

Glossary of legal terms

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ABN	Australian Business Number - an identifier for dealings with the ATO and for future dealings with other government departments and agencies.
ACN	Australian Company Number – issued by ASIC that uniquely identifies each registered company/corporation.
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
abrogate	To repeal, cancel or abolish
acceptance	One of three requisites to the formation of a binding contract (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.
Act	Law passed by parliament, known as a bill before assent by governor or governor-general
act of bankruptcy	An action of a debtor that shows an inability to pay their creditors.
act of God	An event which is caused solely by the effect of nature or natural causes and without any interference by humans whatsoever. Insurance contracts often exclude “acts of God” from the list of insurable occurrences as a means to waive their obligations for damage caused by hurricanes, floods or earthquakes. <i>See force majeure</i>
agreement	An arrangement or an understanding between two or more parties made verbally, in writing, by conduct or any combination of these. The term agreement encompasses both deeds and contracts.
adjournment	When a Court case or formal hearing is put off to a later date
affidavit	A written statement in which the person signing states that the contents are, to the best of their knowledge, true. It is made under oath or affirmed before a notary public, justice of the peace, legal practitioner or other authorised officer. It can be used to support an application or can be tendered by a party to a proceeding as evidence in Court.
agent	An independent person or company with authority to act on behalf of another, binding that other person as if he/she were themselves making the decisions. The authority to act may be formally set out or may be implied.
Alternative dispute resolution /ADR	ADR is an umbrella term that covers methods of attempting to resolve a dispute without going to Court. Mediation and arbitration are types of ADR. Agreements often have clauses in them requiring the parties to participate in ADR and prescribing what processes they will follow if they disagree about anything in the agreement. It typically involves a process much less formal than the traditional Court process and includes the appointment of a third-party to preside over a hearing between the parties.

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amendment	A variation to a contract agreed by all parties and usually set out in writing.
appeal	Application to a higher court to alter a decision of a lower court or tribunal, usually because of a mistake in law. A common example would be an appeal from a decision of a single judge, in say the Federal Court of Australia which would go to a bench of three judges in that Court. Another example would be an appeal from the Federal Court to the High Court of Australia.
arbitration	An alternative dispute resolution method by which an independent, neutral third person arbitrator is appointed to hear and consider the merits of the dispute and makes a final and binding decision, called an award, based on the evidence presented by the parties.
arrears	Payment that is overdue or made after the date when it fell due.
assessable income	Income on which liability to pay income tax is calculated.
asset	Anything of worth that is owned. The assets of a business include money in the bank, accounts receivable, securities held in the name of the business, property or buildings, equipment, fixtures, merchandise for sale or being made, supplies and all things of value that the business owns. Assets also include intangible items like “goodwill” and “intellectual property”.
assignment	Legal transfer of a right or an interest in property from the owner to another person.
audit	Detailed checking of the financial records of a business by an independent qualified person (auditor) in order to verify their correctness or to detect errors or fraud
bad debts	Money owed to you that you cannot collect, due to the inability of the debtor to pay.
bankruptcy	When the financial affairs of an individual are taken over by a trustee, following the individual becoming unable to pay his or her debts. This requires a formal Court process to take place.
beneficiary	A person who is left something in a will or a person for whose benefit property is held by trustees or executors.
boilerplate clauses	This is the term that lawyers use to describe the more generic or more common provisions that appear in most agreements.
bona fide	In good faith; honest or genuine.
bond	Payment by a tenant to a landlord before the tenant takes over the premises as security for its obligations and from which the landlord may be able to deduct arrears of rent or the cost of rectifying damage.
breach	Failure by one of the parties to a contract to satisfactorily perform the service or action agreed to in the contract.
business name	The name of a business officially listed in the state or territory Register of Business Names. It is a legal requirement that person who carries on a business other than under their own name, is obliged to register the business name they trade under.

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CPI	Consumer Price Index - a measure of the aggregate rise or fall in prices of commonly used goods and services, published by the Commonwealth Government as a basis, among other things, for deciding what overall increases should be made to wages and salaries. The CPI is also often used to calculate rent increases on rent reviews.
case law / common law	The area of law developed by the courts while hearing and determining disputes where those Courts interpret legislation and legal principles and precedents which have been developed over time.
caveat emptor	Let the buyer beware. The common law principle that a buyer of goods where no warranty is offered for them takes the risk of their quality on him or herself and had no remedy against the seller, unless there was fraud.
certification mark	A mark used to distinguish goods or services dealt with or provided in the course of trade and certified by the trade mark owner (or by another person approved by the owner) in relation to quality, accuracy or some other characteristic including origin, material or mode of manufacture.
chattel	Any item of property that is not freehold land. It is usually a movable article of property (chattel personal) and includes intangible assets like debts, trademarks and copyright.
classes – intellectual property	Patents, Trade Marks, Designs and Plant Breeder's Rights each have an internationally recognised classification system which divides their respective applications into different technology groups, classes of services or goods, or plant varieties. This classification system assists with searching IP Australia databases of patents, trademarks, designs and plant varieties. Intellectual property rights in respect of trademarks are restricted to the classes in which the goods or services are registered.
clear title	Outright ownership, without any debts or charges on the property.
client-solicitor privilege	A right that belongs to the client of a lawyer that the latter keep any information or words spoken to him during the provision of the legal services to that client, strictly confidential. This includes being shielded from evidence before a court of law.
codicil	An amendment to an existing will, by way of a separate document. The effect is that the will is changed only to the extent of the codicil.
collateral	Any type of property which has been formally committed to support or guarantee a loan.
company/corporation	A registered legal entity which permits a group of people, as shareholders, to focus on pursuing set objectives and empowered with legal rights which are usually only reserved for individuals, including the right to sue and be sued, own property, hire employees or loan and borrow money. The primary advantage of a company structure is that it provides the shareholders with a right to participate in the profits (by dividends) without any personal liability for the company's debts - the company absorbs the entire liability of the business – also referred to as limited liability.

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conciliation	Process of resolving disputes which involves negotiations between parties, assisted by an independent conciliator. Conciliation aims for mutual agreement, rather than a decision in favour of one side made by that independent party.
condition precedent	A contractual condition that suspends the coming into effect of a contract unless or until a certain event takes place. No binding contract exists until the agreed condition occurs.
condition subsequent	A condition in a contract that causes the contract to become invalid if a certain event occurs. Opposite to a condition precedent. The happening of a condition subsequent may invalidate a contract which was, until that time, fully valid and binding.
confidentiality / non disclosure	Protection against disclosure to an outside person or third party of information revealed in a professional or contractual relationship. The terms of agreements are sometimes required to be kept confidential. It is also common for a clause to appear in an Agreement which lists the information relating to the Agreement that must be kept confidential.
conflict of interest	A situation where a person's fiduciary duty or contractual obligation towards someone else, are or may be affected by their own interests.
consent	Agreement to an action or arrangement.
consideration	The price (not necessarily money) paid by one party to the other party, as an obligation under to a contract.
contingent liability	A liability which will only arise upon the happening of a certain event, for example, the guarantor of a loan being asked to honour the guarantee if the borrower defaults.
constitution	A set of rules or principles according to which an organisation or other body is governed.
contract	An agreement between persons which obliges each party to do or not to do certain things. A contract requires consideration to be legally binding. It can be a verbal contract or set out in writing. Its terms can be determined, by conduct or a combination of writing, conversations and/or conduct.
contravene	To breach, neglect or refuse to comply with a particular requirement or condition.
copyright	A right that gives the author of an artistic work, for a limited period, the exclusive right to make copies of their work and publish and/or sell those copies. Registration is not a prerequisite for protection.
co-signatories	People who, together, share responsibility on behalf of a business by jointly signing documents or cheques.
costs (legal)	Legal fees or expenses of a party to a transaction or a matter before a Court. On the determination of a case, the Court has the discretion to award costs and order that a party pays another party's legal expenses for the matter. Usually costs are awarded to the successful party in a dispute and are the subject of formal third party assessment.
counterpart	A copy of an agreement signed by the other party.

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cover note	A document provided by an insurer as evidence of temporary insurance cover before a formal policy is issued.
creditor	A person or company to whom a debt is owed.
damages	An amount of money sought or awarded to a party to a contract for compensation for the loss they have suffered because another party breached the contract. Usually the damages awarded will be enough to put the injured party in the position they would have been in had there been no breach.
debtor	A person who owes a debt.
deed	A special type of written agreement. Unlike a contract, it does not require consideration to pass from one party to another, but must be in writing with copies exchanged between the parties.
deemed	To be treated or regarded as.
defamation	Publication of false and derogatory statements about another person, without any justification recognised by law. "Public interest" may be a recognised justification.
default	To fail to meet an obligation when due, such as paying a debt.
demand letter	A letter usually from a lawyer on behalf of a client that demands payment or some other action, in respect of a default. Usually a demand letter will set out why the payment or action is claimed, how it should be carried out (eg. payment in full), directions for the reply and a deadline for the reply.
disbursement	An "out of pocket expense", other than legal fees, paid out on behalf of another. In a lawyer's bill for example, a disbursement may include payments made on lodging documents or stamp duty, for which reimbursement will be sought.
director's guarantee	A personal guarantee given by a director of a company that she/he will be personally responsible for a debt or other liability of the company. Usually requested in credit applications, leases, loans and hire purchase agreements.
discharge	To fulfill or be released from an obligation. A debt is discharged when it is paid.
disclaimer clause	A clause which renounces a legal claim.
disclosure	Giving particular information to another party as required by a contract or legal process.
discretionary	When a decision may be made in the course of a transaction at the election of the party who has the choice based on their discretion. For example, in some transactions a party would not be able to assign or transfer the benefit of their agreement to a third party without the consent of the other party. Usually that party will have a discretion whether to consent or not.
discretionary trust	A trust in which the trustee has full discretion to decide which (and when) members of a group of eligible beneficiaries is to receive either the income or the capital of the trust.
dishonoured	The word used to describe a cheque, which the drawer's bank will not pay, because this account lacks sufficient funds.

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dissolution	The act of ending, terminating or winding-up a company or partnership.
dividend	A payment to shareholders in a company by way of a distribution of profits. Dividends may be declared by a company's board of directors out of after-tax profit.
drawings	Withdrawals of assets (usually cash) from a business by a sole proprietor or a partner as an advance on profits.
duty of care	The obligation of a person to exercise reasonable care in the conduct of an activity. Breach of a duty of care which causes damage or loss to another may give rise to an action in negligence.
encumbrance	A formal charge or liability on asset – usually on a public register. For example, a mortgage over land or a registered charge over a company.
endowment	The transfer of money or property (usually as a gift) to a public organisation for a specific purpose, such as medical research or scholarships.
enduring power	A power of attorney or guardianship which continues to have effect even if the donor ceases to be mentally competent. Usually the power of attorney must be registered to allow the attorney to deal with any land owned by the principal (the party offering the power on the attorney).
entire agreement	Many agreements include a provision that has the effect of making the written document the complete understanding between the parties. This means that any statements or promises that are not in the written document (but may have been made by a party to induce the other to enter the transaction) are - subject to any deliberate false or misleading conduct – not part of the legally binding agreement.
entity	A business unit – including an individual (sole trader), partnership, a body corporate, a corporation, an incorporated association or body of persons, a trust or superannuation fund.
equity	The body of legal principles which apply where there may be no relief under the contract itself or common law. Equitable means being just, impartial and fair. For example, the concept of “unconscionability” is based in equity to protect people who are taken advantage of by others in commercial negotiations because they have some unique disadvantage – such as poor education, health or age.
estoppel	Legal rule, arising in equity, that one cannot make an allegation or denial of fact that is contrary to one's previous actions or words.
excess	In an insurance policy, excess clauses specify that the policyholder will be responsible for a portion of claims under certain conditions.
exclusion clause	A clause in a contract which attempts to exclude, limit or avoid liability.
executor	A person or persons specifically appointed by a deceased (testator) to administer their will, to ensure that final wishes are respected.
ex gratia	An act done when there is no obligation to do so.
express warranty	A formal statement made when offering goods for sale which is made for the purpose of encouraging people to buy those goods.

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FOI / Freedom of Information	The right of any person to have access to documents held by government agencies, except those exempted by legislation.
fair dealing	The right to legitimate use or reproduction of part or all of copyright material by someone other than the copyright owner, for defined purposes.
fair market value	The hypothetical price that could be obtained for an asset if it were to be purchased by an informed purchaser at the time the value is to be calculated. Usually determined by an expert valuer.
fiduciary	Normally, the term associated with the obligations of a trustee. A fiduciary has rights and powers which would normally belong to another person and which he or she must exercise for the benefit of the beneficiary. A fiduciary must not allow any conflict of interest to affect their duties towards the beneficiary and must exercise a high standard of care in protecting or promoting the interests of the beneficiary. Fiduciary responsibilities exist for persons other than trustees, such as between solicitor and client and principal and agent or a company director and the company's shareholders.
force majeure	An unexpected event, not caused or contributed to by either party to a contract, which operates to excuse a party from performing its obligations for an agreed period of time. An extended force majeure event may give rise to the right to terminate.
garnishment	Proceedings for the attachment of debts or other assets in the hands of a third party (the garnishee).
goodwill	Usually defined as the excess price asked for or obtained for the sale of a business over and above the value of its physical assets. Goodwill is an intangible asset, the price of which is intended to represent a payment for the future value or opportunity to be obtained from the existing client base and other assets.
governing law	The country or state's laws that will be used to interpret and govern decisions on the agreement in the event of a breach or contractual dispute. Where the parties are based in separate countries or states, the governing law clause will usually stipulate where a party must bring court proceedings if there is a dispute about the agreement. This raises issues relating to jurisdiction.
guarantee	A promise or undertaking that a contract or a legal act will be fully carried out, e.g. that money will be repaid. The person giving the undertaking is called the guarantor.
hearing	A proceeding conducted by the court or tribunal to resolve issues of fact and/or law, in which evidence is usually provided by both parties.
hire purchase	Where goods are sold with instalment payments required from the purchaser. No right of ownership is conferred on the purchaser until the last payment due has been made.
implied terms	Terms that become part of a contract, without having to be stated in the contract document. Terms may be implied as a legal requirement imposed by legislation, e.g. "fitness for purpose" under state Sale Of Goods legislation, unless expressly excluded. Otherwise, terms will only be implied in limited circumstances.

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implied warranty	A term, not stated in a contract but which must be fulfilled, that services and related goods will be fit for the purpose for which they are supplied, unless such warranty can be lawfully excluded.
incorporated association	A not-for-profit organisation with a separate legal identity and a structure regulated by legislation that offers protection to members from legal claims made in connection with the associations activities.
indemnity	A promise to stand in the place of or reimburse another party if they suffer loss or damage in the circumstances that are the subject of the indemnity. Usually this will relate to compensation for a wrong done, or an expense or loss suffered as a result of the act or default of another.
indemnity insurance	Risk protection for activities for which a business is or may be liable.
infringement	Occurs when someone intentionally or unintentionally uses another's intellectual property rights without their permission.
injunction	A court order that requires a person to do, or more often to refrain from doing, something. This is an example of "equitable" relief.
in lieu	In place of.
insolvent	Unable to pay debts in full as and when they fall due.
intangible assets	Those non-physical assets of a business, which cannot be assigned a definite fixed value. Including, but not limited to goodwill and all forms of intellectual property.
instrument	A formal legal document in writing.
intellectual property	Abstract property, such as a manuscript or computer software, over which the owner has legal possession including, but not limited to designs, trade marks, business names, business methods, know how, patents, copyright and moral rights.
invalid	Not valid. Without legal effect.
inventory	The value of all the stock of physical items that a business uses in its production process or has for sale in the ordinary course of its doing business.
invoice	Document which sets out the customer charges for goods delivered or work done.
joint and several liability	Arises as an express term of a contract where, say, several people agree to be liable for a debt, the party with the benefit of the obligation may sue any or all of those people.
judgement	The final order or set of orders made by a judge after a court hearing, including reasons that set out the facts and law as applied in the case.
judgement debt	The amount awarded to a party to Court proceedings to be paid under a court order.
(default) judgement	Where the plaintiff is able to enter judgment against a defendant in the absence of a defence being filed with the Court.

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jurisdiction	Determines the authority of a Court to decide matters brought before it. May be affected by country or inter-state restrictions. May also be determined by subject matter or money limits.
landlord	A land or building owner who has leased its land or building or a part of the land or building, to another person or entity. Also known as a lessor.
lease	An agreement between a landlord and a tenant, for rental of premises. Usually in writing.
leasing finance	A common method of acquiring business equipment without capital outlay. The bank or finance company buys the equipment and leases it to the customer, in return for regular rental payments for the duration of the lease period.
leasehold	A legal interest in land for a fixed period.
legally binding	Able to be enforced by law.
legislation	Comprises Acts, regulations or other legal instruments like by-laws, or ordinances that set out the laws made by parliament or authorities that have been delegated law making powers.
lessee	A person who leases property from another.
lessor	A person who leases property to another.
letter of demand	A notice from a creditor that legal action will be taken if a contractual obligation is not met.
liability	Any legal obligation, either due now or at some time in the future. It could be a debt or a promise to do something. To say a person is liable for a debt or wrongful act is to indicate that they are the person responsible for paying the debt or paying compensation for the wrongful act.
licensing of rights	Gives the licensee the right to use (but not own) the rights of the owner (licensor) upon agreed terms.
lien	The right to hold a person's property as security for the performance of an obligation (e.g. where money is owed for storage of goods, the storer has a lien over the goods until paid.)
limitation period	The period of time which an aggrieved party has to commence a legal proceeding against another party. The limitation period varies depending on the jurisdiction and the issue in dispute.
liquidated amount	A certain sum, i.e. a stipulated amount, as opposed to a general claim for an unspecified amount, such as damages, which require expert assessment.
liquidation	The selling of all the assets of a debtor and the use of the cash proceeds of the sale to pay off creditors, usually facilitated by a court appointed person (liquidator).
litigation	A dispute is in litigation or is being litigated when it has become the subject of a formal court action or law suit.
mandatory	Having to be strictly complied with.

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mediation	The most popular form of alternative dispute resolution, mediation involves the appointment of a mediator who acts as a facilitator assisting the parties to reach their own settlement agreement in a structured meeting. The mediator does not adjudicate the issues in dispute or force a compromise. The result of a successful mediation is called a settlement.
merchantable quality	In the context of goods supplied for resale, means “reasonable quality” or in a condition good enough to be sold. This is usually implied in most states Sale of Goods legislation.
minutes	The official record of a meeting. Minutes are usually prepared by the company secretary and signed by the chairperson of the meeting or the secretary after board approval.
misrepresentation	Making a false statement, either deliberately or unintentionally, to induce someone to do something they would otherwise not have done, e.g. enter into a contract. A false and material statement which induces a party to enter into a contract.
moral rights	The rights of the creator (not the owner) of an artistic, dramatic or literary work or film to have their authorship acknowledged and to protect the integrity of the work or film from material editing or alteration.
mortgage	A charge over real property (land) or personal property (goods) as security for the repayment of money borrowed. The creditor to whom the mortgage is made is the mortgagee, the debtor who makes it is the mortgagor. A mortgage over land should be registered to protect the mortgagee’s interest.
negotiate	To communicate on a matter of disagreement between two parties, with a view to first listen to the other party’s perspective and to then attempt to arrive at a resolution by consensus.
nominal damages	Damages of a small amount ordered where a contract has been breached or a right has been affected, but no material damage results.
nominee	A person acting as a buyer on behalf of someone else. Usually an agent. When dealing with a nominee, it is important to know the scope of their authority.
notice of custodial interest	A notice attached to a particular thing to indicate that the thing (be it an artwork, object, music, film etc) embodies traditional ritual knowledge of a particular indigenous community, that permission of the custodians of that knowledge has been sought and given for specific uses and alerting others that the custodians should be contacted for any other uses of the thing. It is important when an agreement deals with anything that might contain indigenous objects, knowledge, culture, language or works.
novation	Substitute or transfer a new obligation for an old obligation, the effect of which is to cancel the old obligation and replace it with the novated obligation. For example, if a person pays a debt owed by a third party to a creditor, the creditor will novate the debt to the party who pays – the paying party is substituted for the creditor.
oath	A pledge that statements made are true which is made with one’s hand on the bible. Witnesses in court are required to take an oath (or make an affirmation) before giving evidence.

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offer	An explicit proposal to contract which, if accepted and accompanied by consideration or an agreed act of part performance, completes the contract and binds both the person that made the offer and the person accepting the offer to the terms of the contract.
ombudsman	A public official appointed to investigate citizens' complaints against the administrative agencies of government, or against members of a particular profession.
option	An agreement, often for consideration, which confers the right on a party for the purchase or sale of something within a stipulated time, in accordance with the terms of the agreement. For example, a right by a tenant to take up a further lease of premises, usually under conditions outlined in the original lease.
order	A formal written direction given by the court, which is enforceable against the party to whom it is directed.
parties	People, organisations or corporations named in an agreement or involved in a court case.
partnership	A business organisation in which two or more persons (but not more than 50) carry on a business together. Partners are each jointly and severally liable for all the debts of the enterprise, but they also share the profits exclusively.
patent	A formal right which may be registered in respect of a device, substance, method or process, which is new, inventive and not obvious. Registration of a patent confers a monopoly right on the patent owner for a certain number of years in the territory where the patent is registered.
payee	Person to whom payment is addressed or made.
payor	Person making the payment.
petition for bankruptcy	Formal action filed in Court by either a debtor or a creditor to file for bankruptcy.
power of attorney	A formal written legal document by which one person (the donor) gives another (the donee) power to represent them or act in their place for certain purposes. May be subject to restrictions and must be registered to allow for the attorney to deal with the donor's land assets (real property).
precedent	A template used as a guide to preparing a similar type of agreement. It can also refer to a prior court decision that is authority for a particular legal position or argument.
privity of contract	A principle that restricts contractual rights and obligations to the immediate parties to a contract. The effect of this is that, usually, a contract that purports to impose an obligation or a benefit on a person who is not a party to that contract, is not enforceable by or against that party.
promissory note	An unconditional, written and signed promise to pay a certain amount of money, on demand or at a certain defined date in the future.
pro rata	To divide in proportion to a certain or interest or share.
proprietor	Owner

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prospectus	A document in which a corporation sets out the material details of a share or bond issue and inviting the public to invest by purchasing these financial instruments. It is a legal requirement that companies that wish to raise money from members of the public must have an ASIC approved and registered prospectus.
proxy	Usually, a right to vote which is signed-over to an agent. Proxies are used frequently at annual meetings of corporations where the right to exercise a vote is proxied from the shareholder to the agent, who attends and votes on their behalf in accordance with their direction.
public officer	Person appointed to act on behalf of an incorporated association in its public dealings.
quantum	Amount or extent.
quorum	The number of people who must be present at a meeting before business can be conducted. Without a quorum, decisions are invalid. The number of people required to make a quorum is determined by the organisation's constitution.
real property	Land
recitals	The introductory section in an agreement where the parties outline the background matters that are relevant to their entering into the agreement. It is usually not a legally binding part of the agreement, but may be considered by a Court when interpreting the agreement in looking to determine the parties intentions.
receivership	An arrangement whereby a company is placed under the control of a "receiver", who is appointed to investigate and manage its affairs. Receivers are usually appointed by lenders to companies who secure their loans with documents that entitled them to appoint a receiver in the event of a default. The receiver usually has the right to take complete control of the company.
redemption to recover	When a borrower (mortgagor) pays back its loan, it has the right to redeem its interest in the property that was mortgaged from the lender (mortgagee), so that the property becomes unencumbered.
reference rate	A standard interest rate against which the rates for individual credit contracts may be calculated. In credit contracts the reference rate is often expressed to be the 90 day Bank Bill rate.
regulations	Laws which are not made by Parliament, but by authorised bodies to whom the power to make law is delegated in legislation.
remedy	Redress, make up for a wrong, usually by way of compensation. The right(s) available to a party to an agreement should the other party breach the agreement.
repeal	Cancellation of a statute or part of a statute or act.
representations	Statements or promises made to the other person as a fact. Representations are often made by one party to entice the other party to enter into an agreement.
rescind	To cancel a contract and place the parties in the same position they would have been in had there been no contract.

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restitution	Giving back what has been provided (under a contract), stolen, or seized to pay a debt.
retainer	A contract between a lawyer and his/her client, wherein the lawyer agrees to represent and provide legal advice to the client, in exchange for money. May also represent a regular periodic payment for on-going professional services.
revocation	Cancelling the effect of a previous act.
right	Entitlements made available by law or arising pursuant to an agreement.
schedule	Usually a list or table accompanying a contract, which sets out information not contained in the body of the main contract.
secured creditor	A creditor who holds a formal mortgage, charge or lien on the property of the debtor such that they have a priority over other creditors.
severability	In relation to an agreement, this refers to whether a part of the agreement can be removed (severed) from the agreement because it is unlawful or unclear, without invalidating the whole agreement. A severability clause is often included in an agreement to indicate the intention of the parties that, in the event of a dispute, if a Court finds a particular clause is invalid, it can be removed and the rest of the agreement given effect to.
sequestration order	In bankruptcy, a Court order that property be seized to satisfy a debt.
settlor	The person who formally creates a trust by donating property to be managed and administered by a trustee, but from which all profits must go to a beneficiary of the trust.
share	A portion of a company bought in exchange for a certificate, the certificate constituting proof of share ownership. Persons owning shares in a company are called shareholders. Shareholders are the owners of the companies assets and are entitled to share in its profits, proportionate to their shareholding and subject to any restrictions which might be imposed on those shares as set out in the companies constitution.
shareholder agreement	A contract between the shareholders of the company and the company itself, in which the relationship of the shareholders is governed. The shareholder agreement will typically restrict transfer of shares, determine how profits are to be distributed, set out dispute resolution provisions and prescribe what to do if a shareholder dies. Shareholder agreements often contain restraint of trade and confidentiality provisions.
sheriff	An officer of the Court responsible primarily for enforcement of court orders.
silent partner	A person who invests in a company or partnership but does not take part in administering or directing the organisation. Usually, he or she will be restricted to sharing in the profits or losses of the business.
Sole trader	A person who conducts business on their own account, with or without employees. They are responsible for all the debts of their business and may have to mortgage or sell their personal assets to pay the debts of their business.

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solvent	Able to pay debts when they are due.
specific performance	A Court ordered equitable remedy, which requires a party to observe their contractual obligations.
stamp duty	A state tax on the transfer of ownership of assets or property, and on leases of property.
status quo	The existing situation.
statutory declaration	Not connected with litigation, a written statement of facts which the person making it signs and solemnly declares to be true before a person authorised to take declarations.
subpoena	An order of a court which requires a person to produce documents to the court or to be present at a certain time and place.
subrogation	To be placed in the position of another. For example when you pay off someone's debt you acquire, by subrogation, the rights they had that relate to that debt.
sue	To take legal action.
sunset clause	A legal clause that sets out a final date for an event to occur. A party's failure to fulfil an obligation by a particular date may lead to termination of the contract.
tax invoice	A document generally issued by the supplier. It shows the price of a supply, indicating whether it includes GST and, if so, must show the amount of GST. It must also show other information, including the ABN of the supplier. Tax payers must have a tax invoice before they can claim an input tax credit on their activity statement (except for purchases of \$50 or less).
term	The period of time that an agreement operates for.
territory	The geographical area that an agreement relates to.
third party	A person or other legal entity that is not a party to the agreement.
time is of the essence	This expression means that the time(s) specified in the contract are critical to the agreement. If one party does not comply with the timing requirements of the contract where time is expressed to be "of the essence", then the other party may terminate the agreement and sue for damages for the breach.
trade mark	Is a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these, which is used to distinguish goods and services of one trader from those of another. If registered as a trademark, it gives the owner a monopoly to use that mark in the class and territory it is registered.
trust	An arrangement where property given by a person called the donor or settlor, to a trustee, for the benefit of another person (the beneficiary or donee). The trustee manages and administers the property, which may include a business. While legal ownership vests in the trustee and the effective ownership lies with the beneficiary(s) and all the profits are held for the benefit or the beneficiary(s). Commonly used for asset protection and lawful tax planning activities.

Glossary of legal terms

trustee	The person who holds property rights for the benefit of another through the legal mechanism of the trust. A trustee usually has full management and administration rights over the property but these rights must always be exercised to the full advantage of the beneficiary. All profits from the property go to the beneficiary although the trustee is entitled to reimbursement for administrative costs and an indemnity out of the trust assets for any losses.
trust account	A secure bank account where a third party (often lawyers and real estate agents) deposits money to be held on behalf of other people, subject to strict accounting rules.
trust deed	A document which sets out the rights and obligations of the trustee and beneficiaries of a trust.
unconscionable conduct	Action that takes unfair advantage of another party, in a contract or transaction.
undertake	To promise to do or refrain from doing an act. An undertaking set out in a contract is an enforceable obligation.
undue influence	Actions that take unfair or improper advantage of the weakness of another party to induce them agree to something.
unjust enrichment	A concept recognised by Courts as an equitable remedy, whereby a party can seek reimbursement from another who has benefitted from the use of their property or actions without legal justification or appropriate compensation. For example, if a lender contracts to lend money to a party who takes those funds and gifts them to a third party, then fails to repay the loan. The lender may have an action against the party who received the gift, in unjust enrichment.
unliquidated	Undetermined, unascertained, e.g. when damages are left to a jury or an expert to determine.
unsecured loan	A loan that is not supported by any collateral or security.
valid	Legally binding or effective.
variation	A variation clause in a contract sets out how changes can be made to an agreement after it has been signed. Usually it requires that any changes to an agreement must be in writing and signed by all parties.
void	Of no legal effect.
voidable	The law distinguishes between contracts which are void and those which are voidable. A contract may be void because it is uncertain or it was entered into for an illegal purpose. In such a case, neither party may enforce the contract. If a contract is voidable, it may be voidable at the option of the innocent party affected by the matter giving rise to the defect.

Glossary of legal terms

waiver	A waiver clause in a contract deals with the assumption that a party that does not act quickly on another party's breach, by enforcing the agreement at that time, gives up its rights to seek compliance with the terms of the agreement in the future. Usually, a waiver clause in a contract will allow an innocent party to proceed for a period following the breach and "reserve their right" to take action at a later date.
warranty	An assurance or representation, forming part of a contract where one party promises that a certain fact is true. A warranty may be express or implied. A warranty is often coupled with an indemnity to protect the party relying on it from any consequences that arise by virtue of the warranty being breached.
without prejudice	A statement (including an offer to settle a dispute) that is not intended to affect the legal rights that either party may have. For example, if one party proposes a solution to a dispute in a letter to the other party, and says that the offer is "without prejudice", it means that the offer cannot be relied on as evidence in those proceedings and cannot be taken to be an admission or concession that reflects on the merits of the underlying dispute.

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