Guide to Legal Authorities
for California Attorneys and Paralegals

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About the Author

I have been an independent paralegal based in Santa Rosa, California since 2007.

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Section 1: Precedent

According to the American Bar Association:

> Precedent is a foundational concept in the American legal system. To put it stare decisis holds that courts and judges should honor "precedent"—or the decisions, rulings, and opinions from prior cases. Respect for precedents gives the law consistency and makes interpretations of the law more predictable—and less seemingly random.

Once a legal principle has been established by a court, as per the doctrine of stare decisis, it will typically be upheld by the same court when the same legal issue is brought up in consecutive instances, and in all courts of lower rank.

The Concept of Stare Decisis

Stare decisis is Latin for "to stand by things decided." It is the doctrine of precedent. Stare decisis—in English, the idea that today's court should stand by yesterday's decisions—is "a foundation stone of the rule of law." (*Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 798)

Michigan v. Bay Mills Indian Community (2014) 572 U.S. 782, 798:

Stare decisis, we have stated, "is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Although "not an inexorable command," id., at 828, stare decisis is a foundation stone of the rule of law, necessary to ensure that legal rules develop "in a principled and intelligible fashion," *Vasquez v. Hillery*, 474 U.S. 254, 265 (1986). For that reason, this Court has always held that "any departure" from the doctrine "demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

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Just eight years after *Michigan v. Bay Mills Indian Community*, a newly constituted Supreme Court overruled *Roe v. Wade*, a 49-year-old precedent:

"Like the infamous decision in *Plessy v. Ferguson, Roe* was also egregiously wrong and on a collision course with the Constitution from the day it was decided."

(*Dobbs v. Jackson Women's Health Org.* (2022) 597 U.S. ____; 142 S.Ct. 2228.)

Under the doctrine of *stare decisis*, lower courts must accept the law as decreed by courts of superior jurisdiction. Thus, the decisions of the California Supreme Court are binding upon and must be followed by all the state courts of California. (*Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450, 455; *People v. Brown* (1985) 169 Cal.App.3d 728, 736; *People v. Lopez* (1986) 176 Cal.App.3d 545, 550.)

Stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." (*Payne v. Tennessee* (1991) 501 U.S. 808, 827–828.)

Stare Decisis Across Court Systems

Federal courts applying state law are bound by the highest state authority to have ruled.

Thus, the Ninth Circuit may be bound by a decision of the California Supreme Court, or the California Court of Appeal, if that is the highest court to have addressed the issue of state law. (*Johnson v. Frankell* (1997) 520 U.S. 911,916 [federal courts must follow state's highest court on question of state law]; *Cal. Pro-Life Council, Inc. v. Getman* (9th Cir.2003) 328 F.3d 1088, 1099 [federal courts must follow state's intermediate appellate courts, absent convincing evidence that the state's highest court would rule differently].)

State courts applying federal law are bound by decisions of the U.S. Supreme Court. (*Elliott v. Albright* (1989) 209 Cal.App.3d 1028, 1034.) But they are not bound by district or circuit court decisions - although such rulings are entitled to "substantial deference." (*Yee v. City of Escondido* (1990) 224 Cal.App.3d 1349, 1351.) Finally, federal court decisions on state law are not binding on state courts. (*Choate v. County of Orange* (2000) 86 Cal.App.4th 312, 327-328.)

Courts May Overrule Their Own Precedents

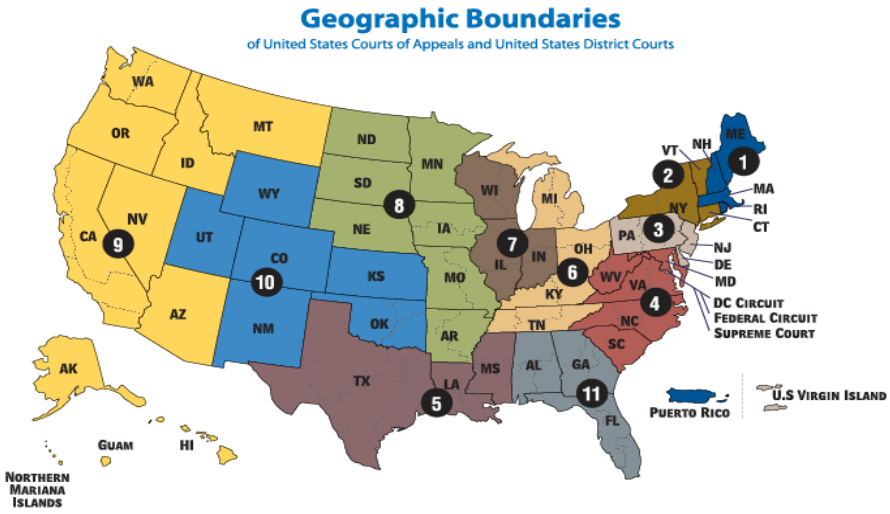
As for the federal and state supreme courts, each may overrule their own precedents. (*State Oil Co. v. Khan* (1997) 522 U.S. 3,20; *Freeman & Mills, Inc. v. Belcher Oil Co.* (1995) 11 Cal.4th 85, 93.) Under what circumstances a high court should exercise its discretion to reverse itself, however, is topic of much scholarly debate. (E.g., Michael Sinclar, Precede71t, Super-Precedent, 14 Geo. Mason L. Rev. 363 (2007); Lawrence B. Solum, The Supreme Court in Bondage: Constitutional Stare Decisis, Legal Formalism, and the Future of Unenumerated Rights, 9 U. Pa. J. Const. L. 155 (Oct. 2006) [discussing "super-stare decisis"].)

Section 2: The Federal Court System

Federal courts hear cases involving the constitutionality of a law, cases involving the laws and treaties of the U.S. ambassadors and public ministers, disputes between two or more states, admiralty law, also known as maritime law, and bankruptcy cases.

The federal court system has three levels:

1. district courts (the trial court),
2. circuit courts which are the first level of appeal, and
3. the Supreme Court of the United States, the final level of appeal in the federal system. There are 94 district courts, 13 circuit courts, and one Supreme Court throughout the country.



Federal courts are courts of limited jurisdiction, meaning they can only hear cases authorized by the United States Constitution or federal statutes.

The federal district court is the starting point for any case arising under federal statutes, the Constitution, or treaties. This jurisdiction is called "original jurisdiction." Sometimes, the jurisdiction of state courts will overlap with that of federal courts, meaning that some cases can be brought in both courts. The plaintiff has the initial choice of bringing the case in state or federal court. However, if the plaintiff chooses state court, the defendant may sometimes choose to "remove" to federal court.

Cases entirely based on state law may be brought in federal court under the court's "diversity jurisdiction." Diversity jurisdiction allows a plaintiff of one state to sue in federal court when the defendant is in a different state. The defendant can also seek to "remove" from state court for the same reason. To bring a state law claim in federal court, all plaintiffs must be in different states than all defendants, and the "amount in controversy" must be more than $75,000. (Note: the rules for diversity jurisdiction are much more complicated than explained here.)

Criminal cases may not be brought under diversity jurisdiction. States may only bring criminal prosecutions in state courts, and the federal government may only bring criminal prosecutions in federal court.

The United States Supreme Court

The Supreme Court is the highest court in the United States. Article III of the U.S. Constitution created the Supreme Court and authorized Congress to pass laws establishing a system of lower courts. In the federal court system's present form, 94 district level trial courts and 13 courts of appeals sit below the Supreme Court.

Because of the supremacy clause (U.S. Const., art. VI, cl. 2), opinions of the U.S. Supreme Court bind all California courts on questions of federal constitutional law. (*People v. Daan* (1984) 161 Cal.App.3d 22, 28; *People v. Superior Court (Williams)* (1992) 8 Cal.App.4th 688, 702; *Calderon v. City of Los Angeles* (1971) 4 Cal.3d 251, 264; *Del Monte v. Wilson* (1992) 1 Cal.4th 1009, 1023; *General Motors Corp. v. City of Los Angeles* (1995) 35 Cal.App.4th 1736, 1749.)

Note: Plurality U.S. Supreme Court decisions *are not binding*. (*Texas v. Brown* (1983) 460 U.S. 730, 737 ["While not a binding precedent, as the considered opinion of four Members of this Court it should obviously be the point of reference for further discussion of the issue."]; *Horton v. California* (1990) 496 U.S. 128, 136; *People v. Camilleri* (1990) 220 Cal.App.3d 1199, 1206 ["Reasoning that does not command the assent of a majority of the United States Supreme Court is not a holding."].)

What is a plurality decision? A plurality decision is a case in which a majority of the court's

members agree on the result, i.e., which party prevails-plaintiff or defendant, petitioner or respondent — but there is no majority agreement on the reason for that result. The justices write several concurring opinions, explaining their differing views. If one opinion receives more votes than the others, it is designated the plurality opinion.

Exception: Plurality SCOTUS opinions *are binding* when the "position taken by those Members who concurred in the judgments on the narrowest grounds." (*Marks v. U.S.* (1977) 430 U.S. 188, 193 ["When a fragmented Court decided a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds."; *U.S. v. Williams* (9th Cir. 2006) 435 F.3d 1148, 1158 ["This narrower test—which excludes confessions made after a deliberate, objectively ineffective midstream warning—represents *Seibert's* holding."]; *U.S. v. Mashburn* (4th Cir. 2005) 406 F.3d 303, 308-9; *U.S. v. Stewart* (7th Cir. 2004) 388 F.3d 1079, 1090; *U.S. v. Aguilar* (8th Cir. 2004) 384 F.3d 520, 525; *U.S. v. Fellers* (8th Cir. 2005) 397 F.3d 1090, 1098.

Determining the "narrowest grounds": One way to determine the "narrowest grounds" is to look for the opinion "most clearly tailored to the specific fact situation before the Court and thus applicable to the fewest cases, in contrast to an opinion that takes a more absolutist position or suggests more general rules." (Linda Novak, Note, The Precedential Value of Supreme Court Plurality Decisions, 80 COLUM. L. REV. 756, 763 (1980).

A word about the concept of "binding": Technically, courts of the same level do not bind each other. Thus, the U.S. Supreme Court may overturn its prior decisions, though it has adopted different practices of stare decisis for its constitutional precedents and its precedents interpreting federal statutes. For a discussion of stare decisis practices of the U.S. Supreme Court, see Amy Coney Barrett, Statutory Stare Decisis in the Courts of Appeals, 73 GEO. WASH. L. REV. 2 (2005).

Further, although federal circuit courts technically do not bind themselves, nearly every circuit court has adopted a strong rule of stare decisis, or "law of the circuit" rule, under which the holding of a published decision by a three-judge panel of the circuit binds subsequent panels. (Joseph W. Mead, Stare Decisis in the Inferior Courts of the United States, 12 NEV. L. J. 787, 794–95 (2012).) Therefore a published circuit court opinion is generally binding on that court. Id. However, "law of the circuit" rules vary slightly by circuit. (*Id.* at 797.)

United States Courts of Appeals

Once the federal district court has decided a case, the case can be appealed to a United States court of appeal. Twelve federal circuits divide the country into different regions. The Fifth Circuit, for example, includes the states of Texas, Louisiana, and Mississippi. Cases from the district courts of those states are appealed to the United States Court of Appeals for the Fifth

Circuit, which is headquartered in New Orleans, Louisiana. Additionally, the Federal Circuit Court of Appeals has a nationwide jurisdiction over very specific issues such as patents.

13 appellate courts sit below the U.S. Supreme Court, and they are called the United States Courts of Appeal. The 94 federal judicial districts are organized into 12 regional circuits, each of which has a court of appeals.

The Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws, and cases decided by the U.S. Court of International Trade and the U.S. Court of Federal Claims.

In the federal system, an opinion from one circuit court of appeals may be persuasive precedent but is not binding on other courts of appeals. (*Hart v. Massanari* (9th Cir. 2001) 266 F.3d 1155, 1172-1173.) This allows the circuits to reach contrary decisions suitable for decision by the U.S. Supreme Court.

Law of the circuit: Although federal circuit courts technically do not bind themselves, nearly every circuit court has adopted a strong rule of stare decisis, or "law of the circuit" rule, under which the holding of a published decision by a three-judge panel of the circuit binds subsequent panels. (Joseph W. Mead, Stare Decisis in the Inferior Courts of the United States, 12 NEV. L. J. 787, 794–95 (2012).) Therefore a published circuit court opinion is generally binding on that court. Id. However, "law of the circuit" rules vary slightly by circuit. (Id. at 797.)

Absent binding Supreme Court or California authority, courts may consider the decisions of the federal circuit courts if they establish a "constitutional norm" on the issue. (*U.S. v. Katzin* (3d. Cir. 2014) 769 F.3d 163, 186.)

The 9th Circuit Court of Appeals

Opinions from the Ninth Circuit Court of Appeals are not binding on California courts but may have persuasive value. (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 879 ["Where the federal circuits are in conflict, the authority of the Ninth Circuit (which decides appeals from the federal courts in California) is entitled to no greater weight than decisions from other circuits. Where there is more than one appellate court decision, and such appellate decisions are in conflict, the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions."

People v. Cahan (1955) 44 Cal.2d 434, 450-51 ["[I]f the federal cases indicate needless limitations on the right to conduct reasonable searches and seizures or to secure warrants, this court is free to reject them."].)

The first panel of Ninth Circuit judges to publish an opinion on an issue binds not only district courts within the circuit, but also subsequent Ninth Circuit panels. For the Ninth Circuit to overrule its own precedent, it must issue an en banc decision. (*Miranda B. v. Kitzhaber* (9th Cir. 2003) 328 F.3d 1181, 1185 [panel must follow prior panel decisions, unless a Supreme Court decision, an en banc decision, or subsequent legislation undermines its precedential value].)

Federal questions: The decisions of the lower federal courts on federal questions are merely persuasive. Where lower federal court precedents are divided or lacking, state courts must make an independent determination of federal law. (*Rohr Aircraft Corp. v. San Diego* (1959) 51 Cal.2d 759, 764; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 506, pp. 569–570; *In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 839.)

Law of the circuit: Although federal circuit courts technically do not bind themselves, nearly every circuit court has adopted a "law of the circuit" rule, under which the holding of a published decision by a three-judge panel of the circuit binds subsequent panels. (Joseph W. Mead, Stare Decisis in the Inferior Courts of the United States, 12 NEV. L. J. 787, 794–795 (2012).) In practice, a published circuit court opinion is generally binding on that court.

Absent binding Supreme Court or California authority, courts may consider the decisions of the federal circuit courts if they establish a "constitutional norm" on the issue. (*U.S. v. Katzin* (3d Cir. 2014) 769 F.3d 163, 186.)

United States District Court

The district courts are the general trial courts of the federal court system. Each district court has at least one United States District Judge, appointed by the President and confirmed by the Senate for a life term. District courts handle trials within the federal court system – both civil and criminal. The districts are the same as those for the U.S. Attorneys, and the U.S. Attorney is the primary prosecutor for the federal government in his or her respective area.

"A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." (*Camreta v. Greene* (2011) 563 U.S. 692, 709 fn.7, citing to 18 J. Moore et al., Moore's Federal Practice § 134.02[1][d], p. 134-26 (3d ed.2011).)

In re Javier A. (1984) 159 Cal.App.3d 913, 924: "Although the decisions of the federal district court are not binding on California courts, *People v. Bradley* (1969) 1 Cal.3d 80, 86; *Gould v. People* (1976) 56 Cal.App.3d 909, 919, fn. 6, in *United States v. Walker* (9th Cir.1978) 575 F.2d 209, the court confronted a similar situation."

The California Court of Appeal has said that even *unpublished* U.S. district court decisions are citable. For example, in *Schlessinger v. Holland America, N.V.* (2004) 120 Cal.App.4th 552, 559,

the court said: "Opinions of the United States District Court that have not been published in the Federal Supplement are properly cited by this court as persuasive, although not precedential, authority. (*Bowen v. Ziasun Technologies, Inc*. (2004) 116 Cal.App.4th 777, 787, fn. 6; see also *City of Hawthorne ex rel. Wohlner v. H & C Disposal Co*. (2003) 109 Cal.App.4th 1668, 1678, fn. 5.)"

United States Bankruptcy Courts

Bankruptcy appeals are generally governed by title 28 United States Code section 158, which provides that the circuit court may establish a bankruptcy appellate panel as an alternative to fill the role of a federal district court in hearing appeals from the bankruptcy court. (*Connecticut Nat. Bank v. Germain* (1992) 503 U.S. 249, 252.)

Thus, the bankruptcy appellate panel holds authority similar to that of a federal district court and its decisions do not bind the district courts. (*Bank of Maui v. Estate Analysis* (9th Cir. 1990) 904 F.2d 470, 472.) Like the decisions of a federal district court, the decisions of a bankruptcy appellate panel are persuasive authority, but not necessarily binding as appellate authority throughout the circuit. (*In re Silverman* (9th Cir. 2010) 616 F.3d 1001, 1005.)

But see, *In re Windmill Farms, Inc*. (9th Cir. BAP 1987) 70 B.R. 618, rev'd on other grounds, 841 F.2d 1467, 1474 (9th Cir. 1988), holding that that Bankruptcy Appellate Panels' "decisions were binding on all bankruptcy courts in this circuit."

In (*Zachary v. Cal. Bank & Tr*. (9th Cir. 2016) 811 F.3d 1191, 1193, fn. 1, the court said "Because we must today address the continued applicability of the absolute priority rule regardless of the precedential effect of BAP opinions, we pretermit* consideration of the issue. Cf. Bank of Maui v. Estate Analysis, Inc., 904 F.2d 470, 472 (9th Cir.1990) (O'Scannlain, J., specially concurring) (discussing need for judicial council action to make BAP decisions binding on all bankruptcy courts within the circuit)." * Omit to do or mention, abandon

Article I Courts

Congress created several Article I, or legislative courts without full judicial power.

Article I Courts are:

- U.S. Court of Appeals for Veterans Claims
- U.S. Court of Appeals for the Armed Forces
- U.S. Tax Court

The decisions from the courts above may not constitute binding authority. The decisions of Article 1 courts, like those above, are reviewable by the United States Court of Appeals for the Federal Circuit and the United States Supreme Court:

- *In re Russell* (8th Cir.1998) 155 F.3d 1012, 1013 [Decisions of the U.S. Court of Appeals for Veterans Claims are reviewable are reviewable by the United States Court of Appeals for the Federal Circuit and the United States Supreme Court:

- *United States v. Shafer* (Dist. Court, ND Ohio 1974) 384 F. Supp. 486, 488 ["The decisions of the United States Court of Military Appeals are in no way binding upon this Court. But their analysis of certain military procedures is immensely helpful in effectuating the controlling precedents."

- *Klein v. US* (Dist. Court, ED Michigan 2000) 94 F. Supp. 2d 838, 846 ["Hence, while the Tax Court's opinions on the subject of tax negligence may be illustrative, they have no precedential value in law, and are due no deference by the court"].)

Section 3: Other Federal Authority

Opinions of the Office of Legal Counsel of the U.S. Department of Justice

Title 28 C.F.R. § 0.25(a) charges the Office of Legal Counsel ("OLC") with "[p]reparing the formal opinions of the Attorney General[,] rendering informal opinions and legal advice to the various agencies of the Government[,] and assisting the Attorney General in the performance of his functions as legal adviser to the President and as a member of, and legal adviser to, the Cabinet").

It is allegedly OLC's official view that each of the legal opinions it issues—whether formal or informal—is an authoritative statement of the law and binds the Executive Branch official to whom OLC issues the opinion by custom and practice. (*Campaign for Accountability v. U.S. Dep't of Justice* (D.D.C. 2017) 278 F. Supp. 3d 303, 309.)

Section 4: The California Court System

California has two types of state courts: (1) trial courts and (2) appellate courts.
There are two types of appellate courts: (1) the Courts of Appeal and (2) the California Supreme Court.

The California Supreme Court

Opinions of the California Supreme Court bind all California courts. (*People v. Harvey* (1980) 112 Cal.App.3d 132, 138; *People v. Neer* (1986) 177 Cal.App.3d 991, 999; *People v. Linkenauger* (1995) 32 Cal.App.4th 1603, 1613.) This is true no matter how old the Supreme Court opinion might be. (*Lawrence Tractor Co. v. Carlisle Ins. Co.* (1988) 202 Cal.App.3d 949, 954; *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1049 fn. 3.)

Non-binding precedent: Absent binding Supreme Court or California authority, courts may consider the decisions of the federal circuit courts if they establish a "constitutional norm" on the issue. (*U.S. v. Katzin* (3d. Cir. 2014) 769 F.3d 163, 186.)

Plurality California Supreme Court decisions: Not binding. *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 829; *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 918 [a plurality opinion "lacks authority as precedent"]; *Roy Supply, Inc. v. Wells Fargo Bank* (1995) 39 Cal.App.4th 1051, 1067.)

Consequences of subsequent actions by the California Supreme Court: The binding force of a published case may be affected by subsequent actions:

- **Petition for review granted**: If the California Supreme Court grants review of a published case, it remains citable authority unless it was subsequently depublished or overturned. (Rules of Court, Rule 8.1105(e) as amended and adopted effective July 1, 2016.)

When the California Supreme Court grants review in a case it now includes the following notice:

> Pending review, the opinion of the Court of Appeal, which is currently published at [citation], may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict. (See Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115(e)(3), Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion, Administrative Order 2021-04-21; Cal. Rules of Court, rule 8.1115(e)(3) and corresp. Comment, ¶ 2.)

- **Petition for review denied**: Denial of review of a case by the California Supreme Court is not an expression of approval, but a denial is not without significance as to the views of the members of the court. (*Renfrew v. Loysen* (1985) 175 Cal.App.3d 1105, 1109; *McClothlen v. DMV* (1977) 71 Cal.App.3d 1005, 1017; *Fire Ins. Exchange v. Abbott* (1988) 204 Cal.App.3d 1012, 1024; *In re Eli F.* (1989) 212 Cal.App.3d 228, 234-35 ["While the denial of review by the Supreme Court does not normally add weight to the opinion of the District Court of Appeal it does not follow that such a denial is without significance" Citing *DiGenova v. State Board of Education* (1962) 57 Cal.2d 167, 178].)

Denial of review may be taken as approval of the conclusion of the Court of Appeal but not necessarily all of its reasoning. (*People v. Bolden* (1990) 217 Cal.App.3d 1591, 1598.) Denial of review has no weight if the case conflicts with a decision of the California Supreme Court. (*People v. Triggs* (1973) 8 Cal.3d 884, 890.)

- **Certiorari denied**: The Supreme Court's denial of a writ of certiorari "imports no expression of opinion upon merits of the case." (*Teague v. Lane* (1989) 489 U.S. 288, 296.)

For further reading, see To Cite or Not to Cite? That Is the Question Citing Unpublished Decisions in California State and Federal Courts By Benjamin G. Shatz and Emil Petrossian

The Court of Appeal

The California Court of Appeal is divided into six geographic districts, and some districts are further subdivided into divisions, some of which have geographic boundaries (e.g., the Fourth District, Division 3, covers Orange County).

District headquarters for the Courts of Appeal are located in:

- First District: San Francisco
- Second District: Los Angeles
- Third District: Sacramento
- Fourth District: San Diego
- Fifth District: Fresno
- Sixth District: San Jose

Although the Court of Appeal is divided up geographically, philosophically, there is only one California Court of Appeal, albeit administratively divided into districts (and sometimes subdivided into divisions). (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Every superior court must follow any published decision from any District (and any division) of any court of appeal. (*Cuccia v. Superior Court* (2007) 153 Cal.App.4th 347,353-354 [stare decisis requires a superior court to follow a published court of appeal decision, even if the trial judge believes the appellate decision was wrongly decided].) Published decisions of every district court of appeal bind all superior court judges. (*Hale v. Superior Court* (1975) 15 Cal.3d 221, 229, fn.3; *Department of Consumer Affairs v. Superior Court* (1977) 71 Cal.App.3d 97, 99; *People v. Superior Court (Clark)* (1994) 22 Cal.App.4th 1541, 1547-1549.)

Note: Court of Appeal justices do not have to follow the opinions of justices in other appellate divisions or districts, although they will usually do so unless there is good reason to disagree. (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1471 ["One district or division may refuse to follow a prior decision of a different district or division."]; *Greyhound Lines, Inc. v. County of Santa Clara*

(1986) 187 Cal.App.3d 480, 485; *McGlothlen v. DMV* (1977) 71 Cal.App.3d 1005, 1017; *People v. Bennett* (1983) 139 Cal.App.3d 767, 771; *Henry v. Associated Indemnity Corp.* (1990) 217 Cal.App.3d 1405, 1416.)

"A decision of a court of appeal is not binding in the courts of appeal. One district or division may refuse to follow a prior decision of a different district or division, for the same reasons that influence the federal Courts of Appeals of the various circuits to make independent decisions. . . ." (*McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 316 n.4.)

Pane to panel differences: There is no horizontal stare decisis between appellate panels of the California Court of Appeal. (*Marriage of Shahan* (2001) 88 Cal.App.4th 398, 409.) Panels of the California Court of Appeal are not bound by prior panels, even within the same district. Thus, any district or division of the court of appeal may disagree with a decision by any other district or division. Hence, while the U.S. Supreme Court regulates circuit-splits from the 13 federal circuits, the California Supreme Court oversees potential splits from effectively 19 courts of appeal (i.e., counting each of the six districts, plus the divisions within those districts as independent courts).

Conflicting appellate rulings in California: As a practical matter, "…a superior court ordinarily will follow an appellate opinion emanating from its own district even though it is not bound to do so." (*McCallum v. McCallum* (1987) 190 Cal. App. 3d 308, 316, fn.4; *Apple Valley Unified School Dist. V. Vavrinek, Trine, Day & Co., LLP* (2002) 98 Cal.App 4th 934, 947.) When different panels of the court of appeal differ, California superior courts may select the opinion they regard as better reasoned. (*People v. Stamper* (1987) 195 Cal.App.3d 1608, 1613, citing *Auto Equity Sales, Inc. v. Superior Court* (1967) 57 Cal.2d 450, 456; *McCallum v. McCallum* (1987) 190 Cal.App.3d 308, 315 n. 4; and see 9 Witkin, California Procedure § 772 at 740-41 (3d ed. 1985)

Rules Re: Unpublished Opinions Court of Appeal Opinions: California practitioners know that they cannot cite or rely upon unpublished or depublished California opinions in California courts, unless relevant to law of the case, res judicata, etc. (Cal. Rules of Court, Rule 8.1115(a).) Violations of the "no-citation rule" can even be sanctionable. (*People v. Williams* (2009) 176 Cal.App.4th 1521, 1529; *Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 885-886.)

"Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action." (Rules of Court, rule 8.1115(a).)

The art of persuasion: Non-published cases of the California Court of Appeal are not to be cited or considered as having precedential value. (*People v. Russo* (2001) 25 Cal.4th 1124, 1133, fn.1; *Jenson v. Kenneth Mullen Co.* (1989) 211 Cal.App.3d 653, 658; *Faitz v. Ruegg* (1981) 114 Cal.App.3d 967, 970; Cal Rules of Court, rule 8.1115(a).) The court's analysis in an unpublished

opinion may, however, be properly considered for its **persuasive value**. (*People v. McDaniels* (1994) 21 Cal.App.4th 1560, 1566, fn.2 ["analysis in an unpublished opinion may properly be considered."")

The California Supreme Court is apparently amenable to the limited use in merits briefs of unpublished opinions. Recently in *Williams v. Chino Valley Independent Fire Dist*. (2015) 61 Cal.4th 97, 113, the court itself noted — without criticism— that the plaintiff "references an unpublished case" simply to demonstrate that "costs may in some FEHA cases be considerable." Note the semantic differences between "citing" and "referencing."

Exception: A non-published opinion may be cited or relied on: (1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or (2) when the opinion relates to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action. Cal Rules of Court, rule 8.1115(b).)

Other possible exceptions: When petitioning the court for review, counsel "can show the need to 'secure uniformity' by citing conflicting published decisions and unpublished decisions. Citing unpublished decisions to show the issue is unsettled does not violate [rule 8.1115(a)] because the petitioner is not relying on the unpublished decision as precedent that should be followed." (Daniel U. Smith & Valerie T. McGinty, Obtaining California Supreme Court Review, Plaintiff Magazine (Dec. 2012).) In *People v. Hill* (1998) 17 Cal.4th 800, 847, fn. 9, the court took judicial notice of an unpublished opinion and explained that "[b]ecause we do not cite or rely on that opinion, the judicial notice does not in this circumstance run afoul of [rule8.1115(a)]." For further reading, see To Cite or Not to Cite? That Is the Question Citing Unpublished Decisions in California State and Federal Courts By Benjamin G. Shatz and Emil Petrossian

If there is an appeal of a **new** case from a trial level decision, the appellate court in that new case can choose either an **earlier appellate court** case holding, or it can create or use new rule. For appellate **districts without appellate divisions** within the district, there must be a "compelling reason" to overrule a decision of another panel of that same district. (*Opsal v. United Services Auto. Ass'n* (1991) 2 Cal.App. 4th 1197, 1203-1204.).

Citable by Judicial Notice? Below is a link to an article from the Appellate Insight blog that discussed whether the judicial notice statute, Evid. Code, § 452(d)(1), might trump Rule 8.1115. Unpublished California Opinions: Citable by Judicial Notice?

The article is interesting but concludes that the Supreme Court has put an end to this debate in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269, fn. 2.) In *Hernandez*, the appellant asked the Court to judicially notice several unpublished opinions adopting the appellant's proposed rule. (*Ibid.*) The Court summarily declined, citing Rule 8.1115(a). (*Ibid.*) The *Hernandez* Court did not address why the rule of court would apparently trump Section 452 of the Evidence Code. (See *ibid.*; cf. *Hess*, *supra*, 27 Cal.4th at p. 532 [statutes

trump rules of court where inconsistent.

The Superior Court

California has 58 trial courts, one in each county. In trial (superior) courts, a judge and sometimes a jury hears witnesses' testimony and other evidence and decides cases by applying the relevant law to the relevant facts. The California courts serve the state's population of over 39 million people.

Before June 1998, California's trial courts consisted of superior and municipal courts, each with its own jurisdiction and number of judges fixed by the Legislature. In June 1998, California voters approved Proposition 220, a constitutional amendment that permitted the judges in each county to merge their superior and municipal courts into a "unified," or single, superior court. As of February 2001, all of California's 58 counties have voted to unify their trial courts.

The Superior Court handles:

- All criminal cases (felonies, misdemeanors, and traffic tickets)
- All civil cases (family law, probate, juvenile, and other civil cases)
- Appeals of small claims cases and other civil cases worth $25,000 or less
- Appeals of misdemeanor cases

Not binding authority: A written trial court ruling has no precedential value. (*Santa Ana Hospital Medical Center v. Belshe* (1997) 56 Cal.App.4th 819, 831, citing 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 763, pp. 730-731.)

Minute orders are not binding. "We caution that our minute orders apply only to the specific case and do not establish binding precedent for other cases." (*In re Scott* (2003) 29 Cal.4th 783, 815, fn.5, citing *Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 125.)

"Nevertheless, because our minute orders did not set out the reasoning of the court, and cannot serve as precedent to guide future decisions, we believe it appropriate to explain the basis for our decisions." (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 9.)

The Superior Court Appellate Division

The appellate division of the superior court handles appeals and petitions for extraordinary writs, such as mandamus, prohibition, and certiorari, in limited civil cases. Every superior court has an appellate division.

A published opinion of one appellate division is not binding on another appellate division, but it can be considered as "persuasive" authority. (*People v. Corners* (1985) 176 Cal.App.3d 139, 146.)

Appellate division decisions have persuasive value, but they are of debatable strength as precedents and are not binding on higher reviewing courts. (*Velasquez v. Superior Court* (2014) 227 Cal.App.4th 1471, 1477, fn. 7.)

Section 5: Other California Authority

Probable cause: In criminal law, probable cause and reasonable suspicion are usually based on a variety of circumstances, As the cases below show, one is seldom able to find a published case exactly on point:

- *Ornelas v. U.S.* (1996) 517 U.S. 690, 698: "[B]ecause the mosaic which is analyzed for a reasonable-suspicion or probable cause inquiry is multi-faceted, one determination will seldom be a useful precedent for another."

- *John v. City of El Monte* (9th Cir. 2007) 515 F.3d 936, 941: "The existence of probable cause necessarily turns upon the particular facts of the individual case, and prior decisions generally are of little help in deciding a specific case."

- *U.S. v. Dortch* (8th Cir. 2017) 868 F.3d 674, 681: "[I] is natural for cases that resemble each other in certain ways or at a high level of generality to come out differently as a result of key details that weigh differently in one than in the other."

- *Davis v. U.S.* (D.C. App. 2000) 759 A.2d 665, 674: "The Supreme Court has recognized, and so have we, the difficulties inherent in 'case-matching' in Fourth Amendment litigation."

Nonpublished Opinions

Nonpublished cases of the California Court of Appeal are not to be cited or considered as having precedential value. (*People v. Russo* (2001) 25 Cal.4th 1124, 1133, fn.1; *Jenson v. Kenneth Mullen Co.* (1989) 211 Cal.App.3d 653, 658; *Faitz v. Ruegg* (1981) 114 Cal.App.3d 967, 970; Cal Rules of Court, rule 977.

The court's analysis in an unpublished opinion may, however, be properly considered for its persuasive value. (*People v. McDaniels* (1994) 21 Cal.App.4th 1560, 1566, fn.2 ["analysis in an unpublished opinion may properly be considered."].

Out-of-State Decisions/Foreign Authorities

Absent California authority on point, courts may consider decisions from other states for their persuasive value. (*Squaw Valley Ski Corp. v. Superior Court* (1992) 2 Cal.App.4th 1499, 1508, fn.2; *Acco Contractors Inc. v. McNamara & Peppe Lumber* (1976) 63 Cal.App.3d 292, 296; *Intellidata Inc. v. State Board of Education* (1983) 139 Cal.App.3d 594, 599; *J.C. Penney Casualty Ins. Co. v. M.K.*

(1991) 52 Cal.3d 1009, 1027.)

Decisions of other jurisdictions are not binding but are persuasive unless they are unsound. (*Acco Contractors, Inc. v. McNamara & Peepe Lumber Co*. (1976) 63 Cal.App.3d 292, 296, citing *People v. Hayne* (1890) 83 Cal. 111, 119; see *People v. Wade* (2016) 63 Cal.4th 137, 141 [analysis of similar statutes by sister state courts persuasive even though legislative history may differ].)

Generally, foreign authorities have no precedential value. "Arguments should always be supported by California authorities whenever there is such authority on point." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2010) ¶ 9:49, p. 9-15 (rev. #1, 2008).)

Duty to Be Up Front

A party has a duty to "[b]e 'up front' about cases that appear to be against your position. . . . . Your failure to confront unfavorable relevant holdings will be regarded as an attempt to deceive and mislead the court." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2010) ¶ 9:58, pp. 9-17 to 9-18.)

In an unpublished case, *People v. Mossett* (Sept. 21, 2010, C063475) [nonpub. opn.], Justice Hull from the Third District Court of Appeal had this to say on this topic:

> "It is with dismay that I note that appellant's counsel made no mention of *People v. Clark* (1992) 7 Cal.App.4th 1041 (*Clar*k) in his opening brief. It is inappropriate, at least, for appellant's counsel to fail to discuss a case that is directly on point even though it defeats appellant's argument. It is no answer to say that it is up to the People to find and bring the case to the court's attention. It can be seen as an attempt to mislead the court by failing to acknowledge—and hoping, perhaps, that the respondent will fail to find—a decision directly contrary to appellant's contention. It is counsel's duty to disclose and discuss such holdings and attempt to distinguish them or argue that they should not be followed; they cannot be ignored."

Opinions of the California Attorney General

As the chief law officer of the state, the California Attorney General provides legal opinions upon request to designated state and local public officials and government agencies on issues arising in the course of their duties.

Opinions of the California Attorney General are not binding, but they may have persuasive value. (*People v. Gar*th (1991) 234 Cal.App.3d 1797, 1800; *Tafoya v. Hastings College* (1987) 191 Cal.App.3d 437, 445, fn.7; *State of C ex rel. State Lands Com. v. Superior Court* (1995) 11 Cal.4th 50, 71.)

How to cite a California Attorney General opinion: 84 Ops.Cal.Atty.Gen. 113

A complete compilation of legal opinions of the California Attorney General issued since 1982 may be viewed and searched using this link: Legal Opinions of the Attorney General - Opinion Unit

Parts of an Opinion May Not Be Binding

The entire content of an appellate decision is not binding. Only the reason for the ruling on a point of law must be followed as precedent per stare decisis, even a footnote. (*Gogri v Jack in the Box Inc.* (2008) 166 Cal.App. 4th 255, 272; *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App. 4th 60, 77.) But parts of the decision that were unnecessary to reach that decision, i.e., dicta, are not binding.(*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App. 4th 820, 850), but dictum from the California Supreme Court should be followed if thorough analysis and compelling logic were utilized. (*State of Calif. v. Superior Ct.* (*Underwriters at Lloyd's of London*) (2000) 78 Cal.App. 4th 1019, 1029, fn. 13.)

Section 6: Miscellaneous

Impact of Victims' Bill of Rights on Search and Seizure Questions

California's Proposition 8 ("The Victims' Bill of Rights")[1], which was on the June 1982 California primary election ballot, added section 28, subdivision (d) to article I of the California Constitution.

That section provides : "Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding...." evidence may be suppressed only if it was obtained in violation of the U.S. Constitution. (*People v. Hull* (1995) 34 Cal.App.4th 1448, 1455; *In re Lance W.* (1985) 37 Cal.3d 873; *People v. May* (1988) 44 Cal.3d 309; *People v. Plyler* (1993) 18 Cal.App.4th 535, 544; *People v. Deltoro* (1989) 214 Cal.App.3d 1417, 1423-24; *People v. Rosales* (1987) 192 Cal.App.3d 759, 767; *People v. Banks* (1990) 217 Cal.App.3d 1358, 1362-1363.

[1] Further reading suggestion: "27 Years of Truth-in-Evidence: The Expectations and Consequences of Proposition 8's Most Controversial Provisions" published in the Berkeley Journal of Criminal Law Volume 14 | Issue 1 Article 1 2009

Also see: *People v. Profit* (1986) 183 Cal.App.3d 849, 880: "Our preoccupation with restrictions on police activity has become so great that an impression circulates that the chief end of criminal law is to prevent invasions by police rather than invasions by criminals. Unquestionably, this preoccupation has led to the release of patently guilty criminals and thereby weakened the deterrent effect of criminal law."

Thus, evidence will not be suppressed on grounds it was obtained in violation of a statute or case based on independent state grounds. (*People v. Brannon* (1973) 32 Cal.App.3d 971, 975 ["Evidence obtained in violation of a statute is not inadmissible per se unless the statutory violation also has a constitutional dimension."]; *U.S. v. Ani* (9th Cir. 1998) 138 F.3d 390, 392 ["Absent a constitutional violation or a congressionally created remedy, violation of an agency regulation does not require suppression of evidence."]; *U.S. v. Davis* (9th Cir. 1991) 932 F.3d 752, 758 ["For cases arising in California, the application of state standards would in any even prove redundant because the California State Constitution no longer affords independent state grounds for excluding relevant evidence."].

From *People v. Buza* (2018) 4 Cal.5th 658, 684-685:

> Even before the passage of Proposition 8, this court ordinarily resolved questions about the legality of searches and seizures by construing the Fourth Amendment and article I, section 13 in tandem. (E.g., *People v. Triggs* (1973) 8 Cal.3d 884, 892, fn. 5 ["At least since the advent of *Wolf v. Colorado* (1949) 338 U.S. 25, we have treated the law under article I, section 19 [now section 13], of our state Constitution as 'substantively equivalent' to the Supreme Court's construction of the Fourth Amendment."].) On various occasions, however, this court has also decided questions pertaining to the legality of searches and seizures solely under article I, section 13, when the United States Supreme Court had not yet decided the parallel question under the Fourth Amendment. (See, e.g., *People v. Ruggles* (1985) 39 Cal.3d 1, 11 ["Rather than await more definitive guidance [from the United States Supreme Court], we turn to article I, section 13 of the California Constitution"]; *People v. Cook* (1985) 41 Cal.3d 373, 376, fn. 1 [similar].) And on some of those occasions, the high court later spoke to the question and reached a contrary conclusion under the Fourth Amendment. We have then been confronted with the question whether to adhere to our own precedent construing article I, section 13, as a matter of stare decisis, or instead to abandon our precedent in favor of the high court's decision. (See *Brisendine , supra* , 13 Cal.3d at p. 552 [adhering to *People v. Superior Court* (*Simon*) (1972) 7 Cal.3d 186, notwithstanding the United States Supreme Court's later decision in *United States v. Robinson , supra* , 414 U.S. 218]; *People v. Cook* (1978) 22 Cal.3d 67, 88 [adhering to the rule of *Theodor v. Superior Court* (1972) 8 Cal.3d 77, notwithstanding the United States Supreme Court's later decision in *Franks v. Delaware* (1978) 438 U.S. 154].)

Judicial Opinions from Foreign Countries

References to other countries' practices occasionally arise in the U.S. Supreme Court's jurisprudence, but they rarely are regarded as persuasive authority. For example, in *Printz v. United States*, Justice Scalia's majority opinion specifically rejects the suggestion that comparison contributes to constitutional interpretation: "Justice Breyer's dissent would have us consider the benefits that other countries, and the European Union, believe they have derived from federal systems that are different from ours. We think such comparative analysis inappropriate to the task of interpreting a constitution . . . ." (*Printz v. United States* (1997) 521 U.S. 898, 921 n.11.)

Justice Clarence Thomas echoed this sentiment in a concurring opinion denying certiorari for a case considering whether long delays before executions constitute cruel and unusual punishment:

> [W]ere there any . . . support in our own jurisprudence, it would be unnecessary for proponents of the claim to rely on the European Court of Human Rights, the Supreme Court of Zimbabwe, the Supreme Court of India, or the Privy Council. (*Knight v. Florida* (1999) 528 U.S. 990, 990 (Thomas, J., concurring) (denying certiorari)

Further reading: A Comparison of Comparison: Use of Foreign Case Law As Persuasive Authority by The United States Supreme Court, The Supreme Court of Canada, and The High Court of Australia
https://gould.usc.edu/why/students/orgs/ilj/assets/docs/11-1%20Lefler.pdf

Advisory Opinions of the International Court of Justice

An advisory opinion is legal advice provided to the United Nations or a specialized agency by the International Court of Justice, under Article 96 of the United Nations Charter.

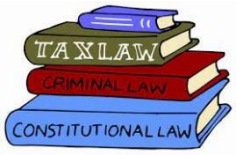
- The General Assembly and the Security Council may request advisory opinions on "any legal matter"
- Other organs and the specialized agencies may request advisory opinions on "legal questions arising within the scope of their activities"

Chapter IV, Articles 65-68 of the Statute of the ICJ and Part IV, Articles 102-109 of the Rules of Court concern advisory opinions. The ICJ website lists organs authorized to request advisory opinions. As of 2017, there have been 28 requests for advisory proceedings:

- 17 by the General Assembly
- 1 by the Security Council
- 2 by the Economic and Social Council
- 3 by the Committee for Review of Administrative Tribunal Judgments

- 1 by UNESCO, 2 by WHO, 1 by IMO, 1 by IFAD

Advisory opinions are not binding, but may inform the development of international law. According to the ICJ website, advisory opinions "carry great legal weight and moral authority. They are often an instrument of preventive diplomacy and have peace-keeping virtues. Advisory opinions also, in their way, contribute to the elucidation and development of international law and thereby to the strengthening of peaceful relations between States."



Treatises and Other Secondary Authority

Secondary authority explains and analyzes the law. Most legal secondary authorities have many citations to primary authorities like cases, statutes, and regulations. Secondary authority does not have binding effect on the court but helps explain what the law is or should be.

There are many types of secondary authorities. Some include:

- Law dictionaries and encyclopedias;
- Legal textbooks like legal treatises or hornbooks;
- Law review articles, comments and notes (written by law professors, practicing lawyers, students, and others);
- Annotations published in code or statute books;
- Legal digests; and
- Legal briefs and memoranda.

"[S]econdary authority is not the law itself. It was not written by the legislature, a court, an agency, a city council, etc. Secondary authority can never be mandatory authority; it can only be persuasive." (Statsky Wernet, Case Analysis and Fundamentals of Legal Writing (3d ed. 1989) p. 207.)

The "treatises of learned men" are also part of the "[u]nwritten law." (Code Civ. Proc., § 1899.)

Such treatises may be considered to find the applicable law in a situation. (*White v. Merrill* (1889) 82 Cal. 14, 18 (conc. opn. of Thornton, J.).)

Restatements of law: Works such as "Restatement[s] of the Law do not have the force of statutory enactment nor do they supersede judicial decisions." (*Janofsky v. Garland* (1941) 42 Cal.App.2d 655, 658.)

However, Restatements may be persuasive authority. An excerpt from *Brady v. Calsol, Inc.* (2015) 241 Cal.App.4th 1212, 1225 states:

> In *Canfield v. Security–First Nat. Bank* (1939) 13 Cal.2d 1: ... 'The Restatement

> ... does not constitute a binding authority, but, considering the circumstances under which it has been drafted, and its purposes, in the absence of a contrary statute or decision in this state, it is entitled to great consideration as an argumentative authority.'" (*Standard Oil Co. v. Oil, Chemical Etc. Internat. Union, AFL–CIO et al.* (1972) 23 Cal.App.3d 585, 589.) While *Standard Oil Co.* dealt with the Restatement on Restitution, the persuasive authority of the Restatement as published by the American Law Institute is generally agreed in other jurisdictions.

Legislative Intent and Statutory Construction

If the language of a statute is clear, legislative intent is irrelevant. (*In re Lance W.* (1985) 37 Cal.3d 873, 886; *In re York* (1995) 9 Cal.4th 1133, 1142.)

"But the admitted rules of statutory construction declare that a legislature is presumed to have used no superfluous words. Courts are to accord a meaning, if possible, to every word in a statute." (*Platt v. Union Pacific R.R. Co.* (1878) 99 U.S. 48, 58.)

Where legislative history resolves the issue, courts should not resort to less reliable tools of statutory construction. "[Canons of construction] include the duty to harmonize statutes on the same subject, if possible, the presumption against implied repeals, and the rule that a specific statute prevails over a general one." (*Med. Board of California v. Superior Court* (2001) 88 Cal.App.4th 1001, 1013.) Where "the legislative history answers the question before us, it is a more reliable indicator of legislative intent than general canons of construction." (*Tellez v. Superior Court* (2020) 56 Cal.App.5th 439, 449.)

Dyna-Med, Inc. v. Fair Emp. & Hous. Com. (1987) 43 Cal.3d 1379: "[T]hese canons of construction are mere guides and will not be applied so as to defeat the underlying legislative intent otherwise determined." (*Id.* at 1391.) In divining this legislative intent, the courts routinely consider extrinsic materials, such as committee reports and digests of the Legislative Counsel, to be relevant because courts "infer that all members of the Legislature considered them when voting on the proposed statute." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46, fn. 9.)

Language subject to two interpretations: But if the language is subject to different interpretations, legislative intent may be considered. (*People v. Superior Court (Ferguson)* (2005) 132 Cal.App.4th 1525, 1532-33. Also see *Conroy v. Aniskoff* (1993) 507 U.S. 511, 519 (conc. opn. of Scalia, J.) ["The greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators."]; *U.S. v. Smith* (9th Cir. 1998) 155 F.3d 1051, 1056, fn.9 ["As is most often the case, the legislative history is of no help whatsoever."]; *Steve Jackson Games, Inc. v. U.S. Secret Service* (5th Cir. 1994) 36 F.3d 457, 462 ["But, when interpreting a statute as complex as the Wiretap Act, which is famous (if not infamous) for its lack of clarity, we consider it appropriate to note the legislative history for confirmation of our understanding of Congress'

intent."].)

Considering multiple codes: Different code sections pertaining to an issue may be considered together. (*People v. Ashley* (1971) 17 Cal.App.3d 1122, 1126 ["It is a well settled rule of statutory construction that the separation of the various statutes into codes is for convenience only, and the codes are to be read together and regarded as blending into each other thereby forming but a single statute."].)

For more on statutory construction, see this Montana Law Review article, this Kansas Law Review article, and this Hofstra Law Review article.

Are Footnotes Binding Authority?

If the footnote is from a California Supreme Court case, it can be binding authority. See the following quote from *Dyer v. Superior Court* (1997) 56 Cal.App.4th 61, 66:

Even when stated in footnotes, our Supreme Court's decisions bind us, and its dicta command our serious respect. (See *Bunch v. Coachella Valley Water Dist*. (1989) 214 Cal. App.3d 203, 212; *People v. Jackson* (1979) 95 Cal. App.3d 397, 402.) However, "language contained in a judicial opinion is `"to be understood in the light of the facts and issue then before the court, and an opinion is not authority for a proposition not therein considered. [Citation.]"' [Citations.]" (*People v. Banks* (1993) 6 Cal.4th 926, 945.) When questions about an opinion's import arise, the opinion "should receive a reasonable interpretation [citation] and an interpretation which reflects the circumstances under which it was rendered [citation]" (*Young v. Metropolitan Life Ins. Co*. (1971) 20 Cal. App.3d 777, 782, and its statements should be considered in context (see *Pullman Co. v. Industrial Acc. Com*. (1946) 28 Cal.2d 379, 388.)

However, generally, a dictum of the (CA) Supreme Court "while not controlling authority, carries persuasive weight and should be followed where it demonstrates a thorough analysis of the issue or reflects compelling logic." (*Dyer v. Superior Court* (1997) 56 Cal.App.4th 61, 67, 68.)

People v. Watterson (1991) 234 Cal. App.3d 942, 945 states in the opinion: "First we note that this footnote is dicta as it was unnecessary to resolution of the issue before the court." That line suggests a footnote will not always be considered dicta.

And in *Hubbard v. Superior Court* (1997) 66 Cal.App.4th 1163, 1168, the court said, "As we shall explain, a compelling argument can be made, and we believe, that footnote 14 of *Izazaga* is a holding." So, a footnote *can constitute a holding*. Conveniently, the next sentence in *Hubbard* explains how to distinguish between dicta and a holding:

> Mr. Witkin has summarized the distinction between the holding of a case and dictum as

follows: "The ratio decidendi is the principle or rule which constitutes the ground of the decision, and it is this principle or rule which has the effect of a precedent. It is therefore necessary to read the language of an opinion in the light of its facts and the issues raised, to determine (a) which statements of law were necessary to the decision, and therefore binding precedent, and (b) which were arguments and general observations, unnecessary to the decision, i.e., dicta, with no force as precedents. (Citations.) (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 783, pp. 753; see also *Trope v. Katz* (1995) 11 Cal.4th 274, 287.)

Dictum or Obiter Dictum

According to *People v. Xue Vang* (2011) 52 Cal.4th 1038, 1047 n.3: "Black's Law Dictionary defines 'obiter dictum' as '[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).— Often shortened to dictum or, less commonly, obiter.' (Black's Law Dict. (9th ed. 2009) p. 1177, col. 2.) ('Dicta' is, of course, the plural form of 'dictum.' (Ibid.))

A "dictum" or "obiter dictum" is a "judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (though it may be considered persuasive)." (*U.S. v. Morgan*, 380 F.3d 698, 702 n. 3 (2d Cir. 2004), quoting Black's Law Dictionary 1100 (7th ed. 1999). When an observation had no role in the judgment, it cannot be characterized as part of the holding. (*Id.*)

A "holding" is a court's "determination of a matter of law pivotal to its decision; a principle drawn from such a decision." *Cal. Pub. Emps.' Ret. Sys. v. WorldCom, Inc.*, 368 F.3d 86, 107 n. 19 (2d Cir. 2004), quoting Black's Law Dictionary 737 (7th ed. 1999). If a point of law "might have been decided either way without affecting any right brought into question, then, according to the principles of the common law, an opinion on such a question is not a decision." (*Jimenez v. Walker*, 458 F.3d 130, 142-43 (2d Cir. 2006), quoting *Carroll v. Lessee of Carroll*, 57 U.S. 275, 286-87 (1853).)

Dicta of the California Supreme Court: "It is, of course, axiomatic that it is only the ratio decidendi of a Supreme Court opinion that is fully binding as precedent on the lower courts of this state. [Citations.] ... It is equally axiomatic, however, that Supreme Court dicta is not to be blithely ignored. Indeed, such dicta is said to be 'persuasive' [citation] and to 'command[ ] serious respect.' "(*Bunch v. Coachella Valley Water Dist.* (1989) 214 Cal.App.3rd 203, 212.) "Generally speaking, follow dicta from the California Supreme Court." (*Aviles-Rodriguez v. Los Angeles Community College Dist.* (2017) 14 Cal.App.5th 981, 990.)

Headnotes and Syllabi

A syllabus (headnote) in an opinion of the United States Supreme Court constitutes no part of

the opinion but has been prepared by the Reporter of Decisions for the convenience of the reader. "See *United States v. Detroit Timber & Lumber Co*. (1906) 200 U. S. 321, 337.)

Dissenting and Concurring Opinions

Statements in dissenting and concurring opinions do not constitute precedent. (Maryland v. Wilson (1997) 519 U.S. 408, 412-413: "We agree with respondent that the former statement was dictum, and the latter was contained in a concurrence, so that neither constitutes binding precedent."

"The opinion of Justice McKee …contains language indicating that deadly force, if necessary, may be used to protect property against a trespasser. However, the other justices concurred in the judgment on the ground of an error in instructions and did not give their approval to that language. Thus, Justice McKee's language has no controlling weight". (*People v. Ceballos* (1974) 12 Cal.3d 470, 483.)

Inferences

Inferences from a court's discussion have no force. "Constitutional rights are not defined by inferences from opinions which did not address the question at issue." (*Texas v. Cobb* (2001) 532 US 162, 169.)

Consider Words in Context

A court's words should be considered in context. "We must read [general language in opinions] as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering." (*Illinois v. Lidster* (2004) 540 U.S. 419, 424; *Gustafson v. Alloyd Co.* (1995) 513 U.S. 561, 562 ["A word is known by the company it keeps."].

Failure to Analyze

A court's ruling is not apt to be given much, in any, weight if it neglected to provide an analysis. "[O]ne unexplained and unelaborated sentence" in one of its opinions should not be interpreted a "novel and far-reaching" departure from its other rulings. (*U.S. v. Robinson* (1973) 414 U.S. 218, 229.)

"However, we do not find this case to be persuasive authority since the court failed to provide any analysis underlying its decision." (*Henslee v. DMV* (1985) 168 Cal.App.3d 445, 453.)

Slip Opinions

A "slip" opinion is a decision that will not be published or which the decision to publish has not yet been made. Judicial decisions go through three stages of printing: slip opinions, advance

sheets, and final bound reports. See U.S. Supreme Court website: www.supremecourtus.gov/opinions/info_opinions.html.

Issue Not Raised

If an issue could have been raised but was not, this may indicate the legal profession's view that the issue does not apply under such facts. (*U.S. v. Ross* (1982) 456 U.S. 798, 819.)

Lawfulness Does Not Necessarily Define Unlawfulness

A ruling that a search was lawful does not automatically mean that searches unlike it are unlawful. (*U.S. v. Knights* (2001) 534 U.S. 112, 117 [the court uses the term "dubious logic" to describe a ruling "that an opinion upholding the constitutionality of a particular search implicitly holds unconstitutional any search that is not like it"].)

Which Courts Have the Final Say on Federal Constitutional Law?

Because of the supremacy clause (U.S. Const., art. VI, cl. 2), opinions of the U.S. Supreme Court bind all California courts on questions of federal constitutional law. (*People v. Daan* (1984) 161 Cal.App.3d 22, 28; *People v. Superior Court (Williams)* (1992) 8 Cal.App.4th 688, 702; *Calderon v. City of Los Angeles* (1971) 4 Cal.3d 251, 264; *Del Monte v. Wilson* (1992) 1 Cal.4th 1009, 1023; *General Motors Corp. v. City of Los Angeles* (1995) 35 Cal.App.4th 1736, 1749.)

Hopkins v. Bonvicino (9th Cir. 2009) 573 F. 3d 752, 769:

> It is the federal courts that are the final arbiters of federal constitutional rights, not the state courts. *See, e.g., Bennett v. Mueller,* 322 F.3d 573, 582 (9th Cir.2003) ("[S]tate courts will not be the final arbiters of important issues under the federal constitution." (quoting *Minnesota v. Nat'l Tea Co.* (1940) 309 U.S. 551, 557.)

The court also noted: "[A] decision by a state court contrary to a holding of this court cannot unsettle or 'de-establish' the clarity of federal law." (*Id*. at 771.) However, one should be mindful of the following SCOTUS comment in *Johnson v. Williams* (2013) 568 U.S. 289:

> [T]he views of the federal courts of appeals do not bind the California Supreme Court when it decides a federal constitutional question and disagreeing with the lower federal courts is not the same as ignoring federal law. The Ninth Circuit's apparent assumption that the California Supreme Court could not refuse to follow federal court of appeals precedent without disregarding the Federal Constitution would undo [28 U.S.C.] §2254(d)'s "contrary to" provision, which requires deference unless a state court fails to follow Supreme Court precedent. 28 U.S.C. §2254(d)(1).

The Cali Supremes View on the Binding Nature of U.S. Supreme Court Decisions

Decisions of the United States Supreme Court interpreting parallel federal text are not binding,

but the California Supreme Court has said they are "entitled to respectful consideration." (*People v. Teresinski* (1982) 30 Cal.3d 822, 836 (*Teresinski*); cf., e.g., *Gabrielli v. Knickerbocker* (1938) 12 Cal.2d 85, 89 ["[C]ogent reasons must exist before a state court in construing a provision of the state Constitution will depart from the construction placed by the Supreme Court of the United States on a similar provision in the federal Constitution."].) This approach reflects the "respect due to the decision of that high tribunal, the fact that to it has been committed, by the consent of the states, the ultimate vindication of liberty and property against arbitrary and unconstitutional state legislation." (*People v. Budd* (1889) 117 N.Y. 1, 13, 22 N.E. 670, affd. *Budd v. New York* (1892) 143 U.S. 517, cited in *Gabrielli* , *supra*, 12 Cal.2d at p. 89.)