

**CHAPTER 1
INTRODUCTION TO LEGAL AUTHORITIES
AND LEGAL RESEARCH**

INTRODUCTION

Legal research is the search for authority that can be applied to a given set of facts and issues. The universe of potentially useful authority is vast, and good researchers have well-developed analysis skills in addition to an understanding of the techniques and efficiencies of doing legal research. The Thurgood Marshall Law Library Guide to Legal Research has been developed for use in a variety of introductory and advanced research courses. It presents a succinct introduction to the tools and techniques, both print and electronic, with which the legal researcher must become familiar. Additionally, the strategy sections include information about how to select potentially relevant authorities, as well as discussions about which sources to consult and how they can best be used.

HOW DOES LEGAL RESEARCH DIFFER FROM RESEARCH IN OTHER CONTEXTS?

To many law students, legal research presents a challenge because it differs in many ways from the research they may have conducted as undergraduates. It is essential to establish a clear understanding of the goals of research in the legal context, and of the various types of legal materials and their interrelationships.

An initial step in developing legal research expertise is to develop an awareness of the types of materials that constitute "the law," and of the relationships between these materials. In the process of researching a legal issue, it may be necessary to consult statutes (legislative enactments), cases (opinions of the judiciary), and/or regulatory materials (administrative agency regulations and decisions). All these types of materials are considered "primary sources." A major challenge for a novice researcher is to gain a perspective on how such sources may apply to a particular subject matter and how they relate to each other. It is often necessary to consult multiple sources and use different techniques for each type of source. Furthermore, for a given problem relevant materials may exist on any or all of the federal, state, or local levels.

A major area in which legal research differs from research a student may previously have conducted is in the need for comprehensiveness in primary authority research. When presented with a legal issue, the researcher must endeavor to locate any potentially relevant authority which would be binding in the applicable jurisdiction. Most important for the beginning researcher to appreciate is that cases or statutory provisions which seem not to favor a client's position cannot simply be ignored and other authorities relied upon instead. Rather, these sources must be discovered, thoroughly analyzed, and distinguished if possible.

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Because law is organic, the legal researcher must also learn to appreciate the need to update and verify every source upon which (s)he intends to rely in developing a legal argument. For example, the precedential value of cases is frequently affected by subsequent judicial analysis or by the actions of legislatures. Likewise, it is not unusual for statutes to be repealed or amended by the legislative body; statutes may also be applied and interpreted by case law. The researcher must update carefully in order to accurately assess the significance of any authority.

Another matter which often challenges beginning legal researchers, is the need to analogize. For many of the problems you may be asked to research, no precisely “on point” - meaning factually identical - authority exists. Judges decide disputes before them, and lawyers build arguments, based on a reasoning process which analogizes that a rule of law applied to one set of facts should logically be applied to another set of factual circumstances. Thus it is rarely sufficient to look for authorities that deal with facts too closely resembling those which you have been presented.

TYPES OF LEGAL AUTHORITIES

Primary

Primary legal authorities are authorized statements of law issued by governmental bodies. This category includes court opinions, constitutions, legislation, regulations and rulings of administrative agencies and other similar documents that carry the force of law. Primary authorities can be either *mandatory* (binding) or *persuasive* (non-binding).

Deciding what constitutes mandatory authority involves a knowledge of which law-making bodies issue legal authority for a particular jurisdiction. The concept of jurisdiction initially involves a determination of whether an issue that arises in a particular geographic location is governed by state or federal law.

In addition to knowing what the law-making bodies are and their relation to each other (for example, rulings of higher courts within a jurisdiction are binding on the lower courts), one must make judgments as to the similarity of facts and issues to the circumstances in the problem that is being researched. Mandatory statutory authority must be followed; mandatory judicial authority must be followed under the principle of *stare decisis*, unless the court decides that changed circumstances warrant a different outcome. The doctrine of *stare decisis* encourages stability of the legal system and provides mechanisms for individuals to predict the outcome of their behavior. However, this goal is counterbalanced by the need for responsiveness to change. The result is a system that places a high premium on following established judicial precedents, but one that allows for change if it is necessary or desirable.

Persuasive primary authority can include court decisions of other jurisdictions, which do not have to be followed but which may be used as examples of good reasoning. For example, a decision of a Pennsylvania state court, or even of a federal court sitting in Maryland, would be only persuasive if the issue relates to Maryland state law. Searching

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for persuasive authority can be important if mandatory authority does not exist in a particular jurisdiction, or if the researcher wishes to look for arguments as to why existing precedents should be changed.

Secondary

Secondary legal authorities are descriptions of, or commentary on, the law. This category includes law review articles, treatises, Restatements of the Law, legal encyclopedias and other similar items. Secondary sources can be used only as persuasive authority. Secondary sources vary widely in their relative weight as persuasive authority.

Statutes from jurisdictions outside the controlling jurisdiction are neither mandatory nor persuasive authority. Court decisions of other jurisdictions that are operating under different statutory frameworks cannot be used as persuasive authority. It is, therefore, important to determine the statutory framework under which cases in other jurisdictions have been decided.

RELATIONSHIP BETWEEN STATUTORY LAW AND CASE LAW

Legal systems in Great Britain and the United States were originally centered around case law, or judge-made law. The term *common law* refers to judge-made law that is found in judicial opinions. Judges hear cases involving particular parties, then issue decisions based on available precedent and on their own initiative in the absence of prior decisions. The notion that a common law existed that reflected the generally accepted values and practices of a society - and upon which judges drew to decide individual disputes - was behind this reliance on judge-made law.

The law in some subject areas still consists primarily of common law. In recent years, however, legislatures and administrative agencies have become much more active in the law-making process. Present-day legislatures adopt statutes affecting a broad range of activities. Some of these statutes may preempt earlier court decisions, either as a result of a deliberate action on the part of a legislature or inadvertently. For example, if the legislature disagrees with a court interpretation, the legislature can amend an existing statute - or enact a new statute - clarifying the particular issue upon which there is disagreement.

Administrative agencies, created and empowered by statute to carry out mandates, have also become extremely active in promulgating regulations that carry the force of law. Most such agencies also have the authority to issue rulings and interpretations of regulations, and to conduct hearings adjudicating disputes under their jurisdiction.

Under the balance of power inherent in our system, courts can declare statutes and regulations to be unconstitutional if they exceed constitutional authority or if they conflict with constitutional provisions. Thus the universe of potential authority for conducting research on a specific problem has broadened considerably from the days when case law comprised the bulk of legal authority. Even so, judicial opinions, whether they draw

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upon earlier common law precedent or apply or interpret statutes or regulations, are still a major source of law for the researcher. The complete picture can only be gained by reading the applicable statutes and regulations in conjunction with relevant cases.

THE UNIVERSE OF CHOICES FOR LEGAL RESEARCH

The world of legal research has been profoundly affected by the information and technology explosions of recent years. The universe of legal materials was once fairly small and contained in a predictable set of sources. Currently the sheer volume of potentially applicable materials, as well as the variety of formats in which they can be accessed, has increased dramatically. The number of cases decided by courts has skyrocketed in recent years; the volume of legislation and regulation has expanded in scope as well as in volume. To complicate matters further, the researcher also may have many more options as to the format in which to search for or access these materials; the researcher must therefore learn to evaluate the various formats available for a given research task.

Factors of cost and time efficiency have assumed great importance for the legal researcher. In "real world" settings, lawyers have always had to make determinations about how much research a particular problem is worth. In the current legal marketplace, clients shop for service much more critically than ever before, and may be much less willing than in the past to pay for unlimited research costs. The researcher's cost-benefit analysis is complicated by the need to make choices among print and electronic formats for the same information. As you will learn in this course, the decision is often not an easy one.

The Lexis system has been available since the mid 1970's; Westlaw has been widely available since the early 1980's. Both electronic research systems offer tremendous advantages to researchers by offering large databases of both primary sources and secondary sources. While these systems have revolutionized traditional methods of research, they have not replaced the print sources. Although the time involved in using print materials must be factored against the time spent online, the cost of using the online systems can be prohibitive in many "real world" situations. Print sources still provide the ability to browse and to "happen upon" cases or other sources that may not be found if the researcher does not think of the terminology contained in those opinions. The flexibility of print sources may also suggest alternative means of approaching or analyzing legal issues more readily than the more literal electronic research tools.

The Internet also plays an important role in the legal research process. Particularly in the administrative law arena, Internet sites offer extensive agency materials that are not available elsewhere. In other areas such as case and statutory law, material on the Internet can almost always be found in legal research databases and in print sources - that is, there is little which is not conveniently available elsewhere. Furthermore, Internet coverage often does not extend very far beyond recent years. Particularly in legal research, where access to historical materials and access to very current information are both extremely important, Internet researchers must be wary of sites that are not authoritative and/or are

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not updated on a regular basis. While researching cases and statutes on the Internet may be a viable alternative if other sources are not available or if the cost of the online services is too high to consider in a particular situation, the Internet is not yet a source that can be relied upon exclusively for legal research. Accuracy and currency of Internet sites vary greatly.

Often the most effective approach to researching a given problem is to utilize a combination of electronic and print sources. It is essential in today's research environment to become adept at using a variety of formats and in making informed judgments about which formats are most efficient to consult at various stages of the research process.

THE LEGAL RESEARCH PROCESS

Legal research is not a linear process. The following represent steps that are typically taken when doing legal research. The order in which the steps are taken may vary depending on information that is known at the outset of the project, on information that is discovered during the research process, and on the scope of the project.

Analyze the facts and formulate a preliminary statement of issues.

This is a continuous process. Be prepared to reframe the issue(s) as your research progresses.

Familiarize yourself with the court structure of the jurisdiction.

It may be necessary to do background research to determine whether state or federal law applies.

Conduct background research to get an overview of the subject area, identify issues and terms, and get clues to primary sources.

Learn the types of authority involved, i.e. whether the issues are governed by case law, statutory law, administrative law or a combination. You may need to learn some of the “black letter law” to gain a context for your research. Secondary sources can be useful for this purpose.

Search for legal authority using appropriate methods of updating.

There are many different techniques for finding primary authorities. For any given research project, some will work better than others. Using a variety of tools will ensure comprehensive research and compensate for difficulties that one may encounter in using particular sources. Always look for pocket parts and other supplements when using print sources. Note the dates of coverage in all electronic sources consulted.

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Read and evaluate primary authorities.

Never overlook the importance of reading cases and other authorities as you go along. Do not substitute reading of the headnotes, synopses or interpretations in secondary sources for your own thoughtful reading of the authorities you find. Look for holdings of cases, not just broad statements of the law.

Make sure cases are still good law and you have the current version of statutes.

Time can often be saved by using case validation tools (citators) as soon as you read a case and determine that it is relevant to your issue. Make sure you have checked all available supplements if using print sources. Look up statutes in electronic form to check for recent amendments.

Refine analysis and formulate conclusion.

Returning to secondary sources near the end of a research project can be helpful. These sources can be easier to understand after you have read some of the primary authorities.

When should you stop?

- When you have completed the steps in the model;
- When you have used a variety of appropriate sources;
- When you are finding the same authorities over and over again;
- When cost exceeds benefit, i.e. you run out of time.

UNDERSTANDING CITATIONS TO BASIC PRIMARY SOURCES

The following examples of citations to cases and statutes, both federal and state, can be used as a guide to help you understand and construct citations. Each example is followed by a brief explanation of its components.

Cases – Federal

Thomas v. Chicago Park Dist., 534 U.S. 316 (2002).

Thomas v. Chicago Park Dist. – The parties to the case.

534 – The volume in which the case appears.

U.S. – The United States Reports, the official reporter of the United States Supreme Court and which reports cases only from the Supreme Court.

316 – The page within volume 534 on which the case begins.

2002 – The year the decision in the case was issued by the court.

Horne v. Flores, 129 S. Ct. 2579(2009).

S. Ct. – The Supreme Court Reporter, an unofficial reporter published by West and which reports cases only from the Supreme Court. Until cases are reported in the advance sheets of the official United States Reports,

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currently more than two years after the decision is issued by the court, this is the reporter that must be cited.

Booth v. Maryland, 327 F.3d 377 (4th Cir. 2003).

F.3d – The Federal Reporter third series, the unofficial reporter of cases from the federal Courts of Appeals, the intermediate level appellate courts within the federal court system.

4th Cir. – The specific court of the 13 Courts of Appeals that decided the case. The 4th Circuit covers the federal courts within the states of Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

Allen v. Rumsfeld, 273 F. Supp. 2d 695 (D. Md. 2003).

F. Supp. 2d – the Federal Supplement second series, the unofficial reporter of cases from the federal District Courts, the trial level courts within the federal court system.

D. Md. – the specific federal District Court that decided the case, the District Court for the District of Maryland. There is at least one federal District Court for each state.

Cases – State

Lema v. Bank of America, 375 Md. 675, 826 A.2d 504 (2003).

Md. – The Maryland Reports, the official reporter of the Maryland Court of Appeals, the higher of the two Maryland appellate courts. It reports only cases from the Court of Appeals.

826 A.2d 504 – A parallel cite to the same case as reported in the Atlantic Reporter second series, one of seven regional reporters that publish appellate cases from all the states. The Atlantic Reporter also publishes appellate cases from Connecticut, Delaware, the District of Columbia, Maine, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont. The seven regional reporters are the Atlantic (A.), North Eastern (N.E.), North Western (N.W.), Pacific (P.), South Eastern (S.E.), South Western (S.W.), and Southern (So.).

Zdravkovich v. Siegert, 151 Md. App. 295, 824 A.2d 1051 ((2003).

Md. App. – The Maryland Appellate Reports, the official reporter of the Maryland Court of Special Appeals, the lower of the two Maryland appellate courts. It reports only cases from the Court of Special Appeals

Utsch v. Utsch, 581 S.E.2d 507 (Va. 2003).

S.E.2d – One of the seven regional reporters. The South Eastern Reporter publishes cases from Georgia, North Carolina, South Carolina, Virginia, and West Virginia.

Va. – The abbreviation of the Virginia Supreme Court, the higher of the two Virginia appellate courts and the court that decided this case.

Griffin v. Griffin, 581 S.E.2d 899 (Va. Ct. App. 2003).

Va. Ct. App. – The abbreviation of the Virginia Court of Appeals, the lower of the two Virginia appellate courts and the court that decided this case.

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Statutes – Federal

8 U.S.C.S. § 1154 (LexisNexis 2008 & Supp. 2011).

8 U.S.C.A § 1154 (West 2005 & Supp. 2011).

8 – Title 8, titles being the main unit into which the United States Code is divided.

U.S.C.S. and U.S.C.A. – the United States Code Service and the United States Code Annotated, two of the three print versions of the United States Code.

1154 – The section within Title 8 that is being cited.

LexisNexis and West – The two competing private publishers of the code.

This must be noted as these are not the official version of the code.

2008 and 2005 – The years the main volumes, containing part of the language being cited, were published.

2011 – The year the supplements, containing additional, newer language also being cited, were published.

Statutes – State

Md. Code Ann., Fin. Inst. § 9-329 (LexisNexis 2011).

Md. Code Ann., Fin. Inst. § 9-329 (West Supp. 2010).

Md. Code Ann. – The abbreviated name of the state code being cited.

Fin. Inst. – The Financial Institutions article, articles being the main unit into which the Maryland Code Annotated is divided.

LexisNexis and West – The two competing publishers of the code. The publisher must be included according to the example in the Bluebook.

You may cite to either version of the code.

2011 – The year the main volume, containing all of the language being cited, was published.

2010 – The year the pocket part supplement, containing all of the language being cited, was published.

Va. Code Ann. § 33.1-346.1 (2005).

33.1-346.1 – The section that is being cited, this being the main unit into which the Virginia Code is divided.

The publisher of the version of the code held by the library is LexisNexis. This is not included according to the example in the Bluebook. If you were citing to the West version, which is disfavored, you would have to include the publisher.

2005 – The year the main volume, containing all of the language being cited, was published.