

Glossary of Legal Terms

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Action, personal: action brought to enforce an obligation made by the defendant's contract. Personal actions are brought to recover debt or damages.

Action, real: action brought for recovery of land

Affidavit: statement or declaration of facts written and sworn to or affirmed before an officer having authority to administer an oath.

Agard: an award.

Alias writ: second writ issued in a case after the original writ had been issued and had proved ineffectual.

Allow: to approve, permit, grant. To sanction, either directly or indirectly.

Appeal: removal of a case from a lower court to a higher court for the purpose of correcting or reversing the lower court's decision. It has a common law origin and is a continuation of the original suit.

Apprentice: person, usually a minor, bound by law (usually by an indenture) to a master, to learn from him his trade, business, or art and to serve him during the time of his apprenticeship.

Arraign: to bring a prisoner to the bar of the court to answer the matter charged upon him in the indictment.

Arraignment: procedure in which the accused is brought before court to plead to the criminal charge in the indictment. The charge is read and the accused may plead "guilty" or "not guilty."

Arrest: to apprehend or detain a person to answer an alleged or suspected crime.

Arrest of judgment: stopping judgment or refusing to render judgment after the verdict because of a matter on the record that would render the judgment, if given, reversible or in error.

Arson: willful and malicious burning of the house of another.

Assault: an attempt or threat to use force to injure the person of another.

Assumpsit: promise assumed or undertaken to perform some act or pay something to another. It may be in writing or oral but is not under seal.

Attachment: process beginning with a writ commanding the sheriff to seize the defendant or his property or effects as security for the satisfaction of judgment the plaintiff may recover. It is used against absconding, concealed or fraudulent debtors.

Audita querela: writ in an action brought by a judgment defendant for relief from the consequences of the judgment.

A vinculo matrimonii: "from the bond of matrimony." A type of divorce which completely dissolves the marriage contract.

Bail: used as a verb, to obtain the release from legal custody of someone, by undertaking that the person appears at the time and place specified, and submits himself to the jurisdiction and judgment of the court.

Bail: used as a noun, the surety or sureties who obtain the release of a person from legal custody by becoming responsible for the defendant's appearance at court.

Bail piece: formal entry of recognizance or special bail in civil actions, signed before the proper officer and filed in the court where the action is pending. It also contains a clause stating that upon performance of a certain condition the obligation shall be void.

Bailee: one to whom goods are delivered in trust for another.

Banc: full bench, full court.

Battery: unlawful use of force (physical violence) to injure another.

Bench warrant: process issued by the court for the attachment or arrest of a person either in a case of contempt or where an indictment was found, or to bring in a witness who did not obey a subpoena.

Bill of costs: itemized, certified statement of amount of costs in a case.

Bill of indictment: formal, written document accusing those named of having committed a felony or misdemeanor, put before the grand jury for their action upon it. If the grand jury decided a trial was necessary, they indorsed on it "a true bill," or if not, "not a true bill" or "not found."

Billa vera: "a true bill." Indorsement made on a bill of indictment by a grand jury when they found it sufficiently sustained by evidence.

Bond: contract under seal to pay a certain sum of money, whereby the maker or obligor promises and binds himself, his administrators, executors, and heirs to pay the sum. It also contains a clause stating that upon performance of a certain condition the obligation shall be void.

Burglary: earlier statutes defined burglary as breaking and entering the house of another at night with intent to commit a felony, whether or not the felony was committed. Modern statutes regarding this crime are less restrictive. For example, breaking is not required, and entry may occur at any time in all types of buildings. A person is guilty of burglary if he enters a building with intent to commit a crime unless the premises at the time are open to the public or if he is permitted to enter.

Capias ad respondendum (capias): writ commanding the sheriff to take and safely keep the defendant, so that he may be brought before the court on a certain day to answer the plaintiff in the action.

Capias ad satisficiendum (ca. sa.): writ of execution issued after recovering judgment. It commands the sheriff to take and safely keep the person named so that he may be brought before the court on a certain day to satisfy the damages or debt recovered by the judgment.

Capias sur indictment (capias): writ commanding the sheriff to take the defendant into custody, so that he may be brought before the court on a certain day to answer the charges brought against him.

Cepi corpus: "I have taken the body," i.e., arrested the defendant. A response written on a writ of capias by the arresting officer.

Certiorari: writ issued by a higher court instructing a lower court to send up to the former all records of a case, certifying their correctness and completeness for review or trial.

Cesset execution: a stay of execution.

Chancery: equity; a court of equity. (See also equity.)

Charge: an accusation in legal form for the apprehension of an offender for trial before a court of proper jurisdiction. It is the first step in the prosecution of a crime.

Chattels: personal property.

Citation: writ issued by a court commanding a person to appear at a specific time and to do what is required, or to show cause why he should not.

Common law: principles and rules of action that derive their authority from usages and customs, or from the judgments and decrees of the courts recognizing and enforcing the usages and customs.

Common recovery: in conveyance of land, a feigned or fictitious suit brought to remove impediments limiting the right of the possessor to transfer title. The suit was most commonly used to remove an entail.

Condemnation: process in which private property is taken for public use without the owner's consent, upon the award and payment of just compensation.

Contempt: there are two types: 1. Direct or criminal contempt is committed in the presence of court, obstructing or interrupting proceedings. A fine or imprisonment is imposed. 2. Constructive (also called indirect or consequential)-arises from matters outside the court which obstruct the administration of justice such as failure or refusal of a party to obey a court order or decree.

Coram: "before," "in the presence of."

Counts: several parts of an indictment, each charging a distinct offense.

Cryer (Crier): court officer who makes proclamations. Principal duties include announcing opening and adjournment of court, transaction of special matters, admission of persons to the bar, swearing of witnesses, calling names of jurors, witnesses and parties, and other proclamations of a public nature as ordered by the judges.

Curia advisari vult (cur. adv. vult. or c.a.v.): the court will advise; the court will consider.

De bene esse: conditionally. A phrase used for proceedings which are provisional and could change at a later date.

Debitum sine brevi (d.s.b.): also known as debet sans breve, a debt without writ. A debt by confession of judgement without suit.

Declaration: see Narrative.

Deed poll: deed made by one party only (e.g., a sheriff's deed), as opposed to a deed executed between two or more parties.

Defalk: to set off one claim from another; deducting a debt due to one from a debt owed to another.

Demurrer: objection made by one party to his opponent's pleading.

Deposition: written evidence taken from a witness in response to a series of written questions, not in open court, but in pursuance of a commission issued by the court. Also, a statement made orally on oath or affirmation, out of court, before a representative of the court.

Discharge: in criminal practice, the act by which a confined person held on an accusation of a crime or misdemeanor is released from custody. The writing with the order for release is also called a discharge.

Distain: to take as a pledge property of another and keep it until an obligation is performed or until the property is replevied by the sheriff.

Distringas: writ directing the sheriff to distrain the goods or chattels of a defendant in order to compel his appearance in court.

Dorrer: portion of a husband's real estate granted by law to his widow for life for her support and the raising of her children.

Easement: right to use the land of another without compensation.

Ejectment: action both for the recovery of the possession of land and for damages for the unlawful detention of its possession.

Embezzlement: type of larceny. The fraudulent appropriation of the property or money of another for one's own use.

Entail: action limiting inheritance by preventing sale of the land and establishing a succession of owners.

Eo die: "on that day," "on the same day."

Equity: system of jurisprudence administered by certain courts that are empowered to decree impartial and equal justice as between two persons whose rights or claims are in conflict. In an equity or chancery case there is no trial by jury and a judge can make decisions that oppose accepted common law precedents.

Error, writ of: writ issued by a higher court to a lower one, ordering that all records be sent up regarding a case in which the defendant disagrees with the judgment of the lower court and believes it to be in error.

Escheat: property reverting to the state when there is no individual competent to inherit.

Estrepelement, writ of: writ to prevent waste which occurs by stripping the land to the injury of the party to whom the land will revert. It is usually issued in ejectment cases.

Evidence: witnesses, records, documents, and other particular objects legally presented at a trial for the purpose of producing belief in the minds of the jury.

Execution: final stage of suit. It is a writ issued to the sheriff or a constable requiring him to execute the court's judgment. Includes fieri facias, capias ad satisfaciendum, venditioni exponas, liberari facias, habere facias possessionem, and levavi facias.

Ex parte: for one party only.

Evidence: witnesses, records, documents, and other particular objects legally presented at a trial for the purpose of producing belief in the minds of the jury.

Fee simple: estate in which the owner is entitled to the whole property with unconditional power of disposition during his life.

Feigned issue: issue made up by the consent of parties and sent to court for the purpose of obtaining the jury's verdict on a disputed matter of fact in which the court does not have jurisdiction or is unwilling to decide. It rests upon a supposititious wager between the parties.

Felony: term used to designate a crime (such as murder) that is more grave than one labelled a misdemeanor.

Fictitious action: action brought to obtain the court's opinion on a point of law, not for settlement of any controversy between the parties.

Fieri facias (fi. fa.): writ of execution directing the sheriff to levy and obtain the amount of a judgment from the property of a judgment debtor.

Forfeiture of a bond: failure to perform the condition on which the obligor was to be excused from the penalty in the bond.

Fraud: intentional, deceitful practice, resorted to in order to deprive another of his right, or to do injury.

Freeholder: person whose possession of an estate in land or other real property is of indeterminate duration.

Freeman: person in possession of a specific amount of land or other assets and residing in the province or state with the right to elect or be elected as a representative in government.

Garnishee: person who has money or property in his possession belonging to a defendant, or who owes the defendant a debt. The money, property or debt is attached in his hands with notice not to pay or deliver it over until the end of the suit.

Garnishment: warning to a person (garnishee) who has money or property in his possession belonging to a defendant, or who owes the defendant a debt. The money, property or debt is attached in the garnishee's hands, with notice not to pay or deliver it over until the end of the case.

Grand jury: jury of inquiry summoned and returned by the sheriff to each session of the court of quarter sessions. The jurors are first sworn and instructed by the court. Their duty is to receive complaints and accusations in criminal cases, hear evidence adduced on the part of the state, and find bills of indictment in cases where they are satisfied a trial ought to be held.

Habeas corpus: writ for the purpose of bringing a party before a court or a judge.

Habere facias possessionem (habere facias, nab. fa.): writ directing the sheriff to place land recovered in an ejectment case into the hands of the successful party in the case.

Hereditaments: goods, lands, and other items capable of being inherited.

Homine replegiando: writ to remove a person from the custody of a private individual in the same manner as replevin of goods.

Ignoramus: "we are ignorant; we ignore it." Written by the grand jury on bills of indictment when, after hearing evidence, they thought the accusations against the prisoner were groundless, suggesting that though the facts could be true, the truth did not appear to them.

Impanel: to present to the court a formal list of the jurors (the panel of jurors) who have been selected for the trial of a particular case.

Imparl: time given to either party in a suit to answer the pleading of the other. It amounts to a continuance of the action.

Indemnify: to secure against loss or damage; to give security for reimbursement of a person in case of anticipated loss.

Indentured servant: a servant who, in return for the payment of certain debts (usually cost of passage to the colonies), agreed to serve for a given period (usually four to seven years) the person who paid the debts. At the end of the period of servitude, the individual not only received his or her freedom but usually also received freedom dues, customarily two sets of clothing (one new), and a few tools or the equivalent in money.

Indictment: accusation in writing found and presented by a grand jury to the court, charging that the person named has done some act, or has been guilty of some omission, which by law, is a public offense, punishable on indictment.

In vacation: time between court terms.

Inquiry, writ of: writ directing the sheriff, by a jury of twelve men, to inquire into the amount of a plaintiff's demand and assess his damages after the plaintiff has obtained a judgment by default on an undetermined claim.

Inquisition: court-ordered valuation of real estate in debt or damage cases. Twelve men summoned by the sheriff determine whether the rents and profits of the estate will be sufficient within seven years to satisfy judgment along with interest and costs of suit.

Judgment-proof: term describing a person against whom judgments for money recoveries are of no effect such as insolvents or those without sufficient property within a court's jurisdiction to satisfy judgment.

Jury: given number of men (usually twelve) selected by law and sworn (or affirmed) to inquire into certain matters of fact and declare the truth upon evidence put before them.

Larceny: unlawful taking and removing personal goods from another.

Larceny by bailee: larceny by one temporarily holding the personal property of another. The bailee fraudulently takes the property for his own or another's use.

Lay out: duty performed by a jury of view determining the courses and distances of a road.

Levari facias (lev. fa.): writ of execution directing the sheriff to take mortgaged premises on which the defendant had defaulted payment, expose them to sale, and pay the sum recovered by the judgment to the plaintiff.

Levy: to raise money for which an execution has been issued.

Liberari facias (lib. fa.): writ of execution issued by the court to the sheriff in cases where a jury of inquiry found that land of the defendant could satisfy debt in a judgment within seven years. It ordered the sheriff to deliver the defendant's land to the plaintiff for that period or until the debt was paid.

Lien: claim or hold that one person has upon the property of another as a security for a debt or charge.

Mandamus: "we command." Writ issued from a court of superior jurisdiction, directed to a private or municipal corporation or an inferior court, commanding the performance of a specified act, or directing the restoration to the complainant to rights of which he was illegally deprived.

Messuage: dwelling house. Term used in wills, deeds, and other court documents.

Misdemeanor: indictable criminal offense which is less serious than a felony, such as cruelty to animals, disruption of religious services, or fornication and bastardy.

Mittimus: precept issued from a court or justice, commanding the sheriff to convey to the prison the person named and commanding the jailer to receive and keep the prisoner until he is delivered to court by due course of law.

Motion: application to the court by the parties or their counsel to obtain a rule or order that is necessary for the progress of the case, or that is unrelated to the entire proceedings.

Narrative: first of formal statements of facts and circumstances of the plaintiff's cause of action. Written by the plaintiff's attorney, it is also known as a declaration.

Nihil dicit: he says nothing. Judgment against a defendant who does not plead or answer the plaintiff's narrative within the limited time allowed.

Nil debit: he owes nothing. A plea in which the defendant disputes the facts set forth in a narrative on actions of debt for simple contract.

Nisi: unless. Judgment which will conclude the defendant's rights unless within the prescribed time he shows cause to set it aside or successfully appeals.

Nisi Prius: a court held for the trial of issues of fact before a jury and one presiding judge.

Nolle prosequi (nol. pros.): formal entry on record by the prosecuting officer that he "will no longer prosecute" the case, either as to some of the counts, some of the defendants, or altogether.

Nolo contendere: "I will not contest it." Name of a plea in a criminal action with the same legal effect as a guilty plea.

Non assumpsit: defendant's plea that he did not undertake or promise as alleged.

Non compos mentis: general term for mental derangement.

Non culpabilis (non. cul.): not guilty.

Non est factum: plea by the defendant denying the execution of the instrument sued upon in point of fact, but not in point of law.

Non est inventus (N.E.I.): he is not found. Inscription on a writ by the sheriff if he cannot find the defendant.

Non prosequitur (non pros.): judgment in favor of a defendant when a plaintiff does not take steps in an action at law during the time prescribed by the court for that purpose.

Non sum informatus: I am not informed; I have not been instructed. Type of judgment by default entered when a defendant's attorney announces that he has not been informed of the answer to be given by him.

Nota bene (n.b.): "mark well," take notice.

Nulla bona (n.a.): no goods. A return made by the sheriff on a writ of execution when he has not found any goods belonging to the defendant on which he could levy.

Obligee: person in favor of whom an obligation is contracted (plaintiff).

Obligor: person engaged to perform some obligation (defendant).

Original writ: writ used to begin personal actions. Includes summons, capias, replevin, attachments (domestic and foreign), and scire facias.

Oyer: hearing.

Oyer and terminer: court that is empowered to inquire, hear, and determine all felony and treason cases.

Paper book: copies of proceedings with notes of points to be argued, given to the judges before the argument. It is used for appeal or error in a criminal case.

Parol contracts: all contracts which are not contracts of record under seal.

Parole: conditional release with the condition that the prisoner must make good in order to receive an absolute discharge from the remainder of his sentence. If not, he will return to serve the remaining time.

Partition: dividing of lands held by joint tenants or tenants in common into distinct portions so that they may hold the land in severalty.

Perjury: false testimony under oath or affirmation given on a matter of fact, opinion, belief, or knowledge by a witness in a trial as part of his evidence.

Petit jury: ordinary jury of twelve men for the trial of a civil or criminal case.

Petition: written application to the court requesting that the court exercise judicial authority in the redress of a wrong, or to grant a favor, privilege, or license.

Plead: to make or deliver the defendant's formal answer to the indictment.

Pleading: formal allegations by the parties of their respective claims and defenses for the court's judgment.

Plene administrivit: plea by an executor or administrator of an estate that he has fully administered all the assets that have come to his hands, and that no assets remain out of which the plaintiff's claim could be satisfied.

Pluries: "often," "frequently." When original and alias writs have been issued and proved ineffectual, a third writ (pluries) may be issued. It has the same effect as the first two writs.

Praecipe (praecipe): written order, signed by the plaintiff's attorney and addressed to the prothonotary, requesting him to issue a particular writ.

Praecipe quod reddat: unit directing the defendant to restore the possession of land. It is used at the beginning of a common recovery suit.

Precept: written order from a court or justice of the peace, commanding a sheriff or constable to do an act within his powers.

Prerogative writ: writ issued by the court when proper cause is shown; includes writs of procedendo, mandamus, habeas corpus and certiorari.

Prefer: prosecute, try, bring before, proceed with.

Presentment: written notice taken by a grand jury of any offense, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government. It is signed by all grand jurors.

Procedendo: writ by which a case which was removed from an inferior to a superior court is sent down again to the same court to be proceeded with there. It is issued if it appears to the superior court that it was removed on insufficient grounds.

Prosecutor: person who, in the name of the government, proceeds against another for a crime. The prosecutor makes an affidavit charging a named person with committing an unlawful offense on which a warrant is issued or indictment or accusation based.

Process returnable: units returnable to a particular court ten. A list in a docket entry for a court term of all writs returnable to that court ten, i.e., a list of all writs compelling action on the part of the defendant in the court term named.

Prothonotary: clerk of the court of common pleas.

Recognizance: obligation of record entered into before a court or justice of the peace with the condition to perform a particular act such as appearing at court, keeping the peace, etc.

Rejoinder: defendant's second pleading; his answer to the plaintiff's reply (replication to his first plea).

Remonstrance: representation made to the court showing reasons against something proposed.

Replevin: personal action brought to recover possession of goods unlawfully taken. It is a redelivery to the owner of the pledge or item taken in distress.

Replevin, personal: action to remove a man from prison or from the custody of any private person. It took the place of the old writ de homine replegiando. As a means of inquiring into the legality of an imprisonment, it has been superseded by the writ of habeas corpus.

Return: sheriff's act of bringing back to the court a writ which he was required to serve or execute, with a brief account of his doings, the time and mode of service or execution, or his inability to accomplish it. It is also the indorsement made by the officer upon the writ, with a brief account of the above.

Right of way: there are several definitions: 1. right belonging to a party to pass over the land of another. This is an easement, and the grantee only has the right to a reasonable and usual enjoyment with the owner of the land retaining rights and benefits of ownership consistent with the easement. 2. strip of land upon which railroad companies build their road bed. When the term is used this way it refers to the land, not the right to pass over it.

Scire facias (sci. fa.): writ to revive a judgment or to have execution of the judgment.

Search warrant: written order from a justice directing a sheriff or constable to search a specific premise and seize any property that constitutes evidence of the commission of a crime, or property intended for use or used in committing a crime. This property is to be brought before the justice, along with the person occupying the premises, to be dealt with according to law.

Secundum regulum (sec. reg.): according to the rule; by rule.

Sentence: formal judgment pronounced by the court or judge upon the defendant after conviction in a criminal prosecution, awarding the punishment to be given.

Severally: apart from others, distinctly, separately.

Similiter: "likewise," "the like." Used either at the end of pleadings or by itself, expressing the acceptance of an issue of fact offered by the opposite party. Also called joinder in issue.

Solvit ad diem: he paid at the day. A plea in an action of debt on a bond, that the defendant paid the money on the day mentioned in the condition.

Statute: written law enacted by the legislative branch of government.

Striking a jury: selecting or nominating a jury of twelve out of the whole number returned as jurors on the panel. It is used in selecting a special jury.

Sub conditione: "upon condition."

Subpoena: order or writ to a person requiring his attendance at a specified time and place to testify as a witness.

Summons: writ which commands the sheriff to notify the defendant that an action has been commenced against him and requiring him to appear in court on a certain day to answer the complaint in the action.

Supersedeas: writ with a command to stay the proceedings at law.

Surety: person who binds himself for the payment of a sum of money, or for the performance of something else, for another.

Surety of the peace: type of preventive justice. Persons suspected of future misbehavior give full assurance to the public that the offense as is apprehended will not take place, and must find pledges or securities for keeping the peace or good behavior.

Talesman: person summoned to act as a juror from among the bystanders in the court.

Tarde venit: return made by the sheriff to a writ when it came to him too late to be executed before the return date.

Tenements: term signifying all that may be held permanently. It includes land, rent and other rights and interests concerning land.

Testatum: writ of execution directed to the sheriff in another county when the defendant and/or his goods are believed to be in that county, commanding that sheriff to execute the writ.

Testimony: evidence given by a competent witness under oath or affirmation. This is different from evidence obtained from writings and other sources.

Theft: fraudulent taking of personal property belonging to another from his possession without consent, with intent to deprive the owner of its value, and to confiscate it to the use of the person taking it.

Tipstaff: court-appointed officer who has duties such as waiting upon court when it is in session, preserving order, serving process, and guarding juries.

Tort: legal wrong committed upon a person or property.

Transcript: official copy of records pertaining to a case, sent up to a court of higher jurisdiction, such as in a writ of error or certiorari.

Traverse: to delay the trial of an indictment until a succeeding term or to deny or take issue upon an indictment.

Traverse jury: jury impaneled to try an action or prosecution.

Trespass: unlawful act committed with actual or implied violence, causing injury to person, property or rights of another.

Trespass on the case: commonly called “case,” an action to recover damages resulting to a party from the wrongful act of another, unaccompanied by direct or immediate force.

Trial by proviso: trial brought by the defendant when the plaintiff neglects to proceed to trial.

Trover: action on the case to recover the value of personal goods wrongfully converted by another for his own use.

Vacation: the act of removing a road from public use.

Venditioni exponas (ven. ex.): you expose to sale. Writ of execution requiring a sale to be made. It is directed to the sheriff after he has levied upon goods or lands under a fi. fa. and made return that they remain unsold for want of buyers.

Venire facias (venire, ven. fa.): writ directing sheriff to “cause to come” before the court on the day mentioned twelve men of the county to act as a jury for a trial.

View: inspection by a jury.

Viewers: persons appointed by the court to investigate certain matters or to examine a particular area (such as a proposed site for a new road) and to report the result of their inspection and opinion to the court.

Writ: order issued to the sheriff from a court of justice with its seal, in the name of the king, queen, or state, directing him to perform a specific action.

Yeoman: In England, a commoner; a man under the rank of gentleman. In colonial Pennsylvania the term usually implied a country man (though not necessarily a farmer) of respectable standing.