

Glossary

advocacy

1. The work or profession of an advocate.
2. The act of pleading for or actively supporting a cause or proposal. [2]

bench trial. A trial before a judge without a jury. • The judge decides questions of fact as well as questions of law. Also termed *trial to the bench*; *nonjury trial*; *court trial*; *trial before the court* (abbr. TBC); *judge trial*. [2]

case in chief

1. The evidence presented at trial by a party between the time the party calls the first witness and the time the party rests.
2. The part of a trial in which a party presents evidence to support the claim or defense. [2]

cross examination. The process of questioning a witness whose direct testimony is adverse to the position of the party undertaking the questioning. The purpose of cross examination is to dilute, neutralize, or completely destroy the effect of the witness's direct testimony. [1]

deposition. A legal process in which an attorney asks oral questions of a person involved in a legal action or of a witness for one of the parties involved. The person who is deposed is called the *deponent*. The deposition is conducted under oath outside of the

Sources

- [1] *The Dictionary of Real Estate Appraisal*, 5th ed. (Chicago: Appraisal Institute, 2010).*
- [2] Bryan A. Garner, *Black's Law Dictionary*, 9th ed. (St. Paul, Minn.: West Group, 2009).
- [3] Uniform Standards of Professional Appraisal Practice, 2010-2011 ed. (Washington, D.C.: The Appraisal Foundation, 2010).
- [4] —, 2012-2013 ed. (Washington, D.C.: The Appraisal Foundation, 2012).

* Note that the fifth edition of *The Dictionary of Real Estate Appraisal* was published in 2010. Definitions from that dictionary may include parenthetical references to *Black's Law Dictionary*, eighth edition, and USPAP, 2010-2011 edition.

courtroom, usually in one of the lawyer's offices. The testimony of an appraiser in a deposition regarding his or her opinion about a parcel of real estate is considered an *oral report*. [1]

direct examination. In a trial or other court proceeding, the initial questioning of a witness by the party who called the witness to testify. [1]

discovery (1). A legal procedure in which lawyers prepare for trial by obtaining factual information from an expert or fact witness(es) through written or oral questions. In discovery, an attorney may also have court authority to examine the files of all appraisals and related information for the purpose of preparing a case. [1]

discovery (2)

1. The act or process of finding or learning something that was previously unknown.
2. Compulsory disclosure, at a party's request, of information that relates to the litigation.
3. The facts or documents disclosed.
4. The pretrial phase of a lawsuit during which depositions, interrogatories, and other forms of discovery are conducted. [2]

docket. 2. A schedule of pending cases. Also termed *court calendar*; *cause list*; *trial calendar*. [2]

exhibit

1. A document, record, or other tangible object formally introduced as evidence in court.
2. A document attached to and made part of a pleading, motion, contract, or other instrument. [2]

expert. A person who is presumed to have special knowledge of, or skill in, a particular field due to education, experience, or study. [1]

expert testimony. Testimony of persons who are presumed to have special knowledge of, or skill in, a particular field due to education, experience, or study. The *Daubert* and *Kumho Tire* decisions of the US Supreme Court discuss four considerations in determining the reliability of expert testimony—testing, peer review, error rates, and acceptability in the relevant scientific community. [1]

expert witness (1). A person qualified to give expert testimony. [1]

expert witness (2). A witness qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion about the evidence or a fact issue. Also termed *skilled witness*. [2]

extraordinary assumption (1). An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions

presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2010-2011 ed.) [1]

extraordinary assumption (2). An assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. [4]

fact-finder. One or more persons—such as jurors in a trial or administrative-law judges in a hearing—who hear testimony and review evidence to rule on a factual issue. Also termed *finder of fact*; *fact-trier* or *trier of fact* (in a judicial proceeding); *fact-finding board* (for a group or committee). [2]

hearsay. Traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness. (*Black's*) [1]

hypothetical condition (1). That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2010-2011 ed.) [1]

hypothetical condition (2). A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. [4]

jurisdictional exception. An assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP. (USPAP, 2010-2011 ed.) [1]

jury instruction (usu. pl.). A direction or guideline that a judge gives a jury concerning the law of the case. Often shortened to *instruction*. Also termed *jury charge*; *charge*; *jury direction*; *direction*. [2]

legal instruction. *See jury instruction.*

material witness. A witness who can testify about matters having some logical connection with the consequential facts, esp. if few others, if any, know about those matters. [2]

motion in limine. A pretrial request that certain inadmissible evidence not be referred to or offered at trial. • Typically, a party makes this motion when it believes that mere mention of the evidence during trial would be highly prejudicial and could not be remedied by an instruction to disregard. If, after the motion is granted, the opposing party mentions or attempts to offer the evidence in the jury's presence, a mistrial may be ordered. A ruling on a motion in limine does not always preserve evidentiary error for appellate purposes. To raise such an error on appeal, a party may be required to formally object when the evidence is actually admitted or excluded during trial. [2]

predicate fact

1. A fact from which a presumption or inference arises.
2. A fact necessary to the operation of an evidentiary rule. • For example, there must actually be a conspiracy for the co-conspirator exception to the hearsay rule to apply. [2]

produce

1. To bring into existence; to create.
2. To provide (a document, witness, etc.) in response to subpoena or discovery request. [2]

protective order

1. A court order prohibiting or restricting a party from engaging in conduct (esp. a legal procedure such as discovery) that unduly annoys or burdens the opposing party or a third-party witness.
2. RESTRAINING ORDER (1). [2]

reasonable. In law, just, rational, appropriate, ordinary, or usual in the circumstances. It may refer to care, cause, compensation, doubt (in a criminal trial), and a host of other actions or activities. [1]

rebuttal testimony. Testimony that is produced to refute the testimony presented by the opposition in a court case. [1]

recross examination. A second cross-examination, after redirect examination. Often shortened to *recross*. [2]

redirect examination. A second direct examination, after cross-examination, the scope ordinarily being limited to matters covered during cross-examination. Often shortened to redirect. Also termed (in England) *reevaluation*. [2]

scope of work. The type and extent of research and analyses in an assignment. (USPAP, 2010-2011 ed.) [1]

subpoena duces tecum (1). A subpoena ordering the witness to appear and to bring specified documents, records, or things. (*Black's*) *See also* **discovery**. [1]

subpoena duces tecum (2). A subpoena ordering the witness to appear in court and to bring specified documents, records, or things. [2]

time certain. 1. A definite, specific date and time. [2]

trier of fact. *See* **fact-finder**.

