



# GLOSSARY OF PERSONAL INJURY LEGAL TERMS



SHELLY LEEKE  
LAW FIRM, LLC

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**Office Locations :**

North Area  
103 Laurel Avenue  
Goose Creek, SC 29445

Charleston & Mt. Pleasant

222 W. Coleman Blvd.  
Mt. Pleasant, SC 29464  
(By Appointment)

Phone: 843.277.6049

Fax: 843.297.8497

[www.LeekeLaw.com](http://www.LeekeLaw.com)

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**Affidavit:** A written statement affirmed or sworn by oath before a commissioner for taking affidavits in British Columbia or a notary public, for use as evidence in court.

**Affirmed:** In the practice of the appellate courts, the decree or order is declared valid and will stand as rendered in the lower court.

**Age of Majority:** The age when a person acquires all the rights and responsibilities of being an adult.

**Allegation:** Something that someone says happened.

**Alternative Dispute Resolution:** Methods for resolving problems without going to court. Mediation is one form of ADR.

**Analgesic:** Generic term for medications that relieve pain. Some analgesics like aspirin have a low pain-relieving threshold, whereas others like Oxymoron have a much higher ceiling.

**Answer:** In a civil case, the defendant's written response to the plaintiff's complaint. In South Carolina the answer must be filed within 30 days, and it either admits to or denies the factual basis for liability.

**Appeal:** A request to a higher court usually composed of a panel of judges, to overturn the legal ruling of a lower court.

**Appellate:** About appeals; an appellate court has the power to review the judgment of another lower court or tribunal.

**Arbitration:** A method of alternative dispute resolution in which the disputing parties agree to abide by the decision of an arbitrator. The arbitrator decides the case, just like a judge or jury.

**Assignment:** The transfer of legal rights, such as the time left on a lease, from one person to another.

**Assumption of Risk:** A defense raised in personal injury lawsuits. An Assumption of Risk asserts that the plaintiff knew that a particular activity was dangerous and thus bears all responsibility for any injury (or possibly a death) that resulted.

**At Fault:** Found responsible. Sometimes fault is shared between parties involved, depending on the circumstances of each case. Shared fault is also referred to as comparative fault.

**Attorney-Client Privilege:** Generally, all communications between an attorney and their client are privileged, that is they are entirely confidential, being given special protection under the law, and no one else (particularly their opponents in a lawsuit) are entitled to gain access to them. This is referred to as the Attorney-Client Privilege. Also, most documents produced by an attorney and his staff in regard to the client's case are also privileged. This is referred to as the attorney work-product privilege. Often times, a defense attorney may, through the discovery process, seek to acquire access to these documents developed by the personal injury attorney and his client. There are only very narrow and specific instances where they are entitled to do so. However, it is the job of the personal injury attorney to know these exceptions and to zealously guard the confidentiality of these documents and the privacy of his clients.

**Bad Faith:** Dishonesty or fraud in a transaction, such as entering into an agreement with no intention of ever living up to its terms or knowingly misrepresenting the quality of something that is being bought or sold.

**Bench Trial:** A trial held before a judge and without a jury.

**Bodily Injury Liability:** A legal liability that may arise as a result of the injury or death of another person.

**Burden of Proof:** The duty of a party in a lawsuit to persuade the judge or the jury that enough facts exist to prove the allegations of the case. Different levels of proof are required depending on the type of case.

**Business Liability:** The term used to describe the liability coverages provided by the Business owners Liability Coverage Form. It includes liability for bodily injury, death, property damage, personal injury, advertising injury, and fire damage.

**Caps on Damages:** A damages cap is an arbitrary ceiling on the amount an injured party can receive in compensation by a judge or jury, irrespective of what the evidence presented at a trial proves compensation should be. A cap is usually defined in a statute by a dollar figure or by tying the cap to another type of damages (e.g. two times compensatory damages). Caps usurp the authority of judges and ju-

ries, who listen to the evidence in a case, to decide compensation based on each specific fact situation. Several states have declared caps unconstitutional.

**Case Evaluation:** One of the most difficult challenges for a private individual handling his or her own personal injury claim is to know what their claim is worth. Most people simply don't feel comfortable in the bargaining process to settle a claim. And even those people who are comfortable with it are at a great disadvantage if they have no real idea where to start bargaining from. Likewise, an attorney who is inexperienced or unfamiliar with personal injury law may not yet have developed the necessary feel for the value of a client's case, and may not yet be familiar with the many resources available to help evaluate a claim. Personal injury attorneys who are well-experienced in resolving personal injury claims will have developed the knowledge of how particular factors will influence the value of a claim. Things such as comparative negligence issues (in which more than one person was at fault for an accident), punitive damages issues (in which the actions of a defendant, such as a drunk driver, were particularly reprehensible), and pre-existing medical conditions of the claimant which may either increase or decrease the value of their claim. Experienced personal injury attorneys will also have access to resources (some at considerable expense), both in book form and on-line, which give them up-to-date details about the claim value of particular types of injuries. An attorney should have an extensive, up-to-date library with medical and legal information that assist substantially in evaluating claims.

**Case Law:** Also known as common law. The law created by judges when deciding individual disputes or cases.

**Catastrophic Injury:** A catastrophic injury is one that is so severe that the injured person is not expected to fully recover. The injured person may require multiple surgeries, long hospital or rehabilitative stays, and full-time nursing or assistive care. Some examples of catastrophic injuries include certain types of brain injuries, spinal cord injuries, severe burns, loss of limb, amputation, and paralysis or paraplegia.

**Challenge for Cause:** Ask that a potential juror be rejected if it is revealed that for some reason he or she is unable or unwilling to set aside preconceptions and pay attention only to the evidence.

**Chambers:** A judge's office.

**Change of Venue:** A change in the location of a trial, usually granted to avoid prejudice against one of the parties.

**Charge to the Jury:** The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

**Circumstantial Evidence:** Indirect evidence that implies something occurred but doesn't directly prove it.

**Civil Lawsuit:** A lawsuit in which one does not need to prove criminal liability. Most civil lawsuits involve the question of paying money damages.

**Class Action:** is a large-scale civil proceeding usually brought about in product liability cases on the behalf of multiple clients who have a shared interest in the case.

**Clerk of the Court:** An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

**Collapse:** Literally, to cave in or give way. Term usually used in a case where a building under construction collapses and causes injury or death to those working in the area.

**Common Law:** The legal system that originated in England and is now in use in the United States. It is based on judicial decisions rather than legislative action.

**Comparative Negligence:** The degree to which the plaintiff is at fault (if at all) when compared to the fault of the defendant. A jury determines comparative negligence after hearing the facts of the case and the relevant law as instructed by the Judge. Damages may be reduced or apportioned as a result of plaintiff's comparative negligence.

**Compensable Claim:** A claim for which a person is entitled to receive compensation.

**Compensation:** Monetary award transferred from defendant to plaintiff to make up for some wrong, damage or injury caused by the defendant's actions or inaction.

**Compensatory Damages:** are monetary awards to the plaintiff for damages that have actually occurred, such as loss of wages or medical bills.

**Complaint:** The formal document that starts a lawsuit once filed with the court. A complaint will outline the circumstances ( parties, nature of damages, desired relief, etc. ) of the incident that form the case.

**Comprehensive General Liability:** A policy covering a variety of general liability exposures, including Premises and Operations, Completed Operations, Products Liability, and Owners and Contractors Protective. Contractual Liability and Broad Form coverages could be added. In most jurisdictions, the "Comprehensive" General Liability policy has been replaced by the newer "Commercial" General Liability (CGL) forms which include all the standard and optional coverages of the earlier forms.

**Comprehensive Personal Liability:** This coverage protects individuals and families from liability for nearly all types of accidents caused by them in their personal lives as opposed to business lives. It is most commonly a part of the protection provided by a Homeowners policy.

**Conflict of Interest:** Refers to a situation when someone, such as a lawyer or public official, has competing professional or personal obligations or personal or financial interests that would make it difficult to fulfill his duties fairly.

**Consideration:** The price in a contract for the other party's promise. The price may be a promise or an act ( e.g. promise of payment ). A party can only sue on a promise if he has given consideration in return for the promise. Consideration is often a monetary amount, but does not have to be.

**Contempt of Court:** An action that interferes with a judge's ability to administer justice or that insults the dignity of the court. Disrespectful comments to the judge or a failure to heed a judge's orders could be considered contempt of court. A person found in contempt of court can face financial sanctions and, in some cases, jail time.

**Contingent Fee Agreement:** When an injured person, or the family member of a deceased person, hires an attorney to represent them in a lawsuit, they both sign a contingent fee agreement. This is a document which is essentially the employment contract with the attorney that lays out in detail all of the terms of that employment. "Contingent fee" refers to the fact that the attorney is being hired on the basis that they will only receive a fee from the client contingent upon the client receiving money from the person ( s ) causing their injuries.

This means that the personal injury attorney only receives payment from the client when the attorney has secured a settlement, binding arbitration award, or jury verdict for the client. This allows even clients of very modest means to hire the very best attorneys for their cases. A good personal injury attorney will be experienced in all phases of case work, and will be able to properly guide the client's case while it is an insurance claim, and, if necessary, on through the stages of lawsuit, discovery, arbitration, mediation, and/or trial.

**Contingent Liability:** A liability imposed because of accidents caused by persons other than employees for whose acts an individual, partnership or corporation may be responsible. For example, an insured who hires an independent contractor can in some cases be held liable for his negligence.

**Contributory Negligence:** Prevents a party from recovering for damages if he or she contributed in any way to the injury. Not all states follow this system.

**Counsel:** Legal advice; a term used to refer to lawyers in a case.

**Counterclaim:** A claim that a defendant makes against a plaintiff.

**Cross Examination:** The process of challenging the evidence presented by a witness, typically a police officer in these cases.

**Damages:** Damages are awarded in various categories. Compensatory damages compensate the plaintiff for actual dollar-value losses ( e.g., medical expenses, both past and future ), lost income, loss of future earning capacity, etc. General damages, which are also a form of compensatory damages, cover more intangible losses, such as pain, suffering, humiliation, the loss of enjoyment of life as well as grief suffered from the loss of a loved one. Punitive damages ( which are rare ) serve to punish a defendant for extreme behavior and which serve to deter others from similar conduct.

**Decision:** The judgment rendered by a court after a consideration of the facts and legal issues before it.

**Defective Product:** A "defective product" is one that causes injury to a person because of some defect in the product ( e.g., manufacturing defect, design defect, or inadequate warning). Product liability litigation and claims are usually

more complicated than ordinary cases because of the necessity of securing experts in the field from which the product was manufactured. These experts can show alternative designs, and can demonstrate that the manufacturer could have prevented the injury, or death, by making modifications, installing safety guards, or having designed a completely different product.

**Deposition:** A deposition is a form of discovery in which a plaintiff, a defendant, a witness, or an expert witness with relevant information about a lawsuit is formally questioned under oath by the attorneys representing all parties in the lawsuit. The deposition is similar to the giving of oral testimony in a trial, but takes place under less formal circumstances and in advance of a trial. The deposition is typically before a court reporter and the witness is subjected to examination by attorneys for all parties.

**Defendant:** A person who is sued or accused in a court of law.

**Design Defect:** In these cases, a poor design causes injury to the person. In North Carolina, the injured person must prove that the manufacturer acted unreasonably in designing the product, that this conduct proximately caused the injury, and one of the following: the design of the product was so unreasonable that a reasonable person, aware of the facts, would not use or consume a product of this design; or the manufacturer unreasonably failed to adopt a safer, practical, feasible and otherwise reasonable design and that the better design would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality or desirability of the product.

**Direct Evidence:** Evidence that is directly perceived to prove an alleged fact.

**Direct Examination:** The initial questioning of a witness by the party that called the witness.

**Directed Verdict:** A judge's order to a jury to return a specified verdict, usually because one of the parties failed to prove its case.

**Disbursements:** Expenditures of money. When lawyers charge clients for disbursements, they seek to recover costs for expenses such as photocopying, long-distance phone charges, etc.

**Discovery:** The use of depositions, interrogatories, requests for production of documents, requests for admissions, and demands for independent medical examinations, and other procedures to discover relevant evidence possessed by the other parties or by independent witnesses.

**Dismissal with Prejudice:** An order to dismiss a case in which the court bars the plaintiff from suing again on the same cause of action.

**Dismissal without Prejudice:** An order to dismiss a case in which the court preserves the plaintiff's right to sue again on the same cause of action.

**Dismissal:** The judge may dismiss your case at motion hearing if there is evidence that your rights were violated during the stop of the vehicle, or a host of other reasons, if the evidence against you is weak. The judge can dismiss a case with prejudice, which means the DA can't re-file the case against you, or without prejudice, which means the DA can choose to re-file and try again to convict you.

**Drunk Driving:** A general reference to those criminal cases that are called DUI, DWI, OUI, OWI, DUII, DWAI, or other acronyms. They generally describe two types of cases: first, where the driver is sufficiently impaired by alcohol, drugs, or a combination of the two that the driver cannot drive safely. Second, "drunk driving" relates to those cases where someone is above that state's legal limit, usually .08, no matter how safely the person is driving.

**Duty:** Duty is a legal obligation to take action or not take action as specified by common law, statute, contract or court order. Under tort law, one has the duty of reasonable care to avoid injuring others.

**DUI:** Driving under the influence. Will either refer to driving under the influence of alcohol, driving under the influence of drugs, or driving under the influence of a combination of liquor and drugs. This is the most widely used acronym for drunken driving cases. The standard for what it means to be under the influence will vary from state to state. It is important to contact a lawyer in your area that knows DUI law if you have been accused of DUI or a related drunk driving offense.

**Duty to Warn:** The legal obligation to warn people of a danger. Typically, manufacturers of hazardous products have a duty to warn customers of a product's potential dangers and to advise users of any precautions they should take.

**Exculpatory Evidence:** Evidence that the District Attorney may possess that could establish your innocence.

**Expert Witnesses:** Expert witnesses are individuals trained in some particular specialty, such as medicine, engineering, accident reconstruction, or economics. By virtue of this training they are qualified to render "expert opinions" or "expert testimony" regarding the facts of a case. Some expert witnesses may have had direct involvement in the personal injury case prior to the beginning of a lawsuit, such as a treating physician (who directly provided medical care to an injured person) or a police officer at a traffic accident scene who has been trained in accident reconstruction (although very few officers actually have more than minimal training in this specialty). Most expert witnesses, however, are hired by one side or the other in a personal injury case for the purpose of analyzing complex information that falls within their area of expertise. Expert witnesses may be vital to a personal injury case's successful conclusion, especially in cases where the facts are highly disputed or particularly complicated. As personal injury attorneys gain experience in their specialty, they will become more and more familiar with whom the most qualified and respected expert witnesses are.

Forseeability - in tort law is the reasonable anticipation that an injury may occur through the action or inaction of another party.

Intentional Torts- are personal injuries or property damage that was caused out of malice, willfulness or the reckless disregard of another person's safety or rights.

Loss of Consortium- is the loss of or decrease in sexual activity between spouses as the result of a personal injury to one of the spouses.

Negligence- is the failure to take the sort of action a reasonable person would take under the same circumstances. Negligence is characterized by carelessness, inattentiveness or a disregard for another's safety. Negligence is different from an intentional tort.

Plaintiff: The Plaintiff in a personal injury case is the person (or persons) injured as a result of the negligence of

one or more other parties. If a formal lawsuit is filed, the injured party is the plaintiff in the lawsuit and the negligent party becomes the defendant. An insurance claim is the formal beginning of a personal injury case, and is made when the personal injury attorney informs an insurance company (or a self-insured business or government entity) that the injured person will be seeking compensation for damages that were sustained. It is very important when making an insurance claim to know what information must be given to an insurance company, what information need not be given, and what information should never be given. Providing more information than required by law may seriously damage the value of a personal injury claim. Also note that a plaintiff may be a family member in the case of a wrongful death suit.

Punitive Damages- are also known as exemplary damages and are meant to punish the defendant for outrageous or particularly egregious behavior. The monetary awards for punitive damages are over and above that of compensatory damages.

Reasonable person standard - is a test in personal injury cases where a theoretical individual behaves in a reasonable manner under a specific set of circumstances in order to avoid injuring others. The defendant in most personal injury cases will be measured against this theoretical "reasonable person".

Strict liability - is a theory in product liability law that says that a company does not need to be either negligent or willful in injuring another person. With strict liability, it is sufficient to say that the product caused the injury in order for a case to go forward.

Tort Law- is the same as personal injury law. A tort is the injury to person or property because of negligence, willfulness or because of strict liability.

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