

Glossary of Legal Terms and Terminology

A

Ab initio (ab init) - From the beginning. Can mean that breaking some terms in a long-running contract results in the contract having been broken from the start.

Absentia - Absent; proceeding without the defendant present.

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

Acceptance - the unconditional agreement to an **offer**. This creates the contract. Before acceptance, any offer can be withdrawn, but once accepted the contract is binding on both sides. Any **conditions** have the effect of a counter offer that must be accepted by the other party.

For contracts controlled by the **UCC**, contracts involving the sales of goods need not mirror the offer's terms. For other contracts, the acceptance must mirror the offer's terms without omitting, adding, or altering terms. In other words, under the UCC, the acceptance may alter the terms of the offer without becoming a counteroffer.

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

Accord and Satisfaction - Compromise and settlement. A way to discharge a claim whereby the parties agree to give and accept something in settlement of the claim that will replace the terms of the parties' original agreement. Accord is the new agreement; satisfaction is performance of the new agreement.

Acknowledgment - (1) A statement of acceptance of responsibility. (2) The short declaration at the end of a legal paper showing that the paper was duly executed and acknowledged.

Acquit, Acquittal - A finding of not guilty by a judge or jury; to discharge.

Action - Case, cause, suit, or controversy disputed or contested before a civil court. Requires service of process on adversary party or potentially adversary party

Actual Place of Business - Any location that the defendant, through regular solicitation or advertisement, has held out as its place of business.

Ad damnum - clause of a pleading alleging amount of loss or injury

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

Adjournment - a temporary postponement of the proceedings of a case until a specified future time.

Adjudication - Judgment rendered by the court after a determination of the issues.

Ad Litem - A Latin term meaning "for the purpose of the lawsuit." For example, a guardian "ad litem" is a person appointed by the court

to protect the interests of a minor or legally incompetent person in a lawsuit.

Administrator - (1) One who administers the estate of a person who dies without a will. (2) An official who manages a court.

Administrative Revocation - The taking of a driver's license by the Motor Vehicle Division, through law enforcement agents and administrative law judges without involvement by the courts.

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 or a witness for improper courtroom conduct.

Adversary: An opponent. The defendant is the plaintiff's adversary.

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

Advisement - The process by which a judge takes time to consider, deliberate and/or consult on a matter prior to ruling.

Affiant - The person who makes and signs an affidavit, deponent.

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

Affidavit of Insolvency - A detailed form signed by the defendant, under oath, attesting to his/her indigency (inability to pay for private legal counsel).

Affidavit of service - an affidavit intended to certify the service of a writ, notice, or other document

Affinity - Related by marriage; family relation from one's spouse's family.

Affirm - an act of declaring something to be true under the penalty of perjury by a person who conscientiously declines to take an oath for religious or other pertinent reasons.

Affirmation - A solemn and formal declaration under penalties of perjury that a statement is true, without an oath.

Affirmative Defense - Apart from denying a charge or claim, a defendant may assert affirmative defenses such as insanity, self-defense or entrapment to avoid criminal responsibility, or assert the statute of limitations or bankruptcy to avoid civil liability.

Affirmed - A decision by an appellate court stating that the decision of the trial court is correct.

Agent - somebody appointed to act on behalf of another person (known as the principal). The amount of authority to deal that the agent has is subject to agreement between the principal and the agent. However, unless told otherwise, third parties can assume the agent has full powers to deal.

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

Alford Plea - A plea to a criminal charge that does not admit guilt, but admits that sufficient evidence exists to obtain a conviction.

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

Alleged - Stated; claimed; asserted; charged.

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

Alternate juror - a juror selected as substitute in case another juror must leave the jury panel

Amend - Improve, correct or change a complaint or other pleading.

Amicus Curiae - A friend of the court. One not a party to a case who volunteers, or is asked by the court, to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

Annul - to make void, as to dissolve the bonds of marriage

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

Appeal - An application to a higher court for review of an order of conviction or of a civil judgment against a party.

Appeal Bond - A sum of money posted by a person appealing a judicial decision (appellant).

Appearance - (1) The formal proceeding by which a defendant submits to the jurisdiction of the court. (2) A written notification to the plaintiff by an attorney stating that s/he is representing the defendant.

Appellant - The party who takes an appeal from one court or jurisdiction to another.

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

Appellee - The party against whom an appeal is taken; sometimes called a respondent.

Arbitration - A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party and agree to abide

by his/her decision. In arbitration there is a hearing at which both parties have an opportunity to be heard.

Argument - a reason given in proof or rebuttal

Arraignment - Appearance of the defendant in criminal court to be advised of rights and enter a plea to the charges.

Arrest - The official taking of a person to answer criminal charges. This involves at least temporarily denying a person of liberty and may involve the use of force.

Arrest Warrant - An order by a judge that gives permission to a police officer to arrest a person for allegedly committing a crime.

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.

Asylum State - The state holding a fugitive from justice in another state.

Attachment - Taking and holding a person's property during proceedings to ensure satisfaction of a judgment not yet rendered.

At Issue - Matters are "at issue" when the complaining party has stated his/her claim, the other side has responded with a denial, and the matter is ready to be tried.

Attempt - A person attempts to commit a crime when: (1) that person intended to commit the crime; and (2) began to do an act that constituted a substantial part of the crime, but failed to commit or complete the crime.

Attorney-at-Law - A licensed advocate or counsel authorized by the courts to prepare, manage and try cases in court, to prepare legal documents, or otherwise represent the interests of citizens.

Attorney-in-Fact - A private person (who is not necessarily a lawyer) authorized by another to act in his/her place, either for some particular purpose, as to do a specified 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 a power of attorney.

Attorney of Record - The attorney retained or assigned to represent a client.

Award - A decision of an Arbitrator.

B

Bail - Cash or surety posted to procure the release of a defendant in a criminal proceeding by insuring his/her future attendance in court, and compelling him/her to remain within the jurisdiction of the court.

Bail Bond - A document through which one agrees to accept responsibility for a defendant and insure his/her appearance in court.

By signing the form, the person posting the bond agrees to forfeit the bond if the defendant fails to appear in court as ordered.

Bailiff - A court attendant who keeps order in the courtroom and has responsibility for 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 ("discharged") from their debts completely or allowed to repay them in whole or in part on a manageable schedule. Federal 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.

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 body of lawyers within a jurisdiction.

Bar Examination - A state examination taken by prospective lawyers, qualifying them to be admitted to the bar and licensed to practice law.

Battery - A beating or other wrongful touching of a person. The threat to use force is an assault; actual use of force is a battery, which usually includes an assault.

Bench - The seat occupied by the judge; more broadly, the court or judicial branch itself.

Bench Trial - Trial without a jury in which a judge decides the facts as well as the law.

Bench Warrant - An order issued by a judge to arrest a person based on his/her failure to obey a court order. A bench warrant may be issued when a person fails to pay a fine, appear, or attend DWI School.

Beneficiary - Someone named to receive property or benefits in a will, trust, insurance policy, or other such document.

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

Bequests - Gifts made in a will.

Best Evidence - Primary evidence; the best form of evidence available. Evidence short of this is "secondary." For example, the original of a letter is the "best evidence," while a photocopy is "secondary evidence."

Best Evidence Rule - Rule requiring parties to proffer the original writing, recording, or photograph when attempting to prove the contents thereof. However, a duplicate is admissible in place of an original unless there is a genuine question about the authenticity of the original or it would be unfair under the circumstances of the case to admit the duplicate instead of the original. Also, an original is not required if it is lost or destroyed, if it cannot be obtained through a subpoena, if it is in the possession of the opposing party, and if the original is not closely related to a controlling issue in the case.

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 sufficiently conclusive that all reasonable doubts are removed from the mind of the ordinary person.

Bill of costs - A written statement of the itemized taxable costs and disbursements

Bill of particulars - factual detail submitted by a claimant after a request by the adverse party which details, clarifies or explains further the charges and/or facts alleged in a pleading

Bind over - To hold a person for trial on bond (bail) or in jail. If the judicial official conducting a preliminary 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.

Bona fide - in good faith. Usually implies an amount of trust that the parties are acting without any hidden motives. The opposite is **mala fides** - in bad faith.

Bona vacantia - vacant property. Refers to a situation where property or goods end up not being owned by anyone. This can happen if a person dies without heirs or a company is struck off without all its property being distributed. It can also occur where a contract becomes void and property under it cannot be restored to an owner.

Bond (supersedeas) - The bond set by the court during the appeal procedure and posted with the Clerk of Court. It ensures payment to the winner at the trial court level if the appeal is unsuccessful.

Bond (surety) - A certificate posted by a bonding company to the law enforcement agency to secure the appearance in court of a criminal defendant.

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

Breach - The breaking or violating of a law, right, or duty, either by the commission or omission of an act.

Breach of contract - Failure by one party to abide by the terms of a contract without lawful excuse. A breach of contract will make the whole contract void and can lead to damages being awarded against the party which is in breach.

Break clause - a clause that allows a tenant to end a lease at specific times during the period of the lease.

Brief - a written or printed document prepared by the lawyers on each side of a dispute and submitted to the court in support of their arguments - a brief includes the points of law which the lawyer wished

to establish, the arguments the lawyer uses, and the legal authorities on which the lawyer rests his/her conclusions.

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 or points: The level of the burden of proof for a type of case indicates the degree to which the point must be proven. For example, in a civil case the burden of proof rests with the plaintiff, who must establish his/her case by such standards of proof as a preponderance of evidence or clear and convincing evidence. In a criminal case, the burden on the prosecutor is to establish the defendant's guilty beyond a reasonable doubt, a much stricter standard.

C

Calendar - List of cases scheduled for hearing in court.

Calendar call - the calling of matters requiring parties, or their attorneys, to appear and be heard, usually done at the beginning of each court day

Calendaring - Assigning & scheduling of court appearances.

Capital Crime - A crime possibly punishable by death.

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

Case file - the court file containing papers submitted in a case

Case Law - Law established by previous decisions of appellate courts.

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

Cause of action - grounds on which a legal action may be brought (e.g., property damage, personal injury, goods sold and delivered, work labor and services).

Caveat - A warning; a note of caution.

Caveat emptor - buyer beware. This is a general rule that it is up to the buyer to find out if what they are buying is what they want. Consumer regulations require certain information to be disclosed to consumers and insurance contracts are covered by the **uberrimae fides** - but many types of business contracts are covered by the caveat emptor rule.

Certificate of readiness - a document attesting that the parties in a lawsuit are ready to go to trial

Certified Copy - A copy of a document with a certificate attesting to its accuracy and completeness by the officer who has custody of the original.

Certify - to testify in writing

Certiorari - A means of getting an appellate court to review a lower court's decision when it is not required to do so. If an appellate court grants a writ of certiorari, it agrees to take the appeal. This is often referred to as "granting cert.," and results in an order to the lower court to convey the record of the case to the appellate court and to certify it as accurate and complete. Usually refers to a request for the Supreme Court to review a decision of the Court of Appeals.

Cert. Denied - Stands for "certiorari denied"; a writ of certiorari is a discretionary method by which a superior court chooses the cases it wishes to hear. "Cert. denied" means that the court has decided not to hear the case.

Challenge - Term used in a jury trial for an attempt to exclude a potential juror.

Challenge for Cause - Objection to the seating of a particular juror for a stated reason (usually bias or prejudice for or against one of the parties in the lawsuit). The judge has the discretion to deny the challenge. Distinguished from peremptory challenge, which they party can usually exercise as a matter of right.

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. Venue may be changed when a cases has received so much local publicity as to create a likelihood of bias in the jury pool.

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

Charges (multiple) - A case with more than one count or offense listed on the court file.

Charging Document - A citation, information, indictment or notice to appear, indicating that the named person committed a specific criminal offense or civil infraction.

Chattel - article of personal property

Chief Judge - Presiding or administrative judge in a court.

Circumstantial Evidence - All evidence except eyewitness testimony. Evidence from which an inference must be drawn. Examples include documents, photographs, and physical evidence, such as fingerprints.

Citation - A written notice to appear in court, usually to answer a violation of traffic law or other minor criminal laws.

Civil Action - Non-criminal cases in which one private individual, business, or government sues another to protect, enforce, or redress private or civil rights.

Civil Contempt - Contempt can be civil or criminal depending on the purpose the court seeks to achieve through its punishment. Contempt is civil when the purpose of punishment is to coerce the defendant to perform an act previously ordered by the court, which the defendant has not done, such as paying child support. Compare with Criminal

Contempt.

Civil Procedure - The set of 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.

Claim - A document forming part of the Statement of Case.

Claimant - The name, under the Civil Procedure Rules, given to the party making a claim in the Courts, plaintiff.

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

Clear and Convincing Evidence - Standard of proof commonly used in civil lawsuits and in regulatory agency appeals. It governs the amount of proof that must be offered in order for the plaintiff to win the case. It imposes a greater burden than the preponderance of evidence standard, but less than the criminal standard "beyond a reasonable doubt."

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. It may take the form of commutation or pardon.

Clerk's extract - a summary of a trial which is written by a clerk

Clerk's minutes - notes, which are taken by a clerk of events that occurred in court.

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

Codicil - An amendment to a will.

Co-Defendants - More than one person arrested and charged on the same criminal incident.

Collateral Estoppel - Rule that bars re-litigation between the same parties of a particular issue or determinative fact when there is a prior judgment.

Collective agreement - term used for agreements made between employees and employers, usually involving trade unions. They often cover more than one organization. Although these can be seen as contracts, they are governed by employment law, not contract law.

Comfort letters - documents issued to back up an agreement but which do not have any contractual standing. They are often issued by a parent or associate company stating that the group will back up the position of a small company to improve its trading position. They always state that they are not intended to be legally binding. Also known as **letters of comfort**.

Commissioner of jurors - a person in charge of summoning citizens for jury duty

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

Common Law - The legal system that originated in England and is now in use in the United States. It derives legal principles from the statements by judges in their written opinions, rather than from statutes enacted by legislative bodies.

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

Company seal - an embossing press used to indicate the official signature of a company when accompanied by the signatures of two officers of the company. Since 1989 it has been possible for a company to indicate its agreement without use of the seal, by two signatures (directors or company secretary) plus a formal declaration. However, some companies still prefer to use a seal and the articles of a company can override the law and require a seal to be used.

Comparative Negligence - A legal doctrine, by which acts of the opposing parties in a tort case are compared to determine the liability of each party, making each liable only for his/her percentage of fault. See also contributory negligence.

Compensatory Damages - Damages awarded to compensate the non-breaching or injured party.

Competency to Stand Trial - In order to be competent to stand trial, a person must have the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in preparing his/her defense. Due process prohibits the government from prosecuting a defendant who is not competent to stand trial.

Competent Witness - Every person is considered competent to be a witness. When a party questions the competency of a witness, the judge must determine the witness's capacity to observe, recall, and communicate what he or she witnessed, and that the witness understands the duty to be truthful.

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

Complaint - [Civil] The initial paperwork filed in a civil action that states the claim for which relief is sought; in the complaint the plaintiff states the wrongs allegedly committed by the defendant. [Criminal] A sworn written statement showing that the complaining person has reason to believe that the defendant has violated a criminal law.

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 it may be less formal.

Concurrent Jurisdiction - Authority vested in more than one court to hear and resolve specific types of disputes.

Concurrent Sentences - Sentences of imprisonment for conviction of more than one crime, to be served at the same time, rather than one after the other.

Condemnation - The legal process by which the government takes private land for a public use, paying the owners a fair price as determined by the court.

Conditions - major terms in a contract. Conditions are the basis of any contract and if one of them fails or is broken, the contract is breached. These are in contrast to **warranties**, the other type of contract term, which are less important and will not usually lead to the breach of the contract - but rather an adjustment in price or a payment of damages.

Conditions of Release - Conditions upon which an arrested person is released pending trial.

Confidentiality agreement - an agreement made to protect confidential information if it has to be disclosed to another party. This often happens during negotiations for a larger contract, when the parties may need to divulge information about their operations to each other. In this situation, the confidentiality agreement forms a binding contract not to pass on that information whether or not the actual contract is ever signed. Also known as a non-disclosure agreement.

Consanguinity - Related by blood.

Consecutive Sentences - Successive sentences of imprisonment, one beginning at the expiration of another, imposed against a person convicted of two or more crimes.

Consensus ad idem - agreement on an idea. This is the concept that the parties to the contract must all be in agreement on the basis of the contract. If it is discovered that the parties were thinking different things, then there is no consensus and the contract is void.

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

Consideration - A bargained-for benefit or right. In a contract each side must give some consideration to the other. Often referred to as the **quid pro quo**. Usually this is the price paid by one side and the goods supplied by the other. But it can be anything of value to the other party, and can be negative - e.g. someone promising not to exercise a right of access over somebody else's land in return for a payment would be a valid contract, even if there was no intention of ever using the right anyway.

Consideration may be a promise to perform a certain act - for example, a promise to deliver goods, a promise not to do something, payment, or a promise to pay money, among other things. Whatever its particulars, consideration must be something of value to the people

who are making the contract.

Consolidation - Joinder of two or more separately filed criminal or civil complaints, so that the charges may be tried together.

Consumer - a person who buys goods or services but not as part of their business. A company can be a consumer for contracts not related to its business - especially for goods or services it buys for its employees. Charities are also treated as consumers.

Contempt of Court - Behavior intended to lessen the dignity of a court. Also, a willful act of disobedience of a judge's verbal or written order. There are two types of contempt, direct and indirect. When the contumacious (contemptuous) conduct occurs before the judge, the contempt is direct and may be punished summarily. All other conduct not witnessed by the judge is indirect contempt. Before punishing indirect contempt, the court must give the accused party notice and an opportunity to be heard. See also Civil Contempt and Criminal Contempt.

Contested action - an action which involves disputed issue(s) of fact or law

Continuance - Deferment of a trial or hearing to a later date.

Contraband - Articles, the possession of which is prohibited by law.

Contract - An agreement between two or more persons that creates an obligation to do or not to do a particular thing. A contract must have something of value promised or given, and a reasonable amount of agreement between the parties as to what the contract means. The parties must be legally capable of making binding agreements.

Contributory Negligence - A legal doctrine that prevents the plaintiff in a civil action from recovering against a defendant for his/her negligence if the plaintiff was also negligent.

Conveyance - a **deed** that conveys property rights.

Covenant - a promise within a contract for the performance or non-performance of a specified act.

Conviction - A judgment of guilt against a criminal defendant.

Corpus Delicti - Body of the crime. The objective proof that a crime has been committed. It sometimes refers to the body of the victim of a homicide or to the charred shell of a burned house, but the term has a broader meaning. For the state to introduce a confession or to convict the accused, it must prove a corpus delicti, that is, the occurrence of a specific injury or loss and a criminal act as the source of that particular injury or loss.

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

Costs - Fees required in the course of a law suit, beginning with the docketing or filing fee, and may include service fees, witness fees, publication fees, etc. Does not include attorney fees.

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

Counterclaim - 1. In civil actions, a claim brought by a defendant against the plaintiff for an unlimited amount of money. 2. In small claims/commercial claims, a claim brought by a defendant against the plaintiff for an amount not to exceed the maximum monetary jurisdiction allowed in the small claims/commercial claims court. In essence, a counter lawsuit within a lawsuit.

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

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

Court Costs - The expenses of prosecuting or defending a lawsuit, other than the attorneys' fees. When permitted by law, a court may award an amount of money to the successful party, to be paid by the losing party, as reimbursement for the winner's court costs.

Court of limited jurisdiction - A City Court, District Court or other court that has jurisdiction only over actions authorized by law.

Court Recorder - A deputy clerk who maintains the verbatim record of court proceedings on tape.

Court Reporter - A certified person who maintains the verbatim record of court proceedings.

Court Rules - Procedural rules adopted by a court that govern the litigation process. Court rules often govern the format and style of documents submitted to the court.

Criminal Contempt - A criminal contempt is an act done in disrespect of the court or its process or which obstructs the administration of justice or tends to bring the court into disrepute. Criminal contempt can be direct or indirect. Direct contempt involves disorderly or insolent behavior in the presence of the judge that interferes with the course of a judicial proceeding; it is punishable summarily (i.e. without a hearing) by fine or imprisonment. Indirect contempt involves willful disobedience of court orders away from the court, which tend to impede justice. For example, refusing to carry out lawful court orders, preventing service of process, withholding evidence, and bribing a witness are all considered indirect criminal contempt. A person charged with indirect contempt is entitled to notice and a hearing.

Cross-Claim - A claim by co-defendants or co-plaintiffs in a civil case against each other and not against persons on the opposite side of the lawsuit.

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

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/her appearance at any hearing; the jailing or imprisonment of a person convicted of a crime.

D

Damages - Monetary compensation or indemnity for wrong or injury caused by the violation of a legal right. 1. Compensatory damages - Reimbursement for actual loss or injury. 2. Exemplary damages - Monetary award by way of punishment for injury caused by aggravated circumstances or malice, in addition to compensation for the injury. 3. Punitive damages - Monetary compensation awarded in excess of ordinary damages, as punishment for a gross wrong.

Date-stamp - the stamping on a document of the date it is received

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

Declaratory Judgment - A judgment of the court that explains what the existing law is or expresses the opinion of the court as to the rights and status of the parties, but which does not award relief or provide enforcement.

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

Debenture - a formal debt agreement. It refers to both the agreement and the document that verifies it. It is usually issued by companies and is generally supported by security over some property of the debtor. If the debtor defaults, the creditor can take and sell the property. Debentures are often transferable, so the creditor can sell it and there are markets on formal stock exchanges that deal in types of debenture. It is sometimes referred to as debenture stock. A mortgage is a type of debenture but one that is always secured, usually against land.

Deed - a written document by which a person transfers ownership of real property to another. A deed must be properly executed and delivered in order to be effective.

De facto - in fact. The opposite of **de jure** (in law). Having a practical effect different from the legally accepted or expected situation. For example, a person who deliberately or negligently gives the impression to another party of being a company director can be treated as a de facto director. So any agreement or statements will bind the company they make as if a properly appointed director made them.

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

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

Default Judgment - A judgment entered against a party who fails to appear in court or respond to the civil complaint or petition.

Defendant - In a civil case, the person being sued. In a criminal case, the person charged with a crime.

Deferred Sentence - A sentence that is postponed to a future time. After conviction, the judge does not announce or impose a

sentence, but defers sentencing to a future date so that the defendant will complete certain conditions, such as attending driving school or completing a probationary period. If the person completes the requirements, the case will be dismissed and will not be part of the defendant's criminal record.

Deficiency Judgment – Judgment for a creditor for an amount equal to the difference between the amount owed by the debtor and the amount collected from sale of the collateral.

De jure - in law. According to law, the opposite of **de facto**.

Demand for Discovery - Demand by the defense attorney to the prosecutor to furnish material information on a case.

Demanding State - The state seeking return of a fugitive.

De minimis - short for de minimis non curat lex: the law does not concern itself with trifles. It basically means insignificant or too small to bother with.

De Novo - "Anew." A trial de novo is a new trial of a case, such as a district court trial de novo of a magistrate court case.

Deponent - The name given to a person who makes a deposition (i.e. affidavit) under oath.

Deposition - An oral statement made before an officer authorized by law to administer oaths. Such statements are taken to examine potential witnesses, to obtain discovery to be used later in trial. Testimony of a witness other than in open court.

Descent and Distribution Statutes - State laws that provide for the distribution of estate property of a person who dies without a will. Same as intestacy laws.

Designee - A person appointed by a judge to act for the court to set conditions of release for any person arrested at a time when the judge is not available.

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 - Now called judgment as a matter of law. An instruction by the judge to the jury to return a specific verdict.

Disbarment - Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law. It is more severe than censure (an official reprimand or condemnation) and suspension (a temporary loss of the right to practice law.)

Discharge of bond - A court order to release a bond.

Disclaim - To refuse a gift made in a will.

Disclaimer - a written document denying legal responsibility, or a limitation of rights that might otherwise be claimed.

Disclosure - Usually in the form of a request, this relates to the making available of relevant documents believed to be in the possession of the other party in inter partes proceedings.

Discovery – Investigation and gathering of information by opposing parties prior to going to trial. The tools of discovery include: interrogatories, depositions, production of documents or things, permission to enter land or other property, physical and mental examinations, and requests for admission.

Discretion - A power or right conferred on a judge to act according to the dictates of his own judgment and conscience, uncontrolled by the judgment or conscience of others.

Dismissal – An order or judgment disposing of a case without a trial.

- **With prejudice** – In criminal cases, the defendant may not be charged with the specific crime again. A case is usually dismissed with prejudice when the court has not pursued action within the six-month time limit. In civil cases, the complainant is barred from bringing the same claim or cause of action against the same defendant.
- **Without prejudice** - the person may be charged with the specific crime again. A case is usually dismissed without prejudice when more evidence is needed in a case or the case needs to be filed in another court because of jurisdictional issues. In civil cases, the plaintiff is entitled to bring the same claim or cause of action again.

Dispose - the act of terminating a judicial proceeding

Disposition - The sentencing or other final settlement of a case.

Dissent – (Verb) to disagree. (Noun) 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 of marriage - the effect of a judgment of dissolution of marriage is to restore the parties to the state of unmarried persons

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

DOC - The Department of Corrections - state prison facility.

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

Docket Call - The proceeding in which a judge assigns trial dates or takes pleas.

Docket Number – The numerical designation assigned to each case by the court.

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

Double Jeopardy - Putting a person on trial more than once for the same crime. It is forbidden by the Fifth Amendment to the U.S. Constitution and by Article II, E of the NM Constitution.

Due diligence - the formal process of investigating the background of a business, either prior to buying it, or as another party in a major contract. It is used to ensure that there are no hidden details that could affect the deal.

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 of legal proceedings, opportunity to be heard by the judge, assistance of counsel, and the defendants' rights to remain silent, to a speedy and public trial, to an impartial jury and to confront and secure witnesses.

E

Easement - an interest in land owned by another that entitles its holder to a specific limited use or enjoyment e.g. the right to cross the land, or to continue to have an unobstructed view over it.

Elements of a Crime - Specific factors that define a crime and which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction.

Eminent Domain - The power of the government to take private property for public use through condemnation, i.e., the legal process by which real estate of a private owner is taken for public use without the owner's consent, but upon the award and payment of just compensation.

Employment contract - a contract between an employer and an employee. This differs from other contracts in that it is governed by employment legislation - which takes precedence over normal contract law.

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.

Encroachment - when a building or some portion of it, or a wall or fence, extends beyond the land of the owner and illegally intrudes upon that of an adjoining owner.

Endorsed - Stamped with the seal of the court indicating the date and time of filing with the court.

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

Entrapment - A defense to criminal charges alleging that agents of the government induced a person to commit a crime he/she otherwise would not have committed.

Entry of Judgment or Order - The filing of a written, dated and signed judgment or order.

Equal Protection of the Law - The guarantee in the Fourteenth Amendment to the U.S. Constitution Article III that the law treats all persons equally. Court decisions have established that this guarantee requires that courts be open to all persons on the same conditions, with like rules of evidence and modes of procedure; that persons be subject to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; that persons are liable to no other or greater burdens than those are laid upon others; and that no different or greater punishment is enforced against them for a violation of the laws.

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

Equitable action (equity matter) - an action which may be brought for the purpose of restraining the threatened infliction of wrongs or injuries, and the prevention of threatened illegal action; case in which payment of money damages will not be adequate compensation

Equitable distribution - the power to distribute equitably upon divorce all property legally and beneficially acquired during marriage by husband and wife or either of them, whether legal title lies in their joint or individual names

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

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

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

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

Estop - to stop, bar, or impede

Estoppel - a rule of law which prevents a person from alleging or denying a fact, because of his/her own previous act.

Et al. - "And others."

Et ano. - "And another"

Et Seq. - "And the following."

Eviction, warrant of - Legal mandate authorizing an enforcement officer to remove persons and their personal property from their premises.

Evidence - Testimony or exhibits received by the court at any stage of court proceedings.

Examination - The questioning of a witness under oath.

Examination before trial (EBT) - a formal interrogation of parties and witnesses before trial

Exceptions - Declarations by either side in a civil or criminal case reserving the right to appeal a judge's ruling upon a motion or objection. 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.

Exchange - the exchange of agreed, signed contracts. The transaction between the seller and the buyer is then legally binding, and completion (including the final transfer of money) usually takes place two to four weeks later.

Exclusion clauses - clauses in a contract that are intended to exclude one party from liability if a stated circumstance happens. They are types of **exemption clauses**. The courts tend to interpret them strictly and, where possible, in favor of the party that did not write them. In customer dealings, exclusion clauses are governed by regulations that render most of them ineffective but note that these regulations do not cover you in business dealings.

Exclusionary Rule - The rule preventing illegally obtained evidence, such as property found during an illegal search, from being used in any trial.

Execution - (1) the performance of all acts necessary to render a written instrument complete, such as signing, sealing, acknowledging, and delivering the instruments (2) supplementary proceedings to enforce a judgment, which, if monetary, involves a direction to the sheriff to take the necessary steps to collect the judgment

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

Exemplification - An official transcript of a document from public records made in a form to be used as evidence and authenticated or certified as a true copy, (e.g. exemplification of a judgment).

Exempli gratia (e.g.) - for example. One or more examples from a greater list of possibilities. Compares with **id est (i.e.)**, that is, which indicates a full, definitive list of all possibilities.

Exempt Property – In collection, execution, and bankruptcy proceedings, this refers to certain property protected by law from the reach of creditors.

Exemption clauses - clauses in a contract that try to restrict the liability of the party that writes them. These are split into **exclusion clauses** that try to exclude liability completely for specified outcomes, and limitation clauses that try to set a maximum on the amount of damages the party may have to pay if there is a failure of some part of the contract. Exemption clauses are regulated very strictly in consumer dealings but these don't apply for those who deal in the course of their business.

Ex gratia - out of grace. A gift made without any obligation on the part of the giver or any return from the receiver.

Exhibits – A document or item which is formally introduced in court and which, when accepted, is made part of the case file.

Exigent Circumstances - An emergency, demand, or need calling for immediate action or remedy that, for instance, would justify a warrantless search.

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 Communication – Communication about a lawsuit between a judge and one party, witness, attorney, or other person interested in the litigation when all of the parties are not present and the absent party did not have notice.

Ex Parte Proceeding - The legal procedure in which only one side is present or represented. It differs from the adversary system or adversary proceeding, and is only lawful in limited circumstances. For example, a hearing for a temporary restraining order.

Ex Post Facto - After the fact. The Constitution prohibits the enactment of ex post facto laws. These are laws that permit conviction and punishment for an act that was lawful at the time it was performed.

Express terms - the terms actually stated in the contract. These can be the written terms, or verbal ones agreed before or at the time the contract is made (see **implied terms**).

Express Warranty - An affirmation of fact or promise made by the seller to the buyer that is relied upon by the buyer in agreeing to the contract.

Expunge - the authorized act of physically destroying information, in files, computers or other depositories

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

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

Extradition - Surrender by one state to another of a person accused or convicted of an offense outside its own territory and within territorial jurisdiction of the other, with the other state which is competent to try him/her, demanding his/her surrender.

Extrinsic - Foreign, from outside sources.

F

Fair preponderance - Level of proof in a civil action; more than half; more convincing.

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

Fee - a fixed charge for service rendered on behalf of court

Felony - A crime that allows a defendant to be imprisoned for more than one year upon being found guilty.

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

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

Filed in Open Court - Court documents entered into the file in court during legal proceedings.

Final Order - An order that ends the lawsuit between the parties, resolves the merits of the case, and leaves nothing to be done but enforcement.

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

Fine - a sum imposed as punishment for an offense

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

First paper - Paper instituting the action (e.g., Summons, Motion, Infant's Compromise).

Fixture - a permanently fixed piece of furniture or equipment incorporated into a property. Removing it would cause damage to buildings or land, and is therefore regarded as legally part of it.

Floating charge - a form of security for a debt. Instead of naming a specific property, which can be taken by the creditor if the debtor defaults (as in a fixed charge like a mortgage), a class of goods or assets is named, such as the debtor's stock. This allows the debtor to trade in the assets freely, but if the debtor fails to make repayments then the floating charge becomes a fixed charge (known as crystallization) over all the stock at that time. The creditor can then take it and sell it to recover the debt.

Foreclosure - a legal proceeding that bars or extinguishes right

Foreperson - a member of a jury, usually the first juror called and sworn or a juror elected by fellow jurors, who delivers the verdict to the court

Forum - A judicial tribunal or a place of jurisdiction. A meeting for discussion.

Foundation - Preliminary questions to a witness to establish admissibility of evidence; i.e., "laying a foundation" for admissibility.

Franchising - commercial agreements that allow one business to deal in a product or service controlled by another. For example, most car manufacturers give franchises to sell their cars to local garages, which then operate using the manufacturer's brand.

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

Freehold - outright ownership of a property. This type of **tenure** contrasts with leasehold where the leaseholder has the rights to occupy a property for a specified period of time.

Fruit of the Crime - Property acquired by means and in consequence of the commission of a crime, and sometimes constituting the subject matter of the crime.

Fruit of the Poisonous Tree - Property seized or statements made subsequent to and because of an illegal search or interrogation. Fruit of the poisonous tree is generally not admissible in evidence because it is tainted by the illegal search or interrogation.

Fugitive - A person who flees from one state to another to avoid prosecution.

Full faith and credit - A requirement of the U.S. Constitution that the records and judicial proceedings of one state shall have the same effect in courts of other states with the same jurisdiction.

G

Garnishment - A legal proceeding in which a debtor's money, which is 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.

Garnishee - A person who owes a debt to a judgment debtor, or a person other than the judgment debtor who has property in his/her possession or custody in which a judgment debtor has an interest

General Damages - Compensation for the loss directly and necessarily incurred by a breach of contract.

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

Going concern - accounting concept that a business should be valued on the basis that it will be continuing to trade and able to use its assets for their intended purpose. The alternative is a break-up basis, which sets values according to what the assets could be sold for immediately - often much less than their value if they were kept in use.

Good Faith - Honest intent to act without taking an unfair advantage over another person. This term is applied to many kinds of transactions.

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

Grand Jury - A jury of inquiry convened to determine whether evidence against a defendant justifies issuing an indictment; comprised of not more than 18 and not less than 15 persons, with at least 12 concurring before an indictment may be returned.

Grantor or Settlor - The person who sets up a trust. Also known as "trustor."

Guarantee - a secondary agreement by which one person promises to honor the debt of another if that debtor fails to pay. Banks and other creditors often call on directors of small companies to give their personal guarantees for company debts. A guarantee must be in writing. The guarantor can only be sued if the actual debtor can't pay, in contrast to **indemnity**.

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

Guardian ad litem - person appointed by a court to represent a minor or incompetent for purpose of some litigation

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/herself. A guardian also may be given responsibility for the person's financial affairs, and thus perform additionally as a conservator. See also Conservatorship.

H

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

Habitable - suitable and fit for a person to live in and free of any faults that might endanger the health and safety of occupants.

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

Hearing -A proceeding, generally public, at which an issue of fact or law is discussed and either party has the right to be heard.

Hearsay – Testimony by a witness concerning events about which the witness has no personal knowledge. Hearsay testimony conveys not what the witness observed personally, but what others told the witness or what the witness heard others say. Hearsay is usually not admissible as evidence in court because of its unreliability.

Holdover Tenancy - a **tenancy** that arises when someone remains in possession of a property after the expiration of the previous tenancy and is recognized by the landlord by accepting rent.

Hung jury - Jury unable to reach a verdict. A trial ending in a hung jury results in a retrial with a new jury.

I

Id est (i.e.) - that is. Is followed by a definition or list of items or options that relate to a preceding statement or condition. Differs from **exempli gratia (e.g.)** - for example - that gives some, but not all, examples of the items or options.

Immunity - A grant by the court assuring someone that they will not face prosecution in return for their providing criminal evidence.

Impaneling - the process by which jurors are selected and sworn to their task

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

Impleader - An addition of a third party to an action by the defendant.

Implied Consent – Knowing indirectly (through conduct or inaction) that a person would agree or give permission. For example, in some states, a person who gets a driver’s license has given implied consent to allow a police officer to conduct an alcohol breath or blood test, when the police suspect the person is driving while intoxicated.

Implied terms - are terms and clauses that are implied in a contract by law or custom and practice without actually being mentioned by any party. Terms implied by custom and practice can always be overridden by **express terms**, but some terms implied by law cannot be overridden, particularly those relating to consumers (see **exemption clauses**).

Implied Warranty of Merchantability – An assumption in law that the goods are fit for the ordinary purposes for which such goods are used. This implied warranty applies to every sale by a merchant who deals in goods of the kind sold. However, if there is a warning that the goods are sold “as is,” the implied warranty does not apply.

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

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

Incarcerate - To confine in jail.

Incorporate - inclusion in, or adoption of, some term or condition as part of the contract. It differs from its company law definition where it refers to the legal act of creating a company.

In-Custody Arraignments (jail cases) – Arraignment while the defendant remains in jail because defendant has not been released on bond or by other means.

Indemnity - a promise by a third party to pay a debt owed, or repay a loss caused, by another party. Unlike a **guarantee**, the person owed can get the money direct from the indemnifier without having to chase the debtor first. Insurance contracts are contracts of indemnity: the insurance company pays first, and then tries to recover the loss from whoever caused it.

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.

Indenture - a deed or other document to which two or more parties are bound.

Index number - a number issued by the county clerk, which is used to identify a case - in civil matters there is usually a charge

Indicia - Signs, indications.

Indictment – The written accusation by a grand jury that charges a person named in the indictment with the violation of a law. Indictments are used for felony charges, not misdemeanors.

Indigency - Financial inability to hire a lawyer or pay court costs.

Indigent - Needy or impoverished. A defendant who can demonstrate his/her indigence to the court may be assigned a court-appointed attorney at public expense in criminal and child abuse/neglect cases, but not in other civil cases.

Indorsed complaint - A statement of the nature and substance of the cause of action, for money only, which indicates the amount of the claim. It may be set forth upon the summons or attached to it.

Infant - An individual who has not attained the age of eighteen (18).

Infant's compromise - a civil proceeding or motion for obtaining court approval of the settlement of an infant's claim

In Forma Pauperis – “In the manner of a pauper.” Permission given to a person to sue without payment of court costs because of indigence or poverty.

Information - An accusation against a person for a criminal offense, without an indictment; presented by the prosecution instead of a grand jury. Informations are used for felony charges, not misdemeanors.

Infra - Below.

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

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

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

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

Inspectorial Search - An entry into and examination of premises or vehicles by an inspector for the identification and correction of conditions dangerous to health or safety.

Inquest - a proceeding which usually is a limited non-jury trial for the purpose of fixing the amount of damages where the plaintiff or defendant alone introduces testimony.

In re - In the matter of; concerning.

In rem - Regarding the right or title to property.

Insolvency - the situation where a person or business cannot pay its debts as they fall due (see **bankruptcy, liquidation** and **receivership**).

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

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

Inter alia - among other things. This is often used in contracts to indicate that what is being specifically referred to is part of a larger group without having to name all the elements.

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

Inter Partes proceedings - Proceedings arising between two or more parties.

Interpleader - An action in which a third person asks the Court to determine the rights of others to property held—but not owned—by the third person.

Interpreter - a person sworn at a judicial proceeding to translate oral or written language

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

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

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

Inter Vivos Trust - Another name for living trust.

Intestacy Laws - See Descent and Distribution Statutes.

Intestate - Dying without having a will.

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

Invitee - a person, such as a customer, who is present in a place either by the express or the implied invitation of the occupier. This normally means that the occupier has to exercise reasonable care to protect the safety of the invited person.

Invoke the Rule - Separation and exclusion of witnesses (other than parties) from the courtroom.

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

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

J

Joinder – Combining charges or defendants on the same complaint. Where a crime is committed by two people, both may be charged on one complaint. Joinder also applies in civil cases, where parties and claims may be joined in one complaint.

Joint and Several Liability - where parties act together in a contract as partners they have joint and several liability. In addition to all the partners being responsible together, each partner is also liable individually for the entire contract - so a creditor could recover a whole debt from any one of them individually, leaving that person to recover their shares from the rest of the partners.

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.

Joint trial - two or more actions involving a common question of law or fact may be joined by court order for trial - the actions are not merged but remain separate and distinct and may result in one or more verdicts and judgments

Joint venture - an agreement between two or more independent businesses in a business enterprise, in which they will share the costs, management, profits or benefits arising from the venture. The exact shares and responsibilities will be set out in a Joint Venture Agreement.

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

Judgment - The first disposition of a lawsuit.

- **Consent Judgment** - Occurs when the provisions and terms of the judgment are agreed on by the parties and submitted to the court for its sanction and approval.
- **Default Judgment** - A judgment rendered because of the defendant's failure to answer or appear.
- **Judgment Notwithstanding the Verdict** – Judgment entered by order of the court for one party notwithstanding the jury's verdict in favor of the other party. A judgment notwithstanding the verdict may only arise after a motion for a directed verdict.
- **Judgment on the Pleadings** – Judgment based on the pleadings alone. 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.

- **Summary Judgment** - Judgment given on the basis of pleadings, affidavits, and exhibits presented for the record without any need for a trial. As with Judgment on the Pleadings, 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.
- **Judgment and Sentence** - The official document of a judge's disposition of a case sentencing a defendant to the Department of Corrections or jail custody.

Judgment roll - a record of the judgment with the supporting papers

Judicial Precedent - A previous judicial decision or preceding that may be relied upon.

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.

Jurat - Certificate of officer or person whom writing was sworn before. Typically, "jurat" is used to mean the certificate of the competent administering officer that writing was sworn to by person who signed it.

Jurisdiction - The court's legal authority to hear and resolve specific disputes. Jurisdiction is usually composed of personal jurisdiction (authority over persons) and subject matter jurisdiction (authority over types of cases.)

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

Juror Disqualified - Juror excused from a trial.

Jury - Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact. A petit jury is a trial jury, composed of 6 to 12 persons, which hears either civil or criminal cases.

Jury (advisory) - a body of jurors impaneled to hear a case in which the parties have no right to a jury trial - the judge remains solely responsible for the findings and may accept or reject the jury's verdict

Jury Array - The whole body of prospective jurors summoned to court from which the jury will be selected. Also called "Jury Panel."

Jury instructions - directions given by the judge to the jury

Jury List - A list containing the names of jurors empanelled to try a cause or containing the names of all the jurors summoned to attend court.

Jury Polling - The procedure by which each individual juror is asked to affirm his or her verdict in open court at the conclusion of a trial.

Jury Trial - A trial in which the jury judges the facts and the judge rules on the law.

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

Juvenile - A person under 18 years of age.

K

Kangaroo Court - Term descriptive of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court or other tribunal.

Knowingly and Willfully - This phrase, in reference to violation of a statute, means consciously and intentionally.

L

Laches - the failure to diligently assert a right, which results in a refusal to allow relief

Landlord - the owner of property that is leased or rented to others.

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

Larceny - Obtaining property by fraud or deceit.

Law - The enforceable rules that govern individual and group conduct in a society. The law establishes standards of conduct, the procedures governing standards of conduct, and the remedies available when the standards are not adhered to.

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

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 adverse witnesses and on cross-examination.

Lease - a contract by which an owner of property conveys exclusive possession and use of it for a specified rent and for a specified period - after which the property reverts to the owner.

Legal age - Eighteen (18) years of age.

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

Legal duty - the responsibility to others to act according to the law.

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

Lesser Included Offense - Any lesser offense included within the statute defining the original charge, such as a lower grade of an offense. An offense composed of some, but not all of the elements of a greater offense and which do not have any additional elements not included in the greater offense, so that it is impossible to commit the

greater offense without also committing the lesser.

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. Used when the deceased died without a will.

Letters of comfort - see **Comfort letters**.

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. Used when the deceased left a will.

Liability - an obligation to do, to eventually do, or to refrain from doing something; money owed; or according to law one's responsibility for his/her conduct; or one's responsibility for causing an injury

Liable - Legally responsible.

Liber - a book used for keeping a record of specific documents or events having legal effect

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

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

Limited Jurisdiction - Courts with limited jurisdiction may hear only certain kinds of cases and are precluded from hearing anything else. For example, small claims court may only decide cases in which the amount in controversy is below a set figure.

Limited liability - usually refers to limited companies where the owners' liability to pay the debts of the company is limited to the value of their shares. It can also apply to contracts where a valid limitation clause has been included in the terms.

Liquidation - the formal breaking up of a company or partnership by realizing (selling or transferring to pay a debt) the assets of the business. This usually happens when the business is insolvent, but a solvent business can be liquidated if it no longer wishes to continue trading for whatever reason (see **receivership** in the financial terms below).

Lis Pendens - A pending suit. Jurisdiction, power, or control that courts acquire over property in a suit pending action and until final judgment.

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

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

Locus standi - [A place of standing]. A right to be heard in court or other proceeding.

Long form order - an order prepared by counsel for signature of the court (usually based on a memorandum decision)

Loss of use - circumstances where a property cannot be occupied in the normal way, through the negligence or wrongdoing of another party.

M

Magistrate – A judge whose civil and criminal jurisdiction is limited by law. In federal court, a judicial officer who is assigned numerous trial and pretrial responsibilities.

Mala fides - bad faith, opposite of **bona fide**.

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

Maintenance - the furnishing by one person to another the means of living, or food, clothing, shelter, etc., particularly where the legal relations of the parties is such that one is bound to support the other, as between parent and child or between spouses

Malicious Abuse of Process – Tort involving a litigant’s malicious misuse of the power of the judiciary. The elements of this tort are: (1) initiation of judicial proceedings against the plaintiff by the defendant; (2) an act by the defendant in the use of process that would not be proper in the regular prosecution of the claim; (3) a primary motive by the defendant in misusing the process to achieve an illegitimate end; and (4) damages.

Mandamus - A writ issued by a court ordering a public official to perform an act that s/he is required to do by law under the existing state of facts.

Mandate - The official decree by a court of appeal.

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.)

Material witness - person whose testimony on some issue has been judicially determined as relevant and substantial

Mediation - A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them reach a resolution.

Memorandum decision - a written opinion or decision of a court on a litigated question, giving the court's conclusion on factual and legal issues (this may constitute the order of the court if so stated)

Memorandum opinion - memorandum in writing, which is a very brief statement of the reasons for a decision, without detailed explanation

Memorialized - In writing.

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

Merchant – A person who regularly deals in goods of the kind being sold or who otherwise holds himself out as having a special knowledge of the goods sold. For example, Bob owns a clock shop and sells clocks, so he would be considered a merchant of clocks. However, if Bob sold his car to someone, he would not be considered a merchant of cars.

Merger Clause – Merger clauses state that the written document contains the entire understanding of the parties. The purpose of merger clauses is to ensure that evidence outside the written document will not be admissible in court to contradict or supplement the express terms of the written agreement.

Merits - The substantive claims and defenses raised by the parties to an action.

Military calendar - To hold in suspense an action that cannot reasonably be tried because a party or witness is in the military service.

Minor – A person under 18 years of age.

Minute book - A Court Clerk's Journal of Courtroom proceedings.

Minutes - a record of court proceedings kept by noting significant events

Miranda Warning – Prior to any custodial interrogation (that is, questioning by police after a person has been deprived of his or her freedom in a significant way), a person must be advised that: (1) he has a right to remain silent; (2) any statement he does make may be used in evidence against him; (3) he has the right to the presence of an attorney; and (4) if cannot afford an attorney, one will be appointed for him prior to any questioning, if he so desires.

Misdemeanor - An offense punishable by not more than one year in county jail and/or \$1,000 fine.

Misrepresentation - where one party to a contract makes a false statement of fact to the other which that other person relies on. Where there has been a misrepresentation then the party who received the false statement can get **damages** for their loss. The remedy of rescission (putting things back to how they were before the contract began) is sometimes available, but where it is not possible or too difficult the court can award damages instead.

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

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

Mitigation – Reduction of penalty or punishment.

Moot - A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question, because there is no actual controversy, or because the issues no longer exist. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.

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

Motion in Limine - A motion made outside the presence of a jury requesting that the court not allow certain evidence that might prejudice the jury. Usually heard before trial begins.

Motion to Expunge - A motion to delete material from official court records, such as a record of juvenile conviction.

Motion to Mitigate Sentence - A motion to reduce the sentence.

Motion to Seal - A motion to close records to public inspection.

Motion to Suppress - A motion to prevent admission of evidence in a case.

Movant - the party who initiates the motion

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

Mutuality - A meeting of the minds of contracting parties regarding the material terms of the agreement.

N

Natural person - Individual (does not include corporate entities)

Necessarily Included Offense - Where an offense cannot be committed without necessarily committing another offense, the latter is a necessarily included offense; sometimes referred to as lesser included offense.

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

Nemo dat quod non habet - no one can give what they do not have. The principle that a seller cannot pass on a better right to the property than they actually have. So, if goods are stolen, the buyer does not get ownership even if there was no indication that they were stolen.

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-Contest Clause - Language in a will providing that a person who makes a legal challenge to the will's validity will be disinherited.

No Contest Plea – See Nolo Contendere.

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

Nolle Prosequi – The prosecutor declines to prosecute, but may still initiate prosecution within the time allowed by law.

Nolo Contendere - No contest. A plea through which the defendant does not admit guilt, but which has the same legal effect as a plea of guilty in a criminal case. However, the no contest plea may not be used in a civil action related to the criminal charge to prove the defendant's civil liability. For example, a plea of nolo contendere for a traffic citation that resulted from an accident cannot be used to convince a judge in a civil case that the defendant is guilty of causing an accident.

Non compos mentis - not of sound mind. A person who is not of sound mind will not have full capacity to enter into a contract.

Non est factum - not my act. This is a denial by a person that they were actually involved in some action or dealings. In a contract, it can occur if a party denies that they signed the contract - that someone else forged their signature.

Non-executive director - a director who does not work directly for a company but advises the other directors. Non-executive directors have the full powers and authority of any other director and can bind the company to any contract.

Non-jury trial - A case tried by a judge on the facts as well as the law.

Non seq. (Non sequitur) - It does not follow

NOPI - Not open for Public Inspection.

No Probable Cause - Insufficient grounds to hold the person who was arrested.

Notice - Formal notification to the party that has been sued that a civil lawsuit has been filed. Also, any form of notification of a legal proceeding or filing of a document.

Notice of Lis Pendens - A notice filed on public records to warn all persons that the title to certain property is in litigation, and that if they purchase or lease that property they are in danger of being bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.

Notice of petition - Written notice of a petitioner that a hearing will be held in a court to determine the relief requested in an annexed petition.

Notice to quit - a notification or communication to a tenant to leave specified premises usually for a breach of terms of the lease.

Nuisance – An unreasonable, unwarranted, or unlawful use of one’s property that annoys, disturbs, or inconveniences another in the use of his or her property. Violation of an ordinance that forbids annoyance of the public in general.

Nunc Pro Tunc – (now for then) an entry made now for an act done previously and to have the effect as if it were done on a prior date.

Nuncupative Will - An oral (unwritten) will.

O

Oaths - Sworn attestations required in court, usually administered by the in-court clerk.

Obiter dictum - [A saying by the way]. An observation on a legal question suggested by a case but not arising in such a manner as to require a decision. Therefore not binding as a precedent.

Objection - The process by which one party tries to prevent the introduction of evidence or the use of a procedure at a hearing. An objection is either sustained (allowed) or overruled by the judge.

Occupancy - holding, possessing, or occupying **premises**.

Occupant - someone who occupies a particular place.

Offense - A violation of a municipal ordinance or state statute.

Offer – An expression of willingness to enter into a bargain that is definite and certain in its terms and that is communicated to the offeree. Once accepted, the offer is transformed into a contractual obligation.

Offeree – The person to whom an offer is made.

Offeror – The person who makes an offer.

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 or different reasoning. A per curiam opinion is an unsigned opinion “of the court.”

Oral Argument - An opportunity for lawyers to summarize their positions before the court and also to answer the judges’ questions.

Oral proof - evidence given by word of mouth; the oral testimony of a witness

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

Ordinance – A law adopted by the governing body of a municipality or county.

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

Parcel - a tract or a plot of land

Parent company - where one company owns more than 50 per cent of the voting rights of another company it is the parent of that company which in turn becomes its subsidiary. It can also occur where the parent has less than 50 per cent but can control the board of directors of the subsidiary: that is, it has the power to appoint and remove directors without referring to other shareholders.

Parens Patriae - The doctrine under which the court protects the interests of a juvenile.

Pari passu - equal and even. This relates to shares to denote that newly issued shares have the same rights and restrictions as those of the same class already existing.

Parol Evidence - Oral evidence.

Parol Evidence Rule - When a written agreement is intended to be a complete and final document, then the terms of the agreement cannot be altered by evidence of oral (parol) agreements that purport to change, explain, or contradict the written agreement.

Parole - The supervised conditional release of a prisoner before the expiration of his/her sentence. If the parolee observes the conditions, he/she need not serve the rest of his/her term.

Partition - the division into parts of property held jointly, or the sale of such property by a court with division of the proceeds.

Partnership - when two or more people or organizations join together to carry on a business.

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

Party wall - a wall that divides two separate premises, which is the joint responsibility of both owners.

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

Penalty Assessment - Procedure in which traffic offender is allowed to mail in a fine (plead guilty by mail). Points may be assessed against the person's driving record for penalty assessment offenses.

Peremptory Challenge - The right to challenge a judge or prospective juror without assigning a reason for the challenge.

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 for an indefinite period.

Personal Jurisdiction - Power which a court has over the defendant's person and which a court must have before it can enter a judgment affecting the defendant's rights.

Per Se Law - In the Motor Vehicle Code, the per se crime is driving with a blood alcohol level of .08 or greater, as established through a valid testing procedure. No proof is required to show that the defendant was under the influence since the law concludes that driving with a blood alcohol content (BAC) of .08 or greater is driving while intoxicated. (DWI can be proved by other evidence even if a defendant's BAC is less than .08.)

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

Personal Recognizance - In criminal proceedings, the pretrial release of a defendant without bail upon his/her promise to return to court. See also Release on Own Recognizance.

Personal Representative - The person that 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.

Petition - a formal written request to a court, which initiates a special proceeding

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

Petit jury - the ordinary jury for the trial of a civil case (so called to distinguish it from the grand jury)

Petty Misdemeanor - A crime that allows less than six months of jail time upon conviction.

Plaintiff - The person/business/organization/agency that files the complaint in a civil lawsuit. Also called the complainant.

Plain View Doctrine - The doctrine that permits a law enforcement officer to lawfully seize incriminating evidence not specifically sought but readily visible in the course of a valid search.

Plea - (1) Defendant's answer to the charge - guilty, not guilty, nolo contendere or Alford plea.

(2) In a criminal proceeding, 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 Agreement - An agreement between the prosecutor and the defendant, presented for the court's approval, regarding the sentence

the defendant should serve upon a plea of guilty, an Alford plea, or a no contest plea. Typically, the defendant pleads guilty in exchange for some form of leniency. For example, the defendant may plead to lesser charges so that the penalties are diminished. Or, the defendant may plead to some, but not all of the charges so that others are dropped. The agreement may include sentencing recommendations. Such bargains are not binding on the court.

Plea Bargaining or Plea Negotiating - The process through which an accused person and a prosecutor negotiate a mutually satisfactory disposition of a case. The Court is not privy to the actual negotiations, but is presented with a plea agreement for its approval or rejection.

Pleadings - The written statements of fact and law filed by the parties to a lawsuit; complaint or petition, answer, and reply.

Points or Point Information - Penalty points imposed by the Motor Vehicles Division after conviction of a traffic offense.

Polling the Jury - a practice whereby the jurors are asked individually whether they assented, and still assent, to the verdict

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

Power of Attorney - Formal authorization of a person to act in the interests of another who is incapable of managing his or her own affairs or property.

Precedent - previously adjudged action or decision on same or similar point, serving as a rule or example for present guidance

Preclude - To prevent or stop

Prejudice - Unfair harm to one party.

Preliminary Hearing - See "Initial Appearance."

Preliminary Injunction - 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.

Pre-Sentence Investigation - A background investigation of the defendant by the Department of Corrections, returnable to the sentencing judge on or before a certain date.

Pre-Sentence Report - A report designed to assist the judge in passing sentence on a convicted defendant. Such reports should contain at least the following: (1) complete description of the situation surrounding the criminal activity; (2) offender's educational background; (3) offender's employment background; (4) offender's social history; (5) residence history of the offender; (6) offender's medical history; (7) information about environment to which the offender will return; (8) information about any resources available to assist the offender; (9) probation officer's view of the offender's motivations and ambitions; (10) full description of the offender's criminal record; and (11) recommendation as to disposition.

Pretermitted Child - A child born after a will is executed, who is not provided for by the will.

Pretrial Conference - A meeting between the judge and the lawyers involved in a lawsuit to narrow the issues in the suit, agree on what will be presented at the trial, and explore the possibility of settling the case without a trial.

Pretrial Intervention - Programs to aid certain qualifying criminal defendants by diverting them from prosecution and enrolling them in rehabilitative programs. Upon successful completion of the required program(s), the criminal case is dismissed. Pretrial intervention is most often used in substance abuse and domestic violence where the crime charged is the defendant's first offense.

Pretrial Release - Release by sheriff's personnel after arrest and before any court appearance, but with a court appearance date.

Precedent - A previously decided case that guides the decision of future cases; source of common law.

Preponderance of the evidence - Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it. The amount of evidence that must be presented to prevail in most civil actions.

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 formal criminal charges.

Prima Facie – Presumably. A fact presumed to be true unless disproved by some evidence to the contrary. Evidence that will prevail until contradicted and overcome by other evidence. A prima facie case is one in which the plaintiff has presented sufficient evidence to require the defendant to go forward with his or her case. In other words, the plaintiff will prevail if the defendant does not rebut the plaintiff's case.

Principal - The person primarily liable; the person for whom performance of an obligation a surety has become bound.

Privilege - A right, power, or immunity held by a person or class beyond the course of law, such as the privilege against self-incrimination under the Fifth Amendment.

Probable Cause – The evidence required before a person or property may be searched or seized by law enforcement and before a search or arrest warrant may be issued.

- **Probable Cause to Arrest** exists when the facts and circumstances within the officers' knowledge and of which the officers had reasonably trustworthy information are sufficient to warrant a person of reasonable caution to believe that the suspect has committed or is committing a crime.
- **Probable Cause to search** exists when the facts and circumstances within the officers' knowledge and of which the officers had reasonably trustworthy information are sufficient to warrant a person of reasonable caution to believe that evidence of a crime will be found in the location identified.

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

Probate Court - The court with jurisdiction to supervise estate administration.

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

Probation - A procedure under which a defendant convicted of a crime is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions.

Probative Value - Evidence has "probative value" if it tends to prove an issue. It is evidence that furnishes, establishes, or contributes toward proof.

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

Proceeding - the succession of events constituting the process by which judicial action is invoked and utilized pursuant to procedure

Process - a legal means, such as a summons, used to subject a defendant in a lawsuit to the jurisdiction of the court; broadly, refers to all writs issued in the course of a legal proceeding

Promissory Estoppel - Equitable doctrine allowing the court to enforce a promise even though a valid contract was not formed when a person reasonably acted in reliance on that promise. Promissory Estoppel allows the court to compensate the person for their expenditures and/or to avoid the unjust enrichment of the other party.

Property Bond - A signature bond secured by mortgage or real property.

Pro Se - In one's own behalf, commonly used to refer to a party representing himself or herself in a court action, instead of being represented by an attorney.

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.

Pro tanto - for so much. Means to the extent specified, but not more.

Pro tempore (pro tem) - for the time being.

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

Proxy - a person who acts on behalf of another for a specific purpose or the form used to make such an appointment. In a company a shareholder can appoint a proxy to attend a meeting and vote on their

behalf.

Public Defender - A court-appointed attorney for those defendants who are declared indigent.

Punitive Damages - Damages awarded over and above compensatory damages in order to punish the defendant for malicious, wanton, willful, reckless, oppressive, or fraudulent conduct. Punitive damages are imposed to compensate the Plaintiff for mental anguish, shame, degradation, or other aggravations beyond actual damages.

Purge - To atone for an offense, to submit to a court's mandate (i.e., to purge oneself of contempt of court)

Q

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

Quid pro quo - something for something. The usual definition of **consideration** in a contract, on the basis that each party should offer something to the other.

Quit - for a tenant to move out of rented premises.

Quorum - the minimum number of people needed at a meeting for it to proceed and make any decisions.

R

Ratification - giving authority to an act that has already been done. A company general meeting resolution can ratify an act previously done by the directors; or a principal can choose to ratify the act of an **agent** that was beyond the specified power of the agent.

Ratio decidendi - [The reason (or ground) for a judicial decision]. Usually a statement of law applied to the problems of a particular case. In essence, the principle upon which a case is decided.

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

Reasonable Belief - Probable cause. The facts and circumstances within an arresting officer's knowledge, and of which s/he had reasonably trustworthy information, sufficient in themselves to justify a person of average caution in believing that a crime has been or is being committed. Facts sufficient to justify a warrantless arrest.

Reasonable Doubt - Such a doubt as would cause a careful person to hesitate before acting in matters of importance to himself/herself.

Reasonable Person - A phrase used to denote a hypothetical person who exercises the 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. This term is commonly used in torts, where 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.

Reasonable Suspicion - Level of suspicion required to justify law enforcement investigation, but not arrest or search. A lower level of suspicion or evidence than probable cause. An officer has reasonable suspicion when the officer is aware of specific, articulable facts, together with rational inferences from those facts, which, when judged objectively, would lead a reasonable person to believe that criminal activity occurred or was occurring.

Rebut - To introduce evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence.

Rebuttal - Evidence that is offered by a party after he has rested his case and after the opponent has rested in order to contradict and explain the opponent's evidence.

Rebuttal Witnesses - Witnesses introduced to explain, repel, counteract, or disprove facts given in evidence by the adverse party.

Recall Order - Court order recalling a warrant or capias (writ requiring an officer to take a named defendant into custody).

Receivership - the appointment of a licensed insolvency practitioner to take over the running of a company. A creditor with a secured debt appoints the receiver. The job of the receiver is to recover the debt either by taking the security and selling it or by running the business as a going concern until the debt is paid off (see **liquidation**).

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

Recusal - The voluntary action by a judge to remove himself or herself from presiding in a given case because of self-interest, bias, conflict, or prejudice. Also, the process by which a judge is disqualified from a case because a party objects.

Redact - to edit, revise

Redemption of shares - where a company issues shares on terms stating that they can be bought back by the company. Not all shares can be redeemed, only those stated to be redeemable when they were issued. The payment for the shares must generally come from reserves of profit so that the capital of the company is preserved.

Redirect 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, but whose final decision is subject to court approval. Also called "special master," "special commissioner," or "hearing officer."

Registered Office - the official address of the company as stated on the register at Companies House. Any documents delivered to this address are considered to be legally served on the company.

Rehearing - Another hearing of a civil or criminal case or motion by the same court in which the matter was originally decided in order to bring to the court's attention an error, omission, or oversight in the first consideration.

Release - Discharge from confinement or custody.

Release On 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.

Relief - Legal remedy

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 - payments or actions ordered by the court as settlement of a dispute. The most common is **damages** (a payment of money). Others include specific performance (of an action required in the contract), **injunction** (see the general contract terms above) and rescission - putting things back to how they were before the contract was signed.

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.

Rendition - Transfer of a fugitive from the asylum state to the demanding state.

Replevin - A legal 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.

Repudiation - has two meanings in contract law. The first is where a party refuses to comply with a contract and this amounts to a breach of contract. The second is where a contract was made by a minor (person under the age of 18) who then repudiates it at or shortly after the age of 18. Then the repudiation **voids** the contract rather than causing a **breach of contract**.

Request for Production - A formal court process by which one party requests that another produce certain documents or other tangible items.

Res - Subject matter

Rescission - Cancellation of a contract.

Res Judicata – A thing or matter already decided by a court. A final judgment on the merits is conclusive as to the rights of the parties and is an absolute bar to a later action involving the same claim, demand, or cause of action. Res judicata bars relitigation of the same cause of action between the same parties where there is a prior judgment. By comparison, collateral estoppel bars relitigation of a particular issue or determinative fact. Compare Collateral Estoppel.

Respondent - The person against whom an appeal is taken. See Petitioner.

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

Restitution – Either financial reimbursement to the victim or community service imposed by the court for a crime committed.

Restore/ reinstate to calendar - to reinstate the action to active inventory

Restrictive covenant - is often included in long-term contracts and contracts of employment to stop the parties working with competitors during the period of the agreement and for some time thereafter. However, unless carefully written the courts will see them as being a restraint of trade and not enforce them.

Retainer - Act of the client in employing the attorney or counsel; also denotes the fee which the client pays when he/she retains the attorney.

Return of service - A certificate of affidavit by the person who has served process upon a party to an action, reflecting the date and place of service.

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

Reversible Error - An 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.

Revocation (of Driver's License) – Judicial termination of a driver's license and privilege to drive after conviction of DWI. The license shall not be renewed or restored for the duration of the revocation, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after date of revocation. This kind of revocation is distinguished from an administrative revocation, in which the Motor Vehicle Division may terminate a driver's license for up to one year.

Revoke - To cancel or nullify a legal document.

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

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

S

Sanction - a penalty or punishment provided as a means of enforcing obedience to a law, rule or code; also, an authorization

Satisfaction of Judgment – Payment of all monies determined to be owed pursuant to a court judgment.

Seal - The Clerk of Court symbol of authenticity.

Seal - to close a case file from public scrutiny - in instances of youthful offenders and acquittal, sealing orders are issued by the court to prevent the public from obtaining information on the cases

Search - Examination of a person's house or other building or premises, or of his person, or vehicle, with a view to discovery of contraband, illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action.

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

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

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

Self-Incrimination (privilege against) - The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed in the Fifth Amendment to the U.S. Constitution. Asserting the right is often referred to as "Taking the Fifth."

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. A concurrent sentence means that two or more sentences would run at the same time. A consecutive sentence means that two or more sentences would run one after another.

Sentence Report - A document containing background material on a convicted person. It is prepared to guide the judge in the imposition of a sentence. Sometimes called a pre-sentence investigation.

Separation - in matrimonial law, a cessation of cohabitation of husband and wife by mutual agreement, or in the case of "judicial separation," under the decree of a court

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 called exclusion of witnesses. This prevents a witness from being influenced by the testimony of a prior witness.

Service - The delivery of a legal document, or of a requirement to appear in court, by an officially authorized person in accordance with the formal requirements of the applicable laws. Service is required, unless waived, for complaints, summonses, or subpoenas, to notify a person of a lawsuit or other legal action taken against him/her.

Service contract - directors and officers of a company are usually given service contracts that are different to a contract of service or employment contract. This is because directors and officers are not always employees and the effect of employment law is different.

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

Settlor - The person who sets up a trust. Also called the grantor or trustor.

Severance - The separation of offenses or defendants into different trials.

Shareholders' Agreement - an agreement between all of the shareholders about how the company should be run and the application of the rights of the shareholders. This acts as a contract between the shareholders. The company itself is not bound by it, as it is not a party to the agreement.

Short form order - an order prepared by the court

Show Cause Order - Court order requiring a person to appear and show why some action should not be taken.

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

Sine die - Without a date, as in an action being adjourned sine die. Legal process which commands a witness to appear and testify.

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

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

Special Damages - Damages that are the actual, but not necessary, consequence of a breach of contract or injury. In contract law, special damages must have been reasonably foreseeable and must flow directly and immediately from the breach, or they are not enforceable.

Specific Performance - A remedy by which a court orders a person who has breached an agreement to perform specifically what he or she has agreed to do. Specific performance is ordered when damages

alone would be inadequate compensation.

Special proceedings general term for remedies or proceedings which are not ordinary actions, e.g., condemnation

Special term - a court part set aside to hear specific types of cases

Special verdict - a special finding of the facts of a case by a jury leaving to the court the application of the law to the facts thus found

Speedy Trial - A rule of law wherein the defendant must be brought to trial within 180 days.

Spendthrift Trust - A trust set up for the benefit of someone whom the grantor believes would be incapable of managing his/her own financial affairs.

Stamp duty - a tax on transactions. Only applied to specific types of transactions e. g. dealings in land and buildings, shares and ships.

Standing - The legal right to bring a lawsuit. Only a person with some legally recognized interest at stake has standing to bring a lawsuit.

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

Statement - A writing made by a person and signed or otherwise adopted or approved by such person; any mechanical, electrical or other recording or a transcription thereof, which is a recital of an oral utterance; and stenographic or written statements or notes which are in substance recitals of an oral statement.

Statute - Law passed by a legislative body declaring rights and duties, or commanding or prohibiting certain conduct.

Statute of Frauds - Law which requires that certain documents be in writing, such as leases for more than one year. Under the UCC, contracts for the sale of goods for more than \$500 must be in writing to be enforced.

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

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

Statutory Law - The body of law enacted by the legislative branch of government, as distinguished from case law or common law.

Stay - A court order halting a judicial proceeding.

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

Stipulation of settlement - A formal agreement between litigants and/or their attorneys resolving their dispute
Strict Liability Statutes - Statutes criminalizing specific conduct without regard to the actor's

intent. The only question for a judge or jury in a strict-liability case is whether the defendant did the prohibited act.

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

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

Subject Matter Jurisdiction - Power of a court to hear the type of case that is before it. Example: a municipal court has subject matter jurisdiction for cases involving violation of that municipality's ordinances, but does not have subject matter jurisdiction over felonies.

Subject to contract - words used on documents exchanged by parties during contract negotiations. They denote that the document is not an offer or acceptance and negotiations are ongoing. Often the expression **without prejudice** is used when subject to contract is meant.

Subpoena - A process directing a witness to appear and give testimony at a certain time and in a certain place.

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

Subpoena (judicial) - an order issued by the court to a person to attend court and give testimony

Subsequent proceedings - Any proceeding or action taken with respect to a specific case after it has been filed with the court.

Suit - A legal action or proceeding.

Sum certain - Liquidated damages pursuant to contract, promissory note, law, etc.

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

Summons - A document signed by a deputy clerk ordering a person to appear before the court to respond to a complaint.

Supplementary proceedings further inquiry, under court jurisdiction, after entry of judgment, to determine means for enforcing the judgment against judgment debtor

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.

Supra - Latin for above.

Surety - One who signs a bond and guarantees to pay money if the defendant fails to appear in court as ordered.

Surety Bond - A bond purchased at the expense of the estate to insure the executor's proper performance.

Survivorship - Another name for joint tenancy, in which one owner becomes entitled to property because he or she has survived all other owners.

Suspended Sentence - Postponed execution of sentence; sentence is imposed, and execution of sentence is suspended, postponed, or stayed for a period and on conditions set by the judge.

Suspension (of driver's license) - The driver's license and privilege to drive are temporarily withdrawn, but only during the period of such suspension. No reapplication is necessary to obtain license.

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

Sworn Complaint Affidavit - A sworn, witnessed complaint filed with the Clerk of the Court.

T

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

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

Testamentary Capacity - The legal ability to make a will.

Testamentary Trust - A trust set up by a will. This trust becomes effective only upon the death of the testator.

Testator - Person who makes a will (female: testatrix)

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

Third Party - A person, business, organization or government agency not actively involved in a legal proceeding, agreement, or transaction, but affected by it.

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

Time served - Actual number of days already served in jail on a charge or offense before conviction.

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

Tort - An injury or wrong committed on the person or property of another. A tort is an infringement on the rights of an individual, but not founded in a contract. The most common tort action is a suit for personal and/or property damages sustained in an automobile accident.

Trademark - a registered name or logo that is protected by law. Trademarks must be granted through the Patent Office.

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

Transfer cases - the removal of a cause from the jurisdiction of one court or judge to another by lawful authority

Trial the formal examination of a legal controversy in court so as to determine the issue.

Trial by Jury - Trial by a body of persons selected from the citizens of a particular district and brought before the court where they are sworn to try one or more questions of fact and determine them by their verdict.

Trial de Novo - A retrial in district court that is conducted as if no trial had occurred in the lower court.

True Bill - A finding by a grand jury that there is sufficient evidence to warrant a criminal charge; allows trial to proceed. An indictment.

True Copy - An exact copy of a written instrument.

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

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.

Trustor - Grantor, settlor; one who establishes a trust.

U

Uberrima fides - utmost good faith. The concept that a party to certain types of contract must act in good faith and declare all relevant facts to the other side even if they do not ask. This only usually applies to insurance contracts where the insured person must declare all known risks. It is an exemption to the general contract rule of **caveat emptor**.

UCC - Uniform Commercial Code. The UCC applies to the sale of movable goods to or by a merchant.

Ultra vires - [Beyond the powers]. Term relates generally to the excess of legal powers or authority.

Underwriter - a person who signs as party to a contract. Now usually only applied to insurance contracts where the underwriters are those who agree to bear all or part of the risk in return for the premium

payments. Underwriters at Lloyd's of London are also known as names.

Undertaking - Deposit of a sum of money or filing of a bond in court.

Unenforceable Contract – A valid contract is unenforceable when some defense exists that is extraneous to the formation of the contract, such as when the contract violates the Statute of Frauds or the Statute of Limitations has passed.

Unfair terms - some terms are made unfair by legislation and will not be enforced by the courts and may even be interpreted against the person who included them in the contract. The legislation mainly protects consumers, but can also apply where there is a business-to-business contract in which one party is significantly more powerful than the other.

Unjust Enrichment - Occurs when a person has unfairly gained at the expense of another (such as by mistake), and principles of justice and equity require the person to return or pay for the property or benefits received.

Unlawful Detainer – An unjustifiable retention of real estate without the consent of the owner or other person entitled to its possession; may occur when a tenant refuses to leave premises after the right of occupancy has ended.

Unlawful Search - Examination or inspection of premises or persons without authority of the law and in violation of the immunity from unreasonable search and seizure under the Fourth Amendment to the U.S. Constitution and Article II.

Unsecured - In collection or bankruptcy proceedings, a debt or a claim is unsecured if there is no collateral, or to the extent the value of collateral is less than the amount of the debt.

Usury - Charging a higher interest rate or higher fees than the law allows.

V

Vacate - to set aside a previous action.

Venire - A writ summoning persons to court to act as jurors. Also refers to the people summoned for jury duty, as in the "jury venire" or "jury panel."

Venue – 1. Geographical place where some legal matter occurs or may be determined. 2. The geographical area within which a court has jurisdiction. It relates only to a place or territory within which either party may require a case to be tried. A defect in venue may be waived by the parties.

Verdict - The findings of a judge or jury at the end of the trial.

Verification - confirmation of the correctness, truth or authenticity of pleading, account or other paper by an affidavit or oath

Vested - Fixed; accrued; settled; absolute.

Void Contract – A contract that does not have any legal effect and cannot be enforced under any circumstances. For example, a contract to commit an illegal act is void.

Voidable Contract – A valid contract that a party may cancel upon request. For example, a contract made by a minor is voidable by the minor or his or her legal guardian.

Voir Dire - A form of questioning designed to establish the qualifications of prospective jurors to serve in a case.

W

Waive - To give up a known right voluntarily. Example: To give up the right to an attorney.

Waiver – In extradition proceedings, a form signed before a judge whereby a defendant voluntarily submits to pick-up by a foreign jurisdiction, waiving his/her rights as guaranteed under the Constitution.

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 affidavit seeking a warrant must establish probable cause by detailing the facts upon which the request is based.

Warrantless Search - Examination of a person or premises without first obtaining a warrant, which may be lawful under such limited circumstances as a domestic violence situation, emergency, hot pursuit, consent, or threat of immediate removal of contraband.

Warranty – A legal promise that certain facts are true.

Warranties - promises made in a contract, but which are less than a **condition**. Failure of a warranty results in liability to pay damages (see the financial terms below) but will not be a **breach of contract** unlike failure of a condition, which does breach the contract.

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

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

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

Witness - A person who testifies to what he/she has seen, heard, or otherwise experienced. Also, a person who observes the signing of a

will and is competent to testify that it is the will-maker's intended last will and testament.

Wound up - winding-up is the formal procedure for disbanding a company.

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

Writ of Attachment - A writ of the court ordering the sheriff to seize or hold a debtor's property and bring the property before the court.

Writ of Certiorari - An order by the appellate court used when the court has the discretion on whether or not to hear an appeal.

Writ of Mandamus - A writ to compel performance of one's responsibilities as set forth by law.

Writ of Prohibition - A writ used by a superior court to prevent an inferior court from exceeding its jurisdiction.

Writ of Superintending Control - A writ issued to prevent a gross miscarriage of justice by correcting the erroneous ruling of a lower court that is acting within its jurisdiction but is making mistakes of law or is acting in willful disregard of the law. The writ is issued when there is no appeal or when an appeal cannot provide adequate relief.