

Glossary of Terms Used in Legal Research

“Legal research is the process of identifying and retrieving information necessary to support legal decision-making. In its broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.”

From: J. Myron Jacobstein and Roy M. Mersky, *Fundamentals of Legal Research*, 8th ed. (Foundation Press, 2002) p. 1.

ACT

A piece of proposed legislation, when first introduced, is known as a bill. The same legislation, as it progresses through the legislature, may be referred to as an act. After enactment the terms “law” and “act” are interchangeable. An act has the same legislative force as a joint resolution, but is technically a different form beginning with the words “Be it enacted” rather than “Be it resolved”.

ADVANCE SHEET

A pamphlet containing the most recent court opinions issued by a single court or from several courts in a jurisdiction. Used in the interim before bound volumes are published. Bound volumes usually retain the same volume and page numbers as the advance sheets. Each bound volume covers several of the advance sheets.

ANNOTATION

Annotations are references to additional interpretative resources which include short summaries of the facts and decisions of cases, citations to law reviews, citations to collateral references, and various secondary sources.

APPELLANT

The party which loses a lawsuit has the option to appeal the decision to the next highest court. This person then becomes the appellant. Appellate procedures differ depending upon in which court the appeal is made.

APPELLATE COURT

A court whose jurisdiction is to review decisions of lower courts that are appealed by losing parties. On the State level, in California, decisions made by the Superior Court (local court) can be appealed to the Courts of Appeal, which is broken up into six districts. On the Federal level, an appeal from a decision made by a U.S. District Court would be heard in the U.S. Circuit Courts.

APPELLEE

The winning party in the lower courts decision. Once the appeal is filed they become the appellee. Appellate procedures differ depending upon in which court the appeal is made.

ATTORNEY GENERAL OPINION

Usually referring to an opinion issued by a state attorney general interpreting a specific law or legal issue. At the Federal level, the U.S. Attorney General gives advice, when requested, on legal issues to the President and executive department heads. Each state also has an attorney general that provides interpretations of law upon request of designated state and local public officials and government agencies for issues arising out of the course of their duties. Opinions are not binding on the courts, but often carry persuasive authority.

AUTHORITY

Authority refers to the sway one judicial opinion has over other courts when deciding cases on the same legal issue. This is also known as legal precedent. Authority may be either mandatory (binding) or persuasive (nonbinding). A court's opinion is binding (mandatory authority) on other courts directly below it in the judicial hierarchy. Opinions of lower courts or of courts outside of the hierarchy are persuasive (nonbinding) authority. This means that another court may take the opinion into consideration but is not bound to follow the legal reasoning. SEE **stare decisis** and **precedent**.

Authority may also be primary or secondary. Primary authority consists of statutes (codes), regulations and case law. Secondary authority leads to and explains the primary authorities and is not considered binding. SEE **primary authority** and **secondary authority**.

BRIEF

A written argument by a party to the case filed with the court. A brief consists of a summary of the case, relevant laws and cases, and an argument for a ruling in favor of the party filing the brief. In California, the brief is most often used at the appellate court level and above.

CIRCUIT COURT

A circuit court is an intermediate appellate court of the United States federal court system. A circuit court decides appeals from the district courts within its federal judicial circuit, as well as certain other federal courts and administrative agencies.

A circuit court is one of the 13 federal appellate courts in the country. For example, the United States Court of Appeal for the Ninth Circuit covers Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.

CITATION

A cite or citation can be a reference to legal authority that supports the validity of an argument or position.

It also can refer to the correct listing of the location of a case, statute, law review, book, or other reference. Citation to authority and references is important and extensive in any form of legal writing.

CITED CASE

A decision made by a court used in a legal argument to back up position or argument. Will either be of mandatory (binding) or persuasive (nonbinding) authority.

CITING CASE

The case that relies on the cited case to help prove its legal argument. The citing case directly quotes the cited case.

CIVIL CASE

A non-criminal lawsuit. In a civil case one private party (individual, business, or government agency) sues another private party. There are many varieties of civil lawsuits. Some examples include disputes over property, probate, negligence, personal injury, divorces and employment issues.

CIVIL PROCEDURE

The body of law that sets out the process that courts will follow when hearing cases of a civil nature starting from the time the initial complaint/petition is filed through pretrial discovery, the trial, and any subsequent appeal.

CODE

A compilation of the laws of a state or nation arranged by topic or title and indexed. SEE **Codification.**

CODIFICATION

Once a bill is passed within the legislature it is then codified. Codification takes the Bill or Public Law and integrates it into the state or Federal code section it creates or modifies. Codified laws may be called a code, revised code, or revised statutes.

COMMON LAW

English common law is the basis of the American legal system (except for Louisiana which is based on Roman Law, specifically the Code of Napoleon of France). Traditionally, common law was largely unwritten and based upon the customs of the people. Thus the legal system developed through decisions of courts and similar tribunals, rather than through legislative statutes or executive action.

CONSTITUTION

This is the document which outlines the essential principals of governance for a state or nation. All other laws passed must be in accordance with the state or federal constitution.

CRIMINAL CASE

A criminal case is brought by the prosecutor's office on behalf of the "people". After an arrest, the charges against an individual are forwarded to the prosecutor's office. The prosecutor is the government official or agency that is employed to investigate and try individuals for breaking established laws. The prosecutor represents the community at large or the "people" who reside in the jurisdiction where the law was broken. Only the designated prosecutor's office may bring criminal charges against an individual.

DECISION

The outcome of a legal proceeding. The term “decision” is often used interchangeably with “judgment” or “opinion”. Technically, the judgment is the written form of the court’s decision in the clerk’s minutes or notes, and an opinion is a written document setting out the reasons for reaching the decision.

DEFENDANT

The party against whom a lawsuit is filed. In a criminal trial, this is the person accused of a crime. In a civil proceeding, this is the person or entity against whom a claim is made. The defendant is sometimes called the respondent.

DIGEST

This is a set of books that compile precedent setting cases by summarizing and arranging the pertinent cases by topic. A digest may cover a particular jurisdiction i.e. California Digest or Federal Digest. A reader can use the digest to find a topic and the digest will reference a series of cases on the subject.

DOCKET NUMBER

Assigned to a case as it is filed with the court, this number assists the court in tracking the case and associated paperwork. Also called a case number.

ENCYCLOPEDIA

A comprehensive written summary that contains explanations of legal principals for specific areas of law. It works like a traditional encyclopedia in that it is arranged by subject. It also contains supporting footnote references to additional resources.

EXECUTIVE ORDER

An executive order in the United States is issued by the President and directed towards federal administrative agencies. The general purpose is to direct these agencies of federal officials in the execution of congressionally established federal law. Executive orders do not have to be passed by Congress but carry the same weight as congressionally enacted legislation. SEE Presidential Proclamations

FEDERAL COURT

Part of the judicial branch of the United States government. Federal courts derive their power directly from the U.S. Constitution. There are three types of federal courts: District Court, U.S. Courts of Appeal (Circuit Courts) and the United States Supreme Court. Federal courts decide cases involving the U.S. Constitution, federal law and cases where the parties are from different states and are involved in a dispute for \$75,000 or more. Criminal cases that involve breaking federal law or committing crimes across state lines are matters of federal jurisdiction.

HEADNOTE

Headnotes precede the opinion portion of a published case. They are summaries of important points of law decided within the case. The text of headnotes is usually taken

from the text of the opinion itself and not rewritten. Each headnote has a topic and number which allows more research to be done by using the digest it is coded for. West publishers uses a key number system, while Lexis publishers has their own digest system.

JUDGMENT

The final ruling in a lawsuit which determines the rights and obligations of the opposing parties. The judgment outlines who is the prevailing (winning) party and who is the losing party. It also sets forth what each party must do including the payment of any damages. After a judgment is made the losing party may have the right to appeal the decision. In general appeals must be made on grounds that the law was misapplied in the court's decision. If a default judgment is entered against a person (they do not answer the complaint or show up for court) the judgment may not be appealed. Instead the defendant must move to vacate (set aside) the default and reopen the case.

LAW REVIEW

A law review or law journal is a scholarly publication that focuses on legal issues. Most are student run law school publications that provide a vehicle for academic publishing in the field of law. Articles often provide an in-depth assessment of a legal topic, propose a new perspective on a legal issue, or provide a critic of current legal philosophy.

LEGISLATIVE HISTORY

Legislative history provides the intent behind the introduction and passage of a particular statute. Some of the documents that make up the legislative history are floor debates, committee analysis, committee hearings, and histories of actions taken. Legislative history can be difficult to acquire but provides useful insight into the meaning and intention of the legislature in passing a particular statute.

OFFICIAL REPORTS

The official report of a court is sanctioned for publication by statute. In California, the two official reports are the California Appellate Reports and the California Reports. Other published versions are considered unofficial. However, both official and unofficial reports will publish the same "opinion" of the court. Only the editorial comment, such as headnotes, will differ.

OPINION

A court's written statement explaining why a certain decision (the judgment) was reached. When a decision is made by a panel of judges, typically one judge will author the final opinion of the court with other judges concurring or dissenting. The different types of opinions rendered by a court are as follows. A *majority* opinion explains the principles of law a majority of judges on the court considered relevant in a given decision. A *separate opinion* may be written by one or more judges concurring or dissenting with the majority opinion. A *concurring opinion* agrees with the result reached by the majority, but disagrees with the reasoning leading to the result. A *dissenting opinion* disagrees with the result and the principles of law used by the majority to decide the case. A majority decision has more authority than any of the other decisions.

ORDINANCE

An ordinance is a law passed by a local branch of government such as a city council or county board of supervisors. Ordinances once passed are codified into municipal (city) codes or county codes. These laws are applicable to a small area and can be more restrictive than but cannot contradict state laws.

PARALLEL CITATION (CITE)

In addition to be published in the official reporter for the Court that rendered the decision, cases are also published in unofficial reporters. In citing a case it will usually have two “citations” one to the official report and one to an unofficial version of the case. The unofficial citation is called a parallel citation because it directs the researcher to another place where the same text of the opinion can be found. A typical citation to a California case would look like this: Church of Christ of Hollywood v. Superior Court (2002) 99 Cal App 4th 1244, 121 Cal Rptr 2d 810. The first citation is the official citation and the second is the parallel citation.

PLAINTIFF

A plaintiff is the party who initiates a lawsuit. May also be referred to a petitioner.

POCKET PART

A method of updating hardbound volumes, usually on an annual basis. Paper supplements are issued containing changes or additions to text, and/or references in the main volume.

PRACTICE GUIDE

A practice guide is a book or set of books that give practical “how to” information on specific legal topics. Unlike a treatise, they do not provide a substantive overview of an area of law. Instead they provide legal analyses, pleadings and/or transactional forms, tips, and checklists.

PRECEDENT

A decision of a court that establishes a principle or rule that is either mandatory or persuasive authority. If it is mandatory authority than a court must adhere to the same legal principals when deciding a case with similar legal issues. If it is persuasive authority than another court is not bound to follow the same principals but may take them into consideration when making a decision. In California, decisions by the California Supreme Court are binding on all courts in California. Decisions by a California Appellate Court are only binding in that appellate district, but can be persuasive in other districts. In Federal courts, decisions by the United States Supreme Court are binding on all courts, but United States Court of Appeals Cases are only binding in the same district. They are considered persuasive in other districts.

PRESIDENTIAL PROCLAMATION

Presidential proclamations carry the same force of law as executive orders – the difference between the two is that executive orders are aimed at those inside government while proclamations are aimed at those outside government. Presidential proclamations are viewed as largely ceremonial or symbolic. We most often associate them with the

designation of a day or week to commemorate a group or event, such as National Volunteer Week, or Women's History Month. However, they are also used to make policy.

PRIMARY AUTHORITY

Mandatory authority resulting from judicial precedent (decisions of the courts) or legislative enactment (laws passed by a legislative or administrative body).

PUBLIC LAW

Public law is a law or statute affecting or applicable to the public generally describing acceptable and unacceptable behavior. Public law is also called public act, general act, or chapter.

REGULATION

Rule based on and meant to carry out a specific piece of legislation (such as for the protection of environment) issued by a regulatory agency under authority granted by a legislative body.

REPORTER/REPORTS

A series of books which contain judicial opinions from a selection of cases that have been decided by the courts, from a single or multiple jurisdictions (e.g. California Reports, Pacific Reporter, United States Reports)

RULES OF COURT

Govern procedures for the conduct of business in the courts. They include time limitations, pleadings allowed, and grounds for appeal. These rules are usually issued by the court itself, or by the highest court in that jurisdiction.

SECONDARY AUTHORITY

Material purporting to explain the meaning or applicability of the primary authority sources of constitutions, statutes, case law, administrative regulations, and executive orders. Secondary authority has only persuasive authority, no mandatory authority. Examples include encyclopedias, digests, treatises and practice guides.

SESSION LAWS

Laws passed by a legislative body in a legislative session.

SHEPARDIZE

To use *Shepard's Citations* in order to check the status of the case, parallel citations, or the use of the case in other jurisdictions

SLIP OPINION

The publication of an individual court decision soon after it is rendered. Slip opinions do not contain headnotes or any other editorial comment. Slip opinions are later compiled into advance sheets. Advance sheets are eventually compiled into bound volumes.

SMALL CLAIMS COURT

A division of most municipal, city or other lowest local courts which hear cases involving relatively small amounts of money (under \$7,500) and without a request for court orders like eviction. In small claims court, attorneys do not represent clients, the filing fee is low, there is no jury, the procedure is fairly informal, each side has a short time to present his/her case and the right to appeal only permits a trial de novo (a new trial) at the next court level. A small claims judgment can be collected using property liens and wage garnishments if the “judgment debtor” fails to pay voluntarily.

STARE DECISIS

The doctrine that a trial court is bound by appellate court decisions (precedents) on a legal question which is raised in the lower court. Reliance on such precedents is required of trial courts until such time as an appellate court changes the rule. The trial court cannot ignore the precedent where the facts are substantially the same.

STATUTE

A law passed by a legislative body and set forth in a formal document. A statute may mean a single act of legislation or a body of acts that are collected and arranged systematically (i.e. codified). In California, once a statute is passed it becomes part of the California Codes.

STATUTES AT LARGE

The official source for the laws and resolutions passed by United States Congress. Every law, public and private, ever enacted by the Congress is published in the Statutes at Large in order of the date of its passage. The *Statutes at Large* includes the text of the Declaration of Independence, Articles of Confederation, the Constitution, amendments to the Constitution, treaties and presidential proclamations. Most acts become part of the United States Code, but for those that do not, the *Statutes at Large* are the official source for citation.

SUNSET LAW

A sunset clause is a provision in a statute or regulation that terminates or repeals all or portions of the law after a specific date, without further legislative action is taken to extend it.

SUPERIOR COURT

In California the courts at the county (local) level are called Superior Courts. Each county has a Superior Court that has jurisdiction over disputes which occur in the county involving state law or the state constitution. Federal issues are the exclusive jurisdiction of the federal courts. Superior Courts are divided according to both dollar amount (Small Claims, Limited Civil, and Unlimited Civil) and subject matter (i.e. Family Law, Probate, Criminal, etc.).

SUPERSEDE

To displace or substitute one publication (in part or wholly) with another.

SUPREME COURT (California)

The highest Court in California is the California Supreme Court. It accepts matters from the California Courts of Appeal for review. It is the final arbiter of the state constitution and state laws. Decisions made by the California Supreme Court can only be overturned by its own decision or by the United States Supreme Court.

SUPREME COURT (United States)

America's highest court, which has the final power to decide cases involving the interpretation of the U.S. Constitution, certain legal areas set forth in the Constitution (called federal questions) and federal laws. The president appoints Supreme Court members (lifetime appointments), which are approved by the Senate. The court reviews the cases filed by state and federal courts and decides which ones to hear.

TABLE OF CASES

A list of cases (alphabetized by case name) that are cited, referred to, or explained in a book with references to the sections, pages, or paragraphs where they are cited. Generally found in the last volume of a set before the index.

TREATISE

A treatise is a book or set of books that interprets and/or provides information on legal topics. All discussion will footnote to applicable legislation and case law.

TREATY

An agreement entered into between two nations. To become effective under the Constitution, it needs approval of "two thirds of the Senators present". Presidents often enter into Executive Agreements with leaders of other nations that are not enforceable treaties.

UNOFFICIAL REPORTS

Court reports published without statutory direction. The "opinion" of the court will not vary between official and unofficial reports. However, the editorial content (headnotes) will vary.