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Basics of Legal Research

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I. WHAT ARE YOU LOOKING FOR?

- [Primary law](#)
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- **Primary law**

A basic understanding of the United States legal system is essential to knowing what to look for and where to find it. The legal system is actually three parallel systems -- federal law, state law, and administrative law -- operating under the authority of the US and state Constitutions. The primary law of each system flows from three primary sources:

[Statutes \(Constitution and laws enacted by the legislature\)](#)

[Cases \(judicial opinions issued by courts\)](#)

[Adjudications \(administrative agency materials\)](#)

In order to research effectively, you must determine if the issue involves federal or state law and what type of primary law applies.

- **Secondary sources**

To determine what law applies, you can turn to [secondary sources](#). This catch –all category of legal materials is essentially everything that is NOT primary law. Secondary sources are materials that explain, analyze, critique or help you find the law. Examples are:

[Legal encyclopedias](#)

[Treatises](#)

[Legal periodicals](#)[Practice materials](#)

Many researchers recommend beginning with secondary sources because these helpful materials are a rich source of citations to the primary law.

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II. HOW TO START?

- [Key questions](#)
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- **Key questions**
 - **Be clear about the scope of your project.** Are you researching an issue for an appellate brief, a memo to a partner, a scholarly article, an oral presentation? How much time (and client resources) can you devote to the project?
 - **Be sure you have the basic facts.** Ask the "who, what, when, where, why and how" questions. This may seem obvious, but you have to be sure you understand the facts surrounding your legal issue before you start.
 - **Articulate the legal issue.** What jurisdiction is involved? Federal or state? Is this a [civil](#) or [criminal](#) matter? Who are the parties and what [relief](#) is sought? Is this a [substantive](#) or [procedural](#) issue?
 - **Consider which of three groups may have established the law** on this issue: the legislature, the courts or the executive branch. It is quite possible that two and possibly all three groups have touched on the topic. Then look for to the [statute](#), [case](#) or [regulation](#) that applies.
 - **Search terms**
 - **To begin to research, you need a list of search terms.**
Here are four ways to come up with search terms:
 1. Ask the person who gave you the assignment.
 2. Use a dictionary, especially a [legal dictionary](#) or thesaurus.
 3. Ask a librarian or other person familiar with the topic and ask for suggestions.
 4. Brainstorm by jotting down as many synonyms and related words as you can because different resources use different terminology to refer to the same topic. For example, "children" could be listed under "infants," "minors," or "parent and child."
 - **Research strategies**
 - Use [secondary sources](#) to learn about the law and get references to primary law.
 - Use "[One Good Case](#)" to get started.

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III. CASES: WHAT ARE CASES AND HOW ARE THEY ORGANIZED?

- [What is a case](#)
- [How to find a specific case by citation](#)
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- **What is a case**

A case is a written decision issued by a court, often referred to as a judicial opinion or decision. Cases are compiled in print sets called case reports or reporters. **Federal courts** and **state courts** use a similar hierarchical organization (lowest to highest): trial court, appellate court, highest court. Courts at each level publish their decisions in chronological order in an [official case reporter](#). Commercial entities, such as West, also publish cases. Federal reports, West's Regional Reporters, and NY reports are in the Reading Room. Other state case reporters are shelved with the state materials on the fourth floor.

Case law is available on [Westlaw](#), [Lexis](#), [Findlaw](#), [Cornell Legal Information Institute](#), and individual court web pages. For example, the [NY Court of Appeals](#) provides access to its recent decisions. The free web sites do not generally have cases issued before 1990, although collections of United States Supreme Court decisions may go back farther.

- **How to find a specific case**

Cases can be found [by citation](#), [by topic](#), and [by name](#).

- **Finding cases by citation**

A standard three-part citation lets you know where to find the case:

Volume Number	Reporter	Page Number
238	F.3d	68

If the abbreviation for the reporter is perplexing, use *Bieber's Guide to Legal Citations* [KF246.B582 Reference], *Bieber's Guide to Legal Abbreviations* [KF246.B58 Reference], or your Blue BookBook to decipher it. If the reporter has gone through volumes 1 – 999, a second series is issued beginning with volume 1 again. In the above example the notation “3d” indicates that the Federal Reporter (F) is now in its third series. Be sure to note which numbered series your citation points to. [Westlaw](#), [Lexis](#) and other online legal databases allow you to pull up cases by simply entering the citation in a search box.

- **Where do you find citations to relevant cases? Secondary sources, annotated statutory codes, case digests, and citators such as Shepard's or KeyCite.**

- **Finding cases by topic**

Cases are published in the order decided by the court - i.e. in chronological order. A reporter will have cases by different judges on a wide variety of topics following each other: criminal law decision followed by a voting rights decision followed by a malpractice decision. To find cases on a certain topic, there is a case finding tool called a [case digest](#). Every reporter published by West uses the West Digest system, which assigns every legal issue in a case to one of 400+ legal topics and further pigeon holes the issue into a subdivisions called [key numbers](#). The topic, key number, and a short blurb about the legal issue are referred to collectively as "[headnotes](#)" and appear as editorial enhancements at the beginning of each case in a

West Reporter. By looking up your topic and key number in the digest for your jurisdiction, you will find a list of citations to cases covering the same point.

[Learn more about the digest system.](#)

Westlaw incorporates the digest system and allows searching by topic number and key number. Lexis has compiled its own head note system. If there is no digest, researchers can search using [keywords](#) or construct [Boolean searches](#) to find cases.

- **Finding cases by name**

You can find a case using party names on both Lexis and Westlaw and most online case law databases as well by entering the litigants' names in the "find by name search" box.

You can find cases and their citations using print resources by using the Case Name volumes at the end of a West digest set. Some digests have volumes listing cases by Plaintiffs or Defendants or both.

- **["One Good Case" Research Strategy](#)**

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IV. STATUTES: WHAT ARE STATUTES AND HOW ARE THEY ORGANIZED?

- [Types of statutes](#)
- [How to find a specific law](#)
 - [by citation](#)
 - [by subject](#)
 - [by popular name](#)

- **Types of statutes**

Statutes are laws enacted by the legislature. Statutes are published in several formats: [session laws](#), [statutory codes](#) and [annotated codes](#).

- [Session laws](#) are the chronological compilation of slip laws passed by the legislature during a legislative session. An act on agriculture could be followed by an act regulating zoos, depending on the order in which the laws were passed. The session laws contain the official text of the law as passed by the legislature. Session laws of the US Congress are compiled in a set called Statutes at Large (abbreviated in citations as Stat.)
- [Statutory codes](#) are the subject arrangements of enacted laws currently in force. The US Code organizes the laws into 50 subject areas called Titles and further arranges them by numbered sections in each Title.
- The Statutes at Large and the US Code are in print in the Reading Room. Statutory codes for all US jurisdictions are arranged alphabetically by state are also in the Reading Room.
- Federal and state statutory codes can also be found on [Westlaw](#), [Lexis](#), and [FDsys](#) (federal only).

[Annotated codes](#). Many researchers begin by determining if a statute is relevant to their issue and advocate turning to an annotated statutory code as the first research step. Why? Because the annotations include the history of the section of the law (when it was enacted and dates of subsequent amendments), cases that interpret the law, and citations to regulations promulgated under the law, law review articles about the law and other research aids. There are two annotated versions of the US Code: United States Code Annotated (USCA) and United States Code Service (USCS). Each publisher provides its own annotations and highlights its own products.

Commercially published codes are not the official law of the jurisdiction, but annotated codes mirror the official codes so the text of the statutes in both sources is the same. However, legal researchers opt for annotated codes due to the editorial enhancements and frequent updates to the print volumes provided by the publishers.

- **How to find a specific law**

Statutes can be found [by citation](#), [by subject](#), or [by popular name](#).

Finding statutes by citation

A three-part citation format tells you where to find the statute in the code for your jurisdiction:

Title Number	Name of Code	Section Number
42	USC	Â§1983

If the abbreviation for the name of the code is puzzling, use *Bieber's Guide to Legal Abbreviations* [KF246.B58 Reference], *Bieber's Guide to Legal Citations* [KF246.B582 Reference], or your Blue Book. Also be aware that some titles are so large that they fill several volumes. Section 1983 could be in one of 29 volumes of Title 42. All the statutory codes for US jurisdictions are in the Reading Room, and are available on [Westlaw](#), [Lexis](#), and several free web sites, such as [FDsys](#) (federal only), [Cornell Legal Information Institute](#), and [Findlaw](#).

Finding statutes by subject

Finding a statute in print on a specific subject requires using the soft cover indexes at the end of the set. Westlaw and Lexis provide tables of contents and indexes to statutory codes as well.

An index is the best way to approach subject searching. Since a code is a subject arrangement of the law, your topic may fit under more than one index subject heading and be covered by more than one statute. Using your list of search terms in an index will provide cross-references to additional subject headings. The index will give you the citation to a relevant Title and Section of the code governing your topic. When using the print codes, be sure to look at the same title and section number in the supplement in back of the volume. This [pocket part](#) provides the latest changes to the law and cites to recent cases interpreting that statutory section.

Finding statutes by popular name

Finding a statute by name is sometimes possible. Some annotated codes include a **Popular Name Table volume** at the end of the [Index](#). Here you can look up statutes by the names people commonly use for them, for example, the Clean Air Act or Endangered Species Act. The Popular Name Table will point you to the appropriate title and section number of the code. Westlaw includes the Popular Name Table as a database (USCA-POP). The Popular Name listing is not available in resources for every jurisdiction and not every statute has a popular name.

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V. WHAT IS ADMINISTRATIVE LAW AND WHERE IS IT FOUND?

- [Administrative law defined](#)
- [Regulations](#)
- **Administrative law defined**

The third source of primary law is administrative law or agency law. Administrative agencies are created by statute and charged with regulating an area of conduct. For example, the federal Food and Drug Administration regulates drug safety by requiring pharmaceutical companies to adhere to testing and reporting procedures. Agencies operate under the jurisdiction's administrative procedures law and the statute that created them (the "enabling law"). The most common form of administrative law encountered by law students and the public is formal rulemaking by agencies that produce [regulations](#). The terms "rules" and "regulations" can be used interchangeably.

- **Regulations**

Federal agency regulations must be published in proposed form and again in final form. Regulations first appear in the **Federal Register (FR)**, a daily publication that presents agency business in chronological order, showing what is done on a day-to-day basis. Once the regulations are published in final form, they are organized by agency and published in the **Code of Federal Regulations (CFR)**. The CFR is essentially a subject arrangement of regulations and is organized into 50 titles, which are subdivided into parts, and further subdivided into sections. States have followed the federal example for organizing state agency regulations.

The CFR is in the Reading Room as are New York's administrative regulations. Other states' regulations are shelved with the state material on the fourth floor. The FR and CFR and most state regulations are on [Westlaw](#), [Lexis](#), [FDsys](#) (federal only), [Cornell Legal Information Institute](#). [HeinOnline](#) has a complete run of the FR from its inception in the 1930s. There is not yet online access to every state code on the web.

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VI. WHAT ARE SECONDARY SOURCES?

- [Secondary sources defined](#)
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Secondary sources defined

Secondary sources are materials that discuss, explain, analyze, and critique the law. They are resources about the law, and not the law itself. Frequently used secondary sources include [legal encyclopedias](#), [legal dictionaries](#), [Restatements of the law](#), subject treatises, [American Law Reports](#) (all in the Reading Room), and articles in [legal periodicals](#) (in the library stacks and online).

Secondary sources come in varying levels of complexity. Some resources such as hornbooks, Nutshells, and the Understanding series target law students. Others are designed for the scholar or practitioner. All secondary sources help the researcher understand the parameters of the research topic and learn the basics about the topic. Researchers who know little about the area of law they are researching should first use a secondary source to gain familiarity with the jargon, issues, key cases and statutes, and history.

How to use secondary sources

Be careful how you use the information you find in secondary sources!

Many secondary Sources are recognized as broad, general resources. They are a great starting place to get fundamental information, but do not cite an encyclopedia as persuasive or binding authority in a legal memo or brief. Just use the resources for your background education and as springboard to cases and other materials.

Likewise, *do not cite* a hornbook or law student study aid in a legal memo or brief. These are background materials for students and are not persuasive authority.

Treatises, depending on the prestige of the author, are occasionally cited as persuasive authority.

Restatements are recognized authorities by the courts and frequently cited.

Law review articles may be persuasive authority depending on the quality of the article, the credentials of the author and the reputation of the publication. Comments, articles or case notes written by students are not likely to be persuasive.

How to find secondary sources

Finding traditional secondary sources

Many secondary sources are well known print sets that are easy to spot in law libraries. [Legal dictionaries](#), and Beiber's are in the Reference Collection in the Reading Room. [Legal encyclopedias](#), such as Corpus Juris Secundum (CJS), American Jurisprudence (AmJur), and NY Jurisprudence are multivolume sets in the Reading Room, as are [American Law Reports](#) and [Restatements of the law](#). The multivolume sets have indexes where you can look up your search terms. The volumes are updated with [pocket parts](#).

Individual [treatises](#), [hornbooks](#), [supplementary sources](#), and [practice materials](#) are often on Reserve behind the Circulation Desk in the Reading Room. They can be found by searching the [online catalog](#), asking a reference librarian, and by scanning the shelves in the appropriate section of the library.

Secondary sources are beginning to appear online in commercial databases. Westlaw and Lexis have legal encyclopedias, ALR, Restatements and several treatises in their secondary materials databases. [Loislaw](#) includes several treatises published by Aspen. You are not likely to find free access to a secondary source on the web.

Finding articles in [legal periodicals](#)

Articles are secondary sources that discuss current issues and point researchers to additional resources. Articles can be found in periodicals such as legal newspapers, bar association journals, academic law reviews (edited by law students), topical law reviews (peer reviewed by experts). The articles in each publication serve distinct audiences covering topics ranging from informing the local bar about law firm mergers to extensively analyzing the impact of a specific law or discussing a trend in legal philosophy. Research generally requires looking at the most reputable, scholarly resources available.

There are **two ways** to find articles in law reviews and law journals: [using an index](#) or [full text searching](#).

- o **Finding articles using an index**

Several indexes to legal literature will help you find relevant articles. Print indexes are multivolume sets that organize articles by topic, author, and/or title to give researchers have a number of ways to find articles on point. Print indexes are organized by year and are not cumulative so researchers must select what year(s) to search and use the volumes covering those years. The print version of Index to Legal Periodicals (ILP) covers articles from the early 1900s forward, while Current Legal Index (CLI) starts with articles written in 1980. Both sets are in the Reading Room.

Online indexes allow you to search the same way, but the search can be done across years, usually from the 1980s forward, eliminating the tedious work of looking up the same topic volume by volume.

[Westlaw](#) and [Lexis](#) provide access to LRI (which is the online version of CLI). ILP is available on the [CUL Gateway](#). There are no hyperlinks to the full texts of articles on ILP and very few on LRI.

- o **Finding articles using full text searching online**

Articles contained in online databases can be found the traditional way by author, title or citation. To find articles on a specific topic, researchers search the full text of articles using keywords or phrases. The database will list the articles returned by the search by relevancy ranking, with those using the words more frequently ranking nearer to the top. An efficient researcher will use unique search terms and restrict the term to segments within the article to pare the down the results.

The convenience of immediately having the article at your fingertips makes full text searching very popular with students. The value of having numerous irrelevant articles at your fingertips must be decided by each researcher.

Finding legal periodicals

Once an index provides a citation to an article, the next step is to find the cited periodical. To find a print journal, use the **online catalog** and search using the journal's exact title. The catalog records will give you links to online sources from the university's databases, such as HeinOnline, Proquest, J-STOR and a call number that tells you where the journal is shelved. Most American law school journals have call numbers beginning with KF10, which means they are shelved on the first floor. The most recent five years of individual journal issues are kept on Special Reserve and will be retrieved for you upon request by the library staff.

Most legal academic periodicals are on Westlaw, Lexis, and HeinOnline. Westlaw has several hundred journals with the full text of articles dating from 1980 forward in the *Law Reviews, Journals and Legal Periodicals* database. Lexis has a similar collection in its *Secondary Legal-Law Reviews & Journals* database. **HeinOnline** has full text articles in PDF from many journals, dating from volume 1 of some journals.

TIPS about legal periodicals

Not every journal is online.

Different databases contain different journals, although there is a great deal of overlap.

Citations to articles written about a specific case can be found by Shepardizing or KeyCiting the case.

Citations to articles about statutes may be listed in the annotations to the statute and at the end of Shepard's or Keycite citing references.

Secondary sources may provide law review citations.

Articles written before 1980s must be found using print indexes and print journals.

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VII. UPDATING CASE LAW WITH SHEPARD'S AND KEYCITE

- **What does it mean to update a case?**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if it is still "good law." Using **Shepard's** or **KeyCite**, you can determine if a case has been expressly reversed or overruled or otherwise impacted by subsequent authorities. Shepard's and KeyCite link to authorities that have mentioned your case. It is the researcher's responsibility to see if being mentioned by other courts may have impacted the case.

More information on Shepard's from Lexis. After logging on through the law school page, select "Prepare for Class," then "Teaching Tools" to find Shepard's Demos for two short webinars.

More information on KeyCite from Westlaw.

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