

LEGAL TERMS AND DEFINITIONS

NEW JUDGE SCHOOL 2016-17

ABSTRACT OF JUDGMENT - A post-judgment remedy that someone winning a civil lawsuit can obtain from the court. The effect of the abstract is to place a lien on the property of the judgment debtor, so that if they sell the property, the money goes to pay the judgment.

ACQUITTAL - When a criminal defendant is found not guilty of the offense they are charged with.

ADJUDICATION - A formal determination of a party's rights in a case.

AFFIANT - The person who swears to an affidavit or statement.

AFFIDAVIT - A written or printed statement or declaration of facts made voluntarily and sworn to or affirmed by an affiant before a person having authority to administer an oath or affirmation, such as a judge, clerk, or notary.

AFFIRMATIVE DEFENSE - A claim by a defendant that would defeat a plaintiff's claim in a civil suit, or result in an acquittal in a criminal case. The defendant has the burden of proof regarding an affirmative defense.

ALIAS CITATION - A citation issued after the original citation usually directed to the sheriff or constable of another county or directed to the defendant under another name.

ALIAS EXECUTION - An order of execution issued after the first one was unsuccessful in satisfying the judgment, ordering the sheriff or constable to seize other property.

AMOUNT IN CONTROVERSY - In a civil suit the amount sued for; the actual dollar value of the plaintiff's claim

ANSWER - A response by a party to a lawsuit. Generally filed by a defendant, but can be filed by a plaintiff if the defendant files a counterclaim.

APPEAL - A request to have a higher court take a case that has been adjudicated already. Most justice court appeals go to county court for a trial de novo.

APPEAL BOND - A bond submitted by a person bringing an appeal which will: (1) assure the person's appearance in the court to which appeal is made, and (2) cover the opponent's costs if the court to which appeal is made determines that the appeal had no merit.

APPEARANCE - Coming into court as a party to a suit, as defendant or plaintiff, by actual physical appearance or by filing a pleading; submitting to the court's jurisdiction.

APPELLANT - The party initiating the appeal; the party who makes an appeal from one court or jurisdiction to another.

APPELLEE - The party in a cause in which the other party has appealed; the party against whom appeal is taken.

ARRAIGNMENT - The procedure in which the defendant is brought before the court, identified, informed of the charge, and required to enter a plea.

ARREST WARRANT - A written order of the court, issued and signed by a magistrate, commanding a law enforcement officer to arrest a person and bring that person before the magistrate.

ATTACHMENT - The seizure of persons or property so that they will come under the custody and control of the court; the process occurs by virtue of a writ, summons or other judicial order. This can be used to secure a person's appearance in court, or in civil suits to keep a defendant from concealing assets to protect them from a pending civil judgment.

BAIL - In a criminal case, security (money or property) presented to the court to ensure a defendant's appearance in court on the charge brought against the defendant.

BAIL BOND - A surety bond or contract in which a third party guarantees that the defendant will appear in court at the designated times and that it will pay the amount of the bond if the defendant does not appear as directed.

BEYOND A REASONABLE DOUBT - The standard of proof necessary in a criminal case or a truant conduct case; the factfinder must be convinced to a moral certainty. A court may not instruct a jury as to the meaning of "beyond a reasonable doubt."

BILL OF REVIEW - A remedy which requests the court to reconsider a decision (usually a default judgment) after the time period for appeal or motion for a new trial has passed. A party has four years from the date of judgment to file a bill of review.

BOND - A written instrument requiring a party to pay a sum fixed as a penalty if the party does not perform actions specified in the document.

BOND FORFEITURE - A suit, initiated in the name of the state, to recover from the defendant or sureties in a criminal case a bond because the defendant violated conditions of the bond.

BURDEN OF PROOF - The duty of a specific party to prove facts in dispute in an issue between parties in a suit. Generally the party bringing the suit has the burden of proof,

so the plaintiff in civil cases and the State in criminal cases have the burden of proof. Defendants have the burden of proof for affirmative defenses. In civil cases, the standard is by a preponderance of the evidence, and in criminal cases it is beyond a reasonable doubt.

CAPIAS - Similar to an arrest warrant; a judicial writ commanding a peace officer to take a person into custody and bring them before the court to answer specific charges.

CAPIAS PRO FINE - An order for a peace officer to arrest someone convicted of a criminal offense who has not satisfied the fine and costs in the judgment. The person must be brought before the issuing court if available. If not, they may be taken to jail for no more than one business day. A court must then make a determination if the defendant is indigent, and order appropriate disposal of the fine and costs, which may include waiver, community service, payment plan, or issuance of a commitment, ordering the defendant to lay out the judgment in jail.

CASH BOND - A type of appearance bond in which the defendant deposits money with the court to guarantee appearance rather than having other parties (sureties) sign a bond.

CAUSE OF ACTION - The facts that give a person the right to judicial relief; the basis of a law suit.

CHALLENGE FOR CAUSE - A challenge to a juror during voir dire examination raising a matter which disqualifies the person from serving as a juror in a particular case.

CHANGE OF VENUE - The transfer of a case to another precinct within the same county or to another county.

CITATION - An order or summons commanding the person named in the order to appear in court on a date named in the order. In criminal cases, this is the "ticket" which originally charges the offense in some cases. In civil cases, the court issues a citation which must then be served on the defendant to notify them of the lawsuit.

COMMISSIONERS COURT - The governing body of officers of a county charged with a variety of executive duties; the county judge presides over the commissioners court.

COMPLAINT - An affidavit or sworn statement made before the court which charges the commission of an offense within the jurisdiction of the court.

CONTEMPT (CONSTRUCTIVE) - A willful disregard or disobedience of the court occurring outside the court's presence, (such as disobeying a court order); notice and hearing are required before person is held in constructive contempt.

CONTEMPT (DIRECT) - A willful disregard or disobedience of the court committed in the immediate view and presence of the court, or so near the presence of the court as to interrupt the orderly course of proceedings.

CONTINUANCE - The adjournment or postponement of an action pending in court, to a later date, usually done upon motion of a party to the action.

CONVERSION - The unauthorized act of appropriating personal property of another for the person's own beneficial use and enjoyment.

CONVICTION - The result of a criminal trial which ends in a judgment that the person is guilty as charged.

COUNTERCLAIM - A claim presented by a defendant against a plaintiff in the same action.

COUNTY COURT - The court to which justice court judgments are generally appealed. Every county has a county court, called the constitutional county court. Some counties additionally have statutory county courts, also called county courts-at-law.

COURT COSTS - Fees and charges required by law to be paid to the courts or some of the court's officers, the amount of court costs is fixed by law.

CROSS-CLAIM - A claim filed by a defendant in a lawsuit against another defendant in the same suit. John sues Steve and Diana. If Diana also sues Steve in the same suit, that is a cross-claim. This is sometimes also called a "cross-action."

DAMAGES - Compensation in money for injury, loss, or damage to person, property, or rights through the unlawful act, omission or negligence of another.

DEFAULT JUDGMENT - A judgment entered by the court upon the failure of a party to answer or appear at the appointed time. A default judgment may not be rendered against a criminal defendant. In most civil cases, a hearing must be held where the plaintiff proves their damages before a default judgment can be rendered.

DEFENDANT - The party against whom a civil or criminal case has been filed.

DEFERRED DISPOSITION - An option in criminal cases where the defendant is given conditions to comply with by the court. If the defendant complies, the case is dismissed. If they fail to comply, the court convicts the defendant following a show cause hearing.

DISCOVERY - The process through which parties obtain information from each other in order to prepare for trial or enforce a judgment.

DISCRETION - Power or privilege of the court to act according to the judge's judgment, in an area not limited by legal rule.

DISMISSAL - An order or judgment disposing of a case by sending it out of court, without holding a trial on the issue. A dismissal can be without prejudice, meaning the plaintiff can refile the case, or with prejudice, meaning the merits of the case have been decided and it cannot be refiled. Most dismissals are without prejudice.

DOCKET - A formal record of the courts in which all the acts done in court in the conduct of each case are entered in a concise form, from its beginning to its conclusion.

DORMANT - Inactive; idle; applies to a judgment that can no longer be enforced. Judgments go dormant 10 years from the date of the judgment, or the date of the last writ of execution, whichever is later.

DUE PROCESS - An exercise of the powers of government in an orderly manner so that a person's individual rights are protected and laws are applied fairly.

ELEMENTS - The factors or things that must be proven to establish a person's criminal culpability or civil liability. Each offense or cause of action has different elements.

EQUITABLE - Just, fair, and right.

EVICTION - The process of depriving a person of possession of land or rental property which the person has held or leased but no longer has the right to possess.

EVIDENCE - Testimony, writings, objects, or other things offered to prove the existence or non-existence of a fact.

EXAMINING TRIAL - An examination conducted by a magistrate for the purpose of inquiring into a criminal accusation against a defendant to determine whether there is sufficient evidence of guilt to justify further proceedings against the accused.

EXCHANGING BENCHES - The hearing of a matter by a judge in a court, other than the judge's own; often due to the disqualification or recusal of the judge of the court where the matter is filed.

EXECUTION - A writ used to enforce civil judgments, where the constable or sheriff seizes exempt property of the judgment debtor and sells it to satisfy the judgment.

EXEMPT PROPERTY - Property specified by statute which may not be seized or sold to satisfy an execution or attachment.

EX PARTE - On one side only; done for, in behalf of, or on the application of, one party only; to discuss or transact business with one party in the absence of the opposite party to a case. Generally, ex parte conversations are not allowed.

EXPUNCTION - The act of erasing or eliminating for the record; to expunge. Some criminal cases may be expunged from court records if the defendant complies with certain requirements.

FINE - A monetary penalty; to sentence a person convicted of an offense to pay a penalty in money.

FORCIBLE DETAINER; FORCIBLE ENTRY AND DETAINER - Specific causes of action that lead to an eviction case. It is now proper to refer to both types of cases simply as Eviction Cases.

FORECLOSURE - The statutory method of enforcing payment of a debt secured by a mortgage or lien on property, by taking and selling the property.

FORFEITURE OF BOND - A judgment ordering payment of an obligation covered in a bond due to failure of the person named in the bond (principal) to perform the conditions of the bond.

GARNISHEE - Person or entity possessing assets of the judgment debtor, named by a judgment creditor in a garnishment claim.

GARNISHMENT - Method of enforcing a civil judgment where a third party who possesses assets belonging to the judgment debtor, or owes a debt to the judgment debtor, is ordered instead to give those assets or pay that debt to the judgment creditor.

GOOD FAITH - Honesty of intention; sincerity.

GUARDIAN AD LITEM - A person appointed by the court to represent a minor, an incompetent person or any other person entitled to such protection by law.

GUILTY - A plea by which a defendant confesses to the crime with which the defendant is charged, or a verdict by which a defendant is convicted of a crime.

HEARSAY - Evidence given in court of an out of court statement, attempting to prove the truth of the out of court statement. Written materials may also be hearsay if offered in court by a witness who did not write or otherwise create the instrument.

HUNG JURY - A jury so irreconcilably divided in opinion that they cannot agree upon a verdict.

INDIGENT - Being unable to afford to retain an attorney to represent the individual, or to be unable to afford to pay fines and court costs, filing fees or appeal bonds.

INJUNCTION - A court order prohibiting someone from doing some specific action or requiring that a person take action to undo some wrong. Generally, justice courts cannot issue injunctions without specific legal authority to do so.

INQUEST - An investigation conducted by a judge or medical examiner to determine the cause and manner of death and whether anyone is responsible for the death of another.

INTERLOCUTORY - Provisional, temporary, not final.

INTERPLEADER - A procedure to determine the rights of parties to property held by another party who has no interest in the property, frequently escrowed money.

INTERROGATORIES - Written questions propounded by one party and served on the adversary, who must serve written answers to the questions under oath.

INVOKING "THE RULE" - On motion from either party or the court, witnesses on both sides are placed under oath, and are removed from the courtroom to a place where they cannot hear the testimony of any other witness. This ensures that their testimony is not affected by the other witnesses.

JUDGMENT - The final decision of the court resolving a dispute and determining the rights and obligations of the parties to the dispute; the official decision of the court. The judgment must be reduced to writing and entered in the court record.

JUDGMENT CREDITOR - One who has obtained a money judgment against another party.

JUDGMENT DEBTOR - One who owes a money judgment to another party.

JUDGMENT NISI - Nisi means unless; a judgment which will be made final unless cause is shown to prohibit it. Used in bond forfeiture cases.

JUDGMENT N.O.V. - Judgment notwithstanding the verdict; a judgment of the court that is opposite to the verdict reached by the jury because there was insufficient evidence to support the jury's decision, as a matter of law.

JUDICIAL NOTICE - The official recognition of certain facts which a judge may properly take and act upon without hearing evidence because the facts are generally known in the territorial jurisdiction of the court or capable of accurate determination through reliable sources.

JURISDICTION - The power of the court to hear and decide the case.

JURISDICTIONAL AMOUNT - The money amount involved in the particular case or dispute by which the jurisdiction of the court to determine the case is measured; part of "subject matter" jurisdiction. Justices of the peace currently have a \$10,000 cap on jurisdictional amounts in civil cases.

JURY - A certain number of individuals, selected according to law, and sworn to declare the truth upon evidence laid before them.

JURY CHARGE - The instructions given to a jury regarding the applicable law in a case which the jurors must apply to the facts of the case, as they determine them, in order to reach a verdict. Justices of the peace do not “charge the jury” in civil cases, but they do in criminal.

JURY PANEL - A group of prospective jurors who are summoned to appear on a stated day and from which a jury is chosen. Also called the venire.

JUVENILE - A person who has not reached the age at which the person is treated as an adult for the purposes of criminal law. In most cases in Texas, this is any person under 17 years of age and over the age of 10.

LESSEE - A person to whom a lease is given.

LESSOR - A person who gives a lease.

LEVY - To assess; raise; execute; exact; collect; gather; as a tax.

LIABLE - Obligated by law or equity.

LIABILITY - Being responsible for actual or possible loss.

MAGISTRATE - A civil public officer invested with powers and functions which may be judicial, executive, or legislative in nature; a justice of the peace is a magistrate, as are most judges.

MAGISTRATE'S WARNING - A warning given by the magistrate to an accused informing the accused of the accused’s legal rights.

MECHANIC'S LIEN - A claim created by law for the purpose of securing priority of payment of the value of work performed and materials furnished in erecting or repairing buildings or improvements on land, or certain mechanical repairs.

MENS REA - A guilty mind; a criminal intent; culpable mental state. Most criminal offenses require a culpable mental state.

MOTION FOR NEW TRIAL - A request that the trial judge set aside the judgment and order a new trial because the trial was improper or unfair due to specific prejudicial errors. This is different from an appeal because an appeal goes to another court, where a motion for new trial requests another trial in the same court.

NEXT FRIEND - One acting for the benefit of a minor or any other person not able to act on one’s own behalf, without being regularly appointed as a guardian.

NOLO CONTENDERE - A plea in criminal cases in which the defendant does not contest the charge against the defendant; also called “no contest”, this plea has the same legal

effect in the criminal court as a guilty plea, but can't be used against the defendant in a separate civil suit.

NOT GUILTY - A plea in which the defendant denies guilt, or a verdict in which the defendant is acquitted of a criminal offense.

NOTARY PUBLIC - A public officer whose function is to administer oaths, certify documents, take affidavits, and attest to the authenticity of signatures; a justice of the peace is an *ex officio* (by virtue of the office) notary public.

NUNC PRO TUNC - Latin phrase meaning now for then. A judgment nunc pro tunc is issued to correct a clerical error in a court's judgment. The judgment is treated as though it had always been issued correctly.

OFFICER OF THE COURT - A term generally used to refer to any person connected with the operation of the court, including bailiffs, clerks, and attorneys.

OPEN COURT - A court to which the public has a right to be admitted. A hearing at which the judge is present held in a place designated for holding court.

PARTY - A person or entity involved in the case, either suing or being sued.

PEACE BOND - A type of bond that must be provided by someone who has threatened to breach the peace. It is conditioned that the person will not act on their threat.

PEREMPTORY CHALLENGE - The right to challenge and remove a prospective juror without stating the reason. Parties get three peremptory challenges (also sometimes called "strikes") and may use them for any reason other than race or gender.

PERSONAL BOND - The defendant's word or promise to appear in court to answer criminal charges; recognizance bond. Can also be a promise to pay a certain amount if they fail to appear.

PETITION - A formal written application stating a party's claims and requesting relief from the court.

PLAINTIFF - A party who files a claim, including a defendant filing a counterclaim (often called a counter-plaintiff).

PLEA - The answer which the defendant in a criminal proceeding makes to the complaint alleging the offense.

PLEADINGS - Oral or written statements made to the court presenting the claims and defenses of the parties.

POSTPONEMENT - A continuance; a delay in proceedings.

POWER OF ATTORNEY - An instrument authorizing another to act as one's agent. It does not grant someone the authority to take actions only allowable by attorneys, such as representing a party in a non-eviction suit.

PREPONDERANCE OF THE EVIDENCE - The greater weight of the evidence; more likely than not; the standard of proof in civil cases.

PRESUMPTION - An inference or conclusion in favor of a particular fact; often a statutory presumption, which may be rebuttable.

PRESUMPTION OF INNOCENCE - Constitutional protection stating that in a criminal case a defendant should be acquitted unless the defendant's guilt is established by evidence beyond a reasonable doubt.

PROBABLE CAUSE - A reasonable ground of suspicion supported by facts or circumstance sufficiently strong in themselves to cause a reasonably cautious person to believe that the accused is guilty of the offense with which the accused is charged.

PRO SE - For self, on one's own behalf; one who does not retain a lawyer but, instead, appears on one's own behalf in court.

QUASH - To vacate; to annul; to make void. For example, a defendant may make a motion to quash a complaint.

REMEDY - The means by which a right is enforced or the violation of a right is prevented, redressed, or compensated.

RENDER - To pronounce, state, declare, or announce in open court the judgment of the court in a given case.

REPLEVY BOND - A bond posted to allow a party to take back or hold property that would otherwise be sequestered, garnished, or attached.

REQUEST FOR ADMISSION - A formal method of discovery whereby written statements of fact are served on the opposing party, which they must then admit or deny.

RES JUDICATA - The concept of law stating that once the merits of a claim have been decided by a court, they can't be re-litigated (other than legally allowed new trials or appeals).

RETURN - The instrument given to the court by a sheriff or constable upon a writ or notice, stating what the officer has done under it and the time and mode of service.

SCIRE FACIAS - An order from the court, used in two different ways. One, to substitute parties when a party to a pending case dies. Also, used to revive a judgment which has gone dormant.

SEARCH WARRANT - A written order issued by a magistrate and directed to a peace officer commanding the officer to search for specified property at a specified place and to seize it and bring it before the magistrate.

SENTENCE - The judgment formally pronounced by the court or judge upon the defendant after conviction in a criminal prosecution, awarding the punishment to be imposed, and ordering that it be carried out.

SEQUESTRATION - A writ used to order a thing which is the subject of a controversy in a lawsuit to be held by the constable until the judge can rule on its disposition.

SERVICE - The delivery of a writ, notice, injunction, etc., by an authorized person, to a person who is thereby officially notified of some proceeding concerning that person.

SHALL - As used in statutes, this word is generally imperative or mandatory, meaning must.

STATUTE - A law enacted by the legislature.

STATUTE OF LIMITATIONS - A statute declaring that no suit shall be maintained on certain causes of action unless brought within a specified period after the right accrued.

STIPULATION - The name given to any agreement made by the attorneys or parties on opposite sides of a cause.

SUA SPONTE - Of its own will or notion; voluntarily. Used to describe a motion made or order issued by the court without request from a party.

SUBPOENA - Process initiated by a party commanding a witness to appear and give testimony, at a specified place and time to testify for the party.

SUBPOENA DUCES TECUM - A subpoena that directs a witness to bring to court and produce certain documents or other things desired as evidence in a judicial proceeding.

SUMMONS - An order to a person to appear in court on a specific date to answer a case filed against the person.

SUPERSEDEAS BOND - A bond posted which requires a court to stay the proceedings or suspend a judgment or execution. Sometimes an appeal bond is referred to as a supersedeas bond.

SURETY - One who promises to answer for the debt or default of another.

SURETY BOND - A bond taken out by a surety who agrees to pay a sum of money in the event that the principal fails to perform an act.

SWORN - Signed in front of someone authorized to take oaths, or signed under penalty of perjury.

THIRD-PARTY CLAIM - Claim brought by a party being sued against another person or entity who is not yet a party to the case.

TORT - A wrong, an injury, or a violation of a duty imposed by law which results in damage or injury to a person or property.

TRANSCRIPT - A copy of the court records in a case.

TRIAL - Proceedings in open court during which the ultimate issues in a case are determined, by a factfinder (judge or a jury).

TRIAL DE NOVO - A new trial or retrial held in an appellate court in which the whole case is heard as if no trial had ever been held in the trial court originally hearing the case. An appeal from the justice court to a county or district court results in a trial *de novo*.

VENIRE FACIAS - A judicial writ, commanding a sheriff or other officer to bring before the court a specific number of individuals to serve on the jury.

VENUE - The place where a case is tried.

VERDICT - The formal and definitive answer by a jury impaneled and sworn for a trial of the case and reported to the court, upon the matters or issues submitted to the jury during trial.

VOID - Having no legal force or binding effect, as a void judgment.

VOIDABLE - That which may be declared void; not void in itself but which requires some action to determine the absence of any legal force or binding effect.

VOIR DIRE - The preliminary examination of a witness or juror, where the individual's competency, interest, etc., may be questioned.

WAIVER - The intentional or voluntary relinquishment of a known right.

WRIT - A court order.

WRIT OF EXECUTION - A writ authorizing an officer to levy on and to sell certain items of the judgment debtor to satisfy a judgment.

WRIT OF GARNISHMENT - A writ directed to one who has possession of money or property belonging to the defendant, ordering the third person not to deliver or pay it to the defendant but to deliver or hold it for the plaintiff.

WRIT OF HABEAS CORPUS - A writ which orders that a person be brought before the court in order to test the legality of the person's detention by the person to whom the writ is directed.

WRIT OF MANDAMUS - A writ issued from a court of competent jurisdiction to another court to command performance of a specific duty which a person is entitled to have performed.

WRIT OF POSSESSION - The writ of execution employed to enforce a judgment to recover possession of land. It commands the sheriff or constable to enter the land and give possession of it to the person entitled under the judgment.