



BLACK'S
LAW DICTIONARY

SEVENTH EDITION

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EDITOR IN CHIEF

Black's Law Dictionary[®]

Seventh Edition

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Editor in Chief



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, usu. also a

unsel.

orney hired to
out a lawsuit
stigation; esp.,
governmental
e alleged mis-
r agency. See
UTOR. Cf. *spe-*

e lawyers em-
termed *house*

ger or lower-
eys employed
esp. someone
nt aspects of
barrister who

COUNSEL.

highly ranked
ed; the lawyer
case or cases,
idistrict litiga-
unsel; *attorney*
UNSEL. — Also

ved by a party
hough not the
is employed to
management of
on appeal. 2. A
a law firm,
ner, or associ-

COUNSEL.

counsel. 2. See
UNSEL.

y employed by
n to assist in a
olic interest so
al attorney. Cf.

ey who is ap-
resent a pro se
efendant's self-
tandby counsel
and guidance to
self-representa-
ounsel.

ho represents a
; often used in
sel. 2. *Military*
es a case on the

counsel, assistance of. See ASSISTANCE OF COUNSEL.

counsel, right to. See RIGHT TO COUNSEL.

counsel and procure. See AID AND ABET.

counsel of record. See ATTORNEY OF RECORD.

counselor. See COUNSEL (2).

count, n. Procedure. 1. The part of an indictment charging the suspect with a distinct offense. 2. In a complaint or similar pleading, the statement of a distinct claim. Cf. DECLARATION (7).

"This word . . . is in our old law-books used synonymously with declaration But when the suit embraces two or more causes of action (each of which of course requires a different statement), or when the plaintiff makes two or more different statements of one and the same cause of action, each several statement is called a count, and all of them, collectively, constitute the declaration." 1 John Bouvier, *A Law Dictionary* 245 (1839).

common count. Hist. In a plaintiff's pleading in an action for debt, boilerplate language that is not founded on the circumstances of the individual case but is intended to guard against a possible variance and to enable the plaintiff to take advantage of any ground of liability that the proof may disclose. • In the action for indebitatus assumpsit, the common count stated that defendant had failed to pay a debt as promised. See *indebitatus assumpsit* under ASSUMPSIT.

general count. A count that states the plaintiff's claim without undue particularity.

money count. Hist. A count, usu. founded on a simple contract, giving rise to a claim for payment of money.

"Simple contracts, express or implied, resulting in mere debts, are of so frequent occurrence as causes of action, that certain concise forms of counts were devised for suing upon them. These are called the 'indebitatus' or 'money counts.'" 2 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 833 (1883).

multiple counts. Several separate causes of action or charged offenses contained in a single pleading or indictment.

omnibus count (ahm-ni-bes). A count that combines in into one count all money claims, claims for goods sold and delivered, claims for work and labor, and claims for an account stated.

separate count. One of two or more criminal charges contained in one indictment, each

charge constituting a separate indictment for which the accused may be tried.

several count. One of two or more counts in a pleading, each of which states a different cause of action.

special count. A section of a pleading in which the plaintiff's claim is stated with great particularity — usu. employed only when the pleading rules require specificity.

3. *Hist.* The plaintiff's declaration, or initial pleading, in a real action. See DECLARATION (7).

4. *Patents.* The part of a patent application that defines the subject matter in a priority contest (i.e., an *interference*) between two or more applications or between one or more applications and one or more patents. See INTERFERENCE (2).

count, vb. 1. In pleading, to declare or state; to narrate the facts that state a claim. 2. *Hist.* To plead orally; to plead or argue a case in court.

counter. Hist. An advocate or professional pleader; one who counts (i.e., orally recites) for a client. • Counters had coalesced into an identifiable group practicing before the Common Bench by the beginning of the 13th century. They were the leaders of the medieval legal profession, and over time came to be known as *serjeants at law*. — Also spelled *countor*; *contor*; *counteur*. See SERJEANT AT LAW.

counteraction. See COUNTERCLAIM.

counteraffidavit. See AFFIDAVIT.

counterbond. See BOND (2).

counterclaim, n. A claim for relief asserted against an opposing party after an original claim has been made; esp., a defendant's claim in opposition to or as a setoff against the plaintiff's claim. — Also termed *counteraction*; *countersuit*; *cross-demand*. — **counterclaim, vb.** — **counterclaimant, n.** Cf. CROSS-CLAIM.

"Under [Fed. R. Civ. P.] Rule 13 the court has broad discretion to allow claims to be joined in order to expedite the resolution of all controversies between the parties in one suit. Rule 13(c) specifically provides that the counterclaimant is not limited by recovery sought by the opposing party but may claim relief in excess of that amount. Further, the general legal rule is that it is immaterial whether a counterclaim is legal or equitable for purposes of determining whether it properly is brought under Rule 13. . . . The expectation is that this liberal joinder policy will further the elimination of circuitry of action and multiple litigation." 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1403, at 15-16 (2d ed. 1990).

compulsory counterclaim. A counterclaim that must be asserted to be cognizable, usu. because it relates to the opposing party's claim and arises out of the same subject matter. ● If a defendant fails to assert a compulsory counterclaim in the original action, that claim may not be brought in a later, separate action (with some exceptions).

permissive counterclaim. A counterclaim that need not be asserted to be cognizable, usu. because it does not arise out of the same subject matter as the opposing party's claim or involves third parties over which the court does not have jurisdiction. ● Permissive counterclaims may be brought in a later, separate action.

counterdeed. See DEED.

counterfeisance (kown-tər-fee-zənts). *Archaic.* The act of counterfeiting.

counterfeit, vb. To forge, copy, or imitate (something) without a right to do so and with the purpose of deceiving or defrauding; esp., to manufacture fake money (or other security) that might be used in place of the genuine article. ● Manufacturing fake food stamps is considered counterfeiting. — **counterfeit, n.** — **counterfeit, adj.**

"Literally a *counterfeit* is an imitation intended to pass for an original. Hence it is spurious or false, and to *counterfeit* is to make false. For this reason the verbs *counterfeit* and *forge* are often employed as synonyms and the same is true to some extent of the corresponding nouns. No error is involved in this usage but it is important to distinguish between the words as far as possible when used as the labels of criminal offenses. In the most restricted sense, [c]ounterfeiting is the unlawful making of false money in the similitude of the genuine. At one time under English statutes it was made treason. Under modern statutes it is a felony." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 431-32 (3d ed, 1982).

counterfeiter. A person who makes an unauthorized imitation of something (esp. a document, currency, or another's signature) with the intent to deceive or defraud.

counterfoil (kown-tər-foyl), *n.* A detachable part of a writing on which the particulars of the main part are summarized. ● The most common example is a check stub, on which the date, the payee, and the amount are typically noted.

counterletter. *Civil law.* A document by which a record owner of real property acknowledges that another actually owns the property. ●

Counterletters are used when the property is to be reconveyed after a period. See *simulated contract* under CONTRACT.

countermand (kown-tər-mand), *n.* An action that has the effect of voiding something previously ordered; a revocation. — **countermand** (kown-tər-mand or kown-), *vb.*

counteroffer, n. *Contracts.* An offeree's new offer that varies the terms of the original offer and that therefore rejects the original offer. — **counteroffer, vb.** — **counterofferor, n.** See MIRROR-IMAGE RULE.

counterpart. 1. In conveyancing, a corresponding part of an instrument <the other half of the indenture — the counterpart — could not be found>. **2.** One of two or more copies or duplicates of a legal instrument <this lease may be executed in any number of counterparts, each of which is considered an original>.

"Formerly 'part' was used as the opposite of 'counterpart,' in respect to covenants executed in duplicate, but now each copy is called a 'counterpart.'" 2 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 927 (1883).

counterpart writ. See WRIT.

counterpromise, n. A promise made in exchange for another party's promise <a promise supported by a counterpromise is binding in its inception>. — **counterpromise, vb.**

counter-roll. *Hist.* A record kept by an officer as a check on another officer's record, esp. the rolls maintained by a sheriff and a coroner.

countersign, vb. To write one's own name next to someone else's to verify the other signer's identity. — **countersignature, n.**

countersuit. See COUNTERCLAIM.

countertrade. A type of international trade in which purchases made by an importing nation are linked to offsetting purchases made by the exporting nation.

"Countertrade is barter in modern clothes. It developed rapidly as a form of doing business with the USSR and Eastern European nations in the 1970s and 1980s, before the major economic and political reforms tended to diminish its emphasis as a means of doing business." Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* § 2.1, at 46 (1995).

countervailable subsidy (kown-tər-vayl-ə-bəl səb-sə-dee). A foreign government's subsidy on