

Chapter 16

Legal Research and Analysis

Chapter Outline

1. Introduction
2. Primary and Secondary Sources
3. Researching Case Law—The Preliminary Steps
4. Secondary Sources of Case Law
5. The Case Reporting System
6. Analyzing Case Law
7. Researching Statutory Law
8. Analyzing Statutory Law
9. Researching Administrative Law
10. Finding Constitutional Law
11. Updating the Law—Learning to Use Citators

Chapter Objectives

After completing this chapter, you will know:

- How primary and secondary sources of law differ and how to use each of these types of sources in the research process.
- How court decisions are published and how to read case citations.
- How to analyze case law and summarize, or brief, cases.
- How federal statutes and regulations are published and the major sources of statutory and administrative law.
- How to read and interpret statutory law and what kinds of resources are available for researching the legislative history of a statute.
- Why finding current law is important and how to verify that your research results are up to date.

Chapter 16 Legal Research and Analysis

Chapter Outline

- I. INTRODUCTION
 - A. For many paralegals, legal research is a fascinating part of their jobs.
 - B. Many paralegals now use computerized legal services to assist in their legal research.

- II. PRIMARY AND SECONDARY SOURCES
 - A. *Primary sources* of the law consist of all documents that establish the law, such as case decisions, a legislative act, administrative rule, or presidential order.
 - B. *Secondary sources* consist of books and articles that summarize, systematize, compile, or otherwise interpret the law, such as legal encyclopedias, articles in a law review, and treatises.

- III. RESEARCHING CASE LAW—THE PRELIMINARY STEPS
 - A. Defining the Issue
 - i. The first step in the legal-research process is to identify the legal question, or issue, to be researched.
 - ii. Examine the facts of the case to determine the nature of the legal issue involved.
 - B. Determining Your Research Goals
 - i. Cases on Point
 1. A *case on point* is a previous case involving fact patterns and legal issues that are similar to a case that has not yet been decided by a court.
 2. The ideal case on point would be a case in which all four elements of the case (parties, circumstances, legal issues, and remedies sought) are very similar; such a case is called a *case “on all fours.”*
 - ii. Mandatory Authorities
 1. A *mandatory authority* is any source of law that a court must follow when deciding a case.
 2. To serve as mandatory authority, a case must be on point and decided by a superior court.
 3. A lower court is bound to follow decisions set forth by a higher court in the same jurisdiction.
 4. When researching, look for cases on point decided by the highest court in your jurisdiction.
 - iii. Persuasive Authorities
 1. A persuasive authority is not binding on a court.
 2. Examples are as follows:
 - a. Prior court opinions of other jurisdictions

- b. Legal periodicals
- c. Encyclopedias
- d. Legal dictionaries.

Really? I Have to Research and Use Real Books?

Research is both mechanical and analytical. The process of research can be accomplished by using a checklist that reflects the sources, both primary and secondary, to be consulted. Knowing what each collection represents and how it fits in the research plan is a lofty goal. Know your state's court system, reporters, statute books, and secondary sources. Know which area of your law library houses these collections. Then follow your checklist.

IV. SECONDARY SOURCES OF CASE LAW

A. Legal Encyclopedias

- i. The two major legal encyclopedias are *American Jurisprudence*, Second Edition, and *Corpus Juris Secundum*.
- ii. Topics are organized alphabetically.
- iii. These encyclopedias are valuable because they provide both broad statements of accepted law and footnotes to other legal sources.
- iv. *American Jurisprudence*, Second Edition
 - 1. This encyclopedia is commonly referred to as *Am. Jur. 2d.* and is published by West Group.
 - 2. *Am. Jur. 2d* offers a detailed discussion of virtually every area of American law.
- v. *Corpus Juris Secundum*
 - 1. *C.J.S.* is published by West Group.
 - 2. This encyclopedia also provides detailed information on almost every area of the law.
- vi. *Words and Phrases*
 - 1. *Words and Phrases* is a 46-volume encyclopedia of definitions and interpretations of legal terms and phrases, published by West Group.
 - 2. Each definition is followed by abstracts from federal or state court decisions in which the word or phrase has been interpreted or defined.

B. Case Digests

- i. Case digests are compilations in which brief statements regarding court cases are arranged by subject and subdivided by jurisdiction and court.
- ii. *The West Key-Number System*
 - 1. West's key-number system has simplified the task of researching case law.

2. The system divides all American law into specific categories, or topics, arranged in alphabetical order.
 3. The topics are further divided into many specific subtopics, each designated by a *key number*.
- iii. West's Federal Digests
 1. West's federal digests cover cases from the United States Supreme Court, the U.S. courts of appeals, the U.S. district courts, and various specialized federal courts, such as bankruptcy courts.
 - iv. West's State and Regional Digests
 1. West's digest system also provides state digests for the cases of all states except Utah, Nevada, and Delaware.
 - v. West's Comprehensive *American Digest System*
 1. This is a comprehensive set of volumes incorporating case abstracts from West's state, federal, and regional digests.
 2. Sequential Sets
 - a. The *American Digest System* is divided into three different sets, each covering a specific period of time.
 3. Advantages of the *American Digest System*
 - a. The major advantage is its vast coverage of cases from different courts.
 - b. The *table of cases* lists all of the cases included in the digest, in alphabetical order.
 - vi. Other Digests
 1. There are other digests for specific jurisdictions and specialized interest areas, such as the *Lawyer's Edition of the Digest of the Supreme Court Reports*.
- C. Annotations: *American Law Reports*
- i. The *American Law Reports (A.L.R.)* is a multi-volume set that presents the full text of selected cases in numerous areas of the law.
 - ii. This set is helpful in finding cases from jurisdictions throughout the country with similar factual and legal issues.
- D. Treatises
- i. A *treatise* is a formal, scholarly work that treats a given subject systematically and in detail.
 - ii. Treatises are written by law professors, legal scholars, and practicing attorneys.
 - iii. *Restatements of the Law*
 1. Restatements are highly respected scholarly compilations of the common law that are published by the American Law Institute (ALI).
 - iv. Legal Periodicals

1. Legal periodicals are a source of secondary authority.
2. Legal periodicals contain thoroughly researched information on a specific area of the law.

V. THE CASE REPORTING SYSTEM

A. State Court Decisions

i. State Reporters

1. State court decisions are usually published in both official and unofficial reporters.
2. A few states, including New York and California, publish more than one official state reporter.
3. Citation Format
 - a. After an appellate decision has been published, it is normally referred to by its citation.
 - b. A reference to the other reporter or reporters in which the case can be found is known as a *parallel citation*.
 - c. When performing legal research, you should include citations to cases or other legal sources in your notes.
 - d. The most widely used book on how to cite legal sources is *The Bluebook: A Uniform System of Citation*.

B. Federal Court Decisions

- i. Federal trial court opinions are published unofficially in West's Federal Supplement (F.Supp.).
- ii. Opinions from the federal circuit court of appeals are published unofficially in West's Federal Reporter (F., F2d, or F3d).

C. United States Supreme Court Decisions

i. The *United States Reports*

1. This is the official edition of all decisions of the United States Supreme Court.

ii. The *Supreme Court Reporter (S.Ct.)*

1. The *Supreme Court Reporter* is an "unofficial reporter."
2. The opinion is preceded by a brief syllabus and headnotes with key numbers.

iii. The *Lawyers' Edition of the Supreme Court Reports (L.Ed. or L.Ed.2d)*

1. This unofficial edition of the entire series of the Supreme Court reports contains many decisions not reported in earlier official volumes.

2. The *Lawyers' Edition* offers research tools and provides summaries of the briefs presented by counsel.
- iv. Unofficial Loose-Leaf Services
 1. These services publish Supreme Court decisions the day after a decision is announced.

Now I Have to Read Those Books?

Locating research material is difficult enough, but understanding what you have located is even harder. Statutes may not be written in plain English or in a reader-friendly format. Cases may be complex, involving much dicta about issues unrelated to that which you are researching. Be patient. Learn to dissect cases and break statutes into elements or component sections. Then, apply these research materials to your facts and demonstrate an analytical answer to your client's legal issue.

VI. ANALYZING CASE LAW

A. The Components of a Case

- i. Case Title
 1. The *title* of a case indicates the names of the parties to the lawsuit.
- ii. Case Citation
 1. The *citation* shows the volume and page number where the case is located in a particular case reporter.
- iii. Docket Number
 1. The *docket number* is assigned by the court clerk where the case is initially filed.
- iv. Dates Argued and Decided
 1. The *date* the case was decided is an important component of a case.
- v. Syllabus
 1. The *syllabus* is a brief synopsis of the facts of the case, the issues analyzed by the court, and the court's conclusion.
 2. Reading the syllabus is not a substitute for reading the case.
- vi. Headnotes
 1. The *headnotes* are short paragraphs that serve to highlight and summarize specific rules of law mentioned in the case.
- vii. Names of Counsel
 1. These are the *names of the lawyers* representing the parties in the case.
- viii. Name of Judge or Justice Authoring the Opinion

1. In some cases, instead of the *name of a judge or justice*, the decision will be authored *per curiam*, which means that the opinion is that of the whole court.
 - ix. Opinion
 1. The formal *opinion* of the court contains the analysis of the decision of the judge or judges who heard and decided the case.
 - x. The Court's Conclusion
 1. In the *conclusion*, the judges indicate their decision on the issue or issues before the court.
- B. Analyzing Cases
- i. Look for Guideposts in the Opinions
 1. It may be necessary to reread a case several times to understand what is being said.
 2. Judges often indicate sections and subsections within an opinion by numbers, letters, or subtitles.
 - ii. Distinguish the Court's Holding from Dicta
 1. Only the *holding* (the legal principle to be drawn from the court's decision) is binding.
 2. Other views expressed in the opinion are referred to as *dicta* and are not binding in subsequent cases.
- C. Summarizing and Briefing Cases
- i. Legal professionals often use an analytical technique called *case briefing* to reduce the content of the case to its essentials.
 - ii. A typical case brief will contain the case citation, the key facts of the case, the case's procedural history, a statement of the issue(s) raised in the case, the court's holding, the court's rationale, and the court's judgment.

VII. RESEARCHING STATUTORY LAW

- A. Statutory law is a primary source of American law.
- B. Statutes are enacted by legislative bodies.
- C. The Publication of Federal Statutes
 - i. Federal statutes are published in three forms:
 1. *Slip laws* present the text of statutes in the form of pamphlets or a single sheet.
 2. *Session laws* are collections of statutes contained in volumes and arranged by the year or legislative session during which they were enacted.
 3. Statutory material is published in compilations referred to as *codes*.
 - ii. The *United States Code (U.S.C.)*
 1. The U.S.C. is published by the U.S. government.

2. The U.S.C. organizes statutes into fifty subjects, or titles.
 3. The U.S.C. further subdivides each title into chapters (sections) and subchapters.
 4. The researcher can find a statute in the U.S.C. through the following methods:
 - a. Searching through the topical outlines
 - b. Looking in the index
 - c. Looking under the act's popular name in the volume entitled *Popular Name Table*.
- iii. Unofficial Versions of the Federal Code
1. The *United States Code Annotated (U.S.C.A.)*
 - a. The U.S.C.A. contains the full text of the U.S.C., the U.S. Constitution, the Federal Rules of Evidence, and various other rules, including the Rules of Civil Procedure and the Rules of Criminal Procedure.
 - b. The U.S.C.A. is more current than the U.S.C. and provides updated statutory information through supplemental pocket parts and pamphlets many times a year.
 2. The *United States Code Service (U.S.C.S.)*
 - a. This code is published by the West Group.
 - b. The research section of the U.S.C.S. provides references and citations to some sources that are not contained in the U.S.C.A., such as *American Law Reports*, legal periodicals, and *American Jurisprudence*.
 - c. Paralegals can begin statutory research in the U.S.C.S., by reviewing the *Subjects Index* or the *Popular Names Table*.
 3. State Codes
 - a. State Codes follow the U.S.C. pattern of arranging statutes by subject.
 - b. Many states publish annotated codes that provide references to case law, legislative history sources, and other documents in which the statute has been considered or discussed.

VIII. ANALYZING STATUTORY LAW

A. Reading Statutory Law

- i. Some statutes are extremely wordy or lengthy or difficult to understand.
- ii. By carefully reading and rereading a statute, a paralegal can usually determine the reasons for the statute's enactment and other things inherent in the statute such as:

1. Coverage and Effective Date
 2. Definitions
 3. Subdivisions
 4. *And* versus *Or*.
- B. Interpreting Statutory Law
- i. Rules of Construction
 1. Certain statutory rules of interpretation, called *rules of construction*, may prove helpful in an analysis of the statute's purpose and intent.
 - ii. The Plain-Meaning Rule
 1. Under the *plain-meaning rule*, the words chosen by the legislature must be understood according to their common meanings.
 - iii. Previous Judicial Interpretation
 1. Researching statutory law also involves researching case law to see how the courts have interpreted and applied statutory provisions.
 - iv. Legislative Intent
 1. Learning the intent of the legislature is helpful in understanding the meaning of a statute.
 2. Sources for reviewing legislative intent are committee reports, *The Congressional Record*, and other sources of legislative history.
- IX. RESEARCHING ADMINISTRATIVE LAW
- A. The *Code of Federal Regulations (C.F.R.)*
- i. C.F.R. contains all federal administrative agency regulations.
- B. Publication of the C.F.R.
- i. The regulations in the C.F.R. are compiled from the *Federal Register*.
- C. Finding Tools for Administrative Law
- i. A good place to start researching administrative regulations is in the index section of the C.F.R.'s *Index and Finding Aids* volume.
 - ii. The Congressional Information Service (C.I.S.) provides an index to the C.F.R., which is helpful in locating regulations by subject matter and in determining the geographical area affected by the regulation.
 - iii. The *American Digest System* provides coverage of court cases dealing with administrative questions, but does not contain agency rulings.
- X. FINDING CONSTITUTIONAL LAW
- A. Constitutions are primary sources of the law.

- B. The U.S. Constitution can be found in a number of publications, including the extensively annotated official publication, which is available through the Library of Congress.
- C. Annotated versions of state constitutions are also available.

XI. UPDATING THE LAW—LEARNING TO USE CITATORS

A. Case Law

- i. *Shepard's Citations* contains the most comprehensive system of case citators in the United States.
- ii. Use *Shepard's* to obtain parallel citations for the cited case and verify the history of a case.
- iii. Online citators enable the researcher to ensure that research results are as up to date as possible.

B. Statutory and Constitutional Law

- i. *Shepard's* citators for constitutions and statutes are similar to the case citators.

C. Administrative Regulations

- i. *Shepard's Code of Federal Regulations Citations* provides citations to the decisions of federal and state courts relating to administrative law.

D. Legal Periodicals

- i. *Shepard's Law Review Citations* includes citations to approximately 200 legal periodicals and law reviews.

E. Online Citators

- i. Several computerized legal-research services, such as Westlaw® and Lexis®, provide online citators.