

**GLOSSARY OF COMMON TERMS AND  
ORDER OF TRIAL EVIDENCE & ARGUMENT  
GLOSSARY**

**Civil Lawsuit** is a claim brought against another person or entity seeking monetary damages or some form of Court action to compensate an injured or aggrieved party.

**Criminal Prosecution** is a case brought against a person or entity for violating the criminal statutes of the Commonwealth and the penalty is usually incarceration, fines or both.

**Plaintiff** is the person who brings a civil lawsuit against another person or entity.

**Prosecutor/Commonwealth** is the person, usually a State or Federal prosecutor, who brings a criminal case against a person or entity *on behalf of* a governmental party, such as the Commonwealth of Pennsylvania.

**Party** is a person or entity who is named as a plaintiff or defendant in a case.

**Materiality** examines of the proximity of a fact or proposition introduced at a trial to a central issue in the case.

**Relevance** examines of the relationship between a premise or proposition introduced and the conclusion that the person making the offering of evidence is trying to prove or disprove by offering the evidence. Relevance is always measured by weighing the probative value of evidence against its prejudicial impact.

**Traditional Difference between Materiality & Relevance:** Relevance examines the relationship between a premise and the conclusion drawn from the premise in a syllogism, while materiality examines the proximity of an offer of proof to the point of the case. Example; in a negligence case, the Plaintiff wants to prove that the Defendant drove through a stop sign and caused an accident. If the Plaintiff presents the testimony of the Plaintiff's brother that Plaintiff "visits his mother every Sunday" to prove that Plaintiff "is a nice person"; this testimony may be *relevant* to prove that Plaintiff is "a nice person" but it is not *material* because the issue of whether the Plaintiff was a "nice person" or not isn't an issue in the case.

**NEW RULE 401 (Merger of Relevance & Materiality)** Evidence is RELEVANT if (a) it has any tendency to make a fact more or less probably than it would be without it; and (b) the fact is of consequence in the trial.

**Burden of Proof** is the quantum of evidence required of a party to prove a contention made in a lawsuit. In a criminal case, the burden of proof is on the Prosecutor to prove his contentions "*beyond a reasonable doubt*". In a civil case, the burden is on the Plaintiff to prove his case by a "*preponderance of the evidence*", which means that putting each parties' evidence on a balance scale, it would tip ever so slightly in favor of the prevailing party.

**Case-In-Chief** is the part of the case that a party must prove to meet his burden of proof.

**Direct Examination** is when an attorney asks questions of his *own* witnesses in order to prove a fact or contention. The scope is normally limited to any material evidence.

**Cross-Examination** is when a party tests the credibility, reliability and/or bias of an opponent's witness through *impeachment* or to bring out facts that were not established during direct examination. The scope of cross-examination of a *party* is normally limited to *any* material evidence. The scope of cross-examination of a witness other than a party is normally limited to those matters to which the witness testified on direct.

**Re-Direct** is when an attorney asks his *own* witness follow-up questions in order to clarify or expand on answers given by his witness during cross examination. The scope of re-direct is normally limited to matters raised on cross-examination.

**Re-Cross** is the opportunity for the attorney to re-examine the witness after re-direct, but the scope of re-cross is limited to matters raised on re-direct.

## **ORDER OF TRIAL EVIDENCE & ARGUMENT**

### **1. OPENING STATEMENT**

- Opportunity for each party's attorney to explain his client's version of the case and tell what witnesses and evidence he plans to introduce to prove his case. It is not an argument, but a roadmap of what the party thinks is important and what he plans to present.

#### **a. Plaintiff/Prosecutor Opening Statement**

#### **b. Defendant Opening Statement.**

- A Defendant may choose to present his opening statement immediately after the Plaintiff, or he may defer his opening until immediately prior to presenting his case-in-chief)

### **2. PLAINTIFF'S CASE-IN-CHIEF**

- a. Direct Examination of Plaintiff's 1<sup>st</sup> Witness
- b. Cross-Examination of Plaintiff's 1<sup>st</sup> Witness
- c. Re-Direct of Plaintiff's 1<sup>st</sup> Witness
- d. Re-Cross of Plaintiff's 1<sup>st</sup> Witness
- e. Re-Direct of Plaintiff's 1<sup>st</sup> Witness (if necessary)
- f. Plaintiff's Move All Trial Exhibits into Evidence

### **3. DEFENDANT'S CASE-IN-CHIEF**

- a. Direct Examination of Defendant's 1<sup>st</sup> Witness
- b. Cross-Examination of Defendant's 1<sup>st</sup> Witness
- c. Re-Direct; Re-Cross, etc.
- d. Defendant Move all Trial Exhibits into Evidence

### **4. CLOSING STATEMENTS**

- a. Plaintiff's Closing Argument
- b. Defendant's Closing Argument
  - Bucks County has a quirk in its order of closing arguments and has the Defendant present his closing first...this is not the order in any other jurisdiction that I know of.