Case Cites

I simply want to depict some of the case cites available to everyone in support of their fight to regain their property and their rights as Sovereign people on the land. This material has been accumulated over a period of time by several interested individuals. I think there is value in this and should be utilized by as many people as you can get it to. If you have corrections or additions please let me know. You can contact me at philerd@mail.com

I have to find the proper way to notice case cites in my material to make them acceptable in court. I believe they must be Italicized and only the case underlined and not the "cite itself."

Maine Rule of Civil Procedure Rule 17(a) [1978] is to ensure that the party who asserts a cause of action possesses, under substantive law, the right sought to be enforced. Rule 17(a) allows circuit courts to hear only those suits brought by persons who possess the right to enforce a claim and who have a significant interest in the litigation. The requirement that claims be prosecuted only by a real party in interest[1] enables a responding party to avail himself of evidence and defenses that he has against the real party in interest, to assure him of finality of judgment, and to protect him from another suit later brought by the real party in interest on the same matter. In its modern formulation, Rule 17(a) protects a responding party against the harassment of lawsuits by persons who do not have the power to make final and binding decisions concerning the prosecution, compromise, and settlement of a claim. 17(a) has been revised to include[2]. AND I have found the proper method for case cites[3], though I will follow the old scholarly format of underlined italicized format.

"Attorneys can't testify; statements of counsel in brief or in oral argument are not facts before the court." – *United States v. Lovable 431 U.S. 783,97 S. 2004, 52 L. Ed. 2d 752* and *Gonzales v. Buist 224 U.S. 126. 56 L.. 693. 32. Ct. 463.S.*

"An attorney for the plaintiff cannot admit evidence into the court. He is either an attorney or a witness," and, "Statements of counsel in brief or in argument are not facts before the court." – *Trinsey v. Pagliaro D.C. Pa. (1964), 229 F. Supp. 647*

A Corporation cannot sue the living man, PERIOD. Again, you can use this in every case where a Bank, Vendor, is trying to sue you! They don't want you to know this! – *Rundle v. DELAWARE & RARITAN CANAL CO. (1853) Unless you are one who thinks (ERIE RAILROAD CO. V. TOMPKINS, 304 U. S. 64 (1938) -- US Supreme ...) removes the validity of cases prior to 1938 then See for yourself, just click the link; Rundle v. DELAWARE & RARITAN CANAL CO. (1853)*[4] *If this decision removes the ability to render case cites prior to those after 1938, then why are case cites prior to 1938 used anywhere?*

All codes, rules and regulations are applicable to the government authorities only, not human/Creators in accordance with Gods laws. All codes, rules and regulations are unconstitutional and lacking in due process. – *Rodriques v Ray Donavan (U.S. Department of Labor, 769 F. 2d 1344, 1348 (1985)* and see – *JONES v. MAYER CO., 392 U.S. 409 (1968)*, which states, "In plain and unambiguous terms, 1982 grants to all citizens, without regard to race or color, "**the same right**" to purchase and lease property "**as is enjoyed by white citizens.**" As the Court of Appeals in this case evidently recognized, that right can be impaired as effectively by "those who place property on the market" as by the State itself." I have copy as it pertains to *42 USC 1982*

In your full disclosure request, ask your local representative for the legal documents that allow them t

Mere good faith assertions of power and authority (jurisdiction) have been abolished. –

Owens v. The City of Independence (1980)

In closing, it is important to remember that they are not entitled to qualified immunity from liability

Government jurisdiction does not extend into or onto real or private property.. The right to purchase [and hold] property is a fundamental right of citizenship beyond the powers of the States to deny to any citizen. Property ownership cannot be cause for government to force or coerce title-holder(s) of property to do anything against his or her will. The title-holder has full control over their property and has the right to non- interference from all other parties. – *Beech Grove Investment v. Michigan Civil Rights Commission, 157 North Western Reporter, 2d Series, pgs 213-232 (1982)*

http://www.landrights.com/toppage3.htm

(Perhaps we need to look at transfers of Property Title or Property Deed)

None of the above mentions FRCP 17(a) Ratification of Commencement & Real Party in Interest. Which was

RULE 60. RELIEF FROM JUDGMENT OR ORDER

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc....

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void;...

(6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in *Title 28, U.S.C., Sec. 1655*, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill or review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

A motion to set aside a judgment as **void** for lack of jurisdiction is not subject to the time

limitations of Rule 60(b). See – *Garcia v. Garcia, 712 P.2d 288 (Utah 1986).*

There is only an immaterial procedural difference between the relief sought pursuant to Rule 60(b) and the relief sought in an independent action. – *Hadden v. Rumsey Prods., 196 F.2d 92 (2d Cir. 1952); 7 Moore's Federal Practice, § 60.38(3) (2d ed. 1971)*

A judgment is **void**, and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounts to a plain usurpation of power constituting a violation of due process. – *United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990)*

Where Rule 60(b)(4) is properly invoked on the basis that the underlying judgment is **void**, "'relief is not a discretionary matter; it is mandatory.'" – *Orner v. Shalala, 30 F.3d 1307, 1310 (10th Cir. 1994) (quoting V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n.8 (10th Cir. 1979)).*

In order for a judgment to be **void**, there must be some jurisdictional defect in the court's authority to enter the judgment, either because the court lacks personal jurisdiction or because it lacks jurisdiction over the subject matter of the suit. – *Puphal v. Puphal, 105 Idaho 302, 306, 669 P.2d 191, 195 (1983); Dragotoiu, 133 Idaho at 647, 991 P.2d at 379.*

A judgment rendered by a court without personal jurisdiction over the defendant is **void**. It is a nullity. [A judgment shown to be **void** for lack of personal service on the defendant is a nullity.] – *Sramek v. Sramek, 17 Kan. App. 2d 573, 576-77, 840 P.2d 553 (1992), rev. denied 252 Kan. 1093 (1993).*

"Where there are no depositions, admissions, or affidavits the court has no facts to rely on for a summary determination." – *Trinsey v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647.*

"A court cannot confer jurisdiction where none existed and cannot make a **void** proceeding valid. It is clear and well established law that a **void** order can be challenged in any court", – *OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907).*

"The law is well-settled that a **void** order or judgment is **void** even before reversal", *VALLEY v. NORTHERN FIRE & MARINE INS. CO., 254 u.s. 348, 41 S. Ct. 116 (1920)*

"Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities ; they are not voidable, but simply **void**, and this even prior to reversal." – *WILLIAMSON v. BERRY, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850).*

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." – *Melo v. U.S., 505 F 2d 1026*

"There is no discretion to ignore lack of jurisdiction." – *Joyce v. U.S. 474 2D 215.*

"The burden shifts to the court to prove jurisdiction." – *Rosemond v. Lambert, 469 F 2d 416*

"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." – *Latana v. Hopper, 102 F. 2d 188; Chicago v. New York 37 F Supp. 150*

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." 100 S. Ct. 2502 (1980)

"Jurisdiction can be challenged at any time." Basso v. Utah Power & Light Co. 495 F 2d 906, 910.

"Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." Hill Top Developers v. Holiday Pines Service Corp. 478 So. 2d. 368 (Fla 2nd DCA 1985)

"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Lantana v. Hopper, 102 F. 2d 188; Chicago v. New York, 37 F. Supp. 150.

"Once challenged, jurisdiction cannot be assumed, it must be proved to exist." Stuck v. Medical Examiners 94 Ca 2d 751. 211 P2d 389.

"Jurisdiction, once challenged, cannot be assumed and must be decided." Maine v Thiboutot 100 S. Ct. 250.

"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." Hagans v Lavine 415 U. S. 533.

CPLR

CPLR § 3215(f) by providing an Affidavit of Default, Affidavit of Facts Constituting the Claim and the Amount Due, Affidavit of Attorney that Defaulting Defendant Is Not in Military Service

CPLR § 3215 Default judgment

Lamb v Moody, 2009 NY Slip Op 04031 (App. DIv., 2nd, 2009)

> In support of their motion for leave to enter a default judgment against the respondent upon his failure to appear or to answer the complaint, the **plaintiffs failed to proffer either an affidavit of the facts or a complaint verified by a party with personal knowledge of the facts as required by CPLR 3215(f)** (*see Peniston v Epstein,* 10 AD3d 450; *DeVivo v Sparago,* 287 AD2d 535, 536; *Fiorino v Yung Poon Yung,* 281 AD2d 513). Accordingly, the Supreme Court properly denied the motion.

CPLR § 3215 Default judgment

(f) Proof

CPLR R 306 Proof of service

(a) Generally

Jian Zheng v Evans, 2009 NY Slip Op 04863 (App. Div., 2nd, 2009)

> In opposition, the plaintiffs failed to raise a triable issue of fact. The plaintiffs produced only an attorney's affirmation offering speculation, unsupported by any evidence, that the defendants acted in bad faith and failed to abide by the terms of the contract of sale (*see Cordova v Vinueza*, 20 AD3d 445). Moreover, the plaintiffs' contention that the granting of summary judgment was premature is without merit. The plaintiffs failed to "show more than a mere hope that [they] might be able to uncover some evidence during the discovery process," nor did they show that their "ignorance was unavoidable and that reasonable attempts were made to discover the facts which would give rise to a triable issue of fact" (*Companion Life Ins. Co. of N.Y. v All State Abstract Corp.*, 35 AD3d 519, 521). [*2]
>
> The Supreme Court also properly granted that branch of the defendants' motion which was for leave to enter a default judgment on their counterclaim for the return of their down payment upon the plaintiffs' failure to serve a reply to the counterclaim. T**he defendants submitted proof of service of their verified answer and counterclaim, proof of the facts constituting the counterclaim, and an affirmation from their attorney regarding the plaintiffs' default in serving a reply (***see* **CPLR 3215[f]). In opposition, the plaintiffs failed to demonstrate that they served a reply on the defendants. Although they annexed a reply to their attorney's affirmation, it was not signed and they did not provide sufficient evidence of service (***see* **CPLR 306[a], [d];** *Celleri v Pabon***, 299 AD2d 385, 385-86;** *cf. Dixon v Motor Veh Acc. Indem. Corp.***, 224 AD2d 382, 383-384). Moreover, the plaintiffs did not provide a reasonable excuse for their failure to timely serve a reply, and a potentially meritorious defense (***see** *ACME ANC Corp. v Read***, 55 AD3d 854, 855;** *Twersky v Kasaks***, 24 AD3d 657, 658;** *cf. MMG Design, Inc. v Melnick***, 35 AD3d 823).**

The bold is mine. David M. Gottlieb

CPLR R. 3211(a)(5) Motion to dismiss for SOL (or other things, but SOL in this case)

Kuo v Wall St. Mtge. Bankers, Ltd., 2009 NY Slip Op 06511 (App. Div., 2nd, 2009)

> The Supreme Court also correctly denied that branch of the defendant's motion which was to dismiss the complaint as barred by the statute of limitations. "To dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the Statute of Limitations, a defendant bears the initial burden of establishing prima facie that the time in which to sue has expired . . . In order to make a prima facie showing, the defendant must establish, inter alia, when the plaintiff's cause of action accrued. **Where, as here, the claim is for the payment of a sum of money allegedly owed pursuant to a contract, the cause of action accrues when the plaintiff possesses a legal right to demand payment'"** (*Swift v New York Med. Coll.*, 25 AD3d 686, 687, quoting *Matter of Prote Contr. Co. v Board of Educ. of City of N.Y.,* 198 AD2d 418, 420 [citations [*2]omitted]; *see Cimino v Dembeck,* 61 AD3d 802; *Matter of Schwartz,* 44 AD3d 779). The defendant offered no evidence that would support a determination that the plaintiff had a legal right to demand payment of her compensation, in connection with the subject loan transaction, prior to the defendant's receipt of the commission fees from the borrower.

The bold is mine. David M. Gottlieb

VOID JUDGMENT

A **void** judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties. – *Rook v. Rook, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987)*

A **void** judgment is to be distinguished from an erroneous one, in that the latter is subject only to direct attack. A **void** judgment is one which, from its inception, was a complete nullity and without legal effect. – *Lubben v. Selective Service System, 453 F.2d 645, 649 (1st Cir. 1972)*

"A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." – Syllabus Point 3, *Aetna Casualty & Surety Co. v. Federal Ins. Co. of N.Y.*, 148 W.Va. 160, 133 S.E.2d 770 (1963).

"In tort actions, unless there is a clear statutory prohibition to its application, under the discovery rule the statute of limitations begins to run when the plaintiff knows, or by the exercise of reasonable diligence, should know (1) that the plaintiff has been injured, (2) the identity of the entity who owed the plaintiff a duty to act with due care, and who may have engaged in conduct that breached that duty, and (3) that the conduct of that entity has a causal relation to the injury." Syllabus Point 4, *Gaither v. City Hospital, Inc.*, ___ W.Va. ___, ___ S.E.2d ___ (No. 23401 February 24, 1997).

"Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it ... No one is bound to obey an unconstitutional law and no courts are bound to enforce it." ***16 Am Jur 2nd §177***

"The general rule is that an unconstitutional act of the Legislature protects no one. It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one; if any person acts under an unconstitutional statute, he does so at his peril and must take the consequences." **16 Am Jur 2d §178**

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." – **Miranda v. Arizona,** 384 US 436 at 491.

The following is courtesy of Marc Fishman (he openly posted it on a group web site. I included it here as it has great bearing on the pursuits of those going into court.)...

Coram Nobis

Filing a Coram Nobis, challenging jurisdiction of the court as not being in accord with the Foreign Sovereign Immunity Act (FSIA). In short, since the court is a private subsidiary of a foreign corporation (the UNITED STATES), the court (private foreign corporation) must follow the law in accord with the FSIA. Since there is no way that they can do this in moving against a flesh and blood citizen of one of the republic states, their "judgments" are void ab initio and must be vacated.

The audio files that go along with the documentation can be retrieved from TalkShoe.com at the following URL:

AIB Talk Radio - check the description column for FSIA to find the discussions (begins on 6-27-08)
http://www.talkshoe.com/talkshoe/web/talkCast.jsp?masterId=48361&cmd=tc

There is also some discussion on Radio Free America, also on TalkShoe:
http://www.talkshoe.com/talkshoe/web/talkCast.jsp?masterId=17898&cmd=tc

If you're interested in the documentation that goes along with this, use the FTP link below and get the two files in the FSIA directory:
ftp://ftp.moneyonaccount.com

Step by Step for the Coram Nobis & Coram Non Judice

What this paper work does is this. It exposes the fraud that has been placed upon you the People of this Nation by our Courts. When the court is operating in it Corporate or a foreign state capacity it can only deal in a corporate setting. They can not bring a suit in law or equity against an American Citizen. This is an 11th amendment violation. That why you as a person, are defined as a Corporation, under the definition of the word 'Person" in ever law book, Statute, Code, Regulation and law dictionary. The courts know they have no jurisdiction over the Citizen.

Now by them having you listed as a Corporation. The laws for bring a claim upon a corporation is different as they are protected under the Foreign Sovereign Immunity Act under (FSIA)28 USC 1602 -1611 as stated this these documents. People lets not get into a debate on how due I spell my name. The issue is this. You can spell you name backwards if that how you fill. That not the issue. The issue is "THEY HAVE YOU LISTED AS A CORPORATION" That were the argument stops. How due they look at you. As a Corporation!!! Fine. As a Corporation and as that Corporation you now have immunity and right protected under the law. Where in the FSIA and the 11th amendment? That where. Is the court going to like it not likely? This is the same IMMUNITY that they have been hiding behind for years. That we did not know about.

So these documents have been created in order to expose the fraud place upon the people of such

injustice and to wake the people up to the billions of dollars of tax money being embezzled by the court system. Through the mis-representation by the lawyers of the BAR Association and the misconduct of the Judicial Officers holding these elected or appointed public offices of trust and honor.

We have a new discovery and it call **Allegation of Jurisdiction.** This needs to be the first document sends in on all new cases. This set the stage on the jurisdiction. The accuser is going to half to state what the jurisdiction is. When they claim the wrong jurisdiction then the Coram Nobis goes in.

1. Allegation of Jurisdiction now requires the accuser to define the jurisdiction that the court are going to operate in

2. First document you are going file is the Coram Nobis.

> A Coram Nobis tell the courts that an error has been made. Either by mistake or a by fraud by them.
>
> Definition of Coram Nobis
>
> **Writ of error coram nobis**
>
> A common-law writ, the purpose of which is to correct a judgment in the same court in which it was rendered, on the ground of error of fact, for which it was statutes provides no other remedy, which fact did not appear of record, or was unknown to the court when judgment was pronounced, and which ,if known would have prevented the judgment, and which was unknown, and could of reasonable diligence in time to have been otherwise presented to the court, unless he was prevented from so presenting them by duress, fear, or other sufficient cause.
>
> At common law in England, it issued from the Court of Kings Bench to a judgment of that court. Its principal aim is to afford the court in which an action was tried and opportunity to correct it own record with reference to a vital fact not known when the judgment was rendered. It is also said that at common law
>
> It lay to correct purely ministerial errors of the officers of the court

3. The second document you are going to filed is the Coram Non Judice. This now informs the court that they have no jurisdiction. Their judgment is void or fraud was placed upon court. The courts act as if there is no judge.

> **Writ of coram non judice**
>
> In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be coram non judice, and the judgment is void.
>
> At common law in England, it issued from the Court of Kings Bench to a judgment of that court. Its principal aim is to afford the court in which an action was tried and opportunity to correct it own record with reference to a vital fact not known when the judgment was

rendered. It is also said that at common law

It lay to correct purely ministerial errors of the officers of the court

Now from here you must decide which document applies in Your case. Not all cases are the same. It depends on how the court decides to run. This how you determine on what document you file in next. Be low are a list of documents you must decide which is the one you need to file in next.

People remember you will need to make this fit your case. Were it may said property and you are dealing with children then of course you use the word children instead of property. The hard work has already been done by creating these documents for you.

You half to have some understanding of filing court papers in to the courts. Some of you this may be your very first time. This will make it rough for the first timers. Get with the people who give you these document and work with them. Also go to talkshoe.com. In the search box in the upper right hand ware it said keyword or ID put in 48361. That the ID # for AIB RADIO. Click on AIB RADIO this will take you over to the recording of the FSIA recording for you to down load and listen to. There is no guarantee on this paper work other then you are now exposing the true corruption of the court system. It depends on how honorable or how dishonorable the court is going to be. So far dishonorable has the top place here. As everything that we do it is always your choice to file or not to file any documents. You need an understanding of this paper work and the documents to back it up.

First document filed in

Allegation of Jurisdiction is the first document filed in a new case. This will cause the accuser to define what the jurisdiction is for the court. When they fail to define the proper jurisdiction then file in the Coram nobis in on them.

JUDICIAL NOTICE; IN THE NATURE OF WRIT OF ERROR CORAM NOBIS & A DEMAND FOR DISMISSAL OR STATE THE PROPER JURISDICTION

Second Document filed in

JUDICIAL NOTICE ;IN THE NATURE OF WRIT OF CORAM NON JUDICE & A DEMAND FOR DISMISSAL & A REVERSAL OF JUDGMENT FOR CONVICTION FOR LACK OF JURISDICTION.

Third document filed in.

JUDICIAL NOTICE; IN THE NATURE OF WRIT OF ERROR CORAM NON JUDICE & A DEMAND FOR DISMISSAL OR STATE THE PROPER JURISDICTION

Fourth document filed in.

JUDICIAL NOTICE ;IN THE NATURE OF WRIT OF CORAM NON JUDICE & A DEMAND FOR DISMISSAL & OBJECTION FOR LACK OF JURISDICTION WITH EXHIBTS OF CONGRESSIONAL RECORDS &STATEMENT OF FACTS WITH CONLLUSION OF FACTS.

Fifth document filed in.

THE COURT IS CORAM NON JUDICE UNDER THE FOREIGN SOVEREIGN IMMUNTY ACT 28 USC 1608 RULE 4(j) CONCLUSION OF FACTS WITH LEGAL DEFINITION OF PERSON, CORPORATION & POLITICAL SUBDIVISION

JUDICIAL NOTICE ;IN THE NATURE OF WRIT OF CORAM NON JUDICE & A DEMAND FOR DISMISSAL JUST CAUSE COURT IN DEFAULT AND LACK JURISDICTION PURSTANT TO FRCP Rule 4 (j)

JUDICIAL NOTICE; THE COURT IS IN CORAM NON JUDICE UNDER THE FOREIGN SOVEREIGN IMMUNITY ACT PURSUANT TO FRCP 4 (j) 2NDNOTICE OF DEFAULT AND NOTICE OF CURE PRAY FOR SUMMARY JUDGMENT.

-- Marc H. Fishman
MFishman@...
"When you find yourself in a hole, the first thing to do is stop digging."
PGP KeyID: 6C8E212E75CDBD79
PGP Key Fingerprint: E620 1F11 D3AC 6FEC 4CC5 8CA6 6C8E 212E 75CD BD79

Thank you for posting this Mark. I have been working on the Coram Nobis issue myself lately, and it's a topic that those who've been down the road to prison might want to research.

On Fri, Aug 22, 2008 at 10:55 AM, sheisaceo <sheisaceo@yahoo. com> wrote:

> I wasn't aware that we 'flame' here as I was hoping that this remained
> an ego-less forum.
>
> Thank you for this. I was busy with writs of habeas corpus and the
> crooks just keep finding ways to try to slime and weasel out of
> documents by refusal to file and even overt theft of the documents.
> You would not believe some of the antics of these people. They HAVE
> TO KNOW WHAT THEY ARE DOING IS ILLEGAL WITH WHAT THEY DO.

This is from their Yahoo Group:

Please visit

http://tinyurl.com/6h8a3u

& listen to the following 3 conference calls by Rod Class for an excellent presentation of how this strategy developed.

You want to listen to:

1.) June 20 EPISODE 71 - FOREIGN RELATION & FOREIGN STATE
2.) July 11 EPISODE 75 - FSIA PART 3 CORPORATION
3.) July 19 EPISODE 78 - FOUNDATION OF THE FSIA

END NOTES BELOW

[1]

Real Party in Interest Law & Legal Definition

A real party in interest is the person or entity whose rights are involved and stands to gain from a lawsuit or petition even though the plaintiff who filed suit is someone else, often called a "nominal" plaintiff. It is the person who will be entitled to benefits of a court action if successful; one who is actually and substantially interested in the subject matter, as opposed to one who has only a nominal, formal, or technical interest in or connection with it. It may be broadly defined as someone who may be adversely affected by the relief sought or the person or entity entitled to the benefits if the action is successful.

Under the Federal Rules of Civil Procedure (FRCP), FRCP 17(a) provides that "every action shall be prosecuted in the name of the real party in interest", so that the named plaintiff must have, under the governing substantive law, the right sought to be enforced. The real party in interest is not necessarily the person who ultimately will benefit from the successful prosecution of the action.

The following is an example of a state statute involving real parties interest:

(a) "Except as otherwise provided in clauses (b), (c) and (d) of this rule, all actions shall be prosecuted by and in the name of the real party in interest, without distinction between contracts under seal and parol contracts.

(b) A plaintiff may sue in his own name without joining as plaintiff or use-plaintiff any person beneficially interested when such plaintiff

1. is acting in a fiduciary or representative capacity which capacity is disclosed in the caption and in the plaintiff's initial pleading; or
2. is a person with whom or in whose name a contract has been made for the benefit of another.

(c) Clause (a) of this rule shall not apply to actions where a statute or ordinance provides otherwise."

← Back

[2] To avoid forfeitures of just claims, revised Rule 17(a) would provide that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed for correction of the defect in the manner there stated.

← Back

[3] Legal Research and **Citation Style in USA**

Introduction

The format for citations to legal materials is different from the format for scholarly citations to books and periodicals in general. This handout is a terse guide to legal citation in the USA.

The generally accepted style manual for legal citations in the USA is the *Bluebook: A Uniform System of Citation,* which is published by the editors of four prestigious law reviews at Columbia University, Harvard, Univ. of Pennsylvania, and Yale Law Schools. A copy of the *Bluebook* can be purchased in any law school bookstore. A comprehensive set of rules from the *Bluebook* is available on the Internet from Peter W. Martin at `Cornell Law School`. In contrast, this handout here contains a terse set of rules that generally agrees with the *Bluebook*, but does not contain all of the fine points and options in the *Bluebook.*

Opinions of some courts use a different format from the *Bluebook,* but these alternative citation formats

contains the same information. Be aware that citations in annotated statutes and other law books may use a different bibliographic format from the *Bluebook.* Furthermore, the proper format according to the *Bluebook* changes with time, so old sources (both cases and law review articles) do not use the modern format for citation.

---

1. Sources of Legal Materials in USA

Statutes and Regulations in the USA

The U.S. Government publishes each statute enacted by the U.S. Congress in *U.S. Statutes at Large.*

Except for doing historical research, a more convenient way to access federal statutes is to use the *U.S. Code,* which groups the original statute and all subsequent amendments together in one place. All statutes from the federal government are published by West in the *United States Code Annotated*. This Code is divided into fifty "titles":
15 is for Commerce and Trade, including trademark statutes
17 is Copyrights
18 is for all federal criminal statutes
26 is the Internal Revenue Code, which is the federal tax law
35 is for Patents
47 is for communications law: telephone, radio/television, etc.
Each "title" may fill multiple volumes on a bookshelf.

The regulations issued by agencies of the federal government, in order to implement law expressed in the statutes, is published in the *Code of Federal Regulations.*

In addition, each state has its own collection of statutes and regulations.

One frequently sees citations in opinions of state courts to decisions from other states, as the common law (i.e., judge-made law) does import rules from other states. In contrast, statutes of other states are irrelevant, because the only statutes that apply are the statutes in the state whose law is being applied. However, occasionally judges look to court opinions from other states in interpreting a word or phrase in a statute.

Reporters for Opinions of Federal Courts

The U.S. Government publishes *U.S. Reports* that contains the official version of all of the opinions of the U.S. Supreme Court.

West publishes:

- *Supreme Court Reporter* that contains all of the opinions of the U.S. Supreme Court since 1882. West's publication is issued several years before the official U.S. Reports appears, and so is useful for citing recent Supreme Court cases.
- *Federal Reporter* contains all of the published opinions of the U.S. Courts of Appeals, plus the few published opinions of Federal District Courts from 1880 to 1932.

- *Federal Supplement* contains published opinions after 1932 of Federal District Courts, which are trial courts.
- *Federal Rules Decisions* contains published opinions of Federal District Courts that pertain to the Rules of Civil (or Criminal) Procedure. These opinions are *not* also found in the Federal Supplement.

Lawyer Cooperative Publishing Company, now owned by Lexis, publishes the *Lawyer's Edition* of the U.S. Supreme Court opinions.

West's Reporters for Opinions of State Courts

There are seven regional reporters:

Atlantic: Pennsylvania, New Jersey, Maryland, Connecticut, Delaware, Rhode Island, Vermont, New Hampshire, Maine

North Eastern: New York, Massachusetts, Illinois, Ohio, Indiana

North Western: Michigan, Wisconsin, Minnesota, North and South Dakota, Nebraska, Iowa

Pacific: Kansas, Oklahoma, and all states in and west of Montana, Wyoming, Colorado, and New Mexico

South Eastern: Georgia, North and South Carolina, Virginia, West Virginia

Southern: Florida, Alabama, Mississippi, Louisiana

South Western: Texas, Missouri, Kentucky, Tennessee, Arkansas

In addition to these regional Reporters, West publishes

- *California Reporter*
- *New York State Reporter*

These two Reporters are not just extracts from the regional Reporters (i.e., *Pacific* for California and *North Eastern* for New York), but contain occasional opinions from other courts that are *not* found in the corresponding regional Reporters.

A few observations on the West regional reporter system:

- The Pacific Reporter was begun in 1883, when there was little legal activity in the 13 western states in the USA, plus Alaska and Hawaii, so it made sense then to bundle all of those states into one Reporter.
- New York State and Massachusetts are in the *North Eastern* Reporter, not in the *Atlantic* Reporter that serves the surrounding states.
- These regional reporters generally only contain published opinions of the state appellate courts, *not* state trial courts. In fact, it is rare to see a published opinion of a trial court in the USA, because such opinions have no precedential value. However, a few decisions of trial courts in the USA are published:

- Pennsylvania publishes a separate reporter, called Pennsylvania District and County Cases (abbreviated: Pa.D.&C.), that contains some decisions of trial courts
- a few decisions of trial courts in New York state are published in West's New York State Reporter (N.Y.S.)
- a few decisions of trial courts in New Jersey are published in the Atlantic reporter, the names of these trial courts are "New Jersey Superior Court Law Division" and "New Jersey Superior Court Chancery Division"
- and, as mentioned above, some opinions of trial courts in the Federal court system are published in the Federal Supplement (F.Supp.).

misleading state court names

The highest state court in New York State is called the "Court of Appeals".
The trial courts in New York State are called the "Supreme Court".
The intermediate courts in New York State are called "Supreme Court, Appellate Division".
Beware of this misleading nomenclature!

In the federal courts, the Courts of Appeals are intermediate courts, between the trial courts and the U.S. Supreme Court. But in both New York and Maryland, their state Court of Appeals is the highest state court.

In most states, the Superior Court is a trial court, which handles larger cases than the ordinary trial court. However, the Pennsylvania Superior Court is an intermediate appellate court, between the trial courts and the Pennsylvania Supreme Court.

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parallel citations

In addition to these regional reporters from West Publishing, many states publish their own opinions in an official state reporter. A law library will typically have the official state reporter of the state in which the library is located, but *not* the official state reporters of distant states. The West regional reporters are the standard source for finding opinions of courts in the USA. Nonetheless, one often finds parallel citations to both West's regional reporter and the official state reporter, particularly in Briefs submitted to that state's court.

Similarly, one often sees citations to opinions of the U.S. Supreme Court that cite in parallel to three different sources:

1. the official *U.S. Reports,*
2. West's *Supreme Court* Reporter (abbreviated "S.Ct."), and
3. Lawyer Cooperative Publishing Company's *Lawyer's Edition*.

I prefer a citation only to *U.S. Reports*, if available; otherwise I only cite to S.Ct. The Lawyer's Edition includes the pagination to the other two editions.

secondary sources

The law in the USA is **only** expressed in constitutions, statutes, and opinions of appellate courts, which

are known as primary sources. Secondary sources collect and explain rules of law from the primary sources.

There are several secondary sources commonly used by attorneys:

1. *American Law Reports,* abbreviated "A.L.R.", contains annotations on a particular topic, which list the important cases in state and federal courts on that topic, along with a terse synopsis of the facts of the case and the judge's ruling. If one can find a relevant annotation in ALR, this may be a quick way of grasping the legal principles. Annotations in ALR are not commonly cited, except as authority for a statement of a legal rule in the majority of jurisdictions. Do *not* look for advocacy of a change in law in ALR, because ALR only reports what the law *is.*
2. *American Jurisprudence,* abbreviated "Am.Jur.", is a legal encyclopedia that is relatively easy to read. It's a good starting point for someone unfamiliar with a particular area of law. Am.Jur. is *not* commonly cited in either law review articles or court opinions.
3. *Restatements of the Law,* is an authoritative source, which summarizes the result of many reported court cases in the USA. The Restatements are written by a large committee of legal scholars, eminent litigators, and judges. The Restatements function as a statutory codification of the common law, i.e., law made by judges' decisions. In contrast to ALR and Am.Jur., the Restatements are commonly cited in scholarly articles and opinions of courts.
4. Treatises written by law professors and other respected authorities. Examples include:
   William L. Prosser, TORTS, (4th ed. 1971).
   Arthur Linton Corbin, CONTRACTS, § 1374 (1962).
5. Articles in law reviews. Most law reviews are published by a law school. A few law reviews are published by professional societies, such as the American Bar Association. Articles often advocate change(s) in law, which need to be distinguished from the current law.
6. Since the year 1941, West publishes U.S. CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS, (abbreviated "U.S.C.C.A.N."), which includes the legislative history of statutes passed by the U.S. Congress. Such material is useful in understanding *why* a statute was passed, and possibly useful in interpreting words or phrases in the statute.

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2. Citation of Court Opinions in the USA

The general form consists of a series of information in the following format for example:
Roe v. Wade, 410 U.S. 113, 118 (1973).
U.S. v. Carroll Towing Co., 159 F.2d 169 (2dCir. 1947).
Palsgraf v. Long Island Railroad Co., 162 N.E. 99 (N.Y. 1928).
Ybarra v. Spangard, 154 P.2d 687 (Cal. 1944).

name of the parties

The full name of the case at the trial court is always in the format *Plaintiff v. Defendant* in civil cases and *Government v. Defendant* in criminal cases. Some appellate courts (e.g., the U.S. Supreme Court) give the name as *Appellant v. Appellee*, which may be the reverse of the order of names at the trial court.

Note that the names of the parties are always italicized when referring to the opinion of the court

in their case. See my further remarks below.

In criminal cases where the government is formally listed as, for example, "People of California", omit "People of", or "State of", and use only the name of the state (e.g., California).

Omit first and middle names of people.

Omit the name of the second and subsequent plaintiffs and defendants, omit "et. al.", and omit alternative names for parties (e.g., "aka", "dba" "also known as" and "doing business as").

volume number

When the volume number would be greater than 999, a second series is begun, and "2d" added to the name of the reporter. Similarly, when the volume number in the second series would be greater than 999, a third series is begun, and "3d" added to the name of the reporter.

name of reporter

Note that the name of the reporter is in regular font, neither underlined nor italicized, even though it is the title of a book. This is a departure from usual scholarly bibliographic format.

The name of the reporter is *always abbreviated* when citing a case. The proper abbreviations follow:
U.S. Reports, abbreviated "U.S."
West's *Supreme Court Reporter*, abbreviated "S.Ct."
Federal Reporter, abbreviated "F."
Federal Supplement, abbreviated "F.Supp."
Federal Rules Decisions, abbreviated "F.R.D."

Atlantic, abbreviated "A."
North Eastern, abbreviated "N.E."
North Western, abbreviated "N.W."
Pacific, abbreviated "P."
South Eastern, abbreviated "S.E."
Southern, abbreviated "S."
South Western, abbreviated "S.W."

West's *California Reporter*, abbreviated "Cal.Rptr."
West's *New York State Reporter*, abbreviated "N.Y.S."

page number of first page of the opinion
[optional] comma followed by the specific **page number** where a quotation or particular holding is found.

location and level of court

This information may be omitted for citations to the U.S. Supreme Court, since it is obvious from the name of the reporter (e.g., U.S. or S.Ct. or L.Ed.).

For opinions of a U.S. Court of Appeals, include the circuit number (e.g., "2dCir." or "9thCir.").

For opinions of federal trial courts, include the district. Some states have only one district (e.g., "D.Mass.") while other states may have two or three districts (e.g., "S.D.N.Y." for Southern District of New York State).

For opinions of state supreme courts, use an abbreviation for the name of the state (e.g., "Cal." for California and "N.Y." for New York).

For opinions of intermediate state appellate courts (i.e., courts between the trial court and state supreme court) use the abbreviation for the state followed by "App." (e.g., "Cal.App." for California). (This rule is a little too terse and oversimplified: the precise form is given in Table 1 of the *Bluebook*.)

year opinion was issued or published

Note that there is no comma between the name of the court and the year of the opinion.

The citation to a single case always ends with a period.

When one mentions a rule of law and cites to more than one case in which the rule is stated, the individual cases are separated by a semicolon, with a period after the last case in the citation.

As stated in the Introduction to this handout, the proper format according to the *Bluebook* changes with time. One older form placed the identification of the court and the year of the opinion immediately after the name of the parties, for example:
~~*U.S. v. Carroll Towing Co.,* (2dCir. 1947) 159 F.2d 169.~~
I have put a line through this example, so students will not follow this obsolete example.

short form of citation

After the full citation has been given at least once in the preceding five citations, or after the case has been discussed by name in the text, the case may be referred to by the name of one party. In picking that one name, *never* pick the name of a government (e.g., U.S., California, ...), never pick the name of a government official (e.g., Janet Reno, being sued in her official capacity as Attorney General), and avoid choosing a frequent litigant (e.g., NAACP). My personal preference in civil cases is to pick the name of the plaintiff at the trial court level, who may be either the appellant or appellee on appeal, unless the plaintiff has a common name like "Smith" or "Jones" or unless the plaintiff is anonymous (e.g., "Doe"). In criminal cases, one always uses the name of the defendant as the short name of the case.

The short form of the citation has the following format:
Palsgraf, 162 N.E. at 100.
In this example, one cites a quotation or holding or fact that is located at page 100, without mentioning the first page number of the opinion.

citing an opinion that was later appealed

One must cite not only the opinion from which the quotation or holding was taken, but also cite the results (e.g., affirmed or reversed) of each appellate court that later considered the same case. This subsequent history of the case is important, because it strengthens the significance of the holding if affirmed, or vitiates the significance of the holding if reversed. It is a **serious error** to cite the opinion of a lower court that was later reversed by an appellate court, without explicitly mentioning the reversal, because the lower court's holding is no longer good law.

There are three common indicators of subsequent history:

1. *aff'd* for affirmed
2. *rev'd* for reversed
3. *cert. den.* for cases appealed to the U.S. Supreme Court, but which that Court declined to hear. This declining to hear *may* be an indication that the U.S. Supreme Court not only agreed with the lower court's opinion, but also saw no interesting legal issue worthy of discussion.

There are several less common indicators of subsequent history:

4. *aff'd without opinion* when no published opinion is issued with the appellate court's decision
5. *overruled by* when the rule is changed in a subsequent case with different parties
6. *rev'd on other grounds* when the decision in that particular case was reversed, but without changing the particular rule of law that is cited. (Many cases involve more than one issue, so the decision of a lower court can be affirmed on one issue and reversed on another issue.)
7. *on remand* when a trial court again considers the case after the ruling of appellate court(s). This is generally the final disposition of the case.

The full list of explanatory phrases is in Table 9 of the *Bluebook.*

Note that if one cites the opinion of the highest court to hear a case, then one does *not* also need to cite the lower courts that heard the same case. One must cite only subsequent history, not previous history. For example, one may cite a U.S. Supreme Court opinion, or a state supreme court opinion that was not appealed to the U.S. Supreme Court, without mentioning any of the previous history.

My general advice is to ignore the prior opinions, unless the case is really important: either it makes a new rule of law or it contains a holding that is *un*favorable to your position. My experience is that reading the prior opinions of a case often provides facts that were omitted from later opinions, and those omitted facts sometimes change my view of the final decision.

If I am only citing a *fact* that was mentioned in the opinion of a lower court (but not repeated in the opinion of a subsequent court hearing the same case), I generally do not give the subsequent history in that one citation, provided that a citation including subsequent history is located nearby. My practice is a departure from the accepted rule, but I think it makes sense.

citing a dissenting opinion

If one quotes from a dissenting opinion, one must indicate in the citation that the source is only a dissenting opinion, which is not law. One puts the name of the judge or justice who wrote the dissenting opinion plus the word "dissenting" in parenthesis at the end of the citation. For example: *Connick v. Myers,* 461 U.S. 138, 156 (1983)(Brennan, J., dissenting).

Generally, one avoids quoting from dissenting opinions, unless one is arguing for a change in the law.

citing an *un*reported opinion

*Un*reported opinions are not law, but may be persuasive authority.

The format is the same as for a reported case, except the volume number and name of the reporter is replaced with a citation to the electronic database. For example:

1991 WL 55402, at *3
cites a case available in WESTLAW but not in published reporters. This particular example was the 55402th item added to the WESTLAW computer database in 1991, and the citation is to page *3. If one is citing the whole case, then one would omit `, at *3` because every case in an electronic database begins at page `*1`, there is no need to mention the first page number.

In January 2001, West began publishing the *Federal Appendix,* which includes the opinions that were *not* selected by the U.S. Courts of Appeals for publication in the *Federal* reporter. Citations to this source are in the same format as citations to regular reported cases, the name of the volume is always abbreviated as "Fed.Appx."

One can cite any credible source in an essay, but local rules of courts may prohibit citing to unpublished or unreported cases in a Brief filed in that court.

string cites

Sometimes one will cite more than one item to support a proposition, in what is called a "string cite". There is a rigid style for the order of the citations:

a. Constitutions
   a. U.S. Constitution
   b. State Constitutions, arranged alphabetically by state
   c. constitutions of foreign nations
   d. charters of the United Nations and other international organizations

b. Statutes
   a. U.S. federal statutes
   b. federal rules of evidence or procedure
   c. state statutes
   d. state rules of evidence or procedure

c. Case Law
   a. U.S. Supreme Court
   b. U.S. Court of Appeals, and within this category: by order of the Circuit — First Circuit cases appear first, Eleventh Circuit cases appear last.
   c. U.S. District Court, and within this category: by alphabetical order of the states.
   d. State court cases, arranged by alphabetical order of the state. Within each state, that state's supreme court decisions appear first, decisions of intermediate appellate courts next, and decisions of trial courts appear last.

d. Secondary materials
   a. Restatements of the Law
   b. Treatises (e.g., Prosser & Keeton, TORTS (5th ed. 1984); Corbin, CONTRACTS)
   c. Articles in Law Reviews

Within each of the above categories of case law, the most recent case appears first, the oldest case appears last.

The organizing principle is that the strongest authority appears first. For example, the U.S. Supreme Court appears before other courts, because it is the highest court in the USA. Similarly, recent cases are more authoritative than a musty old case that may have been ignored for tens of years, but never overturned.

The above order for string cites is from the *Bluebook,* but I do not like this rule and I do *not* follow this rule in my essays that are posted at my websites. Personally, I favor a strict chronological order, with the oldest case first, to clearly show the historical evolution of the law. Old cases are not necessarily "musty" — citing an old case shows that the law is well established, and not some recent quirk.

A string cite as a single-spaced, fine-print footnote is useful for citing authorities to support an assertion that is commonly known amongst attorneys and judges. Because such string cites are difficult-to-read, I prefer to display a string cite as an indented list in the text (*not* as a footnote), with a blank line clearly separating each case. For example:

There is a long line of cases on Heckler's Veto:

1. *Terminiello v. City of Chicago*, 337 U.S. 1 (1949) (speaker was arrested to prevent disturbance by crowd of approximately 1000 protesters).

2. *Edwards v. Louisiana*, 372 U.S. 229 (1963).

3. *Cox v. Louisiana*, 379 U.S. 536 (1965).

4. *Brown v. Louisiana*, 383 U.S. 131 (1966) (The first use by the U.S. Supreme Court of the phrase "heckler's veto" is in footnote 1 at page 133.).

5. *Tinker v. Des Moines,* 258 F.Supp. 971 (S.D.Iowa 1966), *aff'd,* 383 F.2d 988 (8thCir. 1967), *rev'd,* 393 U.S. 503, 508-509 (1969) (Fear of a disturbance in school was *not* adequate reason for school principals to forbid pupils to wear black armbands, as a symbol of their opposition to the war in Vietnam.).

6. *Gooding v. Wilson*, 405 U.S. 518 (1972).

7. *Healy v. James*, 408 U.S. 169 (1972).

8. *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992).

Putting only one case per element in the indented list, and putting a blank line between elements is especially helpful when one also cites earlier opinions in the same case, as I did above in the above-cited *Tinker* case.

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3. Citation of Statutes and Regulations

federal

The general form for federal statutes and regulations consists of a series of information in the following format, for example:
17 U.S.C. § 102.

title number

name of statute or regulation

Note that the name of the statute or regulation is in regular font, neither underlined nor italicized, even though it is the title of a book. This is a departure from usual scholarly bibliographic format. The name is *always abbreviated* as follows:
United States Code, abbreviated "U.S.C."
Code of Federal Regulations, abbreviated "C.F.R."

§ **section number**

There is one blank space between the section symbol and the number.

[optional] **subsection**

It is conventional to denote subsections with lower-case letters of the alphabet. The second sublevel of organization uses numbers. The third sublevel uses upper-case letters. The fourth sublevel uses lower-case roman numerals. Enclose each level of organization in separate parentheses. For example:
17 U.S.C. § 102(a)(1).

period at the end of the citation.

Citations to *U.S. Statutes at Large* are in the following format:
48 Stats. 112, 113 (1933).
Where 48 is the volume number, 112 is the first page number of the statute, 113 is the page number of the quoted material, and 1933 is the year that the statute was enacted. The *U.S. Statutes at Large* are cited when the history of a statute is discussed, but citations to the *United State Code* (abbreviated "U.S.C.") are more common in court cases.

state statutes

The format for citation to state statutes varies among the states, here are two examples:
Illinois: Ill.Rev.Stat. ch. 3, para. 4.
Massachusetts: Mass.Gen.L. ch. 3, § 4.
The states in these two examples use the word "chapter" where the federal government uses the word "title".

The statutes of California, Maryland, New York State, and Texas use words (e.g., "Education", "Penal") instead of title numbers, or chapter numbers, in their statutes. For example:
Cal. Penal Code § ##.
N.Y. Educ. Law § ##.
where ## is an integer number.

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4. *Bluebook* format for citing secondary sources

citation of books

The *Bluebook* has a really strange format for citing books that is a radical departure from scholarly practice in other fields. In a multi-volume book, the volume number is placed to the left of the author's name**!** This practice is not only confusing to nonlawyers, but also ugly. There is no good reason for

books to be cited differently by lawyers than by any other learned profession.

The title of a book is set in small capitals. (Some wordprocessors have a command to automatically convert a block of normal text to small capitals.)

Examples of citing books or chapters in books:

- Michael P. Sullivan, Annotation, *Products Liability: Electricity,* 60 A.L.R.4th 732 (1988).
- Leonard I. Reiser, *Privacy,* 62A AM.JUR.2d 623 (1990).
- RESTATEMENT (SECOND) OF CONTRACTS § 206 (1981).
- RESTATEMENT (SECOND) OF TORTS § 652A (1977).

  Some attorneys omit the "of" in citing the Restatement, but the *Bluebook* includes the "of", and the inclusion makes the title easier to read.

- William L. Prosser, TORTS, (4th ed. 1971).
- 6A Arthur Linton Corbin, CONTRACTS, § 1374 (1962).

A citation to a specific item in a book can be by section number or by page number.

articles in periodicals

The *Bluebook* uses a format for citing articles in periodicals (e.g., law reviews and other scholarly journals) that is different from conventional scholarly bibliographic format. For example:

- Warren & Brandeis, *The Right to Privacy,* 4 HARV.L.REV. 193, 196 (1890).
- William L. Prosser, *Privacy,* 48 CAL.L.REV. 383 (1960).

Note that:

1. the author's name is in conventional order, *not:* last name, first name.
2. the title of the article is in italics, *not* inside quotation marks
3. the name of the periodical is in small capitals
4. the volume number, name of the journal, page number(s), and year of publication are all given in the same format used for court cases.

After experimenting with different formats, I prefer the *Bluebook* format for volume and page numbers, because it is more compact than the traditional scholarly format (e.g., Vol. 4, p. 193). However, I prefer to put the title of an article in quotation marks, instead of italic typeface, since italics are traditionally reserved for titles of books. The really important thing in a citation is that a citation must accurately include all of the information that a reader needs to find and verify the source. The format of the citation is of secondary importance, although professional editors often care more about the format than the accuracy of the information, or the appropriateness of the author's choice of the cited source.

articles/notes

Papers published in law reviews are divided into two classes:

1. *Articles* are written by professors or practicing attorneys

2. *Notes* are written by law students.

The distinction is one of rank. As one arrogant law professor once confided to me, "Who cares what a 25 year old kid thinks?" The traditional *Bluebook* form for citing a Note is to use the word Note in place of the author's name. Astounding! Just because of rank, the student is forced to be anonymous, even if he/she wrote an outstanding scholarly work. The difference between an author of a Note and an author of an Article may be as slight as both passing the bar examination and one or two years of experience as an attorney. Surely, this is *not* a significant difference that affects one's ability to synthesize legal principles from many cases, or to suggest better law. Indeed, court opinions that cite law reviews often also cite Notes, which is proof that some Notes are taken seriously. In writing essays for my web sites during 1996-99, I used the law student's name in place of the word Note, in defiance of the traditional *Bluebook* rule, and to give the author of a good Note proper recognition for his/her work. The sixteenth edition of the *Bluebook* abandoned the traditional rule, in favor of writing the name of the student-author of the Note, followed by the word "Note" as, for example:

> J. Peter Shapiro & James F. Tune, Note, *Implied Contract Rights to Job Security,* 26 Stanford L.Rev. 335 (1974).

This citation form was used by Judge Schiller at 737 A.2d 1250, 1256, n.12 (Pa.Super. 1999). Particularly when writing a memorandum of law, or a Brief to submit to a court, one should include the word "Note", to avoid misrepresenting that a Note is an Article.

Alternatives to the *Bluebook*

As mentioned in the introduction of this handout, the generally accepted style manual for legal citations in the USA is the *Bluebook: A Uniform System of Citation*, which is published by the editors of four prestigious law reviews at Columbia University, Harvard, Univ. of Pennsylvania, and Yale Law Schools. The *Bluebook* has a website.

The *Bluebook* is really only a style manual for authors of law reviews. There is a brief section in the *Bluebook* titled "Practitioners' Notes" that purports to give rules for style in both briefs filed in a court and legal memoranda. However, the *Bluebook* — which is written by law students who edit their school's law reviews — has no authority to establish rules for documents submitted to courts.

Further, there are many objections to the rules in the *Bluebook.* I mentioned above my distaste for their rule on citing a multi-volume book, with the volume number to the left of the author's name, instead of a format consistent with citation style for court cases and law reviews, in which the volume number goes to the left of the name of the book.

There are some alternatives to the *Bluebook,* but these alternatives are not commonly used in the legal profession:

1. The American Bar Association (ABA) has created the Uniform Citation Standards.
2. The Association of Legal Writing Directors (ALWD) has published a citation manual for use in teaching students in the first semester of law school. The ALWD publication simplifies some of the *Bluebook* rules and removes some of the inconsistencies among the *Bluebook* rules. And, unlike the *Bluebook,* the ALWD includes the citation rules promulgated by each state in the USA.

3. The *University of Chicago Manual of Legal Citation,* printed in 1989 by Lawyers' Cooperative Publishing Company. The Chicago Manual is often called "The Maroon Book".
4. Various state supreme courts have published a style manual, some of which are available on the Internet. For example:
    - Massachusetts
    - New Jersey
    - New York

The common *Bluebook* style for citing court cases mentions page numbers in a printed copy of an opinion, contained in a bound volume on a library shelf. These bound volumes are published by West (e.g., the seven regional reporters, Federal Reporter, and Federal Supplement), the U.S. Reports, or an official reporter that is published by a state. WESTLAW, which is West's collection of online databases, and the LEXIS online databases, both contain page numbers in the common printed reporters, so these online databases are substitutes for printed copies in bound volumes. In contrast, the ABA style for citing court cases cites to a paragraph number in each opinion, instead of page numbers in the bound volume of a reporter. The ABA style is thus independent of printed reporters, most of which are proprietary products of West Publishing Company. The ABA style — which the *Bluebook* calls the "public domain format" — will become more important as attorneys find cases from a variety of different sources on the Internet. I expect to see courts post all of their opinions at their own website, instead of relying on West or Lexis to publish the opinions, but courts have been glacially slow to embrace the Internet.

Personally, I like references to generic sources, instead of references to a proprietary product. However, it is an established fact that West Publishing Company is the dominant source of reported court opinions in the USA. In September 2000, the seven regional reporters, F.Supp., and the Federal Reporter — all published by West — occupied 16631 volumes on library shelves. It will be a long time before any other source scans all of those old volumes (or purchases a license to West's database); deletes West's proprietary synopsis, deletes references to West's key numbers, and deletes West's headnotes from each opinion; then inserts paragraph numbers, and makes those old opinions available online. Therefore, I expect attorneys to continue to cite to the page numbers in West's Reporters for a long time.

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5. Legal Writing Style

Legal writing is a type of scholarly writing by an educated person, so the comments in my handout, Technical Writing, and also in my other essay on writing are also applicable to legal writing. However, there are a few matters of style that are unique to legal writing; some of these are discussed below.

I recommend the following books:

- *The Bluebook: A Uniform System of Citation.* (I do *not* like many of the rules in this book, but it *is* the conventional authority on style of citation in legal writing.) The publisher of the Bluebook has a website.
- BLACK'S LAW DICTIONARY, published by West, is the standard legal dictionary in the USA.

- Bryan A. Garner, THE ELEMENTS OF LEGAL STYLE, published by Oxford University Press in 1991, is readable and his advice is good.
- Bryan A. Garner, A DICTIONARY OF MODERN LEGAL USAGE, also published by Oxford University Press, is a useful reference book.

plain English is better

There are two opposing points of view about legal writing style. The traditionalists advocate bloated or archaic legal prose, such as the following examples:

> Wherefore, the party of the first part and the party of the second part do covenant and agree ....
>
> Further, affiant sayeth not.

Such writing deserves to be set in a fancy black letter typeface, then ridiculed. The modernists, led by Bryan Garner, whose books I mentioned above, advocate writing in plain English. I am firmly in the modernists camp. Traditionalist attorneys have sometimes commented that my writing "doesn't look like it was written by a lawyer". They are criticizing me, I take it as a compliment. *<laughing>*

Having advocated using plain English, I must also say that it is entirely appropriate to use conventional legal terms-of-art (e.g., due process, res judicata, amicus curiae, spoliation of evidence, etc.), even though someone without a legal education will probably not understand these terms. I do object to using an *un*common word where there is a common synonym with equivalent meaning (e.g., I object to *eleemosynary* when one could use *charitable* or *nonprofit.*). But, if an *un*common word has a nuance that makes it more appropriate, then use the uncommon word without hesitation. Gardner, in *The Elements of Legal Style* at page 38, says "Arguments against big words have a way of descending into anti-intellectualism, so we ought to recognize that a liberal use of the English vocabulary ought not to be stifled."

specific comments on legal style

capitalization

The names or designation of the parties in a court case *always* begin with an upper-case first letter. This is obvious when the parties are called by their real name (e.g., Myers), but it is also true when the parties are called by their role in the case (e.g., Plaintiff, Defendant, Appellant, etc.). On the other hand, if one is speaking of a plaintiff or defendant in general, then the word has a lower-case first letter.

Consider the following examples of the distinction between *P*laintiffs and *p*laintiffs:

> This is the only cloud seeding case in the USA in which plaintiffs won.

The above sentence means that different plaintiffs (e.g., Slutsky, Duncan, Lunsford, Saba, ..., etc.) each filed one case, but the plaintiffs lost in all but one case.

> This is the only cloud seeding case in the USA in which Plaintiffs won.

The above sentence means that *one* group of Plaintiffs filed several court cases, and those Plaintiffs lost all but one case.

The name of a party in italics (e.g., *Myers*) is a short way of referring to the written opinion of the court that heard the case in which Myers (N.B. no italics) was a party (i.e., the Appellee in *Connick v. Myers*,

a famous U.S. Supreme Court case on freedom of speech for government employees). Note the distinction between the italics and plain typeface: italics designates the opinion of a court, plain typeface designates the person.

The word *Court* has an upper-case *C* whenever it refers to either:

1. the U.S. Supreme Court,
2. the full name of the court (e.g., "the U.S. Court of Appeals for the First Circuit"), or
3. the specific court that receives the document (i.e., in a document written for submission to a court).

innocent ?

A criminal court never finds a defendant to be "innocent". The result in a criminal court can only be "guilty" or "not guilty". Journalists often write that a defendant pled "innocent" or a jury found a defendant "innocent", but the correct phrase is "not guilty".

There are only three possible pleas:

1. guilty, which means that the state does not need to prove its case, and the court only needs to decide the punishment of the defendant.
2. not guilty.
3. *nolo contendere,* in which the defendant does not admit his/her guilt, but also does not demand that the state prove its case. The court then decides the punishment of the defendant. The *nolo* plea is allowed only with the approval of the judge.

"Innocent" is *not* a possible plea in a court in the USA.

conclusory phrases

Be careful of using words such as "unfair, unjust, malicious". Those words express a conclusion, *not* a fact. The conventional names of many torts have such words included: unfair competition, wrongful death, malicious prosecution, etc. It is *not* adequate to merely assert unfairness or malice — one must provide evidence that leads a reasonable person to that conclusion.

signal phrases

The *Bluebook* says that "signal" phrases in footnotes or citations in text ("See, see also, accord, but see, compare, contra, see generally, cf., e.g.") are italicized. This *Bluebook* rule conflicts with generally accepted scholarly practice in other disciplines (e.g. The Chicago Manual of Style, the Modern Language Association Style Manual), and I think the result looks strange, so I refuse to follow this *Bluebook* rule.

rules of style

Lawyers in the USA sometimes appear to follow different rules of style from other users of English:

1. Most lawyers do not know the difference between *that* and *which,* to introduce clauses. See my handout on Technical Writing.
2. Lawyers generally consider *or* to be exclusive, while scientists and logicians consider *or* to be inclusive. See my handout on Technical Writing.
3. Lawyers commonly omit the comma before the last item in a list of items. As Bryan Garner says

in his book, *The Elements of Legal Style,* pages 17-18, the omission of a comma before *and* can cause ambiguity.

4. Judges use the subjunctive mood of verbs when appropriate more frequently than other learned professionals in the USA. I like the subjunctive mood, but it is rarely used in the USA, even among university professors and other educated people.

out-of-place technical jargon

From time to time, one sees allusions in court opinions to technical words or phrases from mechanics, electricity, magnetism, nuclear physics, etc. Such allusions are objectionable because they are jarring to the reader (i.e., they stick out like a sore thumb) and — to a scientifically literate reader — they show that the writer does not understand scientific terms. The latter point raises the question, if the writer uses scientific terms that the writer does not understand, then what else in the document has a weak justification?

In the interest of keeping this essay short, I have posted examples of Technical Babble by judges in the USA in a separate document.

This document is at http://www.rbs0.com/lawcite.htm
first posted 30 July 2000, last modified 26 May 2009.

Go to my collection of links to legal resources on the Internet.

Return to my personal homepage.

[4]

U.S. Supreme Court

Rundle v. Delaware & Raritan Canal Company, 55 U.S. 14 How. 80 80 (1852)

Rundle v. Delaware & Raritan Canal Company

55 U.S. (14 How.) 80

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF NEW JERSEY

Syllabus

By the law of Pennsylvania, the River Delaware is a public navigable river, held by its joint sovereigns in trust for the public.

Riparian owners in that state have no title to the river or any right to divert its waters unless by license from the states.

Such license is revocable, and in subjection to the superior right of the state to divert the water for public improvements, either by the state directly or by a corporation created for that purpose.

The proviso to the provincial acts of Pennsylvania and New Jersey, of 1771 does not operate as a grant of the usufruct of the waters of the river to Adam Hoops and his assigns, but only as a license, or toleration of his dam.

As, by the laws of his own state, the plaintiff could have no remedy against a corporation authorized to take the whole waters of the river for the purpose of canals, or improving the navigation, so neither can he sustain a suit against a corporation created by New Jersey for the same purpose, who have taken part of the waters.

The plaintiffs, being but tenants at sufferance in the usufruct of the water to the two states who own the river as tenants in common, are not in a condition to question the relative rights of either to use its waters without consent of the other.

This case is not intended to decide whether a first licensee for private emolument can support an action against a later licensee of either sovereign or both, who, for private purposes, diverts the water to the injury of the first.

The facts in the case are set forth in the opinion of the Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The plaintiffs in error, who were plaintiffs below, are owners

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of certain mills in Pennsylvania opposite to the City of Trenton, in New Jersey. These mills are supplied with water from the Delaware River by means of a dam extending from the Pennsylvania shore to an island lying near and parallel to it and extending along the rapids to the head of tidewater.

The plaintiffs, in their declaration, show title to the property under one Adam Hoops, who had erected his mill and built a dam in the river previous to the year 1771. In that year, the Provinces of Pennsylvania and New Jersey, respectively, passed acts declaring the River Delaware a common highway for purposes of navigation up and down the same, and mutually appointing commissioners to improve the navigation thereof, with full power and authority to remove any obstructions whatsoever, natural or artificial, and subjecting to fine and imprisonment any person who should set up, repair, or maintain any dam or obstruction in the same, provided

"that nothing herein contained shall give any power or authority to the commissioners herein appointed, or any of them, to remove, throw down, lower, impair, or in any manner to alter a mill dam erected by Adam Hoops, Esq., in the said River Delaware between his plantation and an island in the said river nearly opposite to Trenton, or any mill dam erected by any other person or persons in the said river, before the passing of this act, nor to obstruct, or in any manner to hinder the said Adam Hoops, or such other person or persons, his or their heirs and assigns from maintaining, raising, or repairing the said dams respectively or from taking water out of the said river for the use of the said mills and waterworks erected as aforesaid, and none other."

The declaration avers that by these acts of the provincial legislatures, the said Hoops, his heirs and assigns, became entitled to the free and uninterrupted enjoyment and privilege of the River Delaware for the use of the said mills &c., without diminution or alteration by or from the act of said Provinces, now States of Pennsylvania and New Jersey, or any person or persons claiming under them or either of them. Nevertheless, that the defendants erected a dam in said river above plaintiffs' mills and dug a

canal and diverted the water, to the great injury &c.

The defendants are a corporation chartered by New Jersey for the purpose of "constructing a canal from the waters of the Delaware to those of the Raritan, and of improving the navigation of said rivers." They admit the construction of the canal and the diversion of the waters of the river for that purpose, but demur to the declaration, and set forth as causes of demurrer:

"That the Act of the Legislature of the then Province of

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Pennsylvania passed March ninth in the year of our Lord one thousand seven hundred and seventy one, and the Act of the then Province of New Jersey passed December twenty-first in the year of our Lord one thousand seven hundred and seventy-one, as set forth in said amended fifth count, do not vest in the said Adam Hoops or in his heirs or assigns the right and privilege to the use of the water of the River Delaware without diminution or alteration, by or from the act of the then Province, now State, of Pennsylvania, or of the then Province, now State, of New Jersey or of any person or persons claiming under either of them or of any person or persons whomsoever, as averred in the said amended fifth count of the said declaration. And also for that it does not appear, from the said amended fifth count that the same George Rundle and William Griffiths are entitled to the right and privilege to the use of the water of the River Delaware in manner and from as they have averred in the said amended fifth count of their declaration."

"And also that as it appears from the said amended fifth count that the said River Delaware is a common highway and public navigable river, over which the States of Pennsylvania and New Jersey have concurrent jurisdiction, and a boundary of said states, these defendants insist that the legislative acts of the then Province of Pennsylvania and New Jersey, passed in the year of our Lord seventeen hundred and seventy one, as set forth in the said amended fifth count, were intended to declare the said River Delaware a common highway, and for improving the navigation thereof, and that the provision therein contained, as to the mill dam erected by Adam Hoops in the said River Delaware, did not and does not amount to a grant or conveyance of water power to the said Adam Hoops, his heirs or assigns, or to a surrender of the public right in the waters of the said river, but to a permission only to obstruct the waters of the said river by the said dam without being subjected to the penalties of nuisance; that the right of the said Adam Hoops was, and that of his assigns is, subordinate to the public right at the pleasure of the Legislature of Pennsylvania and New Jersey, or either of them."

On this demurrer the court below gave judgment for the defendants, which is now alleged as error.

It is evident that the extent of the plaintiff's rights as a riparian owner, and the question whether this proviso operates as the grant of a usufruct of the waters of the river, or only as a license of toleration of a nuisance, liable to revocation or subordinate to the paramount public right, must depend on the laws and customs of Pennsylvania as expounded by her own courts. It will be proper, therefore, to give a brief sketch of

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the public history of the river and the legislative action connected with it, as also of the principles of law affecting aquatic rights, as developed and established by the courts of that state.

The River Delaware is the well known boundary between the States of Pennsylvania and New Jersey. Below tidewater, the river, its soil and islands, formerly belonged to the Crown; above tidewater, it was vested in the proprietaries of the coterminous provinces -- each holding *ad medium filum aquae.* Since the Revolution, the states have succeeded to the public rights both of the Crown and the proprietaries. Immediately after the Revolution, these states entered into the compact of 1783, declaring the Delaware

a common highway for the use of both and ascertaining their respective jurisdiction over the same. For thirty years after this compact, they appear to have enjoyed their common property without dispute or collision. When the legislature of either state passed an act affecting it, they requested and obtained the concurrence and consent of the other. Their first dispute was caused by an Act of New Jersey passed February 4, 1815, authorizing Coxe and others to erect a wing dam and divert the water for the purpose of mills and other machinery. The consent of the State of Pennsylvania was not requested; it therefore called forth a protest from the legislature of that state. This was followed by further remonstrance in the following year. A proposition was made to submit the question of their respective rights to the Supreme Court of the United States, which was rejected by New Jersey. After numerous messages and remonstrances between the governors and legislatures, commissioners were mutually appointed to compromise the disputes. But they failed to bring the matter to an amicable conclusion. The dispute was never settled, and the wing dam remained in the river.

In 1824, New Jersey passed the first act for the incorporation of the Delaware & Raritan Canal Company, for which the company gave a bonus of $100,000. This act requires the consent of the State of Pennsylvania, and on application's being made to her legislature, she clogged her consent with so many conditions that New Jersey refused to accept her terms, returned the bonus to the company, and so the matter ended for that time.

Both parties then appointed commissioners to effect, if possible, some compact or arrangement by which each state should be authorized to divert so much water as would be necessary for these contemplated canals. After protracted negotiations, these commissioners finally, in 1834, agreed upon terms, but the compact proposed by them was never ratified by either party.

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In the meantime, each state appropriated to itself as much of the waters of the river as suited its purpose. In 1827 and 1828, Pennsylvania diverted the River Lehigh, a confluent of the Delaware, and afterwards, finding that stream insufficient, took additional feeders for her canal, out of the main stream of the Delaware. On the 4th February, 1830, the Legislature of New Jersey passed the act under which the defendants were incorporated and in pursuance of which, they have constructed the dam and feeder, the subject of the present suit.

The canals in both states, supplied by the river, are intimately and extensively connected with their trade, revenues, and general property -- while the navigation of the river above tidewater, and the rapids at Trenton, is of comparatively trifling importance, being used only at times of the spring freshets for floating timber down the stream when the artificial diversions do not affect the navigation. The practical benefits resulting to both parties, from their great public improvements appear to have convinced them that further negotiations, complaints, or remonstrances would be useless and unreasonable, and thus, by mutual acquiescence and tacit consent, the necessity of a more formal compact has been superseded.

The law of Pennsylvania by which the title and rights of the plaintiffs must be tested differs materially from that of England and most of the other states of the Union. As regards her large fresh water rivers, she has adopted the principles of the civil law. In the case of *Carson v. Blazer,* the supreme court of that state decided that the large rivers, such as the Susquehanna and Delaware, were never deemed subject to the doctrines of the common law of England applicable to fresh water streams, but that they are to be treated as navigable rivers; that the grants of William Penn, the proprietary, never extended beyond the margin of the river, which belonged to the public, and that the riparian owners have therefore no exclusive rights to the soil or water of such rivers *ad filum medium aquae.*

In *Shrunk v. Schuylkill Navigation Company,* the same court repeats the same doctrine, and Chief Justice Tilghman, in delivering the opinion of the court, observes:

"Care seems to have been taken from the beginning to preserve the waters of these rivers for public uses both of fishery and navigation, and the wisdom of that policy is now more striking than ever, from the great improvements in navigation, and others in contemplation, to effect which, it is necessary to obstruct the flow of the water in some places and in others to divert its course. It is true that the state would have had a right to do these things for the public benefit even if the rivers had been private property, but then compensation must have been made to the

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owners, the amount of which might have been so enormous as to have frustrated or at least checked these noble undertakings."

In the case of *Monongahela Navigation Company v. Coons,* the defendant had erected his mill under a license given by an act of the legislature in 1803 to riparian owners to erect dams of a particular structure, "provided they did not impede the navigation," &c.. The Monongahela Navigation Company, in pursuance of a charter granted them by the state, had erected a dam in the Monongahela, which flowed back the water on the plaintiff's mill in the Youghiogany and greatly injured it. And it was adjudged by the court that the Company were not liable for the consequential injury thus inflicted. The court, speaking of the rights of plaintiff consequent on the license granted by the act, of 1803, observed:

"That statute gave riparian owners liberty to erect dams of a particular structure on navigable streams without being indictable for a nuisance, and their exercise of it was consequently to be attended with expense and labor. But was this liberty to be perpetual, and forever tie up the power of the state? Or is not the contrary to be inferred from the nature of the license? So far was the legislature from seeming to abate one jot of the state's control that it barely agreed not to prefer an indictment for a nuisance except on the report of viewers to the Quarter Sessions. But the remission of a penalty is not a charter, and the alleged grant was nothing more than a mitigation of the penal law."

The case of *Susquehanna Canal Company v. Wright* confirms the preceding views and decides, "that the state is never presumed to have parted with one of its franchises in the absence of conclusive proof of such an intention." Hence a license, accorded by a public law to a riparian owner, to erect a dam on the Susquehanna River and conduct the water upon his land for his own private purposes is subject to any future provision which the state may make with regard to the navigation of the river. And if the state authorize a company to construct a canal which impairs the rights of such riparian owner, he is not entitled to recover damages from the company. In that case, Wright had erected valuable mills under a license granted to him by the legislature, but the court said:

"He was bound to know that the state had power to revoke its license whenever the paramount interests of the public should require it. And in this respect a grant by a public agent of limited powers, and bound not to throw away the interests confided to it, is different from a grant by an individual who is master of the subject. To revoke the latter after an expenditure in the prosecution of it would be a fraud. But he who accepts a

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license from the legislature knowing that he is dealing with an agent bound by duty not to impair public rights does so at his risk, and a voluntary expenditure on the foot of it gives him no claim to compensation."

The principles asserted and established by these cases are perhaps somewhat peculiar, but as they affect rights to real property in the State of Pennsylvania, they must be treated as binding precedents in this Court. It is clear also from the application of these principles to the construction of the proviso under consideration that it cannot be construed as a grant of the waters of a public river for private use or a

fee simple estate in the usufruct of them "without diminution or alteration." It contains no direct words of grant which would operate by way of estoppel upon the grantor. The dam of Adam Hoops was a nuisance when it was made, but as it did little injury to the navigation, the commissioners, who were commanded to prostrate other nuisances, were enjoined to tolerate this. The mills of Hoops had not been erected on the faith of a legislative license, as in the cases we have quoted, and a total revocation of it would not be chargeable with the apparent hardship and injustice which might be imputed to it in those cases. His dam continues to be tolerated, and the license of diverting the water to his mills is still enjoyed, subject to occasional diminution from the exercise of the superior right of the sovereign. His interest in the water may be said to resemble a right of common, which by custom is subservient to the right of the lord of the soil, so that the lord may dig clay pits, or empower others to do so, without leaving sufficient herbage on the common. *Bateson v. Green,* 5 T.R. 411.

Nor can the plaintiff claim by prescription against the public for more than the act confers on him, which is at best impunity for a nuisance. His license, or rather toleration, gives him a good title to keep up his dam and use the waters of the river as against everyone but the sovereign, and those diverting them by public authority, for public uses.

It is true that the plaintiff's declaration in this case alleges that the waters diverted by defendants' dam and canal are used for the purpose of mills and for private emolument. But as it is not alleged or pretended that defendants have taken more water than was necessary for the canal or have constructed a canal of greater dimensions than they were authorized and obliged by the charter to make, this secondary use must be considered as merely incidental to the main object of their charter. We do not, therefore, consider the question before us whether the plaintiff might not recover damages against an individual or private corporation diverting the water of this river

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to their injury for the purpose of private emolument only, with or without license or authority of either of its sovereign owners. The case before us requires us only to decide that by the laws of Pennsylvania, the River Delaware is a public navigable river, held by its joint sovereigns in trust for the public; that riparian owners of land have no title to the river or any right to divert its waters unless by license from the state. That such license is revocable and in subjection to the superior right of the state to divert the water for public improvements.

It follows necessarily from these conclusions that whether the State of Pennsylvania claim the whole river, or acknowledge the State of New Jersey as tenant in common and possessing equal rights with herself, and whether either state, without consent of the other has or has not a right to divert the stream, it will not alter or enlarge the plaintiff's rights. Being a mere tenant at sufferance to both as regards the usufruct of the water, he is not in a condition to question the relative rights of his superiors. If Pennsylvania chooses to acquiesce in this partition of the waters for great public improvements or is estopped to complain by her own acts, the plaintiff cannot complain or call upon this Court to decide questions between the two states which neither of them sees fit to raise. By the law of his own state, the plaintiff has no remedy against a corporation authorized to take the whole river for the purpose of canals or improving the navigation, and his tenure and rights are the same as regards both the states.

With these views, it will be unnecessary to inquire whether the compact of 1783 between Pennsylvania and New Jersey operated as a revocation of the license or toleration implied from the proviso of the colonial acts of 1771, as that question can arise only in case the plaintiffs' dam be indicted as a public nuisance.

Nor is it necessary to pass any opinion on the question of the respective rights of either of these co-terminous states to whom this river belongs to divert its waters without the consent of the other.

The question raised is not without its difficulties, but being bound to resolve it by the peculiar laws of Pennsylvania as interpreted by her own courts, we cannot say that the court below has erred in its exposition of them, and therefore

Affirm the judgment.

MR. JUSTICE McLEAN and MR. JUSTICE DANIEL dissented.

MR. JUSTICE CATRON gave a separate opinion; and MR. JUSTICE CURTIS dissented from the judgment of the court, on the merits, but not from its entertaining jurisdiction.

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The following are the opinions of MR. JUSTICE CATRON and MR. JUSTICE DANIEL.

MR. JUSTICE CATRON.

My opinion is and long has been that the mayor and aldermen of a city corporation, or the president and directors of a bank, or the president and directors of a railroad company and of other similar corporations, are the true parties that sue and are sued as trustees and representatives of the constantly changing stockholders. These are not known to the public and not suable in practice by service of personal notice on them respectively, such as the laws of the United States require. If the president and directors are citizens of the state where the corporation was created, and the other party to the suit is a citizen of a different state or a subject or citizen of a foreign government, then the courts of the United States can exercise jurisdiction under the Third Article of the Constitution. In this sense I understood *Letson's Case,* and assented to it when the decision was made, and so it is understood now.

If all the real defendants are not within the jurisdiction of the court, because some of the directors reside beyond it, then the Act of February 28, 1843, allows the suit to proceed regardless of this fact, for the reasons stated in *Letson's Case.* 43 U. S. 2 How. 597.

If the United States courts could be ousted of jurisdiction and citizens of other states and subjects of foreign countries be forced into the state courts without the power of election, they would often be deprived, in great cases, of all benefit contemplated by the Constitution, and in many cases be compelled to submit their rights to judges and juries who are inhabitants of the cities where the suit must be tried, and to contend with powerful corporations in local courts where the chances of impartial justice would be greatly against them and where no prudent man would engage with such an antagonist if he could help it. State laws, by combining large masses of men under a corporate name, cannot repeal the Constitution; all corporations must have trustees and representatives, who are usually citizens of the state where the corporation is created, and these citizens can be sued and the corporate property charged by the suit; nor can the courts allow the constitutional security to be evaded by unnecessary refinements without inflicting a deep injury on the institutions of the country.

MR. JUSTICE DANIEL.

In the opinion of the Court just announced in this cause I am unable to concur.

Were the relative rights and interests of the parties to this

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controversy believed to be regularly before this Court, I should have coincided in the conclusions of the majority for the reason that all that is disclosed by the record either of the traditions or the legislation of the States of Pennsylvania and New Jersey shows an equal right or claim on the part of either of those states to the River Delaware and to the uses to which the waters of that river might be applied. From such an equality in each of those states it would seem regularly to follow that no use or enjoyment of the waters of that river could be invested in the grantees of one of them to the exclusion of the like use

and enjoyment by the grantees of the other. The permission, therefore, from Pennsylvania to Adam Hoops or his assignees to apply the waters of the Delaware in the working of his mill, whatever estate or interest it might invest in such grantee as against Pennsylvania, could never deprive the State of New Jersey of her equal privilege of applying the waters of the same river, either directly, in her corporate capacity, or through her grantee, the Delaware & Raritan Canal Company. My disagreement with my brethren in this case has its foundation in a reason wholly disconnected with the merits of the parties. It is deducible from my conviction of the absence of authority, either here or in the circuit court, to adjudicate this cause, and that it should therefore have been remanded with directions for its dismission for want of jurisdiction.

The record discloses the fact that the party defendant in the circuit court and the appellee before this Court is a corporation, styled in the declaration, "a corporation created by the State of New Jersey." It is important that the style and character of this party litigant, as well as the source and manner of its existence, be borne in mind, as both are deemed material in considering the question of the jurisdiction of this Court and of the circuit court. It is important, too, to be remembered that the question here raised stands wholly unaffected by any legislation, competent or incompetent, which may have been attempted in the organization of the courts of the United States, but depends exclusively upon the construction of the 2d section of the 3d article of the Constitution, which defines the judicial power of the United States -- first with respect to the subjects embraced within that power, and secondly with respect to those whose character may give them access, as parties, to the courts of the United States. In the second branch of this definition, we find the following enumeration as descriptive of those whose position as parties will authorize their pleading or being impleaded in those courts, and this position is limited to

"controversies to which the United States are a party;

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controversies between two or more states -- between citizens of different states -- between citizens of the same state, claiming lands under grants of different states -- and between the citizens of a state and foreign citizens or subjects."

Now it has not been and will not be pretended that this corporation can in any sense be identified with the United States or is endowed with the privileges of the latter, or if it could be, it would clearly be exempted from all liability to be sued in the federal courts. Nor is it pretended that this corporation is a state of this Union, nor, being created by, and situated within the State of New Jersey, can it be held to be the citizen or subject of a foreign state. It must be, then, under that part of the enumeration in the article quoted which gives to the courts of the United States jurisdiction in controversies between citizens of different states that either the circuit court or this Court can take cognizance of the corporation as a party, and this is, in truth, the sole foundation on which that cognizance has been assumed or is attempted to be maintained. The proposition, then, on which the authority of the circuit court and of this tribunal is based is this: the Delaware & Raritan Canal Company is either a citizen of the United States or it is a citizen of the State of New Jersey. This proposition, startling as its terms may appear either to the legal or political apprehension, is undeniably the basis of the jurisdiction asserted in this case and in all others of a similar character, and must be established or that jurisdiction wholly fails. Let this proposition be examined a little more closely.

The term "citizen" will be found rarely occurring in the writers upon English law, those writers almost universally adopting, as descriptive of those possessing rights or sustaining obligations, political or social, the term "subject" as more suited to their peculiar local institutions. But in the writers of other nations and under systems of polity deemed less liberal than that of England, we find the term "citizen" familiarly reviving, and the character and the rights and duties that term implies particularly defined.

Thus, Vattel, in his 4th book, has a chapter, cap. 6th, the title of which is: "The concern a nation may have in the actions of her citizens." A few words from the text of that chapter will show the apprehension of this author in relation to this term. "Private persons," says he,

"who are members of one nation may offend and ill treat the citizens of another; it remains for us to examine what share a state may have in the actions of her citizens and what are the rights and obligations of sovereigns in that respect."

And again: "Whoever uses a citizen ill indirectly offends the state, which is bound to protect this citizen." The meaning of the term

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"citizen" or "subject," in the apprehension of English jurists, as indicating persons in their natural character in contradistinction to artificial or fictitious persons created by law, is further elucidated by those jurists in their treatises upon the origin and capacities and objects of those artificial persons designated by the name of corporations. Thus, Mr. Justice, in the 18th chapter of his 1st volume, holds this language:

"We have hitherto considered persons in their natural capacities, and have treated of their rights and duties. But as all personal rights die with the person, and as the necessary forms of investing a series of individuals, one after another, with the same identical rights, would be inconvenient, if not impracticable, it has been found necessary, when it is for the advantage of the public to have any particular rights kept on foot and continued, to constitute artificial persons who maintain a perpetual succession and enjoy a kind of legal immortality. These artificial persons are called 'corporations.'"

This same distinguished writer, in the first book of his Commentaries 123, says,

"The rights of persons are such as concern and are annexed to the persons of men, and when the person to whom they are due is regarded, are called simply 'rights;' but when we consider the person from whom they are due, they are then denominated, 'duties.'"

And again, cap. 10th of the same book, treating of the "people," he says,

"The people are either 'aliens' -- that is, born out of the dominions or allegiance of the Crown -- or 'natives' -- that is, such as are born within it."

Under our own systems of polity, the term "citizen," implying the same or similar relations to the government and to society which appertain to the term, "subject" in England, is familiar to all. Under either system, the term used is designed to apply to man in his individual character and to his natural capacities -- to a being or agent possessing social and political rights and sustaining social, political, and moral obligations. It is in this acceptation only, therefore, that the term "citizen," in the article of the Constitution, can be received and understood. When distributing the judicial power, that article extends it to controversies between "citizens" of different states. This must mean the natural physical beings composing those separate communities, and can by no violence of interpretation be made to signify artificial, incorporeal, theoretical, and invisible creations. A corporation, therefore, being not a natural person, but a mere creature of the mind, invisible and intangible, cannot be a citizen of a state, or of the United States, and cannot fall within the terms or the power of the above mentioned article, and can therefore neither plead nor be impleaded in the courts of the United States. Against this position it may be urged that the

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converse thereof has been ruled by this Court, and that this matter is no longer open for question. In answer to such an argument, I would reply that this is a matter involving a construction of the

Constitution, and that wherever the construction or the integrity of that sacred instrument is involved, I can hold myself trammeled by no precedent or number of precedents. That instrument is above all precedents, and its integrity everyone is bound to vindicate against any number of precedents if believed to trench upon its supremacy. Let us examine into what this Court has propounded in reference to its jurisdiction in cases in which corporations have been parties, and endeavor to ascertain the influence that may be claimed for what they have heretofore ruled in support of such jurisdiction.

The first instance in which this question was brought directly before this Court was that of *Bank of the United States v. Deveaux,* 5 Cranch 61. An examination of this case will present a striking instance of the error into which the strongest minds may be led whenever they shall depart from the plain, common acceptation of terms or from well ascertained truths for the attainment of conclusions which the subtlest ingenuity is incompetent to sustain. This criticism upon the decision in the case of *Bank v. Deveaux* may perhaps be shielded from the charge of presumptuousness by a subsequent decision of this Court hereafter to be mentioned. In the former case, the Bank of the United States, a corporation created by Congress, was the party plaintiff, and upon the question of the capacity of such a party to sue in the courts of the United States this Court said, in reference to that question,

"The jurisdiction of this Court being limited, so far as respects the character of the parties in this particular case, to controversies between citizens of different states, both parties must be citizens, to come within the description. That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen, and consequently cannot sue or be sued in the courts of the United States unless the rights of the members in this respect can be exercised in their corporate name. If the corporation be considered as a mere faculty, and not as a company of individuals who, in transacting their business, may use a legal name, they must be excluded from the courts of the Union."

The Court having shown the necessity for citizenship in both parties in order to give jurisdiction, having shown further, from the nature of corporations, their absolute incompatibility with citizenship, attempts some qualification of these indisputable and clearly stated positions, which, if intelligible at all, must be taken as wholly subversive of the positions so laid down. After stating the requisite of citizenship and showing that a

corporation cannot be a citizen, "and consequently that it cannot sue or be sued in the courts of the United States," the Court goes on to add, "unless the rights of the members can be exercised in their corporate name." Now it is submitted that it is in this mode only, *viz.,* in their corporate name, that the rights of the members can be exercised; that it is this which constitutes the character, and being, and functions of a corporation. If it is meant beyond this that each member, or the separate members, or a portion of them, can take to themselves the character and functions of the aggregate and merely legal being, then the corporation would be dissolved; its unity and perpetuity, the essential features of its nature, and the great objects of its existence, would be at an end. It would present the anomaly of a being existing and not existing at the same time. This strange and obscure qualification attempted by the Court of the clear legal principles previously announced by it forms the introduction to and apology for the proceeding adopted by it by which it undertook to adjudicate upon the rights of the corporation through the supposed citizenship of the individuals interested in that corporation. It asserted the power to look beyond the corporation, to presume or to ascertain the residence of the individuals composing it, and to model its decision upon that foundation. In other words, it affirmed that in an action at law, the purely legal rights asserted by one of the parties upon the record might be maintained by showing or presuming that these rights are vested in some other person who is no party to the controversy before it.

Thus stood the decision of *Bank of the United States v. Deveaux,* wholly irreconcilable with correct

definition and a puzzle to professional apprehension until it was encountered by this Court in the decision of *Louisville & Cincinnati Railroad Company v. Letson,* reported in 2 How. 497. In the latter decision, the Court, unable to untie the judicial entanglement of *Bank v. Deveaux,* seem to have applied to it the sword of the conqueror; but unfortunately, in the blow they have dealt at the ligature which perplexed them, they have severed a portion of the temple itself. They have not only contravened all the known definitions and adjudications with respect to the nature of corporations, but they have repudiated the doctrines of the civilians as to what is imported by the term "subject" or "citizen" and repealed, at the same time, that restriction in the Constitution which limited the jurisdiction of the courts of the United States to controversies between "citizens of different states." They have asserted that

"a corporation created by and transacting business in a state is to be deemed an inhabitant of the state, capable of being treated

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as a citizen for all the purposes of suing and being sued, and that an averment of the facts of its creation, and the place of transacting its business, is sufficient to give the circuit courts jurisdiction."

The first thing which strikes attention in the position thus affirmed is the want of precision and perspicuity in its terms. The Court affirms that a corporation created by, and transacting business within a state is to be deemed an inhabitant of that state. But the article of the Constitution does not make inhabitancy a requisite of the condition of suing or being sued; that requisite is citizenship. Moreover, although citizenship implies the right of residence, the latter by no means implies citizenship. Again, it is said that these corporations may be treated as citizens for the purpose of suing or being sued. Even if the distinction here attempted were comprehensible, it would be a sufficient reply to it that the Constitution does not provide that those who may be treated as citizens may sue or be sued, but that the jurisdiction shall be limited to citizens only -- citizens in right and in fact. The distinction attempted seems to be without meaning, for the Constitution or the laws nowhere define such a being as a *quasi*-citizen, to be called into existence for particular purposes -- a being without any of the attributes of citizenship, but the one for which he may be temporarily and arbitrarily created, and to be dismissed from existence the moment the particular purposes of his creation shall have been answered. In a political or legal sense, none can be treated or dealt with by the government as citizens but those who are citizens in reality. It would follow, then, by necessary induction from the argument of the Court that as a corporation must be treated as a citizen, it must be so treated to all intents and purposes, because it is a citizen. Each citizen if not under old governments certainly does, under our system of polity, possess the same rights and faculties, and sustain the same obligations, political, social, and moral, which appertain to each of his fellow citizens. As a citizen, then, of a state or of the United States, a corporation would be eligible to the state or federal legislatures, and if created by either the state or federal governments, might, as a native born citizen, aspire to the office of President of the United States -- or to the command of armies, or fleets, in which last example, so far as the character of the commander would form a part of it, we should have the poetical romance of the specter ship realized in our Republic. And should this incorporeal and invisible commander not acquit himself in color or in conduct, we might see him, provided his arrest were practicable, sent to answer his delinquencies before a court martial, and subjected to the penalties

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of the articles of war.

Sir Edward Coke has declared, that a corporation cannot commit treason, felony, or other crime; neither is it capable of suffering a traitor's or felon's punishment, for it is not liable to corporeal penalties -- that it can perform no personal duties, for it cannot take an oath for the due execution of an office; neither

can it be arrested or committed to prison, for its existence being ideal, no man can arrest it; neither can it be excommunicated, for it has no soul. But these doctrines of Lord Coke were founded upon an apprehension of the law now treated as antiquated and obsolete. His lordship did not anticipate an improvement by which a corporation could be transformed into a citizen, and by that transformation be given a physical existence, and endowed with soul and body too. The incongruities here attempted to be shown as necessarily deducible from the decisions of the cases of *Bank of the United States v. Deveaux* and of *Cincinnati & Louisville Railroad Company v. Letson* afford some illustration of the effects which must ever follow a departure from the settled principles of the law. These principles are always traceable to a wise and deeply founded experience; they are therefore ever consentaneous and in harmony with themselves and with reason, and whenever abandoned as guides to the judicial course, the aberration must lead to bewildering uncertainty and confusion. Conducted by these principles, consecrated both by time and the obedience of sages, I am brought to the following conclusions:

1st. That by no sound or reasonable interpretation, can a corporation -- a mere faculty in law, be transformed into a citizen or treated as a citizen.

2d. That the second section of the Third Article of the Constitution, investing the courts of the United States with jurisdiction in controversies between citizens of different states, cannot be made to embrace controversies to which corporations and not citizens are parties, and that the assumption by those courts of jurisdiction in such cases must involve a palpable infraction of the article and section just referred to.

3d. That in the cause before us, the party defendant in the circuit court having been a corporation aggregate created by the State of New Jersey, the circuit court could not properly take cognizance thereof, and therefore this cause should be remanded to the circuit court with directions that it be dismissed for the want of jurisdiction.

Order

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the

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District of New Jersey, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.