

Introduction to the Research Plan

Legal Research Center Video Series

Materials adapted from Amy E. Sloan, *Basic Legal Research: Tools and Strategies* (7th ed. 2018).



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Learning Outcomes For This Video

Students will be able to...

1. Understand the importance and purpose of a legal research plan in conducting effective and efficient research.
2. Describe the key elements of a legal research plan: preliminary information (including jurisdiction), issue statement, search terms, secondary sources, primary sources, updating, and assessment.
3. Explain 3 strategies for crafting search terms: asking journalism questions, using the TARP method, and developing synonyms.
4. Distinguish between primary and secondary legal authorities.

What is legal research?

- Legal research is the process of finding rules that govern conduct in society, i.e. the law.
- Lawyers can't be expected to know every rule; there are too many and they change frequently.
- Lawyers must make sure they are acting on and advising clients of all the relevant, up-to-date laws applicable to a situation.
- Thorough legal research creates confidence in clients, judges, and yourself!

Outline of the basic steps

1. **Obtain preliminary information** about the issue.
2. **Plan the steps** in your research.
3. **Execute** your research plan effectively.
4. **Assess** the information you find and **update** to ensure it is current.
5. **Revise** your research plan as necessary and repeat steps as needed.

1. Preliminary information

- How much time do you have for this assignment?
- What final work product should you produce?
- Are there any limits on the research materials you can use?
- Which jurisdiction's law applies?
- Should you research nonbinding authority?

In practice, ask these questions too:

- Any recommendations for sources that are particularly good for researching this area of law?
- What background on the law or terms of art should you know as you begin?
- Are there any internal resources (written materials or expert colleagues) you should consult?

2. Planning the steps

A. An initial issue statement

B. A list of possible search terms

C. An outline of your search strategy

A. Initial issue statement

- Defines the scope of your research
- Informal is okay
- Varying levels of specificity depending on how much you already know (or don't know!)
 - Can the plaintiff recover from the defendant for destroying her garden?
 - Can the plaintiff recover from the defendant *in negligence* for destroying her garden?
- Don't skip this step!

B. Potential search terms

- Classic journalism questions
 - Who, what, when, where, why, and how
- **TARP**
 - **T**hing or subject matter
 - causes of **A**ction or defenses
 - **R**elief sought
 - **P**ersons or **P**arties involved

Expanding search terms

- Breadth: synonyms and related terms
 - Intoxicated, drunk, under the influence
- Depth: express concepts more abstractly or more concretely; more generally or more specifically
 - Animal > Pet > Dog

Hypothetical

Your client, Paula, recently ended a long-term relationship with her partner, Deena. Paula and Deena never participated in a formal marriage ceremony, but they had always planned to get married “someday.” They lived together for 5 years and called each other “my wife.” They agreed to provide support for each other, and Deena repeatedly said, “What’s mine is yours.” Paula wants to know if she is entitled to part of the value of the assets acquired by Deena during the relationship, or to any support payments.

Hypo search terms

- **Things and subject matter:** property, assets, ownership, support, non-marital relationship
- **causes of Action and defenses:** common-law marriage, breach of contract, detrimental reliance, promises, misrepresentation
- **Relief:** damages, division or disposition of assets, support
- **Parties:** wife, spouse, unmarried couple, cohabitants

C. Outline search strategy

- Identify the type and sequence of research tasks by figuring out what you know, what you do not yet know, and how best to fill in the blanks.
 - Take stock of what you already know.
 - Determine whether to pick a specific source to search (source-driven) or to search across an entire type of content (content-driven).
 - Think about both the electronic and print research tools available to you.

C. Outline search strategy (cont.)

- i. Locate and read secondary authority
- ii. Locate and read primary authority

Secondary Authority

- Statements about the law that explain, interpret, develop, locate, or update primary authority
- Written by practitioners or law professors
- Examples: encyclopedias, treatises, journal or law review articles (legal periodicals), American Law Report annotations (ALRs), restatements of the law, & looseleaf services
- Secondary sources are NOT the law itself and are NOT binding; NOT appropriate to cite most of the time

Secondary Authority (continued)

- Provide context – the big picture
- Get up to speed quickly in an unfamiliar area of law
- Help you locate relevant and authoritative primary authorities, including cases and statutes
- Bottom line:
 - Prevents reinventing the wheel
 - Huge time-saver
 - Helps ensure you don't miss most important issues and authorities

Primary Authority

- Includes caselaw, statutes/codes, regulations, and constitutions
 - Sources of law

Types of Primary Authority

- Binding/mandatory vs. nonbinding/persuasive
 - Jurisdiction
 - Weight of authority (level of court) for cases

Binding vs. Nonbinding Authority

Type of Authority	Binding (Mandatory)	Nonbinding (Persuasive)
Primary	Statutes & other legal rules in force in the jurisdiction Decisions from higher courts within the jurisdiction (precedent)	Decisions from all courts in other jurisdictions Decisions from lower courts within the jurisdiction
Secondary	Never	Always

- i. Locate and read secondary authority
 - a. Locate specific titles by name or subject and use indexes and tables of contents to find relevant sections.
 - b. Conduct natural language keyword search(es) to find relevant sections
 - c. Collect citations to primary authority.
 - d. Update: check publication date or consult pocket part.

- ii. Locate and read primary authority
 - a. Locate relevant statutory sections and review annotations.
 - b. Examine cases cited in secondary authority and statutory annotations.
 - c. Use West's topic & key numbers and Lexis' topics & subtopics to locate similar cases.
 - d. Perform natural language and advanced keyword searches.

ii. Locate and read primary authority (cont.)

e. Use citators (Shepard's and KeyCite) for 2 purposes:

1. Make sure all your primary authority is still good law.
2. Locate further relevant cases that have cited to a statute or case you've already found.

Outline of the basic steps

1. Obtain preliminary information about the issue.
2. Plan the steps in your research.
- 3. Execute your research plan effectively.**
4. Assess the information you find and update to ensure it is current.
5. Revise your research plan as necessary and repeat steps as needed.

3. Execute your plan effectively

- Effective note-taking
- Not just what you found, but how and where you found it
- Be sure to include:
 - Citation information
 - What led you to that information and where you located it
 - Summary of how it's relevant
 - Whether and how you've updated the document

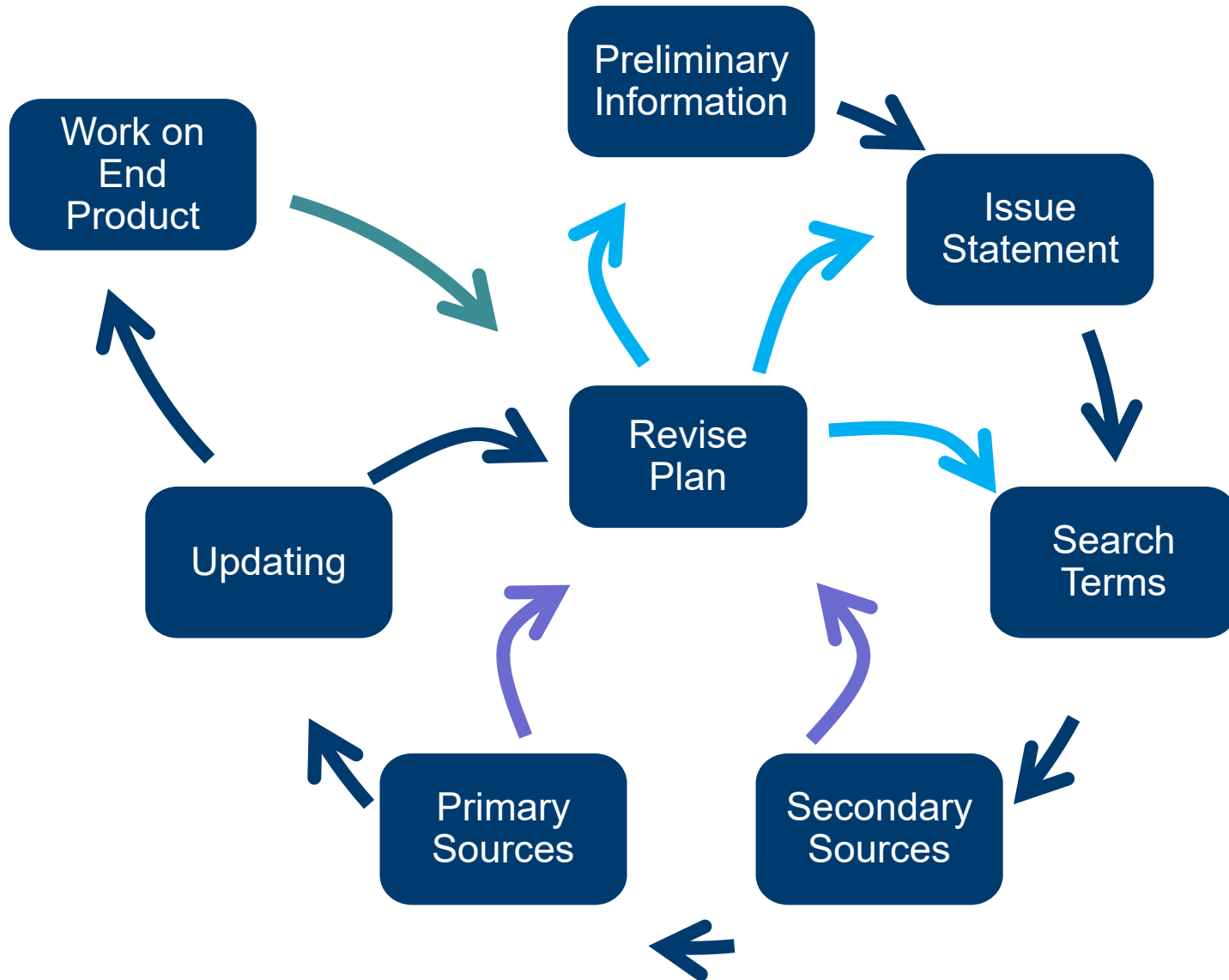
4. Assess and update

- Authority must be up to date and remain valid.
- Consider whether you have gathered enough information to respond your issue statement.

5. Revise plan & repeat steps

- If you've struggled:
 - Make sure you understand the problem; go back to your supervisor for clarification.
 - Rethink your search terms and the scope of your research.
 - Return to secondary sources if you were too quick to jump into primary sources
 - Change up your approach.
 - Consult a librarian or other colleague if appropriate.

Research is Cyclical



What About Generative Artificial Intelligence (Gen AI)?

- Gen AI tools are still new to legal research.
 - There isn't a consensus on the most beneficial time to use Gen AI tools in the legal research process.
- We believe employers and supervisors will expect you to be familiar with the traditional legal research process.
- Learning the basics of legal research will help you evaluate Gen AI responses.

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