

## Glossary of Legal Latin

### **A fortiori**

'From stronger argument' – Used to express a conclusion for which there is stronger evidence than for a previously accepted one

### **Ab initio**

'From the beginning' – If a contract is void (say for mistake) ab initio, this has the consequence that no innocent third parties can acquire rights under any subsequent contract (*Bell v Lever Bros* [1932] AC 161 (HL) (Lord Atkin)).

### **Actus reus**

'A guilty act' – The prohibited conduct or behaviour that the law seeks to prevent. Although commonly referred to as the "guilty act" this is rather simplistic, as the actus reus includes all the aspects of the crime except the accused's mental state (see mens rea). In most cases the actus reus will simply be an act (e.g. appropriation of property is the act of theft) accompanied by specified circumstances (e.g. that the property belongs to another). Sometimes, however, the actus reus may be an omission to act (e.g. failure to prevent death may be the actus reus of manslaughter: *R v Stone and Dobinson* [1977] QB 354) or it may include a specified consequence (death resulting being the consequence required for the actus reus of murder or manslaughter). In certain cases the actus reus may simply be a state of affairs rather than an act (*Winzar v Chief Constable of Kent* (1983) *The Times* 28 March 1983).

### **Ad hoc**

'To this' – Created or done for a particular purpose as necessary:

### **Ad idem**

'Towards the same' – Indicates that the parties to a transaction are in agreement.

### **Ad litem**

'As regards the action'

- A grant ad litem is the appointment by a court of a person to act on behalf of an estate in court proceedings, when the estate's proper representatives are unable or unwilling to act.
- A guardian ad litem is the former name for a litigation friend responsible for the conduct of legal proceedings on behalf of someone else.

### **Ad referendum**

'Subject to reference' – Denoting a contract or other matter that is subject to agreement by other parties and finalisation of the details.

## **Alibi**

'*Elsewhere*' – A defence to a criminal charge alleging that the defendant was not at the place at which the offence was committed at the time of its alleged commission and so could not have been responsible for it. If the defendant proposes to introduce alibi evidence, details of his alibi should be provided to the prosecution.

## **Alieni juris**

'*Of another's right*' – Describing the status of a person who is not of full age and capacity

## **Aliunde**

'*From elsewhere*' – From a source outside the document currently under consideration. Evidence *aliunde* may be considered where the meaning of a document (e.g. a will) is otherwise unclear.

## **Amicus curiae**

'*Friend of the court or tribunal*' – A non-party who gives evidence before the court so as to assist it with research, argument, or submissions. For example, in the House of Lords decision on whether to allow the extradition of General Pinochet their lordships sought an independent expert opinion on the matter of diplomatic immunity. For that purpose they called upon an expert in this field, David Lloyd Jones QC, to assist the court.

## **Animus**

'*Intention*' - The term is often used in combination; for example:

- *animus furandi* – the intention to steal;
- *animus manendi* – the intention to remain in one place (for the purposes of the law relating to domicile);
- *animus donandi*: – the intention to transfer property.

## **Ante**

'*Before*'

## **Bona vacantia**

'*Empty goods*' – Property not disposed of by a deceased's will and to which there is no relation entitled on intestacy. Under section 46 of the Administration of Estates Act 1925, such property passes to the Crown, the Duchy of Lancaster, or the Duke of Cornwall.

## **Bona fide**

'*With good faith*' – Genuine; real

## **Caveat**

'*Let him beware*' – A notice, usually in the form of an entry in a register, to the effect that no action of a certain kind may be taken without first informing the person who gave the notice (the caveator).

### **Caveat emptor**

*'Let the buyer beware'* – A common-law maxim warning a purchaser that he could not claim that his purchases were defective unless he protected himself by obtaining express guarantees from the vendor. The maxim has been modified by statute: under the Sale of Goods Act 1979 (a consolidating statute), contracts for the sale of goods have implied terms requiring the goods to correspond with their description and any sample and, if they are sold in the course of a business, to be of satisfactory quality and fit for any purpose made known to the seller.

### **Certiorari**

*'To be informed'*

### **Cf (confer)**

*'Compare'*

### **Compos mentis**

*'Possessed of mind'* – Of sound mind: sane. A valid contract must be made by someone who is compos mentis.

### **Cor (coram)**

*'In the presence of the people'*

### **Corpus delicti**

*'The body of the offence'* – The proof that the crime has been committed. Originally this referred literally to the corpse of a murdered person. It now refers to the factual evidence of the crime.

### **Cur. adv. vult/Curia Advisari vult**

The court wishes to consider the matter before giving judgment, as when time is needed to consider arguments or submissions made to it.

### **De bene esse**

*'Of well-being'* – Denoting a course of action that is the best that can be done in the present circumstances or in anticipation of a future event.

### **De facto**

*'In fact'* – Existing as a matter of fact rather than of right.

### **De jure**

*'Of law'* – As a matter of legal right; by right.

### **De lege ferenda**

*'Of (or concerning) the law that is to come into force'* – A phrase used to indicate that a proposition relates to the law as it is.

### **De lege lata**

*'Of (or concerning) the law that is in force'* – A phrase used to indicate that a proposition relates to the law as it is.

### **De minimis (non curat lex)**

*'The law is not concerned with trivial matters'*

### **Dictum**

*'A saying'* – An observation by a judge with respect to a point of law arising in a case before him.

### **Dissentiente**

*'Differing in opinion'* – Dissenting from one's brother judges and making a speech to this effect. It is often abbreviated to 'diss' in citations of cases.

### **Doli (in)capax**

*'(In) capable of wrong'* – A child under the age of 10 is deemed incapable of committing any crime. Above the age of 10 children are doli capax and are treated as adults, although they will usually be tried in special youth courts (with the exception of homicide and certain other grave offences) and subject to special punishments.

### **Erratum**

*An error in printing or writing.*

### **Ex gratia**

*Done as a matter of favour* – An ex gratia payment is one not required to be made by a legal duty.

### **Ex officio**

*By virtue of holding an office* – Thus, the Lord Chief Justice is ex officio a member of the Court of Appeal.

### **Ex parte**

1. *On the part of one side only* – An ex parte hearing is defined in the Glossary to the Criminal Procedure Rules as a hearing where only one party is allowed to attend and make submissions. However, the term ex parte is no longer generally used in civil proceedings, having been replaced by the phrase without notice.
2. *On behalf of* – This term is used in the headings of law reports together with the name of the person making the application to the court in the case in question, for example in applications for judicial review.

## **Ex post facto**

*'In the light of subsequent events'* – Describing any legal act, such as a statute, that has retrospective effect

## **Habeas corpus**

*'You shall have the body (in court)'* – A prerogative writ<sup>1</sup> used to challenge the validity of a person's detention, either in official custody (e.g. when held pending deportation or extradition) or in private hands. Deriving from the royal prerogative<sup>2</sup> and therefore originally obtained by petitioning the sovereign, it is now issued by the Divisional Court of the Queen's Bench Division, or, during vacation, by any High Court judge. If on an application for the writ the Court or judge is satisfied that the detention is prima facie unlawful, the custodian is ordered to appear and justify it, failing which release is ordered.

## **Ibid**

*'In the same place'* – Used to save space in textual references to a quoted work which has been mentioned in a previous reference.

## **Ignorantia juris non excusat**

*'Ignorance of the law does not excuse'* – i.e. no defence against criminal or other proceedings arising from its breach.

## **In camera**

*'In the chamber'* – In private. A court hearing must usually be public but the public may be barred from the court or the hearing may continue in the judge's private room in certain circumstances; for example, when it is necessary in the interests of national security or to protect the identity of a witness unwilling to give evidence in public. Part 39 of the Civil Procedure Rules and Part 16 of the Criminal Procedure Rules deal with in camera hearings.

## **In curia**

*'In open court'*

## **In limine**

*'Preliminary'* – Used, for example, to describe an objection

## **In loco parentis**

*'In place of a parent'* – used loosely to describe anyone looking after children on behalf of the parents, e.g. foster parents or relatives. In law, however, only a guardian or a person in whose favour a residence order is made stands in loco parentis; their rights and duties are determined by statutory provisions.

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<sup>1</sup> An order issued by a court in the sovereign's name directing some act or forbearance. Originally, a writ was an instrument under seal bearing some command of the sovereign.

<sup>2</sup> The special rights, powers, and immunities to which the Crown alone is entitled under the common law. Most prerogative acts are now performed by the government on behalf of the Crown. Some, however, are performed by the sovereign in person on the advice of the government (e.g. the dissolution of Parliament) or as required by constitutional convention (e.g. the appointment of a Prime Minister). A few prerogative acts (e.g. the granting of certain honours, such as the Order of the Garter) are performed in accordance with the sovereign's personal wishes.

## **In personam**

*'Against the person'* – Describing a court action or a claim made against a specific person or a right affecting a particular person or group of people (compare *in rem*). The maxim of equity “equity acts in personam” refers to the fact that the Court of Chancery issued its decrees<sup>3</sup> against the defendant himself, who was liable to imprisonment if he did not enforce them.

## **In re**

*'In the matter of'* – A phrase used in the headings of law reports, together with the name of the person or thing that the case is about (for example, cases in which wills are being interpreted). It is often abbreviated to *re*.

## **In rem**

*'Against the thing'*

1 Describing a right that should be respected by other people generally, such as ownership of property, as distinct from a right *in personam*.

2 Describing a court action that is directed against an item of property, rather than against a person or group of people. Actions *in rem* are a feature of the Admiralty Court.

## **Inter alia**

*'Among other things'* – The phrase is used to make it clear that a list is not exhaustive.

## **In situ**

*'In the original place'*

## **Intra**

*'Inside'*

## **Intra vires**

*'Within the powers'* – Describing an act carried out by a body (such as a public authority or a company) that is within the limits of the powers conferred on it by statute or some other constituting document (such as the memorandum and articles of association of a company).

## **Inter vivos**

*'Between living people'* – If a trust is created *inter vivos* it is created during lifetime, as distinct from upon death.

## **Ipsa facto**

*'By that very fact or act'*

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<sup>3</sup> A court order

### **Locus in quo**

*'The place in which'* – The place where an event took place. Fact finders may visit the locus in quo in order to understand the evidence and the judge and jury may inspect it as part of court proceedings.

### **Mens rea**

*'A guilty mind'* – The state of mind that the prosecution must prove a defendant to have had at the time of committing a crime in order to secure a conviction. Mens rea varies from crime to crime; it is either defined in the statute creating the crime or established by precedent. Common examples of mens rea are intention to bring about a particular consequence, recklessness as to whether such consequences may come about (*R v Cunningham* [1957] 2 QB 396), and (for a few crimes) negligence. Some crimes require knowledge of certain circumstances as part of the mens rea (for example, the crime of receiving stolen goods requires the knowledge that they were stolen). Some crimes require no mens rea; these are known as crimes of strict liability. Whenever mens rea is required, the prosecution must prove that it existed at the same time as the actus reus of the crime (coincidence of actus reus and mens rea: *R v Le Brun* [1992] QB 61). A defendant cannot plead ignorance of the law, nor is a good motive a defence. He may, however, bring evidence to show that he had no mens rea for the crime he is charged with; alternatively, he may admit that he had mens rea, but raise a general defence (e.g. duress) or a particular defence allowed in relation to the crime.

### **Non est factum (suum)**

*'It is not my deed'* – A plea that an agreement mentioned in the statement of case was not the act of the defendant. It may be applicable where the person signing a document had no real understanding of the character or effect of that document.

### **Obiter dictum**

*'A remark in passing'* – Something said by a judge while giving judgment that was not essential to the decision in the case. It does not form part of the ratio decidendi of the case and therefore creates no binding precedent, but may be cited as persuasive authority in later cases.

### **Onus (probandi)**

*'Load or burden'* – Something that is one's duty or responsibility (burden of proof).

### **Pari passu**

*'With equal step'* – Proportionally, without preference. The principle that where there are competing claimants, (e.g. in bankruptcy proceedings) assets should be distributed on a pro rata basis, in accordance with the size of the claim.

### **Per**

*'Through, by means of'*

### **Per curiam (per. cur.)**

*'By the court'* – A proposition per curiam is one made by the judge (or, if there is more than one judge, assented to by all).

### **Per incuriam**

*'Through lack of care'* – A decision of a court is made per incuriam if it fails to apply a relevant statutory provision or ignores a binding precedent.

### **Per se**

*'By or in itself or themselves; intrinsically'*

### **Post**

*'Subsequent to; after'*

### **Prima facie**

*'At first appearance'* – on the face of things

### **Quasi**

*'As if, almost'*

### **Qui facit per alium facit per se**

*'He who acts through another, acts through himself'* – The traditional basis of vicarious<sup>4</sup> liability. It means, for example, that an employer is liable for the consequences of any act done by employees in the ordinary course of their duties and responsibilities.

### **Ratio decidendi**

*'The reason for deciding'* – The principle or principles of law on which the court reaches its decision. The ratio of the case has to be deduced from its facts, the reasons the court gave for reaching its decision, and the decision itself. It is said to be the statement of law applied to the material facts. Only the ratio of a case is binding on inferior courts, by reason of the doctrine of precedent.

### **Res judicata**

*'A matter that has been decided'* – The principle that when a matter has been finally adjudicated upon by a court of competent jurisdiction it may not be reopened or challenged by the original parties or their successors in interest. It is also known as action estoppel. It does not preclude an appeal or a challenge to the jurisdiction of the court. Its justification is the need for finality in litigation.

### **Res ipsa loquitur**

*'The thing speaks for itself'* – A principle often applied in the tort of negligence. If an accident has occurred of a kind that usually only happens if someone has been negligent, and the state of affairs that produced the accident was under the control of the defendant, it may be presumed in the absence of evidence that the accident was caused by the defendant's negligence (*Scott v London and St Katherine Docks Co* (1865) 3 Hurl. & C. 596).

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<sup>4</sup> Acting or done for another

## **Sic**

'*So, thus*' – Used in brackets after a copied or quoted word that appears odd or erroneous to show that the word is quoted exactly as it stands in the original.

## **Stare decisis**

'*To stand by things decided*' – A maxim expressing the underlying basis of the doctrine of precedent, i.e. that it is necessary to abide by former precedents when the same points arise again in litigation.

## **Sub judice**

'*In the course of trial*' – The sub judice rule:

1 A rule limiting comment and disclosure relating to judicial proceedings, in order not to prejudge the issue or influence the jury. See contempt of court.

2 A parliamentary practice in which the Speaker prevents any reference in questions or debates to matters pending decision in court proceedings (civil or criminal). In the case of civil proceedings, he has power to waive the rule if a matter of national interest is involved.

## **Sui generis**

'*Of its own kind*' – Forming a class of its own; unique.

## **Ultra vires**

'*Beyond the powers*' – Describing an act by a public authority, company, or other body that goes beyond the limits of the powers conferred on it. Ultra vires acts are invalid (compare *intra vires*). The ultra vires doctrine applies to all powers, whether created by statute or by a private document or agreement (such as a trust deed or contract of agency). In the field of public (especially administrative) law it governs the validity of all delegated and sub-delegated legislation. This is ultra vires not only if it contains provisions not authorized by the enabling power but also if it does not comply with any procedural requirements regulating the exercise of the power.

The doctrine also governs the validity of decisions made by inferior courts or administrative or domestic tribunals and the validity of the exercise of any administrative power. The decision of a court or tribunal is ultra vires if it exceeds jurisdiction, contravenes procedural requirements, or disregards the rules of natural justice (the power conferring jurisdiction being construed as requiring the observance of these). The exercise of an administrative power is ultra vires not only if unauthorized in substance, but equally if (for example) it is procedurally irregular, improperly motivated, or in breach of the rules of natural justice (substantive vs. procedural ultra vires). The remedies available for this second aspect of the doctrine are quashing orders, prohibiting orders, declaration, and injunction (the first two of these are public remedies, not available against decisions of domestic tribunals whose jurisdiction is based solely on contract).

## **Volenti non fit injuria**

'*No wrong is done to one who consents*' – The defence that the claimant consented to the injury or (more usually) to the risk of being injured. Knowledge of the risk of injury is not sufficient; there must also be (even if only by implication) full and free consent to bear the risk (*Simms v Leigh Rugby Football Club Ltd* [1969] 2

All ER 923). A claimant who has assumed the risk of injury has no action if the injury occurs. The scope of the defence is limited by statute in cases involving business liability and public and private transport.