

This chapter provides a basic approach to virtually any legal research task in the law library or on the Internet. This is nothing we invented; rather, it is the almost universal method of experienced legal researchers. Once you understand how this overall approach works, any research task will be greatly simplified. Although some of what we say is fairly conventional (for example, keep accurate notes), much of it isn't. For example, we suggest that achieving the highest quality of legal research requires a commitment to perseverance and patience, and a belief in yourself.

Patience and Perspective

A certain type of attitude and approach are required to efficiently find the information you need among the billions of legal facts and opinions in a law library or on the Internet. Probably the most important quality to cultivate is patience—a willingness to follow the basic legal research method diligently, even though it's a time-consuming process.

Unfortunately, many legal researchers are impatient, preferring to make a quick stab at finding the particular piece of information they think they need. While a quest for immediate gratification is sometimes appropriate when attempted by a master researcher, it most often results in no satisfaction at all when attempted by the less experienced.

Perhaps it will be easier to understand how legal research is best approached if we take an analogy from another field.

Seeking and finding legal information is a lot like learning how to cook a gourmet dish. To cook the dish, you first need to settle on a broad category of cuisine—Japanese, French, Nouvelle California, etc. Next, you find one or two good cookbooks that provide an overview of the techniques common to that specific cuisine. From there you get more specific: You find a recipe to your liking, learn the meaning of unfamiliar cooking terms, and make a list of the ingredients. Finally, you assemble the ingredients and carefully follow the instructions in the recipe.

Legal research also involves identifying a broad category before you search for more specific information. Once you know the general direction in which you're headed, you are prepared to find an appropriate background resource—an encyclopedia, law journal, Internet article, treatise—to educate yourself about the general issues involved in your research. Armed with this overview, you can then delve

into the law itself—cases, statutes, regulations—to find definitive answers to your questions. And, when your research is finished, you can pull your work together into a coherent written statement. (Writing up your research is crucial to knowing whether you really are finished.)

Of course, in the legal research process there are lots of opportunities for dead ends, misunderstandings and even mental gridlock. Answers that seemed in your hand five minutes ago evaporate when you read a later case or statutory amendment. Issues that seemed crystal clear become muddy with continued reading. And authoritative experts often contradict each other.

Take heart. Even experienced legal researchers often thrash around some before they get on the right track. And the truth is, most legal issues are confused and confusing—that's what makes them legal issues. Just remember that the main difference between the expert and novice researcher is that the expert has faith that sooner or later the research will pan out, while the novice too easily becomes convinced that the whole thing is hopeless. Fortunately, this book—and many law librarians—are there to help the struggling legal researcher.

How to Find (and Feel at Home in) a Law Library

Before you can do legal research, you need access to good research tools. The best tools are still found primarily in law libraries, although sometimes legal research involves government document and social science collections.

Many law libraries are open to the public and can be found in most federal, state and county courthouses.

Law school libraries in public universities also routinely grant access to members of the public, although hours of access may be somewhat restricted depending on the security needs of the school. It is also often possible to gain access to private law libraries maintained by local bar associations, large law firms, state agencies or large corporations if you know a local attorney or are willing to be persistent in seeking permission from the powers that be.

Law libraries can be intimidating at first. The walls are lined with thick and formally bound books that tend to look exactly alike. Then too, for the layperson and beginning student, it is easy to feel that you are treading on some sacred reserve, especially in courthouse libraries where the average user is a formally-attired lawyer and where, on occasion, a judge is present. You might even

have the secret fear that if it is discovered that you're not a lawyer, you'll either be asked in a loud voice to leave or, at best, be treated as a second-class citizen.

If you remember that public funds (often court filing fees) probably helped buy the books in the library and pay the people running it, any initial unease should disappear. It may also help you to know that most librarians have a sincere interest in helping anyone who desires to use their library. While they won't answer your legal questions for you, they will often put in your hands the materials that will give you a good start on your research or help you get to the next phase.

A good way to deal with any feelings of intimidation is to recall your early experiences with the public library. Remember how the strangeness of all the book shelves, the catalog and the reference desk rather quickly gave way to an easy familiarity with how they all fit together? Your experience with law libraries will similarly pass from fear to mastery in a very short time.

Helping you understand the cataloging, cross-reference and indexing systems law libraries use is one of the most important functions of this book. As you proceed, we hope you will see that learning to break the code of the law library can be fun.

Legal Research on the Internet

When the first edition of this book was published in 1982, the Internet was largely unknown to the American public. Now, "being on the Internet" is pretty much like having a phone, very common if not yet totally universal. And when questions arise in everyday life, we increasingly turn to the Internet for answers. Want to know where the term "redneck" came from? Type the word in one of the search-engine query boxes that accompany every Internet browser and you'll find more information on the subject than you probably care to read.

As with general information, a lot of legal information is accessible "out there" in cyberspace. In Chapter 4, we'll explain how one search engine—Google—has revolutionized many of the common legal research tasks. Unfortunately, much of the information that you want can still only be reached through "closed" databases that aren't picked up by the common search engines. Thanks to some great Internet "catalogs," however, finding the law—statutes, cases, regulations and interpretative materials—is a straightforward task. Throughout this book we explain how

to use these catalogs and do your research in the comfort of your home or office. Also, in Chapter 4 we provide an overview of online searching techniques. We encourage you to familiarize yourself with that chapter before embarking on your Internet legal research journey.

A Basic Approach to Legal Research in the Law Library

The core task in answering any legal question is to determine the likely answer you would get from a judge. To do this, your ultimate goal will be to find published court opinions that answer the question in a factual context that is as close to yours as possible. The diagram depicted below takes you through the typical steps and resources necessary to reach that goal when using a law library.

As you can see, the diagram is shaped a bit like an hourglass. You start with a universe of possibilities, then narrow your search until you find one or two relevant cases. Those cases, in turn—with the assistance of certain cross-reference tools—allow you to rapidly locate many additional relevant cases.

Your most fervent hope when you start a basic legal research task is to find at least one case that perfectly—and favorably—answers your specific research question in an identical factual context. Of course, this goal is seldom, if ever, met in reality. But the more cases you can locate that are relevant to your question, the better your chances of nailing down a firm answer.

The method depicted in the diagram is appropriate for the type of research that involves an open-ended question about the law. However, it may be overkill for someone who has a very specific research need, such as finding a specific case, reading a specific statute, finding out whether a specific case is still good law, and so on. For those tasks, see the chart at the end of the chapter.

Also, we don't intend the diagram as a lockstep approach to legal research. For example, it may be most efficient in certain circumstances to start your research in a *West Digest* (a tool that summarizes cases by the legal topics they address) instead of using a background resource or code for this purpose. It all depends on such variables as the amount of information you already bring to your quest, the time you have to spend and the level of certainty you are after. Your goal, after all, is to arrive at the best possible answer to your question in the least possible time, not to mechanically complete a laborious research process.

Here, then, is the diagram and a discussion of each research step portrayed in it.

Internet note: If you are doing the bulk of your research on the Internet, you may be using a different set of tools in a somewhat different order.

Step 1: Formulate Your Legal Questions

The top box, "your broad legal research topic," represents the first step in legal research: formulating the questions you wish to answer. This is not as easy as you may think. Often we think we have a question in mind but when we try to answer it, we find that we don't quite know what we're looking for. The best bet here is to make sure that your question has a logical answer. For instance, if you have been bitten by a dog and are looking for information about dog bites, break your search down into some specific answerable questions, such as:

- Who is responsible for injury caused by a biting dog?
- What facts do I have to prove to sue and win compensation for the dog bite?
- Is there a statute or ordinance that covers dog bites?
- Does it make any difference if the dog has or has not ever bitten anyone before?

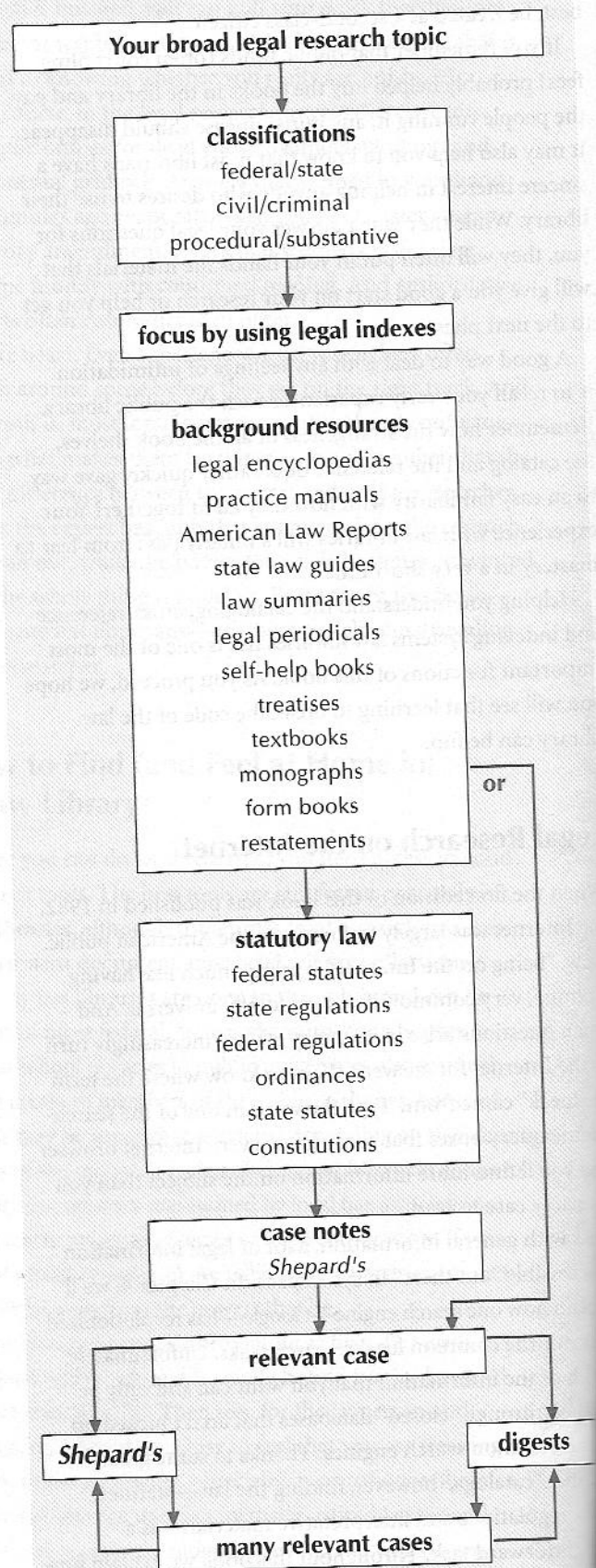
Keep in mind that the first articulation of your research questions will probably change as your research progresses. In this example, you may start out thinking that your issue involves dogs, only to find out that it really involves the duties of landowners to prevent harm from dangerous conditions on their property.

Step 2: Categorize Your Research Questions

The next box down represents the classification stage. Because of the way legal materials are organized, it is usually necessary to place your research topic into a category described by using the three variables shown in this box. Exactly how this is accomplished is the primary subject of Chapter 4.

Also covered in Chapter 4 is the next stage in the chart, when you break down your question into many words and phrases. That enables you to use legal indexes to find a background discussion of your topic.

Basic Legal Research Method Chart



Step 3: Find Appropriate Background Resources

When starting a legal research task, you need an overview of the legal issues connected with your questions and an idea of how your questions fit into the larger legal fabric. This background information can normally best be obtained from books and articles, written by experts, that summarize and explain the subject. How to identify and use these background resources is covered in Chapter 5.

Step 4: Look for Statutes

After you review background resources, you will want to proceed to the law itself. Usually, you should hunt for statutory law first. In most instances, an analysis of the law starts with legislative or administrative enactments—statutes and rules—and ends with court decisions that interpret them. You too should usually deal with the statutory material first and the cases second. We show you how to research statutes in Chapter 6.

However, some important areas of the law are developed primarily in the courts—the law of torts (personal injuries) is a good example. If you have a tort problem—and the background resource provides you with appropriate references—you might wish to start with cases first, and then come back and research statutory law if and when it is indicated. This alternative path is shown on the chart by the line that goes directly from “background resources” to “relevant case.”

Step 5: Find a Relevant Case

After finding one or more relevant statutes or rules, you will want to see how they have been interpreted by the courts. To pinpoint cases that discuss the statute (or rule, regulation or ordinance) you are interested in, use the tools listed in the next box in the “Basic Legal Research Method Chart”: case notes and *Shepard's Citations for Statutes*. These tools are addressed in Chapter 9.

As soon as you find a case that speaks directly to your research question, you are almost home. This is because two major research tools—*Shepard's* and *Case Digests*—cross-reference all cases by the issues decided in them. So if you find one case discussing your question, you can often quickly find a bunch of others discussing the same question.

Step 6: Use *Shepard's* and Digests to Find More Cases

Once you find a relevant case, *Shepard's Citations for Cases* and the West Digest system allow you to rapidly go from that case to any other cases that have some bearing on your precise questions. These tools are covered in detail in Chapter 10.

Step 7: Use *Shepard's* to Update Your Cases

Once you have found cases that pertain to your issue, you need to find out whether the principles stated in these cases are still valid law. To do this, you need to understand the factual context of each case, analyze each case for its value as precedent and use the digests and *Shepard's Citations for Cases* to locate the most recent cases that bear on your issue. We show you how to do all of this in Chapters 7 through 10.

Six Time-Saving Research Tips

The research method just outlined and the techniques explained in the rest of this book work only if you proceed methodically. Otherwise, even though you know how to accomplish many legal research tasks, you are still likely to end up sifting through the law library book by book, spending many hours more than are necessary. In this context, here are six tips for more efficient legal research.

Take Careful Notes

Beginning any legal research effort involves a certain amount of guesswork. You may make several false starts before adopting an approach that works. And what may seem like a wrong approach at first may turn out to be the best one after all. Unfortunately, it is human nature not to keep careful track of your preliminary work, which means that you may find yourself repeating it.

To avoid this, teach yourself to take complete notes from the beginning on all the materials you're using, including the location and substance of any possibly relevant statute, case or comment mentioned in the materials. It may seem like a burden at first, but it will soon become second nature as you see how often it saves you time in the long run. A good article entitled, “How to Look up Law and Write Legal Memoranda Revisited,” by F. Trowbridge Vom Baur, provides some still-sound, structured methods for documenting your research.

It appears in a law journal called *The Practical Lawyer* (May 1965) and can be found in most law libraries.

Check Out the Law Library

Law libraries are always organized according to some plan. When first using a law library, it is helpful to take a brief self-guided tour, carefully noting where the major groupings of materials are located, so you'll know where to go for your books instead of repeatedly searching from wall to wall. This book introduces you to legal research materials and tools such as codes, case reports, digests, encyclopedias and *Shepard's Citations*. Knowing where they are before you dig into your research will make your efforts more efficient. Although many libraries have maps at the reference counter that show where materials are located, they don't replace the walk-around method.

Collect Your Materials in Advance

As you check different cases and statutes for relevant material, you may find yourself reading only a few lines in many different books. So it is a good idea to make a list of all the books involved in the next phase of your research task and gather them in one place before you start reading. This allows you to find everything you need at once rather than continually popping up and down. While this advice may seem obvious, apparently it isn't; you can observe the "jump up and scurry" approach to legal research on any visit to the library.

Find Special Tools and Resources Unique to Your State

This book focuses on the legal research resource tools that are common to the 50 states and are found in the great majority of law libraries. We also discuss some of the resources particular to the more populous states. There are, however, a number of special state-specific tools and resources that we don't mention. So in addition to using the major legal research materials and tools discussed here, check with your law librarian about other state-specific materials.

For instance, where we discuss legal encyclopedias in Chapter 5, we provide the titles of the two main national legal encyclopedias and 15 state-specific encyclopedias. If you are interested in the law of one of the states for which we have not specified an encyclopedia, don't turn to one of the national ones without first checking to see whether the subject you are interested in has been dealt with in a

resource designed specifically for your state. If you can find such local materials (perhaps a law review article or a state bar publication), you stand a good chance of finding the answer to your question a lot faster than if you use general or national materials.

Get Yourself a Good Law Dictionary

Your legal research will constantly introduce you to new and strange terminology that has developed over hundreds of years. When doing research in the law library, it is extremely helpful to have a good law dictionary at your fingertips.

The most well-known law dictionary is *Black's Law Dictionary*. Unfortunately, many of the entries are hard to decipher and are not sufficiently context-sensitive—that is, they are too abstract to fit real-life situations. More user-friendly dictionaries that should serve you well are:

- *Law Dictionary*, Gifis (5th ed., Barron's, 2003); and
- *Ballentine's Law Dictionary: Legal Assistant Edition*, Handler (Thomson, 1993).

Use the Catalog

Most law libraries will have a catalog that lists by author and subject all of the books and periodicals in the library. These days, the catalog will likely be computerized, although a few may still use the card system. The call number on the upper left-hand portion of the card and on the screen tells where the item is located in that library. If an unaided search seems a bit intimidating at first, the law librarian will be happy to show you where to find your materials.

It is important to remember that many important legal research materials—such as articles, statutes and cases—are collected and published in large books or sets of books. A catalog will tell you where the books are located, but it will not tell you where a specific article, case or statute is. For example, if you want to do your own divorce and there is no good self-help book for your state, you could use the catalog to find such helpful background materials as a law school textbook on divorce law, the *Family Law Reporter* (a loose-leaf publication) and any practice manuals or form books on divorce that have been published for your state. However, you couldn't use it to locate the statutes of your state concerning divorce; nor would the catalog help you find any cases on a particular point. To do that, you will have to use legal indexes and other research tools that we discuss later in the book.

An Online Search Strategy

When doing legal research, it's pretty easy to get bogged down in an informational swamp. Your search efforts on the Internet will often produce a long list of links to possibly helpful sites, each of which must be visited to know what's in them. While the length of your results list can be cut back with good key word searching techniques, you'll often find the right link or links by sheer trial and error.

Once you've found a relevant link, however, you must face another potential problem. How valuable is this information? Is it accurate? Is it up to date? And if you are researching primary law sources such as statutes, regulations and cases, is the publisher of the materials "official?"

For instance, should you rely on a statute you found online when the site where you found it is not the official publisher of statutes for the state in question? While we can't completely resolve these issues for you, we can make a few suggestions that will help you navigate the law on the Internet to a successful conclusion.

The first step to doing legal research is to understand what type of legal information you are looking for. Legal questions can conveniently be divided into four types:

- Are you searching for general information about a legal subject of interest?
- Are you searching for the law itself (statutes, court opinions, regulations, ordinances)?
- Are you searching for information about current legal events (such as celebrity trials)?
- Are you searching for a reliable answer to a specific legal question?

Here are some suggestions on how to use the Internet to address these legal questions.

General Information About a Legal Subject

Many people want to bone up on a particular subject. They are looking for the same level of information commonly found in a general-purpose encyclopedia. For instance, you might want a general discussion of:

- What laws are involved when selling a business?
- What's the difference between a living trust and a will?
- When is a new idea patentable?
- What effect does divorce have on pensions earned during a marriage?

These types of questions can be answered without regard to your specific circumstances. For instance, the laws involved when selling a business will be the same for everyone. In Chapter 5, we explain how to use legal background materials to address these types of questions, and we show you how to find background materials on the Internet.

It's important to know when you're looking for background information and when you're actually asking for an answer to a particular legal question. If your question can be started with "Can I ...?", "What will happen if ...?" or "Can they ...?", you're asking for specific legal authority that says, in effect, "Yes, you can" or "No, you can't" in the context of your individual circumstances. To get reliable answers to specific questions like these concerning your situation, you need to dig a lot deeper than when you are searching for background information that applies to everyone. See below for an overview of how this type of research can be carried out on the Internet.

The Law Itself

Another category of legal information is the law itself. The law itself is found in what we call "primary law sources." For most people, the most common primary law sources are the pronouncements—issued by local, state and federal legislative bodies—that we call ordinances, statutes and regulations. Lawyers are also familiar with another type of primary law source—court decisions that either interpret a statute, regulation or ordinance or make some law of their own.

There are many reasons why you may want to find a particular primary law source. Two of the most likely reasons are:

- You may have learned about a particular new law or court decision through the media or at your job, and you want to read it for yourself; or
- You may want to know what the law itself says because you are trying to answer a specific legal question.

If you are searching for the law for the first reason, your research will be self-limiting—that is, you will search for the appropriate law source, find the law source and read the law source, period. In Chapters 6 and 9, we provide examples of how to find statutes and cases online.

If you are searching primary law sources for the second reason—that is, you want to answer a legal question—you usually will have to find and read other legal materials as well as the law itself. Again, see below for this type of search.

Current Legal Events

Many people search for information related to a current legal event. Recent examples would be the Anna Nicole Smith custody battle, the Virginia Tech shootings, or the events surrounding the Phil Spector murder trial. Getting information on current legal events involves finding articles and discussions of interest, online and off. We don't address this type of research in this book. An excellent site for keeping abreast of legal developments is CourtTV [www.courtstv.com.]

Reliable Answers to Specific Legal Questions

This category of legal research involves a hunt for the answer to a very specific legal question, such as:

- I live in North Carolina. I've been charged with second offense drunk driving. My passenger was injured as a result. What penalties do I face?
- Can I run a home school in North Dakota if I've been convicted of a felony?
- My brother is the executor of our parents' estate. I don't like how he is handling it. What can I do about it?
- I want to open a business typing divorce papers for people who are doing their own divorces. Will I get into trouble with the lawyers if I do this?

These are the types of questions that people ask lawyers. To confidently answer these questions, you usually must turn to a variety of legal resources, including background discussions by experts, statutes, court opinions that interpret the statutes, and court opinions that make laws of their own (the common law). Then, you'll want to use some confirming techniques (like *Shepardizing*) that will assure you that your information is current. In the rest of this section, we provide a brief overview of how you can reliably answer questions online, using the search techniques discussed earlier in this chapter and the step-by-step examples spread throughout the book.

Step 1: Categorize your issue. The first step to doing legal research online is to put your research issue in the correct legal category. Chapter 4 provides a number of suggestions for doing this.

Step 2: Get the lay of the land. As we point out in Chapter 2, before trying to answer a specific legal question it is always a good idea to get a little background information about the legal field that your question concerns. This background information not only alerts you to some of the key issues you'll have to consider, but

also gives you a basic vocabulary that will be useful as you continue your research. Also, of course, by reading background materials, you will frequently get directed to the relevant statutes or cases, which you'll have to read if you want a reliable answer to your question.

Step 3: Find relevant statutory authority. After you get the lay of the land, you'll want to zero in on a statute that is as specific to your question as possible. In Chapter 6, we show you how to find federal and state statutes on the Internet. If your background reading has pointed you to a specific statute, then your search should be pretty straightforward. However, if you have to find a statute by performing a category or key word search, then you'll need to be armed with the proper vocabulary. See Chapter 4, where we explain how to come up with words for searching an index. The same exercises apply to preparing for a key word search.

Step 4A: Find a relevant case interpreting the statute. Once you find a relevant statute (or regulation or ordinance), you will want to find out how the courts have interpreted it. In Chapter 9, we show you how to find federal and state court opinions on the Internet. The most comprehensive way to search for interpretations of your relevant statute is to enter the statute citation in the search box along with some appropriate key words describing the issue being researched.

Step 4B: Search for a case. Sometimes there is no relevant statute on a particular subject. Constitutional law, for example, consists primarily of interpretations of the meaning of the Constitution as found in cases decided by the U.S. Supreme Court. If the answer to your question is likely to appear in case law, you can progress directly to your search for relevant cases after reading your background material.

Step 5: Update your case. If you do find a relevant case, your next step is to find out how it has been used in other courts and whether the case remains good law. In Chapter 10, we show you how to do this by using citation systems such as Westlaw *KeyCite* or the Lexis *Shepardize* service.

Step 6: Assess your research results. If you have faithfully taken Steps 1-5, you are likely to have a tentative answer to your legal question. As we suggest in Chapter 11, you would be wise to prepare a brief legal memorandum. Writing down what you've done will help you know whether you've accomplished all that you set out to do. As you do so, ask yourself these questions:

- Can I rely on the source of the background information I used? Was it published by a reputable legal publisher or legal expert? Does it conform to

the other information I discovered while doing my search?

- Was the source of the statutes and cases I found the official source for these items? If not, was the website sponsored in some way by an official source, such as the court or the legislature? If there is no connection between the website and an official source, was the statute or case consistent with what I learned from my background resource?
- Is the way other cases treated the relevant case consistent with your understanding of the case?

If your answers to any of these questions cast some doubt on the reliability or authenticity of your research results, consider paying a visit to your local law library and double checking your search results against the statutes and cases as reported by the official or established publishers described in Chapters 5 through 9.

Understand the Legal Uncertainty Principle

Legal research rarely produces an absolutely certain answer to a complicated question. Indeed, unless you are searching for a simple bit of information such as the maximum jail sentence for arson in Texas, trying to find the definitive answer to a legal issue is often impossible.

There is a reason for this legal “uncertainty principle.” Under the American justice system, any dispute that ends up in court is subject to the adversary process, where two or more parties fight it out and a judge or jury decides who wins. Of course, the fact that statutes are constantly cranked out and amended by legislatures and then subjected to judicial definition and redefinition substantially adds to the total confusion.

What all this means is that defining the “law” that governs any set of facts involves predicting how the courts would rule if presented with the question. If a prediction is based on clear statutes and court decisions, the level of uncertainty will be fairly low. However, if the statutes and case law are themselves subject to conflicting interpretations, as many are, then even the best legal research may amount to little more than a sophisticated form of fortune-telling. Put another way, while in some instances you may believe you have found out “what the law is,” a person with a different set of preconceptions may arrive at a different result.

We mention the legal uncertainty principle simply to warn you against trying to nail down an absolute answer to most legal questions. Often, the best you can hope for is to understand the legal issues involved in a particular problem well enough to convince those who need to be convinced that your view is correct.

Know When You’re Done

Once you understand that your search for the truth will necessarily come up short of absolute certainty, how can you tell when it’s time to quit? To answer this question when the time comes, it’s essential to develop a good sense of proportion and priorities.

Here are some questions to answer as part of trying to conscientiously answer the big question, “Am I done?”

- **Have you logically answered the question you wanted answered when you began?** To test your answer, buttonhole a friend, pose your question and then answer it on the basis of what your research disclosed. You will soon discover whether your logic holds up.
- **Are the laws and facts in the cases you have found pertinent to the facts of your situation?** To test your answer, decide whether the difference between the facts of your situation and the facts of any cases you’ve found (or those addressed by the statute you’ve located) could possibly make a difference in the answer to your question.
- **Do the cases you found refer to (cite) each other?** Cases cite other related cases as authority for their decisions. So each relevant case you find leads you to other cases. On any one issue, you’ll eventually develop a list of cited cases; when it ceases to “grow,” you’ll know you’re done.
- **Are the materials you’ve found to support your answer as up-to-date as you can get?** Because law changes so rapidly, a case or statute that is only a year old may already be obsolete. You haven’t finished your research until you’ve checked all information to be sure it’s current.
- **Have you used all major research resources that might improve your understanding or make your answer more certain?** If there are four different resources that might bear on a tax problem (for example, books that interpret Internal Service

Revenue regulations), it is wise to check all four rather than presuming any one to be correct or definitive.

- **Can you explain your reasoning in writing?** If your research is reasonably complete, you should be able to express in writing the question you researched, your answer to it and the basis for your answer. It is common to think you've finished a research task, only to discover when you try to write it up that there are gaping holes. Chapter 11 suggests some guidelines

for putting your research results into written form, and the answers to the research problems in Chapter 11 contain sample memoranda as examples.

If your answer to all the questions posed above is a resounding or even a qualified "yes," then you've probably done about as much as makes sense. If you feel, however, that any of these questions deserves an honest "no" or a waffling "maybe," you have more work to do.