

APPENDIX VI

DEFINITIONS OF LATIN¹ WORDS USED IN THE *JLM**

Actus reus: Latin for “guilty act,” *actus reus* refers to a wrongful act or omission. This wrongful act or omission is the physical element of a crime. *Actus reus* is one of the necessary elements that must be proven before a court may find a defendant guilty of a criminal offense. *Actus reus* is the direct physical action taken to commit a crime. A physical action is usually defined as a “bodily movement whether voluntary or involuntary.” Criminal statutes generally require proof of both *actus reus* (the physical act) and *mens rea* (the mental state of the accused and his criminal intent).

Amicus curiae: Latin for “friend of the court,” an *amicus curiae* is someone who is not a party to the litigation, but who believes that the court’s decision may affect his interests. An *amicus curiae* may therefore offer information to assist a court in deciding a matter. This information is often provided in a legal opinion in the form of an *amicus* brief. The court has the discretion to decide whether or not to admit this information in the case before it.

Certiorari, Writ of (cert.): An order by an appellate (higher) court declaring that it will review the decision of a lower court on appeal. “*Certiorari* granted” means that the appellate court decided to approve a petition for *certiorari* and review the trial court’s decision. “*Certiorari* denied” means that the appellate court decided not to approve a petition for *certiorari* and will not review the lower court’s decision. Some courts, such as those in New York, simply call *certiorari* “leave to appeal.”

Coram nobis (writ of coram nobis): A writ of *coram nobis* is an order for a court to review its earlier decision in light of possible errors that were not obvious at the time the decision was made. These writs are usually used when no other remedy, such as direct appeal or habeas corpus, is available. An example of when a writ of *coram nobis* might be ordered is when an incarcerated person has already been convicted of a crime and completely served his prison sentence.

Coram non judge: Latin for “before one who is not a judge,” *coram non judge* is a legal term used to indicate a legal proceeding held without a judge, with improper venue, or without jurisdiction

Corpus delicti: Latin for the “body of evidence,” *corpus delicti* refers to the principle that there must be proof that a crime has taken place before a person can be convicted of that crime. For example, in a murder case, there must be an actual body of a victim or enough circumstantial evidence to prove the death of a victim beyond a reasonable doubt before a defendant may be convicted of murder.

¹ Latin phrases are italicized in legal writing. Therefore, if you submit any motions, briefs, complaints, etc. to the court, you should italicize any Latin phrases that you use.

* Words that are defined elsewhere in this Appendix are printed in italics.

De facto: Meaning “concerning fact,” *de facto* describes an action occurring in practice but that is not necessarily created by law. *De facto* is commonly used in contrast to *de jure*. When discussing a legal situation, *de jure* refers to what the law itself states, while *de facto* refers to what actually happens in practice when a law is followed.

De jure: This Latin expression is used to reference an action or regulation that is formally established by law. It is commonly used in contrast to *de facto*. When discussing a legal situation, *de jure* refers to what the law says, while *de facto* refers to what actually happens in practice when the law is followed.

De minimis: Meaning “of minimum importance,” *de minimis* describes things that are insignificant or small. If something is *de minimis*, the law and the courts ignore it for lack of importance.

De novo: A standard of review that a court uses for certain issues in a case on appeal. When a court reviews an issue with a *de novo* standard of review, it may decide the issue as if it were the court that heard the case for the first time. Therefore, a court reviewing a case with a *de novo* standard will not necessarily consider the findings of the lower court on a particular issue.

Dictum (plural: Dicta): This is a statement of a judge’s opinion discussing the meaning of a law related to the case, but not critical to the case’s outcome. *Dictum* generally extends beyond the issue before the court to decide. As *dictum* may be unrelated to the issue being decided, it is not law and is not binding on later courts. *Dictum* is not the legal basis for the judge’s decision on a litigated issue. Later judges can choose to follow the legal analysis found in *dictum*, but they do not have to. The plural form of *dictum* is “*dicta*.”

Ex post facto: This Latin phrase means “from a thing done afterward,” or after the fact. *Ex post facto* describes the situation in which a new law applies to acts committed in the past. The U.S. Constitution prohibits *ex post facto* criminal laws. This means that someone can only be punished under a law that was in effect at the time he committed an offense. His punishment cannot be increased if stricter laws are passed after he broke the law. While *ex post facto*, or retroactive, criminal laws are not allowed, *ex post facto* civil laws are sometimes allowed.

Ex parte: This Latin phrase means “from (by or for) one party.” An *ex parte* motion or petition is brought by one person or party in the absence of, and without representation or notification of, other parties. An *ex parte* judicial proceeding is where the opposing party has not received notice for the proceeding and is not present for the decision. The Fifth and Fourteenth Amendments of the U.S. Constitution limit the availability of *ex parte* orders. The Fifth and Fourteenth Amendments provide that a person shall not be deprived of his liberty or property without sufficient notice. Because of the absence of parties from *ex parte* proceedings, *ex parte* orders are usually temporary, like restraining orders. Any parties affected by the temporary *ex parte* order are given an opportunity to contest it before it is made into a permanent order.

Ex rel. (ex relatione): This Latin phrase means “by/on the relation of.” The government brings a lawsuit ex rel. if a private party (someone not acting as a government official) interested in the matter asks the government to bring suit and the government agrees. For example, if Smith asks the government to bring a lawsuit against Jones, the case would be written as “State ex rel. Smith v. Jones.”

Guardian ad litem: Meaning “guardian for the suit,” a guardian ad litem is a party appointed by a court to assist a minor or other incapable defendant or plaintiff in a particular legal matter. The guardian ad litem directs litigation in the best interests of the person that he assists in the suit, often in juvenile or domestic relations matters.

Habeas corpus (writ of habeas corpus): This Latin term refers to the form of relief that a court may grant in order to release an incarcerated person from unlawful imprisonment. The incarcerated person must prove that he is being held in violation of his rights, for instance because his trial was unfair due to ineffective assistance of counsel. The habeas writ can be sought in both state and federal courts. For more information on habeas corpus, see Chapters 13 and 21 of the *JLM*.

In forma pauperis: This Latin term means “like a poor person.” A court sometimes will allow someone without enough money in a lawsuit to proceed in forma pauperis and avoid paying all filing fees and other court costs. A criminal defendant who proceeds in forma pauperis will also usually have a defense lawyer appointed free of charge.

In absentia: Meaning “in the absence,” in absentia notes that the defendant is not physically present for trial. This term usually pertains to a defendant's right to be present in court proceedings in a criminal trial. U.S. courts have held that the Constitution protects a criminal defendant's right to appear in person as a matter of due process; however, there are certain exceptions to the rule, including the defendant's waiver of his right to be present by voluntarily leaving the trial after it has started.

Malum in se: An offense that is malum in se is one that is seen as wrong in and of itself, such as murder or theft. Although there are laws written prohibiting malum in se crimes, these laws simply codify the inherent moral wrongness of these acts. Malum in se offenses are different from malum prohibitum crimes, which are wrong only because they are prohibited by law and are not considered morally wrong in and of themselves.

Malum prohibitum: Malum prohibitum crimes are crimes that are wrong because they have been prohibited by law. These crimes can therefore vary from jurisdiction to jurisdiction depending on what the legislatures decide the law should be. An example of a malum prohibitum crime is speeding. Driving at 70 miles per hour is not a bad act by itself. It is only bad when the law has set a speed limit below 70 miles per hour, so that anyone exceeding the speed limit is breaking a law. As distinguished from malum in se crimes that are morally wrong, malum prohibitum crimes are wrong only because the law declares these acts to be illegal.

Modus operandi (M.O.) Meaning “method of operating,” this term is used to describe someone’s habits or the way a person works or functions. In a criminal context, modus operandi can be used to identify a culprit based on a characteristic pattern of methods used to commit repeated criminal acts.

Mens rea: Meaning “guilty mind,” mens rea is the mental state, or state of mind, when a criminal act is committed. Mens rea is one of the necessary elements of a crime in criminal law. Mens rea relates to the mental state of the accused, as compared with actus reus, which relates to the direct physical action used to commit a crime.

Nolle prosequi: A declaration made before or during trial declaring that the case against a defendant is being dropped. This can be made in a criminal case by the prosecutor, or in a civil lawsuit by the plaintiff. A nolle prosequi declaration may be made for many reasons, including because the charges against the defendant cannot be proven, because the prosecutor no longer thinks that the defendant is guilty, or because the defendant has died.

Nolo contendere: When a defendant pleads nolo contendere, he is stating “no contest,” meaning that he does not deny responsibility for the charges; however, he is not explicitly admitting guilt either. A criminal defendant’s nolo contendere plea differs from a guilty plea because it cannot be used against him in another cause of action. Because of this, some defendants plead nolo contendere to avoid civil suits that may arise from a criminal conviction.

Per curiam: A court decision made per curiam is one that refers to a decision handed down by the court as a whole acting collectively and anonymously, without identifying any individual judge as the author.

Per se: This Latin phrase means “by/in itself.” For example, in considering a habeas petition, a court may consider that a violation was “per se prejudicial” and not require a party to show further evidence to prove the violation was prejudicial (harmful). If a violation is “per se prejudicial,” it is by its nature harmful to the party. The court will automatically assume that he was prejudiced.

Prima facie case: The facts sufficient to allow the judge or jury to find in a party’s favor if everything he said was undisputed by the other side.

Pro se: This Latin phrase means “for oneself.” Someone who appears in court pro se is representing himself without the services of a lawyer.

Res ipsa loquitur: This Latin phrase means “the thing speaks for itself.” In tort claims of negligence, res ipsa loquitur describes certain situations in which it can be assumed (without having to be proven) that an individual’s injury was caused by the negligent action of another party because the accident was the sort that would not have occurred unless someone were negligent.

Res judicata: Meaning “a matter already judged,” res judicata is a legal concept that requires that issues cannot be re-litigated after a final judgment is made by a court. This notion may also be called “collateral estoppel” or “issue preclusion.”

Respondeat superior: Most commonly used in tort claims, respondeat superior is a legal doctrine which states that an employer or other principal can be held to be legally responsible for the wrongful acts of his employee or agent if those acts occur within the scope of the employment or agency. This rule may also be called the “master-servant rule” or the “rule of supervisor liability.”

Stare decisis: Meaning “to stand by things decided,” stare decisis is the basic legal principle that a court should follow the rules, or ‘precedent,’ established by higher courts or by earlier courts. Stare decisis ensures that the law remains predictable and constant in its application by different judges or courts. Courts cite to stare decisis when a particular issue has been previously brought to the court and a ruling has already been made on that issue. While courts will generally adhere to the previous ruling, this is not universally true.

Sua sponte: Meaning “of one’s own will,” this usually refers to an order made by the judge’s own will without a request by any party to the case. An action is subject to dismissal on a court’s own motion where grounds for dismissal exist. A trial court has the power to dismiss such an action sua sponte. An example of a situation where a trial court could dismiss an action sua sponte would be where there was a failure to comply with the rules of civil procedure or where the judge has determined that his court does not have jurisdiction over the case at issue.

Sub judice: Meaning “under judgment,” sub judice is a term used to indicate that a particular case or matter is before the court and is under judicial consideration.

Subpoena: A command that a person must appear before the court, subject to a penalty if he does not appear.

Subpoena duces tecum: Meaning “bring with you under penalty of punishment,” a subpoena duces tecum is an order to compel the production of certain documents or evidence for a case. A subpoena duces tecum is not limited to the parties to a lawsuit. It may also be used to demand documents or evidence from other persons or entities. It may be used to force a witness to appear before the court and to bring specified items to the court as evidence.