

## Appendix A

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### GLOSSARY OF LEGAL TERMS<sup>1</sup>

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**Action:** A judicial proceeding for the enforcement or protection of a right. Often used as another term for a lawsuit.

**Advance sheet:** A pamphlet containing the full-text of recent court opinions. Advance sheets are printed before a bound volume appears.

**Administrative law:** The branch of law dealing with the regulations and administrative decisions of government agencies.

**Amicus curiae:** Literally, “friend of the court.” An amicus curiae brief is an appellate brief prepared and submitted by a non-party with the court’s permission.

**Annotation:** Editorial commentary, critical notes and references to relevant legal sources (such as cases) often found following the text of the code sections in sets such as *Deering’s California Codes Annotated* and *West’s United States Code Annotated*.

**Answer:** The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

**Appeal:** A request made after trial (or adjudication) by a party that has lost on one or more issues to a higher court for review of the decision of a lower or inferior court or administrative agency. The one who appeals is called the “appellant,” while the other party is the “appellee.”

**Bench trial:** A trial in which there is no jury and the judge decides the case.

**Bill:** A proposed law submitted to a state or federal legislature. If a bill passes, it becomes a statute.

**Breach:** A violation of or failure in the performance of an obligation created by a promise, duty or law without excuse or justification.

**Brief:** A party’s written argument which cites legal authorities and is designed to persuade the court. Examples include appellate briefs and trial briefs.

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<sup>1</sup> Treatises are books written by experts that provide extensive coverage of legal topics. A treatise can be one volume or many volumes.

**Case law:** The law established by previous decisions of appellate courts. A synonym for legal precedent.

**Cause of action:** The fact or facts that give a person a right to relief in court.

**Certified copy:** A copy of a document issued by a court or government agency guaranteed to be a true and exact copy of the original.

**Charter:** The fundamental law of a municipality or other local unit of government; analogous to a constitution.

**Citation or Cite:** The written reference to legal authorities such as statutes, reported cases, regulations, and law review articles. Legal citation manuals include *The Bluebook: A Uniform System of Citation* and the *California Style Manual*.

**Citator:** Traditionally, a set of books that provides the subsequent history of reported cases using abbreviations and arranged in a tabular form. The most well-known citator is *Shepard's Citations*. Today, most citators are online services, whereby users simply enter the citation of the case (or regulation, statute, or law review) in order to view the newer documents that cite the original document.

**Civil procedure:** The rules and processes by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.

**Clerk of court:** The court officer who oversees administrative functions, especially managing the flow of cases through the court.

**Code:** The statutory laws of a state or nation, generally arranged by subject.

**Common law:** Originating from England, common law relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation. Also called "case law."

**Complaint:** A written statement that, when filed with a court, begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

**Conservator/Conservatorship:** The legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing so for him or herself. See also guardianship.

**Constitution:** The fundamental law of a state or a nation; creates the branches of government and identifies basic rights and obligations.

**Contract:** An agreement between two or more people, which creates an obligation to do or not to do a particular thing. A legally enforceable agreement between two or more competent parties made either orally or in writing.

**Court rules:** Regulations governing practice and procedure in the various courts.

**Decision:** A judgment, decree, or order pronounced by a court in settlement of a controversy submitted to it.

**Defendant:** In a civil case, the person or organization against whom the plaintiff brings suit; in a criminal case, the person accused of the crime.

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**Digest:** A compilation of paragraphs summarizing court opinions, organized by subject matter and jurisdiction.

**Discovery:** Procedures used to obtain disclosure of evidence before trial. Depositions are oral statements by a party or witness under oath in response to questions. Interrogatories are written answers by a party or witness.

**Docket:** A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

**Docket number:** A unique number assigned to a case when it is filed with the court.

**Due process:** In criminal law, the constitutional guarantee that a defendant will receive a fair and impartial trial. In civil law, the procedural rights of someone who confronts an adverse action threatening liberty or property.

**Enabling statute:** A statute that confers (as to an administrative agency) the power or authority to engage in conduct not otherwise allowed.

**En banc:** French, meaning "on the bench." Indicates that all judges of an appellate court sit together to hear a case, as opposed to the routine disposition by panels of three judges. In the Ninth Circuit, an *en banc* panel consists of 11 randomly selected judges.

**Encyclopedia (legal):** A complete compendium of the law indexed by subject and supplemented annually. *American Jurisprudence 2nd* and *Corpus Juris Secundum* include case law from all the states. *California Jurisprudence 3rd* includes case and statutory law from California.

**Estate planning:** The arranging for the disposition and management of one's estate at death through the use of wills, trusts, insurance policies, and other devices.

**Et al.:** Latin, meaning "and others."

**Et seq.:** Latin, meaning "and the following." Often seen following code citations (e.g. Vehicle Code ' ' 22100 et seq.)

**Family law:** An area of law dealing with family relations, including divorce, adoption, paternity, custody and support.

**Federalism:** A political system in which power is divided and shared between the national/central government and the states/regional units, in order to limit the power of government.

**FOIA:** Freedom of Information Act

**Fundamental right:** A right that is considered by a court (as the U.S. Supreme Court) to be explicitly or implicitly expressed in a constitution (as the U.S. Constitution).

**Gravamen:** The essential element of a lawsuit.

**Guardian *ad litem*:** A guardian appointed by a court to represent the interests of a minor, a person not yet born, or a person judged incompetent in a particular legal action.

**Guardianship:** A legal arrangement under which one person (a guardian) has the legal right and duty to care for another (the ward) and his or her property. A guardianship is established because the ward is unable to legally act in his or her own behalf.

**Headnote:** A paragraph printed preceding the text of an opinion, which summarizes an important legal issue of a case and which is often assigned a topic and number by editors.

**Hearing:** A proceeding of relative formality at which evidence and arguments may be presented on the matter at issue to be decided by a person or body having decision-making authority. The purpose of a hearing is to provide the opportunity for each side of a dispute, and especially a person who may be deprived of his or her rights, to present its position. A hearing, along with notice, is a fundamental part of procedural due process. Hearings are also held, as for example by a legislature or an administrative agency, for the purpose of gathering information and hearing the testimony of witnesses.

**Hornbook:** Basic legal textbook, usually written by an authority in a field of law. An example is *Prosser & Keaton on the Law of Torts*.

**J.D.:** Juris Doctor or doctor of jurisprudence, the degree commonly conferred by law schools.

**Judgment:** The official decision of a court resolving the dispute between the parties to the lawsuit.

**Jurisdiction:** The power of a court over the subject matter or over the property to decide a matter in controversy. Also, the geographic area over which a particular court has authority.

**Jurisprudence:** The study of law and the structure of the legal system.

**Law review:** A legal journal published and edited by law school students to which legal scholars and students contribute articles.

**Lawsuit:** A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, which resulted in harm to the plaintiff.

**Legal aid:** Assistance provided by an organization established to serve the legal needs of low income individuals.

**Legislation:** The making or giving of laws, especially the exercise of power and function of making rules that have the force of authority by virtue of their promulgation by a legislature.

**Legislative history:** The background documents generated during the passage of a bill through the legislative process. Examples are committee hearings and reports.

**Legislative intent:** The ends sought to be achieved by a legislature in an enactment. Courts often look to legislative intent for guidance in interpreting and applying a

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statute. The legislative history, the language of a law, and the wrong to be corrected may provide indications of legislative intent.

**LexisNexis (or Lexis):** A subscription online legal research service, owned by Reed Elsevier.

**Lien:** A charge or encumbrance upon property for the satisfaction of a debt or other duty that is created by agreement of the parties or by operation of law.

**Litigation:** A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

**Loose-leaf:** A publishing format in which legal materials are kept up-to-date by interfiling new pages periodically (inserting new pages and discarding old ones).

**Malpractice:** Negligence, misconduct, lack of ordinary skill or a breach of duty in the performance of a professional service (as in law or medicine) resulting in injury or loss.

**Mechanic's lien:** A lien against a building and its site to assure priority of payment for labor or services (such as construction or design) or material.

**Memorandum opinion:** A brief opinion of a court that announces the result of a case without extensive discussion. Memorandum opinions are usually unpublished and cannot be cited as precedent.

**Opinion:** The judge's written statement explaining how and why a decision was reached in a case. Because a case may be heard by three or more judges in the courts of appeals, the opinion in appellate decisions can take several forms. If all the judges completely agree on the result, one judge will write the opinion for all. If all the judges do not agree, the formal decision will be based upon the view of the majority, and one member of the majority will write the opinion. The judges who did not agree with the majority may write separately in dissenting or concurring opinions to present their views. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law the majority used to decide the case. A concurring opinion agrees with the decision of the majority opinion, but offers further comment or clarification or even an entirely different reason for reaching the same result. Only the majority opinion can serve as binding precedent in future cases.

**Order:** A mandate from a superior authority (e.g. executive orders); a ruling or command made by a competent administrative authority, especially one resulting from administrative adjudication and subject to judicial review and enforcement; or an authoritative command issued by the court (e.g. court order).

**Ordinance:** Law passed by the local legislative branch of government (city council, county commission); analogous to a state or federal statute.

**Parallel citation:** A citation indicating other sources for the same judicial opinion or statute. (See Chapter 2: *How to Read a Legal Citation* for further explanation and examples)

**Per curiam:** Latin, meaning “for the court.” In appellate courts, often refers to an unsigned opinion.

**Plaintiff:** A person or business that files a formal complaint with the court.

**Pleadings:** Written documents filed with the court, which describe a party’s legal or factual assertions about the case.

**Pocket part:** A paper supplement inserted into a bound volume to update the information found in the main volume. Pocket parts are a common way to update sets of codes.

**Power of attorney:** An instrument containing an authorization for one to act as the agent of the principal and which terminates upon revocation by the principal or death of the principal or agent.

**Precedent:** A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally “follow precedent” - meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case.

**Primary authority:** Rules of law promulgated by the three branches of government as well as the texts of constitutions:

- Constitution-Organic laws of our nation and of our states
- Legislative-Statutes
- Executive/Administrative-Regulations, Executive Orders
- Judicial-Case opinions

**Private law:** A branch of law concerned with private persons, property, and relationships (compare with “public law”).

**Procedure:** The rules for conducting a lawsuit. There are rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

**Pro per:** A slang expression sometimes used to refer to a *pro se* litigant. It is a shortened version of the Latin phrase “in propria persona.”

**Pro se:** Representing oneself; serving as one’s own lawyer.

**Public law:** An enactment of a legislature that affects the public at large throughout the entire territory (as in a state or nation) which is subject to the jurisdiction of the legislature or within a particular subdivision of its jurisdiction; the area of law that deals with the relations of individuals with the state and regulates the organization and conduct of the government (compare with “private law”).

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**Re or In re:** “With regard to” or “in the matter of.” Often used in the title or name of a case where the proceedings involve a probate or bankruptcy estate, or a guardianship.

**Real property:** Land, buildings, crops and other resources attached to or within the land or improvements or fixtures permanently attached to the land or a structure on it.

**Record:** A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

**Regulation:** A rule issued by an administrative agency under authority granted to the agency by the legislature.

**Reply:** A plaintiff’s or complainant’s response to a plea, allegation, or counterclaim in the defendant’s answer.

**Reporter/Reports:** Compilations of judicial opinions arranged chronologically.

**Restatement:** Multivolume publications by the American Law Institute and authored by legal scholars and experts that set forth statements of major areas of law (such as contracts, torts, trusts, and property) and are widely referred to in jurisprudence but are not binding on courts.

**Ruling:** An official or authoritative determination, decree, or interpretation (as by a judge on a question of law).

**Secondary authority:** Sources which explain or describe the law; examples include treatises, legal encyclopedias, hornbooks, and law review articles.

**Shepardize:** To use a Shepard’s citator to trace the history of a case or statute in order to verify its validity or find later legal authorities.

**Slip law:** The earliest separate publication of a new statute, made prior to its inclusion in the general laws.

**Slip opinion:** The earliest printed copy of a single judicial opinion. Slip opinions are compiled into advance sheets. Advance sheets are then compiled into bound volumes.

**Source of law:** The authority such as a constitution, treaty, or statute that provides the legal basis for judicial decisions and for legislation.

**Statute:** A law or act passed by a legislature.

**Stare decisis:** The doctrine of precedent, under which it is necessary for courts to follow earlier judicial decisions when the same points arise again in litigation.

**Substantive law:** Law that creates or defines rights, duties, obligations and causes of action that can be enforced by law.

**Supersede:** To subject to postponement or suspension; to take the place of in authority; to take the place of and render null or ineffective.

**Supplement:** An update usually issued annually, either paper or hardbound. May be inserted into a bound volume as a pocket part or may be shelved next to the main volume.

**Testate:** Having made a valid will; disposed of or governed by a will.

**Tort:** A wrongful act or violation of a duty (other than a breach of contract) that injures another and for which the law imposes civil liability.

**Treatise:** A type of secondary legal material which analyzes a particular aspect of law, often providing information intended to assist attorneys in their practice.

**Treaty:** An international agreement between two or more countries.

**Triable:** Subject to judicial or quasi-judicial examination or trial.

**Westlaw:** Subscription online legal research service, owned by Thomson Reuters.

**WestlawNext:** Launched in early 2010 by West, WestlawNext is a legal research service that allows users to conduct a federated search across multiple content types, without having to select a database first. Documents are sorted by relevance and may be filtered by selecting options provided on the left part of the screen.

**Writ:** A written court order directing a person to take, or refrain from taking, a certain action.

**Writ of certiorari:** An order issued by the U.S. Supreme Court directing the lower court to transmit records for a case which it will hear on appeal.



*Internet Sources Cited in This Appendix:*

- Law.com's Search Legal Terms and Definitions: <http://dictionary.law.com/>
- Nolo's Free Dictionary of Law Terms and Legal Definitions: <https://www.nolo.com/dictionary>
- The Free Dictionary's Legal Dictionary: <http://legal-dictionary.thefreedictionary.com/>
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