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FREE RESOURCE

Understanding Legal Terminology

A Plain-Language Glossary for Year 1 and Year 2

KNOW THE LAW. OWN THE ROOM.

NOTE TO STUDENTS

These notes are a study aid produced by The Legal Vault. They supplement but do **not** replace your lecture notes, prescribed texts, relevant statutes and legislation, and reading the cases in full. Always verify citations and section numbers against the primary sources before relying on them in assessment.

2025 Edition ♦ University of Botswana LLB

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How to Use This Glossary

Legal language -- sometimes called "legalese" -- can feel like a foreign language when you first encounter it. Many legal terms are derived from Latin, and even English legal terms often have a precise technical meaning that differs from everyday usage. Misunderstanding a legal term in an examination can cost marks even where the underlying legal analysis is correct.

This glossary covers the most important legal terms you will encounter across your Year 1 and Year 2 modules at the University of Botswana. Each entry gives you:

- The term in plain language
- The Latin original where relevant
- A clear definition
- An example of how the term is used

STUDY TIP

Do not try to memorise this glossary in one sitting. Keep it beside you as you study each module and refer to it whenever you encounter an unfamiliar term. The best way to learn legal terminology is in context.

A

Ab initio

Ab initio

From the beginning. Used to describe something that is void or invalid from the moment it was created, not just from the moment it was declared invalid.

Example: A contract concluded under duress is voidable -- it remains valid until avoided. But a contract with an illegal object is void ab initio -- it never had legal effect.

Actio

Actio

A right of action; the legal right to bring a claim before a court.

Example: The actio iniuriarum is the action for injury to personality (dignity, reputation, privacy).

Audi alteram partem

Audi alteram partem

Hear the other side. A fundamental principle of natural justice requiring that no person be condemned without being given an opportunity to be heard.

Example: A dismissal without giving the employee an opportunity to respond violates the audi alteram partem principle.

B

Bona fide

Bona fide

In good faith; honestly and without deception or fraud.

Example: A bona fide purchaser for value without notice acquires good title to property even if the seller had no title.

Burden of proof

The obligation on a party to prove the facts they allege. In civil cases, the burden is on the balance of probabilities. In criminal cases, the prosecution must prove guilt beyond a reasonable doubt.

Example: In a contract dispute, the plaintiff bears the burden of proving that a valid contract was concluded.

C

Causa

Causa

Cause or reason. The legal ground or justification for an obligation or transfer of property.

Example: A contract of sale is a valid causa for the transfer of ownership -- without a valid causa, the transfer may be reversed on unjustified enrichment grounds.

Consensus ad idem

Consensus ad idem

Meeting of minds. The mutual agreement between contracting parties on the essential terms of the contract.

Example: Where one party intends to buy a black car and the other intends to sell a white car, there is no consensus ad idem and no valid contract.

Contra bonos mores

Contra bonos mores

Against good morals; contrary to public policy. A contract or act that violates the fundamental values of the legal system.

Example: A contract to commit a crime is contra bonos mores and therefore void and unenforceable.

Contra proferentem

Contra proferentem

Against the drafter. Where a contractual term is ambiguous, it is construed against the party who drafted it or who seeks to rely on it.

Example: An ambiguous exclusion clause in a standard-form contract is construed contra proferentem -- against the party who included it.

Corpus

Corpus

Body; the physical object or subject matter.

Example: In the law of property, corpus refers to the physical object over which ownership is claimed.

D

De facto

De facto

In fact; in practice, regardless of what the law says.

Example: He was the de facto manager of the company even though he had no formal appointment.

De jure

De jure

By law; in accordance with the law.

Example: The director was de jure the head of the department, but de facto the deputy ran everything.

Delict

Delictum

A civil wrong (equivalent to a tort in English law). An unlawful, blameworthy act that causes harm to another, giving rise to liability in damages.

Example: Negligently driving a vehicle and injuring a pedestrian is a delict.

Dictum

Dictum

A statement made by a judge in a judgment. To be distinguished from the ratio decidendi -- the binding part of the decision.

Example: The judge's comment on a hypothetical scenario was a dictum and not binding on lower courts.

Domicile

The place that a person regards as their permanent home, to which they intend to return. Relevant for determining jurisdiction and applicable law.

Example: A student studying abroad may be domiciled in Botswana if they intend to return here permanently.

E

Ex contractu

Ex contractu

Arising from a contract. A right or obligation that originates in a contractual relationship.

Example: A claim for damages ex contractu arises where the defendant has breached their contractual obligations.

Ex delicto

Ex delicto

Arising from a delict (civil wrong).

Example: A claim for damages ex delicto arises where the defendant has committed a wrongful and blameworthy act causing harm.

Ex parte

Ex parte

On one side only; a court application brought by one party without notice to or presence of the other party.

Example: An urgent interdict may be sought ex parte where giving notice to the other party would defeat the purpose of the application.

Ex turpi causa non oritur actio

Ex turpi causa non oritur actio

No action arises from a disgraceful or immoral cause. A party cannot enforce an illegal contract.

Example: A person who pays another to commit a crime cannot sue for the return of the money -- ex turpi causa non oritur actio.

F

Functus officio

Functus officio

Having discharged its duty; no longer having authority to act. An official or court that has completed its function and has no further authority in the matter.

Example: Once a judgment has been delivered, the court is functus officio and cannot revisit its decision except on appeal or review.

I

In duplum rule

In duplum

A common law rule providing that interest on a debt cannot exceed the capital amount outstanding. Once the accumulated interest equals the outstanding capital, interest stops running.

Example: If a debtor owes P10,000 in capital, the interest cannot exceed P10,000 -- it stops at P10,000 under the in duplum rule.

In pari delicto

In pari delicto

In equal fault. Where both parties to an illegal contract are equally guilty, the court will not assist either of them.

Example: Where both parties knowingly concluded an illegal contract, the court will leave them where it finds them -- in pari delicto potior est conditio possidentis.

Inter partes

Inter partes

Between the parties. A court order or proceeding that involves and binds both parties.

Example: An inter partes hearing gives both parties the opportunity to present their arguments, unlike an ex parte application.

Interdict

A court order prohibiting a party from doing something (prohibitory interdict) or compelling them to do something (mandatory interdict).

Example: The court granted an interdict preventing the defendant from demolishing the building pending the outcome of the case.

Ipso facto

Ipso facto

By the fact itself; automatically as a result of the fact.

Example: Upon sequestration of an insolvent's estate, the estate ipso facto vests in the trustee.

iustus error

iustus error

A reasonable and legally excusable mistake. Only a iustus error can potentially vitiate contractual consent.

Example: A mistake induced by the other party's misrepresentation is ordinarily a iustus error.

J

Jurisprudence

The philosophy, theory, and science of law. Also used to refer to the body of case law developed by the courts.

Example: The jurisprudence of the Court of Appeal on constitutional rights has developed significantly since 1992.

Jus

Jus

Right; law. Used in many Latin legal phrases.

Example: Jus in personam is a personal right (enforceable against a specific person). Jus in rem is a real right (enforceable against the world).

L

Locus standi

Locus standi

Standing; the right or capacity to bring proceedings before a court.

Example: A person who is not affected by a decision may lack locus standi to challenge it.

Lex

Lex

Law; statute.

Example: Lex posterior derogat priori -- a later law overrides an earlier one on the same subject.

M

Mala fide

Mala fide

In bad faith; dishonestly or with fraudulent intent.

Example: A mala fide possessor who knows they have no right to possess property may be liable for deterioration of the property.

Mora

Mora

Delay; default. A debtor in mora has failed to perform timeously. A creditor in mora has refused to accept timeous performance.

Example: The debtor was in mora from the date the payment fell due and was not made.

N

Nemo dat quod non habet

Nemo dat quod non habet

No one can give what they do not have. A person cannot transfer better title to property than they themselves have.

Example: A thief who sells stolen goods cannot pass good title to the buyer -- nemo dat quod non habet.

Non est factum

Non est factum

It is not my deed. A defence available to a person who signs a document without knowing its true nature.

Example: A blind person induced to sign a mortgage bond believing it to be a receipt may plead non est factum.

O

Obiter dictum

Obiter dictum

A thing said in passing. A judicial observation that is not essential to the decision and therefore not binding as precedent, though it may be persuasive.

Example: The judge's observation about what the law would be in a different scenario was obiter dictum.

P

Pacta sunt servanda

Pacta sunt servanda

Agreements must be kept. The foundational principle that valid contracts are binding and must be performed.

Example: The court applied pacta sunt servanda and ordered the defendant to perform the contract as agreed.

Parol evidence rule

A rule of evidence that extrinsic evidence (oral or other evidence outside the written document) may not be used to contradict, vary, or add to the terms of a written contract.

Example: The defendant tried to use oral evidence to show the written contract did not represent the full agreement -- the court excluded this evidence under the parol evidence rule.

Per se

Per se

By itself; in itself; inherently.

Example: The act was not per se unlawful -- its unlawfulness depended on the surrounding circumstances.

Prima facie

Prima facie

At first sight; on the face of it. Sufficient to establish a fact unless rebutted.

Example: The plaintiff made out a prima facie case for an interdict -- the court would decide the full merits later.

Privity of contract

The principle that only the parties to a contract have rights and obligations under it. A third party cannot sue on a contract even if it was made for their benefit.

Example: The son could not sue on the contract between his parents because of the privity of contract doctrine.

Q

Quantum

Quantum

Amount; the monetary value of a claim or damages.

Example: The court found the defendant liable but referred the question of quantum (the amount of damages) for separate determination.

Quasi

Quasi

As if; resembling; having some but not all of the characteristics of.

Example: Quasi-mutual assent describes the situation where a contract is enforced despite the absence of true subjective consensus, because one party's conduct reasonably led the other to believe consensus existed.

R

Ratio decidendi

Ratio decidendi

The reason for the decision. The legal principle based on the material facts of the case that was essential to the court's decision. The binding part of a judgment.

Example: The ratio decidendi of Hadley v Baxendale is that contractual damages are limited to losses within the reasonable contemplation of the parties at the time of contracting.

Res judicata

Res judicata

A matter already judged. A final judgment on the merits by a competent court bars the same parties from relitigating the same issue.

Example: The defendant raised res judicata -- the plaintiff had already brought and lost the same claim in earlier proceedings.

Restitutio in integrum

Restitutio in integrum

Restoration to the original position. The remedy of restoring parties to the position they were in before the contract was concluded.

Example: Upon rescission of the contract for misrepresentation, both parties were required to make restitutio in integrum -- returning what each had received.

S

Stare decisis

Stare decisis

To stand by what has been decided. The doctrine of binding precedent -- lower courts must follow the decisions of higher courts on the same legal question.

Example: The High Court was bound by the Court of Appeal's earlier decision on this point -- stare decisis required it to follow the precedent.

Strict liability

Liability that arises without the need to prove fault (negligence or intent). The defendant is liable simply because the harmful event occurred.

Example: Under strict liability, the manufacturer of a defective product may be liable for harm caused by the defect even if they were not negligent.

Sub judice

Sub judice

Under judicial consideration. A matter that is currently before the court and therefore cannot be discussed or commented upon publicly in a manner that may prejudice the proceedings.

Example: The matter is sub judice -- journalists must be careful not to publish comments that could constitute contempt of court.

U

Ultra vires

Ultra vires

Beyond the powers. An act done outside the legal authority of the person or body that performed it.

Example: The regulation was declared ultra vires because the Act of Parliament did not give the Minister authority to make such a regulation.

Uberrimae fidei

Uberrimae fidei

Of the utmost good faith. Certain contracts -- particularly insurance contracts -- require the highest degree of good faith and full disclosure of all material facts.

Example: An insurance contract is uberrimae fidei -- failure to disclose a material fact entitles the insurer to repudiate the policy.

V

Vinculum iuris

Vinculum iuris

A legal bond; the binding tie created by a contractual or other legal obligation between parties.

Example: A valid contract creates a vinculum iuris between the parties -- each is bound to the other by the obligations they have undertaken.

Void

Of no legal effect; a nullity from the beginning. A void act never had legal consequences.

Example: A contract for an illegal purpose is void -- it creates no rights or obligations and cannot be enforced by either party.

Voidable

Valid and subsisting until set aside by the party entitled to avoid it. A voidable act has legal effect until it is challenged.

Example: A contract induced by misrepresentation is voidable -- it is binding until the innocent party elects to rescind it.

Volenti non fit injuria

Volenti non fit injuria

No wrong is done to one who consents. A defence in delict where the plaintiff voluntarily assumed the risk of harm.

Example: A participant in a contact sport who is injured during normal play may be met with the defence of volenti non fit injuria.

Latin Phrases Quick Reference

Latin Term	Plain Meaning
<i>Ab initio</i>	From the beginning
<i>Actio iniuriarum</i>	Action for injury to personality
<i>Audi alteram partem</i>	Hear the other side
<i>Bona fide</i>	In good faith
<i>Contra bonos mores</i>	Against good morals
<i>Contra proferentem</i>	Against the drafter
<i>Ex contractu</i>	Arising from contract
<i>Ex delicto</i>	Arising from delict
<i>Ex parte</i>	On one side only
<i>Ex turpi causa non oritur actio</i>	No action arises from a disgraceful cause
<i>In pari delicto</i>	In equal fault
<i>In duplum</i>	Interest cannot exceed capital
<i>Ipsa facto</i>	By the fact itself
<i>Iustus error</i>	Reasonable mistake
<i>Locus standi</i>	Standing to bring proceedings
<i>Mala fide</i>	In bad faith
<i>Nemo dat quod non habet</i>	Cannot give what you do not have
<i>Non est factum</i>	It is not my deed
<i>Obiter dictum</i>	Said in passing -- not binding
<i>Pacta sunt servanda</i>	Agreements must be kept
<i>Per se</i>	By itself

<i>Prima facie</i>	At first sight
<i>Quasi-mutual assent</i>	Contract enforced on objective appearance of consent
<i>Ratio decidendi</i>	Reason for the decision -- binding
<i>Res judicata</i>	Matter already judged
<i>Restitutio in integrum</i>	Restore to original position
<i>Stare decisis</i>	Stand by what has been decided
<i>Sub judice</i>	Under judicial consideration
<i>Ultra vires</i>	Beyond the powers
<i>Uberrimae fidei</i>	Of the utmost good faith
<i>Vinculum iuris</i>	Legal bond
<i>Volenti non fit injuria</i>	No wrong to one who consents

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