

CHAPTER 4 STATUTORY AND CONSTITUTIONAL LAW RESEARCH

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STATUTORY AND CONSTITUTIONAL LAW: BACKGROUND

Statutes are laws enacted by legislative bodies - either the legislature of one of the fifty states or the U.S. Congress. Constitutions are the fundamental law of country or state. Constitutions establish the institutions of government, define the scope of the government's powers, and guarantee individual civil rights. While states cannot deny federal constitutional rights, state constitutions can guarantee rights beyond those in the U.S. Constitution.

Checking to see whether controlling statutory or constitutional law exists is an important step in any research project. When conducting statutory or constitutional research it is important to recognize that statutory or constitutional language is frequently the product of political negotiation and compromise, and may for that reason be broad and/or ambiguous. This is why courts are frequently confronted by disputes which turn upon questions of statutory interpretation. The Supreme Court of the United States is the final arbiter of disputes involving the U.S. Constitution. The highest court of a state is the final arbiter of disputes involving that state's constitution. It is always important for the researcher to search for cases that have applied and interpreted the relevant language.

Statutory terms often carry meanings that are specific to the piece of legislation. Never assume that a term used in a statute section has its obvious or colloquial meaning. The term may be defined within the section in which it appears, or in a separate "definitions" section enacted along with it. Always read through the entire section, and examine the chapter or part of the code in which it appears, in order to determine whether a term has a special meaning for the purpose of the statute.

Statutory sections in particular are rarely meant to be understood in isolation from one another. Major pieces of legislation are often divided into sections when they are drafted, passed, and integrated into a statutory code. Thus, in order to fully understand a statute section's application, it must be read in conjunction with the rest of the statute as passed.

In state statutory or constitutional research, the concepts of mandatory and persuasive authority vary from their meanings in the case research context. Obviously, each state's statutes and constitution are mandatory authority in that state, and the courts of that state interpret and apply these laws. However, statutes or constitutional provisions from other

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states are usually not persuasive authority in the same sense that cases may be. State courts generally will not consider statutes or constitutional provisions from other states as persuasive authority.

Nevertheless, state courts often consider opinions from courts of other jurisdictions that interpret or involve statutes or constitutional provisions that are similar in language to those of their own state. In fact, many provisions in state constitutions that guarantee individual rights are said to be *in pari materia* with similar provisions in the U.S. Constitution. This means that state courts may resolve conflicts regarding their state constitution by looking to cases interpreting similar federal constitutional provisions. However, when using cases from other jurisdictions as persuasive authority, be certain that their holdings are not dependent upon interpretations of statutory language or constitutional provisions which is absent from, or which varies from, the statute or constitutional provisions of the controlling jurisdiction.

TERMINOLOGY USED IN STATUTORY AND CONSTITUTIONAL RESEARCH

Amendment	A revision, addition, deletion, or correction made to the text of a statute or constitution
Constitution	The highest form of law in the legal system, containing fundamental principles that govern a country and/or state
Public Laws	Laws intended to be of general application
Private Laws	Laws passed for the benefit of an individual or small group of individuals
Slip Law	Separate publication of an individual act; may be distributed in pamphlet or electronic form
Session Laws	Publication of the laws enacted during a particular legislative session; laws are presented in chronological order; publication of bound official versions is often slow
Advance Legislative Service	Commercial publishers print session laws in pamphlet form before official versions are available; usually shelved at the end of an annotated code set
Code	Subject compilation of the public laws currently in force in a particular jurisdiction
Annotated Code	Contains references to cases and other research aids in addition to the text of the code
Title	May refer to the organizational scheme of a code, i.e. Title 18 of the U.S. Code (federal criminal law); or, may refer to the organizational scheme of a particular law, i.e. Title VII of the Civil Rights Act of 1964 prohibits sex-based discrimination in employment
Uniform Law	Model laws drafted by the Uniform Law Commission that states may adopt in their entirety or with changes. Original versions are found in <u>Uniform Laws Annotated</u> which contains notes on which states have adopted the law and references to state court decisions

SOURCES FOR STATUTORY AND CONSTITUTIONAL RESEARCH

Session Laws

Session laws are individual enactments of a legislative body, state or federal, as signed by the executive, governor or president, or passed over the executive's veto. They are published chronologically. An individual session law may be only a sentence long or it may be hundreds of pages long. It may deal with only one very finite topic, or it may deal with dozens of totally unrelated topics. Many states, Maryland included, limit an individual session law to just one topic. At the other extreme, enactments of the United States Congress may, and often do, deal with many disparate topics, totally unrelated to one another.

Codes

Codes are subject compilations of the public laws currently in force in a particular jurisdiction. Most codes also include relevant constitutional texts. Codes are important because researchers want to find statutes on a particular topic, not just those signed into law on a particular date. As a result, the chronological publication scheme of session laws, even with the assistance of a good subject index, offers little to the researcher. Topical compilations of laws, or codes, are therefore more effective in finding a jurisdiction's laws on a topic.

Codes are organized topically and include multi-volume indexes for subject access. The process of compiling and arranging statutes into a code is called codification. Each state code has its own system of subject organization and its own numbering scheme. At the federal level, the code is organized into numbered and named titles. Within each title, the topic is further subdivided into chapters, subchapters and sections. Table T1 (United States Jurisdictions) of *The Bluebook* contains a listing of the available codes for each jurisdiction, federal and state.

When a session law is signed into law by the executive, it is codified into this pre-existing topical outline known as the code. Except in rare cases, the text of the codified legislation will be identical to the session law. A session law may amend an existing section of the code by adding (or deleting) a paragraph or a sentence or a word or something as small as a point of punctuation. Other times a session law will add or repeal an entire section, or sections, of the code. A session law may be editorially pulled apart and affect many different sections of the code or it may be dropped, intact, into just one place. Each state legislature and the United States Congress enact from hundreds to more than a thousand session laws every year. The codification of these new session laws into their respective codes is what makes statutory codes organic entities that must always be used in the most up-to-date form. A code that contains the statutes currently in force in that jurisdiction is published for each state. Most of these codes are commercially published. Laws of a few states, as well as the federal laws, appear in more than one commercially published version. The text of the statute provisions is the same, but the

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format and ancillary information may be different.

Annotated and unannotated codes

In addition to the text of the statutes passed by the legislature, annotated codes contain a number of cross-references to other materials which are very useful to the researcher. Chief among these are references to cases in which courts of the jurisdiction have applied, interpreted or discussed the code provisions. Also useful are cross-references to law review or other periodical articles, treatises, or other secondary sources which cite or discuss the statute section. Unannotated codes contain only the statutory or constitutional language itself, not cross-references to related material. Virtually all of the commercially published state codes are annotated. The federal code is available in one unannotated and two annotated versions. Usually the annotated version is more useful for research.

Updating print codes

Print versions of the state and federal codes are supplemented by annual pocket parts, which are pamphlets that are kept in the back cover of each code volume. Sometimes separate paper bound supplementary volumes are published instead of, or in addition to, pocket parts. Additionally, a set of pamphlets containing new and amended statutes enacted during the current or most recent session of the legislature, “session laws,” are frequently found at the end of a code set.

Electronic sources for statutory and constitutional research

Bloomberg Law, Lexis, and Westlaw contain full versions of the codes and constitutions from each state as well as the U.S. Code and the U.S. Constitution. Statutory codes and constitutions on Lexis and Westlaw include annotations. Online versions of the state and federal codes in Bloomberg Law, Lexis, and Westlaw are updated more frequently than print to incorporate new and amending session laws enacted during the most recent session of the legislature. The annotation material as well as the updating schedule may vary. Bloomberg Law, Lexis, and Westlaw also contain databases covering materials from the most recent legislative session which may not yet be integrated into the code databases. When the content is integrated into the code database, Lexis and Westlaw will alert the researcher of pending legislation that may impact a code section.

Several websites also publish versions of the federal code, the U.S. Constitution, and many state codes and constitutions. As with other types of legal materials, one must use caution in the areas of currency and authoritative nature of the materials.

HIGHLIGHTS OF *BLUEBOOK* FORM FOR STATUTES AND CONSTITUTIONS

Rule 12 provides detailed instructions for statute citation form. The general rule is to cite to the current “official” code (usually, but not always, a version published by the government) whenever possible. If it is not possible to cite to the official code, you

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should cite to a current unofficial (commercially published) code.

The basic format for citing statutes is as follows:

- * the abbreviated name of the code (found in Table T.1);
- * the section, paragraph, or article number(s) of the statute;
- * and the year of the code (according to Rule 12.3.2).

Example: Va. Code Ann. § 32.1-111.4 (2015).

Several questions must be addressed when determining the citation form for statutes.

Which version of the code to cite?

Consult Table T.1 of *The Bluebook* and look up your jurisdiction. The Table provides a list of statutory compilations available for each jurisdiction and the correct format for citing each compilation, including correct abbreviations and whether to include the name of the publisher in the parenthetical. For those jurisdictions in which more than one statutory compilation is available, cite to the official compilation if possible; otherwise, cite to an unofficial compilation.

How to determine which date to include in the citation?

Following Rule 12.3.2 “[w]hen citing a bound volume of the current official or unofficial code, provide parenthetically the year that appears on the spine of the volume, the year that appears on the title page, or the latest copyright year – in that order of preference.” Note that the volume date most likely does not correspond with the enactment date or the effective date of any of the statute sections included in the volume.

How to deal with statute text which is split between the main code volume and a pocket part or supplement?

If the statutory language itself (not annotation material) appears completely in the pocket part or supplement (that is, the statute was passed since the publication of the bound volume), use the term “Supp.” and include in the parenthetical the date(s) of the pocket part or supplement, as follows:

Mass. Gen. Laws Ann. ch. 63, § 30 (West Supp. 2017).

If the statutory language (not just the annotation material) appears partially in the main volume and partially in the pocket part or supplement, which happens, for example, when a statute is amended after the publication of the most recent bound code volume, include both years as follows:

8 U.S.C.S. § 1154 (LexisNexis 2008 & Supp. 2017).

But note the effect of a recent republication of the bound volume:

8 U.S.C.A. § 1154 (West 2017).

How to cite constitutions?

Citation form for constitutions is governed by Rule 11 of *The Bluebook*. States should be abbreviated as indicated in Table T10. Abbreviate articles and clauses according to Table T16. Cite superseded constitutions by year of adoption. Some examples include:

U.S. Const. art. I, § 9, cl. 2.

Md. Const., Declaration of Rights, art. 22.

Md. Const. of 1776, art. II.