Introduction

This material is used for my First Year Legal Research course taught at the University of Florida Levin College of Law. This class uses a five step legal research method taught over 7 one-hour classes in the fall and 7 one-hour classes in the spring semester of a 1L’s first year at UF Law. Classes have usually 30 to 35 students per section. In the fall portion of the course, the instructors teach only Florida resources while in the spring the focus goes to Federal resources. This Teach-In Kit includes materials from only the seven courses taught in the spring semester dealing with federal legal sources. The five steps of the course are:

Step 1: Formulate a research plan
Step 2: Consult secondary sources
Step 3: Conduct your search for primary authority
Step 4: Expand and update your case research
Step 5: Analyze and organize your research results

There is an accompanying online portion of the course mainly used for document delivery and assignment submission. However, some instructors also utilize the quiz capabilities of the learning management system (LMS) that hosts the online content of the course.

Before each class, students are required complete any necessary reading from the assigned text (Osbourne, Impeccable Research), review of the PowerPoint from the upcoming course, and watch any posted vendor videos from Westlaw and Lexis. During the one-hour class, students receive a short lecture review of the PowerPoint covering the week’s material before completing an in-class exercise done in groups or individually. After each class, students must complete a homework assignment closely mirroring the in-class exercise.

At the end of the course, students are required to complete both a pass/fail multiple-choice “core competency” exam as well as a final exam essay. The final exam is an eight hour take-home exam based on a hypothetical legal issue. The students are required to give a legal answer similar to an in-office memo and also keep a research log of their findings. The research log must show the students completed the five steps taught in the course.
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First-Year Legal Research Core Competencies 2017-2018

1. Demonstrate the ability to interpret contemporary legal citations (the ability to identify a citation and its jurisdiction).

2. Given a legal citation to contemporary U.S. statutes and case law, demonstrate the ability to find the full text of the case or statute.

3. Given a statute, demonstrate the ability to use annotated statutes to find cases interpreting the statute.

4. Given a case, demonstrate the ability to determine whether a holding in a specific case is still good law.

5. Given a legal topic, demonstrate the ability to identify secondary sources that would prove valuable in researching that topic.

6. Using the Topic & Key Number and Headnote systems, demonstrate the ability to search for a case in a specific jurisdiction.

7. Demonstrate the ability to create a research plan.

8. Demonstrate the ability to find dockets, briefs, complaints, etc.

9. Demonstrate knowledge of legal information finding tools and methods (e.g., terms and connectors searching, natural language searching, indexes, annotations, and legal classification systems such as headnotes), and the ability to identify their strengths and weaknesses.
Overview of Five Steps of Legal Research
1. **Formulate a Research Plan**

   a. **Who are the parties?** How are they related to each other?
      
      
      ii. The parties’ relationship to each other may dictate what law applies.

   b. **What is the area of law?**
      
      i. Criminal or civil? Tort, property, homicide, administrative?
      
      ii. If you don’t know, use a legal encyclopedia to figure it out; then return to complete your plan.

   c. **What is the legal issue?** What is the question presented?

   d. **What is the jurisdiction?**
      
      i. State or federal? Which county, city, judicial district?
      
      ii. It may be both state and federal – use a legal encyclopedia to figure it out if you don’t know.
1. Formulate a Research Plan, cont.

e. What are the **key facts**?

f. Generate **search terms**
   
i. Use the relevant facts, the area of law, the issue, etc. to generate terms.

   ii. Consult Black’s Law Dictionary for synonyms or other search terms.

   iii. Craft both natural language and terms & connectors (Boolean) searches:

      1. Refer to the PDF on the terms & connectors that are used in Westlaw and Lexis Advance.

      2. Remember that terms & connectors differ by database.

      3. We will be learning more about crafting these searches, the differences between the databases and the two search strategies, and search algorithms this semester.
2. Consult Secondary Sources
   a. Get **background information** about the area of law.
   b. Find **primary authorities** (cases and statutes).
   c. **Refine** your search terms.

**Examples of Secondary Sources:**
- Florida Jurisprudence (state-specific legal encyclopedia)
- American Law Reports (general and subject-specific)
- Willis on Contracts; LaFave on Criminal Law (subject-specific treatises)
- Corpus Juris Secundum (general legal encyclopedia)
- Restatement (Second) of the Law of Torts (subject-specific)
3. **Search for Primary Sources**
   
a. Using the secondary sources, determine whether your issue is controlled by statute or by case law (common law).

b. **Statutory research: US Code, Florida Code**
   
i. Search the Table of Contents; search the Index (Westlaw only); do a keyword search

ii. **Use Annotated codes** – they provide additional research materials (such as cases that cite or interpret the code section, law reviews that discuss the statute, etc.)

c. **Case law/Common law research**
   
i. Use secondary sources to link you to relevant cases.

ii. Use any relevant statutory sections to find relevant cases.

iii. Use keywords from the secondary sources, statutes, and already-found cases to search for cases in a specific jurisdiction.

iv. Keep in mind which cases are mandatory/binding/controlling; and which cases are merely persuasive.
4. Expand & Update Case Research

a. Using cases that you’ve already determined are relevant, look at the cases, statutes, and secondary sources that the relevant case cites to.

b. Look at the Headnotes of relevant cases and use the Digest/Indexing system to find additional relevant cases:
   i. Search the Digest System in Westlaw for keywords or use the index, limited to cases in your jurisdiction.
   ii. Use Lexis Advance’s drill-down, horizontal menu to find other relevant headnotes.

c. Update your research using a citator:
   i. Look at Citing References (Westlaw) or Shepard’s (Lexis Advance) to ensure that the case is still good law and to find additional, relevant case law.
   ii. The yellow or red flags (Westlaw) or yellow, red, or green symbols (Lexis Advance) indicate the treatment that your case has been given.
5. Analyze & Organize Research Results

a. Read the statutes and cases that you have already found, considering:
   i. The holding of the case and the facts critical to the court’s analysis.
   ii. Whether the statute/case helps you answer your legal issue.
   iii. How courts have interpreted the statute.

b. Prioritize statutes and cases:
   i. Which cases provide the best holding for your analysis? Which cases have facts that are most similar/dissimilar to the facts of your case?

c. Evaluate your answer to the legal question
   i. Do you have an answer? Is the answer short and concise? Is the answer a complete one? Do you keep returning to the same primary authorities regardless of your research method?
   ii. If the answer to any question is no, return to your research plan to reevaluate your search terms and to review secondary sources.
Review of Five Steps & State vs. Federal Jurisdiction
Florida Court System

**Supreme Court**
- Must hear the following cases:
  - Constitutional questions
  - Capital cases
  - Bond validations
  - Public Utility cases
- May hear the following cases:
  - Express validity of statutes
  - Construction of Florida or US constitutions
  - Decisions affecting a class of constitutional/statutory officers
  - Certified questions

**District Courts of Appeal**
- Hear the following cases:
  - All matters not directly appealable to the Supreme Court
  - Final actions of state agencies

**Circuit Courts**
- Hear the following cases:
  - Felonies
  - Family Law
  - Probate/Guardianship/Mental Health
  - Juvenile dependency and delinquency
  - Appeals from County Court
  - Civil Cases (over $15,000)

**County Courts**
- Hear the following cases:
  - Misdemeanors
  - Traffic cases
  - Small claims (up to $5,000)
  - Civil cases (up to and including $15,000)

Certain cases are directly appealable to the Supreme Court from the Circuit courts.

The Supreme Court may decide to hear certain cases on appeal from the DCAs.

DCAs may hear appeals direct from the County Courts if the issue is one of great public importance.

Review of Five Steps & State vs. Federal Jurisdiction
Federal Court System

U.S. Supreme Court
- Highest court
- Appeals jurisdiction through *certiorari*
- Limited original jurisdiction over some cases

U.S. Courts of Appeals
- 13 Circuits (12 Regional and 1 for the Federal Circuit)

U.S. District Courts
- 94 Districts, each with a Bankruptcy Court PLUS
  - U.S. Court of International Trade
  - U.S. Court of Federal Claims

Review of Five Steps & State vs. Federal Jurisdiction
# Florida / Federal courts

<table>
<thead>
<tr>
<th>FLORIDA</th>
<th>FEDERAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Court of Last Resort</strong></td>
<td>Florida Supreme Court</td>
</tr>
<tr>
<td><strong>Intermediate Appellate Level</strong></td>
<td>District Court of Appeal</td>
</tr>
<tr>
<td><strong>Trial Level (original jurisdiction)</strong></td>
<td>Judicial Circuit Court (and County Court)</td>
</tr>
</tbody>
</table>
Florida federal court system

Northern District of Florida
Court for the Northern District is held in Tallahassee, Gainesville, Marianna, Panama City and Pensacola.

Middle District of Florida
Court for the Middle District is held in Tampa, Fernandina, Fort Myers, Jacksonville, Live Oak, Ocala, Orlando and St. Petersburg.

Southern District of Florida
Court for the Southern District is held in Miami, Fort Lauderdale, Fort Pierce, Key West, and West Palm Beach.
U.S. Circuit Courts of Appeals

[Map of the United States with circuit court districts marked and labeled]
Florida federal court system

Northern District of Florida
Court for the Northern District is held in Tallahassee, Gainesville, Marianna, Panama City and Pensacola.

Middle District of Florida
Court for the Middle District is held in Tampa, Fernandina, Fort Myers, Jacksonville, Live Oak, Ocala, Orlando and St. Petersburg.

Southern District of Florida
Court for the Southern District is held in Miami, Fort Lauderdale, Fort Pierce, Key West, and West Palm Beach.
U.S. Circuit Courts of Appeals
What jurisdiction are you in? (geographically)

Ocala, Florida
County?
→ Marion
District Court?
→ Middle District of Florida
Circuit Court of Appeals?
→ 11th Circuit Court of Appeals

All federal courts are bound to the U.S. Supreme Court
Jurisdiction

Helps to understand:

1. Where to file your case
   - Which county/circuit court or district court?
   - State or federal?

2. Which statutes and prior court decisions will govern your case
   - Which higher court’s precedent must you follow?
   - Which higher court’s decisions are binding on the court where I am filing my case?
Issues in which Federal & State Jurisdiction May Overlap

- Consumer protection
- Criminal law
- Employment law
- Food and drug regulation
- Emergency preparedness
- Torts/property/family law issues that cross state lines

Issues Typically Reserved for State Jurisdiction

- Family law
- Property law
- Small business
- Torts
- Contracts between residents of the state
- Estate law (wills/trusts)

Issues Exclusively to Federal Jurisdiction

- Copyrights & patents
- Certain money issues
- Federal taxes and Social Security
- Immigration
- Interstate commerce & other interstate issues
- Legal questions involving the U.S. Constitution
State, Federal, or Both?

Your client was arrested and charged with murder in Gainesville, Florida.

State Court
State, Federal, or Both?

Your client was arrested and charged with kidnapping across state lines.

State or Federal Court
State, Federal, or Both?

Your client wants to sue her Florida employer for discrimination on the basis of national origin in violation of her civil rights legislation.

State or Federal Court
State, Federal, or Both?

Your client misrepresented his personal income on his Form 1040 tax return and needs you to help him avoid the repercussions.

Federal Court
What is binding?

United States Supreme Court *(Highest Court)*
- Mandatory authority for all courts, federal and state, when the decisions cover points of federal law.

United States Courts of Appeals *(Intermediate Court)*
- Mandatory for district courts and other lower courts within the circuit.
- Persuasive for other circuits, both for other courts of appeals and for lower courts.
- Federal courts of appeals decisions are not binding on state courts.

United States District Courts *(Trial Court)*
- Mandatory for specialized lower courts if within the appellate jurisdiction of the district court (i.e., bankruptcy, territorial courts, etc.).
- District court decisions are not binding on state courts.
Binding?

A decision of the Florida Supreme Court on a decision of a trial court sitting in the Eighth Judicial Circuit of Florida about a state issue.

Binding
Binding?

A decision of a court sitting in the Gainesville, Florida location of the United States District Court, Northern District of Florida on another decision of a court sitting in the Tallahassee, Florida location of the United States District Court, Northern District of Florida about a federal issue.

Not Binding
A decision of the United States Eleventh Circuit Court of Appeals on a decision of the Eighth Judicial Circuit of Florida about a federal issue.

Not Binding
A decision of the United States Supreme Court on a decision of the Florida First District Court of Appeal as to whether a contract for the sale of land located in Florida must be in writing to be valid.

Not Binding
Use your answers to questions 1 and 2—whether the issue is state or federal and which court you are in—to find the box in the left hand column that applies to your case. Then, read across that row to find out which courts bind you and which courts are only persuasive to you.

<table>
<thead>
<tr>
<th>1) State or Federal Issue? 2) Which court are you in?</th>
<th>Binding Authority</th>
<th>Persuasive Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>State issue in state trial court</td>
<td>That state’s state appeals court</td>
<td>All federal courts</td>
</tr>
<tr>
<td></td>
<td>That state’s highest court</td>
<td>Other states’ state courts</td>
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<tr>
<td></td>
<td></td>
<td>Other state trial courts in the same state</td>
</tr>
<tr>
<td>State issue in state appeals court</td>
<td>That state’s highest court</td>
<td>All federal courts</td>
</tr>
<tr>
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<td>Other states’ state courts</td>
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<td>State trial courts in the same state</td>
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<td></td>
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<td>Other state courts of appeals in the same state</td>
</tr>
<tr>
<td>State issue in state’s highest court</td>
<td>That state’s highest court</td>
<td>All federal courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other states’ state courts</td>
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<td></td>
<td></td>
<td>State courts of appeals in the same state</td>
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<tr>
<td>Federal issue in state trial court</td>
<td>US Supreme Court</td>
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<td>All federal circuit courts</td>
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<tr>
<td></td>
<td></td>
<td>State courts</td>
</tr>
<tr>
<td>Federal issue in state appeals court</td>
<td>US Supreme Court</td>
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<td></td>
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<td>All federal circuit courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>State courts</td>
</tr>
<tr>
<td>Federal issue in state supreme court</td>
<td>US Supreme Court</td>
<td>All federal district courts</td>
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<tr>
<td></td>
<td></td>
<td>All federal circuit courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>State courts</td>
</tr>
<tr>
<td>State issue in federal district court</td>
<td>Interpretations from the state’s highest court</td>
<td>All federal courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other state courts</td>
</tr>
<tr>
<td>State issue in federal circuit court</td>
<td>Interpretations from the state’s highest court</td>
<td>All federal courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other state courts</td>
</tr>
<tr>
<td>State issue in U.S. Supreme Court</td>
<td>Interpretations from the state’s highest court</td>
<td>All federal courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other state courts</td>
</tr>
<tr>
<td>Federal issue in federal district court</td>
<td>US Supreme Court</td>
<td>Other federal circuit courts</td>
</tr>
<tr>
<td></td>
<td>Federal circuit court in the circuit where the district court is</td>
<td>Other federal district courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All state courts</td>
</tr>
<tr>
<td>Federal issue in federal circuit court</td>
<td>That federal circuit court</td>
<td>Other federal circuit courts</td>
</tr>
<tr>
<td></td>
<td>US Supreme Court</td>
<td>Other federal district courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All state courts</td>
</tr>
<tr>
<td>Federal issue in US Supreme Court</td>
<td>US Supreme Court</td>
<td>All federal circuit courts</td>
</tr>
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<td>All federal district courts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All state courts</td>
</tr>
</tbody>
</table>
Step 1: Formulate Research Plan
Legal Research process

- **Step 1:** Formulate a research plan
- **Step 2:** Consult secondary sources
- **Step 3:** Conduct your search for primary authority
- **Step 4:** Expand and update your case research
- **Step 5:** Analyze and organize your research results
Core Competency #7: Demonstrate the ability to create a research plan

- You don’t usually start with nothing
- Most of the time, you have a complaint, motion, order, something to use
- In Appellate Advocacy, you have the Record on Appeal in the Thom Yorke case
- Let’s create a research plan based on that...

Step 1: Formulate Research Plan
Formulate a Research Plan

- Relationship of the parties
- Area of law
- Jurisdiction
- Relevant terms and facts
- The legal question(s) that need(s) to be answered
Generate Search Terms

- Should flow naturally from your legal question
- Be flexible and consider variations of your search terms
- Your ability to generate search terms will improve throughout the year as you build your legal vocabulary. Be patient.
Words v. Concepts
Natural Language
v.
Terms & Connectors
Is there a skill that was covered in your legal research class that you think could have been covered more extensively?

“Terms and connectors searching”

“Boolean search terms”

“Keyword & Boolean searches”
Definitions

- **Terms and Connectors:** Requires specific symbols or words to indicate the relationship between the words and phrases you are searching for. You are giving the database instructions.

- **Natural Language:** Search using phrasing that is similar to the way you speak. No special characters or terms are needed to connect your search string. The database is using its own instructions (algorithm).
Full-Text Searching

Natural Language

- Any sequence of words and phrases you choose
- Proprietary algorithms are used to look for the “best” results
- Results ranked by relevancy
- Like Google!

Terms & Connectors (Boolean)

- “Terms” are the words and phrases you select to express the legal concept you’re looking for
- Connectors” are operators a researcher places between these words and phrases to relate them to one another

Step 1: Formulate Research Plan
When to use T & C

- When trying to be comprehensive
  - If you need to know every time a word or phrase occurs in a set of materials, or for specific facts.

- When trying to be precise
  - Terms & connector searching allows for a level of control that simply isn’t present in other search methods.

- When trying to prove a negative (demonstrate that something IS NOT out there)
Terms

- The **Root Expander (!)** retrieves all extensions of words with variant endings (up to 16 characters).

- The **Universal Character (*)** is used in place of a letter (like a wild card or a blank tile in Scrabble).
Connectors

- **AND** means the search will retrieve documents containing the terms on both sides of the connector. Use for distinct concepts.

- **OR** means the search will retrieve documents containing either of the terms on both sides of the connector. Use for synonyms/like terms.

- **/p** means the search will retrieve documents containing the terms within the same paragraph

- **/s** means the search will retrieve documents containing the terms within the same sentence

- **/n** means the search will retrieve documents containing the terms within “n” amount of words
The purpose of connectors is to show the desired relationships between terms.

<table>
<thead>
<tr>
<th>Means</th>
<th>LexisNexis</th>
<th>Westlaw</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Connector</td>
<td>Example</td>
</tr>
<tr>
<td>Phrase</td>
<td>&quot;&quot;&quot;&quot; or nothing</td>
<td>The rain in Spain</td>
</tr>
<tr>
<td>Proximity - Within # words</td>
<td>w/n</td>
<td>Window w/3 break</td>
</tr>
<tr>
<td>AND</td>
<td>default</td>
<td>Flat rate</td>
</tr>
<tr>
<td>Wildcard</td>
<td>*</td>
<td>Bl*w</td>
</tr>
<tr>
<td>Proximity – same sentence</td>
<td>w/s</td>
<td>Willful w/s wanton</td>
</tr>
<tr>
<td>OR</td>
<td>OR</td>
<td>Jam OR Jelly</td>
</tr>
<tr>
<td>Proximity – same paragraph</td>
<td>w/p</td>
<td>Consideration w/p bargain</td>
</tr>
<tr>
<td>Word root expander</td>
<td>!</td>
<td>Abat!</td>
</tr>
</tbody>
</table>
Advanced Forms

Westlaw

Lexis

Step 1: Formulate Research Plan
Evaluating Your Results

- If you recover too few results:
  - Make sure you’ve crafted your search to pick up different word forms of search terms
  - Try broadening your search by adding additional terms after an OR

- If you recover too many results:
  - Consider separating issues you may not have separated before
  - Rethink your connectors, leaning more toward AND as well as proximity connectors
In Class Exercise: Question 2

Look for federal cases relevant in the United States Court of Appeals for the Third Circuit (this should include cases issued by the Third Circuit, all the district courts in the Third Circuit, and the U.S. Supreme Court). Search for cases that include the following IN THE SAME SENTENCE:

- Similarity
- Advertise and any variations (advertising, advertisement, etc.)
- The exact phrase likelihood of confusion

BROWSE: Westlaw home page > Cases > Federal Cases by Circuit: 3rd Circuit > advanced

Type the following in the “All of these terms” box:
similarity /s advertise! /s "likelihood of confusion"
In Class Exercise: Question 3

- Look for all state cases in Florida (all state courts, but no federal courts). Search for cases that include the following:
  - Employment WITHIN THREE WORDS of discrimination, including variations for both words (employer, employee, discriminatory, etc.)
  - In the same SENTENCE
  - As either HIV or AIDS

BROWSE: Westlaw home page > Cases > Cases by State: Florida > State: All Florida State Cases > advanced
Type the following in the “All of these terms” box:
(employ! /3 discriminat!) /s (HIV OR AIDS)
Terms & Connectors Search Exercises with ANSWERS

NOTE: For each answer, I have included both the number of documents (cases, articles, etc.) my search returned, and the process I used to get those results. But be aware that Westlaw is always adding new material to its database, so you may get a different number of results with exactly the same search.

1. Look for cases issued by the United States Court of Appeals for the Ninth Circuit. Create a terms and connectors search that will search the HEADNOTES field for all of the following:
   - Judge
   - Disqualify and any variations, (disqualification, disqualified, etc.)
   - Property
   - County

**ANSWER TO QUESTION 1:**

My search returned one case.

BROWSE: Westlaw home page → Cases → Federal Cases by Circuit: 9th Circuit → Appellate: Ninth Circuit Court of Appeals → advanced

Scroll to the “Headnote” field and type in:

   judge AND disqualif! AND property AND county

Alternatively, once you reach the “Ninth Circuit Court of Appeals Cases” page, you could type this into the search box:

   adv: HE(judge AND disqualif! AND property AND county)

2. Look for federal cases relevant in the United States Court of Appeals for the Third Circuit (this should include cases issued by the Third Circuit, all the district courts in the Third Circuit, and the U.S. Supreme Court). Search the for cases that include the following IN THE SAME SENTENCE:
   - Similarity
   - Advertise and any variations (advertising, advertisement, etc.)
   - The exact phrase likelihood of confusion

**ANSWER TO QUESTION 2:**

My search returned 155 cases.

BROWSE: Westlaw home page → Cases → Federal Cases by Circuit: 3rd Circuit → advanced

Type the following in the “All of these terms” box:

   similarity /s advertis! /s "likelihood of confusion"
Alternatively, once you reach the “Third Circuit Federal Cases” page, you could type this into the search box:

adv: similarity /s advertis! /s "likelihood of confusion"

---

3. Look for all state cases in Florida (all state courts, but no federal courts). Search for cases that include the following:
   - *Employment* WITHIN THREE WORDS of *discrimination*, including variations for both words (employer, employee, discriminatory, etc.)
   - In the same SENTENCE
   - As either *HIV* or *AIDS*

**ANSWER TO QUESTION 3:**

My search returned nine cases.

BROWSE: Westlaw home page → Cases → Cases by State: Florida → State: All Florida State Cases → advanced

Type the following in the “All of these terms” box:

(employ! /3 discriminat!) /s (HIV OR AIDS)

Alternatively, once you reach the “Florida State Cases” page, you could type this into the search box:

adv: (employ! /3 discriminat!) /s (HIV OR AIDS)

---

4. Look for all state and federal cases relevant in Florida that include the following in the DISSENTING opinion:
   - The exact phrase *confidential informant*
   - *Induce* and any variations (inducement, induces, etc.)
   - *Friendship*

**ANSWER TO QUESTION 4:**

My search returned one case.

BROWSE: Westlaw home page → Cases → Cases by State: Florida → advanced

Scroll to the “Dissenting” field and type in:

"confidential informant" AND "induc!" AND "friendship"

Alternatively, once you reach the “Florida State & Federal Cases” page, you could type this into the search box:
5. Look for law review and journal articles that have the exact phrase *specialty license plates* in the TITLE of the article.

**ANSWER TO QUESTION 5:**

My search returned six articles.

BROWSE: Westlaw home page → Secondary Sources → Law Reviews & Journals → advanced

Scroll to the “Title” field and type in:

“specialty license plates”

Alternatively, once you reach the “Law Reviews & Journals” page, you could type this into the search box:

adv: TI("specialty license plates")

6. Look for entries in Florida Jurisprudence 2d that list *Elizabeth Bosek* as an AUTHOR.

**ANSWER TO QUESTION 6:**

My search returned 5,333 entries.

BROWSE: Westlaw home page → Secondary Sources → By State: Florida → Texts & Treatises: Florida Jurisprudence 2d → advanced

Scroll to the “Author” field and type in:

"Elizabeth Bosek"

Alternatively, once you reach the “Florida Jurisprudence 2d” page, you could type this into the search box:

adv: AU("Elizabeth Bosek")

7. Look for cases from the U.S. Supreme Court that have the following in the LEAD opinion (majority) only (not concurring or dissenting opinions):

- The exact phrase *confrontation clause*
- Within TEN WORDS of
  - *Hearsay*
ANSWER TO QUESTION 7:
My search returned 23 cases.

BROWSE: Westlaw home page → Cases → Federal Cases by Court: U.S. Supreme Court → advanced

Scroll to the “Lead” field and type in:

"confrontation clause" /10 hearsay

Alternatively, once you reach the “U.S. Supreme Court Cases” page, you could type this into the search box:

adv: LEAD("confrontation clause" /10 hearsay)

8. Look for cases from the Florida Supreme Court only, in which the term alimony and at least one of the following terms appear in the HEADNOTE field:
   • Adultery and any variations (adulterous, adulterer, etc.) OR
   • Infidelity OR
   • Unfaithful OR
   • Affair

ANSWER TO QUESTION 8:
My search returned 25 cases.

BROWSE: Westlaw home page → Cases → Cases by State: Florida → State: Florida Supreme Court → advanced

Scroll to the “Headnote” field and type in:

alimony AND (adulter! OR infidelity OR unfaithful OR affair)

Alternatively, once you reach the “Florida Supreme Court Cases” page, you could type this into the search box:

adv: HE(alimony AND (adulter! OR infidelity OR unfaithful OR affair))

9. Look for articles in American Law Reports in which the exact phrase license plates appears in the TITLE, and the exact phrase first amendment appears anywhere in the full text of the document.

ANSWER TO QUESTION 9:
My search returned one article.

BROWSE: Westlaw home page → Secondary Sources → By Type: American Law Reports → advanced

In the “This exact phrase” box, type in:
first amendment

Scroll down to the “Title” field and type in

“license plates”

Alternatively, once you reach the “American Law Reports” page, you could type this into the search box:

adv: “first amendment” & TI(“license plates”)

10. Look for all cases from the federal district courts in Florida (no state courts, not the Eleventh Circuit), in which the following terms appear with TEN WORDS of each other:

• The exact phrase fair use
• Transformative and any variations (transform, transformation, etc.)

ANSWER TO QUESTION 10:

My search returned four cases.

BROWSE: Westlaw home page → Cases → Cases by State: Florida → Federal: Florida Federal District Court → advanced

In the “All of these terms” box, type in:

“fair use” /10 transform!

Alternatively, once you reach the “Florida Federal District Court Cases” page, you could type this into the search box:

adv: “fair use” /10 transform!
Step 2: Consult secondary sources
# Primary vs. Secondary

<table>
<thead>
<tr>
<th>Primary Sources*</th>
<th>Secondary Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>is the Law</td>
<td>is NOT the law</td>
</tr>
<tr>
<td>Statutes (Legislative Branch)</td>
<td>Legal encyclopedias</td>
</tr>
<tr>
<td>Cases (Judicial Branch)</td>
<td>Legal periodicals</td>
</tr>
<tr>
<td>Administrative Rules &amp; Regulations (Executive Branch)</td>
<td>ALRs</td>
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<tr>
<td></td>
<td>Treatises</td>
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<td>Hornbooks</td>
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<td>Looseleafs</td>
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<tr>
<td></td>
<td>Practice guides</td>
</tr>
<tr>
<td></td>
<td>Restatements</td>
</tr>
</tbody>
</table>

**SECONDARY SOURCES ARE ALWAYS PERSUASIVE**

Step 2: Consult secondary sources
Why do research in secondary sources?

- Provide background information about a legal issue
- Help to refine search terms
- Often include helpful annotations, which point you to primary sources
- Will get you back on track when you lose control of your research
- Capitalize on the research someone else has already done
Basic search strategies for secondary sources

Step 1: Brainstorm key words

Step 2: Do one or all of the following:
  • Search the Index for those key words (Westlaw only)
  • Browse the Table of Contents for those key words
  • Conduct a key word search using those key words

Step 3: Locate the relevant section or article. Read it. Cite it. Note the footnotes/endnotes
Types of secondary sources

General
- Tends to be broader, more introductory
- Tends to be less citable
- Can be a faster way to a short answer

Subject-specific
- More focused, detailed, in-depth
- More authoritative and citable
- Usually has more to read but can be necessary when the question is complex or you need to know more
General Secondary Sources

- **Legal Encyclopedias** contain brief, general statements of law with elementary introductory explanations
- **American Law Reports (A.L.R.)** provide articles that survey national case law on specific (narrow) legal topics
- **Legal Periodicals**
  - Includes law reviews and legal journals
  - Provide scholarly articles on specific legal issues
  - Best place to find critiques and reflections on the law
  - Use [HeinOnline](https://www.heinonline.org/)

Step 2: Consult secondary sources
National legal encyclopedias

- **Corpus Juris Secundum (CJS)**
  - Provides a “contemporary statement of law” on a certain topic
  - Cross-references
  - Heavier focus on state cases
  - Available in print & on Westlaw

- **American Jurisprudence (Am.Jur.2d)**
  - Provides controlling cases for a certain topic
  - Cross-references; citations to relevant ALRs
  - More federal focus; more federal statutes and regulations
  - Available in print, on Westlaw, & on Lexis
American Law Reports

- Narrow, discrete points of law and regularly updated
- Written by experts in that particular practice area
- Excellent for case citations – if on point
- Cases organized by jurisdiction, concept, and fact pattern
- Focus on unsettled/split areas of law
  - Topic for a law school paper- (court or circuit) /s split
Subject-Specific Secondary Sources

- **Treatises** contain a longer discussion on a specific area of law
- **Practice Guides** contain materials more geared to helping practitioners handle certain tasks
- **Restatements** are compilations of rules, illustrations and commentary prepared by the American Law Institute to organize and clarify the principles of the common law
Treatises

- Longer discussion
  - Usually a full book, often multivolume
- Synthesizes cases and statutes, offers commentary and analysis of the law
- Focuses on a specific subject
  - LaFave’s Criminal Law
  - Dobb’s on Torts/Prosser & Keeton on Torts
  - Nimmer on Copyright
- Use Georgetown Law’s Treatise Finder to locate well-respected treatises

Step 2: Consult secondary sources
Florida Treatises

- **Florida Practice Series** on Westlaw

- Matthew Bender & FL CLE on Lexis
  - Find another Secondary Sources → Florida → **Treatises, Practice Guides & Jurisprudence**

Step 2: Consult secondary sources
Practice Guides

- In-depth resources with step-by-step procedures
- Sample pleadings and transaction forms

Practice guides titles
- Florida Jurisprudence *Forms*: Legal & Business
- Florida Pleading & Practice *Forms*
- Trawick's Florida Practice & Procedure
- American Jurisprudence Pleadings & Practice *Forms* Annotated
- West’s Legal *Forms*
Restatements

- Prepared by the American Law Institute (ALI)
- Organize and clarify the principles of the common law (contracts or torts)
- NOT THE LAW

Searching restatements:
1. Brainstorm key words
2. Do one or all of the following:
   - Search the key words by Topic
   - Conduct a key word search of the source
3. Locate a rule/restatement on your topic.
   - Note the footnotes/endnotes

- Citation Format = Bluebook Rule 12.9.5
Spring 2017:  
In-class Exercise KEY

Your firm’s new client, Linda Williams, had a meeting with your supervising Partner today and you were allowed to sit in on the meeting to take notes. Ms. Williams’ mother, who had been ill for a while, just passed away last month. The mother, who had a history of high blood pressure, was prescribed a drug named Coleptal. When the mother went to fill the prescription at the pharmacy, she received the generic version of the drug. She died as a result of taking the generic drug. Ms. Williams wants to hold someone accountable for her mother’s death. Your Partner knows he will sue the makers of the generic drug, the pharmacist, and the prescribing doctor, but he is curious to see if Ms. Williams also has a case against the makers of the prescription drug even though her mother took the generic version. Specifically, your Partner wonders if the makers of the prescription drug had a duty to warn of potential death in the generic version.

With your research partner, answer the following questions:

Part One:
1. What area of law or legal topic does this hypothetical involve?  
   Products liability, tort

2. Frame your legal question. What is your research issue(s)?
   Does the prescription drug maker have a duty to warn?  
   Who is liable for death resulting from a generic drug?

3. What are some relevant search terms that will yield optimum results?
   “Prescription drug maker” “drug manufacturer” “duty to warn” “generic drug” “brand manufacturer” products liability (Use “AND”)

4. Does this hypothetical involve a state issue, a federal issue, or potentially both? 
   Both

Part Two:
Answer the questions below using one of the national encyclopedias. If you are practicing with Westlaw today, search in Corpus Juris Secundum (CJS). If you are practicing with Lexis Advance today, search in American Jurisprudence 2d (Am. Jur. 2d).

What are the most relevant/helpful sections of your chosen encyclopedia that helps you understand the issue and refine your keywords?

LEXIS:

Best Option: Search Table of Contents
Option 1: AMJUR TOC > Products liability > Warnings > Failure to Warn as Basis for Liability > Duty to Warn > starts w/ §1023
Keyword Searching:
Option 2: “duty to warn” w/p “generic > §1025 is #2 on the list
Option 3: “duty to warn” AND products liability > starts with §1025
Option 4: “duty to warn” AND “generic drug” > §1025 is #2 on the list
Option 5: “duty to warn” AND “drug manufacturer” > §1025 is #6 on the list

Relevant Sections:
63A Am. Jur. 2d Products Liability § 1023 (existence of duty)
63A Am. Jur. 2d Products Liability § 1024 (failure to warn may render product defective)
63A Am. Jur. 2d Products Liability § 1025 (factors affecting existence of duty)
63A Am. Jur. 2d Products Liability § 1026 (remoteness of danger)
63A Am. Jur. 2d Products Liability § 1027 (manufacturer’s duty to warn as to products manufactured by another)

WESTLAW

Best Option: Search Index
Option 1: C.J.S. Index > “duty to warn” AND generic > 1. Drugs and Narcotics
Option 2: C.J.S. Index > “duty to warn” AND products liability > 8. Drugs and Narcotics
Option 3: C.J.S. Index > “duty to warn” w/s generic drug > 1. Drugs and Narcotics

Results Sections:
28 CJS Drugs and Narcotics § 113-118
28 CJS Drugs and Narcotics § 124-131
Step 3: Primary Sources (Annotated Statutes – United States Code)
Research in the U.S. Code
How bills become published law

1. Bill Passes Congress
2. President Signs Bill
3. Slip Law given a Public Law Number
4. Slip Laws put in bound volume called Session Laws
5. Statutory Code
Statutes/Code

- Introduced as a bill
- When passed → Act
- Slip laws are assigned a designated public law number
- Put in bound volume called Session Laws
  - US = “Statutes at Large” (was OFFICIAL)
  - FL = “Laws of Florida” (was OFFICIAL)

Codification
- Federal - Office of Law Revision Counsel
  - United States Code (Official)
  - United States Code Annotated (West)
  - United States Code Service (Lexis)
- Florida
  - Florida Statutes (Official)
  - West’s Florida Statutes Annotated
  - LexisNexis Florida Statutes Annotated
Beyond West & Lexis

- You can find the USC and the *Statutes at Large* more places than West & Lexis
- FDsys at [www.fdsys.gov](http://www.fdsys.gov)
- [HeinOnline](http://www.heinonline.org) (PDFs - citable)
- Print
  - USC - published every six years with annual supplements
  - *Statutes at Large* - each session of congress
Exercise

- Find the definition of murder in the U.S. Code
- Use either Lexis or Westlaw
- Make note of how you found it
Using an Index

- Why?
  - What is wrong with keyword searching?
  - The short answer is that you can miss things with keyword searching.

Example: Looking up murder in the U.S. Code...
Murder

Generally: 18 USCA § 1111 et seq.

Aimee's Law, Second and Subsequent Offenses, Funds: 42 USCA § 13713

Animals: 7 USCA § 2146

Armed Forces, Cemeteries and Dead Bodies, Honors: 10 USCA § 985

Assassination

Assault and Battery, 18 USCA § 113

Atomic Energy, Inspection and Inspectors: 42 USCA § 2283

Attempts

Attorney General

Child Abduction and Serial Murder Investigative Resources Center: 28 USCA § 531 NT

Civil Rights: 18 USCA § 241 et seq.

Colleges and Universities, Statistics, Financial Assistance: 20 USCA § 1092

Conspiracy
When in doubt, look for entries like...

**Generally:** 18 USCA § 1111 et seq.

**Definitions:** 18 USCA § 1111

But also be on the lookout for...
Possibly relevant provisions that you won’t necessarily know to search for...

Drive-by Shooting, Controlled Substances, Sentence and Punishment: 18 USCA § 36

Federal Prisoners: 18 USCA § 1120, 18 USCA § 1118

Eggs and Egg Products, Inspection and Inspectors: 21 USCA § 1041
Using an Index

- Uses a controlled vocabulary
  - “Death Penalty” may refer you to “Capital Punishment” if that is the term used in the statutes
  - False Imprisonment
    - Wrongful Imprisonment
    - Unlawful Restraint

- Generally best way of working with statutes
This can work if you know what title your code section is in
Not always intuitive
Index is better
Popular Name Table

- Acts that get referred to by name
  - “Civil Rights Act of 1964”
  - “Americans with Disabilities Act”

- Or sometimes by an incomplete or fake name:
  - “Title IX”
  - “G.I. Bill”

- Acts may be codified in several pieces throughout the Code
History (Lexis) & Credits (Westlaw)

- Legislative history

History


Credit(s)

History (Lexis) & Credits (Westlaw)

- When was it enacted/when was it amended?


Citing code and session laws (Federal)

United States Code*

Title Number U.S.C. § Specific Number (most recent publication of official code – 2012 for current statutes).


If there are subsections, the subsection follows the initial section number:


Public Laws

Pub. L. No. Session of Congress in which law was passed-Sequential number assigned to bill

Ex. Pub. L. No. 108-21

U.S. Session Laws

Volume Number Stat. Page number on which the text of bill begins

Ex. 108 Stat. 1969

U.S. Code - Updating

- What do I mean by updating?
  - Has this code section been impacted in some significant way by:
    - Case law
    - Or a very recent legislative proposal
U.S. Code - Updating

- Shepard’s and KeyCite work with code sections
  - You get a list of everything that cites to the code section (in that database)
  - And a symbol (flag, stop sign, etc.)
  - These tell you if the code section has been overruled, affected by pending legislation, etc.

Example: Murder in the U.S. Code
Westlaw’s KeyCite for statutes

Checking Statutes and Court Rules in KeyCite

If a statute or court rule has a red or yellow flag, the most negative treatment is displayed next to the flag at the top of the document. Most negative treatment consists of phrases such as Unconstitutional or Preempted or Proposed Legislation and includes a link to the underlying document, if available.

KEYCITE STATUS FLAGS

- A red flag indicates that the statute or court rule has been amended, repealed, superseded, or held unconstitutional or preempted in whole or in part.

- A yellow flag indicates that the statute or court rule has been renumbered or transferred, that an uncodified session law or proposed legislation affecting the statute or court rule is available, that the statute or court rule was limited on constitutional or preemption grounds or its validity was otherwise called into doubt, or that a prior version of the statute or court rule received negative treatment from a court.
Westlaw KeyCite tools for statutes

**Notes of Decisions:** displays list of cases that have cited and interpreted the statute

**History:** history of the statute including different versions, bill drafts, legislative history, etc.

**Citing References:** displays other cases, secondary sources, court documents, etc. that have mentioned the statute in their discussions

**Context and Analysis (only statutes/regulations):** detailed breakdown of the secondary sources that discuss the statute/regulation at length

---

§ 1111. Murder

United States Code Annotated

Title 18, Crimes and Criminal Procedure

Effective: April 30, 2003

(Approx. 2 pages)

---

Unconstitutional or Prompted

Prior Version Recognized as Unconstitutional by U.S. v. Ealy | 4th Cir. (Va.) | Apr. 02, 2004

---

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or other crime is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

(c) For purposes of this section--
Lexis Shepard's indicators for statutes

The *Shepard's* Signal™ Indicators

The *Shepard's* Signal™ indicators are integrated into case law documents and provide an immediate indication of the subsequent history and treatment of a particular case. When these codes are present, the LexisNexis® research service displays one of the following:

**Note:** Not every case will have a *Shepard's* Signal indicator.

**Warning: Negative treatment is indicated**
The red *Shepard's* Signal indicates that citing references in the *Shepard's*® Citations Service contain strong negative history or treatment of your case (for example, overruled by or reversed).

**Warning: Negative treatment is indicated for statute**
The red exclamation point *Shepard's* Signal indicates that citing references in the *Shepard's*® Citations Service contain strong negative treatment of the Shepardized™ section (for example, the section may have been found to be unconstitutional or void).

**Questioned: Validity questioned by citing refs.**
The orange *Shepard's* Signal indicates that the citing references in the *Shepard's* Citations Service raise questions the continuing validity or precedential value of your case because of intervening circumstances, including

**Caution: Possible negative treatment indicated**
The yellow *Shepard's* Signal indicates that citing references in the *Shepard's* Citations Service may have a significant negative impact on your case (for example, limited or criticized by).

**Positive treatment indicated**
The green *Shepard's* Signal indicates that citing references in the *Shepard's* Citations Service contain history or treatment that has a positive impact on your case (for example, affirmed or followed by).

**Citing refs. with analysis available**
The blue “A” *Shepard's* Signal indicates that citing references in the *Shepard's* Citations Service contain treatment of your case that is neither positive nor negative (for example, explained).

**Citation information available**
The blue “I” *Shepard's* Signal indicates that citing references are available in the *Shepard's* Citations Service for your case, but the references do not have history or treatment analysis (for example, the references are law review citations).
Shepardizing statutes in Lexis

18 USCS § 1111

Current through PL 114-327, approved 12/16/16.

United States Code Service - Titles 1 through 54 > TITLE 18. CRIMES AND CRIMINAL PROCEDURE > PART I. CRIMES > CHAPTER 51. HOMICIDE

§ 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

(c) For purposes of this section--

(1) the term "assault" has the same meaning as given that term in section 113 [18 USCS § 113];

(2) the term "child" means a person who has not attained the age of 18 years and is--

(A) under the perpetrator's care or control; or

(B) at least six years younger than the perpetrator;

(3) the term "child abuse" means intentionally or knowingly causing death or serious bodily injury to a child;

(4) the term "pattern or practice of assault or torture" means assault or torture engaged in on at least two occasions;
Shepardizing statutes in Lexis
U.S. Code - Currency

- What do I mean by currency?
  - Westlaw and Lexis say that this is the statute
  - But when was the last time they checked to see if it has been amended or repealed?
U.S. Code - Currency

- Look for language like “current through” or “updated with”
  - At the top or the bottom of the code section entry

- This tells you the last time they checked to see if there were changes

- It is usually, BUT NOT ALWAYS up to date

Example: Murder statute
Westlaw is saying they have checked all of the legislation passed by Congress through P.L. 114-329 except those listed. We are going to believe them.

Has Congress done anything since P.L. 114-329?
§ 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

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Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;

Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life.

(c) For purposes of this section—

(1) the term "assault" has the same meaning as given that term in section 113 [18 USCS § 113];
Lexis is telling us they have checked all the legislation passed by Congress through P.L. 114-327.
Annotated codes - Westlaw

- **Notes of Decisions**
  - Case annotations, selected by the editors and organized by topic

- **History**
  - Notes regarding amendments and legislative history material

- **Citing References (KeyCite)**
  - Everything that cites to the statute in Westlaw
    - Both primary and secondary sources
    - Not selective or chosen, if it cites the statute it is here

- **Context & Analysis**
  - Selected materials, chosen by the editors (not cases)
    - Secondary
    - Cross references to other statutes
Annotated codes - Lexis

- **Case Notes**
  - Case annotations, selected by the editors and organized by topic

- **Research References & Practice Aids**
  - Selected materials, chosen by the editors (not cases)
    - Secondary
    - Cross references to other regulations

- **Shepard’s**
  - Everything that cites to the statute in Lexis
    - Both primary and secondary sources
    - Not selective or chosen, if it cites the statute it is here
Annotations vs Citator

**Annotations**
- Selected by editors
  - Cases, etc. illustrate principles
  - Significant discussion
- Organized by concept
- Probably not comprehensive

**Citator**
- Automated by computer
  - Possibly just mention statute
- Organized by date, jurisdiction, court, etc.
- Comprehensive (in theory)
In-Class Exercise: Statutes Practice

Correctly cite the following.

1. Section 111 of title 18, United States Code. Use Lexis Advance.
   (a) Statute citation:
   (b) Public law when statute initially passed:
   Pub. L. No. 80-772.
   (c) Most recent amendment:
   Bluebook R. 12.4

2. Florida statute 90.106. Use Westlaw Next.
   (a) Statute citation:
   (b) Session law that passed statute:
   Ch. 76-237, § 1, Laws of Fla.

   (a) Statute citation:
   (b) Enacting public law:
   Pub. L. No. 89-487.
   (c) Original session law:
   80 Stat. 250.

4. Cite to the Florida Forever Act. Use Westlaw.
   (a) Statute citation:
   (b) Enacting law:
   Ch. 99-247, § 21, Laws of Fla.
   (c) Session law that amended the statute in 2008:
   Ch. 2008-229, § 13, Laws of Fla.
Step 4: Expanding and Updating Case Law
Federal Court System

**U.S. Supreme Court**
- Highest court
- Appeals jurisdiction through *certiorari*
- Limited original jurisdiction over some cases

**U.S. Courts of Appeals**
- 13 Circuits (12 Regional and 1 for the Federal Circuit)

**U.S. District Courts**
- 94 Districts, each with a Bankruptcy Court PLUS
  - U.S. Court of International Trade
  - U.S. Court of Federal Claims

*Step 4: Expanding and Updating Case Law*
Florida federal court system

Northern District of Florida
Court for the Northern District is held in Tallahassee, Gainesville, Marianna, Panama City and Pensacola.

Middle District of Florida
Court for the Middle District is held in Tampa, Fernandina, Fort Myers, Jacksonville, Live Oak, Ocala, Orlando and St. Petersburg.

Southern District of Florida
Court for the Southern District is held in Miami, Fort Lauderdale, Fort Pierce, Key West, and West Palm Beach.

Step 4: Expanding and Updating Case Law
U.S. Circuit Courts of Appeals
Where to find Florida cases

- **Southern Reporter (Official)**
  - Florida Supreme Court AND Florida District Courts of Appeal
  - Southern Reporter First, Second, and Third Series (So., So. 2d, So. 3d)

- **Florida Supplement (Official)**
  - Florida Circuit Courts and County Courts (1950-1991)
  - Florida Supplement First and Second Series (Fla. Supp., Fla. Supp. 2d)

- **Florida Law Weekly (Unofficial)**
  - Florida Supreme Court AND Florida District Courts of Appeal
  - Generally unofficial except for recent opinions not yet published in the Southern Reporter (Fla. L. Weekly)

- **Florida Law Weekly Supplement (Official)**
  - Florida Circuit Courts and County Courts (1992-current)
Where to find U.S. Supreme Court cases

- *United States Reports (Official)*
  - Reporter abbreviation: U.S.

- *Supreme Court Reporter (West, unofficial)*
  - Reporter abbreviation: S. Ct.

- *Lawyers' Edition (Lexis, unofficial)*
  - First and Second Series
  - Reporter abbreviation: L. Ed., L. Ed. 2d

- [SupremeCourt.gov](http://www.SupremeCourt.gov) & [SCOTUSblog.com](http://www.SCOTUSblog.com)
Where to find federal trial and appellate court cases

- **Federal Reporter (Official)**
  - Federal district courts (to 1925) and appellate courts
  - Federal Reporter First, Second, and Third Series (F., F.2d, F.3d)

- **Federal Supplement (Official)**
  - Federal district courts
  - Florida Supplement First and Second Series (F. Supp., F. Supp. 2d)

- **Federal Appendix (Official)**
  - Federal appellate court opinions not reported in F.3d (2001- )
  - Reporter abbreviation: F. App’x.
Citing Federal cases

**U.S. Supreme Court Cases**

*Case Name*, Reporter volume number abbreviation of Reporter page number *(Year Case Decided).*


**U.S. Circuit Courts of Appeals Cases**

*Case Name*, Reporter volume number abbreviation of Reporter page number *(Circuit Court Abbreviation Year Case Decided).*

Ex. *United States v. Carter*, 489 F.3d 273 *(2d Cir. 2007).*

Case names must be **underlined** or in *italics.*
One “good case” method

- The system is set up to lead you to more
- From a known on-point case:
  - Headnotes/subject outline → more cases
  - Citators (Shepard’s and KeyCite) → more cases
  - Terms & connectors (using terminology from that “good case”) → more cases
Expanding Case Law

- Both Lexis and Westlaw have special tools for finding related cases
  - Westlaw’s is called the Topic and Key Number System
  - Lexis’ is called LexisNexis Headnotes

- Two important components:
  - Headnotes
  - Subject outline

These components are separate, but we use them in tandem to quickly and efficiently find cases in any jurisdiction.
Headnotes

- Key legal points appearing before published cases
- More precise than citators (Shepard’s and KeyCite)
  - Small set that is highly focused
- **Westlaw**: Written by editors that decide what is important in case DO NOT CITE TO THEM
  - They are unique to each case
- **Lexis**: Headnotes are words taken directly from the words in the opinion that follows
- You must READ THE CASE regardless
- Will give you only cases and from all jurisdictions
Key Numbers

- Westlaw specific
- Headnote is assigned to topic and subtopic (that is the key number)
- Creates large outline
- Find a “good case” then use key numbers and headnotes to find additional relevant cases
Westlaw tips for Headnotes

- "Cases that cite this headnote" - will take you to the cases that cite your case and discuss THAT point of law in headnote
  
  My advice: DON’T CLICK ON IT

- Clicking on key number takes you to other cases that have headnotes under that Topic/Key number (you can see cases from Florida state and federal)

- You can also access the giant outline through the home page under Key Numbers
Lexis tips for Headnotes

- Lexis doesn’t have key numbers but does have an outline (access through “bread crumb” of headnote)
- Headnotes are words taken directly from the words in the opinion that follows
- You can access the outline through Browse > Topics on the homepage
Updating Case Law with Citators

- Will give you a list of EVERYTHING in your database that cites to your “one good case”

  - **Westlaw KeyCite**: Citing References
  - **Lexis Shepardize**: Citing Decisions + Other Citing Sources

- This will include secondary and primary
- But not everything will be on point
- Filter results by: type of material, jurisdiction, headnote

Step 4: Expanding and Updating Case Law
Westlaw’s KeyCite indicators for cases

Checking Cases and Administrative Decisions in KeyCite

If a case or administrative decision has a red or yellow flag, the most negative treatment is displayed next to the flag at the top of the document. Most negative treatment consists of phrases such as *Overruled by*, *Abrogated by*, or *Distinguished by* and includes a link to the underlying document, if available.

If a case has a blue-striped flag, it warns that the case has been appealed to the U.S. Court of Appeals or the U.S. Supreme Court. A blue-striped flag is considered neutral and language such as *Petition for Certiorari Docketed by* or *Appeal Filed by* is displayed next to the flag at the top of the document.

KEYCITE STATUS FLAGS FOR CASES

- A red flag warns that the case or administrative decision is no longer good law for at least one of the points it contains.
- A yellow flag warns that the case or administrative decision has some negative history, but has not been reversed or overruled.
- A blue-striped flag warns that the case has been appealed to the U.S. Court of Appeals or the U.S. Supreme Court (excluding appeals originating from agencies).
Westlaw KeyCite tools for cases

Negative Treatment (cases): displays list of cases that have treated our case with some negative discussion with most negative case first

History: shows whether the case has been ruled on in other court levels previous to current case

Citing References: displays other cases, secondary sources, court documents, etc. that have mentioned the case name in their discussions

Table of Authorities (cases): displays every case cited by current case

Step 4: Expanding and Updating Case Law
Lexis Shepard's indicators for cases

The *Shepard's Signal™* Indicators

The *Shepard's Signal™* indicators are integrated into case law documents and provide an immediate indication of the subsequent history and treatment of a particular case. When these codes are present, the LexisNexis® research service displays one of the following:

**Note:** Not every case will have a *Shepard's Signal* indicator.

- **Warning: Negative treatment is indicated**
  The red *Shepard's Signal* indicates that citing references in the *Shepard's® Citations Service* contain **strong negative history or treatment of your case** (for example, overruled by or reversed).

- **Warning: Negative treatment is indicated for statute**
  The red exclamation point *Shepard's Signal* indicates that citing references in the *Shepard's® Citations Service* contain **strong negative treatment of the Shepardized™ section** (for example, the section may have been found to be unconstitutional or void).

- **Questioned: Validity questioned by citing refs.**
  The orange *Shepard's Signal* indicates that the citing references in the *Shepard's® Citations Service* contain treatment that questions the continuing validity or precedential value of your case because of intervening circumstances, including judicial or legislative overruling.

- **Caution: Possible negative treatment indicated**
  The yellow *Shepard's Signal* indicates that citing references in the *Shepard's Citations Service* contain **history or treatment that may have a significant negative impact on your case** (for example, limited or criticized by).

- **Positive treatment indicated**
  The green *Shepard's Signal* indicates that citing references in the *Shepard's Citations Service* contain **history or treatment that has a positive impact on your case** (for example, affirmed or followed by).

- **Citing refs. with analysis available**
  The blue “A” *Shepard's Signal* indicates that citing references in the *Shepard's Citations Service* contain **treatment of your case that is neither positive nor negative** (for example, explained).

- **Citation information available**
  The blue "I“ *Shepard's Signal* indicates that citing references are available in the *Shepard's Citations Service* for your case, but the references do not have history or treatment analysis (for example, the references are law review citations).
Shepardizing cases in Lexis

**Oliver v. United States, 80 L. Ed. 2d 214**

**Copy Citation**

Supreme Court of the United States

November 9, 1983, Argued; April 17, 1984, Decided

No. 82-15

Reporter

466 U.S. 170 | 104 S. Ct. 1735 | 80 L. Ed. 2d 214 | 1984 U.S. LEXIS 55 | 52 U.S.L.W. 4425

OLIVER v. UNITED STATES

Prior History: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Disposition: 686 F.2d 356, affirmed; 453 A. 2d 480, reversed and remanded.

Core Terms

open field, trespass, privacy, curtilage, privacy interest, intrusion, spaces, expectation of privacy, activities, open fields doctrine, cases, landowners, common law, protections, marijuana, fences, fields, constitutionally protected, intruders, signs, reasonable expectation of privacy, police officer, private land, decisions, searches, effects, factors, courts, posted, rights

Case Summary

Procedural Posture

Writ of certiorari was granted from judgments of the United States Court of Appeals for the Sixth Circuit, which ruled that the open fields doctrine permitted introduction of evidence of the discovery of a marijuana field located in a field surrounded by no trespass signs a mile from petitioner’s home, and of the Supreme Judicial court of Maine, which suppressed evidence obtained under similar circumstances.
Shepardizing cases in Lexis

SAME TOOLS AS WESTLAW

1. History: previous cases
2. Citing Decisions: cases that have cited current case
3. Other Citing Sources: secondary source, statutes, court documents that have cited the case
4. Table of Authorities: cases cited by current case
Case Treatment Descriptions

Once you have verified that a case has not been overturned by a higher court, you will want to focus on finding out how subsequent courts have treated your case. Below is a chart that details some common terms used by Lexis and Westlaw to categorize how a case has been treated.

<table>
<thead>
<tr>
<th>Positive</th>
<th>Neutral</th>
<th>Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Followed by</td>
<td>Discussed by</td>
<td>Overruled by</td>
</tr>
<tr>
<td>Analyzed by</td>
<td>Cited in dissenting/concurring</td>
<td>Reversed by</td>
</tr>
<tr>
<td>Examined by</td>
<td>Cited by</td>
<td>Distinguished by</td>
</tr>
<tr>
<td>Explained by</td>
<td>Mentioned by</td>
<td>Criticized by</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Declined to Extend by</td>
</tr>
</tbody>
</table>

Step 4: Expanding and Updating Case Law
Tips

- As you are expanding your research, remember to pay attention to the jurisdiction of the cases. Make sure you are using cases within your jurisdiction.

- Editors do not always categorize cases exactly as you would think, so you should review several headnotes on relevant points of law to ensure you don’t miss any relevant cases.
Hypothetical

You have a client who was arrested for growing marijuana in a shed on her property in Miami, Florida. The shed is located 200 feet from your client’s home, visible from the street and unimpeded by a fence. Acting on an anonymous tip, the police walked a trained Belgian Malinois up to the door of the shed. The dog indicated the presence of drugs leading to your client’s arrest. Your Partner asks you to figure out whether the shed is considered part of the “curtilage” of the home.

You are such a good researcher that you walked yourself through the first three steps of the research process: you formulated a research plan, consulted secondary sources, found statutes and cases from the secondary sources (and from reading the annotations of the statute), and picked your “one good case” from which to expand and update your research: Florida v. Jardines, 133 S. Ct. 1409 (2013). You read the case and now you want to find more cases that help you answer the Partner’s question.


Expanding your Research

1. Let’s assume you will also use citing references/Shepardize Jardines to find cases that have cited our one good case. For now, let’s focus on using headnotes and the subject outline to expand our research.

2. Read the headnotes of Jardines.

3. Pick ONE headnote that is most relevant to the issue in the above hypothetical.
   a. Which headnote did you choose? HN 6 or HN 7; HN4
   b. Why did you choose this headnote? Defines curtilage

4. Examine where this headnote fits into the outline of legal topics created by Westlaw/Lexis. If you are using Westlaw, what are the topic and key number of this headnote? If you are using Lexis, what is the breadcrumb trail of this headnote?
   
   Topic: 349 (Searches & Seizures)
   Key Number: 27 (Curtilage or open fields; yards and outbuildings).
   Criminal Law & Procedure > Search & Seizure > Expectation of Privacy

5. If you are using Westlaw, click the most narrow topic/key number of the Westlaw headnote outline to find more cases with the same topic and key number (and therefore, with some discussion of the same issue). If you are using Lexis, click the last link of the
Here is a plain text representation of the document:

There are 20 headnotes, but they relate to only 7 different cases (the cases are repeated in the results when they have several headnotes that fit into the same topic/key number). All of these U.S. Supreme Court cases talk about curtilage in the search/seizure topic.

101 cases on Lexis. The Lexis headnote outline is broader than Westlaw’s. So, you are getting every case on the concept of expectation of privacy in the criminal law and procedure topic. That’s going to be a lot. You’ll need to use more keywords and search within the results to get the number down to a more manageable amount. If I search for “curtilage” within the results, I get only 14 cases from the U.S. Supreme Court on this issue.

Updating your Research

6. Go back to the *Jardines* opinion– is there a signal associated with this case? If so, describe it.

   - **Westlaw**: Yes, yellow flag, negative treatment
   - **Lexis**: Yes, questioned symbol

7. Click on the citator symbol. Which “tab” are you defaulted to on the next screen?

   - **Westlaw**: Negative Treatment tab.
   - **Lexis**: “Citing Decisions” in Shepards

8. How many cases have treated this case negatively (“overruled”, “questioned”, “declined to extend”, “distinguished,” warning, caution, etc.) *Jardines*?

   - **Westlaw**: 102 (Negative Treatment tab)
   - **Lexis**: 128 (Questioned + Caution)

9. How many of these cases are from a binding court?

   - **Westlaw**: 1 (browse through the list)
   - **Lexis**: 1 (Narrow by jurisdiction-11th Circuit)

10. Is *Jardines* still good law for your issue in your jurisdiction?

    - Yes. “Declined to Extend by” treatment but not overruled
Dockets
What do we mean?

The docket is a memorialization of everything that has been filed in a case.

- Includes:
  - Complaint and answer (pleadings)
  - Briefs
  - Indictment or bill of information
  - Motions and responses
  - Record
  - Orders, judgments, and opinions of the court

- Dockets are maintained by the clerk of courts in each jurisdiction

- The docket will show the attorneys, parties and judge in a particular matter
Use of docket

- You have a case going on and need to know what is happening.
- You need to look up a similar case to see things that might be helpful (e.g. has someone successfully filed a motion for summary judgment) to use in the progress of your own case.
- You want to see how a particular judge or court has ruled on similar cases.
Sources for dockets

- PACER (Federal only)
- Bloomberg Law
- Westlaw
- Lexis
- Individual court sites
  - i.e. 9th Circuit Court of Appeals
Finding a case docket

- Let’s find a case docket using the docket number
- We’ll use *Washington v. Trump* at the district court (trial) level
  - Many have read the opinion from the 9th Circuit but I want us to look at a trial-level docket first
- How do we find the docket number? There are a few different ways (including through Google)
- Since we already have the appellate opinion from the 9th Circuit, we can use it to find the number
- On the next screen, we will see the 9th Circuit’s opinion in Westlaw...
This is a docket number, but it is the circuit court’s number, NOT the district court’s case number.

To find the district court’s opinion, click on the “History” tab.

Donald J. Trump, President of the United States; U.S. Department of Homeland Security; Rex W. Tillerson, Secretary of State; John F. Kelly, Secretary of the Department of Homeland Security; United States of America, Defendants–Appellants.

No. 17-35105
Argued and Submitted February 7, 2017
Filed February 9, 2017

Synopsis
Background: States of Washington and Minnesota brought action against President, Secretary of Homeland Security, Secretary of State, and United States for declaratory judgment that sections of executive order on refugee admissions and entry of aliens from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen violated First, Fifth, and Tenth Amendments, the Immigration and Nationality Act (INA), the Foreign Affairs Reform and Restructuring Act, the Religious Freedom Restoration Act (RFRA), and the Administrative Procedure Act. States filed motion for temporary restraining order (TRO). The United States District Court for the Western District of Washington, James L. Robart, J., 2017 WL 462040, granted the TRO and denied motion for stay pending appeal. Federal government appealed and moved for emergency stay pending appeal.

Holdings: The Court of Appeals held that:
1 states had standing to assert their own rights and rights of third parties;
2 constitutionality of order was reviewable by federal court;
3 federal government failed to show likelihood of success on claim that order did not violate aliens' due process rights; and
4 it failed to show necessity of an emergency stay.

Dockets
Motion denied.
This flowchart shows us the different opinions that have been issued in this case, at all levels. We want this one...
This is the district court’s opinion, and this is the case number.

We need the docket number which is set up in a special format.

STATE OF WASHINGTON, ET AL v. DONALD J. TRUMP, ET AL, 9th Cir., February 4, 2017

2017 WL 462040
Only the Westlaw citation is currently available.
United States District Court,
W.D. Washington,
at Seattle.

State of Washington, et al., Plaintiffs,
v.
Donald J. Trump, et al., Defendants.

CASE NO. C17-0141JLR
Signed 02/03/2017

Attorneys and Law Firms


Arjun Garg, Michelle R. Bennett, US Department of Justice, Washington, DC, for Defendants.

TEMPORARY RESTRAINING ORDER

JAMES L. ROBART, United States District Judge

I. INTRODUCTION

*1 Before the court is Plaintiffs State of Washington and State of Minnesota’s (collectively, “the States”) emergency motion for a temporary restraining order (“TRO”). (TRO Mot. (Dkt. ## 3, 19 (as amended)).) The court has reviewed the motion, the complaint (Compl. (Dkt. # 1)), the amended complaint (FAC (Dkt. # 18)), all the submissions of the parties related to the motion, the relevant portions of the record, and the applicable law. In addition, the court heard the argument of counsel on February 3, 2017. (See Min. Entry (Dkt. #51).) Having considered all of the foregoing, the court GRANTS the States’ motion as set forth below.
This docket is current through 02/14/2017

<table>
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<th>2/14/2017</th>
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<tr>
<td>Court:</td>
<td>US COURT OF APPEALS FOR THE NINTH CIRCUIT</td>
</tr>
<tr>
<td>Case Title:</td>
<td>STATE OF WASHINGTON, ET AL v. DONALD J. TRUMP, ET AL</td>
</tr>
<tr>
<td>Appeal From:</td>
<td>U.S. DISTRICT COURT FOR WESTERN WASHINGTON, SEATTLE</td>
</tr>
<tr>
<td>Date Filed:</td>
<td>02/04/2017</td>
</tr>
</tbody>
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**CASE INFORMATION**

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<tr>
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<tr>
<td>Case Type:</td>
<td>APPEALS</td>
</tr>
<tr>
<td>Case Subtype:</td>
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<tr>
<td>Nature of Suit:</td>
<td>1440 OTHER CIVIL RIGHTS</td>
</tr>
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**LOWER COURT INFORMATION**

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<tbody>
<tr>
<td>Lower Court Docket Number:</td>
<td>2:17-CV-00141</td>
</tr>
<tr>
<td>Trial Judge(s):</td>
<td>JAMES L. ROBART, SENIOR DISTRICT JUDGE</td>
</tr>
<tr>
<td>Date Filed:</td>
<td>01/30/2017</td>
</tr>
<tr>
<td>Date Order/Judgment:</td>
<td>02/03/2017</td>
</tr>
<tr>
<td>Date NOA Filed:</td>
<td>02/04/2017</td>
</tr>
<tr>
<td>Date COA Received:</td>
<td>02/04/2017</td>
</tr>
</tbody>
</table>
Now let’s find our case docket using Bloomberg Law

The information we will need is:
- The case was in front of the United States District Court for the Western District of Washington
- And the docket number is 2:17-CV-00141
Bloomberg Law has a lot of material, but for this class we will only focus on the docket.
First, we will find a docket for a particular case using the docket number. We will use the original *Washington v. Trump* case at the district court level.

We have to choose the applicable court (Western District of Washington).
Scroll through and click the plus signs next to:

- Court Dockets
- Federal Court Dockets
- U.S. District Courts
- Districts of Washington
- Western District of Washington
When you click on ‘Western District of Washington,’ you should see it appear under the box.

Type in the docket number here. The first number is the year the case was filed, the “CV” indicates it is a civil suit, and the second number is the sequential number assigned by the court.

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:17-cv-00141-JLR

State of Washington, et al., v. Trump., et al

Date Filed: Jan 30, 2017
Nature of suit: 440 Civil Rights: Other
Assigned to: Judge James L. Robart
Cause: 28:1331 Fed. Question
Jurisdiction: Federal Question
Jury demand: None

Parties and Attorneys

**Plaintiff**

State of Washington

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annee1@atg.wa.gov
ATTORNEY TO BE NOTICED
This is the original complaint that started the litigation. Click on the Entry # or “View” to see the filing.
This is the actual complaint, as filed on January 30, 2017. In federal court, almost all documents are required to be filed electronically.
WARNING!!!

- Not at all of the documents listed in the docket have been uploaded to Bloomberg Law’s servers.

- If you try to access one of these documents (by clicking on the hyperlinked Bloomberg document number), you will be asked if you want to request the document.

- You will be told that there is a fee, but you will also notice that the fee is waived for our academic accounts.

- So you should feel free to request the document.

- Example on the next slide...
This box means they don’t have the document yet, but they will get it for us.

Click the green “Accept” button.

In a few minutes you should get an email with a link to the document.

NOTE: The email will be sent to your UF email address.
Keyword searching

- If you already know the case the best way to look up a docket is on the court’s website
- But we don’t always know which case we are looking for (downside of PACER)
- So Bloomberg Law also allows us to search by keywords, using terms and connectors
- The next slide shows how...
Use the “Keywords” search box. To see the connectors used by Bloomberg Law, click on “Search Help.”

There are lots of other fields to search, including a dropdown box to search within a specific date range.
Administrative Law
Three Branches of Government – Federal, State, and Local

Legislative Branch
- Legislation (Statutes & Ordinances)

Judicial Branch
- Judicial Decisions (Cases) & Court Rules

Executive Branch
- Agency Rules/Regulations, Administrative Decisions, Attorney General Opinions
Government agencies

- Purpose: regulate industries, professions, or practices that require close oversight and specialized expertise
- Created via an “enabling statute”
  - These statutes also impose limits on the power an agency may use to accomplish its goals.
Rules and Regulations

Federal administrative law comes from the President, agencies of the Executive Branch, and independent regulatory agencies.

1. The President issues executive orders, proclamations, and reorganization plans.

2. Executive and independent agencies issue rules and regulations that have the force of statutory law.

3. The agencies make administrative decisions that range in procedural format from informal and private to complex on a full judicial scale.
When to conduct administrative law research

- Secondary source(s) tells you
- Boss tells you
- You read a case and it mentions one or more regulations and/or agencies (or “departments”)
- You read a statute and it mentions one or more agencies (or “departments”)
Process of administrative law research

1. Find applicable regulations in an administrative code and update them to be as current as possible.
2. Read administrative guidance and decisions, judicial decisions, and attorney general opinions that interpret the regulation.
3. Find the enabling statute.
4. Read case law interpreting the enabling statute.
5. Review the applicable Administrative Procedure Act (all states and the federal government have procedural acts that set out general guidelines, limitations, and procedures for agencies to follow in carrying out their missions = APA).
Link to rules and regulations passed by government agencies (federal and state)
Rules/regulations created by federal agencies (agencies under the federal executive branch) are published in the Code of Federal Regulations (CFR).

Rules/regulations created by Florida agencies (agencies under the Florida executive branch) are published in the Florida Administrative Code.
At the bottom of the regulation, Westlaw gives you the federal statutes that tell the federal immigration agencies that they have the power to regulate in the area of immigration.
Florida Administrative Code Example

It doesn’t look like there are any judicial court (Florida state court) decisions interpreting this regulation OR any administrative decisions OR attorney general opinions referencing this regulation.

Florida agency that created this rule/regulation about mixing oranges.

Florida statute giving power to the Department of Citrus. Read the statute and find cases about the statute the way you would do for any Florida statute.
1. Find applicable regulations in an administrative code and update
2. Read administrative guidance and decisions, judicial decisions, and attorney general opinions that interpret the regulation
3. Find the enabling statute
4. Read case law interpreting the enabling statute
5. Review the applicable Administrative Procedure Act
Available online

- Federal Register
- https://www.regulations.gov/
- Code of Federal Regulations (CFR) available through FDsys
- Florida Administrative Code & Florida Administrative Register available at https://www.flrules.org/
Legal Research Process Review
Five-Step Legal Research Process

- As good as any and better than most
- Not a linear progression - you often have to start over, revisit steps, or amend your research plan
- If you are lost, work the steps
- Secondary, secondary, secondary
- Avoid the temptation to start with keyword searching for case law
- Don’t reinvent the wheel
Review of Legal Research Process

- Step 1: Formulate a research plan
- Step 2: Consult secondary sources
- Step 3: Conduct your search for primary authority
- Step 4: Expand and update your case research
- Step 5: Analyze and organize your research results
Step 1: Formulate a Research Plan

- Try to come up with:
  - The legal question(s) that need(s) to be answered
  - Relationship of the parties
  - Area of law
  - Jurisdiction
  - Relevant terms and facts

- Generate search terms *before* you begin your research
  - Useful for navigating indexes and tables of contents
  - Also useful for keyword searching
    - Use both natural language and terms-and-connectors

- Sometimes you won’t know the answers at this stage
  - THAT’S OKAY
  - You are identifying questions that you need to research
Step 2: Consult Secondary Sources

- The less you know, the more you need a general secondary source
  - General sources:
    - Encyclopedias: FlaJur, AmJur, CJS
    - American Law Reports (ALR)
    - General law journals

- As you learn more, it makes sense to turn to more detailed sources
  - Subject-specific sources:
    - Treatises - by area of law
    - Restatements
    - Subject-specific law journals
Step 3: Conduct Search for Primary Authority

- Secondary sources (Step 2) should lead you directly to primary sources
- Once you find relevant primary sources, you should be able to find other primary sources without resorting to keyword searching (yet)
  - Annotated codes - lead to case law, other code sections, and secondary sources
  - Headnotes - lead you to other relevant cases in any jurisdiction
  - Cases - lead you to authorities they rely upon - statutes and other cases
Step 4: Expand & Update Case Research

- Check Shepard’s or KeyCite for all cases and statutes you plan to use in your argument
- Make sure that your cases haven’t been overruled or otherwise treated negatively in a way that impacts your argument
- Determine whether there is more recent case law ruling on the same issue
- “One Good Case”
  - As long as you have one relevant case, you can find others without keyword searching (citators and headnotes)
Step 5: Analyze & organize results

- Identify gaps in your writing and analysis
  - “Do I need a citation to primary authority here?”
  - “Am I missing a key component of my argument?”
  - “Do I need to find a more closely analogous case?”

- Return to steps one and two
  - Review and amend your search terms
    - Try a different jurisdiction to see if there are synonyms for the terms you have used
    - Natural language searches
  - Go back to secondary sources
    - Try to find a more subject-specific source (treatise, journal article)
    - Use different finding methods to identify secondary sources (indexes, tables of contents, annotated codes)
      Example: Have you found a relevant statute in an annotated code and looked at all of the secondary source annotations?