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LEGALESE A-Z

A

acquittal - A certification of a person's innocence, freeing them from the charges of a crime. This can come from a jury's "not guilty" verdict or a judge's decision.

affidavit - A written statement of facts confirmed by the oath of the party making it. Affidavits must be notarized or administered by an officer of the court with such authority.

affirmed - Judgment by appellate courts where the decree or order is declared valid and will stand as decided in the lower court.

amicus curiae (a-mi'kus ku'rie) - A friend of the court. One not a party to a case who volunteers 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.

answer - The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for defense.

appeal - A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." Both the plaintiff and the defendant can appeal, and the party doing so is called the appellant. Appeals can be made for a variety of reasons including improper procedure and asking the court to change its interpretation of the law.

appellate - About appeals; an appellate court has the power to review the judgment of another lower court or tribunal.

arbitration - A private process for resolving disputes outside of the courts. A neutral third party hears the evidence of the case and makes a decision.

arraignment - A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty.

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B

bail - Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his/her appearance on the day and time appointed.

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 discharge their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings.

bar - The legal profession as an institution. A bar association is a group of attorneys. In the United States, you must be admitted to the bar to practice law, but only certain states mandate that lawyers be members of local bar associations.

bench - The area of the courtroom occupied by the judge or judges.

bench trial - Trial without a jury in which a judge decides the facts. In a jury trial, the jury decides the facts. Defendants will occasionally waive the right to a jury trial and choose to have a bench trial.

beyond a reasonable doubt - Standard required to convict a criminal defendant of a crime. The prosecution must prove the guilt so that there is no reasonable doubt to the jury that the defendant is guilty.

binding precedent - A prior decision by a court that must be followed without a compelling reason or significantly different facts or issues. Courts are often bound by the decisions of appellate courts with authority to review their decisions. For example, district courts are bound by the decisions of the court of appeals that can review their cases, and all courts – both state and federal – are bound by the decisions of the Supreme Court of the United States.

brief - A written statement submitted by the lawyer for each side in a case that explains to the judge(s) why they should decide the case (or a particular part of a case) in favor of that lawyer's client.

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case law - The use of court decisions to determine how other law (such as statutes) should apply in a given situation. For example, a trial court may use a prior decision from the Supreme Court that has similar issues.

caveat emptor - "Let the buyer beware." This means the purchaser of a product is the one responsible for checking the quality of a product before buying it, and therefore the seller cannot be held liable for any defects.

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

chief judge - The judge who has primary responsibility for the administration of a court. The chief judge also decides cases, and the choice of chief judges is determined by seniority.

circumstantial evidence - All evidence that is not direct evidence (such as eyewitness testimony).

clerk of court - An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

common law - The legal system that originated in England and is now in use in the United States. It is based on court decisions rather than statutes passed by the legislature.

complaint - A written statement by the plaintiff stating the wrongs allegedly committed by the defendant.

contempt of court - Disregard for or failure to obey the rules and authority of the court. Disrespecting a judge or disobeying a court's orders are both grounds to be held in contempt.

continuance - Decision by a judge to postpone trial until a later date.

counsel - Legal advice; a term used to refer to lawyers in a case.

counterclaim - A claim that a defendant makes against a plaintiff. Counterclaims can often be brought within the same proceedings as the plaintiff's claims.

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D

damages - Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

default judgment - A judgment rendered because of the defendant's failure to answer or appear.

defendant - In a civil suit, the person complained against; in a criminal case, the person accused of the crime.

demurrer - A motion to dismiss a civil case because of the legal insufficiency of a complaint.

deposition - An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

discovery - Lawyers' examination, before trial, of facts and documents in possession of the opponents to help the lawyers prepare for trial.

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

docket - A log containing brief entries of court proceedings.

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E

en banc - "In the bench" or "full bench." Refers to court sessions with the entire membership of a court participating, rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases they deem important enough to be decided by the entire court. They are then said to be sitting en banc.

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

exculpatory evidence - Evidence which tends to show the defendant's innocence.

exhibit - Physical evidence or documents that are presented in a court proceeding. Common exhibits include contracts, weapons, and photographs.

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 post facto - After the fact. The Constitution prohibits the enactment of ex post facto laws. These are laws that permit conviction and punishment for a lawful act performed before the law was changed and the act made illegal.

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F

federal question - Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties. In some cases, state courts can decide these issues, too, but the cases can always be brought in federal courts.

felony - A crime carrying a penalty of more than a year in prison.

fiduciary - A person having a legal relationship of trust and confidence to another and having a duty to act primarily for the others benefit, e.g., a guardian, trustee, or executor.

file - To place a paper in the official custody of the clerk of court to enter into the files or records of a case. Lawyers must file a variety of documents throughout the life of a case.

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gag order - A court order restricting parties from commenting on a case publicly or with an unauthorized third party.

good faith - The assumption that all parties will be honest, fair and sincere in their dealings.

grand jury - A body of citizens who listen to evidence of criminal allegations, which are presented by the government, and determines whether there is probable cause to believe the offense was committed. As it is used in federal criminal cases, "the government" refers to the lawyers of the U.S. Attorney's office who are prosecuting the case. Grand jury proceedings are closed to the public, and the person suspected of having committed the crime is not entitled to be present or have an attorney present. States are not required to use grand juries, but the federal government must do so under the Constitution.

grounds - A foundation or basis; points relied on.

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H

habeas corpus - A writ that is often used to bring a prisoner before the court to determine the legality of their imprisonment. A prisoner wanting to argue that there is not sufficient cause to be imprisoned would file a writ of habeas corpus. It may also be used to bring a person in custody before the court to give testimony, or to be prosecuted.

hearsay - Statements by a witness who did not see or hear the incident in question but learned about it through secondhand information such as another's statement, a newspaper, or a document. Hearsay is usually not admissible as evidence in court, but there are many exceptions to that rule.

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

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impeachment - (1) The process of calling something into question, as in "impeaching the testimony of a witness." (2) The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government for trial in the Senate.

inculpatory evidence - Evidence which tends to show the defendant's guilt.

indemnify - Liability for loss shifted from one person held legally responsible to another.

indictment - The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

in forma pauperis - In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

initial hearing - Court proceeding in which the defendant learns of his rights and the charges against him and the judge decides bail.

injunction - An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

inter alia - Among other things.

interrogatories - Written questions asked to one party by an opposing party, who must answer them in writing under oath. Interrogatories are a part of discovery in a lawsuit.

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J

judge - Government official with authority to decide lawsuits brought before courts. Judicial officers of the Supreme Court and the highest court in each state are called justices.

judgment - The official decision of a court finally determining the respective rights and claims of the parties to a suit.

jurisdiction - (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. Some issues can be heard in both state and federal courts. The plaintiff initially decides where to bring the suit, but in some cases, the defendant can seek to change the court. (2) The geographic area over which the court has authority to decide cases. A federal court in one state, for example, can usually only decide a case that arose from actions in that state.

juror - A person who is on the jury.

jury - Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact. State court juries can be as small as six jurors in some cases. Federal juries for civil suits must have six jurors criminal suits must have twelve.

jury instructions - A judge's explanation to the jury before it begins deliberations of the questions it must answer and the law governing the case. Each party suggests jury instructions to the judge, but the judge chooses the final wording.

jury pool - The group of people from which the actual jury is chosen. The jury pool is randomly selected from a source such as voter registration banks. Lawyers in the case choose the actual jurors from the jury pool through a process called voir dire.

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

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K

knowingly - With knowledge, willfully or intentionally with respect to a material element of an offense.

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L

lawsuit - A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

law clerk (or staff attorney) - Assist judges with research and drafting of opinions.

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

liability - Legal debts and obligations.

litigation - A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

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M

magistrate judges - Judicial officers who assist U.S. district court judges in getting cases ready for trial. They may decide some criminal and civil trials when both parties agree to have the case heard by a magistrate judge instead of a district court judge.

mandamus - A writ issued by a court ordering a public official to perform an act.

mea culpa - An admittance of having done something wrong, from Latin meaning "through my fault."

mens rea - The "guilty mind" necessary to establish criminal responsibility.

misdemeanor - Usually a petty offense, a less serious crime than a felony, punishable by less than a year of confinement.

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

motion - Attempt to have a limited issue heard by the court. Motions can be filed before, during, and after trial.

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N

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

nolo contendere - No contest. Has the same effect as a plea of guilty as far as the criminal sentence is concerned, but the plea may not be considered an admission of guilt for any other purpose. Sometimes, a guilty plea could later be used to show fault in a lawsuit, but the plea of nolo contendere forces the plaintiff in the lawsuit to prove that the defendant committed the crime.

non obstante verdicto (N.O.V.) - Notwithstanding the verdict. A verdict entered by the judge contrary to a jury's verdict.

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oath - A promise to tell the truth.

objection - A protest by an attorney, challenging a statement or question made at trial. Common objections include an attorney "leading the witness" or a witness making a statement that is hearsay. Once an objection is made, the judge must decide whether to allow the question or statement.

opinion - A judge's written explanation of a decision of the court. In an appeal, multiple opinions may be written. The court's ruling comes from a majority of judges and forms the majority opinion. A dissenting opinion disagrees with the majority because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the end result of the court but offers further comment possibly because they disagree with how the court reached its conclusion.

oral argument - An opportunity for lawyers to summarize their position before the court in an appeal and also to answer the judges' questions.

overrule - A judge's decision not to allow an objection. A decision by a higher court finding that a lower court decision was wrong.

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P

parties - Plaintiffs and defendants (petitioners and respondents) to lawsuits, also known as appellants and appellees in appeals, and their lawyers.

petit jury (or trial jury) - A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of six persons.

plaintiff - The person who files the complaint in a civil lawsuit.

plea - In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges in open court. A plea of nolo contendere or an Alford plea may also be made. A guilty plea allows the defendant to forego a trial.

plea deal (or plea bargain or agreement) - Agreement between the defendant and prosecutor where the defendant pleads guilty in exchange for a concession by the prosecutor. It may include lesser charges, a dismissal of charges, or the prosecutor's recommendation to the judge of a more lenient sentence.

pleadings - Written statements of the parties in a civil case of their positions. In federal courts, the principal pleadings are the complaint and the answer.

precedent - A court decision in an earlier case with facts and law similar to a dispute currently before a court. Precedent will ordinarily govern the decision of a later similar case, unless a party can show that it was wrongly decided or that it differed in some significant way. Some precedent is binding, meaning that it must be followed. Other precedents need not be followed by the court but can be considered influential.

prima facie case - A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process.

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

probable cause - An amount of suspicion leading one to believe certain facts are probably true. The Fourth Amendment requires probable cause for the issuance of an arrest or search warrant.

pro se - A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.

prosecute - To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.

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TITLE

quash - To overthrow, to vacate, to annul or make void.

quasi judicial - Authority or discretion vested in an officer whose acts partake of a judicial character.

quid pro quo - What for what; something for something; giving one valuable thing for another.

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R

record - A written account of all the acts and proceedings in a lawsuit.

recess - A break in a trial or court proceeding.

remand - When an appellate court sends a case back to a lower court for further proceedings. The lower court is often required to do something differently, but that does not always mean the court's final decision will change

remedy - The means by which a right is enforced or the violation of a right is prevented, redressed or compensated.

res judicata - A rule of civil law that once a matter has been litigated and final judgment has been rendered by the trial court, the matter cannot be relitigated by the parties in the same court, or any other trial court.

reverse - When an appellate court sets aside the decision of a lower court because of an error. A reversal is often followed by a remand. For example, if the defendant argued on appeal that certain evidence should not have been used at trial, and the appeals court agrees, the case will be remanded in order for the trial court to reconsider the case without that evidence.

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S

sentence - The punishment ordered by a court for a defendant convicted of a crime. Federal courts look to the United States Sentencing Commission Guidelines when deciding the proper punishment for a given crime.

service of process - The service of writs or summonses to the appropriate party.

settlement - Parties to a lawsuit resolve their difference without having a trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

sequester - To separate. Sometimes juries are sequestered from outside influences during their deliberations.

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

statute - A law passed by a legislature.

statute of limitations - A law that sets the time within which parties must take action to enforce their rights.

subpoena - A command to a witness to appear and give testimony.

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 facts of the case, and one party is entitled to judgment as a matter of law.

summons - A notice to a defendant that he or she has been sued or charged with a crime and is required to appear in court. A jury summons requires the person receiving it to report for possible jury duty.

sustain - To maintain, to affirm, to approve.

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T

testify - Answer questions in court.

testimony - Evidence presented orally by witnesses during trials or before grand juries.

tort - A civil wrong or breach of a duty to another person as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

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

trial - A hearing that takes place when the defendant pleads "not guilty," and the parties are required to come to court to present evidence.

trial de novo - A new trial or retrial held in an appellate court in which the whole case is heard as if no trial had been heard in the lower court or administrative agency.

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U

uphold - The decision of an appellate court not to reverse a lower court decision. Also called "affirm."

unconstitutional - That which is contrary to or in conflict with the federal or state constitutions.

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

U.S. Attorney (or federal prosecutor) - A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government.

U.S. Marshal (or bailiff) - enforce the rules of behavior in courtrooms.

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V

vacate - To render an act void; to set aside

venue - The geographical location in which a case is tried.

verdict - The decision of a petit jury or a judge.

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

voir dire - The process by which judges and lawyers select a petit jury from among those eligible to serve by questioning them to determine knowledge of the facts of the case and a willingness to decide the case only on the evidence presented in court. "Voir dire" is a phrase meaning "to speak the truth."

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W

warrant - An arrest warrant is a written order directing the arrest of a party. A search warrant orders that a specific location be searched for items, which if found, can be used in court as evidence. Search warrants require probable cause in order to be issued.

witness - A person called upon by either side in a lawsuit to give testimony before the court or jury.

wobbler - A crime that can be punished as either a misdemeanor (a crime with a less severe sentence, usually less than one year in prison) or a felony (a crime with a more severe sentence, usually more than one year in prison).

writ - A formal written command, issued from the court, requiring the performance of a specific act.

writ of certiorari (or "cert") - An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal. The Supreme Court is usually not required to hear appeals of cases. A denial of cert by the Supreme Court allows the previous ruling to stand.

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X, Y, AND Z

Not much legalese that begin with the last three letters of the alphabet...

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