AP Government: Common Legal Terms

A

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.

Admissible

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

Affidavit

A written or printed statement made under oath.

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."

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.

Arraignment

A proceeding in which a criminal defendant is brought into court, told of the charges in an indictment or information, and asked to plead guilty or not guilty.

B

Bail

The release, prior to trial, of a person accused of a crime, under specified conditions designed to assure that person's appearance in court when required. Also can refer to the amount of bond money posted as a financial condition of pretrial release.

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. (See standard of proof.)

C

Capital offense

A crime punishable by death.

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.

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, which relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

Concurrent sentence

Prison terms for two or more offenses to be served at the same time, rather than one after the other. Example: Two five-year sentences and one three-year sentence, if served concurrently, result in a maximum of five years behind bars.

Consecutive sentence

Prison terms for two or more offenses to be served one after the other. Example: Two five-year sentences and one three-year sentence, if served consecutively, result in a maximum of 13 years behind bars.

Contract

An agreement between two or more people 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.

Count

An allegation in an indictment or information, charging a defendant with a crime. An indictment or information may contain allegations that the defendant committed more than one crime. Each allegation is referred to as a count.

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.

D

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.

De jure

Latin, meaning "in law." Something that exists by operation of law.

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 some constitutional right.

Defendant

An individual (or business) against whom a lawsuit is filed. 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.

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.

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.

Exclusionary rule

Doctrine that says evidence obtained in violation of a criminal defendant's constitutional or statutory rights is not admissible at trial.

Exculpatory evidence

Evidence indicating that a defendant did not commit the crime.

F

Federal public defender

An attorney employed by the federal courts on a full-time basis to provide legal defense to defendants who are unable to afford counsel. The judiciary administers the federal defender program pursuant to the Criminal Justice Act.

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.

Felony

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

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

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. See also indictment and U.S. attorney.

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

Impeachment

The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government, who are then tried by the Senate.

Inculpatory evidence

Evidence indicating that a defendant did commit the crime.

Indictment

The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

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/Interrogation

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.

Judgeship

The position of judge. By statute, Congress authorizes the number of judgeships for each district and appellate court.

Judgment

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.

L

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.

M

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.

Misdemeanor

An offense punishable by one year of imprisonment or less. See also felony.

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 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.

N

Nolo contendere

No contest. A plea of nolo contendere has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

O

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. See also precedent.

Oral argument

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

P

Panel

1. In appellate cases, a group of judges (usually three) assigned to decide the case; 2. In the jury selection process, the group of potential jurors; 3. The list of attorneys who are both available and qualified to serve as court-appointed counsel for criminal defendants who cannot afford their own counsel.

Parole

The release of a prison inmate – granted by the U.S. Parole Commission – after the inmate has completed part of his or her sentence in a federal prison. When the parolee is released to the community, he or she is placed under the supervision of a U.S. probation officer.

The Sentencing Reform Act of 1984 abolished parole in favor of a determinate sentencing system in which the sentence is set by sentencing guidelines. Now, without the option of parole, the term of imprisonment the court imposes is the actual time the person spends in prison.

Per curiam

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

Petit jury (or trial jury)

A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of at least six persons.

Plaintiff

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

Plea

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

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.

Pro se

Representing oneself. Serving as one's own lawyer.

Pro tem

Temporary.

Probation

Sentencing option in the federal courts. With probation, instead of sending an individual to prison, the court releases the person to the community and orders him or her to complete a period of supervision monitored by a U.S. probation officer and to abide by certain conditions.

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

R

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.

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.

S

Sanction

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

Sentence

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

Sequester

To separate. Sometimes juries are sequestered from outside influences during their deliberations.

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.

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.

T

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

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.

Uphold

The appellate court agrees with the lower court decision and allows it to stand. See affirmed.

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

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.

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 which it will hear on appeal.