

**Online Instructor's Manual**  
*to accompany*

# **Legal Terminology**

**Sixth Edition**  
**2014 Update**

**Gordon W. Brown**  
*Professor Emeritus, North Shore Community College*

**Kent D. Kauffman**  
*Indiana-Purdue University, Fort Wayne*

Prentice Hall

Boston Columbus Indianapolis New York San Francisco Upper Saddle River  
Amsterdam Cape Town Dubai London Madrid Milan Munich Paris Montreal Toronto  
Delhi Mexico City Sao Paulo Sydney Hong Kong Seoul Singapore Taipei Tokyo



**This work is protected by United States copyright laws and is provided solely for the use of instructors in teaching their courses and assessing student learning. Dissemination or sale of any part of this work (including on the World Wide Web) will destroy the integrity of the work and is not permitted. The work and materials from it should never be made available to students except by instructors using the accompanying text in their classes. All recipients of this work are expected to abide by these restrictions and to honor the intended pedagogical purposes and the needs of other instructors who rely on these materials.**

---

Copyright © 2014 Pearson Education, Inc., publishing as Prentice Hall, Upper Saddle River, New Jersey and Columbus, Ohio. All rights reserved. Manufactured in the United States of America. This publication is protected by Copyright, and permission should be obtained from the publisher prior to any prohibited reproduction, storage in a retrieval system, or transmission in any form or by any means, electronic, mechanical, photocopying, recording, or likewise. To obtain permission(s) to use material from this work, please submit a written request to Pearson Education, Inc., Permissions Department, One Lake Street, Upper Saddle River, New Jersey.

Many of the designations by manufacturers and seller to distinguish their products are claimed as trademarks. Where those designations appear in this book, and the publisher was aware of a trademark claim, the designations have been printed in initial caps or all caps.

10 9 8 7 6 5 4 3 2 1



ISBN-13: 978-0-13-376705-6  
ISBN-10: 0-13-376705-1

## Contents

Chapter 1: Court Systems and Jurisdiction	4
Chapter 2: Criminal Trial Procedure	9
Chapter 3: Civil Trial Procedure	13
Chapter 4: Defensive Pleadings in Civil Trials	17
Chapter 5: Methods of Discovery	21
Chapter 6: Pretrial Hearing and Jury Trial	25
Chapter 7: Steps in a Trial	29
Chapter 8: Legal Ethics	33
Chapter 9: Constitutional Law	37
Chapter 10: Crimes, Accomplices, and Defense	42
Chapter 11: Crimes Against Property	46
Chapter 12: Crimes Against the Person and Human Habitation	50
Chapter 13: Homicide	54
Chapter 14: Crimes Against Morality and Drug Abuse	58
Chapter 15: Torts and Tortfeasors	62
Chapter 16: Intentional Torts	66
Chapter 17: Negligence and Product Liability	70
Chapter 18: Formation of Contracts	75
Chapter 19: Contract Requirements	79
Chapter 20: Third Parties and Discharge of Contracts	84
Chapter 21: Personal Property and Bailments	88
Chapter 22: Intellectual Property	92
Chapter 23: Law of Agency	96
Chapter 24: Wills, Testaments, and Advance Directives	100
Chapter 25: Revocation, Lapses, and Ademption	104
Chapter 26: Principal Clauses in a Will	108
Chapter 27: Disinheritance and Intestacy	112
Chapter 28: Personal Representative of the Estate	116
Chapter 29: Settling an Estate	120
Chapter 30: Trusts	124
Chapter 31: Estates in Real Property	128
Chapter 32: Multiple Ownership of Real Property	132
Chapter 33: Acquiring Title to Real Property	137
Chapter 34: Deeds	140
Chapter 35: Mortgages	144
Chapter 36: Landlord and Tenant	148
Chapter 37: Marriage, Divorce, and Dissolution of Marriage	152
Chapter 38: Divorce Procedure	156
Chapter 39: Business Organization	160
Chapter 40: The Law of Bankruptcy	165

# **Chapter 1**

## **Court Systems and Jurisdiction**

### **Ante Interrogatory: D**

#### **Chapter Overview**

After differentiating between federal and state court systems, Chapter 1 examines the subject of selecting the court, including matters of jurisdiction. The chapter also explores alternative dispute resolutions available for those who wish to settle disputes outside of court.

#### **Chapter Objectives**

The objectives in chapter 1 are to teach students the difference between federal and state courts, to help them learn what jurisdiction and venues are, and to enlighten them on the alternative dispute resolution options.

#### **Lecture Outline**

- I. Federal Courts
  - A. U.S. District Court
  - B. U.S. Court of Appeals
  - C. U.S. Supreme Court
- II. State Courts
  - A. State Trial Courts
  - B. State Intermediate Appellate Courts
  - C. State Supreme Courts
- III. Jurisdiction and Venue
  - A. In Rem Action
  - B. Quasi in Rem Action
  - C. In Personam Action
  - D. Venue
- VI. Alternative Dispute Resolution
  - A. Negotiation
  - B. Mediation
  - C. Arbitration
  - D. Mini-trial

#### **Notes**

The Sources of Law box is a side note to students to help them grasp from where law in the United States comes. Word Wise boxes are helpful to students as they learn about how words are used in several ways, such as the word “court” in this chapter. The other Word Wise box addressing the definition “to speak” can help students’ minds connect with words they are already familiar with in learning new terms. Prefixes and suffixes often indicate a Latin root word, and as students recognize them, they can remember new term definitions easier.

## List of Changes

Two Terms in Action boxes are in every chapter to illustrate how terms are used in real-life situations. Some are current, quirky stories including celebrities, and others are interesting historical cases with surprise endings that will help students remember the terms in the chapters.

In Chapter 1, the Terms in Action educate the student about courts, jurisdiction and venues. In the Terms in Action box about Laci Peterson, the story addresses the occurrence of change in venue.

Unraveling Legalese is not in the textbook, but is found below for the instructor to give to students as another exercise.

## Reviewing What You Learned

1. Federal courts hear cases that raise a federal question (a matter that involves the U.S. Constitution, acts of Congress, or treason). Federal courts also decide cases that involve diversity of citizenship (over \$75,000) between persons from different states, between citizens of the United States and a foreign government, and between citizens of the United States and citizens of a foreign country. In addition, federal courts hear bankruptcy cases, patent and copyright cases, and admiralty cases.
2. Appeals from a state supreme court may be made to the U.S. Supreme Court only when a federal or U.S. Constitutional question is raised.
3. U. S. Courts of Appeals decide cases that have been appealed from federal district courts,
4. For a court to have jurisdiction over an action in rem, the property must be located in the state (and usually the county) where the court sits.
5. If a defendant owns real property in one state and lives in another, the court where the real property is located has jurisdiction over the property only, not the person.
6. In question 7, if suit is brought against the defendant in the state where the property is located and the out-of-state defendant does not appear, the plaintiff's recovery will be limited to an amount up to the value of the property located in that state.
7. To bring a lawsuit against a person and hold him or her personally liable, a personal action, called an in personam action, must be brought by the plaintiff.
8. If the plaintiff's attorney begins an action in a court of improper venue, the defendant's attorney may have the case dismissed.
9. Jurisdiction relates to the power of the court to hear a case, whereas venue relates to the geographic location where the action should be tried.
10. Mediation has a neutral third party (mediator or conciliator) who listens to both sides and makes suggestions for reaching a solution. The mediator tries to persuade the parties to compromise and settle their differences. A mediator is not empowered to make parties settle, but he has authority over the mediation process.  
Arbitration has a neutral third party who makes a decision after hearing the arguments of both sides. Parties have already agreed to resolve their dispute according to a pre-determined arbitration process. Parties can agree to binding arbitration (arbitrator's decision will be final) or non-binding arbitration (arbitrator's decision is simply recommended with no need to comply to it).
11. Negotiation is a two-party process that has no help of a neutral third party. The sides attempt to conclude its dispute by bargaining with each other until one side agrees to the

other side's offer of settlement. Parties in legal dispute may have legal representation, but it is not necessary. A written agreement (settlement terms are often kept private) settles the dispute.

12. Mediation is an informal process in which a neutral third party (mediator or conciliator) listens to both sides and makes suggestions for reaching a solution. It takes place in stages and breaks into private sessions called caucuses. The mediator uses his or her listening skills and the ability to ask probing questions to learn what the interests are behind each side's demands. From that point on the mediator seeks small gains from each side as he or she works to bring disputing parties together so a mutually acceptable agreement (settlement) can be reached. The mediator is not empowered to make the parties settle, but he or she has the authority over the mediation process.
13. The parties in an arbitration process agree to binding arbitration in advance. It is the decision that the arbitrator or conciliator (neutral third party) makes in favor of one side, which must be in writing. It is called the arbitrator's award.

### Understanding Legal Concepts

- |                 |                        |
|-----------------|------------------------|
| 1. T            | 6. F, property         |
| 2. F, four      | 7. T                   |
| 3. T            | 8. F, property, person |
| 4. T            | 9. T                   |
| 5. F, sometimes | 10. T                  |

### Checking Terminology (Part A)

- |      |      |          |       |          |
|------|------|----------|-------|----------|
| 1. h | 5. s | 9. m     | 13. z | 17. c    |
| 2. v | 6. n | 10. a, t | 14. k | 18. b, j |
| 3. q | 7. x | 11. g    | 15. l | 19. d    |
| 4. o | 8. y | 12. r    | 16. p | 20. e    |
|      |      |          |       | 21. W    |

NOTE: Terms not used: f. cert.den.; i. court; u. negotiation

### Checking Terminology (Part B)

- |         |      |       |       |          |
|---------|------|-------|-------|----------|
| 1. h, n | 5. l | 9. a  | 13. g | 17. j, p |
| 2. e    | 6. t | 10. c | 14. v | 18. r    |
| 3. i, o | 7. m | 11. d | 15. b | 19. k    |
| 4. f    | 8. q | 12. s | 16. u |          |

NOTE: Terms not used: u. statute

### Unraveling Legalese

Use simple, non-legal language, with the help of the glossary, to rewrite this quote in the space below so that it is shorter and can be understood by a layperson without losing its meaning.

#### Exercise:

The Appellants argue that Congress's use of the permissive "may" instead of obligatory "must" demonstrates an intention to sustain concurrent jurisdiction. While it is true that some courts have found concurrent jurisdiction because of the use of the permissive "may," the statutes at issue in such cases did not contain the more potent language contained in this statute: "original

exclusive jurisdiction.” That difference makes the analysis in those cases inapplicable.

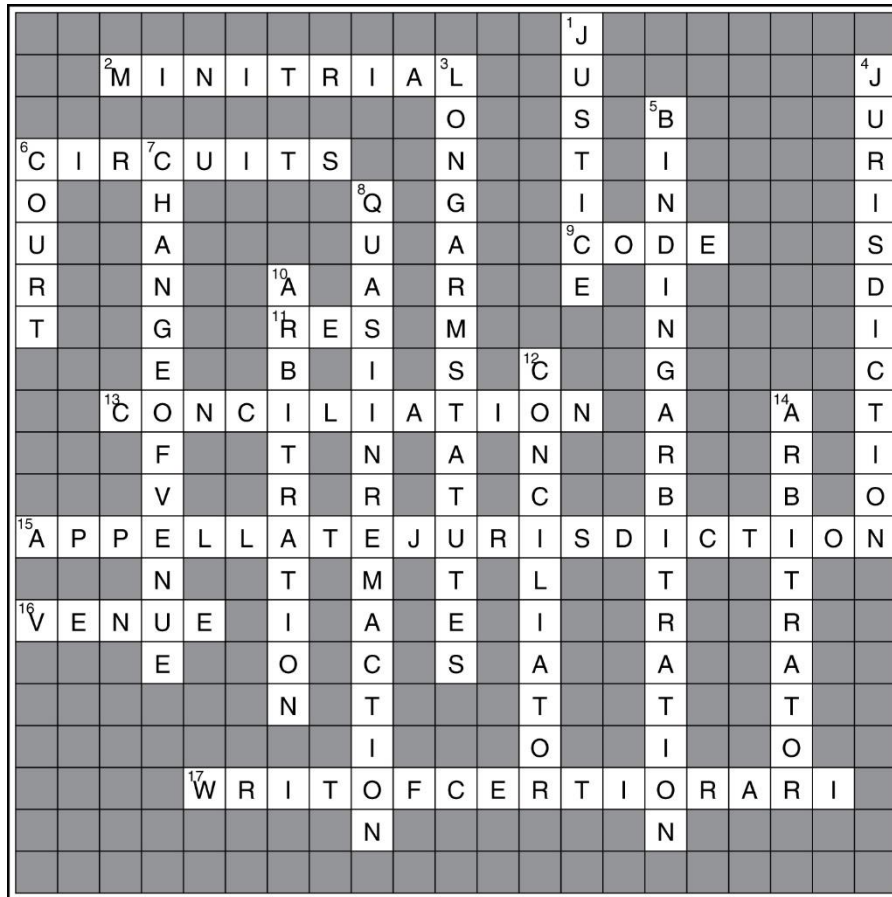
**Answer:**

The party that appealed argued that Congress’s use of “may” instead of “must” in the law shows that it meant to allow two or more courts to decide the case. Although some courts have decided cases following that argument, those cases did not have the stronger statutory language with the words “original exclusive jurisdiction,” which means that only one particular court has the power to hear the case when it is first brought to trial.

**Using Legal Language**

To settle a dispute by means other than litigation over who owned the lot next to her, Susan tried to get Conrad to participate in a(n) **alternate dispute** resolution. Conrad wanted to use **negotiation** because he didn’t want anyone else involved. Susan wanted to use **mediation** (also called **conciliation**)—an informal process in which a neutral third person listens to both sides and makes suggestions for reaching a solution. This case was not one involving a defendant who owned land in one state and lived in another; therefore, it was not a(n) **quasi in rem** action. The **venue** for the trial was Salem because that is where the disputed land was located, and the court in that city had **jurisdiction** over the case. Because the case involved title to land, the trial had to be held in the county where the **res** was located, and because the suit was directed against property, it was a(n) **in rem** action not a(n) **in personam** action. The suit was a(n) **local** action rather than a(n) **transitory** action because it could only be brought in one place. In addition, because the Salem court was the only one that had the power to hear the case, it had **exclusive jurisdiction** rather than **concurrent jurisdiction**. Owing to the fact that the case was being tried for the first time, the court had **original jurisdiction** not **appellate jurisdiction**.

## Puzzling Over What You Learned



*Caveat: Do not allow squares for spaces between words and punctuation (apostrophes, hyphens, etc.) when filling in crossword.*

### Across

2. An informal trial run by a private organization established for the purpose of settling disputes out of court.
6. Name given to the division of U.S. courts.
9. A systematic collection of statutes, administrative regulations, and other laws.
11. The property; the thing.
13. An informal process in which a neutral third person listens to both sides and makes suggestions for reaching a resolution.
15. The power to hear a case when it is appealed.
16. The place where a trial is held.
17. An order from a higher court to a lower court to deliver its records to the higher court for review.

### Down

1. Title given to an appellate court judge.
3. Statutes that allow one state to reach out and obtain personal jurisdiction over a person in another state.
4. The power or authority that a court has to hear a case.
5. Arbitration in which the decision of the arbitrator will prevail and must be followed.
6. A body of government organized to administer justice.
7. The removal of a suit begun in one county or district to another county or district for trial.
8. A lawsuit in which the court has jurisdiction over the defendant's property, but not over the defendant's person.
10. A method of settling disputes in which a neutral third party makes a decision after hearing the arguments on both sides.
12. A neutral third person in a conciliation session who listens to both sides and makes suggestions for reaching a solution.
14. A neutral third person in an arbitration session who listens to both sides and makes a decision with regard to the dispute.





## **Chapter 2**

### **Criminal Trial Procedure**

#### **Ante Interrogatory: D**

#### **Chapter Overview**

Chapter 2 explains criminal trial procedure, beginning the arrest, preliminary hearing, indictment, and arraignment, followed by sentencing and defendants' rights.

#### **Chapter Objectives**

By studying this chapter, students can learn that the process of criminal cases being taken to court is governed by rules that have been adopted by federal and state governments. The procedure is outlined in the chapter, and the rules of criminal procedure may be found on the Internet for further study. Students will also learn where defendants' rights come from and what they are.

#### **Lecture Outline**

- I. Arrest
- II. Preliminary Hearing
- III. Indictment
- IV. Arraignment
- V. Reasonable Doubt
- VI. Sentencing
- VII. Defendants' Rights
- VIII. Trial Separation

#### **Notes**

Miranda Warnings are listed in a box, which can be helpful to the student as they study criminal procedure.

The Web Wise box encourages students to look at overviews of criminal and civil procedure at the Legal Information Institute at [www.law.cornell.edu](http://www.law.cornell.edu) and federal procedure rules and Internet jurisdiction at [www.findlaw.com](http://www.findlaw.com).

#### **List of Changes**

The Terms in Action boxes highlights a criminal situation using terms from the chapter and the longest single prison sentence ever given.

Unraveling Legalese is not in the textbook, but is found below for the instructor to give the students as another exercise.

#### **Reviewing What You Learned**

1. The federal, state, or local government brings the action in a criminal case.
2. A criminal action begins with the issuance of an arrest warrant.
3. If the court finds probable cause that the defendant committed a crime, he or she is either

- kept in jail or released on bail or on personal recognizance.
4. A grand jury is a jury consisting of not more than 23 people who listen to evidence and decide whether or to charge someone with the commission of a crime.
  5. An indictment is a formal written charge made by a grand jury. In contrast, an arraignment is the act of calling a person before the court to answer the indictment or information.
  6. If the judge or jury finds there is a reasonable doubt that the defendant committed the crime, the accused must be acquitted.
  7. When arrested, suspects must be told, before being questioned, that they have the following constitutional rights: (1) the right to remain silent, (2) any statement made by them may be used against them to gain conviction, (3) they have the right to consult with a lawyer, and to have a lawyer present during questioning, (4) a lawyer will be provided without cost for indigent defendants.
  8. Answers will vary. The severity of victim impact can influence the parole boards' decision on granting parole.
  9. A commutation of a sentence reduces it, making it less severe, whereas a pardon sets aside the punishment altogether.
  10. A bifurcated trial is one that is separated into two parts providing for separate hearings for different issues in the same lawsuit. In contrast, severance of actions occurs when a court separates lawsuits or prosecutions involving multiple parties into separate, independent cases, resulting in separate final judgments.

### Understanding Legal Concepts

- |                               |                         |
|-------------------------------|-------------------------|
| 1. F, the public at large, is | 6. T                    |
| 2. F, always                  | 7. F, parole            |
| 3. T                          | 8. T                    |
| 4. T                          | 9. F, concurrent        |
| 5. F, defendant               | 10. F, bifurcated trial |

### Checking Terminology (Part A)

- |      |      |       |          |       |
|------|------|-------|----------|-------|
| 1. h | 5. d | 9. q  | 13. g    | 17. j |
| 2. m | 6. b | 10. v | 14. k, o | 18. i |
| 3. p | 7. n | 11. f | 15. x    | 19. l |
| 4. a | 8. e | 12. r | 16. w    | 20. c |

NOTE: Terms not used: s. grand jury; t. guilty; u. inadmissible

### Checking Terminology (Part B)

- |      |         |          |       |        |
|------|---------|----------|-------|--------|
| 1. v | 5. e    | 9. c     | 13. x | 17. w  |
| 2. j | 6. m, o | 10. h, i | 14. g | 18. u* |
| 3. n | 7. a    | 11. f    | 15. t | 19. u* |
| 4. q | 8. k    | 12. y    | 16. l | 20. r  |

\*Questions #18 and #19 are duplicates, so **u. seizure** is used twice.

NOTE: Terms not used: b. Malefactor; d. Miranda warnings.

## Unraveling Legalese

Use simple, non-legal language, with the help of the glossary, to rewrite this case quote in the space below so that it is shorter and can be understood by a layperson without losing its meaning.

### Exercise:

The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the pleas agreement in camera.

### Answer:

The prosecution and defense must reveal plea bargains in open court for everyone to hear, unless there is a good reason for the judge to allow it to be revealed in the privacy of his or her office.

## Using Legal Language

Alphonse, high on drugs and carrying a handgun, broke into Krista's apartment one evening, unaware that Krista and her dog, Lilly, were present. Lilly lunged at the surprised Alphonse, causing him to shoot himself in the foot. Krista disarmed the bleeding Alphonse and called 911. When the police arrived, Alphonse was placed under **arrest**; that is, deprived of his liberty. He was also told about his rights, called **Miranda warnings**. The next morning, Alphonse went before the court for a **preliminary** hearing, which is also called a **probable cause** hearing. The judge set a high **bail** to assure Alphonse's return to stand trial. The district attorney presented the case to a **grand jury**, which issued an **indictment**—a formal written charge of a crime. This was followed by a court appearance called an **arraignment** at which Alphonse pleaded **not guilty**, denying that he had committed the crime. The trial that followed was governed by regulations known as **rules of criminal procedure**. The state brought the action, that is, **prosecuted**, against Alphonse who was the **defendant**. To find Alphonse guilty, the jury, that is, the **fact finder**, was required to find beyond a **reasonable doubt** that Alphonse committed the crime. At the time of sentencing, Krista was able to give a **victim's impact statement** pointing out the effect the crime had on her life. Alphonse was given a **mandatory** sentence—one that is fixed with no room for discretion.

[illegible]

### Across

- Down**

1. A group of people authorized to grant parole.
2. A conditional release from prison allowing the person to serve the remainder of a sentence outside of a prison under specific terms.
3. Reasonable grounds for belief that an offense has been committed.
7. A wrong against society.
9. A trial that is divided into two parts, providing separate hearings for different issues in the same lawsuit.
11. A written order by a judge or police officer commanding a person to appear in court for a particular purpose.
12. The working out of a mutually satisfactory disposition of a case by the prosecution and the defense.
15. Money or property left with the court to assure that a person will return to stand trial.
16. The party by whom criminal proceedings are started or conducted; the state.
19. The judgment of the court imposing punishment when the defendant is found guilty in a criminal case.



