Legal Research Demystified: A Step-by-Step Approach (Table of Contents and Chapter 5 on Research Plans)

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Available at: https://works.bepress.com/eric_voigt/8/
Legal Research Demystified

A Step-by-Step Approach

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CAROLINA ACADEMIC PRESS
Durham, North Carolina
Contents

Preface xiii
Acknowledgments xvii

Part I · The United States Legal System
Introduction: What You Should Know About Legal Research 1

Chapter 1 · The Federal and State Systems: Three Branches of Government 3

A. The Legislative Branch: Statutes 5
B. The Executive Branch: Regulations 6
C. The Judicial Branch: Caselaw 8
   1. Structure of the Federal Court System 9
   2. Structure of State Court Systems 11
D. Primary Authority vs. Secondary Authority 12
E. Summary of Key Points 13
F. Review Questions on Three Branches of Government 14

Chapter 2 · Binding and Nonbinding Legal Authorities 17

A. Constitutions, Statutes, and Regulations 18
B. Cases from Federal and State Courts 18
   1. Controlling Jurisdiction vs. Controlling Law 19
   2. Doctrine of Stare Decisis 19
   3. Two-Step Approach to Binding Caselaw 20
C. Summary of Key Points 24
D. Review Questions on Binding and Nonbinding Authorities 26

Chapter 3 · The Publication Process for Cases and the Anatomy of a Case 29

A. Where to Find Cases: Print Reporters and Online 29
B. West's National Reporter System 31
   1. Federal Cases 31
   2. State Cases 31
C. Unpublished and Non-Precedential Cases 33
D. Deciphering Case Citations 35
   1. Citations to Reported Cases 35
   2. Citations to Unpublished Cases 36
E. Dissecting Parts of a Case Found on Westlaw and Lexis Advance 37
### Chapter 4 · The Publication Process for Statutes and the Anatomy of a Statutory Code

A. Federal Statutes: From Bill to Law  
B. Federal Statutes: Forms of Publication  
   1. Slip Laws and Session Laws  
   2. Codes  
   3. Comparison Between Public Laws (Session Laws) and Codified Statutes  
C. State Statutes: From Bill to Law  
D. State Statutes: Forms of Publication  
   1. Session Laws  
   2. Codes  
E. Deciphering Statutory Citations  
F. Summary of Key Points  
G. Review Questions on Statutes and Codes

### Chapter 5 · Step 1: Create a Research Plan

A. The Research Plan  
   1. Review the Client’s Facts, and Identify the Governing Law  
   2. Identify the Legal Issues and Keywords  
   3. Identify the Binding and Most Relevant Authorities  
   4. Consider the Appropriate Research Tools to Use  
   5. Identify Any Constraints  
B. Summary of Key Points  
C. Review Questions on Research Plans  
D. Practice Completing a Research Plan
Chapter 6 · Step 2: Research Every Unfamiliar Legal Issue with Secondary Sources  

A. Three Reasons to Research with Secondary Sources  

B. Major Categories of Secondary Sources  
   1. Legal Encyclopedias  
   2. Model or Pattern Jury Instructions  
   3. Treatises and Practice Manuals  
   5. Legal Periodicals  

C. Identifying and Retrieving Secondary Sources  
   1. Two Excellent Methods to Find Secondary Sources on Westlaw and Lexis Advance  
      a. Browsing by Source or Category  
      b. Performing Keyword Searches  
   2. Four Additional Methods to Find Secondary Sources When Searching on Westlaw and Lexis Is Ineffective  
      a. Online Treatise Finders  
      b. Legal Research Guides  
      c. Legal Publishers’ Websites  
      d. Legal Bibliographies  
   3. Two Methods to Find Secondary Sources in Print  
      a. Online Library Catalogs  
      b. Human Law Librarians  

D. Navigating Within a Particular Secondary Source  
   1. Navigating Sources in Print  
   2. Navigating Sources Online  

E. Updating Secondary Sources  
   1. Updating in Print  
   2. Updating Online  

F. Print Research: Four Reasons to Know It  

G. Summary of Key Points  

H. Review Questions on Secondary Sources  

I. Practice Researching with Secondary Sources  

Chapter 7 · Step 3: Research Cases by Topic  

A. Finding Cases with West’s Key Number System  
   1. Creation and Organization of the Key Number System  
   2. Four Steps for Using West’s Digest System in Print  
      a. Locate the Correct Digest Set  
      b. Find Relevant Topics and Key Numbers  
      c. Read the Classified Headnotes and Cases  
      d. Update and Validate Your Research  
   3. Navigating the Key Number System on Westlaw  

G. Summary of Key Points  

H. Review Questions on Secondary Sources  

I. Practice Researching with Secondary Sources
B. Finding Cases by Topic on Lexis Advance
   1. Creation and Organization of the LexisNexis Legal Topic Digest
   2. Two Methods for Finding Cases on Lexis Advance
      a. Best and Good Case Method
      b. Browse Topics Method
C. Other Caselaw Classification Systems
D. Summary of Key Points
E. Review Questions on Classification Systems
F. Practice Researching with Classification Systems

Chapter 8 · Step 4: Use a Reliable Citator to Find Relevant Cases and to Confirm Their Validity
A. Three Reasons to Use Citators
B. Finding Relevant Cases with Shepard’s and KeyCite
   1. Filtering by Jurisdiction and Court
   2. Filtering by Depth of Treatment and Discussion
   3. Filtering by Legal Issue and Headnotes
   4. Filtering by Keywords
C. Confirming the Validity of Cases with Shepard’s and KeyCite
D. Understanding the Persuasive Value of a Case with Shepard’s and KeyCite
E. Limitations of Citators
F. Summary of Key Points
G. Review Questions on Citators
H. Practice Researching with Citators

Chapter 9 · Step 5: Perform Keyword Searches in the Relevant Caselaw Databases
A. Introduction to Keyword Searching
B. Two Keyword Search Options on Westlaw and Lexis Advance
   1. Natural Language Searches
   2. Terms and Connectors (Boolean) Searches
C. Mechanics of Performing Keyword Searches on Westlaw and Lexis Advance
   1. Selecting a Caselaw Database
   2. Searching by Fields or Segments
   3. Filtering and Sorting Search Results
   4. Sample Path for Keyword Searching
D. Summary of Key Points
E. Review Questions on Keyword Searching
F. Practice Performing Keyword Searches
Chapter 10 · Step 6: Expand Your Research Within the Controlling Jurisdiction, If Necessary

A. Return to Step 2 (Secondary Sources) 190
B. Review a Restatement of Law 190
C. Return to Step 4 (Citators) and Step 5 (Keyword Searching) 191
D. Summary of Key Points 194
E. Review Questions on Expanding Research 195
F. Practice Expanding Your Research 196

Chapter 11 · Step 7: Research Cases from Outside the Controlling Jurisdiction, If Necessary

A. Return to Step 2 (Secondary Sources) and Review the American Law Reports to Find Out-of-State Cases 198
B. Return to Step 3 (Cases by Topic) to Find Out-of-State Cases 198
C. Return to Step 4 (Citators) to Find Out-of-State Cases 199
D. Use a Citator for a Restatement of Law 200
E. Summary of Key Points 201
F. Review Questions for Out-of-State Research 201
G. Practice Researching Out-of-State Cases 202

Chapter 12 · Step 8: Use a Reliable Citator to Re-Confirm the Validity of Each Relevant Case 203

Part III · Ten Steps for Researching Statutory Issues
Introduction: What You Should Know About Researching Statutes 207

Chapter 13 · Step 1: Create a Research Plan

A. Comparison of Research Plans for Common Law and Statutory Issues 209
B. Review Questions on Research Plans 210
C. Practice Completing a Research Plan 211

Chapter 14 · Step 2: Research Every Unfamiliar Legal Issue with Secondary Sources

A. Effective Types of Secondary Sources for Statutory Issues 214
   1. Jury Instructions for Statutes 214
   2. Continuing Legal Education Materials 215
   3. Looseleaf Services 217
B. Summary of Key Points 219
C. Review Questions on Secondary Sources 220
D. Practice Researching with Secondary Sources 221

Chapter 15 · Step 3: Find All Relevant Statutes 223
A. Types of Statutes to Research 225
B. Advantages of Researching with Annotated Codes 226
C. Methods for Researching Federal and State Statutes in Print 227
   1. Consult an Index 227
   2. Browse the Table of Contents 228
   3. Review Annotations for Cross-Referenced Statutes 231
   4. Consult a Popular Name Table 231
   5. Summary of Hypothetical on the Americans with Disabilities Act 233
D. Methods for Researching Federal and State Statutes on Westlaw and Lexis Advance 233
   1. Consult an Electronic Index and Table of Contents 235
   2. Review Annotations and Consult an Electronic Popular Name Table 235
   3. Perform Keyword Searches 236
      a. Limit a Keyword Search to the Statutory Text 238
      b. Limit a Keyword Search to the Table of Contents 241
E. Researching Federal and State Statutes on Cost-Effective Online Platforms 243
F. Locating Secondary Sources for Statutes 243
G. Researching with Print Codes: Three Reasons to Know It 244
H. Summary of Key Points 245
I. Review Questions on Researching Statutes 246
J. Practice Researching Statutes 248

Chapter 16 · Step 4: Confirm the Validity of Each Relevant Statute, Determine Each Statute’s Effective Date, and Identify All Amendments 249
A. Westlaw and Lexis Advance: Updating Statutes 250
   1. Use KeyCite or Shepard’s to Confirm the Validity of Each Statute 251
   2. Check the Effective Date for Each Relevant Statute, and Review the Text of Amendments 254
      a. Editorial Summaries 255
      b. History Notes or Credits 256
   3. Check the Currency of the Online Code 261
B. Casemaker and Fastcase: Updating Statutes 262
C. Print Code: Updating Statutes 262
D. Summary of Key Points 264
E. Review Questions on Updating Statutes 264
F. Practice Updating Statutes 266
## Chapter 17 · Step 5: Read All Relevant Statutes Critically

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Consider a Statute's Context</td>
<td>267</td>
</tr>
<tr>
<td>B. Examine a Statute's Plain Meaning</td>
<td>269</td>
</tr>
<tr>
<td>C. Summary of Key Points</td>
<td>271</td>
</tr>
<tr>
<td>D. Review Questions on Reading Statutes</td>
<td>272</td>
</tr>
<tr>
<td>E. Practice Reading Statutes</td>
<td>273</td>
</tr>
</tbody>
</table>

## Chapter 18 · Step 6: Research and Update Administrative Regulations, and Find Cases That Have Interpreted Them

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Federal Regulations: Overview and Forms of Publication</td>
<td>275</td>
</tr>
<tr>
<td>1. Federal Register</td>
<td>276</td>
</tr>
<tr>
<td>2. Code of Federal Regulations</td>
<td>277</td>
</tr>
<tr>
<td>B. Federal Regulations: Researching on Westlaw and Lexis Advance</td>
<td>278</td>
</tr>
<tr>
<td>1. Review Secondary Sources</td>
<td>278</td>
</tr>
<tr>
<td>2. Review Annotations in a Statutory Code</td>
<td>279</td>
</tr>
<tr>
<td>3. Use Shepard’s or KeyCite</td>
<td>279</td>
</tr>
<tr>
<td>4. Consult an Electronic Index</td>
<td>279</td>
</tr>
<tr>
<td>5. Browse the Table of Contents</td>
<td>280</td>
</tr>
<tr>
<td>6. Perform Keyword Searches</td>
<td>280</td>
</tr>
<tr>
<td>C. Federal Regulations: Updating on Westlaw and Lexis Advance</td>
<td>280</td>
</tr>
<tr>
<td>D. State Regulations</td>
<td>281</td>
</tr>
<tr>
<td>E. Finding Cases Interpreting Regulations</td>
<td>281</td>
</tr>
<tr>
<td>F. Summary of Key Points</td>
<td>283</td>
</tr>
<tr>
<td>G. Review Questions on Administrative Regulations</td>
<td>283</td>
</tr>
<tr>
<td>H. Practice Researching and Updating Administrative Regulations</td>
<td>285</td>
</tr>
</tbody>
</table>

## Chapter 19 · Step 7: Research Cases from the Controlling Jurisdiction That Have Interpreted Relevant Statutes

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Review Case Annotations</td>
<td>287</td>
</tr>
<tr>
<td>1. Annotated Statutory Codes in Print</td>
<td>288</td>
</tr>
<tr>
<td>2. Annotated Statutory Codes on Lexis Advance and Westlaw</td>
<td>289</td>
</tr>
<tr>
<td>3. Statutory Codes on Casemaker and Fastcase</td>
<td>290</td>
</tr>
<tr>
<td>B. Use a Reliable Citator Like KeyCite (Westlaw) or Shepard's (Lexis)</td>
<td>294</td>
</tr>
<tr>
<td>to Find Cases</td>
<td>296</td>
</tr>
<tr>
<td>C. Search a Relevant Caselaw Database</td>
<td>300</td>
</tr>
<tr>
<td>D. Summary of Key Points</td>
<td>301</td>
</tr>
<tr>
<td>E. Review Questions on Interpretive Cases</td>
<td>303</td>
</tr>
<tr>
<td>F. Practice Researching Interpretive Cases</td>
<td>304</td>
</tr>
</tbody>
</table>

## Chapter 20 · Step 8: Research the Legislative History of Relevant Statutes, If Necessary

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Types of Federal Legislative History</td>
<td>305</td>
</tr>
<tr>
<td>1. Legislative Bills</td>
<td>306</td>
</tr>
</tbody>
</table>
2. Hearing Materials 308
3. Committee and Conference Reports 308
4. Floor Debate Materials 310
5. Presidential Messages and Statements 311
B. Researching a Federal Legislative History 311
   1. Compiled Legislative Histories 312
   2. Compiling a Legislative History on Your Own 314
      a. Westlaw 314
      b. Lexis Advance and Congress.gov 315
C. Researching a State Legislative History 316
D. Summary of Key Points 316
E. Review Questions on Legislative History 318
F. Practice Researching a Legislative History 319

Chapter 21 · Step 9: Research Comparable Statutes and Cases from Other Jurisdictions, If Necessary 321
A. Researching Primary Authorities Outside Your Jurisdiction 322
   1. Researching Comparable Statutes 322
      a. Uniform Laws 322
      b. Databases and Sources for Multi-State Research 324
   2. Researching Cases Interpreting Comparable Statutes 324
B. Summary of Key Points 326
C. Review Questions for Out-of-State Statutory Research 327
D. Practice Researching Out-of-State Statutes and Interpretive Cases 328

Chapter 22 · Step 10: Use a Reliable Citator to Re-Confirm the Validity of Each Relevant Authority 329

Appendix A · Table 1: Binding vs. Nonbinding Cases 331
Appendix B · Table 2: Choosing the Best Authority 333
Appendix C · Research Action Plan Form 335

Index 337
Part II

Eight Steps for Researching Common Law Issues

Introduction: What You Should Know About Researching the Common Law

After reading Chapters 1, 2, and 3, you should know a few things about the United States legal system, including the structure of the federal and state court systems, the difference between binding and nonbinding authorities, and the publication process for cases. (If you skipped those three chapters in Part I, that was a mistake; read them now.) Now, you are ready to embark on the research journey. This Part II examines the eight steps that students and attorneys should follow when researching a common law issue. The eight research steps discussed in the following eight chapters are summarized below.

Step 1: Create a Research Plan (Chapter 5)
Step 2: Research Every Unfamiliar Legal Issue with Secondary Sources (Chapter 6)
Step 3: Research Cases by Topic (Chapter 7)
Step 4: Use a Reliable Citator to Find Relevant Cases and to Confirm Their Validity (Chapter 8)
Step 5: Perform Keyword Searches in the Relevant Caselaw Databases (Chapter 9)
Step 6: Expand Your Research Within the Controlling Jurisdiction, If Necessary (Chapter 10)
Step 7: Research Cases from Outside the Controlling Jurisdiction, If Necessary (Chapter 11)
Step 8: Use a Reliable Citator to Re-Confirm the Validity of Each Relevant Case (Chapter 12)
For every unfamiliar common law issue, you should follow—or at least consider—these eight research steps. These research steps are an excellent approach to maximize the likelihood that you will find all relevant cases applying to your client’s situation. When faced with an unfamiliar legal question, you will have no idea the number of primary authorities addressing your issue. There might be only a handful of cases with a legal issue and facts like your client’s circumstances, but they may be difficult to find. By following each research step and looking for cases using multiple research tools, it will be unlikely that you will miss an important case. Alternatively, there might be hundreds or even thousands of cases that indirectly touch on your issue, but they may not be directly relevant to the client’s question. These steps will help you weed out irrelevant cases and keep you focused on finding binding cases so that you do not accidently rely on nonbinding cases that conflict with the binding ones. Your court must follow the binding precedent (see Chapter 2).

Additionally, these eight research steps for a common law issue are a great approach to reach a reliable answer on your client’s legal question—one that accurately predicts the conclusion that the court deciding the legal issue will reach. It is insufficient to find just one or two cases; you must find and analyze all relevant cases for your research to be complete. This is especially true for common law issues, which are often fact-intensive. In contrast, when you fail to find the relevant authorities, you cannot accurately predict whether your client will win or lose. (Legal researchers rarely “stumble” upon the right answer.) The wrong answer at any time of your representation of a client could severely harm the client. Say your client has been offered $100,000 to settle her lawsuit against a company, but your boss rejects the settlement offer based on your memorandum predicting (wrongly) that your client will definitely prevail. If the client then loses at trial on every issue, the client would have lost at least $100,000.
To illustrate the non-linear research process, assume your law firm represents an employee against her employer. The partner has asked you to research whether the courts in your state recognize a common law claim against an employer who discharges an employee in retaliation for filing a lawsuit. Imagine, too, that you have background knowledge on claims for retaliation in the employment context but have not previously researched this specific issue. You could skip Steps 2 through 4 and begin with Step 5 and perform a Google-like search in an online database. Through the keyword search, suppose you found one binding decision from an intermediate appellate court that expressly rejected a common law claim for retaliatory discharge. Although it appears you have a reliable answer, you should move back to Step 2 (secondary sources), Step 3 (research by topic), and Step 4 (citators). By completing those research steps, you would discover whether the state supreme court has overruled the appellate decision and whether courts in subsequent decisions have carved out exceptions and allowed common law retaliation claims in limited circumstances.

In short, the purpose of the eight research steps is to provide you with a checklist for researching various legal issues, not to force you to mechanically follow each step for every assignment. If your professor or boss prefers that you deviate from one or more steps, then do so.
Chapter 5

Step 1: Create a Research Plan

The first of the eight steps in researching a common law issue is to develop a research plan. If you needed surgery, you would really hope that your physician had an action plan before entering the operating room. Your clients will have similar expectations. For new legal issues, resist the urge to type “random” words into the search box of an online legal database in hopes that a computer algorithm will deliver the right answers. Many students have tried that method—and failed.

You cannot fully complete the research plan for a new and unfamiliar legal issue at the beginning stage of your research, so remember to update the research plan as you progress through the process. To illustrate, before reviewing a secondary source on a negligence claim, you would not know all possible defenses a defendant might assert against your injured client. After reviewing a secondary source on your state’s negligence law, you might discover that the defendant has a good argument that the client assumed the risk of injury (which would relieve the defendant of liability). You should then revise your research plan to reflect the newly-discovered legal issue.

A. The Research Plan

A typical research plan (Step 1) includes the different parts discussed below. As you move through the research plan for an assignment, you should complete the Research Action Plan Form in Appendix C. An electronic version is also available on this book’s companion website, Core Knowledge. It will keep your research plan organized.

1. Review the Client’s Facts, and Identify the Governing Law

You should first gather and review the facts for your client’s legal dispute and should then attempt to identify the law that applies to your client’s factual situation. Initially, you should know the answers to the who, what, where, when, and why questions, including who are the parties and their relationship to each other (e.g., landlord and tenant), what is the wrongful conduct and what person or thing caused the injury, when the injury occurred, where the injury occurred, and why your client wants to sue or is being sued. Those answers will help you
determine the governing law. To illustrate, if both parties reside in Ohio and the wrongful conduct and injury occurred in Ohio, you know that Ohio state law applies. If the wrongful conduct and injury took place on a military base, you know that federal law applies.

Before reading secondary and primary authorities, you will not know the answer to multiple questions as to your facts and the governing laws. You will not know which facts are legally relevant, which are the facts your court weighs in determining whether your client wins or loses on the disputed issue. As to the law, you will not know whether both federal and state laws govern. And you will not know whether your state allows a plaintiff to bring a claim under both a statute and the common law for the same conduct and injury. As you find those answers in relevant secondary sources (Step 2), make sure you update the research plan.

2. Identify the Legal Issues and Keywords

Next, you should identify your client’s legal issues. Although you will not know all the potential issues and legally relevant facts initially, you should know enough information to sketch a preliminary statement of the issue. For example, suppose your client was attacked in Ohio by the neighbor’s German Shepherd and wants to recover damages for his injuries. The client saw the dog running toward him and threw a few rocks at it, and then the dog bit him. Before performing any research, you could draft an issue statement similar to this one:

**Preliminary Issue:** Under Ohio law, is a dog owner liable for damages when the owner’s dog attacks a neighbor?

As you find more relevant laws throughout the research process, you will better understand what facts are relevant and will probably identify new legal issues. You should then revise your initial issue statement or draft additional ones. Suppose you reviewed a secondary source on Ohio dog-bite law and learned that a victim may bring a common law claim of negligence against a dog owner but that victims who assume the risk of a dog attack cannot recover damages. With this new information, you now know at least one claim to bring and understand that the fact about the rocks being thrown at the dog are legally relevant to the owner’s possible defense of assumption of risk. You should revise the preliminary issue statement, such as stating this question (the added key terms appear in bold):

**Revised Issue:** Under Ohio law, is a dog owner liable on a negligence claim when the owner’s dog attacks a neighbor after the neighbor threw rocks at the dog?
Alternatively, you could divide your preliminary issue statement into two questions:

**Broad Issue:** Under Ohio law, is a dog owner liable on a negligence claim when the owner’s dog attacks a neighbor?

and

**Narrow Issue:** Under Ohio law, does a dog-bite victim assume the risk of injury where the victim threw rocks at the dog immediately before the attack?

Once you have written down at least one issue statement, post it everywhere you plan to research the problem and especially next to your computer. That is no exaggeration. And remember to review the issue statements during the research process to avoid falling into the research “black hole.”

After you have reviewed the client’s facts, identified the governing law, and drafted an issue statement, you should create a list of relevant words and phrases (known as keywords) to use as you research your client’s legal issues. A list of keywords is necessary to research in print and online and should include broad and specific terms. For example, for the dog-bite hypothetical, the broad and specific terms would include “pets,” “animals,” “dogs,” and “German Shepherd.” Start drafting your list by reviewing the answers to the who, what, where, when, and why questions. And as you review secondary and primary authorities, you will discover more legal terms applicable to your client’s situation.

A great source for generating keywords is a legal dictionary or legal thesaurus. *Black’s Law Dictionary* is a well-respected legal dictionary, and courts have cited it to define legal terms.¹ Cornell School of Law maintains a free version of a dictionary known as Wex (http://www.law.cornell.edu/wex). A good choice for a legal thesaurus is *Burton’s Legal Thesaurus.*²

### 3. Identify the Binding and Most Relevant Authorities

Another part of the research plan is to identify binding authorities—the cases that the court deciding the client’s issue must follow. When both binding and non-binding authority exists for the same rule of law, you must cite the binding case in a legal document. If the nonbinding case further supports your argument, it could be cited as well. Citing just the nonbinding case, however, would mislead your reader to believe that binding authority does not exist.

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1. It is available in print and on Westlaw.
2. For a further discussion of how to develop a list of keywords, see Chapter 9.
For common law issues (the focus of Part II of this book), judicial decisions are the only binding authorities. As explained in Chapter 2, you should follow a two-step approach to know which decisions bind your court. You need to (1) determine whether federal or state law applies, and (2) consider what court (e.g., federal or state) and what level of court (e.g., trial court) will resolve the dispute. Recall that Table 1 (Binding vs. Nonbinding Cases) in Appendix A helps you apply the two-step approach to your client’s situation. For instance, imagine your client has brought a negligence claim (state law) in a Georgia trial court. Table 1 informs you that the binding authority includes decisions from the Court of Appeals of Georgia (intermediate appellate court) and the Supreme Court of Georgia (cell A.2 of Table 1). As a result, you know to focus on researching decisions from those courts.

You may also need to research nonbinding judicial decisions. Their persuasive value primarily depends on what court issued the decision, the quality of the court’s reasoning, and the similarities of the legal issues and facts to the client’s situation. Returning to the negligence claim example, decisions from the United States Court of Appeals for the Eleventh Circuit or a federal district court in Georgia would, as a general rule, be highly or moderately persuasive authorities on a state trial court. But those designations are not static. A case would lose its “highly” or “moderately” persuasive status if it is poorly reasoned or conflicts with a binding case.

Of the cases falling in the binding and persuasive categories, remember to focus on finding judicial decisions in which the legal issues and facts are the same or similar to your client’s situation. Because courts generally reach the same conclusion as prior decisions when faced with similar legal issues and facts (under stare decisis), those types of cases will be the most relevant and helpful in predicting how your court will resolve the client’s issues.

Table 2 (Choosing the Best Authority) in Appendix B will help keep you focused on finding judicial decisions with similar legal issues and legally relevant facts. The table has three columns: “Best Authority,” “Good Authority,” and “Fair/Weak Authority.” Of course, you should find cases falling in the “Best Authority” column—the decisions that closely align with the client’s issues and facts. In reviewing Table 2, you should also consider whether a case falls near the top or bottom of a particular column (higher row is usually better authority), whether the case has been designated “for publication” (published decisions are usually better authority), the date the case was decided (recent decisions are usually better authority), and the court’s reasoning.

But do not disregard cases falling in the “Good Authority” column. Many times, you should find and rely on those “Good Authority” cases. Your purpose for citing a case determines whether the “better” authority is the one that falls in the “Best Authority” or “Good Authority” column. For example, assume you need a case identifying the basic elements of a negligence claim in your jurisdiction. Further assume

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3. If statutes and administrative regulations apply, the deciding court would also be bound by those laws.
that you found two cases for this purpose: a nonbinding case that is legally and factually similar ("Best Authority" column in Table 2) and a binding case that is legally similar but factually different ("Good Authority" column in Table 2). You should cite the binding case for the elements, even though it does not technically fall in the "Best Authority" column.

A hypothetical will help you navigate both Table 1 and Table 2. Suppose you are researching Georgia law on whether a manager's derogatory, oral statements to a subordinate employee constitute "outrageous" conduct for a common law claim of intentional infliction of emotional distress ("IIED"). Assume also that the lawsuit is pending in a Georgia trial court and that you found three cases involving a claim for IIED:

- **Case A**: The Supreme Court of Georgia concluded that a co-worker’s harsh, oral statements, alone, do not constitute outrageous conduct.
- **Case B**: The United States Court of Appeals for the Eleventh Circuit ruled that a co-worker’s actions were outrageous when he physically harmed a cat in front of its owner, another co-worker.
- **Case Z**: The Supreme Court of Georgia concluded that plaintiff did not suffer severe emotional distress, which is a separate element than the element of outrageous conduct.

First, you should review Table 1 (Binding vs. Nonbinding Cases) in Appendix A to know which authorities are binding and persuasive. **Case A** and **Case Z** are binding authorities because they are from the Supreme Court of Georgia (court of last resort); however, **Case B** is not binding, because a federal court cannot bind a state court on state law.

Second, you should determine where each case falls in Table 2 to help you confirm whether you have found the most relevant cases for your issue. **Table 2** is reproduced below, and it identifies where the three cases fall. **Case A** falls in the “Best Authority” column (cell A.1) because it is binding and addresses the same legal issue (outrageous conduct) and similar facts (oral statements in the employment context) as the client’s situation. **Case B** falls in the “Good Authority” column (cell B.2) because it is highly persuasive authority from the Eleventh Circuit and involves different, more extreme facts (physical harm instead of mere words). **Case Z**, although from the Georgia Supreme Court, is the weakest authority. This case falls in the “Fair/Weak Authority” column (cell A.3) because it involves a different legal issue (severity of the emotional distress and not outrageous conduct).

As a warning, do not use Table 1 and Table 2 as substitutes for your own thinking and analysis. Instead, use both tables as guides and efficient ways to confirm whether your research is on the right track. No single chart can inform a researcher of the best authority for every circumstance because of the vast number of factual situations.

---

4. If this Eleventh Circuit decision was based on weak reasoning, it would lose its "highly persuasive" status and fall on a lower row in Table 2 (cell C.2).
Table 2: Choosing the Best Authority: Hypothetical on Outrageous Conduct

<table>
<thead>
<tr>
<th>Weight of Authority (Refer to Table 1)</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td>Binding Caselaw</td>
<td><strong>Case A</strong></td>
<td>Legal Issue: Same or similar</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Legal Issue: Same — outrageous conduct</td>
<td>Facts: Different</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Facts: Similar — oral statements in the employment context</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Fair/Weak Authority</strong></td>
<td><strong>Best Authority</strong></td>
<td><strong>Good Authority</strong></td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>Nonbinding: Highly to Moderately Persuasive Caselaw</td>
<td>Legal Issue: Same or similar</td>
<td><strong>Case B</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Facts: Same or similar legally relevant facts</td>
<td>Legal Issue: Similar — outrageous conduct</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Facts: Different — physical harm, not mere words</td>
</tr>
<tr>
<td><strong>C</strong></td>
<td>Nonbinding: Slightly Persuasive Caselaw</td>
<td>Legal Issue: Same or similar</td>
<td>Legal Issue: Same or similar</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Facts: Same or similar legally relevant facts</td>
<td>Facts: Different</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

that exist and because the persuasive value of a nonbinding case correlates with the court’s reasoning. You, therefore, should not spend hours antagonizing whether one case falls in the Best or Good Authority column of Table 2 or whether a case falls in row B or C in a given column of Table 2. For instance, if the only cases you have found fall in the “Fair/Weak Authority” column of Table 2, you know to continue researching and to proactively look for judicial decisions that closely align with the client’s legal issues and factual circumstances.
4. Consider the Appropriate Research Tools to Use

You should identify the research tools you expect to use online and in print to find all relevant secondary and primary authorities. The most popular and most respected online legal research services are Westlaw (owned by Thomson Reuters) and Lexis Advance (owned by LexisNexis). These fee-based commercial services essentially provide the “key” to the universe of law. Their online databases provide access to all federal and state constitutions, statutes, administrative regulations, and caselaw, as well as databases for many secondary authorities covering substantially all legal topics. Additionally, the proprietary computer algorithms on Westlaw and Lexis Advance are probably the most sophisticated in the legal research world. If you cannot find any relevant legal authority for your assignment after researching on these sophisticated services, walk—or run—to a reference librarian or to your professor’s office for help.

Recently, Thomson Reuters has introduced a new Westlaw platform called Westlaw Edge. This new platform has a fresh look and offers several exciting features, including improved artificial intelligence to minimize research time on some assignments. Despite the revamped interface, Westlaw’s organization and search functionality are essentially the same. This book, therefore, refers to both platforms as “Westlaw.” If a feature is available only on Westlaw Edge, it is noted. Students at most schools have access to Westlaw Edge. Attorneys can switch to Westlaw Edge for an additional fee; it is unclear how many attorneys will keep their current Westlaw or will upgrade to the new platform.

Although students have “free” access to Westlaw and Lexis Advance, these sophisticated services are expensive outside the law school bubble. Because some of your clients will be reluctant to pay for legal research, you should know about cost-effective alternatives to the fee-based services and should educate yourself on their limitations.

Casemaker and Fastcase are comprehensive online legal research services available to many attorneys as a benefit of bar membership, but the number of features pales in comparison to Westlaw and Lexis. Casemaker is available for free to members of almost 30 state and local bar associations (e.g., Alabama and Ohio), and Fastcase is available for free to members of over 25 state and local bar associations (e.g., Georgia and Florida). Their online libraries have good coverage of federal and state statutes, regulations, and cases. But both free research services lack significant coverage of secondary sources, although Fastcase provides access to some respected secondary sources for a fee.

A third alternative to Westlaw and Lexis is Google Scholar—a free service for every person with internet access. It has extensive coverage of cases from federal and

5. A fairly new competitor to Westlaw and Lexis Advance is Bloomberg Law. Although this book does not focus on Bloomberg Law, the research skills you learn on Westlaw and Lexis transfer to other online providers like Bloomberg Law.

state courts but has no database for any statute, whether federal or state. Google Scholar does not maintain a database for secondary sources; instead, it provides links to legal articles hosted on both free websites and fee-based databases.

The platforms just discussed make it easy to locate the full text of a judicial decision. Assume a secondary source provided this citation to a federal case: *United States v. Tobin*, 923 F.2d 1506 (11th Cir. 1991). You could retrieve it on Lexis Advance, Westlaw, Casemaker, Fastcase, or Google Scholar by entering the citation in the search box.

In short, if you need to minimize research costs, Casemaker, Fastcase, and Google Scholar are all good options. But use these free services to supplement, not supplant, Westlaw and Lexis Advance.

While a wealth of information is available online, you should also look for relevant secondary sources in print in a law library. Some excellent legal resources are available only in print (see Chapter 2), and some resources and research tools are easier to navigate and understand in print than online. In a nutshell, the printing press is not obsolete — yet.

### 5. Identify Any Constraints

You also need to identify the final work product expected, any limits on the time you can spend on the assignment, and the dollar amount in dispute. If you are drafting a motion for summary judgment or an appellate brief on a claim against your client for $500,000, you would spend many hours researching the law. You, however, would spend fewer hours researching the law for an office memorandum addressing a small-dollar claim.

### B. Summary of Key Points

As you read the multiple parts to a good research plan, you should have realized that researching the law is more complicated than other types of research. To minimize mistakes and maximize efficiency, take time to create a research plan for your assignments. With a research plan in hand, you are ready to move to Step 2 and find and review secondary sources covering your issues.

Remember two important points as you progress through the next research steps. You must update your research plan to reflect any new discoveries, such as new law that raises a new legal issue for the client. And track your research process. After researching for days or weeks and reading many authorities, you will forget which cases you read, which online databases you searched, and which methods you used to search online. You should track and organize your research by completing the Research Action Plan Form in Appendix C. That form is also posted on Core Knowledge.
C. Review Questions on Research Plans

At this point, you should understand how to create a research plan. To test your comprehension, answer the true-false questions on this book’s companion website, Core Knowledge. It will identify the correct answers and provide clear explanations for each question. The same questions are reproduced below.

1. For the first part of your research plan, you should read court decisions discussing your client’s legal issue.
   a. True
   b. False

2. You should consult Table 1 (Binding vs. Nonbinding Cases) and Table 2 (Choosing the Best Authority) to help you determine whether your research is on the right track.
   a. True
   b. False

3. After researching caselaw for one hour, if all the cases you have found fall in the “Fair/Weak Authority” column of Table 2, you should stop researching.
   a. True
   b. False

4. To determine whether a judicial decision falls in the “Best” or “Fair/Weak Authority” column of Table 2, you should consider whether the legal issue and facts are similar to your client’s situation.
   a. True
   b. False

5. The most comprehensive and respected online legal research services are Westlaw and Lexis Advance.
   a. True
   b. False

D. Practice Completing a Research Plan

Like riding a bike, you cannot learn to research by merely reading about it; you must practice doing it. On this book’s companion website, Core Knowledge, a few research assignments have been posted. The online assignments walk you through the steps for researching a common law issue on Westlaw and Lexis Advance, including how to develop research plans. For each assignment, you will research the law to resolve legal issues for your hypothetical client.
Appendix A

Table 1: Binding vs. Nonbinding Cases

<table>
<thead>
<tr>
<th></th>
<th>(1) State or Federal Issue</th>
<th>Binding (Mandatory) Cases</th>
<th>Nonbinding (Persuasive) Cases</th>
</tr>
</thead>
</table>
| A | State issue in state trial court | • That state's highest court  
• That state's intermediate appellate courts | • U.S. Supreme Court  
• Federal circuit courts  
• Federal district courts  
• That state's trial courts |
| B | State issue in state intermediate appellate court | • That state's highest court  
• That state's intermediate appellate courts | • U.S. Supreme Court  
• Federal circuit courts  
• Federal district courts  
• That state's trial courts |
| C | State issue in state's highest court | • That state's highest court | • U.S. Supreme Court  
• Federal circuit courts  
• Federal district courts  
• That state's trial courts |
| D | State issue in federal district court | • That state's highest court  
• That state's intermediate appellate courts (limited circumstances)  
• Federal circuit court encompassing the district court (limited circumstances) | • U.S. Supreme Court  
• Other federal circuit courts  
• Federal district courts  
• That state's trial courts |
| E | State issue in federal circuit court | • That state's highest court  
• That state's intermediate appellate courts (limited circumstances)  
• That federal circuit court (limited circumstances) | • U.S. Supreme Court  
• Other federal circuit courts  
• Federal district courts  
• That state's trial courts |
| F | State issue in U.S. Supreme Court | • That state's highest court  
• That state's intermediate appellate courts (limited circumstances) | • U.S. Supreme Court  
• Federal circuit courts  
• Federal district courts  
• That state's trial courts |
Table 1: Binding vs. Nonbinding Cases, continued

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(1) State or Federal Issue</strong>&lt;br&gt;<strong>(2) State or Federal Court</strong></td>
<td><strong>Binding</strong>&lt;br&gt;(Mandatory) Cases</td>
<td><strong>Nonbinding</strong>&lt;br&gt;(Persuasive) Cases</td>
<td></td>
</tr>
<tr>
<td>G</td>
<td>Federal issue in federal district court</td>
<td>• U.S. Supreme Court&lt;br&gt;• Federal circuit court encompassing the district court</td>
<td>• Other federal circuit courts&lt;br&gt;• That federal district court&lt;br&gt;• Other federal district courts&lt;br&gt;• All state courts</td>
</tr>
<tr>
<td>H</td>
<td>Federal issue in federal circuit court</td>
<td>• U.S. Supreme Court&lt;br&gt;• That federal circuit court</td>
<td>• Other federal circuit courts&lt;br&gt;• Federal district courts&lt;br&gt;• All state courts</td>
</tr>
<tr>
<td>I</td>
<td>Federal issue in U.S. Supreme Court</td>
<td>• U.S. Supreme Court</td>
<td>• Federal circuit courts&lt;br&gt;• Federal district courts&lt;br&gt;• All state courts</td>
</tr>
<tr>
<td>J</td>
<td>Federal issue in state trial court</td>
<td>• U.S. Supreme Court&lt;br&gt;• That state's highest court (limited circumstances)&lt;br&gt;• That state's intermediate appellate courts (limited circumstances)</td>
<td>• Federal circuit courts&lt;br&gt;• Federal district courts&lt;br&gt;• That state's trial courts</td>
</tr>
<tr>
<td>K</td>
<td>Federal issue in state intermediate appellate court</td>
<td>• U.S. Supreme Court&lt;br&gt;• That state's highest court (limited circumstances)&lt;br&gt;• That state's intermediate appellate courts (limited circumstances)</td>
<td>• Federal circuit courts&lt;br&gt;• Federal district courts&lt;br&gt;• That state's trial courts</td>
</tr>
<tr>
<td>L</td>
<td>Federal issue in state's highest court</td>
<td>• U.S. Supreme Court&lt;br&gt;• That state's highest court (limited circumstances)</td>
<td>• Federal circuit courts&lt;br&gt;• Federal district courts&lt;br&gt;• That state's intermediate appellate courts&lt;br&gt;• That state's trial courts</td>
</tr>
</tbody>
</table>
## Appendix B

### Table 2: Choosing the Best Authority

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Best Authority</td>
<td>Good Authority</td>
<td>Fair/Weak Authority</td>
</tr>
<tr>
<td>A</td>
<td>Binding: Caselaw</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Legal Issue: Same or similar</td>
<td>Legal Issue: Same or similar</td>
<td>Legal Issue: Different but same area of law</td>
</tr>
<tr>
<td></td>
<td>Facts: Same or similar legally relevant facts</td>
<td>Facts: Different</td>
<td>Facts: Different</td>
</tr>
<tr>
<td>B</td>
<td>Nonbinding: Highly to Moderately Persuasive Caselaw</td>
<td>Legal Issue: Same or similar</td>
<td>Legal Issue: Same or similar</td>
</tr>
<tr>
<td></td>
<td>Facts: Same or similar legally relevant facts</td>
<td>Facts: Different</td>
<td>Facts: Different</td>
</tr>
<tr>
<td>C</td>
<td>Nonbinding: Slightly Persuasive Caselaw</td>
<td>Legal Issue: Same or similar</td>
<td>Legal Issue: Same or similar</td>
</tr>
<tr>
<td></td>
<td>Facts: Same or similar legally relevant facts</td>
<td>Facts: Different</td>
<td>Facts: Different</td>
</tr>
</tbody>
</table>

1. Review Table 1 in Appendix A to determine which authorities are binding and nonbinding (persuasive).
2. For an example of when a case falling in this cell is better authority than a nonbinding decision in the “Best Authority” column, review Chapter 5, Section A.3.
3. For an example of the type of case falling in this cell, review Chapter 5, Section A.3.
4. For an example of the type of case falling in this cell, review Chapter 5, Section A.3.
Appendix C

Research Action Plan Form

<table>
<thead>
<tr>
<th>Name of client and matter number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final work product (e.g., memo, motion, or oral report) and due date:</td>
</tr>
</tbody>
</table>

Part One: Review the Client’s Facts

<table>
<thead>
<tr>
<th>Who: Who are the parties? What is their relationship to each other? Is client the plaintiff or defendant?</th>
</tr>
</thead>
<tbody>
<tr>
<td>What: What happened? Who was injured?</td>
</tr>
<tr>
<td>Where: Location of events and injury?</td>
</tr>
<tr>
<td>When: Date (and time) of events and injury?</td>
</tr>
<tr>
<td>Why: Why is this being litigated? What relief does the plaintiff seek?</td>
</tr>
</tbody>
</table>

Part One (Continued): Identify the Governing Law

<table>
<thead>
<tr>
<th>Federal or state law (or both):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common law or statutory issue (or both):</td>
</tr>
</tbody>
</table>

Part Two: Identify the Legal Issues and Keywords

<table>
<thead>
<tr>
<th>Draft an initial issue statement (include controlling law, legal question, and legally relevant facts):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial keywords (i.e., search terms) to use:</td>
</tr>
<tr>
<td>Additional keywords (i.e., search terms) uncovered during the research process:</td>
</tr>
</tbody>
</table>
### Part Three: Identify Binding Authorities and the Most Relevant Authorities

<table>
<thead>
<tr>
<th>Court deciding client’s issue (e.g., state trial court?):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Binding authorities (e.g., decisions from intermediate appellate court?):</td>
</tr>
<tr>
<td>Highly to moderately persuasive authorities (e.g., decisions from federal circuit court?):</td>
</tr>
<tr>
<td>Most relevant authorities (similar legal issue and facts):</td>
</tr>
</tbody>
</table>

### Part Four: Consider the Relevant Research Tools and Databases to Use:

<table>
<thead>
<tr>
<th>Print sources (e.g., West’s Digest System or annotated code):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online research platforms (e.g., Westlaw, Lexis, Casemaker, or Fastcase):</td>
</tr>
<tr>
<td>Online databases (e.g., Georgia Code, Alabama state cases, or Eleventh Circuit cases):</td>
</tr>
</tbody>
</table>

### Part Five: Identify Any Constraints

Limitations on research expenses and your time:

### Track Your Research

**Relevant Secondary Sources Found**

<table>
<thead>
<tr>
<th>Legal encyclopedias:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treatises and practice manuals:</td>
</tr>
<tr>
<td>American Law Report (A.L.R.) annotations:</td>
</tr>
<tr>
<td>Legal articles:</td>
</tr>
<tr>
<td>Jury instructions:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Online: Databases searched and search strings used:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Print: Sources reviewed and terms looked up:</td>
</tr>
<tr>
<td>Relevant statutes and other enacted laws found:</td>
</tr>
<tr>
<td>Relevant binding cases found:</td>
</tr>
<tr>
<td>Relevant nonbinding (persuasive) cases found:</td>
</tr>
<tr>
<td>Relevant Digest Topics and Key Numbers:</td>
</tr>
<tr>
<td>Irrelevant authorities—statutes, other enacted laws, and cases:</td>
</tr>
</tbody>
</table>
Index

A
Administrative codes
cases, finding, 282
e-CFR, 283
federal, 277
generally, 277, 281
state, 281
Administrative law
cases, finding, 281–282
codes. See Administrative codes
Federal Register, 276–277
introduction to, 6–7, 275–276
regulations, finding, 278–280
regulations, finding cases, 281–282
regulations, formal rulemaking, 7, 275–277
regulations, updating, 280–281
A.L.R. annotations. See American Law Reports
American Jurisprudence 2d (Am. Jur.), 83–84, 114, 128
Annotated statutory codes. See also
Statutes; Statutory codes
advantages in researching, 226–227
case annotations (statutory annotations), 55, 226, 288–295, 326
Case Notes (Lexis Advance), finding cases, 290, 292–294
defined, 54–55
Key Number System, finding cases, 291–292
Notes of Decisions (Westlaw), finding cases, 290–291, 302
regulations, finding, 279
secondary sources, finding, 243–244
state codes, 60
Authority. See Binding authority; Primary authority; Secondary authority

B
Bills, 5, 51, 56, 306–307
Binding authority
binding vs. nonbinding authority, 17
binding vs. nonbinding cases (summary chart), 24–25, 331–332
cases, 19–23, 24–25
defined, 17
regulations, 18, 275
statutes, 18, 223–224
Binding vs. Nonbinding Cases (chart), 331–332
Boolean searching. See Keyword searching

C
Case annotations. See Annotated statutory codes
Caselaw. See Cases
Caselaw classification systems. See Key Number System; LexisNexis Headnotes

Casemaker
cases, finding, 139–140, 294, 299–300, 302
citator, 146, 160–162, 262, 299–300, 326
introduction to, 77–78
secondary sources, 117, 219
statutes, finding, 243

Cases
binding authority (summary chart), 24–25, 331–332
caselaw, defined, 5, 8
Choosing the Best Authority Chart, 76, 333
choosing the best cases, 73–76
common law, defined, 8
editorial summaries, 38–39, 40, 43
finding methods in print, 82–83, 121–130, 288–290
good law vs. bad law, 154–155, 203
headnotes, 39, 41, 43
interpretive cases, generally, 287, 301
introduction to, 8, 29
opinion, 40
parts of, 37–43
publication diagram, 44
publication of. See Reporters
published vs. unpublished, 33–35
validity, confirming with citators, 154–159, 203, 300

C.F.R. See Code of Federal Regulations
Choosing the Best Authority Chart, 76, 333

Citations
ALWD Guide, 30, 60, 61, 281
Bluebook, 30, 60, 61, 281
cases, 35–37
headnotes, 39, 130
statutes, 61–62

Citators. See also KeyCite; Shepard’s caselaw research, 145–160, 191–194, 199–200, 203–204, 296–300, 326
Casemaker, 146, 160–162, 262, 299–300, 326
comparison chart, 162
confirming validity of authority, 154–159, 203–204, 251–254, 300, 329
defined, 145
Fastcase, 146, 160–162, 262, 299–300, 326
reasons to use, 146, 251, 296
statutory research, 236 n.10, 251–254, 329
C.J.S, 83
Client hypotheticals. See Hypothetical research problems
Codes (administrative). See Administrative codes
Codes (statutory). See Annotated statutory codes; Statutory codes
Common law. See Cases
Compiled legislative histories, 312–313. See also Legislative history
Congress.gov, 52, 63, 261, 311, 315, 317
Constitutions
federal, 3, 5, 6, 8, 9
state, 3–5
supreme law of the land, 3–4, 18
Continuing legal education. See Secondary sources
Cornell’s Legal Information Institute, 53, 63, 73, 117, 243, 323
Corpus Juris Secundum (C.J.S.), 83
Courts
appeal courts, 10–11, 12, 20, 31
federal system, 9–11
federal vs. state courts (comparison chart), 14
state systems, 11–12
structures of (diagrams), 9, 11
trial courts, 9, 11–12, 20, 295

E
E-CFR, 283
Electronic word searching. See Key-word searching
Enacted laws. See Statutes
Encyclopedias
American Jurisprudence 2d (Am. Jur.), 83–84, 114, 128
Corpus Juris Secundum (C.J.S.), 83
generally, 83–87, 116–117
state-specific, 83–84, 86–87
Wex (Cornell's Legal Information Institute), 73, 117

F
Fastcase
cases, finding, 294–295, 299–300, 302
citator, 146, 160–162, 262, 299–300, 326
introduction to, 77–78
secondary sources, 117, 219
statutes, finding, 243
Finding tools
citators. See Citators; KeyCite; Shepard's
indexes
codes, 227–229, 235, 279
Key Number System, 129
secondary sources, 109, 110
Key Number System, 121–135, 141, 198–199, 291–292
LexisNexis Headnotes, 121, 136–139, 141, 198

G
Google Scholar
cases, finding, 193–194
citator, 193–194
introduction to, 77–78
Google-type searching. See Keyword searching
Govinfo.gov, 52, 63, 277, 317

H
Headnotes
defined, 39
editorial enhancements, 39, 149
finding tools. See Key Number System; LexisNexis Headnotes
Lexis Advance, 43, 136–139
Westlaw, 41, 122–123, 130–134
HeinOnline, 106, 312, 326
Hypothetical research problems
Americans with Disabilities Act, 227, 233, 279, 289, 312, 313
bear-wrestling statute, 21–23
dog bites, 72–73, 169, 171, 180, 182–183, 290, 299
Establishment Clause, 124, 126–127, 130, 131–133
intentional infliction of emotional distress, 75–76, 168
landlord liability, 100, 111–112, 172–173, 198–199
negligence (landlords), 172–173
noncompetition agreements, 38–39, 147, 158, 175, 179, 185, 223–224

I
Interpretive cases. See Cases; Statutes

J
Judicial opinions. See Cases
Jurisdiction
controlling jurisdiction vs. controlling law, 19, 189
defined, 19
Jury instructions. See Secondary sources

K
KeyCite. See also Cases; Statutes
cases, filtering results, 149–154
cases, finding, 146–154
cases, validating, 154–156, 158, 159
KeyCite Overruling Risk, 155–156
limitations (summary chart), 161
negative treatment signals (summary charts), 156, 251
sample KeyCite reports, 148, 158, 252
secondary sources, finding, 190, 244
statutes, filtering results, 296, 298
statutes, finding interpretive cases, 296, 298
statutes, validating, 251–253, 254

Key Number System
cases, finding in print, 124–130
cases, finding on Westlaw, 130–134, 198–199, 291–292
creation and organization, 122–124
introduction to, 121–122
LexisNexis
LexisNexis Headnotes compared (chart), 141
print vs. online (comparison chart), 135
Keyword searching
annotated codes, 238–240
cases, 175–183, 300–301, 302
defined, 168
developing keywords, 73, 169–170
limitations, 168, 237, 238
natural language
introduction to, 170–171, 236
limitations, 171–172, 238
sample searches, 176, 182
regulations, 280, 282
roadblocks and solutions (summary chart), 185
statutes, 236–242, 246
terms and connectors (Boolean)
common connectors (summary chart), 174
filtering citator report, 152, 154
introduction to, 172–173
limitations, 237, 238
proximity connectors, 174
root expander, 174
sample searches, 172–173, 174, 182–183, 185, 237, 300–301

L
Law reviews, 95
Legal encyclopedias. See Encyclopedias
Legal periodicals. See Secondary sources
Legislative history
bills, 306–307
committee and conference reports, 308–310
compiled legislative histories, 312–313
floor debate materials, 310–311
hearing materials, 308
legislative process (summary chart), 317
presidential statements, 311
purpose, 305–306
research methods, 314–316
Legislative process. See Legislative history
Lexis Advance. See also LexisNexis
Headnotes; Shepard's
Case Notes, 290, 292–294
introduction to, 30, 77
keyword searching (cases), 170–183, 300–301, 302
keyword searching (statutes), 236–242, 246
legislative history, 314–315, 317
LexisNexis Headnotes, 121, 135–139, 141, 198
regulations, 278–280, 281, 282
segments (caselaw database), 178–179
segments (statutory database), 240
Shepard's, 146–157, 161, 190, 244, 251–254, 296–297
statutes, researching, 233–242, 246, 325
LexisNexis, 54–55, 60, 77, 226, 289
LexisNexis Headnotes
cases, finding on Lexis Advance, 136–139, 198
creation and organization, 136
introduction to, 121, 135
Key Numbers compared (chart), 141
LexisNexis Legal Topic Digest. See
LexisNexis Headnotes
LexisNexis Legal Topic Hierarchy. See
LexisNexis Headnotes
Library catalogs, 107–108
Looseleaf services. See Secondary sources

N
Natural language searching. See Keyword searching
Nonbinding authority
binding vs. nonbinding cases (summary chart), 24–25, 331–332
defined, 17

O
Office of the Law Revision Counsel (OLRC), 53, 63, 243, 261 n.8
Online searching. See Keyword searching

P
Persuasive authority. See Nonbinding authority
Pocket parts, 113, 130, 131, 132, 263
Practice manuals. See Secondary sources
Precedent. See Stare decisis
Primary authority
defined, 12
primary vs. secondary authority, 13–14, 17
Print research
cases, finding methods, 82–83, 121–130, 288–290
secondary sources, 107–110, 113, 114–115
statutes, finding methods, 227–233
Publication of cases. See Reporters
Publication of statutes. See Statutes

R
Regulations. See Administrative law
Reporters
defined, 29, 44
official vs. unofficial reporters, 30
West’s National Reporter System, 31–33
Research Action Plan Form, 335–336
Research hypotheticals. See Hypothetical research problems
Research plans
binding authority, identifying, 73–74, 331–332
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INDEX

common law issues, creating, 71–78
controlling law, identifying, 71–72
keywords, identifying, 72–73
relevant authority, identifying
(charts), 76, 333
research tools, selecting, 77–78
statutory issues, creating, 209–210
tracking research (form), 335–336
Restatements of the Law, 190–191,
192, 200

S
Search terms. See Keyword searching
Secondary authority. See also Secondary
sources
defined, 13
primary vs. secondary authority, 13–14, 17
Secondary materials. See Secondary
sources
Secondary sources. See also Encyclopedias
American Law Reports (A.L.R.),
92–94, 97, 116, 117, 198
cited in annotated statutory codes,
244
commonly used sources (comparison charts), 116–117, 219
commonly used sources (generally),
83–96, 214–218
continuing legal education (CLE)
materials, 215–217, 219
defined, 12–13
example of browsing for sources, 101
example of navigating within
sources, 112
jury instructions, 87–89, 116, 117,
214–215, 216, 219
legal encyclopedias, 83–87, 116–117
legal periodicals, 94–96, 116, 117
looseleaf services, 217–218, 219
methods of identifying and retrieving sources, 97–108, 244
navigating within a source, 109–112
practice manuals, 89–91, 116, 117
reasons to research with, 82, 213
sources compared (charts), 116–117, 219
treatises, 89–90, 116, 117
updating, 112–114, 116
Session laws. See Statutes; Statutory
codes
Shepard’s. See also Cases; Statutes
cases, filtering results, 149–154
cases, finding, 146–154
cases, validating, 154–155, 156–157, 159
limitations (summary chart), 161
negative treatment signals (summary charts), 157, 252
sample Shepard’s reports, 148, 253–254
secondary sources, finding, 190, 244
statutes, filtering results, 296–297
statutes, finding interpretive cases, 296–297
statutes, validating, 251–252, 253–254
Stare decisis, 19–20, 74, 299
State codes. See Annotated statutory
codes; Statutory codes
Statutes
amendments, finding and reviewing, 254–261, 265
case annotations. See Annotated statutory codes
currency of codes, 261–262, 263
defined, 5, 49–50
effective date vs. date of enactment, 255
effective dates, checking, 254–257, 265
finding methods in print, 227–233
finding methods online, 233–243, 322–325
finding methods online (summary charts), 246, 325
good law vs. bad law, 249, 251, 329
interpretive cases, finding with annotations, 288–294, 326
interpretive cases, finding methods (summary chart), 302
interpretive cases, finding with citators, 296–298, 299–300, 326
interpretive cases, finding with keywords, 300–301
publication diagram, 64
publication of, 51–55, 58–60
reading, 267–271
session laws, 51–52, 56, 58, 63
validity, confirming with citators, 249, 251–254, 262, 265
Statutes at Large, 52, 58, 63–64, 258, 312–313
Statutory annotations. See Annotated statutory codes
Statutory codes. See also Annotated statutory codes; Statutes
annoted codes, 54–55, 226–227
contents and organization, 52–53, 58–59
defined, 52
federal codes, 52–56
online codes (fee-based), 63, 233–243, 290–294
online codes (free), 53, 63, 243, 294–295
researching statutes in print, 227–233
researching statutes online, 233–243, 322–325
researching statutes online (summary chart), 246
session laws (comparison), 52, 56, 63
state codes, 58–60
updating online codes, 251–262
updating print codes, 262–264
Statutory construction. See Statutory interpretation
Statutory interpretation, 267–272
T
Table 1 (Binding vs. Nonbinding Cases), 331–332
Table 2 (Choosing the Best Authority), 76, 333
Terms and connectors searching. See Keyword searching
Thomson Reuters, 30, 54, 60, 77, 106, 289
Treatises. See Secondary sources
Types of laws, 3–8
U
Uniform laws, 322–324
United States Circuit Courts. See United States Courts of Appeals
United States Code. See also Statutory codes
contents and organization, 53–54
online (free), 53, 63, 243, 261 n.8
United States Code Annotated (U.S.C.A.). See also Annotated statutory codes; Statutory codes
annotated case annotations (statutory annotations), 55, 289–290
contents and organization, 54–55
regulations, 279
secondary sources, finding, 244
United States Code Service (U.S.C.S.). See also Annotated statutory codes; Statutory codes
annotated case annotations (statutory annotations), 55, 289
contents and organization, 54–55
regulations, 279
secondary sources, finding, 244
United States Constitution, 3, 4, 6, 8, 9, 14, 18, 95
United States Courts of Appeals, 9–11, 14
United States District Courts, 9, 14
United States legal system
  federal vs. state systems (diagram), 4
genernally, 3–12
Unpublished cases, 33–35
Updating authority. See Citators;
  KeyCite; Shepard’s

V
Validating authority. See Citators;
  KeyCite; Shepard’s

W
West Digest System. See Key Number System
West Key Number System. See Key Number System
Westlaw. See also KeyCite; Key Number System
cases, researching, 130–135, 146–154, 175–183, 191–193, 198–
199, 282, 290–292, 296, 298, 299, 300–301
fields (caselaw database), 178–179
fields (statutory database), 239
introduction to, 30, 77
KeyCite, 146–156, 158, 159, 161, 190, 244, 251–253, 254, 296, 298
Key Number System, 121–134, 135, 141, 198–199, 291–292
keyword searching (cases), 170–183, 300–301, 302
keyword searching (statutes), 236–242, 246
legislative history, 312–315, 317
Notes of Decisions, 290–291, 302
regulations, 278–280, 281, 282
statutes, researching, 233–242, 246, 322–324, 325
Westlaw Edge. See also Westlaw
  features, 155–156, 260–261
West Reporter System, 31–33, 122
Wex (Cornell’s Legal Information Institute), 73, 117