

Legal Glossary

Action- A general term that may refer to any number of legal options available to a client. For example, “We will consider taking legal action in this matter.”

Adjudication- The decision or resolution of a legal controversy by one with authority to do so.

Affidavit- A declaration of facts confirmed—usually under oath— by the party providing the information. The declaration is typically made before a witness such as a notary.

Affirmed- When a previous decision, or a decision from a lower court, is upheld.

Amicus Brief- Short for the Latin phrase Amicus Curiae, meaning “friend of the court.” A brief submitted to a court by a non-party, usually on behalf of a third party with an interest in the outcome of the case. The amicus brief is intended to bring the interests of the third party to the court’s attention and assist it in deciding the case.

Allegation- A claim or assertion, typically made against a person. Also, what a party intends to prove.

Alternative Dispute Resolution- When a dispute is settled outside of court. Instead of going to trial, a dispute can be settled by mediation, conciliation, arbitration, or settlement.

Answer- A defendant’s response to the plaintiff’s allegations.

Appeal- When a party seeks to have a higher court review the decision of a lower court.

Appellant- The person or party seeking an appeal.

Appellee- The person or party against whom the appeal is made.

Appellate- Generally refers to those matters pertaining to appeals and proceedings for judicial review (e.g., appellate court, appellate procedure, appellate judge, etc.).

Arbitration- When both parties in a dispute bring their case, out of court, to a neutral third party as a form of alternate dispute resolution. Both parties present their cases to the third party, who seeks to resolve the dispute in a hearing.

Attorney-Client Privilege- The protected status granted to communications between a client and their attorney(s). Attorneys have a legal and ethical obligation to

protect (not disclose) information that clients communicate to them “in confidence.” The client, however, does not have any obligation to protect the disclosed information. But if the client discloses the information to a third party, the privilege is typically lost.

Bench trial- A trial in which a judge decides a case without a jury.

Burden of Proof- The threshold that a party must overcome in order to prevail on a particular issue or case. There may be multiple burdens of proof within any given case. For example, the criminal burden of proof to establish guilt is “beyond a reasonable doubt.” In most civil cases, the burden of proof is “a preponderance of the evidence.”

Case law- Legal principles and precedent collected from an aggregation of court decisions over time.

Cause of action- The legal grounds and facts necessary to form the basis for a lawsuit.

Change of venue- Changing the physical location of a trial.

Circuit Split – When two or more federal circuit courts of appeals decide on conflicting sides of the same legal issue.

Class action- A lawsuit filed by one or more people on behalf of a group of persons who are similarly situated.

Complaint- The first document a plaintiff files in a case that states the facts and legal rights against a defendant.

Counsel- A formal term referring to a lawyer or legal adviser.

Counterclaim- a retaliatory claim by a defendant in his answer against a plaintiff in a lawsuit.

Damages- An amount of money that is awarded to a plaintiff in a lawsuit. There are a few categories of damages: actual damages (compensation for loss), nominal damages (legal recognition of a wrong although no actual loss was suffered), or punitive damages (punishment for the wrong).

Decision- Judgment of findings of fact and/or law reached by the court or judge. The ruling in the case.

Declaratory Judgment- A judgment in which the court resolves a legal uncertainty or legal rights for the litigants. No further action may be required.

Declaratory Relief – When a judge makes a declaratory judgment without awarding damages.

Decree- Court’s order or judgment.

Defamation- Damaging a person’s reputation by making untrue statements about them. May be written (libel) or verbal (slander).

Defendant- The party being sued by the plaintiff in a civil lawsuit.

Deposition- A witness’s sworn, out-of-court testimony, to be used later in the trial. Typically occurs during the discovery phase of a lawsuit.

Discovery- That pre-trial phase of a legal proceeding when parties exchange information and documents relevant to a particular case.

Dissent- An opinion of a judge of a court of appeals (including the Supreme Court) that disagrees with the majority opinion.

District Court- The initial trial courts that hear cases within our federal judicial system.

Docket- A term referring to either the list of cases to be heard by a court, or the list of motions, responses, and briefs in a specific case.

Enjoin- When a court orders a party to stop or start performing a specified action.

En Banc- Latin phrase meaning “in the bench.” A relatively rare occurrence whereby an appellate court, in its entirety, decides a case.

Equal Employment Opportunity Commission (EEOC)- The federal agency responsible for investigating and enforcing civil rights within the workplace.

Equal Protection Clause- A clause in the Fourteenth Amendment to the Constitution prohibiting states from denying any person the equal protection of the laws. Although the text of the Clause only refers to “states,” it is generally understood to apply to the federal government as well.

Exhibit- Evidence used in a trial or hearing.

File- To officially place a document in a court administrator’s custody so that it may be a part of a case record.

Forum Non Conveniens- Latin phrase meaning “the forum does not agree.” When a judge declines to exercise jurisdiction over a case because a more convenient court

should hear the case. The plaintiff has the opportunity to file her case again in the new court.

Fourteenth Amendment to the Constitution- Passed after the Civil War, this amendment guarantees citizenship to natural born citizens, the protection of citizens' rights, and due process of law. In modern times, it is most often used to apply the Bill of Rights to the states.

Freedom of Information Act (FOIA)- Federal law that requires government agencies to release information upon the public's request. The government can refuse to release information if they believe keeping requested information secret would threaten national security, a person's right to privacy, or the internal management of the agency.

Grand Jury- A pre-trial jury of 23 citizens that decides if an accused should be indicted and tried.

Hearsay- An out-of-court statement offered in court for the truth of the matter asserted. Hearsay evidence is generally inadmissible, but there are many exceptions.

HHS Mandate- The section of the Affordable Care Act that requires employers of 50 employees or more to cover contraceptive services in employees' health care plans.

Immunity- When a person or entity may not be punished under the law.

Qualified Immunity- A protection whereby state or federal government officials are shielded from liability as long as they didn't violate an individual's statutory or constitutional rights.

Testimonial Immunity- An exemption that replaces the privilege against self-incrimination, neither compelled testimony or any fruits of it can be used against the witness.

Transactional Immunity- A broader form of immunity than Testimonial Immunity whereby, in exchange for an agreement to testify on behalf of the government, the government agrees not to prosecute the witness for the bad acts relating to the testimony.

In Forma Pauperis- Latin phrase meaning "in the form of a pauper." When a person receives a waiver for court filing fees because of their lack of funds to pay the fees.

Injunction- When the court orders a party to perform or cease a particular action, after a court hearing.

Preliminary Injunction- Also referred to sometimes as a Temporary Injunction, a Preliminary Injunction usually occurs prior to a final determination of the

case. Plaintiffs will typically seek a Preliminary Injunction to prohibit the parties from doing an act that is in dispute and in order to maintain the status quo until there is a final judgment after trial. A party must show that they will suffer irreparable harm unless the injunction is issued and it may only be issued after a hearing.

Permanent Injunction- A final court order that a person or entity must permanently refrain from certain activities.

Intervene- When a court permits a third party, who has an interest in the suit, to enter an already existing lawsuit and assert a complaint stating the basis for a claim.

Judicial review- The process by which a higher court reviews a decision, proceeding, or judgment made by a lower court for an error sufficient to require reversal.

Jurisdiction- A court's legal authority to preside over a particular legal matter or within a particular geographic area.

Liable- Legally responsible or obligated.

Litigant- A party involved in a lawsuit. This includes plaintiff, defendant, petitioner, respondent, cross-complainant and cross-defendant, but not a witness or attorney.

Moot- Generally refers to those issues that a court will not consider or rule upon because it is only of academic interest and not a real legal controversy. Courts only have constitutional authority to resolve actual disputes (cases or controversies). Therefore, legal actions cannot be brought or continued after the matter at issue has been resolved, leaving no live dispute for a court to resolve.

Motion- Oral or written application made by the parties requesting a court to issue a desired ruling or order. A motion can be made throughout a lawsuit, but only after the initial complaint has been filed.

Next friend- A substitute or proxy for a person who is not able to appear in court or who is not competent to do so, usually because they are a minor or considered incompetent.

Oath- A pledge to tell the truth, or promise to fulfill a pledge, often calling upon God as a witness. May be oral or written.

Oral argument- Proceeding during which the attorneys for each party argue their positions on a particular matter in court. If the oral argument is at the trial level, the trial judge will preside. If the oral argument is at the appellate level, there may be a panel of judges, or the entire court may hear the argument en banc.

Order- Every direction or mandate of a judge or court, which is not a judgment or legal opinion (although both may include an order), that directs a party to perform or cease a

specific action.

Plaintiff- The party initiating a civil lawsuit against a defendant.

Pleading(s)- Every legal document that is filed in a lawsuit. May refer to motions, complaints, briefs, etc.

Precedent- A court decision that may be used to help resolve subsequent legal questions.

Binding precedent- Those prior court decisions that a court is required to follow and apply on a particular matter.

Persuasive precedent- Non-binding court decisions that a court may, but is not required, to consider when deciding a particular matter.

Pre-litigation- Those actions or issues that occur prior to the commencement of litigation (i.e., before the filing of the complaint).

Pre-trial Conference- A meeting that is held before trial begins, wherein the parties and the judge outline the issues of a case and set timeframes for legal and procedural matters.

Pro bono- Latin term meaning “for the public good.” Refers to legal services that are provided free of charge. First Liberty Institute is a pro bono law firm.

Redact- The process of reviewing a document and modifying it to edit or black out all confidential and sensitive information contained in it.

Remand- to send back. An appeals court may remand a case to the trial court for further action if it reverses the judgment of the lower court.

Religious Freedom Restoration Act (RFRA)- Federal law that protects the American people from any federal action that substantially burdens the free exercise of sincerely held religious beliefs without a compelling state interest pursued in the least restrictive means possible. RFRA was enacted in 1993.

Religious Land Use and Institutionalized Persons Act (RLUIPA) – Federal law that prohibits the imposition of burdens on the ability of prisoners to engage in religious worship and protects religious institutions from land use laws and regulations that substantially burden the use of their property. RLUIPA was enacted in 2000.

Remedy- A form of court enforcement of a legal right resulting from a successful civil lawsuit. May take various forms (e.g., damages, monetary, declaratory, injunctive, punitive, etc.).

Restitution- Compensation for loss, damage, or injury.

Settlement- An agreement that ends a dispute and results in the voluntary dismissal of any related litigation.

Standing- Doctrine referring to the status of having a legal right to sue. A party must have sustained or will sustain a direct injury or harm and that harm must be redressable, or the party must have a direct stake in an action to be able to bring suit.

Stare Decisis- Latin phrase meaning “to stand by things decided.” Doctrine of precedent whereby a court decides a case based on laws and principles of previous court rulings.

Stay- The judicial act of suspending or halting certain proceedings. May take various forms (e.g., Stay of Proceedings, Stay of Execution, Stay of Removal, etc.).

Statutory- Of or relating to codified laws.

Subject Matter Jurisdiction- The court’s legal authority over the nature of a case and the type of remedy demanded.

Summary Judgment- A ruling in a civil action by a federal court whereby it decides a case before a full trial by applying the law to a set of undisputed facts (because no factual issues remain to be tried).

Temporary Restraining Order- A short-term, pre-trial order of a court to keep conditions as they are until there can be a hearing in which both parties are present.

Texas Religious Freedom Restoration Act (TRFRA)- The Texas version of the Religious Freedom Restoration Act. The Act states that the Texas government cannot enact any law that prohibits the free exercise of religion. The government must have a compelling interest in order to inhibit a person’s religious expression. The Texas legislature passed TRFRA in 1999.

Title VII of the Civil Rights Act of 1964- Federal law that bans discrimination based on race, nationality, sex, color, or religion. Applies to public employers and private employers with fifteen or more employees.

Tort- French for “wrong,” a tort is a civil wrongful act, whether intentional or accidental, from which an injury occurs to another. The injury is usually to a person, property, or reputation. Compensation is usually awarded to the injured party. Tort actions are adjudicated by civil (non-criminal) courts.

Vacate- When a judge sets aside, or cancels, an order or judgment.

Verdict- The decision of a jury, after a trial, about the factual issues presented by a case, which must be accepted by the trial judge to be final. Sometimes, the term also refers to the judge’s resolution of issues in a bench trial.

Writ of Certiorari- Issued when an appellate court decides to review a case from a lower court at its discretion..

501(c)(3) The section of the Internal Revenue Service Code referring to an organization or entity that receives federal tax exempt status because it is operated exclusively for the purposes of religion, charity, public safety, literacy, helping children or animals, or education.