

INCLUDE

taining fruit trees," etc., and the word "yard" meaning by common acceptance an "inclosure." *Wright v. Sample*, 50 So. 268, 162 Ala. 222.

INCLUDE

In general—p. 144
Addition to and also—p. 148
Comprise synonymous—p. 149
Consisting of distinguished—p. 150
Embrace synonymous—p. 150
Offense—p. 151
Part of—p. 151
Word of enlargement—p. 152
Word of limitation—p. 153

Cross References

Between and Including
Compromise
Necessarily Included
Up to and Including

In general

"Include" means to confine, enclose, enclose within, contain. *Homeyer v. Towler*, 57 S.E.2d 228, 230, 80 Ga.App. 703.

To "include" is to comprehend, especially as a constituent, or subordinate element of a whole, or as a part in a total. *Socony-Vacuum Oil Co. v. Texas Co.*, D.C.Mich., 113 F.Supp. 514, 518.

The term "includes" is ordinarily a word of enlargement and not of limitation. *People v. Western Air Lines*, 268 P.2d 723, 733, 42 C.2d 621.

The word "including" in bequest had the same meaning and effect as the words "together with", "as well as", and "also". In *re Link's Estate*, 47 N.Y.S.2d 40, 44, 182 Misc. 966.

As used in statute the word "including" is not one of all-embracing definition, but connotes simply an illustrative application of the general principle. *Argo Oil Corp. v. Lathrop*, 72 N.W.2d 431, 434, 76 S.D. 70.

In ordinary signification the word "including" in statute implies that something has been given beyond the general language which precedes it. *Arnold v. Arnold*, 237 P. 2d 963, 969, 193 Or. 490.

"Included" is a word of art used to refer to income items, as distinguished from items

In general—Cont'd

of deduction, which are ordinarily indicated by the use of the word "allowed". *C. I. R. v. Mackin Corp.*, C.C.A., 164 F.2d 527, 531.

The statutory definition of a thing as "including" certain things does not necessarily place thereon a meaning limited to the inclusions. *People v. Western Air Lines*, 268 P.2d 723, 733, 42 C.2d 621.

Trust as transferee although section 526 (f) of the Revenue Act of 1932 in defining transferee does not include a trust, in view of section 1111(b). *Fidelity Trust Co. v. Commissioner of Internal Revenue*, C.C.A., 141 F.2d 54, 57.

The word "involve" means "to imply"; "to include"; or "necessitate as a result or legal consequence." *Baltimore & O. S. W. R. Co. v. Evans*, 82 N.E. 773, 779, 169 Ind. 410, citing *Stand.Dict.*; 23 Cyc. pp. 352, 353.

In the definition of words and terms in *Bankr.Act July 1, 1898*, c. 541, § 1a, 11 U.S. C.A. § 1, a provision that a word shall "include" a certain thing does not exclude other meanings. In *re Harper*, D.C.N.Y., 175 F. 412, 423.

"It has been said that the word 'including' means moreover, or as well as; but if this was the meaning of the Legislature it was a very embarrassing mode of expressing the idea." *U. S. v. Betsy*, Dist.Col., 8 U.S. 443, 452, 4 Cranch, 443, 452, 2 L.Ed. 673.

The term "including" is not one of all-embracing definition, but connotes simply an illustrative application of the general principle. *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, N.D., 62 S.Ct. 1, 4, 314 U.S. 95, 86 L.Ed. 65.

Under zoning ordinance authorizing erection in residence district of accessory buildings, including one private garage, use of the word "including" conveys the idea that private garages which also are accessory buildings are authorized. *Lowry v. City of Mankato*, 42 N.W.2d 553, 559, 231 Minn. 108.

The section of Business Trust Tax Act providing that a business trust shall "include" every business organization whereby property is conveyed to trustees who are not restricted to mere collection of funds, etc., does not, because of quoted word, limit the kind of business trusts taxable under the Act

In general—Cont'd

to those having more than one trustee. *Koenig v. Johnson*, 163 P.2d 746, 750, 71 Cal.App. 2d 739.

The words "including" and "includes" are in their generally accepted use terms of enlargement, not of limitation, and, therefore, definition of word "structure" contained in City Building Code was not limited by fact that definition contained phrase "including among other things stadium, gospel, circus tents," etc. *El Paso Elec. Co. v. Safeway Stores*, Tex.Civ.App., 257 S.W.2d 502, 506.

The word "include" is sometimes used merely to specify particularly that which belongs to the genus already expressed in more general terms, and sometimes to add to the general class a species which does not naturally belong thereto, or it may be used to preface an illustrative example of a general power already granted, or to serve to define that power or even to enlarge it. *Illinois Cent. R. Co. v. Franklin County*, 56 N.E.2d 775, 781, 387 Ill. 301.

The name "Independent Democratic Party" includes that of "Democratic Party," within Election Law, Laws 1896, p. 925, c. 909, § 57, providing that the name which shall be designated as the political name in a certificate of independent nomination shall not "include" the name of any organized political party. *In re Carr*, 88 N.Y.S. 107, 94 App.Div. 493.

Under a devise by which testator gave to his wife "a lifetime interest in the house and land where we now live, including the furniture therein," the word "including" does not mean that the gift of the furniture is "included" in the terms of the life estate but merely that it was included in the property that testator designed that his wife should have. *Wallace v. Phipps*, 1 Tenn.Ch. App. 326, 332.

The word "including" is the participial form of the verb "include," which by Webster's Dictionary is defined in its primary sense to mean to confine within, to hold, to contain, to shut up, to inclose; by the Century Dictionary, to comprise as a part. The word has also been defined as having an accumulative sense and as classing that which follows with that which has gone before. *Maben v. Rosser*, 103 P. 674, 676, 24 Okl. 588.

In general—Cont'd

The word "Cannabis" in statute prohibiting possession of narcotic drugs, such as coca leaves, opium and Cannabis, defined as including dried flowering or fruiting tops of plant Cannabis Sativa, refers to growing plants, as well as such tops; word "means" in subsections defining certain terms not being used synonymously with word "includes" in subsections defining "Cannabis" and other terms. Laws 1936, c. 289, §§ 2-4. *Harris v. State*, 175 So. 342, 343, 179 Miss. 38.

In a deed of "the following described lands, to wit, two acres * * * and four acres, * * * inclosing the lands where the said grantor's mill and house now stand," the deed should be read as if it had said the mill and house were confined within the six acres of land conveyed. That signification must be adopted, as it gives effect to the intention of the parties, and not a narrower one, which would defeat it. "Inclose" and "include" are words of common derivation, and have several common significations, of which one is "to confine within." *Campbell v. Gilbert*, 57 Ala. 569.

The word "including" may have the sense of addition and of "also" and may merely specify particularly that which belongs to the genus, and is the participle of the word "include" which means to confine within something, hold as in an inclosure, inclose, contain, to comprise as a part or as something incident or pertinent, comprehend, take in, as the greater includes the less, and including being a participle is in the nature of an adjective and is a modifier. *Patteson v. City of Peoria*, 47 N.E.2d 867, 869, 872, 873, 318 Ill.App. 245.

A will "requesting" donee of a testamentary power to "include" among beneficiaries to be designated by her, such of testator's blood relations as she may deem worthy to be recipients of her bounty, was not mandatory so as to convert what was otherwise a general power, into a power in trust for the collateral line of testator, thereby prohibiting the donee of the power from designating any beneficiaries who were not in that category, the word "include" making clear a purpose not to confine the class to testator's blood relations. *Marx v. Rice*, 65 A.2d 48, 51, 1 N.J. 574.

INCLUDE

In general—Cont'd

The phrase "legal or equitable," in statute providing that word owner within statute providing that notice of intention to claim lien must be given owner, should include all the legal or equitable interest in premises, including interest under contract of purchase, was not a phrase of limitation upon the last clause, and the word "including" was expansive rather than qualifying. *Comp.Laws* 1929, §§ 13101, 13129. *Wyoming Park Lumber & Fuel Co. v. Vander Ark*, 289 N.W. 228, 230, 291 Mich. 496.

Under the provision of the National Labor Relations Act directing the National Labor Relations Board to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of the act, Congress by inserting the participial phrase beginning with the word "including" did not intend to differentiate between discrimination in denying employment and in terminating employment in violation of the act. *National Labor Relations Act*, § 10(c), 29 U.S.C.A. § 160(c). *Phelps Dodge Corporation v. National Labor Relations Board*, 61 S.Ct. 845, 313 U.S. 177, 85 L.Ed. 1271, 133 A.L.R. 1217.

Under statute exempting special mobile equipment from taxation and registration and defining special mobile equipment as every vehicle not designed or used primarily for transportation of persons or property and incidentally operated or moved over highways, including farm tractors, road construction or maintenance machinery ditch-digging apparatus and well-boring apparatus, word "including," had its natural meaning and connoted that items of equipment immediately thereafter enumerated were included within preceding definition. *Davidson v. Hare*, 87 N.W.2d 131, 133, 351 Mich. 4.

"Include" means to confine within something; hold as in an inclosure; inclose; contain; to comprise as a part, or as something incident or pertinent; comprehend; take in; as the greater includes the less; the Roman Empire included many nations; to comprise, comprehend, or embrace as a component part, item or member; as, this volume includes all his works; the bill includes his last purchase. To enclose within; contain; confine; as an oyster-shell sometimes includes a pearl. *United States ex rel. Lyons*

In general—Cont'd

v. Hines, 103 F.2d 737, 740, 70 App.D.C. 36, 122 A.L.R. 674.

Within City of New Orleans zoning ordinance establishing apartment district but permitting private clubs "excepting" those whose chief activity is a service customarily carried on as a business quoted word means "including" and ordinance intends to permit use of property for clubs when chief activity is not a service customarily carried on as a business and even to permit clubs whose chief activity is carried on as a business in discretion of council when such discretion is predicated on application of 70% of property owners in immediate vicinity. *Carrere v. Orleans Club*, 37 So.2d 715, 720, 214 La. 303.

The word "including", following general language and preceding an enumeration, is, in its exceptional sense but not in its ordinary sense, a term of enlargement. It has various shades of meaning, sometimes of restriction and sometimes of enlargement. The term is not one of all-embracing definition, but may connote simply an illustrative application of a general principle, or preface an illustrative example of a general power already granted. It has been defined as having an accumulative sense and as classing that which follows with that which has gone before. *State*, on *Inf. Huffman v. Sho-Me Power Co-op.*, 191 S.W.2d 971, 976, 977, 354 Mo. 892.

Where the testator made a full disposition of his property, directing that the interest of his real and personal estate be applied by his wife for the benefit of herself and children, and, on her second marriage or death, deprived her of all power and benefit under the will, and added a subsequent clause directing that his executors shall order all his property, "both" freehold and leasehold, to be sold, the word "both" should be construed as if the testator had said "including." *Lachlan v. Reynolds*, 9 Hare, 796, 799.

Pub.Acts 1895, No. 95, provided for the compulsory education of children between the ages of 8 and 14 years, and in cities between the ages of 7 and 16 years. *Pub.Acts* 1901, No. 83, provided for such education between the ages of 8 and 15, and in cities between 7 and 15. *Acts* 1905, No. 200, provided

In general—Cont'd

for such education of children between and including the ages of 7 and 15 years. Held, that the latter statute does not apply to children during the fifteenth year and until they become 16, as the word "including" has no force to extend that limit beyond the time specifically designated. *Jackson v. Mason*, 108 N.W. 697, 698, 145 Mich. 338.

The word "including," according to common usage, is susceptible of different shades of meaning. It may be used in the sense to comprise or embrace; to confine or to contain; to express the idea that a thing in question constitutes a part only of the contents of some other thing; as a word of enlargement, and ordinarily implying that something else has been given beyond the general language which precedes it; to add to the general clause a species which does not naturally belong to it. It is frequently used as the equivalent of "also." *State v. Montello Salt Co.*, 98 P. 549, 551, 34 Utah, 458.

For fraudulent transfer to hinder, delay or defraud a creditor to constitute act of bankruptcy, creditor need not be one holding a claim provable in bankruptcy at time of transfer. 11 U.S.C.A. § 21, sub. a (1). Phrase shall "include," as used in Bankr. Act § 1 (9), 11 U.S.C.A. § 1 (9), cannot reasonably be read to be equivalent of "shall mean" or "shall include only" so as to restrict word "creditor" to those whose claims are provable at time of fraudulent conveyance, in view of subsections 6, 7, 17, and 19, 11 U.S.C.A. § 1 (6, 7, 17, 19), showing that phrases shall "include" and "shall mean" are not used synonymously or loosely, but are used with discrimination and with a purpose to give to each a meaning not attributable to the other. *American Surety Co. of New York v. Marotta*, Mass., 53 S.Ct. 260, 287 U.S. 513, 77 L.Ed. 466.

Where the Minnesota Supreme Court, in determining definitely the meaning of the statute providing for the care and commitment of "psychopathic personalities," stated that section defining a "psychopathic personality" was intended to include those persons who, by habitual course of misconduct in sexual matters, have evidenced an utter lack of power to control their sexual impulses and who, as a result, are likely to inflict injury on the objects of their uncontrolled de-

In general—Cont'd

sire, the court used the word "include" as defining the entire class of persons to whom the statute applies and not as describing merely a portion of a larger class, and, in advance of a decision by the state court applying the statute to persons outside that definition, the United States Supreme Court should not adopt a construction which would render the provision of doubtful validity. *M. S.A. § 526.09. State of Minnesota ex rel. Pearson v. Probate Court of Ramsey County, Minn.*, 60 S.Ct. 523, 525, 309 U.S. 270, 84 L.Ed. 744, 126 A.L.R. 530.

Under lease providing that tenant should pay all carrying and maintenance charges "including" taxes, "assessments," etc., tenant held liable only for annual installments for permanent improvement of street falling due during term of lease. Word "including" in such lease immediately after the words "carrying and maintenance charges" was evidently intended to specify as a class some of the "charges" contemplated and to limit the liability of the tenant to such assessments as were in the nature of carrying and maintenance charges, and the word "assessments" being ejusdem generis, and referring to obligations recurring at annual, seasonal, or other frequent intervals or current expenses, since accompanying words did not connote permanency. *Baker v. Schleyer*, 253 N.Y.S. 351, 352, 233 App.Div. 584.

Under Income Tax Law, § 350, subd. 7, as amended by Laws 1920, c. 691, providing that, for the purpose of determining liability to the income tax imposed by article 16, the word "resident" "includes" any one who was at any time during the last six months of the calendar year a resident of the state, the entire income from property outside as well as within the state, belonging to an actual resident, who never resided outside the state, is subject to taxation, though he died before the last six months of the calendar year; the word "includes" being used merely to specify the particular case out of abundant caution, to render certain what might have been doubtful, where residents become nonresidents and vice versa during the calendar year. *People ex rel. Woolworth's Estate v. State Tax Commission*, 192 N.Y.S. 772, 774, 200 App.Div. 287.

Statute authorizing distraint of delinquent taxpayer's goods, "including" stocks,

INCLUDE

In general—Cont'd

securities, bank accounts, and evidences of debt, held not intended to exempt intangible property not listed, such as annuity policy, although "bank accounts" was added in 1924, rule that expression of one thing is exclusion of another being unavailable. "Including" has various shades of meaning, sometimes of restriction and sometimes of enlargement, and as used in 26 U.S.C.A. (I. R.C.1954) § 6331(a, b), evidences caution to point out certain classes of property which Congress was fearful a collector might overlook, and was not intended to limit distraint to tangible property and to specified classes of intangibles. Moreover, in a true if not a colloquial sense, an annuity policy is an "evidence of debt." *Cannon v. Nicholas*, C.C.A. Colo., 80 F.2d 934, 936.

Addition to and also

A bequest of \$14,000 including certain notes, etc., is to be construed as embracing or constituting the notes as a part of the \$14,000, and not to mean that the notes are to pass in addition to that sum. *Henry's Ex'r v. Henry's Ex'r*, 81 Ky. 342, 344.

In "diamonds * * * not advanced, * * * including miners' diamonds," in *Tariff Act July 24, 1897, c. 11, § 2, Free List, par. 545, 30 Stat. 202*, "including" is used as a word of addition, rather than of specification. *Sullivan Machinery Co. v. U. S.*, C.C. N.Y., 168 F. 561, 562.

Word "including," as used in *West's Ann. Civ.Code*, § 2338, making principal liable for negligent acts of agent, and having reference to wrongful acts of agent, is equivalent to "and also" or "as well as." *Miller v. Citizens' Nat. Trust & Savings Bank of Los Angeles*, 36 P.2d 1088, 1090, 1 Cal.App.2d 470.

The use of the word "including," in a legacy of \$100, including money trustee in a certain bank, cannot be construed as meaning in addition to, and therefore the devisee is not entitled to the sum of \$100 in addition to the sum trustee at the bank, but only \$100, including such sum. *Brainard v. Darling*, 132 Mass. 218, 219.

Under the will of one having two children, F. and H., in terms giving to "each of my children and H." certain lands, then giving the balance of his lands to his wife for

Addition to and also—Cont'd

life, with remainder to H., and then giving to F. \$5, the first devise is to the two children, the word "and" being used in the sense of "including" probably to emphasize the fact that testator wanted H. to share in such lands notwithstanding the devise of the remainder was to her alone. *Finch v. Hunter*, 230 S.W. 553, 554, 148 Ark. 482.

"Include" is defined as "to confine within, to hold, to attain, to shut up"; and synonyms are "contain," "inclose," "comprise," "comprehend," "embrace," and "involve." *Webst.Dict.* So that, as used in *Comp.Laws S.D. § 1409*, providing that the sheriff shall be entitled to certain fees for summoning jurors, including mileage, the sheriff is not entitled to the mileage in addition to the fee. *Neher v. McCook Co.*, 78 N.W. 998, 999, 11 S.D. 422.

In construing the provision in paragraph 699, *Tariff Act July 24, 1897, c. 11, § 2, Free List, 30 Stat. 202*, for "round unmanufactured timber including pulp woods," held, that the pulp wood subjected to the rossing process, whereby the bark, skin, and rough places are removed, is not manufactured in any true sense; also that it is not necessary that the "pulp woods" should be "round unmanufactured timber," "including" being used as equivalent to "also." *U. S. v. Pierce, Vt.*, 147 F. 199, 77 C.C.A. 425, citing *Hiller v. U. S.*, N.Y., 106 F. 73, 74, 45 C.C.A. 229.

Enabling Act Utah, Act Cong. July 16, 1894, c. 138, 28 Stat. 109, § 8, granted to the state public lands to the extent of two townships to be reserved for the state university, and in addition 110,000 acres to be selected and located as provided, and "including" all the saline lands in said state, for the use of the university. Held, the word "and" before "including" was used to express the relation of addition, and the word "including" was used in the sense of "also," so that the state was entitled to all the saline land, without selection, in addition to the 110,000 acres to be selected and located. *State v. Montello Salt Co.*, 98 P. 549, 551, 34 Utah, 458.

Workmen's Compensation Commission had authority under *Workmen's Compensation Act, § 17(a), V.A.M.S. § 287.190; Laws 1925, p. 384, V.A.M.S. § 287.010*, to allow compensation for permanent partial disability by reason of loss of portion of finger with-

Addition to and also—Cont'd

out evidence of loss of earning power by reason of injury; the provision that other injuries shall "include" permanent injuries causing loss of earning power indicating that other permanent injuries referred to comprehends injuries other than those causing loss of earning power as well as those that do. *Lynch v. Gleaner Combine Harvester Corporation*, 17 S.W.2d 554, 556, 223 Mo.App. 196.

The word "including" may have the sense of addition, and of the word "also," or may merely specify particularly that which belongs to the genus. It is the participle of the word "include" which the Century Dictionary defines as "to confine within something; hold as in an inclosure; inclose; contain;" "to comprise as a part, or as something incident or pertinent; comprehend; take in; as, the greater includes the less; * * * the Roman Empire included many nations." Act Cong. June 16, 1894, § 8, 28 Stat. 109, granting to the state of Utah certain lands to the extent of two townships in quantity, and in addition 110,000 acres, to be selected, "and 'including' all the saline lands in said state," grants only such saline lands as should be selected as a part of the other lands granted and not specifically located. *Montello Salt Co. v. State of Utah*, 31 S.Ct. 706, 708, 221 U. S. 452, 55 L.Ed. 810, Ann.Cas.1912D, 633, citing *Hiller v. U. S.*, 106 F. 73, 74, 45 C.C.A. 229.

1 Stat. 73, relating to the jurisdiction of courts, declares that the District Courts shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on the waters which are navigable from the sea, etc., and of all seizures on land, or other waters other than aforesaid made, and of all suits for penalties and forfeitures incurred under the laws of the United States. Held, that the term "including" classes the seizures enumerated with civil causes of admiralty and maritime jurisdiction, thereby shutting out a trial by jury. It also has a cumulative meaning, and extends the jurisdiction of the court to cases of such seizure. *The Little Ann*, 15 Fed.Cas. 623.

The word "including" may have the sense of addition, and of the word "also," or

Addition to and also—Cont'd

may merely specify particularly that which belongs to the genus. It is the participle of the word "include" which the Century Dictionary defines as "to confine within something; hold as in an inclosure; inclose; contain;" "to comprise as a part, or as something incident or pertinent; comprehend; take in; as, the greater includes the less; * * * the Roman Empire included many nations." Act Cong. June 16, 1894, § 8, 28 Stat. 109, granting to the state of Utah certain lands to the extent of two townships in quantity, and in addition 110,000 acres, to be selected, "and 'including' all the saline lands in said state," grants only such saline lands as should be selected as a part of the other lands granted and not specifically located. *Montello Salt Co. v. State of Utah*, 31 S.Ct. 706, 708, 221 U.S. 452, 55 L.Ed. 810, Ann.Cas.1912D, 633, citing *Hiller v. U. S.*, N.Y., 106 F. 73, 74, 45 C.C.A. 229.

Comprise synonymous

In patent law, "comprising" is synonymous with "including." *In re Bertsch*, Cust. & Pat.App., 132 F.2d 1014, 1019.

"Include" means to comprise as a component part, to enclose within, contain, embrace. *People v. Lane-Marvey Corp.*, 114 N.Y.S.2d 467, 471, 203 Misc. 413.

The word "includes", as used in *Police-men's Minimum Wage Act* defining policemen meant "comprises." *Patteson v. City of Peoria*, 47 N.E.2d 867, 873, 318 Ill.App. 245.

"Include," as used in a devise of land, means "to confine within, to hold, to attain, to shut up," and synonyms are "contain, inclose, comprise, comprehend, embrace, and involve." *Miller v. Johnston*, 91 S.E. 593, 597, 173 N.C. 62.

"Include" is defined by the Century Dictionary as (1) "to confine within something; hold as in an inclosure; inclose; contain." (2) "To comprise as a part, or as something incident or pertinent; comprehend; take in; as the greater includes the less." *Montello Salt Co. v. State of Utah*, 31 S.Ct. 706, 708, 221 U.S. 452, 55 L.Ed. 810, Ann.Cas.1912D, 633.

The enumeration of class "B" securities in statute is exclusive, notwithstanding re-

Comprise synonymous—Cont'd

vision of statute, which originally provided that such class of securities should "comprise" enumerated securities, to provide that such class should "include" enumerated securities. S.H.A. ch. 121½, § 100. Bunge v. Kirchoff, 251 Ill.App. 119.

The word "including" may be used in sense of comprising or embracing, containing or expressing idea that a thing constitutes only part of contents of some other thing, enlarging, or comprising as part or something incident or pertinent. Red Hook Cold Storage Co. v. Department of Labor, 64 N.E.2d 265, 267, 295 N.Y. 1, 163 A.L.R. 439.

The word "including", in statute authorizing creation of corporate co-operatives to conduct any agricultural or mercantile business including dealing with or by associations of agriculturists, of agricultural, dairy, or similar products, meant comprising, comprehending or embracing, and restricted rather than enlarged the scope of the business permitted. State, on Inf. Huffman, v. Sho-Me Power Co-op., 191 S.W.2d 971, 976, 977, 354 Mo. 892.

Webster defines the word "include" as synonymous with "comprise," "comprehend," or "contain," and gives this apt example: "The word duty includes what we owe to God, to our fellow men, and to ourselves. It also includes a tax payable to the government." Farmers' Nat. Bank of New Jersey v. Cook, 32 N.J.L. (3 Vroom) 347, 351.

In Tax Law, § 330, providing that the word investments as used shall "include" any bond, note, debt, etc., the word "include" is used as synonymous with comprise or comprehend, the legislative intent being that only the securities specified in section 330 are to be deemed investments, within sections 331 and 221b. In re Sheppard's Estate, 179 N.Y.S. 409, 412, 189 App.Div. 370.

"Including" means "comprising," which imports addition. Constitutional amendment, imposing tax on gross receipts of "all railroad companies, including street railways," until changed by Legislature, authorized latter to fix different rate for railroad companies than for street and interurban railway companies. West's Ann.Const. art. 13, § 14, adopted in 1910; Pol.Code, § 3664a, as amended by St.1921, p. 20, § 1. People v. Southern Pac. Co., 290 P. 25, 30, 209 Cal. 578.

Consisting of distinguished

"The words 'consisting of' are not synonymous with the word 'including,' but, where something is described as consisting of certain other things, it always implies that there may be others which are not mentioned." Farish v. Cook, 6 Mo.App. 328, 331.

"Consisting of" and "including" are not synonymous, and where a bequest is subsequently qualified by an inventory of property bequeathed, with the heading "consisting of," it determines the extent of the bequest; whereas, a similar provision, followed by "including," would not impliedly exclude items not mentioned. Baker v. Soltan, 118 A. 682, 683, 94 N.J.Eq. 544.

Embrace synonymous

The word "included," as used in section 1721 of the General Statutes of Florida of 1906, F.S.A. §§ 95.16, 95.17, relating to adverse possession under color of title, means inclosed, confined, embraced; and where a written instrument is proffered in evidence as color of title, purporting on its face to convey real estate, but the description of which is so defective as to fail to describe any land, such instrument is not admissible under the statute, but should be excluded for uncertainty. Boley v. McMillan, 63 So. 703, 706, 66 Fla. 159.

In Revenue Act 1926, § 200(a), 44 Stat. 10, 26 U.S.C.A. Int.Rev.Acts, page 145, provision that the term "taxable year" "includes" a period of less than twelve months for which separate return is made does not mean that term "taxable year" must under all circumstances be construed as only a fractional part of year to the exclusion of alternative definitions of calendar or fiscal year, especially since word "includes," although sometimes synonymous with "means," is also used as equivalent of "comprehends" or "embraces." Helvering v. Morgan's, Inc., 55 S.Ct. 60, 293 U.S. 121, 79 L.Ed. 232.

Under 3 Mills' Ann.St.Rev.Supp. § 4389a, authorizing the city council to annex by ordinance any tract adjoining any first-class city, but not within its limits, if it has been platted, or whenever any tract is included or embraced within corporate limits, but has not been made a part of the city, the boundary line must be unbroken and separate property within from that without at

Embrace synonymous—Cont'd

every point, and, when property is excluded from its limits by its boundary line, it is not "included" or "embraced" within the city within the statute, so as to authorize annexation; those words being synonymous. *City of Pueblo v. Stanton*, 102 P. 512, 514, 45 Colo. 523.

Where the purchaser of a mining claim agreed that when he should have realized \$55,625, as net profits, he would pay one-half of the additional net profits until the sellers had received an additional sum, the contract providing that the "net profits hereinbefore mentioned shall be construed to mean the net profits of the entire claim computed * * * in the following manner: * * * From the gross amount of gold produced * * * shall be deducted the actual expense of the labor engaged in the mining operations thereon, including the wages of the men and reasonable compensation for any teams used, also cost of board and lodging for men employed," etc.—such contract could not be construed as including in the deductions the cost of all materials and supplies necessary to enable the men employed to perform their work, "including" being a term of enlargement only when introducing the specific elements constituting the enlargement of the preceding language; the word being used in the sense of its synonyms, "comprising, comprehending, embracing." *Blanck v. Pioneer Mining Co.*, 159 P. 1077, 1079, 93 Wash. 26.

Offense

Manslaughter committed in the driving of a vehicle without gross negligence as defined in subdivision 3(b) of § 192 is a "misdemeanor" and an "included offense" under charge of manslaughter as defined in subdivision 3(a), involving commission of an unlawful act, not amounting to felony, with gross negligence, etc. *People v. Rodgers*, 210 P.2d 71, 94 Cal.App.2d 166.

Part of

"Included" has the meaning of embraced as a component part. *Reynard v. City of Caldwell*, 42 P.2d 292, 296, 55 Idaho, 342.

Word "including" in deed of irrigation system, would be interpreted as relating only to things which were part of the irrigation

Part of—Cont'd

system and as not relating to strip of land running diagonally across two sections, which was not part of system. *Fresno Irr. Dist. v. Smith*, 136 P.2d 382, 386, 58 Cal.App.2d 48.

Under statute defining land, real estate and real property as used in tax law as including all wharves and piers "including" value of right to collect wharfage, cramage or dockage thereon, word "including" means as a part of, or as incidental to, or in conjunction with wharf or pier or bulkhead and does not define a separate and independent type of real property subject to taxation. In *re Harlem River Drive*, 102 N.Y.S.2d 360, 364, 199 Misc. 281.

"Include" has two shades of meaning. It may apply where that which is affected is the only thing included, and it is also used to express the idea that the thing in question constitutes a part only of the contents of some other thing. It is more commonly used in the latter sense. In *LSA-C.C. art. 2924*, which provides that the owner of any promissory note, bond, or other written evidence of debt, for the payment of money, to order or bearer, or transferable by assignment, shall have a right to collect the whole amount of such promissory note, notwithstanding it may include a greater rate of interest or discount than 8 per cent. per annum, etc., construing the words "may collect the whole amount of such promissory note," etc., "notwithstanding such promissory note," etc., together with the phrase "may include a greater rate of interest," etc., it implies that the character of writings in view were those which evidenced a complete contract, including principal and interest of its own, and not one which, properly speaking, had no capital, and included nothing but usurious interest upon another contract. *Dumas v. Boulin, La.*, 1 McGlain, 275, 278.

"Included," as used in Act Feb. 28, 1891, c. 384, 26 Stat. 796, 43 U.S.C.A. §§ 851, 852, providing that indemnity should be granted where certain sections were included within any reservation, is used in its secondary sense, as defined by Webster: "To comprehend, as a genus the species, the whole a part"—and relates to those sections which are a constituent part of the reservation, but not to those which, although shut in by its

INCLUDE

Part of—Cont'd

outer lines, are distinct from the reservation. In defining the word "include" the court said: "Webster defines a nut to be 'the fruit of certain trees and shrubs, consisting of a hard shell inclosing a kernel.' Thus it appears that the word 'shell,' in the expression 'The shell of a nut includes the kernel,' indicates with certainty that the verb 'includes' has its primary meaning, namely, 'to confine within, to shut up,' etc. If the expression were, 'The nut includes the kernel,' there the verb 'includes' would have its secondary signification, and imply that the kernel was a part of the nut." Hibberd v. Slack, C.C.Cal., 84 F. 571, 577.

Under will devising and bequeathing to testator's son testator's dry-cleaning and dyeing "business," "including" machinery, fixtures, stock, and all other personal property located at specified addresses, testator's son under rule of ejusdem generis held not to take real estate owned by decedent where he carried on part of his dyeing business especially where there was a residuary clause whereby remainder of testator's estate was given to others. Surrogate's Court Act, § 202, subds. 4, 9. The word "including," according to common usage, is susceptible of different shades of meaning. It may be used in the sense to comprise or embrace; or to contain or to express the idea that a thing in question constitutes a part only of the contents of some other thing; as a word of enlargement; in other words, to comprise as a part, or as something incident or pertinent. The expression "business" may be an uncertain one. It may mean property, or it may mean good will only. The word "business" denotes the employment, or occupation, in which a person is engaged to procure a living. "Business," in the sense in which occupation is applied, does not, generally speaking, mean property. It means the activity, the energy, the capacity, and the operations by which results are reached. In re Krey's Will, 277 N.Y.S. 269, 154 Misc. 421.

Word of enlargement

The words "include" and "including" when used in statute are ordinarily used as words of enlargement, not limitation. Koenig v. Johnson, 163 P.2d 746, 750, 71 Cal.App. 2d 739.

Word of enlargement—Cont'd

The word "includes" is generally a term of enlargement and not of limitation, and "including" is not one of all-embracing definition, but connotes an illustrative application of the general principle. U. S. v. Gertz, C.A. Hawaii, 249 F.2d 662, 666.

Term "including" is a word of enlargement rather than a word of limitation, and is described as a present participle which often governs the subject, and used in the same sense as "inclusive of." *Prairie Oil & Gas Co. v. Motter*, D.C.Kan., 1 F.Supp. 464, 468.

Ky.St. § 2835, authorizing city to reconstruct sidewalks "including" curbing at cost of abutting property owners, gives power to reconstruct either, as term "sidewalks including curbing" means the same as "sidewalks and curbing." *Wyatt v. City of Louisville*, 267 S.W. 146, 147, 206 Ky. 432.

Word "including" in definition of "factory" by Labor Law shows intent to broaden, not narrow, concept of factory and to illustrate, rather than itemize precisely, factory operations. *Red Hook Cold Storage Co. v. Department of Labor*, 64 N.E.2d 265, 267, 295 N.Y. 1, 163 A.L.R. 439.

The word "include" within policy providing loss by aircraft shall include loss by falling aircraft, or object falling therefrom was word of enlargement and not of limitation and insured would be entitled to recover if damage to building were caused by sonic boom occurring when jet aircraft flying at low altitude passed over area in which building was located. *Alexander v. Firemen's Ins. Co.*, Tex.Civ.App., 317 S.W.2d 752, 755.

"Including" is generally employed as a term of enlargement, not of limitation or enumeration, and, when used in a will, implies that something else is given beyond what is covered by the general language which preceded it. *Carr v. Railton*, 18 A.2d 646, 654, 66 R.I. 225.

The term "include" as used in provision of the Fair Labor Standards Act that an employee "includes" any individual employed by an employer, is not necessarily a word of enlargement. *Blankenship v. W. U. Tel. Co.*, D.C.W.Va., 67 F.Supp. 265, 267.

Word of enlargement—Cont'd

The term "including" may be used in a lease in a restrictive sense as a word of limitation or enumeration, or may be used as a term of enlargement signifying that something else is comprehended beyond the general language preceding the term. *Publishers Bldg. Co. v. Miller*, 172 P.2d 489, 495, 25 Wash.2d 927.

In will disposing of personal effects "including * * * my silver, * * * linens and china", "including" was a word of enlargement meaning "together with", "as well as", or "also", and did not restrict "personal effects" to personalty within the classification of silverware, linens, and china. In *re Douglass' Estate*, 161 P.2d 66, 69, 70 Cal.App. 2d 279.

The word "includes" is not ordinarily a word of limitation but rather of enlargement. *Oil Workers Intern. Union, CIO v. Superior Court, Contra Costa County*, 230 P. 2d 71, 106, 103 Cal.App.2d 512.

Under statute declaring that disobedience of any lawful judgment, order, or process of court is a contempt of authority of that court and statutes, providing for procedure in contempt proceedings, within statute providing that word person "includes" a corporation as well as a natural person, quoted word is used as a word of enlargement, not of limitation. *Oil Workers Intern. Union, CIO v. Superior Court, Contra Costa County*, 230 P.2d 71, 106, 103 Cal.App.2d 512.

The word "including" as used in section 2020, Gen.St.1906, as amended by Laws 1907, c. 5707, F.S.A. § 73.16, providing that in condemnation proceedings all costs of the proceedings shall be paid by petitioner, including a reasonable attorney's fee, is a word of enlargement, and is used in the sense of "and." *Jacksonville Terminal Co. v. Blanchard*, 82 So. 300, 301, 77 Fla. 855.

Under provision of Revenue Act for tax on income of "estates," "including" certain types of income, income falling within types enumerated would be taxable, notwithstanding that it was not income of an "estate"; "including" being a term of enlargement. Revenue Act 1926. § 219(a), 44 Stat. 32, 26 U.S.C.A.Int.Rev.Acts, page 174. U. S. v. National City Bank of New York, D.C.N.Y., 21 F.Supp. 791, 795.

Word of enlargement—Cont'd

Include * * * has * * * two shades of the same meaning. It may apply where that which is affected is the only thing included, and it is also used to express the idea that the thing in question constitutes a part only of the contents of some other thing. It is more commonly used in the latter sense. Including is not a word of limitation, rather is it a word of enlargement, and in ordinary signification implies that something else has been given beyond the general language which precedes it. *Achelis v. Musgrove*, 101 So. 670, 672, 212 Ala. 47.

C.S. § 3423, as amended by Laws 1929, c. 216, provides that sale by county of property acquired through tax deed shall vest in purchaser all title and interest of county, "including" all delinquent taxes which have become a lien subsequent to the delinquency for which the tax deed was issued. The word "including" is generally a term of enlargement, and may be used as a word of addition, indicating something not included rather than of specification, being sometimes used as equivalent to "also" or "and." *Heffner v. Ketchen*, 296 P. 768, 770, 50 Idaho 435.

The word "including" has sometimes been interpreted to express the idea that the thing included constitutes a part only of some other things and may be used as a word of enlargement in the sense of "also" though generally it is not a word of limitation. Words "et cetera" in will following bequest of all of testatrix' personal property, "including jewelry and clothing, etc.," were confined to articles ejusdem generis only, and household furniture passed under bequest. 20 P.S. § 221. In *re McGlathery's Estate*, 166 A. 886, 887, 311 Pa. 351.

The word "including" is sometimes used as a word of enlargement and at other times as one of restriction; sometimes it is used as meaning "also", "as well as", and "for example"; sometimes it is used to specify particularly that which belongs to the class already mentioned in more general terms, and also in an accumulative sense and as classing that which follows with that which has already been mentioned. *Lowry v. City of Mankato*, 42 N.W.2d 553, 559, 231 Minn. 108.

The words "include" and "including" are regarded as being identical or equivalent to each other and, unless the context requires,

INCLUDE

Word of enlargement—Cont'd

they are never regarded as being identical with or equivalent to "mean and include" or such less elastic words as "meant", "meaning", or "by which is meant". While the word including is susceptible of different shades of meaning, it is generally employed as a term of enlargement and not a term of limitation or enumeration. *Houston Bank & Trust Co. v. Lansdowne*, Tex.Civ.App., 201 S.W.2d 834, 838.

In statute permitting participation of city fire department in mutual aid program and allowing city to answer calls for assistance from nearby towns, wherein it was stated that calls for assistance include any call for aid resulting from operation of recognized plan for furnishing of mutual aid in cases of fire or other public emergency, "include" was used as word of enlargement or as indicating reverse of restrictive intention, specifying particular case inserted out of abundant caution. *City of Watertown v. Town of Watertown*, 139 N.Y.S.2d 198, 206, 207 Misc. 433.

The words "include" and "including" are regarded as being identical or equivalent to each other and, unless the context requires, they are never regarded as being identical with or equivalent to "mean and include" or such less elastic words as "meant", "meaning", or "by which is meant". While the word "including" is susceptible of different shades of meaning, it is generally employed as a term of enlargement and not a term of limitation or enumeration. *Houston Bank & Trust Co. v. Lansdowne*, Tex.Civ.App., 201 S.W.2d 834, 838.

Under statute providing for creation of county employees' retirement system, and defining "county employee" to include all persons who receive more than 50 per cent of all compensation for personal services from county funds, in determining whether "include" was used as a term of enlargement or limitation, the word "include" is not ordinarily a word of limitation, but, rather, of enlargement. *Skillman v. Abruzzo*, 88 N.W. 2d 420, 421, 422, 352 Mich. 29.

Where under 1943 Act, it was left to discretion of county board of supervisors to determine who were employees permitted to come within ordinance providing for county employees' retirement system, and 1945

Word of enlargement—Cont'd

amendment defined "county employee" to "include" all persons who receive more than 50 per cent of all compensation from county funds, word "include" was meant to enlarge rather than limit, and hence ordinance amendment which substituted term "40%" for "50%" in its definition of "county employee" was valid, so that judge of recorder's court, 42 per cent of whose salary was received from county, was entitled to be included within retirement system. *Skillman v. Abruzzo*, 88 N.W.2d 420, 421, 422, 352 Mich. 29.

Where open cover contract with Lloyd's underwriters contained "warehouse to warehouse clause" providing for insurance for 15 or 30 days after goods were discharged from vessel at final port, and certificates of insurance recited "includes risk for additional 30 days after discharge from vessel" but thereafter mentioned "all risks to customer's warehouse also particular average and loss in customs," and contained "Cargo Clause (War-time Extension)" providing for insurance until delivery to "final warehouse at the destination named in the policy," which was Santiago, Chile, via Valparaiso, and insured had paid a higher premium for extended coverage, the restrictive clause of "warehouse to warehouse clause" was in effect deleted and word "includes" would not be read as "limits," so that shipments were insured while reasonably delayed in customs in Valparaiso, awaiting release of American dollars. *Industrial Waxes, Inc. v. Brown*, D.C.N.Y., 160 F.Supp. 230, 236.

Policy indemnifying employer against liability for injuries of employees employed in agricultural pursuits and duties incident thereto, "including occasional sawmilling," included injuries to employee engaged in operation of sawmill. The word "including" is defined as comprehending, comprising, taking, containing, embracing, and has restrictive or enlarged meaning depending on circumstances. As used in typewritten policy provision, "agricultural pursuits and all necessary duties incident thereto including occasional sawmilling (not in excess of three weeks), cider press and hauling," it should be held to mean something beyond general language which immediately precedes it. *Weller v. Grange Mut. Casualty Ins. Co. of*

Word of enlargement—Cont'd

Harrisburg, 161 A. 615, 616, 105 Pa.Super. 547.

The broad grant of continuing jurisdiction in the Industrial Accident Commission to rescind, amend, or alter any decision for a period of 245 weeks after the injury as conferred by the general terms of Workmen's Compensation Act, § 20, subd. "d," is not to be limited by the more particular reference in that section to the Commission's right "to review, grant, regrant, diminish, decrease, or terminate" any award upon the ground that the "disability of the person in whose favor such award was made has either recurred, increased, diminished or terminated"; the word "including" in such section not being a word of limitation, but rather a word of enlargement, and in ordinary signification implying that something else has been given beyond the general language that precedes it. *Kennedy v. Industrial Accident Commission of California*, 195 P. 267, 271, 50 Cal.App. 184.

The words "includes" and "including" are regarded as being identical or equivalent to each other, and unless the context in which such words are used requires, they are never regarded as being identical with or equivalent to "mean and include" nor with such less elastic words and terms as "meant" or "meaning" or "by which is meant." While the word "including" is susceptible of different shades of meaning, it is generally employed as a term of enlargement and not a term of limitation or of enumeration. The statute imposing by subdivision (a) an occupation tax on every manufacturer of carbon black is not restricted by subdivision (f) to the methods of making carbon black described therein, because the term "carbon black," as stated therein, "includes" certain types of manufacture, on the ground that the term "includes" is identical to the term "by which is meant," since the latter phrase is less elastic than the former, and the word "includes" is not ordinarily a word of limitation, but rather of enlargement. *Vernon's Ann.Civ.St. art. 7047, subd. 45(a, f). Peerless Carbon Black Co. v. Sheppard*, Tex.Civ.App., 113 S.W.2d 996, 997.

Word of limitation

"Includes" is a word of limitation. *Ex parte Martinez*, 132 P.2d 901, 903, 56 Cal.App. 2d 473.

Word of limitation—Cont'd

As used in will, "including" is not restrictive or exclusionary. *In re Douglass' Estate*, 161 P.2d 66, 69, 70 Cal.App.2d 279.

Where a general term is followed by the word "including", the primary import of words following is to indicate restriction. *Application of Spartan Airlines*, 185 P.2d 925, 199 Okl. 305.

Where a general term in statute is followed by the word "including", the primary import of specific words following quoted word is to indicate restriction rather than enlargement. *Powers ex rel. Doyon v. Charron, R.I.*, 135 A.2d 829, 832.

Where a general term is followed by the word "including", the primary import of words following is to indicate restriction. *Application of Central Airlines*, 185 P.2d 919, 924, 199 Okl. 300.

"Includes" as used in the Fair Labor Standards Act provision that "employee" includes any individual employed by an employer is a term of limitation to indicate what belongs to a genus rather than a term of enlargement. *Blankenship v. W. U. Tel. Co.*, C.C.A.W.Va., 161 F.2d 168, 169.

Although "includes" is ordinarily not a word of limitation, a legislative declaration that "public utility" includes those performing certain enumerated services is not a declaration that those performing other services, not encompassed by the services enumerated, are public utilities subject to control and regulation by Public Utilities Commission. *Television Transmission, Inc. v. Public Utilities Commission*, 301 P.2d 862, 863, 47 C.2d 82.

"Including," as used in *Comp.St. p. 578, § 9*, providing that the clerk must insert in the entry of judgment the necessary disbursements, "including the fees of officers allowed by law, the fees of witnesses, of commissions, the compensation of referees, and the expense of printing papers on appeal," does not necessarily confine the items of disbursements recoverable to those enumerated. *Cooper v. Stinson*, 5 Minn. 522 (Gil. 416).

The word "including," in a mortgage on a railroad, etc., including all depots, warehouses, and structures, etc., does not indicate a restrictive intention, but rather the contrary. These particulars, having been

INCLUDE

Word of limitation—Cont'd

already more particularly described, may have been inserted out of abundant caution, and not for the purpose of confining the mortgage to the railway and its superstructure. *Calhoun v. Memphis & P. R. Co.*, 4 Fed.Cas. 1045, 1047.

"Including" is not a word of limitation. Rather is it a word of enlargement, and in ordinary signification implies that something else has been given beyond the general language which precedes it. Neither is it a word of enumeration, as by the express terms of the language of gift. In a bequest "of all my personal property," including furniture, plate, etc., the word "including" was not held to limit the bequest to the property enumerated after the wording, but to cover all of testator's personal property. *In re Goetz*, 75 N.Y.S. 750, 751, 71 App.Div. 272.

Steel manufacturing corporation's trust mortgage, covering real estate and fixed property of company and all mills, factories, etc., expressly including certain specific things mentioned as being located on described real estate, held not to cover merely specific property particularized following word "including," or property of like nature, since such word is not a term of limitation, notwithstanding ejusdem generis rule. *Cunningham v. Sizer Steel Corporation*, D.C.N.Y., 1 F.2d 337, 338.

Where a railroad company demised property of every description, "including" its railroad and all real estate, rights, and appurtenances connected therewith, also all buildings, etc., and equipment "and all personal property and estate owned by said lessor," also all franchises, etc., the word "including" did not restrict the subclauses to distinctively railroad property, but each subclause covered all property of the lessor fairly included by its terms and not excluded by other terms of the lease. *Gray v. Massachusetts Cent. R. Co.*, 50 N.E. 549, 554, 171 Mass. 116, 124, 125.

The Milk Control Law, requiring Milk Control Commission to fix minimum prices of milk, "including" milk sold by milk dealers to other such dealers, consumers and stores and by stores to consumers, empowers commission to regulate prices of milk sold to United States Government, though it is not included in any of enumerated classes. 31

Word of limitation—Cont'd

P.S. §§ 700j—101, 700j—801, 700j—802. The word "including" is sometimes used as word of limitation meaning "including only", but is more often used as word of extension or enlargement. *Penn Dairies v. Milk Control Commission*, 26 A.2d 431, 433, 344 Pa. 635.

The word "including", as used in the Gross Income Tax Act of 1933, providing that all receipts by reason of the investment of capital, "including" interest, discount, rentals, royalties, fees, commissions, or other emoluments, however designated, is used as a word of limitation, though sometimes in exceptional cases as a word of enlargement it is used as meaning "also" or "in addition to", and the words "interest, discount, rentals, royalties, fees, commissions or other emoluments, however designated" designate the type of receipts from the investment of capital which the legislature intended to tax by the provision. *Burns' Ann.St. § 64-2601(f)*. *Department of Treasury of Indiana v. Muesel*, 32 N.E.2d 596, 598, 218 Ind. 250.

Under Comp.Laws, § 345, authorizing a townsite trustee before issuing a deed of lots to receive for counsel fees, and for moneys expended in the acquisition of the title and for the administration of the trust, including reasonable charges for time and services while employed in such trust, not exceeding the sum of \$1 for each lot, the word "including," shows that the charges for time and services of the trustee were to be embraced within the maximum charge, which was also to be inclusive of counsel fees and for moneys expended in the acquisition of the title and the administration of the trust. *State ex rel. Jennett v. Stevens*, 116 P. 601, 34 Nev. 128.

Public Health Law, § 161, as amended by Laws 1914, c. 319, § 170, which provides that no person shall practice medicine who has been convicted of a felony by any court, and that conviction of felony shall "include" conviction of any offense which, if committed within State of New York, would constitute a felony under the laws thereof, did not embrace conviction of felony in foreign jurisdiction where offense would not be felony under New York law, since the word "include" is used in a restrictive sense as a word of limitation, and in this connection means comprise or comprehend. *People v. Fisher*, 261 N.Y.S. 390, 145 Misc. 406.

Word of limitation—Cont'd

West's Ann.Civ.Code, § 1113, provides that the use of the word "grant" in a conveyance shall imply a covenant that the estate is free from incumbrances, at the time of the execution of the conveyance. Section 1114 provides that the term "incumbrances" includes taxes, assessments, and all liens upon realty. Held that, aside from the statutory definition, an "incumbrance," as used in the phrase "covenant against incumbrances," is any right or interest in land which may subsist in third persons to the diminution of the value of the estate to the grantee, but consistently with the passing of the fee, and both within such definition and under the statute a restrictive covenant against the use of firearms on the premises was an "incumbrance"; the word "includes" being ordinarily a word of enlargement and not of restriction. *Fraser v. Bentel*, 119 P. 509, 511, 161 Cal. 390, Ann.Cas.1913B, 1062.

INCLUDE A MARK

Under Code, § 1, defining a "signature or subscription" to "include a mark, when a person cannot write his name, his name being written near it, and witnessed by a person who writes his own name as a witness," and section 1731, requiring a chattel mortgage to be in writing, and subscribed by the mortgagor, a mortgage of personal property by one who is unable to write his name is subscribed by the mortgagor only when he has made his mark near his name, subscribed for him, and this making of his mark has been witnessed by a person who can and does write "his own name as a witness." *Houston v. State*, 21 So. 813, 814, 114 Ala. 17.

INCLUDED AS THE EQUIVALENT OF

Where testator and wife had executed an antenuptial contract providing that testator would leave his wife by will \$15,000 and that such sum was to include certain real estate at \$11,000 and \$4,000 cash and testator executed a will embodying such provisions and reciting that real estate was "included as the equivalent of" \$11,000, the quoted words meant equal in value, and hence the wife was not entitled to be reimbursed in cash the difference between \$11,000 and \$7,800 when appraised value of real estate was

only \$7,800 when testator died. *Desoe v. Desoe*, 23 N.E.2d 82, 84, 304 Mass. 231.

INCLUDED CRIME

An "included crime" is one that must necessarily be committed in the commission of another. *People v. Savarese*, 114 N.Y.S.2d 816, 834, 208 Misc. 305.

INCLUDED IN

Under will making cash bequest and stating that amount thereof was "included in" a loan secured by named debtor's personal note, use of words "included in" did not make legacy a "specific legacy" on theory that the phrase "included in" was synonymous with "a portion of" as applied to loan. The phrase "a portion of" may be defined as a component part of a given substance which may or may not be separated from the whole. The phrase "included in" is synonymous with "contained in." *In re Kilborn's Will*, 2 N.Y.S.2d 896, 899, 166 Misc. 627.

INCLUDED OFFENSE

Pointing a gun is not an "included offense" of a felonious assault. *Dunbar v. State*, 131 P.2d 116, 122, 75 Okl.Cr. 275.

To be an "included offense" all elements of lesser offense must be contained in the greater offense which contains certain elements not contained in the lesser. *Beck v. State, Ind.*, 149 N.E.2d 695, 697.

Where an offense cannot be committed without necessarily committing another offense, the latter is a necessarily "included offense" within statute making conviction or acquittal a bar to subsequent prosecution for included offense. *People v. Greer*, 184 P.2d 512, 516, 517, 30 Cal.2d 589.

The "offense" of contributing to the delinquency of a minor is necessarily "included" in the offenses of statutory rape and lewd and lascivious conduct against a child under 14 years of age within rule that acquittal or conviction of offense included in greater offense bars subsequent prosecution for greater offense. *People v. Greer*, 184 P.2d 512, 516, 517, 30 Cal.2d 589.

A proper distinction between "included and non-included offenses" in a criminal stat-

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