisition** will be served on the owner by the acquiring authority: see e.g. *Obeid v Victorian Urban Development Authority* [2012] VSC 251. State legislation may require a **notice of acquisition** of property to be filed with the appropriate government agencies, and a similar notice of disposition is filed by the vendor: e.g. *Water (Notice of Disposition of Land) Regulations 2000* (Vic) made under *Water Act 1989* (Vic) s 324. **Acquisitive prescription** (USUCAPTION in civil law systems) is a method of obtaining an interest in property by long, uninterrupted possession.

(3) (competition policy) The *Corporations Act 2001* (Cth) prohibits or restricts the acquisition of shares in various contexts, including self-acquisition and control of shares (Part 2J.2), during takeover activity (Ch 6), compulsory acquisitions and buy-outs (Ch 6A), including provisions for compulsory acquisition of shares.

(4) (taxation) Under the NEW TAX SYSTEM purchases made for business purposes are called **acquisitions** (see CREDITABLE ACQUISITION; GOODS AND SERVICES TAX (GST)).

acquit (*v*) To find an accused *not guilty* (meaning that the prosecution has been unable to make out a case). Not the same thing as INNOCENCE. See ACQUITTAL.

acquittal A finding by a jury or a judge (where judge-alone trials are permitted) that the prosecution has been unable to prove beyond reasonable doubt the guilt of the accused of a nominated criminal offence. In the lower courts the equivalent finding by a magistrate is to *dismiss* the charge. An acquittal is not, however, equivalent to a positive finding of innocence; the acquittal just means that the accused cannot be tried for the same offence again (see AUTREFOIS acquit): *R v Darby* (1982) 148 CLR 668. The prosecution is prohibited from appealing an acquittal because of the principle of DOUBLE JEOPARDY. Where a convicted person successfully appeals against a conviction the Court of Appeal has a discretion either to order a new trial or to hand down a verdict of acquittal. The usual order is for a new trial rather than an acquittal.

act An act (something that is done) is legally relevant if it is a **wrongful act** (a tortious civil wrong or a criminal offence); a **lawful activity** with some legally instrumental purpose (e.g. a transfer of land); or an **act in law**: an act done by the law itself through its agents (e.g. an arrest) or by a citizen through the compulsion of law, in order to comply with some statutory duty (e.g. filing a tax return). Each crime has active elements (ACTUS REUS OR PHYSICAL ELEMENTS) that must be proved to establish the crime; similarly, each tort has elements that must be proved. Unless every element is established, the prosecution (or action) will fail. See also ACT OF PARLIAMENT.