

Glossary

abate

To abate a nuisance (q.v.) is to remove or reduce it without violence or unnecessary damage. Abatement is an alternative to bringing a court action.

abduction

Unlawful removal of a person (often a child) from their home environment.

abrogate

To repeal or cancel.

absolute privilege

The protection given to parliamentary and court proceedings that any information produced or revealed in them cannot give rise to an action for defamation (q.v.).

abuse of process

Misuse or unjust use of court procedure, e.g. long delay in bringing an action may disadvantage a defendant.

acquit

To discharge, to find an accused "not guilty" after trial.

act of bankruptcy

An action of a debtor that shows an inability to pay their creditors (q.v.).

adduce

To present as evidence in court.

adjourn

To suspend a court hearing to a future specified day or *sine die* (q.v.). *Also*: adjournment.

adjournment without conviction

A sentencing order of a good behaviour bond (q.v.).

administrative act

A decision, or refusal to make a decision, by an officer of a government department and which is subject to review either internally or externally by the courts.

adversary system

The system used to decide court cases in Australia, where the opposing parties (q.v.) argue against each other, with a judge or magistrate as an independent decision maker or arbitrator.

affidavit

A written document sworn on oath before a person with authority to administer it. The person in whose name the document is sworn is called the deponent.

affirmation

A pledge that statements made are true which may be made in place of an oath if an oath is contrary to a person's religious belief or if the person has no religious belief. It can be used where a person is giving evidence in a court or where a declaration or affidavit is being made.

alibi

Defence to a criminal charge on the grounds that the accused was somewhere other than the scene of a crime when that crime was committed.

alleged

Said to be the case, but not yet proved.

ADR (alternative dispute resolution)

Process for resolving disputes outside the court system, e.g. through mediation (q.v.) or negotiation (q.v.).

amenity

Features, benefits or advantages of the local environment that people currently enjoy.

amicus curiae

Friend of the court; someone who advises the court on a particular matter but does not represent any of the parties in the action.

annuity

A sum of money payable yearly.

annul

To put an end to, cancel, render void (q.v.) in law.

appeal

To remove a case to a higher court.

appellant

A person who appeals (q.v.) a decision of a court or tribunal.

arbitration

A procedure for resolving disputes which involves less formality than a court hearing.

arrears

Payment that is overdue or made after the date when it fell due.

arrest

To take into custody.

assessable income

Income on which liability to pay income tax is calculated.

assignment

legal transfer of a right or an interest in property from the owner to another person.

asylum

Refuge or protection from persecution, usually in another country.

at large

(An animal) not securely confined to the owner's property.

attachment of earnings

A court order that a deb-tor's employer pay an amount of the debtor's wages regularly to the creditor until the debt is paid off.

attestation clause

A witnessing clause, e.g., a will contains an attestation clause stating the witnesses saw the testator (q.v.) sign and that they signed the will in the presence of the testator and each other.

bail bond

A form signed by a person released on bail (q.v.) setting out the conditions of release.

bail justice

A person who is not a judge or magistrate but who has authority to grant or refuse bail (q.v.), usually at a police station.

balance of probabilities

The standard of proof (q.v.) required in civil law (q.v.) cases, i.e. it is more probable than not that what the person says happened is true. (In criminal cases, the standard is proof beyond reasonable doubt.)

beneficiary

A person who is left something in a will, or a person for whose benefit property is held by trustees or executors.

beyond reasonable doubt

The standard of proof (q.v.) required in criminal cases.

bias

A pre-existing attitude or opinion that favours one side over another in a dispute.

bill of sale

A document which enables one person to possess and use goods (the possessor) while another has legal ownership (usually a person or company that has lent money for the purchase of the goods). *See*: goods mortgage.

bond

(1) A deed (q.v.) in which a person undertakes to do or refrain from doing certain things, e.g. good behaviour bond. (2) Money paid to a landlord by a tenant at the start of a tenancy as security in case of future damage to premises or non-payment of rent.

breach of contract

Failure by one of the parties to a contract (q.v.) to satisfactorily perform the service or action agreed to in the contract.

burden of proof

The obligation to prove what is alleged. In criminal cases, this obligation rests on the prosecution, which must prove its case beyond reasonable doubt. In civil cases, it rests on the plaintiff, who must prove his or her case on the balance of probabilities. Sometimes, however, this burden shifts, for example, where the defendant raises particular defences.

business purpose declaration

A statement signed by a debtor before entering a credit contract that the credit is for business, not domestic, purposes.

by-laws

Former name of local laws (q.v.).

capacity

The ability to understand and give legal consent to an action or arrangement.

case law

The law based on decisions made by judges in previous case. *See*: common law.
See common law.

caveat

A notice given to an appropriate officer ordering him or her not to take a certain step until the person giving the notice (the caveator) has had an opportunity to object (e.g. to a transfer of land).

certificate of title

A document prepared by the Titles Office which shows details of land registered under the Torrens system, particulars of the location, encumbrances (q.v.) and owners.

certiorari

A form of writ (q.v.) by which actions for review of administrative decisions are commenced in the Supreme Court.

character witness

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

chattel

Any property that is not freehold land. It may be a leasehold (called a chattel real) or a movable article of property (chattel personal).

child maintenance order

A parenting order (q.v.) setting out arrangements for the financial support of a child after marriage breakdown.

citizen's arrest

An arrest by any person who is not a police officer or who does not have a warrant (q.v.) to arrest.

civil law

Law which is not criminal or church law (usually the former), it may mean law based on the Roman system. Throughout this book, civil law means non-criminal law.

clear title

Outright ownership, without any debts or charges on the property.

code of practice

A set of guidelines for fair practice developed for a specific industry or occupation. May be voluntary or statutory (q.v.).

codicil

A document signed by a willmaker that alters or adds to an existing will.

cohabitation

Living together as a couple.

collateral contract

A separate contract which precedes or exists alongside the main one.

combined custody and treatment order

A sentence that is served partly in prison and partly in the community undergoing supervised drug treatment.

committal proceedings

Where a Magistrates' Court hears evidence on an indictable charge (q.v.) and decides whether the accused should be sent for trial (also called

a preliminary examination).

common law

The part of English law traditionally based on common custom and being unwritten. Law which is not equity (q.v.), statute (q.v.), ecclesiastical (church), or civil (i.e. Roman).

common law defence

A defence based on decisions in previous cases.

CTO (community treatment order)

Treatment of an involuntary patient (q.v.) by a medical practitioner in the community, not in a mental hospital.

Community Visitor

A person with authority to monitor and report on the performance of mental health services and the welfare of their patients.

CBO (community-based order)

A sentencing order, as an alternative to imprisonment, requiring a person to undertake unpaid or educational work under the supervision of the Office of Corrections.

compensation order

A court order that a person found guilty of a criminal offence must pay for loss or damage of property caused by the offence.

compensatory damages

Damages (q.v.) paid in a defamation action (q.v.) to make up for damage to a person's reputation. May be aggravated (q.v.).

complainant

A person who begins a prosecution against another in the Magistrates' Court, a plaintiff.

comprehensive insurance

Insurance that covers claims against the insured by other persons for damage to their property as well as covering the insured for damage to his or her own property.

conciliation

Process of resolving disputes which involves negotiations between parties, assisted by a conciliator. Conciliation aims for mutual agreement rather than a decision in favour of one side.

condition precedent

A condition which delays the coming into effect of a right (usually under a contract) until that condition is fulfilled.

conduct money

Money which must be provided to a witness subpoenaed (q.v.) to court to cover the cost of travel to and from court.

confidential relationship

A relationship where one party depends on or trusts the authority or professional independence of the other party.

confidentiality

Protection against disclosure to an outside person of information revealed in a professional relationship, e.g. doctor-patient.

conflict of interest

A situation where a person's own interests, or a duty towards someone else, may affect the way they carry out a duty towards others.

consent

Agreement to an action or arrangement. *See also:* informed consent.

consumer lease

A contract (q.v.) for hire of goods by a person for a specified period and rental.

contact order

A parenting order (q.v.) which states the kind and frequency of contact between a child and another person - usually the parent with whom the child is not living.

contempt of court

The failure to obey a court order or an act which shows a disregard for the authority of the court or judge. A person in contempt may face imprisonment.

contest mention hearing

A preliminary hearing in criminal cases where parties can try to reach agreement on some matters before the full hearing.

contravene

To breach, neglect or refuse to comply with a particular requirement or condition.

contributory negligence

A defence in an action for damages for injuries arising from the defendant's negligence. The defendant attempts to prove that the plaintiff's own negligence caused or contributed to the injuries suffered.

conveyance

A transfer of real property (q.v.).

cooling off period

The time during which a purchaser can withdraw from a contract after signing.

copyright

The rights belonging to the owner or licensee of literary, artistic and dramatic works, films and sound recordings, to reproduce, perform or otherwise deal with these works.

corporal punishment

Any physical punishment, usually one causing pain.

corroboration

Independent evidence which supports the main evidence.

cost indemnity rule

The rule, applying in many court proceedings, that the losing side must pay the legal costs (q.v.) incurred by the other side in the action.

counterclaim

Where the defendant has a claim against the plaintiff which might have been brought by bringing a separate action, the defendant may raise it in the existing action by adding a statement of the facts on which the claim is made to the statement of defence.

covenant

An agreement creating an obligation contained in a deed (q.v.) or land title. A covenant may serve the same purpose as a bond (q.v.).

cover note

a document provided by an insurer as evidence of temporary insurance cover before a formal policy is issued.

credit charges

Charges for which a consumer who enters into a credit contract will be liable in addition to the sum borrowed and any interest payable.

credit contract

A contract (q.v.) for deferred payment of a debt owed by one person or organisation to another.

creditor

A person or company to whom a debt is owed.

cross-vesting

Process by which a superior court can exercise the jurisdiction of another, e.g. between state supreme courts and federal courts.

cumulative sentence

An order for a period of imprisonment to be served in addition to a previous sentence. *See*: concurrent sentence. *See* concurrent sentence.

custodial sentence

A sentence of imprisonment.

custody

Control; e.g. when arrested and not free to leave; formerly, care and control of a child.

damages

A court order for money to be paid as compensation for a loss suffered as a result of a civil wrong or breach of contract.

debt agreement

An arrangement for dealing with unpaid debts that is less formal and intrusive than bankruptcy (q.v.).

debtor

A person who owes a debt.

decree of dissolution of marriage

Divorce. *See also:* decree nisi and decree absolute.

See decree nisi.

See decree absolute.

decree of nullity

An order that a marriage is not legally valid.

deed

A written document that is signed, sealed and delivered. "Sealing" (attaching a seal with wax) is no longer necessary. "Delivering" is traditionally completed when the person signing the document says "I deliver this as my act and deed".

deemed

To be treated as.

defamation

Publication of false and derogatory statements about another person, without any justification recognised by law. *See also:* slander, libel.

See slander.

See libel.

default

To fail in some duty, i.e. to fail to do something you were meant to do. So: **default rate** - rate of interest charged on overdue payments; **default summons** - summons which alleges the debtor/defendant has failed to pay money due and owing. The summons may be ordinary or special.

defendant

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

delegated legislation

See: Regulations.

delegation

Allowing lower ranking officials to make decisions on behalf of the person responsible by law for making the decision. *Also:* to **delegate**.

deportation

Expulsion from a country of a resident non-citizen who has committed a serious crime or is considered a threat to national security.

determination

Decision.

dictation

Situation where a decision making body improperly allows itself to be directed by another person or body when making a decision.

directions hearing

A hearing held before the full hearing so that the court or tribunal can give directions to the parties about how the action should proceed.

disbursement

Money paid out on behalf of another. In a solicitor's bill, a disbursement may include payments made on lodging documents, and stamp duty, for example.

discharge

To fulfil or be released from an obligation. A debt is discharged when it is paid.

disclosure

Giving particular information to another party as required by a contract or legal process.

discoverable date

The first day it is, or should have been, known that death or personal injury has occurred, that it was caused by the fault of the defendant, and that the injury was serious enough to justify bringing an action for damages.

discovery

A procedure by which documents relevant to a civil (q.v.) action are exchanged between the parties before the case comes on for hearing.

discretion

Power to choose whether to do or not to do a certain thing, e.g. investigate a complaint.

distrain

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

divisible property

Property which can be taken by the trustee of a bankrupt (q.v.) to pay off debts.

doctrine

A framework, set of rules, procedural steps, or test, often established through precedent (q.v.) in the common law (q.v.), through which judgments can be determined in a given legal case.

See common law.

See precedent.

doctrine of precedent

See: precedent.

domestic relationship

A relationship where two people (of the same or opposite sex) are not married but are living or have lived together as a couple.

domicile

The place where a person has his or her legal home - therefore the place which determines the legal system relevant to that person.

double jeopardy

A situation in which a person may be convicted twice for the same offence.

duress

Undue pressure placed on a person to force him or her to do something.

duty lawyer

A lawyer at the court who provides free legal assistance to people appearing in court on criminal charges who have not yet had legal advice.

duty of care

The obligation of a person to exercise reasonable care in the conduct of an activity. Breach of a duty of care which causes damage or loss to another may give rise to an action in tort (q.v.).

encumbrance

A charge (q.v.) or liability, e.g. a mortgage.

endorse

To write on the back of a document.

enduring power

A power of attorney (q.v.) or guardianship which continues to have effect even if the donor ceases to be mentally competent.

enforce

To make people obey (a law, the terms of an agreement, etc). *Also:* enforceability.

entrapment

Action of a law enforcement officer which induces someone to commit an offence that they would not otherwise have committed.

EPA Victoria

Environment Protection Authority Victoria.

equitable estoppel

A type of estoppel (q.v.) that bars a person from adopting a position in court that contradicts his or her past statements or actions when that contradictory stance would be unfair to another person who relied on the original position.

equity

Fairness. A system of legal rules developed by the Lord Chancellor and special courts in England to make the common law (q.v.) fairer. *Also:* a financial interest in property or goods.

eviction

The action of recovering land or property from an occupier or tenant by legal proceedings.

ex-nuptial

Out of marriage; illegitimate.

excess

Amount of money the insured person has to pay towards the cost of settling a claim under the insurance contract.

exclusion clause

A clause in a contract which attempts to exclude or avoid liability (q.v.).

executor

The person whose duty it is to carry the provisions of a will into effect. Where that person is female, she may be called an executrix.

exhibit

A document or thing shown to a witness when giving evidence, produced for inspection to the court or referred to in an affidavit (q.v.).

express warranty

An undertaking or statement made when offering goods for sale which would naturally encourage people to buy the goods.

expulsion

Permanent exclusion of a student from a school; *compare:* suspension (q.v.).

extradition

The process used when a person in one state or country has committed a crime in another state or country, and is to be taken into custody and sent for trial to the place where the offence allegedly occurred (verb: to extradite).

fair dealing

legitimate use or reproduction of part or all of copyright (q.v.) material by someone other than the copyright owner, for defined purposes.

false imprisonment

Confinement of a person without legal permission.

family violence intervention order

Court order under Family Violence Protection Act 2008 (Vic) restraining a person from harmful or annoying conduct against a family member.

fiat

Consent (by the Attorney-General) to start proceedings on behalf of someone else for review of an administrative act (q.v.).

FOI Online

Victorian Government freedom of information website.

forensic procedure

Examination of the body of a person suspected of having committed an offence, or the taking of certain body samples.

fraud

Intentionally dishonest act (or lack of action) done to deceive someone.

freedom of association

The right to belong, or not belong, to an industrial association (trade union).

freedom of information

The right of any person to have access to documents held by government agencies, except those exempted by legislation.

gazumped

Accepting a higher offer on a property after having agreed on a purchase price with another buyer.

general damages

Damages (q.v.) paid for out-of-pocket expenses, e.g. medical costs, lost wages.

grievance procedure

A defined process for attempting to settle employment disputes within an organisation.

guardian

A person who has the right and duty to protect another person, his or her property and rights. A plenary guardian has all the powers of a parent.

habeas corpus

To have the body. A prerogative writ (q.v.) directed to a person who holds someone in custody commanding him or her to produce that person before a court.

hand-up brief

Documents tendered by the prosecution in a committal hearing containing the charges and a summary of evidence on which the prosecution proposes to rely.

hospital order

A court order, either instead of or (hospital security order) by way of sentence, that a person be admitted to a mental hospital as an involuntary patient (q.v.).

identification material

Material such as finger-prints, voice recordings, handwriting samples or photographs collected by police to help identify a person suspected of committing an offence (q.v.).

identification parade

A police "line up" held so a witness to an offence can try to identify a suspect among other people of similar appearance.

implied terms

Terms set out in legislation (q.v.) that are automatically part of a contract, without having to be stated in the contract document.

in lieu

In place of. So: **time in lieu** - agreement to allow time off instead of payment for overtime worked.

inadmissible

Not allowed, i.e. not able to be used as evidence in a court action.

incorporated associations

A not-for-profit community organisation with a separate legal identity and a structure regulated by legislation.

incorporated documents

Documents added to and considered part of planning schemes that regulate land use and development in a local area or municipality.

indemnity

Compensation for a wrong done, or an expense or loss suffered as a result of the act or default of another. Verb: indemnify.

ITP (Independent Third Person)

An impartial person required to support and assist a person with an intellectual disability, mental illness, brain injury or dementia during questioning by police.

indictable offence

A serious crime which is generally triable before a judge and jury.

indictment

The document that lists the charges against the accused in County or Supreme Court proceedings. Criminal proceedings commence upon its filing with the court.

industrial disease

A disease linked to a particular industry or to doing a particular type of work.

infant

The legal term for a person under 18, used particularly in family law and civil actions (q.v.).

informant

A person who lays an information, i.e. a criminal charge (q.v.). Usually a police officer.

informed consent

Agreement given for something to be done, after the procedure has been fully explained so that the person understands the procedure and his or her rights to agree or refuse.

infringement notice

Notice showing that an offence (usually a driving offence) has been committed and the penalty to be paid (an "on-the-spot-fine").

injunction

A court order which directs someone either to do, or to refrain from doing, a particular thing. An injunction may be interim (operative until further order) or perpetual (continuing indefinitely).

insolvent

Unable to pay debts in full.

instalment order

A court order allowing or requiring a debtor to pay a judgment debt (q.v.) by regular specified payments.

ICO (intensive correction order)

A non-custodial sentence (q.v.) with very strict conditions attached.

interested witness

A witness to a will who (or whose spouse) is given property or power under the terms of the will.

interim order

A temporary court order allowing or preventing certain action, until a full hearing can make a decision on the matter.

interpleader summons

An action by which a person who claims a right to property can bring the question before a court to determine ownership.

interrogation

The asking of questions. In criminal cases, the questioning of suspects by police. In civil proceedings, the pre-hearing process, by which a party asks the other party a series of written questions (interrogatories) which are then required to be answered on oath.

intervention order

Court order restraining a person from harmful or annoying conduct.

intestate

One who dies without leaving a valid will. The deceased's property is distributed to the nearest relatives in an order set by law.

invalid

Not valid (q.v.); without legal effect.

involuntary patient

A patient admitted to a mental hospital on a doctor's recommendation and without the patient's consent.

irreconcilable difference

Serious long-term disagreement between parties that cannot be overcome.

joint tenants

Persons who own land in an undivided share in common; on the death of one owner his or her interest passes to the surviving owner(s), and cannot be disposed of by will or deed, unlike tenants in common (q.v.).

judgment debt

The amount awarded to be paid under a court order.

judicial review

Review by a court of an administrative act (q.v.) on the basis of fault in the decision-making process. *Compare:* review on the merits.

jurisdiction

The authority of a court to decide matters brought before it; the geographical limit within which a court order can be enforced.

juror

A member of a jury (q.v.).

jury

A panel of people selected from the general public to decide the guilt or innocence of people tried in criminal cases, or questions of damages (q.v.) in civil cases.

knowingly concerned

Consciously and deliberately involved in committing an offence.

lease

A document of agreement between a landlord and a tenant, for rental of premises.

legally binding

Able to be enforced by law.

legatee

A person to whom property is bequeathed (q.v.) in a will.

lessee

A person to whom property is leased.

lessor

A person who leases property to another.

letter of demand

A notice from a creditor that legal action will be taken if a debt is not paid.

letters of administration

The document by which a person is empowered to manage the estate of a deceased who left no valid will.

liability

Legal responsibility, e.g. for breaking a contract, committing a crime. It may be civil (q.v.) or criminal, and is enforced by civil or criminal courts.

lien

The right to hold a person's property as security for the performance of an obligation (e.g. the payment of money owing).

linked credit provider

A credit provider that has an arrangement with a supplier of goods that people wanting to borrow money to buy those goods will be directed to that credit provider.

litigation

Court proceedings in civil matters (q.v.). A litigant is one of the opposing parties (q.v.) in a civil proceeding.

litigation guardian

An adult through whom a person under 18 or a person with an intellectual disability can act in court, and who is liable for the costs of such action if unsuccessful.

local laws

Laws made and enforced by municipal councils within their boundaries. Previously called by-laws.

long stop limitation period

In personal injury cases, a period of 12 years, from the date of the act or omission which caused death or injury, within which court proceedings for damages must be issued.

malice

A desire to cause harm to someone, particularly in relation to an action for defamation (q.v.).

mandamus

A form of writ to commence an action for review of an administrative decision (failure to perform a duty) in the Supreme Court.

mandatory

Having to be strictly complied with. Mandatory reporting: obligation to report, e.g. cases of abuse of children, to authorities. Mandatory sentencing: automatic gaol term for certain offences.

material

Relevant or important; information which may influence a decision.

material form

any form of storage from which a copyright (q.v.) work can be reproduced.

means test

Assessment of income and assets to see if a person qualifies for financial assistance.

mediation

Form of dispute resolution where an impartial third party helps communication and negotiations between the parties, but does not decide the dispute. *Compare:* arbitration (q.v.).

mention date

In Magistrates Court criminal matters, the first day on which a matter is listed at court. A case can only be heard on the mention day if it is a plea of guilty.

merchantable quality

Reasonable quality, being in a good enough condition to be sold.

misleading and deceptive conduct

Generally, an action or behaviour which leads another person into error, or which is unfair.

misrepresentation

Making a false statement, either deliberately or unintentionally, to induce someone to do something they would otherwise not have done, e.g. buy something.

mitigation

Circumstances which go towards reducing the damages or punishment which the court may order against a defendant or prisoner.

moral rights

the rights of the creator (not the owner) of an artistic, dramatic or literary work or film to have their authorship acknowledged and to protect the integrity of the work or film.

mortgage

A transfer of real property (land) or personal property (goods) as security for the repayment of money borrowed. The creditor to whom the mortgage is made is the mortgagee, the debtor who makes it is the mortgagor.

native title

A form of communal title whereby land is not owned but is used by those who have rights over it. Describes traditional Aboriginal rights over land in Australia.

natural justice

The rules and procedures to be followed by a person or body with the power to settle disputes. (*See:* Administrative Law). Some rules of natural justice are to act fairly, without bias, and the right of all parties to be heard.

necessaries

The basic requirements for a reasonable lifestyle, e.g. food, clothes, housing, etc.

negligence

A tort (q.v.) involving the breach of a duty of care (q.v.) resulting in loss or damage to another person.

nominal damages

Damages of a small amount ordered where a right has been affected but no damage done.

nominee

A person acting as a buyer on behalf of someone else.

non-custodial sentence

A sentence for a criminal offence (q.v.) which does not involve imprisonment.

non-parole period

The minimum term a prisoner must serve before being eligible for parole (q.v.).

notice of defence

In civil proceedings, written notice which a defendant is required to give within a certain time stating that he or she intends to defend the action or cross-examine witnesses.

oath

A pledge that statements made are true which is made with one's hand on the bible. Witnesses in court are required to take an oath or make an affirmation (q.v.) before giving evidence.

obiter dictum

An opinion voiced by a Judge that has only incidental bearing on the case in question and is therefore not binding. Latin definition: said in passing.

offender

A person who commits an offence.

ombudsman

A public official appointed to investigate citizens' complaints against the administrative agencies of government, or against members of a particular profession.

order to review

An appeal to a higher court.

own motion

Decision by a body to take action, e.g. to start an investigation, without a complaint having been made.

paramount

Most important.

paramountcy principle

A shorthand expression for the rule in the Family Law Act 1975 that when the court makes certain decisions relating to a child, the best interests of the child must be regarded as the paramount consideration.

parenting orders

Court orders made in relation to care of children, where agreement cannot be reached on a Parenting Plan (q.v.), and covering aspects such as residence, contact, maintenance and other issues.

parole

To free a prisoner on his or her own recognisances (q.v.) after serving a minimum term.

party-party costs

The costs (q.v.) of a court action which a court can order to be paid by one party (q.v.) to the other party. See: lawyer-client costs. See lawyer-client costs.

pecuniary

Involving money. So: pecuniary loss - loss of an amount of money; pecuniary penalty - fine; pecuniary interest - financial interest (in property).

perjury

Lying under oath (q.v.) when questioned in a court proceeding or when making a sworn statement. A person found guilty of perjury may face imprisonment.

permanent care order

A court order that a person who is not a child's parent have long-term care and responsibility for the child.

perpetrator

Person who committed the offence.

perpetual succession

Ownership of property remains with a group or organisation as a whole, not individual members of the group.

person responsible

The person highest on a designated list who is available and able to make decisions on medical treatment for a patient who is unable to give informed consent (q.v.).

petition for bankruptcy

Formal action by either a debtor or a creditor (q.v.) to file for bankruptcy (q.v.).

plaintiff

Person who initiates legal proceedings against another in a civil dispute (c.f. complainant).

police brief

The evidence the police prosecutor relies on to prove the guilt of a person charged with a criminal offence.

portability

Right to carry the benefits of e.g. a pension, entitlement or protection order from one state, country or workplace to another.

power of attorney

A formal written legal document by which one person (the donor) gives another (the donee) power to represent them or act in their place for certain purposes. *See:* enduring power.

pre-hearing conference

An informal conference between the parties in a court action to try to reach a settlement or clarify any matters in dispute before the full hearing.

pre-sentence report

A report, usually prepared by the Department of Human Services, for the court to consider before sentencing a young person.

precedent

The doctrine by which courts are obliged to follow past decisions.

preliminary examination

See: committal proceedings.

prerogative writ

A writ issued by a higher court (e.g. the Supreme Court) to prevent lower courts and officials from exceeding their powers or to compel them to exercise their functions, e.g. *habeas corpus* (q.v.), *mandamus* (q.v.), *certiorari* (q.v.).

prescribed owners corporation

A prescribed owners corporation is an owners corporation that levies annual fees in excess of \$200,000 in a financial year; or an owners corporation that comprises more than 100 lots including any accessory lots (car park or storage area).

primary victim

A person who is injured or dies as a direct result of an act of violence.

private ruling

An opinion given by the Australian Taxation Office to an individual taxpayer and which is binding on the ATO with regard to that taxpayer.

privative clause

A provision in a statute (q.v.) that seeks to prevent judicial review (q.v.) of decisions made under that statute.

probate

The proving of a will, the acceptance by the Probate Division of the Supreme Court of Victoria that the deceased's will is valid (q.v.) and the last will in existence.

probation

A non-custodial sentencing order (q.v.) that involves good behaviour and supervision by a probation officer under defined reporting conditions for a specified period.

procure

To encourage or persuade someone to commit an offence.

professional indemnity insurance

Insurance that provides cover for a person against claims for negligence arising out of the performance of his or her professional duties.

prohibited name

A name which cannot be registered because it is obscene or offensive, impracticable or against the public interest.

prohibition

An order to stop decision-making proceedings in a lower court or tribunal.

prohibition notice

a notice banning a workplace activity that may risk safety or health of any person.

prosecution

The party (q.v.) presenting evidence against the person accused of committing a crime.

protection application

An application to a court by the Department of Human Services for intervention to protect the welfare of a child; may involve removal of the child from the family.

protection order

A court order resulting from a protection application (q.v.) with various options for supervised care of a child.

provable debt

A debt that must be accepted for proportional payment from available funds by the trustee of a bankrupt (q.v.), and from which the bankrupt is released on discharge from bankruptcy.

proxy

A person authorised to represent or act for another, or the use of such a person, e.g. voted by proxy.

prudential

Of careful business management.

psychosurgery

Brain surgery used as a way of treating mental disorders.

public nuisance

A nuisance (q.v.) that interferes with a public right to do something.

public officer

Person appointed to act on behalf of an incorporated association in any public dealings.

pursuant to

According to, as directed by (an Act or Regulation).

qualified privilege

Limited protection against an action for defamation (q.v.) except where the person revealing the information did so out of malice (q.v.).

quantum

The amount of money or compensation awarded as damages (q.v.).

quo warranto

By what authority; a prerogative writ (q.v.) to remedy improper use of public office.

quorum

The number of members of a body (e.g. a committee) required to be present to transact business legally.

real property

Land or other real estate.

rebuttable

Capable of being proved wrong in court.

recognisance

A bond (q.v.) the object of which is to secure the performance of an act by the person bound by it, e.g. to be of good behaviour.

referral authority

An authority or government department to which a planning permit must be referred for advice before it is granted.

related victim

A person with a close family or personal relationship to a primary victim (q.v.) who has died as a result of an act of violence.

remand in custody

Order that a person who is charged with an offence be detained or imprisoned until the charge is heard by a court.

remission

For prisoners - a reduction in the time to be served on a sentence of imprisonment.

renewable insurance policy

Insurance provided for a particular period of time, of a kind that is usual to renew at the end of that period of time.

repairer's lien

The right of a repairer to hold repaired goods, e.g. a car, as security for payment.

repeal

To abrogate (q.v.) or cancel legislation (q.v.) or a regulation (q.v.).

repossession

The taking possession of goods by a creditor from a debtor who has breached a term of a credit contract.

represented person

A person whose financial affairs are controlled by an administrator (for a "publicly represented person", the State Trustees).

rescinded

Revoked or cancelled.

rescission

A revocation or stopping action, particularly of a contract. Rescission is only allowed where restitution (q.v.) is possible (verb: to rescind).

residence order

A parenting order (q.v.) stating with whom (usually which parent) a child is to live following separation or divorce.

respondent

A person against whom a summons has been issued or an appeal brought.

responsible authority

The body that has the power to grant or refuse permits, often a local council.

restitution

Giving back what has been provided (under a contract), stolen, or seized to pay a debt.

restraining order

In family law, an order preventing a specified person from harassing or molesting the person applying for the order.

restraint of trade

A commercial arrangement that prevents a business from freely buying or selling goods or services.

RCTO (restricted community treatment order)

If treatment can be safely obtained in the community, patients on hospital orders can be put on a RCTO under section 15A of the MHA, which provides for release into the community on certain conditions.

retrospective

Applying to circumstances existing before the date on which a law came into effect.

revocation

Cancelling the effect of a previous act, e.g. an earlier will.

sanction

A penalty or punishment imposed on someone found guilty of an offence.

secondary victim

A person who is injured, physically or psychologically, as a direct result of witnessing an act of violence, or through being the parent or guardian of a primary victim aged under 18 (q.v.).

secured creditor

A creditor (q.v.) who holds a mortgage, charge (q.v.) or lien (q.v.) on the property of the debtor.

security interest

An interest in or power over goods to secure payment of a debt or obligation.

self-incrimination

The privilege against self-incrimination means the right (with certain limitations) not to do or say anything which might later be used as evidence against you.

self-representation

Presenting your own case in court without a lawyer being there to assist you.

sequestration order

An order that property be seized to satisfy a debt.

serious indictable offence

An indictable offence (q.v.) for which the penalty is imprisonment for five years or more, or life imprisonment.

serious injury

In relation to transport injuries, a serious long-term impairment, disfigurement or loss of a body function, or severe long-term mental or behavioural disturbance, or loss of a foetus.

servitude

A nuisance (q.v.) that concerns a right over another person's property, e.g. an easement.

sheriff

An officer of the court responsible primarily for enforcement of court orders.

show cause

A reversed onus of proof (q.v.) which applies to applications for bail for some drug offences.

solvent

Able to pay all debts when they are due.

special damages

Damages (q.v.) paid for pain and suffering, disfigurement or loss of earning capacity or enjoyment of life. Compare: general damages (q.v.).

specific performance

Doing exactly what is stated in the terms of a contract.

spent conviction

A conviction for a minor criminal offence, which after a certain time without re-offending, is considered to no longer exist.

stale

(A complaint) where the complainant has delayed too long in taking action on a grievance.

stamp duty

A state tax on transfers of ownership of assets or property, or on leases.

standard of proof

The required level to which something must be proved in court. In criminal matters, the standard is "beyond reasonable doubt"; in civil matters, "on the balance of probabilities".

standing

The right to take action in court or to be heard or represented in a case.

status quo

The existing situation.

statute

A law made by Parliament (state or Commonwealth).

statute barred debts

Debts for which the right to take action to recover payment is limited to a specified period, after which such action will not succeed in court.

statutory declaration

A written statement of facts which the person making it signs and solemnly declares to be true before a person authorised to take

declarations.

statutory defence

A ground for defence included in a particular law which would prevent a person from being found guilty of an offence under the law.

subpoena

A writ which commands the appearance of a person or the production of specified documents in a court.

substantiation

Providing evidence to prove that an event took place, e.g. an expense was incurred.

sue

To take legal action.

sufficiently interested party

A person or company, not a party to a contract, that has been involved in a transaction giving rise to a claim under the contract and can be named as a party to the claim.

summary offence

A minor offence heard and decided in a Magistrates Court and not sent for trial before a judge and jury.

summons

A document which is issued by the court requiring the attendance of the person named in the summons at court on a specified date.

supervision order

An order which the Children's Court may impose where a young person is found to be in need of care and attention. A probation officer is appointed to supervise the young person. In addition, the Court can impose conditions to be observed by the young person's parents or persons with whom the young person is living.

surety

A person who binds him or herself to be answerable for another. If there is a default, the surety will be liable.

suspended sentence

A sentence of imprisonment which is only served if the convicted person commits further offences. May be partially or wholly suspended, or a combined custody and treatment order (q.v.).

suspension

exclusion of a student from school for a specified period as a disciplinary measure; less severe punishment than expulsion (q.v.).

sworn evidence

Evidence given under oath (q.v.).

taxable form

Refers to a lawyer's bill of costs (q.v.) which shows details of all the lawyer's charges.

tenancy

The relation between a landlord and a tenant for rented premises. (See: lease).

tenants in common

Form of joint ownership, with two or more people occupying the whole of land in common. Each share has a separate title and can be disposed of by will. *Compare:* joint tenants (q.v.).

tender

An offer by someone who owes money to pay the debt, or part of it, to the person it is owed to.

terms of reference

The preset terms under which an inquiry is conducted or a decision is made.

testamentary capacity

The ability to draw up a valid will, the mental capacity to understand about property rights and family responsibilities.

testator

A person who makes a will. A female testator is sometimes called a testatrix.

therapeutic privilege

Right of doctors, in some circumstances, not to give a patient information that they believe might cause harm to the patient.

third party objector

A person appealing against a decision to grant approval for developments which may produce discharge harmful to the environment.

tort

A civil (q.v.) wrong, an act which causes harm, intentionally or otherwise, for which the remedy is an action for unliquidated (q.v.) damages.

trafficking

In common law, movement from source to end user in the course of trade. Drug trafficking has a much wider definition.

treatment order

A court order that a person suffering from mental illness be sent to a psychiatric hospital for treatment instead of to prison after conviction for an offence.

trespass

Wrongful entry onto or interference with a property without the permission of the lawful owner or occupier.

tribunal

A body set up to hear and decide disputes, usually with less formality and less strict rules of evidence than in a court proceeding.

trust account

A special bank account where a lawyer deposits money held on behalf of other people, subject to strict accounting rules.

trust deed

A document which sets out the rights and obligations of the trustee and beneficiaries (q.v.) of a trust (q.v.).

unconscionable conduct

Action that takes unfair advantage of another party that is under a special disability (q.v.) in a contract or transaction. See special disability or disadvantage.

undertake

To promise, in the course of legal proceedings, to do or refrain from doing an act. An undertaking is enforceable by attachment or like an injunction.

undue influence

Taking unfair or improper advantage of the weakness of another party to make them agree to something.

unliquidated

Undetermined, unascertained, e.g. when damages are left to a jury to determine.

valid

Legally binding (q.v.) or effective.

vendor terms

Contract of sale of property where the seller allows the buyer to pay over a set period.

vendor's statement

A document which must be provided to the buyer of a property by the seller and which gives certain information about the property and matters affecting it.

vexatious

(Legal action) that is unnecessary or undertaken only to cause trouble or inconvenience for the other party.

victim impact statement

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

visa

Permit that allows either temporary or permanent stay in a country.

VoIP (Voice over Internet Protocols)

A general term for a family of transmission technologies for delivery of voice communications over the internet or other networks.

void

Of no legal effect.

voidable

An agreement (or other act) which either of the parties is entitled to rescind (see: rescission), and which until that happens has full legal effect. There are certain restrictions on the view of what is (and is not) voidable that require advice from a lawyer.

waive

To give up a legal right or claim.

warrant

A document issued by a court directing an officer to take certain action. May be: a **warrant of apprehension**, directing that a person be arrested and brought before a court; a **warrant of commitment**, directing that a person be arrested and imprisoned; a **warrant of distress**, directing that a person's goods be seized to satisfy a debt; or a warrant of seizure and sale of real estate.

warranty

(1) A minor clause in a contract, the remedy for breach of which is damages for any loss. (2) A promise to repair or replace defective goods.

waste

Something which does lasting damage to land or alters the nature of the property.

whistleblower

Person who makes a complaint about illegal or inappropriate actions of their employer.

witness

A person who can provide direct information based on their own knowledge about a relevant fact in issue, and appears in court to do this.

writ

A document in the monarch's name and under the seal of the Crown which commands the person to whom it is addressed to do or refrain from doing some act.
