

Glossary of Legal Terms

A

acquittal A verdict after a trial that a defendant in a criminal case has not been proven guilty beyond a reasonable doubt of the crime charged. Note that the defendant is not found "innocent." The defendant does not have to prove anything; rather, the state is found not to have proved its case.

admissible Evidence which can be legally and properly introduced in a civil or criminal trial.

adversary system The trial methods used in the U.S. and some other countries, based on the belief that 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. An **adversary proceeding** is one having opposing parties; contested (differs from *ex parte* proceeding).

B

bailiff A court attendant who keeps order in the courtroom and has custody of the jury.

bench The seat occupied by the judge; more broadly, the court itself, as in **bench trial**, a trial heard by a judge without a jury.

best evidence Primary evidence; the best evidence available; evidence short of this is "secondary"; i.e., an original letter is the "best evidence," 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.

burden of proof In the law of evidence, the necessary 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—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."

C

charge to the jury The judge's instruction to the jury concerning the law which applies to the facts of the case.

circumstantial evidence Evidence which merely suggests something by implication. For example,

physical evidence, such as fingerprints, from which an inference can be drawn. Circumstantial evidence is indirect, as opposed to eyewitness testimony, which is direct.

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 prevail.

conviction A judgment of guilt against a criminal defendant.

corroborating evidence Supplementary evidence that strengthens or confirms the initial evidence.

cross-examination The questioning of a witness produced by the other side.

D

damages Money awarded by a court to a person injured by the unlawful act or negligence of another person.

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

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

direct examination The first questioning of witnesses by the party on whose behalf they are called.

due process of law The right of all persons to receive the guarantees and safeguards of the law and the judicial process. 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 witnesses.

E

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 during the hearing. An **ex parte proceeding** is one in which only one side is represented (differs from adversary system or proceeding).

exclusionary rule The rule preventing illegally obtained evidence to be used in any trial.

H

hearsay Evidence that is not within the personal knowledge of the witness but was relayed to the witness by a third party. Hearsay evidence generally is not admissible in court, although there are many exceptions under which it can be admitted.

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 that cannot reach a verdict.

I

impeachment of a witness An attack on the credibility (believability) of a witness, through evidence introduced for that purpose.

inadmissible That which under the rules of evidence cannot be admitted or received as evidence.

instructions (also called charge) Judge's directions to the jury regarding the law in the case and its authority to determine the facts and to draw inferences from the facts in order to reach a verdict.

J

jury A certain number of persons selected according to law and sworn to inquire into matters of fact and declare the truth about matters of fact before them. A **grand jury** is traditionally composed of as many as 23 people who decide whether the facts of a criminal case are sufficient to issue an indictment charging a person with a crime. A **petit jury** is an ordinary or trial jury, composed of six to twelve persons, which hears either civil or criminal cases.

L

leading question A question which 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.

liable Legally responsible for.

M

mistrial A trial which is terminated before a verdict is reached, either because of some extraordinary circumstance, because of fundamental error prejudicial to the defendant (such as an improper drawing of jurors), or because of a hung jury.

O

objection The process by which one party takes exception to some statement or procedure. An objection is either sustained or overruled by the judge.

overrule Judge's decision not to allow an objection.

P

plaintiff The person who brings a civil lawsuit.

preponderance of the evidence Greater weight of the evidence, the common standard of proof in civil cases.

prosecutor A trial lawyer representing the government in a criminal case.

public defender Government lawyer who provides free legal defense services to a poor person accused of crime.

R

rebuttal Evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence.

re-direct examination Opportunity to present rebuttal evidence after one's evidence has been subjected to cross-examination.

rules of evidence Standards governing whether evidence in a civil or criminal case is admissible.

S

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 U.S. Constitution. Asserting the right is often referred to as "taking the Fifth."

sentence A court's determination of the punishment to be inflicted on a person convicted of a crime.

T

testimony Evidence given by a witness under oath; does not include evidence from documents and other physical evidence.

V

verdict Conclusion, as to fact or law, that forms the basis for the court's judgment.

W

witness One who testifies to what he or she has seen, heard or otherwise experienced.