

ASPEN COURSEBOOK SERIES

Amy E. Sloan

Basic Legal Research

Tools and Strategies

EIGHTH EDITION

Amy E. Sloan, University of Baltimore

A leader in its field, **BASIC LEGAL RESEARCH: Tools and Strategies, Eighth Edition** offers consistently clear instruction and a building-block approach. **Amy E. Sloan** presents her subject in manageable parts that gradually build in complexity. Ideal as a coursebook or reference, this text emphasizes online research, with targeted coverage of print materials. Its comprehensive coverage offers flexibility to fit a variety of course structures. The text incorporates a wealth of learning aids, including sample pages, examples, checklists, and summary charts. Exercises in the accompanying workbook provide more opportunities to test and apply legal research tools and strategies.

The **Eighth Edition** is completely revised and provides thorough instruction in the features and use of the main research platforms. Its updated coverage includes Westlaw, Lexis, and Bloomberg Law.

Written and presented with logic and clarity, **Basic Legal Research: Tools and Strategies, Eighth Edition** features:

- **Clear, step-by-step instruction** that covers the basics of legal research
- **A building-block approach** that breaks the material into discrete and comprehensible parts
- **Self-contained chapters on research sources** that make the book adaptable to any type of legal research course
- **End-of-chapter checklists, numerous examples, and summary charts** that aid in understanding, retention, and review
- **Updated sample pages, screen shots, and references to research sources**
- **Companion website**

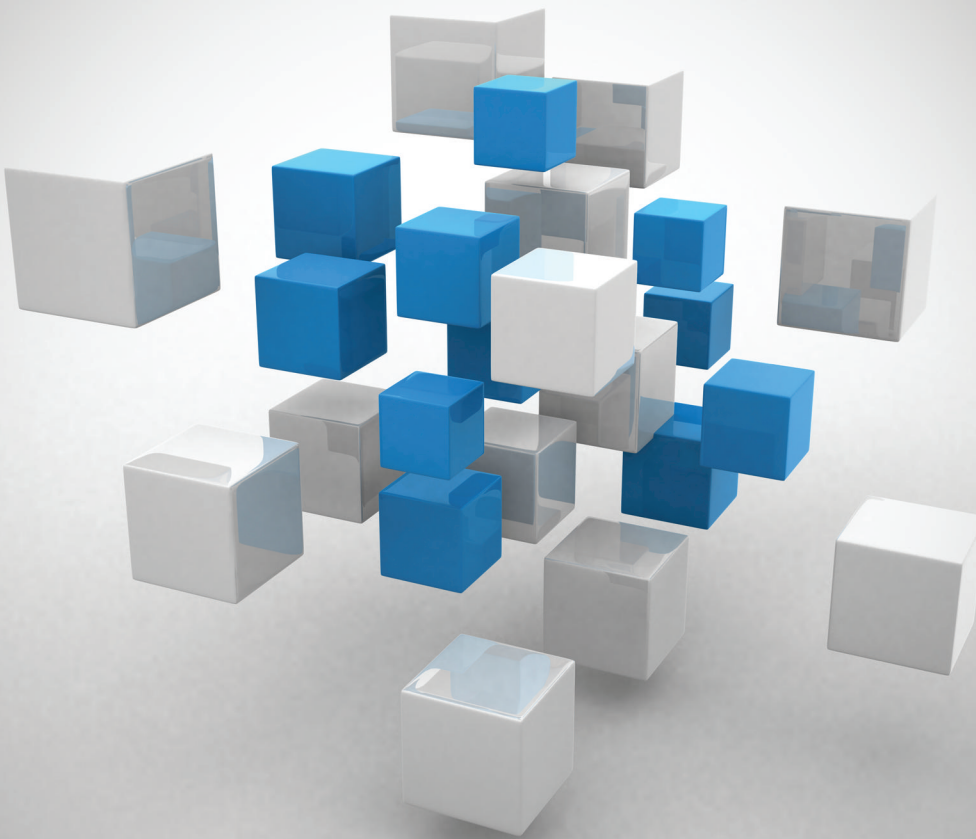
www.AspenPublishing.com



Basic Legal Research

Tools and Strategies

EIGHTH EDITION



Sloan

Basic Legal Research Tools and Strategies

EIGHTH EDITION

Basic Legal Research

EDITORIAL ADVISORS

Rachel E. Barkow

Segal Family Professor of Regulatory Law and Policy
Faculty Director, Center on the Administration of Criminal Law
New York University School of Law

Erwin Chemerinsky

Dean and Jesse H. Choper Distinguished Professor of Law
University of California, Berkeley School of Law

Richard A. Epstein

Laurence A. Tisch Professor of Law
New York University School of Law
Peter and Kirsten Bedford Senior Fellow
The Hoover Institution
Senior Lecturer in Law
The University of Chicago

Ronald J. Gilson

Charles J. Meyers Professor of Law and Business
Stanford University
Marc and Eva Stern Professor of Law and Business
Columbia Law School

James E. Krier

Earl Warren DeLano Professor of Law Emeritus
The University of Michigan Law School

Tracey L. Meares

Walton Hale Hamilton Professor of Law
Director, The Justice Collaboratory
Yale Law School

Richard K. Neumann, Jr.

Alexander Bickel Professor of Law
Maurice A. Deane School of Law at Hofstra University

Robert H. Sitkoff

John L. Gray Professor of Law
Harvard Law School

David Alan Sklansky

Stanley Morrison Professor of Law
Faculty Co-Director, Stanford Criminal Justice Center
Stanford Law School

ASPEN COURSEBOOK SERIES

Basic Legal Research

TOOLS AND STRATEGIES

EIGHTH EDITION

Amy E. Sloan

*Professor of Law
University of Baltimore School of Law*



Copyright © 2021 Amy E. Sloan

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at www.AspenPublishing.com.

Cover image: LpStudio/iStock

To contact Customer Service, e-mail customer.service@aspenpublishing.com, call 1-800-950-5259, or mail correspondence to:

Aspen Publishing
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-5438-2527-5

Library of Congress Cataloging-in-Publication Data

Names: Sloan, Amy E., 1964- author.

Title: Basic legal research: tools and strategies / Amy E. Sloan,
Professor of Law, University of Baltimore School of Law.

Description: Eighth edition. | Frederick, MD: Aspen Publishing, [2021] | Series:
Aspen coursebook series | Includes bibliographical references and index.
| Summary: "Best-selling, concise, accessible textbook for first-year
law students in a legal research course, with a classic, source-based
approach" — Provided by publisher.

Identifiers: LCCN 2020055977 (print) | LCCN 2020055978 (ebook) | ISBN
9781543825275 (paperback) | ISBN 9781543825282 (ebook)

Subjects: LCSH: Legal research — United States.

Classification: LCC KF240.S585 2021 (print) | LCC KF240 (ebook) | DDC
340.072/073 — dc23

LC record available at <https://lcn.loc.gov/2020055977>

LC ebook record available at <https://lcn.loc.gov/2020055978>

About Aspen Publishing

Aspen Publishing is a leading provider of educational content and digital learning solutions to law schools in the U.S. and around the world. Aspen provides best-in-class solutions for legal education through authoritative textbooks, written by renowned authors, and breakthrough products such as Connected eBooks, Connected Quizzing, and PracticePerfect.

The Aspen Casebook Series (famously known among law faculty and students as the “red and black” casebooks) encompasses hundreds of highly regarded textbooks in more than eighty disciplines, from large enrollment courses, such as Torts and Contracts to emerging electives such as Sustainability and the Law of Policing. Study aids such as the *Examples & Explanations* and the *Emanuel Law Outlines* series, both highly popular collections, help law students master complex subject matter.

Major products, programs, and initiatives include:

- **Connected eBooks** are enhanced digital textbooks and study aids that come with a suite of online content and learning tools designed to maximize student success. Designed in collaboration with hundreds of faculty and students, the Connected eBook is a significant leap forward in the legal education learning tools available to students.
- **Connected Quizzing** is an easy-to-use formative assessment tool that tests law students’ understanding and provides timely feedback to improve learning outcomes. Delivered through CasebookConnect.com, the learning platform already used by students to access their Aspen casebooks, Connected Quizzing is simple to implement and integrates seamlessly with law school course curricula.
- **PracticePerfect** is a visually engaging, interactive study aid to explain commonly encountered legal doctrines through easy-to-understand animated videos, illustrative examples, and numerous practice questions. Developed by a team of experts, PracticePerfect is the ideal study companion for today’s law students.
- The **Aspen Learning Library** enables law schools to provide their students with access to the most popular study aids on the market across all of their courses. Available through an annual subscription, the online library consists of study aids in e-book, audio, and video formats with full text search, note-taking, and highlighting capabilities.
- Aspen’s **Digital Bookshelf** is an institutional-level online education bookshelf, consolidating everything students and professors need to ensure success. This program ensures that every student has access to affordable course materials from day one.
- **Leading Edge** is a community centered on thinking differently about legal education and putting those thoughts into actionable strategies. At the core of the program is the Leading Edge Conference, an annual gathering of legal education thought leaders looking to pool ideas and identify promising directions of exploration.

For Bebe

Summary of Contents

Contents *xi*

Preface *xv*

Acknowledgments *xix*

CHAPTER 1	Introduction to Legal Research	1
CHAPTER 2	Understanding Search Options	27
CHAPTER 3	Generating, Prioritizing, and Using Search Terms	39
CHAPTER 4	Secondary Source Research	53
CHAPTER 5	Case Research	91
CHAPTER 6	Research with Citators	119
CHAPTER 7	Statutory Research	143
CHAPTER 8	Federal Legislative History Research	181
CHAPTER 9	Federal Administrative Law Research	205
CHAPTER 10	Online Legal Research	223
CHAPTER 11	Developing a Research Plan	245
APPENDIX	Selected Online Research Resources	273

Index 279

Contents

Preface *xv*

Acknowledgments *xix*

CHAPTER 1	Introduction to Legal Research	1
	A. Introduction to the legal system	2
	B. Introduction to the process of legal research	10
	C. Introduction to research planning	14
	D. Introduction to legal citation	18
	E. Overview of this text	24
CHAPTER 2	Understanding Search Options	27
	A. Introduction to search approaches	27
	B. Source-driven search process	29
	C. Content-driven search process	33
	D. Evaluating search options	35
CHAPTER 3	Generating, Prioritizing, and Using Search Terms	39
	A. Generating search terms based on categories of information	39
	B. Expanding the initial search	42
	C. Prioritizing search terms	43
	D. Using search terms in a word search	45
CHAPTER 4	Secondary Source Research	53
	A. Introduction to secondary sources	53
	B. Researching secondary sources online	61
	C. Researching secondary sources in print	68
	D. Citing secondary sources	72
	E. Sample pages for secondary source research	77
	F. Checklist for secondary source research	87

CHAPTER 5	Case Research	91
	A. Introduction to cases	91
	B. Researching cases online	98
	C. Researching cases in print	108
	D. Citing cases	112
	E. Sample pages for case research	114
	F. Checklist for case research	118
CHAPTER 6	Research with Citators	119
	A. Introduction to citators	119
	B. Using Shepard's in Lexis for case research	122
	C. Using KeyCite in Westlaw for case research	130
	D. Using BCite in Bloomberg Law	135
	E. Sample pages for case research with citators	136
	F. Checklist for case research with citators	141
CHAPTER 7	Statutory Research	143
	A. Introduction to statutory law	143
	B. Researching statutes online	154
	C. Researching statutes in print	164
	D. Citing statutes	169
	E. Sample pages for statutory research	170
	F. Checklist for statutory research	178
CHAPTER 8	Federal Legislative History Research	181
	A. Introduction to federal legislative history	181
	B. Researching federal legislative history online	187
	C. Researching compiled federal legislative history in print	194
	D. Citing federal legislative history	195
	E. Sample pages for federal legislative history research	197
	F. Checklist for federal legislative history research	202
CHAPTER 9	Federal Administrative Law Research	205
	A. Introduction to federal administrative law	205
	B. Researching federal regulations online	209
	C. Researching federal regulations in print	214
	D. Citing federal regulations	216
	E. Sample pages for federal administrative law research	216
	F. Checklist for federal administrative law research	220

CHAPTER 10	Online Legal Research	223
	A. Introduction to online legal research	223
	B. Effective word searching	229
	C. Additional online research resources	237
	D. Citing authority obtained online	240
	E. Checklist for online legal research	242
CHAPTER 11	Developing a Research Plan	245
	A. Introduction to research planning	245
	B. Creating a research plan	245
	C. Finding help	258
	D. Sample research plans	260
	E. Research checklists	265
APPENDIX	Selected Online Research Resources	273
<i>Index</i>		279

Preface

Basic Legal Research: Tools and Strategies was first published more than twenty years ago. In the generation that has passed since then, legal research has undergone a sea change. Research is now conducted almost exclusively online, and access to print materials is uncertain at best for most researchers. Prior editions of this text also gradually shifted emphasis from print to online research. The eighth edition is now fully oriented toward online research. You will notice the following changes in this new edition:

- **Reordered content emphasizes online research process**—Material from prior editions has been reordered to organize instruction around online research. Chapter 2 explains different approaches to online research. It uses a research example to illustrate how to choose the best search approach based on the nature of the research task. Chapter 3 discusses how to generate and prioritize search terms and introduces word search techniques. It uses sample searches to illustrate how to use search terms to draft a natural language or terms and connectors search.
- **Chapters on individual sources feature online research**—Chapters covering individual sources of authority have been reorganized to feature online research. Chapters 4 through 9 focus primarily on online search techniques, incorporating targeted descriptions of print sources. Chapter 10 also covers online research. It builds on the topics covered in earlier chapters, addressing differences among search engines; techniques for reviewing and refining search results; and field and segment searching.
- **Coverage of online platforms has been updated**—The text covers the latest releases of Lexis, Westlaw, and Bloomberg Law. It also discusses other services such as HeinOnline, Fastcase, Casetext, and govinfo.gov. Annotated examples and screen shots have been updated.
- **Citation explanations have been updated**—The text covers both the *ALWD Guide to Legal Citation* (7th ed.) and the *Bluebook* (21st ed.). New material on citation literacy explains how citation formats communicate weight of authority.

The philosophy and the format of the eighth edition remain the same as those of earlier editions. The genesis of this book was a conversation I had with Todd Petit, a student in my Lawyering Skills class at Catholic University, in the fall of 1994. Todd was working on a research project, and he came to me in frustration and bewilderment over the research process. Over the course of the year, Todd ultimately mastered the skill of legal research. Nevertheless, our conversation that fall caused me to start thinking about how I could teach research more effectively, a process that ultimately culminated in this book.

I do not believe Todd's experience was unique. Mastering a skill is a form of experiential learning—learning that can be done only by doing. And the “doing” aspect necessarily involves periods of trial and error until a person grasps the skill. It is not surprising that this can be frustrating and even bewildering at times.

Having said that, however, even experiential learning has to be built on a base of information. My goal with this book is to provide two kinds of information necessary for students to learn the process of legal research: basic information about a range of research sources and a framework for approaching research projects.

This text provides instruction for using a variety of legal research sources, including secondary sources, cases, citators, statutes, federal legislative history, and federal administrative regulations. Each of these sources is described in a separate chapter that includes the following components:

- introductory information;
- techniques for online research;
- a brief explanation of print research tools;
- an explanation of citation rules;
- an annotated set of screen shots illustrating the research process; and
- a checklist summarizing both the research process for the source and its key features.

The range of material in each of these chapters is intended to accommodate a variety of teaching and learning styles. These chapters contain textual explanations, charts, and checklists that can be used for in-class discussions and for out-of-class reference as students are conducting research. In addition, the screen shots illustrating the research process provide both instructional material and a useful summary synthesizing the information on the source from the rest of the chapter.

This text does more, however, than simply explain the bibliographic features of various research sources. It also provides instruction in research as a process, and it does this in two ways. First, Chapters 1–3 provide an overview of research sources and the research process. These chapters provide a framework for understanding the relationships among

different types of legal authority; an overview of different approaches to searching; a method for generating and prioritizing search terms; and techniques for drafting word searches. Through this material, these chapters set the stage for a process-oriented introduction to research instruction. Second, Chapter 11 provides a framework for creating a research plan. By setting out a process based on a series of questions students can ask to define the contours of any type of research project, it provides a flexible approach that can be adapted to a variety of assignments. Although Chapter 11 is the last chapter in the text, it can be used whenever students are required to develop a strategy for approaching a research project.

The coverage of online research within each chapter devoted to an individual research source addresses search techniques specifically suited to that source. Chapter 10 addresses online research more generally. It explains differences among search engines; techniques for executing, reviewing, and refining searches; and field and segment searching. This chapter can be used in conjunction with other chapters at any point in the research course.

Moreover, the text provides instruction in a wide range of online research sources. It discusses research using commercial services such as Westlaw, Lexis, and Bloomberg Law. But it also covers a range of other online research options, including subscription services and publicly available websites. As part of this instruction, the text discusses cost considerations so that students can learn to make informed decisions about how to select the best source for any research project.

This text seeks to provide students not only with the bibliographic skills to locate the legal authorities necessary to resolve a research issue, but also an understanding of research process that is an integral component of students' training in problem-solving skills. I hope this text will prove to be a useful guide to students as they undertake this intellectual challenge.

Amy E. Sloan
February 2021

Acknowledgments

Many people contributed to the eighth edition of this book. My thanks here will not be adequate for the assistance they provided. I want to thank the reference librarians at the University of Baltimore Law Library, especially C.J. Pipins. I am grateful to Caylee Henderson for her research support. A number of my colleagues at other schools contributed to this project by sharing their experiences in teaching with earlier editions, both by communicating with me directly and through anonymous reviews.

The people at Aspen Publishing have been incredibly generous with their time and talents. Their guidance and expertise contributed greatly to the text, and I am grateful for their assistance. I very much appreciate the assistance of everyone at The Froebe Group, my partners on this and many other projects. Tom Daughhetee and Kathy Langone deserve special thanks for their patience, skill, and good humor in the production process.

I want to thank my family and friends for their support, especially Peggy Metzger and Jack and Andrew Metzger-Sloan.

I would be remiss if I limited my acknowledgments to those who assisted with the eighth edition of the text because much of what appears here originated in the earlier editions. In particular, I would like to acknowledge Joanne Colvin, Diana Donahoe, Susan Dunham, Lauren Dunnock, Lynn Farnan, Melanie Oberlin Knapp, Susan B. Koonin, Jan Levine, Carli Masia, Shavaun O'Brien, Jaquetta Oram, Adeen Postar, Katie Rolfes, Herb Somers, Jessica Thompson, Robert Walkowiak III, and Michelle Wu for their work on earlier editions of the text.

I would also like to acknowledge the publishers who permitted me to reprint copyrighted material in this text:

Figure 2.1 Lexis Search Screen. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.

Figure 2.2 Alabama State Code Index. Westlaw, *General Index for the Code of Alabama*, Marriage entry. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.

Figure 2.3 Source-Driven Search Results in Bloomberg Law. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloomberglaw.com.

- Figure 2.4** Content-Driven Search Results in Westlaw. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 4.1** ILP Citation List. Reprinted with permission from H.W. Wilson. Copyright © 2020 H.W. Wilson.
- Figure 4.2** Legal Trac Citation List. From Gale. LegalTrac. © Gale, a part of Cengage, Inc. Reproduced by permission. www.cengage.com/permissions
- Figure 4.3** HeinOnline Display of a Legal Periodical Article. Reproduced with permission of HeinOnline. Copyright © 2020 HeinOnline.
- Figure 4.4** Index to Am. Jur. 2d. Reprinted with permission from Thomson Reuters/West, *American Jurisprudence*, 2d Series, General Index (2019 Edition), p393, Copyright © 2019 Thomson Reuters/West.
- Figure 4.5** Am. Jur. 2d Main Volume Entry Under False Imprisonment. Reprinted with permission from Thomson Reuters/West, *American Jurisprudence*, 2d ed., Vol. 32 (2017), p.61. Copyright © 2017 Thomson Reuters/West.
- Figure 4.6** Am. Jur. 2d Pocket Part Entry for False Imprisonment. Reprinted with permission from Thomson Reuters/West, *American Jurisprudence*, 2d Series, Vol. 32 Cumulative Supplement (2019), p.1. Copyright © 2019 Thomson Reuters/West.
- Figure 4.8** Am Jur. 2d Search Box and Table of Contents. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 4.9** Am Jur. 2d Index Entry for False Imprisonment. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 4.10** Westlaw, Am. Jur. 2d Volume 32, § 21. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 4.11** A.L.R. Annotation in Lexis. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 4.12** Restatement Search Options in Bloomberg Law. The Restatement (Second) of Torts, Rules and Appendix Volumes. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloombergindustry.com.
- Figure 4.13** Section 35 of The Restatement (Second) of Torts, Rules and Appendix Volumes. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloombergindustry.com.
- Figure 5.2** Google Scholar. Excerpt from *Padilla-Mangual v. Pavia Hospital*, 516 F.3d 29-30. Copyright © 2008 Google Scholar. Google Scholar™ scholarly texts search is a trademark of Google LLC and this book is not endorsed by or affiliated with Google in any way.
- Figure 5.3** Westlaw excerpt from *Padilla-Mangual v. Pavia Hospital*, 516 F.3d 29-30. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 5.4** Headnotes with Key Number Links, 516 F.3d 29-30. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.

- Figure 5.5** Key Number System List of Case Summaries. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 5.6** Example of a Case in Lexis. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 5.7** Ravel View. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 5.8** Example of a Case in Bloomberg Law. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloomberglaw.com.
- Figure 5.12** West Key Number Search Results and Case Summaries. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 5.13** Results of a Word Search in Lexis Advance. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 5.14** Results of a Word Search in Bloomberg Law. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloomberglaw.com.
- Figure 6.1** Case with Shepard's® Summary. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 6.3** Shepard's® Entry Excerpt for 165 Ohio App. 3d 699. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 6.4** Citing Decision Grid View. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 6.5** Headnote 9 from the Original Case, *Uddin v. Embassy Suites Hotel*. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 6.6** Shepard's® Entry Excerpt for *Uddin v. Embassy Suites Hotel*. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 6.7** *Davis v. Accor North America, Inc.*, citing *Uddin v. Embassy Suites Hotel*. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.

- Figure 6.8** KeyCite Tabs and Status Flag, 165 Ohio App. 3d 699. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 6.10** KeyCite “Negative Treatment” Tab. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 6.11** KeyCite “History” Tab. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 6.12** KeyCite “Citing References” Tab. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 6.14** KeyCite Filtering Options. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 6.16** BCite Display. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloombergingustry.com.
- Figure 6.17** Shepard’s ® Display. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 6.18** KeyCite Display. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 6.19** BCite Display. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloombergingustry.com.
- Figure 7.5** 8 U.S.C.A. § 915. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 7.6** Chapter outline in Title 18. United States Code Annotated, Title 18 (2015), p. 683. Reprinted with permission from Thomson Reuters/West. Copyright © 2015 Thomson Reuters/West.
- Figure 7.7** Excerpt from 18 U.S.C.A. § 915. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 7.8** Westlaw U.S.C.A Table of Contents and Search Options. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 7.9** Excerpt from 18 U.S.C.S. § 915 in Lexis. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 7.10** Lexis U.S.C.S. Table of Contents. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 7.11** 18 U.S.C. § 915 in Bloomberg Law. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloombergingustry.com.
- Figure 7.12** 18 U.S.C.A. § 915. United States Code Annotated, Title 18 (2015), pp. 723-724. Reprinted with permission from Thomson Reuters/West. Copyright © 2015 Thomson Reuters/West.
- Figure 7.13** Pocket part update for 18 U.S.C.A. § 915. United States Code Annotated, 2017 Supplement, Title 18, p. 34. Reprinted with permission from Thomson Reuters/West. Copyright © 2017 Thomson Reuters/West.

- Figure 7.14** West's Annotated Code of Maryland Index. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 7.15** Maryland Transportation Code § 20-102. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 7.16** Outline of Title 20, Maryland Transportation Code. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 7.17** Related Code Section. Reprinted with permission from Thomson Reuters/West. Copyright © 2020 Thomson Reuters/West.
- Figure 7.18** Lexis Search Results. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 7.19** Maryland Transportation Code § 20-102. Copyright © 2020 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc. and are used with the permission of LexisNexis.
- Figure 7.20** Bloomberg Law Search Results. Reproduced with permission. Copyright © 2020 by the Bureau of National Affairs, Inc. (800) 372-1033, www.bloomberglaw.com.
- Figure 8.1** How a Bill Becomes a Law. Reprinted with permission from Guide to Congress, CQ Press, 7th Ed. (2013), p. 1364. Copyright © 2013 CQ Press, an imprint of SAGE Publications, Inc.
- Figure 8.5** HeinOnline Sources of Compiled Legislative Histories Entry. Reproduced with permission of HeinOnline. Copyright © 2020 HeinOnline.
- Figure 8.6** Search Options for Congressional Publications in Proquest Legislative Insight. Reprinted with permission of Proquest. Copyright © 2021 ProQuest Congressional.

Basic Legal Research

Introduction to Legal Research

- A. Introduction to the legal system
 - B. Introduction to the process of legal research
 - C. Introduction to research planning
 - D. Introduction to legal citation
 - E. Overview of this text
-

What is legal research and why do you need to learn about it? Researching the law means finding the rules that govern conduct in our society. To be a successful lawyer, you need to know how to research the law. Lawyers are often called upon to solve problems and give advice, and to do that accurately, you must know the rules applicable to the different situations you and your clients will face. Clients may come to you after an event has occurred and ask you to pursue a remedy for a bad outcome, or perhaps defend them against charges that they have acted wrongfully. You may be asked to help a client accomplish a goal like starting a business or buying a piece of property. In these situations and many others, you will need to know your clients' rights and responsibilities, as defined by legal rules. Consequently, being proficient in legal research is essential to your success in legal practice.

As a starting point for learning about how to research the law, it is important to understand some of the different sources of legal rules. This chapter discusses what these sources are and where they originate within our legal system. It also provides an introduction to the process of legal research, an overview of some of the research tools you will learn to use, and an introduction to legal citation. Later chapters explain how to locate legal rules using a variety of resources.

A. INTRODUCTION TO THE LEGAL SYSTEM

1. SOURCES OF LAW

Four main sources of law exist at both state and federal levels:

- constitutions;
- statutes;
- court opinions (also called cases); and
- administrative regulations.

A constitution establishes a system of government and defines the boundaries of authority granted to the government. The United States Constitution is the preeminent source of law in our legal system, and all other rules, whether promulgated by a state or the federal government, must comply with its requirements. Each state also has its own constitution. A state's constitution may grant greater rights than those secured by the federal constitution, but because a state constitution is subordinate to the federal constitution, it cannot provide lesser rights than the federal constitution does. All of a state's legal rules must comport with both the state and federal constitutions.

Since grade school, you have been taught that the U.S. Constitution created three branches of government: the legislative branch, which makes the laws; the judicial branch, which interprets the laws; and the executive branch, which enforces the laws. State governments are also divided into these three branches. Although this is elementary civics, this structure truly does define the way government authority is divided in our system of government.

The legislative branch of government creates statutes, which must be approved by the executive branch (the president, for federal statutes; the governor, for state statutes) to go into effect. The executive branch also makes rules. Administrative agencies, such as the federal Food and Drug Administration or a state's department of motor vehicles, are part of the executive branch. They execute the laws passed by the legislature and create their own regulations to carry out the mandates established by statute.

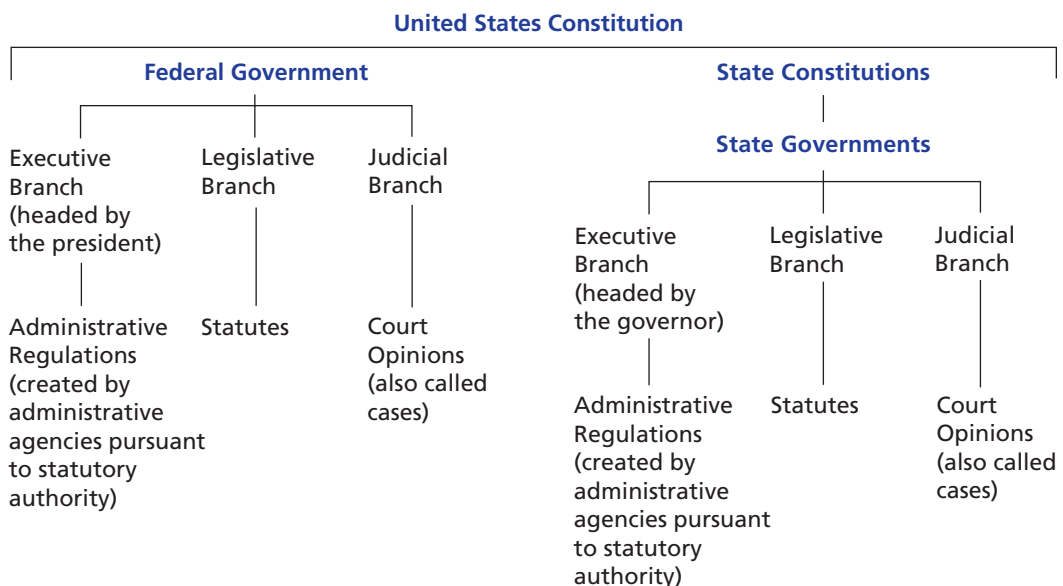
The judicial branch is the source of court opinions. Courts interpret rules created by the legislative and executive branches of government. If a court determines that a rule does not meet constitutional requirements, it can invalidate the rule. Otherwise, however, the court must apply the rule to the case before it. Court opinions can also be an independent source of legal rules. Legal rules made by courts are called "common-law" rules. Although courts are empowered to make these rules, legislatures can adopt legislation that changes or abolishes a common-law rule, as long as the legislation is constitutional.

Figure 1.1 shows the relationships among the branches of government and the types of legal rules they create.

An example may be useful to illustrate the relationships among the rules created by the three branches of the federal government. As you know, the U.S. Constitution, through the First Amendment, guarantees the right to free expression. Congress could pass legislation requiring television stations to provide educational programming for children. The Federal Communications Commission (FCC) is the administrative agency within the executive branch that would be responsible for carrying out Congress's will. If the statute were not specific about what constitutes educational programming or how much educational programming must be provided, the FCC would have to create administrative regulations to execute the law. The regulations would provide the information not detailed in the statute, such as the definition of educational programming. A television station could challenge the statute and regulations by arguing to a court that prescribing the content of material the station must broadcast violates the First Amendment. The court would then have to interpret the statute and regulations to decide whether they comport with the Constitution.

Another example illustrates the relationship between courts and legislatures in the area of common-law rules. The rules of negligence have largely been created by the courts. Therefore, liability for negligence is usually determined by common-law rules. A state's highest court could decide that a plaintiff who sues a defendant for negligence cannot recover any damages if the plaintiff herself was negligent and contributed to

FIGURE 1.1 BRANCHES OF GOVERNMENT AND LEGAL RULES



her own injuries. This decision would create a common-law rule governing future cases of negligence within that state. The state legislature could step in and pass a statute that changes the rule. For example, the legislature could enact a statute providing that juries are to determine the percentage of negligence attributable to each party and to apportion damages accordingly, instead of completely denying recovery to the plaintiff. Courts in that state would then be obligated to apply the rule from the statute, not the former common-law rule.

Although these examples are simplified, they demonstrate the basic roles of each of the branches of government in enunciating the legal rules governing the conduct of society. They also demonstrate that researching a legal issue may require you to research several different types of legal authority. The answer to a research question may not be found exclusively in statutes or court opinions or administrative regulations. Often, these sources must be researched together to determine all the rules applicable to a research issue.

2. TYPES AND WEIGHT OF AUTHORITY

a. Types of Authority

One term used to describe the rules that govern conduct in society is “authority.” “Authority,” however, is a broad term that can describe both legal rules that must be followed and other types of information that are not legal rules. To understand the weight, or authoritative value, an authority carries, you must learn to differentiate “primary” authority from “secondary” authority and “binding” authority from “nonbinding” authority.

Primary authority is a term used to describe a source of a rule of law. All of the sources of rules discussed so far in this chapter are primary authorities. Constitutional provisions, statutes, cases, and administrative regulations contain legal rules, and as a consequence, are primary authorities. Because “the law” consists of legal rules, primary authority is sometimes described as “the law.”

Secondary authority, by contrast, refers to commentary on the law or analysis of the law, but not “the law” itself. An opinion from the U.S. Supreme Court is a primary authority, but an article written by a private party explaining and analyzing the opinion is a secondary authority. Secondary authorities are often quite useful in legal research because their analysis can help you understand complex legal issues and refer you to primary authorities. Nevertheless, a secondary authority is not “the law” and therefore is distinguished from a primary authority.

Binding and nonbinding authority are terms lawyers use to define the authoritative value of a source of law. Binding authority, which can also be called mandatory authority, refers to an authority that must be followed. In other words, a binding authority contains one or more rules

that you must apply to determine the correct answer to your research question. Nonbinding authority refers to an authority that can be, but does not have to be, followed. Nonbinding authority is sometimes called persuasive authority. A nonbinding authority will not dictate the answer to your research question, but it may help you figure out the answer. Whether an authority is binding or nonbinding depends on several factors, as discussed in the next section.

b. Weight of Authority

The degree to which an authority controls the answer to a legal question is called the weight of the authority. Not all authorities have the same weight. The weight of an authority depends on its status as primary or secondary, as well as its status as binding or nonbinding.

An authority's status as a primary or secondary authority is fixed. An authority is either part of "the law," or it is not. Anything that does not fit into one of the categories of primary authority is secondary authority. Distinguishing primary authority from secondary authority is the first step in determining how much weight a particular authority has in the resolution of your research question. Then you can determine whether the authority is binding or nonbinding.

(1) Secondary authority: always nonbinding

Once you identify an authority as secondary, you can be certain that it will not control the outcome of the question you are researching because all secondary authorities are nonbinding. Nevertheless, some are more persuasive than others. Some are so respected that a court, while not technically bound by them, would need a good reason to depart from or reject their statements of legal rules. Others do not enjoy the same degree of respect, leaving a court free to ignore or reject such authorities if it is not persuaded to follow them. Further discussion of the persuasive value of various secondary authorities appears in Chapter 4. The important thing to remember for now is that secondary authorities are always categorized as persuasive or nonbinding.

(2) Primary authority: sometimes binding, sometimes nonbinding

Sometimes a primary authority is a binding, or mandatory, authority, and sometimes it is not. You must be able to evaluate the authority to determine whether it is binding on the question you are researching.

Jurisdiction is one factor affecting whether a primary authority is binding. A rule contained in a primary authority applies only to conduct occurring within the jurisdiction where the authority is in force. For example, all laws in the United States must comport with the federal Constitution because it is a primary authority that is binding, or mandatory, in all United States jurisdictions. The New Jersey constitution is

also a primary authority because it contains legal rules establishing the scope of state government authority, but it is binding authority only in New Jersey. The New Jersey constitution's rules do not apply in Illinois or Michigan. Similarly, New Jersey statutes are primary authorities, but they are binding only in New Jersey.

Determining the weight of a case is a little more complex. All cases are primary authorities. Whether a particular case is binding or nonbinding is a function not only of jurisdiction, but also level of court.

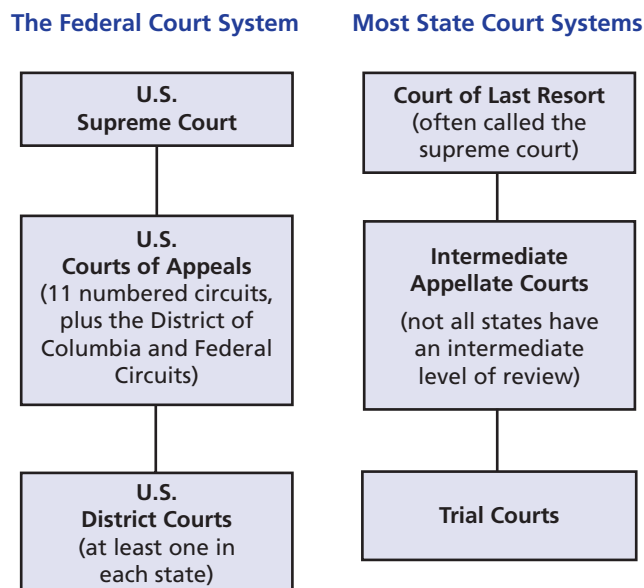
(i) Court system structures

In considering the weight of a case, it is important to remember that the federal government and each state constitute different jurisdictions because each has its own government. Consequently, the federal and state court systems are separate. Although the systems are separate, they are structured similarly. The federal and all state judicial systems have multiple levels of courts. **Figure 1.2** illustrates the structures of federal and state court systems.

Trial courts are at the bottom of the judicial hierarchy. In the federal system, the United States District Courts are trial-level courts, and each state has at least one federal district court.

Intermediate appellate courts hear appeals of trial court cases. Most states, but not all, have intermediate appellate courts. In the federal system, the intermediate appellate courts are called United States Courts of Appeals, and they are divided into 13 separate circuits: 11 numbered

FIGURE 1.2 STRUCTURE OF THE FEDERAL COURT SYSTEM AND MOST STATE COURT SYSTEMS



circuits (First through Eleventh), the District of Columbia Circuit, and the Federal Circuit.

The highest court or court of last resort within a jurisdiction is often called the supreme court. It hears appeals of cases from the intermediate appellate courts or directly from trial courts in states that do not have intermediate appellate courts. In the federal system, of course, the court of last resort is the United States Supreme Court.

To determine the weight of a case, you must evaluate both jurisdiction and level of court, as described below.

(ii) Determining the weight of a case: jurisdiction

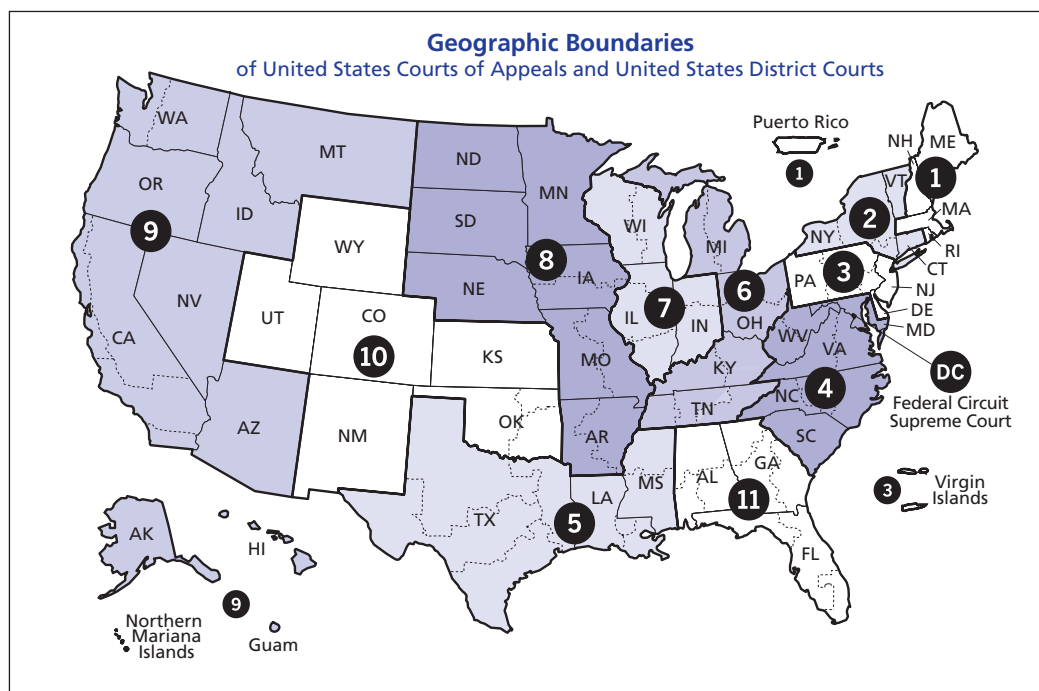
As with other forms of primary authority, cases are binding authorities only within the court's jurisdiction. An opinion from the Texas Supreme Court is binding only for a court applying Texas law. A California court deciding a question of California law would consider the Texas opinion a nonbinding authority. If the California court had to decide a new issue not previously addressed by any binding California authorities (a "question of first impression"), it might choose to follow the Texas Supreme Court's opinion if it found the opinion persuasive.

On questions of federal law, opinions of the U.S. Supreme Court are binding on all other courts because it has nationwide jurisdiction. An opinion from a circuit court of appeals is binding on federal courts only within the circuit that issued the opinion. A decision of the U.S. Court of Appeals for the Eleventh Circuit, for example, would bind the federal courts located in the Eleventh Circuit but not the federal courts located in the Seventh Circuit. **Figure 1.3** shows the geographic boundaries of the federal circuit courts of appeals.

Remember that the federal government and each state constitute different jurisdictions. On questions of state law, each state's courts get the last word, and on questions of federal law, the federal courts get the last word. This means that a federal opinion applying state law is not binding on the state courts, although it may be very persuasive.

Ordinarily, understanding how jurisdiction affects weight of authority is fairly intuitive. When a Massachusetts trial court resolves a case arising out of conduct that took place in Massachusetts, it will treat an opinion of the Massachusetts Supreme Judicial Court as a binding authority. Sometimes, however, a court has to resolve a case governed by the law of another jurisdiction. State courts sometimes decide cases governed by the law of another state or by federal law. Federal courts sometimes decide cases governed by state law. When that happens, the court deciding the case will treat the law of the controlling jurisdiction as binding.

For example, assume that the U.S. District Court for the Western District of Texas, a federal trial court, has to decide a case concerning breach of a contract to build a house in El Paso, Texas. Contract law is, for the most part, established by the states. To resolve this case, the

FIGURE 1.3 GEOGRAPHIC BOUNDARIES OF THE FEDERAL COURTS OF APPEALS

federal court will apply the contract law of the state where the dispute arose, in this case, Texas. The Texas Supreme Court's cases on contract law are binding authorities for resolving the case because Texas law controls the resolution of the case.

Now assume that the same U.S. District Court has to decide a case concerning immigration law. Immigration law is established by the federal government. Therefore, the court will apply federal law to this case. The opinions of the U.S. Supreme Court and the U.S. Court of Appeals for the Fifth Circuit are binding authorities for this court in resolving the immigration case.

(iii) Determining the weight of a case: level of court

The second step in determining the weight of a case is evaluating the level of the court that decided the case. To do this, recall the structure of most court systems: trial courts, intermediate appellate courts (if they exist within the jurisdiction), and court of last resort. You likely already know that decisions of higher courts typically carry more weight than those of lower courts.

Trial court opinions, including those from federal district courts, bind the parties to the cases. But they do not bind other trial courts considering similar cases, nor do they bind courts above them in the court structure. They are usually nonbinding, or persuasive, authority, even within the controlling jurisdiction.

The opinions of intermediate appellate courts bind lower courts, although you must know the jurisdiction's court structure to know precisely which courts are bound by which decisions. Generally, intermediate appellate cases are binding authorities for the trial courts directly subordinate to them in the jurisdiction's court structure. In jurisdictions with multiple appellate divisions, the opinions of one division may or may not bind trial courts in other divisions.

The weight of intermediate appellate cases on the intermediate appellate courts themselves varies. Again, in jurisdictions with multiple appellate divisions, the opinions of one division may or may not bind other divisions. In addition, in some circumstances, intermediate appellate courts can overrule their own prior opinions. Intermediate appellate cases are nonbinding authorities for the court of last resort.

The court of last resort may, but is not required to, follow the opinions of the courts below it. The opinions of the court of last resort, however, are binding authorities for both intermediate appellate courts and trial courts subordinate to it within the jurisdiction. The court of last resort is not bound by its own prior opinions but will be reluctant to change an earlier ruling without a compelling justification.

Figure 1.4 illustrates how a court's position within the judicial hierarchy affects the weight of its opinions.

3. SUMMARY OF WEIGHT OF AUTHORITY

This discussion provides an overview of some common principles governing the weight of authority. These principles are subject to exceptions and nuances not addressed here. Entire fields of study are devoted to

FIGURE 1.4 LEVEL OF COURT AND WEIGHT OF AUTHORITY

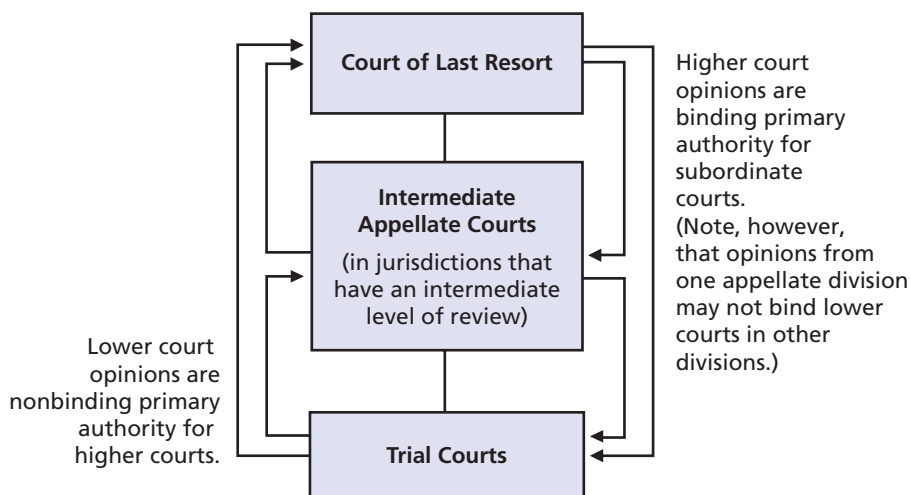


FIGURE 1.5 TYPES OF AUTHORITY

TYPE OF AUTHORITY	BINDING (MANDATORY)	NONBINDING (PERSUASIVE)
PRIMARY (legal rules)	Constitutional provisions, statutes, and regulations in force within a jurisdiction are binding authority within that jurisdiction. Decisions from higher courts within a jurisdiction are binding authority for lower courts within the same jurisdiction.	Decisions from courts within one jurisdiction are nonbinding authority for courts in other jurisdictions. Decisions from lower courts within a jurisdiction are nonbinding authority for higher courts within the same jurisdiction.
SECONDARY (anything that is not primary authority; usually commentary on the law)	Secondary authority is <i>not</i> binding authority.	Secondary authority is nonbinding authority.

resolving questions of jurisdiction, procedure, and conflicts regarding which legal rules apply to various types of disputes. As you begin learning about research, however, these general principles will be sufficient to help you determine the weight of the authority you locate to resolve a research issue.

Figure 1.5 illustrates the relationships among the different types of authority.

B. INTRODUCTION TO THE PROCESS OF LEGAL RESEARCH

Imagine that you are standing in the parking lot at Disney World. You have a key in your hand, but you have no idea which car it starts. The key is not much use to you unless you have some way of figuring out which car it starts. The more information you can gather about the car, the easier the car will be to find. Knowing the make, model, or color would narrow the options. Knowing the license plate number would allow you to identify the individual vehicle.

Understanding the mechanics of using various legal research tools is like having that key in your hand. You have to know the features of the research tools available to you to conduct research, just as you must have the key to start the car. But that is not enough to make you an effective

researcher. Effective legal research combines mastery of the mechanics of research with legal problem-solving skills. The research process is part of the reasoning process. It is not a rote task you complete before you begin to evaluate an issue. Rather, it is an analytical task in which you narrow the field of all legal information available to the subset of information necessary to assess an issue. As you locate and evaluate information, you will learn about the issue you are researching, and that knowledge will help you determine both whether you have located useful information and what else you should be looking for to complete your understanding of the issue.

To understand the process of research, you must first understand how legal information is organized. Most, if not all, of the authorities you will learn to research are available from a variety of sources. They may be published in print, online, or in both formats. Online research services that provide access to legal publications include commercial databases that charge a fee for access and websites freely available to anyone. Of course, you can obtain legal information from a general search engine like Google or a general source of information like Wikipedia, but lawyers often conduct legal research with more specialized tools.

Much legal information is organized by type of authority and jurisdiction. In print, this means individual types of authority from individual jurisdictions are published in separate sets of books. Court opinions from Maryland will be in one set of books (called “reporters”), and those from Massachusetts will be in another set of reporters. The same holds true for print collections of statutes and other types of legal authority.

Online research tools are organized similarly. Some are like print sets of books in that they provide access to one type of authority from one jurisdiction. The website for the Arizona Supreme Court, for example, contains only Arizona Supreme Court opinions. Others provide access to multiple types of authority from many different jurisdictions. Although these services aggregate a wide range of legal authority, they generally subdivide their contents much like print sources into individual databases organized by jurisdiction and type of authority. There are many commercial and government sources that provide online access to legal authority.

Westlaw and Lexis are the best known online legal research services. Bloomberg Law is another online provider. All three are commercial databases that allow you to access all of the types of legal authority discussed in this chapter. They charge subscribers for use of their services, although your law school undoubtedly subsidizes the cost of student research while you are in school. Other commercial and free research services you may encounter in law school include Fastcase, Casemaker, Findlaw, and Cornell Law School’s Legal Information Institute, among others. They provide access to many of the same types of authorities you

can find in Lexis and Westlaw. You will also learn about federal, state, and local government websites you can use for legal research.

The organization of legal information by jurisdiction and type of authority affects the way individual legal authorities are identified. All legal authorities have citations assigned to them. The citation is the identifying information you can use to retrieve a document from a book or database. Thus, if you have the citation to an authority, you can locate it using that identifying information. To return to the key analogy, this is like knowing the state and license plate number of the car you are trying to locate in the parking lot.

Citations were originally formulated so that researchers could find authorities in print. Although most authorities are now available online, they are still primarily identified by their print citations. In print research, the citation generally includes the name of the book in which the source is published, the volume of the book containing the specific item, and the page or section number where the item begins. For example, each court opinion is identified by a citation containing the volume number of the reporter in which it is published, the name of the reporter, and the starting page of the opinion. If you had the citation for a case, you could locate it easily. Statutes, secondary sources, and other forms of authority also have citations you can use to retrieve specific documents.

Of course, with most research projects, you will not know the citations to the authorities you need to find. You will have been assigned the project to find out which legal authorities, if any, pertain to the subject of your research issue. Moreover, although occasionally you will need to locate only one specific item, such as a specific case, more often you will need to collect a range of authorities that pertain to the issue, such as a statute and cases that have interpreted the statute. Therefore, you will need to narrow the field of all legal information to that subset of information necessary to analyze your research issue.

You will generally narrow the field of information using two types of criteria: general document characteristics and specific content. General document characteristics include the jurisdiction and type of authority (e.g., cases, statutes, secondary sources). By narrowing the field of information to documents with particular characteristics, you can identify binding authority relevant to your research issue. Focusing on documents that contain specific content is another way to narrow the field to information relevant to your research question. Although you will usually use both types of criteria in conducting research, the order in which you use them affects your research process.

With some research tools, you must determine jurisdiction and type of authority before you begin to look for content related to your research issue because the information available is organized into separate books or databases according to jurisdiction and type of authority. In other words, you filter the available information by source first and

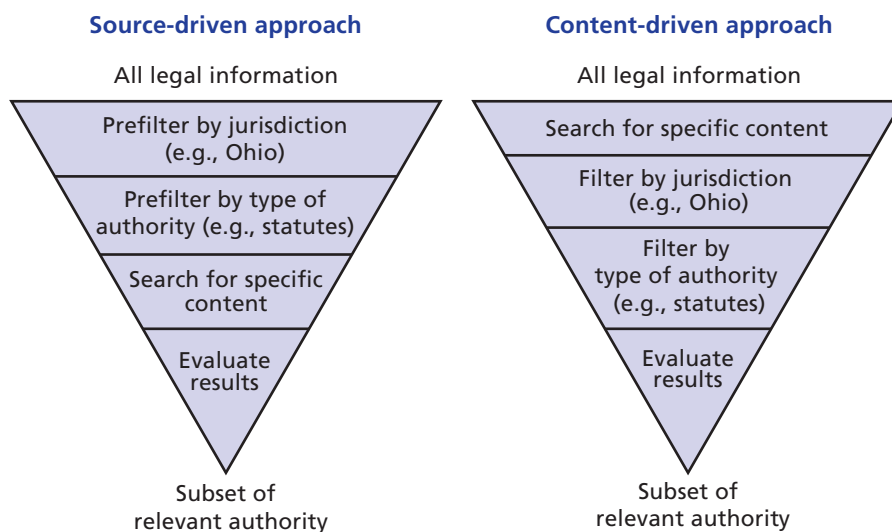
then identify relevant content within each source. When you filter first by source, you use a source-driven approach to research.

With some online services, including Westlaw, Lexis, and Bloomberg Law, you can, but do not have to, filter by jurisdiction or type of authority before you execute a search. You have the option of searching for content related to your research issue first and then filtering the results by jurisdiction, type of authority, or both. When you filter first by content, you use a content-driven approach to research.

With either approach, once you locate information, you must evaluate the results of your research to determine whether the information you have found is useful. The source-driven and content-driven approaches are illustrated in **Figure 1.6**.

One question you may have is whether it is better to use a source- or content-driven approach. The answer depends on the nature of your research project and your level of expertise about the subject matter. With a source-driven approach, you have to think carefully about a research issue to figure out which type(s) of authority are most likely to contain relevant information. Although selecting a type of authority can be challenging, choosing specific types of authority to research can make it easier to analyze the results because they are confined to the particular type of authority you selected. In addition, a savvy researcher may know exactly what type of authority governs—such as a state statute—and may not want to bother filtering through other types of authority included in the results. Conversely, if you are not sure which type(s) of authority to use, you may miss some relevant material altogether if it is in a source you did not consider using.

FIGURE 1.6 SOURCE-DRIVEN AND CONTENT-DRIVEN APPROACHES TO RESEARCH



Because the content-driven approach allows you to search without first selecting a source, it shifts much of the analytical work involved in research to filtering the search results. This can be an advantage because the search results can include sources you might not have considered using. On the other hand, this approach frequently retrieves a large amount of information that has to be sifted carefully. Retrieving hundreds or thousands of documents can feel overwhelming if you do not understand your research issue well enough to filter the results effectively. Chapter 2 explains source-driven and content-driven searching in greater detail to help you learn how to determine which approach is better for your research project.

C. INTRODUCTION TO RESEARCH PLANNING

The chapters that follow explain how to use a range of research tools to locate various types of legal authority. As noted above, however, knowing the mechanics of the research tools available to you is only part of learning to be an effective researcher. To research effectively, you must incorporate your technical knowledge into a research plan so that you can find the information you need to analyze your research issue. To do this, you will want to proceed in an organized manner to make sure your research is accurate and complete. Chapter 11, *Developing a Research Plan*, explores research planning in depth. This introduction to the planning process will help provide context as you learn the features of various research tools.

When you have a research task to complete, you will ordinarily proceed as follows:

- Define the scope of your research project and the issue(s) you need to research.
- Generate a list of search terms specific to your research issue(s).
- Plan your research path for each issue.
- Execute your research plan to search for relevant information.
- Assess the information you find and update your research to ensure that all the information is current.
- Revise your search terms and research plan as necessary and repeat the search process to complete your understanding of your research issue(s).

It is always a good idea to define the scope of your project before searching for information. Think about what you are being asked to do. Are you being asked to spend three weeks locating all information from every jurisdiction on a particular subject, or do you have a day to find

out how courts in one state have ruled on an issue? Will you write an extensive analysis of your research, or will you summarize the results orally to the person who made the assignment? Evaluating the type of work product you are expected to produce, the amount of time you have, and the scope of the project will help you determine the best way to proceed.

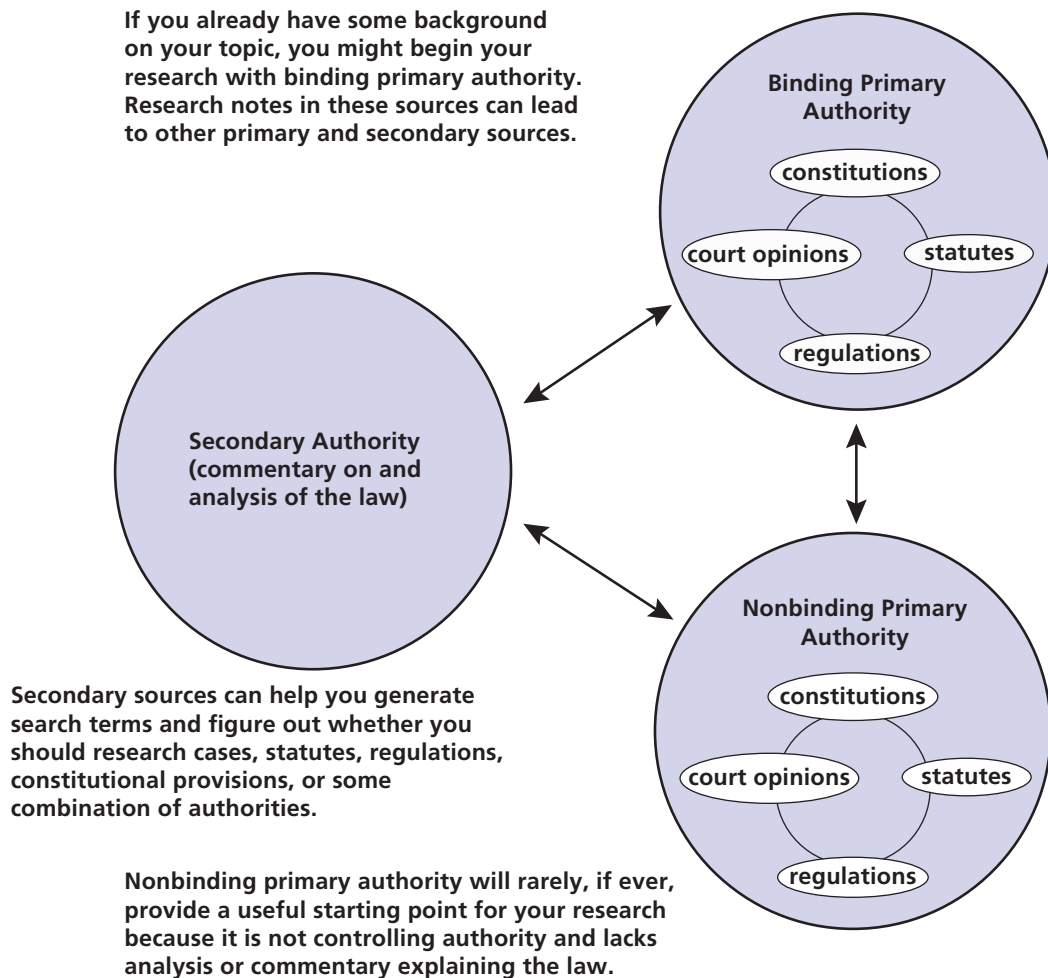
You should also think carefully about the issue(s) you are being asked to research. Sometimes you will be asked to research a specific issue. Sometimes you will be presented with a research scenario and asked to determine the issue(s) it presents. It sounds almost silly to say this, but knowing what you are looking for will make it easier to find what you need.

Once you have defined your research task, you will need to generate search terms to use to search for information. Chapter 3 discusses different ways to do this. In general, however, you will need to construct a list of words or concepts to use to search for relevant content.

You will then want to plan your research path. The more you know about your research issue going in, the easier it will be to plan your research process. The less you know, the more flexible you will need to be in your approach. One of the goals of this text is to help you learn to plan your research path and assess the appropriate starting, middle, and ending points for your research.

Your ultimate goal in most research projects will be to locate binding primary authority, if it exists, on your research issue. Thus, regardless of whether you use a source- or content-driven approach, at some point you must consider type of authority and jurisdiction because these two factors determine whether the information you have located is binding primary authority. If binding primary authority is not available or does not directly answer your research question, nonbinding authority (either primary or secondary) may help you analyze the issue. Therefore, in planning your research path, it may be helpful for you to think about three categories of authority: binding primary authority, nonbinding primary authority, and secondary authority.

Because your goal will usually be to locate binding primary authority, you might think that that should be the starting point for all your research. In fact, if you know a lot about the issue you are researching, you might begin with binding primary authority, but that is not always the case. Secondary authorities that cite, analyze, and explain the law can provide a very efficient way to obtain background information and references to primary authority. Although secondary authorities are not controlling in your analysis, they are invaluable research tools and can be a good starting point for your project. Nonbinding primary authority will rarely provide a good starting place because it provides neither the controlling rules nor analysis explaining the law. **Figure 1.7** shows the relationships among these three categories of authority.

FIGURE 1.7 WHERE TO BEGIN YOUR RESEARCH PROJECT

Many research sources contain notes that refer to other sources, so once you locate one relevant source, you may be able to use the research notes to find additional useful information. Thus, there may be more than one appropriate starting point for your research. This text explains the features of a wide range of research sources so you can learn to make this assessment for different types of research projects.

Once you have planned your research path, you will execute your plan to search for information. As you locate information, you will need to evaluate its relevance to your research issue. One important aspect of assessing the information you find is making sure it is up to date. The law can change at any time. New cases are decided; older cases may be overruled; statutes can be enacted, amended, or repealed. Therefore, keeping

your research current is essential. One way to update your research is with a specialized research tool called a citator, which is explained in Chapter 6. In addition, most sources of legal information will indicate how recently they have been updated to help you assess whether the information is current.

Most print research sources consist of hardcover books that can be difficult to update when the law changes. Some print resources are published in chronological order. For those resources, new books are published periodically as new material is compiled. Many, however, are organized by subject. For those resources, publishers cannot print new books every time the law changes. This would be prohibitively expensive, and because the law can change at any time, the new books would likely be out of date as soon as they were printed. To keep the books current, therefore, many print sources are updated with softcover pamphlets containing new information that becomes available after the hardcover book is published. These supplementary pamphlets are often called “pocket parts” because many of them fit into a “pocket” in the inside back cover of the hardcover book. The hardcover book and the pocket part will each indicate the period of time it covers. You will see pocket parts mentioned throughout this text in reference to print research tools.

Online sources also usually contain publication or revision date information that you can use to assess how current it is. Online sources can be updated easily in the sense that new information can be added and older information revised at any time and as frequently as necessary. Westlaw, Lexis, and Bloomberg Law update at least some of their content on a daily basis. Providers other than major commercial vendors may not update their content as frequently. In addition, updates for some content may only become available when the print version of the source is updated, which means the online version may only be as current as the latest print version. No matter how you locate information, you must pay careful attention to the date of any information you find.

Because research is not a linear process, you may find that you have to revise your search terms or your research plan to complete your work. If you do not find any information, or find too much information, you may need to backtrack or rethink your approach. Even if you find relevant information from the start, what you learn when you assess that information may take you in new directions. The process of searching, reading, and assessing will continue until you have narrowed the field of all legal information to the subset of information necessary to evaluate your research issue. This text explains a variety of search strategies you can use to tailor your research process to the specific issue you are researching.

D. INTRODUCTION TO LEGAL CITATION

When you present the results of your research in written form, you will need to include citations to the legal authorities you have found. Lawyers use citations to communicate two things:

- the type and weight of the authority used to support a proposition; and
- the information the reader needs to locate the item.

Different forms of authority have unique citation formats. You need to master these formats. You will use them as a writer to convey the weight of the authority you use and as a reader to evaluate the quality of the support provided for a proposition.

Rules for formatting legal citations appear in *The Bluebook: A Uniform System of Citation* (21st ed. 2020) and the *ALWD Guide to Legal Citation* (7th ed. 2021). Citation formats are the same using either source. Any minor differences are typically addressed in online updates to maintain consistency between both manuals. You should use whichever citation manual your professor directs you to use.

This section provides a brief overview of the organization of both citation manuals and will make the most sense if you have your citation manual in front of you as you read. Later chapters contain instructions for citing individual sources of legal authority.

1. THE BLUEBOOK

The *Bluebook* is available in print and online. Both versions contain the same citation rules. The online version offers search capability unavailable in the print version. Additionally, it allows you to pin frequently used rules, a task you would otherwise need to do manually with a print *Bluebook*. The online version also requires an annual subscription fee, whereas a print *Bluebook* requires only a single purchase. Most of the discussion in this section applies equally to the print and online versions of the *Bluebook*, but a few variations are noted.

The first part of the print *Bluebook* is the Introduction, which explains how the *Bluebook* is organized. The Introduction explains that the *Bluebook* contains two sets of instructions for citing authority: “basic” citation rules used in legal practice and more complex rules used for citations in scholarly publications such as law journals, a type of secondary source discussed in more detail in Chapter 4. The “basic” citation rules apply to the types of documents most students write in their first year of law school, such as briefs, memoranda, and other documents used in legal practice. The remainder of the citation rules apply primarily to law journals, although some aspects of these rules also apply to

practice documents. You are unlikely to write documents in law journal format at the beginning of your legal studies; therefore, you will want to focus your attention on the format for citations in briefs, memoranda, and other similar legal documents.

Learning to cite authority using the *Bluebook* requires you to become familiar with four items:

- the Bluepages and corresponding Bluepages Tables;
- the citation rules in the Rules (Whitepages) section of the *Bluebook*;
- the Tables; and
- the finding tools for locating individual citation rules (i.e., print Table of Contents, Index, and Quick Reference guide; online Dashboard and search function).

■ THE BLUEPAGES AND CORRESPONDING BLUEPAGES TABLES

The Bluepages contain the rules for citing legal authority in briefs, memoranda, and legal documents other than law journals. This section contains general information applicable to any type of citation, such as the placement of citations in legal documents. It also contains specific instructions for citing cases, statutes, secondary sources, and other forms of authority, as well as examples of many types of citations. Bluepages Table BT1 contains the abbreviations for words commonly found in the titles of court documents. In addition, some courts require special citation formats for authorities cited in documents filed with those courts. Table BT2 refers you to sources for local citation rules. In print, the Bluepages appear at the beginning of the *Bluebook*. Online, use the Dashboard to access the **Bluepages**.

■ THE TEXT OF THE CITATION RULES

Most of the *Bluebook* is devoted to explaining the rules for citing different types of authority. In print, the Rules section appears in the white pages in the middle of the *Bluebook*. Online, use the Dashboard to access the **Whitepages**. These rules can be divided into five categories:

1. Rules 1 through 9 are general rules applicable to a citation to any type of authority. For example, Rule 5 discusses the proper format for quotations.
2. Rules 10 through 17 contain rules for citing various primary and secondary authorities. For example, Rule 10 explains how to cite a court opinion, and Rule 12 explains how to cite a statute.
3. Rule 18 contains rules for citing authorities published exclusively in electronic form.
4. Rule 19 contains rules for citing authorities published in services for researching law related to specific subject areas.
5. Rules 20 and 21 contain rules for citing foreign and international materials.

Some of the material contained in the rules also appears in the Bluepages. If the Bluepages contain all the information you need for a citation, you may not need to consult the Rules (Whitepages) section. If you face a citation question not addressed in the Bluepages, however, you should consult the individual rules for more detailed guidance. Most of the rules for citing specific types of legal authority begin with a description of the elements necessary for a full citation. The remainder of the rule will explain each component in greater detail.

Most rules are accompanied by example citations showing the format for citing various authorities. The examples in the Rules (Whitepages) section are in the typefaces required for law journals, which are not always used in other types of legal documents. Therefore, although the examples with the individual rules will be somewhat useful to you in understanding how to cite legal authority, you cannot rely on them exclusively. The instructions in Bluepages B2 explain the differences between typeface conventions for citations in law journals and other documents.

■ THE TABLES

In print, the Tables appear in the white pages with blue edges at the back of the *Bluebook*. Online, use the Dashboard to access the Whitepages and scroll down to view an outline of Tables. (Refer to the Bluepages to locate the Bluepages Tables.)

The citation rules in the Bluepages and Rules (Whitepages) sections explain the general requirements for different types of citations. Often they require that certain words be abbreviated. The Tables contain abbreviations necessary for proper citations. For example, Table T1 lists each jurisdiction in the United States, and under each jurisdiction, it shows the proper abbreviations for citations to that jurisdiction's cases and statutes. Whenever you have a citation that includes an abbreviation, you will need to check the appropriate Table to find the precise abbreviation required for a proper citation. You should note, however, that the type styles of some of the abbreviations in the Tables are in law journal format and may need to be modified according to Bluepages B2 for the work you will produce in your first year of law school.

■ THE FINDING TOOLS FOR LOCATING INDIVIDUAL RULES

As noted above, the Bluepages should be your starting point for determining how to construct a citation in *Bluebook* format. If you cannot find what you need in the Bluepages, you can find individual citation rules in the Rules (Whitepages) section using the Table of Contents in print or the Dashboard online.

The print version has additional finding tools that may help you locate the rules you need: the Index and Quick Reference guides. The Index references in black type refer to the pages with relevant rules. Those in blue type refer to examples of citations. The Quick Reference guides

on the inside front and back covers give examples of different types of citations. The examples on the inside front cover are in the format for law review and journal footnotes and will be of little or no use to you in your first year of law school. The examples on the inside back cover are in the proper format for the types of documents you are likely to draft in your first year.

The online *Bluebook* does not contain the Index, but you can use the search function to find rules and use the Pin function on the Dashboard to pin rules you use frequently. The online version also has a Quick Style Guide accessible from the Quick Guide link on the Dashboard. This guide has limited citation examples formatted for law review and journal footnotes.

All of the pieces of the *Bluebook* work together to help you determine the proper citation format for a legal authority:

1. Use the Bluepages to find citation instructions governing the authority you want to cite.
2. If the Bluepages do not contain all the information you need for the citation, find the relevant rule in the Rules (Whitepages) section. You can do this in print by using the Index, Table of Contents, or Quick Reference guide or online by using the Whitepages Dashboard or search function.
3. Use the Tables to find abbreviations and other information necessary for a complete citation.
4. If necessary, convert the typefaces in the examples and Tables into the proper format for briefs and memoranda according to Bluepages B2.

As you read the remaining chapters in this text, you will find more specific information about citing individual legal authorities. In general, however, you will be able to use the *Bluebook* to figure out how to cite almost any type of authority by following these four steps.

2. THE ALWD GUIDE

The *ALWD Guide* is a print publication. Although it is available as a Kindle e-book, it is not published online through a dedicated website the way the *Bluebook* is.

The *ALWD Guide* contains introductory material that explains what citations are, how the *ALWD Guide* is organized, and how your word processing settings may affect citations, among other topics. You should read this material as you begin learning about legal citations.

The *ALWD Guide* is organized differently than the *Bluebook* in that the *ALWD Guide* incorporates information on citations for practice documents and scholarly publications together within each citation rule. The *Bluebook*, by contrast, largely separates rules for practice documents into the Bluepages, as explained above. When you are using the *ALWD Guide*, you do not need to refer to a separate set of rules for different types of documents.

Learning to cite authority using the *ALWD Guide* requires you to become familiar with five items:

- the finding tools for locating individual citation rules (Table of Contents and Index);
- the text of the citation rules;
- the Appendices;
- the “Fast Formats” and “Snapshots”; and
- the *ALWD Guide* website.

■ THE TABLE OF CONTENTS AND INDEX

To locate individual citation rules, you can use the Table of Contents at the beginning of the *ALWD Guide* or the Index at the end. Unless otherwise indicated, the references in the Index are to rule numbers, not page numbers or specific examples.

■ THE TEXT OF THE CITATION RULES

Most of the *ALWD Guide* is devoted to explaining the rules for citing different types of authority. The rules are divided into the following Parts:

1. Part 1 (Rules 1 through 11) contains general rules applicable to a citation to any type of authority. For example, Rule 3 discusses spelling and capitalization.
2. Part 2 (Rules 12 through 29) contains rules for citing various primary and secondary authorities. For example, Rule 12 explains how to cite a court opinion, and Rule 14 explains how to cite a statute.
3. Part 3 (Rules 30 through 33) contains rules for citing online sources.
4. Part 4 (Rules 34 through 37) contains rules for incorporating citations into documents.
5. Part 5 (Rules 38 through 40) contains rules regarding quotations.

In each citation rule in Parts 2 and 3, you will find a description of the elements necessary for a full citation to an authority, followed by an annotated example showing how all of the elements fit together to create a complete citation. You should read this part of the rule first. The remainder of the rule will explain each component in greater detail.

Within the text of each rule in the *ALWD Guide*, you will find cross-references to other citation rules and to Appendices containing additional

information that you may need for a complete citation. An explanation of the Appendices appears below.

You will also find “Sidebars” in some rules. The “Sidebars” are literally asides on citation. They provide information about sources of legal authority, help you avoid common citation errors, and offer citation tips.

■ THE APPENDICES

The *ALWD Guide* contains eight Appendices. Six of them — Appendices 1, 3, 4, 6, 7, and 8 — follow the Parts containing the citation rules; two — Appendices 2 and 5 — are published online.

The citation rules in Parts 2 and 3 explain the general requirements for citations to different types of authority. Most of these rules require that certain words be abbreviated. Appendices 1, 3, 4, and 5 contain abbreviations necessary for proper citations.

For example, Appendix 1 lists Primary Sources by Jurisdiction. It lists each jurisdiction in the United States, and under each jurisdiction, it shows the proper abbreviations for citations to that jurisdiction’s cases, statutes, and other primary authorities. Whenever you have a citation that includes an abbreviation, you will need to check the appropriate Appendix to find the precise abbreviation required for a proper citation.

Appendix 2 contains references to local court citation rules. As noted above, some courts require special citation formats for authorities cited in documents filed with those courts. The *ALWD Guide* provides information on these local rules in Appendix 2.

Appendix 6 contains information on citations to federal taxation materials, and Appendix 7 contains information on selected federal administrative publications. Appendix 8 contains *Bluebook* rule references so you can correlate the rules in the two citation manuals.

■ THE “FAST FORMATS” AND “SNAPSHOTS”

Before the text of each rule for citing an individual type of authority in Parts 2 and 3, you will find a section called “Fast Formats.” The “Fast Formats” provide citation examples for each rule, in addition to the examples interwoven with the text of the rule. A “Fast Formats Locator” appears on the inside front cover of the *ALWD Guide*. You can use this alphabetical list to find “Fast Formats” pages without going to the Table of Contents or Index.

“Snapshots” also accompany the citation rules for some of the most commonly cited types of legal authority. “Snapshots” are annotated sample pages from sources of law that show you where to find the components of a full citation within the document.

■ THE ALWD GUIDE WEBSITE

Updates to the *ALWD Guide* are posted online. The URL for the *ALWD Guide* website is listed in the Appendix at the end of this text.

All of the pieces of the *ALWD Guide* work together to help you determine the proper citation format for a legal authority:

1. Use the Table of Contents or Index to find the rule governing the authority you want to cite.
2. Read the rule, beginning with the components of a full citation at the beginning of the rule.
3. Use the Appendices to find additional information necessary for a correct citation.
4. Use the “Fast Formats” and “Snapshots” preceding the rule for additional examples and information.
5. If necessary, check the website for any updates.

As you read the remaining chapters in this text, you will find more specific information about citing individual legal authorities. In general, however, you will be able to use the *ALWD Guide* to figure out how to cite almost any type of authority by following these five steps.

E. OVERVIEW OF THIS TEXT

Because different research projects have different starting and ending points, it is not necessary for you to follow all of the chapters in this text in order. The sequence of assignments in your legal research class will determine the order in which you need to cover the material.

Although you may not cover the chapters in order, a brief overview of the organization of this text may provide useful context for the material that follows. As noted earlier, Chapter 2 contrasts source- and content-driven search strategies. Chapter 3 discusses how to generate search terms, one of the first steps in any research project. It also describes how to use search terms to construct a word search. Chapters 4 through 9 explain how to research different types of authority. Chapter 10 discusses online search techniques, and Chapter 11 covers how to create a research plan.

Chapters 4 through 9 are each organized in a similar way. Each begins with an overview of the type of authority discussed. Then you will find an explanation of the process of researching the authority, followed by information on citation format. The next item in each of these chapters is a section of sample pages. The sample pages contain step-by-step illustrations of the research process described earlier in the chapter. As you read through the text, you may find it helpful to review both the excerpts within the chapter and the sample pages section to get a sense of the research process for each type of authority. Each of these chapters concludes with a research checklist that summarizes the research process and may be helpful as you conduct research.

Chapter 10 provides more detailed instruction in online research. Chapter 2 provides a foundation for drafting word searches, and Chapters 4 through 9 focus on search techniques specific to individual sources. Chapter 10 discusses differences among search engines and general online search techniques. As you gain familiarity with online search tools, you may also want to review the Appendix at the end of the text, which lists a number of research websites.

The final chapter, Chapter 11, discusses research strategy and explains how to create a research plan. You do not need to read all of the preceding chapters before reading Chapter 11, although you may find Chapter 11 easier to follow after you have some background on a few research sources. Learning about research involves more than simply learning how to locate individual types of authority. You must also be able to plan a research strategy that will lead to accurate research results, and you must be able to execute your research strategy efficiently and economically. Chapter 11 sets out a process that will help you achieve these goals in any research project, whether in your legal research class or in legal practice.

Understanding Search Options

- A. Introduction to search approaches
- B. Source-driven search process
- C. Content-driven search process
- D. Evaluating search options

Chapter 1 gave you a brief introduction to the source-driven and content-driven approaches to research. This chapter will explain these search approaches in more detail so you can learn how to assess which approach is best for the specific research tasks you will be asked to do as a student and in legal practice.

A. INTRODUCTION TO SEARCH APPROACHES

To illustrate the differences between source- and content-driven searching, this chapter uses the following research scenario:

Your client recently ended a long-term relationship with her partner. She and her partner never participated in a formal marriage ceremony, but they had always planned to get married “someday.” They lived together for ten years and referred to each other as husband and wife. Your client and her former partner orally agreed to provide support for each other, and your client’s former partner repeatedly made statements like, “What’s mine is yours.” Your client wants to know if she is entitled to part of the value of the assets her former partner acquired during their relationship or to any support payments.

Assume that your supervisor asked you to find out whether the parties' relationship qualified as a common-law or "informal" marriage under the state's family law statutes and to submit a summary of your research by the end of the day. How would you approach the task?

Assume instead that your supervisor gave you a week to research the law and submit a memorandum analyzing any legal theories that might apply to your client's situation. How would you approach that task?

Neither of these assignments requires you to explain how you conducted your research. Your supervisor and the client will be focused on the substantive results of your research, not on the research process. But each of these tasks is different in terms of the complexity of the research required, the work to be produced, and the deadline for completion. Accordingly, you would use a different research process for each one. Knowing how to vary your research process to suit the task you need to accomplish is vital for performing complete, accurate, and efficient research.

Figure 2.1 shows how to execute source- and content-driven searches in Lexis. You can execute a source-driven search by selecting a source

FIGURE 2.1 LEXIS SEARCH SCREEN

