

GLOSSARY



The following on-line legal dictionaries and glossaries may be helpful (most allow word searches). Be aware that web sites frequently change addresses or shut down without notice . Try a net search with “legal glossary” or “legal definitions.” These sites were current in October 2007 (Ben Carroll - carrollb@hawaii.edu).

www.nolo.com/lawcenter/dictionary/wordindex.cfm
www.uscourts.gov/library/glossary.htm
www.id.uscourts.gov/glossary.htm
www.citylegalguide.com/glossary.cfm

www.lectlaw.com/def.htm
www.duhaime.org/diction.htm
<http://dictionary.lp.findlaw.com>
<http://dictionary.law.com>

ADR: Abbreviation for alternative dispute resolution.

Abode service: Accomplished under the Hawaii Rules of Civil Procedure (HRCPP) or federal rules (FRCP) when process server leaves summons and complaint with competent person at defendant's place of residence.

Ad Damnum: The amount of damages claimed in the complaint prayer.

Adjudication: The process by which a court resolves a legal dispute through litigation. The verb is *adjudicate*.

Administrative agency: Governmental institution established by statute and intended to implement stated legislative policy.

Administrative hearing: Adjudication or rule-making hearing of an administrative agency.

Administrative law: Generic name given to the rules, regulations, guidelines, and procedures of administrative agencies.

Administrative law judge: Sometimes called Hearing Officer. The quasi-judicial presiding officer at an administrative hearing.

Admissible: Appropriate to be admitted into evidence at trial. The oral, written, or physical items of evidence that the court allows to be introduced at trial to prove a case.

Admission: (1) An acceptance of the truth of an allegation in a claim for relief. (2) an acceptance of the truth of an assertion in a Request for Admission. A discovery (information gathering) tool by which one party to the lawsuit asks another party to admit or deny the truth of certain important facts. (3) An out-of-court statement made by a party to the litigation that is inconsistent with a position the party is taking in the litigation. (An exception to the hearsay rule.)

Advance Sheet: A pamphlet that comes out before (in advance of) a later volume.

Adversarial System: Legal system based on the premise that justice and truth have a greater chance of emerging when parties to a controversy appear before a neutral judge and jury to argue their conflicting positions.

Affidavit: A written statement of fact in which a person (called the affiant) swears that the statement is true. A written statement of facts made under oath in the presence of a notary public.

Affirmative defense: A defense that is based on new factual allegations by the defendant not contained in the plaintiff's allegations. A set of facts or a legal restriction that goes beyond the allegations of the complaint and that, if established to the satisfaction of the court, would constitute a valid defense even if the allegations of the complaint were true.

Agent for service of process: The person designated by a corporation to accept service of process.

Alternative dispute resolution: The various methods of private dispute resolution, such as arbitration, mediation, conciliation, etc. Alternatives to litigation.

“Ambulance Chasing”: (pejorative term) Aggressively pursuing potential plaintiffs (e.g., personal injury victims) to encourage them to hire a particular attorney. Some of these activities are subject to ethics codes.

Amended pleading: Under HRCPP or FRCP, a pleading filed which alters the allegations and/or responses of an earlier pleading based upon something other than newly-occurring transactions.

Amicus curiae brief: A friend-of-the-court brief. A brief filed in an appeal by an interested outside third party.

Answer: The pleading filed by a defendant to respond to the allegations of the complaint, identify defenses, and state any additional relevant claims.

Answer to Cross-claim: The response of a co-party to a cross-claim filed against it.

Appeal: A review of the actions of a lower court by a higher court.

Appearance: (1) Going to court to act on behalf of a party to the litigation. (2) A document often filed with the court by an attorney to establish representation of the client in a pending lawsuit.

Appellant: The party filing an appeal.

Appellant's brief: The brief filed by the appellant on appeal. Sometimes called Opening Brief.

Appellate brief: A generic name for a brief filed on appeal (by appellant, appellee, or amicus curiae).

Appellate jurisdiction: The jurisdiction of a court to hear and decide an appeal of the actions of a lower court.

Appellee: The party against whom an appeal is filed.

Appellee's brief: The brief filed by an appellee on appeal. Sometimes called Answer or Answering Brief.

Application (Motion) for Entry of Default Judgment: Under the HRCF or FRCP, filed after a default is entered, seeking entry by the judge of a judgment.

Arbitration: A means of dispute resolution utilizing a neutral third party (arbitrator or panel of arbitrators) whose decision is generally binding. Arbitration can be private or court-annexed. Often considered faster and less expensive than settling a dispute in a court.

Arbitrator: The neutral third-party decision maker in an arbitration, whether private or court-annexed.

Associate justices: The justices of the United States or Hawaii Supreme Court other than the Chief Justice.

Associates: Salaried lawyers without ownership or "partner" status in a law firm.

Attachment: A pre-judgment remedy providing for the seizure of property to satisfy a judgment which might ultimately be rendered in a pending civil action.

Attorney-Client Privilege: Protection allowing a client and attorney to refuse to disclose communications between them whose purpose was to facilitate the provision of legal services for the client.

Attorney of Record: The attorney who has filed a notice of appearance. *See also* Appearance.

Attorney work-product: Materials prepared by an attorney in anticipation of litigation, to assist the attorney in pursuing his client's interests. Discoverable only upon a showing of substantial need and undue hardship.

Authentication: The process by which evidence is shown to actually be what the offering party claims it is.

Authority: Anything that a court could rely on in reaching its decision.

Authorization forms: Signed by the client to authorize release to his attorneys of confidential information (often medical or employment information).

Bailiff: The official charged with maintaining order in the courtroom. Usually announces judge.

Bench: Raised podium area at the front of a courtroom where a judge sits.

Bench trial: Non-jury trial in which the judge is the trier-of-fact (see also *court trial and non-jury trial*).

Best Evidence Rule: Requires that, if available, the *original* of a document must be offered into evidence, rather than a copy.

Bill: A proposed statute.

Billable hour: An hour in which tasks are performed by an attorney or paralegal on behalf of a specific client; the value of the time is then billed to the client.

Boilerplate: Standard language that is commonly used in a certain kind of document.

Bond: A payment or surety filed by an appellant to protect the opposing party against the costs incurred should the appeal fail.

Brief: A formal memorandum of law filed with a court setting forth legal arguments with citations to legal authorities, often including a statement of facts and possibly other sections as well. A brief is usually submitted in connection with an application, motion, trial, or appeal.

Burden of proof: The responsibility of proving a fact at trial. Basically, the requirement that one party or the other must provide a certain level of evidentiary support for a given issue; failure to so provide leads to judgment for the opposing party.

Caption: The informational area found at the top of pleadings, motions, and other documents filed with the court in a pending lawsuit.

Cause of action: A legally acceptable reason for suing. A legal claim which, if proven, and if no successful defenses are raised, is sufficient to lead to judgment.

Certificate of service: Component of a pleading, motion, or other paper filed with the court in which the filing party certifies that a copy has been provided to all other parties.

Chain of custody: A thorough accounting of the whereabouts of a piece of evidence from the time obtained through the trial.

Challenge for cause: A request to exclude someone from a jury for a specified reason. Used by counsel to attempt to disqualify a juror who is biased or who knows the parties, or is otherwise unfit to serve; the judge makes the final decision whether to disqualify.

Charge to jury: Instructions to the jury on how to go about determining the facts and reaching its verdict.

Chief justice: The presiding justice in the United States Supreme Court or Hawaii Supreme Court.

Choice of forum: When concurrent jurisdiction exists, the decision to be made as to the court in which to file a complaint.

"Chinese Wall": Steps taken to prevent an employee

(attorney, paralegal, or secretary) from having any contact with a particular case or client in the office. May result from a *conflict of interest* or from prior knowledge gained representing an opposing party.

Circumstantial evidence: Offered to prove a secondary fact from which the trier-of-fact must draw an inference to find the primary fact.

Citation: A reference to any written material. It is the "address" where the material can be found in the library. Also called a *cite*.

Citator: A book containing lists of citations that can help you assess the current validity of an item and can give you leads to additional laws.

Civil action: A lawsuit. One private party suing another, or a private party suing the government, or the government suing a private party for a matter other than the commission of a crime.

Civil action number: The number assigned by the court to a lawsuit, for purposes of internal control (also called a *docket number*).

Civil cover sheet: Filed with the court along with a complaint, in order to provide the court with basic background information.

Civil litigation: Utilizing the court to resolve a private dispute. The process by which the non-criminal disputes of opposing parties are administered by a neutral third party, where the neutral third party has the power to render a resolution of the dispute binding upon the disputants, and where the dispute centers upon the determination of the bounds of certain alleged rights, privileges, and/or obligations of the disputants.

Claim: The assertion you make in your complaint (lawsuit) of a right to property or money from the other party to the lawsuit.

Class action: Lawsuit in which a large number of parties act as a group, with their claims joined together and pursued by a "representative party"; the group (called a "class") can also be made up of defendants.

Clear and convincing evidence: A high burden of proof sometimes required in a civil case involving serious allegations, such as fraud. Falls between "beyond a reasonable doubt" and "preponderance of the evidence."

Clerk's office: The office in a courthouse where pleadings are filed and other administrative tasks are performed.

Code: A set of laws or rules, organized by subject matter, e.g., Hawaii Penal Code, or C.F.R. (next entry).

Code of Federal Regulations: The annual publication of the federal government in which federal regulations in force are arranged by topic. Abbreviated "C.F.R."

Common Law: Judge-made law in the absence of

controlling statutory law or other higher law.

Compensatory damages: Money damages designed to reimburse the wronged party for the amount of the quantifiable damages (including special damages and general damages).

Competent (evidence): Capable of giving testimony because the person understands the obligation to tell the truth, has the ability to communicate, and has knowledge of the topic of his or her testimony. Not related to mental competence or ability.

Complaint: The formal statement of a plaintiff's cause or causes of action seeking a legal or equitable remedy against one or more defendants, which when filed with the court and served upon the defendants in the required manner successfully commences a lawsuit. the first pleading filed with the Court (your lawsuit). It contains: (1) a statement of the Court's jurisdiction over the parties, such as "diversity of citizenship" jurisdiction for federal courts (lawsuit between citizens of different states), and the subject matter (facts); (2) a statement of claims/causes of action against the Defendant(s); and (3) request(s) for relief, such as monetary damages.

Compulsory counterclaim: A claim by a party brought against an opposing party which arises out of the transaction that is the subject matter of the original claim; it must be filed, or is waived.

Conciliation: A form of alternative dispute resolution where the neutral third party ("conciliator") is a go-between for parties who wish no contact; the conciliator has no authority to render a binding resolution.

Concurrent jurisdiction: Exists where two courts (for example, state and federal) could potentially exercise jurisdiction over a dispute.

Concurring Opinion: An opinion written by less than a majority of the judges on the court that agrees with the *result* reached by the majority but not with all of its reasoning.

Confidentiality: The privacy maintained with regard to the client's situation, and the law firm's strategy, in a legal matter.

Conflict of interest: Arises when an attorney or paralegal has a vested interest of some sort which is against the client's interest.

Conflict of laws: An area of the law that determines what law applies when a choice must be made between the laws of different, coequal legal systems, e.g., two states. Situation arising when it is not absolutely clear which laws apply to a dispute (for example, such a situation might arise in a dispute over a contract which was signed in one state but performed in another).

Conflicts check: Effort by a law firm to ensure that no conflict of interest exists before accepting a new case. A

check of the client files of a law firm to help determine whether a conflict of interest might exist between a prospective client and current or past clients.

Consent Judgment: A judgment the terms of which have been agreed upon by the parties (also called a stipulated judgment).

Consolidation of Actions: The act of combining several causes of action into one trial when the actions involve the same parties and substantially the same issues and defenses.

Constitution: The fundamental law that creates the branches of government and that identifies basic rights and obligations.

Contempt of Court: An act or failure to act which the Court believes obstructs its administration of justice. A court has the power to punish by fine or imprisonment such contempt of its authority.

Contested: Opposed, as where a motion engenders opposition.

Contingent fee case: Case where the fee charged by lawyers varies depending on the result in the case.

Continuance: A delay sought for the purpose of postponing a scheduled trial.

Contract law: That broad field of substantive law concerned with the interpretation and enforcement of contracts.

Copies: Photocopies (or historically carbon copies) of an original document; to be distinguished from *duplicates* (see also *duplicates*).

Counsel tables: Where opposing counsel (and sometimes clients and paralegals) sit in the courtroom during a trial.

Count: A single cause of action stated in a complaint, counterclaim, or the like.

Counterclaim: Claim filed by a party against an opposing party in a responsive pleading, usually by a defendant against a plaintiff.

Court-annexed arbitration: Alternative program that is part of the official judicial system, in which the presiding officer and decision maker (called the arbitrator) is someone other than a judge or jury.

Counterclaim: a claim/cause of action stated by the defendant against the plaintiff, and is either contained in defendant's answer or is a separate pleading.

Court reporter: In a deposition, a private individual who records the transcript; in a trial, an official employee who records the transcript.

Court trial: A trial in which there is no jury; the judge decides questions of fact (also called a *bench trial* or *non-jury trial*).

Covenant not to sue: An agreement or provision, often included in a settlement, negating the possibility that the signing party will again file suit on the same claim.

Crimes: Offenses against the public at large, prosecuted by the government.

Criminal litigation: Litigation involving the prosecution and punishment of crimes.

Cross-appellant: Party who, after the filing of an appeal by an opposing party, proceeds to appeal the same decision on other grounds.

Cross-claim: A claim for relief asserted against a co-party.

Cross-examination: Questioning by one who did not originally call the witness; follows direct examination.

Cross-motions for summary judgment: Competing motions for summary judgment filed by opposing sides in a lawsuit; sometimes submitted on stipulated facts.

Damages: Losses suffered by an injured party as a result of wrongful behavior by another. Monetary compensation sought or recovered in court by any person who has been injured by the action of another. Damages may be collected for personal injury, property damage, etc.

Deadlines: Time by which an act must be completed, or else be waived.

Declarant: In the context of hearsay law, person who made an out-of-court statement.

Declaratory judgment: A court decision establishing the rights and obligations of the parties but not ordering them to do or to refrain from doing anything.

“Deep Pocket”: Slang for a person or organization with enough money or other assets to be able to pay a judgment.

Default: Under the HRCF or FRCF, an official recognition by the court that a party against whom a claim has been raised has failed to plead or otherwise defend against the claim.

Default judgment: A judgment for the plaintiff because the defendant failed to appear or to file an answer before the deadline. Judgment entered subsequent to, and based upon, a default.

Defendant: The party against whom a complaint raises a claim.

Defense: a denial or answer offered by the defendant to diminish or defeat plaintiff's causes of action.

Demonstrative evidence: Physical evidence used to illustrate, demonstrate, or explain something relevant to a case, although it did not itself play a role in the case.

Denial: Disputing the truth of an allegation in a complaint, or of an assertion in a Request for

Admission.

Deponent: Person who is examined at a deposition.

Deposition: Procedure by which the oral testimony of a party or non-party witness is taken, prior to trial, in response to questions, with the proceedings recorded in a transcript.

Deposition digest: Summary of deposition transcript prepared by a law firm for its internal use.

Deposition upon oral examination: Common form of deposition, where the examination is made up of oral questions; allows for follow-up questions.

Deposition upon written questions: Less common form of deposition, where examination is based upon written questions, with no opportunity for follow-up.

Designation: Identifies the purpose of a pleading or motion; often appears just below (or as a part of) the caption.

Dictum: A statement made by a court that was not necessary to resolve the specific legal issues before the court. The plural of dictum is dicta.

Digests: (1) Volumes that contain summaries of court opinions. These summaries are sometimes called *abstracts or squibs*. (2) Volumes that contain summaries of annotations in A.L.R., A.L.R.2d, etc.

Direct evidence: Evidence as to a fact in dispute not requiring the trier-of-fact to draw an inference.

Direct examination: Questions posed by the attorney or party who calls a witness or who noticed a deposition.

Discoverable: Obtainable through one of the devices of pretrial discovery, e.g., interrogatories.

Discovery: Rules, methods, and procedure by which the parties to a lawsuit are authorized to request (and, by seeking a court order, to compel) the disclosure of factual information held by opposing parties (or, in some instances, non-party witnesses).

Discovery conference: Meeting at which attorneys and judge work out a plan (followed by a corresponding court order) for the orderly progression of the discovery process.

Dismissal: Order of the court disallowing further litigation of a complaint or other claim for relief, or some individual cause of action raised in a complaint or claim for relief.

Dismissal without prejudice: A dismissal that does not preclude the party asserting the claim dismissed from raising it again at a later time.

Dismissal with prejudice: A dismissal that precludes the party asserting the claim dismissed from raising it again at some later time.

Dispositive motions: Motions that, if granted, constitute

a final resolution of some aspect of a case, or possibly even the entire case; the granting of such a motion might be appealed, but the issues involved will not be further considered by the trial court.

Dissenting Opinion: An opinion that disagrees with the result and the reasoning used by the majority.

Diversity of Citizenship: The parties to the litigation are from different states, and the amount in controversy exceeds the amount specified by federal statute. The basis of federal jurisdiction over cases between citizens of different states (such as when the Plaintiff is from Hawaii and the Defendant is from California), or between a citizen of a state and an alien (anyone who is not a citizen or national of the United States).

Diversity jurisdiction: Federal jurisdiction conferred by virtue of the diverse citizenship of the parties and the amount in controversy.

Docket: A formal record containing brief entries of all court proceedings.

Docket number: See *civil action number*.

Domestic relations law: That broad field of substantive law dealing with marital status, child custody, and other circumstances of the family relationship.

Duplicates: Documents conformed with an original signature, as contrasted *to copies*.

Elements: Essential components of a cause of action.

Et al.: And others. Used in captions and citations.

Et Seq.: And following. Used in statutory references.

Evidence: testimony, writings, or physical objects presented at the trial to prove or disapprove a certain point or fact. A separate determination must be made on whether a particular item of evidence is relevant or irrelevant, admissible or inadmissible, etc.

Equitable remedies: Remedies that involve something other than money damages, such as an injunction.

Exception: Under some court rules, a brief statement made on the record at trial which preserves the right to appeal an adverse evidentiary ruling.

Exclusive jurisdiction: Jurisdiction of a court when no concurrent jurisdiction exists; such court is the only court empowered to hear that case.

Execution: Enforcing a judgment by obtaining possession and title of the losing party's assets.

Exhaustion of administrative remedies: Pursuing all available methods of resolving a dispute within the administrative agency before asking a court to review what the agency did. Completing the final stage of the administrative adjudication process; prerequisite to judicial review.

Exhibits: Documents or physical evidence entered into

evidence at trial, or marked at a deposition.

Expedited transcript: Transcript received from court reporter on an accelerated schedule at additional expense.

Ex Parte Hearing: A hearing at which only one party is present. A court order issued at such a hearing is an *ex parte order*.

Expert witness: Witness whose qualifications have been accepted by the court as sufficient to justify scientific, technical, or specialized opinion testimony on a relevant issue. Expert witnesses usually are used to help the jury understand difficult and technical subjects which the average person is not familiar with.

FRAP: Abbreviation for Federal Rules of Appellate Procedure. Hawai'i's equivalent is HRAP.

FRCP: Abbreviation for Federal Rules of Civil Procedure.

Fact Finder: A person or a group of persons who determine the facts of a case. In a jury trial, the jurors are the fact-finders; in a bench-trial, the judge is the fact-finder.

Fact-pleading: Strict requirement that all significant facts be pleaded; requires more detail than notice-pleading.

Federal Courts: The courts of the United States, as distinguished from the courts of individual states. There are three levels of federal courts: the District Courts (such as the Hawaii District Court), the Courts of Appeals (such as the Ninth Circuit Court in San Francisco), and the Supreme Court in Washington, D.C.

Federal Question Jurisdiction: A legal question that arises from the application of the United States Constitution, a statute of Congress, or a federal administrative regulation. The basis of federal Jurisdiction over cases in which what is in dispute is the meaning or application of something in the Constitution of the United States (such as civil rights violation of privacy, etc.), acts of Congress, or treaties.

Federal Register: Daily publication of federal government containing information with regard to administrative agencies.

Federal Rules of Civil Procedure: (FRCP) The set of procedural rules governing all civil actions in the U.S. District Courts. In addition to this body of rules, each District Court usually has its own local rules. For example, the Hawaii District Court has made its own rules: the Rules of the United States District Court for the District of Hawaii (known as "Local Rules.").

Finding: the decision reached by a judge or jury on issues of facts.

Follow-up questions: Available at a deposition upon

oral examination; enable an examining attorney to explore the deponent's response.

Form books: Official or commercial compilations of model pleadings and motions.

Forum: the place (site of court) where a case is heard and determined.

Foundation: Background information establishing that a witness has knowledge sufficient to justify the testimony to come, or that a piece of physical evidence is what it is asserted to be.

Freedom of Information Act: (FOIA). Statute that gives citizens access to certain information in the possession of the government.

Garnishment: An execution on property owned by a judgment debtor but held by some third party.

General appearance: An appearance held to constitute an admission that the court has personal jurisdiction. (Most courts have eliminated this category of appearance; see also *special appearance*.)

General damages: Those compensatory damages that are not subject to precise calculation, such as damages for pain and suffering.

General jurisdiction: The power of the court (within its geographic boundaries) to hear any kind of case, with certain exceptions. Empowered to hear cases covering a broad spectrum of subject matters.

General release: A document by which a party releases all future rights to bring an action against another party based upon prior occurrences.

General verdict: Decision of a jury in which the decision identifies, in the most simple and straightforward fashion, which party has won and the amount of applicable damages (if any).

Grounds for appeal: The specific errors of the lower court that an appealing party asserts justify remedial action by the appellate court.

HRS: Abbreviation for Hawaii Revised Statutes.

HRCP: Abbreviation for Hawaii Rules of Civil Procedure.

Harmless error: Error committed by a lower court that does not, in the view of the appellate court, justify any remedial action.

Hawaii Revised Statutes: (HRS) Comprehensive collection of statutes (laws) passed by Hawai'i legislature, organized by subject and numbered.

Hawaii Rules of Civil Procedure: (HRCP) The set of procedural rules governing civil actions in the circuit court of Hawaii. Additional rules are contained in the Circuit Court rules.

Hearsay: A statement made out-of-court but offered in

the court to establish the truth of the facts contained in the statement.

Hearsay Rule: Evidentiary rule that hearsay is inadmissible; there are, however, many exceptions.

High court: Highest court in a particular court system.

“Hired Gun”: (pejorative term) Expert witness who makes a living testifying in trials, often for only one side.

Id.: (or *Ibid.*). Same citation as immediately above.

Impaneled: Selected, sworn in, and seated.

Impeach: To challenge, to attack the credibility of. To discredit the testimony of a witness.

Impleader: Third-party complaint practice (see *third-party complaint*).

Inadmissible: Inappropriate to be admitted into evidence at trial.

In banc: Before all the judges of an appellate circuit.

Indigent: Poor, unable to pay for needed services.

Inferior Court: A lower court.

Information and Belief: “To the best of my knowledge; good faith understanding.”

Infra: Below, mentioned or referred to later in the document.

In-hand service: Method by which a process server places a summons and complaint directly in the hands of a defendant.

In Issue: In dispute or question.

Initial client interview: The first interview of a client by a law firm at the beginning of a new matter.

In rem jurisdiction: Jurisdiction over a thing (such as land).

Injunction: An order of the court that a party perform a certain act, or refrain from performing a certain act.

Interlocutory appeal: An appeal occurring prior to judgment in the trial court; such appeals are authorized only under limited circumstances.

Intermediate appellate court: In a typical court system, hears appeals from the trial court, and renders decisions which can be reviewed by the high court.

Interpleader: An action brought by a plaintiff to avoid the possibility of double or multiple liability (often involving a "stakeholder" situation).

Interrogatories: (1) Written questions posed as part of the formal discovery process, by one party to another, and requiring written responses; (2) questions propounded to the jury to elicit a "general verdict with interrogatories."

Intervention: Procedure by which an outside third party can participate in a pending lawsuit.

Investigation: The gathering of facts in general, and more particularly the gathering of facts admissible in evidence.

Irreparable harm: Injury suffered that cannot be compensated by money damages which are easily calculable or readily identifiable.

John/Jane Doe: a fictitious name used in legal proceedings to name a party before its real name is known; most complaints name as 'Doe Defendants, corporations, partnerships, government entities, etc.

Joinder: Combining of claims; combining of parties.

Joinder of claims: Combining two or more claims in one lawsuit.

Joinder of parties: The right of two or more plaintiffs to pursue common claims in one lawsuit; the right to file one lawsuit against two or more defendants.

Joint and Several Liability: liability owed to a third party by two or more parties collectively or individually.

Joint Liability: liability shared by two or more parties.

Judgment: The final decree of a court, resolving the contested issues of law and fact.

Judgment by default: Final decree entered by the court based upon the entry of a prior default.

Judgment creditor: The party to whom damages must be paid. One who is owed money under the terms of a judgment.

Judgment debtor: One who owes money under the terms of a judgment.

Judgment lien: An interest in property of a judgment debtor asserted subsequent to entry of judgment.

Judicial branch: The branch of government which is made up of the court system.

Judicial review: The right of the courts to determine the meaning of statutes and regulations, and to determine the constitutionality of the actions of the other branches of government (including the constitutionality of statutes passed).

Jurisdiction: The authority of a court to decide and administer cases.

Jurisdictional statement: Statement setting forth the jurisdictional basis for a lawsuit; required by the FRCP (and the rules of some states, not Hawai'i) to appear in a complaint.

Jurors: Members of the jury who decide questions of fact in jury trials.

Jury box: Where the jury sits in a courtroom.

Jury demand: Filed by a party who seeks a jury trial with regard to a disputed issue of fact.

Jury instructions: Guidelines submitted by the judge to

the jury which must be followed by the jury as they conduct their deliberations and reach their conclusion.

Jury panels: A group of potential jurors from whom a jury is selected.

Jury trial: A trial in which the trier-of-fact is the jury.

Justices: The "judges" of a high court.

Key-Word Search: A search through a list of specified words that function like an index to a database.

Law clerk: (1) Non-lawyer employee of a law firm (often a law student); (2) law students or recent law school graduates who work for a judge for a one- or two-year period.

Law Review: A legal periodical published by a law school. Sometimes called a *law journal*.

Lawsuit: A civil action in which a plaintiff and defendant, and possibly other parties, litigate their dispute in the courts.

Lay witness: A non-expert witness.

Leading question: A question that suggests the answer as part of the question.

Legal remedies: Remedies that involve money damages.

Legislation: (1) The process of making statutory law. (2) A statute.

Legislative History: All of the events that occur in the legislature before a bill is enacted into a statute.

Limited jurisdiction: Jurisdiction of a court empowered to hear only certain specified types of cases.

Lis pendens notice: Filed on the land records with regard to the property of a defendant, to notify the world that title to the property is subject to judgment in a pending lawsuit.

Litigants: Parties to litigation.

Litigation: The formal process of resolving legal controversies through special tribunals established for this purpose. The major tribunal is a court. The process by which the disputes of opposing parties are administered by a neutral third party, where the neutral third party has the power to render a resolution of the dispute binding upon the disputants.

Litigation strategy: The "big picture" view of a dispute which drives the decision-making processes of the party.

Local rules: Rules of an individual court in addition to those rules that apply throughout a court system (for example, each U.S. District Court has "local rules" in addition to the FRCP).

Long-arm jurisdiction: Jurisdiction over an out-of-state defendant.

Long-arm statute: Statute that establishes and defines

long-arm jurisdiction (e.g., HRS § 634-35).

Looseleaf Service: A three-ring (or post) binder containing pages that can be easily inserted or taken out. The service covers current information on a broad or narrow topic.

Magistrate: A judicial officer having some but not all the powers of a judge.

Mail notice: Service of process, pleading, motion, or discovery request accomplished by mail.

Mandate: Issued by federal court of appeals twenty-one days after the judgment of that court is entered; incorporates judgment, written opinion (if any), and costs.

Majority Opinion: The opinion whose result and reasoning is supported by at least half plus one of the judges on the court.

Malpractice: Serious wrongful conduct committed by an individual, usually a member of a profession.

Materiality: The extent to which a fact to be proven is of consequence to the determination of a civil action.

Mediation: Form of alternative dispute resolution in which the neutral third party (called a "mediator") assists the parties in their face-to-face negotiations, but has no power to bind the parties.

Mediator: Neutral third party in a mediation

Medical report: A written evaluation of the medical situation of a patient prepared by a treating physician.

Memorandum of law: (1) Written document filed with the court in support of a motion, referencing judicial opinions, statutes, or other applicable facts and law; (2) research memorandum prepared for internal firm use.

Memorandum Opinion: A court opinion that does not name the judge who wrote the opinion.

Military affidavit: Required to show that a party against whom a default judgment is sought is not in the military service of the United States.

Motion: A request to a court for an order of some sort. A motion can be made before trial (such as a motion to dismiss), during trial (such as a motion for directed verdict), or after trial (such as a motion for judgment notwithstanding the verdict).

Motion calendar: Proceeding at which many pending motions are heard by the court (also called a *motion day*); also applied to the document scheduling such a proceeding.

Motion day: Proceeding at which many pending motions are heard by the court (also called *motion calendar*).

Motion for Extension of Time: Motion by which a party can request additional time, beyond a current

deadline, to complete an act.

Motion for Judgment as a Matter of Law: Pursuant to Rule 50 of the HRCF or FRCP, a motion made at a jury trial by which a party requests that the judge enter judgment in its favor.

Motion for Judgment on Partial Findings: Motion pursuant to Rule 52 of the HRCF or FRCP, by which a party in a bench trial requests that judgment be entered in its favor after the opposing party has been fully heard.

Motion for Judgment on the Pleadings: Under Rule 12(c) of the HRCF or FRCP, a motion by which a party requests that judgment be entered in its favor based upon the application of legal analysis to the facts as established by the pleadings alone.

Motion for More Definite Statement: Under Rule 12(e) of the HRCF or FRCP, a motion by which a party seeks correction of vague or ambiguous assertions in a previous pleading to which a response is required.

Motion for New Trial: A request for a new trial that, under the HRCF or FRCP, must be served not later than 10 days after the entry of judgment.

Motion for Order Compelling Discovery: Under Rule 37 of the HRCF or FRCP, a motion seeking an order that instructs the opposing party to comply with a previous discovery request (also called a *Motion to Compel*).

Motion for Order Compelling Physical or Mental Examination: Under Rule 35 of the HRCF or FRCP, a motion seeking an order authorizing the physical examination of a party (or person in the custody or legal control of a party).

Motion for Protective Order: Under Rule 26(c) of the HRCF or FRCP, a motion seeking an order limiting or regulating an opposing party's discovery rights.

Motion for Sanctions: (1) Under Rule 26(c) of the HRCF or FRCP, a motion seeking an order imposing a penalty against an opposing party who has failed to obey an order compelling a discovery response; (2) a motion seeking an order imposing a penalty under Rule 11 of the HRCF or FRCP (related to the obligation of an attorney to sign a pleading or other court document only after reasonable inquiry, and in good faith).

Motion for Summary Judgment: A motion seeking the entry of judgment in favor of the moving party as a result of there being no genuine issue of material fact, and the moving party being entitled to judgment as a matter of law. HRCF / FRCP Rule 56.

Motion in Limine: A motion filed prior to trial seeking a preliminary ruling or order with regard to some issue of evidence expected to arise at trial.

Motion to Amend the judgment: Under the HRCF or FRCP, a motion filed not later than 10 days after entry of the judgment of the trial court, seeking modification

of the judgment or the inclusion of some additional findings.

Motion to Compel: See *Motion for Order Compelling Discovery*.

Motion to Dismiss: A motion filed seeking the dismissal of one or more claims for relief; see, for example, Rules 12(b) and 41 of the HRCF or FRCP.

Motion to Strike: Under Rule 12(f) of the HRCF or FRCP, a motion seeking an order compelling the removal from a pleading of any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Movant: The party who formally requests a court to do something.

Non-jury trial: A bench trial, in which questions of fact are decided by a judge (*see bench trial and court trial*).

Notice of Appeal: Document filed by a party seeking an appeal by right (see Rule 3 of the Hawai'i or Federal Rules of Appellate Procedure).

Notice of Deposition: Document provided to parties in a pending lawsuit that officially schedules a deposition and that identifies the deponent, place, and time of the deposition, etc.

Notice of Hearing: A document that may be required in order to schedule oral argument on a pending motion.

Notice-pleading: A short and plain statement of the claim showing that the pleader is entitled to relief. Requirement that pleading place opposing party on notice of the claim or defense; less strict than fact-pleading requirement.

Numbered paragraphs: The manner in which averments of claim or defense are set forth in a pleading, and in which statements are set forth in a motion.

Objections: Asserted in opposition to inappropriate questions posed to a witness, inadmissible materials offered into evidence, or inappropriate discovery requests.

Of counsel: An attorney affiliated with a firm in some way other than full-time employment, such as a retired (but still somewhat active) attorney, or an occasional advisor.

Offer of judgment: Under Rule 68 of the HRCF or FRCP, an official offer to settle a case made by one party to another. If refused, there are certain potential repercussions for the party refusing.

Opening statement: Statement made by counsel to the jury just prior to the presentation of evidence at trial.

Opinion testimony: Testimony by a witness as to his or her opinion with regard to a situation, as opposed to testimony with regard to a fact.

Opinion: A court's written explanation of how and why

it applied the law to the specific facts before it to reach its decision. Also called a *case*. *Opinions* are printed in volumes called *reporters*.

Oral argument: Formal argument by counsel to a judge in open court, as on a motion or on an appeal.

Order: A formal command or directive of the court.

Ordinance: A law passed by the local legislative branch of government (e.g., city council).

Original jurisdiction: The power of a court to hear a particular kind of case initially. A trial court has original jurisdiction to hear a case from the filing of the complaint through the completion of the trial.

Panel: (1) A group of potential jurors; (2) a group of appellate judges; (3) a group of arbitrators.

Panel of arbitrators: A group of arbitrators acting together as the neutral third party deciding an arbitration.

Parallel Cite: An additional citation where you can find the same written material in the library.

Partial summary judgment: Summary judgment as to less than all the issues presented by a lawsuit.

Parties: Litigants or disputants.

Partner: One of the senior attorneys having ownership status and a voice in the management of a law firm.

Pendent jurisdiction: jurisdiction of a court to hear all causes of action which exist between the parties as long as at least *one* of the causes of action justifies jurisdiction and all such causes of action would ordinarily be tried together.

Per Curiam: By the court. A court opinion that does not name the particular judge who wrote the opinion.

Peremptory challenge: Used by a party to automatically disqualify a potential juror without stated reason; each party is entitled to only a limited number of peremptory challenges.

Permanent injunction: An injunction entering pursuant to a judgment after trial, of theoretically infinite duration.

Permissive joinder: Concept regulating the rights of multiple plaintiffs to join together in one action, or the rights of a plaintiff to sue multiple defendants in one action (*see*, for example, Rule 20 HRCF / FRCF).

Personal jurisdiction: Authority of a court to exercise its powers over the specific parties involved in the case.

Persuasive Authority: Whatever a court relies on in reaching its decision when it is not required to do so.

Petition for Certiorari: Filed by a party seeking review in the United States Supreme Court of an adverse decision of the lower federal courts, or of the state high courts.

Petition for Permission to Appeal: Filed in the federal courts by a party seeking to bring an interlocutory appeal.

Petition for Rehearing: Filed by a party seeking a reconsideration of the decision of a United States Court of Appeals.

Physical evidence: Non-testimonial evidence. That which can be seen or touched. Also called *tangible evidence*.

PI Cases: Personal injury (tort) cases.

Plaintiff: The party who commences a lawsuit by filing a complaint.

Plead: To deliver a formal statement or response.

Pleading: Any one of the documents listed in Rule 7(a) of the HRCF or FRCF, each of which represents an assertion by a party as to that party's legal and factual positions on matters at issue, made in anticipation of trial, requiring resolution at trial, and immediately operative for the purpose of defining the matters at issue without any need of further court order. Note that certain states may identify certain other pleadings beyond those identified in Rule 7(a) of the HRCF or FRCF.

Pocket Part: An insert that fits into a small pocket built into the inside back cover of a bound volume.

Police report: Document filed by investigating police officer with his police department with regard to his investigation of an accident.

Post-judgment discovery: Procedures by which a judgment creditor can compel a judgment debtor to reveal the existence of assets available to satisfy the judgment. In Hawai'i, known as examination of judgment debtor.

Prayer for relief: The "wherefore clause" in a complaint or related pleading, in which the party filing the pleading sets forth the nature of the relief sought. The request for damages or other form of relief.

Preliminary injunction: Injunction obtained after a pretrial hearing which remains in force during the pendency of the action.

Preponderance of the evidence: A standard of proof which is met when more of the evidence favors plaintiff's position than the Defendant's. Usual standard with regard to the burden of proof at a civil trial.

Presumption: An assumption that a certain fact is true. It is rebuttable if the court will consider evidence that it is false, and nonrebuttable if no such contrary evidence will be considered.

Pretrial conference: A meeting between the parties to a lawsuit presided over by a Magistrate or a judge prior to trial in order to narrow the issues to be tried, discuss trial logistics and possible settlement, and resolve any

other matters. Under HRCF / FRCP Rule 16, a meeting prior to trial between and among the judge, the attorneys in a case, and any unrepresented parties, at which are discussed such things as the status of discovery and motions, scheduling issues, settlement, etc.

Pretrial memorandum: Document often required in conjunction with a pretrial conference, prepared by one or more of the parties and related to the issues to be addressed in the conference.

Private arbitration: A form of alternative dispute resolution, occurring outside the judicial system, in which a private arbitrator renders a binding decision.

Privilege: A special benefit, right, or protection. In the law of evidence, a privilege is the right to refuse to testify or to prevent someone else from testifying. A right to prevent testimony as to certain past communications between certain individuals whose relationship fits into a protected category, such as husband/wife or attorney/client.

Probative value: The tendency of proffered evidence to make a material fact more or less probable.

Pro bono: Performed without a fee, or for a reduced fee.

Procedural rules: The rules that govern the mechanics of resolving a dispute in court or in an administrative agency, e.g., a rule on the time a party has to respond to a complaint. Rules (such as the HRCF or FRCP) that establish the manner in which a lawsuit is administered.

Process: The "package" of documents (usually the summons, complaint, and any other related documents) served on a defendant at the outset of a lawsuit.

Process server: A person (such as a sheriff) who delivers to the defendant the summons, complaint, and other related documents which constitute the "process" served at the outset of a lawsuit.

Production of Documents: a discovery tool which enables a party to a lawsuit to inspect documents another party or nonparty has in its possession or control.

Professional codes of ethics: Canons or rules governing the actions of professionals (such as attorneys or, in a growing trend, paralegals) in the conduct of their profession.

Property law: That broad field of substantive law concerning interests related to land (known as "real property") and other tangible things (known as "personal property").

Proposed order: Accompanies a motion, identifying the order sought from the court.

Pro se appearance: Appearance filed by a party who is not represented by an attorney.

Pro se party: A party who is not represented by an attorney.

Punitive damages: Damages in excess of the amount necessary to compensate the injured party, intended to punish the wrongdoer or to discourage like behavior in the future.

Quash: To render a subpoena ineffective and unenforceable.

Quasi-judicial: Like or similar to a court.

Quasi-legislation: A regulation of an administrative agency that has characteristics of the legislation (statutes) of a legislature.

Real evidence: Physical evidence that played a direct role in the events at issue in a lawsuit.

Reasonable Person: a hypothetical person who exercises the same level of care or judgment as an ordinarily prudent and competent person would exercise under similar circumstances. This term is usually used to describe a standard of proof.

Rebuttal: Evidence put on by the plaintiff after the defendant has finished presenting his case; limited to refuting arguments raised by the defendant.

Record: Pleadings, trial transcript, evidence, and other exhibits from the trial court which are filed with the appellate court on an appeal.

Relevancy: The tendency of evidence to make the existence of any fact that is of consequence to the determination of a lawsuit more probable or less probable than it would be without the evidence.

Relief: The legal or equitable remedy sought in a claim.

Remand: The order by which a higher court sends an appealed case back to the lower court for further action.

Remedy: A legal resolution to a problem.

Removal: The transfer of a case filed in state court to the federal court for the federal district in which the state court is located, provided there is concurrent jurisdiction and provided further that certain other statutory conditions are met.

Reply brief: The optional brief filed by an appellant in response to the appellee's brief.

Reply to Counterclaim: Pleading which represents essentially an "answer" to the claims raised in a counterclaim.

Reporters: Volumes containing the full text of court opinions. *Also* Official Reporter.

Request for Admissions: Discovery device by which a party can compel an opposing party to admit or deny the truth of certain facts, or certain statements applying law to fact.

Request for Entry of Default judgment: Under Rule 55 of the HRCF or FRCP, the document filed with the court seeking entry by the clerk of judgment based upon

a default which has previously been entered.

Request for Production of Documents and Things or Entry Upon Land: Under the HRCF or FRCP, a discovery request seeking the right to inspect and copy documents, enter upon land, inspect and perform tests upon tangible things, etc.

Res Judicata: A judgment on the merits will prevent the same parties from relitigating the same cause of action on the same facts.

Respondeat Superior: "Let the superior answer." An employer is responsible for the wrongs committed by an employee within the scope of employment.

Restatements: A series of volumes that attempt to formulate existing law in a given area.

Rested: Indication that a plaintiff or defendant has completed presentation of evidence.

Retainer: (1) The contract of employment between attorney and client. (2) An amount of money paid by a client to make certain that an attorney will be available to work for him or her. (3) The amount of money or other assets paid by the client as a form of deposit or advance payment against future fees and costs. An amount paid in advance to an attorney by a client against which amounts are withdrawn as earned.

Retainer letter: A letter identifying billing arrangements between an attorney and a client, as well as the fact of representation.

Return of Service: The method by which a court is notified that a defendant has been served with a summons and complaint.

Reversal: Overturning the decision of a lower court.

Rule 12(b) Motion: A motion filed asserting one of the seven defenses set forth in Rule 12(b) HRCF / FRCP.

Rule 12 Defense: One of the seven defenses identified in Rule 12(b) of the HRCF or FRCP.

Sanctions: Penalties (e.g., fines or imprisonment) imposed by the court, as where a pleading is signed in violation of Rule 11 HRCF / FRCP, or where a party ignores an order compelling compliance with a discovery request. HRCF / FRCP 37.

Satisfaction of Judgment: A document filed with a court by a judgment creditor, indicating that the judgment debtor has paid off the judgment.

Scheduling conference: A pretrial conference under Rule 16(b) of the FRCP which establishes time limits for joining parties, amending pleadings, completing discovery, filing motions, etc.

Scheduling order: An order of the court pursuant to Rule 16 of the FRCP establishing time limits for joining parties, amending pleadings, completing discovery, filing motions, etc.

Scope: In witness examination, the breadth of the questioning of the previous questioner which limits the current questioner; for example, the allowable questions on cross-examination are limited to the *scope* of direct examination. (See also *scope of discovery*.)

Scope of discovery: The breadth of allowable discovery, as established by Rule 26 HRCF / FRCP; generally described as liberal.

Second Chair: A seat at the counsel's table in the courtroom used by an assistant to the trial attorney during the trial.

Senior partner: Law firm partner with higher status than an ordinary partner, exercising a more powerful voice in firm management or taking a larger share of the firm's profits.

Service: Delivery, as of a pleading or of the "process" which is delivered to the defendant at the outset of a lawsuit.

Service of process: The delivery of a formal notice to a defendant ordering him or her to appear in court to answer the allegations of the plaintiff. The required notification by personal delivery, mail, or publication of pleadings (such as complaints and motions) to a person that is involved in some action or proceeding. In Hawaii, a deputy sheriff is usually hired to serve the complaint on a Defendant. Delivery to the defendant of the "package" which includes the summons and complaint, made by a process server or by mail at the outset of a lawsuit.

Settlement: Resolving a lawsuit or other dispute by agreement of the parties prior to the full playing-out of the litigation process.

Settlement Agreement: A document incorporating the terms on which disputing parties have agreed to resolve their dispute.

Shepardizing: Using the volumes of *Shepard's Citations* in order to obtain the data available in these volumes, e.g., whether a case has been appealed, whether a statute has been repealed.

Sheriff: A public official who is often charged with responsibility for completing service of process, or of serving subpoenas; may also be called upon to maintain order in a courtroom.

Signature block: That portion of a pleading or motion that is signed by the attorney; often includes the attorney's address and phone number, the party represented, and possibly other information as well.

Slip Law: A single act passed by the legislature and printed separately, often in a small pamphlet. It is the first official publication of the act.

Slip Opinion: A single court opinion, which for many courts is the first printing of the case.

Sole practitioner: An attorney who practices alone, with no partners.

Special appearance: An appearance filed for the limited purpose of contesting jurisdiction. (Most courts have eliminated this category of appearance; see also *general appearance*.)

Special damages: Money damages which are capable of precise calculation. Special defense: See *affirmative defense*.

Special verdict: Verdict in which the jury is asked to decide specific individual issues of fact, which are then incorporated into the judgment of the court.

Specific performance: An equitable remedy, requiring a party to perform the obligations of a contract; generally only applied where the object of the contract is "unique."

Standing: the right of a party to bring a claim/cause of action to the Court. This right arises when a party has been wronged.

Standing pretrial scheduling order: A permanent order of the court applicable to all cases filed and relating to the timing of, and deadlines for, such things as discovery, amendments to pleadings, filing of motions, joining parties, etc.

Status conference: A pretrial conference occurring after the scheduling conference and before the final pretrial conference, designed to expedite the administration of the case and often focusing on the possibility of settlement.

Statute of limitations: The deadline, established by statute, by which a cause of action must be asserted in a lawsuit, or be lost forever.

Stay: To delay the enforcement or the execution of a judgment.

Stipulated: Agreed to.

Stipulated judgment: A judgment the terms of which have been agreed upon by the parties (also called a *consent judgment*).

Stipulation: an agreement between opposing parties in a case as to some relevant issue.

Stipulation of facts: A statement setting forth those facts which have been agreed upon by the parties.

Structured settlement: Settlement in which the amount of damages agreed upon is paid not in one lump sum, but in a series of installments over time.

Subject matter jurisdiction: Jurisdiction of a court over the type or category of dispute existing between the parties.

Subpoena: A document issued under the authority of the court and served upon a person, commanding that person to appear at a certain place at a certain time, usually at

a deposition, or trial (see also *subpoena duces tecum*).

Subpoena duces tecum: A subpoena that commands the person subpoenaed to produce certain documents and things at a certain place at a certain time. Substantive law: The rules that govern the non-procedural issues presented to the court for decision.

Substantive Law: The nonprocedural rules that govern rights and duties.

Summary Judgment: Judgment rendered by the Court in response to a motion filed by a party who claims that there is no dispute about the important (material) facts, thus making it unnecessary to send the case to a jury or bench trial.

Summons: A formal notice from the court ordering the defendant to appear. Served with a complaint to summon the defendant to appear in court by a certain date, and to inform the defendant of the possibility of default if such appearance is not made.

Supplemental pleading: Under the HRCF or FRCP, a pleading that modifies an earlier pleading based upon transactions or occurrences taking place *subsequent to that earlier pleading*.

Supplementation: Updating of previously-served discovery responses (see Rule 26(e) HRCF / FRCP, for example).

Supra: Above, mentioned or referred to earlier in the document.

TRO: Abbreviation for temporary restraining order.

Temporary restraining order: A form of injunctive relief which may be ordered by the court in an ex parte manner but which remains in force for only a very brief time (usually no more than ten days) until a hearing can be held; abbreviated "TRO."

Testimony: Statements made by a witness or a party under oath at a trial in Court or at a deposition out of court.

Theory of the case: The litigation strategy formulated by a plaintiff.

Theory of the defense: The litigation strategy formulated by a defendant.

Third party complaint: A complaint filed by a party defending a claim against an outside third party who may be liable to the defending party for any judgment obtained on the original claim (also called *impleader*).

Three-judge panel: Group of judges assigned to decide a case heard in the U.S. Court of Appeals.

Tickler system: A method for deadline tracking in which empty slots in a receptacle correspond to future dates, With reminder forms inserted into relevant slots.

Time sheets: Forms used by most law firms on which attorneys and paralegals enter time spent working on

various tasks, then identify the client to be billed for such time.

Title of the action: Names of the parties as they appear in the caption of a pleading or motion.

Tort law: That broad field of substantive law concerned with allegations of one party asserting that another party has wrongfully caused injury to person or property. A private wrong or injury other than a breach of contract or the commission of a crime, although some breaches of contract and crimes can also constitute torts.

Transcript: A written verbatim recitation of a deposition or trial, prepared by a court reporter.

Trial: Proceeding in a lawsuit in which evidence is presented by the parties and ruled upon by the judge, after which a decision is made resolving the case. The trial is the focus of the entire process of litigation in the courts. (See also *bench trial*; *jury trial*; *non-jury trial*; *court trial*).

Trial court: The court of original jurisdiction in which a lawsuit is first filed, and in which a trial will eventually be held unless the lawsuit is resolved prior to trial. Only in the trial court do trials take place.

Trial de novo: A new trial begun from scratch, with no direct reliance on a previous record.

Trial docket: The list of cases awaiting trial; impacts on the scheduling of cases for trial based upon length of docket and available courtrooms and judges.

Trial memorandum: Legal memorandum requested by the trial court judge to explain the parties' position on factual and legal questions at issue in the trial.

Trial notebook: Notebook used by attorney at trial; it contains separate sections for easy access to pleadings, discovery materials, jury selection materials, witness information, model jury instructions, etc.

Trier-of-fact: The entity charged with deciding questions of fact; in a bench trial the judge is the trier-of-fact, while in a jury trial the jury is the trier-of-fact.

Uncontested: Unopposed, as a motion to which there is no opposition.

United States Courts of Appeal: The intermediate appellate courts in the federal court system.

United States District Courts: The trial courts in the federal court system which have the power to hear and determine cases involving federal laws and/or actions between citizens of different states. Hawai'i's single District Court is located in the Prince Kuhio Federal Building, 300 Ala Moana Boulevard in Honolulu.

Venue: The geographical location where the trial takes place. To decide the proper venue for civil cases, the Court usually considers where the action happened, or where the parties to the lawsuit live or do their business.

Verdict: The decision rendered by the jury with regard to questions of fact.

Verification: A signature by the party making allegations attesting to their truth, as where a plaintiff signs a verified complaint.

Verified complaint: A complaint where the truth of the allegations has been sworn to by the plaintiff, who then signs the complaint to that effect.

Vicarious Liability: Being responsible because of what someone else has wrongfully done or wrongfully failed to do. *See also Respondeat Superior.*

Voir dire: The oral examination of prospective jurors for purposes of selecting a jury. Examination prior to a trial by the Court and/or the attorneys or parties of prospective jurors to determine their qualifications and suitability to serve as Jurors. The process by which potential jurors are questioned so as to identify potential bias or other incapacity. Also examination of expert to determine qualifications.

Voluntary dismissal: A dismissal under Rule 41 of the HRCF or FRCP to which the party whose claim is dismissed agrees. Unless otherwise specified, such a voluntary dismissal is generally without prejudice to the claim being raised again.

Waiver: The loss of a right or privilege because of an explicit rejection of it or because of a failure to claim it at the appropriate time. Under Rule 12(g) and (h) HRCF / FRCP, loss of the right to raise subsequent Rule 12 issues based upon the prior filing of a Rule 12 motion (or a pleading) which omitted such issues.

With(out) Prejudice: When a lawsuit is dismissed with prejudice, that means the same lawsuit cannot be brought to court again; dismissal without prejudice, however, allows the same lawsuit to be brought again.

Witness stand: Area in a courtroom where the witness submits to examination by the attorneys.

Working copies: Copies made when working with documents, to avoid marking original documents.

Work-Product: Notes, working papers, memoranda, or similar documents and tangible things prepared by the attorney in anticipation of litigation are not discoverable. Work done by an attorney in the process of preparing for trial, which is usually not obtainable through discovery.

Writ of certiorari: The writ issued by the Supreme Court of the United States indicating a willingness to review a decision for which review had been requested by a Petition for Certiorari.

Writ of execution: The official document required for the enforcement of a judgment for the payment of money (*see*, for example, Rule 69 of the FRCP).