

INTRODUCTION

I. GUN SAFETY IS YOUR RESPONSIBILITY

Firearm ownership, possession, and use are individual rights that carry extraordinary responsibilities, both morally and legally. Firearms are potentially deadly. Possessing and using them demands the acceptance of the highest level of responsibility by you. Depending on your individual circumstances, accepting that personal responsibility may require you to do more than the law demands to avoid accidents.

The overwhelming majority of gun owners are extremely responsible. Gun accidents claim far fewer lives than most people are made to think. In the last reporting year, 62 children under age 14 died from gun accidents.¹ With over 90 million adults owning a gun and over 60 million children under age 14 living in the United States, the improper use of guns causes astoundingly few accidental deaths. Meanwhile, thousands more tragically die from car accidents, residential fires, bathtub drownings, accidental poisonings, and household hazards.² In fact, homes where gun accidents occur usually are not typical homes. Alcoholism and criminal histories are common, as is a disproportionate involvement in automobile accidents and driver's license suspensions. All of this reflects individual irresponsibility in homes where accidents happen.

The only foolproof way to avoid gun accidents is to educate people. If everyone obeyed the four simple rules of firearm safety, accidents would not happen. The four rules of firearm safety are: (1) treat all firearms as if they are always loaded – no exceptions; (2) never allow the muzzle of your

¹ To find statistical information on the number of children who died as a result of a gun accident, see *Fatal Injury Reports, 1999-2010, National and Regional*, CENTERS FOR DISEASE CONTROL AND PREVENTION, NAT'L CENTER FOR INJURY (last updated Feb. 19, 2013), http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html.

² For example, in 2010, motor vehicle accidents resulted in 1,418 deaths of children under 14 years old, versus just 62 unintentional firearms related deaths during that same time period. *Fatal Injury Reports, 1999-2010, National and Regional*, CENTERS FOR DISEASE CONTROL AND PREVENTION, NAT'L CENTER FOR INJURY (last updated Feb. 19, 2013), http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html.

firearm to point toward anything you do not intend to destroy; (3) keep your finger off the trigger until your sights are aligned with the target and you have made a conscious mental decision to shoot; and (4) be sure of your target and its surroundings, especially what is behind it.

The gun-ban lobby typically distorts facts and resists efforts to promote real gun-safety instruction, or offer gun owners more opportunities to learn. They fear that merely mentioning a firearm in an educational context would tacitly endorse the concept that firearms have social utility. But firearms do have social utility both as self-defense tools and for their crime deterrent effect. Firearms are used at least four times more often to prevent a crime than to commit one.³ Nonetheless, instead of education, gun-ban lobbyists have pushed one-size-fits-all legislation such as mechanical lock mandates that, while potentially one part of an individualized safety system, often are inappropriate or create a false sense of security that can actually increase carelessness and accidents.

Thanks to the efforts of over 35,000 certified gun-safety instructors who teach gun safety to law enforcement and civilians across the country, as well as the award-winning, time-proven, and law enforcement-endorsed safety programs being used nationally, firearm accident rates are at their lowest levels ever recorded.⁴ To do your part, you can learn those guidelines, live by them, and teach them to others. Taking classes in firearms handling is an excellent way to do this. Free materials concerning firearm safety are available in almost every gun store and from the National Rifle Association, National Shooting Sports Foundation, and the California Rifle and Pistol Association websites.

II. HOW TO USE THIS BOOK

Along with your responsibility to know and follow safety procedures, you also have increasing legal responsibilities. The goal of this book is to educate you about California's complex firearms laws so that you can avoid inadvertently violating them, as well as to educate those tasked with enforcing those laws so they avoid causing innocent people unnecessary legal problems.

³ In 2010, the Bureau of Justice reported around 426,100 crimes committed with a firearm, compared to estimates of 2.5 million defensive gun uses. Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. CRIM. L. & CRIMINOLOGY 150 (1995); MICHAEL PLANTY & JENNIFER L. TRUMAN, U.S. DEPT. OF JUSTICE, FIREARM VIOLENCE, 1993-2011 1 (2013).

⁴ *Fatal Injury Reports, 1999-2010, National and Regional*, CENTERS FOR DISEASE CONTROL AND PREVENTION, NAT'L CENTER FOR INJURY (last updated Feb. 19, 2013), http://www.cdc.gov/injury/wisqars/fatal_injury_reports.html.

This book discusses how to legally buy, own, transport, and possess firearms, when it is legal to use deadly force, and how to get firearms or firearm ownership rights back if they are taken away. This book also explores, explains, and summarizes the major firearms laws affecting firearm owners in California and particularly warns about legal “traps” that California firearm owners often unintentionally fall into.

As the Disclaimer makes clear, this book only serves as a general guide. It is not a complete legal treatise of firearms law. Individual circumstances vary and can change any legal analysis. Since firearms laws frequently change, only constant study and legal analysis will keep you informed about their current status and applicability. As always, you are strongly encouraged to seek advice from an attorney experienced in firearms law if you have additional questions or concerns about firearms law and how it applies to your personal circumstances.

While reading this book, keep in mind that the exact language from many code⁵ sections and court decisions have been shortened and/or paraphrased to highlight the particular point being made. Please note that all code sections referenced in this book are to the 2014 editions unless otherwise indicated. For exact statutory language, and when analyzing the cited cases, the particular statute, code, and/or specific case(s) can and should be consulted directly. It’s fairly easy to find these resources online. The California Legislative Counsel maintains all California codes on its website at www.leginfo.ca.gov. Case opinions of the California Supreme Court and Courts of Appeal are available on the Judicial Branch of California website at www.courts.ca.gov/opinions.

Because this book is intended for a wide audience, including firearm owners, firearm consumers, law enforcement, and lawyers, exact legal “Bluebook” citation format is not used.⁶ For example, “*id*” and “*supra*,” (terms used by lawyers to denote preceding or subsequent authority), do not appear in this book. However, *general* Bluebook citation format is utilized for consistency. For the exact and proper legal citations, please refer to the specific case, statute, or website you are interested in.

⁵ “A code is a set of books containing all of the statutes in force in a given jurisdiction, organized by subject matter.” THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 15 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).

⁶ The Bluebook is a style guide for legal citation in the United States that is used by law students, lawyers, scholars, judges and other legal professionals.

A. The Materials Posted at www.CalGunLawsBook.com Complement This Book



I will try to make the current text of all the codes and court decisions, supplemental authorities, and updates to this book available through www.CalGunLawsBook.com. More detailed legal memoranda elaborating on particular subjects covered in each chapter of this book and additional helpful materials will also be posted on this website. This website complements this book, and vice versa.

If you have firearms law questions, or would like to make suggestions for topics to be included in upcoming editions, email gunlawquestion@calgunlaws.com. To receive blog articles and email news bulletins on cutting-edge self-defense issues, civil rights issues, cases, court rulings, and other legal developments, subscribe to receive these bulletins from www.CalGunLawsBook.com.

B. Symbols Used Throughout This Book

Throughout this book I use the following symbols to bring your attention to certain information:



This “New Law” symbol indicates an important change in the law. Since many new laws took effect in 2014, it is imperative for you to understand the changes that these new laws make and how they may affect you.



This “Caution” symbol points out notable information and potentially troublesome gray areas that you should pay particular attention to as you are reading this book.



This “California Gun Laws” symbol indicates that a reference has been made to the www.CalGunLawsBook.com website where you can find updates and supplemental materials that complement this book.

III. HOW TO READ LAWS AND DETERMINE WHETHER THEY APPLY

A. Federal Laws, State Laws, and Local Laws

This book covers both federal and state firearms laws. Local laws, however, are mostly beyond the scope of this book. Federal law is made up of the “United States Constitution, federal statutes and regulations, U.S. treaties, and federal [case] law,” *i.e.*, court opinions.⁷ State law consists of the “state’s constitution, statutes, regulations,” and state court law cases.⁸ Local laws are statutes or ordinances that are applicable to a particular locality rather than the entire state.⁹ This book discusses both California and federal law under the main topic or heading, pointing out where most people run into problems with law enforcement. Even though this book does not discuss every local law in California, you are always obligated to comply with federal, state, and also local law.

B. Statutory Interpretation Techniques

Regardless of whether you or a court is examining a federal or state law, the following rules governing statutory interpretation apply.

As the United States Supreme Court explained, “in interpreting a statute a court should always turn first to one, cardinal canon before all others . . . courts must presume that a legislature says in a statute what it means and means in a statute what it says there When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”¹⁰ “Congress is presumed to act intentionally and purposely when it includes language in one section but omits it in another.”¹¹

If a statute’s plain language is ambiguous, courts then look to the legislature’s intent and give it “a reasonable and common sense interpretation consistent with the apparent purpose, which will result in wise policy rather than mischief and absurdity.”¹² If necessary, courts will break down the words of the statute and compare their placement within the statute as a whole. Courts will also consider its context, purpose, evils to be remedied,

⁷ BLACK’S LAW DICTIONARY 645 (8th. ed. 2004).

⁸ BLACK’S LAW DICTIONARY 1444 (8th. ed. 2004).

⁹ BLACK’S LAW DICTIONARY 957 (8th. ed. 2004).

¹⁰ *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (internal citations omitted).

¹¹ *Estate of Bell v. Comm’r*, 928 F.2d 901, 904 (9th Cir. 1991).

¹² 7 B.E. WITKIN, SUMMARY OF CAL. LAW, CONST. LAW § 115 (10th ed. 2012).

other legislation, and public policy.¹³ For example, in *People v. Squier*, the California Court of Appeal said that “[t]he rule of strict interpretation of penal statutes does not apply in California” and “where two interpretations of a penal statute are possible, that construction which favors the defendant is preferred unless such a construction is contrary to public interest, sound sense, and wise policy.”¹⁴ Therefore, according to the rule of lenity, when a statute is susceptible to two reasonable interpretations, the court should prefer the interpretation that most favors a defendant. In reality, the rule rarely works to a defendant’s advantage.

Courts are also permitted to review secondary sources like legal treatises and law review articles to see what experts in a particular field say about the statute. These secondary sources are not binding, however, and serve merely as persuasive authority.

C. How to Read Court Opinions

When a dispute results in a lawsuit, the court’s rulings will usually be issued through an “opinion.” These court opinions can be issued by either trial or appellate court judges. A court’s opinion typically lays out the facts of the case and the laws governing the facts and then applies the governing laws to each of the relevant fact patterns.¹⁵

When reading a court opinion, the first thing to look at is the case name or caption. This will identify the parties to the case. The party bringing the lawsuit is the plaintiff. The one defending against the lawsuit is the defendant. If the case is a criminal case, the state or federal prosecutor will bring a lawsuit on behalf of the government. The plaintiff in a criminal case is typically the “United States” or the “People of the State of California.”



After the case name you will see a legal “citation.” This tells you where you can locate the actual opinion of the case. Many court opinions are now available for free online. I will try to get all of the opinions cited in this book posted on www.CalGunLawsBook.com. The case citation can tell you which court rendered the decision and when the opinion was rendered. For example, *District of Columbia v. Heller*, the 2008 United States Supreme Court case that determined there is an individual right to keep and bear arms for self-defense, is cited as *District of Columbia v. Heller*, 554 U.S. 570 (2008). The citation of “554” is the volume of the United States Reports, “U.S.” is the abbreviation of the United States Reports, and “570” is the page

¹³ See 7 B.E. WITKIN, SUMMARY OF CAL. LAW, CONST. LAW § 115 (10th ed. 2012).

¹⁴ *People v. Squier*, 15 Cal. App. 4th 235, 241 (1993).

¹⁵ For a more substantive analysis on how to read court opinions, see Orin S. Kerr, *How to Read a Legal Opinion: A Guide for New Law Students*, 11 GREEN BAG 2D 51 (2007), available at www.CalGunLawsBook.com.

number where this opinion begins. The final “2008” represents the year in which the opinion was rendered.

Under the case name there is a courthouse case number, dates indicating when the lawsuit was filed and when it was decided, and the names of the attorneys who represented the parties (if any). The judge who rendered the opinion will also be identified.

In most opinions the judge first discusses the facts of the case, then the procedural history of the case (*i.e.*, how the case has progressed through the court system), and then the ultimate legal or factual issue(s) the judge had to resolve.

After discussing the governing law and doing a statutory analysis, if the meaning of a law is subject to dispute (as it often is), the judge will discuss how the law applies to the facts. By weaving the governing laws into the facts of the case, the judge will reach an ultimate ruling, a decision or opinion that is also referred to as the court’s “holding,” on the issue(s) of the case.

Reading court opinions helps determine how laws will be interpreted and applied to different sets of facts. The United States has a “common law” system whereby, in addition to state and federal laws, courts look to previously decided cases to aid in making their judgments. Under this “common law” system, some court decisions are considered binding legal “precedent,” which means that lower courts must defer to the higher courts’ prior interpretation of the law.

Since not all cases are factually the same, lawyers either try to distinguish their facts from the facts that formed the basis of any earlier adverse court opinion(s) so the court does not adopt that opinion as its rationale, or the lawyers try to show why the earlier court opinion(s) should be legal “precedent” that the court should follow and adopt. This can be a difficult task. It is one of the things lawyers really earn their money doing.

IV. HOW TO JUDGE A LAWYER

If you ever need a lawyer, regardless of whether it is an attorney with experience in firearms law or an attorney in another practice area, it is important that you properly evaluate the attorney before you retain him or her for your case. There are a lot of bad lawyers out there. Meaningful factors to consider when evaluating an attorney are years of experience, cases actually tried to a jury, practice area(s), specializations, and competence in the particular area in which you need assistance.

There is a lot of helpful information about lawyers on the internet. But do not be fooled by slick internet marketing techniques, inflated website “ratings,” and meaningless “awards.” These days, a lawyer’s reputation can be manipulated online. Just because the attorney claims to be “the best attorney” in a particular area or shows up first on a Google or Yahoo! search or has a high rating on some forums does not necessarily mean that attorney is the right or best one for you. There are ways attorneys can manipulate their marketing profiles and endorsements to appear accomplished in a particular field when, in actuality, they either refer those cases to other attorneys or are themselves novice attorneys.



For more guidance on how to evaluate and select an attorney who is right for you, see the “How to Judge a Lawyer” memorandum on the www.CalGunLawsBook.com website.