

## JUDICIAL PROCESS GLOSSARY

Adapted from: Rossum & Tarr, David O'Brien

**Abstention:** The doctrine under which the U.S. Supreme Court and other federal courts choose not to rule on state cases, even when empowered to do so, so as to allow the issue to be decided on the basis of state law.

**Actus Reus:** The physical element of a criminal act.

**Advisory Opinion:** A legal opinion rendered at the request of the government or another party indicating how the court would rule if the issue arose in an adversary context.

**Amicus Curiae:** "Friend of the court." A person or group not directly involved in a particular case that volunteers or is requested by the court to supply its views on the case (usually through the submission of a brief.)

**Appeal:** The procedure whereby a case is brought from an inferior to a superior court. In the Supreme Court, certain cases are designated as appeals under federal law and, in theory, must be heard formally by the court.

**Appellant:** The party who appeals a decision from a lower to a higher court.

**Appellate Jurisdiction:** The authority of a court to hear, determine, and render judgment in an action on appeal from an inferior court.

**Appellee:** The party against whom an appeal to a superior court is taken and who has an interest in upholding the lower court's decision.

**Arraignment:** The formal process of charging a person with a crime, reading the charge, and asking for and entering his plea.

**Bail:** The security (cash or bond) given as a guarantee that a released prisoner will appear at trial.

**Bill of Attainder:** A legislative act declaring a person guilty of a crime and passing sentence without benefit of trial.

**Brief:** A document prepared by counsel as the basis for an argument in court. It sets forth the facts of the case and the legal arguments in support of the party's position.

Case Law: The law as defined by previously decided cases.

Certification: A method of appeal whereby a lower court requests a higher court to rule on certain legal questions so that the lower court can make the correct decision in light of the reply.

Certiorari: Writ of: An order from a superior court to an inferior court to forward the entire record of a case to the superior court for review. The U.S. Supreme Court may issue such writs at its discretion.

Civil Action: A lawsuit, usually brought by a private party, seeking redress for a noncriminal act (e.g., a suit in negligence, contract, or defamation).

Class Action: A suit brought by a person or a group on behalf of all persons similarly situated.

Comity: Courtesy and respect. In the legal sense, the respect federal courts give to the decisions of state courts.

Common Law: Principles and rules of action, particularly from unwritten English law, whose authority stems from long-standing usage and custom or from judicial recognition and enforcement of those customs.

Concurrent Powers: Powers which may be exercised by both the national government and state governments.

Concurring Opinion: An opinion submitted by a member of a court who agrees with the result reached by the court in a case but either disagrees with the court's reasons for the decision or wishes to address matters not touched in the opinion of the court.

Declaratory Judgment: A judicial pronouncement declaring the legal rights of the parties involved in an actual case or controversy but not ordering a specific action.

De Facto: "In Fact." The existence of a thing in fact or reality, as opposed to de jure (by right).

Defendant: The person against whom a civil or criminal charge is brought.

De Jure: "By Right." Lawful, rightful, legitimate; as a result of official action.

De Minimis: unimportant, not warranting adjudication.

Discretionary Jurisdiction: Jurisdiction that a court may accept or reject in particular cases. The Supreme Court has discretionary jurisdiction over 90% of its caseload

**Dissenting Opinion:** An opinion submitted by a member of a court who disagrees with the result reached by the court.

**Distinguish:** To point out why a previous decision is not applicable.

**Diversity Jurisdiction:** The authority of fed. courts to hear cases involving citizens of different states.

**Docket:** All cases filed in a court.

**Dual Federalism:** The view that national powers should be interpreted so as not to invade traditional spheres of state activity.

**Equity:** The administration of justice based upon principles of fairness rather than upon strictly applied rules found in the law.

**Error/Writ of:** A writ issued by a superior court directing a lower court to send it the record of a case in which the lower court has entered a final judgment, for the purpose of reviewing alleged errors made by the lower court.

**Exclusionary Rule:** The rule that evidence obtained by illegal means, such as unreasonable searches and seizures, cannot be introduced by the prosecution in a criminal trial.

**Ex parte:** "From (or on) one side." A hearing in the presence of only one of the parties to a case, such as a hearing to review a petition for a writ of habeas corpus.

**Ex Post Facto:** "After the fact." A law which makes an action a crime, though the action was legal when it was committed.

**Ex Rel:** "By (or on) the information of." The designation of suit instituted by a state but at the instigation of a private individual interested in the matter.

**Federal Question:** A case that contains a major issue involving the U.S. Constitution, or U.S. laws or treaties. (The jurisdiction of fed. courts is limited to federal questions and diversity suits.)

**Habeas Corpus:** "You have the body." A writ inquiring of an official who has custody of a person whether that person is imprisoned or detained lawfully.

**Hearsay:** information not known first hand by the person providing it.

**In Camera:** "In chambers." The hearing of a case or part of a case in private (without spectators).

**Incorporation:** The process by which provisions of the Bill of Rights were applied as limitations on state governments through the Due Process Clause of the Fourteenth Amendment.

**In Forma Pauperis:** "In the manner of a pauper." Permission for indigents to bring legal action without payment of required fees.

**Injunction:** A writ prohibiting the person to whom it is directed from performing some specified act.

**In Re:** "In the matter of; concerning." The name for judicial proceedings in which there are no adversaries.

**Judgment of the Court:** The ruling of the court (independent of the reasons for the ruling).

**Judicial Review:** The power of a court to review legislation or other governmental action in order to determine its validity with respect to the U.S. constitution or state constitutions.

**Juris Belli:** "Under the law of war." That part of the law of nations which defines the rights of belligerent and neutral nations during wartime.

**Jurisdiction:** The authority of a court to hear, determine, and render final judgment in an action, and to enforce its judgments by legal process.

**Justiciability:** The question of whether a matter is appropriate for judicial decision. A justiciable issue is one that appropriately can be decided by a court.

**Litigant:** An active participant in a lawsuit.

**Majority Opinion:** An opinion in a case that is subscribed to by a majority of the judges who participated in the decision.

**Mandamus:** "We command." A court order directing an individual or organization (usually in government) to perform a particular act.

**Mens Rea:** The mental element of a criminal act.

**Moot:** Unsettled, undecided. A moot question is one in which either the result sought by the lawsuit has occurred or the conditions have so changed as to render it impossible for the court to grant the relief sought.

**Obiter Dicta:** (Also called dictum or dicta.) That part of the reasoning in a judicial opinion which is not necessary to resolve the case. Dicta are not necessarily binding in future cases.

**Opinion of the Court:** The opinion which announces the court's decision and is adhered to by a majority of the participating judges.

**Ordinance:** A statute or regulation of a city (or municipal) government.

**Original Jurisdiction:** The authority of a court to hear, determine, and render judgment in an action as a trial court.

**Overrule:** when a court's decision repudiates the principle of a prior decision of that court. The older decision is no longer authoritative.

**Per Curiam:** "By the court." An unsigned opinion by the court, or a collectively authored opinion.

**Petitioner:** The party who files a petition in court seeking action.

**Plaintiff:** The party who brings a civil action or sues to obtain a remedy for an injury to his or her rights.

**Plea Bargain:** Negotiations between the prosecution and defense aimed at exchanging a plea of guilty for concessions by the prosecution.

**Plenary consideration:** Full consideration; after briefs, oral arguments, & hearings.

**Plurality Opinion:** An opinion announcing the decision of the Court, in which less than a majority of the Court join.

**Police Power:** The power of a state to protect the health, safety, welfare, & morals of its citizens.

**Political Question:** An issue that a court believes should be decided by a nonjudicial unit of gov't.

**Precedent:** A prior case relied upon in deciding a present dispute.

**Preemption:** The doctrine under which issues previously subject to state control are brought, through congressional action, within the primary or exclusive jurisdiction of the national gov't.

**Prima Facie:** "At first sight." Evidence that, unless contradicted, is sufficient to establish a claim without investigation or evaluation.

**Pro Bono:** "For the good." Legal services rendered without charge.

**Ratio Decidendi:** "reason for the decision" ... the principle that decided the case.

Remand: To send back. In remanding a decision, a higher court sends it, for further action, back to the court from which it came.

Respondent: The party against whom a legal action is taken.

Ripeness: the principle that courts will not hear cases prematurely; avoid guessing at pertinent facts.

Sovereignty: Supreme political authority.

Special Master: A person designated by a court to hear evidence and submit recommendations & findings based on that evidence. The Supreme Crt. typically uses special masters in original jurisdtn.

Standing: The qualifications needed to bring or participate in a case. To have standing to sue, plaintiffs must demonstrate the existence of a controversy in which they personally have suffered or are about to suffer an injury or infringement of a legally protected right.

Stare Decisis: "Let the decision stand." The doctrine that a point settled in a previous case is a precedent that should be followed in subsequent cases with similar facts.

State Action: Action by the state or by a private entity closely associated with it ("under color of state law"). A basis for redress under the Due Process & Equal Protection clauses of the 14th Amendments.

Statute: A written law enacted by a state legislature.

Stay: To halt or suspend further judicial proceedings.

Subpoena: An order to present oneself and to testify before a court, grand jury, or legislative hearing

Subpoena Duces Tecum: An order by a court or other authorized body that specified documents or papers be produced.

Sub silentio: covertly ... without explicitly saying so.

Summary consideration: Without the benefit of briefs & oral arguments.

Tort: Willful or negligent injury to the person, property, or reputation of another.

Ultra Vires: "Beyond Power." Action beyond the legal authority of the person or body performing it.

Vacate: To make void, annul, or rescind.

Venue: The jurisdiction in which a case is to be heard.

Vested Rights: Long established rights which government should recognize and protect and which a person cannot be deprived of without injustice.

Writ: A written court order commanding the recipient to perform or refrain from performing acts specified in the order.