

# FACULTY OF JURIDICAL SCIENCES

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# Lecture-38



## O

### Objection to dischargeability

A trustee's or creditor's objection to the debtor being released from personal liability for certain dischargeable debts. Common reasons include allegations that the debt to be discharged was incurred by false pretenses or that debt arose because of the debtor's fraud while acting as a fiduciary.

### Objection to exemptions

A trustee's or creditor's objection to the debtor's attempt to claim certain property as exempt from liquidation by the trustee to creditors.

### Opinion

A judge's written explanation of the decision of the court. Because a case may be heard by three or more judges in the court of appeals, the opinion in appellate decisions can take several forms. If all the judges completely agree on the result, one judge will write the opinion for all. If all the judges do not agree, the formal decision will be based upon the view of the majority, and one member of the majority will write the opinion. The judges who did not agree with the majority may write separately in dissenting or concurring opinions to present their views. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law the majority used to decide the case. A concurring opinion agrees with the decision of the majority opinion, but offers further comment or clarification or even an entirely different reason for reaching the same result. Only the majority opinion can serve as binding precedent in future cases. See also precedent.

### Oral argument

An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

## P

## Panel

1. In appellate cases, a group of judges (usually three) assigned to decide the case; 2. In the jury selection process, the group of potential jurors; 3. The list of attorneys who are both available and qualified to serve as court-appointed counsel for criminal defendants who cannot afford their own counsel.

## Parole

The release of a prison inmate – granted by the U.S. Parole Commission – after the inmate has completed part of his or her sentence in a federal prison. When the parolee is released to the community, he or she is placed under the supervision of a U.S. probation officer.

The Sentencing Reform Act of 1984 abolished parole in favor of a determinate sentencing system in which the sentence is set by sentencing guidelines. Now, without the option of parole, the term of imprisonment the court imposes is the actual time the person spends in prison.

## Party in interest

A party who has standing to be heard by the court in a matter to be decided in the bankruptcy case. The debtor, U.S. trustee or bankruptcy administrator, case trustee, and creditors are parties in interest for most matters.

## Per curiam

Latin, meaning "for the court." In appellate courts, often refers to an unsigned opinion.

## Peremptory challenge

A district court may grant each side in a civil or criminal trial the right to exclude a certain number of prospective jurors without cause or giving a reason.

## Petit jury (or trial jury)

A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of at least six persons.

## Petition

The document that initiates the filing of a bankruptcy proceeding, setting forth basic information regarding the debtor, including name, address, chapter under which the case is filed, and estimated amount of assets and liabilities.

## Petition preparer

A business not authorized to practice law that prepares bankruptcy petitions.

## Petty offense

A federal misdemeanor punishable by six months or less in prison.

## Plaintiff

A person or business that files a formal complaint with the court.

## Plan

A debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

## Plea

In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges. See also *nolo contendere*.

## Pleadings

Written statements filed with the court that describe a party's legal or factual assertions about the case.

## Postpetition transfer

A transfer of the debtor's property made after the commencement of the case.

## Prebankruptcy planning

The arrangement (or rearrangement) of a debtor's property to allow the debtor to take maximum advantage of exemptions. (Prebankruptcy planning typically includes converting nonexempt assets into exempt assets.)

#### Precedent

A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally "follow precedent" - meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case.

#### Preferential debt payment

A debt payment made to a creditor in the 90-day period before a debtor files bankruptcy (or within one year if the creditor was an insider) that gives the creditor more than the creditor would receive in the debtor's chapter 7 case.

#### Presentence report

A report prepared by a court's probation officer, after a person has been convicted of an offense, summarizing for the court the background information needed to determine the appropriate sentence.

#### Pretrial conference

A meeting of the judge and lawyers to plan the trial, to discuss which matters should be presented to the jury, to review proposed evidence and witnesses, and to set a trial schedule. Typically, the judge and the parties also discuss the possibility of settlement of the case.

#### Pretrial services

A function of the federal courts that takes place at the very start of the criminal justice process – after a person has been arrested and charged with a federal crime and before he or she goes to trial. Pretrial services officers focus on investigating the backgrounds of these persons to help the court determine whether to release or detain them while they await trial. The decision is based on

whether these individuals are likely to flee or pose a threat to the community. If the court orders release, a pretrial services officer supervises the person in the community until he or she returns to court.

### Priority

The Bankruptcy Code's statutory ranking of unsecured claims that determines the order in which unsecured claims will be paid if there is not enough money to pay all unsecured claims in full.

### Priority claim

An unsecured claim that is entitled to be paid ahead of other unsecured claims that are not entitled to priority status. Priority refers to the order in which these unsecured claims are to be paid.

### Pro per

A slang expression sometimes used to refer to a pro se litigant. It is a corruption of the Latin phrase "in propria persona."

### Pro se

Representing oneself. Serving as one's own lawyer.

### Pro tem

Temporary.

### Probation

Sentencing option in the federal courts. With probation, instead of sending an individual to prison, the court releases the person to the community and orders him or her to complete a period of supervision monitored by a U.S. probation officer and to abide by certain conditions.

### Probation officer

Officers of the probation office of a court. Probation officer duties include conducting presentence investigations, preparing presentence reports on convicted defendants, and supervising released defendants.

#### Procedure

The rules for conducting a lawsuit; there are rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

#### Proof of claim

A written statement describing the reason a debtor owes a creditor money, which typically sets forth the amount of money owed. (There is an official form for this purpose.)

#### Property of the estate

All legal or equitable interests of the debtor in property as of the commencement of the case.

#### Prosecute

To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government