

LEGAL RESEARCH—2016  
HANDOUT 5.1

## Law Literature and Its Users (A General Introduction to US Legal Research and Publications)

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## LAW LITERATURE AND ITS USERS (A GENERAL INTRODUCTION TO US LEGAL RESEARCH AND PUBLICATIONS)

1. Introduction
  - a. Highlight differences between Canadian and US legal publications
  - b. Concentrate on free sites Canadian lawyers and librarians can access
  - c. Concentrate on best sites for certain types of research
2. U.S. Legislation
  - a. Creation
    - i. Created by legislative branch of government
      1. Federal, state, city, county, tribal
    - ii. Within guidelines of US Constitution
    - iii. Interpreted by judges (judicial branch)
    - iv. Implemented through regulations (executive branch)
  - b. Publication
    - i. Terminology
    - ii. *Revised Statutes v. United States Code*
    - iii. *United States Code*
    - iv. Brady Act, PL 103-159 (1993), <https://www.gpo.gov/fdsys/pkg/STATUTE-107/pdf/STATUTE-107-Pg1536.pdf>
  - c. Sources of Legislative Enactments
    - i. *US Statutes at Large*, print, GPO online, HeinOnline
    - ii. *US Code*
      1. Office of the Law Revision Counsel, US House of Representatives, <http://uscode.house.gov/> \*\*\*(always most current)
      2. Legal Information Institute (LII), Cornell, <https://www.law.cornell.edu/>
      3. Findlaw, <http://codes.lp.findlaw.com/uscode>
      4. Print
  - d. Update Code Section
    - i. Use most recent session laws, published chronologically
      1. Subject index
      2. Classification table (or concordances)
  - e. Annotated Codes
    - i. Same citation as official *USC*
    - ii. Includes text of law, history of amendments, secondary source references, short case annotations
    - iii. *USCA*
      1. Print
      2. Westlaw

## 5.1.2

- iv. *USCS*
  - 1. Print
  - 2. Lexis
- v. Print sets have monthly supplements, annual pocket parts
- vi. Online may be several months out of date for case annotations and other references
- f. Cases Interpreting *US Code* Sections
  - i. Like noting up a statute in Canada looking for interpreting cases
  - ii. In US, use code citation as your search term
  - iii. Annotated codes in print or pay services like Westlaw and Lexis
  - iv. KeyCite or Shepardize the code section
  - v. Full text search in comprehensive federal case database (last resort)
- g. Legislative Activity (not covered in live presentation)
  - i. Legislative actions – Library of Congress, Congress.gov, <https://www.congress.gov/>
  - ii. Legislative history documents
    - 1. Bill and amended versions
    - 2. Committee hearings
    - 3. Committee reports
    - 4. Conference committee reports
    - 5. Debates in the *Congressional Record*
    - 6. Presidential signing statement
    - 7. Session or public law
  - iii. Research Tips
    - 1. Each Congress = 2 calendar years; e.g., 114<sup>th</sup> Congress includes all activity in 2015 and 2016
    - 2. To locate legislative documents, include a Congress and/or date; e.g., House Report 114-335 or Public Law 114-101
    - 3. Research Guide, Legislative History, Library of Congress, <http://www.loc.gov/law/help/leghist.php>
    - 4. HeinOnline for compiled legislative histories, search name of act and ‘legislative history’
- h. Research Tips
  - i. US legislation - Research Guide, UW Gallagher Law Library, US (Federal) Laws, <http://guides.lib.uw.edu/law/uslaws>
  - ii. Update US Code section with new session or public laws
  - iii. US laws are gathered as amended and published by subject - remember the Brady Act!
  - iv. To find cases interpreting a code section, need annotated code in print or Westlaw or Lexis
- 3. State Legislation
  - a. State legislative websites

### 5.1.3

- i. Legislative activity
    - ii. Session laws and codes
    - iii. Documents to answer legislative history questions
    - iv. See these as examples of best state legislative websites:
      1. Washington State Legislature, <http://leg.wa.gov/>
      2. Oklahoma State Courts Network, <http://www.oscn.net/applications/oscn/index.asp?ftdb=STOKCS&level=1>
      3. Wisconsin Legislature, <http://docs.legis.wisconsin.gov/statutes/prefaces/toc>
  - b. Annotated codes
    - i. Print
    - ii. Westlaw and Lexis
  - c. HeinOnline
    - i. Historical session laws and codes
    - ii. American law school academic journals for articles
    - iii. Nyberg, *Subject Compilation of State Laws*
4. Organizational Structure of Collections of Laws Passed By Legislature
  - a. Ignore the name or title of the collection and look at how the laws are organized in the set
    - i. Chronological
    - ii. By subject
  - b. These are arranged chronologically
    - i. *California Statutes*
    - ii. *US Statutes at Large*
  - c. These are arranged by subject
    - i. *Maine Revised Statutes Annotated*
    - ii. *Wisconsin Code*
    - iii. *Revised Code of Washington*
  - d. Why does this matter?
    - i. Citation rules
    - ii. The collection arranged by subject is normally more current and includes all amendments
5. Judicial Opinions
  - a. Structure of court system
    - i. Biggest difference between Canada and US
      1. Canada: provincial and local court appeals do not go through the federal court system
      2. US: state and local court appeals can go through the federal court system and issues of state law can be heard originally in federal district courts (diversity jurisdiction)
  - b. Publication of judicial opinions

#### 5.1.4

- i. Biggest difference between Canada and US
  1. Canada: judicial opinions published in reporters by jurisdiction and many by topic/subject
  2. US: judicial opinions published in reporters primarily by jurisdiction
- ii. Publication in US
  1. Slip opinion
  2. Preliminary print or advance sheet
  3. Reporters by jurisdiction
    - a. Federal
      - i. US Reports (official)
      - ii. Federal Reporter (unofficial)
      - iii. Federal Supplement (unofficial)
    - b. State
      - i. Individual state reports (about 25, official)
      - ii. Regional reporters (unofficial, but by state action can be official)
  4. Reporters by subject
    - a. Bankruptcy, Tribal Law, Military Justice, Federal Rules
- iii. Citation patterns
  1. Parallel citations in different reporters to same case
  2. *The Bluebook*, for proper citation format
  3. Vendor neutral citation, use paragraph numbers, not volume and page
  4. Check disclaimers on court websites. Print copy may be only official one!
- iv. Case verification (or Noting Up)
  1. Case affected by subsequent decision?
    - a. KeyCite on Westlaw
    - b. Shepards on Lexis
  2. Verify the authority of the rule of your case. Is it still good law?
  3. Two components
    - a. History of your case
    - b. Treatment of your case
  4. Citation searches in full-text case databases are not usually a good substitute for KeyCite or Shepards – too many cases to review!
  5. No real proven free alternative that has proven to be authoritative
- v. Judicial Opinions and Precedent
  1. Precedent
  2. Examples
    - a. Washington State Court of Appeals must follow rules in judicial opinions from the Washington State Supreme Court

### 5.1.5

- b. Idaho State Supreme Court does not have to follow the judicial pronouncements from the Washington State Supreme Court
  - c. All state and federal courts must follow the rules in US Supreme Court
  - d. Issues of state law can be determined by federal courts but are not binding on state courts
  - e. Issues of federal law can be determined by state courts, but are not binding on federal courts
- vi. Best Sources, Free Case Law
1. Know what a published opinion from court looks like
  2. Official court website
    - a. Slip opinion or completely edited, check pagination
    - b. Disclaimers? Are opinions published there official?
    - c. PDF format available – slip opinion or final version?
    - d. Live links to cited material?
    - e. Easy to search by subject or known citation or case name?
    - f. Does site include all opinions decided by that court historically?
  3. Look for PDF on other free websites
    - a. Google Scholar, <https://scholar.google.com/>
    - b. Justia, <http://law.justia.com/>
    - c. Ravel Law, <http://ravellaw.com/>
    - d. Public Library of Law, <http://www.plol.org/Pages/Search.aspx>
    - e. Legal Information Institute, <https://www.law.cornell.edu/supremecourt/text/home>
    - f. Findlaw, <http://caselaw.findlaw.com/>
    - g. OpenJurist, <http://openjurist.org/browse-open-jurist>
  4. Evaluate sources
    - a. PDF with page numbering to official court source for citation purposes?
    - b. Where are footnotes?
    - c. Are citations within opinion hot linked to sources?
    - d. Is the opinion complete with all of its parts
      - i. Syllabus by Reporter of Decisions?
      - ii. All concurring and dissenting opinions?
    - e. Parallel citations to case included?
  5. Research tips for case law
    - a. Federal trial court and appellate level judicial opinions both published

## 5.1.6

- b. States publish only appellate level judicial opinions (with a couple exceptions)
  - c. Unpublished opinions normally cannot be cited or used for precedential purposes, but find on Westlaw, Lexis, Bloomberg, and in looseleaf services
  - d. Court structure important to understand precedential value
  - e. All judicial opinions published chronologically within reporter, so finding tools needed
  - f. Searching for judicial opinions
    - i. Annotated code
    - ii. Secondary sources
    - iii. West digest system print and Westlaw
  - g. Search full text in database
    - i. Coverage – how far back
    - ii. Currency
    - iii. Sophistication of search engine
6. General Research Tips (not covered completely in live presentation)
- a. Free Sources
    - i. Legal research guide
      - 1. Who has the expertise you seek?
      - 2. Georgetown Law Library
      - 3. University of Washington Gallagher Law Library
      - 4. Cornell Law Library
      - 5. Google search
      - 6. *Specialized Legal Research*, ed. Hazelton
    - ii. Center for Computer-Assisted Legal Instruction (CALI), <https://www.cali.org/>
      - 1. Free American legal text books
      - 2. Search all law school websites with one search
    - iii. Ask a law librarian!
    - iv. Google Scholar <https://scholar.google.com/>
      - 1. Law review articles, but access limited if not on open access platforms
      - 2. Judicial opinions, state and federal, but may not be comprehensive or completely current
      - 3. Multijurisdictional judicial opinion searching available
    - v. Law Firm Search Engine <http://lawfirmsearchengine.com/>
      - 1. Permits searching of public content on over 4500 law firm websites worldwide
      - 2. Can limit search to top 100 law firms
      - 3. Started by a law firm librarian, Jeff Buckley
    - vi. Staying current with new US legal developments

### 5.1.7

1. See the great legal research guide written by Mary Whisner, Gallagher Law Library, <http://guides.lib.uw.edu/law/staying-current>
  - vii. Watch for new free databases
    1. Casetext, <https://casetext.com/>
    2. Ravel Law, <https://www.ravellaw.com/> (data visualization and digitization project with Harvard Law Library)
  - b. Low-Cost Sources
    - i. HeinOnline
      1. *US Code*, all historical editions
      2. Law Reviews from v. 1 to date
      3. Nyberg, *Subject Compilations of State Laws*
      4. *Federal Register* and *CFR*, all historical editions
      5. Compiled legislative history collections
      6. *US Statutes at Large*, all historical editions
      7. State statutes/codes and session laws, all historical editions
      8. State case law, all historical editions
      9. Search engine improving, but precision is hard
      10. Much more!
    - ii. *The Bluebook: A Uniform System of Citation*
      1. Court structure and names of reporters
      2. Names of codes and annotated codes
      3. Reference to individual court style sheets for citations
      4. Some abbreviations
    - iii. Consider a subscription to a low-cost legal research database like FastCase, CaseMaker, VersusLaw
      1. Multijurisdictional searches are easier
      2. Better, more robust search engine than some free sites
    - iv. Consider a subscription to KeyCite or Shepards only
      1. Most efficient way to be sure your case is still good law (authority) – noting up cases and statutes!
      2. Proven track record
  - c. Secondary sources
    - i. Hard to find good ones for free
    - ii. Law review searches can be overwhelming
    - iii. Be wary of broad Google searches when you don't know much about American law
    - iv. Legal encyclopedias can get you started with right terminology and context
    - v. Nutshell or hornbook good place to start for citations and terminology
- ## 7. Conclusion