

MY DICTIONARY
(LOOK UP complicated subjects elsewhere)

Additur: Appeals Court adding to the amount of an award (see remittitur).

Ad Litem: lit. "for the case", representing a minor or incompetent adult in a lawsuit.

Affidavit: A written signed statement confirmed under oath to be used in court.

Borson: The Borson family, Sophia and Samuel, made names for themselves in their dissolution of marriage back in 1974. Fire your attorney, and see what happens when he comes back with a Borson motion for fees felt to be due.

Bright-line: a clear distinction that resolves a question or matter in dispute.

Common law: Law based on court decisions (precedent) rather than law based on legislative enactment. Common law is the system of legal concepts upon which laws are based, and is adaptable by judges to the changing needs of society.

Conform to proof: Leave may be requested at trial to amend a complaint or answer to include new facts, so as to conform the accusation to proof from evidence adduced in the trial.

Contingency fee: Perhaps best explained by this. To a lawyer, it means, "If I don't win your lawsuit, I get nothing. If I do win it, you get nothing".

Contracts: Can be written and/or oral. Anything that shows a "meeting of the minds". "Condition precedent" refers to a condition that must exist before an obligation is created. Used in contract law to refer to an event that must occur or an act that must be done before a contract becomes effective.

Condition subsequent: A condition which, if it occurs, cancels the contract, because it will be in breach. A morality clause is an example. In a lease, a condition subsequent will give a landlord the right to void the lease, such as subletting or keeping pets, if it is specifically forbidden in the lease.

Contract of adhesion: A one-sided contract, unilaterally written by a party (The producer?) who offers it on a "take it or leave it" basis. You sign a contract showing all of the terms, and then find that there is a "Standard Terms" kind of contract glued to the back, which you didn't know about before, and are told cannot be altered. Beware! Definitions like "gross" tend to appear here, sometimes different from what you thought you'd negotiated. Happened to my lawyer dealing with Cannon and "The Happy Hooker". Really gross!

Declaration: Instead of bringing a witness to court, often such a person is asked to sign a "Declaration", a form of affidavit, purported to be written by themselves, but in reality usually composed by the attorney, in order to make the opposing party look bad with appropriate spin.

Declaratory Relief: Asking the court to make a statement or assertion.

De facto: Actual existence, "in fact" contrast with de jure.

De jure: Lawful, by right, legitimate.

Defamation: See Libel.

Demurrer: A Motion to Dismiss. A plea for the dismissal of a lawsuit on the basis that while the facts may be correct, they are insufficient or otherwise legally defective.

De Novo: Anew, afresh, a trial de novo is a retrial of a case.

Discovery: A procedure to be followed in order to avoid a "trial by ambush", the main parts being Depositions, Interrogatories, and Production of Documents.

Dispositive: A dispositive motion means one that will end the action in favor of one side, like Motion to Dismiss or Summary Judgment.

Dysfunctional: Impaired by psychosocial behavior, can apply to families and family court officials.

Equity (in law): Fairness. Justice according to principles of fairness and not strictly according to formulated law. Were separate courts, but now are combined, administering "justice in equity".

Estoppel: A bar preventing a litigant from asserting a different set of facts than asserted in a previous hearing.

Evidence (see also Proof):

Extrinsic evidence: A written instrument, such as a Deed or a Contract or a Will, may contain elements that do not appear in the writing, and can be examined in court. Extrinsic here means outside the four corners of a written instrument.

Parol evidence: Parol is something that is spoken, and at one time, contracts and pleadings were oral and not written. Parol evidence can refer to the term used in a deed or contract "and other consideration", the nature or content of which can be adduced in court proceedings. Perhaps obviously, a useful term to include, if appropriate.

Ex Parte: (Latin) For, by, or in behalf of only one party. Used in several situations, for example, you could get an ex parte divorce in some places, but it wouldn't hold up well, if you want to get remarried! An ex parte injunction can be obtained in some urgent situations, without informing the other party. Commonly used in court filing procedures, where a party has an urgent need to file a motion, and cannot wait the usual several weeks for an O.S.C. These motions are heard before other cases on calendar, and the judge will get upset if it is not urgent, and will dismiss it.

Id, idem: (Latin) Means "the same thing", and is used to save time typing out repetitively the same case or statute or other reference.

Infra: Below, or later, in the same document (opposite of Supra).

In limine: (Lim-i-nee) Motion in limine asks the court to not admit certain evidence, as being prejudicial, or not probative etc, before trial starts.

Inter alia: Among other things.

Interlocutory: temporary decision pending a final decision.

Interrogatories: A set of written questions submitted to the other side required to be answered under oath. Supposed to be intelligent questions, but lawyers often use them simply to harass, as many as 500 questions were asked me.

Joinder: The joining together of more than one plaintiff or defendant, or more than one claim or charge, which is encouraged.

Laches: Unreasonable delay in pursuing a known right against someone.

Libel (written) & **Slander** (spoken): Libel/slander is a tort (qv), an allegation of injury for which a civil action may be brought. There are 2 kinds, libel *per se*, which includes statements that are defamatory on their face ("My lawyer is corrupt" is probably not libelous, according to Merriam Webster it means "perverted into a state of moral weakness or wickedness" which won't get an argument from me, but "My lawyer is a crook" may be libelous if you can't prove it). And libel *per quod*, a sort of half-truth, which brings in other factors, such as "My lawyer wasn't licensed to practice law", when in fact he was licensed in a different state.

Lis pendens: A pending suit, used to record that a pending suit may effect title to real property (the filing denied to me by Judge Gold, but allowed to Nicolette's attorney. I took the matter to Civil court (not Family court) and interestingly, he

lost his case, perhaps because it was before a different judge (who had never worked with this attorney in private practice, unlike Gold), and I used an attorney.

Mandamus: A writ from a higher court commanding a lower court to do something.

Minute order: Summary of a Court hearing prepared by the clerk.

Nunc Pro Tunc order: "now for then", where a further order corrects a previous order.

Offer of proof: made when a lawyer tries to show that an objection should be overruled, by offering to show proof that it is relevant to the argument.

O.S.C. (Order to show cause): a judge's order to appear in court to show cause why a certain order should NOT be made (scary if you're the defendant). Note that common sense would seem to say that the burden should be on the plaintiff that something was true, but here it is the other way around, as defendant, you are required to show that something is NOT true, with your Answer, usually within 30 days, and if you don't bother, the other side wins by default. If you think about it, however, this would appear to be the only way to get the case started, otherwise there would be nothing to prevent the defendant from ignoring the summons. But this method does give rise to many false and frivolous claims, like finding a finger in your restaurant food.

Passim, Sic Passim: Lat. "So throughout" indicates that the same reference or word or idea can be found throughout

Pendente lite: "Pending the litigation", an order made during litigation (example is alimony) prior to judgment and final order.

Per curiam: "by the court".

Per se: Said of acts so obviously wrong that no further evidence is required.

Peremptory challenge: A challenge, without giving a reason, to NOT have someone serve on a case, for example a judge or a jury member. Can normally only be used once when first being confronted by a judge, and a limited number of times in jury selection.

Pleading: A written statement by a plaintiff or a defendant setting forth the material facts on which he bases his case. There will be many

Petitioner vs. Respondent could be labeled Plaintiff vs. Defendant.

Prima Facie: On its face. Describing a fact convincing on its face, without any further proof of validity.

Post-judgment orders: issued by court after entry of judgment.

Pro hac vice: "for this turn", for a particular time or purpose.

Proof: Standards of proof have been developed as guides for judges and juries, depending on the venue.

"Preponderance of the Evidence" is the level of proof required for most civil cases. To persuade the judge or jury that facts are probably more one way than the other way.

"Clear and Convincing Proof". Greater than Preponderance, and less than Beyond a reasonable doubt.

"Beyond a Reasonable Doubt" is the highest standard of proof required in a trial, and is used in criminal cases.

"Burden of Proof". Refers to who has the obligation to deliver the proof. In criminal court, it is the State. There is the burden of persuading the court to proceed with the trial to the point of "winning" the case (which doesn't change throughout trial) and the burden of going forward with the evidence, which is on the plaintiff at the start of the trial, but then shifts to the defendant to produce counter-evidence which may lead to the plaintiff "losing" the case.

Quitclaim deed: A deed where grantor releases all right, title and interest in a property. The deed only purports to convey such title as the grantor has.

QV: (Lat, quod vide) Which see; an instruction to the reader to look elsewhere for something.

Recusal: Process whereby the judge excuses himself from hearing a case. A party also can seek recusal during a case, for good cause (difficult to achieve, because it is ruled upon by the same judge).

Recusation: The plea whereby a person requests recusal.

Redacted: Edited or revised, but usually applies to document content hidden under a black line for purposes of confidentiality.

Remittitur: Appeals Court lessening an amount of an award (see Additur).

Replevin: Action for the recovery of a possession wrongfully taken.

Res Ipsa Loquitur: "The thing speaks for itself".

Restraining order: An order of the court, after an application for injunction is filed, forbidding the defendant from doing something until the court holds a hearing on the matter. Usually brought by someone fearful of violent behavior.

Reversible error: Error sufficiently harmful to justify reversal of lower court. Also called prejudicial error. Harmless error says the opposite.

R.I.C.O.: Racketeer Influenced and Corrupt Organizations (Act). You may picture a set of gangsters wearing shades with turned up collars. But these days, it may be your real estate agent in cahoots with the Building Inspector, the escrow people, the purchaser of your property, and your opponent's lawyers.

Schmuck: (Yiddish, Shmok, lit. penis) A stupid, naive, foolish, mean or nasty person [Webster's Third New International Dictionary, Unabridged. Merriam-Webster, 2002.] Can often be applied to a lawyer (your own or the other ones), a judge with a history of domestic violence who puts you in prison the day before your appearance in court, an accountant who doesn't file a return in time causing the state to take and keep \$200k in estimated tax, an agent who turns down work for you without your knowledge, your wife's secret lover and his sons, journalists who libel you, and a cop who won't file a police report. This all happened to me!

Scienter: Guilty knowledge; such knowledge of facts or circumstances as to render one criminally or civilly liable for another's injury or loss.

S.L.A.P.P.: Strategic Lawsuits Against Public Participation. Lawsuits brought by a public body against individuals to hush them up (Goliaths vs. Davids?), usually defended on the basis of Davids 1st Amendment rights of free speech. Ironically, these suits led to multiple defamation suits for slander and libel between parties, many of which were frivolous, so much so that most state's legislators saw the need to curb the enthusiasm, and created "Anti-SLAPP" laws requiring certain punitive standards of proof, including the probability of success, to prevent abuse (a highly subjective standard). On pain of David paying all the costs.

Star Chamber: English court, abolished in 1641. Remembered for its use of arbitrary punishments, its lack of procedural safeguards, and unfettered powers. Much like what I and Zachary experienced in the Los Angeles Family Court of Judge Arnold Gold, described elsewhere.

Statute of Frauds: Law that holds some contracts are not enforceable unless there is a signed writing to show there was an agreement (such as real estate deals, and very few others).

Sua Sponte: "On its own will or motion", usually where judge does something without being asked.

Sub Judice: Not yet decided, in front of a judge and under judicial consideration.

Subpoena or Subpena: A legal, judicial, order requiring a person to appear to give testimony with respect to a dispute before the court. I've served a few, forgiven by Judge Gold when the party didn't show up.

Sui juris: "of one's own right", possessing full legal capacity. (Alieni juris, under Roman Law means not possessing legal capacity, as a with a child or slave or Terri Schindler).

Sui Generis: Unique, without an equal.

Summons: A legal document informing a person that a lawsuit has been initiated against them, and demanding that they respond or they will lose.

Supersedeas: "You shall desist". A writ to the Court of Appeal which demands the stay of proceedings such as the enforcement of a judgment pending hearing of an appeal (such as me, being thrown out of my house. Denied!)

Supra: Above, or to be found in what was already mentioned (opposite of Infra).

Tort: A wrongful act (but not from a contract), resulting in injury to another person, property, reputation or some other right, entitled to remedy at law, usually in the form of damages. An Intentional Tort is a tort committed by one who knows that it will bring about a wrongful result.

Unlawful detainer: Wrongfully retaining property, as when refusing to vacate an apartment when lease is up, or, hanging on to my possessions when there's a court order to release them to me.

Ultra Vires: Latin, "Beyond granted powers". Conduct that exceeds the powers granted to an entity, most commonly used in reference to corporate actions that exceed its powers claimed through its articles of incorporation or by state law (and can also apply to powers exercised by a judge!)

Vacatur: Where a court vacates a decision effectively wiping the case from the record. Insurance companies often try to do this!

Voire Dire: A preliminary examination of a witness or a juror to see if there are sources of bias, and to find out if they are qualified to speak the truth.

Writ: A judicial order to do something.

Writ of certiorari: "To be informed of". An order from a higher court for a lower court to provide all transcripts. Commonly used at the Supreme Court of the United States level. It means they're interested in the case, and want more information.