PART I  STUDY OUTLINE

I.  INTRODUCTION

Chapter 7 addressed the more frequently used research sources that help a researcher summarize, explain, interpret, locate, or update the law. This chapter presents other frequently used secondary authority sources.

II.  LEGAL PERIODICALS

Legal periodicals publish articles on legal topics, and through the various publications, articles are available on literally every legal topic. The articles are valuable for their depth of research; citation to numerous primary and secondary sources; and in-depth analysis of current legal issues, recently emerging areas of the law, or very specific topics. Publications in legal periodicals are secondary authority.

A.  Types of Legal Periodicals

1.  Law Reviews

   Law reviews are scholarly periodicals published by law schools. They contain articles written by law professors, judges, practitioners, and law students and are usually published four times a year. Law reviews usually include the following:

   ▪  Articles. Articles are written by scholars, judges, or practitioners and usually present a comprehensive analysis of very specific topics.
   ▪  Notes and Comments. These are shorter pieces written by students. They are like the articles in that they are narrow in focus, thoroughly researched, and extensively footnoted.
   ▪  Recent Development/Cases. This section discusses recent cases and developments in the law such as new statutes. Students author this section.
   ▪  Book Reviews. Most law reviews include book reviews of recent legal publications.
2. Bar Association and Other Association Publications
The journals include articles on specific legal subjects, recent developments in the case and statutory law, and tips and guides for practitioners. They also include book reviews, news about the association, and technology updates.

3. Commercial Publications
There are numerous commercial journals and periodical publications that focus on specific areas of law, such as the Journal of Taxation.

4. Legal Newspapers and News Letters
A number of legal newspapers are available by subscription, and include articles and features on trends in litigation, developments in the law, information on attorneys and the legal profession, and book reviews.

B. Research Using Legal Periodicals

1. Use as a Research Tool
Refer to a legal periodical when you are seeking an analysis and critique of a specific legal topic that is more in-depth or narrower in focus than that provided by a legal encyclopedia or a treatise. You may also refer to a periodical when seeking information on a recently emerging legal issue that is not yet addressed in treatises.

2. Research Techniques—Legal Periodicals
There are research tools designed to help you locate specific articles:

a. Index to Legal Periodicals (ILP). The Index to Legal Periodicals provides an index to the contents of most legal periodicals in the United States, the United Kingdom, and most Commonwealth countries. The index includes the following features:
   1) Subject/Author Index. Articles are indexed alphabetically by both subject and author in the Subject/Author Index.
   2) Table of Cases. Cases that have been noted or discussed in articles are indexed alphabetically by the names of both plaintiff and defendant.
   3) Table of Statutes. If you know the name of a statute, this index will direct you to articles that have discussed the statute.
   4) Book Reviews. The Book Review Index lists by book title the periodicals that have reviewed the title.

b. Current Law Index (CLI). The Current Law Index is a periodical index similar to ILP. The index includes the following features:
   1) Subject Index. The CLI has a separate subject index where articles are indexed alphabetically by subject.
   2) Author/Title Index. There is a separate index where articles are indexed alphabetically by author and title.
   3) Table of Cases. Cases that have been noted or discussed in articles are indexed alphabetically by the names of both plaintiff and defendant.
   4) Table of Statutes. If you know the name of a statute, this index will direct you to articles that have discussed the statute.

c. Legal Resource Index (LRI). The LRI includes the same information as the CLI, as well as references to several legal newspapers. The CD-ROM version is called LegalTrac.
d. Other Periodical Indexes. In addition to the major indexes discussed previously, there are several other indexes.

(1) *Index to Foreign Legal Periodicals.* This index focuses on journals published outside of the United States and the British Commonwealth.

(2) *Current ILP.* This index, published weekly, provides access to articles not yet indexed in the *ILP* or the *CLI*.

e. Reference from Other Sources. Another source, such as a citation in a court opinion, legal encyclopedia, or treatise may direct you to a legal periodical article.

3. Computer-Aided Research

The *ILP*, *CLI*, and *LegalTrac* are available in CD-ROM. The *ILP* and *CLI* are available on Westlaw and LexisNexis. *LegalTrac* is available on the Internet by subscription.

### III. RESTATEMENTS OF THE LAW

The American Law Institute was founded in 1923 to address two major defects in American law: uncertainty and complexity. The primary goal of the Institute is to promote clarification and simplification of the law. The founders decided that this goal could be accomplished through a restatement of the law defining what the law is for basic legal subjects. Restatements are the work product of highly competent scholars in each area of the law and are a highly respected and valuable research tool. The Restatements are secondary authority and are used to support primary authority or when there is no primary authority.


#### A. Restatement Features

The Restatements of the law have the following features:

- **Organization.** Each Restatement of the law is divided into chapters that cover major areas. The chapters are then divided into broader topics, and the topics are divided into individual sections that present a general principal of law.

- **Restatement of the Law.** Each Restatement section begins with a statement of the principle of law or a rule of law, summarizing and defining U.S. law on the topic.

- **Comments.** Following the rule of law is a comment section that includes an analytical discussion of the rule and may present hypothetical illustrations of the application of the rule.

- **Reporter’s Notes.** Following the comments are reporters’ notes that include general information concerning the Restatement and citations to cases, treatises, articles, and other secondary sources in support and opposition to the Restatement.

- **Cross-References.** Cross-references to the West’s digests’ key numbers and *ALR* annotations accompany each Restatement.

- **Appendix Volumes.** Beginning with the Restatement Second there are **noncumulative** Appendix volumes that categorize and summarize decisions of courts from different jurisdictions that have cited Restatements.
Updates. The Restatements are updated with pocket parts for each hardbound volume and supplements that are placed beside the appropriate hardbound volume.

Index. A comprehensive index accompanies each Restatement that references sections, comments, and reporters’ notes.

B. Research Using Restatements of the Law

1. Use as a Research Tool
   Restatements have several uses as a research tool. You may refer to a Restatement when a specific legal term, principal, or rule has not been defined in your jurisdiction. When a Restatement has been adopted, the comments and reporters’ notes are invaluable aids in locating cases from other jurisdictions and other secondary sources interpreting the Restatement. A Restatement may also be used to locate authority to challenge an existing law.

2. Research Techniques—Restatements
   a. Index. You may locate Restatement topics by consulting the alphabetical index usually located at the end of each Restatement.
   b. Table of Contents. If you are familiar with the area and topic, you can scan the Table of Contents of the Restatement volume for the specific section.
   c. Appendix Volumes. Refer to the noncumulative Appendix volumes for summaries of court opinions addressing the Restatement section you are researching.
   d. Reference from Other Sources. Often you may be directed to a specific Restatement section from another source.


IV. UNIFORM LAWS AND MODEL ACTS

The National Conference of Commissioners on Uniform State Laws was formed to draft and promote uniform laws. The members of the conference are judges, attorneys, law professors, and legal scholars. The goal of the Conference is to make available for adoption by states’ uniform laws and model acts in areas of the law where uniformity would be beneficial to the states.

Model acts are drafted for those situations where a state does not intend to adopt an entire law but rather intends to modify a uniform law to meet the state’s requirements. Some of these are the Model Penal Code and the Model Business Corporations Act. The uniform laws and model acts are secondary authority. They become primary authority only when they are adopted by a state’s legislature.

A. Features of Uniform Laws and Model Acts

The Uniform Laws Annotated have the following features:

- Organization. Each law or act is divided into topics and subtopics by articles and sections.
- Uniform Law. Each section presents a statement of the uniform law.
Chapter 8     Secondary Authority—Periodicals, Restatements, Uniform Laws, Dictionaries, Legislative History, and Other Secondary Authorities

- **Commissioners’ Notes.** The law may be followed by the Commissioners’ comments on the law, which include, among other things, the purpose of the law, a discussion of the variations adopted by the states, references to law review articles, and a list of the states that have adopted the law.

- **Library References.** Following the law are library references or guides to other research sources, such as digest key numbers and encyclopedia cites.

- **Notes to Decisions.** Each law includes a summary of court decisions interpreting the law from all adopting states.

- **Tables.** Each volume has tables that list states that have adopted the law.

- **Index.** Each uniform law has an index at the back of the volume.

- **Updates.** Pocket parts update each volume.

**B. Research Using Uniform and Model Laws**

1. **Use as a Research Tool**
   If a researcher is proposing or drafting legislation, uniform laws and model acts are invaluable guides. When a jurisdiction has adopted a uniform law, the Commissioners’ comments and notes to decisions are invaluable aids in locating cases from other jurisdictions and other secondary sources interpreting the law. The Commissioners’ comments and notes to decisions may be helpful in locating persuasive authority to challenge an existing law.

2. **Research Techniques—Uniform Laws**
   a. **Uniform Laws Annotated, Master Edition.** The *Uniform Laws Annotated, Master Edition (ULA)* includes the uniform laws and annotations to all uniform laws that have been adopted by one or more states. The *Directory of Uniform Acts and Codes: Tables and Codes* is published with the set. The *Directory* lists the uniform laws and model laws by name, subject, and adopting jurisdiction.
   b. Reference from Other Sources. Often you may be directed to a specific uniform law section from another source.

3. **Computer-Aided Research**
   Uniform laws and model acts are available on Westlaw and LexisNexis.

**V. DICTIONARIES AND WORDS AND PHRASES**

**A. Legal Dictionaries**

Legal dictionaries provide the spelling, pronunciation, and legal meaning assigned to terms used in the law. They differ from other dictionaries in that they cite the source of the definition, such as a treatise or court opinion. Legal dictionaries are valuable not only for their definitions, but also for the citations that are a research source for both primary and secondary authority.

The two most well-known law dictionaries are *Black’s Law Dictionary*, published by West, and *Oran’s Dictionary of the Law*, published by Cengage Learning.

**B. Words and Phrases**

Words and Phrases is a multivolume set that provides the judicial definition of words and phrases. It includes only terms that have been defined in federal and state court opinions. *Words and Phrases* is a valuable case finder, especially in those situations where you are looking for a unique definition of a term.
VI. LEGISLATIVE HISTORY

Legislative history is the record of the legislation during the enactment process before it became law. It is composed of committee reports, transcripts of hearings, statements of legislators concerning the legislation, and any other material published for legislative use in regard to the legislation. It is a secondary authority source sometimes relied upon by the courts when interpreting laws.

It is important to note that legislative history is considered only if the plain meaning of a statute is not clear or sections of a statute are internally inconsistent. If the meaning is clear, that meaning will be applied by the court even if the legislative history indicates the legislature intended a different meaning.

A. Federal Legislative History Sources

1. Congressional Bills
   Each bill goes through several versions before it is passed. An examination of the terms or provisions deleted or added in the various versions of the bill may reveal the legislative intent.

2. Committee Hearings
   Congressional committees hold hearings to receive public input and expert testimony concerning proposed legislation. The records of the hearing are composed of transcripts of the legislators’ questions and witness testimony along with exhibits and documents submitted. Some of the information may help explain how the legislation applies or the reason certain terms or phrases were used.

3. Committee Reports
   A committee report on a bill usually includes the text of the bill, the majority’s reasons for recommending the bill, an analysis of the contents of the bill, and the minority’s reasons for opposing the bill. Because the report clearly states the legislators’ intent and is prepared by those who worked with the bill, the courts usually consider the report the most authoritative source of legislative history.

4. Congressional Debates
   Congress may hold debates on a bill, and the records of the debates are published in the Congressional Record. The debates often include explanations of provisions of the bill, its purpose, or how it applies.

B. Researching Federal Legislative History

1. Use of Legislative History
   The courts may resolve a matter involving the interpretation of a law by looking to the legislative history of the law to determine the legislature’s intended meaning of a term or phrase or when or how the law applies.

2. Sources for Locating and Compiling Federal Legislative History
   The starting point of your research is to locate the statute in the USC, USCA, or the USCS and review the history of the statute in the annotations. This will provide you with several pieces of information necessary to locate the legislative history. The following are the main sources for locating and compiling legislative history.
a. Compiled Legislative Histories. A starting point for researching legislative history is to determine if the legislative history has already been compiled. Some of the sources for locating compiled legislative histories are listed here:
- *Public Laws Legislative Histories on Microfiche*, published by Commerce Clearing House (CCH)
- *Sources of Compiled Legislative Histories*, sponsored by the American Association of Law Libraries and published by Fred B. Rothman Publications
- Check with the federal agency responsible for administering the legislation

b. *Congressional Information Service (CIS)*. The *Congressional Information Service* is a commercial publication considered one of the most comprehensive publications of legislative history documents. It includes summaries of the law; committee reports, documents, and hearing testimony; and references to debates published in the *Congressional Record*.

c. *United States Code Congressional and Administrative News Service (USCCAN)*. It publishes the texts of federal statutes and committee reports. Through this source you can identify the reports and other sources from which you can assemble the legislative history.

d. *Congressional Record*. It is a record of the debates on the floor of the Senate and House. It is useful if you are interested in reviewing the floor debates on a bill.

e. *Congressional Index*. The *Congressional Index* is a loose-leaf service published by CCH. It includes various information on bills, such as indexes of bills by subject and sponsor, a summary of each bill, tables of actions taken on a bill, companion bills, and voting records on a bill.

f. Congressional and Other Sources. Copies of legislative history documents, such as bills and committee reports, usually are available through your congressional representatives. You can also Shepardize a statute and locate law review articles and ALR annotations that have analyzed the statute.

g. Computer-Aided Research. There are several online services that may be used to locate and compile legislative history.
- Westlaw and LexisNexis. Both of these services have databases that allow you to access the full text of bills, selected legislative history documents such as committee reports, and the *Congressional Record*. Both have bill-tracking services. CIS is available on LexisNexis.
- LEGI-SLATE. LEGI-SLATE is an online bill-tracking service.
- Access and Thomas. Access and Thomas are websites maintained by the federal government that provide access to legislative history documents.

C. State Legislative History

State legislative history and its location vary from state to state and may be limited. Consult the appropriate state legislative records or service office for the availability of legislative history. Information on state legislation may be available from the state legislative website, and Westlaw and LexisNexis offer state databases.
VII. JURY INSTRUCTIONS—OTHER RESEARCH SOURCES

A. Jury Instructions

Most states adopt uniform or model jury instructions for the courts to follow when instructing the jury. These jury instructions are often published with the annotated statutes. If not, check at the local law library or with the court. If there is no approved set of jury instructions, there are several texts that include model jury instructions, such as *Am. Jur. Pleading and Practice Forms*.

B. Practice and Form Books

There are many types of single- and multivolume texts designed to assist practitioners. Some of the better-known texts are listed here:

- *West’s Federal Forms*
- *West’s Legal Forms, 2d*—Model practice forms such as contracts and real estate forms
- *Fletcher Corporation Forms Annotated*—Corporation law forms
- *Am. Jur. Pleading and Practice Forms*—Model litigation documents such as complaints and interrogatories
- *Am. Jur. Legal Forms, 2d*—Model practice forms such as contracts and wills
- *Am. Jur. Proof of Facts*—Information ranging from interviews and discovery to what must be proved in a case
- *Am. Jur. Trials*—Information on conducting a trial such as opening arguments and trial strategy

C. Loose-leaf Services

Loose-leaf services are publications that focus on a specific area of law and include primary authority such as statutes, regulations, and summaries of court and administrative decisions. Also, they usually include an analysis of the law and references to secondary sources. Some of the major publishers are CCH, Bureau of National Affairs (BNA), and Matthew Bender (MB).

D. Presidential Materials

The two main types of directives issued by the President are proclamations and executive orders. Proclamations are announcements that have no legal effect such as declaring a week “National Bicyclers Week.” Executive orders cover a wide range of topics and are usually directives to agencies. These directives have the force of law. Presidential proclamations and executive orders are published in the *Federal Register, CFR, USCCAN*, and the *Weekly Compilation of Presidential Documents* (published by the Office of the Federal Register). They are also available on Westlaw and LexisNexis, and the GPO website.

E. Martindale-Hubbell Law Directory

The *Martindale-Hubbell Law Directory*, published by LexisNexis, is a comprehensive directory of attorneys. The multivolume set, arranged alphabetically by state, provides the names of attorneys and biographical information, such as date of admission to the bar, law school attended, and publications.
PART II STUDY QUESTIONS

1. What are the four types of legal periodicals discussed in the text?
2. What do law reviews usually include?
3. When would you refer to a legal periodical?
4. What are the research tools that help you locate specific articles?
5. What features are included in the ILP?
6. What was the primary goal of the American Law Institute when it created the Restatements of the Law?
7. What areas of law are covered by the Restatements?
8. What are the features of the Restatements?
9. What are the uses of Restatements as a research tool?
10. What are the research techniques for locating Restatements?
11. What is the goal of the National Conference of Commissioners on Uniform State Laws?
12. List the features of the Uniform Laws Annotated.
13. How are uniform laws and model acts used as a research tool?
14. How do legal dictionaries differ from other dictionaries?
15. How are legal dictionaries valuable as a research tool?
16. What is legislative history composed of?
17. What are the sources of legislative history?
18. When will a court refer to legislative history?
19. What are three sources for locating compiled legislative histories?
20. What are loose-leaf services?

PART III ASSIGNMENTS

ASSIGNMENT 1
The client is involved in a dispute over the ownership of a website. Locate a 1998 law review article that addresses this question.

ASSIGNMENT 2
Locate the section of the Restatement of Contracts 2d that defines undue influence and provides when undue influence makes a contract voidable. What is the section and what does it provide?
ASSIGNMENT 3
The supervisory attorney is working on a contract that involves the purchase of computer information. Refer to the Uniform Laws Annotated for the definition of the term electronic message. Provide the appropriate uniform law citation and the definition of the term.

PART IV WEB ASSIGNMENTS

ASSIGNMENT 1
The supervising attorney is considering using computer animation in the trial of a case. He remembers that Carole Cox-Korn wrote an article on the subject between 1998 and 2001. Locate the article.

ASSIGNMENT 2
A. Which section of the Restatement (Second) of Torts identifies the duty of parents to control the conduct of children?
B. What is the duty?
C. What is the citation of a 1999 Alaska court opinion that discusses this topic?

ASSIGNMENT 3
Refer to the Uniform Laws Annotated.
A. What section of the Model Penal Code addresses murder?
B. What degree of felony is murder?
C. What 1998 Pennsylvania case discusses when an accomplice may be liable for felony murder?

ASSIGNMENT 4

ASSIGNMENT 5
Refer to the United States Code and Administrative News. What is the purpose of the Technology Transfer Commercialization Act of 2000?

PART V CHAPTER SUMMARY
This chapter discussed frequently used research sources designed to locate, interpret, and analyze statutory and case law: legal periodicals, Restatements of the Law, uniform and model laws, legislative history, and other sources.
Legal periodicals publish articles on legal topics in every area of the law. Periodical articles are valuable for their detailed analysis of current legal issues, recently emerging areas of the law, or very specific topics, depth of research, and citation to primary and secondary sources.

Restatements of the Law present a uniform statement of the law for areas of the case law such as torts and contracts. A Restatement provides guidance as to how the law should be defined or stated, reasons in support of the definition or statement of the law, and citations to cases, treatises, and other secondary sources.

Uniform laws and model acts provide uniform statements of the law that are available for adoption by states. They are invaluable guides when drafting or interpreting legislation.

The chapter also covered other topics, such as legislative history, and other research sources, such as from books. The legislative history is the record of the legislation during the enactment process. It often includes guidance as to the meaning or application of the statute.

The chapter briefly covered other research sources that may be valuable to a researcher:

- **Jury Instructions**—Provide the definition of terms, elements of a cause of action, and so on that a jurisdiction has adopted.
- **Practice and Form Books**—Provide guidance when drafting legal documents or pleadings.
- **Loose-Leaf Services**—Publications that focus on specific areas of law and compile primary authority such as statutes and summaries of court and administrative decisions.
- **Presidential Materials**—Proclamations and executive orders by the President.
- **Martindale-Hubbell Law Directory**—A comprehensive directory of attorneys.