
Legal Terminology, Part 1

GENERAL TERMINOLOGY

Learning the language of the law is similar in some ways to learning a new language. At first, many words and phrases may sound foreign to your ears and difficult to memorize. It's nevertheless essential to understand their meaning and usage in order to carry out the most basic legal functions.

A more subtle difficulty lies in learning new ways to use familiar words and phrases. For example, in legal terms the word *court* serves not only to refer to the judicial branch of government or the place where legal disputes are decided (Figure 1). The term is used quite commonly to refer to the particular judge and related administrative personnel involved in deciding a particular matter. The term *court* may also signify all the judges in a particular district or county.

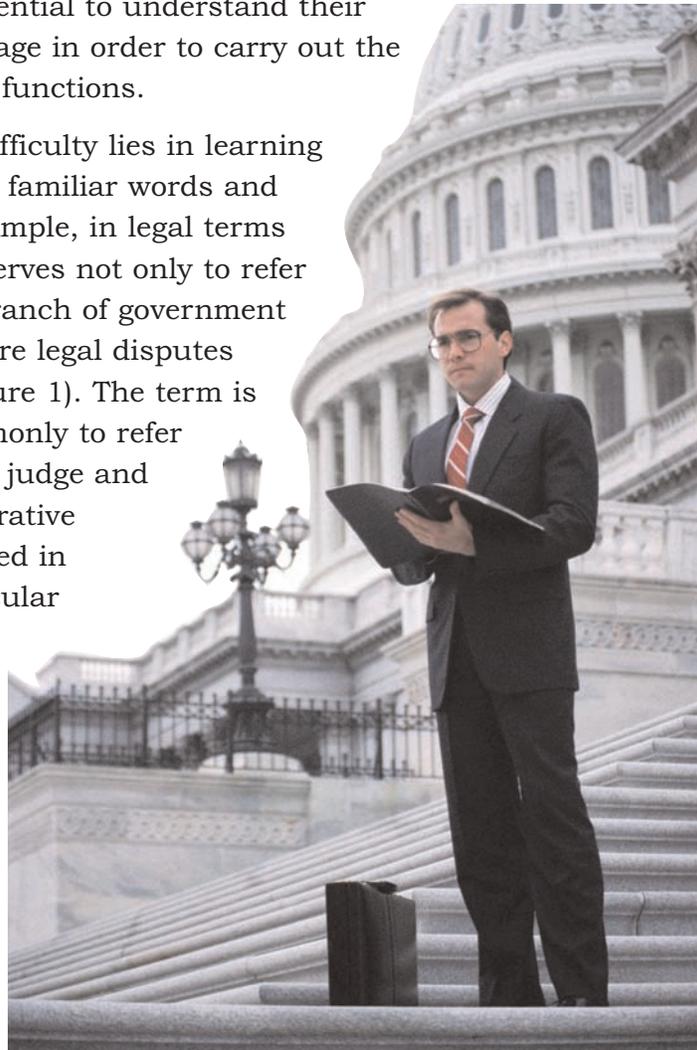


FIGURE 1—Familiar words take on new meaning in the legal profession.



Whether the words are familiar or unfamiliar, you'll need to use legal terminology quite precisely. Otherwise, you'll leave your words open to misinterpretation.

The Importance of Precision

The *adversarial legal system* is a system of justice where opposing parties battle against each other in court trying to get a result that favors them. The judge makes sure each side is treated fairly. There is always a winning and a losing side in such a system.

In our adversarial legal system, opponents and critics are quick to seize on any perceived inaccuracies in the language used in a written or oral legal exchange. The extent of the inaccuracy can have a devastating effect on the outcome of a case. A crucial paragraph or provision in a contract, for example, may be deemed void. A court may decide against your firm's client because certain documents didn't clearly request the type of relief desired. An appeal may be lost, forcing the client to pay the other party's attorney fees and costs. Attorneys or paralegals may be subjected to disciplinary action or lawsuits.

Consider the six-letter word *allege*. In common usage, the term is often used to simply make a claim, as in the following examples:

- Agnes alleged that her boyfriend had a date with someone else.
- Mr. Andrews alleged that I misused my computer e-mail privileges.
- The police allege that the suspect stole all seven goldfish.

As a legal term, however, the word *allege* is used to describe the action of formally stating a specific charge in a court of law or legal document. The related legal term *allegation* refers to the specific charge against a person made in accordance with state or federal legal codes. Each specific charge may alternatively be referred to as a *cause of action*.

At first glance, the distinction between the ordinary and legal usages may not seem entirely clear. The difference lies in the available proof of the described conduct. Media and lay people use the term *allege* to describe suspected actions without necessarily obtaining proof to back up the claim. By contrast, legal professionals are usually limited to alleging only what they can prove.

Various rules governing the practice of law make it quite clear that attorneys will likely face disciplinary action for making allegations which are either untrue or lack reasonable grounds for belief. Disciplinary action may include suspending or revoking a lawyer's license to practice or even a lawsuit against the attorney.

Another word frequently misused by the media is *innocent*. At one time or another, you've probably heard or read something similar to this statement: "John Doe pleaded innocent to the charge of murder today."

Our legal system presumes that every person is innocent until proven guilty beyond a reasonable doubt. However, there is no legal plea of "innocent." In virtually every state the available pleas to answer a criminal accusation are limited to

- *Guilty*, an admission of having committed the crime alleged
- *Not guilty*, a denial of having committed the crime alleged
- *Not guilty by reason of insanity*, a denial based on an inability to appreciate the criminality of an act or to form criminal intent
- *Double jeopardy or former jeopardy*, a statute that forbids charging someone with a crime for which he or she has already been found not guilty

- *No contest*—often rendered in Latin as *nolo contendere*—essentially the same as a guilty plea in a criminal case, except that it can't be used as evidence against a defendant later in a private, or *civil*, lawsuit

A person found not guilty is said to be *acquitted*. Formal, legal release from charges and from any legal or financial consequences arising from the charges is called an *acquittal*.

Common English Terms

When used in a legal context, many common English words and phrases take on a different shade of meaning than in their ordinary usage. The word *injury*, for example, ordinarily refers to some sort of physical harm done to the body. In legal usage, however, *injury* has the broader meaning of an invasion of legal rights that adversely affects a person's body, property, or reputation. Loss, harm, or hurt that results from an injury is known, in legal terms, as *damage*. An act or failure to act that infringes on the rights of another person and causes damage to that person is known as a *wrongful act*. Exceptions are often made when a person inflicts damage in the exercise of an equal or superior right, as in the case of self-defense against an attacker.

A party that considers itself injured may legally seek *relief*, which in legal terms is understood as

- Financial compensation for loss sustained by the injury
- Certain types of compulsory conduct, such as the payment of alimony or child support
- Prohibition against certain types of conduct, such as dumping toxic waste

Relief in the form of compulsory or prohibited conduct is known as *equitable relief*.

The legal means by which a person's right is enforced and relief is gained is known as a *remedy*. A remedy consisting of financial relief is commonly referred to as *damages*, which

the court *awards* to the injured party. Damages may be further characterized as *actual* or *punitive*. *Actual damages*—also known as *compensatory damages*—represent a sum awarded to the injured party as financial compensation for loss or damage. Compensatory damages may include financial compensation for expenses, lost work time, and expenses incurred as a result of the injury, such as medical bills and the like. Compensatory damages may also be awarded for mental anguish or physical pain arising from the injury, known as *pain and suffering* (Figure 2). *Punitive damages*, awarded above and beyond compensatory damages, are an additional punishment.



FIGURE 2—Plaintiffs often win compensation for their pain and suffering when they sue.

By contrast, a remedy that involves equitable relief is commonly known as an *injunction*, which is a command issued by the court either forbidding or compelling specifically defined activities. A command issued by a court is known as an *order*, and is often delivered formally in a document known either as a *court order* or simply an *order*.

State and federal codes, which set out in detail the laws enacted by a state or federal legislature, often provide *statutory* definitions of legal words and phrases. The term *statutory* here implies that the definition has been officially authorized by a *statute*, which is a law enacted by the state or federal legislature. Statutory definitions are commonly found near the very beginning of the state or federal code.

Bear in mind, however, that courts are rarely bound to statutory definitions. In fact, as part of our system of checks and balances, courts are specifically empowered to interpret legal words and phrases. Court justices often exercise this power through critical analysis of the multiple definitions of words found in various dictionaries, as well as through the careful study of statutes and rulings of other courts, both past and present.

Many appellate courts have published decisions that, for page after page, analyze, evaluate, define, and finally decide the meaning of only one or two words. Just a few examples of such terms include

- *Knowingly*, which may be defined generally as acting with awareness of consequences, or more specifically with deliberate intent to harm or to disobey the law
- *Sudden and accidental*, a phrase found vague and ambiguous in more than 50 cases, and clear and unambiguous in more than 50 others
- *Explosion*, the specific definition of which may or may not provide insurance coverage
- *Day*, which has been defined a number of ways, including a 24-hour period, the period included within daylight hours, and the period during which work is performed
- *Extend*, which is often analyzed with reference to the type of behavior or conduct covered by a legal order
- *Combination*, which has been defined in a variety of ways, including the joining of two parts and the coming together of more than two parts

Since legal definitions vary so widely, a court's decision about the meaning of a word or phrase may depend entirely upon how well you've researched and constructed your documents. It's therefore crucial to develop a comprehensive knowledge of legal terminology and to become familiar with the context of prior accepted usage. Your knowledge and precision will benefit you, your supervising attorney, and your firm's clients.

Latin and the Law

The modern legal practices that are known to much of the Western world mainly evolved from the practices and precedents established in ancient Rome (Figure 3). Latin was the common language of the Roman legislators, and many of the concepts handed down from ancient Roman lawmakers are still expressed most concisely in the Latin original. As a member of the legal profession, you'll need to master a broad range of Latin words and phrases commonly used in the practice of law. These terms form a major part of our everyday legal language.



FIGURE 3—The roots of modern law can be traced back to Roman days.

Progressive legal scholars and writers often prefer plain English and simplicity so that their entire audience will understand them. However, some Latin phrases can be used to sum up the comments of judges, lawyers, or scholars in just a few words rather than through lengthy explanations. The use of Latin, moreover, is a succinct way of expressing certain opinions without the uncertainties of English usage discussed earlier. These phrases are often referred to as *terms of art*—words that possess a known meaning unique to a profession, usually summarizing a complex concept in one succinct phrase.

Though decisions regarding the use of Latin words and phrases may sometimes be left to your supervising lawyer, many statutes require the use of a Latin term.

Because Latin forms the root of thousands of English words, learning the phrases commonly used in the legal profession isn't as difficult as it sounds. Even a brief examination of the boxed item below will probably turn up several Latin legal terms that closely resemble their modern English equivalents. More intensive study of the list will deepen your familiarity with common Latin constructions.

Common Latin Legal Terms

- *ab absurdo*—Literally, “from the absurd.” Often used to describe an argument that seeks to establish its validity by pointing out the absurdity of the opposing argument.
- *ab initio*—From the beginning
- *ad infinitum*—Without limit; forever, to infinity, endlessly
- *certiorari*—Literally, “to be certain or assured.” Used to describe petitions from a higher court to certify the record of a case tried in a lower court, so that the higher court may review the case.
- *contra*—In opposition to; against
- *damnum absque injuria*—No basis for a lawsuit; loss without injury in the legal sense
- *dixi*—I have spoken; the matter is settled
- *in flagrante delicto*—While the wrong is blazing
- *lex talionis*—An eye for an eye, a tooth for a tooth

This list represents only a fraction of the Latin terms you'll need to master. For study purposes, a much more extensive list can be found in the Appendix at the end of this study unit. For now, we'll move on *sine mora*—that is, without delay—to other topics. As you learn about more specific fields of legal practice, you'll encounter more Latin terminology, which will be defined in context.

Before proceeding to the next section, please take a moment to check your understanding of general legal terminology by completing *Self-Check 1*.



Self-Check 1

At the end of each section of *Legal Terminology, Part 1*, you'll be asked to check your understanding of what you've just read by completing a "Self-Check." Answering these questions will help you review what you've learned so far. Please complete **Self-Check 1** now.

1. *True or False?* In legal terms, any loss, hurt, or harm that results from injury is known as *damages*.
2. _____ use of the term *allege* requires adequate proof or grounds for belief.
 - a. Ordinary
 - b. Legal
 - c. Malicious
 - d. Illegal
3. What are the five common pleas that may be entered in a court of law?

4. Define the term *statute*.

Check your answers with those on page 55.
