

Court of Record

COMMENTARY

This writer concludes, from the definitions below, that a court of record is a court which must meet the following criteria:

1. generally has a seal
2. power to fine or imprison for contempt
3. keeps a record of the proceedings
4. proceeding according to the common law (not statutes or codes)
5. the tribunal is independent of the magistrate (judge)

Note that a judge is a magistrate and is not the tribunal. The tribunal is either the sovereign himself, or a fully empowered jury (not paid by the government)

Black's Law Dictionary, 4th Ed., 425, 426

COURT. ...

INTERNATIONAL LAW

The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be.

CLASSIFICATION

Courts may be classified and divided according to several methods, the following being the more usual:

COURTS OF RECORD and COURTS NOT OF RECORD. The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

A "court of record" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial. Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

....

See [7 Cal Jur 571](#) for more info
about courts of record

7 California Jurisprudence, Bancroft Whitney (1922), Page 580-581
Courts of Record.--Courts are divided generally into courts of
record and those that are not of record. A court of record is a
judicial tribunal having attributes and exercising functions
independently of the person designated generally to hold it, and
proceeding according to the course of the common law.⁴ In a court
of record the acts and judicial proceedings are enrolled, whereas,
in courts not of record, the proceedings are not enrolled. The
privilege of having these enrolled memorials constitutes the great
leading distinction between courts of record and courts not of
record.⁵

4. Ex parte Thistleton, 52 Cal. 220. As to what are "courts of
common-law jurisdiction" within the meaning of the federal
naturalization act, see Alienage and Citizenship, Vol. 1, p. 911.

5. Hahn v. Kelly, 34 Cal. 391, 94 Am. Dec. 742, per Sawyer, J.,
concurring. See infra, §§ 26-28, as to records.

Under the constitutional revision of 1863, the district, county
and probate courts were also courts of record. Caulfield v.
Stevens, 28 Cal. 118.

Webster's New Practical Dictionary, 386 (1953)
G. & C. Merriam Co., Springfield, Mass.

MAGISTRATE

A person holding official power in a government; as: a The
official of highest rank in a government (chief, or first,
magistrate). b An official of a class having summary, often
criminal, jurisdiction.

Merriam-Webster On-Line Dictionary

MAGISTRATE

an official entrusted with administration of the laws

Black's Law Dictionary, 4th Ed., 1103

MAGISTRATE

Person clothed with power as a public civil officer. State
ex rel. Miller v. McLeod, 142 Fla. 254, 194 So. 628, 630.

A public officer belonging to the civil organization of the
state, and invested with powers and functions which may be either

judicial, legislative, or executive. But the term is commonly used in a narrower sense, designating, in England, a person intrusted with the commission of the peace, and, in America, one of the class of inferior judicial officers, such as justices of the peace and police justices. *Martin v. State*, 32 Ark. 124; *Ex parte White*, 15 Nev. 146, 37 Am.Rep. 466; *State v. Allen*, 83 Fla. 655, 92 So. 155, 156; *Merritt v. Merritt*, 193 Iowa 899, 188 N.W. 32, 34.

.....

The word "magistrate" does not necessarily imply an officer exercising any judicial functions, and might very well be held to embrace notaries and commissioners of deeds. *Schultz v. Merchants' Ins. Co.*, 57 Mo. 336.

California Penal Code

7. Words and phrases....The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:....

9. The word "magistrate" signifies any one of the officers mentioned in Section 808.

807. Magistrate defined. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. (Enacted 1872.)

808. Persons designated as magistrates The following persons are magistrates:

1. The judges of the Supreme Court
2. The judges of the courts of appeal.
3. The judges of the superior courts.
4. The judges of the municipal courts.
5. The judges of the justice courts.

Black's Law Dictionary, 4th Ed., 1602, 1603

SUIT

Old English Law

The witnesses or followers of the plaintiff. 3 Bl. Comm. 295. See *Secta*.

Modern Law

A generic term, of comprehensive signification, and applies to any proceeding by one person or persons against another or others in a court of justice in which the plaintiff pursues, in such court, the remedy which the law affords him for the redress

of an injury or the enforcement of a right, whether at law or in equity. See Kohl v. U.S., 91 U.S. 375, 23 L.Ed. 449; Weston v. Charleston, 2 Pet. 464, 7 L.Ed. 481; Syracuse Plaster Co. v. Agostini Bros. Bldg. Corporation, 169 Misc. 564 7 N.Y.S.2d 897.

Black's Law Dictionary, 4th Ed., 1677

TRIBUNAL

The seat of a judge; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise. See Foster v. Worcester, 16 Pick. (Mass.) 81.

Webster's New Practical Dictionary, 707 (1953)
G. & C. Merriam Co., Springfield, Mass.

TRIBUNE

1. In ancient Rome, a magistrate whose special function was to protect the interests of plebeian citizens from the patricians.
2. Any defender of the people.

Merriam-Webster On-Line Dictionary

COURT

1. the residence of a sovereign or similar dignitary
2: a sovereign and his officials and advisers as a governing power
3: an assembly of the retinue of a sovereign
4: an open space enclosed by a building or buildings
5: a space walled or marked off for playing a game (as tennis or basketball)
6: the place where justice is administered; also: a judicial body or a meeting of a judicial body

A "*minute order*" issued by a judge is not part of the record.

RECORD

The proceedings of the courts of common law are records. But every minute made by a clerk of a court for his own future guidance in making up his record is not a record. 4 Wash. C.C. 698. See 10 Penn. St. 157; 2 Pick. Mass. 448; 4 N. II. 450; 6 id. 567; 5 Ohio St. 545; 3 Wend. N.Y. 267; 2 Vt. 573; 6 id. 580; 5 Day, Conn. 363; 3 T. B. Monr. Ky. 63.

"The **Common-Law Record** consists of the **Process**, the **Pleadings**, the **Verdict** and the **Judgment**.

After Judgment, such Errors were **Reviewable by Writ of Error**. Errors which occurred at the Trial were not part of the Common-Law Record, and could be Reviewed by a Motion for a New Trial, after Verdict and before Judgment; by Statute, such Errors could be Reviewed after judgment by incorporating them into the Record by means of a Bill of Exceptions. It was therefore essential to keep clearly in mind the distinction between Matter of Record and Matter of Exception.

"UNDER the ancient practice, the Proceedings in a litigated case were Entered upon the Parchment Roll, and when this was completed, the end product became known as the Common-Law Record. It consisted of Four Parts, the Process, which included the Original Writ and the Return of the Sheriff, by which the Court acquired Jurisdiction over the defendant; the Pleadings, presented by the Parties in the prescribed order to develop an Issue of Law or of Fact, and which included the Declaration and all subsequent Pleadings, together with the Demurrers, if any; the Verdict; and the Judgment. These Four Elements formed the Common-Law Record, but it should be observed that at the point where the Retrospective Motions come into play, the Record has not been developed beyond the Stage of Entering the Verdict upon the Roll. At this point it should also be recalled that between the time when the Pleadings Terminated in an Issue, which Joinder in Issue was duly Recorded on the Parchment Roll, and the time when an Entry of the Verdict was made, nothing was Recorded on the Parchment Roll. The reason for this was that between the Joinder of Issue and the Rendition of the Verdict, the Trial takes place, and what occurs during this Trial does not Appear upon the Face of the Common-Law Record. Thus, Offers and Rejection of Evidence, the Court's Instruction of the Jury, or its Refusal to Instruct as requested by Counsel, or any Misconduct Connected with the Trial, such as Prejudicial Remarks on the Part of the Court, and the like—that is—any Error that occurs at the Trial—cannot be corrected by resort to the Common-Law Record because not Apparent Upon its Face. Such Errors were preserved only in the notes made by the Presiding Judge, or in his memory, and were reviewable, after Verdict and before Final Judgment, by a Motion for New Trial made before the Court En Banc at Westminster, within four days after the Commencement of the Next Term following the Rendition of the Verdict. As each of the Judges of the Court had Motions of a similar character coming up for decision from the Trials over which they had presided, the natural inclination of each Judge was to support the Rulings of his brother Jurists, and thus Overrule the Motion for a New Trial. Furthermore, Errors that occurred at the Trial were not Reviewable after Judgment on Writ of Error, because Not Apparent on any one of the Four Parts of the Common-Law Record. To remedy this Defect, Parliament enacted Chapter 31 of the Statute of Westminster II in 1285,⁶ which provided for Review of such Errors through the use of what came to be known as a Bill of Exceptions.

"Thus, it appears that in four out of five Retrospective Motions, the Court is permitted to consider only Defects Apparent Upon the Face of Part of the Common-Law Record—the Process, the Pleadings, and the Verdict—and Errors Occurring at the Trial were regarded as extraneous and not to be considered in rendering Judgment upon the Motions. Matters extraneous to or outside of the Record could be tested after Verdict and before Judgment only by a Motion for a New Trial. A distinction is made between Matter of Record and Matter of Exception, Matter of Record referring to those Errors Apparent upon the Face of the Common-Law Record and hence Reviewable after Final Judgment upon a Writ of Error, and Matter of Exception referring to those Errors which Occurred at the Trial, and were Not Apparent on the Face of the Common-Law Record, hence Reviewable after Final Judgment only by incorporating such Errors into the Record by means of a Bill of Exceptions, as authorized by Chapter 31 of the Statute of Westminster II in 1285."

Koffler: Common Law Pleading 567-568

Proceedings in courts of chancery are said not to be, strictly speaking, records; but they are so considered. *Gresley*, Ev. 101. And see 8 Mart. La. N. S. 303; 1 Rawle, Penn. 381; 8 Yorg. Tenn. 142; 1

Pet. C. C. 352.
Bouvier's Law Dictionary, 14th Ed. (1870)

MINUTE

In practice. A memorandum of what takes place in court, made by authority of the court. From these minutes the record is afterwards made up.

Toulier says they are so called because the writing in which they were originally was small; that the word is derived from the Latin *minuta (scriptura)*, in opposition to copies which were delivered to the parties, and which were always written in a larger hand. 8 Toullier, n. 413.

Minutes are not considered as any part of the record. 1 Ohio, 268. See 23 Pick. Mass. 184.
Bouvier's Law Dictionary, 14th Ed. (1870)

MINUTE BOOK

A book kept by the clerk or prothonotary of a court, in which minutes of its proceedings are entered.
Bouvier's Law Dictionary, 14th Ed. (1870)