

DEFINITIONS

2. De Novo Review

De novo means "anew." Black's Law Dictionary, 8th Ed. (Bryan A. Garner, ed. 2004). We have explained that "the word 'anew' means anew, de novo, from start to finish,--from beginning to end." *White Sulphur Springs v. Voise*, 136 Mont. 1, 5, 343 P.2d 855, 857 (1959). For instance, a trial de novo means "trying the matter anew, the same as if it had not been heard before and as if no decision had previously been rendered." *McDunn v. Arnold*, 2013 MT 138, ¶ 22, 370 Mont. 270, 303 P.3d 1279. In de novo review, the Supreme Court independently reviews the record, using the same criteria used by the district court, to determine whether judgment is appropriate. *Siebken v. Voderberg*, 2012 MT 291, ¶ 20, 367 Mont. 344, 291 P.3d 572. The court is "not required to affirm simply because the [lower court's application]...was not unreasonable or arbitrary... the issue is not whether the [lower court]...had some reasonable basis for its conclusion...but whether, in view of the findings of fact, this Court agrees that the conclusion was the most appropriate application of the statute to the facts." *Anderson v. Carlsons Transp.*, 178 Mont. 290, 293, 583 P.2d 440, 443 (1978). Further, "an appellate court is not bound by the findings of the trial court, but is free to draw its own conclusions from the evidence presented." *Sharp v. Hoerner Waldorf Corp.*, 178 Mont. 419, 423, 584 P.2d 1298, 1300 (1978). De novo review is appropriately applied to questions of law, where no deference is given to the trial court's determination because the trial court's decision does not hinge on an exercise of the court's discretion. *Costco Wholesale*, ¶ 19.

In de novo review of agency proceedings, the appellate court's review consists of considering whether the agency "erred in law or whether its decision is wholly unsupported by the evidence or clearly arbitrary or capricious." *Winchell v. Mont. Dep't of Natural Resources & Conservation*, 1999 MT 11, ¶ 11, 293 Mont. 89, 972 P.2d 1132.

A. Questions of Law Reviewed De Novo

- The Supreme Court reviews a district court's conclusions of law de novo to determine whether the court's interpretation and application of the law are correct. *State v. Howard*, 2008 MT 173, ¶ 8, 343 Mont. 378, 184 P.3d 344 abrogated on other grounds by *State v. Stops*, 2013 MT 131, 370 Mont. 226, 301 P.3d 811. The Supreme Court's review of questions of law is plenary; the Court reviews the decision to determine whether the lower court's conclusion of law is correct. *State v. Brown*, 1999 MT 133, ¶ 15, 294 Mont. 509, 982 P.2d 468. The Court has used the terms de novo and "plenary" synonymously. See *Johnson v. Costco Wholesale*, 2007 MT 43, ¶ 19, 336 Mont. 105, 152 P.3d 727.

- On questions of law, the parties are entitled to full review by the appellate court without special deference to the views of the trial court. [Johnson v. Costco Wholesale](#), 2007 MT 43, ¶ 18, 336 Mont. 105, 152 P.3d 727 (citing 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 5236, 238 (2d ed., West Supp. 2006)). Accord [State v. Couture](#), 2010 MT 201, ¶ 47 n. 2, 357 Mont. 398, 240 P.3d 987; [State v. Zimmerman](#), 2014 MT 173, ¶ 11, 375 Mont. 374, 328 P.3d 1132.
- Summary judgment. [Siebken v. Voderberg](#), 2012 MT 291, ¶ 16, 367 Mont. 344, 291 P.3d 572.
- Judgment as a matter of law: Since the assessment of the sufficiency of the evidence and the application of the law to that assessment cannot involve discretion—that is, since no deference is given to the trial court—the question is one of law to which the de novo or plenary standard of review applies. [Johnson v. Costco Wholesale](#), 2007 MT 43, ¶ 19, 336 Mont. 105, 152 P.3d 727.
- Statutory interpretation. [LHC, Inc. v. Alvarez](#), 2007 MT 123, ¶ 13, 337 Mont. 294, 160 P.3d 502; [State v. Gallagher](#), 2005 MT 336, ¶ 16, 330 Mont. 65, 125 P.3d 1141 (question of whether district court correctly designated defendant as a persistent felony offender was a question of statutory interpretation, reviewable de novo).
- Denial of motion to dismiss in a criminal case. [State v. LeMay](#), 2011 MT 323, ¶ 27, 363 Mont. 172, 266 P.3d 1278.
- Whether a party has been afforded his or her right to a trial de novo. [McDunn v. Arnold](#), 2013 MT 138, ¶ 10, 370 Mont. 270, 303 P.3d 1279.
- Construction and interpretation of a contract. [Cole v. Valley Ice Garden, L.L.C.](#), 2005 MT 115, ¶ 24, 327 Mont. 99, 113 P.3d 275.
- Whether contract (plea agreement) was breached. [State v. Shepard](#), 2010 MT 20, ¶ 8, 355 Mont. 114, 225 P.3d 1217.
- Sufficiency of the evidence. [Giambra v. Kelsey](#), 2007 MT 158, ¶ 29, 338 Mont. 19, 162 P.3d 134.
- Whether district court's action conforms to statutory requirements. [Jacobsen v. Thomas](#), 2006 MT 212, ¶ 13, 333 Mont. 323, 142 P.3d 859.
- District court's decision to dismiss a claim based on lack of subject matter jurisdiction. [State v. Boucher](#), 2002 MT 114, ¶ 10, 309 Mont. 514, 48 P.3d 21.
- Whether a party has waived the right to trial by jury. [Balyeat Law, P.C. v. Harrison](#), 1999 MT 144, ¶ 18, 295 Mont. 13, 983 P.2d 902.
- Constitutional law questions. [State v. Racz](#), 2007 MT 244, ¶ 13, 339 Mont. 218, 168 P.3d 685.
- Discretionary rulings based on legal conclusions. [Jacobsen v. Allstate Ins. Co.](#), 2009 MT 248, ¶ 17, 351 Mont. 464, 215 P.3d 649.
- District Court's order granting a motion to compel arbitration. [Iwen v. US. West Direct](#), 1999 MT 63, ¶ 17, 293 Mont. 512, 977 P.2d 989.

- District Court's determination as to whether a party is entitled to postjudgment interest. [In re Marriage of Debuff](#), 2002 MT 159, ¶ 15, 310 Mont. 382, 50 P.3d 1070.
- District Court's finding of actual innocence. [State v. Beach](#), 2013 MT 130, ¶ 8, 370 Mont. 163, 302 P.3d 47.

B. Mixed Questions of Law and Fact

The Supreme Court reviews mixed questions of law and fact de novo. [Whitlow v. State](#), 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861. The Supreme Court reviews a district court's application of the rules of civil procedure to undisputed facts, a purely legal question, de novo. [Citizens Awareness Network v. Mont. Bd. of Env'tl. Review](#), 2010 MT 10, ¶ 13, 355 Mont. 60, 227 P.3d 583.

We generally review situations where the applicable law is undisputed and the issue is whether the facts satisfy the statutory standard, as mixed questions of law and fact. We review mixed questions of law and fact de novo. [Citizens Right to Recall v. State](#), 2006 MT 192, ¶ 6, 333 Mont. 153, 142 P.3d 764.

We apply de novo review to mixed questions of law and fact, including the district court's application of controlling legal principles to its factual findings. In such cases, the district court's application of controlling legal principles will not be disturbed unless they are clearly erroneous. Thus, although we review the district court's factual determinations for clear error, whether those facts satisfy the legal standard is reviewed de novo. Such a bifurcated standard of review affords appropriate deference to the trial court's fact-finding role and responsibility, while providing this Court with the opportunity to review legal conclusions and the application of legal standards de novo. [BNSF Ry. Co. v. Cringle](#), 2012 MT 143, ¶ 16, 365 Mont. 304, 281 P.3d 203.

- Ineffective assistance of counsel. [Whitlow v. State](#), 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861.
- Whether a plea is voluntary. [State v. Warclub](#), 2005 MT 149, ¶¶ 21-24, 327 Mont. 352, 114 P.3d 254 (Court reviews mixed question of voluntariness to determine whether the district court's interpretation of the law—and application of the law to facts—is correct).