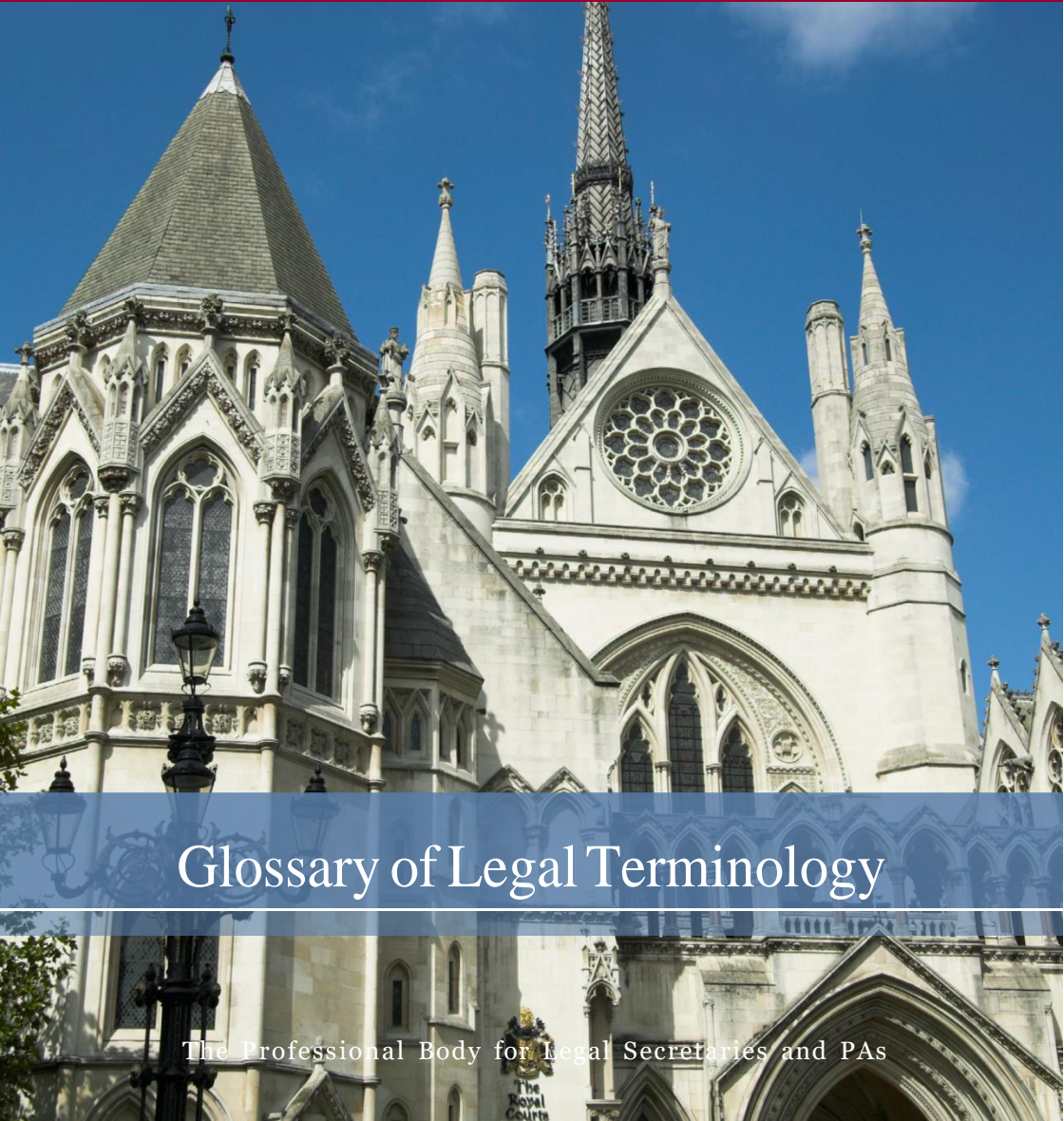




THE INSTITUTE OF LEGAL SECRETARIES AND PAs



Glossary of Legal Terminology

The Professional Body for Legal Secretaries and PAs

Glossary of Legal Terminology

Listed are some of the words and terms you may encounter in your career. In Law, you will find that Latin words and other terms are used to describe people and situations. This usage is helpful because it eliminates the need for long definitions and explanations. Latin or foreign words which have not been brought into common usage in the English language are usually written in *italics*. If you wish to delve deeper into legal terminology, you can find a legal dictionary in the Legal Resources section of our Student and Member area.

A

Ab initio: From the beginning. If something is void *ab initio* it means void from the beginning.

Abjuration: The renunciation by oath of a legal right or privilege.

Absolute: Final, complete, without conditions.

Act of God: An unforeseen event of natural causes, such as a flood or earthquake.

Actus reus: A guilty act.

Ad diem: To the appointed day.

Address for service: The address that a party in a civil action nominates as the address where he may be served with documents relating to the action. It does not need to be that person's own address - it is oftenthe address of a solicitor.

Ad hoc: For a specific purpose.

Ad idem: This indicates that two or more persons are in agreement.

Ad infinitum: Endless or forever.

Adjourned sine die: The adjournment of legal proceedings, without fixing a date when they will be recommenced.

Administration of estates: The management and distribution of a deceased persons estate.

Ad valorem: According to the value.

Affidavit: A written statement sworn under oath or affirmed before a solicitor or other person who is empowered to administer oaths. An affidavit may be used, in some cases, as evidence in court proceedings.

Alias: An assumed name by which a person is known.

Alibi: A defence given by a person that he was elsewhere at the time an offence was committed.

Alibi Warning/Notice: A warning given to the defendant on a trial on indictment informing him that if he intends to put forward an alibi at the trial as a defence, he should give notice of the alibi to the prosecution within the prescribed time.

Alternative Dispute Resolution: A term used to describe various methods of resolving disputes without going to court.

Ancillary: Additional and incidental to something.

Annul: To make void or invalid.

Antecedents: A person's past history.

Anton Piller Order: Prior to the Civil Procedure rules, this was an order issued by the High Court whereby the claimant must be permitted to enter the defendant's premises to inspect, copy or remove any documents belonging to the claimant or relating to his property. It is now called a search order.

Apportionment: To share or divide benefits or monies which more than one person either has the benefit of or

must pay.

Attest: To bear witness to or affirm that something is true.

Attestation clause: This is a clause at the end of a document, and usually in a specific form, showing that the signature of a party to the document has been witnessed by another person.

B

Bench: The judges or magistrates sitting at a court of law.

Bench warrant: An order issued by the court for the immediate arrest of someone.

Beneficiary: A person who is to benefit by receiving something under a will, or for whose benefit property is being held on trust.

Bequeath: To dispose of personal property under a will.

Bequest: Something that is bequeathed.

Breach of contract: The failure by one party to keep to his part of a contract.

C

Canon law: The ecclesiastical laws governing the Church of England.

Cause list: A list of cases which are to be heard in the Supreme Court.

Caveat: This means Let him beware. A caveat is a notice often placed with a registry, such as the Probate Registry, which prevents any action being taken on the matter without notice first being given to the person lodging the caveat.

Certiorari: See under Quashing Order.

Chattel: Property other than freehold land. There are chattels real which are interests in land and chattels personal, which is other property either tangible or intangible.

Chose in action: Something which can be owned but is intangible, such as the goodwill of a business or a copyright.

Chose in possession: Personal property.

Circumstantial evidence: Evidence which is not actually seen by a witness but strongly suggests that a fact is so because of circumstances.

Codicil: A document which alters or adds to a will and which has been executed in the same manner as a will.

Commissioner for oaths: A person who may administer oaths.

Committal: The sending of a person to prison for a short period or on a temporary basis. Committal for sentence or for trial is the procedure whereby a magistrates' court sends a person to the Crown Court for sentence or for trial.

Compos mentis: Of sound mind.

Conditional fee agreement: An agreement where the firm can charge the client an enhanced fee if the case is won.

Conduct money: Money paid to a witness to cover his expenses in attending court.

Consideration: If someone is making a legal agreement with another, each party must give something to the other. This is known as the "consideration". It does not have to be money, it can be action taken, or a promise to pay or act. Consideration cannot be something that has already been done in the past or something that one of the parties to the agreement is already bound to do in any event.

Contributory negligence: Where a person has contributed by their own negligence to, for example, an accident which caused them injury.

Conveyance: A legal document transferring ownership of freehold property when it is sold. It is used only for unregistered land.

Copyright: The exclusive right to publish, perform, etc. the work of someone.

Coram: In the presence of.

Co-Respondent: A third party in divorce proceedings, i.e., where adultery has been alleged in the petition, the co-respondent is the person who might be cited as having committed adultery with the respondent.

Counsel: A barrister.

Counterpart: A document signed by a party to a deed, quite often a lease, which is identical to the original. Each party keeps the copy signed by the other.

Court of Protection: This administers the property of persons suffering from mental disorders.

Covenant: An agreement in a deed whereby one party is obliged to do something which is for the benefit of the other party.

Cross-examination: This is where a person giving evidence in court is examined by the legal representative of another party.

D

Damages: Money paid by one party to another by way of compensation.

Debenture: A type of charge or mortgage given by a limited company. **Decree**

absolute: A court order which shows that a divorce is final.

Decree nisi: A court order granted mainly in divorce proceedings. It is granted six weeks before the decree absolute. This gives a period of time in which it may be shown that the divorce should not be granted for some reason.

Deed: A document which must be prepared for certain transactions, frequently used in conveyancing matters to transfer property. It must comply with certain formalities.

De facto: In fact.

De minimis: A small matter.

Demise: To grant land to another, e.g., by way of a lease.

Deponent: A person who gives evidence by deposition.

Deposition: Evidence, either verbal or taken down in writing, given under oath.

Derogate: To detract from, e.g., limit a right.

Devise: To give land under a will.

Dictum: An opinion given by a judge during the hearing of a case.

Disbursement: Out of pocket expenses, e.g., for travel, postage, etc.

Distrain: To seize goods in satisfaction of a debt.

Distress Warrant: A written notice held by the court bailiff authorising him to seize or distrain the goods of a debtor.

Domicile: The country or jurisdiction where a person has his permanent residence.

Dying declaration: A verbal statement made by someone immediately before his death in the knowledge that he is about to die.

E

E.& O.E.: This means 'errors and omissions expected'. In effect, this means that no liability is accepted for minor errors, etc.

Easement: An easement is a right enjoyed by an owner of land over another piece of land which he does not own, e.g., rights of way, rights of light, etc.

Empanel: To form a jury.

Encumbrance: A right over land which is held by someone who does not own the land, e.g., a mortgage.

Equity: Very simply, this is a system of rules when applied by the courts and means that fairness will prevail.

Escrow: A document which will come into effect when a certain condition is met.

Estoppel: A rule which provides that a person is barred from denying something which he has previously asserted or which has been decided on by a court case to which he was a party.

Et seq: Abbreviation for et sequens meaning 'and what follows'.

Execution of a document: The proper signing of a document in accordance with legal formalities.

Executor/executrix: A person appointed by a will to deal with the affairs in the will according to the terms of the will. Also known as a personal representative.

Ex gratia: As a favour, not legally obliged.

Ex parte: An application made either by an interested person who is not a party to an action, or by one party in the absence of the other. Since the Civil Procedure Rules came into effect, this is now referred to as 'without notice'.

Expert witness: A person who is an expert in a particular field, such as a surgeon or engineer, who is called to give evidence.

F

Fee simple: This is a term which refers to freehold property.

Fiduciary: A relationship involving trust on one person's behalf where the other is legally obliged to act in his best interests.

Fi-Fa: Abbreviation for fieri facias meaning 'that you cause to be done'. This is a writ of execution issued in the High Court after judgment is obtained in a legal action for debt or damages.

Fixed charge: A mortgage over a particular property.

Freezing injunction: See under Mareva injunction.

G

Garnishee order: See under Third-party debt order.

General damages: A payment intended to compensate for a wrongful act.

Guardian ad litem: Before the Civil Procedure Rules came into effect this was a term applied to a person who defends proceedings in a court action on behalf of another who is unable to do so, such as a child or a person suffering from a mental illness. Such a person is now called a 'litigation friend'.

H

Hereditament: Land and property which passes on the death of an intestate owner to his heir.

I

Immemorial: See Time Immemorial.

In camera: This means in private, to which the public do not have access.

Incorporation: A process whereby something becomes a legal personality, such as a company being started.

Indemnify: To promise to compensate someone against any loss or damage they may incur.

Indenture: This is a type of deed made between parties.

Injunction: A court order which restrains or compels someone to do a particular act.

In loco parentis: Temporarily in place of a parent.

In personam: An action at court against a person.

In rem: An action against a thing, e.g., a ship or other property. A ship may be arrested through this type of action as security for a claim brought against the owner.

In situ: On the original site.

Insolvency: Being unable to pay debts. An insolvent person may become bankrupt. An insolvent company may go into liquidation or be wound up.

Intellectual property: This relates to intangible property, such as an idea or a design.

Inter alia: Among others.

Interim payment: In a court case where liability has already been determined, the party who is liable makes a payment to the other party before the final amount of damages is calculated.

Interlocutory: A proceeding which is issued before the final case is decided at court.

Interpleader: A process settling a dispute of ownership where one independent person is holding property which is claimed by other parties as being theirs.

Inter vivo: Among living persons.

Intestacy: This occurs where a person dies without having made a valid will. He is said to have died intestate.

J

Joint and several: This is an expression used where two or more people may become liable. They are liable both individually and jointly together.

Judgment: The final decision of a court.

Judicial precedent: A previous binding decision of a court.

Jurat: A memorandum at the end of an affidavit which shows details of how the affidavit was sworn, i.e., before whom, when and where.

K

Knock for knock agreement: An agreement between insurance companies in which each company agrees to pay for the damage to its own insured's vehicles.

L

Land charges: Rights and interests in land which must be registered with the Land Registry if they are to have any legal effect.

Legacy: A gift of personal property under a will.

Legatee: A person to whom a legacy is left.

Lessor: A person who grants a lease to another. That other person is called the lessee.

Lien: A right to hold property until a debt is paid off.

Limitation of actions: This is a legal rule whereby different types of actions must be brought before the court within a certain time.

Liquidated damages: A fixed sum of damages.

Liquidation: This is a process whereby a company is wound up.

Litigation friend: This is a term given to a person who conducts proceedings in a court action on behalf of someone who is unable to do so themselves, e.g., a child or someone suffering from mental illness. Before the Civil Procedure Rules came into effect, a litigation friend was known as either a 'next friend' or 'guardian ad litem', depending on the circumstances.

Locus: The place.

Locus in quo: The place where, i.e., where the accident happened or where the crime was committed.

Locus sigilli: The place of the seal. If a document has been sealed by the court and you are sending a copy which does not show the seal you can write on the copy 'L/S' inside a circle and this indicates where the seal is placed on the original document. The date of the seal should also be given under the letters L/S.

Locus standi: A right to take part in court proceedings.

M

Mandamus: See under Mandatory order.

Mandatory order: An order from the High Court ordering a public duty to be carried out. Used to be known as 'mandamus'.

Mareva injunction: Prior to the Civil Procedure Rules this was the name given to a court order which freezes the assets of a person or company so that they cannot dispose of them or take them out of the country. This is now called a freezing injunction.

Mens rea: A guilty mind. With the intention of committing a guilty act.

Mesne: This means average or intermediate. In landlord and tenant disputes you may find that a landlord claims 'mesne profits' rather than rent in cases where a tenant remains on the premises after the tenancy has been terminated.

Messuage: A dwelling house and any buildings or land attached to it.

Mitigation: A person whose responsibility or guilt is not disputed may make a plea in mitigation, i.e., a statement which tries to reduce the penalty he must pay. This would normally take the form of a statement showing that he has never done anything like that before and giving reasons as to why this particular offence has occurred.

Mortgage: The use of land or other property as security for a loan. The person lending the money is the mortgagee

and the person borrowing the money, and thus mortgaging his property, is the mortgagor.

Muniments: Title deeds and other documents proving ownership of land.

N

Next friend: Before the Civil Procedure Rules came into effect, this was a term applied to a person who brings court proceedings on behalf of one who cannot, such as a child. Such a person is now called a 'litigation friend'.

Nisi: This relates to a court order which will become effective at a certain time unless cause is shown within a certain period why it should not become effective.

Nominal damages: These are given where someone wins the case but has not actually suffered any damage. A nominal sum is awarded just to show that the case has actually been won.

Non sequitur: It does not flow.

Notice to admit: A notice by one party to another in civil proceedings that they wish to bring a particular item or document into the evidence without having to prove it.

Notice to quit: A notice given by a landlord to a tenant that the tenancy is to end.

Notice to treat: This is a notice which must be given to a party when it is desired to exercise powers of compulsory purchase over that party's land.

O

Official Solicitor: An official of the Supreme Court who may, in certain circumstances, be called upon to act in his capacity as a solicitor, e.g., he will quite often act as next friend to a person under a disability.

Office copies: Official copies of a document or record that has been issued by public office, such as a court. An office copy normally will bear the watermark of the issuing organisation. The Land Registry previously used the term 'office copies' when referring to copies of the register held by it but now refers to these as 'official copies'.

Ombudsman: An official who investigates complaints made against the administrative procedures of government departments and other bodies.

P

Parcel: A portion or plot of land. Also, a clause in a deed describing the land being sold.

Passing off: One business trying to pass itself off as another, e.g., using a trademark similar to that of a well-known company in the hope that people will believe they are dealing with the well-known company.

Peppercorn rent: A nominal sum stated in a lease for which rent will not actually be collected.

Per se: By itself.

Plaintiff: Before the Civil Procedure Rules came into effect, the person who brought an action in civil court proceedings was called the plaintiff. Such a person is now known as the claimant.

Power of attorney: The giving of authority by one person to another to act on his behalf. It can relate to general matters or a specific matter. Often given if a person is going to be out of the country. It can be revoked at any time. There is also an enduring Power of Attorney which cannot be revoked which has effect when the person giving it is no longer capable of managing their own affairs.

Pre-action protocol: Guidelines for the reasonable conduct of solicitors and clients before certain court proceedings are issued.

Prima facie: At first sight, on first impression.

Privilege: The right of a party to refuse to answer a question or to disclose a document on the ground that they have a particular reason for not doing so which is recognised by law.

Product liability: The liability of a manufacturer of goods to the purchaser or consumer of those goods.

Prohibiting order: An order from the High Court directing a lower court or body not to take a particular course of action. Used to be known as prohibition.

Pro rata: In proportion.

Provisional damages: Awarded in personal injury cases if there is a chance that the claimant may, in the future, severely deteriorate due to the injury which caused the condition from which he is suffering and which is the subject of the claim.

Puisne: Junior - in particular, most High Court judges are called puisne judges (but not the head of each division). It also means younger or later, e.g., a second mortgage is a puisne mortgage.

Q

Quantum: Meaning how much, i.e., the amount of damages.

Quarter days: 25 March, 24 June, 29 September and 25 December. Often the days on which rent may be due under the terms of a lease.

Quashing order: An order issued by a higher court quashing a decision of an inferior court. Used to be known as 'certiorari'.

R

Rack rent: Rent at full market value.

Recitals: Clauses at the beginning of a deed and which usually begin with the word 'WHEREAS' and are descriptive only.

Recognisance: A sum or bond pledged to the court in return for bail being granted.

Res ipsa loquitur: The thing speaks for itself - a term used in negligence actions to state that by the very fact that an accident happened, negligence must have been the cause of it.

S

Search order: See under Anton Piller Order.

Security for costs: Security deposited with the court in a civil action which guarantees that if that party loses the action there will be money available to pay the costs.

Seisin: Occupation of freehold land.

Service: A procedure governed by the rules of the court to bring documents to the attention of the parties involved.

Sine die: This means without a day. Used in the adjournment of legal proceedings without fixing a date on which the proceedings will be recommenced.

Special damages: A payment which is not intended to compensate for the wrongful act but which is reimbursement for a particular loss such as travel expenses or loss of wages.

Spent conviction: A previous conviction, which no longer forms part of a person's criminal record. This is because a certain period of time has elapsed since the time of the conviction.

Stakeholder: An independent person holding deposit money for the purchase of property.

Statutory declaration: A statement solemnly declared before a person empowered to administer oaths.

Stay: A postponement, e.g., of proceedings.

Structured settlement: A way of paying damages to a claimant by way of instalments for the rest of his life.

Subject to contract: A term used mainly in matters relating to the sale/purchase of land and means that anything agreed in such correspondence is not legally binding until the contracts have been signed and exchanged between the parties.

Sub judice: Under trial. If a matter is sub judice it may not be publicly discussed.

T

Tenure: The legally recognised holding of land or of office for a certain period of time or under certain conditions.

Testator/testatrix: A person who makes a Will.

Testimonium: A statement at the end of a deed or Will before the attestation clause that the parties have signed the document. They are effectively acknowledging the contents of the document.

Third-party debt order: When one party has been found to owe another money, a court order may be made so that the person who owes the debtor money pays it to the creditor instead. Used to be known as a 'garnishee order'.

Time immemorial: If something is said to have existed since time immemorial, it is taken to have existed as long as anyone can remember, and in fact is presumed to have existed since 1189.

Tort: A wrongful act in civil law.

Tortfeasor: A person who commits a tort.

U

Unliquidated damages: Damages claimed where the sum is not known and will be determined by the court or by the parties concerned.

V

Vendor: The seller (of property).

Venue: The place at which an event, e.g., a trial, is to take place.

Vicarious liability: The liability of one person for the act of another, most often the liability of an employer for acts committed by an employee in the course of employment.

Volenti non fit injuria: Used as a defence in actions claiming damages for personal injury and means that if a person consents to an act, then no injury is done. For example, in a boxing match one of the boxers cannot claim against the other for punching him on the nose!

W

Without prejudice: A term used when a lawyer is attempting to negotiate a settlement in a claim or dispute. If the settlement proposals are not accepted then anything the lawyer said 'without prejudice' cannot be used in evidence later on. Therefore, when this term is used, it really means that the person using it is protecting his position.



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