

Legal A-Z

Acceptance.

In insurance acceptance occurs when an applicant for insurance receives his policy from the company and, in the case of general insurance, pays the premium. In Life Insurance, since the initial premium is almost always submitted with the application, issuance of the policy by the company constitutes acceptance. (LE)

Action.

A lawsuit involving the right of one party to recover from another person in a court of law. (LE)

Action Ex Contractu.

An action or lawsuit based on breach of a promise made in a legal contract. This promise could be expressed or implied. (LE)

Action Ex Delicto.

An action in tort involving damages demanded for a breach of a duty. (LE)

Additur.

A situation where the court increases a previous jury award. (LE)

Administrator.

A person appointed by a court as a fiduciary to settle the financial affairs and the estate of a deceased person. (LE)

Affiant.

The person who executes an affidavit. (LE)

Affidavit.

A written or printed declaration or statement of fact, made voluntarily and confirmed by the oath or affirmation of the party making it, and taken before an officer having authority to administer such oath. (LE)

Affirmed.

When an appellate court declares that a judgment, decree or order is valid and right, and must stand as rendered in the lower court. (LE)

Agency.

When one person acts on behalf of another person, an agency is created with the first person being the agent and the second person being the principal. The principal generally can be held responsible for acts of its agents. (LE)

Agreement.

One of the elements of a legal contract. When an offer made by one party has been accepted by the other, with mutual understanding by both, an agreement exists. (LE)

Alcoholic Beverage Control Laws.

See Dram Shop Laws. (LE)

Alcoholic Beverage Liability Insurance.

See Dram Shop Liability Insurance. (LE)

Annul.

To make or declare void or invalid; such as invalidating a contract of marriage. (LE)

Answer.

A statement made by the defendant in response to a complaint or action which has been brought against the defendant. It states why the defendant should not be held liable. (LE)

Appeal.

**The right of a party who has received an adverse decision to take the case to a higher court for review. (LE)

Appellant.

The person making an appeal to the higher court. (LE)

Appellate.

Refers to courts which hear appeals for review of decisions rendered by a lower court. (LE)

Appellee.

Also called the respondent. The person to whom the appellant is making his or her appeal. (LE)

Arson.

The willful and deliberate burning of property. (LE)

Assignee.

A person to whom policy rights are assigned in whole or in part by the original policy owner. (LE)

Assignment.

Transfer by the policy owner of legal rights or interest in the policy contract to a third party. Most policies cannot be assigned without the permission of the insurer. (LE)

Assumption of Risk.

One of the common law defenses available to an individual. For instance, one person riding with another in an automobile has generally "assumed the risk" and, therefore, has no action against the driver of the vehicle should an accident occur. This is a common law concept and has been modified by recent case law and by statute in some jurisdictions. (LE)

Attachment.

A court order allowing one person to take something of value belonging to another into custody for a particular purpose. As an example, if an individual is at fault in an automobile accident, the insured person may get a court order attaching the first individual's automobile in settlement of the claim. The purpose of the attachment is to make sure something of value is available to settle the claim if the individual is held liable. (LE)

Attractive Nuisance.

The law states that an individual owes no duty of care to someone trespassing upon that individual's property. This is an exception to that rule since it does state that a special duty of care is required of a person with respect to conditions which attract children. (LE)

Bailee.

A person or concern having possession of personal property entrusted to him by the owner. An example would be a laundry which has custody of customers' clothing for washing or dry cleaning. Bailees are required to exercise the same care with the property of others as they would with their own property. (LE)

Bailment.

The personal property of one person being held by another with the intent of its being returned to the original owner. Cars in a garage for repairs would be an example of a bailment. (LE)

Bailor.

A person who owns property which has been entrusted to another. The owner of a fur coat who has entrusted it to a furrier for storage would be a bailor. (LE)

Brief.

A statement prepared by an attorney to highlight the principal issues of his or her case. (LE)

Certiorari.

A writ issued by a higher court to a lower court asking the lower court to forward the record of a particular case in question. (LE)

Chattel.

All personal property items. (LE)

Class Action Suit.

A legal device allowing a group of individuals with a claim against a company or an individual to join together as plaintiffs in a single suit. (LE)

Collateral Source.

A rule which allows a plaintiff to recover damages even if the plaintiff has already recovered damages from a source other than the defendant. (LE)

Common Law.

The unwritten law developed primarily from judicial case decisions based on custom and precedent. It developed in England and constitutes the basis for the legal systems of most of the states in the United States. (LE)

Community Property.

Common or statutory law which holds that husband and wife are each entitled to 1/2 of the total earnings and the property of both parties to the marriage. It is applicable in Arizona, California, Idaho, Hawaii, Louisiana, Nevada, New Mexico, Oklahoma, Texas and Washington state. (LE)

Comparative Negligence.

In some states the negligence of both parties to an accident is established in proportion to the degree of their contribution to the accident. Several states have comparative negligence laws, and each one varies somewhat from the others. This is in contrast to contributory negligence, which is a general common law rule. See Contributory Negligence for comparison. (LE)

Compensatory Damages.

Damages recoverable or awarded for injury or loss sustained. In addition to actual loss or injury, this term may include amounts for expenses, loss of time, bodily suffering and mental suffering, but does not include punitive damages. (LE)

Competency.

This is one of the elements that must be present in order to have a legal contract. It relates to the fitness or ability of either of the parties to the contract. An example of incompetency would be an alcoholic or a mental incompetent. (LE)

Concealment.

The failure to disclose a material fact. See Material Fact. (LE)

Conservator.

Someone appointed to manage an insurer deemed by law or court action to be in danger of failure. (LE)

Consideration.

The exchange of values on which a contract is based. In insurance, the consideration offered by the insured is usually the premium and the statements contained in the application. The consideration offered by the insurer is

the promise to pay in accordance with the terms of the contract. (LE)

Consortium.

The companionship of a spouse. If a spouse is injured through the fault of another, part of the damages could include the value of the spouse's services or companionship which was lost due to the accident. (LE)

Conspiracy.

A combination of two or more persons that by concerted action seek to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. (LE)

Constructive Performance.

A situation in which an act has not actually been completed but conduct has gone so far as to show intent to complete the act. (LE)

Consumer Protection Act.

A law passed by many states which protects a policyholder from the misconduct, misrepresentation, or "sharp" trade practices of insurers, brokers, and agents. (LE)

Contract of Adhesion.

A contract that one party must accept or reject in toto, without bargaining over the wording. An insurance contract is an example, since the contract is developed by the insurer, and the insured must accept it as it is. (LE)

Contract of Insurance.

The contract whereby an insurer agrees to indemnify an insured for losses, provide other benefits, or render services to or on behalf of the insured. The contract of insurance is often called an insurance policy, but the policy is merely the evidence of the agreement. (LE)

Contributory Negligence.

If an injured party fails to exercise proper care and in some way contributes to his injury, the doctrine of contributory negligence will probably negate or defeat his claim, even though the other party is also negligent. Contrast with Comparative Negligence. (LE)

Countersignature Law.

Refers to the laws which most states have requiring that any insurance contract in a state be countersigned by a representative of the insurer located in that state. (LE)

Creditor.

The person to whom a debt is owed. (LE)

Crime.

A public wrong, a violation of criminal law. The state is the entity that bring charges against one who commits a crime, and the matter is adjudicated in a criminal court. Contrast with Tort. (LE)

Damages.

The amount required to pay for a loss. (LE)

Debtor.

One who owes a legal obligation or money to another. (LE)

Declaration.

A formal specifying of the facts constituting the plaintiff's cause of action against the defendant. (LE)

"Deep Pockets" Liability.

A term used to describe the legal doctrine of joint-and-several liability, under which recovery can be sought from any of several co-defendants based on ability to pay, rather than the degree of negligence. Example: A and B are jointly liable for an injury; A was 90%

negligent and B was 10% negligent, but A has no assets; the claimant is permitted to reach into the "deep pockets" of B for the full amount of the award against A and B. (LE)

Defalcation.

Stealing of money. (LE)

Defamation.

Any derogatory statement which is designed to injure a person's business or reputation. Defamation can be accomplished as libel or slander. (LE)

Defendant.

The person being sued in a court action. (LE)

Degree of Care.

A duty owed to others which depends on circumstances. Persons who invite others on their premises, those who invite children on their premises and those who sell what might be considered inherently dangerous products are all required to take different degrees of care to prevent harm to others. (LE)

Demurrer.

A formal statement which states that even if the other party's facts are true, there is no cause of action. (LE)

Deposition.

A sworn statement of a witness or other party in a judicial proceeding. (LE)

Directed Verdict.

A verdict for the defendant based on the court's decision that the plaintiff's case has not been proven. (LE)

Dissent.

This occurs when one or more judges disagree with the majority decision. (LE)

Dram Shop Laws.

Liquor liability laws are called dram shop laws. They provide that a person serving someone who is intoxicated or contributing to the intoxication of another person may be liable for injury or damage caused by the intoxicated person. (LE)

Encumbrance.

A claim on property, such as a mortgage, a lien for work and materials, or a right of dower. The interest of the property owner is reduced by the amount of the encumbrance. (LE)

Estate Tax.

A tax payable to the federal government. The amount is based on the value of the estate of the decedent. (LE)

Estoppel.

The legal principle whereby a person loses the right to deny that a certain condition exists by virtue of his having acted in such a way as to persuade others that the condition does exist. For example, if an insurer allows an insured to violate one of the conditions of the policy, he cannot at a later date void the policy because the condition was violated. The insurer has acted in such a way as to lead the insured to believe that the violation did not void the coverage. (LE)

Exculpatory.

That portion of a contract or agreement which relieves one party to the agreement of the consequences of his or her own acts. (LE)

Exemplary Damages.

See Punitive Damages. (LE)

Fee Simple.

Complete ownership of property with the unconditional right to dispose of it. (LE)

File-and-Use Rating Laws.

State laws pertaining to insurance rates which permit insurers to adopt new rates without the prior approval of the insurance department. Usually insurers submit their new rates along with supporting statistical evidence, but this is not necessary in all cases. (LE)

Financed Insurance.

Payment of insurance premiums, in whole or in part, with funds derived from borrowing, usually from the case value of the policy. Also known as Minimum Deposit Insurance, the Bank Loan Plan, and the Chicago Plan. (LE)

Fraud.

Dishonesty. (LE)

Gross Negligence.

Willful and wanton negligence or misconduct. (LE)

Guardian.

A person appointed by the court to take care of affairs of another. A common example would be a guardian to take care of the affairs of a minor or a mentally incompetent. (LE)

Guest Law.

Some states have legislation which restricts the rights of a guest to collect from the driver of an automobile he is riding in on the grounds of ordinary negligence. Usually such cases require proof of willful and wanton negligence on the part of the driver before the guest can collect. See also Assumption of Risk. (LE)

Impeach.

Evidence which tends to detract from the credibility of the witness. (LE)

Implied Warranty.

In certain cases the law says that one has given a warranty to another even though the warranty is not in writing. An example would be in sales: A seller implies that his product is fit for the purpose it purports to serve. (LE)

Imputed.

Occurs when actions of one party, usually the agent, are deemed to be actions of the other party, usually the principal. (LE)

Incompetent.

A person who cannot manage his or her own affairs. One who is legally declared insane would be an example of an incompetent. Children under a certain age are also considered incompetents for some purposes. (LE)

Injunction.

A court order intended to prevent a person from doing something which might later be termed to be wrongful or illegal. (LE)

Insolvent.

Where a person's or business's liabilities exceed their assets. (LE)

Inter Vivos Transfer.

Transfer of all or a portion of the assets of a person's estate while that person is still alive. Contrast with Testamentary Transfer. (LE)

Inter Vivos Trust.

A trust that is created and takes effect during the lifetime of the grantor. Contrast with Testamentary Trust. (LE)

Interrogatories.

A procedure for gaining evidence which involves one party submitting questions to the other party in order to gather facts and information to prepare for a trial. (LE)

Intervening Cause.

A possible defense against negligence. Negligence may be avoided or reduced if it can be shown that an intervening cause broke the uninterrupted chain of events required to establish a proximate cause. Contrast with Proximate Cause. (LE)

Intestate.

Dying without a will thus permitting the probate court to appoint an administrator to settle the estate. (LE)

Invitee.

One who has been either expressly or implicitly invited onto the premises of another. The most common example would be customers invited to a store to purchase goods or services. (LE)

Joint and Several Liability.

A legal doctrine permitting recovery from any of several co-defendants based on ability to pay, rather than the degree of negligence. See "Deep Pockets" Liability. (LE)

Joint Tenancy.

Ownership of property shared equally by two or more parties under which the survivor assumes complete ownership. This is different from a tenancy in common where the heirs of a deceased party to the tenancy inherit his or her share. (LE)

Judgment or Decree.

The formal decision by a judge or court. (LE)

Jurisdiction.

Authority of the court to decide cases of a particular type or in a particular area. (LE)

Last Clear Chance.

A doctrine that liability may attach to a person who, immediately before an accident, had a last clear chance to avoid it and did not. (LE)

Lease.

Contract whereby the owner or user of property (the lessor) agrees to let another party (the lessee) use the property for a consideration (money or rent). (LE)

Legal Hazard.

An increase in the likelihood that a loss will occur because of court actions. (LE)

Legal Liability.

Liability under the law as opposed to liability arising from contracts or agreements. In insurance, it is most often used to refer to the liability that an individual has if he or she should negligently injure another party. For example, an owner of an automobile may be held legally liable if he or she is negligent in the operation of the automobile and injures another person or damages another person's property as a result of that negligence. (LE)

Lessee.

The person to whom a lease is granted. Commonly called the "tenant." (LE)

Lessor.

The person granting a lease. Also known as the "landlord." (LE)

Liability.

See Legal Liability. (LE)

Libel.

A written statement about someone which is personally injurious to that individual. In maritime law it means legal action brought against the owner of another ship. See also Defamation. (LE)

Licensee.

(1) One who is licensed. (2) A person who goes on the premises of another for his or her own interests. The owner of the premises must use ordinary care not to injure a licensee. A person using another's land for a shortcut, as long as he had the permission of the owner, would be an example. See also Degree of Care. (LE)

Lien.

A claim against property which then serves as security for the payment of that claim. (LE)

Liquidated Damages.

Damages that are agreed to either by the court or by the parties to a suit or action. (LE)

Liquor Control Laws.

See Dram Shop Laws. (LE)

Litigant.

One who is engaged in a lawsuit. (LE)

Master-Servant Rule.

The rule that all employers are obligated to protect the public from the acts of their employees. Courts hold employers liable for torts committed by employees in the course of their employment. (LE)

Material Fact.

In insurance, it refers to a fact which is so important that the disclosure of it would change the decision of an insurance company, either with respect to writing coverage, settling a loss, or determining a premium. Usually, the misrepresentation of a material fact will void a policy. (LE)

Mediation.

An informal means of trying to promote settlement of a dispute. It involves a third-party mediator who meets the parties to the dispute and tries to get them to agree on a settlement. (LE)

Misrepresentation.

The use of oral or written statements that do not truly reflect the facts either by an insured on an application for insurance or by an insurer concerning the terms or benefits of an insurance policy. (LE)

Mortgage.

Interest in real property conveyed to mortgagee as security for the loan of money by the mortgagor to the mortgagor, often the money being used by the mortgagor for the purchase of the real property from its seller (this is known as a purchase money mortgage). (LE)

Negligence, Comparative.

See Comparative Negligence. (LE)

Negligence, Contributory.

See Contributory Negligence. (LE)

Negligence, Gross.

See Gross Negligence. (LE)

Negligence, Presumed.

See Res Ipsa Loquitur. (LE)

Nominal Damages.

A small amount of money awarded to a plaintiff to verify his or her legal rights, even though no actual damages have been proven. (LE)

Parol.

A legal term which refers to oral statements as distinguished from written statements. (LE)

Parol Evidence Rule.

This rule states that a written instrument or contract cannot be modified by an oral agreement. It is based on the concept that written contracts should contain all of the facts and agreements between the parties and, therefore, should not be allowed to be altered orally at some future date. (LE)

Personalty.

Personal property, as opposed to real property; anything that can be moved. (LE)

Plaintiff.

The party who brings a legal action against another, called the defendant. (LE)

Precedent.

In common law, previous cases are used to prove the present case. These cases are called "precedence." (LE)

Presumed Negligence.

See Res Ipsa Loquitur. (LE)

Prima Facie.

Literally means "at first view." It refers to evidence which is, according to law, sufficient to establish or prove a point, unless successfully rebutted by other evidence. (LE)

Privity.

The legal status of being a party to a contract or a third party beneficiary under a contract. Privity is required to maintain a legal action based on contract but not for legal action based on tort. In other words, no one can dispute the terms of a contract other than the parties thereto. (LE)

Proximate Cause.

The effective cause of loss or damage. It is an unbroken chain of cause and effect between the occurrence of an insured peril or a negligent act and resulting injury or damage. (LE)

Punitive Damages.

Damages awarded over and above compensatory damages to punish a negligent party because of wanton, reckless, or malicious acts or omissions. General Liability policies cover punitive damages when included with compensatory damages in a lump sum, but it is up to the courts to decide whether or not they are to be awarded. Also known as Exemplary Damages. (LE)

Quasi-Contract.

A legal doctrine for situations in which there is no specifically drawn contract. It prevents unjust enrichment or injustice by treating the situation as if a contract actually had been in effect. (LE)

Realty.

Real property, as opposed to personalty; land and anything affixed to it such as buildings. (LE)

Rehearing.

A second hearing by a court. Its purpose is to call the court's attention to an error or omission which may have occurred in the court's first consideration of the claim. (LE)

Remand.

Usually used in appellate courts whereby the appellate court refers the case back to the original court for further action. (LE)

Representation.

A statement made on an application for insurance that the applicant represents as correct to the best of his knowledge and belief. See also Warranty. (LE)

Res Ipsa Loquitur.

Literally translated, this expression means "facts speak for themselves." Under this doctrine, an individual is presumed to be negligent if the circumstances of injury are under his complete and exclusive control, and it can be shown that the injury or damage could only have occurred if the individual were negligent. (LE)

Rescission.

(1) Repudiation of a contract. A party whose consent to a contract was induced by fraud, misrepresentation or duress may repudiate it. A contract may also be repudiated for failure to perform a duty. (2) The termination of an insurance contract by the insurer when material misrepresentation has occurred. (G,LE)

Respondent Superior.

Originally the law said that, under certain circumstances, a master was liable for the wrongful acts of his servant. In today's usage this expression refers to the fact that, under certain circumstances, a principal is responsible for the wrongful acts of its agents or an employer for those of its employees. Under this doctrine, if an employee negligently injures a customer while in the course of his employment, the employer could be held liable. (LE)

Retaliatory Law.

A state law that says that agents from another state applying for a license to operate in the state in question will be accorded the same treatment as agents residing in the retaliatory state are given in the foreign state. (LE)

Settlement.

Conclusion of litigation by the mutual agreement of parties involved prior to final verdict; certain settlements must be court-approved. (LE)

Slander.

A spoken statement about someone which is personally injurious to the individual. See also Defamation. (LE)

Stacking of Limits.

Applying the limits of more than one policy to an occurrence, loss or claim. In some cases, courts have required a stacking of limits when multiple policies, or multiple policy periods, cover an occurrence. (LE)

Statute of Fraud.

A statute which states that certain contracts must be in writing in order to be enforceable. An example would be any contract involving the sale of real estate. (LE)

Statute of Limitations.

The time limit set by law during which a person must bring legal action on a case. (LE)

Subrogation.

The right of one who has taken over another's loss to also take over his right to pursue remedies against a third party. It is never used in Life Insurance and seldom in Health. (LE)

Testamentary Transfer.

Transfer of the assets of an estate according to the provisions of the deceased person's last will and testament. Contrast with Inter Vivos Transfer. (LE)

Testamentary Trust.

A trust created after the grantor's death, according to the provisions of the deceased person's last will and testament. Contrast with Inter Vivos Trust. (LE)

Tort.

A private wrong, independent of contract and committed against an individual, which gives rise to a legal liability and is adjudicated in a civil court. A tort can be either intentional or unintentional, and it is mainly against liability for unintentional torts that one buys Liability Insurance. (LE)

Tort Feasor.

A person who has committed a tort. (LE)

Trespasser.

An individual who goes onto another person's property without any legal right to do so. The only duty that the owner of the property owes a trespasser is not to intentionally harm or set a trap for him. (LE)

Twisting.

The act of, or attempt thereat, which induces a policy owner, by means of misrepresentation, to drop an existing policy and take another. Note that it is the misrepresentation that is illegal, not the replacement of one policy by another. (LE)

Uberrimae Fidei.

Latin for "utmost good faith." A basic principle of the insurance contract is that it is based on "utmost faith." (LE)

Valued Policy Law.

A law passed by a state legislature which requires that in the event of a total loss to a building, the insurance company must pay the face amount of a valued policy, regardless of the actual cash value of the property which was destroyed. It can have the effect of allowing the insured to recover an amount much greater than the

actual cash value of the property. The intent of the law is to guard against unscrupulous insurers purposely writing in excess of the value of property in order to collect greater premiums. (LE)

Vicarious Liability.

The law says that under certain circumstances a person is liable for the acts of someone else. For example, in matters related to an automobile a parent might be held responsible for the negligent acts of a child. In such a case the parent would be vicariously liable. (LE)

Void.

A term used to describe a policy contract that is completely free of all legal effect. (LE)

Warranty.

A statement made on an application for most kinds of insurance that is warranted as true in all respects. If untrue in any respect, even though the untruth was not known to the applicant, the contract may be voided without regard to the materiality of the statement. By contrast, statements in Life and Health applications are not warranties except in cases of fraud, and the trend in more recent court decisions in other lines has tended to modify the doctrine of warranty to an application only when the statement is material to a risk or the circumstances of a loss. (LE)

Warranty, Implied.

See Implied Warranty. (LE)

Wrongful Death Action.

A civil court suit brought by survivors against someone believed responsible, by negligence or intention, for another's death. In a few states actions for wrongful death have statutory minimums or maximums, but in most states they do not. (LE)