

Legal glossary

A plain language guide to common legal terms.

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A

abate

To stop harm being done to a property, or to the owner's or renter's full use of a property. *See also* nuisance.

abduction

Unlawfully removing a person, often a child, from their home.

abrogate

To abolish or cancel something, such as a law, so that it is no longer in force.

absolute privilege

What people say in courts and parliaments cannot be used as the basis for a defamation lawsuit, which is a court action taken by a person to defend their reputation. *See also* defence, qualified privilege.

abuse of process

Using a legal right or process in a way that is unfair to others. For example, one party to a lawsuit can abuse a court procedure by causing delay on purpose, to get some advantage over the other party.

accused

A person who has been charged with a crime. Also known as a defendant.

acquit

To find someone 'not guilty' on a charge in a criminal case.

Act

A written law made by parliament, also called an 'Act of parliament', 'statute' or legislation.

act of bankruptcy

An act of a debtor that shows they cannot pay what they owe their creditors.

act of God

A natural event such as a cyclone that no-one could see coming or prevent.

actus reus

An act that must be proved before a court can find someone guilty of a criminal offence. The acts are different for different offences. For example, armed robbery includes the act of using or pretending to use a weapon. *See also* mens rea.

adduce

To adduce or lead evidence is to show a document or thing to the court, or to ask a witness questions, as part of an argument in a court case.

adjourn

To move a court hearing to another time or day.

adjournment without conviction

The outcome of a criminal case where the court does not record a conviction, as long as the person sentenced does not offend again within the period stated by the court. This court order is also known as a 'good behaviour bond', 'deferred sentence' or 'suspended sentence'.

administrative act

A decision or action by a government department or agency, made with the authority of an Act of parliament or case law. Government departments can only do what is allowed by the Act. If they do things they do not have power to do, their actions can be challenged in a court or tribunal. *See also* case law, tribunal, ultra vires.

administrator

(1) Someone who takes legal responsibility for the possessions of a person who has died without making a will or who is still alive but cannot manage their own possessions. For example, an administrator may be appointed to manage the money, house or other possessions of a person who has a severe mental disability. (2) A manager appointed by the directors of a company that is in financial difficulty. This may give creditors a better chance of getting their money back because the company can keep trading under supervised management instead of being wound up.

adversarial system

The system operating in courts in Australia and other common law countries. In this system, barristers question witnesses and present opposing arguments and evidence to the judge, who then decides between them and makes orders about what is to happen.

affidavit

A document that presents written evidence in a court case, setting out what a witness says is true. It must be sworn to be true and correct in front of an authorised official, on oath or by affirmation.

affirmation

One way to promise that a statement made by a witness in court or in an affidavit is true. The other way is to swear an oath on the Bible or other holy book. People who cannot swear an oath because it would be against their religion, or because they have no religious belief, can make an affirmation instead. *See also* affidavit.

age of consent

The age a young person can legally have sex. In Victoria this is 16.

agent

A person who acts for someone else. They can make decisions, carry out tasks or make agreements for the other person. For example, if you ask someone to bid for you at an auction they will be acting as your agent.

aggravated damages

Money ordered by a court as extra compensation, more than normal damages. This order can be made when someone who makes a claim in court can prove that the way the other party behaved while they were doing the wrong thing caused even greater injury or loss. *See also* damages.

aggravating factors

Circumstances that make an offence much more serious. For example, if a gun is used in a robbery that is an aggravating factor.

aiding and abetting

Helping someone carry out a criminal offence. For example, a person can aid and abet an arsonist by buying petrol for them, knowing they plan to burn down a building.

alibi

Defence to a criminal charge on the grounds that the accused was not there when a crime was committed.

alleged

Claimed but not proved. For example, the police can allege in court that a car was stolen, but they then have to prove it with evidence. If you say a person did something illegal you are making an allegation. Unless you can back it up, you will not be able to win a court case about it.

alternative dispute resolution

A way of resolving a dispute outside the court system. There are different kinds of alternative dispute resolution, including negotiation and mediation.

amendment

A change made to a legal document or Act of parliament.

amicus curiae

A person who is not a party to a dispute but appears in a case to help the court by representing a person without charge or by explaining complicated laws in a balanced way. Also known as a 'friend of the court'.

annuity

A payment or other benefit that is received once a year.

annul

To cancel the legal effect of something, as if it never happened. For example, a court can annul a marriage, which means it was never valid, in contrast to making a divorce order, which ends a valid marriage.

antecedent

Prior.

appeal

The review of the decision of a lower court by a higher court. If an appeal is successful, the higher court can change the lower court's decision.

appellant

A person who appeals against a court or tribunal decision.

arbitration

A form of alternative dispute resolution where the parties appoint an independent person (an arbitrator) to sort out their dispute. Arbitration is often the method people choose to solve construction and shipping disputes.

arrears

Money owed that must be paid back by the end of a certain period.

arrest

To seize a person suspected of breaking the law and hold them under police control. Police have powers to arrest people they suspect are criminal offenders.

assignment

Legal transfer of some right to use property. For example, putting a lease over farmland into another person's name, or giving another person copyright in a song you have written.

asylum

Protection offered by another country to a person who had to leave their home country because of persecution.

attachment of earnings

A court order that tells an employer to hold money back from an employee's wages and pay it to a creditor.

attestation clause

Words in a document that say a witness was there when the document was signed, and that they saw another person sign that document. The witness signs their name next to the attestation clause.

award

(1) A standard set of working conditions, including pay rates, for a particular industry. (2) A court decision that a party receive compensation, such as an 'award' of damages to compensate them for physical injuries.

B**bail**

The procedure that allows a person who has been charged with an offence to be released from police control or prison from the time of the charge until the hearing of the case. Courts can add conditions to bail. For example, they can require that people released on bail promise to come to the court on a set date. Courts can also require them to put up an amount of money that they cannot get back if they do not appear in court as they promised.

bail bond

A form signed by a person released on bail. It sets out the promises the person has made to the court so they can be released from police control or prison. *See also* surety.

bail justice

An official, usually based at a police station, who has the same power as judges and magistrates to grant or refuse bail to an accused person.

bailment

An arrangement in which a person has to look after another person's goods. The person looking after the goods must return them at the time the parties agreed, or when some task has been completed. For example, when you give your watch to a jeweller for repairs, the jeweller must look after it until you pay for the repairs. You can then get the watch back. Bailment has nothing to do with bail in criminal cases.

balance of probabilities

More likely than not. The plaintiff in a civil case (a non-criminal case) must prove that what they are arguing is more likely to be true than false. *See also* beyond reasonable doubt.

bankruptcy

When a person who cannot pay their debts has their money and property taken over to be managed by a person who uses it to pay back creditors. The debtor is then called a bankrupt.

barrister

A lawyer who specialises in giving advice in difficult cases and representing clients in court.

beneficiary

(1) Someone whose money or property is being looked after for them by someone else. (2) A person who is left something in a will. *See also* trust.

bequeath

To leave money or other property to someone in a will. For example, a grandmother might bequeath her engagement ring to her granddaughter.

beyond reasonable doubt

The level of proof required in criminal trials. If there is any reasonable doubt about the case made by the prosecution, it has not been proved and the defendant will be found not guilty.

bias

When a judge or other decision-maker is not open to being persuaded. Bias can be shown by outright favouritism or hostility towards a party in a case, or by anything that could compromise a judge's or other decision-maker's fairness and independence, such as when they have a financial interest in the outcome of a case.

bona fide

Honest and genuine.

bond

(1) An undertaking by someone to do or not do something. (2) A tenant's payment of money to a landlord at the start of a tenancy. The bond is held in case there is any damage to the property or the tenant fails to pay rent.

breach of contract

When a party to a contract fails to do what they agreed to do under the contract.

burden of proof

The obligation on one legal party to prove their side of the case in court. In a criminal trial, the prosecution must leave no reasonable doubt that what they allege is what really happened. If they cannot prove their case in this way, the accused will not be convicted. In a civil trial, the plaintiff must prove that their claim is more likely to be true than false. *See also* balance of probabilities, beyond reasonable doubt, onus of proof.

business purpose declaration

A document that formally states that a person bought goods to be used in a business, to make money, not for personal use.

by-laws

A name sometimes used to describe the rules made by local government councils.

C

capacity

The ability to understand and be held responsible by the law for your actions. It also refers to a person's ability to understand and agree to something, such as to undergo medical treatment.

case law

Law based on the reasons judges have given for their decisions in court cases, and which judges in later, similar cases are bound to follow. Under the doctrine of precedent, lower courts, such as the Magistrates' Court of Victoria, are bound to follow relevant decisions of higher courts, such as the Supreme Court of Victoria. Case law is also called 'common law' and 'judge-made law'. *See also* precedent, doctrine of.

caveat

(1) A warning or notice – for example, to a buyer to thoroughly check a product before buying it. *See also* caveat emptor. (2) A notice filed with Land Victoria warning anyone who searches the land title that someone claims ownership or some other right in the land.

caveat emptor ('let the buyer beware')

In the past, buyers who purchased goods could not easily get a refund if there was something wrong with the goods. These days buyers can get refunds or exchanges much more easily because consumer protection laws say goods must work properly and do what they are supposed to do.

certificate of title

A document created by Land Victoria that gives details of where a piece of land is, who owns it and any debt on it, such as a mortgage. Certificates of title are official copies made from registers kept for all land in the state. *See also* transfer of land.

certiorari

An order made by a higher court, such as the Supreme Court of Victoria, that cancels the legal effect of a decision that was incorrectly made by a lower court, public official or authority, or one they had no power to make. *See also* jurisdiction, mandamus.

character witness

A person who appears in court to give a character reference for an accused person.

charge

(1) A statement giving the details of a crime an accused person is claimed to have committed. (2) A debt that is attached to money or anything else of value, similar to a mortgage on a house and land. When someone gives a guarantee that they will pay back a debt, they can agree to have a charge placed over their assets. This stops them selling or giving away the assets until the debt is paid off.

chattel

Property, such as jewellery, that can be moved, unlike land.

child maintenance order

A court order about payments towards the costs of supporting and bringing up a child.

citizen's arrest

A rule under case law which permits a person who sees a serious crime taking place to stop the person committing the crime and keep them under control until the police get there.

civil action

A court case where a person or organisation sues another for compensation or for some other court order. This is different from a criminal case, where the police bring criminal charges and the court may give the defendant a penalty, such as time in prison, if they are found guilty.

civil law

The area of law that covers disputes between organisations, companies or individuals, such as the law relating to contracts.

clear title

Outright ownership of property, without any remaining debts or other liabilities.

clearout

When a debtor moves away from where they live and does not tell their creditors what their new address is.

code of practice

Guidelines setting out proper practice in an industry or occupation. For example, a code of practice can set out safety guidelines for an industry. Codes can be voluntary or required by legislation.

codicil

A document that changes an existing will.

cohabitation

Living together as a couple.

committal proceedings

A hearing in a Magistrates' Court that decides whether someone charged with a serious criminal offence should face trial in a higher court. It is also known as a preliminary examination. *See also* indictable offence.

common law

See case law.

common law defence

A defence to a crime or other wrongdoing that has developed from decisions in court cases. Compare this with a defence created by legislation. *See also* defence.

community treatment order

An order that authorises medical treatment for a patient who has been admitted to a psychiatric hospital without their consent. The treatment takes place in the community.

Community Visitor

A person who reports on the quality of mental health services and the welfare of patients.

community-based order

A sentencing order that can be made by a court instead of ordering a prison term. The person sentenced must do unpaid or educational work in the community, supervised by the Office of Corrections.

compensation order

An order requiring that someone found guilty of an offence pay for damage to property caused by the offence.

compensatory damages

Payment of money ordered by a court in a civil case. For example, if a defamation claim is successful, damages must be paid by the defendant to compensate the person whose reputation they have harmed.

complainant

The person who formally starts an action in a court or tribunal or who makes a complaint to a complaint-handling body.

comprehensive insurance

Car insurance that covers a person for claims against them for damage they do to other people's property and also for damage to their own property.

conciliation

A form of alternative dispute resolution. The parties negotiate with the help of an independent person called a conciliator. The aim is to sort out the dispute by agreement.

concurrent sentence

A prison term that is served at the same time as another sentence. Because the sentences are not served one after the other, there is no extra time in prison for any sentences after the first one. *See also* cumulative sentence.

conduct money

Money covering the cost of travel to court. A party who requires a witness to appear in court must pay for them to get there.

confidential relationship

A relationship where one person trusts the professional independence of another person.

confidentiality

The principle that private information told to a person must not be revealed. Some professionals must keep information confidential, for example in a doctor-patient relationship.

conflict of interest

A situation where someone's personal interests or their duties to another person could affect the way they carry out their duties. For example, a lawyer should not agree to represent the buyer as well as the seller in a sale of land.

consent

To agree to or approve something.

consideration

Something of value, such as money, given by one person to another person as part of a contract.

consumer

Under The Australian Consumer Law, a person who buys goods or services for less than \$40,000 or for personal or home use.

consumer lease

An agreement to hire goods for a particular period and to make payments for that hire.

contact order

A court order about how often someone can see their children if they don't live with them. A contact order states the type and frequency of contact that is allowed between an adult, such as a parent, and a child.

contempt of court

Disobeying a court order or doing something that shows disrespect for the authority of the court or a judge.

contest mention hearing

A hearing in which parties can try to reach agreement on some matters before a full criminal hearing is held.

contract

An agreement that the law will enforce.

contravene

To break a rule or requirement.

contributory negligence

A defence in a negligence case. The defendant tries to prove that the plaintiff's own carelessness was part of the reason they got injured.

conveyance

A document used to transfer land from one person to another. Similar to a transfer of land registered with Land Victoria. *See also* certificate of title, transfer of land.

cooling-off period

The period in which a buyer can legally get out of a contract they have signed without breaking it. A contract to purchase a house in Victoria will often have a cooling-off period of three days.

copyright

Property rights over creative works, such as books, music, art, sound recordings, films or broadcasts. Generally only the copyright owner, or someone who has their permission, can publish, copy, perform or broadcast the works.

corroboration

Something that backs up evidence another witness has given in court.

costs

The amount charged by a lawyer for legal work. Lawyers can only charge the amount agreed with the client in a costs agreement or the amount stated by a court in its rules. The party who loses a case usually has to pay all their own costs plus most of the costs of the other side. *See also* indemnity costs.

counsel

A lawyer who appears in court and speaks on behalf of their client, often a barrister. *See also* barrister.

counterclaim

A formal document that states a person's answer to the writ or other claim that started a legal action against them. For example, if a plaintiff sues a defendant for damage that his dog has caused his garden, the defendant might make a counterclaim that the plaintiff damaged a fence that would have kept the animal in. A defendant can use a counterclaim instead of suing the other party in a separate court action.

covenant

A formal, written agreement that creates a legal obligation. For example, a property developer might add a covenant to every block of land in a subdivision to stop anyone building a house there unless it is made of brick.

cover note

A document given by an insurer as evidence of temporary cover before a formal policy can be issued.

credit

A debt that does not have to be paid until some time in the future.

credit contract

A contract relating to the giving of credit. Credit is being allowed to pay later, in the future, for something you are getting now.

creditor

A person or organisation that a debt is owed to.

cross-examination

An opposing party's questioning of a witness in a court case.

Crown

(1) A common term for the legal power and authority of the Commonwealth, state and territory governments. (2) Another name for the prosecution in a criminal trial. *See also* prosecution.

cumulative sentences

Prison terms that are served one after another, not at the same time. *See also* concurrent sentence.

custodial sentence

A prison sentence.

custody

When a person is put under lawful control, such as when a person is arrested by the police and taken to a police station.

damages

A court order for money to be paid to someone to compensate them for a loss. For example, a person who caused an injury to another person that stopped them working can be ordered by the court to pay damages that compensate the injured person for their loss of income. *See also* liquidated damages.

de facto

Commonly used to refer to two people living together as a married couple but who are not legally married. They are sometimes said to be in a 'de facto' marriage or relationship. 'De facto' means 'in fact'. *See also* domestic relationship.

debt

Money owed.

debt agreement

An arrangement between a debtor and a creditor for the repayment of a debt, sometimes by instalments.

debtor

A person who owes a debt.

declaratory order

A court's judgment about the meaning of a point of law in a case. A declaratory order just states the law. It does not itself include a remedy such as damages or an injunction. *See also* damages, injunction.

D

decree

(1) A command given by a public authority. For example, a health authority might decree that animals with a contagious disease be quarantined.

(2) A court order.

decree absolute

The final court order in divorce proceedings.

decree nisi

A temporary order that terminates a marriage. Neither party can remarry until the order is finalised, usually a month after the decree nisi is issued. *See also* decree absolute.

decree of nullity

A court order stating that a marriage is not legally valid. *See also* marriage.

deed

A formal legal document that is used for specific purposes, such as trusts, some types of ownership of land and agreements where no money is going to be paid. Deeds must clearly state that they are a deed, and they usually include the term 'signed, sealed and delivered'. They are also called 'contracts under seal'.

deemed

Treated by the law as having certain characteristics, whether or not they have those characteristics in reality. For example, children may be deemed to have the same home as their parents whether they actually live there or not.

defamation

To damage another person's reputation by publishing or communicating false statements about them.

default

Failure to do something that is legally required. For example, a person who fails to make a payment on their car is in default on the loan.

defence

(1) A defendant's response to the legal claims made against them in court by a prosecutor or plaintiff. (2) A lawful excuse for conduct: for example, killing someone in self-defence. (3) A term referring to the defendant and their legal team.

defendant

A person who has been charged with a criminal offence or against whom a civil lawsuit has been brought.

delegation

The transfer of responsibilities from a higher authority to a lower one. For example, a government minister may have power to delegate their decision-making responsibility for visa applications to a public servant. When there is a delegation, the higher official continues to have the authority to make the decision.

deponent

A person who swears or affirms an affidavit. *See also* affidavit.

deportation

Removal of a non-citizen from a country because they do not have a legal right to enter or remain there, have been convicted of a serious crime or are regarded as a threat to national security.

depositions

A written record of the evidence given on oath at a committal hearing. Depositions may be used if the witness cannot give evidence when the trial takes place. *See also* committal hearing.

determination

A decision.

directions hearing

A short meeting between the judge and the lawyers in a case to decide how the case will be run until the hearing starts. For example, information can be given about the law and about what evidence can be admitted.

disbursement

Money paid by one person on behalf of another person. For example, a lawyer pays the cost of lodging documents on behalf of their client. Also called 'out-of-pocket' expenses.

discharge

(1) When a person fulfils or is released from an obligation. (2) To release someone. For example, letting a prisoner out of jail.

disclosure

Providing information to a party as required by a contract or other legal process.

discoverable date

The first date that a person knew, or should have known, that someone was injured, that the defendant caused it and that the injury was serious enough for compensation to be ordered.

discovery

Compulsory sharing of facts and documents between parties before a case is heard in court.

discretion

Power to choose whether to do something or not. For example, a judge may have discretion to allow a party extra time to complete a document if it would be unfair to enforce the legal time limit.

distrain

To seize property of a debtor to enforce the payment of a debt.

divisible property

Property belonging to a bankrupt that can be used to pay off debts.

domestic relationship

A relationship where people live together as a couple or a family. This describes people's living arrangements, not their marital status.

domicile

A person's permanent home according to the law. The home base where they belong. It is not necessarily the same as 'residency', which is where someone is presently living. It is particularly relevant to family law and taxation law.

double jeopardy

The principle that no-one should be placed at risk – 'in jeopardy' – of being convicted of a criminal offence for which they have already been punished. For example, in most circumstances if you have been on trial and found not guilty you cannot be put on trial for the same offence again even if there is new evidence.

E

duplicity

(1) Deceit. (2) Charging a person with more than one offence on the basis of one set of circumstances.

duress

Forcing someone to do something they do not want to do. An agreement signed under duress will be invalid.

duty lawyer

A lawyer who provides free assistance at court to a person who has been charged with a criminal offence and has not yet had any legal advice.

duty of care

An obligation to take reasonable care to avoid harming someone or something.

easement

A legal right over another person's land. Easements are usually listed on a property's title. For example, a right of way to walk or drive across a property to get to another place is an easement.

ejectment

An action by an owner to get their land back, sometimes involving evicting a tenant from it.

encumbrance

A legal restriction, such as a mortgage, that prevents the owner from freely dealing with real estate or other property.

endorse

To support or approve something.

enduring power

Written authority given to a person to make decisions on behalf of another person. The authority remains valid even when that person is no longer mentally competent. There are different types of enduring powers including enduring powers of attorney (financial), enduring powers of attorney (medical treatment) and enduring powers of guardianship. *See also* power of attorney.

equity

(1) Fairness and justice. (2) A right to property that the court will recognise even though it does not amount to full legal ownership. (3) A set of legal rules that aims to reduce any harshness that would result from strict application of the law.

estate

All the property a person has. It is often used to describe property belonging to someone who has died, or the property of a bankrupt.

estoppel

A legal rule that stops someone from going back on what they said they would do in an agreement when it has been relied on by another party to their disadvantage.

eviction

The lawful removal of a tenant from a property.

evidence

Material presented to a court to prove or disprove a fact. It can include what witnesses say as well as documents and other objects.

ex gratia

Something done as a favour, without any legal obligation to do so.

ex parte

An application to a court made by one party only, where the other party is not present or does not yet know about the court action.

examination in chief

When a party questions his or her own witness in court.

excess

The amount a person does not get back from the insurer when they make a claim on their insurance. For example, if a car is insured for an agreed value of \$10,000 with an excess of \$1000, the insurer will pay only \$9000 on a claim if the car is written off.

exclusion clause

A term in a contract which tries to exclude rights or avoid liabilities. It is also sometimes called a 'limitation clause'.

executor

The person named in a will as the one who must ensure that the deceased person's intentions, as stated in the will, are carried out.

exemplary damages

A court order that a wrongdoer pay the victim a larger amount of damages than necessary to compensate for their loss. Its purpose is to punish the wrongdoer and make an example of them. *See also* general damages, special damages.

exhibit

A document or thing that is provided as evidence in a court case or referred to in a sworn statement. For example, a gun might be produced as an exhibit in a criminal case, and a bank statement might be produced in a civil case.

express warranty

A verbal or written promise made about a product – for example, when someone selling a toaster says it will last for six years.

expulsion

Permanent removal from an organisation or place. For example, a school principal might order the expulsion of a student from school.

extradition

A process used when a person is sent by one state or country to another state or country to face criminal charges there.

false imprisonment

Keeping someone locked up or preventing them leaving against their will, without lawful authority. *See also* habeas corpus.

family violence intervention order

A court order made to protect a family member from violence, intimidation or harassment. *See also* intervention order.

fiat

An official authorisation to do something, issued in the name of a government official. For example, an Attorney-General can give their fiat to allow a person to bring proceedings in a court when they would not normally have the right to do so.

F

fiduciary duty

An obligation to act honestly and for the benefit of another person. The duty only applies to certain relationships where a fiduciary relationship exists – for example, a solicitor owes a fiduciary duty to their client.

forensic patient or resident

A person detained in a mental hospital or institution after being found unfit to stand trial, or found not guilty because of mental illness or intellectual disability.

forensic procedure

A method of collecting evidence, such as taking fingerprints or getting a DNA sample, from a person suspected of an offence.

fraud

Dishonest action or inaction intended to deceive someone.

freedom of association

The right to join or choose to be identified with some group with a common interest. For example, people have a right to join a union.

freedom of information

The right to access documents held by government agencies, except documents excluded under the law.

G**general damages**

Part of the money a court orders a defendant to pay as compensation. General damages cover losses that cannot be calculated exactly, such as money for pain and suffering, disfigurement or loss of earning capacity or enjoyment of life. *See also* exemplary damages, special damages.

grievance procedure

The steps that need to be followed by someone with a complaint, often against an employer or government department or agency.

guarantee

A binding promise made by one person to ensure that another person carries out their legal obligations. The person making the promise is called a guarantor.

guardian

Someone who is legally responsible for taking care of another person or their property.

H**habeas corpus**

A common law action challenging the legality of someone's imprisonment.

hand-up brief

A collection of documents that must be given to – 'served on' – the accused person in a criminal case and provided to the court. The brief must contain all the charges and a summary of evidence that will be used against the accused. *See also* service.

hearing

The time and place at which a court or tribunal hears the parties argue their case and makes a decision.

hearsay evidence

Statements about something that has not been seen or heard by the witness, but has been told to them by another person. Hearsay evidence is usually not allowed in court.

hire

(1) An agreement to pay for the temporary use of something, for example a car. Also called renting or leasing. (2) To employ someone to do work.

hire purchase

A contract that requires a buyer to purchase goods by making instalment payments. The buyer only owns the goods after they have made the final instalment payment.

identification material

Material that is collected by police to help identify a person suspected of committing an offence. This may include fingerprints, voice recordings, handwriting samples or photographs.

identification parade

A police line-up. A group of people that includes a suspect and several other people who have nothing to do with the case. A person who saw an offence being committed is asked to say whether anyone in the line is the offender. If they pick the suspected person, it can be used as evidence in court.

implied terms

(1) Unwritten promises that a court considers are part of an agreement because it is clear that the parties meant to include them. (2) Terms that, under legislation such as consumer protection laws, are automatically part of some agreements. For example, under legislation all goods sold in Victoria must be of a reasonable quality. *See also* merchantable quality.

implied warranty

A promise that goods and services will be of reasonable quality. This does not need to be written into the contract as it automatically applies to all goods and services sold in Victoria.

in lieu of

Instead of.

in loco parentis

Someone who is acting in the position of a parent and has authority over a child. For example, a school teacher in charge of children on a school bus trip.

inadmissible

Something that is not allowed as evidence in a court hearing. For example, the fact that someone has been convicted of theft in the past is inadmissible to show that they stole something this time.

incorporated association

An organisation, such as a club, formally set up as a separate, legally-recognised body.

incorporated documents

Papers that are included in a contract or other legal document because they are specifically referred to and stated to form part of the contract.

indemnity

A promise to pay compensation to cover losses or expenses that may arise in the future. For example, an insurance policy covers losses caused by another person's actions.

indemnity costs

Lawyers' fees paid in full by the party who loses a court case. *See also* costs.

Independent Third Person

A person, other than a friend or family member, who provides support to a person with an intellectual disability, brain injury or mental illness when they are being questioned by the police.

independent witness

An independent person who sits with a child being questioned by police when their parent or guardian cannot be present. The independent witness ensures that the child is cared for and understands what is happening.

indictable offence

A serious crime that is generally heard before a judge and jury in a criminal case.

indictment

A document that lists the charges against an accused and is filed with the court to begin criminal proceedings.

industrial disease

Damage to health caused by conditions in a workplace. For example, lung disease caused by working in a mine or a wheat silo without a face mask.

infant

A child or young person under 18. In law, an infant is not just a baby. The more common legal term for someone who is not an adult is 'minor'. *See also* minor.

informant

A person who swears an affidavit stating that an offence has occurred and is named on the documents that start a criminal case in court. The informant is usually a police officer but can also be the victim of the crime. *See also* affidavit.

informed consent

When a person freely agrees to a procedure with full understanding of what it involves and knowing about any risks. For example, a patient can give informed consent to surgery after a surgeon explains to them the risks involved.

informer

A person, often a criminal, who gives information to the police about criminal activity by other people. Informers may hope for a reward or a lighter punishment for their own offences.

infringement notice

A notice stating that an offence has been committed. It also states the amount of any fine that has to be paid.

injunction

A court order that directs a person to do, or not to do, something. For example, a court can order a developer not to demolish a historic building.

inquisitorial legal system

A kind of legal system found outside Australia, where judges can ask witnesses questions and make their own investigations about the facts in a case. *See also* adversarial system.

insolvent

When a person is unable to pay their debts in full when they are due.

instalment order

A court order that allows a debtor time to pay off a debt that has been proved in court. Payments may be made monthly or weekly instead of all at once. *See also* judgment debt.

instrument

A formal document, in writing or digitally authorised, which has a legal effect. For example, a transfer of land is an instrument that has the effect of changing ownership from one person to another.

intellectual property

Rights given by legislation to make money out of inventions and creative work. It includes copyright, industrial designs, patents, trademarks and plant breeder's rights. The inventor or creator can keep the rights or sell them. Other people can be sued for making copies without paying royalties. *See also* copyright.

intensive correction order

A sentence that is served in the community rather than in jail. Intensive correction orders have very strict conditions attached to them.

interim order

A temporary court order that stays in place only until a court can make a decision on the issue at a full hearing.

intervention order

A court order that prohibits a person from harming or harassing someone. *See also* family violence intervention order, personal safety intervention order.

intestate

Without a will. A person is said to have died intestate if they die without making a will.

invalid

Unable to be enforced at law. A legal provision or document that is not in proper legal form.

irretrievable breakdown

The end of a marriage. If a husband and wife cannot save their marriage, the court will grant a divorce if they have been separated for 12 months or more.

judgment debt

The amount of money that a court has ordered a debtor to pay.

judicial review

The court's review of an administrative decision on the basis of a legal error in the decision-making process. For example, a court can review a decision by an official on the ground that the official is biased. *See also* administrative act.

jurisdiction

The authority of a court or tribunal to hear matters brought before it.

knowingly concerned

Deliberately involved in committing a criminal offence.

J

K

L

lawyer–client costs

The costs a lawyer charges their own client.

lease

A document that sets out an agreement for the renting out of property, such as a house or car.

leasehold

The rental of a property – it does not amount to ownership.

legally binding

An obligation the law will enforce.

legatee

A person who receives a gift in a will. The gift, called a legacy, is not land but usually something else of value, such as jewellery or shares.

lessee

A person who rents property, such as a tenant who rents a house from a landlord.

lessor

A person who owns property and rents it out to another person.

letter of demand

A letter, usually written by a lawyer for their client, telling the person who receives it that unless they do what the letter says they will be sued. For example, a letter of demand can ask a debtor to repay a loan to avoid being sued.

letters of administration

A document that gives a person authority to manage the property of a person who has died without making a valid will. *See also* intestate.

liability

Legal responsibility.

libel

See defamation.

lien

The right to hold a person's property as security until an obligation is performed. For example, property may be held by a creditor until a debt is paid.

linked credit provider

A credit provider who has an agreement with someone selling goods. If a customer wants to buy goods but needs to borrow the money, the seller will suggest the buyer go to that credit provider.

liquidated amount

An amount of money that is definite or easily worked out. For example, the cost of a repair bill. *See also* unliquidated.

liquidated damages

An amount fixed in a contract as the amount the parties agree will be payable if the contract is broken. It must be a realistic amount to compensate the other party, not a penalty. *See also* damages.

litigant

A party in a civil action.

M

litigation

Court proceedings about a civil dispute, not a criminal case.

litigation guardian

An adult who acts in court for a child or person with an intellectual disability. A litigation guardian must pay for the costs of the court action if it is unsuccessful.

local laws

Laws made by local councils, also known as by-laws.

locus standi

The right to appear in a court action and be heard. It is also called standing. In general, a person cannot have their say in a court case about something that does not directly affect their interests. *See also* standing.

maintenance

Money paid to a person to financially support them. For example, when a couple has separated a court can order a parent to make regular payments to support their child.

malice

A desire to cause harm to someone.

mandamus

A court order requiring a lower court, government body or official to do something that they have a duty to do. For example, the court might order a minister to reconsider an application for a new broadcasting licence they have failed to consider properly.

mandatory

Required by law to be done.

mandatory reporting

A law that says people in particular jobs must tell a government agency if they know an offence is being committed. For example, doctors and teachers must report child abuse.

marriage

A legally binding agreement between a man and a woman to have a permanent relationship together as husband and wife. There must be a formal statement in front of official witnesses who register the marriage with the authorities.

material

Relevant or important. For example, material evidence is something that helps to prove an argument in a criminal case.

means test

A list of requirements that a person must meet to qualify for a benefit such as a pension or other financial assistance. Means tests often take into account a person's income and assets.

mediation

A form of alternative dispute resolution where an independent person (a mediator) is appointed to help the parties come to agreement. Mediators do not decide the outcome of the dispute. They help the parties consider the issues and best outcome. Parties may choose to use mediation instead of going to court, or the court may order the parties to go to mediation as a way of avoiding a court hearing.

mens rea

The mental part of a crime that the prosecution must prove in a trial. For example, an intention to steal something is the mens rea for the crime of theft. There is also a physical part of a crime, known as actus reus, that must be proved by the prosecution. *See also* actus reus, prosecution.

mention date

The first day that a criminal matter is brought before a Magistrates' Court. On this day, a person tells the court whether they will plead guilty or not guilty to a criminal charge.

merchantable quality

Being in good enough condition to be sold. Under Australian consumer protection laws, goods must be of merchantable quality.

minor

In Victoria, a child or young person under 18. *See also* infant.

misleading or deceptive conduct

Something done by a manufacturer or seller that is unfair, dishonest or likely to mislead a consumer when buying goods or services.

misrepresentation

Making a statement or doing something that is false in order to try to get someone to do something they would not otherwise have done.

mitigating circumstances

Circumstances which reduce the damages or punishment a court may order against a defendant.

mortgage

A debt on real estate or goods as security for the repayment of money borrowed. The mortgage stops the owner of the property selling it until they have paid off the debt.

mortgagee

A person or body, such as a bank, that lends money secured by a mortgage over the property of the borrower.

mortgagor

A person who borrows money and signs a mortgage as security. The money is often lent to buy something valuable, such as real estate, and the mortgage is a debt over that property. *See also* mortgage and mortgagee.

native title

The interests and rights of Indigenous Australians to their traditional land. This title is not the same as a certificate of title. It is a connection to land under traditional laws and customs that has not been interrupted by later settlement.

natural justice

Rules that courts, other dispute settlement bodies and government officials must follow to ensure that decisions are fair to all parties. Examples include the requirement that decision-makers act fairly without bias and the right of all parties involved in a case to present their side of a dispute.

necessaries

Things such as food and basic clothes that the law says are needed for people to live a reasonable life. A minor, in Victoria someone under 18 years old, cannot enter a legally enforceable contract, except for necessaries.

N

negligence

An act that breaches a duty to take reasonable care and results in loss or damage to another person.

negotiable instrument

A signed document, such as a cheque, that transfers money from person to person.

next friend

A person who brings a court action on behalf of a child or a person of unsound mind. *See also* guardian, independent witness.

nominal damages

A small amount of damages that a court can order a defendant to pay a plaintiff when a right has been violated but no damage of monetary value has been done. For example, a person can sue for trespass if a person goes onto their property without permission. The court would order nominal damages if no harm was done to the property.

nominee

(1) A person put forward as a candidate for an elected position. (2) A person chosen to act on behalf of someone else. *See also* agent.

non-custodial sentence

A criminal sentence that does not involve imprisonment.

non-parole period

The minimum period that a person must spend in prison before they are eligible to be released on parole. *See also* parole.

notice of defence

In a civil case, a document that a defendant must give to a plaintiff informing them that they will defend the lawsuit against them, and the reasons why.

notional earnings

The amount of money a person is expected to earn in a week. If a person does not work, the court calculates how much the person would be capable of earning if they did work.

nuisance

Doing something that stops another person fully using and enjoying land they own or occupy. For example, someone burning off smelly rubbish in their backyard might ruin a neighbour's enjoyment of their gardening. *See also* private nuisance, public nuisance.

oath

A person's promise to tell the truth in court. A person taking an oath places one hand on the Bible or other holy book to demonstrate how seriously they take their promise. *See also* affirmation.

obiter dictum

Words said or written by a judge, when deciding a court case, which are not necessary for the decision. For example, a judge in the Supreme Court of Victoria might say in passing that the law on theft in the United Kingdom is not the same as the law on theft in Victoria. Since the Supreme Court is not bound by United Kingdom law, the judge's comment about it is not necessary for the court's decision.

offence

A criminal act.

O

offender

A person who has committed a crime.

offer

The first step in agreeing to make a legally binding agreement. An offer must be accepted before there can be a legally enforceable contract. For example, a person can offer to sell their car for \$5000 and a buyer can accept the offer and pay that purchase price.

ombudsman

A public official appointed to investigate citizen complaints against government departments and statutory authorities. The term can also refer to an umpire who resolves consumer complaints in a particular industry, for example, banking. *See also* statutory authority.

on their own undertaking

When a person is released on bail without having to pay money to guarantee they will attend court on a specified date.

onus of proof

The responsibility to prove a case in court. In criminal trials, the prosecution must prove its case, leaving no reasonable doubt about it. In civil (non-criminal) cases, the plaintiff must prove that their claims are more likely to be true than false. *See also* burden of proof, standard of proof.

order nisi

An order that will come into force at the end of a stated period unless a specified event happens. *See also* decree absolute and decree nisi.

originating motion

An application that starts a court proceeding. The process, which is different for different courts, is set out in rules made by the court.

own motion

Something a court does without being asked by the parties in a case. For example, a court can 'of its own motion' find a person guilty of contempt of court.

paramount

The most important thing, above anything else.

paramountcy principle

The family law principle that the welfare of children is the most important consideration to be taken into account when court orders are being made.

parenting orders

A court order for the care of children when their separated or divorced parents cannot make arrangements for this themselves. The order covers matters such as where the child will live, contact with the parents and financial support.

parenting plan

A written agreement between parents who are separated or divorced that covers arrangements for the care and financial support of their children. Parenting plans can set out things like where the children will live and who will pay for what.

parol agreement

A verbal agreement.

P

parol evidence

Verbal evidence. The parol evidence rule says that where a written agreement exists, verbal evidence cannot be used to change the meaning of that agreement.

parole

To free a prisoner after they have served a minimum term but before the end of their sentence. While on parole they may be subject to conditions such as having to report regularly to police.

party

A person or organisation directly involved in a court case, including a person or organisation that has brought the case before a court or who is defending claims made against them.

party-party costs

Where the court orders that one party pay the court costs of the other party.

pecuniary

Involving money. A pecuniary loss is a loss of money and a pecuniary penalty is a fine.

perjury

The criminal offence of lying when questioned in court or when making a sworn statement. *See also* affirmation, oath.

permanent care order

An order made by a court that a child live with someone who is not their parent.

perpetrator

A person who commits a crime. *See also* offender.

perpetual succession

The fact that a company or organisation continues, even if one or more of its members dies. Legal ownership of its property is not interrupted by death because everything is owned by the company or group as a whole.

person responsible

A person who makes decisions about medical treatment for a person who cannot give informed consent to it themselves. *See also* informed consent.

personal safety intervention order

A court order made to protect a person from violence, intimidation or harassment by someone who is not a family member.

petition for bankruptcy

The formal process taken to begin an application to the court to make a person a bankrupt. *See also* bankruptcy.

plaintiff

A person who begins a civil lawsuit against another person.

pleadings

Written statements submitted by both parties before a civil court proceeding that outline the basic position of each party.

police brief

Evidence that the police prosecutor uses to prove that a person is guilty of a crime.

portability

Able to be moved. For example, mobile phone numbers and health insurance contribution periods are portable. You can take them with you if you change from one service provider to another.

possession

(1) Having control over property. Possession is not the same as ownership. For example, a bicycle you have borrowed from a friend is in your possession but you do not own it. (2) Having illegal drugs on your person or property.

power of attorney

A formal, written legal document in which one person gives another person power to make decisions or take actions for them in certain situations.

precedent, doctrine of

The doctrine that courts must follow past rulings of higher courts in very similar cases. The precedent comes from the reasons a judge has given for their decision in a case. For example, the County Court of Victoria must follow relevant rulings of the Supreme Court of Victoria. *See also* case law.

preliminary examination or hearing

See committal proceedings.

prerogative writ

An order made by the Supreme Court of Victoria or the High Court of Australia to cancel the claimed legal effect of a decision (*certiorari*), or to require a body to do something (*mandamus*), or to prohibit a body from acting outside its authority (*prohibition*). *See also* *certiorari*, *mandamus*, *prohibition*, *ultra vires*.

pre-sentence report

A report the court considers before sentencing a young person. It is usually prepared by the Department of Human Services (Victoria).

presentment

A document listing the charges against an accused. It is given to the court to begin a court case.

presumption of innocence

The principle in criminal law that every person is innocent until a court finds them guilty.

prima facie

Something that seems to be the case, on the face of it. For example, if a court requires a *prima facie* case to exist before a person can start a legal action, there must be enough evidence to suggest, without going into the case in full, that the claim could succeed.

primary victim

Someone injured or killed as a direct result of an act of violence, not a secondary victim who has only witnessed the incident.

principal relief

The main things a plaintiff in a civil case is seeking to get from a defendant by taking them to court. It can include getting compensation from the defendant or having them do, or stop doing, something.

private nuisance

Interference with the enjoyment and use of land. Examples include neighbours making noise late at night or smells from uncollected rubbish.

privilege against self-incrimination

An accused person's right in criminal cases, subject to certain limits, not to do or say anything that could be used as evidence against them in a court case.

privileged information

Information that is not allowed to be revealed in court.

privity of contract

The principle that only the parties to an agreement can be bound by it or go to court to enforce it.

pro bono

Free or reduced-fee assistance in a legal matter.

probate

Acceptance by a court that a deceased person's will is valid and was the last will they made before they died.

probation

A sentence that is served in the community and which does not involve a prison term. It requires good behaviour and supervision by a probation officer for a specified period.

procure

- (1) Obtain. For example, police can procure evidence from a crime scene.
- (2) To encourage or influence a person to commit a crime.

professional indemnity insurance

A type of insurance that covers a person against a claim that they did not take enough care in doing their job. Lawyers, for example, take out professional indemnity insurance.

prohibited name

A name that cannot be registered because it is not in the public interest to allow it. For example, an obscene or offensive name, or a name that is so long that it is totally impractical, can be refused registration.

prohibition

An order made by the Supreme Court of Victoria or the High Court of Australia prohibiting a body from acting outside its authority. *See also* jurisdiction, prerogative writ, ultra vires.

prohibition notice

A safety notice that bans some activity that could be a risk to workers.

prosecution

The party presenting evidence in court on behalf of the state or Commonwealth government against a person accused of committing a crime. The prosecution is also known as the Crown.

protected property

In bankruptcy, things the bankrupt owns that cannot be taken away and sold to pay creditors. This includes clothes and some trade tools.

protection application

An application to a court by the Department of Human Services (Victoria) for an authorisation to protect a child from harm. A successful application may authorise the removal of a child who is in danger of harm, where their family or other carers are unable or unwilling to protect them.

protection order

An order made by a court in response to a protection application. This may involve removal of the child from the family.

prothonotary

The title of the chief clerk of the Supreme Court of Victoria. Prothonotaries are responsible for the court's administrative functions. They can also review costs and fees charged to parties, conduct mediations and bring charges for contempt of court if someone breaks the court's rules or shows disrespect towards it. *See also* mediation.

proxy

A person who has been given power to do something on behalf of another person, such as voting for them at a meeting. The document authorising the action is also called a proxy or a proxy form.

public nuisance

A nuisance that interferes with the rights of members of the public. For example, a person who blocked off a public road would be committing a public nuisance.

pursuant to

In accordance with.

qualified privilege

A defence that gives protection against a defamation lawsuit. It can be used if information was given not to cause harm, and to someone who had a public interest in getting it and who acted reasonably when they published it. *See also* absolute privilege.

quantum

An amount. For example, the quantum of damages awarded by a court is the amount of money the defendant must pay.

quorum

The number of people who have to be present in a meeting for a vote passed by the meeting to be valid. For example, one-third of all the senators have to be present in parliament for a Senate vote to be valid.

real estate or real property

Land, and buildings on land.

rebuttable

Able to be disproved in court.

recognisance

An undertaking by a person to a court that they will do something. For example, an accused person can undertake to a court that they will appear at a later date for their hearing. A recognisance often includes a payment to the court – known as a security – to back up their commitment to do something.

registrar

The officer in charge of the administrative section of a court, which is known as the 'registry'. *See also* registry.

registry

The administrative section of a court that accepts documents that are filed with the court and also handles some public enquiries. *See also* registrar.

Q

R

regulation

A law made by a body other than parliament but under its authority. For example, regulations made by the Governor of Victoria on the advice of the Victorian government, known as the Governor in Council, about the keeping of dogs and cats.

related victim

A person in a close family or personal relationship with a person who was killed as a result of an act of violence.

release (or settlement)

A document signed by parties ending a court action. The party who began the action agrees to drop it, often in exchange for a payment by the other party.

remand in custody

An order that a person charged but not yet convicted of an offence be detained or imprisoned until they go to court for a hearing.

remission

A reduction in the length of a prison term.

repairer's lien

The right of a repairer to hold repaired goods until payment for their repair is received.

repeal

To cancel the whole or part of an Act of parliament or a regulation.

repossession

Taking back goods bought on credit from someone who owes money on them. This is an action a creditor can take against a debtor who does not pay. A bank may also take possession of a house if mortgage repayments are not made.

rescission

The ending of a contract that places the parties to the contract in the position they were in before the contract existed. For example, in a rescission of a contract for the sale of a car the seller would get back the car and the buyer would get back their purchase money. *See also* termination.

residence order

An order by the court that states who a child will live with – usually one of their parents – after a separation or divorce.

respondent

A defendant in a civil case that has been appealed to a higher court. *See also* appellant.

responsible authority

The government department or agency that is named in an Act of parliament as the body with power to act in a particular situation.

restitution

A court order for the return of goods to someone when a court decides that it would be unfair if they did not get them back.

restraining order

A court order that prohibits someone from doing something, such as harassing another person.

S

restraint of trade

An agreement that restricts a business in its dealings. For example, a seller may promise the buyer of a business that the seller will not set up a new business close by, at least for a few years. A contract like this cannot be enforced if it goes on for too many years or covers a very wide area.

retrospective law

A law that applies to something that happened in the past. For example, a law passed in 2012 that put a tax on car sales in 2011 would be a retrospective law.

reversed onus of proof

Where the responsibility to prove an argument in a criminal case is changed so that the accused must show they are innocent. *See also* onus of proof.

review 'on the merits'

Review of the merits of a case by a tribunal based on a full hearing of the facts. This is different from an appeal that deals only with arguments about the law.

revocation

Cancellation of a previous law or legal document. For example, when a new will is made, the old one is usually revoked.

sanction

(1) Punishment or threat to make people do the right thing. For example, a court may impose a penalty on a party who fails to lodge documents on time. (2) Approval or authorisation. For example, a company director can authorise (sanction) an employee's spending on travel for work.

schedule

Extra information accompanying an Act of parliament or a contract, such as tables, lists or forms.

secondary victim

(1) A person who witnesses a crime or other violence and is psychologically injured by seeing it. (2) The parent or guardian of a child who has been injured. *See also* primary victim.

secured creditor

A person or company that is owed money and has the right to sell a debtor's property to cover any money that has not been paid by the due date.

security

Money or property promised to be handed over as a guarantee for repayment of a loan, or as a guarantee that a defendant will meet their bail conditions.

security patient/resident

A person who has been sent to a mental hospital or residential institution rather than to prison.

self-incrimination

Saying something that might be used against you in court.

self-represented litigant

A person who does not have a lawyer to appear for them in court and who presents their case to the court themselves.

sentencing order

A court order that imposes a penalty, such as imprisonment, in a criminal case.

sequestration order

An order taking away a bankrupt's property so that it can be used to pay off their debts.

serious indictable offence

An offence that has a penalty of imprisonment for five years or more. *See also* indictable offence.

serious injury

Injury as a result of a car accident or other transport accident that causes serious long-term damage. It includes losing an arm, a leg or bodily functions, or suffering continuing mental or behavioural disturbances.

service

Formal delivery of legal documents to a person to tell them there are court proceedings against them which they must defend, or to make sure a witness in a case knows when they have to go to court to give evidence.

severable

Parts of a contract that can be removed by a court without stopping the rest of the contract having legal effect.

sheriff

An officer of the court who has power to enforce court orders.

show cause

The requirement that a party show why some decision or court order should not be made against them. For example, to get bail, an accused person might have to show a court why they should not be held in prison.

sine die

Latin for 'another day'. Used when a court hearing is adjourned indefinitely, usually when the parties say they have reached agreement. The case can then only be brought back if one of the parties applies to the court.

solicitor

A lawyer who usually does not appear in court. *See also* barrister.

solvent

Having enough money to pay debts when they are owed.

special damages

Part of the money a court orders to be paid as compensation by a defendant. Special damages cover specific expenses that can be calculated exactly, such as medical expenses or the cost of buying a replacement item. *See also* general damages.

specific performance

Carrying out obligations that are set out in a contract. For example, a contract might require the sale of a piece of land. A court can order specific performance.

spent conviction

A criminal conviction which is removed from a person's criminal record if they do not reoffend during a certain period.

stale complaint

A complaint that fails because the person making the complaint has waited too long to take action.

stamp duty

A state tax on transfers of ownership of property, such as land.

stand down

See adjourn.

stand over

See adjourn.

standard of proof

The required level for proving a case in court. In criminal cases the prosecution must prove their case by leaving no reasonable doubt about the defendant's guilt. This is known as proof 'beyond reasonable doubt'. In civil (non-criminal) cases, the plaintiff must prove that their argument is more likely to be true than false. This is known as proof 'on the balance of probabilities'. *See also* balance of probabilities, beyond reasonable doubt, civil action.

standing

The right to bring proceedings before a court. To be a party in a case a person must be able to show that they have sufficient interest in the case because, for example, of possible effects on their property or commercial activities.

status quo

The way things are now.

statute

A law made by parliament – also known as an Act of parliament or legislation.

statutory authority or body

A person or organisation that is given special powers by parliament to do work for the public benefit.

statutory declaration

A written statement of facts that is signed and declared to be true before an official authorised to take declarations.

statutory defence

Protection against being sued that is stated in legislation. It stops a person being found liable in court. For example, people who are giving evidence in court can say things that they could be sued for saying anywhere else.

stay of proceedings

An order that a particular legal action stop. A stay may be for a fixed period, until certain events occur, or permanent.

strict liability

Holding a person responsible for breaking a law that does not require proof that they intended to break it or were negligent. Proof that the person broke the law is enough. *See also* liability, mens rea, negligence.

subpoena

A court order saying that a person must appear in court to give verbal evidence or provide particular documents. *See also* summons.

substantiation

Backing up a statement or claim with proof. For example, substantiating a claim for expenses with a receipt.

summary offence

A minor criminal offence, for example being drunk and disorderly, usually heard in the Magistrates' Court.

summons

A formal document issued by a court which says someone must appear in court on the date stated in the document. *See also* service, writ.

supervision order

An order the Children's Court may impose upon a young person found guilty of an offence. Under this order, the young person will be supervised by a probation officer and will have to obey any other conditions the court imposes upon them.

surety

In criminal law, a person who promises a court that an accused person released on bail will attend court on a hearing date. If the accused person does not attend court, the surety must pay the court the amount of money stated in the bail documents.

suspended sentence

A sentence of imprisonment that is only served if the convicted person commits a further offence. If the sentence is wholly suspended, no time in prison will be served, but if it is only partly suspended the convicted person will serve some time in prison. Suspended sentences can be combined with treatment orders, such as those requiring a person to undergo treatment in the community for drug addiction.

sworn evidence

Evidence given in court under oath. *See also* affirmation, oath.

tenancy

The agreement between a landlord and a tenant for the rental of a property.

tender

To hand over. For example, evidence is tendered in a court. Money is 'legal tender' that can be handed over in exchange for goods.

termination

The end of something. Contracts terminate when the parties have done what they agreed. They can also be terminated without being completed, for example if one party breaks the contract or when it is impossible to carry out.

terms of reference

The formal list of things that a body set up to examine a matter of public interest, such as child abuse, can investigate and report on. The body must investigate all the matters listed, and it cannot go beyond them.

testamentary capacity

The mental ability, good memory and understanding needed to make a will.

testator

Someone who makes a will.

therapeutic privilege

A doctor's right, in some cases, not to tell a patient something where the doctor believes it would harm them to know.

tort

A civil wrong that causes harm, intentionally or otherwise. A person affected by a tort can take action in court to claim compensation for the wrong.

trafficking

Trading illegal products such as guns, drugs or ivory, often across borders, for commercial reward.

T

transfer of land

A document used to change ownership of land from one person to another. The transfer must be registered with Land Victoria. *See also* certificate of title.

treatment order

A court order saying that a person convicted of a crime will be sent to a psychiatric hospital for treatment instead of going to prison.

trespass

(1) Going onto someone's land without permission. (2) Trespass to goods is wrongful interference with someone's personal property, for example doing something that harms someone's computer. (3) Trespass to the person is doing something that interferes with a person's body without their permission – for example, giving a very drunk person a tattoo.

tribunal

A body, similar in procedures to a court, that hears and decides disputes.

trust

A type of property ownership where one person, the trustee, holds property for the benefit of someone else, the beneficiary. For example, a trustee may hold a child's inheritance for them until they turn 18.

trust account

A bank account in which money is held on behalf another person, not for the use of the account holder. For example, a lawyer's trust account holds clients' money. It is regulated by strict accounting rules that safeguard the clients' interests.

trust deed

A formal legal document setting out the rights and obligations of all the parties to a trust. *See also* trust.

ultra vires ('beyond powers')

An act of a person or body that is outside their powers under the law. For example, it would be ultra vires for the Victorian parliament to pass laws applying to the New South Wales Police Force because this is a power of the New South Wales parliament not the Victorian parliament.

unconscionable conduct

Conduct that takes unfair advantage of a vulnerable person in a contract or other transaction. The vulnerability can be due to factors such as poor education, language difficulties or drunkenness.

undertaking

A promise to do or not do something. For example, an accused can make an undertaking to appear in court on a certain day.

undue influence

Taking unfair advantage of a person's weaknesses, or of a close relationship with them, so they agree to do something you want them to do, such as sign a contract.

unliquidated

Not yet set as a definite amount. This usually refers to the part of damages for compensation that are left for a court to decide. Other damages are the actual cost, for example, of property that has been damaged. *See also* liquidated amount, liquidated damages.

U

V

valid

Legally binding.

vendor

A seller.

vendor terms

A contract of sale that allows the buyer of a property to pay the seller in instalments over a longer period than usual, for example three or five years.

vendor's statement

A document signed by the vendor (seller) of a property. It sets out information about the property that the seller must give the buyer before a contract of sale is signed.

vexatious litigation

Legal action that is taken only to annoy or embarrass the other party.

victim impact statement

A statement made to the court by a victim of a crime. It sets out details of injury, loss or damage caused by the crime.

void

Having no legal effect.

voir dire

In a criminal trial, a process where the judge hears legal arguments and evidence from witnesses after the jury has been sent out of the court. For example, the judge might use a voir dire to decide whether certain evidence should be heard by the jury.

W

waive

To give up a legal right or claim.

warrant

A document issued by a court directing an officer to take certain action. For example, a warrant can order the police to arrest someone or seize their property.

warranty

A promise in a contract. For example, a promise by a manufacturer that goods will be repaired or replaced if they turn out to be faulty.

whistleblower

A person within an organisation who makes a complaint or alerts authorities that the organisation is doing something illegal or inappropriate.

will

A document that sets out what a person wants to happen to their money and other property after they die.

witness

A person who appears in court to give direct information about something relevant to the case the court is hearing.

writ

A document in a civil proceeding that a plaintiff has issued to commence a court action. *See also* summons.

write off

To cancel a debt. This means the person owing the money no longer has to pay it.

Acknowledgement: This guide draws on Fitzroy Legal Service Inc.'s online *Law handbook* glossary; Trischa Mann (ed.), *Australian law dictionary*, first and second editions (Melbourne: Oxford University Press, 2010, 2013); and the *LexisNexis Concise Australian legal dictionary* (Chatswood, NSW: LexisNexis, 2011). Thanks to the members of the reference group for their valuable contribution in reviewing this guide.

Victoria Law Foundation helps Victorians understand the law and their legal system. We are a not-for-profit organisation funded by the Legal Services Board Public Purpose Fund.

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PUB12-06

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