

APPENDIX VI

DEFINITIONS OF LATIN WORDS USED IN THE *JLM*¹

Actus reus: Latin for “guilty act,” *actus reus* refers to an act or omission (a failure to act) that is wrongful. This wrongful act or omission is the direct, physical action that someone takes to commit a crime. A physical action is usually defined as a “bodily movement whether voluntary or involuntary.” *Actus reus* is one of the necessary elements that must be proven before a court finds someone guilty of a criminal offense. Criminal statutes generally require proof of both (1) *actus reus* (the physical act) and (2) *mens rea* (the mental state of the accused and their criminal intent).

Amicus curia(e): Latin for “friend of the court,” an *amicus curia* (plural: *amicus curiae*) is someone who is not a party to the lawsuit but believes that the court’s decision may affect their interests. An *amicus curia* may 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 authority to decide whether or not to admit the brief.

Certiorari (writ of certiorari): A writ of *certiorari* (or “*cert.*” for short) is an order by an appellate (higher) court declaring their decision to review a 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 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 State, call *certiorari* “leave to appeal.”

Coram nobis (writ of coram nobis): A writ of *coram nobis* is a motion submitted by a party in a lawsuit 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 served their prison sentence.

Coram non judice: Latin for “before one who is not a judge,” *coram non judice* 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 someone may be convicted of murder.

De facto: Meaning “concerning fact,” *de facto* describes an action occurring in practice but that is not necessarily created by law (*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 explicitly says, whereas *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.

¹ Latin phrases are italicized in legal writing. If you submit any motions, briefs, complaints, or other documents to the court, you should italicize any Latin phrases that you use.

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 hearing 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*)**: *Dicta* refers to a judge's statements, remarks, or observations made in the opinion of a case that are not critical to the case's outcome. A *dictum* generally extends beyond the issue that is in front of the court to decide. Because *dicta* may be unrelated to the issue being decided, they are not law and are not binding on later courts. A *dictum* is not the legal basis for the judge's decision on a litigated issue. Later judges can choose whether or not to follow the legal analysis found in *dicta*.

Ex post facto: This Latin phrase means "from a thing done afterward," or after-the-fact. *Ex post facto* describes a situation where a new law applies to acts committed in the past. The U.S. Constitution prohibits *ex post facto* criminal laws. This means that a person can only be punished under a law that was in effect at the time they committed the offense. Someone's punishment cannot be increased if stricter laws are passed after they 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 provide that a person shall not be deprived of their liberty or property without sufficient notice. Because of the absence of all parties from *ex parte* proceedings, *ex parte* orders are usually temporary, such as temporary 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 party in a legal matter. The guardian *ad litem* directs litigation in the best interests of the person they are assisting 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 they are being held in violation of their rights, for instance because their 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 (or some) 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* describes someone who 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—for example, a defendant can waive the right to be present by voluntarily leaving the trial after it starts.

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. When *malum in se* offenses are written into law, the laws simply codify the inherent moral wrongness of the offenses. *Malum in se* differs from *malum prohibitum*, which refers to offenses that are wrong only because they are prohibited by law and not considered morally wrong in and of themselves.

Malum prohibitum: *Malum prohibitum* offenses are wrong because they are prohibited by law. Therefore, these crimes can vary across jurisdictions depending on what the legislatures decide the law should be. An example of a *malum prohibitum* offense 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. Compared to *malum in se* crimes that are inherently morally wrong, *malum prohibitum* crimes are wrong only because the law says the acts are 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 suspect based on a characteristic pattern of methods used to commit repeated crimes.

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 someone takes 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 the defendant is guilty, or because the defendant has died.

Nolo contendere: When someone pleads *nolo contendere*, they plead “no contest,” meaning they do not deny responsibility for the charges. However, the defendant is not explicitly admitting guilt either. A criminal defendant’s *nolo contendere* plea differs from a guilty plea because it cannot be used against them 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 decided 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. When such a violation occurs, the court will automatically assume that the party was prejudiced.

Prima facie: This Latin phrase means “on the first appearance.” *Prima facie* describes a fact or presumption that is sufficient to be regarded as true, unless otherwise disproved.

Pro se: This Latin phrase means “for oneself.” A party 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 where something can be assumed without having to be proven—for example, that someone’s injury was caused by someone else’s negligence 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 that states that an employer or other principal can be held to be legally responsible for the wrongful acts of their employee or agent if those acts occur within the scope of their 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 and 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 rulings made by higher courts and previous courts, this is not universally true.

Sua sponte: Meaning “of one’s own will,” this usually refers to an order made by a judge in a case without a request from any party. For example, 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 an action *sua sponte*. A situation where a trial court could dismiss an action *sua sponte* could be where there was a failure to comply with the rules of civil procedure or where the judge has determined their court does not have jurisdiction over the case.

Sub judice: Meaning “under judgment,” *sub judice* is a term used to indicate that a particular case or matter is before the court and 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 also be used to demand documents or evidence from other persons or entities, such as witnesses or family members of parties.