

BREACH

BRANCH OF THE SEA. This term, as used at common law, included rivers in which the tide ebbed and flowed. *Arnold v. Mundy*, 6 N.J.Law, 86, 10 Am.Dec. 356.

BRANCH PILOT. One possessing a license, commission, or certificate of competency issued by the proper authority and usually after an examination. *Dean v. Healy*, 66 Ga. 503; *State v. Follett*, 33 La. Ann. 228. Holder of certificate given by the Trinity House to pilots who have passed an examination. *Houston Pilots v. Goodwin*, Tex.Civ.App., 178 S.W.2d 308, 311.

BRANCH RAILROAD. A lateral extension of a main line; a road connected with or issuing from a main line. *Biles v. Railroad Co.*, 5 Wash. 509, 32 Pac. 211; *Blanton v. Railroad Co.*, 86 Va. 618, 10 S.E. 925. Feeder lines, *Union Pac. R. Co. v. Anderson*, 167 Or. 687, 120 P.2d 578, 588.

BRAND. To stamp; to mark, either with a hot iron or with a stencil plate. *Dibble v. Hathaway*, 11 Hun, N.Y., 575. And see *Miles v. Vermont Fruit Co.*, 98 Vt. 1, 124 A. 559, 563.

BRANDING. An ancient mode of punishment by inflicting a mark on an offender with a hot iron. A recognized punishment for some military offenses. Marking of cattle for the purpose of identification.

BRANDY. Product from distilling wine or the fermented juice of any fruit. *Chicago, B. & Q. R. Co. v. California Wine Co.*, 313 Ill.App. 498, 40 N.E.2d 624, 627.

BRANKS. An instrument formerly used in some parts of England for the correction of scolds; a scolding bridle.

BRASIATOR. A maltster, a brewer.

BRASIUM. Malt.

BRASS KNUCKLES or KNUCKS. A weapon worn on the hand for the purposes of offense or defense, so made that in hitting with the fist considerable damage is inflicted. It is called "brass knuckles" because it was originally made of brass. The term is now used as the name of the weapon without reference to the metal of which it is made; *Patterson v. State*, 3 Lea, Tenn., 575.

BRAWL. A clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace.

In English law, specifically, a noisy quarrel or other uproarious conduct creating a disturbance in a church or churchyard. 4 B.Comm. 146; 4 Steph.Comm. 253.

"Tumults" and "brawls" as substantially identical. *State v. Perkins*, 42 N.H. 464.

BREACH. The breaking or violating of a law, right, or duty, either by commission or omission.

This name is sometimes given to that part of the declaration which alleges the violation of the defendant's promise or duty, immediately preceding the *ad damnum* clause.

Expenditure by administrator of proceeds of policy pending appeal from award of proceeds to administrator as "breach" of obligation of faithful administration. *State ex rel. and to Use of Gnekow v. United States Fidelity & Guaranty Co.*, 349 Mo. 528, 163 S.W.2d 86, 90.

BREACH OF CLOSE. The unlawful or unwarrantable entry on another person's soil, land, or close. 3 Bl.Comm. 209.

BREACH OF CONTRACT. Failure, without legal excuse, to perform any promise which forms the whole or part of a contract. *Friedman v. Katzner*, 139 Md. 195, 114 A. 884, 886. Prevention or hindrance by party to contract of any occurrence or performance requisite under the contract for the creation or continuance of a right in favor of the other party or the discharge of a duty by him. *Sharp v. Williams*, 141 Fla. 1, 192 So. 476, 480. Unequivocal, distinct and absolute refusal to perform agreement. *R. T. Clark & Co. v. Miller*, 154 Miss. 233, 122 So. 475, 481. Violation of obligation. *Russell v. Stephens*, 191 Wash. 314, 71 P.2d 30, 31.

Anticipatory Breach

A breach committed before there is a present duty of performance, and is the outcome of words evincing intention to refuse performance in the future. *King Features Syndicate v. Valley Broadcasting Co.*, D.C.Tex., 42 F.Supp. 107, 108.

Acquiescence by other party as necessary, *Cerruti v. Burdick*, 130 Conn. 284, 33 A.2d 333, 335. Clear and unequivocal, renunciation of contract and refusal to perform as essential, *Kimel v. Missouri State Life Ins. Co.*, C.C.A. Kan., 71 F.2d 921, 923. Party to contract putting it out of his power to perform as breach, *Assembly, Inc. v. Giller*, 134 Misc. 657, 236 N.Y.S. 308, 313. Positive statement that promisor will not or cannot substantially perform contractual duties as breach, *Hawkinson v. Johnston*, C.C.A. Mo., 122 F.2d 724, 729, 730.

Bankruptcy as "anticipatory breach", *In re Robertson*, D.C.Ark., 41 F.Supp. 665, 668.

Doctrine is that party denying liability destroys contract so far as able. *Pollack v. Pollack*, Tex.Com.App., 46 S.W.2d 292, 293.

Continuing Breach

Such breach occurs where the state of affairs, or the specific act, constituting the breach, endures for a considerable period of time, or is repeated at short intervals.

Constructive Breach

Such breach takes place when the party bound to perform disables himself from performance by some act, or declares, before the time comes, that he will not perform. *Jordan v. Madsen*, 69 Utah, 112, 252 P. 570, 573; *The Adamello*, D.C.Va., 19 F.2d 388, 389.

BREACH OF COVENANT. The nonperformance of any covenant agreed to be performed, or the doing of any act covenanted not to be done. *Holt-house*.

BREACH OF DUTY. In a general sense, any violation or omission of a legal or moral duty. More particularly, the neglect or failure to fulfill in a just and proper manner the duties of an office or fiduciary employment. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence or arising through mere oversight or forgetfulness, is a breach of duty. *Hivick v. Hemme*, 118 Okl. 167, 247 P. 692, 693.

BREACH

BREACH OF POUND. The breaking any pound or place where cattle or goods distrained are deposited, in order to take them back. 3 Bl.Comm. 146.

BREACH OF PRISON. The offense of actually and forcibly breaking a prison or gaol, with intent to escape. 4 Chit.Bl. 130, notes; 4 Steph. Comm. 255. The escape from custody of a person lawfully arrested on criminal process.

BREACH OF PRIVILEGE. An act or default in violation of the privilege of either house of parliament, of congress, or of a state legislature.

BREACH OF PROMISE. Violation of a promise; chiefly used as an elliptical expression for "breach of promise of marriage."

BREACH OF THE PEACE. A violation or disturbance of the public tranquillity and order. The offense of breaking or disturbing the public peace by any riotous, forcible, or unlawful proceeding. 4 Bl.Comm. 142, *et seq.*; People v. Bartz, 53 Mich. 493, 19 N.W. 161. "Breach of the peace" is a generic term, State v. Reichman, 135 Tenn. 653, 188 S.W. 225, 228, Ann.Cas.1918B, 889, and includes all violations of public peace or order and acts tending to a disturbance thereof, City of St. Louis v. Slupsky, 254 Mo. 309, 162 S.W. 155, 157, 49 L.R.A., N.S., 919. One who commits a breach of the peace is guilty of disorderly conduct, but not all disorderly conduct is necessarily a "breach of the peace." Garvin v. City of Waynesboro, 15 Ga.App. 633, 84 S.E. 90, 91; City of Seattle v. Franklin, 191 Wash. 297, 70 P.2d 1049, 1051.

A *constructive* breach of the peace is an unlawful act which, though wanting the elements of actual violence or injury to any person, is yet inconsistent with the peaceable and orderly conduct of society. An *apprehended* breach of the peace is caused by the conduct of a man who threatens another with violence or physical injury, or who goes about in public with dangerous and unusual weapons in a threatening or alarming manner, or who publishes an aggravated libel upon another, etc.

BREACH OF TRUST. Any act done by a trustee contrary to the terms of his trust, or in excess of his authority and to the detriment of the trust; or the wrongful omission by a trustee of any act required of him by the terms of the trust. Also the wrongful misappropriation by a trustee of any fund or property which had been lawfully committed to him in a fiduciary character. Every violation by a trustee of a duty which equity lays upon him, whether willful and fraudulent, or done through negligence, or arising through mere oversight and forgetfulness, is a "breach of trust." The term, therefore, includes every omission and commission in carrying out the trust according to its terms, of care and diligence in protecting and investing the trust property, and of using perfect good faith. H. B. Cartwright & Bro. v. United States Bank & Trust Co., 23 N.M. 82, 167 P. 436, 453. A violation by the trustee of any duty which he owes to the beneficiary. Bruun v. Hanson, C.C.A.Idaho, 103 F.2d 685, 699.

BREACH OF TRUST WITH FRAUDULENT INTENT. Larceny after trust. State v. Owings, 205 S.C. 314, 31 S.E.2d 906, 907.

BREACH OF WARRANTY. In real property law and the law of insurance. The failure or falsehood of an affirmative promise or statement, or the nonperformance of an executory stipulation. Stewart v. Drake, 9 N.J.Law, 139. Failure of insured to disclose trivial and temporary disorders. Franklin Life Ins. Co. v. Critz, C.C.A.Miss., 109 F.2d 417. As used in the law of sales, "breach of warranty," unlike fraud, does not involve guilty knowledge, Anglo-California Trust Co. v. Hall, 211 P. 991, 993, 61 Utah, 223, and rests on contract, Oelwein Chemical Co. v. Baker, 204 Iowa, 66, 214 N.W. 595, 596. Falsity of statements incorporated into fidelity bond. City Bank & Trust Co. v. Commercial Casualty Co., La.App., 176 So. 27, 30.

BREAD ACTS. Laws providing for the sustenance of persons kept in prison for debt.

BREAK. "Break" may be used in a broad sense, as in seller's covenant in contract of sale of auto, to indicate a weakness, impairment, or destruction of parts, however caused. American Locomotive Co. v. National Wholesale Grocery Co., 226 Mass. 314, 115 N.E. 404, 405, L.R.A.1917D, 1125.

BREAK A LEG. Pertaining to a broken bone anywhere between ankle and hip, with possible exception of patella, 100% American Local Mut. Life & Accident Ass'n of El Paso v. Work, Tex. Civ.App., 289 S.W. 1020.

BREAK AND TAKE. Sale of merchandise or amusement where customer pays for a chattel and a chance for another unpaid for chattel, the ticket being the opportunity for fortuitous selection of a differentiated article. Minter v. Federal Trade Commission, C.C.A.3, 102 F.2d 69, 73.

BREAKAGE. Odd cents retained by race track promoter out of amounts due on wagers. Wise v. Delaware Steeplechase & Race Ass'n, Del.Super., 2 Terry 182, 18 A.2d 419, 421, 423.

BREAKDOWN SERVICE. As applied to an electric public service corporation is primarily a service for emergency and is used in case the electric plant of the customer breaks down; it is also used when very little electricity is required, as upon holidays and Sundays, and also at the peak of the service when a maximum current is required during the day. People ex rel. New York Edison Co. v. Public Service Commission for First Dist., 191 App.Div. 237, 181 N.Y.S. 259, 261.

BREAKING. Forcibly separating, parting, disintegrating, or piercing any solid substance.

In the law as to housebreaking and burglary, it means the tearing away or removal of any part of a house or of the locks, latches, or other fastenings intended to secure it, or otherwise exerting force to gain an entrance, with the intent to commit a felony; or violently or forcibly breaking out of a house, after having unlawfully entered it, in the attempt to escape. Sims v. State, 136 Ind. 358, 36 N.E. 278; Melton v. State, 24 Tex.App. 287, 6 S.W. 303. Actual "breaking" involves application of some force. Rains v. Commonwealth, 293 Ky. 429, 169 S.W.2d 41, 44, the action of accused must have been such as would, without additional effort, have made an entry possible. Armour v. State, 72 Okl.Cr. 44, 112 P.2d 1116, 1119, but there is no requirement that there be shown violence, a latch lifted, or a