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SCHOOL OF LAW
LIBRARY

SECONDARY SOURCES:

An Introduction

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1. Overview

Have you:

- ever wondered where to start your research?
- found yourself unable to generate effective search terms for an online database, index, or digest?
- tried a search that turns up too many results, no results, or nothing relevant?
- been confused by the text of a statute or the language of a case?

If so, you should consider turning to a secondary source. Secondary sources:

- are easy to find using the online catalog and journal indexes
- usually are easier to read - no statutory language or case law to decipher
- save you valuable research time by providing extensive citations to case law, statutes, and other secondary sources
- explain and analyze a particular statute, case, or legal issue
- often discuss the policy implications of case and statutory law
- often discuss the history and development of a legal issue
- frequently are updated with pocket parts to provide you with timely information about new developments on your issue

Overview: Primary and Secondary Sources

The materials that you will use for legal research are generally divided into two broad categories: primary sources and secondary sources. Primary sources are those that are statements of the law from a governmental entity, such as a court, legislature, executive agency, President, or Governor. You have already used some primary materials for legal research when searching statutes and cases.

Secondary sources, on the other hand, are materials written by legal commentators, such as law professors, judges, and lawyers. Secondary sources discuss, explain, and analyze what the law is or what it should be. In addition, secondary sources provide extensive citations to primary legal materials and other relevant secondary sources.

You will already be familiar with some types of secondary sources from your undergraduate research papers, such as books, journal articles, and reference books. There are other types of secondary sources that are unique to legal research, such as legal encyclopedias, *American Law Reports*, and Restatements. This tutorial will:

- describe the different types of secondary sources for legal research
- show you how to find and use them

Research Tip: You will save yourself a lot of time by using a secondary source to take advantage of all the research and analysis someone else has already done.

Overview: When to Use a Secondary Source?

Often, when you begin your research, you will want to start with a secondary source to provide you with some context for the research that you are doing. Most of the time people will not have any substantive knowledge about the issues they are researching. Reading a good secondary source towards the beginning of the research process will help a researcher gain a quicker understanding of the structure and substance of an area of law.

Research Tip: Secondary sources are an ideal starting place when you want to find out more about the area of law before you begin searching for primary law to support your legal argument.

2. Legal Treatises: What Are They?

One of the easiest and most useful secondary sources you can find is a legal treatise. What is a legal treatise? Really, it is just another name for a book. The term “treatise” implies comprehensive coverage of a topical area. The Library has an extensive collection of legal treatises on all topics. Many legal treatises have pocket parts, or are loose leafs, so that the text is kept up-to-date with new developments in the law.

Most of the Law Library's treatise collection is located on the fourth floor. Books on the laws of specific states, however, are located with the state materials on the second floor, and treatises on foreign and international law are located on the first and ground floor of the Library.

For most primary legal materials, you have a choice of finding and using the materials in print, online through Lexis or Westlaw, or sometimes, on the web for free. **This is not true for legal treatises!** Treatises are almost always used in print. Although the number of treatises available on Lexis and Westlaw is increasing, the vast majority of books are available only in print. Legal treatises are not available on the free web.

Legal Treatises: Where Are They

To find treatises in the Library, you should start with the online catalog, NUCat (<http://nucats.lib.neu.edu/search>). There are four ways of searching the catalog depending on what information you have: author, title, keyword, ISBN, or subject. If you do not have the name of an author or title, the best place to start is with a keyword search. A well-constructed keyword search will help you to identify easily the best treatises for your research. Once you have found a relevant book, scroll down to the subject headings and click on the most relevant ones to find more books on the same topic.

Research Tip: For full details on using the online catalog, ask for help at the Reference Desk or Circulation Desk.

Research Tip: There are two series of specialized treatises designed for law students that you might find useful for both research assignments and class preparation: hornbooks and nutshells. Some of these books are on Reserve and cannot be checked out, but can be used anywhere in the Library while it is open.

Below is an example of a typical method to finding a treatise:

- Go to NUCat (<http://nucats.lib.neu.edu/search>), the online catalog.
- Select **Keyword**.
- Type in general search terms. Or Use the advanced Search feature to connect search terms.
- As you browse through your results, note the title, location, and call number of any book that appears relevant. For example, *Understanding the Americans with Disabilities Act: An Overview for Lawyers* (fourth floor, KF480 .G67 2000) looks like it might be a promising starting point for people who are researching the ADA for the first time
- **Shelf Browsing:** Note that many of the books on the ADA are located at or around the same call number in the stacks: KF480.
- If you browse the shelves around KF480 where you found the first book, you will find many other books on the ADA. One example is the treatise titled *ADA handbook: disability discrimination: statutes, regulations and related materials*. (fourth floor, KF480 .H36 1995).

3. Law Reviews: What Are They?

Law reviews (or law journals) are another form of secondary source. In fact, most commentary on law is published in law reviews. Most law schools publish several different law reviews - a general law review, such as the *Georgetown Law Journal*, and one or more specialized law reviews, such as the *American Criminal Law Review* and the *Tax Lawyer*. There are several hundred law reviews published in the United States. The Library subscribes many of them.

Law review articles are usually written on very narrow topics of law and treat the topic comprehensively. Law review articles are known for the extensive footnotes that accompany the text. Footnotes often occupy half or more of each page. Like all secondary sources, law journals serve two research purposes:

- the text will explain and analyze the law
- the extensive footnotes will lead to additional primary and secondary sources

Research Tip: If you have a good case or statute on point, look for an article or case note explaining and analyzing it.

Law Reviews: Where Are They?

Law journals are available both in print and electronically. The printed journals are in different locations in the Library depending on the title and topic:

- The formal named law reviews (Harvard Law Review, Georgetown Law Review, etc.) are on the third floor
- Topical law reviews (Tax Lawyer, Family Law Journal, etc.) are located in the stacks near other topical works. Check NUCat for their location.

Like legal treatises, law journal articles are easy to find and use. There are several ways to find relevant law review articles:

- full-text searching on Lexis and Westlaw
- annotated codes
- other secondary sources

Law Reviews: Full Text

Lexis, Westlaw, and Hein have databases containing the full text of hundreds of law reviews. Searching these databases are unique because every word of the article is searchable, not just the title and subject headings. There are advantages and disadvantages to searching the full text of law reviews.

First, the advantages:

- you can create very specific searches using terms and connectors or natural language
- you can search sections, subsections, and footnotes of articles for content that does not appear in the indexes
- new articles are usually added to the full text databases before they appear in the journal indexes
- a few law reviews are available on Lexis or Westlaw, but not in the journal indexes
- Hein often has complete coverage of a specific journal's publication from the first issue to present issue

Now, the disadvantages:

- the law reviews constitute a huge database, so you are likely to find many irrelevant or marginally relevant articles
- some law reviews are not included in the full text online databases
- online coverage of law reviews varies greatly
 - Westlaw has the *Harvard Law Review* back to 1949
 - most other major law reviews begin coverage in early 1980s

- many law reviews do not begin with online coverage until early to mid 1990s
- on Westlaw, for most law reviews published before 1994, only selected articles from the law review are online, and there is no way to know which articles are online and which are not

To access the full text law reviews online:

- **Lexis:** go to "Look for a Source," and click on "Secondary Legal." Choose "Law Reviews and Journals" for the combined database of all available law reviews
- **Westlaw:** type "JLR" in the "**Search** these databases" box
- **Hein Online:** look up the journal alphabetically by title

Research Tip: Full text law reviews can be a good starting place for research, but don't rely exclusively on one database over the other - Lexis and Westlaw - you could be missing a lot of scholarly writings. For comprehensive searching, use both services. Although there is a lot of overlap, each has something the other does not.

4. Encyclopedias: What are They?

Legal encyclopedias are large multi-volume sets used to get an overview and introduction to an area of the law. Encyclopedias are available both in print and online, though not every encyclopedia is available in both formats. There are three types of legal encyclopedias:

- national (or general)
- state
- subject - these are extensive treatises on a specific area of law, such as Contracts, Corporations, or Federal Practice

National Encyclopedias

The two major national legal encyclopedias are:

- *American Jurisprudence, 2d (Am Jur)*
 - In print: Fourth floor, KF154 .A42
 - Online: Lexis and Westlaw
- *Corpus Juris Secundum (CJS)*,
 - In print: Fourth floor, KF154 .C56
 - Online: Westlaw; not available on Lexis

Both of these encyclopedias are broad, general treatments of the full range of federal and state law. When you use an encyclopedia, you will get a much briefer and less detailed discussion of the topic than you would if you read a treatise or law review article. *Am Jur* and *CJS* articles focus primarily on common law and case law and do not contain extensive citations to statutes or other secondary sources.

Finding your topic in print: Using an encyclopedia in print is simple - just look up your issue in the General Index, and go to that topic and section of the encyclopedia. The General Indexes are republished every year and are very detailed.

Advantages to using encyclopedias in print:

- easier to read a long article
- usually easier and quicker to find relevant materials using the index
- less chance of being overwhelmed with too many hits when searching

Updating in print: Both *Am Jur* & *CJS* use pocket parts for updating. In addition, *Am Jur* has a "New Topic Service" to treat developing issues that are not yet included in the main encyclopedia.

Finding your topic online: Use terms and connectors or natural language searching on Lexis or Westlaw. To access *Am Jur* or *CJS* online:

- **Lexis:** go to "Look for a Source," and choose "Legal;" then click on "Secondary Legal," "Jurisprudence and ALR," and choose "American Jurisprudence 2d."
- **Westlaw:** type "AMJUR" in the "Search these databases" box; or type "CJS" in the "Search these databases" box

Advantages of using encyclopedias online:

- can search for specific phrases or words that may not appear in the index
- easy to link back and forth between different articles, sections, and case citations

Research Tip. Never cite to *Am Jur* or *CJS* as persuasive authority. Use the encyclopedias for an outline of the law and as a case finding tool.

State Encyclopedias

Many (but not all) states have an encyclopedia focusing exclusively on the laws of that state. These encyclopedias may be called:

- "Encyclopedia" (e.g., *Pennsylvania Law Encyclopedia*)
- "Jurisprudence" (e.g., *California Jurisprudence or Cal Jur*)
- "Practice" (e.g., *Massachusetts Practice*)

State encyclopedias are more useful than national encyclopedias. When you research an area of state law, consider looking at a state encyclopedia early in your research process. A state encyclopedia will describe the state law on a particular topic and usually will give a brief history of the development of the law in that state as well as a discussion of leading cases and/or relevant statutes. The citations will be to that state's law rather than attempting to cover the law of all states. State encyclopedias are more likely to contain citations to statutory law than the national encyclopedias. Unfortunately, not every state

has an encyclopedia. For those states that do have encyclopedias, there is great variation in the coverage as well as online availability.

To access state encyclopedias online:

Westlaw: click on "Directory," and click on "U.S. State Materials." Select your state, then choose "Forms, Treatises, CLEs and Other Practice Materials" and see if there is an encyclopedia listed:

State Encyclopedias on Westlaw

California Jurisprudence 3d
Summary of California Law
Florida Jurisprudence 2d
Georgia Jurisprudence
Illinois Law and Practice
Louisiana Civil Law Treatise
Maryland Law Encyclopedia
Massachusetts Practice
New Jersey Practice
New York Jurisprudence 2d
Strong's North Carolina Index
Ohio Jurisprudence 3d
Summary of Pennsylvania Jurisprudence 2d
South Carolina Jurisprudence
Texas Jurisprudence 3d

Lexis: go to "Look for a Source," and choose "Legal;" then, click on "Secondary Legal," and choose "Jurisprudence & ALR." You will see a list of available state encyclopedias in addition to *Am Jur* and ALR

State Encyclopedias on LexisNexis

Witkin Summary of California Law
Florida Jurisprudence 2d
Illinois Jurisprudence
Michigan Law and Practice
Dunnell Minnesota Digest
New York Jurisprudence 2d
Ohio Jurisprudence 3d
Pennsylvania Law Encyclopedia
Tennessee Jurisprudence
Texas Jurisprudence 3d
Michie's Jurisprudence of Virginia and West Virginia

5. American Law Reports: What is ALR

ALR (American Law Reports) contains extensive annotations. The value of ALR for research purposes is the annotations. The term “annotation” as used in ALR means lengthy documents that treat a narrow topic in great detail. Each annotation is organized in a similar fashion:

- scope note that describes what is and is not covered in the annotation.
- short summary of the treated case
- annotation outline
- extensive research references that point you to additional secondary sources on the topic and may even include a sample terms and connectors search for Lexis or Westlaw
- in-depth index
- table of cases
- annotation text

ALR is published in two series:

- a numbered series (ALR, ALR 2d, ALR 3d, ALR 4th, ALR 5th, ALR 6th)
- since 1969, a federal series (ALR Fed) (prior to 1969, federal issues were treated as part of the numbered series)

Research Tip: If your issue is treated in ALR, it will be treated in great detail; however, not every topic of law is covered in ALR.

Research Tip. Never cite to ALR as persuasive authority. Use it to gain an understanding of the law and as a tool for finding primary sources.

American Law Reports: Print

The ALR numbered series are available at KF132 .A5 on the fourth floor. ALR Fed is also available on the Fourth Floor.

Searching for a topic in ALR is very easy. The primary search tool is the *ALR Index*. This six-volume index covers ALR 2d-6th and ALR Fed. The index is easy to use with extensive cross-references and a lot of detail to help you focus on your issue.

Research Tip: ALR 3d-6th, ALR Fed, and the *ALR Index* are updated by pocket parts. **Always** check the pocket parts!

Research Tip: Annotations may be superseded. An "Annotation History Table" appears in the last volume of the *ALR Index* and should be checked to determine the status of an annotation. The pocket parts of the bound volumes also indicate if an annotation has been superseded and give the citation to the later annotation

American Law Reports: Online

The full text of ALR is available on both Lexis and Westlaw. In general, when you do a terms and connectors search, you will have your best success limiting your search to the title segment (Lexis) or title field (Westlaw). ALR titles are usually quite long and almost always include the most important search terms. For example, using "Americans with Disabilities" as a title search yields 19 annotations on Lexis and 48 documents on Westlaw. The difference in the results is because Westlaw includes 29 index entries in the search results. Not all of these annotations would be useful for our research, but some of the annotations could be potentially helpful, if only to skim for some extra background material.

If you do a terms and connectors search in ALR on Lexis or Westlaw and get too many results, you can limit your search in one of the following ways:

- adding additional words or phrases to the terms and connectors search
- restricting your search to the title field
- trying a natural language search instead

To access ALR online:

- **Lexis:** go to "Look for a Source," and choose "Legal" tab, then, click on "Secondary Legal" and "Jurisprudence & ALR," then select "American Law Reports (ALR2d, ALR3d, ALR4th, ALR5th, ALRFED, & L.Ed.2d)
- **Westlaw:** type "ALR" in the "Search these databases" box

6. Restatements: What Are They?

Restatements are an attempt to organize and "codify" the common law of the United States. Each area of law is "restated" into chapters, titles, and sections. Restatements are published by the American Law Institute (ALI). Although the Restatements are not primary law, they can carry great weight with courts and are frequently cited for common law issues. Further information about ALI and the drafting process for the Restatements can be found at www.ali.org/ali/thisali.htm. There are thirteen Restatements covering broad areas of law, such as: Contracts, Property, and Torts.

Although the format of the various Restatements has varied slightly, most volumes will have a Table of Contents at the front of the volume, followed by the text, which will be in chapter, title, and section order. A very detailed index usually appears at the end of the volume or set of volumes. Each section will state the specific findings of the section, followed by comments from the drafters. Often sections will have illustrations of the section to clarify the point of law and extensive case citations.

The Restatements are updated by an Appendix, which may be in several volumes. The Appendix contains short summaries of cases in section number order of the Restatement.

Some Appendices also have Reporters Notes which expand on the text of the section in the main volume(s).

Research Tip: Judicial opinions and secondary sources often cite to the Restatements. Use these citations in the printed or online Restatements to find the full text of the section, reporters notes, and case notes.

Restatements: Print

Restatements at the Law Library are located on the Fourth floor at KF 395.

Like other secondary sources, using a Restatement in print is quite easy. Simply look up your issue in the index, and you will be referred to the appropriate pages and sections, or, if you have a broader topic, you can skim through the Table of Contents to locate your topic. Always remember to update your search using the Appendix volumes to find the most recent cases as well as any additional Reporter's Notes referred to in some of the volumes.

Research Tip: There is no overall print index for all of the Restatements. You must know which Restatement is the most useful for your particular research problem.

Research Tip: In some single volume Restatements, the Appendix is a pocket part in the main volume. Also look for Interim Case Citations and pocket parts for the Appendices as well as Annual Supplements. Because updating practices vary for each Restatement, you will need to be very diligent when updating your research to be sure you have located all of the most recent cases.

Restatements: Online

Both Lexis and Westlaw have the Restatements available online in full text. Although both services have a combined database of all Restatements, searching that database could yield a very large and cumbersome result. Also, it is always more expensive in the commercial environment (law firms, etc.) to search a combined database than a smaller database. A better choice would be to select the specific Restatement (e.g. Property, Contracts) that deals with your issue.

To access Restatements online:

- **Lexis:** go to "Look for a Source," and choose "Legal;" then, click on "Secondary Legal" and choose "Restatements"
- **Westlaw:** click on "Directory," and choose "Treatises, CLEs and Practice Guides." Select "ALI Restatements of the Law & Principles of Law."