

DGM 4330 – Corporate Issues – Terms and Definitions 1 – Litigation

Litigation	The parties submit their dispute to the court for bench trial or jury trial. Full rules of evidence and other formalities apply.
Arbitration	Like litigation, except with relaxed evidence rules: the parties usually agree in advance to abide by the ruling of the arbitrator (often a retired attorney or judge).
Mediation	A refereed dialogue: the mediator facilitates complete communication and balance between the parties, who shape their own settlement or agreement to end the dispute. Best without attorneys. Card's favorite.
Hearsay	An out-of-court statement intended to prove the truth of the matter asserted.
Hearsay Rule	Hearsay is not admissible in court. Exceptions: the alleged defamatory statement giving rise to a defamation action, excited utterances, dying declaration, party admission, etc..
Hierarchy of laws	Treaty Constitution Code and Official Regulations Common Law (case law) *Note: Supremacy Clause v. states' rights
Mandatory Authority	Treaties, constitution of the jurisdiction, code of the jurisdiction, case law of the jurisdiction.
Persuasive Authority	Mandatory authorities of sister jurisdictions, case law of sister jurisdictions, scholarly articles from credible authorities.
Cause of Action	A legal theory under which to seek recovery. A "Claim", roughly.
Plaintiff	The person complaining of a wrong they've suffered, and seeking redress in court.
Defendant	The party accused of wrongful conduct in a court action.
Complaint	The document filed by Plaintiff in court to initiate a case.
Answer	The document filed in court by Defendant to respond to the Complaint.
Counterclaim	Assertion by Defendant of a claim against Plaintiff, thereby also making the Plaintiff a Defendant as to that claim.
Cross-Claim	Assertion by Defendant against a third party alleging that third party's shared or complete liability for the cause(s) of action filed against Defendant.
Discovery	The process by which the Parties in a court action acquire information to build their respective cases.
Interrogatories	Written "confirm or deny" questions that are asked and answered on paper between the parties
Request for Documents	Early part of Discovery (means just what it appears to mean)

Deposition	The slightly less formal examination of a party or witness, before trial and out of court. Usually videotaped, wrongful questions are objected to, but still recorded and answered. Subjects are under oath.
Motion	A request filed in writing or offered in court orally for a procedural or substantive decision as to a particular issue. Examples: Motions for Judgment on the Pleadings, Motions for Summary Judgment, Motions to Compel, etc.
Hearing	An in-court meeting, with judge, to answer specific questions or settle specific issues (substantive or procedural).
Trial	Final, formal presentation of case before a judge and, if requested, a jury. Includes jury selection (if applicable), opening arguments, testimony of selected parties and witnesses, closing arguments, jury instructions given by the court, jury deliberation, result as to liability, weighing and awarding of damages and/or equitable relief.
Appeal	A request that a higher court review the decision of a lower court, usually asserting a mistake of some kind in the procedure or result.
Legal relief	Money damages to be paid to Plaintiff.
Equitable Relief	Specific Performance "Must-do" or Injunction "Don't-Do" to bring about results of fairness.
<i>Prima Facie</i>	Obvious on its face, i.e. "Prima Facie Evidence of Liability."
Burden of Proof	Level of evidence required of a Party in order to prevail in court. Examples: In criminal law, the prosecution must prove the guilt of the defendant "beyond a reasonable doubt;" in civil law, the burden of proof is usually "preponderance of the evidence (51% sure) or, for fraud and some other claims, "clear and convincing evidence."
A genuine issue as to a material fact.	What gives rise to a valid "cause of action." (Failure of this test can result in successful Summary Judgment motions.)