Secondary Resources, Treatises, and Forms

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BRAG: Bridge the Research and Analysis Gap
June 7, 2011
A Legal Problem

A Research Problem
What do we know?

- Do we have a citation?
  - Case, Statute, Regulation
  - Const. provision, Municipal Ordinance, Court Rule
- Jurisdiction?
- What keywords do we have?
Research Analysis

- What area of law is involved here?
- What type of primary authority should we find?
- In what publications will we find this authority?
- How much do I know about this area of law?
Secondary Authority

- Purposes
  - Broad overview
  - In-depth analysis
  - Jargon
  - Practical Guidance and Tips
  - Citations
  - Forms

- START HERE especially when you don’t know enough about the subject area

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Legal Resources

- Secondary Authority Publications
  - Legal Encyclopedias
  - *American Law Report* annotations (ALR)
  - Treatises – books about the law
  - Law Journal Articles, Periodical Indexes
  - Form books
  - Restatements of the Law
  - Uniform Acts and Model Laws
  - Legal Dictionaries and Words & Phrases
Secondary Authority

• Four Categories
  - Descriptive v. Prescriptive
  - Broad Overview v. In Depth Coverage of Narrow Topic
  - Scholarly v. Practical
  - National v. Local
Secondary Authority

Descriptive v. Prescriptive
- Descriptive – what the law is
- Prescriptive – what the law should be

Descriptive
- Legal Encyclopedia articles
- *American Law Report* annotation
- Treatises
- Restatements
- Looseleaf services

Prescriptive
- Law Journal Articles
- Uniform Law / Model Act
- Treatises

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Broad Overview v. In Depth Analysis

- **Broad Overview** – high level, general parameters, big picture
- **In Depth** – detailed coverage of whole topic or parts of topic

<table>
<thead>
<tr>
<th>Broad Overview</th>
<th>In Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Encyclopedia articles</td>
<td>Law Journal Articles</td>
</tr>
<tr>
<td>Nutshells</td>
<td>Scholarly Treatises</td>
</tr>
<tr>
<td>Student Hornbooks</td>
<td></td>
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</tbody>
</table>
### Secondary Authority

**Scholarly v. Practical**
- Scholarly – broad, deep, comprehensive
- Practical – practitioner-oriented

<table>
<thead>
<tr>
<th>Scholarly Treatises</th>
<th>Practical Treatises</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>American Law Report</em> annotation</td>
<td>Looseleaf Services</td>
</tr>
<tr>
<td>Encyclopedia articles</td>
<td>Forms / form books</td>
</tr>
<tr>
<td>Restatements</td>
<td></td>
</tr>
<tr>
<td>Law Journal Articles</td>
<td></td>
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<tr>
<td>Uniform Law / Model Act</td>
<td></td>
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</tbody>
</table>

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## Secondary Authority

### National v. Local
- National – law from all jurisdictions considered
- Local – law from a particular state considered

<table>
<thead>
<tr>
<th>Type</th>
<th>National Coverage</th>
<th>Local Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Encyclopedia</td>
<td><em>CJS, AmJur</em></td>
<td><em>Colorado Law Annotated</em></td>
</tr>
<tr>
<td>ALR</td>
<td><em>American Law Reports</em></td>
<td>NA</td>
</tr>
<tr>
<td>Treatise</td>
<td><em>Employment Screening</em></td>
<td><em>Guide to Colorado Employment Law</em></td>
</tr>
<tr>
<td>Restatements</td>
<td><em>Restatement of Torts</em></td>
<td>NA</td>
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<tr>
<td>Journals</td>
<td><em>Yale Law Journal</em></td>
<td><em>The Colorado Lawyer</em></td>
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<tr>
<td>Uniform Law / Model Act</td>
<td><em>Uniform Laws Annotated</em></td>
<td>NA</td>
</tr>
<tr>
<td>Forms</td>
<td><em>West's Legal Forms</em></td>
<td><em>Colorado Real Estate Forms</em></td>
</tr>
</tbody>
</table>
National Encyclopedias

- American Jurisprudence 2d (AmJur)
- Corpus Juris Secundum (CJS)

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Colorado Legal Encyclopedia

- *Colorado Law Annotated*
  - In two volumes
  - Coverage varies
- *Westlaw - COLANN*

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Research Method

Legal Encyclopedias

1. Starting Points …
   - Index
   - Topic Outline / Table of Contents
   - Table of Laws and Rules

2. Locate and Read Content

3. Note Citations to other Authority

4. Update
   - Pocket Part? Supplemental Volume?
American Law Reports

What it Does

- In-Depth Review of an Issue of Law
- Narrower coverage of topic than an Encyclopedia Article but comprehensive coverage of that topic
- Leading Case Method
American Law Reports

Parts of the ALR Set

- Eight Series including Federal
  - ALR 1st, 2nd, 3rd, 4th, 5th, and 6th (state issues – MOL)
  - Federal (federal issues)
  - International Law (*new)
- Various Indexes BUT use the Multi-set Index
- Digests – NOW use the West Topic and Key Number Digest
- Annotations Volumes
- Updating – Pocket Parts and Supplemental Volumes
American Law Reports

Annotations

- Annotation
  - Analysis
  - Research References
    - Cases (by jurisdiction)
    - Key Number Digest
    - Related ALR annotations
    - Westlaw databases
    - Encyclopedia articles
    - Law Journal articles
- Case on which the annotation is based
  - Printed either with the Annotation or within the volume

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American Law Reports

Research Method – Starting Points

- **Index**
  - Multivolume Index for All Editions of ALR
    - Annotation History Table
    - All ALRs (even superseded ones)
  - Quick Index for Federal (located in by Fed. ALR)
- **Use the ALR Digest**
- **ALR Citation (from another source)**
  - Alert: Be Sure to Note the Proper ALR Series!
American Law Reports

Research Method

- Locate and review Annotation
  - Consult Research References
  - Note cases in relevant jurisdiction
  - Note any additional ALR annotations

- Update research with appropriate tool

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Treatises

What Are They?

- Books by scholars and experts on a particular legal subject
- One (or more) for every subject
- Type and depth of analysis varies
- Updated by pocket parts or cumulative pamphlets, or looseleaf pages
Treatises

- Type and depth of analysis varies
- Single or multivolume
- Bound volume or looseleaf
- Updated by pocket parts or cumulative pamphlets, or looseleaf pages
- Historical research
Colorado Association of Law Libraries

Colorado Treatises

The Practitioner’s Guide to Colorado Employment Law

Colorado Practice Series

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Colorado Causes of Action

Colorado Causes of Action Elements, Defenses, Remedies, and Forms
Douglas S. MacGregor & Alyssa Rosen
Steven C. Choquette, General Editor
Treatises

Also Treatises

- Hornbooks
- Nutshells

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Treatises

• Research Methods
  - Index
  - Table of Contents
  - Table of Cases
  - Table of Statutes (laws and rules)

• Forms
• Note Colorado citations ...
Treatises

- Finding Treatises
  - Cross Reference
  - Library Catalog
Treatises

- Finding Treatises
  - Stand and Scan
  - Find a Friend
  - Ask a Librarian

Library of Congress Call Number Guide

- Administrative Law KF 5401-5425
- Admiralty KF 1104-1109
- Agency KF 1341-1348
- Agriculture KF 1682
- Antitrust KF 1631-1657
- Appellate Practice (Civil) KF 9050-9058
- Appellate Practice (Crim) KF 9690
- Arbitration KF 3482
- Art Law KF 4288-4296
- Aviation KF 2400
- Banking KF 966-1032
- Bankruptcy KF 1501-1548
- Blue Sky Law KF 1068
- ...
Treatises

- Finding Treatises
- Classic Treatises

**Classic Treatises - By Familiar Title**

- *Corbin* Corbin on Contracts, Corbin on contracts, Arthur U. Corbin, Rev. ed., Joseph C. Baer, St Paul, Minn. - West Pub. Co., 1993-
- *Couch* Couch on Insurance, Couch on Insurance 3d, 11th ed. by A. Hogan, in consultation with Thomas P. Seigle, Des Moines, Iowa, Clark Boardman Callaghan, 1995
- *Fleischer's* Fletcher Cyclopedia of the Law of Private Corporations, Fletcher cyclopaedia of the law of private corporations, Permanent ed. Callaghan, Ill. - Callaghan, 1934-
- *Sutherland* Sutherland on Statutory Construction, Sources and statutes construction, Norman J. Singer and J.C. Sutherland, 6th ed., 2000 revisions, St. Paul, Minn. - West Group, 2000-

Advanced Legal Research - Spring 2009

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Form books

- Books of Forms
- Cover all topics
- Two Types
  - Transactional/substantive
  - Practice/litigation
- Annotated
- Save time
- Not authoritative
Form books

- Notable Titles
  - Rabkin and Johnson, *Current Legal Forms*
  - AmJur *Legal Forms 2d*
  - West’s *Legal Forms*
  - Nichols’ *Cyclopedia of Legal Forms*
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Form books

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Form books

§ 25:131 Assignment—Copyright

Assignment

______ [Name of assignor], a corporation organized and existing under the laws of ______ [state], with its principal place of business at ______ [address], ______ [city], ______ County, ______ [state] (“assignor”), in consideration of $______ and other good and valuable consideration paid by ______ [name of assignee], a corporation organized and existing under the laws of ______ [state], with its principal place of business at ______ [address], ______ [city], ______ County, ______ [state] (“assignee”), assigns to assignee, its successors and assigns, all its interest in the copyright of a ______ [book or as the case may be] entitled “______,” and described as follows: ______, and in all renewals and extensions of the copyright that may be secured under the laws now or subsequently in force in the United States of America or in any other country.

Assignor, through its duly authorized officer below, has executed this assignment at ______ [designate place of execution], on ______ [date].

[Seal]

[Signature of corporation by authorized officer]

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Form books

§ 25:132

For forms concerning assignments of copyrights generally, see Copyright and Literary and Artistic Property (Ch 72).

Tax Notes
For tax aspects of the assignment of royalties, see Federal Tax Guide To Legal Forms, Compromises, Settlements and Assignments § 12:58.

Research References

Text References
Transfer of copyright ownership generally, see Am. Jur. 2d, Copyright and Literary Property §§ 160 et seq.

West’s Digest References
Assignments ⇐ 5, 40

§ 25:133 Assignment—Interest in trust

Assignment

I, ______ [name of assignor], of ______ [street address], ______ [city], ______ County, ______ [state], in consideration of the love and affection that I have and bear towards ______ [name of assignee], of ______ [street address], ______ [city], ______ County, ______ [state], and other good and
Legal Periodicals

- Commentary & Analysis on a Narrow Area of Law
- Support Arguments by citing a Scholar
- Citations
Legal Periodicals

- Written by
  - Law Professors
  - Law Students
  - Lawmakers
  - Lawyers

- Quality by Author and Journal
  - Peer Reviewed
Legal Periodicals -- Types

- **Law Review or Law Journal**
  - Broad (i.e., law school law review)
  - Special-Interest (i.e., Technology Law, International Law)

- **Bar Association Journals**
  - *The Colorado Lawyer, Florida Bar Journal*

- **Legal Newspaper**
  - *Law Week Colorado*

- **Topical Newsletters**
  - *CCH Workers' Compensation Business Management Guide*
  - *North Carolina Employment Law Letter*
Colorado Bar Journal Articles

- The Colorado Lawyer
  - Published by the Colorado Bar Association
  - Practical articles written by members of the Bench and Bar (and occasionally librarians)
  - Published monthly; membership fee
  - Special features:
    - Annual Survey of Colorado Law
    - Colorado Appellate courts opinion summaries
    - Legislative Update – August Issue
## Legal Periodicals

<table>
<thead>
<tr>
<th>Format</th>
<th>Coverage Dates</th>
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<tbody>
<tr>
<td>HeinOnline (electronic - PDF)</td>
<td>Comprehensive Coverage of Most Titles</td>
</tr>
<tr>
<td>Index to Legal Periodicals &amp; Books Full Text (electronic)</td>
<td>Selective Full Text; Dates Vary</td>
</tr>
<tr>
<td>Publisher Web Site (electronic)</td>
<td>Varies but recent years only</td>
</tr>
<tr>
<td>Print (vol. title pg. no.)</td>
<td>Complete</td>
</tr>
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Legal Periodicals

How to Find Articles …

• Periodical Index
  - *Index to Legal Periodicals* (since 1908)
  - *Current Law Index* (since 1980)
• HeinOnline (www.heinonline.org)
• Google Scholar (scholar.google.com)
  - “and HeinOnline”
• Annotated Code cross-references
• Other Secondary Authority

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Restatement

- Written by American Law Institute
- Editions are significant
  - First is descriptive
  - Second is prescriptive
- “Black letter rule,” comments, illustrations
- Annotated with case summaries
- Persuasive authority
- Cover various topics such as?
Restatement

- Agency
- Conflict of Laws
- Contracts
- Foreign Relations Law
- Judgments
- Law Governing Lawyers
- Property

- Restitution
- Security
- Suretyship & Guaranty
- Torts
- Trusts
- Unfair Competition
Restatement

Research Methods

• Find applicable Restatement for your topic/issue
• Use index(es) OR table of contents (or both)
• Locate material in main text
• To find cases
  - Appendix volumes
  - Pocket part
  - Softbound supplements
Uniform Laws & Model Acts

- Drafted by
  - National Conference of Commissioners on Uniform State Laws (uniform laws)
  - American Law Institute (model acts)
- Notable examples
  - Uniform Commercial Code
  - Uniform Probate Code
- Secondary authority until it is enacted by a state legislature
Uniform Laws & Model Acts

• *Uniform Laws Annotated*
  - Provides text of uniform law
  - *List of states that have enacted the law*
  - Notes of Decisions
  - Research References (West Publication)
Uniform Laws & Model Acts

- **Uniform Laws Annotated**
  - Set Index (pamphlet),
    - Directory of Uniform Acts
    - Jurisdiction Listing Uniform Acts Adopted
  - Value for Legal Research …
    - If your state has enacted the uniform law, but the particular aspect of it that you are researching has not been litigated in your state, this helps you find cases from other jurisdictions that have adopted the law and addressed the issue and may prove to be persuasive to your court
Legal Dictionaries

- Definitions of words and phrases
- Derived from legal sources
- Dictionary of Environmental Legal Terms
- English/Spanish – Spanish/English
Words and Phrases

- Words and Phrases Judicially Defined
- Case Finding Tool like a Digest
- West Publication (Reference)
- Parts of Case Reporters and Digests
- Westlaw: WP field in cases databases
Book Recommendation


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