Introduction to Legal Research

I. Basic Function of legal research = find the law:

A. Sources of US Law = Primary Authority. Primary authority is the law.
   1. US Constitution, Supremacy Clause
      (1) Interpreting the Constitution is often an issue; locating it is not.
   2. Executive Branch (state and federal): issues executive orders.
   3. Legislative Branch (state and federal): enacts statutes and codes.
   4. Judicial Branch (state and federal): makes common law / issues court decisions
   5. Executive Agencies (state and federal): promulgate regulations.

B. Weight/Nature of Authority: must understand authority to determine which types of authority (cases, statutes, regulations) are necessary.
   1. Mandatory Authority: authority that must be followed (facts, rule, holding applicable in your jurisdiction).
      (1) Always primary authority
      (2) Case law from a higher court in your jurisdiction or a statute.
   2. Persuasive Authority: authority that may be followed.
      (1) Can be primary or secondary authority.

C. Court Structure
   1. Courts of Last Resort / High Court / Supreme Court:
      (1) Decisions are mandatory authority in given jurisdiction.
      (2) Usually determines matters of law.
   2. Intermediate Appellate Courts
      (1) Determine matters of law and/or fact.
      (2) Decisions may be mandatory.
   3. Trial Courts
      (1) Decisions are never mandatory.
      (2) Typically have original jurisdiction/general jurisdiction. Court where one party files a case against another party or where criminal charges are filed against an individual.
      (3) Resolve questions of fact.
      (4) Can be referred to as Superior Court (Connecticut), Supreme Court (New York), or a specialty court such as Probate Court.
   4. Federal Court Structure
      (1) US Supreme Court: highest court
      (2) US Courts of Appeals: appellate court
         (a) 13 Circuit Courts of Appeal: 11 numbered circuits (geographic) plus the Federal Circuit and DC Circuit
      (3) US District Courts: trial court
5. State Court Structure:
   (1) Resembles federal court structure but courts may have different names and there may be specialized lower courts (e.g. probate court; family court).
   (2) Larger more populous states typically have more lower courts.

Legal Authority

<table>
<thead>
<tr>
<th>Type of Primary Authority</th>
<th>When and Where Mandatory</th>
<th>When and Where Persuasive</th>
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<tbody>
<tr>
<td>US Constitution</td>
<td>Always mandatory on federal and state courts</td>
<td>NA</td>
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<tr>
<td>US Supreme Court Decision interpreting and applying federal law</td>
<td>Always mandatory on federal and state courts</td>
<td>NA</td>
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<tr>
<td>Federal statute *</td>
<td>Always mandatory on federal and state courts</td>
<td>NA</td>
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<tr>
<td>Federal administrative regulations**</td>
<td>Always mandatory on federal and state courts</td>
<td>NA</td>
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<tr>
<td>US Court of Appeals decision interpreting and applying federal law</td>
<td>Always mandatory on federal courts within the jurisdiction of the Court of Appeals issuing the decision</td>
<td>Regarded as persuasive by the federal courts that do not need to treat the decision as mandatory</td>
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<tr>
<td>State Constitution***</td>
<td>Always mandatory on all state courts within the state</td>
<td>NA</td>
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<tr>
<td>Decision of a state’s highest court interpreting and applying that state’s law***</td>
<td>Always mandatory on all lower state courts within a given state.</td>
<td>Regarded as persuasive by federal and state courts that do not need to treat the decision as mandatory.</td>
</tr>
<tr>
<td>Decision of a state’s intermediate appellate court interpreting and applying that state’s law***</td>
<td>Always mandatory on all lower state courts within the jurisdiction of the intermediate appellate court</td>
<td>Regarded as persuasive by federal and state courts that do not need to treat the decision as mandatory.</td>
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II. Starting Legal Research

A. Typical Legal Research Process
1. Formulate plan
   (1) Generate search terms for an issue statement.
      (a) things, actions, people, places (TAPP)
      (b) who, what, when, where why (5Ws)
   (2) Determine: what do I already know about this issue?
      (a) Case? Statute? Source?
      (b) This can serve as a good starting point.

2. Consult Secondary Sources:
   (1) Types:
      (a) Legal Encyclopedia: like regular encyclopedias but discuss legal topics and includes
citations to the relevant statutes and cases. *Corpus Juris Secundum (CJS)*
and *American Jurisprudence (Am Jur)* are the most common, but there are also state
specific legal encyclopedias for the larger states, e.g. *New York Jurisprudence (NY
Jur)*.
      (b) Treatise or Hornbook (student treatise): discuss a broad legal topic in great depth.
      Popular treatises include *Corbin on Contracts, Prosser and Keeton on Torts*.
      (c) ALR Annotation: summarizes a narrow legal issue and provides citations to
relevant primary sources of law in various jurisdictions. Case and statutes are
arranged by jurisdiction as well similar/dissimilar holdings.
      (d) Restatement: highly regarded treatises, which synthesize the common law on
black letter, legal topics (torts, property, agency, etc.) and are written by well-
respected legal scholars of the American Law Institute.
      (e) Law Review (article, note, comment): cutting-edge, historical, scholarly analysis
of a topic by law professors, students, and sometimes jurists and practitioners.
   (2) Locate Secondary Authority
      (a) Bloomberg, Lexis Advance, Westlaw Next
      (b) Morris (law library catalog; library.law.yale.edu)
      (c) See a Librarian

3. Search Primary Sources
(1) Print: access points include Index and Table of Contents.
(2) Electronic (Bloomberg, Lexis Advance, Westlaw Next): access points include browsing, advanced/boolean searching, or starting from a known source.

4. Expand and confirm you have good law.
   (1) Expand using the One Good Case/Statute Method:
      (a) Use Headnotes
      (b) Use Citator
      (c) Use Cases cited within
      (d) Use terms words and concepts
   (2) Use a Citator to confirm you have good law
      (a) How have subsequent other courts treated your case?
         (i) Note: depth of treatment
         (ii) Note: jurisdiction
         (iii) Note: flags/symbols – interpret
      (b) What happened to your case as it progressed through the system?

5. Read Results and start writing.

III. Case Law
A. Cases are published chronologically in a Reporter.
   1. A series of reporters is published and when that series is finished a new series begins. Publishers decide how long a series runs.
      (1) For example, the Federal Reporter series dates:
          F. publishes decisions from 1880 – 1924;
          F.2d publishes decisions from 1924 – 1993;
          F.3d publishes decisions from 1993 – present.
   2. Reading a case citation: volume followed by reporter abbreviation followed by page number followed by a parenthetical with the court (if not the highest court) and the year. See Orientation Top Ten, How to Read a Case Citation, http://library.law.yale.edu/orientation/top-ten.
   3. Cases from high courts / final appellate cases are always almost published because they involve issues of law.
   4. Cases from intermediate courts often published.
   5. Trial court cases are rarely published because they deal with facts (often only important to the parties).

B. Publication Types
   1. Official Publications = typically published by the (state or federal) government
   2. Unofficial Publications = typically published by a private publishing company

C. Publication of US Supreme Court Cases
   1. Official Reporter = U.S Reports abbreviated as U.S. (e.g. 530 U.S. 703).
   2. Unofficial Reporter (West) = Supreme Court Reporter abbreviated as S.Ct. (e.g. 120 S.Ct. 2480).
   3. Unofficial Reporter (Lexis) = Lawyer’s Edition Reporter abbreviated as L.Ed. (e.g. 147 L.Ed. 597).
D. Publication of US Circuit Courts of Appeals Cases
   1. *Federal Reporter* (West) = abbreviated as F., F.2d. F.3d e.g.

E. Publication of US District Court Cases

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<tr>
<th>Court</th>
<th>Official</th>
<th>Unofficial</th>
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| U.S. Supreme Court     | United States Reports = U.S.       | 1) *Supreme Court Reporter* (West) = S. Ct.  
|                        |                                    | 2) *Lawyers' Edition* (Lexis) = L. Ed., L. Ed. 2d |
| U.S. Courts of Appeal  | N/A                                | 1) *Federal Reporter* (West) = F., F.2d, F.3d |

F. Publication of State Court Cases
   1. Same pattern: Or. for Oregon Supreme Court cases, Or.App. for Oregon Appellate Court Cases.
   2. Westlaw publishes regional reporters. These regional reporters collect state court opinions within a specific region and publish them. Their is a Pacific Reporter, cited as P., Atlantic reporter cited as A., a South Eastern reporter, S.E., and so on.

![Regional Reporters (State Cases)](image)