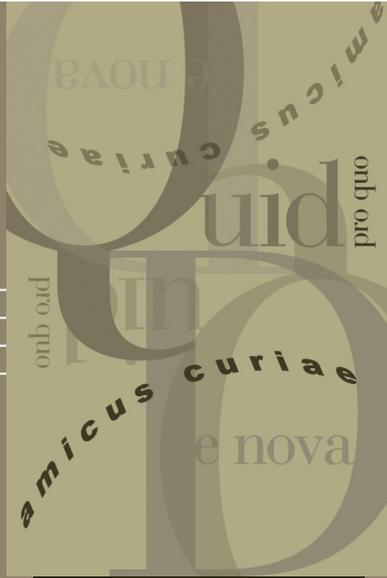


STATE BAR OF MICHIGAN



YOUR GUIDE TO  
Legal Terms

# YOUR GUIDE TO LEGAL TERMS

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**A**

**abstract of record:**An abbreviated but complete history of a case.

**abstract of title:** An abbreviated chronological history of the ownership of a plot of land.

**action:** Lawsuit; the legal demand for one's right asserted in a court.

**action in personam:** A lawsuit against a person based on personal liability.

**action in rem:** A lawsuit to determine title to property.

**adjective law:** The body of rules of procedure or practice; the part of law that sets forth methods of enforcing rights, as distinguished from substantive law, which creates those rights.

**adversary system:** The trial methods used in the U.S. and some other countries, 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, under established rules of procedure before an impartial judge and/or jury.

**allegation:** The position of a party to a lawsuit, stated in the pleading.

**amicus curiae:** A "friend of the court;" one not involved as a party who intervenes in a lawsuit to volunteer information about a point of law to assist the court in deciding a matter before it.

**ancillary:** bill or suit— A lawsuit growing out of and supplementary to another suit, i.e., a suit seeking enforcement of a judgment.

**answer:** The pleading in which the defendant states his or her position concerning the plaintiff's allegations and sets forth the grounds of his or her defense.

**appearance:** Coming into court; the formal act by which a defendant submits to the jurisdiction of a court.

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

**appellate court:** A court that hears appeals and reviews lower court decisions, generally on the lower court record only.

**appellee:** The successful party in the lower court against whom an appeal is taken.

**arraignment:** In criminal practice, to bring the prisoner to court in person to answer a charge.

**arrest of judgment:** Refusal by a court to enter a judgment on a verdict already rendered, on the basis that to do so could be erroneous for reasons appearing on the face of the record.

**at issue:** Parties to a suit are at issue when they reach a point in the pleadings at which facts are alleged to exist by one side and are denied by the other.

**attachment:** The act of seizing a person or property so that the person or property is before the court, subject to its judgment.

**attorney of record:** The attorney named in the permanent record or file of a case who bears the ultimate responsibility for the handling of the case on behalf of the party he or she represents.

## B

**bail:** Cash or other security placed on deposit with the court to obtain the release of an arrested or imprisoned person and to guarantee his or her reappearance before the court on a specified day.

**bail bond:** A financial obligation signed by the accused and those who serve as sureties to guarantee his or her future appearance in court.

**bailiff:** A court attendant who keeps order and is responsible for the custody of the jury.

**banc:** Bench; the place where a court sits permanently or regularly; a court “sitting in banc” is a session of all the judges of a court, as distinguished from the sitting of a single judge.

**bench warrant:** An order issued by the court (“from the bench”) for the attachment or arrest of a person.

**best evidence:** Primary evidence; the best evidence available; evidence short of this is “secondary.” For example, an original letter is the “best evidence;” a photocopy is “secondary evidence.”

**binding instruction:** An instruction by the judge to the jury that if it finds certain facts to exist, it must rule for the plaintiff or defendant, as the case may be.

**bind over:** To hold for trial, a finding at a preliminary hearing that sufficient evidence exists to require a trial on the charges made against the defendant.

**brief:** A written argument submitted to the court by counsel setting forth facts and/or law supporting his or her client’s case.

**burden of proof:** The duty to establish a fact or facts in dispute; e.g., the plaintiff in a personal injury lawsuit has the burden of proving that an injury occurred, and that the defendant caused it.

**burglary:** The breaking into and entering of a building to commit inside it a serious crime; e.g., robbery.

## C

**caption:** The heading of a document prepared for consideration as part of a court proceeding, showing the names of the parties, name of the court, number of the case on the calendar, etc.

**cause:** A suit, litigation, or action — civil or criminal.

**certiorari:** An order commanding judges or officers of a lower court to certify the record of a case for judicial review by an appellate court.

**challenge for cause:** An objection to the qualifications of a juror for which a reason is given; usually on grounds of personal acquaintance with one of the parties or the existence of a bias that may affect the verdict.

**challenge to the array:** To question the qualifications of an entire panel summoned for jury duty, usually because of alleged partiality or some deficiency in the manner by which the panel was selected and summoned.

**chambers:** The private office or room of a judge.

**change of venue:** The removal of a suit started in one county or district to another location for trial, usually on the basis that one of the parties cannot obtain a fair trial in the original county or district.

**circuit court:** The highest trial court of original jurisdiction in Michigan.

**circumstantial evidence:** Indirect or inferred evidence, as distinguished from direct or eyewitness evidence. For example, just before retiring for the night, a man looks outside and sees that the ground is bare. When he awakes the next morning, he sees that the ground is covered with snow. He concludes that it snowed during the night. The evidence on which he bases this conclusion is indirect or circumstantial (he did not actually see it snow, but he infers that it did from the result).

**civil actions or suits:** Generally, non-criminal cases concerning the claim of one private individual against another.

**claim:** To demand; to assert.

**code:** A collection of laws pertaining to related subjects arranged into chapters, table of contents, and indices, issued by legislative authority; a complete compilation of law on a subject.

**codicil:** An addition to a will.

**commit:** To send a person to prison, asylum, or reformatory pursuant to court order.

**common law:** Law that derives its authority solely from ancient usage and customs and from the judgments and decrees of courts that recognize and enforce such usage and customs; as distinguished from statutory law.

**commutation:** The reduction of a sentence, as from death to life imprisonment.

**comparative negligence:** The doctrine by which acts of opposing parties leading to an event are compared in their degree of negligence, and recovery is permitted according to the degree of fault of each party (often on a percentage basis); as distinguished from contributory negligence.

**competency:** Characteristics that make a witness or a defendant legally fit and qualified to testify or to be tried.

**complainant:** One who seeks legal redress; e.g., a plaintiff in a civil action, or one who calls the police to report a crime.

**complaint:** The first pleading by the plaintiff in a civil action setting forth his or her claims.

**concurrent sentence:** A sentence for a crime that runs at the same time as that for another crime, rather than successively.

**condemnation:** The process by which private real estate is taken for public use without the owner's consent but with just compensation, pursuant to a court order; a forced sale for public use. (See also eminent domain.)

**contempt of court:** An act that embarrasses, hinders, or obstructs a court in the administration of justice, or lessens its authority or dignity. Contempts are of two kinds: a direct contempt is committed in the view and presence of the court; an indirect contempt is committed outside the presence of the court (usually a failure or refusal to obey a lawful court order).

**contract:** An exchange of oral or written promises between two or more parties to do or not do a particular thing, enforceable by law.

**contributory negligence:** A doctrine that prohibits recovery of damages by a plaintiff whose own behavior contributed even slightly to the event that caused the plaintiff's injuries; as distinguished from comparative negligence.

**corpus delicti:** The object or thing upon which a crime has been committed; e.g., the body of a murdered person or the charred shell of a burned house.

**corroborating evidence:** Additional evidence that tends to strengthen or confirm evidence already given.

**costs:** An allowance to the successful party in a litigation to reimburse him or her for the expenses of prosecuting or defending the suit; ordinarily does not include attorneys' fees.

**counterclaim:** A claim asserted by a defendant against the plaintiff in the course of a lawsuit instituted by the plaintiff; in essence, a counter-lawsuit within a lawsuit.

**court of record:** A court whose proceedings are permanently recorded; they have the power to fine or imprison for contempt. Courts not of record have less authority, and their proceedings are not permanently recorded. The only courts not of record in Michigan are municipal courts.

**criminal insanity:** Lack of mental capacity such that a person may not be held legally responsible for what would otherwise be criminal acts.

**cross-examination:** The questioning of a witness by the party opposed to the party who produced him or her to test the truth of the witness's testimony, to further develop it, or to otherwise expand on it.

**cumulative sentence:** Sentences for two or more crimes to run successively rather than concurrently.

## D

**damages:** Compensation recoverable in court by one who has suffered loss, detriment, or injury to his or her person, property, or rights due to the unlawful acts or negligence of others.

**de novo:** Anew, afresh. A "trial de novo" is a retrial.

**declaratory judgment:** A judgment of a court determining the rights of the parties or giving the court's opinion on a legal point without ordering that anything be done. A declaratory judgment is usually requested before the happening of (and to prevent) any specific act that could result in a claim for damages.

**decree:** A court decision or order. A final decree fully and finally disposing of a case; an interlocutory decree is preliminary in nature, determining some issue in the case, but not the ultimate question involved.

**default:** A failure to do what ought to be done; e.g., when a defendant doesn't plead within the time allowed or fails to appear for trial.

**demurrer:** An answer to a complaint, suggesting that even if the facts alleged in the complaint are true, they do not create any liability and therefore do not warrant any further proceedings in the matter.

**deposition:** Testimony of a witness given elsewhere than in open court, recorded and sworn to for use at the trial of the case.

**direct evidence:** Proof of facts by witnesses who personally saw deeds or heard words spoken that constitute the facts to be proven; as distinguished from circumstantial evidence.

**direct examination:** The questioning of a witness during trial by the party on whose behalf the witness is summoned to testify.

**directed verdict:** An instruction by the judge to the jury to return a specific verdict, based generally on the judge's conclusion that, as a matter of law, the proof brought forth at the trial supports only one possible verdict.

**discover:** Procedures available to a party to a lawsuit to ascertain facts relating to the issue to be determined that are known to other parties or witnesses, to enable the party to prepare for trial.

**dismissal:** An order or judgment finally deciding a particular lawsuit in favor of the defendant by sending it out of court without trial. Dismissal "with prejudice" forever bars the right to bring a lawsuit

on the same claim or cause; dismissal “without prejudice” disposes of the particular lawsuit before the court, but permits a new lawsuit to be brought based on the same claim or cause.

**dissent:** The disagreement of one or more judges of a court with the decision rendered by the majority.

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

**double jeopardy:** Being placed more than once in danger of being convicted and sentenced for the same offense.

**due process of law:** The fundamental rules that guarantee “fair play” in the conduct of legal proceedings; e.g., the right to an impartial judge and jury, the right to present evidence on one’s own behalf, the right to confront one’s accuser, the right to be represented by counsel, etc.

## E

**embezzlement:** The wrongful taking of property or money by a person to whom it has been entrusted.

**eminent domain:** The right of the state to take private property for public use through condemnation.

**enjoin:** To command a person to perform some act or to abstain or desist from some act.

**entrapment:** Inducement of a person by officers or agents of government to commit a crime he or she would not otherwise have committed in order to prosecute that person.

**equity jurisdiction:** A court’s power to provide relief based on simple fairness in situations to which no statutory law applies. It is intended to make the administration of justice more complete by giving the courts power to relieve injustice even though no specific law covers the situation.

**escheat:** The right of the state to appropriate property to which no one else has a valid claim.

**escrow:** A writing, deed, fund, or object delivered by one person to another to be held until specified acts are performed or certain conditions are met, and then to be disposed of as directed under the terms of the escrow.

**estoppel:** A prohibition against a claim that is inconsistent with the claimant's prior conduct; e.g., one who sells land representing that he is authorized to do so may not claim in a later lawsuit against him or her for failure to consummate the transaction that he or she had no authority to sell.

**et al:** For et alii, meaning "and others."

**et seq:** For et sequentes or et sequentia, meaning "and the following."

**ex contractu:** Rights and causes of action arising from a contract.

**ex delicto:** Obligations and causes of action arising from a personal wrong or misconduct.

**ex parte:** By, for, or on the request of one party only, without notice to any other party.

**ex post facto:** After the fact. An ex post facto law is one enacted after the commission of an act, which retroactively changes the legal consequences of that act.

**execution:** The carrying out of some act or course of conduct to its completion; e.g., execution of a civil judgment is the putting into effect of the final judgment of the court by obtaining possession of that which the judgment has awarded.

**exception:** A formal objection to the court's ruling, which implies that the excepting party does not accept the court's ruling and will seek its reversal at a later time.

**exhibit:** A paper or article submitted in a court or produced during a trial or hearing and formally made a part of the record.

**expert evidence:** Testimony concerning scientific, technical, or professional matters by persons qualified to speak with authority because of their specific training, skill, or familiarity with the subject.

**extenuating circumstances:** Circumstances that make a crime less reprehensible than it would otherwise be; e.g., the theft of a loaf of bread to feed a starving child.

**extradition:** The delivery to one state of a person accused or convicted of an offense committed within its jurisdiction by another state in which that person was apprehended.

## F

**fair preponderance:** Evidence strong enough to convince jurors in civil cases that the party bearing the burden of proof has established its case; the greater weight of the evidence.

**false arrest:** Any unlawful physical restraint of another person, in prison or elsewhere.

**false pretenses:** Misrepresentation to obtain another's money or goods.

**felony:** A serious crime, generally punishable by death or imprisonment in a state prison for more than a year.

**fiduciary:** A trustee; one who has the duty to act primarily for the benefit of another with respect to the subject matter of the trust.

**fraud:** The intentional perversion of truth to deprive another of property or to induce a person to surrender a legal right, or to injure him or her in some other way.

## G

**garnishment:** A proceeding whereby a debtor's money or property held by a third party is attached and applied to the payment of the debt.

**general assignment:** A transfer for benefit of creditors of all of a debtor's property to a trustee with authority to wind up the debtor's affairs and distribute the proceeds fairly among all the creditors.

**grand jury:** See jury.

**guardian:** A person who has the legal duty and power to take care of the person and property of another who, because of some disability, usually age or incompetence, is considered incapable of administering his or her own affairs.

**guardian ad litem:** A person appointed by a court to look after and represent a minor's interests in litigation.

## H

**habeas corpus:** "You have the body;" the name of a writ used to bring a person before a court or judge. Generally, the writ is addressed to an official or person who holds another. It commands him or her to produce the detained person in court so that the court may determine whether that person is being denied his or her freedom lawfully.

**harmless error:** An error committed in the course of a trial that was corrected or would not have affected the outcome of the trial, and therefore does not justify reversal of the verdict on appeal.

**hearsay:** Secondhand evidence not arising from personal knowledge of the witness, from repetition of what the witness has heard others say.

**holographic:** A will entirely handwritten, dated, and signed by the author.

**hostile witness:** A witness who exhibits such antagonism toward the party that called him or her to testify, that cross-examination of the witness by that party is permitted by the court.

**hypothetical question:** A question based on assumed or proven facts on which an expert is asked his or her opinion at trial.

I

**impeachment of witness:** An attack on the credibility (believability) of a witness through evidence produced for that purpose.

**implied contract:** One in which the agreement of the parties is not expressed, but is assumed on the basis of their conduct.

**imputed negligence:** Blame attributed to an individual not on the basis of his or her conduct, but because of the conduct of another for whom he or she is legally responsible; e.g., an employer is liable for negligence of his or her employee.

**inadmissible:** That which under the rules of evidence cannot be admitted or received as evidence.

**incompetent evidence:** Inadmissible evidence.

**indeterminate sentence:** An indefinite sentence of “no less than” and “not more than” stated periods. The exact term to be served is decided by government authorities within the minimum-maximum limits set by the court or by statute.

**indictment:** A grand jury’s written accusation that charges a named party with the commission of a crime.

**inferior court:** Any court subordinate to the chief appellate court in a particular judicial system.

**information:** A formal accusation of the commission of a criminal offense made by a competent public officer, such as a prosecutor, rather than by indictment by a grand jury.

**injunction:** A court order prohibiting a threatened or continuing act, or mandating certain actions.

**instruction:** A statement made by a judge to a jury at the close of the trial about the law to be applied in deciding the case.

**inter alia:** Among other things.

**inter alios:** Among other persons; between others.

**interlocutory:** Temporary; not final.

**interrogatories:** Written questions posed by one party and served on another who must answer them in writing under oath; a form of discovery to enable the party posing the questions to prepare for trial.

**intervention:** The method by which a third party becomes a party to a suit or action initiated between two other parties.

**intestate:** Without making a will.

**irrelevant:** Evidence not bearing on the matter in dispute, not tending to prove or disprove any issue involved in the matter.

## J

**jurisprudence:** The philosophy of law; the science that deals with principles of law and legal relationships.

**jury:** A given number of persons selected according to the law to determine issues of fact on the basis of evidence submitted to them.

**grand jury:** A jury of inquiry that receives complaints and accusations in criminal cases. It hears the prosecutor's evidence and issues indictments when satisfied that there is probable cause to believe that a crime was committed, that the accused committed that crime and that a trial should be held.

**petit jury:** The ordinary jury of 12 (or fewer) persons selected to hear the trial of a civil or criminal case and to determine issues of fact; so called to distinguish it from the grand jury.

**jury commissioner:** The court officer responsible for choosing the panel of persons to serve as potential jurors for a particular court term.

## L

**leading question:** One that suggests to a witness the answer desired by the inquirer, or puts words into the witness's mouth — prohibited on direct examination on the theory that the witness is friendly to the party who called him or her and will accept any suggestions made by that party's counsel rather than answering, as he or she should, on the basis of his or her own recollection.

**levy:** To assess; gather; seize; e.g., to levy a tax or to collect a sum of money on an execution.

**libel:** Injury to a person's character or reputation through print, writing, pictures, or signs, as distinguished from the spoken word. Generally, any publication that injures someone's reputation. (Compare with slander.)

**lien:** A claim against property to secure a debt or other obligation.

**lis pendens:** A notice of a pending suit involving property, disclosing that there is a dispute as to ownership.

**litigation:** The process of resolving a dispute over legal rights in court.

**locus delicti:** The place where an offense was committed.

## M

**malfeasance:** The commission of an unlawful act. (Compare with misfeasance.)

**malicious prosecution:** An action initiated without probable cause to believe that the charges could be sustained, for the purpose of injuring the defendant.

**mandamus:** An action seeking a court order commanding a person, corporation, public officeholder, or inferior court to perform a specific act alleged to be required as part of his or her or its official duties.

**mandate:** A judicial command issued by a court or judicial officer.

**manslaughter:** The unlawful killing of another without intent to kill – either voluntary or involuntary. Voluntary manslaughter is the killing of another on a sudden impulse; e.g., a quarrel erupts into a fistfight in which one of the participants is killed. Involuntary manslaughter is the killing of another during the commission of an unlawful act not ordinarily expected to result in great bodily harm, or during the commission of a lawful act without proper caution;

e.g., driving an automobile at excessive speed, resulting in a fatal collision.

**master:** A court officer who acts as an assistant to the judge by inquiring into such matters as are assigned to him or her and reporting the findings to the court. Sometimes a “special master” is appointed for a specific assignment, but often clerks, commissioners, auditors, and referees perform the duties of masters.

**misdemeanor:** Offenses less serious than felonies; generally punishable by fine or imprisonment in local rather than state prisons.

**misfeasance:** the improper performance of a lawful act. (Compare with malfeasance.)

**mistrial:** Termination of a trial before a verdict, with the case ordered for retrial, because of some basic flaw, such as lack of jurisdiction or improper drawing of jurors, or because of some event in the courtroom that jeopardizes the rights of one of the parties to a fair trial.

**mitigating circumstance:** One that, though it does not excuse an offense, reduces the degree of blame; particularly relevant to the extent of punishment to be imposed or whether punitive damages should be awarded.

**moot:** Not actual; theoretical or hypothetical; usually in reference to a court’s refusal to consider a case because the issue involved was resolved before the court’s decision, leaving nothing that would be affected by the court’s decision.

**moral turpitude:** Conduct that is inherently unethical or immoral, as distinguished from conduct that would be proper but for a statute that prohibits it.

**multiplicity of action:** Numerous and unnecessary attempts to litigate the same right.

**municipal court:** Court whose authority is confined to the city or community in which it is established.

**murder:** The unlawful killing of a human being by another with malice aforethought. Murder in the first degree is characterized by premeditation; murder in the second degree is characterized by a sudden intent to kill or to cause injury without deliberation or premeditation.

## N

**ne exeat:** A court order forbidding the person to whom it is addressed to leave the country, the state, or the jurisdiction of the court.

**negligence:** Failure to do or not to do something that a reasonable and prudent person would do or not do under the same circumstances.

**next friend:** One acting without formal appointment as guardian for the benefit of a minor or person of unsound mind not judicially declared incompetent, or other person under some disability.

**nisi prius:** Courts for the initial trial of issues of facts, as distinguished from appellate courts.

**no bill:** This phrase, endorsed by a grand jury on the written indictment submitted to it for its approval, means that the evidence was found insufficient to indict.

**nolle prosequi:** A formal entry on the record by the plaintiff in a civil suit or the prosecutor in a criminal case declaring that he or she will not further prosecute the case.

**nolo contendere:** “I will not contest it;” a plea by a defendant in a criminal case on which, like a plea of guilty, a conviction may be entered, but, unlike a plea of guilty, may not be used as an admission of any other matter.

**nominal party:** One with no real interest in the outcome, who is joined as a party or defendant merely because the technical rules of pleading require his or her presence on the record.

**non compos:** Not of sound mind.

**non obstante verdicto:** Notwithstanding the verdict, i.e., an order of the judge entering a judgment for the defendant notwithstanding a jury verdict for the plaintiff.

**notice to produce:** A written notice requiring the opposing party to produce a specific paper or document at the trial or during pretrial discovery.

## O

**objection:** The taking of an exception to a question, answer, statement, or procedure in trial; intended to focus the court's attention on some allegedly improper item of evidence or procedure and to obtain corresponding relief.

**of counsel:** Commonly describes counsel hired to help prepare, manage, or appeal a case, but who is not the principal attorney of record for the client.

**opinion evidence:** Statement of what the witness thinks, believes, or infers about facts in dispute – as distinguished from his or her personal knowledge of the facts themselves; not admissible except in the case of experts, with certain limitations.

**out of court:** A person who has no legal status in court, i.e., one not before the court. For example, when a plaintiff, by what he has done or failed to do, shows that he or she cannot go forward with his or her suit, he or she often is said colloquially to have put himself or herself “out of court.”

## P

**panel:** The jurors serving a specific court; either all persons summoned for jury duty for a specific court term, or those the clerk selected by lot for the trial of a particular case.

**parole:** Conditional release from prison before the end of a sentence; if the parolee observes the conditions, he or she need not serve the rest of his or her term.

**parties:** Principals; the parties to a lawsuit are those who instituted it and those against whom it is brought.

**peremptory challenge:** The right of the prosecution and defense in criminal cases to dismiss a prospective juror without giving any reason. The number of such challenges is limited by statute.

**petit jury:** See jury.

**plaintiff:** A person who brings a civil action; the party who complains or sues.

**pleading:** The process by which opposing parties alternately present their contentions in writing, each responding to the immediately preceding pleading of the other party, thereby narrowing the controversy until a single point of dispute emerges, called the issue. It is the issue that is resolved at trial.

**polling the jury:** Asking jurors individually whether they assented and still assent to the verdict announced by the foreman.

**power of attorney:** Authorization for one person to act as another's agent or attorney.

**praecipe:** An original writ commanding the defendant to do certain things or to show the reason he or she had not done it; also, an order directing a court clerk to issue a particular writ.

**prejudicial error:** "Reversible error;" an error in the course of a trial serious enough to require an appeals court to reverse the judgment.

**preliminary hearing:** "Preliminary examination;" a hearing before a judicial officer to determine whether there is sufficient evidence against a person charged with a crime to warrant holding him or her for trial. The constitution bans secret accusations, so preliminary hearings are public unless the defendant asks otherwise; the accused must be present, accompanied by legal counsel.

**preponderance of evidence:** The greater weight (in terms of quality, not quantity) of evidence, or that evidence which is more believable and convincing.

**presentment:** An informal written statement from a grand jury to the court, summarizing the grand jury's knowledge or observations about a public offense with respect to which no indictment has

been requested or voted.

**presumption of facts:** A requirement that courts and judges must draw particular inferences from the existence of some other fact; e.g., when I left the house, the streets were snow-covered, so I presume it must have snowed.

**presumption of law:** A requirement that courts and judges must draw particular inferences from the existence of particular facts. Irrebuttable presumptions are those that may not be overcome by proof; e.g., that a child born to a married mother is legitimate. Rebuttable presumptions exist until and unless the truth of the inference is disproven; e.g., that one in possession of property is its owner.

**probable cause:** A reasonable ground, established after investigation, for believing that facts exist warranting further proceedings.

**probate:** The act or process of proving the validity of a will.

**probation:** In criminal law, to allow one convicted of a crime to go free while his or her prison sentence is suspended during good behavior, generally under the supervision of a probation officer.

## Q

**quaere:** A query; question; doubt.

**quash:** To vacate; to annul or to void.

**quasi:** Authority or discretion vested in a public administrative officer to investigate and determine facts and to draw corresponding conclusions that are judicial in nature; e.g., Public Service Commission findings of facts relevant to requested rate increases.

**quid pro qu:** Something for something; a fair return; the giving of one valuable thing for another.

**quo warranto:** By what authority; a proceeding demanding that a person show by what right he or she exercises an authority; intended to prevent unauthorized exercise of power.

## R

**reasonable doubt:** An accused person is entitled to acquittal if, in the minds of the jurors, guilt is not proved beyond a “reasonable doubt;” proof beyond a “reasonable doubt” is that which excludes every reasonable theory of the facts except that which it tends to support, establishing the facts to a moral certainty but not beyond all possible or imaginary doubt.

**rebuttal:** The introduction of answering evidence; proof by one party disputing proof provided by its adversary; the stage of a trial in which such evidence is introduced.

**redirect examination:** The questioning of a witness during trial by the party that called him or her to testify, following cross-examination by the other party on matters arising out of such cross-examination.

**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, and serves as an arm of the court.

**removal, order of:** A court order transferring an action to another court.

**reply:** The plaintiff’s answer to the defendant’s argument when a case is tried or argued before a court.

**res judicata:** A claim or controversy that has been decided in court. A matter finally decided on its merits cannot again be brought before a court.

**retainer:** The act of employing an attorney; the initial fee that the client pays an attorney to secure his or her services.

**rule nisi:** A court order obtained on motion by either party to show cause why relief sought by the party obtaining the order should not be granted.

## S

**search and seizure, unreasonable:** In general, an unlawful search of one's premises or person; a search that is unreasonably oppressive in its invasion of privacy.

**search warrant:** A written order from a justice or magistrate directing an officer to search a specific place for a specific object, issued on a showing of probable cause.

**separate maintenance:** An allowance granted to support a married, but separated, spouse and his or her children.

**sequestration of witnesses:** A court order requiring each witness (except the parties) to stay outside the courtroom until called to testify; requested and issued to prevent the testimony of any witness from being influenced by that of another witness.

**sheriff:** A county-elected officer whose main duties are to aid criminal and civil courts and act as chief preserver of the peace. The sheriff serves processes, calls juries, executes judgments, and holds judicial sales.

**sine qua non:** Indispensable; that without which something cannot be.

**slander:** Injury to a person's character or reputation through the spoken word rather than through print, writings, pictures, or signs. (Compare with libel.)

**specific performance:** A court order directing a party to a contract who has breached its terms to do what he or she contracted to do; generally involved when the thing or service contracted for is unique, so that money damages for breach of contract would be inadequate; e.g., breach of contract to sell water rights to one who has no alternative access to water.

**stare decisis:** To abide by or adhere to decided cases; the policy of

the courts to be guided by precedent and not to disturb a settled point of law as applied to a certain set of facts.

**state's evidence:** Testimony of an accomplice or participant in a crime that tends to criminate or convict others, given under a promise of immunity; to turn "state's evidence."

**statutes:** Laws enacted by the legislative branch of government.

statute of limitation — A legislatively enacted time limit on the right to seek relief in court, providing that any claim for relief shall be barred unless begun within a specific period of time following the alleged wrong.

**stay:** The halting of a judicial proceeding by court order.

**stipulation:** An agreement between opposing attorneys on any matter relating to the proceedings or trial; e.g., to extend the time to answer, to adjourn the trial date, to admit certain facts at the trial, etc.

**subpoena:** An order commanding a witness to appear and testify.

**subpoena duces tecum:** An order commanding a witness to produce certain documents or records.

**substantive law:** That part of law that states, defines, and regulates rights; as distinguished from adjective law, which sets forth methods of enforcing rights created by substantive law.

**summons:** A writ directing a sheriff or other officer to notify an individual that an action has been started against him or her in court and that he or she is required to appear on the day named to answer the complaint.

**surety:** Guarantor; one who guarantees the obligations (usually financial) of another person.

## T

**testator of testatrix:** The maker of a written will. A person who dies without leaving a written will dies "intestate."

**testimony:** Evidence given by a competent witness under oath, as distinguished from documentary evidence or evidence from other sources.

**tort:** An injury or wrong committed against the person or property of another, arising out of violation of a duty established by law rather than by contract.

**transcript:** The record of proceedings in a trial or hearing.

**true bill:** In criminal practice, the written endorsement made by a grand jury on a proposed indictment when they find enough evidence to indict; a finding by a grand jury of the existence of sufficient evidence to warrant the issuance of an indictment.

## U

**undue influence:** Whatever destroys free will and causes a person to do things that he or she would not do if left to act freely.

**unlawful detainer:** The unjustified retention of real estate by one whose original entry was lawful, but whose right to possession has terminated; e.g., a tenant who refuses to leave after his or her lease has expired.

## V

**venire:** Technically, a writ summoning prospective jurors; popularly refers to the group of jurors summoned.

**venireman:** A member of a jury.

**venue:** The country, city, or other locality that has jurisdiction over a case.

**verdict:** The jury's decision or finding on the issues submitted to it for determination.

**voir dire:** "To speak the truth;" the preliminary examination into the qualifications of prospective witnesses or jurors.

## W

**waive:** To abandon or surrender a claim, privilege, or right.

**waiver of immunity:** A means authorized by statute by which a witness, before testifying or producing evidence, may renounce 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 of arrest:** An order issued by a magistrate, justice, or other competent authority to a peace officer, requiring the arrest of the person named in the order.

**weight of evidence:** The qualitative value of any given evidence to support one side of an issue over the other; e.g., the weight of the witness's testimony favored the plaintiff.

**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.

**without prejudice:** A claim or cause dismissed "without prejudice" may be the subject of a new lawsuit.

**witness:** One who testifies to what he or she has seen, heard, or otherwise observed.

**writ:** A court order requiring the performance of a specific act, or giving the authority to have it done.

**writ of error coram nobis:** Common-law writ correcting a judgment in the same court in which the judgment was given on the grounds of error of fact not known to the court at the time at which the judgment was arrived.



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