

GLOSSARY OF LEGAL TERMS

- accused:** the person charged with the offence, the defendant.
- acquittal:** the deliverance and release of the accused by a finding of not guilty.
- affidavit:** a written statement to be used as evidence. The maker of the statement swears or affirms its truth before a commissioner of oaths, a solicitor, or a court official, who then witnesses the person's signature.
- ancillary:** action incidental to some pre-existing cause of action. The pre-existing action is called 'principal relief'.
- bail:** release from prison or prison custody, pending trial. Bail is sometimes given on certain conditions. Failure to appear for trial after bail is a criminal offence.
- barrister:** the person who receives instructions from the solicitor and appears in court on behalf of the client to put the client's case.
- burden of proof :** the obligation of proving the case. The burden in civil cases is on 'the balance of probabilities', while in criminal cases, the burden is 'beyond all reasonable doubt'.
- civil law:** the law administered by the non-criminal courts whereby individual grievances between citizens are settled.
- civil wrong:** wrongdoing by one individual against another, in which an individual can gain compensation in the civil courts.
- competent witness:** a person who is legally able to give evidence in a trial.
- compellable witness:** a person who is legally compelled to give evidence in a trial. A wife may be a competent witness, in the sense that she is legally able to give evidence, but she may not be compellable.
- compensation schemes:** a scheme providing monetary compensation for a criminal wrong.
- complainant:** the person who complains of a criminal wrong, used here to describe the woman who reports a sexual crime to the police.
- common law:** the law made by virtue of the decisions of the courts.
- conciliation:** a method of dispute resolution by means of discussion and settlement without resort to the courts.

contempt: acting in disregard of a court order. Contempt is a criminal offence.

corroboration: confirmation of a statement by evidence as corroborative evidence.

counsel: a barrister who may be prosecution or defence counsel.

crime: an unlawful act or default which is an offence against the public and which makes the person guilty of the act liable to legal punishment.

cross-examination: the practice of questioning and cross-questioning by both sides of the court.

custody order: an order which allows a parent to have the right to guardianship of his or her child.

defence: the defendant's case or the legal personnel who act for the defendant.

defendant: a person who is sued or prosecuted or who has court proceedings brought against him or her.

decriminalisation: the rendering of an act as non-criminal, a civil wrong rather than a criminal offence.

delict: the term for a civil wrong or tort in Roman Law.

discretionary, discretion: a decision left to the judge

estate: an interest in land.

estate holder: one with an interest in land.

evidence: events and statements produced to substantiate a legal action.

evidentiary requirements: the body of rules which governs the introduction of evidence in court.

equitable interest: an interest in land recognised by virtue of fairness.

ex parte: an application to the court by one party to the proceedings without the other party being present.

exclusion order: an order requiring someone to vacate a house; also called an ouster order.

general law: that body of law, as opposed to customary law, modelled on the English legal system.

in camera: evidence which is not heard in open court.

injunction: a court order requiring someone to do or refrain from doing something.

inter se: between them.

interdict: the Scottish term for injunction.

interest, joint interest: a right to land or property.

interim: in the meantime. An interim order in an action is made prior to the full hearing of the case, when a final order will be made. The hearing for an interim order will be an **interlocutory proceeding**.

judicial separation: similar to divorce in that it makes both husband and wife single persons again for all legal purposes. Unlike a divorce, it does not allow either party to remarry. It is also called **legal separation**.

legal right: right recognised at law; often distinguished from an equitable right (see above).

legal separation: see above, **judicial separation**.

legislation: that body of law made by the parliamentary process, also called **statute**.

magistrate: the judge in the lower or magistrates' courts.

maintenance order: order against a person requiring him or her to pay a sum suitable to maintain another; usually awarded against one spouse for the benefit of the other and the children.

mandatory: no element of choice or discretion; to be contrasted with discretionary.

mens rea: the criminal intention to commit a crime: the **mens rea** and the **actus reus** (or criminal act) together make the crime.

non-molestation order: an order to compel someone to stop harassing or molesting another.

obiter dictum: a statement of opinion by a judge which is not relevant to the case being tried; a statement which is not of the same authority as if it had been relevant (to be distinguished from **ratio decidendi**).

originating summons: a legal document commencing proceedings in a court.

ouster order: see **exclusion order**.

petitioner: the person who presents a petition or case to court; the plaintiff.

personal property: all property except land.

plaintiff: the person who sues, brings the civil action.

plenishings: improvements to property.

perjury: a false statement made under oath during a trial. Perjury is a crime.

prima facie: as it first appears.

principal claim: the main claim in a court action; to be contrasted with ancillary relief.

private: a criminal process brought by a private citizen.

procurator fiscal: a Scottish professional prosecutor.

prosecution: the side in a court case whose function it is to prove the guilt of the accused to the satisfaction of the jury

public defender: the individual employed by the state to act as defence counsel.

quasi-criminal: an action midway between the criminal and civil law.

rape trauma syndrome: a term used to describe the response of a victim of sexual assault which appears unusual. Typically, the victim of the syndrome behaves coolly and dispassionately after the attack rather than in a stereotypical fashion. See, further, Rowland, J., Rape: The Ultimate Violation, Pluto Press, 1983.

ratio decidendi: the reason for the judicial decision.

separate representation: representation of a witness or a person interested in a trial by someone other than the defence or prosecution counsel.

statute: see **legislation**

summary court: magistrates' or lower court.

summons: document issued by the court to the accused in a criminal action.

testimony: spoken evidence given under oath.

tort: a civil wrong, other than a breach of contract, which gives rise to the right to bring an action in the civil courts.

vicarious liability: liability which is imposed because one person is responsible for the actions of another. For example, an employer is vicariously liable for the actions of his employees.

warrant: document issued by a magistrate or other legal official, allowing the police to take certain actions.

writ: a document issued to commence a legal proceedings.