



GLOSSARY OF LEGAL TERMS

acquittal A finding of "not guilty," affirming the presumption of innocence of a person charged with a crime.

adversary system The term used to describe the American legal system where two or more opposing parties present their evidence and witnesses to the fact finder, which is either the judge or the jury, and the fact finder finds in favor of a particular party. This system is used in both civil and criminal cases. The adversary system is different from the inquisitorial system, which commonly used in many other parts of the world, particularly in Europe. In the inquisitorial system, the judge or a panel of judges ask questions of a party and witnesses the judge or panel chooses to ask questions of and then finds in favor of a particular party,

alternative dispute resolution Processes that people can use to help resolve conflicts rather than going to court. Common ADR methods include mediation, arbitration and negotiation.

Amicus curiae 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.

appeal A request by a party in a lawsuit that the trial court's decision be reviewed by an appellate court or an appeal from the ruling of one appellate court to a higher appellate court.

appellant The party who initiates an appeal. Sometimes called a petitioner.

appellate court A court having jurisdiction to hear appeals and review a trial court's decision.

appellee The party against whom an appeal is taken, sometimes called a respondent.

bar The whole body of lawyers. The "case at bar" is the case currently being considered.

brief A written argument prepared by counsel to file in court setting forth both facts and law in support of a case.

burden of proof A term used to describe the amount of evidentiary proof a party must show, i.e., the burden the party must carry, to win a civil case or to obtain a conviction in a criminal case. There are several different burdens of proof. The two most common are: (1) in civil cases the burden of proof is "by preponderance of the evidence" (more than 50% likely); and (2) in criminal cases the burden of proof for the prosecution is "beyond a reasonable doubt" (almost 100% likely). It is important to note that in a criminal case, the defendant does not have any burden of proof because the defendant is presumed to be innocent and the prosecutor has the burden of proof to show "beyond a reasonable doubt," the defendant is in fact guilty.

case law Law based on following the prior decisions of other courts.

certiorari "To make sure." A request for certiorari is an appeal which the higher court is not required to grant. If it does, then it agrees to hear the case, and a writ of certiorari is issued commanding officials of inferior courts to convey the record of the case to the higher court.

civil case A case involving disputes between two or more people, between people and companies, or between people and government agencies.

common law The term generally refers to the "judge made law" (case law or decision law). The common law originated in England in the rulings of judges based on tradition and custom. These rulings became the law common to the land. Common law is distinguished from statutes (laws enacted by legislatures).

complaint The first pleading document filed in a lawsuit. It initiates a civil case and it includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for a specific remedy from the court. A complaint (indictment or information) in a criminal case is a sworn statement regarding the defendant's actions that constitute a crime.

criminal case A case brought by the government, through a prosecutor, against a person thought to have broken the law. (Criminal law is a broad field of the law involving action taken by the state against a person accused of committing a crime.)

crime An act, or failure to act, forbidden by law and designated a crime in the statutes.

decision The judgment reached or given by a court of law.

decree An order of the court. A **final** decree is one which fully and finally disposes of the litigation; an **interlocutory** decree is one that often disposes of only part of a lawsuit.

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

dispute A conflict of claims or rights for which a legal suit may be brought.

dissent The disagreement of one or more judges with the decision of the majority.

due process of law Law in its regular administration through the courts of justice; the guarantee of due process requires that every person be protected by a fair trial; i.e., the

right to an impartial judge and jury, the right to present evidence on one's own behalf, the right to confront one's accuser, the right to be represented by counsel, etc.

enjoin To issue an injunction, i.e., to issue a court order prohibiting an act.

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

federalism or federal system As applied to the United States, is synonymous with sovereign powers. A concept that the federal or U.S. government will be restrained from usurping the powers of state and local governments. For example, the state governments have their own powers, such as the power to create a public interfere in decisions states make about their schools.. The federal government has its own powers that state and local governments cannot interfere with, such as the control over coinage and the regulating of foreign trade. Both have concurrent powers, or work together, in such areas as taxation and public health and welfare.

felony A most serious crime with penalties of imprisonment ranging from a year and a day to life, or, in some states, punishable by death.

finding Formal conclusion by a judge or regulatory agency on issues of fact; also a conclusion by a jury regarding a fact.

grand jury A jury of inquiry that hears evidence and, if satisfied that there is a probable cause that a crime was committed, presents an indictment. A petit jury is the jury in a criminal trial that decides the guilt or innocence of the accused.

grievance A dispute A cause of distress that results within or outside of the court. For example, a client may have a grievance against his or her own attorney if the attorney fails to properly prepare the client's case for trial.

grounds The factual or legal basis for some action; legal reasons for filing a lawsuit.

homicide The killing of one person by another.

impartial Objective; provision of the Sixth Amendment to the U.S. Constitution requiring the judge or a jury not to favor one party over another or to prejudge the merits of the case.

indictment A formal charge or accusation of criminal action.

injunction A court order prohibiting a threatened or continuing act.

judicial review The concept of the courts reviewing the acts of the executive or legislative branch. This helps promote the concept of checks and balances between the three branches of government. The most notable judicial review case involved the the Supreme Court declaring an act of Congress

unconstitutional. *Marberry v. Madison* is the classic case of judicial review.

legislative history Background of action by a legislature, including testimony before committees, written reports and debates on the legislation.

litigation The process of bringing, maintaining, or resolving a legal dispute in court.

misdemeanor A less serious crime; in Minnesota punishable by 90 days in jail and/or \$500 fine.

Gross misdemeanor A less serious class of crime with penalties of imprisonment from 91 days to one year or a fine greater than \$500 or both. A **petty misdemeanor** is a minor offense for which one may be fined.

moot A moot case or a moot point refers to a court's refusal to consider a case or point because the issue or issues involved have been resolved prior to the court's decision, leaving nothing which would be affected by the court's decision.

motion An application for a rule or order, made to a court or judge.

opinion A written statement of a judge setting forth the reasons for a decision and explaining his or her interpretation of the law applicable to the case. A **majority** opinion represents the views of more than half of the judges who participated in the case. A **plurality** opinion represents the view of the greatest number of judges, but less than half of those who hear the case. For example, suppose nine judges hear a case and decide it by a five to four vote. If all five agree in their reasons for the decision and join in an opinion stating those reasons, it would be a majority opinion. However, if three of the five agree on the reasoning and the other two agree with the decision but not with the reasoning, the opinion of the three would be a plurality opinion. A **dissenting** opinion is one which disagrees with the decision of the majority. A **concurring** opinion agrees with the decision of the majority, but differs from the reasoning of the majority opinion.

ordinance The laws passed by city government.

overrule To overturn; as, for example, when a court of appeals decides that a previous decision in a different case, by that court or by a lower court, was incorrect. After a case has been overruled it can no longer be referred to as a precedent.

perjury Lying under oath.

plaintiff The complaining party to litigation; one who initiates the court action.

precedent A prior judicial decision that serves as an example or rule to authorize or justify another.

prosecutor A public officer who conducts criminal proceedings on behalf of the people (i.e., the government's attorney in a criminal case).

public defender A public officer who provides Constitutionally guaranteed defense for those who are accused of criminal offenses but cannot afford to hire an attorney.

relief The court agreeing to provide the party what she or he asked for.

remand To send back to a lower court, a higher court can remand a case to a lower court with instructions to carry out certain orders.

remedy Legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.

reverse To overturn the ruling of a lower court.

standard of proof The minimum amount of evidence that must be shown to win a case. There are several different burdens of proof. The two most common are: (1) "by preponderance of the evidence" (more than 50% likely) in civil cases; and (2) "beyond a reasonable doubt" (almost 100% likely) in criminal cases.

statutory law Law written by the legislature declaring, commanding or prohibiting something. Regulation refers to rules made by government agencies that carry out the intent of a statute.

stay To stop or hold off. To stay a judgment is to prevent it from being enforced.

subpoena A process of service which requires a person to appear as a witness and give testimony in court.

supreme court. The highest court of most states; the highest court of the United States. The U.S. Supreme Court is made up of a chief justice and eight associate justices appointed by the president. Supreme Court decisions must be followed by lower courts in similar cases. However, the Supreme Court itself need not abide by its earlier decisions if it becomes convinced that circumstances demand a new approach. After a major decision by the Supreme Court, legislatures often revise laws to bring them into accord with the Constitution as interpreted by the decision.

supremacy clause Article 6, clause 2 of the Constitution, which declares the federal Constitution and laws to be binding over the state constitutions and laws.

trier of fact The judge or jury when deciding the events that actually happened as proven in a trial. A **court trial** is a type of trial where the judge is the trier of fact as well as law. A **jury trial** is a type of trial where the jury is the trier of fact.

voir dire The process of selecting a jury.

warrant A court order calling for the arrest of the person named for a specific charge or the search of a specified area.