

How Courts Work

Protect your Rights
Win in Court



How Courts Work

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How Courts Work

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LAWSUIT CHECKLIST

- ☐ I have taken the “HowCourtsWork.com Lawsuits Courses?”
- ☐ I have found the Court that has the correct Jurisdiction.
- ☐ I have found the Court that has the correct Venue.
- ☐ Have I formatted my complaint correctly on pleading paper?
- ☐ Have I titled my complaint caption correctly?
- ☐ Have I included all of the information required in my complaint?
- ☐ I have listed the correct parties.
- ☐ I have written my simple statements of facts
- ☐ I have listed my Cause for Action
- ☐ I have listed Request for Relief
- ☐ Demand for Jury Trial (optional)
- ☐ I have included Exhibits and Evidence (optional)
- ☐ I have filled out all of the necessary forms that I must file with my complaint?.
- ☐ I have written my summons with helpful information to find the Defendant.
- ☐ I have included a Certificate of Service (Original + ____ copies) or
- ☐ A Certificate of Service with Affidavit of Service (Original + ____ copies)
- ☐ I have printed plenty of copies of all documents.
- ☐ Complaint (Original + ____ copies)
- ☐ Summons (Original + ____ copies)
- ☐ Have I checked for local *Pro Se* assistance?

LAWSUITS



Lawsuits

Lawsuits

Statistics show that somewhere around 90% of filed lawsuits are settled out of court. Many times because one party or the other does not have enough information about courts and gives up.

DUE PROCESS



What is Due Process?

This is very important to remember.

Due process is the Constitutional legal requirement which demands that the state, including the court systems, must respect all of the Constitutional and legal rights that are owed to every individual.

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

P L E A D I N G S



What are Pleadings?

Pleadings are the written statements filed with the court all along the case.

The initial complaint is the plaintiffs first pleading to the court.

Pretty much each complaint, answer, motion and discovery motion is a pleading.

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

CAUSE OF ACTION



What is a Cause of Action?

Cause of action - The fact or facts which give a person a right to relief in court.

To file a complaint you must have a viable “cause of action”. A cause of action is the fact or facts which give a person a right to relief in court.

When stating your supporting facts and the “cause of action” it is best to support it with laws, statutes or previous cases.

WHAT IS A LAWSUIT



What is a Lawsuit?

Lawsuit - An action or proceeding in a civil court; term used for a suit or action between two private parties in a court of law.

A lawsuit is a complaint or claim usually filed at the clerk of the courts office, to recover losses or address some other sort of grievance.

Usually demands a legal or equitable remedy.

Commonly awarded damages are:

Compensatory damages - Damages that are paid to compensate the claimant for losses.

Punitive damages - Money award given to punish the defendant or wrongdoer.

FILING A LAWSUIT



How do I file a Lawsuit?

You must file a complaint with the court. Make a plan and make sure you have grounds for a lawsuit "a cause of action". Every complaint must have a viable "cause of action". And the "cause of action" must match the jurisdiction and the venue of the court where the complaint is being filed.

When you get a copy of the Rules of the Court from your Court or when you talk to the clerk of the court. Be sure and find out how many copies of the complaint and summons you will need to bring when doing the initial filing.

For instance, smaller courts will need one for the court, one for the clerk, one for the defendant and of course one for yourself. Some higher courts or cases involving the state will require many more copies to be filed.

WHERE TO FILE A LAWSUIT



Where is a Lawsuit filed?

A complaint, along with your pre written summons if your court allows it, is usually filed in the court that has correct jurisdiction and venue.

Correct jurisdiction is the court that has the authority to hear and decide the type of lawsuit being filed. The venue is the correct physical location of the court.

AFTER THE LAWSUIT IS FILED



What happens next?

(Usually, but be sure and check the procedures and rules of the court you are in.)

The clerk will usually assign the complaint a case number then the Court will issue the Summons and the Summons and a Copy of the Complaint will be delivered to the Defendant.

The Defendant must answer or, usually, be in default.

A SUMMONS



Serving the Summons

What is a Summons?

An Instrument used to commence a civil action or special proceeding; the means of acquiring jurisdiction over a party.

If for some reason your court does not do the SERVICE of the complaint, the serving of the summons and complaint to the defendant. You may be able to have any person who is at least 18 years old except the Plaintiff or any other party associated with the complaint serve a summons and complaint. Then a certificate of service must be filed or attached if sending with a reply or answer.

SERVICE OF PROCESS



What is Service of Process?

Service of process - The delivering of writs, summonses, and subpoenas by delivering them to the party named in the document. Also referred to as "service".

There are many ways to serve process. From sending it in the US Mail, E-mail etc., to hiring a professional Process Server, which you can usually find in the yellow pages or online.

Sometimes a Sheriff is ordered to serve process.

CERTIFICATE OF SERVICE



Filing the Certificate

What is a Certificate of Service?

Certificate of Service - The section, form or part of a pleading or motion that certifies that the party filing the document has sent a copy of the document to all or certain parties in a lawsuit.

It can be a simple certificate explaining how the Process was served. Or to make it stronger you can have the signing of the certificate notarized which makes it more like an affidavit. And it gets turned in to the court via the clerk's office.

A MOTION



Submitting a Motion

What is a Motion?

Motion - An application made to a court or judge which requests a ruling or order in favor of the applicant.

Example: Motion to Dismiss (the case or lawsuit)

AN ANSWER



Filing the Answer

What is an answer?

Answer: A formal, written statement by the defendant in a lawsuit which answers each allegation contained in the complaint.

The Defendant either answers the complaint within the court ordered timeframe or files a motion.

DISCOVERY



What is Discovery?

Discovery - The name given pretrial devices for obtaining facts and information about the case.

TRIAL



What is a Trial?

Trial - A judicial examination of issues between parties to an action.

Most cases never get to trial.

Now lets start again a bit more in depth. Example forms are at the end of the book.

A BASIC COMPLAINT



The Complaint

Understand that court is not school, you have an adversarial opponent and the court cannot let you go back and do redo's if you make a mistake. Meaning that, in most courts, if the case is dismissed for administrative reasons you will have to restart the entire process.

Be sure and check the local Rules of the Court to make sure you comply with their procedure(s).

The complaint is the plaintiffs initial pleading to the court for relief. It initiates the lawsuit and litigation. Among other things it states the supporting facts, laws, statutes etc. The cause of action must be clear.

If you want the best possible chance to win your case and, this isn't really hard at all, make sure you fill out the complaint correctly.

The first thing to remember is to make sure the court you are filing in is the correct court, (correct jurisdiction and venue). Usually you can make sure by calling the clerks office for the court. Then get a copy or look up the Rules of the Court or Rules of Civil Procedure for that court. For the

most part basically they are all rooted from the FRCP, Federal Rules of Civil Procedure.

BUT, be sure and check your courts rules.

Sample Complaint is at the end of this book.

Start with the name of the court and the location of the court.

(Find out the courts name and make sure you have the correct Jurisdiction and Venue)

**IN THE ABC COUNTY SUPERIOR COURT
BIG CITY, ABC COUNTY, STATE**

*Case information: On the left state the names of the **parties** in the case and their attorneys if there are any.*

On the right make a spot for the clerk to write in a case number, the title/type of document and (simply because in most courts you cannot add DEMAND FOR JURY TRIAL after motions have started) add DEMAND FOR JURY TRIAL

Jane Doe,
Plaintiff,
VS.
Larry Lazy,
Defendant

Case Number:

COMPLAINT
DEMAND FOR JURY TRIAL

COMPLAINT

(In Federal or District Courts the paper used will have line numbers preprinted down the left side. For other courts use line numbering to be clear and to allow ease when finding, discussing and using information on the complaint form.)

Then clarify that this court has the Jurisdiction and that you are in the appropriate Venue.

JURISDICTION and VENUE

1. Both parties live in ABC County.
2. The property involved and actions related are in ABC County.

Then state your complaint and include copies of all evidence. Sometimes it is easier to clarify the “cause of action” then to support the cause of action list all of the pertinent facts before it.

Courts are usually very busy, in order to make it all very clear and easily understandable give each piece of information its own numbered line.

GENERAL FACTS OF THIS CASE

PLAINTIFF Jane Doe sues DEFENDANT Larry Lazy for money damages and states:

Facts

3. May, 12, 2011 Jane Doe called and scheduled an appointment to get an estimate for her house to be painted.
4. May 13, 2011 Larry Lazy came to the house and agreed to paint the house blue for \$4,000.00.
5. Jane Doe would be on a business trip during the painting of the house.
6. May 13, 2011 Jane Doe and Larry Lazy signed a contract with the above mentioned terms included (contract attached as Exhibit 1).
7. Jane Doe paid Larry Lazy \$2,000.00 as half of the agreed upon price.
8. Jane Doe returned and found that the house had been painted white.

Cause of action

9. Breach of Contract. Larry Lazy did not fulfill his part of the Contract that he signed on May 13, 2011 to paint Jane Doe's house blue.

*What do you want the court to do?***REQUEST FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as set forth below.

PLAINTIFF demands that the \$2,000.00 down payment be returned so that she can get the house painted white.

Jane Doe, Plaintiff
1234 Center Street
Any Town, Your State Zip

That is a basic complaint.

It is enough of a complaint though that in most cases Jane Doe would have no problem winning.

THE SUMMONS



The Summons

A summons is issued by the court. Submitting a summons with the court will offer the court some additional information such as the description or possible locations of the Defendant

There are several types of summons. A notice to appear and a citation are two types of simple summons that are usually attached or already a part of something like a traffic ticket.

In a civil case the summons is sent along with a copy of the complaint. It is the Court ordering an action by a defendant.

We will assume that the Sheriff is serving the Summons.

The caption is the same as all other court documents:

IN THE ABC COUNTY SUPERIOR COURT BIG CITY, ABC COUNTY, STATE

Jane Doe,
Plaintiff,
V.
Larry Lazy,
Defendant

Case Number:

COMPLAINT
DEMAND FOR JURY TRAIL

Here is the summons:

SUMMONS

TO THE SHERIFF OF _____ COUNTY,

YOU ARE COMMANDED:

To summon the above named defendant(s) and serve upon said defendant(s) a copy of this summons and complaint. *(Optional: You can help the sheriff find the defendant)* The address of the defendant is currently thought to be 6789 South Street. His business address is 5643 North Street. Or he may be at his sister's house. His sister lives at 1720 Maple Street. The defendant is about 6 feet tall, blonde hair and brown eyes.

TO THE ABOVE NAMED DEFENDANT(S):

Within twenty (20) days after you receive this Summons, excluding the day you receive it, you must file written defenses to the Plaintiff at (address). The original of your Answer must be filed with the Clerk's Office of the Court and must include proof that a copy of the Answer was served on the plaintiff or his/her attorney who is named on this Summons.

Failure to file an Answer denying the allegations will result in a judgment against you, and action may be taken by the plaintiff or his/her attorney to satisfy the judgment.

DATED: _____

Clerk

Jane Doe, Plaintiff
1234 Center Street
Any town, USA 56789

That is a common summons.

The next step is to receive the answers or get the court to rule a default judgment in your favor.

SERVICE OF PROCESS



Service of Process

Service of process - The delivering of writs, summonses, and subpoenas by delivering them to the party named in the document. Also referred to as "Service".

Download a sample Certificate of Service with an Affidavit of Service: [click here](#).

The caption is the same as all other documents unless it is added at the bottom of a pleading or other document.

The affidavit of service is optional.

**IN THE ABC COUNTY SUPERIOR COURT
BIG CITY, ABC COUNTY, STATE**

Jane Doe,
Plaintiff,

Case Number: _____

VS.

CERTIFICATE OF SERVICE

Larry Lazy,
Defendant

Certificate of Service (long version)

Under penalty of Perjury, I certify that on month, day and year , a complete copy of _____ was served on persons name, by :

___ Certified ___ Regular US Postal mail, return receipt requested, certificate # _____,

at the following address: _____,

___ Fax, to the following number: _____,

___ Delivery service: _____ ,

___ Personal delivery by: _____.

Signature: _____

Certificate of Service (short version)

I hereby certify that a copy has been provided to the following by United States Postal Service and by electronic mail (e-mail) on this 2nd day of July, 2011 to:

Then list their names,
physical addresses,
e-mail addresses
and who they are
in the lawsuit, like the plaintiff etc.

Signature: _____

Affidavit of Service (Optional)

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____, by (name of person making statement).

	<u>(Signature of Notary Public)</u>
	<u>(Name of Notary Typed, Printed, or</u>
(NOTARY	<u>Stamped)</u>
SEAL)	<u>(My commission Expires)</u>

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

A MOTION



Motions

Motion - An applicable application made to a court or judge which requests a ruling or order in favor of the applicant.

Be sure and check your local Court for Court specific instructions.

Motions are a huge key to winning, losing or even having a court case dismissed. You can use motions and motions can be used against you or to stop the lawsuit altogether.

As tools used in court motions can make or break your case. Including, a Motion to Dismiss for not doing the complaint correctly or a Motion to Compel Discovery to force someone to submit information or documents.

ADD TEETH to your motion: By searching case law, your local and state code you can find cases that are similar or the same and you can base the motion on that case or law. This helps the court see that you should win the case, dismiss the case or at least get the motion you are requesting.

Add any supporting documents to the motion, receipts, amendments to the contract etc.

A motion has the same caption as all other court documents.

**IN THE ABC COUNTY SUPERIOR COURT
BIG CITY, ABC COUNTY, STATE**

Jane Doe,
Plaintiff,

Case Number:

VS.

MOTION

Larry Lazy,
Defendant

**MOTION TO DISMISS JANE DOE’S COMPLAINT FOR LACK OF
SUBJECT-MATTER JURISDICTION**

Defendant Larry Lazy pursuant to ABC COUNTY SUPERIOR COURT Rule of Civil Procedure 1.125(a)(2) and 1.140(c)(3) moves for an Order Dismissing Plaintiff Jane Doe’s Complaint.

1. This Court lacks subject matter jurisdiction to proceed. ABC COUNTY SUPERIOR COURT does not have Jurisdiction over cases under \$5,000.00.

2. The case should be dismissed for lack of subject matter jurisdiction.

Wherefore Larry Lazy moves this Court to enter an Order dismissing the Complaint by Jane Doe and granting such other and further relief as the Court may deem reasonable and just under the circumstances.

Larry Lazy

Example Motions

Examples of motions that can be filed in court.

Be sure and check the Rules of the Court for the court you are in!

Motion in Limine

A "motion in limine" asks the court to decide that certain evidence may or may not be presented to the jury at the trial.

Motion to Strike

Requesting the court to order the removal of all or part of a pleading to the court. To request elimination of all or part of a trial witness's testimony. "The jury is instructed to disregard the stricken statements."

Motion to Dismiss

"Common rules for dismissal."

- (1) Lack of subject-matter jurisdiction.
- (2) Lack of personal jurisdiction.
- (3) Improper venue.
- (4) Insufficient process.
- (5) Insufficient service of process.
- (6) Failure to state a claim upon which relief can be granted.
- (7) Failure to join a party under Rule 19, or failure of a witness or corroborating party to participate.

Motion to Suppress

A formal, written request to a court for an order that certain evidence be excluded from consideration by the court, judge or jury at trial.

Motion to Amend the Complaint

A party's request that the Court permit the party to change a Complaint previously filed with the Court.

Motion to Compel Discovery

A party's request that the Court order the party's opponent to respond to the party's discovery request. Discovery in a lawsuit is a way to learn more about your opponent's case.

Motion for Default Judgment

A request by the plaintiff that the Court enter a judgment against a defendant who has failed to file a pleading or otherwise defend against a plaintiff's claim.

Motion to Dismiss

A party's request that the Court dismiss a case because of settlement, voluntary withdrawal, or a procedural defect.

Motion for Enlargement of Time

A party's request that the Court extend the time allowed to respond or to perform an action.

Motion for Judgment on the Pleadings

A party's request that the Court rule in its favor based on the pleadings filed with the Court, without accepting any evidence, because the outcome of the case is based on the Court's interpretation of the law.

Motion to Vacate Judgment

A party's request that the Court cancel or invalidate a judgment.

Motion for a More Definite Statement

A party's request that the Court require an opponent to change a vague or ambiguous pleading to which the party is unable to adequately respond.

THE ANSWER



Answer

Answer - A formal, written statement by the defendant in a lawsuit which answers each allegation contained in the complaint.

The answer is usually the first pleading by the defendant that wants to lose or one that thinks they are absolutely and easily not liable for whatever the complaint is about (risky).

A better strategy is to file motions rather than answering in hopes that you will never have to answer.

But, remember, if motions fail to stop the case and you fail to answer the complaint it will usually result in a default judgment and you lose.

Motions can be used to avoid answering a complaint. Motions to dismiss, motion for summary judgment, motion for a default judgment or demurrer (contend that the facts laid out by the Plaintiff, even if true, are not enough to grant the complaint in favor of the Plaintiff).

To keep yourself in a safe zone it is customary to answer the complaint as simply as possible until more information is required. Affirm, deny or don't know.

An answer has the same caption as all other court documents.

**IN THE ABC COUNTY SUPERIOR COURT
BIG CITY, ABC COUNTY, STATE**

Jane Doe,
Plaintiff,

VS.

Larry Lazy,
Defendant

Case Number:

COMPLAINT
DEMAND FOR JURY TRAIL

Answer the complaint as simply as possible. There will be plenty of time to argue later.

ANSWER

As and for his answer to the Complaint of Jane Doe, the Defendant Larry Lazy respectfully shows and alleges to each part of the complaint with corresponding numbers:

1. Admits
2. Admits
3. Not enough knowledge
4. Admits
5. Not enough knowledge
6. Admits
7. Admits
8. Denies
9. Denies

Added in a sample of an incomplete simple motion to dismiss...

WHEREFORE, defendant prays that this Court dismiss the complaint of the plaintiff herein, with costs and disbursements to defendant, together with such other relief the Court finds to be just and proper.

Dated: _____

Jane Doe, Plaintiff
1234 Center Street
Any town, USA 56789

You must submit copies including the Certificate of Service/Affidavits of choice (examples below) to all parties and to the clerk and court (if required by that court).

Certificate of Service (long version)

Under penalty of Perjury, I certify that on month, day and year , a complete copy of _____ was served on persons name, by :

___ Certified ___ Regular US Postal mail,

return receipt requested, certificate # _____,

at the following address:

_____,

___ Fax, to the following number: _____,

___ Delivery service: _____ ,

___ Personal delivery by: _____.

Signature: _____

Certificate of Service (short version)

I hereby certify that a copy has been provided to the following by United States Postal Service and by electronic mail (e-mail) on this 2nd day of July, 2011 to:

Then list their names,
physical addresses,
e-mail addresses
and who they are
in the lawsuit, like the plaintiff etc.

Signature: _____

Affidavit of Service (Optional)

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20____, by (name of person making statement).

	<u>(Signature of Notary Public)</u>
	<u>(Name of Notary Typed, Printed, or</u>
(NOTARY	<u>Stamped)</u>
SEAL)	<u>(My commission Expires)</u>

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

DISCOVERY

THE KEY TO WINNING!



Discovery

Discovery is the gold and the key. For years there have been arguments that big law firms and people with deep pockets have an advantage because they can afford to play all kinds of tricks with discovery.

If you learn even the basics it will give you a powerful arsenal to help you win a lawsuit.

Remember that generally civil courts use the FRCP as a guideline. Be sure and check your local rules so you won't be surprised by your local court.

Discovery - The name given pretrial devices for obtaining facts and information about the case. Motions and discovery are the battle before the battle. After which each party will be able to evaluate their strength in the case and one or the other will offer a settlement or the court will force a summary judgment as to not waste the courts time or money.

For the most part, everything admitted becomes evidence unless stricken by a motion.

If a discovery motion is ignored a motion to compel discovery may be ordered making any further ignorance a punishable offence.

Discovery is a great way to expose dishonest people or behavior.

Some of the main tools used to get evidence admitted are:

1. Requests for answers to interrogatories - A set or series of written questions propounded to a party, witness, or other person having information or interest in a case; a discovery device.
2. Requests for production of documents or E-discovery- a request to have documents or information in electronic format entered into evidence.
3. Requests for admissions - similar to the answer to a complaint but more definitive, the party must admit, deny or explain why they cannot answer.
4. Requests for depositions - testimony of a witness or a party taken under oath usually outside the courtroom, the transcript of which becomes a part of the court's file.
5. Using subpoenas - a command to appear at a certain time and place to give testimony upon a certain matter.
6. Request for an inspection or physical examination – to inspect property, evidence or even a person as in a physical examination for medical cases.

Many times a "motion in limine" will be used to ask the court to decide that certain evidence may or may not be admitted or presented. Because relevance or reasonably calculated to lead to admissible evidence, may need to be specifically addressed.

Discovery Scope from Federal Rules of Civil Procedure

Scope in General; Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and

location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

Here is a list of other information you can freely obtain on the Internet.

From the **Federal Rules of Civil Procedure**

TITLE V. DISCLOSURES AND DISCOVERY

Rule 26. Duty to Disclose; General Provisions Governing Discovery

Rule 27. Depositions to Perpetuate Testimony

Rule 28. Persons Before Whom Depositions May Be Taken

Rule 29. Stipulations About Discovery Procedure

Rule 30. Depositions by Oral Examination

Rule 31. Depositions by Written Questions

Rule 32. Using Depositions in Court Proceedings

Rule 33. Interrogatories to Parties

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

Rule 35. Physical and Mental Examinations

Rule 36. Requests for Admission

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

Caption is the same as all other pleadings.

IN THE ABC COUNTY SUPERIOR COURT
BIG CITY, ABC COUNTY, STATE

Jane Doe,
Plaintiff,
VS.

Larry Lazy,
Defendant

Case Number:

MOTION FOR DISCOVERY

(Simple) MOTION FOR DISCOVERY

Pursuant to Rule 26 General provisions governing discovery I respectfully request that the Defendant Larry Lazy provide discovery of the following:

1. A receipt for the purchase of the paint you used to paint my house at 1234 Center Street, Any town, USA 56789.
2. A list of the witnesses the plaintiff intends to call at the hearing.
3. A copy of his work hours for the painting of the house.

Jane Doe, Plaintiff
1234 Center Street
Any town, USA 56789

TRIAL



Trial

Trial – To settle a dispute between parties, a tribunal/court is formed as a forum to decide a resolution after all other administrative hearings (motions, discovery etc.) have failed to lead to a settlement. Most people think of a trial as a Judge, Jury, and two parties in dispute.

As a result of the effectiveness of due process, motions and discovery 90% of lawsuits never go to trial because a settlement is offered and agreed to before the point that a trial becomes necessary.

Judge – makes sure that rules of procedure are followed justly and according to the rule of law and due process.

Jury – a group of people that decides the outcome of a dispute between parties after all other forms of dispute resolution (motions, discovery) have been exhausted and the parties cannot agree on a settlement.

Preceding a trial, administrative hearings are used to decide smaller aspects and clarify segments of the information and due process.

Basically; Types of trials:

Civil Trial: to settle a dispute between two parties.

Criminal Trial: the state accuses a citizen of a crime.

Bench Trial – Judge plays the role of the jury.

APPEAL



APPEAL

Appeal - An appeal is a challenge to a ruling by a court. For the sake of what our focus is, civil court, it would usually be an appeal to a higher court because our court system is structured in levels and every level having a higher level court above it.

Basically the reason for appeal is a party thinks that justice or due process is not clearly evident in the previous court or the result of that.

To find the appellate court or the court to appeal to ask the court you are in what the next higher court is or find out if you need to move to a Federal Court.

Glossary of Legal and Court Terms

- A -

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

Acceptance - The taking and receiving of anything in good faith with the intention of retaining it.

Accomplice - 1. A partner in a crime. 2. A person who knowingly and voluntarily participates with another in a criminal activity.

Accretion - The increase or accumulation of land by natural causes, as out of a lake or river.

Acknowledgment - A formal declaration before an authorized official by the person who executed an instrument that it is his free act and deed; the certificate of the official on such instrument attesting that it was so acknowledged.

Acquittal - A release, absolution, or discharge of an obligation or liability. In criminal law the finding of not guilty.

Action Case- Cause, suit, or controversy disputed or contested before a court of justice.

Additur - An increase by a judge in the amount of damages awarded by a jury.

Adjective law - Also, procedural law. That body of law which governs the process of protecting the rights under substantive law.

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

Administrative agencies - Agencies created by the legislative branch of government to administer laws pertaining to specific areas such as taxes, transportation, and labor.

Administrator - 1. One who administers the estate of a person who dies without a will. 2. A court official.

Admiralty law - Also, maritime law. That body of law relating to ships, shipping, marine commerce and navigation, transportation of persons or property by sea, etc.

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

Admonish - To advise or caution. For example the court may caution or admonish counsel for wrong practices.

Advance sheets - Paperback pamphlets published by law book publishers weekly or monthly which contain reporter cases, including correct volume number and page number. When there are sufficient cases, they are replaced by a bound volume.

Adversary proceeding - One having opposing parties such as a plaintiff and a defendant. Individual lawsuit(s) brought within a bankruptcy proceeding.

Adverse possession - Method of acquiring real property under certain conditions by possession for a statutory period.

Affiant - The person who makes and subscribes an affidavit.

Affidavit - A voluntary, written, or printed declaration of facts, confirmed by oath of the party making it before a person with authority to administer the oath.

Affirmation - A solemn and formal declaration that an affidavit is true. This is substituted for an oath in certain cases.

Affirmative defense - A defense raised in a responsive pleading (answer) relating a new matter as a defense to the complaint; affirmative defenses might include contributory negligence or estopped in civil actions; in criminal cases insanity, duress, or self-defense might be used.

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

Agreement - Mutual consent.

Aid and Abet - To actively, knowingly, or intentionally assist another person in the commission or attempted commission of a crime.

Alien - A foreign-born person who has not qualified as a citizen of the country.

Allegation - A statement of the issues in a written document (a pleading) which a person is prepared to prove in court.

Alteration - Changing or making different.

Alternative dispute resolution - Settling a dispute without a full, formal trial. Methods include mediation, conciliation, arbitration, and settlement, among others.

American Bar Association - A national association of lawyers whose primary purpose is supposed to be improvement of lawyers and the administration of justice.

American Law Reports - A publication which reports cases from all United States jurisdictions by subject matter.

Ancillary - A proceeding which is auxiliary or subordinate to another proceeding. In probate, a proceeding in a state where a decedent owned property but was not domiciled.

Annotations - Remarks, notes, case summaries, or commentaries following statutes which describe interpretations of the statute.

Answer - A formal, written statement by the defendant in a lawsuit which answers each allegation contained in the complaint.

Answers to Interrogatories - A formal written statement by a party to a lawsuit which answers each question or interrogatory propounded by the other party. These answers must be acknowledged before a notary public or other person authorized to take acknowledgments.

Antitrust acts - Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing, and monopolies.

Appeal - A proceeding brought to a higher court to review a lower court decision.

Appeal Bond - A guaranty by the appealing party insuring that court costs will be paid.

Appearance - The act of coming into court as a party to a suit either in person or through an attorney.

Appendix - Supplementary materials added to the end of a document.

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

Appellee - (See respondent) The party against whom an appeal is taken.

Arbitration - The hearing of a dispute by an impartial third person or persons (chosen by the parties), whose award the parties agree to accept.

Arbitrator - A private, disinterested person chosen by the parties in arbitration to hear evidence concerning the dispute and to make an award based on the evidence.

Arraignment - The hearing at which the accused is brought before the court to plead to the criminal charge in the indictment. He may plead "guilty," "not guilty," or where permitted "nolo contendere." (See preliminary hearing.)

Arrest - To take into custody by legal authority.

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

Assignment - The transfer to another person of any property, real or personal.

Assumption of risk - A doctrine under which a person may not recover for an injury received when he has voluntarily exposed himself to a known danger.

At issue - The time in a lawsuit when the complaining party has stated their claim and the other side has responded with a denial and the matter is ready to be tried.

Attachment - Taking a person's property to satisfy a court-ordered debt.

Attorney-at-law - An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts.

Attorney-in-fact - A private person (who is not necessarily a lawyer) authorized by another to act in his or her place, either for some particular purpose, as to do a specific act, or for the transaction of business in general, not of legal character. This authority is conferred by an instrument in writing, called a "letter of attorney," or more commonly "power of attorney."

Attorney of record - The principal attorney in a lawsuit, who signs all formal documents relating to the suit.

Bail - Money or other security (such as a bail bond) provided to the court to temporarily allow a person's release from jail and assure their appearance in court. "Bail" and "Bond" are often used interchangeably. (Applies mainly to state courts.)

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

Bailiff - An officer of the court responsible for keeping order and maintaining appropriate courtroom decorum and has 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 be released from or "discharged" from their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings. The person with the debts is called the debtor and the people or companies to whom the debtor owes money are called creditors.

Bankruptcy Judge - The judge who determines whether a debtor is entitled to a discharge in bankruptcy.

Bankruptcy law - The area of federal law dealing with the handling of bankrupt persons or businesses.

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

Bar examination - A state examination taken by prospective lawyers in order to be admitted and licensed to practice law.

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

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

Bench trial - (Also known as court trial.) Trial without a jury in which a judge decides the facts.

Bench warrant - An order issued by a judge for the arrest of a person.

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

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

Bequests - Gifts made in a will.

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

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

Bill of particulars - A statement of the details of the charge made against the defendant.

Bind over - To hold a person for trial on bond (bail) or in jail. If the judicial official conducting a hearing finds probable cause to believe the accused committed a crime, the official will bind over the accused, normally by setting bail for the accused's appearance at trial. (This is a state court procedure.)

Bond (See bail bond.) - A written agreement by which a person insures he will pay a certain sum of money if he does not perform certain duties properly.

Bound supplement - A supplement to a book or books to update the service bound in permanent form.

Booking - The process of photographing, fingerprinting, and recording identifying data of a suspect. This process follows the arrest.

Breach - The breaking or violating of a law, right, or duty, either by commission or omission. The failure of one part to carry out any condition of a contract.

Breach of contract - An unjustified failure to perform when performance is due.

Brief - A written argument by counsel arguing a case, which contains a summary of the facts of the case, pertinent laws, and an argument of how the law applies to the fact situation. Also called a memorandum of law.

Burden of proof - In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point (the burden of proof). It deals with which side must establish a point or points. (See standard of proof.)

Burglary - The act of illegal entry with the intent to steal.

Business bankruptcy - A proceeding under the Bankruptcy Code filed by a business entity.

Bylaws - Rules or laws adopted by an association or corporation to govern its actions.

- C -

Capital crime - A crime punishable by death.

Calendar - A list of cases scheduled for hearing in court.

Canons of ethics - Standards of ethical conduct for attorneys.

Capacity - Having legal authority or mental ability. Being of sound mind.

Caption - Heading or introductory party of a pleading.

Case law - Law established by previous decisions of appellate courts, particularly the United States Supreme Court. (See stare decisis in Foreign Words Glossary.)

Cases - General term for an action, cause, suit, or controversy, at law or in equity; questions contested before a court of justice.

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

Cause of action - The fact or facts which give a person a right to relief in court.

Caveat - A warning; a note of caution.

Censure - An official reprimand or condemnation of an attorney. (See disbarment or suspension.)

Certificate of Service - The section, form or part of a pleading or motion that certifies that the party filing the document has sent a copy of the document to all or certain parties in a lawsuit.

Certificate of Title - Document issued by Registrar of Titles for real estate registered under the Torrens System, which is considered conclusive evidence of the present ownership and state of the title to the property described therein.

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

Certiorari - A writ of review issued by a higher court to a lower court. A means of getting an appellate court to review a lower court's decision. If an appellate court grants a writ of certiorari, it agrees to take the appeal. (Sometimes referred to as "granting cert.")

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

Challenge for cause - A request from a party to a judge that a certain prospective juror not be allowed to be a member of a jury because of specified causes or reasons. (Also, see peremptory challenge.)

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

Change of venue - Moving a lawsuit or criminal trial to another place for trial. (See venue.)

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

Chief judge - Presiding or administrative judge in a court.

Chattel - An article of personal property.

Child - Offspring of parentage; progeny.

Chronological - Arranged in the order in which events happened; according to date.

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

Citation - A writ or order issued by a court commanding the person named therein to appear at the time and place named; also the written reference to legal authorities, precedents, reported cases, etc., in briefs or other legal documents.

Citators - A set of books which provides the subsequent history of reported decisions through a form of abbreviations or words. Most widely used are Chopt's Citations.

Civil - Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.

Civil action - An action brought to enforce or protect private rights.

Civil Aeronautics Board (CAB) - A commission which promotes and regulates the civil air transport industry in the U.S. and between the U.S. and foreign countries.

Civil law - Law based on a series of written codes or laws.

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

Civil Service Commission - A federal agency which regulates the hiring of government employees.

Claim - A debt owing by a debtor to another person or business. In probate parlance, the term used for debts of the decedent and a procedure that must be followed by a creditor to obtain payment from his estate.

Class action - A lawsuit brought by one or more persons on behalf of a larger group.

Clayton Act - A federal law which is an amendment to the Sherman Act dealing with antitrust regulations and unfair trade practices.

Clean air acts - Federal and state environmental statutes enacted to regulate and control air pollution.

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

Clemency or executive clemency - Act of grace or mercy by the president or governor to ease the consequences of a criminal act, accusation, or conviction. (Sometimes known as commutation or pardon.)

Clerk of Court - Administrator or chief clerical officer of the court.

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

Code of Federal Regulations - An annual publication which contains the cumulative executive agency regulations.

Code of Professional - The rules of conduct that govern the legal profession Responsibility .

Codicil - An amendment to a will.

Collate - To arrange in order; verify arrangement of pages before binding or fastening; put together.

Collective mark - Trademark or service mark used by members of a cooperative, an association, or other collective group or organization.

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

Common law - Also case law. Law established by subject matter heard in earlier cases.

Commutation - The reduction of a sentence, as from death to life imprisonment.

Comparative fault - A rule in admiralty law where each vessel involved in a collision is required to pay a share of the total damages in proportion to its percentage of fault.

Comparative negligence - The rule under which negligence is measured by percentage, and damages are diminished in proportion to the amount of negligence attributable to the person seeking recovery.

Compensatory damages - Damages that are paid to compensate the claimant for losses.

Complainant - The party who complains or sues; one who applies to the court for legal redress. (See also plaintiff.)

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

Conciliation - A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps lower tensions, improve communications, and explore possible solutions. Conciliation is similar to mediation, but is may be less formal.

Concurrent sentences - Sentences for more than one crime that are to be served at the same time, rather than one after the other. (See also cumulative or consecutive sentences.)

Condemnation - The legal process by which the government takes private land for public use, paying the owners a fair price. (See eminent domain.)

Conformed copy - An exact copy of a document on which has been written things that could not or were not copied, i.e., a written signature is replaced on the conformed copy with a notation that it was signed by the parties.

Consecutive sentences - Successive sentences, one beginning at the expiration of another, imposed against a person convicted of two or more violations. (See also cumulative or concurrent sentences.)

Consent - Agreement; voluntary acceptance of the wish of another.

Conservatorship - Legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing that for himself or herself. (See also guardianship.)

Consideration - The price bargained for and paid for a promise, goods, or real estate.

Constitution - The fundamental law of a nation or state which establishes the character and basic principles of the government.

Constitutional law - Law set forth in the Constitution of the United States and the state constitutions.

Consumer bankruptcy - A proceeding under the Bankruptcy Code filed by an individual (or husband and wife) who is not in business.

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

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

Contract - An agreement between two or more persons which creates an obligation to do or not to do a particular thing. A legally enforceable agreement between two or more competent parties made either orally or in writing.

Contributory negligence - The rule of law under which an act or omission of plaintiff is a contributing cause of injury and a bar to recovery.

Conveyance - Instrument transferring title of land for one person or group of persons to another.

Conviction - A judgment of guilt against a criminal defendant.

Corroborating evidence - Supplementary evidence that tends to strengthen or confirm the initial evidence.

Counsel - A legal adviser; a term used to refer to lawyers in a case.

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

Court - A body in government to which the administration of justice is delegated.

Court-appointed attorney - Attorney appointed by the court to represent a defendant, usually with respect to criminal charges and without the defendant having to pay for the representation.

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

Court of original jurisdiction - A court where a matter is initiated and heard in the first instance; a trial court.

Court reporter - A person who transcribes by shorthand or stenographically takes down testimony during court proceedings, a deposition, or other trial-related proceeding.

Court rules - Regulations governing practice and procedure in the various courts.

Creditor - A person to whom a debt is owed by another.

Crime - An act in violation of the penal laws of a state or the United States. A positive or negative act in violation of penal law.

Criminal justice system - The network of courts and tribunals which deal with criminal law and its enforcement.

Cross-claim - A pleading which asserts a claim arising out of the same subject action as the original complaint against a co-party, i.e., one co-defendant cross claims against another co-defendant for contribution for any damages assessed against him.

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

Cumulative sentences - Sentences for two or more crimes to run consecutively, rather than concurrently.

Custody - Detaining of a person by lawful process or authority to assure his or her appearance to any hearing; the jailing or imprisonment of a person convicted of a crime.

- D -

Damages - Money awarded by a court to a person injured by the unlawful actor negligence of another person.

Debtor - One who owes a debt to another; a person filing for relief under the Bankruptcy Code.

Decision - The opinion of the court in concluding a case at law.

Declaratory judgment - A statutory remedy for judicial determination of a controversy where plaintiff is in doubt about his legal rights.

Decree - An order of the court. A final decree is one that fully and finally disposes of the litigation. (See interlocutory.)

Defamation - That which tends to injure a person's reputation. (See libel and slander.)

Default - Failure of the defendant to appear and answer the summons and complaint.

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

Defendant - The person defending or denying a suit.

Defense of property - Affirmative defense in criminal law or tort law where force was used to protect one's property.

Deficient - Incomplete; defective; not sufficient in quantity or force.

Defunct - A corporation no longer operative; having ceased to exist.

Demurrer - A pleading filed by the defendant that the complaint as filed is not sufficient to require an answer. "So What!"

Dependent - One who derives existence and support from another.

Deposition - Testimony of a witness or a party taken under oath outside the courtroom, the transcript of which becomes a part of the court's file.

Digest - An index or compilation of abstracts of reported cases into one, set forth under proper law topic headings or titles and usually in alphabetical arrangement.

Direct evidence - Proof of facts by witnesses who saw acts done or heard words spoken.

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

Directed verdict - In a case in which the plaintiff has failed to present on the facts of his case proper evidence for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it.

Disbarment - Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law. (See censure or suspension.)

Discharge - The name given to the bankruptcy court's formal discharge of a debtor's debts. In probate, the release of the estate's representative from fiduciary responsibility.

Disclaim - To refuse a gift made in a will.

Discovery - The name given pretrial devices for obtaining facts and information about the case.

Dismissal - The termination of a lawsuit. (See with prejudice and without prejudice.)

Dissent To disagree. - An appellate court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.

Dissolution - The termination; process of dissolving or winding up something.

Diversity of citizenship - The condition when the party on one side of a lawsuit is a citizen of one state and the other party is a citizen of another state; such cases are under the jurisdiction of federal courts.

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

Docket - An abstract or listing of all pleadings filed in a case; the book containing such entries; trial docket is a list of or calendar of cases to be tried in a certain term.

Docket control - A system for keeping track of deadlines and court dates for both litigation and non-litigation matters.

Domicile - The place where a person has his permanent home to which he intends to return.

Double jeopardy - Putting a person on trial more than once for the same crime. It is forbidden by the Fifth Amendment to the United States Constitution.

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

- E -

Elements of a crime - Specific factors that define a crime which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction: (1) that a crime has actually occurred, (2) that the accused intended the crime to happen, and (3) a timely relationship between the first two factors.

Eminent Domain - The power of the government to take private property for public use through condemnation.

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

Encyclopedia- A book or series of books arranged alphabetically by topics containing information on areas of law, including citations to support the information.

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

Entity- A person or legally recognized organization.

Entrapment- The act of inducing a person to commit a crime so that a criminal charge will be brought against him.

Entry- A statement of conclusion reached by the court and placed in the court record.

Environment- The conditions, influences, or forces which affect the desirability and value of property, as well as the effect on people's lives.

Environmental Protection Agency (EPA) - A federal agency created to permit coordinated and effective governmental action to preserve the quality of the environment.

Equal Protection of the Law -The guarantee in the Fourteenth Amendment to the U.S. Constitution that all persons be treated equally by the law.

Equity- Justice administered according to fairness; the spirit or habit of fairness in dealing with other persons.

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.

Esquire- In the United States the title commonly appended after the name of an attorney. In English law a title of dignity next above gentleman and below knight. Title also given to barristers at law and others. Abbreviated: Esq.

Estate- A person's property.

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

Estoppel -An impediment that prevents a person from asserting or doing something contrary to his own previous assertion or act.

Ethics- Of or relating to moral action and conduct; professionally right; conforming to professional standards.

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

Exceptions- Declarations by either side in a civil or criminal case reserving the right to appeal a judge's ruling upon a motion. Also, in regulatory cases, objections by either side to points made by the other side or to rulings by the agency or one of its hearing officers.

Exclusionary Rule- The rule preventing illegally obtained evidence to be used in any trial.

Execute- To complete; to sign; to carry out according to its terms.

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

Exempt property -All the property of a debtor which is not attachable under the Bankruptcy Code or the state statute.

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

Exonerate- Removal of a charge, responsibility, or duty.

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

Ex parte proceeding- Action Circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.

Expungement -The process by which the record of criminal conviction is destroyed or sealed.

Extradition -The surrender of an accused criminal by one state to the jurisdiction of another.

- F -

Fair market value - The value for which a reasonable seller would sell an item of property and for which a reasonable buyer would buy it.

Family law - Those areas of the law pertaining to families, i.e., marriage, divorce, child custody, juvenile, paternity, etc.

Federal Aviation Agency (FAA) - A federal agency which regulates air commerce to promote aviation Administration safety.

Federal Bureau of (FBI) - A federal agency which investigates all violations of federal Investigation laws.

Federal Communications (FCC) - A federal agency which regulates interstate and foreign Commission communications by wire and radio.

Federal Deposit Insurance (FDIC) - An agency which insures deposits in banking institutions in Corporation the event of financial failure.

Federal Mediation and Conciliation Service - An agency which provides mediators to assist in labor-management disputes.

Federal Register - A daily publication which contains federal administrative rules and regulations.

Federal Supplement - Books which gives the government certain control and power to regulate discharge of pollutants into the nation's waters in an effort to achieve clean waters.

Federal Unemployment Tax - A tax levied on employers based on employee wages paid. (FUTA tax)

Felony - A serious criminal offense. Under federal law any offense punishable by death or imprisonment for a term exceeding one year.

Fiduciary - A person or institution who manages money or property for another and who must exercise a standard care imposed by law, i.e., personal representative or executor of an estate, a trustee, etc.

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

Filing Fee - The fee required for filing various documents.

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

Food and Drug (FDA) - A federal agency which sets safety and quality standards for Administration food, drugs, cosmetics, and household substances.

Foreclosure - A court proceeding upon default in a mortgage to vest title in the mortgagee.

Forfeiture - A cancellation. A legal action whereby a contract purchaser following default loses all his interest in the property.

Fraud - A false representation of a matter of fact which is intended to deceive another.

- G -

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

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

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

Government Printing Office - The federal agency in charge of printing, binding, and selling of all government communications.

Grand Jury - A jury of inquiry whose duty it is to receive complaints and accusations in criminal matters and if appropriate issue a formal indictment.

Grantor - The person who sets up a trust. Also referred to as "settlor."

Grievance - In labor law a complaint filed by an employee regarding working conditions to be resolved by procedural machinery provided in the union contract. An injury, injustice, or wrong which gives ground for complaint.

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

Guardianship - Legal right given to a person to be responsible for the food, housing, health care, and other necessities of a person deemed incapable of providing these necessities for himself or herself.

- H -

Habeas corpus - The name of a writ having for its object to bring a person before a court and for the court to prove that the state has sufficient cause or evidence to hold them.

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

Headnote - A brief summary of a legal rule or significant facts in a case, which along with other headnotes, precedes the printed opinion in reports.

Hearing - A formal proceeding (generally less formal than a trial) with definite issues of law or of fact to be heard. Hearings are used extensively by legislative and administrative agencies.

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

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

Hung jury - A jury whose members cannot agree upon a verdict.

- I -

Immigrants - Persons who come into a foreign country or region to live.

Immigration - The entry of foreign persons into a country to live permanently.

Immigration and Naturalization Service (INS) - A federal agency which regulates immigration and naturalization of aliens.

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

Impeachment - A criminal proceeding against a public official.

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

Implied contract - A contract not created or evidenced by the explicit agreement of the parties but one inferred by law; as the use of electric power in your home implies a contract with the light company.

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

Incapacity - Lack of legal ability to act; disability, incompetence; lack of adequate power.

Incarceration - Imprisonment in a jail or penitentiary.

Incompetent - One who lacks ability, legal qualification, or fitness to manage his own affairs.

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 - A written accusation by a grand jury charging a person with a crime. (See information.)

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

Initial appearance - The defendant comes before a judge within hours of the arrest to determine whether or not there is probable cause for his or her arrest.

Information - Accusatory document, filed by the prosecutor, detailing the charges against the defendant. An alternative to an indictment, it serves to bring a defendant to trial.

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 - A prohibitive order or remedy issued by the court at the suit of the complaining party, which forbids the defendant to do some act which he is threatening or attempting to do. Conversely, it may require him to perform an act which he is obligated to perform but refuses to do.

Insolvent - When the total debt of an entity is greater than all of its property.

Instructions - Judge's explanation to the jury before it begins deliberations of the question it must answer and the applicable law governing the case. (Also referred to as charge.)

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.

Intentional tort - Wrong perpetrated by one who intends to break the law.

Interlocutory - Temporary; provisional; interim; not final.

Internal Revenue Service (IRS) - The federal agency which administers the tax laws of the United States.

Interrogatories - A set or series of written questions propounded to a party, witness, or other person having information or interest in a case; a discovery device.

Interstate Commerce (ICC) - A federal agency which regulates all transportation in Commission interstate commerce.

Intervention - An action by which a third person who may be affected by a lawsuit is permitted to become a party to the suit.

Involuntary bankruptcy - A proceeding initiated by creditors requesting the bankruptcy court to place a debtor in liquidation.

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

- J -

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

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

Judge - A presiding officer of the court.

Judgment - The official and authentic decision of a court of justice upon the rights and claims of parties to an action or suit submitted to the court for determination. (See also summary judgment.)

Judgment debtor - One who owes money as a result of a judgment in favor of a creditor.

Judicial lien - A lien obtained by judgment or other judicial process against a debtor.

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.

Judiciary - The branch of government invested with judicial power to interpret and apply the law; the court system; the body of judges; then bench.

Jurat - Certificate of person and officer before whom a writing is sworn to.

Jurisdiction - The power or authority of a court to hear and try a case; the geographic area in which a court has power or the types of cases it has power to hear.

Jurisprudence - The study of law and the structure of the legal system.

Jury - A certain number of men and women selected according to law and sworn to try a question of fact or indict a person for public offense.

Jury Administrator - The court officer responsible for choosing the panel of persons to serve as potential jurors for a particular court term.

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

- K -

Key number system - A research aid developed by West Publishing Company which classifies digests of cases in to various law topics and subtopics which are given paragraph numbers called "Key Numbers." Each key number for a given topic helps the researcher quickly find all references to the legal matter being researched.

- L -

Lapsed gift - A gift made in a will to a person who has died prior to the will-makers death.

Larceny - Obtaining property by fraud or deceit.

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

Law Blank - A printed legal form available for preparing documents.

Law Clerk - In the United States, usually a law school student employed by a law firm to do research and other tasks. In the courts, a lawyer (or law school student) employed to do legal research.

Lawsuit - An action or proceeding in a civil court; term used for a suit or action between two private parties in a court of law.

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

Legal aid - Professional legal services available usually to persons or organizations unable to afford such services.

Legal process - A formal paper that is legally valid; something issuing from the court, usually a command such as a writ or mandate.

Legal texts - Books that cover specific areas of the law, usually dealing with a single topic.

Legislation - The act of giving or enacting laws; the power to make laws via legislation in contrast to court-made laws.

Legitimate - That which is legal, lawful, recognized by law or according to law.

Leniency - Recommendation for a sentence less than the maximum allowed.

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

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

Liable - Legally responsible.

Libel - Published defamation which tends to injure a person's reputation.

Licensing boards - State agencies created to regulate the issuance of licenses, i.e., to contractors, cosmetologists, realtors, etc.

Lien - An encumbrance or legal burden upon property.

Limine - (See "in limine" in Foreign Words Glossary).

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

Litigant - A party to a lawsuit.

Litigation - A lawsuit; a legal action, including all proceedings therein.

Living trust - A trust set up and in effect during the lifetime of the grantor. (Also called inter vivos trust.)

Loose-leaf services - Loose-leaf replacement pages provided by a publisher in areas of the law where changes occur at a rapid rate.

- M -

Magistrate (See U.S. Magistrate Judge.) - Judicial officer exercising some of the functions of a judge. It also refers in a general way to a judge.

Malfeasance - The commission of an unlawful act.

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

Malpractice - Any professional misconduct.

Manslaughter - The unlawful killing of another without intent to kill; either voluntary (upon a sudden impulse); or involuntary (during the commission of an unlawful act not ordinarily expected to result in great bodily harm). (See also murder.)

Marshal - The executive officer of the federal court.

Martindale-Hubbell Law - A publication of several volumes which contains names, addresses, Director specialties, and rating of United States lawyers; also includes digests of state and foreign statutory law.

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.

Memorandum - An informal note or instrument embodying something the parties desire to have in written evidence.

Memorialized - In writing.

Merger - The absorption of one thing or right into another.

Minor - A person under the age of legal competence.

Minute book - A book maintained by the courtroom deputy (bailiff), which contains minute entries of all hearings and trial conducted by the judge.

Minutes - Memorandum of a transaction or proceeding.

Miranda warning - Requirement that police tell a suspect in their custody of his or her constitutional rights before they question him or her. So named as a result of the Miranda v. Arizona ruling by the United States Supreme Court.

Misdemeanor - A criminal offense lesser than a felony and generally punishable by fine or by imprisonment other than in a penitentiary.

Misfeasance - Improper performance of an act which a person might lawfully do.

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

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

Mittimus - The name of an order in writing, issuing from a court and directing the sheriff or other officer to convey a person to a prison, asylum, or reformatory, and directing the jailer or other appropriate official to receive and safely keep the person until his or her fate shall be determined by due course of law.

Mitigation - A reduction, abatement, or diminution of a penalty or punishment imposed by law.

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

Motion - An application made to a court or judge which requests a ruling or order in favor of the applicant.

Move the Court - Request or insist on an action by the court based on law or Rules of Procedure.

Motion in Limine - A motion made by counsel requesting that information which might be prejudicial or to suppress illegally-obtained evidence so that it not be allowed to be heard in a case.

Murder - The unlawful killing of a human being with deliberate intent to kill: (1) murder in the first degree is characterized by premeditation; (2) 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.

Mutual assent - A meeting of the minds; agreement.

- N -

National Labor Relations Board. (NLRB) - A federal agency which prevents and remedies unfair labor practices by employers and labor organizations

Naturalization - Process by which a person acquires nationality after birth and becomes entitled to privileges of citizenship.

Negligence - Failure to use care which a reasonable and prudent person would use under similar circumstances.

Negotiation - The process of submission and consideration of offers until an acceptable offer is made and accepted.

Next friend - One acting without formal appointment as guardian for the benefit of an infant, a person of unsound mind not judicially declared incompetent, or other person under some disability.

No Bill - This phrase, endorsed by a grand jury on the written indictment submitted to it for its approval, means that the evidence was found insufficient to indict.

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

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

Noise Control Act - A act which gives government agencies the right to promulgate standards and regulations relating to abatement of noise emissions, i.e., requirement that autos and like vehicles must have mufflers.

Nonfeasance - Nonperformance of an act which should be performed; omission to perform a required duty or total neglect of duty.

Nonjury trial - Trial before the court but without a jury.

Notary Public - A public officer whose function it is to administer oaths, to attest and certify documents, and to take acknowledgments.

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

Notice to creditors - A notice given by the bankruptcy court to all creditors of a meeting of creditors.

Nuncupative will - An oral (unwritten) will.

- O -

Oath - A solemn pledge made under a sense of responsibility in attestation of the truth of a statement or in verification of a statement made.

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

Occupational Safety and Health Act (OSHA) - A federal law designed to develop and occupational safety and health standards promote .

Occupational Safety and Health Review Commission - The agency established by OSHA to adjudicate enforcement actions under the Act.

Official reports - The publication of cumulated court decisions of state or federal courts in advance sheets and bound volumes as provided by statutory authority.

On a person's own recognizance - Release of a person from custody without the payment of any bail or posting of bond, upon the promise to return to court.

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

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

Oral argument - Presentation of a case before a court by spoken argument; usually with respect to a presentation of a case to an appellate court where a time limit might be set for oral argument.

Order - A mandate, command, or direction authoritatively given. Direction of a court or judge made in writing.

Ordinance - A rule established by authority; may be a municipal statute of a city council, regulating such matters as zoning, building, safety, matters of municipality, etc.

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

- P -

Paperbound supplement - A temporary supplement to a book or books to update the serve.

Paralegal - Also, legal assistant. A person with legal skills who works under the supervision of a lawyer.

Pardon - An act of grace from governing power which mitigates punishment and restores rights and privileges forfeited on account of the offense.

Parol evidence - Oral or verbal evidence; evidence given by word of mouth in court.

Parole - Supervised release of a prisoner from imprisonment on certain prescribed conditions which entitle him to termination of his sentence.

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

Patent - A grant to an inventor of the right to exclude others for a limited time from making, using, or selling his invention in the United States.

Patent and Trademark Office - The federal agency which examines and issues patents and registers trademarks.

Peremptory challenge - Request by a party that a judge not allow a certain prospective juror as a member of the jury. No reason or cause need be stated. (See challenge for cause.)

Periodical - A publication which appears regularly but less often than daily.

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

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

Per se doctrine - Under this doctrine an activity such as price fixing can be declared as a violation of the antitrust laws without necessity of a court inquiring into the reasonableness of the activity.

Personal property - Anything a person owns other than real estate.

Personal recognizance - In criminal proceedings, the pretrial release of a defendant without bail upon his or her promise to return to court. (See also recognizance.)

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

Person in need of supervision - Juvenile found to have committed a "status offense" rather than a crime that would provide a basis for a finding of delinquency. (See status offense.)

Petitioner - The person filing an action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court. (See respondent.)

Plaintiff - A person who brings an action; the party who complains or sues in a civil action. (See complainant.)

Plea - The first pleading by a criminal defendant, the defendant's declaration in open court that he or she is guilty or not guilty. The defendant's answer to the charges made in the indictment or information.

Plea bargaining - Process where the accused and the prosecutor in a criminal case work out a satisfactory disposition of the case, usually by the accused agreeing to plead guilty to a lesser offense. Such bargains are not binding on the court. Also referred to as plea negotiating.

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

Pocket parts - Supplements to law books in pamphlet form which are inserted in a pocket inside the back cover of the books to keep them current.

Polling the jury - The act, after a jury verdict has been announced, of asking jurors individually whether they agree with the verdict.

Post-trial - Refers to items happening after the trial, i.e., post-trial motions or post-trial discovery.

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

Power - Authority to do. One has the power to do something if he is of legal age. Also, used as "powers," the term refers to authority granted by one person to another, i.e., powers given an executor in a will or an agent in a power of attorney.

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

Precedent - Laws established by previous cases which must be followed in cases involving identical circumstances. (See stare decisis in Foreign Words Glossary.)

Preinjunction - Court order requiring action or forbidding action until a decision can be made whether to issue a permanent injunction. It differs from a temporary restraining order.

Preliminary hearing - Also, preliminary examination. A hearing by a judge to determine whether a person charged with a crime should be held for trial. (See arraignment.)

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

Presentence report - A report to the sentencing judge containing background information about the crime and the defendant to assist the judge in making his or her sentencing decision.

Presentment - Declaration or document issued by a grand jury that either makes a neutral report or notes misdeeds by officials charged with specified public duties. It ordinarily does not include a formal charge of crime. A presentment differs from an indictment.

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.

Pretrial conference - Conference among the opposing attorneys and the judge called at the discretion of the court to narrow the issues to be tried and to make a final effort to settle the case without a trial.

Prima facie case - A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process. (See prima facie in the Foreign Words Glossary.)

Primary authority - Constitutions, codes, statutes, ordinances, and case law sources.

Private law - That law, such as a contract between two persons or a real estate transaction, which applies only to the persons who subject themselves to it.

Privilege - A benefit or advantage to certain persons beyond the advantages of other persons, i.e., an exemption, immunity, power, etc.

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

Probate - Court proceeding by which a will is proved valid or invalid. Term used to mean all proceedings pertaining to the administration of estates such as the process by which assets are gathered; applied to pay debts, taxes, and expenses of administration; and distributed to those designated as beneficiaries in the will. Conducted in states courts.

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

Probate estate - Estate property that may be disposed of by a will. (See estate.)

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

Product liability - Legal responsibility of manufacturers and sellers to buyers, users, and bystanders for damages or injuries suffered because of defects in goods.

Promisee - An individual to whom a promise is made.

Promisor - An individual who makes a promise.

Promissory estoppel - A promise which estops the promisee from asserting or taking certain action.

Property tax - A tax levied on land and buildings (real estate) and on personal property.

Proprietor - Owner; person who has legal right or title to anything.

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

Proximate cause - The last negligent act which contributes to an injury. A person generally is liable only if an injury was proximately caused by his or her action or by his or her failure to act when he or she had a duty to act.

Proxy - The instrument authorizing one person to represent, act, and vote for another at a shareholders' meeting of a corporation.

Public law - That law such as traffic ordinances or zoning ordinances which applies to the public.

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

Public Service Commission - Also, Public Utilities Commission. A state agency which regulates utilities.

Punitive damages - Money award given to punish the defendant or wrongdoer.

Purchase agreement or purchase offer - Also, sales agreement and earnest money contract. Agreement between buyer and seller of property which sets forth in general the price and terms of a proposed sale.

Putative - Alleged; supposed; reputed.

- Q -

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

Quasi-contract - An obligation created by the law in the absence of an agreement or contract; not based upon the intentions or expressions of the parties.

Quasi-criminal action - A classification of actions such as violation of a city ordinance that is not also violation of a criminal statute, which are wrongs against the public punishable through fines but are not usually indictable offenses.

Quiet title action - A court proceeding to remove a cloud on the title to real property.

Quitclaim deed - A deed without warranty of title which passes whatever title the grantor has to another.

- R -

Real property - Land, buildings, and whatever is attached or affixed to the land. Generally synonymous with the words "real estate."

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

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

Rebut - Evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence. (See rejoinder.)

Recognizance - An obligation entered into before a court whereby the recognizer acknowledges that he will do a specific act required by law.

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

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

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

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

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

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

Registered mark - Trademark with the words "Registered in the U.S. Patent and Trademark Office" or the letter "R" enclosed within a circle.

Rejoinder - Opportunity for the side that opened the case to offer limited response to evidence presented during the rebuttal by the opposing side. (See rebut.)

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

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

Remittitur - The reduction by a judge of the damages awarded by a jury.

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

Replacement volumes - Volumes which replace books and their pocket parts when the pocket parts cause the books to become too bulky.

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

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

Reporters - Books which contain court decisions.

Request for admission - Also, Request to Admit. Written statements of facts concerning a case which are submitted to an adverse party and which that party must admit or deny; a discovery device.

Request for production of documents - A direction or command served upon another party for production of specified documents for review with respect to a suit; a discovery device.

Request to admit - See, Request for Admission.

Rescission - The unmaking or undoing of a contract; repeal.

Research - A careful hunting for facts or truth about a subject; inquiry; investigation.

Resolution - The formal adoption of a motion.

Respondent - The person against whom an appeal is taken. (See petitioner.)

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

Restatement - A publication which tells what the law is in a particular field, as compiled from statutes and decisions.

Restitution - Act of restoring anything to its rightful owner; the act of restoring someone to an economic position he enjoyed before he suffered a loss.

Retainer - Act of the client in employing the attorney or counsel, and also denotes the fee which the client pays when he or she retains the attorney to act for them.

Return - A report to a judge by police on the implementation of an arrest or search warrant. Also, a report to a judge in reply to a subpoena, civil or criminal.

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

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

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

Revoke - To cancel or nullify a legal document.

Right of way - The right of a party to pass over the land of another.

Robinson-Patman Act - An amendment to the Clayton Act which deals with price discrimination.

Robbery - Felonious taking of another's property, from his or her person or immediate presence and against his or her will, by means of force or fear. (See larceny.)

Rules - Established standards, guides, or regulations set up by authority.

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

- 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.

Seal - To mark a document with a seal; to authenticate or make binding by affixing a seal. Court seal, corporate seal.

Secondary authority - Legal encyclopedias, treatises, legal texts, law review articles, and citators. Writings which set forth the opinion of the writer as to the law.

Secured debts - In bankruptcy, a debt is secured if the debtor gave the creditor a right to repossess the property or goods used as collateral.

Securities and Exchange Commission (SEC) - A federal agency which monitors the securities industry.

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

Self-incrimination, privilege against: - The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed in the Fifth Amendment to the United States Constitution. Asserting the right is often referred to as "taking the Fifth."

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. (See concurrent and consecutive sentences.)

Sentence Report - (See Presentence Report.)

Sequester - To separate. Sometimes juries are separated from outside influences during their deliberations. For example, this may occur during a highly publicized trial.

Sequestration of witnesses - Keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand, and cautioning them not to discuss their testimony with other witnesses. Also referred to as "separation of witnesses."

Service of process - The delivering of writs, summonses, and subpoenas by delivering them to the party named in the document. Also referred to as "service."

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

Settlor - The person who sets up a trust. Also referred to as "grantor."

Shepardizing - Method for finding subsequent development of a legal theory by tracing status of a case as legal authority.

Sheriff - The executive officer of local court in some areas. In other jurisdictions the sheriff is the chief law enforcement officer of a county.

Sherman Act - The basic antitrust statute prohibiting any unreasonable interference, conspiracy, restraint of trade, or monopolies with respect to interstate commerce.

Sidebar - A conference between the judge and lawyers, usually in the courtroom, out of earshot of the jury and spectators.

Slander - Spoken defamation which tends to injure a person's reputation. (See libel.)

Small Business (SBA) - A federal agency which provides assistance of all kinds, Administration including loans, to small businesses.

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

Social Security - A system of federal old-age pensions for employed persons begun in 1935. A portion of the payment is deducted from the employee's salary and an equal portion is contributed by the employer.

Social Security Administration - The federal agency which administers the national social security program.

Social Security Tax - A payroll deduction based on gross wages paid; this amount is matched by the employer as required by the Federal Insurance Contribution Act (FICA).

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

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

Speedy Trial Act - Federal law establishing time limits for carrying out major events, i.e. indictment, arraignment, etc., in a criminal prosecution.

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.

Standard of proof - Indicates the degree to which the point must be proven. In a civil case, the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as a "preponderance of evidence" or "clear and convincing evidence." (See burden of proof.)

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

Stare decisis - Respect the precedents established by prior decisions.

Status offenders - Youths charged with the status of being beyond the control of their legal guardian or are habitually disobedient, truant from school, or having committed other acts that would not be a crime if committed by an adult, i.e., smoking. Also referred to as minors or children in need of supervision.

Statute - Legislative enactment; it may be a single act of a legislature or a body of acts which are collected and arranged for a session of a legislature. (See statutory law.)

Statute of frauds - A statutory requirement that certain contracts must be in writing.

Statute of limitations - A statute which limits the right of a plaintiff to file an action unless it is done within a specified time period after the occurrence which gives rise to the right to sue.

Statutory - Relating to a statute; created or defined by a law.

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

Statutory damages - Damages that are stipulated within the statute rather than calculated based on the degree of harm to the plaintiff.

Statutory law - Laws promulgated by Congress and state legislatures. (See case law and common law.)

Statutory research - Research of legislation enacted by a state or the United States.

Stay - A court order halting a judicial proceeding.

Stipulation - An agreement between the parties involved in a suit regulating matters incidental to trial.

Strict liability - Concept applied by the courts in product liability cases that when a manufacturer presents his goods for public sale, he is representing that they are suitable for their intended use.

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

Subject research - Research of matter by determining all law related to that matter by finding everything on the subject.

Subpoena - A command to appear at a certain time and place to give testimony upon a certain matter.

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

Substantive criminal law - Law with the purpose of prevention of harm to society which prescribed punishment for specific offenses. The basic law of rights and duties as opposed to "remedial law" which provides methods of enforcement.

Substantive law - The statutory or written law that governs rights and obligations of those who are subject to it.

Summary judgment - A judgment given on the basis of pleadings, affidavits, and exhibits presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law.

Summons - Instrument used to commence a civil action or special proceeding; the means of acquiring jurisdiction over a party.

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.

Suppress - To forbid the use of evidence at a trial because it is improper or was improperly obtained. (See also exclusionary rule.)

Surety Bond - A bond purchased at the expense of the estate to insure the executor's proper performance. Also referred to as "fidelity bond."

Survivorship - (See joint tenancy.)

Suspension - A temporary loss of the right to practice law by an attorney. (See disbarment or censure.)

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

- T -

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.

Taxable income - The income against which tax rates are applied to compute tax paid; gross income of businesses or adjusted gross income of individuals less deductions and exemptions.

Tax Court of the United States - A judicial body which hears cases concerning federal tax laws.

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

Temporary restraining order - An emergency remedy of brief duration issued by a court only in exceptional circumstances, usually when immediate or irreparable damages or loss might result before the opposition could take action.

Tender of performance - An offer or attempt to do what is required under a contract or under the law.

Testamentary capacity - The legal ability to make a will.

Testamentary trust - A trust set up by a will.

Testator - Person who makes a will (Female: testatrix).

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

Third party complaint - A petition filed by a defendant against a third party (not presently a party to the suit) which alleges that the third party is liable for all or part of the damages plaintiff may win from defendant.

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

Tort - A private or civil wrong or injury for which the court provides a remedy through an action for damages.

Trademark - A word, name, symbol, or devise used by a manufacturer to distinguish his goods from those sold by others.

Transcript - A written, word-for-word record of what was said. Usually refers to a record of a trial, hearing, or other proceeding which has been transcribed from a recording or from shorthand.

Transmittal form - Form required in certain courts for transmitting documents for filing.

Treatise - A formal and systematic book or writing containing a narrative statement on a field of law.

Trial - A judicial examination of issues between parties to an action.

Trial brief - A written document prepared for and used by an attorney at trial. It contains the issues to be tried, synopsis of evidence to be presented and case and statutory authority to substantiate the attorney's position at trial.

Trust - A legal device used to manage real or personal property, established by one person (grantor or settlor) for the benefit of another (beneficiary). (See 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.

Truth in lending - Statutes which provide that precise and meaningful cost of credit information be provided to the credit customer.

- U -

Unfair labor practice - Actions by the employer which interfere with, restrain, coerce, or threaten employees with respect to their rights.

Uniform Commercial Code (U.C.C.) - A uniform law governing commercial transactions. The U.C.C. has been adopted by all states except Louisiana.

Uniform Laws Annotated - Annotated uniform and model acts approved by the National Conference of Commissioners on Uniform State Laws.

Unilateral contract - An agreement by which one undertakes an express performance without receiving any express promise of performance from the other.

Union - An organization of workers formed for the purpose of collective bargaining.

United States Attorney - A federal district attorney appointed by the President to prosecute for all offenses committed against the United States; to prosecute or defend for the government all civil actions in which it is concerned and perform all duties of the district to which he/she is assigned.

United States Bankruptcy Court - The judicial body which hears matters pertaining to bankruptcy and reorganization.

United States Court of Appeals - Courts which hear appeals from federal district courts, bankruptcy courts, and tax courts.

United States Court of Claims - Court which hears actions against the U.S. Government.

United States Court of Military Appeals - Court which hears appeals from court marshal decisions .

United States Court of Customs & Patent Appeals - Court which hears appeals from all U.S. customs courts.

United States Court of International Trade - Court which hears cases concerning federal tariff laws.

United States District Courts - Courts which try both criminal and civil actions and admiralty cases.

United States Magistrate Judge - Courts given authority by 28 U.S.C. s 636. This court hears all preliminary criminal matters, but does not conduct felony trials, and any pretrial civil matters referred

by the district court. If all parties consent, criminal misdemeanor and civil trials can be heard by this court.

United States Marshal's Service - Agency which serves civil and criminal process in federal courts.

United States Postal Service - The federal office which provides mail delivery to individuals and businesses within the United States.

United States Reports - Publication of court decisions of the United States Supreme Court.

United States Supreme Court - The highest court in the land, established by U.S. Constitution.

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

Unliquidated debt - Remaining not determined; unassessed or unsettled; in dispute as to the proper amount.

Unsecured debts -- In bankruptcy, debts such as open accounts at department stores for which the debtor has not pledged collateral to guarantee payment.

Urban - A city or town.

Usury - Extraction of interest on a loan above the maximum rate permitted by statute.

- V -

Vacate - To set aside.

Venire - A writ summoning persons to court to act as jurors. (See venire facias in Foreign Words Glossary.)

Venue - Authority of a court to hear a matter based on geographical location.

Verdict - A conclusion, as to fact or law, that forms the basis for the court's judgment. (See directed verdict.)

Veterans' Administration (VA) - The federal agency which administers a system of benefits for veterans and their dependents.

Visa - An official endorsement on a document or passport denoting that the bearer may proceed.

Void - Invalid; a void agreement is one for which there is no remedy.

Voidable - Capable of being declared invalid; a voidable contract is one where a person may avoid his obligation, as a contract between an adult and a minor.

Voir dire - The preliminary examination made in court of a witness or juror to determine his competency or interest in a matter. Literally, to speak the truth.

Voluntary bankruptcy - A proceeding by which a debtor voluntarily asks for a discharge of his debts under the Bankruptcy Code.

- W -

Wage Earner's Plan - Also, Chapter 13. A chapter of the Bankruptcy Code which allows a debtor to file a wage earner's plan for payment of a percentage of his debts from future earnings.

Waiver - Intentionally given up a right.

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

Warrant - Most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search. An application seeking a warrant must be accompanied by an affidavit which establishes probable cause by detailing the facts upon which the request is based.

Warranty - A promise that a proposition of fact is true.

Warranty deed - A deed which guarantees that the title conveyed is good and its transfer rightful.

Water rights - The right to use water.

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

Withholding - A tax deducted from a salary, wage, or other income on behalf of the government at the time of payment of wages to the person who pays it.

With prejudice - A declaration which dismisses all rights. A judgment barring the right to bring or maintain an action on the same claim or cause.

Without prejudice - A declaration that no rights or privileges of the party concerned are waived or lost. In a dismissal these words maintain the right to bring a subsequent suit on the same claim.

Witness - One who personally sees or perceives a thing; one who testifies as to what he has seen, heard, or otherwise observed.

Words and Phrases Legally Defined - A set of books in dictionary form which lists judicial determinations of a word or phrase.

Worker's compensation - A state agency which handles claims of workers injured on their jobs.

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

Writ of certiorari - An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal. (See certiorari.)

Writ of execution - An order of the court evidencing debt of one party to another and commanding the court officer to take property in satisfaction of the debt.

Writ of garnishment - An order of the court whereby property, money, or credits he possession of another person may be seized and applied to pay a debtor's debt. It is used as an incident to or auxiliary of a judgment rendered in a principal action.

- X -

- Y -

- Z -

Zoning Commission - Local agencies with jurisdiction to regulate use of properties within their geographic area.

How Courts Work

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