

## **CHAPTER FIFTEEN: GLOSSARY OF LEGAL TERMS**

**Abstract of record** -- A complete history in short, abbreviated form of the case as found in the record.

**Abstract of title** -- A chronological summary of all official records and recorded documents affecting the title to a parcel of real property.

**Abuse of process** -- A type of lawsuit based on the improper use of court process, such as a subpoena.

**Acquittal** -- The legal and formal certification of the innocence of a person who has been charged with crime, returned by a jury or judge sitting without a jury as the trier of fact.

**Action in personam** -- An action against the person, founded on personal liability.

**Action in rem** -- An action for a thing; and action for the recovery of a thing possessed by another.

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

**Administrator** -- A person appointed by the court to handle the affairs of a person who has died without a will (intestate). (Compare: Executor.)

**Adversary system** -- The system of trial practice in the United States and some other countries in which each of the opposing, or adversary, parties has full opportunity to present and rebut opposing contentions before the court.

**Affirmative defense** -- In criminal law, a defense in which the facts constituting it are peculiarly within the accused's own knowledge, and on which it is fair to require him to produce the supporting evidence. Also, a defense expressly designated by statute as affirmative. The burden of going forward with the evidence of an affirmative defense is on the accused.

**Alimony** -- See Maintenance.

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

**Amicus curiae** -- A friend of the court; one who interposes and volunteers information upon some matter of law.

**Ancillary bill or suit** -- One growing out of and auxiliary to another action or suit, such as a proceeding for the enforcement of a judgment, or to set aside fraudulent transfer of property.

**Annulment** -- A declaration of invalidity of a marriage in which the court finds a marriage does not properly exist.

**Answer** -- A pleading by which a defendant responds to the plaintiff's allegation of facts.

**Appearance** -- The formal proceeding by which defendant submits himself to the jurisdiction of the court.

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

**Appellate court** -- A court having jurisdiction of appeal and review; not a "trial court."

**Appellee** -- The party against whom an appeal is taken; generally, the party who won in the lower court.

**Arraignment** -- In criminal practice, to bring a prisoner to the bar of the court to answer to a criminal charge.

**Arrest of judgment** -- The act of staying the effect of a judgment already entered.

**Attachment** -- A remedy by which plaintiff is enabled to acquire a lien upon property or effects of defendant.

**Attorney of record** -- Attorney whose name appears in the permanent records or files of a case.

**Bail** -- To set at liberty a person arrested or imprisoned, on security being taken, for his appearance on a specified day and place.

**Bond** -- An obligation signed by the accused, with sureties, to secure his presence in court.

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

**Banc** -- Bench; the place where a court permanently or regularly sits. A sitting "en banc" is meeting of all the judges of a court, as distinguished from the sitting of a single judge or panel of judges.

**Battery** -- A type of lawsuit or criminal offense based on a actual physical violence, whether serious or minor, inflicted by the defendant on the plaintiff. A battery is the result of an assault, which is really an attempted battery.

**Bench warrant** -- Process issued by the court itself, or “from the bench” for the attachment or arrest of a person.

**Best evidence** -- Primary evidence, as distinguished from secondary; the best and highest evidence of which the nature of the case is susceptible.

**Beyond a reasonable doubt** -- The highest degree of proof, required to establish guilt in a criminal case.

**Bill of particulars** -- A written statement by a prosecuting attorney specifying the details of a crime with which an accused is formally charged, such as the exact time, location, etc.

**Binding instruction** -- One in which the jury is told if they find certain conditions to be true they must find for plaintiff, or defendant, as the case may be.

**Bind over** -- To hold on bail for trial.

**Blotter** -- Record kept at a police station of the first encounter of police with a crime or suspected crime.

**Booking** -- A police administrative action officially recording an arrest and identifying the person, the place, the time, the authority, and the reason for the arrest.

**Brief** -- A document prepared by counsel to file in court, usually setting forth both facts and legal arguments in support of his case.

**Burden of proof** -- In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute.

**Capital offense** -- A felony for which the death penalty may be imposed.

**Caption** -- The heading or introductory clause which shows the names of the parties, name of the court, number of the case, etc.

**Cash bond** -- A type of bail in which the accused in a criminal case deposits with the court the full amount of his bail in cash. The entire amount is refundable if he appears when required.

**Cause of action** -- The legal basis for a lawsuit.

**Certiorari** -- An original writ commanding judges or officers of inferior courts to certify or to return records of proceedings in a case for judicial review. This term is used to apply to most requests for review by the U.S. Supreme Court.

**Chambers** -- Private office or room of a judge.

**Change of venue** -- The removal of a suit begun in one county or district to another, for trial, or from one court to another in the same county or district.

**Charge** -- The judge's instructions to the jury on its duties, and on the law involved in the case and how it must be applied. The charge is always given just before the jury retires to consider its verdict. Also, "charge" is often used to mean an accusation in a criminal case.

**Circuit courts** -- In Illinois, the court of general jurisdiction or trial-level court.

**Circumstantial evidence** -- All evidence of an indirect nature; the process of decision by which a court or jury may establish a fact by inference from circumstances known or provided.

**Citation** -- A form of combined complaint and summons that may be used in minor criminal cases. A traffic ticket is a form of citation. Also, the means of referring to published court decisions or other legal materials by book and page number.

**Civil action** -- A lawsuit based on a private wrong, as distinguished from a crime, or to enforce rights through remedies of a private or non-penal nature. All legal proceedings that are not criminal actions are civil actions.

**Code** -- A collection, compendium or revision of laws systematically arranged into chapters, table of contents and index and promulgated by legislative authority.

**Codicil** -- A supplement or an addition to a will.

**Commit** -- To send a person to prison, to an asylum, workhouse or reformatory by lawful authority.

**Common law** -- "Judge-made" law that has developed from court decisions based on customs and precedents; distinct from laws enacted by legislatures and written in statutes and codes.

**Commutation** -- The change of a punishment from a greater degree to a lesser degree, as from death to life imprisonment.

**Comparative negligence** -- The doctrine by which one person's negligence is compared to another's, measured in terms of percentage. Any damages allowed are diminished in proportion to the amount of negligence attributable to the person seeking recovery.

**Competency** -- In the law of evidence, the presence of those characteristics which render a witness legally fit and qualified to give testimony, or which renders a criminal defendant fit to stand trial.

**Complainant** -- Synonymous with "plaintiff."

**Complaint** -- The first pleading on the part of the plaintiff in a civil action.

**Concurrent sentence** -- Sentences for more than one crime in which the time of each is to be served at the same time, rather than consecutively (See below).

**Condemnation** -- The legal process by which real estate of a private owner is taken for public use without his consent, upon the award and payment of just compensation.

**Consecutive sentence** -- Separate sentences (each additional to the other) imposed against a convicted person; one sentence to begin at the expiration of another.

**Contempt of court** -- Any act calculated to embarrass, hinder or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful order.

**Continuance** -- A postponement granted by a court in a legal proceeding. Under present practice, a continuance may only be granted for good cause, such as the illness of counsel or a party, or the unavailability of a witness.

**Controlling case** -- A prior appellate court opinion which, by reason of its legal analysis or facts, is so similar to current case as to constitute a precedent.

**Corpus delicti** -- The body (material substance) upon which a crime has been committed, e.g., the corpse of a murdered man, the charred remains of a burned house.

**Corroborating evidence** -- Evidence supplementary to that already given and tending to strengthen or confirm it.

**Court reporter** -- A person who transcribes by shorthand or stenographically takes down testimony during court proceedings.

**Cost** -- An allowance for expenses in prosecuting or defending a suit. Ordinarily this does not include attorney's fees.

**Counterclaim** -- A claim presented by a defendant in opposition to the claim of a plaintiff.

**Courts of record** -- Those whose proceedings are permanently recorded and which have the power to fine or imprison for contempt. Courts not of record are those of lesser authority whose proceedings are not permanently recorded.

**Criminal insanity** -- Lack of mental capacity to do or abstain from doing a particular act; inability to

distinguish right from wrong.

**Cross-examination** -- The questioning of a witness in a trial or deposition by the party opposed to the one who produced the witness.

**Damages** -- Compensation which may be recovered in court by any person who has suffered loss, detriment or injury to his person, property or rights, though the unlawful act or negligence of another.

**De Novo** -- Anew, afresh. A “trial de novo” is the retrial of a case.

**Declaratory judgment** -- One 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 which fully and finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree which is not final.

**Defamation** -- Injuring a person's character or reputation by false statements.

**Default** -- A “default” occurs when a defendant fails to answer a civil complaint within the time allowed or fails to appear at the trial.

**Degree of proof** -- The degree of proof by which a case or defense must be established. The degree of proof required to establish guilt in a criminal case is beyond a reasonable doubt. The degree of proof necessary to permit an extraordinary remedy in a civil case is clear and convincing evidence (extraordinary remedies include most remedies other than money damages, such as an injunction). The degree of proof required to prevail in other civil cases is a preponderance of the evidence. A lesser degree of proof required to make a valid arrest or hold a criminal accused for trial is probable cause.

**Demur** -- To file a pleading (called “a demurrer”), admitting they are legally insufficient.

**Deposition** -- The testimony of a witness not taken in open court, by authority of statute or court rule.

**Determinate sentencing** -- A sentence of imprisonment for a specific or definite rather than for a minimum and maximum term.

**Direct evidence** -- Proof of facts by a witness who saw acts done or heard words spoken, as distinguished from circumstantial evidence, which is called indirect.

**Direct examination** -- The first interrogation of a witness by the party on whose behalf he is called.

**Directed verdict** -- An order by the judge (based upon an essential weakness of the prosecution's case) that the jury must find that the defendant was not proved guilty beyond a reasonable doubt.

**Discovery** -- Process by which one party in a legal action seeks to determine the evidence in possession of the other side that could affect the outcome of the case. Usually occurs before trial. (See: Deposition and Interrogatories.)

**Dismissal without prejudice** -- Permits the complainant to sue again on the same cause of action. Dismissal "with prejudice" bars the right to refile an action on the same claim or cause.

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

**Dissolution of marriage** -- In Illinois, a type of legal proceeding in which a marriage is dissolved when the complaining party establishes one of nine grounds for dissolution. (Previously called a divorce.) (See: Grounds for dissolution.)

**Divorce** -- See: Dissolution of marriage.

**Docket** -- Court record in which cases are listed or formally entered.

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

**Double jeopardy** -- Common-law and constitutional prohibition against prosecuting a person more than once for the same crime, transaction or omission.

**Due process** -- Law in its regular course of administration through the courts of justice. The constitutional guarantee of due process requires that every person have the protection of a fair trial.

**DUI** -- Driving while under the influence of alcohol, other drug, or combination). Illinois law that prohibits a person from driving or being in actual control of any vehicle while: (1) the alcohol concentration in the person's blood or breath is 0.10 or more; (2) under the influence of alcohol; (3) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of driving safely.

**Embezzlement** -- The fraudulent appropriation by a person to his own use or benefit of property or money entrusted to him by another.

**Eminent domain** -- The power to take private property for public use by condemnation. See Condemnation.

**Enjoin** -- To require a person, by writ of injunction from a court of equity, to perform or to abstain

or desist from some act.

**Entrapment** -- The act of officers or agents of a government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him.

**Equitable action** -- An action which may be brought to restrain the threatened infliction of wrongs or injuries. (Remedies not available at common law.)

**Escheat** -- In American law, the right of the state to an estate to which no one is able to make a valid claim.

**Escrow** -- A writing, or deed, delivered by the grantor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition.

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

**Et al** -- An abbreviation of et alii, meaning "and others."

**Et seq.** -- An abbreviation for et sequens, or et sequential, "And the following."

**Evidence** -- Anything tending to prove a fact, or disprove an alleged fact. Some of the more important classes of evidence are: (1) testimony; (2) physical evidence, or things which have a tangible existence; (3) documentary evidence which includes a wide range of letters, memoranda, or other writings; and (4) demonstrative evidence, in which a procedure, cause, effect, or event is shown or acted out. See also circumstantial evidence and direct evidence.

**Exclusionary rule** -- Judge-made doctrine that evidence illegally obtained cannot be used to convict a person of a crime. (See: Suppression of Evidence.)

**Ex parte (ex par'te)** -- By or for one party; done for, in behalf of or on the application of one party only.

**Ex post facto (ex post fak'to)** -- After the fact; an act or fact occurring after some previous act or fact, and relating thereto.

**Ex rel.** -- "In behalf of."

**Exception** -- A formal objection to an action of the court during the trial of a cause, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal.

**Executor** -- A person designated in a will or appointed by the court to carry out the directions of the



will. (Compare: Administrator)

**Exhibit** -- A paper, document or other article produced and exhibited to a court during a trial or hearing.

**Expert evidence** -- Testimony given in relation to some scientific, technical or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject.

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

**Extradition** -- The surrender by one state to another of an individual accused or convicted of an offense outside its own territory, and within the territorial jurisdiction of the other.

**Extraordinary writ** -- Any of five special types of lawsuits which can be brought originally only in a court of jurisdiction: habeas corpus, mandamus, procedendo, prohibition and quo warranto.

**Fair preponderance** -- Evidence sufficient to create in the minds of the triers of fact the conviction that the party upon whom the burden is placed has established its case.

**False arrest** -- Any unlawful physical restraint of another's liberty, whether in prison or elsewhere.

**False pretenses** -- Designed misrepresentation of existing fact or condition whereby a person obtains another's money or goods.

**Felony** -- A crime of a graver nature than a misdemeanor. Generally, an offense punishable by imprisonment in a penitentiary or death.

**Fiduciary** -- A term derived from the Roman law meaning a person holding the character of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires.

**Forcible entry and detainer** -- A proceeding for restoring possession of land to one who has been wrongfully deprived of possession.

**Forgery** -- The false making or material altering, with intent to defraud, of any writing which, if genuine, might be the foundation of legal liability.

**Fraud** -- An intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other rights, or in some manner to do him injury.

**Garnishment** -- A proceeding whereby property, money or credits of a debtor in possession of

another (the garnishee) are applied to the debts of the debtor.

**Garnishee (noun)** -- The person upon whom a garnishment is served, usually a debtor of the defendant in the action; (verb) to institute garnishment proceedings.

**Good time** -- Time awarded an inmate to diminish a prison sentence in return for good behavior.

**Grand jury** -- A jury whose duty is to receive complaints and accusations in criminal cases, hear the evidence and find bills of indictment in cases where they are satisfied a trial ought to be had. The size of the jury (16 in Illinois) is set by law.

**Gratuitous guest** -- In automobile law, a person riding at the invitation of the owner of a vehicle, or his authorized agent, without payment of consideration or a fare.

**Grounds for dissolution of marriage** -- The nine grounds for dissolution of marriage in Illinois are: extreme physical or mental cruelty; desertion (one year or more); adultery; impotence at time of marriage; prior existing marriage; habitual drunkenness or drug abuse; attempt to take spouse's life; conviction of a felony; and infection of spouse with venereal disease. (See No-fault divorce.)

**Guardian** -- A person legally charged with care of another. Parents are the natural guardians of their children. The probate court may appoint guardians to care for minors or persons who are incompetent because of mental illness, mental deficiency, senility, or other cause. A guardian may be appointed as guardian only of the person (that is, actual custody), or as guardian of both the person and property of his ward.

**Guardian ad litem** -- A guardian appointed for the specific purpose of protecting the interest of a minor who is sued or whose property is involved in a lawsuit. (See also Next Friend.)

**Guilty but mentally ill** -- An alternative to the defense of insanity. A defendant convicted under this defense is held accountable for the crime, but the Department of Corrections must provide psychiatric treatment in addition to incarceration and may transfer him to the custody of the Department of Mental Health and Development Disabilities.

**Habeas corpus** -- "You have the body." The name given a variety of writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official or person detaining another, commanding him to produce the body of the prisoner or person detained so that the court may determine if such person has been denied his liberty without due process of law.

**Habitual criminal** -- A person convicted a third time for certain felony offenses. Carries a sentence of mandatory life imprisonment.

**Harmless error** -- In appellate practice, an error committed by a lower court during a trial, but not prejudicial to the rights of the party and for which the court will not reverse the judgement.

**Hearsay** -- Evidence not proceeding from the personal knowledge of the witness.

**Holographic will** -- A testamentary instrument entirely written, dated and signed by the testator in his own handwriting.

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

**Hypothetical question** -- Combination of facts and circumstances, assumed or proved, stated in such a form as to constitute a coherent set of facts upon which the opinion of an expert can be asked to provide evidence in a trial.

**Immunity, grant of** -- A judicially sanctioned agreement that an individual's testimony will not be used against him or that he will not be prosecuted for the offense(s) about which he is questioned, usually in exchange for his testimony against an accomplice or other offender.

**Impeachment of witness** -- An attack on the credibility of a witness by the testimony of other witnesses.

**Implied contract** -- A contract in which the promise made by the obligor is not expressed, but inferred by his conduct or implied in law.

**Imputed negligence** -- Negligence which is not directly attributable to the person himself, but which is the negligence of a person who is in privity with him, and with whose fault he is chargeable. See Respondent Superior.

**Inadmissible** -- That which, under the established rules of evidence, cannot be admitted or received.

**In camera** -- In chambers; in private.

**Incompetent evidence** -- Evidence that is not admissible under the established rules of evidence.

**Indictment** -- An accusation in writing found and presented by a grand jury, charging that a person therein named has done some act, or been guilty of some omission, which, by law, is a crime.

**Inferior court** -- Any court subordinate to the chief appellate tribunal in a particular judicial system.

**Information** -- An accusation for some criminal offense, in the nature of an indictment, from which it differs only in being presented by a competent public officer instead of a grand jury.

**Injunction** -- A court order commanding a specific person to do -- or not to do -- a particular act, under pain of punishment for contempt of court for disobedience. An injunction is an extraordinary remedy requiring clear and convincing evidence to justify its use, and is generally restricted to cases

in which money damages would be an inadequate remedy.

**Insanity** -- A complete defense to a crime; exists when at the time of the commission of the crime, the accused was not aware that the act was legally wrong. (See Guilty but mentally ill.)

**Instruction** -- A direction given by the judge to the jury concerning the law of the case.

**Inter alia** -- Among other things or matters.

**Inter alios** -- Among other persons; between others.

**Interlocutory** -- Provisional; temporary; not final. Refers to orders and decrees of a court. Interlocutory appeals are appeals taken before a final judgement in a case.

**Interrogatories** -- Written questions asked by one party in a legal action of the other side, which must answer the questions in writing under oath.

**Intervention** -- A proceeding in a suit or action by which a third person is permitted by the court to make himself a party.

**Intestate** -- One who dies without leaving a will.

**Joint and several** -- Together and separately. The term normally refers to the liability of two or more persons with respect to a single transaction. When persons are jointly and severally liable on a debt, for example, they are liable for the entire debt both individually and as a group.

**Judgment** -- A final order of a trial court, which gives effect to the factual decision in the case. Judgment should be distinguished from verdict, which is strictly a finding of fact requiring an appropriate order, or judgment, to make it operational. In a criminal case, the sentence is part of the judgment.

**Jurisdiction** -- The power or authority of a court. Territorial jurisdiction refers to the geographical extent of a court's authority. A trial court is said to have general jurisdiction if it has authority to deal with all types of civil and criminal cases. A court's jurisdiction may be exclusive or it may be concurrent with other courts. Subject-matter jurisdiction refers to the power of a court to deal with specific types of lawsuits or award certain kinds of remedies. Monetary jurisdiction refers to limitations on the court's authority to deal with lawsuits depending on the minimum or maximum money amount in controversy. A court in which a given type of action may be begun is said to have original jurisdiction. A court with power to review the decisions of other courts has appellate jurisdiction.

**Jurisprudence** -- The philosophy of law, or the science that treats the principles of positive law and legal relations.

**Jury** -- A certain number of people, selected according to law, and sworn to inquire of certain matters of fact, and declare the truth upon evidence laid before them. (See Grand jury and petit Jury.)

**Jury commissioner** -- An officer charged with the duty of selecting the names to be put into a jury wheel, or of drawing the panel of jurors for a particular term of court.

**Leading questions** -- One that instructs a witness how to answer or puts into his mouth words to be echoed back; one that suggests to the witness the answer desired. Prohibited on direct examination.

**Levy** -- A seizure; the obtaining of money by legal process through seizure and sale of property. The raising of the money for which an execution has been issued.

**Limitation** -- A certain time allowed by statute in which litigation must be brought.

**Lis pendens** -- A pending suit.

**Maintenance** -- Money or property that the court orders one party to pay for the support of the other party in a suit for dissolution of marriage.

**Malfeasance** -- Evil doing; ill conduct; the commission of some act which is prohibited by law.

**Malicious prosecution** -- An action instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted.

**Malpractice** -- A type of lawsuit brought against a professional person, such as a doctor, lawyer or engineer, for injury or loss caused the plaintiff by the defendant's failure to meet local standards of practice for the profession involved.

**Mandamus** -- The name of writ that issues from a court of jurisdiction commanding the performance of a particular act.

**Mandate** -- A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgment, sentence or decree.

**Mandatory supervised release** -- Formerly parole. A procedure in which a convict is released on good behavior before the expiration of a sentence to a penitentiary.

**Manslaughter** -- The unlawful killing of another without malice; may be either voluntary (upon a sudden impulse) or involuntary (in the commission of some unlawful act).

**Master in chancery** -- An officer of a federal court who acts as an assistant to the judge.

**Material evidence** -- Evidence that is relevant and goes to the substantial issues in dispute.

**Mens rea** -- Literally, “guilty mind.” One of two basic requirements, along with a guilty act, that must concur for a crime.

**Mentally ill or mental illness** -- A substantial disorder of thought, mode or behavior that afflicted a person at the time of the commission of the offense and that impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior or is unable to conform his conduct to the requirements of the law. (Compare: Insanity.)

**Miranda warning** -- Requirement that police tell a suspect in their custody of his constitutional rights before they question him; based upon the U.S. Supreme Court decision in *Miranda v. Arizona*.

**Misdemeanor** -- Offenses less than felonies; generally those punishable by fine or imprisonment other than in penitentiaries.

**Misfeasance** -- A misdeed or trespass. The improper performance of some act that a person may lawfully do.

**Mistrial** -- An erroneous or invalid trial; a trial that cannot stand in law because of lack of jurisdiction, wrong drawing of jurors or disregard of some other fundamental requisite.

**Mitigating circumstance** -- One that does not constitute a justification or excuse of an offense, but may be considered as reducing the degree of moral culpability.

**Moot** -- Unsettled; undecided.

**Moral turpitude** -- Conduct contrary to honesty, modesty or good morals.

**Motion** -- Request, made either in writing or orally, that the court rule on a particular legal issue.

**Murder** -- The unlawful killing of a human being by another with malice aforethought, either express or implied.

**Negligence** -- The failure to do something that a reasonable person, guided by ordinary considerations, would do; or the doing of something that a reasonable and prudent person would not do.

**Next friend** -- One acting for the benefit of an infant or other person without being regularly appointed as guardian.

**No bill** -- This phrase, indorsed by a grand jury on an indictment, is equivalent to “not found” or “not a true bill.” It means that, in the opinion of the jury, evidence was insufficient to warrant the return

of a formal charge.

**No-fault divorce** -- A non-adversary proceeding in which a marriage is dissolved by mutual agreement because irreconcilable differences have caused the irretrievable breakdown of the marriage, and the court determines that efforts at reconciliation have failed or that future attempts at reconciliation would be impractical.

**Nolle prosequi** -- A formal entry upon the record by the plaintiff in a civil suit, or the prosecuting officer in a criminal case, by which he declares that he “will no further prosecute” the case.

**Nolo contendere** -- A pleading usually used by a defendant in a criminal case, which literally means “I will not contest it.”

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

**Nonfeasance** -- The total omission or failure of an agent to perform some distinct duty that is the agent's legal duty to perform.

**Notice to produce** -- In practice, a notice in writing requiring the opposite party to produce a certain described paper or document at the trial.

**Objection** -- The act of taking exception to some statement of procedure in trial. Used to call the court's attention to improper evidence or procedure.

**Of counsel** -- A phrase commonly applied to a lawyer or lawyers employed to assist in the preparation or management of the case, or its presentation on appeal, but not the principal attorney of record.

**Opinion evidence** -- Evidence of what the witness thinks, believes or infers in regard to the fact in dispute, as distinguished from his personal knowledge of the facts; not admissible except (under certain limitations) in the case of experts.

**Order of removal** -- An order by a court directing the transfer of a cause to another court.

**Panel** -- A list of 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 selected by the clerk lot.

**Parole** -- See Mandatory supervised release.

**Parties** -- The persons who are actively concerned in the prosecution or defense of a legal proceeding.

**Per curiam** -- A phrase used to distinguish an opinion of the whole court from an opinion written by one judge.

**Peremptory challenge** -- The challenge that the prosecution or defense may use to reject a certain number of prospective jurors without giving any reason.

**Periodic imprisonment** -- A sentence of imprisonment during which the committed person may be released for periods of time during the day or night or for periods of days, or both.

**Perjury** -- The willful assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, whether upon oath or in any form allowed by law to be substituted for an oath, and known to such witness to be false.

**Personal recognizance** -- A type of bail, consisting simply of written promise to appear in court when required. Generally, when there is no good reason to suppose an accused in a criminal case will not appear when required, he will be released on his personal recognizance

**Petit jury** -- The ordinary jury of 12 persons (six in certain civil cases) for the trial of a civil or criminal case. So called to distinguish it from the grand jury.

**Plaintiff** -- A person who brings an action; the party who complains or sues in a personal action and is so named on the record.

**Plaintiff in error** -- The party who obtains a writ of error to have a judgment or other proceeding at law reviewed by an appellate court. (See Appellant.)

**Plea bargaining (or negotiation)** -- In a criminal law, pre-trial negotiations between the defense and prosecution, with a view to obtaining more lenient treatment for the accused in return for a plea of guilty. If a bargain is struck, the accused will normally be permitted to plead guilty to a lesser offense, or plead guilty to a principal offense and have other charges dismissed. The underlying basis for a negotiated plea must be stated in the court's records.

**Pleading** -- The process by which the parties in a suit or action alternately present written statements of their contentions, each responsive to that which precedes and each serving to narrow the field of controversy, until there evolves one or more points, affirmed on one side and denied on the other, called "issues" upon which they then go to trial.

**Polling the jury** -- A practice whereby jurors are asked individually whether they assented, and still assent, to the verdict.

**Power of attorney** -- An instrument authorizing another to act as one's agent of attorney.



**Prejudicial error** -- Synonymous with “reversible error”; an error that warrants the appellate court's reversing the judgement before it. (Compare: Harmless error.)

**Preliminary hearing** -- Synonymous with “preliminary examination”; the hearing given a person charged with crime by a judge to determine whether he should be held for trial.

**Preponderance of evidence** -- Greater weight of evidence, or evidence that is more credible and convincing to the mind, not necessarily the greater number of witnesses.

**Presentence report** -- Document resulting from an investigation by a probation agency of a convicted person and his background in order to assist the judge in determining the appropriate sentence or whether to release the person on probation.

**Presentment** -- An informal statement in writing by a grand jury to the court that a public offense has been committed, from its own knowledge or observation, without any bill or indictment laid before it.

**Presumption of fact** -- An inference as to the truth or falsity of any proposition or fact, drawn by a process of reasoning on the absence of actual certainty of its truth or falsity, or until such certainty can be ascertained.

**Presumption of law** -- A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence.

**Pre-trial motion** -- A motion made before the trial of a case, such as motion to suppress evidence that might be expected to be used at a later trial.

**Prima facie** -- So far as can be judged from the disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary.

**Probable cause** -- Reasonable grounds to believe that a suspect in a criminal case committed the offense charged.

**Probate** -- The act or process of proving a will.

**Probation** -- The sentencing of a person convicted of an offense to a period of supervision by a probation officer pending good behavior.

**Pro bono publico** -- “For the good of the public” signifying legal services offered without charge.

**Pro se** -- A term signifying that an accused or convicted person acts as his own attorney.

**Prosecutor** -- One who instigates the prosecution upon which an accused is arrested or who proffers an accusation against the party whom he suspects to be guilty; also, one who takes charge of a case

and performs the function of trial lawyer for the people.

**Public defender** -- An attorney employed by a governmental agency to represent accused persons who are unable to hire private attorneys.

**Quash** -- To overthrow, vacate, annul or void a summons, subpoena or indictment.

**Quasi judicial** -- Authority or discretion vested in an officer wherein his acts partake of judicial character.

**Quid pro quo** -- “What for what,” a fair return or consideration.

**Quo warranto** -- A writ issuable by the state, through which it demands an individual to show by what right he exercises an authority that can be exercised only through grant or franchise emanating from the state.

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

**Rebuttal** -- The introduction of rebutting 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.

**Recuse** -- To disqualify oneself as a judge in a particular case.

**Redirect examination** -- Follows cross-examination, and is conducted by the party who first examined the witness.

**Reference** -- A person to whom a cause pending in a court is referred by the court to take testimony, hear the parties and report thereon to the court; an officer exercising judicial powers and an arm of the court for a specific purpose.

**Reported case** -- Generally, a court decision is referred to as reported when it has been published by one of several legal publications.

**Reply** -- When a case is tried or argued in court, the argument of the plaintiff in answer to that of the defendant. A pleading in response to an answer.

**Rest** -- Party is said to “rest” or “rest his case” when he has presented all the evidence he intends to offer.

**Restraining order** -- An order in the nature of an injunction.

**Retainer** -- Act of the client in employing his attorney or counsel. Also denotes the fee that the client pays when he retains the attorney to act for him.

**Rule of court** -- An order made by a court having competent 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.

**Search and seizure, unreasonable** -- In general, an examination without authority of law of one's premises or person with a view to discovering stolen contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.

**Search warrant** -- An order in writing, issued by a judge in the name of the state, directing an officer to search a specified house or other premises for stolen property. Usually required as a condition precedent to a legal search and seizure.

**Self defense** -- The protection of one's person or property against some injury attempted by another. The law of "self defense" justifies an act done in the reasonable belief of immediate danger. When acting in justifiable self defense, a person may not be punished criminally nor held responsible for civil damages.

**Sentence** -- The judgment in a criminal action following a verdict or plea of guilty. In a felony case the sentence may include a determinate sentence of imprisonment of up to a year. In either case the sentence may also include some form of probation, conditional discharge, periodic imprisonment, fine restitution shall be the sole disposition for a felony.

**Separate maintenance** -- Allowance granted to a spouse for support of him or herself and children while living apart for the other spouse, but not divorced.

**Separation of witness** -- An order of the court requiring all witnesses to remain outside the courtroom until each is allowed to testify except the plaintiff or defendant.

**Service of process** -- Notification of a person that he has been named as a party to a lawsuit or has been accused of an offense. Process itself consists of a summons, citation or warrant, to which a copy of the complaint or other pleading is attached. Depending on court rules, service may be by personal delivery to the person to be notified, or by delivery to his home, or by registered mail, or by publication.

**Specific performance** -- A mandatory order in equity. Where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what he has agreed to do.

**Stare decises** -- 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 as precedent and apply it to future cases where

the facts are substantially the same.

**State's evidence** -- Testimony, given by an accomplice or participant in a crime, tending to convict others.

**Statute** -- Written law adopted by the legislature.

**Statute of limitations** -- The time period within which litigation may be commenced in a particular cause of action.

**Stay** -- A stopping or arresting 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 assented to by the parties, and most stipulations must be in writing.

**Subpoena** -- A process to cause a witness to appear and give testimony before a court or magistrate.

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

**Substantive law** -- The law dealing with rights, duties and liabilities, as distinguished from the law regulating procedure.

**Summary judgment** -- A judgment before trial on the merits. Typically it occurs when the facts are so clear that no trial is necessary.

**Summons** -- A writ directing the sheriff or other officer to notify the named person that an action has been commenced against him in court and that he is required to appear, on the day named, and answer the complaint in such action.

**Supersedeas** -- A writ containing a command to stay proceedings at law, such as the enforcement of a judgment pending on appeal.

**Suppression of evidence** -- An order by the judge refusing to permit certain evidence against the defendant to be considered.

**Temporary restraining order (TRO)** -- A temporary emergency order from a judge prohibiting some action until the judge can hear arguments or evidence.

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

**Third-party action** -- A court action arising from existing civil litigation against a third party who was not party to the original litigation but who may be liable.

**Tort** -- An injury or wrong committed, either with or without force, to the person or property of another.

**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, traverse signifies a denial. When a defendant denies any material allegation of fact in the plaintiff’s declaration, he is said to traverse it.

**Treatise** -- A book systematically treating subjects of the law.

**Trial de novo** -- A new trial or retrial in which the whole case is gone into as if no previous trial had taken place.

**True bill** -- In criminal practice, the endorsement made in a grand jury upon a bill of indictment when they find sufficient evidence to warrant a criminal charge.

**Trustee** -- One who holds legal title to property “in trust” for the benefit of another person.

**Undue influence** -- Whatever destroys free will and causes a person to do something he would not do if left to himself.

**Unlawful detainer** -- A detention of real estate without the consent of the owner or other person entitled to its possession.

**Usury** -- Taking more than a lawful rate of interest for the use of money.

**Venire** -- Technically, a writ summoning persons to court to act as jurors; popularly used as meaning the body of names thus summoned.

**Veniremen** -- Members of a panel of jurors.

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

**Verdict** -- The formal decision or finding made by a jury, reported to the court and accepted by it.

**Voir dire** -- To speak the truth. The phrase denotes the preliminary examination which the court may

make of one presented as a witness or juror, as to his qualifications.

**Waiver of immunity** -- A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed by the U.S. Constitution that no person shall be compelled to be a witness against himself. (Compare: Immunity.)

**Warrant of arrest** -- A writ issued by a magistrate, justice or other competent authority, to a sheriff or other officer, requiring him to arrest the person therein named and bring him before the magistrate or court to answer to a specified charge.

**Weapon** -- As defined in the Illinois Sentencing Act, Category I weapons include any firearm, knife with a blade at least three inches in length, switchblade, or any other dangerous weapon of like character. Category II weapons include black-jacks, slingshots, metal knuckles, or any other weapons of like character.

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

**Willful** -- A “willful” act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently.

**With prejudice** -- The term, as applied to judgment of dismissal, is as conclusive of rights of parties as if action had been prosecuted to final adjudication adverse to the plaintiff.

**Witness** -- One who testifies to what he has seen, heard or otherwise observed.

**Writ** -- An order issuing from a court requiring the performance of a specified act or giving authority and commission to have it done.

**Writ of prohibition** -- Counterpart of the writ of mandate. It stops the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

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