

**CIVIL TERMINOLOGY FOR UTAH INTERPRETERS**

**Table of Contents**

Contracts (Contratos/Convenios) ..... 2,3  
Debt Collection (Cobranza de Deudas) ..... 4-6  
Guardianship and Conservatorship (Tutela y Curatela) ..... 7-11  
Landlord-Tenant (Arrendador-Arendatario)..... 12-14  
Probate (Homologaciones/Verificaciones) ..... 15-24  
Real Property (Bienes Inmuebles)..... 25,26  
Torts (Agravios y Daños) ..... 27-30  
Medical Terms (Términos Médicos)..... 31-37

## CONTRACTS (Contratos/Convenios)

**Anticipatory repudiation (Repudio anticipado/en antelación)** – when a part to a contract repudiates (reneges on) his/her obligations under that contract before fully performing those obligations. This can be by word (“I won’t deliver the rest of the goods” or “I can’t make any more payments”) or by action (not showing up with goods or stopping payments). The result is that the other party does not have to perform his/her obligations and cannot be liable for not doing so. This is often a defense to a lawsuit for payment or performance on a contract. One cannot repudiate his obligations and demand that the other person perform.

**Duress (Coerción)** – the use of force, false imprisonment or threats (and possibly psychological torture or “brainwashing”) to compel someone to act contrary to his/her wishes or interests. If duress is used to get someone to sign an agreement or execute a will, a court may find the document null and void. A defendant in a criminal prosecution may raise the defense that others used duress to force him/her to take part in an alleged crime. The most famous case is that of publishing heiress Patty Hearst, who was kidnapped, raped, imprisoned and psychologically tortured until she joined her captors in a bank holdup and issued statements justifying her actions. She was later convicted of the bank robbery, but was eventually pardoned by President Jimmy Carter.

**Estoppel (Impedimento)** – a bar or impediment (obstruction) which precludes a person from asserting a fact or a right or prevents one from denying a fact. Such a hindrance is due to a person’s actions, conduct, statements, admissions, failure to act or judgment against the person in an identical legal case. Estoppel includes being barred by false representation or concealment (equitable estoppels), failure to take legal action until the other party is prejudiced by the delay (estoppels by laches), and a court ruling against the party on the same matter in a different case (collateral estoppels).

**Frustration of purpose (Frustración del propósito)** – sometimes called commercial frustration, when unexpected events arise which make a contract impossible to be performed, entitling the frustrated party to rescind the contract without paying damages. Example: Jack Appleseller contracts to buy a commercial building to rent out, and, while the sale is pending, the building is condemned by the city as unsafe for any use. Mr. Appleseller can back out of the purchase without obligation.

**Impossibility (Imposibilidad)** – when an act cannot be performed due to nature, physical impediments or unforeseen events. It can be a legitimate basis to rescind (mutually cancel) a contract.

**Laches (Inercia procesal)** – the legal doctrine that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party (hurt the opponent) as a sort of “legal ambush.” Examples: a) knowing the correct property line, Oliver Owner fails to bring a lawsuit to establish title to a portion of real estate until Nat Neighbor has built a house which encroaches on the property in which Owner has title; b) Tommy Traveler learns that his father has died, but waits four years to come forward until the entire estate has been distributed on the belief that Tommy was dead; c) Susan Smart has a legitimate claim against her old firm for sexual harassment, but waits three years to come forward and file a lawsuit, after the employee who caused the problem has died, and the witnesses have all left the company and scattered around the country. The defense of laches is often raised in the list of “affirmative defenses” in answers filed by defendants, but is seldom applied by the courts. Laches is not to be confused with the “statute of limitations,” which sets specific periods to file a lawsuit for types of claims (negligence, breach of contract, fraud, etc.)

**Mailbox rule (Regla del buzón)** – (applies only to ACCEPTANCE of an offer) where an offer expressly authorizes acceptance by **mail**, acceptance is effective upon dispatching the letter.

**Parol evidence rule (Regla de la prueba oral)** – if there is evidence in writing (such as a signed contract) the terms of the contract cannot be altered by evidence of oral (parol) agreements purporting to change, explain or contradict the written document.

**Specific performance (Cumplimiento específico)** – the right of a party to a contract to demand that the defendant (the party who it is claimed breached the contract) be ordered in the judgment to perform the contract. Specific performance may be ordered instead of (or in addition to) a judgment for money if the contract can still be performed and money cannot sufficiently reward the plaintiff. Example: when a defendant was to deliver some unique item such as an art-work and did not, a judge may order the defendant to actually deliver the artwork.

**Statute of frauds (Ley de fraudes)** – law in every state which requires that certain documents be in writing, such as real property titles and transfers (conveyances), leases for more than a year, wills and some types of contracts. The original statute was enacted in England in 1677 to prevent fraudulent title claims.

**Unclean hands (Manos sucias)** – a legal doctrine which is a defense to a complaint, which states that a party who is asking for a judgment cannot have the help of the court if he/she has done anything unethical in relation to the subject of the lawsuit. Thus, if a defendant can show the plaintiff had “unclean hands,” the plaintiff’s complaint will be dismissed or the plaintiff will be denied judgment. Unclean hands is a common “affirmative defense” pleaded by defendants and must be proved by the defendant. Example: Hank Hardnose sues Grace Goodenough for breach of contract for failure to pay the full amount for construction of an addition to her house. Goodenough proves that Hard nose had shown her faked estimates from subcontractors to justify his original bid to Goodenough.

**Undue influence (Influencia indebida/Coacción)** – the amount of pressure which one uses to force someone to execute a will leaving assets in a particular way, to make a direct gift while alive or to sign a contract. The key element is that the influence was so great that the testator (will writer), donor (gift giver) or party to the contract had lost the ability to exercise his/her judgment and could not refuse to give in to the pressure. Evidence of such dominance of another’s mind may result in invalidation of the will, gift or contract by a court if the will, gift or contract is challenged. Participation in preparation of the will, excluding other relatives being present when the testator and the attorney meet, are all evidence of undue pressure, and an imbalance or change in language which greatly favors the person exercising the influence is a factor in finding undue influence. Example: Pete Pounder constantly visits his aunt Agnes while she is ill and always urges her to leave her mansion to him instead of to her son. Pounder threatens to stop visiting the old lady, who is very lonely, tells her she is ungrateful for his attention, finally brings over an attorney who does not know Agnes and is present while she tells the attorney to write a new will in favor of Pounder.

**Void (Nulo/Cancelado)** – referring to a statute, contract, ruling or anything which is null and of no effect. A law or judgment found by an appeals court to be unconstitutional is void, a rescinded (mutually cancelled) contract is void, and a marriage which has been annulled by court judgment is void.

**Voidable (Cancelable/Derogable)** – capable of being made void. Example: a contract entered into by a minor under 18 is voidable upon his/her reaching majority, but the minor may also affirm the contract at that time “Voidable” is distinguished from “void” in that it means only that a thing can become void but is not necessarily void.

## **Debt Collection (Cobranza de Deudas)**

**Attach (Adjuntar/Embargar)** – 1) To add, affix, annex, bind, fasten, or join as a part. 2) To seize or take by legal process; to carry out an attachment, for example, to attach the funds in a debtor's bank account to pay a judgment. 3) To adhere or become legally effective, especially in connection with something or upon some event. For example, certain rights and responsibilities attach to becoming a parent.

**Bankruptcy (Quiebra/Bancarrota/Insolvencia)** – Bankruptcy is a legal proceeding, guided by federal law, designed to address situations where a debtor—either an individual or a business—has accumulated obligations so great that he or she is unable to pay them off.

**Civil penalty (Sanción Civil/Multa)** – Civil Penalty refers to a fine assessed for violation of a statute or regulation. It can be fines or surcharges imposed by governmental agencies for enforcing regulations. For example, late payment of taxes could lead to imposition of a civil penalty.

**Claim (Demanda/Reclamo)** – 1) v. to make a demand for money, for property, or for enforcement of a right provided by law. 2) n. the making of a demand (asserting a claim) for money due, for property, from damages or for enforcement of a right.

**Creditor (Acreeedor)** – A creditor is defined as “a financial institution or any other type of creditor that extends credit or extends a financial accommodation under a credit agreement with a debtor.” *Smith v. United Student Aid Funds*, 1997 U.S. Dist. LEXIS 4085, 3-4 (E.D. La. Mar. 31, 1997) Creditors use judicial and statutory processes to have debts satisfied

**Debtor (Deudor)** – n. 1) a person or entity that owes an amount of money or favor to another. 2) in bankruptcy, the party whose affairs are the subject of the proceedings is called the "debtor."

**Employment (Empleo)** – n. the hiring of a person for compensation.

**Forfeit ( Renunciar a . . . )** – To lose to another person or to the state some privilege, right, or property due to the commission of an error, an offense, or a crime, a breach of contract, or a neglect of duty; to subject property to confiscation; or to become liable for the payment of a penalty, as the result of a particular act. To lose a franchise, estate, or other property, as provided by the applicable law, due to negligence, misfeasance, or omission. This nonconsensual deprivation transfers the property to another person or restores it to the original grantor.

**Garnishee (Embargado)** – A person holding a judgment debtor's property, such as debtor's employer (holding wages) or bank (holding an account).

**Garnisher or Garnishor (Embargador)** – Entity that requests the garnishment

**Garnishment (Retención de Sueldo)** – A court order to take part of a person's wages, before he gets them, and apply the amount taken to pay a debt owed to a creditor.

**Homestead (Patrimonio familiar/Residencia familiar )** – the dwelling house and its adjoining land where a family resides. Technically, and pursuant to the modern homestead exemption laws, an artificial estate in land, created to protect the possession and enjoyment of the owner against the claims of creditors by preventing the sale of the property for payment of the owner's debts so long as the land is occupied as a home.

**Impound (Incautar/Depositario)** – 1) to collect funds, in addition to installment payments, from a person who owes a debt secured by property, and place them in a special account to pay property taxes and insurance when due. This protects the lender or seller from the borrower's possible failure to keep up the insurance or a mounting tax bill which is a lien on the property. 2) to take away records, money or property, such as an automobile or building, by government action pending the outcome of a criminal prosecution. The records may be essential evidence, or the money or property may be forfeit to the state as in illegal drug cases.

**Judgment (Fallo/Sentencia)** – A judgment is the final order made by a court in a law suit. Once judgment is entered by the court, the court cannot take further action with respect to the issues contested in the law suit. However, a final judgment is subject to appeal.

**Judgment creditor (Acreedor por Sentencia)** – n. the winning plaintiff in a lawsuit to whom the court decides the defendant owes money. A judgment creditor can use various means to collect the judgment. The judgment is good for a specified number of years and then may be renewed by a filed request. If the defendant debtor files for bankruptcy, the judgment creditor will have priority (the right to share in assets) ahead of general creditors who are not secured by mortgages or deeds of trust and do not have judgments. However, if the bankrupt person has no assets, this becomes an empty advantage.

**Judgment debtor (Deudor por Sentencia)** – n. the losing defendant in a lawsuit who owes the amount of the judgment to the winner.

**Lien (Gravamen/Derecho de retención)** – the right to retain the lawful possession of the property of another until the owner fulfills a legal duty to the person holding the property, such as the payment of lawful charges for work done on the property. A mortgage is a common lien. In its widest meaning this term includes every case in which real or personal property is charged with the payment of any debt or duty; every such charge being denominated a lien on the property. In a more limited sense it is defined to be a right of detaining the property of another until some claim be satisfied.

**Quitclaim deed (Cesión de derechos/Transferencia de propiedad mediante renuncia)** – a quitclaim deed is a release by the grantor, or conveyor of the deed, of any interest the grantor may have in the property described in the deed. Generally a quitclaim deed relieves the grantor of liability regarding the ownership of the property. Thus, the grantor of a quitclaim deed will not be liable to the grantee, or recipient of the deed, if a competing claim to the property is later discovered. A quitclaim deed is not a guarantee that the grantor has clear title to the property; rather it is a relinquishment of the grantor's rights, if any, in the property.

**Satisfy (Pagar/Cumplir/Satisfacer)** – to carry out the terms or obligation of (as by payment of money) a judgment

**Seize (Confiscar)** – the act of law enforcement officials taking property, including cash, real estate, vehicles, etc., that has been used in connection with or acquired by illegal activities. Property may also be seized to satisfy an unpaid judgment, as long as proper notice of the amount due has been served. A court or civil authority decides what is to be done with the property, such as selling it at a sheriff's sale.

**Wages (Sueldos y Salarios)** – include all cash payments made to employees for services rendered, including salaries, commissions, vacation allowances, fees, bonuses, back pay and many fringe benefits. The form in which payment is made, when it is made, or on what measurement of production it is based does not determine what comprises an employee's wages.

**Withholding (Retención)** – the act of deducting amounts from an employee's salary to fulfill obligations.

**Writs of garnishments (Auto de embargo)** – a writ of garnishment is an order granted to a third party (garnishee), to hold or attach the property of a defendant or judgment creditor. A garnishee can be a person or a corporation who is in possession of the property of a judgment creditor or a defendant.

## **GUARDIANSHIP AND CONSERVATORSHIP (Tutela y Curatela)**

**Acceptance of appointment (Carta de aceptación de funciones)** – a written document signed by the guardian/conservator confirming acceptance of the order to serve as guardian/conservator of the protected person. This document must be a written document filed with the court.

**Advance health care directive (Directriz de cuidados médicos anticipada)** – or oral statement by an adult that expresses the adult’s wishes for health care treatment in case the adult is, in the future, not able to express current wishes. Utah law recognizes a standard advance health care directive form. Utah’s form provides for the possibility of an expression of wishes as well as for the appointment of a health care agent. Utah law also recognizes a hierarchy of surrogate decision makers in case the adult has never issued an advance health care directive and is now unable to express current wishes.

**Affidavit (Declaración jurada)** – a written and sworn statement witnessed by a notary public or other official with the authority to administer oaths. Affidavits may be admitted into evidence.

**Agent (Representante/Agente)** – an adult appointed by another adult (“the principal”) in a power of attorney, executed according to law. The agent’s legal authority is limited to the authority granted by the principal.

**Annual accounting (Reporte anual del patrimonio)** – the yearly financial report of the protected person’s estate that the guardian—or conservator if one has been appointed—must file with the court.

**Annual report (Reporte anual)** – the guardian’s yearly report to the court on the well being of the protected person. The annual report shows the protected person’s status and care and alerts the court to any changes.

**Appointment (Nombramiento/Designación)** – the designation of a person by the court to be a guardian or conservator and to discharge the duties of that office.

**Certified copy (Copia certificada)** – a certified copy of a court order is dated, signed, and stamped by the Clerk of Court certifying that the copy is a true copy of the original court order. A certified copy is a photocopy of the original, but it will have an original stamped or embossed seal of the court and clerk’s signature.

**Closed hearing (Audiencia privada)** – a hearing that can be attended only by those with a direct interest in the proceeding. The public cannot attend. Any party in a guardianship/conservatorship proceeding may request closed hearings. Most hearings are open or public hearings and anyone may attend.

**Code of Judicial Administration (Código de Administración Judicial)** – the rules established by the Utah Judicial Council governing administrative practices and procedures of the state judiciary.

**Conservator (Curador)** – a person or institution appointed by the court to manage the property and financial affairs (“estate”) of a protected person. A guardian is a person or institution appointed by a court to make decisions about the care of another person who is in need of continuing care and protection, such as a minor child or an incapacitated adult. Sometimes the same person is appointed to both roles. If no conservator is appointed, the guardian has some of the responsibility of a conservator.

**Conservatorship (Curatela)** – the court proceeding to appoint a conservator and any subsequent proceedings. A conservatorship exists when the court has appointed a conservator for a person in need of protection.

**Court visitor (Ayudante profesional del tribunal)** – a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings. The judge may appoint a visitor to inquire about and observe a protected person's circumstances to provide a more complete and nuanced picture of that person's life.

**Emergency guardianship (Designación temporal de un custodio)** – an extraordinary court proceeding that may result in the appointment of a temporary guardian to provide for the immediate care and custody of a person for a specified period not longer than 30 days. If a temporary guardian is appointed, the court must hold a hearing within five days. Until the full hearing and order of the court, the temporary guardian is charged with the care and custody of the protected person and must not permit the protected person to be removed from the state. The authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time, and must obey the court's orders.

**Estate (Patrimonio)** – all of the protected person's assets and liabilities, including all real property (land) and personal property (things).

**Evidence (Pruebas)** – testimony, records, documents, material objects, or other things presented at a hearing to prove the existence or nonexistence of a fact.

**Fiduciary (Fiduciario)** – a person who has assumed a special relationship to another person or another person's property, such as a trustee, administrator, executor, lawyer, or guardian/conservator. The fiduciary must exercise the highest degree of care to maintain and preserve the person's rights and/or property which are within his/her charge.

**Final accounting (Rendición final de cuentas)** – the last financial accounting that must be filed with the court by the guardian or conservator upon the death of the protected person, resignation of the guardian or conservator, or termination of the guardianship/conservatorship.

**Guardian (Custodio)** – a person or institution appointed by a court to make decisions about the care of another person who is in need of continuing care and protection, such as a minor child or an incapacitated adult. A conservator is a person or institution appointed by the court to manage the property and financial affairs (“estate”) of a protected person. Sometimes the same person is appointed to both roles. If no conservator is appointed, the guardian has some of the responsibility of a conservator.

**Guardian ad litem (Abogado de los niños)** – a lawyer appointed by a court to look after the interests of a minor child during court proceedings, or to look after the interests of an adult in conservatorship proceedings.

**Guardianship (Custodia)** – the court proceedings to appoint a guardian and any subsequent proceedings. A guardianship exists when the court has appointed a guardian for an incapacitated person.

**Incapacitated person (Persona con discapacidad)** – as defined in the Utah Uniform Probate Code, an “incapacitated person” means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

**Interested person (Personas con derecho)** – as defined in the Utah Uniform Probate Code, an "interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust or the estate of a decedent, or protected person. It also includes persons having priority for appointment as personal representative, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated. The court can determine who is an interested person in a particular case, so the meaning may vary from one case to the next.

**Inventory (Inventario)** – a detailed list of property and other assets with their estimated or actual values. A guardian or conservator must file an inventory with the court within 90 days after appointment.

**Jurisdiction (Jurisdicción)** – the legal authority of a court to hear and determine a case. Jurisdiction also means the power of the court over the persons involved in a case and over the subject matter of the case.

**Letters of guardianship/conservatorship (Cartas de custodia/Curatela)** – the document issued by the court authorizing the appointment of the guardian/conservator and the extent of the powers of the guardian/conservator to act on behalf of the protected person.

**Limited guardianship (Custodia limitada)** – a guardianship that orders the guardian to have decision-making powers limited to the specific needs of the protected person. A limited guardianship order describes the guardian's decision-making authority over the protected person. Utah law presumes that the court will order a limited guardianship.

**Parens patriae (Padre absoluto)** – a Latin phrase meaning literally "parent of the country" and used to refer traditionally to the role of the sovereign as guardian of persons under legal disability, such as minor children or incapacitated adults.

**Petition (Petición)** – a document filed to initiate a case, setting forth the alleged grounds for the court to take jurisdiction and asking the court to grant the petitioner's request.

**Petitioner (Peticionario/Solicitante/Demandante)** – the person who files the petition, asking the court to do something. In guardianship proceedings, the petitioner is often, although not always, the person asking to be appointed as guardian.

**Plenary guardianship (Custodia absoluta/plena)** – a guardianship that orders the guardian to have all decision-making powers for the protected person allowed by law. Also known as a "full" guardianship.

**Power of attorney (Poder)** – a written document in which one person, as principal, appoints another as agent, and gives that agent authority to do certain specified acts or kinds of acts, on behalf of the principal. Completing a power of attorney document does not require a court proceeding. The principal should sign the document before a notary public.

**Principal (Poderante/mandante)** – the person who has given authority to another ("agent") to act for the principal's benefit and according to the principal's direction and control.

**Private, public and protected records (Registros privados, públicos y protegidos)** – most records filed in the district courts and justice courts are "public" records, meaning that anyone who asks can view the record and make a copy of it. Many public records are available on the court's website. Some records are "private," meaning that only the parties, their lawyers, and a few others can view and copy the record. Less common are "protected" records, meaning also that only the parties, their lawyers and a few others

can view and copy the record. Records in guardianship and conservatorship proceedings are private, except that the court's orders and letters of appointment are public.

**Protected person (Persona protegida)** – the person in a guardianship proceeding who has been determined by the court to be legally incapacitated and in need of a guardian. Also, the person in a conservatorship proceeding who has been determined by the court to be in need of a conservator. Representative payee if an agency, such as the Veteran's Administration or the Social Security Administration, pays benefits to the protected person who has been found by the court to be incapacitated, the agency must appoint a representative payee to receive the payments. This appointment is separate from the court-appointed guardian and conservator. Any person wishing to serve as the representative payee must apply to the agency that provides the benefits. In most cases, the agency will appoint the court-appointed guardian or conservator as representative payee. However, the agency providing the benefits has the authority to appoint any person it chooses to be the protected person's representative payee. Once appointed by the agency, the representative payee has the authority to receive and handle the benefits for the protected person.

**Respondent (Demandado/Parte demandada)** – the person who responds to a petition. In a guardianship/conservatorship proceeding, the person who is alleged to be incapacitated and in need of protection.

**Serving papers (Entrega formal de documentos)** – serving papers—also called service of process—means delivering a copy of the papers filed with the court to the other parties and interested persons. Court rules require that all parties and interested persons be served with a copy of all papers filed and be given time to respond.

**Standard of proof (Grado de certeza)** – there are three standards of proof in most court proceedings: *Beyond a reasonable doubt* (the highest standard) – (Más allá de una duda razonable) – means that the evidence must be firmly convincing about the truth of the fact to be proved. This standard applies in all criminal and juvenile delinquency cases.

*Preponderance of the evidence* (the lowest standard) – (Preponderancia de las pruebas) – means that the evidence must show that the fact to be proved is more likely true than not true. This standard applies in most civil cases.

*Clear and convincing evidence* (a middle standard) – Pruebas claras y convincentes – means that the evidence must leave no serious doubt about the truth of the fact to be proved. This standard applies in some civil cases, including deciding whether a person is incapacitated.

**Statute (Ley)** – a law passed by the Utah state legislature.

**Temporary guardian (Custodio temporal)** – a person or entity appointed by the court to have temporary decision-making authority for a person if an emergency exists, or if an appointed guardian is not effectively performing his or her duties and the protected person's welfare requires immediate action. The appointment of temporary guardian is for a specified time not to exceed 30 days. The court must hold a hearing within five days.

**Trust (Fiduciario)** – a transaction in which the owner (called the trustor or settlor) of real property (land) or personal property (things) gives ownership to a trustee, to hold and to manage for the benefit of a third party (called the "beneficiary").

**Trustee (Fideicomisario)** – a fiduciary in whom an estate, interest, or power is vested, under an express or implied agreement, to hold and to manage for the benefit of another.

**Utah Code (Código penal de Utah)** – the collection of all statutes enacted by the Utah legislature.

**Utah Rules of Civil Procedure (Reglamento de Procedimientos Civiles de Utah)** – the rules governing court procedures in all actions of a civil nature.

**Utah Uniform Probate Code (Código Uniforme de Utah de Homologaciones/Verificaciones)** – the statutes that govern probate matters including administration of a decedent’s estate, guardianships, conservatorships, trusts, and advance healthcare directives.

**Venue (Demarcación/Sitio/Lugar)** – the county, city or geographical area in which a court with jurisdiction may hear and determine a case. A change of venue, that is, a change to a court in a different area, may be requested under some circumstances.

## LANDLORD – TENANT (Arrendador – Arrendatario)

### Assignment (Traspaso) and sub-lease (sub-arrendamiento):

**Assignment (Traspaso)** – when tenant transfers the entire lease term to an assignee and retaining no interest or rights in the leased property such as the tenant’s right to enter the or the right to inspect the property.

**Sub-lease (Sub-arrendamiento)** - where tenant retains some interest or right in the leased premises upon sub-letting.

**Commit waste (Daños a la propiedad)** – when tenant neglects the leased premises so as to deteriorate its value (for which tenant can be accountable).

**Constructive eviction (Desalojo putativo)** – when landlord’s acts, while not actually depriving the premises from tenant, they prevent the tenant from enjoying the beneficial use of the premises.

**Default (Incumplimiento)** – when one of the parties fails to meet their contractual obligations. That person is said to be “in default”.

**Distress (Embargo/Secuestro de Bienes)** – the law permitting landlords to enter the tenant’s property and seize all the tenant’s personal property until tenant pays back owed rent.

**Escrow (Depósito en Garantía)** – (see also “escrow agent”) n. a form of account held by an "escrow agent" (an individual, escrow company or title company) into which is deposited the documents and funds in a transfer of real property, including the money, a mortgage or deed of trust, an existing promissory note secured by the real property, escrow "instructions" from both parties, an accounting of the funds and other documents necessary to complete the transaction by a date ("closing") agreed to by the buyer and seller. When the funding is complete and the deed is clear, the escrow agent will then record the deed to the buyer and deliver funds to the seller. The escrow agent or officer is an independent holder and agent for both parties who receives a fee for his/her/its services. 2) n. originally escrow meant the deed held by the escrow agent. 3) n. colloquially, the escrow agent is called an "escrow," while actually the escrow is the account and not a person. 4) v. to place the documents and funds in an escrow account, as in: "we will escrow the deal."

**Fixtures (Accesorios fijos)** – those items that tenants, especially long term and commercial tenants, affix to or improve upon the leased premises. It is often disputed as to whether an item affixed is of such a permanent nature that it becomes a “fixture”. “Fixtures cannot be removed by the tenant if the court . . .

**Forcible detainer (Ocupación forzada)** – (a) holding and keeping by force, or by menaces and threats of violence, the possession of any real property, whether acquired peaceably or otherwise; or (b) unlawfully entering real property during the absence of the occupants or at night, and, after demand is made for the surrender of the property, refusing for a period of three days to surrender the property to the former occupant.

**Frustration of tenant’s use** - See “Quiet enjoyment”:

**Holdover (Retención del inmueble)** – a tenant who is violating the lease agreement by refusing to leave upon lease termination.

**Implied warranty of habitability (Garantía de habitabilidad implícita)** – a promise implied in the Landlord-Tenant agreement that the landlord will not disturb the tenant’s possession.

**Landlord’s election (La elección del propietario)** – the landlord often can choose from several remedies.

**Landlord’s self-help (Derecho del propietario a actuar)** – landlord’s right to enter the premises and recover the premises when there is a holdover tenant.

**Lease term (Duración del arrendamiento)** – length of the lease contract period, e.g., month to month term, year to year term. Usually, when the first year of the lease expires, unless specifically contracted otherwise, the lease term automatically converts to a month to month lease.

**Lease termination (Conclusión del contrato)** – when the “lease term” of the lease contractually ends or terminates by the breach of the landlord or tenant.

**Offset (Compensación)** – (noun) also called a "setoff," the deduction by a debtor from a claim or demand of a debt or obligation. Such an offset is based upon a counterclaim against the party making the original claim. Example: Harry Hardhead makes a claim or files a lawsuit asking for \$20,000 from Danny Debtor as the final payment in purchase of a restaurant; as part of his defense Debtor claims an offset of \$10,000 for alleged funds owed by Hardhead for repairs Debtor made on property owned by Hardhead, thus reducing the claim of Hardhead to \$10,000. 2) (verb) counterclaim an alleged debt owed by a claimant to reduce the demand of that claimant.

**Order of Restitution (Orden de regresar la propiedad a su dueño)** – [this gets a bit tricky] In Utah, this is essentially a court issued notice of eviction given the tenant 3 days to vacate and “**restore** possession of the premises to the plaintiff”, hence “restitution” is the derivative of “restore”. Note this has a different meaning of “restitution” used to describe how the defendant is supposed to “make the plaintiff whole, often by paying him monetary damages. It would be appropriate to translate this as either “**eviction**”, or “restore the property to the plaintiff/landlord.

**Quiet Enjoyment (Pleno uso y disfrute)** – the right to enjoy and use premises (particularly a residence) in peace and without interference. Quiet enjoyment is often a condition included in a lease. Thus, if the landlord interferes with quiet enjoyment, he/she may be sued for breach of contract. Disturbance of quiet enjoyment by another can be a "nuisance" for which a lawsuit may be brought to halt the interference or obtain damages for it.

**Relet premises (Sub-arrendamiento del sitio)** – when tenant defaults or prematurely vacates the premises, landlord usually has the right (and usually the obligation) to find another tenant so as to mitigate landlord’s damage. See also, Duty to Mitigate Damages.

**Rent acceleration clause (Cláusula de pago anticipado)** – lease contract provision allowing landlord to demand the remaining monies owed under the lease in the event of tenant’s default

**Rent accrual (Fecha de vencimiento de la renta)** – refers to the general lease rule that rent payment is not due until the last day of the lease term

**Rent covenants (Acuerdos de arrendamiento)** – implied promises in every lease even when they are not written, e.g., implied promise by landlord the landlord owns the land to be leased or the implied promise of “quiet enjoyment” – see quiet enjoyment.

**Rent escrow (Renta en depósito)** – amount of monies paid up front by the future tenant to the future landlord which is to be held by landlord until the end of the lease term.

**Security Deposit (Depósito en caso de daños)** – n. a payment required by a landlord from a tenant to cover the expenses of any repairs of damages to the premises greater than normal "wear and tear." The security deposit must be returned within a short time (varying by states) after the tenant vacates, less the cost of repairing any unusual damage. Unfortunately for tenants, these damages are usually subject to the judgment of the landlord, who may desire to paint and refinish on the tenant's money, which results in many small claims suits. In a few states the security deposit must be kept in a separate bank account, and some states require payment of interest on the amount held as a deposit. A security deposit is sometimes confused with a deposit of the "last month's rent," which may be credited to the tenant for the final month's rent. A security deposit cannot be used legally as a rent credit.

**Statute of frauds (Ley contra fraudes)** – the statute followed in all states requiring that voluntary transfers of land, including leaseholds, be in writing or otherwise be considered void (or with leaseholds, an "at will" tenancy).

**Summary possession by landlord (Procedimiento conciso de desalojo)** – a judicial procedure which hastens landlord's possession of the premises when there is a holdover tenant.

**Surrender (Abandono)** – usually a case of tenant abandoning the leased premises thereby amount of his surrendering the property and his rights under the lease contract.

**Tenancy at will (Arrendamiento sin duración determinada)** – occupation of real property owned by another until such time as the landlord gives notice of termination of the tenancy (usually 30 days by state law or agreement), which may be given at any time.

## **PROBATE (Homologaciones/Verificaciones)**

**Abandonment (Abandono)** – a parent’s or custodian’s act of leaving a child without adequate care, supervision, support or parental contact for an excessive period time. Also, the desertion of one spouse by the other with the intent to terminate the marriage relationship.

**Adjudication (Adjudicación /Fallo)** – giving or pronouncing a judgment or decree, or the rendering of a decision on a matter before a court.

**Adoptee (Adoptado)** – a person who has been legally adopted. It is usually referred to an adult person being adopted. (Over the age of 18 years).

**Adoption (Adopción)** – the judicial act which creates the relationship of parent and child where it did not previously exist.

**Affiant (Declarante)** – the person who makes and writes a declaration (affidavit) under oath.

**After-born children (Niños nacidos después del hecho)** – those born to a testator after he/she has executed a will.

**Agent (Representante)** – one who has authority to act for another.

**Amicus Curiae (Amigo del Tribunal)** – a friend of the court; a nonparty who interposes, with the permission of the court, and volunteers information upon some matter before the court.

**Ancillary administration (Administración suplementaria)** – a secondary administration in a state where the decedent owned property and which is not the state where the decedent was domiciled.

**Annual account (Estado de cuenta anual)** – report of a conservator filed with the court, showing income to and payments from an estate, as well as inventory changes.

**Annual report (Reporte anual)** – report of a guardian filed with the court, about the ward’s (protected person) current condition.

**Annual review (Evaluación anual)** – yearly judicial review to determine whether continued court supervision is needed.

**Annuity (Anualidad/Pensión anual)** – the right to receive fixed sums of money at regular intervals.

**Assets (Activos/Posesiones)** – all property of a person, corporation or estate of a decedent; real or personal, tangible or intangible.

**Attorney of record (Abogado en actas)** – the attorney whose name appears in the permanent records or files of a case. If case is private he/she is the only attorney that has access to the file.

**Bequest (Legado/Herencia)** – a gift by will of personal property.

- Specific bequest: a gift of personal property of a specific class or kind.
- Residuary bequest: a gift of the balance of the decedent’s assets after payment of debts and other specific gifts.

**Birth parents (Padres biológicos)** – a biological mother or a biological father.

**Bond – Probate (Garantía de Homologación de Testamento)** - Insurance that the court may require, which is paid for by and covers the ward's or decedent's estate.

**Other (Letra)** – a formal certificate or evidence of a debt.

**Calendar-Probate (Agenda de Homologaciones/Verificaciones)** – Law and motion (Consent) Calendar where formal probate/estate matters, guardian and conservator matters are heard. Name changes, Minor settlements and Adoptions are NOT heard on this calendar.

**Other (Calendario)** – a court's list of cases for arraignment, hearing, trial or arguments.

**Cause of Action (Causal de la Demanda)** – a claim in law in fact sufficient to justify a legal right to file petition or complaint.

**Certified copy (Copia Certificada)** – is a true, accurate or genuine copy of the original. A clerk may certify any court document that is not confidential or in a sealed envelope. Distinguished from a plain copy by a court stamp and an original signature by a court officer stating the certified copy is a true and correct copy of the original document retained by the court.

**Change of name (Cambio de nombre)** – (42-1-1 UCA) Changing one's name to another name.

**Change of Venue (Cambio de Jurisdicción)** – the removal of a case begun on one county or district to another for trial, or from one court to another in the same county or district. In probate for example, if all the parties in a guardianship have moved out of the county, they may want to file a change of venue. In criminal cases, a change of venue will be permitted if the court feels the defendant cannot receive a fair trial where the court is located.

**Charitable Trust (Fideicomiso Caritativo)** – a trust having a charitable organization as a beneficiary.

**Charitable Remainder Trust (“CRT”) (Fideicomiso Caritativo Restante)** – an irrevocable trust into which the grantor converts highly appreciated assets (e.g., investment real estate, stocks, etc.) into a lifetime income without paying capital gains tax when the asset is sold. Utilizing a CRT reduces income and estate taxes while letting you benefit your favored charity.

**Child Abuse (Maltrato a Menores)** – any form of cruelty to a child's physical, moral or mental well-being.

**Claims (Reclamos)** – a debt the decedent owed on the date of death.

**Claimant (Demandante)** – an entity making a demand for money or property.

**Codicil (Codicilio)** – a supplement or an addition to a will. It may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in the existing will.

**Consent to Adopt (Consentimiento a la Adopción)** – allowing or agreeing to have a child adopted.

**Conservator (Curador)** – a person or institution appointed by the court to manage the ward's estate.

**Continuance (Aplazamiento)** – a hearing that is postponed, may be court ordered or requested by an attorney or the moving party.

**Contract (Contrato)** – an oral or written agreement between two or more parties which is enforceable by law.

**Co-Personal Representatives (Co Apoderados)** – two or more persons appointed to represent a decedent’s estate who must act together in the administration of the estate.

**Costs (Costas)** – an allowance for expenses for handling an estate, or prosecuting or defending a case. Ordinarily this does not include attorney fees.

**Costs of Administration (Gastos de Administración)** – the actual costs of administering an estate (as opposed to costs of paying the debts of decedent), eg, filing fees, appraiser fees, sales commissions, storage expenses, delivery charges, and the personal representative’s commissions and his/her attorney’s fees.

**Co-trustees (Co Fiduciarios)** – more than one trustee serving at the same time with the same duties and responsibilities.

**Counterclaim (Reconvencción/Contrademanda)** – a claim presented by another party in opposition to the petition or claim filed.

**Court Visitor (Enviado del Tribunal)** – a person appointed by the court, in a guardianship proceeding, to visit the alleged protected person (incapacitated) and report to the court.

**Creditor (Acreedor)** – an individual or entity to which an estate may be indebted.

**Custodial Parent (Padre con la Patria Potestad)** – the party who is given possession of minor children, as well as authority to make decisions affecting them.

**Custody (Patria Potestad)** – the right or responsibility for a child’s care and control carrying with it the duty of providing food, shelter, medical care, education and discipline.

**Decedent (Finado)** – the person who has died.

**Decree (Decreto)** – a final judgment, order or determination of the court.

**Demand for Notice (Solicitud de Notificación)** – a written statement, filed after the death of the decedent, by a person with a financial or property interest in a decedent’s estate who desires notice of any order or filing pertaining to the decedent’s estate.

**Devise (Legado)** – a gift by will of real or personal property. A devise is synonymous with a bequest or legacy.

**Devisee (Herederero)** – a person designated in a will to receive a devise.

**Disclaimer (Descargo de Responsabilidad)** – a written statement where an heir or devisee declines to accept an asset of the estate.

**Disinheritance Clause (Cláusula de Desheredamiento)** – a will clause which specifically omits a gift for anyone not named in the will.

**Distributee (Beneficiario de una Herencia)** – an heir entitled to a share of an intestate estate.

**Distribution (División Hereditaria)** – a division of estate assets, pursuant to authority of the court, to those legally entitled to a share of the decedent’s estate.

**Domicile (Domicilio/Dirección)** – a person’s usual place of dwelling and shall be synonymous with “residence.”

**Durable Power of Attorney for health care (Poder Permanente para Atención Médica)** – a legal document by which one person gives another power to make health care decisions. This power of attorney is effective even after the giver no longer has legal capacity.

**Elective Share (Participación/Parte/Porción/Acción Optativo)** – a spouse’s statutory share of a deceased spouse’s estate.

**Encumbrance (Derecho de Terceros/Gravamen)** – a lien or claim, such as a mortgage, on property.

**Equitable Interest (Interés Equitativo)** – the interest held by a beneficiary of a trust, ie, the right to use or receive property held by the trust according to its terms.

**Estate (Herencia/Patrimonio)** – the whole of the decedent’s assets, real and personal.

- **Probate estate (Patrimonio en Sucesión Testamentaria)** – assets in the decedent’s name alone.
- **Non-probate estate (Bienes Excluidos de la Sucesión Testamentaria)** – assets with a named beneficiary, “in trust for” designation, joint tenancy, “payable on death” (POD), or “transfer on death” (TOD) designation.

**Et al (y otro(a)s)** – all others.

**Exemplified Copy (Copia Legalizada)** – an authenticated copy of a certified copy. The exemplified copy is authenticated by a judge and clerk of court, not a deputy clerk.

**Ex Parte (A Instancia de Parte)** – by or for one party only. Ordinarily courts are not allowed to engage in communications with one party only. Both parties must be heard from.

**Ex Parte Order (Orden a Instancia de Parte)** – an order secured without notice to the opposing party or parties.

**Family Allowance (Asignación Familiar)** – a portion of a decedent’s estate set aside by statute for a surviving spouse, children, or parents, regardless of any testamentary disposition or competing claims.

**Fiduciary (Fiduciario)** – a special relationship of trust between two people; a person having legal responsibilities for another person or another person’s property, such as a trustee, administrator, executor, lawyer or guardian. The fiduciary must exercise the highest degree of care to maintain and preserve the person’s right and/or property which are within his/her care.

**Filed (Entablar/Interponer/Presentar)** – the process of having a document or pleading stamped with the date of receipt by the clerk’s office and placed in the court file and shown on the docket.

**Formal Probate (Homologación/Verificación Formal)** – a court proceeding overseen by a referee or judge to probate a will and/or appoint a personal representative of an estate. The administration of a formally probated estate may be either supervised or unsupervised by the court depending on the

complexity of the estate to be probated, and may include determining testacy of the estate or validity of a will and determination of heirs. Less complex and uncontested probate cases may be filed in front of a court registrar and are termed Informal Probate.

**Fraud (Fraude)** – an intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right

**Guardian (Custodio)** – a person or institution appointed by the court to take care of the ward. A guardian has or may have the authority to consent on behalf of an infant, child or incompetent to marriage, enlistment in the armed forces or major medical, surgical or psychiatric treatment.

**Guardian Ad Litem (Abogado de los Niños)** – a guardian ad litem is an attorney the court appoints to represent the interests of a minor child.

### **Guardianship**

**(Legal) – Patria Potestad** – parenthood, guardianship or other legally established supervision of a child, or incapacitated (protected) person.

**(Physical) – Custodia** – the immediate, though not necessarily permanent, care charge and control of a minor or incapacitated (protected) person.

**Heir (Heredero) /Heiress (Heredera)** – a male (heir) or female (heiress) entitled by law to inherit a portion of the estate of a person who has died intestate (without a will).

**Heirs (Herederos/Sucesores)** – any individual entitled by law to inherit from another.

**Holographic Will (Testamento Hológrafo)** – a Will written, dated and signed entirely in a testator's handwriting.

**Homestead (Residencia Familiar)** – property which is set aside for the benefit of specific family members, and which cannot be transferred by the decedent to a third party. As long as the homestead does not exceed in area or value the limits fixed by law, in most states it is exempt from forced sale for collection of a debt.

**Incapacitated Person (Persona Discapitada)** – a person who cannot make or communicate responsible personal decisions because of mental illness, mental deficiency, physical illness or disability, chronic uses of drugs, chronic intoxication, or any other cause except being a minor.

**Indigent (Indigente)** – a person who lacks money to pay filing fees, court costs, etc.

**Informal Probate (Homologación/Verificación Informal)** – does not require a hearing before the Judge on the probate calendar. Can be done either by waiver of notice or the court will send notice. Can only probate the will if there is one and appoint a personal representative. Cannot do anything else which would normally be done formally and before the Judge. Such as “Determining Heirs” or Adjudication of Intestacy etc.

**Inherit (Heredar)** – receive something from a person (usually after the person is deceased).

**Inheritance (Herencia)** – that which is received from another person upon his death.

**Inter vivos (Entre vivos/En vida)** – a type of trust created during one's lifetime to hold property for the benefit of another person.

**In Re (En Referencia a)** – in the affair; in the matter of; concerning; regarding. This is the usual method of entitling a judicial proceeding in which there are not adversary parties, but merely some res concerning which judicial action is to be taken.

**Interest (Derecho)** – any right or ownership in property.

**Interested Person or Interested Party (Persona con Derecho o Parte con Derecho)** – an heir or devisee, or any other person having a right to, or a claim against, a deceased person's estate. Creditors and the state, as well as state and county agencies, in certain circumstances, are interested persons.

**Intestate (Intestado)** – the term applies when an individual dies without a will; they are unable to locate any will. Intestate administration and distribution applies.

**Intestate Estate (Herencia Intestada)** – property that is held (1) solely in the name of an intestate person (a person who dies without a will) or (2) as a tenant in common by an intestate person. In the absence of a will, the intestate laws determine who inherits which shares of an intestate estate.

**Irrevocable (Irrevocable)** – can't be changed or revoked.

**Issue (Descendencia)** – all descendants, of all generations, of a deceased person.

**Joint Ownership (Dominio en Conjunto/Titularidad Conjunta)** – the ownership of property by two or more people, usually with the right of survivorship.

**Joint property (Bienes Comunes)** – property owned jointly with another person or persons.

**Joint Tenancy with Right of Survivorship (Coproiedad de un Inmueble)** – a form of ownership by two or more persons such that upon one owner's death, the other owner automatically inherits the entire asset. A will provision cannot give the asset to someone other than the joint owner.

**Joint Will (Testamento Conjunto)** – a single will that is signed by two or more persons (usually spouses) as their separate wills, and is to be probated after the death of each testator. Joint wills are not favored by law and may result in a finding of intestacy by the court. They often result in litigation for breach of contract when the survivor executes a new will following the first party's death.

**Jurisdiction (Jurisdicción)** – the authority for a court to act on a matter. The authority of the court to hear and decide an action. The legal authority of a court to hear a case or conduct other proceedings; power of the court over persons involved in a case and the subject matter of the case.

**Law and Motion Calendar (Calendario de Asuntos Legales y Mociones)** – a setting before a judge at which time a variety of matters, motions, petitions or procedural requests may be presented.

**Letters of Administration (Cartas de Administración)** – the court document which shows the appointed person or institution is authorized to handle the estate of the decedent and administration of the estate is Intestate.

**Letters of Conservatorship (Cartas de Curatela)** – the court document which shows the appointed person or institution is authorized to take care of the protected person.

**Letters Testamentary (Cartas Sucesionarias)** – the court document which shows the appointed person or institution is authorized to handle the estate of the decedent and administration is guided under the Will left by the decedent. (Testate)

**Liability (Responsabilidad Legal)** – a legal responsibility, obligation or debt.

**Lien (Gravamen)** – a claim against property for payment of a debt. Common types of liens include the mechanics lien, the judgment lien and the mortgage lien

**Lis Pendens (Litispendencia/Anotación de Litis)** – notice of a pending suit filed with the county recorder's office.

**Living Will (Testamento en Vida)** – a legal document by which a person expresses his/her end-of-life medical treatment wishes.

**Minor (Menor)** – a child under the age of 18 whom, by law, does not have the capacity to manage his or her affairs.

**Motion (Moción/Petición)** – a formal request presented to a court.

**Nunc Pro Tunc (Efecto Retroactivo)** – now for then. This phrase applies to acts which are allowed after the time when they should have been done with retroactive effect.

**Parties (Partes)** – the persons who are actively involved in the case, the prosecution or defense of a legal proceeding. Including Petitioners, Respondents, plaintiff, defendant, etc.

**Personal Representative (Administrador Personal)** – the person responsible for administering an estate. Sometimes referred to as an executor or administrator, the Personal Representative is the person appointed by the court to administer the estate of the decedent by giving notice of his/her appointment, paying claims of the state and then distributing the estate according to the will or to the heirs if there is no will. A Personal Representative appointed in either a formal or an informal proceeding generally has the authority to do almost anything the decedent could have done with his/her property during his/her lifetime,

**Personal Service (Notificación Personal)** – party who must be given notice of action or hearing by being served in person by either constable, sheriff or party not related to the case.

**Petition (Petición)** – a person who files an action in a court of original jurisdiction. Also the person who appeals the judgment in a lower court.

**Plaintiff (Demandante)** – a person who files a law suit.

**Pleading (Alegatos)** – the formal allegations by the parties of their respective claims and defenses.

**Plenary Guardian (Custodio Absoluto)** – full, entire, complete Guardianship.

**Pour-Over Will (Testamento que Transfiere Bienes a un Fideicomiso Existente)** – a will that transfers property to a pre-existing trust at the death of the testator.

**Power of Attorney (Poder)** – a signed document that authorizes another person on someone’s behalf. A power of attorney expires upon the death of the person who granted the power of attorney. The fact that a person had power of attorney does not give that person priority for appointment as personal representative.

**Prayer (Moción Petitoria)** – the request that the court grant the process, or relief in the petition (now more commonly known as the “wherefore”

**Private case type (Asunto de tipo confidencial)** – only the parties who filed the case and the attorneys of record may have access to the pleadings in the case.

**Probate (Sucesión Testamentaria/Homologación de Testamento)** – the process of proving the validity of a will. The court process of settling an estate (the “probate estate”) of a deceased person and transferring property to the heirs or beneficiaries of the estate.

**Probate Court (Tribunal de Homologaciones/Verificaciones)** – a court having general powers over probate of wills, administration of estates, and in some states, empowered to appoint guardians and conservators or approve the adoption of minors and adults. (In Utah the court also handles name changes and all trust matters.) Court with similar functions is called Surrogate or Orphan’s Court in certain states.

**Probate estate (Patrimonio a verificar/homologar)** – the property of a decedent that is subject to administration by the executor or administrator of an estate. It encompasses totality of assets and liabilities of decedent, including all manner of property, real and personal.

**Pro bono (Gratuitamente)** – Latin phrase for work or services done or performed by an attorney, free of charge.

**Pro se (Por Derecho Propio)** – Latin phrase for acting without an attorney. Reference to persons who present their own case to the court without a lawyer. For him or herself – in his own behalf. Appears in front for him/herself in court.

**Protected Person (Persona Protegida por una Norma)** – a person who cannot make or communicate responsible personal decisions because of mental illness, mental deficiency, physical illness or disability, chronic uses of drugs, chronic intoxication, or any other cause except being a minor. (\*Preferred over incapacitated\*): A person who is under a guardian’s charge or protection.

**Real Property (Bienes Inmuebles)** – all real estate, including land, fixed improvements (buildings), and growing things thereon: excludes personal property

**Representative Payee (Acreedor Representante)** – a person named by a federal agency, such as the Veteran’s Administration or Social Security Administration, to receive and account for another person’s benefits.

**Residual Devise (Legado Residual)** – a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount.

**Residuary Estate (Herencia Residual)** – the estate that remains after all specific bequests are made.

**Respondent (Apelado/Demandado)** – the person who is the subject of a petition.  
Revocable: Capable of being changed or revoked.

**Return (Acta de Notificación)** – the act of a sheriff, constable or other officer in delivering back to the court a paper which he was required to serve or his failure to serve with an endorsement on the paper stating what he has done with it, the time and mode of service, etc.

**Right of survivorship (Derecho de Sobrevivientes)** – permitting property to bypass probate procedures, this right of a joint property owner provides that, in the event of death, the surviving joint owner receives ownership in full.

**Sealed/sealing a case (Sellar el Expediente de un Caso)** – the closure of court records to inspection, not to be opened without order of the court.

**Self-Proved Will (Testamento al que se le da efecto aun sin cumplir con las formalidades sucesorias)** – a will in which at least two witnesses took an oath, included in the will, at the time the will was signed, and in which both the witnesses' and the decedent's signatures were notarized by a qualified notary public.

**Service by Publication (Notificación por medio de publicación)** – service of a summons or other process upon an absent or non-resident party, by publishing the same as an advertisement in a designated newspaper (General circulation).

**Share (Participación/Porción)** – the part of an estate which an heir will receive. The number of shares is not the same as the number of heirs as some heirs may receive only part of a share. When heirs are not all related in the same way, some may receive shares “by representation.” The laws are different in each state as to how shares are determined.

**Statute (Estatuto/Acto Constitutivo)** – a law passed by the state legislature.

**Stipulation (Acuerdo/Estipulación/Pacto)** – an agreement between parties through their attorneys, if any, respecting business before the court. It is not binding unless agreed to by the parties and must be in writing.

**Tenancy in Common (Propiedad Mancomunada de un Inmueble)** – a form of ownership by two or more persons such that when one owner dies, that person's will (or, if there is no will, the intestate laws) determines who inherits that joint tenant's interest in the asset.

**Termination of Parental Rights (Extinción de Derechos Parentales)** – the permanent elimination of all parental rights and duties, including residual parental rights and duties by court order. A judicial proceeding freeing a child from all custody and control by parents.

**Testament (Testamento)** – another name for a will, a testament is a document that deals with the disposition of one's property upon death.

**Testamentary Trust (Fideicomiso Testamentario)** – a trust that is created upon death by the terms of a person's will.

**Testate (Testamentado)** – one who has died leaving a will or one who has made a will

**Testator (Testador/Autor de la Herencia)** – an individual who dies leaving a will or testament in force; a person who makes a valid will. (Female: Testatrix)

**Testimony (Testimonio)** – information or evidence given by a witness under oath.

**Waiver (Renuncia)** – the act of intentionally abandoning a right, claim or privilege.

**Ward (Pupilo)** – a person for whom a guardian has been appointed.

**Wherefore (Por lo cual)** – what the Judge has ordered; It usually is the same or what was asked for in the Petition in the “Therefore” or the “Prayer”

**Will (Testamento)** – a legally executed document that directs how and to whom a person’s property is to be distributed after death. Also called a testament, a will is a document that deals with the disposition of one’s property upon death. Wills generally cannot dispose of property held as tenants by the entirety, joint tenants with rights of survivorship, or retirement plan benefits or life insurance proceeds (unless made payable to the estate). The person who has a will is a “testator”.

**Witness (Testigo)** – as it pertains to a will, a person who is present at the time the other witnesses, the notary, and the testator are all also present in his or her company and, with proof of identification, signs the will and watches all the others signing at the same time.

## **REAL PROPERTY (Bienes Inmuebles)**

**Adverse possession (Prescripción adquisitiva de dominio/Posesión adverse)** – a means to acquire title to land through obvious occupancy of the land, while claiming ownership for the period of years set by the law of the state where the property exists. This can arise when a rancher fences in a parcel contending he was to get title from some prior owner, and then gazes cattle on the property for many years without objection by the title holder. Payment of real property taxes and making improvements (such as paving or fencing) for the statutory period (varies by state) are evidence of adverse possession but cannot be used by a land grabber with no claim to title other than possession.

**Assignment (Cesión de derechos)** – the act of transferring an interest in property or some right (such as contract benefits) to another. It is used commonly by lawyers, accountants, business people, title companies and others dealing with property.

**Condemnation (Expropiación forzosa/ Confiscación)** – the legal process by which real estate of a private owner is taken for public use without the owner's consent, but the owner receives just compensation.

**Constructive possession (Posesión ficticia)** – when a person does not have actual possession, but has the power to control an asset, he/she has constructive possession. Having the key to a safe deposit box, for example, gives one constructive possession.

**Covenants (Claúsulas/Estipulaciones)** – commonly called “CC and Rs”, these are written rules, limitations and restrictions on use, mutually agreed to by all owners of homes in a subdivision or condominium complex. CC and Rs may limit size and placement of homes, exterior colors, pets, age of residents, use of barbecues and other conduct to protect the quiet enjoyment of the various residents. CC and Rs are enforced by the homeowners association or by individual owners who can bring lawsuits against violators and are permanent or “run with the land” so future owners are bound to the same rules.

**Easement (Usufructo/Servidumbre de acceso)** – the right to use the real property of another for a specific purpose. The easement is itself a real property interest, but legal title to the underlying land is retained by the original owner for all other purposes. Typical easements are for access to another property (often redundantly states “access and egress,” since entry and exit are over the same path), for utility or sewer lines both under and above ground, use of spring water, entry to make repairs on a fence or slide area, drive cattle across and other uses. Easements can be created by a deed to be recorded just like any real property interest, by continuous and open use by the non-owner against the rights of the property owner for a statutory number of years, typically five (“prescriptive easement”), or to do equity (fairness), including giving access to a “land-locked” piece of property (sometimes called an “easement of necessity”). Easements may be specifically described by boundaries (“24 feet wide along the northern line for a distance of 180 feet”), somewhat indefinite (“along the trail to the northern boundary”) or just for a purpose (“to provide access to the Jones property” or “access to the spring”) sometimes called a “floating easement”. There is also a “negative easement” such as a prohibition against building a structure which blocks a view. Title reports and title abstracts will usually describe all existing easements upon a parcel of real property. Issues of maintenance, joint use, locking gates, damage to easement and other conflicts clog the judicial system, mostly due to misunderstandings at the time of creation.

**Holdover tenants (Inquilinos que retienen la tenencia del inmueble)** – periodic tenancies

**Implied covenant of habitability (Pacto implícito de habitabilidad)** – whether expressly written into the lease agreement or not, every lease for the rental of residential property contains a warranty of habitability. This warranty (or promise) is implied because it is a basic assumption to the lease agreement

that Courts enforce regardless of whether it is written into the lease. In legal terms, the implied warranty of habitability is the landlord's responsibility and promise that the unit is fit for occupation by human beings and is in substantial compliance with state and local codes and ordinances that protect the health and safety of tenants.

**Sublease (Subarrendar)** – the lease to another of all or a portion of premises by a tenant who has leased the premises from the owner. A sublease may be prohibited by the original lease, or require written permission from the owner. In any event, the original tenant (lessee) is still responsible for paying the rent to the owner (landlord/lessor) through the term of the original lease and sublease.

**Tenancy at will (Ocupación de inmueble sin un plazo establecido)** – occupation of real property owned by another until such time as the landlord gives notice of termination of the tenancy (usually 30 days by state law or agreement), which may be given at any time. A tenancy at will is created by agreement between the tenant and the landlord, but it cannot be transferred by the tenant to someone else since the landlord controls the right to occupy.

## TORTS (Agravios / Daños)

### Apportionment of liability (Asiganción de responsabilidad):

**Comparative negligence (Culpa de la víctima)** – the degree to which a person contributed to his own injury, damage or death. Usually measured in terms of percentage.

**Contributory negligence (Culpa concurrente)** – the failure to exercise reasonable care by the plaintiff which contributed to the plaintiff's injury. In some states, if plaintiff contributed at all (even 1%) to his injuries, he is completely barred to recover damages.

**Assumption of risk (Aceptación del riesgo)** – taking a chance in a potentially dangerous situation. This is a typical affirmative defense in a negligence case, in which the defendant claims that the situation (taking a ski-lift, climbing a steep cliff, riding in an old crowded car, working on the girders of a skyscraper) was so inherently or obviously hazardous that the injured plaintiff should have known there was danger and took the chance that he/she could be injured.

**Bailment (Consignación/Depósito)** – the act of placing property in the custody and control of another, usually by agreement in which the holder (bailee) is responsible for the safekeeping and return of the property. Examples: bonds left with the bank, autos parked in a garage, animals lodged with a kennel.

**“But for” Causation (Causa necesaria)** – the legal theory in negligence cases that stands for the rule that plaintiff must prove that “but for the defendant's negligent act” the accident and damages would not have caused. In other words, the plaintiff must show the defendant's act, alone, was the cause and that no other intervening causes led to the accident and damages.

**Chattel (Pertencencias/Enseres)** – an item of personal property which is movable, as distinguished from real property (land and improvements.)

**Comparative negligence (Culpa comparativa)** – a rule of law applied in accident cases to determine responsibility and damages based on the negligence of every party directly involved in the accident. For a simple example, Eddie Leadfoot, the driver of one automobile, is speeding and Rudy Airhead, the driver of an oncoming car, has failed to signal and starts to turn left, incorrectly judging Leadfoot's speed. A crash ensues in which Airhead is hurt. Airhead's damage recovery will be reduced by the percentage his failure to judge Leadfoot's speed contributed to or caused the accident. Most cases are not as simple, and the formulas to figure out, attribute and compare negligence often make assessment of damages problematic, difficult, and possibly totally subjective. Not all states use comparative negligence (California is a fairly recent convert), and some states still use contributory negligence (**Culpa Concurrente**) which denies recovery to any party whose negligence has added to the cause of the accident in any way. Contributory negligence is often so unfair that juries tend to ignore it.

**Conversion (Conversión/Apropiación ilícita)** – civil wrong (tort) in which one converts another's property to his/her own use, which is a fancy way of saying “steals”. Conversion includes treating another's goods as one's own, holding onto such property which accidentally comes into the convertor's (taker's) hands, or purposely giving the impression the assets belong to him/her. This gives the true owner the right to sue for his/her own property or the value and loss of use of it, as well as going to law enforcement authorities since conversion usually includes the crime of theft.  
See also: theft

**Defamation (Difamación)** – the act of making untrue statements about another which damages his/her reputation. If the defamatory statement is printed or broadcast over the media is libel and, if only oral, it is slander.

**False imprisonment (Encarcelamiento ilegal)** – depriving someone of freedom of movement by holding a person in a confined space or by physical restraint including being locked in a car, driven about without opportunity to get out, being tied to a chair or locked in a closet. It may be the follow-up to a false arrest (holding someone in the office of a department store, for example), but more often it resembles a kidnapping with no belief or claim of a legal right to hold the person. Therefore, false imprisonment is often a crime and if proved is almost always the basis of a lawsuits for damages.  
See also: false arrest

**Foreseeability (Previsibilidad)** – reasonable anticipation of the possible results of an action, such as what may happen if one is negligent or consequential damages resulting from breach of a contract.  
See also: foreseeable risk negligence

**Immunity (Inmunidad/Excensión)** – exemption from penalties, payments or legal requirements, granted by authorities or statutes. Generally there are three types of immunity at law: a) a promise not to prosecute for a crime in exchange for information or testimony in a criminal matter, granted by the prosecutors, a judge, a grand jury or an investigating legislative committee; b) public officials' protection from liability for their decisions (like a city manager or member of a public hospital board); c) governmental (or sovereign) immunity, which protects government agencies from lawsuits unless the government agreed to be sued; d) diplomatic immunity which excuses foreign ambassadors from most U.S. criminal laws.

**Implied warranty (Garantía implícita)** – an assumption at law that products are “merchantable”, meaning they work and are useable as normally expected by consumers, unless there is a warning that they are sold “as is” or second-hand without any warranty. A grant deed of real property carries the implied warranty of good title, meaning the grantor (seller) had a title (ownership) to transfer.

**Indemnity (Indemnización)** – the sharing of a loss by each of several persons who may have been jointly responsible for injury to a third party, who entered into a business which lost money or who owe a debt jointly. Quite often this arises when one responsible party pays more than his share and then demands contribution from the others in proportion to their share of the obligation. Example: three partners own equal shares in a building from which a cornice falls and injures Bobby Hardhat. One partner pays the demand of \$9,000 for Hardhat's injury; he is entitled to a contribution of \$3,000 from each of his partners.

**Inherently dangerous (Inherentemente peligroso)** – an act or activity that is so dangerous that negligence need not be proven.

**Invitee (invitado)** – one who is granted permission to enter the land or property.

**Joint tortfeasor (Coautores de acto ilícito)** – two or more persons whose negligence in a single accident or event causes damages to another person. In many cases the joint tortfeasor are jointly and severally liable for the damages, meaning that any of them can be responsible to pay the entire amount, no matter how unequal the negligence of each party was. Example: Harry Hotrod is doing 90 miles an hour along a two-lane road in the early evening, Adele Aimster has stopped her car to study a map with her car sticking out into the lane by six inches. Hotrod swings out a couple of feet to miss Aimster's vehicle, never touches the brake, and hits Victor Victim, driving from the other direction, killing him. While Hotrod is grossly negligent for the high speed and failure to slow down, Aimster is also negligent for her car's

slight intrusion into the lane. As a joint tortfeasor she may have to pay all the damages, particularly if Hotrod has no money or insurance. However, comparative negligence rules by statute or case law in most jurisdictions will apportion the liability by percentages of negligence among the tortfeasors (wrongdoers) and the injured parties.

See also: comparative negligence.

**Last clear chance (Última oportunidad de evitar un accidente)** – a rule of law in determining responsibility for damages caused by negligence, which provides that if the plaintiff (the party suing for damages) is negligent, that will not matter if the defendant (the party being sued for damages caused by his/her negligence) could have still avoided the accident by reasonable care in the final moments (no matter how slight) before the accident. The theory is that although the plaintiff may have been negligent, his/her negligence no longer was the cause of the accident because the defendant could have prevented the accident. Most commonly applied to auto accidents, a typical case of last clear chance would be when one driver drifts over the center line, and this action was noted by an oncoming driver who proceeds without taking simple evasive action, crashes into the first driver and is thus liable for the injuries to the first driver who was over the line.

**Libel (Difamación en forma escrita)** – written defamatory comment.

**Licensee (Permisionario)** – one who has received property owner's permission (license) to enter or use the property or thing in question. The permission conveys less than whole ownership of the property or thing . . . usually permission for limited use purposes.

**Master-Servant:**

1) employer, in the area of law known as “master and servant”, which more properly should be called employer and employee (**empleador y empleado**).

2) a person, supposedly with special expertise, appointed by a judge to investigate a problem (**Experto**) (such as whether a parent's home is appropriate for child visitation) and report back to the judge his/her findings and recommendations.

See also: employment master and servant respondeat superior.

**Misappropriation (Apropiación ilícita)** – the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose, particularly by a public official, a trustee of a trust, an executor or administrator of a dead person's estate or by any person with a responsibility to care for and protect another's assets (a fiduciary duty).

**Negligence per se (Negligencia simple)** – an act which in and of itself alone is considered negligent, e.g., exploding devices where to do is very likely to cause harm.

**Nuisance (Molestia)** – the unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public. Nuisances can include noxious smells, noise, burning, misdirection of water onto other property, illegal gambling, unauthorized collections of rusting autos, indecent signs and pictures on businesses and a host of bothersome activities. Where illegal they can be abated (changed, repaired or improved) by criminal or quasi-criminal charges. If a nuisance interferes with another person's quiet or peaceful or pleasant use of his/her property, it may be the basis for a lawsuit for damages and/or an injunction ordering the person or entity causing the nuisance to desist (stop) or limit the activity (such as closing down an activity in the evening).

**Private nuisance (molestia o perjuicio a un individuo)** – the interference with an individual's peaceful enjoyment of one's property, which can be the basis for a lawsuit both for damages caused by the

nuisance and an order (injunction) against continuing the noxious (offensive) activity or condition. Examples: fumes from a factory above the legal limit, loud noises well above the norm, directing rain water onto another person's property, operating an auto repair business in a neighborhood zoned residential, or numerous barking dogs.

**Proximate cause (Causa próxima)** – a happening which results in an event, particularly injury due to negligence or an intentional wrongful act. In order to prevail (win) in a lawsuit for damages due to negligence or some other wrong, it is essential to claim (plead) proximate cause in the complaint and to prove in trial that the negligent act of the defendant was the proximate cause (and not some other reason) of the damages to the plaintiff (person filing the lawsuit). Sometimes there is an intervening cause which comes between the original negligence of the defendant and the injured plaintiff, which will either reduce the amount of responsibility or, if this intervening cause is the substantial reason for the injury, then the defendant will not be liable at all. In criminal law, the defendant's act must have been the proximate cause of the death of a victim to prove murder or manslaughter.

**Public nuisance (Alterar el orden público)** – a nuisance which affects numerous members of the public or the public at large (how many people it takes to make a public is unknown), as distinguished from a nuisance which only does harm to a neighbor or a few private individuals. Example: a factory which spews out clouds of noxious fumes is a public nuisance but playing drums at three in the morning is a private nuisance bothering only the neighbors.

**Res ipse loquitur (Doctrina de Ley que define Negligencia)** – Latin, meaning “the thing speaks for itself.”

**Respondeat superior (Superior responsible)** – (rehs-pond-dee-at superior) n. Latin for “let the master answer, a key doctrine in the law of agency, which provides that a principal (employer) is responsible for the actions of his/her/its agent (employee) in the “course of employment.” Thus, an agent who signs an agreement to purchase goods for his employer in the name of the employer can create a binding contract between the seller and the employer. Another example: if a delivery truck driver negligently hits a child in the street, the company for which the driver works will be liable for the injuries. See also: negligence principal agency agent.

**Slander (Difamación hablada)** – spoken defamatory comment.

**Strict liability (Responsabilidad objetiva)** – automatic responsibility (without having to prove negligence) for damages due to possession and/or use of equipment, materials or possessions which are inherently dangerous, such as explosives, wild animals, poisonous snakes or assault weapons. This is analogous to the doctrine of res ipsa loquitur in which control, ownership and damages are sufficient to hold the owner liable.

**Trespass (Entrada ilícita)** – entering another person's property without permission of the owner or his/her agent and without lawful authority (like that given to a health inspector) and causing any damage, no matter how slight.

**Uniform Commercial Code (Código Uniforme de Comercio)** – a set of statutes governing the conduct of business, sales, warranties, negotiable instruments, loans secured by personal property and other commercial matters, which has been adopted with minor variations by all states except Louisiana.

## MEDICAL TERMS (Términos Médicos)

**Alzheimer's Disease (Enfermedad de Alzheimer)** – Alzheimer's disease is a brain disease that causes problems with memory, thinking, and behavior. Alzheimer's is the most common type of dementia--a general term for memory loss and other cognitive deficits--serious enough to interfere with daily life. Alzheimer's disease accounts for 50 percent to 70 percent of dementia cases. Alzheimer's is a progressive disease, in which symptoms gradually worsen over a number of years. In its early stages, memory loss is mild, but with late-stage Alzheimer's individuals lose the ability to carry on a conversation and respond to their environment. Alzheimer's is the sixth leading cause of death in the United States. Those with Alzheimer's live an average of eight years after their symptoms become noticeable to others, but survival can range from three to 20 years depending on age and other health conditions.

Prognosis: Symptoms usually develop slowly and get worse over time, becoming severe enough to interfere with daily tasks.

Contributing to incapacity: As Alzheimer's disease progresses, it affects memory and other cognitive abilities, as well as the ability to perform tasks in daily life.

For more information, see:

□ [http://www.alz.org/alzheimers\\_disease\\_what\\_is\\_alzheimers.asp](http://www.alz.org/alzheimers_disease_what_is_alzheimers.asp)

**Anemia (Anemia)** – anemia indicates lower than normal hemoglobin in the blood, and lower than normal red blood cell count. The most common causes of anemia in aging are blood loss, poor nutrition, or poor absorption of iron.

Prognosis: The prognosis, generally, is good, with treatment, and the anemia should be controlled.

Contributing to incapacity: If severe, anemia can decrease the capacity of the brain to function well.

**At risk (en riesgo)** – this is a term used to describe people, especially frail elders, who become confused when placed under physical or mental stress. Someone might purposely put a person under stress in order to cause confusion in that person.

Prognosis: Confusion of this type is intermittent, not progressive, and disabling only during the period of confusion.

Contributing to incapacity: Capability of function can be markedly reduced in stressful situations.

**Brain tumor (Tumor cerebral)** – brain tumors are growths that occur in different portions of the brain. Some brain tumors may be removed surgically. Malignant brain tumors usually cannot be removed, do not respond well to treatment, and frequently progress fairly rapidly to death.

Prognosis: Benign tumors, fair to good. Malignant tumors, poor to fatal.

Contributing to incapacity: Brain tumors, especially in certain locations, can cause mental confusion similar to the confusion that occurs with other forms of dementia.

**Cerebral arteriosclerosis (Arteriosclerosis cerebral)** – this condition occurs when the arteries in the brain harden. The disorder causes plaques to form in blood vessels that have become stiffened with aging, leading to marked diminution in blood flow to the brain. Clotting of blood in these small vessels can be a cause of multiple small strokes.

Prognosis: Variable. Arteriosclerosis may persist for many years or, with multiple strokes, may lead to periodic episodes of confusion and eventually to death.

Contributing to incapacity: The confusion occurring with cerebral arteriosclerosis can mimic the confusion that is seen with other forms of dementia. It is usually not progressive, but may be associated with periodic recurrent episodes. The resulting diminished abilities can be both physical and mental, and frequently is a cause for institutionalization.

**Comatose – (Comatoso [sa])** – comatose is a state in which a person is unconscious and unaware of surroundings. A person can be comatose as a terminal event with many illnesses, or may be comatose

as a result of alcohol, drugs, stroke, or medical disorders, such as diabetes.

Prognosis: In most comatose states the person may recover from the coma with treatment and may then have an essentially normal life. Some comas, such as seen in terminal liver disease, are fatal.

Contributing to incapacity: Persistent comas eliminate the possibility of the patient making any decisions and a surrogate is required. In temporary comas, the individual usually will return to normal function.

**Confusion (Confusión)** – confusion is a state in which the person experiences loss of memory, as well as diminished awareness of environment, time (of day, year, or month), and presence or absence of friends or relatives. May result from multiple causes, many of which are reversible.

Prognosis: Varies widely, depending on cause.

Contributing to incapacity: Severe confusion indicates lack of capacity; but it is important to be alert to temporary or reversible causes of confusion, such as urinary tract infections, effects of medication, or delirium.

**Congestive heart failure (Insuficiencia cardíaca congestiva)** – congestive heart failure is a term that physicians use any time the heart is not functioning adequately to take care of normal or even excessive physical activity. The condition is common in older individuals, but in most instances can be well controlled with medication, and does not always indicate a serious problem. In a severe state it is quite serious. Congestive failure should be described indicating whether it is mild, moderate, or severe. The physician should explain the extent of the disability.

Prognosis: Mild to moderate congestive heart failure carries a good prognosis with adequate treatment. Severe congestive heart failure may be fatal.

Contributing to incapacity: The severe congestive heart failure patient will be totally incapacitated physically and mentally, and in need of round-the-clock support to take care of daily activities. Mental function is not affected in the mild to moderate condition.

**Delirium (Delirio)** – delirium indicates a state of temporary total confusion frequently associated with agitation, restlessness, and, at times, hallucinations. Older people on medications, using alcohol, or following surgery are particularly susceptible to delirium. Delirium also may be triggered by an illness associated with fever and by extreme anxiety.

Prognosis: Delirium is usually temporary and does not produce a permanent problem.

Contributing to incapacity: States of delirium can be misinterpreted to indicate a serious mental disorder when, in reality, the condition is usually temporary.

**Delusion (Ilusión, idea delirante)** – a delusion implies a belief in something that is contrary to fact or reality. Delusions are misconceptions in which people may believe things are happening that are not. Delusions can be frightening or they can be fantasies such as delusions of grandeur.

Prognosis: Delusions may occur with serious mental illness and, as such, the prognosis is not good.

Delusions without other symptoms may not be a serious problem.

Contributing to incapacity: Delusions may contribute to diminished capacity, especially when associated with other problems and when they are obvious to other people.

**Dementia (Demencia)** – dementia is caused by various diseases and conditions that result in damaged brain cells or connections between brain cells. When making a diagnosis of dementia, of Mental Disorders, Fourth Edition (DSM-IV). To meet DSM-IV criteria for dementia, the following are required:

□ Symptoms must include decline in memory and in at least one of the following cognitive abilities:

(1) Ability to generate coherent speech or understand spoken or written language;

(2) Ability to recognize or identify objects, assuming intact sensory function;

(3) Ability to execute motor activities, assuming intact motor abilities, sensory function and comprehension of the required task; and

(4) Ability to think abstractly, make sound judgments and plan and carry out complex tasks.

□ The decline in cognitive abilities must be severe enough to interfere with daily life. It is important for a physician to determine the cause of memory loss or other dementia like symptoms. Some symptoms can be reversed if they are caused by treatable conditions, such as depression, delirium, drug interaction, thyroid problems, excess use of alcohol or certain vitamin deficiencies. When dementia is not caused by treatable conditions, a physician must conduct further assessments to identify the form of dementia that is causing symptoms. Different types of dementia are associated with distinct symptom patterns and distinguishing microscopic brain abnormalities. The most common types are: Alzheimer's disease, vascular dementia, mixed dementia, frontotemporal dementia, dementia with Lewy bodies, Parkinson's disease, Creutzfeldt-Jakob disease, and Normal pressure hydrocephalus. In 2011, the Alzheimer's Association's journal, *Alzheimer's and Dementia: The Journal of the Alzheimer's Association* published new criteria and guidelines for the diagnosis of Alzheimer's disease. These were developed by the Association and the National Institute on Aging (NIA) of the National Institutes of Health (NIH). For more information, see page 24, *New Diagnostic Criteria and Guidelines for Alzheimer's Disease*. Source: *Utah's State Plan for Alzheimer's Disease and Related Dementias*, Page 22.

Prognosis: Dementias may be progressive, such as Alzheimer's disease, which progresses in stages.

Dementia resulting from multiple small strokes may not be progressive. Disability may recur with each new episode associated with multiple strokes. Dementias associated with brain abnormalities, such as tumors and hydrocephalus, are usually progressive unless surgical treatment is successful.

Contributing to incapacity: Dementia is a common cause of diminished capacity, often leading to the need for guardians or other surrogate decision makers.

**Depression (Depresión)** – depression may be considered intrinsic or reactive. Intrinsic depression is a state of depression that occurs spontaneously without any obvious reasons and has been shown to have some chemical manifestations in the brain that affect the person's mood. Reactive depression is the depression that occurs as a result of life situation, such as loss of a child or spouse, loss of health, loss of income.

Prognosis: Usually good. Anti-depressant medications are frequently quite effective in treating even severe depression. Reactive depressions usually run their course after the causal event and a period of grieving has passed.

Contributing to incapacity: Depression can sometimes mimic dementia. In this way it can temporarily affect decisional capacity and should be carefully evaluated.

**Developmental disability (Discapacidad neuromotora)** – see “Intellectual Disability.”

**Frail elderly (Persona anciana débil, frágil)** – frail elders are older individuals who have physical or mental disabilities that may interfere with the ability to live independently and perform the activities of daily living, often over age 85.

Prognosis: People in this state will usually deteriorate gradually and are especially susceptible to stress, infections, injury, and disturbances of circulation.

Contributing to incapacity: Frail older people may or may not have diminished decisional capacity. It is important not to equate advanced age and frail physical condition with decisional incapacity.

**Functional (Trastornos funcionales)** – functional means a disturbance in the body not associated with a diseased tissue or organ. Many functional disorders such as an irritable bowel, forms of mild depression, drinking disorders, anxiety, are examples of functional states.

Prognosis: Usually good since the functional disorders are progressive and individuals can learn with help, sometimes with medication, to control functional abnormalities.

Contributing to incapacity: Individuals with functional disorders often become more severely incapacitated if an organic disorder, such as a stroke, heart attack, or senility, also develops.

**Global cognitive impairment (Déficit en la función cognitiva)** – global cognitive impairment indicates disturbance of total brain function, including memory deficit, inability to understand, lack of judgment, and lack of ability to recognize or understand one’s surroundings.

Prognosis: Global cognitive impairment usually indicates a very severe progressive mental disorder.

Contributing to incapacity: Global cognitive impairment invariably leads to total loss of judgment capability. There is loss of ability to compare or make decisions, or of being able to understand situations. This condition usually is associated with total incapacity.

**Hallucination (Alucinación)** – hallucination is an apparent perception of sights, sounds, and/or smells that are not actually present. Hallucinations may occur in a delirium, but they may also occur with certain functional disorders, especially schizophrenia, and organic disorders of the brain. Hallucinations are commonly associated with drugs, excessive use of alcohol and, especially in the elderly, illnesses associated with fever.

Prognosis: The prognosis depends on the condition associated with the hallucination and may be serious when present with mental illness or organic disorders of the brain.

Contributing to incapacity: Observers of individuals having hallucinations will usually associate the hallucinations with serious mental impairment, which may be correct, or the hallucinations may be associated with a temporary condition.

**Immobility (Inmovilidad)** – immobility indicates the lack of an individual to utilize the extremities in meaningful movement. Immobility may mean a lack of ability to walk or the lack of the ability to do things with the arms and hands. The most common cause of immobility is stroke, but other problems, such as severe arthritis, can immobilize an individual.

Prognosis: Most such problems are permanent and often progressive.

Contributing to incapacity: Immobility is a very significant cause of incapacity and, when severe, causes problems in the ability of the individual to survive without considerable support.

**Incontinence (Incontinencia)** – incontinence is the loss of the ability to control the urine output and sometimes the bowel control is lost.

Prognosis: Newer techniques have helped patients to learn the control of bladder and bowel, but the presence of incontinence associated with mental problems adds to a poor prognostic outcome.

Contributing to incapacity: Incontinence is probably the most significant abnormality that leads to institutionalization of the older protected person and, when associated with mental deterioration, the condition is a serious problem.

**Intellectual disability<sup>18</sup> (Discapacidad intelectual, retraso mental [menores de 18])** – intellectual disability is a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18. Intellectual functioning refers to general mental capacity, such as learning, reasoning, problem solving, and so on. One measurement of intellectual functioning is an IQ test. Generally, an IQ test score of around 70 or as high as 75 indicates a limitation in intellectual functioning. See American Association on Intellectual and Development Disabilities, [www.aidd.org](http://www.aidd.org).

**Memory deficit (Déficit de la memoria)** – memory deficits occur in normal aging. Benign memory loss of aging implies minor memory changes, such as forgetting where one leaves keys or glasses. Serious memory loss is forgetting what they are used for, getting lost, etc. Older people with memory deficit may still retain reasonably good judgment abilities. Judgment enables persons to make rational decisions. Prognosis: Memory loss does not necessarily imply a poor prognosis and many individuals who have primary memory deficit may retain judgment ability and make reasonable decisions.

Contributing to incapacity: The ability to make good judgments is important to anyone's capability to function in the world. If the memory deficit is the only deficit, a person with poor memory function may not be severely handicapped.

**Multiple sclerosis (Esclerosis múltiple)** – multiple sclerosis (MS) is a neurological disorder that affects adults of all ages. Usually it begins in the second, third, or fourth decade of life, but can occur later. This disease affects various areas of the nervous system and may produce mild disability and even death. Symptoms may include anything from disturbance of vision to almost complete paralysis of all the extremities along with changes in sensation throughout the body.

Prognosis: The outlook is variable. Usually if the onset of the disorder is mild, the disease does not progress rapidly. Even the moderately severe cases do not progress inevitably, but can have remissions and recurrences. Acute severe cases may be fatal within a few weeks.

Contributing to incapacity: Mild Multiple Sclerosis is well tolerated. Many patients with MS, however, can be totally incapacitated physically, but are seldom affected from the standpoint of intellectual function.

**Normal pressure hydrocephalus (Hidrocefalia de presión normal)** – normal pressure hydrocephalus is not common, but when present can produce a dementia similar to the other dementias. It is due to a constriction in the tube that drains the fluid from the fluid portion of the brain into the spinal canal, causing an enlargement of the ventricles (the fluid-containing sacs within the brain). This condition can be diagnosed by a CT scan and treated by a surgical procedure.

Prognosis: When discovered at a reasonably early stage the prognosis is good, even though surgery is necessary.

Contributing to incapacity: Far advanced hydrocephalus often produces irreversible brain changes, but when treated early, the patient may perform normally after surgery with a procedure called a shunt.

**Organic (Trastorno organico)** – organic means change in body tissue or blood chemistry. Examples of diseases associated with tissue damage are arthritis, Alzheimer's disease, and stroke. Disorders such as diabetes, kidney, and liver disease are characterized by significant abnormalities in the blood chemistry. Prognosis: Many of the organic disorders are treatable and even though all are not cured, many can be controlled with surgery or medications.

Contributing to incapacity: Older people, especially the frail elderly, frequently have multiple organic changes. Multiple organic problems in the elderly lead to marked disability and incapacity. When not controlled, organic diseases can lead to total incapacity and death.

**Organic brain syndrome (Síndrome cerebral organico)** – organic brain syndrome is a term that has been used for years to describe anyone with organic changes in the brain producing dementia. Recent studies have shown that this is a poor diagnosis because the various mental disorders can be classified in relation to their causes (see dementia).

Prognosis: When there is organic brain damage, such as with hardening of the arteries, multiple strokes, or cerebral arteriosclerosis, the disorder is usually slowly progressive.

Contributing to incapacity: The various dementias that would be included in this broad description have the same significance as other dementias.

**Paranoia (Paranoia)** – paranoia is a symptom in which a person becomes very suspicious about people and events surrounding him or her. Paranoia is often a symptom of other disease, especially schizophrenia. Paranoid individuals may become dangerous because they become frightened of an individual and unwittingly may do severe harm to the person they think is persecuting them.

Prognosis: Many individuals with paranoid trends have persistent paranoia through life. It may be mild, or when associated with mental disease, may be severe. In some instances, medical treatment or psychotherapy can be helpful.

Contributing to incapacity: Paranoid individuals can often be very difficult to evaluate and to deal with. They can be so suspicious that they will not trust even their closest companions.

**Parkinson's disease (Enfermedad de Parkinson)** – Parkinson's Disease is a disorder that usually has its onset in late life, but can begin in the second and third decades. It is primarily a disease of the nerves and muscles producing a severe tremor and muscle rigidity, which flattens the facial features and causes disturbance in walking. The mental function is not affected until the disease is very far advanced. Most individuals with Parkinson's disorders seem to be unusually bright.

Prognosis: With new treatment methods (drug therapy) the outlook in Parkinson's has improved tremendously, both in relation to function and life expectancy. Now individuals with Parkinson's can look forward to a normal life expectancy and maintain function for many years.

Contributing to incapacity: Even with good treatment Parkinson's disorders can sometimes be totally disabling. Individuals may end up in wheelchairs or in nursing homes. In the far advanced stages mental capacity may be decreased.

**Pernicious anemia (Anemia perniciosa)** – pernicious Anemia (PA) is a specific type of anemia that is related to a deficiency in vitamin B12 and folic acid. Pernicious anemia was previously a fatal disorder until the discovery of liver extract and, eventually, vitamin B12, which now can control the disorder completely. When not controlled, PA causes the person to have a markedly deficient amount of iron and red blood in the system. The disease can affect the nervous system, producing changes in the ability to walk and producing numbness in the extremities, especially the feet.

Prognosis: With treatment, the condition should be well controlled.

Contributing to incapacity: If treated, there should be no incapacity related to pernicious anemia.

**Schizophrenia (Esquizofrenia)** – schizophrenia is a mental disorder associated with dramatic personality changes characterized by withdrawal, indifference, and at times delusions, hallucinations, and paranoia. Sometimes a person with schizophrenia presents symptoms of multiple personalities. Schizophrenia, when associated with paranoia, may create a dangerous situation, and may result in very bizarre behavior. Such patients should be under the care of a psychiatrist.

Prognosis: The prognosis of schizophrenia has improved in recent years with the use of antipsychotic medications, which sometimes help to relieve some of the severe symptoms of schizophrenia.

Contributing to incapacity: Persons with severe schizophrenia can present very severe management problems for family and caretakers. Their behavior can be so strange that one is not sure whether the patient's decisions are accurate or inaccurate.

**Sensory changes in the body (Cambios sensoriales por envejecimiento)** – sensory changes are the most common physical changes that occur with aging. Sensory changes may involve hearing, vision, the olfactory sense (the sense of smell), inability to recognize thirst, changes in taste and touch, and, frequently, loss of sense of equilibrium. Older individuals do not have loss of all of these functions. Some may not lose any. Some may lose one or two of these functions, but such losses can affect health. For example, if one has loss of taste and smell, appetite is impaired. If one does not recognize thirst, one can easily become dehydrated.

Prognosis: Sensory changes are common in aging, and unless severe, do not seriously incapacitate an individual and are not progressive.

Contributing to incapacity: They usually do not contribute to incapacity.

**Stress (Estrés)** – stress is a condition in which the body and the mind of the individual can be affected by events in one's life which can be either pleasant or extremely difficult. Constructive stress occurs in the lives of most of us, and most individuals react favorably by performing well under stress, e.g., actors and athletes perform better as a result of stress. On the other hand, stress can be disabling. Among the most stressful situations causing problems are the stresses resulting from the loss of spouse, or, especially for

an older individual, the stress of being forced to move one's residence, especially against a person's will. Many life situations may cause severe stress.

Prognosis: Individuals who handle stress well in youth usually handle stress well with aging. People who don't handle stress well can suffer and develop severe depression. Frequently physical reactions, such as elevated blood pressure, occur as a result of adverse reactions to stress.

Contributing to incapacity: Older individuals, especially frail individuals, may perform very badly under stress. Individuals should not be judged adversely when they are in a very stressful situation. They should be re-evaluated when stress can, if possible, be eliminated or somewhat reduced.

**Stroke (Ataque cerebral, derrame cerebral)** – stroke is the most common physical cause of disability in older individuals. Stroke is usually a result of a blood clot in an artery in the brain, leading to disability, such as the loss of the use of all the muscles on one side of the body, sometimes loss of speech and, when massive, can be fatal.

Prognosis: When the individual has recovered from a stroke, the initial damage does not usually progress, but there may be a recurrence of stroke.

Contributing to incapacity: The degree and size of the stroke determines the incapacity. Some individuals, after stroke, have minor disabilities. Others may have such severe disability that they are confined to a wheelchair. With multiple strokes, mental function can deteriorate, but usually with a single stroke the person remains clear mentally, but because of speech deficit may have a problem in expressing himself.

**Vitamin B12 deficiency (Deficiencia de vitamina B12)** – B12 is a vitamin that specifically prevents the progression of pernicious anemia, and helps to control the blood in patients with pernicious anemia. There has been some evidence that a deficiency of vitamin B12 may contribute to senile dementia. Patients with dementia should be tested for B12 deficiency.

Prognosis: The outlook for treatment of individuals with a deficiency of B12 is very good.

Contributing to incapacity: Treated individuals with B12 deficiencies should not have any incapacity.

For additional information, see:

- National Library of Medicine, <http://www.nlm.nih.gov/medlineplus/>