

Tree Law Workshop

Loyola Law School, Donovan Hall
Saturday, October 16, 2010

Handouts

Presented

by:

A stylized graphic of a suspension bridge with two tall towers and a curved span supported by vertical hangers. The bridge is rendered in a light gray color and is positioned behind the text.

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FINDING THE LAW: LEGAL RESEARCH

By Tammy Barcenilla

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Handout for Tree Law Workshop

October, 16, 2010

Introduction

- Primary sources of the Law

- Enacted Law
- Case Law (Federal and State court cases)
- Administrative materials

Federal	State	County & City
Constitution	Constitution	Charter
Statutes	Statutes	Ordinances
Regulations	Regulations	Regulations
Federal and State Court Case		

- Secondary sources of the law

- Encyclopedias
 - American Jurisprudence and California Jurisprudence
- Treatises (by area of law)
 - Witkin Summary of California Law
 - Miller & Starr California Real Estate
- Legal periodicals
 - Law reviews and journals
- A.L.R. Annotations
- Restatements
- Hornbooks & Nutshells (West Publishing Co.)
- Black's Law Dictionary

- Finding tools

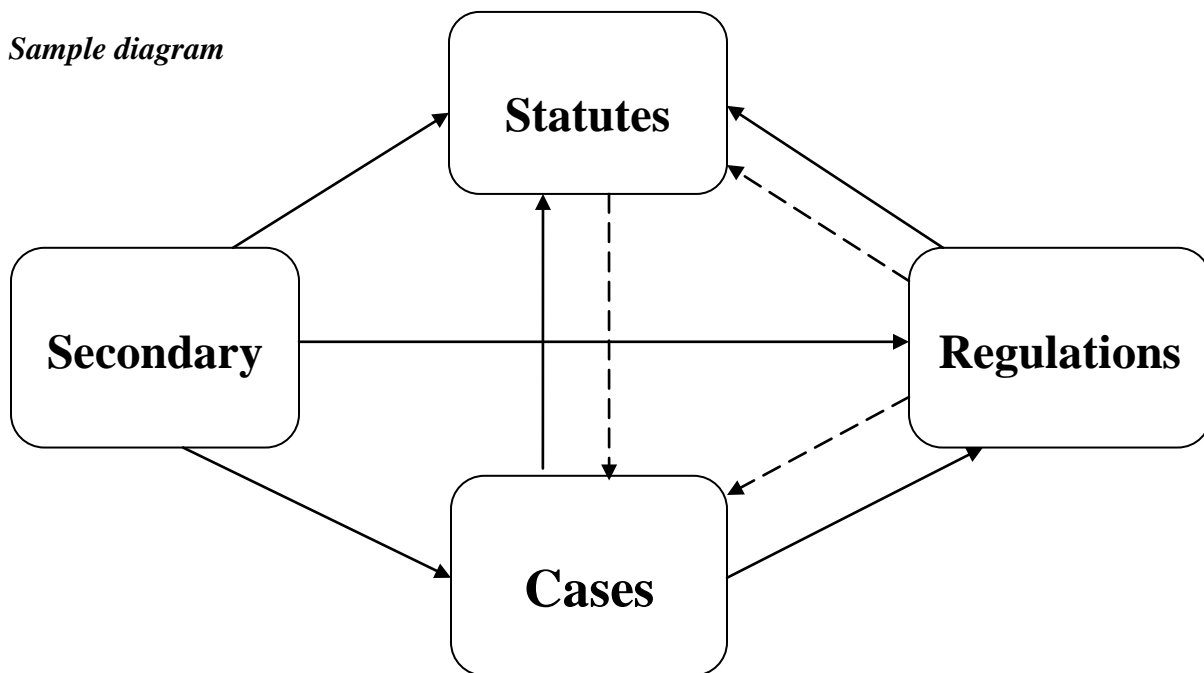
- Library catalog – L.A. Law Libraries with online catalogs:
 - **L.A. County Law Library**
301 W. First St., LA, CA 90012
<http://lalaw.lib.ca.us/>
 - Free trainings in legal research, etc. Free use of Westlaw, Lexis Nexis
 - **Loyola Law School Library**
919 Albany St., LA, CA 90015
<http://library.lls.edu>

- **U.S.C. Law School Library**
699 Exposition Blvd. LA, CA 90089
<http://lawweb.usc.edu/library/>
 - **U.C.L.A. Law School Library**
UCLA School of Law, 1112 Law Bldg., LA, CA 90095
<http://www.law.ucla.edu/home/index.asp?page=11>
 - **Southwestern Law School Library**
3050shire Blvd., LA, CA 90010
<http://www.swlaw.edu/library>
 - **Pepperdine University School of Law Library**
24255 Pacific Coast Hwy, Malibu, CA 90263
<http://law.pepperdine.edu/library/>
 - **Whittier Law School Library**
3333 Harbor Blvd., Costa Mesa, CA 92626
<http://www.law.whittier.edu/library/LibraryFacility.asp>
- Internet search engines
- Westlaw
 - Subscribe
 - Can retrieve documents at <http://creditcard.westlaw.com> (but can't search)
 - LexisNexis
 - Subscribe
 - Pay as you go options available at <http://www.lexisone.com>
 - Findlaw.com
 - FREE
 - Click on “legal professionals click here”
 - Click on “cases and codes”
 - May need to register (no charge)
- Other online resources
You can find A LOT just by searching your subject or area of law in Google.
Federal and state agencies maintain websites with information about the law and the agency.
- Federal
 - U.S. Government Printing Office
<http://www.gpoaccess.gov/>
 - Laws and Regulations
http://www.usa.gov/Topics/Reference_Shelf/Laws.shtml
 - California
 - Local Government
<http://www.ca.gov/About/Government/Local/index.html>
 - Legislative Information
www.leginfo.ca.gov

Beginning Your Research

- Generate research terms
 - o Consider who, what, when and where?
 - Location and timing of the occurrence of your situation will be very important.
 - o If you already know something about a particular area of law, start there (refer to the diagram below).

Sample diagram



- List and rank your potential authorities
 - o Binding authority should be your main focus, but primary authority outside of your jurisdiction can be used as persuasive authority.

Time to Quit Researching

- Consider quitting when you are seeing the same authorities cited and the same legal rules stated over and over again. At the point of diminishing returns stop researching, check through your research notes and allow yourself time for analysis.

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Public Trees – Outline


- Street Trees
- Timber Operations
- Forest Service Trees



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Street Trees – Outline


- Background
- What are Street Trees?
- Who Owns Them?
- Public & Private Rights in Street Trees
- Issues
 - Interference with Free Passage
 - Interference with Utility Lines
 - Tree Cracking the Sidewalk
 - Liability for Negligent Maintenance
 - Private Party Damages Tree
 - Local Government Threatens to Remove Trees



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Background: Local Government


- State Government – State Constitution
 - State enacts statutes governing trees and the streets
- Counties
 - Divisions of the state
 - No constitutions
 - Counties may enact ordinances governing trees and the streets
- Cities
 - Municipal corporations, also divisions of the state
 - Can have charters – constitutions for the city
 - Cities without charters are general-law cities
 - Cities may enact ordinances governing trees and the streets



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Background: Right of Way

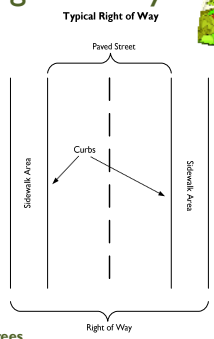
- Parts of the Right of Way
- Who Owns What?
- A street tree is a tree in the right-of-way.
- Control of street or highway:
 - State, for state highways
 - County, outside of cities and towns
 - Municipality, within “incorporated areas”



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Typical Right of Way

Paved Street
Curbs
Sidewalk Area
Private Lot




Ownership of Street Trees

- As a general rule, whoever owns the land owns the tree.
- It can be difficult to figure out who owns the street.
 - Need to research property deeds with title company or in County Recorder's office. (See sample property description on next slide.)
- Usually the abutting property owner owns the land under the street up to the centerline.
 - The state, county or city may have an easement or dedication.
 - The state, county or city may own the land outright ("fee simple")
- In most cases, for trees, it doesn't matter.

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Sample Metes and Bounds Description

Those portions of Lots 45, 46 and 47 of Tract 5776, in the city of Los Angeles, as per map recorded in Book 179, Pages 44 to 47 inclusive of Maps, in the office of the county recorder of said county, described as follows:

Beginning at the intersection of the Northerly line of the land described in the deed to the city of Los Angeles, recorded January 20, 1961 as Instrument No. 4557 in Book D1099 Page 556 of Official Records in said recorders office and the Westerly line of the land described in the deed to Joseph J. Ramos and Margaret Ramos, recorded January 11, 1968 as Instrument No. 166 in said recorders office; then Northerly along said Westerly line to that certain court described in the deed to Victor R. Jimenez and Eliza F. Jimenez, recorded July 17, 1964 as Instrument No. 556 in Book D2533 Page 348, Official Records in said recorders office as having a bearing and length of "North 82° 35' 30" West 118.89 feet," thence along the most Northerly Southerly line and most Westerly Easterly as follows:

North 82° 35' 30" West, North 57° 01' 00" West 41.51 feet, South 20° 58' 00" West 14.94 feet, South 54° 51' 00" West 41.18 feet, North 59° 36' 00" West 36.08 feet, Southwesterly along tangent curve concave to the South having a radius of 5 feet, through a central angle of 95° 30' 00", an arc distance of 8.33 feet, South 24° 54' 00" 32.84 feet, Southerly along a tangent curve concave Easterly having a radius of 130 feet through a central angle of 14° 37' 00", an arc distance of 33.16 feet and South 10° 17' 00" West to said Northerly line in the deed to the city of Los Angeles; thence Easterly along said Northerly line to the point of beginning.

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State or Local Government Rights in Street Trees

- Government may trim or remove street trees
 - Whether or not the government owns the land on which the trees are growing
 - When they obstruct free passage
 - When they interfere with safety in the thoroughfare
- Abutting property owner has rights in street trees
 - Even if he or she doesn't own the land
 - Local ordinances control whether abutting owner has the right to trim or remove trees – may require permits
 - Abutting owner may have right to sue for damages if third party damages trees unlawfully

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Who is Responsible for Maintaining Street Trees?

- This is generally determined by local ordinance
 - City of Los Angeles: Urban Forestry Division (city agency)
 - Each tree pruned every nine years
 - Abutting owners cannot prune or remove street trees without a permit.
 - Montebello: the city. Property owners are forbidden to maintain or remove trees.
 - Bakersfield: property owners
- Utility companies may trim trees to keep them from interfering with their lines
 - But they're liable for excessive pruning

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Tree Cracking the Sidewalk

- Who must keep trees from cracking sidewalk?
 - Under state law, abutting owners are responsible for maintaining sidewalks.
 - It's a good idea to report substantially cracked sidewalks to the local government.
- When is a property owner liable for damages to travelers resulting from tree-cracked sidewalks? Factors:
 - Did owner modify right of way to benefit property?
 - Did owner undertake to maintain tree?
 - Is there a local ordinance making her liable?
 - Do other owners in the area maintain their trees?
- If you get sued, your insurance may help.
- Liability for damage caused by negligent maintenance of tree is very similar.

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What Can You Do if a Private Party Damages Street Trees?

- If they're in front of your property, you can sue under Civil Procedure Code § 733, which provides for treble damages.
- If they're not in front of your property, you can contact your local government.
- If local government wants to remove street trees, you have very limited rights if they're not in front of your property. Try political action.

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Trees in Parks

- Civ. Proc. Code § 733 applies to trees “on the commons or public grounds of any city or town”
 - Treble damages
 - *The city must enforce – you can’t.*
- Public entities are not liable for injuries caused by a natural condition of any unimproved public property. Gov. Code § 831.2.



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Timber Operations

- California Forest Practice Act of 1973
- Permit required for “timber operations” – cutting or removing “timber or other solid wood forest products . . . from timberlands for commercial purposes”
- “Timberland” is land which is available for, and capable of, growing trees for commercial purposes.
- Permit also required for conversion of timberlands to other uses, including residential or commercial uses.



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Forest Service Trees - I

- Regulated by U.S. Forest Service, in Dept. of Agriculture
- 191 million acres, 156 national forests, 19 national grasslands, including 90 million acres of timberland
- Multiple-Use, Sustained-Yield Act (MUSYA) of 1960 sets policy that national forests be administered for 5 purposes:
 - Outdoor recreation
 - Range
 - Timber
 - Watershed
 - Wildlife and Fish



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Forest Service Trees - 2

- Forest and Rangeland Renewable Resources Planning Act of 1974
 - Requires USFS to assess its forest resources every 10 years and update long-range planning objectives every five years
- National Forest Management Act of 1976
 - Mandates land and resource management plans (LRMPs) for each forest entity.
 - Allows clearcutting only when it is the “optimal method.”
 - Subsequent management decisions, such as issuing permits and contracts for timber sales, must be consistent with the LRMP



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Outline

- Overview of environmental laws
- Relationship between federal and state environmental law
- NEPA & CEQA
- California Coastal Act
- Endangered Species Act



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Federal and State Environmental Laws

Federal

1965 1970 1975 1980 1985 1990 1995 2000 2005 2010

Air Pollution: Clean Air Act

Water Pollution: Clean Water Act

Oil Pollution: Oil Pollution Act

Waste Management: RCRA, HSWA, HWCA

Toxic Land Cleanup: CERCLA, SARA

Species Protection: ESA, CEQA

Environmental Review: NEPA, CEQA

Global Warming: Global Warming Solutions Act

California

Clean Air Act

Clean Water Act

Porter-Cologne Act

Oil Pollution Act

OSPRA

RCRA, HSWA, HWCA

CERCLA, SARA

HSAA


ESA


CEQA

NEPA

CEQA

Global Warming Solutions Act






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Relationship Between Federal & State Environmental Law

- Federal law
 - Applies to federal actions and projects
 - Limits on what federal government can order states to do
- State law
 - Applies to state and local actions and projects
- Models when there are federal and state environmental laws on the same subject
 - Separate laws in separate spheres (NEPA & CEQA)
 - Cooperative federalism (CWA, PCA)






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NEPA & CEQA

- National Environmental Policy Act (NEPA)
 - Federal - applies to U.S. government projects
 - Statute: 42 U.S.C. §§ 4321-4370f
 - Regulations: 40 C.F.R. §§ 1500.1-1518.4.
- California Environmental Quality Act (CEQA)
 - State
 - Applies to State and local projects
 - Statute: Public Resources Code §§ 21000-21177
 - Regulations (CEQA Guidelines): 14 C.C.R. §§ 15000-15387.





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NEPA & CEQA What They Do


- Require an Environmental Impact Statement/Report when a proposed action/project may have a significant effect on the environment.
- Purpose is to inform the decision makers of the environmental consequences of their decision.
- NEPA is purely procedural but CEQA requires decision makers to
 - Mitigate each significant environmental effect to the degree that is feasible
 - Adopt a statement of overriding considerations when the project's effects can't be completely mitigated.
- Procedural requirements under both laws are specific and complex.

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How NEPA and CEQA Can Protect Trees

- Trees are part of the environment.
- EIS/EIR required when action project may have a significant effect on the environment
- What is a "significant effect"?
 - Thresholds of significance vary
 - Recent LA County EIR found that the destruction of 179 Coast Live Oak trees was not significant.
 - Case in Pasadena found that impact on 16 Coast Live Oak trees was significant enough to require an MND.
 - Level of significance depends on context
 - City, rural or country
 - Type of tree, and whether it has particular environmental significance (e.g. oak)
 - Type of environment around tree
 - You can also argue global-warming impacts.




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NEPA & CEQA – What To Do

- Get to know the law and the process
 - Community Guide to CEQA, pcfoundation.org
- Keep an eye out for CEQA determinations
 - Agency Web sites, State database at <http://www.ceqanet.ca.gov/>
 - Newspaper ads by agencies (e.g. LA. City Planning in the LA. Time business section on Thursdays)
- Participate in the process
 - Agencies try to slip things by the public
 - E.g. Los Angeles zoning code streamlining
 - E.g. County Public Works project that will kill 179 trees
 - Public comments are effective
 - You can always sue to enforce CEQA or NEPA.




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California Coastal Act

- Response to federal Coastal Zone Management Act
 - Much more powerful than CZMA
 - Public Resources Code §§ 30000-30900.
- Protects coastal zone
- Coastal zone generally extends inward 1,000 yards from shoreline
 - But there many statutory additions – see maps at Coastal Commission offices.
 - Urban land may be excluded from permit requirements.




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Coastal Act – How it Works

- CDP Required for "Development"
 - Defined to include "removal or harvesting of major vegetation." This could apply if enough trees were destroyed.
- Most CDPs are issued by local governments
 - In order to have authority to do this they need to have an approved Local Coastal Program in place.
 - Applies to the portion of the coast lying with the local jurisdiction
- Environmental Sensitive Habitat Areas (ESHA) protected
 - Against "any significant disruption of habitat values"
 - Adjacent development must be sited and designed to prevent certain impacts on ESHA
 - ESHA is designated by the LCP, if there is one.
 - But there is no requirement that it be designated geographically
 - Trees often serve as ESHA
- Enforcement is usually by Coastal Commission
 - But there is a citizen-suit provision allowing private enforcement.



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Endangered Species Act

- Federal Act
 - Protects listed endangered and threatened species
 - Listing process started by petition from interested persons
 - Section 7 (16 U.S.C. § 1536) requires federal agencies to consult with U.S. Fish & Wildlife Service when necessary to ensure that their actions don't jeopardize the continued existence of a listed species. This can stop big federal projects.
 - Section 9 (16 U.S.C. § 1538) prohibits private individuals (and entities) from harming members of a listed species. They can get "incidental take permits."



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ESA for Trees

- No trees listed under federal or California ESA
- But trees are habitat
- Federal actions:
 - *Habitat may not be destroyed or adversely modified to an extent that jeopardizes the survival of the species.*
 - *Northern Spotted Owl case:*
 - FWS designated 11.6 million acres as critical habitat, including 3 million acres of private land
 - This prohibited cutting down a lot of the old-growth forest, because it would be an adverse modification of the critical habitat.



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