

Sixth Edition

LEGAL RESEARCH, ANALYSIS, & WRITING

Joanne Banker Hames | Yvonne Ekern



SIXTH EDITION

Legal Research, Analysis, and Writing

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Brief Contents

- CHAPTER 1** Introduction to Legal Research, Writing, and Analysis 1
- CHAPTER 2** The Starting Point: Analyzing Facts and Identifying Legal Issues 19
- CHAPTER 3** Finding and Analyzing Case Law 38
- CHAPTER 4** How to Read and Summarize a Case Law Decision 78
- CHAPTER 5** Constitutions, Statutes, and Administrative Regulations 105
- CHAPTER 6** Statutory and Constitutional Analysis 139
- CHAPTER 7** Secondary Sources 170
- CHAPTER 8** Digests 194
- CHAPTER 9** Validating Your Research: Using *Shepard's*, Keycite, and Other Citators 211
- CHAPTER 10** Introduction to Lexis Advance, Westlaw, and Bloomberg Law 235
- CHAPTER 11** Computer-Assisted Legal Research (CALR): The Freely Accessible Internet 255
- CHAPTER 12** Basic Legal Writing Skills 273
- CHAPTER 13** The Memorandum of Law: Predictive Legal Writing 297
- CHAPTER 14** Writing to the Court: Persuasive Writing 329
- CHAPTER 15** Motion Practice: Research and Writing Issues 372
- CHAPTER 16** Legal Correspondence 397
- APPENDIX A** Research Case Files 415
- APPENDIX B** Research and Writing Problems Based on Short Stated Fact Patterns 442
- APPENDIX C** Legal Citation 447
- APPENDIX D** Research Strategies: An Overview 456

APPENDIX E	Case Briefing Practice	461
APPENDIX F	Supplemental Cases	466
APPENDIX G	Answer Key to “Test Yourself” and “Test Yourself— Writing it Right”	511
APPENDIX H	U.S. Court System	529
	Glossary	533
	Credits	539
	Index	542

Contents

Preface xviii

About the Authors xxiv

CHAPTER 1	Introduction to Legal Research, Writing, and Analysis	1
	Chapter Outline	1
	Skill Objectives for Chapter 1	1
	Introduction	2
	Preparing for Legal Research	2
	Legal Research and Law Practice	3
	The Role of the Researcher	4
	The U.S. Legal System	5
	Sources of U.S. Law	6
	Constitutional Law	6
	Statutory Law	6
	Administrative Regulations	6
	Case Law	6
	Relationship between Sources of Law	7
	Legal Publications	7
	The Law Library	8
	Traditional Law Libraries	8
	Types of Legal Materials	8
	Virtual Law Libraries	9
	Features of Legal Publications	9
	Internet and Legal Research	10
	Legal Citation	11
	Case Law	11
	United States Constitution	13
	The United States Code (Statutes)	13
	Online Research	14
	Citation Matters	14
	Chapter Summary	15
	Terms to Remember	16
	Questions for Review	16
	Can You Figure It Out?	16
	Test Yourself	16
	Test Yourself—Write It Right	17
	Citation Exercises	17
	From the Writer’s Corner	17
	Assignments and Exercises	17
	Case Project	18

CHAPTER 2	The Starting Point: Analyzing Facts and Identifying Legal Issues	19
	Chapter Outline	19
	Skill Objectives for Chapter 2	19
	Introduction	20
	Understand and Analyze the Facts	20
	Sort the Facts of a Client's Case	21
	Compare Case Law Facts With Your Client's Facts	22
	Legal Issues	23
	Identify the Legal Issues	24
	Issues in Your Client's Case	24
	Issues in a Reported Case	25
	Writing Issue Statements	26
	Sample Case File	29
	Finding It Online	34
	Citation Matters	34
	Chapter Summary	35
	Terms to Remember	35
	Questions for Review	35
	Can You Figure It Out?	35
	Test Yourself	35
	Test Yourself—Write It Right	35
	Citation Exercises	36
	From the Writer's Corner	36
	Assignments and Exercises	36
	Case Project	37
CHAPTER 3	Finding and Analyzing Case Law	38
	Chapter Outline	38
	Skill Objectives for Chapter 3	38
	What Is a Case?	39
	Case Citations	39
	Overview of Case Law and the Concept of <i>Stare Decisis</i>	40
	The Appeal Process	59
	Where to Find Case Law	60
	Case Law Reporters	61
	Lexis and Westlaw	61
	CD-ROM Products	61
	Internet	61
	Federal Case Law	61
	United States Supreme Court Case Law	61
	<i>United States Reports</i>	62
	<i>Supreme Court Reporter</i>	62
	<i>Lawyers' Edition</i>	62

Other Federal Reporters	62
Specialized Reporters	63
Lexis and Westlaw	63
State Case Law	63
Regional Reporters	63
Official Reporters	63
Unofficial Reporters	64
Other Sources	64
An Approach to Reading a Case	64
Components of a Case	64
Reading Topic Sentences—An Approach to Reading Case Law	65
A Method for Reading and Color Highlighting a Legal Decision	66
Official and Unofficial Publications	70
How to Use Case Law	71
Compare and Contrast the Facts of a Reported Case with Your Client’s Facts	71
Finding It Online	72
Citation Matters	72
Chapter Summary	74
Terms to Remember	74
Questions for Review	75
Can You Figure It Out?	75
Test Yourself	75
Test Yourself—Write It Right	75
Citation Exercises	76
From the Writer’s Corner	76
Assignments and Exercises	76
Case Project	77
CHAPTER 4 How to Read and Summarize a Case Law Decision	78
Chapter Outline	78
Skill Objectives for Chapter 4	78
Purpose of a Case Brief	79
The Components of a Case Brief	79
Name and Citation of the Case	80
Judicial History/Procedural History	80
Facts	80
Issue(s)	81
Rule(s)	81
Analysis or Reasoning	81
Holding	81
How to Write a Case Brief	87
Analysis and the Case Brief	95

An Approach to a Daunting Project	98
Finding It Online	100
Citation Matters	100
Chapter Summary	101
Terms to Remember	101
Questions for Review	101
Can You Figure It Out?	101
Test Yourself	101
Test Yourself—Write It Right	102
Citation Exercises	102
From the Writer’s Corner	102
Assignments and Exercises	103
Online Research Exercises	104

CHAPTER 5	Constitutions, Statutes, and Administrative Regulations	105
	Chapter Outline	105
	Skill Objectives for Chapter 5	105
	Introduction	106
	Constitutions	107
	Federal Statutory Law	109
	Enactment of Statutory Law	109
	Initial Publication of Statutes	110
	<i>United States Code</i>	113
	Legislative Histories	115
	<i>United States Code</i> Publications	116
	Pocket Part Supplements	116
	Online Publications	120
	State Statutory Law	120
	Local Ordinances	121
	Administrative Regulations	121
	Court Rules	122
	Uniform Laws and Model Codes	122
	Finding Constitutional Provisions, Statutory Law, Administrative Regulations, and Rules of Court	123
	Using a Citation	123
	Using an Index	123
	Popular Name Tables	126
	Finding Administrative Regulations and Rules of Court	126
	Legislative Materials on the Internet	126
	Constitutions	128
	Codes	129
	Rules of Court	130
	Administrative Regulations	130

	Miscellaneous Legislative Materials	130
	Searching the GPO's Federal Digital System	130
	Finding It Online	133
	Citation Matters	133
	Chapter Summary	135
	Terms to Remember	135
	Questions for Review	135
	Can You Figure It Out?	136
	Test Yourself	136
	Test Yourself—Write It Right	136
	Citation Exercises	137
	From the Writer's Corner	137
	Assignments and Exercises	137
	Case Project	138
CHAPTER 6	Statutory and Constitutional Analysis	139
	Chapter Outline	139
	Skill Objectives for Chapter 6	139
	Introduction	140
	Constitutional Analysis	140
	Federalism—The Relationship between Federal and State Governments	141
	Analyzing Statutes and Regulations	142
	Determine if a Law Applies	142
	Outline Statutory or Regulatory Language	143
	Review Case Law That Interprets Code or Regulatory Provisions	145
	Review Other Code Sections	148
	Watch Your Dates	151
	Legislative History	151
	Applying Statutory Law to a Fact Pattern	154
	The Internet and Legislative Analysis	161
	Finding It Online	161
	Citation Matters	163
	Chapter Summary	164
	Terms to Remember	164
	Questions for Review	164
	Can You Figure It Out?	165
	Test Yourself	165
	Test Yourself—Write It Right	165
	Citation Matters	166
	From the Writer's Corner	167
	Assignments and Exercises	167
	Case Project	169

CHAPTER 7	Secondary Sources	170
	Chapter Outline	170
	Skill Objectives for Chapter 7	170
	Introduction	171
	Features of Secondary Source Materials Accessed in Print Form	172
	Legal Encyclopedias: <i>American Jurisprudence 2d</i> and <i>Corpus Juris Secundum</i>	176
	Using Legal Encyclopedias	176
	<i>American Law Reports</i>	178
	Using <i>A.L.R.</i>	178
	Treatises	182
	Using a Treatise	182
	Periodicals	182
	Guides to Periodicals	183
	Looseleaf Services	183
	Restatements of the Law	184
	Miscellaneous Resources	184
	Continuing Legal Education Books and Materials	184
	Form Books	184
	Pattern Jury Instructions	186
	The Legal Dictionary and Legal Thesaurus	187
	The Internet and Secondary Sources	187
	Finding It Online	189
	Citation Matters	190
	Chapter Summary	190
	Terms to Remember	191
	Questions for Review	191
	Can You Figure It Out?	191
	Test Yourself	191
	Test Yourself—Write It Right	191
	Citation Exercises	192
	From the Writer’s Corner	192
	Assignments and Activities	192
	Case Project	193
CHAPTER 8	Digests	194
	Chapter Outline	194
	Skill Objectives for Chapter 8	194
	Introduction	195
	Headnotes and Topics	195
	West Digests	199

Other Digests	202
Using Digests	202
Lexis Advance, Westlaw, Bloomberg Law, and Digests	203
Lexis Advance	203
Westlaw	203
Bloomberg Law	205
Finding It Online	206
Citation Matters	207
Chapter Summary	207
Terms to Remember	208
Questions for Review	208
Can You Figure It Out?	208
Test Yourself	208
Test Yourself—Write It Right	208
Citation Exercises	209
From the Writer’s Corner	209
Assignments and Activities	210
Case Project	210

CHAPTER 9 Validating Your Research: Using *Shepard’s*, Keycite, and Other Citators 211

Chapter Outline	211
Skill Objectives for Chapter 9	211
Introduction to Citators	212
Shepard’s Citations	212
<i>Shepard’s</i> Case Citators in Print	213
<i>Shepard’s</i> Statutory Citators in Print	219
<i>Shepard’s</i> Citators on Lexis Advance	223
Keycite	226
BCite	228
Cite Checking a Document	228
Finding It Online	229
Citation Matters	229
Chapter Summary	230
Terms to Remember	230
Questions for Review	231
Can You Figure It Out?	231
Test Yourself	231
Test Yourself—Write It Right	231
Citation Exercises	232
From the Writer’s Corner	232
Assignments and Activities	232
Case Project	233

CHAPTER 10	Introduction to Lexis Advance, Westlaw, and Bloomberg Law	235
	Chapter Outline	235
	Skill Objectives for Chapter 10	235
	Introduction	236
	Preparing to Search	236
	Full-Text Searching on Lexis Advance and Westlaw	237
	Natural Language/Keyword Searching	238
	Terms and Connectors (Boolean Searching)	239
	Lexis Advance Sources	242
	Searching and Retrieving Documents on Lexis Advance	244
	Searching on Lexis Advance	244
	Retrieving Documents by Hyperlinking	244
	Retrieving Documents Using Tables of Contents	245
	Other Features of Lexis Advance	245
	Westlaw Databases	246
	Searching and Retrieving Documents on Westlaw	246
	Searching on Westlaw	246
	Other Features of Westlaw	248
	Search Possibilities and Problems With Lexis Advance and Westlaw	249
	Bloomberg Law	250
	Finding It Online	251
	Citation Matters	251
	Chapter Summary	252
	Terms to Remember	252
	Questions for Review	252
	Can You Figure It Out?	252
	Test Yourself	252
	Test Yourself—Write It Right	253
	Citation Exercises	253
	From the Writer’s Corner	253
	Assignments and Activities	253
	Case Project	254
CHAPTER 11	Computer-Assisted Legal Research (CALR): The Freely Accessible Internet	255
	Chapter Outline	255
	Skill Objectives for Chapter 11	255
	Internet Legal Research	256
	Searching Online Legal Websites	257
	Search Features	257
	Government Websites (.gov)	261
	Law School Websites (.edu)	265
	Commercial Websites (.com)	266

Organizational Websites (.org)	267
Legal Blogs	267
Evaluating Search Results	268
Intranets	269
Finding It Online	269
Citation Matters	269
Chapter Summary	270
Terms to Remember	270
Questions for Review	270
Can You Figure It Out?	270
Test Yourself	270
Test Yourself—Write It Right	271
Citation Exercises	271
From the Writer’s Corner	271
Assignments and Activities	271
Case Project	272
CHAPTER 12 Basic Legal Writing Skills	273
Chapter Outline	273
Skill Objectives for Chapter 12	273
Outline Your Document Before You Write	274
Basic Considerations	275
Use Topic Sentences	275
Use Active Voice	275
Avoid Noise Words	275
Use Front-Loaded Sentences	276
Keep Legal Writing Simple	276
Use Short Sentences	276
Avoid Unnecessary Words	277
Use Specific, Concrete Terms	277
Sentences	277
The Role of Topic Sentences	278
Paragraphs In General	280
Construction of a Well-Written Paragraph	283
The Thesis Paragraph	284
How to Arrange a Thesis Paragraph	285
Overview of Predictive Writing	287
Overview of Persuasive Writing	290
Initial Considerations After Completion of the Research	292
Overview of a Legal Research and Writing Project	293
Overview of the Editing and Revision Process	293
Finding It Online	294
Citation Matters	294
Chapter Summary	295
Terms to Remember	295

- Questions for Review 295
- Test Yourself 295
- Test Yourself—Write It Right 295
- Citation Exercises 296
- From the Writer’s Corner 296
- Assignments and Exercises 296
- Case Project 296

CHAPTER 13 The Memorandum of Law: Predictive Legal Writing 297

- Chapter Outline 297
- Skill Objectives for Chapter 13 297
- Introduction 298
- Memorandum of Law 299
- Format for a Memorandum of Law 299
- Preparing to Write the Memorandum of Law 301
 - Organizing a Memorandum 302
 - Situations Controlled by Statutory Law 302
 - Situations Controlled by Case Law 304
- Writing The Memorandum of Law 313
 - Statement of Facts 313
 - Issue Statement 318
 - Discussion 318
 - Analysis 319
 - Citing Authorities 319
 - Conclusion 320
- Finding It Online 325
- Citation Matters 325
- Chapter Summary 326
- Terms to Remember 326
- Questions for Review 326
- Test Yourself 326
- Test Yourself—Write It Right 326
- Citation Exercises 327
- From the Writer’s Corner 327
- Assignments and Exercises 328
- Case Project 328

CHAPTER 14 Writing to the Court: Persuasive Writing 329

- Chapter Outline 329
- Skill Objectives for Chapter 14 329
- Introduction 330
- Rules of Court 334
- Common Features 334
 - Case Caption 334
 - Table of Contents 336

Table of Authorities	336
Statement of Facts	344
Statement of Issue(s) or Question(s) Presented	355
Summary of Argument	356
Argument	356
Conclusion	356
Signature	356
Persuasion	360
Memorandum of Points and Authorities	361
Declarations	362
Trial and Arbitration Briefs	362
Appellate Briefs	364
Role of the Research Associate	365
Online Research	366
Citation Matters	366
Chapter Summary	366
Terms to Remember	367
Questions for Review	367
Test Yourself	367
Test Yourself—Write It Right	367
From the Writer’s Corner	368
Citation Exercises	368
Assignments and Exercises	368
Case Project	368

CHAPTER 15 Motion Practice: Research and Writing Issues 372

Chapter Outline	372
Skill Objectives for Chapter 15	372
Introduction	373
Nature and Purpose of Motions	373
General Purpose of a Motion	373
General Motion Procedure	374
Motions Made in Civil Cases	374
Motions Made in Criminal Cases	375
Research Issues in Motion Practice	376
Identifying the Basis or Grounds for Granting the Motion	376
Researching Procedural Issues for a Motion	377
Inconsistent Local Rules of Court	387
Writing Issues in Motion Practice	388
The Memorandum of Points and Authorities	388
Affidavits, Declarations, and the Statement of Facts	389
Other Supporting Documents	390
Using Forms	392

The Internet and Motion Practice 392
Finding It Online 393
Citation Matters 393
Chapter Summary 394
Terms to Remember 394
Questions for Review 394
Can You Figure It Out? 394
Test Yourself 394
Test Yourself—Write It Right 395
Citation Exercises 396
From the Writer’s Corner 396
Assignments and Exercises 396
Case Project 396

CHAPTER 16 Legal Correspondence 397

Chapter Outline 397
Skill Objectives for Chapter 16 397
Introduction 398
Business Letter Format 398
 Letterhead and Date 399
 Special Mailing or Delivery Methods 399
 Inside Address and Reference Line 399
 Salutation 400
 Body 400
 Closing and Signature Block 400
 Closing Notations 400
General Correspondence 402
 Confirmation Letters 402
 Appointment Letters 402
 Cover or Transmittal Letters 402
 Information Letters 403
Case Summaries 404
Opinion Letter 405
 Tone 405
 Fact Statement 405
 Analysis 405
 Conclusion 407
Demand Letter 407
 Tone 407
 Fact Statement 408
 Analysis 408
 Damages and Injuries 408
 The Demand or Offer to Settle 408
Fax and E-Mail 408
Finding It Online 410

	Citation Matters	411
	Chapter Summary	411
	Terms to Remember	411
	Questions for Review	411
	Test Yourself—Writing It Right	412
	Citation Exercises	412
	From the Writer’s Corner	412
	Assignments and Exercises	412
APPENDIX A	Research Case Files	415
APPENDIX B	Research and Writing Problems Based on Short Stated Fact Patterns	442
APPENDIX C	Legal Citation	447
APPENDIX D	Research Strategies: An Overview	456
APPENDIX E	Case Briefing Practice	461
APPENDIX F	Supplemental Cases	466
APPENDIX G	Answer Key to “Test Yourself” and “Test Yourself— Writing It Right”	511
APPENDIX H	U.S. Court System	529
	Glossary	533
	Credits	539
	Index	542

Preface

GOALS

Beginning legal researchers generally ask four questions:

- How do I find the law?
- How do I know that I found the right law?
- How do I know when to stop?
- What do I do with the law now that I have it?

Experienced legal researchers know that successful research requires the ability to answer each of these questions.

They also know that researching the law requires more than knowledge of law books. Today, it also requires proficiency in finding the law online. Whatever source a researcher uses, though, legal research requires the ability to analyze factual and legal disputes; the ability to understand the written law, whether found in cases or statutory materials; the ability to apply the law to the factual disputes; and the ability to communicate one's findings in a legally acceptable format. Our purpose in writing this book is to give students the basic information and practical exercises so that they can develop the skills needed to research and analyze a problem and to communicate their results appropriately.

Our experience in teaching legal research classes in law school and paralegal programs confirms that all programs cover the same topics and assign similar projects. A review of the model curriculum for legal research and writing recommended by the American Association for Paralegal Education further illustrates the similarity. However, even within law schools or paralegal programs, the way in which legal research and writing is taught often differs. Some programs teach separate courses in legal research, legal writing, and legal analysis. Some programs recommend research before writing, while others require writing and analysis courses before research. This text is appropriate for a variety of instructional approaches to legal research, analysis, and writing. Realizing that there are legitimate reasons for different organizations, we offer suggestions for using the text with different approaches to teaching the subject.

In addition, many educational institutions offer courses, including legal research and writing, online. Even traditional classroom education often incorporates online features within the class. This text can easily be used in such instances. All chapters refer students to helpful Internet websites to enhance their learning. Research chapters also direct students to freely accessible websites providing access to case law, codes, and selected secondary sources. The extensive use of annotated sample pages and screen shots and the variety of questions, exercises, and assignments at the end of the chapters allow a student to explore the world of legal research outside the traditional classroom.

Recognizing that legal research and writing requires “hands-on experience,” at the end of most chapters, we include numerous research and writing exercises, including one feature entitled “Test Yourself” where students can check their own work by referring to Appendix G, which contains suggested answers. In addition, in most chapters, questions are suggested for group work or discussion. Many of these questions are easily posted on discussion boards for students to “discuss”

online. Several features in the text are especially helpful for online instruction, including online research assignments at the end of most chapters.

CHANGES TO THE SIXTH EDITION

While retaining the pedagogical features of the prior edition, the sixth edition contains the following updates and changes:

1. Every chapter contains a new end-of-chapter feature, “Write It Right,” containing writing examples and exercises with answers or suggested answers located in Appendix G allowing students to check their own work.
2. Research chapters contain new sections with expanded discussion of free Internet research websites with an emphasis on government sites. Students can now start developing and practicing basic online research skills at the beginning of their research course.
3. Chapter 9 was revised to reflect the changes to Shepards and KeyCite resulting from the changes in the Lexis Advance and Westlaw websites.
4. Chapter 10 was revised to reflect the progression from Lexis.com and Westlaw.com to Lexis Advance and Westlaw (previously known as WestlawNext.)
5. Chapter 11 was revised to reflect changes and additions to legal research websites available without fee.
6. Sample pages of print materials have been modified in Chapters 3, 5, 7, and 8, reflecting the trend to rely on online sources.
7. Appendix C—Citation Guide updated to reflect changes in the 20th Edition of the Bluebook.
8. Appendix G (Answers to Test Yourself)—Revised to include suggested answers to Writing Exercises in each chapter.

ORGANIZATION

- Chapter 1 presents an introduction to legal research and writing as well as an overview of the legal system, with an emphasis on the way by which laws originate. The distinction between federal and state laws is explained. This material provides even beginning students with the basic information and concepts needed to undertake a legal research project.
- Chapter 2 introduces students to the beginning steps of legal research—analyzing the facts and issues to be researched.
- Chapter 3 explains how to find and analyze case law. The importance of legal citations is explained.
- Chapter 4 explains how to brief a case using the IRAC method of analysis.
- Chapters 5 and 6 explore statutes and constitutions. These chapters explain the publication and organization of these materials both in print and online. The chapters also explain how the laws should be read and analyzed.
- Chapters 7 and 8 explore numerous secondary sources and digests.
- Chapter 9 explains *Shepard’s*, KeyCite, and other citators.
- Chapter 10 introduces computer-assisted legal research as it applies to Westlaw and Lexis, although the use of the Internet as a research tool is included in all chapters. Bloomberg Law is also introduced.
- Chapter 11 presents an overview of the use of free Internet sites for legal research.

- Chapter 12 explains the basic legal writing skills.
- Chapter 13 introduces predictive legal writing using the memorandum of law. This chapter also reviews the basic analysis methods (e.g., IRAC) introduced in earlier chapters and shows how these methods are incorporated into more formal legal writing.
- Chapter 14 introduces persuasive legal writing, with an emphasis on writing to a court.
- Chapter 15 presents an overview of research and writing concerns in motion practice.
- Chapter 16 introduces basic legal correspondence.

For courses covering only legal writing, the following chapters are appropriate:

- Chapters 1 and 2: Introductory Material (These chapters may be quickly reviewed depending on the students' educational background.)
- Chapter 4: How to Read and Summarize a Case Law Decision
- Chapter 6: Statutory and Constitutional Analysis
- Chapter 12: Basic Legal Writing Skills
- Chapter 13: The Memorandum of Law: Predictive Legal Writing
- Chapter 14: Writing to the Court: Persuasive Writing
- Chapter 15: Motion Practice: Research and Writing Issues
- Chapter 16: Legal Correspondence
- Appendix Materials

For courses covering only legal research, the following chapters are appropriate:

- Chapters 1 and 2: Introductory Material (These chapters may be quickly reviewed depending on the students' educational background.)
- Chapter 3: Finding and Analyzing Case Law
- Chapter 5: Constitutions, Statutes, and Administrative Regulations
- Chapter 7: Secondary Sources
- Chapter 8: Digests
- Chapter 9: Validating Your Research: Using *Shepard's*, KeyCite, and Other Citators
- Chapter 10: Computer-Assisted Legal Research (CALR): Lexis, Westlaw, and Bloomberg Law
- Chapter 11: Computer-Assisted Legal Research (CALR): The Freely Accessible Internet
- Appendix Materials

PRACTICAL APPROACH

Regardless of which instructional approach is followed, this text assists the instructor in presenting material in a practical and relevant way.

Each chapter opens with a short memorandum *From the Desk of W. J. Bryan, Esq.*, that contains a hypothetical factual situation to be researched and analyzed by a fictional research associate. The memorandum approach helps to introduce the topic of the chapter and to engage the student's imagination. Each chapter contains figures with sample pages from print resources, screen shots from online sources, or examples of legal writing so as to illustrate text material. One feature at the end of the chapter, Can You Figure It Out?, requires students to answer questions related to these figures. Furthermore, because learning to do legal research requires hands-on experience, at the end of each chapter are research, analysis, citation, and writing exercises. Research assignments can be performed in a library or, in many cases, online. (Answers to most of these exercises are found in an Instructor's Manual.) So that students can build confidence prior to

using a library or online resource, exercises are found in a chapter end feature, Test Yourself. Answers to selected research problems are found in Appendix G to the text.

Each chapter also addresses important writing issues in end-of-chapter features. **Test Yourself** also contains a section entitled “Write It Right.” Here students find a writing assignment preceded by an explanation and example. Suggested answers to the writing assignment are generally provided in Appendix G. This feature covers a variety of legal writing issues.

All chapters also include a **Chapter Summary**, **Terms to Remember**, **Citation Matters**, and **Questions for Review**, as well as a **Case Project**. This section allows students and instructors to select one hypothetical case (many of which are found in Appendices A and B) and to perform some research, analysis, or writing project in chapters. In this way, students see how the material covered in the different chapters is integrated. Questions and problems for group work, either in class or online through the use of discussion boards, have been added.

FEATURES

A variety of features helps students and instructors.

- **Legal vocabulary** is identified in boldface type. The key terms are defined in the margins of the text where the terms appear. A comprehensive **Glossary** is also included at the end of the book.
- **Skill Objectives** are listed at the beginning of each chapter, helping students recognize the main points of the chapter.
- **Finding It Online** offers students the opportunity to explore online legal research resources.
- **Citation Matters**, a feature that appears in each chapter, is a brief overview of major citation rules affecting legal writing.
- **The Writer’s Corner**, a feature in each chapter, focuses on an important legal writing issue.
- As previously stated, an interoffice memorandum called *From the Desk of W. J. Bryan, Esq.*, opens the text of each chapter. This memorandum serves as an introduction to the subject matter, encouraging the student to think about the subject matter in a practical setting.
- **Research checklists** are found in several chapters, providing a quick, easy-to-read summary of the material found in the text.
- **Sample pages** from an assortment of law books are included in the research chapters. Practical exercises, found in the section **Can You Figure It Out?** at the end of the chapters, give students the opportunity to practice research skills *before* going to the library.
- Examples of actual **research memoranda** appear in appropriate chapters.
- A **Chapter Summary** is included in every chapter; it provides a short overview of the major concepts covered in the chapter.
- Basic **Questions for Review** follow the chapter summary. These questions are designed to focus the student on the most important concepts presented in the chapter.
- **Assignments, Activities, and Exercises** are included at the end of each chapter. These features include library research problems, analysis exercises, and writing assignments.
- **Citation Exercises** are included at the end of each chapter.
- Questions **From the Writer’s Corner** located at the end of the chapter reinforce the material covered in the chapter.

- Most chapters include a feature called **A Point to Remember**. This practical information is fashioned to help students focus on the skills and concepts that will help them in doing legal research, writing, and analysis.
- **Test Yourself**, including **Write It Right**, allows students to test their own research and writing skills by providing answers to the questions in Appendix G.
- **Appendix B** includes several research problems that may be used as a basis for assignments for all chapters, giving students the opportunity to see the entire research process as it relates to one factual problem. Many of the problems contain case documents, including transcripts and declarations. Other appendixes include a **citation guide**, a **research strategies outline**, and **partially completed case briefs**.

INSTRUCTOR SUPPLEMENTS

Instructor's Manual with Test Bank Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

TestGen This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.

PowerPoint Presentations Our presentations are clear and straightforward. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable.

To access supplementary materials online, instructors need to request an instructor access code. Go to www.pearsonhighered.com/irc, where you can register for an instructor access code. Within 48 hours after registering, you will receive a confirming email, including an instructor access code. Once you have received your code, go to the site and log on for full instructions on downloading the materials you wish to use.

ALTERNATE VERSIONS

eBooks This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit www.mypearsonstore.com.

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chapter **one**

INTRODUCTION TO LEGAL RESEARCH, WRITING, AND ANALYSIS

SKILL OBJECTIVES FOR CHAPTER 1

When you complete chapter 1, you should be able to

- Describe the role of a legal researcher.
- Explain the effect of federalism on legal publications.
- Describe the sources of U.S. law.
- Explain the difference between a primary and a secondary source of law.
- List the types of materials often found in law libraries.
- List the common features of law books.



CHAPTER OUTLINE

- 1-1** Introduction
 - Preparing for Legal Research
 - Legal Research and Law Practice
 - The Role of the Researcher
- 1-2** The U.S. Legal System
- 1-3** Sources of U.S. Law
 - Constitutional Law
 - Statutory Law
 - Administrative Regulations
 - Case Law
 - Relationship between Sources of Law
- 1-4** Legal Publications
- 1-5** The Law Library
 - Traditional Law Libraries
 - Types of Legal Materials
 - Virtual Law Libraries
 - Features of Legal Publications
- 1-6** Internet and Legal Research
- 1-7** Legal Citation
 - Case Law
 - United States Constitution
 - The United States Code (Statutes)

From the Desk of W. J. Bryan, Esq.

TO: Research Assistant
FROM: W. J. Bryan
RE: Our Client, Justin Meyers
DATE:

I'm sorry I won't be here to greet you personally on your first day of work. Unfortunately, I need to be in court today. I am leaving a file on your desk for you to review. The case relates to a new client, Justin Meyers. He is charged with murder. There may be a problem with the legality of a search and seizure, and we need to do more research into this matter. After you read the documents in the file, including statements from several individuals, please write a brief memorandum outlining the issues in the case.

You need to familiarize yourself with our office library. The firm has a legal library containing all state and federal cases and codes, as well as selected secondary source materials. I hope that all the books you need are available. You can access information on various free Internet sites, but these sites are sometimes unreliable. The firm maintains subscriptions to both Westlaw and Lexis but these sources are not free, and using them can be costly.

Just leave your memo on my desk and I will review it tomorrow morning.

1-1 INTRODUCTION

If you are a research assistant for W. J. Bryan working on the Meyers case, you must engage in legal research, analysis, and writing. You are asked to determine if Meyers's rights were violated. To do this, you first need to conduct legal research and locate laws dealing with police searches. You then need to read and analyze the law and apply it to the facts of the Meyers case. Your job is not complete, however, until you communicate your findings to Bryan in a written memorandum.

One of the most important skills for lawyers and paralegals is the ability to find and analyze the law and to communicate their findings, usually in writing. Many other professions also find legal research skills useful. Police officers, for example, often refer to code sections and case law in their jobs. Although this textbook is intended primarily for students pursuing a career as a legal professional, it provides a basic framework for legal research that any student should be able to follow. The subject matter of each chapter is introduced in a hypothetical factual scenario, found in a note from the desk of W. J. Bryan, Esq. As you go through the text, you will learn where and how laws are published, how to find the law, how to analyze a factual situation and apply the relevant legal principles, and how to communicate your findings to clients, other attorneys, and the court. You will also learn how to access legal information through the Internet and how to evaluate online information. At the end of each chapter are several practical research, analysis, and writing exercises. Some exercises can be completed with materials found in the text. Others require that you visit a law library or access the Internet. In addition to the exercises found at the end of the chapters, Appendixes A and B contain several hypothetical cases for research and writing assignments.

Preparing for Legal Research

As you develop your research skills, you will also develop your legal vocabulary. Initially, legal terminology may present problems for you. When you read cases,

statutes, or other legal source material, you are reading material written by lawyers (or judges) for other lawyers. Many terms used in the law are not common in everyday language. Latin terminology is used to express some legal concepts. Many words that you *think* you understand have special meanings when used in a legal context. A **legal dictionary** is an essential tool that defines and explains legal terms. Another tool is a **legal thesaurus**. This provides synonyms for legal terms. This is particularly helpful when you use an **index**. Table 1-1 shows common legal terms used in case law. Review this list and see how many you understand without the use of a legal dictionary or thesaurus.

legal dictionary

A dictionary defining and explaining legal terms.

legal thesaurus

A book providing synonyms for legal words.

index

A list of words and phrases that reflects the topics covered in the book.

Legal Research and Law Practice

Although legal professionals and paraprofessionals spend considerable time studying the law before working in the field, they do not know the answer to every legal question. Even the most experienced lawyers must research the law. Laws change constantly. Legislatures routinely enact, amend, or repeal statutes. Courts decide new cases every day. Even constitutions are amended. When lawyers make legal arguments in court or give legal advice to clients, they must be certain about the current state of the law. Because laws are not the same throughout the various states, lawyers must be certain about the law in their jurisdiction. This often requires legal research.

The researcher's job starts with identifying the nature of the client's legal problem and researching laws related to that problem. It does not stop with just finding the law. The law must be analyzed in relation to the facts of the particular case and the results of the research and analysis explained, usually in written form, to the appropriate person. See Box 1-1. This person may be a client, another attorney, or a judge. Thus, the legal research process usually involves three steps—finding the law, analyzing the law, and then preparing a written explanation or argument based on the law.

TABLE 1-1 Legal Terminology

Affirm	Precedent
Appeal	Real party in interest
Appellant	Remand
Appellee	Respondent
Civil	Reverse
Criminal	<i>Stare decisis</i>
Defendant	Writ of certiorari
Motion for summary judgment	Writ of habeas corpus
Plaintiff	Writ of mandate

BOX 1-1 THE LEGAL RESEARCH PROCESS

- ✓ Identify factual question raised by the client's problem.
- ✓ Find law that applies to factual question.
- ✓ Analyze law in relationship to factual question.
- ✓ Communicate findings.

The Role of the Researcher

Only attorneys can give legal advice to clients. Therefore, if you are not an attorney, your legal research should be under the general supervision of an attorney, who must review the research before a client is advised of the findings.

As a research assistant, you may find yourself engaged in various responsibilities, including:

- Gathering or verifying the facts that raise a legal question
- Summarizing the facts
- Conducting legal research
- Summarizing relevant law
- Drafting legal memoranda
- Reviewing legal memoranda for technical requirements
- Checking the citations in memoranda
- Reviewing legal memoranda from opposing counsel

Whatever your responsibilities are, realize that the attorney always expects accuracy and thoroughness. The attorney often relies on your research when advising clients or when arguing matters in court. Even if your job responsibilities do not include working as a research assistant for an attorney, if you work in a law office, you often need to perform legal research for your own benefit. Legal research, analysis, and writing skills contribute greatly to your success in a law office.



The Writer's Corner

IRAC

How to Organize Most Legal Writing

At first, legal writing seems daunting. Questions of where to begin and how to begin can seem overwhelming. The good news is that most legal writing follows a very simple formula. At the core of a legal discussion or argument there are four absolutely necessary sections: the **ISSUE**, the **RULE** of law, the **ANALYSIS/APPLICATION** of the law to the facts of the case you are working on, and the **CONCLUSION**. (This formula is often referred to as the IRAC method.)

When you add a concise **INTRODUCTION** and a Statement of **FACTS**, you have the outline of most legal analysis.

Keep in mind that the reader needs the document organized such that it is easy to read. When drafting a document, simply adhere to this basic formula and the reader—your audience—will easily follow your logic.

Under this formula, the basic outline of most legal memoranda is:

Introduction

(concise overview for the reader)

Statement of Facts

(summary of all key facts and helpful explanatory facts)

Issue

(the legal question(s) to be analyzed under the applicable rule(s) of law)

Rule

(state and explain the rule(s))

Analysis/Application

(analyze/apply the rule(s) of law to the key facts)

Conclusion

(state the conclusion you reach after your analysis)

Remember—you take this approach with each issue. If your case involves three issues, you will go through this process three times.

As you study law notice how this is the formula for most legal writing, including case law decisions. Basic writing skills are also essential in legal writing. At the end of each chapter is an exercise to see if you can “write it right.”

A Point to Remember

A nonlawyer, such as a paralegal or a law clerk, cannot give legal advice. To do so is the unauthorized practice of law and is unethical, not to mention illegal. Paralegals or clerks who do legal research should report their findings to a supervising attorney. All legal advice to a client must come from an attorney.

1-2 THE U.S. LEGAL SYSTEM

The ability to engage in effective legal research requires a basic understanding of the U.S. legal system. Several principles of government affect the way our laws are published and applied. One of the most important concepts is federalism. In the United States, government operates under a principle called *federalism*, which means that separate governments, federal and state, regulate citizens. Each government makes its own laws. When researching an issue, you face different sets of laws for each state and for the federal government. A key feature of legal publications is that separate publications often exist for federal law and for that of each individual state. Even though some secondary sources attempt to discuss all laws, many legal publications (especially primary sources of law) contain law related only to a specific jurisdiction, that is, only federal law or only the law of one state. When you begin research, you save time, and are more accurate, if you focus on publications that contain the proper law. See Box 1-2. As you continue with your legal education, your ability to do this will improve.

Sometimes your research shows that both state and federal laws apply. For example, consider the Meyers case mentioned at the beginning of the chapter. In this case, the defendant is charged with the crime of murder. This is a state crime, and a state court will hear the case. However, the U.S. Constitution controls the question of the legality of a search that prohibits unreasonable searches and seizures. To complicate matters, the state in which Meyers resides may also have constitutional provisions regulating unreasonable searches by police. Researching this type of case can be difficult. Keep in mind that where a conflict exists between state and federal law, federal law controls. This is because of the “Supremacy Clause” of the Constitution (Article VI): “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” When a state passes a law that conflicts with the Constitution, the U.S. Supreme Court has the power to declare that state law unconstitutional and unenforceable. Like the concept of federalism, the Supremacy Clause is important to legal research.

federalism

A system of government in which the people are regulated by both federal and state governments.

BOX 1-2 RESEARCH CHECKLIST

Before You Begin

- ✓ Review the factual situation.
- ✓ Determine whether federal law, state law, or both control the factual situation.
- ✓ Use research materials that contain the proper law.

1-3 SOURCES OF U.S. LAW

In both federal and state systems, laws come from the same types of sources. U.S. law is found in four sources: constitutions, statutes, administrative rules or regulations, and case law decisions. All governments, state and federal, have constitutions generally published in various sources. Other laws come from our legislatures, courts, and administrative agencies. Both the federal and state legislatures enact statutory laws, published in codes. Federal courts and state courts are responsible for case law found in case reporters. Administrative agencies exist on both federal and state levels from which we derive administrative rules or regulations.

Constitutional Law

The federal government and all states have constitutions, documents whose primary purpose is to establish the government and define its functions and obligations in relation to the people. The U.S. Constitution establishes and defines the role of the federal government and its relation to the people of the United States. The U.S. Constitution applies only to the federal government, unless expressly made applicable to individual states. Each state constitution establishes and defines the role of the state government and its relationship to citizens of that state. The various constitutions are published in numerous ways, often with the statutory law for the jurisdiction. The U.S. Constitution can be found with the U.S. Codes, and state constitutions are usually found with the state codes.

Statutory Law

Statutory law results from legislative action. The federal and state legislatures enact laws that are then sent to the chief executive (the president or the governor) for approval. After they are signed (or a veto properly overridden), the laws are organized and published in codes. The code for the United States is the *United States Code*. Legislatures also empower the courts to enact rules, known as *rules of court*, which govern practice in the courts. In addition, local governing bodies (cities and counties) enact laws, often known as *local ordinances* or *municipal codes*.

Administrative Regulations

In order for the government to perform all of its tasks, legislatures created various agencies to handle specific jobs. For example, Congress created the Securities and Exchange Commission (SEC) to handle corporate stock transactions. Agencies generally have the power to make necessary rules or regulations. These are *administrative regulations*. Administrative agencies exist in the federal government as well as in each state.

Case Law

The English *common law* plays an important role in the U.S. legal system. Common law is based on the concept of *precedent* or *stare decisis*, rather than an exhaustive system of written laws or rules. When parties have a legal problem, their dispute comes before a judge who decides the case. The decision becomes a precedent. Then, if the same type of factual dispute comes before a court in the future, the judge follows the decision of the first case. Although the federal

common law

Body of law developed through the courts.

precedent

The example set by the decision of an earlier court for similar cases or similar legal questions that arise in later cases.

stare decisis

“It stands decided”; another term for precedent.

government, as well as the states, has codified considerable law, precedent still plays an important role. U.S. courts have the role of interpreting other laws and applying these laws to different factual disputes. Case law results from selected decisions made by various *appellate* courts, including the U.S. Supreme Court. It does not come from trial court decisions. The concept of *stare decisis* is discussed in more detail in Chapter 3.

Relationship between Sources of Law

When you research an issue, you often find that more than one primary source of law applies. In the U.S. legal system, the courts have the power to interpret the U.S. Constitution, state constitutions, federal and state codes, and federal and state administrative regulations. See Box 1-3. Thorough research requires that when you find constitutional or statutory law (including administrative regulations), you must also determine if case law interprets these laws.

BOX 1-3 PRIMARY SOURCES OF LAW

Federal Law	State Law
U.S. Constitution	State constitution
U.S. Code	State codes
Federal administrative regulations	State administrative regulations
Federal cases	State cases

1-4 LEGAL PUBLICATIONS

Law is published in the same types of materials as any other information, that is, books, periodicals such as magazines or newspapers, and electronic media. Published law is either a *primary source* of law or a *secondary source* of law. The former is a work that contains the law, such as publications of constitutions, statutes, administrative regulations, and cases. Publications of statutes are sometimes called *code books*. Publications of cases are *case reporters*. Secondary sources of law are publications that explain or discuss the law (e.g., legal encyclopedias and journals). Secondary sources are helpful in finding and understanding the primary law. The goal of legal research is to find a primary source of law that controls your factual situation or answers your legal question.

Until recently, the term *law publication* referred to books or magazines. Today, a broader definition is necessary. Primary and secondary sources of law are published not only in books but also in electronic form. Today, many legal researchers rely heavily on the Internet, including fee-based services such as *Lexis* (Lexis Advance) and *Westlaw*. These sites provide access to vast amounts of primary and secondary sources of law. The Internet provides access to numerous other fee-based and free sites containing legal information. *CD-ROM and DVD libraries* containing both primary and secondary sources are also available.

Two major publishers are responsible for many legal publications. These publishers are Thomson Reuters/West and Lexis Law Publishing, and they produce many materials in both print and electronic formats. Each of these publishers adds helpful editorial features to their legal publications to assist the researcher. As you proceed through this text, these features will be introduced and explained.

primary source

A work that contains the law.

secondary source

A tool used to help understand the law; one such tool is a legal encyclopedia that explains the law.

code books

Books that contain codes or statutes.

case reporters

Books that contain case decisions from the courts.

Lexis

A computer-assisted legal research service.

Westlaw

A computer-assisted legal research service.

1-5 THE LAW LIBRARY

Traditional Law Libraries

law library

A library that is dedicated to legal resource material.

One of the prerequisites to doing legal research is familiarity with the *law library*, which is a library dedicated to legal resource material. Many law firms maintain their own law libraries. These libraries vary in size and content and may contain small collections of basic law books or extensive collections of legal research material. Some larger law firms even employ law librarians to maintain their libraries.

If you need a comprehensive legal library, you might use a county law library or that of a nearby law school. These libraries generally contain primary and secondary sources related to the laws of your state as well as materials related to the laws of the United States. Most likely, these libraries also contain primary and secondary sources concerning the laws of other states and of foreign nations. County law libraries are often open to the public. Law school libraries, on the other hand, may be available to you only if your law firm has a special arrangement with the school.

A Point to Remember

You should make every effort to become familiar with your firm's law library as soon as possible. Knowing what resources are immediately available can save you time and worry.

Types of Legal Materials

See Figure 1-1 for a list of the specific types of books found in most law libraries. Many law libraries also provide electronically stored information. Today legal

FIGURE 1-1 Types of Legal Materials

Case Reporters	Large sets of books containing written case decisions or opinions from state and federal courts
Code Books	Sets of books containing either federal or state statutory law organized in a topical order; may also contain copies of the federal or state constitution
Encyclopedias	Multivolume sets of books that explain the law; they are organized alphabetically by topic; some explain American law in general, others are limited to explanations of laws in a single state
Digests	Multivolume sets of books that act as a detailed topical index to case reporters; are organized topically and contain short summaries of cases
Looseleaf Service	A type of legal work, usually concerning a single legal topic (such as family law), where the written material is kept in a pull-apart binder. The material is continually updated. When laws are changed the publisher sends replacement pages to the subscribers of the service. Pages with the old law are removed and replaced with new pages that reflect the changes in the law
Treatises	Usually single books published on one legal subject
Form Books	Books containing forms that lawyers use to prepare legal documents; sometimes referred to as <i>practice books</i>
Legal Periodicals	Magazines, journals, and newspapers related to the practice of law; included are law reviews and journals published regularly by law schools

materials are found not only in print but also on DVDs and CD-ROMs, and many law libraries make these available to researchers.

In addition to law libraries, legal collections are often included in many general libraries, although these collections are not as comprehensive as those found in law libraries. Your local public library may have copies of your state codes, federal codes, or case law. Many university or college libraries contain a wide array of legal materials.

Virtual Law Libraries

In addition to the traditional law library, today's researcher has access to vast amounts of legal materials through online subscription sources, such as Lexis, Westlaw, and Bloomberg Law. Many of the same books that are accessed in traditional libraries can be accessed and searched through these online services. For this reason, familiarity with traditional print resources is important. A list of some of the materials found on Westlaw is found in Figure 1-2. Selected research materials are also available through many free Internet sites. The federal and state governments, as well as many law schools, maintain free websites with limited legal materials. Many commercial sites also feature legal materials. A researcher can usually find primary law (i.e., constitutions, codes, and cases) for free. However, because of copyright issues, only limited secondary source materials are available.

In a virtual law library, researchers can find legal material from the convenience of their own desk at almost any time of the day or night. The researcher needs a computer and an Internet connection. However, reliability of free Internet sites is always a concern, and the researcher must be careful in relying on such sites. If researchers want to access Westlaw, Lexis, or Bloomberg Law, they also need a fee-based subscription.

Features of Legal Publications

Learning to do legal research requires a great deal of time and effort. However, in some respects, legal research is similar to general research, and law books and periodicals are often similar to nonlegal materials. Most law books (except for case reporters) have an extensive *table of contents* and index. The table of contents, like that of any book, is an outline of the material covered in the book. The index is a list of words and phrases that reflect the topics covered. Using both enables you to find any particular topic in the book. When using legal periodicals, you can locate specific topics in indexes that resemble the Readers' Guide to Periodical Literature that you probably used when writing research papers in high school and college.

table of contents

An outline of the material covered in the book or document.

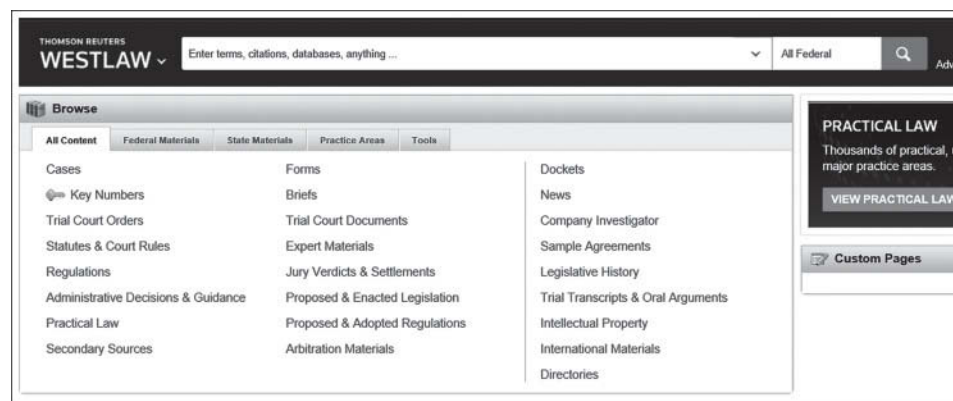


FIGURE 1-2 Westlaw Directory