

Opinion - judge's explanation of a ruling in a written document

- Caption
 - Party A vs. Party B
 - Two sides = parties / litigants
- Case Citation - Name of court that decided the case, law book in which opinion was published, year of decision
- Author of Opinion - states a last name followed by "J." (Judge / Justice) or "per curiam" (by the court)
- Facts of the Case - Most discussions of facts also cover procedural history of case
- Law of the Case
 - Stage 1
 - Discusses general law principles relevant to cases like the one the court is deciding
 - Might explore discussion of precedents (past cases) related to current case
 - Stage 2 - Applies general law principles to particular facts of the dispute
- Concurring / Dissenting Opinions
 - In case of non unanimous decisions, judges who disagree explain their opinions as
 - Concurrence (concurring opinion) - explains vote in favor of winning side but based on different legal rationale
 - Dissent (dissenting opinion) - explains vote in favor of losing side

Common Legal Terms

- Damages - Award of money
- Injunction - Order to do or refrain from doing something
- Plaintiff - Person bringing the lawsuit
- Defendant - Person being sued/charged
- Types of legal disputes
 - Civil
 - A files a lawsuit against B asking the court to order B to pay A money or to stop doing something
 - Criminal
 - No plaintiff and no lawsuit
 - Plaintiff = government prosecutor
 - Instead of lawsuit, criminal charges are filed
 - Instead of damages or injunction, prosecutor asks court to punish individual through jail time or a fine
- Lawyer / attorney / counsel - mean the same thing for the past century or so

- Judges refer to themselves as "the court" in legal opinions
- Appellate Litigation
 - Appellate opinions decide the outcome of appeals
 - Appeal = legal proceeding that considers whether another court's legal decision was right or wrong
 - Appeal = writ of certiorari
 - Appeals may be filed before a higher court (aka appellate or appeals court)
 - Appellate cases are decided by panels of several judges
 - Petitioner / Appellant = Party that lost at original court and is filing the appeal
 - Respondent / Appellee = Party that won in lower court and must defend the lower court's decision
 - Some older opinions refer to appellant as "plaintiff in error" and appellee as "defendant in error"
 - Some courts label an appeal as a petition

In the US:

- District Court judge oversees trial stage
- Next higher court = Court of Appeals; cases are decided by panels of three judges called Circuit Court judges
- Losing side can further seek review of that decision by US Supreme Court, where cases are decided by all nine judges called Justices - one Chief Justice and rest Justices / Associate Justices

What to Learn from Reading a Case

- Know the Facts
- Know the Specific Legal Arguments Made by the Parties
 - important in case of appeals
 - Lawyer articulates specific ways in which lower court was wrong
- Know the Disposition - the action the court took
 - Announced at the end of the opinion
 - Appeals court might affirm (maybe in result, even if not in reasoning) or reverse a lower court decision, ruling for the other side
 - Appeals court might vacate the lower court decision, wiping it off the books and then remand the case, sending it back to lower court for further proceedings
- Understand the Reasoning of Majority Opinion
 - Identify **source of the law** the judge applied - some opinions interpret the Constitution, others interpret statutes (written laws passed by legislative bodies like Congress) or "the common law" (body of prior case decisions derived from pre-1776 English law). Often "common law" is used to refer to areas of judge-made law as opposed to legislatively-made law.
 - Torts, Contracts, Property - mostly common law
 - Criminal - mostly common law or statutes
 - Civil Procedure - statutory law or Constitution
 - **Where is "common law" / statutes written?**
 - **Constitutional rules > Statutory rules > Common law rules**
 - Identify method of reasoning used to justify court's decision
 - When a case is governed by a statute, court follows what the statute says because the legislature has settled the law
 - Similarly, when past courts have answered similar questions before, court concludes that it is required to reach a particular result because it is bound by past precedents
 - This is an application of judicial practice of "stare decisis" - "that which has been already decided should remain settled"
 - In case of common law cases, the court is not bound by a statute of constitutional rule, so it can pick the rule they think is best and explain in their opinion why they think that it is the best
- Understand the Significance of Majority Opinion
 - Holding = clear rule of law new to a particular case that resolves the parties' legal dispute
 - Dicta = legal statements in opinion not needed to resolve dispute of parties; pluralized abbreviation of Latin phrase "obiterdictum" ("a remark by the way")
 - Holdings are often contrasted with dicta found in an opinion
 - When a court announces a clear holding, think about how the court's rule would apply in other situations
 - Which facts are legally relevant for this particular rule? Consider new sets of facts - "hypotheticals / analogies"
 - "Rather than trying to fill in the ambiguity with false certainty, try embracing the ambiguity instead."
 - Identify which law is unclear as well as unsettled issues
- Understand Any Concurring and / or Dissenting Opinions

"en banc" = on the bench; all the judges of a court hear the case

"ibid" = short for ibidem = in the same place

Id. = immediately preceding cited authority

Bailor = person delivering goods

Bailee = person to whom goods are delivered / someone who temporarily gains possession, not ownership, of a good

Comity = practice among different political entities involving mutual recognition of legislative, executive, and judicial acts.

Dissent = difference of opinion

Letters rogatory = formal letters of request from a court to a foreign court

Pen registers: surveillance devices that capture phone numbers dialed on outgoing calls

Trap and trace devices: capture numbers identifying incoming calls

Tracking a vehicle while in motion: "a person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another."

Mutual legal assistance treaty (MLAT): agreement between >= 2 countries to gather and exchange information in an effort to enforce public or criminal laws.

Electronic Communications Privacy Act (ECPA) - protects individual privacy from intrusions of other individuals

Foreign Intelligence Surveillance Act (FISA) - authorizes the collection of information about the activities of foreign powers and their agents, whether activities are criminal or not

Communications Assistance for Law Enforcement Act (CALEA) - wiretapping law

Types of CALEA wiretaps:

1. Metadata - Trap and Trace
2. Content - Title III Wiretap

Collective Entity Doctrine: treats certain groups or organizations as a single legal entity for certain purposes

Act of Production Doctrine: person or entity cannot be compelled to produce documents or other physical evidence that would incriminate them, but can be required to produce non-incriminating materials

Difference from subpoena: act of production doctrine can be invoked as a defense against a subpoena that seeks to compel the production of documents or physical evidence that would be incriminating, while a subpoena is a tool that the government or other party can use to require the production of such materials

Foregone Conclusion Doctrine:

- government must show that it already knows the content and existence of the evidence that it seeks to compel the individual to produce, and that the evidence is a foregone conclusion
- evidence must be known to exist independently of the individual's compelled testimony, and the testimony must not add any new information that would incriminate the individual

CALEA - law that enforces all companies

AWA - not a law; court cannot force a company to modify its product

Snowden pivoted Apple to being privacy-centric

ex parte: other parties not there