

# **Evidence-Based Instruction for Foreign and International Law Research**

## Presenters



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# Scaffold

## US Legal Research

1. Preliminary Analysis
2. Secondary Sources
3. Codified Law (aka Statutes & Regs)
4. Cases (aka Precedent)

## FCIL Research

1. Research Plan
2. Secondary Sources
3. Primary Sources



# Scaffold - FCIL

## 1. Research Plan

- a. Question/task
- b. Type of law
- c. Specific entities of interest & key characteristics
- d. Relevant facts
- e. Key search terms/concepts
- f. Plan of attack

## 2. Secondary Sources

- a. Reference Materials
- b. Books & Journals
- c. Gray Lit

## 3. Primary Sources

- a. Identify what they are for that area/jurisdiction and how they are binding

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## 3-Step Research Process Framework Basics - For All Topics

### 1) Research Plan: Identify →

- a) The question/task
- b) Type of law
- c) Specific entities of interest & key characteristics
  - i) Foreign Law: Jurisdiction; Legal System and consequences of that (civil/common/etc); governmental entity (national/federal/smaller unit/etc.); area of law and what documents we might need to find
  - ii) International Law:
    - (1) Treaty:
      - (a) Name
      - (b) Classify type: bilateral / multilateral
      - (c) Parties

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- c) BOOKS & JOURNAL ARTICLES
- d) Gray Literature: Reports, Working Papers, Other
- 3) Primary Sources
  - a) Locate the primary sources.
    - i) Foreign law: domestic legal materials (legislation/regulations/cases/constitutions)
    - ii) International law:
      - (1) Treaties:
        - (a) The treaty itself - always
        - (b) If there's an organization involved - is there any enforcement documentation that's relevant, from a committee or other adjudicatory body?
        - (c) Travaux preparatoires - if background
      - (2) CIL: Those documents used to prove state practice and opinio juris. Non-exhaustive examples:
        - (a) State Practice: diplomatic acts & correspondence, conduct in connection with resolutions/activities of int'l orgs; executive conduct; conduct in connection with treaties; legislative & administrative acts; decisions of nat'l courts
        - (b) OJ: public statements on behalf of state; official publications; legal opinions of the gov't; diplomatic correspondence; decisions of nat'l courts; treaty provisions; conduct in connection with resolutions/activities of int'l orgs.

# Scaffold - FCIL

## Assessment Questions (material)

Including questions that ask students to compare the role of the framework in different scenarios allows them to make explicit connections between strategy and a variety of legal issues. For example:

- What about this hypo is different from Exercise 1, and how might that affect your research plan, if at all?
- Compare this International Law Assessment to the Foreign Law Assessment; in what ways did the scope of each assessment change your research strategy?

# Predictive questions

[To establish the scaffold in class 1] Take 10 minutes and discuss in groups of 2 or 3 what you think should be included in the research planning phase - what questions do you think you should ask during the research plan process for FCIL topics.

# Predictive questions

- [To intro foreign law] How do differences in common law or civil law systems influence legal research?
- [To intro intl law] What do you think are the primary sources of law in international law?

# Retrieval questions

- CRAAP analysis
  - [Weeks after the CRAAP class] There are approximately 10 million websites on the GDPR. Evaluate this one: <https://gdprhub.eu/>, considering the CRAAP analysis. Would you use this website, and if so, when? How would you classify it (finding, primary, book, etc.)?
- Research plan
  - [Ask at beginning in isolation before introducing new subjects] What are the steps of a research plan generally?
- Secondary source
  - [Throughout when introducing non-traditional secondary sources] There are approximately 10 million websites on the GDPR. Evaluate this one: <https://gdprhub.eu/>, considering the CRAAP analysis. Would you use this website, and if so, when? How would you classify it (finding, primary, book, etc.)?

# Predictive & retrieval combos

- How might your research plan on  $X$  differ from the one we did on  $Y$ . Now execute research plan and discuss.
  - Between exercises - German bankruptcy for academic research v. Norwegian corporate social responsibility for law firm blog
  - Between classes - Recap the research plan - how would that differ for the UN?

# Tips

- Consider learning objectives first
- Tie prediction/retrieval exercises to your learning objectives
- Do not try to do everything at once!

# Resources

- Alyson Drake, Building on CREAC: Reimagining the Research Log as a Tool for Legal Analysis, 52 U. Mem. L. Rev. 57 (2021), <https://www.memphis.edu/law/documents/drake.pdf>.
- Janet Kearney, A Research Process for the Entire World? Challenges in Foreign, Comparative, and International Law Instruction, Journal of Legal Education (forthcoming), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4593665](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4593665).
- See handout with webinar materials, *Recommended Resources on Scaffolding, Prediction, & Retrieval*

Questions?

**Thank You!**

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