

CHAPTER 8 RESEARCHING A STATE LAW PROBLEM

THE LEGAL RESEARCH PROCESS: STATE LAW SOURCES

Analyze the facts and formulate a preliminary statement of issues.

Develop a system for organizing research notes & putting cites in *Bluebook* form.

Familiarize yourself with the court structure of the jurisdiction.

- *Bluebook* Table T.1

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

- Hornbooks [Reading Room across from library desk]
- Law review articles [print - compact shelving on Level 1; Lexis; Westlaw]
- American Law Reports (ALR) [print on Level 2; Westlaw]
- Seek expert advice

Search for legal authority (relevant statutes & cases) using appropriate methods of updating.

- Annotated codes [print on Level 3 (Md. Code is on Level 2); Lexis; Westlaw]
- West digests [Level 3 (Md. Digest is on Level 2)]
- full text case databases (Westlaw; Lexis; Internet sites)
- American Law Reports (ALR) [print on Level 2; Lexis; Westlaw]
- Shepard's [Lexis]
- KeyCite [Westlaw]

Read and evaluate primary authorities.

- Reporters [print on Level 3 (Md. reporters on Level 2); Westlaw; Lexis; Internet sites]

Make sure cases are still good law.

- Shepard's [Lexis]
- KeyCite [Westlaw]

Refine analysis & formulate conclusion.

- Treatises [Level 2; check the library's online catalog]
- Law review articles

IDENTIFYING STATE COURT STRUCTURE AND REPORTERS

Each state has a unique court structure and the names of the various courts differ from state to state. When doing research in a particular jurisdiction, it is essential to know which court decided each case in order to evaluate its precedential weight. A quick way to determine the appellate structure and the names and abbreviations of the various courts

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is to consult Tables T.1 and T.7 of the *Bluebook*. Table T.1 lists each United States jurisdiction, both federal and state, and provides the names of the courts, the reporters in which their decisions can be found, and how they should be cited. This table also lists statutory and administrative compilations.

Sample *Bluebook* information from Table T.1 - Maryland

Maryland Court of Appeals (Md.) - highest appellate court

Reporter	Dates	Reporter Abbreviation	Status
Maryland Reports	1851-present	Md.	Official
Atlantic Reporter	1885-present	A., A.2d	Unofficial

Maryland Court of Special Appeals (Md. Ct. Spec. App.) - intermediate appellate court

Reporter	Dates	Reporter Abbreviation	Status
Maryland Appellate Reports	1967-present	Md. App.	Official
Atlantic Reporter	1967-present	A.2d	Unofficial

USING SECONDARY SOURCES FOR STATE LAW PROBLEMS

- A state-specific law encyclopedia (e.g., the *Maryland Law Encyclopedia*) can be a good starting point for a research problem set in a specific state.
- General coverage law encyclopedias (*American Jurisprudence 2d* or *Corpus Juris Secundum*) can provide general background and citations to primary authorities from various states.
- The state series of A.L.R. may contain an annotation on your topic. A print index covering the third through sixth series is available, or A.L.R. can be searched on Westlaw.
- Many treatises or the Restatements of Law can provide analysis and citations to state case law.
- Law reviews can sometimes be found dealing with the law of specific states. Westlaw and Lexis provide databases that cover legal periodicals published by law schools in individual states; search these with some caution because they frequently include only a few publications. Also helpful are multi-state survey articles in law reviews which help identify trends and put the law of your state in perspective.

USING STATE ANNOTATED CODES IN PRINT

- Start with the index volumes using terms identified in background research.
- Look up references to sections that appear relevant. Before reading any text, check to see if there is added or amended text in either a pocket part or a separate pamphlet supplement next to the volume. There may also be a supplementary pamphlet at the end of the entire set.
- Read the text of the statute carefully. Look at adjacent sections to see if they may be relevant as well. There may also be separate “definitions” sections that define terms.
- Following the statute language, there may be references (annotations) to cases that have interpreted the section. There may also be cross-references to pertinent commentary sources. Additional case annotations and references to secondary sources may appear in pocket parts and supplements even if the text of the code section has not changed.

STATE AND REGIONAL CASE LAW RESOURCES

STATE	REGIONAL REPORTER(S)	DIGEST(S)
Alabama	Southern, Southern 2d	Alabama 2d (comprehensive)
Alaska	Pacific 2d, Pacific 3d	Pacific, Alaska 2d (comprehensive)
Arizona	Pacific, Pacific 2d, Pacific 3d	Pacific
Arkansas	South Western, South Western 2d, South Western 3d	Arkansas
California	Pacific, Pacific 2d, Pacific 3d, California Reporter	Pacific, Calif. (-1950) & Calif. 2d (1950-)
Colorado	Pacific, Pacific 2d, Pacific 3d	Pacific
Connecticut	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d
Delaware	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d
District of Columbia	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d & Maryland 2d (comprehensive)
Florida	Southern, Southern 2d	Florida 2d (1935-)

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Georgia	South Eastern, South Eastern 2d	South Eastern, South Eastern 2d
Hawaii	Pacific 2d, Pacific 3d	Pacific
Idaho	Pacific, Pacific 2d, Pacific 3d	Pacific
Illinois	North Eastern, North Eastern 2d	Illinois (-1938) & Illinois 2d (1938-)
Indiana	North Eastern, North Eastern 2d	Indiana 2d (comprehensive)
Iowa	North Western, North Western 2d	North Western, North Western 2d
Kansas	Pacific, Pacific 2d, Pacific 3d	Pacific
Kentucky	South Western, South Western 2d, South Western 3d	Kentucky (-1930) & Kentucky 2d (1930-)
Louisiana	Southern, Southern 2d	Louisiana 2d (1935-)
Maine	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d
Maryland	Atlantic, Atlantic 2d & Maryland	Atlantic, Atlantic 2d & Maryland 2d (comprehensive)
Massachusetts	North Eastern, North Eastern 2d	Mass. (-1933) & Mass. 2d (1933-)
Michigan	North Western, North Western 2d	North Western, North Western 2d
Minnesota	North Western, North Western 2d	North Western, North Western 2d
Mississippi	Southern, Southern 2d	Mississippi
Missouri	South Western, South Western 2d, South Western 3d	Missouri (-1930) & Missouri 2d (1930-)
Montana	Pacific, Pacific 2d, Pacific 3d	Pacific
Nebraska	North Western, North Western 2d	North Western, North Western 2d

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Nevada	Pacific, Pacific 2d, Pacific 3d	Pacific
New Hampshire	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d
New Jersey	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d
New Mexico	Pacific, Pacific 2d, Pacific 3d	Pacific
New York	North Eastern, North Eastern 2d, New York Supp., New York Supp. 2d	N.Y. (-1929), N.Y.2d (1930-1961), N.Y.3d (1961-1978), N.Y.4th (1978-).
North Carolina	South Eastern, South Eastern 2d	South Eastern, South Eastern 2d
North Dakota	North Western, North Western 2d	North Western, North Western 2d
Ohio	North Eastern, North Eastern 2d	Ohio
Oklahoma	Pacific, Pacific 2d, Pacific 3d	Pacific
Oregon	Pacific, Pacific 2d, Pacific 3d	Pacific
Pennsylvania	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d & Penn. (-1938) & Penn. 2d (1939-)
Rhode Island	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d
South Carolina	South Eastern, South Eastern 2d	South Eastern, South Eastern 2d
South Dakota	North Western, North Western 2d	North Western, North Western 2d
Tennessee	South Western, South Western 2d, South Western 3d	Tennessee 2d (comprehensive)
Texas	South Western, South Western 2d, South Western 3d	Texas (-1935) & Texas 2d (1935-)
Utah	Pacific, Pacific 2d, Pacific 3d	Pacific
Vermont	Atlantic, Atlantic 2d	Atlantic, Atlantic 2d

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Virginia	South Eastern, South Eastern 2d	South Eastern, South Eastern 2d & Virginia and West Virginia
Washington	Pacific, Pacific 2d, Pacific 3d	Pacific
West Virginia	South Eastern, South Eastern 2d	South Eastern, South Eastern 2d & Virginia and West Virginia
Wisconsin	North Western, North Western 2d	North Western, North Western 2d
Wyoming	Pacific, Pacific 2d, Pacific 3d	Pacific

REGIONAL DIGESTS COVERAGE

Atlantic Atlantic 2D	-1930/47 1930/47-2006
North Eastern	Digest no longer published
North Western North Western 2d	-1932/44 1932/44-2006
Pacific Digest Pacific Digest 1-100 P.2d Pacific Digest 101-366 P.2d Pacific Digest 367-584 P.2d Pacific Digest 585- P.2d	1850-1931 1931-1940 1940-1962 1962-1979 1979-2006
South Eastern South Eastern 2d	-1934 1934-2006
South Western	Digest no longer published
Southern	Digest no longer published

USING WEST DIGESTS TO LOCATE STATE COURT CASES

- Keep in mind that state and regional digests in our library, with the exception of the Maryland Digest, are updated only through 2006.
- Use either the state digest or the appropriate regional digest, depending on which one the library owns. To identify the digests and reporters for each state's case law which are available in our library, consult "State and Regional Case Law Resources."
- Start with the most recent series of the digest if the one you are using has been published in more than one series, e.g., start with *Atlantic Digest Second Series*, which will index more recent cases than *Atlantic Digest*.
- Locate the Descriptive Word Index volumes for the digest set. Look up research terms to identify potentially relevant topics and key numbers. Check the pocket part of the Descriptive Word Index volumes to see if later terms have been added.
- Look up the topics and key numbers in the main digest volumes to find summaries of cases. Digests are organized alphabetically by topic and, within each topic, chronologically by key number.
- In addition to the main volume, references to recent cases may be in a pocket part in the back of the book or in a separate pamphlet supplement that covers the particular volume, or in a paper supplement at the end of the set that updates all topics and key numbers in that set. It usually makes sense to start with the most recent supplement and work backwards.
- Record the citations of cases that appear to be relevant to your research situation. Note that the digest may include cases that are not mandatory authority. For example, regional digests include cases from other states; state digests include cases from federal courts.

USING AMERICAN LAW REPORTS TO LOCATE STATE COURT CASES

A.L.R. can be useful for obtaining an overview of the law on a specific topic and for locating citations to cases, both within the jurisdiction and in other states. One recognized weakness of the state series of A.L.R. is that it sometimes gathers and reports case law without noting the fact that the cases are based on differing state statutes. The "Quick Index" for the state A.L.R. is a one-volume paperback covering A.L.R. 3rd, 4th, & 5th.

References to A.L.R. annotations are often found in secondary sources, code annotations, and citators. The print state law version of A.L.R. is currently in its 5th series. The newer series do not automatically update the earlier ones; that is, there may be annotations in the earlier series that are still useful and that are kept up to date in the volume's pocket part. Use caution, however, because many of the older annotations have been superseded by a

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later one or may simply be too old to be useful. The process for determining whether an annotation in one of the earlier series is still current is as follows:

To check the currency of an A.L.R. annotation, do the following:

- Go to the “Annotation History Table” located in the back of each bound volume of the A.L.R. Index.
- Look for the citation to your annotation in the Table. Be sure to also consult the Table in the pocket part.
- If you find your citation, note the citation of the superseding (more current) or supplementary annotation.
- Also check the superseding annotation in the “Annotation History Table.”

TIPS FOR SELECTING STATE LAW DATABASES

State cases

Searching for state case law requires some attention to database selection. Both Lexis and Westlaw offer databases with various combinations of courts. For example, you can select a database containing decisions from only the state courts from a particular state, or one containing both state court cases and federal court cases applying the law of that state. Your selection depends on the type of issue involved and the objective of the research project, among other factors. Be certain to use the print database directories or the online database descriptions to ascertain the coverage of a database before you begin searching.

State statutes

For state statutes, Westlaw and Lexis may offer the option of searching in either an annotated (including cross-references to cases and other sources) or unannotated (statute text only) version of the code. Often the annotated version is a better choice, since it will search your terms in both the statute text and the annotation materials. However, if your searches yield too many hits, you may wish to try searching in the unannotated version.

Electronic citators

The most up-to-date electronic citators are Shepard’s on Lexis and KeyCite on Westlaw.

STRATEGIES FOR RESEARCHING A STATE LAW PROBLEM

Initial steps

When facing any research problem that involves unfamiliar territory, the wisest approach is to take some time at the outset to acquire background information. Without knowledge of the terminology and the issues, one can waste an inordinate amount of time unsuccessfully searching for primary sources in either print indexes or full text databases.

Secondary sources are good places to gain helpful background information. Hornbooks cover broad legal topics, but may at least provide a paragraph or two about a particular subject that could serve as an overall framework. Law review articles deal with topics in greater detail and may give, in many instances, more information than is needed. If approached carefully, however, they can arm the novice with terms that will make searching and reading the primary sources an easier task. One should never view use of a secondary source as a substitute for the primary sources and indexes of the particular jurisdiction, but they can be viewed as excellent jumping off places. Encyclopedias, either general ones such as *American Jurisprudence 2d* or *Corpus Juris Secundum*, or jurisdiction-specific ones such as *West's Maryland Law Encyclopedia* may also be helpful as starting points, although the quality of the information varies topic by topic and these tools must be used with great care.

Law review articles on particular topics can be found by using full text databases on Lexis (Source directory: Secondary legal; Law Reviews & Journals; U.S. Law Reviews and Journals, Combined or Westlaw (database identifier JLR). Citations to articles may be located using either of the two index databases that are accessible from the library's home page, the *Index to Legal Periodicals* and *LegalTrac*. The objective in looking for law reviews is to find one or two good articles to use as starting points. The more recent the article, the better, because the law changes rapidly. Articles in bar journals will be practitioner oriented and are less likely to be helpful. Avoiding articles dealing with the law of particular states may be a good idea, unless the article happens to cover the state in which your problem is set. Printing or copying entire law review articles is generally a waste of time and paper and would be incredibly expensive in a work setting. Skim articles just to get an idea of what is involved in the topic. If they are good ones, you may want to return to them toward the end of your research to help put what you have found in context.

In addition to gathering terms and issues, you may notice cites to apparently relevant statutes or cases. Recording cites from other jurisdictions may not be a good use of time at this stage. However, noting a few cites from your jurisdiction that appear to be especially on point may save you time in the later phases of your research. If you can find one fairly recent case in any jurisdiction that is precisely on point with the issue(s) you are researching, you can look it up and note the relevant topic and key numbers for later use in the digest.

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Finally, in terms of background, it is well worth spending a few minutes with the section in the *Bluebook* that deals with the particular state. The names of courts vary from state to state and you will often have to identify which court decided a case simply by looking at the reporter abbreviation.

Searching for statutes

Once you are familiar with some of the terminology, the annotated code is a logical next step for researching the law of a particular state. While some topics may still be covered only by case law, it is extremely important that you not make that assumption without checking the code.

The index volumes for annotated codes are similar to the Descriptive Word Index volumes in the digest, except that they lead to statute sections rather than to topics and key numbers. Indexes can yield obvious entries but they can just as easily have entries that are not so obvious. Background information from secondary sources may certainly help with this process. However, a good rule of thumb is to limit the time in any index to no more than 15 minutes. If you can't find something fairly quickly, go on to another source. Eventually, you will either find a reference to the statute in cases, or, at least you may find additional information that will help you when you come back to the code at a later time.

Assuming that you do find a relevant statute section, it is a good idea to first check the pocket part and any other supplements before reading the text of the code section. Often you will find that the statute has been amended. You should read the most recent version, as opposed to an obsolete one. Read the current language of the statute very carefully, word for word. Check the sections immediately preceding and following the section you found because they are likely to deal with the same general subject area and may, therefore, be relevant to the problem. Also, many times there are "definitions" sections that define terms and it is important to look for these.

NOTE: There may be times in the practice of law that you will need an older version of a statute. You may be litigating a case that arose before recent amendments. In general the law that applies is the law that existed at the time of the occurrence.

Annotations are found after individual code sections. Annotations may include cases decided in the particular state that have interpreted that statute. While the annotations may not include a comprehensive listing of cases construing the statute, those cited are typically important and the cites should be noted. You will not find case annotations for all statutes. Some have never been the subject of litigation.

Thus far, the discussion of statutes has revolved around print publications. State annotated codes are also available on Lexis and Westlaw. However, searching for statutes online is often more difficult and time consuming than using print codes. An advantage of using Westlaw or Lexis is that the databases are updated frequently and it may be easier to find recent statutory changes using Westlaw or Lexis than in print sources.

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Searching for cases

There are several strategies for searching for case law in a particular state and researchers develop their own preferences for tackling this aspect of legal research. The traditional mechanism for finding cases by subject is to begin with the Descriptive Word Index of the appropriate print digest, identify relevant topics and key numbers, read the summaries of cases found under the topics and key numbers and then look up and read the cases. This is a time-tested, valid method that is still widely used. Topic and key number searching may also be done online on Westlaw.

Variations on this theme may occur when the researcher, through secondary sources or code research, finds several cites to possibly relevant cases. Sometimes it makes more sense to begin by looking up and reading some of those opinions before trying to use the digest. Because the regional reporter system and the digest system are interrelated, noting the topics and key numbers at the beginning of relevant cases can be a helpful shortcut to using the digest, although one should still check the index to make sure there is not an obvious entry that should be consulted. Once cites to cases have been found, they can be reviewed either online or in print. Our library has current subscriptions to all print regional reporters, but does not maintain current subscriptions to official reports for states other than Maryland.

Other possibilities for finding cases in a particular state include using A.L.R. annotations and Shepardizing or KeyCiting. There is a table of jurisdictions at the beginning of each A.L.R. annotation that allows the researcher to quickly find cites to cases of a particular state within the A.L.R. annotation. KeyCiting or Shepardizing cases can be helpful in locating additional cases.

A topic and key number digest search can be performed on Westlaw. Lexis has a feature called “More Like This Headnote” that works similarly. Both Lexis and Westlaw have full text databases of state case law. In full text searching online the researcher must formulate a search request that anticipates terms that are used in the opinions as opposed to using the controlled vocabulary of an index. In both formats, knowledge of terminology is critical to effective use.

The research objective for a state law problem is to find and understand the holdings of all relevant statutes and cases that constitute mandatory authority in that state. Relevancy should be defined here in a very broad sense. Cases may not exist that track the specific fact pattern and it may be necessary to analogize from other types of cases. Cases that are not in favor of the position you are trying to advocate cannot be ignored and one must deal with them in some fashion. While there are instances in which the numbers of cases on a particular issue in a particular state are overwhelming and different strategies must be applied, generally that is not the case. The best way to ensure that one finds all the relevant cases is to use a variety of research sources and methods. Print and online formats complement each other and often one finds cases by one method or in one source that are not found using another method or source.

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Even if the law of a particular state appears to be clear, taking the time to understand trends in other states may be very important. The law in a state may be clear, but may be contrary to what is happening elsewhere. That could mean that existing decisions are ripe for being overruled. Law review articles and A.L.R. annotations can be helpful in understanding the overall picture and identifying nationwide trends. While relevancy may be defined broadly when researching your own state's decisions, you may want to define relevancy on a narrower basis when looking at persuasive authority to make that search a manageable one.

Making sure cases are still good law

Prior to citing cases in a written document or oral argument, it is essential that each one is verified to make sure that it has not been reversed on appeal or overruled by a later court. Shepard's (Lexis) and KeyCite (Westlaw) are the tools for accomplishing this task.

Refining analysis and formulating conclusion

Knowing when to stop researching can be difficult. It is tempting to believe that more time will unearth the perfect case that will make the entire problem clear. Unfortunately, many legal problems do not have as perfect an answer as one would like. Balancing the need to do a reasonable, comprehensive research job with time and resource constraints is not always easy. Following the steps outlined above ensures that the researcher has done a complete and reasonable job. At some point, you must stop and draw conclusions from the authority that has been found.

HIGHLIGHTS OF *BLUEBOOK* FORM FOR STATE LAW SOURCES

Cases

The *Bluebook* discusses use of parallel citations in Rule 10.3, B5.1.3, and Table BT.2. When citing most states' cases, one cites only to the appropriate regional reporter. Always check local rules for requirements of specific courts. The Maryland rule, Md. R. 8-504(a), requires inclusion of “. . . a reference to the official Report.” Thus, parallel citation is required when citing Maryland cases in documents submitted to Maryland courts. In scholarly writing and office memoranda, citation to *West's Atlantic Reporter* is sufficient.

Maryland Court of Appeals Cases

Cited to a Maryland court:

Figueiredo-Torres v. Nickel, 321 Md. 642, 584 A.2d 69 (1991).

The case appears in volume 321 of the Maryland Reports, beginning at page 642 and also in volume 584 of the Atlantic Reporter, Second Series, beginning at page 69. It must be cited to both reporters. The case was decided in 1991. The official publication, Maryland Reports, includes cases only from the Maryland Court of Appeals, so it is clear from that citation alone which court decided the case.

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Cited otherwise:

Figueiredo-Torres v. Nickel, 584 A.2d 69 (Md. 1991).

Citation is made only to the West regional reporter. Because all of the West regional reporters publish cases from a number of states and sometimes more than one court within each state, this citation alone is not sufficient to identify the state, much less the specific court. Thus, the abbreviation of the court (in this instance the Maryland Court of Appeals) must be included with the year. "Md." as used here is *neither* the abbreviation of the state, *nor* the abbreviation of the official reporter. It is the abbreviation of the *court*.

Maryland Court of Special Appeals Cases

Cited to a Maryland court:

Green v. State, 91 Md. App. 790, 605 A.2d 1001 (1992).

The official publication, Maryland Appellate Reports, includes cases only from the Maryland Court of Special Appeals, so it is clear from that citation alone which court decided the case.

Cited otherwise:

Green v. State, 605 A.2d 1001 (Md. Ct. Spec. App. 1992).

The abbreviation of the *court* must be included with the year because, once again, the citation to the Atlantic Reporter alone is sufficient to identify *neither* the state *nor* the court. Note that unlike with the Court of Appeals, the abbreviation for this court is *not* the same as for the official reporter for the court.

Statutes

Statute form for state codes is governed by Rule 12 of the *Bluebook*, as described in Chapter 3 of this research guide. A number of examples are provided there as well. Generally, Rule 12 and Table T.1 provide most of the information needed to cite state statutes.