

Illinois Toolkit

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Legal Basics

Civil v. Criminal

- People can represent themselves in any kind of legal action. Knowing the difference between civil and criminal law can be crucial to research and assistance, as both types have different expectations, court rules, and possible punishments.
 - There is a cultural assumption that people are entitled to an attorney for any legal action, but this is not the case. People are only entitled to an attorney for criminal cases; for civil cases, the person either has to hire an attorney or represent themselves. For this reason, you will likely encounter more patrons involved in civil cases than criminal.
- At the most basic level, criminal cases involve the defendant being accused of breaking a law, while civil cases involve one person suing another person for an alleged legal wrongdoing.
 - Criminal law is the law of crimes and their punishments, while civil law is the law of civil or private rights.

Criminal

- If a person is on trial for a criminal matter, that means that the State has charged them with breaking a law.
 - This could be burglary, theft, murder, etc.
 - In every criminal case, the plaintiff is the State. Individual citizens cannot charge another individual citizen with a criminal act.
 - For example, if someone broke into your home and stole your television, your case would only be heard in court if the prosecutor decides that the matter should be heard in court. You do not have the option of charging the person who broke into your home with a criminal act yourself; you

might, however, have the option of suing them in civil court, which we will get to momentarily.

- Criminal cases typically are decided by a jury (although the defendant can request a trial to be decided by the judge – this is called a bench trial).
 - The jury can find the defendant either guilty or not guilty
 - The standard to be found guilty is “beyond a reasonable doubt”: due to the evidence presented by the prosecution, there is no other reasonable explanation for the crime other than for it to have been committed by the defendant
 - If the defendant is found not guilty, they are free to go and receive no punishment
 - Additionally, the State/prosecution cannot appeal the verdict due to the constitutional concept of double jeopardy: a person cannot be tried for the same crime twice.
 - If the defendant is found guilty, they are then sentenced to some kind of punishment
 - The range of punishments for criminal cases is vast, and could include probation, monetary fines, jail time, house arrest, or community service.
 - Sentences are sometimes mandated by the law itself, while other situations allow the judge or jury to decide the sentence.
 - For example, if the defendant broke a law that states that the punishment for breaking that law is a minimum of five years in prison, the judge has the discretion to sentence them to five years and one day, or fifty years.
 - Other laws will require a minimum or maximum monetary fine, with the judge having discretion to set the actual amount within those confines.
 - The type and severity of the punishment is contingent on many factors, including the law itself, other relevant laws, the severity of the criminal act, the judge, the defendant’s actions in court, etc.
 - After receiving the sentence, the defendant can then appeal their sentence (the process of that is discussed in “Jurisdiction and Court Levels”)

Civil

- If a person is involved in a civil trial, that means that some kind of right was infringed upon
 - There was not a crime, but there was a legal wrongdoing
 - This is called a tort: “an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability” (Cornell)
 - In the legal world, “injury” does not necessarily mean that the person was physically injured; with civil suits especially, it typically means that there was an invasion of a legal right

- Similarly, “harm” does not have to be physical, but can instead mean a loss or detriment that the individual suffered
 - Some examples of torts include trespass, damage to personal property, negligence, and defamation
- Civil cases are brought often with intent of recovering damages (a monetary sum) and/or an injunction (a legal move which stops the other party from continuing the tortious act)
- Unlike in criminal cases, parties are not found guilty or not guilty; rather, the defendant can be found liable or not liable
 - If the defendant is found not liable, the plaintiff can appeal the decision
 - If the defendant is found liable, the court imposes damages and whatever other legal remedy the court feels is necessary (such as an injunction)
- Also unlike in criminal cases, both parties can appeal the verdict (discussed in more detail in “Jurisdiction and Court Levels”)
- Jail time is never a possible outcome for a civil trial.

Common law v. Legislative law

- We have two different sources of law: common (or judge-made) law, and statutes passed by the legislature

Common law

- Judge’s decision on a case becomes law
- This decision is based on precedent – past cases that, due to their topic and jurisdiction, have authority over the current case. Judges must consider relevant precedent when deciding the case in front of them.
 - This requires judges to apply the law in the same way to cases with the same facts.
- Sometimes, preceding cases get overruled, but this tends to be an exception rather than the norm. If a case is overruled, the judge explains why; it is often because of changes on society or the law.
- Overruling can mean that a precedent case is no longer good law – using a citator is the best way to determine if the case you are looking at is still good law

Legislature

- The other option is the legislature. For the federal level, this is Congress; at state level, it is the state legislature
 - Federal law applies to everyone in the country, while state law generally only applies to those in the state
- For the legislature, a bill is written, agreed upon, and sent to the President (if the law is federal) or to the state governor (if the law is within one state). The President/state governor then have the option to either sign it into law or to veto it. A veto can be overridden by a two-thirds majority of the relevant legislative body.

- There are also municipal codes, such as city or county codes. These are decided upon by the governing body of that city or county.

Jurisdiction/Court levels

- If you are assisting a pro se litigant with research, it is likely that they are in the first phase of their journey through court: the trial level. This is the first time this case has been heard in court, and the decision will be the first one either party gets on the matter.
 - In criminal cases, the defendant is always tried in state court
 - In civil cases, the case can be heard in a federal court first if the case arises out of a federal statute, the Constitution, or treaties
 - If you are suing for a First Amendment violation, that could be heard in federal court. If you are suing over a property dispute, that would most likely be heard in state court. The plaintiff (the person who initiated the suit) typically has a choice of whether to bring the case in state or federal court.
- You may also be seeing PSLs at the next stage: the appeal. Appeals occur when a party is unhappy about the outcome they received in trial court, and they believe that bringing it in front of another justice or group of justices will get them a more favorable result
 - In civil cases, either party can appeal (sometimes even both appeal at the same time!)
 - The party doing the appealing is the appellee, and the other party is the appellant.
 - The party can appeal the entire decision, or just a part of it
 - As an example, let's say the plaintiff is suing the defendant, their neighbor, for two issues: a nuisance complaint and an instance of trespass. The judge finds the defendant liable for trespass but not for nuisance, and awards the plaintiff \$1000. The plaintiff can appeal and argue that the defendant should be liable for nuisance, and that the monetary amount for trespass was too low. The defendant can appeal at the same time and argue that they should not be held liable for any of the charges against them.
 - In criminal cases, it works a little bit differently. If a defendant is found guilty, they can appeal that sentence. If they are found not guilty, the state cannot appeal; this is due to a constitutional provision called "double jeopardy," where someone cannot be tried for the same crime twice, even in higher court.
- If that appeal is still unsuccessful, the final option is to take the case to the Supreme Court of either the state or of the U.S., depending on the case.
 - The IL Supreme Court can hear cases related to state law, as well as some special circumstances. <https://www.isba.org/public/illinoiscourts>
 - The U.S. Supreme Court can hear cases that involve federal law, even if it was originally heard in a state court. <https://www.nolo.com/legal-encyclopedia/what-cases-does-the-us-supreme-court-hear.html#:~:text=The%20United%20States%20Supreme%20Court,federal%20law%2C%20including%20the%20Constitution.>

bolster an argument, but cannot be used to force an outcome

- A decision made by the district court is binding to those in that district
- How to use this to assist a PSL
 - A reference interview can include a checklist of items such as the following:
 - Is the trial dealing with a criminal or civil matter?
 - Is it the trial being held at the trial level, or is an appeal?
 - Is the trial being held in state or federal court?
 - These questions let you know what kinds of cases you can use as precedent, and therefore what the PSL can use in their argument to the court

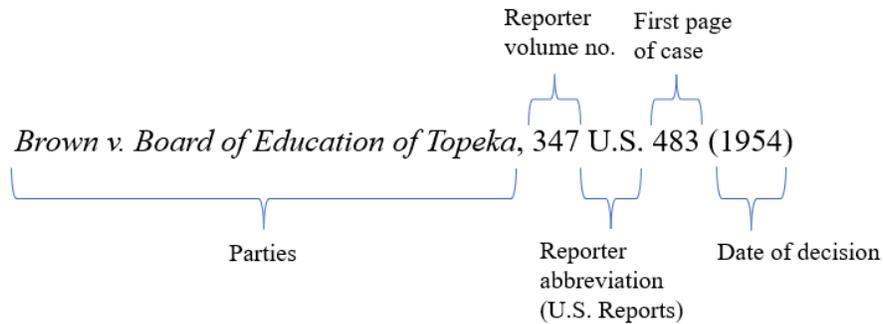
How to read a legal citation

- Most librarians are familiar with some kind of citation method, whether that be MLA, Chicago, APA, or any of the other myriad options. In law, the most common method of citation is Bluebook.
- Bluebook is a literal blue book that contains the rules for the citation style. Neither the official book nor the online version are available for free (although there is a free, extremely pared down style guide available here:
<https://www.legalbluebook.com/bluebook/v21/quick-style-guide>)
 - There is an open-source version of Bluebook called Indigo Book. It is the same citation system, just published by a different group. That link is here:
<https://law.resource.org/pub/us/code/blue/IndigoBook.html>
- Bluebook citations can be created for just about anything, but we will be focusing on the three most commonly used sources: cases, statutes, and law review articles.
- Knowing how a Bluebook citation is structured can be helpful during research. The case citation tells you which court the case was heard in, which helps determine if the case can or should be used as precedent, whereas statute citations tell you where the statute can be found in the U.S. Code.
 - As will be discussed in later sections, telling a patron that a case will be helpful to them is likely outside of the purview of legal reference. However, using the citation to judge whether the case is even relevant is a good tool for patrons, and explaining this process is probably fine. After all, you are only telling them what the citation says; this is a factual determination, and not subject to interpretation.

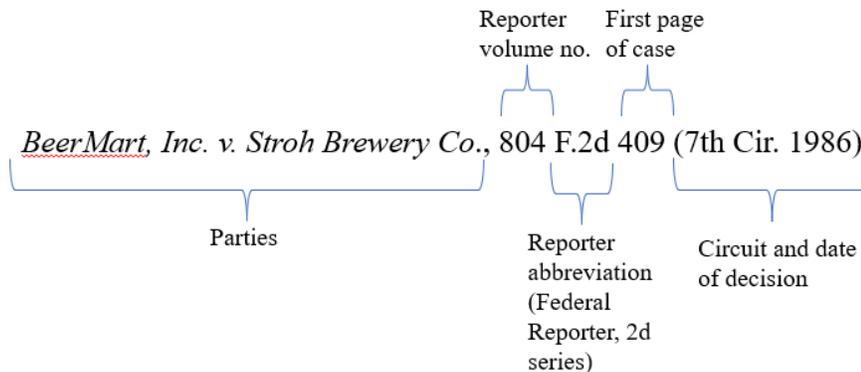
Cases

- Here, we will be diagramming a U.S. Supreme Court citation, a Seventh Circuit citation, and several Illinois court citations.
 - The confusing thing here is that “citation” is also a term for one small part of the citation as a whole.
- Cases are published in reporters. These reporters are contracted by courts to publish their recent decisions. Sometimes, cases are published in more than one reporter; in that case, there may be more than one

- SCOTUS – Brown v. Board of Education

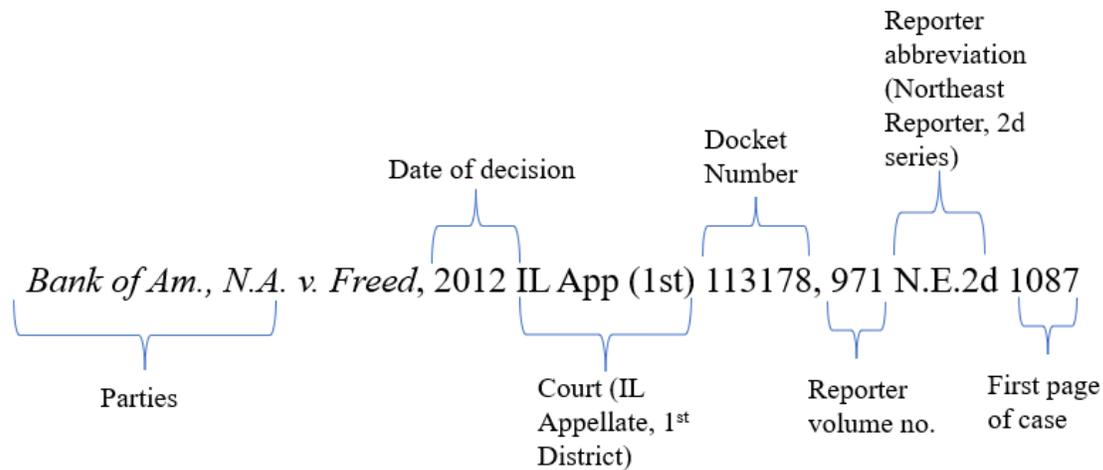


- With SCOTUS cases, there is no court explicitly listed; it is clear from the reporter name, as that reporter is the only one that has SCOTUS cases.
- In this case, the official citation is 347 U.S. 483. The rest of it is important, of course, but this specific section refers to where in the reporter the case can be found.
- If the citation refers to a specific page number within the case, it will look like this: 347 U.S. 483, X (1954)
- Seventh Circuit – *BeerMart v. Stroh*



- Here, the official citation would be 804 F.2d 409.

- IL Supreme Court



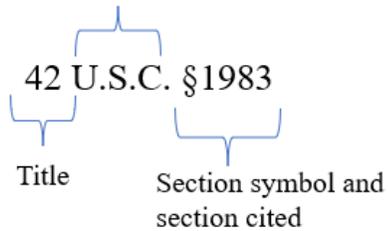
- There are two differences to note here:
 - 1) This citation shows the People as the plaintiff, which indicates that this is a criminal case rather than a civil one.
 - 2) This case has two citations: 164 Ill. 2d 104, and 646 N.E.2d 587. This second citation is a parallel citation. It refers to a reporter that is not considered to be the “official” reporter for this court; in this case, Illinois courts use the Illinois Reporter as the official reporter, and the Northeast Reporter as a second, “unofficial” reporter. The Northeast Reporter is a perfectly valid publisher, it just isn’t the first choice of the Illinois court. Having two publishers means that researchers can look in two different places for the case, which (in theory) makes it easier to locate.
- IL Appellate Court
 - In IL, appellate court citations include the docket number.
- IL Circuit Court decisions are not typically published or cited to, so knowing the citation is not necessary. These cases are not typically used for precedent.

Statutes

Federal

- Federal statutes are kept in the US Code

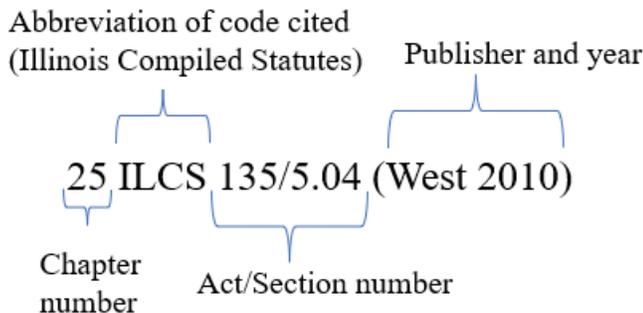
Abbreviation of code cited



- Some citations include a year after the section; this is only necessary if the citation refers to an older version of the code
- In some cases, you might need to refer to the entire statute. If that is the case, the statute name goes before the citation above. (Ex: National Environmental Policy Act of 1969, 42 U.S.C. § 4332)

IL

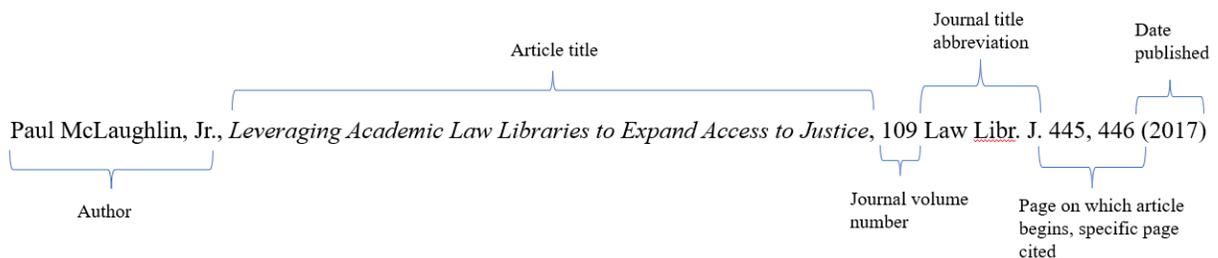
- Illinois statutes are a little trickier to cite to.



- The IL code is published by both West and LexisNexis, so you need to specify which you are citing from.

Law Review

- Law review is the legal world’s version of an academic journal. The articles are most often cited to in other academic works, but they can be an invaluable research tool when assisting patrons.



How to read a case

- Generally, you should look for the following elements when reading a case:
 - Facts
 - Put simply: what happened?
 - Procedural history
 - What happened in previous trials? Was the case dismissed? Did the plaintiff or defendant win? Was a rule struck down, or a prior case overturned?
 - Issue
 - The question the court must answer in this case
 - Rule
 - The law that the court decides to apply to the case
 - Holding
 - The court's decision after applying the rule to the facts
 - Hint: this is not at the end of the case. This is often after the facts of the case.
 - Reasoning
 - Why did the court select that specific rule, and why did they apply it to the facts in the way that they did?

Legal Reference v. Legal Advice

- Before we get into actually doing the research, I want to take a step back and address the ever-present issue of legal reference v. legal advice
 - This is something that law librarians deal with every single day
- Always remember that if the legal issue at hand seems too complicated, you can tell the patron that the question would be best handled by an attorney.
 - [links to legal aid]
- In every state, it is illegal for someone who is not a licensed attorney to give legal advice.
 - This is fairly straightforward on its face, but the lingering question is what actually constitutes legal advice
 - This distinction can be a little murky, and there is not a clear answer. However, there are certain actions that are more likely to be viewed as legal advice.
- At the core of it, try to think of legal reference in the same way as any other kind of reference. You would probably not tell the patron what the document they need actually says, nor would you interpret it for them. You would not tell the patron how they should solve their problem; you would simply provide them with the materials and leave them to their own devices.
 - Those same actions apply with legal reference. Help them find the thing they need, but do not interpret, explain, or offer an opinion on the document. Refer them to items, but do not recommend actions (other than consulting an attorney).
 - Some concrete examples of what not to do are:
 - Telling a patron which legal form to fill out and how to fill it out

- Pointing them in the direction of forms, either in print or online, is fine, but telling them that they need to fill out Form 1-A is verging on being legal advice
 - Helping a patron interpret a case, statute, code, etc.
 - Writing any kind of legal document for the patron, such as a contract or will
 - Helping a patron interpret a legal document they received from a court or attorney
- Even if you know the answer to the patron's question, you cannot give it.
 - For example, let's assume that you were involved in lobbying for a specific piece of legislation, and were involved enough that you actually do know what it says and means. If a patron comes in asking for help interpreting that statute, you as a librarian cannot assist them.
 - I have had many instances where I do know what the patron should do or I know how the law in question works, but because I am not an attorney, I cannot tell them. All I can do is point them in the direction of the answer.
- There is, of course, always the possibility that your interpretation is incorrect, or the form you think they should fill out is actually the wrong one. The law is extremely confusing, and it is very easy to misinterpret something. With other types of reference, this might not be a major issue; with legal reference, it can mean that the patron loses their court case. Play it safe, and do not give opinions, answers, directions, or interpretations.

Referral Services

- You may decide that the patron would be best served by an attorney, or you might want to show them how to find one. The following are links to online referral services.
- <https://www.illinoislegalaid.org/get-legal-help>
- <https://www.justia.com/lawyers/illinois>
- <https://www.isba.org/public/illinoislawyerfinder>

Legal Research Techniques

- First thing: identify the legal issue
 - Treat this like any other reference interview
 - Patrons do not always know what they need, and often do not know how to ask
 - For instance, I once had a patron ask if there were rules for Illinois state courts to follow in civil cases that involve destruction of evidence. After I sent him links to Illinois civil procedure rules (which is what I thought he wanted), he then informed me that what he actually wanted was quite different. He told me that when Tom Brady destroyed his cell phone after being told to give it to investigators, an attorney on a news segment said that in this situation, the court must assume that the evidence destroyed would have been detrimental to the person's case. The patron wondered if Illinois had a similar rule for civil proceedings.

- I have no idea why he wanted to know this, but it does serve as an excellent illustration of how patrons do not always ask for what they want on the first try. If I had known about the Tom Brady angle from the start, I could have given him a much better answer.
 - Knowing this, do not be afraid to ask questions. Asking questions to get more insight into their issue is not akin to giving legal advice. After all, you cannot assist them without fully understanding the issue.
- Start with secondary sources, preferably ones geared towards non-lawyers. These sources summarize and interpret the law, and can provide references to primary sources.
 - IL Self-Help <https://www.illinoislegalaid.org/get-legal-help/lshc-directory>
 - Self-help centers are located across the state. These centers, often placed in a courthouse, provide computers that patrons can use to research their legal issue.
 - These centers can provide court forms, court navigation assistance, and research assistance.
 - As with law librarians, staff at these centers cannot and do not provide legal advice or assistance with filling out legal forms or documents.
 - I only mention self-help centers because they are useful to know about. There may be patrons who want to do the research themselves or might want access to something that your library does not provide.
 - Print sources
 - Dictionaries
 - Black's Law Dictionary provides detailed definitions of legal terms.
 - It is currently on the 11th edition, and does not have an online subscription.
 - There is a website called thelawdictionary.org which has the entirety of the 2nd edition available for free. Be aware that the 2nd edition was originally published in 1910, so it may be missing modern phrases or have outdated definitions. Additionally, the site's search function is not the best.
 - Encyclopedias
 - National
 - Corpus Juris Secundum (CJS) and American Jurisprudence 2d (AmJur)
 - Might be available in a non-law library
 - Illinois
 - Illinois Law and Practice (West)
 - Comprehensive survey of Illinois law
 - Illinois Jurisprudence (Lexis)
 - Focus on major topics that are useful to a legal practitioner

- These are published by competing publishers and have different uses
 - Online sources <https://www.law.cornell.edu/>
 - Cornell Legal Information Institute
 - This site, hosted by Cornell Law School, provides a wide array of legal information, including legal encyclopedias, citation basics, and discussions of certain legal topics.
 - Cornell also provides some caselaw, so you can still use the site when you feel ready to move on to primary sources.
 - Cornell Wex online encyclopedia
 - <https://www.law.cornell.edu/wex>
 - Justia legal guides <https://www.justia.com/legal-guides/>
 - Justia provides free legal guides on a variety of topics. These are very general, and are not state-specific.
 - Justia also has a Find a Lawyer feature (<https://www.justia.com/lawyers>), which patrons can use if they decide to hire an attorney
 - Nolo <https://www.nolo.com/>
 - Nolo provides a free legal encyclopedia at <https://www.nolo.com/legal-encyclopedia>. As with Justia, it is very general and not state-specific
 - GMU Free Legal Research Sites <https://www.law.gmu.edu/library/freelegalresearch>
 - George Mason University provides an extensive list of free sites that provide access to both primary and secondary sources
 - IL Legal Aid <https://www.illinoislegalaid.org/>
 - Illinois Legal Aid provides free legal definitions and court forms, all geared towards Illinois law.
 - The site also provides detailed explanations of every step of the legal process, from the beginning to end of a case, and gives instructions on how to fill out certain legal forms.
 - Illinois Legal Aid also provides free legal representation to those who qualify. Interested persons simply have to fill out this page of the site: <https://www.illinoislegalaid.org/get-legal-help>
 - There is no guarantee that Illinois Legal Aid will take their case, but they may as well try.
- Primary
 - Cases
 - Cases can be tricky to find for free online. You may have to search several different sites to find the case you are looking for, and it is possible that the case will be locked behind a paywall.
 - Caselaw Access Project <https://case.law/>
 - Hosted by Harvard Law School, the Caselaw Access Project is dedicated to making cases freely available online.

- It has a phenomenal search function that makes it very easy to find cases (although keep in mind that the case you want might not be there).
 - FindLaw <https://lp.findlaw.com/>
 - Similarly, FindLaw provides free cases. You can search by court and party name.
 - This site is geared more towards practicing attorneys, so keep that in mind when searching.
 - Court websites
 - Nearly every court in the country has a website, and those websites provide free access to the cases decided by that court.
 - Google Scholar <https://scholar.google.com/>
 - Google Scholar allows you to search for case law in any jurisdiction.
 - It is relatively robust, and utilizes Google's search function.
 - Once you find your case, you need to know if it still good law. Typically, you would do this by utilizing a legal citator, a function available in every paid legal database.
 - Unfortunately, there is not a free way to do this.
 - Fastcase (<https://www.fastcase.com/>) and Casetext (<https://casetext.com/>) both provide citator functions, and are cheaper than the bigger legal databases (and both provide free trials.
 - Google Scholar does include a "how this case was cited" feature, but it only lists other cases that cited the first one; it does not tell you whether or not that first case is still good law.
- Legislation
 - Almost all federal legislation can be found at congress.gov
 - Specific Acts or other pieces of legislation (plus a lot of other random government documents) can also be found at <https://www.govinfo.gov/browse-a-z>
 - Illinois legislation can be found at ilga.gov
- Codes/statutes
 - The current US Code can be found on Cornell's Legal Information Institute at <https://www.law.cornell.edu/uscode/text>
 - Current and previous versions can be found at <https://www.govinfo.gov/app/collection/USCODE>
- Misc.
 - GMU Free Legal Research Sites <https://www.law.gmu.edu/library/freelegalresearch>
 - George Mason University provides an extensive list of free sites that provide access to both primary and secondary sources

Definitions

- We felt that it would be useful to include a small dictionary of common legal terms. All definitions are taken from Black's Law Dictionary. The italicized sentences are simpler explanations of the terms.

A

Acquit – to find a defendant not guilty in a criminal trial. (Lake County)

Admissible – capable of being legally admitted; allowable; permissible. *This term usually applies to evidence: if a piece of evidence is admissible, this means that it can be used in court; if a piece of evidence is inadmissible, it cannot be used.*

Affidavit – a written document stating that the information in the document is factual and true.

Signed while the person is under oath, and often needs to be notarized. (Misc.)

Affirm – a declaration from a higher court that the judgment of a lower court is correct and should stand. (LC)

Allegation – a claim of fact not yet proven to be true. In a lawsuit, a party puts forth their allegations in a complaint, indictment or affirmative defense, and then uses evidence at trial to attempt to prove their truth. (Cornell)

Answer – defendant's written response to plaintiff's claims, where the defendant either admits or denies fault.

Appeal – the process by which a case is brought from a lower court to a higher court for a review. (LC) Appeals are typically not automatic, and must be requested by the party wishing to get a different outcome to their case. (Misc.)

Appellate Court – a court that reviews cases from lower courts and has the authority to affirm or reverse the decision the lower court came to. (LC)

Arraignment - in criminal cases, a court hearing where the defendant is advised of the charges and is asked to plead guilty or not guilty. (LC)

Award – in civil cases, the money or other relief which the winning party is entitled to after the case. (Fed)

B

Bench trial – a trial in which the judge, rather than a jury, determines the verdict of the lawsuit. Must be requested. (Fed)

Breach – failure to perform a legal obligation. (Fed)

Brief – a document filed with the Court arguing for or against a motion. (Fed)

Burden of proof – obligation to prove the facts at issue in the case. For example, in criminal trials, the State must prove to a jury that the defendant committed the crime; therefore, the State has the burden of proof. (LC)

C

Case – a civil or criminal proceeding, action, suit, or controversy at law or in equity. *Basically, the case is why everyone is in court. It does not refer only to the charges or claims, but refers to the entire proceeding from start to finish.*

Challenge for cause – a party's challenge supported by a specific reason, such as bias or prejudice, that would disqualify that potential juror. *In cases that are heard by a jury, both the prosecution and defense get chances to decide which potential jurors are chosen. Challenges for cause are made when either the prosecution or defense believes that the potential juror is biased or prejudiced in such a way that they cannot be impartial, and cannot come to a fair decision.*

Chambers – the private room or office of a judge. *If a judge asks to see someone in their chambers, that basically means that they want to talk to a person in their office. If done during a trial, this discussion is off-the-record.*

Charge – to accuse a person of an offense; a formal accusation of an offense as a preliminary step to prosecution. *A charge can be either the act of accusing someone of an offense, or the formal documentation that lists what the person is accused of doing.*

Chief Judge – the judge who presides over the sessions and deliberations of the court, while also overseeing the administration of the court. *The Chief Judge is basically the manager of the other judges in that particular court.*

Circuit court – a court usually having jurisdiction over several counties, districts, or states, and holding sessions in all those areas. *The term can refer to different types of courts. For example, in Illinois, the circuit court is the name for the trial court; in federal courts, however, the circuit court is the name of the appellate court.*

Citation – a reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position. *A citation is a reference to a past legal decision or document that impacts the case, either by proving or disproving a point or argument.*

Civil – of, relating to, or involving private rights and remedies that are sought by action or suit, as distinct from criminal proceedings. *If someone is involved in a civil trial, that means that some kind of right was infringed on; there was no crime, but there was a legal wrongdoing. Examples include trespass, damage to personal property, negligence, and defamation.*

Closing arguments – in a trial, a lawyer's final statement to the judge or jury before deliberation begins, in which the lawyer requests the judge or jury to consider the evidence and to apply the law in his or her client's favor. *This is the final statement the party makes to whoever is deciding the case, whether that be the judge or the jury. A closing argument asks the judge or jury to decide in that party's favor.*

Common law – the body of law derived from judicial decisions, rather than from statutes or constitutions; also called “case law.” *United States law comes from case law and from statutes or constitutions (which are written by the legislature).*

Complaint – the initial pleading that starts a civil action and states the basis for the court’s jurisdiction, the basis for the plaintiff’s claim, and the demand for relief. In some states, this pleading is called a petition. In criminal law, a complaint is a formal charge accusing a person of an offense. *In civil cases, the complaint is the first thing filed by the plaintiff. It outlines who the plaintiff is suing, why the plaintiff is suing, and what the plaintiff wants to get if they win the case.*

Conclusions of law – an inference on a question of law, made as a result of a factual showing, no further evidence being required. Also, a judge’s final decision on a legal point raised in a trial or hearing, particularly one that is vital to reaching a judgment. *Many cases often center around whether a particular law should be applied to that case. A judge gives a conclusion of law after reviewing the facts of the case and stating whether the law in question does in fact apply.*

Contempt of court – conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by a fine or imprisonment. *If a spectator, plaintiff, defendant, attorney, or other courtroom attendee’s conduct is so distracting or rude as to interrupt the proceedings, the judge can find them to be in contempt of court. The person is then removed from court and often either put in jail or given a monetary fine.*

Continuance – the adjournment or postponement of a trial or other proceeding to a future date. *A continuance just means that someone needs a bit more time before the trial can begin or*

continue, and requests that the trial be delayed. The person who wants a continuance must file a motion for it.

Court of appeals – (see appellate court)

Court reporter – someone who records judicial proceedings and testimony, stenographically or by electronic or other means, and when requested, prepares a transcript. *The court reporter uses a special kind of keyboard that allows them to quickly and accurately record what is being said and done in court. This record is then turned into a court transcript.*

Criminal – of, relating to, or involving a crime; or, relating to, or involving the part of the legal system that is concerned with crime. *If someone is on trial for a criminal matter, this means that the State has charged them with breaking a law.*

Cross-examination – the questioning of a witness at a trial or hearing by the party opposed to the party in whose favor the witness has testified. The purpose of cross-examination is to discredit a witness before the fact-finder in any of several ways, as by bringing out contradictions and improbabilities in earlier testimony, by suggesting doubts to the witness, and by trapping the witness into admissions that weaken the testimony. The cross-examiner is typically allowed to ask leading questions but is traditionally limited to matters covered on direct examination and to credibility issues. *Let's say that Carol is testifying in favor of the plaintiff (Amy), and says that she witnessed Bob (the defendant) trespassing on Amy's property. After she is done giving her testimony, Bob's lawyer can ask questions designed to make Carol's testimony look weak to the jury. These questions can point out inconsistencies in Carol's testimony, show that Carol is not a credible witness, etc.*

D

Damages – money paid by, or ordered to be paid to, a person as compensation for loss or injury.

When a plaintiff wins a civil case, they are often rewarded damages: an amount of money that the defendant must pay to the plaintiff as punishment for their wrongdoing.

Deliberate – when the court, jury, etc. weighs and analyzes all the evidence after closing arguments. *This is the official term for the period of time in which the jury decides whether the defendant is guilty or liable.*

De novo – Latin for “anew.” A trial de novo is a new trial on the entire case – that is, both questions of fact and issues of law – conducted as if there had been no trial in the first instance. *Sometimes, a case is tossed out completely and everyone starts the case over as if the first one never happened. This new case is called a “trial de novo.”*

Declarant – someone who has made a statement; someone who has signed a declaration.

Declaration – a formal statement, proclamation, or announcement. *This differs from an affidavit in that it is not notarized. A declaration also does not have to be a statement of facts; for example, a common declaration is a declaration of intent to become a U.S. citizen.*

Default – to fail to appear or answer. *If the defendant does not appear in court or submit an answer, they are then in default.*

Default judgment – a judgment entered against a defendant who has failed to plead or otherwise defend against the plaintiff’s claim. *If the defendant is found to be in default, a default judgment can be found against them. Similarly to when a sports team forfeits a game if they do not show up, the defendant loses the case by not submitting an answer or plea in a timely manner (or at all).*

Defendant – a person sued in a civil proceeding or accused in a criminal proceeding. *The defendant is the person who is accused of doing some legal wrong or crime, and who is on trial*

for that wrongdoing or crime. When looking at case names, the defendant is always second (State v. Smith; Jones v. Smith).

Defense – a defendant’s stated reason why the plaintiff or prosecutor has no valid case; specifically, a defendant’s answer, denial, or plea. Also, a defendant’s method and strategy in opposing the plaintiff or the prosecution. *The defense is the argument given as to why the defendant did not do what they are being accused of.*

Deposition – a witness’s out-of-court testimony that is reduced to writing (usually by a court reporter) for later use in court or discovery purposes. *A deposition is essentially an interview with the witness, where the witness has sworn that they are telling the truth. Depositions are done prior to the case going to the trial, and can be used as evidence during that trial.*

Direct examination – the first questioning of a witness in a trial or other proceeding, conducted by the party who called the witness to testify. *If Carol is asked to give testimony in support of Amy, Carol will first be questioned by Amy’s attorney. If Carol is asked to give testimony in support of Bob, Carol will first be questioned by Bob’s attorney.*

Disclosure – the mandatory divulging of information to a litigation opponent according to procedural rules. *In civil cases, if one party finds out certain information, that information must be given to the other party as well. This process is called “disclosure.” The Federal Rules of Civil Procedure list the kinds of information that must be disclosed to the other party.*

Discovery – compulsory disclosure, at a party’s request, of information that relates to the litigation. Also, the pretrial phase of a lawsuit during which depositions, interrogatories, and other forms of discovery are conducted. *Discovery has two meanings that are relevant here. The first is essentially the same as “disclosure”: there are certain things that have to be handed over*

to the other party. The second refers to the period of time before the trial in which attorneys gather their evidence.

Docket – a formal record in which a judge or clerk briefly notes all the proceedings and filings in a court case. Also, a schedule of pending cases. *A docket can refer to a couple of things. The first is the record of all the paperwork that has been submitted and filed for the case; this can include briefs, answers, motions, etc. The second is simply the schedule of cases for a particular court or judge.*

Due process – the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case. *Due process means that everyone has the right to a fair trial.*

E

Electronic case filing (e-filing) – the practice or an instance of submitting or lodging a document with an authority, especially a governmental authority such as a court, over the internet. *E-filing allows self-represented litigants to file their court documents over the Internet.*

Element – a constituent part of a claim that must be proved for the claim to succeed. *For torts and crimes, certain things had to have happened in order for the tort or crime to have been committed. This is similar to a recipe: you need certain ingredients in order to make certain dishes, and without those ingredients, the dish is not quite right. As an example, let's say that for burglary, the following elements must be proven: the defendant broke into a home; they stole an item from the home; and they did all of this at night. (These are not the actual elements for burglary, just an example for the definition.) If the plaintiff cannot prove those elements, the defendant cannot be found guilty.*

Evidence – something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact. Also, the collected mass of things, especially testimony and exhibits, presented before a tribunal in a given dispute. *Evidence is what the plaintiff and defendant present to the court to prove their sides of the argument. Evidence can include witness testimony, affidavits, depositions, DNA, fingerprints, items of clothing, weapons, etc.*

Ex parte – done or made at the instance and for the benefit of one party only, and without notice or, 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, usually for temporary or emergency relief. Despite the traditional one-sidedness of ex parte matters, some courts now require notice to the opposition before what they call an “ex parte hearing.” *An ex parte move is done with only the knowledge of one party. These typically result in hearings or injunctions.*

Exhibit – a document, record, or other tangible object formally introduced as evidence in court. Also, a document attached to and made part of pleading, motion, contract, or other instrument. *An exhibit is some piece of evidence that a party formally presents as evidence in court.*

Expert witness – a witness qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion about the evidence or a fact issue. *An expert witness can be a doctor, mechanic, or any other professional who can give their expert opinion on a piece of evidence or a fact presented in trial.*

F

Federal Rules of Civil Procedure – the rules governing civil actions in the U.S. district courts. *These rules only apply to federal civil courts, and dictate policies, procedures, and expectations of attorneys in those courts.*

Federal Rules of Evidence – the rules governing the admissibility of evidence at trials in U.S. district courts and other federal courts of first instance. *These rules apply to all civil courts, and dictate what can and cannot be used as evidence in a case.*

Filing – a particular document (such as a pleading) in the file of a court clerk or record custodian. Also, the act or an instance of submitting or lodging a document with a court clerk or record custodian. *A filing can be either a specific document that has already been filed, or it can refer to the process of actually submitting documents.*

Finding of fact – a determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or hearing. *Cases often have facts which are in dispute, with each side claiming different things. A finding of fact is the judge or jury stating that they have one found one side's facts to be true.*

Fraud – a knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment. *Fraud essentially is lying to someone to get them to do something that will harm them but benefit you.*

G

Good faith – a state of mind consisting in 1) honesty in belief or purpose, 2) faithfulness to one's duty or obligation, 3) observance of reasonable commercial standards of fair dealing in a given trade or business, or 4) absence of intent to defraud or to seek unconscionable damage. *If someone is acting in good faith, they are acting in the best way they can: truthfully, faithfully to their obligations and careers (if relevant), or in a way that shows that they are not intended to defraud or cause excessive harm to another person. Good faith often shows up in contract disputes.*

Grand jury – a body of 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.

Grand juries view evidence provided by the prosecutor and decide if the evidence is strong enough that the defendant should be indicted. Grand juries are not used in every single case.

Grounds – the reason or point that something (as a legal claim or argument) relies on for validity. *If someone says that they have grounds for appeal, this means that they have reasons why they should appeal; “grounds” refers to those reasons.*

H

Harm – injury, loss, damage; material or tangible detriment. *“Harm” does not have to mean a physical injury; it simply means that the person suffered a loss or damage. This can include financial loss, damage to the person’s reputation, etc.*

Hearing – a judicial session, usually open to the public, held for the purpose of deciding issues of fact or law, sometimes with witnesses testifying. *Hearings typically help resolve issues that may come up in the case, such as deciding whether a piece of evidence is admissible or not.*

Hearsay – traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness. Such testimony is generally inadmissible under the rules of evidence. *Typically, a witness cannot testify about what other people have said. There are a number of exceptions to hearsay, however.*

Hung jury – a jury that cannot reach a verdict by the required voting margin. *Juries typically need to vote unanimously on a verdict – every member of the jury must have the same vote in order to move forward. When this does not happen, the jury is declared to be a hung jury, and the case is usually declared a mistrial.*

I

Impeachment – the act of discrediting a witness, as by catching the witness in a lie or demonstrating that the witness has been convicted of a criminal offense. *Impeaching a witness means that the witness has been discredited on the stand during cross examination.*

Indictment – the formal written accusation of a crime, made by a grand jury and presented to a court for prosecution against the accused person. *An indictment is essentially the same thing as a charge, except that an indictment comes from a grand jury rather than a prosecutor.*

Injunction – a court order commanding or preventing an action. To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted. *An injunction is the court telling a party to either stop or start doing a certain action. Injunctions are only granted if there is no other solution that the court can provide, and if not providing the injunction will result in extreme harm to the person requesting it.*

Injury – the violation of another’s legal right, for which the law provides a remedy; a wrong or injustice. Injuries are divided into real injuries (such as wounding) and verbal injuries (such as slander). There may be criminal wrongs (as with assault) or civil wrongs (as with defamation). Some authorities distinguish “harm” from “injury,” holding that while “harm” denotes any personal loss or detriment, “injury” involves an actionable invasion of a legally protected interest. *As with “harm,” an injury does not have to be physical. The difference between a harm and an injury is not always clear.*

Interrogatory – a written question or set of questions submitted to an opposing party in a lawsuit as part of discovery. *An interrogatory is simply a written list of questions that one party*

sends to another for them to answer. Interrogatories are sent out, answered, and sent back during the discovery phase.

J

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. *In this context, a judgment is basically any official statement coming from the court, whether that be the final verdict or something like whether a piece of evidence is admissible in court.*

Jurisdiction – a government’s general power to exercise authority over all persons and things within its territory; especially, a state’s power to create interests that will be recognized under common-law principles as valid in other states. Also, a court’s power to decide a case or issue a decree. *If a court has jurisdiction in a case, that means that they have the right and power to hear and decide the case. If a government has jurisdiction, that means that they have authority over everything within the physical territory the government covers; for example, the state government in Illinois only has jurisdiction over matters in Illinois, while the United States government has jurisdiction over matters that occur within the entire United States.*

Jury – a group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them. *The jury is the group of people, selected by both sides of the case, who decides whether the defendant is guilty or not guilty in criminal court and liable or not liable in civil court. In some instances, the jury also decides on what punishment the defendant will receive.*

Jury instruction – a direction or guideline that a judge gives a jury concerning the law of the case. *Jury instructions give the jury information regarding the law at issue so that they can best decide the case.*

Jury selection – the practice or instance of the court’s allowing the parties to a lawsuit, usually through attorneys, to examine prospective jurors, sometimes along with the judge, to assess the fitness or desirability of those jurors to be empaneled. *Jury selection is just that: selecting the jury.*

L

Liable – responsible or answerable in law; legally obligated. *In civil cases, if someone is found liable, that means that they have been held legally responsible for the action. For example, if Amy sues Bob for trespass and the jury finds him liable, that means that the jury has decided that Bob did trespass and thus owes Amy damages.*

Litigant – a party to a lawsuit; the plaintiff or defendant in a court action, whether an individual, firm, corporation, or other entity. *A litigant is another term for the plaintiff or defendant in a case.*

M

Material fact – a fact that is significant or essential to the issue or matter at hand; especially, a fact that makes a difference in the result to be reached in a given case. *A material fact is a fact that is so important to the case that affects the outcome.*

Mediation – a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. *Mediation is sometimes done instead of a trial; mediators discuss the issue with both parties and attempt to find a solution that both parties are comfortable with.*

Mistrial – a trial that the judge brings to an end without a determination on the merits because of a procedural error or serious misconduct occurring during the proceedings. Also, a trial that ends inconclusively because the jury cannot agree on a verdict. *Mistrials can occur due to a number*

of reasons, such as misconduct, jury tampering, a hung jury, etc. Note: a mistrial is not a full trial, and therefore does not affect the defendant being able to be tried again.

Mitigating circumstance – a fact or situation that does not justify or excuse the wrongful act or offense but that reduces the degree of culpability and thus may reduce the damages (in a civil case) or the punishment (in a criminal case). *A mitigating circumstance is something that is used to help the defendant get a lighter punishment. It does not excuse the behavior, but can help make it a bit more understandable.*

Motion – a written or oral application requesting a court to make a specified ruling or order. *A motion is simply a formal request for the court to do something. Motions can either be granted or denied.*

Motion for a more definite statement – a party's request that the court require an opponent to amend a vague or ambiguous pleading to which the party cannot reasonably be required to respond. *This motion is granted sparingly, and only in cases where the party genuinely cannot respond to the pleading.*

Motion for a new trial – a party's post-judgment request that the court vacate the judgment and order a new trial for reasons such as factually insufficient evidence, newly discovered evidence, and jury misconduct. In many jurisdictions, this motion is required before a party can raise such a matter on appeal. *Some jurisdictions require a party to file a motion for a new trial before they can appeal the ruling.*

Motion for a protective order – a party's request that the court protect it from potentially abusive action by the other party, usually relating to discovery, as when one party seeks discovery of the other party's trade secrets. A court will sometimes craft a protective order to protect one party's trade secrets by ordering that any secret information exchanged in discovery

be used only for purposes of the pending suit and not be publicized. *A motion for a protective order is not the same thing as a person requesting a protective or restraining order. A motion for a protective order is meant to protect sensitive, protected information during the trial.*

Motion for judgment as a matter of law – a party’s request that the court enter a judgment in its favor before the case is submitted to the jury, or after a contrary jury verdict, because there is no legally sufficient evidentiary basis on which the jury could find for the other party. Also called a motion for a directed verdict. *This motion asks the court to recognize that there is no evidentiary basis for the other party to win the case, and to enter a judgment in the favor of the party making the motion.*

Motion for relief from judgment or order – a party’s request that the court correct a clerical mistake in the judgment – that is, a mistake that results in the judgment’s incorrectly reflecting the court’s intentions – to relieve the party from the judgment because of such matters as (1) inadvertence, surprise, or excusable neglect, (2) newly discovered evidence that could not have been discovered through diligence in time for a motion for a new trial, (3) the judgment’s being the result of fraud, misrepresentation, or misconduct by the other party, or (4) the judgment’s being void or having been satisfied or released. *This motion asks that the court either fix a clerical error in the judgment itself or for the party to be relieved of the obligations placed on them by the judgment.*

Motion for sanctions – a party’s request that the court impose a penalty on an attorney’s law firm or opposing party that has violated some requirement or has been responsible for the violation. *This motion asks the court to punish the opposing party for violating a requirement.*

Motion for summary judgment – a request that the court enter judgment without a trial because there is no genuine issue of material fact to be decided by a fact-finder – that is, because the

evidence is legally insufficient to support a verdict in the non-movant's favor. *Summary judgment means that the facts are so clear that it is obvious that the other party is not able to win the case.*

Motion in limine – 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 the mere introduction 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. *If there is a piece of evidence that has already been deemed inadmissible, but you think that mentioning it at all will irrevocably taint the jury against you, you can make a motion in limine to force the other party to not mention that piece of evidence.*

Motion to amend or alter the judgment – a party's request that the court correct a substantive error in the judgment, such as a manifest error of law or fact. Under the Federal Rules of Civil Procedure, a motion to alter or amend the judgment must be filed within ten days after the judgment is entered. It should not ordinarily be used to correct clerical errors in a judgment. Those types of errors – that is, errors that result in the judgment not reflecting the court's intention – may be brought in a motion for relief from judgment, which does not have the ten-day deadline. A motion to alter or amend the judgment is usually directed to substantive issues regarding the judgment, such as an intervening change in the law or newly discovered evidence that was not available at trial. *If there is a large error in the judgment that makes it so the judgment is not in line with current law or fact, a motion to amend or alter the judgment can be filed. This motion would ask the court to correct those errors in the judgment.*

Motion to dismiss – a request that the court dismiss the case because of settlement, voluntary withdrawal, or a procedural defect. Under the Federal Rules of Civil Procedure, a plaintiff may voluntarily dismiss the case, or the defendant may ask the court to dismiss the case, usually based on a defense listed in Rule 12(b). These defenses include lack of personal or subject-matter jurisdiction, improper venue, insufficiency of process, the plaintiff's failure to state a claim on which relief can be granted, and the failure to join an indispensable party. *In civil court, a defendant can file a motion to dismiss for a variety of reasons.*

Motion to strike – in civil procedure, a party's request that the court delete insufficient defenses or immaterial, redundant, impertinent, or scandalous statements from an opponent's pleading. Also, in evidence, a request that inadmissible evidence be deleted from the record and that the jury be instructed to disregard it. *A motion to strike can either be to delete something from the court record or deleting something from an opponent's pleading.*

Movant/moving party – someone who makes a motion to the court or a deliberative body. *The movant or moving party is the party making the motion.*

N

Negligence – the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights; the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances. *The "reasonable standard of care" is one that appears in several laws, and is defined in the R section of this page. If someone acts in a negligent way, this*

means that they failed to do what a reasonable person would have in those same circumstances, or did what a reasonable person would not do.

Notice – legal notification required by law or agreement, or imparted by operation of law as a result of some fact; definite legal cognizance, actual or constructive, of an existing right or title. *Notice is a fancy way of telling someone something that they need to know in regards to a case or their rights.*

O

Objection – a formal statement opposing something that has occurred, or is about to occur, in court and seeking the judge’s immediate ruling on the point. The party objecting must usually state the basis for the objection to preserve the right to appeal an adverse ruling. *If an attorney or PSL raises an objection, this usually means that something has happened in court that that person does not agree with or thinks is not being handled correctly. Example: Carol is testifying against Bob, who is being sued by Amy for allegedly trespassing onto her property. If Bob’s attorney feels that Amy’s attorney is not questioning Carol properly, the attorney can raise an objection. If the judge agrees with Bob’s attorney, Amy’s attorney must move on to another topic or start questioning Carol in a different way. The person raising the objection must always say why they are objecting something; simply saying “objection” is not enough.*

Opening statements – at the outset of a trial, an advocate’s statement giving the fact-finder a preview of the case and of the evidence to be presented. Although the opening statement is not supposed to be argumentative, lawyers – purposefully or not – often include some form of argument. *The opening statement is meant to be a sort of overview of what the attorney or PSL will be doing during the trial: their view of the case, the evidence they will present, etc.*

Technically, opening statements are not supposed to include any kind of argument, merely facts about what the person will be doing, but that is often not the case.

Overruled - to rule against or reject. Also, of a court to overturn or set aside a precedent by expressly deciding that it should no longer be controlling law. *Overruling can occur in court. If someone raises an objection, the judge can overrule that objection, meaning that the judge has rejected it. Overruling can also mean that a higher court has decided that a ruling from a lower court is not a good one, and the higher court issues its own ruling stating so. An example of this would be the Supreme Court overruling a circuit court decision.*

P

Perjury – the act or an instance of a person’s deliberately making material false or misleading statements while under oath; especially, the willful utterance of untruthful testimony under oath or affirmation, before a competent tribunal, on a point material to the adjudication. *Perjury is intentionally lying under oath.*

Petitioner – a party who presents a petition to a court or other official body, especially when seeking relief on appeal. *A petitioner is a person who presents a petition.*

Plaintiff – the party who brings a civil suit in a court of law. *Example: Alice sues Bob. Alice is the plaintiff, as she is the one suing Bob and bringing the matter to court. The case here would be “Alice v. Bob.” In criminal matters, the State is the plaintiff, as the State is typically the only body that can bring criminal charges. Those cases typically looking like “State of Illinois v. Bob.”*

Plea – in criminal law, an accused person’s formal response of “guilty,” “not guilty,” or “no contest” to a criminal charge. Also, a factual allegation offered in a case. *“Plea” can mean a lot of things, but typically refers to the defendant’s response to a criminal charge.*

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, usually a more lenient sentence or a dismissal of the other charges. *Some estimate that between 90 and 95% of criminal cases are resolved through plea bargains. If a defendant agrees to a plea bargain, this typically means that they are pleading guilty or no contest. Often, the defendant receives a lighter sentence or is convicted of a lesser crime than what they were initially charged with.*

Primary source – the originator or primary agent of an act, circumstance, or result. *In law, primary sources are constitutions, statutes, regulations, and cases. These documents all contain the actual text of laws, as well as interpretations and applications to other cases.*

Prosecution – a criminal proceeding in which an accused person is tried. Also, one or more government attorneys who initiate and maintain a criminal action against an accused defendant. *“Prosecution” can refer to either the criminal case itself, or to the attorneys who are representing the plaintiffs in a criminal case.*

Prosecutor – a legal officer who represents the state or federal government in criminal proceedings. *The prosecutor is the person who leads the plaintiff argument in a criminal case.*

Protective order – a court order prohibiting or restricting a party from engaging in conduct that unduly annoys or burdens the opposing party or a third-party witness. Also, a court order prohibiting family violence; especially, an order restricting a person from harassing, threatening, and sometimes merely contacting or approaching another specified person (also called a restraining order). *A protective order is an order from the court telling a party that they cannot engage in conduct that would burden the opposing party. Additionally, protective orders can be*

restraining orders; these orders prohibit one party from abusing or, sometimes, even contacting the other party.

Q

Quid pro quo – an action or thing that is exchanged for another action or thing or more or less equal value; a substitute. *Quid pro quo simply means that one action is substituted for another.*

R

Reasonable/reasonable person – a hypothetical person used as a legal standard, especially to determine whether someone acted with negligence; specifically, a person who exercised the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensible, does things without serious delay, and takes proper but not excessive precautions. *Many civil cases use the concept of a reasonable person when deciding liability.*

Redirect examination – a second direct examination, after cross-examination, the scope ordinarily being limited to matters covered during cross-examination. Often shortened to “redirect.” *Redirect is another chance to question a witness.*

Remedy – the means of enforcing a right or preventing or redressing a wrong; a legal or equitable relief. *Remedies are the civil court version of jail or a fine: if the defendant is found liable in a suit, they are told to do or stop doing some action. This is a remedy.*

Request for admission – in pretrial discovery, a party's written factual statement served on another party who must admit, deny, or object to the substance of the statement. Ordinarily, many requests for admission appear in one document. The admitted statements, along with any statements not denied or objected to, will be treated by the court as established and therefore do

not have to be proved at trial. *Requests for admission ask the other party to admit, deny, or object to a written factual statement.*

Request for production – in pretrial discovery, a party’s written request that another party provide specified documents or other tangible things for inspection and copying. *Requests for production ask the other party to provide documents or other items to the requesting party so the requesting party can inspect and copy the documents.*

S

Sanction – a penalty or coercive measure that results from failure to comply with a law, rule, or order. *In court, sanctions are usually placed on attorneys or law firms who are doing things they shouldn’t be.*

Secondary source – a book, article, essay, etc. that analyzes something such as a legal doctrine or a historical event in such a way that it can be used to support an argument. *Secondary sources are things like books and journal articles, whereas primary sources are cases and statutes. Secondary sources analyze and discuss the law, while primary sources state the actual law itself.*

Statute of limitations – a law that bars claims after a specified period; specifically, a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered). The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonable available and fresh. *Statutes of limitations place time limits on when a claim can be brought in civil court. This time limit can start counting down either at the time of the offense or at the time the victim became aware of the offense; the statute of limitations itself will explain which way of counting applies. As an example, let’s say that Amy believes that Bob trespassed onto her property. The local trespass*

law states that suits for trespass must be started within two years of the alleged offense. If Amy waits two years and one day to file, her case will be thrown out for violating the statute of limitations.

Stipulation – a material condition or requirement in an agreement; especially, a factual representation that is incorporated into a contract as a term. Such a contractual term often appears in a section of the contract called “Representations and Warranties.” *A stipulation is a condition in a contract that a party thinks is material to the contract.*

Strike – to remove a prospective juror from a jury panel by a peremptory challenge or a challenge for cause. Also, to expunge, as from a record. *In this context, “strike” simply means “remove.”*

Subpoena – a writ or order commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply. *A subpoena is a written document commanding a person to appear in court. If the person does not appear, they may suffer penalties.*

Sustain – to uphold or rule in favor of. *“Sustain” is usually used in the context of an objection in court. If a judge sustains an objection, that means they agree with the objection.*

T

Table of authorities – an alphabetical list of authorities cited in a book or brief, usually with subcategories for cases, statutes, and treatises. *A table of authorities is a list of all of the sources of law the person used in their document.*

Testimony – evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition. *Testimony is the oral statement given by a witness at trial or in an affidavit or deposition.*

Transcript – a handwritten, printed, or typed copy of testimony given orally; especially, the official record of proceedings in a trial or hearing, as taken down by a court reporter. *A transcript is a printed record of everything that was said in a trial or hearing.*

U

Undisputed fact – an uncontested or admitted fact. *An undisputed fact is one that both parties agree is true.*

V

Vacate – to nullify or cancel; make void; invalidate. *In this context, “vacate” usually means “cancel.”*

Venue – the proper or possible place for a lawsuit to proceed, usually because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant. *In this context, a venue is not necessarily the physical building that the trial is held in; rather, “venue” refers to the correct location for the trial to occur. For instance, if a crime occurs in Illinois, an Illinois court is a possible venue for the trial. A court in Missouri would not be a proper venue for that trial.*

Verdict – a jury’s finding or decision on the factual issues of a case. *A verdict is the jury’s final decision on the case. In criminal cases, this is usually, but not always, a finding of “guilty” or “not guilty.”*

Voir dire – 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. *This term is basically a fancy way of referring to jury selection, though it does technically have a more specific meaning.*

W

With prejudice – with loss of all rights; in a way that finally disposes of a party’s claim and bars any future action on that claim. *If a claim is dismissed with prejudice, that means that the claim can never again be brought to court. For example, if Amy’s trespassing claim against Bob is dismissed with prejudice, she can never again sue him for that alleged instance of trespassing.*

Witness – someone who sees, knows, or vouches for something. Also, someone who gives testimony under oath or affirmation in person, by oral or written deposition, or by affidavit. *A witness is someone who saw or knows something about the events of the case. Both parties can call witnesses.*