

Advanced Legal Research: Process and Practice

ADVANCED LEGAL
RESEARCH: PROCESS AND
PRACTICE

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ACKNOWLEDGMENTS

I would like to thank my colleagues for their support and encouragement of this project. I deeply appreciate our team of law librarians: Angus Nesbit, Kelly Reynolds, Adam Anderson, and Francesco Fasano, who are not only deeply committed to the instructional and service mission of our institution, but are also kind and interesting humans. I am also grateful for our new Director, Jane Larrington, who provides strong leadership, encourages us to pursue our interests, and celebrates our individuality.

I would also like to express my gratitude for Allia Service and Rayne Vieger, their commitment to open access to information, and the support they provided for this project.

PART I.

GETTING STARTED

CHAPTER 1.

INTRODUCTION

GOALS

Over several years of teaching legal research, our law librarian instructors have listened to students who express a need for more hands-on practice with legal research because they lack confidence in the thoroughness of their research, and they lack the level of efficiency necessary for effective professional legal practice. This text targets those concerns by posing a client scenario involving major sources of law and legal information (state and federal): secondary sources, enacted law, case law, administrative regulations, and legislative history. This text will provide background on the sources of law, supplement text with video demonstrations, and suggest group and individual activities that emphasize formative self-assessment and simulate practice experiences so that students have many opportunities to develop and improve research skills.

What is missing?

The problem used in this text does not cover every legal research topic. Two important topics missing from this problem are tribal law and foreign and international law. These two areas of legal research warrant entire courses. For information on tribal law research, please consult

several excellent research guides: Indian Law Research Guides, National Indian Law Library; American Indian Law, Harvard University Law Library; Native American Law Guide: Federal Indian Law and Tribal Law Materials, UCLA Law Library; Indian and Tribal Law, University of Washington Gallagher Law Library.

You can also find research guides for foreign and international law research: Foreign, Comparative and International Law, University of Washington Gallagher Law Library; Foreign and International Law, Georgetown Law Library.

PROCESS AND PRACTICE-BASED APPROACH

The client scenario provides an opportunity for you to explore your own research process, develop methods of documenting and organizing research, communicate research results to the simulated client or supervising attorney, and keep time records of research tasks to track efficiency. This text does not aim to be a comprehensive explanation of all sources of law. Rather, it focuses on practicing the research process: how to find and analyze legal information sources in an efficient, thorough way. The client scenario presents few specific facts. This is intentional. You will be investing time and energy exploring and reflecting on the research process and finding sources, rather than making complex factual arguments in a legal memorandum.

ORGANIZATION AND CONTENT

Part I

This book begins with an overview of the research process and analysis. Next, it introduces a client scenario that can be used as a semester-long research problem or for practice examples throughout a course. Then, it offers some contextual material for the client scenario that could be used for diversity and inclusion discussions.

Part II

The next part of the book offers sample assignments and assessments that could be used for an advanced legal research course. Or, the samples could inspire ideas for different assignments and assessments. Throughout this book, you will have opportunities to contribute ideas, questions, and samples, toward the goal of making research learning collaborative and inclusive.

Part III

The next section of the book outlines and discusses steps in the legal research process: (1) preparing to research; (2) finding and using secondary sources; (3) finding and using enacted law; (4) finding and using case law; (5) finding and using administrative law; (6) finding and using legislative history; and (7) updating, reading and organizing sources. For each step of the research process, the text will explain sources of information, suggest search techniques, provide practice examples and short demonstration videos, and offer discussion and reflection questions.

In keeping with the spirit of open and accessible education, this book will emphasize freely available legal information resources, rather than focusing mostly on commercial research platforms such as Westlaw and Lexis. Commercial platforms are important tools for the practice of law, so texts used in first year research and writing instruction necessarily focus on how to use Westlaw, Lexis, and Bloomberg Law. But for many entering the profession, the expense of these platforms makes them unattainable. Even for new attorneys who have access to commercial platforms, they must learn to use them in a limited, fiscally responsible way, so knowing how to find information on freely available websites is an essential professional skill.

REFLECTION AND COLLABORATION

There are many ways to structure a legal research course for effective learning. Law librarians and legal research and writing faculty tend to be creative, energetic, engaged teachers who care deeply about student learning. I have learned as much from talking to my colleagues and watching them teach as I have from being in the classroom myself. Equally important is what I learn from you, the students: your questions, reflections, observations, and commitment to excellent professional skills continuously inspire and inform instructional design choices and teaching methods. This book provides one approach to teaching a second/third year legal research course: it uses one complex scenario for the whole semester so you can see the interplay of different types of sources, experience the iterative nature of legal research, and have time to reflect deeply on the effectiveness of your research process. The collaborative approach of this book allows you to develop teamwork skills that are essential in professional practice, as well as appreciate and learn from different approaches and perspectives of your colleagues. Throughout this resource, you will have opportunities to share discussion and reflection questions, as well as your ideas for research logs.

COURSE DESIGN

This text offers some suggestions for exercises, activities, assignments, and assessments. It also provides an opportunity for collaborators to contribute other ideas for course materials. In addition to content, instructors and students should think about course design and

delivery. Student learning is best when the course materials, course design, and instructional approaches are as inclusive and accessible as possible. Many articles and books on inclusive and accessible course design and instruction are available; some suggestions for further reading are listed below. As a short summary, here are some important considerations for designing and teaching a legal research course:

1. **Transparency:** Have an in-class discussion about the purpose and goals underlying course exercises, activities, assessments, and course design. Reflect on whether the purpose and goals were achieved. Transparency allows students to see the relevancy of their coursework to their larger professional goals, and requires instructors to be able to articulate clearly how course work is aligned with those learning goals.
2. **Predictability:** The course should be designed and structured with a predictable rhythm to each class session, each week, and the semester. Predictability is enhanced by consistent due dates; clearly communicated class agendas; consistent and organized weekly modules in the learning management system; overviews and recaps during each class session; and a clear syllabus that lists overviews and learning goals for each class session, as well as due dates for every assignment and assessment.
3. **Flexibility:** The concept of flexibility might seem opposite to predictability. However, within the predictable structure of the course, students

should have some flexibility in how to complete activities, exercises, and assessments. For example, if a weekly research journal is assigned, then students could have some flexibility in either creating a written journal entry, sound recording, or short video. Similarly, allowing some flexibility in the medium for final projects will allow students to communicate what they have learned in the most effective way for them. Creating frequent opportunities for formative feedback also promotes flexibility, as instructors will be able to address students' unique challenges and strengths, and supplement classroom sessions to address any common questions that arise in real time.

4. **Timely and frequent feedback:** Adult learners seek frequent feedback so they can improve their skills and achieve professional goals. Courses should be designed so that feedback from instructors is provided in a predictable and timely manner. For example, if students submit a weekly research journal entry on Friday afternoon, feedback should be consistently provided by Monday afternoon so that students can use that feedback in their work for the week. Set due dates for instructor feedback and stick to them. Feedback should be provided in multiple forms: answering common questions or addressing common challenges during a class session; personalized feedback to individual students on assignments; responding to questions during office hours; responding in a timely way to

student emails; and providing substantive, formal feedback on summative assessments.

5. **Formative assessments:** Provide multiple opportunities for students to practice skills and receive feedback before they have a higher stakes summative assessment. Formative assessments decrease student stress and emphasize growth and skills development, rather than focusing on grading and ranking students. Using multiple formative assessments also allows for variety in media (written documents, oral presentations, video or audio projects, visual charts or tables) which promotes inclusivity in the different ways that students communicate their learning.
6. **Universal Design for Learning principles:** Universal Design for Learning (UDL) is one way of approaching inclusive course design and teaching. UDL, based on neurological science, provides guidelines for engaging all students in effective learning. Course design should address the affective network (student engagement, motivation, and persistence), recognition network (ways in which students take in information), and strategic network (ways that students demonstrate mastery of the course material).
 1. Transparency, predictability, and frequent feedback address the affective network by communicating relevancy of course materials, aligning activities and assessments to learning goals, and providing an organized, step by step approach to achieving professional goals.

2. Varied course materials (demonstrations, readings, discussions, written outlines, clear class session overviews and recaps, and substantive videos) address the recognition network by providing multiple means by which students can take in information, given individual challenges such as ADHD, other neurological challenges, visual or auditory processing difficulties, mental health concerns, as well as family situations.
3. Varied and multiple formative assessments, predictable weekly assignments, and flexibility in media for assignments and projects address the strategic network. Students will be able to demonstrate mastery of the material most effectively if they can plan their time, have multiple opportunities to show their growth, and have some flexibility in how they communicate their knowledge and skills.
7. **Backward Design:** There are many instructional design models. Backward design is one model that facilitates thoughtful, methodical planning of a course so that it is as inclusive and student-centered as possible. Backward design begins with determining the end result of the course: what should students know or be able to do at the end of the course. This is another way of saying “what are the learning outcomes of the course?” The next step is to create assessments that will measure if the learning outcomes are being

achieved. Then, create class activities and materials that will allow students to practice and prepare for those assessments. The goal is to align course activities, materials, and assessments with the learning outcomes. Student engagement, motivation and persistence wanes if a class activity or assessment is unrelated to a desired outcome. For example, if a learning outcome is for students to practice using multiple platforms to find secondary sources, a multiple choice test or quiz on terminology would not align with the learning outcome and students might perceive it to be busy work, or a needless source of stress and unrelated to professional goals. Many instructors use backward design charts or tables to help with effective course design.

Backward Design sample chart.pdf

Suggested Reading

Dyane L. O’Leary, *Flipped out, Plugged in, and Wired up: Fostering Success for Students with ADHD in the New Digital Law School*, 45 Cap. U. L. Rev. 289 (2016);

Rebecca Flanagan, *Anthrogogy: Towards Inclusive Law School Learning*, 19 Conn. Pub. Int. L. J. 93 (2019).

Mary Cheney, (2023) *A More Inclusive Classroom: Considerations for the Legal Research Professor Teaching Neurodivergent Students*, Legal Reference Services Quarterly, DOI: 10.1080/0270319X.2023.2264689

Sean Darling-Hammond and Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons*

in Pedagogy from Transformative Law Professors, 25 La Raza L.J. (2015).

Tessa L. Dysart and Tracy L. M. Norton, eds. Law Teaching Strategies for a New Era: Beyond the Physical Classroom (Carolina Academic Press 2021).

NEXT GENERATION BAR EXAM

Law students entering law school in 2023 may be taking the NextGen Bar Exam in 2026. The NextGen Bar Exam will be the first version on the bar exam to require test takers to demonstrate legal research proficiency. In May 2023, the National Conference of Bar Examiners (NCBE) issued its “Bar Exam Content Scope” identifying the foundational skills, concepts, and principles to be tested in the new bar exam. The following excerpt from the NCBE Bar Exam Content Scope outlines the legal research skills to be tested in the NextGen Bar:

Foundational Skills Group C: Legal Research

The purpose of Foundational Skills Group C is to test the extent to which an examinee can identify and implement legal research strategies, including preliminary issue-spotting, working with provided resources, developing and refining a theory of the case, and reaching closure on research questions.

15. In a matter that requires legal research, identify the research questions that need to be answered.
16. Identify ambiguities in the language, standards, elements, or factors of a provided resource (such as a statute, contract, or judicial opinion).

17. Identify efficient legal research strategies (including appropriate search terms) that are likely to uncover other legal sources to assist in the interpretation of a provided resource (such as a statute, contract, or judicial opinion).
18. Given a collection of legal sources, identify the roles and characteristics of the sources, including their authoritative weight.
19. Given one or more judicial opinions, identify the facts in a matter that are analogous to and/or distinct from the dispositive facts in the opinions.

Note: Depending on the context of the question, a question assessing Task 19 may be classified as either an Issue Spotting and Analysis question (Group A) or a Legal Research question (Group C).

20. Given a collection of legal sources, identify other sources, search terms, or research strategies that might be used to update sources or find additional sources.
21. Given a collection of legal sources, identify which sources are relevant to or dispositive of a legal issue in the matter.
22. Given a collection of legal sources, identify whether the sources are sufficient to complete an assigned research or other lawyering task. (NCBE Bar Exam Content Scope Outline, May 2023).

While test takers will not be tasked with an open-ended research question that requires searching for online legal

sources, they will be required to identify legal research questions; analyze legal sources; develop effective research plans, including identifying search terms; apply knowledge of different types of legal sources and their authoritative weight; update sources; and determine when their research is complete. You will be practicing and reflecting on all of these skills throughout this text. You are encouraged to add reflection and discussion questions at the end of sections and chapters that focus on the crucial analytical and legal information literacy skills that go hand-in-hand with actual searching for and finding legal sources, so that you can begin your skills practice for the NextGen Bar Exam. You will find that the following student learning outcomes for this text reflect the skills that you will need for success on the new bar exam and law practice.

LEARNING OUTCOMES

After using this resource, you will be able to:

1. Read and analyze a set of facts; identify and articulate initial legal issues and associated areas of substantive law; formulate a research plan that identifies relevant primary and secondary legal authorities; and document and communicate that plan to a colleague or senior partner.
2. Locate, retrieve and search within legal resources, using indexes, tables of contents and keyword searching; recognize the terminology associated with legal resources; and assess the relevance and authority of federal, state, and local legal systems that may impact a given research issue.

3. Read, evaluate, analyze and organize research findings (considering authority/credibility, current-ness, and authenticity) and communicate them through a research summary, log, letter, video presentation or other work product.
4. Reflect on the research findings and how they apply to the research issues; determine the accuracy and thoroughness of results; critically evaluate the efficiency of the research process; and determine strategies to modify the research process if necessary.

CHAPTER 2.

OVERVIEW OF THE RESEARCH PROCESS AND LEGAL ANALYSIS

LEARNING GOALS

After reading this chapter, you will be able to

1. List the steps of the research process
2. Identify the fundamentals of legal analysis in each step of the research process
3. Reflect on your own research process, strengths, and weaknesses

OVERVIEW OF LEGAL RESEARCH PROCESS STEPS

In your first-year legal research and writing course, most likely you learned steps of the legal research process and practiced applying them in your course research and writing projects. Intertwined with the steps of the legal research process is legal analysis. Analyzing your client's problem (what questions you need to answer, what sources might answer that question, what cases will be most relevant to the legal issues, etc.) makes the legal research process complex and challenging. This section will review the steps in the research process as well as some fundamentals of legal analysis.

1. Offline preparation for research
2. Find and Use Secondary Sources
3. Find and Use Federal, State, and Local Enacted Law (Statutes and Ordinances)
4. Find and Use Case Law
5. Find and Use Administrative Law
6. Find and Use Legislative History
7. Update, Read, Organize, and Analyze Sources

After you have been through the research process several times, you realize that research is not a rigid, linear process. Often, you will start with a statute or a case if that is the information you have. You will then go back to secondary sources to read some context and learn more about the relevant area of law. However, because legal research is so complex, you will always use the legal research process steps as a structure so that your results are thorough, and you achieve them in the most efficient way possible.

LEGAL ANALYSIS

As you proceed through the research process, you are necessarily engaging in legal analysis. When you are preparing to research, you frame a legal issue or multiple issues based on your client's problem; you also decide on search terms that are likely to produce relevant results and select the proper jurisdiction for your research. When you find sources, you question whether they are relevant to your legal issues and articulate how those sources apply to your issues. During each step of your research, you will question if you need to change or add

to your search terms in order to find more or different sources. When you have collected multiple primary and secondary sources, you will need to understand how they all fit together. The reflection activities, discussion questions, and other practice activities throughout this text will help you engage in the analysis necessary for thorough legal research, and prepare you for effective communication of your research in whatever form is required.

REFLECTION ACTIVITY

Write a short reflection on your current research process: What steps do you follow? What methods do you use to find secondary sources, statutes, and cases? How do you record and organize your research results? Do you feel confident that you have found all the sources you need? What are your research strengths? What are your research weaknesses? How do you decide that you are finished researching?

STUDENT DISCUSSION AND REFLECTION QUESTIONS

What is the research skill that you are most confident in?
Why do you think you are most confident in that skill?

What is the research skill that you are least confident in?
Why do you think you are least confident in that skill?

What is the first thing you do when you get a research project?

What are your learning goals for research skills?

CHAPTER 3.

CLIENT SCENARIO

SAMPLE PROBLEM AND CLIENT FILE

Our law librarians have used this scenario for several semesters of our Advanced Legal Research course (both asynchronous-online and in-person). We find that the problem is interesting to most students and requires you to access many types of sources that you might not have encountered in first-year research and writing courses. The scenario could be modified for different jurisdictions, or to address different student learning outcomes or course coverage.

The client file contains only basic facts; it consists of a client intake form, a letter, and an image that is at issue. Like real law practice, the research inquiry is guided by the client's questions. In contrast to first year legal research and writing problems, which are usually narrowly defined, the broad questions in this client scenario require you to explore many types of resources, exercise critical thinking skills, and reflect on and revise searches based on information you encounter.

For more experiential/simulation practice, students could interview a simulated client (maybe a colleague or another student) to gather facts and formulate the research questions.

PerezAnders Client Intake.pdf

Letter from Brewer Ian Bunwell.pdf

PerezAnders_Beer Logo and Name.pdf

ADDITIONAL HYPOTHETICAL CLIENT
SCENARIOS FOR PRACTICE

Add a hypothetical research problem to support research
instruction and student practice

CHAPTER 4.

DIVERSITY, EQUITY, AND INCLUSION TOPICS

The proposed client scenario presents an opportunity to discuss diversity, equity, and inclusion in the craft brewing industry. These topics can be part of a class discussion or an online discussion board to add meaning and context to the research problem.

Craft brewing is a multi-billion-dollar industry, but less than 1% of breweries in the U.S. are black-owned...not for lack of interest, but largely due to lack of access to seed money to start a business, lack of access to property suitable for brewing operations, and lack of access to employment experience and education/training programs.

People of color, as well as people in the LGBTQIA+ community, and women are significantly underrepresented in the craft brewing and other beverage alcohol industries. People of color have not only felt unwelcome as industry members, but also as consumers of craft beer. Fortunately, some members of underrepresented communities who are passionate about brewing and distilling have acted on their goals to make the craft brewing industry more inclusive and welcoming.

To learn more about the movement to make craft brewing more inclusive and diverse, explore the following resources:

The NPR program 1A recently presented a segment on diversity, equity, and inclusion in the craft brewing industry and community.

Entrepreneurship and Equity in Brewing offers a 10-week program that trains Black, Indigenous, People of Color, and other underrepresented groups in beer brewing and running a business in the craft brewing industry.

The Michael James Jackson Foundation funds scholarship awards to Black, Indigenous, and People of Color within the brewing and distilling trades.

The Brewer's Association is a non-profit trade association whose purpose is to promote and protect American craft brewers, their beers, and the community of brewing enthusiasts. The Brewer's Association offers a Diversity, Equity, and Inclusion Mini-Grants program to bring educational opportunities "to those pursuing entrepreneurship and employment opportunities in craft beer and those seeking to explore the legacy and importance of beer in culture." The Brewer's Association also maintains a resource hub for diversity, equity, and inclusion.

Several breweries are leading the way in creating a more diverse and inclusive craft brewing community.

There are several places to find stories of those who are underrepresented in the brewing industry and

community, and even those who have been enslaved, oppressed, or threatened:

The story of Patsy Young, a woman who was a brewer, weaver, baker, and a slave.

Story from the LGBTQIA+ community: Beer is for Everyone.

Perspectives from women in brewing.

DISCUSSION AND REFLECTION QUESTIONS:

Contribute a discussion or reflection question for this topic.

PART II.

SAMPLE ASSIGNMENTS

CHAPTER 5.

WEEKLY RESEARCH JOURNAL ENTRIES

OVERVIEW

The journal entries are simultaneously a reflective exercise and a formative assessment.

- **Reflective exercise:** You will be submitting weekly research journal entries or logs showing your progress on the efficiency and effectiveness of your research process, your progress on finding and analyzing research results, and your ability to reflect on your weekly progress toward your individual research goals. The weekly journal/log also documents the information you need to complete the assigned course projects.
- **Formative assessment:** Throughout the research process, you should receive substantive feedback on the work you are doing. This feedback allows you to learn from mistakes, improve research strategies, and exercise your metacognitive skills. Instructors will provide personalized feedback on each of your journal entries so that you continue to improve throughout the course.

FORMAT

The form/platform for the journal entries is up to you.

You can do a video entry, a blog, a text document, substantive chart, or a diagram. Consider your audience; make your journal easy to read and understand for both you and the reader (i.e. a supervising attorney or colleague).

SUBSTANCE

Journal entries/logs should include:

- an explanation of research process, including steps taken to navigate databases and commentary on the reliability/usability of the research database or platform;
- research results related to the week's subject focus (i.e. if we are covering secondary sources during that week, your journal entry should focus on the secondary sources you found), including evidence that you read and analyzed the material in that source (a summary or explanation) and citations to other legal sources that you found in the source and plan on investigating further;
- a reflective element demonstrating your thinking about your progress toward short and long-term research goals, new techniques you learned, new resources you encountered.

SAMPLE RUBRIC: WEEKLY JOURNAL ENTRY GRADING RUBRIC

Grade	Description of Student Work
Excellent (5 points)	<ul style="list-style-type: none"> • Journal entry discusses research results found – results are thorough and reflect the weekly module material. Results show creativity and expansive thinking as well as varied use of tools. • Journal entry thoroughly explains research process and summarizes research results with consideration of effective communication to a specific audience. • Journal entry shows reflection on thoroughness and efficiency, as well as growth as a legal researcher.
Good (4 points)	<ul style="list-style-type: none"> • Journal entry discusses research results found – results reflect weekly module material but may not reflect a thorough approach or use of a variety of tools. • Journal entry provides an explanation of research process and results. • Journal entry shows basic self-reflection on new research techniques and knowledge.
Satisfactory (3 points)	<ul style="list-style-type: none"> • Journal entry discusses research results found – results are incomplete as compared to weekly module material and reflect minimal use of tools and approaches. • Journal entry provides a basic or incomplete explanation of research process and results. • Journal entry provides little self-reflection.

Grade	Description of Student Work
Below Professional Expectations (1-2 points)	<ul style="list-style-type: none"> • Journal entry discussion of research results is incomplete as compared to weekly module material and lacks explanation of uses of tools and approaches. • Journal entry provides little or no explanation of research process or results. • Journal entry provides no self-reflection.

Sample Journal Prompt (This is a sample prompt for the first journal entry)

Your first journal entry will be a statement of your research goals and a reflection on your current starting point (what are your strengths, weaknesses, challenges, concerns, etc.) as well as a discussion that you have done this week on secondary sources. Every weekly journal entry should (1) explain the research that you done in relation to the sources that we are covering during the week (i.e. this week we are talking about secondary sources), (2) discuss platforms, resources, websites, or other tools you used, and (3) reflect on your development as an effective researcher (did you discover something new? become more efficient? become better at creating effective searches?) You can use any form you like: a text document, a video, a visual chart, or diagram.

CHAPTER 6.

RESEARCH LOG ASSIGNMENT

After a couple of weeks of searching for and finding information for the client scenario, you probably will have collected a few types of sources and learned some foundational information about the legal issues. At this point, you will need to start organizing and documenting your research.

In your first-year legal research and writing course, your professor might have provided you with a research log to fill out for a project. Perhaps that worked well for you, or perhaps you had different ideas about how to record research results and organize your sources.

PURPOSE OF RESEARCH LOG ASSIGNMENT

The goal of this project is for you to develop a research log that will be useful and practical for your academic and professional lives. We do this project early in the semester so you can use it to record and organize results going forward. In previous semesters students have commented that they started using the log/chart/instrument they developed in this class for their jobs or internships and found it very helpful. A few samples are available for inspiration. Mostly it's important for you to develop a log or chart or checklist that works for you so that you have some way to track and organize your results. Also,

think about the possibility that a supervisor or colleague might ask to see what you have found so far, so your log/chart/instrument/checklist should be understandable to someone who wants to consult your research results.

INSTRUCTIONS FOR CREATING THE LOG

Create a chart, checklist, or other document that you will use to record and organize research process and results. After you create the Log form, you will record the research you have completed already, and you will continue to use it for the remainder of the semester. You can develop something completely new or modify a log format that worked well for you in your first-year legal research and writing course.

RESEARCH LOG SAMPLES

In the following section you will find samples of research logs that students have created. You are invited to use those for inspiration and/or add your own to the collection of samples.

Sample Log 1.worddocument Sample Log
2.worddocument Sample Log 3.worddocument Sample
Log 4.worddocument

Contribute a sample research log form (file uploads restricted to University of Oregon students and faculty only)

Contribute a description of a research log or instrument (for contributors outside of the University of Oregon)

CHAPTER 7.

FINAL PROJECT

PROJECT DESCRIPTION – SUMMATIVE ASSESSMENT

The Final Project will outline, summarize, and explain all the research you have done on the client’s scenario. It should focus on the research resources and process — it is **not** a substantive memo in which you apply law to facts and draw legal conclusions. The purpose of the project is to identify research sources, explain information found in those sources, and organize research process and results so they can be communicated to a supervisor or colleague thoroughly and effectively.

The project is an opportunity to demonstrate your mastery of the research process you have been working on during the semester. Throughout the semester you reflected on your research process on a weekly basis and received substantive feedback. Now it is time to organize and synthesize all of that research to present a comprehensive, structured work product.

Project Substance

The final project should (1) clearly identify each resource, (2) summarize the information found in that resource, (3)

explain how/where to find the resource, and (4) have a clear, logical organizational structure.

- Identify the Resource – Provide a title, author, chapter, name of the website, organization, government agency, statute, regulation, case, etc. **A hyperlink does not count as identification of the resource.** You can provide a hyperlink in addition to clearly identifying the name of the resource.
- Summarize the Information – Describe the information you found that is relevant to the legal issue and why it is relevant.
- Explain How/Where to Find the Resource – For some resources like cases or statutes, you will not need to explain how to find them. However, for government reports, proposed regulations, law review articles, treatises, or legislative history, for example, you should explain how to find the information so that a colleague or supervisor can access it. A hyperlink is not an explanation of how to find a resource. Links break or change. You can use hyperlinks in addition to explaining how to find the resource.
- Provide a Clear Organizational Structure – This is a complex problem raising several legal issues. Whenever you present your research to a colleague or a supervisor, you organize the information logically. Imagine that the colleague or supervisor is going to use your research in preparation for a meeting with the client. How can you present all of that research in a user-

friendly way?

Project Form

There are many ways to present research information effectively and thoroughly. Some possible presentation forms are described below:

- Detailed Log – You might choose to use the research log you created at the beginning of the semester as a basis for your final project. You will need to reorganize some information and add more detail to descriptions of the substance and how to find the resource.
- Video – Many students enjoy creating a video in which they use Power Point slides to identify and explain resources and a screen-casting video tool to demonstrate how to find the resources on websites or research platforms.
- Research Guide – A research guide is an organized collection of resources related to a topic. You probably have encountered a research guide during your work on this problem that you can consult as a sample. If you choose this method for your project, think carefully about how to organize the research, provide thorough and meaningful descriptions of the relevant information, and explain how to find the resources.

SAMPLE RUBRIC

Grade	Description of Student Work
Excellent	The project is presented at a mature level, organized logically and carefully edited, with correct grammar, good vocabulary, and high quality of careful and informed thinking. The project demonstrates thoroughness in research, solid analytical and reasoning skills, and good organization, and communicates information effectively for the intended audience. The work meets all course expectations timely and completely and shows thorough and active grasp of concepts and demonstrates exceptional ability to synthesize course activities and materials.
Good	The project is presented at a professional level, with good grammar, vocabulary, organization and thought, with good analysis and communication of the information to the intended audience, with only a few minor flaws such as imprecise language, confusing descriptions of how to find resources, or a few typographical/grammatical errors. The work meets course expectations timely and completely, shows good grasp of concepts and ability to synthesize course activities and materials, but does not rise to the level of being exceptional.
Satisfactory	The project is presented at a professional level with adequate grammar, vocabulary, and thought, but with incomplete coverage of available resources, minimal analysis, problems with organization, weak or minimal grasp of concepts, and limited ability to synthesize the course lectures and materials.
Below Professional Standards	The project is marred by serious problems of grammar, vocabulary, organization, or unclear expression. The project does not analyze or evaluate resources or identify relevant resources. Grasp of concepts is incomplete or uncertain, and student does not synthesize course activities and course materials.

PART III.

LEGAL RESEARCH PROCESS

CHAPTER 8.

OFFLINE PREPARATION FOR RESEARCH

LEARNING GOALS

After reading this chapter, you will be able to

1. Read and analyze a set of facts.
2. Identify relevant jurisdiction(s).
3. Articulate initial legal issues or questions.
4. Create a list of search terms to begin legal research.

OVERVIEW

An important, but often overlooked or neglected, step in the research process is preparing to research. When you get your research assignment, resist the temptation to start typing words into a Google or commercial platform search bar immediately. The time you invest thinking about your research will increase your efficiency and effectiveness later. To prepare for research (1) identify the jurisdiction(s) relevant to your client's problem, (2) articulate the legal question(s) presented by the client's situation, and (3) create a list of search terms from the information you have gathered from the client.

IDENTIFY THE JURISDICTION(S)

Before you start looking for legal information, you need to know which jurisdiction's law controls. Keep in mind that the problem might have multiple questions that require research in several jurisdictions.

- Is this a state issue?
- Is this a federal issue?
- Are there issues covered by municipal law?
- Which state's law controls?
- Which federal district court and circuit court of appeals control?
- Is tribal law involved?
- Is foreign or international law involved?

ARTICULATE THE LEGAL QUESTION

Often, one of the most challenging aspects of getting started with research is understanding exactly what the client wants and framing the client's goals as legal questions. When you are formulating a legal question, you need to consider the facts you have gathered as well as what legal principles might be involved. When you are preparing to research, think about articulating **preliminary** legal questions, because after you start researching you are likely to refine, change, or add to your legal questions.

CREATE A LIST OF SEARCH TERMS

Your terms will guide your online searches of databases,

websites, and commercial platforms such as Lexis and Westlaw. They will also help you find information in indexes and tables of contents if you are using print sources. When generating your list of terms, think of legal concepts and principles as well as words arising from the facts gathered from the client. Consider synonyms, as well as general and specific terms.

Suggested Activities

1. **Who, What, When, Where, How?** Ask yourself or your colleagues these questions to help generate a list of terms.
2. **Question-storming.** Because we are often unfamiliar with specific areas of law, we might have trouble identifying precise legal concepts or terminology. Sometimes, asking yourself or a colleague questions about the client’s problem helps generate search terms. For example, I might ask myself or my colleague “why did a brewer write a letter to our client complaining that his customers are likely to be confused by our client’s beer name and logo”? That question might lead me to put different forms of “likely” and “confusion” on my terms list.

STUDENT DISCUSSION AND REFLECTION QUESTIONS

1. In the past, have you spent time preparing to research? Why or why not?
2. What methods did you use to prepare to research for the current problem?

Contribute a reflection or discussion question to this section

CHAPTER 9.

FINDING AND USING SECONDARY SOURCES

You likely encountered a few types of secondary sources in previous legal research and writing courses. In this chapter, you will review the main types of secondary sources and learn about some secondary sources that you might not have used previously.

LEARNING GOALS:

After reading this chapter, you will be able to

1. Provide background on what a secondary source is and why you use secondary sources.
2. Discuss the different types of secondary sources.
3. Use various strategies for searching for secondary sources and using them effectively.

WHAT IS A SECONDARY SOURCE?

Legal information is divided into primary sources and secondary sources. Primary sources are the law from government entities: constitutions, statutes, administrative rules/regulations, and cases. Constitutions and statutes come from the legislature (legislative branch). Administrative agencies (executive

branch) issue rules/regulations and administrative law judges issue administrative opinions and rulings. Courts (judicial branch) deliver court opinions, which we refer to as case law.

In contrast, secondary sources are sources written **about** the law. They explain, analyze, summarize, or discuss the law. They are usually written by law professors or attorneys.

WHY USE A SECONDARY SOURCE?

Sometimes a client will come to you with a question about an area of law unfamiliar to you. Secondary sources provide you with background information as well as refer to statutes and cases that will give you a starting point for further research. Even if you have some experience with the legal topic, a secondary source might make your research more efficient by summarizing some important legal rules and highlighting important statutes, cases, and administrative rules, giving you a quicker and easier entry point.

Librarians and legal research and writing professors often suggest starting your research with secondary sources; but you can use secondary sources at different points throughout your research process. You might find some statutes and cases, and then recognize that you need to read some secondary sources to put the law in a bigger context or investigate how experts have analyzed the body of law on your topic.

TYPES OF SECONDARY SOURCES

The main types of secondary sources are encyclopedias,

treatises and other books, law review and journal articles, American Law Reports, and practice materials. Other excellent places to find secondary source material are government and organizational websites, as well as blogs. With any source, you need to evaluate its credibility, currentness, and impact; however, when looking at organizational websites and blogs, you need also to inquire whether the organization or blog author has a particular bias.

Encyclopedias

What are legal encyclopedias?

Legal encyclopedias describe terms and concepts in relatively easy to digest entries. The commentary is more general, rather than detailed, so encyclopedias provide quick grounding in a legal concept. The main legal encyclopedias are American Jurisprudence (AmJur) and Corpus Juris Secundum (CJS). AmJur and CJS are not jurisdiction-specific but will often provide citations to cases or statutes from multiple jurisdictions, so you will need to do further research to find sources on the controlling law of your state or federal jurisdiction. Some states have their own legal encyclopedias that focus on the law of that state. Wex is a free legal dictionary and encyclopedia from the Legal Information Institute, Cornell Law School.

Where do you find legal encyclopedias?

Some law libraries might still have print volumes of encyclopedias. However, recently most libraries have stopped updating print encyclopedias or have removed them altogether. AmJur is available on Westlaw and Lexis

and CJS is available on Westlaw. Wex is freely available by searching for the Legal Information Institute.

Treatises and other Books

There are many types of books that can aid in legal research. You will hear terms like treatise, monograph, looseleaf, practice guide, and desk book. To put it simply, they are all books, but they range in breadth and depth of treatment and format. You would choose one type of book over another depending on the question you are trying to answer, the amount of time you have, and the stage of representation or litigation.

What is a treatise?

A treatise is a book covering a legal topic in a comprehensive way. It provides analysis, legal rules, and illustrative examples. A treatise can be single or multi-volume, or serial in nature, and covers a general topic. When you are doing legal research, you probably will not have time to read a whole treatise on a legal topic. Treatises have tables of contents and indexes that you can use to find a specific issue or sub-topic relevant to your problem. For example, Restatements of the Law is considered a multivolume treatise.

What is a monograph?

A monograph is a singular volume that presents more specific treatment of a topic. It is a specialized, scholarly treatise. Like other treatises, they have tables of contents and indexes to help you target the specific area relevant to your problem.

Where do you find treatises and monographs?

Most law libraries have treatises and monographs in print and ebook form. Lexis, Westlaw, and Bloomberg also host collections of treatises. You can find some treatises on HeinOnline as well; some public and academic law libraries provide no-cost access to HeinOnline to the general public.

Practice Example:

Many subscription databases available through law libraries provide access to treatises, monographs and other books. However, you can also find books on freely available platforms as well. In this example, you will search for trademark resources using Oregon Bar Books and NOLO databases from the State of Oregon Law Library website.

The following video will demonstrate the research steps to find resources using the State of Oregon Law Library website.



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://opentext.uoregon.edu/legal/?p=41#oembed-1>

What is a practice guide?

A practice guide explains how to practice in a particular area of law. Practice guides focus on succinct statements

of legal principles and provide tools such as checklists and sample language for pleadings. Tables of Contents provide excellent organizational structure to help you analyze the necessary parts of a legal claim. Most practice guides are jurisdiction specific. One popular example of a practice guide is the collection of Oregon BarBooks. Some states, such as California, have many practice guides on a variety of topics.

Where do you find practice guides?

In Oregon, members of the Bar have access to Oregon BarBooks. Members of the public can access them through the State of Oregon Law Library. Law students usually have access through their school's library website. Lexis, Westlaw, and Bloomberg also provide access to practice guides. Finally, many law libraries still have print copies of practice guides on the shelves.

Practice Materials

What are Practice Materials?

In addition to practice guides, a type of book discussed above, there are other practice materials: forms, model pleadings, jury verdicts, dockets, and court rules. Generally, practitioners consider any materials that provide "how-to" information to be practice materials. For example, an attorney might use a form to learn some basic information on how to file a complaint on a trademark issue. Or the attorney might look at dockets for trademark infringement cases to see examples of how trademark cases move through a court or what types of motions are typically filed.

Where do you find practice materials?

If you are looking for freely available practice materials, go to county, state and academic law libraries, which might provide access to some of their databases.

Commercial platforms such as Westlaw, Lexis, and Bloomberg have extensive collections of practice materials.

Westlaw

Westlaw has the following databases with practice-oriented materials:

Briefs: contains briefs from the U.S. Supreme Court (and selected Petitions for Writ of Certiorari, Courts of Appeals, Courts of Appeals for the Armed Forces, U.S. Tax Court and various state courts and the District of Columbia.

Dockets: Dockets are formal records noting all proceedings and filings in court cases. The Westlaw docket database contains docket information on cases filed in state courts, U.S. District Courts, U.S. Courts of Appeals, U.S. Bankruptcy Courts and the U.S. Supreme Court. Some administrative agency dockets are also provided.

Expert Materials: This database contains selected reports, affidavits, depositions, and trial transcripts from expert witnesses for state and federal courts.

Forms: This database contains text forms, fillable PDF forms, clauses, and checklists from national and state

form sets, including legal and business, transactional, litigation, and pleading and practice forms.

Jury Verdicts and Settlements: You can search by topic or jurisdiction to find information on jury verdicts, settlements, and arbitrations in state and federal court cases.

Trial Court Documents: Search by type of document (motions, pleadings, jury instruction filings, exhibits, or interrogatories), jurisdiction, or topic to find documents filed in state or federal courts.

Trial Transcripts and Oral Arguments: Transcripts of trials and oral arguments from selected state and federal courts. Transcripts of oral arguments in the U.S. Supreme Court are official transcripts; all others are unofficial.

Sample Agreements: This database provides access to numerous executed business agreements including language, clauses, and provisions drafted by law firms and in-house counsel.

The Practical Law Database provides several types of resources (practice notes, documents, clauses, checklists, toolkits, etc.) in various practice areas such as Antitrust, Arbitration, Bankruptcy, Capital Markets and Corporate Governance, Commercial Transactions, Mergers and Acquisitions, Data Privacy and Cybersecurity, Employee Benefits, Finance, Government Practice (Federal, State and Local), Health Care, Intellectual Property and Technology, Labor and Employment, Litigation, Real Estate, and Trusts and Estates.

Lexis

Lexis has the following databases containing practice-oriented materials:

Briefs, Pleadings & Motions: In addition to briefs from state and federal courts, this database includes federal and state pleadings (complaints, petitions, answers, declarations, and memoranda of points and authorities), motions, and other documents.

Dockets (Courtlink): This database allows you to search for dockets and documents with keywords, docket numbers, litigant names, attorney or judge information, case type, litigation area, and other fields.

Expert Witness Materials: This database provides access to expert witness challenges, resumes and CVs, summaries, and testimonies and reports, searching by content type, jurisdiction, or practice area.

Jury Instructions: Search for federal and state jury instructions by jurisdiction or practice area.

Jury Verdicts & Settlements: This database contains jury verdict and settlement information by jurisdiction or practice area.

Sample Forms: Search for forms by jurisdiction or practice area.

Bloomberg Law

Bloomberg Law is a practice-oriented platform. In their practice centers for various topics, you can find toolkits, forms, charts, checklists, practical guidance, clauses, and

documents. Bloomberg also provides access to federal and some state dockets.

American Law Reports

What are American Law Reports?

American Law Reports (ALR) is a series containing articles called annotations. The annotations cover narrow legal issues concisely, and provide a user-friendly organizational structure. Annotations cite to relevant primary sources from multiple jurisdictions.

Where do you find American Law Reports?

Westlaw and Lexis provide access to American Law Reports.

Scholarly Journal Articles

What is a law review or law journal article?

Authored by judges, practitioners, and law professors, law review and law journal articles are deep, detailed discussions on narrow legal issues; they often review the historical development of legal principles and propose changes to the law. Law reviews and journals also publish Notes and Comments, authored by law students. The Notes and Comments focus on a recent court decision or discuss a broader issue of law.

Law reviews and journals are published by student editorial boards. Many journals cover a broad range of topics, but journals on specialized topics are available. For example, a law school might have journals focusing

on international law, environmental law, women and the law, or criminal justice.

Where do you find law review and journal articles?

You can find free access to many journal articles on Google Scholar. In addition, state and county law libraries often provide access to HeinOnline, which has an extensive law journal database. Westlaw, Lexis, and Bloomberg also provide access to law review and journal databases. Increasingly, law schools provide free access to their journals through their websites or online repositories.

Practice Example:

In this example, you will search Google Scholar to find a law review or journal article on trademark infringement in the context of beer names and breweries.

The following video will demonstrate how to find and access articles using Google Scholar.



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://opentext.uoregon.edu/legal/?p=41#oembed-2>

Government and Organization Websites

In the last decade, governmental entities such as administrative agencies have created websites containing

extensive amounts of helpful information. In addition to linking to primary sources, government agencies provide reports, FAQs, forms, tools, and other publications that help you find and understand legal principles within their jurisdiction. Non-governmental organizations have similar types of information available on their websites. With this wealth of information available for free, you will often find helpful secondary sources just by using a Google type of search.

On Google, you can refine your searches to be more targeted and efficient by clicking on the “settings” link in the lower right corner of the screen and using the options for Advanced Search and working with “site or domain.” For example, if you just want government sites, you can type .gov into the site or domain search box and then put other search terms in the boxes at the top of the Advanced Search page. Or, if you want to search a particular site, you can type that site name and then add search terms. This type of searching will allow you to eliminate irrelevant results and save time and energy.

Practice Example:

In this example, you will look for a secondary source on the issue of trademarks for beer and breweries on a government website using a google advanced search.

The following video will demonstrate using a google advanced search to find a secondary source on a government website.



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Blogs

Blogs on a variety of legal topics also are an easily accessible way to start your research. Be attentive to the credentials of the author and how current the blog is. Blogs are a great way to read about current trends in the law, breaking cases, and background information; but always verify the information is correct with your own research into primary sources.

SUGGESTED ACTIVITY

One group of students should use only free sources and one group should use only subscription platforms to find secondary sources on one aspect of the client's problem (i.e. the trademark issue or Oregon brewery licenses) and then compare and contrast results. This activity can be done as an online discussion board or as in-class group work and class discussion.

STUDENT-DRAFTED DISCUSSION AND REFLECTION QUESTIONS

1. What is your level of confidence that you have found the best secondary source for your research problem?

2. What types of secondary sources mentioned in this chapter have you used before, and which sources have you not used before?

Contribute a discussion or reflection question to this section

CHAPTER 10.

FINDING AND USING ENACTED LAW (STATUTES AND ORDINANCES)

LEARNING GOALS:

After reading this chapter, you will be able to

1. Use several methods to find statutes (federal and state) and municipal ordinances relevant to your issue(s).
2. Navigate the sections of a statute or ordinance.
3. Use statutes to find other relevant sources.

WHAT ARE STATUTES?

Statutes are codified laws. When a statute is codified, it is placed into a code that is organized by topic. For example, 42 U.S.C. §1983 is a federal statute allowing a civil action for deprivation of rights. That means the statute is section 1983 of Title 42. All the statutes in Title 42 address public health and welfare.

You will often start your search for primary legal sources with statutes because they address so many legal issues. Any case law on that legal issue will interpret or apply the relevant statute, so it makes sense to start with the statutory sections. Also, you can use the statute to find

other legal sources such as case law and administrative rules.

METHODS OF FINDING STATUTES

You can use several methods to find both state and federal statutes:

1. Use a citation to a statute from a secondary source.
2. Use an index to a state or federal code.
3. Use a table of contents for a state or federal code.
4. Use a popular name table, if available.

Most researchers use online sources, so the following discussion focuses on various online platforms. However, you can still find print statutory codes in some state, county, and academic law libraries. Print codes have index volumes that are located on the shelf at the end of the volume series.

State Statutes

Most states publish their codes on a government website. For example, in Oregon, you can find the Oregon Revised Statutes on the Oregon Legislature's website. From the home page of that website, you choose the Bills and Laws tab, then select the latest version of the Oregon Revised Statutes.

Once you have located the statutory code, if you have a citation from a colleague or from a secondary source, you can use that citation to find the relevant section. If you do not have a citation, you can

- browse an index, if available;
- look at the table of contents;
- or search using key terms.

Use the Index

Not all freely available government websites publish an index to their statutory code, but many do. For example, the Oregon Revised Statutes on the Oregon Legislature's website provides an `index.pdf` to the statutes. To use the index, think about the search terms you generated at the beginning of your research process and navigate through the index to check for those terms. The index often will refer you to another similar word or issue. The index term will refer you to a statute section or sections.

Use the Table of Contents

A table of contents is a list of titles, sections, or parts of the code. It usually appears at the beginning of the code. Browsing a table of contents may lead you to a part of the statutory code that is relevant to your legal issue, then you can look at the individual statutory sections more carefully to see if they apply to your problem.

Search with Key Terms

Most government websites will have a search box where you can enter key terms. Often this method is quicker than scanning a Table of Contents. However, you will need to sift through several results to decide which are applicable to your legal issue.

Other Places to Find State Statutes

In addition to state government websites, you can find statutes on Lexis, Westlaw, and Bloomberg. Westlaw provides indexes to state statutory codes. Lexis, in contrast, provides indexes for only some of the state codes. Bloomberg provides access to state codes, but not to indexes.

Practice Example:

In this example, you will practice using an index and a key word search to find Oregon statutes on brewery licensing issues on the Oregon Legislature's website.

The following video will demonstrate using an index and key word search on the Oregon Legislature's website.



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://opentext.uoregon.edu/legal/?p=43#oembed-1>

Federal statutes

Federal statutes are codified in the United States Code (U.S.C.). You can find the official version of the United States Code on the Government Printing Office website. Also, the Legal Information Institute (LII) at Cornell Law School publishes the United States Code. On Westlaw, you will find the United States Code Annotated (USCA);

on Lexis, the United States Code Service (USCS); and on Bloomberg, the United States Code.

Once you have located the United States Code, if you have a citation from a colleague or from a secondary source, you can use that citation to find the relevant section. If you do not have a citation, you can

- browse an index, if available;
- look at the table of contents;
- use a popular name table;
- or search using key terms.

Use the Table of Contents

You can browse a Table of Contents to the U.S.C. on the GPO website, the LII website, and on Westlaw, Lexis, and Bloomberg.

Use the Index

Westlaw and Lexis both provide an index; however, on Lexis, the index is more challenging to find. On Lexis, you need to type “USCS index” into the “search sources” box. Bloomberg does not have an index to the United States Code.

Use the Popular Name Table

A Popular Name Table allows you to search for a federal law when you do not have a citation, but have a popular name for the law, such as the Affordable Care Act. Westlaw, Lexis, and Bloomberg provide access to a Popular Name Table. LII has a Table of Popular Names

that is located under the heading “Original Content” on the website.

Search by Key Term

The Government Printing Office website allows you to term-search in the titles. Of course, Westlaw, Lexis, and Bloomberg allow sophisticated searching with your key terms.

USING STATUTES EFFECTIVELY

Once you find a relevant statute, the work is not over. To use statutes effectively in your research you need to complete the following steps:

1. Read and analyze the statutory language carefully;
2. Look at surrounding sections; and
3. Use the statutory annotations to find case law and other resources.

Read and Analyze the Statutory Language

First, you need to read the statute carefully and analyze the language and how it applies to your problem. Take note of words in statutes that might have more than one meaning. Also, identify whether the statute lists elements of a cause of action or mentions factors to be considered in determining if a claim exists. Elements are a list of things that are required to prove a claim or constitute a crime. In contrast, factors are examples of things that may be considered in determining whether a plaintiff has stated a claim.

Look at Surrounding Sections

Often, other sections surrounding the relevant statutory section you found will help clarify words, provide context, or identify other legal principles that affect your problem. For example, a definitions section of a statute may help guide your interpretation and application of certain words. Other sections might identify an administrative agency that issues rules applicable to your problem or specify damages or penalties.

Use Statutory Annotations to Find Case Law Interpreting the Statute

What are annotations?

Annotations are short summaries of cases interpreting and applying the statute. They provide an efficient entry point to case law research.

Where do you find annotations?

Some states provide annotations to statutory codes on freely available government websites. For example, the Oregon Legislature's website provides annotations to the Oregon Revised Statutes.

Both Westlaw and Lexis provide annotations for state and federal statutes. For example, on Westlaw, you can browse and search Notes of Decisions, which are synopses of cases selected by Westlaw editors as examples of cases that apply and interpret the statute. Similarly, Lexis provides Notes to Decisions.

The Notes of Decisions (Westlaw) and Notes to Decisions (Lexis) are driven by citator services. Citators are

important tools for two main purposes: (1) to make sure that your source is still good law; and (2) to expand your research to ensure you have found all relevant sources. On Westlaw, the citator service KeyCite allows you to see Notes of Decisions, Citing References, History, and Context and Analysis. Lexis, with citator Shepards, provides Citing Decisions, History, and Other Citing Sources.

Difference between Notes of Decisions and Citing References:

On Westlaw, Notes of Decisions are case synopses that are collected by Westlaw editors as examples of cases applying and interpreting the statute. Consequently, the Notes of Decisions are not **all** the cases that cite the statute. In contrast, Citing References is a machine algorithm that collects all the cases (and other sources) that cite the statute.

Difference between Notes to Decisions and Citing Decisions:

On Lexis, Notes to Decisions are cases synopses that are collected by Lexis editors as examples of cases applying and interpreting the statute. Consequently the Notes to Decisions are not **all** the cases that cite the statute. In contrast, Citing Decisions is a machine algorithm that collects all the cases that cite the statute. Other Citing Sources collects all other sources that cite to the statute.

Annotated Codes in Print

Many state, county, and academic libraries have annotated state and federal codes in print. For example, the West Oregon Revised Statutes Annotated is an annotated print code in Oregon. Federal annotated print

codes are the United States Code Annotated and the United States Code Service.

LOCAL LAW (ORDINANCES)

What is local law?

When you are researching local law, you likely will be doing one of the following tasks:

- Researching the power grants from the constitution or statute to a particular city or county;
- Determining what law controls in relation to the law of the state, county, city, or other government unit;
- Identifying a particular city or county law; or
- Uncovering court decisions about any of the above issues.

Local law is the law of cities, counties, school districts, and special service districts such as water, fire, and hospitals. Another term used for city and county law is municipal law. When you are looking for municipal or local law, you will mainly be concerned with county and city laws called ordinances.

Counties are the largest territorial division for local government within states. They provide a range of public services such as public health, criminal prosecution, airports, parks, libraries, land use planning, refuse disposal, elections, air pollution control, economic development, public housing, animal control, among others.

City governments are formed by state constitutions and statutes, and their powers are expressed through charters and ordinances. They usually provide fire and police protection, street maintenance, building permits, parks and recreation, land use planning, and other social services.

What is Home Rule?

Home rule is granted by state constitution or statute and allocates some power to cities and counties to govern themselves, subject to state and federal constitutions. Home rule is expressed in a charter. Not all states are home rule states. For states that do not follow the home rule doctrine, they are under Dillon's Rule, which provides that municipalities have only the powers given to them explicitly by the state. For more information on the Home Rule Doctrine, consult the National League of Cities website.pdf.

How do you find local law?

City and county websites provide links to city and county ordinances, codified in city and county codes. Sometimes you can find codes in print; however, the best way to find the most updated local codes is through internet searching. City and county websites are less sophisticated than state and federal websites, so access points will be limited to tables of contents and simple keyword searching. City and county websites also may have other information, besides codes, helpful to your research, so make sure to explore and search websites thoroughly.

Finally, if you are looking for case law that interprets or applies county or city ordinances, you can use the

ordinance section number as one of your key terms in case law searches.

Practice Example:

In this example, you will use the City of Eugene website to find any ordinances on licensed premises for beer brewing.

The following video will demonstrate how to use the City of Eugene website to find ordinances and other information.



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://opentext.uoregon.edu/legal/?p=43#oembed-2>

SUGGESTED ACTIVITY

For one of the aspects of the client's problem, students should use different methods of finding statutes. For example, one group should use an index, one group should use term searching on a free website, one group should use term searching on a subscription platform. Students can then discuss the process and results with the whole class. This activity can be completed using an online discussion board or in-class group work and class discussion.

STUDENT ADDED DISCUSSION AND REFLECTION QUESTIONS

1. Have you routinely used indexes to search for statutes? Why or why not?
2. What method of finding statutes has been the most effective for you? Why?
3. What challenges have you had finding statutes, or navigating statutory codes?

Contribute a discussion or reflection question to this section.

CHAPTER 11.

FINDING AND USING CASE LAW

LEARNING GOALS

After reading this chapter, you will be able to

1. Identify and use many search techniques to find relevant case law.
2. Identify and use free, non-subscription platforms to find relevant case law.
3. Conduct case law research more confidently and efficiently.

WHERE DO YOU FIND CASES?

Most people conduct case law research online. Several websites provide free access to case law: Google Scholar, state and federal court websites, Library of Congress (only United States Reports), the Government Printing Office website (federal court opinions), Findlaw, Justia, and Caselaw Access Project. Fastcase is available through some state law libraries (i.e. the State of Oregon Law Library website) and with state Bar Association membership. Keep in mind that freely available websites and platforms will have few or no tools to help with searching, and some provide cases only from certain jurisdictions or for certain date ranges.

Commercial platforms such as Casetext, Westlaw, Lexis, and Bloomberg will provide more editorial enhancements to increase your efficiency and effectiveness in finding results.

A note about print sources

Some academic and public law libraries still have case reporters in print. Case reporters are multi-volume sets that publish case law for different jurisdictions. Each state has reporters for their courts. Regional reporters publish cases for states in a certain geographic region. For example, the Pacific Reporter series publishes state cases from Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming.

Federal cases are published in West's Federal Supplement (U.S. District Court), West's Federal Reporter (Federal Court of Appeals), West's Supreme Court Reporter (U.S. Supreme Court decisions), Lexis's United States Supreme Court Reports, Lawyers' ed. (U.S. Supreme Court decisions), and United States Reports (official version of U.S. Supreme Court decisions). The citations you see for cases refer to the volume number, the reporter name, the page number, the court and date of the decision.

HOW DO YOU FIND CASES?

Finding case law is an important part of your research process for most legal issues. You probably practiced case law research frequently in first year legal research and writing courses. However, most students feel that they need additional practice because they want more

confidence in their results and more efficiency in their searches. This chapter will focus on practicing different methods of finding cases:

- Using secondary sources.
- Using statutory annotations.
- Using one good case.
- Using an index (West's Topic and Key Number system, Lexis's Case Notes system).
- Using natural language and terms and connectors (Boolean) searching.

Using Secondary Sources

Chapter 9 discusses different types of secondary sources and how to use them to learn background information about your legal issue and find primary sources of law. To reiterate, when you are starting your research and reading secondary sources, you might come across citations to cases important to that legal topic or issue. You might have noted some cases at that point; but if not, you can circle back to secondary sources to find citations to cases that seem important now that you know a bit more about your issue.

Use Statutory Annotations

If you found an important statute in your research, you probably looked at the annotations to the statute to start finding cases. (See Chapter 10).

Use One Good Case

If you found a citation to a relevant case in a secondary

source or a statute, you can use that case to find other cases. There are several ways to use a good case to find more cases:

1. Look at the cases cited in the good case.
2. On Westlaw or Lexis, use the headnote tools in the good case to find other cases.
3. On Westlaw or Lexis, use the citators (Key Cite and Shepards) in the good case to find other cases.
4. On Google Scholar, use the Cited By and How Cited links to find other cases.

Practice Activity

For the trademark issue, use google scholar to find any relevant cases. Compare your results to the cases you find on a subscription platform such as Westlaw or Lexis.

Use an Index

Westlaw and Lexis have indexing systems that allow you to use legal topics and sub-topics to find cases. On Westlaw, the Topic and Key Number system indexes all U.S. case law; on Lexis, the Topics system provides that service.

You can use the index in a few ways:

1. In a case headnote, look at the corresponding index terms or Key Numbers and click on the links to find other cases categorized under that index term or number.
2. On Westlaw, find Key Numbers under the Content Types tab and either browse or term

search in that list of Key Numbers.

3. On Lexis, find the Topics tab and search or browse.
4. Use the Key Number or Topic as a search term when you are doing Boolean searching (see below discussion of Boolean searching).

Use Natural Language and Boolean Searching

Most students are adept at using natural language to search for cases. An example of a natural language search is *what constitutes trademark infringement on a beer label?* Search algorithms have improved, so most platforms you use for searching will produce relevant results. However, most law librarians and legal research and writing professors will advise you to use multiple methods and tools to ensure that your results are both thorough and accurate. In this section, you will learn more about using terms and connectors (also called Boolean language) to search effectively for cases. Boolean searching may seem time-consuming and awkward at first, but with practice, it will become easier.

Boolean Searching

When you encounter a website or research platform, look for a “search help” link, which will inform you of search language and other search tips for that platform. Although the connectors will vary in meaning based on the website or platform you are using, the following are some common terms and connectors:

Boolean connector	Example	Meaning
OR	house OR residence	alternative terms
AND	emotional AND physical	both terms must be in results
" ... "	"emotional distress"	an exact phrase must be in results
(...)	frisk! OR (search /s seiz!)	search inside the parentheses runs first
!	seiz!	root expander for multiple forms of the term
/s	search /s seiz!	terms in the same sentence
/p	distress /p harm	terms in the same paragraph
/n	intent! /10 distress	term within n (number of words) of the other term
+s	intent! +s distress	terms in the same sentence and same order
+p	search +p seiz!	terms in the same paragraph and same order
+n	42 +5 2000e	term within n (number of words) and same order (this will cover for statute variants, e.g. 42 U.S.C. 2000e, 42 United States Code Section 2000e)

The connectors are processed in a specific order in your searches. After the connector OR, proximity connectors are processed from narrowest “” to broadest, AND. Sometimes, you need to use parentheses to change the order. For example, *frisk! OR search! /3 seiz!* should be expressed like this to run properly: *frisk! OR (search! /3 seiz!)*.

Suggested Activity:

In this activity, you will practice creating a Boolean (terms and connectors search) on the issue of trademark infringement in the context of beer labels and names. Try this search on several platforms, compare results, then revise your searches to try different combinations of terms.

STUDENT ADDED DISCUSSION AND REFLECTION QUESTIONS

1. Which case searching method do you feel most comfortable with?
2. Have you used one type of searching method more than other in your research?
3. What type of searching method is the most frustrating for you? Why?

Contribute a discussion or reflection question to this section.

CHAPTER 12.

FINDING AND USING ADMINISTRATIVE LAW

LEARNING GOALS

After reading this chapter, you will be able to

1. Explain the relationship of administrative law to statutory law.
2. Name examples of federal and state administrative agencies.
3. Identify and explain administrative law sources.
4. Find agency rules/regulations on free websites and commercial platforms.
5. Find agency decisions and guidance on free websites and commercial platforms.

Most law students do not have much time or opportunity to research administrative law during first year legal research and writing courses. The first part of this chapter will explain how administrative law fits into the legal research landscape. The next part will discuss administrative law resources and where to find them.

WHAT IS ADMINISTRATIVE LAW?

Overview

Administrative law (both federal and state) is the law governing the creation and operation of administrative agencies. Most administrative agencies (including boards, commissions, and departments) are part of the executive branch of government. Legislatures establish agencies and give them their powers through enabling statutes. Some state agencies are established through the state constitution. Thorough and accurate legal research requires you to find, read, and analyze administrative rules and decisions because they are primary sources of law, just like statutes and cases.

Sources of Administrative Law

Agencies promulgate rules (also called regulations) that administer, implement, apply, and interpret statutes in the agencies' jurisdiction. Agencies also conduct investigations and inspections to determine if regulations are being followed, and issue licenses and permits. Also, agencies, via administrative law judges, hold hearings and decide cases involving the agencies' rules. Therefore, when you are searching for relevant administrative law, you will be looking for enabling legislation, agency rules/regulations, agency guidance like interpretive opinions or procedural manuals, administrative decisions, and possibly federal court decisions reviewing agency actions or decisions.

Examples of Administrative Agencies

Federal

Some examples of federal administrative agencies:

- Department of Agriculture
- Civil Rights Commission
- Commerce Department, includes several divisions such as the Census Bureau and the Patent and Trademark Office.
- Consumer Product Safety Commission
- Department of Defense
- Department of Education
- Department of Energy
- Environmental Protection Agency
- Equal Employment Opportunity Commission
- Federal Communications Commission
- Government Publishing Office
- Department of Health and Human Services, includes several divisions such as the Centers for Disease Control and Prevention, Food and Drug Administration, Indian Health Service, National Institutes of Health, and the Refugee Resettlement Office.
- Department of Homeland Security, includes divisions such as Federal Emergency Management Agency, Secret Service, Transportation Security Administration, U.S. Customs and Border Protection, and U.S. Immigration and Customs

Enforcement.

- Department of Housing and Urban Development
- Interior Department, includes divisions such as Fish and Wildlife Service, Bureau of Indian Affairs, National Indian Gaming Commission, and National Park Service.
- International Trade Commission
- Department of Justice, including divisions such as the Bureau of Alcohol, Tobacco, Firearms and Explosives, Drug Enforcement Administration, Federal Bureau of Investigation, Parole Commission, and the Bureau of Prisons.
- Department of Labor
- Library of Congress
- National Aeronautics and Space Administration
- National Archives and Records Administration, includes the Federal Register Office and Office of Government Information Services.
- Peace Corps
- Securities and Exchange Commission
- State Department
- The White House Office
- Department of Transportation
- Department of Treasury, includes divisions such as the Alcohol and Tobacco Tax and Trade Bureau, Engraving and Printing Bureau, Internal Revenue Service, and the United States Mint.

You can find a list of all federal administrative agencies on the Federal Register website. As you can see from this sampling, administrative rules touch every part of our lives.

State (Oregon)

Below is a sampling of state agencies in Oregon. You can find a full list of Oregon administrative agencies on the State of Oregon's website.

- Oregon Department of Agriculture
- Board of Cosmetology
- Criminal Justice Commission
- Oregon Department of Education
- Employment Department
- Department of Energy
- Department of Environmental Quality
- Oregon Department of Forestry
- Oregon Department of Human Services
- Department of Justice
- Bureau of Labor and Industries
- Land Use Board of Appeals
- Oregon Liquor and Cannabis Commission
- Oregon Occupational Health and Safety Administration
- Office of Public Defense Services
- Public Utility Commission of Oregon

- Oregon Secretary of State
- Oregon Department of Veterans' Affairs

You can find agencies for any state, usually by looking at the state website. For example, in California, the state website lists their administrative agencies. Similarly, the Washington state website has an agency directory page.

WHERE DO YOU FIND ADMINISTRATIVE LAW?

Federal

Administrative Procedure Act

The Administrative Procedure Act (APA), Title 5 U.S.C. § 551 et seq., governs agencies' rulemaking procedures, addresses agencies' issuance of licenses and permits, and sets out standards for judicial review of agency actions. The APA may be an important part of your research if the issue involves a challenge to the scope of the agency's authority to take a specific action.

Enabling Statutes

An enabling statute establishes the powers and responsibilities of a government agency. For example, Congress established the United States Patent and Trademark Office (USPTO) by passing Title 35 U.S.C. § 1.pdf. Title 35 U.S.C. § 2 outlines the powers and duties of the agency and § 3 designates officers and employees of the agency. You find enabling statutes by searching the sections of a Title that governs your legal issue, or by using a table of contents for the United States Code.

Rules

Agencies issue rules just like legislatures pass statutes. However, rules are subordinate to statutes in that they implement, interpret, and prescribe the statutory law. Administrative agencies have more expertise than the legislature in the subject matter, so they are able to provide more details and set particular standards for implementation of a more general statutory law. An agency rule is defined as

“the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.”

5 U.S.C. § 551(4).

A Proposed Rule (Notice of Proposed Rulemaking) is published in the Federal Register for public comment. Citations to proposed rules will have a Federal Register citation such as, 88 FR 33968. After the comment period, the agency will finalize the rule and then publish the final rule in the Federal Register, with an effective date and notice of the changes that the new rule makes to the Code of Federal Regulations. The new rule is then integrated into the e-CFR, which is an unofficial but authoritative

compilation published by the Office of the Federal Register and the Government Printing Office. The official edition of the CFR is published annually; each of the 50 subject matter titles are re-published each year on a staggered, quarterly basis. Once a final rule is codified into the CFR, it will have a citation such as 10 CFR 431.

For more detailed information on rulemaking, please consult *A Guide to the Rulemaking Process.pdf*, prepared by the Office of the Federal Register.

In addition to using government databases such as the Government Printing Office (govinfo.gov), federalregister.gov, e-CFR, and agency websites, you can find federal regulations, both the Federal Register and the Code of Federal Regulations, on Westlaw, Lexis, and Bloomberg.

Agency Decisions

Pursuant to the APA, agencies have some quasi-judicial powers to adjudicate matters having to do with enforcement of their rules. For example, the United States Patent and Trademark Office uses its Trademark Trial and Appeal Board (TTAB) to handle appeals involving applications to register trademarks, appeals from expungement proceedings involving registrations of trademarks, and trials involving applications or registrations of trademarks. You can find TTAB decisions on the USPTO website.

You can find some agency decisions on Westlaw, Lexis, and Bloomberg as well.

On Westlaw, navigate to federal materials, then select the

Federal Administrative Decisions & Guidance link. Westlaw provides access to some, but not all decisions from executive branch or independent agencies and offices.

On Lexis, choose the “federal” tab, then select federal administrative materials. Lexis provides access to various types of administrative information such as decisions, directives, memoranda, papers, and news releases for executive branch and independent agencies.

Bloomberg has multiple access points for U.S. government agency information. For example, you can look at All Legal Content or search in topical practice centers.

Agency Guidance

In addition to rules and formal adjudications, agencies also produce guidance documents in the form of procedural manuals, advisory opinions and notices, handbooks, etc. These types of guidance documents are most likely found on agency websites. For example, the USPTO website provides a link to guidance documents under the “Learning and Resources” tab.

As discussed above, the commercial platforms provide variable access to agency guidance documents for several agencies.

Court Decisions Reviewing Agency Actions

To find court decisions reviewing agency decisions or other actions, you will use the case finding strategies and tools discussed in Chapter 11.

Practice Example:

In this example, you will search the Alcohol and Tobacco Tax and Trade Bureau website for administrative information on beer brewing.

The following video will demonstrate searching the Alcohol and Tobacco Tax and Trade Bureau website for relevant primary and secondary sources.



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://opentext.uoregon.edu/legal/?p=47#oembed-1>

State (Oregon example)

Researching state administrative law is similar to researching federal administrative law. You may want to look for the state's Administrative Procedure Act, as well as the enabling legislation for the agency involved in your legal problem if the agency's authority is in question. The main sources of state administrative law are rules, agency decisions, and agency guidance. Each state maintains a government website providing access to administrative rules and other information. For example, California's Office of Administrative Law website provides access to the California administrative rules, information on the rulemaking process, publications and forms, as well as

an agency index. In Washington, the state legislature's website links to the Washington Administrative Code and the State Register. In Oregon, the Secretary of State website links to the Oregon Administrative Rules and some historical administrative orders and rule compilations. In addition, state agencies host websites with useful information such as relevant rules, decisions, practical guidance, current awareness tools, and other resources. The following sections will highlight sources of administrative law from Oregon as an example.

Oregon Administrative Procedure Act

Oregon's Administrative Procedure Act, ORS 183.310, defines powers, responsibilities, and procedures for state administrative agencies.

Enabling Statutes

When you are doing statutory research (see Chapter 10), you should look at surrounding sections to find laws giving powers and responsibilities to a particular agency. You should also use statutory annotations to find cases interpreting and applying those statutory sections. For example, if you were looking at the Oregon Revised Statutes for laws on alcohol, you would look in Chapter 471. In Chapter 471, you will find 471.705 et seq. which establishes the Oregon Liquor and Cannabis Commission and defines its regulatory powers and procedures.

Rules

Free Government Websites

The best method for accessing Oregon Administrative Rules is to use the Oregon Administrative Rules Database

(OARD) on the Secretary of State's website. The OARD is continuously updated as rules are approved and received. The database allows you to browse through current rules using chapter numbers, chapter names, rule numbers, or rule text. You can also use the OARD to access the Oregon Bulletin, a monthly online publication containing Notices of Proposed Rulemaking, Permanent and Temporary Administrative Rule filings, rule text, and Minor Correction filings, as well as Annual Compilations of rules.

For example, you may be looking for rules from the Oregon Liquor and Cannabis Commission (OLCC). First, go to the Secretary of State website and link to the OARD. If you do not have a rule number citation, you can browse by Chapter name to find the Oregon Liquor and Cannabis Commission, Chapter 845. If you are looking for a rule addressing a specific issue, you might choose to search by text of the rule. If you are wondering whether a brewer can brew beer using cannabis, for example, you might conduct a search using the terms cannabis and beer.

Depending on when the rule was last updated, you would look at the Oregon Bulletin to see if there are any proposed new rules or corrections. For example, if the rule you found was last updated in February 2023, you would look at the Bulletins for March, April, and May 2023 for any changes or corrections to make sure you are looking at the most recent rule language.

Commercial Databases

Westlaw, Lexis, and Bloomberg provide access to state administrative information.

Westlaw has databases containing Oregon Regulations as well as Administrative Decisions and Guidance. The decisions and guidance database covers a limited number of agencies: Attorney General Opinions, Bureau of Labor & Industries Decisions, Division of Financial Regulation Decisions, Employment Relations Board Decisions, Environmental Administrative Decisions, Insurance Bulletins, Land Use Board of Appeals Decisions, Legal Ethics Opinions, Public Utility Commission Decisions, and Workers Compensation Administrative Decisions.

On Lexis, you can access Oregon Administrative Codes and Regulations, the Oregon Bulletin, as well as select Oregon administrative materials such as decisions and guidance: Oregon Insurance Bulletin & Notices, Attorney General Opinions, Department of Commerce, Corporate Division Materials, Department of Environmental Quality, Government Ethics Commission Final Dispositions, Public Utility Commission Decisions, Workers' Compensation Decisions, Bureau of Labor and Industries, Employment Relations Board Decisions, Market Conduct Examinations, and Land Use Board of Appeals.

Bloomberg has databases of state codified regulations as well as proposed rules.

Agency Decisions and Guidance

As explained above, Westlaw and Lexis allow you to

access select agency decisions and guidance. However, you can find an abundance of helpful information including decisions and guidance, reports, forms, publications, news, licensing and permitting information, etc. on agency websites. For example, the OLCC website provides extensive information on Alcohol Licensing and Permits with links to applications, forms, educational resources, rules, and compliance materials.

Practice Example:

In this example, you will practice searching the Oregon Liquor and Cannabis Commission (OLCC) website for primary law and other information on beer brewing.

The following video will demonstrate finding sources on the OLCC website.



One or more interactive elements has been excluded from this version of the text. You can view them online here: <https://opentext.uoregon.edu/legal/?p=47#oembed-2>

SUGGESTED ACTIVITY

Students can select an area of interest and find federal and/or state administrative agencies that regulate that area of interest. Student should explore the website to find secondary and primary sources. Suggested topics of

interest: offshore wind energy, state literacy initiatives, indigenous tribal claims to Colorado River water, electric vehicle tax incentives. This activity can be done as a short in-class exercise so students learn ways to navigate agency websites.

STUDENT ADDED DISCUSSION AND REFLECTION QUESTIONS

1. What types of administrative law research have you done in the past?

Contribute a discussion or reflection question to this section.

CHAPTER 13.

FINDING AND USING LEGISLATIVE HISTORY

Legislative history research (both federal and state) is another topic that first year research and writing courses do not cover in a comprehensive way. This chapter will explain the reasons you might research legislative history, sources (documents) of legislative history, legislative process, and where to find legislative history documents.

LEARNING GOALS

After reading this chapter, you will be able to

1. Explain federal and state legislative process.
2. Identify a variety of free and subscription resources to find legislative history materials.
3. Locate relevant documents to determine the legislative intent or goals of enacted legislation.
4. Explain the legislative history information in the context of the client scenario.

WHY RESEARCH LEGISLATIVE HISTORY?

Legislative history research might come up in the context of academic writing. However, in practice, there are a couple of common types of legislative research you might need to do: bill tracking and researching the “legislative

intent” underlying a statute to help with statutory interpretation.

WHAT IS LEGISLATIVE HISTORY?

Legislative history is a secondary source consisting of bill versions, documents, reports, transcripts of testimony, debates, and statements that lead up to the passage of a law which is then codified as a statute. Legislative history material is produced in the framework of the legislative process.

LEGISLATIVE PROCESS

Put simply, legislative process is the procedure by which a proposed law becomes a law. The process is similar in both federal and state government. Below is a general overview of the legislative process:

1. A bill is proposed or introduced.
2. The bill is assigned to a committee.
3. If the bill is released from the committee, it goes to the chamber (i.e. House or Senate) floor for debate, amendment, or vote.
4. If the bill passes that chamber, it goes to the other chamber.
5. The other chamber assigns the bill to a committee and if released, goes to debate and vote.
6. If the other chamber makes changes, the bill must return to the original chamber for concurrence.
7. The bill will go to conference committee to resolve differences and issue a report outlining the

final version.

8. After the bill has been passed in identical form by both chambers of congress, it is an “enrolled” bill that goes to the President (or State Governor) for signature or veto.

Helpful resources on federal legislative process: Congressional website, Congress.gov, the White House website, whitehouse.gov, the House of Representatives website, house.gov; Congressional Research Service (CRS) Report.

Helpful resources on state legislative process: How Ideas Become Law on the Oregon Legislature’s website, Overview of California Legislative Process on the California State Association of Counties website.pdf, Overview of the Legislative Process on the Washington Legislature’s website, Legislative Process on the National Conference of State Legislatures website.

SOURCES OF LEGISLATIVE HISTORY

Each step of the legislative process produces documents, which are the sources of legislative history you are looking for when you conduct research.

Federal

1. Preliminary documents – before a bill is even proposed, a committee might conduct studies or hear testimony by experts resulting in committee prints, bibliographies, analysis, or reports from the Congressional Research Service, the Congressional Budget Office, or the Government

- Accountability Office;
2. Bill – versions of the bill;
 3. Committee – Committee Reports;
 4. Chamber Floor – Floor debates and votes;
 5. Conference Committee – Conference reports;
 6. President – signing statement or veto statement.

State (Oregon example)

1. Bill – versions of the bill;
2. Committee minutes, recordings, and exhibits for committee hearings and work sessions;
3. Recordings of floor proceedings and submitted testimony;
4. House and Senate journals that show votes.

HOW DO YOU FIND LEGISLATIVE HISTORY?

This section will explain how to find legislative sources for different types of legislative history research in the federal system and in the state system.

Bill Tracking

Bill tracking is searching for a bill that is relevant to a client's issue and following the bill as it moves through the legislative process. You can (1) search by bill number; (2) search for a bill using search terms; and (3) search for bills affecting a statute if you have a statutory citation (some platforms).

Federal

You can track federal bills on the official congressional website, Congress.gov; the GovTrack website, govtrack.us; or Westlaw and Lexis.

Congressional Website

On Congress.gov, toward the top of the page you will find the menu entitled “Bill Searches and Lists.” Select the “Introduced” link to see a list of bills introduced in the current session, with tracking information. You also can search legislation by entering a bill number or other information in the main search bar, and then selecting the “actions” tab in the result to see the bill’s movement through Congress. You can subscribe to various types of alerts to get notifications about congressional actions.

GovTrack Website

On GovTrack, you can find bills by topic or you can select the “Search” icon to use an advanced search template to find bills by title, congressional session, sponsor, status, or chamber (House or Senate). You can select the “Get Alerts” icon to subscribe to various types of alerts for legislation and legislative actions.

Westlaw and Lexis

On Westlaw, under the “Content Types” tab, select “Proposed and Enacted Legislation” and then the “Federal” link. On the right side of the page are “Tools and Resources” including Bill Tracking, CRS (Congressional Research Service) Bill Summaries, and Historical Proposed Legislation. If you have a statute citation and you want to determine if any bills affect that statute, you

will see a yellow flag icon when looking at the relevant statutory section. If you select the icon, you will see the proposed or pending legislation that affects that statute.

On Lexis, under the “Content” tab, select “Statutes and Legislation,” then “Bill Tracking.” In the “Federal” category, you will see “Bill Tracking Reports” for the current congress as well as previous congressional sessions. By selecting the “Bill Tracking Reports” link, you will be able to search by various methods including title, citation, date, and search terms. If you have a statute citation and you want to determine if any bills affect that statute, you will see a yellow triangle icon when looking at the relevant statutory section. If you select the icon, you will see the proposed or pending legislation that affects that statute.

State (Oregon example)

You can track bills by using the Oregon Legislative Information Service website, using *The Oregonian* bill tracking service at <https://gov.oregonlive.com/bill/>, or using Westlaw or Lexis.

Steps for bill tracking by bill number:

1. On the Oregon Legislative Information Service (OLIS) website, first select the “Session” icon in the top right-hand corner of the page to select the current congressional session.
2. Select the “Bills” icon in the top right-hand corner of the page and enter your bill number in the search box. HB signifies a House Bill. SB signifies a Senate Bill.

3. The result will be a page that provides an overview of the bill, as well as tabs across the top where you can access the text of the bill, analysis, and amendments. Beneath the overview, you can access “Measure History,” a schedule of the bill’s path through the legislative process, with links to recordings of public hearings and work sessions.

The Oregonian bill tracking allows you to enter a bill number or search by terms to access a bill overview, measure text, and amendments.

Steps for bill tracking by search terms:

1. On the OLIS website, select the “Session” icon and choose the current session.
2. Select the “Bills” icon then choose the “Bill Text” tab and enter your search term in the search text box.
3. The results of the search are bills that contain those terms. If you click on a result, you will see a bill overview.

You can use Westlaw or Lexis for bill tracking by search terms. On Westlaw, in “Content Types,” choose the “Proposed and Enacted Legislation” database. You can choose a particular state and then look at the right side of the page to find available “Tools and Resources,” such as Bill Tracking, Historical Session Laws and Bills, and Legislative History. If you choose the “Bill Tracking” resource, for example, you can enter search terms in the search bar at the top of the page to find bills containing those search terms. If you select a result, you will see a summary of the bill as well as the bill activity. On Lexis,

navigate to the “State” tab and select a state. Under the “Statutes and Legislation” heading, you will see a link for “Bill Tracking Reports” which will provide a search template for multiple ways to search.

Bill tracking using an Oregon Revised Statutes citation

If you know of a statute that affects your client, but you need to research if there are any bills that will affect that statute, you can use the OLIS website, the Oregon Legislature’s website, or Westlaw and Lexis to find that information.

On the OLIS website:

1. Select the “Session” icon on the top right side of the page to choose the current session.
2. Select the “More” icon on the top right side of the page and then select “Reports and Documents.”
3. Select “Daily and Cumulative Publications” and then select the arrow next to the “Cumulative Publications” heading.
4. Select the “Statutes Affected by Measures” link.
5. You can look through the table using your statutory section number to see the bill number, if any, that affects your statute.

On the Oregon Legislature’s website:

1. Select the “Bills and Laws” tab.
2. On the left side of the page, you will see a menu. Under the “Session Information” heading, select “Session Publications.” This will link you back to the OLIS page referenced above. Select the

“Statutes Affected by Measures” link.

Lexis and Westlaw

The citator services on Lexis and Westlaw alert you to bills that affect your statutory section. On Lexis, when you are looking at a relevant statutory section, there will be a yellow triangle icon to indicate proposed or pending legislation. If you select the yellow triangle icon, you will see the bill and the other legislative tracking information. On Westlaw, a yellow flag appears next to the statutory section to indicate pending or proposed legislation. Selecting the icon will take you to the bill and other legislative information.

Legislative Intent

A common research scenario is that a statute relevant to your legal problem contains ambiguous or unclear language and you need to find information to help with statutory interpretation. If you are interpreting a statute, you would first use primary sources such as a definitions section in the statute, case law, and administrative regulations and decisions. If you cannot fully answer the ambiguity with those primary sources, you look at secondary sources such as legislative history and legal treatises. This section explains the process and sources when researching legislative history for statutory interpretation.

This type of legislative history research works backward, starting with a codified statute to find a session law chapter, then a bill, and the documents produced through the legislative process.

Federal Legislative History Research

The most important documents for statutory interpretation of a federal statute are committee reports, versions of the bill, and congressional debates.

Sources of Federal Legislative History

Committee and Conference Reports

Congressional committee reports and conference committee reports are considered to be the most important sources for statutory interpretation. Committee reports come from each of the House and Senate committees that considered the legislation. Reports provide the text of the bill, explain the purposes of the bill, and analyze the bill section by section.

Conference committees are appointed to draft a compromise bill if the House and Senate versions of the bill are different. Conference Reports are considered to be very useful because they come at the end of the legislative process and report on the compromise bill text.

Bill Versions

The introduction of a bill usually begins the legislative process. Bills are often amended several times during the legislative process so comparing versions of the bill may help with statutory interpretation based on changes or deletions of language in the law.

Congressional Debates

Congressional debates include discussions and explanations of bills and amendments. Transcripts of proceedings and debates, which are not verbatim

transcripts, are published in the Congressional Record. The Congressional Record is published in a daily edition, which is published every day Congress is in session, and a bound edition, published years after the daily edition. The page numbers in the daily edition and the bound edition are different. Usually, you will cite to the bound edition if it is available. HeinOnline, in its U.S. Congressional Documents database, has a “Congressional Record Daily to Bound Locator” tool to help you convert Daily Edition citations to Bound Edition citations.

Other legislative documents

House and Senate committees hold hearings to determine the need for new legislation and hear the testimony of individuals and organizations interested in the legislation. Hearings may provide good background information on the issue the legislation is addressing but are not considered to be as important in legislative history research because they involve the views of individuals and organizations testifying rather than the views of Congress.

Research process steps

1. Find the version of the law when the language at issue was introduced. Sometimes laws are amended several times, so the version in which the relevant language was introduced is most likely to have legislative history materials helpful for interpretation.

- a. From the statutory section, scroll to the end of the section to find a parenthetical or source note that provides citations to the slip law or laws that are the source of the statute in its

current form. The following is an example of a parenthetical or source note: (Pub. L. 111–353, title III, § 306(b), Jan. 4, 2011, 124 Stat. 3959).

b. You will use the slip law number (Pub.L. 111-353) to find the bill. The 111 refers to the Congressional session, and the 353 means it was the three hundred and fifty-third law passed in that session. The slip laws are compiled at the end of the congressional session and published in chronological order in the Statutes at Large, which is the other citation in the parenthetical: 124 refers the volume of the Statutes at Large (abbreviated as Stat.) and 3959 refers to the page number of the volume where that law starts.

2. Use the Public Law or Statutes at Large citation to find the bill in the following sources: Congress.gov, Proquest Congressional, Westlaw, Lexis.

a. Congress.gov (a free source): Choose the Advanced Searches link on the top of the screen, then select the correct congressional session, and enter the search using the suggested citation forms in the “Legislation and Law Numbers” search box. For example, if you are looking for the bill number associated with Pub. L. 111-353, you would check mark the box for the 111th Congress, then enter 111PL353 in the “Legislation and Law Number” search box. Your result is H.R. 2751 FDA Food Safety Modernization Act. H.R. stands for House of Representatives, so you know it is a House Bill.

b. Proquest Congressional (subscription – available at some academic and public law libraries): From the start page, choose “Search for a Citation,” then select “Public Laws” if you are using a public law citation. Use the drop-down menu to select the correct congressional session and enter the law number. You will get information for the public law, including the bill number.

c. Westlaw (subscription): Westlaw will do a lot of work for you. When you scroll to the end of a statutory section on Westlaw, you will find the source note with a hyperlink to the public law number. When you select that link, you will get the public law, which also refers to the bill number. You will see tabs across the top of the page: Bill Drafts, Legislative History Materials, and Statutes Affected. The Legislative History tab will list citations to reports and the Congressional Record. Keep in mind that Westlaw **may not** provide **all** the legislative history materials that exist, but rather, only select documents.

d. Lexis (subscription): On Lexis, when you scroll to the source note at the end of the statute, you will find a hyperlink to the public law. When you select that link, you will see the public law, with a reference to the bill number. On the right side of the screen, you will find links to Bill Tracking, Bill Text, and CIS Legislative History. The CIS Legislative History link provides access to many

legislative history materials.

3. Use the Bill number to find legislative history materials in the following sources:

a. Congress.gov: When you are looking at the relevant bill, you will find an overview, as well as tabs that provide a summary, the text of the bill, actions taken, titles of the act, amendments, sponsors, committees, and related bills. In those categories, you will find links to other documents.

b. Proquest Congressional (subscription): Once you have the bill number, you can use the “Search for a Citation” option, select the correct congressional session, and enter your bill number in the search box. When you get the resulting bill, you will see the following tabs where you can access information: Overview, Actions, Committees, Sponsors, Related publications, and Bill text.

Compiled Legislative History

You can find compiled legislative histories for certain laws. A compiled legislative history means that someone has collected all the legislative history documents associated with a law and put them in one place. Compiled legislative histories can be found in the following resources: Legal Histories of Selected U.S. Laws on the Internet: Free Sources, Proquest Legislative Insight (subscription), HeinOnline’s U.S. Federal Legislative History Library (subscription with some public law libraries providing free access), Department of

Justice Legislative Histories (free), Westlaw (subscription), and Lexis (subscription).

On Westlaw, you can find Arnold and Porter Legislative Histories and U.S. GAO Legislative Histories. From the Westlaw start screen, click on the Content tab to find Specialty Areas, then Legislative History. Under the “Federal” heading you will see a link for U.S. GAO Legislative Histories. Clicking on that link will allow you to search by terms or by various citations. To find Arnold and Porter Legislative Histories, from the Legislative History link under the Content tab, look at the right side of the page under “Tools and Resources” and click on the Arnold and Porter link. You will find a list of acts that have compiled legislative histories.

On Lexis, under “Content,” click on the Statutes and Legislation link, then under “content type,” select “Legislative Histories” to find several compiled legislative histories as well as other documents.

On HeinOnline, find the U.S. Federal Legislative History Library in the list of databases. You can look at the U.S. Federal Legislative History Title Collection to find a list of acts that have compiled legislative histories. Or, you can navigate “Sources of Compiled Legislative Histories” to find legislative histories by bill number, public law number, popular name of the public law, or congressional session.

Proquest Legislative Insight allows you to search for compiled histories by using several different types of citations or use the “Advance Search” option to search by term.

State Legislative History Research (Oregon Example)

The most important legislative history materials in Oregon are the documents and audio or video recordings from the committees that consider the bill. You will be looking for committee minutes or audio and video logs of the committee hearings and work sessions; audio and video recordings of hearings and work sessions; exhibits that were introduced; the original bill file; audio or video recordings of activities from the chamber floor; and journals that show votes recorded in the chambers. The availability and format for these materials, and where you can find them, depends on the date of the legislative activity. The next section will discuss the various sources of Oregon legislative history in greater detail.

For more information on researching state legislative history, look for a research guide. In your browser, type *Oregon (or whatever the relevant state is) legislative history research guide*. For example, using that type of search, you will get results such as Oregon Legislative History Research from the Lewis and Clark Law School, Legislative History Research from the State of Oregon Law Library, Oregon Legislative Records Guide from the Oregon State Archives, or Oregon Legislative History Research from the University of Oregon. Such guides can be found for legislative history research in other states as well.

Sources of Oregon Legislative History

Minutes and Audio and Video Logs

Committee minutes summarize the discussions that take place in legislative committees. The minute summaries

(also known as tape logs) help researchers locate where a particular topic was discussed on the recordings. You can find these logs in different places and forms depending on the year:

2014 – forward: Recording logs located on the Oregon State Archives website.

2007-2014: Audio logs listing only the speakers name and the recorded time, with links to mp3 audio files can be found on the Oregon State Archives website.

1991-2005: Audio logs with links to some audio recordings can be found on the Oregon State Archives website.

1926-mid 1990s: Minutes are located on microfilm at some academic and public law libraries.

Audio and video recordings of committee hearings and work sessions

The Oregon State Archives website has online audio recordings available for 1999 forward.

Links to archived video and audio recordings from 1999 forward are available on the Oregon Legislature’s website. From the Oregon Legislature’s home page, go to the “Get Involved” tab and then select Audio and Video. You will find a section for recent archives for sessions within the last year. On the right side of the page is a section heading “Expand: View Archives” that links to audio and video recordings on OLIS back to the 1999-2000 legislative session.

From 2015 – present, you can find online videos with a log on the same screen on the Oregon Legislature’s

website (which links to OLIS) by searching for the bill number in the correct legislative session, then selecting the link under “Measure History” and finding the meeting date and time on the right side of the screen.

Exhibits

Exhibits are submitted by committee staff, legislators, and the public in response to a proposed bill. They include letters, proposed amendments, written testimony, and reports. You can find online exhibits for legislative sessions 2007 – present on the Oregon Legislature’s website using the session and bill number, and looking under the Analysis tab.

You can also contact the Oregon State Archives for help finding older exhibits.

Bill files

Original bill files are located at the Oregon State Archives. They are files that contain the original measure, with subsequent engrossed versions of the bill, as well as committee reports, amendments, and staff measure analyses. From 2007 to present, you can find some of this information on the Oregon Legislature’s website (which links to OLIS) using the session and bill number, and looking under the Text, Analysis, Meeting Material/Exhibits, and Amendments tabs.

Audio and video recordings of chamber debates

Audio and video recordings of chamber debates are available on the Oregon Legislature’s website for legislative sessions 1999 forward. From the “Get Involved” page, go to Audio and Video, and find the View

Archives links on the right side of the page. For older sessions, the Oregon State Archives has audio tapes.

Journals

House and Senate Journals record the actions of the chambers while they are in session. In the journals you can find votes, explanations of votes, and messages from the Governor. Senate journals are available online from 2012 on the Secretary of the Senate web page. House journals are available online from 2001 on the Chief Clerk of the House web page.

Research Process Steps

The steps for researching Oregon legislative history are similar to those discussed above for federal legislative history.

1. Locate the relevant Oregon Revised Statutes (ORS) section for your problem or issue. (See Chapter 10).
2. From the ORS section, scroll to the end of the statute to find the source note which will list the session law number. For example, this is the source note for ORS 471.175. [1999 c.351 §2; 2001 c.104 §213; 2001 c.154 §1; 2010 c.33 §2; 2011 c.180 §1; 2013 c.32 §1; 2019 c.57 §27; 2021 c.180 §7; 2021 c.275 §3; 2021 c.351 §51]. The session law is the law that is passed by the legislature. The citation 2021 c.275 §3 refers to the 2021 Session Laws, chapter 275, section 3.
3. Use the session law to find the bill. Once you have a Session Law citation, go to the Oregon

Legislature’s website, and select the Bills and Laws tab. On the left side of the page, click on the link to Oregon Laws. Select the correct session and scroll until you find the correct chapter. Once you are looking at the session law, you will see the bill number to the right of the chapter number. Using the session law referenced above, you would go to Oregon Laws, choose the 2021 Session, then scroll down to find chapter 275. The bill number to the right of chapter 275 is SB 317. SB refers to Senate Bill.

4. Use the bill number to find legislative history materials. On the Bills and Laws page of the Oregon Legislature’s website, find the Bills menu on the left side. Select the correction session for your bill, then scroll down the results to find your bill number. Using the example above, you would select 2021 Session Bills, then scroll down the list of results to find SB 317. You will see an Overview of the bill and tabs to access the Text, Analysis, Amendments, etc. If you scroll down, you will find Measure History, which you can expand to find links to public hearings and work sessions.
5. In the legislative history materials, look for recordings and related documents. When you link to the public hearings and work sessions, you will find links to testimony, letters, and reports. On the right side of the page are links to recordings and recording logs.

PRACTICE ACTIVITY:

Students can work through the following example in class

either in groups or individually and then discuss. For online classes, student can work through the example individually then use a discussion board to discuss process and results.

Your client has been a home brewer in Oregon and is thinking about starting to sell her beer, so you have been looking at statutes that outline the licensing schemes in Oregon. The presumption is that her home brew operation so far has not been subject to licensing laws. In this example, you are going to look at the history of Oregon Revised Statute 471.037 to learn more about the motivations, values, incentives, etc. in passing that law.

1. Use the Oregon Legislature's website to look up ORS 471.037 and find the session law that passed that law (2011).
2. Look up the session law to find the bill number.
3. Use the bill number to find measure history.
4. Listen to the hearing/session.

The following video will demonstrate the research steps to find the legislative history for 471.037.



One or more interactive elements has been excluded from this version of the text. You can

view them online here: <https://opentext.uoregon.edu/legal/?p=49#oembed-1>

STUDENT DISCUSSION AND REFLECTION QUESTIONS

1. What is the most challenging aspect of legislative history research for you?

Contribute a discussion or reflection question to this section.

SAMPLE EXERCISES FOR LEGISLATIVE HISTORY

Creating legislative history problems for student practice is a challenge. The goal is to tie them in some way to a realistic situation, while also facilitating practice with various platforms and legislative history documents. Below are some suggestions for legislative history practice that are related to the Client File for Isabel Perez-Anders presented in Chapter 3.

Federal Legislative History

In the client file, the client Isabel indicates that she wants to know how to track and research

legislation, federal and state, that impacts brewers, specifically for of brewing beer with CBD or cannabis. Since recreational cannabis has been legalized and regulated, both federal and state laws have had to define new terminology and amend historical legal categories of the substance. Some recent legal changes have focused on industrial hemp. Some statutory sections that were modified in 2018 with regard to how hemp is treated under federal law are Title 7 USC sections 1639o, 1639p, 1639q, 1639r, and 1639s and 7 USC 3319d (c)(3)(E); 21 USC 802 and 812 (c)(17). I think it was the 2018 Farm Bill, or Agriculture Improvement Act of 2018 and related bills. **We need to find legislative history documents for that law that discuss hemp. The documents could be the Congressional Record, House or Senate Reports, Conference Reports and Congressional Research Service documents.**

State Legislative History (Oregon)

In 2021, Oregon made some changes to hemp laws as reflected in ORS 571.269. We need to find the legislative history material for that law. Please look at the hearings and work sessions to find testimony and witness statements by people and organizations that are in the hemp industry. Please listen to any recordings of discussions of hemp. From this information, please summarize

the concerns of those in the hemp industry with regard to passage of this law.

IDEAS FOR FEDERAL OR STATE
LEGISLATIVE HISTORY PRACTICE
PROBLEMS

Contribute ideas for federal and/or state legislative history problems.

CHAPTER 14.

UPDATING, READING, ANALYZING, AND ORGANIZING SOURCES

Entering search terms on research platforms and finding primary and secondary sources are really just a small part of a comprehensive research process. Legal analysis, as well as effective communication skills, go hand-in-hand with finding legal sources. For example, as discussed in Chapter 2, you are engaging in legal analysis when you are looking at statutory sections to determine which sections are relevant, reading cases in a list of search results to decide which cases might be mandatory or persuasive authority for your research problem, identifying a topic that requires you to find a secondary source to learn more background information, deciding which cases negatively impact an important case for your legal issue, or identifying gaps in your research that require further investigation. After you have found and skimmed many legal sources, you will need to engage in much deeper analysis to (1) determine if your statute, case, or regulation is still considered good law, (2) identify and define unclear terms in enacted law, (3) understand facts that are determinative in case decisions, (4) accurately articulate court rulings, and (5) synthesize numerous legal sources to accurately communicate the law.

First year legal research and writing courses comprehensively cover updating. This chapter reviews the updating process and tools, and discusses strategies for effective reading, organization, analysis, and synthesis of the sources and authorities you find during the research process.

LEARNING GOALS:

After reading this chapter, you will be able to

1. Explain reasons why you must update sources and authorities that you find during the research process.
2. Explain various times (points in the research process) that you will update sources and authorities.
3. Identify tools available for updating.
4. Identify strategies and techniques for effective reading of sources and authorities.
5. Explain and implement effective strategies for organizing sources and authorities.
6. Explain and implement methods for analyzing and synthesizing sources and authorities.

WHY DO YOU UPDATE AUTHORITIES?

Updating legal authorities is a crucial step in the research process so you know how your authorities have been treated by legislatures, courts, and administrative agencies. Also, the updating process often leads you to

cases or other sources that you might not have found previously.

When you find a case that seems relevant, you need to make sure that it still represents the current law. If you find a statute, you need to consider if the statute has been amended or held unconstitutional by a court.

WHEN DO YOU UPDATE SOURCES AND AUTHORITIES?

Professors and librarians refer to updating as a crucial step in the research process. Often it is discussed as one of the final steps in your research. However, as you have learned by now, legal research is not a linear process. Frequently, your process will circle back around, and you will complete research steps in a different order, depending on the problem and the information you have when you begin.

You will update your sources at many different times during your research process. For example, perhaps you found a statute that seems relevant to your problem. You might see a symbol on Westlaw or Lexis that indicates the existence of pending legislation that might affect the statute. You would follow that link to look at the pending legislation. If you are looking at the annotations to a statute and find a case that looks relevant. You would use Keycite, Shepard's or B-Cite to see if that case has been affected by subsequent case holdings before you spend a lot of time reading that case comprehensively and relying on it in your analysis. So, updating occurs during the research process as you find and initially evaluate sources.

You will update your authorities toward the end of the research process to make sure your searching has been thorough and to see if any important cases have been decided since you started your research. Finally, before you file any pleading or document with the court, or submit a memorandum to a colleague or supervisor, you will update your legal authorities to make sure that the authorities that you are citing in your document are still good law.

TOOLS FOR UPDATING AUTHORITIES

Citators on major research platforms such as Westlaw (KeyCite), Lexis (Shepard's), and Bloomberg (B-Cite) are tools for updating legal sources. In addition, you can use "Authority Check" on Fast Case and "How Cited" on Google Scholar to update cases.

Using a citator to retrieve a list of authorities that affect your case, statute, or regulation is only the first step. The more challenging and important step requires you to analyze the impact of the authority on the sources you have found. Keycite, Shepard's, and B-Cite have a variety of analytical tools that help.

Westlaw (Keycite)

Keycite is the citator service on Westlaw. This is a tool that allows you to see and analyze legal authorities that have cited, discussed, analyzed, or otherwise treated your case or other authority. Keycite uses flags and other symbols to indicate how your case has been treated by other authorities; you can access a legend for these symbols by clicking on the "Powered by KeyCite" link

towards the top of the screen when you are looking at a case or statute. For example, a yellow flag next to cases and administrative decisions indicates some negative treatment, but not a reversal or overruling. A yellow flag next to statutes or regulations means that proposed legislation or a proposed rule is available, a court decision has questioned its validity, or a prior version received negative treatment from a court. Other symbols are a red flag, a red-striped flag, a blue-striped flag, and an orange circle with an exclamation mark. These symbols alert you to potentially negative treatment of your authority, but they are only the beginning of your analytical updating process.

If you click on the symbol, Westlaw will link to negative treatment. Note that you can also access negative treatment by clicking on that tab at the top of the screen. You will see a list of negative citing references for your authority. All the negative citing references are organized in a chart with the following columns: treatment, title, date, type, depth, and headnotes. You should use the information in these columns to help you analyze how the negative citing references affect your case or statute.

Treatment

For example, if the treatment column indicates that a case “criticized” your case, that case is probably less of a priority than a case that indicates that it abrogates or overrules your case. The treatment prompts will help you prioritize which cases to read first to understand the status and validity of your case.

Depth

The depth graph is a visual depiction of how much your cases is discussed in the citing case. If you hover your cursor over the bar graph, you will see a text description of the depth of treatment. For example, two bars indicates your case was cited by the case. Three bars means that your case was discussed by the citing case. The depth of treatment is another tool that allows you to prioritize your reading and analysis of the citing authorities.

Headnotes

As you have encountered from your work with case law, headnotes are summaries of legal principles in the case; they are created by Westlaw as research aids. Also, you have probably noticed that cases often address many different legal issues. If you are concerned with a particular legal issue or principle of a case but are not concerned with other legal issues in that case, you can use the Headnotes column to help you select the citing references that deal with your legal issue.

Lexis (Shepard's)

Shepard's is the citator service on Lexis. The functionality is similar to Keycite on Westlaw, but the symbols are different. A symbol will appear next to the case name; you can click on that to link to the citing authority. Also, you can use the "Shepardize this Document" link on the right side of the screen to access the whole list of citing authorities. Lexis uses the following symbols: a green diamond with a plus sign is a positive reference; a yellow triangle is a cautionary symbol indicating possible negative treatment; an orange square with the letter Q

indicates that validity is questioned; a dark blue octagon is neutral indicating that citing information is available.

In the citing decisions, Shepard's also provides analytical information on the type of treatment, depth of treatment, and headnotes to aid in your analysis.

Bloomberg (B-Cite)

B-Cite is the citator service for Bloomberg, with a similar functionality to Keycite and Shepard's. B-Cite has a collection of symbols that alert you to treatment of your authority. On the right side of the authority, you will see an icon for "B-Cite Analysis"; by clicking that icon, you will access a summary of the treatment of your authority. You will also see a link "What are the B-Cite Indicators" where you can access a comprehensive analytical chart explaining all the symbols. For example, negative treatment is indicated by a red square with a minus sign; cautionary treatment is depicted by a yellow square with a white triangle; distinguishing treatment is depicted by a blue square with a white back slash; and positive treatment is indicated by a green square with a plus sign. If you select the case analysis list, or select a particular symbol to see the citing authorities, you will see a table with type of treatment and depth of treatment. You can also select a "see details" link to access the particular parts of the citing authority that discuss or refer to your case.

Fast Case (Authority Check)

The tools on Fast Case are less sophisticated than citator services on Westlaw, Lexis, and Bloomberg. On the left side of the screen, you can access the "Authority Check" icon to see a citation report for your authority. If a case

has no negative treatment, Fast Case uses a white flag icon; if a case has negative treatment, you will see a red flag icon. Click on those icons to see the citator report.

Google Scholar (How Cited)

If you are using Google Scholar for case law research, you will find a “How cited” link on the left side. You will see a list of excerpts from cases under the heading “How this document has been cited” and a list of cases under the “Cited By” heading. Google Scholar does not provide the analytical tools that the commercial databases provide. However, Google Scholar is freely available to everyone.

HOW TO USE CITATOR INFORMATION

The analytical tools on commercial databases will enhance the efficiency of your analytical process, but you will still need to do the more time-consuming work of **reading** the cited authorities that affect your case or statute in an active, critical, and reflective way. The next section provides some strategies for effective legal reading.

EFFECTIVE READING STRATEGIES

Many excellent articles and books discuss effective legal reading strategies. A few important points emerge from those studies and discussions: 1. Legal reading is different from other types of reading; 2. Students who read with a professional purpose and use critical reading strategies read more effectively and have higher grades; and 3. Students can learn to use effective legal reading strategies.

Resources on legal reading strategies:

Jane Grise, Critical Reading for Success in Law School and Beyond (2d ed., West Academic Publishing, 2022). Check your law school subscription to West Academic Study Aids for access to this resource.

Ruth Ann McKinney, Reading Like a Lawyer: Time-Saving Strategies for Reading Law Like an Expert (2d ed., Carolina Academic Press, 2005).

Laurel Currie Oates & Anne Enquist, Legal Writing Handbook: Analysis, Research, and Writing (4th ed., Aspen Publishers, 2006).

Jodi L. Wilson, Critical Reading for Law Students.pdf

Legal reading is different

In your undergraduate classes, most likely you were reading texts, articles, and other materials to gain a general understanding of a subject. The authors of these texts were writing for the purpose of describing information for the reader to understand the topic.

In legal sources such as cases, statutes, and regulations, the author's purpose is not to explain or describe general information to the reader. In cases, judges are issuing a legal ruling by applying law to a set of facts and listing the reasons for a particular decision. Statutes set out a law as passed by a legislature, using language that often has a precise meaning. In issuing regulations or rules, administrative agencies use specific language to implement and enforce those statutes. As someone reading legal authorities, your purpose is not to gain a

general understanding of a topic, but rather to **solve a legal problem** based on applying legal rules to your client's particular facts. Adding further complexity, legal authorities contain terminology that may be unfamiliar to the reader. Therefore, a successful legal reader needs to read purposefully, actively, critically, and reflectively.

Successful students read with professional purpose

Several studies show that students who read with purpose have higher grades than students who do not read with a purpose. For further information on these studies, please read the following resources:

Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 Seattle U. L. Rev. 603 (2007).

Dorothy Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 Reading Res. Q. 154 (1995).

Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 Reading Res. Q. 407 (1987).

Laurel C. Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 Iowa L. Rev. 139 (1997).

What is reading with a professional purpose?

What does it mean to read purposefully and actively? When you read a case, for example, you take on a professional role, such as a lawyer representing a client, or a judge deciding a legal issue. What do you need to find in, or learn from, that case to fulfill that professional role?

As a lawyer advocating for a client, you would examine and give meaning to the case based on your representation of a client: What is happening procedurally? Who are the parties? How does the case relate to others with similar issues? Is the court addressing the precise legal issue that you are investigating? How do the case facts relate to your client's situation? What are the specific arguments made by the parties in the case, and could you make those arguments in your client's situation?

As a judge reading a case, you are examining the case in the context of deciding how the law applies to the facts before you: What is the procedural posture of the case? Who are the parties? What are the applicable rules? Does the case affect the decision you will render? How does the case affect your decision?

When you adopt one of these roles in your reading, you are becoming an active, critical, and reflective reader by asking yourself questions, challenging the text, reflecting on the information, and thinking about the parts of the case strategically.

Strategies for reading critically, actively, and reflectively

Below is a list of specific strategies to use to become a more effective reader.

Prior to reading:

- Find a setting that is comfortable and free of distractions
- Connect with your professional purpose

- Establish the context of the case: note the date of the case; consider the social and procedural context; note the identity of the parties
- Articulate how the case connects to your pre-existing knowledge

During reading:

- Read all the headings and other structural aspects of the case (i.e. the first sentence of each paragraph) before you read the case carefully
- Comprehend the facts
- Predict what you will learn from the case
- Think about what questions will be answered
- Develop new questions as you are reading
- Create graphic depictions of ideas, topics, and subtopics
- Annotate the case with your questions and observations
- Paraphrase what you are reading
- Look up terms and solve confusions before you move on in your reading
- Identify the main ideas in the issue, holding, and court's reasoning
- Identify the legal rules

After reading:

- Evaluate the court's reasoning
- Brief the case

- Ask yourself questions
- Ask questions to others (professors, colleagues)
- Connect the case to your existing knowledge and experiences
- Determine how the case fits with other cases and write a synthesis

EFFECTIVE ORGANIZATION STRATEGIES

Legal professionals use a variety of tools and methods for organizing legal sources. Organization should take place throughout the research process rather than waiting until the end to wade through a mass of citations or notes. Chapters 4, 5, and 6 describe suggested activities and assignments in conjunction with this text; one of those assignments is developing a research log to track research process and results. A log, which can take many forms, is one good way to organize your research as you are working through the research process. A log will also help you at the end of your research process when you are analyzing and synthesizing your research. The major research platforms, Lexis, and Westlaw, provide some tools to help with tracking and organizing research as well.

Research log

Research logs track research process steps, identify resources found during that process, and describe the information in those resources relevant to the legal problem. They can take the form of charts, tables, outlines, or spreadsheets. You should use a form that makes sense to you but is organized and comprehensive

enough so that you can easily communicate crucial research information to a colleague or supervisor. Chapter 5 provides examples of research logs for inspiration.

Westlaw and Lexis

Westlaw and Lexis have folder systems in which to organize research. Also, you can use several tools to highlight and annotate the sources you find on Westlaw or Lexis. While these tools are helpful for research conducted on commercial platforms, most likely you will use freely available websites and other sources outside of commercial platforms, so you will need a way to collect and organize all of your research in one place.

EFFECTIVE STRATEGIES FOR ANALYZING AND SYNTHESIZING SOURCES AND AUTHORITIES

As discussed in Chapter 2, legal analysis and legal research are intertwined. You engage in legal analysis starting in the first step of the research process when you are thinking about your legal problem. As you read secondary sources, your analysis grows more complex and detailed. Your analysis of the problem gains structure as you discern statutory requirements or common law elements of a claim or criminal violation. While you will engage in deep reading and analysis of each statute or case separately to gain understanding, your ultimate goal with legal research is to synthesize all the legal authorities to comprehend the applicable law and be able to communicate how it applies to your client's situation.

Many people choose to create a detailed outline of their

analysis and synthesis of legal research results. Others may find that charts or tables help them analyze and synthesize their research. Whatever form you choose for your analysis and synthesis, you should identify the legal authority (case, statute, regulation), state the rule (elements, factors, principle), explain the rule, and describe how the rule applies to your client's situation. By clearly identifying all of these analytical parts, you will be able to see how the parts fit together into a synthesized body of law.

Below are some examples of charts, tables, and outlines to use as tools for organization, analysis, and synthesis.

Example 1: Table

Statement of Legal Issue:

Client's facts:

Jurisdiction:

Authority (case, statute, regulation)	Rule (elements, common law rule, factors)	Rule Explanation (i.e. rule in context)	Application to client's facts and preliminary conclusion
fill in research here	fill in research here	fill in research here	fill in research here

Example 2: Outline

1. First issue or sub-issue: statement of legal issue
 - a. Client's facts
 - b. Authority 1 (statute, case, etc)
 - i. Rule
 - ii. Rule explanation
 - iii. Application to client's facts
 - iv. Preliminary conclusion
 - c. Authority 2 (statute, case, etc.)
 - i. Rule
 - ii. Rule explanation
 - iii. Application to client's facts
 - iv. Preliminary conclusion
2. Second issue or sub-issue: statement of the legal issue
 - a. Client's facts
 - b. Authority 1
 - i. Rule
 - ii. Rule explanation
 - iii. Application to client's facts
 - iv. Preliminary conclusion

STUDENT DISCUSSION AND REFLECTION QUESTIONS

1. What strategies have you used to read efficiently

and effectively?

2. How have your legal reading strategies changed over time?
3. What tools do you use to organize your research?
4. What is the most challenging aspect of organizing and analyzing your research? Why?

Contribute a discussion or reflection question to this section.