

Legal terms used in cases or in statutes. We provide very simplified definitions of terms used within case law, with a brief explanation of the context of the terms.

Cause of action- used as in “did the complaint state a cause of action.” This is whether the pleadings in the lawsuit are sufficient, if proven, to prove a wrong that the courts may remedy. This is a higher standard than federal courts, which use the test “of failure to state a claim for which relief may be granted.” Cause of action also refers to the reason that a plaintiff is entitled to come to court. Thus, you may read a court opinion stating, “This is a cause of action for breach of contract.”

Certification of a question- Federal courts may request that if they are trying a case in which state law will decide an issue that the state court tell the federal court what the state law means. This process is referred to as certification or “a certified question.” Please note that the state courts do not have to answer the question.

Discovery- In most civil lawsuits, each party is entitled to discovery from the other party. Discovery is the process by which each party must reveal [and usually does its best NOT to reveal] information needed to prepare the case. Interrogatories are written questions which have to be answered under oath. Depositions are sworn statements. Requests to produce [shortened to “production”] are demands to inspect documents or tangible objects. Many cases in this program are battles over discovery. Either party (or if a third party is subpoenaed, they may) object to discovery because the information is privileged or immaterial to the lawsuit. Due to HIV confidentiality rules, in almost all contaminated blood lawsuits, objections to discovery of information about the donors are made by the hospitals/blood banks/pharmaceutical companies. Discovery is often criticized as expensive, and calculated to withhold information, not share information. Some courts in pilot projects are now changing discovery so that it is automatic rather than only done on request.

Dismiss (Motion to) (also called a Demurrer)- After a lawsuit is filed, the defending party may file a motion requesting that the suit be dismissed for failing to state a cause of action or for failure to state a claim for which relief may be granted. The court must solely look to the complaint (the name of the pleading usually used to start a suit; may also be called a “bill of complaint.”.) If the complaint states a cause of action, the court denies the motion. If the complaint is not legally adequate, the court may dismiss the case either finally or with leave to amend. This may also be called, with or without prejudice. A complaint dismissed with prejudice cannot be refilled. [There are procedural traps here, such as an order of dismissal with prejudice not being a final judgment,

which we will ignore.] A complaint dismissed without prejudice, or with leave to amend may be refilled to try to correct the deficiencies.

Diversity- used to refer to federal jurisdiction by diversity. Federal courts are strictly limited in the kinds of cases that they can hear. All states have courts of general jurisdiction that can consider any litigation. Federal courts instead must have a specific statute which permits them to hear a case. Most cases involving contaminated blood in federal courts are diversity case. Federal courts may hear cases between citizens of different states under diversity jurisdiction.

Mandamus- An order by a superior tribunal ordering a lower tribunal to do something, an "injunction" directed to a court or its judges.

Prohibition- A court order directing that a lower court not take act which it plans on doing. State court procedures vary widely. In most states, if a party is displeased with an order, they may appeal. Some states require that certain actions not be taken by appeal, but instead just by prohibition. This results in strange case captions, like Jones vs. The Superior Court of West Fiddlesticks Judicial District. These cases are really between the litigants below, and rarely does the Judge or Court come to argue.

Rev'd- Abbreviation for reversed, indicating that a particular court opinion was reversed on other grounds

Statute of limitations (also called statutes of repose)- States provide time limits for bringing lawsuits in their civil law. Even if a case is meritorious, if it is brought after the time limit, it must be dismissed.

Strict liability (also called products liability)- The modern concept of liability for products which cause personal injury or property damage is called strict liability. In this case, if a product is released into commerce, and is used without inspection for defects, then if the product is miss-designed or hazardous, the injured party may sue to recover against the manufacturer and sellers without regard to contract law. In many cases involving alleged contaminated blood, the plaintiff try to sue under the doctrine of strict liability. However, many states have passed laws which take the provision of blood out of this rule, and instead require that all suits for defective blood be brought as medical malpractice actions. The statute of limitations is often very short on medical malpractice, often 2 years as compared to 5 or 5 years for strict liability. Blood cases often consider these issues.

Summary judgment- Rule 56 of the federal rules of civil procedure and similar state rules permit the court to rule

on affidavits and other discovery together with the pleadings without holding any trial. In this case, the party seeking the summary judgment must demonstrate that there are no material disputed facts for trial, and that given the undisputed facts, that it is entitled to a judgment applying the law to these facts. All inferences are drawn against the party who seeks summary judgment. Summary judgments are greatly favored by lawyers and litigants, and disfavored by the appeals courts. As a result, many summary judgments are set aside. However, there are several summary judgments which appeals courts have upheld in this program. These usually involve the application of the statute of limitations to a case. That is, the defense concedes for purposes of discussion that there was negligence, but instead states that the case was brought after the statute of limitations had expired.

ABBREVIATIONS and LATIN- It takes law school students several weeks to begin to make sense of the Latin terms and obscure abbreviations in cases. Here is a list of the most frequent-

ADA- Americans with Disabilities Act

affd- shorthand for "Affirmed," indicates that the appeals court summarily affirmed another courts decision

ALJ- Administrative Law Judge

ARC- Usually refers to AIDS related complex, in much less frequent use, an acronym for American Red Cross

Arguendo- Assume just for the purposes of the discussion

AZT- Anti-viral agent, sold under brand name Retrovir; one of the few authorized anti-HIV agents

CDC- Center for Disease Control and Prevention; government agency located in Atlanta, Georgia; one of the agencies which identified the HIV epidemic; significantly involved in HIV government policy

CFR- Code of Federal Regulations- A very large set of paper back books, supplemented by DAILY notices in the Federal Register. These are regulations that govern how the executive branch of the government works, as well as providing regulations for the conduct of various businesses

Cert. denied- "Certiorari denied," indicating that the US Supreme Court declined to accept a case for review; DOES not imply that the U.S. Supreme Court agrees with any particular decision, just that it did not review the case

De novo- The review of a case by an appeals court without giving any presumption of correctness to the lower court

decision

DOJ- Department of Justice

EEOC- Equal Employment Opportunity Commission; government agency which oversees complaints of job discrimination

ELISA- test for presence of HIV anti-bodies; Enzyme Linked Immunoassay

En banc- A session of court in which all of the Judges attend and vote; appeals courts often sit in divisions or in panels of 3 judges drawn from the court; after an adverse ruling, litigants may request a hearing before the entire court; rarely granted

ERISA- Employee Retirement Income Security Act- a federal labor law which governs pensions and health benefits of many workers

Estoppel- An equitable legal doctrine in which a litigant is precluded from introducing certain evidence or making certain arguments because of their prior improper behavior

Ex parte- Without notice; Central to our court system is the fact that all parties with an interest in the outcome of a suit may be heard and must be given prior notice of court hearings; certain emergency applications may be made without notice to other parties

FAPE- Free and Appropriate Public Education; Under various federal laws and regulations children with disabilities must be provided with a free, appropriate public education

FR- Federal Register; daily collection of federal government proposed regulations and news

HBV- Hepatitis B Virus; a blood borne communicable disease thought to be linked to those positive for HIV; used for surrogate testing prior to ELISA/Western Blot tests

HIV- Human Immunodeficiency Virus- the agent that causes persons to suffer damage to their immune systems. Often used as a catchall or synonym for AIDS or ARC

HTLV- Term used to describe HIV coined during early investigation at NIH

LAV- Term used by the French Pasteur Institute to describe disease now commonly known as HIV

MMWR- Morbidity and Mortality Weekly; CDC's weekly publication; contains universal precautions and other items frequently referred to in cases, administrative rules and cases

NIH- National Institutes of Health; government agency which was involved in

early AIDS investigation

Per Curiam- By the court; an order or opinion of the Court which does not state the name of the author, and is thus presumed to be on behalf of the entire court

Sua sponte- The Court directed an action itself

Subpoena- A court order to appear to testify

Subpoena deuces tecum- A court order to appear and testify and to bring documents/objects when testifying

UCC- Uniform Commercial Code- The “law merchant” of the United States. It is not quite uniform, since each state has taken the official draft(s) (there are continuing changes to the UCC by its permanent committee) and changed things to suit local needs. Usually referred to in cases involving suits over contaminated blood, since if blood is governed by the UCC article on sales, there are warranties which apply and remedies which permit litigation

Universal precautions- A series of CDC recommendations for use by professions who are in contact with blood; presumes that everyone is infectious and has professionals take steps to avoid blood/bodily fluids exchange

U.S.C.- United States Code- An official compilation of the laws of the United States, split into 50 titles; a citation refers to the volume and then section, for example, 42 USC 1983 refers to volume 42, section 1983; section numbering can be Byzantine with numerous sub-letters per section

Voir dire- “To speak the truth”; a opportunity to ask preliminary questions before a person is qualified as a juror or expert witness

Western Blot (WB)- confirmatory test for presence of HIV anti-bodies