

GLOSSARY of Civil Legal Terms



A

Affidavit

A written or printed statement made under oath.

Affirmed

In the practice of the court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

Amicus curiae

Latin for “friend of the court.” A person or group that is not a party to an action but has a strong interest in the matter. This person or group petitions the court for permission to submit a brief to inform the court’s decision making. Such briefs are called “amicus briefs.” The plural form of “amicus curiae” is “amici curiae.”

Answer

The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

Appeal

A request made after a trial by a party that has lost on one or more issues that a higher court review the decision to determine if it was correct. To make such a request is “to appeal” or “to take an appeal.” One who appeals is called the “appellant;” the other party is the “appellee.”

Appellant

The party who appeals a district court’s decision, usually seeking reversal of that decision.

Appellate

About appeals; an appellate court has the power to review the judgment of a lower court (trial court) or tribunal. For example, the U.S. circuit courts of appeals review the decisions of the U.S. district courts.

Appellee

The party who opposes an appellant’s appeal, and who seeks to persuade the appeals court to affirm the district court’s decision.

B

Bench trial

A trial without a jury, in which the judge serves as the fact-finder.

Brief

A written statement submitted in a trial or appellate proceeding that explains one side’s legal and factual arguments.

Burden of proof

The duty to prove disputed facts. In civil cases, a plaintiff generally has the burden of proving his or her case. In criminal cases, the government has the burden of proving the defendant’s guilt.

C

Case file

A complete collection of every document filed in court in a case.

Case law

The law as established in previous court decisions. A synonym for legal precedent. Akin to common law, which springs from tradition and judicial decisions.

Caseload

The number of cases handled by a judge or a court.

Cause of action

A set of factual elements that must be satisfied to obtain a legal remedy. The factual elements needed for a specific cause of action are typically specified in a statute, legal precedent, or administrative regulation.

Chambers

The offices of a judge and his or her staff.

Chief judge

The judge who has primary responsibility for the administration of a court; chief judges are determined by seniority.

Civil action

A noncriminal lawsuit in which the plaintiff files a complaint, and the defendant disputes the complaint's allegations. The plaintiff may plead for remedies in the form of monetary damages or court order, such as an injunction or a declaration of legal rights.

Claim

A set of operative facts creating a right enforceable in court. Under the Federal Rules of Civil Procedure, attempting to file a lawsuit in which no claim is present will result in the dismissal of that lawsuit for failure to state a claim.

Class action

A lawsuit in which one or more members of a large group, or class, of individuals or other entities sue on behalf of the entire class. The district court must find that the claims of the class members contain questions of law or fact in common before the lawsuit can proceed as a class action.

Clerk of court

The court officer who oversees administrative functions, especially managing the flow of cases through the court. The clerk's office is often called a court's central nervous system.

Common law

The legal system that originated in England and is used in the United States, which relies on legal principles established in prior judicial decisions. Common law principles can be changed by legislation.

Complaint

A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

Counsel

1. Legal advice; 2. A term used to refer to the lawyers in a case.

Court

Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

Court reporter

A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand or audio recording, and then produces a transcript of the proceedings upon request.



Damages

Money that a defendant pays a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).

De novo

Latin, meaning "anew." A trial de novo is a completely new trial. Appellate review de novo implies no deference to the trial judge's ruling.

Declaratory judgment

A judge's statement about someone's rights. For example, a plaintiff may seek a declaratory judgment that a particular statute, as written, violates a constitutional right.

Default judgment

A judgment awarding a plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint.

Defendant

In a civil case, the person or organization against whom the plaintiff brings suit; in a criminal case, the person accused of the crime.

Deposition

An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial. See "discovery."

Discovery

The process through which parties disclose and obtain evidence before trial.

Dismissal with prejudice

Court action that prevents an identical lawsuit from being filed later.

Dismissal without prejudice

Court action that allows an identical lawsuit to be filed later.

Docket

A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

Due process

In criminal law, the constitutional guarantee that a defendant will receive a fair and impartial trial. In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property.

E

En banc

French, meaning “on the bench.” All judges of an appellate court sitting together to hear a case, as opposed to the routine disposition by panels of three judges. In the Ninth Circuit, an en banc panel consists of 11 randomly selected judges.

Equitable

Pertaining to civil suits in “equity” rather than in “law.” In English legal history, the courts of “law” could order the payment of damages and could afford no other remedy (see “damages”). A separate court of “equity” could order someone to do something or to cease to do something (e.g., injunction). In American jurisprudence, the federal courts have both legal and equitable power, but the distinction is still an important one. For example, a trial by jury is normally available in “law” cases but not in “equity” cases.

Evidence

Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

Ex parte

A proceeding brought before a court by one party only, without notice to or challenge by the other side.

F

Federal question jurisdiction

Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties.

File

To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

G

H

Habeas corpus

Latin, meaning “you have the body.” A writ of habeas corpus generally is a judicial order forcing law enforcement authorities to produce a prisoner they are holding, and to justify the prisoner’s continued confinement. Federal judges receive petitions for a writ of habeas corpus from state prison inmates who say their state prosecutions violated federally protected rights in some way.

Hearsay

Evidence presented by a witness who did not see or hear the incident in question but heard about it from someone else. With some exceptions, hearsay generally is not admissible as evidence at trial.

I

Injunction

A court order preventing one or more named parties from taking a specific action. A preliminary injunction often is issued to allow fact-finding, so a judge can determine whether a permanent injunction is justified.

Interrogatories

A form of discovery consisting of written questions to be answered in writing and under oath.

Issue

1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.

J

Judge

An official of the judicial branch with authority to decide lawsuits brought before courts. Used generically, the term judge may also refer to all judicial officers, including Supreme Court justices.

Judgment

The official decision of a court finally resolving the dispute between the parties to the lawsuit.

Judicial Conference of the United States

The policy-making entity for the federal court system. A 27-judge body whose presiding officer is the Chief Justice of the United States.

Jurisdiction

The legal authority of a court to hear and decide a certain type of case. It also is used as a synonym for venue, meaning the geographic area over which the court has territorial jurisdiction to decide cases.

Jurisprudence

The study of law and the structure of the legal system.

Jury

The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.

Jury instructions

A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

K

L

Lawsuit

A civil legal action by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

Litigation

A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

M

Magistrate judge

A judicial officer of a federal district court who conducts initial proceedings in criminal cases, decides criminal misdemeanor cases, conducts many pretrial civil and criminal matters on behalf of district judges, and decides civil cases with the consent of the parties.

Mistrial

An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

Moot

Not subject to a court ruling because the controversy has not actually arisen, or has ended.

Motion

A request by a litigant to a judge for a decision on an issue relating to the case.

Motion in Limine

A pretrial motion asking that certain evidence be found inadmissible and that it not be referred to or offered at trial.

N

O

Opinion

A judge's written explanation of the decision of the court.

Oral argument

An opportunity for lawyers to summarize their position before the court and also to answer the judge's questions.

P

Per curiam

Latin, meaning "for the court." In appellate courts, the term often refers to an unsigned opinion.

Plaintiff

A person or business that files a formal complaint with the court.

Pleadings

Written statements filed with the court that describe a party's legal or factual assertions about the case.

Precedent

A court decision in a prior case with facts and legal issues similar to a case before a court. Judges typically "follow precedent," meaning they apply the principles established in prior cases to decide new cases that have similar facts and entail similar legal questions. Judges may disregard precedent if a party can show that the prior case was wrongly decided or that it was significantly different from the party's case.

Pro se

Representing oneself. Serving as one's own lawyer.

Procedure

The rules for conducting a lawsuit; there are federal rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.



Record

A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

Remand

Send back to a lower court.

Reverse

The act of a court setting aside the decision of a lower court. A reversal is often accompanied by a remand to the lower court for further proceedings.



Sanction

A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.

Service of process

The delivery of legal documents to an entity as required by procedural rules.

Settlement

Parties to a lawsuit resolve their dispute without completing a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims but usually do not include an admission of wrongdoing.

Standard of proof

Degree of proof required. In criminal cases, prosecutors must prove a defendant's guilt "beyond a reasonable doubt." The majority of civil lawsuits require proof "by a preponderance of the evidence" (50 percent plus), but in some cases, the standard is higher and requires "clear and convincing" evidence.

Statute

A law passed by a legislature.

Statute of limitations

The time within which a lawsuit must be filed or a criminal prosecution begun. The deadline can vary, depending on the type of civil case or the crime charged.

Sua sponte

Latin, meaning "of its own will." Often refers to a court taking an action in a case without being asked to do so by either side.

Subpoena

A command, issued under a court's authority, to a witness to appear and give testimony.

Subpoena duces tecum

A command to a witness to appear and produce documents.



Temporary restraining order

Akin to a preliminary injunction, it is a judge's short-term order forbidding certain actions until a full hearing can be conducted. Often referred to as a TRO.

Testimony

Evidence presented either orally or in writing by witnesses during trials or before grand juries.

Tort

A civil, not criminal, wrong. A negligent or intentional injury against a person or property, excluding breach of contract.

U

U.S. attorney

A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government. The U.S. attorney employs a staff of assistant U.S. attorneys who appear as the government's attorneys in individual cases.

V

Venue

The geographic area in which a court has jurisdiction. A change of venue is a change or transfer of a case from one judicial district to another.

Verdict

The decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a civil case.

Voir dire

Jury selection process of questioning prospective jurors to ascertain their qualifications and determine any basis for challenge.

W

Witness

A person called upon by either side in a lawsuit to give testimony.

Writ

A written court order directing a person to take, or refrain from taking, a certain act.

Writ of certiorari

An order issued by the U.S. Supreme Court directing the lower court to transmit records for a case that the U.S. Supreme Court will hear on appeal.

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Z

Sources

<https://www.uscourts.gov/glossary>

<https://www.law.cornell.edu/wex>



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