

The following quick reference sheet highlights some of the most common terms you are likely to encounter during your first weeks of law school. These terms are by no means exhaustive, and the information provided in this guide is merely a starting place. You will learn more about each of these terms in the coming weeks, and throughout your 1L year. Keep Black's Law Dictionary (or [another reputable legal dictionary](#)) with you — whether physically or virtually — whenever you study so you can immediately look up any term or phrase for which you cannot readily recall the definition. Doing so will help you not just learn, but master, the language of the law — and will get you that much closer to developing the essential skill of legal fluency.

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Sources of Law

Primary Source of Law: Law created and published by any branch of the government (ex: U.S. Constitution, statutes, regulations, cases).

Secondary Sources of Law: Publications that interpret, discuss, categorize or provide notations to those primary sources of law (ex: casebooks, treatises, legal scholarship, hornbooks and study supplements) are secondary sources.

Mandatory Authority: Law that must be followed by courts and others within a particular jurisdiction. For example, trial courts must follow the decisions of appellate courts within their own system (ex: U.S. District Court for the E.D. of Missouri must follow decisions by the Eighth Circuit Court of Appeals and the U.S. Supreme Court because those cases would be mandatory authority).

Persuasive Authority: Law from outside of the relevant jurisdiction or commentary from a secondary source is persuasive. Courts need not follow the decisions of other courts that are not appellate courts within their own system (ex: U.S. District Court for the E.D. of Missouri need not follow decisions by the Ninth Circuit Court of Appeals because those decisions would be merely persuasive [not mandatory] authority).

Rules

Rules: Any standard, guide, or regulation established by a rule-making authority (court, legislature or executive agency); a discrete item of “the law.”

Rules have a variety of terms and words of art that go with them. Your rule may be made up of factors, it may be made up of elements, or it may be a balancing test.

Factors Test: A test where the court considers many different components that are relevant to reach a decision (ex: To determine whether X results, consider A, B, C and D).

Elements: Items that are defined by the law as being necessary to reach a decision.

Conjunctive Elements Test: Several elements must all be established for a rule to apply (ex: X results if A, B and C are met).

Disjunctive Elements Test: A rule will apply when either one or another element is met (ex: X results if either A or B is met).

Balancing Test: A test where the court weighs two or more factors to reach a decision (ex: X results where A outweighs B).

Standards of Proof

Preponderance of the Evidence: the party with the burden of proof must be more convincing than the other party — conceptually, by at least 51%.

Clear and Convincing: a higher standard than preponderance of the evidence, but lower than beyond a reasonable doubt.

Beyond a Reasonable Doubt: the highest standard, applied in criminal cases.

Parts of a Case

Precedent and Inherited Authority: The principle that a case needs to be decided in line with the previous cases on a similar point with similar facts.

Procedural Facts: The logistical steps that happened within the lifespan of the case itself, from the point of filing to the point of the court's decision.

Legally Relevant Facts: Facts that are important to the judge in making his or her decision. Legally relevant (or legally significant) facts, if changed, would alter the court's reasoning or change the court's holding.

Reasoning of the Court: The thought process of the court; the “how” and “why” the court reached its decision is referred to as the court's reasoning.

Holding/Ruling/Outcome: These terms are often used interchangeably to refer generally to the answer to the central question of the case (the issue).

Disposition: The specific outcome of the case for the current litigants (ex: reversed and remanded for new trial on the merits).

Dicta: Any part of a court opinion that is unnecessary to the resolution of the dispute before the court is called dicta and it is not binding on later courts.

Dissent: A separate opinion issued when a justice disagrees with the majority opinion and presents his or her opinion on the issue at dispute.

Parts of a Case (continued)

Concurrence: A separate opinion issued by a justice who ultimately voted with the majority but disagreed with some or all of the reasons supporting the majority's legal conclusion.

Parties to a Case

At trial:

Plaintiff (or Petitioner): The party who brings a civil suit in a court of law is the plaintiff. In a criminal suit, the government prosecutes and there is no plaintiff.

Defendant: The person sued in a civil proceeding or prosecuted in a criminal proceeding.

On appeal:

Appellant (or Petitioner): The party who appeals the case (usually the party who lost in the lower court).

Appellee (or Respondent): The party who won in the trial court and must respond to appellant/petitioner's appeal.

Civil Cases

Summons: A notice indicating that the plaintiff has filed a lawsuit and the defendant is required to answer the complaint.

Complaint/Petition: A document filed by the plaintiff that initiates a lawsuit and sets forth facts and legal claims.

Answer: A response from the defendant to claims made in the complaint.

Motion to Dismiss/Demurrer: A request to the judge from the defendant to end the case because the complaint does not state a legal claim.

Civil Cases (continued)

Discovery: The process by which parties obtain facts and evidence from each other by asking for documents and questioning witnesses.

Interrogatories: Written discovery questions

Depositions: Questioning parties or witnesses under oath

Request for Documents: Written requests for documents as part of discovery (including medical records, emails, text messages, other communications, etc.)

Motion for Summary Judgment: A request to end the lawsuit without trial because there are legally relevant factual disputes, and one side is entitled to prevail.

Trial: The judge or jury hears testimony/reviews evidence and issues a verdict.

Motion for Directed Verdict: A request by the defense to dismiss the lawsuit after the plaintiff has presented testimony.

Jury instructions: Directions for the jury on whether and how to consider evidence, what law to apply to the facts, etc.

Verdict: The jury's decision at the close of evidence.

JNOV (judgment notwithstanding the verdict): A request to set aside the jury's verdict.

Opinion and Judgment: The decision of the court.

Appeal: A party applies to a higher court for a different decision.

Court of Appeals/Supreme Court: Typically, intermediate and highest appellate court in a jurisdiction.

Briefs: Documents filed by the parties setting forth the legal basis for the appeal.

Criminal Cases

Complaint/Warrant or Summons: Statement charging an individual or entity with "counts" or specific violations of the law.

Indictment: A grand jury's written accusation charging a person or entity with a crime, after the grand jury has considered evidence and found probable cause to try the person or entity.

Preliminary Hearing: Alternative to a grand jury, where a judge considers evidence and decides whether there is probable cause to try the defendant.

Information: The "charging document" filed after a judge has found probable cause at a preliminary hearing.

Arraignment: A court appearance by the accused to hear the charges and enter a plea (guilty or not guilty).

Motion to Suppress: A request that the court refuse to allow a particular piece of evidence to be admitted.

Criminal cases employ similar use of directed verdict/jury instructions/verdicts/opinions/judgment and appeal.

Legal Analysis

Analogize a Case: To take the facts, rationale, or argument of a written decision and explain how they are similar to your case.

Distinguish a Case: To take the facts, rationale or argument of a written decision and explain how there is a significant factual, procedural, or legal difference between that written decision and the facts of your case.