

Aspen Coursebook Series

THE PROCESS OF LEGAL RESEARCH

AUTHORITIES AND OPTIONS

Eighth Edition

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*This book is dedicated to our families,
our colleagues who have taught legal research with us,
and our students of the past three decades.*

PREFACE

Whatever career you choose in the law, to help your clients — the people and organizations that are relying on you — you must know the pertinent law. To know the pertinent law, you must know how to conduct legal research. This book's aim is to help you develop that skill, which, like other legal skills, will continue to improve with experience.

Since the first edition of this book was published (1986), we have become its primary authors. We have worked with excellent reference librarians and hundreds of practitioners who teach in our law schools' legal writing courses. Most important, we have taught literally thousands of law students.

In writing this edition, we came to the following two-part thesis about learning research: First, in an environment with a dizzying array of legal research resources, your first and fundamental task is to understand legal authorities — hence the emphasis throughout the book on what the types of law are, how they are made, how they fit together, and how to derive the pertinent rules from them. Second, once you have that core knowledge, you must wisely select from the options that provide what you need and use them proficiently — hence the emphasis on the various research options, their major attributes, advantages, and disadvantages.

To be frank, some people think of “research” as dry and tedious. In fact, legal research conducted on behalf of a client whose well-being is at stake is challenging and creative. There is some resemblance to a hunt for treasure, the law you find may be downright interesting, and your ability to use your findings to help your client is often rewarding.

We have yet to figure out a way to have a real client “live” in this book so that you can experience these feelings. We have, instead, included a series of realistic client situations and shown you how legal research would help to solve the clients' problems. Here are the basic issues, so you can think about them before you begin reading:

- Is it permissible for an employer to decline to hire a qualified applicant because the applicant would work with her spouse and coworkers would be uncomfortable with this arrangement?
- Can a former employee of a grocery store recover money for the harm to his reputation when his manager tells coworkers he was fired for pilfering food, which was not in fact true but rather a story made up by a disgruntled coworker?
- Could an employer be liable to a driver injured in a crash caused by one of its employees who was backing out of a parking lot after picking up donuts for a work meeting — and also talking on his cellphone?

- Is an employee of a company with fifty-one employees spread over two worksites eligible for reinstatement after adoption leave under the federal family leave statute?
- May an employer discipline workers for writing disparaging messages on Facebook about their working conditions?
- What happens when a lawyer fails to properly sign an answer to a complaint within the specified time period? Does the other side win?
- Once a lawsuit is filed over an employee's termination, can the fired employee still talk with friends at the former employer?

(As you can see, one benefit of reading this book will be learning a bit about your rights as an employee.) We have included the bumps we experienced along the way, to show you that legal research is not always smooth sailing.

Each chapter here contains a fair amount of information. To help you read the chapters actively, they begin not only with a table of contents but also with a list of key concepts and tools. As you read the chapter or as you review it, you may want to define these terms. Also, we have included some reflection questions at the end of the chapters to help you think more broadly and critically about what you have read. Finally, “the proof of the pudding is in the eating”: the chapters conclude with a realistic client situation for *you* to research, which unfolds as the chapters unfold.

We wish you the best as you take on the challenge of learning legal research.

Deborah Schmedemann
Ann Bateson
Mehmet Konar-Steenberg

May 2012

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Listing the authors of this edition of this book is not an easy matter. Christina Kunz, who appears as the lead author, does not in fact continue to work on it, but it was her idea to begin with, and she was its most dedicated shepherd for a number of editions. Thus it will always be “the Kunz book.” Others who were involved at various stages and whose contributions continue to linger here are Matthew Downs, Cliff Greene, Peter Erlinder, and Susan Catterall.

The long-time authors are delighted to welcome two new contributors: Anthony Winer and Sara Deer, both professors at William Mitchell, who have contributed a new chapter on international law and tribal law. We are grateful for their expertise.

We have had many colleagues assisting us not in the direct writing of this book but in teaching from it. We sincerely thank in particular the following reference librarians: Valerie Aggerbeck, Deborah Hackerson, and May Wells at the University of St. Thomas; Neal Axton, Janelle Beitz, Jean Boos, Sonya Huesman, and Karen Westwood at William Mitchell. At William Mitchell, practicing lawyers teach students to research and write; they are too numerous to mention by name, but we heartily thank them for their insights.

More broadly we thank those who teach legal research around the country who have shared their insights into how students learn and how this book can assist that process. And we thank our students who have been just as insightful over the years!

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It takes time and considerable energy to write this book. Not surprisingly, our families and friends pay a bit of a price when we are engaged in this project. Thanks for your tolerance—for the eighth time!

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