

Finding the Law and Introduction to Legal Research

Chapter Overview

This chapter discusses the role of legal professionals in legal research, the ethical duty to perform research competently, types of law libraries and their uses, and the sources of law in the United States. The chapter also examines the classification of law books as either primary or secondary sources. Finally, there is a brief introduction to the major law book publishers.

A. The Importance of Legal Research

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

Today's legal researchers are expected to know how and when to use conventional print sources, the computer-assisted research services LexisNexis and Westlaw, and the Internet to find the best answer to a research question as quickly and effectively as possible.

B. The Ethical Duty to Research Accurately

Perhaps the most fundamental aspect of the attorney–client relationship is the client’s absolute trust and confidence in the attorney’s competence. In fact, Rule 1.1 of the American Bar Association’s Model Rules of Professional Conduct requires that attorneys provide competent representation, meaning the legal knowledge, skill, thoroughness, and preparation necessary for the representation.

Although it is important to *know* the law, particularly in a field in which you may intend to specialize, it is even more important to be able to *find* the law. In this sense, proficiency in legal research is the foundation for a successful legal career. Your employer will not be as interested in your final grade in any specific class as much as your ability to find accurate answers to questions relating to topics, even though you may not have been exposed to those topics in school.

In fact, the duty to perform accurate legal research has been addressed in a number of cases. For example, *People v. Ledesma*, 729 P.2d 839, 871 (Cal. 1987), held that an attorney’s first duty is to investigate the facts of a client’s case and to research the law applicable to those facts. Moreover, the failure to research adequately may lead to liability for legal malpractice. In *Smith v. Lewis*, 530 P.2d 589 (Cal. 1975), *overruled on other grounds*, 544 P.2d 561 (Cal. 1976), the California Supreme Court affirmed a lower court decision requiring an attorney to pay \$100,000 to a former client because the attorney’s research was inadequate. In sum, you will be expected to perform competent legal research not only because your employer will insist on it but also because ethical standards demand it.

C. Law Libraries

1. Types of Law Libraries

As noted in the preface to this text, legal research is a “hands-on” skill, requiring you to know how to use a law library. Your first task, therefore, is to locate a law library that you may use. There are approximately 3,600 law libraries in the United States. Following is a list of the most common types of law libraries:

- **Law School Libraries.** All accredited law schools have their own law libraries, most of which will have tens of thousands of volumes in print and nonprint forms. Many law school libraries are open only to their students. In a newer trend, many law libraries offer research tutorials and guides on their Web sites.

- **Federal Depository Libraries.** More than 1,200 libraries throughout the nation have been designated as *Federal Depository Libraries*, meaning that certain U.S. government publications, such as statutes and cases, will be sent to the library for access by the public. In many instances, local public libraries, law school libraries, or university libraries are designated as federal depositories. The location of the depository library nearest you can be found at <http://www.gpoaccess.gov/libraries.html>.

- **Local Law Libraries.** Often, a county or city will maintain a law library (typically near a courthouse), and these are usually open to the public. The American Association of Law Libraries provides a list of state, county, and court law libraries at <http://www.aallnet.org/sis/sccll/membership/libraries.htm>.

- **Courthouse Law Libraries.** Many courts, both federal and state, maintain their own law libraries. Some law libraries are open to the public while others restrict access to courthouse personnel, attorneys, and their paralegals.

- **Law Firm Libraries.** Almost every law firm will maintain a law library. Large law firms maintain extensive collections. These law libraries are available for use only by employees of the firm.

To find a law library, consult a telephone book or use a general Internet search engine such as Google and call law schools, courthouses, and county offices in your area to determine library policy on use.

Additionally, law libraries exist in computer databases such as those offered by LexisNexis or Westlaw. In fact, these computer-assisted legal research services offer far more resources than most legal professionals could afford to maintain on their own. Finally, law libraries now exist in cyberspace with vast collections of legal materials available for free “24/7.” These virtual law libraries afford quick and easy access to a significant number of legal resources, as discussed in detail in Chapter 9. See “CyberSites” at the end of this chapter for a list of some Web sites that provide research guides and tutorials.

2. Arrangement of Law Libraries

There is no one standard arrangement for law libraries. Each law library is arranged according to the needs of its patrons. Spend an hour browsing the shelves and familiarizing yourself with the law library’s arrangement, organization, and collections. The law library’s Web site may also offer a “virtual” tour.

Few law libraries offer a conventional print card catalog (identical in its alphabetical arrangement to the card catalogs you may have been introduced to in grade school) to help you locate the books you need. The more modern approach is the online catalog or OPAC (online public access catalog). Simply type in or “enter” the title, author, or subject matter you desire in the search box displayed on the screen, and you will then be given the “call number.” The shelves or *stacks* in the law library are

clearly marked, and locating a book is merely a matter of matching up the call number provided by the card or online catalog with the appropriate stack label.

Ethics Alert

Library Courtesy

Assume that everyone who uses the law library is as busy as you are. Observe standard library etiquette by reshelving properly every book you use (unless the law library has a preshelfing stack for books that are to be reshelved). Do not deface books by turning pages down or marking in them. Do not resort to unfair conduct by hiding or intentionally misplacing books. There is no excuse for such overzealous tactics that not only impede learning but also reflect poorly on one who is joining the legal profession.

Practice Tip

Legal Abbreviations

In the beginning of your legal career, you may become confused by the numerous abbreviations used for legal books, case reports, and journals. To determine the meaning of abbreviations such as “Ala.” for *Alabama Reports* or “C.J.S.” for *Corpus Juris Secundum*, check Appendix A in *Black’s Law Dictionary* (9th ed. 2009), which provides an extensive list of abbreviations commonly used in law. Additionally, be patient. Within just a few weeks you will probably know about 90 percent of all of the abbreviations you are likely to encounter. See Chapter 4 for a list of some other common legal abbreviations.

Law libraries are non-circulating libraries, meaning that few materials may be checked out by patrons. Your law library may offer other services, such as allowing you to reserve a room for group projects or to hold materials in a carrel.

D. Sources of Law in the United States

1. Cases and Our Common Law Tradition

The American legal system is part of what is referred to as the “common law” tradition. *Common law* is defined in part by *Black’s Law Dictionary*

313 (9th ed. 2009) as that body of law that derived from judicial decisions rather than from statutes or constitutions.

In early English cases, people training to be lawyers began “taking notes” on what occurred during trials. When judges were called upon to decide cases, they then began referring to these written reports of earlier cases and following the prior cases in similar situations. The English referred to this system as the “common law” because it was applied equally throughout England and replaced a less-uniform system of law.

This concept of following previous cases, or precedents, is called *stare decisis*, which is a Latin phrase meaning “to stand by things decided.” Broadly, the doctrine of *stare decisis* means that once courts have announced a principle of law, they will follow it in future cases that are substantially similar. It is this doctrine of *stare decisis* that serves to protect litigants from inexperienced or biased judges. Moreover, *stare decisis* promotes stability in our judicial system because it promotes uniform and predictable rulings.

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

2. *Constitutions*

A second source of law in the United States is constitutions. A *constitution* sets forth the fundamental law for a nation or a state. It is the document that provides the principles relating to organization and regulation of a federal or state government. We have a United States Constitution, our supreme law of the land (and which establishes the framework for our government by creating the legislative branch, the presidency, and the judiciary), and each state has its own individual constitution.

3. *Statutes*

A *statute*, or law, is defined by *Black’s Law Dictionary* 1542 (9th ed. 2009) as “a law passed by a legislative body.” In the United States, legislatures did not become particularly active in enacting statutes until the early to mid-1800s, when our economy began changing from a very rural one to a more urban one. This major change in American society was coupled with a tremendous population growth, and it became clear that rather than having a system in which disputes were decided on a case-by-case basis, which was slow and cumbersome at best, enacting broader laws that would provide rules to govern public behavior would best serve the needs of a growing society.

4. *Administrative Regulations*

A fourth source of law in the United States is found in the vast number of *administrative rules* or *regulations* promulgated by federal and state agencies such as the Food and Drug Administration or the Iowa Labor Services Division.

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

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

5. *Executive Branch*

Although the primary function of the federal executive branch is to enforce the law, it serves as a source of law itself in three ways. First, treaties are entered into by the executive branch with the advice and consent of the U.S. Senate. Second, the President, our chief executive, can issue executive orders to regulate and direct federal agencies and officials. State governors may also issue executive orders. Third, the executive branch exerts influence on the law through policies on enforcing laws. For example, if federal laws relating to possession of small amounts of drugs are rarely enforced, the effect is as if the law does not exist, despite the fact that a statute clearly prohibits such acts. Nevertheless, although such an approach by the executive branch influences the law as well as societal behavior, such influence on the law is indirect and remote. In the event the government prosecutes an individual for violation of a previously unenforced law, the individual usually may not raise the previous laxity as a defense.

E. Legal Systems of Other Countries

Although every country has its own system of law, most systems are classified as either being part of the common law tradition, described previously, or part of the civil law tradition. *Civil law* systems developed from Roman law, which followed a comprehensive set of codes. In general, civil law countries place much heavier reliance on their collections of statutes than on their much smaller collections of cases. China, France, Germany, Italy, Japan, Mexico, the Russian Federation, South Korea,