

Law Guidebook and Working Reference Manual



Legal Meanings, Terms, and Definitions

Working Familiarity with the Language of American Jurisprudence

Reversible Error – Reversible Error is an error which substantially affects appellant’s legal rights and obligations which, if uncorrected, would result in a miscarriage of justice and which justifies reversing a judgment in the court below even if the error was not objected to in the lower court.

Prejudicial Error – see Reversible Error (synonymous).

Harmless Error – Harmless Error is an error which is not sufficiently prejudicial to an appellant or does not affect his or her substantial rights so as to warrant the reviewing court overturning or otherwise modifying the lower court decision

Whether a particular error is harmless or not is a matter of federal and not state law as to federal constitutional questions.

The burden of whether a particular error is harmless or not falls upon the prosecution in that “the prosecution has the burden of proving ‘beyond a reasonable doubt that the error . . . did not contribute to the verdict obtained’” 368 US 18, 24.

Plain Error – Plain Error is a rule requiring an appellate court to reverse a conviction (or decision) and award a new trial when an obvious (palpable) error in the trial proceedings which was not objected to during the trial and went uncorrected by the trial court, affected the defendants right to a fair trial

In such an instance as an error having occurred so prejudicing the defendant’s rights and the trial court having failed to correct such error, even if or though no objection is made by the defendant(s), the appellate court will conclude that there was plain error and direct that there be a retrial.

Error – An Error as used in a legal sense is an act involving a departure from truth or accuracy; a mistake 252 P 2d 550, 555.

After the court has rendered its ruling or judgment, an erroneous ruling on a legal issue [Error of Law] occurring during the trial is subject to review by an appellate court. However, a claim that the Trier of fact improperly found a fact [Error of Fact] may be reversed by the trial court on the grounds that the verdict was against the weight of the evidence, or by the appellate court on the more limited ground that the lower court could not have reasonably found the facts it did.

Erroneous – Erroneous meaning involving a mistake; as used in a legal sense erroneous signifies a deviation from the requirements of the law.

Erroneous is distinguished from Illegal in that erroneous does not connote a lack of legal authority.

Erroneous “means having the power to act, but [committing] error in its exercise” 15 F 2d 285, 286.

Erroneous Judgment – An Erroneous Judgment is a judgment “rendered according to course and practice of court, but contrary to law, or upon erroneous application of legal principles” 157 SE 434.

An Erroneous Judgment remains in effect until reversed or modified upon appeal, it is not void, and not subject to collateral attack.

Recall a Judgment – Recall a Judgment meaning to reverse or vacate a decision based on a matter of fact, as opposed to a matter of law.

Assignment of Error – An Assignment of Error is “the appellant’s declaration or complaint against the trial judge charging error in the acts of the lower court which assignments are the basic grounds for reversal” 177 So. 2d 833, 835.

Expert Witness – An Expert Witness is a witness having special knowledge of the subject about which he or she is about to testify.

The knowledge must generally be such knowledge as that which would not normally be possessed by the average person. The expert witness is thus, able to afford the tribunal [trier of fact] having the matter under consideration a special assistance.

This expertise may derive from either, study and education, or from experience and observation.

De Novo Hearing – A De Novo Hearing is a new hearing. De Novo: Latin meaning: new, young, fresh, renewed, revived; a second time.

In a De Novo Hearing, the judgment of the trial court is suspended and [the reviewing court] determine[s] the case as though it originated in [the reviewing court] and give[s] no attention to the findings and judgment of the trial court except as may be helpful . . . in the reasoning” 46 NE 2d 429,430.

Degree of Proof – Degree of Proof is the measure of probability necessary in order for a court or other fact finder to render a decision or verdict with regard to the evidence presented to it.

Insufficient Evidence – Insufficient Evidence is a decision by a trial judge that the evidence offered by a plaintiff or prosecutor to prove his or her case has failed to provide even the minimum degree of evidence necessary to proceed with the case.

This decision results in a directed verdict or ruling in favor of a defendant.

If an appellate court decides that the evidence was insufficient, it will reverse the decision of the lower court and dismiss the case.

Preponderance of the Evidence – Preponderance of the Evidence is a general standard of proof in civil cases.

“Evidence preponderates where it is more convincing to the trier [of fact] than the opposing evidence” McCormick, Evidence 957 (3rd ed. 1984).

It thus refers to proof which leads the trier of fact to find that the existence of the fact in issue is more probable than not.

Proof - Proof is the evidence that tends to establish the existence of a fact in issue; the persuasion of the trier of fact by the production of evidence of the truth of a fact alleged.

Prima Facie – Prima Facie – Latin meaning: at first view, on its face; not requiring further support to establish existence, validity, credibility, etc.

Prima Facie Case – A Prima Facie Case is a case which is sufficient on its face, being supported by at least the requisite minimum evidence, and being free from palpable defects.

Presumptive Evidence – Presumptive Evidence is prima facie evidence or evidence that is not conclusive; evidence that must be received and treated as true and sufficient until and unless rebutted by other evidence, i.e., evidence that a statute deems to be presumptive of another fact unless rebutted.

Clear and Convincing – Clear and convincing as a standard of proof is that quantum of evidence beyond a mere preponderance, but below that of “beyond a reasonable doubt, and such that it will produce in the mind of the Trier of the fact a firm belief as to the facts sought to be established.

Rebuttal Evidence – Rebuttal Evidence is any evidence that repels, counteracts, or disproves evidence given by a witness,” 158 P 2d 799, 80; also, “that which explains away, contradicts, or otherwise refutes the adverse party’s evidence “by any process which consists merely in diminishing or negating the force’ of it” 202 NW 896, 898.

It is that evidence which may be offered to contradict other evidence or to rebut a presumption of fact.

Rebuttal can only attack those claims made in the opposing party’s argument and cannot raise any new issues.

Conclusion of Fact - Conclusion of Fact is conclusion reached solely through use of facts and natural reasoning, without resort to rules of law; inferences from evidentiary facts.

Conclusion of Law – Conclusion of Law is conclusion reached through application of rules of law.

“Where the ultimate conclusion can be arrived at only by applying a rule of law, the result so reached embodies a conclusion of law, and is not a finding of fact” 229 NW 194, 197.

Conclusive Evidence – Conclusive Evidence is evidence which is incontrovertible; the term itself contemplates degree of proof.

That is to say, conclusive evidence, is “either not open or not able to be questioned, as where it is said that a thing is conclusively proved, it means that such result follows from the facts shown as the only one possible” 21 So 2d 878, 880.

Miscarriage of Justice – Miscarriage of Justice is damage to the rights of one party to an action that results from errors made by the court during the trial and that is sufficiently substantial to require reversal.

Where the appellate court is seriously doubtful that without committed errors the result in the case would have been the same, the errors may require a reversal on the grounds of a miscarriage of justice.

Question of Fact – Questions of Fact is disputed factual contention traditionally left for the jury to decide, however, when no jury is present, the judge serves as the trier of fact and decides both questions of fact and of law.

The distinction between fact and law is often nebulous, however, the way an issue is characterized in this regard can trigger many different legal consequences since there are different standards of review for findings of fact and finding of laws.

Question of Law – Questions of Law is disputed legal contention left for the judge to decide.

The occurrence or non-occurrence of an event is a question of fact, whereas their legal significance is a question of law.

Appeals are usually determined on questions of law, however, the line between fact and law can be difficult to objectively determine. In such situations, there may be a compound conclusion of law and fact.

Stare Decisis – Stare Decisis meaning to stand by that which was decided. -- more to come

Burden of Proof – Burden of Proof is the duty of a party to substantiate an allegation or issue either to avoid the dismissal of that issue early in the trial or in order to convince the trier of facts as to the truth of that claim and hence to prevail in a civil suit. – more to come

Shifting the Burden of Proof – Shifting the Burden of Proof means transferring to the other party in a litigation the burden that one party has in producing evidence to support his or her claim; it requires that the person who originally had the burden make out a prima facie case or defense by some minimum of evidence.

Finding – Findings are decisions of a court on issues of fact or issues of law.

The purpose of findings are to answer questions raised by the pleadings, It is de

Findings by design facilitate review by disclosing the grounds on which the judgment rests,

Working list of terms as used in legal sense:

Protective Custody
Rebuttal
Reckless disregard –Motion in error
Writ of error
Due care
Conclusive evidence Bona fide
Breach
But for
Prevarication
Presumption
Inference
Preponderance of the evidence
Premise
Reasonable
Burden of Proof
Question of fact and question of law
Miscarriage of justice – 302
Complaint, Complainant
Compelling Interest
Competent as opposed to incompetent
Collateral attack
Prosecution
Prosecutorial Discretion
Prosecutorial Misconduct
Habeas corpus
Direct attack
Color of law
Comment
Concealment
Equal protection of laws
Compulsory process
Compurgator
Wager of law
Concurrent
Consecutive
Opinion
Confrontation clause
Conjecture
Pro forma
Professional conduct
Pro bono public
Procedendo
Privilege
Prior inconsistent statement
Prima impressions
Prerogative writ as opposed to peremptory writ
Preclusion of issue, issue preclusion, and estoppels
Precedent
Post facto, ex post facto
Post hoc ergo propter hoc
Constitution
Possession, possessory action, possessory interest
Petitioner, plaintiff, respondent
Petition, pleading
Per se
Penal action, penal code or law
Original jurisdiction
Organic law
Order to show cause (show cause order)
Opinion as opposed to decision
Facial invalidity, void for vagueness, on its face
On or about as opposed to of the essence (time of)
Open court
Sequester, Sequestration
Malfeasance, Misfeasance, Nonfeasance
Veracity, credibility as in witness
Venal
Vacate, vitiate
Oath

Shifting the burden of proof
Side-bar
Obiter dicta, orbiter dictum
Obstruction of justice
Offer of proof
Officer, official
Sham pleading
Constitutional right
Construction
Construe
Contempt of court
Contra bonos mores
Contra pacem
Court of law
Abuse of discretion
Absque Hoc
Abstract of record
Abuse of process
Accord
Accusatory instrument
Acquiescence
Act, action, action at law, actionable
Actionable tort
Action ex delicto
Action for possession (possessory action)
Actions in rem
Actions quasi in rem ad damnum
Adhesion contract
Adjudication
Controversy
Admissible evidence
Admissions
Ad testification
Affirmation
Affirmative relief
Adversary
Adversary proceeding
Adverse party
Affidavit
Advocacy
Declaratory judgment
Affiant
Deponent
Affirm
Remand
Reverse
Malice Aforethought
Against the [Manifest] [Weight of the] Evidence
Directed Verdict
Allegation
Aggrieved Party
Pleading
Election of Remedies
Demurrer
American Bar Association
American Civil Liberties Union
Pleading
A posteriori
A priori
Appeal
Appearance
Appellant
Appellate Court
Appellate jurisdiction
Appellee
Argument
Cause of action
Artifice
Articles of Impeachment

Contributory negligence
Atrocious
Attendant circumstances
Authority
Averment
Good faith, bad faith
Recovery
Reasonable belief
Before-the-fact
Best evidence rule
Bill of rights
Breach and as in, breach of contract, duty, care, promise, the peace, trust, of trust with fraudulent intent
Also, constructive, material, partial
Burden
Brief
Brutum Fulmen as opposed to
Operation of the Law
Canon
Calumny
Calendar Call
Capacity
Capias et al
Care, due care, utmost care
Moral certainty, moral turpitude
Case or controversy
Case law, common law
Case of first impression
Causa et al; mortis, proxima, sine qua non
Cause et al, direct, immediate, intervention, proximate, remote, superseding, supervising
Cause of action, splitting of
Caveat
Censure
Certiorari
Challenge, et al general, for cause, also voir dire
Equitable jurisdiction, equity, chancery
Character witness
District court
Circuit court
Chief justice
Circumstantial evidence
Citation, compare subpoena
Civil, and as in action, contempt, law, liability, procedure, rights,
Civil Damages Act
Citizen, civitas
Claim
Claimant
Clean hands doctrine
Code of professional responsibility
Cogent
Cognizable
Collateral estoppels
Litigation, litigated
Construction, strict, implied, statutory, et al
Sua sponte
Subornation of perjury
Summons
Sub judice
Sub modo
Sub nomine
Sub rosa
Sub silent
Suit, suitor, sum certain
Summary proceeding, directed verdict or ruling, summary judgment, summation, summons
Supersedeas
Suppression of evidence
Supra, as opposed to infra
Mistrial

Sustain
False Swearing
Tainted, fruit of the poisonous tree
Mischief
Testify, testimony
Tortious, Tortfeasor, Tort, Tort Claims Act
Threat
To wit
Transfer
Trial
Trial de novo
Trial court
Verdict
Void for vagueness, vagueness
Vicarious liability
Verification
Vexatious litigation
Void, void on its face, null and void, nullify, vitiate
Wager of law
Wanton
Warrant, search and seizure, plain view
Willful
Witness, expert, lay, hostile, adverse, material
Prejudice, with, without, bias,
Kangaroo Court
Words of art
Writ, et al
Wrongful act