

Part One

Research

CHAPTER 1 The Sources of the Law

CHAPTER 2 Legal Research Finding Tools

CHAPTER 3 The Case Brief

Chapter 1

The Sources of the Law

CHAPTER OBJECTIVES

After completing this chapter, you will be able to:

- Understand a citation.
- Describe the difference between official reporters and unofficial reporters.
- Differentiate between slip laws, session laws, and codes.
- Find the text of an administrative regulation.
- Use secondary sources such as legal encyclopedias and treatises.
- Explain the hierarchy of the law.
- Use the Internet to locate current cases and court rules.

Learning the law is like learning a new language. You will have to learn new words and new concepts, and face new challenges. This chapter introduces you to the “language of the law” and how it developed. You will be introduced to primary and secondary sources of the law, such as cases and encyclopedias. Building on each concept, you will begin the process of learning what the law is and how to “find” it. The process takes time and patience. And once you master the basics, you will approach each concept and assignment like a puzzle whose clues need to be unraveled. Embrace it and attack it like any other task you have studied. The most important point to remember is patience. Rome wasn’t built in a day! Now, let’s get started.

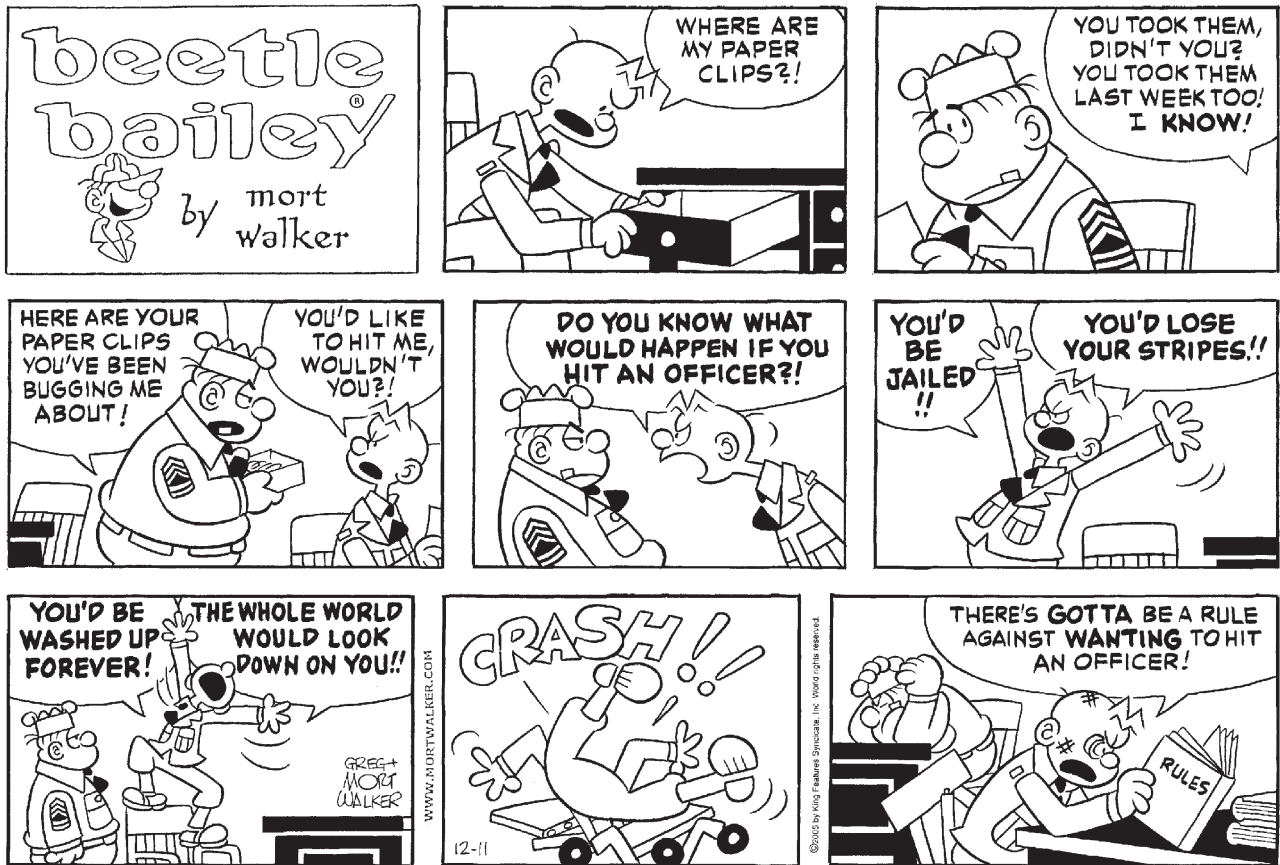
Case Fact Pattern



Hypothetical 1-1

Your attorney was appointed to represent a criminal defendant in federal court. The defendant has his sentencing hearing tomorrow and you read on the CNN website that the U.S. Supreme Court just handed down a decision that may affect the outcome of your attorney’s hearing. You hope the case has been posted on the U.S. Supreme Court website so that you can review it. Since you know the name of the case, you check the site to see if the case is available. It is! After reviewing it, you immediately bring the case to your attorney’s attention. Can you use the case in the legal brief you are assisting your attorney in preparing for his court case? Does your attorney have to tell the prosecutor about the case?

Welcome to the world of legal research! The field of law is complex, with the American legal system generating over 100,000 published opinions each year, volumes upon volumes of new and existing statutory materials, and thousands of treatises and articles analyzing the evolution and application of the law. No one individual can ever hope to master every element, angle, and detail in the law library. With practice, the process does get easier. So, whenever a new situation arises requiring the application of legal principles, you will be faced once again with that question—What is the law? In this chapter and the chapters that follow in this section, you’ll learn how to find answers.



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LEGAL RESEARCH IN GENERAL

Congress, the fifty state legislatures, and the thousands of local legislatures all generate legislation in the form of statutes and ordinances. The federal court system, the fifty state court systems, and the local court systems all churn out written opinions. The many executive agencies and departments release regulations and quasi-judicial decisions. Moreover, these activities have been going on for years, decades, centuries! As a result, an enormous quantity of law has been produced and, theoretically, must be sorted through when addressing a legal research problem.

A comprehensive law library, the storehouse for all these materials, is indeed an impressive sight. With rows and rows of uniform volumes, shelves of multivolume treatises and statutory codes, looseleaf binders with up-to-the-minute pronouncements, computers and the Internet, the available resources are vast.

Although the volume of material that might apply to a given research problem is truly staggering, you should not throw up your hands and say “Impossible!” before you even start. Fortunately, there is help. Over the years a logical, thorough, and even ingenious system of research aids has been developed that enables you to focus on the heart of your research problem.

There are a few basic concepts to keep in mind as you begin your study of this system. First, when faced with a specific research project, you need to understand your goal before you start. Are you interested in finding out what the current law is? Are you interested in tracing the development of the law? Do you need to determine precisely what the law was at some specific time when events critical to the resolution of your client’s problem occurred? Or are you simply interested in a general understanding of a new area of the law? Your approach will differ depending upon your goal.

Second, you should consciously devise an approach that is both thorough and efficient. It would be unwise to simply plunge in. The complexity of the subject matter and the potential for getting lost and confused in a mass of materials require that you think before you act.

Finally, if you do become stumped or confused, as you inevitably will, get help. Consult with your supervising attorney. Ask another paralegal. Talk to the librarian (law librarians are helpful

and often extremely knowledgeable about both research in general and the peculiarities of their specific law library). Don't give up your solo efforts too quickly, but don't waste time floundering, either. Sometimes a brief tip from someone with experience can save you hours of frustration.

As your skills develop, you will begin to understand that mastering legal research is a continuing process in which new ideas and information enable you to refine and perfect your own personal approach. The following sections introduce you to some of the resources available to assist in the process. There are other resources—indeed, whole books have been written on the subject of legal research—but those described herein are the most important. Chapter 2 concludes with a discussion of some practical legal research techniques.

PRECEDENTIAL VALUE: PRIMARY AUTHORITY VERSUS SECONDARY AUTHORITY

stare decisis

Decisions from a court with substantially the same set of facts should be followed by that court and all lower courts under it; the judicial process of adhering to prior case decisions; the doctrine of precedent whereby once a court has decided a specific issue one way in the past, it and other courts in the same jurisdiction are obligated to follow that earlier decision in deciding cases with similar issues in the future.

trial courts

Courts that hear all cases and are courts of general jurisdiction.

appellate courts

The court of appeals that reviews a trial court's record for error.

state supreme court

The final and highest court in many states.

Before we discuss the many available resources, let's consider an important and basic principle that underlies all legal research.

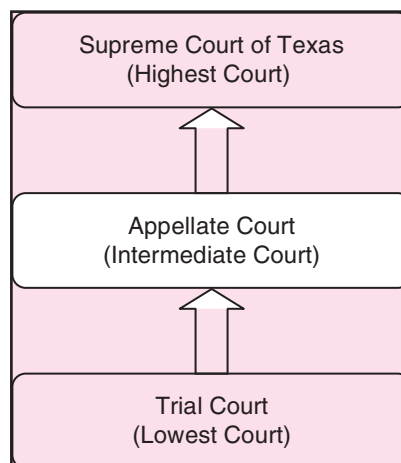
Imagine for a moment an appellate judge sitting in her chambers, having just left the courtroom where opposing sides in an appeal have concluded oral argument. On her desk are the competing briefs, each filled with references to cases, statutes, treatises, and other sources, each presenting a compelling rationale. How does the judge weigh the relative merits of the differing points of view? How does she decide who wins and who loses?

Although every judge has a characteristic style and every case its own peculiar twist, there is in fact a pattern to the manner in which judicial decision making proceeds. That pattern is steeped in legal history and is the doctrine of *stare decisis*. *Stare decisis* means that decisions from a court with substantially the same set of facts should be followed by that court and all lower courts under it. Most of us have a general understanding of the court system, but a quick overview is appropriate before we learn how the principle of *stare decisis* works. You may recall that the courts where most controversies are filed are known as **trial courts**. Trial courts usually have the power to hear all cases and are courts of general jurisdiction. Their names range from district court to common pleas court; and the notable exception, the Supreme Court, which is the trial court in New York.

When a party from the trial court is dissatisfied with the decision of that court, an appeal may be filed. **Appellate courts** review the decisions of trial courts. Often appellate courts consist of panels of three judges who render a decision based upon the existing law of that court. The final and highest court in many states is the **state supreme court**. Most state supreme courts consist of a panel of three to nine justices. Often the state supreme courts are the court of last resort for most litigants unless the case presents a constitutional or federal issue. In those very limited instances, a state court decision may be appealed to the highest court in the United States: the U.S. Supreme Court. Let's see how these legal principles work. Suppose you live in Texas. The civil court system generally appears as in Figure 1.1.

FIGURE 1.1

Texas Civil Court System





PRACTICE TIP

Not all states use the term “supreme court” to identify their highest court. For example, New York calls its highest court the New York Court of Appeals and its lowest court the Supreme Court. The state of Texas has two courts of appeals: the Texas Supreme Court (civil cases) and the Texas Court of Criminal Appeals (criminal cases). Check your state for the listing of its courts so you understand how it works.

precedential value

The force that a cited authority exerts upon the judge’s reasoning.

primary authority

The original text of the sources of law, such as constitutions, court opinions, statutes, and administrative rules and regulations.

mandatory authority

Authority that is binding upon the court considering the issue—a statute or regulation from the relevant jurisdiction that applies directly; a case from a higher court in the same jurisdiction that is directly on point; or a constitutional provision that is applicable and controlling.

persuasive authority

All nonmandatory primary authority.

secondary authority

Authority that analyzes the law such as a treatise, encyclopedia, or law review article.

A decision is handed down by the Dallas Appeals Court. Who must follow that decision? All trial courts under the Dallas Appeals Court and that appeals court. What about a decision from the San Antonio Appeals Court? Does that court have to follow the Dallas Appeals Court? The answer is no. However, if the case is appealed to the Texas Supreme Court, must the San Antonio Appeals Court follow that court’s decision? The answer is yes. That is how the doctrine of *stare decisis* works. You will search for cases from the highest applicable court that most closely follow your legal proposition. This search leads you to cases that set the precedent for your research problem.

As a general proposition, decisions are based upon the precedential value of the competing sources cited by the parties. Legal research thus becomes a search for those authorities with the most powerful precedential value. **Precedential value** is the force that a cited authority exerts upon the judge’s reasoning. In order to determine the degree of precedential value of a given authority, the judge determines whether it is primary or secondary; if primary, he or she must determine whether it is mandatory or merely persuasive.

Primary authority is composed of the original text of the sources of law—the language of court opinions, the provisions of constitutions, the requirements of statutes, the guidelines of agency regulations. Primary authority is, in effect, the law itself.

Primary authority can be either mandatory or persuasive. **Mandatory authority** is binding upon the court considering the issue—a statute or regulation from the relevant jurisdiction that applies directly; a case from a higher court in the same jurisdiction that is directly on point; or a constitutional provision that is applicable and controlling. It is best to rely upon mandatory authority in your research, because the court is compelled to follow it. If two primary authorities conflict (as where a statute has been passed to counteract a court opinion, or where principles embedded in the applicable constitution render a statute unconstitutional), the court is compelled to follow the mandatory authority.

All nonmandatory primary authority is **persuasive authority**. A case on point, but from a different jurisdiction, or from a lower or equivalent court in the same jurisdiction, would constitute persuasive authority, as would a statute on point but from a different state.

Secondary authority, on the other hand, is a step removed from the original text. It may consist of the comments of an expert expressed in a treatise. It may be found in the pages of a legal encyclopedia, or in articles in a law review, or in analysis set forth in a looseleaf service. It may include the unofficial provisions of a “restatement” of the law. Whatever the source, however, all forms of secondary authority have one thing in common—they are not the law itself, but rather analyses of the law.

Apply these concepts with a simple example. Assume you are writing a brief to be considered by an intermediate appellate court in California. A case on point decided by the California Supreme Court would constitute mandatory authority. If such a case existed and was the only applicable mandatory authority, you might not have to go further in your research. If no such case existed, and no other mandatory authority existed, then a case on point decided by the Nevada Supreme Court would constitute persuasive primary authority—which means that your California intermediate appellate court, although not bound by the Nevada decision, might at least be persuaded by its logic. Finally, in addition to citing primary authorities, you might also want to cite to the principles enunciated in a respected treatise in the applicable field. The treatise, though only a secondary authority, might be held in such esteem by the court that it, too, has substantial persuasive value. Indeed, a secondary authority might be given more persuasive weight by a court than a nonmandatory primary authority.

In the pages that follow, we will be considering numerous different authorities. As you read these pages, and later in your research, you should always keep in mind the concepts of primary and secondary authority. In the context of a specific research project, you should also consider whether a given primary authority is mandatory or merely persuasive.

You Be the Judge



Hypothetical 1-2

Attorneys and paralegals are required to research all aspects of the law and cite both supporting and adverse authority. When attorneys fail to adequately research an issue or fail to cite adverse authority, courts do not hesitate to admonish them. Locate and review *Cicio v. City of New York*, 469 N.Y.S. 2d 467 (A.D. 2 Dept. 1983), and *Smith v. Lewis*, 530 P. 2d

589 (Cal. 1975). What were the facts of the cases? Were the results in the cases correct? Why or why not? In the *Smith* case, what minimum standards did the judge require of the attorney? And, in *Cicio*, what professional obligations did the court impose on the attorneys?

FINDING CASE LAW

reporters

Hardbound volumes containing judicial decisions.

Judicial opinions, which are often simply referred to as cases, are a primary source of the law and are published in a continuing series of hardbound volumes called **reporters**. Reporters are organized not by topic but chronologically. This poses the problem of how to find those cases relevant to a given research topic without sifting through every case in every volume.

In this section and succeeding sections, we discuss methods of dealing with this obstacle. A logical starting point is the citation concept.

Citations

We will begin by focusing on a case decided by the United States Supreme Court, *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed. 2d 694 (1966). (You know the case. In almost every episode of television shows like *Law and Order*, people are arrested and read their rights: “You have the right to remain silent . . .”; this is the case that set forth those requirements.) But have you ever wondered where those lists of rights originated, or better yet, how to find the case? You might first ask yourself, “Why all those numbers and letters after the name of the case?” The letters and numbers, together with the name *Miranda v. Arizona*, constitute the citation for the reporter opinion. A **citation** (also called a cite) provides information that directs you to the exact page in the exact volume of each reporter in which the text of this case appears. We will analyze each component of the citation, but first a word about consistency in citation form.

citation

Information about a legal source directing you to the volume and page in which the legal source appears.

As you can imagine, with the large number of courts in the American system, there are different reporters that publish judicial opinions, each requiring a unique citation. There is also a need for citations associated with statutes, regulations, municipal codes, treatises, law review articles, and other legal publications and materials. In order to minimize inconsistency in practice, standard systems of citation were developed. The leading authority for the rules on citations was *The Bluebook: A Uniform System of Citation*, published in book format by the law reviews of several leading law schools. This citation system became the universal model until 2000 when the *ALWD Citation Manual* was published. *The Bluebook* has been known to be difficult to use and master, resulting in the increasing adoption of the ALWD system. Published by Aspen Publishers, the *ALWD Citation Manual* is easier to use.

Although both systems are recognized, the *ALWD Citation Manual* is becoming the more acceptable alternative. The trend, however, is toward a universal system of citation, erasing the mystery of proper citation once and for all. The *Universal Citation Guide*, published by the American Association of Law Libraries in 1999, offers an alternative form for standardized citation form. Whether this system will become the ultimate “bible” for citation form is anyone’s guess. Your attorneys will guide you as to the proper form to use in your jurisdiction. More detail on proper citation format and integrating it into legal writing is addressed in Chapter 7.

Now, let’s return to our consideration of the citation for *Miranda v. Arizona*. First, let’s take the name of the case. There are literally pages of rules on proper identification of parties in the name portion of the citation. You should check either *The Bluebook* or *ALWD Citation Manual* to review some of the trickier aspects for most cases; however, it is sufficient to remember that the name of a lawsuit (for citation purposes) will contain the last name of the parties to the lawsuit, generally the full name for a business entity (for example, “Widgets, Inc.”). The party’s names in the case are either underlined or italicized. For example:

Miranda v. Arizona



PRACTICE TIP

Because *The Bluebook: A Uniform System of Citation* has a bright blue cover, the citation system is known informally as the “bluebook system” or “bluebook format.”

The “v” in the middle stands for “versus.” The “v” is always lowercase followed by a period (.). The “v.” is also underlined or italicized as part of the citation.

Now we turn to the remaining components of the citation. We will analyze each group of letters and numbers, one at a time.

First, 384 U.S. 436 represents that the case appears in Volume 384 of the United States Reports at page 436. Reporters are designated as either an official reporter or unofficial reporter as is often determined by the court. The official reporter for the United States Supreme Court is *U.S. Reports*.

Two basic rules can be drawn from the citation 384 U.S. 436. First, volume number always appears before the reporter’s abbreviation. Second, the page number always appears after the abbreviation.

The next group of letters and number in our example is “86 S.Ct. 1602.” This group refers to another reporter, published by West, called the *Supreme Court Reporter*, which also publishes Supreme Court cases. For citation purposes, it is abbreviated as *S.Ct.* Thus, the case of *Miranda v. Arizona* also appears in Volume 86 of the *Supreme Court Reporter* at page 1602. (Remember our rule: volume number before abbreviation, page number after.)

And the final group of letters and numbers in our example is “16 L. Ed. 2d 694.” Like the *Supreme Court Reporter*, this group refers to yet another reporter that publishes United States Supreme Court cases, called *United States Supreme Court Reports, Lawyers’ Edition*, published by LexisNexis. It is abbreviated as “L. Ed.” and since the case is found in the second series of that reporter, “2d” is added to the citation. Therefore, *Miranda v. Arizona* also appears in Volume 16 of Second Series of *Lawyers’ Edition* on page 694. Both the *Supreme Court Reporter* and *Lawyers’ Edition* are considered unofficial reporters. You will learn more about the need for and great usefulness of such reporters in succeeding sections of this chapter.

It is important to note that recently there was a major change in legal publishing. For years, the leading legal publishers were West Publishing Company and Lawyers Cooperative Publishing Company. Both companies are now under the umbrella of the Thomson Corporation publishing under the name Thomson West.

The other leading legal publisher is Reed Elsevier, who now owns LexisNexis. You will see some legal publications under the LexisNexis brand that were previously under another publisher. You can use either set of publications; it is simply a matter of preference and availability.

When a case text is found in two or more reporters, the citations for that case are known as **parallel citations** (see Figure 1.2). When parallel citations exist, the official reporter is always listed first. Thus for *Miranda v. Arizona* the official citation, “384 U.S. 436,” precedes the parallel citations “86 S.Ct. 1602, 16 L. Ed. 2d 694.” We discuss official and unofficial reporters in more detail in later sections.

The final reference in the citation is (1966). This is, as you might have guessed, the year in which *Miranda v. Arizona* was decided. The year of decision, in parentheses, is always included at the end of the citation. Sometimes the name of the court that decided the case will also appear within this final parenthesis. Since some reporters publish decisions from several courts and even several states, it is sometimes impossible to discern the court by simply identifying the reporters; hence, proper citation for a case appearing in such a reporter must include identification of the specific court that decided the case.



PRACTICE TIP

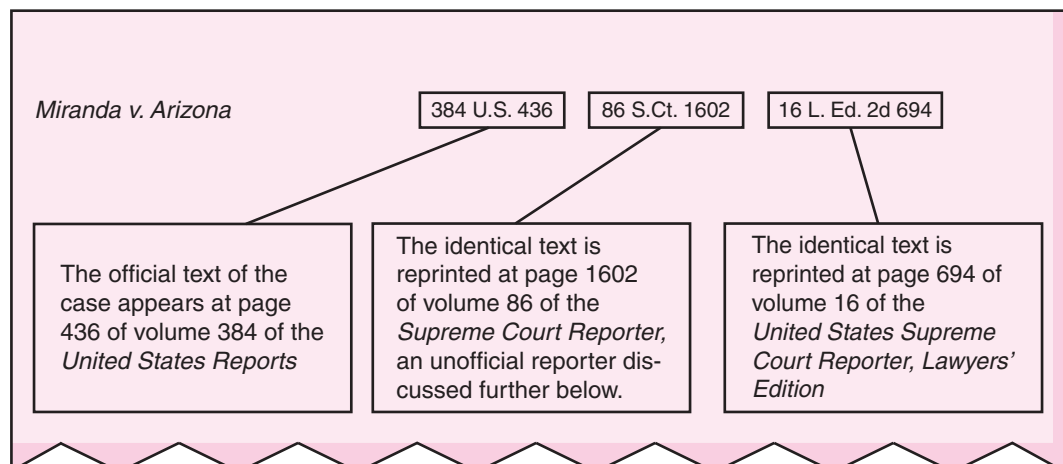
To remember the important pieces of information to retrieve a case, just keep saying to yourself “volume, reporter, page.”

parallel citation

A citation of a case text found in two or more reporters.

FIGURE 1.2

Parallel Citations



official reporter

Government publications of court decisions.

**PRACTICE TIP**

The early U.S. Supreme Court case volumes were published by private individuals (and not the U.S. government) bearing their name. You may see a citation such as *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Private reporter names appear for the first ninety volumes of the *U.S. Reports*. Do not cite the private reporter. Use a citation manual for proper citation form.

regional reporters

Reporters that contain the cases of all the states in a particular geographical area.

Citations are the keys that unlock the information in a law library. Your understanding of the citation concept will improve as you work your way through the following sections, and especially as you do your own research. Several citation exercises appear at the end of this chapter.

Official Reporters

An **official reporter** is one sanctioned by the court generating the opinions contained within its pages. The *United States Reports*, for example, is the official reporter for Supreme Court decisions, and is published by the U.S. government. Most of the states have one or more official reporters for the decisions of their various courts. Many of these are published by the respective state governments; for some states, however, the reporter designated as official is one of the unofficial reporters from the National Reporter System (to be discussed further) or some other unofficial reporter.

The citation of a case from a state that has an official reporter will list the official reporter first, generally followed by parallel citations to the National Reporter System. Check your citation manual and find the rule that establishes the appropriate order.

Official reporters are generally less useful than the unofficial reporters. The volumes are often published only long after the opinions are released, and they are generally not indexed well, limiting their usefulness for research purposes.

National Reporter System

By the end of the 1880s, the West Publishing Company of St. Paul, Minnesota (now Thomson West) had developed a reporter system covering the decisions of all the states. Called the National Reporter System, it contained seven **regional reporters** corresponding to geographic areas of the country. This system is still in use today. The seven regional reporters, with their abbreviations for citation purposes, are provided in Table 1.1.

Each of these reporters contains the decisions of the courts of several states. Table 1.2 shows the states currently covered by each reporter. Each regional reporter contains all of the decisions of the highest court, and often many of the decisions of one or more lower courts of these states for the time period covered.

As the number of volumes in each of these regional reporters reached 200 or 300, a second series was initiated, with the numbering starting over again at Volume 1. The second series is designated in a citation by the indicia “2d” appearing after the abbreviation. And now, as volumes in the second series reach 999, a third series, denoted as 3d, exists. Whereas a case in the first series of *Pacific Reporter*, for example, might have the citation “197 P. 32” (meaning the text appears at page 32 of volume 197 of the first series), a case in the second series might have the citation “5 P.2d 17” (meaning the text

TABLE 1.1
Seven Regional Reporters

Northeastern Reporter	N.E.
Atlantic Reporter	A.
Southeastern Reporter	S.E.
Southern Reporter	So.
Northwestern Reporter	N.W.
Southwestern Reporter	S.W.
Pacific Reporter	P.

TABLE 1.2
States Covered in Specific Regional Reporters

Regional Case Reporter	States Covered
Atlantic	Connecticut, Delaware, D.C., Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont
Northeastern	Illinois, Indiana, Massachusetts, New York, Ohio
Northwestern	Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin
Pacific	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, Wyoming
Southeastern	Georgia, North Carolina, South Carolina, Virginia, West Virginia
Southwestern	Arkansas, Kentucky, Missouri, Tennessee, Texas
Southern	Alabama, Florida, Louisiana, Mississippi



PRACTICE TIP

The Southern reporter is cited as *So.* (not *S.*).

advance sheets

Softcover pamphlets containing the most recent cases.

slip opinion

The first format in which a judicial opinion appears.

appears on page 17 of Volume 5 of the second series); and a later case in the third series might have the citation “117 P.3d 365” (meaning the text appears at page 365 of volume 117 of the third series).

Because the number of cases generated by the courts of California and New York is extensive, West established two separate reporters, the *California Reporter* and the *New York Supplement*, to handle the volume of opinions. Although the decisions of the highest courts of these states continue to be published in their respective regional reporters (California’s in the *Pacific Reporter*; New York’s in the *Northeastern Reporter*), the separate supplementary reporters publish the significant lower court decisions as well. The citation abbreviation for the *California Reporter* is Cal. Rptr., Cal. Rptr. 2d, or Cal. Rptr. 3d; for *New York Supplement* it is N.Y.S. or N.Y.S. 2d.

The National Reporter System remains current not only through the frequent publication of bound volumes, but also by issuance of **advance sheets**, which are softcover pamphlets containing the most recent cases (and paged exactly as they will later appear in the permanent bound volumes). Cases may appear in these advance sheets many months or even more than a year before they appear in an official reporter, making the regional reporters significantly more current, hence more useful, than the official reporters of most states.

Another form of a recently handed court opinion is a slip opinion. A **slip opinion** is the first format in which a judicial opinion appears. It is individually paginated (beginning with page one) and is often simply the typewritten text generated by the court’s own clerical staff. In some states, slip opinions are gathered together informally in a binder or folder at the law library or the courthouse. In other states, slip opinions are published, but their high expense and delayed availability make them impractical research tools. The published slip opinion may even appear after the advance sheet version is available. With the advent of the Internet and computer-assisted research such as Westlaw and Lexis/Nexis, case decisions can be retrieved virtually the day they are handed down by the court. Online research will be discussed in more detail in Chapter 2.

Each volume in the National Reporter System contains a table of cases in the front, listing alphabetically by state all those cases whose full text appears in that volume. Each volume also contains subject indexes in the rear of the volume (the subject indexes appear near the front of the advance sheets). The foundation for these indexes is the Key Number System, which is perhaps the single most important element in American legal research. Mastering this system is essential to mastering legal research. In Chapter 2, *Legal Research Finding Tools*, you will learn the details of this system and have a clear understanding of the interrelationship between the sources of the law and finding them in the law library or online.

United States Supreme Court Decisions

The regional reporters of the National Reporter System collect cases from the fifty state court systems and territories. What about the federal courts? Where are federal decisions collected, and how do we go about finding the federal cases we need for our research? Let’s start with the Supreme Court.

There are four principal sources of the decisions of the U.S. Supreme Court. You already know the three primary reporters from our discussion of the *Miranda v. Arizona* citation—*United States Reports*, *Supreme Court Reporter*, and *United States Supreme Court Reports, Lawyers’ Edition*. These sources comprise bound volumes and advance sheets. There is also an important source published in looseleaf format—*The United States Law Week*.

The *United States Reports* series, as you recall, is the official series, and its publication (even the advance sheets) lags far behind the issuance of opinions, making it less useful than the other sources for research purposes. In addition, *U.S. Reports* also lacks research aids such as effective indexing by topic, available in the other sources. Perhaps the most useful contribution of *U.S. Reports* is its presentation of a syllabus (a relatively detailed summary) of each decision, prepared by the official court reporter. These syllabi, however, appear in the unofficial sources as well. Figure 1.3 shows the syllabus and introductory points of a U.S. Supreme Court slip opinion, *Tory v. Cochran*.

The *Lawyers’ Edition* series is a unofficial reporter formerly published by the Lawyers Co-Operative Publishing Company and now part of LexisNexis. These volumes are now in their second series, abbreviated for citation purposes as *L. Ed. 2d*. They are indexed according to a system that categorizes points of law utilizing a case headnote system. This case headnote system is a research “finding tool” and will be addressed in detail in Chapter 2. There are two features of the *Lawyers’ Edition* volumes, in addition to their timely publication, that make them useful research tools. First, they often provide summaries of the briefs of the opposing attorneys, which are not found in *U.S. Reports* or the *Supreme Court Reporter*. Second, each volume contains

FIGURE 1.3 A Syllabus of a U.S. Reports Case

(Slip Opinion) **OCTOBER TERM, 2004** 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

name of case

court where case was appealed from

docket number and date of decision

summary of case

Appeals Court action and decision

decision of U.S. Supreme Court

disposition

justice who authored opinion

justices who dissented from majority opinion

TORY ET AL. v. COCHRAN

CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA,
SECOND APPELLATE DISTRICT

No. 03–1488. Argued March 22, 2005—Decided May 31, 2005

In a state-law defamation action filed by attorney Johnnie L. Cochran, Jr., a California trial court found that petitioner Tory, assisted by petitioner Craft and others, had, *inter alia*, falsely claimed that Cochran owed him money, picketed Cochran’s office with signs containing insults and obscenities, and pursued Cochran while chanting similar threats and insults, in order to coerce Cochran into paying Tory money to desist from such libelous and slanderous activity. Because Tory indicated that he would continue to engage in the activity absent a court order, the court permanently enjoined petitioners and their agents from, among other things, picketing, displaying signs, and making oral statements about Cochran and his firm in any public forum. The California Court of Appeal affirmed, and this Court granted certiorari. After oral argument, Cochran’s counsel informed the Court of Cochran’s death, moved to substitute Cochran’s widow as respondent, and suggested that the case be dismissed as moot. Petitioners agreed to the substitution, but denied that the case was moot.

Held: Cochran’s widow is substituted as respondent, but the case is not moot. Despite Cochran’s death, the injunction remains in effect. Nothing in its language says to the contrary. Cochran’s counsel argues that the injunction is still necessary, valid, and enforceable, and no source of California law says that it automatically became invalid upon Cochran’s death. As this Court understands that law, a person cannot definitively know whether an injunction is legally void until a court has ruled that it is. Given this uncertainty, the injunction here continues significantly to restrain petitioners’ speech, thus presenting an ongoing federal controversy. Cochran’s death, however, makes it unnecessary for this Court to explore petitioners’ basic claims. Rather, the Court need only point out that the injunction, as written, has lost its underlying rationale. Since picketing Cochran and his law offices while engaging in injunction-forbidden speech could no longer coerce Cochran to pay for desisting in this activity, the grounds for the injunction are much diminished or have disappeared altogether. Consequently the injunction amounts to an overly broad prior restraint upon speech, lacking plausible justification. Pp. 2–4.

Vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O’CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined. THOMAS, J, filed a dissenting opinion, in which SCALIA, J., joined.

annotations, which are in-depth articles that analyze selected issues raised in some of the more important cases appearing in that volume, and identify additional relevant cases. You will learn more about annotations in the section on the *American Law Reports (A.L.R.)* series.

The *Supreme Court Reporter* (citation abbreviation *S.Ct.*) is a publication of Thomson West, formerly West Publishing Company. It utilizes the key number/digest system seen in the National Reporter System, making it a useful resource for cross-referencing decisions in the state courts and the lower federal courts. As mentioned earlier, this system is the foundation for all legal research and also will be discussed in Chapter 2.

Although both the *Lawyers' Edition* and the *Supreme Court Reporter* issue advance sheets much sooner than does *U.S. Reports*, preparation of headnotes and annotations (and other production realities) still produces a lag time between issuance of the opinions and their appearance in print. To meet the immediate needs of the legal community, *The United States Law Week* publishes full texts of the decisions almost immediately upon their issuance by the Supreme Court. The *U.S. Law Week* publication is a **looseleaf service**, publishing pages with prepunched holes for insertion into looseleaf binders. In addition to the Supreme Court decisions, it contains sections on other recent legal developments. You should cite to *U.S. Law Week* only when the Supreme Court decision has not yet appeared in one of the other advance sheets (citation abbreviation *U.S.L.W.*). The *U.S. Law Week* is published weekly, with special editions when the Supreme Court is releasing substantial volumes of opinions.

There are other sources of Supreme Court decisions, as well. These include other looseleaf services (such as the *U.S. Supreme Court Bulletin*), newspapers (which are never cited as a source for the text of an opinion), and the various online computer services (which we will discuss in Chapter 2).

looseleaf service

A service that publishes recently decided court decisions in looseleaf binders, such as *U.S. Law Week*.

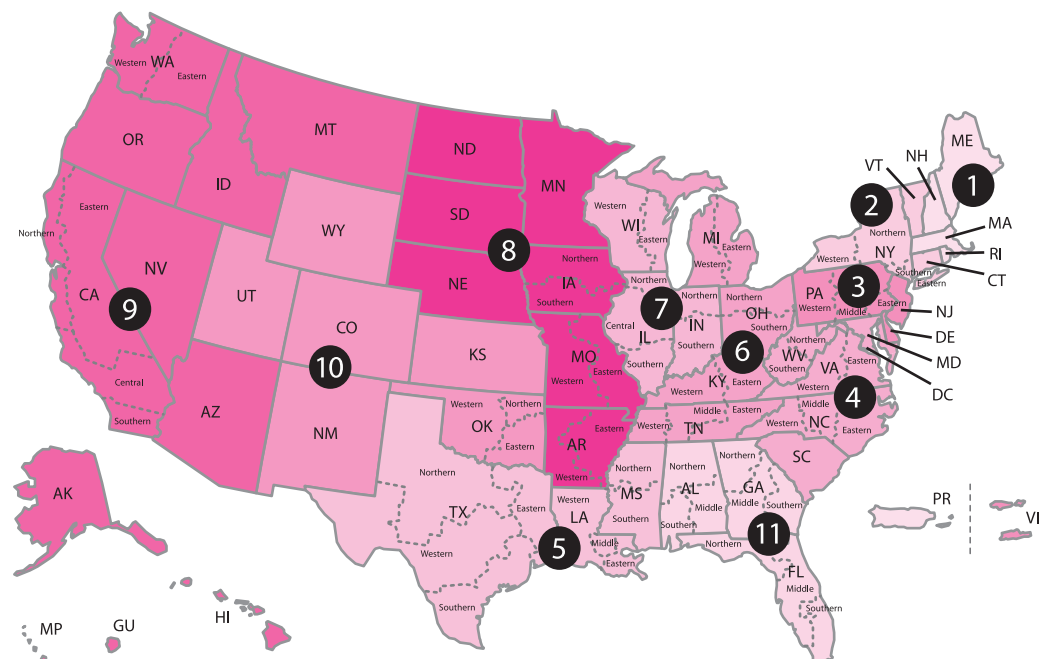
Federal Court Decisions

With the importance attached to decisions of the federal courts in the American legal system, it is odd to note that there is no official government reporter of federal decisions below the level of the Supreme Court. The reporters prepared by West for federal decisions are the *Federal Supplement* (publishing decisions of the United States District Courts and certain other courts since 1932) and the *Federal Reporter* (dating back to 1880 and currently publishing decisions of the appellate circuits; prior to 1932 the *Federal Reporter* published U.S. District Court cases as well). These are the standard sources for federal case law, cited respectively as *F. Supp.* or *F. Supp.2d* and *F., F.2d, or F.3d*. Federal cases prior to 1880 are collected in the West set *Federal Cases*.

When reviewing cases from the federal courts, be alert to the circuit in which your legal problem originates. This issue is important as there are twelve federal circuits and one federal circuit court (in the District of Columbia). Many of the states' federal trial courts are divided into districts. For example, Texas is divided into four districts: northern, southern, eastern, and western. (See Figure 1.4 for a map of the federal circuits and district courts.)

FIGURE 1.4
A Map of the Federal Circuits and District Courts

Source: Map from U.S. Courts, available at: www.uscourts.gov



There are also several reporters in the West system that print only those federal decisions relating to a specific topic. For example, *Federal Rules Decisions* is cited as *FR.D.* and contains decisions relating to the Federal Rules of Civil Procedure (FRCP) and the Federal Rules of Criminal Procedure. *West's Bankruptcy Reporter* (cited as *B.R.*) contains decisions of the federal bankruptcy courts.

All these West reporters utilize the key number/digest system. There are other sources of federal cases as well, including sources related to specific topics and the *A.L.R.*, *Federal* series.

American Law Reports (A.L.R.)

The Lawyers Co-Operative Publishing Company produced several series of volumes in addition to the Lawyers' Edition of the *Supreme Court Reports*. In this section we discuss the *American Law Reports* series, referred to as *A.L.R.* and now published by West.

The *A.L.R.* series publishes full texts of only certain state and federal court decisions, which are selected for the level of interest generated by the issues that they address (see Figure 1.5). Each individual case selected is followed by an **annotation**, which provides an in-depth analysis of a specific and important legal issue raised in the accompanying decision, together with an extensive survey of the way the issue is treated in various jurisdictions. Many cases are cited and summarized in these annotations, making them excellent research sources. An example of the first page of such an annotation is found in Figure 1.6 and an interior page is found in Figure 1.7. The *A.L.R.* volumes are now in their sixth series, cited as *A.L.R. 6th*.

A second set of *A.L.R.* volumes is called *A.L.R. Federal*. It is structured identically to the standard *A.L.R.* series, with selected cases (all federal) followed by annotations on the federal issues presented.

annotation

An in-depth analysis of a specific and important legal issue raised in the accompanying decision, together with an extensive survey of the way the issue is treated in various jurisdictions.

FIGURE 1.5 An Example of an *A.L.R.* Case

Source: From *Annotated Law Reports*. Reprinted with permission from Thomson West.

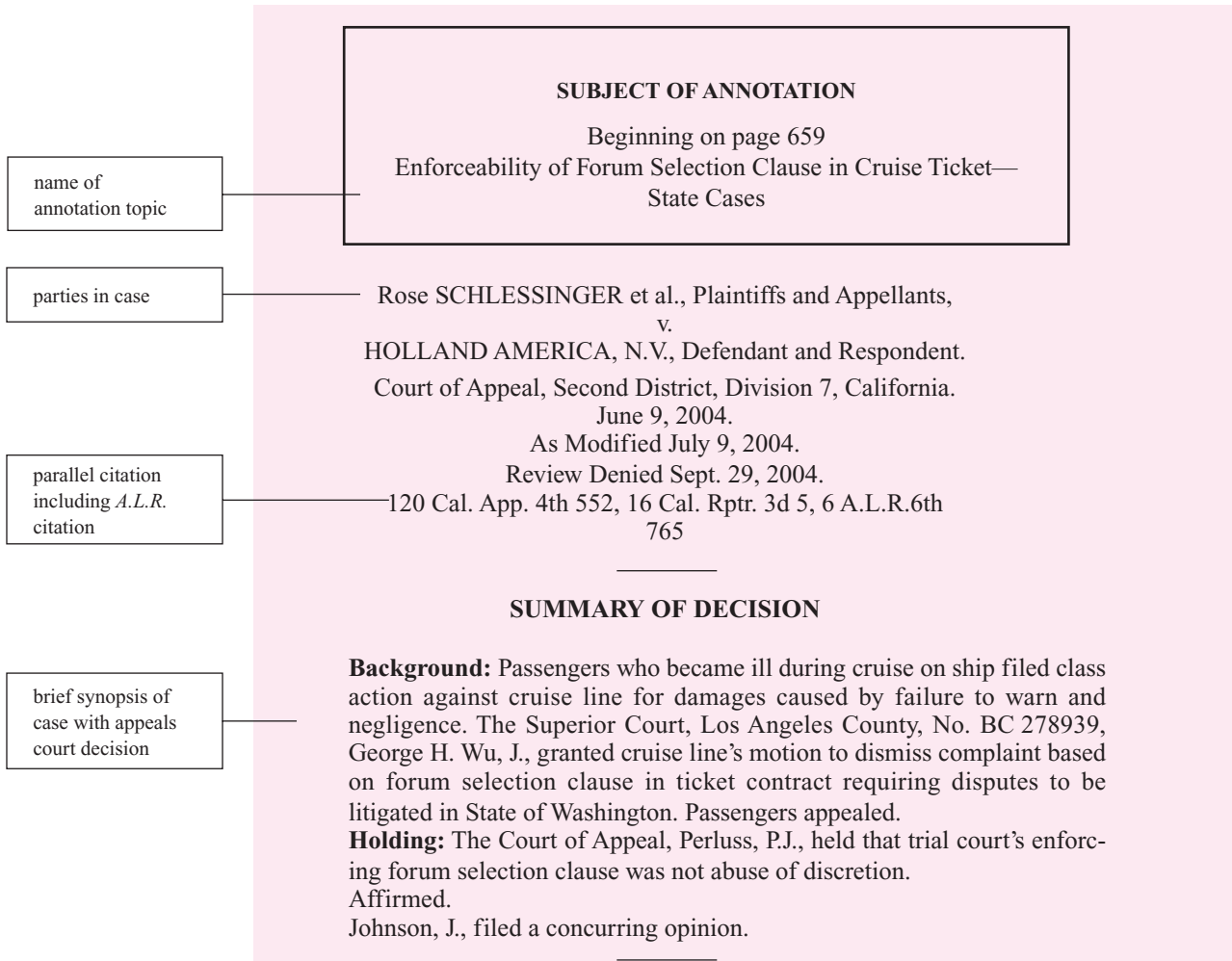


FIGURE 1.6 First Page of *A.L.R.* AnnotationSource: From *Annotated Law Reports*. Reprinted with permission from Thomson West.

The diagram shows a pink rectangular area representing the first page of an A.L.R. annotation. On the left side, there are four white boxes with black borders, each containing a label. Lines connect these boxes to specific parts of the pink area:

- The top box, labeled "A.L.R. annotation", points to the citation "6 A.L.R.6th 659" in the top right corner.
- The second box, labeled "topic of annotation", points to the title "ENFORCEABILITY OF FORUM SELECTION CLAUSE IN CRUISE TICKET—STATE CASES" in the upper middle.
- The third box, labeled "summary of annotation", points to the main body of text, which is a paragraph summarizing the case *Schlessinger v. Holland America, N.V.*
- The bottom box, labeled "highlighted case of annotation", points to the text "Schlessinger v. Holland America is fully reported at page 765, *infra*." at the bottom of the page.

There is a digest collecting all the *A.L.R.*, *A.L.R. Federal*, and *Lawyers' Edition* headnotes arranged alphabetically by topic, called the *A.L.R. Digest*. A much more useful research aid is the *Index to Annotations*, which indexes all the annotations in *A.L.R. 3d*, *A.L.R. 4th*, *A.L.R. 5th*, *A.L.R. 6th*, and *A.L.R. Federal*.

Other Unofficial Reporters

Although the West and *A.L.R.* systems are by far the most important unofficial reporters, there are other unofficial reporters that exist or have existed in the past in various jurisdictions. When doing research you must make sure that you have accounted for all potential sources of cases, including other reporter systems. This can be accomplished by conferring with your local legal librarian or your supervising attorney, by referring to your citation manual, which lists reporters for each jurisdiction, or by conducting your own thorough library search for potential sources. The latter method, although more difficult, will provide you with useful exposure to the law library.

Looseleaf Services

Yet another source of case law is found in the looseleaf services, introduced in the discussion of *U.S. Law Week* in the section on Supreme Court cases. There are a large number of looseleaf services covering a wide variety of topics. Some of the major publishers are the Bureau of National Affairs (BNA), Commerce Clearing House (CCH) a Wolters Kluwer business, and

FIGURE 1.7 Interior Page of A.L.R. Annotation

Source: From *Annotated Law Reports*. Reprinted with permission from Thomson West.

CONTRACTS; SHIPPING 6 A.L.R.6th 659
 6 A.L.R.6th 659

TABLE OF CONTENTS

lists all library source

Research References

Index

Table of Cases, Laws, and Rules

identifies subjects covered in annotation

ARTICLE OUTLINE

§ 1 Scope

§ 2 Background and summary

§ 3 Clause held enforceable

§ 4 Clause held unenforceable

cases and laws from all U.S. jurisdictions

outline of contents of annotation

Research References

The following references may be of related or collateral interest to a user of this annotation.

WEST’S KEY NUMBER DIGEST

Admiralty ⇌ 1.20(2); Consumer Protection ⇌ 36.1; Contracts ⇌ 127(4); Shipping ⇌ 163, 166(2)

WESTLAW DATABASES

Multistate Commercial Law and Contracts Cases (MCML-CS)
 Williston on Contracts 4th (WILLSTN-CN)
 WESTLAW® Search Query: “FORUM SELECTION CLAUSE”/S
 CRUISE

A.L.R. LIBRARY

West’s A.L.R. Digest, Shipping ⇌ 166(2)
 A.L.R. Index, Carriers; Change of Venue; Contracts; Forum Non Conveniens; Ships and Vessels
 Liability of travel publication, travel agent, or similar party for personal injury or death of traveler, 2 A.L.R.5th 396
 Forum non conveniens doctrine in state court as affected by availability of alternative forum, 57 A.L.R.4th 973
 Validity of contractual provision limiting place or court in which action may be brought, 31 A.L.R.4th 404
 Doctrine of forum non conveniens: assumption or denial of jurisdiction of contract action involving foreign elements, 90 A.L.R.2d 1109
 Validity of contractual provision authorizing venue of action in particular place, court, or county, 69 A.L.R.2d 1324
 Liability of motor carrier for loss of passenger’s baggage or packages, 68 A.L.R.2d 1350

research finding tools

FIGURE 1.7 Cont.

CONTRACTS; SHIPPING 6 A.L.R.6th 659
6 A.L.R. 6th 659

FORMS

Am. Jur. Legal Forms 2d, Ships and Shipping §§ 233:131, 233:136
Am. Jur. Pleading and Practice Forms, Carriers § 50

LAW REVIEWS AND OTHER PERIODICALS

Dickerson, The Cruise Passenger's Dilemma: Twenty-First Century Ships, Nineteenth-Century Rights, 28 Tul.Mar. L.J. 447 (2004)
O'Hara, The Jurisprudence and Politics of Forum-Selection Clauses, 3 Chi. J. Int'l L. 301 (2002)
Robertson, Recent Developments in Admiralty and Maritime law at the National Level and in the Fifth and Eleventh Circuits, 27 Tul. Mar. L.J. 495 (2003)

ADDITIONAL REFERENCES

Appellate Materials, Appellants Reply Brief, 2004 WL 1061992
Appellate Materials, Respondent's Brief, 2004 WL 486057
Appellate Materials, Appellants Opening Brief, 2003 WL 23156187

KeyCite®: Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.

INDEX

<p>Age of passenger § 3 Background and summary § 2 Bargaining power, lack of § 3 Bold-face notice § 3 Burden on plaintiff contesting forum selection clause § 3 Cancellation of reservations § 3, 4 Capital letters § 3 Class action § 3 Contingency fee basis, inability to obtain counsel on § 3 Equitable tolling of limitations period § 3 False pretenses § 3 Federal law as governing enforceability of forum selection clauses § 3, 4 Fine print § 4 Food poisoning § 3</p>	<p>Foreign country, forum in § 3 Foreign registry § 3 Fundamental fairness § 3, 4 Illness § 3 Knowledge of provision § 3, 4 Limitations period, expiration of § 3 Maritime contracts § 3, 4 Negotiating power, lack of § 3 Notice of provision § 3, 4 Opportunity to review contract § 3 Penalty for cancellation § 3, 4 Port charges, assessment and collection of § 3 Preemption of field of maritime law by federal law § 3, 4 Presumption of validity of forum selection clause § 3 Public policy § 3</p>
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periodicals

briefs of parties from subject case

Westlaw information

areas discussed in annotation

Aspen Publishers. The specific format of each depends upon the publisher, the nature of the material covered, and the scope of the service.

A few generalizations apply to most looseleaf services. Each usually applies to only one topic; for example, the *Federal Securities Law Reporter* published by CCH relates only to laws regulating securities issuance and transactions. Weekly updates are usually provided in the form of pre-punched supplement or replacement pages to be inserted into the binder in which the service is maintained. Coverage often extends to both state and federal cases relating to the topic, as well as applicable statutes and textual analysis. Looseleaf services are often organized in a complex but extremely effective manner, with numbered paragraphs and topical indexes. For a detailed explanation, refer to the explanatory materials that are included with each service. Often cases are summarized in the text but reprinted in full in companion looseleaf volumes; these companion volumes are organized in a manner similar to reporters, and some looseleaf services ultimately reissue them in permanent bound volumes.

Many of the cases in the looseleaf services are reprinted nowhere else, not even in the reporters of the West system. For this reason, the looseleaf services can be a valuable resource. It is convenient to have textual materials and cases and statutes from many jurisdictions all in one location and with one common system of indexing. Finally, the weekly updates often make the looseleaf services the most current source of information available.

FINDING STATUTES AND CONSTITUTIONS

In addition to finding cases, you will need to locate the text of applicable statutes and constitutions. These sources of law are also organized in a logical fashion.

Slip Laws and Session Laws

The U.S. Congress and the fifty state legislatures pass many bills each year. These bills become statutes with the signature of the president or governor.

The first format in which a newly signed statute appears is called a **slip law**. A slip law is an official publication of a single statute or *act* (a group of related statutes). A slip law usually identifies a public act number or other official designation associated with this single statute or act. The federal government and most states issue slip laws, but they are rarely used for research purposes because there are other, more comprehensive formats in which the new statute will shortly appear.

The second format in which new statutes appear is a compilation called the **session laws**. Session laws are permanent collections of the statutes of one jurisdiction, printed periodically in chronological order of issuance, and with each new edition including only those laws passed since the previous edition. The federal session laws are printed in a series called the *Statutes at Large*. Each of the states has its own version of session laws.

Statutes concerning diverse subjects are generated in each legislative session, with no particular order to their issuance. Session laws are useful for checking recent legislation, but they are often inadequately indexed and difficult to use for comprehensive research.

Codes

The solution to the problem of research in statutes is provided by the code. A **code** is a set of volumes, issued by order of the legislature, that groups statutes by subject matter and is well indexed, in order to make the statutes more accessible for research purposes. Federal statutes are contained in the *United States Code* (cited as *U.S.C.*); check your library to find the government edition of your state's statutory code.

A code is sometimes deemed the official text of some or all of the statutes it contains. It is important to consider, for a moment, this concept of "official" as it applies to statutes. As a practical matter, if one assumes that each version of a text accurately reproduces the true text, it doesn't matter which is official. On occasion, however, the text of one version may contain an error, creating a situation where different versions of the same statute exist. Under such circumstances it becomes important to know which version—slip or session or code—is deemed by the legislature to be the official version. For the federal government, portions of the *United States Code* have been officially adopted, making the code version official for those portions; for other federal statutes, the official version is found in the *Statutes at Large*. You should check your own jurisdiction to verify which version of its statutes is the official one.

slip law

The first format in which a newly signed statute appears.

session laws

The second format in which new statutes appear as a compilation of the slip laws.

codes

Set of volumes that groups statutes by subject matter and is well indexed, in order to make the statutes more accessible for research purposes.



PRACTICE TIP

The first group of numbers in a citation to a code is the title, followed by the name of the code, and finally, the section of the statute. Section is identified as §. Two section §§ symbols together indicates more than one section such as 42 U.S.C. §§ 1-10. When you see a statute cited using the words *et seq.*, it means “and what follows.” This suggests that the statute is being cited for its general contents and appears as follows: 42 U.S.C. §1 *et seq.*

annotated code

A code that provides, in addition to the text of the codified statutes, such information as cases that have construed the statute; law review articles that have discussed it; the procedural history of the statute (amendments or antecedents); cross-references to superseded codifications; cross-references to related statutes; and other information.

legislative history

The transcripts of the legislative debates leading up to the passage of the bill that became the law or statute.

rules of court

The rules that govern the litigation process in civil and criminal proceedings.

Annotated Codes

The availability of this information makes the **annotated codes** valuable reference tools. All states have at least one annotated code, and in some large states publishers issue competing versions. The principal annotated codes for the federal statutes are the *United States Code Annotated (U.S.C.A.)* published by West and the *United States Code Service (U.S.C.S.)* published by LexisNexis. A passage from *West's United States Code Annotated* appears in Figure 1.8. Note the corresponding library references, which assist in the research process.

Most state annotated codes are published in hardbound volumes updated with advance sheets and pocket parts. Some are published in looseleaf format. Provision is generally made for publication of some version of the session laws (usually without annotation, but including an index and possibly a table of codified statutes affected), which may appear even before the government's version of the session laws. You should check your law library to learn more about the annotated code in your state. An excerpt from the Texas Codes Annotated appears in Figure 1.9 along with the corresponding section of the pocket part. Notice in Figure 1.9 that the statute has not been amended or repealed.

Local Ordinances

There are far too many local systems in use to make anything but the broadest generalizations about practices regarding the publishing and availability of local ordinances. Many municipalities have a code of ordinances analogous to a statutory code. Municipal codes rarely have case citations, although there is some coverage in the individual state editions of *Shepard's*. Check your local library for more information about the system in your community.

Legislative History

Sometimes the language of a statute may not be entirely clear, and a dispute may arise over its meaning. In such a case the **legislative history** can be consulted. For some bills the legislative history can be extensive. Legislative histories for federal statutes are generally on file at the more comprehensive law libraries; for those pertaining to state statutes, you may have to dig a little deeper. Go to the state library at your state's capital or the legislative archives; check the location of these records for your own state. To obtain the legislative history of an out-of-state statute, you will almost certainly have to contact a library in that state.

Constitutions

The Constitution of the United States is reprinted and annotated in both the *U.S.C.A.* and *U.S.C.S.* It is also printed by the federal government in a separate pamphlet, and can be found as an appendix in a wide variety of sources. The availability of annotation information is as important (perhaps even more important) when researching the Constitution as when researching statutes, in that the impact and accepted meaning of the broad provisions of the Constitution can only be gauged through an analysis of court interpretations. A passage from the text of the U.S. Constitution is shown in Figure 1.10.

The text of state constitutions is likewise found in annotated state codes (and unannotated versions as well). State constitutions vary widely in terms of length and depth of coverage, with some going into great detail about the workings of state government. Access to the cases and cross-references found in the annotations remains important.

There are many other resources relating to the Constitution and state constitutions. However, for most of your purposes as a paralegal, the constitutional texts found in the annotated codes will adequately fulfill your requirements.

Court Rules

Annotated in the *U.S.C.A.* and *U.S.C.S.* and reprinted under separate cover are the **rules of court**. The court rules govern the litigation process in civil and criminal proceedings. (Civil law resolves disputes between parties and often involves some type of monetary compensation for the wrongful acts of another party. On the other hand, criminal law involves

FIGURE 1.8 A Passage from *West’s United States Code Annotated*

Source: From *West’s United States Code Annotated*. Reprinted with permission from Thomson West.

§ 154. Regulations for preparation and sale; licenses

The Secretary of Agriculture is hereby authorized to make and promulgate from time to time such rules and regulations as may be necessary to prevent the preparation, sale, barter, exchange, or shipment as aforesaid of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, or otherwise to carry out this chapter, and to issue, suspend, and revoke licenses for the maintenance of establishments for the preparation of viruses, serums, toxins, and analogous products, for use in the treatment of domestic animals, intended for sale, barter, exchange, or shipment as aforesaid.

section from U.S. code annotation

(Mar. 4, 1913, c. 145, § 1 [part], 37 Stat. 832; Dec. 23, 1985, Pub.L. 99–198, Title XVII, § 1768(b), 99 Stat. 1654.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1985 Acts. House Report No. 99–271(Parts I and II), Senate Report No. 99–145, and House Conference Report No. 99–447, see 1985 U.S. Code Cong. and Adm. News, p. 1103.

Amendments

1985 Amendments. Pub.L. 99–198, § 1768(b), inserted “or otherwise to carry out this section”.

statutory history and amendments

Codifications

Another section 1768 of Pub.L. 99–198 amended section 136y of Title 7, Agriculture.

FEDERAL SENTENCING GUIDELINES

Violations of statutes and regulations dealing with any food, drug, biological product, device, cosmetic, or agricultural product, see § 2N2.1, 18 USCA.

research sources

LIBRARY REFERENCES

Administrative Law

Licensing and permits for use of biological products, see 9 CFR § 101.1 et seq.

applicable *Code of Federal Regulations*

Encyclopedias

25 Am Jur 2d, Drugs and Controlled Substances § 129.

secondary source explanation of statute topic

Forms

10 Federal Procedural Forms L Ed, Foreign Trade and Commerce § 33:1.

FIGURE 1.8 Cont.

21 § 154 **FOOD AND DRUGS Ch. 5**

Law Review and Journal Commentaries
Federal regulation of agricultural biotechnologies. Thomas O. McGarity, U.Mich.J.L.Ref. 1089 (1987).

Texts and Treatises
Food, Drugs, and Cosmetics, 13 Fed Proc L Ed § 35:491.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

Notes of Decisions

State regulation and control 1

1. State regulation and control
Animal and Plant Health Inspection Service's (APHIS) preemption of state laws that "impose requirements which are different from, or in addition to, those imposed by [United States Department of Agriculture (USDA)]" regarding the safe-ty, efficacy, potency, purity, or labeling of licensed vaccines preempts inconsistent substantive state law "requirement," but not state common law remedies, and thus, common-law claims are not preempted to the extent that they seek relief for alleged violations of the federal substantive standards. *Symens v. Smith Kline Beecham Corp.*, C.A.8 (S.D.) 1998, 152 F.3d 1050.

secondary source material

caselaw on topic

the wrongful acts committed by an individual against society. Normally, state and federal legislatures define those acts that violate society's standards, imposing a punishment, such as imprisonment, fines, or in extreme cases, death, for violation of those standards.) The rules used to guide the civil process in the federal courts are the Federal Rules of Civil Procedure, and for criminal cases, the Federal Rules of Criminal Procedure. These rules control the court process and are the guide for judges and attorneys in litigating or prosecuting a case.

Other types of court rules are the Rules of Evidence, governing the admission of evidence at a trial, and Rules of Appellate Procedure, governing the parties on an appeal. These rules are often located in either the federal codes or, at the local level, in state codes. The complexity of the rules of court is compounded even further because many courts have their own rules for their individual courts, known as **local rules**. These rules supplement the existing rules of court and also must be consulted when practicing in any court, whether state or federal. The local rules for the district court for the northern district of Indiana are shown in Figure 1.11.

local rules

Individual rules for a particular court that supplement the other rules of court.

FINDING ADMINISTRATIVE REGULATIONS AND DECISIONS

There is a wide variety of federal, state, and municipal agencies that issue regulations. The ability to find these regulations and the administrative decisions construing them is an important element of your skills as a paralegal.

Federal

Federal regulations have been printed for over fifty years in the *Federal Register*, a daily journal of all regulations (as well as proclamations, orders, and notices) issued by federal agencies. The *Federal Register* (cited as *Fed. Reg.*) is analogous to the *Statutes at Large* in that it publishes regulations chronologically, rather than by subject, and thus is unwieldy for comprehensive research. There is an annual compilation of all effective regulations arranged by subject, however, called

FIGURE 1.9 An Excerpt from the Texas Codes Annotated

Source: From *Vernon's Texas Codes Annotated*, Volume 4, 2005. Reprinted with permission from Thomson West.

code section

title of code section

penalty section of state

legal research references

COMPETITION & TRADE PRACTICES

Title 2

§ 17.62

§ 17.62. Penalties

(a) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Section 17.60 or 17.61 of this subchapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material or merchandise or sample of merchandise is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000 or by confinement in the county jail for not more than one year, or both.

(b) If a person fails to comply with a directive of the consumer protection division under Section 17.60 of this subchapter or with a civil investigative demand for documentary material served on him under Section 17.61 of this subchapter, or if satisfactory copying or reproduction of the material cannot be done and the person refuses to surrender the material, the consumer protection division may file in the district court in the county in which the person resides, is found, or transacts business, and serve on the person, a petition for an order of the court for enforcement of Sections 17.60 and 17.61 of this subchapter. If the person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his principal place of business, or in another county agreed on by the parties to the petition.

(c) When a petition is filed in the district court in any county under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provisions of Sections 17.60 and 17.61 of this subchapter. Any final order entered is subject to appeal to the Texas Supreme Court. Failure to comply with any final order entered under this section is punishable by contempt.

Added by Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.

Historical and Statutory Notes

Prior Laws:
 Acts 1969, 61st Leg., p. 1504, ch. 452, § 1.
 Vernon's Ann.Civ.St. art. 5069–10.08.

Law Review and Journal Commentaries

Taking Texas home equity for a walk, but keeping it on a short leash!, 30 Tex. Tech L.Rev. 197 (1999).

Library References

Consumer Protection ¶ 50.
 Westlaw Topic No. 92H.
 C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237–238.
 6 Texas Pl & Pr Forms, DTPA (Deceptive Trade Practices Act) §§100A:37, 100A:42, 100A:43, 100A:46, 100A:47.

Texts and Treatises

13 Texas Jur 3d, Consum L § 6.

FIGURE 1.9 Cont.

	<p>DECEPTIVE TRADE PRACTICES § 17.63 Ch. 17 Note 2</p>
case decisions on the topic	<p style="text-align: center;">Notes of Decisions</p> <p>Injunction violations 1</p> <hr style="width: 20%; margin-left: 0;"/> <p>1. Injunction violations In action for civil penalties against credit bureau in potential amount of \$70,000 for alleged violation of injunction against deceptive practices, credit bureau was entitled to jury trial on fact issues relating to whether credit bureau had knowingly violated the injunction and, if so, the amount of penalty to be assessed. Credit Bureau of Laredo, Inc. v. State (Civ. App. 1974) 515 S.W.2d 706, error granted, affirmed 530 S.W.2d 288.</p>
pocket part	<p style="text-align: right;">§ 17.63</p> <p>COMPETITION & TRADE PRACTICES Title 2</p>
statutory reference in pocket part	
no amendments or changes to statutory section	<p>§ 17.62. Penalties</p> <p style="text-align: center;">Research References</p> <p>ALR Library 117 ALR 5th 155, Right to Private Action Under State Consumer Protection Act—Preconditions to Action.</p> <p>Encyclopedias TX Jur. 3d Consumer & Borrower Protection Laws § 209, Penalties and Enforcement.</p> <p>Forms Texas Jurisprudence Pleading & Practice Forms 2d Ed § 20:5, Petition-Multiple Grounds for Relief-For Disqualification from County Fair.</p> <p style="text-align: right;">Texas Jurisprudence Pleading & Practice Forms 2d Ed § 100A:34, Penalties.</p> <p>Treatises and Practice Aids Lange and Leopold, 4 Tex. Prac. Series § 868, Limitation Periods on Actions for Debt. Cochran, 27 Tex. Prac. Series § 1.5, Dtpa-Statutory Approach-Overview.</p>
new research references	<p style="text-align: center;">Notes of Decisions</p> <p>Federal actions 2</p> <hr style="width: 20%; margin-left: 0;"/> <p>2. Federal actions The \$75,000 amount in controversy requirement for removed diversity case was satisfied in insureds’ action against homeowners’ insurer asserting breach of contract and other state law claims arising from insurer’s denial of claim filed after insureds discovered toxic mold in their house, where, in addition to \$48,890 in property damages, insureds’ petition sought mental anguish damages, damages arising from future disease and medical complications, damages for costs of monitoring, remediating and preventing mold in the future, treble damages and statutory damages under the Texas Deceptive Trade Practices Act, treble damages and statutory damages under the Texas Insurance Code, exemplary damages, and attorneys’ fees. Lewis v. State Farm Lloyds; S.D.Tex.2002, 205 F.Supp.2d 706. Removal Of Cases ⇐ 74</p>
recent cases on topic	

FIGURE 1.10 A Passage from the Text of the U.S. Constitution**U.S. Constitution****Amendments to the Constitution of the United States of America**

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the several states, pursuant to the Fifth Article of the original Constitution

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article III.**Section 1.**

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

FIGURE 1.11 Local Rule for the District Court for the Northern District of Indiana**L.R. 5.1****General Format of Papers Presented for Filing**

(a) **Form, Style, and Size of Papers.** In order that the files of the clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the clerk for filing shall be flat and unfolded. All filings shall be on white paper of good quality, 8-1/2" x 11" in size, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double spaced, except for headings, footnotes and quoted material. The filings shall have no covers or backs and shall be fastened together at the top left corner and at no other place. The filings shall be two-hole punched at the top (the holes shall be 2 3/4" apart and appropriately centered). The title of each pleading must be set out on the first page. Each page shall be numbered consecutively. Any paper presented to the clerk for filing which contains four or more exhibits shall include a separate index identifying and briefly describing each exhibit. The court encourages the use of recycled paper.

(b) **Signature.** Every pleading, motion, or other paper shall clearly identify the name, complete address, telephone number, facsimile number (where available) and email address (where available) of the *pro se* litigant or attorney. The original of any pleading, motion or other paper that contains a rubber stamp or facsimile signature shall be deemed unsigned for purposes of Fed. R.Civ. P. 11 and 26(g). Affidavits shall require only the signature of the affiant.

(c) **Number of Copies; Return of File-stamped Copies.** An original and one copy of all pleadings, motions, and other papers shall be submitted for filing unless ordered otherwise. If a party wishes to receive by return mail a file-stamped copy of the pleading, motion, or paper, the party shall include an additional copy to be file-stamped, and a self-addressed envelope of adequate size and with adequate postage.

**PRACTICE TIP**

Pay close attention to the local rules of courts. Documents that you file may be rejected because you don't follow a local rule. If you and your attorney are practicing in a new court, *always* check the local rules of court for that court's nuances. Doing so could mean the difference between success and failure on a case, or worse, cost you your job.

the *Code of Federal Regulations* (cited and often abbreviated as *C.F.R.*). By checking the current *C.F.R.* and all subsequent issues of the *Federal Register*, you can identify those regulations effective in a given area. Figure 1.12 shows a passage from the *Federal Register*; Figure 1.13 shows a passage from the *C.F.R.*

Administrative agencies also render quasi-judicial decisions. There is no single federal publication that gathers all administrative decisions in one place, as the *C.F.R.* does for federal regulations. Rather, every agency publishes its own decisions. For example, the Equal Employment Opportunity Commission publishes its decisions in a series called *EEOC Decisions* published by Commerce Clearing House. For more specific information, you can contact the relevant agency directly or check the looseleaf services devoted to the relevant topic (these services include regulations and administrative decisions in their coverage).

State and Local

The systems employed by the states and municipalities to compile administrative regulations and decisions vary widely, although many are based loosely on the federal format already described. Some jurisdictions update their publication of regulations fairly frequently, others only occasionally. In many instances you must contact the relevant agency directly in order to identify the current effective regulations. You should learn the system that applies in your state and in any local jurisdiction in which you will be working.

THE HIERARCHY OF THE LAW

This chapter illustrated the types of primary legal source material found in legal research. They are generally constitutions, statutes, cases, court rules, and administrative rules and regulations. Remember, a primary source is the law itself. When researching, is one primary source more authoritative than another? Which one should be used and how?

The U.S. Constitution is the "supreme law" of the land. When you are researching a problem, bear in mind that the U.S. Constitution prevails over all other primary sources of the law.

FIGURE 1.12 Example of *Federal Register*

76504 Federal Register/ Vol. 70, No. 247/Tuesday, December 27, 2005/Rules and Regulations		
<p>FEDERAL COMMUNICATIONS COMMISSION</p> <p>47 CFR Part 76</p> <p>[MB Docket No. 05-49; FCC 05-187]</p> <p>Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Implementation of Section 340 of the Communications Act; Report and Order</p> <p>AGENCY: Federal Communications Commission.</p> <p>ACTION: Final rule.</p> <p>SUMMARY: In this document, the Commission adopts final rules implementing section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), which creates Section 340 of the Communications Act ("Act"), and amends the copyright laws in order to provide satellite carriers with the authority to offer Commission-determined "significantly-viewed" signals of out-of-market broadcast stations to subscribers. This document satisfies the statutory mandate to adopt rules for satellite carriage of significantly viewed signals by December 8, 2005.</p> <p>DATES: Effective January 26, 2006.</p> <p>FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov of the Media Bureau, Policy Division, (202) 418-2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1-C823, Washington, DC 20554, or via the Internet to Cathy.Williams@fcc.gov.</p> <p>SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order, FCC 05-187, adopted on November 2, 2005 and released on November 3, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (http://www.fcc.gov/cgb/ecfs/). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street,</p>	<p>SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).</p> <p>Final Paperwork Reduction Act Analysis</p> <p>This Report and Order contains modified information collection requirements, which were proposed in the <i>NPRM</i>, 70 FR 11314 (March 8, 2005), and are subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13, 109 Stat 163 (1995). These information collection requirements were submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA and approved by OMB on May 25, 2005. In addition, the general public and other Federal agencies were invited to comment on these information collection requirements in the <i>NPRM</i>. We further note that pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." We received no comments concerning these information collection requirements. On June 16, 2005, the Commission announced that it had obtained OMB approval for these information collection requirements, encompassed by OMB Control Nos. 3060-0311, 3060-0888, and 3060-0960. This Report and Order adopts the following information collection requirements, as proposed in the <i>NPRM</i>.</p> <p>OMB Control Number: 3060-0311. OMB Approval Date: 05/25/05. OMB Expiration Date: 05/31/08. Title: 47, CFR 76.54, Significantly Viewed Signals; Method to be Followed for Special Showings. Form Number: Not applicable. Type of Review: Revision of a currently approved collection. Respondents: Business or other for-profit entities. Number of Respondents: 500. Frequency of Response: On occasion reporting requirement; Third party disclosure requirement. Estimated Time Per Response: 1-15 hours (average). Total Annual Burden: 20,610 hours. Total Annual Costs: \$200,000. Privacy Impact Assessment: No impact(s). Needs and Uses: 47 CFR 76.54(b) provides for cable operators and</p>	<p>broadcast stations seeking cable carriage of "significantly viewed" signals to use the § 76.7 petition process to demonstrate "significantly viewed" status on a community basis by independent professional audience surveys. The rule changes require satellite carriers or broadcast station seeking satellite carriage of "significantly viewed" signals to use in same petition process now in place for cable operators, as required by 47 CFR 76.5, 76.7 and 76.54 of the FCC's rules.</p> <p>47 CFR 76.54(c) is used to notify interested parties, including licensees or permittees of television broadcast stations, about independent professional audience surveys that are being conducted by an organization to demonstrate that a particular broadcast station is eligible for significantly viewed status under the Commission's rules. The notifications provide interested parties with an opportunity to review survey methodologies and file objections. The existing notification requirement in § 76.54(c) is retained, however, the rule changes will increase the potential number of parties that would file such notifications.</p> <p>47 CFR 76.54(d) provides for cable operators and broadcast stations seeking cable carriage of "significantly viewed" signals to use the § 76.7 petition process to demonstrate "significantly viewed" status. The rule changes will expand use of the § 76.7 petition process to include petitions filed by satellite carriers or broadcast stations seeking satellite carriage of "significantly viewed" signals.</p> <p>47 CFR 76.54(e) and (f) are additions to the rule. These rules will be used to notify television broadcast stations about the retransmission of significantly viewed signals by a satellite carrier into these stations' local market.</p> <p>OMB Control Number: 3060-0888. OMB Approval Date: 05/25/05. OMB Expiration Date: 05/31/08. Title: Part 76, Multichannel Video and Cable Television Service; Pleading and Complaint Rules; 47 CFR 76.7 Petition Procedures. Form Number: Not applicable. Type of Review: Revision of a currently approved collection. Respondents: Business or other for-profit entities. Number of Respondents: 500. Frequency of Response: On occasion reporting requirement; Third party disclosure requirement. Estimated Time Per Response: 4-60 hours (average). Total Annual Burden: 16,000 hours. Total Annual Costs: \$200,000. Privacy Impact Assessment: No impact(s).</p>

FIGURE 1.13 Passage from *Code of Federal Regulations*

**SUBCHAPTER E—VIRUSES, SERUMS, TOXINS, AND
ANALOGOUS PRODUCTS; ORGANISMS AND VECTORS**

PART 101—DEFINITIONS

Sec.

- 101.1 Applicability.
- 101.2 Administrative terminology.
- 101.3 Biological products and related terms.
- 101.4 Labeling terminology.
- 101.5 Testing terminology.
- 101.6 Cell cultures.
- 101.7 Seed organisms.

AUTHORITY: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 38 FR 8426, Apr. 2, 1973, unless otherwise noted.

§ 101.1 Applicability.

When used in parts 101 through 117 of this subchapter, the meaning of the words and phrases listed shall be as defined in this part.

§ 101.2 Administrative terminology.

The following administrative words and phrases shall mean:

Adjacent herd. Adjacent herds are herds physically contiguous to the herd of origin; there are no herds between an adjacent herd and the herd of origin.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The agency in the Department of Agriculture responsible for administering the Virus-Serum-Toxin Act.

Biological products. The term *biological products*, also referred to in this subchapter as biologics, biologicals, or products, shall mean all viruses, serums, toxins (excluding substances that are selectively toxic to microorganisms, e.g., antibiotics), or analogous products at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals and which act primarily through the direct stimulation, supplementation, enhancement, or modulation of the immune system or immune response. The term “biological products” includes but is not limited to vaccines, bacterins, allergens, antibodies, antitoxins, toxoids,

immunostimulants, certain cytokines, antigenic or immunizing components of live organisms, and diagnostic components, that are of natural or synthetic origin, or that are derived from synthesizing or altering various substances or components of substances such as microorganisms, genes or genetic sequences, carbohydrates, proteins, antigens, allergens, or antibodies.

(1) A product’s intended use shall be determined through an objective standard and not a subjective one, and would be dependent on factors such as representations, claims (either oral or written), packaging, labeling, or appearance.

(2) The term *analogous products* shall include:

(i) Substances, at any stage of production, shipment, distribution; or sale, which are intended for use in the treatment of animals and which are similar in function to biological products in that they act, or are intended to act, through the stimulation, supplementation, enhancement, or modulation of the immune system or immune response; or

(ii) Substances, at any stage of production, shipment, distribution, or sale, which are intended for use in the treatment of animals through the detection or measurement of antigens, antibodies, nucleic acids, or immunity; or

(iii) Substances, at any stage of production, shipment, distribution, or sale, which resemble or are represented as biological products intended for use in the treatment of animals through appearance, packaging, labeling, claims (either oral or written), representations, or through any other means.

(3) The term *treatment* shall mean the prevention, diagnosis, management, or cure of diseases of animals.

Department. The U.S. Department of Agriculture.

Distributor. A person who sells, distributes, or otherwise places in channels of trade, one or more biological

Similarly, state constitutions set out the rights of its citizens. Those rights may not conflict, limit, or decrease the rights granted by the U.S. Constitution, although some state constitutions have extended rights afforded under our Constitution. That is permissible.

The next tier of primary authority is a statute. The Congress of the United States passes legislation subject to signing or veto by the president. Similarly, states have legislatures, which pass legislation signed or vetoed by their respective governors. Any statute passed must not conflict with the U.S. Constitution. And notably, state statutes may not conflict with federal statutes. Federal law preempts state law, which means that states cannot pass laws that conflict with federal law. Think about when you pass through security to board an airplane. The security check is governed by federal law, and as such, states cannot pass laws that interfere or conflict with the process.

Along with statutes, administrative rules and regulations have the full force of law. Although there are no specific constitutional provisions creating administrative agencies, Congress and state legislatures have passed legislation creating individual agencies and defining their powers. The rules and regulations that are ultimately adopted are the law.

Albeit a primary source of the law, case law interprets constitutions, statutes, and administrative rules and regulations. When cases are decided that have far-reaching social and political implications, legislatures may attempt to circumvent a case decision by passing a law that directly overturns that case law. For example, a court finds that burning the American flag is free speech under the First Amendment of the U.S. Constitution. Congress disagrees with that result and passes a statute that makes it illegal to burn the American flag. Now, the law is challenged in court. The U.S. Supreme Court finds that the law violates the U.S. Constitution. If the Court holds that the statute violates the Constitution, then the law is struck down. Therein lies the dichotomy of the law through its hierarchy.

The goal in legal research is to find the best primary sources of the law that apply to your research problem. Unfortunately, the primary sources of the law are not always the most instructive on the subject. Often, it is easier to understand the law or begin your legal research by reviewing a source that presents an overview of a topic. Those sources are the secondary source material defined in the next section.

SECONDARY SOURCES

All the materials we've discussed in this chapter have been primary sources. There are a variety of secondary sources as well—sources a step removed from the primary authority, but valuable for their analytic insights and useful explanations.

Legal Encyclopedias

legal encyclopedia
A multivolume compilation that provides in-depth coverage of every area of the law.

A **legal encyclopedia** is a multivolume compilation that provides in-depth coverage of every area of the law. Such a purpose is difficult to achieve in practice: Legal encyclopedias tend to overgeneralize and are thus rarely cited as authority for a point of law. They should not be disregarded in conducting research, however, since they provide useful general information about a broad range of topics, and can thus be used to obtain background information about an unfamiliar area. They also provide citations to cases, a useful starting point for research. Encyclopedias use footnotes extensively to communicate relevant information. Be sure to review the footnotes when reading a legal encyclopedia.

There are two well-known legal encyclopedias, both now West publications. The first is called *Corpus Juris Secundum* (cited as *C.J.S.*). The *C.J.S.* set references the West Key Number System, so that researchers can often go directly from the encyclopedia review to the appropriate digest volume to find relevant case law quickly. (The key system is discussed in Chapter 2.) Figure 1.14 is an example of a List of Titles in *C.J.S.* with Figure 1.15 referencing a passage from the section on Landlord & Tenant.

The second set, *American Jurisprudence*, 2d (cited as *Am. Jur. 2d*), includes references to *A.L.R.* annotations as well as cases from all reporters. Like *C.J.S.*, *Am. Jur. 2d* is very useful for learning and as a starting place for research but is not looked upon as authoritative. A page from *Am. Jur. 2d* is referenced in Figure 1.16. The subject of the topic is landlord/tenant relations. Compare the *Am. Jur.* and *C.J.S.* texts on the landlord and tenant issue.

Encyclopedias have also been published summarizing the law of some of the larger states, including Texas (*Texas Jurisprudence 2d*), New York (*New York Jurisprudence 2d*), Illinois (*Illinois Law and Practice*), and several others. These encyclopedias have strengths and limitations similar to those of *C.J.S.* and *Am. Jur. 2d*.

FIGURE 1.14 List of Titles in *Corpus Juris Secundum*Source: From *Corpus Juris Secundum*. Reprinted with permission from Thomson West.

LIST OF TITLES IN CORPUS JURIS SECUNDUM

Abandonment	Assumpsit, Action of	Collision
Abatement and Revival	Asylums and Institutional Care	Commerce
Abduction	Facilities	Common Lands
Abortion and Birth Control;	Attachment	Common Law
Family Planning	Attorney and Client	Compounding Offenses
Absentees	Attorney General	Compromise and Settlement
Abstracts of Title	Auctions and Auctioneers	Concealment of Birth or Death
Accession	Audita Querela	Conflict of Laws
Accord and Satisfaction	Bail; Release and Detention	Confusion of Goods
Account, Action on	Pending Proceedings	Conspiracy
Accountants	Bailments	Constitutional Law
Accounting	Bankruptcy	Contempt
Account Stated	Banks and Banking	Continuances
Acknowledgments	Beneficial Associations	Contracts
Actions	Bigamy and Related Offenses	Contribution
Adjoining Landowners	Bills and Notes; Letters of Credit	Conversion
Admiralty	Bonds	Convicts
Adoption of Persons	Boundaries	Copyrights and Intellectual
Adulteration	Breach of Marriage Promise	Property
Adultery	Breach of the Peace	Coroners and Medical Examiners
Adverse Possession	Bribery	Corporations
Aeronautics and Aerospace	Bridges	Costs
Affidavits	Brokers	Counterfeiting
Affray	Building and Loan Associations,	Counties
Agency	Savings and Loan Associations,	Courts
Agriculture	and Credit Unions	Covenants
Aliens	Burglary	Credit Reporting Agencies;
Alteration of Instruments	Business Trusts	Consumer Protection
Ambassadors and Consuls	Canals	Creditor and Debtor
Amicus Curiae	Cancellation of Instruments;	Criminal Law
Animals	Rescission	Crops
Annuities	Carriers	Customs and Usages
Appeal and Error	Cemeteries	Customs Duties
Appearances	Census	Damages
Apprentices	Certiorari	Dead Bodies
Arbitration	Champerty and Maintenance;	Death
Architects	Barratry and Related Matters	Debt, Action of
Armed Services	Charities	Declaratory Judgments
Arrest	Chemical Dependents	Dedication
Arson	Children Out-of-Wedlock	Deeds
Assault and Battery	Citizens	Depositaries
Assignments	Civil Rights	Depositions
Assistance, Writ of	Clubs	Deposits in Court
Associations	Colleges and Universities	Descent and Distribution

FIGURE 1.15 Landlord and Tenant Reference in *Corpus Juris Secundum*

Source: From *Corpus Juris Secundum*. Reprinted with permission from Thomson West.

LANDLORD & TENANT

§ 60

privity of contract.² However, by merely assigning a lease, the lessee only places the assignee in the same relationship with the lessor as was occupied by the lessee, and nothing else is implied as against the assignor.³

Assignee's liability to assignor.

Where an assignee covenants to perform all the covenants in the original lease, he or she is liable to the lessee-assignor in the same manner as the lessee is liable to the original lessor.⁴ Where the lessee, after assigning his or her lease, receives a new lease from the landlord to commence on the expiration of the original lease, and the assignee holds over after such expiration, the lessee can recover from the assignee whatever damages are the natural and proximate result of the wrongful trespass of the assignee.⁵

6. Construction and Operation of Subleases

§ 59 Generally

A sublease creates a new estate; the construction and operation of a sublease depend generally on the language of the agreement and the circumstances of the case.

Research References

- 324 Ill. App. 229, 57 N.E.2d 756 (1st Dist. 1944).
 Mass.—Maybury Shoe Co. v. Izenstatt, 320 Mass. 397, 69 N.E.2d 666 (1946).
 N.J.—Conover v. Solar Oil Co., 14 N.J. Misc. 127, 182 A868 (Sup. Ct. 1936).
²Ky.—Entroth Shoe Co. v. Johnson, 260 Ky. 309, 85 S.W.2d 686 (1935).
 Minn.—Kostakes v. Daly, 246 Minn. 312, 75 N.W.2d 191 (1956).
³Neb.—Beltner v. Carlson, 153 Neb. 797, 46 N.W.2d 153 (1951).
⁴Ariz.—Catalina Groves v. Oliver, 73 Ariz. 38, 236 P.2d 1022 (1951).
 Iowa—L. P. Courshon Co. v. Brewer, 215 Iowa 885, 245 N.W. 354 (1932).
⁵Pa.—Taylor v. Kaufhold, 368 Pa. 538, 84 A.2d 347, 32 K.A.L.R.2d 575 (1951).

[Section 59]

§ 49.

²Ark.—Jaber v. Miller, 219 Ark. 59, 239 S.W.2d 760 (1951).

As to distinctions between assignments and subleases, see § 50.

West's Key Number Digest, Landlord and Tenant ⇐ 80(1)

While an assignment of a lease transfers an existing estate into new hands,¹ a sublease creates a new estate.² When a lease is transferred by a sublease, a new lessor-lessee relationship is created between the original lessee and the sublessee, but the original lessee retains both privity of estate and privity of contract with the original lessor and no legal relationship is created between the lessor and sublessee.³

The same rules apply to a sublessor-sublessee relationship as are applicable to a lessor-lessee relationship.⁴ However, the construction and operation of a particular sublease depend on all the circumstances of the case and on the language of the agreement construed in accordance with the usual rules of construction.⁵

§ 60 Liability of original tenant to landlord

A subletting does not change the relationship of the landlord and the original tenant, or relieve the tenant of liability on the covenants of the lease, unless this is done by the original lease, or by some other transaction or agreement, such as a surrender and a substitution of tenants.

Research References

- ³Md.—Italian Fisherman, Inc. v. Middlemas, 313 Md. 156, 545 A.2d 1 (1988).
⁴Neb.—Krance v. Faeh, 215 Neb. 242, 338 N.W.2d 55 (1983).
⁵Cal.—Roadside Rest, Inc. v. Lankershim Estate, 76 Cal. App. 2d 525, 173 P.2d 554 (2d Dist. 1946).
 Ill.—Sixty-Third & Halsted Realty Co. v. Goldblatt Bros., 342 Ill. App. 389, 96 N.E.2d 838 (1st Dist. 1951), judgment aff'd, 410 Ill. 468, 102 N.E.2d 749 (1951).
 Ind.—Bowers v. Sells, 125 Ind. App. 324, 123 N.E.2d 194 (1954).
 Mo.—First Trust Co. v. Downs, 230 S.W.2d 770 (Mo. Ct. App. 1950).
 Pa.—McRoberts v. Stadelman, 168 Pa. Super. 489, 79 A.2d 119 (1951).
 As to the construction and operation of leases, generally, see §§ 412 to 466.

Contract construction rules applicable

The interpretation and construction of a sublease is governed by the principles of interpretation and construction of contracts generally.

Iowa—Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22 (Iowa 1978).

FIGURE 1.16 A Page from *American Jurisprudence*Source: From *American Jurisprudence*. Reprinted with permission from Thomson West.

49 Am Jur 2d LANDLORD AND TENANT § 1158

conveyance to one who is described by a fictitious or assumed name is valid,¹⁸ and accordingly, the reassignment of the term by an assignee although the name of the second assignee is an assumed one, if intended as a bona fide assignment, will be effectual to relieve the assignor of further liability to the lessor, since it effectually destroys the privity of estate.¹⁹

C. SUBLEASE [§§ 1157–1186]

Research References

ALR Digest: Landlord and Tenant §§ 88 et seq.

ALR Index: Landlord and Tenant

16A Am Jur PI & Pr Forms (Rev), Landlord and Tenant, Forms 421 et seq.

11 Am Jur Legal Forms 2d, Leases of Real Property §§ 161:1241 et seq.

1. IN GENERAL [§§ 1157–1161]

§ 1157. Generally

A sublease is a grant by a tenant of an interest in the rented premises less than his or her own, retaining to himself or herself a reversion, and a subtenant is a person who rents all or a portion of leased premises from the lessee for a term less than the original one, leaving a reversionary interest in the first lessee.²⁰ Where the sublease is for the whole term, it is in law an assignment as between the original lessor and the sublessee, but may be given effect as a contract as between the sublessor and sublessee.²¹ An instrument in the form of a sublease is not to be regarded as an assignment so as to transfer the entire interest of the lessee and divest him or her of any reversionary estate or right of re-entry, where the negotiations were for a sublease, the original lessors' consent was to a sublease, the instrument was so designated, the rent was to be paid by the sublessee to the sublessor, the parties were referred to as lessor and lessee, the pleadings referred to the instrument as a sublease, and there were later transactions between the parties with reference to a separate assignment.²²

§ 1158. Right to sublet

It is well settled that in the absence of restrictions thereon by the parties,²³ or

18. 23 Am Jur 2d, Deeds §§ 33 et seq.

19. *Hartman v Thompson*, 104 Md 389, 65 A 117.

20. *Jackson v Sims* (CA8 Okla) 201 F2d 259; *Coles Trading Co. v Spiegel, Inc.* (CA9 Ariz) 187 F2d 984, 24 ALR2d 702; *Haynes v Eagle-Picher Co.* (CA10 Kan) 295 F2d 761, 16 OGR 28, cert den 369 US 828, 7 L Ed 2d 794, 82 S Ct 846; *Johnson v Moxley*, 216 Ala 466, 113 So 656; *Cities Service Oil Co. v Taylor*, 242 Ky 157, 45 SW2d 1039, 79 ALR 1374; *Marcelle, Inc. v Sol. & S. Marcus Co.*, 274 Mass 469, 175 NE 83, 74 ALR 1012; *Davidson v Minnesota Loan & Trust Co.*, 158 Minn 411, 197 NW 833,

32 ALR 1418.

Restatement 2d, Property § 95.

Forms: Sublease—Office space. 11A Am Jur Legal Forms 2d §§ 161:1251, 161:1252.

—Short form. 11A Am Jur Legal Forms 2d §§ 161:1253.

21. *Davidson v Minnesota Loan & Trust Co.*, 158 Minn 411, 197 NW 833, 32 ALR 1418.

As to assignments, see §§ 1076 et seq.

22. *Coles Trading Co. v Spiegel, Inc.* (CA9 Ariz) 187 F2d 984, 24 ALR2d 702.

23. §§ 1162 et seq.

restatement

A recitation of the common law in a particular legal subject.

Restatements

The uniform laws were drafted with the hope of standardizing state statutes in selected areas of law. The **restatements** were conceived to perform a similar purpose for the common law. In the 1920s a group of distinguished legal experts formed the American Law Institute for the purpose of drafting organized and detailed studies of the common law in certain areas. They feared that the growing complexity and inconsistency of common law would undermine our legal system; their solution was to create a body of law approved by an independent committee of distinguished legal scholars and available to all who wished to cite to it. *Restatements* have been issued in several areas of the law (including contracts, property law, torts, and conflict of laws, among others). Subsequent developments have resulted in the issuance of second editions in several areas, for example, the *Restatement of the Law of Torts, 2d*.

The courts have been receptive to the law as expressed in the *Restatements*, which now carry more authoritative weight than the legal encyclopedias. However, you should keep in mind that the *Restatements*, as a secondary authority, do not overrule existing case precedent in a jurisdiction. They might persuade a court, but they can never mandate a particular result unless adopted by the state.

The text of the restatements may provide useful support if you are attempting to overturn a precedent in your jurisdiction that goes against generally accepted restatement doctrine. In addition to the text, you may also find that the cross-references to cases are useful.

treatise

A scholarly study of one area of the law.

Treatises and Texts

A **treatise** is a scholarly study of one area of the law. Treatises differ from restatements in that they are usually the work of one author or group of authors, rather than the result of a collective effort such as that expended to make the restatements so broadly accepted.

Treatises vary with regard to the force of their persuasiveness. Some, like William Prosser's classic text on tort law, currently published by West as *Prosser and Keeton on the Law of Torts*, 5th ed. (West 1984), is widely recognized as authoritative and often cited by the courts. Others are less widely accepted.

Treatises also vary with regard to depth of treatment. Some are multivolume, some a single volume. A one-volume treatise is commonly referred to as a *text*. West publishes a series of one-volume scholarly **texts** known collectively as **hornbooks** (the Prosser work is part of this series), as well as much less thorough paperback treatments known collectively as the **nutshell** series. Nutshells generally provide good introductions to areas with which you are not familiar, whereas hornbooks fill in many more of the gaps. Neither hornbooks nor nutshells are often cited in legal briefs on disputed points (Prosser being a notable exception), although generally accepted legal principles are sometimes informally categorized as "hornbook law."

Some treatises are multivolume works covering a subject area in extraordinary detail, and some of these have had wide acceptance by the courts over the years (*Wigmore on Evidence* is a good example). Whether or not persuasive when cited to the court, such comprehensive treatises are usually useful for the purpose of learning about an area of law or finding cases on point.

When using a treatise or text, there is one important consideration to keep in mind. You must determine whether the scholarly purpose of the author(s) was to state the law as it *is* or as it *should be*. If the text is presenting the law as it is, it will be valuable as a tool to find primary sources. If the text is presenting the law as it should be, the persuasive value of the conclusions will be affected by their relationships to existing precedent, in conjunction with the logic of the argument presented and the prestige of the author(s).

texts

One-volume treatises.

hornbooks

Scholarly texts.

nutshell

A paperback series of the law.

law reviews

Periodicals edited by the top students at each law school, featuring scholarly articles by leading authorities and notes on various topics written by the law students themselves.

Law Reviews and Periodicals

In addition to multivolume or book-length treatises, there are also legal publications that print articles of interest. **Law reviews** are periodicals edited by the top students at each law school, featuring scholarly articles by leading authorities and notes on various topics written by the law students themselves. A law review usually carries the name of its law school as part of its title (for example, the *Harvard Law Review* or the *University of Pennsylvania Law Review*). Like many other secondary sources, these articles are most valuable as learning tools or sources of citations to relevant primary authorities, and are not often cited in briefs. Nevertheless, an article in a leading law review by a top scholar can have a substantial impact on the profession.

There are also numerous legal periodicals published by bar associations or private publishers. These periodicals vary in quality from scholarly journals to newsletters. Some are useful as research tools for the profession as a whole; others provide limited information to defined segments of the bar.

Looseleaf Services and Annotations

The textual treatment that looseleaf services and annotations provide is a valuable resource. Annotations provide broad analysis and extensive case summaries. The looseleaf services bring together in one topical reporter applicable case texts, statutes, regulations, and independent analysis. A page from a looseleaf service is reproduced in Figure 1.17.

FIGURE 1.17 A Page from a Looseleaf Service

Source: From *Immigration Law and Procedure*. Reprinted with permission from Lexis Nexis Matthew Bender.

7-21	SANCTIONS AND DISCRIMINATION	§ 7.03[2][b]
§ 7.03 The Prohibition Against Knowingly Hiring, Referring, or Recruiting An Unauthorized Alien; Employment Authorization, Employment Authorization Document (“EAD”)		
[1]—In General		
<p>Just as IRCA’s underlying purpose is to discourage unauthorized aliens from immigrating by denying them jobs, its primary method of doing so is to prohibit anyone from hiring them or commercially recruiting or referring them, knowing of their unauthorized status. This prohibition is accompanied by the employment verification requirement, designed to uncover whether a job applicant is an unauthorized alien, and backed up by an enforcement system and penalties. A valid verification gives the employer an affirmative defense of good faith which, however, is rebuttable. Particularly as the term “unauthorized alien” is first introduced by IRCA it warrants close study, as does the “knowing” requirement.</p>		
[2]—Unauthorized Alien: Concept and Definition		
[a]—In General		
<p>In recent decades, more and more attention has been given to sub-rosa immigration, by public figures and journalists who have written with alarm or in explanation of the massive penetration of our borders by “wetbacks” or “illegal aliens.” However inappropriate these labels, or inadequate such terms as “undocumented” or “deportable aliens,” the issue of terminology is now finessed by IRCA which addresses the alien’s status solely in terms of this statute’s focus, namely, whether the individual is an alien authorized for the given employment. The statute defines the term only “with respect to the employment of an alien at a particular time” as being “not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General.”¹</p>		
<p style="text-align: center;">PLANNING NOTE</p> <p style="text-align: center;">The immigration agency has suggested the following language for employers who want to ask potential employees about their work authorization: “Are you currently authorized to work for all employers in the United States on a full-time basis, or only for your current employer?”^{1,1}</p>		
[b]—Prior Law and Impact of IRCA		
<p>Prior to the passage of IRCA, it was clear that an employment relationship was not unlawful simply because the employee was in the United States in violation of law. The taking of a job by an already deportable alien was not criminal or otherwise barred by</p>		
<p>¹ INA § 274A(h)(3), 8 U.S.C. § 1324a(h)(3).</p> <p>^{1,1} Letter from OSC Special Counsel (Jun. 24, 1993), <i>reprinted in</i> 70 Interpreter Releases 1303–04 (Oct. 4, 1993).</p>		



PRACTICE TIP

When using sources that can only be located on the Internet, print hard copies of the law or case for the court and all parties involved in the case. Do not risk having the court exclude the information by not having copies available.



Ethics Alert

You have just found a great case that may help your attorney win a case. The case was just handed down today by the U.S. Supreme Court and you plan on citing it in the brief you are preparing for tomorrow's hearing. You don't tell your attorney about the case; you just cite it in the brief. Of course you make a copy for yourself and your attorney to review, but not for opposing counsel (who you know is returning from his European holiday today). Can you cite the case in the brief, and what ethical responsibilities, if any, do you have in this circumstance?

The answer is probably yes if you provide a copy of the case to all parties and the opposing counsel has an opportunity to review the case. Not only may the court rules guide this hypothetical but also the rules of ethics, more formally known as the Rules of Professional Responsibility. As a paralegal, you may be held to

the same ethical standards as attorneys because of the substantive legal work you perform under their supervision. Having a sufficient understanding of the professional conduct expected not only of the attorney, but indirectly of the paralegal, is critical since attorneys are responsible for and will be held accountable for the unprofessional misconduct of their staff. Become familiar with the Model Rules of Professional Conduct. Check the American Bar Association (ABA) website, www.abanet.org, for the current professional ethical standards. Additionally, paralegal associations, such as the National Federation of Paralegal Associations and the National Association of Legal Assistants, offer a framework for paralegals and their supervising attorney to follow. Throughout this book, ethical scenarios will be presented to provoke thought, alert you, and provide awareness of some of the ethical issues that are present in the paralegal profession.



THE E-FACTOR

THE COURTS AND THE INTERNET

Most state and federal courts have websites where recently decided cases, court rules, and other important information are posted. These websites provide up-to-date case decisions, which literally can be retrieved within hours of a decision being handed down by a court. Some suggested websites for court and case law information are:

U.S. Supreme Court: The official website for the U.S. Supreme Court is www.supremecourtus.gov. This website provides recent court decisions, slip opinions, and later cases beginning in 1991 and subsequent years. The documents are normally provided in PDF format and identify the procedures for downloading cases and other information. The site also provides the court rules, which are crucial if you are preparing a brief for the U.S. Supreme Court. Other notable sections of the website are the listing of the current docket, briefs of litigants and interested parties in cases, orders, journals, and a host of useful information about the Court.

U.S. Circuit Courts of Appeals: Each of the U.S. Circuit Courts have their own websites, however, the general website for the U.S. Circuit Courts and U.S. Federal Courts is www.uscourts.gov. Connecting to all the federal courts, this website provides access through "courtlinks" to any federal court for which you may need information.

You can directly access the court you need by entering, for example, www.ca3.uscourts.gov if you were interested in finding out information about the Third Circuit Court of Appeals. If you were to visit the website of the Third Circuit, you could access court decisions, the rules of court, including the newly posted amendments to the Third Circuit Local Appellate Rules, brief requirements, orders of the court, and many other important sources of information.

U.S. Federal Courts: As previously mentioned, the U.S. Federal Courts can be accessed by using www.uscourts.gov. Direct links are provided in the website, or simply enter the website of the court for which you are seeking information. If you wanted to access the northern district federal court of Texas, use www.txnd.uscourts.gov or for the southern district federal court of Indiana, use www.insd.uscourts.gov. Indiana also has a website providing information on all the federal courts in Indiana at www.in.gov/judiciary/courts/federal.html. Try one of the search engines, such as Google, Yahoo, or any of the many others to locate information on a federal court.

State Courts: Many state courts post information on websites as well. Larger states such as California and New York may have websites for their many state courts of appeals. Decisions and rules of court are updated daily. Check them!

PRACTICAL CONSIDERATIONS: THE CONSTRAINTS OF THE INTERNET

Not everyone has access to the Internet and electronic resources. Finding up-to-the-minute laws and cases may place others at a disadvantage. Power outages, remote locations, and web unavailability contribute to inaccessibility of electronic resources. Consequently, courts may have rules for presenting cases that have not been published in print form. Review your local rules for guidance on the subject, but always print a hard copy of the electronic resource and either attach it to the legal document your attorney is presenting or prepare sufficient copies for the court and any opposing counsel involved in the case. A court decision may be dispositive of your case, but if you are the only one who can find it or has access to it, the court may prohibit using the case out of fairness to all the parties.

Summary

Before starting a legal research problem, isolate your goal and formulate a plan or approach. Then, if you get lost or confused, get help.

Stare decisis means that decisions from a court with substantially the same set of facts should be followed by that court and all lower courts under it. This principle allows you to search for cases with precedential value. Precedential value is the force that a cited authority exerts upon a judge's reasoning. Primary authority consists of the original text of court opinions, constitutions, statutes, and agency regulations. Mandatory authority is primary authority that a court must follow; persuasive authority need not be followed, although its logic may be persuasive. Secondary authority is a step removed from the original text—not the law itself, but an analysis of the law.

Reporters are series of volumes containing judicial opinions. Opinions can be located by searching for the volume and page number identified in a citation. Proper citation form is established by *The Bluebook* and the *ALWD Citation Manual*. The Key Number System was established by the West Company to index cases appearing in its private reporters, including the regional reporters of the National Reporter System. Annotations are found in the *American Law Reports* volumes; they summarize and provide citations for judicial opinions. Looseleaf services are books with binders in which pages can be easily inserted or replaced, and which often publish case texts. Slip opinions are individually paginated texts of judicial opinions, almost always typewritten, and are usually the first format in which opinions are published.

Slip laws are publications of a single statute or act. Session laws are publications of the statutes of a jurisdiction, printed chronologically as they are enacted, and with each new edition including only those laws passed since the last edition. A code groups statutes by subject matter, and is generally well indexed. Annotated codes provide, in addition to the statutory text, information associated with each statute, including citations to judicial opinions that have construed that statute. A legislative history comprises legislative debates leading up to the enactment or defeat of a proposed statute. The text of constitutions is usually printed as part of a corresponding code or annotated code.

Federal regulations appear in the Federal Register or the Code of Federal Regulations. Federal administrative decisions are available from the agencies rendering the decision or from looseleaf services covering the applicable subject area. The availability and format of state and local regulations and administrative decisions vary widely from state to state and locality to locality.

The “supreme law” of the land is the U.S. Constitution. It prevails over all sources of the law. Statutes are primary sources of the law and may not conflict with the Constitution as well as administrative rules and regulations. Although a primary source of the law, case law interprets the other primary sources of the law.

A legal encyclopedia is a multivolume compilation purporting to provide in-depth coverage of every area of the law. Restatements are drafted by distinguished panels of legal experts for the purpose of developing and encouraging a uniform approach to various areas of common law. A treatise is a scholarly study of one area of the law, differing from a restatement in that it is usually the work of one author or group of authors, rather than a panel of experts.

Texts are one-volume treatises. Law reviews are periodicals edited by law students. Looseleaf services and annotations include secondary discussions of legal topics, as well as texts of cases and statutes.

The Internet provides immediate access to the law and cases. Most courts have websites, which provide case decisions, court rules, and other important information. Use Internet search engines to locate court websites.

Since many people do not have access to the Internet, check court and local rules for usage of recent cases or cases that are only cited electronically. Always print a hard copy of a case for use in court or as an attachment to a brief.

Key Terms

<i>stare decisis</i>	looseleaf service
trial courts	annotation
appellate courts	slip law
state supreme court	session laws
precedential value	code
primary authority	annotated codes
mandatory authority	legislative history
persuasive authority	rules of court
secondary authority	local rules
reporters	legal encyclopedia
citation	restatements
parallel citations	treatise
official reporter	texts
regional reporters	hornbooks
advance sheets	nutshell
slip opinion	law reviews

Review Questions

1. What is a citation?
2. How do official reporters and unofficial reporters differ?
3. What is the National Reporter system? List the regional reporters in that system.
4. What is an annotation?
5. Describe the difference between slip laws, session laws, and codes.
6. Describe the types of legal authority.
7. Identify the hierarchy of the law.
8. Where can the text of administrative regulations be found?
9. What is a legal encyclopedia? What is a treatise?
10. Name two Internet sources where recent court decisions are located.

Exercises

1. Determine whether your state law libraries have the following legal sources and identify the name of each book.
 - a. State case reporter
 - b. Regional reporter
 - c. State digest
 - d. State encyclopedia
 - e. State statute
2. Locate the cases below and identify the name of the case and the year the case was decided.
 - a. 398 N.E.2d 148
 - b. 164 A.2d 451
 - c. 375 P.2d 245
 - d. 97 S.Ct. 2549
 - e. 676 F.2d 385
 - f. 252 U.S. 416
 - g. 597 S.W.2d 134
 - h. 298 So.2d 94

- i. 281 N.W.2d 804
 - j. 214 Cal. Rptr. 177
3. Identify the abbreviation for the following legal research sources:
 - a. *United States Code Annotated*
 - b. *California Reporter*, Third Series
 - c. *Southern Reporter*
 - d. *Federal Rules Decisions*
 - e. *Bankruptcy Reporter*
 4. Using *The Bluebook* or *ALWD Citation Manual*, prepare the proper citations to the cases identified:
 - a. Dreier versus the United States Volume 106 of the Federal Reporter third series page 844 in the ninth circuit in 1997
 - b. Thomason versus Sanchez found in Volume 539 of the Federal Reporter Second series on page 955 decided by third circuit in 1976
 - c. Federal Rule of Civil Procedure Rule 26
 5. Define the following items:
 - a. parallel citation _____
 - b. mandatory authority _____
 - c. *stare decisis* _____
 - d. session law _____
 - e. treatise _____
 6. Identify the reporter in which the following case appears:
 - a. 389 F.2d 579 _____
 - b. 143 S.W.3d 452 _____
 - c. 572 A.2d 501 _____
 - d. 87 S.Ct. 339 _____
 - e. 476 So.2d 197 _____
 - f. 333 F.3d 1082 _____
 - g. 148 F.R.D. 553 _____
 - h. 518 U.S. 343 _____
 - i. 162 N.E. 97 _____
 - j. 206 N.Y.S.2d 934 _____
 7. Locate 69 Fed. Reg. 28066 (May 18, 2004) and answer the following:
 - a. What is the section heading?
 - b. What page deals with “Sensitive Security Information”?
 - c. What is the date of the publication?
 8. Locate 49 U.S.C.A. §44901 and answer the following:
 - a. What is the name of the Code Section?
 - b. Has this section been amended?
 - c. What section of the statute identifies who can supervise the screening of passengers?
 - d. What section of the *C.F.R.* does 49 U.S.C.A. section 44901 reference?
 9. Continue using 49 U.S.C. §44901 *et seq.* and answer the following questions:
 - a. What section of the Code allows for cancellation of a flight if a security threat arises?
 - b. Who has the right to cancel the flight?
 - c. In 49 U.S.C. §44901 *et seq.*, which section deals with passenger manifests?
 - d. Under the passenger manifest section, which are the statutory requirements for the manifest?



Portfolio Assignment

Locate the rules of appellate procedure in the federal circuit where you live. Determine whether there are local rules of that court as well. (Be sure they are current and have not been amended.) Prepare an outline of the brief requirements for filing an Appellant's Brief. Hint: What color is the cover page of the brief? Length of the brief? Size of the paper? Components of the cover page?



Vocabulary Builder

Legal Research: Sources of the Law

S S K O O B N R O H O F S S P
 T R E K H P E Q Q T T I L L N
 E U G L H Q E F R S S H L I F
 E D W W U F H C R I L W E P T
 H N V U O R V E C X S C H O N
 S R E S T A T E M E N T S P E
 E O L S X R D R S J L P T I D
 C V J Q O E E S U U G S U N E
 N G R P R W I A Y O E Y N I C
 A Q E A Z O M P T D C X V O E
 V R T Z N Y J Y O I Z V C N R
 D S X L Q M Q C Z T S E R D P
 A D A Q O V G V O F G E W R J
 P W N O I T A T O N N A S X V
 S C I T A T I O N S P C Z Z B

ADVANCE SHEETS
CODES
NUTSHELLS
RESTATEMENTS
STARE DECISIS

ANNOTATION
COURT RULES
PRECEDENT
SESSION LAWS
TREATISES

CITATIONS
HORNBOOKS
REPORTERS
SLIP OPINION