

510/71110 Introduction to Commercial Law Glossary

Term	Definition
<i>Ab initio</i>	From the beginning. (Latin)
<i>Abrogate</i>	To cancel or repeal.
Agent	In agency law this is a person who has authority to enter into a binding contract on behalf of another (the principal) with a third party – for example an insurance agent selling an insurance policy to a customer on behalf of an insurance company.
<i>Ante</i>	Before (Latin)
Appeal	A request to a superior court to overrule the decision or penalty or award of a lower court or tribunal.
Assignment	The transfer of intangible property (for example, insurance policy, lease, a debt, or company shares), usually evidenced in writing.
Bailment	The delivery of goods by one person (the bailor) to the possession of another (the bailee) for safekeeping, storage or for work to be undertaken. The transfer imposes a duty of care upon the bailee to take reasonable care of the goods.
Bankruptcy	A status imposed on a debtor who cannot pay their bills and is declared bankrupt.
Beneficiary	A person entitled to receive a benefit under the terms of a trust or will.
<i>Bona fide</i>	In good faith (in other words, honestly, with genuine intentions. (Latin)
Capacity	The legal ability of a person to enter into a binding contract.
Caucus	A collective name for the Members of Parliament of a political party – for example, the Labour Party Caucus.
Chattels	Chattels real are interests that are less than actual property ownership or freehold and include leasehold interests in land. Chattels personal (choses in possession), which are tangible items that can be physically held.
Citation	The information that comes with the report of a court decision indicating where it can be found.
Code	A statement of law purporting to be the complete statement of law on a particular subject.
Common law	Originally, ancient customs; now the set of judge-made laws. A law developed by the courts.
Company (or incorporated company)	A company (almost always having shareholders with limited liability) set up under and subject to the requirements of the Companies Act 1993.
Conciliation	A process of resolving disputes where an independent person helps parties to resolve issues that are obstacles to settling a dispute.
<i>Consensus ad item</i>	In contract law, refers to the meeting of the minds required to make a binding contract, particularly referring to agreement on essential terms of the contract. (Latin)
Constitution	The basic law that establishes the form of government and how laws can be enacted.
Consumer	A person who buys goods or services of a type usually bought by individuals for domestic or household use: and does not use the goods or services to manufacture or re-sell.
Conversion	A tortious act involving interference or use of another's goods without their consent.
Conveyance	The transfer of ownership of property.
Conveyancing	Performing the practical steps required to transfer property

	between owners, together with other associated work.
Copyright	A property right in original works such as books, paintings, and designs governed by the Copyright Act 1994.
Corporation	Generally a group of people united in a common purpose and who form a separate legal entity – for example, a company or local authority.
Counteroffer	A rejection of an offer and the making of a new offer that might be accepted or rejected.
Crown	The crown broadly is the state or Government of New Zealand.
Customary title	Is land held by Māori in accordance with Māori customary values and practices rather than the land transfer system that is used for non-Māori land.
Damages	Money awarded by a court to a party as compensation for wrongs committed by another party.
Debt	An amount owing under a contract.
Deceit	A tortious action involving false representations made knowingly or recklessly where the person lacked actual and honest belief in the truth of the representations.
Deed	A written, signed, and witnessed document in a particular format.
Defendant	The person being prosecuted or sued in a court case.
Deposit	A percentage of the purchase price (usually 10%) is paid to show the intention of the purchaser to complete the transaction as well as giving some protection to the vendor in the event of the contract falling through.
Disputes Tribunal	The tribunal that hears disputes mainly relating to contracts up to a set monetary limit.
Dissenting judgment	Given by a judge on a panel who disagrees with the majority decision and writes a separate judgment setting out the reasons for this.
Distinguish	The term used by a judge deciding that the facts of a previous case differ materially from the facts of the current case he or she is deciding, with the effect that the previous case will not be treated as a precedent for the case now being decided.
Easement	A right given by the owner of one piece of land that gives some degree of access or use of that land to the owner of adjoining land, such as the right to use a driveway or lay and use drainage pipes.
Encumbrance	A charge or mortgage (usually securing a debt) over land or personal property.
Equity	A set of remedies that supplement common law remedies.
Estate	The rights you have in land.
Estoppel	A person can't suggest that something is true and then later deny it is true, to the detriment of another.
Executed	If this is used in respect of a document it just means 'signed'.
Executive	The branch of government that runs the country and sets policy.
Exemplary damages	Sums awarded not to compensate for a breach of contract, but rather to punish the breaching party.
Fiduciary	Someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.
Fiduciary duties	These include the duty to put the interests of the person owed the fiduciary duty above those of the person owing the fiduciary duty and for the person owing the duty not to make a personal profit from information gained during such a relationship.
Fixtures	Items that are attached to land or a building, such as a house on permanent foundations, which is in law viewed as part of the land.

Forbearance	In contract law, a form of consideration where a creditor agrees not to sue the debtor for a specific period of time. The agreement is enforceable by the debtor.
Forum	The place where disputes are heard and ruled upon – by courts and tribunals.
Fraud	Acting dishonestly to obtain some object or outcome to which you have no legal entitlement.
General damages	Loss that cannot be precisely determined in monetary terms.
Goods	A category of personal property where specific definitions are provided for the purposes of the Sale of Goods Act, the Fair Trading Act and the Consumer Guarantees Act.
Goodwill	The benefit and advantage of the good name, reputation and connections of a business; the value of a business above the value of its physical assets.
Guarantee	Where one person (the guarantor) agrees to meet the debt of another person (the debtor), if the debtor defaults in paying the debt to the creditor.
Hansard	The published reports of proceedings, debates and speeches conducted in the House of Representatives.
Headnote	The summary of the facts, applied law, and outcome that is usually found at the start of a reported court decision.
Hire-purchase	An agreement to purchase goods by paying instalments, only when all the instalments are paid does ownership pass.
Implied terms	In contract, these are terms that are not written into the contract but are implied in a contract so long as they don't contradict the express words of the contract.
Incorporated company	The shareholders of an incorporated company have limited liability unless its constitution says otherwise. Such a company is set up under and subject to the requirements of the Companies Act 1993
Incorporation	The completion of the steps required to be undertaken to enable registration as a company under the Companies Act 1993.
Indefeasible	A right which cannot be challenged or made void.
Indemnity	Where a person (the indemnifier) agrees to be primarily liable for all liabilities and losses of another person.
Injunction	A remedy whereby a court orders a defendant (usually) to stop a specified activity or course of action that is harming or may harm the plaintiff.
Insolvent, insolvency	A person or other entity is insolvent when they/it cannot pay their/its bills.
Intangible assets	Intellectual property assets such as business goodwill, licences, supply contracts, logos and trademarks.
in trade	Trade done in commerce.
Invitation to treat	Setting up a situation so that a person will make an offer.
Issue	In a court decision this is the question that a court has to answer on the law and/or facts to complete its judgment.
Joint and several liability	Where two or more partners or guarantors are liable for a debt, the creditor can sue any one of them for the whole of the debt.
Judicial precedent	The rule that courts must follow the past decisions of higher courts.
Judiciary	The courts.
Jurisdiction	The extent of the power given to a body or court.
Law	Enforceable rule made by a recognised lawmaker.
Legislation	Laws (also known as acts or statutes) made by Parliament. c.f. Delegated legislation such as regulations and bylaws, and court-made law – common law and equity.
Legislature	The body (Parliament) that makes statutes.

Life interest	An interest in real property that is limited to the life of the person holding the estate – for example, the use of a house during the person’s lifetime.
Liquidated damages	Damages that are known or readily ascertainable - may have been agreed by the parties to a contract in advance to apply in the case of a breach.
Liquidation (of a company)	This is the process through which a company ceases to have existence. This usually occurs where a company cannot pay its debts.
Mediation	A private and confidential process to resolve disputes involving the appointment of an independent person to help the parties come to their own resolution of their differences.
<i>Mens rea</i>	A guilty mind – the mental requirement (of intention) for conviction of a criminal offence. (Latin)
Misrepresentation	A false statement that induces a party to enter into a contract.
Mitigation of loss	Taking necessary steps to reduce loss after breach of contract.
Mortgage	A security over land or personal property in favour of a lender securing a debt or other obligation.
Nominal damages	Small sums awarded to recognise that a breach has occurred, even though no loss has been suffered.
Offer	An indication to the offeree that the offeror is willing to be legally bound under the terms the offeror makes.
Offeree	A person to whom an offer is made.
Offeror	A person who makes an offer.
Ownership	The right to possess and deal with property to the full extent permitted by law.
Parliament	Comprises the House of Representatives (votes on legislation) and the Governor-General (signs legislation).
Partnership	A business organisation of two or more members, to which the law in the Partnership Act 1908 applies.
Passing off	Carrying on business in a way calculated to mislead the public into believing that one’s business is that of another.
Personal property	This term covers tangible property such as goods, chattels (choses in possession) and leasehold interests in land, together with intangible property (such as choses in action). Personal property is also referred to as Personalty. It includes broadly everything is not land or permanently affixed to land.
Plaintiff	A person who brings a civil claim in a court against another.
Possession	The right to control the physical custody of an item of property.
Principal	The party who authorises an agent to act on his or her behalf in an agency arrangement.
Private law	Law governing relations between individuals (and companies).
Privy Council	Until 2004 this was the highest New Zealand court and was located in England.
<i>Profit à prendre</i>	This is a right granted to the non-owner of land to remove something from the land – for example, mature timber from trees growing on the land.
Property	Something that can be owned.
Prosecution	The party, usually the Crown that brings a charge on behalf of the state for criminal offences.
Public law	Law governing relations between individuals and the Crown.
Purchaser	The buyer.
Real property	This term covers land, attachments to the land (‘fixtures’), and crops on the land, together with minerals under the land. (This class of property is also known as ‘realty’.)
Representation	A statement which can be made through words, images, conduct or silence.

Registration	The action of adding information to a register, usually a public register such as the Companies Register or the Personal Property Securities Register.
Remainer	An interest – usually where someone is given the right to live in a property for the rest of their life, with the property passing to another person on the death of the person with the life interest.
Remedy	An order by a court that makes good a breach of a civil obligation.
Remoteness of loss	A loss caused by a breach of contract that is considered to be too remote to the breach to be valid.
Reversion	The interest a person who has leased land to another has in that land because the rights that have been leased will return at the end of the lease.
Sanction	A penalty given as part of a judgment of a court. Examples range from imprisonment for criminal offences to financial penalties such as fines.
Security	A right someone else has over the goods.
Sentence	The punishment imposed by a court for a criminal offence.
Services	A contract in relation to the performance of work or for the performance of work.
Special damages	Quantifiable monetary loss
Standard form contract	Pre-printed contracts that are used in cases where the parties don't generally need to negotiate terms.
<i>Stare decisis</i>	The system of precedent used in the common law. Courts are bound to follow decisions of superior courts that heard earlier cases with similar material facts. (Latin)
Stock in trade	The stock a business holds and uses as part of its day-to-day trading.
Tangible assets	Items to be included in the sale of a business such as plant and machinery in a factory or food cabinets, or table and chairs in a cafe.
Term	The terms of a contract set out the rights and obligations of the parties, including payment for services or goods or land to be provided in return.
Tort	A non-criminal wrong for which a person may be awarded a remedy.
Tortfeasor	A person who commits a tortious act.
Tortious	Relating to the law of tort.
Trade	Business
Transfer	The passing of a legal right from one person to another, such as the right to own property.
Turnover	The amount of money received in sales during the trading period.
<i>Uberimae fidei</i>	The utmost good faith is required. (Latin)
<i>Ultra vires</i>	Outside the power. (Latin)
Unliquidated	An amount of money not pre-determined, known or certain (also known as 'illiquid').
Valid contract	A contract the law will enforce.
Vendor	The seller.
Voidable contract	A contract that one of the parties may refuse to be bound by because they have not given true consent to the agreement.
Void contract	A contract that the courts will not enforce.