

Glossary

A

abate

To lessen, reduce or remove.

abrogate

To abolish or put an end to.

acceptance

In contract law, acceptance is 'a final and unqualified expression of assent as to the terms of the offer.'¹

accused

A person charged with a criminal **offence**.

acquiescence

Express or implied words or conduct that constitute consent.

acquittal

Discharge from prosecution of a criminal offence after a **verdict** of **not guilty**.

Act of God

An extraordinary and unforeseeable event or accident that could not be guarded against (for example, a natural event). In many cases, the occurrence of an Act of God will result in a relief of liability.

Act of Parliament

Law made by the monarch in **Parliament** (which consists of the monarch, the **House of Commons** and the **House of Lords**). Also known as statute law and primary legislation.

acte clair

'So clear.' In EU law, it refers to the principle whereby a domestic court or a **member State** may decline to refer a question of EU law to the European Court of Justice on the ground that the answer to the question is 'so clear.'

actus reus

'A guilty act.' An act which, when coupled with the requisite mental element (known as the **mens rea**), provides a definition of an offence. For example, the *actus reus* of the crime of murder is the unlawful killing of another person.

administration

The word 'administration' can refer to:

- (i) The management of the affairs by a **trustee** of a **bankrupt**;
- (ii) Getting in the debts of a deceased person and distributing the deceased's assets to those persons entitled to them;

¹ E Peel, *Trietel on the Law of Contract* (12th edn, Sweet & Maxwell, London, 2007) 18.

- (iii) In insolvency law, administration is a mechanism whereby a person (known as an **administrator**) is appointed to rescue the company as a going concern or, if this is not reasonably practicable, to achieve a better result for the company's creditors than a **winding up**.

administrative receiver

A person appointed by a floating chargeholder, who is appointed in order to recover the payment owed to the chargeholder.

administrator

An administrator is a person appointed to manage the property of another. A female administrator is known as an administratrix.

agent

Someone engaged to carry out an act for another person (known as the **principal**).

affirm

To continue with a **voidable** contract, or to continue with a contract that has been breached by the other party.

alternative dispute resolution (ADR)

A collective phrase used to encompass those procedures and mechanisms that aim to resolve disputes without the need to initiate legal proceedings. Examples of ADR include **arbitration**, **conciliation** and **mediation**.

amelioration

The act of improving or making something better.

amortize

To reduce or recoup an amount or **debt**, usually via putting aside smaller sums.

appeals

The process whereby a losing party, seeking to reverse or modify a decision of a court of tribunal, applies to have his case reheard on certain grounds.

appellant

A person who appeals a decision of a court or tribunal.

Appellate Committee of the House of Lords

Prior to October 2009, the Appellate Committee of the House of Lords was the highest court in the UK. In October 2009, it was abolished and its functions were taken over by the **Supreme Court**.

appellate court

A court that can hear **appeals**.

applicant

A person who makes an application.

arbitration

The determination of a dispute between two (or more) parties by a person known as an arbitrator. Arbitration is a form of **alternative dispute resolution**.

Arrears

A **debt** remaining payable after the date of payment has passed.

articles of association

The rules governing the internal operation and organization of a company.

artificial person

A body recognized by the law as having **legal personality** (also known as legal or juridical persons). Artificial persons include **companies** and **limited liability partnerships**.

ascertained goods

Goods identified and agreed upon at the time a contract for the sale of goods is made.

assignment

The transferring of contractual rights.

Attorney General

The principal law officer of the **Crown** whose duties include, *inter alia*, commencing prosecutions on behalf of the Crown.

attornment

In relation to the sale of goods, attornment occurs where a person acknowledges that he holds goods on behalf of another.

automatism

A complete loss of voluntary control.

B

bailee

A person who takes possession of goods by way of **bailment**.

bailor

A person who entrusts goods to another (the **bailee**) by way of **bailment**.

bailment

Where one party (the **bailor**) transfers goods to another (the **bailee**) for a purpose, on the understanding that the goods will be returned once the purpose is fulfilled.

bankruptcy

A process whereby an individual is declared as being **bankrupt** and his estate is administered for the benefit of his **creditors**. Bankruptcy is initiated via a bankruptcy order.

bar

A legal impediment (for example, in contract law, a claimant may be impeded (barred) from rescinding a contract in certain circumstances).

Bar

Relating to the profession of a **barrister**. When barristers become qualified, they are 'called to the Bar.'

bare licensee

One who is permitted to be present on another's land, but is required to leave if the owner withdraws permission.

barrister

One of the two principal branches of the legal profession (the other being **solicitors**). A person is a barrister if he has been called to the **Bar** by one of the four Inns of Court.

basic award

In employment law, a basic award is a sum payable to a person who has been unfairly dismissed by his ex-employer, and is designed to award the person for their years of service.

battery

The direct or indirect application of unlawful force by one person to another. Battery is both a **crime** and a **tort**.

bench

The collective name given to the judges or **magistrates** who decide a case.

beneficiary

A person for whose benefit property on trust is held (the person holding the property is known as the **trustee**).

Bill

A proposed **Act of Parliament** submitted to either House of **Parliament**. Until the proposed Act receives **Royal Assent**, it is known as a Bill.

bill of exchange

'[A]n unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.'²

bill of lading

A document signed and delivered by the master of a ship acknowledging receipt of goods to be delivered.

binding authority

A decision of a court that must be followed by courts who are obliged to follow the decisions of that court.

² Bills of Exchange Act 1882, s 3(1).

block exemption

In **competition law**, a block exemption validates an agreement that, in the absence of the block exemption, would breach the EC Treaty, Art 81 or the Competition Act 1998.

bona fide

'In good faith.'

bonus shares

Shares allotted to existing shareholders and paid for out of the company's distributable profits.

breach

The failure to comply with a duty or obligation, or the invasion of a right.

breach of contract

Failure to comply with a **term** of a contract.

business name

The name of a business, other than:

- (i) the surname (including forenames or initials) of the sole proprietor concerned;
- (ii) the surnames, or corporate names, of all the members of the partnership concerned; or
- (iii) the name of the company concerned.

byelaw (or bylaw)

A law created by a body granted authority by **Parliament**, with the purpose of administering or managing a particular geographical area. An obvious example is **local authorities** who are granted authority to make **byelaws** in relation to their geographical jurisdiction. Byelaws are a form of **subordinate legislation**.

C

cab-rank rule

The rule stating that a **barrister** should accept any brief within his area of expertise.

capacity

The ability of a person to enter into certain transactions or make certain decisions. For example, a party that lacks **capacity** may not be able to enter into a binding contract, create a valid will, or consent to certain medical procedures.

cartel

In **competition law**, a cartel occurs where a person dishonestly agrees with one or more other persons to engage in certain prohibited activities, such as price-fixing, limiting the supply of goods, or other acts designed to adversely affect competition. Agreeing to form a cartel is a criminal offence.

casus omissus

An 'omitted case.' A case or issue which should be covered by **statute**, but which is not.

caveat

'Let him beware.' A warning.

caveat emptor

'Let the buyer beware.'

chambers

Chambers can refer to:

- (i) The private chambers of a judge; or
- (ii) An organization formed by a number of self-employed **barristers**.

champerty

Formerly a tort and a crime, champerty occurs where one person finances the legal proceedings of another person in return for a share in any monetary award ordered by the court.

Charge

A form of security, whereby assets of the **debtor** are charged, and the chargeholder can look to the charged assets in order to satisfy a debt. A good example of a charge is a mortgage, whereby the **creditor** can seize and sell the mortgaged asset should the debtor default.

charterparty

A written agreement whereby a person (known as the charterer) leases a ship for the purposes of transporting goods.

chief executive officer (CEO)

Typically, the highest ranking executive officer of a company.

chattel

Any property other than freehold land.

chose

An asset other than land. Now known as a 'thing.'

chose in action

A chose that cannot be possessed or has no physical existence (for example, a share in a company). Now known as a 'thing in action.'

chose in possession

A chose that is tangible and can be possessed. Now known as a 'thing in possession.'

civil law

The term 'civil law' can refer to:

- (i) The law relating to civil wrongs (as opposed to the criminal law);
- (ii) Those legal systems which are based largely on Roman law (as opposed to common law).

civil partnership

A relationship formed by two persons of the same sex aged 16 or over, who can register as civil partners.

Chancery Division

The senior division of the **High Court of Justice**.

claim

The assertion of a right.

claimant

A person who initiates a civil claim (formerly called the **plaintiff**).

codification

The process whereby law is collected and restated in **statute**.

collateral

Parallel; running side-by-side.

commercial agent

A self-employed intermediary who has continuing authority to negotiate the sale or purchase of goods on behalf of another person (the **principal**), or to negotiate and conclude the sale or purchase of goods on behalf of and in the name of that principal.³

committal

The process whereby the **magistrates** investigate a case and decide that there is sufficient evidence to send the case to the **Crown Court**.

common law

The term 'common law' can refer to:

- (i) Those legal systems which are largely based on the system present in England (as opposed to civil law);
- (ii) The body of law created and developed by the judiciary (as opposed to **statute** law);
- (iii) The original body of law as formulated by the Common Law Courts (as opposed to **equity**).

company

A legal person created by one or more persons usually via the registration of documents with the **Registrar of Companies** (although companies can also be created by **Royal Charter** or an **Act of Parliament**). Also known as a **corporation**.

compensation

Payment for loss or injury sustained to another.

competition law

The area of the law that prohibits and regulates practices that are designed to adversely affect competition in the marketplace (for example, the forming of **monopolies** or **cartels**).

conciliation

A form of **alternative dispute resolution** whereby a person known as a conciliator will attempt to resolve a dispute between two parties. A conciliator will not impose a decision upon the parties (unlike an arbitrator), but will facilitate the agreement of a compromise that is acceptable to both parties.

condition

A **term** that goes to 'the root of a contract.' Conditions are fundamental terms, the breach of which entitles the non-breaching party to terminate the contract and claim **damages**.

³ Commercial Agents (Council Directive) Regulations 1993, reg 2(1).

condition precedent

A condition that must be complied with before an **offer** can be accepted, or before a contract becomes operational.

conditional fee agreement

An agreement made between a lawyer and his client, whereby the lawyer is paid only upon some condition being satisfied (e.g. the lawyer wins the case).

conduct money

A payment made to a witness, in order to compensate him for expenses associated with acting as a witness (for example, travelling expenses).

consensus ad idem

'Agreement as to the same thing.'

consequential economic loss

Economic loss that is the result of physical injury or property damage.

consideration

In contract law, consideration is the price for which the promise of the other party is bought. Consideration is an essential ingredient of a valid contract (unless the contract is **executed by deed**).

consolidating Act of Parliament

A consolidating **Act of Parliament** brings together into one Act, provisions that were contained in a series of Acts.

conspiracy

Both a tort and a crime, the tort of conspiracy occurs where:

- (i) The **defendant** joins forces with another party, and both parties act in a manner that damages the business interests of another; or
- (ii) The defendant uses unlawful means to harm the business interests of another.

contra proferentem

'Against a person who proffers a thing.' Provides that an ambiguous **exclusion clause** will be construed against the **proferens**.

contract

A legally binding agreement containing obligations that can be enforced by the parties.

contribution

Where two or more persons are liable for a loss (for example, if they are **joint tortfeasors**), and one of them is ordered to pay **damages**, that person may be able to obtain a contribution from the other liable person(s).

contributory negligence

A defence whereby the **defendant** argues that the **claimant** in some way contributed to the loss that he suffered. At **common law**, contributory negligence operates as a complete defence, but under **statute**, it merely serves to reduce the **damages** awarded.

constructive dismissal

Where the employee terminates his employment due to the actions of the employer, the employee is said to have been constructively dismissed.

consumer

There is no single accepted definition of 'consumer,' with differing pieces of legislation having differing definitions. Generally, consumers are a class of persons who are deemed by the law to be deserving of extra protection and so are given extra rights and remedies.

consumer hire agreement

A consumer hire agreement is a form of agreement that is regulated by the Consumer Credit Act 1974. It occurs where a person enters into an agreement with an individual (the hirer) for the **bailment** of goods, and:

- (i) It is not a **hire purchase agreement**;
- (ii) It must be capable of lasting more than three months; and
- (iii) It must not require the hirer to make payments exceeding £25,000.

contempt of court

Conduct during legal proceedings which aims to interfere with the administration of justice. Contempt of court is a criminal offence.

contributory negligence

The reduction of **damages** due to claimant's own **negligence**.

conversion

Interfering with goods in a manner inconsistent with another's right to possession.

copyright

The exclusive right to reproduce certain works.

corporate personality

The separate personality belonging to **legal persons**. Also known as separate personality or legal personality.

corporation

A legal person created by one or more persons usually via the registration of documents with the **Registrar of Companies** (although corporations can also be created by **Royal Charter** or an **Act of Parliament**). More commonly known as a **company**.

Corpus Juris Civilis

Body of Civil Law.

counsel

Traditionally used to describe **barristers**, but can now also refer to **solicitors** with appropriate **rights of audience**.

counterclaim

Where a **claimant** commences proceedings against a **defendant**, the defendant may also have a cause of action against the claimant. Rather than commence a separate action, the defendant may bring the claim (the counterclaim) as part of the proceedings in which the claimant's claim is heard.

counter-offer

A response of an **offeree** which varies, adds to, or contradicts the terms of an **offer**.

county courts

First established by the County Courts Act 1846, county courts exercise an exclusively civil jurisdiction, with cases being heard by district judges and circuit judges. County courts tend to deal with the more minor civil cases.

court

The word 'court' can refer to:

- (i) A place where justice is administered and legal disputes resolved; or
- (ii) The persons who administer such justice (that is, judges or **magistrates**).

Court of Appeal

Created by the Judicature Act 1873, the Court of Appeal was, in 1966, divided into the two divisions that exist today, namely the Civil Division and the Criminal Division. The Court of Appeal exclusively hears appeals (that is, it has no **first-instance** jurisdiction) and it is bound by decisions of the **Appellate Committee of the House of Lords** and, generally, its own decisions.

Court of Protection

A court set up to deal with the affairs of adults (and some children) who lack **capacity**.

court of record

A court whose decisions and **judgments** are recorded and preserved, and which may fine and/or imprison those who commit **contempt of court**.

covenant

A promise, usually contained in a **deed**, whereby one party (the **covenantor**) will promise another party (the **covenantee**) to perform a certain act or acts, or to refrain from engaging in a certain act or acts.

covenantee

The person who benefits from a **covenant**.

covenantor

The person who promises to carry out certain acts or to refrain from carrying out certain acts under a **covenant**.

credit

Credit refers to a situation where a **creditor** allows the **debtor** to pay the **debt** over an agreed period of time, or to defer full payment until a later date.

creditor

A person to whom a **debt** is owed by another (this other person is known as the **debtor**).

crime

An act or omission that the state considers harmful, and wishes to punish and deter by the bringing of criminal proceedings (such proceedings are usually brought by the state) and the imposition of punishments such as **fin**es or imprisonment.

criminal law

The body of law that (i) defines what acts constitutes criminal offences; (ii) lays down procedures by which these offences are tried, and; (iii) establishes sentences to be imposed upon conviction.

Crown

Usually used to refer to the monarch, but actually refers to the monarch in his public capacity as head of a constitutional monarchy, and so is distinct from the actual monarch (hence why it is said that 'the Crown never dies'). The Crown also refers to **Parliament**, ministers and their servants.

Crown Court

Established by the Courts Act 1971, the Crown Court is a court of almost exclusive criminal jurisdiction, holding trials for all **indictable offences**, and those **either-way offences** that have been sent to the Crown Court for **trial**. It also hears appeals from decisions of **magistrates' courts**. Cases in the Crown Court are normally heard in front of a **judge** and **jury**.

Crown debt

A debt owed to the **Crown** (for example, VAT, income tax). Historically, such debts were classed as **preferential debts**, but Crown debts lost preferential status following the passing of the Enterprise Act 2002.

crystallise

The process whereby a **floating charge** becomes a **fixed charge**.

custom

Custom can refer to:

- (i) A long-established local practice that may be given legal effect by the court, providing that a number of stringent conditions are satisfied;
- (ii) A particular trade practice which may form an **implied term** of a contract.

D

damages

An award of money designed to compensate loss sustained due to the commission of a civil wrong (for example, **negligence**, **breach of contract** etc).

damnum sine injuria esse potest

'Loss can be without legal wrong.'

de facto

'In fact.'

de jure

'In law.'

debenture

A document evidencing a loan to a **company**.

debt

A sum of money owed by one person (the **debtor**) to another (the **creditor**).

debt capital

Capital raised through borrowing. Also known as **loan capital**.

debtor

A person who owes a **debt** to another (this other person is known as the **creditor**).

declaration of incompatibility

A declaration made by the **High Court**, **Court of Appeal** or **Appellate Committee of the House of Lords/Supreme Court** indicating that the court is of the opinion that a piece of domestic legislation is incompatible with certain rights found in the European Convention on Human Rights.

deed

A legal document that is used to create a right. Deeds are similar to contracts, except they are subject to stricter formalities.

defamation

The publishing a statement, referring to a person, that lowers that person in the estimation of right-thinking members of society generally, or which would tend to make them shun or avoid him.

default

To fail in some duty.

defence

An argument or statement submitted by the defendant that aims to counter the case of the claimant/prosecution. Defences can be complete (that is, the defence will completely exonerate the defendant) or partial (that is, the defence will reduce, but not eliminate, the defendant's liability).

defendant

A person who is sued in a civil action or charged with a criminal offence.

deferred shares

Shares which entitle the holder to a share of the company's profits, only once the preferred and ordinary shareholders have received a share of the profits.

delegated legislation

Legislation made by those authorized by **Parliament** to create legislation.

delegatus non potest delegare

'A person who is a delegate cannot delegate his powers.' An **agent** must personally perform the act required of him and cannot delegate it to another.

demurrer

A pleading challenging a legal cause of action.

derogation

The ability to opt-out in certain circumstances.

determine

To bring to an end or extinguish. To terminate.

devolution

The transfer of power to a lower level (*e.g.* from central government to local government).

direct effect

A provision has direct effect if it can be relied on in a domestic court.

director

An officer of the company is whom usually powers of management are lawfully vested. A **private company** requires at least one director, and a **public company** requires at least two directors.

Director of Public Prosecutions

The Director of Public Prosecutions (DPP) is the head of the Crown Prosecution Service (CPS). His permission is required before certain designated offences can be prosecuted by the local CPS.

disability

A 'physical or mental impairment which has a substantial and long-term adverse effect on [a person's] ability to carry out normal day-to-day activities.'⁴

dismiss

Dismissal can refer to:

- (i) The striking-out of a case
- (ii) The rejection of an **appeal**
- (iii) An employee is dismissed where (a) his employment contract is terminated (whether with or without notice); (b) he is employed under a limited-term contract, and that contract terminates by virtue of the limiting event, and the contract is not renewed; or (c) the employee terminates the contract (whether with or without notice) in circumstances under which he is entitled to terminate it without notice by reason of the employer's conduct (**constructive dismissal**).⁵

disqualify

To temporarily prohibit a person from engaging in a certain act (for example, conviction of a motoring offence may result in the **defendant** being disqualified from driving for a fixed period) or from engaging in a certain profession (for example, an individual can be disqualified from acting as a **director** of a company). Breaching a disqualification order normally constitutes **contempt of court**.

distress damage-feasant

A self-help remedy which allows a person to seize a **chattel** belonging to another which is on the person's land and is causing it damage.

⁴ Disability Discrimination Act 1995, s 1(1).

⁵ Employment Rights Act 1996, ss 95(1) and 136(1).

divest

To take away or deprive a person of a power, right or interest.

dividend

The distribution, usually in cash, of profits to the shareholders, usually at a fixed amount per **share**.

doli incapax

'Incapable of crime.' Certain persons (*e.g.* those under ten years of age) cannot have criminal proceedings initiated against them by virtue of being deemed incapable of committing a crime.

double jeopardy

A long-established principle that states that a person cannot be tried twice for the same offence. The Criminal Justice Act 2003 provides for an exception to the rule in relation to serious offences where new and compelling evidence comes to light.

duress

In civil law, duress occurs where a person engages in an act or enters into a transaction due to the illegitimate pressure or threats of another. The presence of duress usually renders a contract **voidable**.

E

economic duress

Economic duress occurs where a person illegitimately pressures or threatens the economic or business interests of another, thereby causing him to enter into a contract. In order for economic duress to arise, the victim must have had no realistic alternative but to enter into the contract. The presence of economic duress will render a contract **voidable**.

either-way offence

Offences that are triable either summarily in a **magistrates' court**, or on **indictment** in the **Crown Court**.

ejusdem generis

'Of the same class.' A grammatical rule of **statutory interpretation** which provides that where a provision contains specific words followed by general words, the general words must be interpreted in a manner consistent with the specific words (that is, the general words will only cover 'the same class' of persons, objects etc as the specific words).

emblements

Annual crops grown and cultivated through labour.

Employment Appeal Tribunal

A body that hears appeals from **employment tribunals**.

employment tribunals

Bodies that hear disputes between employers and employees.

enactment

An **Act of Parliament**, or part of an Act.

English legal system

The system of law that applies to England and Wales.

equity

The supplementary system of law that originally derived from the decisions of the Court of Chancery. Derives from the Latin '*aequitas*' meaning 'fairness' or 'equality.'

equity capital

An amount of money acquired by a company by the selling of **shares**. Also known as share capital.

estop

To deny the assertion of a right.

estoppel

A rule of evidence whereby a person will be prevented from denying the truth of a statement he has previously made that was relied upon by another.

European Economic Area

A body that enables states to join the single market without joining the European Union.

ex turpi causa non oritur actio

'An action does not rise from a base cause.' In **tort**, a **defendant** may not owe a duty to a **claimant** who sustains loss whilst engaged in an illegal act.

exclusion clause

A term in a contract that excludes/limits liability for **breach of contract** or some other civil wrong. Also known as an exemption clause.

execute

The signing and delivery of a **deed**.

executed

That which is done or completed.

executor

A person appointed by a **testator** (a person making a will) to administer an estate upon the testator's death. A female executor is known as an executrix.

executory

That which remains to be done or completed.

exemption clause

A **term** in a contract that excludes/limits liability for **breach of contract** or some other civil wrong. Also known as an exclusion clause.

exoneration

To be relieved of liability.

expectation loss

A measure of damages for **breach of contract** that aims to put the **claimant** in the position he would have been had the contract been performed as agreed (that is, had the breach not occurred).

expressio unius est exclusion alterius

'To express one thing is to exclude another.'

F

Family Division

One of the three divisions of the **High Court of Justice**.

fiduciary

The word 'fiduciary' can refer to:

- (i) A relationship of trust and confidence (for example, **solicitor** and client, doctor and patient or **trustee** and **beneficiary**); or
- (ii) A person who is in such a relationship and who is under an obligation to act in the other's interests (for example, a doctor, solicitor or trustee).

Financial Services Authority

A company limited by guarantee that regulates financial services in the UK. The Financial Services and Markets Act 2000, s 2(2) provides that its regulatory objectives are:

- Market confidence
- Public awareness
- The protection of consumers; and
- The reduction of financial crime.

fine

A monetary punishment payable by a **defendant** upon being convicted of an **offence**.

firm

A **partnership**.

first instance

Cases heard for the first time are said to be first instance cases.

First-tier Tribunal

A tribunal that can only hear **first-instance** cases. Decisions of First-tier Tribunals can be appealed to an **Upper Tribunal**.

fixed charge

A charge taken over a specific asset (for example, a specific building or piece of equipment). The ability of the owner of the charged asset to use that asset is heavily limited.

floating charge

A charge taken over a class of assets (for example, raw materials) or over the whole or part of the undertaking. The owner of the charged asset remains free to use the charged assets until the occurrence of certain events, whereupon the charge will **crystallise** and fix onto the charge assets.

forbearance

Deliberately refraining from enforcing a legal right.

force majeure

'Superior force.'

fraudulent misrepresentation

A fraudulent misrepresentation occurs where 'a false representation has been made, (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false.'⁶

frustration

Where a contract becomes illegal, impossible or performance becomes radically different from what the parties envisaged, it is said to be frustrated and will be **void**.

G

garden leave

A **term** of a contract that provides for an employee to give a lengthy period of **notice**, during which time, he may not work for any employer, but will continue to receive all the pay and benefits of the employment contract.

Gazette

The London Gazette is the Official Newspaper of Record for England and Wales. The Edinburgh Gazette and Belfast Gazette perform the same functions for Scotland and Ireland respectively.

general damages

Damages for losses which the law presumes to flow from the wrong complained of and, as such, do not need to be specifically pleaded.

general meeting

A meeting of a company at which the **members** can propose and vote on **resolutions** and question the **directors** regarding the company's affairs.

going concern

A business is normally a going concern if those who run it are of the opinion that it will continue in operational existence for the foreseeable future.

golden rule

A rule of **statutory interpretation** under which the literal and grammatical meaning of a word should be adhered to, unless it would produce an absurdity or a repugnancy, in which case, the court may use an alternative meaning that the word may bear in order to avoid the absurdity or repugnancy.

goods

All personal **chattals**, other than **things in action** and money.⁷

⁶ *Derry v Peek* (1889) 14 App Cas 337 (HL) 374 (Lord Herschell).

⁷ Sale of Goods Act 1979, s 61(1).

goodwill

Goodwill is a collective term used for certain assets of the company, such as its reputation and business connections. As such, it represents the difference between the value of a business as a whole and its tangible assets, less liabilities.

gratuitous promise

A promise for which **consideration** is not given.

Green Paper

A governmental report, inviting consultation on the development of the law or the creation of new **legislation**.

guarantee

An agreement (usually collateral to the main agreement) whereby one person (known as the **guarantor**) agrees to become liable for the debts of another if that other person defaults.

guarantee company

A company whose **members'** liability is limited to a specified amount (the guarantee) upon the company's **winding up**. Historically, such companies could be formed with a share capital, but this ability has been abolished.

guarantor

The person who agrees under a **guarantee** to pay the debts of another should that other person default.

guardian *ad litem*

A person who protects the rights and property of a person who lacks **capacity**, or who is incapable of managing his own affairs.

guilty

The word 'guilty' can refer to:

- (i) A plea submitted by the **defendant** indicating that he has committed the **offence** for which he has been charged.
- (ii) A **verdict** reached by a **judge** or **jury** stating that the accused committed the offence for which he is charged.

H

habeas corpus

'You have the body.' A writ whereby an individual can challenge the lawfulness of his detention.

Hansard

The Official Report of Parliamentary Debates. Named after Thomas Hansard who first purchased the publishing rights for the debates.

harassment

Harassment can refer to:

- (i) In employment law, harassment is a form of discrimination that occurs where *A*, on the grounds of sex, race etc, is the recipient of unwanted attention from *B*, that serves to humiliate *A* or which creates a hostile or intimidating atmosphere.

- (ii) The Protection of Harassment Act 1997, s 1 creates a **summary offence** of harassment. However, s 4 states that the offence is **indictable** if the person causes another to fear, on at least two occasions, that violence will be used. Section 3 creates a statutory tort of harassment, allowing the claimant to obtain an **injunction** to prevent further harassment.

High Court of Justice

The High Court (as it is commonly known) was established by the Judicature Acts 1873-75, and consists of three divisions, namely the **Chancery Division**, the **Family Division** and the **Queen's Bench Division** (or King's Bench Division if the monarch is male).

hire-purchase agreement

An agreement for the **bailment** (hire) of goods, whereby the **bailee** (hirer) will make periodic payments to the **bailor** for a specified period. At the end of the agreement, the bailee will have an option to purchase the goods.

holding company

A company that controls a **subsidiary** company or companies.

holding out

Holding out occurs where one party causes others to believe that he occupies a post, or has authority, that he does not in fact have. In such cases, the person holding out is usually regarded as liable as if he were the person he claimed to be. For example, the Partnership Act 1890, s 14(1) provides that any person who, by words or conduct, represents himself, or knowingly suffers himself to be represented, as a partner in a partnership is liable as if he were a partner to any third party.

home rule

The granting of independence or self-government to a constituent part of a state or country.

Home Secretary

The Home Secretary is a governmental minister and the head of the Home Office. The Home Secretary is responsible for the reduction of crime, security, counter-terrorism, immigration and civil emergencies.

homicide

The killing of a human being by a human being.

horizontal direct effect

In EU law, a provision has horizontal direct effect if it creates obligations that can be enforced by persons against other persons.

House of Commons

The Lower House of **Parliament**, consisting of a number of elected representatives known as **Members of Parliament** (MPs).

House of Lords

The phrase 'House of Lords' can refer to:

- (i) The Upper House of **Parliament**, consisting of the Lords Temporal (hereditary peers/peeresses, life peers/peeresses and the Lords of Appeal in Ordinary) and Lords Spiritual (the Archbishops of Canterbury and York and various senior bishops), or
- (ii) The name by which the **Appellate Committee of the House of Lords** is commonly known.

I

ibid

Short for '*ibidem*,' meaning 'in the same place.' Used to indicate that a source is the same as that found in the previous footnote.

illegal

Acts or omissions forbidden by the law.

immovables

Tangible items that cannot be moved. Normally, refers to land or property attached to land.

immunity

Exemption from legal proceedings, liability or an obligation.

implied terms

Terms added to the contract by the law that usually serve to protect consumers.

in pari delicto

'In equal fault.'

incapacity

A lack of legal competence (for example to enter into contracts). Examples of persons who can lack **capacity** include **minors** and persons with mental disorders.

incorporation

The process whereby a corporation (company) is created. Today, the vast majority of companies are incorporated by registration.

indemnify

To compensate someone for the loss they suffered due to the act of another.

indemnity

Compensation for injury, loss or expenses.

independent contractor

A term used to distinguish employees from other persons who perform acts for an employer, but who are not under the control of the employer in terms of how the act is to be performed.

indictable offence

An indictable offence is 'an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable or triable either way.'⁸ Offences that are indictable only must be tried in the **Crown Court**.

indictment

A written document setting out the charges against the **accused**.

⁸ Criminal Law Act 1977, s 64(1)(a).

inferior court

Courts whose jurisdiction is limited geographically and financially, namely **magistrates' courts** and **county courts**.

injunction

A court order restraining an act (known as a **prohibitory injunction**), or requiring an act to be performed (known as a **mandatory injunction**).

injuria sine damno

'Injury without harm.'

innominate term

A **term** of a contract that is neither a **condition** nor a **warranty**. Breach of an innominate term will only allow the non-breaching party to terminate the contract if the breach deprives him of substantially the whole benefit of the contract.

innuendo

In relation to **defamation**, an innuendo is a statement that is not defamatory in itself, but when combined with other information, it can take on a secondary meaning that is defamatory.

insanity

A disorder of the mind that affects a person's reasoning to such an extent that he cannot be held legally responsible for his actions.

insolvency

The inability to pay one's **debts**.

inter se

Between or amongst themselves.

inter alia

'Amongst others.'

inter partes

'Between the parties.'

interlocutory proceedings

Proceedings incidental to the main object of the cause of action.

intestate

A person is intestate if he dies without making a will.

invitation to purchase

A 'commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of that commercial communication and thereby enables the consumer to make a purchase.'⁹

⁹ Consumer Protection from Unfair Trading Regulations 2008, reg 2(1).

invitation to treat

An invitation to make an **offer**, to bargain, or to deal.

issued share capital

The combined **nominal value** of **shares** that a company has issued.

J

joint and several liability

Persons who are jointly and severally liable, may be sued jointly for a loss, or any one person can be sued for the entire loss (although that one party can usually obtain a **contribution** from the other liable parties).

joint liability

Where parties are jointly liable, each party can be sued for the entire loss caused (although the **claimant** cannot obviously recover the full loss from all jointly liable parties).

joint tortfeasors

Persons whose acts amount to a common design and result in the commission of a **tort**. Joint **tortfeasors** are **jointly and severally liable** for their tortious acts.

judge

An officer of the **Crown** who has the power to decide disputes according to the law and order, as applicable, punishments or other remedies.

judgment

The word 'judgment' can refer to:

- (i) The decision of a court; or
- (ii) The reasoning behind a particular judge's decision.

Judicial Committee of the Privy Council

Established by the Judicial Committee Act 1833, the Judicial Committee of the Privy Council (commonly known as the Privy Council) is the final appeal court for a number of Commonwealth countries, Crown dependencies and other UK overseas territories. Prior to October 2009, the Judicial Committee was also the final appeal court in relation to 'devolution' issues, but in October 2009, the Supreme Court took over this function.

judicial review

The supervisory function exercised by the **High Court** in relation to the acts of the **inferior courts, tribunals** and public authorities.

jurisprudence

The study of the theory and philosophy of law.

juror

A person who sits on a **jury**.

jury

A body of persons summoned by a court to determine questions of fact. Juries normally consist of 12 persons, but in cases concerning the illness of death or **jurors**, the number may be less, providing that it does not fall below 9.

Justice of the Peace

The formal title of a **magistrate**.

L

laches

Negligence or unreasonable delay in enforcing an equitable right, which serves to defeat that right. Derives from the Old French word *laschesse* meaning 'lax' or 'indolent.'

law

The word 'law' can refer to:

- (i) A body of rules derived from **legislation**, case law and **custom** that is binding among the citizens of the community or state; or
- (ii) An individual rule in such a body of rules.

Law Commission

A body created in 1965 that is subject to a statutory duty to keep the law under review, and to promote the simplification and modernisation of the law.

Law Lords

The **Lord Chancellor**, ex-Lord Chancellors, the **Lords of Appeal in Ordinary** and other peers who have held high judicial office and who sit in the **House of Lords**.

Law Society

The body that represents the interests of **solicitors** in England and Wales. It used to also act as the regulatory body for solicitors, but this function is now undertaken by the **Solicitors Regulation Authority**.

lease

A contract in which one party (the **lessor**) conveys to another (the **lessee**) exclusive possession of property for a specified period, usually in return for payment in the form of rent.

leave

Permission. For example, in order for a party to appeal, they will often require leave to appeal from the court they are seeking to appeal to, or the court whose decision is being appealed.

Legal Aid

The system of publically funded legal advice and representation.

legal personality

The separate personality belonging to legal persons. Also known as separate personality or corporate personality.

legal persons

Persons created by the law (*i.e.* **companies** and **limited liability partnerships**).

legal tender

Money that a **debtor** offers to a creditor in satisfaction of a **debt**, which cannot be refused by the **creditor**. The following is classified as legal tender under the Coinage Act 1971, s 2:

- Gold coins of any amount
- Bank notes
- Coins proclaimed as legal tender under the Coinage Act 1971, s 3
- Coins of cupro-nickel and silver of denominations of more than 10 pence, for payment of any amount not exceeding £10
- Coins of cupro-nickel and silver of denominations of not more than 10 pence, for payment of any amount not exceeding £5
- Coins of bronze, for payment of any amount not exceeding 20 pence.

legislation

A collective term used to describe **Acts of Parliament** and all forms of **subordinate legislation**.

lessee

A person to whom a **lease** is granted. The person who grants the lease to the lessee is known as the **lessor**.

lessor

A person who grants a **lease**. The person to whom a lease is granted is known as a **lessee**.

libel

A **defamatory** statement published in a permanent form (for example, in writing). A defamatory statement published in a non-permanent form is known as **slander**. Libel can amount to both a **crime** and a **tort**, whereas slander constitutes a tort only.

license

Permission to engage in an act which, without such permission, would be wrong or unlawful.

licensee

The person who benefits from a **license**.

licensor

The person who grants a **license**.

lien

The right to hold the property of another until an obligation is satisfied.

limitation period

A period after which a claim may not be brought. Limitation periods are set down either by a specific **statute**, or by the provisions of the Limitation Act 1980.

limited company

A company in which the liability of each **member** is limited. The form of limitation depends upon whether the company is limited by guarantee or limited by shares.

limited liability

A shareholder's liability is limited to the amount unpaid on his **shares**.

limited liability partnership (LLP)

A business structure established by the Limited Liability Partnerships Act 2000. Despite its name, a LLP has more in common with a registered company, than with a partnership, namely it is a body corporate, the liability of its members is limited and it is generally subject to company law, as opposed to partnership law.

limited partnership

A form of **partnership** created under the Limited Partnerships Act 1907. A limited partnership must consist of at least one general partner who is responsible for the firm's debts. The remaining partners may be limited partners who, at the time of entry to the firm, contribute a set amount of capital and are not liable for the debts or liabilities of the firm beyond this amount.

linked transaction

A transaction linked to a regulated **consumer credit agreement** or regulated **consumer hire agreement**, and therefore subject to certain provisions of the Consumer Credit Act 1974.

liquidated damages

A pre-estimated amount of **damages** that is payable should a party to a contract breach it.

liquidation

The **winding up** of a company.

liquidator

A person who is appointed to **wind up** a company.

listed company

A **public company** whose **shares** are listed on a **stock exchange**. Also known as a quoted company.

Listing Rules

Rules created and administered by the **Financial Services Authority** that apply to **listed companies**.

literal rule

A rule of **statutory interpretation** that provides that words should be given their literal, everyday, grammatical meaning, even if to apply such a meaning produces an absurdity.

litigant

A party to **litigation**

litigate

To pursue or defend a legal action.

litigation

The determination of a legal dispute through the courts.

loan capital

Capital raised through borrowing. Also known as debt capital.

local authority

A body responsible for administering local government. Includes county councils and district councils.¹⁰

¹⁰ Local Government Act 2000 s 1.

locus standi

'A place of standing.' The right to appear and be heard before a court.

long title

The formal title of an **Act of Parliament** that usually provides a summary of the Act's purpose(s).

Lord Chancellor

Historically, the highest ranking judge in the **English legal system**. No longer exercises judicial capacity following the Constitutional Reform Act 2005, but is still classified as a **Law Lord**.

Lord Chief Justice

The head of the judiciary in England and Wales. The Lord Chief Justice is also the President of the Criminal Division of the **Court of Appeal**.

Lord Justice of Appeal

The title given to ordinary judges who sit in the **Court of Appeal**. Usually known as a Lord Justice.

Lords of Appeal in Ordinary

Senior members of the judiciary who have held high judicial office for at least two years, and who sit on the **Appellate Committee of the House of Lords**.

Low Pay Commission

A body set up to advise the government on issues relating to the minimum wage. Now exists via the National Minimum Wage Act 1998, s 8.

M

magistrate

Formally known as **Justices of the Peace**, magistrates are unpaid, part-time members of the local community who are trained to resolve disputes in **magistrates' courts**. They are usually lay persons with no formal legal qualifications.

magistrates' courts

'[A]ny justice or justices of the peace acting under any enactment or by virtue of his or their commission or under the common law.'¹¹ An inferior court that hears around 95% of all criminal cases in England and Wales, although it does have a small, but notable, civil jurisdiction. Cases in magistrates' courts are heard either by a bench of 2-7 **magistrates**, or by a single district judge.

Magna Carta

'Great Charter.' A charter granted by King John in which the powers of the monarch were limited and subjects of the Realm were granted certain rights pertaining to their freedom. Parts of the 1297 version of the charter remain on the statute books. Regarded by many as a bill of rights for the UK (indeed the fifth and sixth amendments of the American Constitution derived from the *Magna Carta*).

¹¹ Magistrates' Courts Act 1980, s 148(1).

maintenance

Meddling in a legal action, normally by providing financial support. Maintenance used to be a criminal offence, but this is no longer the case. However, contracts involving maintenance are still regarded as **void** on the ground of illegality.

mala fides

'Bad faith,' as opposed to *bona fides* meaning 'good faith.'

malfeasance

The performance of an unlawful act. Can be contrasted with **misfeasance**, which is performing a lawful act in an unlawful manner.

malice

Ill-will or the intention or desire to do evil.

malicious falsehood

A **tort** similar to **defamation** (and sometimes wrongly classified as a form of defamation) whereby a person publishes a false statement that is designed to injure the commercial or business interests of another.

mandatory injunction

An **injunction** requiring the performance of a stipulated act.

marriage settlement

An agreement made in contemplation of a marriage, which usually operates to benefit any children of the marriage.

Master of the Rolls (MR)

The President of the Civil Division of the **Court of Appeal**.

mediation

A form of **alternative dispute resolution** in which the disputing parties will engage a mediator, who will aim to help the parties reach a mutually acceptable result. Unlike **arbitration**, the decision of the mediator is not binding – in fact, the mediator may not even offer suggestions.

member

In company law, a member is a person who agrees to become a member of a company, and whose name is entered in the register of members. The subscribers of a company's **memorandum of association** are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.¹²

Member of Parliament (MP)

A person elected by his constituency to sit in the **House of Commons**.

Member of the European Parliament (MEP)

A person who has been elected to the European Parliament.

Member State

A state that is a member of the European Union.

¹² Companies Act 2006, s 112.

memorandum of association

Usually known as the memorandum, a company's memorandum of association was, historically, its most important constitutional document. Under the Companies Act 2006, the memorandum has lost much of its importance and now merely provides an historical snapshot of the company's particulars at the time of formation.

mens rea

'Guilty mind.' The mental element required for the commission of certain crimes.

Mercantile Courts

Courts outside London which hear less complex commercial cases. Mercantile Courts can be found in Birmingham, Bristol, Cardiff, Chester, Leeds, Liverpool and Manchester.

minor

A person under the age of 18.

minutes

The notes and records of the proceeds of a meeting.

mischief rule

A rule of **statutory interpretation** that provides that, when interpreting **legislation**, the court should have regard to the mischief that the legislation intended to remedy.

misfeasance

The improper or unlawful performance of a lawful act. Can be contrasted with **malfeasance**, which is the performance of an unlawful act.

misprision

Misprision is the failure to report a crime. It comes in two principal forms:

- Misprision of felony is the failure to report a felony. Previously a common law offence, it has been abolished following the abolition of the distinction between a felony and a misdemeanour.
- Misprision of treason is the failure to report treason to a **judge** or **Justice of the Peace**. It remains a common law offence.

misrepresentation

A false statement of past or existing fact, or of law, that induces a party to enter into a contract.

mistake

In contract law, a mistake may serve to **vitiating** consent and render a contract **void**.

mitigation

In relation to an award of **damages**, mitigation refers to the process whereby the **claimant** takes reasonable steps in order to reduce the loss sustained. A claimant who fails to mitigate his loss may find that he cannot recover those losses that could have been mitigated.

Money bills

Bills that concern national taxation, public money/loans and their management.

monopoly

A monopoly in relation to good or services occurs where at least one-quarter of the goods or services supplied in the UK are supplied by one person.¹³

moratorium

An authorized delay in the performing of an obligation (for example, the payment of a debt).

motive

The reason for the commission of a criminal offence.

multiplicand

A figure representing the annual amount of each head of loss.

multiplier

The length of time that each head of loss is likely to be payable.

N

natural law

A conceptualization of law that aims to determine the function and purpose of law by discussing its relationship with morality.

natural persons

Biological persons (that is, human beings), as opposed to **legal persons**.

necessaries

Goods suitable to the condition in life of the **minor** or other person concerned and to his actual requirements at the time of the sale and delivery.¹⁴ Minors and mentally incapacitated persons can create binding contracts for the purchase of necessities.

negligence

A **tort** whereby one person who owes a duty of care to another, breaches that duty and causes the other person harm.

negotiable instrument

A transferable document that promises to pay the bearer a sum of money at a future date. Examples include cheques, bills of exchange and promissory notes.

nemo dat quod non habet

'No one gives who possesses not.'

nervous shock

Psychiatric damage caused as a result of another person's **negligence**. The term 'psychiatric injury' is now preferred to 'nervous shock.'

¹³ Fair Trading Act 1973, ss 6 and 7.

¹⁴ Sale of Goods Act 1979, s 3(3).

night time

For the purposes of the Working Time Regulations 1998, 'night time' refers to a period, the duration of which is not less than seven hours, which includes the period between midnight and 5 a.m.¹⁵

night worker

A worker:

- (i) who, as a normal course, works at least three hours of his daily working time during night time, or
- (ii) who is likely, during night time, to work at least such proportion of his annual working time as may be specified for the purposes of these Regulations in a collective agreement or a workforce agreement.¹⁶

nominal damages

Damages awarded when no loss has been sustained. Consequently, nominal damages tend to amount to around £2.

nominal value

A fixed value attached to **shares** when they are issued, which may bear no resemblance to the actual value of the shares. Shares cannot be sold for less than their nominal value.

non est factum

'It is not my deed.'

noscitur a sociis

'It is known from its associates.'

not guilty

The phrase 'not guilty' can refer to:

- (i) A plea submitted by the **defendant** indicating that he has not committed the offence for which he has been charged. The prosecution will be required to prove that the **accused** committed the offence 'beyond reasonable doubt.'
- (ii) A **verdict** reached by a **judge** or **jury** stating that the accused did not commit the offence for which he is charged.

notice

'Notice' can refer to:

- (i) Knowledge or awareness. Such knowledge may be actual or imputed.
- (ii) In employment law, 'notice' refers to the minimum period an employer or employee must give before terminating the employee's employment.

novation

The act of substituting one contract for another.

novus actus interveniens

'New intervening act.'

¹⁵ Working Time Regulations 1998, reg 2(1).

¹⁶ *Ibid.*

nuisance

The unreasonable interference with the use or enjoyment of another person's land.

nulli enim res sua servit jure servitutis

'No one can have a servitude over his own property.'

O

obiter dictum

'A thing said by the way.' A statement made by a **judge** in a **judgment** which is not directly relevant to the case before him, and so is merely of **persuasive authority**. The plural of *obiter dictum* is *obiter dicta*.

objects clause

A clause in a company's constitution stating the purposes for which a company has been formed, and which serves to limit the contractual **capacity** of the company. It used to be the case that all companies required an objects clause, and it would be contained within the company's **memorandum of association**. Companies incorporated under the Companies Act 2006 have unrestricted objects by default, and do not require an objects clause. Should the company choose to restrict its objects, the objects clause will be contained within the company's **articles of association**.

objective

Unbiased, impartial and detached. Not affected by personal feelings or opinions.

obligation

A legal or moral duty.

offence

An act or omission that constitutes a **crime**.

offer

In contract law, an 'offer' is 'an expression of willingness to contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed.'¹⁷

offeree

A person to whom an **offer** is addressed.

offeror

A person who makes an **offer**.

official receiver

An officer appointed by the Secretary of State who acts for the court in cases involving **bankruptcy** and winding up.

Order in Council

An Order (usually amounting to a form of subordinate legislation) made by the monarch upon advice from the Privy Council, or the government.

¹⁷ E Peel, *Treitel on the Law of Contract* (12th edn, Sweet & Maxwell, London, 2007) 9.

ordinary resolution

A **resolution** passed by a majority of over 50 per cent. An exact 50 per cent split means that the resolution is lost.

overrule

Where a higher court holds that a decision of a lower court *in the same case* is incorrect and is no longer good law. The decision of the lower court is overruled by the higher court.

P

pari passu

‘With equal step.’

Parliament

The supreme legislature of the UK, consisting of the monarch, the **House of Commons** and the **House of Lords**.

Parliamentary session

The time between the State Opening of **Parliament** (usually November) and Parliament’s prorogation (closing) (again, usually in November).

parol

Oral. Not to be confused with ‘parole,’ which is the early release of a prisoner.

parol evidence

Oral evidence. Where an agreement is embodied in a written document, the general rule is that parol evidence cannot be adduced to add, vary or contradict the terms of the written document.

partnership

A business structure defined as ‘the relation which subsists between persons carrying on a business in common with a view to profit.’¹⁸

passing off

A **tort** whereby one party makes a **representation** aimed at damaging the business or goodwill of another. It usually takes the form of one person indicating that he has manufactured goods that were in fact manufactured by someone else.

pecuniary

Financial or economic.

per incuriam

‘Through want of care.’ Where relevant authority is not discussed by the court.

per se

‘In itself.’

¹⁸ Partnership Act 1890, s 1(1).

personal injury

'[A]ny disease and any impairment of a person's physical or mental condition.'¹⁹

personal representative

An **administrator** or **executor** whose function it is to settle the affairs of deceased persons.

persuasive authority

A precedent which is not binding, but which may be influential on a case, or be taken into account by the court. Persuasive authorities include *obiter dicta*, the decisions of inferior courts and decisions of overseas courts.

plaintiff

A person who initiates a civil claim. Now known as a **claimant**.

poll

A vote. In company law, a poll involves a vote in which each **member** has a number of votes equal to the number of **shares** he holds.

power of attorney

A **deed** executed by one person granting authority for another person to represent him or act on his behalf

precedent

An authoritative decision in a case that may be used to decide a later case with similar facts. Precedents may constitute **binding authority** or **persuasive authority**.

pre-emption

A right of first refusal. For example, in company law, shareholders have pre-emption rights, meaning that if a company issues new **shares**, it should first offer them to the existing shareholders.

preference

A preference occurs where a person does something, which puts a **creditor** of his in a better position than the creditor would be in if the person became **bankrupt**. It occurs most commonly where a **director** of a company benefits a creditor of the company and places the creditor in a better position than he would be in if the company was wound up.

preference shares

Shares which entitle the holder to some sort of benefit, usually in relation to his entitlement to a **dividend**. For example, preference shareholders may be entitled to all the dividends, or to greater dividends than the ordinary shareholders.

preferential debts

In company law, preferential debts are those debts that, in the event of a **winding up**, have priority over other debts.

pre-incorporation contract

A contract made on behalf of, or purporting to be made by, a company that is yet to be incorporated. The company is not bound by such contracts, but the person who purported to make the contract on the company's behalf may be.

¹⁹ Civil Procedure Rules, r 2.3.

preliminary reference/ruling

A ruling of the European Court of Justice on a point of interpretation of EU law, upon a reference by a **member State's** domestic court.

premium

The word 'premium' can refer to:

- (i) The payment for a contract of insurance
- (ii) A sum paid in excess of the **nominal value** of **shares**.

prescription

The acquisition or the termination of a right due to the lapse of time.

prima facie

'At first glance.' Initially.

primary legislation

Legislation passed by **Parliament** in the form of an **Act of Parliament**.

primary victims

Those in fear of their physical safety due to the defendant's actions.

principal

Someone who engages an **agent** to perform some act on his behalf, usually resulting in the creation of legal relations with a third party.

private Act of Parliament

An **Act of Parliament** that applies to specific individuals, groups of individuals, companies or localities.

private company

A company that is not a **public company**. It is so called because it cannot offer its **shares** to the public.

private law

The body of law that regulates the relationship between individuals (as opposed to public law). Examples include family law, contract law and company law.

privity of contract

Privity of contract is a rule that provides that:

- (i) Only parties to a contract may enforce the contract, and
- (ii) A contract only imposes obligations upon parties who are party to it.

probate

A document (known as a grant of probate) which officially provides evidence of the authority of an **executor**.

proferens

The party favoured by an **exclusion clause**.

prohibitory injunction

An **injunction** restraining the performance of a certain act.

promoter

The word 'promoter' can refer to:

- (i) A person who introduces a **private Act of Parliament**
- (ii) A person who undertakes and enters into the process of setting up of a company.

proprietary

Relating to exclusive ownership, control or use.

prosecutor

A person who, on behalf of the **Crown**, institutes criminal proceedings against a person.

prospectus

A document providing information concerning a company, issued when the company wishes to raise money.

proxy

A person appointed to vote for another (for example, at a general meeting of a company).

public Act of Parliament

An **Act of Parliament** of national importance that applies to the entire UK, unless stated otherwise.

public company

A limited company with a share capital (although its members liability can be limited by shares or guarantee), whose certificate of incorporation states that it is a public company. Unlike **private companies**, public companies can list their **shares** on a stock exchange and sell them to the public.

public law

The body of law that seeks to regulate the relationship between the state and its citizens (as opposed to **private law**). Examples include criminal law, human rights and administrative law.

public nuisance

A nuisance that 'materially affects the reasonable comfort and convenience of life of a class of the public who come within the sphere or neighbourhood of its operation.'²⁰

'pure' economic loss

Financial loss not associated with physical injury or property damage.

Q

qua

'In the capacity of.'

quantum meruit

'As much as he has deserved.' A reasonable sum based on services provided.

²⁰ WVH Rogers, *Winfield & Jolowicz on Tort* (17th edn, London, Sweet & Maxwell, 2006) 643.

quash

To annul or make void.

Queen's Bench Division

The largest of the three divisions of the **High Court of Justice**.

Queen's Counsel (QC) (or King's Counsel if the monarch is male)

A **barrister**, who is 'learned in the law' and has practiced for at least ten years, who has been appointed as Counsel to Her Majesty. They are informally referred to as 'silks' due to the silk gowns they wear.

quia timet

'Because he fears.' A ***quia timet* injunction** is granted where no tort has yet been committed, but the court is satisfied that damage is almost certain and imminent.

quorum

The minimum number of persons required in order to have a formal meeting. For example, a minimum of two persons at a general meeting will constitute a quorum, unless the company is a single member company, in which case that member will constitute a quorum.²¹

quoted company

A **public company** whose **shares** are listed on a **stock exchange**. Also known as a listed company.

R

ratify

To approve or sanction, even though it may be in breach of law.

ratio decidendi

'Reason for deciding.' The reasons upon which a case is decided. It is the *ratio* that forms the binding part of a decision.

recaption

The retrieval of **chattals** that have been wrongfully detained by another.

receiver

In company law, a receiver is a person appointed in order to recover payment of a debt. The receiver may be appointed by the court or by a person (usually a **creditor**).

rectification

The correction of a written document, where that document fails to reflect the intentions of the parties who created it.

redundancy

The dismissal of an employee, where the dismissal is wholly or mainly attributable to:

- (i) The fact that the employer has ceased, or intends to cease, (a) to carry on business for the purposes for which the employee was employed, or (b) to carry on that business in the place where the employee was so employed, or

²¹ Companies Act 2006, s 318.

- (ii) The fact that the requirements of the business have ceased or diminished, or are expected to cease or diminish.

Registrar of Companies

The Registrar of Companies is the Chief Executive of Companies House. The principal functions of the Registrar are to register the incorporation and dissolution of companies, and to ensure that documents delivered to Companies House are accurate.

reinstatement

An order made by an **employment tribunal** requiring an employer to re-employ an employee that was unfairly dismissed by the employer.

reliance loss

A measure of **damages** for **breach of contract** that aims to put the **claimant** in the position he would have been in prior to the contract being formed. It aims to compensate the claimant for expenses incurred in reliance of the other party performing his obligations.

remedy

An order of the court aimed at preventing the infringement of a right, or providing compensation for loss sustained.

renunciation

Abandonment of a right or obligation (for example, performance of a contract).

repeal

The revocation of a **statute**, or part of a statute.

rescission

The termination of a contract, either by an act of the parties or the court.

rectification

The correction by the courts of an error in a written document.

redeemable shares

Shares that are issued, but can be redeemed by the company at either the insistence of the company or the shareholder.

relator action

An action brought by the **Attorney General** upon an application from a private person inviting the Attorney General to join the private person in bringing the proceedings.

representation

A pre-contractual statement concerning some fact or belief designed to induce a party into entering a contract.

representee

The party to whom a **representation** is addressed.

representor

The party making a **representation**.

repudiate

To refuse to honour or fulfil a contract.

repudiatory breach

A **breach of contract** that gives rise to the right to terminate.

res extincta

'The thing has ceased to exist.' In contract law, *res extincta* applies where the subject matter of a contract once existed, but no longer exists. The effect of *res extincta* is to render the contract **void**.

res ipsa loquitur

'The thing speaks for itself.'

res sua

An abbreviation of *res sua nemini servit* meaning 'no one can have servitude over his own property.' It applies where a person contracts to purchase property that he already owns. The effect of *res sua* is to render the contract **void**.

resolution

A decision arrived at by a formal vote.

respondent

A person against who an **appeal** is brought (the person bringing the appeal being known as the **appellant**).

restitutio in integrum

'Restoration to the original position.'

restrictive covenant

A promise, usually made by **deed**, forbidding the commission of a certain act.

rights of audience

Rights which determine in which court one may appear as an advocate.

Royal Assent

The process whereby the monarch approves a **Bill** and, in doing so, it becomes an **Act of Parliament**. Unless otherwise stated in the Act, it will come into force on the day it receives Royal Assent.

S

salvor

A person engaged in the salvaging of a ship, or of items lost at sea.

schedule

An appendix to a **Bill** or **Act of Parliament**.

seal

The authentication of a written document by impressing and attaching a piece of wax to it.

secondary victims

Those who witnessed the defendant's **negligence**, or were told about it, but did not fear for their physical safety.

separate personality

The separate personality belonging to **legal persons**. Also known as legal personality or corporate personality.

severance

A severable contract is one in parts, whereby one part can be severed and disregarded and the remainder can be enforced.

share

A share is a measure of a person's interest in a company.

share capital

An amount of money acquired by a company by the selling of **shares**. Also known as **equity capital**.

share certificate

A document indicating the number of **shares** held by the person named on it. A share certificate provides *prima facie* evidence of title to the number of shares stated on it.

short title

The name by which an **Act of Parliament** is commonly known and cited. Can be contrasted with the **long title**.

slander

A **defamatory** statement published in a non-permanent form. A defamatory statement published in a permanent form is known as **libel**. Slander *per se* amounts to a **tort** only.

sole practitioner

A **sole proprietor** who is a professional (for example, an accountant or lawyer).

sole proprietor

An individual who conducts business on his own. If the individual is a professional (for example, an accountant or a lawyer), he will be a **sole practitioner**. In all other cases, he will be known as a **sole trader**.

sole trader

A **sole proprietor** who is not a professional.

solicitor

One of the two principal branches of the legal profession (the other being **barristers**). A solicitor is a person employed to conduct legal proceedings and advise on legal matters.

solicitor-advocate

A **solicitor** who provides advocacy services and who has greater rights of audience than a normal solicitor.

Solicitors Regulation Authority

A body that is responsible for regulating **solicitors**. It achieves this through setting standards for entry into the profession and setting the professional standards of practising solicitors.

special damages

Damages which are not presumed to flow from the wrong complained of, and which must therefore be specifically pleaded. Contrast with **general damages**.

special resolution

A vote requiring a majority of not less than 75 per cent.

specific performance

A court order requiring performance of an act, normally to fulfil a contract.

standing

The right to be heard in a court.

stare decisis

‘Keep to what has been decided previously.’

stare rationibus decidendis

‘Keep to the reasoning of what has been decided previously.’

statute

An **Act of Parliament**.

statute law

The body of laws that derive from **Parliament** in the form of **legislation**.

statutory instrument (SI)

Where a power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on Her Majesty in Council or on any Minister of the **Crown** then, any document by which that power is exercised shall be known as a statutory instrument.²² The majority of **subordinate legislation** is passed in the form of statutory instruments.

statutory interpretation

The process whereby judges interpret the words contained within **legislation**. The courts have developed three canons of interpretation, namely the **literal rule**, the **golden rule** and the **mischief rule**.

stock exchange

A recognized organization of persons who engage in the buying and selling of stocks, **shares** and other securities.

stoppage in transit

The right of an unpaid seller to stop, whilst in transit, goods the delivery of goods to the buyer, and to retain possession of them until the price is paid.

strict liability

In relation to civil law, strict liability refers to liability without fault, meaning that the **claimant** will not need to establish negligence or carelessness. In criminal law, it refers to an offence that does not require the prosecution to establish the existence of **mens rea** (all that is required to convict is the **actus reus**).

²² Statutory Instruments Act 1946, s 1(1).

striking out

The ability of the court to dismiss all or part of a statement of a case.

subjective

Relating to the thoughts or characteristics of an individual.

subordinate legislation

Legislation not made by **Parliament**. Would include all **delegated legislation**.

subpoena

A **writ** compelling a person to attend a trial as a **witness**. Now known as a **witness summons**.

subrogation

The ability to take on the legal rights of others.

subsidiary company

A company is a subsidiary company of another company, if that other company:

- (i) holds the majority of voting rights in it
- (ii) is a **member** of it and has the right to remove or appoint the board of directors, or
- (iii) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it.²³

substratum

The purpose for which a company was formed. A company may be wound up if it becomes impossible for it to achieve its substratum.

sue

To commence civil proceedings against another.

summary offence

Criminal offences that must be tried in a **magistrates' court**. Summary offences are classified as such by **statute** and tend to be minor criminal offences.

Supreme Court

From October 2009, the Supreme Court will take over the functions of the **Appellate Committee of the House of Lords**, thereby becoming the highest appellate court in the UK. Its functions will remain the same as the Appellate Committee, save that it will also act as the final appeal court in devolution matters (such cases were previously heard by the **Judicial Committee of the Privy Council**).

surplusage

In law, a word or phrase is 'surplusage' if it is superfluous or useless to the case in question.

T

Takeover

The process whereby one company acquires control of another by purchasing all, or the majority of, its **shares**.

²³ Companies Act 2006, s 1159(1).

takeover bid

An offer by a company (known as the bidder) to the shareholders of another company (known as the target) to purchase their **shares**.

tender

Attempted performance of a contractual obligation.

term

In contract law, a 'term' refers to an obligation contained (through express provision or implication) in a contract.

test case

A case which is brought and the result applied to similar cases that are not litigated.

testator

A person who makes a will.

thing

An asset other than land. Historically known as a '**chose**.'

thing in action

A 'thing' that cannot be possessed or has no physical existence (for example, a **share** in a company). Historically known as a '**chose in action**.'

thing in possession

A 'thing' that is tangible and can be possessed. Historically known as a '**chose in possession**.'

time immemorial

A time that is beyond legal memory. This has been fixed at the 3 September 1189 by the Statute of Westminster I 1275.

title

The right to enjoyment or possession of an item.

tort

A civil wrong independent of contract. Derives from the Latin '*tortus*' meaning 'twisted' or 'wrong.'

tort of deceit

A false statement made knowingly, or recklessly careless whether it is true or false, with the intent that another relies on it to his detriment.

treasury shares

Shares held in a company's own treasury.

trespass to goods

Any direct physical interference with goods that are in the possession of another person, without the consent of the person in possession, unless there is lawful justification for the interference.

trespass to the person

A group of torts relating to the intentional and direct application of force to a person. Includes assault, **battery** and false imprisonment.

trial

The examination and determination of a legal matter by a court of law.

tribunal

A body that exists outside the judicial hierarchy that exercises legal or administrative functions in specified areas. For example, the majority of disputes between employers and employees are heard by **employment tribunals**.

trustee

A person who holds property on trust for another and who is under an obligation to administer that property for the benefit of the other person (this other person is known as the **beneficiary**).

U

uberrimae fidei

'Utmost good faith.'

ultra vires

Acting 'beyond one's powers.'

unascertained goods

Goods that are not identified and agreed upon at the time a contract for the sale of goods is made.

undertaking

The word 'undertaking' can refer to:

- (i) A promise or obligation
- (ii) A company or **firm**.

undue influence

The placing of improper pressure on another person in order to force them to enter into an agreement, or engage in some other act. Agreements tainted by undue influence are **voidable** at the instance of the party who was unduly influenced.

unilateral contract

A contract in which only the **offeror** is bound, whereby the offeror promises to pay in return for another party performing a stipulated act. The offeror is only bound to pay once the stipulated act is fully performed.

unilateral mistake

Unilateral mistake occurs where one party to a contract is mistaken and the other party is aware, or can be taken to be aware, of the mistake. The presence of a unilateral mistake will render a contract **void**.

unliquidated damages

Unascertained damages that will be quantified by the court.

unsecured creditor

A **creditor** who loans money without taking security for the loan.

Upper Tribunal

Tribunals that hear appeals from First-tier Tribunals, as well as having a first-instance jurisdiction. For example, the **Employment Appeal Tribunal** will hear appeals from **employment tribunals**. Upper Tribunals are superior **courts of record**.

user

The use or enjoyment of a right or thing.

V

verdict

The answer of a **jury** given to a court.

versus (v)

Against. Abbreviated to 'v' in case citations. If the case is a criminal one, 'v' is pronounced as 'against.' If the case is civil, it is pronounced as 'and.'

vertical direct effect

In EU law, a provision has vertical direct effect if it creates obligations that can be enforced by persons against the state, or emanations of the state.

vicarious liability

Imposing liability on a person (usually an employer) for the acts of another (usually the employer's employee).

vitiating

To render incomplete, imperfect or faulty.

void ab initio

'Invalid from the beginning.' A void contract is regarded as though it never existed.

voidable

A voidable contract is valid until it is set aside.

volenti non fit injuria

'To a willing person, no harm is done.'

W

waive

Abandonment of a legal right or claim.

warranty

A contractual **term** that is collateral to the main purpose of the contract. Breach of a warranty allows the non-breaching party to claim **damages**, but does not give rise to a right to terminate the contract.

whistleblowing

The alleging and reporting of misconduct to a person or body inside or outside of the whistleblower's employment.

winding up

The process whereby a company is, voluntarily or by court order, brought to an end.

witness

A person who gives evidence to a court or tribunal.

witness summons

A **writ** compelling a person to attend a trial as a **witness**. Previously known as a **subpoena**.

worker

A worker is:

- (i) someone who has entered into a contract of employment, or
- (ii) someone who has not entered into a contract of employment, but who undertakes to perform personally work or services for another, provided that these services are not being provided for a professional client.²⁴

writ

A written command from the court requiring either the performance or abstention of an act.

wrongful dismissal

Wrongful dismissal occurs where an employee is dismissed, and the dismissal amounts to a **breach of contract**. An example of a wrongful dismissal is where an employer dismisses an employee without providing sufficient **notice**.

wrongful interference with goods

A collective term for a number of **torts** relating to goods, including **trespass to goods** and **conversion**.

wrongful trading

A person commits wrongful trading if it appears that:

- (i) the company has gone into insolvent liquidation
- (ii) at some time, before the commencement of the **winding up** of the company, that person knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and
- (iii) that person was a **director** of the company at the time.²⁵

Y

youth courts

Generally, a youth court is a **magistrates' court** exercising its jurisdiction in relation to a **defendant** who is a child or a young person. Youth courts were formerly known as 'juvenile courts'.

²⁴ Employment Rights Act 1996, s 230(3).

²⁵ Insolvency Act 1986, s 214(2).