

Introduction to Legal Principles and Authorities and the Research Process

PART I STUDY OUTLINE

I. INTRODUCTION

Legal research is the process of finding the law that applies to a client's problem. **Legal analysis** is the process of determining how the law applies to the problem.

For the purposes of the text, *law* is defined as the enforceable rules that govern individual and group conduct in a society.

II. SOURCES OF LAW

A. Enacted Law

Enacted law encompasses all law that has been adopted by a legislative body or the people. It includes:

- *Constitutions*—adopted by the people
- *Statutes, ordinances*—laws passed by legislative bodies
- *Regulations*—actions of administrative bodies that have the force of law.

1. Constitutions

A **constitution** is a governing document adopted by the people. It establishes the framework for the operation of government, defines the powers of government, and guarantees the fundamental rights of the people. Both the federal and state governments have constitutions.

a. U.S. Constitution.

- (1) Establishes and defines the powers of the three branches of federal government: executive (president), legislative (Congress), and judicial (courts)
- (2) Establishes the broad powers of the federal and state governments and defines the relation between the federal and state governments
- (3) Defines in broad terms the rights of the members of society

- b. **State Constitutions.** Each state has adopted a constitution that establishes the structure of the state government. In addition, each state constitution defines the powers and limits of the authority of the state government and the fundamental rights of the citizens of the state.

2. Statutes

Laws passed by legislative bodies are called **statutes**. Statutes declare rights and duties or command or prohibit certain conduct. Any law passed by any legislative body—federal, state, or local,—can be referred to by various terms, such as *acts*, *codes*, *statutes*, or *ordinances*.

3. Administrative Law

The body of law created by administrative agencies. It is composed of the rules, regulations, orders, and decisions promulgated by the administrative agencies when carrying out their duties.

B. Common Law/Case Law

In a narrow sense, the term **common law** refers to the law created by courts in the absence of enacted law.

Case law encompasses a broader range of law than does the term *common law*. Case law includes not only the law created by courts in the absence of enacted law but also the law created when courts interpret or apply enacted law.

1. Role of the Courts

Disputes in our society arise from specific fact situations. The courts are designed to resolve these disputes.

The creation of new law and the interpretation and application of existing law by the courts become law itself.

The result reached by a court is usually called a decision. The court's written decision, which includes the reasons for the decision, is called an **opinion**. Case law is composed of the general legal rules, doctrines, and principles contained in court opinions.

2. Court Systems

There are two parallel court systems: the federal court system and the state court system.

- a. **Jurisdiction.** Jurisdiction is the extent of a court's authority to hear and resolve specific disputes. A court's jurisdiction is usually limited to two main areas:

- (1) **Personal Jurisdiction.** **Personal jurisdiction** is the authority of the court over the parties to resolve a legal dispute involving them.
- (2) **Subject Matter Jurisdiction.** **Subject matter jurisdiction** is the court's authority over the types and kinds of cases it may hear and decide.
- (3) **Concurrent Jurisdiction.** **Concurrent jurisdiction** exists when more than one court has authority to deal with the same subject matter.

There are two types of courts in both the federal and state court systems:

- Courts of general jurisdiction. Courts of general jurisdiction have the authority to hear and decide any matter brought before them.
 - Courts of limited jurisdiction. Courts of limited jurisdiction are limited in the types of cases they can hear and decide.
- b. **Federal Court System.** The federal court system is composed of three basic levels of courts:
- (1) Trial Courts. The **trial court** is the court where the matter is heard and decided. If the trial is conducted by a judge and a jury, the judge decides **questions of law**, such as what the law is or how it applies. The jury decides **questions of fact**, such as whether a person performed a certain act.
 - (2) Court of Appeals. The primary function of a **court of appeals** is to review the decision of a trial court to determine and correct any error that may have been made.
 - (3) United States Supreme Court. The United States Supreme Court is the final court of appeals in the federal system. It is the highest court in the land. A party who disagrees with the decision of a court of appeals must ask (petition) the Supreme Court to review it. The request is called a **petition for writ of certiorari**.
- c. **State Court System.** Every state has its own state court system.
- (1) Trial Courts. All states have trial courts where the evidence is presented, testimony taken, and a decision reached. The court of general jurisdiction is often called a district court. There are various courts of limited jurisdiction, such as probate courts, small claims courts, county courts, domestic relations courts, magistrate courts, and so on.
 - (2) Court of Appeals. Many states have intermediary courts of appeals that function in the same manner and play the same role in the state court system as the federal court of appeals does in the federal system.
 - (3) State Supreme Court. Every state has a highest appellate court, usually called the Supreme Court. This court is the highest court in the state, and its decisions are final on all questions involving state law.
3. Precedent and Stare Decisis
- a. Precedent. **Precedent** is an earlier court decision on an issue that applies to govern or guide a subsequent court in its determination of an identical or similar issue based on identical or similar facts. A case that is precedent is often called **on point**.
 - b. Stare Decisis. The doctrine of **stare decisis** is a basic principle of the case law system that requires a court to follow a previous decision of *that court* or a *higher court*, when the current decision involves issues and facts

similar to those involved in the previous decision. The doctrine does not apply if there is a good reason not to follow it. Some of these reasons include:

- The earlier decision has become outdated because of changed conditions or policies.
- The legislature has enacted legislation that has, in effect, overruled the decision of an earlier court.
- The earlier decision was poorly reasoned or has produced undesirable results.

III. HIERARCHY OF THE LAW

In general, within each jurisdiction, the constitution is the highest authority, followed by the other enacted law (legislative and administrative law), then the case law.

The U.S. Constitution separates the powers to govern between the federal and state governments. This separation of powers is called **federalism**. The **supremacy clause** of the Constitution (Article VI) provides that between federal and state law, federal law is supreme.

IV. AUTHORITY

Authority can be defined as anything a court may rely on when deciding an issue. It includes not only the law but also any other nonlaw source that a court may look to in reaching a decision.

A. Types of Authority

1. Primary Authority

Primary authority is the law itself. It is composed of the two main categories of law: enacted law and case law.

2. Secondary Authority

Secondary authority is any source a court may rely on that is not the law, that is, not primary authority. Secondary authority consists of legal resources that summarize, compile, explain, comment on, interpret, or in some other way address the law.

Secondary authority can be used in several ways:

- To obtain a background or overall understanding of a specific area of the law. Legal encyclopedias are useful for this purpose.
- To locate primary authority (the law) on a question being researched.
- *American Law Reports (ALR)*, treatises, digests, *KeyCite*, and *Shepard's* can be used for this purpose.
- To be relied upon by the court when reaching a decision, which usually occurs

only when there is no primary authority governing a legal question or it is unclear how the primary authority applies to the question. Treatises, law reviews, and restatements of the law are relied upon for this purpose.

Secondary Authority Examples:

Annotations. Annotations are notes and comments on the law. One of the well-known annotations is *ALR*.

Law Dictionaries. Legal dictionaries include definitions of legal terms (and usually a citation to the authority for the definition) and guides to pronunciation.

Law Reviews. Law reviews are scholarly publications usually published by law schools.

Legal Encyclopedias. A legal encyclopedia is a multivolume set of books that provides a summary of the law.

Restatements of the Law. The *Restatements of the Law*, published by the American Law Institute, presents a variety of topics and discusses what the law is on each topic, or what it should be.

Treatises. A treatise is a single- or multivolume work written by an expert in an area that covers that entire area of law.

B. Role of Authority

1. Mandatory Authority

Mandatory authority is any source that a court must rely upon or follow when reaching a decision, for example, a decision of a higher court in the jurisdiction on the same or a similar issue. Secondary authority can never be mandatory authority.

- a. **Enacted Law.** The three-step process for determining whether an enacted law applies to govern a legal question:

Step 1: Identify all the laws that may govern the question.

Step 2: Identify the elements of the law or statute.

Step 3: Apply the facts of the case to the elements.

- b. **Case Law.** For a court opinion to be mandatory authority, binding another court to follow the rule or principle of law established in the opinion, two conditions must be met:

- The court opinion must be on point.
- The court opinion must be written by a higher court in that jurisdiction.

2. Persuasive Authority

Persuasive authority is any authority a court is not bound to consider or follow, but may consider or follow when reaching a decision.

- a. **Primary Authority as Persuasive Authority.** Occasionally, courts look to enacted law as persuasive authority. Remember that even though case law is primary authority, it may not be primary authority in a specific situation.
- b. **Secondary Authority as Persuasive Authority.** Secondary authority is not the law, and can never be mandatory authority. However, if there is no mandatory authority and there is persuasive primary authority, secondary authority may be used in support of the persuasive primary authority.

Secondary authority is most valuable in situations where there is no primary authority, either mandatory or persuasive.

V. INTRODUCTION TO LEGAL CITATION

You are often required to present the results of your research in writing. This requires citation to the legal authorities you have identified. There are two manuals that provide rules for legal citation, *The Bluebook: A Uniform System of Citation* and *ALWD Citation Manual: A Professional System of Citation*.

Information about citation form under each manual is presented in relevant chapters throughout the text.

VI. LEGAL RESEARCH AND ANALYSIS PROCESS

The **legal research and analysis process** is a systematic approach to legal research and analysis

Part A—Analyze the Assignment

Identify type and purpose of assignment, constraints, prepare an outline.

Part B—Conduct Research

Step 1: Preliminary Preparation. Gather information, identify the key facts, and perform preliminary research if necessary.

Step 2: Issue. Identify the issue.

Step 3: Rule. Identify the law that governs the issue.

Step 4: Analysis/Application. Determine how the rule of law applies to the issue.

Step 5: Conclusion. Create a summary of the results of the legal analysis.

PART II STUDY QUESTIONS

1. How is law defined in the text?
2. What does legal analysis involve and what does it require?
3. What is enacted law?
4. What does case law include?

5. What are the two main court systems in the United States?
6. What is jurisdiction?
7. What are the two parts of the legal research and analysis process?
8. What is an acronym that is commonly used in reference to steps 2 through 5 of Part B of the legal research and analysis process?
9. What are the five steps of Part B of the legal research and analysis process?
10. What is the role of a trial court?
11. What is the role of a court of appeals?
12. What is precedent?
13. What is the doctrine of stare decisis?
14. What does the supremacy clause provide?
15. What is primary authority?
16. What is secondary authority?
17. What is mandatory authority?
18. What is persuasive authority?

PART III ASSIGNMENTS

ASSIGNMENT 1

What is the difference between precedent and stare decisis?

What is the difference between mandatory and persuasive precedent?

ASSIGNMENT 2

Refer to the annotations following 18 U.S.C.A. § 645. What are the four secondary authority sources listed in the annotations? List three primary authority sources—include only the case name, the Federal Reporter or Supplement citation, and the year of the decision.

ASSIGNMENT 3

Facts: The client, a resident of State A, is charged in state court with embezzlement in violation of a 1982 State A embezzlement statute. The company he works for manufactures products for the federal government and private businesses. His employer kept the company checks in a locked filing cabinet. The employer would often pre-sign several blank checks when she left town. She authorized department heads to fill in the checks and use them to pay invoices and other business expenses. The client was not a department head and was not authorized to fill in the checks. He found the key to the locked filing cabinet, filled in one of the blank checks with his name, and cashed it. The client claims that he did not commit embezzlement because he was not “entrusted” with the check within the meaning of the state statute.

Authority: You have located the following authority:

1. *State v. Stahl*—a 2000 decision by the highest court of State B. In this case, three office employees were informed of the location of the key to a locked cabinet where cash was kept. The employees were authorized to open the cabinet and remove the money in case of a fire. When no one was present, the defendant opened the cabinet and took the money. The court held that the defendant was entrusted with the money within the meaning of the embezzlement statute.
2. A law review article published in 2004 that discusses what constitutes entrustment and conversion.
3. *United States v. Crimm*—a United States Court of Appeals case. The defendant, an employee of a private company, stole platinum that was being used for a product being manufactured under a contract between the company and the U.S. government. The court held that the employee had violated the federal embezzlement statute 18 U.S.C. § 641.
4. *State v. Pete*—a 1962 decision by the highest court of State A where the defendant worked for a company as an executive secretary and was convicted of embezzling checks from the company. The defendant did not have specific authority to endorse checks for deposit. The court found entrustment because the defendant had implied authority to deposit checks.
5. A 1982 State A statute that provides that “Embezzlement consists of the embezzling or converting to one’s own use of anything of value, with which one has been entrusted, with fraudulent intent to deprive the owner thereof.”
6. *State v. Artee*—a 1980 decision by the court of appeals of State A where the court ruled that the defendant, who agreed to wear an electronic monitoring device while on probation, was entrusted with the device within the meaning of the embezzlement statute.
7. Federal statute 18 U.S.C. § 641, which provides that embezzlement occurs when an individual embezzles or converts property of the United States or property being made under contract for the United States.
8. 26 Am. Jur. 2d *Embezzlement* § 23 (2006)—A legal encyclopedia section that discusses when mere access to the property converted is sufficient for embezzlement.

Questions

- A. Which authority is primary authority, and which is secondary authority? Why?
- B. Which authority can be mandatory authority and why?
- C. Which authority can be persuasive authority? Why?
- D. Assume all the authority except the federal authority applies to the issues raised by the facts of the client’s case and list the authority in the hierarchical order of its value as authority, that is, authority with greatest authoritative value is listed first, followed by the other authority in the order it will be looked to by the court.

- E. Why do the federal statute and federal court opinion probably have no authoritative value in this case? In what situation may they be considered to have authoritative value?

PART IV WEB ASSIGNMENTS

ASSIGNMENT 1

What is the website for your state Supreme Court? What is the website (if any) for your local court of general jurisdiction?

ASSIGNMENT 2

When is a state Supreme Court decision mandatory precedent? When is it persuasive precedent?

ASSIGNMENT 3

Facts: Five months ago your client moved to a city in State A from a different state. She wishes to run for city council.

Authority: Your research reveals that the city does not have an ordinance defining residency or the requirements necessary to establish residency. Nor does State A have a statute addressing the residence requirements for municipal elections. You have, however, located the following authority:

1. A 1998 State A statute that provides that a candidate for state Supreme Court judge must have resided in the state three years prior to the election.
2. A 2000 State B statute that states that individuals running for any county or municipal office must have resided in the county or municipality for six months.
3. *Garcia v. Municipality of Weston*. A 2001 State A court of appeals decision providing that a person running for state senate must reside within the senate district for a minimum of one year prior to the election.
4. *Reisin v. City*. A Supreme Court decision from State B holding that a person running for any municipal position must reside in the municipality for three months.
5. American Jurisprudence Second section that provides that most states have a three-month residency requirement for the purposes of eligibility to run for municipal positions.

Questions

- A. Which authority is primary authority, and which is secondary authority?
- B. Which, if any, of the authority is mandatory authority and why?
- C. Which authority can be persuasive authority and why?

ASSIGNMENT 4

Refer to Colorado statute 4-2-314 by using an Internet legal research site such as FindLaw or look up the statute at a local law library. Refer to the annotations following the statute and list three examples of primary authority and three examples of secondary authority.

ASSIGNMENT 5

Refer to Article 2 section 6 of the Colorado State constitution by using an Internet legal research site such as FindLaw or look up the constitution at a local law library. Refer to the annotations following this section of the constitution, and list the names of two cases and one Am. Jur. 2d (American Jurisprudence Second) and one *C.J.S.* (Corpus Juris Secundum) reference.

PART V CHAPTER SUMMARY

The process of legal analysis requires determining, which law applies to a legal question and how it applies. To engage in the process, you must understand the law and the basic doctrines and principles that govern and guide the analysis of the law.

There are primarily two sources of law in the United States:

1. Enacted law
2. Case law

Enacted law, as used in this text, consists of constitutions, laws passed by legislative bodies, and regulations adopted by administrative bodies to aid in the enforcement and application of legislative mandates. Case law is composed of the law created by the courts in two situations:

1. When there is no law governing a topic.
2. Through interpretation of enacted law where the meaning or application of the enacted law is unclear.

There are two court systems in the United States: the federal court system and the state court system. Although there are differences in each system, they have basic similarities. Both systems have trial courts where matters are initially heard, trials are held, and judgments are rendered; both also have courts of appeals, where the judgments of trial courts are reviewed and possible errors corrected.

To provide consistency and stability to the case law, two doctrines have evolved:

1. Precedent
2. Stare decisis

Precedent is an earlier court decision on an issue that applies to govern or guide a subsequent court in its determination of identical or similar issues based on identical or similar facts. The doctrine of stare decisis provides that a court must follow a previous

decision of a higher court in the jurisdiction when the current decision involves issues and facts similar to those involved in the previous decision.

The two sources of law, enacted and case law, are called *primary authority*. Primary authority is the law itself. Any other authoritative source a court may rely on in reaching a decision is called *secondary authority*. Secondary authority is not the law; it consists of authoritative sources that interpret, analyze, or compile the law, such as legal encyclopedias and treatises. Courts always rely on and look to primary authority before looking at secondary authority when resolving legal issues.

If primary authority governs the resolution of a legal question, it must be followed by the court. This type of primary authority is called *mandatory authority*. Secondary authority can never be mandatory authority. Any authority the court is not bound to follow, but that it may follow or consider when reaching a decision, is called *persuasive authority*. Both primary authority and secondary authority can be persuasive authority.

A *legal research and analysis process* is a systematic approach to legal research and analysis. This organized approach makes legal research easier, saves time, and helps develop research skills. A two-part legal research and analysis process is recommended. The first part involves analyzing the assignment and preparing to research, and the second part is the research component.

The remaining chapters of this book address the application of the basic concepts and principles presented in this chapter. Each concept and principle plays a critical role in legal analysis.