

## **GLOSSARY OF LEGAL TERMS**

This glossary defines a number of terms in common legal use. Many books on the law for non-lawyers contain glossaries. Check your library or bookstore. See especially, Lile Denniston's *The Reporter and the Law* (New York: Hastings House, 1980), *Barron's Dictionary of Legal Terms* (New York: Barron's Educational Series, 1998) and *Black's Law Dictionary* (West Publishing Company, Minneapolis).

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

**adversary system** The trial methods used in the U.S. and some other countries, based on the belief that the truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination the evidence presented by their adversaries, under established rules of procedure before an impartial judge and/or jury.

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

**Amicus curiae** A friend of the court; one not a party to the case who volunteers to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

**appeal** A request by the losing party in a lawsuit that the judgment be reviewed by a higher court.

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

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

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

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

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

**burden of proof** In the law of evidence, the necessity or duty of affirmatively proving a fact of facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point - the burden of proof - is not the same as the **standard of proof**. "Burden of proof" deals with which side must establish a point or points; "standard of proof" indicates the degree to which the point must be proven. For example, 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."

**case law** Law based on previous decisions of appellate courts, particularly the Supreme Court.

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

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

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

**complaint** The first legal document filed in a civil lawsuit. It includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for a specific remedy from the court.

A complaint in a criminal case is a sworn statement regarding the defendant's actions that constitute a crime.

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

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

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

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

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

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

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

**due process of law** Law in its regular administration through the courts of justice; the guarantee of due process requires that every person be protected by a fair trial; i.e., the right to an impartial judge and jury, the right to present evidence on one's own behalf, the right to confront one's accuser, the right to be represented by counsel, etc.

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

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

**federalism or federal system** As applied to the United States, a division of powers between the federal or U.S. government and the government of the fifty states. The states have powers of their own, such as power to create a public school system. The federal government has powers such as control over coinage and the regulating of foreign trade. Both have concurrent powers in such areas as taxation and public health and welfare.

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

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

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

**grievance** A legal dispute.

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

**homicide** The killing of once person by another.

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

**indictment** A formal charge or accusation of criminal action.

**injunction** A court order prohibiting a threatened or continuing act.

**judicial review** The power of the Supreme Court to declare an act of Congress unconstitutional. Marberry v. Madison is the classic case of judicial review.

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

**litigation** The process of resolving a dispute over legal rights in court.

**misdemeanor** Less serious crime; in Minnesota punishable by 90 days in jail and/or \$500 fine. **Gross misdemeanor** is a less serious class of crime with penalties of imprisonment from 91 days to one year or a fine greater than \$500 or both. A **petty misdemeanor** is a minor offense for which one may be fined.

**moot** A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question of a pretended controversy which 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 which would be affected by the court's decision.

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

**ordinance** The laws passed by city government.

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

**perjury** Lying under oath.

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

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

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

**ratification** The process of approving an amendment to the U.S. Constitution, which is spelled out in Article 5 of that document.

**relief** Deliverance from oppression, wrong, or injustice; a general designation of the assistance, redress, or benefit which a plaintiff seeks at the hands of the court.

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

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

**reverse** To overturn the ruling of a lower court.

**standard of proof** The level of evidence necessary to prevail in a legal case. It varies depending on the nature of the case. The standard is "**beyond a reasonable doubt**" (the jury has a higher degree of certainty about the defendant's guilt although need not be 100% convinced) in criminal cases, and "**preponderance of the evidence**" or "**clear and convincing evidence**" (the majority of the evidence) in most civil cases.

**statutory law** Law enacted by the legislative branch of government, as distinguished from **case law** or **common law**. A statute is an act of the legislature declaring, commanding or prohibiting something. Regulation refers to rules made by government agencies that carry out the intent of a statute.

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

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

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

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

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

**voir dire** The process of selecting a jury.

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

#### Crimes\*

**First degree murder:** When a person premeditates (plans ahead of time) and intentionally kills another person. When the killing is not justifiable or excusable. Also, if the killing happens during the commission of a serious crime.

**Second degree murder:** When a person kills another person on purpose but did not plan it out ahead of time.

**Third degree murder:** When an individual kills another person without premeditation and without intent. (Dangerous act)

**First degree manslaughter:** When an individual kills another intentionally, but in the "heat of passion," provoked by the victim's words or actions.

**Second degree manslaughter:** When an individual causes the death of another person by recklessness, unreasonable risk, carelessness, setting a dangerous trap or not properly confining dangerous animals.

**Criminal negligence:** When an individual is killed because of a careless operation of a motor vehicle (car, plane, boat, etc.).

**First degree assault:** When an individual intentionally and with force enough to kill another person inflicts great bodily harm.

**Second degree assault:** When an individual, who has the ability to carry out the threat, intentionally threatens, intentionally inflicts or tries to inflict or causes a person to fear immediate bodily harm or death.

**Battery:** Unlawful touching of another person without consent of the other person.

**First degree robbery:** When an individual takes the property of another individual by the use of force or threat of force and, using a dangerous weapon, causes bodily harm or fear of bodily harm.

**Second degree robbery:** When an individual takes the property of another individual with the use of force or the threat of force. (No weapon/no harm.)

**Kidnapping:** When an individual is taken against his or her will, held for ransom, and used as a shield or hostage, to create fear in the victim or others, or held as a slave.

**False imprisonment:** When an individual, without the other person's consent intentionally and without authority, confines or restrains another individual.

**Abduction:** When an individual, who is under legal age, is taken without the consent of the individual's guardian or parent(s) for the purpose of marriage.

**Rape:** When an individual has sexual relations with an individual without the person's consent or with an individual who is under age 16.

\*These are general definitions; refer to individual state statutes for more specific information (see e.g., Minnesota Sections 609.01 et.seq. on Crimes and Offenses).