

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

**PRO SE HANDBOOK:
The Manual for the Litigant Filing Without Counsel**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

GUIDELINES TO FILING YOUR OWN CASE IN FEDERAL COURT

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CHAPTER I.

INTRODUCTION

Welcome to the United States District Court for the District of Idaho. We have prepared this handbook specifically for the person who has chosen, for whatever reason, to represent himself/herself as a party to a lawsuit: the pro se litigant. The purpose of this handbook is to provide the pro se litigant with a practical and informative initial resource that will assist in the decision-making process and in the filing of a lawsuit when choosing not to retain the aid of a licensed attorney. Many reasons exist for filing a lawsuit pro se, for example, the litigant might feel that the cost of an attorney is prohibitive.

The next three chapters of this handbook provide information that you should consider before filing your own lawsuit such as whether or not you have a case you can win, the importance of legal counsel and the alternatives, and the structure of the federal court system. If after considering this information, you feel you have a case that should be filed in federal court and you wish to represent yourself, additional information has been provided to assist you in filing your case and utilizing the appropriate rules of procedure for the United States District Court for the District of Idaho.

We have also provided an overview of legal research and a glossary of common and foreign words regularly used in the legal field. These tools should not be considered the last word, nor should this entire handbook be used as your only resource. This handbook should be considered only as the first step in filing your own lawsuit.

As Clerk of Court for the District of Idaho, my deputy clerks and I are willing to assist

you with questions regarding the Local Rules of Civil Procedure and the Local Rules of Criminal Procedure for the District of Idaho as well as the Federal Rules of Civil Procedure and the Federal Criminal Rules of Procedure. However, by law we cannot answer questions of a legal nature. Do not hesitate to call on us regarding a procedural matter.

We wish you the very best in your endeavor. The mission statement for the United States District Court for the District of Idaho is as follows:

The mission of the United States District and Bankruptcy Courts for the District of Idaho is to provide an impartial and accessible forum for the just, timely, and economical resolution of legal proceedings within the jurisdiction of the courts, so as to preserve judicial independence, protect individual rights and liberties, and promote public trust and confidence.

Those of us employed by the District of Idaho take this mission statement very seriously. In order to provide the impartial and accessible forum that you are entitled to, the federal courts for Idaho are housed in the main courthouse in Boise and three satellite courthouses throughout the state. The addresses and telephone numbers are as follows:

U.S. District Court District of Idaho 550 West Fort Street Boise, ID 83724 (208) 334-1361	U.S. District Court District of Idaho 220 East 5th Street Moscow, ID 83843 (208) 882-7612
U.S. District Court District of Idaho 250 S. 4th Avenue Pocatello, ID 83201 (208) 236-6912	U.S. District Court District of Idaho 205 N. 4th, 2nd Floor Coeur d'Alene, ID 83814 (208) 664-4925

CHAPTER II.

THE FIVE REQUIRED ELEMENTS OF A LAWSUIT

There are five very important elements that must exist before you can file a case in federal court. The following is a summary of the things you should consider before filing a case in federal court. This summary is not to be considered the final word. Before continuing, you must understand that even if you have met all five elements, there is always a possibility that you may not win.

THE FIVE REQUIRED ELEMENTS OF A LAWSUIT

- A. Real Injury or Wrong.
- B. Jurisdiction.
- C. Statute of Limitations.
- D. Immunity.
- E. Facts and Evidence.

A. REAL INJURY OR WRONG.

Cases brought by persons without counsel typically fall into two categories: civil rights violations and tort claims.

A **civil rights** case involves a claim seeking redress for the violation of a person's constitutional rights. This type of claim is often brought under the federal statute, 42 U.S.C. S 1983. Under this law, a person who acts under color of state law to violate another's

constitutional rights may be liable for damages.

A **tort** is defined as a "private or civil wrong or injury." It is distinguished from criminal law because it is an injury against an individual and not the state (city, county, or state government). If a person ran a stoplight and hit your car, the state would ticket the driver for running the stoplight but it would not be able to sue the driver for the injuries received by the victim of the other car. That is considered a private wrong or injury and it is the right of the victim to file a **civil** suit against the driver seeking damages for the injuries received.

There are three types of torts: intentional, negligence, and strict liability. You cannot sue someone just because you are angry at them; you have to have been injured in some way. You can bring a tort action in federal court if a violation of a federal law has occurred.

B. JURISDICTION

Jurisdiction is the authority given a court to hear and decide certain cases. For a court to render a valid judgment, it must have both jurisdiction over the subject matter of the controversy and jurisdiction over the persons or entities involved. The court system is described more fully in Chapter IV of this handbook; however, to file a case in federal court, you must meet at least one of two important criteria:

1. The case must deal with a "federal question" of law; or
2. The parties to the case must be residents of different states (known as diversity of citizenship) and the monetary amount in controversy must exceed \$50,000.

Federal courts enforce "federal law," that is, the United States Constitution and federal statutes enacted by Congress. State courts enforce state laws. Sometimes they overlap, such as

in diversity cases. This is why it is important that legal counsel is obtained as often as possible.

C. STATUTE OF LIMITATIONS.

A **statute of limitations** is that part of the statute that sets a particular period of time within which a suit can be filed. It begins to run when the injury or right has been violated. Some examples are as follows:

1. Car accident or other personal injury: 2 years
2. Civil rights violation:
2 years
3. Contract dispute:
6 years
4. Medical malpractice:
2 1/2 years

D. IMMUNITY.

Immunity prohibits you from suing a person who is performing his/her duties as prescribed by law. When a judge decides a case, he is immune from suit because he is performing the duties directed by law. However, if a judge has operated his car illegally and caused you to be harmed, you can sue him for damages because driving his car does fall under the duties of being a judge.

Most government employees are immune from suit if they are performing their assigned duties and are not aware of a violation of the law.

You should realize that immunity may be a defense that prevents a person who is sued from being liable. There may be other legal defenses that the person can assert which will also protect them from liability.

E. FACTS AND EVIDENCE.

You cannot sue someone because you believe or you have a feeling the person has violated your rights. You must have facts to support your lawsuit such as the time and place of the incident, witnesses who observed the behavior, and actual articles of evidence such as a gun or a police report or other documentary evidence. The burden of proof is on the plaintiff to win the case; and without factual evidence, the case cannot be won.

It is very important that you have all five required elements before you consider filing a case against someone or some entity. After all of these elements are met, you must still follow the procedures set out for the particular court you will file your case with. In Chapter V of this handbook, we will discuss the rules and procedures for filing lawsuits in the United States District Court for the District of Idaho. If your case needs to be filed in any other court, you should contact the clerk's office of that court for information regarding local rules and procedures for filing your particular case.

Chapter III deals with information regarding representation by legal counsel. Please take time to read the information provided. There are alternatives to filing a lawsuit on your own, and you should give these alternatives your utmost consideration.

CHAPTER III.

REPRESENTATION BY AN ATTORNEY: IT'S IMPORTANT

This handbook was developed to address the needs of the litigant who wishes to file a lawsuit pro se, without the aid of an attorney. However, we feel it is very important that the pro se litigant understand that there are alternatives to representing yourself if you are indigent. Additionally, there are matters that are extremely complex and each matter deserves appropriate representation.

In a criminal case, a defendant is entitled to legal counsel by the United States Constitution and one can be provided if indigence is shown on the part of the defendant. However, in a civil case, the plaintiff is not entitled to an attorney. There are organizations that can help obtain counsel in civil matters for nominal fees or even on a volunteer basis. The Idaho State Bar has a referral service that lists attorneys who belong to the Idaho Volunteer Lawyers and they are willing to help indigent parties in several different ways. Legal Aid Services is also available as well as the American Civil Liberties Union. There are also attorneys who would be willing to represent you on a contingent fee basis where the attorney collects a fee only if money is won in the suit.

In Idaho, the telephone numbers to call are:


Idaho State Bar:
(208) 342-8958
Idaho Legal Aid Services, Inc.: (208) 345-0106
American Civil Liberties Union: (208) 344-5243

A. ALTERNATIVES TO LITIGATION IN FEDERAL COURT.

Under the Civil Justice Reform Act of 1990, the United States District Court for the District of Idaho has adopted the concept of Alternative Dispute Resolution (ADR). ADR provides options of resolving disputes before and/or after a lawsuit is filed. There are many forms of ADR, and the following is a description of the four basic forms:

1. **Arbitration:** A dispute resolution process in which one or more arbitrators issue a non-binding judgment on the merits after an expedited, adversarial hearing. The arbitrator’s non-binding decision addresses only the disputed legal issues and applies legal standards. Either party may reject the non-binding ruling and request a trial de novo in district court within 30 days of the arbitrator’s decision. If they do not request trial de novo and do not attempt settlement, the arbitrator’s decision becomes the final, non-appealable decision.

2. **Mediation:** A flexible, non-binding dispute resolution process in which an impartial neutral third party--the mediator--facilitates negotiations among the parties to help them reach settlement. A hallmark of mediation is its capacity to expand traditional settlement discussions and broaden resolution options, often by going beyond the legal issues in controversy. In the District of Idaho, all civil cases except prisoner petitions, Social Security, student loan recovery, Medicare, forfeiture, Bankruptcy appeals, federal tax suits, Federal Tort Claims Act cases in excess of \$1 million, cases involving Temporary Restraining Orders, Preliminary Injunctions or other extraordinary injunctive relief will be automatically assigned to mediation. In addition, all Bankruptcy adversary proceedings and contested cases shall be eligible for assignment to mediation. A party will be allowed to “opt out” of the mediation process only upon successfully demonstrating to the Court by motion that “compelling reasons” exist as to why this mediation should not occur or could not possibly be productive.

- 3 **Settlement Conference:** Pursuant to Local Rule 68.1,  Settlement Conferences, the parties are required to explore the possibility of settlement prior to trial. At any time after an action or proceeding is at issue, any party may file a request for, or the assigned judge on his own initiative may order a settlement conference. A conference is then held before an assigned judge who facilitates the parties to come to settlement.

All information provided to the settlement judge is confidential.

The purpose of ADR is to provide an incentive for the speedy, fair, and economical resolution of controversies by informal procedures while preserving the right to a conventional trial. There is no penalty for non-participation in these programs or for not accepting the decision/award. Parties retain the right for a trial de novo.

United States Arbitration & Mediation of Idaho provides information and facilitation of the above alternatives prior to filing a lawsuit in federal court. Its address and telephone number are as follows:

(208) 338-7770
P. O. Box 7803
Boise, ID 83707

B. NECESSITY OF EXHAUSTING AVAILABLE REMEDIES.

You should be aware that, in some instances, it is necessary for you to pursue all remedies that may be available before you can pursue a claim in court. There are two areas in particular where this is likely to arise: (1) if you are appealing an agency decision, or (2) if you are seeking a writ of habeas corpus in the federal court.

1. Administrative Grievance Procedures.

Often times people want to appeal the decision of some governmental agency that affects them. An example of this is in the area of Social Security benefits.

If you want to appeal the denial of some benefit that is provided through an agency of the United States government or the state of Idaho, you must pursue all of the administrative

procedures which are set up by the agency before you can bring a lawsuit. Only after you have pursued and exhausted the administrative procedure will the court have jurisdiction to hear a claim.

2. Petition for Writ of Habeas Corpus.

A person who is incarcerated or is otherwise in custody pursuant to court order may wish to challenge the fact or duration of his confinement. Such a challenge would be brought as a petition for writ of habeas corpus against the person or entity who holds them in custody, e.g., the prison's warden. If the person can successfully show that a constitutional right was violated, which would have otherwise prevented the incarceration ("fact of incarceration") or the duration of the incarceration the court will grant a writ of habeas corpus.

However, before such a petition can be filed in the federal court, the petitioner must pursue and exhaust all available state law remedies. This means that if you want to challenge a conviction or a sentence, you must pursue your right of appeal under Idaho law. This may be accomplished in two ways: (1) the direct right of appeal to the Idaho Supreme Court, or (2) by filing a petition for post-conviction relief in the state district court followed by an appeal to the Idaho Supreme Court. Only after you have fully pursued the available state law remedies will you be eligible to pursue a federal petition for writ of habeas corpus.

C. ATTORNEY FEE SANCTIONS AND HOW THEY APPLY TO THE PRO SE LITIGANT.

Pro se litigants are subject to the same sanctions as licensed attorneys. Pursuant to Local Rule 1.3, Sanctions:

(a) The court may sanction for violation of any local rule governing the form of pleadings and other papers filed with the court only by the imposition of a fine against the attorney or a person proceeding pro se.

(b) Other sanctions for non-technical violations are provided through the Federal Rules of Civil Procedure including but not limited to imposition of costs, allowance of attorney fees, dismissal or default in the action, contempt proceedings, and suspension or disbarment of counsel.

In many cases, the prevailing party may be awarded costs to be paid by the non-prevailing party under certain conditions. Pursuant to Local Rule 54.1, Taxation of Costs:

(a) Within ten (10) days after entry of judgment, under which costs may be claimed, the prevailing party may serve and file a cost bill requesting taxation of costs itemized thereon.

These costs shall include clerk's fees and service fees; trial transcripts; deposition costs; witness fees; mileage and subsistence; exemplification and copies of papers; maps, charts, models, photographs, summaries, computations, and statistical summaries; interpreter fees; docket fees; and other items with prior court approval.

Local Rule 54.3, Award of Attorney Fees, states that "attorney fees will not be treated as routine items of costs. Attorney fees will only be allowed upon an order of a judge of the court after such fact finding process as the judge shall order." Rule 54.3 sets out the requirements for petitioning the court for an award of award fees; and after the petition is filed by the prevailing party, the other party has fourteen days to object to the award.

As a pro se litigant, you must remember that if you are not the prevailing party in your lawsuit, you could be required to reimburse the other party(ies) for their costs and attorney fees, subject to the fact finding of the judge.

NOTE: The following paragraph is quoted from the Federal Rules of Civil Procedure:

Rule 11. Signing of Pleadings, Motions,
and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. . . . The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

CHAPTER IV.

**THE STRUCTURE OF THE COURTS
OR
SHOULD THIS CASE BE FILED IN STATE OR FEDERAL COURT?**

There are two court systems in the United States: the state courts and the federal courts. The state courts typically hear matters relating to civil, criminal, domestic (divorce and child custody), probate, and property in accordance with the laws of each state. Matters typically heard by the federal courts involve violation of federal laws; admiralty and maritime matters; United States patent, trademark, and copyright matters; bankruptcy proceedings; proceedings against ambassadors, consuls, and ministers. These matters usually fall into two main categories: (1) federal question cases -- cases which arise under the Constitution, laws, or treaties of the United States; and (2) diversity cases -- civil matters arising between parties who are citizens of different states and the amount in controversy exceeds \$50,000.

Remember, in Chapter II we discussed the five required elements of a lawsuit. Before filing a case in a federal court, you must decide if the court has jurisdiction. Jurisdiction is the authority given a court to hear and decide certain cases. The United States Supreme Court is given its authority by Article III of the United States Constitution. There may be instances when the United States Supreme Court might review a judgment rendered by a state court, but those instances are rare, occurring only when there has been a final judgment or decree of the highest court of the state in which a decision could be had involving a substantial federal question. Normally, the United States Supreme Court reviews judgments rendered by the United States Courts of Appeals, of which there are thirteen federal judicial circuits. The United States

Supreme Court has original jurisdiction over matters involving treason and presidential impeachment.

The following are all of the other federal courts which are established and given their authority by acts of Congress enacted under constitutional authority.

- o United States Courts of Appeals:
 - The Courts of Appeals for the District of Columbia and for the First through the Eleventh Circuits hear appeals from the federal district courts, bankruptcy courts, and tax courts. They also review some decisions of various federal administrative agencies.
 - The United States Court of Appeals for the Federal Circuit hears appeals from final decisions of federal district courts for civil actions arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks, including claims of unfair competition when joined with substantial and related claims dealing with patents, copyrights, etc. as well as the final decisions of the district courts and the United States Claims Court where the United States is sued as defendant, and appeals from decisions of the United States Court of International Trade, and United States Patent and Trademark Office, the United States International Trade Commission relating to unfair import practices, and decisions by the Secretary of Commerce relating to import tariffs, among others.
- o United States Court of Military Appeals. This court hears appeals from court martial decisions. There is no further appeal from this court.
- o United States Claims Court. This court hears certain kinds of actions against the United States Government, except those involving tort claims under the Federal Tort Claims Act. These cases may be appealed to the United States Court of Appeals for the Federal Circuit.
- o Tax Court of the United States. This court hears cases concerning the federal tax laws. Its decisions may be appealed to the United States Court of Appeals.
- o United States Court of International Trade. This court hears cases concerning the federal tariff laws. Its decisions may be appealed to the United States Court of Appeals for the Federal Circuit.
- o United States Bankruptcy Courts. These courts hear all matters pertaining to bankruptcy and financial reorganization. Their decisions may be appealed to the United States District

Court and, in some cases, to the appropriate United States Court of Appeals.

- o United States District Courts. These courts try both criminal and civil actions and sit as admiralty courts. They may also review decisions of federal administrative agencies. There is at least one United States District Court in each state. Their decisions may be appealed to the appropriate United States Court of Appeals.

NOTE: The United States District Court for the District of Idaho is located in the Ninth Circuit of the United States Courts of Appeals.

The federal district courts have both civil and criminal jurisdiction. They have original jurisdiction in the following types of actions:

- o Civil actions arising under the Constitution, laws, or treaties of the United States ("federal question" cases).
- o Actions where the matter in controversy exceeds the sum or value of \$50,000, exclusive of interest and costs, and is between citizens of different states; citizens of a state and foreign states or citizens or subjects thereof; or citizens of different states in which foreign states or citizens or subjects thereof are additional parties ("diversity" cases).
- o All criminal offenses against the laws of the United States.
- o Admiralty, maritime, and prize cases.
- o Bankruptcy matters and proceedings.
- o Actions of interpleader involving money or property of value of \$500 or more claimed by citizens of different states.
- o Action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.
- o Actions or proceedings arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies ("antitrust" cases).
- o Any civil action arising under any act of Congress relating to the postal service.
- o Actions arising under any act of Congress providing for internal revenue or revenue from imports or tonnage except matters within the jurisdiction of the United States Customs

Court.

- o Any civil action authorized by law to be commenced by any person dealing with civil rights, election disputes, and voting rights.
- o All civil actions, suits, or proceedings commenced by the United States or by any agency or officer thereof.
- o Actions for recovery of interest revenue tax or actions not exceeding \$10,000, founded upon the United States Constitution, any action of Congress, or any regulation of any executive department (The United States Court of Claims has concurrent jurisdiction in these actions).
- o Actions for the partition of lands where the United States is one of the tenants in common or is a joint tenant.
- o Actions involving national banks and other federal corporations.
- o Actions involving labor disputes which are authorized by specific statutes to be litigated in federal court.
- o Aliens' actions for torts.
- o Tort claim actions against the United States.
- o Actions and proceedings against consuls or vice consuls of foreign states.
- o Actions on bonds executed under any law of the United States (state courts have concurrent jurisdiction in these actions).
- o Actions involving Indian allotments or land grants to the states.
- o Actions involving injuries protected by specific federal laws (i.e., the Federal Employers Liability Act).
- o All proceedings to condemn real estate for the use of the United States or its departments or agencies.
- o Actions involving use or management of the public lands of the United States.
- o Actions involving regulations by the United States of environmental quality.

CHAPTER V.

**RULES AND PROCEDURES FOR FILING
A CASE IN DISTRICT COURT**

Whether you are a party to a lawsuit, a person representing yourself in a lawsuit, or an attorney representing a party in a lawsuit, you are subject to the rules of procedure for any court in which your case is filed. The federal courts are governed by the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and the Federal Rules of Criminal Procedure (Fed. R. Cr. P.) as well as other rules of procedure regarding other areas such as evidence, appeals, etc. No matter what document or procedure you are involved with, you must follow the particular rule or rules that govern the matter.

In the United States District Court for the District of Idaho, all procedures are governed not only by the federal rules of procedure listed above but also by the Local Rules of Civil Procedure and the Local Rules of Criminal Procedure. The numbering system of the Local Rules coincides with the numbering system of the federal rules for easy reference. Copies of the federal rules can be found at the Idaho State Law Library, 450 West State Street, Boise, Idaho, or at the Ninth Circuit Law Library located in the Federal Building and U.S. Courthouse, 550 West Fort Street, Boise, Idaho.

Copies of the Local Rules for the District of Idaho can be obtained at any of the offices listed in Chapter I of this handbook. As a pro se litigant, you are responsible for becoming familiar with the court's local rules and procedures.

A. PROCEDURES FOUND IN THE LOCAL RULES.

- 1.. GENERAL FORMAT OF PLEADINGS: Rule 5.1.
2. PROOF OF SERVICE: Rule 5.2
3. COPIES OF ORDERS AND ENVELOPES: Rule 5.4
4. NON-FILING OF DISCOVERY PLEADINGS: Rule 5.5
5. MOTION PRACTICE: Rule 7.1
6. REQUESTS AND ORDERS TO SHORTEN OR EXTEND TIME OR CONTINUE TRIAL DATES: Rule 7.3
7. STIPULATIONS: Rule 7.4
8. FORM OF A MOTION TO AMEND AND ITS SUPPORTING DOCUMENTATION: Rule 15.1
9. PRE-TRIAL PROCEDURES: Rule 16.1
10. INFANTS AND INCOMPETENT PERSONS: Rule 17.1
12. REQUIREMENTS OF DISCLOSURE OF FACTS: Rule 26.2
13. LIMITATION ON DEPOSITIONS: Rule 30.1
14. LIMITATION ON INTERROGATORIES: Rule 33.1
15. NOTATION OF “JURY DEMAND” IN THE PLEADING: Rule 38.1

B. PROCEDURES ON FILING AND TIME LINES:

PLEADING	DESCRIPTION	RULE	TIME
1. Civil Cover Sheet	The document that must accompany the complaint and summons before filing can occur. (Form 1.)	LR 5.1(d)	Initial filing.
2. Complaint	Sets out the parties, the controversy and the governing law, allegations, statements of facts, and demand for relief.	LR 3.1 LR 5.1(b) FRCP 10	Initial filing.
3. Summons	Issued by the Clerk at the time of filing the complaint, the summons is served on the defendant with a copy of the complaint. A Waiver of Service of Summons can also be served on the defendant with a copy of the complaint. (Forms Index: C.4 and C.5) The summons informs the defendant that they must answer the allegations in the complaint or judgment will be entered in favor of the plaintiff. (Form 2.)	FRCP 4 LR 5.2	Issued with the seal of the Clerk.
4. Motions and proposed orders.	To seek an order from the court on some particular matter during the pendency of a case. Either party may bring.	LR 7.1 LR 5.4 FRCP 11 & 12	Motions are filed with the Clerk and proposed Orders are sent to the respective Judge's office for review.
5. Response to motions.	The other party is entitled to respond to a motion.	FRCP 6 LR 7.1 (a)(2)	Within 14 days of when the motion was served.
6. Proof of Service Requirement.	Whenever a document is filed with the court, there must be a proof of service certificate included, which certifies that a copy of the document was sent to the other party.	LR 5.2	Attached to the document served and filed with the Clerk.
7. Copies of Pleadings	When motions and stipulations are filed, you are required to include copies of the proposed order and stamped, addressed envelopes for each of the parties to be served.	LR 5.4	Received by the Clerk and forwarded to the Judge for review.

PLEADING	DESCRIPTION	RULE	TIME
8. Discovery	Initial disclosures, disclosure of expert testimony, notices of depositions, depositions, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall be served upon other counsel and parties but shall NOT be filed with the court unless on order of the court or for use in the proceeding.	LR 5.5 LR 26.2	Documents are exchanged between the parties prior to certain deadlines.
9. Pretrial Procedures	All rules governing all Pretrial requirements and hearings are set out in this rule.	LR 16.1	

C. FORMS INDEX

-- Forms to be used by Pro Se Litigants:

1. CIVIL COVER SHEET
2. SUMMONS IN A CIVIL ACTION
3. SUBPOENA IN A CIVIL ACTION
4. SCHEDULING CONFERENCE FORM/LITIGATION PLAN INSTRUCTIONS
(When case is assigned to Article III Judge.)
 - a. Scheduling Conference Form/Litigation Plan Instructions
 - b. Notice of Availability of the Magistrate Judge to Exercise Civil Jurisdiction and Appeal Option
 - c. Waiver of Service
 - d. Notice of Lawsuit and Request for Waiver of Service of Summons
 - e. Waiver of Service of Summons
5. NOTICE OF ASSIGNMENT TO MAGISTRATE JUDGE
 - a. General Order No. 98
 - b. Scheduling Conference Form/Litigation Plan Instructions
 - c. Scheduling Conference Form/Litigation Plan
 - d. Notice of Lawsuit and Request for Waiver of Service of Summons
 - e. Waiver of Service of Summons
6. INSTRUCTIONS FOR FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 2 U.S.C. SECTION 1983
7. CERTIFICATE OF SERVICE BY MAIL

-- **Forms to be used by Prisoner Pro Se Litigants:**

8. APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER
9. INSTRUCTIONS FOR FILING A COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. SECTION 1983
10. PETITION UNDER 28 U.S.C. SECTION 2255 FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY
11. PETITION UNDER 28 U.S.C. SECTION 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

CHAPTER VI

TRIAL PREPARATION

The Local Rules of the District of Idaho cover all phases of trial preparation from the pretrial conference to the satisfaction of judgment. The following information is not meant to be all inclusive and you should always consult the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Idaho to find out what the court requires of all parties when filing suit and participating in trial. **Local Rule 16.1** sets out those pretrial requirements that all parties should be aware of.

A. Pretrial Conference and Order

Prior to the actual trial, a pretrial conference is usually held between the trial judge and counsel to determine if all discovery has been completed, what exhibits and witnesses each side might use during the trial, the approximate length of time that will be necessary for the trial, and what ground rules the judge will require before, during, and after the trial. After the conference, a pretrial order is usually prepared which sets out the above.

B. The Trial -- The Role of the Judge and Jury

A trial is defined as "a judicial examination of issues between parties to an action." The parties each get the opportunity to present their side of the case, and the judge and jury (if the trial is a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the judge's duty to see that only proper evidence and arguments are

presented. In a jury trial, he also instructs the jury which will be called on to make decisions regarding those matters at issue and then a judgment is entered based on the verdict reached by the jury. **Local Rule 58.1.**

If the parties have not requested a trial by jury, **Local Rule 38.1**, the judge becomes the trier of law (the judge) and the trier of fact (the jury). The judge then enters a Findings of Fact and Conclusions of Law, sometimes prepared by the prevailing party, based on the evidence and arguments presented and then a judgment is entered based on those findings of fact and conclusions of law.

C. Selection of the Jury

A jury trial begins with the judge choosing prospective jurors to be called for voir dire (examination). **Local Rule 47.1.** The jury box shall be filled before examination on voir dire and the Court will examine the jurors as to their qualifications. Not less than five (5) days before trial, the parties are to submit written requests for voir dire questions. Unless otherwise ordered, six (6) jurors plus a number of jurors equal to the total number of preemptory challenges which are allowed by law shall be called to complete the initial panel. **Local Rule 48.1.** After voir dire of all prospective jurors, a jury of six (6) is named and instructed by the judge regarding the issues they will be deciding. **Local Rule 51.1.**

Peremptory challenges: Each party has been given number of preemptory challenges established by law which enable the parties to reject prospective jurors without cause. This decision is based on subjective considerations of the parties when they feel a prospective juror would be detrimental to their side of the case.

Challenge for Cause: Either the plaintiff or defendant may challenge a prospective juror for cause when the prospective juror lacks a qualification required by law, is not impartial, is related to either of the parties, or will not accept the law as given to him by the court.

D. Opening Statements

After the jury is empaneled, each side may present an opening statement. **Local Rule 39.1.** The plaintiff has the burden of proving that he was wronged and suffered damages from such wrong and that the defendant caused such damages; the plaintiff is therefore allowed to present his statement first. This may be followed by a statement by the defendant.

E. Testimony of Witnesses

After opening statements are given, testimony of witnesses and documents are presented by each side, plaintiff side to begin. **Local Rule 43.1.** Cross-examination is conducted by the other side after the initial examination. If after a party has cross-examined a witness, the other side has the opportunity to redirect examination in order to requestion the witness on the points covered by the cross-examination.

If a witness testifies to one fact and a statement or document in the files shows that testimony to be contradicted, the document can then be used to question the witness on the accuracy of his statements. If the evidence produced shows that the witness's testimony is false, the witness is considered impeached upon cross-examination.

F. Motions During the Course of the Trial

Before the closing arguments and up until the time the case is sent to the jury for deliberation, certain motions may be made during the course of the trial.

1. Motion in Limine: This motion is made prior to the jury selection and it requests that the judge not allow certain facts to be admitted into evidence--such as insurance policies, subsequent marriages, criminal records, and other matters which are either not relevant to the particular case involved or which might influence the jury unfairly.

This motion is usually made by the defendant. If granted, the court instructs the jury to render a verdict for the defendant and against the plaintiff, and the trial is concluded in the defendant's favor. If the court denies the motion, the trial continues with presentation of the defendant's side.

3. Motion for Mistrial: Either party can move for a mistrial if, for example, during the course of the trial certain matters which are not admissible such as those mentioned in a motion for limine are presented by any witness either purposely or unintentionally in the presence of the jury. If the jury grants the motion for mistrial, the trial is immediately ended and the jury is dismissed.

4. Objections: During the examination of a witness, one side may "object" to the questioning or testimony of a witness or presentation of evidence if the attorney feels the testimony or evidence about to be given should be excluded. If the objection is sustained by the judge, that particular testimony or evidence is excluded. If the objection is overruled by the judge, the testimony or evidence may be given. A ruling on an objection may be the basis for

appeal; however, in order to preserve the right to appeal, a party must ask the court recorder that that portion of the trial--the question/evidence, the objection, and the ruling-- be transcribed in order to *preserve the record* for later appeal.

G. Rebuttal Testimony

After each side has presented its evidence, the plaintiff may be allowed to present some rebuttal testimony.

H. Closing Arguments

Closing arguments to the jury set out the facts that each side has presented and the reasons why the jury should find in favor of the client. Time limits are sometimes set by the court for closing arguments, and each side must adhere to the specified time. The plaintiff presents closing argument first and may reserve some of the time for a rebuttal to defendant's closing argument. **Local Rule 39.1.**

I. Charge to the Jury

After each side presents testimony and evidence, the jury delivers his charge to the jury, usually in the form of written instructions. Each side may present proposed written instructions to the judge for consideration. After the judge has considered all proposed instructions, the jury is given each instruction which sets forth the jury's responsibility to decide the facts in light of the applicable rules of law. The jury then returns a verdict granting favor to the plaintiff or defendant and assesses damages to be awarded, if any.

J. Mistrial

If a jury is unable to reach a verdict, in which case the judge declares a mistrial, the case must be tried again before a new jury. A jury which cannot reach a verdict is usually referred to as a *hung jury*.

K. Preparation of Judgment

Following the entry of the jury's verdict, either side may give notice of its intention to appeal. The judgment is prepared by the prevailing side and presented to the court for entry. The losing side has the opportunity to file post-trial motions before judgment is entered. These post-trial motions usually set out why the jury's verdict should be disregarded or why the judgment submitted by the other side should be more in keeping with the jury's verdict. **Local Rule 58.1.**

L. Costs

If the jury or the judge awarded costs to the prevailing party, it is necessary to prepare a bill of costs incurred in the suit for the approval of the court. Costs are specified by **Local Rule 54.1** as to what is allowable, and only those costs listed as allowable may be recovered by the prevailing party. Within fourteen (14) days after entry of judgment, under which the costs may be claimed, the prevailing party may serve and file a cost bill requesting taxation of costs itemized thereon.

Claims for attorney fees will not be treated as routine items of costs. Attorney fees will only be allowed upon an order of a judge of the court after such fact finding process as the judge shall order. **Local Rule 54.3.**

M. Satisfaction of Judgment

Whenever the amount directed to be paid by any judgment or order, together with interest (if interest accrues) and the clerk's statutory charges, shall be paid into court by payment to the clerk, the clerk shall enter satisfaction of said judgment or order. The court will enter satisfaction of any judgment upon receipt of an acknowledgment from the prevailing party that all awards have been satisfied. **Local Rule 58.2.**

CHAPTER VII

LEGAL RESEARCH -- AN OVERVIEW

It is not the purpose of this chapter to teach the pro se litigant legal research and writing nor is it our goal to sort out the complexities of applying the law, whether it be statutory or case law, to the facts of a particular case. The law prohibits personnel in the Clerk's office from providing information regarding the application of the law to the facts of any case. The intention here is to provide information that is basic to a law library to be used as a guideline.

Just as there are certain standards of procedure for filing documents with the Clerk's office, there are certain standards for citing authority when applying the law to the facts of a certain case. The most common source of citation standards is A Uniform System of Citation, Fifteenth Edition, published and distributed by The Harvard Law Review Association, Cambridge, Massachusetts. It is more commonly referred to as "The Bluebook" and sometimes as the "The Harvard Citator." All of the information required for proper citation format can be found in this one text.

Authority is the information used to convince a court how to apply the law to the facts of a case. Legal authority is divided into two classes -- primary and secondary. There are two sources of primary authority: (1) constitutions, codes, statutes, and ordinances; and (2) court decisions, preferably from the same jurisdiction where the case is filed. Secondary authority, which is not cited except in certain circumstances, is found in legal encyclopedias, legal texts, treatises, law review articles, and court cases in other jurisdictions.

- Primary authority is the most accepted form of authority cited and should be used before any other authority.

1. Constitutions, codes, statutes, and ordinances are the written laws of either the United States, the individual states, counties, and municipalities. These laws are enacted by the United States Congress, state legislatures, commissioners, and city councils.
2. When a particular case is decided, it becomes "precedent" which means that it becomes an example or authority for an identical or similar case or a similar question of law. Court decisions are the basis for the system of stare decisis. These decisions are published in what is called the National Reporter System which covers cases decided by the United States Supreme Court down to the individual state district courts. These reporters each have their own "digest" system which serves as an index by subject on points of law. There are many reporters in this system and they can be found in most law libraries.

- Secondary authority is used to obtain a broad view of the area of law and also as a finding tool for primary authority. Secondary authority is not cited to the court unless there is no other authority available.

1. Legal encyclopedias contain topics which are arranged alphabetically and are substantiated by supporting authorities.
2. Treatises are texts written about a certain topic of law by an expert in the field.
3. Law review articles are published by most accredited law schools and are sometimes a broad diagnosis of a particular area.
4. The Index to Legal Periodicals provides the only book reviews in the law and also provides case comments, which cases are listed in the "Table of Cases."
5. American Law Reports Annotated (A.L.R.) is a collection of cases on single narrow issues. You must be aware that A.L.R. must be constantly updated.

6. Restatements are publications compiled from statutes and decisions which tell what the law is in a particular field.
7. Shepard's Citations is a large set of law books which provide a means by which any reported case (cited decision) may be checked to see when and how another court (the citing decision) has cited the first decision. All cases must be checked to make sure another court has not reversed or overruled your cited decision.

Some basic rules of legal research are as follows:

1. Give priority to cases from your own jurisdiction.
2. Search for the most recent ruling on a subject matter.
3. Check the pocket part in the back of almost all law books. The pocket part is the most frequently used device for updating law books.
4. Pay attention to dates on books, i.e., copyright date and date of pocket parts.
5. Be aware of "2d" and "3d" citations. They distinguish one series from another.
6. All legal citations are written with the volume number first, an abbreviation of the title, and the page number, e.g., 152 P.2d 967 or 144 A.L.R. 422.
7. Shepardizing your citations can save a lot of embarrassment later on.

As state above, the above information is not meant to be a complete or comprehensive guide to the law library or to legal research and writing.

CHAPTER XII.

GLOSSARY

NOTE: The following definitions are not legal definitions. The definitions given are simply intended to give you a general idea of the meanings.

A

Abstract of title	A chronological summary of all official records and recorded documents affecting the title to a parcel of real property.
Acceptance	The taking and receiving of anything in good faith with the intention of retaining it.
Accomplice	1. A partner in a crime. 2. A person who knowingly and voluntarily participates with another in a criminal activity.
Accretion	The increase or accumulation of land by natural causes, as out of a lake or river.
Acknowledgment	A formal declaration before an authorized official by the person who executed an instrument that it is his free act and deed; the certificate of the official on such instrument attesting that it was so acknowledged.
Acquittal	A release, absolution, or discharge of an obligation or liability. In criminal law the finding of not guilty.

Action	Case, cause, suit, or controversy disputed or contested before a court of justice.
Additur	An increase by a judge in the amount of damages awarded by a jury.
Adjective law	Also, procedural law. That body of law which governs the process of protecting the rights under substantive law.
Adjudication	Giving or pronouncing a judgment or decree. Also the judgment given.
Administrative agencies	Agencies created by the legislative branch of government to administer laws pertaining to specific areas such as taxes, transportation, and labor.
Administrator	1. One who administers the estate of a person who dies without a will. 2. A court official.
Admiralty law	Also, maritime law. That body of law relating to ships, shipping, marine commerce and navigation, transportation of persons or property by sea, etc.
Admissible evidence	Evidence that can be legally and properly introduced in a civil or criminal trial.
Admonish	To advise or caution. For example the court may caution or admonish counsel for wrong practices.
Advance sheets	Paperback pamphlets published by law book publishers weekly or monthly which contain reporter cases, including correct volume number and page number. When there are sufficient cases, they are replaced by a bound volume.
Adversary proceeding	One having opposing parties such as a plaintiff and a defendant. Individual lawsuit(s) brought within a bankruptcy proceeding.
Adverse possession	Method of acquiring real property under certain conditions by possession for a statutory period.
Affiant	The person who makes and subscribes an affidavit.

Affidavit	A voluntary, written, or printed declaration of facts, confirmed by oath of the party making it before a person with authority to administer the oath.
Affirmation	A solemn and formal declaration that an affidavit is true. This is substituted for an oath in certain cases.
Affirmative defense	A defense raised in a responsive pleading (answer) relating a new matter as a defense to the complaint; affirmative defenses might include contributory negligence or estopped in civil actions; in criminal cases insanity, duress, or self-defense might be used.
Affirmed	In the practice of appellate courts, the word means that the decision of the trial court is correct.
Agreement	Mutual consent.
Aid and Abet	To actively, knowingly, or intentionally assist another person in the commission or attempted commission of a crime.
Alien	A foreign-born person who has not qualified as a citizen of the country.
Allegation	A statement of the issues in a written document (a pleading) which a person is prepared to prove in court.
Alteration	Changing or making different.
Alternative dispute resolution	Settling a dispute without a full, formal trial. Methods include mediation, conciliation, arbitration, and settlement, among others.
American Bar Association	A national association of lawyers whose primary purpose is improvement of lawyers and the administration of justice.
American Law Reports	A publication which reports cases from all United States jurisdictions by subject matter.

Ancillary	A proceeding which is auxiliary or subordinate to another proceeding. In probate, a proceeding in a state where a decedent owned property but was not domiciled.
Annotations	Remarks, notes, case summaries, or commentaries following statutes which describe interpretations of the statute.
Answer	A formal, written statement by the defendant in a lawsuit which answers each allegation contained in the complaint.
Answers to Interrogatories	A formal written statement by a party to a lawsuit which answers each question or interrogatory propounded by the other party. These answers must be acknowledged before a notary public or other person authorized to take acknowledgments.
Antitrust acts	Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing, and monopolies.
Appeal	A proceeding brought to a higher court to review a lower court decision.
Appeal Bond	A guaranty by the appealing party insuring that court costs will be paid.
Appearance	The act of coming into court as a party to a suit either in person or through an attorney.
Appendix	Supplementary materials added to the end of a document.
Appellate court	A court having jurisdiction to hear appeals and review a trial court's procedure.
Appellee	(See respondent) The party against whom an appeal is taken.
Arbitration	The hearing of a dispute by an impartial third person or persons (chosen by the parties), whose award the parties agree to accept.
Arbitrator	A private, disinterested person chosen by the parties in arbitration to hear evidence concerning the dispute and to make an award based on the evidence.

Arraignment	The hearing at which the accused is brought before the court to plead to the criminal charge in the indictment. He may plead "guilty," "not guilty," or where permitted "nolo contendere." (See preliminary hearing.)
Arrest	To take into custody by legal authority.
Assault	Threat to inflict injury with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm.
Assignment	The transfer to another person of any property, real or personal.
Assumption of risk	A doctrine under which a person may not recover for an injury received when he has voluntarily exposed himself to a known danger.
At issue	The time in a lawsuit when the complaining party has stated their claim and the other side has responded with a denial and the matter is ready to be tried.
Attachment	Taking a person's property to satisfy a court-ordered debt.
Attorney-at-law	An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts.
Attorney-in-fact	A private person (who is not necessarily a lawyer) authorized by another to act in his or her place, either for some particular purpose, as to do a specific act, or for the transaction of business in general, not of legal character. This authority is conferred by an instrument in writing, called a "letter of attorney," or more commonly "power of attorney."
Attorney of record	The principal attorney in a lawsuit, who signs all formal documents relating to the suit.

B

Bail	Money or other security (such as a bail bond) provided to the court to temporarily allow a person's release from jail and assure their appearance in court. "Bail" and "Bond" are often used interchangeably. (Applies mainly to state courts.)
Bail bond	An obligation signed by the accused to secure his or her presence at the trial. This obligation means that the accused may lose money by not properly appearing for the trial. Often referred to simply as "bond."
Bailiff	An officer of the court responsible for keeping order and maintaining appropriate courtroom decorum and has custody of the jury.
Bankruptcy	Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may be released from or "discharged" from their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings. The person with the debts is called the debtor and the people or companies to whom the debtor owes money are called creditors.
Bankruptcy Judge	The judge who determines whether a debtor is entitled to a discharge in bankruptcy.
Bankruptcy law	The area of federal law dealing with the handling of bankrupt persons or businesses.
Bar	1. Historically, the partition separating the general public from the space occupied by the judges, lawyers, and other participants in a trial. 2. More commonly, the term means the who body of lawyers.
Bar examination	A state examination taken by prospective lawyers in order to be admitted and licensed to practice law.
Battery	A beating, or wrongful physical violence. The actual threat to use force is an

	"assault;" the use of it is a battery, which usually includes an assault.
Bench	The seat occupied by the judge. More broadly, the court itself.
Bench trial	(Also known as court trial.) Trial without a jury in which a judge decides the facts.
Bench warrant	An order issued by a judge for the arrest of a person.
Beneficiary	Someone named to receive property or benefits in a will. In a trust, a person who is to receive benefits from the trust.
Bequeath	To give a gift to someone through a will.
Bequests	Gifts made in a will.
Best evidence	Primary evidence; the best evidence available. Evidence short of this is "secondary." That is, an original letter is "best evidence," and a photocopy is "secondary evidence."
Beyond a reasonable doubt	The standard in a criminal case requiring that the jury be satisfied to a moral certainty that every element of a crime has been proven by the prosecution. This standard of proof does not require that the state establish absolute certainty by eliminating all doubt, but it does require that the evidence be so conclusive that all reasonable doubts are removed from the mind of the ordinary person.
Bill of particulars	A statement of the details of the charge made against the defendant.
Bind over	To hold a person for trial on bond (bail) or in jail. If the judicial official conducting a hearing finds probable cause to believe the accused committed a crime, the official will bind over the accused, normally by setting bail for the accused's appearance at trial. (This is a state court procedure.)
Bond	(See bail bond.) A written agreement by which a person insures he will pay a certain sum of money if he does not perform certain duties property.

Bound supplement	A supplement to a book or books to update the service bound in permanent form.
Booking	The process of photographing, fingerprinting, and recording identifying data of a suspect. This process follows the arrest.
Breach	The breaking or violating of a law, right, or duty, either by commission or omission. The failure of one part to carry out any condition of a contract.
Breach of contract	An unjustified failure to perform when performance is due.
Brief	A written argument by counsel arguing a case, which contains a summary of the facts of the case, pertinent laws, and an argument of how the law applies to the fact situation. Also called a memorandum of law.
Burden of proof	In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point (the burden of proof). It deals with which side must establish a point or points. (See standard of proof.)
Burglary	The act of illegal entry with the intent to steal.
Business bankruptcy	A proceeding under the Bankruptcy Code filed by a business entity.
Bylaws	Rules or laws adopted by an association or corporation to govern its actions.

C

Capital crime	A crime punishable by death.
Calendar	A list of cases scheduled for hearing in court.
Canons of ethics	Standards of ethical conduct for attorneys.

Capacity	Having legal authority or mental ability. Being of sound mind.
Caption	Heading or introductory party of a pleading.
Case law	Law established by previous decisions of appellate courts, particularly the United States Supreme Court. (See stare decisis in Foreign Words Glossary.)
Cases	General term for an action, cause, suit, or controversy, at law or in equity; questions contested before a court of justice.
Cause	A lawsuit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice.
Cause of action	The fact or facts which give a person a right to relief in court.
Caveat	A warning; a note of caution.
Censure	An official reprimand or condemnation of an attorney. (See disbarment or suspension.)
Certificate of Title	Document issued by Registrar of Titles for real estate registered under the Torrens System, which is considered conclusive evidence of the present ownership and state of the title to the property described therein.
Certification	1. Written attestation. 2. Authorized declaration verifying that an instrument is a true and correct copy of the original.
Certiorari	A writ of review issued by a higher court to a lower court. A means of getting an appellate court to review a lower court's decision. If an appellate court grants a writ of certiorari, it agrees to take the appeal. (Sometimes referred to as "granting cert.")
Challenge	An objection, such as when an attorney objects at a hearing to the seating of a particular person on a civil or criminal jury.

Challenge for cause	A request from a party to a judge that a certain prospective juror not be allowed to be a member of a jury because of specified causes or reasons. (Also, see peremptory challenge.)
Chambers	A judge's private office. A hearing in chambers takes place in the judge's office outside of the presence of the jury and the public.
Change of venue	Moving a lawsuit or criminal trial to another place for trial. (See venue.)
Charge to the jury	The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.
Chief judge	Presiding or administrative judge in a court.
Chattel	An article of personal property.
Child	Offspring of parentage; progeny.
Chronological	Arranged in the order in which events happened; according to date.
Circumstantial evidence	All evidence except eyewitness testimony. One example is physical evidence, such as fingerprints, from which an inference can be drawn.
Citation	A writ or order issued by a court commanding the person named therein to appear at the time and place named; also the written reference to legal authorities, precedents, reported cases, etc., in briefs or other legal documents.
Citators	A set of books which provides the subsequent history of reported decisions through a form of abbreviations or words. Most widely used are Chopart's Citations.
Civil	Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.
Civil action	An action brought to enforce or protect private rights.

Civil Aeronautics Board	(CAB) A commission which promotes and regulates the civil air transport industry in the U.S. and between the U.S. and foreign countries.
Civil law	Law based on a series of written codes or laws.
Civil procedure	The rules and process by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.
Civil Service Commission	A federal agency which regulates the hiring of government employees.
Claim	A debt owing by a debtor to another person or business. In probate parlance, the term used for debts of the decedent and a procedure that must be followed by a creditor to obtain payment from his estate.
Class action	A lawsuit brought by one or more persons on behalf of a larger group.
Clayton Act	A federal law which is an amendment to the Sherman Act dealing with antitrust regulations and unfair trade practices.
Clean air acts	Federal and state environmental statutes enacted to regulate and control air pollution.
Clear and convincing evidence	Standard of proof commonly used in civil lawsuits and in regulatory agency cases. It governs the amount of proof that must be offered in order for the plaintiff to win the case.
Clemency or executive clemency	Act of grace or mercy by the president or governor to ease the consequences of a criminal act, accusation, or conviction. (Sometimes known as commutation or pardon.)
Clerk of Court	Administrator or chief clerical officer of the court.
Closing argument	The closing statement, by counsel, to the trier of facts after all parties have concluded their presentation of evidence.

Code of Federal Regulations	An annual publication which contains the cumulative executive agency regulations.
Code of Professional Responsibility	The rules of conduct that govern the legal profession.
Codicil	An amendment to a will.
Collate	To arrange in order; verify arrangement of pages before binding or fastening; put together.
Collective mark	Trademark or service mark used by members of a cooperative, an association, or other collective group or organization.
Commit	To send a person to prison, asylum, or reformatory by a court order.
Common law	Also case law. Law established by subject matter heard in earlier cases.
Commutation	The reduction of a sentence, as from death to life imprisonment.
Comparative fault	A rule in admiralty law where each vessel involved in a collision is required to pay a share of the total damages in proportion to its percentage of fault.
Comparative negligence	The rule under which negligence is measured by percentage, and damages are diminished in proportion to the amount of negligence attributable to the person seeking recovery.
Complainant	The party who complains or sues; one who applies to the court for legal redress. (See also plaintiff.)
Complaint	1. The legal document that usually begins a civil lawsuit. It states the facts and identifies the action the court is asked to take. 2. Formal written charge that a person has committed a criminal offense.
Conciliation	A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps lower tensions, improve communications, and explore possible solutions. Conciliation is similar to mediation, but is may be less

	formal.
Concurrent sentences	Sentences for more than one crime that are to be served at the same time, rather than one after the other. (See also cumulative or consecutive sentences.)
Condemnation	The legal process by which the government takes private land for public use, paying the owners a fair price. (See eminent domain.)
Conformed copy	An exact copy of a document on which has been written things that could not or were not copied, <u>i.e.</u> , a written signature is replaced on the conformed copy with a notation that it was signed by the parties.
Consecutive sentences	Successive sentences, one beginning at the expiration of another, imposed against a person convicted of two or more violations. (See also cumulative or concurrent sentences.)
Consent	Agreement; voluntary acceptance of the wish of another.
Conservatorship	Legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing that for himself or herself. (See also guardianship.)
Consideration	The price bargained for and paid for a promise, goods, or real estate.
Constitution	The fundamental law of a nation or state which establishes the character and basic principles of the government.
Constitutional law	Law set forth in the Constitution of the United States and the state constitutions.
Consumer bankruptcy	A proceeding under the Bankruptcy Code filed by an individual (or husband and wife) who is not in business.
Contempt of court	Willful disobedience of a judge's command or of an official court order.
Continuance	Postponement of a legal proceeding to a later date.

Contract	An agreement between two or more persons which creates an obligation to do or not to do a particular thing. A legally enforceable agreement between two or more competent parties made either orally or in writing.
Contributory negligence	The rule of law under which an act or omission of plaintiff is a contributing cause of injury and a bar to recovery.
Conveyance	Instrument transferring title of land for one person or group of persons to another.
Conviction	A judgment of guilt against a criminal defendant.
Corroborating evidence	Supplementary evidence that tends to strengthen or confirm the initial evidence.
Counsel	A legal adviser; a term used to refer to lawyers in a case.
Counterclaim	A claim made by the defendant in a civil lawsuit against the plaintiff. In essence, a counter lawsuit within a lawsuit.
Court	A body in government to which the administration of justice is delegated.
Court-appointed attorney	Attorney appointed by the court to represent a defendant, usually with respect to criminal charges and without the defendant having to pay for the representation.
Court costs	The expenses of prosecuting or defending a lawsuit, other than the attorney fees. An amount of money may be awarded to the successful party (and may be recoverable from the losing party) as reimbursement for court costs.
Court of original jurisdiction	A court where a matter is initiated and heard in the first instance; a trial court.
Court reporter	A person who transcribes by shorthand or stenographically takes down testimony during court proceedings, a deposition, or other trial-related proceeding.
Court rules	Regulations governing practice and procedure in the various courts.
Creditor	A person to whom a debt is owed by another.

Crime	An act in violation of the penal laws of a state or the United States. A positive or negative act in violation of penal law.
Criminal justice system	The network of courts and tribunals which deal with criminal law and its enforcement.
Cross-claim	A pleading which asserts a claim arising out of the same subject action as the original complaint against a co-party, <u>i.e.</u> , one co-defendant cross claims against another co-defendant for contribution for any damages assessed against him.
Cross-examination	The questioning of a witness produced by the other side.
Cumulative sentences	Sentences for two or more crimes to run consecutively, rather than concurrently.
Custody	Detaining of a person by lawful process or authority to assure his or her appearance to any hearing; the jailing or imprisonment of a person convicted of a crime.

D

Damages	Money awarded by a court to a person injured by the unlawful act or negligence of another person.
Debtor	One who owes a debt to another; a person filing for relief under the Bankruptcy Code.
Decision	The opinion of the court in concluding a case at law.
Declaratory judgment	A statutory remedy for judicial determination of a controversy where plaintiff is in doubt about his legal rights.
Decree	An order of the court. A final decree is one that fully and finally disposes of the litigation. (See interlocutory.)
Defamation	That which tends to injure a person's reputation. (See libel and slander.)

Default	Failure of the defendant to appear and answer the summons and complaint.
Default judgment	A judgment entered against a party who fails to appear in court or respond to the charges.
Defendant	The person defending or denying a suit.
Defense of property	Affirmative defense in criminal law or tort law where force was used to protect one's property.
Deficient	Incomplete; defective; not sufficient in quantity or force.
Defunct	A corporation no longer operative; having ceased to exist.
Demurrer	A pleading filed by the defendant that the complaint as filed is not sufficient to require an answer.
Dependent	One who derives existence and support from another.
Deposition	Testimony of a witness or a party taken under oath outside the courtroom, the transcript of which becomes a part of the court's file.
Digest	An index or compilation of abstracts of reported cases into one, set forth under proper law topic headings or titles and usually in alphabetical arrangement.
Direct evidence	Proof of facts by witnesses who saw acts done or heard words spoken.
Direct examination	The first questioning of witnesses by the party on whose behalf they are called.
Directed verdict	In a case in which the plaintiff has failed to present on the facts of his case proper evidence for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it.
Disbarment	Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law. (See censure or suspension.)

Discharge	The name given to the bankruptcy court's formal discharge of a debtor's debts. In probate, the release of the estate's representative from fiduciary responsibility.
Disclaim	To refuse a gift made in a will.
Discovery	The name given pretrial devices for obtaining facts and information about the case.
Dismissal	The termination of a lawsuit. (See with prejudice and without prejudice.)
Dissent	To disagree. An appellate court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.
Dissolution	The termination; process of dissolving or winding up something.
Diversity of citizenship	The condition when the party on one side of a lawsuit is a citizen of one state and the other party is a citizen of another state; such cases are under the jurisdiction of federal courts.
Diversion	The process of removing some minor criminal, traffic, or juvenile cases from the full judicial process, on the condition that the accused undergo some sort of rehabilitation or make restitution for damages.
Docket	An abstract or listing of all pleadings filed in a case; the book containing such entries; trial docket is a list of or calendar of cases to be tried in a certain term.
Docket control	A system for keeping track of deadlines and court dates for both litigation and non-litigation matters.
Domicile	The place where a person has his permanent home to which he intends to return.
Double jeopardy	Putting a person on trial more than once for the same crime. It is forbidden by the Fifth Amendment to the United States Constitution.
Due process of law	The right of all persons to receive the guarantees and safeguards of the law and the judicial process. It includes such constitutional requirements as adequate notice,

assistance of counsel, and the rights to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses.

E

Elements of a crime	Specific factors that define a crime which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction: (1) that a crime has actually occurred, (2) that the accused intended the crime to happen, and (3) a timely relationship between the first two factors.
Eminent Domain	The power of the government to take private property for public use through condemnation.
En Banc	All the judges of a court sitting together. Appellate courts can consist of a dozen or more judges, but often they hear cases in panels of three judges. If a case is heard or reheard by the full court, it is heard en banc.
Encyclopedia	A book or series of books arranged alphabetically by topics containing information on areas of law, including citations to support the information.
Enjoining	An order by the court telling a person to stop performing a specific act.
Entity	A person or legally recognized organization.
Entrapment	The act of inducing a person to commit a crime so that a criminal charge will be brought against him.
Entry	A statement of conclusion reached by the court and placed in the court record.
Environment	The conditions, influences, or forces which affect the desirability and value of property, as well as the effect on people's lives.
Environmental Protection Agency	(EPA) A federal agency created to permit coordinated and effective governmental action to preserve the quality of the environment.

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.
Equity	Justice administered according to fairness; the spirit or habit of fairness in dealing with other persons.
Escheat	The process by which a deceased person's property goes to the state if no heir can be found.
Escrow	Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.
Esquire	In the United States the title commonly appended after the name of an attorney. In English law a title of dignity next above gentleman and below knight. Title also given to barristers at law and others. Abbreviated: Esq.
Estate	A person's property.
Estate tax	Generally, a tax on the privilege of transferring property to others after a person's death. In addition to federal estate taxes, many states have their own estate taxes.
Estoppel	An impediment that prevents a person from asserting or doing something contrary to his own previous assertion or act.
Ethics	Of or relating to moral action and conduct; professionally right; conforming to professional standards.
Evidence	Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.
Exceptions	Declarations by either side in a civil or criminal case reserving the right to appeal a judge's ruling upon a motion. Also, in regulatory cases, objections by either side to points made by the other side or to rulings by the agency or one of its hearing officers.

Exclusionary Rule	The rule preventing illegally obtained evidence to be used in any trial.
Execute	To complete; to sign; to carry out according to its terms.
Executor	A personal representative, named in a will, who administers an estate.
Exempt property	All the property of a debtor which is not attachable under the Bankruptcy Code or the state statute.
Exhibit	A document or other item introduced as evidence during a trial or hearing.
Exonerate	Removal of a charge, responsibility, or duty.
Ex parte	On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.
Ex parte proceeding	Actions taken by or orders made by a court upon the application or petition of one party without notice or hearing to other interested parties.
Extenuating circumstances	Circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.
Expungement	The process by which the record of criminal conviction is destroyed or sealed.
Extradition	The surrender of an accused criminal by one state to the jurisdiction of another.
Fair market value	The value for which a reasonable seller would sell an item of property and for which a reasonable buyer would buy it.
Family law	Those areas of the law pertaining to families, <u>i.e.</u> , marriage, divorce, child custody, juvenile, paternity, etc.
Federal Aviation Administration	A federal agency which regulates air commerce to promote aviation safety.

Federal Bureau of Investigation	(FBI) A federal agency which investigates all violations of federal laws.
Federal Communications Communications	(FCC) A federal agency which regulates interstate and foreign communications by wire and radio.
Federal Deposit Insurance Corporation	(FDIC) An agency which insures deposits in banking institutions in the event of financial failure.
Federal Mediation and Conciliation Service	An agency which provides mediators to assist in labor-management disputes.
Federal Register	A daily publication which contains federal administrative rules and regulations.
Federal Supplement	Books which gives the government certain control and power to regulate discharge of pollutants into the nation's waters in an effort to achieve clean waters.
Federal Unemployment Tax	A tax levied on employers based on employee wages paid. (FUTA tax)
Felony	A serious criminal offense. Under federal law any offense punishable by death or imprisonment for a term exceeding one year.
Fiduciary	A person or institution who manages money or property for another and who must exercise a standard care imposed by law, <u>i.e.</u> , personal representative or executor of an estate, a trustee, etc.
File	To place a paper in the official custody of the clerk of court/court administrator to enter into the files or records of a case.
Filing Fee	The fee required for filing various documents.
Finding	Formal conclusion by a judge or regulatory agency on issues of fact. Also, a conclusion by a jury regarding a fact.
Food and Drug Administration	(FDA) A federal agency which sets safety and quality standards for food, drugs, cosmetics, and household substances.

Foreclosure	A court proceeding upon default in a mortgage to vest title in the mortgagee.
Forfeiture	A cancellation. A legal action whereby a contract purchaser following default loses all his interest in the property.
Fraud	A false representation of a matter of fact which is intended to deceive another.

G

Garnishment	A legal proceeding in which a debtor's money, in the possession of another (called the garnishee) is applied to the debts of the debtor, such as when an employer garnishes a debtor's wages.
General jurisdiction	Refers to courts that have no limit on the types of criminal and civil cases they may hear.
Good time	A reduction in sentenced time in prison as a reward for good behavior. It usually is one third to one half of the maximum sentence.
Government Printing Office	The federal agency in charge of printing, binding, and selling of all government communications.
Grand Jury	A jury of inquiry whose duty it is to receive complaints and accusations in criminal matters and if appropriate issue a formal indictment.
Grantor	The person who sets up a trust. Also referred to as "settlor."
Grievance	In labor law a complaint filed by an employee regarding working conditions to be resolved by procedural machinery provided in the union contract. An injury, injustice, or wrong which gives ground for complaint.
Guardian	A person appointed by will or by law to assume responsibility for incompetent adults or minor children. If a parent dies, this will usually be the other parent. If both die, it probably will be a close relative.

Guardianship Legal right given to a person to be responsible for the food, housing, health care, and other necessities of a person deemed incapable of providing these necessities for himself or herself.

H

Habeas corpus The name of a writ having for its object to bring a person before a court.

Harmless error An error committed during a trial that was corrected or was not serious enough to affect the outcome of a trial and therefore was not sufficiently harmful (prejudicial) to be reversed on appeal.

Headnote A brief summary of a legal rule or significant facts in a case, which along with other headnotes, precedes the printed opinion in reports.

Hearing A formal proceeding (generally less formal than a trial) with definite issues of law or of fact to be heard. Hearings are used extensively by legislative and administrative agencies.

Hearsay Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court.

Hostile witness A witness whose testimony is not favorable to the party who calls him or her as a witness. A hostile witness may be asked leading questions and may be cross-examined by the party who calls him or her to the stand.

Hung jury A jury whose members cannot agree upon a verdict.

I

Immigrants Persons who come into a foreign country or region to live.

Immigration The entry of foreign persons into a country to live permanently.

Immigration and Naturalization Service	(INS) A federal agency which regulates immigration and naturalization of aliens.
Immunity	Grant by the court, which assures someone will not face prosecution in return for providing criminal evidence.
Impeachment	A criminal proceeding against a public official.
Impeachment of a witness	An attack on the credibility (believability) of a witness, through evidence introduced for that purpose.
Implied contract	A contract not created or evidenced by the explicit agreement of the parties but one inferred by law; as the use of electric power in your home implies a contract with the light company.
Inadmissible	That which, under the rules of evidence, cannot be admitted or received as evidence.
Incapacity	Lack of legal ability to act; disability, incompetence; lack of adequate power.
Incarceration	Imprisonment in a jail or penitentiary.
Incompetent	One who lacks ability, legal qualification, or fitness to manage his own affairs.
Independent executor	A special kind of executor, permitted by the laws of certain states, who performs the duties of an executor without intervention by the court.
Indeterminate sentence	A sentence of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.
Indictment	A written accusation by a grand jury charging a person with a crime. (See information.)
Indigent	Needy or impoverished. A defendant who can demonstrate his or her indigence to the court may be assigned a court-appointed attorney at public expense.

Initial appearance	The defendant comes before a judge within hours of the arrest to determine whether or not there is probable cause for his or her arrest.
Information	Accusatory document, filed by the prosecutor, detailing the charges against the defendant. An alternative to an indictment, it serves to bring a defendant to trial.
Infraction	A violation of law not punishable by imprisonment. Minor traffic offenses generally are considered infractions.
Inheritance tax	A state tax on property that an heir or beneficiary under a will receives from a deceased person's estate. The heir or beneficiary pays this tax.
Injunction	A prohibitive order or remedy issued by the court at the suit of the complaining party, which forbids the defendant to do some act which he is threatening or attempting to do. Conversely, it may require him to perform an act which he is obligated to perform but refuses to do.
Insolvent	When the total debt of an entity is greater than all of its property.
Instructions	Judge's explanation to the jury before it begins deliberations of the question it must answer and the applicable law governing the case. (Also referred to as charge.)
Intangible assets	Nonphysical items such as stock certificates, bonds, bank accounts, and pension benefits that have value and must be taken into account in estate planning.
Intentional tort	Wrong perpetrated by one who intends to break the law.
Interlocutory	Temporary; provisional; interim; not final.
Internal Revenue Service	(IRS) The federal agency which administers the tax laws of the United States.
Interrogatories	A set or series of written questions propounded to a party, witness, or other person having information or interest in a case; a discovery device.
Interstate Commerce Commission	(ICC) A federal agency which regulates all transportation in interstate commerce.

Intervention	An action by which a third person who may be affected by a lawsuit is permitted to become a party to the suit.
Involuntary bankruptcy	A proceeding initiated by creditors requesting the bankruptcy court to place a debtor in liquidation.
Issue	1. The disputed point in a disagreement between parties in a lawsuit. 2. To send out officially, as in to issue an order.

J

Joint and several liability	A legal doctrine that makes each of the parties who are responsible for an injury, liable for all the damages awarded in a lawsuit if the other parties responsible cannot pay.
Joint tenancy	A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property. Tenancy by the entirety is a special form of joint tenancy between a husband and wife.
Judge	A presiding officer of the court.
Judgment	The official and authentic decision of a court of justice upon the rights and claims of parties to an action or suit submitted to the court for determination. (See also summary judgment.)
Judgment debtor	One who owes money as a result of a judgment in favor of a creditor.
Judicial lien	A lien obtained by judgment or other judicial process against a debtor.
Judicial review	The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.

Judiciary	The branch of government invested with judicial power to interpret and apply the law; the court system; the body of judges; then bench.
Jurat	Certificate of person and officer before whom a writing is sworn to.
Jurisdiction	The power or authority of a court to hear and try a case; the geographic area in which a court has power or the types of cases it has power to hear.
Jurisprudence	The study of law and the structure of the legal system.
Jury	A certain number of men and women selected according to law and sworn to try a question of fact or indict a person for public offense.
Jury Administrator	The court officer responsible for choosing the panel of persons to serve as potential jurors for a particular court term.
Justiciable	Issues and claims capable of being properly examined in court.

K

Key number system	A research aid developed by West Publishing Company which classifies digests of cases in to various law topics and subtopics which are given paragraph numbers called "Key Numbers." Each key number for a given topic helps the researcher quickly find all references to the legal matter being researched.
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L

Lapsed gift	A gift made in a will to a person who has died prior to the will-makers death.
Larceny	Obtaining property by fraud or deceit.
Law	The combination of those rules and principles of conduct promulgated by legislative authority, derived from court decisions and established by local custom.

Law Blank	A printed legal form available for preparing documents.
Law Clerk	In the United States, usually a law school student employed by a law firm to do research and other tasks. In the courts, a lawyer (or law school student) employed to do legal research.
Lawsuit	An action or proceeding in a civil court; term used for a suit or action between two private parties in a court of law.
Leading question	A question that suggests the answer desired of the witness. A party generally may not ask one's own witness leading questions. Leading questions may be asked only of hostile witnesses and on cross-examination.
Legal aid	Professional legal services available usually to persons or organizations unable to afford such services.
Legal process	A formal paper that is legally valid; something issuing from the court, usually a command such as a writ or mandate.
Legal texts	Books that cover specific areas of the law, usually dealing with a single topic.
Legislation	The act of giving or enacting laws; the power to make laws via legislation in contrast to court-made laws.
Legitimate	That which is legal, lawful, recognized by law or according to law.
Leniency	Recommendation for a sentence less than the maximum allowed.
Letters of Administration	Legal document issued by a court that shows an administrator's legal right to take control of assets in the deceased person's name.
Letters Testamentary	Legal document issued by a court that shows an executor's legal right to take control of assets in the deceased person's name.
Liable	Legally responsible.

Libel	Published defamation which tends to injure a person's reputation.
Licensing boards	State agencies created to regulate the issuance of licenses, <u>i.e.</u> , to contractors, cosmetologists, realtors, etc.
Lien	An encumbrance or legal burden upon property.
Limine	(See "in limine" in Foreign Words Glossary).
Limited Jurisdiction	Refers to courts that are limited in the types of criminal and civil cases they may hear. For example, traffic violations generally are heard by limited jurisdiction courts.
Litigant	A party to a lawsuit.
Litigation	A lawsuit; a legal action, including all proceedings therein.
Living trust	A trust set up and in effect during the lifetime of the grantor. (Also called inter vivos trust.)
Loose-leaf services	Loose-leaf replacement pages provided by a publisher in areas of the law where changes occur at a rapid rate.

M

Magistrate	(See U.S. Magistrate Judge.) Judicial officer exercising some of the functions of a judge. It also refers in a general way to a judge.
Malfeasance	The commission of an unlawful act.
Malicious prosecution	An action instituted with intention of injuring the defendant and without probable cause, and which terminates in favor of the person prosecuted.
Malpractice	Any professional misconduct.

Manslaughter	The unlawful killing of another without intent to kill; either voluntary (upon a sudden impulse); or involuntary (during the commission of an unlawful act not ordinarily expected to result in great bodily harm). (See also murder.)
Marshal	The executive officer of the federal court.
Martindale-Hubbell Law Director	A publication of several volumes which contains names, addresses, specialties, and rating of United States lawyers; also includes digests of state and foreign statutory law.
Mediation	A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.
Memorandum	An informal note or instrument embodying something the parties desire to have in written evidence.
Memorialized	In writing.
Merger	The absorption of one thing or right into another.
Minor	A person under the age of legal competence.
Minute book	A book maintained by the courtroom deputy (bailiff), which contains minute entries of all hearings and trial conducted by the judge.
Minutes	Memorandum of a transaction or proceeding.
Miranda warning	Requirement that police tell a suspect in their custody of his or her constitutional rights before they question him or her. So named as a result of the <u>Miranda v. Arizona</u> ruling by the United States Supreme Court.
Misdemeanor	A criminal offense lesser than a felony and generally punishable by fine or by imprisonment other than in a penitentiary.

Misfeasance	Improper performance of an act which a person might lawfully do.
Mistrial	An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.
Mitigating circumstances	Those which do not constitute a justification or excuse for an offense but which may be considered as reasons for reducing the degree of blame.
Mittimus	The name of an order in writing, issuing from a court and directing the sheriff or other officer to convey a person to a prison, asylum, or reformatory, and directing the jailer or other appropriate official to receive and safely keep the person until his or her fate shall be determined by due course of law.
Mitigation	A reduction, abatement, or diminution of a penalty or punishment imposed by law.
Moot	A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question or a pretended controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.
Motion	An application made to a court or judge which requests a ruling or order in favor of the applicant.
Motion in Limine	A motion made by counsel requesting that information which might be prejudicial not be allowed to be heard in a case.
Murder	The unlawful killing of a human being with deliberate intent to kill: (1) murder in the first degree is characterized by premeditation; (2) murder in the second degree is characterized by a sudden and instantaneous intent to kill or to cause injury without caring whether the injury kills or not.
Mutual assent	A meeting of the minds; agreement.

N

National Labor Relations Board	(NLRB) A federal agency which prevents and remedies unfair labor practices by employers and labor organizations.
Naturalization	Process by which a person acquires nationality after birth and becomes entitled to privileges of citizenship.
Negligence	Failure to use care which a reasonable and prudent person would use under similar circumstances.
Negotiation	The process of submission and consideration of offers until an acceptable offer is made and accepted.
Next friend	One acting without formal appointment as guardian for the benefit of an infant, a person of unsound mind not judicially declared incompetent, or other person under some disability.
No Bill	This phrase, endorsed by a grand jury on the written indictment submitted to it for its approval, means that the evidence was found insufficient to indict.
No-contest Clause	Language in a will that provides that a person who makes a legal challenge to the will's validity will be disinherited.
No-fault Proceedings	A civil case in which parties may resolve their dispute without a formal finding of error or fault.
Noise Control Act	A act which gives government agencies the right to promulgate standards and regulations relating to abatement of noise emissions, <u>i.e.</u> , requirement that autos and like vehicles must have mufflers.
Nonfeasance	Nonperformance of an act which should be performed; omission to perform a required duty or total neglect of duty.
Nonjury trial	Trial before the court but without a jury.

Notary Public	A public officer whose function it is to administer oaths, to attest and certify documents, and to take acknowledgments.
Notice	Formal notification to the party that has been sued in a civil case of the fact that the lawsuit has been filed. Also, any form of notification of a legal proceeding.
Notice to creditors	A notice given by the bankruptcy court to all creditors of a meeting of creditors.
Nuncupative will	An oral (unwritten) will.

O

Oath	A solemn pledge made under a sense of responsibility in attestation of the truth of a statement or in verification of a statement made.
Objection	The process by which one party takes exception to some statement or procedure. An objection is either sustained (allowed) or overruled by the judge.
Occupational Safety and Health Act (OSHA)	A federal law designed to develop and promote occupational safety and health standards.
Occupational Safety and Health Review Commission	The agency established by OSHA to adjudicate enforcement actions under the Act.
Official reports	The publication of cumulated court decisions of state or federal courts in advance sheets and bound volumes as provided by statutory authority.
On a person's own recognizance	Release of a person from custody without the payment of any bail or posting of bond, upon the promise to return to court.
Opening statement	The initial statement made by attorneys for each side, outlining the facts each intends to establish during the trial.
Opinion	A judge's written explanation of a decision of the court or of a majority of judges.

A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. (A per curiam opinion is an unsigned opinion "of the court.")

Oral argument Presentation of a case before a court by spoken argument; usually with respect to a presentation of a case to an appellate court where a time limit might be set for oral argument.

Order A mandate, command, or direction authoritatively given. Direction of a court or judge made in writing.

Ordinance A rule established by authority; may be a municipal statute of a city council, regulating such matters as zoning, building, safety, matters of municipality, etc.

Overrule A judge's decision not to allow an objection. Also, a decision by a higher court finding that a lower court decision was in error.

P

Paperbound supplement A temporary supplement to a book or books to update the serve.

Paralegal Also, legal assistant. A person with legal skills who works under the supervision of a lawyer.

Pardon An act of grace from governing power which mitigates punishment and restores rights and privileges forfeited on account of the offense.

Parol evidence Oral or verbal evidence; evidence given by word of mouth in court.

Parole Supervised release of a prisoner from imprisonment on certain prescribed conditions which entitle him to termination of his sentence.

Party A person, business, or government agency actively involved in the prosecution of

	defense of a legal proceeding.
Patent	A grant to an inventor of the right to exclude others for a limited time from make, using, or selling his invention in the United States.
Patent and Trademark Office	The federal agency which examines and issues patents and registers trademarks.
Peremptory challenge	Request by a party that a judge not allow a certain prospective juror as a member of the jury. No reason or cause need be stated. (See challenge for cause.)
Periodical	A publication which appears regularly but less often than daily.
Perjury	The criminal offense of making a false statement under oath.
Permanent injunction	A court order requiring that some action be taken, or that some party refrain from taking action. It differs from forms of temporary relief, such as a temporary restraining order or preliminary injunction.
Per se doctrine	Under this doctrine an activity such as price fixing can be declared as a violation of the antitrust laws without necessity of a court inquiring into the reasonableness of the activity.
Personal property	Anything a person owns other than real estate.
Personal recognizance	In criminal proceedings, the pretrial release of a defendant without bail upon his or her promise to return to court. (See also recognizance.)
Personal representative	The person who administers an estate. If named in a will, that person's title is an executor. If there is no valid will, that person's title is an administrator.
Person in need of supervision	Juvenile found to have committed a "status offense" rather than a crime that would provide a basis for a finding of delinquency. (See status offense.)
Petitioner	The person filing an action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court. (See respondent.)

Plaintiff	A person who brings an action; the party who complains or sues in a civil action. (See complainant.)
Plea	The first pleading by a criminal defendant, the defendant's declaration in open court that he or she is guilty or not guilty. The defendant's answer to the charges made in the indictment or information.
Plea bargaining	Process where the accused and the prosecutor in a criminal case work out a satisfactory disposition of the case, usually by the accused agreeing to plead guilty to a lesser offense. Such bargains are not binding on the court. Also referred to as plea negotiating.
Pleadings	The written statements of fact and law filed by the parties to a lawsuit.
Pocket parts	Supplements to law books in pamphlet form which are inserted in a pocket inside the back cover of the books to keep them current.
Polling the jury	The act, after a jury verdict has been announced, of asking jurors individually whether they agree with the verdict.
Post-trial	Refers to items happening after the trial, <u>i.e.</u> , post-trial motions or post-trial discovery.
Pour-Over will	A will that leaves some or all estate assets to a trust established before the will-maker's death.
Power	Authority to do. One has the power to do something if he is of legal age. Also, used as "powers," the term refers to authority granted by one person to another, <u>i.e.</u> , powers given an executor in a will or an agent in a power of attorney.
Power of attorney	An formal instrument authorizing another to act as one's agent or attorney.
Precedent	Laws established by previous cases which must be followed in cases involving identical circumstances. (See stare decisis in Foreign Words Glossary.)

Preinjunction	Court order requiring action or forbidding action until a decision can be made whether to issue a permanent injunction. It differs from a temporary restraining order.
Preliminary hearing	Also, preliminary examination. A hearing by a judge to determine whether a person charged with a crime should be held for trial. (See arraignment.)
Preponderance of the evidence	Greater weight of the evidence, the common standard of proof in civil cases.
Presentence report	A report to the sentencing judge containing background information about the crime and the defendant to assist the judge in making his or her sentencing decision.
Presentment	Declaration or document issued by a grand jury that either makes a neutral report or notes misdeeds by officials charged with specified public duties. It ordinarily does not include a formal charge of crime. A presentment differs from an indictment.
Pretermitted child	A 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 estate property to go to such children.
Pretrial conference	Conference among the opposing attorneys and the judge called at the discretion of the court to narrow the issues to be tried and to make a final effort to settle the case without a trial.
Prima facie case	A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process. (See prima facie in the Foreign Words Glossary.)
Primary authority	Constitutions, codes, statutes, ordinances, and case law sources.
Private law	That law, such as a contract between two persons or a real estate transaction, which applies only to the persons who subject themselves to it.
Privilege	A benefit or advantage to certain persons beyond the advantages of other persons,

i.e., an exemption, immunity, power, etc.

Probable cause	A reasonable belief that a crime has or is being committed; the basis for all lawful searches, seizures, and arrests.
Probate	Court proceeding by which a will is proved valid or invalid. Term used to mean all proceedings pertaining to the administration of estates such as the process by which assets are gathered; applied to pay debts, taxes, and expenses of administration; and distributed to those designated as beneficiaries in the will. Conducted in states courts.
Probate court	The court with authority to supervise estate administration.
Probate estate	Estate property that may be disposed of by a will. (See estate.)
Probation	An alternative to imprisonment allowing a person found guilty of an offense to stay in the community, usually under conditions and under the supervision of a probation officer. A violation of probation can lead to its revocation and to imprisonment.
Product liability	Legal responsibility of manufacturers and sellers to buyers, users, and bystanders for damages or injuries suffered because of defects in goods.
Promisee	An individual to whom a promise is made.
Promisor	An individual who makes a promise.
Promissory estoppel	A promise which estops the promisee from asserting or taking certain action.
Property tax	A tax levied on land and buildings (real estate) and on personal property.
Proprietor	Owner; person who has legal right or title to anything.
Prosecutor	A trial lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of

deciding who and when to prosecute.

Proximate cause	The last negligent act which contributes to an injury. A person generally is liable only if an injury was proximately caused by his or her action or by his or her failure to act when he or she had a duty to act.
Proxy	The instrument authorizing one person to represent, act, and vote for another at a shareholders' meeting of a corporation.
Public law	That law such as traffic ordinances or zoning ordinances which applies to the public.
Public defender	Government lawyer who provides free legal defense services to a poor person accused of a crime.
Public Service Commission	Also, Public Utilities Commission. A state agency which regulates utilities.
Punitive damages	Money award given to punish the defendant or wrongdoer.
Purchase agreement or purchase offer	Also, sales agreement and earnest money contract. Agreement between buyer and seller of property which sets forth in general the price and terms of a proposed sale.
Putative	Alleged; supposed; reputed.

Q

Quash	To vacate or void a summons, subpoena, etc.
Quasi-contract	An obligation created by the law in the absence of an agreement or contract; not based upon the intentions or expressions of the parties.
Quasi-criminal action	A classification of actions such as violation of a city ordinance that is not also violation of a criminal statute, which are wrongs against the public punishable through fines but are not usually indictable offenses.

Quiet title action	A court proceeding to remove a cloud on the title to real property.
Quitclaim deed	A deed without warranty of title which passes whatever title the grantor has to another.

R

Real property	Land, buildings, and whatever is attached or affixed to the land. Generally synonymous with the words "real estate."
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.
Reasonable person	A phrase used to denote a hypothetical person who exercises qualities of attention, knowledge; intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. Thus, the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.
Rebut	Evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence. (See rejoinder.)
Recognizance	An obligation entered into before a court whereby the recognizer acknowledges that he will do a specific act required by law.
Record	All the documents and evidence plus transcripts of oral proceedings in a case.
Recuse	The process by which a judge is disqualified from hearing a case, on his or her own motion or upon the objection of either party.

Re-direct examination	Opportunity to present rebuttal evidence after one's evidence has been subjected to cross-examination.
Redress	To set right; to remedy; to compensate; to remove the causes of a grievance.
Referee	A person to whom the court refers a pending case to take testimony, hear the parties, and report back to the court. A referee is an officer with judicial powers who serves as an arm of the court.
Rehearing	Another hearing of a civil or criminal case by the same court in which the case was originally heard.
Registered mark	Trademark with the words "Registered in the U.S. Patent and Trademark Office" or the letter "R" enclosed within a circle.
Rejoinder	Opportunity for the side that opened the case to offer limited response to evidence presented during the rebuttal by the opposing side. (See rebut.)
Remand	To send a dispute back to the court where it was originally heard. Usually it is an appellate court that remands a case for proceedings in the trial court consistent with the appellate court's ruling.
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.
Remittitur	The reduction by a judge of the damages awarded by a jury.
Removal	The transfer of a state case to federal court for trial; in civil cases, because the parties are from different states; in criminal and some civil cases, because there is a significant possibility that there could not be a fair trial in state court.
Replacement volumes	Volumes which replace books and their pocket parts when the pocket parts cause the books to become too bulky.
Replevin	An action for the recovery of a possession that has been wrongfully taken.

Reply	The response by a party to charges raised in a pleading by the other party.
Reporters	Books which contain court decisions.
Request for admission	Also, Request to Admit. Written statements of facts concerning a case which are submitted to an adverse party and which that party must admit or deny; a discovery device.
Request for production of documents	A direction or command served upon another party for production of specified documents for review with respect to a suit; a discovery device.
Request to admit	See, Request for Admission.
Rescission	The unmaking or undoing of a contract; repeal.
Research	A careful hunting for facts or truth about a subject; inquiry; investigation.
Resolution	The formal adoption of a motion.
Respondent	The person against whom an appeal is taken. (See petitioner.)
Rest	A party is said to "rest" or "rest its case" when it has presented all the evidence it intends to offer.
Restatement	A publication which tells what the law is in a particular field, as compiled from statutes and decisions.
Restitution	Act of restoring anything to its rightful owner; the act of restoring someone to an economic position he enjoyed before he suffered a loss.
Retainer	Act of the client in employing the attorney or counsel, and also denotes the fee which the client pays when he or she retains the attorney to act for them.
Return	A report to a judge by police on the implementation of an arrest or search warrant. Also, a report to a judge in reply to a subpoena, civil or criminal.

Reverse	An action of a higher court in setting aside or revoking a lower court decision.
Reversible error	A procedural error during a trial or hearing sufficiently harmful to justify reversing the judgment of a lower court.
Revocable trust	A trust that the grantor may change or revoke.
Revoke	To cancel or nullify a legal document.
Right of way	The right of a party to pass over the land of another.
Robinson-Patman Act	An amendment to the Clayton Act which deals with price discrimination.
Robbery	Felonious taking of another's property, from his or her person or immediate presence and against his or her will, by means of force or fear. (See larceny.)
Rules	Established standards, guides, or regulations set up by authority.
Rules of evidence	Standards governing whether evidence in a civil or criminal case is admissible.

S

Search warrant	A written order issued by a judge that directs a law enforcement officer to search a specific area for a particular piece of evidence.
Seal	To mark a document with a seal; to authenticate or make binding by affixing a seal. Court seal, corporate seal.
Secondary authority	Legal encyclopedias, treatises, legal texts, law review articles, and citators. Writings which set forth the opinion of the writer as to the law.
Secured debts	In bankruptcy, a debt is secured if the debtor gave the creditor a right to

repossess the property or goods used as collateral.

Securities an Exchange Commission	(SEC) A federal agency which monitors the securities industry.
Self-defense	The claim that an act otherwise criminal was legally justifiable because it was necessary to protect a person or property from the threat or action of another.
Self-incrimination, privilege against:	The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed in the Fifth Amendment to the United States Constitution. Asserting the right is often referred to as "taking the Fifth."
Self-proving will	A will whose validity does not have to be testified to in court by the witnesses to it, since the witnesses executed an affidavit reflecting proper execution of the will prior to the maker's death.
Sentence	The punishment ordered by a court for a defendant convicted of a crime. (See concurrent and consecutive sentences.)
Sentence Report	(See Presentence Report.)
Sequester	To separate. Sometimes juries are separated from outside influences during their deliberations. For example, this may occur during a highly publicized trial.
Sequestration of witnesses	Keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand, and cautioning them not to discuss their testimony with other witnesses. Also referred to as "separation of witnesses."
Service of process	The delivering of writs, summonses, and subpoenas by delivering them to the party named in the document. Also referred to as "service."
Settlement	An agreement between the parties disposing of a lawsuit.
Settlor	The person who sets up a trust. Also referred to as "grantor."

Shepardizing	Method for finding subsequent development of a legal theory by tracing status of a case as legal authority.
Sheriff	The executive officer of local court in some areas. In other jurisdictions the sheriff is the chief law enforcement officer of a county.
Sherman Act	The basic antitrust statute prohibiting any unreasonable interference, conspiracy, restraint of trade, or monopolies with respect to interstate commerce.
Sidebar	A conference between the judge and lawyers, usually in the courtroom, out of earshot of the jury and spectators.
Slander	Spoken defamation which tends to injure a person's reputation. (See libel.)
Small Business Administration	(SBA) A federal agency which provides assistance of all kinds, including loans, to small businesses.
Small Claims Court	A state court that handles civil claims for small amounts of money. People often represent themselves rather than hire an attorney.
Social Security	A system of federal old-age pensions for employed persons begun in 1935. A portion of the payment is deducted from the employee's salary and an equal portion is contributed by the employer.
Social Security Administration	The federal agency which administers the national social security program.
Social Security Tax	A payroll deduction based on gross wages paid; this amount is matched by the employer as required by the Federal Insurance Contribution Act (FICA).
Sovereign Immunity	The doctrine that the government, state or federal, is immune to lawsuit unless it give its consent.
Specific performance	A remedy requiring a person who has breached a contract to perform specifically what he or she has agreed to do. Specific performance is ordered when damages would be inadequate compensation.

Speedy Trial Act	Federal law establishing time limits for carrying out major events, <u>i.e.</u> indictment, arraignment, etc., in a criminal prosecution.
Spendthrift trust	A trust set up for the benefit of someone who the grantor believes would be incapable of managing his or her own financial affairs.
Standard of proof	Indicates the degree to which the point must be proven. In a civil case, the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as a "preponderance of evidence" or "clear and convincing evidence." (See burden of proof.)
Standing	The legal right to bring a lawsuit. Only a person with something at stake has standing to bring a lawsuit.
Status offenders	Youths charged with the status of being beyond the control of their legal guardian or are habitually disobedient, truant from school, or having committed other acts that would not be a crime if committed by an adult, <u>i.e.</u> , smoking. Also referred to as minors or children in need of supervision.
Statute	Legislative enactment; it may be a single act of a legislature or a body of acts which are collected and arranged for a session of a legislature. (See statutory law.)
Statute of frauds	A statutory requirement that certain contracts must be in writing.
Statute of limitations	A statute which limits the right of a plaintiff to file an action unless it is done within a specified time period after the occurrence which gives rise to the right to sue.
Statutory	Relating to a statute; created or defined by a law.
Statutory construction	Process by which a court seeks to interpret the meaning and scope of legislation.
Statutory law	Laws promulgated by Congress and state legislatures. (See case law and common law.)
Statutory research	Research of legislation enacted by a state or the United States.

Stay	A court order halting a judicial proceeding.
Stipulation	An agreement between the parties involved in a suit regulating matters incidental to trial.
Strict liability	Concept applied by the courts in product liability cases that when a manufacturer presents his goods for public sale, he is representing that they are suitable for their intended use.
Strike	Highlighting in the record of a case, evidence that has been improperly offered and will not be relied upon.
Subject research	Research of matter by determining all law related to that matter by finding everything on the subject.
Subpoena	A command to appear at a certain time and place to give testimony upon a certain matter.
Subpoena Duces Tecum	A court order commanding a witness to bring certain documents or records to court.
Substantive criminal law	Law with the purpose of prevention of harm to society which prescribed punishment for specific offenses. The basic law of rights and duties as opposed to "remedial law" which provides methods of enforcement.
Substantive law	The statutory or written law that governs rights and obligations of those who are subject to it.
Summary judgment	A judgment given on the basis of pleadings, affidavits, and exhibits presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law.
Summons	Instrument used to commence a civil action or special proceeding; the means of acquiring jurisdiction over a party.

Support trust	A trust that instructs the trustee to spend only as much income and principal (the assets held in the trust) as needed for the beneficiary's support.
Suppress	To forbid the use of evidence at a trial because it is improper or was improperly obtained. (See also exclusionary rule.)
Surety Bond	A bond purchased at the expense of the estate to insure the executor's proper performance. Also referred to as "fidelity bond."
Survivorship	(See joint tenancy.)
Suspension	A temporary loss of the right to practice law by an attorney. (See disbarment or censure.)
Sustain	A court ruling upholding an objection or a motion.

T

Tangible Personal Property Memorandum (TPPM)	A legal document that is referred to in a will and used to guide the distribution of tangible personal property.
Taxable income	The income against which tax rates are applied to compute tax paid; gross income of businesses or adjusted gross income of individuals less deductions and exemptions.
Tax Court of the United States	A judicial body which hears cases concerning federal tax laws.
Temporary relief	Any form of action by a court granting one of the parties an order to protect its interest pending further action by the court.

Temporary restraining order	An emergency remedy of brief duration issued by a court only in exceptional circumstances, usually when immediate or irreparable damages or loss might result before the opposition could take action.
Tender of performance	An offer or attempt to do what is required under a contract or under the law.
Testamentary capacity	The legal ability to make a will.
Testamentary trust	A trust set up by a will.
Testator	Person who makes a will (Female: testatrix).
Testimony	The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.
Third party complaint	A petition filed by a defendant against a third party (not presently a party to the suit) which alleges that the third party is liable for all or part of the damages plaintiff may win from defendant.
Title	Legal ownership of property, usually real property or automobiles.
Tort	A private or civil wrong or injury for which the court provides a remedy through an action for damages.
Trademark	A word, name, symbol, or devise used by a manufacturer to distinguish his goods from those sold by others.
Transcript	A written, word-for-word record of what was said. Usually refers to a record of a trial, hearing, or other proceeding which has been transcribed from a recording or from shorthand.
Transmittal form	Form required in certain courts for transmitting documents for filing.
Treatise	A formal and systematic book or writing containing a narrative statement on a field of law.

Trial	A judicial examination of issues between parties to an action.
Trial brief	A written document prepared for and used by an attorney at trial. It contains the issues to be tried, synopsis of evidence to be presented and case and statutory authority to substantiate the attorney's position at trial.
Trust	A legal device used to manage real or personal property, established by one person (grantor or settlor) for the benefit of another (beneficiary). (See trustee.)
Trust agreement or declaration	The legal document that sets up a living trust. Testamentary trusts are set up in a will.
Trustee	The person or institution that manages the property put in trust.
Truth in lending	Statutes which provide that precise and meaningful cost of credit information be provided to the credit customer.

U

Unfair labor practice	Actions by the employer which interfere with, restrain, coerce, or threaten employees with respect to their rights.
Uniform Commercial Code	(U.C.C.) A uniform law governing commercial transactions. The U.C.C. has been adopted by all states except Louisiana.
Uniform Laws Annotated	Annotated uniform and model acts approved by the National Conference of Commissioners on Uniform State Laws.
Unilateral contract	An agreement by which one undertakes an express performance without receiving any express promise of performance from the other.
Union	An organization of workers formed for the purpose of collective bargaining.
United States Attorney	A federal district attorney appointed by the President to prosecute for all offenses

	committed against the United States; to prosecute or defend for the government all civil actions in which it is concerned and perform all duties of the district to which he/she is assigned.
United States Bankruptcy Court	The judicial body which hears matters pertaining to bankruptcy and reorganization.
United States Court of Appeals	Courts which hear appeals from federal district courts, bankruptcy courts, and tax courts.
United States Court of Claims	Court which hears actions against the U.S. Government.
United States Court of Military Appeals	Court which hears appeals from court marshal decisions.
United States Court of Customs & Patent Appeals	Court which hears appeals from all U.S. customs courts.
United States Court of International Trade	Court which hears cases concerning federal tariff laws.
United States District Courts	Courts which try both criminal and civil actions and admiralty cases.
United States Magistrate Judge	Courts given authority by 28 U.S.C. s 636. This court hears all preliminary criminal matters, but does not conduct felony trials, and any pretrial civil matters referred by the district court. If all parties consent, criminal misdemeanor and civil trials can be heard by this court.
United States Marshal's Service	Agency which serves civil and criminal process in federal courts.
United States Postal Service	The federal office which provides mail delivery to individuals and businesses within the United States.
United States Reports	Publication of court decisions of the United States Supreme Court.
United States Supreme Court	The highest court in the land, established by U.S. Constitution.

Unlawful detainer	A detention of real estate without the consent of the owner or other person entitled to its possession.
Unliquidated debt	Remaining not determined; unassessed or unsettled; in dispute as to the proper amount.
Unsecured debts	In bankruptcy, debts such as open accounts at department stores for which the debtor has not pledged collateral to guarantee payment.
Urban	A city or town.
Usury	Extraction of interest on a loan above the maximum rate permitted by statute.
V	
Vacate	To set aside.
Venire	A writ summoning persons to court to act as jurors. (See venire facias in Foreign Words Glossary.)
Venue	Authority of a court to hear a matter based on geographical location.
Verdict	A conclusion, as to fact or law, that forms the basis for the court's judgment. (See directed verdict.)
Veterans' Administration	(VA) The federal agency which administers a system of benefits for veterans and their dependents.
Visa	An official endorsement on a document or passport denoting that the bearer may proceed.
Void	Invalid; a void agreement is one for which there is no remedy.
Voidable	Capable of being declared invalid; a voidable contract is one where a person may

avoid his obligation, as a contract between an adult and a minor.

Voir dire The preliminary examination made in court of a witness or juror to determine his competency or interest in a matter. Literally, to speak the truth.

Voluntary bankruptcy A proceeding by which a debtor voluntarily asks for a discharge of his debts under the Bankruptcy Code.

W

Wage Earner's Plan Also, Chapter 13. A chapter of the Bankruptcy Code which allows a debtor to file a wage earner's plan for payment of a percentage of his debts from future earnings.

Waiver Intentionally given up a right.

Waiver of immunity A means authorized by statute by which a witness, before testifying or producing evidence, may relinquish the right to refuse to testify against himself or herself, thereby making it possible for his or her testimony to be used against him or her in future proceedings.

Warrant Most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search. An application seeking a warrant must be accompanied by an affidavit which establishes probable cause by detailing the facts upon which the request is based.

Warranty A promise that a proposition of fact is true.

Warranty deed A deed which guarantees that the title conveyed is good and its transfer rightful.

Water rights The right to use water.

Will A legal declaration that disposes of a person's property when that person dies.

Withholding	A tax deducted from a salary, wage, or other income on behalf of the government at the time of payment of wages to the person who pays it.
With prejudice	A declaration which dismisses all rights. A judgment barring the right to bring or maintain an action on the same claim or cause.
Without prejudice	A declaration that no rights or privileges of the party concerned are waived or lost. In a dismissal these words maintain the right to bring a subsequent suit on the same claim.
Witness	One who personally sees or perceives a thing; one who testifies as to what he has seen, heard, or otherwise observed.
Words and Phrases Legally Defined	A set of books in dictionary form which lists judicial determinations of a word or phrase. Defined
Worker's compensation	A state agency which handles claims of workers injured on their jobs.
Writ	A judicial order directing a person to do something.
Writ of certiorari	An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal. (See certiorari in Foreign Words Glossary.)
Writ of execution	An order of the court evidencing debt of one party to another and commanding the court officer to take property in satisfaction of the debt.
Writ of garnishment	An order of the court whereby property, money, or credits in the possession of another person may be seized and applied to pay a debtor's debt. It is used as an incident to or auxiliary of a judgment rendered in a principal action.

Z

Zoning Commission

Local agencies with jurisdiction to regulate use of properties within their geographic area.

GLOSSARY

Commonly Used Foreign Words and Phrases

A

Ab Initio	From the beginning.
Absence d'esprit	(Fr.) Absence of mind.
A contrario	Argument based on contract.
Ad curiam	Before the court; to the court.
Ad damnum	To the damage.
A datu	From the date.
Addendum	(Pl. addenda) Something added; appendix or supplement.
Ad finem	To the end; at the end.
Ad hoc	For this purpose or occasion.
Ad infinitum	To infinity.
Ad libitum	(Abbreviation ad lib) At will.
Ad litem	For purpose of the suit or action.
Admortization	Amortization.
Ad rem	To the thing at hand.
Ad valorem	To the value.
Adversus	Against.
A fortiori	With greater force.
Agenda	Things to be done.
Alias	Called by another name.
Alibi	Elsewhere; in another place.
Alii	Others.
Alter ego	A counterpart.
A maximis ad minima	From the greatest to the least.
Amicus	Friend.
Amicus curiae	Friend of the court.
Animo	With intent.
Animo et facto	An intention and fact.
Anno Domini	(Abbreviation A.D.) In the year of our Lord.
Ante	Before.

A priori	From something previously determined.
Apropos	(Fr.) Pertinent to the purpose or time.
Arguendo	By arguing or reasoning; being in argument.

B

Bona fide	In good faith.
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C

Capita	Persons; heads.
Causa	A cause; an action, expectation; reason.
Causa mortis	In expectation of death.
Causa prima	First or original cause.
Causa proxima	Immediate cause.
Caveat	Notice of opposition; caution; warning.
Caveat actor	Let the doer beware.
Caveat emptor	Let the buyer beware.
Certiorari	A writ of review or inquiry; to be made more certain.
Cestui	The one.
Cestui que use	Person who uses.
Charta	A charter, as a deed of land.
Circa	About; concerning; in the area of.
Committitur	Entry which records a defendant's commitment.
Compos mentis	Of a sound mind; sane.
Conditio sine qua non	A necessary condition.
Condicto	A summons; an action.
Contra	Contrary to.
Contra bonos mores	Against good morals.
Contra formam statuti	Against the form of the statute.
Contra pacem	Against the peace.
Coram	Before; in the presence of.
Coram iudice	Before the jurisdiction of the court.
Corpus	The main body or substance of a thing; principal of an estate or a fund.
Corpus delicti	The body or substance of the offense.
Corpus juris	Comprehensive collection of the law.
Corpus juris civilis	The body of the civil law.

Coup de grace	(Fr.) A finishing blow or stroke.
Crimen	A crime.
Cui bono	For whose benefit.
Culpa	Fault or guilt.
Cum	With.
Curia	Court.
Custodia legis	Custody of the law.

D

Damnum absque injuria	Legally noncompensable loss.
Datum	(Pl. data) An item or thing given; a date.
De bene esse	Conditionally or provisionally; for what it is worth.
De facto	In fact; an actuality.
De Jure	By right; valid in law.
De minimis non curat lex	The law does not care about mere trifles.
De novo	Anew.
Dictum	(Pl. dicta) A decision; a judicial opinion on a point of law.
Duces Tecum	An bring with you.
Durante	Pending or during.
Durante vita	During life.

E

Emeritus	Retired from official active duties.
Eo ipso	By the thing itself.
E pluribus unum	One out of many; one composed of many (the motto of the United States, one government formed of many states).
Erratum	(Pl. errata) Error made in printing.
Esprit de corps	(Fr.) The spirit which animates a collective body, as of the army or the bar.
Esse	To be.
Et	And; also.
Et alii	(Abbreviated et al.) An others.
Et sequentia	(Abbreviated et seq.) And as follows.
Et uxor	(Abbreviated et ux.) And wife.
Et vir	And husband.
Ex adverso	From the opposite view.

Ex cathedra	From the bench; with high authority.
Ex contractu	From a contract.
Ex curia	Out of court.
Ex dono	By gift.
Ex lege	According to the law.
Ex officio	By virtue.
Ex parte	From or of one side or party.
Ex post facto	After the act is done; after the fact.
Ex proprio motu	By his own motion.
Ex relatione	(Abbreviated ex rel.) On the information of or on the relation of.

F

Facto	In fact; in or by the law.
Fait	(Fr.) A fact; an act committed; a deed.
Fait Accompli	(Fr.) The deed is done.
Feme, femme	(Fr.) Woman.
Feme covert	(Fr.) A married woman.
Feme sole	(Fr.) A single woman (unmarried).
Finis	The end or conclusion.

G

Gradus	A grade or a degree.
Gravis	Serious; of importance; something grave.

H

Habeas Corpus	You have the body; a writ used to bring someone before the court.
Habendum	Clause in a deed which defines the extent of ownership in the thing granted; begins with the words "To have and to Hold."
Hoc	With or this.

I

Ibidem	(Abbreviated Ib., ib., Ibid., or ibid.) In the same place, or case, or on the same page.
Id est.	(Abbreviated i.e.) That is; that is to say.
In actu	In reality.

In ambiguo	Ambiguous; in doubt.
In camera	In chambers, or in private. A hearing in camera takes place in the judge's office outside of the presence of the jury and the public.
In curia	In court.
In esse	In being; to be.
In extenso	In full length; verbatim.
In extremis	At point of death; in extremity.
In facto	In fact or in deed.
In finito	Perpetually; to infinity.
In forma pauperis	As a poor man; a pauper.
Infra	Beneath; below.
In futuro	In the future.
In hoc	In this regard; in this.
In initio	In the beginning.
In limine	At the beginning; the threshold.
In loco	In the proper place or location.
In loco parentis	In the place of a parent.
In medias res	Into the midst of things.
In pari delicto	Of equal fault or guilt.
In personam	Against a certain person; against the person.
In propria persona	Persons who present their own case without lawyers. (See pro se.)
In re	In the matter of.
In rem	Against the thing.
In situ	In the original situation.
Inter alia	Among other things.
Inter alios	Among other persons.
Inter vivos	Between living persons.

In toto	The whole; entirely.
Iipse	He; himself.
Iipso facto	By the act itself; or by the fact itself.
Iipso jure	By the law itself.

J

Judicium	Judgment.
Jus civile	Civil law.
Jus commune	Common law.
Jus divinum	Divine law.

L

Lex	Law.
Lex domicili	Law of the dominion.
Lex loci	The law or custom of a place.
Lex scripta	Law by statute.
Liber	Book; a book of records, as of deeds.
Lis pendens	A pending lawsuit.
Locus	Place or location.
Locus sigilli	(Abbreviated L.S.) The place of the seal.

M

Mala	Bad.
Mala fide	With bad faith.
Malo modo	In a bad manner.
Malo animo	With an evil intent.

Mandamus	Writ issued by a superior court to an inferior tribunal to enforce the performance of a public duty.
Memorabilia	Items to be remembered.
Mens rea	The "guilty mind" necessary to establish criminal responsibility.
Mortis causa	In expectation of death.

N

Nee	(Fr.) Word used to show maiden family name of a married woman.
Nil	Nothing; of no account.
Nolle prosequi	Not willing to proceed.
Nolo contendere	I do not wish to contend; a plea entered by a defendant.
Non	Not.
Non assumpsit	A plea in defense that "he did not undertake and promise."
Non compos mentis	Not of sound mind; mentally incompetent.
Non sequitur	It does not follow.
Nota	Note; take notice.
Nota bene	(Abbreviated NB) Note well.
Nulla bona	Return made upon execution by the sheriff or court officer when he has found no leviable goods.
Nunc pro tunc	Now for then; acts allowed with retroactive effect.

O

Obiter dictum	A thing said by the way, as language unnecessary to a decision or ruling on an issue not raised.
Oblatio	Tender of payment.
Onus Probandi	The burden of proving.
Opere citato	(Abbreviated op. cit.) In the work quoted.

P

Parens patriae	Power of guardianship over persons under disability. The doctrine under which the court protects the interests of a juvenile.
Pendens	Pending.
Pendente lite	Pending the litigation; while the suit continues.
Per annum	Annually; by the year.
Per capita	By the head; for each individual; equally shared.
Per contra	On the contrary.

Per curiam	By the court; by the court as a whole.
Per diem	By the day.
Per se	Considered by itself; taken alone.
Persona	A person.
Per stirpes	By representation; use to designate the manner of rights of descendants where children of a deceased descendant will take the share which their parent would have taken if living.
Per viam	By way of.
Pro bono publico	For the public good. Lawyers representing clients without a fee are said to be working pro bono publico.
Pro rata	Proportionate share; distribution in proportion.
Pro se	For himself; on his own behalf.
Post	After; later.
Post factum	After the fact; after the event.
Post hoc	After this.
Praecepte	A writ commanding a person to do some act or to appear and show cause why he should not do so; an order.
Prima facie	On the face of it; at first view.
Pro confesso	As if conceded.
Pro forma	For the sake of form.
Pro nunc	For now.

Q

Quantum	(Pl. quanta) Quantity or amount.
Quantum meruit	As much as he deserves.
Quantum sufficit	A sufficient quantity.
Quasi	As if; having the character of.
Quasi ex contractu	As if by contract; as if from contract.
Quid pro quo	One thing for another; this for that.
Quo warranto	An action whereby one is required to show by what right he exercises a public office, franchise or liberty; a writ bringing the person into court on such action.

R

Ratio legis	The reason underlying the law.
Res	A thing; the subject matter.
Res adjudicata	Once settled by a judicial decision the party may not sue again on the

	same matter.
Res gestae	The facts or things done which form the basis for a litigation action.
Res ipsa loquitur	The thing speaks for itself.
Res judicata	The same as res adjudicata.
Respondeat superior	Let the principal answer for the acts of his agent.

S

Sanae mentis	Of a sound mind; sane.
Sans recours	(Fr.) Without recourse.
Scilicet	(Abbreviated scil.) To wit; that is to say (most often seen abbreviated in pleadings s. or ss.)
Secundum	According to.
Secundum legem	According to law.
Secundum regulam	According to rule.
Semper fidelis	Always faithful.
Sequitur	It follows. (See et sequitur.)
Sine	Without.
Sine die	Without a day appointed.
Sine qua non	An indispensable condition; a requisite.
Stare decisis	To abide by decided cases.
Status quo or status in quo	The existing state of something.
Sua sponte	Of his own volition; spontaneously.
Sub	Under or subordinate to.
Sub conditione	Under a condition; on condition.
Subpoena	Under penalty; a document to cause a witness to appear under penalty if he should not do so.
Subpoena duces tecum	A subpoena ordering a person to produce certain documents, records, or other items described therein for evidence (also under penalty for failure to appear).
Sui generis	Of his, her, or its own kind.
Supersedeas	Preventing or annulling; a writ to stay a legal proceeding.
Supra	Before; above.

T

Tempus	Time
Tenere	To hold or to keep.

Toto Whole or complete (also used in toto).
Totum The whole.

U

Ubi supra Where above mentioned.
Ultra Beyond; outside of; in excess of.
Ultra vires Beyond power; beyond or exceeding legal power or authority.
Una voce With one voice; unanimously.
Uxor Wife.
Uxor et vir Wife and husband.

V

Vacantia bona Goods without an owner; unclaimed goods.
Vel Whether; or.
Vel non Or not.
Venire facias Writ used in summoning jurors.
Versus (Abbreviated v. or vs.) Against.
Vice versa The order is changed; in alternative order.
Vir Husband.
Vir et uxor Husband and wife (also sometimes seen et ux)
Viva voce By oral testimony; a living voice.
Vivos Living. (See inter vivos.)