

A BRIEF CHAT BETWEEN
NITTY GRITTY LAW LIBRARY
AND CHAT GPT-5
August 18, 2025

NGLL: What is a court of record in America?

CHAT GPT-5:

In the United States, a **court of record** refers to a court where the proceedings and judgments are officially documented, and these records are preserved for future reference. The primary distinction between a court of record and other courts is that in a court of record, the following key elements are present:

1. Official Transcript:

The court proceedings, including testimonies, motions, and decisions, are transcribed and recorded. These records become part of the legal history and can be referenced in future cases or appeals.

2. Authority to Issue Binding Judgments:

Courts of record typically have the power to issue binding decisions that can be appealed to higher courts. The decisions made in these courts are usually more significant and have broader implications because of the official records.

3. Independence:

Courts of record usually have a level of judicial independence. The decisions they make cannot be overturned except by a higher court, typically through an appeal.

4. Formal Procedures:

These courts follow established and standardized rules and procedures. The importance of maintaining an accurate record ensures fairness and transparency in the judicial process.

Types of Courts in America That Are Courts of Record:

- **Superior Courts:** In most states, the **Superior Court** (or District Court in some states) is a court of record.
- **Appellate Courts:** Courts that hear appeals are also courts of record.
- **Federal Courts:** All federal courts, including District Courts, Circuit Courts of Appeal, and the U.S. Supreme Court, are courts of record.

Courts of Record vs. Courts Not of Record:

Some smaller courts, like **small claims courts** or certain **municipal courts**, may not be considered courts of record because their proceedings aren't always officially transcribed, and their decisions are not as easily appealed or referenced.

In essence, a **court of record** ensures that a complete and accurate record of all its proceedings is maintained, making its decisions more transparent and subject to review by higher courts.

NGLL:

Here is the exact definition of a court of record in the USA from Black's Law Dictionary, edition 4:

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.

Practical Implications:

In practice, courts of record include:

- **State Superior or District Courts**
- **Federal Courts**
- **Appellate Courts**
- **Supreme Courts**

Courts that are *not* of record typically include:

- **Small Claims Courts**
- **Some Municipal Courts**
- **Certain Administrative Tribunals**

This distinction is vital for understanding how cases are handled, how rulings can be appealed, and the level of authority a particular court holds. Courts of record are central to the structure of the judicial system, and their decisions can have broader legal implications.

[illegible]

NGLL:

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. H. 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. *Toullier* 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 vs. Record:** Minutes are not part of the formal court record. They're often brief summaries and not intended to capture all the details of a case. Once the court proceedings are transcribed and formalized, the **minutes** help create the full, official record.
- **Minute Book:** This is a **logbook** kept by the court clerk, which records these minute entries. It is a tool to record the proceedings in shorthand before the final record is prepared.

Key Points on Minutes:

- **Not Part of the Record:** While minutes serve as a temporary record, they do not constitute the official record of the court's proceedings. For something to be part of the record, it must meet certain formal criteria.
- **Historical Context:** The term "minute" comes from the Latin *minuta* (meaning "small"), referring to the fact that these initial notes were once written in a smaller hand than official copies of documents.

3. Court of Record & Common-Law System:

The text you've provided reinforces the idea that a **court of record** is where formal judicial actions are documented in detail for future reference. In a **common law** system, it's important to distinguish between:

- **The record**, which is the official documentation and can be used in appellate review, and
- **The minutes**, which are merely preparatory notes and not legally binding.

This historical structure of the **common law record** is significant because it defines how courts handle errors, appeals, and formal documentation. In modern courts, these distinctions still carry weight, though the specific legal procedures (e.g., motions, appeals) have evolved.

Summary:

- **Record:** In common law, this is the official documentation of a case's process, pleadings, verdict, and judgment.
- **Minute:** A shorthand summary or note of proceedings, not part of the official record, but used to create it.
- **Matter of Record vs. Matter of Exception:** Distinguishing between errors visible on the face of the official record and errors occurring during trial, which must be handled differently.

This detailed distinction between records and minutes helps clarify the hierarchy of judicial documents and how they are treated within the legal system.

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NGLL:

It is also useful to understand exactly what is a court. According to Black's Law Dictionary, 4th Ed., 425, 426:

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

There are other subtle changes between the 4th and 5th editions of Black's Law Dictionary. The 4th edition is more oriented toward law. The 5th edition is more oriented toward policy.

CHAT GPT-5

Court - 4th Edition (Black's Law Dictionary)

Court - 5th Edition (Black's Law Dictionary)

Significance of the Shift:

1. Sovereign Power to Legal System:

- In the 4th edition, the **court** is deeply tied to the **sovereign's authority**, reflecting an earlier era when courts were often directly tied to the monarchy or sovereign rulers.
- The 5th edition's emphasis on "**suit**" marks a shift to viewing the court as part of the **modern legal system**, where disputes are resolved through legal processes rather than the will of a monarch or ruler.

2. Change from Royalty to Formal Legal Proceedings:

- The 4th edition's reference to a "**suite of the sovereign**" underscores the court as a physical entity, representing the monarch's presence and will.
- The 5th edition's change to "**suit**" reflects the growing prominence of **litigation** and **civil proceedings** as the focus of courts in modern legal systems. Courts are no longer just places where the sovereign rules but are now formal venues for resolving disputes between individuals, organizations, and governments.

3. Orientation Toward Policy:

- You noted that the **4th edition** is more oriented toward **law**, focusing on the structure and function of courts in a legal context. The **5th edition** shifts toward **policy**, suggesting an approach where courts are seen more in terms of their practical functions—**dispute resolution**—and their role in **policy decisions** and the broader **legal system**.
- This reflects a changing perception of courts as institutions that help **administer justice** in the context of **society's evolving rules**, rather than simply enforcing the will of the sovereign or monarch.

Other Subtle Changes Between the 4th and 5th Editions:

- **Focus on Policy:** As you pointed out, the 5th edition is more oriented toward policy, which may indicate a shift towards **proceduralism** and **pragmatism** in legal definitions. Courts in modern legal systems are seen not only as venues of justice but also as part of the broader **administration of policy**, influencing areas such as public administration, regulation, and governance.
- **Legal Terminology Evolution:** This subtle shift between the two editions also illustrates the evolution of legal terminology. Terms that once had a direct connection to monarchical power (like "sovereign" and "suite") are evolving to reflect more **democratic** and **systematic** views of legal institutions, focusing on **lawsuits** and **legal proceedings**.

Summary of the Shift in the Definition of Court:

- **4th Edition (Sovereign Focus):** A court was considered the person and suite of the sovereign, emphasizing the connection between the court and sovereign authority. It was seen as an institution where the monarch or ruler presides with their retinue.
- **5th Edition (Litigation Focus):** The definition changed to focus on "**suit**", emphasizing the court's role in legal proceedings and disputes. It reflects a more **modern legal system**,

where courts are viewed as institutions that resolve disputes through legal processes, not as places where sovereigns exercise absolute power.

This subtle shift in terminology signifies a broader evolution in how the role of the court is perceived—moving from royal prerogative to a modern legal system centered around **legal procedures** and **dispute resolution**.

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NGLL:

I would like to continue this conversation at a later date. When I log on later, can I continue this conversation? Do you have a way to make the connection?

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CHAT GPT-5:

I currently don't have the ability to remember past conversations once you log off. So, when you come back, we'd be starting fresh. However, if you'd like to continue the conversation later, you can always refer back to this conversation by saving or copying the key points, and we can pick up right where we left off.

If I did have memory on, I'd be able to recall what we discussed and continue seamlessly. But for now, you can always share any relevant details, and we'll dive back in from there!

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NGLL:

Thank you. Bye for now!

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CHAT GPT-5:

You're very welcome! Feel free to return anytime. Take care and see you later!