

UNDERSTANDING LEGAL TERMINOLOGY

PRESENTED AT THE COUNTY AND DISTRICT CLERKS' ASSOCIATION 2018 WINTER CONFERENCE

ACQUIT	To clear (a person) of a criminal charge; specif., to give an official decision in a court of law that someone is not guilty of a crime “she was acquitted on all three counts”.
ACQUITTAL	The legal certification, usu. by jury verdict, that an accused person is not guilty of the charged offense; an official statement in a court of law that a criminal defendant is not guilty. — Also termed not-guilty verdict
ADMONISHMENTS	In Texas, prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of: (1) the range of the punishment attached to the offense; (2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a plea bargain agreement between the state and the defendant and, if an agreement exists, the court shall inform the defendant whether it will follow or reject the agreement in open court and before any finding on the plea. Should the court reject the agreement, the defendant shall be permitted to withdraw the defendant's plea of guilty or nolo contendere; (3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's attorney, the trial court must give its permission to the defendant before the defendant may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial; (4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; (5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter; and (6) the fact that if the defendant is placed on community supervision, after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the court is authorized to release the defendant from the penalties and disabilities resulting from the offense as provided by Article 42A.701(f). <i>CCP Art. 26.13</i>
AFFIRMATIVE DEFENSE	A defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true. The defendant bears the burden of proving an affirmative defense. Examples of affirmative defenses are duress (in a civil case) and insanity and self-defense (in a criminal case). — Also termed plea in avoidance; plea in justification.
AFFIRMATIVE FINDINGS	Specific findings of the finder of fact (whether judge or jury) that support an enhanced punishment or other action by the court or by the state. Without the requisite affirmative finding, the action is not available to the court or the state.
ARRAIGNMENT	(ə-rayn-mənt) The initial step in a criminal prosecution whereby the defendant is brought before the court to hear the charges and to enter a plea.
BATSON CHALLENGE	<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986), was a case in which the United States Supreme Court ruled that a prosecutor's use of peremptory challenge in a criminal case—the dismissal of jurors without stating a valid cause for doing so—may not be used to exclude jurors based solely on their race. The Court ruled that this practice violated the Equal Protection Clause of the Fourteenth Amendment. This gave rise to the term Batson challenge, an objection to a peremptory challenge based on the standard established by the Supreme Court's decision in this case. Subsequent jurisprudence has resulted in the extension of Batson to civil cases (<i>Edmonson v. Leesville Concrete Company</i>) and cases where jurors are excluded on the basis of sex (<i>J.E.B. v. Alabama ex rel. T.B.</i>). <i>Wikipedia</i>
CHALLENGE FOR CAUSE	Right of a party in a trial to have a juror dismissed based on the potential juror admitting bias, personal knowledge of the facts of the case, or some other reason for impartiality.
CHARGE	A formal accusation of an offense as a preliminary step to prosecution “a murder charge”. — Also termed criminal charge.

COMMON LAW	1. The body of English law that was adopted as the law of the American colonies and supplemented with local enactments and judgments. 2. The body of judge-made law that developed during and after the United States' colonial period, esp. since independence.
CONCLUSIONS OF LAW	1. An inference on a question of law, made as a result of a factual showing, no further evidence being required; a legal inference. 2. A judge's final decision on a legal point raised in a trial or hearing, particularly one that is vital to reaching a judgment.
CONDITIONS OF PROBATION	In Texas, conditions of "community supervision" means the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period. <i>CCP Art. 42A.001</i>
DETAINER	1. The action of detaining, withholding, or keeping something in one's custody. 2. The confinement of a person in custody. 3. A writ authorizing a prison official to continue holding a prisoner in custody. 4. Criminal law. A request sent by a criminal-justice agency to a prison, jail, or asylum requesting either that a certain inmate be held for the agency or that the agency be notified a reasonable time before the inmate is released.
DEFERRED ADJUDICATION	A conditional judgment placing a convicted defendant on probation, the successful completion of which will prevent entry of the underlying judgment of conviction. This type of probation is common with minor traffic offenses. — Also termed deferred adjudication; deferred-adjudication probation; deferred prosecution; probation before judgment; probation without judgment; pretrial intervention; adjudication withheld.
DISMISSAL	Termination of an action or claim without further hearing, esp. before the trial of the issues involved; esp., a judge's decision to stop a court case.
DEUCES TECUM	(d[y]oo-səs tee-kəm also tay-kəm) "Bring with you". Subpoena duces tecum: A subpoena ordering the witness to appear in court and to bring specified documents, records, or things. — Also termed deposition subpoena duces tecum.
ELECTION OF PUNISHMENT	In Texas, the Defendant has the right to choose if the judge or jury will assess their punishment.
EX PARTE	(eks pahr-tee) "From the part". Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, anyone having an adverse interest; of, relating to, or involving court action taken or received by one party without notice to the other, usu. for temporary or emergency relief "an ex parte hearing", "an ex parte injunction".
FINDINGS OF FACT	A determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usu. presented at the trial or hearing "he agreed with the jury's finding of fact that the driver did not stop before proceeding into the intersection". — Often shortened to finding.
GAG ORDER	1. A judge's order directing parties, attorneys, witnesses, or journalists to refrain from publicly discussing the facts of a case. When directed to the press, such an order is generally unconstitutional under the First Amendment. 2. A judge's order that an unruly defendant be bound and gagged during trial to prevent further interruptions. — Also termed gag rule.
GRAND JURY	A body of (usu. 16 to 23) people who are chosen to sit permanently for at least a month — and sometimes a year — and who, in ex parte proceedings, decide whether to issue indictments. If the grand jury decides that evidence is strong enough to hold a suspect for trial, it returns a bill of indictment (a true bill) charging the suspect with a specific crime. — Also termed accusing jury; presenting jury; jury of indictment.
HABEAS CORPUS	(hay-bee-əs kor-pəs) "That you have the body". A writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal (habeas corpus ad subjiciendum). In addition to being used to test the legality of an arrest or commitment, the writ may be used to obtain judicial review of (1) the regularity of the extradition process, (2) the right to or amount of bail, or (3) the jurisdiction of a court that has imposed a criminal sentence.
HORIZONTAL GAZE NYSTAGUMS TEST	(nis-tag-məs) Criminal law. A field-sobriety test for intoxication, in which the suspect is told to focus on an object (such as a pencil) and to track its movement, usu. from side to side, by moving only the eyes. Intoxication is indicated if the eyes jerk or twitch while tracking the object. The test has been recognized as valid by the National Highway Transportation Safety Administration.

IMPEACH	1. To charge with a crime or misconduct; esp., to formally charge (a public official) with a violation of the public trust “President Nixon resigned from office to avoid being impeached”. 2. To discredit the veracity of (a witness) “to impeach a witness on cross-examination”. 3. To challenge the accuracy or authenticity of (a document) “the handwriting expert impeached the holographic will”.
INCOMPETENCY	Lack of legal ability in some respect, esp. to stand trial or to testify “once the defense lawyer established her client's incompetency, the client did not have to stand trial”. — Also termed legal incompetency; incompetence; mental incompetence; legal incompetence.
INDICTMENT	Criminal law. To charge (a person) with a crime by formal legal process, esp. by grand-jury presentation.
INDIGENT	1. A poor person. 2. Someone who is found to be financially unable to pay filing fees and court costs and so is allowed to proceed in <i>forma pauperis</i> . The Supreme Court has recognized an indigent petitioner's right to have certain fees and costs waived in divorce and termination-of-parental-rights cases.
JUDGMENT	A court's final determination of the rights and obligations of the parties in a case. The term judgment includes an equitable decree and any order from which an appeal lies.
MANDAMUS	“We command”. A writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usu. to correct a prior action or failure to act. — Also termed writ of mandamus.
MOTION	A written or oral application requesting a court to make a specified ruling or order.
MOTION FOR DISCOVERY	Compulsory disclosure, at a party's request, of information that relates to the litigation “the plaintiff filed a motion to compel discovery”. The primary discovery devices are interrogatories, depositions, requests for admissions, and requests for production. Although discovery typically comes from parties, courts also allow limited discovery from nonparties.
MOTION FOR NEW TRIAL	A party's postjudgment request that the court vacate the judgment and order a new trial for such reasons as factually insufficient evidence, newly discovered evidence, and jury misconduct.
MOTION TO LIMINE	“Threshold”. A pretrial request that certain inadmissible evidence not be referred to or offered at trial. Typically, a party makes this motion when it believes that mere mention of the evidence during trial would be highly prejudicial and could not be remedied by an instruction to disregard. If, after the motion is granted, the opposing party mentions or attempts to offer the evidence in the jury's presence, a mistrial may be ordered. A ruling on a motion in limine does not always preserve evidentiary error for appellate purposes. To raise such an error on appeal, a party may be required to formally object when the evidence is actually admitted or excluded during trial.
MOTION TO QUASH	A party's request that the court nullify process or an act instituted by the other party, as in seeking to nullify a subpoena.
MOTION TO REVOKE	Motion to Revoke Probation is typically filed when a person has violated a term or condition of their probation. Once a violation has occurred and been discovered, it is up to the probation officer to determine what action to take. <i>avvo.com</i>
MOTION TO SUPPRESS	Criminal law. A request that the court prohibit the introduction of illegally obtained evidence at a criminal trial. — Also termed suppression motion.
MOTION TO WITHDRAW	1. An attorney's request for a court's permission to cease representing a client in a lawsuit. 2. A defendant's formal request for a court's permission to change the defendant's plea or strike an admission.
NOLO CONTENDERE	(noh-loh kən-ten-də-ree) “I do not wish to contend”. A criminal defendant's plea that, while not admitting guilt, the defendant will not dispute the charge. This plea is often preferable to a guilty plea, which can be used against the defendant in a later civil lawsuit.
NUNC PRO TUNC	(nəŋk proh təŋk or nuŋk proh tuŋk) “Now for then”. Court order to correct a clerical error in the record.
PEREMPTORY CHALLENGE	The right of a party in a trial to have a juror dismissed without stating a reason.
PLEA BARGAIN	A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty or no contest to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, usu. a more lenient sentence or a dismissal of the other charges. — Also termed plea agreement; negotiated plea; sentence bargain.

PREPONDERANCE OF THE EVIDENCE	The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. — Also termed preponderance of proof; balance of probability; greater weight of the evidence.
PRIMA FACIE	(prī-mə fay-shə or fay-shee) “At first sight; on its face”. Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue “a prima facie showing”.
PRIMA FACIE CASE	1. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.
PRO SE	“For oneself; on one's own behalf”. Without a lawyer. “The defendant proceeded pro se”, “a pro se defendant”.
PROBABLE CAUSE	1. Criminal law. A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest warrant or search warrant may be issued. — Also termed reasonable cause; sufficient cause; reasonable grounds; reasonable excuse. 2. Torts. A reasonable belief in the existence of facts on which a claim is based and in the legal validity of the claim itself. In this sense, probable cause is usu. assessed as of the time when the claimant brings the claim (as by filing suit).
QUO WARRANTO	(kwoh wə-ran-toh also kwoh wahr-ən-toh) “By what authority”. A common-law writ used to inquire into the authority by which a public office is held or a franchise is claimed. — Also termed writ of quo warranto.
REMAND	1. The act or an instance of sending something (such as a case, claim, or person) back for further action. 2. An order remanding a case, claim, or person.
RES GESTAE	(rays jes-tee also jes-tl) “Things done”. The events at issue, or other events contemporaneous with them. In evidence law, words and statements about the res gestae are usu. admissible under a hearsay exception (such as present sense impression or excited utterance).
RESTITUTION	1. A body of substantive law in which liability is based not on tort or contract but on the defendant's unjust enrichment. 2. The set of remedies associated with that body of law, in which the measure of recovery is usu. based not on the plaintiff's loss, but on the defendant's gain. 3. Return or restoration of some specific thing to its rightful owner or status. 4. Compensation for loss; esp., full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.
SENTENCE	Criminal law. The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer “a sentence of 20 years in prison”.
SHOCK PROBATION	Probation that is granted after a brief stay in jail or prison. Shock probation is intended to awaken the defendant to the reality of confinement for failure to abide by the conditions of probation. This type of probation is discretionary with the sentencing judge and is usu. granted within 180 days of the original sentence. — Also termed split sentence.
STIPULATION OF EVIDENCE	In Texas, agreement that evidence is considered without actual introduction of that evidence. Stipulation must be that of the Defendant.
VOIR DIRE	(vwahr deer also vor deer or vor dlr) French “to speak the truth”. 1. A preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury. Loosely, the term refers to the jury-selection phase of a trial. 2. A preliminary examination to test the competence of a witness or evidence.
WRIT	A court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act.

Definitions sourced from Black's Law Dictionary, unless otherwise noted.