

What Is Double Jeopardy? Legal Definition and Examples

The clause preventing the government from taking "a second bite of the apple"

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The legal term *double jeopardy* refers to the [constitutional protection](#) against being made to stand trial or face punishment more than once for the same criminal offense. The double jeopardy clause is present in the [Fifth Amendment](#) to the [U. S. Constitution](#), which provides that “No person shall ... be subject for the same offense to be twice put in jeopardy of life or limb.”

Key Takeaways: Double Jeopardy

The double jeopardy clause, included in the Fifth Amendment of the Constitution, provides protection against being prosecuted again for the same offense after being acquitted, convicted, and/or punished for the same offense.

Once acquitted, a defendant cannot be retried for the same offense on the basis of new evidence, no matter how damning that evidence may be.

Double jeopardy applies only in criminal court cases and does not prevent defendants from being sued in civil court over the same offense.

In essence, the double jeopardy clause holds that once an accused person has been acquitted, convicted, or punished for a particular crime, they cannot be prosecuted or punished again for the same crime in the same jurisdiction.

The framers of the Constitution had several reasons for providing protection against double jeopardy:

Preventing the government from using its power to wrongly convict innocent persons;
Protecting the people from the financial and emotional damages of multiple prosecutions;
Preventing the government from simply ignoring jury decisions it did not like; and
Restricting the government from bringing excessively harsh charges against defendants.

In other words, the framers didn't want the government to use its extensive powers to get what attorneys call "a second bite of the apple."

Double Jeopardy Essentials

In legal terms, "jeopardy" is the risk (e.g. prison time, fines, etc.) faced by defendants in criminal trials. Specifically, the double jeopardy clause can be claimed as a valid defense in three cases:

Being tried again for the same offense after being acquitted;
Being tried again for the same offense after being convicted; or
Being subjected to more than one punishment for the same offense.

What about new evidence? It is important to note that once a defendant has been acquitted of an offense they cannot be re-tried for that offense based on the discovery of new evidence—no matter how damning that evidence might be.

Similarly, double jeopardy bars judges from re-sentencing defendants who have already served their punishment. For example, a defendant who had completed a given prison term for selling five pounds of cocaine could not be re-sentenced to a longer term because it was later discovered that he or she had actually sold 10 pounds of cocaine.

When Double Jeopardy Does Not Apply

The protection of the Double Jeopardy Clause does not always apply. Mainly through legal interpretations over the years, the courts have developed certain principles for deciding the applicability of double jeopardy as a valid defense.

Civil Lawsuits

Protection from double jeopardy applies *only* in criminal court cases and does not prevent defendants from being sued in civil court over their involvement in the same act. For example, if a defendant is found not guilty of manslaughter in a drunk-driving incident, he or she cannot be tried again in criminal court. However, the deceased victim's family is free to sue the defendant for wrongful death in a civil court to recover financial damages.

On October 3, 1995, a jury in a criminal court found former professional football superstar O. J. Simpson “not guilty” of the murders of Simpson’s ex-wife Nicole Brown Simpson and Ronald Goldman. However, after his acquittal of the criminal charges, Simpson was sued in civil court by the family of Ronald Goldman. On February 5, 1997, the civil court jury found Simpson 100% liable (responsible) for the wrongful death of Goldman and ordered him to pay \$33,500,000 in damages.

Lesser Charges for Same Offense

While double jeopardy prohibits different prosecutions for the same offense, it does not protect defendants from multiple prosecutions for multiple offenses. For example, a person acquitted of murder could be tried again on the “lesser included offense” of involuntary manslaughter.

Jeopardy Must Begin

Before the Double Jeopardy Clause can apply, the government must actually place the defendant “in jeopardy.” In general, this means that the defendants must actually be placed on trial before they can claim double jeopardy as a defense. Typically, jeopardy begins—or “attaches”—to the case after the trial jury is sworn in.

Jeopardy Must End

Just as jeopardy must begin, it also must end. In other words, the case must reach a conclusion before double jeopardy can be used to protect the defendant from being prosecuted again for the same offense. Jeopardy typically ends when the jury reaches a verdict, when the judge enters a judgment of acquittal before sending the case to the jury, or when punishment has been carried out.

However, in the 1824 case of [United States v. Perez](#), the U.S. Supreme Court ruled that defendants may not always be protected by the double jeopardy clause when trials end without a verdict being reached, as in hung juries and mistrials.

Charges Brought by Different Sovereigns

The protections of the double jeopardy clause apply only against double prosecution or punishment carried out by the same government, or “sovereign.” The fact that a state has prosecuted a person does not prevent the federal government from prosecuting that person for the same offense, and vice versa.

For example, defendants convicted of carrying a kidnapping victim across state lines can be charged, convicted, and punished separately by each state involved and by the federal government.

Multiple Punishments

In some cases, the [appellate courts](#)—typically the state and U.S. Supreme Courts—are required to decide whether the double jeopardy protections apply in cases of multiple punishments.

For example, in 2009 Ohio prison officials tried but failed to execute convicted murder Romell Broom by lethal injection. When after two hours and at least 18 needle sticks, the execution team failed to find a usable vein, Ohio's governor ordered Broom's execution suspended for 10 days.

Broom's attorney appealed to the Ohio Supreme Court arguing that trying again to execute Broom again would violate his constitutional protections against double jeopardy and cruel and unusual punishment.

In March 2016, a divided [Ohio Supreme Court ruled](#) that multiple needle sticks did not amount to cruel and unusual punishment because they were not done deliberately in an attempt to torture Broom. The court further ruled double jeopardy did not apply because no punishment would have been carried out (jeopardy ended) until Broom had actually been injected with lethal drugs.

On December 12, 2016, the U.S. Supreme Court [refused to hear](#) Broom's appeal for the same reasons as cited by the Ohio Supreme Court. On May 19, 2017, the Ohio Supreme Court scheduled a new execution to be carried out on June 17, 2020.

Hollywood Provides a Lesson on Double Jeopardy

One of the many confusions and misconceptions about double jeopardy is illustrated in the 1990 movie *Double Jeopardy*. In the plot, the heroine is wrongly convicted and sent to prison for murdering her husband, who had actually faked his own death and was still alive. According to the movie, she is now free to murder her husband in broad daylight, thanks to the double jeopardy clause.

Wrong. Since the movie was released, several attorneys have pointed out that because the fake murder and the real murder took place at different times and in different places, they were two different crimes, leaving the murderous heroine unprotected by double jeopardy.

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