

Sources of Law: Some Definitions



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Affidavit

- A written statement that may take the place a personal appearance in court.
- It is made by the person (the Deponent) who signs it, and swears to its truth before a commissioner of oaths.
- It is a voluntary statement and there is no cross examination involved.

Affidavit

Example 1:

- A victim of a violent crime lies in hospital.
- He is unlikely to recover – but he has probably recognized his attacker.
- What legal action should a prosecutor take?

Deposition

- Testimony taken before a trial, typically in a lawyer's office.
- Both questions and answers are recorded.
- It is expected that further questions will be asked by both sides in court (i.e. cross-examination will be permitted).
- Deposition recorded by court reporters.
- Proceedings are under oath.
- A report of the proceedings are signed by the Reporter and the Deponent – certifying it is a true record of the proceedings.

Deposition

Example 2:

- John Smith provided the diesel generators for the ABC gas pipeline company in northern BC.
- The lawyers for ABC and the lawyers for the Province of BC are opposing each other.
- Neither party is sure if there is a case, who the plaintiff and defendant are, and if a prosecution is likely to be successful.
- John Smith was brought into the lawyers' office for a: _____?

Discovery

- Reviews the details of a lawsuit of legal action prior to trial.
- Aim is to expose/collect details to help with the preparations for trial.
- Provides an opportunity for both sides to review the facts and possibly settle prior to trial.

Discovery

Example 3:

- In a separation case, the lawyers bring in Mr. & Mrs. Smith.
- He sits on one side of the table with his lawyers and
- She sits on her side of the table with her lawyers.
- This is _____?

Injunction

- A court order which requires an individual to perform (or to stop performing) a particular act/action.
- The intent of an injunction is to at least temporarily maintain the status quo (no change to how things have been).
- Typically associated with additional action.
- Violation of an Injunction may be punishable for Contempt of Court.

Injunction

Example 4a:

- A Landlord wants to evict a tenant who is damaging his property, and also wants to prevent the tenant from further damaging the property.
- They need to get an _____?

Injunction

Example 4b:

- The long established Greek restaurant, Minerva's Taverna uses the 5 Olympic rings on their sign.
- The 2010 Winter Olympic business policy forbids this.
- Legal proceedings would easily take 12 months or longer to resolve and the games are less than a year away.
- What type of immediate action is needed...

Subpoena

- A court order issued by the court for a person to come before the court at a stated time and place.
- Failure to appear may result in that person being charged with Contempt of Court, as well as a warrant for arrest.
- A subpoena must be served on the individual personally. (Being Served).

Subpoena (contd).

- A subpoena must contain:
 - The names of the legal proceedings
 - The name of the person required to appear
 - The time and place of the hearing.

Subpoena (contd).

Example 5:

- Mrs. X was having an affair with Mr. Y.
- Mr. Y is being tried for theft over \$5000.
- His defense lawyers want Mrs. X to testify because she is Mr. Y's alibi.
- She is reluctant to do so because it will seriously harm her marriage to Mr. X .
- The defense lawyers can...

Malfeasance

Misfeasance

Nonfeasance

- Malfeasance: a comprehensive term for any act that is illegal and/or wrongful (in the eyes of the law).
- It may not be a distinct crime but may be used to describe the actions that contributed to a crime (by the malfeasant – person, committing the malfeasant behavior).

Malfeasance

Misfeasance

Nonfeasance (contd).

- Misfeasance: a comprehensive term for any act that is not illegal, but it is improperly performed, which results in injury to another person.
- Nonfeasance: is simply a failure to act (when it was proper to do so), which resulted in an injury to another person.

Malfeasance

Misfeasance

Nonfeasance (contd).

- The distinctions between the three terms makes little difference to the law.
- In all cases the plaintiff (person making the complaint), must prove that the defendant did not perform an action(s) that they should have, and that this resulted in injury to the plaintiff.

3 Feasance (contd).

Example 6: (based on a true events)

- A person is a passenger in a pick-up truck driven by his father.
- The driver pulls out to pass traffic on a partially snow covered road across a double line.
- The driver loses control and the truck goes off the road and into a telephone pole.
- The air-bags do not deploy.
- The passenger sustains a broken vertebrae which causes severe pain and suffering.

3 Feasance (contd).

Example 6: (continued)

- The driver (father) wants the passenger (adult son) to make a statement to ICBC that
 - a) he (dad) was not speeding, and that
 - b) he (dad) swerved to avoid a deer crossing the road, and
 - c) that he (son) is not that badly injured.
- The passenger (son) can make a claim of ____ ? against the driver (dad).

Barristers, Solicitors & Attorneys

- Barrister: has exclusive right of argument in all the superior courts.
- They are very learned in law and have pleaded at the bar (i.e. “passed the bar” exam).
- Barristers draft any pleadings in all cases brought to the court.

Barristers, Solicitors & Attorneys (contd).

- In Canada and Great Britain – two tiered system:
 - Solicitors perform all legal tasks except the appearance in court
 - Barristers perform all legal tasks AND also try the cases in court.

Barristers, Solicitors & Attorneys (contd).

- Solicitor: handles out-of-court legal matters.
 - Meet prospective clients,
 - Provide legal advice,
 - Draft letters and documents,
 - Negotiate on behalf of the client,
 - Prepare the case for trial.

Barristers, Solicitors & Attorneys (contd).

- Typically there are more solicitors than barristers because most work is done outside the court.
- A solicitor advises the barrister on behalf of the client.
- In the USA a solicitor is similar to a Lawyer – who does not appear in court.

Barristers, Solicitors & Attorneys (contd).

- Attorney: authorized to practice law (based on training/education from a Law school) in at least one area (such as criminal or civil law).
 - Provide legal advice,
 - Draft letters and documents,
 - Represent a client in court, etc.

Barristers, Solicitors & Attorneys (contd).

- In the USA an attorney must meet similar requirements (education and the bar exam) to a Barrister in Canada and Great Britain.
- The term attorney and barrister are somewhat similar and often interchanged in Canada.

Barristers, Solicitors & Attorneys (contd).

Example 6a: You are in the cell and your solicitor says you are in trouble. Who does he call? _____?

Example 6b: You are a spectator in the courtroom. All the lawyers present are ____?

Example 6c: In the USA your court lawyer is called a(n) _____?