

GLOSSARY OF LEGAL TERMINOLOGY

General Disclaimer: The list provided is a list of general definitions. It is neither comprehensive nor does it apply to every individual. The list is not intended to be legal advice and is not a substitute for the advice of an attorney. Consult an attorney for advice regarding your individual situation.

A

Action: Case, cause, suit, or controversy disputed or contested before a court of justice.

Adjudication: Giving or pronouncing a judgment or decree. Also the judgment given.

Ad Litem: A Latin term meaning for the purposes of the lawsuit. For example, a guardian "ad litem" is a person appointed by the court to protect the interests of a minor or legally incompetent person in a lawsuit.

Admissible evidence: Evidence that can be legally and properly introduced in a civil or criminal trial.

Adversary System: The trial method used in the U.S. and some other countries. This system is based on the belief that truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination the evidence presented by their adversaries. All this is done under the established rules of procedure before an impartial judge and/or jury.

Affiant: A person who makes and signs an affidavit.

Affidavit: A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths. For example, in criminal cases, affidavits are often used by police officers seeking to convince courts to grant a warrant to make an arrest or a search. In civil cases, affidavits of witnesses are often used to support motions for summary judgment.

Affirmed: In the practice of appellate courts, the word means that the decision of the trial court is correct.

Allegation: A statement of the issues in a written document (a pleading) which a person is prepared to prove in court. For example, an indictment contains allegations of crimes against the defendant.

Amicus Curiae (a-mi'kus ku'ri-e): A friend of the court. One, not a party to a case who volunteers to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

Answer: The defendant's response to the plaintiffs allegations as stated in a complaint. An item-by-item, paragraph-by-paragraph response to points made in a complaint; part of the pleadings.

Appeal: A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the appellant.

Appearance: **1.** The formal proceeding by which a defendant submits to the jurisdiction of the court. **2.** A written notification to the plaintiff by an attorney stating that he or she is representing the defendant.

Appellate court: A court having jurisdiction to hear appeals and review a trial court's procedure.

Appellee (ap-e-le'): The party against whom an appeal is taken. Sometimes called a *respondent*.

Arraignment: A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty. Sometimes called a *preliminary hearing* or *initial appearance*.

Arrest: To take into custody by legal authority.

Assault: Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm.

B

Bail Bond: An obligation signed by the accused to secure his or her presence at the trial. This obligation means that the accused may lose money by not properly appearing for the trial. Often referred to simply as *bond*.

Bailiff: A court attendant who keeps order in the courtroom and has custody of the jury.

Bar: **1.** Historically, the partition separating the general public from the space occupied by the judges, lawyers, and other participants in a trial. **2.** More commonly, the term means the whole body of lawyers.

Battery: A beating, or wrongful physical violence. The actual threat to use force is an *assault*; the use of it is a battery, which usually includes an assault.

Bench: The seat occupied by the judge. More broadly, the court itself.

Bench Trial: Trial without a jury in which a judge decides the facts.

Bench Warrant: An order issued by a judge for the arrest of a person.

Beneficiary: Someone named to receive property or benefits in a will. In a trust, a person who is to receive benefits from the trust.

Bequeath: To give a gift to someone through a will.

Bequests: Gifts made in a will.

Best Evidence: Primary evidence; the best evidence available. Evidence short of this is "secondary." That is, an original letter is "best evidence," and a photocopy is "secondary evidence."

Beyond a Reasonable Doubt: The standard in a criminal case requiring that the jury be satisfied to a moral certainty that every element of a crime has been proven by the prosecution. This standard of proof does not require that the state establish absolute certainty by eliminating all doubt, but it does require that the evidence be so conclusive that all reasonable doubts are removed from the mind of the ordinary person.

Brief: A written statement prepared by one side in a lawsuit to explain to the court its view of the facts of a case and the applicable law.

Burden of Proof: In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point (the burden of proof) is not the same as the standard of proof. *Burden of proof* deals with which side must establish a point or points; *standard of proof* indicates the degree to which the point must be proven. For example, in a civil case the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as a preponderance of evidence or clear and convincing evidence.

C

Calendar: List of cases scheduled for hearing in court.

Caption: The heading on a legal document listing the parties, the court, the case number, and related information.

Case Law: Law established by previous decisions of appellate courts, particularly the Supreme Court.

Cause: A lawsuit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice.

Cause of action: The facts that give rise to a lawsuit or a legal claim.

Certification: **1.** Written attestation. **2.** Authorized declaration verifying that an instrument is a true and correct copy of the original.

Certiorari: A means of getting an appellate court to review a lower court's decision. The loser of a case will often ask the appellate court to issue a *writ of certiorari*, which orders the lower court to convey the record of the case to the appellate court and to certify it as accurate and complete. If an appellate court grants a writ of certiorari, it agrees to take the appeal. This is often referred to as *granting cert*.

Challenge: An objection, such as when an attorney objects at a hearing to the seating of a particular person on a civil or criminal jury.

Chambers: A judge's private office. A hearing in chambers takes place in the judge's office outside of the presence of the jury and the public.

Change of Venue: Moving a lawsuit or criminal trial to another place for trial.

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: All evidence except eyewitness testimony. One example is physical evidence, such as fingerprints, from which an inference can be drawn.

Citation: **1.** A reference to a source of legal authority. **2.** A direction to appear in court, as when a defendant is *cited* into court, rather than arrested.

Civil Actions: Noncriminal cases in which one private individual or business sues another to protect, enforce, or redress private or civil rights.

Civil Procedure: The rules and process by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.

Clear and Convincing Evidence: Standard of proof commonly used in civil lawsuits and in regulatory agency cases. It governs the amount of proof that must be offered in order for the plaintiff to win the case.

Closing Argument: The closing statement, by counsel, to the trier of facts after all parties have concluded their presentation of evidence.

Codicil (kod'i-sil): An amendment to a will.

Commit: To send a person to prison, asylum, or reformatory by a court order.

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: A legal doctrine by which acts of the opposing parties are compared to determine the liability of each party to the other, making each liable only for his or her percentage of fault. See also *contributory negligence*.

Complainant: The party who complains or sues; one who applies to the court for legal redress. Also called the *plaintiff*.

Complaint: **1.** The legal document that usually begins a civil lawsuit. It states the facts and identifies the action the court is asked to take. **2.** Formal written charge that a person has committed a criminal offense.

Conservatorship: Legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing that for himself or herself. (See also *guardianship*. Conservators have somewhat less responsibility than guardians.)

Contempt of Court: Willful disobedience of a judge's command or of an official court order.

Continuance: Postponement of a legal proceeding to a later date.

Contract: A legally enforceable agreement between two or more competent parties made either orally or in writing.

Contributory Negligence: A legal doctrine that says if the plaintiff in a civil action for negligence also was negligent, he or she cannot recover damages from the defendant for the defendant's negligence. Most jurisdictions have abandoned the doctrine of contributory negligence in favor of *comparative negligence*.

Conviction: A judgment of guilt against a criminal defendant.

Corroborating Evidence: Supplementary evidence that tends to strengthen or confirm the initial evidence

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

Counterclaim: A claim made by the defendant in a civil lawsuit against the plaintiff. - In essence, a counter lawsuit within a lawsuit.

Court Administrator/Clerk of court: An officer appointed by the Court or elected to oversee the administrative, non-judicial activities of the court.

Court: Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

Court Costs: The expenses of prosecuting or defending a lawsuit, other than the attorneys' fees. An amount of money may be awarded to the successful party (and may be recoverable from the losing party) as reimbursement for court costs.

Court Reporter: A person who makes a word-for-word record of what is said in court and produces a transcript of the proceedings upon request.

Cross-Claim: A claim by codefendant or co-plaintiffs against each other and not against persons on the opposite side of the lawsuit.

Cross-Examination: The questioning of a witness produced by the other side.

D

Damages: Money awarded by a court to a person injured by the unlawful act or negligence of another person.

Decision: The judgment reached or given by a court of law.

Declaratory Judgment: A judgment of the court that explains what the existing law is or expresses the opinion of the court without the need for enforcement.

Decree: An order of the court. A final decree is one that fully and finally disposes of the litigation. An *interlocutory* decree is a preliminary order that often disposes of only part of a lawsuit.

Defamation: That which tends to injure a persons reputation. *Libel* is published defamation, whereas *slander* is spoken.

Default: A failure to respond to a lawsuit within the specified time.

Default Judgment: A judgment entered against a party who fails to appear in court or respond to the charges.

Defendant: In a civil case, the person being sued. In a criminal case, the person accused of the crime.

Demurrer: A motion to dismiss a civil case because of the legal insufficiency of a complaint.

De Novo: A new. A *trial de novo* is a new trial of a case.

Deposition: An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

Direct Evidence: Proof of facts by witnesses who saw acts done or heard words spoken.

Direct Examination: The first questioning of witnesses by the party on whose behalf they are called.

Disbarment: Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law. It differs *from censure* (an official reprimand or condemnation) and *from suspension* (a temporary loss of the right to practice law).

Disclaim: To refuse a gift made in a will.

Discovery: The pretrial process by which one party discovers the evidence that will be relied upon in the trial by the opposing party.

Dismissal: The termination of a lawsuit. A dismissal without prejudice allows a lawsuit to be brought before the court again at a later time. In contrast, a dismissal with prejudice prevents the lawsuit from being brought before a court in the future.

Diversion: The process of removing some minor criminal, traffic, or juvenile cases from the full judicial process, on the condition that the accused undergo some sort of rehabilitation or make restitution for damages.

Docket: A list of cases to be heard by a court or a log containing brief entries of court proceedings.

Domicile: The place where a person has his or her permanent legal home. A person may have several residences, but only one domicile.

Double Jeopardy: Putting a person on trial more than once for the same crime. It is forbidden by the Fifth Amendment to the U.S. Constitution.

Due Process of Law: The right of all persons to receive the guarantees and safeguards of the law and the judicial process. It includes such constitutional requirements as adequate notice, assistance of counsel, and the rights to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses.

E

En Banc: All the judges of a court sitting together. Appellate courts can consist of a dozen or more judges, but often they hear cases in panels of three judges. If a case is heard or reheard by the full court, it is heard en banc.

Enjoining: An order by the court telling a person to stop performing a specific act.

Equal Protection of the Law: The guarantee in the Fourteenth Amendment to the U.S. Constitution that all persons be treated equally by the law. Court decisions have established that this guarantee requires that courts be open to all persons on the same conditions, with like rules of evidence and modes of procedure; that persons be subject to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others;

that persons are liable to no other or greater burdens than such as are laid upon others, and that no different or greater punishment is enforced against them for a violation of the laws.

Equity: Generally, justice or fairness. Historically, equity refers to a separate body of law developed in England in reaction to the inability of the common-law courts, in their strict adherence to rigid writs and forms of action, to consider or provide a remedy for every injury. The king therefore established the court of chancery, to do justice between parties in cases where the common law would give inadequate redress. The principle of this system of law is that equity will find a way to achieve a lawful result when legal procedure is inadequate. Equity and law courts are now merged in most jurisdictions.

Escheat (es-chet): The process by which a deceased person's property goes to the state if no heir can be found.

Estate: An estate consists of personal property (car, household items, and other tangible items), real property, and intangible property, such as stock certificates and bank accounts, owned in the individual name of a person at the time of the person's death. It does not include life insurance proceeds unless the estate was made the beneficiary) or other assets that pass outside the estate (like joint tenancy asset).

Estate Tax: Generally, a tax on the privilege of transferring property to others after a person's death. In addition to federal estate taxes, many states have their own estate taxes.

Estoppel: A person's own act, or acceptance of facts, which preclude his or her later making claims to the contrary.

Et al: And others.

Evidence: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

Execute: To complete the legal requirements (such as signing before witnesses) that make a will valid. Also, to execute a judgment or decree means to put the final judgment of the court into effect.

Executor: A personal representative, named in a will, who administers an estate.

Exhibit: A document or other item introduced as evidence during a trial or hearing.

Ex Parte: On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.

Ex Parte Proceeding: The legal procedure in which only one side is represented. It differs from *adversary system or adversary proceeding*.

Ex Post Facto: After the fact. The Constitution prohibits the enactment of ex post facto laws. These are laws that permit conviction and punishment for a lawful act performed before the law was changed and the act made illegal.

Extenuating Circumstances: Circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.

Expungement: Official and formal erasure of a record or partial contents of a record.

E

Family Allowance: A small amount of money set aside from the estate of the deceased. Its purpose is to provide for the surviving family members during the administration of the estate.

Felony: A crime of a graver nature than a *misdemeanor*, usually punishable by imprisonment in a penitentiary for more than a year and/or substantial fines.

Fiduciary: A person having a legal relationship of trust and confidence to another and having a duty to act primarily for the others benefit, e.g., a guardian, trustee, or executor.

File: To place a paper in the official custody of the clerk of court/court administrator to enter into the files or records of a case.

Finding: Formal conclusion by a judge or regulatory agency on issues of fact. Also, a conclusion by a jury regarding a fact.

First Appearance: The initial appearance of an arrested person before a judge to determine whether or not there is probable cause for his or her arrest. Generally the person comes before a judge within hours of the arrest. Also called *initial appearance*.

Fraud: Intentional deception to deprive another person of property or to injure that person in some other way.

G

Garnishment: A legal proceeding in which a debtor's money, in the possession of another (called the *garnishee*), is applied to the debts of the debtor, such as when an employer garnishes a debtor's wages.

General Jurisdiction: Refers to courts that have no limit on the types of criminal and civil cases they may hear.

Grantor or Settlor: The person who sets up a trust.

Guardian: A person appointed by will or by law to assume responsibility for incompetent adults or minor children. If a parent dies, this will usually be the other parent. If both die, it probably will be a close relative.

Guardianship: Legal right given to a person to be responsible for the food, housing, health care, and other necessities of a person deemed incapable of providing these necessities for himself or herself. A guardian also may be given responsibility for the person's financial affairs, and thus perform additionally as a conservator. (See also *conservatorship*.)

H

Harmless Error: An error committed during a trial that was corrected or was not serious enough to affect the outcome of a trial and therefore was not sufficiently harmful (prejudicial) to be reversed on appeal.

Hearsay: Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.

Hostile Witness: A witness whose testimony is not favorable to the party who calls him or her as a witness. A hostile witness may be asked leading questions and may be cross-examined by the party who calls him or her to the stand.

I

Immunity: Grant by the court, which assures someone will not face prosecution in return for providing criminal evidence.

Impeachment of a Witness: An attack on the credibility (believability) of a witness, through evidence introduced for that purpose.

Inadmissible: That which, under the rules of evidence, cannot be admitted or received as evidence.

In Camera: In chambers, or in private. A hearing in camera takes place in the judge's office outside of the presence of the jury and the public.

Indigent: Needy or impoverished. A defendant who can demonstrate his or her indigence to the court may be assigned a court-appointed attorney at public expense.

In Forma Pauperis: In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

Infraction: A violation of law not punishable by imprisonment. Minor traffic offenses generally are considered infractions.

Inheritance Tax: A state tax on property that an heir or beneficiary under a will receives from a deceased person's estate. The heir or beneficiary pays this tax.

Initial Appearance: In criminal law, the hearing at which a judge determines whether there is sufficient evidence against a person charged with a crime to hold him or her for trial. The Constitution bans secret accusations, so initial appearances are public unless the defendant asks otherwise; the accused must be present, though he or she usually does not offer evidence. Also called *first appearance*.

Injunction: Writ or order by a court prohibiting a specific action from being carried out by a person or group. A *preliminary injunction* is granted provisionally, until a full hearing can be held to determine if it should be made permanent.

Instructions: Judge's explanation to the jury before it begins deliberations of the questions it must answer and the applicable law governing the case. Also called *charge*.

Interlocutory: Provisional; not final. An interlocutory order or an interlocutory appeal concerns only a part of the issues raised in a lawsuit.

Interrogatories: Written questions asked by one party in a lawsuit for which the opposing party must provide written answers.

Intervention: An action by which a third person who may be affected by a lawsuit is permitted to become a party to the suit. Differs from the process of becoming an *amicus curiae*.

Inter Vivos Gift: A gift made during the giver's life.

Inter Vivos Trust: Another name for a *living trust*.

Intestacy Laws: See descent and distribution statutes.

Intestate: Dying without a will.

Intestate Succession: The process by which the property of a person who has died without a will passes on to others according to the state's descent and distribution statutes. If someone dies without a will, and the court uses the state's interstate succession laws, an heir who receives some of the deceased's property is an *intestate heir*.

Irrevocable Trust: A trust that, once set up, the grantor may not revoke.

Issue: (1) The disputed point in a disagreement between parties in a lawsuit. **(2)** To send out officially, as in to issue an order.

J

Joint and Several Liability: A legal doctrine that makes each of the parties who are responsible for an injury, liable for all the damages awarded in a lawsuit if the other parties responsible cannot pay.

Joint Tenancy: A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property. Tenancy by the entirety is a special form of joint tenancy between a husband and wife.

Judge: An elected or appointed public official with authority to hear and decide cases in a court of law. A Judge Pro Tem is a temporary judge.

Judgment: The final disposition of a lawsuit. Default judgment is a judgment rendered because of the defendant's failure to answer or appear. *Summary judgment* is a judgment given on the basis of pleadings, affidavits, and exhibits presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law. *Consent judgment* occurs when the provisions and terms of the judgment are agreed on by the parties and submitted to the court for its sanction and approval.

Judicial Review: The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.

Jurisdiction: (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. **(2)** The geographic area over which the court has authority to decide cases.

Jury: Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact. A petit jury is an ordinary or trial jury, composed of six to 12 persons, which hears either civil or criminal cases.

Justiciable: Issues and claims capable of being properly examined in court.

L

Lapsed Gift: A gift made in a will to a person who has died prior to the will-maker's death.

Law: The combination of those rules and principles of conduct promulgated by legislative authority, derived from court decisions and established by local custom.

Law Clerks: Persons trained in the law who assist judges in researching legal opinions.

Lawsuit: A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

Leading Question: A question that suggests the answer desired of the witness. A party generally may not ask one's own witness leading questions. Leading questions may be asked only of hostile witnesses and on cross-examination.

Legal Aid: Professional legal services available usually to persons or organizations unable to afford such services.

Letters of Administration: Legal document issued by a court that shows an administrator's legal right to take control of assets in the deceased person's name.

Letters Testamentary: Legal document issued by a court that shows an executor's legal right to take control of assets in the deceased person's name.

Liable: Legally responsible.

Libel: Published words or pictures that falsely and maliciously defame a person. Libel is published defamation; *slander* is spoken.

Lien: A legal claim against another person's property as security for a debt. A lien does not convey ownership of the property, but gives the lien holder a right to have his or her debt satisfied out of the proceeds of the property if the debt is not otherwise paid.

Limited Jurisdiction: Refers to courts that are limited in the types of criminal and civil cases they may hear. For example, traffic violations generally are heard by limited jurisdiction courts.

Litigant: A party to a lawsuit. Litigation refers to a case, controversy, or lawsuit.

Living Trust: A trust set up and in effect during the lifetime of the grantor. Also called *inter vivos trust*.

M

Magistrate: Judicial officer exercising some of the functions of a judge. It also refers in a general way to a judge.

Malfeasance: Evil doing, ill conduct; the commission of some act which is positively prohibited by law.

Mandamus: A writ issued by a court ordering a public official to perform an act.

Mediation: A form of *alternative dispute resolution* in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.

Mens Rea: The "guilty mind" necessary to establish criminal responsibility.

Miranda Warning: Requirement that police tell a suspect in their custody of his or her constitutional rights before they question him or her. So named as a result of the *Miranda v. Arizona* ruling by the U.S. Supreme Court.

Misdemeanor: A criminal offense considered less serious than a felony. Misdemeanors generally are punishable by a fine or a limited local jail term, but not by imprisonment in a state penitentiary.

Mistrial: An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.

Mitigating Circumstances: Those which do not constitute a justification or excuse for an offense but which may be considered as reasons for reducing the degree of blame

Moot: A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question or a pretended controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.

Motion: Oral or written request made by a party to an action before, during, or after a trial, upon which a court issues a ruling or order.

N

Negligence: Failure to exercise the degree of care that a reasonable person would exercise under the same circumstances.

No-Contest Clause: Language in a will that provides that a person who makes a legal challenge to the will's validity will be disinherited.

No-Fault Proceedings: A civil case in which parties may resolve their dispute without a formal finding of error or fault.

Nolo Contendere: A plea of no contest. In many jurisdictions, it is an expression that the matter will not be contested, but without an admission of guilt. In other jurisdictions, it is an admission of the charges and is equivalent to a guilty plea.

Notice: Formal notification to the party that has been sued in a civil case of the fact that the lawsuit has been filed. Also, any form of notification of a legal proceeding.

Nunc Pro Tunc: A legal phrase applied to acts which are allowed after the time when they should be done, with a retroactive effect.

O

Oath: Written or oral pledge by a person to keep a promise or speak the truth.

Objection: The process by which one party takes exception to some statement or procedure. An objection is either sustained (allowed) or overruled by the judge.

Opening Statement: The initial statement made by attorneys for each side, outlining the facts each intends to establish during the trial.

Opinion: A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. A *per curiam opinion* is an unsigned opinion "of the court."

Oral Argument: An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

Order: A written or oral command from a court directing or forbidding an action.

Overrule: A judge's decision not to allow an objection. Also, a decision by a higher court finding that a lower court decision was in error.

P

Party: A person, business, or government agency actively involved in the prosecution or defense of a legal proceeding.

Peremptory Challenge: A challenge that may be used to reject a certain number of prospective jurors without giving a reason.

Perjury: The criminal offense of making a false statement under oath.

Permanent Injunction: A court order requiring that some action be taken, or that some party refrain from taking action. It differs from forms of temporary relief, such as a *temporary restraining order* or *preliminary injunction*.

Personal Property: Tangible physical property (such as cars, clothing, furniture, and jewelry) and intangible personal property. This does not include real property such as land or rights in land.

Personal Representative: The person who administers an estate. If named in a will, that person's title is an executor. If there is no valid will, that person's title is an *administrator*.

Petitioner: The person filing an action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court. The opposing party is called the *respondent*.

Plaintiff: The person who files the complaint in a civil lawsuit. Also called *the complainant*.

Plea: In a criminal proceeding, it is the defendant's declaration in open court that he or she is guilty or not guilty. The defendant's answer to the charges made in the indictment or information.

Plea Bargaining or Plea Negotiating: The process through which an accused person and a prosecutor negotiate a mutually satisfactory disposition of a case. Usually it is a legal transaction in which a defendant pleads guilty in exchange for some form of leniency. It often involves a guilty plea to lesser charges or a guilty plea to some of the charges if other charges are dropped. Such bargains are not binding on the court.

Pleadings: The written statements of fact and law filed by the parties to a lawsuit.

Power of Attorney: Formal authorization of a person to act in the interests of another person.

Precedent: A previously decided case that guides the decision of future cases.

Preliminary Hearing: Another term for *arraignment*.

Preponderance of the Evidence: Greater weight of the evidence, the common standard of proof in civil cases.

Pre-Trial Conference: A meeting between the judge and the lawyers involved in a lawsuit to narrow the issues in the suit, agree on what will be presented at the trial, and make a final effort to settle the case without a trial.

Prima Facie Case: A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process.

Probable Cause: A reasonable belief that a crime has or is being committed; the basis for all lawful searches, seizures, and arrests.

Probate: The court-supervised process by which a will is determined to be the will-maker's final statement regarding how the will-maker wants his or her property distributed. It also confirms the appointment of the personal representative of the estate. Probate also means the process by which assets are gathered; applied to pay debts, taxes, and expenses of administration; and distributed to those designated as beneficiaries in the will.

Probate Court: The court with authority to supervise estate administration.

Probate Estate: Estate property that may be disposed of by a will.

Probation: An alternative to imprisonment allowing a person found guilty of an offense to stay in the community, usually under conditions and under the supervision of a probation officer. A violation of probation can lead to its revocation and to imprisonment.

Pro Bono Publico: For the public good. Lawyers representing clients without a fee are said to be working pro bono publico.

Pro Se: A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.

Prosecutor: A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute.

Proximate cause: The act that caused an event to occur. A person generally is liable only if an injury was proximately caused by his or her action or by his or her failure to act when he or she had a duty to act.

Public Defender: Government lawyer who provides free legal defense services to a poor person accused of a crime.

Q

Quash: To vacate or void a summons, subpoena, etc.

R

Real Property: Land, buildings, and other improvements affixed to the land.

Reasonable Doubt: An accused person is entitled to acquittal if, in the minds of the jury, his or her guilt has not been proved beyond a "reasonable doubt"; that state of minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

Reasonable Person: A phrase used to denote a hypothetical person who exercises qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. Thus, the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.

Rebut: Evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence.

Record: All the documents and evidence plus transcripts of oral proceedings in a case.

Recuse: The process by which a judge is disqualified from hearing a case, on his or her own motion or upon the objection of either party.

Re-Direct Examination: Opportunity to present rebuttal evidence after one's evidence has been subjected to cross-examination.

Redress: To set right; to remedy; to compensate; to remove the causes of a grievance.

Referee: A person to whom the court refers a pending case to take testimony, hear the parties, and report back to the court. A referee is an officer with judicial powers who serves as an arm of the court.

Rehearing: Another hearing of a civil or criminal case by the same court in which the case was originally heard.

Remand: To send a dispute back to the court where it was originally heard. Usually it is an appellate court that remands a case for proceedings in the trial court consistent with the appellate court's ruling.

Remedy: Legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.

Removal: The transfer of a state case to federal court for trial; in civil cases, because the parties are from different states; in criminal and some civil cases, because there is a significant possibility that there could not be a fair trial in state court.

Replevin: An action for the recovery of a possession that has been wrongfully taken.

Reply: The response by a party to charges raised in a pleading by the other party.

Respondent: The person against whom an appeal is taken. See *petitioner*.

Rest: A party is said to *rest or rest its case* when it has presented all the evidence it intends to offer.

Restitution: Act of giving the equivalent for any loss, damage or injury.

Reverse: An action of a higher court in setting aside or revoking a lower court decision.

Reversible Error: A procedural error during a trial or hearing sufficiently harmful to justify reversing the judgment of a lower court.

Revocable Trust: A trust that the grantor may change or revoke.

Revoke: To cancel or nullify a legal document.

Robbery: Felonious taking of another's property, from his or her person or immediate presence and against his or her will, by means of force or fear. It differs from *larceny*.

Rules of Evidence: Standards governing whether evidence in a civil or criminal case is admissible.

S

Sanction A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.

Search Warrant: A written order issued by a judge that directs a law enforcement officer to search a specific area for a particular piece of evidence.

Self-Defense: Claim that an act otherwise criminal was legally justifiable because it was necessary to protect a person or property from the threat or action of another.

Self-Incrimination, Privilege Against: The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed in the Fifth Amendment to the U.S. Constitution. Asserting the right is often referred to as *taking the Fifth*.

Sentence: The punishment ordered by a court for a defendant convicted of a crime. A concurrent sentence means that two or more sentences would run at the same time. A consecutive sentence means that two or more sentences would run one after another.

Service: The delivery of a legal document, such as a complaint, summons, or subpoena, notifying a person of a lawsuit or other legal action taken against him or her. Service, which constitutes formal legal notice, must be made by an officially authorized person in accordance with the formal requirements of the applicable laws.

Settlement: An agreement between the parties disposing of a lawsuit.

Settlor: The person who sets up a trust. Also called the *grantor*.

Slander: False and defamatory spoken words tending to harm another's reputation, business, or means of livelihood. Slander is spoken defamation; *libel* is published.

Small Claims Court: A court that handles civil claims for small amounts of money. People often represent themselves rather than hire an attorney.

Sovereign Immunity: The doctrine that the government, state or federal, is immune to lawsuit unless it gives its consent.

Specific Performance: A remedy requiring a person who has breached a contract to perform specifically what he or she has agreed to do. Specific performance is ordered when damages would be inadequate compensation.

Standing: The legal right to bring a lawsuit. Only a person with something at stake has standing to bring a lawsuit.

Stare Decisis: The doctrine that courts will follow principles of law laid down in previous cases. Similar to *precedent*.

Status Offenders: Youths charged with the status of being beyond the control of their legal guardian or are habitually disobedient, truant from school, or having committed other acts that would not be a crime if committed by an adult. They are not delinquents (in that they have committed no crime), but rather are persons in need of supervision, minors in need of supervision, or children in need of supervision, depending on the state in which they live. Status offenders are placed under the supervision of the juvenile court.

Statute of Limitations: The time within which a plaintiff must begin a lawsuit (in civil cases) or a prosecutor must bring charges (in criminal cases). There are different statutes of limitations at both the federal and state levels for different kinds of lawsuits or crimes.

Statutory Construction: Process by which a court seeks to interpret the meaning and scope of legislation.

Stay: A court order halting a judicial proceeding.

Stipulation: An agreement by attorneys on both sides of a civil or criminal case about some aspect of the case; e.g., to extend the time to answer, to adjourn the trial date, or to admit certain facts at the trial.

Strike: Highlighting in the record of a case, evidence that has been improperly offered and will not be relied upon.

Sua Sponte: A Latin phrase which means on one's own behalf. Voluntary, without prompting or suggestion.

Subpoena: A court order compelling a witness to appear and testify.

Subpoena Duces Tecum: A court order commanding a witness to bring certain documents or records to court.

Summary Judgment: A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgment as a matter of law.

Summons: A notice to a defendant that he or she has been sued or charged with a crime and is required to appear in court. A jury *summons* requires the person receiving it to report for possible jury duty

Survivorship: Another name for *joint tenancy*.

Sustain: A court ruling upholding an objection or a motion.

I

Temporary Relief: Any form of action by a court granting one of the parties an order to protect its interest pending further action by the court.

Temporary Restraining Order: A judge's order forbidding certain actions until a full hearing can be held. Usually of short duration. Often referred to as a *TRO*.

Testamentary Capacity: The legal ability to make a will.

Testamentary Trust: A trust set up by a will.

Testator: Person who makes a will (female: *testatrix*).

Testimony: The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.

Third Party: A person, business, or government agency not actively involved in a legal proceeding, agreement, or transaction.

Third-Party Claim: An action by the defendant that brings a third party into a lawsuit.

Title: Legal ownership of property, usually real property or automobiles.

Tort: A civil, not criminal, wrong. A negligent or intentional injury against a person or property with the exception of breach of contract.

Transcript: A written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a transcript of a hearing or oral deposition.

Trust: A legal device used to manage real or personal property, established by one person (the *grantor or settlor*) for the benefit of another (the *beneficiary*). A third person (the *trustee*) or the grantor manages the trust.

Trustee: The person or institution that manages the property put in trust.

U

Unlawful Detainer: A detention of real estate without the consent of the owner or other person entitled to its possession.

Uphold: The appellate court agrees with the lower court decision and allows it to stand. See affirmed.

V

Vacate: To set aside. To vacate a judgment is to set aside that judgment.

Venue: The proper geographical area (county, city, or district) in which a court with jurisdiction over the subject matter may hear a case.

Verdict: A conclusion, as to fact or law that forms the basis for the court's judgment. A *general verdict* is a jury's finding for or against a plaintiff after determining the facts and weighing them according to the judge's instructions regarding the law.

Voir Dire: Process of questioning potential jurors so that each side may decide whether to accept or oppose individuals for jury service.

W

Wage Garnishment: A non-bankruptcy legal proceeding whereby a plaintiff or creditor seeks to subject to his or her claim the future wage of a debtor. In other words, the creditor seeks to have part of the debtor's future wages paid to the creditor for a debt owed to the creditor.

Waiver: Intentionally giving up a right.

Waiver of Immunity: A means authorized by statute by which a witness, before testifying or producing evidence, may relinquish the right to refuse to testify against himself or herself, thereby making it possible for his or her testimony to be used against him or her in future proceedings.

Warrant: Most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search.

Will: A legal declaration that disposes of a person's property when that person dies.

Without Prejudice: A claim or cause dismissed without prejudice may be the subject of a new lawsuit.

With Prejudice: Applied to orders of judgment dismissing a case, meaning that the plaintiff is forever barred from bringing a lawsuit on the same claim or cause.

Witness: A person who testifies to what he or she has seen, heard, or otherwise experienced. Also, a person who observes the signing of a will and is competent to testify that it is the will-maker's intended last will and testament.

Writ: A judicial order directing a person to do something.