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Understanding California West and Deerings Code Annotations

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Introduction. This backgrounder is intended to help legal researchers wade through the California *West* and *Deerings* annotated codes which appear in both hard copy and on the Westlaw and Lexis databases. I decided to put something like this together after 23-plus years of living and breathing in the field of legislative history/intent research and running into more than my fair share of *!!#+&%#@!* moments.

The benefits of having the upper hand in this area include:

- **Eliminating unpleasant surprises.** What you don't know *can* hurt you. My aim is to help you be more affective at what you do.
- **Functioning like a statutory expert when the need arises.** The most common reason why researchers analyze the statutory annotations and scratch their heads is to identify when specific language of interest first entered a statute. This enables you to dig deeper for pointed legislative history research purposes. Finding out how a statute has evolved over time is another reason why the annotations are helpful. There are other uses for these wild and crazy annotations covered in this backgrounder – all of which can help you function at a higher level.

Eight categories of annotations are addressed:

1. The citations immediately following the code section (*page 2*)
2. California Law Revisions Commission comments (*page 2*)
3. "Former" section notes (*page 3*)
4. Amendment descriptions (*page 3*)
5. Letters of intent published in the Legislative Journals (*page 4*)
6. Uncodified general law excerpts from the chaptered law regarding intent (*page 4*)
7. Prior law notes (*page 5*)
8. Recodification tables and other peculiarities (a work in progress) (*page 6*)

A ridiculous, imaginary code section and accompanying annotations are employed to help you stay awake while you learn more than you ever thought you needed to know about California code annotations.

Lastly, I prepared a referenced companion piece to this backgrounder as a “must” tool: *“Helpful Tips Regarding California Statutes: I. Statutes & Amendments to The Codes, Online 1850 – Current, II. Effective, Operative & Retroactive Dates.”*

Imaginary California Insurance Code § 666

(a) It shall be unlawful for an insurance broker licensed under this chapter to do this, that or the other thing with respect to a contract of insurance.

(b) A civil penalty of \$5000 shall attach to every violation of this section, unless the broker is a Los Angeles Laker’s fan, in which case the penalty shall be \$10,000.

(c) Everybody and their grandmothers have standing to sue under this section.

(d) This section shall only apply to insurance brokers who refuse to eat their broccoli.

Comments: Legislative history annotations typically follow the text of the section in the order of appearance shown below. Of course, not all code sections are accompanied by every category of annotation illustrated here. (*Disclaimer:* All of the following annotations are purely fictional and are not intended to be exhaustively illustrative of every possible annotation.)

#1. [Citations immediately following the code section.] Added Stats 1973 ch 323 § 1 p 400, operative June 1, 1974. Amended Stats. 1978 ch 1072 §2 p 762, Stats. 1990 ch 440 § 1 SB 2109, Stats 1995 ch 1000 § 344.

Comments: Such citations are provided for every code section and refer to the *Statutes and Amendments to the Codes* (see my separate handout regarding free, internet access to this collection from 1850 to current).

The annotated codes have traditionally described all the amendments to the initial act (although this is becoming a rarity, see item #4 below – talk about *!!#+&%#@!* moments). (The prior law citations are provided separately (see item #7 below) and are not accompanied by descriptions.)

If you are working with hard bound codes: (1) Remember to check the annual pocket supplements. (2) Also, it can be useful to work with both versions of the statute reprinted in the main volume and in the pocket and their respective annotations. (E.g., sometimes the pockets do not carry over all the citations from the main volume.)

Both *Deering’s* and *West’s* tend to report the identical citations for this category, although occasionally, one or both will miss cites. *Overall, it is always best to work with both sets of codes to minimize errors.*

Lastly, designated “operative” vs. “effective” dates can be crazy making. See my separate handout on this topic.

#2. California Law Revision Commission Comment, 1990 amendment. We just think these are good changes to make because of the recent holdings in *Me v. You* and *Them v. Us*. 16 *Cal.Law Rev’n Comm’n* 1003.

Alternative: Legislative Committee Comment, 1990 amendment. We had to amend the Law Revision Commission’s proposal because they forgot to take into account the mildly interesting holding in *Everybody vs The Universe*.

Comments: Until the mid-1980's, a legislative committee, upon approving a bill implementing a Commission recommendation, would adopt the Commission's recommendation as indicative of the committee's intent in approving the bill. If a Comment required revision because the Legislature amended the Commission's recommendation, the revised Comment would be adopted as a "Legislative Committee Comment." The committee's report would be printed in the journal of the relevant house.

The Legislature has discontinued the former practice largely to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments.

Bill reports are published as appendices to the Commission's annual reports. Most often the Commission comments will cite to the appropriate volume of the Commission's published reports. Rarely will there be a citation to the appropriate journal where you can find the Legislative Committee Comment. Both *Deering's* and *West's* tend to report the identical content for this category. Commission materials and a description of their use are available on their website at <http://www.clrc.ca.gov/>.

The upshot here is that this category can yield valuable evidence of legislative intent without having to schlep to the library or State Archives.

#3. Former Section: Former § 666, added by Stats 1955 ch 345 § 75 and repealed by Stats 1960 ch 888 § 17 prohibited minors from chewing gum on Sunday after 6 pm.

Alternative Former Section Note: Former § 666, *similar to this section*, was added by Stats 1955 ch 345 § 75 and repealed by Stats 1969 ch 888 § 17.

Comments: The editors of the annotated codes keep track of what has happened to most of the code section numbers over time, even when they are not being used. (This is a very handy thing to know about when you are trying to reconstruct what a prior law looked like before its repeal. Be aware that massive recodification tables are supplied by *West's* and *Deerings* in volume 1 of the relevant code book, e.g. Elections, Education, etc.)

Sometimes the former sections are part of the prior law of the statute you are interested in, and sometimes they are not. But most of the time (not always) the terms "Former Section" designate language that is *unrelated* to the current code section. Obviously, if they are similar, you need to review them. In our example, the only thing the former section has in common with our imaginary code section is irrelevant absurdity.

Bottom line – it is important to distinguish between former sections that are unrelated to the current language and the actual derivation of the current language to avoid wasting big chunks of time chasing down chaptered laws that are not on point.

#4. Amendments (Deering's format)

1978 Amendment: Added subd (b).

1990 Amendment: **(1)** Added subdivs (b) and (e); **(2)** redesignated former subd (b) as subd (c).

1995 Amendment: Code maintenance.

Comments: This information can be quite useful for identifying when your terms of interest first appeared. Regarding the 1995 description, the office of Legislative Counsel introduces an annual housekeeping bill that provides non substantive clean-ups to the codes. *This means that any attempt to interpret the change as being substantive can be defeated.*

Problems to watch out for:

(1) Unfortunately, amendment descriptions are not always provided and are becoming a rarity, especially in *West's*. This will require you to locate the cited chaptered laws in the *Statutes and Amendments to the Codes* to determine when your terms of interest first appeared (see my separate handout on how to find and use this collection online). The *Deering's* or *West's Legislative Service* can substitute here as well.

(2) The descriptions rarely tell you what the original chaptered law read like, but you can find them in the *Statutes and Amendments to the Codes*.

(3) The descriptions can be confusing, especially when there have been numerous reletterings. If you were looking for the act that added subdivision (c) in the above illustration, you could easily follow the relettering notes to conclude that it was added in 1978 as former subdivision (b). But frequent, subsequent reletterings can leave you wondering "who's on first and who's on second ...?"

(4) The descriptions can also be overly cryptic or just plain incomplete.

The upshot here is – when in doubt, go to the cited *Statutes and Amendments to the Codes* for the actual chaptered law to see whahzup (see my companion hand-out for how-to). Don't rely on fuzzy, unclear descriptions.

#5. Letters of intent published in the Legislative Journals. "I introduced this bill because my cousin, Billy, wanted to sue his insurance broker for some reason or another." Statement by Senator BoopDeBoop (citation to Senate Journal provided, date and page.)

Comments: These are freebie legislative history/intent items. But – you'll need to be up to speed on whether you can get the court to accept such statements. You can call me for more information here.

#6. Uncodified general law excerpts from the chaptered law regarding intent. Sec. 2 of the 1973 act states: This act is declaratory of existing law.

Comments: Such statements are the law, but are not assigned a code book and section number. Neither are they reprinted in most unannotated desk reference code books.

Caution advised. The meaning of the statement "this act is declaratory of existing law" is "this act is intended to be retroactive since it doesn't make any substantive changes, and only clarifies existing law." (Whoa!) This topic is covered in my companion backgrounder.

#7. Prior law

Historical Derivation (Deering's format):

(a) Former Ins C § 665 Enacted 1935

(b) Former Pen C § 653e, enacted 1872, as amended by Stats 1919 Ex Sess ch 3 § 1 p 40, Stats 1923 ch 77

§ 3 p 1101

(c) Stats 1850 ch 186 § 2 p 332, as amended by Stats 1911 ch 347 § 7 p 578, Stats 1921 ch 782 §5

Comments: These critical annotations are buried in tiny font after all of the above. So always let your eyes drop and look for them. They are frequently overlooked and are fraught with challenges.

In our example, they tell us that before Insurance Code § 666 was added in 1973 (per category #1 above), it had a *prior life under other statutory designations*. This makes tracing the entry of statutory terms “interesting” to say the least. Let’s pretend that you want to know when subdivision (a) of our Imaginary Insurance Code § 666 first appeared. Now let’s pretend you found out that it existed in the original 1973 act because you saw it in the cited *Statutes and Amendments to the Codes* (per category #1 above). This means that *subdivision (a) might have originated in the prior law*, either as a different code section as shown in prior law annotation (a) and (b) above; or it might have entered before your particular code book was added, as a section of general law statutes as shown in prior law annotation (c) above.

The only way to find out when subdivision (a) was first added is to analyze the chaptered laws in the *Statutes and Amendments to the Codes* (again, see my handout on this publication series. However, with respect to category (b), please note that the 1872 Penal Code enactment is published separately and is not included in that online collection. However, LRI has a digital copy of this collection so you can call us for a copy of your excerpt.)

It helps to think of each category of prior law as separate branches of a family tree. Each branch has its own life and must be considered as a unit. While it is not unusual for branches to “hand off” to each other in chronological order via repeals and recodifications, sometimes parallel bodies of prior law coexisted at the same time as well. (Sorry.)

Overall, *West’s* and *Deering’s* citations can vary widely here. It is not unusual for one or both annotators to miss citations. Again, it is advisable to work with both code books whenever possible.

Part of the problem is that the code annotators rely primarily upon *simultaneous* repeals to inform their derivative/prior law history notes. (I.e., the act that adds a new code section usually repeals the former statute.). Unfortunately, the code annotators do not uniformly take into account the following two situations:

(1) Where language is cut and pasted from a code section that was not simultaneously repealed (i.e., the section still exists and terms were just moved out of it; B&P §17200 et seq is one of the hairiest examples here); and

(2) where a body of law is repealed and one or more legislative session passes before the law’s “heir” takes over (i.e., there’s a gap in time between enactments).

In both of these situations important prior law citations are lost and must be recovered by other means. (E.g., (1) sometimes the legislative history of the 2nd act will provide clues; (2) old case cites sometimes refer to the older repealed law; (3) subject searches in the *Statutory Record* publications of the Legislative Counsel and in the *Statutes and Amendments to the Codes* are quite useful; and (4) law review or treatise commentaries might have picked up the trail.)

Regarding prior law annotation (a) in our example, the *Deering’s* citation is incomplete. *West’s* would show it as Stats. 1935 c. 145, § 665. That is the act that added the state’s first Insurance Code. Note that the section of the act (665) corresponds to the actual former code section number (665) – this is a big clue that this is nonsubstantive Code Commission recodification of prior law into a new code book. However, although the Code Commission was not technically

authorized to propose substantive changes, sometimes it did. So you'll need to cover this base through legislative history research.

Regarding prior law annotation (c) in our example, the original § 2 of the 1850 act sets the critical agenda: All subsequent amendments refer to that section. Thus, § 7 of the 1911 act amended § 2 of the 1850 act, and so on.

#8. Recodification tables and other peculiarities (work in progress)

Comments:

Recodification tables. Sometimes the Legislature recodifies certain code books on a massive scale. When this happens, the code annotators publish recodification tables. They usually appear in volume 1 of the relevant code book, e.g. Elections, Education, etc. It would take a separate "tips" sheet to cover the messes involved here and this backgrounder is a work in progress. So – you can either be intuitive with it and/or call me for help.