

**Afortiori**

(ah-for-she-ory) prep. Latin for "with even stronger reason," which applies to a situation in which if one thing is true then it can be inferred that a second thing is even more certainly true. Thus, if Abel is too young to serve as administrator, then his younger brother Cain certainly is too young.

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**a priori assumption**

(ah-pree-ory) n. from Latin, an assumption that is true without further proof or need to prove it. It is assumed the sun will come up tomorrow. However, it has a negative side: an a priori assumption made without question on the basis that no analysis or study is necessary, can be mental laziness when the reality is not so certain.

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**a.k.a.**

prep. abbreviation for "also known as" when someone uses different initials, a nickname, a maiden or married name. Example: Harold G. Snodgrass, a.k.a. Harry Snodgrass, a.k.a. H. G. Snodgrass, a.k.a. "Snuffy the Snod."

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**abandon**

v. to intentionally and permanently give up, surrender, leave, desert or relinquish all interest or ownership in property, a home or other premises, a right of way, and even a spouse, family, or children. The word is often used in situations to determine whether a tenant has left his/her apartment and the property inside and does not intend to come back. Thus, a landlord can take over an apartment

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**abandoned property**

n. property left behind (often by a tenant) intentionally and permanently when it appears that the former owner (or tenant) does not intend to come back, pick it up, or use it. Examples may include possessions left in a house after the tenant has moved out or autos left beside a road for a long period of time, or patent rights of an inventor who does not apply for a patent and lets others use his

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**abandonment**

n. the act of intentionally and permanently giving up, surrendering, ...

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**abate**

v. to do away with a problem, such as a public or private nuisance or some structure built contrary to public policy. This can include dikes which illegally direct water onto a neighbor's property, high volume noise from a rock band or a factory, an improvement constructed in violation of building and safety codes, or seepage from a faulty septic tank.

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**abeyance**

1) n. when the ownership of property has not been determined. Examples include title to real property in the estate of a person who has died and there is no obvious party to receive title or there appears to be no legal owner of the property, a shipwreck while it is being determined who has the right to salvage the ship and its cargo, or a bankrupt person's property before the bankruptcy court

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**able-bodied**

adj. physically capable of working at a job or in the military. It is often used to describe a person as capable of earning a living and, therefore, of paying alimony or child support.

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**abrogate**

v. to annul or repeal a law or pass legislation that contradicts the prior law. Abrogate also applies to revoking or withdrawing conditions of a contract.

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**abscond**

v. 1) traditionally to leave a jurisdiction (where the court, a process server or law enforcement can find one) to avoid being served with legal papers or being arrested. 2) a surprise leaving with funds or goods that have been stolen, as in "he absconded with the loot."

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**absolvitor**

the judgement pronounced when the court assails

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**abstention doctrine**

n. when the Supreme Court refuses to exercise its federal constitutional jurisdiction or declines to consider a question of state law arising from a case being appealed from a state court.

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**abstract**

n. in general, a summary of a record or document, such as an abstract of judgment or abstract of title to real property.

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**abuse of process**

n. the use of legal process by illegal, malicious, or perverted means. Examples include serving (officially giving) a complaint to someone when it has not actually been filed, just to intimidate an enemy; filing a false declaration of service (filing a paper untruthfully stating a lie that someone has officially given a notice to another person, filing a lawsuit which has no basis at law, but is i

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**abut**

v. when two parcels of real property touch each other.

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**acceleration**

n. 1) speeding up the time when there is vesting (absolute ownership) of an interest in an estate, when the interest in front of it is terminated earlier than expected; 2) in a contract or promissory note, when the payment of debt is moved up to the present time due to some event like non-payment of an installment or sale of the property which secures the debt.

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**accept**

v. to receive something with approval and intention to keep it. This use often arises on the question of accepting a payment which is late or not complete or accepting the "service" (delivery) of legal papers.

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**acceptance of service**

n. agreement by a defendant (or his/her attorney) in a legal action to accept a complaint or other petition (like divorce papers) without having the sheriff or process server show up at the door. The agreement of "acceptance of service" must be in writing or there is no proof that it happened. In most jurisdictions there is a form entitled "receipt and acknowledgment of acceptance of service" or s

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**access**

n. 1) in real estate the right and ability to get to the property. 2) when a husband has the opportunity to make love to his wife, it is said he has access. This rather vulgar use of "access" has been important because if a husband "had access" to his wife during the time when she became pregnant, it is presumed he is the father. Modern use of blood tests and DNA studies may show the father to be

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**accessory action**

an action that subserves an ulterior legal purpose

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**accessory obligation**

an obligation undertaken in order to make an earlier obligation more effective

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**accommodation**

1) n. a favour done without compensation (pay or consideration), such as a signature guaranteeing payment of a debt, sometimes called an accommodation endorsement. Such accommodation is not the smartest business practice, since the holder of the note can go after the accommodator rather than the debtor and will do so if the accommodator has lots of money or is easier to locate than the debtor. 2)

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**accord and satisfaction**

n. an agreement to accept less than is legally due in order to wrap up the matter. Once the accord and satisfaction is made and the amount paid (even though it is less than owed) the debt is wiped out since the new agreement (accord) and payment (the satisfaction) replaces the original obligation. It is often used by creditors as "a bird in the hand is worth two in the bush" practicality.

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**account stated**

n. a statement between a creditor or the person to whom money is owed and a debtor (the person who owes) that a particular amount is owed to the seller as of a certain date. Often the account stated is a bill, invoice or a summary of invoices, signed by the customer or sent to the customer who pays part or all of it without protest. This is important when a frustrated businessman sues for "account

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**accounts payable**

n. bills that are owed.

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**accounts receivable**

n. the amounts of money due or owed to a business or professional by customers or clients. Generally, accounts receivable refers to the total amount due and is considered in calculating the value of a business or the business's problems in paying its own debts. Evaluation of the chances of collecting based on history of customers' payments, quality of customers and age of the accounts receivable a

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**accrue**

v. 1) growing or adding to, such as interest on a debt or investment which continues to accumulate. 2) the coming into being of the right to bring a lawsuit. For example, the right to sue on a contract only accrues when the contract is breached (not on mere suspicion that it might be breached) or when the other party repudiates the contract (anticipatory breach).

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**acknowledge**

v. 1) generally to admit something, whether bad, good or indifferent. 2) to verify to a notary public or other officer (such as a County Clerk) that the signer executed (wrote, signed) the document like a deed, lease, or power of attorney, to make it certified as legal and suitable for recording

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**actings**

acts, conduct

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**action**

n. a lawsuit in which one party (or parties) sues another

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**actual controversy**

n. a true legal dispute which leads to a genuine lawsuit rather than merely a "cooked up" legal action filed to get a court to give the equivalent of an advisory opinion. Federal courts, including the U.S. Supreme Court, will only consider an "actual controversy", on appeal, since they will not give advisory (informal) opinions or make judgments on "friendly suits" filed to test the potential outcome

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**actual notice**

n. having been informed directly of something or having seen it occur, as distinguished from constructive notice (e.g. a notice was mailed but not received, published in a newspaper, or placed in official records).

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**ad seriatim**

adj. (add sear-ee-ah-tim) Latin for "one after another".

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**ad valorem**

adj. Latin for "based on value," which applies to property taxes based on a percentage of the county's assessment of the property's value. The assessed value is the standard basis for local real property taxes, although some place "caps" (maximums) on the percentage of value (as under Proposition 13 in California) or "parcel taxes" which establish a flat rate per parcel.

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**adeem**

v. to revoke a gift made in a will by destroying, selling or giving away the gift item during the lifetime of the testator (writer of the will). Example: a person writes in his/her will, "I leave my son my 1988 Cadillac automobile" and then Dad totals or sells the car. Nasty legal fights can arise if the supposed adeemed gift is not clearly identified, as in "I give Robert my family car." Then the

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**adequate remedy**

n. a remedy (money or performance) awarded by a court or through private action (including compromise) which affords "complete" satisfaction, and is "practical, efficient and appropriate" in the circumstances. In part this depends on what relief (like an order granting one an easement over a neighbor's property or an order keeping the drunken husband away from the complaining wife) a party is seeking

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**adjudication**

n. the act of giving a judicial ruling such as a judgment or decree. The term is used particularly in bankruptcy proceedings, in which the order declaring a debtor bankrupt is called an adjudication.

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**adjusted basis**

n. in accounting, the original cost of an asset adjusted for costs of improvements, depreciation, damage and other events which may have affected its value during the period of ownership. This is important in calculating capital gains for income tax purposes since the adjusted basis is generally higher than the original price and will lower capital gains taxes.

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**adjuster**

n. an employee (usually a non-lawyer) of an insurance company or an adjustment firm employed by an insurance company to negotiate an early settlement of a claim for damages against a person, a business or public body (like a city). While a fair and responsible adjuster can serve a real purpose in getting information and evaluating the case for the insurance company, some adjusters try to make a sale

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**administer**

v. 1) to conduct the duties of a job or position. 2) particularly, to manage the affairs of the estate of a person who has died under supervision of the local court. 3) to give an oath, as in "administer the oath."

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**administrative hearing**

n. a hearing before any governmental agency or before an administrative law judge. Such hearings can range from simple arguments to what amounts to a trial. There is no jury, but the agency or the administrative law judge will make a ruling.

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**administrative law judge**

n. a professional hearing officer who works for the government to preside over hearings and appeals involving governmental agencies. They are generally experienced in the particular subject matter of the agency involved or of several agencies. Formerly called "hearing officers," they discovered that there was more prestige and higher pay in being called "judge."

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**Administrative Procedure Act**

n. the federal act which established the rules and regulations for applications, claims, hearings and appeals involving governmental agencies. There are similar acts in many states which spell out the rules for dealing with state government agencies.

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**admission against interest**

n. an admission of the truth of a fact by any person, but especially by the parties to a lawsuit, when a statement obviously would do that person harm, be embarrassing, or be against his/her personal or business interests. Another party can quote in court an admission against interest even though it is only hearsay.

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**admission of evidence**

n. a judge's acceptance of evidence in a trial.

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**admission of guilt**

n. a statement by someone accused of a crime that he/she committed the offense. If the admission is made outside court to a police officer it may be introduced as evidence if the defendant was given the proper warnings as to his/her rights ("Miranda warning") before talking.

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**admission to bail**

n. an order of a court in a criminal case allowing an accused defendant to be freed pending trial if he/she posts bail (deposits either cash or a bond) in an amount set by the court. Theoretically the posting of bail is intended to guarantee the appearance of the defendant in court when required. In minor routine cases (e.g. petty theft or drunk driving) a judge automatically sets bail based on a

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**admit**

v. 1) to state something is true in answering a complaint filed in a lawsuit. The defendant will admit or deny each allegation in his or her answer filed with the court. If he or she agrees and states that he/she did what he/she is accused of, then the allegation need not be proved in trial. 2) in criminal law, to agree a fact is true or confess guilt. 3) to allow as evidence in a trial, as the ju

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**adopt**

v. 1) to take on the relationship of parent to child of another person, particularly (but not necessarily) a minor, by official legal action. 2) to accept or make use of, such as to adopt another party's argument in a lawsuit.

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**advance**

n. a payment which is made before it is legally due, such as before shipment is made, a sale is completed, a book is completed by the author, or a note is due to be paid.

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**advancement**

n. a gift made by a person to one of his or her children or heirs (a presumptive heir since an heir is only determined on the date of death) in anticipation of a gift from the still-living parent's potential estate as an advance on one's inheritance. Example: John Richguy is going to leave his son \$100,000 under his will or a percentage of the estate on John's death. John gives the son \$50,000 wit

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**adverse**

adj. clearly contrary, such as an adverse party being the one suing you. An adverse interest in real property is a claim against the property, such as an easement.

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**adverse interest**

n. a right or concern that is contrary to the interest or claim of another.

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**adverse party**

n. the opposite side in a lawsuit. Sometimes when there are numerous parties and cross-complaints, parties may be adverse to each other on some issues and in agreement on other matters. Two beneficiaries of a person who has died may join together to claim a will was valid, but fight each other over the assets of the dead person's estate if the court rules the will was legal.

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#### **advisory opinion**

n. an opinion stated by a judge or a court upon the request of a legislative body or government agency. An advisory opinion has no force of law but is given as a matter of courtesy. A private citizen cannot get an advisory ruling from a court and can only get rulings in an actual lawsuit. State attorneys general also give advisory opinions at the request of government officials. These opinions are

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#### **affirm**

v. what an appeals court does if it agrees with and confirms a lower court's decision.

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#### **affix**

v. 1) to attach something to real estate in a permanent way, including planting trees and shrubs, constructing a building, or adding to existing improvements. The key is that affixed items are permanent and cannot be picked up and moved away like a washing machine. 2) to sign or seal, as affix a signature or a seal.

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#### **after-acquired property**

n. 1) personal or real property acquired by a debtor after he/she has agreed that all his/her property secures a debt. Thus, the new property also becomes security for the debt. This includes improvements to real property which is security on a deed of trust or mortgage and personal property pledged in a security agreement (UCC-1). 2) in bankruptcy, property acquired by the bankrupt person after h

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#### **after-acquired title**

n. title to property acquired after the owner attempts to sell or transfer the title to another person before he/she actually got legal title. When the title is acquired by the seller in this paper shuffle, title automatically goes to the person to whom it was sold, passing through the person who acquired title "like a dose of salts" on its way to the new purchaser. Example: John signs, acknowledg

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#### **after-discovered evidence**

n. evidence found by a losing party after a trial has been completed and judgment (or criminal conviction) given, also called newly-discovered evidence. If the evidence absolutely could not have been discovered at the time of trial, it may be considered on a motion for a new trial.

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#### **age discrimination**

n. an employer's unfair treatment of a current or potential employee up to age 70, which is made illegal by the Age Discrimination Unemployment Act, first adopted in 1967. The claimant's problem is proof of age discrimination, but employers should beware. Even flight attendants in their late 30s have proved that there was age discrimination in replacing them with younger, "more attractive" women.

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#### **agency**

n. the relationship of a person (called the agent) who acts on behalf of another person, company, or government, known as the principal. "Agency" may arise when an employer (principal) and employee (agent) ask someone to make a delivery or name someone as an agent in a contract. The basic rule is that the principal becomes responsible for the acts of the agent, and the agent's acts are like those

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#### **agent for acceptance of service**

n. states require that a corporation name an actual person (usually in the articles of incorporation or other filing with the Secretary of State) who is authorized to accept service of any lawsuit or claim against the corporation. Many larger corporations, particularly those which operate in several states, name a professional agent which represents many corporations.

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#### **aggravated assault**

n. the crime of physically attacking another person which results in serious bodily harm and/or is made with a deadly or dangerous weapon such as a gun, knife, sword, ax or blunt instrument. Aggravated assault is usually a felony punishable by a term in state prison.

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#### **agreed statement**

n. occasionally the two parties on opposite sides of a lawsuit or on an appeal from a trial judgment will agree upon certain facts and sign a statement to be used in court for that purpose. Agreed statements are only used when the only remaining dispute boils down to a question of law and legal argument and not of the actual facts.

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**aid and abet**

v. help commit a crime. A lawyer redundancy since abet means aid, which lends credence to the old rumor that lawyers used to be paid by the word.

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**aleatory**

adj. uncertain; usually applied to insurance contracts in which payment is dependent on the occurrence of a contingent event, such as injury to the insured person in an accident or fire damage to his insured building.

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**alias**

n. 1) a name used other than the given name of a person or reference to that other name, which may not be an attempt to hide his/her identity (such as Harry for Harold, initials or a maiden name).

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**alibi**

n. an excuse used by a person accused or suspected of a crime. In the original Latin it means "in another place," which has to be the ultimate alibi.

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**alienation**

n. the transfer of title to real property, voluntarily and completely. It does not apply to interests other than title, such as a mortgage.

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**alienation of affections**

n. convincing a wife to leave her husband, often for another man, causing the husband to lose conjugal relations. This is primarily of historic interest, since alienation of affections was a civil wrong for which a deprived husband could sue the party convincing the wife to leave, but the right to sue has been abolished in almost all states.

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**aliquot:**

(al-ee-kwoh) adj. a definite fractional share, usually applied when dividing and distributing a dead person's estate or trust assets.

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**all the estate I own**

n. a phrase from a poorly drafted will which means the possessions owned by the deceased at the moment of death, not when the will was written.

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**allege**

v. to claim a fact is true, commonly in a complaint which is filed to commence a lawsuit, in an "affirmative defense" to a complaint, in a criminal charge of the commission of a crime or any claim.

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**alluvion**

n. an increase in one's land from soil deposited on the shoreline by natural action of a stream, river, bay or ocean.

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**alter ego**

n. a corporation, organization or other entity set up to provide a legal shield for the person actually controlling the operation. Proving that such an organization is a cover or alter ego for the real defendant breaks down that protection, but it can be difficult to prove complete control by an individual. In the case of corporations, proving one is an alter ego is one way of "piercing the corpor

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**alternative pleading**

n. a legal fiction in which a party to a lawsuit or a defendant charged with a crime can plead two ways which are inconsistent with each other. Examples: a) someone hurt in an accident can plead that the other party was negligent or ran into him intentionally. b) "not guilty" and "not guilty by reason of insanity" (in which there is the implied admission that the defendant committed the act).

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**ambiguity**

n. when language has more than one meaning. If the ambiguity is obvious it is called "patent," and if there is a hidden ambiguity it is called "latent." If there is an ambiguity, and the original writer cannot effectively explain it, then the ambiguity will be decided in the light most favorable to the other party.

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**amended complaint**

n. what results when the party suing (plaintiff or petitioner) changes the complaint he/she has filed. It must be in writing, and can be done before the complaint is served on any defendant, by agreement between the parties (usually their lawyers), or upon order of the court. Complaints are amended to correct facts, add new causes of action (bases for the lawsuit), substitute discovered names for

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**amended pleading**

n. a changed written pleading in a lawsuit, including complaint or answer to a complaint. Pleadings are amended for various reasons, including correcting facts, adding causes of action (legal bases for a suit), adding affirmative defenses, or responding to a court's finding that a pleading is inadequate as a matter of law. Amendments cannot be made willy-nilly, but only prior to being served, upon

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**American Bar Association**

n. the largest organization of American lawyers, which has no official standing, but is prestigious in formulating guidelines for the practice of law, giving direction to legislation, lobbying for the law profession, and evaluating federal judges. Less than one-third of attorneys belong to the A.B.A., and it is often dominated by the larger urban law firms and those who are interested in bar assoc

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**American Civil Liberties Union**

n. the largest organization of American lawyers, which has no official standing, but is prestigious in formulating guidelines for the practice of law, giving direction to legislation, lobbying for the law profession, and evaluating federal judges. Less than one-third of attorneys belong to the A.B.A., and it is often dominated by the larger urban law firms and those who are interested in bar assoc

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**American Depository Receipt**

n. called in the banking trade an ADR, it is a receipt issued by American banks to Americans as a substitute for actual ownership of shares of foreign stocks. ADRs are traded on American stock exchanges and over-the-counter easily without the necessity of trading the foreign shares themselves.

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**amnesty**

n. a blanket abolition of an offense by the government, with the legal result that those charged or convicted have the charge or conviction wiped out. Examples: a) the amnesty given to Confederate officials and soldiers after the Civil War, or b) President Jimmy Carter's granting amnesty (under certain conditions) to those who violated the Selective Service Act in evading the draft during the Viet

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**amortization**

n. a periodic payment plan to pay a debt in which the interest and a portion of the principal are included in each payment by an established mathematical formula. Most commonly it is used on a real property loan or financing of an automobile or other purchase. By figuring the interest on the declining principal and the number of years of the loan, the monthly payments are averaged and determined.

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**ancillary administration**

n. administration of an estate's assets in another state. An "ancillary administrator" is chosen by the executor or administrator of an estate to handle the property (primarily real estate) of the deceased's estate in a state other than the one in which the estate is probated. Example: John Dunn dies in Montana where he had been living and leaves a parcel of land in downtown Columbus, Ohio. There

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**ancillary jurisdiction**

n. a term used in federal courts when the court decides matters not normally under federal jurisdiction so that it can give a judgment on the entire controversy, when the main issue is a federal matter which it is authorized by law to determine

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**and**

conj. this little word is important in law, particularly when ...

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**antenuptial (prenuptial) agreement**

n. a written contract between two people who are about to marry, setting out the terms of possession of assets, treatment of future earnings, control of the property of each, and potential division if the marriage is later dissolved. These are fairly common if either or both parties have substantial assets, children from a previous marriage, potential large inheritances, high incomes, or have been

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**anticipatory breach**

n. when a party to a contract repudiates (reneges on) his/her obligations under that contract before fully performing those obligations. This can be by word ("I won't deliver the rest of the goods" or "I can't make any more payments") or by action (not showing up with goods or stopping payments). The result is that the other party does not have to perform his/her obligations and cannot be liable f

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**antitrust laws**

n. acts adopted by Congress to outlaw or restrict business practices considered to be monopolistic or which restrain interstate commerce. The Sherman Antitrust Act of 1890 declared illegal "every contract, combination...or conspiracy in restraint of trade or commerce" between states or foreign countries. The Clayton Antitrust Act of 1914, amended by the

Robinson-Patman Act of 1936, prohibits discrim

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**apparent authority**

n. the appearance of being the agent of another (employer or principal) with the power to act for the principal. Since under the law of agency the employer (the principal) is liable for the acts of his employee (agent), if a person who is not an agent appears to an outsider (a customer) to have been given authority by the principal, then the principal is stuck for the acts of anyone he allows to a

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**appear**

v. for a party or an attorney to show up in court.

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**appraise**

v. to professionally evaluate the value of property including real estate, jewelry, antique furniture, securities, or in certain cases the loss of value (or cost of replacement) due to damage. This may be necessary in determining the value of the estate of someone who has died, particularly when the items must be divided among the beneficiaries, to determine the value of assets for insurance cov

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**appreciate**

v. to increase in value over a period of time through the natural course of events, including inflation, greater rarity, or public acceptance. This can include real property, jewelry, rare books, art works or securities.

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**approach**

v. short for "approach the bench," as in "may I approach, your honor," or "will counsel approach?"

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**approach the bench**

v. an attorney's movement from the counsel table to the front of the bench (the large desk at which the judge sits) in order to speak to the judge off the record and/or out of earshot of the jury. Since the bench area is the sacred territory of the judge the attorney must ask permission as "may I approach the bench," or simply, "may I approach." If the judge consents, then opposing counsel must be

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**approach the witness**

v. a request by an attorney to the judge for permission to go up to a witness on the witness stand to show the witness a document or exhibit. "May I approach the witness?" is the typical request, and it is almost always granted.

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**appurtenant**

adj. pertaining to something that attaches. In real property law this describes any right or restriction which goes with that property, such as an easement to gain access across the neighbor's parcel, or a covenant (agreement) against blocking the neighbor's view. Thus, there are references to appurtenant easement or appurtenant covenant.

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**arbiter**

n. in some jurisdictions the name for a referee appointed by the court to decide a question and report back to the court, which must confirm the arbiter's finding before it is binding on the parties.

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**arbitrary**

adj. not supported by fair or substantial cause or reason. Most often it is used in reference to a judge's ruling.

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**arbitrator**

n. one who conducts an arbitration, and serves as a judge who conducts a "mini-trial," somewhat less formally than a court trial. In most cases the arbitrator is an attorney, either alone or as part of a panel. Most court jurisdictions now have lists of attorneys who serve as arbitrators. Other arbitrators come from arbitration services which provide lists from which the parties can agree on an ar

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**arguendo**

prep. Latin meaning "for the sake of argument," used by lawyers in the context of "assuming arguendo" that the facts were as the other party contends, but the law prevents the other side from prevailing. Example: "assuming arguendo" that the court finds our client, the defendant, was negligent, the other party (plaintiff) was so contributorily negligent he cannot recover damages. In short, the law

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**argumentative**

adj. the characterization of a question asked by the opposing attorney which does not really seek information but challenges the truthfulness or credibility of the witness. Since such a question is not allowable, often it is the basis of an objection before the question is answered, much like irrelevant, immaterial or hearsay. The definition of argumentative is somewhat vague, and different judges

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**arms length**

adj. the description of an agreement made by two parties freely and independently of each other, and without some special relationship, such as being a relative, having another deal on the side or one party having complete control of the other. It becomes important to determine if an agreement was freely entered into to show that the price, requirements, and other conditions were fair and real. Ex

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**arraign**

v. to bring a criminal defendant before the court, at which time the charges are presented to him/her, the opportunity to enter a plea (or ask for a continuance to plead) is given, a determination of whether the party has a lawyer is made (or whether a lawyer needs to be appointed), if necessary setting the amount of bail, and future appearances are scheduled.

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**article**

n. a paragraph or section of any writing such as each portion of a will, corporate charter (articles of incorporation), or different sections of a statute.

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**articles of impeachment**

n. the charges brought (filed) to impeach a public official. In regard to the President, Vice President and federal judges, the articles are prepared and voted upon by the House of Representatives, and if it votes to charge the official with a crime, the trial is held by the Senate.

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**as is**

adj. description of a condition in a sales contract in which the buyer agrees to take the property (e.g. house, horse, auto, or appliance) without the right to complain if it is faulty. However, the buyer must have had the right to reasonable inspection, so that he/she has a chance to find any obvious deficiency. Intentionally hiding a known defect will make a seller liable for fraud and serves to

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**assault and battery**

n. the combination of the two crimes of threat assault) and actual beating (battery). They are both also intentional civil wrongs for which the party attacked may file a suit for damages.

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**assess**

v. to set a value on property, usually for the purpose of calculating real property taxes. The assessed value is multiplied by the tax rate to determine the annual tax bill. This function is usually performed by employees of the County Assessor. In California, under Proposition 13, the new assessment can only take place upon sale of real property.

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**asset**

n. generally any item of property that has monetary value, including articles with only sentimental value (particularly in the estates of the dead). Assets are shown in balance sheets of businesses and inventories of probate estates. There are current assets (which includes accounts receivable), fixed assets (basic equipment and structures), and such intangibles as business good will and rights to

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**assigned risk**

n. a person whose official driving record (accidents and tickets) is so poor that he/she cannot purchase commercial auto insurance, and must be assigned to a state operated or designated insurance program at high rates.

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**assignment for benefit of creditors**

n. a method used for a debtor to work out a payment schedule to his/her creditors through a trustee who receives directly a portion of the debtor's income on a regular basis to pay the debtor's bills.

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**Associate Justice**

n. a member of the U.S. Supreme Court appointed by the President and confirmed by the U.S. Senate. There are eight Associate Justices and one Chief Justice. They serve for life or until voluntary retirement or removal after being convicted after impeachment. (Only one was ever charged (1805) and he was acquitted.)

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**association**

n. any group of people who have joined together for a particular purpose, ranging from social to business, and usually meant to be a continuing organization. It can be formal, with rules and/or bylaws, membership requirements and other trappings of an organization, or it can be a collection of people without structure. An association is not a legally established corporation or a partnership. To ma

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**assume**

v. to take over the liability for a debt on a promissory note, which is often done by the buyer of real property which has a secured debt upon it. Example: Bob Buyer pays part of the price of a piece of real property by taking over the debt that Sally Seller had on the property. However, usually the original owner to whom Sally owes the debt must agree to the assumption.

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**assumption**

n. the act of taking over a debt as part of payment for property which secures that debt.

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**assumption of risk**

n. 1) taking a chance in a potentially dangerous situation. This is a typical affirmative defense in a negligence case, in which the defendant claims that the situation (taking a ski-lift, climbing a steep cliff, riding in an old crowded car, working on the girders of a skyscraper) was so inherently or obviously hazardous that the injured plaintiff should have known there was danger and took the c

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**assured**

n. the person or entity that is insured, often found in insurance contracts.

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**attached**

adj. 1) referring to two buildings which are connected, or equipment which is solidly incorporated into a structure such as bolted to the floor or wired to the ceiling (and not capable of being removed without damage to the structure). If an item is so attached it probably has become a part of the real property, except for "trade fixtures," which can be detached. 2) referring to money or an object

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**attachment**

n. the seizing of money or property prior to getting a judgment in court, in contemplation that the plaintiff will win at trial (usually in simple cases of money owed) and will require the money or property to cover (satisfy) the judgment. The Supreme Court has ruled that an attachment may be made only after a hearing before a judge in which both sides can argue the danger that the party being sue

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**attempt**

v. and n. to actually try to commit a crime and have the ability to do so. This means more than just thinking about doing a criminal act or planning it without overt action. It also requires the opportunity and ability. Attempts can include attempted murder, attempted robbery, attempted rape, attempted forgery, attempted arson, and a host of other crimes. The person accused cannot attempt to commi

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**attest**

v. 1) to confirm (usually in writing) that a document is genuine. 2) to bear witness that someone actually signed a document, such as a will. All states require at least two witnesses (three in Vermont) to attest that a will was signed and declared to be a will (except a will written in one's own handwriting in some states).

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**attorney at law (or attorney-at-law)**

n. (or attorney-at-law) a slightly fancier way of saying attorney or lawyer.

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**Attorney General**

n. in each state and the federal government the highest ranking legal officer of the government. The federal Attorney General is chief of the Department of Justice appointed by the President with confirmation required by the Senate, and a member of the Cabinet. He or she is in charge of federal prosecutions (including overseeing the numerous regional U.S. Attorneys), and numerous cases and matters

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**attorney of record**

n. the attorney who has appeared in court and/or signed pleadings or other forms on behalf of a client. The lawyer remains the attorney of record until some other attorney or the client substitutes for him/her, he/she is allowed by the court to withdraw, or after the case is closed. Sometimes lawyers find themselves still on the record in cases (such as divorces) which they believe have long since

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**attorneys advertising**

n. the commercials which appear on television or crowd the yellow pages of the telephone book. Until the Supreme Court ruled (1977) that any restriction on lawyer advertising was an abridgement of free speech, advertising by lawyers was illegal and cause for discipline or disbarment. One problem is that the size and cleverness of the ads are no indication of the quality of the talent, experience,

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**attorneys fee**

n. the payment for legal services. It can take several forms 1) hourly charge, 2) flat fee for the performance of a particular service (like \$250 to write a will), 3) contingent fee (such as one-third of the gross recovery, and nothing if there is no recovery), 4) statutory fees (such as percentages of an estate for representing the estate), 5) court-approved fees (such as in bankruptcy or guardia

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**attorneys work product**

n. written materials, charts, notes of conversations and investigations, and other materials directed toward preparation of a case or other legal representation. Their importance is that they cannot be required to be introduced in court or otherwise revealed to the other side. Sometimes there is a question as to whether documents were prepared by the attorney and/or the client for their use in the

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**attractive nuisance doctrine**

n. a legal doctrine which makes a person negligent for leaving a piece of equipment or other condition on property which would be both attractive and dangerous to curious children. These have included tractors, unguarded swimming pools, open pits, and abandoned refrigerators. Liability could be placed on the people owning or controlling the premises even when the child was a trespasser who sneaked

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**auditor**

n. an accountant who conducts an audit to verify the accuracy of the financial records and accounting practices of a business or government. A proper audit will point out deficiencies in accounting and other financial operations. Many counties have an appointed or elected auditor to make independent audits of all governmental agencies in the county government. The term "auditor" is often misused a

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**authorities**

n. 1) previous decisions by courts of appeal which provide legal guidance to a court on questions in a current lawsuit, which are called "precedents." Legal briefs (written arguments) are often called "points and authorities." Thus, a lawyer "cites" the previously decided cases as "authorities" for his/her legal positions. 2) a common term for law enforcement, as in "I'm going to call the authorit

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**authority**

n. permission, a right coupled with the power to do an act or order others to act. Often one person gives another authority to act, as an employer to an employee, a principal to an agent, a corporation to its officers, or governmental empowerment to perform certain functions. There are different types of authority, including "apparent authority" when a principal gives an agent various signs of aut

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**authorize**

v. to officially empower someone to act.

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**award**

1) n. the decision of an arbitrator or commissioner (or any non-judicial arbiter) of a controversy. 2) v. to give a judgment of money to a party to a lawsuit, arbitration, or administrative claim. Example: "Plaintiff is awarded \$27,000."

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**Bachelor of Laws**

n. the degree in law from a law school, abbreviated to LLB, which means that the recipient has successfully completed three years of law studies in addition to at least three undergraduate years on any subject. Since the early 1960s most accredited law schools grant a Juris Doctor (JD) degree instead of the LLB. Law schools which made the switch allowed the prior holders of the LLB to claim the JD

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**back-to-back life sentences**

n. slang for consecutive life terms imposed by a judge when there were two crimes committed by the defendant, both of which can result in punishment of a life term, such as two murders, or a murder and a rape involving aggravated assault. The purpose of making the sentences subsequent ("back-to-back") and not "concurrent" (served at the same time) is to lessen the chance of parole, since if parole

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**bad debt**

bad debt . an uncollectible debt. The problem is to determine when a debt is realistically dead, which means there must be some evidence of uncollectibility or a lengthy passage of time. Discharge in bankruptcy, the running of the statute of limitations to bring a lawsuit, disappearance of the debtor, a pattern of avoiding debts or the destruction of the collateral security can all make a deb

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**bail bondsman**

n. a professional agent for an insurance company who specializes in providing bail bonds for people charged with crimes and awaiting trial in order to have them released. The offices of a bail bondsman (or woman) are usually found close to the local courthouse and jail, his/her advertising is found in the yellow pages, and some make "house calls" to the jail or hand out cards in court. Bail bondsm

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**balance due**

n. the amount of a debt still owed on an account or the principal owed on a promissory note. In the case of a promissory note, the balance due is not the sum of installments due, since these include amortized interest, but may be the principal due without further interest.

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#### balance sheet

n. the statement of the assets and the liabilities (amounts owed) of a business at a particular time usually prepared each month, quarter of a year, annually, or upon sale of the business. It is intended to show the overall condition of the business. A balance sheet should not be confused with a profit and loss statement, which is an indicator of the current activity and health of the business.

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#### bankruptcy court

n. the specialized federal court in which bankruptcy matters under the Federal Bankruptcy Act are conducted. There are several bankruptcy courts in each state, and each one's territory covers several counties. The office of a court clerk, where petitions can be filed, is located next to each court.

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#### bankruptcy proceedings

n. the bankruptcy procedure is: a) filing a petition (voluntary or involuntary) to declare a debtor person or business bankrupt, under Chapter 7, Chapter 11, or Chapter 13, to allow reorganization or refinancing under a plan to meet the debts of the party unable to meet his/her/its obligations. The petition is supposed to include a schedule of debts, assets and income potential. b) A hearing called

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#### bar

1) n. collectively all attorneys, as "the bar," which comes from the bar or railing which separates the general spectator area of the courtroom from the area reserved for judges, attorneys, parties and court officials. A party to a case or criminal defendant is "before the bar" when he/she is inside the railing. 2) v. to prevent some legal maneuver, as in "barring" a lawsuit due to the running out

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#### bar association

n. an organization of lawyers. There are two types, one of which is official and usually called an "integrated bar," which is qualified by the particular state's highest court to establish rules for admission and conduct. There are also local bar associations by city or county which are unofficial and voluntary, but do conduct the business of attorneys, such as settling fee disputes and working with

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#### bargain

n. 1) a mutual agreement or contract between two parties which is voluntary and involves the exchange of consideration (money, goods, services, or a promise for a promise). 2) a supposed good deal.

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#### beach bum trust provision

n. a requirement in a trust that a beneficiary can only receive profit from the trust equal to the amount he/she earns. This provision is intended to encourage the beneficiary to work, and not just lie around the beach and live off the trust.

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#### bearer paper

n. negotiable instrument (e.g. a bond) which is payable to whoever has possession (the bearer).

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#### belief

n. convinced of the truth of a statement or allegation. In a common phrase "upon information and belief," the so-called belief is based only on unconfirmed information, so the person declaring the belief is hedging his/her bet as to whether the belief is correct.

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#### beneficial interest

n. the right of a party to some profit, distribution, or benefit from a contract or trust. A beneficial interest is distinguished from the rights of someone like a trustee or official who has responsibility to perform and/or title to the assets but does not share in the benefits.

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#### beneficial use

n. the right to enjoy the use of something (particularly such pleasant qualities as light, air, view, access, water in a stream) even though the title to the property in which the use exists is held by another.

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#### benefit

1) n. any profit or acquired right or privilege, primarily through a contract. 2) in worker's compensation the term "benefit" is the insurance payment resulting from a fatal accident on the job, while "compensation" is for injury without death. 3) in income taxation, anything that brings economic gain. 4) "fringe benefits" may be part of the compensation for employment other than salary or wages,

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**benefit of counsel**

n. having the opportunity to have an attorney and legal advice in any legal matter, but particularly while appearing in court. If someone makes an appearance or agrees to a contract without benefit of counsel, when a lawyer would be either essential or at least quite valuable, he/she may challenge the court rulings or the contract terms, usually without success since failure to have an attorney is

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**bestiality**

n. copulation by a human with an animal, which is a crime in all states as a "crime against nature."

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**BFP**

n. slang for bona fide purchaser, which means someone who purchased something (e.g. a bond, a promissory note, or jewelry) with no reason to be suspicious that it was stolen, belonged to someone else, or was subject to another party's claim. The BFP must have paid a full and fair price and have received the item in the normal course of business, otherwise he/she might have some doubts ("wanta buy

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**bias**

n. the predisposition of a judge, arbitrator, prospective juror, or anyone making a judicial decision, against or in favor of one of the parties or a class of persons. This can be shown by remarks, decisions contrary to fact, reason or law, or other unfair conduct. Bias can be toward an ethnic group, homosexuals, women or men, defendants or plaintiffs, large corporations, or local parties. Getting

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**bid**

n. an offer to purchase with a specific price stated. It includes offers during an auction in which people compete by raising the bid until there is no more bidding, or contractors offer to contract to build a project or sell goods or services at a given price, with usually the lowest bidder getting the job.

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**bifurcation**

n. the act of a judge in dividing issues before a trial so that one issue will be ruled upon before hearing evidence on the other issue.

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**bilateral contract**

n. an agreement in which the parties exchange promises for each to do something in the future. "Susette Seller promises to sell her house to Bobby Buyer and Buyer promises to pay Seller \$100,000 for it." This is distinct from a "unilateral contract," in which there is a promise to pay if the other party chooses to do something. "I'll pay you \$1,000 if you'll stop smoking." These are basically acad

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**bill of particulars**

n. a written itemization of claims which a defendant in a lawsuit can demand of the plaintiff to find out what are the details of the claims. Thus, a general claim that defendant owes plaintiff \$50,000 for goods delivered or damaged must be broken down so the defendant can understand and defend. In criminal cases it can give an accused person notice of the factual bases for the charges.

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**Bill of Rights**

n. the first ten amendments to the federal Constitution demanded by several states in return for ratifying the Constitution, since the failure to protect these rights was a glaring omission in the Constitution as adopted in convention in 1787. Adopted and ratified in 1791, the Bill of Rights are: First: Prohibits laws establishing a religion (separation of church and state), and bans laws which wo

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**bill of sale**

n. a written statement attesting to the transfer (sale) of goods, possessions, or a business to a buyer. It is useful to show that the buyer now has ownership and to detail what was actually purchased. A bill of sale may accompany an agreement which states the agreed-upon terms of sale, including the date of transfer, the price, timing of payment and other provisions.

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**blackmail**

n. the crime of threatening to reveal embarrassing, disgraceful or damaging facts (or rumors) about a person to the public, family, spouse or associates unless paid off to not carry out the threat. It is one form of extortion (which may include other threats such as physical harm or damage to property).

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**blank endorsement**

n. endorsement of a check or other negotiable paper without naming the person to whom it would be paid.

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**blue laws**

n. state or local laws which prohibit certain activities, particularly entertainment, sports or drinking on Sunday, to honor the Christian Sabbath. They were employed in the New England colonies controlled by the puritans who kept the Sabbath sacred. "Blue" was slang for puritanical. In most cases blue laws have been repealed, but vestiges remain at least informally.

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**blue ribbon jury**

n. a jury selected from prominent, well-educated citizens, sometimes to investigate a particular problem such as civic corruption. Use of blue ribbon juries in criminal cases violates the right to have a jury of one's peers.

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**blue sky laws**

n. laws intended to protect the public from purchasing stock in fraudulent companies that lack substance, such as those selling swamp land, non-existent gold strikes and dry oil wells, or who have no assets besides a post office box. Blue sky laws require that corporations advertising and selling shares to the public must get approval from the state corporations commissioner and/or the Securities

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**boiler room**

n. a telephone bank operation in which fast-talking telemarketers or campaigners attempt to sell stock, services, goods, or candidates and act as if they are calling from an established company or brokerage. Often the telemarketers are totally fraudulent and in violation of security laws.

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**boilerplate**

n., adj. slang for provisions in a contract, form or legal pleading which are apparently routine and often preprinted. The term comes from an old method of printing. Today "boilerplate" is commonly stored in computer memory to be retrieved and copied when needed. A layperson should beware that the party supplying the boilerplate form usually has developed supposedly "standard" terms (some of which

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**bona fide**

adj. Latin for "good faith," it signifies honesty, the "real thing" and, in the case of a party claiming title as bona fide purchaser or holder, it indicates innocence or lack of knowledge of any fact that would cast doubt on the right to hold title.

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**bona fide purchaser**

n. commonly called BFP in legal and banking circles; a person who has purchased an asset (including a promissory note, bond or other negotiable instrument) for stated value, innocent of any fact which would cast doubt on the right of the seller to have sold it in good faith. This is vital if the true owner shows up to claim title, since the BFP will be able to keep the asset, and the real owner wi

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**bondsman**

n. 1) someone who sells bail bonds. 2) a surety (guarantor or insurance company, who/which provides bonds for performance.

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**booby trap**

n. a device set up to be triggered to harm or kill anyone entering the trap, such as a shotgun which will go off if a room is entered, or dynamite which will explode if the ignition key on an auto is turned. If a person sets up such a trap to protect his/her property, he/she will be liable for any injury or death even to an unwanted intruder such as a burglar. Setting a booby trap to even protect

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**book account**

n. an account of a customer kept in a business ledger of debits and credits (charges and payments), which shows the amount due at any given time. This can provide a clear basis for suing for a debt.

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**book value**

n. a determination of the value of a corporation's stock by adding up the stated value of corporate assets as shown on the books (records) of a corporation and deducting all the liabilities (debts) of the corporation. This may not be the true value of the corporation or its shares since the assets may be under- or over-valued.

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**boycott**

n. organized refusal to purchase products or patronize a store to damage the producer or merchant monetarily, to influence its policy, and/or to attract attention to a social cause. Labor unions and their sympathizers have boycotted lettuce and grapes not picked by union farm workers, and civil rights activists have boycotted stores and restaurants that had "white only" hiring policies. The term i

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**breach of promise**

n. historically, the dumping of a female fiancee by her intended husband after he had proposed marriage and she

had accepted. She was entitled to file a suit for damages for the embarrassment of the broken engagement. Such lawsuits were gradually outlawed in various states and no longer exist.

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**breach of the peace**

n. any act which disturbs the public or even one person. It can include almost any criminal act causing fear or attempting intimidation, such as displaying a pistol or shouting inappropriately.

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**breach of warranty**

n. determination that a statement as to title of property, including real property or any goods, is proved to be untrue, whether intended as a falsehood or not. It can also apply to an assurance of quality of a product or item sold. The party making the warranty is liable to the party to whom the guarantee was made. In modern law the warranty need not be expressed in so many words, but may be impl

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**breaking and entering**

n. 1) the criminal act of entering a residence or other enclosed property through the slightest amount of force (even pushing open a door), without authorization. If there is intent to commit a crime, this is burglary. If there is no such intent, the breaking and entering alone is probably at least illegal trespass, which is a misdemeanor crime. 2) the criminal charge for the above.

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**brought to trial**

v. the act of actually beginning a trial, usually signaled by swearing in the first witness (not the impanelling of the jury or beginning opening statements).

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**bucket shop**

n. an unofficial and usually illegal betting operation in which the prices of stocks and commodities are posted and the customers bet on the rise and fall of prices without actually buying stock, commodities, or commodity futures. Bucket shops are seldom seen today since there are many opportunities to gamble legally on the stock and commodities markets.

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**building and loan**

n. another name for savings and loan association. As the name implies, originally these institutions were meant to provide loans for building a house after the depositor had saved enough for a down payment.

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**bulk sale**

n. the sale of all or a large part of a merchant's stock as well as equipment. This generally applies to retailers, restaurants, and other businesses with inventories.

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**bulk sales acts**

n. state laws (spelled out in the Uniform Commercial Code adopted generally throughout the country) which require a seller of the business including his/her inventory to a) publish notice of the sale, b) give written notice to all creditors, and c) set up an escrow of the funds realized from the sale upon which the creditors can make a claim for a brief period of time. These statutes are intended

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**bulk transfer**

bulk sale

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**burden**

n. anything that results in a restrictive load upon something. This is not meant in a tangible sense, but includes a "burden" on interstate commerce (which is any matter which limits, restricts or is onerous such as a license or fee for passage), and "burdens" on land such as zoning restrictions or the right of a neighbor to pass over the property to reach his home (easement).

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**business**

n. any activity or enterprise entered into for profit. It does not mean it is a company, a corporation, partnership, or has any such formal organization, but it can range from a street peddler to General Motors. It is sometimes significant to determine if an accident, visit, travel, meal or other activity was part of "business" or for pleasure or no particular purpose.

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**business invitee**

n. a person entering commercial premises for the purpose of doing business, rather than just taking a short cut to the next street. It is important since a business is liable to a business invitee for injury caused by dangerous conditions such as bad floors or oil on the linoleum. There is a presumption that anyone entering a retail store or restaurant in which one may browse is a business invitee

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**but for rule**

n. one of several tests to determine if a defendant is responsible for a particular happening. In this test, was there any other cause, or would it have occurred "but for" the defendant's actions? Example: "But for" defendant Drivewild's speeding, the car would not have gone out of control, and therefore the defendant is responsible. This is shorthand for whether the action was the "proximate caus

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**buy-sell agreement**

n. a contract among the owners of a business which provides terms for their purchase of a withdrawing partner's or stockholder's interest in the enterprise.

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**C.I.F.**

n. the total of cost, insurance and freight charges to be paid on goods purchased and shipped.

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**calendar**

1) n. the list of cases to be called for trial before a particular court; 2) v. to set and give a date and time for a case, petition or motion to be heard by a court. Usually a judge, a trial setting commissioner, or the clerk of the court calendars cases.

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**calendar call**

n. the hearing at which a case is set for trial.

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**call**

n. the demand by a corporation that a stockholder pay an installment or assessment on shares already owned.

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**calumny**

n. the intentional and generally vicious false accusation of a crime or other offense designed to damage one's reputation.

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**cancel**

v. to cross out, annul, destroy, void and/or rescind a document. Cancelling can be done in several ways: tear up the document or mark on its face that it is cancelled, void, or terminated if the debt for which it stood has been paid. It is important that the document (like a promissory note) itself become no longer operative either by destruction or marking, so that it cannot be used again.

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**cancellation**

cancel

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**caning**

n. a punishment for crimes employed in certain Asian countries (notably Singapore) even for misdemeanors (lesser crimes) in which the convicted defendant receives several lashes with a flexible "cane" meted out by a husky and skilled whipper. Such corporal punishment as a specific punishment or sentence so far is unknown in the last century in the United States.

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**cap**

n. slang for maximum, as the most interest that can be charged on an "adjustable rate" promissory note.

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**capital account**

n. the record which lists all basic assets of a business, not including inventory or the alleged value of good will.

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**capital assets**

n. equipment, property, and funds owned by a business.

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**capital expenditure**

n. payment by a business for basic assets such as property, fixtures, or machinery, but not for day-to-day operations such as payroll, inventory, maintenance and advertising. Capital expenditures supposedly increase the value of company assets and are usually intended to improve productivity.

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**capital investment**

capital expenditure

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**capital stock**

n. the original amount paid by investors into a corporation for its issued stock. Capital stock bears no direct relationship to the present value of stock, which can fluctuate after the initial issue or first stock offering. Capital stock also does not reflect the value of corporate assets, which can go up or down based on profits, losses, or purchases of equipment. Capital stock remains as a ledg

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#### capitalization

n. 1) the act of counting anticipated earnings and expenses as capital assets (property, equipment, fixtures) for accounting purposes. 2) the amount of anticipated net earnings which hypothetically can be used for conversion into capital assets.

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#### capitalized value

n. anticipated earnings which are discounted (given a lower value) so that they represent a more realistic current value since projected earnings do not always turn out as favorably as expected or hoped.

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#### capricious

adv., adj. unpredictable and subject to whim, often used to refer to judges and judicial decisions which do not follow the law, logic or proper trial procedure. A semi-polite way of saying a judge is inconsistent or erratic.

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#### care

n. in law, to be attentive, prudent and vigilant. Essentially, care (and careful) means that a person does everything he/she is supposed to do (to prevent an accident). It is the opposite of negligence (and negligent), which makes the responsible person liable for damages to persons injured. If a person "exercises care," a court cannot find him/her responsible for damages from an accident in which

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#### careless

adj., adv. 1) negligent. 2) the opposite of careful. A careless act can result in liability for damages to others.

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#### carrier

n. in general, any person or business which transports property or people by any means of conveyance (truck, auto, taxi, bus, airplane, railroad, ship), almost always for a charge. The carrier is the transportation system and not the owner or operator of the system. There are two types of carriers: common carrier (in the regular business or a public utility of transportation) and a private carrier

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#### carryback

n. in taxation accounting, using a current tax year's deductions, business losses or credits to refigure and amend a previously filed tax return to reduce the tax liability.

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#### carrying for hire

n. the act of transporting goods or individuals for a fee. It is important to determine if the carrier has liability for safe delivery or is subject to regulation.

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#### carrying on business

v. pursuing a particular occupation on a continuous and substantial basis. There need not be a physical or visible business "entity" as such.

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#### carryover

n. in taxation accounting, using a tax year's deductions, business losses or credits to apply to the following year's tax return to reduce the tax liability.

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#### case of first impression

n. a case in which a question of interpretation of law is presented which has never arisen before in any reported case. Sometimes, it is only of first impression in the particular state or jurisdiction, so decisions from other states or the federal courts may be examined as a guideline.

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#### case system

n. the method of studying law generally used in American law schools, in which the students read, outline (brief), discuss and hear lectures about the cases. Each case presented stands for a particular rule of law in the subject matter covered and is contained in "casebooks" on particular topics (contracts, torts, criminal law, constitutional law, agency, etc.). The system is useful since it relat

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#### cashiers check

n. a check issued by a bank on its own account for the amount paid to the bank by the purchaser with a named payee, and stating the name of the party purchasing the check (the remitter). The check is received as cash since it is guaranteed by the bank and does not depend on the account of a private individual or business. Cashiers'

checks are commonly used when payment must be credited immediately

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**casual**

adj. defining something that happens by chance, without being foreseen, or informally. This includes "casual" labor or employment, which is someone hired to do a task just because he/she was available at the moment. "Casual laborer" carries the implication that the laborer does not belong to a union and that the employer and the laborer will not pay appropriate taxes on the wages paid.

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**casualty**

1) an accident which could not have been foreseen or guarded against, such as a shipwreck caused by storm or fire caused by lightning. 2) the loss, as of life, from such an unavoidable accident. The courts remain inconsistent on the exact definition.

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**D.A.**

n. slang for District Attorney.

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**d.b.a.**

n. short for "doing business as," when a person or entity uses a business name instead of his/her/its own. All states have requirements for filing a certificate of "doing business under a fictitious name" either with the County Clerk, the state Secretary of State or some other official to inform the public as to the real person or entity behind a business name. It is not necessary if the business

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**D.U.I.**

n. short for driving under the influence of alcohol.

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**D.W.I.**

n. 1) short for driving while intoxicated. 2) abbreviation for dying without issue (children).

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**dangerous**

adj. unsafe, hazardous, fraught with risk. It can be negligence for which a lawsuit can be brought if damage results from creating or leaving unguarded a dangerous condition which can cause harm to others, a dangerous instrumentality (any device which can cause harm, including explosives and poisonous substances) or dangerous weapon which is inherently hazardous to anyone handling it or within the

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**dangerous weapon**

n. any gun, knife, sword, crossbow, slingshot or other weapon which can cause bodily harm to people (even though used for target shooting). If a person is harmed by such a weapon that is left unguarded, improperly used, or causes harm even to a person who plays with it without permission, the victim or his/her survivors can sue for negligence and possibly win a judgment.

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**date rape**

n. forcible sexual intercourse by a male acquaintance of a woman, during a voluntary social engagement in which the woman did not intend to submit to the sexual advances and resisted the acts by verbal refusals, denials or pleas to stop, and/or physical resistance. The fact that the parties knew each other or that the woman willingly accompanied the man are not legal defenses to a charge of rape.

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**day in court**

n. popular term for everyone's opportunity to bring a lawsuit or use the court system if he/she thinks he/she has a gripe which can be resolved in court. Example: "John finally got his day in court to protest his speeding ticket."

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**earnest payment**

n. a deposit paid to demonstrate commitment and to bind a contract, with the remainder due at a particular time. If the contract is breached by failure to pay, then the earnest payment is kept by the recipient as pre-determined (liquidated) or committed damages.

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**EIR**

n. popular acronym for environmental impact report, required by many states as part of the application to a county or city for approval of a land development or project.

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**ejection**

n. a lawsuit brought to remove a party who is occupying real property. This is not the same as an unlawful detainer (eviction) suit against a non-paying or unsatisfactory tenant. It is against someone who has tried to claim title to the property. Example: George Grabby lives on a ranch which he claims he has inherited from his great uncle, but Betty Benefield sues for ejection on the basis that,

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**eiusdem generis**

(eh-youse-dem generous) v adj. Latin for "of the same kind," used to interpret loosely written statutes. Where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. Example: if a law refers to automobiles, trucks, tractors, motorcycles and other motor-powered vehicles, "vehi

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**elder law**

n. a newly coined vague term covering estate planning, wills, trusts and the problems of older people. Essentially it is a sales gimmick to attract older clientele.

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**election of remedies**

n. an outmoded requirement that if a plaintiff (party filing suit) asks for two remedies based on legal theories which are inconsistent (a judge can grant only one or the other), the plaintiff must decide which one is the most provable and which one he/she really wants to pursue, usually just before the trial begins. Example: suing someone for both breach of contract and for fraud (a secret plan n

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**election under the will**

n. in those states which have statutes which give a widow a particular percentage of the late husband's estate (such as dower), the surviving wife may elect to take that percentage instead of any lesser amount (or assets with unacceptable conditions such as an estate which will be cancelled if she remarries) left to her under his will.

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**eleemosynary**

(eh-luh-moss-uh-nary) adj. charitable, as applied to a purpose or institution.

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**element**

n. 1) an essential requirement to a cause of action (the right to bring a lawsuit to enforce a particular right). Each cause of action (negligence, breach of contract, trespass, assault, etc.) is made up of a basic set of elements which must be alleged and proved. Each charge of a criminal offense requires allegation and proof of its elements. 2) essential requirement of a zoning general plan.

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**embezzlement**

n. the crime of stealing the funds or property of an employer, company or government or misappropriating money or assets held in trust.

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**embezzler**

n. a person who commits the crime of embezzlement by fraudulently taking funds or property of an employer or trust.

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**emblements**

n. crops to which a tenant who cultivated the land is entitled by agreement with the owner. If the tenant dies before harvest the crop will become the property of his/her estate.

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**emergency**

n. a sudden, unforeseen happening which requires action to correct or to protect lives and/or property.

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**emotional distress**

n. an increasingly popular basis for a claim of damages in lawsuits for injury due to the negligence or intentional acts of another. Originally damages for emotional distress were only awardable in conjunction with damages for actual physical harm. Recently courts in many states, including New York and California, have recognized a right to an award of money damages for emotional distress without

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**employee**

n. a person who is hired for a wage, salary, fee or payment to perform work for an employer. In agency law the employee is called an agent and the employer is called the principal. This is important to determine if one is acting as employee when injured (for worker's compensation) or when he/she causes damage to another, thereby making the employer liable for damages to the injured party.

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**employer**

n. a person or entity which hires the services of another called a principal in the law of agency.

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**employment**

n. the hiring of a person for compensation. It is important to determine if acts occurred in the "scope of employment" to establish the possible responsibility of the employer to the employee for injuries on the job or to the public for acts of the employee.

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**en banc**

(on bonk) French for "in the bench," it signifies a decision by the full court of all the appeals judges in jurisdictions where there is more than one three- or four-judge panel. The larger number sit in judgment when the court feels there is a particularly significant issue at stake or when requested by one or both parties to the case and agreed to by the court.

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**enabling clause**

n. a provision in a new statute which empowers a particular public official (Governor, State Treasurer) to put it into effect, including making expenditures.

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**enclosure**

(inclosure)n. land bounded by a fence, wall, hedge, ditch or other physical evidence of boundary. Unfortunately, too often these creations are not included among the actual legally described boundaries and cause legal problems.

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**encroach**

v. to build a structure which is in whole or in part across the property line of another's real property. This may occur due to incorrect surveys, guesses or miscalculations by builders and/or owners when erecting a building. The solutions vary from giving the encroaching party an easement or lease (for a price, usually) for the lifetime of the building, or if the structure is small, actually movi

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**encroachment**

n. the act of building a structure which is in whole or in part on a neighbor's property.

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**encumbrance**

(incumbrance)n. a general term for any claim or lien on a parcel of real property. These include: mortgages, deeds of trust, recorded abstracts of judgment, unpaid real property taxes, tax liens, mechanic's liens, easements and water or timber rights. While the owner has title, any encumbrance is usually on record (with the County Recorder or Recorder of Deeds) and must be paid for at some point.

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**endorse (indorse)**

v. 1) to sign one's name to the back of a check, bill of exchange or other negotiable instrument with the intention of making it cashable or transferable. 2) to pledge support to a program, proposal or candidate.

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**enjoin**

v. for a court to order that someone either do a specific act, cease a course of conduct or be prohibited from committing a certain act. To obtain such an order, called an injunction, a private party or public agency has to file a petition for a writ of injunction, serve it on the party he/she/it hopes to be enjoined, allowing time for a written response. Then a court hearing is held in which the

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**enjoyment**

n. 1) to exercise a right. 2) pleasure. 3) the use of funds or occupancy of property. Sometimes this is used in the phrase "quiet enjoyment" which means one is entitled to be free of noise or interference.

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**enter a judgment**

v. to officially record a judgment on the "judgment roll," which entry is normally performed by the court clerk once the exact wording of the judgment has been prepared or approved and signed by the trial judge. All times for appeal and other post-judgment actions are based on the date of the entry of judgment and not the date when the judgment is announced.

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**entity**

n. a general term for any institution, company, corporation, partnership, government agency, university or any other organization which is distinguished from individuals.

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**entry of judgment**

n. the placement of a judgment on the official roll of judgments.

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**environmental impact report**

n. a study of all the factors which a land development or construction project would have on the environment in the area, including population, traffic, schools, fire protection, endangered species, archeological artifacts and community beauty. Many states require such reports be submitted to local governments before the development or project can be approved, unless the governmental body finds th

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**environmental law**

n. a body of state and federal statutes intended to protect the environment, wildlife, land and beauty, prevent pollution or over-cutting of forests, save endangered species, conserve water, develop and follow general plans and prevent damaging practices. These laws often give individuals and groups the right to bring legal actions or seek court orders to enforce the protections or demand revision

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**equal opportunity**

1) n. a right supposedly guaranteed by both federal and many state laws against any discrimination in employment, education, housing or credit rights due to a person's race, color, sex (or sometimes sexual orientation), religion, national origin, age or handicap. A person who believes he/she has not been granted equal opportunity or has been outright sexually harassed or discriminated against may

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**equal protection of the law**

n. the right of all persons to have the same access to the law and courts and to be treated equally by the law and courts, both in procedures and in the substance of the law. It is akin to the right to due process of law, but in particular applies to equal treatment as an element of fundamental fairness. The most famous case on the subject is *Brown v. Board of Education of Topeka* (1954) in which C

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**equitable**

adj. 1) just, based on fairness and not legal technicalities. 2) refers to positive remedies (orders to do something, not money damages) employed by the courts to solve disputes or give relief.

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**equitable estoppel**

n. where a court will not grant a judgment or other legal relief to a party who has not acted fairly; for example, by having made false representations or concealing material facts from the other party. This illustrates the legal maxim: "he who seeks equity, must do equity." Example: Larry Landlord rents space to Dora Dressmaker in his shopping center but falsely tells her a Sears store will be a

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**equitable lien**

n. a lien on property imposed by a court in order to achieve fairness, particularly when someone has possession of property which he/she holds for another.

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**equity of redemption**

n. the right of a mortgagor (person owing on a loan or debt against their real property), after commencement of foreclosure proceedings, to "cure" his/her default by making delinquent payments. The mortgagor also must pay all accumulated costs as well as the delinquency to keep the property.

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**equivalent**

n., adj. equal in value, force or meaning.

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**ergo**

(air-go)conj. Latin for "therefore," often used in legal writings. Its most famous use was in *Cogito, ergo sum*: "I think, therefore I am" principle by French philosopher Rene Descartes (1596-1650).

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**erroneous**

adj. 1) in error, wrong. 2) not according to established law, particularly in a legal decision or court ruling.

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**error**

n. a mistake by a judge in procedure or in substantive law, during a hearing, upon petitions or motions, denial of rights, during the conduct of a trial (either granting or denying objections), on approving or denying jury instructions, on a judgment not supported by facts or applicable law or any other step in the judicial process. If a majority of an appeals court finds an error or errors which

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**errors and omissions**

n. short hand for malpractice insurance which gives physicians, attorneys, architects, accountants and other professionals coverage for claims by patients and clients for alleged professional errors and omissions which amount to negligence.

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**escalator clause**

n. a provision in a lease or other agreement in which rent, installment payments or alimony, for example, will increase from time to time when the cost of living index (or a similar gauge) goes up. Often there is a maximum amount of increase ("cap") and seldom is there a provision for reduction if the cost of living goes down or for deflation instead of inflation.

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**escape clause**

n. a provision in a contract which allows one of the parties to be relieved from (get out of) any obligation if a certain event occurs.

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**escrow agent**

n. a person or entity holding documents and funds in a transfer of real property, acting for both parties pursuant to instructions. Typically the agent is a person (commonly an attorney), escrow company or title company, depending on local practice.

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**escrow instructions**

n. the written instructions by buyer and seller of real estate given to a title company, escrow company or individual escrow in "closing" a real estate transaction. These instructions are generally prepared by the escrow holder and then approved by the parties and their agents.

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**espionage**

n. the crime of spying on the federal government and/or transferring state secrets on behalf of a foreign country. The other country need not be an "enemy," so espionage may not be treason, which involves aiding an enemy.

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**esquire**

n. a form of address showing that someone is an attorney, usually written Albert Pettifog, Esquire, or simply Esq. Originally in England an Esquire was a rank just above "gentleman" and below "knight." It became a title for barristers, sheriffs and judges.

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**estate by entirety**

n. tenancy by the entirety

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**estate tax**

n. generally a federal tax on the transfer of a dead person's assets to his heirs and beneficiaries. Although a transfer tax, it is based on the amount in the decedent's estate (including distribution from a trust at the death) and can include insurance proceeds. Currently such federal taxation applies to the amount of an estate above \$600,000, or as much as double that amount if the estate is dis

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**estop**

v. to halt, bar or prevent.

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**et al.**

n. abbreviation for the Latin phrase et alii meaning "and others." This is commonly used in shortening the name of a case, as in "Pat Murgatroyd v. Sally Sherman, et al."

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**et seq.**

(et seek) n. abbreviation for the Latin phrase et sequentes meaning "and the following." It is commonly used by lawyers to include numbered lists, pages or sections after the first number is stated, as in "the rules of the road are found in Vehicle Code Section 1204, et seq."

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**et ux.**

(et uhks) n. abbreviation for the Latin words et uxor meaning "and wife." It is usually found in deeds, tax assessment rolls and other documents in the form "John Alden et ux.," to show that the wife as well as the husband own property. The connotation that somehow the wife is merely an adjunct to her husband, as well as the modern concepts of joint tenancy, tenancy in common, community property w

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**evasion of tax**

n. the intentional attempt to avoid paying taxes through fraudulent means, as distinguished from late payment, using legal "loopholes" or errors.

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**ex delicto**

(ex dee-lick-toe)adj. Latin for a reference to something that arises out of a fault or wrong, but not out of

contracts. Of only academic interest today, it identified actions which were civil wrongs (torts).

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**ex officio**

a (ex oh-fish-ee-oh)dj. Latin for "from the office," to describe someone who has a right because of an office held, such as being allowed to sit on a committee simply because one is president of the corporation.

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**ex rel.**

conj. abbreviation for Latin ex relatione, meaning "upon being related" or "upon information," used in the title of a legal proceeding filed by a state Attorney General (or the federal Department of Justice) on behalf of the government, on the instigation of a private person, who needs the state to enforce the rights of himself/herself and the public. For example, the caption would read: The State

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**examination**

n. 1) the questioning of a witness by an attorney. Direct examination is interrogation by the attorney who called the witness, and cross-examination is questioning by the opposing attorney. A principal difference is that an attorney putting questions to his own witness cannot ask "leading" questions, which put words in the mouth of the witness or suggest the answer, while on cross-examination he/s

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**exception**

n. 1) a formal objection during trial ("We take exception, or simply, "exception")" to the ruling of a judge on any matter, including rulings on objections to evidence, to show to a higher court that the lawyer did not agree with the ruling. In modern practice, it is not necessary "to take exception" to a judge's adverse ruling, since it is now assumed that the attorney against whom the ruling is

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**exception in deed**

n. a notation in a deed of title to real property which states that certain interests, such as easements, mineral rights or a life estate, are not included in the transfer (conveyance) of title.

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**excessive bail**

n. an amount of bail ordered posted by an accused defendant which is much more than necessary or usual to assure he/she will make court appearances, particularly in relation to minor crimes. If excessive bail is claimed, the defendant can make a motion for reduction of bail, and if it is not granted, he/she can then apply directly to a court of appeal for reduction.

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**exchange**

1) v. to trade or barter property, goods and/or services for other property, goods and/or services, unlike a sale or employment in which money is paid for the property, goods or services. 2) n. the act of making a trade or barter. An exchange of "equivalent" property, including real estate, can defer capital gains taxation until the acquired property is sold. 3) n. short for "Starker" exchange of

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**excise**

n. a tax upon manufacture, sale or for a business license or charter, as distinguished from a tax on real property, income or estates. Sometimes it is redundantly called an excise tax.

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**exculpatory**

adj. applied to evidence which may justify or excuse an accused defendant's actions and which will tend to show the defendant is not guilty or has no criminal intent.

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**excusable neglect**

n. a legitimate excuse for the failure of a party or his/her lawyer to take required action (like filing an answer to a complaint) on time. This is usually claimed to set aside a default judgment for failure to answer (or otherwise respond) in the period set by law. Illness, press of business by the lawyer (but not necessarily the defendant), or an understandable oversight by the lawyer's staff ("

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**execute**

v. 1) to finish, complete or perform as required, as in fulfilling one's obligations under a contract or a court order. 2) to sign and otherwise complete a document, such as acknowledging the signature if required to make the document valid. 3) to seize property under court order. 4) to put to death pursuant to a sentence rendered by a court.

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**executed**

1) adj. to have been completed. (Example: "it is an executed contract") 2) v. to have completed or fully performed. (Example: "he executed all the promises made in the contract") 3) v. completed and formally signed a document, such as a deed, contract or lease. 4) v. to have been put to death for a crime pursuant to a death sentence.

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**execution**

n. 1) the act of getting an officer of the court to take possession of the property of a losing party in a lawsuit (judgment debtor) on behalf of the winner (judgment creditor), sell it and use the proceeds to pay the judgment. The procedure is to take the judgment to the clerk of the court and have a writ of execution issued which is taken to the sheriff (or marshal, constable or other authorized

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**executive clemency**

n. the power of a President in federal criminal cases, and the Governor in state convictions, to pardon a person convicted of a crime, commute the sentence (shorten it, often to time already served) or reduce it from death to another lesser sentence. There are many reasons for exercising this power, including real doubts about the guilt of the party, apparent excessive sentence, humanitarian reason

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**executive order**

n. a President's or Governor's declaration which has the force of law, usually based on existing statutory powers, and requiring no action by the Congress or state legislature.

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**executory**

adj. something not yet performed or done. Examples: an executory contract is one in which all or part of the required performance has not been done; an executory bequest is a gift under a will which has not been distributed to the beneficiary.

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**executory interest**

n. an interest in property (particularly real estate) which will only pass to another in the future, or never, if certain events occur.

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**exemplary damages**

n. often called punitive damages, these are damages requested and/or awarded in a lawsuit when the defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton or grossly reckless. Examples of acts warranting exemplary damages: publishing that someone had committed murders when the publisher knew it was not true but hated the person; an ex-husband trashes his former wife's auto

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**exemption**

n. 1) in income taxation, a credit given for each dependent, blindness or other disability, and age over 65, which result in a downward calculation in tax levels. These are not to be confused with deductions, which reduce gross income upon which taxes are paid. 2) a right to be excluded from, such as not being subject to attachment of one's wages if one is in a low-income bracket, or not being sub

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**expectancy**

n. a possibility of future enjoyment of something one counts on receiving, usually referring to real property or the estate of a deceased person, such as a remainder, reversion, or distribution after the death of someone who has use for life.

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**expense**

n. in business accounting and business taxation, any current cost of operation, such as rent, utilities and payroll, as distinguished from capital expenditure for long-term property and equipment.

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**expert testimony**

n. opinions stated during trial or deposition (testimony under oath before trial) by a specialist qualified as an expert on a subject relevant to a lawsuit or a criminal case.

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**expert witness**

n. a person who is a specialist in a subject, often technical, who may present his/her expert opinion without having been a witness to any occurrence relating to the lawsuit or criminal case. It is an exception to the rule against giving an opinion in trial, provided that the expert is qualified by evidence of his/her expertise, training and special knowledge. If the expertise is challenged, the a

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**express**

adj. direct, unambiguous, distinct language, particularly in a contract, which does not require thought, guessing, inference or implication to determine the meaning.

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**express contract**

n. a contract in which all elements are specifically stated (offer, acceptance, consideration), and the terms are stated, as compared to an "implied" contract in which the existence of the contract is assumed by the

circumstances.

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**extension**

n. granting of a specific amount of extra time to make a payment, file a legal document after the date due or continue a lease after the original expiration of the term.

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**extenuating circumstances**

n. surrounding factors (sometimes called mitigation) which make a crime appear less serious, less aggravated or without criminal intent, and thus warranting a more lenient punishment or lesser charge (manslaughter rather than murder, for example).

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**extinguishment**

n. the cancellation or destruction of a right, quite often because the time for enforcement has passed. Example: waiting more than four years after the due date to make a demand for payment on a promissory note wipes out the person's right to collect the money owed to him/her. It can also occur by fulfilling the obligation so no further money or performance is due.

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**extrajudicial**

adj. referring to actions outside the judicial (court) system, such as an extralegal confession, which, if brought in as evidence, may be recognized by the judge during a trial.

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**extraordinary fees**

n. attorneys' fees claimed, usually in the administration of a dead person's estate, for work beyond the normal, including filing collection suits, preparing tax returns or requiring unusual effort beneficial to the estate. This claim is in addition to the usual statutory or court-approved legal fees. The attorney must submit proof of time, effort and benefit to justify the claim, and the final de

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**extreme cruelty**

n. an archaic requirement to show infliction of physical or mental harm by one of the parties to his/her spouse to support a judgment of divorce or an unequal division of the couple's property. All states except Illinois and South Dakota recognize "no fault" divorces, but in some states evidence of cruelty may result in division of property favoring the suffering spouse (victim).

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**extrinsic fraud**

n. fraudulent acts which keep a person from obtaining information about his/her rights to enforce a contract or getting evidence to defend against a lawsuit. This could include destroying evidence or misleading an ignorant person about the right to sue. Extrinsic fraud is distinguished from "intrinsic fraud," which is the fraud that is the subject of a lawsuit.

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**eyewitness**

n. a person who has actually seen an event and can so testify in court.

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**face amount**

n. the original amount due on a promissory note or insurance policy as stated therein, without calculating interest.

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**face value**

n. in shares of stock, the original cost of the stock shown on the certificate, or "par value."

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**fact**

n. an actual thing or happening, which must be proved at trial by presentation of evidence and which is evaluated by the finder of fact (a jury in a jury trial, or by the judge if he/she sits without a jury).

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**fact finder (finder of fact)**

n. in a trial of a lawsuit or criminal prosecution, the jury or judge (if there is no jury) who decides if facts have been proven. Occasionally a judge may appoint a "special master" to investigate and report on the existence of certain facts.

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**factor**

n. 1) a salesman who sells in his/her own name on behalf of others, taking a commission for services. 2) something that contributes to the result.

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**fair trade laws**

n. state laws which permit manufacturers or producers to set minimum rates for resale of the product. They have been

repealed or found violative of state constitutions in many states.

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**false arrest**

n. physically detaining someone without the legal right to do so. Quite often this involves private security people or other owners or employees of retail establishments who hold someone without having seen a crime committed in their presence or pretend that they are police officers. While they may be entitled to make a "citizen's arrest" they had better be sure that they have a person who has com

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**false pretenses**

n. the crime of knowingly making untrue statements for the purpose of obtaining money or property fraudulently. This can range from claiming zircons are diamonds and turning back the odometer on a car, to falsely stating that a mine has been producing gold when it has not. It is one form of theft.

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**family**

n. 1) husband, wife and children. 2) all blood relations. 3) all who live in the same household including servants and relatives, with some person or persons directing this economic and social unit.

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**family purpose doctrine**

n. a rule of law that the registered owner of an automobile is responsible for damages to anyone injured when the auto is driven by a member of the family with or without the owner's permission. The theory of this liability is that the vehicle is owned for family purposes. This doctrine is the law in some states instead of making a registered owner liable for damages caused by anyone driving his/h

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**federal courts**

n. the court system which handles civil and criminal cases based on jurisdictions enumerated in the Constitution and federal statutes. They include federal district courts which are trial courts, district courts of appeals and the U.S. Supreme Court, as well as specialized courts such as bankruptcy, tax, claims (against the government) and veterans' appeals.

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**federal question**

n. one basis for filing a lawsuit in federal district court is that it is based on subjects enumerated in the U.S. Constitution or when a federal statute is involved. Thus, existence of such a federal question gives the federal court jurisdiction.

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**Federal Tort Claims Act**

n. a statute (1948) which removed the power of the federal government to claim immunity from a lawsuit for damages due to negligent or intentional injury by a federal employee in the scope of his/her work for the government. It also established a set of regulations and format for making claims, giving jurisdiction to federal district courts.

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**fee**

n. 1) absolute title in land, from old French, fief, for "payment," since lands were originally given by lords to those who served them. It often appears in deeds which transfer title as "Mary Jo Rock grants to Howard Takitall in fee..." or similar phrasing. The word "fee" can be modified to show that the title was "conditional" on some occurrence or could be terminated ("determinable") upon a futur

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**felon**

n. a person who has been convicted of a felony, which is a crime punishable by death or a term in state or federal prison.

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**felonious**

adj. referring to an act done with criminal intent. The term is used to distinguish between a wrong which was not malicious, and an intentional crime, as in "felonious assault," which is an attack meant to do real harm.

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**felony murder doctrine**

n. a rule of criminal statutes that any death which occurs during the commission of a felony is first degree murder, and all participants in that felony or attempted felony can be charged with and found guilty of murder. A typical example is a robbery involving more than one criminal, in which one of them shoots, beats to death or runs over a store clerk, killing the clerk. Even if the death were

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**fertile octogenarian**

n. an unrealistic notion that any person (male or female) is capable of having a child no matter at what age, infirmity or physical deficiency. Thus, if property title could not pass to one's child as long as he or she might have or acquire a sibling, then he/she must wait until mother and dad have actually died, unnecessarily tying up the property. Most states have passed laws to cure this anomal

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**fictitious defendants**

n. when a party suing (plaintiff) is not sure if he/she knows if there are unknown persons involved in the incident or the

business being sued, there are named fictitious persons, usually designated Doe I, Doe II, and so forth, or "Green and Red Company," with an allegation in the complaint that if and when the true names are discovered they will be inserted in the complaint by amendment. Naming f

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**fiduciary relationship**

n. where one person places complete confidence in another in regard to a particular transaction or one's general affairs or business. The relationship is not necessarily formally or legally established as in a declaration of trust, but can be one of moral or personal responsibility, due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is ha

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**fighting words**

n. words intentionally directed toward another person which are so nasty and full of malice as to cause the hearer to suffer emotional distress or incite him/her to immediately retaliate physically (hit, stab, shoot, etc.). While such words are not an excuse or defense for a retaliatory assault and battery, if they are threatening they can form the basis for a lawsuit for assault.

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**final judgment**

n. the written determination of a lawsuit by the judge who presided at trial (or heard a successful motion to dismiss or a stipulation for judgment), which renders (makes) rulings on all issues and completes the case unless it is appealed to a higher court. It is also called a final decree or final decision.

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**final settlement**

n. an agreement reached by the parties to a lawsuit, usually in writing and/or read into the record in court, settling all issues. Usually there are elements of compromise, waiver of any right to reopen or appeal the matter even if there is information found later which would change matters (such as recurrence of a problem with an injury), mutual release of any further claim by each party, a state

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**finding**

n. the determination of a factual question vital (contributing) to a decision in a case by the trier of fact (jury or judge sitting without a jury) after a trial of a lawsuit, often referred to as findings of fact. A finding of fact is distinguished from a conclusion of law which is determined by the judge as the sole legal expert. Findings of fact and conclusions of law, need not be made if waive

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**finding of fact**

n. the determination of a factual question vital (contributing) to a decision in a case by the trier of fact (jury or judge sitting without a jury) after a trial of a lawsuit, often referred to as findings of fact. A finding of fact is distinguished from a conclusion of law which is determined by the judge as the sole legal expert. Findings of fact and conclusions of law, need not be made if waive

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**firm offer**

n. in contract law, an offer (usually in writing) which states it may not be withdrawn, revoked or amended for a specific period of time. If the offer is accepted without a change during that period, there is a firm, enforceable contract.

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**first degree murder**

n. although it varies from state to state, it is generally a killing which is deliberate and premeditated (planned, after lying in wait, by poison or as part of a scheme), in conjunction with felonies such as rape, burglary, arson, or involving multiple deaths, the killing of certain types of people (such as a child, a police officer, a prison guard, a fellow prisoner), or certain weapons, particu

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**first impression**

adj. referring to a legal issue which has never been decided by an appeals court and, therefore, there is no precedent for the court to follow. To reach a decision the court must use its own logic, analogies from prior rulings by appeals courts and refer to commentaries and articles by legal scholars. In such cases the trial judge usually asks for legal briefs by attorneys for both sides to assist

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**flight**

n. running away or hiding by a person officially accused of a crime with the apparent intent of avoiding arrest or prosecution.

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**floating easement**

n. an easement (a right to use another's property for a particular purpose) which allows access and/or egress but does not spell out the exact dimensions and location of the easement.

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**for value received**

prep. a phrase used in a promissory note, a bill of exchange or a deed to show that some consideration (value) has been given without stating what that payment was.

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**forced sale**

n. a sale of goods seized by the sheriff to satisfy (pay) a judgment.

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**forcible entry**

n. the crime of taking possession of a house or other structure or land by the use of physical force or serious threats against the occupants. This can include breaking windows or doors or using terror to gain entry, as well as forcing the occupants out by threat or violence after having come in peacefully.

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**foreclosure sale**

n. the actual forced sale of real property at a public auction (often on the courthouse steps following public notice posted at the courthouse and published in a local newspaper) after foreclosure on that property as security under a mortgage or deed of trust for a loan that is substantially delinquent. The lender who has not been paid may bid for the property, using his/her/its own unpaid note to

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**foreign corporation**

n. a corporation which is incorporated under the laws of a different state or nation. A "foreign" corporation must file a notice of doing business in any state in which it does substantial regular business. It must name an "agent for acceptance of service" in that state, or the Secretary of State in some jurisdictions will automatically be that agent so people doing business with a foreign corpora

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**forensic**

1) adj. from Latin forensis for "belonging to the forum," ancient Rome's site for public debate and currently meaning pertaining to the courts. Thus, forensic testimony or forensic medicine are used to assist the court or the attorneys in legal matters, including trials.

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**forensic medicine**

n. research, reports and testimony in court by experts in medical science to assist in determining a legal question. Cause of death is a common issue determined by pathologists who may be coroners or medical examiners.

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**forensic testimony**

n. any testimony of expert scientific, engineering, economic or other specialized nature used to assist the court and the lawyers in a lawsuit or prosecution.

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**forensics**

n. public speaking or argumentation.

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**foreseeability**

n. reasonable anticipation of the possible results of an action, such as what may happen if one is negligent or consequential damages resulting from breach of a contract.

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**foreseeable risk**

n. a danger which a reasonable person should anticipate as the result from his/her actions. Foreseeable risk is a common affirmative defense put up as a response by defendants in lawsuits for negligence. A skier hits a bump on a ski run, falls and breaks his leg. This is a foreseeable risk of skiing. A mother is severely injured while accompanying her child on a roller coaster when the car jumps t

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**forfeit**

v. to lose property or rights involuntarily as a penalty for violation of law. Example: the government can take automobiles or houses which are used for illegal drug trafficking or manufacture. A drug pusher may forfeit his/her car (property) if caught carrying drugs in it and found guilty. A parent may have to forfeit his/her house if his/her daughter is selling drugs from the house, even though

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**forgery**

n. a person who commits the crime of forgery, by making false documents or signatures.

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**forgery**

n. 1) the crime of creating a false document, altering a document, or writing a false signature for the illegal benefit of the person making the forgery. This includes improperly filling in a blank document, like an automobile purchase contract, over a buyer's signature, with the terms different from those agreed. It does not include such innocent representation as a staff member autographing phot

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**fornication**

n. sexual intercourse between a man and woman who are not married to each other. This usage comes from Latin *fornicari*, meaning vaulted, which became the nickname for brothel, because prostitutes operated in a vaulted underground cavern in Rome. Fornication is still a misdemeanor in some states, as is adultery (sexual intercourse by a married person with someone not his/her spouse), but is virtual

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**forthwith**

adv. a term found in contracts, court orders and statutes, meaning as soon as it can be reasonably done. It implies immediacy, with no excuses for delay.

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**forum non conveniens**

(for-uhm nahn cahn-vee-nee-ehns) n. Latin for a forum which is not convenient. This doctrine is employed when the court chosen by the plaintiff (the party suing) is inconvenient for witnesses or poses an undue hardship on the defendants, who must petition the court for an order transferring the case to a more convenient court. A typical example is a lawsuit arising from an accident involving an ou

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**four corners of an instrument**

n. the term for studying an entire document to understand its meaning, without reference to anything outside of the document ("extrinsic evidence"), such as the circumstances surrounding its writing or the history of the party signing it. If possible a document should be construed based on what lies within its four corners, unless such examination cannot solve an ambiguity in its language.

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**franchise**

1) n. a right granted by the government to a person or corporation, such as a taxi permit, bus route, an airline's use of a public airport, business license or corporate existence. 2) n. the right to vote in a public election. 3) v. to grant (for a periodic fee or share of profits) the right to operate a business or sell goods or services under a brand or chain name. Well-known franchise operation

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**franchise tax**

n. a state tax on corporations or businesses.

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**fraud in the inducement**

n. the use of deceit or trick to cause someone to act to his/her disadvantage, such as signing an agreement or deeding away real property. The heart of this type of fraud is misleading the other party as to the facts upon which he/she will base his/her decision to act. Example: "there will be tax advantages to you if you let me take title to your property," or "you don't have to read the rest of t

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**free and clear**

adj. referring to the ownership of real property upon which there is no lien, encumbrance, recorded judgment or the right of anyone to make a claim against the property. The term is used in contracts for sale of real property and deeds, to state that the title has no claim against it.

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**free on board (FOB)**

adj. referring to purchased goods shipped without transportation charge to a specific place. Free on board at the place of manufacture shows there is a charge for delivery. Example: if an automaker in Detroit sells a car "FOB Detroit," then there will be a shipping charge if delivery is taken anywhere else. If the contract reads "FOB New Orleans," then the auto will be shipped to that city without

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**fresh pursuit**

n. immediate chase of a suspected criminal by a law enforcement officer, in which situation the officer may arrest the suspect without a warrant. It can also refer to chasing a suspect or escaped felon into a neighboring jurisdiction in an emergency, as distinguished from entering another jurisdiction with time to alert law enforcement people in that area. Example: when a deputy sheriff from Montg

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**frisk**

v. quickly patting down the clothes of a possible criminal suspect to determine if there is a concealed weapon. This police action is generally considered legal (constitutional) without a search warrant. Generally it is preferred that women officers frisk women and men officers frisk men.

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**frivolous**

adj. referring to a legal move in a lawsuit clearly intended merely to harass, delay or embarrass the opposition. Frivolous acts can include filing the lawsuit itself, a baseless motion for a legal ruling, an answer of a defendant to a complaint which does not deny, contest, prove or controvert anything, or an appeal which contains not a single arguable basis (by any stretch of the imagination) fo

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**fruit of the poisonous tree**

n. in criminal law, the doctrine that evidence discovered due to information found through illegal search or other unconstitutional means (such as a forced confession) may not be introduced by a prosecutor. The theory is that the tree (original illegal evidence) is poisoned and thus taints what grows from it. For example, as part of a coerced admission made without giving a prime suspect the so-ca

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**frustration of purpose**

n. sometimes called commercial frustration, when unexpected events arise which make a contract impossible to be performed, entitling the frustrated party to rescind the contract without paying damages. Example: Jack Appleseller contracts to buy a commercial building to rent out, and, while the sale is pending, the building is condemned by the city as unsafe for any use. Mr. Appleseller can back ou

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**fugitive from justice**

n. a person convicted or accused of a crime who hides from law enforcement in the state or flees across state lines to avoid arrest or punishment. Under Article IV, Section 2 of the U.S. Constitution, Governors are required to "deliver up" and return any fugitives from justice to the state where they allegedly committed the crime, a process called extradition.

---

**full disclosure**

n. the need in business transactions to tell the "whole truth" about any matter which the other party should know in deciding to buy or contract. In real estate sales in many states there is a full disclosure form which must be filled out and signed under penalty of perjury for knowingly falsifying or concealing any significant fact.

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**full faith and credit**

n. the provision in Article IV, Section 1 of the U.S. Constitution which states: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other state." Thus, a judgment in a lawsuit or a criminal conviction rendered in one state shall be recognized and enforced in any other state, so long as the original judgment was reached by due process o

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**fungible things**

n. sometimes merely called "fungibles," goods which are interchangeable, often sold or delivered in bulk, since any one of them is as good as another. Grain or gravel are fungibles, as are securities which are identical.

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**gag order**

n. a judge's order prohibiting the attorneys and the parties to a pending lawsuit or criminal prosecution from talking to the media or the public about the case. The supposed intent is to prevent prejudice due to pre-trial publicity which would influence potential jurors. A gag order has the secondary purpose of preventing the lawyers from trying the case in the press and on television, and thus c

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**garnishee**

n. a person or entity, quite often a bank or employer, which receives a court order not to release funds held for or owed to a customer or employee, pending further order of the court.

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**gender bias**

n. unequal treatment in employment opportunity (such as promotion, pay, benefits and privileges), and expectations due to attitudes based on the sex of an employee or group of employees. Gender bias can be a legitimate basis for a lawsuit under anti-discrimination statutes.

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**general appearance**

n. an attorney's representation of a client in court for all purposes connected with a pending lawsuit or prosecution. After "appearing" in court, the attorney is then responsible for all future appearances in court unless officially relieved by court order or substitution of another attorney. A lawyer may be leery of making a general appearance unless all details of representation (such as the am

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**general damages**

n. monetary recovery (money won) in a lawsuit for injuries suffered (such as pain, suffering, inability to perform certain functions) or breach of contract for which there is no exact dollar value which can be calculated. They are distinguished from special damages, which are for specific costs, and from punitive (exemplary) damages for punishment and to set an example when malice, intent or gross

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**general denial**

n. a statement in an answer to a lawsuit or claim by a defendant in a lawsuit, in which the defendant denies everything

alleged in the complaint without specifically denying any allegation. It reads: "Defendant denies each and every allegation contained in the complaint on file herein," or similar inclusive language.

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**general plan**

n. a plan of a city, county or area which establishes zones for different types of development, uses, traffic patterns and future development.

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**generation skipping**

adj., adv. referring to gifts made through trusts by a grandparent to a grandchild, skipping one's child (the grandchild's parent). Originally intended to avoid or defer federal gift or estate taxes if paid through a "generation skipping trust," it is now subject to a generation skipping tax, and if made directly without a trust, the gift is as taxable as any large gift. In other words, although g

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**gift in contemplation of death**

n. (called a gift causa mortis by lawyers showing off their Latin), a gift of personal property (not real estate) by a person expecting to die soon due to ill health or age. Federal tax law will recognize this reason for a gift if the giver dies within three years of the gift. Treating the gift as made in contemplation of death has the benefit of including the gift in the value of the estate, rath

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**gift tax**

n. federal tax on large gifts. Gifts to members of a family may be up to \$10,000 a year to each plus an additional \$30,000 accumulation of gifts is allowed tax-free. Several states also impose gift taxes. As with all tax questions, professional assistance in gift tax planning is vital.

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**go bail**

v. slang for putting up the bail money to get an accused defendant out of jail after an arrest or pending trial or appeal.

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**good cause**

n. a legally sufficient reason for a ruling or other action by a judge. The language is commonly: "There being good cause shown, the court orders...."

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**Good Samaritan rule**

n. from a Biblical story, if a volunteer comes to the aid of an injured or ill person who is a stranger, the person giving the aid owes the stranger a duty of being reasonably careful. In some circumstances negligence could result in a claim of negligent care if the injuries or illness were made worse by the volunteer's negligence. Thus, if Jack Goodguy sees a man lying by the road, a victim of a

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**good title**

n. ownership of real property which is totally free of claims against it and therefore can be sold, transferred or put up as security (placing a mortgage or deed of trust on the property).

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**goods**

n. items held for sale in the regular course of business, as in a retail store.

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**governmental immunity**

n. the doctrine from English common law that no governmental body can be sued unless it gives permission. This protection resulted in terrible injustices, since public hospitals, government drivers and other employees could be negligent with impunity (free) from judgment. The Federal Tort Claims Act and state waivers of immunity (with specific claims systems) have negated this rule, which stemmed

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**grace period**

n. a time stated in a contract in which a late payment or performance may be made without penalty. Often after the grace period ends without payment or performance by the person who is supposed to pay, the contract is suspended. Example: if a person does not pay his/her insurance payment (premium) by the stated deadline, he/she usually has a few days extra to pay before the absolute deadline. If t

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**grand larceny**

n. the crime of theft of another's property (including money) over a certain value (for example, \$500), as distinguished from petty (or petit) larceny in which the value is below the grand larceny limit. Some states only recognize the crime of larceny, but draw the line between a felony (punishable by state prison time) and a misdemeanor (local jail and/or fine) based on the value of the loot.

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**grand theft**

n. the crime of theft of another's property (including money) over a certain value (for example, \$500), as distinguished

from petty (or petit) larceny in which the value is below the grand larceny limit. Some states only recognize the crime of larceny, but draw the line between a felony (punishable by state prison time) and a misdemeanor (local jail and/or fine) based on the value of the loot.

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**grandfathered in**

adj. refers to continued allowed use of property as it was when restrictions or zoning ordinances were adopted.

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**grant**

v. to transfer real property from a title holder (grantor) or holders to another (grantee) with or without payment. However, there is an important difference between the types of deeds used. A grant deed warrants (guarantees) that the grantor (seller) has full right and title to the property, while a quitclaim deed only grants whatever the grantor owns (which may be nothing) and guarantees nothing

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**grantee**

n. the party who receives title to real property (buyer, recipient, donee) from the seller (grantor) by a document called a grant deed or quitclaim deed.

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**grantor-grantee index**

n. a set of books and/or computerized lists found in the office of every County Recorder or Recorder of Deeds which lists all recorded transfers of title by deed (as well as liens, mortgages, deeds of trust and other documents affecting title). Each yearly index is usually alphabetized by the last names of grantors (the party transferring title) and grantee (the recipients of title). The listing i

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**gratuitous**

adj. or adv. voluntary or free.

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**gross income**

n. in calculating income tax, the income of an individual or business from all sources before deducting allowable expenses, which will result in net income.

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**guarantee**

1) v. to pledge or agree to be responsible for another's debt or contractual performance if that other person does not pay or perform. Usually, the party receiving the guarantee will first try to collect or obtain performance from the debtor before trying to collect from the one making the guarantee (guarantor). 2) the promise to pay another's debt or fulfill contract obligations if that party fai

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**guest**

n. 1) in general, a person paying to stay in a hotel, motel or inn for a short time. 2) a person staying at another's residence without charge, called a "social guest." An important distinction is that a non-paying guest is not owed the duty of being provided a safe boarding space, as is a paying customer. Thus if a social guest trips on a slippery rug, he/she has no right to sue for negligence, b

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**guest statute**

n. a state law which sets standards of care by the driver of a car to a non-paying passenger. Although state laws vary, the basic concept is that the social passenger can bring suit for negligence against the driver for gross negligence only if the driver could have foreseen that his/her actions or car could put the rider in great peril. Examples: driving while drunk, going far over the speed limi

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**guilty**

adj. having been convicted of a crime or having admitted the commission of a crime by pleading "guilty" (saying you did it). A defendant may also be found guilty by a judge after a plea of "no contest," or in Latin nolo contendere. The term "guilty" is also sometimes applied to persons against whom a judgment has been found in a lawsuit for a civil wrong, such as negligence or some intentional act

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**habeas corpus**

(hay-bee-us core-puss) n. Latin for "you have the body," it is a writ (court order) which directs the law enforcement officials (prison administrators, police or sheriff) who have custody of a prisoner to appear in court with the prisoner to help the judge determine whether the prisoner is lawfully in prison or jail. The writ is obtained by petition to a judge in the county or district where the p

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**habitable**

adj. referring to a residence that is safe and can be occupied in reasonable comfort. Although standards vary by region,

the premises should be closed in against the weather, provide running water, access to decent toilets and bathing facilities, heating, and electricity. Particularly in multi-dwelling buildings freedom from noxious smells, noise and garbage are included in the standard. This can

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**habitual criminal**

n. under the statutes of many states, a person who has been convicted of either two or three felonies (or of numerous misdemeanors), a fact which may increase punishment for any further criminal convictions.

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**half blood**

1) adj. sharing one parent only. 2) n. a half brother or half sister. "Half blood" should not be confused with "half breed," which was a pejorative expression for a person born of parents of two races, particularly Native American and white.

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**harass**

(either harris or huh-rass) v. systematic and/or continual unwanted and annoying pestering, which often includes threats and demands. This can include lewd or offensive remarks, sexual advances, threatening telephone calls from collection agencies, hassling by police officers or bringing criminal charges without cause.

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**harmless error**

n. an error by a judge in the conduct of a trial which an appellate court finds is not sufficient for it to reverse or modify the lower court's judgment at trial. Harmless error would include: a technical error which has no bearing on the outcome of the trial, an error that was corrected (such as allowing testimony and then ordering it stricken and admonishing the jury to ignore it), the issue aff

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**headnote**

n. the summary of the key legal points determined by an appeals court, which appears just above each decision in published reports of cases. Headnotes are useful for a quick scan of the judgment, but they are the editor's remarks and not the court's.

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**heat of passion**

n. in a criminal case, when the accused was in an uncontrollable rage at the time of commission of the alleged crime. If so, it may reduce the charge, indictment or judgment down from murder to manslaughter, since the passion precluded the defendant having premeditation or being fully mentally capable of knowing what he/she was doing.

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**heiress**

n. feminine heir, often used to denote a woman who has received a large amount upon the death of a rich relative, as in the "department store heiress."

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**heirs of the body**

n. descendants of one's bloodline, such as children or grandchildren until such time as there are no direct descendants. If the bloodline runs out, the property will "revert" to the nearest relative traced back to the original owner.

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**held**

v. decided or ruled, as "the court held that the contract was valid."

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**hidden asset**

n. an item of value which does not show on the books of a business, often excluded for some improper purpose such as escaping taxation or hiding it from a bankruptcy trustee. However, there may be a legitimate business reason for not including all assets on a profit and loss statement.

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**highway**

n. any public street, road, turnpike or canal which any member of the public has the right to use, provided he/she/it follows the laws governing its use, such as having a driver's license if operating a vehicle. Thus, the use is really a privilege and not an absolute right.

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**hit and run**

n. the crime of a driver of a vehicle who is involved in a collision with another vehicle, property or human being, who knowingly fails to stop to give his/her name, license number and other information as required by statute to the injured party, a witness or law enforcement officers. If there is only property damage and no other person is present, leaving the information attached to the damaged

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**hobby loss**

hobby loss . in income tax, a loss from a business activity engaged in more for enjoyment than for profit, which can be deducted against annual income only.

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**hold harmless**

n. a promise to pay any costs or claims which may result from an agreement. Quite often this is part of a settlement agreement, in which one party is concerned that there might be unknown lawsuits or claims stemming from the situation, so the other party agrees to cover them.

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**holder**

n. a general term for anyone in possession of property, but usually referring to anyone holding a promissory note, check, bond or other paper, either handed to the holder (delivery) or signed over by endorsement, for which he/she/it is entitled to receive payment as stated in the document.

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**holder in due course**

n. one holding a check or promissory note, received for value (he/she paid for it) in good faith and with no suspicion that it might be no good, claimed by another, overdue or previously dishonored (a bank had refused to pay since the account was overdrawn). Such a holder is entitled to payment by the maker of the check or note.

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**holding**

1) n. any ruling or decision of a court. 2) n. any real property to which one has title. 3) n. investment in a business. 4) v. keeping in one's possession.

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**holdover tenancy**

n. the situation when a tenant of real estate continues to occupy the premises without the owner's agreement after the original lease or rental agreement between the owner (landlord) and the tenant has expired. The tenant is responsible for payment of the monthly rental at the existing rate and terms, which the landlord may accept without admitting the legality of the occupancy. A holdover tenant

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**holographic will**

n. a will entirely handwritten, dated and signed by the testator (the person making the will), but not signed by required witnesses. Under those conditions it is valid in about half the states despite the lack of witnesses. A letter which has all the elements of a will can be a holographic will, as can a will scratched in the dust of an automobile hood of a person dying while lost in the desert.

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**home rule**

n. the power of a local city or county to set up its own system of governing and local ordinances without receiving a charter from the state which comes with certain requirements and limitations. The concept has become popular with so-called libertarians, survivalists and others who would like to divorce local government from as much state regulation as possible. However, few cities and counties h

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**hometowned**

adv. legalese for a lawyer or client suffering discrimination by a local judge who seems to favor local parties and/or attorneys over those from out of town.

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**hornbook law**

n. lawyer lingo for a fundamental and well-accepted legal principle that does not require any further explanation, since a hornbook is a primer of basics.

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**hostile possession**

n. occupancy of a piece of real property coupled with a claim of ownership (which may be implied by actions, such as putting in a fence) over anyone, including the holder of recorded title. It may be an element of gaining title through long-term adverse possession or claiming real estate which has no known owner.

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**house counsel**

n. any attorney who works only for a particular business.

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**household**

n. a family living together, all of whom need not be related.

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**hypothecate**

v. from Greek for "pledge," a generic term for using property to secure payment of a loan, which includes mortgages, pledges and putting up collateral, while the borrower retains possession.

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**Illusory promise**

A promise that is too indefinite to be legally enforceable or optional for the promisor to perform.

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**Immunity**

Exemption from a duty or penalty granted to a person or class or persons.

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**Impeach**

(a) To charge public official with wrongdoing while in office. (b) To challenge or discredit a witness's testimony.

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**in camera**

Latin for "in chambers." A legal proceeding is "in camera" when a hearing is held before the judge in her private chambers or when the public is excluded from the courtroom. Proceedings are often held in camera to protect victims and witnesses from public

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**In limine**

Latin: at the beginning or on the threshold.

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**In pari delicto**

Latin: both parties are equally at fault.

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**In Personam**

Regarding a person; a right, action, judgment or entitlement that is attached to a specific person(s).

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**In Rem**

Regarding a thing; proprietary in nature; a right or judgment related to the use or ownership of an item of property.

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**Incapacity**

To lack the legal, physical, or intellectual ability to stand trial, give consent, make a valid will.

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**incapacity**

(1) A lack of physical or mental abilities that results in a person's inability to manage his or her own personal care, property or finances. (2) A lack of ability to understand one's actions when making a will or other legal document.

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**Incompetency**

Lacking legal qualifications or physical, intellectual, or fitness to perform required duty.

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**Incorporeal**

Legal rights which are intangible such as copyrights or patents.

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**Incorporeal Hereditament**

An intangible right which is attached to property and which is inheritable.

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**Indefeasible**

A right or title in property that cannot be made void, defeated or canceled by any past event, error or omission in the title.

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**Indemnity**

Contract with a third-party to perform another's obligations if called upon to do so by the third-party, whether the other has defaulted or not.

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**Indictable Offence**

An offence which the government can opt to cause trial by a more formal process than by summary process.

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**Indictment**

The formal document that charges a person with a crime. It is on the basis of an indictment that an accused person must stand trial.

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**Indigenous**

Native to a particular territory.

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**Indigent**

Impoverished, unable to hire a lawyer or afford expense of criminal defense.

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**Infanticide**

Murder of an infant soon after its birth.

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**Information**

A sworn accusation of a crime signed by a public officer such as prosecutor that serves the same function as indictment.

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**Injunction**

Court document that prohibits a party or individual from performing a particular action, or orders the performance of a particular action.

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**Innocent Passage**

A term of international maritime law referring to a ship's right to enter and pass through a coastal state's territorial waters so long as it is not prejudicial to the peace, good order or security of the coastal state.

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**Insanity**

Unsoundness of mind that prevents a person from entering certain legal relationships and releases a person from criminal or civil responsibility

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**Insider trading**

Financial transactions based on material information not available to the public, punishable by civil and criminal penalties.

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**Insolence**

Insulting a supervisor at the workplace or within an employment contract.

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**Insolence**

Insulting a supervisor at the workplace or within an employment contract.

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**Insolvent**

Unable to pay debts as they become due.

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**Insubordination**

Willful failure to obey a supervisor's lawful orders.

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**Insurance**

System of protection in which one party agrees to guarantee another against specific damages or losses.

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**Intellectual Property**

As a type of property, intellectual property has that unique characteristic of being ethereal; of the mind, intangible, with no corporeal existence; hence, 'intellectual property'.

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**intentional tort**

A deliberate act that causes harm to another, for which the victim may sue the wrongdoer for damages. Acts of domestic violence, such as assault and battery, are intentional torts (as well as crimes).

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**Inter Alia**

Latin: 'among other things', 'for example' or 'including'.

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**Inter partes**

Latin: between parties.

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**Inter se**

Inter se - as between or amongst themselves. As between the parties.

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**Inter vivos**

From one living person to another, as in inter vivos gifts, trusts, etc.

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**Interim order**

A temporary court order; intended to be of limited duration, usually just until the court has had an opportunity of hearing the full case and make a final order.

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**Interlineation**

An addition of something to a document after it has been signed. Such additions are ignored unless they are initialed by the signatories and, if applicable, witnesses (eg. wills).

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**Interlocutory**

Proceedings taken during the course of, and incidental to a trial.

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**Interlocutory injunction**

An injunction which lasts only until the end of the trial during which the injunction was sought.

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**Interloper**

A person who, without legal right, runs a business (eg. without mandatory licenses), or who wrongfully interferes or intercepts another's business.

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**International law**

A combination of treaties and customs which regulates the conduct of states amongst themselves. The highest judicial authority of international law is the International Court of Justice and the administrative authority is the United Nations.

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**Internet**

A global computer network.

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**Intestate**

Dying without a will.

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**Intestate succession**

Distribution of property after death according to statute rather than according to wishes expressed in decedent's will.

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**Inure**

To take effect, to result; to come into operation.

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**Invitee**

A person invited, implicitly or explicitly, upon the real property of another.

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**Islamic Law**

The law according to the Muslim faith and as interpreted from the Koran.

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J.

n. abbreviation for Judge, as in the Hon. William B. Boone, J.

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**Jane Doe**

n. 1) a fictitious name used for a possible female defendant who is unknown at the time a complaint is filed to start a lawsuit. 2) the temporary fictitious name given to an unidentified hospitalized or dead woman.

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**jaywalking**

n. walking across a street outside of marked cross-walks, and not at a corner, and/or against a signal light. If there is vehicle traffic or clear markings of a place to cross, this is a traffic misdemeanor subject to fine, and may be (but not conclusively) contributory negligence in the event of injury to the jaywalker by a vehicle.

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**JD**

n. short for Juris Doctor, identifying the holder as having received that law degree.

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**jeopardy**

n. peril, particularly danger of being charged with or convicted of a particular crime. The U.S. Constitution guarantees in the Fifth Amendment that no one can "be twice put in jeopardy of life or limb" for the same offense. Thus, once a person has been acquitted, he/she may not be charged again for that crime. However, if there was a mistrial, hung jury or reversal of conviction on appeal (but th

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**jobber**

n. a merchant who buys products (usually in bulk or lots) and then sells them to various retailers. This middleman generally specializes in specific types of products, such as auto parts, electrical and plumbing materials, or petroleum. A jobber differs from a broker or agent, who buys and acts for specific clients.

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**John Doe**

n. 1) a fictitious name used for a possible male defendant who is unknown at the time a complaint is filed to start a lawsuit. 2) the temporary fictitious name given to an unidentified hospitalized or dead man.

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**joinder**

n. the joining together of several lawsuits or several parties all in one lawsuit, provided that the legal issues and the factual situation are the same for all plaintiffs and defendants. Joinder requires a) that one of the parties to one of the lawsuits make a motion to join the suits and the parties in a single case; b) notice must be made to all parties; c) there must be a hearing before a judge

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**joinder of issue**

n. that point in a lawsuit when the defendant has challenged (denied) some or all of plaintiff's allegations of facts, and/or when it is known which legal questions are in dispute. This is stated in the expression: "the issue is joined," in the same manner as a military man would say: "the battle has been joined," meaning the fight is underway. Thus, the pre-trial legal underbrush has been cleared

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**joint**

adj., adv. referring to property, rights or obligations which are united, undivided and shared by two or more persons or entities. Thus, a joint property held by both cannot be effectively transferred unless all owners join in the transaction. If a creditor sues to collect a joint debt, he/she must include all the debtors in the lawsuit, unless the debt is specifically "joint and several," meaning

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**joint adventure**

n. when two or more people go together on a trip or some other action, not necessarily for profit, which may make them all liable for an accident or debt arising out of the activity.

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**joint and several**

adj. referring to a debt or a judgment for negligence, in which each debtor (one who owes) or each judgment defendant (one who has a judgment against him/her) is responsible (liable) for the entire amount of the debt or judgment. Thus, in drafting a promissory note for a debt, it is important to state that if there is more than one person owing the funds to be paid, the debt is joint and several,

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**joint enterprise**

n. a generic term for an activity of two or more people, usually (but not necessarily) for profit, which may include partnership, joint venture or any business in which more than one person invests, works, has equal management control and/or is otherwise involved for an agreed upon goal or purpose. One significant factor is that if a court finds that two or more people are involved in a joint enterprise

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**joint liability**

n. when two or more persons are both responsible for a debt, claim or judgment. It can be important to the person making the claim, as well as to a person who is sued, who can demand that anyone with joint liability for the alleged debt or claim for damages be joined in (brought into) the lawsuit.

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**joint powers agreement**

n. a contract between a city, a county and/or a special district in which the city or county agrees to perform services, cooperate with, or lend its powers to the special district or other government entity.

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**joint tortfeasors**

n. two or more persons whose negligence in a single accident or event causes damages to another person. In many cases the joint tortfeasors are jointly and severally liable for the damages, meaning that any of them can be responsible to pay the entire amount, no matter how unequal the negligence of each party was. Example: Harry Hotrod is doing 90 miles an hour along a two-lane road in the early evening

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**Jones Act**

n., adj. a federal law which covers injuries to crewmen at sea, gives jurisdiction to the federal courts and sets up various rules for conduct of these cases under maritime law. A claim for recompense (payment) for damages at sea is called a "Jones Act case."

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**judge**

1) n. an official with the authority and responsibility to preside in a court, try lawsuits and make legal rulings. Judges are almost always attorneys. In some states, "justices of the peace" may need only to pass a test, and federal and state "administrative law judges" are often lawyer or non-lawyer hearing officers specializing in the subject matter upon which they are asked to rule. The word "judge"

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**judge advocate**

n. a military officer with legal training who has the mixed duties of giving advice on legal matters to the group of officers sitting as a court-martial (both judge and jury) and acting as the prosecutor of the accused serviceman or woman. A judge advocate holds responsibility to protect the accused from procedural improprieties such as questions from the members of the court.

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**judge advocate general**

(J.A.G.) n. a military officer who advises the government on courts-martial and administers the conduct of courts-martial. The officers who are judge advocates and counsel assigned to the accused come from the office of the judge advocate general or are appointed by it to work on certain courts-martial.

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**judgment**

n. the final decision by a court in a lawsuit, criminal prosecution or appeal from a lower court's judgment, except for an "interlocutory judgment," which is tentative until a final judgment is made. The word "decree" is sometimes used as synonymous with judgment.

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**judgment by default**

n. if a defendant in a lawsuit fails to respond to a complaint in the time set by law (commonly 20 or 30 days), then the plaintiff (suer) can request that the default (failure) be entered into the court record by the clerk, which gives the plaintiff the right to get a default judgment. If the complaint was for a specific amount of money owed on a note, other money due, or a specific contract price

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**judgment creditor**

n. the winning plaintiff in a lawsuit to whom the court decides the defendant owes money. A judgment creditor can use various means to collect the judgment. The judgment is good for a specified number of years and then may be renewed by a filed request. If the defendant debtor files for bankruptcy, the judgment creditor will have priority (the right to share in assets) ahead of general creditors w

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**judgment debt**

n. the amount of money in a judgment award to the winning party, which is owed to the winner by the losing party.

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**judgment debtor**

n. the losing defendant in a lawsuit who owes the amount of the judgment to the winner.

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**judgment notwithstanding the verdict**

(N.O.V.) n. reversal of a jury's verdict by the trial judge when the judge believes there was no factual basis for the verdict or it was contrary to law. The judge will then enter a different verdict as "a matter of law." Essentially the judge should have required a "directed verdict" (instruction to the jury to return with a particular verdict since the facts allowed no other conclusion), and whe

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**judicial**

adj., adv. 1) referring to a judge, court or the court system. 2) fair.

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**judicial discretion**

n. the power of the judge to make decisions on some matters without being bound by precedent or strict rules established by statutes. On appeal a higher court will usually accept and confirm decisions of trial judges when exercising permitted discretion, unless capricious, showing a pattern of bias, or exercising discretion beyond his/her authority.

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**judicial foreclosure**

n. a judgment by a court in favor of foreclosure of a mortgage or deed of trust, which orders that the real property which secured the debt be sold under foreclosure proceedings to pay the debt. The party suing probably has chosen to seek a judicial foreclosure rather than use the foreclosure provisions of the mortgage or deed of trust. Usually this move is made to get a "deficiency judgment" for

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**judicial notice**

n. the authority of a judge to accept as facts certain matters which are of common knowledge from sources which guarantee accuracy or are a matter of official record, without the need for evidence establishing the fact. Examples of matters given judicial notice are public and court records, tides, times of sunset and sunrise, government rainfall and temperature records, known historic events or th

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**judicial proceedings**

n. any action by a judge re: trials, hearings, petitions or other matters formally before the court.

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**judicial sale**

n. a sale of goods by an official (keeper, trustee or sheriff) appointed by the court and ordered by a court, usually to satisfy a judgment or implement another order of the court. Such sales require public notice of time, place and a description of the goods to be sold.

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**jump bail**

v. to fail to appear for a court appearance after depositing (posting) bail with the intention of avoiding prosecution, sentencing or going to jail. Posting bail guarantees that the accused person will give up the money if he/she does not show up in court. It allows the accused person to remain free pending the final decision on his/her criminal case. In some circumstances a criminal defendant can

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**jurat**

(jur-at) n. Latin for "been sworn," the portion of an affidavit in which a person has sworn that the contents of his/her written statement are true, filled in by the notary public with the date, name of the person swearing, sometimes the place where sworn, and the name of the person before whom the oath was made. It reads generally: "Sworn to this 12th day of October, 1994, by Martha J. Milner, be

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**Juris Doctor**

(J.D.) n. the law degree granted upon graduation by many university law schools with accepted high standards of admission and grading. This often supersedes the Bachelor of Laws in recognition that the law curriculum entitles a person to a graduate degree.

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**jurist**

n. although it means any attorney or legal scholar, jurist popularly refers to a judge.

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**jury box**

n. the enclosed area in which the jury sits in assigned seats during a jury trial.

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**jury fees**

n. the rather minimal amount paid each day to jurors, plus payment for mileage from home to court. In criminal trials this amount is paid by the government (usually county government in state cases), but in civil lawsuits the jury fees are paid by the parties to the lawsuit in equal amounts. It is important for a party requesting a jury trial to deposit ("post") the first day's jury fees with the

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**jury of ones peers**

n. a guaranteed right of criminal defendants, in which "peer" means an "equal." This has been interpreted by courts to mean that the available jurors include a broad spectrum of the population, particularly of race, national origin and gender. Jury selection may include no process which excludes those of a particular race or intentionally narrows the spectrum of possible jurors. It does not mean t

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**jury panel**

n. the list from which jurors for a particular trial may be chosen.

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**jury selection**

n. the means by which a jury is chosen, with a panel of potential jurors called, questioning of the jury by the judge and attorneys (voir dire), dismissal for cause, peremptory challenges by the attorneys without stating a cause and finally impaneling of the jury.

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**jury stress**

n. a form of mental, emotional, psychological, physical and sexual tension found to affect juries in long trials due to exhaustion, sequestration, the mountain of evidence and the desire to do the right thing.

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**jury tampering**

n. the crime of attempting to influence a jury through any means other than presenting evidence and argument in court, including conversations about the case outside the court, offering bribes, making threats or asking acquaintances to intercede with a juror.

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**just compensation**

n. 1) in general a fair and reasonable amount of money to be paid for work performed or to make one "whole" after loss due to damages. 2) the full value to be paid for property taken by the government for public purposes guaranteed by the Fifth Amendment to the U.S. Constitution, which states: "...nor shall private property be taken for public use without just compensation." If the amount offered by

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**justice of the peace**

(JP) n. a judge who handles minor legal matters such as misdemeanors, small claims actions and traffic matters in "justice courts." Dating back to early English common law, "JPs" were very common up to the 1950s, but they now exist primarily in rural "justice districts" from which it is unreasonable for the public to travel to the county seat for trials of minor matters. In Nevada justices of the

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**justiciable**

n. referring to a matter which is capable of being decided by a court. Usually it is combined in such terms as: "justiciable issue," "justiciable cause of action" or "justiciable case."

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**justifiable homicide**

n. a killing without evil or criminal intent, for which there can be no blame, such as self-defense to protect oneself or to protect another or the shooting by a law enforcement officer in fulfilling his/her duties. This is not to be confused with a crime of passion or claim of diminished capacity, which refer to defenses aimed at reducing the penalty or degree of crime.

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**juvenile court**

n. a special court or department of a trial court which deals with under-age defendants charged with crimes or who are neglected or out of the control of their parents. The normal age of these defendants is under 18, but juvenile court does not have jurisdiction in cases in which minors are charged as adults. The procedure in juvenile court is not always adversarial (although the minor is entitled

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n. the shorthand symbol for "contract" used almost universally by lawyers and law students.

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**kidnapping**

(also spelled kidnaping) n. the taking of a person against his/her will (or from the control of a parent or guardian) from one place to another under circumstances in which the person so taken does not have freedom of movement, will, or decision through violence, force, threat or intimidation. Although it is not necessary that the purpose be criminal (since all kidnapping is a criminal felony) the

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**labor and materials**

(time and materials) n. what some builders or repair people contract to provide and be paid for, rather than a fixed price or a percentage of the costs. In many states, if the person performing the work is not a licensed contractor, he/she is limited to labor and materials in any lawsuit for contract payment, and may not receive a profit above that amount. Consumers who believe they will get a bet

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**land**

n. real property, real estate (and all that grows thereon), and the right to minerals underneath and the airspace over it. It may include improvements like buildings, but not necessarily. The owner of the land may give a long-term (like 99 years) lease to another with the right to build on it. The improvement is a "leasehold" for ownership of the right to use without ownership of the underlying la

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**landlady**

n. female of landlord or owner of real property from whom one rents or leases.

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**landlocked**

adj. referring to a parcel of real property which has no access or egress (entry or exit) to a public street and cannot be reached except by crossing another's property. In such a case there is an "implied easement" over the adjoining lot from which it was created (carved out).

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**landlord and tenant**

n. the name for the area of law concerning renting and leasing property and the rights of both the owner and the renter or lessee.

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**landlords lien**

n. the right of a landlord to sell abandoned personal property left on rented or leased premises by a former tenant to cover unpaid rent or damages to the property. However, to exercise this lien the landlord must carefully follow procedures which differ in each state, but generally require written notice to the ex-tenant and a public sale.

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**last antecedent rule**

n. a doctrine of interpretation (construction) of statutes that any qualifying words or phrases refer to the language immediately preceding the qualifier, unless common sense shows that it was meant to apply to something more distant or less obvious. Example: "The commercial vehicular license shall not apply to boats, tractors, and trucks, with only four wheels and under three tons...", the qualifie

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**last clear chance**

n. a rule of law in determining responsibility for damages caused by negligence, which provides that if the plaintiff (the party suing for damages) is negligent, that will not matter if the defendant (the party being sued for damages caused by his/her negligence) could have still avoided the accident by reasonable care in the final moments (no matter how slight) before the accident. The theory is

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#### **last will and testament**

n. a fancy and redundant way of saying "will." Lawyers and clients like the formal resonance of the language. Will and testament mean the same thing. A document will be the "last" will if the maker of it dies before writing another one.

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#### **latent defect**

n. a hidden flaw, weakness or imperfection in an article which a seller knows about, but the buyer cannot discover by reasonable inspection. It includes a hidden defect in the title to land, such as an incorrect property description. Generally, this entitles the purchaser to get his/her money back (rescind the deal) or get a replacement without a defect on the basis of "implied" warranty of quality

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#### **lateral support**

n. the right of a land- owner to assurance that his/her neighbor's land will provide support against any slippage, cave-in or landslide. Should the adjoining owner excavate into the soil for any reason (foundation, basement, leveling) then there must be a retaining wall constructed (or other protective engineering) to prevent a collapse. A classic example: a developer excavated into a hill along b

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#### **law**

n. 1) any system of regulations to govern the conduct of the people of a community, society or nation, in response to the need for regularity, consistency and justice based upon collective human experience. Custom or conduct governed by the force of the local king were replaced by laws almost as soon as man learned to write. The earliest lawbook was written about 2100 B.C. for Ur-Nammu, king of Ur

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#### **law and motion calendar**

n. a court calendar in which only motions and special legal arguments are heard.

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#### **law book**

n. any of numerous volumes dealing with law, including statutes, reports of cases, digests of cases, commentaries on particular topics, encyclopedias, textbooks, summaries of the law, dictionaries, legal forms and various combinations of these such as case reports with commentaries. Statutes of every state and the Federal Code are published, usually with comments, "annotations" and brief statement

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#### **law of admiralty**

n. statutes, customs and treaties dealing with actions on navigable waters. It is synonymous with maritime law.

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#### **law of the case**

n. once a judge has decided a legal question during the conduct of a lawsuit, he/she is unlikely to change his/her views and will respond that the ruling is the "law of the case."

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#### **law of the land**

n. a slang term for existing laws.

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#### **lawsuit**

n. a common term for a legal action by one person or entity against another person or entity, to be decided in a court of law, sometimes just called a "suit." The legal claims within a lawsuit are called "causes of action."

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#### **lay a foundation**

v. in evidence, to provide to the judge the qualification of a witness (particularly an expert witness) or a document or other piece of evidence which assures the court of the talent and experience of a witness or the authenticity of the document or article. Example: a medical report cannot be introduced unless the physician who wrote it testifies that he wrote it, or a photograph must be authentic

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#### **leading**

1) v. short for "leading the witness," in which the attorney during a trial or deposition asks questions in a form in which he/she puts words in the mouth of the witness or suggests the answer. Leading is improper if the attorney is questioning a witness called by that attorney and presumably friendly to the attorney's side of the case. Thus, the opposing attorney will object that a question is "I

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#### **leading the witness**

n. asking a question during a trial or deposition which puts words in the mouth of the witness or suggests the answer,

which is improper questioning of a witness called by that attorney, but is proper in cross-examination or allowed if a witness is declared by the judge to be a hostile or adverse witness.

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**legal**

adj., adv. according to law, not in violation of law or anything related to the law.

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**legal action**

n. any lawsuit, petition or prosecution.

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**legal advertising**

n. 1) notices of probate sales and other documents required by law to be published in court-approved local newspapers of general circulation. 2) commercials for the legal services of lawyers and law firms, which may range from television spots with actors to garish ads in telephone books' yellow pages. Such advertising would have been cause for disbarment for illegal solicitation of legal services

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**legal age**

n. the age at which a person is responsible for his/her own actions (including the capacity to enter into a contract which is enforceable by the other party), for damages for negligence or intentional wrongs without a parent being liable and for punishment as an adult for a crime. In almost all states the basic legal age is 18, which is the universal American voting age under the 26th Amendment to

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**legal aid society**

n. an organization formed to assist persons who have limited or no financial means but need legal help, usually sponsored by the local bar association's donations, sometimes with some local governmental financial support. Such societies examine the assets and income of the applicant, decide if the person has a legitimate need for legal services, give counselling, provide mediation, prepare simple

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**legal separation**

n. a court-decreed right to live apart, with the rights and obligations of divorced persons, but without divorce. The parties are still married and cannot remarry. A spouse may petition for a legal separation usually on the same basis as for a divorce, and include requests for child custody, alimony, child support and division of property. For people who want to avoid the supposed stigma of divorc

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**legal services**

n. the work performed by a lawyer for a client.

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**legal tender**

n. all money issued by the government.

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**legalese**

n. slang for the sometimes arcane, convoluted and specialized jargon of lawyers and legal scholars.

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**legatee**

n. a person or organization receiving a gift of an object or money under the terms of the will of a person who has died. Although technically a legatee does not receive real property (a devisee), "legatee" is often used to designate a person who takes anything pursuant (according) to the terms of a will. The best generic term is beneficiary, which avoids the old-fashioned distinctions between lega

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**legitimate**

adj., adv 1) legal, proper, real. 2) referring to a child born to parents who are married. A baby born to parents who are not married is illegitimate, but can be made legitimate (legitimized) by the subsequent marriage of the parents. 3) v. to make proper and/or legal.

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**lemon law**

lemon law n. statutes adopted in some states to make it easier for a buyer of a new vehicle to sue for damages or replacement if the dealer or manufacturer cannot make it run properly after a reasonable number of attempts to fix the car. Without a "lemon law" auto makers have often demanded the buyer come back a dozen times and give up use of the car for lengthy periods while they test it, claimi

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**lesser crime**

n. in criminal law, a crime which is proved by the same facts as a more serious crime. Example: Ignatz "Itchy" Fingers is charged with armed robbery, but the prosecution fails to prove Itchy used his pistol since the victims do not recall the gun, but does prove he took the jewels. Thus, he is convicted of larceny, which is a lesser form of theft and he will receive a lighter sentence. A common ex

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**lesser-included offense**

n. in criminal law, a crime which is proved by the same facts as a more serious crime. Example: Ignatz "Itchy" Fingers is charged with armed robbery, but the prosecution fails to prove Itchy used his pistol since the victims do not recall the gun, but does prove he took the jewels. Thus, he is convicted of larceny, which is a lesser form of theft and he will receive a lighter sentence. A common ex

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**let**

v. 1) to allow or permit. This is distinguished from "against one's will." The word can be very important legally, as in the statement "Lucy let Johnny have sexual relations with her," which can make a huge difference in a claim of rape. 2) to lease or rent real property, particularly a room or apartment, to another person.

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**letters**

n. shorthand for letters testamentary or letters of administration.

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**letters of administration**

n. a document issued by the court clerk which states the authority of the administrator of an estate of a person who has died, when there is no will or no available executor named by a will and an administrator has been appointed by the court. It is issued during probate of the estate as soon as the court approves the appointment of the administrator, who files a security bond if one is required.

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**leverage**

1) n. the use of borrowed money to purchase real estate or business assets, usually involving money equaling a high percentage of the value of the purchased property. 2) v. to borrow most of the funds necessary as a loan against real estate to buy other real estate or business assets. The dangers of high leverage are over-appraisal of the property to satisfy a lender, a decline in the value of the

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**levy**

1) v. to seize (take) property upon a writ of execution (an order to seize property) issued by the court to pay a money judgment granted in a lawsuit. The levy is actually made by a sheriff or other official at the request of the holder of the judgment (the winner in the lawsuit), and the property will be sold at a sheriff's sale to provide money to satisfy the unpaid judgment. 2) v. the act of a

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**lewd and lascivious**

adj., adv. references to conduct which includes people living together who are known not to be married, entertainment which aims at arousing the libido or primarily sexual sensation, open solicitation for prostitution or indecent exposure of genitalia (which is itself a crime). Due to the tendency of judges to be overly careful in writing about moral and/or sexual matters the definitions have been

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**libel per se**

n. broadcast or written publication of a false statement about another which accuses him/her of a crime, immoral acts, inability to perform his/her profession, having a loathsome disease (like syphilis) or dishonesty in business. Such claims are considered so obviously harmful that malice need not be proved to obtain a judgment for "general damages," and not just specific losses.

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**liberty**

n. freedom from restraint and the power to follow one's own will to choose a course of conduct. Liberty, like freedom, has its inherent restraint to act without harm to others and within the accepted rules of conduct for the benefit of the general public.

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**license**

1) n. governmental permission to perform a particular act (like getting married), conduct a particular business or occupation, operate machinery or vehicles after proving ability to do so safely or use property for a certain purpose. 2) n. the certificate that proves one has been granted authority to do something under governmental license. 3) n. a private grant of right to use real property for a

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**licensee**

n. a person given a license by the government or under private agreement.

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**licensor**

n. a person who gives another a license, particularly a private party doing so, such as a business giving someone a license to sell its product.

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**lie detector test**

n. a popular name for a polygraph which tests the physiological reaction of a person to questions asked by a testing expert. A potential or actual criminal defendant or possible witness cannot be forced or ordered to take a lie detector test. Some habitual liars pass lie detector tests, and innocent, honest people fail them due to nervousness and other factors. However, law enforcement authorities

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**lienor**

n. a person who holds a lien on another's property or funds.

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**life without possibility of parole**

n. a sentence sometimes given for particularly vicious criminals in murder cases or to repeat felons, particularly if the crime is committed in a state which has no death penalty, the jury chooses not to impose the death penalty, or the judge feels it is simpler to lock the prisoner up and "throw away the key" rather than invite years of appeals while the prisoner languishes on death row. Opponent

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**limitation of actions**

n. the period of time in which a person has to file with the clerk of the court or appropriate agency what he/she believes is a valid lawsuit or claim. The period varies greatly depending on what type of case is involved, whether the suit is against the government, whether it is by a minor, and most importantly, in what state or federal jurisdiction the right to sue arose. This is more commonly ca

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**limited jurisdiction**

n. courts' authority over certain types of cases such as bankruptcy, claims against the government, probate, family matters, immigration and customs or limitations on courts' authority to try cases involving maximum amounts of money or value.

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**limited liability**

n. the maximum amount a person participating in a business can lose or be charged in case of claims against the company or its bankruptcy. A stockholder in a corporation can only lose his/her investment, and a limited partner can only lose his/her investment, but a general partner can be responsible for all the debts of the partnership. Parties to a contract can limit the amount each might owe the

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**liquidate**

v. to sell the assets of a business, paying bills and dividing the remainder among shareholders, partners or other investors.

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**literary property**

n. the writings of an author which entitles him/her to the use of the work, including publication, and sale or license for a profit to others who will then have the right to publish it. Literary property includes books, articles, poetry, movie scripts, computer programs and any writing which lends itself to publication or use. A close question can arise when a professional writer sends letters to

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**litigant**

n. any party to a lawsuit. This means plaintiff, defendant, petitioner, respondent, cross-complainant and cross-defendant, but not a witness or attorney.

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**litigious**

adj. referring to a person who constantly brings or prolongs legal actions, particularly when the legal maneuvers are unnecessary or unfounded. Such persons often enjoy legal battles, controversy, the courtroom, the spotlight, use the courts to punish enemies, seek profit, and pursue minor matters which do not deserve judicial attention. Some of these people are called "professional plaintiffs."

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**living trust**

n. sometimes called an inter vivos (Latin for "within one's life") trust, a trust created by a declaration of trust executed by the trustor or trustors (also called settlor or settlors) during his/her/their lifetime, as distinguished from a "testamentary trust," which is created by a will and only comes into force upon the death of the person who wrote the will. A living trust should not be confus

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**loiter**

v. to linger or hang around in a public place or business where one has no particular or legal purpose. In many states, cities and towns there are statutes or ordinances against loitering by which the police can arrest someone who refuses to "move along." There is a question as to whether such laws are constitutional. However, there is often another criminal statute or ordinance which can be appli

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**long cause**

n. a lawsuit in which it is estimated that a trial will take more than one day. In many courts the so-called "short cause" cases will be scheduled more quickly than long cause cases, since "short cause" cases are easier to fit into busy court calendars. If a trial estimated as a "short cause" turns out to take longer than one day, the judge may declare a mistrial and force the parties to try the c

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#### **long-arm statute**

n. law which gives a local state court jurisdiction over an out-of-state company or individual whose actions caused damage locally or to a local resident. The legal test is whether the out-of-state defendant has contacts within the state which are "sufficiently substantial." An accident or injury within the state usually shows such a substantial contact. This is particularly important when a drive

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#### **loss**

n. 1) the value placed on injury or damages due to an accident caused by another's negligence, a breach of contract or other wrongdoing. The amount of monetary damages can be determined in a lawsuit. 2) when expenses are greater than profits, the difference between the amount of money spent and the income.

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#### **loss of bargain**

n. the inability to complete a sale or other business deal, caused by another's breach of contract, intentional interference with one's business, negligence or some other wrongdoing. The amount of monetary damages resulting from this loss can be determined in a lawsuit.

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#### **loss of consortium**

n. the inability of one's spouse to have normal marital relations, which is a euphemism for sexual intercourse. Such loss arises as a claim for damages when a spouse has been injured and cannot participate in sexual relations for a period of time or permanently due to the injury, or suffers from mental distress, due to a defendant's wrongdoing, which interferes with usual sexual activity. Thus, th

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#### **loss of use**

n. the inability to use an automobile, premises or some equipment due to damage to the vehicle, premises or articles caused by the negligence or other wrongdoing of another. Examples: compensation for each day a car is out of commission during repairs or for the period of non-occupancy while a burned building is restored. A common standard of compensation (payment) is rental value of the automobil

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#### **lower court**

n. 1) any court of lesser rank, such as municipal or justice court below a superior or county court, a superior or county court below an appeals court, or a federal District Court of Appeals below the U.S. Supreme Court. 2) a reference in an appeal to the trial court which originally heard the case. Typical language in an appeals decision: "In the lower court, the judge ruled Defendant had no basi

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#### **M. O.**

n. slang for modus operandi, the way or pattern in which a repeat criminal usually commits his/her crime.

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#### **M. Naughten rule**

n. a traditional "right and wrong" test of legal insanity in criminal prosecutions. Under M'Naughten (its name comes from the trial of a notorious English assassin in the early 1800s), a defendant is legally insane if he/she cannot distinguish between right and wrong in regard to the crime with which he/she is charged. If the judge or the jury finds that the accused could not tell the difference,

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#### **magistrate**

n. 1) a generic term for any judge of a court, or anyone officially performing a judge's functions. 2) in a few states, an officer of the court at the lowest level who hears small claims lawsuits, serves as a judge for charges of minor crimes and/or conducts preliminary hearings in criminal cases to determine if there is enough evidence presented by the prosecution to hold the accused for trial. 3

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#### **mail box rule**

n. in contract law, making a written offer or acceptance of offer valid if sent in the mail, with postage, within the time in which the offer must be accepted, unless the offer requires acceptance by personal delivery on or before the specified date. The rule may also apply to mailing payments of insurance premiums when due. However, relying on this so-called "rule" can be dangerous, since the par

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#### **maim**

v. to inflict a serious bodily injury, including mutilation or any harm which limits the victim's ability to function physically.

Originally, in English common law it meant to cut off or permanently cripple a body part like an arm, leg, hand or foot. In criminal law, such serious harm becomes an "aggravated" assault, which is a felony subject to a prison term.

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**make**

v. 1) to create something. 2) to sign a check, promissory note, bill of exchange or some other note which guarantees, promises or orders payment of money.

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**make one whole**

v. to pay or award damages sufficient to put the party who was damaged back into the position he/she would have been in without the fault of another.

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**maker**

n. 1) the person who signs a check or promissory note, which makes him/her responsible for payment. 2) a person who endorses a check or note over to another person before it is delivered, making the endorser obligated to pay until it is delivered.

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**malum in se**

(mal-uhm in say) adv. Latin referring to an act that is "wrong in itself," in its very nature being illegal because it violates the natural, moral or public principles of a civilized society. In criminal law it is one of the collection of crimes which are traditional and not just created by statute, which are "malum prohibitum." Example: murder, rape, burglary and robbery are malum in se, while vi

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**malum prohibitum**

(mal-uhm prohibit-uhm) adj. Latin meaning "wrong due to being prohibited," which refers to crimes made so by statute, compared to crimes based on English common law and obvious violations of society's standards which are defined as malum in se. Statutory crimes include criminal violations of regulatory acts, "white collar crimes" such as improper use of insider information, issuance of stocks with

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**mandate**

n. 1) any mandatory order or requirement under statute, regulation, or by a public agency. 2) order of an appeals court to a lower court (usually the original trial court in the case) to comply with an appeals court's ruling, such as holding a new trial, dismissing the case or releasing a prisoner whose conviction has been overturned. 3) same as the writ of mandamus, which orders a public official

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**mandatory joinder**

n. the required inclusion of a party in a lawsuit whom the court finds is absolutely necessary to a resolution of all issues in the case.

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**Mann Act**

n. a federal statute making it a crime to transport a woman across state lines for "immoral" purposes. The Mann Act was intended to prevent the movement of prostitutes from one state to another or in and out of the country in the so-called "white slave" trade. However, it also applies to a male taking his under-age girlfriend to a love-nest in a neighboring state, or a female transporting an under

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**marital rights**

n. an old-fashioned expression for the rights of a husband (not rights of a wife) to sexual relations with his wife and to control her operation of the household.

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**mark**

n. an "X" made by a person who is illiterate or too weak to sign his/her full name, used in the expression "His Mark," or "Her Mark." On the rare occasion that this occurs, the "X" should be within or next to a notation such as "Theresa Testator, her mark." If the mark is intended as a signature to a will it should be formally witnessed (as signatures are) to make the will valid.

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**marked for identification**

adj. documents or objects presented during a trial before there has been testimony which confirms their authenticity and/or relevancy. Each item is given an exhibit identification letter or number and thus is marked for identification. The marked exhibits are actually introduced into evidence (made part of the official record) upon request of the lawyer offering the evidence and approval by the ju

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**market value**

n. the price which a seller of property would receive in an open market by negotiation, as distinguished from a "distress" price on a forced or foreclosure sale, or from an auction. Market value of real property is normally determined by a professional appraiser who makes comparisons to similar property sales in the area, which are often called "comparables."

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**marshal**

1) n. a federal court official who may serve papers and act as a law enforcement officer in keeping order in court, protecting federal officials, making arrests or participating in court-ordered police activities. Each district court has a federal marshal and a corps of deputies. 2) n. in several states, a law enforcement officer, similar to a sheriff or constable, who serves official documents an

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**master**

n. 1) employer, in the area of law known as "master and servant," which more properly should be called employer and employee. 2) a person, supposedly with special expertise, appointed by a judge to investigate a problem (such as whether a parent's home is appropriate for child visitation) and report back to the judge his/her findings and recommendations.

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**master and servant**

n. the body of law, including statutes and legal decisions which are precedents, which relates to the relationship of an employer and employee.

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**material representation**

n. a convincing statement made to induce someone to enter into a contract to which the person would not have agreed without that assertion. Thus, if the material representation proves not to be true or to be misleading, the contract can be rescinded or cancelled without liability.

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**material witness**

n. a person who apparently has information about the subject matter of a lawsuit or criminal prosecution which is significant enough to affect the outcome of the case or trial. Thus, the court must make every reasonable effort to allow such a witness to testify, including a continuance (delay in a trial) to accommodate him/her if late or temporarily unavailable.

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**matter of record**

n. anything, including testimony, evidence, rulings and sometimes arguments, which has been recorded by the court reporter or court clerk. It is an expression often heard in trials and legal arguments that "such and such is a matter of record" as distinguished from actions outside the court or discussions not written down or taped.

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**maturity**

n. 1) the date when the payment of the principal amount owed under the terms of a promissory note or bill of exchange becomes due. Quite often a note states that failure to pay interest or installment payments when due "accelerates" the note, making the "maturity date" immediate if such payments are demanded and not paid. 2) the age when one becomes an adult, which is 18 for most purposes.

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**maxims**

n. a collection of legal truisms which are used as "rules of thumb" by both judges and lawyers. They are listed in the codified statutes of most states, and include: "When the reason of a rule ceases, so should the rule itself." "He who consents to an act is not wronged by it." "No one can take advantage of his own wrong." "No one should suffer by the act of another." "He who takes the benefit mus

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**may**

v. a choice to act or not, or a promise of a possibility, as distinguished from "shall," which makes it imperative. 2) in statutes, and sometimes in contracts, the word "may" must be read in context to determine if it means an act is optional or mandatory, for it may be an imperative. The same careful analysis must be made of the word "shall." Non-lawyers tend to see the word "may" and think they

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**mayhem**

1) n. the criminal act of disabling, disfiguring or cutting off or making useless one of the members (leg, arm, hand, foot, eye) of another either intentionally or in a fight, called maiming. The serious nature of the injury makes mayhem a felony, which is called "aggravated assault" in most states. 2) v. to commit mayhem is to cause gross harm in an uncontrolled fashion.

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**McNabb-Mallory rule**

n. a federal rule of evidence in criminal trials that prohibits the use of incriminating statements made by a defendant while he/she is detained beyond the legal period of time before being brought before a judge or magistrate (arraignment). This rule is seldom applied since the courts have become zealous about speedy arraignments and warnings to the accused about the right to remain silent and ha

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**mechanics lien**

n. the right of a craftsman, laborer, supplier, architect or other person who has worked upon improvements or delivered materials to a particular parcel of real estate (either as an employee of the owner or as a sub-contractor to a general

contractor) to place a lien on that real property for the value of the services and/or materials if not paid. Numerous other technical laws surround mechanic's

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#### **mediator**

n. a person who conducts mediation. A mediator is usually a lawyer or retired judge but can be a non-attorney specialist in the subject matter (like child custody) who tries to bring people and their disputes to early resolution through a conference. The mediator is an active participant in the discussions and attempts to work out a solution, unlike an arbitrator, who sits as a judge.

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#### **meet and confer**

n. a requirement of courts that before certain types of motions and/or petitions will be heard by the judge, the lawyers (and sometimes their clients) must "meet and confer" to try to resolve the matter or at least determine the points of conflict. This has the beneficial effect of resolving many matters, reducing the time for arguments and making the lawyers and clients face up to the realities o

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#### **meeting of the minds**

n. when two parties to an agreement (contract) both have the same understanding of the terms of the agreement. Such mutual comprehension is essential to a valid contract. It is provable by the express provisions of a written contract, without reference to any statements or hidden thoughts outside the writing. There would not be a meeting of the minds if Bill Buyer said, "I'll buy all your stock,"

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#### **mental competency**

n.1) in general, able to act in the circumstances, including the ability to perform a job or occupation, or to reason or make decisions. 2) in wills, trusts and contracts, sufficiently mentally able to understand and execute a document. To be competent to make a will a person must understand what a will is, what he/she owns (although forgetting a few items among many does not show incompetency), a

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#### **mental cruelty**

n. a term, rapidly going out of fashion and out of the statutes, which has been used to justify granting a divorce when the state laws required that some wrong had to be found in the defending spouse. In absence of actual physical cruelty (or unwillingness to discuss it) the person wanting the divorce could testify to a list of indignities ("he swore at me, he came home late, he humiliated me in f

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#### **mental suffering**

n. emotional pain synonymous with "mental anguish."

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#### **mercantile law**

n. that broad area of the law (also called commercial law), statutes, cases and customs which deal with trade, sales, buying, selling, transportation, contracts and all forms of business transactions. Much of the law of business transactions is covered by the Uniform Commercial Code, which has been adopted almost universally in the United States.

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#### **merchantable**

adj. a product of a high enough quality to make it fit for sale. To be merchantable an article for sale must be usable for the purpose it is made. It must be of average worth (not necessarily special) in the marketplace and must not be broken, unworkable, damaged, contaminated or flawed.

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#### **mesne**

(mean, with a silent s) adj. from Norman French for intermediate, the middle point between two extremes. It is seldom used, except in reference to "mesne profits."

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#### **mesne profits**

n. profits which have accrued while there was a dispute over land ownership. If it is determined the party using the land did not have legal ownership, the true owner can sue for some or all of the profits made in the interim by the illegal tenant, which are thus called "mesne profits."

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#### **metes and bounds**

(meets and bounds) n. a surveyor's description of a parcel of real property, using carefully measured distances, angles and directions, which results in what is called a "legal description" of the land, as distinguished from merely a street address or parcel number. Such a metes and bounds description is required to be recorded in official county records on a subdivision map and in the deeds when

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#### **military law**

n. regulations governing the conduct of men and women in the armed services in relation to their military (not civilian) activities.

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**mining claim**

n. a description by boundaries of real property in which metal ore and/or minerals may be located. A claim on public land must be filed with the Bureau of Land Management or other federal agency, and the claim must be "worked" by being mined or prepared for mining within a specific period of time.

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**ministerial act**

n. an act, particularly of a governmental employee, which is performed according to statutes, legal authority, established procedures or instructions from a superior, without exercising any individual judgment.

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**minority**

n. 1) in voting, a side with less than half the votes. 2) a term for people in a predominantly Caucasian country who are not Caucasian, such as the United States where Caucasians comprise the majority and the minorities include African Americans, Hispanics, Asians, indigenous Americans (Indians) and other so-called "people of color." This ironic term is used despite the fact that the majority of t

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**Miranda warning**

n. the requirement, also called the Miranda rule, set by the U.S. Supreme Court in *Miranda v. Arizona* (1966) that prior to the time of arrest and any interrogation of a person suspected of a crime, he/she must be told that he/she has: the right to remain silent, the right to legal counsel, and the right to be told that anything he/she says can be used in court against him/her. The warnings are kno

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**mirror wills**

n. the wills of a husband and wife which are identical except that each leaves the same gifts to the other, and each names the other as executor.

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**misadventure**

n. a death due to unintentional accident without any violation of law or criminal negligence. Thus, there is no crime.

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**misappropriation**

n. the intentional, illegal use of the property or funds of another person for one's own use or other unauthorized purpose, particularly by a public official, a trustee of a trust, an executor or administrator of a dead person's estate or by any person with a responsibility to care for and protect another's assets (a fiduciary duty). It is a felony (a crime punishable by a prison sentence).

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**misjoinder**

n. the inclusion of parties (plaintiffs or defendants) or causes of action (legal claims) in a single lawsuit contrary to statute. Reasons for a court ruling that there is misjoinder include: a) the parties do not have the same rights to a judgment; b) they have conflicting interests; c) the situations in each claim (cause of action) are different or contradictory; or d) the defendants are not inv

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**misnomer**

n. the wrong name.

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**misprision of a felony**

n. the crime of concealing another's felony (serious crime) from law enforcement officers.

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**mistake**

n. 1) an error in comprehending facts, meaning of words or the law, which causes one party or both parties to enter into a contract without understanding the obligations or results. Such a mistake can entitle one party or both parties to a rescission (cancellation) of the contract. A mistaken understanding of the law (as distinguished from facts) by one party only is usually no basis for rescissio

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**modification**

n. a change in an existing court order or judgment made necessary by a change in circumstances since the order or judgment was made or to cure an error. A motion (petition) to the court for modification is common after divorce judgments because the courts "retain jurisdiction" over matters concerning the children which may need changes such as terms of child support and custody.

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**molestation**

n. the crime of sexual acts with children up to the age of 18, including touching of private parts, exposure of genitalia, taking of pornographic pictures, rape, inducement of sexual acts with the molester or with other children and variations of these acts by pedophiles. Molestation also applies to incest by a relative with a minor family member and any unwanted sexual acts with adults short of r

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**month-to-month**

adj. referring to a tenancy in which the tenant pays monthly rent and has no lease, and the tenancy can be terminated by the landlord at any time on thirty days notice.

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**monument**

n. 1) an established landmark which a surveyor uses as part of a legal description of real property. 2) a building or other structure of historic importance, which may be recognized formally and marked by federal, state or local agencies, and therefore may not be torn down or substantially altered.

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**moot point**

n. 1) a legal question which no court has decided, so it is still debatable or unsettled. 2) an issue only of academic interest.

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**moral certainty**

n. in a criminal trial, the reasonable belief (but falling short of absolute certainty) of the trier of the fact (jury or judge sitting without a jury) that the evidence shows the defendant is guilty. Moral certainty is another way of saying "beyond a reasonable doubt." Since there is no exact measure of certainty it is always somewhat subjective and based on "reasonable" opinions of judge and/or

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**motion for a new trial**

n. a request made by the loser for the case to be tried again on the basis that there were significant legal errors in the way the trial was conducted and/or the jury or the judge sitting without a jury obviously came to an incorrect result. This motion must be made within a few days after the judgment is formally entered and is usually heard by the same judge who presided at the trial. Such a mot

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**motion for a summary judgment**

n. a written request for a judgment in the moving party's favor before a lawsuit goes to trial and based on testimony recorded outside court, affidavits (declarations under penalty of perjury), depositions, admissions of fact and/or answers to written interrogatories, claiming that all factual and legal issues can be decided in the moving party's favor. These alleged facts are accompanied by a wri

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**motion for dismissal**

(non-suit) n. application by a defendant in a lawsuit or criminal prosecution asking the judge to rule that the plaintiff (the party who filed the lawsuit) or the prosecution has not and cannot prove its case. Attorneys most often make this motion after the plaintiff or prosecutor has presented all the evidence they have, but they can make it at the end of the evidence presentation but before judg

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**motion to strike**

n. a request for a judge's order to eliminate all or a portion of the legal pleading (complaint, answer) of the opposition on any one of several grounds. It is often used in an attempt to have an entire cause of action removed ("stricken") from the court record. A motion to strike is also made orally during trial to ask the judge to order "stricken" answers by a witness in violation of rules of ev

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**motion to suppress**

n. a motion (usually on behalf of a criminal defendant) to disallow certain evidence in an upcoming trial. Example: a confession which the defendant alleges was signed while he was drunk or without the reading of his Miranda rights. Since the motion is made at the threshold of the trial, it is a motion in limine, which is Latin for "at the threshold."

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**motive**

n. in criminal investigation the probable reason a person committed a crime, such as jealousy, greed, revenge or part of a theft. While evidence of a motive may be admissible at trial, proof of motive is not necessary to prove a crime.

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**mouthpiece**

n. old-fashioned slang for one's lawyer.

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**movant**

n. the party in a lawsuit or other legal proceeding who makes a motion (application for a court order or judgment).

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**move**

v. to make a motion in court applying for a court order or judgment.

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**multifarious**

adj., adv. reference to a lawsuit in which either party or various causes of action (claims based on different legal theories) are improperly joined together in the same suit. This is more commonly called misjoinder.

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**multiplicity of suits**

n. several actual or potential lawsuits which should be joined together in one suit and one trial. It is a basic principle of law that multiplicity is to be avoided when possible, practical and fair. Example: several suits are filed by different people against the same person or entity, based on the same set of facts and the same legal issues. On motion of either party or by the judge's own determ

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**municipal**

adj. referring to an incorporated or chartered city or town.

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**municipal court**

n. a lower court which usually tries criminal misdemeanors and civil lawsuits involving lesser amounts of money than superior, district or county courts. The authority, importance and geographical area covered differ from state to state. In California, municipal courts have county-wide jurisdiction, try misdemeanor criminal cases, conduct preliminary hearings of felonies and try cases up to \$25,00

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**muniment of title**

n. documentary evidence of title to real property. A muniment could be a deed, a decree of distribution proving inheritance, or a contract of sale.

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**mutual**

adj., adv. referring to anything in which both parties have reciprocal rights, understanding or agreement.

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**mutual wills**

n. wills made by two people (usually spouses, but could be "partners") in which each gives his/her estate to the other, or with dispositions they both agree upon. A later change by either is not invalid unless it can be proved that there was a contract in which each makes the will in the consideration for the other person making the will.

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**Nation**

A distinct group or race of people that share history, traditions and culture.

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**National treatment**

A tenet of international trade agreements whereby nations must afford imported goods the same treatment that they afford domestic or national products (no discrimination).

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**Natural Justice**

Basic or fundamental judicial rights extended to a person with rights at issue.

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**Naturalization**

The legal process of becoming a United States citizen.

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**Negligence**

The failure to act in a manner that could be considered reasonable and/or prudent under the circumstances.

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**Negotiable instrument**

An unconditional promise to pay a certain amount of money, at a certain time or on demand, to the bearer of the instrument.

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**Negotiate**

To communicate on a matter of disagreement between two parties, with a view to first listen to the other party's perspective and to then attempt to arrive at a resolution by consensus.

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**Nemo Judex In Parte Sua**

Latin: no person can judge a case in which he or she is party or in which he/she has an interest.

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**Next of Kin**

Person most closely related to another.

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**No-fault Divorce**

A divorce that does not require proof of grounds for divorce beyond both party's desire for divorce.

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**nolo contendere**

A plea entered by the defendant in response to being charged with a crime.

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**Non compos mentis**

Not of sound mind (Latin).

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**Non est factum**

Latin for not his deed and a special defense in contract law to allow a person to avoid having to respect a contract that she or he signed because of certain reasons such as a mistake as to the kind of contract.

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**Non-joinder**

When a person who should have been made a party to a legal proceedings has been forgotten or omitted.

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**Non-profit**

Operated as nearly as possible at cost; an organization not seeking profit and which does not disgorge excess income to its members, in the form of dividends or otherwise.

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**Nonfeasance**

Not doing something that a person should be doing. Compare with malfeasance and misfeasance.

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**Noscitur a sociis**

That the meaning of a word may be known from accompanying words.

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**Not For Profit**

Operated as nearly as possible at cost; on a cost-recovery basis; an organization not seeking profit and which does not disgorge excess income to its members, in the form of dividends or otherwise.

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**Notary**

Also known as notary public: a legal officer with specific judicial authority to attest to legal documents usually with an official seal.

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**Notary Public**

Person authorized to attest to legal documents, administer oaths, and certify authenticity of signatures.

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**Notwithstanding**

In spite of, even if, without regard to or impediment by other things.

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**novation**

The substitution of a new contract for an old one. A novation may change one of the parties to the contract or the duties that must be performed by the original parties.

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**Nudum pactum**

A contract-law term which stands for those agreements which are without consideration, such as a unilateral undertaking, which may bind a person morally, but not under contract law, in those jurisdictions which still require consideration.

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**Nuisance**

Conduct that disturbs another person's enjoyment of their property.

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**Nunc pro tunc**

Deemed retroactive

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**O.R.**

n. short for "own recognizance," meaning the judge allowed a person accused in a criminal case to go free pending trial without posting bail. A person so released is often referred to as having been "OR-ed."

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**O.S.C.**

n. short for order to show cause.

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**obiter dicta**

(oh-bitter dick-tah) n. remarks of a judge which are not necessary to reaching a decision, but are made as comments, illustrations or thoughts. Generally, obiter dicta is simply dicta.

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**object**

1) v. to ask the court not to allow a particular question asked of a witness by the opposing lawyer on the basis that it is either legally not permitted, confusing in its wording or improper in its "form." An attorney may also object to an answer to the question on the basis that it is not "responsive" since a witness is limited to answering a question as asked and is not allowed to make unsolicited

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**obligation**

n. a legal duty to pay or do something.

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**obligor**

(ah-bluh-gore) n. the person or entity who owes an obligation to another, as one who must pay on a promissory note

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**obscene**

adj., adv. a highly subjective reference to material or acts which display or describe sexual activity in a manner appealing only to "prurient interest," with no legitimate artistic, literary or scientific purpose. Pictures, writings, film or public acts which are found to be obscene are not protected by the free speech guarantee of the First Amendment. However, the courts have had difficulty making

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**obstruction of justice**

n. an attempt to interfere with the administration of the courts, the judicial system or law enforcement officers, including threatening witnesses, improper conversations with jurors, hiding evidence or interfering with an arrest. Such activity is a crime.

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**occupancy**

n. 1) living in or using premises, as a tenant or owner. 2) taking possession of real property or a thing which has no known owner, with the intention of gaining ownership.

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**occupant**

n. 1) someone living in a residence or using premises, as a tenant or owner. 2) a person who takes possession of real property or a thing which has no known owner, intending to gain ownership.

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**occupation**

n. 1) fairly permanent trade, profession, employment, business or means of livelihood. 2) possession of real property or use of a thing.

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**occupational disease**

n. an illness resulting from long-term employment in a particular type of work, such as black lung disease among miners, or cancer among asbestos installers. If the chances of being afflicted by such an illness are significantly higher than the average in the population, then a former employee may receive benefits from Social Security or worker's compensation for a work-related disability.

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**occupational hazard**

n. a danger or risk inherent in certain employments or workplaces, such as deep-sea diving, cutting timber, high-rise steel construction, high-voltage electrical wiring, use of pesticides, painting bridges and many factories. The risk factor may limit insurance coverage of death or injury while at work.

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**occupy the field**

v. to preempt (monopolize) an area of statutory law by a higher authority, such as federal preemption of bankruptcy or interstate commerce over state legislation, and state statutes or state constitution prevailing over laws of cities and counties on certain topics.

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**of counsel**

adj. reference to an attorney who is not actively involved in the day-to-day work of a law firm, but may be available in particular matters or for consultation. This designation often identifies a semi-retired partner, an attorney who occasionally uses the office for a few clients or one who only consults on a particular case or on his/her specialty. Putting the name of the attorney "of counsel" o

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**off calendar**

adj. refers to an order of the court to take a lawsuit, petition or motion off the list of pending cases or motions which are scheduled to be heard. A case or motion will be ordered off calendar if the lawyers agree (stipulate) to drop it, if the moving party's lawyer fails to appear, if a suit is settled pending final documentation or any number of procedural reasons for the

judge to determine th

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**offender**

n. an accused defendant in a criminal case or one convicted of a crime.

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**offense**

n. a crime or punishable violation of law of any type or magnitude.

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**offer of proof**

n. an explanation made by an attorney to a judge during trial to show why a question which has been objected to as immaterial or irrelevant will lead to evidence of value to proving the case of the lawyer's client. Often the judge will ask: "Where is this line of questions going?" and the offer of proof is the response. The offer provides the opposition a preview of the questions (and helps preven

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**offeree**

n. a person or entity to whom an offer to enter into a contract is made by another (the offeror).

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**offeror**

n. a person or entity who makes a specific proposal to another (the offeree) to enter into a contract.

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**officer of the court**

n. any person who has an obligation to promote justice and effective operation of the judicial system, including judges, the attorneys who appear in court, bailiffs, clerks and other personnel. As officers of the court lawyers have an absolute ethical duty to tell judges the truth, including avoiding dishonesty or evasion about reasons the attorney or his/her client is not appearing, the location

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**official**

1) adj. referring to an act, document or anything sanctioned or authorized by a public official or public agency. The term can also apply to an organizational act or product which is authorized by the organization, such as an Official Boy Scout knife or emblem, an official warranty, membership card or set of rules. 2) n. a public officer or governmental employee who is empowered to exercise judge

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**official misconduct**

n. improper and/or illegal acts by a public official which violate his/her duty to follow the law and act on behalf of the public good. Often such conduct is under the guise or "color" of official authority.

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**officious intermeddler**

n. a volunteer who assists and/or benefits another without contractual responsibility or legal duty to do so, but nevertheless wants compensation for his/her actions. The courts generally find that the intermeddler must rely on the equally voluntary gratitude of the recipient of the alleged benefit.

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**offset**

1) n. also called a "setoff," the deduction by a debtor from a claim or demand of a debt or obligation. Such an offset is based upon a counterclaim against the party making the original claim. Example: Harry Hardhead makes a claim or files a lawsuit asking for \$20,000 from Danny Debtor as the final payment in purchase of a restaurant; as part of his defense Debtor claims an offset of \$10,000 for a

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**offshore corporation**

n. a corporation chartered under the laws of a country other than the United States. Some countries (particularly in the Caribbean) are popular nations of incorporation since they have little corporate regulation or taxes and only moderate management fees. Professional trustees and nominal officials in the country of incorporation perform routine contacts with the local government but take no acti

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**omission**

n. 1) failure to perform an act agreed to, where there is a duty to an individual or the public to act (including omitting to take care) or where it is required by law. Such an omission may give rise to a lawsuit in the same way as a negligent or improper act. 2) inadvertently leaving out a word, phrase or other language from a contract, deed, judgment or other document. If the parties agree that

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**omnibus clause**

n. 1) an automobile insurance policy clause which provides coverage no matter who is driving the car. 2) a provision in a judgment for distribution of an estate of a deceased person, giving "all other property" to the beneficiaries named in the will.

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**on all fours**

adj. a reference to a lawsuit in which all the legal issues are identical (or so close as to make no difference) to another case, particularly an appeals decision which is a precedent in deciding the suit before the court. Thus, an attorney will argue that the prior case of, for example, *Steele v. Merritt* is "on all fours" with the case before the court, and so the court must reach the same conclu

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**on demand**

adj. in a promissory note, a requirement that the amount due must be paid when the person to whom the funds are owed demands payment (rather than upon a certain date or on installments). Such a note is called a "demand note."

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**on file**

prep. having been formally filed with the clerk of the court or the judge, such as a pleading is "on file."

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**on or about**

prep. a phrase referring to a date or place used in a complaint in a lawsuit or criminal charge if there is any uncertainty at all, in order to protect the person making the allegations of fact from being challenged as being inaccurate. Thus, a complaint will read "On or about July 11, 1994, Defendant drove his vehicle negligently and without due care on or about the corner of Sunset and Vine Stre

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**on or before**

prep. a phrase usually found in a contract or promissory note, designating performance or payment by a particular date, but which may be done prior to that date.

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**on the stand**

prep. testifying during a trial, in which the witness almost always sits in a chair beside the judge's bench, often raised above the floor level of the courtroom and behind a knee-high panel.

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**open court**

n. the conduct of judicial proceedings (trials, hearings and routine matters such as trial settings) in which the public may be present. Some hearings and discussions are held in the judge's chambers ("in camera") or with the courtroom cleared of non-participants and/or the jury such as adoptions, sanity hearings, juvenile criminal charges and arguments over evidence and motions which might prejud

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**operation of law**

n. a change or transfer which occurs automatically due to existing laws and not an agreement or court order. Examples: a joint tenant obtains full title to real property when the other joint tenant dies; a spouse in a community property state will take title to all community property if the spouse dies without a will that leaves some of the dead mate's interest in the community property to another

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**opinion**

n. the explanation of a court's judgment. When a trial court judgment is appealed to a court of appeals, the appeals judge's opinion will be detailed, citing case precedents, analyzing the facts, the applicable law and the arguments of the attorneys for the parties. Those opinions considered by the court to be worthy of serving as a precedent or involving important legal issues will be published i

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**option**

n. a right to purchase property or require another to perform upon agreed-upon terms. An option is paid for as part of a contract, but must be "exercised" in order for the property to be purchased or the performance of the other party to be required. "Exercise" of an option normally requires notice and payment of the contract price. Thus, a potential buyer of a tract of land might pay \$5,000 for t

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**or**

conj. either; in the alternative. It is often vital to distinguish between "or" and "and." Example: Title to the Cadillac written "Mary or Bill Davidson" means either one could transfer the car, but if written "Mary and Bill Davidson," both must sign to change title.

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**oral contract**

n. an agreement made with spoken words and either no writing or only partially written. An oral contract is just as valid as a written agreement. The main problem with an oral contract is proving its existence or the terms. As one wag observed: "An oral contract is as good as the paper it's written on." An oral contract is often provable by action taken by one or both parties which is obviously in

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**ordinary**

adj. regular, customary and continuing, and not unusual or extraordinary, as in ordinary expense, ordinary handling,

ordinary risks or ordinary skill.

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**original jurisdiction**

n. the authority of a court to hold a trial, as distinguished from appellate jurisdiction to hear appeals from trial judgments.

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**orphan**

n. a child, particularly a minor, whose two natural parents are dead. In some cases, such as whether a child is eligible for public financial assistance to an orphan, "orphan" can mean a child who has lost one parent.

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**ostensible agent**

n. a person who has been given the appearance of being an employee or acting (an agent) for another (principal), which would make anyone dealing with the ostensible agent reasonably believe he/she was an employee or agent. This could include giving the ostensible agent stationery or forms of the company, letting him/her use the company truck, telephone or desk in the company office. Businesses sho

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**ostensible authority**

n. apparent authority to do something or represent another person or entity.

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**ouster**

n. 1) the wrongful dispossession (putting out) of a rightful owner or tenant of real property, forcing the party pushed out of the premises to bring a lawsuit to regain possession. This often arises between partners (in a restaurant or store) or roommates, when one co-owner or co-tenant forces out the other, changes locks or makes occupancy intolerable. 2) removal of someone from a position or off

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**out of court**

adj. referring to actions, including negotiations between parties and/or their attorneys, without any direct involvement of a judge or the judicial system. Most commonly it refers to an "out-of-court settlement" in which the parties work out a settlement agreement, which they may present to the court for inclusion in a judgment approving the agreement so that the parties can request a court to enf

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**out-of-pocket expenses**

n. moneys paid directly for necessary items by a contractor, trustee, executor, administrator or any person responsible to cover expenses not detailed by agreement. They may be recoverable from a defendant in a lawsuit for breach of contract; allowable for reimbursement by trustees, executors or administrators; or deductible by a landlord from a tenant's security deposit for damages beyond normal

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**outbuilding**

n. a structure not connected with the primary residence on a parcel of property. This may include a shed, garage, barn, cabana, pool house or cottage.

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**outlaw**

n. popularly, anyone who commits serious crimes and acts outside the law.

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**output contract**

n. an agreement in which a producer agrees to sell its entire production to the buyer, who in turn agrees to purchase the entire output, whatever that is. Example: an almond grower has a "home" for his output, and the packer of nuts is happy to have a sure-fire supply, even though it may have to store away a glut.

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**overcharge**

v. 1) to charge more than a posted or advertised price. 2) to file a criminal complaint for crimes of greater degree than the known facts support, in an effort by the prosecutor to intimidate the accused.

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**overrule**

v. 1) to reject an attorney's objection to a question to a witness or admission of evidence. By overruling the objection, the trial judge allows the question or evidence in court. If the judge agrees with the objection, he/she "sustains" the objection and does not allow the question or evidence. 2) to decide (by a court of appeals) that a prior appeals decision on a legal issue was not correct and

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**overt act**

n. in criminal law, an action which might be innocent itself but if part of the preparation and active furtherance of a crime, can be introduced as evidence of a defendant's participation in a crime. Example: Rental of a van, purchase of explosives, obtaining a map of downtown New York City and going back and forth to the World Trade Center, could each be considered overt acts as part of the terro

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**owe**

v. to have a legal duty to pay funds to another. However, to owe does not make the amount "payable" if the date for payment has not yet arrived.

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**own**

v. to have legal title or right to something. Mere possession is not ownership.

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**own recognizance**

(O.R.) n. the basis for a judge allowing a person accused of a crime to be free while awaiting trial, without posting bail, on the defendant's own promise to appear and his/her reputation. The judge may consider the seriousness of the crime charged, the likelihood the defendant will always appear, the length of time the person has lived in the area, his/her reputation in the community, his/her emp

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**owner**

n. one who has legal title or right to something. Contrary to the cynical adage: "Possession is nine-tenths of the law," possession does not necessarily make one a legal owner.

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**ownership**

n. legal title coupled with exclusive legal right to possession. Co-ownership, however, means that more than one person has a legal interest in the same thing.

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**paid into court**

adj. referring to money deposited with the clerk of the court by a person or entity who knows that the money is owed but does not know to whom they should pay it until the outcome of a lawsuit between two other parties is decided. In short, the party handing over the money is saying: "Here is the money. You two argue over it, but spare me the trouble and cost of the suit." Example: A contractor bu

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**pander**

1) v. to solicit customers for a prostitute. 2) n. a pimp, who procures customers for a prostitute or lures a woman into prostitution, all for his own profit. 3) v. catering to special interests without any principles, such as a politician who says to whatever group he/she is addressing just what they want to hear to win their support, contributions or favors.

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**panderer**

n. 1) a person who panders or solicits for a prostitute. 2) some politicians catering to special interests.

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**panel**

n. the list of people selected to appear for jury duty.

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**paper hanger**

n. slang for a person who criminally writes and cashes "bad" checks on accounts he/she either does not have or which have no money in them.

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**par**

n. 1) an equal level. 2) the face value of a stock or bond, printed on the certificate, which is the amount the original purchaser paid the issuing corporation. However, most common stocks are issued as "no-par value," and the value reflects the current market for the stock. Preferred stocks state a par value upon which the dividends are calculated, and the par value of bonds establishes the final

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**paramount title**

n. a right to real property which prevails over any other person's claim of title.

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**parcel**

n. a defined piece of real estate, usually resulting from the division of a large area of land. It can range in size from a small lot to a gigantic ranch. 2) a package.

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**parent**

n. the lawful and natural father or mother of a person. The word does not mean grandparent or ancestor, but can include an adoptive parent as a replacement for a natural parent.

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**parental neglect**

n. a crime consisting of acts or omissions of a parent (including a stepparent, adoptive parent or someone who, in practical terms, serves in a parent's role) which endangers the health and life of a child or fails to take steps necessary to the

proper raising of a child. The neglect can include leaving a child alone when he or she needs protection; failure to provide food, clothing, medical atten

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**parish**

n. 1) a geographic area served by a church (particularly Catholic) originally measured by whether people living in the area could walk to the church. 2) in Louisiana, the governmental equivalent of a county.

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**parody**

n. the humorous use of an existing song, play, or writing which changes the words to give farcical and ironic meaning. Parodies have been challenged as copyright infringements on the original works, particularly since some have reaped terrific profits. Recent decisions favor the parodies and say they have an originality of their own and, thus, are not infringements. There is a free speech issue in

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**parol**

n. if there is evidence in writing (such as a signed contract) the terms of the contract cannot be altered by evidence of oral (parol) agreements purporting to change, explain or contradict the written document.

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**partial**

adj. not complete or entire.

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**partial breach**

n. the failure to meet a term of a contract which is so minimal that it does not cause the contract to fail or justify breach (breaking the contract) by the other contracting party. A partial breach can be remedied (made up) by a small reduction in payment or other adjustment. Example: a landlord promises to rent an apartment furnished, and when the tenants move in some furnishings are not there.

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**partial disability**

n. the result of an injury which permanently reduces a person's ability to function, but still permits some working or other activity. In worker's compensation cases an injured worker is often awarded a percentage rating of permanent partial disability, which will entitle him/her to a money settlement. The percentage payoff is often based on a physician's evaluation of what part of the person's

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**partial verdict**

n. in a criminal trial, the result when the jury finds the defendant guilty of one or more charges but not guilty (or deadlocks) on one or more other charges.

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**participate**

v. to invest and then receive a part or share, as in business profits, payments on a promissory note, title to land, or as one of the beneficiaries of the estate of a person who has died.

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**partner**

n. 1) one of the co-owners and investors in a "partnership" which is an on-going business enterprise entered into for profit. A "general partner" is responsible for the debts, contracts and actions of all the partners in the business, is an equal in management decisions unless there is an agreement establishing management duties and rights, and shares in the profits and losses based on the percent

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**party of the first part**

n. reference in a written contract to identify one of the people entering into the agreement. The agreement would read "Mary McConnell (hereinafter called The Party of the First Part)." Better practice is to identify the parties by a short form of their name ("hereinafter referred to as McConnell") or as Buyer, Seller, Owner, Trustee or some other useful identification. Name use aids in following

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**party of the second part**

n. a reference to a party to a written contract, as distinguished from "the party of the first part."

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**party wall**

n. a wall shared by two adjoining premises which is on the property line, such as in townhouses, condominiums, row houses or two units in a duplex. Both owners are responsible for maintaining structural integrity of the wall, even if the wall is entirely on the property of one of the parties.

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**passenger**

n. a rider who has paid a fare on a train, bus, airline, taxi, ship, ferry, automobile or other carrier in the business of transporting people for a fee (a common carrier). A passenger is owed a duty of care by such a carrier and has a right to sue for damages for injuries suffered while being transported without proof of negligence. One tricky issue is whether a person

who has entered the depot,

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**passion**

n. in a criminal case, when the accused was in an uncontrollable rage at the time of commission of the alleged crime. If so, it may reduce the charge, indictment or judgment down from murder to manslaughter, since the passion precluded the defendant having premeditation or being fully mentally capable of knowing what he/she was doing.

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**passive**

adj. referring to being inactive. A "passive trustee" is one who has no responsibilities other than to hold title or wait for an event which would activate the trust. "Passive income" for tax purposes includes any income in which there is no effort or active management, and is treated differently for some purposes, such as Social Security income limitations. It may include stock dividends, trust p

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**patent ambiguity**

n. an obvious inconsistency in the language of a written document.

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**patent defect**

n. an obvious flaw in a product or a document (such as leaving out the property description in a deed).

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**pawn**

v. to pledge an item of personal property as security for a loan, with the property left with the pawnbroker. The interest rates are on the high side, the amount of the loan is well below the value of the pledged property, and the broker has the right to sell the item without further notice if the loan is not paid. Pawnbrokers are licensed by the state.

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**pay**

v. to deliver money owed.

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**payable**

1) adj. referring to a debt which is due. A debt may be owed, but not yet payable until a certain date or event. 2) n. a debt which is due. "Payables" are all the liabilities (debts) of a business.

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**payable on demand**

adj. a debt on a promissory note or bill of exchange which must be paid when demanded by the payee (party to whom the debt is owed).

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**payment in due course**

n. the giving of funds to the holder of a promissory note or bill of exchange when due, without any knowledge that the document had been acquired by fraud or that the holder did not have valid title. The true owner of the bill or note cannot also demand payment, but must look to the recipient of the funds.

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**payment in full**

n. the giving of all funds due to another. This language is often inserted on the back of a check above the place for endorsement to prove that the payee accepts the payment as complete.

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**peace bond**

n. a bond required as part of a court order to guarantee that a person will stay away from another person he/she has threatened or bothered. The bond will be forfeit (given up) if the order is violated, but that is no consolation to a person injured, molested or murdered by the violator.

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**peaceable possession**

n. in real estate, holding property without any adverse claim to possession or title by another.

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**peculation**

n. misappropriation of public (government) funds or property.

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**pecuniary**

adj. relating to money, as in "pecuniary loss."

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**pedophilia**

n. an obsession with children as sex objects. Overt acts, including taking sexually explicit photographs, molesting children and exposing one's genitalia to children, are all crimes. The problem with these crimes is that pedophilia is also treated as a mental illness, and the pedophile is often released only to repeat the crimes or escalate the activity to the level of murder.

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**peeping tom**

n. a person who stealthily peeks into windows, holes in restroom walls or other openings with the purpose of getting a sexual thrill from seeing women or girls undressed or couples making love. The term comes from the legendary Tom who was the one person who peeked when Lady Godiva rode her horse naked through the streets of Coventry to protest taxes. Being a peeping tom is treated as a crime base

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**peer**

n. an equal. A "jury of one's peers," to which criminal defendants are constitutionally entitled, means an impartial group of citizens from the judicial district (e.g. county) in which the defendant lives. It does not mean a jury ethnically, educationally, economically or sexually the same as the defendant, although in some jurisdictions attempts are made to meet those criteria.

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**peer review**

n. an examination and evaluation of the performance of a professional or technician by a board or committee made up of people in the same occupation. This may arise in determining whether a person has been legitimately discharged, denied promotion or penalized by an employer, or is found to have failed to meet minimum standards of performance and is thus liable in a lawsuit claiming damages due to

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**penal**

adj. referring to criminality, as in defining "penal code" (the laws specifying crimes and punishment), or "penal institution" (a state prison or penitentiary confining convicted felons).

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**penalty**

n. 1) in criminal law, a money fine or forfeiture of property ordered by the judge after conviction for a crime. 2) an amount agreed in advance if payment or performance is not made on time, such as a "late payment" on a promissory note or lease, or a financial penalty for each day a building contractor fails to complete a job.

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**pendent jurisdiction**

n. in federal procedure, the policy that allows a federal court to decide a legal question normally tried in state courts because it is based on the same facts as a lawsuit which is under federal court jurisdiction. (It also may be spelled: pendant)

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**pendente lite**

(pen-den-tay lee-tay) adj. Latin for awaiting the litigation (lawsuit). It is applied to court orders (such as temporary child support) which are in effect until the case is tried, or rights which cannot be enforced until the lawsuit is over.

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**penitentiary**

n. a state or federal prison in which convicts are held for commission of major crimes (felonies).

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**people**

n. the designation for the prosecuting government in a criminal trial, as in *People v. Capone*. Such a case may also be captioned *State v. Davis* or in federal prosecutions, *United States v. Miller*.

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**per**

prep. from Latin for "by means of" or simply, "by" as in "per day" (by day) or "per capita" (by head).

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**per capita**

adj. Latin for "by head," meaning to be determined by the number of people. To find the per capita cost, the total number of persons are added up and the bill, tax or benefits are divided equally among those persons.

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**per curiam**

adj. Latin for "by the court," defining a decision of an appeals court as a whole in which no judge is identified as the specific author.

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**per diem**

adj. or n. Latin for "per day," it is short for payment of daily expenses and/or fees of an employee or an agent.

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**per se**

(purr say) adj. Latin for "by itself," meaning inherently. Thus, a published writing which falsely accuses another of having a sexually transmitted disease or being a convicted felon is "libel per se," without further explanation of the meaning of the statement.

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**per stirpes**

(purr stir-peas) adj. Latin for "by roots," by representation. The term is commonly used in wills and trusts to describe the

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distribution when a beneficiary dies before the person whose estate is being divided. Example: "I leave \$100,000 to my daughter, Eleanor, and if she shall predecease me, to her children, per stirpes." Thus, if Eleanor dies before her parent, then the \$100,000 will be divided

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**peremptory challenge**

n. the right of the plaintiff and the defendant in a jury trial to have a juror dismissed before trial without stating a reason. This challenge is distinguished from a "challenge for cause" (reason) based on the potential juror admitting bias, acquaintanceship with one of the parties or their attorney, personal knowledge about the facts, or some other basis for believing he/she might not be impartial

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**peremptory writ of mandate**

(or mandamus) n. a final order of a court to any governmental body, government official or a lower court to perform an act the court finds is an official duty required by law. This is distinguished from an alternative writ of mandate (mandamus), which orders the governmental agency, court or officials to obey the order or show cause at a hearing why it should not. The usual practice is for anyone

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**perfect**

(with stress on the second syllable) v. 1) to complete; to take all required steps to achieve a result, such as obtaining a lien or other security by legal action or completing and filing all documents to present a case to a court of appeals. A mechanic's lien for labor and/or materials used to improve real property is "perfected" by filing a lawsuit and obtaining a judgment that the lien attaches

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**perfected**

adj. having completed all necessary legal steps to achieve a result, such as perfected title to property.

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**perform**

v. 1) to fulfill one's obligations under a contract. 2) to comply with requirements of a court order.

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**performance**

n. fulfillment of one's obligations required by contract. Specific performance of a contract may be demanded in a lawsuit. Partial performance is short of full performance spelled out in the contract, but if the contract provided for a series of acts or deliveries with payment for each of the series, there may be partial recovery for what has been performed or delivered even if there is not full p

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**perjurer**

n. a person who intentionally lies while under an oath administered by a notary public, court clerk or other official, and thus commits the crime of perjury. A perjurer may commit perjury in oral testimony or by signing or acknowledging a written legal document (such as an affidavit, declaration under penalty of perjury, deed, license application, tax return) knowing the document contains false in

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**permanent disability**

n. an injury which impairs the physical and/or mental ability of a person to perform his/her normal work or non-occupational activities supposedly for the remainder of his/her life. Under worker's compensation laws (covering on-the-job injuries) once the condition is stable, a degree of permanent disability is established even if the employee is able to work despite the physical problem. Permanent

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**permanent injunction**

n. a final order of a court that a person or entity refrain from certain activities permanently or take certain actions (usually to correct a nuisance) until completed. A permanent injunction is distinguished from a "preliminary" injunction which the court issues pending the outcome of a lawsuit or petition asking for the "permanent" injunction.

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**permanent injury**

n. physical or mental damage which will restrict the employment and/or other activities of a person for the rest of his/her life. In a lawsuit to recover damages caused by the negligence or intentional wrongful act of another, a permanent injury can be a major element in an award of general damages.

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**permissive**

adj. 1) referring to any act which is allowed by court order, legal procedure, or agreement. 2) tolerant or allowing of others' behavior, suggesting contrary to others' standards.

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**permit**

1) v. to allow by silence, agreement or giving a license. 2) n. a license or other document given by an authorized public official or agency (building inspector, department of motor vehicles) to allow a person or business to perform certain acts. These can include building a structure, using a building, driving on the highway, conducting a retail business, and dozens of

other activities. The purpo

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**person**

n. 1) a human being. 2) a corporation treated as having the rights and obligations of a person. Counties and cities can be treated as a person in the same manner as a corporation. However, corporations, counties and cities cannot have the emotions of humans such as malice, and therefore are not liable for punitive damages unless there is a statute authorizing the award of punitive damages.

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**personal effects**

n. things which include clothes, cosmetics and items of adornment. This is not the same as "personalty" which means all tangible property which is not real property, money or investments. The expression is often found in wills ("I leave my personal effects to my niece, Susannah").

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**personal service**

n. delivering a summons, complaint, notice to quit tenancy or other legal document which must be served by handing it directly to the person named in the document. Personal service is distinguished from "constructive service," which includes posting the notice and then mailing a copy or publishing a summons on a person the court has found is hiding to avoid service, and from "substituted service,"

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**personal services**

n. in contract law, the talents of a person which are unusual, special or unique and cannot be performed exactly the same by another. These can include the talents of an artist, an actor, a writer or professional services. The value of personal services is greater than general labor, so woodcarving is personal service and carpentry is not. Therefore, if an actor contracts to perform in a movie and

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**personalty**

n. movable assets (things, including animals) which are not real property, money or investments.

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**petit jury**

n. old-fashioned name for the jury sitting to hear a lawsuit or criminal prosecution, called "petit" (small) to distinguish it from a "grand" jury, which has other duties.

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**petition**

1) n. a formal written request to a court for an order of the court. It is distinguished from a complaint in a lawsuit which asks for damages and/or performance by the opposing party. Petitions include demands for writs, orders to show cause, modifications of prior orders, continuances, dismissal of a case, reduction of bail in criminal cases, a decree of distribution of an estate, appointment of

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**petty larceny**

n. a term used in many states for theft of a small amount of money or objects of little value (such as less than \$500). It is distinguished from grand larceny, which is theft of property of greater worth and a felony punishable by a term in state prison. Petty larceny is a misdemeanor with a maximum punishment of a term in the county jail. States which only use the term "larceny" often treat theft

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**picketing**

n. standing or parading near a business or government office usually with signs of protest or claims in labor disputes or public policy controversies (peace marches to pro- or anti-abortion advocates). Picketing is constitutionally guaranteed as free speech, but in some cases it may be limited by court order to prevent physical combat, blocking of entrances or threats to the public safety.

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**pierce the corporate veil**

v. to prove that a corporation exists merely as a completely controlled front (alter ego) for an individual or management group, so that in a lawsuit the individual defendants can be held responsible (liable) for damages for actions of the corporation. If a corporation has issued stock and held regular meetings of shareholders and directors, it is unlikely a judge will "pierce" the veil and limit

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**pilferage**

n. a crime of theft of little things, usually from shipments or baggage.

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**pimp**

n. a person who procures a prostitute for customers or vice versa, sharing the profits of the person's activities. Supposedly he provides protection for the prostitutes, but quite often he will threaten, brutalize, rape, cheat and induce drug addiction of the prostitutes. A pimp commits the crime of pandering.

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**pink slip**

n. 1) slang for official automobile registration certificate, due to its color in some states. 2) slang for notice of being fired or laid off from a job.

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**piracy**

n. the crime of robbery of ships or boats on the oceans. Accusation, trial and punishment of pirates may be under international agreement applicable anywhere, or under the laws of the particular nation where the accused has been captured.

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**plagiarism**

n. taking the writings or literary concepts (a plot, characters, words) of another and selling and/or publishing them as one's own product. Quotes which are brief or are acknowledged as quotes do not constitute plagiarism. The actual author can bring a lawsuit for appropriation of his/her work against the plagiarist and recover the profits. Normally plagiarism is not a crime, but it can be used as

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**plain error**

n. a mistake by the trial court found by a court of appeals to be very obvious and sufficient to require reversal of the trial decision.

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**plain view doctrine**

n. the rule that a law enforcement officer may make a search and seizure without obtaining a search warrant if evidence of criminal activity or the product of a crime can be seen without entry or search. Example: a policeman stops a motorist for a minor traffic violation and can see in the car a pistol or a marijuana plant on the back seat, giving him "reasonable cause" to enter the vehicle to mak

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**plaintiffs attorney**

n. the attorney who represents a plaintiff (the suing party) in a lawsuit. In lawyer parlance a "plaintiff's attorney" refers to a lawyer who regularly represents persons who are suing for damages, while a lawyer who is regularly chosen by an insurance company to represent its insureds is called a "defense attorney."

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**plea in abatement**

n. 1) in criminal law, the response by an accused defendant to each charge of the commission of a crime. Pleas normally are "not guilty," "guilty," "no contest" (admitting the facts, but unwilling to plead "guilty," thus resulting in the equivalent of a "guilty" verdict but without admitting the crime), or "not guilty by reason of insanity" (at the time of the criminal act). However, the accused m

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**plead**

v. 1) in civil lawsuits and petitions, to file any document (pleading) including complaints, petitions, declarations, motions and memoranda of points and authorities. 2) in criminal law, to enter a plea of a defendant in response to each charge of criminal conduct.

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**pleading**

n. 1) every legal document filed in a lawsuit, petition, motion and/or hearing, including complaint, petition, answer, demurrer, motion, declaration and memorandum of points and authorities (written argument citing precedents and statutes). Laypersons should be aware that, except possibly for petitions from prisoners, pleadings are required by state or federal statutes and/or court rules to be of

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**pledge**

v. to deposit personal property as security for a personal loan of money. If the loan is not repaid when due, the personal property pledged shall be forfeit to the lender. The property is known as collateral. To pledge is the same as to pawn. 2) to promise to do something.

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**plenary**

adj. full, complete, covering all matters, usually referring to an order, hearing or trial.

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**police court**

n. in some states a type of municipal court which handles misdemeanors (minor crimes) and traffic violations, as well as conducting arraignments (first appearances) and preliminary hearings of those accused of felonies to decide if there is cause to send the defendant to a higher court for trial. Police courts only handle criminal cases-unlike those municipal courts which also have jurisdiction ov

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**police powers**

n. from the 10th Amendment to the Constitution, which reserves to the states the rights and powers "not delegated to the United States," which include protection of the welfare, safety, health and even morals of the public. Police powers include

licensing, inspection, zoning, safety regulations (which cover a lot of territory), quarantines, and working conditions as well as law enforcement. In sho

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**political question**

n. the determination by a court (particularly the Supreme Court) that an issue raised about the conduct of public business is a "political" issue to be determined by the legislature (including Congress) or the executive branch and not by the courts. Since 1960 the U.S. Supreme Court has been willing to look at some questions previously considered "political," such as "one-man-one-vote," as constit

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**posse comitatus**

(pahs-see coh-mitt-tah-tus) n. from Latin for "possible force," the power of the sheriff to call upon any able-bodied adult men (and presumably women) in the county to assist him in apprehending a criminal. The assembled group is called a posse for short.

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**possess**

v. to own, have title to, occupy, physically hold or have under exclusive control. In wills there is often the phrase "of which I die possessed," in describing the estate.

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**possession of stolen goods**

n. the crime of possession of goods which one knows or which any reasonable person would realize were stolen. It is generally a felony. Innocent possession is not a crime, but the goods are generally returned to the legal owner.

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**possessory interest**

n. in real estate, the intent and right of a person to occupy and/or exercise control over a particular plot of land. A possessory interest is distinguished from an interest in the title to property, which may not include the right to immediately occupy the property. Example: a long-term lease.

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**possibility of a reverter**

n. the potential that the title to a real property interest will return to the original grantor or giver or to his/her lineal descendants. Examples of events which could cause the title to revert: A gift of property to a hospital on condition that it be used forever for health care, but if the building is no longer used for that purpose the property will revert to the family of the original grantor.

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**post**

v. 1) to place a notice on the entrance or a prominent place on real property, such as a notice to quit (leave), pay rent or of intent to conduct a sheriff's sale, which requires mailing of a copy to the occupant to complete service of the notice. 2) to place a legal notice on a designated public place at the courthouse. 3) a commercial term for recording a payment. 4) to mail.

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**post mortem**

n. Latin for "after death," an examination of a dead body to determine cause of death, generally called an autopsy.

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**postdated check**

n. a check delivered now with a written date in the future, so that it cannot be cashed until that date. The danger to the recipient is that such a check is legally only a promissory note due at the later date, and if the account is closed or short when the check is presented at the bank, the payee has no rights to demand payment by the bank or claim that the delivery of a bad check was criminal.

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**pot**

n. slang for marijuana, an illegal narcotic.

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**pour over will**

n. a will of a person who has already executed a trust in which all property is designated to be distributed or managed upon the death of the person whose possessions are in trust, leaving all property to the trust. A pour over will is a protection which is intended to guarantee that any assets which somehow were not included in the trust become assets of the trust upon the party's death. A pour over

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**power**

n. the right, authority and ability to take some action or accomplish something, including demanding action, executing documents, contracting, taking title, transferring, exercising legal rights and many other acts.

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**power of acceptance**

n. the ability to accept an offer and thus create a binding contract. In real estate an acceptance can only be made for a period specified in the offer, and the power is terminated permanently by the making of a counter-offer. Thus, one cannot

make a counter-offer and then decide to accept the original offer.

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**practicable**

adj. when something can be done or performed.

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**practice**

1) n. custom or habit as shown by repeated action, as in "it is the practice in the industry to confirm orders before shipping." 2) n. the legal business, as in "law practice," or "the practice of the law." 3) v. to repeat an activity in order to maintain or improve skills, as "he practices the violin every evening." 4) v. to conduct a law business, as "she practices law in St. Louis."

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**pray**

v. to formally request judicial judgment, relief and/or damages at the end of a complaint or petition.

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**prayer**

n. the specific request for judgment, relief and/or damages at the conclusion of a complaint or petition. A typical prayer would read: "The plaintiff prays for 1) special damages in the sum of \$17,500; 2) general damages according to proof [proved in trial]; 3) reasonable attorney's fees; 4) costs of suit; and 5) such other and further relief as the court shall deem proper." A prayer gives the judge

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**precatory**

adj. referring to a wish or advisory suggestion which does not have the force of a demand or a request which under the law must be obeyed. Thus "precatory words" in a will or trust would express a "hope that my daughter will keep the house in the family," but do not absolutely prevent her from selling it.

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**predecease**

v. to die before someone else, as "if my brother, Harry, should predecease me, his share of my estate I give to his son, Eugene."

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**preemption**

n. the rule of law that if the federal government through Congress has enacted legislation on a subject matter it shall be controlling over state laws and/or preclude the state from enacting laws on the same subject if Congress has specifically stated it has "occupied the field." If Congress has not clearly claimed preemption, a federal or state court may decide the issue on the basis of history.

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**preemptive right**

n. the right of a shareholder in a corporation to have the first opportunity to purchase a new issue of stock of that corporation in proportion to the amount of stock already owned by the shareholder.

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**preference**

n. in bankruptcy, the payment of a debt to one creditor rather than dividing the assets equally among all those to whom he/she/it owes money, often by making a payment to a favored creditor just before filing a petition to be declared bankrupt. Such a preference is prohibited by law, and the favored creditor must pay the money to the bankruptcy trustee. However, the bankruptcy court may give security

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**preferred dividend**

n. a payment of a corporation's profits to holders of preferred shares of stock.

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**preferred stock**

n. a class of shares of stock in a corporation which gives the holders priority in payment of dividends (and distribution of assets in case of dissolution of the corporation) over owners of "common" stock at a fixed rate. While the assurance of first chance at profits is a psychological and real benefit, preferred stock shareholders do not participate in higher dividends if the corporation makes a loss.

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**premises**

n. 1) in real estate, land and the improvements on it, a building, store, shop, apartment, or other designated structure. The exact premises may be important in determining if an outbuilding (shed, cabana, detached garage) is insured or whether a person accused of burglary has actually entered a structure. 2) in legal pleading, premises means "all that has hereinabove been stated," as in a prayer.

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**premium**

n. 1) payment for insurance coverage either in a lump sum or by installments. 2) an extra payment for an act, option or priority.

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**prerogative writ**

n. an historic generic term for any writ (court order) directed to government agencies, public officials or another court.

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**prescriptive easement**

n. an easement upon another's real property acquired by continued use without permission of the owner for a period provided by state law to establish the easement. The problems with prescriptive easements are that they do not show up on title reports, and the exact location and/or use of the easement is not always clear and occasionally moves by practice or erosion.

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**presiding judge**

n. 1) in both state and federal appeals court, the judge who chairs the panel of three or more judges during hearings and supervises the business of the court. 2) in those counties or other jurisdictions with several judges, the one is chosen to direct the management of the courts, usually on an annual or other rotating basis. The presiding judge usually makes assignments of judges to specialized

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**presumption**

n. a rule of law which permits a court to assume a fact is true until such time as there is a preponderance (greater weight) of evidence which disproves or outweighs (rebutts) the presumption. Each presumption is based upon a particular set of apparent facts paired with established laws, logic, reasoning or individual rights. A presumption is rebuttable in that it can be refuted by factual evidence

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**pretermitted heir**

n. the child of a person who has written a will in which the child is not left anything and is not mentioned at all. After the death of the parent, a pretermitted heir has the right to demand the share he/she would have received as an heir under the laws of distribution and descent. The reasoning is that the parent either inadvertently forgot the child or incorrectly believed the child was dead, a

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**pretrial discovery**

n. the entire efforts of a party to a lawsuit and his/her/its attorneys to obtain information before trial through demands for production of documents, depositions of parties and potential witnesses, written interrogatories (questions and answers written under oath), written requests for admissions of fact, examination of the scene and the petitions and motions employed to enforce discovery rights

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**prevailing party**

n. the winner in a lawsuit. Many contracts, leases, mortgages, deeds of trust or promissory notes provide that the "prevailing party" shall be entitled to recovery of attorney's fees and costs if legal action must be taken to enforce the agreement. Even if the plaintiff gets much less than the claim, he/she/it is the prevailing party entitled to include attorney's fees in the collectable costs. Us

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**price fixing**

n. a criminal violation of federal antitrust statutes in which several competing businesses reach a secret agreement (conspiracy) to set prices for their products to prevent real competition and keep the public from benefitting from price competition. Price fixing also includes secret setting of favorable prices between suppliers and favored manufacturers or distributors to beat the competition.

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**prima facie case**

n. a plaintiff's lawsuit or a criminal charge which appears at first blush to be "open and shut."

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**prime suspect**

n. the one person law enforcement officers believe most probably committed a crime being investigated. Once a person is determined to be a prime suspect, the police must be careful to give the "Miranda warnings," or take the risk that any admissions (any evidence gained from the statements) by the suspect may be excluded in trial.

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**principal place of business**

n. location of head office of a business where the books and records are kept and/or management works. In most states corporations must report their principal place of business to the Secretary of State.

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**prior restraint**

n. an attempt to prevent publication or broadcast of any statement, which is an unconstitutional restraint on free speech and free press (even in the guise of an anti-nuisance ordinance). Stemming from the First Amendment to the Constitution, the ban on prior restraint allows publication of libel, slander, obvious untruths, anti-government diatribes, racial and religious epithets, and almost any m

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**prior(s)**

n. slang for a criminal defendant's previous record of criminal charges, convictions, or other judicial disposal of criminal cases (such as probation, dismissal or acquittal). Only previous felony convictions can be introduced into evidence. However, the record of "priors" can have an impact on sentencing, as with prior drunk driving convictions requiring mandatory jail sentences, and "three strik

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**priority**

n. the right to be first or ahead of the rights or claims of others. In bankruptcy law, the right to collect before other creditors is given to taxing authorities, judgment holders, secured creditors, bankruptcy trustees and attorneys. The right also can apply to mortgages, deeds of trusts or liens given priority in the order they were recorded (in the "race to the courthouse").

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**privacy**

n. the right to be free of unnecessary public scrutiny or to be let alone. Once a person is a "public figure" or involved in newsworthy events, the right to privacy may evaporate.

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**private carrier**

n. one who provides transportation or delivery of goods for money, just for the particular instance, and not as a regular business. It is distinguished from a "common carrier" which is in the business, such as buses, railroads, trucking companies, airlines and taxis. However, a private carrier may be liable for injuries to anyone who pays or shares the cost of transport.

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**private nuisance**

n. the interference with an individual's peaceful enjoyment of one's property, which can be the basis for a lawsuit both for damages caused by the nuisance and an order (injunction) against continuing the noxious (offensive) activity or condition. Examples: fumes from a factory above the legal limit, loud noises well above the norm, directing rain water onto another person's property, operating an

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**private parts**

n. men's or women's genitalia, excluding a woman's breasts, usually referred to in prosecutions for "indecent exposure" or production and/or sale of pornography.

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**private property**

n. land not owned by the government or dedicated to public use.

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**private road**

n. a road or driveway on privately owned property, limited to the use of the owner or a group of owners who share the use and maintain the road without help from a government agency. A private road has not been given to a government entity (like a county or city) and accepted by that entity for public use. Some private roads are used by the public, but should be closed off at least once a year to

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**privilege against self incrimination**

n. a right to refuse to testify against oneself in a criminal prosecution or in any legal proceeding which might be used against the person. This privilege is guaranteed by the Fifth Amendment to the Constitution, which provides: "No person...shall be compelled in any criminal case to be a witness against himself...." Therefore, refusing to answer questions during a trial ("I refuse to answer on the g

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**privileged communication**

n. statements and conversations made under circumstances of assured confidentiality which must not be disclosed in court. These include communications between husband and wife, attorney and client, physician or therapist and patient, and minister or priest with anyone seeing them in their religious status. In some states the privilege is extended to reporters and informants. Thus, such people cann

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**privileges and immunities**

n. the fundamental rights that people enjoy in free governments, protected by the U.S. Constitution in Article IV: "The citizens of each state shall be entitled to all privileges and immunities in the several States," and specifically to be protected against state action by the Constitution's 14th Amendment (1868): "No State shall make or enforce any law which shall abridge the privileges or immun

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**privity**

n. contact, connection or mutual interest between parties. The term is particularly important in the law of contracts, which requires that there be "privity" if one party to a contract can enforce the contract by a lawsuit against the other party. Thus, a tenant of a buyer of real property cannot sue the former owner (seller) of the property for failure to make repairs guaranteed by the land sales

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**pro per**

adj. short for "propria persona," which is Latin for "for oneself," usually applied to a person who represents himself/herself

in a lawsuit rather than have an attorney.

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**pro se**

(proh say) prep. Latin for "for himself." A party to a lawsuit who represents himself (acting in propria persona) is appearing in the case "pro se."

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**pro tanto**

(proh tahn-toe) Latin for "only to that extent." Example: a judge gives an order for payments for one year, pro tanto.

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**pro tem**

1) adj. short for the Latin pro tempore, temporarily or for the time being. In law, judge pro tem normally refers to a judge who is sitting temporarily for another judge or to an attorney who has been appointed to serve as a judge as a substitute for a regular judge. When an appeals justice is not available or there is a vacancy, a lower court judge is appointed Justice Pro Tem until a new Justice

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**probative**

adj. in evidence law, tending to prove something. Thus, testimony which is not probative (does not prove anything) is immaterial and not admissible or will be stricken from the record if objected to by opposing counsel.

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**probative facts**

n. evidence which tends to prove something which is relative to the issues in a lawsuit or criminal prosecution.

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**probative value**

n. evidence which is sufficiently useful to prove something important in a trial. However, probative value of proposed evidence must be weighed by the trial judge against prejudicing in the minds of jurors toward the opposing party or criminal defendant. A typical dispute arises when the prosecutor wishes to introduce the previous conduct of a defendant (particularly a criminal conviction) to show

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**procedure**

n. the methods and mechanics of the legal process. These include filing complaints, answers and demurrers; serving documents on the opposition; setting hearings, depositions, motions, petitions, interrogatories; preparing orders; giving notice to the other parties; conduct of trials; and all the rules and laws governing that process. Every state has a set of procedural statutes (often called the C

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**proceeding**

n. any legal filing, hearing, trial and/or judgment in the ongoing conduct of a lawsuit or criminal prosecution. Collectively they are called "proceedings," as in "legal proceedings."

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**process**

n. in law, the legal means by which a person is required to appear in court or a defendant is given notice of a legal action against him/her/it. When a complaint in a lawsuit is filed, it must be served on each defendant, together with a summons issued by the clerk of the court stating the amount of time (say, 30 days) in which the defendant has to file an answer or other legal pleading with the c

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**process server**

n. a person who serves (delivers) legal papers in lawsuits, either as a profession or as a government official, such as a deputy sheriff, marshal or constable.

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**proctor**

n. 1) in admiralty (maritime) law, an attorney. 2) person who keeps order.

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**product liability**

n. the responsibility of manufacturers, distributors and sellers of products to the public, to deliver products free of defects which harm an individual or numerous persons and to make good on that responsibility if their products are defective. These can include faulty auto brakes, contaminated baby food, exploding bottles of beer, flammable children's pajamas or lack of label warnings. Examples:

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**professional negligence**

n. An act or continuing conduct of a professional which does not meet the standard of professional competence and results in provable damages to his/her client or patient. Such an error or omission may be through negligence, ignorance (when the professional should have known), or intentional wrongdoing. However, malpractice does not include the exercise of professional judgment even when the resul

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**proffer**

v. to offer evidence in a trial.

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**promise**

1) n. a firm agreement to perform an act, refrain from acting or make a payment or delivery. In contract law, if the parties exchange promises, each promise is "consideration" (a valuable item) for the other promise. Failure to fulfill a promise in a contract is a breach of the contract, for which the other party may sue for performance and/or damages. 2) v. to make a firm agreement to act, refrain

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**promoter**

n. a person who puts together a business, particularly a corporation, including the financing. Usually the promoter is the principal shareholder or one of the management team and has a contract with the incorporators or makes a claim for shares of stock for his/her efforts in organization. Most states limit the amount of "promotional stock" since it is supported only by effort and not by assets or

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**promotional stock**

n. stock issued in a newly formed corporation and given to a promoter (organizer) of the corporation in payment for his/her efforts in putting the company together and locating shareholders or other funding. Most states (and the federal Securities and Exchange Act) limit promotional stock to an amount reasonable for the effort since it is not backed by assets or money.

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**proof**

n. confirmation of a fact by evidence. In a trial, proof is what the trier of the fact (jury or judge without a jury) needs to become satisfied that there is "a preponderance of the evidence" in civil (non-criminal) cases and the defendant is guilty "beyond a reasonable doubt" in criminal prosecutions. However, each alleged fact must be proved separately, as must all the facts necessary to reach a

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**proper party**

n. a person or entity who has an interest (financial or protection of some legal rights) in the subject matter of a lawsuit and, therefore, can join in the lawsuit as he/she/it wishes, or may be brought into the suit (as an unnecessary party) by one of the parties to the legal action. However, the judgment may leave some matters undecided. A proper party is distinguished from a "necessary party,"

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**property damage**

n. injury to real or personal property through another's negligence, willful destruction or by some act of nature. In lawsuits for damages caused by negligence or a willful act, property damage is distinguished from personal injury. Property damage may include harm to an automobile, a fence, a tree, a home or any other possession. The amount of recovery for property damage may be established by ev

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**property tax**

n. an annual governmental tax on real property or personal property based on a tax rate (so many dollars or cents per \$100 value of the property). The value is usually established by an Assessor, a county official. In California the assessed value of real property is based on the amount of the last sale of the property, and the tax is limited to 1% of that figure (with a few minor exceptions) unde

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**propria persona**

adj. from Latin, for oneself.

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**proprietary**

adj. referring to ownership.

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**proprietary interest**

n. a total or partial ownership.

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**proprietary rights**

n. those rights which go with ownership of real property or a business.

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**prostitution**

n. the profession of performing sexual acts for money. Prostitution is a crime throughout the United States, except for a few counties in the state of Nevada, where it is allowed in licensed houses of prostitution. Soliciting acts of prostitution is also a crime, called pandering or simply, soliciting. Pandering on behalf of a prostitute is called pimping.

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**protective custody**

n. the act of law enforcement officials in placing a person in a government facility or foster home in order to protect him/her from a dangerous person or situation. Most commonly a child who has been neglected or battered or is in danger

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from a violent person is taken in as a temporary ward of the state and held in probation facilities or placed in a foster home until a court can decide the future

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**protest**

1) v. to complain in some public way about any act already done or about to be done, such as adoption of a regulation by a county board, sending troops overseas, or use of the death penalty. 2) v. to dispute the amount of property taxes, the assessed evaluation of property for tax purposes or an import duty. 3) n. a written demand for payment of the amount owed on a promissory note which has not been paid

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**prove**

v. to present evidence and/or logic that makes a fact seem certain. A party must do this to convince a trier of fact (jury or judge sitting without a jury) as to facts claimed and to win a lawsuit or criminal case.

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**provisional remedy**

n. a generic term for any temporary order of a court to protect a party from irreparable damage while a lawsuit or petition is pending.

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**proviso**

n. a term or condition in a contract or title document.

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**proximate cause**

n. a happening which results in an event, particularly injury due to negligence or an intentional wrongful act. In order to prevail (win) in a lawsuit for damages due to negligence or some other wrong, it is essential to claim (plead) proximate cause in the complaint and to prove in trial that the negligent act of the defendant was the proximate cause (and not some other reason) of the damages to

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**prudent man rule**

n. the requirement that a trustee, investment manager of pension funds, treasurer of a city or county, or any fiduciary (a trusted agent) must only invest funds entrusted to him/her as would a person of prudence, i.e. with discretion, care and intelligence. Thus solid "blue chip" securities, secured loans, federally guaranteed mortgages, treasury certificates and other conservative investments pro

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**public**

1) n. the people of the nation, state, county, district or municipality which the government serves. 2) adj. referring to any agency, interest, property, or activity which is under the authority of the government or which belongs to the people. This distinguishes public from private interests as with public and private schools, public and private utilities, public and private hospitals, public and

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**public benefit corporation**

n. a term used in some states for a nonprofit community service corporation. Typical examples are clubs like Kiwanis, Rotary, soroptimists and Lions.

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**public charge**

n. a general term for an indigent, sick or severely handicapped person who must be taken care of at public expense.

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**public corporation**

n. a corporation created to perform a governmental function or to operate under government control, such as a municipal water company or hospital.

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**public easement**

n. the right of the general public to use certain streets, highways, paths or airspace. In most cases the easement came about through reservation of the right when land was deeded to individuals or by dedication of the land to the government. In some cases public easements come by prescription (use for many years) such as a pathway across private property down to the ocean. Beach access has been t

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**public figure**

n. in the law of defamation (libel and slander), a personage of great public interest or familiarity like a government official, politician, celebrity, business leader, movie star or sports hero. Incorrect harmful statements published about a public figure cannot be the basis of a lawsuit for defamation unless there is proof that the writer or publisher intentionally defamed the person with malice

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**public nuisance**

n. a nuisance which affects numerous members of the public or the public at large (how many people it takes to make a public is unknown), as distinguished from a nuisance which only does harm to a neighbor or a few private individuals.

Example: a factory which spews out clouds of noxious fumes is a public nuisance but playing drums at three in the morning is a private nuisance bothering only the n

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#### **public property**

n. property owned by the government or one of its agencies, divisions, or entities. Commonly a reference to parks, playgrounds, streets, sidewalks, schools, libraries and other property regularly used by the general public.

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#### **public record**

n. any information, minutes, files, accounts or other records which a governmental body is required to maintain and which must be accessible to scrutiny by the public. This includes the files of most legal actions. A court will take "judicial notice" of a public record (including hearsay in the record) introduced as evidence. For example: a recorded deed to show transfer of title or a criminal jud

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#### **public trust doctrine**

n. the principle that the government holds title to submerged land under navigable waters in trust for the benefit of the public. Thus, any use or sale of the land under water must be in the public interest. Nevertheless, there has been a great deal of use for offshore oil drilling, for landfill, and marine shoreline development, in which protection of the public interest has been dubious at best.

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#### **public use**

n. the only purpose for which private property can be taken (condemned) by the government under its power of eminent domain. Public use includes: schools, streets, highways, hospitals, government buildings, parks, water reservoirs, flood control, slum clearance and redevelopment, public housing, public theaters and stadiums, safety facilities, harbors, bridges, railroads, airports, terminals, pris

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#### **public utility**

n. any organization which provides services to the general public, although it may be privately owned. Public utilities include electric, gas, telephone, water and television cable systems, as well as streetcar and bus lines. They are allowed certain monopoly rights due to the practical need to service entire geographic areas with one system, but they are regulated by state, county and/or city pub

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#### **publication**

n. 1) anything made public by print (as in a news- paper, magazine, pamphlet, letter, telegram, computer modem or program, poster, brochure or pamphlet), orally, or by broadcast (radio, television). 2) placing a legal notice in an approved newspaper of general publication in the county or district in which the law requires such notice to be published. 3) in the law of defamation (libel and slander

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#### **publish**

v. to make public to at least one other person by any means.

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#### **puffing**

n. the exaggeration of the good points of a product, a business, real property and the prospects for future rise in value, profits and growth. Since a certain amount of "puffing" can be expected of any salesman, it cannot be the basis of a lawsuit for fraud or breach of contract unless the exaggeration exceeds the reality. However, if the puffery includes outright lies or has no basis in fact ("Se

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#### **putative**

adj. commonly believed, supposed or claimed. Thus a putative father is one believed to be the father unless proved otherwise, a putative marriage is one that is accepted as legal when in reality it was not lawful (e.g. due to failure to complete a prior divorce). A putative will is one that appears to be the final will but a later will is found that revokes it and shows that the putative will was

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#### **quasi**

(kway-zeye, kwah-zee) adj., adv. from Latin for "as if," almost, somewhat, to a degree (always used in combination with another word). Quasi refers to things and actions which are not exactly or fully what they might appear, but have to be treated "as if" they were.

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#### **quasi community property**

n. in community property states, property acquired by a couple who have not been married, but have lived and purchased the property as if they were married. Often this includes property purchased or received by a couple shortly before marriage.

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#### **quasi contract**

n. a situation in which there is an obligation as if there was a contract, although the technical requirements of a contract have not been fulfilled.

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**quasi corporation**

n. a business which has operated as a corporation without completing the legal requirements, often in the period just before formal incorporation.

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**quasi in rem**

adj. referring to a legal action which is primarily based on property rights, but includes personal rights as well.

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**quasi-criminal**

adj. a reference to a court's right to punish for actions or omissions as if they were criminal. The most common example is finding a parent who is delinquent in child support in contempt of court and penalizing him/her with a jail sentence. If a hearing is quasi-criminal the quasi-defendant is entitled to all due process protections afforded a criminal defendant.

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**Queens Bench**

n. 1) the highest court in Great Britain during the reign of a Queen, so that opinions are identified as a volume of Queen's Bench (QB). 2) in the United States, organizations of women lawyers, dating from when women were a small minority of practicing attorneys and needed to encourage each other, urge employment of women attorneys, protect against discrimination and promote the cause of equality

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**query**

n. common lawyer lingo for a question to be answered.

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**question of fact**

n. in a lawsuit or criminal prosecution, an issue of fact in which the truth or falsity (or a mix of the two) must be determined by the "trier of fact" (the jury or the judge in a non-jury trial) in order to reach a decision in the case. A "question of fact" may also be raised in a motion for summary judgment which asks the court to determine whether there are any questions of fact to be tried, al

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**question of law**

n. an issue arising in a lawsuit or criminal prosecution which only relates to determination of what the law is, how it is applied to the facts in the case, and other purely legal points in contention. All "questions of law" arising before, during and sometimes after a trial are to be determined solely by the judge and not by the jury. "Questions of law" are differentiated from "questions of fact,

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**qui tam action**

(kwee tam) n. from Latin for "who as well," a lawsuit brought by a private citizen (popularly called a "whistle blower") against a person or company who is believed to have violated the law in the performance of a contract with the government or in violation of a government regulation, when there is a statute which provides for a penalty for such violations. Qui tam suits are brought for "the gove

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**quiet title action**

n. a lawsuit to establish a party's title to real property against anyone and everyone, and thus "quiet" any challenges or claims to the title. Such a suit usually arises when there is some question about clear title, there exists some recorded problem (such as an old lease or failure to clear title after payment of a mortgage), an error in description which casts doubt on the amount of property o

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**quit**

v. to leave, used in a written notice to a tenant to leave the premises (notice to quit).

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**quotient verdict**

n. an award of money damages set by a jury in a lawsuit in which each juror states in writing his/her opinion of what the amount should be. Then the amounts are totalled and divided by the number of jurors to reach a figure for the award. A quotient verdict is illegal and improper since it is based on guesses and not a rational discussion of the facts. Such a judgment will be set aside on a motion

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**race to the courthouse**

n. slang for the rule that the first deed, deed of trust, mortgage, lien or judgment which is recorded with the County Recorder will have priority and prevail over later recordings no matter when the documents were dated.

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**Racketeer Influenced Corrupt Organization (RICO) statue**

n. a federal law which makes it a crime for organized criminal conspiracies to operate legitimate businesses.

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**racketeering**

n. the federal crime of conspiring to organize to commit crimes, particularly as a regular business ("organized crime" or "the Mafia").

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**ratable**

adj. taxable according to value, such as an estate or property.

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**ratification**

n. confirmation of an action which was not pre-approved and may not have been authorized, usually by a principal (employer) who adopts the acts of his/her agent (employee).

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**ratify**

v. to confirm and adopt the act of another even though it was not approved beforehand. Example: An employee for Holsinger's Hardware orders carpentry equipment from Phillips Screws and Nails although the employee was not authorized to buy anything. The president of Holsinger's ratifies the deal when Phillips delivers the order. A person under the legal age who makes a contract may ratify the contract.

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**rational basis**

n. a test of constitutionality of a statute, asking whether the law has a reasonable connection to achieving a legitimate and constitutional objective.

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**ready, willing and able**

adj. fully prepared to act, as in performing a contract.

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**real estate investment trust**

n. nicknamed REIT, a real estate investment organization which finds investors and buys real property and gives each investor either a percentage interest in the property itself or an interest in a loan secured by a mortgage or deed of trust on the property. Usually the loan is used to develop the property and build upon it, and then there is a division of profits upon sale-if there is a profit.

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**real party in interest**

n. the person or entity who will benefit from a lawsuit or petition even though the plaintiff (the person filing the suit) is someone else, often called a "nominal" plaintiff. Example: a trustee files a suit against a person who damaged a building owned by the trust; the real party in the interest is the beneficiary of the trust.

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**realty**

n. a short form of "real estate."

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**reasonable**

adj., adv. in law, just, rational, appropriate, ordinary or usual in the circumstances. It may refer to care, cause, compensation, doubt (in a criminal trial), and a host of other actions or activities.

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**reasonable reliance**

n. particularly in contracts, what a prudent person would believe and act upon if told something by another. Typically, a person is promised a profit or other benefit, and in reliance takes steps in reliance on the promise, only to find the statements or promises were not true or were exaggerated. The one who relied can recover damages for the costs of his/her actions or demand performance if the

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**reasonable speed**

n. the speed of an automobile determined to be lower than the posted speed limit due to the circumstances, such as rain, icy road, heavy traffic, poor condition of the vehicle or gloom of night. Exceeding reasonable speed under the circumstances can result in being cited for speeding. In the law of negligence, exceeding reasonable speed in the prevailing conditions may be found to be negligent even

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**reasonable time**

n. in contracts, common custom in the business or under the circumstances will define "reasonable time" to perform or pay. It is bad practice to draft a contract using such a vague term.

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**reasonable wear and tear**

n. commonly used in leases to limit the tenant's responsibility (and therefore liability to repair or repaint) upon leaving. It is subjective, but the considerations include the length of time of tenancy (the longer the occupancy the more wear and tear

can be expected), the lack of unusual damage such as a hole in the wall or a broken window, and the condition of the premises when the tenant moved

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**rebate**

1) n. a discount or deduction on sales price. A secret rebate given by a subcontractor to a contractor in return for getting the job is illegal, since it cheats the person hiring the contractor. 2) v. to give a discount or deduction.

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**rebuttable presumption**

n. since a presumption is an assumption of fact accepted by the court until disproved, all presumptions are rebuttable. Thus rebuttable presumption is a redundancy.

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**rebuttal**

n. evidence introduced to counter, disprove or contradict the opposition's evidence or a presumption, or responsive legal argument.

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**recapture**

n. in income tax, the requirement that upon sale of property the taxpayer pay the amount of tax savings from past years due to accelerated depreciation or deferred capital gains.

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**receipt**

n. a written and signed acknowledgment by the recipient of payment for goods, money in payment of a debt or receiving assets from the estate of someone who has died.

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**receiver**

n. 1) a neutral person (often a professional trustee) appointed by a judge to take charge of the property and business of one of the parties to a lawsuit and receive his/her rents and profits while the right to the moneys has not been finally decided. Appointment of a receiver must be requested by petition of the other party to the suit, and will only be authorized if there is a strong showing tha

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**receivership**

n. the process of appointment by a court of a receiver to take custody of the property, business, rents and profits of a party to a lawsuit pending a final decision on disbursement or an agreement that a receiver control the financial receipts of a person who is deeply in debt (insolvent) for the benefit of creditors. Thus, the term "the business is in receivership."

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**recess**

n. a break in a trial or other court proceedings or a legislative session until a certain date and time. Recess is not to be confused with "adjournment," which winds up the proceedings.

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**recidivist**

n. a repeat criminal offender, convicted of a crime after having been previously convicted.

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**reciprocal discovery**

n. the exchange of documents, lists of witnesses, and other information between the two sides of a lawsuit or criminal prosecution before trial.

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**reciprocity**

n. mutual exchange of privileges between states, nations, businesses or individuals. In regard to lawyers, reciprocity refers to recognizing the license of an attorney from another state without the necessity of taking the local state's bar examination. Such reciprocity is seldom granted now, since many large states refuse to give it.

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**reckless**

adj. in both negligence and criminal cases, careless to the point of being heedless of the consequences ("grossly" negligent). Most commonly this refers to the traffic misdemeanor "reckless driving." It can also refer to use of firearms (shooting a gun in a public place), explosives or heavy equipment.

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**reckless disregard**

n. gross negligence without concern for danger to others. Actually "reckless disregard" is redundant since reckless means there is a disregard for safety.

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**reckless driving**

n. operation of an automobile in a dangerous manner under the circumstances, including speeding (or going too fast for the conditions, even though within the posted speed limit), driving after drinking (but not drunk), having too many passengers in the car, cutting in and out of traffic, failing to yield to other vehicles and other negligent acts. It is a

misdemeanor crime. A "wet reckless" is a p

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**reconveyance**

n. in those states which use deeds of trust as a mortgage on real property to secure payment of a loan or other debt, the transfer of title by the trustee (which has been holding title to the real property) back to the borrower (on the written request of the borrower) when the secured debt is fully paid. Under the deed of trust the borrower transfers title in the real property to the trustee (ofte

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**record**

1) v. (ree-cored) to put a document into the official records of a county at the office of the County Recorder or Recorder of Deeds. The process is that the document is taken or sent to the Recorder's office, a recording fee paid, the document is given a number (a document number, volume or reel number and page number), stamped with the date (and usually the time) of recording and then in most mod

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**recording acts**

n. the statutes of each state which established the keeping of official records by County Recorders or Recorders of Deeds.

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**records**

n. in business, particularly corporations, all the written business documents, especially about financial dealings. Thus, shareholders and partners are entitled to access to the "records" of the business.

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**recoupment**

n. the right of a defendant in a lawsuit to demand deduction from the amount awarded to plaintiff (party bringing the suit) of a sum due the defendant from the plaintiff in the transaction which was the subject of the lawsuit. Example: Laura Landlord sues Tillie Tenant for nonpayment of rent, Tenant is entitled to deduct a deposit made at the commencement of the lease, or an amount Landlord receiv

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**recourse**

n. the right to demand payment to the writer of a check or bill of exchange.

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**recover**

v. to receive a money judgment in a lawsuit.

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**recoverable**

adj. referring to the amount of money to which a plaintiff (the party suing) is entitled in a lawsuit. Thus, a judge might rule "\$12,500 is recoverable for lost wages, and \$5,500 is recoverable for property damage to plaintiff's vehicle."

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**recovery**

n. the amount of money and any other right or property received by a plaintiff in a lawsuit.

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**recuse**

v. to refuse to be a judge (or for a judge to agree to a request by one of the parties to step aside) in a lawsuit or appeal because of a conflict of interest or other good reason (acquaintanceship with one of the parties, for example). It also applies to a judge or prosecutor being removed or voluntarily removing himself/herself from a criminal case in which he/she has a conflict of interest, suc

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**redeem**

v. to buy back, as when an owner who had mortgaged his/her real property pays off the debt. The term also refers to paying the amount due and all charges after a foreclosure (because of failure to make payments when due) has begun. A person who has pawned a possession may redeem the item by paying the loan and interest to the pawnbroker.

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**reentry**

n. taking back possession and going into real property which one owns, particularly when a tenant has failed to pay rent or has abandoned the property, or possession has been restored to the owner by judgment in an unlawful detainer lawsuit. Reentry may also be allowed when a buyer defaults on payments on a contract of sale or upon foreclosure of a mortgage or deed of trust which secured a loan on

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**referee**

n. a person to whom a judge refers a case to take testimony or acquire other evidence such as financial records and report to the court on such findings.

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**refresh ones memory**

v. to use a document, exhibit or previous testimony in order to help a witness recall an event or prior statement when the witness has responded to a question that he/she could not remember. To attempt to "refresh" the memory of a forgetful or reluctant witness, the witness must have denied remembering and the attorney must have the witness identify the document, exhibit or prior statement (lay a

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**register**

n. in corporations, the record of shareholders, and issuance and transfer of shares on the records of the corporation.

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**registration statement**

n. a detailed report to be filed with the Securities and Exchange Commission by a corporation making an issuance of shares to be advertised and sold to the general public in more than one state (in interstate commerce), which must be approved by the SEC before it will approve the stock issuance.

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**registry of deeds**

n. the records of land title documents kept by the County Recorder or Recorder of Deeds. These are usually kept on microfilm reels of copies of the original documents, which can be found by tracing the names of owners in the Grantor-Grantee index. These are public information but may require the assistance of an employee to locate.

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**regulations**

n. rules and administrative codes issued by governmental agencies at all levels, municipal, county, state and federal. Although they are not laws, regulations have the force of law, since they are adopted under authority granted by statutes, and often include penalties for violations. One problem is that regulations are not generally included in volumes containing state statutes or federal laws bu

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**rehearing**

n. conducting a hearing again based on the motion of one of the parties to a lawsuit, petition or criminal prosecution, usually by the court or agency which originally heard the matter. Rehearings are usually requested due to newly discovered evidence, an unfortunate and possibly unintended result of the original order, a change of circumstance or a simple claim that the judge or agency was just w

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**rejection of claim**

n. in probate law (administration of an estate of a person who died), a claim for a debt of the deceased denied (rejected) in total or in part by the executor or administrator of the estate. A claim is rejected in writing filed with the court, and a judge shall approve or disapprove the rejection if the claimant protests. If a claim is not acted upon it may be presumed to be approved in most state

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**release**

1) v. to give up a right as releasing one from his/her obligation to perform under a contract, or to relinquish a right to an interest in real property. 2) v. to give freedom, as letting out of prison. 3) n. the writing that grants a release.

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**release on ones own recognizance**

v. for a judge to allow a criminal defendant pre-trial freedom without posting bail, based on the past history of the defendant, roots in the community, regular employment, the recommendation of the prosecutor, the type of crime, and in total the likelihood of making all appearances in court and the improbability that the defendant will commit another crime while awaiting trial. Often called "O.R."

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**relevancy**

adj. not important, pertinent, or germane to the matter at hand or to any issue before the court. This is the most common objection raised by attorneys to questions asked or to answers given during testimony in a trial. The objection is made as soon as an alert attorney believes the opposition is going into matters which are not concerned with the facts or outside the issues of the lawsuit. It is

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**relevant**

adj. having some reasonable connection with, and in regard to evidence in trial, having some value or tendency to prove a matter of fact significant to the case. Commonly, an objection to testimony or physical evidence is that it is "irrelevant."

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**reliction**

n. gradual change of water line on real property which gives the owner more dry land.

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**relief**

n. generic term for all types of benefits which an order or judgment of court can give a party to a lawsuit, including money award, injunction, return of property, property title, alimony and dozens of other possibilities.

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**remise**

v. to give up something, sometimes used in quitclaim deeds.

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**remittitur**

n. 1) a judge's order reducing a judgment awarded by a jury when the award exceeds the amount asked for by the plaintiff (person who brought the suit). 2) an appeal's transmittal of a case back to the trial court so that the case can be retried, or an order entered consistent with the appeals court's decision (such as dismissing the plaintiff's case or awarding costs to the winning party on appeal)

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**remote**

adj., adv. extremely far off or slight. Evidence may be so remote from the issues in a trial that it will not be allowed because it is "immaterial." An act which started the events which led to an accident may be too remote to be a cause, as distinguished from the "proximate cause." Example: While Doug Driver is passing a corner a friend calls out to him causing him to look away, and then Doug loo

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**renewal**

n. keeping an existing arrangement in force for an additional period of time, such as a lease, a promissory note, insurance policy or any other contract. Renewal usually requires a writing or some action which evidences the new term.

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**rental value**

n. the amount which would be paid for rental of similar property in the same condition in the same area. Evidence of rental value becomes important in lawsuits in which loss of use of real property or equipment is an issue, and the rental value is the "measure of damages." In divorce cases in which one of the spouses stays in the family residence, the use of the property has rental value which is

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**renunciation**

n. 1) giving up a right, such as a right of inheritance, a gift under a will or abandoning the right to collect a debt on a note. 2) in criminal law, abandoning participation in a crime before it takes place, or an attempt to stop other participants from going ahead with the crime. A defendant may use renunciation as evidence of his/her innocence. Once the crime is underway, any claimed renunciati

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**reorganization**

n. the implementation of a business plan to restructure a corporation, which may include transfers of stock between shareholders of two corporations in a merger. In bankruptcy, a corporation in deep financial trouble may be given time to reorganize while being protected from creditors by the bankruptcy court. The theory is that if the business is able to get on its feet the creditors will eventual

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**repair**

v. to restore to former condition or in some contracts to operational soundness. Contracts should spell out the repairs to be made and what the final condition will be. Example: roof repairs should be more than a half-baked patching to temporarily halt leaking.

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**repeal**

1) v. to annul an existing law, by passage of a repealing statute, or by public vote on a referendum. Repeal of constitutional provisions requires an amendment, as with the repeal of prohibition in which the 21st Amendment repealed the 18th Amendment. 2) n. the act of annulling a statute.

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**reply brief**

n. the written legal argument of the respondent (trial court winner) in answer to the "opening brief" of an appellant (a trial court loser who has appealed).

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**reports**

n. the published decisions of appeals courts in all states and federal courts, which are found in federal, state and regional series (called "reporters") which are constantly updated with pamphlets called "advance sheets" which are soon followed by bound volumes. There are also reports of specialized courts and particular subject matters such as taxes, bankruptcy and federal procedure. Thus there

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**repossess**

v. to take back property through judicial processes, foreclosure, or self-help upon default in required payments.

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**represent**

v. 1) to act as the agent for another. 2) to act as a client's attorney. 3) to state something as a fact, such as "I tell you this horse is only four years old." 4) to allege a fact in court, as "I represent to the court that we will present six witnesses," "We represent that this is the final contract between the parties."

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**representation**

n. 1) the act of being another's agent. 2) acting as an attorney for a client. 3) a statement of alleged fact either in negotiations or in court.

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**representative**

1) n. an agent. 2) n. in probate law, a generic term for an executor or administrator of the estate of a person who has died, generally referred to as the "personal representative." 3) adj. typical, as "these pictures are representative of the conditions at the job site."

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**reprieve**

n. a temporary delay in imposition of the death penalty (a punishment which cannot be reduced afterwards) by the executive order of the Governor of the state. Reasons for reprieves include the possibility of newly discovered evidence (another's involvement, evidence of mental impairment), awaiting the result of some last-minute appeal, or concern of the Governor that there may have been some error

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**repudiation**

n. denial of the existence of a contract and/or refusal to perform a contract obligation. Repudiation is an anticipatory breach of a contract.

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**reputation**

n. a person's good name, honor or what the community thinks of him/her. The quality and value of one's reputation is a key issue in suits for defamation (libel and slander) since the damage to one's reputation by published untruths may determine the amount of judgment against the defamer. Sometimes a person's favorable reputation is so great that most defamation cannot do him/her much harm.

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**reputed**

adj. referring to what is accepted by general public belief, whether or not correct.

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**request**

1) v. to ask or demand a judge to act (such as issuing a writ) or demanding something from the other party (such as production of documents), usually by a party to a lawsuit (usually the attorney). 2) n. the act of asking or demanding.

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**requirements contract**

n. a contract between a supplier (or manufacturer) and a buyer, in which the supplier agrees to sell all the particular products that the buyer needs, and the buyer agrees to purchase the goods exclusively from the supplier. A requirements contract differs from an "an output contract," in which the buyer agrees to buy all the supplier produces.

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**res**

(rayz)n. Latin, "thing." In law lingo res is used in conjunction with other Latin words as "thing that."

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**res adjudicata**

n. a thing (legal matter) already determined by a court, from Latin for "the thing has been judged." More properly res judicata.

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**resale**

n. selling again, particularly at retail. 2) adj. referring to sales to the general public, as distinguished from wholesale, sales to retailers. In many states a "resale license" or "resale number" is required so that the state can monitor the collection of sales tax on retail sales.

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**rescission**

n. the cancellation of a contract by mutual agreement of the parties.

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**rescue doctrine**

n. the rule of law that if a rescuer of a person hurt or put in peril due to the negligence or intentional wrongdoing of another (the tortfeasor) is injured in the process of the rescue, the original wrongdoer is responsible in damages for the rescuer's injury. Example: Sydney Sparetire speeds on a mountain highway, and skids in front of Victor Victim, running Victim's car off the bank, trapping V

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**reservation**

n. a provision in a deed which keeps (reserves) to the grantor some right or portion of the property. The language might read: "Sarah Sims reserves to herself an easement of access to lots 6, 7 and 8," or "reserves mineral rights," or "except she reserves lot 5."

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**reserve**

v. to keep for oneself a right or a portion of the real property when transferring (conveying) a parcel of real estate to another.

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**reserve fund**

n. a fund of money created to take care of maintenance, repairs or unexpected expenses of a business or a multi-unit housing development (often condominiums or a housing cooperative) operated by a homeowners association or other governing body. Most states require that homeowners associations maintain such a fund.

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**resident**

n. a person who lives in a particular place. However, the term is vague depending on the permanence of the occupation.

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**residuary bequest**

n. in a will, the gift of whatever is left (the residue) after specific gifts are given. It is also called a residuary legacy.

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**resisting arrest**

n. the crime of using physical force (no matter how slight in the eyes of most law enforcement officers) to prevent arrest, handcuffing and/or taking the accused to jail. It is also called "resisting an officer" (but that can include interfering with a peace officer's attempt to keep the peace) and is sometimes referred to merely as "resisting."

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**responsible**

adj. 1) legally liable or accountable. 2) having the ability to pay or perform.

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**Restatement of the Law**

n. a series of detailed statements of the basic law in the United States on a variety of subjects written and updated by well-known legal scholars under the auspices of the American Law Institute since the 1930s. While not having the force of statutes or of decided precedents, the Restatement (as lawyers generally call it) has the prestige of the scholars who have studied the legal questions. Topi

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**restraint of trade**

n. in antitrust law, any activity (including agreements among competitors or companies doing business with each other) which tends to limit trade, sales and transportation in interstate commerce or has a substantial impact on interstate commerce. Most of these actions are illegal under the various antitrust statutes. Some state laws also outlaw local restraints on competitive business activity.

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**restriction**

n. any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects managed by homeowners' associations or similar organizations, such organizations are usually required by state law to impose restrictions on use. Thus, the restrictions are part of the "covenants, conditions and restrictions" intended to

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**restrictive endorsement**

n. an endorsement signed on the back of a check, note or bill of exchange which restricts to whom the paper may be transferred. Example: "for transfer only to Frank Lowry, [signed] J. Ripps." Also spelled "indorsement."

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**result**

n. common lawyer lingo for outcome of a lawsuit.

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**retire**

v. 1) to stop working at one's occupation. 2) to pay off a promissory note and thus "retire" the loan. 3) for a jury to go into the jury room to decide on a verdict after all evidence, argument and jury instructions have been completed.

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**retraction**

n. 1) to withdraw any legal document in a lawsuit or other legal proceeding, or withdraw a promise or offer of contract. 2) in defamation, particularly libel, the correction of any untruth published in a newspaper or magazine or broadcast on radio or television, usually upon the demand of the person about whom the damaging false statement was made. A clear and complete retraction will usually end

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**retrial**

n. a new trial granted upon the motion of the losing party, based on obvious error, bias or newly discovered evidence, or after mistrial or reversed by an appeals court.

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**retroactive**

adj. referring to a court's decision or a statute enacted by a legislative body which would result in application to past transactions and legal actions. In criminal law, statutes which would increase penalties or make criminal activities which had been previously legal are prohibited by the constitutional ban on ex post facto laws (Article I, Section 9). Most court decisions which change the elem

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**return of service**

n. written confirmation under oath by a process server declaring that there was service of legal documents (such as a summons and complaint).

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**revenue ruling**

n. a published opinion of the Internal Revenue Service stating what it would rule on future tax questions based on the same circumstances. These rulings are of general use to taxpayers, tax preparers, accountants and attorneys in anticipating tax treatment by the IRS. They have the force of law until otherwise determined by the federal tax court or a new revenue ruling.

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**reversal**

n. the decision of a court of appeal ruling that the judgment of a lower court was incorrect and is therefore reversed. The result is that the lower court which tried the case is instructed to dismiss the original action, retry the case or change its judgment. Examples: a court which denied a petition for writ of mandate is ordered to issue the writ. A lower court which gave judgment with no evide

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**reversible error**

n. a legal mistake at the trial court level which is so significant (resulted in an improper judgment) that the judgment must be reversed by the appellate court. A reversible error is distinguished from an error which is minor or did not contribute to the judgment at the trial.

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**reverter**

n. synonymous with reversion.

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**review**

n. the judicial consideration of a lower court judgment by an appellate court, determining if there were legal errors sufficient to require reversal. The process requires notice of appeal, obtaining a transcript of the trial or hearing at the trial level, obtaining all the pleadings and other documents filed in the original trial, preparation of briefs citing precedents and arguing that there was

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**revival**

n. 1) requesting a court to reinstate the force of an old judgment. 2) reinstating a contract or debt by a new agreement after the right to demand performance or collect has expired under the statute of limitations (the time to sue).

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**revocation**

n. 1) mutual cancellation of a contract by the parties to it. 2) withdrawing an offer before it is accepted ("I revoke my offer"). 3) cancelling a document before it has come into legal effect or been acted upon, as revoking a will. 4) to recall a power or authority previously given, as cancelling a power of attorney or cancelling a driver's license due to traffic offenses.

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**revoke**

v. to annul or cancel an act, particularly a statement, document or promise, as if it no longer existed. Thus, a person can revoke a will or revoke an offer to enter into a contract, and a government agency can revoke a license.

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**right**

1) n. an entitlement to something, whether to concepts like justice and due process or to ownership of property or some interest in property, real or personal. These rights include: various freedoms; protection against interference with enjoyment of life and property; civil rights enjoyed by citizens such as voting and access to the courts; natural rights accepted by civilized societies; human rig

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**right of way**

n. 1) a pathway or road with a specific description (e.g. "right to access and egress 20 feet wide along the northern line of Lot 7 of the Cobb subdivision in page 75 of maps"). 2) the right to cross property to go to and from another parcel. The right of way may be a specific grant of land or an "easement," which is a right to pass across another's land. The mere right to cross without a specific

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**right to privacy**

n. the possible right to be let alone, in absence of some "reasonable" public interest in a person's activities, like those of celebrities or participants in newsworthy events. Invasion of the right to privacy can be the basis for a lawsuit for damages against the person or entity (such as a magazine or television show) violating the right. However, the right to privacy does

not extend to prohibit

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**rights**

n. 1) plural of right, which is the collection of entitlements which a person may have and which are protected by the government and the courts or under an agreement (contract). 2) slang for the information which must be given by law enforcement officers to a person who is about to be arrested, is a prime suspect in a crime, or is officially accused of a crime. These "rights" are short for "Mirand"

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**riparian**

adj. referring to the banks of a river or stream.

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**ripe**

adj. in constitutional law, referring to a law case appealed from a state or federal court which is ready for consideration by the Supreme Court, meaning that all other avenues for determining the case have been exhausted, there is a real controversy and the law needs to be settled on one or more issues raised by the case.

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**risk**

n. chances of danger or loss, particularly of property covered by an insurance policy or property being used or transported by another. Insurance companies assume the risk of loss and calculate their premiums by the value and the risk based on statistically determined chances. A trucking company assumes the risk of loss while carrying goods.

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**risk of loss**

n. the responsibility a carrier, borrower or user of property or goods assumes or an insurance company agrees to cover if there is damage or loss.

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**roadside test**

n. a preliminary test law enforcement officers use on a suspected drunk driver at the spot the driver has been pulled over. Essentially it is a test of equilibrium (balance), reflexes and mental acuity, consisting of standing on one foot and then the other, walking a straight line, touching one's nose with the forefinger of each hand, saying the alphabet backwards or counting by twos. Some tests i

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**rogatory letters**

n. a written request by a judge to a judge in another state asking that a witness in the other state have his/her testimony taken in the other state's court for use in the local court case.

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**royalty**

n. a percentage of gross or net profit or a fixed amount per sale to which a creator of a work is entitled which is determined by contract between the creator and the manufacturer, publisher, agent and/or distributor. Inventors, authors, movie makers, scriptwriters, music composers, musicians and other creators contract with the manufacturers, publishers, movie production companies and distributor

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**rule**

1) v. to decide a legal question, by a court, as in: "I rule that the plaintiff is entitled to the goods and damages for delay in the sum of \$10,000." 2) v. to make a judicial command, such as: "I find that George Gonzo is the parent of Larry Gonzo and rule that he must pay support of \$150 per month to the mother" for the support of Larry. 3) n. any regulation governing conduct. 4) n. one of the r

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**rules of court**

n. a set of procedural regulations adopted by courts which are mandatory upon parties and their lawyers on matters within the jurisdiction of those courts. Most states have statewide rules of court. Federal court rules are adopted by the district courts based on the Federal Rules of Procedure, and county, district and municipal court judges adopt what are called "local rules" of court. Local rules

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**running at large**

adj. 1) referring to cattle or other animals which have escaped from an enclosure and are wandering. The owner will be liable for damage caused by such animals. 2) political campaigning by a candidate running for an office from no specific district, but from an entire city, county or state.

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**running with the land**

adj. permanently part of the title (ownership) to real property.

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**said**

adj. a reference back to a thing that was previously mentioned or identified, popular in legal documents, as "the said driver drove said automobile in a negligent manner."

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**sale**

n. transfer of something (and title to it) in return for money (or other thing of value) on terms agreed upon between buyer and seller. The price paid may be based on a posted cost, established by negotiation between seller and buyer, or by auction with potential buyers bidding until the highest bid is accepted by the seller or his agent (auctioneer).

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**satisfaction**

n. receiving payment or performance of what is due.

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**satisfaction of judgment**

n. a document signed by a judgment creditor (the party owed the money judgment) stating that the full amount due on the judgment has been paid. The judgment creditor (the party who paid the judgment) is entitled to demand that the judgment creditor (the party to whom the money judgment is owed) sign the satisfaction of judgment, file it with the court clerk, acknowledge it before a notary public,

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**satisfaction of mortgage**

n. a document signed by a lender acknowledging that a mortgage has been fully paid. It must be recorded with the County Recorder (or Recorder of Deeds) to clear the title to the real property owned by the person who paid off the debt.

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**save harmless**

v. 1) also called hold harmless, to indemnify (protect) another from harm or cost. 2) to agree to guarantee that any debt, lawsuit or claim which may arise as a result of a contract or contract performance will be paid or taken care of by the party making the guarantee. Example: the seller of a business agrees to "save harmless" the buyer from any unknown debts of the business.

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**savings and loan**

n. a banking and lending institution, chartered either by a state or the federal government. Savings and loans only make loans secured by real property from deposits, upon which they pay interest slightly higher than that paid by most banks. In the early 1980s savings and loans were "de-regulated," allowing them to make loans for speculative land development, removing high reserve funds requirements

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**scintilla**

n. Latin for "spark." Scintilla is commonly used in reference to evidence, in the context that there must be a "scintilla of evidence" (at least a faint spark) upon which to base a judgment.

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**scope of employment**

n. actions of an employee which further the business of the employer and are not personal business, which becomes the test as to whether an employer is liable for damages due to such actions under the doctrine of respondeat superior (make the master answer). Example: Dick Deliver drives a truck delivering groceries for Super-Duper Market. If Dick negligently runs the truck into Victor Victim's VW

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**scrivener**

n. a person who writes a document for another, usually for a fee. If a lawyer merely writes out the terms of a lease or contract exactly as requested by the client, without giving legal advice, then the lawyer is just a scrivener and is probably not responsible for legal errors (unless they were so obvious as to warrant comment). A non-lawyer may act as a scrivener without getting in trouble for p

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**seal**

n. a device which creates an impression upon paper or melted wax, used by government agencies, corporations and notaries public to show that the document is validly executed, acknowledged or witnessed, since the seal is unique to the sealer. Corporate seals state the name, date and state of incorporation. Notaries increasingly use a rubber stamp instead of a seal since their print is easier to mic

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**sealed verdict**

n. the decision of a jury when there is a delay in announcing the result, such as waiting for the judge, the parties and the attorneys to come back to court. The verdict is kept in a sealed envelope until handed to the judge when court reconvenes.

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**sealing of records**

n. trial records and decisions which a judge orders kept secret. Usually these are the criminal records of under-age offenders which cannot be examined without a special court order or only by those connected with law enforcement. On occasion records in civil trials are sealed on the motion of a party claiming the need to protect inventions, business secrets or national security. Sometimes sealing

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**search**

v. 1) to examine another's premises (including a vehicle) to look for evidence of criminal activity. It is unconstitutional under the 4th and 14th Amendments for law enforcement officers to conduct a search without a "search warrant" issued by a judge or without facts which give the officer "probable cause" to believe evidence of a specific crime is on the premises and there is not enough time to

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**search and seizure**

n. examination of a person's premises (residence, business or vehicle) by law enforcement officers looking for evidence of the commission of a crime, and the taking (seizure and removal) of articles of evidence (such as controlled narcotics, a pistol, counterfeit bills, a blood-soaked blanket). The basic question is whether the search and seizure were "unreasonable" under the 4th Amendment to the

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**second degree murder**

n. a non-premeditated killing, resulting from an assault in which death of the victim was a distinct possibility. Second degree murder is different from first degree murder, which is a premeditated, intentional killing or results from a vicious crime such as arson, rape or armed robbery. Exact distinctions on degree vary by state.

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**secondary boycott**

n. an organized refusal to purchase the products of, do business with or perform services for (such as deliver goods) a company which is doing business with another company where the employees are on strike or in a labor dispute. Example: Big Basket Markets are being struck by the Retail Clerks Union, and Cupboard Canning and Wheato Bread are selling foodstuffs to Big Basket. The Teamsters Union t

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**secret rebate**

n. a kickback of money by a business to a "preferred" customer, not offered to the public or by a subcontractor to a contractor not shown on a job estimate. Both are illegal in most states as unfair business practices and may result in criminal penalties or refusal of a court to enforce a contract (written or oral) in which there is such a secret rebate.

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**secured transaction**

n. any loan or credit in which property is pledged as security in the event payment is not made.

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**security interest**

n. generic term for the property rights of a lender or creditor whose right to collect a debt is secured by property.

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**seduction**

n. the use of charm, salesmanship, promises, gifts and flattery to induce another person to have sexual intercourse outside marriage, without any use of force or intimidation. At one time seduction was a crime in many states, but if the seducee (usually female) is of the age of consent and is not drugged, intoxicated or otherwise unable to consent, seduction is no longer criminal. However, just as

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**seized**

(seised) n. 1) having ownership, commonly used in wills as "I give all the property of which I die seized as follows:...." 2) having taken possession of evidence for use in a criminal prosecution. 3) having taken property or a person by force.

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**seizure**

n. the taking by law enforcement officers of potential evidence in a criminal case. The constitutional limitations on seizure are the same as for search. Thus, evidence seized without a search warrant or without "probable cause" to believe a crime has been committed and without time to get a search warrant, cannot be admitted in court, nor can evidence traced through the illegal seizure.

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**self-dealing**

n. in the stock market, using secret "inside" information gained by being an official of a corporation (or from such an officer) to buy or sell stock (or real property wanted by the corporation) before the information becomes public (like a merger, poor profit report, striking oil). Self-dealing can also apply to general partners of a limited partnership who do not inform limited partners of busin

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**self-defense**

n. the use of reasonable force to protect oneself or members of the family from bodily harm from the attack of an aggressor, if the defender has reason to believe he/she/they is/are in danger. Self-defense is a common defense by a person accused of assault, battery or homicide. The force used in self-defense may be sufficient for protection from apparent harm (not just an empty verbal threat) or t

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**self-executing**

adj. immediately effective without further action, legislation or legal steps. Some statutes are self-executing, as are some legal rights (such as when a person holds property as security and title passes automatically when payments are not made). Most judgments in lawsuits are not self-executing and are only documents giving the winning party the right to try to collect.

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**self-help**

n. 1) obtaining relief or enforcing one's rights without resorting to legal action, such as repossessing a car when payments have not been made, retrieving borrowed or stolen goods, demanding and receiving payment or abating a nuisance (such as digging a ditch to divert flooding from another's property). Self-help is legal as long as it does not "break the public peace" or violate some other law (

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**self-serving**

adj. referring to a question asked of a party to a lawsuit or a statement by that person that serves no purpose and provides no evidence, but only argues or reinforces the legal position of that party. Example: Question asked by a lawyer of his own client: "Are you the sort of person who would never do anything dishonest?" Such a question may be objected to as "self-serving" by the opposing lawyer

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**sell**

v. to transfer possession and ownership of goods or other property for money or something of equivalent value.

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**seller**

n. one who sells goods or other property to a buyer (purchaser).

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**senior lien**

n. the first security interest (lien or claim) placed upon property at a time before other liens, which are called "junior" liens.

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**separate property**

n. in community property states (California, Texas, Arizona, Idaho, Louisiana, New Mexico, Nevada and Washington), the property owned by one spouse which he/she acquired: a) before marriage, b) by inheritance, c) as a gift, d) assets traceable to other separate property such as money received from sale of a house owned before marriage, and e) property the spouses agree is separate property. State

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**sequester**

v. to keep separate or apart. In so-called "high-profile" criminal prosecutions (involving major crimes, events or persons given wide publicity) the jury is sometimes "sequestered" in a hotel without access to news media, the general public or their families except under supervision, in order to prevent the jury from being "tainted" by information or opinions about the trial outside of the evidenc

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**seriatim**

(sear-ee-ah-tim) prep. Latin for "one after another" as in a series. Thus, issues or facts are discussed seriatim (or "ad seriatim"), meaning one by one in order.

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**servant**

n. an employee of an employer, technically one who works for a master. A servant is distinguished from an "independent contractor" who operates his/her own business even though spending much time on the work of a particular person or entity. The servant has established hours or piece work, is under the direction of the employer even as to details, cannot work for competitors and acts for the benef

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**service**

n. 1) paid work by another person, either by contract or as an employee. "Personal services" is work that is either unique (such as an artist or actor) or based on a person's particular relationship to employer (such as a butler, nanny, traveling companion or live-in health care giver). 2) the domestic activities of a wife, including the marital relationship (consortium), are legally considered "s

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**service by FAX**

n. delivery of legal documents required by statute to be "served" by transmitting through telecopier phone (FAX), followed by mailing an original ("hard copy"). Increasingly, the courts recognize this as legitimate service since it is instantaneous.

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**service by mail**

n. mailing legal pleadings to opposing attorneys or parties, while filing the original with the court clerk with a declaration stating that the copy was mailed to a particular person at a specific address. Once a party has responded by filing an answer, subsequent pleadings (except orders to show cause and orders of examination) can be served upon his/her/its attorney by mail.

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**service by publication**

n. serving a summons or other legal document in a lawsuit on a defendant by publishing the document in an advertisement in a newspaper of general circulation. Service by publication is used to give "constructive notice" to a defendant who is intentionally absent, in hiding, unknown (as a possible descendant of a former landowner), and only when allowed by a judge's order based on a sworn declarati

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**services**

n. work performed for pay.

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**servient estate**

n. real property which has an easement or other use imposed upon it in favor of another property (called the "dominant estate"), such as right of way or use for access to an adjoining property or utility lines. The property giving usage is the servient estate, and the property holding usage of the easement is the dominant estate.

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**session**

n. 1) a meeting (or "sitting") of a court for a particular period of time. "Session" technically means one day's business (as in "today's session"). 2) the term of an appeals court covering several months (as in the "Spring Term" or the "October Term").

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**set**

v. to schedule, as to "set a case for trial."

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**set aside**

v. to annul or negate a court order or judgment by another court order. Example: a court dismisses a complaint believing the case had been settled. Upon being informed by a lawyer's motion that the lawsuit was not settled, the judge will issue an order to "set aside" the original dismissal.

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**setting**

n. the action of a court, clerk or commissioner in scheduling a trial or hearing.

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**settle**

v. to resolve a lawsuit without a final court judgment by negotiation between the parties, usually with the assistance of attorneys and/or insurance adjusters, and sometimes prodding by a judge. Most legal disputes are settled prior to trial.

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**severable contract**

n. an agreement which is made up of several separate contracts between the same parties, such as series of sales, shipments or different pieces of equipment. Therefore, breach of one of the separate (severable) contracts is not a breach of the remainder of the overall contract and is not an excuse for the other party to refuse to honor any divisible part of the contract which has not been breached

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**several liability**

n. referring to responsibility of one party for the entire debt (as in "joint and several") or judgment when those who jointly agreed to pay the debt or are jointly ordered to pay a judgment do not do so. A person who is stuck with "several liability" because the others do not pay their part may sue the other joint debtors for contribution toward the payment he/she has made.

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**severance**

n. 1) a separating by court order, such as separate trials for criminal defendants who were charged with the same crime, or trying the negligence aspect of a lawsuit before a trial on the damages. Such division of issues in a trial is sometimes also called "bifurcation." Severance is granted when a joint trial might be unfair or reaching a decision on one issue (such as negligence) may save the tr

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**sex offender**

n. generic term for all persons convicted of crimes involving sex, including rape, molestation, sexual harassment and pornography production or distribution. In most states convicted sex offenders are supposed to report to local police authorities, but many do not.

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**shall**

v. 1) an imperative command as in "you shall not kill." 2) in some statutes, "shall" is a direction but does not mean mandatory, depending on the context.

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**share and share alike**

adj. referring to the equal division of a benefit from an estate, trust or gift, which includes the right of the survivors to divide the portion of any beneficiary who dies before receiving the gift. Example: Teal Testator wills her 2,000 shares of IBM stock "to my four nephews, Matthew, Mark, Luke and John, share and share alike." Luke dies before Testator, so the 2,000 shares

will be divided amo

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**shareholders agreement**

n. an employment agreement among the shareholders of a small corporation permitting a shareholder to take a management position with the corporation without any claim of conflict of interest or self-dealing against the shareholder/manager. Such agreements are common when there are only three or four shareholders.

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**shareholders derivative action**

n. a lawsuit by a corporation's shareholders, theoretically on behalf of the corporation, to protect and benefit all shareholders against the corporation for improper management.

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**shareholders meeting**

n. a meeting, usually annual, of all shareholders of a corporation (although in large corporations only a small percentage attend) to elect the board of directors and hear reports on the company's business situation. In larger corporations top management people hold the proxies signed over to them by many of the shareholders to vote for them

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**sharp practice**

n. actions by a lawyer using misleading statements to opposing counsel or the court, denial of oral stipulations (agreements between attorneys) previously made, threats, improper use of process or tricky and/or dishonorable means barely within the law. A consistent pattern of sharp practice may lead to discipline by the state bar association or by the courts.

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**Shepardize**

n. a method of locating reports of appeals decisions based on prior precedents from Shepard's Citations, books which list the volume and page number of published reports of every appeals court decision which cites a previously decided case or a statute. Shepard's exists for all sets of reports of appeals cases, and is updated every month with supplemental booklets. While it looks like a mathematic

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**sheriff**

n. the top law enforcement officer for a county, usually elected and responsible for police protection outside of incorporated cities, management of the county jail, providing bailiffs for protection of the courts, and such civil activities as serving summonses, subpoenas and writs, conducting judgment sales, and fulfilling various functions ordered by the courts. The office was brought to the Unit

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**sheriffs sale**

n. an auction sale of property held by the sheriff pursuant to a writ (court order) of execution (to seize and sell the property) to satisfy (pay) a judgment, after notice to the public.

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**shield laws**

n. statutes enacted in some states which declare that communications between news reporters and informants are confidential and privileged and thus cannot be testified to in court. This is similar to the doctor-patient, lawyer-client or priest-parishioner privilege. The concept is to allow a journalist to perform his/her function of gathering news without being ordered to reveal his/her sources an

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**shifting the burden of proof**

n. the result of the plaintiff in a lawsuit meeting its burden of proof in the case, in effect placing the burden with the defendant, at which time it presents a defense. There may be shifts of burden of proof on specific factual issues during a trial, which may impact the opposing parties and their need to produce evidence.

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**short cause**

n. a lawsuit which is estimated by the parties (usually their attorneys) and the trial setting judge to take no more than one day. Thus, a short cause may be called on the "short cause" calendar and get priority on the calendar since it can be fitted into the court's schedule and will not tie up a courtroom for a long period. Short causes may be treated differently from "long cause" cases, such as

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**shortening time**

n. an order of the court in response to the motion of a party to a lawsuit which allows setting a motion or other legal matter at a time shorter than provided by law or court rules. Shortening time is usually granted when the time for trial or some other court action is approaching and a hearing must be heard promptly by the judge. Example: the local rules require that a party give the other side

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**show cause order**

n. an order of the court, also called an order to show cause or OSC, directing a party to a lawsuit to appear on a certain date to show cause why the judge should not issue a specific order or make a certain finding. Examples: an order to a

husband directing that he show cause why the wife in a divorce action should not be awarded \$1,000 a month alimony (spousal support) and \$500 a month child sup

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**sidebar**

n. 1) physically, an area in front of or next to the judge's bench (the raised desk in front of the judge) away from the witness stand and the jury box, where lawyers are called to speak confidentially with the judge out of earshot of the jury. 2) a discussion between the judge and attorneys at the bench off the record and outside the hearing of the jurors or spectators. 3) in journalism, a brief

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**sign**

v. 1) to write one's signature on a document, including an "X" by an illiterate or physically impaired person, provided the mark is properly witnessed in writing as "Eddie Jones, his mark." An attorney-in-fact given authority to act for another person by a power of attorney may sign for the one giving the power but should identify the signature as "by his attorney-in-fact, George Goodman." 2) to c

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**similarly situated**

adj. with the same problems and circumstances, referring to the people represented by a plaintiff in a "class action," brought for the benefit of the party filing the suit as well as all those "similarly situated." To be similarly situated, the defendants, basic facts and legal issues must be the same, and separate lawsuits would be impractical or burdensome.

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**simple trust**

n. a trust which requires that all income be distributed each year and not accumulated.

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**sine qua non**

(see-nay kwah nahn) prep. Latin for "without which it could not be," an indispensable action or condition. Example: if Charlie Careless had not left the keys in the ignition, his 10-year-old son could not have started the car and backed it over Polly Playmate. So Charlie's act was the sine qua non of the injury to Playmate.

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**situs**

n. Latin for "location," be it where the crime or accident took place or where the building stands.

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**sole proprietorship**

n. a business owned by one person, as distinguished from a partnership or corporation.

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**solicitation**

n. the crime of encouraging or inducing another to commit a crime or join in the commission of a crime. Solicitation may refer to a prostitute's (or her pimp's) offer of sexual acts for pay.

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**Solicitor General**

n. the chief trial attorney in the federal Department of Justice responsible for arguing cases before the Supreme Court and ranking second to the Attorney General in the Department.

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**solitary confinement**

n. the placement of a prisoner in a federal or state prison in a cell away from other prisoners, usually as a form of internal penal discipline, but occasionally to protect the convict from other prisoners or to prevent the prisoner from causing trouble. Long-term solitary confinement may be found to be unconstitutional as "cruel and unusual punishment."

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**solvency**

n. 1) having sufficient funds or other assets to pay debts. 2) having more assets than liabilities (debts). The contrast is "insolvency," which may be a basis for filing a petition in bankruptcy.

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**sound mind and memory**

n. having an understanding of one's actions and reasonable knowledge of one's family, possessions and surroundings. This is a phrase often included in the introductory paragraph of a will in which the testator (writer of the will) declares that he/she is "of sound mind and memory." The general test is whether the person making the will understood: a) the meaning and effect of the will, b) what the

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**sounds in**

adj. referring to the underlying legal basis for a lawsuit or one of several causes of action in a suit, such as contract or tort (civil wrong). The phrasing might be: "Plaintiff's first cause of action against Defendant sounds in tort, and his second cause of action sounds in contract."

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**speaking demurrer**

n. an attempt to introduce evidence during a hearing on a demurrer. A demurrer is a legal opposition to a complaint in a lawsuit (or to an answer), which says, in effect, that even if the factual claims (allegations) are true, there are legal flaws or failures in the lawsuit. Therefore, since the factual allegations are admitted for the sake of argument, introducing evidence is improper, and an at

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**special**

adj. referring to a particular purpose, person or happening. In law these include hearings, proceedings, administrator, master, orders and so forth.

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**special administrator**

n. a person appointed by the court in a probate proceeding (management of the estate of a deceased person) to take charge of the assets and/or investigate the status of the estate and report to the court, usually when there is a dispute between beneficiaries (those who may receive from the estate) and the executor or administrator.

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**special appearance**

n. the representation by an attorney of a person in court for: a) only that particular session of the court; b) on behalf of the client's regular attorney of record; c) as a favor for an unrepresented person; or d) pending a decision as to whether the attorney agrees to handle the person's case. A special appearance is different from a "general appearance" in which the attorney is committed to rep

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**special circumstances**

n. in criminal cases, particularly homicides, actions of the accused or the situation under which the crime was committed for which state statutes allow or require imposition of a more severe punishment. "Special circumstances" in murder cases may well result in the imposition of the death penalty for murder (in states with capital punishment) or life sentence without possibility of parole. Such c

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**special damages**

n. damages claimed and/or awarded in a lawsuit which were out-of-pocket costs directly as the result of the breach of contract, negligence or other wrongful act by the defendant. Special damages can include medical bills, repairs and replacement of property, loss of wages and other damages which are not speculative or subjective. They are distinguished from general damages, in which there is no ev

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**special master**

n. a person appointed by the court to carry out an order of the court, such as selling property or mediating child custody cases. A "special" master differs from a "master" in that he/she takes positive action rather than just investigating and reporting to the judge.

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**special prosecutor**

n. an attorney from outside of the government selected by the Attorney General or Congress to investigate and possibly prosecute a federal government official for wrongdoing in office. The theory behind appointing a special prosecutor is that there is a built-in conflict of interest between the Department of Justice and officials who may have political or governmental connections with that departm

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**special verdict**

n. the jury's decisions or findings of fact with the application of the law to those facts left up to the judge, who will then render the final verdict. This type of limited verdict is used when the legal issues to be applied are complex or require difficult computation.

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**specific devise**

n. the gift in a will of a certain piece of real estate to a certain person or persons. Example: "I leave the Lazy Z Ranch to my brother, David."

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**specific finding**

n. a decision on a fact made by a jury in its verdict and which the judge has requested the jury to determine as part of its deliberations. Often the judge gives a jury a list of decisions on findings of fact to be made to help the jurors focus on the issues. Example: Findings: Was defendant exceeding the speed limit?-yes; Was defendant negligent?-yes; If defendant was negligent, was the negligenc

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**specific legacy**

n. a gift in a will of a certain article or property to a certain person or persons.

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**speculative damages**

n. possible financial loss or expenses claimed by a plaintiff (person filing a lawsuit) which are contingent upon a future occurrence, purely conjectural or highly improbable. Speculative damages should not be awarded, and jury instructions

should so state. Examples: a) plaintiff believes that ten years hence, as he ages, he may begin to feel pain from a healed fracture although no physician has t

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#### **speedy trial**

n. in criminal prosecutions, the right of a defendant to demand a trial within a short time since to be held in jail without trial is a violation of the "due process" provision of the 5th Amendment (applied to the states by the 14th Amendment). Each state has a statute or constitutional provision limiting the time an accused person may be held before trial (e.g. 45 days). Charges must be dismissed

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#### **spendthrift clause**

n. a provision in a trust or will that states that if a prospective beneficiary has pledged to turn over a gift he/she hopes to receive to a third party, the trustee or executor shall not honor such a pledge. The purpose is to prevent a "spendthrift" beneficiary from using a potential gift as security for credit on a speculative investment. Example: Junior Jones is talked into an investment in Flo

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#### **spontaneous exclamation**

n. a sudden statement caused by the speaker having seen a surprising, startling or shocking event (such as an accident or a death), or having suffered an injury. Even though the person who made the spontaneous exclamation is not available (such as he/she is dead or missing), a person who heard the exclamation may testify about it as an exception to the rule against "hearsay" evidence. The reason i

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#### **spot zoning**

n. a provision in a general plan which benefits a single parcel of land by creating a zone for use just for that parcel and different from the surrounding properties in the area. Example: in a residential neighborhood zoned for single-family dwellings with a minimum of 10,000 square feet, the corner service station property is zoned commercial. Spot zoning is not favored, since it smacks of favori

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#### **springing interest**

n. a future right to title to real property created by a deed or will. Example: "I give title to my daughter Mabel for her lifetime, and, on her death, title to my grandson Rex." Rex has a springing interest in the property.

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#### **stakeholder**

n. a person having in his/her possession (holding) money or property in which he/she has no interest, right or title, awaiting the outcome of a dispute between two or more claimants to the money or property. The stakeholder has a duty to deliver to the owner or owners the money or assets once the right to legal possession is established by judgment or agreement.

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#### **standing**

n. the right to file a lawsuit or file a petition under the circumstances. A plaintiff will have standing to sue in federal court if a) there is an actual controversy, b) a federal statute gives the federal court jurisdiction, and c) the parties are residents of different states or otherwise fit the constitutional requirements for federal court jurisdiction. A state court example: a trade associat

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#### **star chamber proceedings**

n. any judicial or quasi-judicial action, trial or hearing which so grossly violates standards of "due process" that a party appearing in the proceedings (hearing or trial) is denied a fair hearing. The term comes from a large room with a ceiling decorated with stars in which secret hearings of the privy council and judges met to determine punishment for disobedience of the proclamations of King H

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#### **state action**

n. in federal Civil Rights Acts, dating back to 1875, any activity by the government of a state, any of its components or employees (like a sheriff) who uses the "color of law" (claim of legal right) to violate an individual's civil rights. Such "state action" gives the person whose rights have been violated by a governmental body or official the right to sue that agency or person for damages.

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#### **state of domicile**

n. the state in which a person has his/her permanent residence or intends to make his/her residence, as compared to where the person is living temporarily. Domicile depends on intent, location of a home where a person regularly sleeps and some conduct. A corporation's state of domicile is the state where the corporation is incorporated.

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#### **status conference**

n. a pre-trial meeting of attorneys before a judge required under federal Rules of Procedure and in many states required to inform the court as to how the case is proceeding, what discovery has been conducted (depositions, interrogatories, production of documents), any settlement negotiations, probable length of trial and other matters relevant to moving the

case toward trial. Court rules usually

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**statute**

n. a federal or state written law enacted by the Congress or state legislature, respectively. Local statutes or laws are usually called "ordinances." Regulations, rulings, opinions, executive orders and proclamations are not statutes.

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**statute of limitations**

n. a law which sets the maximum period which one can wait before filing a lawsuit, depending on the type of case or claim. The periods vary by state. Federal statutes set the limitations for suits filed in federal courts. If the lawsuit or claim is not filed before the statutory deadline, the right to sue or make a claim is forever dead (barred). The types of cases and statute of limitations perio

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**statutory offer of settlement**

n. a written offer of a specific sum of money made by a defendant to a plaintiff, which will settle the lawsuit if accepted within a short time. The offer may be filed with the court, and if the eventual judgment for the plaintiff is less than the offer, the plaintiff will not be able to claim the court costs usually awarded to the prevailing party.

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**stay away order**

n. a court order that a person may not come near and/or contact another.

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**stay of execution**

n. a court-ordered delay in inflicting the death penalty.

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**stock**

1) n. inventory (goods) of a business meant for sale (as distinguished from equipment and facilities). 2) share in the ownership of a corporation (called "shares of stock" or simply "shares"). 3) cattle. 4) v. to keep goods ready for sale in a business.

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**stock certificate**

n. printed document which states the name, incorporation state, date of incorporation, the registered number of the certificate, the number of shares of stock in a corporation the certificate represents, the name of the shareholder, the date of issuance and the number of shares authorized in the particular issue of stock, signed by the president and secretary of the corporation (or with facsimile

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**stock in trade**

n. the inventory of merchandise held for sale.

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**stockholder**

n. shareholder in a corporation.

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**stockholders derivative action**

n. a lawsuit by a corporation's shareholders, theoretically on behalf of the corporation, to protect and benefit all shareholders against the corporation for improper management.

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**straw man**

n. 1) a person to whom title to property or a business interest is transferred for the sole purpose of concealing the true owner and/or the business machinations of the parties. Thus, the straw man has no real interest or participation but is merely a passive stand-in for a real participant who secretly controls activities. Sometimes a straw man is involved when the actual owner is not permitted t

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**street**

n. a roadway in an urban area, owned and maintained by the municipality for public use. A private road cannot be a street.

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**strict construction**

(narrow construction) n. interpreting the Constitution based on a literal and narrow definition of the language without reference to the differences in conditions when the Constitution was written and modern conditions, inventions and societal changes. By contrast "broad construction" looks to what someone thinks was the "intent" of the framers' language and expands and interprets the language ext

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**strike**

1) v. to remove a statement from the record of the court proceedings by order of the judge due to impropriety of a question, answer or comment to which there has been an objection. Often after a judge has stricken some comment or

testimony (an answer made before an objection has stopped the witness), he/she admonishes (warns) the jury not to consider the stricken language, but the jury has a hard

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**structure**

n. anything built by man/woman, from a shed to a highrise or a bridge.

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**subchapter S corporation**

n. the choice by a small corporation to be treated under "subchapter S" by the Internal Revenue Service, which allows the corporation to be treated like a partnership for taxation purposes. This may provide the benefit of passing losses (particularly in the early development of the business) to the stockholders. Technically the term "subchapter S corporation" is a misnomer since it is a normal cor

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**subcontractor**

n. a person or business which has a contract (as an "independent contractor" and not an employee) with a contractor to provide some portion of the work or services on a project which the contractor has agreed to perform. In building construction, subcontractors may include such trades as plumbing, electrical, roofing, cement work and plastering. If a subcontractor is not paid for his/her work, he/

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**subject to**

adj. referring to the acquisition of title to real property upon which there is an existing mortgage or deed of trust when the new owner agrees to take title with the responsibility to continue to make the payments on the promissory note secured by the mortgage or deed of trust. Thus, the new owner (grantee) buys the property "subject to" secured debt. However, should the new owner fail to pay, th

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**submitted**

n. the conclusion of all evidence and argument in a hearing or trial, leaving the decision in the hands of the judge. Typically the judge will ask the attorneys after final arguments: "Is it submitted?" If so, no further argument is permitted.

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**subordination agreement**

n. a written contract in which a lender who has secured a loan by a mortgage or deed of trust agrees with the property owner to subordinate the first loan to a new loan (thus giving the new loan priority in any foreclosure or payoff). The agreement must be acknowledged by a notary so it can be recorded in the official county records.

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**subornation of perjury**

n. the crime of encouraging, inducing or assisting another in the commission of perjury, which is knowingly telling an untruth under oath. Example: lawyer Frank Foghorn is interviewing a witness in an accident case who tells Foghorn that Foghorn's client was jaywalking outside the crosswalk when struck by the defendant's car. Foghorn tells the witness to help his client by saying the accident occu

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**subrogee**

n. the person or entity that assumes the legal right to attempt to collect a claim of another (subrogor) in return for paying the other's expenses or debts which the other claims against a third party. A subrogee is usually the insurance company which has insured the party whose expenses were paid. Thus, the subrogee insurance company may file a lawsuit against a party which caused the damages to

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**subrogor**

n. a person or entity that transfers his/her/its legal right to collect a claim to another (subrogee) in return for payment of the subrogor's expenses or debts which he/she/it claims. Thus, a person injured in an accident (subrogor) is paid by his/her/its own insurance company (subrogee) for the damages, and then the insurance company sues the party who apparently caused the damages.

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**subscribe**

v. 1) to sign at the end of a document. The courts have been flexible in recognizing signatures elsewhere on a contract or will, on the theory that a document should be found valid if possible. 2) to order and agree to pay for an issue of stock, bonds, limited partnership interest, investment or periodical magazine or newspaper.

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**substantial performance**

n. in the law of contracts, fulfillment of the obligations agreed to in a contract, with only slight variances from the exact terms and/or unimportant omissions or minor defects. A simple test is whether the omission, variance or defect can be easily compensated for with money. Examples: a) the contract is for supplying 144 pumps for \$14,400, and only 140 were delivered; b) the real property was s

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**substitute in**

v. to take over a case from another lawyer, which must be confirmed by a written statement filed with the court.

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**substitution**

n. putting one person in place of another, in particular replacement of the attorney of record in a lawsuit with another attorney (or the party acting in propria persona).

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**substitution of attorney**

n. a document in which the party to a lawsuit states that his/her attorney of record is being substituted for by another attorney or by the party acting for himself/herself (in propria persona). Normally the departing attorney and the replacement attorney will both sign the document, agreeing to the substitution, but only the new attorney need agree, since a party may replace counsel at any time.

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**succession**

n. the statutory rules of inheritance of a dead person's estate when the property is not given by the terms of a will, also called laws of "descent and distribution."

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**successive sentences**

n. in criminal law, the imposition of the penalty for each of several crimes, one after the other, as compared to "concurrent sentences" (at the same time). Example: Carl Convict has been found guilty of manslaughter, assault with a deadly weapon and armed robbery, for which the maximum sentences are 15 years, 10 years and 10 years, respectively. By imposing successive sentences, the judge adds th

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**suffering**

n. the pain, hurt, inconvenience, embarrassment and/or inability to perform normal activities as a result of injury, usually in the combination "pain and suffering," for which a person injured by another's negligence or wrongdoing may recover "general damages" (a money amount not based on specific calculation like medical bills but as compensation for the suffering which is subjective and based on

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**suit**

n. generic term for any filing of a complaint (or petition) asking for legal redress by judicial action, often called a "lawsuit." In common parlance a suit asking for a court order for action rather than a money judgment is often called a "petition," but technically it is a "suit in equity."

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**sum certain**

n. a specific amount stated in a contract or negotiable instrument (like a promissory note) at the time the document is written. A sum certain does not require future calculation or the awaiting of future happenings. Example: "Wanda Williams will pay Wilma Jackson \$10,000 for redecorating her house, including all costs," is a sum certain as compared to "Williams will pay Jackson for time (at the r

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**summary adjudication of issues**

n. a court order ruling that certain factual issues are already determined prior to trial. This summary adjudication is based upon a motion by one of the parties contending that these issues are settled and need not be tried. The motion is supported by declarations under oath, excerpts from depositions which are under oath, admissions of fact by the opposing party and other discovery, as well as a

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**summation**

n. the final argument of an attorney at the close of a trial in which he/she attempts to convince the judge and/or jury of the virtues of the client's case.

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**supersedeas**

(sooh-purr-said-ee-uhs) Latin for "you shall desist," an order (writ) by an appeals court commanding a lower court not to enforce or proceed with a judgment or sentence pending the decision on the appeal or until further order of the appeals court.

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**superseding cause**

n. the same as an "intervening cause" or "supervening cause," which is an event which occurs after the initial act leading to an accident and substantially causes the accident. The superseding cause relieves from responsibility (liability) the party whose act started the series of events which led to the accident, since the original negligence is no longer the proximate cause.

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**supplemental**

adj. referring to anything that is added to complete something, particularly a document, such as a supplemental declaration, supplemental complaint, supplemental answer, supplemental claim.

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**supra**

(sooh-prah) Latin for "above," in legal briefs and decisions it refers to the citation of a court decision which has been previously mentioned. Thus a case when first cited will be referred to as *Guinn v. United States*, (1915) 238 U.S. 347, meaning it can be found in volume 238 of the U.S. Reports (of the Supreme Court) at page 347 and was decided in 1915. The next time the case is cited as *Guinn*

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**supremacy clause**

n. Article VI, section 2 of the U.S. Constitution, which reads: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the c

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**surcharge**

n. an additional charge of money made because it was omitted in the original calculation or as a penalty, such as for being late in making a payment.

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**surplusage**

n. a term used in analyzing legal documents and pleadings to refer to wording or statements which have no legal effect and, therefore, can be ignored.

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**surrebutal**

n. in written or oral legal argument, the response to the other party's response (rebuttal) to the initial argument. In written briefs most courts will not allow more than a single surrebutal. The rule is usually the same for oral argument. However, occasionally the parties joust back and forth until the judge stops the debate.

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**surrender**

v. 1) to turn over possession of real property, either voluntarily or upon demand, by tenant to landlord. 2) to give oneself up to law enforcement officials.

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**surrogate**

n. 1) a person acting on behalf of another or a substitute, including a woman who gives birth to a baby of a mother who is unable to carry the child. 2) a judge in some states (notably New York) responsible only for probates, estates and adoptions.

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**surrogate court**

n. a court in a few states (including New York) with jurisdiction over probates, estates and adoptions.

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**survivor**

n. a person who outlives another, as in "to my sons, Arnold and Zeke, or the survivor." The survivor is determined at the time the asset or property is received, so if both sons are alive they are both survivors.

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**sustain**

v. in trial practice, for a judge to agree that an attorney's objection, such as to a question, is valid. Thus, an attorney asks a witness a question, and the opposing lawyer objects, saying the question is "irrelevant, immaterial and incompetent," "leading," "argumentative," or some other objection. If the judge agrees he/she will rule "sustained," meaning the objection is approved and the questi

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**swear**

v. 1) to declare under oath that one will tell the truth (sometimes "the truth, the whole truth and nothing but the truth"). Failure to tell the truth and do so knowingly is the crime of perjury. 2) to administer an oath to a witness that he/she will tell the truth, which is done by a notary public, a court clerk, a court reporter or anyone authorized by law to administer oaths. 3) to install into

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**swindle**

v. to cheat through trick, device, false statements or other fraudulent methods with the intent to acquire money or property from another to which the swindler is not entitled. Swindling is a crime as one form of theft.

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**T.R.O.**

n. legal slang for temporary restraining order.

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**tainted evidence**

n. in a criminal trial, information which has been obtained by illegal means or has been traced through evidence acquired by illegal search and/or seizure. This evidence is called "fruit of the poisonous tree" and is not admissible in court.

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**take**

v. to gain or obtain possession, including the receipt of a legacy from an estate, getting title to real property or stealing an object.

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**taking the Fifth**

n. the refusal to testify on the ground that the testimony might tend to incriminate the witness in a crime, based on the Fifth Amendment to the Constitution, which provides that "No person...shall be compelled to be a witness against himself," applied to state courts by the 14th Amendment. The term became famous during televised Senate committee hearings on organized crime in 1951, when a series of

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**tangible property**

n. physical articles (things) as distinguished from "incorporeal" assets such as rights, patents, copyrights and franchises. Commonly tangible property is called "personalty."

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**tax**

n. a governmental assessment (charge) upon property value, transactions (transfers and sales), licenses granting a right and/or income. These include federal and state income taxes, county and city taxes on real property, state and/or local sales tax based on a percentage of each retail transaction, duties on imports from foreign countries, business licenses, federal tax (and some states' taxes) o

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**tax costs**

n. a motion to contest a claim for court costs submitted by a prevailing party in a lawsuit. It is called a "Motion to Tax Costs" and asks the judge to deny or reduce claimed costs. Example: a winning party claims a right to have his/her attorneys' fees and telephone bills paid by the loser, even though they are not allowable as costs under state law or the contract which was the subject of the su

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**Tax Court**

n. a federal agency with courts in major cities which hear taxpayers' appeals from decisions of the Internal Revenue Service. Tax court hears the appeal de novo (as a trial rather than an appeal) and does not require payment of the amount claimed by the IRS before hearing the case. Tax court decisions may be appealed to the Federal District Court of Appeals.

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**tax return**

n. the form to be filed with a taxing authority by a taxpayer which details his/her/their income, expenses, exemptions, deductions and calculation of taxes which are chargeable to the taxpayer.

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**tax sale**

n. an auction sale of a taxpayer's property conducted by the federal government to collect unpaid taxes.

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**temporary injunction**

n. a court order prohibiting an action by a party to a lawsuit until there has been a trial or other court action. A temporary injunction differs from a "temporary restraining order" which is a short-term, stop-gap injunction issued pending a hearing, at which time a temporary injunction may be ordered to be in force until trial. The purpose of a temporary injunction is to maintain the status quo

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**temporary insanity**

n. in a criminal prosecution, a defense by the accused that he/she was briefly insane at the time the crime was committed and therefore was incapable of knowing the nature of his/her alleged criminal act. Temporary insanity is claimed as a defense whether or not the accused is mentally stable at the time of trial. One difficulty with a temporary insanity defense is the problem of proof, since any

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**tenancy at sufferance**

n. a "hold-over" tenancy after a lease has expired but before the landlord has demanded that the tenant quit (vacate) the premises. During a tenancy at sufferance the tenant is bound by the terms of the lease (including payment of rent) which existed before it expired. The only difference between a "tenancy at sufferance" and a "tenancy at will" is that the latter was created by agreement.

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**tenancy at will**

n. occupation of real property owned by another until such time as the landlord gives notice of termination of the tenancy (usually 30 days by state law or agreement), which may be given at any time. A tenancy at will is created by agreement between the tenant and the landlord, but it cannot be transferred by the tenant to someone else since the landlord controls the right to occupy.

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**tenancy by the entirety**

n. joint ownership of title by husband and wife, in which both have the right to the entire property, and, upon the death of

one, the other has title (right of survivorship). Tenancy by the entirety is used in many states and is analogous to "community property" in the seven states which recognize that type of property ownership.

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**tenement**

n. 1) a term found in older deeds or in boiler-plate deed language which means any structure on real property. 2) old run-down urban apartment buildings with several floors reached by stairways.

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**tentative trust**

n. a bank account deposited in the name of the depositor "in trust for" someone else, which is a tentative trust until the death of the depositor since the money can be withdrawn at any time.

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**term**

n. 1) in contracts or leases, a period of time, such as five years, in which a contract or lease is in force. 2) in contracts, a specified condition or proviso. 3) a period for which a court sits or a legislature is in session. 4) a word or phrase for something, as "tenancy" is one term for "occupancy."

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**testacy**

n. dying with a will (a testament). It is compared to "intestacy," which is dying without a will.

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**testamentary**

adj. pertaining to a will.

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**testamentary capacity**

n. having the mental competency to execute a will at the time the will was signed and witnessed. To have testamentary capacity, the author of the will must understand the nature of making a will, have a general idea of what he/she possesses, and know who are members of the immediate family or other "natural objects of his/her bounty." Inherent in that capacity is the ability to resist the pressure

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**testatrix**

n. female form of testator, although distinguishing between genders is falling out of fashion.

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**third party**

n. a person who is not a party to a contract or a transaction, but has an involvement (such as one who is a buyer from one of the parties, was present when the agreement was signed or made an offer that was rejected). The third party normally has no legal rights in the matter, unless the contract was made for the third party's benefit.

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**third-party beneficiary**

n. a person who is not a party to a contract but has legal rights to enforce the contract or share in proceeds because the contract was made for the third party's benefit. Example: Grandma enters into a contract with Oldfield to purchase a Jaguar automobile to be given to grandchild as a graduation present. If Oldfield takes a down payment and then refuses to go through with the sale, grandchild m

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**Thirty-day notice**

n. a notice by a landlord to a tenant on a month-to-month tenancy or a holdover tenant to leave the premises within 30 days. Such notice does not have to state any reason and is not based on failure to pay rent. The landlord's service of the notice and the tenant's failure to vacate at the end of 30 days provide the basis for a lawsuit for unlawful detainer (eviction) and a court judgment ordering

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**three strikes, you're out**

n. recent (beginning 1994) legislation enacted in several states (and proposed in many others, as well as possible federal law) which makes life terms (or extremely long terms without parole) mandatory for criminals who have been convicted of a third felony (as in California) or of three felonies involving violence, rape, use of a deadly weapon or molestation. The impetus for "three strikes, you're

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**three-day notice**

n. a notice to pay delinquent rent or quit (leave or vacate) the premises given by a landlord to a tenant, which in most states gives the tenant three days to pay or get out. Service of the notice and failure of the tenant to pay or vacate within three days provide the basis for a lawsuit for unlawful detainer (eviction) for unpaid rent and a court judgment ordering the tenant to leave. While the

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**tide lands**

n. land between the high and low tides, which is uncovered each day by tidal action. This land belongs to the owner of the land which fronts on the sea at that point.

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**time is of the essence**

n. a phrase often used in contracts which in effect says: the specified time and dates in this agreement are vital and thus mandatory, and "we mean it." Therefore any delay-reasonable or not, slight or not-will be grounds for cancelling the agreement.

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**time served**

n. the period a criminal defendant has been in jail, often while awaiting bail or awaiting trial. Often a judge will give a defendant "credit for time served," particularly when sentencing for misdemeanors. Example: Johnny Jumpstart was arrested for drunk driving and spent the night in jail before he was released on his own recognizance. Since the minimum sentence in his state was 48 hours, the ju

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**timely**

adj. within the time required by statute, court rules or contract. Example: a notice of appeal is required to be filed within 60 days of the entry of judgment, so a notice filed on the 61st day is not "timely."

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**title abstract**

n. a history of the chain of title.

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**title report**

n. the written analysis of the status of title to real property, including a property description, names of titleholders and how title is held (joint tenancy, etc.), tax rate, encumbrances (mortgages, liens, deeds of trusts, recorded judgments), and real property taxes due. A title report made when the report is ordered is called a "preliminary report," or a "prelim," and at time of recording an u

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**to wit**

prep. that is to say. Example: "the passengers in the vehicle, to wit: Arlene Jones, Betty Bumgartner and Sherry Younger."

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**toll**

v. 1) to delay, suspend or hold off the effect of a statute. Examples: a) a minor is injured in an accident when he is 14 years old, and the state law (statute of limitations) allows a person hurt by negligence two years to file suit for damages. But for a minor the statute is "tolled" until he/she becomes 18 and decides whether or not to sue. Thus the minor has two years after 18 to file suit. b)

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**tontine**

n. a rare agreement among several persons who agree that each will invest in an annuity and the last to die will receive the remaining assets and profits.

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**tools of trade**

n. in bankruptcy law, the equipment a person requires in order to pursue his occupation, which is exempt from claims of creditors. They are also generally exempt from attachment by judgment creditors since it is important for a person to earn an income to support the family and pay creditors.

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**tort claims act**

n. a federal or state act which, under certain conditions, waives governmental immunity and allows lawsuits by people who claim they have been harmed by torts (wrongful acts), including negligence, by government agencies or their employees. These acts also establish the procedure by which such claims are made. Before the enactment of tort claims acts, government bodies could not be sued without th

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**tortfeasor**

n. a person who commits a tort (civil wrong), either intentionally or through negligence.

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**tortious**

adj. referring to an act which is a tort (civil wrong).

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**trade**

1) n. a business or occupation for profit, particularly in retail or wholesale sales or requiring special mechanical skill. 2) v. to exchange one thing for another, which includes money for goods, goods for goods and favors for goods or money.

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**trade fixture**

n. a piece of equipment on or attached to the real estate which is used in a trade or business. Trade fixtures differ from other fixtures in that they may be removed from the real estate (even if attached) at the end of the tenancy of the business, while ordinary fixtures attached to the real estate become part of the real estate. The business tenant must compensate the owner for any damages due t

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**trade secret**

n. a process, method, plan, formula or other information unique to a manufacturer, which gives it an advantage over competitors. Therefore the trade secret has value and may be protected by a court-ordered injunction against use or revelation of trade secrets by an employee, former employee or someone who comes into possession of the trade secret. The employer may seek damages against such a person.

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**trader**

in U.S. income tax law, a person who deals in property as a business, making several purchases and sales within a year as distinguished from a few sales of assets held for investment. Thus a trader will lose the right to defer capital gains by "exchanging" for another property. The exact details require consultation with a C.P.A. or attorney.

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**transcript**

n. the written record of all proceedings, including testimony, in a trial, hearing or deposition (out-of-court testimony under oath). Jurisdictions vary as to whether the attorneys' final arguments are recorded, with the Federal Court Reporter Act, but not all states, requiring inclusion. A copy of the transcript may be ordered from the court reporter and a fee paid for the transcription and first

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**transfer**

n. 1) the movement of property from one person or entity to another. 2) passage of title to property from the owner to another person. 3) a piece of paper given to allow a person or shipment to continue travel.

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**transfer agent**

n. a person or company retained by a corporation to process transfers and registration of shares of stock (stock certificates). One difficulty is that the stock certificates do not always include the name and address of the current transfer agent, but the information can be obtained from the corporation or a stockbroker.

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**transfer in contemplation of death**

n. giving property under the belief of the giver that he/she is about to die or has a terminal illness. However, health recovery may result in cancellation of the gift. This is also called a "gift causa mortis."

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**transferred intent**

n. in both criminal and tort (civil wrong) law, when an intent to cause harm to one person results in harm to another person instead of the intended target, the law transfers the intent to the actual harm. Examples: a) with malice aforethought Nate Nogood intends to shoot his girlfriend and misses her, and the bullet hits a passerby, killing him. Nogood may be charged with first degree murder since

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**treason**

n. the crime of betraying one's country, defined in Article III, section 3 of the U.S. Constitution: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." Treason requires overt acts and includes the giving of government security secrets to other countries, even if friendly, when the information could harm

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**treasury bill**

n. a promissory note issued in multiples of \$10,000 by the U.S. Treasury with a maturity date of not more than one year.

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**treasury bond**

n. a long-term bond issued by the U.S. Treasury.

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**treasury note**

n. a promissory note issued by the U.S. Treasury, for a period of one to five years.

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**treasury stock**

n. stock of a private corporation which was issued and then bought back by the corporation or otherwise reacquired by the corporation. Treasury stock held by a corporation earns dividends for the corporation, but the corporation may not cast votes in decision-making the way a regular shareholder would be entitled.

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**treble damages**

n. tripling damages allowed by state statute in certain types of cases, such as not making good on a bad check or intentionally refusing to pay rent. Federal antitrust violations also carry treble damage penalties.

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**trespass**

n. entering another person's property without permission of the owner or his/her agent and without lawful authority (like

that given to a health inspector) and causing any damage, no matter how slight. Any interference with the owner's (or a legal tenant's) use of the property is a sufficient showing of damage and is a civil wrong (tort) sufficient to form the basis for a lawsuit against the trespasser.

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**trial court**

n. the court which holds the original trial, as distinguished from a court of appeals.

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**trial de novo**

n. a form of appeal in which the appeals court holds a trial as if no prior trial had been held. A trial de novo is common on appeals from small claims court judgments.

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**tribunal**

n. any court, judicial body or board which has quasi-judicial functions, such as a public utilities board which sets rates or a planning commission which can allow variances from zoning regulations.

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**trier of fact**

n. the judge or jury responsible for deciding factual issues in a trial. If there is no jury the judge is the trier of fact as well as the trier of the law. In administrative hearings, an administrative law judge, a board, commission or referee may be the trier of fact.

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**triple net lease**

n. a lease in which the lessee's (tenant's) rent includes a share of real property taxes, insurance and maintenance as well as the basic rent. A "triple-net-lease" is standard in leases of commercial property in shopping centers and malls.

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**true bill**

n. the written decision of a Grand Jury (signed by the Grand Jury foreperson) that it has heard sufficient evidence from the prosecution to believe that an accused person probably committed a crime and should be indicted. Thus, the indictment is sent to the court.

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**trust deed**

n. another name for a deed of trust, a form of mortgage used in some states, in which title is transferred to a trustee to protect the lender (beneficiary) until the loan is paid back.

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**trustee in bankruptcy**

n. a person appointed by a bankruptcy court to supervise the affairs of a person or business which is in bankruptcy, determine both assets and debts, marshal (gather) and manage the assets if necessary, and report to the court. Most trustees in bankruptcy are full-time professionals and are paid from the estates of the debtors.

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**trustor**

n. the creator of a trust (who normally places the original assets into the trust), called a "settlor" or "donor" in many states. Trustor is a title used primarily in western states.

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**Truth in Lending Act**

n. a federal statute which requires a commercial lender (bank, savings and loan, mortgage broker) to give a borrower exact information on interest rates and a three-day period in which the borrower may compare and consider competitive terms and cancel the loan agreement.

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**Twinkie defense**

n. a claim by a criminal defendant that at the time of the crime he/she was of diminished mental capacity due to intake of too much sugar, as from eating "Twinkies," sugar-rich snacks. The defense was argued successfully by a defense psychiatrist in the notorious case of former San Francisco County Supervisor Dan White, who shot and killed San Francisco Mayor George Moscone and County Supervisor H

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**UCC-1**

n. a financing agreement form for using personal property (e.g. equipment) to secure a loan under the provisions of the Uniform Commercial Code (UCC) adopted in almost all states.

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**ultimate fact**

n. in a trial, a conclusion of fact which is logically deduced from evidence ("evidentiary facts"). Example: the evidentiary facts were that driver Larry Leadfoot a) exceeded the speed limit, b) drove over the double-line, c) skidded and lost control of his car; the ultimate fact was, therefore, Leadfoot was negligent. It is essential to introduce the evidentiary facts during the trial in order to

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**ultrahazardous activity**

n. an action or process which is so inherently dangerous that the person or entity conducting the activity is "strictly liable" for any injury caused by the activity. Examples: working with high explosives or conducting a professional auto race on public streets.

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**unclean hands**

n. a legal doctrine which is a defense to a complaint, which states that a party who is asking for a judgment cannot have the help of the court if he/she has done anything unethical in relation to the subject of the lawsuit. Thus, if a defendant can show the plaintiff had "unclean hands," the plaintiff's complaint will be dismissed or the plaintiff will be denied judgment. Unclean hands is a commo

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**unconstitutional**

adj. referring to a statute, governmental conduct, court decision or private contract (such as a covenant which purports to limit transfer of real property only to Caucasians) which violate one or more provisions of the U.S. Constitution. The ultimate determination of constitutionality is the U.S. Supreme Court. Unconstitutional can also refer to violations of a state constitution.

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**under the influence**

n. one of many phrases for being drunk on alcoholic beverages or high on drugs or a combination of alcohol and drugs. Driving a vehicle when "under the influence" of alcohol or drugs is a crime, as is "public drunkenness."

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**undisclosed principal**

n. a person who uses an agent for his/her negotiations with a third party, often when the agent pretends to be acting for himself/herself. As a result, the third party does not know he/she can look to the real principal in any dispute.

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**undivided interest**

n. title to real property held by two or more persons without specifying the interests of each party by percentage or description of a portion of the real estate. Such interests are typical between joint tenants, tenants in common and tenants by the entirety.

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**unified estate and gift tax**

n. in federal estate taxes, the value of the estate plus gifts upon which no gift tax has been paid are combined to determine the assets upon which the tax is calculated. The estate tax "kicks in" at \$600,000 for each deceased person. In larger estates an experienced accountant is virtually mandatory to determine the estate tax (if any) and prepare the tax return.

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**Uniform Commercial Code**

n. a set of statutes governing the conduct of business, sales, warranties, negotiable instruments, loans secured by personal property and other commercial matters, which has been adopted with minor variations by all states except Louisiana.

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**unilateral contract**

n. an agreement to pay in exchange for performance, if the potential performer chooses to act. A "unilateral" contract is distinguished from a "bilateral" contract, which is an exchange of one promise for another. Example of a unilateral contract: "I will pay you \$1,000 if you bring my car from Cleveland to San Francisco." Bringing the car is acceptance. The difference is normally only of academic

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**uninsured motorist clause**

n. the clause in a policy of insurance on an automobile which provides that if the owner (or a passenger) of the automobile is injured by a negligent driver of another vehicle who does not have liability insurance, then the insurance company will pay its insured's actual damages.

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**unissued stock**

n. a corporation's shares of stock which are authorized by its articles of incorporation but have never been issued (sold) to anyone. They differ from "treasury stock," which is stock that was issued and then reacquired by the corporation.

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**unlawful**

adj. referring to any action which is in violation of a statute, federal or state constitution, or established legal precedents

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**unlawful assembly**

n. the act of assembling for the purpose of starting a riot or breaching the peace or when such an assembly reasonably could be expected to cause a riot or endanger the public. Although freedom of assembly is guaranteed by the First Amendment to the Constitution, law enforcement has the right to require disbursement of such an assembly as part of the

"police powers" of the state and the potential

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**unreasonable search and seizure**

n. search of an individual or his/her premises (including an automobile) and/or seizure of evidence found in such a search by a law enforcement officer without a search warrant and without "probable cause" to believe evidence of a crime is present. Such a search and/or seizure is unconstitutional under the 4th Amendment (applied to the states by the 14th Amendment), and evidence obtained thereby m

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**use tax**

n. a state tax on goods purchased in another state for use in the taxing state, to make up for local sales tax. Example: Bill Buyer, who lives in California (which has a sales tax), orders a freezer from a company in a state with no sales tax. California will attempt to charge a "use" tax equivalent to its sales tax.

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**usurious**

adj. referring to the interest on a debt which exceeds the maximum interest rate allowed by law.

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**utter**

v. 1) to issue a forged document. 2) to speak.

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**uxor**

n. Latin for "wife." In deeds and documents the term "et ux." is sometimes used to mean "and wife," stemming from a time when a wife was a mere legal appendage of a man and not worthy of being named.

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**valuable consideration**

n. a necessary element of a contract, which confers a benefit on the other party. Valuable consideration can include money, work, performance, assets, a promise or abstaining from an act.

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**vehicular manslaughter**

n. the crime of causing the death of a human being due to illegal driving of an automobile, including gross negligence, drunk driving, reckless driving or speeding. Vehicular manslaughter can be charged as a misdemeanor (minor crime with a maximum punishment of a year in county jail or only a fine) or a felony (punishable by a term in state prison) depending on the circumstances. Gross negligence

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**vendee**

n. a buyer, particularly of real property.

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**venire**

(ven-eer-ay) n. the list from which jurors may be selected.

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**verification**

n. the declaration under oath or upon penalty of perjury that a statement or pleading is true, located at the end of a document. A typical verification reads: "I declare under penalty of perjury under the laws of the State of California, that I have read the above complaint and I know it is true of my own knowledge, except as to those things stated upon information and belief, and as to those I be

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**vest**

v. to give an absolute right to title or ownership, including real property and pension rights.

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**vexatious litigation**

n. filing a lawsuit with the knowledge that it has no legal basis, with its purpose to bother, annoy, embarrass and cause legal expenses to the defendant. Vexatious litigation includes continuing a lawsuit after discovery of the facts shows it has absolutely no merit. Upon judgment for the defendant, he/she has the right to file a suit for "malicious prosecution" against the original vexatious pla

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**vigilante**

n. someone who takes the law into his/her own hands by trying and/or punishing another person without any legal authority. In the 1800s groups of vigilantes dispensed "frontier justice" by holding trials of accused horsethieves, rustlers and shooters, and then promptly hanging the accused if "convicted." A mother who shoots the alleged molester of her child is a vigilante.

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**void for vagueness**

adj. referring to a statute defining a crime which is so vague that a reasonable person of at least average intelligence

could not determine what elements constitute the crime. Such a vague statute is unconstitutional on the basis that a defendant could not defend against a charge of a crime which he/she could not understand, and thus would be denied "due process" mandated by the 5th Amendment, ap

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**voluntary bankruptcy**

n. the filing for bankruptcy by a debtor who believes he/she/it cannot pay bills and has more debts than assets. Voluntary bankruptcy differs from "involuntary bankruptcy" filed by creditors owed money to bring the debtor before the bankruptcy court.

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**voting trust**

n. a trust which solicits vote proxies of shareholders of a corporation to elect a board of directors and vote on other matters at a shareholders' meeting. A voting trust is usually operated by current directors to insure continued control, but occasionally a voting trust represents a person or group trying to gain control of the corporation.

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**waive**

v. to voluntarily give up something, including not enforcing a term of a contract (such as insisting on payment on an exact date), or knowingly giving up a legal right such as a speedy trial, a jury trial or a hearing on extradition (the transfer to another state's jurisdiction of one accused of a crime in the other state).

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**ward**

n. 1) a person (usually a minor) who has a guardian appointed by the court to care for and take responsibility for that person. A governmental agency may take temporary custody of a minor for his/her protection and care if the child is suffering from parental neglect or abuse, or has been in trouble with the law. Such a child is a "ward of the court" (if the custody is court-ordered) or a "ward of

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**watered stock**

n. shares of stock of a corporation which have been issued at a price far greater than true value. In this case, the actual value of all shares is less than the value carried on the books of the corporation.

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**weight of evidence**

n. the strength, value and believability of evidence presented on a factual issue by one side as compared to evidence introduced by the other side.

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**wet reckless**

n. a plea to a charge of reckless driving which was "alcohol related." A wet reckless results from a plea bargain to reduce a charge of drunk driving when the amount of blood alcohol was borderline illegal, there was no accident and no prior record. The result is a lower fine, no jail time and no record of a drunk driving conviction, but if there is a subsequent drunk driving conviction the "wet r

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**whiplash**

n. a common neck and/or back injury suffered in automobile accidents (particularly from being hit from the rear) in which the head and/or upper back is snapped back and forth suddenly and violently by the impact. The injury is to the "soft tissues" and sometimes to the vertebrae, does not always evidence itself for a day or two, and can cause pain and disability for periods up to a year. The degree

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**white collar crime**

n. a generic term for crimes involving commercial fraud, cheating consumers, swindles, insider trading on the stock market, embezzlement and other forms of dishonest business schemes. The term comes from the out-of-date assumption that business executives wear white shirts with ties. It also theoretically distinguishes these crimes and criminals from physical crimes, supposedly likely to be commit

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**widow**

n. a woman whose husband died while she was married to him and who has not since remarried. A divorced woman whose ex-husband dies is not a widow, except for the purpose of certain Social Security benefits traceable to the ex-husband.

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**widower**

n. a man whose wife died while he was married to her and who has not remarried.

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**widows election**

n. the choice a widow makes between accepting what her husband left her in his will and what she would receive by the laws of succession. Example: the state law in which the husband died would give his widow one-half of his estate by the law

of succession (the other half going to the children) if there were no will, but in his will the late husband left his widow only one-quarter of his estate. Sh

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**will contest**

n. a lawsuit challenging the validity of a will and/or its terms. Bases for contesting a will include the competency of the maker of the will (testator) at the time the will was signed, the "undue influence" of someone who used pressure to force the testator to give him/her substantial gifts in the will, the existence of another will or trust, challenging illegal terms or technical faults in the e

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**willful**

adj. referring to acts which are intentional, conscious and directed toward achieving a purpose. Some willful conduct which has wrongful or unfortunate results is considered "hardheaded," "stubborn" and even "malicious." Example: "The defendant's attack on his neighbor was willful."

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**willfully**

adv. referring to doing something intentionally, purposefully and stubbornly. Examples: "He drove the car willfully into the crowd on the sidewalk." "She willfully left the dangerous substances on the property."

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**wind up**

v. to liquidate (sell or dispose of) assets of a corporation or partnership.

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**wiretap**

n. using an electronic device to listen in on telephone lines, which is illegal unless allowed by court order based upon a showing by law enforcement of "probable cause" to believe the communications are part of criminal activities. Use of wiretap is also a wrongful act for which the party whose telephones were tapped may sue the party performing the act and/or listening in as an invasion of priva

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**withdrawal**

n. 1) in criminal law, leaving a conspiracy to commit a crime before the actual crime is committed, which is similar to "renunciation." If the withdrawal is before any overt criminal act the withdrawer may escape prosecution. 2) the removal of money from a bank account.

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**witness stand**

n. a chair at the end of the judge's bench on the jury box side, usually with a low "modesty screen," where a witness sits and gives testimony after he/she has sworn to tell the truth. When called to testify the witness "takes the stand." Most witness stands are equipped with a microphone linked to an amplifying system so that judge, attorneys and jury can hear the testimony clearly.

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**words of art**

n. 1) specialized language with meaning peculiar to a particular profession, art, technical work, science or other field of endeavor. 2) jargon known only to people who specialize in a particular occupation.

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**work product**

n. the writings, notes, memoranda, reports on conversations with the client or witness, research and confidential materials which an attorney has developed while representing a client, particularly in preparation for trial. A "work product" may not be demanded or subpoenaed by the opposing party, as are documents, letters by and from third parties and other evidence, since the work product reflects

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**Workers Compensation Acts**

n. state statutes which establish liability of employers for injuries to workers while on the job or illnesses due to the employment, and requiring insurance to protect the workers. Worker's compensation is not based on negligence of the employer, but is absolute liability for medical coverage, a percentage of lost wages or salary, costs of rehabilitation and retraining, and payment for any perman

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**Workmens Compensation**

n. a former name for worker's compensation before the unisex title of the acts was adopted.

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**World Court**

n. the Court of International Justice, founded by the United Nations in 1945, which hears international disputes, but only when the parties (usually governments) agree to have the issue heard and to be bound by the decision.

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**writ of attachment**

n. a court order directing a sheriff (or other law enforcement officer) to seize property of a defendant which would satisfy a judgment against that defendant.

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**writ of coram nobis**

(writ of core-uhm noh-bis) n. from Latin for "in our presence," an order by a court of appeals to a court which rendered judgment requiring that trial court to consider facts not on the trial record which might have resulted in a different judgment if known at the time of trial.

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**writ of execution**

n. a court order to a sheriff to enforce a judgment by levying on real or personal property of a judgment debtor to obtain funds to satisfy the judgment amount (pay the winning plaintiff).

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**writ of mandate**

(mandamus) n. a court order to a government agency, including another court, to follow the law by correcting its prior actions or ceasing illegal acts.

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**wrongful termination**

n. a right of an employee to sue his/her employer for damages (loss of wage and "fringe" benefits, and, if against "public policy," for punitive damages). To bring such a suit the discharge of the employee must have been without "cause," and the employee a) had an express contract of continued employment or there was an "implied" contract based on the circumstances of his/her hiring or legitimate

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**your honor**

n. the proper way to address a judge in court.

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**youthful offenders**

n. under-age people accused of crimes who are processed through a juvenile court and juvenile detention or prison facilities. In most states a youth-ful offender is under the age of 18. Often a court has the latitude to try some young defendants as adults, particularly for repeat offenders who appear to be beyond rehabilitation and are involved in major crimes like murder, manslaughter, armed robb

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**Zebra Crossing**

Striped white or yellow lines painted on asphalted streets indicating a pedestrian crossing or a pedestrian right-of-way.

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**Zombi**

A mechanically driven human corpse.

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**Zone or zoning**

A territorial restriction as to land use.

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**Zoning**

The laws dividing cities into different areas according to use, from single-family residences to industrial plants. Zoning ordinances control the size, location, and use of buildings within these different areas.