

PARALEGAL SERIES

Deborah E. Bouchoux

LEGAL RESEARCH AND WRITING FOR PARALEGALS

NINTH EDITION

Deborah E. Bouchoux

Legal Research and Writing for Paralegals

emphasizes the skills and issues that paralegals encounter in practice. Thoroughly up-to-date, the Ninth Edition continues to combine clear text with visual aids, writing samples, tips, and pointers. Designed specifically for paralegal students, Deborah Bouchoux's classroom-tested approach teaches cutting-edge research skills, writing style, and proper citation form to equip students with an essential skill set and well-founded confidence.

The author's logical and comprehensive approach enhances students' understanding. Part I covers Primary Authorities, Part II discusses Secondary Authorities, and Part III covers the basics of Legal Writing. In addition, Bouchoux integrates writing strategies into each research chapter to demonstrate the link between the two processes. The text thoroughly explains proper citation form and updating/validating legal authorities. The Legal Writing section includes samples of legal writing, such as letters, a court brief, and a legal memorandum.

Classroom-tested and widely respected, *Legal Research and Writing for Paralegals* features:

- **Clear pedagogy** designed to enhance the accessibility of the material.
- **Targeted and ample exercises** help students learn how to use a wide range of research sources.
- **Charts and practice tips**, updated for this edition, help students apply what they have learned.
- **Thorough coverage of electronic research** with chapters on both Internet research and fee-based services.

Updates and highlights from the revised Ninth Edition:

- **New "Sidebar" feature in all research chapters** provides quick tips showing how the material in that chapter applies to computer-assisted legal research systems, such as Lexis, Westlaw, and Bloomberg Law.
- **Discussion of GovInfo**, which provides free public access to official and authenticated publications from all three branches of the federal government.
- **Coverage of new tools used for cite-checking**, including EVA and Bestlaw.
- Discussion of **Westlaw Edge**, Westlaw's new research platform.
- Extensive **new coverage of the increasing use of artificial intelligence** in legal research and writing.
- Discussion of new **sources that provide free public access to the law**, including Harvard's Caselaw Access Project and CourtListener.
- **New sections on preparing email letters and email memoranda**, including assignments.
- **All new Research Questions and Internet Legal Research Assignments** have been included for each chapter.

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Legal Research and Writing for Paralegals

PARALEGAL SERIES

Legal Research and Writing for Paralegals

Ninth Edition

Deborah E. Bouchoux, Esq.

Georgetown University

Washington, D.C.



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For my husband, Don, and my children,
Meaghan, Elizabeth, Patrick, and Robert,
who have provided immeasurable support
and inspiration in helping me achieve my
goal of writing a legal research and writing
textbook for paralegal students.

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Preface

You will soon discover that legal research is truly a “hands-on” subject. Although there are numerous books to be found that discuss methods and techniques, there is no substitute for actually performing the task of legal research. A simple analogy can be drawn to driving a car: You may find several manuals that discuss driving and provide tips on better driving, but simply reading about operating a car is not a substitute for actually driving a car yourself. Similarly, you will learn the most about legal research, about which shortcuts are invaluable, and about which techniques are non-productive, only by doing legal research. To that end, library assignments are placed at the conclusion of each chapter so you can see and use the books discussed in each chapter. You should never have to use a book or set of books that have not been discussed in the chapter you have finished reading or any preceding chapter. Take the time to explore the books by reviewing the foreword, table of contents, and index found in each volume. Familiarize yourself with all of the features of the books or electronic resources you use, and you will simplify your legal research.

Performing legal research can be both frustrating and gratifying. It can be frustrating because there is often no one perfect answer and because there are no established guidelines on how much research to do and when to stop. On the other hand, legal research is gratifying because you will be engaged in a task that requires you to *do* something and one in which you will be rewarded by finding the right case, statute, or other authority.

You should view legal research as an exciting treasure hunt—a search for the best authorities to answer a question or legal issue. In this sense, the task of using and exploring the law library or the Internet for answers to legal issues or questions should be a welcome relief from the assignments of other classes, which may be passive in nature and involve copious amounts of reading.

I would encourage you to research with other students if you are comfortable doing so. Often you will learn a great deal by comparing notes with others who may be able to share successful strategies for effectively using various books or electronic resources or finding the answers to research problems. Naturally, sharing ideas and tips for research techniques should not be viewed as an excuse not to do the work yourself or a license to use answers discussed by others. In other words, you should research with other students (if you find it useful to do so), but you should never write together. Not only is this practice dishonest, but it will prevent

you from effectively learning the skill of legal research. Ultimately, an employer is not interested in how many “points” you obtained on a class exercise or what grade you obtained, but in whether you can be depended upon to research an issue competently. As adult learners and professionals, you should concentrate on learning the skill of legal research rather than focusing on the number of right answers you can obtain.

Although this text shows case names and book titles in italics, underlining or underscoring is also acceptable according to *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass’n et al. eds., 20th ed. 2015), which is the standard reference tool for citation form. There is variation among practitioners, so check with your firm or office to determine if there is a preference. Unless otherwise noted, all citations given in *Bluebook* form are displayed in the format used by practitioners, not in the LARGE AND SMALL CAP format used in academic writing. Most citation examples are fictitious.

In 2000, the Association of Legal Writing Directors introduced a new citation manual, now in its sixth edition: ALWD & Coleen M. Barger, *ALWD Guide to Legal Citation* (6th ed. 2017). This manual, referred to as *ALWD* (pronounced “all wood”), provided a user-friendly alternative to *The Bluebook*. After the first edition of *ALWD* was published in 2000, each edition steadily crept closer to *Bluebook* citation format, and with the publication of the fifth edition in 2014, it was (and remains) identical to *The Bluebook* in all critical respects. Thus, the focus of this text is on *The Bluebook* because it is the citation manual used in nearly all law firms and the one you will be expected to have “on the job.”

When you begin reading this book, most of you will be unfamiliar with cases, statutes, constitutions, or the numerous other legal authorities. As you progress in class and through the chapters and assignments in this text, you will readily be able to measure your progress. When you complete this text and your legal research class, you will have gained thorough mastery of legal research and writing techniques as well as familiarity with the numerous sets of law books and electronic resources that you will be required to use in your profession.

This ninth edition of the text provides several new features, including the following:

- An entirely new feature included in all research chapters, called “Sidebar: Computer-Assisted Research,” which is a quick tip showing how the material in that chapter relates to Lexis, Westlaw, and Bloomberg Law, namely, the computer-assisted legal research systems.
- Discussion of GovInfo, which provides free public access to official and authenticated publications from all three branches of the federal government.
- Discussion of new tools used for cite-checking, including EVA and Bestlaw.
- References to helpful YouTube videos for tips on updating (Shepardizing and KeyCiting), researching, and preparing memos and briefs.

- Information on ABA opinions relating to obligations of legal professionals who engage in blogging and their obligations in the event of a data breach that affects client information.
- Enhanced discussion of computer-assisted legal research in Chapter 11, including discussion of the features of Westlaw Edge, Westlaw's newest research platform.
- Extensive discussion of new artificial intelligence features that boost legal research, including the following:
 - Visualization tools such as Lexis's Ravel View and Bloomberg Law's Citation Map
 - Lexis's Lex Machina (providing analytical data on judges, attorneys, and law firms)
 - Lexis Advance Context (identifying the specific language a judge has relied on so writers can craft targeted arguments for that judge)
 - Lexis Advance's and Westlaw Edge's answer cards (providing clear and concise answers to commonly asked questions)
 - EVA (helping researchers find and summarize cases)
 - KeyCite Overruling Risk flag (indicating when a case has been implicitly overruled)
 - Typeahead technology (predicting suggestions as researchers begin typing)
 - Litigation analytics offered by Lexis Advance, Westlaw Edge, and Bloomberg Law
- A new section in Chapter 12 on three new websites that provide free public access to law:
 - Harvard's Caselaw Access Project (providing free online access to 6.5 million published cases)
 - CourtListener (allowing searchability of cases as well as a citator service)
 - RECAP Project (providing free access to cases filed in the federal courts)
- Practical writing tips using notetaking tools such as OneNote and Keep and using tech tools such as Grammarly (to locate spelling, grammar, and punctuation errors) and Hemingway Editor (to locate passive voice and improve difficult-to-read passages).
- A new section in Chapter 16 on preparing an email letter (and an assignment requiring you to prepare an email letter to a client).
- A new section in Chapter 17 on preparing informal or email memoranda (and an assignment requiring you to prepare such an email memo).
- All new Research Questions and Internet Legal Research Assignments have been included.

Additionally, several new practice tips are included, such as a practice tip in Chapter 5 providing a checklist on using digests, a practice tip in Chapter 8 on the new "cleaned up" parenthetical used in citations, and a practice tip in Chapter 14 on new writing topics, such as using the

tech tools Grammarly and Hemingway Editor to eliminate mistakes and improve your writing.

New charts are included, including those on presenting parallel citations, how to locate legislative history documents, and how to find and update C.F.R. regulations.

Additionally, references to helpful websites and blog sites have been updated, and numerous new sample documents are included. Chapter 13 (which provides an overview of the legal research process) includes a full range of open-ended research questions, requiring readers to use and apply all skills learned in previous chapters to obtain answers to these research questions.

The vast number of legal authorities available both in a conventional law library and through digital law libraries means that effective legal researchers are flexible. Sometimes the materials you need are not on the shelves, and you will need to switch direction. Sometimes new methods of locating materials emerge. In any event, you will find legal research an interesting hunt for the authorities you need, whether in conventional print sources, on Lexis Advance or Westlaw (the computer-assisted legal research systems), or on the Internet.

Although every effort has been made to refer to useful websites, those sites can change both their content and addresses without notice. References to websites are not endorsements of those sites.

Textbook Resources

Instructor resources to accompany the text, including a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides, are available on the Companion Website for this book.

Deborah E. Bouchoux, Esq.

Winter 2019

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Legal Research and Writing for Paralegals

Section

I

Legal Research

Primary Authorities

Finding the Law

We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution.

Charles Evans Hughes (1907)

- A. The Paralegal's Role in Legal Research and Writing**
- B. Law Libraries**
- C. Sources of Law in the United States**
- D. Legal Systems of Other Countries**
- E. Legal System of the United States**
- F. Law Book Publishing**
- G. Nonprint Research Media**
- H. Change in Our Legal System**
- I. Identifying the Holding in a Case**
- J. How the Legal Research Process Works: A Research Scenario**
- K. Case Citation Form**

Chapter Overview

In this chapter we will discuss the role of paralegals in legal research and writing, the ethical duty to perform research competently, types of law libraries and their uses, and the sources of law in the United States. We will also examine the classification of law books as either primary or secondary sources. Finally, there is a brief introduction to the major law book publishers, who will be compared in greater detail in later chapters.

A. The Paralegal's Role in Legal Research and Writing

1. Legal Research and Writing as Core Competencies

Paralegals are expected to perform the task of legal research competently and cost effectively. In fact, the American Association for Paralegal

Education (“AAfPE”), a national organization that serves the needs of paralegal educators and institutions offering paralegal education programs, identifies legal research as one of the “core competencies” that a successful paralegal must possess.

Performing legal research today is both easier and more difficult than it was just a generation ago. It is easier because many materials are available through electronic sources and on the Internet, making it quick and easy to find statutes, cases, and other legal authorities. It is more difficult because these new materials make so many sources accessible that tracking down the right authority can seem like finding a needle in a haystack.

Today’s paralegals are expected to know how to use conventional print sources, computer-assisted research services such as Lexis Advance and Westlaw, and the Internet to find the best answer to a research problem as quickly and effectively as possible.

Once you have conducted legal research, you will need to communicate the results of that research. In fact, the cornerstone of the legal profession is communication — communication with a colleague, client, adverse party, or judge. In most cases the communication will be in written form. Even in those instances in which you communicate orally, you will often follow up with a written letter or memo to a file. Effective legal writing is not only a task expected of paralegals but also one of the core competencies identified by AAfPE for success in the paralegal profession.

2. Ethical Duty to Research Accurately

Perhaps the most fundamental aspect of the attorney-client relationship is the client’s absolute trust and confidence in the competence of the attorney. This duty of competence is imposed on paralegals as well who are required to exercise the ordinary skill and knowledge that would be expected of similar paralegals in similar circumstances. In fact, Guideline 1 of the American Bar Association’s Model Guidelines for the Utilization of Paralegal Services specifically requires that attorneys take reasonable measures to ensure that a paralegal’s conduct is consistent with the attorney’s obligations, meaning that obligations imposed on attorneys are likewise imposed on paralegals. Thus, attorneys are responsible for ensuring that their paralegals are competent to perform assigned work, including legal research and writing.

Although it is important to “know” the law, particularly in a field in which you may intend to specialize, it is even more important to be able to “find” the law. In this sense, proficiency in legal research is the foundation for a successful career as a paralegal. Your employer will not be as interested in your final grade in any specific class as much as your ability to find accurate answers to questions relating to topics even though you may not have been exposed to those topics in school. If you cannot perform legal research tasks accurately and efficiently, you will not be a successful paralegal despite excellent grades in your coursework.

In fact, the duty to perform accurate legal research has been addressed in a number of cases, including *People v. Ledesma*, 729 P.2d 839, 871 (Cal. 1987), in which the court noted that an attorney's first duty is to investigate the facts of a client's case and to research the law applicable to those facts. In sum, the ethical duty to conduct adequate research required of attorneys is shared by paralegals as well.

Moreover, the failure to research adequately may lead to liability for legal malpractice. In one of the earliest cases on this subject matter, *Smith v. Lewis*, 530 P.2d 589 (Cal. 1975), *overruled on other grounds*, 544 P.2d 561 (Cal. 1976), the California Supreme Court affirmed a lower court decision awarding \$100,000 to be paid to a former client by an attorney who had failed to conduct adequate legal research. The court held that the attorney was obligated to undertake reasonable research and stated, "[e]ven as to doubtful matters, an attorney is expected to perform sufficient research to enable him to make an informed and intelligent judgment on behalf of his client." 530 P.2d at 596. In sum, you will be expected to perform competent legal research not only because your employer will insist on it but also because ethical standards demand it. Finally, as further evidence of the importance of legal research, a number of law librarians and other experts have advocated that bar examinations include a legal research component. Now that we have established the role of paralegals in legal research and writing and the ethical duty shared by paralegals with attorneys to conduct competent legal research, we can address two critical questions: where legal research is performed and what sources are used.

B. Law Libraries

1. Types of Law Libraries

As noted in the introduction to this text, legal research is a "hands-on" skill, requiring you to know how to use a law library. Your first task, therefore, is to locate a law library that you may use. There are thousands of law libraries in the United States. Following is a list of the most common types of law libraries with a brief description of each:

Law School Libraries All ABA-accredited law schools have their own law libraries, most of which will have tens of thousands of volumes in print and nonprint forms such as Lexis Advance, Westlaw, e-books, microforms, and online. If you are attending a paralegal program that is affiliated with a law school, you will likely have access to the law library at the law school. Even if you do not attend a paralegal program affiliated with a law school, you may have access to a law school library if it has been designated as a Federal Depository Library, or a partial or selective depository, meaning that certain publications of the U.S. government,

generally statutes, regulations, and court decisions, will be sent to the library for review and access by the general public. In many cases, local public libraries or university libraries are designated as federal depositories. You can easily determine whether a library is a Federal Depository Library by calling the reference librarian at the library and inquiring. The locations of the approximately 1,150 depository libraries can be found at the Government Publishing Office's website: www.gpo.gov or at www.fdlp.gov.

Paralegal School Libraries Some paralegal programs maintain their own law libraries, although these are typically much smaller and contain far fewer volumes than law school libraries. Generally, only students who attend these programs have access to these law libraries.

Local Law Libraries Often a county or city will maintain a law library, and these are usually open to members of the general public. These law libraries vary in size, with the largest law libraries being found in the largest counties. Often they are located near a courthouse. The American Association of Law Libraries provides a list of state, county, and court law libraries at the following website: www.aallnet.org/gllsis/resources-publications/member-libraries.

Government or Agency Law Libraries Various governmental agencies, such as the Department of Justice, maintain their own law libraries. These law libraries typically serve only agency employees, and members of the general public will have no access. The Library of Congress, the world's largest library, located in Washington, D.C., was established by the U.S. Congress in 1800 primarily to provide reference and research assistance to members of Congress. It has an excellent law library, which is open to any member of the general public.

Courthouse Law Libraries Many courts, both federal and state, maintain their own law libraries. Court law libraries are often found in the courthouse for the county seat. Some law libraries are open to the public while others restrict access to courthouse personnel, attorneys, and their paralegals.

Bar Association and Private Group Law Libraries Often bar associations or private groups, such as insurance companies or real estate boards, will maintain law libraries. These are usually open only to members of the association or group.

Law Firm Libraries Almost every law firm will maintain a law library. These law libraries are available for use only by members or employees of the firm.

You should consult a directory or use a general Internet search engine, such as Google, and contact law schools, courthouses, and county offices in your area to determine whether members of the general public have access to those law libraries and to obtain the hours for each.

Additionally, many public and college or university libraries are increasing their collections of law books. Although these libraries typically offer only the major sets of books, such as the cases of the U.S. Supreme Court, federal statutes, and statutes from the state in which they are located, these public or college libraries may afford a quick answer to some legal research questions.

Finally, law libraries now exist in computer databases such as those offered by Lexis Advance or Westlaw and in cyberspace with vast collections of legal materials available for free “24/7.” These virtual law libraries afford quick and easy access to a significant number of legal resources. One of the best known and most reliable is GovInfo (www.govinfo.gov), which replaced the Federal Digital System, which provides free online access to publications from all three branches of the federal government, including access to federal statutes and regulations and selected federal court cases. Conducting legal research using Lexis Advance and Westlaw and similar services is discussed in Chapter 11, and conducting legal research through the Internet is discussed in Chapter 12.

2. Arrangement of Law Libraries

There is no one standard arrangement for law libraries. Each law library is arranged according to the needs of its patrons or by decision of the law librarian. The best introduction to a law library is a tour given by a staff member, and you should inquire whether orientation tours of the law library are given. If you cannot arrange for a tour, obtain a copy of the library handbook or guide that will describe the services offered, set forth the library’s rules and regulations, and provide a floor plan of the law library. Spend an hour wandering around the law library and familiarizing yourself with its arrangement, organization, and collections. You will notice that there may be duplicate volumes of some books or even duplicate sets of books. In general, books that are widely used will have duplicates to ensure ease of use and accessibility. In many cases you can judge legal books by their titles, which usually describe their contents. The law library’s website may offer a “virtual” tour.

Nearly all law libraries use an electronic or online catalog or OPAC (online public access catalog) to help you locate materials.

Most of the online catalogs are very easy to use, and you should not be intimidated. The law library staff is usually quite willing to provide instruction, and training sessions can be completed in only a few minutes. Typically, you will type in or “enter” the title, author, or subject matter you desire in the search box displayed on the screen, and you will then be provided with the “call number.” The shelves or “stacks” in the law library are clearly marked, and locating a book is merely a matter of matching

up the call number provided by the online catalog with the appropriate stack label.

Most law school and large law firm law libraries use the Library of Congress classification system to arrange their books. The Library of Congress classification system arranges books on the shelves in subject order. Materials are organized according to twenty-one branches of knowledge. The category “law” is Class K. Each book is marked with a three-line classification number, consisting of an alphanumeric combination, which includes letters, a whole number, and a decimal. For example, a book may be classified as “KFC80.W5.” The designation “KF” is the Library of Congress identifier for American legal publications, “C” represents “California,” and “80.W5” refers to the book’s location in the stacks.

An unusual feature of law libraries is that, in general, they are not circulating libraries. That is, unlike other libraries that circulate their volumes by allowing one to check out books, law libraries seldom allow patrons to check out books. You can imagine your frustration if you were unable to read a case because someone had already checked out the volume containing the case.

Practice Tip: The Law Library

Familiarize yourself with your law library by investing half an hour to wander through the stacks and gain a sense of how the library is arranged. Experiencing the way the stacks are organized will imprint itself on your memory. This initial investment will save time for you later when you need to recall, for example, where the books relating to corporate law or litigation are located.

3. Law Library Staff

Most of the larger law libraries are serviced by full-time law librarians who not only are lawyers who have been awarded a Juris Doctor degree but also possess a Master’s Degree in Library Science. Most library staff members are extremely helpful and responsive to questions; however, you should diligently try to locate a book or answer before you approach library staff for help. In law school libraries, the individuals who sit at the front desk are often law students who may not be thoroughly knowledgeable about the arrangement of the library or its collections. Therefore, if you have a question, be sure to address it to one of the professional law librarians (in this regard, the reference librarians are particularly helpful) rather than a student who may be more interested in studying at the front desk than helping you locate a book. Many reference librarians are available for research consultations by appointment. Some law library websites offer live chat assistance. Although law

librarians will provide useful research tips and suggestions, they will not provide legal advice.

4. Law Library Courtesy

You should assume that everyone who uses the law library is as busy as you, and therefore you should observe standard library etiquette by reshelving properly every book you use (unless the law library you use prohibits reshelving or has a separate preshelving area for books that are to be reshelved). Nothing is more frustrating than taking time out of a busy schedule to travel to a law library and search for the appropriate sources only to realize that a needed volume is missing. If you take books to a study carrel to read or to the photocopier to reproduce a page, you must reshelve them when you are finished. This is particularly true in school situations in which your fellow classmates will in all likelihood have the same assignments as you and will thus need to use the same books.

Do not deface the books by turning pages down or marking an answer. Finally, do not resort to unfair conduct by hiding or intentionally misplacing books. There is no excuse for such overzealous tactics that not only impede learning but also reflect poorly on one who is purporting to be a member of a profession devoted to the law.

Ethics Alert: Researching Economically

Because legal researchers have so many sources from which to choose when conducting a research project, it is critical to consider which sources best serve the client's interests. Rather than rushing to begin a project the minute it is assigned, spend some time thinking things through. Should you begin with the conventional print sources? Lexis Advance or Westlaw? The Internet? Your ethical duty to research accurately includes the duty to research economically as well.

5. Other Library Services

Most law libraries offer a variety of other services to ensure students can conduct productive research. You may be able to reserve a carrel so you can store books and materials there while you work on a long-term project. Similarly, you may be able to reserve a group study room so you can meet with other students. Some law library websites offer live chat assistance. Law librarians typically possess degrees in law and library science and may assist you in borrowing materials from other libraries. Many law libraries also offer classes and tutorials to help students conduct research more efficiently and can arrange interlibrary loans so you can borrow materials from other institutions.

Practice Tip: Legal Abbreviations

In the beginning of your legal career, you may become confused by the numerous abbreviations used for legal books, case reports, and journals. To determine the meaning of abbreviations such as “Ala.” (for Alabama Reports) or “C.J.S.” (for Corpus Juris Secundum), check Appendix A in *Black’s Law Dictionary* (10th ed. 2014), which provides an extensive list of abbreviations commonly used in law. Additionally, be patient. Within just a few weeks you will likely learn about 90 percent of all of the abbreviations you are likely to encounter. See Chapter 4 for a list of some common legal abbreviations.

C. Sources of Law in the United States

1. Cases and Our Common Law Tradition

If your task is to be able to find the law, one may well ask, “What is the ‘law’ we are talking about?” There are numerous definitions of the word “law.” On an academic or philosophical level, law is a system of rules that governs society so as to prevent chaos. On a practical level, on the other hand, as indicated by the quotation at the beginning of this chapter, Governor of New York, and later U.S. Supreme Court Chief Justice, Charles Evans Hughes suggested that the law “is what the judges say it is.” This second view may give you cause for concern. If the law is what a judge says, what if the judge rules against you because of your race, or sex, or religion? What if the judge is not familiar with an area of the law? The American legal system has certain safeguards built into it to protect litigants from such scenarios.

The American legal system is part of what is referred to as the “common law” tradition. “Common law” is defined in part by *Black’s Law Dictionary* (10th ed. 2014) as that body of law that derived from judicial decisions rather than from statutes or constitutions. Common law is thus often referred to as “judge-made law.”

This common law system began in England several hundred years ago. Since at least 1300 A.D., people who may have been training to be lawyers began “taking notes” on what occurred during trials. When judges were called upon to decide cases, they then began referring to these written reports of earlier cases and following the prior cases in similar situations. The English referred to this system as the “common law” because it was applied equally all throughout England and replaced a less uniform system of law. This system of following similar previous cases was considered the most equitable way of resolving disputes: People who are involved in like situations should be treated in the same manner.

This concept of following previous cases, or precedents, is called *stare decisis*, which is a Latin phrase meaning “to stand by things decided.” In its broadest sense, the doctrine of *stare decisis* means that once courts have announced a principle of law, they will follow it in future cases that are substantially similar. It is this doctrine of *stare decisis* that serves to protect litigants from judges who may not be familiar with an area of the law. If the judge is required to follow precedent, he or she cannot rule against you based on your race, sex, or religion. Similarly, these precedents will guide a judge who is unacquainted with a certain area of the law. In this way, *stare decisis* advances fairness and consistency in our legal system.

Moreover, *stare decisis* promotes stability in our judicial system. It would not only be chaotic but manifestly unfair if judges treated each case that came before them as being severed from our great body of legal tradition and then rendered different and inconsistent rulings on a daily basis. You can imagine the frustration of a client who seeks advice of counsel on the division of property in a dissolution of a marriage only to be informed that the division depends on which judge hears the case: that Judge Jones divides property in a marital dissolution on a 50/50 basis; Judge Smith divides the property on a 40/60 basis; and Judge Anderson divides the property differently each day depending upon his mood. The client’s rights would be totally dependent upon an arbitrary assignment to a judge. Such a result is not only unjust but also unpredictable. Thus, *stare decisis* not only encourages stability in our legal system but also aids those in the legal profession in advising clients as to the likely disposition of their cases.

Under this system or doctrine of precedent following, “the law” was thus found in the written decisions of the judges, and these decisions served as precedents that were followed in later cases involving substantially similar issues. Thus, the first source of law in the United States is judge-made case law.

2. Constitutions

The second source of law in the United States is constitutions. A constitution sets forth the fundamental law for a nation or a state. It is the document that sets forth the principles and basic laws that govern a country, state, or organization. We have a U.S. Constitution, our supreme law of the land, and each state has its own constitution.

3. Statutes

The third source of law in the United States is statutes. A statute, or law, is defined by *Black’s Law Dictionary* (10th ed. 2014) as “a law passed by a legislative body.” In the United States, legislatures did not become particularly active in enacting statutes until the early to mid-nineteenth century, when the U.S. economy began changing from a very rural base to

a more urban base. This major change in American society was coupled with a tremendous population growth, due largely to immigration, and it became clear that rather than having a system that decided disputes on a case-by-case basis, which was slow and cumbersome at best, enacting broader laws that would set forth rules to govern behavior of the public at large would best serve the needs of a growing society. For example, when people live miles apart from one another and interact on a sporadic basis, few disputes will arise. On the other hand, when people are crowded into apartment buildings and work in densely populated urban areas, the number of problems greatly increases, and there is a concomitant need for general regulation by law or statute.

4. Administrative Regulations

A fourth source of law in the United States is found in the vast number of administrative rules and regulations promulgated by federal agencies such as the Federal Communications Commission (“FCC”), the Food and Drug Administration (“FDA”), the Occupational Safety and Health Administration (“OSHA”), and numerous other agencies. Agencies exist in the individual states as well, and these also issue rules and regulations.

The agencies play a unique role in our legal system because they function quasi-legislatively and quasi-judicially. You may recall from basic history and civics classes that our government is divided into three branches: the legislative branch, which makes laws; the judicial branch, which interprets laws; and the executive branch, which enforces laws. Each division is to exercise its own powers, and, by a system known as “checks and balances,” each functions separately from the others and may limit the powers of the others.

The agencies, on the other hand, perform two functions: They act as a legislature by promulgating rules and regulations that bind us; and they act as a judiciary by hearing disputes and rendering decisions.

Although you may not have given a great deal of thought to the effect of the agencies in your daily life, their influence is significant and far-reaching. For example, the podcasts you listen to and the television you watch are regulated by the FCC; the cosmetics you use and the food or aspirin you ingest are regulated by the FDA; and the safety of your workplace is regulated by OSHA.

5. The Executive Branch

Although the primary function of the federal executive branch is to enforce the law, it does serve as a source of law in three ways. First, treaties are entered into by the executive branch with the advice and consent of the U.S. Senate. These agreements between two or more nations do affect your daily life and serve as a source of law because they may relate to trade and import matters, economic cooperation, or even international boundaries and fishing rights. Second, the President, our chief executive,

can issue executive orders to regulate and direct federal agencies and officials. State governors may also issue executive orders. Third, the executive branch exerts influence on the law through policies on enforcing laws.

For example, if various federal laws relating to possession of small amounts of drugs are rarely enforced, the *effect* is as if the law does not exist despite the fact that a statute clearly prohibits such acts. Nevertheless, although such an approach by the executive branch influences the law as well as societal behavior, such influence on the law is indirect and remote. In the event the government then prosecutes an individual for violation of such a previously unenforced law, the individual usually cannot raise the previous laxity as a defense. In a related example, in 1980, when the Selective Service System was reinstated to require U.S. males born in 1960 or later to register with the Service, several conscientious objectors refused to register. The federal government immediately prosecuted some of these individuals, who then asserted as a defense that they had been singled out for prosecution because they had been vigorous opponents of this draft registration. This defense, commonly known as “selective enforcement,” is rarely successful and was not successful in the draft registration cases. To use a simple analogy, if you are cited for speeding, you cannot successfully assert that either all people who speed should be likewise cited or that none should. You would accept that you had simply been unluckier than other speeders. On the other hand, if only women are cited or only Hispanics are cited, such would appear to be the result of discrimination based on sex or ethnic origin, and a defense of selective enforcement alleging such bias might well be successful.

D. Legal Systems of Other Countries

Although every country has its own system of law, most systems are classified as being either part of the common law tradition, described above, or part of the civil law tradition. Civil law systems developed from Roman law. The Eastern Roman emperor Justinian I commissioned a comprehensive code of laws known as *Corpus Juris Civilis*, meaning “Body of Civil Law,” to set forth all of the law of the Roman Empire. As a result, countries whose systems of law follow the Roman scheme of law with thoroughly comprehensive codes are said to be part of the civil law tradition. Even today many countries’ codes of civil law are derived from the original Roman codes.

In general, civil law countries (which are a majority of nations) place much heavier reliance on their collections of statutes than on their much smaller collections of cases. These statutes are designed to address every conceivable legal issue that might arise, and it is these statutes that provide the ultimate answers to legal questions. Cases considered by judges rarely form the sole basis for any decision in civil law countries. Austria, China, France, Germany, Greece, Italy, Japan, Mexico, the Russian Federation, South Korea, Spain, and most of the countries of Latin and South America are considered civil law countries. Islamic law

is followed by several countries in the Middle East. Some countries follow mixed systems.

In general, English-speaking countries or those that are prior British Commonwealth colonies are part of the common law system, which is greatly dependent on cases used as precedents, which in turn are followed in future cases that are substantially similar. Non-English-speaking countries are usually part of the civil law system, which is greatly dependent on codes or statutes intended to apply to every legal question or dispute. Because of the thoroughness of the Roman codes, statutes came to be known as the “written” law while the common law, relying as it does on judge-made case law, is often referred to as the “unwritten” law.

It is interesting to note that every state in the United States, except Louisiana, and every Canadian province, except Quebec, is part of the common law tradition. Because Quebec and Louisiana were settled by the French, their legal systems are largely patterned after the law of France, a civil law country. In fact, the Civil Code of Louisiana is heavily influenced by the Code Napoleon, the French legal code enacted in 1804. In practice, however, even in many countries with systems based on civil law, case law still plays a significant role, and there is typically judicial review of legislative acts. Table T.2 of *The Bluebook* identifies more than 40 foreign countries as either common law or civil law countries.

E. Legal System of the United States

The nature of our federalist system of government seeks to apportion power between our central or federal government and the 50 separate states and the District of Columbia. The framers of the country feared that an overly strong federal government with concentrated power would ultimately engulf the separate states. Therefore, the Tenth Amendment to the Constitution was adopted. This amendment reserves to the individual states any powers not expressly granted or delegated to the federal government.

As a result, although the United States adheres to a uniform common law tradition, there is no one single legal system in this country. We have federal laws enacted by the U.S. Congress and federal cases decided by our federal courts, including the U.S. Supreme Court. Moreover, unless an area of the law has been preempted by the U.S. Constitution or the federal government, each state and the District of Columbia are free to enact laws as well as decide cases dealing with state or local concerns. Even within each state are smaller political subdivisions such as cities and counties, which enact local ordinances and regulations.

Thus, there is a tremendous body of legal literature on the shelves of law libraries: federal cases and federal statutes; Connecticut cases and Connecticut statutes; Florida cases and Florida statutes; Utah cases and Utah statutes; and so forth. Additionally, both the federal government and state governments promulgate administrative regulations, attorneys general issue opinions regarding legal problems, and experts publish