

sit and vote in the House of Lords." David M. Walker, *The Oxford Companion to Law* 942 (1980).

**peer-reviewed journal.** A publication whose practice is to forward submitted articles to disinterested experts who screen them for scholarly or scientific reliability, the idea being that articles actually published have already withstood expert scrutiny and comment.

**peer-review organization.** A government agency that monitors health-regulation compliance by private hospitals requesting public funds (such as Medicare payments). — Abbr. PRO.

**peer-review privilege.** See PRIVILEGE (3).

**peers of fees.** *Hist.* Vassals or tenants of the same lord who judged disputes arising out of fees.

**peine forte et dure (pen for tay door or payn fort ay dyoor).** [French "strong and hard punishment"] *Hist.* The punishment of an alleged felon who refused to plead, consisting of pressing or crushing the person's body under heavy weights until the accused either pleaded or died.

"In all other felonies, however, the punishment of *peine forte et dure* was, until lately, denounced as the consequence of an obstinate silence. The greatest caution and deliberation were indeed to be exercised before it was resorted to; and the prisoner was not only to have '*trina admonitio*,' but a respite of a few hours, and the sentence was to be distinctly read to him, that he might be fully aware of the penalty he was incurring." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 425-26 (2d ed. 1826).

"In old English law, a person charged with felony who, refusing to accept jury trial, was pressed to death (*peine forte et dure*), was not regarded as committing suicide, so that he did not forfeit his property." Glanville Williams, *The Sanctity of Life and the Criminal Law* 270 n.4 (1957).

**pell.** See CLERK OF THE PELLs.

**pellex (pel-eks), n.** [Latin] *Roman law.* A concubine.

**penal (pee-nal), adj.** Of, relating to, or being a penalty or punishment, esp. for a crime.

"The general rule is that penal statutes are to be construed strictly. By the word 'penal' in this connection is meant not only such statutes as in terms impose a fine, or corporal punishment, or forfeiture as a consequence of violating laws, but also all acts which impose by way of punishment damages beyond compensation for the benefit of the injured party, or which impose any special

burden, or take away or impair any privilege or right." William M. Lile et al., *Brief Making and the Use of Law Books* 344 (3d ed. 1914).

"The word *penal* connotes some form of punishment imposed on an individual by the authority of the state. Where the primary purpose of a statute is expressly enforceable by fine, imprisonment, or similar punishment the statute is always construed as penal." 3 Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 59.01, at 1 (4th ed. 1986).

**penal action.** See ACTION.

**penal bill.** See *penal bond* under BOND (2).

**penal bond.** See BOND (2).

**penal clause.** See PENALTY CLAUSE.

**penal code.** A compilation of criminal laws, usu. defining and categorizing the offenses and setting forth their respective punishments. — Also termed *criminal code*. See MODEL PENAL CODE.

**penal custody.** See CUSTODY (1).

**penal institution.** See PRISON.

**penal law. 1.** See *penal statute* under STATUTE.  
**2.** CRIMINAL LAW.

**penal liability.** See LIABILITY.

**penal redress.** See REDRESS.

**penal sanction.** See *criminal sanction* under SANCTION.

**penal statute.** See STATUTE.

**penal sum.** The monetary amount specified as a penalty in a penal bond. See *penal bond* under BOND (2).

**penalty. 1.** Punishment imposed on a wrongdoer, esp. in the form of imprisonment or fine. ● Though usu. for crimes, penalties are also sometimes imposed for civil wrongs. **2.** Excessive liquidated damages that a contract purports to impose on a party that breaches. ● If the damages are excessive enough to be considered a penalty, a court will usu. not enforce that particular provision of the contract. Some contracts specify that a given sum of damages is intended "as liquidated damages and not as a penalty" — but even that language is not fool-proof.

"A *penalty* is a sum which a party . . . agrees to pay or forfeit in the event of a breach, but which is fixed, not as a pre-estimate of probable actual damages, but as a *punishment*, the threat of which is designed to prevent the breach, or as *security*, where the sum is deposited or the covenant to pay is joined in by one or more sureties, to insure that the person injured shall collect his actual damages. Penalties . . . are not recoverable or retainable as such by the person in whose favor they are framed . . ." Charles T. McCormick, *Handbook on the Law of Damages* § 146, at 600 (1935).

**civil penalty.** A fine assessed for a violation of a statute or regulation <the EPA levied a civil penalty of \$10,000 on the manufacturer for exceeding its pollution limits>.

**statutory penalty.** A penalty imposed for a statutory violation; esp., a penalty imposing automatic liability on a wrongdoer for violation of a statute's terms without reference to any actual damages suffered.

**penalty clause.** A contractual provision that assesses an excessive monetary charge against a defaulting party. • Penalty clauses are generally unenforceable. — Often shortened to *penalty*. — Also termed *penal clause*. Cf. LIQUIDATED-DAMAGES CLAUSE; LIMITATION-OF-REMEDIES CLAUSE.

"It not infrequently happens that contracts provide for what is to happen in the event of a breach by the parties, or by one of them. Such provisions may be perfectly simple attempts to avoid future disputes, and to quantify the probable amount of any loss. That is unobjectionable. But sometimes clauses of this kind are not designed to quantify the amount of the probable loss, but are designed to terrorize, or frighten, the party into performance. For example, a contract may provide that the promisor is to pay £5 on a certain event, but if he fails to do so, he must then pay £500. Now a clause of that kind is called a penalty clause by lawyers, and for several hundred years it has been the law that such promises cannot be enforced. The standard justification for the law here is that it is unfair and unconscionable to enforce clauses which are designed to act *in terrorem*." P.S. Atiyah, *Promises, Morals, and Law* 57-58 (1981).

**penance.** *Eccles. law.* A punishment assessed by an ecclesiastical court for some spiritual offense.

**pend, vb.** (Of a lawsuit) to be awaiting decision or settlement.

**pendency** (pen-dən-see), *n.* The state or condition of being pending or continuing undecided.

**pendens.** See LIS PENDENS.

**pendent** (pen-dənt), *adj.* 1. Not yet decided; pending <a pendent action>. 2. Of or relating to pendent jurisdiction or pendent-party juris-

diction <pendent parties>. 3. Contingent; dependent <pendent upon a different claim>.

**pendent-claim jurisdiction.** See *pendent jurisdiction* under JURISDICTION.

**pendente lite** (pen-dən-tee li-tee), *adv.* [Latin "while the action is pending"] During the proceeding or litigation; contingent on the outcome of litigation. — Also termed *lite pendente*. Cf. LIS PENDENS.

**pendente lite administration.** See ADMINISTRATION.

**pendent jurisdiction.** See JURISDICTION.

**pendent-party jurisdiction.** See JURISDICTION.

**pending, adj.** Remaining undecided; awaiting decision <a pending case>.

**pending, prep.** 1. Throughout the continuance of; during <in escrow pending arbitration>. 2. While awaiting; until <the injunction was in force pending trial>.

**pending-ordinance doctrine.** The principle that a municipality may properly deny an application for a property use that, although it would satisfy existing law, would violate a law that is pending when the application is made. • This doctrine was judicially created, mainly to short-circuit landowners' attempts to circumvent a new ordinance by applying for a nonconforming use on the eve of its approval.

**penetration pricing.** Pricing of a new product below its anticipated market price to enter a market, discourage competition, and recover the initial investment.

**penitentiary** (pen-ə-ten-shə-ree), *n.* A correctional facility or other place of long-term confinement for convicted criminals; PRISON. — **penitentiary, adj.**

**Pennoyer rule** (pə-noy-ər). The principle that a court may not issue a personal judgment against a defendant over which it has no personal jurisdiction. *Pennoyer v. Neff*, 95 U.S. 714 (1877).

**Pennsylvania rule.** *Torts.* The principle that a tortfeasor who violates a statute in the process of causing an injury has the burden of showing that the violation did not cause the injury.