GLOSSARY

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A

abstract of judgment---A sentencing summary in criminal cases sent to the Department of Correction.

abstract of record — A complete history in short. An abbreviated form of the case as found in the record.

abstract of title — An abbreviated chronological history of the ownership of a parcel of land.

abuse of process — The improper use by any party of legal proceedings for the sole purpose of forcing another party to yield to its demands.

accessory — A person who assists another in the commission of a crime, either before or after the fact.

action in personam — An action against the person, founded on a personal liability.

action in rem — An action for the recovery of a specific object, usually an item of personal property such as an automobile.

adjudication — Giving or pronouncing a judgment or decree. Also, the judgment given.

administrator (f. administratrix) — In probate law, a person appointed by the court to settle the estate of a dead person. Administrators are appointed when there is no will, or when there is a will but the executor has died, resigned or been removed from office. Duties of an administrator are similar to those of an executor.

adversary system — The system of trial practice in which each of the opposing (or adversary) parties has full opportunity to present and establish opposing contentions before the court.

adverse possession — A statutory method of acquiring title to land by possessing the land for a certain period of time and under certain conditions.

affirmative defense — In criminal law, a defense in which the facts are peculiarly within the defendant's own knowledge and which the defendant is required to establish by a preponderance of the evidence, *e.g.* the insanity defense. Occasionally the phrase is used to refer to defenses which the state must negate beyond a reasonable doubt when some evidence of probative value supporting the defense has been introduced by either party, *e.g.* self-defense, entrapment.

In civil cases, a defense that must be pleaded in the defendant's answer and the defendant must establish the defense by a preponderance of the evidence, *e.g.* discharge in bankruptcy, estoppel, fraud.

agent — One who acts for another. Similar to a servant under the rule of respondeat superior, in which a principal may be held liable for the wrongful acts or omissions of agents or servants.

aggravating circumstance---A circumstance which constitutes a justification or excuse for increasing the punishment for a criminal offense.

allegations — The declaration made in a pleading which presents what the party expects to prove.

allocution — The court's inquiry of a convicted person asking whether he has any legal reason why sentence should not be pronounced and whether he has anything he wishes to say to the court before sentence is pronounced.

amicus curiae *(a-mikus ku'-ri-e)* — "A friend of the court." One who interposes with the permission of the court to volunteer information on some legal matter.

ancillary bill or suit — A bill or suit growing out of an auxiliary to another action or suit.

answer — A pleading by which the defendant resists the plaintiff's allegations of fact.

appeal — A procedure in which a party seeks to reverse or modify, by a higher court, a judgment or final order of a lower court or administrative agency. Appeals generally must be made on the grounds that the lower court misinterpreted or misapplied the law, rather than on the grounds that it made an incorrect finding of fact.

appearance — The formal proceeding by which a party submits to the jurisdiction of the court.

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

appellate court — A court having jurisdiction of appeal and review, not a "trial court."

appellee — The party against whom an appeal is taken.

arraignment — In criminal cases, a proceeding in which the accused is brought into open court, informed of the charge against him and called upon to enter his plea to the charge.

assault — An intentional and unlawful offer to inflict bodily injury on another by force, or force unlawfully directed toward another person, under circumstances which created a well-founded fear of injury. There must be an ability present to execute the act if not prevented. "In criminal law, the conduct is properly denominated an attempted battery."

assumption of risk — In tort law, a defense in a personal injury suit. The defense asserts that the plaintiff assumed the risk of whatever dangerous condition caused his injury.

at issue — A case is said to be "at issue" when the pleadings have been completed and the case is ready for trial before either a judge or a jury.

attachment — The act of taking, apprehending or seizing persons or property by a writ, summons or order to bring the person or property into legal custody. Used to bring a person to court, acquire jurisdiction over seized property, compel appearances, furnish securities for a debt or costs and to seize a fund in the hands of a third person.

attorney of record — An attorney whose name appears in the permanent records or files of a case.

B

bail — The amount of security required to effect the release of a person arrested or imprisoned, for appearance at a specified time and place.

bail bond — A signed obligation with sureties to assure presence in court.

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

battery — Touching another person in a rude, insolent an angry manner.

bench warrant — A warrant issued from the court for the arrest of a person in either civil or criminal proceedings.

best evidence rule — A rule of evidence requiring the original of a written document to be produced unless, through the exercise of due diligence, the original is unavailable.

bind over — To hold for trial or for further inquiry. Usually refers to the action of a municipal court, county court or police court, in which the accused is held for trial in a criminal case following a preliminary hearing.
body attachment---a civil arrest warrant.
brief — A written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of a case.
burden of proof — The necessity or duty to prove a fact or facts in dispute.
burglary — Breaking into and entering a building with the intent to commit a felony.

C

caption — The heading on a pleading which shows the name of the court, the name of the parties and the number of the case, as well as other pertinent information.
cause — A suit, litigation or action which is civil or criminal.
certiorari *(s'er'shi-o-ra'ri)* — An original writ commanding judges or officers of inferior courts to certify or return records of proceedings for judicial review.
challenge to the array — Questioning the qualifications of an entire jury panel, usually on the grounds of partiality or some fault in the summoning process.
chambers — The private room or office of a judge.
change of venue — The removal of a suit begun in one county to another, or from one court to another in the same county
charge — The judge's instructions to the jury on its duties, on the law involved in the case and on how the law in the case must be applied. The charge is always given just before the jury retires to consider its verdict. Also, meaning an accusation in a criminal case.
chattel — An item of tangible personal property, such as a car, television set or coat.
circumstantial evidence — All evidence of an indirect nature. Evidence which the court or jury may determine from known circumstances, or which is established by inference.
civil action — A lawsuit based on a private wrong, as distinguished from a crime, or the enforcement of rights through remedies of a private or non-penal nature.
clerk of courts — The elected official who acts as principal clerk of courts.
code — A collection, compendium or revision of laws systematically arranged and promulgated by legislative authority.
codicil — A supplement or addition to a will.
commit — To place custody of a person in the department of corrections, department of mental health or the county jail
common law — Law derived from usages or customs of immemorial antiquity, or from the judgments or decrees of courts. Also called "case law."
commutation — The change of a punishment from a greater degree to a lesser degree, as from death to life-imprisonment.
competency — The presence of those characteristics which render a witness legally fit and qualified to give testimony. In criminal cases, the mental ability of the defendant to understand the nature of the proceedings and assist his attorney in the preparation of a defense.
complainant — Synonymous with "plaintiff."
complaint — The first or initial pleading on the part of the plaintiff.
concurrent sentences — Sentences for more than one crime in which the time of each is served jointly rather than separately.
condemnation — The legal process by which real estate is appropriated for public use without the owner's consent, but after the payment of just compensation.
consecutive sentences — Sentences imposed for more than one offense, one sentence to begin at the expiration of the other.

consent decree — A court order to which the defendant has acquiesced.
contempt of court — Any act calculated to embarrass, hinder or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Direct contempts are those committed in the immediate presence of the court. Indirect contempt is the failure or refusal to obey lawful orders.
continuance — A postponement granted by the court. A continuance may be granted only for a good cause, such as illness of counsel or a party, or the unavailability of a witness.
contract — An enforceable oral or written agreement between two or more parties.
conversion — The improper use of another's personal property for one's personal use.
corpus delicti — Literally, the body or material substance upon which a crime has been committed. For example, the corpse of a murdered person or the charred remains of a burned house. Commonly used to refer to a rule of evidence requiring the state to introduce some evidence, independent of a defendant's statements, to establish the elements of the crime charged were committed by someone.
corroborating evidence — Supplementary evidence tending to strengthen or confirm previous evidence.
costs — An allowance for expenses in prosecuting or defending a suit, usually not including attorney's fees.
counterclaim — A claim presented by the defendant in opposition to the claim of the plaintiff.
court of record — Courts whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt. Courts not of record are those of lesser authority whose proceedings are not recorded.
court reporter — A person appointed by the court to report, maintain and transcribe testimony of court proceedings.
criminal insanity — The lack of mental capacity to do, or abstain from doing, a particular act. The inability to distinguish right from wrong.
cross-examination — The questioning of a witness in a trial or in the taking of a deposition by the party opposed to the one who produced the witness.

D

damages — Compensation which may be recovered in the courts by any person who has suffered loss, detriment, or injury to person, property or rights through the unlawful act or negligence of another.
damunum absque injuria *(dam'num abs'kwe in-joo'ri-a)* — Literally, "a wrong without injury." The doctrine that a person has no cause of action, and that the courts will not hear a case in which the wrongful acts of potential defendants caused no harm to person or property rights.
declaratory judgment — A judgment which states the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.
decree — A decision or order of the court. A final decree is one which fully and finally disposes of the litigation. An interlocutory decree is a provisional or preliminary decree which is not final.
defamation — The use of false, derogatory statements about another. Verbal statements constitute "slander." Written statement constitute "libel."
default — When a defendant fails to plead within the time allowed or fails to appear at the trial.
defendant — The party against whom a civil or criminal action is brought.
de minimus no curat lex — Literally, "the law does not cure trifles." The doctrine that a minimal or trifling injury does not justify the time and trouble of a lawsuit, and the courts may properly refuse to hear such a case.
de novo — A new, fresh. A "trial de novo" is the retrial of a case.

deposition — The testimony of witness not taken in open court, but in pursuance of a rule of court.
devise — A gift of real property made in a will.
direct evidence — Proof of facts by witnesses who saw acts done or heard words spoken. Distinguishable from circumstantial evidence, which is indirect.
direct examination — The first interrogation of a witness by the party on whose behalf the witness is called.
directed verdict — An instruction by the judge to the jury to return a specific verdict.
discovery — A proceeding in which one party may be informed of facts known by other parties or witnesses.
dismissal without prejudice — A dismissal which permits the plaintiff to sue again on the same cause of action. Dismissal "with prejudice" bars the right to bring an action on the same claim or cause.
dissent — The disagreement of one or more judges of a court with the decision of the majority.
docket — To enter, or a brief entry made, into the formal record of a proceeding. Also, the book containing the entries in brief and all the important acts done in court in the course of each case.
domicile — That place were a person has true and permanent home. A person may have several residences, but only one domicile.
double jeopardy — A common law and constitutional prohibition against more than one prosecution for the same crime.
due process — Law in its regular course through the courts. The guarantee of due process assures every person a fair trial in both civil and criminal actions, after notice is given and the person has an opportunity to be heard.

E

easement — The use the land by another for a special purpose. For example, a privilege, service or convenience which one neighbor has of another, such as a way over the neighbor's land, a gateway or a watercourse.
emancipation — The time when a child becomes legally free from parental control, which occurs automatically upon reaching the age of majority (18 for most purposes). It may occur earlier when the child is married or abandoned by parents and begins self-support.
embezzlement — The fraudulent appropriation for personal use or benefit of property or money entrusted by another.
eminent domain — The power to take private property for public use by condemnation.
en banc — Depending on the particular court, this phrase indicates a hearing or argument before all the judges of the court sitting together, or a panel of judges, as opposed to a hearing or argument before a single judge.
enjoin — To require a person, by injunction, to perform or abstain from some act.
entrapment — The act of officers or government agents, for the purpose of instituting a criminal prosecution, to induce a person to commit a crime not contemplated.
equitable action — An action brought to restrain threatened wrongs or injuries. The prevention of threatened illegal action with remedies not available in common law.
equity — The spirit and habit of doing to others as we desire them to do to us. The synonym for natural justice which is ethical rather than jural and whose precepts are those of the conscience not of positive law.
equity courts — Courts which administer a legal remedy according to a system of equity, as opposed to courts of common law.
escheat *(es-chet)* — The right of the state to an estate to which no one is able to make a valid claim.

escrow — An arrangement whereby a deed or other writing, money or securities are placed in the hands of a third person to be held until the occurrence of a specified contingency, performance of a specified condition or receipt of a specified notice authorizing release.
estate — A collective term meaning all property owned by a person, both real and personal of any kind, as well as property rights and rights in an action.
estoppel — A person's own act or acceptance of acts, which precludes later claims to the contrary.
et al — An abbreviation of et alii, meaning "and others."
et seq — An abbreviation for et sequentes, or et sequentia, meaning "and the following."
et ux — An abbreviation for et uxor, literally "and wife." Used when a grantor's or grantee's wife joins in a transaction.
evidence — Anything tending to prove fact or disprove alleged fact. Some of the more valuable classes of evidence are: (1) testimony; (2) tangible evidence, or things which have a physical existence; (3) documentary evidence, which includes a wide range of letters, memoranda or other writings; (4) demonstrative evidence, in which a procedure, cause, effect, or event is shown or acted out. See also, circumstantial evidence, direct evidence, rules of evidence and parol evidence and parol evidence rule.
exclusionary rule — A rule prohibiting the use in criminal prosecutions of illegally obtained evidence. An example is the suppression of a defendant's confession if the defendant was not brought before a judge promptly after his arrest.
ex contractu — Rights and causes of acting arising from a contract.
ex delicto — Rights and causes of action arising from a tort.
executor (f. executrix) — A person named by the decedent in a will to carry out the will's provisions.
exhibit — A paper, document or other article produced as evidence in and exhibited to a court during a trial or hearing.
ex parte — By or for one party. Done on behalf of, or on the application of, one party.
expert evidence — Testimony given on some scientific, technical or professional matter by person qualified to speak authoritatively because of special training, skills or familiarity with the subject.
ex post facto — Literally, "after the fact." An act or fact occurring after some previous act or fact, and relating to it.
extenuating circumstances — Circumstances which render a crime less aggravated, heinous or reprehensible than it would otherwise be.
extradition — The surrender by one state to another of an individual accused or convicted of an offense outside its own territory, and within the other's territorial jurisdiction.

F

fair comment — In libel law, a statement made by a writer in the honest belief of its truth, even though the statement is not true in fact.
fair preponderance — Evidence sufficient enough to establish a case.
false arrest — Any unlawful physical restraint of another's liberty.
false pretenses — Designed misrepresentation of existing fact whereby a person obtains another's money or goods.
fee simple — Absolute ownership of real property.
felony — A crime of a graver nature than a misdemeanor. Generally, an offense punishable by death or imprisonment for more than one year.
fiduciary *(fi-du-she-a-re)* — Derived from roman law, a person standing in special trust, confidence or responsibility in obligations to others; for example, a company director.
forcible entry and detainer — A summary proceeding for restoring possession of land to one wrongfully deprived of possession.

foreclosure — A legal proceeding to enforce payment of a debt through the sale of property on which the creditor holds the lien.
forgery — Falsifying or altering, with the intent to defraud, any writing that might be a foundation for legal liability.
fraud — An intentional perversion of truth. A deceitful practice or device intended to deprive another of property or other rights, or to inflict injury in some manner.

G

garnishee — The person on whom a garnishment is served, usually a debtor of the defendant.
garnishment — A statutory proceeding where property, money or credits in possession or under the control of another are applied to the debts of the debtor.
general assignment — The voluntary transfer, by a debtor, of all property to a trustee for the benefit of all creditors.
gratuitous guest — A person riding at the invitation of the owner of a vehicle or an authorized agent, without payment of a consideration of a fare.
guardian ad litem — A person appointed by the court to represent the interests or potential interests of a minor, an incompetent or an unborn baby, whose interests may be affected by the court's decree.

H

Habeas corpus — Literally,"you have the body." A variety of writs intended to bring a person before a court or a judge. Generally directed to an official detaining someone, commanding the official to produce the detainee so the court may determine if that person has been denied liberty without due process of law.
harmless error — An error committed by a lower court during a trial, which is not prejudicial to the rights of a party and for which the court will not reverse the judgment.
hearsay — Evidence not from the witness's personal knowledge.
holographic will — A will written in the testator's own handwriting, as opposed to the invalid nuncupative will which is declared orally by the testator before a sufficient number of witnesses and afterwards reduced to writing.
hostile witness — A witness subject to cross-examination by the party calling him to testify, because of evident antagonism exhibited during direct examination.
hung jury — A jury which cannot agree on a final verdict.
hypothetical question — A combination of assumed of proved facts and circumstances on which an expert can be asked to base an opinion.

I

impanel — To complete a jury. When the voir dire is finished and both sides have used their challenges, the jury is complete or "impaneled." The jurors are then sworn in, or given an oath to perform their duty, and the trial can proceed with the introduction of evidence.
impeachment of witness — An attack on the credibility of a witness by the testimony of other witnesses.
implied contract — A contract in which the promise made by the obligor is not expressed, but inferred by conduct or implied by law.
imputed negligence — Negligence which is not directly attributable to a person , but to another who has a joint legal interest and with whose fault he is chargeable.
inadmissable — That which, under the established rules of evidence, cannot be admitted.
in camera — In chambers. In private.

incompetent evidence — Evidence which is not admissible because, even if accepted, it would not tend to prove the allegation involved.
indeterminate sentence — An indefinite sentence of "not less than" and "not more than" so many years. The exact term to be served is later determined by parole authorities within the maximum and minimum limits set by the court or statute.
indictment — An accusation in writing presented by a grand jury charging a person with an act or omission which is a crime.
inferior court — Any subordinate court to the chief appellate court.
information — An accusation for a criminal offense which differs from an indictment only in being presented by a prosecuting attorney instead of a grand jury.
injunction — A mandatory prohibitive writ issued by a court.
innocent — Free from guilt and acting in good faith without knowledge of incriminating circumstances.
instruction — A direction given by the judge to the jury concerning the law of the case.
inter alia — Among other things or matters.
inter alios — Among other persons, between others.
interlocutory — Provisional or temporary orders and decrees of the court.
interrogatories — Formal written questions used in the judicial examination of a party, who must provide written answers under oath.
intervention — A proceeding which allows a third person to become a party to a lawsuit.
inter vivos — Literally, "from one living person to another." When property passes from one living person to another, as opposed to a case of succession or devise.
intestate — Dying without leaving a will.
irrelevant — Evidence not relating to or applicable to the matter at issue. Also, not supporting the issue.

J

jurisprudence — The philosophy of law, or the science which deals with the principles of positive law and legal relations.
jury — A certain number of persons selected according to law, and sworn to inquire about certain matters of fact to declare the truth from evidence presented.
  grand jury — A jury whose duty it is to receive complaints and accusations in criminal cases, hear the evidence and issue indictments in cases where it feels a trial ought to take place.
  petit jury — The jury of twelve (or fewer) persons for the trial of a civil or criminal case.
jury commissioner — The officer who selects names for the jury wheel, or who draws the panel of jurors for a particular term of court.

L

last clear chance — A rebuttal to the defense of contributory negligence, which states that although the plaintiff's own negligence may have been self-endangering, the defendant has the last clear chance to avoid injuring the plaintiff.
leading question — A question which instructs a witness how to answer, puts words into the witness's mouth to be echoed back or one which suggests to the witness the answer desired. Prohibited on direct examination.
letters rogatory — A request by one court of another court in an independent jurisdiction that a witness be examined with written questions (interrogatories) sent with the request.
levy — The legal process whereby property may be seized and sold to satisfy a judgment or debt.
liable — Responsible, answerable.

libel — A method of defamation expressed in print, writing, pictures or signs, and in its most general sense any publication that is injurious to an individual's reputation.
lien *(leen)* — Any of a variety of charges or encumbrances on property, imposed to secure the payment of a debt or the performance or nonperformance of some act. Liens are enforced by some kind of foreclosure proceeding, and can be imposed on real or personal property.
limitation — A certain time allowed by statute in which litigation must be brought.
lis pendens — Notice of a pending suit to third parties concerning specific property.
litigant — One who is engaged in a lawsuit.
locus delicti — The place of the offense.

M

malfeasance — Evil doing, ill conduct or the commission of some act which is positively prohibited by law.
malicious prosecution — An action instituted with the intention of injuring the defendant and without probable cause, and which terminates in favor of the defendant.
malpractice — A kind of lawsuit brought against a professional person, such as a doctor, lawyer or engineer, for injury or loss caused by the professional's failure to abide by accepted standards of practice.
mandamus — A writ issued from a court of superior jurisdiction to an inferior court which commands the performance of a particular act.
mandate — A judicial command or precept from a court or judicial officer directing another officer to enforce a judgment, sentence or decree.
mandatory instruction — An instruction which attempts to set out certain facts upon which the jury is directed to reach a certain result.
manslaughter — The unlawful killing of another. Manslaughter may be either voluntary, upon sudden impulse, or involuntary, in the commission of some unlawful act.
master — An officer of the court, usually an attorney, appointed for the purpose of taking testimony and making a report to the court, most frequently in divorce cases.
material evidence — Evidence that is relevant to the substantial issues in dispute.
mens rea *(menz re a)* — Literally, "guilty mind." One of the two basic requirements for a crime.
misdemeanor — An offense less serious than a felony and generally punishable by fine or imprisonment for less than one year.
misfeasance — A misdeed or trespass. The improper performance of a lawful act.
mistrial — A trial terminated by the court because of some error or prejudice developing during the trial.
mitigating circumstance — A circumstance which does not constitute a justification or excuse for an offense, but which may reduce the punishment.
moot — Unsettled, undecided. A moot point is one not settled by judicial decisions.
moral turpitude — Conduct contrary to honesty, modesty or good morals.
motion in limine --A motion made before or during trial to prohibit introduction of specific evidence or reference to specific actions.
multiplicity of actions — Numerous attempts to litigate the same issue.
municipal courts — Courts whose territorial authority is confined to the city or community.
murder — The unlawful killing of a human being by another with malice aforethought, either expressed or implied.

N

negligence — The omission of an act which a person guided by ordinary considerations would do. Also, doing something which a reasonable and prudent person would not do.

next friend — One acting for the benefit of an infant or another without being regularly appointed as a guardian.
no-fault divorce — A divorce based on irretrievable breakdown of a marriage and involving mutual consent of the parties or a three-year separation.
nolle prosequi *(nol'e pros'e-kwe)* — A formal entry into the record by the plaintiff in a civil suit, or the prosecuting officer in a criminal case, in which it is declared that he "will no further prosecute" the case.
nolo contendere — Literally, "I will not contest it." A pleading which denies the guilt but admits the facts on which the charge is based.
nominal party — One who joins as a party or defendant merely because pleading technicalities require his presence in court.
non compos mentis — Literally, "not of sound mind." Insane.
non obstante veredicto — Literally, "notwithstanding the verdict." A judgment entered for one party by the court despite a jury verdict against that party. (n.o.v.).
notice to produce — A written notice requiring the opposite party to produce a certain paper or document at the trial.

O

objection — The exception to some statement or procedure in a trial, which calls the court's attention to improper evidence or procedure.
of counsel — Applying to counsel assisting in the preparation or management of a case, or its presentation on appeal, as opposed to the principal attorney of record.
opinion evidence — Evidence of what the witness thinks, believes or infers regarding disputed fact as opposed to personal knowledge of the facts. Opinion evidence is not admissible except (under certain limitations) in the case of experts.
ordinance — A written law enacted by the legislative body of a city, town, or county.
out of court — One who has no legal status in court is said to be "out of court." For example, when a plaintiff, by some act or omission, is unable to maintain the action, that plaintiff has put himself out of court.

P

panel — A list of jurors to serve in a particular court, or for the trial of a particular action. The term denotes either the whole body or persons summoned as jurors for a particular term of court of those selected by the clerk by lot.
pardon — Action by an executive relieving a criminal of the sentence.
parole — A procedure in which a convict is released on good behavior before the expiration of the maximum sentence.
parol evidence — Oral or verbal evidence. The ordinary evidence given by witnesses in court.
parol evidence rule — When parties put an agreement in writing, all previous oral agreements merge with the writing, and subsequent oral evidence cannot modify the contract, in the absence of a mistake or fraud in the preparation of the writing.
parties — Persons actively participating in the prosecution or defense of a legal matter.
patent — A right, and the document evidencing the right, to the exclusive control for a term of years to a unique discovery, invention or process. Patents are regulated and issued by the federal government. Also, obvious, plain or evident.
peremptory challenge — A challenge used to reject a certain number of prospective jurors without stating any cause.
personal recognizance — Bail consisting of a written promise to appear in court when required. Generally, when there is no good reason to suppose the accused in a criminal case will not appear when required, he will be released on his own recognizance.

plaintiff — A person who institutes an action. The party who complains or sues in a personal action.

plaintiff in error — The party obtaining a writ of error to have judgment reviewed by an appellate court.

plea — In criminal cases, the formal response to a criminal charge. In the federal system the three formal responses are: (1) "guilty"; (2) "not guilty" — a complete denial; and (3) "no contest" (nolo contendere) — admission of the facts upon which the charge is based (generally used when the defendant is concerned that a guilty plea might be used against him in subsequent civil litigation).

In the state system the three formal responses are: (1) "guilty"; (2) "not guilty"; or (3) "guilty but mentally ill".

plea bargaining — Pre-trial negotiations between the defense and the prosecution to obtain more lenient treatment for the accused. The accused will normally be permitted to plead guilty to a lesser charge or plead guilty to a principal offense and have other charges dismissed. The underlying basis for a negotiated plea must be stated in the court's records.

pleading — The process used by parties to present written contentions alternately, responsive to preceding points and narrowing the field of controversy, until a single disputed point evolves. This point is called "the issue" on which they then go to trial.

polling the jury — Asking the jurors individually whether they assented, and still assent, to the verdict.

post conviction petition — A petition by the defendant filed in the court where a conviction was had collaterally attacking the sentence or judgment after direct appeal has failed or after the time for perfecting an appeal has passed.

power of attorney — An instrument authorizing another to act as one's agent or attorney.

praecipe *(pra-si-pe)* — An original writ commanding the defendant to do the act required. Also, an order addressed to the clerk of the court, requesting the issuance of a particular writ.

prejudicial error — Synonymous with "reversible error." An error which requires the appellate court to reverse the judgment before it.

preliminary hearing — Synonymous with "preliminary examination." The hearing given a person charged with a crime by a magistrate or judge to determine whether that person should be held for trial.

preponderance of evidence — Greater weight of evidence. Evidence more credible and convincing but not necessarily the greater number of witnesses.

presentment — A written statement to a court by a grand jury indicating an offense has taken place. The statement arises from the grand jury's own knowledge or observation, without having a bill of indictment brought before it.

presumption of fact — An inference about the truth or falsity of a fact, reasoned in the absence of an actual certainty of its truth or falsity, or until such a certainty is ascertained

presumption of law — A rule that courts and judges shall draw a particular inference from a particular fact or from particular evidence.

prima facie — Literally "on its face." Evidence is said to be prima facie when, standing alone, it amounts to the degree of proof needed to make a particular finding. In a criminal case, the state's case is said to be prima facie if the evidence introduced is sufficient enough to convict.

priority of liens — The precedence in which liens on property are honored and paid. The general rule is "first in time, first in priority," although certain liens such as those for unpaid taxes, may have priority regardless of when they attached to the property.

probate — The process of proving a will.

probation — Allowing a person convicted for some minor offense (particularly juvenile offenders) to go at large under a suspension of sentence during good behavior and generally under the supervision or guardianship of a probation officer.

pro bono publico — For the public good or for the welfare of the whole, usually referring to voluntary service rendered by attorneys.
promissory note — A written promise to pay specific sum of money to a named person.
property bond — A kind of security, usually real estate in the jurisdiction of the case, to guarantee one's appearance in court.
prosecutor — The instigator of prosecution against an arrested person of accusation against a suspect. Also, one who takes charge of a case as a trial lawyer for the people.
prospective juror---Citizen summoned by the court for jury selection.
proximate cause — One of the four requirements for a tort. In order to establish a right to recover in a civil action based on a tort, the plaintiff must show that an act or omission of the defendant was a proximate cause of the plaintiff's injury or loss.

Q

quash — To vacate an appeal, summons or subpoena.
quasi judicial — The nature of the authority or discretion of an officer when that officer's acts become judicial.
quid pro quo — Literally, "what for what." A fair return or consideration.
quo warranto — A judicial writ requiring an individual to show by what right he undertakes to exercise the authority of a particular office or position.

R

reasonable doubt — The state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge. A defendant is entitled to acquittal if, in the minds of the jury, the defendant's guilt has not been proved beyond a "reasonable doubt."
rebuttal — The showing that statements of witnesses as to what occurred are not true. Also, the stage of a trial at which such evidence may be introduced.
redact---Removal of prejudicial or inadmissible information from a written document.
redirect examination — Follows cross-examination by the party who first examined the witness.
referee — An officer to whom a pending cause is referred to take testimony and report back to the court. The referee exercised judicial powers as an arm of the court for that specific purpose.
removal, order of — An order by a court directing the transfer of a case to another court.
reply — The argument of the plaintiff in response to that of the defendant. A pleading in response to an answer.
res ipsa loquitur *(rez ip'sa lok'wi-ter)* — Literally, "a thing that speaks for itself." The doctrine which holds a defendant guilty of negligence without an actual showing of negligence. Its use is limited to cases in which the cause of the plaintiff's injury was entirely under the control of the defendant, and the injury presumably could have been caused only by negligence.
res judicata — A rule of civil law that once a final judgment has been rendered by a court, the matter cannot be relitigated by the parties. A court will use *res judicata* to deny reconsideration of the matter.
respondeat superior — Literally, "a superior (or master) must answer." The doctrine which holds that an employer or principal is responsible for the acts and omissions of employees or agents, when those acts are within the scope of their duties as employees or agents.
rest — A party is said to "rest" when all the evidence he intended to offer has been presented.

retainer — The act of the client to employ counsel. Also denotes the fee which the client pays the attorney.
robbery — The taking or stealing of property from another with force or the threat of force.
rule nisi, or rule to show cause *(ni'si)* — A decision or order of a court which will become final unless the party against whom it is directed files an exception or an appeal or otherwise complies with the order.
rule of court — An order concerning court procedures. General rules of court govern the court's practice.

S

search and seizure, unreasonable — Generally, an examination made of premises or person without legal authority, to discover stolen contraband, illicit property or some evidence of guilt.
search warrant — A written order issued by a justice or magistrate in the name of the state, directing an officer to search a specified house or other premises for stolen property. Usually required preceding a legal search and seizure.
self-defense — The protection of one's person or property against some injury attempted by another. When acting in justifiable self-defense in the belief of immediate danger, a person may not be punished criminally nor held responsible for civil damages.
sentence — The judgment in a criminal action, following a verdict or a plea of guilty.
separate maintenance — An allowance granted to a wife for support of herself and her children while she is living apart from her husband but not divorced from him.
separation of witnesses — A court order requiring all witnesses to remain outside the courtroom until each is called to testify.
servant — An employee or one who acts for another.
service of process — Official notification that a person has been named a party to a lawsuit or has been accused of some offense. Process consists of summons, citation or warrant to which a copy of the complaint or other pleading may be attached.
sheriff — A county officer chosen by popular election whose principal duties are to aid criminal and civil courts. The sheriff is the chief preserver of the peace, who serves processes, summons juries, executes judgments and holds judicial sales.
sine qua non *(si'ne kwa non)* — An indispensable requisite.
slander — Base and defamatory spoken words about another's reputation, business or means of livelihood.
sovereign immunity — The doctrine that a government or governmental agency cannot be sued without the consent of legislation.
specific performance — A mandatory order in equity. Where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what has been agreed upon.
stare decises *(sta're de-si sis)* — The doctrine that once a court has laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.
state's evidence — Testimony given by an accomplice or joint participant in a crime, tending to incriminate others, and given under an actual or implied promise of immunity.
statute — The law enacted by the legislature.
statute of limitations — The time limit within which an action must be brought after its cause arises, depending on the kind of action involved. The unexcused failure to bring an action within that time bars it forever.
stay — A court order which stops or arrests a judicial proceeding.
stipulated exhibit---Any exhibit admitted into evidence by agreement of all parties.

stipulation — An agreement by opposing attorneys with respect to any matter involved in the proceedings. Stipulations must be either in writing filed with an approval by the court or read into the record during the proceedings.

subpoena — A process causing a witness to appear to give testimony before a court or magistrate.

subpoena duces tecum *(su-pe'na du sez te'kum)* — A process which commands a witness to produce certain documents or records in a court proceeding.

substantive law — Law dealing with rights, duties and liabilities as distinguished from laws which regulate procedures.

summary judgment - A judgment awarded without a trial based upon the law, where there is no genuine disagreement between the parties concerning the facts in the case.

summons — A writ directing a sheriff or other officer to notify the named person that an action has been instituted against him in court and that he is required to appear in court on a specific day to answer the complaint.

supersedeas *(su-per-sa-de-as)* — Literally, "stay of proceedings." A writ containing a command to stay legal proceedings, such as the enforcement of a judgment because of a pending appeal.

suppression hearing — A hearing caused by a defense motion to prohibit the use of evidence alleged to have been obtained in violation of the defendant's rights. This hearing is held outside of the presence of the jury, either prior to or at trial, and the state has the burden of going forward with the evidence and establishing that the defendant's rights were not violated in the process of obtaining the evidence. Suppression hearings are held only in criminal cases.

T

testate — A word used to describe a decedent who has left a valid will.

testator (f. testatrix) — The person who makes a will.

testimony — Evidence given by a competent witness under oath. Distinguished from evidence derived from writing or other sources.

theft — The unauthorized taking of personal property belonging to another.

tort — An injury or wrong committed, either with or without force, against the person or property of another.

transcript — The official record of a trial or hearing.

transitory — Action that might have taken place anywhere. "Local" actions can occur only in some particular place.

traverse — In pleading, traverse signifies a denial. When a defendant denies any material allegation of fact in the plaintiff's declaration, the defendant is said to traverse it.

trespass — A form of action seeking redress in money damages for any unlawful injury to person, property or rights

trial de novo — A new trial or retrial in an appellate court in which the whole case is approached as if no trial had taken place in a lower court.

true bill — In criminal practice, the endorsement made by a grand jury of a bill of indictment when it finds the bill sufficient evidence to warrant a criminal charge.

trust — A transaction in which the owner of real or personal property gives ownership to a trustee, to hold and to mange for the benefit of a third party, called the "beneficiary." Also, the document setting up a trust.

U

undue influence — Whatever destroys free will and causes a person to do something he would not do if left to his own devices.
unlawful detainer — A detention of real estate without the consent of the owner or other person entitled to its possession.
usury — The act or practice of lending money at an exorbitant or illegal rate of interest.

V

venire *(ve-ni're)* — A writ summoning jurors to court. Popularly used to mean the body of names thus summoned.
venire facias do novo *(fa'she-as de no vo)* — A fresh or new venire which the court grants when there has been some impropriety or irregularity in returning the jury, or when the verdict is so imperfect or ambiguous that no judgment can be rendered.
venireman — Members of a panel of jurors.
venue — The particular county, city or geographical area in which a court with jurisdiction may hear and determine a case.
verdict — The formal and unanimous decision or finding made by a jury, reported to the court and accepted to it.
voir dire *(vwor der)* — Literally, "to speak the truth." The preliminary examination which the court or counsel makes of a potential juror or witness as to the prospective juror's or witness's qualifications.

W

waiver of immunity — The means by which a witness, in advance of giving testimony or producing evidence, renounces the fundamental right guaranteed by the Constitution that no person shall be compelled to be a witness against himself.
warrant of arrest — A writ issued by a magistrate, judge or other competent authority requiring a person's arrest to be brought before the magistrate or court to answer to a specified charge.
weight of evidence — The balance or preponderance of evidence. The inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.
willful — A "willful" act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently.
with prejudice — Dismissal "with prejudice" bars the right to bring or maintain an action on the same claim or cause.
without prejudice — A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.
witness — One who testifies to what has been seen, heard or otherwise observed.
writ — An order issued from a court requiring the performance of a specified act, or giving authority and commission to that act.