

СЛОВНИК ПРОФЕСІЙНИХ ТЕРМІНІВ

Abbasinare – стародавня форма тілесного покарання

A barbaric form of *corporal punishment* meted out in the middle ages where persons would be permanently blinded by the pressing of hot irons to the open eyes.

Abduction – викрадення

To take someone away from a place without that person's consent or by fraud. See also "*kidnapping*".

Abet – провокувати

The act of encouraging or inciting another to do a certain thing, such as a crime. For example, many countries will equally punish a person who aids or abets another to commit a crime.

Acceptance – прийняття

One of three requisites to a valid *contract* under common law (the other two being an *offer* and *consideration*). A contract is a legally binding agreement between two or more parties which starts with an offer from one person but which does not become a contract until the other party signifies an unequivocal willingness to accept the terms of that offer. The moment of acceptance is the moment from which a contract is said to exist, and not before. Acceptance need not always be direct and can, in certain circumstances, be implied by conduct (see *acquiescence* below).

Accord and Satisfaction – погодження та задоволення

A term of contract law by which one party, having complied with its obligation under a contract, accepts some type of compensation from the other party (usually money and of a lesser value) in lieu of enforcing the contract and holding the other party to their obligation. This discharges the contract. The definition cited by lawyers is usually that found in *British Russian Gazette & Trade Outlook Ltd. v. Associated Newspapers Ltd.* (1933) 2 K.B. 616: "Accord and satisfaction is the purchase of a release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative".

Accretion – збільшення

The imperceptible and gradual addition to land by the slow action of water. Heavy rain, river or ocean action would have this effect by either washing up sand or soil or by a permanent retreat of the high water mark. The washing up of soil is often called *avulsion* although the latter term is but a variety of accretion.

Acquiescence – уступки

Action or inaction which binds a person legally even though it was not intended as such. For example, action which is not intended as a direct *acceptance* of a *contract* will nevertheless stand as such as it implies recognition of the terms of the contract. For example, if I display a basket of fruit in a marketplace and you come by, inspect an apple and then bite into it, you have acquiesced to the contract of sale of that apple. Acquiescence also refers to allowing too much time to pass since you had knowledge of an event which may have allowed you to have legal recourse against another, implying that you waive your rights to that legal recourse.

Act – дія

A bill which has passed through the various legislative steps required for it and which has become law, as in “an Act of the Commonwealth of Australia”. Synonymous to *statute*, *legislation* or *law*.

Addendum – додаток

An attachment to a written document. For example, *affidavits* may be addendums to a *petition* as a *petition* may be an addendum to a *writ*.

Administrative law – адміністративне право

Synonymous with “natural justice”. Administrative law is that body of law which applies for hearings before *quasi-judicial* or *administrative tribunals*. This would include, as a minimum, the principles of *natural justice* as embodied in *audi alteram partem* and *nemo iudex in sua causa*. Many *quasi-judicial* organizations or *administrative tribunals* supplement the rules of natural justice with their own detailed rules of procedure.

Administrative tribunal – адміністративний трибунал

Hybrid adjudicating authorities which straddle the line between government and the courts. Between routine government policy decision-making bodies and the traditional court forums lies a hybrid, sometimes called a “tribunal” or “administrative tribunal” and not

necessarily presided by judges. These operate as a government policy-making body at times but also exercise a licensing, certifying, approval or other adjudication authority which is “*quasi-judicial*” because it directly affects the legal rights of a person. Administrative tribunals are often referred to as “Commission”, “Authority” or “Board”.

Adultery – прелюбодіяння

Voluntary *sexual intercourse* between a married person and another person who is not their married spouse. In most countries, this is a legal ground for *divorce*. The person who seduces another’s spouse is known as the “adulterer”. In old English law, this was also known as *criminal conversation*.

Alimony – аліменти

An amount given to one spouse to another while they are separated. Historically, the word “alimony” referred to monies paid while spouses were legally separated but stilled *wedlocked*. Where they were divorced, the monies payable were then referred to as “*maintenance*” but this distinction is now in disuse.

Alliance – союз

A military treaty between two or more *states*, providing for a mutually-planned offensive, or for assistance in the case of attack on any member.

Amalgamation – об’єднання

The merging of two things together to form one such as the amalgamation of different companies to form a single company.

Ambassador – посол

A citizen that has been officially asked by their country to live in another country in order to legally represent it. For example, the USA has sent ambassadors to live, and represent the USA, in almost all other countries.

Amend – змінювати

To change, to revise, usually to the wording of a written document such as legislation.

Annulment – анулювати

To make void; to cancel an event or judicial proceeding both retroactively and for the future. Where, for example, a marriage is annulled, it is struck from all records and stands as having never transpired in law. This differs from a divorce which merely cancels a

valid marriage only from the date of the divorce. A marriage annulled stands, in law, as if never performed.

Anti-trust – антимонопольний

(USA) “Anti-trust” legislation is designed to prevent businesses from price-setting or other secret collaboration which circumvents the natural forces of a free market economy and gives those engaging in the anti-trust conduct, a covert competitive edge. Also known as “anti-combines” or “competition” legislation.

Appeal – апеляція, подавати апеляцію

To ask a more senior court or person to review a decision of a subordinate court or person. In some countries such as Canada, the USA and Australia, appeals can continue all the way up to the Supreme Court, where the decision is final in that it can no longer be appealed. That is why it is called “supreme” (although, in Australia the supreme court is called the *High Court*).

Arbitration – арбітраж

A *alternative dispute resolution* method by which an independent, neutral third person (“arbitrator”) is appointed to hear and consider the merits of the dispute and renders a final and binding decision called an award. The process is similar to the litigation process as it involves adjudication, except that the parties choose their arbitrator and the manner in which the arbitration will proceed. The decision of the arbitrator is known as an “award”. Compare with *mediation*.

Arraignment – звинувачення

In USA criminal law, the formal appearance of an accused person to hear, and to receive a copy of, the charge against him or her, in the presence of a judge, and to then enter a plea of guilty or not guilty. The arraignment is the final preparatory step before the criminal trial.

Arrears – борги

A debt that is not paid on the due date adds up and accumulates as “arrears”. For example, if you do not pay your rent, the debt still exists and is referred to as “arrears”. The same word is used to describe child or spousal maintenance or support which is not paid by the due date.

Arson – підпал

Some countries define “arson” as the intentional setting of a fire to a building in which people live; others include as “arson” the

intentionally setting of a fire to any building. In either case, this is a very serious crime and is punishable by a long jail sentence.

Assault – напад

The touching of another person with an intent to harm, without that person's consent.

Assign – призначати

To give, to transfer responsibility, to another. The assignee (sometimes also called "assigns") is the person who receives the right or property being given and the assignor is the person giving.

Attorney – вповноважений

An alternate word for *lawyers* or "*barrister & solicitor*", used mostly in the USA. A person that has been trained in the law and that has been certified to give legal advice or to represent others in *litigation*.

Felony – тяжкий злочин

A serious crime for which the punishment is prison for more than a year or death. Crimes of less gravity are called *misdemeanours* <*dict-m.htm*>. This term is no longer used in England or other Commonwealth countries but remains a major distinction in the United States. Historically, in England, the term referred to crimes for which the punishment was the loss of land, life or a limb.

Fiduciary – опікун

Normally, the term is synonymous to a *trustee* <*dict-t.htm*>, which is the classic form of a fiduciary relationship. A fiduciary has rights and powers which would normally belong to another person. The fiduciary holds those rights which he or she must exercise to the benefit of the *beneficiary* <*dict-b.htm*>. A fiduciary must not allow any conflict of interest to infect their duties towards the *beneficiary* <*dict-b.htm*> and must exercise a high standard of care in protecting or promoting the interests of the *beneficiary* <*dict-b.htm*>. Fiduciary responsibilities exist for persons other *than trustees* <*dict-t.htm*> such as between solicitor and client and principal and agent.

Fraud – підробка

Deceitful conduct designed to manipulate another person to give something of value by (1) lying, (2) by repeating something that is or ought to have been known by the fraudulent party as false or suspect or (3) by concealing a fact from the other party which may have saved

that party from being cheated. The existence of fraud will cause a court to void a contract and can give rise to criminal liability.

Fugitive – втікач

One who runs away to avoid arrest, prosecution or imprisonment. Many extradition laws also call the suspect a “fugitive” although, in that context, it does not necessarily mean that the suspect was trying to hide in the country from which extradition is being sought.

Gavel – молоточок судді

A wooden mallet used by a judge to bring proceedings to a start or to an end or to command attention in his or her court.

General counsel – головний консультант

The senior *lawyer* of a *corporation*. This is normally a full-time employee of the *corporation* although some *corporations* contract this position out to a *lawyer* with a private firm.

Habeas corpus

Latin: a court petition which orders that a person being detained be produced before a judge for a hearing to decide whether the detention is lawful. *Habeas corpus* was one of the concessions the British Monarch made in the *Magna Carta* and has stood as a basic individual right against arbitrary arrest and imprisonment.

Habitual offender – закоренілий злочинець

A person who is convicted and sentenced for crimes over a period of time and even after serving sentences of incarceration, such as demonstrates a propensity towards criminal conduct. Reformation techniques fail to alter the behaviour of the habitual offender. Many countries now have special laws that require the long-term incarceration, without parole, of habitual offenders as a means of protecting society in the face of an individual that appears unable to comply with the law.

Harassment – переслідування

Unsolicited words or conduct which tend to annoy, alarm or abuse another person. An excellent alternate definition can be found in Canadian human rights legislation as: “a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. Name-calling (“stupid”, “retard” or “dummy”) is a common form of harassment. (See also *sexual harassment*).

Hearsay – плітка

Any evidence that is offered by a witness of which they do not have direct knowledge but, rather, their testimony is based on what others have said to them. For example, if Bob heard from Susan about an accident that Susan witnessed but that Bob had not, and Bob attempted to repeat Susan's story in court, it could be objected to as "hearsay". The basic rule, when testifying in court, is that you can only provide information of which you have direct knowledge. In other words, hearsay evidence is not allowed. Hearsay evidence is also referred to as "second-hand evidence" or as "rumor". You are able to tell a court what you heard, to repeat the rumor, and testify that, in fact, the story you heard was told to you, but under the hearsay rule, your testimony would not be evidence of the actual facts of the story but only that you heard those words spoken.