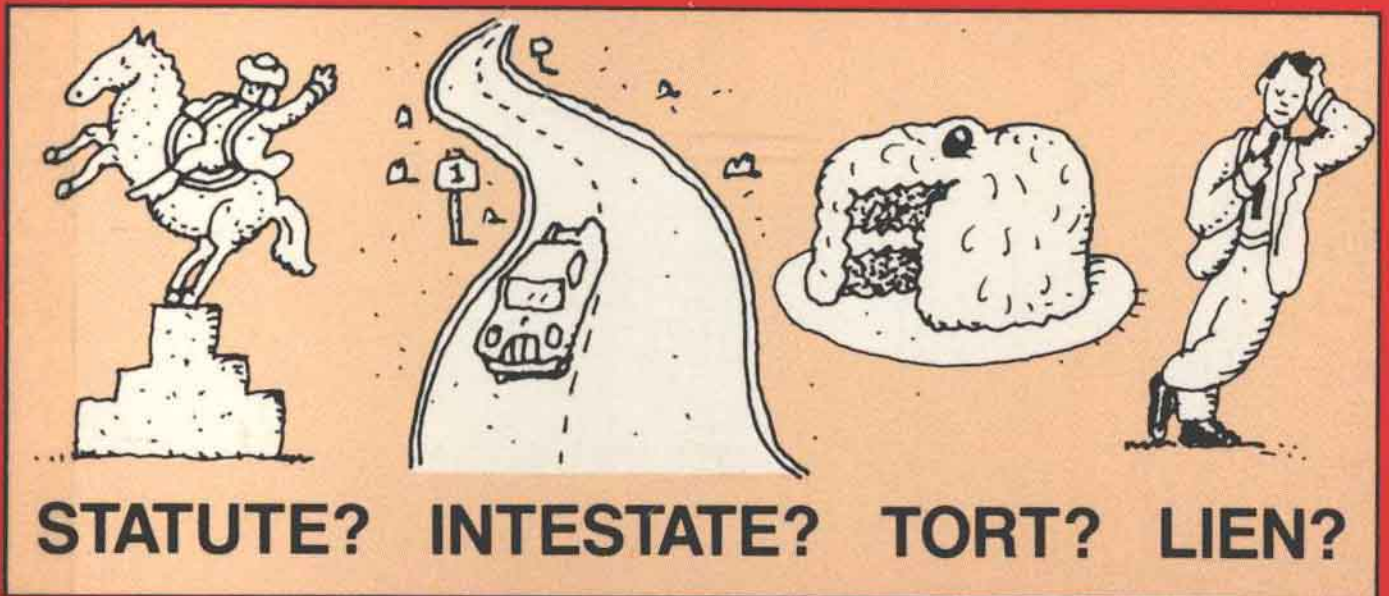




DICTIONARY OF LEGAL TERMS

A SIMPLIFIED GUIDE TO THE
LANGUAGE OF LAW



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Steven H. Gifis

DICTIONARY OF LEGAL TERMS

A Simplified Guide to the Language of Law

**by Steven H. Gifis
Associate Professor of Law
Rutgers University School of Law/Newark**

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Translating “legalese” is big business. Too often we’re forced to depend on lawyers to define even the most common legal terms. That’s why I’ve had a special edition of the *Dictionary of Legal Terms* published for HALT members. This book presents clear and concise explanations of the legal terms that you encounter daily.

HALT is committed to making the legal system more accessible. And, plain English is the key to that access. Through the use of HALT’s *Citizens Legal Manuals*, the *Dictionary of Legal Terms* and other self-help material, you can regain control over your legal affairs.

More than anything, I’d like to tell you that you won’t need this book for very long. But legal reform is an evolutionary process that requires the dedication and time of concerned people like you and all HALT members.

Although half the states have passed plain English laws, much more work is needed to broaden these reforms and pass them nationwide. With your support HALT is actively working toward that goal.

Glenn Nishimura
Executive Director
HALT / Americans for Legal Reform

PREFACE

Professions tend to insulate themselves from lay understanding by the development of specialized jargon. The legal profession has achieved this insulation so successfully that the uninitiated is overwhelmed by the incomprehensibility of his or her lawyer's prose. Despite the increasing pervasiveness of law into every facet of modern life, the special language of the law remains a barrier to nonlawyers. In recent years "plain language" statutes have been passed by several states, requiring that consumer contracts, such as residential leases, be written in plain, everyday language. Yet, even with these reforms, the language of the lawyer often remains a mystery to the client.

The lawyer's language is replete with words having particular meanings. Thus, a lawyer "moves" to "evict a holdover tenant" when his or her client wants to kick the tenant out. The lawyer seeks to "partition a co-tenancy" gone sour and to "compel an accounting" to the "aggrieved party." A client's home is destroyed by earthquake and the insurance company refuses to pay. An attorney asks if the "risk" of earthquake is included in the insured's policy and, if not, whether "representations" were made to the homeowner that would support an action to "reform" the policy or that might create an "estoppel" against the company's denial of "liability." A merchant finds an umbrella in a coat rack; the attorney asks whether it has been "abandoned" or "mislaid" and explains to the merchant the "duty" that the law imposes upon a "finder" of "lost property."

In 1975 I authored a paperback law dictionary primarily for law students who were trying to comprehend what I and their other law professors were saying. That book has been used by tens of thousands of law students. It is hoped they have found it of assistance in understanding the baffling new world of law. Paralegals, legal secretaries and other professionals who regularly interact with lawyers have also purchased the law dictionary. It occurred to me, however that the greatest need for communication existed between the lawyer and the client.

And, even for the general citizens, it seemed to me that comprehending the ordinary newspaper article had to be growing more and more difficult as the news of the day became more and more entangled with legal jargon. The available law dictionaries were either too sophisticated for the average lay person or too simplistic and incomplete to be helpful. The purpose of this book is to provide a ready, accessible and useful source of understanding of the language of law and law-related processes and concepts.

The text of the book has been drawn in large part from the earlier publication *Law Dictionary*. The definitions have been re-drafted in lay terms and the citations to authority have been deleted. Users of this book who need a more detailed explanation of a term may find resort to the *Law Dictionary* appropriate. And, in addition to the greater readability of the text, many new terms were added that law students might not encounter in their studies and that might not be thought of as technically "legal terms" but that have special meaning and arise in legal contexts. Hundreds of definitions have been added from the fields of securities, finance and taxation, which will assist the average person in understanding the business section of a newspaper. Abbreviations such as "N.O.V." have been defined so that the user will not have to fumble through many other sources until he or she discovers that the phrase refers to non obstante verdicto.

Although the book is titled a *Dictionary of Legal Terms* and may be used as one would use any other dictionary, it is contemplated that the user may want to skim through the book from time to time, stopping to read definitions touching upon jargon that he or she has noticed but not comprehended. In this fashion the book will be a primer for the lay person and hopefully will bridge the communication gap between the reader and the law.

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ACKNOWLEDGMENTS

A number of persons contributed to this project. The financial and securities terms were drafted by Michael B. Perkins, C.F.A.; the taxation terms, by David Mills, Esq. The task of editing the *Law Dictionary* into a layman's version was handled very ably by Keith Roberts, Esq., and significant editorial assistance was rendered by Alan Dexter Bowman, Esq., and Joseph C. Mahon, Esq. The examples were drafted by Andrew Levine, Rutgers School of Law-Newark, Class of 1984. The overall editing of the entire manuscript was performed with great skill and precision by my wife, Susan Pollard Gifis, Esq. Finally, the entire manuscript was typed and retyped with great care and cheerfulness by my secretary, Angela DiPierro. Without the contributions of all of these persons, this book would not have been produced.

PRONUNCIATION GUIDE

The decision as to which Latin words, maxims and expressions should be included in this dictionary, in view of the thousands that the user might encounter, was necessarily a somewhat arbitrary one; but an earnest effort has been made to translate and, where appropriate, to illuminate those terms and phrases considered likely to be crucial to a full understanding of important legal concepts. Hopefully, there are no significant omissions and we have erred only on the side of overinclusiveness.

Each of the Latin and French words and phrases—at least those that continue to be recognized as such and have not become, functionally, a part of the English language—includes a phonetic spelling designed to assist the user in the pronunciation of terms that are probably unfamiliar to her or him. The purpose in providing this pronunciation guide, however, has not been to indicate the “correct” mode of pronouncing the terms; rather, the goal has been to afford the user a guide to an acceptable pronunciation of them. In the case of Latin words, therefore, neither the classic nor the ecclesiastical pronunciation has been strictly followed; instead, the phonetic spellings provided herein reflect the often considerable extent to which pronunciation has been “Anglicized” and/or “Americanized,” partly through widespread legal usage.

Of course, such a system is anything but uniform, and adoption of it is clearly hazardous from the standpoint of general acceptance as well as that of scholarship. Many, if not most, of these terms have alternative pronunciations in common usage throughout the English-speaking legal world, and there has been some deference to classical or ecclesiastical pronunciation and, hopefully, to consistency. Thus, the choices made here, while in most cases meant to reflect the most commonly accepted pronunciation, inevitably have been the product of the author’s personal preferences.

pronunciation guide

The phonetic symbols employed herein were drawn from what the author perceives as a commonly recognized and understood "system." The following guide should be of some assistance in interpreting them.

Vowels

ă as in *ăt*
ă as in *ărmy*
à as in *arrive*
ā as in *āpe*
au as in *out*

ě as in *ěgg*
ē as in *ēvil*
è as in *earn*

ĩ as in *ĩll*
ī as in *īce*
õ as in *õx*
ô as in *orgy*
ō as in *ōpen*

ŭ as in *ŭp*
û as in *ûrge*
ū as in *rūde*

Consonants

g as in *gas*
j as in *jump* or as
the *g* in *rouge*
or *bourgeois*

KEY TO EFFECTIVE USE OF THIS DICTIONARY

Alphabetization: The reader should note carefully that all entries have been alphabetized letter by letter rather than word by word. Thus *ab initio*, for example, is located between *abeyance* and *abortion*, rather than at the beginning of the listings. In the same manner, *actionable* appears before, not after *action ex delicto*.

Brackets: Material in brackets [thus] represents an alternate expression for the preceding phrase. For example, “Federal Bureau of Investigation [F.B.I.]” indicates that F.B.I. is another way of expressing the entry for Federal Bureau of Investigation. When the reader is referred to a different main entry for the definition of a particular word, brackets are also used to indicate that the word to be defined appears as a sub-entry of the main word to which the reader is referred. Thus, “**COMPENSATORY DAMAGES** See **damages** [ACTUAL DAMAGES]” indicates that the definition of compensatory damages appears under the sub entry ACTUAL DAMAGES, which in turn is found under the heading DAMAGES.

Cross References: **Boldface type** has been used within the text of the definitions and at the end of them, to call attention to terms that are defined in the dictionary as separate entries and that should be understood and, if necessary, referred to specifically, in order to assure the fullest possible comprehension of the word whose definition has been sought in the first instance.

Terms emphasized in this manner include many that appear in the dictionary only in a different form or as a different part of speech. For example, although the term “alienate” may appear in boldface in the text of a definition, it will not be found as a separate entry, since it is expected that the reader can readily draw the meaning of that term from the definition

given for the word “alienation”; likewise, the reader coming across the word “estop” printed in boldface should not despair upon discovering that it is not in fact an entry here, but should instead refer to the term “estoppel.”

Also, the reader must not assume that the appearance of a word in regular type precludes the possibility of its having been included as a separate entry, for by no means has every such word been printed in boldface in every definition. Terms emphasized in this manner include primarily those an understanding of which was thought to be essential or very helpful in the reader’s quest for adequate comprehension. Many terms that represent very basic and frequently used concepts, such as “property,” “possession” and “crime,” are often printed in regular type. Furthermore, boldface is used to emphasize a word only the first time that that word appears in a particular definition.

Examples: Examples have been included to clarify many terms. Where these appear, they are clearly marked “*EXAMPLE:*”.

Gender: Where masculine nouns and pronouns have been used, they are intended to refer to both men and women and should be so read.

Subentries: Words printed in boldface **SMALL CAPITALS** include:

- (1) those whose significance as legal concepts was not deemed sufficiently substantial to warrant their inclusion in the dictionary as separate entries, though some explanation or illumination was thought desirable, and
- (2) those which, though important, are most logically and coherently defined in the context of related or broader terms.

Words emphasized in this manner either have been separately and individually defined in the manner of “subcategories” or have been defined or illustrated, implicitly or explicitly, within the text of the definition of that main entry.

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A

ABANDONMENT the intentional giving up of rights or property with no future intention to regain title or possession.

EXAMPLE: Paul finishes reading his newspaper while waiting for a doctor to see him. Upon leaving the doctor's office, Paul intentionally decides not to take the paper with him. Paul *abandons* the newspaper. Had he merely forgotten the paper and returned to the office to retrieve it, he would not be considered to have abandoned the property.

ABATABLE NUISANCE see **nuisance**.

ABATEMENT generally, a lessening or reduction: also, either a termination or a temporary suspension of a lawsuit. An **ABATEMENT OF A LEGACY** means that the legacy to a beneficiary is either reduced or completely eliminated because of debts that must first be paid out of the decedent's estate. An **ABATEMENT OF TAXES** is a tax rebate or decrease.

ABDUCTION the criminal or wrongful act of forcibly taking away another person through **fraud**, persuasion or violence. (Compare **kidnapping**.)

ABET see **aid and abet**.

ABEYANCE an undetermined or incomplete state of affairs; in property law, the condition of a **freehold** or estate in fee when there is no existing person in whom the estate vests.

ABILITY TO STAND TRIAL see **competent**.

AB INITIO (*ăb ĭn-ĭ'-shē-ō*) Lat.: from the beginning. Commonly used in referring to the time when an action or instrument or interest in property becomes legally valid.

abortion

ABORTION the premature termination of a pregnancy; may be either spontaneous (miscarriage) or induced. A woman enjoys a constitutional right to have an abortion during the first trimester of her pregnancy. During the second trimester, however, the state may regulate the abortion procedure, and during the third trimester the state may even proscribe abortion except where medically necessary to preserve the health of the mother.

ABRIDGE to shorten, condense; to diminish.

ABROGATE to annul, repeal, put an end to; to make a law void by legislative repeal.

ABSCOND to travel secretly out of the **jurisdiction** of the courts, or to hide in order to avoid a legal **process** such as a lawsuit or arrest.

ABSQUE HOC (*äb'-skwā hōc*) Lat.: without this. If it had not been for this; a phrase used to introduce a denial in a pleading.

ABSTENTION [DOCTRINE] the policy that a federal district court may decline to exercise its **jurisdiction** and may allow a state court to decide a federal constitutional question or questions of state law. Abstention is based on **comity** and is intended to restrict federal court interference in state proceedings. See **federalism**.

EXAMPLE: A prisoner in a state prison brings a lawsuit in federal district court claiming that under federal law he is entitled to have access to a law library. The state in which the prisoner is jailed may require by law that each state prison maintain an adequate law library. The federal court applies the *abstention doctrine* in refusing to hear the case, instructing the prisoner to raise the issue in a state court.

ABSTRACT OF RECORD a condensed history of a case, taken from the trial court records and prepared for use by the **appellate court**.

ABSTRACT OF TITLE a short history of **title** to land, noting all **conveyances**, transfers, **grants**, **wills** and judicial proceedings, and all **encumbrances** and **liens**, together with evidence of satisfaction and any other facts affecting title.

EXAMPLE: John wants to sell a parcel of land to Bill. In order to protect himself from claims by any other persons concerning that parcel, Bill insists that John provide an *abstract of title* before Bill purchases the land. Only with that abstract can Bill be satisfied that John is the rightful owner of the property. Bill can also purchase a policy of title insurance to protect himself from any problems that develop arising from ownership in the land. The insurance will be based on the abstract of title.

ABUSE OF DISCRETION on appeal, the characterization by a reviewing court of a lower court or administrative agency decision or ruling as arbitrary and unreasonable, leading the reviewing court to overturn the decision. See **discretion**.

ABUSE OF PROCESS improper use of a legal **process**; for example, serving a **summons** to frighten the recipient or to prompt a response from him, where no **suit** has been filed, or filing a lawsuit for an improper purpose.

EXAMPLE: Nick desperately needs information from Sam to aid Nick in preparing for a lucrative business deal. Sam refuses to provide that information because of its confidential nature. Nick files a lawsuit against Sam so he can acquire the information by claiming that he needs it in connection with the lawsuit. Nick has thus participated in an *abuse of process* because he used service of summons, which is a legal process, to institute a lawsuit, for the sole purpose of acquiring information not otherwise lawfully available to him.

ABUT to adjoin, touch boundaries, border on.

ACCELERATION 1. the hastening of the time for **enjoyment** of a **remainder** interest due to the premature termination of a **preceding estate**; 2. the process by which, under the terms of a **mortgage** or similar obligation, an entire debt is to be regarded as due upon the borrower's failure to pay a single

acceleration clause

installment or to fulfill some other duty. See **acceleration clause**.

ACCELERATION CLAUSE a provision in a contract or document that, upon the happening of a certain event, a person's expected interest in the property will become vested sooner than expected. Often found in **installment contracts**, this clause, if invoked, causes the entire debt to become due upon a party's failure to make payment on time.

EXAMPLE: David signs a loan agreement with the bank, promising to repay the bank in monthly payments over a three-year period. The agreement includes an *acceleration clause* which provides that if Dave fails to pay the required amount for any month or months, the bank can demand that Dave repay the remaining amount of the loan in one payment.

Although acceleration clauses are frequently found in loan or mortgage agreements, they are not generally resorted to until other methods of repayment are attempted.

ACCEPTANCE the voluntary act of receiving something or of agreeing to certain terms. 1. In contract law, acceptance is consent to the terms of an **offer**, creating a binding **contract**.

EXAMPLE: A homeowner contracts with an aluminum siding company to cover the house with new siding. The homeowner is not happy with two of the clauses in the contract, but the company is unwilling to change the clauses. When the homeowner signs the contract with the clauses unchanged, his signature acts as an *acceptance* of those clauses as they are printed. The fact that he has questioned those clauses has no effect on their validity as part of the contract.

2. In real property law, acceptance is essential to completion of a gift **inter vivos**. 3. "Acceptance" by a bank of a check or other **negotiable instrument** is a formal procedure whereby the bank on which the check is drawn promises to honor the **draft** by paying the payee named on the check.

ACCESSORY a person who aids or contributes to a crime as a subordinate. An accessory performs acts that aid others in committing a crime or in avoiding apprehension. In some

jurisdictions an accessory is called an **aider and abettor**. See also **accomplice**; **conspirator**. Compare **principal**.

ACCESSORY AFTER THE FACT a person who harbors or assists a criminal knowing that he or she has committed a **felony** or is sought in connection with a crime.

ACCESSORY BEFORE THE FACT a person who incites, counsels or orders another to commit a crime, but who is not present when it is committed.

ACCOMMODATION INDORSEMENT see **indorsement**.

ACCOMMODATION MAKER [OR PARTY] one who, as a favor to another, signs a **note** as acceptor, **maker** or **indorser**, without receiving compensation or other benefit, and who thus guarantees the debt of the other person.

ACCOMPLICE one who voluntarily joins another in committing a crime. An accomplice has the same degree of liability as the **defendant**. See also **accessory**; **aid and abet**; **conspirator**. Compare **principal**.

ACCORD AND SATISFACTION the payment of money or other valuable consideration (usually less than the amount owed) in exchange for **extinguishment** of a debt. There must be an express or implied agreement that accepting the smaller sum discharges the obligation to pay the larger sum.

ACCOUNTING METHOD the method used by a business (**corporation**, **partnership** or **sole proprietorship**) in keeping its books and records for purposes of computing income and **deductions** and determining taxable **income**.

ACCRUAL METHOD an accounting method under which income is subject to tax when the right to receive such income becomes fixed, and deductions are allowed when the obligation to pay becomes fixed, regardless of when the income is actually received or when the obligation is actually paid. The accrual method must be utilized by any business taxpayer that has inventory.