

COMMON LEGAL TERMS

Affidavit — a written or printed statement made under oath.

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."

Arbitration — the use of an arbitrator to settle a dispute. Similar to a mediation.

Bankruptcy (can be mistyped as bankruptcy) — a legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the chapters of title 11 of the United States Code (the Bankruptcy Code).

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.

Complaint (can be easily mistyped as compliant) — a written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

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 facto — Latin, meaning "in fact" or "actually." Something that exists in fact but not as a matter of law.

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 some constitutional right.

Default judgment — 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 — an individual (or business) against whom a lawsuit is filed; in a criminal case, the person accused of the crime.

De minimis (often misspelled minimus) — Latin. It means “the law does not take account of trifles.”

Deposition — an oral statement made before an officer authorized by law to administer oaths (usually a court reporter). 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.

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

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.

Examination under oath (EUO) — a formal proceeding during which an insured, under oath and in the presence of a court reporter, is questioned by an insurance company representative.

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

Face sheet filing (can be mistyped as “fact sheet”) — a bankruptcy case filed either without schedules or with incomplete schedules listing few creditors and debts. (Face sheet filings are often made for the purpose of delaying an eviction or foreclosure)

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

In camera (do not hyphenate!!) — Latin, meaning in a judge's chambers. Often means outside the presence of a jury and the public. In private.

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.

Interrogatories — a form of discovery consisting of written questions to be answered in writing and under oath.

Judgment (commonly misspelled as judgement, which has a different meaning) — the official decision of a court finally resolving the dispute between the parties to the lawsuit.

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. See also grand jury.

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.

Lien — a charge on specific property that is designed to secure payment of a debt or performance of an obligation. A debtor may still be responsible for a lien after a discharge.

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

Magistrate judge — a judicial officer of a 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.

Mediation — intervention in a dispute in order to resolve it

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 (common misspelling: mute) — 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 requesting the court to prohibit the other side from presenting, or even referring to, evidence on matters said to be so highly prejudicial that no steps taken by the judge can prevent the jury from being unduly influenced.

Parol evidence rule (often misspelled as “parole”) — a substantive common law rule in contract cases that prevents a party to a written contract from presenting extrinsic evidence that discloses an ambiguity and clarifies it or adds to the written terms of the contract that appears to be whole.

Peremptory challenge (often mistyped “preemptory”) — a district court may grant each side in a civil or criminal trial the right to exclude a certain number of prospective jurors without cause or giving a reason.

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

Precedent (can be mistyped “president”) — 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.

Pretrial conference — a meeting of the judge and lawyers to plan the trial, to discuss which matters should be presented to the jury, to review proposed evidence and witnesses, and to set a trial schedule. Typically, the judge and the parties also discuss the possibility of settlement of the case.

Prima facie (commonly mistyped as prima facia or fascia) — based on the first impression; accepted as correct until proved otherwise.

Pro se — representing oneself. Serving as one's own lawyer.

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

Quitclaim deed (commonly mistyped as “quick claim”) — a legal instrument which is used to transfer interest in real property. The entity transferring its interest is called the grantor, and when the quitclaim deed is properly completed and executed it transfers any interest the grantor has in the property to a recipient, called the grantee.

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

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.

Statute (often misspelled “statue”) — a law passed by a legislature.

Subpoena (often misspelled “subpeona”) — a command, issued under a court's authority, to a witness to appear and give testimony.

Subpoena duces tecum (watch out for “deuces”) — a command to a witness to appear and produce documents.

Testimony — evidence presented orally by witnesses during trials or before grand juries.

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

Voir dire — jury selection process of questioning prospective jurors, to ascertain their qualifications and determine any basis for challenge.

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