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| Supreme Court of the Northern Territory |
| COMMON WORDS and EXPRESSIONS |
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**COMMON WORDS AND EXPRESSIONS**

**abscond**

1. To leave a place without permission, usually secretly. *“He absconded from the gaol.”*

**accident**

1. Something done which is not intended or not meant to happen. *“He accidentally fell over. It was an accident.” “He was driving his car, and had an accident*.”

**accomplice**

1. A person who helped another person to do something wrong. *“Jimmy broke into the house. Freddy stayed outside to watch out in case someone was coming. Freddy was Jimmy’s accomplice.”*

**accumulate**

1. To add on top of something else. Thus, if Jimmy is sentenced to two offences and is gaoled for both offences, his sentences may be accumulated, or added up together. See also *cumulate. “I sentence you to 3 months on count 1 and 3 months on count 2, to be served cumulatively.”* This means that the total sentence was for 6 months.
2. To gather over time. “*He accumulated his wealth over many years.”*

**accuse**

1. To blame someone for doing something wrong that has happened. In a legal setting, the person who blames is the police or the prosecutor; and the person being blamed is usually the defendant. To accuse does not mean that the person being accused is guilty. *“Johnny, you are accused of stealing.”*

**accused**

1. To be blamed by someone for something. See also **accuse**.
2. The person who is being accused, or the defendant in court. *“Will the accused please stand?”* *“The accused said he was not guilty.”*

**acquit**

1. A formal finding by a court that the person is not guilty. *“Johnny was acquitted by the Judge of stealing the money.”*

**act/Act**

1. A law which has been written down and passed by the lawmakers, such as an Act of a Parliament or of the Legislative Assembly. “*He committed an offence against the Summary Offences Act.”*
2. Something done by someone. *“He picked up the knife carelessly and dropped it on his foot. This was a stupid act.”*

**actus reus**

See **physical element**.

**Act of the Legislative Assembly or Act of Parliament**

1. Northern Territory Acts are made by the Legislative Assembly in Darwin. Commonwealth Acts are made by the Parliament in Canberra. State Acts are passed by the relevant State Parliament. See **act***.*

**address**

1. The place where someone lives. *“What is your address?”*
2. To speak to a group of people. *“Johnny’s lawyer addressed the jury.”*  *“The Prime Minister addressed a large crowd which had gathered to hear her speak.”*

**adjournment**

1. A break during the hearing of a proceeding. The break may be short, for example, over the lunch hour. *“The Court will now adjourn until 2pm.”* Or, it may be for a much longer period, perhaps for several days or even months, and it may even occur before the case starts. *“I am seeking an adjournment of the trial until next year.”*

**adjudge**

1. The formal act of a judge or magistrate who decides something. *“He was adjudged guilty of stealing.”*

**Admission – admit**

1. To tell others, often the police or the court, that you have done the wrong thing. “*He admitted to the police that he was the one who stole the money.”* Lawyers will often say: *“He made full admissions to the police.”* This means he told the police everything he had done.

**adult**

1. A person who is aged 18 years or older.

**affirm – affirmation**

1. To make a formal non-religious promise to tell the truth. The promise involves knowing that, if the person making the promise tells deliberate lies, that person has committed the offence of **perjury** and may be sent to gaol. A promise to tell the truth is called an affirmation. *“Does he wish to be affirmed?” “He made an affirmation.”* Another way of making a formal promise to tell the truth is to make an oath: See **Oath**.

**aggravation, circumstance of**

1. To aggravate something is to make something which is wrong or bad, or even worse. If a person breaks into a house without permission, that is wrong. If he breaks into a house at night-time, that is worse, so it is called a circumstance of aggravation. A circumstance of aggravation increases the **maximum penalty**. Usually if a person is charged with an **offence**, the circumstance of aggravation must also be charged and the accused will be asked how he **pleads** to both the **offence** and the circumstance of aggravation separately. *‘He not only broke into the house, but it was aggravated by the fact that he did it at night-time.” “How do you plead to the charge of unlawful entry? Guilty or not guilty?* –guilty. *And, how do you plead to the circumstance of aggravation that it happened at night-time? Guilty or not guilty?”* – guilty.

**aid and abet**

1. To help someone else to do something wrong. A person who helps someone else to do something wrong may be called an **accomplice,** or an aider and abetter. “*He was aided and abetted by his brother, Sammy.”*

**alias**

1. It is quite common for people to use more than one name. A name other than the real name is called an alias if the person is using a false name to avoid punishment for wrong-doing. *“His real name is John Jabiljara Smith, but he also uses the alias of Donald Mallard.”*

**alibi**

1. This is evidence that the person who is charged with an offence was somewhere else when the crime was committed. *“He has an alibi. He was not in Melbourne at that time. He was staying with his grandfather in Mt. Isa when that happened. You can ask his grandfather.”*

**alleged**

1. To allege is to make a complaint about some wrong without it being proved. So, when someone is charged with an offence, it is only an alleged offence until such time as the charge has been proved. *“It is alleged that it was John Smith who broke into the shop and stole the money.”*

**alternative**

1. Sometimes, there may be more than one possible way of doing something. For example, there are two ways of getting to a place in a car. One way is to drive the car yourself; the other way is to go as a passenger. *“Did you drive the car yourself; or, alternatively, did you go as a passenger?”*
2. Sometimes, when a person is charged with an offence, it may not be clear which offence he committed. For example, a person has stolen property in his car. He may be charged with stealing the property; or, *in the alternative,* with receiving stolen property, and leave it up to the court to decide.

**amend**

1. To change something. For example, a person may be charged with stealing $100. Later, it is discovered that he stole $200. The prosecutor will then apply to *amend* the charge so that the charge is changed from stealing $100 to stealing $200.

**answer**

1. To reply to a statement or a question being asked by someone else. Police often say to a person who is being spoken to, *“You do not have to answer any of my questions.”*  This means that the person has a choice: he can sit quietly and say nothing; or he can speak to the police if he wants to do so.

**appeal**

1. If a person is convicted of an offence, he has a right to go to another (higher) court to have the conviction or sentence changed in his favour. This process is called an appeal. *“I want to appeal against my sentence because it is too much.”*
2. To beg. *“He appealed to the court for mercy.”*

**appearance**

1. When a person has been **bailed** for an offence, or has been sent a **summons** to attend court, he must attend the court at the time and place fixed by the court or by the person who granted bail. If he does not attend, there will be *no* *appearance* by the person. If he does attend, he will have *appeared.*
2. How something looks to someone. *“He gave the appearance that he was a policeman because he was wearing his uniform.”*

**arraign**

1. The formal reading of the charge when the person is asked to **plead** either **guilty** or not guilty. The judge will often say: *“Arraign the accused, please.”*  Sometimes a judge may ask: *“Has the accused been arraigned yet?”*

**arraignment day**

1. Every month, a **Supreme Court** or **District Court** has what is called *“arraignment day”.* On this day, a judge will have a list of all of the persons awaiting trial, and all of those persons will be there to find out when their cases will be heard.

**arrest**

1. When the police want to take a person to the police station, and the person does not want to go there, the police may *arrest* the person. If a person is arrested, the police can use force. A person can only be arrested for committing an offence. The person arrested must be told what the offence is. After the person is arrested, the person may be put in the police cells. The police may also ask the persons questions to see if they can get a confession. The police can only hold a person in the cells for a limited time, and then they must take the person arrested to a court so that the person can ask for bail. *“You are under arrest for stealing.”*
2. To stop something. *“The cancer in his body has been arrested.”*

**arson**

1. A person commits arson if they deliberately set fire to a building, a car or a boat which is not their own property. This is a serious **offence**. It is not arson if the fire was an accident.

**assault**

1. Assault usually happens when someone hits, slaps or punches someone else without their permission, or threatens to do so. Sometimes, just touching someone else without permission can be an assault. For example, touching a female on the genitals is a *sexual assault.* If the person uses a weapon, then it is an *aggravated assault.* It is not an assault if you touch someone in a friendly way without meaning to hurt them, or if it happens in a game such as football, so long as it is within the rules of the game. *“Did you assault that person?”*
2. An attack. *“The assault on the village by the men started at dawn.”*

**attempt**

1. To try to do something, but not actually succeed in doing it. For example, a person who fired a gun at another person meaning to kill that person is not guilty of murder if the shot missed, but may be guilty of attempted murder. *“He attempted to steal the money from the shop, but he failed.”*

**Attorney-General**

1. A politician who is a member of the government (and usually a Minister) with responsibility for legal matters. He or she is the State’s principal legal officer and head of the **Bar**.

**autrefois acquit**

See **plea**.

**autrefois convict**

See **plea***.*

**backdate**

1. If a person has been arrested for an offence, and has spent time in custody either in the police cells or in a prison waiting for his or her matter to be dealt with by the court, and the court sentences the person to gaol, the judge can order that the sentence is to take effect from a date earlier than the date of the sentence to allow for the time already spent in custody. *“You have already spent 3 days in gaol, so I backdate your sentence 3 days to take this into account.”*

**bail**

1. If a person has been arrested and charged with an offence, the person may be allowed to go free until the date he or she must come to court. Sometimes, bail can be granted by a police officer when the person is first taken to the police station after arrest. If the police officer does not grant bail, the person can ask for bail from a judge or magistrate. If bail is refused by a judge or magistrate, the person will be taken to the nearest gaol and placed in the remand section of the gaol until his case is heard in court. Bail is a promise to attend court on a particular day and time. Bail may be granted on conditions. Usually, there will be a condition that the person will promise to pay a sum of money if he does not attend. There may be other conditions as well, such as a promise not to break the law and a promise to report to the nearest police station every week at a certain time. *“I wish to apply for bail.” “Yes, bail is granted in the sum of $200 on your own recognisance until 10 am on Friday, 27th May.”*  (see **recognisance**). If the person has got bail but does not attend court at the time fixed, or fails to comply with the conditions of bail, a warrant will then be issued for his or her arrest (see **warrant**) and an application to the court will be made for breach. (see **breach**). This is also an offence in some places. (see **offence**).

**bailiff**

1. An officer employed by the **sheriff** or a court to serve a **summons** or to seize property when authorised by a **warrant**.

**balance of probabilities**

1. In criminal trials, the prosecution must prove that the defendant is guilty **beyond reasonable doubt**. In some cases, defences can be raised where the **burden of proof** is on the defendant upon the *balance of probabilities* (egthe defence of **mental** **impairment** and the partial defence of **diminished** **responsibility** in murder cases). In civil cases, the plaintiff need only prove its case on the *balance of probabilities.* Where proof on the balance of probabilities is only required, this is a lower standard of proof than proof beyond reasonable doubt. Essentially, it means that the court must be able to be satisfied that what has to be proved is, more likely than not, or more probable than not, that and is such as to cause a belief by the court in its reality.

**bar**

1. Private lawyers who go to court and speak in court and are paid by the client are members of the independent bar. Other lawyers who speak in court but work for Legal Aid or work for the Director of Public Prosecutions are also members of the bar. “The bar” refers to all of these lawyers. Not all lawyers are members of the bar. Some lawyers never go to court at all; or if they do, they do not speak to the judge or magistrate, but sit next to the barrister who is speaking to the court and help the barrister with the case. (see **barrister**)
2. To stop. *“He was barred from entering a hotel.”*
3. Something which prevents something from happening. *“There were bars in the window to keep out thieves.”*

**bar table**

1. The table in the court room where the barristers sit. Only barristers and lawyers are allowed to sit at the bar table, unless the judge allows someone else to sit there, too. *“Mr. Smith, you may sit at the bar table.”*

**barrister**

1. A **lawyer** who has the right to represent a person in a court. A **solicitor** is a lawyer who acts for clients, but has no right to represent them in court in a speaking role. (see **solicitor**)

**bench**

1. The table in front of where a judge or magistrate sits in the court room.
2. All of the judges of a particular court. *“Judge Smith is a member of the New South Wales Supreme Court bench.”*
3. A table, such as a work bench, used by a carpenter.

**beyond reasonable doubt**

1. In criminal trials, the prosecution must prove that the defendant is guilty of the offence *beyond reasonable doubt.* Attempts by judges to explain to juries what this actually means usually results in a mis-trial. (see **mis-trial**) In some jurisdictions, judges have been allowed to tell juries that it means that they have to be quite sure that the person is guilty, and that it is not enough that they think the accused probably committed the crime. In some circumstances, a judge is permitted to say that a reasonable doubt is not one which is fantastic or completely unreal.

**bias**

1. Bias means that someone tends to favour one side of a dispute, instead of being fair and just to both sides. Judges and magistrates are not allowed to be biased, but must listen to both sides and decide the case fairly. Even if the judge or magistrate looks like he or she might be biased, he or she cannot decide the case. This is called *apparent bias.* Therefore, a judge or magistrate cannot hear a case where his wife or close relative is a witness, or is involved in the case as a party, such as the defendant in a criminal case. *“That judge cannot hear this case because it looks like he is biased.”*

**blood test**

1. Sometimes, police have the right to ask for a blood sample from a person. The sample is taken by a nurse or a doctor and then it is then sent to a laboratory to be tested. The test may be done to see if the person has been drinking alcohol or taking drugs. Sometimes, it is taken to establish a person’s DNA. (see **DNA**). The purpose of the blood test is to gain **evidence**. *“He had a blood test which showed that he had been taking illegal drugs.”*

**bond**

1. A promise made to a court to be of good behaviour for a specified time. If the person is not of good behaviour during the period of the bond, a sum of money might have to be paid to the court, or perhaps the person will be re-sentenced and sent to gaol. A judge or magistrate might say: *“I am going to release you on a bond to be of good behaviour for a period of 6 months.”*

**bound**

1. Must. A judge or magistrate might say: *“I am bound to give you a sentence of at least 28 days gaol.”* That means that the judge or magistrate has no choice about giving less than 28 days gaol.
2. A person can also be “bound” by entering into a bond. *“You will be bound over to keep the peace for the next six months”* means that the person must enter into a 6-month bond to be of good behaviour.

**breach**

1. A person who is released from gaol on a suspended sentence and who does not comply with the conditions of the suspended sentence can be “breached.” Similarly, a person who does not answer his bail or who does not comply with the conditions of this bail can be “breached.” Hence, the prosecutor might say to the court: *“This is an application for breach of bail.”*

**brief**

1. A collection of the relevant documents prepared and organised by a solicitor for use in court by a **barrister**.
2. Colloquial. A barrister. *“My brief is John Jones.”*
3. Something which is short or small. *“He had a brief word with his lawyer.”*
4. To instruct a barrister. *“The solicitor has briefed Mr Smith as the defendant’s barrister.”*

**burden of proof**

1. In criminal cases, the usual rule is that the prosecution must prove that the defendant is guilty, and the defendant does not have to prove that he or she is innocent. So, it is often said that *“the burden of proof rests with the prosecution”.*  Another expression used, which means the same thing, is *“the onus of proof”.*

**carnal knowledge**

1. The offence of having sexual intercourse with a person who is under the age of 16. This offence is now called ‘sexual intercourse or gross indecency with a child under 16 years” in some **jurisdictions**. In some states of the United States of America, it is called “statutory rape”.

**cause**

1. To make something happen. *“He caused the car to leave the road because he fell asleep while he was driving the car.”*
2. A legal proceeding. This meaning is only used in cases which are not criminal cases. If someone brings an action, for example, to recover a debt, the action is referred to as a “cause”.

**caution**

1. A police officer may not question a **suspect** about an offence without first *cautioning* the suspect. The caution required is as follows: “You do not have to answer any of my questions; but, if you do, whatever you say may be taken down (or recorded) and given in evidence.” If a suspect is questioned before a caution is given, the judge may exclude evidence of what the accused said to the police. If the caution has been given, the judge may also exclude the evidence if the judge is not satisfied that the suspect understood the caution.

**cell**

1. This usually refers to the room where a person is locked up in a gaol or police station. *“He was placed in the cell.”*
2. A very small part of the tissue of a living creature or person.

**challenge**

1. A word used to show that a person chosen to serve on a jury is objected to. If a person is charged with a serious offence, he may be tried by a judge and jury of 12 ordinary citizens. The **jury panel** is summonsed (see “**summons**”) to attend the court on the first day of the trial. Usually, there are a large number of people required to attend. What happens is that each potential juror is given a number, which is written down and placed in a special box. A number is then taken out of the box and the person with that number will be selected for the jury, unless he or she is challenged. Both the prosecution and the defendant can challenge such a person when the number has been drawn. All that has to be done is to say “*challenge*”. That person will then not be selected for the jury. Each side usually has 6 challenges, except in murder trials where each side has 12 challenges. Once all the challenges have been used up, there can be no more challenges unless good reason is also shown. This type of special challenge is called a *“challenge for cause”* and is very rare. There is no limit to the type of good reason which must be shown. The most common reason is because the person is not qualified to be a juror because, for example, the person cannot speak English. To raise an objection. Lawyers in court cases often raise objections to evidence. That means that the lawyer asks the judge or magistrate to throw that piece of evidence out, or reject that evidence. The most common reason is because that evidence is not relevant to the case. If no objection is raised, the evidence is often admitted into evidence because it was not *challenged*. Sometimes, evidence is not going to be disputed. For example, there may be no dispute that the police found a large sum of money in Johnny’s pocket. The dispute is whether the money was Johnny’s, or whether he stole it. A lawyer might say: “*There is no challenge to the evidence that the police found this money in Johnny’s pocket.”*

**chambers**

1. A judge’s or magistrate’s office. The judge might say: *“I will see counsel in my chambers.”* That means that the judge wants to have a private meeting with the lawyers in his office for some reason.

**character evidence**

1. In criminal cases, the defendant can call witnesses who know him personally to tell the court that he is a person of good *character.* This witness will tell the court that he has known the defendant for many years and he or she has always done the right thing, and has been a valuable member of the community and is well regarded by everybody. *Character evidence* can be used during the trial to convince the court that it is not likely that the defendant is guilty, and also as a factor to be considered in deciding whether or not to believe the defendant’s evidence. It is also used, if a person is guilty, to persuade the court that the defendant should be treated leniently. The prosecution cannot call evidence of bad character unless the accused calls evidence as to his good character.

**charge**

1. To move suddenly towards something. *“The man was charged by a bull.”*
2. To be taken to court for committing an offence. A policeman might say: *“You will be charged with dangerous driving.”* A lawyer might ask: *“What is Mr. Smith charged with?”*
3. In criminal trials where there is a jury, at the end of the trial, the judge has to remind the jury about the evidence given by the witnesses, and to tell the jury what the law is. This is called the judge’s *charge to the jury.*

**child protection offender register**

1. A register which is kept of offenders found guilty of sexual offences against children. The purpose of the register is to keep the police informed of their whereabouts after release from prison, to assist the police to investigate sexual offences against children, and to prevent those persons from working with or in areas with children.

**circumstantial evidence**

1. Evidence of a series of facts which, when looked at individually, prove nothing of importance to the case; but, when looked at as a whole, may be sufficient to prove another fact of importance to the case. Circumstantial evidence is often used to prove the identity of the person who committed a crime where there are no eye witnesses. For example, in a murder case, the prosecution may be able to prove: (1) that the victim was shot by a bullet from a gun; (2) that the bullet caused the victim to die; (3) that a gun was found in the defendant’s motor car; (4) that the bullet found in the victim’s body came from the gun found in the defendant’s car; (5) that the defendant’s fingerprints were found on the gun;

(6) that gunpowder was found on the defendant’s clothing; (7) that the defendant had a reason for wanting the victim to die because (8) evidence was given that the defendant hated the victim. None of the facts (1) to (8), looked at individually, prove that the defendant killed the victim; but, when considered together, they amount to *circumstantial evidence* that the accused was the killer.

**client**

1. The person for whom a barrister or solicitor is representing, or acting, *“I will ask my client for his* ***instructions*** *on your client’s offer of settlement.”*

**closed-circuit television or CCTV**

1. In criminal trials, some witnesses (called **vulnerable witness**) do not have to give their evidence in the court room. They are allowed to go into a special room and give their evidence by closed circuit television. Everyone in the court room can see and hear the witness on a TV screen, and the witness can see and hear what is going on in the court room. This usually happens when the witness is a child or where the witness claims to be the victim of a sexual offence.

**closed court**

1. When a court is in session but members of the public are not allowed to come in.

**closing address**

1. The time when the lawyers speak to the magistrate or jury at the end of a trial to try to convince the court to find in their favour. “*Mr. Smith, in his closing address, urged the jury not to convict.”*

**commit**

1. The act of doing something which is against the law. *“He committed the offence of stealing a bottle of Coke.”*
2. To place on trial or for sentence. A magistrate, at the end of a committal hearing (see **committal**), might say: *“You are committed for trial at the next sittings of the Supreme Court.”* This means that the magistrate has found that there is sufficient evidence to place the defendant on trial before the Supreme Court for a serious offence.
3. To send to prison after a finding of guilt by a court. *“The judge committed the prisoner to prison for 3 years.”* This means that the judge has signed the formal document called a **warrant of commitment,** which authorises the **gaol** to hold the prisoner in **custody**.

**committal**

1. When a person is charged with a serious offence, the law requires that the matter must go before a magistrate first to see if there is sufficient evidence to put the defendant on trial before the Supreme Court, or other court, which deals with jury trials. This hearing is called a committal hearing. At the committal hearing, the defendant has the right to cross-examine some or all of the Crown witnesses, but often the magistrate decides only on the written statements of the witnesses. If the defendant intends to plead guilty, he can ask the magistrate to commit him for sentence only. *“The date for the committal is next Wednesday at 10 o’clock.”* Another word for a committal hearing is a preliminary hearing.

**common law**

1. Rules of law not written down or passed by an Act of Parliament, usually of long standing and inherited from England.

**community service or community work order**

1. An order that a person convicted of an offence must do work for the benefit of the community. The work will be supervised by a probation officer or by a **parole** officer. The court will fix the total number of hours of work that must be done. If the work is not done, the person can be arrested and sentenced again, which could mean a sentence of imprisonment. A magistrate or judge might say: *“You are sentenced to perform 80 hours community work.”*

**complaint**

1. A formal court document which sets out the details of the offence or offences being charged. This form is only used if the matter is going to be dealt with by a magistrate.

**complainant**

1. A **victim** of a crime, especially a violent offence or a sexual offence. He or she is called the complainant because he or she is the person complaining about the offence. *“He then hit the complainant on the head with a large stick.”*
2. The person who brings a charge on complaint (see **complaint**) for a minor offence in the magistrate’s court – usually a police officer.

**comply**

1. To obey. It may be said that a person *“has failed to comply with the conditions of his bail”.*

**concurrent sentences**

1. Concurrent means “at the same time”. If a court imposes a sentence of 3 months for an offence and 6 months for another offence, and they are to be

served concurrently, the total sentence is only 6 months because both sentences will be served together at the same time. Sometimes a court will impose a second sentence which is only partly concurrent with the first sentence. For example, a sentence of 6 months to be served partly concurrently with another sentence of 6 months as to 3 months will result in a total sentence of 9 months.

**condition**

1. Something which must be obeyed for the court’s order to be complied with. Conditions are frequently imposed by courts when granting bail. For example, bail may be granted on condition that the person report to the nearest police station every Friday. Failure to report will be a breach of the condition. This may result in the court cancelling or revoking the bail.
2. The state of something. *“The car was in poor condition.”*

**conditional release order**

See **suspended sentence**.

**confession**

1. This word is often used to mean that a person charged with an offence has told the police that he or she did what is complained of, and knew that what he or she did was wrong. *“When he spoke to the police, he made a full confession.”*

**consecutive sentences**

1. This has the same meaning as cumulative sentences. See **cumulative**.

**consent**

1. Free agreement. This word is often used in cases involving **unlawful sexual intercourse** or **rape**. If a man has sex with another person, it is unlawful if the other person has not consented. Consent means free agreement, that is, that the person wanted to have sex with the other person and was not pressured by threats of some kind into agreeing. If there is no consent to having sex, the person may be guilty of **sexual intercourse** **without** **consent** or **rape**.

**conviction**

1. A penalty imposed by a court after it records a finding of guilt. When a person has been found guilty of an offence, the court must consider whether or not to impose a conviction. A conviction is a **sentencing order** which has certain consequences that might affect a person’s ability to travel overseas, to engage in jury duty, to find employment or to hold a public office. Essentially, it is an indication by the court that the matter is of a serious enough nature for the court to show its displeasure at the offender to warrant recording a conviction. Whereas if the court decides not to record a conviction, this is an indication that the court treated the matter as very minor.

**corroboration**

1. Law. **Evidence** which, according to special legal rules, tends to show or supports a finding (but, by itself, may be insufficient to prove) that a crime was committed by the person accused of the crime. For example, in a rape case, if the defendant denies having sexual intercourse with the complainant, there may be evidence that semen was found on or near the complainant’s body which when tested by an **expert** shows a **DNA** match with the defendant’s DNA. In certain cases, the law requires the trial judge to warn the jury that it is dangerous to convict if there is no evidence amounting to corroboration.
2. (Colloquially) **Evidence** which supports the oral evidence of another witness even though it does not amount to corroboration according to the special rules of law as to what amounts to corroboration. For example, evidence may be given by a witness that something happened on a particular occasion which, by itself, does not prove the accused’s guilt, but which is a piece of circumstantial evidence. Another witness may be called who gives evidence of the same happening as the first witness. If the second witness’ evidence supports the first witness’ evidence, it may be said that the evidence of the first witness was corroborated by the second witness.

**costs**

1. A sum of money ordered by a court to be paid to one of the parties to a case, usually by the unsuccessful party to the successful party, as compensation for the money spent in having to bring or defend the case. Costs are frequently awarded in civil cases, and will include the fees payable to that party’s lawyers, as well as any witness fees and other expenses reasonably incurred by that party. However, costs are in the discretion of the court and the court may decide not to award any costs at all if the successful party has not conducted the proceedings fairly, or may award only part of the costs if, for example, the successful party was only partly successful. In criminal cases decided by magistrates, if the defendant has been found not guilty, the court may award costs as well. Costs are not awarded in jury trials. Costs can also be ordered in special circumstances against someone who is not a party, and even against a lawyer if his behaviour has caused financial loss to one or more of the parties (including his own client).

**counsel**

1. A lawyer who represents someone in court, ie a **barrister**.
2. Any lawyer who gives advice to someone, whether the counsel appeared in court or not.
3. To advise. *“My lawyer counselled me not to speak to the police and to say nothing.”*
4. To urge or egg on when it appears in the phrase *counsel and procure*. Therefore, a person who urges another person to commit an offence is said to

have *“counselled or procured the commission of* *the offence”* and, in law, is as guilty of the offence as the person who committed it.

**County Court**

See **District Court**.

**court**

1. The judge or magistrate sitting as the court. *“He was refused bail by the court.”*
2. It can also refer to the place where the court will be sitting. *“He went to the wrong court.”*

**courthouse**

1. The place where the court sits. It is also the place where the court has its offices. *“He went to the courthouse to pay his fine.”*

**Court of Appeal**

1. A court having jurisdiction to hear appeals from civil cases dealt with by a judge sitting without a jury, or by a judge and jury.
2. In some States (Victoria and Queensland), a court having jurisdiction to hear appeals in criminal proceedings either against sentence or against conviction. In some jurisdictions, the Crown has a limited right to appeal against an acquittal. All Courts of Criminal Appeal can entertain an appeal by the prosecutor against inadequacy of sentence.

**Court of Criminal Appeal**

1. A court having jurisdiction to hear appeals in criminal proceedings. See **Court of Appeal**.

**court room**

1. The specific room in which the court is sitting. *“The court room was packed with lots of people who came to watch the case against Fred Smith.”*

**course**

1. A period of time, usually longer than a few minutes. *“During the course of the day, she went shopping, visited her family and went drinking at the pub.”*
2. The study of a subject at a school or university. *“She was doing a law course at the university.”*
3. In the expression “of course”, it means “yes”. *“Did you then go home?* – *Of course, I did.”*

**credit**

1. Capable of belief. *“You wouldn’t credit it, but he actually is a very good footballer even though he is so small*.*”*
2. Relating to the quality of believability of a witness’ evidence. *“The defence lawyer attacked the credit of the witness by showing that he had been a robber and a thief*.*”*
3. Buying something on a promise to pay for it at a later time. *“He bought the food on credit.”*

**crime**

1. A crime is committed when a person does something (an offence) which is punishable by a long term of imprisonment. The law divides offences into three categories. The first category is called regulatory offences. These are minor offences which usually result in a fine. These are dealt with by magistrates, for example traffic offences. The second category is called simple offences. These can result in a short prison sentence. They are also dealt with by magistrates, for example common assaults. The third category is called crimes. Crimes are the most serious of offences. There are two types of crimes. The less serious type is called minor indictable offences. These can, and often are, dealt with by magistrates, for example, aggravated assaults. The more serious crimes must be referred to the Supreme Court, or other court, which deals with jury trials for trial by jury, for example, murder, arson, drug offences and sexual offences.

**Criminal Code**

1. This is a law passed by a parliament or legislative assembly which sets out most, if not all, of the crimes which can be committed and fixes the maximum penalty for each crime. It may also contain some simple offences as well, such as common assault. This law may also deal with: (1) defences which are available, such as **self-defence**, and the circumstances where such defences are available; (2) circumstances where what might otherwise be an offence is excused, for example, mistake; (3) circumstances where what might otherwise be an offence is not an offence because it is authorised by law, for example, a person who consents to a fight is not guilty of assault in certain circumstances; (4) the procedure to be followed in the Supreme Court when dealing with crimes; (5) the right to appeal to a **Court of Criminal Appeal;** (6) the powers of the Administrator or state governor to grant a pardon if someone has been wrongly convicted but can no longer appeal. The States which have adopted a Criminal Code are Queensland, Tasmania and Western Australia. There is also a Criminal Code in the Australian Capital Territory and the Northern Territory. The Commonwealth has also a Criminal Code which deals with Commonwealth offences.

**criminal law**

1. The body of laws which deal with crimes and simple offences. The laws may be in the form of a **Criminal Code**, and there are usually other laws as well which are dealt with in special Acts dealing with that type of crime. For example, in the case of drug offences, these may be dealt with in an Act which might be called the *Misuse of Drugs Act* rather than in the Criminal Code, because the *Misuse of Drugs Act* does not only deal with crimes, but also regulates the lawful use of drugs by those authorised to use them, such as doctors. In some States, not all of the criminal law is written down in an Act of Parliament because these laws are part of the common law which are still in force.

**cross-examination**

1. The right of the **barrister** representing a party to ask questions of a **witness** called by the barrister of the opposing party. In a criminal case, the lawyer for the defendant can ask questions of witnesses called by the prosecutor. When this occurs, it is called cross-examination. If the defendant’s lawyer calls any witnesses, these can be cross-examined by the prosecutor as well. There are strict rules about what questions can be asked in cross-examination, but, generally, questions which are relevant to the issues in the case, or relevant to the witness’ **credit** as a witness, will be allowed.

**Crown**

1. In criminal proceedings in a superior court, such as a Supreme Court, the prosecution is, in theory, brought by the sovereign, ie the Queen or King on behalf of the State. Hence, “the Crown” is a reference to the prosecution. A Crown witness, is similarly a prosecution witness. A lawyer may refer to the case brought by the prosecution as “*the Crown case”*,or to a prosecution witness as a *“Crown witness”.* This is still commonly said even where responsibility for prosecutions has been given to the **Director of Public Prosecutions**.

**cumulative**

1. To add on. When a person has been found guilty of more than one offence, the court may order that a sentence of imprisonment be served cumulatively upon another sentence of imprisonment for the other offence. Thus, if the court imposes a sentence of 3 months for the first offence, and 6 months for the second offence, to be served cumulatively on the first offence, the total sentence is 9 months imprisonment.

**curfew**

1. Sometimes, it is a condition of release, either on **bail** or subject to a conditional release order such as a **suspended sentence**, that the defendant is not to be at large (ie allowed to freely be wherever he or she wishes to go) during certain times of the day or night, but must remain at his or her residential address. This

is called a “curfew”. Curfews are commonly employed to ensure juvenile offenders stay home during hours of darkness so they do not get up to mischief.

**custody**

1. Being imprisoned or held in a police cell until the person arrested is brought to court or bailed. *“He was taken into custody by the police.”* or *“He is still in custody at Berrimah prison.”*
2. When it refers to something which is not a living person, it means that the thing is in the possession and control of someone. *“The Court will retain custody of the exhibits until the case is over.”*
3. It may refer to which parent is given the right to have the care and control of a child. *“The Court granted custody of the girl to her mother.”*

**customary law**

1. Rules of conduct binding on people by long usage. These rules may apply only to certain persons and not to everyone, such as Aboriginal customary law. Customary law of this type is not enforceable in the courts. But, if these rules are of general application and binding on everyone, they may be enforced in the courts as part of what is called “the **common law**”. Customary law is no longer binding if it is contrary to a law passed by a parliament or legislative assembly.

**deception**

1. An act by a person which is intended by that person to cause another person to believe that the person, or something in that person’s possession, is something other than what it really is. For example, if A tells B that he is collecting money for Red Cross, and B gives A money believing he is making a gift to Red Cross, and A intends to keep the money for himself, that will be deception by A. In such a case, A will have committed the offence of *criminal deception.*

**defendant**

1. Criminal law. A person who is charged with an offence. Once a person has been tried, found guilty and sentenced to gaol, the defendant is then referred to as “the prisoner”.
2. Civil law. The person or party against whom the action has been brought.

**detention**

1. The imprisonment of juvenile or young offenders who are under the age of 18. Juvenile offenders are not sent to a prison, but may be sent to a detention centre. Detention centres are run on a different basis from prisons because more emphasis is given to education and reform than punishment.
2. The power given to police to hold persons in a cell or elsewhere in a police station for a period whilst the police make enquiries. At this stage, the person may or may not be under arrest. Persons held by the police in these circumstances are held in detention. A policeman might say: *“You are being detained whilst we make further enquiries.”* In the Northern Territory, police have the power to detain persons who are drunk in a public place in certain circumstances, for example, if the police believe that the person is at risk to himself, or if the police believe that the person may commit an offence if he is released before he sobers up.

**direction**

1. During a **summing up**, the trial judge is required to give what are called directions to the jury. Directions are of two kinds. The first kind is a direction which the jury must comply with. For example, the direction may be about what the prosecution needs to prove before the jury can convict. The second type of direction is usually advisory only, and is often designed to assist the jury on how to evaluate the evidence. If the trial judge does not properly direct the jury, this is called a misdirection, which may result in a conviction being quashed on appeal.

**diminished responsibility**

1. In some cases, the law recognises that a person is not fully responsible for his actions because of mental illness. The mental illness must be of a serious kind, but not so serious that the person was insane (see **insanity**) at the time of the conduct causing death. If it can be proved that, at the time the defendant caused the victim’s death, the defendant had a serious mental illness, the defendant may be found not guilty of murder, but guilty of manslaughter.

**directed verdict**

1. At the end of the prosecution case in a criminal trial, the defendant or his lawyer may make a submission to the Judge that there is *no case to answer*. What this means is that there is a gap in the evidence on a matter which the prosecutor must prove in order to secure a conviction. For example, in a murder case, if the prosecutor has not led any evidence at all to show that the alleged **victim** is dead, the jury could not possibly convict the accused of murder. In such a case, the judge is authorised by law to direct the jury that it must enter a verdict of not guilty at that stage of the case, without hearing anything more by way of evidence from the defence, or **addresses** by counsel, or **summing up** by the judge. However, if there is some evidence that the alleged victim is dead, even if it is tenuous or weak, the trial must go on; although the trial judge may instead give what is called a **Prasad direction**.

**directly**

1. Straight to and without any interruption. *“He was taken directly to the police station in a paddy wagon.”*
2. Sometimes it may mean “as soon as”. *“Directly he arrived at the house, he sat down and smoked a cigarette.”*

**discharged**

1. Allowed to go free. *“The jury returned a verdict of not guilty and the Judge discharged the defendant.”*
2. The point at the end of a trial when the jury has finished its functions. *“The Judge discharged the jury.”*
3. To fire or shoot. *“He pointed the gun at the house and discharged several bullets at it.”*

**discretion**

1. Judicial officers are frequently given powers to do things where the exercise of the power is left to the common sense and good judgment of the judicial officer. For example, the actual sentence to be imposed in a particular case is called a discretionary judgment. Also, in some cases, a judicial officer can exclude evidence which is technically admissible because the Judge exercises his discretion to reject it for some good reason. Discretionary powers must be exercised according to law and not unreasonably.

**District Court**

1. In all States (except Tasmania, the Northern Territory and the Australian Capital Territory), there is a court which hears matters formerly within the sole jurisdiction of the relevant Supreme Court. This includes criminal trials presided over by a judge and jury. Usually very serious criminal trials, such as a trial for murder, are still heard by a judge and jury in the Supreme Court. In Victoria, the equivalent court is called the County Court. District Courts also usually hear appeals from decisions of magistrates in criminal and civil cases.

**DNA (Deoxyribonucleic Acid)**

1. All living creatures are made up of numerous minute organisms called cells. DNA is found in parts of these cells, and is responsible for genetic characteristics which are inherited from the parents of an individual, such as skin colour and racial appearance, as well as many other characteristics. Certain DNA has been shown to be unique to each individual (except in the case of identical twins). This DNA can be tested scientifically. To do the test, samples have to be taken from the body of a person to find out what that person’s DNA looks like. Usually, this is done by taking a mouth swab. DNA can be found in blood, semen, teeth, bones, saliva and in skin cells. Therefore, if blood is found on the shirt of a person who has been attacked, it can be tested to find out what the DNA looks like in that blood, and it can then be compared with a sample taken from a **suspect** to see if it looks the same. If there is a match, the samples will be evidence that the blood on the shirt came from the suspect. This may help to prove that the suspect was the person who committed the offence against the person wearing the shirt. A policeman might say: *“I want to take a sample from you to test for DNA.”*  An expert witness might give evidence that: *“I tested the accused’s DNA and the sample of blood from the shirt, and there was a match.”*

**dock**

1. The place in the court room where the defendant sits during a criminal trial.

**dock identification**

1. This occurs when a witness is asked if the witness can see in the court room the person who the witness claims to have seen commit the offence. This type of identification is often unreliable and may not be permitted by the judge or magistrate.

**D.P.P**

1. An abbreviation of “Director of Public Prosecutions”. The DPP has responsibility for bringing charges to be heard in a Supreme Court or District Court. Sometimes, the DPP (who is a person) might be the lawyer who prosecutes the case; but usually the prosecutor is a lawyer who works for the DPP.

**duress**

1. Law. A threat to commit a serious offence upon someone else, unless the person threatened does what the person making the threat wants him or her to do. *“Jones held a gun at Smith’s head and said that, unless Smith helped him to rob the bank, he would kill Smith’s daughter. Smith helped him rob the bank, but he acted under duress.”* Duress is a complete defence to a criminal charge if there is no way of getting out of it.
2. Colloquial. To act under some kind of pressure, not amounting to legal duress.

**DVO**

1. An abbreviation for “domestic violence order”. If a person threatens someone else, the person threatened may ask the police for a DVO. If the police make a DVO, the order usually requires the person concerned not to come near another person. Commonly, women who are threatened with violence, often by their husbands or boyfriends, get DVOs against the husband or boyfriend to protect themselves from further violence. The police can only make a temporary order. It must be confirmed by a magistrate. The husband or boyfriend can ask the magistrate not to make the order. If the magistrate feels that the husband or boyfriend is not a threat, the magistrate may refuse to confirm the order. If the husband or boyfriend does not take any notice of the order, he can be arrested and brought before the court, and possibly sent to gaol.

**elements of an offence**

1. The essential facts which must be proved beyond **reasonable doubt** by the prosecution before a finding of guilt is proved. For example, on a charge of murder, the essential elements might be: (1) John Smith was killed; (2) the person who killed John Smith was the defendant; (3) the defendant acted **voluntarily;** (4) the defendant intended to kill John Smith or intended to cause John Smith **serious harm**.

**evidence**

1. Evidence is of three main kinds: oral evidence, documentary evidence and real evidence. When a witness comes to court and tells the court what he or she saw or heard, this is called oral evidence. Documentary evidence is a document such as a statement made to the police, which has been written down and received by the court as evidence in the case. It includes any other evidence in paper form. Real evidence refers to objects tendered in evidence. For example, in a murder case, the prosecution may tender the murder weapon. The court must decide the case only on the evidence and not take into account anything which is not in evidence. In the case of documentary and real evidence, it is not received by the court unless tendered (ie offered) by the lawyer for a party, or by the party personally. It is then up to the judge if the evidence is admitted (accepted) into evidence. Generally speaking, evidence will be admitted if it is relevant, and rejected if it is not. Evidence is relevant if it tends to support the case of one party or the other. Once admitted into evidence, it is marked as an exhibit. Exhibits are then made available for the jury to see and consider. Oral, or spoken, evidence is recorded and transcribed (or written down). A fourth kind of evidence is a demonstration by a witness. For example, a witness may be asked to show by using his hands how long a knife was. The judge will then record the length demonstrated or shown by the witness. See also **circumstantial evidence** and **opinion evidence**.

**examination-in-chief**

1. When a witness is called (asked) by a party to give oral or spoken evidence, the lawyer who calls the witness asks the witness questions which the witness is required to answer. These questions are meant to assist the witness to tell the court what the witness knows. This process is called “examination-in-chief”. After that has happened, the lawyer for the other side will be able to ask questions as well. When this occurs, it is called **cross-examination**. After the   
   cross-examination has finished, the first lawyer may ask more questions of the witness. This process is called **re-examination**.

**execute**

1. To do something. *“He executed a right-hand turn into Smith Street.”* This means that the driver of a car made a right-hand turn into Smith Street.
2. To kill someone deliberately, usually as a punishment, or possibly for revenge. In former times, courts were required to sentence people found guilty of murder to the death penalty. The person who carried out the death penalty was called “the executioner”, and the process itself was called “execution.” In Australia, the method of execution was always by hanging. The death penalty is not lawful in Australia any longer, but it is still carried out by a number of overseas countries. Methods of execution vary from hanging, firing squad, electric chair, beheading and poisoning by lethal injection.

**exhibit**

See **evidence** above.

**expert**

1. Law. A person who has special knowledge of a particular subject which an ordinary member of the public will not have. An expert must show that he or she has made a special study, usually at a university, of the subject which he or she will be asked to tell the court about. Experts can also be people who have had long practical experience in the subject of the evidence. The most common experts used in criminal trials are medical doctors, pathologists, fingerprint experts, scientists (such as chemists and biologists), and anthropologists. However, the law does not place any limits on the areas of expertise which may be the subject of expert evidence. Experts are permitted to give evidence to explain other evidence, such as DNA, fingerprints, injuries to persons, causes of death, and whether a particular substance is a drug such as ganja (marijuana) or something else. Often, this involves the expert in giving an opinion which is based on the facts known to the expert, using his or her special knowledge. (see **opinion evidence**)

**extradite**

1. If a person commits a crime and then leaves the state or country where the crime was committed, the person may be arrested and brought before a court of the state or country where he has been found, and that court may order that the person be taken back to the country or state where the crime was committed to be put on trial before the proper court with **jurisdiction** to try the case. This process is called *extradition*. *“He was arrested in New South Wales and extradited to the Northern Territory.”*

**evidential burden**

1. Law. The party who has the legal obligation to bring **evidence** of a fact to a court. The evidential burden may be different from the legal **burden of proof**. For example, in a criminal trial, there is an evidential burden on the defendant to raise certain defences, such as **self-defence** or **duress**. This can be done either by the defendant extracting the evidence through the **cross-examination** of **witnesses** called by the prosecution, or by the defendant calling witnesses to give evidence. But once there is evidence of such a defence, the legal burden of proof shifts to the prosecution to prove **beyond reasonable doubt** that the defendant was not acting in self-defence or under duress. Usually the evidential burden, as well as the burden of proof, in a criminal trial rests with the prosecution.

**fail**

1. This word is commonly used when someone is required to do something and the person does not do it at all, or does not do it by the time required. For example, if a person who is on bail to attend court at a particular time does not turn up, lawyers may say: *“He has failed to appear”.*

**false**

1. This usually means untrue or a lie. *“He gave false evidence.”*

**felony**

1. A serious crime.

**felony murder rule**

1. If a person causes the death of another whilst committing a felony, the person is guilty of murder even if there was no intent to kill or cause serious harm to the victim.

**fine**

1. A monetary penalty imposed by a court. If someone is convicted of a minor offence, the court may impose a fine. This means that the person must pay a sum of money fixed by the court to the court as a punishment for breaking the law. If the fine is not paid on time, the person can be forced to pay it by the **fines and recovery unit**.
2. The state of the weather. *“It was a fine day.”* This means that it was not raining that day.
3. To show agreement. *“That’s fine by me.”* – meaning that it is OK.

**fines and recovery unit**

1. This is a government office in the Northern Territory which collects the fines payable to the courts, but which have not been paid. (see **fine**) If a person is too poor to pay a fine, he or she can speak to someone at this office and come to some other arrangement, such as be given more time to save up the money to pay the fine, or to do community work instead. This office has the job to collect the fine and it has the power to force payment. If the fine is not paid, or if the community work is not done, the person owing the fine might be sent to gaol instead.

**fingerprint**

1. An impression left by a finger on something. The skin on the tips of the fingers has small ridges. When a person touches an object, these ridges can leave a mark behind on the object. These marks are called fingerprints. The mark which is left on the object can be collected by an expert (see **expert**) and carefully looked at. Each person’s fingerprints are different from everybody else’s fingerprints. A fingerprint expert can compare the fingerprints with a **suspect’s** fingerprints to see if they are the same. If they are the same, this will become evidence to prove that the suspect handled the object. Similar marks can also be left by the hand (handprints) or the foot (footprints). When a person is arrested for an offence, the police usually take that person’s fingerprints and keep a record of them to be used later for identification purposes. (see **identification**)

**fitness to plead**

1. Sometimes people who commit offences are not able to be tried because, for example, they cannot understand what will be happening in the court room, or because they are incapable of giving **instructions** to a lawyer. This may be because they are mentally ill, or it may be because they are unable to communicate because they are deaf and dumb and have never learned to speak or use sign language. Persons in this category are *not fit to plead.*  When this occurs, the Supreme Court may hold a special hearing to decide if the person is *fit to plead.* If the court decides that the person is not fit to plead, the judge must decide if the person will get better in the next year. If so, the trial will wait until that occurs. If not, in the Northern Territory, another special hearing may take place to see if the prosecution can prove that the person committed the offence. This hearing is conducted before a judge and jury. If the jury finds that the person did commit the offence, the decision of the jury is called a *qualified finding of guilt*. The word “qualified” is used to show that the person has not been found guilty after a proper trial. The judge must then decide whether to let the person go free or to place the person under supervision. If the person eventually gets better, the person will be allowed to go free. If the person does not get better, the person may be held in a prison if he is really dangerous, or he may be allowed to return to the community under the supervision of appropriate persons such as a psychiatrist. If the jury decides the person is not guilty, the person will go free. In other jurisdictions, if the person is not fit to plead, he cannot be tried at all; but he may be ordered to be held in a prison or other facility “ at the governor’s pleasure.” This means indefinitely until the person either becomes fit to plead at some later time, or until the governor acting on the advice of the government decides that it is safe to release that person back into the community.

**foreman (or foreperson)**

1. A **juror** selected by a **jury** as the jury’s spokesperson. The foreman announces the **verdict** of the jury at the end of the trial.

**forensic**

1. Something used in courts of law. Therefore, a forensic examination is one conducted for use in court. Similarly, *forensic evidence* refers to evidence collected by a *forensic expert* for use in court. For example, **fingerprints** found on a pane of glass collected by a fingerprint expert will be *forensic evidence*, and the expert may be referred to as a *forensic expert.* Some experts work only as court experts, such as *forensic biologists* or *forensic pathologists.*

**foresight**

1. To be able to see into the future that something will, or possibly might, happen in certain circumstances. For example, most people know that it is dangerous to carry a loaded gun because, if it is dropped, it might go off and shoot somebody. In such a case, it could be said that the person *foresaw the possibility that the gun might go off and shoot someone if the gun was dropped.*

**forfeit**

1. To lose to the state. For example, if a person is found with drugs and convicted of possessing illegal drugs, the court will order that the drugs be *forfeited* to the state. Forfeiture may also be ordered of anything used to grow drugs, or anything used to carry drugs such as a motor vehicle or boat. In some cases, the court may be asked to order forfeiture of land as well, if it has been used to grow drugs or to hide them. If something is forfeited, it belongs to the state. No compensation is payable by the state to the owner of the things forfeited unless the owner is an innocent person. If the thing forfeited is valuable, the state may sell it and keep the money. If it is not valuable, the thing forfeited will usually be destroyed.

**friend**

See **prisoner’s friend** and **my learned friend**.

**gaol**

1. A place, usually a building or series of buildings surrounded by walls or fences or both, where persons found guilty of offences (criminals) are sent as punishment for serious offences. These criminals are called prisoners. Each prisoner will be kept in the gaol for such time as the court decides before they are allowed to go free. Whilst in the gaol, the prisoners will be given a place to sleep and provided with food and drink. Whilst in the gaol, prisoners may be given the chance to learn a trade, or to improve their education generally, or may be given the chance to do a course designed to make them law abiding when they are let go, such as courses in alcohol rehabilitation or to learn how to deal with anger. The word “gaol” is also spelt “jail”. Other words for “gaol” are “penitentiary” and “correctional centre”.

**general deterrence**

1. The idea expressed by the words “general deterrence” is that a punishment ordered by a court is expected to make the rest of society aware of what will happen to them if they break the law, so that they will be obedient and law abiding. In other words, it is intended to *deter* others from committing the same kind of crime.

**good behaviour**

1. Sometimes, when a person is convicted of a minor offence, a court will release the person back into the community on a bond (or written promise – see **bond**) to be of good behaviour for a specific period of time. “Good behaviour” means that the person is expected to obey the law and not commit any more offences. If a person is allowed to go free on a good behaviour bond, and he commits another offence during the period of the bond, he may be brought back before the court and given another, usually more severe, punishment.

**grand jury**

1. A jury, usually of between 12 to 23 persons, which inquires into whether the prosecution has sufficient evidence to warrant trial by jury. This type of jury was abolished in Australia and replaced by a **committal** hearing before a magistrate. It is still commonly used in the United States of America.

**grievous harm**

See **serious harm**.

**guarantee**

1. A promise made by a person to a court that another person who has been charged with an offence will comply with the conditions of his bail (see **bail**). The person who makes the promise is called a “guarantor” or “surety”. Usually, a guarantor is asked to promise that, if the person on bail does not comply with his bail, the guarantor will pay a sum of money to the state. Sometimes, guarantors have to actually pay the money to the court when they sign the promise. If the promise is kept, the guarantor will get his money back. A guarantor, therefore, has a real interest in seeing that the person on bail complies with his bail.
2. Civil law. A written promise by a person to secure the performance of an obligation owed to that person by another person. *“He guaranteed Fred Smith’s debt to Fanny Smith.”*

**guilty**

1. A plea by a person who is charged with an offence that he did commit the offence. A person who is charged with an offence will be asked by the court if he wishes to plead guilty or not guilty. If he says “guilty”, there is no need for a trial and the judge or magistrate will deal with it at a **sentencing hearing**. If he says “not guilty”, there must be a trial and the court then decides whether he is guilty or not guilty.
2. Knowledge by a person that what he did was wrong. “*He had guilt written all over his face.” “He ran away from the police because he knew he was guilty.” “He told the police he was guilty.”*

**harm**

1. “Harm” has a special legal meaning. It means physical harm to a person’s body, or harm to a person’s mental health, whether it lasts for only a short time or a long time. Physical harm includes pain, unconsciousness, scarring or causing the spread of an infectious disease. In the Northern Territory, it can also include any touching which is socially unacceptable. Harm to mental health means important harm to a person’s mental well-being. However, causing an emotional reaction such as distress, fear, anger or grief is not “harm”.
2. To hurt or cause hurt in some way.

**hearing**

1. The process of presenting a case before a court for trial or for sentence. *“The hearing is listed for 10 o’clock next Wednesday.”* This means that the case will start at 10 o’clock next Wednesday. *“Has this case come on for hearing yet? No, it has yet to be heard.”*
2. Sometimes, courts will order that witnesses leave the court room to wait outside until they are called to give evidence. The usual order is: *“All witnesses must leave the court room and remain within hearing until called.”* “Within hearing” in this sense, means “nearby – within earshot”.

**hearsay**

1. Law. Information told by one person to another. As a general rule, witnesses are allowed to tell the court only what they saw themselves and what they heard themselves. If a witness is asked to tell the court about what someone else told that witness, it is called “hearsay”. Hearsay is generally inadmissible in evidence because the law regards this evidence as unreliable; but there are many exceptions to the rule. One important exception is something said by the defendant which amounts to an **admission** or confession. This often happens when the defendant has been spoken to by the police.

**High Court**

1. The final appellate court in Australia. Appeals to the High Court from State and Territory courts of appeal require special leave to be given by the High Court before the High Court will hear the appeal. Usually, this means that the applicant must show an exceptional case before special leave will be granted.

**home detention**

1. A form of imprisonment which is an alternative to being sent to gaol. The court may impose a sentence of imprisonment, but suspend it if the prisoner agrees to a home detention order. The order will require the prisoner to stay in his own home and not to leave his home without the permission of a **parole officer**. Usually, permission is given by parole officers to attend work, or important social occasions such as funerals. If a prisoner placed on home detention leaves home without permission, he can be arrested and brought back to the court. The court may then revoke or cancel the home detention order and send the prisoner to serve the suspended gaol sentence instead. Home detention orders usually carry a number of other conditions such as banning alcohol or other drugs, and allowing parole officers to visit the home at any time of the day or night to check that the prisoner is at home and to take samples to test for drugs and alcohol. The conditions will vary from case to case, depending on what conditions the judge decides to impose. If the prisoner completes the home detention order without breaking the conditions, he will not have to serve the gaol sentence.

**hostile**

1. If a witness has given **evidence-in-chief** which seriously differs from his signed statement, the court may declare the witness hostile. This means that the barrister who called the witness can **cross-examine** his own witness.

**hung jury**

See **majority verdict**.

**identification**

1. In all criminal trials, the prosecution must prove that a crime was committed, and that it was the defendant who committed the crime. Sometimes, the witnesses to the crime do not know the person who committed the crime, although they saw the crime being committed. This may be because the witnesses were too far away to see clearly, or because they had never seen the person who committed the crime before, or because the person committing the crime had worn a mask, or because it was too dark to see properly. The prosecution will then try to prove that the accused committed the crime by other means, for example, by **fingerprint** evidence or by using **DNA** evidence. If the witnesses are able to give a description of the criminal, the witnesses may be asked to take part in an “*identification parade*”. When this occurs, the defendant or suspect and a number of other similar looking people are asked to attend at the police station and stand together in a line. The witness is then asked to see if he can pick out the offender. If the witness picks out the **defendant** or **suspect**, this will become *identification evidence.* If the defendant or suspect refuses to take part in an identification parade, the police may use a **photo board**. This is a collection of photos of people who look similar to the defendant or suspect. One of the photos will be a photo of the defendant or suspect. If the witness identifies the right person, this will also become *identification evidence.* Identification evidence is often unreliable and, for that reason, there are strict rules about how this kind of evidence must be obtained before it will be admitted into evidence by the judge or magistrate.

**illegal**

1. Any conduct which amounts to an offence is called *illegal. “He illegally took the money from the safe and put it in his pocket.”*

**impanel – also empanel**

1. When a person is charged with a serious crime, the law requires that there be a trial before a **judge** and jury (see **jury**). At the beginning of the trial, the defendant is asked whether he pleads guilty or not guilty. If he pleads not guilty, the next step is to select the jury. Some weeks before the trial, a number of ordinary citizens are selected at random to serve on juries. These people make up the *jury panel.* The jury is selected from the panel by drawing their names one by one from a barrel. As each name is called, both the prosecutor and the defendant, or his lawyer, have the right to challenge that juror (see **challenge**). The process continues until 12 jurors have been selected. At this stage, it is said that the *jury has been impanelled.* Sometimes this is spelt *empanelled.*  The process of jury selection from the jury panel is called *impannelling the jury.*

**indecent**

1. Something which is offensive to public decency or morality. Usually, this requires a breach of society’s sexual rules, such as touching a woman on the breasts or on the area of the vagina without her permission. If a person encourages a child to behave indecently, or behaves indecently in front of a child, the person may be charged with *indecent dealing of a child.* If a person exposes his or her sexual organs to another person, not a child, this may amount to *indecent exposure.*

**indictment**

1. A formal written document which sets out the charge against the defendant in a jury trial. When a person is put on trial for a serious offence before a judge and jury, the charge or charges will be written down in a document which is often called an “indictment”. (In Victoria, this document is called a *presentment*. In South Australia, it is called an *information.*)The indictment must be given to the defendant, or his lawyer, well before the trial starts so that the defendant will know what charge he has to meet at his trial. Only serious offences, called *indictable offences,* can be put on an indictment. Less serious offences which are dealt with by magistrates are usually written down as well, but the document is then called a *complaint.*

**inference**

1. The mental process of drawing a conclusion from facts which have been proved. For example, if a person rushes at another person with a large knife saying “I’m going to kill you” and then stabs the person in the chest with the knife, the inference might be that the person with the knife intended to kill the other person. If, on the other hand, the person with the knife said “I’m going to stab you in the arm” but instead stabbed the person in the heart, and there was evidence that the person with the knife slipped over at the time of the stabbing, the inference might be only that there was an intention to injure the person.

**information**

1. A written document setting out a charge against a defendant of a serious nature: see **indictment**.
2. Something told by someone to someone else. *“I received information that Fred Smith was living at an address in Alice Springs.”*

**information for courts**

1. A document given to the court at a **sentencing hearing** which is a record of the defendant’s previous **convictions**, often referred to as his *priors.*

**innocent**

1. Free from wrong-doing. In criminal proceedings, the defendant is presumed to be innocent until the prosecution proves otherwise **beyond reasonable doubt**.
2. Lacking in knowledge of the world, such as *an innocent child.*

**insanity**

1. If a person’s mind is impaired to such a degree that he is not legally responsible for his or her actions, the **common law** defence of insanity could be raised by the defence. If the defence succeeds, the verdict is usually “guilty, but insane”. In some jurisdictions, this results in the court ordering the defendant to be held in gaol “at the Governor’s pleasure”. This means the defendant will not be released whilst he remains insane.
2. See **mental impairment**.

**instructions**

1. When a lawyer represents a **client**, the lawyer is generally bound to conduct the matter according to what the client has told the lawyer, or the client’s instructions. A lawyer might say: *“I will need to get instructions on the offer your client has made.”* A lawyer must not accept instructions to do something which is unlawful, unethical or to mislead the court. A lawyer cannot raise a positive case which is contrary to his instructions. This means, for example, that a barrister cannot suggest to a witness that the witness is lying about something if his instructions are that what the witness has said is the truth.

**intent**

1. Law. The mental element of an offence. When a person commits an act intentionally, what is meant is that the person knew what he was doing, or that he acted deliberately. In criminal cases, the relevant intent which must be proved often relates to both the act itself and the consequences of the act. For example, if a person is charged with murder, the prosecution must prove that the defendant (1) intentionally did the act which caused death (eg fired the gun) and (2) intended that his act would cause death or serious harm to the victim. If the defendant says that the gun went off accidentally, this would mean that the defendant was saying (3) that although he fired the gun, he did not mean to do so, and (4) he did not intend to cause death or serious harm to the victim.

**interpreter**

1. A court interpreter is an officer of the court trained to listen in one language and interpret into another during the trial of a case. The interpreter’s job is to minimise language difficulties between the court and all parties and witnesses.

**involuntary intoxication**

1. Intoxication means to be in a state of drunkenness caused by drinking too much beer, wine or spirits, or caused by taking a drug, or by taking another substance such as sniffing petrol or glue. If the person has become intoxicated because someone forced him or her to take the intoxicating substance against his or her will (eg by forcing him to drink it or take it under a threat), or if the person made a mistake thinking that the substance was something else which was harmless, or if the person’s drink was spiked with a harmful drug, for example, the law calls this *involuntary intoxication,* which may amount to a defence to any crime which the person committed whilst in that condition of drunkenness.

**judge**

1. A judge is a court official who hears all sides of a dispute brought before the court. In criminal trials for serious offences, the court consists of the judge and a jury (see **jury**). The judge presides over the court, and decides all issues except questions of fact and the question of whether or not the prosecution has proved that the defendant is guilty. (These issues are solely the jury’s function.) The judge also controls the procedure to be adopted, the behaviour of all persons in the court and what evidence is to be rejected as inadmissible evidence. The judge must also instruct the jury on the relevant law to be applied. In some jurisdictions, the defendant has the option of being tried by a judge alone. In that case, the judge decides the question of guilt or not as well. If the accused is found guilty, the judge decides what penalty to impose. Civil cases are usually tried without a jury, and the judge must hear the case, control the procedure, rule on admissibility of evidence, and decide the case according to the evidence and the relevant law to be applied. In civil cases and in criminal cases before a judge sitting alone, the judge must provide reasons for his decision. These may be given orally or in writing. In jury trials, reasons are not required from the jury. Judges also hear appeals from lower courts. When a judge or judges constitute an appeal court, they do not try the case all over again. The party appealing (the appellant) must usually show that there was a legal error by the court or judicial officer presiding in the court below, or that a **miscarriage of justice** has occurred, before the appeal court will interfere with the decision. In order to be appointed a judge, a person must be an experienced lawyer and of good character. Usually, a judge will have practised as a **barrister** for many years, and will have become a **QC** or **SC** before his or her appointment by the **state**. A judge is paid a salary by the state, must be appointed until the age of 70 (in some states it is to age 72) and may not be dismissed by the state unless it can be proved that the judge is no longer fit to carry out his duties because of permanent ill-health, or incompetence, or bad behaviour.
2. To judge. To make a decision based on evidence.

**judge’s associate**

1. In the **superior** **courts**, each judge has an assistant, who is usually a lawyer completing his or her training, called a judge’s associate. Associates assist the judge in legal research and speech writing, as well as help to organise the hearings. During the hearing, the associate usually sits in the court room and takes custody of the exhibits when they are tendered. In criminal trials, the associate may also assist in the jury selection process, and the taking of the verdict from the jury. The associate is also the person who has dealings with the lawyers or the public which are related to the work of the judge.

**jurisdiction**

1. The extent of a court’s authority to hear a case. The authority may be limited by geographical area. For example, an Australian court usually cannot hear a case involving a crime against a law of another country which happened in that other country. The authority may also be limited by subject matter. For example, a magistrate cannot try and convict a person for murder. There may also be other ways in which the jurisdiction of a court is limited. For example, a court’s jurisdiction may be limited by the size of a claim for money.
2. A particular State of Territory. If a person living in South Australia has left that state, lawyers may say: *“He is no longer in the jurisdiction.”*

**juror**

1. A member of the **jury**.

**jury**

1. In criminal trials, a jury consists of 12 ordinary members of the public who have been selected from the **jury panel** to decide whether or not the prosecution has proved that the accused is guilty of the charge brought. The jury must decide what facts it accepts have been proved. It must then apply the facts to the relevant law as explained to it by the judge before reaching its decision. Juries are also sometimes used in civil cases. When this occurs, the jury is often much smaller – usually only 4 persons are required to constitute the jury. The empanelling procedure is similar (but not identical) to that used in criminal trials. In civil cases, the judge explains the law to the jury, and the jury decides the facts according to the law as explained to it by the judge. If damages are sought, the jury usually decides whether to award any damages and, if so, how much.

**jury box**

1. The place in the court room where the **jury** sits during the hearing of the case.

**jury guard**

1. A court official whose job is to look after the **jury** when the court is not in session. Jury guards make sure that no-one is allowed into the **jury room**, ensure that the jury has adequate food and drink, and may arrange and supervise overnight accommodation for the jury if that becomes necessary. If the jury wishes to ask the judge a question, this is usually done by the **foreman** of the jury writing a note to the judge, putting it in a sealed envelope and handing it to the jury guard, who then gives it to the **judge**. When the jury has retired to the jury room, the jury guard is the only person who is allowed into the jury room, such as when the jury needs some assistance or has reached its verdict. Jury guards are not permitted to discuss the case with the jury.

**jury panel**

1. A large number of persons (usually a hundred or more) selected at random and summoned to attend court for selection as jurors in a trial before the Supreme Court, or before a court which conducts jury trials such as a District Court of a State.

**jury room**

1. A room next to the **court room** where the **jury** in a criminal trial goes when the **court** is not in session, for example, during **adjournments** for lunch and the like. It is also used by the jury when it is necessary for the trial judge to hear argument on the admissibility of **evidence**. When there is a dispute about whether certain evidence should be received into evidence, the parties do not want the jury to hear what that evidence is going to be because it may not be admitted into evidence. It is also the place where the jury deliberates or decides the outcome of the case at the end of the trial. The jury room is guarded at all times by one or more **jury guards** when the jury is in the jury room to make sure that the jury cannot be contacted by anyone not a juror. Each jury room has its own toilets and tea and coffee is made available for the jurors. There is always a table and enough chairs for each juror to sit on. Sometimes, the judge may allow the jury to leave the jury room for various reasons, such as to give the jurors a rest from having to think about the case. When this happens, the jury guards take the jurors to some quiet place, such as on a balcony of the court building, where the jurors can take a rest without being disturbed by other people.

**justice**

1. The title given to a **superior** **court** judge. *“The judge in the case against Fred Smith was* *Justice Stevens.”*
2. Fairness, according to law. *“The judge did not give him a fair trial because he kept interrupting his lawyer all the time, and the lawyer was not allowed to tell the jury what he wanted to say. Justice was not done. There was a* ***miscarriage of justice****.”*

**Justice of the Peace or J.P.**

1. A person authorised by law to witness certain legal documents and to issue **warrants**, especially search warrants, as well as carry out some other, usually minor, legal functions. Sometimes, a Justice of the Peace may be permitted to preside in court over very minor offences. A Justice of the Peace is not always legally trained, but all magistrates and judges are usually made Justices of the Peace as well.

**kill**

1. To cause the death of. *“John was killed in a motor car accident last week and will be buried next Tuesday.”*
2. (Aboriginal English, Kriol.) To injure.

**lawful**

1. Conduct which is permitted by the law. *“John punched Fred in the face and broke his jaw, but it was lawful for him to do this because it happened during a boxing match.”* Compare with **unlawful**.

**lawyer**

1. A person who has studied law at a university, obtained a degree in law, and uses his or her knowledge of law in his work. Lawyers may be practising lawyers or non-practising lawyers. Practising lawyers are those lawyers who have been recognised by the courts as being allowed to charge members of the public for their work. In order to be a practising lawyer, the lawyer must complete practical training as well as a law degree, and must be accepted by the courts as a fit person to charge for his or her work. In addition, a practising lawyer must have a practising certificate from the Law Society, or other body which regulates the legal profession. A practising lawyer may be a **solicitor**, a **barrister,** or both. A   
   non-practising lawyer may be someone who has retired from practising law, or may be a lawyer who is employed as a law teacher, or may be someone who works only for a large organisation or company as an employee and who does not need a practising certificate because neither the lawyer nor his employer will charge anyone for his work.

**leading question**

1. This is a question where the question itself suggests to the witness what answer the witness should give to it. For example, *“After you spoke to Fred Smith, was the very next thing you did to punch him in the mouth?”* Another form of leading question is one which can only be answered “yes” or “no”. For example, *“You were very angry that night, weren’t you?”* Usually, a witness can only be asked leading questions in **cross-examination**. The principal exception to this is where a witness is an **expert witness** or where a witness has been declared **hostile**.

**legal**

1. That which is **lawful**. That which is not lawful may also be called illegal: see **unlawful**. *“He had a legal right to the money in his bank account because he earned it himself.”*

**liberty**

1. Freedom, the state of being free from control by others, especially the state. *“Although the magistrate found him guilty, he was not sent to gaol and was allowed to be at liberty.” “He deprived her of her liberty because he locked her in a room and would not let her out.”*

**list of priors**

1. A record of a person’s previous convictions, usually given to the judge during a **sentencing hearing**.

**magistrate**

1. A court official appointed by the state to decide cases in courts which deal with minor matters. Magistrates also conduct **committal** hearings involving serious charges. They also deal with civil cases involving claims for sums of money below a certain figure, usually less than $100,000. Magistrates also sit as a coroner, and deal with a wide variety of both civil and criminal matters. Most matters are, in fact, decided by magistrates. In order to be appointed a magistrate, a person must now be a lawyer; although, in the past, this was not always necessary. Magistrates are paid a salary by the state and must be appointed until they reach a certain age, usually 65. The state cannot dismiss a magistrate unless the magistrate is no longer fit to carry out his or her duties for some very good reason, such as permanent ill-health, or because of incompetence, or improper behaviour.

**majority verdict**

1. In former times, jury verdicts needed to be unanimous. If the jury was unable to agree on the verdict, the jury was said to be *hung.* This meant that there had to be a re-trial before a differently constituted jury. In some cases, the law allows a majority of the jury to return the verdict. The majority must usually be at least 10 or more of the 12 jurors hearing the case. Majority verdicts are not permitted unless the jury has been unable to reach agreement having deliberated for a specified length of time, such as 6 hours. Majority verdicts are not constitutionally permitted in cases involving offences against Commonwealth laws. Not all states permit majority verdicts.

**Master**

1. A court official who decides certain civil cases, especially cases which concern procedural issues before the case goes to trial, and who is often responsible for making sure that the parties are ready to have the case heard by a judge (see **procedure**). In some states, the Master is now called Associate Judge.
2. The title given to a male child or youth as a form of address. *“Master John Smith is only 13 years old.”*
3. A male school teacher.
4. Anyone having a position of importance or pre-eminence, such as the master (or captain) of a ship, the master (or head) of a household, or an employer.

1. Anyone who is very skilled at something. *“He was a master of several languages.”*

**manslaughter**

1. Law. The **unlawful** killing of a person in circumstances not amounting to **murder**. The offence of manslaughter can be committed in two ways: (1) “voluntary manslaughter”, which means that although the defendant intended to kill or cause serious harm to the victim, he is not guilty of murder because what he did was partially justified by law (eg in cases where the death arose out of **provocation** caused by the victim); (2) “involuntary manslaughter”, which means that the defendant did not mean to kill or cause serious harm to the victim, but the conduct which caused the victim’s death was **reckless** or criminally **negligent**.

**maximum penalty**

1. The highest penalty available to a court for an offence, usually reserved for cases falling in the worst category for that type of offence.

**mens rea**

See **intent**.

**mental impairment**

1. Law. A mental impairment is anything which causes someone’s mind to be seriously affected to such a degree that the person cannot be held responsible for his or her actions. Mental impairment may be caused by senility, intellectual disability, mental illness, brain damage or **involuntary intoxication**. The law assumes that every person is not mentally impaired until the contrary is proved by the defence on the **balance of probabilities**. The mental impairment must be so severe that the person (a) did not know the nature and quality of his or her act, or (b) did not know that what he or she was doing was wrong, or (c) was unable to control his or her actions. If a person is found not guilty because of mental impairment, the judge must either let the person go free or make a **supervision order**. The judge will not let the person go free unless the person has recovered from his or her mental impairment and is no longer a danger to society. See also **insanity**.

**minimum term**

1. See **non-parole period**.

**miscarriage of justice**

1. A proceeding where what was done was not done according to law.

**misdirection**

1. See **direction**.

**misdemeanour**

1. A crime which is not classified as a **felony**, because it is less serious.

**mis-trial**

1. A trial without legal effect because of some fundamental defect in the proceeding. This can occur in a many different ways, both before and after the jury has returned its verdict. For example, the trial judge might declare a mis-trial before the verdict is reached because a witness has given inadmissible evidence which is so **prejudicial** to the accused that the accused cannot get a fair trial. Another example is where the trial judge dies or becomes very ill during the course of the trial.

**mitigation**

1. Facts which are relied on to show that the person who committed the crime should be dealt with leniently by the court. Mitigating facts may relate to the way the crime was committed. For example, although the defendant stole the money, he stole it to feed his children who were starving because he was too poor to buy food for them. Mitigating facts may also relate to the individual. For example, it may be the case that the defendant was a person of good **character** who had not previously offended. At a **sentencing** **hearing,** the lawyer for the defendant must tell the court about any mitigating facts. These facts may be called *facts in mitigation,* or *mitigating circumstances.*

**murder**

1. Law. If a person **unlawfully** kills another person, and at the time he or she intended to cause the victim’s death, or intended to cause serious harm to the victim, the defendant is guilty of murder. It is important that the killing is **unlawful**. It is not unlawful if the defendant was acting in **self-defence**, in which case, no crime has been committed. If the killing was partially excused because of **provocation** by the victim, or partially excused because the defendant was in a state of **diminished responsibility**, the accused is not guilty of murder, but guilty of manslaughter.

**my learned friend**

1. A polite way of referring to the **barrister** for the other side in court when addressing the court. Barristers never refer to each other by name only in this situation. *“My learned friend and I have discussed this privately, and have reached agreement.”* or *“My learned friend, Mr Smith, and I have discussed this matter,* ***your Honour****, and have reached agreement.”* It is now also common for lawyers to refer to each other as “my friend”.

**negligent**

1. Careless. In civil cases, a person who, because of carelessness, causes damage or injury to another person or another person’s property, may be liable to pay damages as compensation to that person for that carelessness.
2. Criminal law. This requires proof of conduct which is so careless that it deserves to be punished by the criminal law. The level of carelessness needed to be proved is greater than would be necessary in a civil case.

**night or night-time**

1. Law. The time between 9pm and 6am.
2. Any time after sunset and before sunrise.

**no case to answer**

See **directed verdict**.

**nolle prosequi**

1. If a person has been charged with an offence on an **indictment**, the prosecution has the right, at any time before the verdict of the jury has been given to the court, to file in the court a document called a *nolle prosequi* which stops the case from going ahead any further, and requires the judge to discharge the defendant. The judge cannot refuse to accept a nolle prosequi. The filing of a nolle prosequi does not prevent the prosecution from laying a new indictment for the same offence at a later time. Usually, the prosecution will file a nolle prosequi where it is satisfied that it cannot prove the case against the defendant.

**Non-parole period**

1. The minimum period of time which a prisoner must spend in gaol before being considered for early release. When a judge or magistrate has sentenced a person to gaol for a long period, he or she must also fix the minimum period of time which the offender must serve in prison before the prisoner is able to be considered for release on **parole** by the Parole Board. This minimum period is called the *non-parole period* or the minimum term*.* In very serious cases, the court has a discretion not to fix a non-parole period at all, which means that the prisoner must serve the whole sentence in prison. There are strict rules which the judge must follow in fixing the non-parole period, which vary from state to state, and vary according to whether the offence is a State or a Territory offence, or a Commonwealth offence.

**not guilty**

1. When a person is charged with an offence before a court, the offence will be read out to the defendant by an officer of the court, and the defendant will be asked to plead either guilty or not guilty. If the defendant pleads *not guilty*,the case must go to trial.
2. If the verdict of a court is *not guilty*,this means that the defendant must be discharged and, unless in gaol for some other offence, he or she must be allowed to go free. Once a person has been found not guilty by a court, he or she cannot be tried again for the same offence or a similar offence arising out of the same circumstances.

**oath**

1. A formal promise to God, or some other deity, that the person making the promise is telling the truth, or will carry out some function or duty in accordance with law. Oaths are frequently taken when (1) a witness is asked to give evidence, (2) jury guards are chosen, (3) a juror is chosen, (4) a witness is asked to sign a statement to the police, or (5) important public officers are chosen (eg a judge, magistrate, or minister of the government). Because many people do not have religious beliefs, an alternative to taking an oath is to make an **affirmation**, which is a solemn promise to tell the truth or carry out the function or duty concerned. A deliberate failure to carry out a promise to tell the truth is an offence called **perjury**.

**obliged**

1. Compelled by law or by social or customary practice. When a police officer **cautions** a **suspect,** the police officer will say to the suspect, that the suspect *“is not obliged to answer any questions”*. What this means is that the suspect is free to choose whether to answer the questions of the police officer or not to answer them. If the suspect chooses not to answer them, the police officer must not continue with the interview. In ordinary society, a person who chooses to remain silent might be thought to be guilty. In a criminal trial, the jury may be told that everyone has the right to remain silent and the jury must not think that, because he did not speak, he must be guilty.

**offence**

1. Conduct which is punishable by a court for the breach of a law. *“He committed the offence of murder.”*

**offender**

1. A person who commits an **offence**.

**officer of the court**

1. Any person whose first duty of loyalty is to the court, whether or not the person is employed by the court. This includes lawyers, interpreters, sheriffs, bailiffs, and jury guards.

**onus**

See **burden of proof**.

**opening address**

1. In criminal trials, the lawyer for the prosecution will tell the court what the case is all about before any of the witnesses are called. This is not **evidence**, but is done to help the court understand what the witnesses are going to say, and why they are being called to give evidence. This is called an *opening address.* At the end of the prosecution case, the lawyer for the defendant may also give an opening address, in which he will tell the court about what the defence witnesses will say and why they are being called to give evidence. A similar procedure is followed in civil cases.

**operative period**

1. If a person has been found guilty of an offence and given a suspended or partly **suspended sentence** of imprisonment, the court may fix conditions which must be complied with for a period of time after the defendant has been released or allowed to go free. This period of time is called the *operative period.* For example, if John Smith is found guilty of stealing, the court might impose a sentence of imprisonment for 9 months, but suspend the sentence immediately upon condition that Mr Smith be of good behaviour for 12 months. The 12-month period is called the operative period. If John Smith is not of good behaviour during the operative period, he can be arrested and the court might order that he serve some, or all, of the sentence of 9 months held in suspense.

**opinion evidence**

1. A conclusion reached by a witness based on facts known to that witness. Usually, a person must be an **expert** **witness** before being allowed to give an opinion, and the expert must explain the facts he has taken into account before being asked about his opinion. For example, a pathologist might be asked to describe a cut to the body of a deceased person which he examined. He might then be asked what kind of object could have caused that cut. He might then be shown a knife and asked if the cut could have been caused by that knife. His answer to the last question is an opinion, because the expert cannot say that it must have been caused by that particular knife – all he can say is that, in his opinion, that knife could have caused that injury. An ordinary witness can also sometimes be asked to give an opinion if the matter is something within the knowledge of ordinary people. For example, a witness might be asked if he thought that someone else was drunk. Whatever answer is given is only that witness’ opinion.

**O.R.**

1. This is an abbreviation for “own recognisance” and is usually used in the context of **bail**. If a person is granted bail, but is not required to pay any money into court to secure the bail, he may be asked to promise to pay a sum of money to the court if he does not comply with the terms of his bail. When this happens, the judge or magistrate might say: “*Bail is granted until 10 o’clock next Tuesday in the sum of $500 OR.”*

**pardon**

1. If a person has been convicted of an offence, but the Attorney-General is convinced that the person was innocent, the **Attorney-General** will recommend that the Governor (or Administrator) give the person a pardon. If the person is still in gaol, he or she will then be set free. A pardon can also be given to a person who has committed an offence but has not yet been tried for the offence (usually called an “amnesty”). A pardon does not take away a conviction for the crime. It just removes the penalty.

**parole**

1. A person who has been sent to gaol might be released from gaol by the Parole Board before he has completed his sentence on conditions, one of which is that he be of good behaviour whilst still on parole. Before parole can be granted, the court must have set a **non-parole period** which has expired. Parole can then be granted by a Parole Board, but usually only if the Board considers that it is safe to allow the prisoner out of gaol. The Parole Board will then fix the starting date for parole, as well as the conditions of parole which will include supervision by a Parole Officer. The conditions might state that the prisoner is not to drink alcohol, and must live in a particular place, and must report to his Parole Officer at certain times and places, as well as other things which the Parole Board considers necessary in the circumstances in order to help the prisoner to reform and stay a law abiding citizen. If the prisoner does not comply with his conditions of parole, he can be arrested and put back in gaol to serve out the rest of his sentence. The Parole Board is appointed by the relevant government minister and is often chaired by a lawyer or judge. The other members of the Board are often a senior police officer, possibly a doctor or psychologist, a person who represents victims of crime, and ordinary citizens of good character.

**penalty**

1. When a person has been found guilty of an offence by a court, the court must consider what order to make as a matter of justice in all the circumstances of the case. Usually, this results in a fine, a community service order or sentence of imprisonment, although there are many other options available as well, which range from dismissing the case if the offence is trivial to releasing the offender on a **bond** with or without recording a **conviction**, a **fine**, **community service**, a **suspended sentence**, **home detention** or actual imprisonment. Whatever order is made is called the **sentence** of the court. Usually, a sentence will involve some hardship to the defendant, which is called the *penalty.*

**penis**

1. The male sexual organ (including the scrotum).

**perjury**

1. An offence committed by someone who has formally promised to tell the truth to a court, but who tells the court a deliberate lie, or something which he does not believe to be true.

**photo board**

See **identification**.

**physical element**

1. Usually, conduct, or an act which is part of an **offence**. For example, if A takes B’s money, the act of taking the money is A’s conduct.

**plea**

1. Before a criminal trial can commence, the charge must be read to the defendant. The defendant will then be asked to plead (ie tell the court) whether he is either **guilty** or not guilty. If the defendant refuses to say anything, or anything sensible, the court will treat this as a plea of not guilty. If there is a plea of guilty, the court will next conduct a **sentencing hearing**. Usually, this occurs immediately after a plea of guilty. If there is a plea of not guilty, the **trial** is deemed to have commenced and the defendant must be put on trial. Apart from pleas of guilty and not guilty, a defendant may make a special plea that he cannot be tried, either because he has already been convicted of the same or a similar offence arising out of the same circumstances (this plea is called **autrefois convict**), or because he has been found not guilty of the same or similar offence arising out of the same circumstances (called a plea of **autrefois acquit**). He may also plead specially that he has been **pardoned**, or that the court has no **jurisdiction** to try him.

**pleadings**

1. In civil cases, the case is usually begun by the person who files the first document in the court’s registry. This person is called the plaintiff, and the first document may be called a Writ of Summons. The writ must be **served** on the other party or parties to the case, so as to tell them that the plaintiff intends to have the dispute decided by the court. The plaintiff must then file a Statement of Claim, which is a document which sets out in detail the grounds of the plaintiff’s claim, and what relief the plaintiff is seeking from the court. The defendant or defendants must then file a Defence, which is a document in which the defendants indicate the extent to which the claim is going to be disputed, and in which the defendant must raise any special matters of defence not mentioned in the Statement of Claim. The Statement of Claim and the Defence are called “pleadings”. There are sometimes further pleadings filed after the Defence has been filed if it is necessary to draw new matters to the other party’s notice. The pleadings define the subject matters of the dispute. If an issue is raised at trial which is not in the pleadings, the court will not hear it or admit evidence of it, unless the pleadings are amended. There are no written pleadings in criminal cases.

**plea hearing**

See **sentencing hearing**.

**possess – possession**

1. Law. To exercise control over some object, even if it is in the physical custody of someone else, or not in the physical custody of anybody. *“The money was in his possession because he was the only person who knew where it was hidden.”*
2. To belong to someone. *“He did not possess any money.” “He did not have any possessions.”*
3. To have a particular quality. *“He was possessed with courage.”*
4. To know something. *“I possess a little French.”*

**Prasad direction**

1. A trial judge has discretion to inform a jury at the conclusion of the prosecution case, that the jury has the right to bring in a verdict of not guilty then and there, or at any time later in the proceedings, without hearing anything more. This would not be done unless the judge is of the view that the evidence is so lacking in weight and reliability that no reasonable jury could convict on it. A barrister might ask the trial judge to give the jury “a Prasad direction”.

**prejudicial**

1. Law. A trial judge has the power to reject evidence which is otherwise relevant and admissible if the evidence is likely to cause an irrational, emotional or illogical response by the jury if the evidence is admitted. This is particularly so if the weight of the evidence is minimal. Lawyers will be heard to say to the judge that the evidence should be excluded (rejected) because *“its prejudicial effect outweighs its probative value”.*  “Prejudicial” in this sense means “damaging in some unacceptable way”.

**preliminary**

1. Something which one side, or both sides, asks to be decided separately before all of the issues in a case are tried. A lawyer might say, *“I wish to raise a preliminary issue”* (or *“preliminary question”*). Often a preliminary issue relates to some question of **procedure** or question of law which needs to be decided before the trial begins.

**preliminary hearing**

See **committal hearing**.

**presentment**

See **indictment**.

**pre-recorded evidence**

1. Sometimes the rules of evidence permit the prosecution to arrange for a witness’ evidence to be given before the trial starts. This evidence is required to be recorded by using video-cameras. The evidence is taken before a judge and the defendant’s lawyer has the right to cross-examine the witness in the usual way. At the trial, the pre-recorded evidence is then played before the jury without the witness having to attend court at that time. This is often done where the witness is a child, because it is well-known that a child’s memory is much less accurate after a long time has past. It is also commonly used where the witness claims to be the victim of a **sexual offence**.

**presentment**

See **indictment**.

**presumption of innocence**

See **innocent**.

**previous convictions**

1. Whenever a person has been found guilty of an offence, a record is kept of that conviction and all other convictions of the same person, usually by the police. A defendant’s previous convictions (called “priors”) are not usually allowed to be told to a court until after the person has either pleaded guilty or found guilty after trial. There are exceptions to this rule. The most common exception is where the defendant has put his or her **character** in issue, for example, by calling evidence of good character. The previous convictions of a witness are not treated the same way, if they are relevant to the witness’ **credit**. For example, if a witness has convictions for dishonesty, the witness will usually be allowed to be questioned about them if they tend to show that the witness is a person of bad character and, therefore, not a truthful person. Previous convictions are relevant to sentencing because they may show, for instance, that the defendant has committed the same kind of offence previously, and needs a stronger sentence to prevent him or her from re-offending.

**prison**

1. A place of confinement run by the state, usually as a punishment for persons who have been convicted of serious offences. See also **gaol**.

**prisoner’s friend**

1. If the police wish to question a **suspect** who does not speak English as a first language, the suspect is entitled to have a person whom the suspect chooses, to attend the interview, to help him or her to understand his or her legal rights, and to act as a witness to the questioning to ensure that it is conducted fairly by the police.

**privilege**

1. Something which is so private that the law prevents it from being revealed in court. For example, what a person tells his lawyer for the purposes of a case is usually not able to be revealed to the court because it is *privileged*.

**probation**

1. A form of supervision by an officer of the Director of Correctional Services. See **supervision**.

**procedure**

1. Each court has its own special rules which deal with what must be done by the parties in order for a case to be ready to be tried in the court. These rules are referred to as rules of procedure. They may require certain forms to be completed and filed in the court, which set out information needed by the court to see that justice is done. For example, these rules usually require each party to a civil case to file **pleadings**, and to provide lists of documents which are relevant to the case. One of the main purposes of these rules is to ensure that each party knows the substance of the case of the other party or parties so that they can prepare their own case properly. Another purpose is to force parties to provide information to other parties which they need to know if the trial is to run smoothly, to encourage settlement of disputes, and to ensure that the court is able to arrive at a just result. The procedure in criminal cases is very different from the procedure used in civil cases, because in criminal cases there are no written pleadings.

**promise**

1. A formal agreement of some kind with legal consequences if the promise is not kept. For example, a witness may be asked, before giving evidence, if the witness promises to tell the truth. This type of promise is an alternative to an **oath**, and may result in a charge of **perjury** if the witness tells lies. Another common example is a promise made in writing to comply with the conditions of **bail**.

**proof**

1. The task of calling evidence to establish some fact which is essential to the outcome of the case. *“The standard of proof in a criminal case is proof* ***beyond reasonable doubt****.”*
2. A statement taken from a witness. If a witness, when called to give evidence, does not tell the court about the things which are in the witness’ statement, it is often said that *the witness did not come up to proof.* Hence, “proofing”’ which is the actual taking of a statement of a witness by a police officer or lawyer.

**prosecutor**

1. The lawyer who is in charge of bringing a criminal trial before a court. In cases heard before magistrates, the prosecutor may be a police officer.

**provocation**

1. Law. Words or actions by a person who has been killed, directed towards the person charged with his or her murder, which caused the accused to lose his or her self-control and kill the deceased. Provocation is a partial defence to a charge of murder. Once there is evidence of provocation, the prosecution must prove that the defendant was not acting under the influence of provocation. If the prosecution cannot disprove provocation, the accused is not guilty of murder, but may be found guilty of manslaughter.
2. Any conduct from the victim of a crime which caused the offender to attack the victim. Although no longer a defence to criminal conduct (except in murder cases), it may be relevant to the sentence which the judge imposes.

**put**

1. A word used in a **leading question** to a witness asking the witness to agree or disagree with a certain matter of fact or opinion. *“I put it to you that you were very angry that night”* is a forceful way of asking *“I say that you were very angry that night. Do you agree or not?”,* but also implying that the only truthful answer to the question is “Yes”.

**Queen’s evidence**

1. If a crime is committed by more than one offender acting together, and one of the offenders agrees to be a witness for the prosecution against the other offender or offenders, it may be said that this offender has “turned Queen’s evidence”.

**Q.C. – Queen’s Counsel**

1. A senior barrister who has been recognised as an outstanding advocate. Formerly, a barrister could only be appointed a QC by the Governor-General, a State governor, or the Administrator of a Territory, acting upon the advice of the Executive Council, which, in turn, acted upon the advice of Cabinet. The process of appointment to the office of Queen’s Council also required the support of the **Attorney-General**, the legal profession and the Judges, especially the Chief Justice. An appointment to the office of Queen’s Counsel lasts for life. If the Queen dies and is replaced by a King, the title is changed to King’s Counsel or KC. The office has now fallen into disuse in Australia, and has been replaced by the office of Senior Counsel or **SC**. QCs or SCs wear special robes made from silk, and are commonly referred to as *silks.* They are entitled to charge higher fees for their work than other barristers because of their experience, deep knowledge of the law, and skill as advocates.

**questioned – questioning**

1. Law. The process of formally interviewing a suspect by the police, usually with the object of obtaining a **confession**.

**rape**

1. Law. The **common law** offence of rape requires proof that the accused inserted his penis into the **vagina** of a woman without her consent, knowing that the woman did not consent to this happening. In many places, this offence has been replaced by a statutory offence sometimes called “**sexual intercourse without consent**”.
2. Colloquial. Any sexual attack upon another person of either sex involving the insertion of the penis or finger(s) into another person’s vagina, anus or mouth without that person’s consent.

**reckless**

1. Law. A person is reckless as to something happening if the person is aware that there is a risk that it might occur as a result of what that person is doing, and decides to take the risk. It must also be shown that the risk was one which was unjustifiable to take. This usually means that there must be a real chance, and not just a far-fetched chance, that the risk might occur. For example, a person who drives a car at great speed on a dirt road may be reckless about whether or not the car will be involved in a serious accident.
2. Colloquial. Serious risk-taking: *a reckless driver.*

**recognisance – also recognizance**

1. A promise taken before a court or a court official which is written down and recorded in the court, such as a **bond** to be of good behaviour whilst on bail.

**record of interview**

1. When a suspect is interviewed, or asked questions by a police officer about an offence, the questions and answers are recorded or written down by the police to be used in **evidence**. In serious cases, the questions and answers must now be recorded electronically, ie either by using video-tape or disc, or by a tape-recording. The interview, once it is recorded, is called the “record of interview”.

**re-examination**

1. The process of asking questions of witness who has been **cross-examined,** with a view to providing explanations for things said in cross-examination which might be misleading, incomplete or misunderstood if no further explanation is given.

**relevant**

1. See **evidence**. If evidence is not relevant, it might be said to be “irrelevant”.

**remand**

1. If a person charged with an offence is refused bail by a court, the person is held in a **gaol** until that person is granted bail or can be tried by the court. Such a person is held *on remand*, and is placed in a different section of the gaol from sentenced prisoners, usually called *the remand section*.

**remanet**

1. If a person is unable to be given a trial date at the time when the court allocates trial dates or dates for sentencing hearings for criminal cases, the case is put into the list of cases to be considered on the next occasion that the court allocates trial dates or dates for sentencing hearings. Trial dates or dates for sentencing hearings are usually confirmed or allocated on **arraignment** days, which are usually the first day of criminal **sittings** of the court when the court goes through the list of cases waiting to be heard. If no date is given, the court will often order that the case be made *remanet* to the next arraignment day, ie adjourned to the next arraignment day.

**represent**

1. To act in the place of someone else. A person charged with a criminal offence is entitled to defend the case personally, or to engage a lawyer to appear on his behalf or to *represent* him.
2. To suggest something to someone. *“He represented to me that he was a policeman, but I later found out that he was not.”*

**reserve juror**

1. In criminal trials, each jury must consist of 12 individual jurors. Sometimes, an additional juror is added to the jury who can take the place of a juror who can no longer continue as a juror, so that the number of jurors hearing the case does not fall below 12. These additional jurors are called *reserve jurors.* This is particularly important in charges for breaches of Commonwealth laws because, under the Constitution of Australia, if there are not 12 jurors, the case cannot go on and must start again. Sometimes, the law allows juries to consist of less than 12 jurors, but usually 9 or 10 are still usually required. See also **majority verdict**.

**reside**

1. To live at a particular place. *“He resides in Tennant Creek.”*

**S.C. – Senior Counsel**

1. The process of appointment of an S.C. does not require the approval of the government, and is usually made by the Chief Justice rather than the Governor or Administrator.
2. See **Q.C. – Queen’s Counsel**

**search warrant**

1. The general rule is that a police officer has no power to search a person, or a person’s property, unless the person has obtained the permission of a judicial officer before the search is conducted. This permission is called a *search warrant* which the law requires to be written down and signed by the judicial officer. Some parliaments have passed laws which allow police to conduct searches without a search warrant, but usually only in special cases. If a search is conducted without a search warrant when one is required by law, anything found might not be admitted into evidence by the trial judge.

**section**

1. Law. When laws are made by a legislative body (ie a parliament or legislative assembly), the laws are written down in what are called “Acts”. Each Act usually deals with a particular subject matter. For example, an Act dealing with evidence is likely to be called the *Evidence Act,* and an Act dealing with the Police Force could well be called the *Police Administration Act.* Within each Act, there will be numerous rules and laws each dealing with different topics relevant to the general subject matter. Each of these rules or laws are given numbers called *“sections”.* Sometimes, sections are further divided into different parts for ease of reading, or because the section needs to be clarified or further particularised. These divisions are called *subsections.* This is done for ease of reference and so that, if it is necessary to refer to that part of an Act which deals with a particular subject matter, the court will be able to be referred to that part by reference to the section number and/or sub-section number. For example, a law dealing with whether or not a wife can be forced to give evidence against her husband might be found in section 10 of the *Evidence Act*. If the law wanted to create an exception to the general rule set out in section 10, it might divide section 10 into two subsections: section 10 sub-section (1), which sets out the general rule, and Section 10   
   sub-section (2), which deals with the exceptions to sub-section (1).
2. Colloquial legal. An order made by a court pursuant to a section of an Act usually dealing with mental incompetence: *“He was sectioned by the court and sent to a psychiatric ward at the hospital.”*
3. Medicine: a cutting or slicing of some bodily tissue.
4. A portion or part of something as in *a section of the road was not bituminised.*

**security**

1. Criminal Law. The lodging of money with a court in order to make sure that a promise to the court is kept. For example, bail may be granted *on security* in the sum of $1000.
2. Civil Law. Usually a sum of money paid into court to await the outcome of the decision of the court, as in *security for costs.*
3. A person employed to guard people or property.
4. Anything designed as to protect against wrong-doers (eg *security fence, security screen etc*)*.*

**self-defence**

1. Law. An act done to ward off an attack to one’s self or to another, or to prevent someone from stealing, damaging or trespassing against one’s property. If the act is a reasonable response in all the circumstances, no offence is committed. If self-defence is raised in a criminal trial, the prosecution must prove that the defendant was not acting in self-defence **beyond reasonable doubt**.

**self-incrimination**

1. An admission or **confession** made by a witness which could be used as evidence to show that the person is guilty of an offence, particularly when a witness is asked questions in evidence and the answers could be used against him in later criminal proceedings. A witness is not compelled by law to answer questions which are self-incriminating.

**sentence**

1. The judgment of a criminal court after a finding of guilt or a plea of guilty to an offence. *“The sentence of the court was that John Smith was to be sent to gaol for 3 months.”*

**Sentencing Act**

1. An Act (or law) of a legislative body dealing with the sentencing powers of criminal courts.

**sentencing hearing**

1. A hearing in open court after a finding of guilt or a plea of guilty in which the prosecutor and the lawyer for the defendant address the court on the factors to be considered by the court when it sentences the defendant.

**sentencing order**

1. An order which can be made by a court when sentencing a person who has committed an **offence**. There are a wide variety of orders ranging from **convictions** without penalty, no-conviction **bonds**, **fines**, **community service orders**, **home detention** orders, **suspended sentences**, and sentences of actual imprisonment, as well as a number of others.

**serious harm**

1. Law. Any **harm** which endangers, or is likely to endanger, a person’s life; or that is likely to be significant and longstanding if not treated medically.

**serve**

1. Law. The act of formally delivering a court document, such as a **summons**, to a person who is required by law to receive that document. *“He was served with the summons last Tuesday at 4 pm.”*
2. To perform a duty or function. *“Fred Smith served as a juror in the trial of Bill Bloggs.”*
3. To carry out an obligation. *“He has to serve 3 years in gaol before he can be set free.”*

**service**

1. The act of serving. See **serve**. *“Service of the summons was done last Tuesday* *at 4 o’clock.”*

**sexual intercourse without consent**

1. A modern statutory offence which includes a wide variety of sexual acts committed against a **victim** without his or her consent, knowing that the **victim** has not consented. It includes the penetration of any part of the body by a penis or other object, the licking of the **vagina**, or the oral stimulation of the **penis**.

**sexual offence**

1. Any **offence** of a sexual nature, including sexual assault, acts of gross indecency, **indecent** dealing of a child and under-age sex.

**sexual offenders’ register**

1. More correctly, **Child Protection Offender Register**.

**sheriff**

1. The sheriff is an officer of the Supreme Court charged with the responsibility of carrying out administrative functions, including **service** of documents, arranging for jury attendance, **court security**, the holding and securing of prisoners in the cells and confines of the court, assisting the court with **procedural** matters relating to criminal matters, as well as numerous other functions.

**side bar**

1. In some states of the United States of America, if objection is taken to the evidence to be led by either the prosecution or defence in a criminal trial before a judge and jury, counsel may be asked to come to the side of the judge’s bench to make their **submissions**. This is called a “side-bar”. The judge’s **bench** is often quite small and there is room for the advocates to stand to one side of the bench. The purpose of this practice is to enable the judge and the advocates to discuss the objection without the jury being able to hear what is being said. This practice is not used in Australia.

**silence, right of**

1. It is a general rule of law that a person cannot be compelled to answer questions which are **self-incriminating**, whether as a **witness** in court or when being asked questions by police. The principal exceptions to the rule relate to providing details of one’s name and address to a police officer, providing certain samples to the police, and providing a driver’s licence when requested by a police officer. This right is known as the *right of silence*.

**silk**

See **Queen’s Counsel.**

**sine die**

1. (pronounced “synee dye”, which means “without a date”) If a court adjourns a matter sine die, it means that the case is adjourned until such time as the court decides to fix a new date. This does not usually happen in criminal cases.

**sittings**

1. Criminal courts hearing cases with juries need to arrange for a **jury panel** to be called before the court to try cases from time to time. A jury panel will usually be selected to serve only for a few weeks at a time, and then a new panel will be selected. Each time a new panel is called for, the time when that panel will be asked to turn up for jury service is called a “sittings”. A sittings will usually last for about a month, before there is a new sittings. *“His case is coming up for trial in the February sittings of the Supreme Court.”* Also, if a court only sits in a place from time to time, every period of time that the court will sit to conduct business in that place is called a ‘sittings’. A sittings may also be a civil sittings, if the court will only be hearing civil cases during that period. *“The next sittings in Alice Springs will begin on the 1st of March.”*

**solicitor**

1. A lawyer who does legal work, but does not usually appear as an advocate or **barrister** in a court. Some solicitors do not do court work at all, because they specialise in other matters, for example, preparing legal contracts. Others may act for people in cases which are to be tried in a court, and they arrange for the witnesses to be **proofed**, and for them to be brought to the court at the time of trial. Usually, solicitors attend to matters of **procedure** and prepare a **brief** for the **barrister** who the solicitor engages to argue the case in court.

**special deterrence**

1. When a judge or magistrate is considering what **penalty** to impose upon a person who is guilty of an **offence,** one of the matters which must be considered is whether the defendant might break the law again in the future. One of the purposes of imposing a penalty is to encourage the defendant to behave lawfully in the future. If the judge or magistrate thinks that there is a risk that the defendant might offend again, the penalty will usually be harder than if he or she thinks that the defendant is unlikely to re-offend. If the risk is very low, the court may decide that *there is no need for special deterrence*, and the penalty is likely to be less than what might otherwise be the case.

**special verdict**

1. In criminal cases, the jury is usually required to find either that the defendant is guilty or not guilty. Sometimes, a jury is asked to provide an answer to some further question in addition to a verdict of guilty. For example, the prosecution might have claimed that the defendant stole a number of different items. The evidence might show that the defendant stole some of those items, but maybe not others. In such a case, the judge may ask the jury to decide which items were stolen by the defendant. This is called a *special verdict.*

**standard of proof**

1. In criminal cases, the prosecution must prove that the defendant is guilty *beyond reasonable doubt.* In such a case, the *standard of proof* required is proof beyond reasonable doubt. See also **burden of proof** and **proof**.

**stand aside**

1. When a jury is being **impanelled**, the prosecutor can either **challenge** a person whose name has been called to serve on the jury, or s*tand aside* that person. The prosecution can stand aside up to six persons without challenging them. A person who is challenged cannot serve on that jury, but a person who has been stood aside might later become eligible if the **jury** **panel** has been exhausted before enough jurors have been selected to form a jury.

**state**

1. A sovereign political body, such as Australia. A state is made up of a head of state and three arms of government, the legislature, the executive and the judiciary. In Australia, the head of state is the Queen, and in her absence from Australia, it is the Governor-General. The head of state is largely a ceremonial position, but in extreme cases, the head of state has reserve powers which can be used in cases of extreme emergency which cannot be resolved by ordinary means. (This is not so in countries where the head of state is an elected president, such as the United States of America, where the office of President is very powerful politically.) The legislature is the Parliament of the Commonwealth, which consists of the House of Representatives elected by the people on a representative basis, and the Senate, which is elected by the people on a proportional basis. There are 10 senators from each of the states of Australia as well as two senators from the Northern Territory and two from the Australian Capital Territory. The legislature has the power to make laws. The executive consist of the ministers having responsibility for carrying out the laws into effect, and of the public servants employed by the state who are, in effect, the servants of each minister. The judiciary consists of the courts which enforce the laws passed by the Parliament.
2. A political body which is more or less independent in relation to its own internal affairs, and which is part of a union of states which make up a federation of states, or commonwealth, such as Australia. These States are referred to as the State of New South Wales, or the State of South Australia, etc.; and, similarly, are made up of a head of state (called a Governor), a legislature or State Parliament, the executive controlled by State ministers and State public servants, and a judiciary made up of State courts.
3. The condition of a thing, for example, *“This car was in a poor state of repair.”*
4. To say something, for example, *“He stated that his name was Fred Smith.”*

**statute**

1. A law passed by a parliament or legislative assembly.

**statement**

1. A written document which records what a witness is expected to say if called to give evidence. In criminal cases, a statement is usually written down by a police officer when a witness is being interviewed, but it may also be prepared by a lawyer working for the prosecution. In civil cases, statements are prepared by **solicitors**. A copy of the statement of each witness taken by a police officer or by a prosecution lawyer is usually given to the defendant or his lawyer in criminal cases before the witness is called to give evidence.

**stay**

1. Criminal law. An order of a court stopping the case from going any further. A stay may be a permanent stay, in which case the matter will never go any further; or it may only be a temporary stay pending the happening of some other event. In criminal cases, **superior courts** have the power to stay a criminal prosecution if the court decides that the prosecution is an abuse of process. The words “abuse of process” covers a wide variety of circumstances where it would not be proper to allow the prosecution to proceed further. A common example of a permanent stay is where the court decides that the prosecution is doomed to failure. A common example of a temporary stay is where the defendant needs a lawyer, the state has refused to grant him or her legal aid, and the defendant cannot afford to pay for his own lawyer. In that type of case, the stay is only until such time as a lawyer is provided.
2. In civil cases, a *stay of execution* may be granted, which means that the successful party cannot enforce the judgment of the court. Usually, a stay of execution is only temporary. For example, a stay of execution may be granted if the losing party has lodged an appeal. A civil court can also grant a permanent stay of execution where the court’s judgment has already been satisfied.

**steal**

1. To take something that does not belong to you and you know that you have no legal right to it. Another word for steal is “thieve”. A person who steals is called a thief.
2. To do something in a secret, or underhand way, as in *“He stole out of the house under cover of darkness.”*
3. To do something which is improper, but not necessarily **illegal**, such as *“He stole her virginity.” or “He stole the show.”*

**subpoena**

1. A written document issued by a court requiring a person to attend the court on a particular date to give evidence as a **witness** or to produce documents to the court, or to do both. A subpoena to give evidence may sometimes be called a *summons to witness.* Failure to comply with a subpoena without good reason might result in the court ordering that the person be arrested and brought before the court forcibly.

**submit**

1. A polite way of asking a court to accept something as true, or to decide something in a particular way. For example, a lawyer might say to a court, *“I submit that the court should find that the defendant is not guilty.”* Hence, when a lawyer addresses a court, what is being said is referred to as a *submission.*
2. To surrender or yield. For example, *“He submitted to the jurisdiction of the court.”* or *“When the police officer told him he was under arrest, he submitted peacefully.”*

**summing up**

1. At the end of a criminal trial, the trial judge is required to remind the jury of the important evidence in the case, to tell the jury what the relevant law is, and how they must use the law to decide the case according to the facts which the jury has accepted as having been proved. This process is called the “summing up”, or *the Judge’s address to the jury*.

**summons**

1. A document issued by an officer of a court calling upon the person to whom the summons is addressed to attend the court at a specified time. A summons might be directed to a person who has been charged with an offence to attend the court. It might also be directed to a witness, or a potential juror, to attend the court. The failure to comply with a summons without good reason is likely to result in the arrest of that person.
2. In civil law, a document which commences an action in the court may be called a writ of summons.
3. In civil law, a summons is a document which calls upon a party to attend the court at a particular time so that some matter can be decided by the court. If the matter to be decided is a matter of **procedure**, the summons is called an *interlocutory summons.*

**superior court**

1. The High Court of Australia, the Federal Court of Australia, and the Supreme Courts of each of the States and Territories (including the Courts of Appeal and the Courts of Criminal Appeal).

**supervision order**

1. A **sentencing order** which requires the person being sentenced to be supervised by the court in some way. A common type of supervision order is an order, often included as a condition of a **suspended sentence**, that a person is to be placed under the supervision of a parole officer (or probation officer) (See **parole**). This type of supervision order usually requires the person to report to a probation or parole officer and to obey reasonable directions as to employment, residence, etc., as well as other specific conditions usually related to not taking alcohol or drugs for a specified period.
2. An order made in relation to a person who is not fit to stand trial, or who is mentally incompetent. See **mental impairment** and **fitness to plead**. This type of supervision order is designed to assist the defendant’s mental recovery as well as to protect the public in the meantime if the person is dangerous.

**supreme court**

1. The Supreme Court of a State or Territory, with (almost) unlimited jurisdiction to hear civil cases, the main exception being where exclusive jurisdiction is conferred upon another court or tribunal. The supreme courts have unlimited jurisdiction to hear criminal matters for serious offences, which must be charged on **indictment**. A single judge of the Supreme Court may also hear appeals from magistrates in those jurisdictions where there is no **District Court**.

**surety**

1. A guarantor. See **guarantee**.

**suspect**

1. A person becomes a “suspect” if a police officer thinks that a person may be guilty of an offence, based on some evidence which is stronger than mere speculation. The evidence does not have to be so strong that the police officer actually believes that the suspect has committed the offence. Once a person has become a suspect, a police officer is required to **caution** the person before asking the person any questions which may be of an incriminating nature, or   
   **self-incriminating**.

**suspended sentence**

1. There are two kinds of suspended sentences. First, there is a fully suspended sentence. This is a sentence of imprisonment which does not have to be carried out immediately, but gives the defendant the opportunity to serve his sentence in the community. If the person complies with the conditions imposed by the court, and does not commit any further offences during the **operational period** of the suspended sentence, the defendant will not have to go to gaol. If the defendant breaches the conditions, or commits another offence during the operational period, the defendant may be required to serve the sentence originally imposed in gaol. Secondly, there are partially suspended sentences of imprisonment. In this case, the court imposes a sentence of imprisonment, but it orders that, after the defendant has served part of the sentence in gaol, he or she is to be released and will serve that balance of the sentence in the community in the same way as a fully suspended sentence.

**swear**

1. The formal taking of an **oath** by a witness to tell the truth. *“Do you swear by almighty God to tell the truth?”*
2. To use objectionable or foul language. *“He swore at me.” “I heard him swearing when he was arguing with his wife.”*

**take into account**

1. This means not to forget, overlook or ignore some fact which is relevant to a decision by a court or a jury. For example, usually, courts are more lenient when sentencing a **youth** for an offence than would be the case if the person was an adult. If a court imposed a sentence which would be right if the offender was an adult, but too severe if the offender was a youth, it would be said that the court *“did not take into account the offender’s youth”*.

**testify**

1. To give evidence as a **witness**. *“He testified that he saw the defendant punch Mr. Smith on the nose.”* A witness’ evidence is often referred to as the witness’ *testimony.*

**time**

1. The hour of the day or night. *“What time did you go to work?”*
2. To do time, means to serve a sentence in prison. *“Whilst he was doing his time, he did a course in anger management.”*

**transcript**

1. A written record of the oral evidence give by the **witnesses**, as well as of everything else said in court by the lawyers, the judge or magistrate.

**trial**

1. The formal process of deciding an issue before a court of law. In the criminal law, it means the process of deciding whether or not the person is guilty of the offence which has been brought against him by the prosecutor.

**undertake**

1. To make a formal promise. A lawyer might say to a judge or magistrate: *“I undertake to give a copy of this statement to the defendant’s lawyer as soon as I can.”*
2. To do something. *“He undertook the task of trying to repair the broken down car himself.”*

**unfit to plead**

See **fitness to plead**.

**unlawful**

1. That which is forbidden by the criminal law and punishable by a court. *“It is unlawful to threaten someone with a gun.”*

**unlawful sexual intercourse**

See **sexual intercourse without consent**, and see **carnal knowledge**.

**vagina**

1. The female sexual organ leading to the uterus. In legal terms, it usually includes both the internal and the external female genitalia including the mons pubis.

**verdict**

1. The decision or judgment of a court. Usually, it refers specifically to the decision of a jury as to whether or not the defendant is guilty. *“The jury reached a verdict of not guilty”.*

**victim**

1. A person who is injured as a result of a crime or offence. *“The victim of this assault suffered a broken arm.”*

**victim levy**

1. In the Northern Territory, a person convicted of an offence who is not sent to gaol is required to pay a small sum of money, usually between $40 to $60, which goes into a fund to compensate victims of crime.

**video-conferencing facility**

1. A device which enables a person who is not physically present in court to be seen and heard through a television screen in the court room whilst physically somewhere else. The person, usually a witness, can also hear and see what is happening in court. It enables a witness to give evidence in court without having to travel to the court house.

**voire dire**

1. An examination of a witness during the course of a trial which is held in the absence of the jury, usually for the trial judge to determine if the evidence of the witness should be admitted into evidence.

**voluntary**

1. Something is voluntary if it is the result of a person’s free will. An act can be voluntary even if the person did not mean to cause the result of the act. For example, a person who fires a gun may have wanted to fire the gun, but he may not have wanted to shoot anyone with the gun. The act of firing the gun would still be a voluntary act. But if the person fired the gun because he tripped over something which caused his finger to pull the trigger, the act of firing the gun would not have been a voluntary act. Similarly, a person who is held down by another and who forces him to drink alcohol by pouring the alcohol down his throat is not drinking the alcohol voluntarily.
2. In the context of **confessions** made to the police, a confession is not admissible as evidence unless it is proven to be voluntary, ie the confession must have been made by the defendant by his own free will. A confession which is obtained by threats, for example, is not voluntary and will be rejected.

**vulnerable witness**

1. A class of **witness** which the law recognises suffers from some kind of handicap or pressure which might make the witness reluctant or unable to give evidence. The class includes children, the **victim** of a **sexual offence**, and persons who suffer from an intellectual disability. A vulnerable witness may give evidence using special measures designed to make the witness feel comfortable in giving evidence. In cases involving the evidence of a victim of a sexual offence, the court may be closed to the public in some jurisdictions.

**youth**

1. Any person under the age of 18

**warrant**

1. Criminal law. A written authority given by a court or judicial officer to enforce something or to permit something which would otherwise be illegal, but which the law permits to happen if the court or judicial officer is satisfied that there is a good cause for issuing the warrant. There are various kinds of warrant. A police officer may be given a warrant to arrest someone, or a warrant to carry out search, or a warrant to listen into telephone conversations, or to install a camera or microphone in someone else’s home in order to gather **evidence**.
2. A judicial officer who sends a person to gaol must sign a warrant of **commitment** to a prison. In civil cases, a person who has succeeded in obtaining a judgment of the court for the payment of a sum of money can obtain a warrant of execution for a bailiff or sheriff to seize the property of the person whom the court has ordered to pay the money.

**warning**

See **caution**.

**witness**

1. A person who comes to court to tell the court (or give evidence about) what that person saw or heard, or otherwise has knowledge of.

**witness box**

1. A place where a witness sits or stands when giving evidence in a court.

**your Honour**

1. Form of address when speaking to a judge or magistrate. *“Will your Honour pardon me for a moment whilst I speak to my* ***client****?”*