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Basic Contract Law for California Small Businesses



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Basic Contract Law for California Small Businesses

Introduction

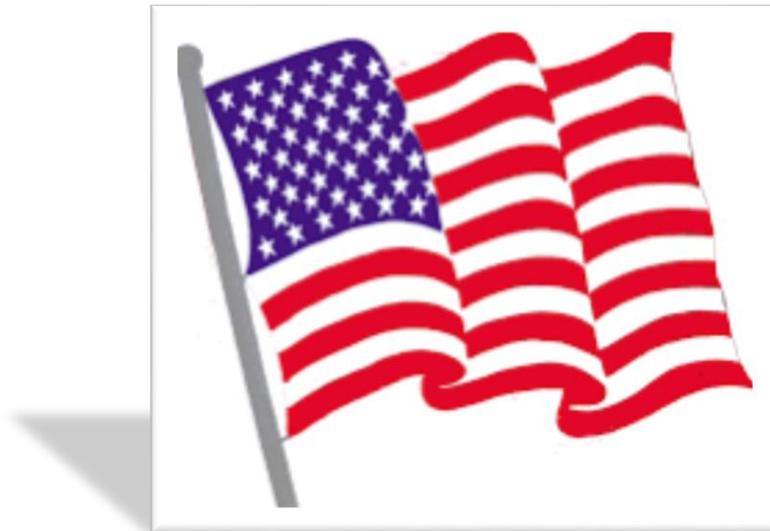
A contract is a legally binding and enforceable agreement between parties to do or not do something. Consumers enter into contracts for many reasons. An agreement to buy a car or buy a home typically involves a contract. If you hire a service to maintain your lawn, you have created a contract.

You need to consider several factors to determine whether you have entered into a contract, or agreement. Once you have entered into a contract, you need to think about issues that call the contract's validity or enforceability into question. Finally, if you think there has been a breach of the contract, you need to determine whether a party has suffered damages for which compensation might be available.

Always read and understand a document before you agree to be bound by its terms. Consider consulting an attorney for major or significant contract agreements.

These materials summarize:

- The elements of a contract
- The factors that affect the validity of a contract
- Damages if a contract is breached.



Contract Components

Three elements that must be present for a contract to exist:

- Offer
- Acceptance
- Consideration



Offer

The first step to creating a contract is an offer. An offer is a written or spoken statement by a person who wants to or intends to be a party to a contract or agreement. An offer expresses the party's intention to be held to a commitment once the offer is accepted.

To decide if an expression qualifies as an offer, you must consider a number of factors:

- Is the person making the offer seriously intending to make an offer?

A person who, apparently jokingly, says he'll sell a new car for \$100 is obviously not serious and is not making a valid offer.

- Does the party's statement show willingness to be held to its contents?

A person requesting a price quote or opening negotiations is not making an offer. Advertisements are usually considered invitations soliciting offers.

- Does the party's statement contain definite terms regarding the subject matter? Is the subject matter identified, are the parties identified, is the price set, are quantities determined, and is time for performance stated?

A valid offer must contain enough information so that, if necessary, a court could enforce the contract terms or reliably determine damages.

Example of a statement that constitutes a valid offer:

Smith offers to sell Jones a painting for \$500. Smith tells Jones that Jones can accept Smith's offer either orally or in writing within five (5) days.

Two (2) days later, Jones sends Smith a letter, in which Jones agrees to buy the statue for \$500.

Smith's offer to Jones gave Jones the power to conclude the transaction by accepting Smith's offer, either in words or in writing.

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Example of a statement that is not a valid offer:

Smith asked: "Will you sell your Maserati Birdcage to me? E-mail me the lowest price."

Jones answered: "The lowest price for my Maserati Birdcage is \$3 million".

Smith said that price was acceptable, and then argued there was a valid contract. But Jones' statement was not an offer; it was just a response to a request for information. As a result, Jones could not form a contract through an alleged "acceptance".



Acceptance

For an acceptance of an offer to be valid, the acceptance must occur while the offer is still open. In some situations, the person making the offer gives a definite time frame so the offer ends when the time has elapsed:

"I will sell you my car for \$200, but you must decide whether to buy it within two (2) days."

Other ways an offer may lapse include:

- The person making the offer withdraws the offer
- The person who receives the offer rejects it
- A reasonable amount of time passes after the offer is made
- The subject matter of the offer is destroyed before acceptance

If the person who is responding to the offer changes the conditions of the offer in the response to the offer, this is a rejection of the original offer. Instead of accepting, the party has now made a counteroffer.

"I will buy your car, but I will pay only \$150 for it."

In this case, the person who made the original offer to sell the car responds to the new offer by one of the following:

- Accepting
- Rejecting
- Proposing yet another offer (a rejection with a counteroffer)

A party can accept an offer two ways:

- By promising to do or not do something, or
- By performing the desired action

In the first type of acceptance, by promising to do or not do something, a person responds to an offer to sell a car for \$150 by promising to pay \$150 for the car. This is a **bilateral contract**.

In the second type of acceptance, a homeowner offers a neighbor \$10 to cut the grass and the neighbor responds by cutting the grass. The neighbor accepts the offer simply by performing the act requested. This is a **unilateral contract**.

Example of acceptance of an offer:

After an offer to enter into a contract has been communicated, the other party must accept the offer before a contract can be created. Issues regarding accepting an offer:

The acceptance must be communicated. Silence is usually not considered acceptance, with a few specific exceptions.

The offer must be accepted without modifications; otherwise, it is a counter-offer.

Until an offer is accepted, it may be revoked (the exception is an option contract).

Only the person to whom the offer is made can effectively accept the offer.

Acceptance will be judged by an objective standard; if an average person making an offer would have thought that the other party accepted, then there is an acceptance of the contract offer.

Example of a rejection:

An offer lapses if it is not accepted within a stipulated time frame. In other words, if an offer is open for a specified time, it will close at the end of that time.

For example, Smith offered to sell a car to Jones; the offer lasts for 14 days. After 14 days, Jones has not accepted; Jones is not allowed to accept the offer anymore (but if no time has been stipulated, the offer will close after a reasonable time).

An offer can be revoked at any time before its acceptance and the revocation become effective when the person receiving the offer learns of it. For example, Smith offers to sell his property to Jones, then sold it to Miller. Then Jones heard about Smith's sale to Miller. Smith had validly withdrawn the offer to Jones when Jones learned of Smith's sale to Miller.

Example of a counteroffer:

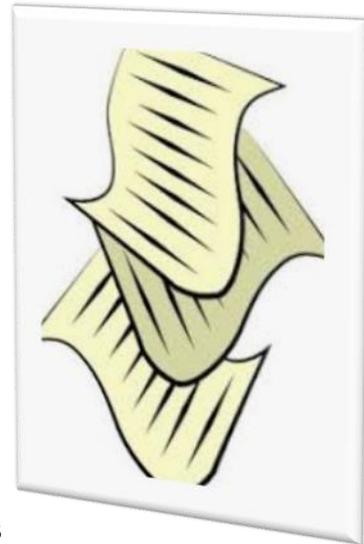
Smith offers to sell Smith's house for \$500,000, to be paid in 45 days. Jones received the offer and counter offered \$400,000, payable in 60 days. The original offer is dead; Jones can no longer accept the original offer.

Example of bilateral contract acceptance:

Smith offers Smith's home for sale for \$500,000, with a 20-day escrow. Jones agrees to pay \$500,000 to purchase the home, with a 20-day escrow.

Example of unilateral contract acceptance:

A unilateral contract is one wherein the offeror bargains for a completed performance rather than a promise to perform. To form the contract, one party (the offeror) makes a promise in exchange for the act of performance by the other party. That is, the offer is only accepted once the other party completely performs the requested for action.



Example of a Unilateral Contract:

An example of a unilateral contract is an offer of a reward. An example is if Smith promises to pay Jones \$500 if Jones finds Smith's lost diamond ring; if Jones finds the ring, Smith must pay the reward. Jones' acceptance is the act of searching for and finding the ring.

Consideration

Consideration is a legal concept. Consideration in contract law means something of value that a party to a contract gives in exchange for a performance or a promise to perform.

Consideration can be any of the following:

- Money
- Goods
- A promise to do something there is no legal obligation to do
- A promise to not do something there is a legal right to do

Promises to exchange money, goods, or services are forms of consideration. Sometimes, detrimental reliance can substitute for consideration.

All parties in an agreement must give consideration to create a contract. Consideration distinguishes contracts from gifts. Courts typically do not look at the adequacy of consideration unless there is evidence of some type of wrongdoing by the party benefiting most from the contract.

Example of money as consideration:

Amazon Prime takes your credit card payment in exchange for delivering paper towels to your office.

Example of goods as consideration:

Smith approaches Jones, an attorney, and asks for legal representation. Smith offers Jones a chicken as payment. Jones accepts the chicken as payment for legal services.

Example of promises to do something not legally required as consideration:

Smith is an accountant who prepares tax returns for public clients, including Jones; Smith does not take tax returns to the post office for mailing. Jones asks Smith to mail the returns for Jones for \$50; because Smith is otherwise under no obligation to go to the post office to mail Jones' returns, Jones' promise to pay \$50 is consideration.

Example of promises to refrain from doing something the party has a legal right to do as consideration:

Smith backed Smith's car onto Jones' lawn and uprooted one of Jones' trees. Jones is legally permitted to sue Smith for the value of the damaged tree. Smith offers Jones \$1,200 as payment for the new tree and an agreement not to sue. This agreement provides adequate consideration to support the formation and existence of an enforceable contract because Jones had a right to sue Smith, which Jones gave up based on Smith's payment.

Example of detrimental reliance as a substitute for consideration:

Detrimental reliance (also known as promissory estoppel) is an exception to the requirement of traditional consideration for a contract to be enforceable. Even without goods or money exchanged, a promise is enforceable if the person making the offer should reasonably expect to induce action (or a promise not to act) from the other party if the action (or forbearance to act) actually happened, and injustice is avoided by enforcement of the promise.

An example is when homeowner Smith tells handyman Jones that Smith will hire Jones to install a front gate on Smith's property, but no otherwise binding contract agreement is reached. Jones spends money to buy wood and hardware for the gate. The day before Jones begins work, Smith says he is no longer interested in the gate installation. Promissory estoppel may be applied to create an enforceable contract agreement because Jones detrimentally relied on Smith's representations.

Defenses to Contract

Once analysis shows a contract has been formed to begin with, you need to consider defenses that call into question the validity of the contract.

Some defenses make a contract unenforceable (a void contract). Other defenses give a party the option to enforce the contract (a voidable contract).



Legality of the Contract

Although two persons may exchange an offer, an acceptance, and consideration, if the subject matter of the contract is illegal, a valid, enforceable contract does not exist.

For example, if someone offers to pay money for illegal drugs, and the drug dealer accepts by promising to deliver the illegal drugs, the contract is void for illegal subject matter.

Capacity of the Parties

To be bound to a contract, the parties must be competent to enter into an agreement.

Parties generally will not be held to the contracts they enter if they are:

- Underage
- Mentally ill
- Intoxicated



However, a minor may have the option of enforcing a contract.

Mistake, Duress, and Fraud

A **mistake** by both parties to a contract on an important issue makes the contract unenforceable. However, a mistake by only one party does not necessarily make the contract void. Consider fraud in the inducement and / or reasonable diligence.

Duress is the use of physical force or mental pressure by one party to make the other party agree to the contract. The use of duress makes the contract voidable by the party put under duress. Consider elderly persons changing their wills to benefit a caregiver.

Fraud is the intentional misrepresentation of an important issue of the contract. The presence of fraud in a contractual proceeding makes the contract voidable by the party upon whom the fraud was perpetrated.

Unconscionability

A contract may be unenforceable if it is found by a court to be fundamentally unfair. This defense is usually found in consumer cases, in which a person buys an item under terms so grossly unfair to the customer that the court refuses to enforce the contract.

Statute of Frauds

In many instances, contracts do not have to be in writing to be legally binding. However, the "Statute of Frauds" requires that some contracts be in writing to be valid.

The Statute of frauds applies to the following subject matter:

- Sale of real estate
- Sale of goods worth more than \$500
- Contracts that cannot be performed within one year

- Contracts to pay someone else's debts
- Leases for more than one year
- Contracts for marriage

All of these must be in writing to be enforceable.

Parol Evidence Rule

Although it is not a defense to a contract, the Parol Evidence Rule may affect the contents of a contract and how a contract is enforced. The Parol Evidence Rule applies once parties have come to a final, written contract. Once the parties agree to a final, written contract between the parties, the Parol Evidence Rule forbids the introduction in a court proceeding of any previous agreements between the parties on the subject matter of the contract.

The Parol Evidence Rule permits the judge or jury in a contract dispute to only look at the written contract, the four corners of the document, and not at any previous discussions or agreements between the parties. The impact of the parol evidence rule is that all factors that are important to the contract and have been decided by the parties should be stated in the final, written contract. The parol evidence rule does not forbid the introduction of subsequent agreements between the parties.

Defenses to Enforcement

Some of the defenses to contract formation are claims of improper formation: there was no valid offer, no valid acceptance, or no valid consideration. Some other defenses follow:

Statute of Frauds refers to a statute which requires certain contracts to be in writing to be enforceable. Its original purpose was to prevent the unscrupulous from claiming a contract was orally formed when in fact none was formed. The typical **Statute of Frauds** includes contracts which involve the sale of land, certain guarantee or surety contracts, and contracts which by their own terms cannot be performed within one year from the date of its formation.

The Uniform Commercial Code (UCC) Chapter 2, which applies to contracts for the sale of goods having a price of \$500 or more, requires a writing. Web site services and software services by themselves are not covered under UCC 2. Web sites and software sold off-the-shelf would be governed by UCC 2. A contract to purchase computer hardware which also included some custom design or graphics or software may also be

governed by UCC 2, and thus require a writing.

A contract in which **fraud, duress** or **undue influence** was involved is not void but may be voidable by the party wronged.

A contract which for some reason is **against public policy** is void.



A **mutual mistake** as to a material part of a contract may provide grounds for either party to rescind or for a reformation. Sometimes a **unilateral mistake** will allow for rescission.

Sometimes promises which do not satisfy the requirements of an **offer** are enforceable as if a contract was formed.

Contract Termination

Once there is a valid contract between parties, it can end in several ways. A contract may have a limited time span and finish at the end of the stated time. If a person is hired to work for two weeks, the contract concludes at the end of two weeks. In many instances in which there is a specific time frame stated in the contract, parties to the contract may have the option to extend the contract for a longer period of time.

Contracts also may be project-specific, not time-specific. Goods or services may be contracted for a project and upon the completion of the project, the contract ends. Parties to a contract may mutually agree to rescind the contract, in which case the parties may agree on the duties and responsibilities of each party after the rescission.

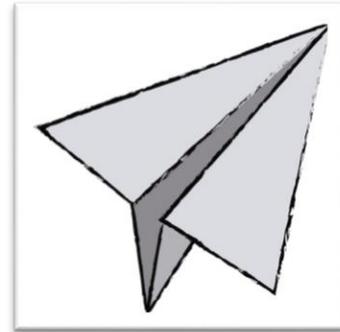
A contract also may end because of a **breach**. A breach occurs when a person does not fulfill his or her responsibilities as promised in the contract. A breach may be minor or major. A minor breach is one that affects small, minor details of the agreement and may not affect the outcome of the contract. A major breach is one that affects the subject matter of the contract and very likely will affect the outcome of the contract. This is also known as a "breach of a material issue." When there has been a breach in a contract, the question of damages is raised.

Damages

The damages due to a party when there is a contract breach depend on many factors, including which party breaches, what damages were incurred, what the contract states with regard to damages, whether the breach material, and the subject matter of the contract. When a person is harmed by a contract breach, courts usually award only foreseeable damages. Foreseeable damages are those damages that the parties anticipated or should have anticipated at the time the contract was formed.

Money Damages

In most cases in which an injury results from a contract breach, the injured party receives money damages. The court places the person in the position he or she would have been in if the contract had been performed. For example, if a homeowner contracts with a person to paint a house, the painter might stop in the middle of the job and refuse to finish painting. If the homeowner finds another painter to finish the job at an additional cost of \$150, the damages are \$150.



Although one basically is entitled to the money difference between what was promised and what it costs to complete the promise, the injured party must mitigate the damages. Mitigation means the injured party takes reasonable steps to limit the extent of the injury and finish the job. In the previous example, the homeowner could not hire a famous painter from Italy to finish painting the house and expect the first painter to pay for the extra expense of plane fare, fees, room, and board.

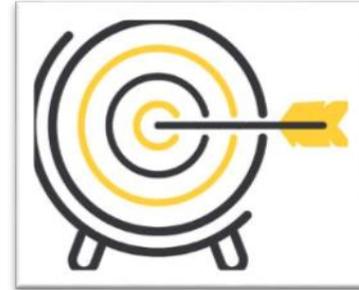
Specific Performance

There are some situations in which money damages are inadequate. Typically, in a contract involving the sale of land, awarding money damages for a breach does not put the nonbreaching party in the same position he or she would have been in if the contract were fulfilled. Because real estate is unique, one cannot simply go out and buy property that is the same as the subject of the original contract.

In a case such as this, the court may order the breaching party to perform the duties required by the contract. This remedy is called specific performance. Courts only order specific performance in rare cases in which the subject matter of the contract is unique, and it is difficult to put a monetary amount on the damage incurred as a result of the breach. Specific performance is not awarded in personal service contracts. In the previous example, the court would not order the original painter to complete the job.

Liquidated Damages

In an attempt to set a monetary damage amount in a case in which it may be difficult to do so, the parties may include a contract provision that specifies the amount of damages in event of a breach. Such predetermined damages are called liquidated damages.



An example is when a person puts down earnest money for a house and later changes his or her mind. In a real estate contract with a liquidated damage provision, the buyer may forfeit the earnest money to the seller as a damage award.

Rescission

In most contract disputes, a court puts the nonbreaching party in the position he or she would have been in if the contract had not been breached. However, there are times when the court may place the party in the position he or she was in before the contract was executed. This remedy is known as rescission.

In cases in which there was a mutual mistake regarding the subject matter of the contract, the parties may be returned to their positions before the contract. If the parties have exchanged goods or money, those items are returned. This remedy also may be selected in cases in which one party intentionally misrepresents a material fact.



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APPENDIX A

Glossary of Legal Terms and Concepts

~A~

Ab Absurdo: An evidentiary suggestion or statutory interpretation that is, or leads to, an absurdity (Latin).

Abandon: Give up or totally desert; absolute relinquishment.

Abandonment: Leaving property behind.

Abate: To end, to nullify.

Abatement: Reduction in amount owed; usually granted by the person to whom the debt is owed (the “obligee”).

ABC Rule: An equitable (not legal) exception to the general rule that attorney fees are not usually owed or awarded; the Rule allows an award of attorney fees as an item of consequential damages.

Ab Initio: From the beginning (Latin).

Abode: A place (or places) with which, through continuous or long-time habitation, an individual has established significant contacts.

Absolute: Unconditional, complete.

Absolute Discharge: In bankruptcy law, to be fully absolved of former debts and the status of “bankrupt”.

Absolute Immunity: Shields public officials from being sued for official acts, regardless of motive.

Absolute Priority Rule: The highest rank amongst creditors; this creditor gets paid in full before any other creditor is paid any amount.

Absolute Privilege: A complete defense to an otherwise defamatory statement, based on the circumstances in which it was made.

Abstract of Title: A legal statement of the conveyances and charges appearing in the jurisdiction's official records and affecting title to real property.

Abuse of Discretion: Improper application of law to fact; a decision of a court based on erroneous findings of fact or conclusions of law.

Abuse of Dominant Position: Intentional anti-competitive acts by persons substantially in control of a market, which has, is, or likely will prevent or inhibit competition.

Abuse of Process: Using court processes for an improper purpose.

Accardi Doctrine: Agencies must abide by their own regulations.

Acceleration Clause: A contract term that if a single payment is missed, or some other default occurs (insolvency, for example), the entire remaining amount of the contract is due in full immediately.

Acceptance: Final and full expression of assent to a contract offer.

Accord and Satisfaction: When one party to a contract, having complied with its contractual obligation, accepts compensation from the other party of a lesser value than called for in the contract agreement, instead of enforcing the contract by its literal terms or holding the other party to the original agreement.

Accounting: A detailed statement of the financial relationship between parties arising out of a contract or other official relationship.

Acquiescence: Action or inaction tending to express agreement.

Acta Exteriora Indicant Interiora Secreta: The outward acts show the secret intentions (Latin).

Action: A formal demand to a court to resolve a dispute.

Act of God: An event caused only by the acts of nature or natural causes, without any human interference.

Actual Total Loss: Property that is completely destroyed or lost (insurance law).

Actuary: Professionals uniquely skilled in the application of mathematics to risk management, contingent events, and opportunity.

Actus Reus: An act that is prohibited (Latin).

Ad Damnum: To the damage (Latin).

Addendum: Written attachment to a document.

Adhesion Contract: A contract provided, often to consumers at point-of-sale, with no opportunity for meaningful negotiation as to its terms (“take-it-or-leave-it”); usually to the great benefit of one side and grave detriment of the other.

Ad Hoc: To this point (Latin).

Ad Infinitum: Continuing indefinitely (Latin).

Adjourn: The end of a hearing or proceeding for the day or forever.

Adjudicative Fact: Basic underlying facts that a party must prove.

Adjuster: Agent of the insurer who quantifies or otherwise determines the extent of the insurer's liability for loss when a claim is submitted.

Ad Litem: For this particular lawsuit (Latin).

Administrative Law: A body of law for hearings before quasi-judicial organizations (administrative tribunals) or regulatory agencies.

Administrative Tribunal: Adjudicating bodies that render decisions.

Administrator: A person who manages the assets of another.

Ad Quaestionem Facti Non Respondent Judices, Ad Quaestionem Juris Non Respondent Juratores: Judges instructs on points of law; jurors decide matters of fact (Latin).

Adult: An individual who has reached, or is over, the age of majority.

Adverse Possession: The use, possession, or occupation of land, without legal title, for a period of time so the user, possessor, or occupier becomes legal owner.

Adverse Witness: Individual called to testify who supports a position opposite or not supporting the position of a party to the proceeding.

Affiant: A person who makes statement via a sworn affidavit.

Affidavit: A written statement of fact made under oath.

Affirmative Defense: A reply to a legal claim, which alleges facts which, if true, render the underlying claim lost.

Agency: A fiduciary relationship between one person (the principal) and another person (the agent); the agent acts on the principal's behalf.

Agent: A person who has been given the power to act on behalf of another person; the power to bind that other person to an agreement.

Agreement in Principle: Commitment to the terms of a future contract.

Aleatory Contract: A contract depending on an uncertain event (Civil law).

Alienate: To transfer property.

Alternative Dispute Resolution (“ADR”): Methods by which disputes are resolved privately (not in court) through mediation or arbitration.

Amalgamation: The merging of two things together to form one.

Ambidexter: An attorney who purports to act for both sides; frequently prohibited by ethics rules.

Ambiguity: Words capable of multiple meanings.

Ambulance Chaser: Someone who follows accident cases and tries to induce the injured party to sue.

Amend: To revise and make changes.

Amicus Curiae: Friend of the court (Latin)

Ancillary Relief: Secondary relief sought by a litigant, which is subordinate to or dependent on, the principal claim.

And/Or: Any combination of two options; one, either, both.

Animus: Hostility; intention (Latin).

Animus Contrahendi: Intention to contract (Latin).

Annulment: To make void forever in the eyes of the law.

Antedate: To back-date.

Anticipatory Breach: When one contracting party indicates to the other party to the contract that it will not be meeting its obligations.

Anti-Trust: Prohibited business activities furthering restraint of trade.

Appeal: To ask a higher court to review a decision of a lower court.

Appearance: Showing up in court.

Appellant: The person who initiates an appeal of a decision.

Apportionment: Proportionate parts to all according to their share.

Appraisal: Informed and objective estimation of a thing's worth.

Appurtenance: Something detached that is part of another thing.

Arbiter: Arbitrator.

Arbitration: Submitting a dispute for a hearing and decision by a third-party who is neither a judge or a Court.

Arbitration Act: Statute delineating default terms for arbitrations.

Arbitration Agreement: A contract to refer disputes to arbitration.

Arbitration Clause: Contract clause requiring arbitration of disputes.

Arbitration Rules: Procedures governing particular arbitrations.

Arbitrator: Presiding officer in arbitration.

Arm's Length: Relationship without control of one over the other.

Arrears: The sum of the debt that is not paid by the due date.

Asset: A thing of value.

Assign: To sell, give or otherwise transfer legal right or responsibility.

Association: Organization for a defined purpose and group.

Assumpsit: Ancient term for action for breach of contract.

Attorney: Alternate word for lawyers or barrister or solicitor (USA).

Attorney Work Product: Privilege shielding from discovery counsel's notes or other documents prepared in anticipation of litigation.

Attorn or Attornment: Consent, implicit or explicit, to transfer a right.

Audita Querela: Application to a Court, after judgment, seeking to avoid execution of that judgment, based on an occurrence between judgment and execution that compromises the creditor's entitlement.

Auditor: A person who examine and verifies the accounts of another.

Authentic Act: Document properly prepared or authenticated by a court officer (notary, for example), and thereafter given enhanced evidentiary status (civil law).

Automatic Stay: Ceasing collection proceedings (bankruptcy law).

Automatism: Act by one who is not conscious of his actions.

Averments: Pleadings; allegations of fact by a party to a lawsuit.

Award: Decision of an arbitrator.

Intellectual Property Terms of Art.

- Abandonment (of a patent application): Stopping the prosecution process; can be implicit (failure to reply to an office action or pay a prescribed fee within the time period allowed) or explicit (PTO is informed by the applicant or his agent that further prosecution will not be pursued).
- Application (patent application): Formal documents filed requesting the grant of a patent.
- Abandonment (of a patent application): Stopping the prosecution process; can be implicit (failure to reply to an office action or pay a prescribed fee within the time period allowed) or explicit (PTO is informed by the applicant or his agent that further prosecution will not be pursued).
- Application (patent application): Formal documents filed requesting the grant of a patent.

~B~

Bad Faith: Intent to deceive; misleading another to gain some advantage.

Bailiff: A person acting with legal authority when seizing personal property; the officer in each courtroom in charge of security.

Bailment: The transfer of possession of something (by “bailor”) to another (the “bailee”) for a temporary purpose (storage or repair, most commonly), after which the property is returned or disposed of per agreement.

Bailor: One who temporarily transfers possession of property to another.

Bait and Switch: To attract customers by advertising, at attractive prices, reputable products, then disparaging it, in favor of a higher-priced product.

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Bank: Corporation empowered to deal with cash, receive deposits, and make loans.

Bankrupt: One who has legally declared bankruptcy.

Bankruptcy: The formal condition of an insolvent person being declared bankrupt under law.

Bankruptcy Trustee: One who oversees a Bankrupt's assets to benefit creditors.

Battle of the Forms: Two people who intend to contract, but offer differing form contracts, renders the conclusion as to the terms of the contract, or determining if there was a contract, difficult.

Bench: A judge's desk in a courtroom.

Beneficiary: The person for whom a trust has been created.

Best Evidence Rule: When a document is submitted in evidence, the original must be produced.

Bill of Costs: Memorandum presented by the successful party in litigation, to the other, as a proposal of costs and disbursements that the winner is claiming.

Binder: A written certification or formal statement of an insurance policy.

Bitcoin: Electronic form of value using peer-to-peer technology to operate with no central authority or banks.

Black Letter Law: A deeply embedded principle of law that is undisputed.

Blue-Pencil Severance: Striking out an undesirable clause in a document.

Bona Fide: Good faith (Latin)

Bond: Written guarantee regarding fulfilling a legal obligation.

Bootlegging: Illegally making or selling copies of artist performances.

Breach of Contract: Failure of a party to a contract to perform.

Builders' Lien: A statutory encumbrance on real property by one who worked on it.

Burden of Proof: A rule of evidence that requires a party to prove a certain point; otherwise, the Court will assume the contrary.



Intellectual Property Term of Art

- Berne Convention: International copyright treaty.

~C~

Cancel: To end.

Canon Law: The law of the Church; based on religious beliefs.

Capacity: The power to acquire legal rights and assert legal rights.

Capital Asset: A designation of an asset allowing profit or loss to be tracked for tax purposes; generally, assets belonging to a tax-payer unless specifically excluded.

Capital Expenditure: A one-time expense to transmit an enduring benefit to a capital asset.

Capital Gain: The net proceeds of sale of an asset.

Capital Loss: Amount lost when disposing of an asset.

Cartel: An anti-competitive agreement among merchants to create a monopoly.

Case Law: Published legal decisions of the courts which.

[24]

Caveat: Formal warning; beware (Latin).

Caveat Emptor: Buyer beware (Latin).

Cease and Desist Letter: A written directive advising someone to stop its action related to specified legal rights asserted by another.

Certainty of Terms: Legal requirement of valid offers to contract; they must be precise and definite for effective acceptance by another.

Certificate of Independent Legal Advice: A document stating that a person received independent legal advice on a proposed contract.

Ceteris Paribus: All things being equal (Latin).

Challenge for Cause: Challenge to a prospective juror for which the cause is disclosed to the Court for decision.

Chattel: Moveable items of property.

Choice of Law Clause: A contract term setting the jurisdiction for dispute resolution, or the applicable law.

Chose in Action: A property right in something intangible.

Circumstantial Evidence: Evidence allowing a judge or jury to deduce certain fact from other facts that have been proven.

Citation: Court order to either do some thing or appear to answer charges.

Civil Action: Actions that are not criminal proceedings.

Civil Code: Assembly of laws that pertain to individuals.

Civil Law: Body of law derived from statutes, not case law.

Civil Liability: Requirement to compensate another because of an unjustified injury to person or property.

Civil Litigation: The conduct of a non-criminal matter in a court of law from initial advice to client(s) through enforcement of judgment.

Civil Rights: Personal rights and entitlements.

Class Action: Various people combining lawsuits into one, against a single, common defendant, based on similar facts.

Clean Hands: A maxim of the law that one wishing to petition a court for judicial action, must be free of fraud or unfair conduct.

Collateral: Property committed to guarantee a loan.

Collective Bargaining: Negotiation between an employer and representatives of a designated unit of employees.

Collective Bargaining Agreement: A contract between an employer and a union.

Comity: One state, to the extent possible, must recognize the legislative, executive, or judicial acts of another (international law).

Commercial Arbitration: ADR to resolve trade transactions.

Commodity: A thing capable of being subject to being traded.

Commonality: A requirement of class actions; common questions of law and fact must exist among class.

Common Interest Doctrine: A doctrine protecting disclosures to those working together on a legal claim.

Common Law: Law articulated by a judge in a court case.

Common Share: Basic share of a corporation.

Community of Interest: Requirement, for certification, that members of a proposed class represent a community of interest (class actions).

Compensatory Damages: Compensation for a victim's actual injuries.

Complete Diversity: Jurisdictional requirement of federal district courts that that all persons on one side of the controversy be citizens of different states than all persons on the other side.

Complete Preemption: Doctrine of Constitutional law that a state law claim is converted into a federal claim based on federal legislation.

Compound Interest: Interest paid on both principal and interest.

Conciliation: A form of alternate dispute resolution (ADR) in which a neutral third party hears both sides and proposes a resolution.

Condition Precedent: A requirement that must be met before a contract or clause becomes effective.

Condition Subsequent: A condition in a contract that invalidates the agreement if a certain event occurs.

Conflict of Interest: A personal or business interest that conflicts with a public or fiduciary interest.

Conflict of Laws: Study of the resolution of a case considering conflicting state, federal, and international law.

Confrontation Clause: The 6th Amendment Constitutional guarantee of the right for an accused to be confronted with the witnesses against him; basis for Hearsay Rule and cross-examination.

Consanguinity: Descendants of a same common ancestor.

Consensus Ad Idem: Meeting of the minds (Latin).

Consideration: Some valuable right, interest, profit or benefit accruing to the one party of a contract, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

Consortium: Companionship of husband and wife within a marriage.

Constitution: The basic, fundamental law of a state.

Constitutional Law: Law focused on constitutions.

Constructive Discharge: When an employer deliberately makes an employee's working conditions intolerable so the employee resigns.

Constructive Trust: A trust imposed by a court despite the absence of a willing settlor.

Consumer Debt: Debt incurred for personal, family, or household needs.

Consumer Debtor: Debtors with debts below a prescribed amount (bankruptcy law).

Contemnor: One who has been found to have committed contempt.

Contempt of Court: Conduct that is disobedient, obstructive or contemptuous to the Court.

Contingency Fee: Payment of legal fees as a percent of an award.

Continuance: Adjournment of a trial or other legal proceeding.

Contract: An agreement obligating each party to do or not do an act.

Contract Law: Body of law regulating formation and enforcement of agreements.

Contribution: One's right to recover proportionate share from others who were also liable.

Conveyance: A writing transferring real property.

Corporate Secretary: Officer of a corporation responsible for maintaining the official documents of a corporation: official seal, records of shares issued, and minutes of meetings.

Costs: A court order that one party in litigation must pay the other party's expenses.

Counterclaim: A defendant's claim against a plaintiff.

Counter-Offer: A reply to an offer.

Court: The room where judicial proceedings unfold, or the judicial body presiding over those proceedings.

Court of Record: Court that retains written records of its proceedings and has the ability to fine or imprison.

Covenant: A writing in which signatories either commit to certain things or in which they agree to particular facts.

Cramdown: Forcing secured creditors to lose their collateral and take a sum of cash instead (bankruptcy law).

Creditor: One to whom a debtor owes money, goods or services.

Cross Examination: Questioning a hostile witness.

Curtesy: Widower's interest in his deceased wife's real property.

Curtilage: The area immediately around a home, inside the fence.

Cyberspace: The Internet; a decentralized but interconnected body of data and self-maintained telecommunications networks.

Cybersquatting: The bad faith registration of trademarks, as domain names, by non-trademark owners, who then try to sell the domain names back to the trademark owners.

Confidentiality Agreement: Binding agreement by which information may be disclosed by one party to another to be used only for stated purposes, not to be disclosed to others, and returned on request.

Intellectual Property Terms of Art

- Continuation Application (also called a file wrapper continuation application) – an application filed after the final office action on an earlier filed application that consists of the same disclosure; the claims may be the same or there may be a new set of claims directed to the same invention claimed in the prior application; continuation applications must be filed before the earlier application is abandoned and must contain no new matter; a continuation application has the same filing date as the earlier (parent) filed application.
- Continuation in Part Application (CIP) – an application filed before the earlier filed application is abandoned that adds new material to or deletes material from

the earlier filed application; material in common with the earlier application has the original application's filing date, new material has the filing date of the CIP.

- Copyright – a type of intellectual property protection that protects the manner in which an idea is expressed.

~D~

Damages: Compensation ordered by a court to compensate for losses or suffering caused by another's fault.

Death Duties: Taxes due as a result of the death of the tax-payer.

Debenture: Writing creating or acknowledging a debt or loan.

Debt: An amount of money due and payable.

Debtor: One who owes money, goods or services to another.

Deceit: Willful or reckless misrepresentation or concealment of material facts with an intent to mislead.

Deceptive Trade Practice: An intentional act or omission in the course of business that tends to mislead or deceive.

Decree: A decision or order of government or judicial body.

De Facto: In fact (Latin).

Defalcation: Defaulting on a debt related to public or trust funds (usually public officials); setting off two debts owed between two people by the agreement to a new amount representing the balance.

Defamation: An attack on the good reputation of a person.

Default Judgment: An order of the Court striking a claim because no appearance, answer, reply or defense was timely filed.

Defendant: The individual, company, or organization defending a legal action taken by a plaintiff.

Defunct Company: A corporation cancelled by the jurisdiction which initially created it.

De Jure: Of the law (Latin).

Deliberate: An act an individual considered the probable consequences of beforehand.

Deliberate Indifference: Ignoring a situation known to exist.

Demand Letter: Writing from a lawyer, on behalf of a client, that demands payment or some other action.

De Minimis Non Curat Lex: Courts will not entertain extremely minor transgressions of the law (Latin).

Democracy: Government in which people freely govern themselves.

Demonstrative Evidence: Tangible evidence in court.

Demurrer: Motion asking for dismissal because of a lack of basis in law or insufficiency of the evidence pled.

De Novo: New (Latin).

Deponent: One who gives evidence under oath.

Deposition: Official statement by a witness, taken in writing.

Depreciation: An accounting procedure in which the cost or other recorded value of a fixed asset, less estimated residual value (if any), is distributed over its estimated useful life in a systematic way.

Derivative Action: Class action brought for a wrong done to a corporation.

Digital Executor: An executor who wraps up digital accounts of the deceased, such as Facebook.

Diligence: The degree of attention required of a person in a given situation.

Direct Contempt: Contempt of Court in the presence of the judges.

Directed Verdict: A Court stops a trial when it determines that an essential fact has not been proven.

Direct Evidence: Evidence offered in trial in the form of personal recollections or documents directly establishes facts to be proven.

Director: Manager selected by shareholders to run a corporation.

Disclaimer: Renunciation of liability which might otherwise occur.

Disclosure: Delivery to the other side in a legal matter of relevant documents or other evidence.

Discovery: Providing information on request of the other side of a lawsuit (civil litigation).

Dismissal Without Prejudice: Dismissal of an action before it is judged on the merits; it leaves the parties as though the action had never been filed.

Dispositive: A fact or law which settles a contested issue.

Dissent: To disagree.

Dissolution: Ending or winding-up a company or state of affairs.

Diversity Jurisdiction: Jurisdiction of a federal court to dispose of a matter meeting a minimum monetary threshold, which also involves residents of different states.

Dividend: A proportionate distribution of profits made in the form of a money payment to shareholders, by a for-profit corporation; declared by a company's board of directors.

Docket: A Court record listing active cases before that court.

Doctrine: A stated principle.

Document: Writing capable of being entered into evidence.

Domicile: One's permanent residence.

Double Hearsay: An out-of-court declaration containing another out-of-court declaration.

Dower: A widow's life estate interest in her husband's real property if he dies intestate.

Dragnet Clause: A credit agreement purporting to secure future liabilities.

Duces Tecum: Bring with you (Latin).

Due Process: Fundamental procedural safeguards when a state or court purports to affect any right of that citizen.

Dummy Corporation: A corporation created solely for the purpose of insulating an individual or another corporation from liability.

Duress: A person is prevented from acting, or not acting, according to their free will, by threats or force of another.

Duty: Legal obligation for one to conduct oneself to a certain standard, failing which, he could be liable for negligence if damages occur in the result.

Dying Declaration: Statement of fact made by a dying victim relating to the cause of death; exception to the hearsay rule.

Intellectual Property Terms of Art

- Derivative Work: Intellectual property (copyright): a work that builds on, or reassembles, with some degree of originality, existing works.
- Design Patent – patent used to protect the aesthetic aspects of an article and not the functional aspects; a patent on ornamental or aesthetic features of a device.
- Disclosure – description of an invention in an application or patent; consists of a specification (written description), drawings, and claims.
- Divisional Application – an application during the pendency of a prior application continuing the same disclosure but with claims directed to an invention that differs from the original application; usually filed in response to a Restriction Requirement from the PTO.

~E~

Ecclesiastical Law: Church law.

E-Commerce: Buying and selling goods and services on the Internet.

Economic Activity: Production, distribution, and consumption of commodities.

Embezzle: Illegal transfer of money or property legally possessed by the embezzler.

Emolument: Benefit received as compensation for holding office.

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LEX LAW CORP.

Enactment: To establish by law; as a statute or regulation.

En banc: As a full bench (French).

Endorsement: Writing on the back of a document.

Durable Power of Attorney: A power of attorney that continues after a donor becomes incapacitated.

Equitable Estoppel: A bar to a party from asserting a legal claim or defense contrary or inconsistent with a prior action.

Escheat: Where property of a decedent is turned over to the government.

Estoppel: A rule of law that when person A, by act or words, gives person B reason to believe a certain set of facts upon which person B takes action, person A cannot later, to his own benefit, deny those facts or say that his earlier act was improper.

Et al.: And others (Latin).

Evidence: Proof of fact(s) presented at a judicial proceeding.

Exclusive Dealing: Arrangement designed to suppress trade by the selection and exclusive use of a particular supplier's product.

Exculpate: That which excuses from fault; justifies a wrong action.

Exhibit: A document or object presented to the court as evidence.

Exigent Circumstances: Unusual and time-sensitive circumstance justifying conduct that might not otherwise be permissible or lawful.

Ex Parte: For one party only; outside one party's knowledge; (Latin).

Expert Witness: A witness with a defined area of expertise allowed to give opinion evidence in Court.

Ex Post Facto: After the fact (Latin).

Expropriation: The government's purchase of land from a private owner.

Expunge: To remove permanently; to cancel.

Ex Rel: On the relation of, or the information of (Latin).

Extinguishment: The termination of legal rights.

Intellectual Property Terms of Art

- Embodiment – one form of an invention; an example of the invention.
- Enablement – the requirement of the Patent Code that the patent application disclosure must give a sufficiently clear description of the invention so as to enable a person having ordinary skill in the art (technology) to make and use the invention without undue experimentation.
- Examination – process by which the PTO decides to grant a patent.
- Exclusive License Agreement – a legal document licensing an intellectual property to another party for their exclusive use. This intellectual property cannot be licensed to any other party for any use.

~F~

Facilitate: To make easy or less difficult.

Fair Comment: A comment made which though defamatory, is not actionable as it is an opinion on a matter of public interest.

[37]

Fair Market Value: The hypothetical most probable price that could be obtained for a property by average, informed purchasers.

Fault: A breach of duty or negligence and, in some circumstances, the errors or omissions of others or of things under a person's control.

Federalism: A system of government which has created, by written agreement, a central and national government to which it has distributed specified legislative (law-making) powers, called the federal government, and regional or local governments (or sometimes called provinces or states) to which is distributed other, specified legislative powers.

Fiduciary: A legal duty of loyalty and faithfulness towards another.

Fifth Amendment: Article of the federal Constitution providing fundamental rights such as the immunity in regard to self-incrimination.

Final Order: An order or judgment of the Court that finally disposes of the rights of the parties.

First Amendment: Amendment to the US Constitution which safeguards, inter alia, freedom of expression.

First In, First Out Rule: Each withdrawal in an account, made without particulars, is presumed to be a return of all or part of the oldest deposit.

Fishing Expedition: A speculative demand for information without any real expectation about the outcome of the demand.

Fixtures: A chattel that has become real property by having been affixed to real property.



Force Majeure: An act of God; an inevitable, unpredictable act of nature, not dependent on an act of man (French).

Foreclosure: The sale of real property secured by a mortgage, in order to satisfy an outstanding loan.

Forfeiture: Seizure of private property because it was illegally obtained, is an illegal substance, or the legal basis for possession has ended.

Forgery: The making of a false document knowing it to be false with intent that it should be used or acted on as genuine to the prejudice of another.

Forum Conveniens: The court or forum most suitable for the ends of justice.

Franchise: A licensing contract in which a holder of certain legal rights gives another to sell or package those rights.

Franchisee: The person who receives, for consideration, the license to right to sell a product or service and to operate a business along the lines developed by the franchisor and using the franchisor's trade name or other designation.

Franchisor: The legal rights holder who licenses, in whole or in part, those legal rights to another pursuant to a franchise agreement.

Fraud: Deceitful or deceptive conduct designed to manipulate another person to give something of value.

Fraudulent Conveyance: A transfer of an interest in property done with intent to defeat creditors or others of their just and lawful entitlements.

Frustration: The inability to complete a contract because the object of it has been lost or fundamentally changed.

Fungibles: Standard commercial movable things that are sold by measure, number or weight.

Intellectual Property Terms of Art

- Fair Use: A statutory exemption to copyright for criticism, comment, news reporting, teaching, scholarship, or research.
- File Wrapper (also called file history) – folder kept by the PTO that contains all the correspondence/documents involved in a patent application; contents of the file.
- Filing Date – date on which all the required parts of an application are received at the PTO.

~G~

GAAP: Generally accepted accounting principles

Gain: Increase in value, capital, or amount compare loss capital gain; gain realized on the sale or exchange of a capital asset.

GAL: Guardian ad litem.

Gap-Filler: Term supplied by a court when contract partners fail to make provisions for a particular matter (price, remedy for breach).

Garnishment: a remedial device used by a creditor to have property of the debtor or money owed to the debtor that is in the possession of a third party attached to pay the debt to the creditor.

Garnishment of Wages: Seizing an amount owing pursuant to a court order directly from the employee's wages.

Garnishor: A creditor who brings a garnishment proceeding against a garnishee.

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LEX LAW CORP.

General: Involving, applicable to, or affecting the whole

General Accounting Office (GAO): The federal government office that carries out legal, accounting, auditing and claims settlement functions with respect to federal government programs and operations, as assigned by Congress.

General Appearance: Court appearance by which a party submits to the jurisdiction of the court.

General Counsel: a lawyer at the head of a legal department (as of a corporation or government agency)

Goodwill: An intangible asset that is made up of the favor or prestige which a business has acquired beyond the mere value of what it sells.

Graduated tax: Increasing in rate with increase in taxable base; progressive.

Grandfather: To permit to continue; often "Grandfather Clause".

Grant: To permit as a right or privilege.

Grantee: One to whom a grant is made

Grantor: One who makes a grant.

Gravamen: Gist

Gray Market: Market employing irregular but not illegal methods.

Greenmail: The practice of buying enough of a company's stock to threaten a hostile takeover and reselling it to the company at a price above market value

Gross Income: All income derived from any source except for items specifically excluded by law

Gross Profit: Net sales minus the cost of goods sold

Gross Receipts: the total amount of value in money or other consideration received by a taxpayer in a given period for goods sold or services performed

Guarantee: An assurance that a condition will be fulfilled

~H~

Hear: To give a hearing to.

Hearing: Proceeding of relative formality at which evidence and arguments may be presented

Hearsay: Statement made out of court and not under oath which is offered as proof that what is stated is true

Hearsay Rule: Rule barring the admission of hearsay as evidence.

Hedge: To reduce possible losses in speculative transactions by engaging in offsetting transactions.

Hedging: The practice of engaging in offsetting financial transactions to reduce losses.

High-Low Agreement: A settlement that is contingent on a jury's award of damages and that sets a minimum amount that the defendant will pay the plaintiff if the award is below that amount and a maximum amount that the defendant will not pay more than.

Hobby Loss: A nondeductible loss from a hobby.

Hold: To have lawful possession or ownership.

Hold Harmless: Of, relating to, or being an agreement between parties in which one assumes the potential liability for injury that may arise from a situation and thus relieves the other of liability.

Holder in Due Course: The holder of a negotiable instrument that is complete and regular on its face and that is taken in good faith and for value without notice that it is overdue or has been dishonored.

Holding: A ruling of a court upon an issue of law raised in a case.

Home Office Expense: Expenses arising from operating a business in a qualified manner in one's home.

Homestead Credit: Property tax credit program, offered by some state governments, that provides reductions in property taxes to eligible households.

Homestead Exemption: An exemption from liability that prevents creditors from obtaining satisfaction from a debtor's homestead see also declaration of homestead at declaration

Hornbook: A book explaining the fundamentals of the law.

~I~

i.e.: Abbreviation for id est, "that is" (Latin).

Illegal: Violation of statute, regulation or ordinance

Illusory promise: Agreement to do something that is indefinite.

Immaterial: Objection to introducing evidence in a trial.

Immunity: Exemption from penalties, payments or legal requirements.

Impanel: To select and seat a jury.

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LEX LAW CORP.

Impeach: To discredit the testimony of a witness.

Implied contract: Agreement which is found to exist based on the circumstance.

Implied warranty: An assumption at law that products are "merchantable".

Impossibility: An act cannot be performed due to nature or physical impediments.

Impound: To collect and hold funds.

Impute: To attach to a person responsibility.

In absentia: In absence (Latin).

In camera: In chambers (Latin).

In forma pauperis: In the form of a pauper (Latin).

In kind: Referring to payment, distribution, or substitution of things.

In lieu: Use taxes paid instead of sales tax.

In limine: At the threshold (Latin).

In pari delicto: In equal fault (Latin).

In perpetuity: Forever.

In pro per: In propria persona; representing oneself.

In re: In regard to.

In toto: Completely or in total (Latin).

Incapacity: Not able to perform.

Inchoate: Referring to something which has begun but has not been completed.

Income: Money, goods or other economic benefit received.

Income tax: A tax on an individual's net income, after deductions.

Incompetency: The condition of lacking the ability to handle one's affairs.

Incompetent: A person who is not able to manage his/her own affairs.

Indemnify: To guarantee against any loss which another might suffer.

Indicia: Signs or circumstances (Latin).

Inference: A rule of logic applied to evidence in a trial

Infra: Below (Latin).

Instrument: A written legal document such as a contract, lease, or deed.

Insured: The person or entity who will be compensated for loss by an insurer.

Intangible property: Items such as stock in a company which represent value.

Integration: Adopting a writing as part of an agreement

Inter alia: Among other things (Latin).

Interlocutory: Provisional; not intended to be final.

Interrogatories: Written questions to a party to a lawsuit asked by the other side.

Invest: To put money into a business, or buy property, or buy securities.

Invitee: One who comes onto another's property to transact business.

Ipse dixit: He himself said it (Latin).

Ipsa facto: By the fact itself (Latin).

Irrelevant: Not important, pertinent, or germane to the matter at hand.

Intellectual Property Terms of Art

- Improvement Patent – a patent having claims that are an improvement or modification of the invention of a prior patent.
- Infringement – an unauthorized attempt to make, use, sell or have made a property right owned by another; can be direct or contributory or can be actively induced (the encouragement of others to infringe).
- Intellectual Property – property in the form of patents, trademarks, service marks, trade names, trade secrets, and copyrights.
- Interference – priority proceedings in the PTO to determine which of the two or more parties was first to invent the subject matter in conflict.
- Invention – conception of a novel, useful, unobvious contribution which is then reduced to practice.

~J~

J. D.: Abbreviation for Juris Doctor or Doctor of Jurisprudence; the formal name for the university law degree.

Joint Affidavit: An affidavit sworn by two or more persons.

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LEX LAW CORP.

Joint and Several Liability: Liability of more than one person for which each person is liable to pay back the entire amount.

Joint Venture: A legal relationship among individuals or corporations to invest for some common purpose.

Judgment: A decision given by a court.

Judgment Creditor: Any person entitled to enforce a judgment against another.

Judgment Debtor: A person against whom a money judgment has been obtained.

Judicial Discretion: The power the law gives the Court or a judge to choose among two or more alternatives, each being lawful.

Judicial Immunity: Absolute immunity from civil liability for official decisions or acts.

Judicial Independence: That judges are not subject to pressure and influence, and are free to make impartial decisions.

Judicial Lien: A lien obtained by judgment or other judicial proceeding.

Judicial Misconduct: Conduct on the part of a judge that is prohibited and which could lead to a form of discipline.

Judicial Notice: A doctrine which enables a judge to accept a fact without the need of a party to prove it through evidence.

Judicial Proceeding: Procedurals and hearings before a court, or a tribunal or administrative board that performs a judicial function.

Judicial Review: A process where a court of law is asked to rule on the appropriateness of the decision of an administrative agency or tribunal.

Jure: By right, under legal authority (Latin).

Jurisdiction: Legal authority to judge or to act in a given situation or case.

Jurisprudence: Case law, or the legal decisions which have developed and which accompany statutes in applying the law against situations of fact.

Juror: A member of a jury; a person who has taken an oath to serve on a jury.

Jury: A group of citizens randomly selected from the general population and brought together to assist justice by deciding which version, in their opinion, constitutes 'the truth' given different evidence by opposing parties.

Jury Nullification: The extraordinary power of a jury to issue a verdict contrary to the law as applied to the proven facts.

Jury Tampering: To unlawfully disrupt the independence of a jury member with a view to influencing that juror otherwise than by the production of evidence in open court.

Jus: The law; a legal right (Latin).

Justiciability: An actual and substantial controversy must be at hand; a necessary prerequisite of a matter put to a court of law for resolution.

~K~

Kin: A blood relative.

Knowingly: Acting voluntarily and intentionally and not because of mistake or accident.

Known Loss Doctrine: A principle of insurance law which prevents an insured from coverage if the insured knew the loss was probable at the time of the insurance contract.

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LEX LAW CORP.

~L~

Laches: An allegation that a legal right is stale under the circumstances and no longer able to support enforcement.

Laissez-faire: Leave alone; a theory of contract law that persons ought to have freedom of contract with minimal state or judicial interference (French).

Law: Rules of conduct approved and enforced by the government of and over a certain territory.

Law Journal: A scholarly or academic publication presenting commentary of emerging or topical developments in the law.

Law of the Case Doctrine: When a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.

Lawyer: An individual trained in the law and that has been certified to give legal advice or to represent others in litigation.

Lawyering: The work of a lawyer in giving legal advice or in suggesting an application of that law in advancing a client's case.

Leading Question: A "yes or no" question which suggests an answer.

Legal Citation: An abbreviation for a law report or other regular or periodic law or legal and authoritative publication.

Legalese: Legal terms combined in long-winded sentences.

Legal Fiction: A ruling based on hypothetical or non-existent facts.

Legislation: Written and approved laws.

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LEX LAW CORP.

Letters Rogatory: A request of a judge in one jurisdiction to a court of another, to conduct some litigation-related task.

Levy: A seizure of specified property for the purposes of conversion into money.

Liability: A legal obligation.

Libel: Written form of defamation.

Liberal Construction: A form of interpretation allowing a judge to consider other factors when deciding the meaning of a phrase.

License: A special permission to do something.

Licensee: The holder of a license to do or use something.

Licensor: The person who grants a license to another.

Lien: A right to compensation that remains attached to an object that has been sold.

Lifting the Corporate Veil: Disregarding the general rule a corporation is a legal entity distinct from its shareholders by regarding the company as a mere agent or puppet of a controlling shareholder or parent corporation.

Limited Partner: A unique colleague in a partnership relationship who has agreed to be liable only to the extent of his investment.

Limited Partnership: A partnership with at least one general partner and a limited partner, the latter contributing financially or otherwise but not otherwise involved in the business or, generally, personally liable for the debts of the partnership.

Limited Power of Attorney: A POA limited by a condition or term or in regards to a specific item of property.

Liquidated Damages: Pre-determined damages.

Liquidation: The converting of assets into cash.

Lis Pendens: A dispute or matter that is the subject of ongoing or pending litigation (Latin).

Literal Construction: Interpretation that does not allow evidence extrapolated beyond the actual words.

Litigant: A person who is a party to a legal action.

Litigation: A dispute is in litigation when it has become the subject of a formal court action or lawsuit.

Litigation Loan: A loan made by a third-party to litigation, typically a finance company, to a litigant to finance the litigation.

Litigation Privilege: Non-disclosure protection imposed on documents which come into existence because of litigation.

Locus: Place: location (Latin).

Intellectual Property Terms of Art

- License – an agreement between the owner of a patent and another party that permits the other party to practice the invention or benefit from rights; usually involves some compensation from the licensee to the licensor; does not include legal title (remains with licensor).
- Licensee – party obtaining rights under a license agreement.
- Licensor – party granting rights under a license agreement.

~M~

Mailbox Rule: A contract law exception that makes a mailed acceptance of an offer valid as of posting.

Mala Fides: Bad faith (Latin).

Malfeasance: Doing something illegal.

Malice: Spite or ill-will.

Malicious Prosecution: An intentional tort that redresses losses flowing from an unjustified prosecution.

Malum in se: Something wrong in itself (Latin).

Malum prohibitum: Wrong because prohibited (Latin).

Manifest Abuse of Discretion: Standard of judicial review; discretion exercised improvidently or thoughtlessly and without due consideration.

Marshalling: If a creditor has access to two sources of payment, he shall take his payment out of that fund upon which another creditor has no access or lien.

Mary Carter Agreement: A partial settlement to litigation where some defendants settle by accepting a term of which is a loan by the settling defendant to the plaintiff, to be repaid by any monies recovered from the remaining defendant(s).

Mea Culpa: I am guilty (Latin).

Mechanic's Lien: A statutory charge on real property arising from labor or material supplied to improve it.

Med-Arb: A form of arbitration in which the arbitrator starts as a mediator but in the event of a failure of mediation, the arbitrator imposes a binding arbitration decision.

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LEX LAW CORP.

Mediation: A neutral facilitator who assists the parties to a dispute in negotiating a settlement.

Meeting of the Minds: The fact of contracting parties arresting their thoughts on a common set of fundamental terms.

Merchantable Quality: A product that is undamaged and usable and of sufficient quality to merit purchase at the desired price by a reasonable buyer.

Merger: Absorption of one thing or legal right into another.

Minutes: Official written record of a meeting.

Misrepresentation: A false and material statement that induces a party to enter into a contract.

Mistake: A fundamental error underlying a purported contract.

Mitigating Circumstances: Facts that, while not negating a wrongful action, tend to show that the defendant may have had some grounds for his actions.

Mitigation of Damages: The obligation upon a person who sues another for damages, to minimize damages, as far as reasonable.

Moiety: Half of something.

Moot: A matter where the issue raised concerns a hypothetical or abstract question.

Moral Turpitude: An act of baseness or depravity contrary to accepted moral standards.

Moratorium: The temporary suspension of legal action.

Mortgage: An interest given on a piece of land, in writing, to guarantee the payment of a debt or the execution of some action.

Mortgagee: Lender; one who extends credit secured by a mortgage.

Mortgagor: The person who borrows money secured by conceding a mortgage against his interest in real property.

Motion: A proposal made to a Court or at a meeting and intended to be considered and decided upon.

Motion to Strike: A motion put to the Court to strike a pleading or evidence of a witness.

~N~

Necessaries of Life: A product or service sold or provided to an individual not legally competent, for his comfort or convenience.

Negligence: A breach of a duty to take care.

Negotiable Instrument: A document of an amount of money, or a title, which is readily transferable to another.

Negotiate: To communicate on a matter of disagreement, with a view to attempt to reach a resolution.

Negotiation: Discussion for the purposes of exploring and arriving at an agreement.

Nolo Contendere: I will not defend (Latin).

Non-pecuniary Damages: Damages not readily quantified or valued in money, such as compensation for pain and suffering.

Non-compete Agreement: An agreement on a departing employee restricting same-industry employment.

Non Compos Mentis: Not of sound mind (Latin)

Non-disclosure Agreement: A contract between the holder of confidential information and another person to whom that information is disclosed, prohibiting that other person from disclosing the confidential information to any other party.

Nonfeasance: Not doing something that a person should be doing.

Non-profit: An organization not seeking profit and that does not disgorge excess income to its members.

Non Sequitur: It does not follow (Latin).

Nota Bene: Note well (Latin).

Notary: A legal officer with specific judicial authority to attest to legal documents, usually with an official seal.

Not for Profit: An organization not seeking profit and which does not disgorge excess income to its members.

Notice of Motion: A formal notice to participants in litigation of an intent to seek specific relief in an action.

Notwithstanding: In spite of; even if; without regard to.

Novation: Substitute a new debt for an old debt, canceling the old debt.

Nudum Pactum: A contract for which there is no consideration (Latin).

Nuisance: Use of one's property to the extent of unreasonable annoyance or inconvenience to a neighbor or to the public.

Nunc Pro Tunc: Now for then; deemed retroactive (Latin).

Intellectual Property Terms of Art

- Nominative Fair Use: The use of another's trademark to identify a thing and does not imply current sponsorship or endorsement.
- Non-exclusive License Agreement: A legal document licensing an intellectual property to another party for use in a defined field. This intellectual property may be licensed to additional parties for use in fields other than the ones specified in previously executed license agreements.
- Non-obvious: A criterion in Section 103 of the Patent Code which requires that an invention cannot receive a valid patent if the invention could be readily deduced from publicly available information by one of ordinary skill in the art.
- Novel: Requirement for patentability: original in conception or style.

~O~

Oath: Solemn affirmation to tell the truth.

Obiter Dictum: An observation by a judge on a matter not specifically before the court (Latin).

Obligations: A legal requirement established by law or contract.

Obligee: One who is to receive the benefit of someone else's obligation.

Obligor: One who is contractually or legally, committed or obliged, to providing something to another person.

Offer: An explicit proposal to contract that, if accepted, completes the contract and binds both the person who made the offer, and the person accepting the offer, to the terms of the contract.

Officer: A management-level employee of a corporation entrusted with discretion in the exercise of some corporate power.

Oligopoly: A market condition in which there are only a few sellers of a specific product or service.

Ombudsperson: A person who investigates customer complaints against an employer; governments have ombudspersons who investigate citizen complaints.

Onus: The burden (Latin).

Open-Ended Agreement: A contract silent as to an essential term.

Open Fields Doctrine: There is no constitutionally protected expectation of privacy in open spaces.

Opening Statement: A lawyer's initial remarks at trial, to the finder of fact, setting out the road-map of the case or theory of the case.

Open Justice: Proceedings ought to be open to the public, including court files and public trials.

Oppressive: Harsh, dishonest or wrongful conduct.

Order: A formal written direction given by a member of the judiciary.

Ordinance: An executive decision of a government that is not from the legislature.

Out-of-Court Settlement: An agreement among litigants to settle a matter privately before the Court renders a decision.

Intellectual Property Terms of Art

- Obvious – term used by examiner when rejecting claims that the examiner feels would have been apparent to one "skilled in the art" at the time the invention was made.
- Official Gazette – published each Tuesday; officially announces the issuance of patents.

~P~

Pain and Suffering: Distress caused by the tortious conduct of another.

Paralegal: A person who is not a lawyer, or is not acting in that capacity, but who provides a limited number of legal services under the supervision of a lawyer.

Pari Delicto: Of equal fault (Latin).

Pari Passu: Equitably; without preference (Latin).

Parol Evidence Rule: Verbal evidence is inadmissible to vary or contradict the terms of a written agreement.

Particulars: The material facts that a party to litigation alleges are true and which that party will need to prove at trial in order to win the relief claimed.

Partnership: An organization in which two or more persons carry on a business together.

Party Wall: A partition wall; a dividing wall which separates two adjoining real properties.

Par Value Shares: Shares of equal value that have a common stated price.

Passing-Off: False representation likely to induce a buyer to believe that the goods or services are those of another.

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Past Recollection Recorded: An exception to the Hearsay Rule, whereby evidence of which a witness has no current recall can nonetheless be admitted for the truth of its contents, if it was recorded at a time when the witness was able to verify its accuracy.

Payee: The person to whom payment is addressed or given.

Payor: The person who makes required payment(s).

Peace Officer: Law enforcement officer; person empowered to make arrests; police officer.

Peer-to-Peer File Sharing: Downloading a computer file to a user's computer, using software, which then allows the user to make the file available to other users (peers).

Pendente Lite: During litigation (Latin).

Pen Register: An electronic surveillance device that attaches to a phone line and registers every number dialed from a specific telephone.

Pension: A private or government fund from which intermittent and regular benefits are paid to a person upon retirement or disability.

Per Capita: By the head (Latin).

Per Curiam: On behalf of the court (Latin).

Peremptory: Not open to challenge; final or absolute.

Peremptory Challenge: A party's challenge to a prospective juror for which no reason or justification need be given.

Performance Bond: A contract wherein a 3rd party, in exchange for a fee, secures another's fulfillment of a contract or performance of a duty.

Perjury: An intentional lie given while under oath or in a sworn affidavit.

Permanent Resident: An individual who has status in a country usually less than citizenship but more than just a visitor.

Perpetuity: Unlimited duration; forever.

Per Se: Of itself (Latin).

Personal Knowledge: Something a witness actually saw or heard.

Personal Property: Property other than real property.

Personal Service: Service of court documents directly to an individual.

Personal Services Contract: A contract in which the skills or talents of a party are material.

Personalty: Personal property.

Persona Non Grata: An unwelcome person (Latin).

Per Stirpes: By roots or stocks; by representation (Latin)

Petition: The formal, written document submitted to a court, which seeks redress.

Piercing the Corporate Veil: A situation in which courts put aside limited liability and hold a corporation's shareholders or directors personally liable for the corporation's actions or debts.

Plagiarism: The representation of the work of others as one's own.

Plain Error: Limited grounds upon which an appeal alleging deficient jury instructions will be allowed, which were not objected to at the time they were presented to the jury; the error must be so obvious or serious that the public reputation and integrity of the judicial proceeding is impaired.

Plain Meaning Rule: A rule of interpretation that where the plain meaning of a statute is apparent, there is no room for interpretation.

Plaintiff: The person who initiates or files a case with a court.

Plat: A subdivision map prepared for approval by a governmental authority.

Pleadings: Core document(s) of a party to litigation formally setting out the facts and the law that support that party's position.

Plebiscite: The submission of a legislative proposal to the vote of the people.

Poison Pill Plan: An anti-takeovers scheme by which financial disadvantages are triggered and targeted to discourage potential takeover acquirers.

Policy: Planning decisions of a government agency; an insurance contract.

Political Question Doctrine: A doctrine that prevents a court of law from determining issues that are essentially political.

Political Speech: Expressions that comment on government action.

Ponzi Scheme: A form of investment fraud whereby initial investors are promised a return of their investment by the enlistment of subsequent investors.

Postal Rule: A rule of contract law that makes an exception to the general rule that an acceptance is only created when communicated directly to the offeror.

Power of Attorney: A document giving a person the right to make binding decisions for another, as an agent.

Practice of Law: The giving of legal advice or of representation of another as agent in a court of law or through rules of court, or in the preparation of legal documents or in dispute or contractual negotiation.

Preamble: A introductory written statement of facts or assumptions upon which a statute or contract is based.

Precatory Language: Words that express a desire.

Precedent: A case that establishes legal principles to a certain set of facts, coming to a certain conclusion, and which is to be followed from that point on when similar or identical facts are before a court.

Predatory Pricing: The pricing of products in an unfair manner with an object to eliminate or retard competition and thereby gain and exercise control over prices in the relevant market.

Preemption Doctrine: The superseding of any lower jurisdiction's law in the event of a law on topic extant within a higher jurisdiction.

Preferred Shares: A share in a company that has some kind of special right or privilege attached to it, such as that it is distinguished from the company's common shares.

Premises Liability: The liability of an occupier of real property towards injury to others.

Preponderance: Evidence that persuades a judge or jury to lean to one side as opposed to the other, during the course of litigation.

Present Memory Revived: A facilitative mechanism used at trial to assist a witness in recalling his or her memory, thus revived.

Presumption of Fact: A conclusion of fact constructed logically from other proven facts.

Presumption of Innocence: A legal presumption that benefits a defendant in a criminal case and which results in acquittal in the event that the prosecutor does not prove guilt beyond a reasonable doubt.

Priest and Penitent Privilege: A privilege suggesting the exclusion from evidence of matters discussed during a confession between a Roman Catholic priest and a penitent.

Prima Facie: A legal presumption which means on the face of it or at first sight (Latin).

Primogeniture: Oldest son inherits.

Principal: An agent's master.

Private Nuisance: An unreasonable interference with the use or enjoyment of land.

Privilege: A special and exclusive legal advantage or right such as a benefit, exemption, power, or immunity.

Privity of Contract: A doctrine of contract law that prevents any person from seeking the enforcement of a contract, or suing on its terms, unless they are a party to that contract.

Probate: The formal certificate given by a court that certifies that a will has been proven, validated and registered and which, from that point on, gives the executor the legal authority to execute the will.

Probative: Tending to prove.

Pro Bono: For the good (Latin).

Pro Forma: For the sake of form (Latin).

Prohibition: A legal restriction against the use of something or against certain conduct.

Promisee: A person whom is to be the beneficiary of a promise, an obligation or a contract.

Promisor: The person who has become obliged through a promise (usually expressed in a contract) towards another.

Promissory Estoppel: A promise made to another party to a contract that the contract will not be enforced in whole or in part and which, once acted upon, prevents subsequent proceedings to enforce the contract as against the person who relied on the promise.

Promissory Note: An unconditional, written and signed promise to pay a certain amount of money, on demand or at a certain defined date in the future.

Propound: To offer a document as being authentic or valid.

Proprietor: Owner.

Pro Rata: To divide proportionate to a certain rate or interest (Latin).

Pro Se: On one's own behalf (Latin).

Prospectus: A document in which a corporation sets out the material details of a share or bond issue and inviting the public to invest by purchasing these financial instruments.

Pro Tempore: Something done temporarily; not intended to be permanent (Latin).

Proxy: A written appointment given by a voting member of an organization to another person allowing the proxy holder to attend a specific meeting on the member's behalf, including the exercise of the member's voting rights.

Publication: Communication of the alleged defamatory statement to a third-party.

Public Domain: Property that is available or accessible to the public.

Publicity: The use of an individual's name, image or reputation to promote products or services.

Public Nuisance: A nuisance that interferes with the public.

Public Policy: Certain acts or contracts are said to be against public policy if they tend to promote breach of the law, of the policy behind a law, or tend to harm the state or its citizens.

Puffery: Advertising that states in general terms that one product or service is superior and which does not otherwise imply any specific representation in regards to the product or service.

Punitive Damages: Special and highly exceptional damages ordered by a court against a defendant where the act or omission which caused the suit, was of a particularly heinous, malicious or highhanded nature.

Intellectual Property Terms of Art

- Patent (utility, letters, design, plant) – a grant by a government to an inventor giving the latter the right to exclude others for a limited period of time for making, using, or selling the invention; an exclusive privilege granted to an inventor to make, use or sale an invention for a set number of years.
- Patentee: A person to whom a patent has been granted; who appears on the official government registry as the patent owner.
- Patent Application: Formal document submitted to the PTO with a request for a grant; includes an Abstract of Disclosure, patent drawings, specification, claims, oath or declaration, and a filing fee payment.

- Patent Cooperation Treaty (PCT) – a multilateral treaty which became effective in 1978 that eliminates some of the duplication involved when obtaining patent protection for the same invention in several countries; more than 40 nations are signatories of the PCT; with the PCT it is possible to file and prosecute a single international application, which has the same effect as filing a separate application in each PCT nation that the inventor designates at the time of filing the application; the PCT neither creates an international patent nor changes the substantive requirements of patentability in any individual PCT nation (including the US), it merely reduces the duplication of effort required to file and processes parallel applications in several nations at the same time.



- Patent and Trademark Office (PTO): Organization within the Department of Commerce that deals with the issuance of patents.
- Piracy: Unauthorized duplication of a matter protected by intellectual property.
- Plant Patent – two distinct forms of plant patent or patent-like protection are available for new plant varieties;
 - 1930 Plant Patent Act (PPA), PTO may grant patents for asexually reproduced varieties, and
 - under the 1970 Plant Variety Protection Act (PVPA) protection of new sexually reproduced varieties are protected by the Department of Agriculture.

- Point of Novelty Test: A test to assist in determining whether a product infringes upon an existing design patent; whether the accused product appropriates the novelty of the patented one.
- Prior Art – existing technical information against which the patentability of an invention is evaluated; is pertinent in novelty and obviousness requirements for a patent.
- Provisional Patent Application – accepted in 1995, the provisional patent application provides an early priority date without counting against the twenty-year life of the patent. Requirements for filing a provisional are specifications, drawings if necessary, filing fee, and assignee. No claims are submitted with the provisional.

~Q~

Qualified Immunity: Shields public official from any litigation in regards to acts undertaken in good faith.

Qualified Privilege: A defense in defamation actions that defeats the claim when the alleged defamation issues during specified occasions.

Quantum: Amount (Latin).

Quantum Meruit: As much as is deserved (Latin).

Quash: To cancel or set aside.

Quasi-Contract: Agreement imposed by law resulting from certain actions of a person.

Quasi-Judicial: Administrative tribunals.

Question of Fact: Inquiry into what actually occurred.

Question of Law: Inquiry into the scope, effect, or application of a rule.

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Quid Pro Quo: The exchange of something for something (Latin).

Qui Tam: Who, as well? (Latin).

Quitclaim: A deed in which a person who has an alleged interest in real property transfers this interest to another.

Quorum: The minimum number of voting members that must be in attendance at a meeting of an organization for that meeting to be “regularly constituted”.

~R~

Ratification: The act by a principal, after the agent has acted, confirming that what the agent may have done without authority, is binding on the principal.

Reasonable Person: The concept of an “average person”, against which the actions of another are weighed.

Rebuttable Presumption: A presumption of fact that can be defeated by persuasive evidence to the contrary.

Receipt: Document acknowledging delivery of a thing or the payment of money.

Recoupment: To withhold a portion of something due to be paid or given, based on a right or claim to do so.

Re-cross Examination: The resumption of cross-examination by the original cross-examiner in order to respond to matters that may have arisen during the re-examination of a witness.

Recuse: When a judge declines to preside over a matter because she feels unqualified to perform legal duties because of a possible conflict of interest or lack of impartiality party.

Redact: To remove text or images from an original document.

Red Herring: An irrelevant legal issue.

Re-direct Examination: The re-opening of an examination-in-chief after cross-examination, to cover matters that may have arisen during cross-examination.

Referendum: Putting a question of proposed law to a popular vote.

Regulation: A rule, issued not by a legislative body but by the executive branch of government, supported by an enabling statute.

Relator: An informer; a person who supplies facts.

Release: A party giving up all claims or rights.

Remedy: A remedial judicial action to right a wrong.

Replevin: A legal action taken to reclaim goods.

Republic: A form of government where the law-makers and administrators are chosen by the people.

Republication: The validation of a previously invalid will by express reference to it in a subsequent will or codicil.

Rescind: To cancel a contract putting.

Res Gestae: Things done (Latin).

Res Ipsa Loquitur: The thing speaks for itself; no additional proof is needed to understand the occurrence (Latin).

Res Judicata: Already subject to judicial determination (Latin).

Respondeat superior: Let the principal answer (Latin).

Respondent: The party that responds to a claim filed in court against it by a Claimant.

Restitution: The return to a rightful owner of a thing wrongfully taken.

Restrictive Covenant: A contract in which a party agrees to be restricted in some regards as to future conduct.

Resulting Trust: A trust that is presumed by the court from certain situations.

Retainer: A contract between a lawyer and a client in which the lawyer agrees to represent and provide legal advice to the client, in exchange for money.

Reverse Mortgage: A loan made to the homeowner, with the home as collateral; payment is not required until the homeowner sells, moves out, or dies; the loan amount and interest is paid out of the proceeds of sale.

Reverse Passing-Off: The action of a provider of goods or services who purchases another's goods or services, removes the latter's trademark and replaces it with its own.

Revocable Trust: A trust which can be revoked at the discretion of the settlor.

Rider: A written amendment to the coverage of an existing insurance policy.

Right to be Forgotten: A right to have personal information deleted from a party's database.

Right: A claim or advantage conferred or protected by law.

Right of First Refusal: A right to be the first person allowed to purchase something if it is ever offered for sale.

Rule Against Perpetuities: A common-law rule that prevents suspending the transfer of property for more than 21 years, or a lifetime plus 21 years.

Rule of Law: That individuals and government shall submit to and be regulated by law, and not engage in arbitrary action.

Rules of Court: Rules of procedure and conduct during the sitting of a court of law uniformly applicable to litigants and their lawyers, and governing the hearings of claims and motions.

Runaway Witness: A witness who, while under cross-examination, is unresponsive.

Intellectual Property Terms of Art

- Reduction to Practice: There are two types:
 - (a) actual – occurs when the invention is physically implemented, the article is manufactured, machine is built and tested, the method is performed and confirmed, or the composition of matter has been synthesized or produced, and
 - (b) constructive – filing of a patent application; to show one of average skill in the art how to make and use the invention.
- Reverse Payment: A payment by a patent holder to an infringer in consideration of the infringer's cease and desist.
- Royalty: A share of income, in accordance with the terms of a license agreement, paid by a licensor for the right to make, use or sell an invention.

~S~

Sabbath Breaking: Doing business on a Sunday.

Sale: The exchange of goods or services for consideration.

Sanction: To ratify or approve; to punish.

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Sarbanes–Oxley Act: A federal law that substantially revised and strengthened securities laws.

Scienter: Knowledge of wrongdoing; knowledge of the "wrongness" of one's actions prior to acting (Latin).

Scrivener: Scribe.

Seal: A wax impression on a document.

Sealing Order: A court order that restricts access to or disclosure of any record or document filed in a proceeding.

Securities: Negotiable instruments that yield dividends or interest.

Security: Something given to ensure the payment of a loan.

Security Deposit: Money paid to another to be held as security for the occurrence of a specified event.

Seizure: Dispossession of something against the will of the possessor.

Self-Represented Litigant: One who represents himself in a dispute.

Sequestered Jury: A panel confined to a location during deliberations where it is shielded from outside contacts.

Sequestration: Taking someone's property, voluntarily (by deposit) or involuntarily (by seizure), by court officers or into the possession of a third party, awaiting the outcome of a trial in which ownership of that property is at issue.

Set-Off: A type of cross-claim by a defendant against the plaintiff which, if successful, would result in the reduction or elimination of the plaintiff's claim.

Settlement: An agreement articulating a resolution of a dispute.

Sexting: Sending digital text messages containing suggestive, provocative, or explicit sexual photographs.

Share: A portion of ownership of a for-profit corporation.

Shareholder: One who owns shares of a for-profit corporation.

Shareholder Agreement: A contract between the shareholders of the company and the company.

Sheriff: Individuals empowered to ensure the security of courthouses generally and courtrooms especially, to secure jurors during trials, and to assist in the execution of court orders.

Sherman Antitrust Act: Federal statute that defines and prohibits contracts or conspiracies designed to restrain trade.

Shotgun Clause: A buy-sell agreement; a legal agreement between shareholders in a business that allows one partner to put a price on the table for the value of the business and leave it up to the other partner to take the money or match the offer in a short period of time (usually 20 to 40 days).

Silent Partner: One who invests in a company but does not take part in administering the organization but shares in the profits or losses.

Simony: Selling miracles or the promise of other Divine service.

Sine Qua Non: A thing that is absolutely necessary; an essential condition (Latin).

Situs: Location (Latin).

Slander: Defamation that is spoken, not recorded in a fixed form.

Slander of Title: Intentionally insulting property; includes real property, a business, or goods.

Small Claims: A court with simplified rules of procedure to deal with claims of a lesser value.

Sole Proprietorship: A business by a single individual which is not formally organized and for which the individual and the business are indistinguishable in the eyes of the law.

Spam: Unsolicited e-mail.

Special Damages: Damages capable of precise calculation such as out-of-pocket expenses and loss of earnings.

Specific Performance: A remedy in the event of breach of contract, whereby the Court orders a party found in breach of his/her contractual obligations to perform their specific duty as set out in the contract.

Spendthrift Trust: A trust designed to prevent a beneficiary from depleting the trust funds, or from his creditors demanding payment therefrom.

Spite Fence: A fence built to annoy a neighbor, and not for any beneficial purpose.

Spoliation: The intentional destruction of relevant evidence when litigation is existing or pending.

Springing Power of Attorney: A power of attorney which becomes legally effective on the occurrence of an event (such as incapacity).

Standing: The ability to sue and speak to the court on a controversy based on interest in the outcome.

Star Chamber: An elitist, secretive and abusive private “court”.

Stare Decisis: Determining points in litigation according to precedent (Latin).

Statement of Claim: Document that sets out the plaintiff's allegations of fact and engages the judicial process.

Statute of Frauds: Requirement that certain kinds of contracts be memorialized in a writing, signed by the party to be charged, with sufficient content to evidence the contract.

Statute of Limitations: A procedural rule which limits the time in which a party may bring an action to enforce a right.

Statute of Repose: The deadline set by statute on the assertion of a right by litigation.

Statutes: Written laws approved by legislatures.

Statutory Lien: A lien arising solely by force of a statute on specified circumstances or conditions.

Statutory Trust: A trust created by the effect of a statute.

Stay: To stop or suspend a proceeding.

Stipulated Judgment: When both parties in civil matter agree to settle their dispute, and the judge signs a legal document reflecting the parties' agreement.

Stipulation: An agreement between the parties with respect to an issue before the court.

Stirpes: One's descendants; the offspring of a person (Latin).

Stock: The aggregate of a person's shares held in a corporation.

Straight-line Depreciation: A depreciation formula that writes off the cost of an asset at a fixed percentage rate for every year of an asset's useful life.

Strict Liability: Tort liability of the defendant without need to prove intent, negligence, or even fault, so long as the plaintiff can prove that it was the defendant's object that caused the damage.

Sublicense: The grant by a licensee of certain licensed rights to a third party.

Subordination: To be subject to the orders or direction of another; of lower rank.

Subpoena: An order of a court requiring a person to be present at a certain time and place or suffer a penalty; literally, under penalty (Latin).



Subrogation: The substitution of one person to the rights of another.

Subsidiary: A corporation subordinate to a dominant company which is able, through share ownership, to exert influence or control over its affairs.

Substantial Performance: The fulfillment of essential obligations, but not necessarily strictly all obligations, as required under a contract.

Substantive Law: Core law that determines rights and obligations; not procedural law.

Substituted Service: A method of delivery of a court document on a person other than in-person and generally subject to pre-authorization by the court.

Successor: One who takes over the rights of another.

Sui Generis: One of a kind; its own kind (Latin).

Summary Judgment: A court order, dismissing a claim, based on the allegation that there is no claim or defense with a reasonable probability of success.

Summons: One of the initial documents issued in a civil suit; giving the defendant notice of the claim.

Supersedeas: An application to a court to stay proceedings; usually to stay or stop enforcement or collection proceedings.

Supersedeas Bond: A contract by which a surety obligates itself to pay a final judgment rendered against its principal under the conditions stated in the bond.

Suppressed Evidence: The intentional non-disclosure by the prosecution of evidence favorable to an accused and asked for by the accused, where that evidence is material either to guilt or punishment.

Surety: A person who promises to answer for the debt or performance of another.

Surety Bond: A three-party bond contract in which a third party (the "surety") backs up a principal by agreeing to honor the principal's obligation(s) towards the obligee of a bond in the event of the latter's default.

Surplusage: Superfluous allegations, especially in regards to pleadings.

Syndicate: A group of individuals formed to carry on a specified purpose.

Intellectual Property Terms of Art

- Scenes A Faire: Elements of an original work that are so trite or common that they are not captured by copyright.
- Search (location of information) – sometimes performed to determine if prior art exists that would affect the patentability of an invention.
- Statutory Bar (requirements) – specific acts related to an invention which if performed more than one year prior to the filing of a patent application will

preclude patentability; i.e., publication, sale of invention, abandoning the invention, or public use.

- Suggestive Mark: A trademark that does not describe the product but instead suggests it, requiring some imagination to connect with the nature of the product.

~T~

Take-Down Notice: A notice sent to an Internet service provider alleging unlawful material published on the site; a process operated by online hosts in response to court orders or allegations that content is illegal.

Tamper: To interfere improperly or in violation of the law.

Tax Amnesty: A limited-time opportunity for a taxpayer to pay a defined amount, in exchange for forgiveness of a tax liability (including interest and penalties) relating to a previous tax period, without fear of criminal prosecution.

Taxation of Costs: The formal quasi-judicial review of a bill of costs or other determination of costs payable by one litigant to another.

Tax Avoidance: To avoid taxes by arranging one's affairs so as not to incur tax.

Tax Evasion: A prohibited or illegal act or omission designed to reduce one's tax liability.

Testimony: Oral evidence of a witness in a judicial proceeding.

Third Party: A person who is not privy to a contract or a party in a lawsuit.

Third-Party Claim: A claim made by a defendant within existing legal proceedings seeking to enjoin a person not party to the original action, to enforce a related duty.

Thirteenth Amendment: An amendment to the US Constitution forbidding slavery.

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Tied Selling: Where a supplier sells on condition that the buyer purchase an associated or "tied" additional product.

Time-Bar Clause: A clause in a contract setting a strict deadline within which either party may bring a dispute to either a court or to arbitration.

Time of the Essence: A contractual term requiring performance within a specified time.

Title: Proof of ownership.

Torah: A primary source of Jewish law including the Old Testament and extensive interpretations.

Trade Libel: Defamatory statements made in regards to the quality of a business' products or services.

Transcript: An official verbatim written record of what was said.

Triage: To sort or choose.

Trial: A formal examination of evidence before a judge.

Trust: A legal obligation with respect to property given by a person (donor) to another (trustee) to the advantage of a beneficiary

Trustee: A person who holds property rights for the benefit of another.

Intellectual Property Terms of Art

- Trademark: A word, name, symbol, or device or any combination of these used by a manufacturer or vendor in connection with a product.
- Trade Secret: Unique commercial information; property protected by keeping it confidential or secret.

~U~

Ultra-hazardous Activity: Activities that can cause injury, even when conducted with the greatest prudence and care.

Ultra Vires: Beyond the powers (Latin).

Umpire: Arbitrator.

Unbundling Legal Services: A retainer with a lawyer for legal services of limited scope.

UNCITRAL: Acronym of the United Nations Commission on International Trade Law; known in law as the abbreviation in reference to arbitration rules and laws published by that agency.

Unconscionable: A bargain or contract that is clearly unfair, harsh, and contrary to common sense or good conscience.

Under Protest: A qualification made to a legal action taken by a person that the action is contrary to the intent or desire of the person making the protest.

Undertaking: An unequivocal declaration of intention made by a lawyer in the course of his/her practice, addressed to someone who reasonably places reliance on it.

Undue Hardship: Circumstances that excuses a person from a legal obligation so as to avoid an unreasonable or disproportionate harm.

Undue Influence: The unconscientious use by one person of his/her power over another in order to induce the other to compromise a property right.

United States Code: Codified collection of federal legislation in the United States.

Unjust Enrichment: Benefiting from the action or property of another without legal justification.

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Unlawful Interference with Economic Interests: An intentional and economic tort; one person using unlawful means with the object and effect of causing economic or other damage to another.

Usury: Excessive or illegal interest rate.

Intellectual Property Term of Art

- Utility Patent: One of three types of US patents; this type is most commonly regarded as "a patent"; protects patentable inventions such as processes, machines, compositions of matter and improvements. other types of patents are design and plant patents.

~V~

Vacatur: Motion to set aside a judgment (Latin).

Vagueness: A law lacking precision; a law with insufficient guidance.

Valuation: An expert's opinion as to the market value of an item of property.

Vendor: The seller; the person selling.

Venue: Location of a judicial hearing.

Verdict: Decision of a jury; truth told (French).

Vertical Restraint: Special condition or term offered to select distributors by a supplier in order to manipulate trade.

Vexatious Action: Litigation undertaken to annoy or oppress.

Vexatious Litigant: An individual who habitually or persistently engages in legal proceedings, without having a legitimate claim requiring resolution.

Vicarious Liability: Liability for the tort of another even though the person being held responsible may not have done anything wrong.

Viz: That is to say; to wit (Latin).

Voidable: Legal agreement or contract that is extinguishable at the option of a party.

Void or Void *Ab Initio*: A document that is void, as if it did not exist; not legally binding.

Voir Dire: A mini-hearing at the start of trial on the eligibility of prospective jurors.

Voluntary Disclosure: A tax amnesty program whereby a delinquent taxpayer discloses information not previously reported to a tax agency, and, by doing so voluntarily, avoids liability to penalty or prosecution normally associated with prior non-disclosure.

~W~

Waiver: An intentional relinquishment or abandonment of a known right or privilege.

Waiver by Conduct: The abandonment of a right implied from a person's conduct.

Want of Prosecution: An application to a judge to dismiss a law suit alleging that the litigant has inexcusably delayed moving the litigation along and that under the circumstances, the litigation ought to be dismissed.

Warrant: A document giving a person legal authority to do a certain thing.

Warranty: A guarantee given on the performance of a product or the doing of a certain thing.

Whistleblower: An employee who reports a supervisor or an employer's legal violations or wrongdoings.

Will: A written statement, usually signed, made by individuals, which directs the distribution of their property when they die.

Willfully: Acting voluntarily, deliberately and intentionally.

Without Prejudice: Without detriment to any existing right or claim.

With Prejudice: A case that is over and done with, once and for all, and can't be brought back to court.

Witness: A person who perceives an event by sensory perception.

Wobbler: A criminal offense that offers to the district attorney the option of charging as a misdemeanor or as a felony.

Writ: An official court document commanding the person to whom it is addressed to do something specific.

Wrongful: An act or omission that exposes a person to liability.

~X~

X: A form of signature by persons unable to write or sign their names.

~Y~

Yellow Dog Contract: Contract of employment in which the employee promises not to join a union, and to forfeit employment if he joins a union during the period of employment (labor law).

~Z~

Zealous Witness: A witness who demonstrates disproportionate enthusiasm while testifying.

Zebra Crossing: Striped white or yellow lines painted on asphalted streets indicating a pedestrian crosswalk.



Zero: Nil; no quantity or number.