

GLOSSARY

A

abstract of record - A complete history of the case in a concise, abbreviated form.

acquittal - A trial verdict that indicates that the defendant in a criminal case has not been found guilty of the crime charged, beyond a reasonable doubt.

action - A legal dispute brought to court for trial and settlement (see also case, lawsuit).

actus reus - A criminal act.

ademption - Failure of a gift because the will-maker, by the time of death, no longer owns the property that the will-maker attempted to bequeath in the will.

adjudication - Giving or pronouncing a judgment or decree; also the judgment given.

administration - The process of collecting the estate's assets; paying its debts, taxes, expenses, and other obligations; and distributing the remainder as directed by the will.

administrator - A personal representative, appointed by a probate court, who administers the estate of someone who dies without a will or leaves a will naming an executor who dies before the will-maker or who refuses to serve.

admissible - Evidence that can be legally introduced in court.

adversary system - The system of trial practice in the U.S. and some other countries in which each of the opposing or adversarial parties has full opportunity to present and establish its contentions before the court.

affidavit - A written statement of fact given voluntarily and under oath. 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.

affirmative defense - Without denying the charge, the defendant raises extenuating or mitigating circumstances such as insanity, self-defense, or entrapment to avoid civil or criminal responsibility. The defendant must prove any affirmative defense he or she raises.

allegation - The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he or she expects to prove.

alimony - A court-ordered payment for the support of one's estranged spouse in the case of

divorce or separation.

alternative dispute resolution (ADR) - Means of settling a dispute without a formal trial.

amicus brief - A document filed by an amicus curiae in support of a party in a lawsuit.

amicus curiae - Friend of the court. A party who volunteers information on some aspect of a case or law to assist the court in its deliberation.

ancillary bill or suit - A cause of action growing out of and supported by another action or suit, such as a proceeding for the enforcement of a judgment.

answer - A pleading by which a defendant resists or otherwise responds to the plaintiff's allegation of facts.

anti-lapse statute - A state law that provides for a gift to go to the descendants of certain will beneficiaries who die before the will-maker dies.

appeal - A request by the losing party in a lawsuit for higher court review of a lower court decision.

appearance - The formal proceeding by which a defendant submits himself or herself to the jurisdiction of the court.

appellant - The party appealing a decision or judgment to a higher court.

appellate court - A court having jurisdiction to review the judgments of a "trial court."

appellee - The party against whom an appeal is filed.

arbitration - Dispute settlement conducted outside the courts by a neutral third party. May or may not be binding.

arraignment - The proceeding in criminal cases where an accused individual is brought before a judge to hear the charges filed against him or her, and to file a plea of guilty, not guilty, or no contest. Also called a preliminary hearing, or an initial appearance.

arrest - To take into custody by legal authority.

assignment - The transfer of one's interest in a right or property to another person or entity.

attorney-at-law - A lawyer licensed to provide legal advice and to prepare, manage and try cases.

bail - Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his or her appearance on the day and time appointed (also called bail bond).

bailiff - A court attendant whose duties are to keep order in the courtroom and to have custody of the jury.

bankruptcy - Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, perhaps by paying a portion of each debt.

bench trial - A trial heard by a judge without a jury.

bench warrant - Order issued by a judge for the arrest of an individual.

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.

binding instruction - An instruction in which a jury is told that if it finds certain conditions to be true, it must decide in favor of the plaintiff, or defendant, as the case might be.

breach of contract - A legally inexcusable failure to perform a contractual obligation.

brief - A written statement prepared by each side in a lawsuit to explain to the court its view of the facts in a case and the applicable law.

burden of proof - The standard by which a case is decided. In criminal cases, the prosecutor must prove his/her case "beyond a reasonable doubt." In civil cases, the plaintiff must prove his/her case by a "preponderance of evidence," or, in some cases, by "clear and convincing" evidence.

C

calendar - The clerk of the court's list of cases with dates and times set for hearings, trials or arguments.

calling the docket - The public calling of the docket or list of cases, for the purpose of setting a time for trial or entering orders.

caption - The heading or introductory clause on documents filed which shows the names of the parties, name of the court, number of the case, etc.

case - A legal dispute.

case law - Law based on published judicial decisions.

cause - A lawsuit, litigation or legal action.

cause of action - Facts giving rise to a lawsuit.

caveat emptor - Let the buyer beware. This phrase expresses the 19th century rule of law that the purchaser buys at his own risk.

certiorari - Order to a lower court to deliver the record of a case to an appellate court.

challenge for cause - The objection to the inclusion of a person on a jury for a stated reason. Attorneys can make this challenge as necessary during voir dire.

change of venue - Moving a trial to a new location, generally because pre-trial publicity has made it difficult to select an impartial jury.

charge to the jury - The judge's instructions to the jury concerning the law applicable to the case.

charitable trust - A trust set up to benefit a charity.

circuit courts - In several states, the name given to a tribunal, the territorial jurisdiction of which may comprise several counties or districts. In the federal system, the courts of appeal beneath the U.S. Supreme Court.

citation - A reference to a source of legal authority. Also, 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.

claim - An assertion of a right to money or property made by the injured party that is suing.

clear and convincing evidence - A level of proof requiring the truth of the facts asserted to be highly probable.

clerk of the court - A court employee who is responsible for maintaining permanent records of all court proceedings and exhibits, and administering the oath to jurors and witnesses.

codicil - An amendment to a will.

common law - Law arising from tradition and judicial decisions rather than laws passed by the legislature.

common law action - A case in which the issues are determined by common law legal principles established by courts and tradition, as opposed to statutes.

comparative negligence - A legal doctrine where the actions of both parties to a civil suit are compared to determine the liability of each to the other.

complainant - The individual who initiates a lawsuit; synonymous with "plaintiff."

complaint (civil) - Initial document filed by the plaintiff in a civil case stating the claims against the defendant.

complaint (criminal) - A formal accusation charging that a person has committed an offense.

conditional release - A release from custody, without the payment of bail, which imposes regulations on the activities and associations of the defendant.

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.

consideration - Something of value given in return for another's performance or promise of performance; generally required to make a promise binding and to make agreement of parties enforceable as a contract. Consideration may be either executed or executory, express or implied.

contempt of court - Any act calculated to embarrass, hinder, or obstruct a court. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term mostly used with reference to the failure or refusal to obey a court order. Any party found in contempt of court normally receives sanctions.

continuance - The postponement of a proceeding to a later date.

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

contributory negligence - Legal doctrine which says that a plaintiff cannot recover damages in a civil action for negligence if the plaintiff was also negligent.

conviction - A trial verdict or judgment that a criminal defendant is guilty of a crime.

copyright - The right to literary property, giving authors, composers, and other creators the

sole right to reproduce and distribute their work for a limited period of time.

corpus delicti - Body of the crime. The objective proof that a crime has been committed.

corroborating evidence - Supplementary evidence that supports the initial evidence.

counsel - Legal advice; also a term used to refer to lawyers in a case.

counterclaim - A claim by a defendant in a civil case that the plaintiff has injured him or her.

court costs - The expenses in addition to legal fees of prosecuting or defending a lawsuit.

court of last resort - The final court that decides a case on appeal (for example, the Supreme Court of the United States or the supreme court of any state).

courts of record - Courts whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt.

court reporter - A person who records, transcribes, or stenographically takes down testimony, motions, orders, and other proceedings during trials, hearings, and other court proceedings.

criminal case - Case brought by the government against an individual accused of committing a crime.

cross-examination - Questioning of a witness by an attorney for the side against which the witness testified.

D

damages - Monetary compensation which may be recovered in the courts by any person who has suffered loss, detriment, or injury to his or her person, property or rights, through the unlawful act or negligence of another.

decision - The judgment reached or given by a court of law.

declaratory judgment - A judgment which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

decree - A decision or order of the court. A final decree is one that finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree that is not final.

defamation - That which tends to injure a person's reputation. **Libel** is published defamation, whereas **slander** is spoken.

default - Occurs when a defendant does not file the proper response within the time allowed or

fails to appear at the trial.

defendant - In a civil case, the defendant is the person against whom the lawsuit is brought. In a criminal case, the defendant is the person accused of committing the crime.

deliberation - The process by which a jury reaches a verdict at the close of a trial.

demur - In some state courts, to file a pleading (called a demurrer) admitting the truth of the facts in the complaint, or answer, but contending they do not make out a cause of action.

de novo - Latin for anew or afresh. A "trial de novo" is the retrial of a case. A "de novo" standard of review permits an appellate court to substitute its judgment for that of a trial judge.

deposition - An oral statement made before an officer authorized by law to administer oaths. Before trial, such statements are often taken to examine potential witnesses and to obtain information.

descent and distribution statutes - State laws that provide for the distribution of estate property of a person who dies without a will. Same as **intestacy laws**.

direct examination - The first interrogation of a witness by the party on whose behalf he or she is called.

directed verdict - An instruction by the judge to the jury to return a specific verdict because one of the parties failed to meet its burden of proof.

discovery - The pre-trial process by which each party ascertains evidence the other party will rely upon at trial.

dismissal - A court order terminating a case. May be voluntary (at the request of the parties) or involuntary.

dissent - A term commonly used to denote the disagreement of one or more judges of a court with the decision of the majority.

district attorney - A state government lawyer who prosecutes criminal cases. Also referred to as a prosecutor.

district courts - U.S. district courts are trial courts. State district courts are also often trial courts of general jurisdiction.

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. Diversion may take place before the trial or its equivalent, as when a juvenile accused of a crime may consent to probation without an admission of guilt. If the

juvenile completes probation successfully (takes a course or makes amends for the crime), then the entire matter may be expunged (erased) from the record.

docket - A log containing brief entries of court proceedings and filings of legal documents in a case.

domicile - The place where a person has his or her true and permanent home. A person may have several residences, but only one domicile.

donor - The person who sets up a trust. Also known as its **grantor** or **settlor**.

double jeopardy - The common-law and constitutional prohibition against more than one prosecution for the same crime, transaction or omission.

due process - United States law in its regular course of administration through the courts. The constitutional guarantee of due process requires that everyone receive such constitutional protections as a fair trial, 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.

duress - Refers to conduct that has the effect of compelling another person to do what he or she would not otherwise do. It is a recognized defense to any act, such as a crime, contractual breach or tort, all of which must be voluntary to create liability or responsibility.

E

en banc - All the judges of an appellate court sitting together to hear oral arguments in a case of unusual significance and to decide the case.

enjoin - To require a person, through the issuance of an injunction, to perform or to abstain from some specific act.

equal protection of the law - Guarantee of the Fourteenth Amendment of the U.S. Constitution that all persons receive equal treatment under law.

equitable action - An action which may be brought for the purpose of restraining the threatened infliction of wrongs or injuries, and the prevention of threatened illegal action. An action seeking an injunction is an equitable action.

escheat - The process by which a deceased person's property goes to the state if no heir can be found.

escrow - Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.

estate - Applies to all that a person owns. 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.

et al. - And others.

evidence - Any form of proof presented by a party for the purpose of supporting its factual allegations or arguments before the court.

exclusionary rule - A judge-made rule that prevents unconstitutionally obtained evidence from being used in court to build a case against a criminal defendant.

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.

exemplary damages - An order to pay money as a form of punishment or deterrence from future error that has caused legal injury; also known as punitive damages.

exhibit - A paper, document or other article produced and exhibited to a judge or jury during a trial or hearing.

ex parte - By or for one party; done for, on behalf of, or on the application of, one party only.

ex post facto - After the fact. The Constitution prohibits the enactment of ex post facto laws-- laws that make punishable as a crime an act done before the passing of the law.

expungement - The official and formal elimination of part of a record.

extradition - The process by which one jurisdiction (state or nation) surrenders to another jurisdiction a person accused or convicted of a crime in the other state.

F

family allowance - 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 serious criminal offense generally punishable by imprisonment of one year or more.

fiduciary - A person having a legal relationship of trust and confidence to another and having a duty to act primarily for the other's benefit, for example, a guardian, trustee, or executor.

finding - A formal conclusion by a trial judge or jury regarding the facts of a case.

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 designed to deprive another person of property or to injure him or her 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 a creditor garnishes a debtor's wages.

good time - A reduction in sentenced time in prison as a reward for good behavior. It usually is one third to one half off the maximum sentence.

grand jury - A group of citizens assembled in secret to hear or investigate allegations of criminal behavior. A grand jury has authority to conduct criminal investigations and to charge a crime through an indictment.

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 or providing these necessities for himself or herself. Can also include financial affairs, and thus perform additionally as a conservator.

H

habeas corpus petition - In federal court, a means by which a state prisoner may challenge the constitutionality of his or her conviction and imprisonment.

harmless error - In appellate practice, an error committed by a trial court during a trial, but not harmful to the rights of the party and for which the court will not reverse the judgment.

hearing - Any form of judicial, quasi-judicial or legislative proceeding at which issues are heard, or testimony taken.

hearing on the merits - A hearing before a court on the legal questions at issue, as opposed to procedural questions.

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.

holding - The legal conclusion or principle that provides the basis for a court's judgment.

holographic will - A handwritten will.

hostile witness - A witness who is subject to cross-examination by the party who called him or her to testify, because of his or her evident antagonism toward that party as exhibited in his or her direct examination.

hung jury - A jury that is unable to reach a unanimous verdict.

I

immunity - A grant by the court against prosecution in return for providing criminal evidence against another person or party.

impeachment of witness - An attack on the credibility of a witness by the testimony of other witnesses or other evidence.

implied contract - Not explicitly written or stated; determined by deduction from known facts or from the circumstances or conduct of the parties.

inadmissible - Evidence which cannot under the rules of evidence be admitted in court.

in camera - In chambers or in private. A hearing or inspection of documents that takes place outside the presence of the jury and public.

independent executor - A special kind of executor, permitted by the laws of certain states, who performs the duties of an executor without intervention by the court.

indeterminate sentence - A sentence of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.

indictment - The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

indigent - Meeting certain standards of poverty, thereby qualifying a criminal defendant for representation by a public defender.

inferior court - Courts of limited jurisdiction.

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.

information - A formal accusation by a prosecutor that the defendant committed a crime. An information is an alternative to an indictment as a means of charging a criminal.

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.

injunction - An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

instructions - Judge's explanation to the jury before it begins deliberations of the questions it must answer. Judge's instructions include information about law governing the case.

intangible assets - Nonphysical items such as stock certificates, bonds, bank accounts, and pension benefits that have value and must be taken into account in estate planning.

integrated bar - The organized state bar association to which every lawyer in a state must belong in order to be permitted to practice in that state.

interlocutory - Provisional; temporary; not final. Refers to orders and decrees of a court.

interrogatories - Written questions asked by one party of an opposing party, who must answer them in writing under oath; a discovery device in a lawsuit.

intervention - A proceeding in a lawsuit in which a third person is permitted by the court to make him or herself a party.

inter vivos gift - A gift made during the giver's life.

inter vivos trust - Another name for a living trust.

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.

irrevocable trust - A trust that, once set up, the grantor may not revoke.

issue - The disputed point in a disagreement between parties in a lawsuit.

J

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.

judgment - The final disposition of a lawsuit.

judgment notwithstanding the verdict - A judge's decision to rule in a case contrary to the jury's verdict.

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 - The power, right or authority to apply the law. A court's authority to hear cases.

jury - A certain number of persons, usually selected from lists of registered voters or licensed drivers, and sworn to inquire of certain matters of fact, and declare the truth upon evidence laid before them during a trial.

jury panel - A list of prospective jurors to serve in a particular court, or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those the clerk selects by lot.

justiciable claim - A claim that is capable of being resolved in the courts.

juvenile court - Court specifically established to hear cases concerning minors.

L

lawsuit - A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

leading question - A question that instructs a witness how to answer or suggests which answer is desired. These questions are usually prohibited on direct examination.

liable - Legally responsible.

libel - Published words or pictures that falsely and maliciously defame a person, that is, injure his or her reputation. 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 lienholder a right to have his or her debt satisfied out of the proceeds of the property if the debt is not otherwise paid.

limitation (statute of) - A certain time allowed by statute in which litigation must be brought.

liquidated damages - A form of money payment in an amount specified in advance by a contract or agreement as the sum to be paid if terms were violated.

litigant - Individual bringing a lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

litigation - 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.

long-arm statute - State laws that give a court jurisdiction to try civil cases in which persons from other states have been sued. Long-arm statutes are commonly employed to allow a local court to exercise jurisdiction over out-of-state motorists who cause automobile accidents within the state.

M

magistrate judges - Judicial officers who assist U.S. district judges in getting cases ready for trial, who may decide some criminal and civil trials when both parties agree to have the case heard by a magistrate judge instead of a judge.

mala in se - Evil in itself--behavior that is universally regarded as criminal, such as murder.

mala prohibita - Wrong because prohibited--behavior that is criminal only because a society defines it as such. An example is the manufacture of alcoholic beverages during Prohibition.

mandate - A judicial command directing the proper officer to enforce a judgment, sentence, or decree.

manslaughter - The unlawful killing of another without premeditation, either voluntary--upon a sudden impulse, for example, a quarrel erupts into a fistfight in which one of the participants is killed; or involuntary--during the commission of an unlawful act not ordinarily expected to result in great bodily harm, or during the commission of a lawful act without proper caution, for example, driving an automobile at excessive speed resulting in a fatal collision.

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.

memoranda of law - Formal written arguments in support of a motion filed in a case.

mens rea - The "guilty mind" necessary to establish criminal responsibility.

merits - Issues of legal substance at stake in a case, as opposed to procedural considerations.

Miranda warning - The warning police must give suspects regarding their constitutional right to remain silent and their right to an attorney.

misdemeanor - Less serious criminal offense usually punishable by a sentence of one year or less.

mistrial - An erroneous or invalid trial; a trial which cannot stand in law because of lack of jurisdiction, incorrect procedure with respect to jury selection, or disregard of some other fundamental requisite; an invalid trial because of the inability of a jury to reach a verdict.

motion to dismiss - A formal request for the court to dismiss a complaint because of insufficiency of evidence or because the law does not recognize the injury or harm claimed.

multiplicity of actions - Numerous and unnecessary attempts to litigate the same right.

municipal courts - In the judicial organization of some states, courts whose territorial authority is confined to a city or community.

murder - The unlawful killing of a human being with malice aforethought (deliberate intent to kill). Murder in the first degree is characterized by premeditation; murder in the second degree is characterized by a sudden and instantaneous intent to kill or to cause injury without caring whether the injury kills or not.

N

negligence - Failure to exercise ordinary care.

nolo contendere - No contest. Has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

nominal party - One who is joined as a party or defendant merely because the technical rules of pleading require his or her presence in the record.

notice - A formal notification to a party that a lawsuit has been initiated.

notice to produce - A notice in writing requiring the opposite party to yield a certain described paper or document in advance or at the trial.

nuncupative will - An oral (unwritten) will.

O

objection - The act of taking exception to some statement or procedure in trial. Used to call the

court's attention to improper evidence or procedure.

objection overruled - A judge's rejection of an objection as invalid.

objection sustained - Support or agree with an objection. Used by the judge to indicate agreement with a motion or request.

of counsel - A phrase commonly applied to counsel employed to assist in the preparation or management of the case, but who is not the principal attorney of record.

offer - An act of willingness to enter into a purchase agreement that justifies to another person an understanding that his assent to that purchase agreement is invited and will establish a contract.

one day-one trial jury service - System used in many jurisdictions where potential jurors serve either for the length of a trial if assigned to a jury or, if not, complete their service in one day.

opinion - A written explanation of a decision of a trial court or of the decision of a majority of judges of an appellate court. At the appellate level, a dissenting opinion disagrees with the majority opinion because of the reasoning and/or principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment.

option - A contract that gives the holder a right or option to buy or sell specified property, such as stock or real estate, at a fixed price for a limited period of time.

oral argument - An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

order - A command from the court directing or forbidding an action.

original jurisdiction - A court's authority to hear a case in the first instance.

P

parole - The supervised, conditional release of a prisoner.

parties - The persons who are actively involved with the prosecution or defense of a legal proceeding. Plaintiffs and defendants are parties to lawsuits, appellants and appellees are parties in appeals. (They may also be known as petitioners and respondents.)

patent - A government grant giving an inventor the exclusive right to make or sell his or her invention for a term of years.

peremptory challenge - A motion to reject a juror for an unspecified race-neutral reason.

May only be used a limited number of times.

perjury - The criminal offense of making a false statement under oath.

personal property - Tangible physical property (such as cars, clothing, furniture, and jewelry) and intangible personal property, but not real property--that is, not land or rights in land.

personal recognizance - When a person is released from custody before trial on his or her promise to return for further proceedings.

petit jury - The twelve (or fewer) jurors selected to sit in the trial of a civil or criminal case.

petitioner - Person filing an action or appealing from a lower court's judgment.

plaintiff - A person who brings an action; the party who complains or sues in a personal action and is so named on the record. The person who files the complaint in a civil lawsuit.

plea - The defendant's declaration of guilty or not guilty, in response to the criminal charges contained in the information or indictment.

plea bargain - The process by which an accused person agrees to plead guilty to some of the charges in return for the government's promise to drop some of the charges.

pleadings - Written statements of fact and law filed by the parties to a lawsuit. Comprised of complaints, answers and replies.

polling the jury - A practice whereby the jurors are asked individually whether they agreed, and still agree, to the verdict.

pour-over will - A will that leaves some or all estate assets to a trust established before the will-maker's death.

precedent - Previously decided case which guides future decisions.

prejudicial error - Synonymous with "reversible error"; an error which warrants the appellate court in reversing the judgment before it.

preliminary hearing - Criminal hearing at which a judge determines whether sufficient evidence exists to warrant trying an individual charged with a crime.

preponderance of evidence - The greater weight of evidence, or evidence that is more credible and convincing to the mind, but not necessarily the greater number of witnesses.

pre-sentence investigation - An inquiry conducted at the request of the court after a person has been found guilty of a criminal offense. Provides the court with extensive background

information to determine an appropriate sentence.

presumption - A rule of law that courts and judges will draw a particular inference from a particular fact, or from particular evidence.

pretermitted child - A child born after a will is executed, who is not provided for by the will. Most states have laws that provide for a share of estate property to go to such children.

pre-trial conference - A meeting in which attorneys for both sides meet the judge in advance of the trial to seek to clarify or narrow the issues.

prima facie case - The minimum amount of evidence a plaintiff must produce to overcome a motion to dismiss.

principal - In criminal law, one who commits an offense, or an accomplice who is present during the commission of the crime. In commercial law, the amount received in loan, or the amount upon which interest is charged. In the law of agency, one who has permitted or engaged another to act for his or her benefit, in accordance with his or her direction and subject to his or her control.

probable cause - Reasonable belief that an individual has committed a crime.

probate court - The court with authority to supervise estate administration.

probate estate - Estate property that may be disposed of by a will.

probation - A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed.

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 - Government lawyer who tries criminal cases.

public defender - Lawyer employed by the government to represent individuals accused of crimes who cannot afford to hire their own attorney privately.

puffing - A statement of belief not meant as fact; a seller's extravagant statements to enhance his wares and induce others to buy the product. Salesmanship talk, characterized as puffing, cannot be the basis of a charge of fraud or express warranty, since the buyer is said to have no right to rely on sales talk.

Q

quash - To overthrow; vacate; to annul or void a summons or indictment.

R

real property - Land, buildings, and other improvements affixed to land.

reasonable doubt - Uncertainty that might exist in the mind of a reasonable person applying reason to the evidence introduced.

rebuttal - The introduction of contrary evidence; the showing that statements of witnesses as to what occurred is not true; the stage of a trial at which such evidence may be introduced.

record - A written account of all the acts, proceedings and testimony in a lawsuit.

redirect examination - Follows cross-examination and is exercised by the party who called first and questioned the witness.

reliance - Confidence or dependence upon what is deemed sufficient authority such as a warranty that provides a written guarantee of the integrity of a product.

remand - When an appellate court sends a case back to a lower court for further proceedings.

removal, order of - An order by a court directing the transfer of a case to another court.

reply - A pleading in response to an answer.

repossession - To take back--as in a seizure or foreclosure--to satisfy the obligation to the seller, bank or finance company after the debtor defaults on his or her payments.

rest - A party is said to "rest" or "rest its case" when it has presented all the evidence it intends to offer.

reverse - When an appellate court sets aside the decision of a lower court because of an error. A reversal is often accompanied by a remand.

revocable trust - A trust that the grantor may change or revoke.

revoke - To cancel or nullify a legal document.

rule of court - An order made by a court having jurisdiction. Rules of court are either general or special: the former are the regulations by which the practice of the court is governed; the latter are special orders made in particular cases.

rule to show cause - A court order obtained on motion by either party to demonstrate why the particular relief sought should not be granted. Generally, used in connection with contempt proceedings.

S

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-proving will - A will whose validity does not have to be testified to in court by the witnesses to it, since the witnesses executed an affidavit reflecting proper execution of the will prior to the maker's death.

sentence - The punishment ordered by a court for a defendant convicted of a crime.

separation of witnesses - An order of the court requiring all witnesses to remain outside the courtroom until each is called to testify, except the plaintiff or defendant.

sequester - To separate. Sometimes juries are sequestered from outside influences during their deliberations.

serve - To deliver a legal document, such as a complaint, summons or subpoena. Service constitutes formal legal notice.

settlement - Agreement resolving a dispute between parties in a lawsuit without trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

settlor - The person who sets up a trust. Also called the **grantor** or **donor**.

sheriff - An officer of a county, often chosen by popular election, whose principal duties are to aid the courts. The sheriff serves processes, summons juries, executes judgments and holds judicial sales.

sidebar conference - Confidential discussion between judge and attorneys to resolve legal matters, which could be prejudicial if aired before the jury.

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.

special appearance - Notice of the party that has been sued that he or she is aware of the lawsuit, but contests the court's authority over himself or herself. This prevents a defendant from losing a case by default.

special damages - A form of compensatory damages ordered paid when the injury done

resulted from the other side's wrong but was not a natural or necessary consequence.

specific performance - Where damages would be inadequate compensation for the breach of a contract, the party who breached the contract will be compelled to perform specifically what he or she originally agreed to do.

spendthrift trust - A trust set up for the benefit of someone who the grantor believes would be incapable of managing his or her own financial affairs.

standing - The legal right to sue or enter a lawsuit on a particular matter.

stare decisis - The doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.

statute - Law enacted by legislatures or executive officers, such as codes.

statute of limitations - A law that sets the time within which parties must take action to enforce their rights.

stay - A suspending of a judicial proceeding by order of the court.

stipulation - An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless agreed to by the parties.

strike - To remove improperly offered evidence from the court record.

style - The title of a lawsuit.

subpoena - A document issued by the court to compel a witness to appear and give testimony or to procure documentary evidence in a proceeding.

subpoena duces tecum - A process by which the court commands a witness to produce certain documents or records in a trial.

substantive law - Law dealing with rights, duties and liabilities, as distinguished from law which regulates procedure.

suit in equity - A civil case in which a court forbids or allows another person to take an action.

summary judgment - A court order that decides a case in favor of one side on the basis of affidavits or other evidence, before the trial commences. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgement as a matter of law.

summons - Legal notice informing an individual of a lawsuit and the date and location of the

court where the case will be heard.

support trust - A trust that instructs the trustee to spend only as much income and principal (the assets held in the trust) as needed for the beneficiary's support.

surety bond - A bond purchased at the expense of the estate to insure the executor's proper performance. Often called a fidelity bond.

survivorship - Another name for joint tenancy.

T

talesman - A person called to act as a juror from among the bystanders in a court.

tangible personal property memorandum (TPPM) - A legal document that is referred to in a will and used to guide the distribution of tangible personal property.

temporary restraining order (TRO) - Prohibits a person from an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held.

testamentary capacity - The legal ability to make a will.

testamentary trust - A trust set up by a will.

testimony - Evidence given by a competent witness, under oath, as distinguished from evidence derived from writings and other sources.

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 wrong or breach of a duty to another person, as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

transcript - The official record of proceedings in a trial or hearing.

transitory - Actions are "transitory" when they might have taken place anywhere, and are "local" when they could occur only in some particular place.

traverse - In pleading, to traverse signifies to deny. When a defendant denies any material allegation of fact in the plaintiff's declaration, he or she is said to traverse it.

trust - A legal device used to manage property--real or personal--established by one person (the donor, grantor or settlor) for the benefit of another (the beneficiary). A third person or the grantor manages the trust. This person is known as the trustee.

trust agreement or declaration - The legal document that sets up a living trust. Testamentary trusts are set up in a will.

trustee - The person or institution that manages the property put in trust.

U

undue influence - Influence of another that destroys the freedom of a testator or donor and creates a ground for nullifying a will or invalidating a future gift. The exercise of undue influence is suggested by excessive insistence, superiority of will or mind, the relationship of the parties or pressure on the donor or testator by any other means to do what he is unable, practically, to refuse.

unilateral mistake - An act or omission arising from ignorance or misconception of a party to a contract, which may, depending upon its character or the circumstances surrounding it, justify repealing a contract.

V

venire - The panel of citizens called for jury service from which a jury will be selected.

venue - The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case.

verdict - Formal decision made by a jury, read before a court, and accepted by the judge.

voir dire - To speak the truth. Process in which prospective jurors are questioned to determine whether they can perform their duties in an impartial manner.

W

waive - To voluntarily give up a right or a claim.

warranty - A written or oral statement by one party to a contract that a fact is or will be as it is expressly declared or promised to be.

weight of evidence - The balance or preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

will - A legal declaration that disposes of a person's property when that person dies.

with prejudice - As applied to a judgment of dismissal, the term refers to the adjudication of a case on its merits, barring the right to bring or maintain another action on the same claim.

without prejudice - A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

witness - One who testifies under oath as to what she or he has seen, heard or otherwise observed.

writ - An order issued from a court requiring the performance of a specified act, or giving authority and commission to have it done.