COMMON LAW
AND
THE COURTS

Tenth Edition, 2001
Revised By
The Administrative Staff of American Educational Institute, Inc.

PRINTED IN THE UNITED STATES OF AMERICA

COMMON LAW AND THE COURTS

1. INTRODUCTION TO CLAIMS LAW COURSES

Most insurance professionals agree that they need to know the law in order to do their jobs effectively. At AEI we believe that in order to know the law, you must understand how to apply it. This requires more than mere recitation of rules and principles. You must be able to apply the law to different fact patterns you'll encounter in your daily work. In order to understand the law, you'll need to become familiar with the courts and the decisions they hand down.

In AEI course materials you'll read text sections explaining legal rules relating to practical insurance issues. Then, you'll read court decisions that illustrate how those rules have been applied to actual cases – the same kinds of cases you are confronted with on a daily basis. Finally, to test your understanding of the law, you'll take an exam designed to assess your ability to identify legal issues and apply the law to facts similar to those in your claim files.

When you read the text, think about how the legal rules under discussion would apply to the different types of claims you are currently handling or might handle in the future. Then read the cases that follow the text material to see how actual lawsuits have been resolved in the courts. Keep in mind that the text and court decisions don't always mean that your own jurisdiction will resolve similar issues in the same way. State courts are autonomous and are not bound to decide cases in the same way as courts in other states. Even within a particular jurisdiction, courts are not always bound by another court's decision. For example, a state trial court decision is not binding on that state's appellate courts, although a state appellate court decision would be binding on that state's trial courts.

In the federal system, there are trial courts known as federal district courts, circuit courts of appeal and, of course, the Supreme Court. While district courts are bound by decisions of the appeals court in their jurisdiction, they are not bound by decisions of other district courts or the decisions of other circuit courts of appeal. Circuit courts are frequently in disagreement over important issues. When this happens, the Supreme Court frequently agrees to hear cases on those issues so a precedent can be established for all federal courts to follow.

Keep in mind too that it's only the court's ruling on the issue or issues before it that establishes a precedent for other courts to follow. When the court engages in dictum (that is, discussing a matter or matters not necessary to the court's decision), that dictum has no binding effect on courts in subsequent cases. Furthermore, a court in a subsequent case may conclude that the prior court's ruling, which would otherwise be binding, was based on facts sufficiently different that the prior ruling doesn't apply to the case before it. Finally, a state legislature or the U.S. Congress can in some circumstances circumvent the effect of a prior court decision by enacting a statute.

There are few black and white answers in the law. What AEI courses will give you is an understanding of how the law applies to insurance claims and an ability to analyze the claims on your desk so that you can make prompt and correct decisions.

HOW TO READ AND UNDERSTAND CASES

Under our judicial system, in jury trials, the judge decides questions of law and the jury decides questions of fact. (In bench trials, the judge performs both functions.) At the end of a jury trial, the judge tells the jury what the applicable law is. The jury then decides what happened, and applies the law to the facts. The general rule is that the jury is the sole arbiter as to the facts of the event. An appeal rarely can be taken from the jury's determination of what actually happened.

Rulings of the judge on legal issues are subject to review by a higher court. This is called an appeal. The power of the higher, or appellate, court is limited to a review of the proceedings in the lower court. No further testimony may be taken, nor may any further evidence be submitted.

The case material which you will study represents the opinions of the higher courts. In each case, the Appellant (the party taking the appeal) will seek to convince the court that the trial judge in the lower court erred in certain rulings. As a consequence, the Appellant claims the deprivation of a fair trial. The Respondent or Appellee (the party against whom the appeal is taken) will have an opportunity to convince the higher court that the rulings of the lower court were correct. If the Respondent prevails, the higher court will affirm or uphold the decision. On the other hand, if the court is convinced that there was an error of law committed, it may either: (1) reverse the decision and send the case back (remand) to the lower court for a new trial, or (2) reverse the decision and direct the trial court to enter judgment in accordance with the appellate court's decision.

The opinion of the appellate court usually recounts the facts as determined by the jury, and the rulings of law by the lower court that the Appellant urges as being erroneous.

In reading the cases, you should first understand the errors that the Appellant alleges were committed at the trial level and what relief is being demanded (a new trial or a dismissal of the complaint.) You should then proceed to study the opinion to see how the court disposed of each question.

Many students have found that it is helpful for their study, and later review, to outline (brief) each case by breaking down the opinion into the following categories:

1. FACTS: These are set forth in the opinion and are germane to the issue.

2. ISSUES: These are the errors of law that have been alleged and represent the matters on which the court must make a decision.

3. RULING: This is the decision of the court on each of the issues together with a short statement of reasons for the ruling.

Keep in mind that the cases in the text have been edited in order to make them more meaningful to you in your studies. When you see marks such as . . . . or * * * they signify that the editors have decided to omit something from the original.

2. COMMON LAW

ORIGINS OF AMERICAN LAW

The origin of law, like the origin of language, is impossible to determine with any certainty. Suffice it to say that when we emerged from the caves, reason showed us the disadvantages of living by the law of the jungle, and the advantages available as a result of communal living in an orderly way. Organized society was formed, and certain customs and usages emerged which were designed to assure each member of society the right to live in peace and harmony with other members. In this way, our law finds its true source in the customs and usages of society.

In some instances, these customs and usages, whether they referred to business or private conduct, were later enacted into written laws. For example, certain business customs were employed for years by merchants in the conduct of their business. These involved the use of commercial paper, such as bills and notes, and were universally accepted as the rule of business by those engaged in their merchant trade. Later, in England, Parliament passed the Bill of Exchange Act, which we in this country adopted as the Negotiable Instruments Law. This has now been incorporated into the Uniform Commercial Code, which has been enacted by the legislatures in practically all of our states. These laws, called statutes or legislation, have evolved from customs and usages out of commercial necessity.

As our judicial system has evolved, customs and usages have been formally enacted into law in the form of statutes. The legislature, in response to the will of the majority of people, is obligated to and does pass legislation necessary to effect needed changes. An example of this type of lawmaking is the enactment of workers' compensation acts. The public demanded that some system be devised whereby an employee, injured in the course of employment, would receive compensation and medical benefits regardless of negligence or fault on the part of either employee or employer. These acts changed the former "fault" based system under which the employer was required to respond in damages only when the employer's negligence caused the accident.

Our court system employs a combination of statutes enacted by state and federal legislatures and state and federal court decisions based on the English common law system borrowed by the original colonies. Established by our Constitution in 1787, the courts retained the common law system, subject to constitutional guidelines.

At the conclusion of the Revolutionary War, the new states did not have an immediate opportunity to enact laws of their own. They were unable to give the then duly constituted courts any guidance in what system of jurisprudence should be adopted. The courts continued to apply the same rules of decision that had been utilized prior to independence, thus engrafting the English common law upon our American Law. From that time on, courts in each state developed the common law in response to the usages and customs prevailing in their state. While all of the courts started out with the basic English common law, each state's courts in the course of time reaffirmed, amended or rejected the English rules, and in that way each state developed a common law of its own. In *Industrial Acceptance Corporation v. Webb,* 287 S.W. 657 (Missouri), the court, in defining the application of the common law in the United States, said:

> As concerns its force and authority in the United States, the phrase designates that portion of the common law of England * * which had been adopted and was in force here at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States.

This system remains in effect today. When no statute governs an issue, the court will look to prior court decisions to determine what the common law is. When there is a controlling statute, the court must interpret its application to the case.

The highest court in each state has the sole authority to decide the common law principles which will be applicable to matters occurring within the borders of the state. It is not bound by the decisions of the courts of other states as to the common law rules applicable to a given situation. It may be persuaded by those other decisions, and may adopt them as its own. On the other hand, the court may reject the rules adopted in other states, and make its own rules of law. Thus, the common law applicable within a certain state is what the highest court of that state says it is. If the court has not passed on a particular legal problem, the question can be considered to be an "open" one. This poses a particular problem to both lawyers and insurance professionals. The best that can be accomplished in advance of a court's decision is to make an "educated" guess as to how the court might rule, having in mind its past performance in cases of like nature as well as its approval of the decisions of other states in similar matters. Where a number of state courts have adopted the same common law principle and a smaller number have rejected it, the view held by the former is usually referred to as the majority view, while the principle adopted by the smaller number is referred to as the minority view.

CODIFIED LAW – STATUTES

In ancient times, codes originated as written rules of conduct applicable to all members of the community. Some were said to be divinely inspired while others were the written expression of customs already established. The most historic of the ancient codes were the Twelve Tables of Rome (about 450 B.C.) and the Corpus Juris Civilis (about 530 A.D.). The most familiar code to most is the Mosaic Law (Law of Moses) which consisted of ordinances given to Moses at the same time that he received the Ten Commandments.

The object of these codes was to make available in written form the rules of conduct applicable to business and to define the duties and responsibilities imposed upon members of the community. We follow the same approach even today. Every state has a written code in the form of statutes designed to regulate the affairs of its citizens. Just how well these laws meet their objectives will depend upon the clarity with which they are written.

In support of statutory law, both state and federal governments have administrative codes consisting of written rules and regulations which apply to any number of different subjects. While these rules and regulations are a function of the executive branch of government, they help define how statutes enacted by the legislature are to be implemented.

For example, North Carolina has a statute requiring continuing education for adjusters and other insurance professionals. It authorizes the insurance commission to adopt rules governing the administration of continuing education. The rules cover such specifics as the number of credits required, approval of providers, courses and instructors, and sanctions for noncompliance.

Statutes are only one part of our legal system. The final determination of what a particular statute means is made by the courts. The courts even have the power, called judicial review, to strike down a statute if it is found to be unconstitutional. If a legislature disagrees with a court's interpretation of a statute, it can amend the statute, effectively circumventing the effect of the court's ruling for future cases. However, when a court strikes down a statute on constitutional grounds, the legislature, if it wishes to enact new legislation on the same subject, must consider how to achieve the goal of its legislation without running afoul of the constitutional issue ruled on by the court.

COMMON LAW – JUDICIAL DECISIONS

The common law of England, upon which the jurisprudence of all of our states (except Louisiana) is based, consists of a body of rules of action relating to the government and security of persons and property. These rules derive from customs and usages and from the judgments and decrees of courts recognizing, affirming, and enforcing such usages.

Unlike statutes, which are the written will of the people as expressed by the legislature, the common law is the uncodified will of the people as established by customs and usages, and as interpreted and enforced by the courts.

As noted previously, a legislature can neutralize a prior court decision by enacting a statute (unless the court decision was made on a constitutional basis). However, jealous of their jurisdictional prerogatives, courts have taken the position that any statute passed by the legislature that is "in derogation of" or changes the common law is to be strictly construed. In other words, when examining a statute, courts construe it to mean that the common law is altered only in the manner and to the extent that the statute says it is. Nothing is taken for granted. If the statute says that it changes the common law rule in one respect, that is the only change that is recognized by the courts.

Common law, then, is simply the sum total of all court decisions. When an issue is raised in a case, the court will look to prior decisions to determine how the issue should be decided in the case before it. The court will look for cases that address the same or similar issues based on the same or similar facts. If the prior case is "on point," that is it deals with the same legal issues in a substantially similar factual context, the court may be bound to follow its holding or may merely use it for guidance depending on what type of court decided it. Sometimes the case will be "one of first impression," meaning that no other case has dealt with the issue. However the court reaches its decision, it will take its place as part of the common law and may itself be the basis for subsequent court decisions on the issue.

COMMON LAW RIGHTS AND DUTIES

At common law, courts adopted the fundamental concept that each individual was possessed of certain rights, which the courts were bound to protect. These basic rights are: the right to liberty; security of person, property, and reputation; and the services of a wife (now, either spouse) and unemancipated child. Any threat to these rights was actionable. Wrongful invasion of these rights that resulted in the deprivation or diminution of these rights gave rise to an action at law for damages.

As common law has developed in response to societal needs, additional rights have been recognized as deserving of judicial protection. For example, today, a person's right of privacy may be vindicated in a legal action for money damages.

In the law, the duty of one corresponds to the rights of others. Wherever there exists a right in any person, there also rests a corresponding duty upon some other person, or upon all persons generally, not to interfere with that right. The common law imposes a duty of care to act in a certain way towards (1) the community at large, and (2) other individuals.

1. COMMUNITY: The common law required that all members of the community regulate their own conduct in such a way as to avoid any offense to the peace and dignity of the community. The failure to so regulate one's conduct was regarded as having public consequences, in that the community was offended. For such failure, the guilty person was answerable to the community.

These acts that the common law regarded as offensive to the community include arson, assault, battery, homicide, larceny and embezzlement. To this list, other acts have been added by statute. In fact, most American jurisdictions have codified their entire body of criminal law, and the basic elements of any particular crime are now defined by statute. All acts that are offensive to the community are classified as crimes. The public consequences of these acts subject the actor to criminal liability.

Upon conviction, some form of punishment is imposed. This could include a fine, imprisonment or even execution in capital cases. The actor's "debt to society" created by the commission of any of these crimes is discharged only by exacting the punishment that the law requires.

2. INDIVIDUALS: The common law required that each individual respect the obligations assumed under a contract. It also required that all individuals regulate their own conduct in such a way as to avoid interference with, or infringement upon, the basic rights of others recognized by the law. The duty thus imposed not only refers to intentional acts, but also requires the individual to exercise just, proper and sufficient care to avoid an invasion of the rights of others. Based on the common law, then, if an individual has failed to meet these duties and damages have resulted, the aggrieved person may bring an action for damages. If the act, its commission or its omission, involves only the immediate parties, the consequences in the form of an action for damages are "private" in nature. The payment of money damages, whether by judgment or compromise settlement, ends the matter.

An act or an omission may have both public and private consequences. It may be an offense against the peace and dignity of the community, and it may also invade the private rights of an individual. In such a case, the offender is subject to both criminal and civil liability. The actor is answerable to the public for the violation of a public duty and will,

upon conviction, be subject to the punishment prescribed by law. The actor is also answerable in damages to the individual for the invasion of that person's private rights. These are separate and distinct liabilities. The disposition of one will not necessarily have any effect upon the disposition of the other.

For example, A assaults B, causing serious permanent injuries. A is arrested, indicted and convicted of assault with intent to kill. A is sentenced to a prison term. B still has a cause of action against A for damages based on bodily injuries, since A invaded B's legally protected right of safety of person. The fact that A is in the process of paying the debt to society will not absolve A's liability to B. Conversely, if A made a handsome settlement with B prior to the criminal trial, this fact would not relieve A of criminal liability.

REMEDIES – LEGAL AND EQUITABLE

When a person's legally recognized rights are invaded or threatened by another, that person is entitled to a remedy. A "remedy" is what the person is asking a court to do in order to redress the invasion of his or her rights. The legal remedy, in most civil cases, is money damages. If a person suffers injury or property damage at the hands of another who has breached a legal duty owed to the person, the law allows the person suffering the injury or damage to recover a sum of money as compensation. The size of the sum is determined by the judge or jury based on the facts of each case. Money damages may also be recovered for breach of contract.

Although most civil cases involve claims for money damages, some plaintiffs seek other, non monetary relief of an equitable nature. The word "equitable" simply means fair. It originated in cases for which there was no applicable rule of law but for which fairness required a certain resolution. Now, law and equity have been merged and in most cases, the court can consider both legal and equitable remedies available to the litigants. The following is a brief description of the most commonly sought equitable remedies.

1. INJUNCTION: This is a writ (order) issued by a court in equity that forbids one party to the action from acting, or requires that party to cease acting, in such a way as would cause irreparable harm to the other party. For example, a man operates a dog kennel in a residential neighborhood and the residents are disturbed by the barking of the dogs at night. Upon petition and answer, the court could issue an injunction compelling the kennel owner to cease and desist in his operations and to remove the dogs from the neighborhood. In such a case, it is clear that a judgment for money damages would not be an adequate remedy, since the neighbors want to be free from the noise and disturbance, rather than to receive money in payment for a continued inconvenience.

2. REFORMATION: This refers to the power of a court in equity to reform or rewrite a contract to conform with the original intent of the parties. It allows a court to reform or

rectify a contract whenever the contract fails, through fraud or mutual mistake, to express the real agreement or intention of the parties. For example, a house is partially destroyed by fire on March 10th. There is no insurance, but this loss convinces the owners of the necessity for fire insurance. They promptly apply for insurance on March 11th. Through a clerical mistake, the policy issued shows the inception date to be March 1st. The insureds make a claim for the fire damage that occurred on March 10th. The insurance carrier may petition a court in equity to reform the policy to conform with the intent of the parties, which was to provide insurance from March 11th, and not from the date shown on the policy.

3. RESCISSION: This refers to the power of a court in equity to abrogate, annul, void or cancel a contract upon a showing of fraud, either in the inducement or the making of the contract, returning the parties to the positions they would have occupied if the contract had never been made. For example, if the evidence indicates that an adjuster induced a claimant to sign a general release on the representation that the insurance company's physician found no permanent disability when, in fact, he had, a court in equity could find that the fraud of the adjuster induced the claimant to sign the release. The court could issue a decree that the release be cancelled and destroyed. This is an example of fraud in the inducement. In another example, the adjuster calls on the claimant, who has lost his glasses and cannot see well enough to read. The adjuster asks the claimant to sign a paper. The adjuster represents it to be a partial receipt when, in fact, it is a release. The claimant signs it, relying on the statement of the adjuster. On these facts, there is fraud in the factum, or in the making of the contract. A court in equity has the power to void the release. Rescission may also be appropriate in cases involving failure of consideration, material breach of contract, or default. Finally, in certain situations, rescission is achieved by the mutual consent of the parties, expressly or implicitly by virtue of their actions.

4. SPECIFIC PERFORMANCE: This remedy allows a court in equity to compel a party to a contract to fulfill the obligations that he assumed, if the remedy at law for breach of contract is inadequate. Specific performance ordinarily is available only when the subject matter of the contract is unique. For example, every parcel of real estate is considered to be unique. Suppose A owns a lot adjoining B's property. A and B enter into a contract wherein A agrees to sell the lot to B for an agreed price. At the time for performance, A refuses to sell the land, B has a cause of action at law against A for breach of the contract of sale. The measure of B's damage would be the difference in the cost of acquiring another lot of the same size in the same neighborhood as compared with the contract price. Under these circumstances, another lot in the same area would not suit B's purpose, which was to add A's lot to his present holdings. B's remedy at law for breach of contract is inadequate. Therefore, a court in equity could compel A to sell his property to B at the contract price. In other words, A would be compelled to specifically perform the obligation that he assumed under the contract of sale.

Specific performance is not available when an award of money damages would be an adequate remedy. Specific performance is not always feasible, even when the remedy at law is inadequate. Judges are reluctant to grant specific performance in cases in which it would be impossible or very difficult for the court to oversee proper performance of the contract. This is true, for example, with personal services contracts. A court could not effectively force an individual in the performing arts to give a "good" performance.

PRECEDENT (STARE DECISIS)

Precedent is a rule applied by the courts that promotes stability and continuity in the development of common law principles. When a court has laid down a principle of law as applicable to a certain issue, it will adhere to that principle. It will apply that principle to all future cases where the facts are substantially the same. The rule is an authority for binding precedent in the same court, or in other courts of equal or lower rank in the same jurisdiction, in subsequent cases when the same point is again in controversy. It is grounded on the theory that security and certainty require that an established legal principle be recognized and followed. The stability of business and personal affairs requires that such matters be conducted in accordance with the established law. If there were uncertainty as to what the law might require, it is obvious that business and personal relationships would be seriously hampered.

The rule is subject to the exception that courts may modify or overrule a legal principle that they have previously adopted when public necessity demands it or, because of advances in technology, the reason for the rule no longer exists. For example, the original common law view with respect to the ownership of land held that the owner of property owned the land to the center of the earth and the airspace above it to the heavens. Anyone who invaded any portion of this area was considered a trespasser. This pronouncement was made at a time when there were no aircraft. There was no reason why the public would require the use of the airspace above an owner's property. However, in the light of modern conditions and public necessity, the rule has been modified to the extent that the ownership of land does not include all of the airspace above it. It now includes only that portion of the airspace that is required for the enjoyment of the property by the owner. To this end, courts have established three zones above the land. The first zone is the area that the owner has reduced to possession by occupancy, regardless of the height of the building on the property. This zone is in the exclusive possession of the owner and intrusion by aircraft is a trespass. The second zone refers to the airspace above the first zone, which is needed by the owner for the peaceful enjoyment of his property. This also is part of the owner's exclusive possession and no intrusion is legal. The third zone refers to the airspace above the second zone. This has been held to be in the public domain and can be used by anyone, without incurring liability to the owner of the property below. Therefore, if an aircraft is flown at a high altitude within the third zone and does not interfere with the owner's right of possession or his right of enjoyment of his property, there is no trespass.

The widespread use of insurance is another factor that has caused the courts to reexamine some of the well-established principles of law. For example, the policy of the common law courts was to look with favor upon the continuation of marriage and family life without disruption. Therefore, they rejected any litigation between members of the family, which would interfere with the "peace and harmony of the home." A parent could not sue a child; a child could not sue his parent; a husband could not sue his wife; and a wife could not sue her husband for bodily injuries due to his negligence. With the advent of insurance, such suits would have little or no effect on family life. Therefore, the courts have reconsidered their earlier views in this area. Most have ruled that there is no longer any reason for the application of the rule against suits between spouses, and have specifically overruled it. Many also now permit actions between parent and child.

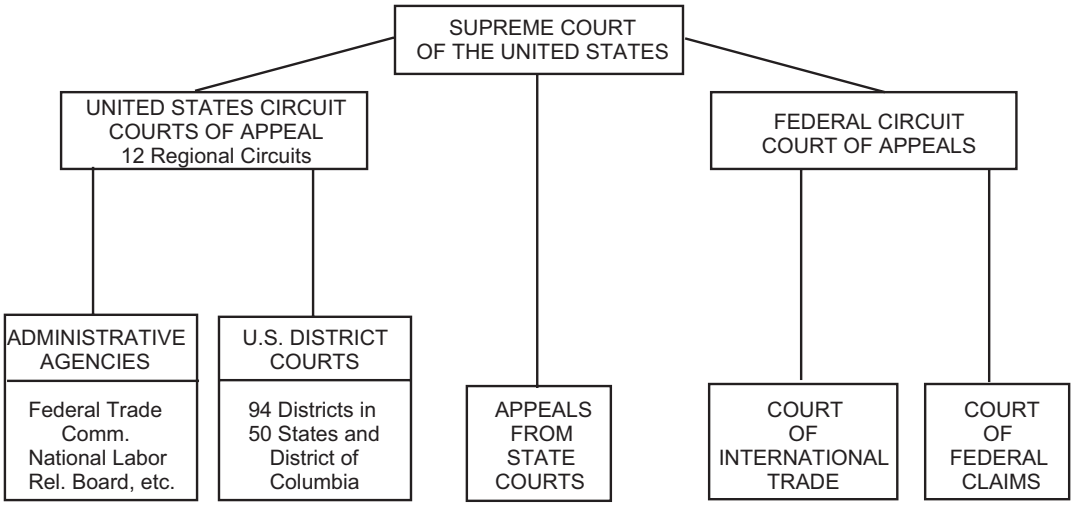
THE AMERICAN JUDICIAL SYSTEM

In the initial stages of organized society, there was one person who exercised all of the rights and powers of sovereignty. He was variously designated as a chief, emperor, or king. As sovereign, he heard and resolved disputes between his subjects. As these matters became more numerous, he delegated this duty to other members of the court, who sat as judges in the king's name and exercised the power of judgment for him. This delegation of authority worked out quite well for a time. Many litigants who were aggrieved by the rulings of the judges appealed to the king, asking him to either properly instruct the judges or to specifically reverse the decision rendered. As these matters became more numerous, the king undertook a second delegation of authority by appointing appellate judges. Their duties were to hear and determine those matters that previously involved an appeal to the king. To avoid any further appeal to the king, the appellate judges sat in groups of three and later five for the purpose of deciding the appeal. The decision agreed upon by the majority of the judges disposed of the matter. The king still was the highest authority and, if a party was dissatisfied with the decision of the appellate court, he could still appeal to the king. This situation prevailed in England until the sovereign powers of the king were transferred to Parliament. The judicial power of the king to hear appeals from the appellate courts was transferred to the Law Committee of the House of Lords. In England today, this Committee is the highest court to which an appeal may be taken.

At the successful conclusion of the Revolutionary War, all the powers of sovereignty became vested in the thirteen states. Each of these states became in effect a separate country. Each of them adopted a constitution, which created the various departments of government, including the judiciary, and set forth the powers delegated to each. All the states decided that there should be a complete separation of the government into three branches: executive, legislative, and judicial. As a result, they did not totally adopt the English judicial system. They created a court, (usually called the Supreme Court) which would act as the highest court of the state and to which appeals could be taken. It is now a matter of history that these thirteen separate nations agreed to form a federation or union. The instrument by which this was accomplished is the Constitution of the United States. In furtherance of this objective, each of the thirteen nations gave up certain rights of sovereignty, relinquishing those rights in favor of the national government of the United States. The Constitution established the U.S. Supreme Court and defined its jurisdiction. Provision was made for the creation of inferior federal courts by the Congress. These federal courts were created for the purpose of handling, among other matters, cases of admiralty and maritime law, cases in which the United States is a party and cases involving controversies between citizens of different states. In all other matters, the state courts have exclusive jurisdiction. Under present federal rules, the federal courts may assume jurisdiction in cases involving controversies between citizens of different states only when the amount in controversy exceeds $75,000, exclusive of interest and costs. Appeals from the decisions of the various federal district courts are taken to the circuit court of appeals of the circuit in which the district court is located. From the circuit court of appeals, an appeal can be taken to the Supreme Court of the United States.

The Supreme Court of the United States can hear appeals from the decisions of the supreme courts of the various states only when there is a federal question involved. Otherwise, the decision of the highest state court is absolute.

THE UNITED STATES COURT SYSTEM



STATE COURTS

In the state system, the trial courts are called by different names, such as: circuit courts (not to be confused with federal circuit courts of appeal), district courts, superior courts, trial courts or, in the case of Pennsylvania, Courts of Common Pleas.

State trial courts are courts of general jurisdiction, meaning that they can hear virtually any kind of case. Many states also have specialized trial courts of various types. For example, probate courts hear cases involving the validity of wills, the administration of estates, and the appointment of guardians. Family courts typically hear matters concerning divorce, custody, child support, and juvenile delinquency. Finally, most state court systems include municipal courts, which hear minor, non-felony criminal matters and traffic cases arising within the particular municipality.

Appeals from the trial courts are taken to courts usually called simply, Court of Appeals. Keep in mind though that some states (e.g., Delaware, Maine, Montana, Nevada, New Hampshire, Rhode Island, Vermont, West Virginia, Wyoming) don't have separate appellate courts. In these jurisdictions, appeals are taken directly to the highest court.

In all but three states, the highest state court is known as the supreme court or the supreme judicial court. In West Virginia, it is known as the Supreme Court of Appeals and in Maryland and New York, the highest court is called the Court of Appeals. New York is particularly confusing because its appellate court is called the Supreme Court, Appellate Division, and its trial courts are called Supreme Courts.

APPEALS

As previously discussed, in the trial of a lawsuit, the jury decides the facts from the evidence presented and the judge decides the law. Once the jury decides the facts, they generally are settled forever and appeals are rarely taken from the jury's determination. For example, generally in a case involving the issue of speeding, the speed of the defendant's automobile is an issue for determination by the jury. If three witnesses testify that the defendant was exceeding the speed limit and two witnesses testify that he was not, the jury will have the task of deciding which of the witnesses it will believe. It could decide that the two witnesses were more believable than the other three. The jury has the opportunity to see and hear the witnesses testify and it has the duty of deciding which witnesses it will believe. Once this question is decided, no appeal can be taken from the jury's determination. The question thus decided by the jury is referred to as a question of fact.

On the other hand, if the plaintiff offers the testimony of a witness who is not qualified as a physician to testify to the physical condition of the plaintiff and to the diagnosis of his injuries, and the defendant objects, the judge will rule as to whether the court will receive the evidence offered. The judge's decision on this point involves a question of law.

Appeals may be taken only on questions of law in which the appellant contends that the judge's rulings were erroneous or the evidence should or should not have been received. When a case is tried before a judge only and both sides have waived a jury trial, the judge acts as both judge and jury, deciding questions of law as well as questions of fact. Appeals may generally be taken only on questions of law.

Appeals often occur upon a decision of law, before any trial on the merits of the case. For example, a defendant demurs to plaintiff's complaint, meaning that the defendant concedes the plaintiff's factual allegations but argues that, even if these facts are true, the plaintiff is not legally entitled to a judgment. Whichever way the judge decides, the aggrieved party may appeal. Another example is when the court grants summary judgment to one of the parties on the grounds that there are no facts in dispute to be heard by a jury. The aggrieved party may appeal.

3. CASE LAW REPORTS AND LEGAL RESEARCH

CASE LAW REPORTS

Since the common law consists of the sum total of the judicial decisions based upon customs and usages, some means had to be found whereby lawyers and judges would have the written opinions of the various courts available. Originally, court reporters undertook this duty and sent transcribed copies of court opinions to those who subscribed to the service. Today these reports are organized by state or region, numbered in sequence, and printed or made available by way of online services such as Westlaw and LexisNexis. Cases may be cited by case name followed by the number of the book in which the case is located and the page on which the case begins. The case of *Smith v. Jones*, cited as 232 N.Y. 71, means that the case would be found in book number 232 of the New York Reports, on page 71. Since the book numbers have reached rather large proportions, most of the reports have a second or third series, beginning again with volume one. For example, if the location of a case is in the second series, the citation would read 30 NY2d 143. This means that the case is located in volume number 30 of the second series on page 143. When an official reporter cite is unavailable, you may see a case cited to an online reporting service such as Westlaw or LexisNexis. Cases cited in this way can be found by using those online services. It should also be pointed out that some court opinions are not officially published. Depending on the rules of the particular jurisdiction, it may be inappropriate for litigants to cite these decisions as precedent.

Each state has its own reporter system, identified by the name of the state. However, law book publishers found that there was a need for a collection of reports for more than one state in one volume. Therefore, they divided the United States into regions and published the reports of the states according to areas. This is called the National Reporter System. For example, the Atlantic Reporter contains the reports of the New England states (excluding Massachusetts and New York), Maryland, New Jersey, Pennsylvania, Delaware, and D.C. The Northeastern Reporter covers New York, Massachusetts, Ohio, Indiana, and Illinois. The Southeastern, Southern, Southwestern, Northwestern, and Pacific Reporters cover the states in those areas. Because of this additional reporting system, cases are cited either in the state reporter system, the national reporter system, or both. For example, if a case were cited as *Smith v. Jones*, 30 NY2d 143, 145 NE2d 15, this gives the location of the case report in both systems.

The decisions of the Supreme Court of the United States are recorded in the United States Reports. As in other citations, the volume number and the page number are given in order to show the location of the opinion, such as 320 US 55. These decisions are also reported in the Lawyers Edition series (e.g., 38 L. Ed.2d 71) and in the Supreme Court series (e.g., 14 S. Ct 22). The decisions of the inferior federal courts are collected in the Federal Reporter (circuit courts of appeal) and the Federal Supplement (district courts).

There are other reporting systems that report all of the cases involving specific subjects. The most prominent of these is the Commerce Clearing House, Inc. (abbreviated CCH), which has a number of systems reporting on various legal subject matter including personal and commercial liability cases and Worker's Compensation.

The American Law Reports (abbreviated ALR), now in its fifth series (ALR 5th), offer an annotation service wherein specific subjects are annotated by means of an exhaustive review of all of the decided cases on a particular subject.

DIGEST SYSTEMS

Legal editors have devised a system of headnotes preceding each reported case, outlining the principles of law involved in the case and the court's ruling. These are designed to assist the reader in finding the law applicable to the case and in disregarding cases which have no bearing on the problem. These headnotes are incorporated into several digest systems in which can be found all the cases listed which bear on the particular headnote of interest. The West Publishing Company has devised a "key number" system in which the headnotes are all given numbers, and once the number of the headnote involving a certain legal principle has been found, all cases in all states involving the same principle can also be found.

The American Digest System operates along similar lines and covers the decisions of all American courts of last resort, both state and federal, from the year 1658 to the present under uniform classifications. This system consists of Digests at first compiled every ten years but now every five years and a General Digest, all key-numbered to follow West's system. There are also the United States Supreme Court Digest (covering all cases in that court) and the Federal Digest (covering the Federal Reporter, Federal Supplement, and the Supreme Court Reporter).

SHEPARD'S CITATIONS

Another tool which can be used to find applicable law is Shepard's Citations. In this compilation, the editors show the citation of the case, and then list beneath the citation all other cases in which the particular case is noted in the opinion. It is tied in with the "key number" system and indicates the particular point or points that are discussed in later cases. It also will show the history of the particular case, whether it was subject to further appeal, either to the highest court of the state or the United States Supreme Court as well as whether it was affirmed or reversed. Shepard's Citations are available for all the national reporting systems, such as the Atlantic Reporter, Northeast Reporter, Southern Reporter, as well as the Federal Reporter and the United States Reports.

The citations are kept up to date by means of monthly supplements and with new volumes issued on a yearly basis.

RESTATEMENT OF THE LAW

The legal profession decided there should be an orderly statement of the common law rather than continued reliance on the "growing indigestible mass of decisions." It was for this purpose that the American Law Institute was formed in 1923. Its membership consisted then and still consists of outstanding lawyers, judges and law professors. The result of their labors was the "Restatement of the Law." It deals with various branches of the law, notably Agency, Conflict of Laws, Contracts, Restitution, and Torts. It attempts to explain the common law rules applicable to various situations. Since the decisions of the courts in many areas are in hopeless conflict, the Restatement recommends a rule to be applied to such cases. While the Restatement is not binding on any court, many courts have been persuaded to adopt the Restatement rule as their own. Others have, in certain areas, rejected the Restatement rule. Therefore, we can regard the Restatement as being persuasive of what the American Law Institute thinks the law should be. To determine whether a court has adopted or rejected the Restatement rule, check the decisions of the court in the state under consideration.

Having completed the original Restatement, the American Law Institute then undertook a complete revision of it. The revised Restatement is referred to as the second series. In citing it, refer to the particular subject and specify that it appears in the revised version by the use of the word "Second." For example, the Restatement of Torts, as revised, would be referred to as, "Restatement, Torts, Second." Some topics are in a Third revision, such as Torts.

COMPUTER ASSISTED LEGAL RESEARCH

The explosive growth of technology and the Internet have made computerized research an efficient way to do your legal research. Initially, the only method for doing computer-assisted research was through large legal information databases that charge a fee for access. These databases have updated their services and now provide fee-based Internet access to their web sites. Reported decisions, statutes and other legal materials are readily available simply by entering the case citation. It is possible to view any reported decision in its entirety, verify that it is still good law, and download it. In addition, these legal databases allow you to conduct research on a particular topic by entering key words or phrases in a search engine. Despite the fees, these databases provide the most expansive and up-to-date legal information available, in addition to providing the ability to perform legal research online.

The Internet is also a reliable and quick tool for retrieving case and statutory law at little or no expense. Some cases and all statutory provisions are available electronically via various state government websites. Keep in mind that the type and amount of information available will vary significantly from state to state. It is worthwhile to visit these websites regularly because the states are increasing their presence on the Internet daily. In addition, there are many law related websites that contain compilations of useful links that may be helpful in doing legal research. With the great volume of court decisions and statutes available online, computerized research is a valuable tool that will help you evaluate claims and understand legal issues quickly and efficiently.

4. LEGAL TERMINOLOGY

GLOSSARY OF LEGAL TERMS

In studying claims law and reading court cases, you will encounter various legal terms. The text and the accompanying cases will be more understandable if you have some knowledge of what certain words mean as well as how they are used. The following definitions and terms may be helpful:

ab initio	Lat., from the beginning.
accord and satisfaction	A settlement; specifically, a legal defense based on the fact that the claim against the defendant has already been settled and cannot be reopened.
acknowledgment	Formal declaration before an authorized official (such as a notary public or commissioner of deeds) by a person who executed (signed) an instrument that it is his or her free act and deed.
action	The legal demand of one's right to recover from another person or party made before a court; a lawsuit.
action ex contractu	Action for the breach of a promise set forth in a contract, express or implied.
action ex delicto	An action arising out of damages demanded for a breach of a duty; action in tort.
additur	Increase, by the court, of a jury award; distinguish remittitur which is a reduction of the award.
affiant	A person who makes and subscribes to an affidavit.
affidavit	A written or printed declaration or statement of fact, made voluntarily and confirmed by the oath or affirmation of the party making it, and taken before an officer having authority to administer such oath.
affirmed	In the practice of appellate courts, to affirm a judgment, decree or order is to declare that it is valid and right, and must stand as rendered below (in the lower court); to concur in its correctness.
agency	Relationship, such as between employer and employee, whereby one, the agent, acts on behalf of the other, the principal, and the principal can be held responsible for the agent's act.
annul	To make or declare void or invalid; nullify or cancel, as to invalidate a contract of marriage.
answer	Document, prepared by defendant in response to complaint, which sets forth defenses – reasons why defendant should not be held responsible.

appeal	The right of a party who has received an adverse decision to take the case to a higher court for review.
appellant	The person taking an appeal.
appellate court	Usually refers to the higher court to which an appeal is taken for review of the decision of the lower or trial court.
appellee	The person against whom an appeal is taken. Also referred to as the respondent.
arbitration	A method of dispute resolution, alternative to litigation, whereby two or more parties submit the matter in dispute to an arbitrator selected by mutual agreement and whose decision is final and binding.
assignment	The transfer of legal rights from one, the assignor, to another, the assignee.
assumpsit	Lat., he undertook; he promised. In practice, it refers to a form of action for damages for the nonperformance of a contract.
bailment	Relationship involving transfer of possession and control of property by bailor to bailee in which bailee accepts responsibility for the property.
bankruptcy	A condition in which one's debts exceed his or her assets so that the debts cannot be paid.
beneficiary	One for whose legal benefit an act is performed, as in, the third-party beneficiary of a contract.
bifurcate	To divide into two separate parts, as in bifurcation of a trial to determine liability separately from damages.
bill	A formal declaration, complaint, or statement of particular things in writing.
bill in equity	A formal written complaint, in the nature of a petition, addressed by the suitor in chancery (equity) to the chancellor or to a court of equity, or a court having equitable jurisdiction, showing the names of the parties, stating the facts which make up the case and the complainant's allegations, averring that the acts disclosed are contrary to equity, and praying for process and specific relief, or for such relief as the circumstances demand.
bill of exceptions	A formal statement of objections by a party during trial to the rulings of the trial judge, stating the objection, with the facts and circumstances on which it is based, so that the rulings in dispute can be reviewed by the appellate court.

brief	Document prepared by lawyer to define and argue the issues of a case prior to court's decision. Also, a method used by a law student to summarize a court's written opinion.
business invitee	In law of premises liability, one who enters for benefit of land owner and to whom higher duty of care is owed.
certiorari	A writ issued by a superior court to one of inferior jurisdiction commanding the inferior court to certify and forward to the superior court the record of the case in question. Sometimes called a certification in state court systems.
cf.	An abbreviation for "compare," often used by a court to refer to a case that can be distinguished from the case at hand (the "instant" case).
chattel	An item of personal property.
collateral source	In the law of damages, a rule which allows a plaintiff to recover damages even if the plaintiff has already recovered those same damages from a source other than the defendant, such as an insurance policy.
common carrier	Carriers (transporters of persons or property), such as buses and trains, that hold themselves out for use by the general public.
concur	Agreement by one or more judges either with the majority decision of the court or a dissenting opinion; a judge may or may not write a separate concurring opinion.
conflict of laws	Problem presented in determining which state's law applies to a given case; may be resolved by significant contacts rule or lex loci and lex fori rules.
consideration	In contracts, the value that passes or is promised to pass between the parties and without which there is no contract.
consortium	Benefit by way of society and services that passes between spouses and, more recently recognized in the law, parents and children, and for deprivation of which legal action may be brought.
contra proferentem	Doctrine that requires that ambiguities in documents be construed againt the drafter of the document.
contract	Agreement between two or more competent parties and based on legal consideration, for breach of which the law provides a remedy.
contribution	Liability of one of two or more responsible parties to pay a fair share of a judgment.

creditor	Person to whom a debt is owed, such as a judgment creditor.
debtor	One who owes a legal obligation or debt to another.
decision	The ruling of the court.
declaration	In practice, it is the first pleading on the part of the plaintiff in an action at law, being a formal and methodical specification of the facts and circumstances constituting the cause of action. Also called the narrative (narr.) or complaint.
declaratory judgment	A declaration by the court of the rights and obligations of the respective parties, e.g., that an insurer is or is not obligated to provide a defense to its insured in pending litigation.
demurrer	The formal mode of disputing the sufficiency in law of the pleading of the other side. In effect, it is an allegation that, even if the facts as stated in the adverse party's pleading are true, there is no assertable cause of action against the demurring party.
de novo	Lat., anew, a second time; a court that retries a matter de novo will do so as if there has been no previous trial, and will not be bound by any rulings made in the previous trial.
deposition	Oral interrogation of witness under oath prior to trial, intended to assist in the discovery of pertinent facts; also known as examination before trial.
derivative	This term has varied meanings in the law, but in civil litigation it is often used in reference to a derivative action. A derivative action is a lawsuit arising out of an injury to another person. For example, a wife's loss of consortium suit arising out of an injury to her husband, caused by a third party, is a derivative suit.
dictum (plural: dicta)	A statement of law that is not necessary to arrive at the court's decision, and goes beyond the issue determined by the court, and which, therefore, cannot be used as precedent.
directed verdict	Decision of court, made after plaintiff's case has been heard, that defendant is entitled to prevail because plaintiff has not proven his or her case.
discovery	Procedures such as depositions, interrogatories and physical examinations, by which parties to a lawsuit can find out facts and theories upon which their adversaries will rely at trial.
dismissal	Termination of a legal action either with prejudice (action cannot be brought again) or without prejudice (action may be brought again).
dissent	Disagreement by one or more judges with the majority decision of the court, usually accompanied by a written dissenting opinion.

error	A mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception of application of the law. On appeal, the appellant alleges that the trial judge has committed error or errors in rulings of law.
estoppel	Inability of a person to assert a legal position as a result of certain prior inconsistent action on his or her own part.
et al.	(1) et alibi: and elsewhere (2) et alii: and others. Used in the title of cases when there are multiple parties and only the first is named.
et seq.	An abbreviation for "et sequentes" or "et sequentia," meaning "and the following."
evidence	The testimony of witnesses and introduction of records, documents, exhibits or other means which may be presented at trial or other legal proceeding in an attempt to prove or disprove alleged facts.
exculpatory	Anything which tends to exonerate. In an agreement, language intended to relieve one party of the consequences of his or her acts.
execution	In contracts, the performance of an act; in damages, the satisfaction of a judgment.
ex parte	On one side only; a judicial proceeding is ex parte when it is conducted at the request of one party and without notice to any other parties.
fiduciary	A person, such as a trustee, having an obligation to act on behalf of another with the utmost good faith and candor; the nature of the duties imposed upon such person.
Forbearance	The act of refraining from enforcing a right, obligation, or debt.
fraud	A false statement or other deceit made by one with the intent to induce another to rely upon it to his or her detriment.
guardian ad litem	A guardian appointed by a court to represent the interests of a minor child or incompetent in a lawsuit.
harmless error	A minor legal error by a trial court that does not substantially prejudice the rights of any party and permits an appellate court to affirm the result in the trial court, even if the error was objected to in the trial court.
hearsay	Testimony by a witness based not on his or her own observations but on what someone else said, offered in evidence to prove the truth of what was said.

hold harmless	See indemnification against liability.
impeach	In evidence, to affect the credibility of a witness in a negative way.
implead	To bring into a legal action, usually a third party.
imputed	Knowledge or act of one person charged to another, usually within an agency relationship.
in camera	In chambers; a hearing is held in camera when it is held in the judge's chambers or when all spectators are excluded from the courtroom.
inapposite	Not suitable, not pertinent.
indemnification	Legal responsibility, either assumed by contract or imposed by law, of the indemnitor to protect the indemnitee against liability or loss; indemnification against liability (also called hold harmless) requires the indemnitor to actively defend the indemnitee against liability claims while indemnification against loss only requires reimbursement after a loss has been incurred.
independent contractor	Worker who, unlike an employee, is not controlled by the employer so that the employer is not responsible for the independent contractor's acts.
infant	In the law, one who has not yet reached the age of majority; also called a minor.
inference	In evidence, a proposition that may be drawn from other facts already admitted.
infra	Below or following.
injunction	Equitable remedy intended to prevent an individual from committing an anticipated wrongful act.
insolvent	Without assets, and thus unable to pay a settlement or judgment.
inter alia	Lat., among other things.
interlocutory	A court action, other than a final disposition of a case, that needs to be resolved before a final disposition can be made. For example, a party whose motion for summary judgment has been denied may take an interlocutory appeal of that decision.
interpleader	An action by which a person or entity that might be liable to two or more persons and that does not contest that there is liability to some one of them, petitions that they resolve their right to recover between themselves.

interrogatories	Discovery procedure by which one party submits written questions to another party in an attempt to gather facts in preparation for trial.
intervention	The procedure that allows a person who is not a party to a case, but has an interest in its subject matter, to become a party to the case.
joint and several liability	Rule by which one of two or more liable defendants is required to pay an entire judgment even if it exceeds his or her fair share.
joint enterprise	Two or more persons pursuing a common purpose and sharing control over its operation.
judgment or decree	Formal entry of the decision of the court.
judgment-proof	Without sufficient assets from which to pay a judgment.
jurisdiction	Autonomous court authority, such as that possessed by each of the fifty states as well as the federal courts; also, the power of these authorities to decide cases.
laches	Equitable doctrine under which a party who fails to assert a legal right for a substantial time period may be barred from doing so, if the assertion of that right would now cause unfair prejudice to another.
lease	Contract whereby lessor agrees to provide housing or other permissive use of property to lessee for stated rent.
lex fori	Lat., the law of the forum, or the procedural law of the court in which the action is brought. All contract and tort actions are transitory in the sense that the action may be brought in any court having jurisdiction of the parties. The lex fori will govern the procedure by which the moving party seeks to obtain a remedy. The lex loci will be applied by the court to decide the rights of the parties against each other.
lex loci	Literally translated means the "law of the place." Generally, the substantive rights of the parties to an action are governed by the lex loci, or the law of the place where the rights were acquired or the liabilities incurred. Lex Loci Contractus refers to the law of the place where the contract was made. Originally, the governing law was the law of the place where the contract was made. Presently, the governing law may be predetermined by the parties or determined by the law of the state with the greater interest in determining the rights of the parties.

	Lex Loci Delicti refers to the law of the place where the crime or wrong took place. Historically, in tort cases, the substantive rights of the parties were determined by the law of the place of the tort although now, some states use the law of the state with the greater interest.
licensee	In premises liability, one who is permitted or suffered to be on the property without any benefit to the landowner.
lien	A charge against or incumbrance on property.
liquidated damages	Those damages which are fixed, either by the parties or the court.
magistrate	A minor official with limited judicial authority; in the federal courts, a judicial officer appointed by judges to conduct pretrial proceedings such as status or settlement conferences and hearings on pretrial motions.
mandamus	Lat., we command. A court action directed towards an executive, administrative or judicial officer, ordering the performance of the officer's duties.
material	A fact or statement that bears a relationship of consequence to another fact. For example, evidence is material if it has a logical relationship to a fact to be established at trial.
mediation	An informal and nonbinding method of dispute resolution whereby a third-party mediator conducts discussions between the parties in an effort to focus the issues and promote settlement.
moot	An adjective used to define a question that is not presently before the court. For example, a point may be moot if a dispute over it has already been resolved.
mortgage	Interest in real property conveyed to mortgagee as security for the loan of money by the mortgagee to the mortgagor, often the money being used by the mortgagor for the purchase of the real property from its seller (this is known as a purchase money mortgage).
motion	A request for some action by the court in the course of a lawsuit. For example, the moving party may request the court to order the responding party to submit to certain discovery procedures.
movant	The moving party; the party making the motion requesting action by the court.
negligence	Act or omission not done with reasonable care and for which actor can be held civilly liable; gross negligence is negligence of a greater degree, sometimes described as recklessness; contributory negligence is that negligence charged to plaintiff; comparative

	negligence is a plaintiff's negligence that may allow recovery, but reduces recovery according to plaintiff's percentage of negligence. In a modified form, recovery may only be allowed if plaintiff's negligence is less than a certain percentage of the total negligence of all parties.
nolo contendere	Lat., no contest. In criminal litigation, a plea by which the accused does not admit guilt but otherwise accepts punishment for the crime.
nominal damages	An insignificant sum of money awarded to a successful plaintiff to vindicate his or her legal rights although the plaintiff has proven no actual damages.
nonsuit	A term broadly applied to a variety of terminations of an action that do not adjudicate issues on the merits. Judgment of nonsuit is of two kinds – voluntary and involuntary. When the plaintiff abandons his case, and consents to have the judgment go against him for costs, it is voluntary. But when he, being called, neglects to appear, or when he has given no evidence on which a jury could find a verdict, the judgment of the court dismissing the case is called an involuntary nonsuit.
n.o.v.	Lat., non obstante veredicto. Notwithstanding the verdict. A judgment entered by the court for one party, notwithstanding a finding by the jury of a verdict for the other party.
novation	Substitution of a new contract for an existing contract, by agreement of the parties to the existing contract.
obligee	A promisee; the party to whom another person is obligated under a contract.
obligor	A promisor; the party who must perform some obligation under a contract.
opinion	The court's explanation of its decision.
order	Ruling by the court, other than a judgment, requiring certain action be taken by the parties.
overrule	To change the law of prior cases; to change precedent. To rule against an objection during a trial.
per curiam	Lat., by the whole court; all of the judges.
per quod	Lat., whereby; in a complaint, the allegation of special damages resulting from the defendant's wrongful act.
per se	Lat., by itself, such as negligence per se.

personalty	Personal property, as opposed to real property; anything that can be moved.
plain error	A legal error by a trial court that is so obvious and so prejudicial to the rights of a party that it may be reversed by an appellate court even if the error was not objected to in the trial court.
precedent	A previously decided case that, because it deals with the same issues as a pending case, governs the court's decision in the pending case.
prejudice	Damage or detriment to one's interests or legal rights.
presumption	An inference that can be drawn from a given set of facts, such as in bailments, where the loss of a bailor's property gives rise to a presumption that the bailee was negligent.
prima facie	Lat., on it face, such evidence as will suffice to let a party prevail until overcome by contrary evidence.
privity	A relationship, often contractual, which gives rise to mutual interests. In contract law, for example, the contracting parties are said to be "in privity."
promissory note	A written promise by which the promisor agrees to pay a specified sum of money to the promisee at a designated time and place.
pro se	Lat., for himself; a person who represents himself in court and does not hire a lawyer is appearing pro se.
proximate cause	The cause the law considers to be the one responsible for the resulting damage, and which will make the defendant who proximately caused the damage liable to the injured plaintiff.
punitive damages	Also known as exemplary damages, they are awarded not to compensate the injured plaintiff but to punish the defendant and deter future wrongdoing.
quantum meruit	Equitable doctrine under which the law will imply a promise to pay the reasonable value of labor or materials furnished by another, in the absence of an actual contract, in order to prevent unjust enrichment of the person benefitting from the labor or materials.
realty	Real property, as opposed to personalty; it refers to land and anything affixed to it.
rehearing	Second consideration of a cause of action for the sole purpose of calling to the court's attention an error, omission or oversight on the court's part in its first consideration of the cause.

release	Agreement by releasor to exonerate one potentially liable to him (releasee) in exchange for valuable consideration, usually the payment of money.
relevant	The tendency to make the existence of a fact more probable than not.
remand	To send back. The sending of a cause of action back to the same court out of which it came, for the purpose of having some action on it there.
remedy	The means by which a right is enforced or the violation of a right is prevented or compensated.
remittitur	See additur.
removal	The act of taking a lawsuit out of state court and sending it to federal court.
res ipsa loquitur	Lat., the thing speaks for itself; in evidence, a means of proving negligence by the circumstances of an accident.
rescission	The act of rescinding or making void a contract, as if it had never been made.
res judicata	Lat., a thing decided or adjudged; legal doctrine that prevents the relitigation of a case by the same parties after it has been finally decided by a court.
respondeat superior	Lat., let the master answer; this rule establishes the vicarious liability of a principal for acts committed by an agent while in the scope of the agency.
restitution	Repayment of monies obtained illegally.
reversed	The action of the appellate court in annulling or making void a judgment entered in the court below.
set aside	To cancel or vacate a prior legal decision.
settlement	Conclusion of litigation by mutual agreement of parties prior to final verdict; certain settlements must be court-approved.
specific performance	An equitable remedy that allows one contracting party to force another, in breach, to perform as promised; the remedy is not available unless money damages for the breach are inadequate.
standing	The legal right to sue on a claim; a person must have a sufficient stake or interest in a controversy in order to have standing to sue with regard to that controversy.

stare decisis	Lat., to stand by a decision; it is the policy of the courts to follow prior decisions on a particular point of law; see precedent.
statute of limitations	Statute that prescribes the time within which a legal action may be commenced and after which time no further legal action is possible.
stay	Court order that freezes a legal proceeding and prevents it from going forward; may be used to stop the enforcement of a judgment or of another court order.
stipulation	Presentation of certain undisputed facts into evidence by mutual agreement of the parties.
strict liability	Liability without regard to fault and subject to limited defenses, often imposed in product liability cases.
sua sponte	Lat., of its own will, voluntarily.
subrogation	Right of one (subrogee) who has paid, in connection with a legal obligation to do so, a debt on behalf of another (subrogor), to stand in the subrogor's shoes in making demand on a third party to recoup that payment.
substantive law	The part of law that creates, defines and regulates rights and generally determines the merits of a case; as opposed to adjective or procedural law, which provides the mechanisms by which legal rights are enforced.
summary judgment	Prompt disposition of a lawsuit, on motion of either party, available where only legal issues rather than fact issues are in dispute.
supra	Above or preceding.
toll	As in statute of limitations, to show facts that prevent its barring the action.
tort	From the Lat. "tortus" for twisted; refers to any civil wrong for which a legal remedy is available, usually involving the recovery of money damages.
trier of fact	The jury in jury cases; the judge in cases not tried before a jury; decides all questions of fact.
trover	Common law action for the recovery of goods wrongfully withheld by another.
unilateral	One-sided; in contracts, for example, a unilateral contract requires only the action of one party to create it.

vendor	A seller of property, usually real property; the buyer is known as vendee or purchaser.
venue	The place where a lawsuit can be brought; proper venue is determined by such factors as where the accident happened and where the litigants reside.
verdict	Decision by court alone or by court upon jury's deliberation, by which litigation is concluded in favor of one of the parties.
void	Of no legal effect; void ab initio means void from the beginning.
voir dire	Lat., to speak the truth. Examination of jury panel to select members of the jury.
waiver	Voluntary relinquishment of a known legal right.
writ	An order issued by a court requiring or permitting the performance of an act.