

2021 National Legal Research Teach-In Kit

Research Instruction & Patron Services Special Interest Section
American Association of Law Libraries

Secondary Sources Assignment

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This assignment is a hypothetical and a set of short questions designed to assess students' understanding of the role of different secondary sources by asking them to research the same problem in multiple secondary sources and reflect on the information provided. The assignment includes instructions and a hypothetical that were posted to the learning management system, Canvas, an assignment document that gave the students questions to answer, research notes on possible answers, and a rubric for grading.

To view the entire kit, please visit <URL for this year's kit: TBD>

Note from the author: This submission is a hypo with a set of short questions designed to assess students' understanding of the role of different secondary sources by asking them to research the same problem in multiple secondary sources and reflect on the information provided. This submission includes instructions and a hypo posted to Canvas, an assignment document that gave the questions to answer, and a rubric. The instructions and assignment document are reproduced here. The rubric is submitted separately. Please see the end of this document for research notes/answer current as of fall 2020.

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Instructions and hypo posted to Canvas:

This assignment is a series of short questions and answers. The questions ask you to apply what you learned in class to research a hypothetical using secondary sources, recall some things we discussed, and reflect on the role of secondary sources in your research. Follow along with the questions and don't jump ahead. You'll wind up doing extra work!

For this assignment, read and consider this hypothetical:

Your client, Rachael Harris, is an attorney who does mergers and acquisitions work for a large firm in New York City. She represents Buy-N-Large, a corporation considering acquiring another corporation, Axiom, a maker of experimental spacecraft. While reading through some paperwork, Rachael finds an internal company memo detailing Axiom's newest technology, a highly sophisticated autopilot that would make Axiom the clear leader in its field. Rachael buys stock in Axiom, a publicly traded company. Buy-N-Large decides not to acquire Axiom after all. Axiom introduces its autopilot a month later, their stock price soars, Rachael sells her stock for great deal of money, and a certain government agency comes knocking. Was Rachael's purchase of Axiom stock illegal?

To complete the assignment, download this document and edit it in your word processor of choice. When you are finished, upload the document back to this space: [the assignment document is attached]

You will be assessed according to this rubric: [the Secondary Sources Rubric is attached]

Assignment document:

Copy and paste these prompts into a new document. Write your answers below each question. Upload this back to the Canvas assignment space.

Note: when answering the "why is it helpful?" questions, aim to write 1-4 sentences. The final question requires you to write a ½ page reflection.

1. Take no longer than five minutes to brainstorm: what area of law would you assign this question? What keywords and answers to the JUST ASK questions jump out at you? (Note: JUST ASK stands for Jurisdiction, Useful Tips, Scope of Research, Terms of Art, Acronyms, Sources, Key Cost Constraints)
2. Search an encyclopedia or across secondary sources broadly on Westlaw. Do not search American Law Reports (ALR), treatises, or law journal articles (you'll do that later in the assignment).
 - a. Show me your search string.
 - b. Give a citation and a link to one helpful result. Why is it helpful?
3. Search the American Law Reports (ALR) on Lexis.
 - a. Show me your search string.
 - b. Give a citation and a link to one helpful result. Why is it helpful?
4. Having done this background research, you should be ready to assign this problem an area of law.
 - a. Choose one: securities, contracts, torts, corporations law
 - b. Give some terms of art you will try to include in your next searches.
5. Now that you have assigned this an area of law, let's find a treatise.
 - a. Locate and name a recommended treatise for this area of law. How did you choose this treatise?
 - b. Search within your chosen treatise for some help with our research question. Give a citation and a link to one helpful result. Why is it helpful?
 - c. If you did not do so for 5a, find a treatise on this topic on a research platform *other than Lexis and Westlaw*.
 - i. Give the name of this treatise.
 - ii. Search within your chosen treatise for some help with our research question. Give a citation and a link to one helpful result. Why is it helpful?
6. Finally, search for a law journal article. Give a citation and a link to one helpful result. Why is it helpful?
7. Reflect on the research you've done for this assignment and the role that different secondary sources can play. Are there particular sources that were more or less helpful? Did you find that some sources helped you use or understand other sources? If you gave this assignment to someone else, what would be the second "S" in JUST ASK, the useful starting point? (Write ½ page single-spaced or one full page double-spaced.)

Research notes from the author:

1. You might think about corporate law, mergers and acquisitions, professional responsibility, or securities law when you read this question. Some secondary sources will cut across areas of law and others, like treatises, will stay narrowly focused on a single area of law.
2. The search that you performed here was probably important. If you could think of the term of art "insider" or "insider trading" your search results were likely much better. One possible encyclopedia entry that would have been helpful is:

Cause of Action for Securities Fraud Under Section 10(b) of 1934 Securities Exchange Act and/or Rule 10b-5, 74 Causes of Action 2d 567 (Originally published in 2016).
[https://www.westlaw.com/Document/I2d1ab0e189a211e68f0ee788d95a4213/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I2d1ab0e189a211e68f0ee788d95a4213/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

The misappropriation theory is thus designed to protect the integrity of the securities markets against abuses by outsiders to a corporation who have access to confidential information that will affect the corporation's security price when revealed, but who owe no fiduciary or other duty to that corporation's shareholders. The misappropriation doctrine clothes an outsider with temporary insider status when the outsider obtains access to confidential information solely for corporate purposes in the context of a special confidential relationship.
74 Causes of Action 2d 567 (Originally published in 2016)

This source contains information about securities fraud, cases, defenses, and even client intake forms. For our purposes, possibly the best thing it gave us is another term of art "misappropriation theory" or "misappropriation doctrine."

3. moving to the ALR. I searched it for insider trading misappropriation theory

Who may be liable under "misappropriation theory" of imposing duty to disclose or abstain from trading under § 10(b) of Securities Exchange Act of 1934 (15 U.S.C.A. § 78j(b)) and SEC Rule 10b-5 (17 CFR § 240.10b-5), 114 A.L.R. Fed. 323 (Originally published in 1993).
[https://www.westlaw.com/Document/I749ae59b4a6d11dab728fecade9b37ea/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I749ae59b4a6d11dab728fecade9b37ea/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

looks to be a good result.

section 7 is just about legal advisors. ALR gives citations to cases illustrating a particular point and we see at least one SDNY case.

4. Georgetown treatise finder points you to

Loss seligman, etc. which you have you look up in NU Search and find out it's on Cheetah. Searching misappropriation gives you all kinds of results because it's a common word. Ultimately, the index pointed to the chapter on fraud, the section on insiders, and the subsection about the duty requirement. It goes through a very lengthy discussion of how the misappropriation theory evolved through court decisions including O'Hagan which loosely matches the facts of our hypo.

[http://prod.resource.cch.com.turing.library.northwestern.edu/resource/scion/document/html/30f452607c0110009944d8d385ad16940e%21csh-da-filter%21WKUS-TAL-DOCS-PHC-%7B5621C20A-0E83-4D24-A6B2-7541AB8C2495%7D--WKUS_TAL_8278%23teid-204/\(WKUS_TAL_8278\)F403AB8383C93B05040C38269BF9319E:WKUS_TAL_8278%23teid-204/745C41AD9FD4B90D12ACE33C85C31C98F403AB83:WKUS-TAL-DOCS-PHC-%7B5621C20A-0E83-4D24-A6B2-7541AB8C2495%7D?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=Cheetah](http://prod.resource.cch.com.turing.library.northwestern.edu/resource/scion/document/html/30f452607c0110009944d8d385ad16940e%21csh-da-filter%21WKUS-TAL-DOCS-PHC-%7B5621C20A-0E83-4D24-A6B2-7541AB8C2495%7D--WKUS_TAL_8278%23teid-204/(WKUS_TAL_8278)F403AB8383C93B05040C38269BF9319E:WKUS_TAL_8278%23teid-204/745C41AD9FD4B90D12ACE33C85C31C98F403AB83:WKUS-TAL-DOCS-PHC-%7B5621C20A-0E83-4D24-A6B2-7541AB8C2495%7D?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=Cheetah)

It is arguably way more information than you need to just say that legal advisors can be held liable for insider trading.

The Georgetown Treatise Finder also gives you a recommendation for a treatise all about insider trading. Even though it's not the gold medal treatise, the subspecialty in the area that you're researching should make this one attractive. It has a whole chapter on the misappropriation theory:

Corporate officers, directors and employees, as well as "temporary" insiders such as investment bankers, attorneys and accountants, are treated as fiduciaries vis-à-vis their employers or clients pursuant to a well-established body of legal precedent. Thus, in O'Hagan, the Court saw that there was no question regarding the existence of a fiduciary lawyer-client relationship

§ 6:6.Fiduciary relationships and Rule 10b5-2 —Employment settings, 18 Insider Trading Regulation, Enforcement and Prevention § 6:6
[https://www.westlaw.com/Document/I9f552e04d37e11d9b5f2b85458f05fe9/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I9f552e04d37e11d9b5f2b85458f05fe9/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

Georgetown Treatise Finder also gives the gold medal to [Law of Securities Regulation by Thomas Lee Hazen](#):

The O'Hagan decision accordingly clarified that the duty which forms the basis of the Rule 10b-5 violation need not be owed to a purchaser or seller of securities. It is sufficient that the breach of duty is carried out through securities trading. The use of a securities transaction to effectuate the breach of the duty is a sufficient connection.

§ 12:165.Rule 10b-5's Applicability to Outsider Trading—The Misappropriation Theory—A Duty-Based Obligation and the Evolving Misappropriation Theory of Liability, 4 Law Sec. Reg. § 12:165

All of the treatises detail the creation of the theory and some boundaries around the theory. They all quickly note that attorneys can be liable. It is possible that the treatises are too much information, considering that the ALR gave the quick answer with a citation to the SDNY.

5. law reviews

You should have noticed that the law review results were pretty old. This makes sense considering that the leading Supreme Court case, O'Hagan, was decided in the late 90's. This shows how some topics can be hot in law reviews then fade away leaving more basic answers to other kinds of secondary sources. It should also show you that law review results have to be updated in order to be reliable. That having been said, you could find some basic statements about misappropriation that would be fairly helpful, but probably not as helpful as what you found in other secondary sources

Secondary Sources Survey Rubric

Fall 2020

Criteria				Possible points	Notes
Creates adequate search terms	Does not identify any terms of art or area of law	Identifies terms of art or area of law	Identifies terms of art and area of law	15	
Careful consideration of search techniques (terms & connectors, natural language, field searching). Best practices= <ol style="list-style-type: none"> 1. broad natural language search 2. targeted searches within search results 3. careful use of terms and connectors designed not to exclude too much information 	Does not attempt any of the best practices for searching discussed in class	Attempts one of the best practices for searching discussed in class	Attempts two or more of the best practices for searching discussed in class	15	
Understand and appreciate the purpose and value of using encyclopedias.	Does not search an encyclopedia; Does not address why secondary source would help answer question	Searches an encyclopedia; Partially addresses why secondary source would help answer question	Searches an encyclopedia; Fully addresses why secondary source would help answer question	10	
Understand and appreciate the purpose	Does not search ALR; Does not address why secondary source	Searches ALR; Partially addresses why secondary source	Searches ALR; Fully addresses why secondary source	10	

and value of using the ALR.	would help answer question	would help answer question	would help answer question		
Finds and evaluates treatises.	Fails to choose a treatise	Chooses a treatise indiscriminately and/or fails to evaluate at least one treatise from a service other than Lexis or Westlaw	Fully articulates reasons why treatise was chosen; evaluates at least one treatise from a service other than Lexis or Westlaw	10	
Understand and appreciate the purpose and value of using the treatises.	Does not search within a treatise; Does not address why secondary source would help answer question	Searches within a treatise; Partially addresses why secondary source would help answer question	Searches within a treatise; Fully addresses why secondary source would help answer question	10	
Understand and appreciate the purpose and value of using law journals.	Does not search for a law journal article; Does not address why secondary source would help answer question	Searches for a law journal article; Partially addresses why secondary source would help answer question	Searches for a law journal article; Fully addresses why secondary source would help answer question	10	
Articulates thoughtful reasons why different secondary sources would be appropriate to meet a research need.	Articulates no reasons why a source would meet a research need; does not choose among secondary source options or chooses indiscriminately	Partially articulates reasons why a source would meet a research need; considers different secondary source options and offers some support for decision	Fully articulates reasons why a source would meet a research need; considers different secondary source options and supports decision	20	
				Total= 100 points	