

Glossary of Legal Terms

[A] [B] [C] [D] [E] [F] [G] [H] [I] [J] [L] [M] [N] [O] [P] [Q] [R] [S] [T] [U] [V] [W]

A

abstract of record

A complete history in short; abbreviated form of the case as found in the record.

acquit

To find a defendant not guilty in a criminal trial.

adversary system

The system of trial practice in the U.S. and some other countries in which each of the opposing or adversary, parties has full opportunity to present and establish its opposing contentions before the court.

affidavit

A written, sworn statement of facts made voluntarily, usually in support of a motion or in response to a request of the court.

affirm

The assertion of an appellate court that the judgment of lower court is correct and should stand.

allegation

The assertion, declaration or statement of a party to a lawsuit often made in a pleading or legal document, setting out what the party expects to prove at the trial.

amicus curiae

A friend of the court; one who interposes and volunteers information upon some matter of law.

answer

A pleading by which defendant endeavors to resist the plaintiff's allegation of facts.

appeal

A request to take a case to a higher court for review.

appearance

The formal proceeding by which a defendant submits himself or herself to the jurisdiction of the court.

appellant

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

appellate jurisdiction

The power of a court to review a case that has already been tried by a lower court.

appellee

The party against whom an appeal is taken.

arbitration

The hearing and settlement of a dispute between opposing parties by a third party whose decision the parties have agreed to accept.

arraignment

In a criminal case, the proceeding in which an accused is brought to the court to hear the charges read and to enter a plea.

arrest

To take into custody; to deprive a person of liberty by legal authority.

attachment

A remedy by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain in the future.

attorney of record

The attorney whose name appears as counsel to a party in the permanent records or files in a case.

attorney-at-law

A lawyer; one who is licensed to act as a representative for another in a legal matter or proceeding.

B**bail**

To set at liberty a person arrested or imprisoned on security (or bail) being taken for his or her appearance in court on a specified day and place.

bailiff

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

bar

Historically, the partition separating the general public from the space occupied by the judges, attorneys, jury, and others during a trial. More commonly, the whole body of lawyers qualified to practice in any jurisdiction. A "case at bar" is a case now under the court's consideration.

bench

The seat occupied by the judge; more broadly, the court itself.

bench trial

Trial held before judge sitting without a jury; jury waived trial.

bench warrant

Process issued by the court or "from the bench" for the attachment or arrest of a person.

beneficiary

The individual or corporation who receives the benefit of a transaction; e.g. beneficiary of a life insurance policy.

bind over

To hold for trial.

brief

A written document presented to the court by a lawyer usually setting forth both facts and law in support of his or her case.

burden of proof

In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute.

C

capital case

A criminal case in which death sentence may be imposed.

case

Any proceeding, action, cause, lawsuit or controversy initiated through the court system by filing a complaint, petition, indictment or information.

cause

A suit, litigation or action, civil or criminal.

cause of action

The rights which a party has to institute a judicial proceeding.

certiorari

An original writ or court order commanding judges or officers of inferior courts to certify or return records of proceedings in a cause for judicial review.

change of venue

The moving of a suit began in one district to another district for trial or from one court to another in the same district.

charge

Formal accusation of having committed a criminal offense.

chief justice

Presiding judge of the Supreme Court.

civil action

A lawsuit between or among private parties for declaration, enforcement or protection of a right, or for redress or prevention of a wrong.

civil law

All law that is not criminal law.

claim

The assertion of a right to money or property.

clerk magistrate

County court official.

codicil

A supplement or an addition to a will.

common law

The law of a country based on custom, usage, and the decision of law courts.

commutation

The change of a punishment from a greater degree to a lesser degree, as from death to life imprisonment.

comparative negligence

The doctrine by which acts of the opposing parties in a civil action are compared in the degrees of "slight," "ordinary," and "gross" negligence.

complainant

Synonymous with "plaintiff".

concurrent sentence

Sentences for more than one crime in which the time of each is to be served concurrently rather than successively.

condemnation

The legal process by which real estate of a private owner is taken for public use without the owner's consent, but upon the award and payment of just compensation.

consecutive sentences

Successive sentences, succeeding one another in regular order.

contempt of court

Any act calculated to embarrass, hinder or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity.

conviction

The finding that a person is guilty beyond a reasonable doubt of committing a crime.

corroborating evidence

Evidence supplementary to that already given and tending to strengthen or confirm it.

costs

An allowance for expenses in prosecuting or defending a suit; ordinarily does not include attorney's fees.

counterclaim

A claim presented by a defendant against the plaintiff in a civil action.

counsel

A lawyer or group of lawyers.

court administrator

Manager of administrative, nonjudicial affairs of a court.

court of record

A court in which a permanent record of proceedings is made; a court having the power to fine or imprison for contempt.

court reporter

Person who records and transcribes the verbatim testimony and all other oral statements made during court sessions.

crime

Conduct declared unlawful by a legislative body and for which there is a punishment of a jail or prison term, a fine, or both.

criminal insanity

Lack of mental capacity to do or abstain from doing a particular act; inability to distinguish right from wrong.

cross examination

The questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.

custody

Detaining a person by lawful process and authority to assure his or her appearance at any hearing; the jailing or imprisonment of a person convicted of a crime.

D**damages**

Financial compensation claimed by or ordered paid to a person who has suffered injury or loss through the unlawful act or negligence of another.

de novo

Anew, afresh; a "trial de novo" is the retrial of a case.

declaratory judgment

A court's judgment that declares the rights of the parties or expresses the opinion of the court on a question of law without ordering anything to be done.

decree

A decision or order of the court. A final decree is one which fully and finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree which is not final.

default

The failure of a party to respond in a timely manner to a pleading; a failure to appear for trial.

defendant

A person sued or accused.

demur

To file a pleading (called "a demurrer") admitting the truth of the facts in the complaint or answer, but contending they are legally insufficient.

deposition

The testimony of a witness not taken in open court, but in pursuance of authority given by statute or rule of court to take testimony elsewhere.

dictum

A statement in a court's opinion that is not necessary to the decision of the case, but that is included as "by the way" remark of the court. (Formally called "obiter dictum"; plural, "dicta").

direct evidence

Proof of facts by witnesses who saw acts done or heard words spoken in relation to a matter directly in issue; as distinguished from circumstantial evidence.

direct examination

The first interrogation of a witness by the party on whose behalf he or she is called.

directed verdict

An instruction by the judge to the jury to return a specific verdict mandated by the evidence.

discovery

A proceeding whereby one party to an action may learn of facts known by other parties or witnesses.

dissent

The explicit disagreement of one or more judges or a court with the decision of the majority.

docket

A list of cases to be tried by a court.

domestic relations

Refers to dissolution of marriage (divorce); custody of children and their support; maintenance (alimony) and property division.

domicile

The place where a person has his or her true and permanent home; a person may have several residences, but only one domicile.

double jeopardy

More than one prosecution for the same crime, transaction or omission.

DWI

Driving while under the influence of intoxicating liquor or drugs.

due process

Law in its regular course of administration through the courts of justice. The constitutional guarantee of due process requires that every individual have the protection of a fair trial.

E**eminent domain**

The lawful power to take private property for public use by the process of condemnation.

en banc

"On the bench." All judges of a court sitting together to hear a case.

enjoin

To require a person by order of the court to perform, to abstain or resist from some act.

entrapment

The act of officers or agents of a government in inducing a person to commit a crime not contemplated by him or her for the purpose of instituting a criminal prosecution against that individual.

escrow

A writing or deed delivered by the grantor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition.

estoppel

A person's own act or acceptance of facts which preclude his or her later making claims to the contrary.

evidence

A fact presented before a court such as a statement of a witness, an object, etc., that bears on or establishes a point in question.

ex parte

By or for one party; done for, in behalf of, or on the application of one party only.

exhibit

A paper, document or other article produced and exhibited to a court during a trial or hearing.

expert evidence

Testimony given in relation to some scientific, technical or professional matter by experts; i.e., persons qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject.

extradition

The surrender by one state to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction.

F

felony

A crime of a graver nature than a misdemeanor; generally, an offense punishable by death or imprisonment in a penitentiary; in Nebraska, Class I through Class IV.

fiduciary

A term derived from the Roman law meaning a person holding the character of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires.

forcible entry and detainer

A summary proceeding for restoring possession of land to one who has been wrongfully deprived of possession.

forgery

The false making or material altering with intent to defraud of any writing which, if genuine, might be the foundation of a legal liability.

fraud

An intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right or in some manner to do him or her injury.

G

garnishment

A proceeding whereby property, money or credits of a debtor in possession of another (garnishee), are applied to the debts of the debtor.

garnishee

The person upon whom a garnishment is served; usually a debtor of the defendant in the action; (verb) to institute garnishment proceedings.

grand jury

A body of persons sworn to inquire into crime and bring an accusation (indictment) against the suspected criminal if warranted; grand juries are uncommon in Nebraska.

guardian ad litem

Person appointed by a court to look after the interest of a minor involved in litigation.

H**habeas corpus**

"You have the body"; name given a variety of writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official person detaining another, commanding him or her to produce the body of the prisoner or person detained so the court may determine if such person has been denied his or her liberty without due process of law.

hearing

An in-court proceeding before a judge generally open to the public.

hearsay

Testimony given by a witness who relates what he or she has heard said by others, not what he or she knows personally.

holographic will

A testamentary instrument or will entirely written, dated and signed by the testator in his or her own handwriting.

I**immunity from prosecution**

The waiver by a prosecutor of his or her right to prosecute in exchange for information or testimony.

impeachment of witness

An attack on the credibility of a witness by other evidence or the testimony of other witnesses.

inadmissible

That which, under the established rules of evidence, cannot be admitted or received.

indeterminate sentence

An indefinite sentence of "not less than" and "not more than" so many years, the exact term to be served being afterwards determined by parole authorities within the minimum and maximum limits set by the court or by statute.

indictment

An accusation in writing found and issued by a grand jury, charging that a person named has done some act, or is guilty of some omission, which by law is a crime.

inferior court

Any court subordinate to the chief appellate tribunal in a particular judicial system.

information

An accusation of some criminal offense in the nature of an indictment, but which is presented by a competent public officer such as a county attorney instead of a grand jury.

infraction

An act which is prohibited by law but which is not legally defined as a crime.

inheritance tax

Tax imposed by Nebraska according to the relationship to the decedent of the person who receives the property.

injunction

A mandatory or prohibitive order issued by a court.

insanity

A complete defense to a crime; exists when at the time of the commission of the crime, the accused was not aware of the nature and quality of his or her criminal act, or if the accused did, was not aware that the act was legally wrong.

instruction

A direction given by the judge to the jury concerning the law of the case.

interlocutory

Provisional; temporary; not final; refers to orders and decrees of a court.

interrogatories

Written questions propounded by one party and served on an adversary, who must provide written answers under oath; discovery procedure in preparation for a trial.

intestate

One who dies without leaving a will.

irrelevant

Evidence not relating or applicable to the matter in issue; not supporting the issue.

J**jeopardy**

Exposure to possible conviction, such as being on trial in court.

judge

An elected or appointed official with authority to hear and decide cases in a court of law; Nebraska judges are selected and retained according to the merit plan.

judgment

The official decision or decree of the court upon the rights and claims of the parties.

jurisdiction

The legal power to hear and decide cases; the territorial range of such power.

jurisprudence

The philosophy of law of the science which treats of the principles of positive law and legal relationships.

jury (or petit jury)

A jury of 12 (or fewer) persons, selected according to law, who are sworn to inquiry of certain matters of fact, and to declare the truth upon evidence laid before them.

L

libel

A method of defamation expressed by print, writing, pictures or signs; in its most general sense, any publication that is injurious to the reputation of another.

lien

An encumbrance upon property, usually as security for a debt or obligation.

limitation

A certain time allowed by statute in which litigation must be brought.

limited jurisdiction

Courts limited in the types of criminal and civil cases they may hear.

litigant

Person or group engaged in a lawsuit.

litigation

A judicial controversy.

M

malfeasance

Evil doing; ill conduct; the commission of some act, especially by a public official, which is positively prohibited by law.

mandamus

The name of a writ which issues from a court of superior jurisdiction, directed to an inferior court or a public officer, commanding the performance of a particular act.

mandate

A command from a court directing the enforcement of a judgment, sentence or decree.

manslaughter

The unlawful killing of another without malice; may be voluntary, upon a sudden impulse, or involuntary in the commission of some unlawful act.

material evidence

Such as is relevant and goes to the substantial issues in dispute.

merit plan

Method for the selection and retention of judges in Nebraska and some other states.

misdemeanor

Offenses less than felonies; generally those punishable by fine or imprisonment otherwise than in penitentiaries; in Nebraska, Class I through Class V.

mistrial

An erroneous or invalid trial; a trial which cannot stand in law.

mitigating circumstance

One which does not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability; as used in death penalty considerations.

moot

Unsettled; undecided; a moot point is one not settled by judicial decisions; a moot case is one that seeks to determine an abstract question which does not arise upon existing facts.

moral turpitude

Conduct contrary to honesty, modesty or good morals.

motion

Oral or written request before, during or after a trial on which a court issues a ruling or order.

murder

The unlawful killing of a human being by another with malice aforethought, either express or implied.

N**negligence**

The failure to do something which a reasonable person, guided by ordinary considerations, would do; the doing of something which a reasonable and prudent person would not do.

next friend

One acting for the benefit of an infant or other person without being regularly appointed as guardian.

no bill

This phrase, endorsed by a grand jury on the indictment, is equivalent to "not found" or "not a true bill"; in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

nolo contendere

A pleading usually used by defendants in criminal cases; literally means "I will not contest it".

notary public

A person authorized by law and specifically designated to administer oaths, certify and authenticate specific documents, and perform other prescribed acts.

O

oath

Written or oral pledge by a person to keep a promise or speak the truth.

objection

The act of taking exception to some statement or procedure in trial; used to call the court's attention to improper evidence or procedure.

opinion

A formal statement by a judge or justice of the law bearing on a case.

ordinance

A law passed by a city or town lawmaking body.

P

parole

The conditional release of a convict from prison before the expiration of his or her sentence. If he or she meets the conditions, the parolee does not have to serve the remainder of the sentence.

parties

The persons who are actively concerned in the prosecution or defense of a legal proceeding.

per curiam

A phrase used to distinguish an opinion of the whole court from an opinion written by any one judge.

peremptory challenge

The challenge which the prosecution or defense may use to reject a certain number of prospective jurors without assigning any cause.

personal representatives

Includes executor, administrator, special administrator, and persons who perform substantially the same functions in decedents' estates.

perjury

The willful assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his or her evidence, whether upon oath or in any form allowed by law to be substituted for an oath, and known to such witness to be false.

petition

Written application to a court requesting a remedy available under law.

plaintiff

The person who brings an action; the party who complains or sues in a personal action and is so named on the record.

plea

A defendant's official statement of "guilty" or "not guilty" or to the charges made against him or her.

plea bargaining (or negotiation)

The process by which the prosecutor and the defense counsel attempt to resolve a criminal case by a guilty plea.

pleading

The process by which the parties in a suit or action alternately present written statements of their contentions, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a specific point or points, affirmed on one side and denied on the other, called the "issue" upon which they then go to trial.

post conviction

In criminal cases those matters occurring after conviction.

power of attorney

Document authorizing another to act as one's agent or attorney in fact (not an attorney at law).

praecipe

An original writ commanding the defendant to do the thing required; an order addressed to the clerk of a court, requesting him or her to issue a particular writ.

precedent

Previously-decided case which is recognized as an authority for determining future cases.

preliminary hearing

The hearing given a person charged with a crime to determine whether he or she should be held for trial.

preponderance of evidence

Greater weight of evidence or evidence which is more credible and convincing to the mind, not necessarily the greater number of witnesses; the standard of proof usually required in civil actions.

prima facie

So far as can be judged from the disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary.

probable cause

A constitutionally prescribed standard of proof; a reasonable ground for belief in the existence of certain facts.

probate

Proceedings in which court has jurisdiction over the personal representative and the assets of the deceased; protects heirs from fraud and embezzlement; protects federal and state governments so all taxes are paid by the estate; protects creditors of the deceased.

probation

In modern criminal administration, allowing a person convicted of an offense (particularly juvenile offenders) to go at large under a suspension of sentence, during good behavior, and generally under the supervision or guardianship of a probation officer.

pro bono

Legal services provided without attorney fees.

pro se

Legal representation of oneself.

prosecution

Act of pursuing a lawsuit or criminal trial.

prosecutor

A lawyer who represents the government in bringing legal proceedings against an alleged wrongdoer.

pro tem

"Temporary." public defender

A lawyer employed by the government to represent a person accused of a crime who cannot afford a lawyer for his or her defense.

Q

quash

To overthrow, vacate; to annul or void a summons or indictment.

R

reasonable doubt

An accused person is entitled to acquittal if, in the minds of the jury, his or her guilt has not been proved beyond a "reasonable doubt"; that state of minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

recuse

To disqualify oneself as a judge in a particular case.

referee

A judicial officer at the trial court level to whom a cause pending in a court is referred by the court to take testimony, hear the parties, and report thereon to the court; in the Nebraska court system referees are primarily involved in delinquent child support matters.

registrar

Court official designated to accept or reject applications for informal probate and informal appointment of a personal representative.

release on own recognizance

An alternative to bail; release upon certain conditions set by the court.

remand

To send back.

reply

When a case is tried or argued in court, the argument of the plaintiff in answer to that of the defendant; a pleading in response to an answer.

respondent

Party against whom an appeal is brought in an appellate court; the prevailing party in the trial court case.

restitution

Act of giving the equivalent for any loss, damage or injury.

restraining order

An order in the nature of an injunction.

retainer

Act of the client in employing an attorney or counsel; denotes the fee which the client pays when retaining an attorney to act for him or her.

rules of court

Regulations made by a court of competent jurisdiction governing the general practice and procedure in all matters coming before the court.

S**search warrant**

An order in writing, issued by a judge in the name of the state, directing an officer to search a specified house or other premises for stolen property; usually required as a condition precedent to a legal search and seizure.

self-defense

The protection of one's person or property against some injury attempted by another. The law of "self-defense" justifies an act done in the reasonable belief of immediate danger. When acting in justifiable self-defense, a person may not be punished criminally nor held responsible for civil damages.

sentence

Judgment formally pronounced by a judge upon a defendant after his or her conviction in a criminal or civil prosecution.

sentence, concurrent

Two or more sentences which run at the same time.

sentence, consecutive

Two or more sentences which run after another.

sentence, determinate

A sentence that states exactly the time to be served or money to be paid.

separation of witnesses

An order of the court requiring all witnesses to remain outside the courtroom until each is called to testify, except the plaintiff or defendant.

sheriff

An officer of a county, chosen by popular election, whose principal duties are aid of criminal and civil courts; chief preserver of peace; serves processes, summons juries, executes judgments, and holds judicial sales.

slander

Base and defamatory spoken words tending to harm another's reputation, business or means of livelihood. Both "libel" and "slander" are methods of defamation, libel being expressed by print, broadcast, writings, pictures, signs or other forms of side publication, while slander is expressed orally.

small claims court

A division of the county courts of Nebraska.

special appearance

An answer in a legal proceeding with the sole purpose of testing the court's jurisdiction.

special performance

A mandatory order in equity; where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what he or she has agreed to do.

stare decisis

The doctrine that when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to the principle and apply it to future cases where the facts are substantially the same.

stay

A stopping or arresting of a judicial proceeding by order of the court.

stipulation

An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial; not binding unless assented to by the parties; most stipulations must be in writing.

subpoena

A process to cause a witness to appear and give testimony before a court.

subpoena duces tecum

"Under penalty you shall take it with you." A process by which the court commands a witness to produce specific documents or records in a trial.

substantive law

The law dealing with rights, duties and liabilities; as distinguished from adjective law, which is the law regulating procedure.

summary judgment

The termination of a lawsuit, usually before trial, upon the judgment showing that there is no issue of fact in the case, and that one party or another is entitled to prevail as a matter of law.

summons

A writ or order directing the sheriff or other officer to notify the named person that an action has been commenced against him or her in court, and that he or she is required to appear, on the day named, and answer the petition or complaint in such action.

T

testamentary trust

Trust that comes into being only as a result of the death of a person whose will provides for the creation of a trust after his or her death.

testator

One who makes or has made a will.

testimony

Evidence given by a competent witness, under oath, as distinguished from evidence derived from writings and other sources.

tort

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

transcript

The official record of proceedings in a trial or hearing.

trier of fact

Judge or jury in a case who determines the outcome of the dispute.

trust

A legal entity established by a trust agreement signed by a person during his or her life or arising after death from a will or testamentary trust.

trustee

A person appointed to execute a trust.

trusty

An inmate granted special privileges.

U

undue influence

Whatever destroys free will and causes a person to do something he or she would not do if left to himself or herself.

usury

The taking of more for the use of money than the law allows.

V**venue**

The particular county, city or geographic area in which a court with jurisdiction may hear and determine a case.

verdict

In practice, the formal and unanimous decision or finding made by a jury, reported to the court and accepted by it.

voir dire

To speak the truth; the phrase denotes the preliminary examination which the court may make of one presented as a witness or juror as to his or her qualifications.

W**waiver of immunity from self-incrimination**

A means authorized by statutes by which a witness in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed by the Constitution that no person shall be compelled to be a witness against himself or herself.

warrant of arrest

A writ or order issued by a judge or other competent authority, to a sheriff or other officer, requiring him or her to arrest a person therein named and bring that person before the court to answer to a specified charge.

weight of evidence

The balance of preponderance of evidence; the inclination of the greater amount of credible evidence offered by a trial to support one side of the issue rather than the other.

will

The document a person signs to provide for the orderly disposition of his or her assets after his or her death, in accord with individual's wishes to provide for family security and protection, and to immunize death taxes.

with prejudice

The term as applied to judgment of dismissal, is as conclusive of rights of parties as if action had been prosecuted to final adjudication adverse to the plaintiff.

without prejudice

A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.

witness

One who testifies to what he or she has seen, heard or otherwise observed or concluded from observations.

writ

An order from a court of justice requiring the performance of a specified act or giving authority and commission to have it done.

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