

Introduction to Legal Research and Writing

Introduction to Legal Research and Writing

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Preface

This text is designed to provide:

- a) a clear explanation of basic information;
- b) exercises to give the student the necessary practice in researching and writing; and
- c) sample legal writing documents.

The ideal text should be “user-friendly” and readable while balancing the need for detail. Each chapter would cover only a manageable amount of material for someone who has not been previously exposed to the law. This book attempts to fill that need for the legal studies student and professor.

The objectives of the legal research portion of the book are to teach the student how:

1. to competently perform legal research in the law library and on the computer;
2. to use correct citation form; and
3. to understand the fundamentals of legal research.

The objectives of the legal writing portion of the book are:

1. to explain the fundamentals of legal analysis and writing;
2. to teach the student how to communicate clearly; and
3. to explain how to eliminate mechanical errors.

Organization of the Text

The legal research portion of the book and Appendix B contain basic citation rules and research exercises. To facilitate the student’s participation, this portion emphasizes the process of finding and using primary sources and gives the student “hands-on” experience by completing legal research exercises. Chapters 1 and 2 give an important

overview of the legal system and legal reasoning. Chapters 3 through 6 introduce legal encyclopedias, digests, *American Law Reports*, cases, constitutions, statutes, court rules, administrative law, and citators. The chapters also contain lengthy research assignments, allowing the professor to assign certain of the exercises one term and a different set of exercises another term. Chapter 7 gives an overview of the research process and explains how the various legal sources studied relate to each other. Chapter 8 introduces computer-assisted legal research and explores the Internet as a legal research tool.

Primary and secondary sources are covered in separate chapters in the text. This organization allows the professor the freedom to choose which type of source to cover first. The chapter on secondary sources precedes the chapters on primary sources because many legal research professors cover secondary sources before primary sources.

The sequence chosen for these chapters tracks the order in which a researcher who is unfamiliar with a particular area of the law commences a research assignment. Unless the legal researcher has somehow already found a primary source on point, the researcher will most likely begin research by referring to a secondary source first.

The legal writing portion of the book explains how to write legal documents and includes samples of various types of legal documents. Chapters 9 and 10 give an introduction to legal writing and legal writing fundamentals. Chapters 11 through 15 are each devoted to a different type of legal document, starting with the transmittal letter and the client opinion letter and continuing through pleadings and motions, the office memo, the memorandum of law, and the appellate brief.

The various types of legal documents are explained in separate chapters, again to allow the professor to choose which chapters are to be covered, time permitting. A professor who does not usually cover a particular type of document may enjoy the challenge of teaching something a little different. In addition, the book is a good reference for the student who is later asked to write a type of legal document not studied in legal writing class.

The appendices contain additional material that could be profitably used in either legal research or legal writing. They provide the student with an explanation of and necessary practice in eliminating mechanical errors, quoting correctly, and writing short- and long-form citations correctly. The rules for quotations and short-form citations are not covered in many other texts but are something the student should master. Appendix E contains four fact patterns. These fact patterns can serve as the subject of a legal research assignment and then later as the subject of a client opinion letter, office memo, memorandum of law, or appellate brief.

Making the Book “User Friendly” by Including a Search and Seizure Problem

A legal research and writing book could easily be the most boring textbook in the entire bookstore. My challenge was to write a book that would spark student interest and involve the student in the research and writing process. Students learn more if they

are involved in the course materials. I found that students are keenly interested in “search and seizure” because the topic is easy to “picture” and understand. I decided to use the topic to make the book student friendly.

The text entices the student to participate in the learning process by discussing primary sources and documents relating to the search-and-seizure topic. The search-and-seizure materials are fairly easy to understand, contain interesting and easy-to-grasp facts, and can be a basis for a number of class discussions. References throughout the book to the search-and-seizure topic involve the students in the course materials and provide continuity. The search-and-seizure topic also lends itself to some great class discussions. By using this important topic, students will learn legal research and writing and some substantive law at the same time. Where the search-and-seizure topic is not used, other topics appear several times in the text and in the exercises.

Appendix A expands the student’s involvement with Joshua, who was first introduced in Chapter 2. That appendix cites suggested primary authorities to use in answering the issues raised in *Smeek*. These materials can profitably be used when completing the writing exercises found at the end of the appendix.

Decreasing Professor Preparation Time

Legal research and legal writing are typically very time-consuming courses in a legal studies curriculum. Many professors shy away from teaching these courses because of the time commitment. Just keeping up with grading assignments leaves very little time for outside preparation of material. A “professor friendly” book is self-contained and eliminates the need for a great deal of professor-prepared materials.

This book is designed to be the only one the student and the professor need for legal research and legal writing. Basic citation rules are included in Chapters 3 and 5 and Appendix B, thus eliminating the need for a separate citation manual. However, some professors may require students to purchase a citation manual, such as the *Bluebook*, for reference. The citation rules are consistent with *Bluebook* form so that the advanced student can later refer to the *Bluebook* or other citation manual when necessary. As explained, the legal research portion of the book contains sample pages from the various authorities and research exercises. The legal writing portion of the book contains sample documents, heavily footnoted to offer the student guidance on the writing process.

Key Features of *Introduction to Legal Research and Writing*

This book the following features:

- the writing style is student-friendly;
- key terms are bolded on first use, are defined in text boxes, and are included in the glossary;

- the “Research Tip” feature highlights important legal research procedures;
- the “Legal Analysis Tip” feature highlights information crucial to legal analysis;
- students can use the “You Be the Judge” feature to enhance their critical thinking skills, and the instructor can use this feature to spark classroom discussion;
- the “Writing Tip” feature highlights writing advice that otherwise might be overlooked;
- Chapters 1 through 7 contain a lengthy discussion of sources of law and law library resources;
- Chapter 2 provides a detailed explanation of legal analysis and legal reasoning;
- Chapter 6 contains an explanation of the use of online citators;
- Chapter 8 provides a comprehensive, but not overly detailed, discussion of computer-assisted legal research;
- Chapter 9 introduces legal writing and discusses ethical obligations in writing legal documents with examples from recent cases;
- Chapter 10 discusses writing basics, including the writing process, avoidance of mechanical errors, and editing and proofing;
- Chapters 11 through 15 contain sample legal writing documents, with the documents in Chapters 11 through 14 heavily annotated by footnotes to provide writing assistance to students;
- Appendix B explains how to locate and cite to cases;
- Appendix F contains the text of wiretapping statutes discussed in Chapter 5;
- many chapters provide discussion points to spark classroom discussion; and
- many chapters include cyberlaw exercises that can be assigned to further explore relevant information online.

Acknowledgments

I could not have written this book without the help of my husband, Richard Firth. He gave me the emotional support I needed (as well as the technological support).

Carol M. Bast

Introduction

If you are just starting your study of law, you may be wondering what legal research and legal writing have to do with law. After all, you do not see television and movie lawyers performing legal research or writing legal documents. They are usually portrayed arguing eloquently to the judge and jury. What television and movies do not show is all the legal research and writing that took place before the lawyer entered the courtroom.

The job of the lawyer and those working with the lawyer is to competently deal with the client's problem. The client may need the lawyer to either help the client avoid a problem or help the client solve a problem. A client may ask the lawyer to write a will or contract or represent the client in a real estate closing. In these types of transactions, the lawyer helps the client avoid problems by advising the client of the client's rights and responsibilities, by helping the client plan the best course of action, and by drafting any necessary legal documents. Where a problem exists, the client may ask the lawyer to file a lawsuit on the client's behalf or defend the client in a lawsuit. In dealing with a litigation matter, the lawyer advises the client, drafts any necessary legal documents, and represents the client in court.

Legal research and writing are the basic skills necessary for avoiding and solving legal problems. To deal with a problem, the lawyer first has to know the relevant law. Discovering what the law is requires legal research. Inadequate knowledge of relevant law may cause the client to lose money or lose a lawsuit. Once the lawyer knows the relevant law, the lawyer avoids or solves problems by communicating—with the client, another lawyer, the court, the jury, and others. Many times the communication is oral, but the lawyer often must communicate using the lawyer's legal writing skills.

Besides causing the client problems, inadequate legal research or mistakes in written communication may cause the lawyer to be disciplined or disbarred because state lawyer ethics rules also govern lawyer legal research and communication.

The provisions of a number of lawyer ethics rules are discussed in Chapters 7 and 9. The attorney must perform legal tasks in a timely manner. The lawyer generally may not reveal client confidential information. The lawyer has a duty to give the client honest advice. The lawyer may not represent the client if the claim or defense is frivolous. The lawyer must be truthful in dealing with the court and others and has a duty to explain the law to the court. The lawyer must respect the legal rights of others and

not cause undue “embarrass[ment], delay or burden.” The lawyer must supervise non-lawyer assistants and may be held responsible for the actions of the nonlawyer assistants. A lawyer may not falsely attack the reputation of a judge, a juror, or a legal official. A lawyer may not engage in conduct that violates an ethics rule or that is dishonest, fraudulent, or deceitful.

In today’s competitive legal job market, you need to know how to competently research and write. Potential employers and colleagues are looking for someone who has these skills. Once on the job, those you come in contact with will assume that you know how to perform legal research and write legal documents. They may not have enough time to teach you those skills if you do not already have them. You will have to work hard to build credibility. You may easily lose this credibility if your colleagues sense you lack basic skills.

The legal researcher must find all law relevant to the legal question being researched, must apply the law to the legal question, and must reach an answer. An answer to a legal question is inadequate if it is not supported by legal principles, if it is not based on current law, or if it is based on incomplete legal research. A lawyer’s competency is immediately in question if the lawyer’s argument does not take into account recent changes in the law or applicable legal principles.

The legal writer has the challenge of representing the best interests of the client while often facing a hostile audience. A court document will be closely scrutinized by the judge and opposing counsel. The details of a will are studied when the decedent’s estate is administered and may be challenged by relatives omitted from the will. The wording of a contract will be analyzed as the contract is performed, especially if a problem arises. Drafting legal documents is an important part of a lawyer’s role; the reader judges the competency of the writer by the clarity and effectiveness of the legal document. Poor writing will deter and prejudice the reader and may cause problems if the writing is misunderstood; inept writing may cause litigation; unclear writing obscures the message the writer is attempting to communicate.

Legal research and legal writing are skills learned with practice. This book is written to give you basic information on legal research and legal writing; it contains research and writing exercises to help you learn how to perform legal research and write legal documents. The first half of the book describes basic legal research materials found in the law library and online. You will be searching these materials to find relevant legal principles. You will apply the legal principles you discover to answer legal research exercises. The second half of the book first helps you improve your basic writing skills by avoiding common errors, writing in plain English, and organizing. The book then introduces the traditional format of common legal documents—letters, office memos, pleadings, memoranda of law, and appellate briefs. Now that you know why legal research and legal writing are important to someone dealing with the law, it is time for you to learn how to perform legal research and write legal documents.

About the Author

Carol M. Bast, J.D., LL.M., is a professor in the Department of Legal Studies at the University of Central Florida, where she has taught for the past thirty years. She teaches Legal Research and Legal Writing and authored an undergraduate textbook on those topics. She teaches the survey course, Law and the Legal System, and co-authored an undergraduate textbook used in the course. Her areas of research and writing include eavesdropping and wiretapping, plagiarism, legal ethics, legal research, legal writing, and international trade agreements. She served as editor-in-chief of the *Journal of Legal Studies in Business*, November 2008–November 2010; she served as editor-in-chief of the *Journal of Legal Studies Education*, August 2006–August 2008. Prior to becoming a professor, Bast clerked for a federal district judge and practiced corporate, securities, and real estate law. She received her LL.M. in International Economic Law and Policy from the University of Barcelona in 2016, her J.D. magna cum laude from New York Law School in 1982, and her B.A. from Kalamazoo College in 1974.

