

Random House

Legal
Dictionary

兰登书屋
袖珍英汉法律词典



上海外语教育出版社

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兰登书屋袖珍英汉法律词典

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出版前言

本词典为世界著名出版公司兰登书屋袖珍词典系列之一，特点是简明扼要、携带方便，释义精当、举例适切。同义异称、参见、比较条目均在定义之外注明，交叉查阅检索便利，体例编排合理科学。

各行各业乃至个人生活无不涉及法律知识，而在今日的社会则还需懂得一些英文的法律词语，这已成为各领域人士应有的常识。广泛频繁的对外交往中，对法律术语的误解、误译有时会造成很大的问题。此外，某些法律文书往往以英文版为准，因此懂得有关术语的确切定义是甚为重要的。为此，本社引进了这本篇幅虽小，然内容相当丰富、涵盖了法律各个方面的袖珍词典，并将词条译成中文，使之更便于我国读者使用。

有些术语迄今尚未有普遍通行的中译名，故对于本词典中的译法，还望饱学之士与法学行家给予指正。凡有任何不足之处，也敬请广大读者提出改进意见。

——本社编辑部

To Mom and Dad
who passed their love of
language on to me

PREFACE

The law touches almost every aspect of life, and the language of law is accordingly as broad and complex as human experience itself. Defining, refining, debating, interpreting, and applying the words of constitutions, statutes, contracts, wills, judicial opinions, and other legal writings is a major preoccupation of the law.

It is, in fact, a fundamental preoccupation: to question the meaning of a term in a legal context is often to question the scope of the law itself. To define the word "murder," for example, is to articulate just what it is that distinguishes one of the most heinous of crimes from a lesser offense such as manslaughter, or for that matter from a heroic act of justifiable homicide. Even a seemingly insignificant word can make a crucial difference in the interpretation of a legal writing. One standard legal reference work — a 90-volume compendium entitled *Words and Phrases* — cites almost 50 judicial opinions discussing the meaning of just the first word listed: "a."

Because law, like the society whose rules it expresses, is constantly evolving — and also because the United States does not have a unified legal system, but instead has more than

fifty separate systems of state and federal law — legal terms are seldom susceptible of a precise definition upon which everyone can agree. But lawyers, legislators, and judges could not even carry on discussions about nuances and variations in legal concepts if there were not a large body of specialized vocabulary whose central meaning is understood and shared by all. The objective of this dictionary is to provide a basic understanding of the core of that vocabulary — a few thousand of the most common and most important terms used in contemporary American law.

A great many of these legal terms have considerable currency in popular usage as well and are at least vaguely understood by almost everyone. The intent here is to go beyond such superficial understandings, enabling the user to come away with some grasp of the current scope and significance of these legal concepts. This is done through:

- 1 definitions that include enough detail to avoid being simplistic. (See, for example, MURDER; HEARSAY.)
- 2 examples of sentences and phrases showing how a term is used. (See IMPRESS; UNDERWRITE.)
- 3 subentries that flesh out the meaning of the main entry term. (See the categories of property listed under PROPERTY, or the two branches of the concept of due process list-

- ed under *DUE PROCESS*.)
- 4 historical information, summaries of recent cases, or other commentary. (See *SEPARATE BUT EQUAL*; *LACHES*.)
 - 5 division of certain terms into separate entries to avoid confusion between unrelated or easily conflated meanings. (See *ACQUIT*¹ with its noun form *acquittal*, versus *ACQUIT*², and its noun form *acquittance*.)
 - 6 copious cross references to related or contrasting terms that help to place an entry in context and clarify its scope.
 - 7 an appendix summarizing all of the amendments to the United States Constitution, which are the source of so many of the most fundamental principles in American law.

Much of the specialized vocabulary of the law consists of everyday English words used in specialized senses. By and large, this dictionary gives only the specialized meanings. (See *IMPERTINENT*; *INFANT*.) This does not mean that lawyers never use such terms in their ordinary meanings; even in legal discourse, *impertinent* can mean rude, and an *infant* is sometimes just a baby.

Many individuals have been instrumental in bringing this project to fruition. Particular thanks go to my friends William H. Roth and Nancy S. Erickson, who provided support and

assistance in many ways; to Paul Hayslett, whose programming wizardry solved a number of computerization problems; to Georgia S. Maas, who handled computer keyboarding and coding tasks with uncommon skill and intelligence; to my copyeditor Robert L. Cohen, for his perceptive suggestions; and above all to my editor, Enid Pearsons, whose guidance and assistance in every aspect of the project made this book possible.

JEC
New York
February, 1996

GUIDE TO THE DICTIONARY

Entries and Subentries

Main entries, printed in large **bold** type, are alphabetized word by word, in “telephone-book” style. For example, the various Latin phrases beginning with the word “per” (such as “per curiam,” “per se,” and “per stirpes”) are grouped together before such words as “percentage lease,” “perjury,” and “person.”

Many entries include a number of related terms and phrases as subentries, shown within the entry in normal-sized **bold** type. Most of these are specific phrases using the main-entry term, grouped together for ease of comparison; these phrases are shown alphabetically under the main entry at their own numbered definitions. See, for example, *adhesion contract*, *bilateral contract*, *contract under seal*, and the other types of contract listed and defined at defs. 4 – 10 under **CONTRACT**.

In addition, as also exemplified in the entry for **CONTRACT**, subentries may be

- 1 incorporated into the text of a definition, where they are defined implicitly. See the terms *oral contract* and *written contract* in def. 7 and, in def. 9, where *third-party beneficiary contract* is defined, the related term *third-party beneficiary*.

- 2 included as variants or alternate terms for a main entry or a subentry, preceded by "Also" or "Also called." See *contract of adhesion* at def. 4.
- 3 shown at the end of an entry as a related grammatical form — usually another part of speech — derived from the main entry term. See *contractual* following def. 11.

Note that definitions and numbered subentries for a one-word main entry are grouped by part of speech. For example, in the entry for *CONTRACT*, all of the definitions of "contract" as a noun and the phrases using that term as a noun are grouped together, followed by the definition of "contract" as a verb.

Cross References

The grouping of related phrases by subject matter under a main-entry term (as just illustrated for the term "contract") — instead of scattering them alphabetically throughout the dictionary — is one of the primary ways in which this book seeks to facilitate understanding of the legal concepts represented. Another is the inclusion of extensive cross references directing the reader to additional entries for further information.

Kinds of cross references

The cross references have three broad functions:

- 1 When a term is dealt with in an entry in another part of the alphabet, a cross reference directs the reader who has looked for the term alphabetically to the entry where it is discussed. These cross references are usually signaled by such words as "see"; "see under," or "same as." See ADHESION CONTRACT (directing the reader to see under CONTRACT), PRIME CONTRACTOR (noting that this is the same thing as a *general contractor*, as defined in the entry for CONTRACT), and CONCURRENT (directing the reader to the appropriate entries for definitions of *concurrent jurisdiction* and *concurrent sentences*.)
- 2 Cross references also call attention to related entries containing additional information on the subject just discussed, entries for various legal phrases containing a particular word, and entries for contrasting terms, all of which provide context and additional understanding for the specific term under discussion. These cross references are typically introduced by such signals as "see," "see also," or "cf." (meaning "compare"). See CONSTRUCTIVE (citing numerous entries for phrases employing the term "constructive," and calling attention to the entry for the contrasting term "actual") and FREEDOM OF RELIGION (directing attention to the entry for the related concept of SEPARATION OF CHURCH AND STATE).

- 3 Many definitions depend upon an understanding of certain key legal terms that are defined elsewhere. Cross references to such terms are indicated simply by highlighting them typographically, as discussed directly below. See **REPLY** (defined as a **PLEADING** in response to a **COUNTERCLAIM** akin to an **ANSWER**) and **BURDEN**² (citing **EASEMENT** and *covenant running with the land* as the kind of thing that gives rise to this kind of burden).

Type styles for cross references

As the foregoing examples illustrate, all cross references (whether or not preceded by a signal such as "see" or "cf. ") are highlighted by the use of a distinctive typeface¹.

Whenever a main entry is specifically referred to elsewhere in the dictionary, the term is printed in **SMALL CAPITAL LETTERS**. When the reader's attention is being directed to a specific subentry, *italics* are always used, in one of the following three ways:

- 1 Usually the subentry being referred to is given in full in *italics*, followed closely by a parenthetical reference to the main-entry term (in small capitals) under which that subentry will be found. See def. 4 under **DEFENSE**, with its cross references to *burden of pleading* and *burden of proof*, both of which will be found under **BURDEN**¹.

- 2 Often a list of cross references to phrases all beginning with the same word is shortened by writing, e. g. , "See also *indecent* ASSAULT, SPEECH under those words" instead of "See also *indecent assault* (under ASSAULT) ; *indecent speech* (under SPEECH)." See PERSONAL for a more extensive example.
- 3 When the cross reference is simply from one subentry to another under the same main entry, the small-capital reference to the main entry is omitted. See the "cf." cross references back and forth between *bilateral contract* and *unilateral contract* under CONTRACT.

Plural forms in cross references

Occasionally a sentence containing a cross reference uses the plural form of the term being referred to, even though the actual entry is in the singular. See def. 7 under ANSWER (referring to COUNTERCLAIMS), and def. 4 under TRUST (referring to CONFLICTS OF INTEREST).

Labels

Terms or definitions that are significantly more casual in tone than is typical of legal discourse are labeled *Informal* or *Slang*.

Words and phrases in *Latin*, *French*, or *Law French* (a dialect of French, quite different from modern French, used extensively by English lawyers in the 14th and 15th centuries) are

so labeled, and unless their current definition is substantially the same as their original meaning, a more literal translation is added in parentheses to show how the actual Latin, French, or Law French words relate to the current use of the term in American law. See *PARENS PATRIAE*; *FORCE MAJEURE*; *CY PRES*.

Parts of speech are indicated in italics for all one-word main entries and any related forms listed at the end of such entries. (For abbreviations used, see list following this Guide.)

Examples

Many definitions include examples of how the term is used in phrases or in sentences, typically signaled by a colon. See *CONTRACT* (def. 1); *APPROPRIATION* (defs. 1–2).

These examples are normally italicized. In some cases, the phrase used as an example is also specifically defined elsewhere in the dictionary. In these cases, the sample phrase is also a cross reference, and so is either accompanied by a parenthetical reference in small capitals to the appropriate main entry or is itself printed in small capitals. See the entry for *SPECIFIC*, with sample phrases exemplifying each of its meanings, each of which is itself a main entry or subentry elsewhere in the dictionary.

Typefaces

As noted above, all main entries and subentries

appear in bold print. This makes them easy to find when looking up a cross reference. For example, the entry for **ORAL** includes a reference to *oral contract* (under **CONTRACT**). That subentry actually appears in def. 7 under **CONTRACT** (in the definition of *express contract*), not between defs. 8 and 9 as it would if it were a numbered subentry; but because it is in bold print it should be easily located upon a quick perusal of the entry for **CONTRACT**.

Small capitals always denote a cross reference to a main entry.

Italics are used for cross references to subentries, for labels, for examples, and occasionally to highlight a key word. (See the italicized word "state" in the second sentence of the entry for **INCORPORATION DOCTRINE**.)

Personal Pronouns

The approach taken in this book to the perennial problem of masculine and feminine pronouns (he / she, him / her, ect.) is to use them interchangeably and randomly. Unless the context clearly indicates otherwise, each should be read as including the other. Obviously, no suggestion should be read into any use of such a term that one sex is more likely than the other to sue or be sued, commit a crime or a tort, be a lawyer or a judge, or the like.