

# The origin of the writ of certiorari essay sample



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## Introduction

The writ of certiorari is one of the legal procedures involving the proceedings between the supremacy court and a lower court. The writ of certiorari is prominent in legal systems of major countries in the world. The writ of certiorari is also one of the oldest writs in the world defining the relationship between the supreme court and other courts in the land on legal proceedings. The writ is used to give a certain appellate proceeding for the purpose of re-examination of any action taken in the course of trial court of an inferior court. The term is still used in the United States in context of some appeals.

This paper will review the writ of certiorari in all its details. The paper will review the application of the writ in appeal case in the United States and other major countries in the world. The paper will also look at the origin of the writ of certiorari and how it has evolved over the years to understand why it is still relevant to our legal system. The following source will be used for the study:

Brenner, S. (2000). Granting Certiorari by the United States Supreme Court: An Overview of the Social Science Studies. *Law Library Journal*, Vol . 92: 193-201. In this Journal article, Brenner gives an account of how the high court grants the writ of certiorari to the applicants in the United States. The author explains how the Supreme Court uses the certiorari to change some of the decision that had been made earlier the district court. This was an important source of information for the study as it gives a full about of application of writ of certiorari in the US court system

Garmisa, S. (2003). Supreme Court Reviews Common Law on Certiorari, Old Appellate Cases. *Chicago Daily Law Bulletin* 149 (April 15): In this article the author review show the Supreme Court uses the Law on certiorari. This author provides review of a number of cases where the Supreme Court has used the law on certiorari in the country. This source was also an important source of information for the study.

Baker, J. H. (1990). *An Introduction to English Legal History*. Butterworths Press. In this book the author gives a history of English legal history. The author gives account of origin of writ in the English legal history and explains how writ of certiorari was developed as a result of supremacy of King Bench or royal courts.

#### Origin of writ of certiorari

The writ of certiorari is a writ or an order which is sent by a higher to a lower court ordering the lower court to give transcripts and the related documents for a specific case for review by the high court. In most countries, the writ is usually issued from the highest court in the land following a request applied by a petitioner. However the decision whether to grant or to deny the writ is usually a judicial discretion.

Writ of certiorari is a term which is derived from Latin works meaning “to be ascertained” or in other words to make is more certain. In this case, it is the high court which wants to make it certain of the case through reviewing the decision that had been made by the lower court regarding the case. Before the court grants the writ, it must be filed with a good explanation on why the petitioner is actually resulting to the writ instead of the normal legal

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procedure. This means that there must be a case to ascertain the need for the writ. The petition must also indicate clearly what in the case under dispute in order to make it clear for the court what is to be reviewed (Brenner, 2000).

When a petitioner submits the writ for review, the clerks in the court review it in details before it is passed on to the judges to make their decision. The process is usually democratic like other procedures as the judges cast their votes on the writs. For example in the United States, the number of writs granted by the Supreme Court is less than 5% due to a high number of requests and a busy schedule for the Supreme Court.

The high court has the power to deny a writ in which it is indicated as “ Cert. Denied”. However the denial for a writ does not mean that the decision made by the lower court has prevailed. There are many grounds for denial and therefore “ Cert. Denied” does not mean that the court has approved the decision for the case made by the lower court.

The high court has the main responsibility of defending the constitution. Therefore it is the prerogative of the Supreme Court to grant writ to the most deserving cases (Brenner, 2000). In most cases the Supreme Court will grant writ to the very controversial cases which may act as precedent to other cases. When the lower court is served with a writ of certiorari, it has the duty to turn in all the requested materials to the Supreme Court. The Supreme Court will most certainly ask for materials that pertain to the proceeding of case under question. After the review of the case, the supreme court then makes its decision in which it can affirm the ruling that h

ad been made earlier by the lower court or it can give a new ruling rejecting the earlier ruling (Garmisa, 2003).

Therefore it is not every case that is brought before the high court that will be granted a writ of certiorari. The court has the discretion of grant the writ to only those cases with merit. These are the cases which have been ruled in district courts or other lower courts and which the ruling by the high court is likely to lead clarification of the constitution.

The writ of certiorari originated from the English law. In English laws, a writ was a document inform of a letter of a command which was given by the king or by another person who was exercising jurisdiction of a franchise. The original writs were usually written in Latin which can explain why most of the laws used in the modern day criminal justice system are also written in Latin.

In each and every stage in the evaluation of the English law, the writ gained increased importance. They became necessary for any case that had to be heard in the royal court like in the King's Bench or Common Pleas. In most cases, the writ served as a command which demanded that the case had to be brought before the court which had issued the writ or commanded the recipient of the writ to appear before the authority issues it.

In the early English law, a plaintiff did not have to obtain a writ in order to have the case before the local court. The plaintiff could give complain informally but it had to be written down so that it would be then served to the defendant (Baker, 1990).

However the case was very different for the royal court. If the plaintiff wanted the case to be heard in a royal court - in which case it indicates a form of superiority - then they had to obtain a writ or a command from the king. In English common law, the resource to the King's court was something very unusual and the plaintiff had to pay to access this.

In England royal courts, the writ would have to be purchased from the Chancery although the court exchequer was also in a position to issue the writ. By the time of Henry II, the writ had become very common in the English legal system but they were mostly confined to the royal courts. In course of time, the writ of certiorari was developed and was used to bring an inferior court for review into Kings Bench (Baker, 1990). Writ of certiorari was also used to remove indictments for any trial in such a court. With time, it then evolved to a common remedy that was used in the legal system to bring an inferior court of a tribunal or any other public authority to a close review by the superior court so that the superior court can be decide whether to change the decision made by the said bodies.

After independence, the United States legal system inherited the English laws together with the writ system. The United States federal courts were granted the authority to issue all writs in accordance to the law with the enactment of All Writs Act (28 USC 1651). However, the new Federal Rules of Civil Procedure which were obtained in 1938 governing the civil procedures in the district courts abolished some of the writs which had been inherited from English law. It is from this change in the civil produce law that the writ of certiorari was maintained in the United States courts of appeal.

## Conclusion

The writ of certiorari is one of the writs that are used in the criminal justice system. The writ of certiorari is used by the high court to order a lower court to turn paper for a court that had been decided earlier by the lower court for close review by the high court. The writ originated from the earlier English common law where it was used to bring an inferior court before the Kings Bench for a review of the ruling that had been made on the case. Through inheritance of English laws, the writ of certiorari is still used in the US legal system by the Supreme Court.

## References

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