

## **GLOSSARY OF SELECTED LEGAL TERMS**

Sources:

- US Courts : <http://www.uscourts.gov/library/glossary.html>
- New York State Unified Court System: <http://www.nycourts.gov/lawlibraries/glossary.shtml>

### **Acquittal**

A jury verdict that a criminal defendant is not guilty, or the finding of a judge that the evidence is insufficient to support a conviction.

### **Action**

A civil judicial proceeding whereby one party prosecutes another for a wrong done or for protection of a right or prevention of a wrong; requires service of process on adversary party or potentially adversary party.

### **Admissible**

A term used to describe evidence that may be considered by a jury or judge in civil and criminal cases.

### **Adversary**

An opponent. The defendant is the plaintiff's adversary.

### **Adversary System**

The system of trial practice in the U.S. and some other countries in which each of the opposing, or adversary, parties has full opportunity to present and establish its opposing contentions before the court.

### **Affidavit**

A written or printed statement made under oath.

### **Allegation**

The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what the party expects to prove.

### **Amicus Curiae**

Latin for "friend of the court." It is advice formally offered to the court in a brief filed by an entity interested in, but not a party to, the case.

### **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.

### **Brief**

A written or printed document prepared by the lawyers on each side of a dispute and submitted to the court in support of their arguments - a brief includes the points of law which the lawyer wished to establish, the arguments the lawyer uses, and the legal authorities on which the lawyer rests his/her conclusions.

### **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.

### **Bench Trial**

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

**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.

**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.

**Cause of Action**

A legal 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.

**Common law**

The legal system that originated in England and is now in use in the United States that relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

**Compensatory Damages**

Reimbursement for actual loss or injury, as distinguished from exemplary or punitive damages.

**Complaint**

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

**Contract**

An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

**Conviction**

A judgment of guilt against a criminal defendant.

**Counsel**

Legal advice; a term also used to refer to the lawyers in a case.

**Damages**

Monetary compensation or indemnity for wrong or injury caused by the violation of a legal right. 1. Compensatory damages - Reimbursement for actual loss or injury. 2. Exemplary damages - Monetary award by way of punishment for injury caused by aggravated circumstances or malice, in addition to compensation for the injury. 3. Punitive damages - Monetary compensation awarded in excess of ordinary damages, as punishment for a gross wrong.

**Decision**

The determination reached by a court in any judicial proceeding, which is the basis of the judgment.

**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.

**Defense Attorney**

The lawyer who represents the defendant in any legal proceeding.

**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.

**Discovery**

Procedures used to obtain disclosure of evidence before trial.

**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.

**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.

**Felony**

A serious crime, usually punishable by at least one year in prison.

**Grand Jury**

A body of 16-23 citizens who listen to evidence of criminal allegations, which is presented by the prosecutors, and determine whether there is probable cause to believe an individual committed an offense.

**Guardian ad litem**

Person appointed by a court to represent a minor or incompetent for purpose of some litigation.

**Hearing**

A preliminary examination where evidence is taken for the purpose of determining an issue of fact and reaching a decision on the basis of that evidence.

**Incompetency**

Lack of legal qualification or fitness (physical, intellectual or moral fitness) to discharge a legally required duty or to handle one's own affairs; also relates to matters not admissible in evidence.

**Indictment**

A formal, written accusation issued by a grand jury charging someone with a crime. An indictment is not proof of a crime.

**Injunction**

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

**In re**

In the matter of; concerning.

**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.

**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.

**Lawsuit**

A legal action started 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.

**Mental Health Treatment**

Special condition the court imposes to require an individual to undergo evaluation and treatment for a mental disorder. Treatment may include psychiatric, psychological, and sex offense-specific evaluations, inpatient or outpatient counseling, and medication.

**Misdemeanor**

An offense punishable by one year of imprisonment or less.

**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.

**Negligence**

Conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.

**Oath**

A swearing to the truth of a statement which, if made by one who knows it to be false, may subject one to a prosecution for perjury or other legal proceedings.

**Opinion**

A judge's written explanation of the decision of the court. Because a case may be heard by three or more judges in the court of appeals, the opinion in appellate decisions can take several forms. If all the judges completely agree on the result, one judge will write the opinion for all. If all the judges do not agree, the formal decision will be based upon the view of the majority, and one member of the majority will write the opinion. The judges who did not agree with the majority may write separately in dissenting or concurring opinions to present their views. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law the majority used to decide the case. A concurring opinion agrees with the decision of the majority opinion, but offers further comment or clarification or even an entirely different reason for reaching the same result. Only the majority opinion can serve as binding precedent in future cases.

**Oral argument**

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

**Perjury**

The act of lying or stating falsely under oath.

**Plaintiff**

A person or business that files a formal complaint with the court; the party bringing a civil action.

**Plea**

In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges.

**Plea Bargain**

An agreement between a criminal defendant and a prosecutor in which the defendant admits having committed a crime. In return, the prosecutor asks the judge to impose a less severe sentence than had the defendant been convicted at a trial. The judge is not bound by the terms of a plea bargain. A plea bargain ensures that a guilty defendant is punished.

**Power of Attorney**

Instrument authorizing one to act legally for another either generally or in a specified matter.

**Precedent**

A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally "follow precedent" - meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case.

**Procedure**

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

**Prosecute**

To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.

**Prosecutor**

The lawyer who represents the State in a criminal case.

**Recuse**

To disqualify oneself as a judge.

**Relief**

Legal remedy.

**Remand**

To send a case back from an appellate court to the lower court from which it came, for further proceedings.

**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.

**Sentence**

The punishment ordered by a court for a defendant convicted of a crime.

**Sentencing guidelines**

A set of rules and principles established by the United States Sentencing Commission that trial judges use to determine the sentence for a convicted defendant.

**Settlement**

Parties to a lawsuit resolve their dispute without having 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 the admission of fault.

**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 the standard is higher and requires "clear and convincing" proof.

**Statute**

A law passed by a legislature.

**Statutory Law**

Law, or statute, enacted by a state legislature or the United States Congress.

**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.

**Subpoena**

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

**Suit**

A legal action or proceeding.

**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**

An oral declaration made by a witness or party under oath.

**Tort**

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

**Transcript**

A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition.

**Trial**

The formal examination of a legal controversy in court so as to determine the issue.

**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.

**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.

**Warrant**

Court authorization, most often for law enforcement officers, to conduct a search or make an arrest.

**Witness**

A person called upon by either side in a lawsuit to give testimony before the court or jury.