

Glossary

Ab initio from the beginning.

Abrogate recall or repeal; make void or inoperative.

Absolute liability liability for an act that causes harm even though the actor was not at fault.

Acceptance unqualified assent to the act or proposal of another; as the acceptance of a draft (bill of exchange), of an offer to make a contract, of goods delivered by the seller, or of a gift or deed.

Accident an event that occurs even though a reasonable person would not have foreseen its occurrence, because of which the law holds no one responsible for the harm caused.

Accord agreement to a different performance other than what was originally specified in the contract.

Accord and satisfaction an agreement to substitute a different performance for that called for in the contract and the performance of this substitute agreement.

Acknowledgment an admission or confirmation, generally of an instrument and usually made before a person authorized to administer oaths, such as a notary public; the purpose being to declare that the instrument was executed by the person making the instrument, or that it was a voluntary act or that that person desires that it be recorded.

Action a proceeding to enforce any right.

Action in personam an action brought to impose liability upon a person, such as a money judgment.

Action in rem an action brought to declare the status of a thing, such as an action to declare the title to property to be forfeited because of its illegal use.

Action of assumpsit a common law action brought to recover damages for breach of a contract.

Act of God a natural phenomenon that is not reasonably foreseeable.

Act-of-state doctrine the doctrine whereby every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment of another government's acts done within its own territory.

Actual the physical delivery of an agreement.

Administrative agency a governmental commission or board given authority to regulate particular matters.

Administrative law the law governing administrative agencies.

Administrative Procedure Act (APA) a federal law governing the operations and process of federal administrative agencies.

Administrative regulations rules made by state and federal administrative agencies.

Advisory opinion an opinion that may be rendered in a few states when there is no actual controversy before the court and the matter is submitted by private persons, or in some instances by the governor of the state, to obtain the court's opinion.

Affidavit a statement of facts set forth in written form and supported by the oath or affirmation of the person making the statement setting forth that such facts are true on the basis of actual knowledge or on information and belief. The affidavit is executed

before a notary public or other person authorized to administer oaths.

Affirmative covenant an express undertaking or promise in a contract or deed to do an act.

Agency the relationship that exists between a person identified as a principal and another by virtue of which the latter may make contracts with third persons on behalf of the principal. (Parties—**principal, agent, third person**)

Agent one who is authorized by the principal or by operation of law to make contracts with third persons on behalf of the principal.

Airbill a document of title issued to a shipper whose goods are being sent via air.

Aktiengesellschaft German version of the *société anonyme*, very similar to the U.S. corporate form of business organization.

Alteration any material change of the terms of a writing fraudulently made by a party thereto.

Ambiguous having more than one reasonable interpretation.

Amicus curiae literally, a friend of the court; one who is approved by the court to take part in litigation and to assist the court by furnishing an opinion in the matter.

Answer what a defendant must file to admit or deny facts asserted by the plaintiff.

Anticipatory breach the repudiation by a promisor of the contract prior to the time that performance is required when such repudiation is accepted by the promisee as a breach of the contract.

Anticipatory repudiation the repudiation made in advance of the time for performance of the contract obligations.

Antitrust acts statutes prohibiting combinations and contracts in restraint of trade—notably, the federal Sherman Antitrust Act of 1890.

Apparent authority appearance of authority created by the principal's words or conduct.

Appeal taking a case to a reviewing court to determine whether the judgment of the lower court or administrative agency was correct. (Parties—**appellant, appellee**)

Appellate jurisdiction the power of a court to hear and decide a given class of cases on appeal from another court or administrative agency.

Arbitration the settlement of disputed questions, whether of law or fact, by one or more arbitrators by whose decision the parties agree to be bound.

Article 2 section of Uniform Commercial Code that governs contracts for the sale of goods.

Article 2A the portion of the UCC that governs the lease of goods.

Assignee a third party to whom contract benefits are transferred.

Assignment transfer of a right. Generally used in connection with personal property rights, as rights under a contract, commercial paper, an insurance policy, a mortgage, or a lease. (Parties—**assignor, assignee**)

Assumption of risk the common law rule that an employee could not sue the employer for injuries caused by the ordinary risks of employment on the theory that the employee assumed such risks by undertaking the work. The rule has been abolished in those areas governed by workers' compensation laws and most employers' liability statutes.

Attorney in fact a private attorney authorized to act for another under a power of attorney.

Attorneys counselors at law who are officers of the court.

Authenticate make or establish as genuine, official, or final, such as by signing, countersigning, sealing, or performing any other act indicating approval.

Bailee person who accepts possession of a property.

Bailment the relationship that exists when personal property is delivered into the possession of another under an agreement, express or implied, that the identical property will be returned or will be delivered in accordance with the agreement. (Parties—**bailor, bailee**)

Bailment for hire a contract in which the bailor agrees to pay the bailee.

Bailor the person who turns over the possession of a property.

Battle of the forms merchants' exchanges of invoices and purchase orders with differing boiler plate terms.

Bilateral contract an agreement under which one promise is given in exchange for another.

Bill of lading a document issued by a carrier reciting the receipt of goods and the terms of the contract of

transportation. Regulated by the federal Bills of Lading Act or the UCC.

Bill of sale a writing signed by the seller reciting that the personal property therein described has been sold to the buyer.

Bona fide in good faith; without any fraud or deceit.

Boycott a combination of two or more persons to cause harm to another by refraining from patronizing or dealing with such other person in any way or inducing others to so refrain.

Breach the failure to act or perform in the manner called for in a contract.

Cancellation a crossing out of a part of an instrument or a destruction of all legal effect of the instrument, whether by act of party, upon breach by the other party, or pursuant to agreement or decree of court.

Carrier an individual or organization undertaking the transportation of goods.

Case law law that includes principles that are expressed for the first time in court decisions.

Cause of action the right to damages or other judicial relief when a legally protected right of the plaintiff is violated by an unlawful act of the defendant.

Caveat emptor Let the buyer beware. This maxim has been nearly abolished by warranty and strict tort liability concepts and consumer protection laws.

Cease and desist order an order issued by a court or administrative agency to stop a practice that it decides is improper.

Certiorari a review by a higher court of the regularity of proceedings before a lower court. Originally granted within the discretion of the reviewing court. The name is derived from the language of the writ, which was in Latin and directed the lower court to certify its record and transfer it to the higher court. In modern practice, the scope of review has often been expanded to include a review of the merits of the case and, also, to review the action of administrative agencies.

CF cost and freight.

Choice-of-law clause a clause in an agreement that specifies which law will govern should a dispute arise.

C.I.F. cost, insurance, and freight.

Circumstantial evidence relates to circumstances surrounding the facts in dispute from which the trier of fact may deduce what has happened.

C.I.S.G. uniform international contract code contracts for international sale of goods.

Civil action in many states a simplified form of action combining all or many of the former common law actions.

Civil court a court with jurisdiction to hear and determine controversies relating to private rights and duties.

Clayton Act a federal law that prohibits price discrimination.

COD cash on delivery.

Comity a principle of international and national law that the laws of all nations and states deserve the respect legitimately demanded by equal participants.

Commerce clause that section of the U.S. Constitution allocating business regulation.

Commercial impracticability when costs of performance rise suddenly and performance of a contract will result in a substantial loss.

Commercial unit the standard of the trade for shipment or packaging of a good.

Commoncarrier a carrier that holds out its facilities to serve the general public for compensation without discrimination.

Common law the body of unwritten principles originally based upon the usages and customs of the community that were recognized and enforced by the courts.

Comparative negligence a defense to negligence that allows plaintiff to recover reduced damages based on his level of fault.

Compensatory damages a sum of money that will compensate an injured plaintiff for actual loss.

Complaint the initial pleading filed by the plaintiff in many actions, which in many states may be served as original process to acquire jurisdiction over the defendant.

Condition an event that affects the existence of a contract or the obligation of a party to a contract.

Condition precedent event that if unsatisfied would mean that no rights would arise under a contract.

Condition subsequent an event whose occurrence or lack thereof terminates a contract.

Conflict of interest conduct that compromises an employee's allegiance to that company.

Conflict of laws the body of law that determines the law of which state is to apply when two or more states are involved in the facts of a given case.

Consent decrees informal settlements of enforcement actions brought by agencies.

Consequential damages damages the buyer experiences as a result of the seller's breach with respect to a third party.

Consequential loss a loss that does not result directly from a party's act but from the consequences of that act.

Consideration the promise or performance that the promisor demands as the price of the promise.

Consignee person to whom goods are shipped.

Consignment a bailment made for the purpose of sale by the bailee. (Parties—**consignor**, **consignee**)

Consignor person who delivers goods to the carrier for shipment.

Conspiracy an agreement between two or more persons to commit an unlawful act.

Constitution a body of principles that establishes the structure of a government and the relationship of the government to the people who are governed.

Constitutional law the branch of law that is based on the constitutions in force in a particular area or territory.

Consumer credit credit for personal, family, and household use.

Consumer credit transaction a transaction referred to by the FTC rule limiting the rights of a holder in due course in this type of transaction to protect consumers of goods or services for personal, family, or household use.

Consumer goods goods used or bought primarily for personal, family, or household use.

Consumer lease lease of goods by a natural person for personal, family, or household use.

Contract a binding agreement based upon the genuine assent of the parties, made for a lawful object, between competent parties, in the form required by law, and generally supported by consideration.

Contract of adhesion a contract offered by a dominant party to a party with inferior bargaining power on a take-it-or-leave-it basis.

Contractual capacity the ability to understand that a contract is being made and to understand its general meaning.

Contributory negligence negligence of the plaintiff.

Cooperative a group of two or more persons or enterprises that acts through a common agent with respect to a common objective, such as buying or selling.

Copyright a grant to an author or artist of an exclusive right to publish and sell the copyrighted work for the life of the author or artist and fifty years thereafter. For a "work made for hire," a grant of an exclusive right to publish and sell the copyrighted work for 100 years from its creation or 75 years from its publication, whichever is shorter.

Costs the expenses of suing or being sued, recoverable in some actions by the successful party and, in others, subject to allocation by the court. Ordinarily, costs do not include attorney's fees or compensation for loss of time.

Counterclaim a claim that the defendant in an action may make against the plaintiff.

Counterfeiting manufacturing, with fraudulent intent, of a document or coin that appears genuine.

Counteroffer a proposal by an offeree to the offeror that changes the terms of, and thus rejects, the original offer.

Course of dealing pattern of performance between two parties to a contract.

Court a tribunal established by government to hear and decide matters properly brought to it.

Covenants obligations of parties in a lease.

Creditor person (seller or lender) who is owed money; also may be a secured party.

Crime a violation of the law that is punished as an offense against the state or government.

Cross complaint a claim that the defendant may make against the plaintiff.

Cross-examination the examination made of a witness by the attorney for the adverse party.

Customary authority authority of an agent to do any act that, according to the custom of the community,

usually accompanies the transaction for which the agent is authorized to act.

Cybersquatters the term for those who register and set up domain names on the Internet for resale to the famous users of the names in question.

Damages a sum of money recovered to redress or make amends for the legal wrong or injury done.

Debtor a buyer on credit, i.e., a borrower.

Declaratory judgment a procedure for obtaining the decision of a court on a question before any action has been taken or loss sustained. It differs from an advisory opinion in that there must be an actual, imminent controversy.

De facto existing in fact as distinguished from as of right, as in the case of an officer or a corporation purporting to act as such without being elected to the office or having been properly incorporated.

Defamation libel, the attacking of someone's reputation.

Defendant party charged with a violation of civil or criminal law in a proceeding.

Delegated powers powers expressly granted the national government by the Constitution.

Delegation the transfer to another of the right and power to do an act.

Demurrer a pleading that may be filed to attack the sufficiency of the adverse party's pleading as not stating a cause of action or a defense.

Deposition the testimony of a witness taken out of court before a person authorized to administer oaths.

Design patents patents that protect new and nonobvious ornamental features that appear in connection with an article of manufacture.

Detrimental reliance see **reliance** and **promissory estoppel**.

Dicta see *obiter dictum*.

Direct damages losses that are caused by breach of a contract.

Directed verdict a direction by the trial judge to the jury to return a verdict in favor of a specified party to the action.

Direct examination the asking of witnesses about details pertinent to a case.

Directors the persons vested with control of the corporation, subject to the elective power of the shareholders.

Discharge of contract termination of a contract by performance, agreement, impossibility, acceptance of breach, or operation of law.

Discovery procedures for ascertaining facts prior to the time of trial in order to eliminate the element of surprise in litigation.

Dismiss a procedure to terminate an action by moving to dismiss on the ground that the plaintiff has not pleaded a cause of action entitling the plaintiff to relief.

Disparagement of goods the making of malicious, false statements as to the quality of the goods of another.

Dispute Settlement Body a means, provided by the World Trade Organization, for member countries to resolve trade disputes rather than engage in unilateral trade sanctions or a trade war.

Distributor the entity that takes title to goods and bears the financial and commercial risks for the subsequent sale of the goods.

Domicile the home of a person or the state of incorporation, to be distinguished from a place where a person lives but does not regard as home, or a state in which a corporation does business but in which it was not incorporated.

Donee recipient of a gift

Donor person making a gift.

Draft see **bill of exchange**.

Due care the degree of care that a reasonable person would exercise to prevent the realization of harm, which under all the circumstances was reasonably foreseeable in the event that such care was not taken.

Due process the constitutional right to be heard, question witnesses, and present evidence.

Due Process Clause the process of checking the environmental history and nature of land prior to purchase.

Dumping selling goods in another country at less than their fair value.

Duress conduct that deprives the victim of free will and that generally gives the victim the right to set aside any transaction entered into under such circumstances.

Duty an obligation of law imposed on a person to perform or refrain from performing a certain act.

Economic duress threat of financial loss.

Effects doctrine the doctrine that states U.S. courts will assume jurisdiction and will apply antitrust laws to conduct outside of the United States where the activity of business firms has direct and substantial effect on U.S. commerce.

Electronic funds transfer (EFTA) any transfer of funds (other than a transaction originated by a check, draft, or similar paper instrument) that is initiated through an electronic terminal, telephone, computer, or magnetic tape so as to authorize a financial institution to debit or credit an account.

Employment-at-will doctrine doctrine in which the employer has historically been allowed to terminate the employment contract at any time for any reason or for no reason.

En banc the term used when the full panel of judges on the appellate court hears a case.

Equity the body of principles that originally developed because of the inadequacy of the rules then applied by the common law courts of England.

Estoppel the principle by which a person is barred from pursuing a certain course of action or of disputing the truth of certain matters.

Ethica a branch of philosophy dealing with values that relate to the nature of human conduct and values associated with that conduct.

European Union (EU) name used to describe the union of the fifteen member countries of Europe who seek to unify their economic, monetary, and political policies.

Evidence that which is presented to the trier of fact as the basis upon which the trier is to determine what happened.

Exculpatory clause a provision in a contract stating that one of the parties shall not be liable for damages in case of breach; also called limitation-of-liability clause.

Execute to carry out a judgment.

Executed contract an agreement that has been completely performed.

Executive branch the branch of government (e.g., the president) formed to execute the laws.

Executory contract an agreement by which something remains to be done by one or both parties.

Exemplary damages damages, in excess of the amount needed to compensate for the plaintiff's injury, that are awarded in order to punish the defendant for malicious or wanton conduct; also called "punitive damages."

Exhaustion of administrative remedies the requirement that an agency make its final decision before the parties can go to court.

Existing goods goods that physically exist and are owned by the seller at the time of a transaction.

Expert witness one who has acquired special knowledge in a particular field as through practical experience or study, or both, whose opinion is admissible as an aid to the trier of fact.

Export sale a direct sale to customers in a foreign country.

Express authority authority of an agent to perform a certain act.

Express contract an agreement of the parties manifested by their words, whether spoken or written.

Express warranty a statement by the defendant relating to the goods, which statement is part of the basis of the bargain.

Ex-ship the obligation of a seller to deliver or unload goods from a ship that has reached its port of destination.

Fair use a principle that allows the limited use of copyrighted material for teaching, research, and news reporting.

FAS free alongside the named vessel.

FCPA Foreign Corrupt Practices Act; prohibits bribery by U.S.-based companies in their international operations.

Federal district court a general trial court of the federal system.

Federal Register a government publication issued five days a week that lists all administrative regulations, all presidential proclamations and executive orders, and other documents and classes of documents that the president or Congress direct to be published.

Federal sentencing guidelines federal standards used by judges to determine mandatory sentencing terms for convicted criminals.

Federal supremacy declared by constitution for use when direct conflict between state and federal statutes exist.

Federal system the system of government in which a central government is given power to administer to national concerns while individual states retain the power to administer to local concerns.

Federal Trade Commission Act a statute prohibiting unfair methods of competition in interstate commerce.

Fifth Amendment constitutional protection against self incrimination which also guarantees due process.

Firm offer an offer stated to be held open for a specified time, which must be so held in some states even in the absence of an option contract, or under the UCC, with respect to merchants.

FOB free on board, indicating a seller is providing for the shipping of goods to the buyer.

FOB place of destination general commercial language for delivery to the buyer.

FOB place of shipment a 'ship to' contract.

Food, Drug, and Cosmetic Act a federal statute prohibiting the interstate shipment of misbranded or adulterated foods, drugs, cosmetics, and therapeutic devices.

Forbearance refraining from doing an act.

Foreign corporation a corporation incorporated under the laws of another state.

Forgery the fraudulent making or altering of an instrument that apparently creates or alters a legal liability of another.

Formal contracts written contracts or agreements whose formality signifies the parties' intention to abide by the terms.

Forum a court in which any lawsuit should be brought.

Franchise a privilege or authorization, generally exclusive, to engage in a particular activity within a particular geographic area, such as a government franchise to operate a taxi company within a specified city, or a private franchise as the grant by a manufacturer of a right to sell products within a particular territory or for a particular number of years.

Franchise agreement sets forth rights of franchisee to use trademarks, etc., of franchisor.

Franchisee person to whom franchise is granted.

Franchising the granting of permission to use a trademark, trade name, or copyright under specified conditions.

Franchisor party granting the franchise.

Fraud the making of a false statement of a past or existing fact, with knowledge of its falsity or with reckless indifference as to its truth, with the intent to cause another to rely thereon, and such person does rely thereon and is harmed thereby.

Fraud in the inducement is fraud in the obtaining of a promise to an instrument, not fraud as to the nature of the instrument itself.

Freedom of Information Act federal law permitting citizens to request documents and records from administrative agencies.

Freight insurance insures that shipowner will receive payment for transportation charges.

Full warranty the obligation of a seller to fix or replace a defective product within a reasonable time without cost to the buyer.

Funds transfer communication of instructions or requests to pay a specific sum of money to the credit of a specified account or person without an actual physical passing of money.

Fungible goods goods of a homogeneous nature of which any unit is the equivalent of any other unit or is treated as such by mercantile usage.

Future goods goods that exist physically but are not owned by the seller as well as goods that have not yet been produced.

Gambling making a bet with a chance for profit and similar to a lottery in that there are the three elements of payment, prize, and chance.

General agent an agent authorized by the principal to transact all affairs in connection with a particular kind of business or trade or to transact all business at a certain place.

General damages damages that in the ordinary course of events follow naturally and probably from the injury caused by the defendant.

General jurisdiction the power to hear and decide all controversies involving legal rights and duties.

Gift the title to an owner's personal property voluntarily transferred by a party not receiving anything in exchange.

Good faith the absence of knowledge of any defects in or problems.

Goods anything movable at the time it is identified as the subject of a transaction.

Gray market goods foreign-made goods with U.S. trademarks brought into the United States without the consent of the trademark owners to compete with these owners.

Guarantor one who undertakes the obligation of guaranty.

Guaranty an undertaking to pay the debt of another if the creditor first sues the debtor and is unable to recover the debt from the debtor or principal. (In some instances the liability is primary, in which case it is the same as suretyship.)

Horizontal price fixing a violation of antitrust law whereby competitive businesses—manufacturers, for example—agree on the price they will charge for a good or service.

Identification point in the transaction when the buyer acquires an interest in the goods subject to the contract.

Identified term applied to particular goods selected by either the buyer or the seller as the goods called for by the sales contract.

Illusory promise a promise that in fact does not impose any obligation on the promisor.

Immunity not being subject to liability ordinarily imposed by law.

Implied contract a contract expressed by conduct or implied or deduced from the facts. Also used to refer to a quasi contract.

Implied warranty a warranty that was not made but is implied by law.

Imputed vicariously attributed to or charged to another; for instance, the knowledge of an agent obtained while acting in the scope of authority is imputed to the principal.

Incidental authority authority of an agent that is reasonably necessary to execute express authority.

Incidental damages incurred by the nonbreaching party as part of the process of trying to cover or sell; includes storage fees, commissions and the like.

Incorporation by reference a contract consisting of both the original or skeleton document and the detailed statement that is incorporated in it.

Indemnity the right of a person secondarily liable to require that a person primarily liable pay for loss

sustained when the secondary party discharges the obligation that the primary party should have discharged; the right of an agent to be paid the amount of any loss or damage sustained without fault because of obedience to the principal's instructions; an undertaking by one person for a consideration to pay another person a sum of money to indemnify that person when a specified loss is incurred.

Indemnity contract an undertaking by one person, for a consideration, to pay another person a sum of money in the event that the other person sustains a specified loss.

Independent contractor a contractor who undertakes to perform a specified task according to the terms of a contract but over whom the other contracting party has no control except as provided for by the contract.

Informal contract a simple oral or written contract.

Infringement the violation of trademarks, patents, or copyrights by copying or using material without permission.

Injunction an order of a court of equity to refrain from doing (negative injunction) or to do (affirmative or mandatory injunction) a specified act. Its use in labor disputes has been greatly restricted by statute.

In pari delicto equally guilty; used in reference to a transaction as to which relief will not be granted to either party because both are equally guilty of wrongdoing.

Instructions summary of the law given to jurors by the judge before deliberation begins.

Insurable interest an interest in the nonoccurrence of the risk insured against, generally because such occurrence would cause financial loss, although sometimes merely because of the close relationship between the insured and the beneficiary.

Insurance a plan of security against risks by charging the loss against a fund created by the payments made by policyholders.

Insured person to whom the promise in an insurance contract is made.

Insurer promisor in an insurance contract.

Integrity the adherence to one's values and principles despite the costs and consequences.

Intellectual property rights Trademark, copyright, and patent rights protected by law.

Intentional tort a civil wrong that results from intentional conduct.

Interlineation a writing between the lines or adding to the provisions of a document, the effect thereof depending upon the nature of the document.

Interpleader a form of action or proceeding by which a person against whom conflicting claims are made may bring the claimants into court to litigate their claims between themselves, as in the case of a bailee when two persons each claim to be the owner of the bailed property, or an insurer when two persons each claim to be the beneficiary.

Interrogatories written questions used as a discovery tool that must be answered under oath.

Invasion of privacy tort of intentional intrusion in to the private affairs of another.

Inventory goods held primarily for sale or lease to others; raw materials, work in progress, materials consumed in a business.

Investigative consumer report a report on a person based on personal investigation and interviews.

Ipsa facto by the very act or fact in itself without any further action by anyone.

Irrebuttable presumption a presumption that cannot be rebutted by proving that the facts are to the contrary; not a true presumption but merely a rule of law described in terms of a presumption.

Joint and several contract a contract in which two or more persons are jointly and separately obligated or under which they are jointly and separately entitled to recover.

Joint contract a contract in which two or more persons are jointly liable or jointly entitled to performance under the contract.

Judge primary officer of the court.

Judgment the final sentence, order, or decision entered into at the conclusion of the action.

Judgment n.o.v. a judgment that may be entered after verdict upon the motion of the losing party on the ground that the verdict is so wrong that a judgment should be entered the opposite of the verdict, or non obstante veredicto (notwithstanding the verdict).

Judgment on the pleadings a judgment that may be entered after all the pleadings are filed when it is clear from the pleadings that a particular party is entitled to win the action without proceeding any further.

Judicial branch the branch of government (courts) formed to interpret the laws.

Jurisdiction the power of a court to hear and determine a given class of cases; the power to act over a particular defendant.

Jury a body of citizens sworn by a court to determine by verdict the issues of fact submitted to them.

Laches the rule that the enforcement of equitable rights will be denied when the party has delayed so long that rights of third persons have intervened or the death or disappearance of witnesses would prejudice any party through the loss of evidence.

Last clear chance the rule that a defendant who had the last clear chance to have avoided injuring the plaintiff is liable even though the plaintiff had also been contributorily negligent. In some states also called the humanitarian doctrine.

Law the order or pattern of rules that society establishes to govern the conduct of individuals and the relationships among them.

Law of the case matters decided in the course of litigation that are binding on the parties in the subsequent phases of litigation.

Law of the forum the law of state in which the court is located.

Legislative branch the branch of government (e.g., Congress) formed to make the laws.

Letter of credit a written agreement by which the issuer of the letter, usually a bank, agrees with the other contracting party, its customer, that the issuer will honor drafts drawn upon it by the person named in the letter as the beneficiary. Domestic letters are regulated by the UCC, Article 5; international letters, by the Customs and Practices for Commercial Documentary Credits. Commercial or payment letter: the customer is the buyer of goods sold by the beneficiary and the letter covers the purchase price of the goods. Standby letter: a letter obtained instead of a suretyship or guaranty contract requiring the issuer to honor drafts drawn by the beneficiary upon the issuer when the customer of the issuer fails to perform a contract between the customer and the beneficiary. Documentary letter: a letter of credit that does not obligate the issuer to honor drafts unless they are accompanied by the documents specified in the letter.

Libel written or visual defamation without legal justification.

Licensing the transfer of technology rights to a product.

Limitation-of-liability clause a provision in a contract stating that one of the parties shall not be liable for damages in case of breach; also called “exculpatory clause.”

Limited jurisdiction a court’s power to hear and determine cases within certain restricted categories.

Limited warranty any warranty that does not provide the complete protection of a full warranty.

Liquidated damages a provision stipulating the amount of damages to be paid in the event of default or breach of contract.

Liquidation of damages clause the specification of exact compensation in case of a breach of contract.

Lis pendens the doctrine that certain kinds of pending action are notice to everyone so that if any right is acquired from a party to such action, the transferee takes that right subject to the outcome of the pending action.

Lottery any plan by which a consideration is given for a chance to win a prize; it consists of three elements: (1) there must be a payment of money or something of value for an opportunity to win, (2) a prize must be available, and (3) the prize must be offered by lot or chance.

Mailbox rule timing for acceptance tied to proper acceptance.

Majority of age, as contrasted with being a minor; more than half of any group, as a majority of stockholders.

Mark any word, name, symbol, or device used to identify a product or service.

Market power the ability to control price and exclude competitors

Mask work the specific form of expression embodied in a chip design, including the stencils used in manufacturing “semiconductor chip products.”

Mediation the settlement of a dispute through the use of a messenger who carries to each side of the dispute the issues and offers in the case.

Merchant a seller who deals in specific goods classified by the UCC.

Minor at common law anyone under 21 years of age, but now any person under 18 in most states, and 19 in a few.

Misdemeanor a criminal offense that is neither treason nor a felony.

Misrepresentation a false statement of fact although made innocently without any intent to deceive.

Money a medium of exchange.

Most-favored-nation clause a clause in treaties between countries whereby any privilege subsequently granted to a third country in relation to a given treaty subject is extended to the other party to the treaty.

Motion for summary judgment request that the court decide case on basis of law only because there are no material issues disputed by the parties.

Motion to dismiss a pleading that may be filed to attack the sufficiency of the adverse party’s pleading as not stating a cause of action or a defense.

Natural law a system of principles to guide human conduct independent of, and sometimes contrary to, enacted law and discovered by man’s rational intelligence.

Necessaries things indispensable or absolutely necessary for the sustenance of human life.

Negligence the failure to exercise due care under the circumstances in consequence of which harm is proximately caused to one to whom the defendant owed a duty to exercise due care.

Negligence per se an action that is regarded as so improper that it is declared by law to be negligent in itself without regard to whether due care was otherwise exercised.

Negotiable warehouse receipt a receipt that states the covered goods will be delivered ‘to the bearer’ or ‘to the order of.’

Nominal damages a nominal sum awarded the plaintiff in order to establish that legal rights have been violated although the plaintiff in fact has not sustained any actual loss or damages.

Nonnegotiable bill of lading see ‘straight bill of lading.’

Nonnegotiable warehouse receipt a receipt that states the covered goods received will be delivered to a specific person.

Obiter dictum that which is said in the opinion of a court in passing or by the way, but which is not necessary to the determination of the case and is therefore not regarded as authoritative as though it were actually involved in the decision.

Objective intent the intent of parties to an agreement that is manifested outwardly and will be enforced.

Offer the expression of an offeror's willingness to enter into a contractual agreement.

Offeree person to whom an offer is made.

Offeror person who makes an offer.

Operation of law the attaching of certain consequences to certain facts because of legal principles that operate automatically, as contrasted with consequences that arise because of the voluntary action of a party designed to create those consequences.

Option contract a contract to hold an offer to make a contract open for a fixed period of time.

Order designates payment to a particular person or entity for their further direction.

Ordinary contract defenses any defense that a party to an ordinary contract may raise, such as a lack of capacity of parties, absence of consideration, fraud, concealment, or mistake.

Original jurisdiction the authority to hear a controversy when it is first brought to court.

Output contract the contract of a producer to sell its entire production or output to a given buyer.

Parol evidence rule the rule that prohibits the introduction in evidence of oral or written statements made prior to or contemporaneously with the execution of a complete written contract, deed, or instrument, in the absence of clear proof of fraud, accident, or mistake causing the omission of the statement in question.

Past consideration something that has been performed in the past and which, therefore, cannot be consideration for a promise made in the present.

Patent the grant to an inventor of an exclusive right to make and sell an invention for a nonrenewable period of 20 years.

Patentable a term used to describe an invention that is new and not obvious to a person of ordinary skill and knowledge in the art or technology to which the invention is related.

Per se in, through, or by itself.

Person a term that includes both natural persons, or living persons, and artificial persons, such as corporations which are created by act of government.

Personal property property that is movable or intangible, or rights in such things.

Physical duress threat of physical harm to person or property.

Plant patents patents that protect the developers of a sexual reproduction of new plants.

Pleadings the papers filed by the parties in an action in order to set forth the facts and frame the issues to be tried, although, under some systems, the pleadings merely give notice or a general indication of the nature of the issues.

Postdate to insert or place on an instrument a later date than the actual date on which it was executed.

Power of appointment a power given to another, commonly a beneficiary of a trust, to designate or appoint who shall be beneficiary or receive the fund after the death of the grantor.

Power of attorney a written authorization to an agent by the principal.

Precedent a decision of a court that stands as the law for a particular problem in the future.

Preempt to take precedence over.

Preemption the federal government's superior regulatory position over state laws on the same subject area.

Presumption a rule of proof that permits the existence of a fact to be assumed from the proof that another fact exists when there is a logical relationship between the two or when the means of disproving the assumed fact are more readily within the control or knowledge of the adverse party against whom the presumption operates.

Price the consideration for sale of goods.

Prima facie evidence that, if believed, is sufficient by itself to lead to a particular conclusion.

Principal Register a federal register maintained for recording trademarks and service marks.

Private carrier a carrier owned by the shipper, such as a company's own fleet of trucks.

Privity a succession or chain of relationship to the same thing or right, such as privity of contract, privity of estate, privity of possession.

Privity of contract the relationship between a promisor and the promisee.

Procedural law the law that must be followed in enforcing rights and liabilities.

Product disparagement false statements made about a product or business.

Product liability liability imposed upon the manufacturer or seller of goods for harm caused by a defect in the goods, comprising liability for (a) negligence, (b) fraud, (c) breach of warranty, and (d) strict tort.

Promisee a person to whom a promise is made.

Promisor a person who makes a promise.

Promissory estoppel the doctrine that a promise will be enforced although it is not supported by consideration when the promisor should have reasonably expected that the promise would induce action or forbearance of a definite and substantial character on the part of the promisee and injustice can be avoided only by enforcement of the promise.

Proximate cause the act that is the natural and reasonably foreseeable cause of the harm or event that occurs and injures the plaintiff.

Proximate damages damages that in the ordinary course of events are the natural and reasonably foreseeable result of the defendant's violation of the plaintiff's rights.

Punitive damages damages, in excess of those required to compensate the plaintiff for the wrong done, that are imposed in order to punish the defendant because of the particularly wanton or willful character of wrongdoing; also called "exemplary damages."

Pur curiam opinion an opinion written by the court rather than by a named judge when all the judges of the court are in such agreement on the matter that it is not deemed to merit any discussion and may be simply disposed of.

Quantum meruit an action brought for the value of the services rendered the defendant when there was no express contract as to the purchase price.

Quasi as if, as though it were, having the characteristics of; a modifier employed to indicate that the subject is to be treated as though it were in fact the noun that follows the word quasi, as in quasi contract, quasi corporation, quasi-public corporation.

Quasi contract a court-imposed obligation to prevent unjust enrichment in the absence of a contract.

Quasi-judicial proceedings forms of hearings in which the rules of evidence and procedure are more relaxed but each side still has a chance to be heard.

Quid pro quo literally 'what for what.' An early form of the concept of consideration by which an action for

debt could not be brought unless the defendant had obtained something in return for the obligation sued upon.

Reasonable care the degree of care that a reasonable person would take under all the circumstances then known.

Rebuttable presumption a presumption that may be overcome or rebutted by proof that the actual facts were different from those presumed.

Reformation a remedy by which a written instrument is corrected when it fails to express the actual intent of both parties because of fraud, accident, or mistake.

Remand decision of appellate court to send a case back to trial court for additional hearings or a new trial.

Remedy the action or procedure that is followed in order to enforce a right or to obtain damages for injury to a right.

Repudiation the result of a buyer or seller refusing to perform the contract as stated.

Requirements contract a contract to buy all requirements of the buyer from the seller.

Rescission by agreement the setting aside of a contract by the action of the parties as though the contract had never been made.

Rescission upon breach the action of one party to a contract to set the contract aside when the other party is guilty of a breach of the contract.

Res ipsa loquitur the permissible inference that the defendant was negligent in that the thing speaks for itself when the circumstances are such that ordinarily the plaintiff could not have been injured had the defendant not been at fault.

Respondeat superior the doctrine that the principal or employer is vicariously liable for the unauthorized torts committed by an agent or employee while acting within the scope of the agency or the course of the employment, respectively.

Reverse the term used when the appellate court sets aside the verdict or judgment of a lower court.

Right legal capacity to require another person to perform or refrain from an action.

Right of privacy the right to be free from unreasonable intrusion by others.

Right to cure the second chance for a seller to make a proper tender of conforming goods.

Risk the peril or contingency against which the insured is protected by the contract of insurance.

Risk of loss in contract performance is the cost of damage or injury to the goods contracted for.

Robinson-Patman Act a federal statute designed to eliminate price discrimination in interstate commerce.

Sale of goods a present transfer of title to movable property for a price.

Sale on approval term indicating that no sale takes place until the buyer approves or accepts the goods.

Seasonable timely.

Service mark any word, name, symbol, or device that identifies a service.

Several contracts separate or independent contracts made by different persons undertaking to perform the same obligation.

Sherman Antitrust Act a federal statute prohibiting combinations and contracts in restraint of interstate trade, now generally inapplicable to labor union activity.

Shop right the right of an employer to use in business without charge an invention discovered by an employee during working hours and with the employer's material and equipment.

Slander defamation of character by spoken words or gestures.

Sovereign immunity doctrine the doctrine that states that a foreign sovereign generally cannot be sued unless an exception to the Foreign Sovereign Immunities act of 1976 applies.

Special agent an agent authorized to transact a specific transaction or to do a specific act.

Special damages damages that do not necessarily result from the injury to the plaintiff but at the same time are not so remote that the defendant should not be held liable therefor provided that the claim for special damages is properly made in the action.

Special jurisdiction a court with power to hear and determine cases within certain restricted categories.

Specific performance an action brought to compel the adverse party to perform a contract on the theory that merely suing for damages for its breach will not be an adequate remedy.

Statute of frauds a statute that, in order to prevent fraud through the use of perjured testimony, requires

that certain kinds of transactions be evidenced in writing in order to be binding or enforceable.

Statute of limitations a statute that restricts the period of time within which an action may be brought.

Statutory law legislative acts declaring, commanding, or prohibiting something.

Stop delivery the right of an unpaid seller under certain conditions to prevent a carrier or a bailee from delivering goods to the buyer.

Straight (or nonnegotiable) bill of lading a document of title that consigns transported goods to a named person.

Strict liability a civil wrong for which there is absolute liability because of the inherent danger in the underlying activity, for example, the use of explosives.

Strict tort liability a product liability theory that imposes liability upon the manufacturer, seller, or distributor of goods for harm caused by defective goods.

Subjective intent a secret intent of a person.

Subject matter jurisdiction judicial authority to hear a particular type of case.

Substantial impairment material defect in a good.

Substantial performance the equitable doctrine that a contractor substantially performing a contract in good faith is entitled to recover the contract price less damages for noncompletion or defective work.

Substantive law the law that defines rights and liabilities.

Substitution discharge of a contract by substituting another in its place.

Sui generis in a class by itself, or its own kind.

Sui juris legally competent, possessing capacity.

Summary judgment a judgment entered by the court when no substantial dispute of fact is present, the court acting on the basis of affidavits or depositions that show that the claim or defense of a party is a sham.

Summons a writ by which an action was commenced under the common law.

Tariff domestically a government-approved schedule of charges that may be made by a regulated business, such as a common carrier or warehouse. Internationally a tax imposed by a country on goods crossing its borders,

without regard to whether the purpose is to raise revenue or to discourage the traffic in the taxed goods.

Tender an offer of money as part of a contract.

Tender of goods to present goods for acceptance.

Tender of payment an unconditional offer to pay the exact amount of money due at the time and place specified by the contract.

Tender of performance an unconditional offer to perform at the time and in the manner specified by the contract.

Testimony the answers of witnesses under oath to questions given at the time of the trial in the presence of the trier of fact.

Theory of the case the rule that, when a case is tried on the basis of one theory, the appellant in taking an appeal cannot argue a different theory to the appellate court.

Third party beneficiary a third person whom the parties to a contract intend to benefit by the making of the contract and to confer upon such person the right to sue for breach of contract.

Tie-in sale the requirement imposed by the seller that the buyer of particular goods or equipment also purchase certain other goods from the seller in order to obtain the original property desired.

Toll the statute stop the running of the period of the Statute of Limitations by the doing of some act by the debtor.

Tort a civil wrong that interferes with one's property or person.

Tortious interference see "contract interference."

Trade dress a product's total image including its overall packaging look.

Trade libel written defamation about a product or service.

Trademark a name, device, or symbol used by a manufacturer or seller to distinguish goods from those of other persons.

Trade name a name under which a business is carried on and, if fictitious, it must be registered.

Trade-secrets secrets of any character peculiar and important to the business of the employer that have been communicated to the employee in the course of confidential employment.

Transferee buyer or vendee.

Transferor seller or vendor.

Treble damages three times the damages actually sustained.

Trespass an unauthorized action with respect to person or property (Party—**trespasser**).

Trial de novo a trial required to preserve the constitutional right to a jury trial by allowing an appeal to proceed as though there never had been any prior hearing or decision.

Trier of fact in most cases a jury, although it may be the judge alone in certain classes of cases (as in equity) or in any case when jury trial is waived, or when an administrative agency or commission is involved.

Trust a transfer of property by one person to another with the understanding or declaration that such property be held for the benefit of another; the holding of property by the owner in trust for another, upon a declaration of trust, without a transfer to another person. (Parties—**settlor, trustee, beneficiary**)

Trust agreement instrument creating a trust.

Unconscionable unreasonable, not guided or restrained by conscience and often referring to a contract grossly unfair to one party because of the superior bargaining powers of the other party.

Undisclosed principal a principal on whose behalf an agent acts without disclosing to the third person the fact of agency or the identity of the principal.

Undue influence the influence that is asserted upon another person by one who dominates that person.

Unfair competition the wrong of employing competitive methods that have been declared unfair by statute or an administrative agency.

Unilateral contract a contract under which only one party is obligated to perform.

Universal agent an agent authorized by the principal to do all acts that can lawfully be delegated to a representative.

Usage of trade language and customs of an industry.

Usury the lending of money at greater than the maximum rate of interest allowed by law.

Utility patents the patents that grant inventors of any new and useful process, machine, manufacture,

or composition of matter or any new useful improvement of such devices the right to obtain a patent.

Vacating of judgment the setting aside of a judgment.

Valid legal.

Valid contract an agreement that is binding and enforceable.

Value consideration or antecedent debt or security given in exchange for the transfer of a negotiable instrument.

Verdict the decision of the trial or petty jury.

Vertical price fixing an agreement by a retailer with a producer, for example, not to resell below a stated price, which is a violation of antitrust law.

Vicarious liability imposing liability for the fault of another.

Void of no legal effect and not binding on anyone.

Voidable a transaction that may be set aside by one party thereto because of fraud or similar reason but which is binding on the other party until the injured party elects to avoid.

Voidable contract an agreement that is otherwise binding and enforceable but may be rejected at the option of one of the parties as the result of specific circumstances.

Voidable title title of goods that carries with it the contingency of an underlying problem.

Void agreement an agreement that cannot be enforced.

Voir dire examination the preliminary examination of a juror or a witness to ascertain fitness to act as such.

Volenti non fit injuria the maxim that the defendant's act cannot constitute a tort if the plaintiff has consented thereto.

Waiver the release or relinquishment of a known right or objection.

Warehouser a person engaged in the business of storing the goods of others for compensation.

Warehouse receipt a receipt issued by the warehouser for stored goods. Regulated by the UCC, which clothes the receipt with some degree of negotiability.

Warranties of seller of goods warranties consisting of express warranties that relate to matters forming part of the basis of the bargain; warranties as to title and right to sell; and the implied warranties that the law adds to a sale depending upon the nature of the transaction.

Warranty a promise either express or implied about the nature, quality, or performance of the goods.

Warranty of title implied warranty that title to the goods is good and transfer is proper.

Willful intentional, as distinguished from accidental or involuntary. In penal statutes, with evil intent or legal malice, or without reasonable ground for believing one's act to be lawful.

World Trade Organization (WTO) agency responsible for administering the objectives of the General Agreement on Tariffs and Trade (GATT).

Writ of certiorari ordered by the U.S. Supreme Court granting a right of review by the court of a lower court decision.