

## Glossary

Following is a glossary of terms commonly used in the judicial system.

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### A

**abatement of action** A suit that has been quashed and ended.

**abeyance** Incomplete or undetermined state of affairs.

**abscond** To run away or hide from the jurisdiction of the court in order to avoid legal proceedings.

**abstract of record** Abbreviated, but complete history of a case as found in the record.

**abstract of title** Concise chronological history of all official records and recorded documents affecting title to a parcel of land.

**Accelerated Rehabilitative Disposition (ARD)** Voluntary program established by Pennsylvania's Supreme Court in 1972 for first-time, non-violent offenders whereby offenders undergo a probation supervision program for two years without conviction. If the program is successfully completed, charges against the offender are dismissed.

**accessory** Person who aids or contributes in commission of a crime, usually by convincing someone to commit a crime or by helping the suspect escape or hide evidence. Usually not present during the crime. Compare **accomplice**.

**accomplice** Person who knowingly and voluntarily participates with another in a criminal act through aiding, abetting, advising or encouraging offender. See **aid and abet**. Compare **accessory**.

**accord and satisfaction** Method of discharging a claim whereby parties agree to give and accept something in settlement of claim. The new agreement is called the accord. The satisfaction is the action performed to settle the claim.

**acknowledgment** Short declaration at end of a legal paper showing paper was duly executed and acknowledged.

**acquittal** Verdict after a criminal trial that **defendant** is not guilty of charged crime. Compare **guilty**.

- action** A judicial proceeding. An action **in personam** is against a person. An action **in rem** is against a thing, usually where property is involved.
- actus reus** (ACK tus REE us) Proof that a criminal act has occurred. See **elements of a crime**.
- ad litem** (add LYE dem) For the purposes of the lawsuit. E.g., a **guardian ad litem** is appointed to prosecute or defend a suit on behalf of an incapacitated person or a minor.
- additur** (ADD ih tur) Increase by judge in amount of damages awarded by jury.
- adjudication** Pronouncing judgment or decree; the judgment given.
- administrator** One who administers estate of person who dies without a will. See **personal representative**. Compare **executor**.
- admissible evidence** Evidence which can be legally introduced in a trial.
- adversary proceeding** Proceeding having opposing parties; contested. Differs from **ex parte** proceeding.
- adversary system** Trial method used in U.S. and some other countries, based on belief that truth can best be determined by giving opposing parties full opportunity to present and establish evidence and to test by cross-examination evidence presented by adversaries under established rules of procedure before an impartial judge and/or jury.
- advocate** Person who assists, pleads, defends or prosecutes on behalf of another.
- affiant** Person who makes and signs an **affidavit**.
- affidavit** Voluntary written statement of facts given under oath. In criminal cases affidavits are often used by police officers seeking to obtain search or arrest warrants. In civil cases affidavits of witnesses are often used to support motions for summary judgment.
- affirm** Act of appellate court to uphold decision of a lower court.
- affirmative defense** Without denying charge, defendant raises extenuating or **mitigating circumstances** such as insanity, self-defense or entrapment to avoid civil or criminal responsibility.
- aggravated assault** See **assault**.
- aggravating circumstances** Circumstances occurring in commission of an offense which occur above and beyond the offense itself and which serve to increase the offense's guilt or enormity or add to its consequences. May increase sentence of individual convicted of the offense. Compare **mitigating circumstances**.
- aggrieved party** Party whose rights have been adversely affected by a court's or another person's actions.
- aid and abet** To actively, knowingly or intentionally assist another person in commission or attempted commission of a crime. See **accomplice**.
- alibi** Proof offered by defendant that he/she was at some other place at time of crime and thus could not have committed crime charged.
- allegation** Statement by a party in an **action** which the party intends to prove.
- alleged** Claimed as true.
- allocatur** (AL lo CAH tur) "It is allowed." Petition to **appeal**.
- allocution** In criminal cases, convicted defendant's statement to the sentencing judge or jury before sentencing. Victim's allocution is a crime victim's address to the court before sentencing.
- alternative dispute resolution (ADR)** Settling a dispute without a full, formal trial. Methods include **mediation, conciliation, arbitration** and settlement, among others.
- amenable** Legally accountable.
- amicus curiae** (uh ME kus KYU ree EYE) Friend of the court. One not a party to a case who, having strong interest in the outcome, offers information on a point of law or some other aspect of the case.
- answer** Defendant's response to plaintiff's **allegations** as stated in a **complaint**. Item-by-item, paragraph-by-paragraph response to points made in complaint. Part of the **pleadings**.
- appeal** Request to have a decision made by a lower court reviewed by a higher court.
- appearance** Coming into court. Formal act by which a defendant submits to the jurisdiction of a court. Compare **arraignment**.
- appellant** Party who initiates an appeal.
- appellate court** Court having jurisdiction to review decisions of lower courts or administrative agencies.

**appellee** Party against whom an appeal is taken. Also called a respondent.

**arbitration** Form of **alternative dispute resolution** in which parties bring a dispute to a neutral third party and agree to abide by the decision reached. Decisions usually cannot be appealed.

**arraignment** Proceeding in which an accused person appears before a judge to hear the criminal charges filed against him/her and to enter a plea of guilty or not guilty. Compare **preliminary hearing** and **initial appearance**. See also **appearance**.

**array** A panel of potential jurors or the jurors empaneled for a trial.

**arrest** To take into custody by legal authority.

**arrest of judgment** Act of delaying the effect of a **judgment** already entered.

**assault** Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force which would give victim reason to fear or expect immediate bodily harm. Aggravated assault must include another act which is also criminal, e.g., an attempt to cause serious bodily injury, commit another crime or use a deadly weapon. Compare **battery**.

**assumpsit** Oral or written agreement or contract not under seal.

**at issue** Point in a lawsuit when complaining party has stated a claim and other side has responded with a denial. Contested points are said to be “at issue.”

**attachment** Legal seizure and holding of a person’s property pending outcome of a lawsuit. Also, arrest of person guilty of **contempt of court**.

**attempt** Effort to commit a crime, carried beyond preparation, but not executed.

**attest** To bear witness. To affirm to be true.

**attorney-at-law** **Advocate**, counsel or official agent employed in preparing, managing and trying cases in the courts. Generally shortened to attorney. Also called lawyer.

**attorney-in-fact** Private person, not necessarily an attorney, authorized by another to act in his place and stead, either for a particular purpose or for transaction of business in general that is not of a legal nature. Authority is conferred by an instrument in writing called

a letter of attorney or, more commonly, **power of attorney**.

**attorney of record** Principal attorney in a lawsuit who signs all formal documents relating to suit.

**auter action pendant** Another action pending.

**averment** A verification of fact, especially an **allegation** in a pleading.

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## B

**backlog** Number of pending cases exceeding the capacity of a court.

**bail** Money or other security (such as a **bail bond**) given to a court to temporarily secure a person’s release from **custody** and assure his/her appearance in court. May be forfeited should individual subsequently fail to appear before the court. Bail and bond are often used interchangeably.

**bail authority** In Pennsylvania the district justice, magistrate, Philadelphia bail commissioner or judge with jurisdiction over the case in question authorized by law to set, modify, revoke or deny bail.

**bail bond** (often referred to simply as bond) Obligation, signed by accused, to secure his/her presence at trial

**bailiff** Court attendant who keeps order in the courtroom and has custody of the jury.

**bankruptcy** Statutes and judicial proceedings involving persons or businesses who cannot pay debts and seek the assistance of the court in getting a fresh start.

**bar** Historically, partition separating general public from space occupied by judges, lawyers and other participants in a trial. More commonly, the whole body of lawyers. A “case at bar” is a case currently being considered.

**bar examination** State examination taken by prospective lawyers in order to be admitted to practice law.

**battered child syndrome** Medical and psychological condition of a child who has suffered continuing injuries not inflicted accidentally and thus are presumed to have been inflicted by someone close to the child.

- battered woman syndrome** Medical and psychological condition of a woman who has been physically, sexually and/or emotionally abused by a spouse or lover. Also called battered wife syndrome or battered spouse syndrome.
- battery** Physical contact intended to harm someone. Threat to use force is **assault**; use of it is battery, which usually includes an assault. Aggravated battery is unlawful use of force with unusual or serious consequences, e.g., use of a dangerous weapon.
- bench** Seat occupied by the judge or the court itself.
- bench conference** See **sidebar conference**.
- bench ruling** Oral ruling from a judge on the bench.
- bench trial** Trial with no jury, in which the judge decides the facts.
- bench warrant** Arrest warrant issued directly by a judge.
- beneficiary** Someone named to receive benefits from a legal device such as a will, trust or insurance policy.
- bequeath** To give someone a gift through a will.
- bequest** Gift made in a will.
- best evidence** Primary evidence; best evidence available. Evidence short of this is “secondary.” E.g., an original letter is the best evidence; a photocopy is secondary evidence.
- beyond a reasonable doubt** Standard in a criminal case requiring the jury to be satisfied “to a moral certainty” that every element of a crime has been proven by the prosecution. Does not require state to establish absolute certainty by eliminating all doubt, but does require that evidence be so conclusive that all **reasonable doubts** are removed from the mind of the ordinary person.
- bifurcation** Dividing the issues in a case so that one issue can be decided before the others. E.g., a divorce will often be granted before custody, support and marital property issues are resolved.
- bill** Formal written declaration, petition, complaint or statement. E.g., a declaration of wrong a complainant has suffered is a bill of complaint. Also, a draft of a new or amended law presented to a legislature for action.
- bill of evidence** Transcript of testimony heard at trial.
- bill of particulars** Statement detailing charge/s made against defendant.
- billable hour** Unit of time used by attorneys to account for work completed for clients and chargeable to clients. Usually broken into tenths or quarters of hours.
- bind over** To hold a person for trial on bond (**bail**) or in jail. If the judicial official conducting the preliminary hearing finds **probable cause** to believe accused committed a crime, he/she will “bind over” accused, normally by setting **bail** for the accused’s appearance at trial.
- binding instruction** Instruction in which jury is told that if it finds certain conditions to be true, to find for the plaintiff or defendant, as the case may be. Compare **directed verdict**.
- blackletter laws** Informal term encompassing basic principles of law generally accepted by courts or present in statutes of a particular jurisdiction. Also called hornbook laws.
- blood alcohol content (BAC)** Concentration of alcohol in one’s bloodstream. Federal law requires that all states adopt a maximum BAC of 0.08% for one to be considered legally drunk.
- blue laws** Laws regulating commercial activity on Sundays.
- blue sky laws** State statutes regulating sale of securities.
- bona fide** Made in good faith. Sincere; genuine.
- bond** See **bail bond**.
- booking** Process of photographing, fingerprinting and recording identifying data of a suspect following arrest.
- breach of contract** Legally inexcusable failure to perform contractual obligation.
- Breathalyzer** Device used to measure **blood alcohol content** via a person’s breath.
- brief** Written statement prepared by one side in a lawsuit to explain to the court its view of the facts of a case and applicable law.
- burden of proof** Necessity or duty to prove a fact in a dispute. Not the same as standard of proof. Burden of proof deals with which side must establish a point or points; standard of proof indicates degree to which point must be proven.
- burglary** Breaking into and entering a building with intent to commit a felony.

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**C**

- calendar** List of cases scheduled for hearing in court.
- call to the bar** To admit someone to practice law.
- calling the docket** Public calling of the **docket** or list of **causes** at commencement of a court term.
- calumny** (KAL uhm nee) Maliciously accusing someone falsely in order to damage that person's reputation.
- capital crime** Crime punishable by death.
- capital punishment** See **death penalty**.
- caption** Heading on a legal document listing parties, court, case number and related information.
- case at bar** See **bar**.
- caselaw** Collection of reported cases that form the body of law within a jurisdiction. Also known as **jurisprudence**.
- caseload** Total number of cases filed in a given court or before a given judicial officer for a given period of time.
- cause** Lawsuit, litigation or **action**.
- cause of action** Facts that give rise to a lawsuit.
- caveat** (KA vee OTT) Warning; note of caution.
- cease and desist order** Order of an administrative agency or court prohibiting a person or business from continuing a particular course of conduct.
- censure** An official reprimand, particularly of a public official.
- certiorari** (SIR she oh RARE ee) Writ issued by appellate court directing lower court to deliver record of a case for review. Often referred to as "granting cert."
- challenge** Objection, such as when an attorney objects at **voir dire** hearing to seating of a particular individual on a jury. May be **challenge for cause** or **peremptory challenge**. See also **challenge to the array**.
- challenge to the array** Questioning the qualifications of an entire jury panel, usually on the grounds of some legal fault in composition of the panel, e.g., racial discrimination.
- challenge for cause** Objection to seating of a particular juror for a stated reason, usually bias or prejudice for or against one party in the lawsuit. Judge has discretion to deny challenge. Also known as challenge to the poll. Compare **peremptory challenge**.
- change of venire** (veh NI ree; popularly pronounced veh NEER) Bringing in a jury from another county to hear a trial, usually because of concerns that pretrial publicity has made empaneling an impartial jury difficult. Compare **change of venue**.
- change of venue** Moving a lawsuit to another place for trial, usually because pretrial publicity has made empaneling an impartial jury difficult. Compare **change of venire**.
- character evidence** Testimony of witnesses who know the general character and reputation of a person in the community in which that person lives.
- charge** Formal complaint issued accusing an individual of a crime. Compare **indictment** and **information**. Also, judge's instruction to the jury concerning law which applies to the facts of a case. Also called **instruction**. Compare **binding instruction** and **directed verdict**.
- circuit court** Court whose jurisdiction extends over several counties or districts and which holds sessions in all of those areas. Pennsylvania's appellate courts are circuit courts, holding sessions in various locations throughout the Commonwealth.
- circumstantial evidence** Evidence which suggests something by implication, from which an inference can be drawn, e.g., physical evidence, such as fingerprints. Also called indirect evidence. Compare **direct evidence**.
- citation** Reference to source of legal authority. Also, writ issued by a court commanding a person to appear at a specified place and time and do something specified or to give just cause why he/she should not. Also, direction to appear in court, as when a driver receives a citation for a moving or parking violation.
- civil actions** Noncriminal cases in which one private party sues another for redress of private or civil rights.
- civil procedure** Entire process by which a civil case is tried.

- class action** Lawsuit brought by one or more persons on behalf of a larger group.
- clear and convincing evidence** Evidence indicating that which is to be proven is highly probable or reasonably certain. Greater than **preponderance of evidence**, which is generally the standard applied in civil trials, but less than the evidence **beyond a reasonable doubt** required in criminal trials.
- clemency** (also called executive clemency) Act of grace or mercy by president or governor to ease consequences of criminal act, accusation or conviction. May take form of **commutation** or **pardon**.
- clerk of courts** In Pennsylvania an officer appointed or elected to oversee court matters of a criminal nature such as the filing of motions or petitions. Compare **prothonotary**.
- closing argument** In a trial, closing statements by counsel to the judge or jury after evidence has been presented. Also called summation.
- code** Complete, systematic collection of laws.
- codicil** (KOD I sill) Addition to a will.
- cognovit actionem** (KOG NO vit ACK she OH nem) "He has confessed the action." Written confession by defendant of plaintiff's claim. Usually upon condition. Authorizes plaintiff's attorney to sign **judgment** and issue execution.
- cognovit judgment** See **confession of judgment**.
- commit** To send a person to prison, an asylum or reformatory pursuant to court order.
- common law** Law arising from tradition and judicial decisions rather than laws passed by the legislature. Originated in England and has been followed as law in most American jurisdictions. Compare **statute**.
- Common Pleas Court** See **Court of Common Pleas**.
- community service** Sentencing option whereby offender performs volunteer work for government, non-profit or community-based organizations.
- commutation** Form of **clemency** reducing one's sentence, as from death to life imprisonment.
- comparative negligence** Legal doctrine by which negligence of plaintiff determines amount plaintiff may recover from defendant. Compare **contributory negligence**.
- complainant** See **plaintiff**.
- complaint** Legal document that usually begins a civil lawsuit. States facts and identifies action court is asked to take.
- conciliation** Form of **alternative dispute resolution** in which parties bring their dispute to a neutral third party, who helps reach a solution. Nonbinding. Similar to **mediation**, but may be less formal.
- concur** To agree, act together or consent. Compare concurring opinion under **opinion**.
- concurrent sentence** Two or more sentences served at same time rather than one after another. Three five-year terms served concurrently add up to no more than five years in prison. See also **consecutive sentence**.
- condemnation** Legal process by which government invokes its powers of **eminent domain** and takes privately owned property for public use, paying owners just compensation. Also, act of judicially pronouncing someone **guilty**. Usually called **conviction**.
- confession of judgment** Act of a debtor in permitting **judgment** to be entered against him/her by a creditor. Also known as cognovit judgment.
- consecutive sentences** Successive sentences, one beginning at the expiration of another. Three five-year terms served consecutively impose a 15-year sentence. Also called cumulative sentence. See also **concurrent sentence**.
- consent decree** Disposition in juvenile court in which proceedings are suspended and child is continued under supervision in his/her own home under terms and conditions negotiated with probation services and agreed to by all parties concerned. Also, a court decree to which all parties agree.
- consent judgment** See **judgment**.
- conservatorship** See **guardianship**.
- consideration** Inducement for which a party enters into a contract.
- conspiracy** Two or more people joining together to commit an unlawful act.
- contempt of court** Willful disobedience of judge's command or official court order.
- contingency fee** Fee for an attorney's services paid only if attorney is successful or suit is

- favorably settled out of court. Fee is usually a percentage of the amount client recovers.
- continuance** Postponement of a legal proceeding to a later date.
- contributory negligence** Legal doctrine that says if plaintiff in a civil action for negligence was also negligent, he/she cannot recover damages from defendant for defendant's negligence. Most jurisdictions have abandoned this doctrine in favor of **comparative negligence**.
- controlled substance** A drug whose possession and use is controlled by law.
- conviction** Act of judicially declaring a criminal defendant **guilty**. Also called condemnation.
- copyright** Exclusive right of the author of a literary or artistic work to control how his/her work is used. Many jurisdictions have expanded this right to include computer programs and other electronic data.
- corporal punishment** Physical punishment, e.g., spanking, caning or branding.
- corpus delicti** (COR pus di LICK ty) Material substance (body) upon which a crime has been committed, i.e., the physical evidence a crime has been committed, e.g., the body of a homicide victim or broken windows in a vandalized building.
- corroborating evidence** Supplementary evidence that strengthens or confirms initial evidence.
- counsel** Another name for attorney. Also, advice given by an attorney to a client.
- count** Each offense listed in a **complaint, information** or **indictment**.
- counterclaim** Claim made by defendant against plaintiff in a civil lawsuit, especially in opposition to the plaintiff's claim.
- court administrator** Officer who oversees administrative, nonjudicial activities of a court.
- Court of Common Pleas** Intermediate original court in some states, including Pennsylvania, that usually has civil and criminal jurisdiction. In Pennsylvania Common Pleas Courts also hear appeals from certain state and most local government agencies and from the minor courts. May also be referred to as trial courts or county courts.
- court costs** Fees and costs legally charged by the court for expenses of the litigation, e.g., filing fees, jury fees, reporter fees. Also, an amount of money that may be awarded to the successful party, recoverable from the losing party, as reimbursement for the cost of the litigation.
- court order** A court or judge's written command.
- court of record** Court whose proceedings are permanently recorded and which has power to fine or imprison for contempt.
- court reporter** Person who records and transcribes verbatim reports of all proceedings in court. Also called a stenographer.
- court-martial** Military court set up to try military personnel accused of crimes.
- crime** Type of behavior defined by law as deserving punishment. Crimes are classified as either **misdemeanors** or **felonies**.
- crime of passion** Crime committed during an intensely emotionally-charged moment.
- Crimes Code** Short title for Title 18 of *Purdon's Pennsylvania Statutes*, "Crimes and Offenses."
- criminal history record information** Information collected by criminal justice agencies on individuals with arrest records. Includes descriptions and notations of arrests, detentions, indictments or other formal criminal charges, dispositions, sentencing, correctional supervision and release. Also called a prior record or rap sheet.
- criminal insanity** Mental condition which renders a person unable to determine right from wrong. Defendants criminally insane cannot be convicted as criminal conduct involves conscious intent to do wrong.
- criminal summons** Order commanding accused to appear in court. May be issued in lieu of an arrest warrant for misdemeanors when the issuing official believes the accused will appear without being placed under bail.
- cross-claim** Claim by codefendants or coplaintiffs against each other.
- cross-examination** Questioning of witness by opponent in a trial. Compare **direct examination**.
- cruel and unusual punishment** Punishment that is considered barbaric, tortuous, degrading and out of proportion to the crime committed. Prohibited by the Eighth Amendment to the U.S. Constitution, although not specifically defined.

**cumulative sentence** See **consecutive sentence**.

**custody** Responsibility for care of a person, often a minor child whose parents are divorced. Legal custody is the right to make decisions regarding child's care and upbringing. Physical custody is the right to have child live with the individual to whom physical custody has been granted. Joint custody is custody shared by both parents. Sole custody is when one parent has lone control over a child. Also, being held under control by law enforcement officials. Being in custody is being under **arrest**. See also **protective custody**.

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## D

**damages** Money awarded by court to a person for injury or loss suffered by the unlawful act or negligence of another. Compensatory or actual damages are awarded for amount actually loss, as in payment of hospital bills. Punitive damages are awarded above and beyond actual damages to punish the guilty party and deter any future similar actions.

**de facto** In fact. Exercising power as if legally constituted. Compare **de jure**.

**de jure** (dee JOOR ee) By right; by the law. Exercising power in accordance with the law. Compare **de facto**.

**de novo** (deh NO vo) Anew. A "trial de novo" is a new trial of a case.

**death penalty** Sentence of death for being convicted of committing certain serious crimes such as murder. Also called capital punishment.

**decedent** Person who has died.

**decision** Judgment reached or given by a court.

**declaratory judgment** Judgment in a civil case that declares rights and responsibilities of the parties or interpretation of the law without awarding damages or requiring action. E.g., a court may be asked to issue a declaratory judgment on the constitutionality of a statute or whether an insurance policy covers a given activity. Usually requested by plaintiffs in order to avoid future legal difficulties.

**decree** Order of the court. A final decree fully and finally disposes of litigation. An interlocutory decree settles preliminary or subordinate points or pleas, but not entire case.

**defamation** Harming the reputation of another by making false statements to a third party, thus exposing the individual to ridicule, hatred, contempt or condemnation. May be criminal or civil. Includes **libel** and **slander**.

**default** Failure to fulfill a legal or contractual obligation.

**default judgment** Judgment entered against a defendant who does not respond to a claim or does not appear at trial.

**defendant** In a civil case, the person being sued. In a criminal case, the person charged with a crime.

**demurrer** (dih MUR rer) Motion still used in Pennsylvania to dismiss a civil case because the complaint is legally insufficient. In most states this is now called a **motion to dismiss**.

**deponent** One whose **deposition** is being taken.

**depose** To testify, bear witness. Also, to examine a witness via **deposition**.

**deposition** Sworn testimony of a witness taken under oath outside of court. Also, the session at which such testimony is recorded.

**descent and distribution statutes** State laws that provide for distribution of estate property when a person dies without a will. Also known as intestacy laws. Compare **intestate succession**.

**direct evidence** Proof of facts by witnesses who saw acts done or heard words spoken, as distinguished from **circumstantial**, or indirect, evidence.

**direct examination** First questioning of a witness by the party who called him/her. Compare **cross-examination**.

**directed verdict** Instruction by judge to jury to return a specific verdict, usually because one party failed to prove its case. Compare **binding instruction**.

**disbarment** Form of disciplining a lawyer whereby he/she loses, permanently or temporarily, the right to practice law.

**discharge** Dismissal of a case. Also, vacating of a court order. Also, dismissal of a juror, jury or

witness from any further responsibilities in a case.

**disclaim** To renounce one's legal rights or claims.

**discovery** Pretrial process by which one party reveals, at other party's request, relevant information about the litigation.

**dismissal** Termination of a lawsuit. "Dismissal without prejudice" permits the suit to be filed again at a later time. "Dismissal with prejudice" prevents the lawsuit from being refiled.

**disorderly conduct** Conduct that bothers others or disturbs the peace, such as loitering, public drunkenness, parties that are too loud.

**disposition** Court's final determination of a lawsuit or criminal charge.

**dissent** Disagreement by one or more appellate court judges with the decision the majority.

**disturbing the peace** Engaging in **disorderly conduct**.

**diversion** Process of removing certain minor criminal, traffic or juvenile cases from full judicial process on condition that accused undergo some sort of rehabilitation or training, e.g., job training. If defendant completes probation successfully, the charges may be dropped.

**docket** List of cases to be heard by court. Also, log containing brief entries of court proceedings.

**domicile** Place where a person has his/her permanent, legal home. A person may have several residences, but only one domicile.

**double jeopardy** Putting a person on trial more than once for the same crime. Forbidden by the Fifth Amendment to the U.S. Constitution.

**due process of law** Right of all persons to receive guarantees and safeguards of law and judicial process. Includes such constitutional rights as adequate notice; assistance of counsel; and rights to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses.

wear an electronic device which transmits the individual's whereabouts to a receiver that is monitored for violations. Usually used in connection with **house arrest**.

**elements of a crime** Specific factors that define a crime, which the prosecution must prove **beyond reasonable doubt** in order to obtain **conviction**. Elements that must be proven are (1) that a crime actually occurred (**actus reus**), (2) that the accused intended the crime to happen (**mens rea**), (3) a timely relationship between the first two factors.

**embezzlement** Fraudulently taking property or money entrusted to one individual by another.

**eminent domain** Power of the government to take private property for public use, after paying owner reasonable compensation. See **condemnation**.

**en banc** All judges of a court sitting together. Appellate courts often hear cases in panels of three judges. If a case is heard or reheard by the full court, it is heard en banc.

**encumbrance** A claim against property.

**enjoin** To require a person, via an **injunction**, to perform or abstain from performing some specific act.

**entrapment** Defense to criminal charges, alleging that agents of the government induced a person to commit a crime he/she otherwise would not have committed.

**equal protection of the law** Guarantee in the Fourteenth Amendment to the U.S. Constitution that all persons or classes of persons be treated equally by the law.

**equitable action** Action which seeks just, fair, nonmonetary remedy, e.g., an **injunction**.

**equitable distribution** Fair distribution of marital property in a divorce. May not mean equal distribution.

**equity** Generally, **justice** or fairness; body of principles that determine what is just or fair. Historically, refers to a system of law developed in England in reaction to the legal inability of common law courts to consider or provide remedy for every injury. The king established a court of chancery to do justice between parties in cases where common law would give inadequate redress. Compare **justice**.

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## E

**electronic monitoring** Type of sentencing or arrest wherein an individual is required to

**escheat** (iss SHEET) Process by which the property of one who has died goes to the state if no heir can be found.

**esquire** Title used after an attorney's name.

**estate** All properties owned by an individual when he/she dies.

**estate tax** Tax paid on an estate as it passes to the heirs.

**estoppel** Principle that prevents someone from claiming or denying something in court that contradicts what has already been established as fact.

**evidence** Information presented in court to prove or disprove **alleged** facts. See also specific types, including **admissible, best, character, circumstantial, clear and convincing, corroborating, direct, expert, hearsay, irrelevant, material, opinion, prima facie, real, relevant, state's and substantive evidence**. Compare **rebuttal, testimony, preponderance of evidence, corpus delicti, exhibit** and **weight of evidence**.

**ex delicto** (ex dee LICK toh) Arising from a tort; breach of duty.

**ex officio** By virtue of an office or position.

**ex parte** (ex PART ee) On behalf of only one party, without notice to any other party. E.g., a request for a search warrant is an **ex parte proceeding** since person subject to the search is not notified of proceeding.

**ex parte proceeding** Proceeding in which only one side is represented. Differs from **adversary system** or **proceeding**.

**ex post facto** (ex post FAC toh) After the fact. E.g., ex post facto laws permit conviction and punishment for a lawful act performed before law was changed and act was made illegal. The U.S. Constitution prohibits these.

**examination** Questioning of witness under oath. See **direct examination** and **cross-examination**.

**exclusionary rule** Rule preventing illegally obtained evidence from being used in any trial. See **suppress**.

**exculpate** To free from blame or accusation, particularly in matters of small importance. Compare **exonerate**.

**execute** (a judgment or decree) To put final judgment of court into effect.

**executor** Personal representative, named in a will, who administers an estate. Compare **administrator**.

**exempt property** Certain property protected by law from creditors.

**exhibit** Document or other article introduced as evidence in court.

**exonerate** Removal of a charge, duty or responsibility. Also, to clear completely from accusation or blame and any attendant suspicion of guilt. Compare **exculpate**.

**expert evidence** Testimony relating to scientific, technical or professional matters given by persons particularly qualified by reason of special training, skill or familiarity with the subject.

**expert witness** Person with special knowledge in a particular field who may testify and give opinion on meanings of facts related to that knowledge. See also **opinion evidence**.

**expungement** Official and formal removal of conviction from a criminal record.

**extenuating circumstances** See **mitigating circumstances**.

**extortion** Illegally obtaining money or property by force, threat, intimidation, or undue or illegal power.

**extradition** Process by which one state or nation surrenders to another state or nation a person accused or convicted of a crime in the requesting state/nation.

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## F

**fair comment** Term used in **libel** law applying to statements relating to matters of public concern made by a writer in honest belief that they are true, even though they are not.

**false arrest** Arresting an individual without proper legal authority.

**false pretenses** Purposely misrepresenting a fact or condition in order to obtain another's money or goods.

**family court** Court having jurisdiction over family matters such as child abuse and neglect, support, paternity and custody.

**felony** Serious crime punishable by imprisonment for more than a year or death and/or substantial fines. Compare **misdemeanor**.

**fiduciary** (fih DOO she AIR ee) Person having a legal relationship of trust and confidence with another and a duty to act primarily for the other's benefit, e.g., **guardian**, **trustee** or **executor**.

**file** To submit a paper to the clerk of court/court administrator to be entered into the official files or records of a case. Also, to begin a lawsuit.

**finding** Formal conclusion by judge, jury or regulatory agency on issues of fact.

**fine** Money penalty imposed in criminal or civil actions.

**first appearance** See **initial appearance**.

**forcible entry and detainer** Summary proceeding for restoring possession of land to one who has been wrongfully deprived of it.

**forgery** Falsely and fraudulently making or altering a document, e.g., a check.

**fraud** Intentional deception to deprive another person of property or to injure that person in some other way.

**frivolous lawsuit** Lawsuit having no legal merit. Often filed to harass defendant.

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## G

**garnishment** Legal proceeding in which a debtor's money is seized to pay the debtor's creditors, such as when one's wages are garnished.

**good faith** Honest belief; absence of **malice** and intent to defraud. Also known as **bona fide**.

**good time** Reduction in time served in prison as reward for good behavior.

**grand jury** Group of citizens, usually numbering 23, assembled to determine whether enough evidence exists to charge an individual with a felony. May issue **indictment**, charging the suspect, or may have power to issue **presentment**. Compare **petit jury**.

**granting cert** See **certiorari**.

**gravamen** (gruh VAY men) The significant point of a grievance or complaint.

**guardian ad litem** (add LYE dem) Person appointed by court to look after interests of a minor or incapacitated person involved in legal proceedings.

**guardianship** Legal right given to a person to care for an individual or his/her property when that individual is deemed incapable of doing so for him/herself. Also called **conservatorship**.

**guilty** Plea made by accused in confessing crime with which charged. Also, verdict reached when jury convicts defendant of crime with which charged. Compare **acquittal**.

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## H

**habeas corpus** (HAY be us KOR pus) Writ that orders a person to be brought before a judge, usually to determine whether that individual is being legally detained or imprisoned.

**harmless error** Error committed during trial which was not serious enough to affect outcome of trial and thus is not grounds for reversal. Compare **reversible error**.

**hearsay** Evidence not known to a witness personally, but which was relayed to witness by a third party. Generally inadmissible in court.

**holographic will** Will written by testator in his/her own handwriting, usually unwitnessed.

**homicide** Killing of one human being by another.

**hornbook laws** See **blackletter laws**.

**hostile witness** Witness biased against the examining party or who does not want to testify. May be asked **leading questions**.

**house arrest** Sentence or type of arrest whereby an individual is confined to his/her residence except for preapproved trips, such as medical appointments, work, community service obligations, etc. Often used in connection with **electronic monitoring**.

**hung jury** Jury unable to reach a verdict.

**hypothetical question** Imaginary situation, incorporating facts previously established, upon which an **expert witness** is permitted to give an opinion. Most often asked of medical experts in personal injury suits.

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**I**

- immediate cause** Last event in a series of events which causes another event, particularly an injury, to occur. May or may not also be the **proximate cause**. An event may have more than one proximate cause, but only one immediate cause.
- immunity** Agreement by court not to prosecute an individual in exchange for that individual providing criminal evidence.
- impeach** To attack the credibility of a witness. Also, to charge with a crime or misconduct; in particular, to charge a public official with a violation of the public trust. Also, to challenge the authenticity or accuracy of a document.
- impunity** Exemption from punishment.
- in camera** In the judge's private chambers, or in private. A hearing in camera takes place in the judge's office, outside of the presence of jury and public.
- in forma pauperis** (in FORM uh PAH per us) In the manner of a pauper. Permission given to an **indigent** or poverty-stricken individual to sue without payment of court fees.
- in limine** (LIM ih nee) Motion requesting that court exclude certain evidence that might prejudice jury.
- in perpetuity** Forever.
- in personam** (per SO nam) Procedural term used to designate proceedings or actions involving the personal rights and interests of the parties. Compare **in rem**.
- in propria persona** (PRO pree uh per SO nuh) See **pro se**.
- in rem** Procedural term used to designate proceedings or actions in determining the status of a thing or the rights of persons with respect to that thing. Compare **in personam**.
- inadmissible** That which under rules of evidence cannot be admitted as evidence.
- incarcerate** To confine in jail.
- incompetent** Person lacking the capacity, legal qualification or fitness to manage personal affairs or to discharge a required duty.
- indemnity** Liability or loss shifted from one person held legally responsible to another.
- indeterminate sentence** Sentence with specified minimum and maximum length, e.g., one to five years in prison. Also, a maximum sentence which may be reduced by a parole board, via statutory authorization, after minimum term has been served.
- indictment** Formal written accusation by a **grand jury** charging a person with a crime. Compare **charge**, **information**, **presentment**.
- indigent** Poor person. An individual who can demonstrate his/her indigence to the court may be assigned a court-appointed attorney or may not have to pay filing fees and court costs. See also **in forma pauperis**.
- indirect evidence** See **circumstantial evidence**.
- inferior court** Court of special, limited or statutory jurisdiction. May also denote any court subordinate to chief appellate court. See **limited jurisdiction**.
- information** Formal accusation of a crime filed by a prosecutor without a grand jury indictment. Compare **charge** and **indictment**.
- infraction** Violation of law usually not punishable by imprisonment, e.g., minor traffic offenses.
- initial appearance** First appearance in court of a person who has been arrested, to hear charges read, be advised of rights and have bail determined. Person generally comes before judge within hours of arrest. Also called first appearance. Compare **arraignment** and **preliminary hearing**.
- injunction** Court order preventing or requiring a specific action. See **preliminary injunction** and **permanent injunction**.
- instructions** Judge's directions/guidelines to jury regarding law which applies to the facts of a case. Also called **charge**. Compare **binding instruction** and **directed verdict**.
- intangible assets** Nonphysical items such as patents, trademarks, copyrights and good will.
- integrated bar** State bar association to which a lawyer must belong in order to practice in that state.
- inter alia** (IN ter AY lee uh or AH lee uh) Among other things.
- inter alios** (IN ter AY lee us or AH lee us) Among other persons.

**inter vivos gift** (IN ter VEE VOHS) Gift made during giver's life.

**inter vivos trust** See **living trust**.

**interlocutory appeal** Appeal made before the trial court's final ruling on the entire case.

**interlocutory decree** See **decree**.

**interlocutory order** Any order given before the final order is issued. Usually cannot be appealed until case is fully resolved.

**intermediate punishment** Set of sentencing options more severe than probation, but not as severe as incarceration. Includes, among other options, **electronic monitoring**, intensive supervision, and residential drug and alcohol treatment. May or may not involve housing of offender.

**interpleader** Suit filed by a party holding property who does not know to whom the property should go, to determine who should receive the property.

**interrogatories** Written questions submitted to another party in a lawsuit for which written answers must be provided. Part of **discovery** process.

**intervention** Action by which a third party who may be affected by a lawsuit is permitted to become a party to the suit. Compare **third party claim**.

**intestacy laws** (in TES ta see) See **descent and distribution statutes**.

**intestate** One who dies without leaving a will.

**intestate succession** Process by which property of person who has died without a will or whose will has been revoked is distributed to others. Compare **descent and distribution statutes**.

**irrelevant** Evidence not related or applicable to an issue in a trial and thus not admissible.

**irrevocable trust** (ear REV o cuh b'l) Trust that, once set up, grantor may not revoke.

**issue** Disputed point between parties in a lawsuit.

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## J

**joinder** Joining parties or claims in a lawsuit. Compare **misjoinder** and **nonjoinder**.

**joint and several liability** Legal doctrine which makes any number of members of a party responsible for a liability, at adversary's discretion.

**joint tenancy** Form of legal co-ownership of property which gives the survivors, when one of the owners dies, the rights to the decedent's shares of the property. Tenancy by the entirety is a special form of joint tenancy between husband and wife. Compare **tenancy in common**.

**joint custody** See **custody**.

**judge** Elected or appointed public official with authority to hear and decide cases in a court of law. A judge pro tem is a temporary or visiting judge. Compare **justice** and **magistrate**.

**judgment** Final disposition of a lawsuit. See **consent judgment**, **declaratory judgment**, **default judgment**, **summary judgment** and **non obstante veredicto**.

**judicatory** Relating to judgment.

**judicial bypass** Obtaining permission from the court to do something that ordinarily requires permission of someone else, e.g., a minor obtaining a court order to have an abortion without notifying her parents.

**judicial officer** An officer of a court; someone charged with upholding the law, administering the judicial system.

**judicial review** Authority of court to review and declare unconstitutional actions of other branches of government.

**Judiciary Act Repealer Act (JARA)** Act of 1978 that enacted 42 Pa.C.S., Pennsylvania's judicial code.

**judicial** (juh RID ih kul) Relating to law, judicial proceedings and administration of justice.

**judicial day** Day on which a court is in session.

**juris** Of law.

**Juris Doctor** Doctor of Law. Law degree bestowed on those who have successfully graduated from law school.

**jurisdiction** Court's authority to hear and/or decide a case. Also, territory in which a court is authorized to hear cases.

**jurisprudence** Study of law and legal system. See also **caselaw**.

**jurist** One skilled or versed in the law. Also refers to judges, justices, district justices, magistrates, etc.

**jury** Group of people selected according to law and sworn to decide questions of fact and render a decision about these matters. See **grand jury** and **petit jury**.

**jury commissioner** Court officer responsible for choosing the panel of potential jurors for a particular court term.

**jury instructions** See **instructions**.

**justice** Fair administration of laws. Compare **equity**. Also, an appellate court judge. Compare **judge** and **magistrate**.

**justice of the peace** Local judicial officer who has **limited jurisdiction**, usually involving minor offenses and civil matters, and with authority to perform civil functions such as marriages. Pennsylvania used justices of the peace prior to the Constitution of 1968.

**justiciable** (jus TISH ee uh b'l) Of issues and claims which may be properly examined in court.

**juvenile** Person who has not yet reached age (usually 18) at which he/she can be treated as adult for purposes of criminal law.

**juvenile court** Court having jurisdiction over cases involving children under a specific age, usually 18.

**juvenile delinquent** A minor guilty of criminal or anti-social behavior for which he/she may not be punished as an adult.

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## K

**kidnapping** Unlawfully taking and carrying away a person by force, against his/her will.

**King's Bench power** Extraordinary jurisdiction given some high courts, including Pennsylvania's Supreme Court, to assume **adjudication** of any case pending before a lower court which involves issue/s of immediate public importance. In Pennsylvania the Supreme Court can do this on its own or upon petition from any party.

**knowingly** Willfully or intentionally with respect to a material element of an offense.

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## L

**lack of jurisdiction** Court's lack of power to act in a particular manner or to give certain kinds of relief.

**lapsed gift** Gift made in a will to a person who died before will-maker.

**larceny** Unlawfully taking personal property with intent to deprive owner of it permanently. Also called theft. Differs from **robbery**.

**law** Rules established by governing authorities to maintain order in a society.

**law clerks** Law students who assist judges and attorneys with legal research, writing, etc.

**leading question** Question which suggests answer desired of witness. Generally may be asked only of a **hostile witness** and on **cross-examination**.

**leave of court** Permission received from a court to take a nonroutine action.

**legal aid** Professional legal services available for free or for reduced cost to those unable to afford them.

**legal custody** See **custody**.

**leniency** Recommendation by prosecutor to judge for a sentence less than maximum allowed.

**levy** Seizing property of a debtor for satisfaction of a judgment against him/her. Also, imposition of fine or tax.

**liable** Legally responsible for.

**libel** Published words or pictures that falsely and maliciously defame a person. Compare **slander** and **fair comment**.

**lien** Legal claim against another person's property as security for a debt, lasting until the debt has been paid.

**limited action** Civil action in which recovery of less than a certain amount as specified by statute is sought.

**limited jurisdiction** Courts limited in types of cases they may hear. In Pennsylvania these courts include district justice courts, Philadelphia Municipal Court, Philadelphia Traffic Court and Pittsburgh Magistrates Court. Also called minor courts or special courts. See **inferior court**.

**lis alibi pendens** (liss PEN DENZ) Lawsuit pending elsewhere.

**lis pendens** Pending suit. Also, legal notice that a dispute exists which may affect title to a certain piece of land.

**litigant** Party to a lawsuit.

**litigation** Lawsuit or process of carrying through a lawsuit.

**living trust** Trust set up and in effect during lifetime of grantor. Also called inter vivos trust. Compare **testamentary trust**.

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## M

**magistrate** Local judicial official having limited original jurisdiction, especially in criminal cases. Also often used to refer to a judge. Compare **judge** and **justice**.

**mala in se** (MAL uh in see) "Evil in itself." Behavior universally regarded as criminal, e.g., murder. Also called *malum in se*. Compare **mala prohibita**.

**mala prohibita** (MAL uh PRO HIB ih duh) "Prohibited evil." Behavior that is criminal only because society defines it as such, e.g., gambling. Also called *malum prohibita*. Compare **mala in se**.

**malfeasance** Unlawful act. Often used to describe misconduct by public officials. Compare **misfeasance** and **nonfeasance**.

**malice** Intent to commit a wrongful act without just cause or excuse.

**malice aforethought** Mental state required to prove murder.

**malicious prosecution** Action instituted with intention of injuring defendant and without probable cause.

**mandamus** (man DAY mus) Writ issued by a court ordering a public official, another court, a corporation, public body or individual to perform an act.

**mandate** Judicial command or order directing an officer of the court to enforce judgment, sentence or decree.

**mandatory sentence** Sentence set by law, allowing for little or no discretion by the sentencing judge.

**manslaughter** Unlawful killing of another without intent to kill. May be voluntary, i.e., upon sudden impulse, e.g., a quarrel erupts into a fistfight in which a participant is killed; or involuntary, i.e., committed during commission of an unlawful act not ordinarily expected to result in great bodily harm or during commission of a lawful act without proper caution, e.g., driving an automobile at excessive speed, resulting in fatal collision. Compare **murder**.

**master** Official appointed by a court to assist with proceedings. Masters may take testimony, rule on pre-trial issues, compute interest, handle uncontested divorces, etc. Usually must present written report to court.

**material evidence** Evidence that is relevant and goes to substantiate issues in a dispute.

**mediation** Form of **alternative dispute resolution** in which parties bring their dispute to a neutral third party, who helps them agree on settlement. Nonbinding. Similar to **conciliation**.

**memorial** Abstract of a legal record. Also, written statement of facts presented to legislature or executive as a petition.

**mens rea** (menz REE uh) The state of mind of the defendant the prosecution must prove in order to establish criminal responsibility. See **elements of a crime**.

**minor courts** See **limited jurisdiction**.

**Miranda rule** Requirement that police advise a suspect in custody of constitutional rights before questioning him/her. Named after U.S. Supreme Court ruling in *Miranda v. Arizona*, 384 U.S. 436 (1966) establishing such requirements.

**mischarge** Erroneous jury instruction that could be grounds for verdict reversal.

**misdemeanor** Criminal offenses generally punishable by fine or limited local jail term, but not by imprisonment in penitentiary. Compare **felony**.

**misfeasance** Lawful act performed in wrongful manner. Compare **malfeasance** and **nonfeasance**.

**misjoinder** Erroneously joining parties in a lawsuit. Compare **joinder** and **nonjoinder**.

**mistrial** Trial terminated before verdict is reached, either because of some procedural error, serious misconduct during proceedings or **hung jury**.

**mitigating circumstances** Circumstances which do not constitute justification for committing an offense, but which may reduce degree of blame and help reduce sentence of individual convicted. Also known as extenuating circumstances. Compare **aggravating circumstances**.

**mittimus** (MIT ih mus) Written court order directing a jailer to receive and safely keep a person until ordered otherwise.

**moot** Having no practical significance. Usually refers to court's refusal to consider a case because issue involved no longer exists.

**moral turpitude** Immorality, depravity; conduct so wicked as to be shocking to the community's moral sense.

**motion** Application to a court or judge for a ruling or order.

**motion to dismiss** Request to dismiss a civil case because of settlement, withdrawal or a procedural defect. Compare **demurrer**.

**multiplicity of actions** Two or more separate litigations of the same issue against the same defendant.

**Multistate Bar Examination (MBE)** Multiple-choice bar exam given by every state's bar association. Its 200 questions are not state-specific and cover contracts, criminal law, constitutional law, real property, evidence and torts.

**municipal court** Court whose jurisdiction is confined to the city or community in which it is erected. Usually has summary jurisdiction over minor offenses and a limited number of misdemeanors. Occasionally also possesses limited civil jurisdiction. Pennsylvania has one municipal court, Philadelphia Municipal Court.

**murder** Unlawful killing of a human being with **malice aforethought**. First degree murder is premeditated, i.e., planned. Second degree murder is sudden, instantaneous intent to kill or to cause injury without caring whether injury kills or not. Pennsylvania and some other states also allow for third degree

murder, which is murder committed by a person engaged in commission of a felony. Compare **manslaughter**.

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## N

**negligence** Failure to use that degree of care which a reasonable person would use under the same circumstances. See also **comparative negligence** and **contributory negligence**.

**next friend** One acting without formal appointment as guardian, for benefit of minor or incompetent plaintiff and who is not party to the lawsuit.

**no bill** Grand jury's notation on written indictment indicating insufficient evidence was found to indict. Compare **true bill**.

**no contest** See **nolo contendere**.

**no-contest clause** Language in a will that a person who makes a legal challenge to the will's validity will be disinherited.

**"no-fault" proceeding** Civil case in which claim is adjudicated without finding of error or fault.

**nol pros** Abbreviation of **nolle prosequi**.

**nolle prosequi** (NAHL ee PROS eh KWEE) "I do not choose to prosecute." Decision by prosecutor or plaintiff not to go forward with an **action**. Called "nol pros" for short.

**nolo contendere** (NO LO con TEN deh ree) Criminal defendant's plea, whereby he/she accepts punishment without admission of guilt. Also called no contest.

**nominal party** One joined as a party or defendant in a lawsuit because the technical rules of pleading require his/her presence in the record.

**non compos mentis** (non COM pos MENT iss) Not of sound mind.

**non obstante veredicto** (non ob STANT ee ver eh DICK toh) "Notwithstanding the verdict." Verdict entered by judge contrary to jury's verdict.

**non prosequitur** (non preh SEK wit tur) Judgment entered when plaintiff, at any stage of proceedings, fails to prosecute his/her action. Called "non pros" for short.

**non pros** Abbreviation of **non prosequitur**.

**nonfeasance** Failure to act when duty required. Compare **malfeasance** and **misfeasance**.

**nonjoinder** Neglecting to add a party to a lawsuit who should be added. Compare **joinder** and **misjoinder**.

**nonsuit** Plaintiff's voluntary withdrawal of a suit without decision on merits or court's dismissal of a case because plaintiff has failed to make out a legal case or to bring forward sufficient evidence.

**notary public** Licensed public officer who has authority to certify documents, administer oaths, take acknowledgement and deposition and perform other specified functions, depending on the state.

**notice** Formal notification to a party that a civil lawsuit has been filed against him/her. Also, any form of notification of legal proceeding.

**nugatory** Useless; invalid.

**nuisance** Offensive, annoying, unpleasant or obnoxious thing or practice that interferes with use or enjoyment of a property.

**nunc pro tunc** "Now for then." Action applied to acts which should have been completed at an earlier date than actually were, with the earlier date listed as the completion date.

**nuncupative will** (nun KY00 puh tive) An oral will.

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## O

**oath** Solemn pledge to keep a promise or speak the truth.

**obiter dictum** (OH bih der DICK tum) "Something said in passing." Remarks or observations of a judge, made in passing during pronouncement of judicial opinion, but not necessary to the pronouncement. Often called dictum or dicta.

**objection** Process during a court proceeding whereby one party takes exception to something that has occurred or will occur and requests immediate ruling by judge.

**"on his own recognizance"** See **personal recognizance**.

**one-day, one-trial jury service** Method of jury selection in many jurisdictions which requires prospective jurors to serve for only one day if they are not chosen for a jury or for only the length of a trial if chosen.

**onus probandi** (OH nus pruh BAN die) **Burden of proof**. Often shortened to **onus**.

**opening statement** Statements made at the start of a trial by attorneys for each side, outlining each's legal position and the facts each intends to establish during the trial.

**opinion** Court's written decision of a case. A majority or plurality opinion expresses court's decision. A concurring opinion generally agrees with majority, but usually states different or additional reasons for reaching same conclusion. A dissenting opinion states opinion of judges who disagree with majority. *Per curiam* opinion is an unsigned opinion of an appellate court.

**opinion evidence** What a witness thinks, believes or infers regarding disputed facts. Generally admissible only when given by an **expert witness** unless opinion is based on matters common to lay persons.

**oral argument** Summary by attorneys before court (particularly appellate court) of positions regarding legal issue being litigated.

**order** Command, written or oral, from a court.

**ordinance** Law enacted by a municipality such as a county or city council.

**orphans' court** Court that oversees estates, adoptions, appointments of guardians. Also called probate court.

**overrule** Judge's decision not to allow an **objection**. Also, decision by higher court finding that lower court decision was in error.

**overt act** Act done to carry out or in furtherance of intention to commit a crime. Compare **actus reus**.

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## P

**pain and suffering** Physical and/or emotional distress compensable as an element of damage in **torts**.

**pardon** Form of **clemency** releasing one from the penalties of a criminal conviction.

- parens patriae** (PAH renz PATE ree eye) Doctrine under which the government protects the interests of a minor or incapacitated person.
- parole** Supervised, conditional release of a prisoner before expiration of his/her sentence.
- party** One who files a lawsuit or against whom a lawsuit is filed.
- patent** Government grant giving an inventor exclusive right to make or sell his/her invention for a term of years.
- penal** Of, relating to or involving punishment or penalties.
- penal code** Code of laws concerning crimes and offenses and their punishment.
- pendente lite** (pen DEN tee LYE tee) During the progress of a lawsuit; contingent on the outcome of the suit.
- per curiam** (per KYUR ee uhm) See **opinion**.
- peremptory challenge** (peh REMP teh ree) Challenge which may be used to reject a certain number of prospective jurors without giving a reason. Compare **challenge for cause**.
- perjury** Deliberately making a false or misleading statement under oath.
- permanent injunction** Court order requiring or forbidding an action, granted after final hearing has been held on its merits. (Does not necessarily last forever.) Compare **preliminary injunction**.
- personal jurisdiction** Adjudicative power of a court over an individual.
- personal property** Any movable physical property or intangible property which may be owned. Does not include real property such as land or rights in land.
- personal recognizance** Release of a defendant without bail upon promise to return to court as required. Also known as releasing one "on his own recognizance."
- personal representative** Person who administers legal affairs of another because of incapacity or death.
- petit jury** (PEH tee) Jury composed of six to twelve persons who hear evidence presented at a trial and determine the facts in dispute. Compare **grand jury**.
- petition** Written request to a court asking for a particular action to be taken.
- petitioner** See **plaintiff**.
- physical custody** See **custody**.
- plaintiff** Person, corporation, legal entity, etc., initiating a civil lawsuit. Also called complainant or petitioner.
- plea** Defendant's formal response to a criminal charge. Plea may be **guilty**, not guilty or **nolo contendere** (no contest).
- plea bargaining** Mutually satisfactory disposition of a case negotiated between accused and prosecutor. Usually defendant pleads guilty to lesser charge/s in exchange for reduced sentence or dismissal of other charges.
- pleadings** Written statements by parties to a lawsuit, setting forth or responding to allegations, claims, denials or defenses.
- plenary action** (PLEH nuh ry) Complete, formal hearing or trial on merits.
- polling the jury** Asking jurors individually after verdict has been announced whether they agree with verdict.
- Post-Conviction Relief Act** Process by which someone who has been convicted of a crime may request a court to vacate or correct a conviction or sentence.
- pour-over will** Will that leaves some or all estate assets to existing trust.
- power of attorney** Legal authorization for one person to act on behalf of another individual. See **attorney-in-fact**.
- praecipe** (PRESS ih pee) Writ commanding a person to do something or to show cause why he/she should not.
- precedent** Previously decided case which guides decisions of future cases. Compare **stare decisis**.
- precept** Writ issued by person of authority commanding a subordinate official to perform an act.
- prejudice** Preconceived bias. Judgment decided before facts are given.
- prejudicial error** See **reversible error**.
- preliminary hearing** Hearing at which judge determines whether evidence is sufficient against a person charged with a crime to warrant holding him/her for trial. Compare **arraignment** and **initial appearance**.
- preliminary injunction** Court order requiring or forbidding an action until a decision can

- be made whether to issue a **permanent injunction**. Issued only after both parties have had opportunity to be heard. Compare **temporary restraining order**.
- premeditation** Decision or plan to commit a crime.
- preponderance of evidence** Greater weight of evidence, a common standard of proof in civil cases. Jury is instructed to find for the party which has the stronger evidence, however slight that may be. Compare **clear and convincing evidence**.
- presentencing report** Report to sentencing judge containing background information about crime and defendant to assist judge in making his/her sentencing decision. Sometimes called sentencing report.
- presentment** Declaration or document issued by grand jury on its own initiative, making accusation. Compare **indictment**.
- presumption of innocence** Fundamental principle of American justice system that every individual is innocent of a crime until proven guilty in a court of law.
- presumption of law** Rule of law that courts and judges must draw a particular inference from a particular fact or evidence.
- pretermitted child** (PRE ter MITT ed) Child born after a will is executed, who is not provided for by the will. Most states have laws that provide for a share of the estate to go to such children.
- pre-trial conference** Informal meeting between judge and lawyers in a lawsuit to narrow issues, agree on what will be presented at trial and make final effort to settle case without trial.
- prima facie case** (PREE muh FAH sheh) Case that has minimum amount of evidence necessary to allow it to continue in the judicial process.
- prima facie evidence** Evidence sufficient to establish a fact or sustain a finding in favor of the side it supports unless rebutted.
- prior record** See **criminal history record information**.
- prior restraint** Restraint on speech or publication before it is spoken or published. Prohibited by constitution unless defamatory or obscene or creates a clear and present danger.
- privileged communication** Communication protected by law from publication. Includes certain communications between attorneys and clients, clergymen and confessors, doctors and patients, and husbands and wives as well as issues of national security and foreign policy and journalists protecting sources.
- pro bono publico** “For the public good.” When lawyers represent clients without a fee. Usually shortened to “pro bono.”
- pro hac vice** (pro hack VEE chay) “For this time only.” Usually refers to an attorney who is not licensed in a particular jurisdiction who has been granted permission to try a particular case in that jurisdiction.
- pro se** (pro see) An individual who represents himself/herself in court. Also called “in propria persona” or “pro persona.”
- probable cause** Sufficient legal reasons for allowing search and seizure or arrest of a person.
- probate** Process of proving a will is valid and should be carried out. Also refers more generally to law governing estates.
- probate court** See **orphans’ court**.
- probation** Alternative to imprisonment, allowing person found guilty of offense to stay in the community, usually under conditions and under supervision of a probation officer.
- procedural law** Law which prescribes the method of enforcing rights or obtaining redress for invasion of rights. Compare **substantive law**.
- proceeding** A legal action. Conducting judicial business before a court or judicial officer.
- process** Summons to appear in court or notification to a defendant that a suit has been filed against him/her.
- promulgate** To put (a law) into action or effect. To make known publicly.
- prosecutor** Attorney representing the government in a criminal case.
- protective custody** Confinement of an individual by law enforcement officials to protect that individual from a dangerous person or situation.

**protective order** Court order to protect a party or witness from further harassment, service of process or discovery by the opposing party.

**prothonotary** In Pennsylvania an officer elected or appointed to oversee court matters of a civil nature, including maintaining all official court documents and records. Compare **clerk of courts**.

**proximate cause** Act legally sufficient to result in liability. Also, act without which an action could not have occurred. Differs from **immediate cause**.

**public defender** Government lawyer who provides legal services for an individual accused of a crime, who cannot afford to pay.

**public domain** Government-owned land. Also, publications, inventions, etc., not protected by **copyright**.

**punishment** Penalty, such as a fine, imprisonment or probation, imposed on one who has broken the law. See also **death penalty** and **cruel and unusual punishment**.

**punitive damages** Damages awarded to a **plaintiff** over and above the actual damages, meant to punish defendant and thus deter future behavior of like nature.

**purge** To **exonerate** or cleanse from guilt.

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## Q

**quash** To vacate, void, nullify.

**quid pro quo** "Something for something." Fair return consideration; i.e., giving something of value in return for getting something of similar value.

**quo warranto** (quo wah RANT oh) Writ used to discover by what authority an individual holds or claims a public office, franchise or liberty.

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## R

**rap sheet** See **criminal history record information**.

**ratio decidendi** (RAY she oh DES ih DEN die) Principle or rule of law on which a court decision is based.

**real evidence** Physical evidence that plays a direct part in an incident in question, as opposed to oral testimony.

**real property** Land, anything growing on the land and anything erected on or attached to the land. Also called real estate.

**reasonable doubt** State of mind in which jurors cannot say they feel confident that an individual is **guilty** of crime charged. See **beyond a reasonable doubt**.

**reasonable person** Hypothetical person who sensibly exercises qualities of attention, knowledge, intelligence and judgment. Used as legal standard to determine negligence.

**rebuttal** Evidence which disproves evidence introduced by the opposing party.

**recidivism** (reh SID ih vizm) Relapse into former type of behavior, as when an individual relapses into criminal behavior. A habitual criminal is a recidivist.

**recognizance** See **personal recognizance**.

**record** Official documents, evidence, transcripts, etc., of proceedings in a case.

**recovery** To obtain judgment in one's favor. Also, to obtain damages or other relief in a lawsuit or other legal proceeding.

**recusal** Process by which a judge excuses him/herself from hearing a case.

**recusation** Plea by which defendant requests that judge hearing his/her trial excuse him/herself from case.

**re-direct examination** Opportunity to question witness after cross-examination regarding issues brought up during the cross-examination. Compare **rehabilitation**.

**redress** To set right; to remedy; to compensate.

**referral** Process by which a juvenile case is introduced to court, agency or program where needed services can be obtained.

**referee** Person appointed by a court to assist with certain proceedings, such as taking testimony.

**rehabilitation** Reexamining a witness whose credibility has suffered during cross-examination to restore that witness's credibility. Compare **re-direct examination**.

**rehearing** Another hearing of case by same court in which suit was originally heard.

**rejoinder** Defendant's answer to the plaintiff's reply.

**relevant evidence** Evidence that tends to prove or disprove a matter at issue.

**relief** See **remedy**.

**remand** To send a case back to the court where originally heard for further action. Also, to send an individual back into custody after a preliminary examination.

**remedy** Means by which right or privilege is enforced or violation of right or privilege is prevented, redressed or compensated. Also called relief.

**remit** To send a case back to a lower court.

**remittitur** (reh MID ih dur) Judge's reduction of damages awarded by jury.

**removal** Transfer of state case to federal court for trial.

**replication** Plaintiff's reply to defendant's plea, answer or counterclaim.

**replevin** (reh PLEV in) Action for recovery of a possession wrongfully taken.

**reply** Plaintiff's response to defendant's argument, counterclaim or answer. Plaintiff's second pleading; followed by defendant's rejoinder.

**reprieve** Temporary postponement of a sentence, particularly of a death sentence.

**reprimand** Disciplinary action against an attorney that declares his/her actions improper, but does not prevent him/her from practicing law. May be public or private.

**respondent** See **appellee**.

**rest** When one side finishes presenting evidence in a trial.

**restitution** Return of something to its rightful owner. Also, giving the equivalent for any loss, damage or injury.

**restraining order** Order prohibiting someone from harassing, threatening, contacting or even approaching another individual.

**retainer** Act of a client in hiring an attorney. Also denotes fee client pays when retaining attorney.

**return** Report to judge of action taken in executing a writ issued by judge, usually written on the back of the writ. Also, the action of returning the writ to court.

**reverse** Higher court setting aside lower court's decision.

**reversible error** Error sufficiently harmful to justify reversing judgment of lower court. Also called prejudicial error. Compare **harmless error**.

**revocable trust** (REV uh kuh b'l) Trust that grantor may change or revoke.

**revoke** To cancel or nullify a legal document.

**right to counsel** Guarantee in the Sixth Amendment of the U.S. Constitution of a criminal defendant's right to court-appointed counsel if the defendant cannot afford to hire counsel.

**robbery** Felonious taking of another's property in that person's presence by force or fear. Differs from **larceny**.

**rule of court** Rules governing how a given court operates.

**rules of evidence** Standards governing whether evidence is admissible.

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## S

**sanction** Penalty for failure to comply with rule, order or law.

**scofflaw** One who habitually ignores the law or does not answer court summonses.

**satisfaction** See **accord and satisfaction**.

**search warrant** Written order issued by a judge that permits a law enforcement officer to search a specific area for specific items.

**secondary evidence** See **best evidence**.

**self-defense** Use of force to protect one's self, family or property from harm or threatened harm by another.

**self-incrimination, privilege against** Right of people to refuse to give testimony against themselves. Guaranteed by Fifth Amendment to U.S. Constitution. Asserting right is often referred to as "taking the Fifth."

**self-proving will** Will whose validity does not have to be testified to in court by witnesses since the witnesses executed an **affidavit** reflecting proper execution of will prior to maker's death.

**sentence** Punishment inflicted on a person convicted of crime. See **concurrent sentences**,

- consecutive sentences, death penalty, house arrest, indeterminate sentence, mandatory sentence and suspended sentence.**
- sentencing guidelines** Set of guidelines introduced to ensure conformity in sentencing throughout Pennsylvania. Federal government and several other states also use.
- sentencing report** See **pre-sentencing report**.
- separation of witnesses** See **sequestration of witnesses**.
- sequestration** Keeping all jurors together during a trial to prevent them from being influenced by information received outside courtroom.
- sequestration of witnesses** Keeping all witnesses (except plaintiff and defendant) out of courtroom except for their time on the stand to prevent them from hearing testimony of other witnesses. Also called separation of witnesses.
- service** Delivery of legal document, such as **complaint, summons or subpoena**.
- set aside** To annul or negate a court order or judgment.
- sidebar** Conference between judge and lawyers, usually in courtroom, out of earshot of jury and spectators. Also called bench conference.
- slander** False and defamatory spoken words tending to harm another's reputation, business or means of livelihood. Compare **libel**.
- small claims court** Court that handles civil claims for small amounts of money. People often represent themselves rather than hire an attorney.
- sole custody** See **custody**.
- sovereign immunity** Doctrine that a government, either state or federal, is immune to lawsuits unless it gives its consent.
- special courts** See **limited jurisdiction**.
- specific performance** **Remedy** requiring person who has breached a contract to fulfill his/her part of the contract, as opposed to simply paying damages. Ordered when paying damages would be inadequate or inappropriate.
- spendthrift trust** Trust set up for benefit of someone whom grantor believes would be incapable of managing his/her own financial affairs, and to keep money out of hands of creditors.
- standard of proof** See **burden of proof**.
- standing** Legal right to bring a lawsuit.
- stare decisis** (STEHR ee dih SYE sis) Doctrine that courts will follow principles of law laid down in previous cases. Compare **precedent**.
- state's evidence** Testimony given by accomplice or participant in a crime, given under promise of immunity or reduced sentence, to convict others.
- status offenders** Youths who habitually engage in conduct not considered criminal if committed by an adult, but which cause charges to be brought in juvenile court and show minor is beyond parental control, e.g., being truant from school.
- status offense** Act declared to be an offense when committed by a juvenile, e.g., habitual truancy, running away from home, violating curfew.
- statute** Law enacted by legislative branch of government. Also called statutory law. Compare **common law**.
- statute of limitations** Timeframe within which a lawsuit must be brought or an individual charged with a crime. Differs for different types of cases/crimes or in different states.
- statutory construction** Process by which a court seeks to interpret legislation.
- statutory law** See **statute**.
- stay** Court order halting a judicial proceeding or the action of halting such proceeding.
- stenographer** See **court reporter**.
- stipulation** Agreement by attorneys on both sides of a case about some aspect of the lawsuit, e.g., to extend time to answer, to adjourn trial date.
- sua sponte** (SOO eh SPON tee) On one's own behalf. Voluntarily, without prompting or suggestion.
- sub judice** (sub JOO dih SEE) Before a court or judge; under judicial consideration.
- subpoena** (suh PEE nuh) Court order compelling a witness to appear and testify. Also, the act of ordering a witness to appear and testify.
- subpoena duces tecum** (suh PEE nuh DOO sess TEE kum) Court order commanding a witness to bring certain documents or records to court.

**subrogation** Substituting one person in place of another in asserting a lawful claim, demand or right.

**substantive evidence** Evidence presented to prove a fact in issue.

**substantive law** Law which creates, defines and regulates rights. Compare **procedural law**.

**sui generis** (SOO ee JEN er iss) Of its own kind or class; the only one of its kind.

**sui juris** (SOO ee JUR iss) Of his own right. Possessing full social and civil rights.

**summary** Quickly executed.

**summary judgment** Judgment made when there are no disputes of the facts of a case and one party is entitled to prevail as a matter of law.

**summary offense** In Pennsylvania a violation of law punishable by imprisonment for up to 90 days and/or a fine not exceeding \$300.

**summary proceeding** Nonjury proceeding that disposes of a case promptly and simply. Also called summary trial.

**summation** See **closing argument**.

**summons** Notice to a defendant that he/she has been sued and is required to appear in court. Also, notice requiring person receiving it to report for jury duty or as witness in a trial. As relates to potential jurors, also called **venire**.

**sunset law** Law that automatically expires at the end of a set period of time unless formally renewed.

**sunshine laws** Laws forbidding or restricting closed meetings of government bodies and providing for public access to records.

**supersedeas** (SOO per SEE dee uhss) Writ issued by appellate court to preserve the status quo pending review of a judgment or pending other exercise of its jurisdiction.

**support trust** Trust that instructs trustee to spend only as much as is needed for beneficiary's support.

**suppress** To forbid use of evidence at trial because it is improper or was improperly obtained. See **exclusionary rule**.

**survivorship** Another name for **joint tenancy**.

**sustain** Court order allowing an objection or motion to prevail.

**suspended sentence** Sentence postponed by order of the court. Also, decision of court to postpone pronouncement of sentence.

**swindle** To obtain money or property by fraud or deceit.

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## T

**temporary restraining order** Judge's order forbidding certain actions until a full hearing can be held to determine whether injunction should be issued. Often referred to as TRO. Compare **preliminary injunction**.

**tenancy by the entirety** See **joint tenancy**.

**tenancy in common** Form of legal co-ownership of property in which survivors, when one of the owners dies, do not have rights to decedent's shares of the property. Compare **joint tenancy**.

**testamentary capacity** Mental ability an individual must have to make a will.

**testamentary trust** Trust set up by a will. Compare **living trust**.

**testimony** Evidence given by witness under oath at trial or via affidavit or deposition.

**theft** See **larceny**.

**third party** Person, business or government agency, etc., not actively involved in a legal proceeding, agreement or transaction, but who is somehow involved.

**third-party claim** Action by a defendant that brings a third party into a lawsuit. Compare **intervention**.

**tort** Injury or wrong committed on a person or property of another for which remedy can be sought in civil court, except that which involves a contract.

**tortfeasor** One who commits a **tort**; a wrongdoer.

**transcript** Official record of all testimony and events that occur during a trial or hearing.

**transfer hearing** Hearing in juvenile court to determine whether jurisdiction over a juvenile case should remain in juvenile court or be transferred to adult court.

**trial de novo** A new trial.

**TRO** **Temporary restraining order**.

**true bill** **Indictment** by grand jury. Notation on indictment that charge should go to court. Compare **no bill**.

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

**trustee** Person or institution that manages a trust.

**turncoat witness** Witness whose testimony was expected to be favorable, but who later becomes a hostile witness.

## U

**undue** More than necessary; excessive.

**undue prejudice** Harmful bias that results when judge or jury are exposed to convincing but inadmissible evidence or evidence that so arouses emotions that clear, impartial consideration is lost.

**unlawful detainer** Detention of real property without consent of owner or other person entitled to its possession.

**usury** (YOO seh ree) Charging higher interest rate than law allows.

## V

**vacate** To nullify, render void.

**venire** (veh NI ree; popularly pronounced veh NEER) Writ summoning persons to court to act as jurors. Also, a group of people summoned for jury duty.

**venue** (VEN YOO) Geographical area from which a jury is drawn, where a criminal trial is held and where an **action** is brought. Also, the geographical location in which the alleged actions that gave rise to the legal action occurred.

**verdict** Decision reached by a jury or judge on the facts presented at a trial.

**victimless crime** Crime considered to have no direct victims, usually because it involves consenting adults, e.g., drug possession.

**voir dire** (vwahr deer) Process of questioning potential jurors.

## W

**waiver** Voluntarily giving up right.

**waiver of immunity** Means by which witness relinquishes right against self-incrimination, thereby making it possible for his/her testimony to be used against him/her in future proceedings.

**warrant** Writ directing or authorizing someone to do something; most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search. See also **bench warrant** and **search warrant**.

**weight of evidence** Persuasiveness of some evidence as compared to other.

**white-collar crime** Nonviolent crimes involving dishonest business practices, e.g., **fraud**, **embezzlement**, insider trading on the stock market.

**will** Legal document that sets forth how an individual wants his/her property disposed of when he/she dies.

**willfully** Intentionally, as distinguished from accidentally, carelessly or inadvertently, but not necessarily maliciously.

**with prejudice** Judge's decision in a case whereby any future action on the claim is barred in any court.

**without prejudice** Without loss of rights.

**witness** One who testifies to what he/she has seen, heard or otherwise experienced. See also **expert witness**, **hostile witness**, and **turncoat witness**.

**work release** Sentence under which defendant is imprisoned, but is released during day to work at a job approved by Department of Corrections or the court.

**writ** Judicial order directing a person to do something.

**writ of certiorari** See **certiorari**.

**writ of execution** Writ directing sheriff or other court officer to enforce a court judgment or decree.

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