A GUIDE to LEGAL RESEARCH

SUPPLEMENTED EDITION

BY

N C. SURRENCY
Professor of Law and Law Librarian
le University School of Law

AND

ELD
er, United States Court
ary Appeals

JOSEPH CREA
Professor of Law
Brooklyn Law School

AN OCEANA PUBLICATION

A
GUIDE
to
LEGAL RESEARCH

SUPPLEMENTED EDITION

BY

ERWIN C. SURRENCY
Associate Professor of Law and Law Librarian
Temple University School of Law

AND

BENJAMIN FELD
Commissioner, United States Court of Military Appeals

JOSEPH CREA
Professor of Law
Brooklyn Law School

OCEANA PUBLICATIONS, INC.
Dobbs Ferry, New York
1966

Supplemented Edition
1966

Library of Congress Catalog Card No. 59-14272

PRINTED IN THE UNITED STATES OF AMERICA

CONTENTS

TABLE OF CHARTS

INTRODUCTION

A lawyer needs two skills. First, he should be able to write and express himself well. The second skill necessary for the successful practice of law is a knowledge of the use of the tools of his profession; namely, law books. This manual is designed to aid the student in attaining this objective by serving as a basic introduction to legal research for the first year law student.

This is a revision of *A Practical Guide to Legal Research* by Benjamin Feld and Joseph Crea, published in 1952. The original volume was the result of a need felt by many teachers of legal research for a small and concise manual in this field. A unique approach was adopted by the original authors which has been carried into this volume; namely, discussing the methods of legal research under separate chapters for federal and state law rather than by types of law books. Such an approach has the disadvantage of repetition to some extent but several years of teaching this subject has reinforced the belief that some repetition is advantageous. For this and many other reasons, the revisors of this edition owe a great debt to the original two authors as well as to Dean Jerome Prince who made suggestions of improvements for both editions.

As this book is designed to describe only the very basic features of many of the books which the lawyers will use, and omits reference to many others, it is well for the student to become familiar with the other more extensive texts in the field of legal research. The current books are *How to Find the Law,* 5th edition, edited by Roalfe; Price and Bitner, *Effective Legal Research;* Notz, *Legal Research,* 3d edition; and Pollack, *Fundamentals of Legal Research.* These books are excellent sources and are more detailed than this manual.

As this book is intended for law school use, it cannot go into detail concerning the particular books of a local jurisdiction. For some states, texts on local legal bibliography have been prepared and should be used as a supplement to this book.

The authors would like to express their appreciation to the following companies for permission to use sample pages from their publications: Shepard's Citations, Bobbs-Merrill Company, Inc., American Law Book Company, and the Lawyers Cooperative Publishing Company.

Legal Research

Dean Benjamin F. Boyer, Miss Emily Drummond, and Mr. Robert A. Lynch of Temple University School of Law, have contributed a number of sound and useful suggestions which have been incorporated in the text. Mrs. Caroline M. Boesch. secretary to Mr. Surrency and Miss Jacklyn E. Rice, secretary to Mr. Feld, have been our indefatigable manuscript supervisors. We are especially grateful to our respective wives, Ida Surrency and Thelma Feld for testing the book for readability and comprehensibility by the non-expert in the law. And, finally, a father would like to express his appreciation to his two children, Robert and Ellen Surrency, for relinquishing time from their story hour to make this book possible.

Erwin C. Surrency
Benjamin Feld
Joseph Crea

August, 1959.

CHAPTER I

THE FACTS ARE FIRST

§1. *PURPOSE OF LEGAL RESEARCH.* A lawyer's principal function is to give advice on legal matters. He may represent a client at a legislative committee hearing, before a court in the trial of a case or special proceeding, or on an application before an executive or administrative agency. The purpose of an adversary proceeding in a court of law is to bring before the court or other tribunal all the facts, evidence, and law bearing on a controversy so that a just decision can be reached. Therefore, the lawyer's purpose in legal research is to discover all the diverse legal factors bearing on the issue and prepare a presentation of the full facts and the law. Legal research may be defined as the search for authority and precedent as found in the sources of our law.

Gone is the day when the lawyer need use only the reports of his courts and the statutes of his jurisdiction to be a successful practitioner for the number of legal books as well as the number of sources of the law has grown and continues to grow. Who among the Bar of the early 19th century could have predicted that the construction of homes would be governed by building codes, or that the practice of many businesses and professions would be regulated by the states through licenses, or that taxes would be the controlling factor in many legal decisions? Since law books are the tools of the legal profession, knowledge of the use of law books is a pressing necessity for the successful lawyer.

§2. *SOURCES OF THE LAW.* Under our legal system there are two controlling sources of the law: statutes and decisions. The term statutory law is more inclusive than is generally considered by the term in popular parlance for it includes not only legislative enactments but constitutions, treaties, court rules, interstate compacts, municipal ordinances, and administrative rules and regulations.

The other source of the law, decisions, interprets the provisions of statutes and builds up the common law. This source includes, in addition to court decisions, the decisions of the administrative agencies and the opinions of such officials as the attorney general and the comptrol-

ler general who render opinions for the guidance of the executive branch of our government in the administration of our law.

§3. *CONCURRENCE OF FEDERAL AND STATE LAW.* The unique feature of our constitutional form of government is that it provides for two systems of law—federal and state. Each is supreme within its own sphere, but in many areas the jurisdiction is concurrent and the law of both may be applicable. The history of constitutional law shows, however, that the powers granted to the federal government have been enormously extended and that the limitations on the states have been greatly broadened.

In seeking legal advice, a client generally does not inquire whether a particular provision of federal or state law applies to his problem. He leaves that to his lawyer, and it is up to the lawyer to know the source of the law applicable.

§4. *FACTS.* There are many requirements for successful legal research; but chiefly, a thorough knowledge of the facts and an orderly procedure in research are necessary. The techniques of accomplishing both of these objectives will vary with the individual, but the purpose of this book is to give a procedure for legal research and the sources to consult for a thorough investigation of legal problems. This suggested outline will vary with each problem and as one gains experience, he will vary the order in which he proceeds. However, one should never fail to be thorough and to consult all sources of the law because short cuts result in the omission of important materials, such as constitutional provisions or a rule of practice, which may make a material difference in the solution. To examine each of these sources may seem like a long and tedious process, but with practice, the amount of time and effort will be materially reduced. Difficult or not, the effectiveness of good research is enormous.

Before anyone can begin research on a legal problem, he must have the complete facts. To marshal the full facts of any legal problem requires thorough investigation by interviews with the client and independent investigation. The client will tell his version and will be very sincere and honest in doing so, but he may overlook a significant fact which will later prove to be controlling. It is well to remember that any happening will appear different to each witness that was present. It is necessary to sift all the evidence to determine impartially what the true facts are before proceeding with the research.

§5. *FACTS ANALYSIS.* After the facts are assembled and some orderly statement of these facts is prepared in writing, the lawyer then must analyze them to determine the issues. The purpose for such analysis is to suggest points of departure in the search. This analysis is always necessary and the methodical researcher will prepare such an outline before he wastes time and effort in unnecessary research. The lawyer, who has been in practice for many years, as well as the novice, will find such a procedure both useful and time saving.

In preparing the analysis, the following five points should be considered.

1. Parties or persons involved.
2. Subject-matter.
3. Cause of action or ground of defense.
4. Object or relief sought.
5. Place of act or event.

ILLUSTRATION OF FACT ANALYSIS

Facts: A bought a bicycle from B for $35. At that time A was 15 years of age. Two days later, the bicycle was stolen. A now wants to get his money back from B, although he is unable to return the bicycle.

WHAT LEGAL PROBLEMS ARE INVOLVED?

(1) *Parties or persons.* This element includes the relationship of the parties to each other and whether they belong to any special class or group.

What is the relationship of the parties to each other? (Buyer or purchaser and seller.)

Do any of the persons belong to any special class of persons? (As is an infant and B is a shopkeeper and an adult.)

Would it make any difference to the problem if A were not an infant? Would it make any difference if B were not a shopkeeper?

Summary: The analysis indicates that the essential facts regarding the parties are that one is an infant-buyer and the other is an adult-shopkeeper-seller. The search will be directed to only these facts relating to the parties.

(2) *Subject-matter.* This category concerns the thing involved without which the problem would not have arisen. In the illustration, the thing is a bicycle.

Is the word "bicycle" broad enough to cover every case which might reasonably be in point? (No. An infant might buy other articles, such as books a radio, etc.)

What word or words would include all such cases? (Property.)

Is the word "property" too inclusive for the kind of thing involved? (Yes A bicycle is personal property.)

Summary: The analysis indicates that the search will be concerned with personal property.

(3) *Cause of action or ground of defense.* The cause of action is the claim asserted by one person against the other, and the defense is the position of the one against whom the claim is asserted.

What does A claim? (The right to cancel or rescind his purchase.)

Does it make any difference that A has not offered to return the bicycle?

What is B's position with respect to A's claim? (That the sale was completed and that A has not offered to return the bicycle.)

Summary: The specific issue here is whether there is the right to cancel or rescind a purchase or sale without offering to return the property received.

(4) *Object or relief sought.* This element involves the purpose of bringing the suit or presenting the claim.

What is the purpose of bringing suit or presenting the claim? (To recover the money paid to B.)

Summary: The object of the instant matter is the recovery of the purchase price paid to the seller.

(5) *Place of the Act or Event.* The place of the act or event usually, but not always, determine what law applies to the problem.

In what legal jurisdiction was the purchase made?

Does it make any difference that the parties reside in different legal jurisdictions?

Summary: The law governing a negligent act committed in a federal enclave within a state would be different from that governing the same cause of action taking place within the exclusive jurisdiction of the state. Or, a negligent act committed in an eleemosynary institution may not be actionable; whereas, if these same parties had committed this act at another place, the result would be entirely different. These are but a few examples which illustrate the importance of the place where the act took place.

§6. *LEGAL PROBLEMS TO BE DETERMINED.* The combined summaries of the analysis indicate that the specific legal problem is, "Has an infant-buyer a right in Pennsylvania to recover the purchase price paid by him for an article of personal property from an adult-seller-shopkeeper without returning that article to the seller?"

§7. *TECHNIQUE OF NOTE TAKING.* The next step in the process of research is to find the law. How one proceeds is important. It is difficult if not impossible to remember every step in the search. An outline of search should be kept. Such an outline is suggested in the Appendix. This outline should be printed on a separate sheet or on the file jacket. It is important to fill in this chart as one proceeds. Just checking the list is not enough for a list should be kept of all the words searched in the indexes, of key numbers or classifications of the digest searched, and of all cases and statutes read. All sources consulted should be noted and authority relied upon must be indicated. This chart should bear a date in the event that this same problem is raised again in which event, the research could then be brought up to date without researching the entire question again.

Most lawyers are addicted to taking notes on legal size pads. A better procedure is the use of 4 x 6 cards. After each case is carefully briefed and each argument recorded on a different card, the cards can then be arranged in any desired order. These cards can be used later for purpose of arguing in court.

The lawyer has available to him several mechanical devices for reproducing printed matter inexpensively. No longer need the lawyer copy passages from decisions or even brief them when he can have available a copy of the entire decision at a small cost and with substantial savings in time.

§8. *CITATIONS.* One of the most important parts of any legal research paper is the reference to sources used as authority for the conclusions of law cited in the text. Such references are numerous in legal writing, and to keep them uniform but brief, legal scholars have developed a system of citing materials which, though lacking in bibliographical niceties used in other learned fields, is effective when employed correctly. This system has been made possible because legal literature is fairly homogeneous in nature and the bibliography of the field is familiar to those who use it.

The purpose of a legal citation is to lead the reader directly to the citation without enforced recourse to other methods of determining the exact reference. The reader's convenience should be the foremost concern and for this reason, it is imperative that all the necessary data should be given.

In making legal citations, there are a few simple rules that should be scrupulously observed. The first is the form of the citation for cer-

tain forms have won acceptance in legal literature and for this reason, should be closely followed.

One of the chief failures of many legal writers is the misuse of abbreviations; developing one's own system, much to the annoyance of the reader. Incorrect abbreviations are potentially misleading; they may indicate an entirely different source to the reader than the one intended, or mean nothing at all to him. Also, the failure to use correct citations can reflect unfavorably on the merits of the paper.

The usual method of referring to a decision is as follows:

Sullivan v. Davis, 363 Ala. 685, 83 So. 2d 434, 59 ALR 2d 331 (1955).

The figures to the left of the abbreviations are the volumes and the figures to the right are the pages on which the title of the decision is found. The year given is the date the decision was rendered. It should be observed that the citation includes all sources of the decision and the official source is given first. The name of the court which rendered the decision should be given in parenthesis with the date when the court which rendered the decision is not clear from the citation. In the above example, *Ala.* represents the official reports of the Supreme Court of Alabama, but consider the following examples:

Smith v. Mott, 100 So.2d 173 (Fla. 1957).
Farley v. United States, 252 F.2d 85 (C.A. 9th Cir. 1958).

The reports cited above contain decisions from several courts and for this reason, the court rendering the decision should be indicated. It should further be observed that when United States is a part of the title, it should be spelled out.

When a direct quotation is employed, the citation should include the page on which the decision began and the page on which the quotation will be found.

For named reporters or for local reports, the jurisdiction should be indicated in parenthesis when not indicated in the citation:

Reed v. Fillippone, 36 Del. Co. Rep. 31 (Pa. Com. Pl. 1950).
Livingston & Fulton v. Ingen, et al 9 John. 507 (N.Y. 1811).

When citing the early reports of the United States Supreme Court, the general practice is just to refer to the volume of the reporter but the better practice is to refer to the reporter and the volume of the official reports:

Irvine v. Lowry, 14 Pet. (39 U.S.) 293, 10 L. Ed. 462 (1840).

In some of the states, the early reports which were reported by individual reporter and so cited, have been renumbered and incorporated into the official series and are cited by the volume number of the official series.

Cain v. Cain et al, 40 Ky (1 Monroe) 213 (1841).

When citing to a decision where the official report has not yet appeared, the volume and page of the official report is left blank but the information is supplied for the unofficial report.

Goodwin v. Bean et al,—N. H.—, 112 A. 2d 51 (1955).

Acceptable methods of citing legal materials are lucidly prescribed in the following manuals to which one may refer when in doubt:

Miles O. Price. *A Practical Manual of Standard Legal Citations* 2d ed. (New York, Oceana Publications, 1958).

A Uniform System of Citation. Form of citation and abbreviations. Published by the Columbia Law Review, Harvard Law Review, Yale Law Journal, and the University of Pennsylvania Law Review.

CHAPTER II

WHERE TO BEGIN

*§9. *GENERAL KNOWLEDGE OF THE LAW.* With all the facts ascertained and analyzed in the manner previously discussed, the next step is the search for the principle of law involved. The searcher may or may not be familiar with the legal principles involved in the problem. The future course he pursues will depend on his knowledge, but no particular course is suited for all situations.

A general knowledge of all areas of the law involved in the problem is necessary. Thus, for example, with regard to the suggested problem in the previous chapter; "Has an infant-buyer a right to recover the purchase price paid by him for any article of personal property from an adult seller without returning that article to the seller?, it is important to know the general status occupied by an infant in the law. The simplest approach to this problem is through a text, encyclopedia, or an annotation in the *American Law Reports Annotated.*

The number of excellent text books is very limited and there is no set procedure for finding whether a text exists on the particular subject needed. The only method that can be recommended is to use the card index of a library.

No specific method of research in texts can be recommended as they all vary in both content as well as organization. However, the first step would be to examine the table of contents to determine if the subject matter of the problem is discussed. The use of the index would be a more direct approach and will, doubtless, save time. A good text will refer to both statutes and decisions in support of the conclusions stated and will often include a table of cases and statutes cited. These sources should be noted and checked. The search is not completed when a portion of text is found which supports the conclusions which suit the researcher as courts consider texts as persuasive authority only. The law is found in legislation and decisions.

*§10. *ENCYCLOPEDIAS.* An encyclopedia serves two functions. The first function is that of a text on all legal topics and the second function is as a book of search into decisions and, sometimes, statutes. Currently, there are two comprehensive encyclopedias, *Corpus Juris Secundum* and *American Jurisprudence.* In addition, there are many

*See Appendix B.

state encyclopedias of varying exellence. The first pitfall that the novice in legal research should be aware of in using encyclopedias is not to rely upon the text but rather, go to the sources cited.

Both of the two encyclopedias vary in coverage. *Corpus Juris Secundum* purports to be based on all reported American decisions, whereas, *American Jurisprudence* is based upon selected cases. *Corpus Juris Secundum* entirely restates the text of Corpus Juris, its predecessor, but makes frequent references to the footnotes of the previous work. None of the decisions cited in *Corpus Juris* is again cited in its successor. *American Jurisprudence* is a complete revision of its predecessor, *Ruling Case Law*. The latter encyclopedia is still cited by some judges as R.C.L.

The fields of law or topics in the encyclopedias are arranged in alphabetical order, and contain an analysis at the beginning of each topic. *Corpus Juris Secundum* has a word index at the end of the volume for each topic in that volume. *American Jurisprudence* has an index at the end of each volume covering the material in that volume. In addition, there is a four volume index to the entire set kept current with pocket parts. Thus, both sets can be used in either of two ways: (1) by going directly to the topic and looking under the analysis until the appropriate section is found or (2) by means of the indices in the *Corpus Juris Secundum* and *American Jurisprudence* to the topics within the volume or through the complete index for *American Jurisprudence.*

For the beginner, as well as the experienced practitioner, the better method is the fact word approach through the indices, as this is the most direct and more comprehensive method.

Taking the legal problem from the analysis in Chapter I on the right of an infant-buyer to recover the purchase price paid by him for an article of personal property and using *American Jurisprudence* for the general orientation source, the searcher will find the following references:

Topic Analysis, 27 Am. Jur. 743-746
IV. Agreements of Infants.
D. Particular Agreements
Sec. 29 Agreements as to personal property
E. Avoidance of Infants' Contracts.
Sec. 36 Contracts as to personal property
Sec. 45 Necessity of Returning Consideration.
Sec. 50 Money paid by an infant; Deduction for Use or Depreciation.

cycle, or bicycle is not regarded as a necessary.[10] In some instances, however, bicycles have been regarded as necessaries because of the common use of bicycles by persons in the infant's position in the neighborhood.[11]

§ 19. —Education.—A proper education is a necessary for an infant.[12] Some kind of education has been included from early times within the class of necessaries for which an infant may contract. The early cases, however, seem to have confined this to elementary or vocational education.[13] Even in the later cases, a college, university, or professional education has generally been excluded,[14] although it has been judicially suggested that it may be allowed in a case where the infant's ability and prospects justify it.[15] Correspondence school instruction has been excluded in several cases,[16] as has instruction in music and painting.[17]

§ 20. —Medical Services.—Medical and dental services reasonably required by the infant are usually classed as necessaries.[18] Although an infant has been held liable for medical attention, in a few cases, without consideration of his living conditions,[19] the general rule is that since an infant is not liable even for necessaries when he is living with, and being supported by, his parents, he is not liable for necessary medical, dental, and hospital expenses.[20]

Minn 248, 2 NW 942, 37 Am Rep 407; Rainwater v. Durham, 11 SCL (2 Nott & M'C) 524, 10 Am Dec 637.

10 **Anno:** 78 ALR 392; 47 LRA 307; 12 BRC 294.

In Schoenung v. Gallet, 206 Wis 52, 238 NW 852, 78 ALR 387, it was held that an automobile is not a necessary for which an infant earning $75 a month may bind himself, although he uses it in going between his home and his place of employment 3 miles distant, and occasionally in performing work for his employer.

In Pyett v. Lampman 53 Ont L Rep 149, 12 BRC 289, [1923] 1 DLR 249, it was held that an infant is not liable for the price of a motor vehicle bought for the purpose of aiding him in carrying on a trade or business, and that the fact that the vehicle was "necessary" in his business did not make it a "necessary" for the price of which he could bind himself by a contract.

In some cases the court has impliedly held that an automobile is not a 'necessary," by holding that a contract to purchase an automobile is voidable although it has been fully executed by both parties. Reynolds v. Garber-Buick Co. 183 Mich 157 149 NW 985, LRA1915C 362.

11 **Anno:** 47 LRA 307.

12 Sisson v. Schultz, 251 Mich 553, 232 NW 253, citing RCL; International Text Book Co. v. Connelly, 206 NY 188, 99 NE 722, 42 LRA(NS) 1115; Johnson v. Newberry (Tex Com App) 267 SW 476, citing RCL.

Anno: 42 LRA(NS) 1116; 8 Ann Cas 131; 20 Ann Cas 593.

A contract by an infant to go on a tour as a billiardist, under the direction of a professional billiardist, is a contract for necessaries which the infant cannot disaffirm although in part executory. Roberts v. Gray [1913] 1 KB(Eng) 520, Ann Cas 1914C 236—CA.

13 St. John's Parish v. Bronson, 40 Conn 75, 16 Am Rep 17; Ayers v. Burns, 87 Ind 245, 44 Am Rep 759; Wallin v. Highland Park Co. 127 Iowa 131, 102 NW 839, 4 Ann Cas 421; Stone v. Dennison, 13 Pick.(Mass) 1, 23 Am Dec 654; Pardey v. American Ship-Windlass Co. 20 RI 147, 37 A 706, 78 Am St Rep 844; Middlebury College v. Chandler, 16 Vt 683, 42 Am Dec 537.

Anno: 42 LRA(NS) 1116.

14 White v. Sikes, 129 Ga 508, 59 SE 228, 121 Am St Rep 228; Mauldin v. Southern Shorthand & Business University, 126 Ga 681, 55 SE 922, 8 Ann Cas 130; Turner v. Gaither, 83 NC 357, 35 Am Rep 574.

Anno: 8 Ann Cas 131.

A five-year course of instruction in "complete steam engineering" is not a necessary for which an infant can contract, in the absence of anything to show his circumstances in life or his resources for securing such instruction. International Text Book Co. v. Connelly, 206 NY 188, 99 NE 722, 42 LRA(NS) 1115.

15 International Text Book Co. v. Connelly, 206 NY 188, 99 NE 722, 42 LRA(NS) 1115.

Anno: 42 LRA(NS) 1115.

16 Nielson v. International Text Book Co. 106 Me 104, 75 A 330, 20 Ann Cas 591; International Text Book Co. v. Connelly, 206 NY 188, 99 NE 722, 42 LRA(NS) 1115.

Anno: 42 LRA(NS) 1115; 8 Ann Cas 131; 20 Ann Cas 593.

17 **Anno:** 42 LRA(NS) 1116, 1117.

18 Kilgore v. Rich, 83 Me 305, 22 A 176, 12 LRA 859, 23 Am St Rep 780; Hoyt v. Casey, 114 Mass 397, 19 Am Rep 371; Cole v. Wagner, 197 NC 692, 150 SE 339, 71 ALR 220; Foster v. Adcock, 161 Tenn 217, 30 SW (2d) 239, 70 ALR 569; Johnson v. Newberry (Tex Com App) 267 SW 476, citing RCL.

Anno: 71 ALR 227; 12 LRA 860; 18 Am St Rep 653.

19 **Anno:** 71 ALR 227.

20 Hoyt v. Casey, 114 Mass 397, 19 Am Rep 371; Cole v. Wagner, 197 NC 692, 150 SE 339, 71 ALR 220; Foster v. Adcock, 161 Tenn 217, 30 SW(2d) 239, 70 ALR 569.

Anno: 71 ALR 228.