

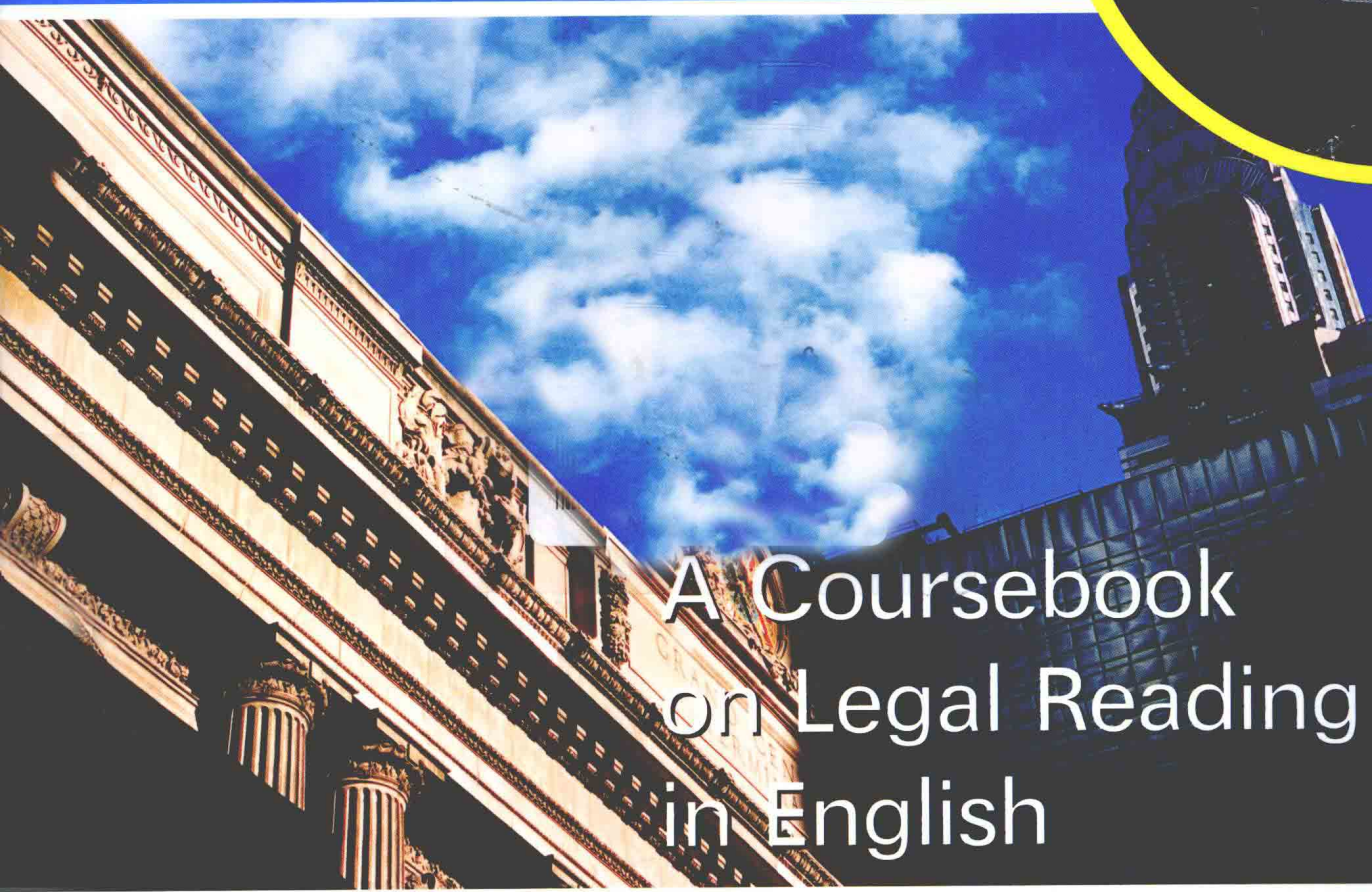
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法律英语

阅读教程



A Coursebook
on Legal Reading
in English

中国法制出版社
CHINA LEGAL PUBLISHING HOUSE

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前 言

众所周知，美国法是英美法系的典型代表，其法律体系完整、内容丰富，既有传统的普通法，又有新兴的成文法；既有统一的联邦法，又有各州的法律。同时，美国法在世界范围内影响深远，学习研究美国法意义重大，这不仅表现为许多国家都在研究美国的法律规则，借鉴其成熟做法，还表现为许多国际公约也参照美国法的理念、原则、规则制定。

因此，本书主要选取了美国法案例作为阅读理解材料，希望读者通过研读这些部门法的经典案例，学习权威、实用的美国法律知识，掌握地道、纯正的法律英语。本书具有以下特点：

首先，编者参考了大量的美国原版法学书籍，包括美国法学院教材及大量判例，力求实现教材内容的权威性和丰富性。

其次，本书作为法律英语阅读教材，选取了极具代表性的英文案例。英美法系是判例法系，无论是法官还是律师都特别注重对判例的研究，因此学习美国法不能绕过案例。通过研究案例，了解法官判案推理过程和有关法律、法规的适用，更有利于学习标准的法律英语，也更容易掌握美国法的精髓。本书选取了几十个经典案例，以期最大程度的展现美国法原貌。

再次，本书在每个案例的后面都附有问答练习题，以期帮助读者检查自己学习研读案例的程度水平。

法律英语证书（Legal English Certificate，简称 LEC）全国统一考试旨在为国家机关、涉外企事业单位、律师事务所等提供招募国际性人才的客观标准，同时督促国内法律从业人员提高专业英语水平。LEC 考试的题型、考查内容与美国律师资格考试相近，同时又突出了法律英语语言运用特色，并结合中国实际增加了法律英语翻译测试。公检法机关和企事业单位涉外法务工作人员；从事涉外法务的律师、公司法律部门的从业人员；高等院校法律、英语、经贸等专业学生；愿意从事法律英语教学的教师以

及社会上一切法律英语爱好者均可参加 LEC 考试。LEC 考试每年举行两次，分别在 5 月和 12 月的最后一个星期六举行。有关考试信息请考生关注 LEC 考试官方网站：www.lectest.com。

本书由法律英语证书（LEC）全国统一考试指导委员会组织专家编写，它不仅为欲参加 LEC 的考生提供了系统权威的复习指南；也是一本为全国高等院校学生学习法律英语所精心编写的精品系列教材之一。

书中不当之处，敬请同仁指正。

编者
2011 年 9 月

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Appendix I Key to Exercises**Appendix II 常用拉丁语法律词汇****Sources of Reading Materials Used in this Book**

Unit 1 Introduction to Legal Reading Skills



一、典型的美国法案例通常有哪几部分组成？

1. 案例名称 (Case Name); 例如: *Marbury v. Madison* (马伯里诉麦迪逊), *v* is short for *versus*. 是“诉”的意思。

2. 判决法院 (Court rendering the opinion); 例如: *New Jersey Supreme Court* (新泽西最高法院)。

3. 卷宗号; 案号 (Citation); 例如: *93 N. J324, 461 A. 2d 138 (1983)*, 这说明该案出自《新西汇编》第 93 卷, 第 324 页, 以及《大西洋汇编》第二辑第 138 页, 该案判决于 1983 年。此处, *A* 是 *Atlantic Reporter* 的缩写。像这种指明两个或两个以上出处的卷宗号叫作: “平行卷宗号”, 其英语表达为 “parallel citation”, 意思是 “An additional reference to a case that has been reported in more than more reporter.” 广义上卷宗号包括上述一、案例名称; 二、判决法院。

4. 主审法官姓名 (Justice wrote the opinion)。

5. 判决书 (*opinion: stating the issue raised, describing the parties and facts, discussing the relevant law, and rendering judgment.*) 判决书是整个案例的主体部分, 其中包括法律争议 (Issue)、双方当事人情况、事实经过、判决采用的相关法律以及判决结果。

判决书的阅读过程之中, 要注意以下几点: 1. 时态主审法官的意见用现在时态; 前审法院的意见用过去时态。2. 主审法官的意见是法院意见。3. 除法院意见外还有两种意见, 它们被称为 “反对意见” (*dissenting opinion or dissent*) 与 “配合意见” (*concurring opinion*)。 *Dissenting opinion: opinion offered by a judge disagreeing with the majority panel of judges' conclusion*; “反对意见” 指不同意大多数法官判决结论之某一法官的意见; *Concurring opinion: opinion written by a judge agreeing with the majority's conclusion but not its reasoning.* “配合意见” 是指同意大多数法官的意见, 但是不同意判决结论的推理之某一法官的意见。

6. 法庭投票 (*Votes of the court*) 例如在七名大法官审理的情况下, 有几名法官的意见是 “维持原判” (*affirmance*), 有几名法官的意见是 “撤销原判、发回重审” (*reversal and remandment*)。

二、什么是 citation?

由于卷宗号这一块涉及内容庞杂,这里再逐一特别说明一下。我们首先来看一下《布莱克法律词典》中 citation 的定义: A reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position. (p. 237) 7th edition. 由于 a citation is a reference to a legal authority, 因此, citation 必须要有一个标准, 这样以后的参考者才容易检索到。正如《布莱克法律词典》所指出的一样, Citation formats exist for many different types of legal sources including cases, statutes and secondary legal materials. Understanding the basic format for each of these different types of sources will enable the researcher to more independently locate materials in the law library.

案例之中的卷宗号通常包括下列几个部分:

- a. 案件双方当事人姓名 (the names of the parties involved in the lawsuit);
- b. 包含案件全文的汇编卷号 (the volume number of the reporter containing the full text of the case);
- c. 该案例汇编的缩写名称 (the abbreviated name of that case reporter);
- d. 案例开始的页码数 (the page number on which the case begins);
- e. 案件判决年份 (the year the case was decided); 有时还包括
- f. 案件判决法院 (the name of the court deciding the case)。举例说明: Hebb v. Severson, 201 P. 2d 156 (Wash. 1948)。在这个例子当中, Hebb 是原告 (plaintiff), Severson 是被告 (defendant)。我们可以在《太平洋汇编》第二辑 201 卷第 156 页 (volume 201 of the Pacific Reporter Second Series beginning on page 156) 找到这一案例。该案是由华盛顿州最高法院 (Washington State Supreme Court) 于 1948 年判决的。

三、如何阅读案例之中的 citation?

确定卷宗号之中的缩略码。请对照下列列表, 找出缩略码 (abbreviation) 的汇编全称 (full reporter title)。

Abbreviation Title (汉语汇编名称)

EA. Atlantic Reporter 大西洋汇编

A. 2d. Atlantic Reporter, 2d Series 大西洋汇编第二辑

Cal. Rep. California Reporter 加利福尼亚州汇编

F. Federal Reporter 联邦汇编

F. 2d. Federal Reporter, 2d Series 联邦汇编第二辑

F. 3d. Federal Reporter, 3d Series 联邦汇编第三辑

F. Supp. Federal Supplement 联邦补充案例

L. Ed. U. S. Supreme Court Decisions, Lawyers' Edition 美国最高法院案例汇编, 律师版

L. Ed. 2d. U. S. Supreme Court Decisions, Lawyers Edition, 2d Series 美国最高法院案例汇编, 律师版第二辑

N. E. Northeastern Reporter 东北汇编

N. E. 2d. Northeastern Reporter, 2d Series 东北汇编第二辑

N. W. Northwestern Reporter 西北汇编

N. W. 2d. Northwestern Reporter, 2d Series 西北汇编第二辑
 N. Y. S. New York Supplement 纽约补充案例
 N. Y. S. 2d. New York Supplement, 2d Series 纽约补充案例第二辑
 Pacific Reporter 太平洋汇编
 2d. Pacific Reporter, 2d Series 太平洋汇编第二辑
 S. Ct. Supreme Court Reporter 最高法院案例汇编
 S. E. Southeastern Reporter 东南汇编
 BS. E. 2d. Southeastern Reporter, 2d Series 东南汇编第二辑
 So. Southern Reporter 南方汇编
 So. 2d. Southern Reporter, 2d Series 南方汇编第二辑
 QS. W. Southwestern Reporter 西南汇编
 S. W. 2d. Southwestern Reporter, 2d Series 西南汇编第二辑
 U. S. United States Reports 美国案例汇编

再举两例说明,例如: *Morgan v. United States*, 298 U. S. 468, 56 S. Ct 906, 80L. Ed. 1288 (1936) 表示: 摩根诉美国, 收集在美国案例汇编第 298 卷, 468 页开始; 最高法院案例汇编第 56 卷 906 页开始; 美国最高法院案例汇编律师版第 80 卷 1288 页开始, 1936 年判决。For example, a popular name for a Supreme Court case is: *Roe v. Wade*

Which translates as Plaintiff versus Defendant

原告 罗诉 被告 魏德

The official citation for this Supreme Court decision is:

410 U. S. 113

Which translates as Volume 410 United States Reports Page 113

410 卷 美国案例汇编 113 页

There are several different publishers for legal documents such as court decisions. (Libraries usually only carry one of these published versions.) These publishers may be referred to in parallel citations for this case.

例如, 该案的平行汇编是:

93 S. Ct. 705

Which translates as Volume 93 Supreme Court Reporter Page 705, g7

第 93 卷 最高法院案例汇编 705 页 4

Or

35 L. Ed. 2d 147

Which translates as Volume 35 U. S. Supreme Court Reports, Lawyers Edition, 2nd Series Page 147 第 35 卷 美国最高法院案例汇编律师版第二辑 147 页

该案完整的卷宗号 (full citation) 就是:

Roe v. Wade 410 U. S. 113 93 S. Ct. 705 35 L. Ed. 2d. 147 1972

Case name Official citation Parallel citation parallel citation Date of opinion. (屈文生)

1. The Specific Skills of Legal Reading

One of the most important skills in law school is the ability to read a judicial opinion efficiently and accurately. Legal reading is a challenging task for new law students. This is because legal texts are very incomprehensible to novice readers and law schools often don't spend sufficient time instructing students on how to read legal texts. Legal texts are unique in both their form and structure. Comprehending legal text requires knowledge of legal terminology and an understanding of both case structure and legal theory. In order to read any text well, readers need four types of reading knowledge: 1) word recognition; 2) text structure; 3) grammatical knowledge; and 4) reading strategies. We need to understand the reading process more generally.

The first concept readers need is word recognition, which is the set of strategies used to identify words. In order to recognize the words, readers need sufficient background knowledge about the law. However, even if a reader recognizes a word, it does not mean that the reader comprehends its meaning. As we know, legal cases are full of terms that present new and sometimes abstract concepts. A new reader without background knowledge about the law will have a hard time understanding new information in a legal text.

A second concept the legal reader needs is an understanding of "text structure." Comprehension proceeds more smoothly if the reader understands the organizational structure of the text. For example, the typical judicial opinion contains a synopsis, fact section, issue statement, and holding. A new reader could easily become confused by this unusual structure.

In addition to word recognition and text structure, a beginning legal reader needs grammatical knowledge, which can help the reader understand the relationship among concepts within a sentence. In legal texts, the grammar and syntax are so complex that the reader has to work hard to understand how the sentences fit together. Understanding the complex grammar and syntax used in legal texts presents a significant challenge to the novice legal reader.

Finally, readers need a fourth type of knowledge, referred to as reading strategies. Reading strategies are intentional, flexible, and self-evaluative. It is a set of mental processes used by a reader to achieve a purpose. Novice readers approaching a new type of text for the first time make use of several basic strategies, including underlining, making notes, highlighting, and questioning text. Experts in a field have developed more specialized reading strategies, allowing them to read more analytically and efficiently. For example, a practicing attorney or "legal expert" may synthesize text, hypothesize, and connect with prior knowledge or experience. Here, we will discuss what reading strategies can help law students comprehend legal text most

efficiently and accurately. ^①

2. The Structure of a Judicial Opinion

Judicial opinions (also known as legal opinions or legal decisions) are written decisions authored by judges explaining what the case is about, how they resolved the particular legal dispute and an explanation of their reasoning. Modern judicial opinions reflect hundreds of years of history and practice. They usually follow a simple and predictable formula. This section talks through the basic formula. Generally speaking, it starts with the introductory materials at the top of an opinion and then moves on to the body of the opinion. ^② The headings used for these sections are: 1) Headnote, 2) Caption, 3) Citation, 4) Author of Opinion, 5) Facts, 6) Issues, 7) Procedural History, 8) Legal Reasoning/Law of Case, 9) Holding/Decision, 10) Concurrence/Dissent.

1) Headnote

Headnote is the summary of the key legal points determined by an appeals court, which appears just above each decision in the published reports of cases. Headnotes are useful for a quick scan of the judgment, but they are the editor's remarks and not the court's. Each jurisdiction usually determines whether headnotes are part of the law or only an editorial device to facilitate research. Most headnotes are included by private publishers and do not constitute a part of an opinion. The most notable publisher that employs headnotes is the West Group in the National Reporter System, which publishes cases from practically every jurisdiction. The Reporter of Decisions for the United States Supreme Court also prepares a syllabus for Supreme Court decisions, when feasible, at the time an opinion is issued. The syllabus summarizes the points of law addressed in each case, but does not constitute part of the opinion and does not constitute binding authority. ^③

2) Caption

The caption is the title of the case, which tells you who was involved in the case and reflects the last names of the two sides to the dispute. These two sides are often referred to as the "parties" or as the "litigants" in the case. Usually, the first name identifies who is bringing the court action and the second name is the person against whom action is being brought. For example, if Ms. Smith sues Mr. Jones, the case caption may be *Smith v. Jones*. In a criminal case, the government brings the case, and the government itself is listed as a party. For example, if the federal government charges John Doe with a crime, the case caption will be

^① Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, P1—2

^② Orrin S. Kerr, *How to Read a Legal Opinion, A Guide for New Law Students*, Washington, DC: Version 2.0 (August 2005).

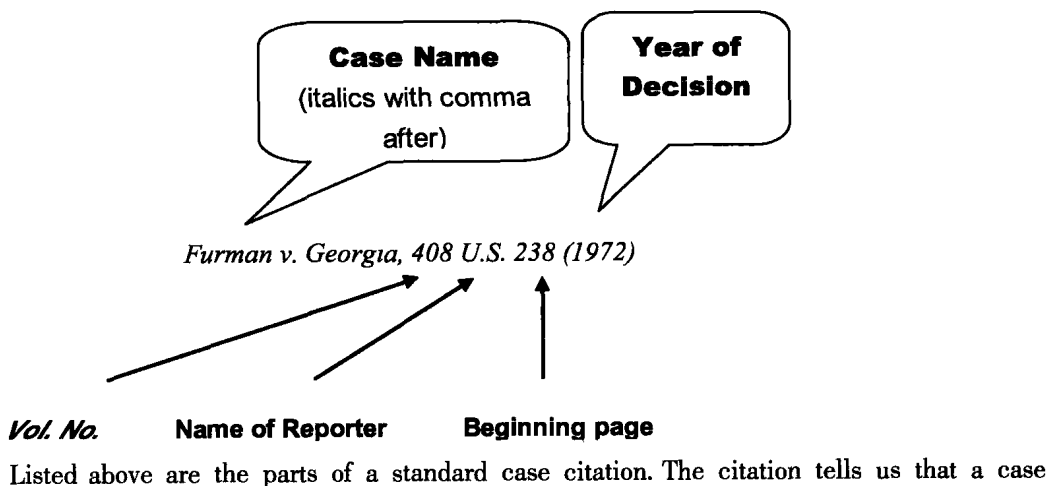
^③ <http://legal-dictionary.thefreedictionary.com/Headnote>

United States v. Doe. If a state brings the charges instead, the caption will be *State v. Doe*, *People v. Doe*, or *Commonwealth v. Doe*, depending on the practices of that state. ①

3) Citation

A legal citation is a reference to legal authorities and precedents such as statutes, cases, regulations and law review articles. Citations are used for arguments in courts, legal textbooks, law review articles and the like to establish or fortify the propositions argued. Citations to legal materials follow a standard format which makes it possible for anyone using a law library to find cited cases, statutes, regulations, and law review articles. Most legal citations consist of three basic parts: 1. The name of the case, statute, or article. 2. A statement of where the item can be found in a multi-volume set of legal materials written as: volume number, name of publication (or set), page number. 3. The date. ②

A case citation provides the following pieces of information: the name of the actual case; the physical volumes where the case can be found; the court that decided the case and the year the case was decided. Using the citation to the case *Regents of Furman v. Georgia*, 408 U. S. 238 (1972), let us decode the information provided. *Furman v. Georgia* is the name of the case. When a lawsuit is originally filed, the case name appears as *plaintiff v. defendant*. When the case is appealed, the case name usually appears as *appellant v. appellee*. It should always be underlined or written in italics. 408 U. S. 238 is the citing of where the case can be found: in volume 408 of the United States Reports, beginning at page 238. Reporters are sets of volumes containing judicial opinions of a case. The year 1972 in the parentheses tells you the year the court decided the case. This is the year in which the decision was delivered by the court and may not be the year in which the case was heard. ③



① Orin S. Kerr, *How to Read a Legal Opinion, A Guide for New Law Students*, Published by The Green Bag, Inc.

② *Legal Research Guide*, Boston College Law Library

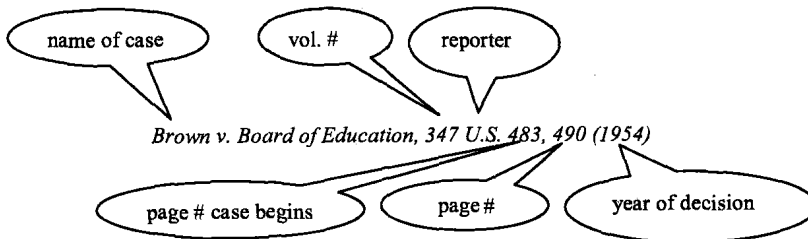
③ How to read a case citation. Lexis/Nexis

called *Furman versus Georgia* was decided in 1972 and can be found in Volume 408 of the United States Reports, starting on page 238.

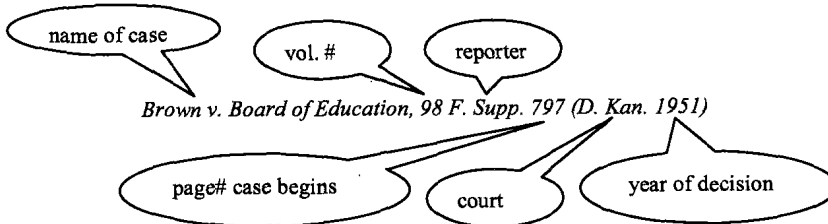
Samples (Boston College Law Library)

Cases

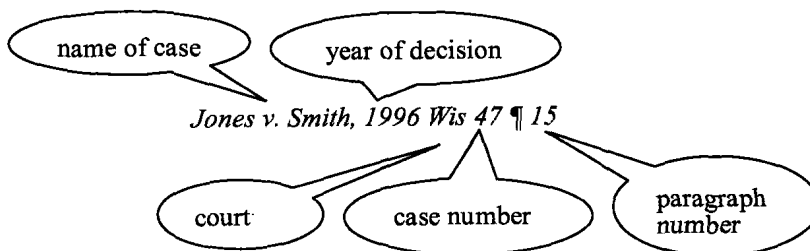
United State Supreme Court



Lower Federal Court

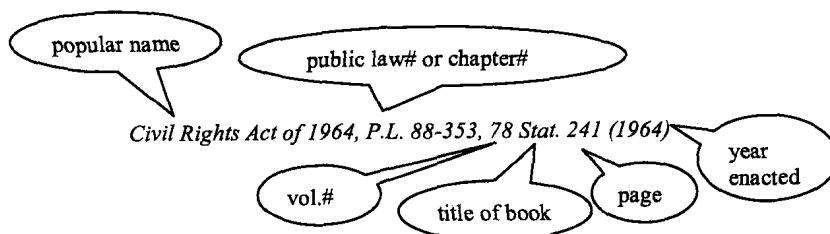


" Universal" or " Vendor—Neutral" Case Citation as adopted by the Wisconsin State Bar

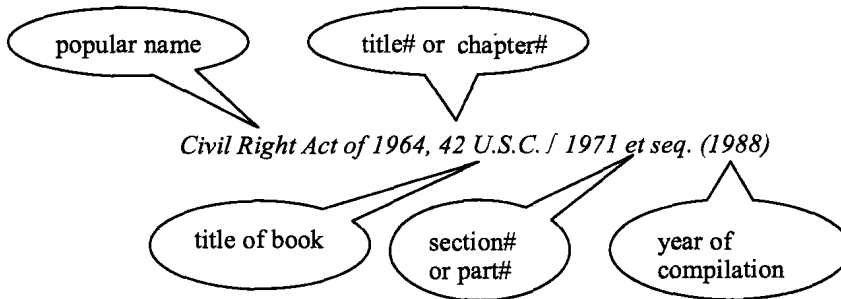


Statutes

Session Law

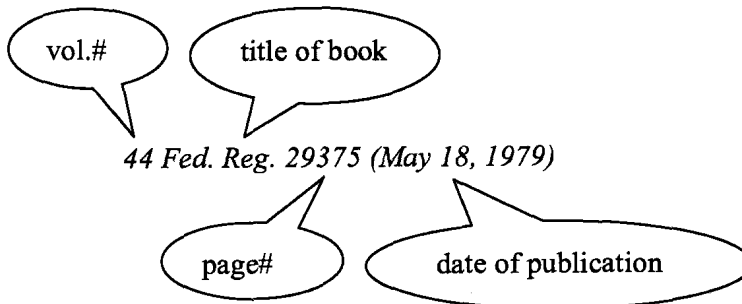


Code

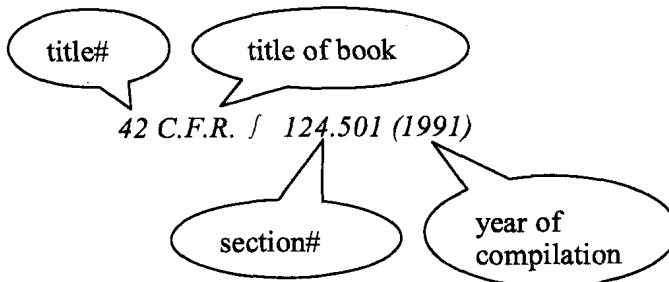


Regulations

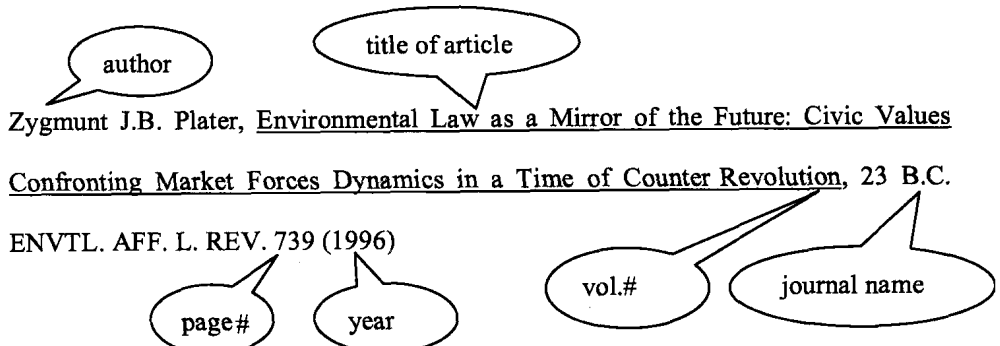
As Promulgated



As Codified



Law Review Articles



Some variations:

When using a direct quote from the case, it is important to provide the specific page on which that quote is found. In that case, the citation would have the page added as follows:

Furman v. Georgia, 408 U. S. 238, 240 (1972)

or

Furman v. Georgia, 408 U. S. at 240 (1972)

Because federal appeals courts (circuit courts) are found in one of twelve different districts, the specific district is typically added as follows:

Cooper v. Pate, 382 F. 2d 443 (7th Cir. 1967)

Ninety—four federal district courts are spread throughout the country (there is at least one in every state and the more populated states have as many as four). The specific district should be identified:

Howard v. United States, 864 F. Supp. 1019 (D. Colo. 1994)

A "reporter" is a multi—volume publication where court decisions are found. The full name and abbreviations for the reporters you are most likely to encounter are:^①

A. & A. 2d

Atlantic Reporter (1st & 2nd Series) (1885—present)

A. L. R. , A. L. R. 2d, 3d, 4th, 5th, 6th, A. L. R. Fed. , A. L. R. Fed. 2d

American Law Reports (case annotations)

Am. Jur. 2d

American Jurisprudence, 2nd Edition

Cal. Rptr. , Cal. Rptr. 2d, Cal. Rptr. 3d

California Reporter (1st, 2nd, & 3rd Series) (1959—present)

C. J. S.

Corpus Juris Secundum

C. F. R.

Code of Federal Regulations

F. R. , Fed. Reg.

① *Reading Case Citations*, http://www.cjed.com/Read_Citation.pdf