PART I STUDY OUTLINE

I. INTRODUCTION

Legal research is part of the legal analysis process. It is that part of the legal analysis process that involves finding the law that applies to the legal question raised by the facts of a client’s case. Each is a step in a process designed to answer legal questions and lead to the resolution of disputes.

II. GOAL OF LEGAL RESEARCH

The primary goal of legal research is to identify the law that answers the question raised by the facts of a client’s case. This includes locating the applicable statutory and case law and the authority that interprets how the law applies, including secondary authority if necessary.

III. LEGAL RESEARCH PROCESS

A legal research process is a systematic approach to legal research.

- Legal writing is highly organized and structured. An organized research structure helps ensure that complex subject matter is clearly communicated.
- If you do not have a research process and merely gather research material, a great deal of time will be wasted.
- When you are researching or analyzing an assignment or engaging in legal writing, a research process helps you capture ideas as they come to you.
- A research process also helps you overcome the difficult areas of legal research and writing. You may get stuck in a difficult research area or encounter writer’s block. A research process helps you avoid these problems by providing a stepped approach.

This section presents a two-part legal research process and discusses matters that should be considered at each stage of the process.
IV. PART A—ANALYZE THE ASSIGNMENT

A. Assignment

The research process begins with identifying the type and purpose of the assignment.

1. Is the assignment clearly understood?
2. What type of legal writing (document) is required?

   The next step when considering the assignment is to determine the type of legal writing the assignment requires.

   a. Law Office Legal Research and Analysis Memoranda. The law office legal memorandum is designed to inform the reader of the results of the research and analysis.

   b. Correspondence. There are several types of correspondence that a paralegal or law clerk may be required to draft: demand letters, settlement proposals, notices of events such as hearing dates, and so on.

   c. Court Briefs. A court brief is a document filed with a court that contains an attorney’s legal argument and the legal authority in support of that argument.

   • Trial Court Briefs—A court may require an attorney to submit a brief in support of a position taken by an attorney in regard to a legal issue in the case.

   • Appellate Court Briefs—An appellate brief presents the legal arguments and authorities in support of the client’s position on appeal.

B. Constraints

1. Time
   The performance of an assignment may be governed by a time constraint. Most assignments have a deadline.

2. Length
   The assignment may have a length constraint.

3. Format/Organization
   Most law offices have rules or guidelines that govern the organization and format of most types of legal writing, including the presentation of legal research through such means as case briefs, office memorandums, and correspondence.

C. Organization—Research Outline

An outline is the skeletal structure and organizational framework of the legal research assignment.

1. Value of an Outline
   An outline makes research and writing easier by providing an organized framework for research and analysis. There are several reasons for this:

   • The act of creating an outline causes you to organize ideas and prepare an approach to the assignment at the beginning of the process.

   • The use of an outline saves time.

   • An outline provides an organized framework for the structure of the assignment and for conducting research and analysis.

   • An outline breaks complex problems into manageable components.
2. Creation of an Outline

The goal when creating an outline is to prepare the skeletal framework for the research and for any document you may be assigned to draft in conjunction with the research. If the research assignment requires the presentation of the results in a particular format, such as a research memorandum, locate the standard format used in the office for the type of legal writing you are drafting.

When developing an outline, there are several points to keep in mind:

a. Keep the facts and issues of the assignment in mind while developing the outline. It may be necessary to expand the outline to accommodate additional facts and issues.

b. Be flexible when creating and working with an outline. Realize that it may be necessary to change the outline as you conduct research.

c. Do not be surprised if it is necessary to reorganize the outline as a result of your research. Research may provide a clearer picture of the relationship between issues and necessitate a rethinking of the outline’s organization.

d. If the research assignment involves presenting the result in a written document such as a memo, the basic organizational approach for most legal writing is the IRAC format.

3. Use of an Outline

An outline is of greatest value when it is actively integrated into the research process. It can serve as an invaluable guide during the research and analysis process. How, then, is an outline integrated into the research and analysis process? The practical approach suggested here is to use an expanded outline. This approach is composed of two steps.

a. Step 1: Convert the outline to a usable form—an expanded outline. The first step in the use of the outline is to convert it to a usable form—to expand the outline. This is accomplished by taking several sheets of three-hole or binder paper, or creating separate pages if you are using a computer, and writing the name of each section and subsection of the outline at the top of a separate page.

b. Step 2: Integrate all research, analysis, and ideas into the outline while conducting the research and analysis.

   (1) Ideas. When any idea occurs concerning the case, enter it on the page of the expanded outline that relates to that idea. The value of the ability to immediately place ideas where they belong in the structure of the research cannot be overemphasized. Following are some of the benefits:

   • Ideas are not lost.
   • Confusion is avoided if ideas are recorded in the section where they belong in the research.
   • Writing is made easier. If the research assignment is part of a writing assignment, when you sit down to write, all ideas are there, each in its proper place.

   (2) Research. Just as ideas are placed in the proper place in the expanded outline as they occur, all the relevant research should be entered in the appropriate page as research is conducted.
V. PART B—CONDUCT RESEARCH

A five-step approach for conducting research and analysis is recommended. The recommended process is designed to help you quickly and efficiently conduct research and analysis without leaving out any critical information. The recommended five steps are the following:

1. Preliminary preparation
2. Issue
3. Rule
4. Analysis/Application
5. Conclusion

An acronym commonly used in reference to steps 2 through 5 is IRAC. IRAC is an easy way to remember the process—issue, rule, analysis/application, and conclusion. The research component of this process involves steps 1 through 3. Steps 4 and 5 of the process are not concerned with research, rather the analysis of the research after the research is complete. How to conduct the research steps (steps 1 through 3) in conjunction with the use of a research outline is discussed here.

A. Step 1: Preliminary Preparation

Gather all information necessary to research and analyze the assignment.

Part 1: Gather information about the case. The analysis process should begin with a consideration of the facts of the client’s case. The facts should be identified and reviewed at the outset. This preliminary step should include the following:

1. Be sure you have all the facts.
2. Study the available facts to see if additional information should be gathered before legal analysis can properly begin.
3. Organize the facts.
4. Weigh the facts.

List all the facts on the facts page of the research outline.

Part 2: Identify the key terms and key facts. Identify the key terms and the key facts that appear to be critical to the outcome of the case. List the key facts on the facts page of the research outline.

Part 3: Conduct preliminary research. Before conducting any research, check the office research files for previous memos or research that may have addressed the issue(s) you are researching. It may be necessary to conduct some basic research in the area(s) of law that govern the issue or issues in the case. If preliminary research is necessary, create a preliminary research page in the outline. Include the results of the research on this page. Add all the relevant information, including the official citation of the source.

B. Step 2: Issue

Identify the issue (legal question) or issues raised by the facts of the client’s case. The issue is the precise legal question raised by the facts of the dispute. Place the issue or issues being researched on the issue page of the outline.

C. Step 3: Rule

Identify the law that governs the issue. This is the legal research component of legal analysis. The three-part process presented is recommended for conducting legal research.
Part 1: Locate the general law (primary authority) that governs the issue. Identify the terms that you will use to search for the law that governs the issue. Ask yourself, “What type of law applies to the question raised by the facts of the case?” This may be enacted law or common/case law.

a. Enacted Law. When researching primary authority, look first for the enacted law, constitutional provision, statute, and so on, that governs the issue. Ask yourself, “What terms will I use to search a statutory index or computer database to locate the law that applies to this issue?” All the relevant research concerning the statute should be entered in the rule of law page of the outline as research is conducted.

b. Common/Case Law. The issue may be governed by rules or principles established by the courts. In such cases there may be no statutory law that applies. Include all the relevant information from the case on the rule of law page of the outline.

Part 2: Locate the law (primary authority if possible) that interprets how the general law applies to the specific fact situation of the issue. Ask yourself, “What terms will I use to search a case law digest or computer database to locate the court opinion that interprets how the general law applies to the specific fact situation raised by the issue?” When researching case law or secondary source material, retrieve everything you may need from the source and include it in the expanded outline as you read the material. When looking for primary authority, always conduct counteranalysis.

Role of Secondary Authority. Secondary authority may be relied upon by the court if there is no primary authority or if it is unclear how the primary authority applies. Also, when performing counteranalysis, secondary authority sources such as American Law Reports (ALR) annotations are helpful in locating counterarguments.

Part 3: Update research. All research must be updated to ensure that the source you are reading has not been changed.

VI.WHEN TO STOP

A. When to Stop Researching When You Find Nothing

1. Look to another source of law. After you have conducted research using all the possible terms the statute may be categorized under, it’s time to look to another source such as case law.

2. Reconsider the issue and search terms. It may be possible that the issue or search terms are stated so broadly or narrowly that you are not finding anything.

3. Reconsider the legal theory. It may be that you have incorrectly analyzed the question and are searching in the wrong area of law. Review the question to see if another area of law may be involved.

4. Matters of first impression. It may be that the issue you are researching has not been addressed in your state. If this is the case, refer to a secondary source such as a legal encyclopedia, treatise, or ALR annotation to identify how other jurisdictions have answered the question.
B. When to Stop Researching After Finding Several Legal Sources

1. Stop when you have found the answer
   The first research step is to find the primary authority that answers the question. If the authority clearly answers the question, stop researching.

2. Stop when you have found several authorities on the research topic
   Here are some factors to keep in mind if you locate several authorities that address the research issue:
   a. Primary Authority (Constitutions, Statutes, Cases). If you have several cases that address the topic, use the mandatory authority cases. If you have case law that is mandatory authority, you do not need persuasive authority such as cases from other jurisdictions. If you have several mandatory authority cases, select the case that is most on point, that most clearly analyzes the law, and is most recent.
   b. Secondary Authority. You do not need to include secondary sources in your research if the primary authority clearly provides the answer to the issue. However, you might want to include secondary authority sources to support your research if they specifically address the research topic. If there is no primary authority on a topic, then reference to secondary authority is necessary. The more specific the secondary authority source, the better.

3. Other factors governing when to stop
   Time and economic factors may govern how thorough your research should be and when to stop. When this is the case, first locate the primary authority that answers or addresses the question. That is, the enacted law (statute, etc.) that applies and the case law that is on point.

VII. GENERAL CONSIDERATIONS

A. Focus

Keeping focused is critical when performing the steps of the research and analysis process. At the broadest level, it means keeping focused on the specific task assigned. Analyze only the issue or issues assigned. When identifying the issue, keep focused on the facts of the client’s case. Ask yourself, what must be decided about which of the facts of the client’s case? When identifying the rule of law, keep focused on the facts of the case and the elements of the rule of law. This will help you quickly eliminate rules of law that may not apply.

B. Ethics—Intellectual Honesty

Rule 1.1 of the American Bar Association’s Model Rules of Professional Conduct requires that a client be represented competently. This means that it is your ethical duty to possess and exercise that degree of knowledge and skill ordinarily possessed by others in the profession. One aspect of competency requires that a legal problem be researched with intellectual honesty. Intellectual honesty means to research and analyze a problem objectively. Do not let emotions, preconceived notions, personal views, or stubbornness interfere with an objective analysis of the client’s case. Do not assume you know the law.
PART II STUDY QUESTIONS

1. What is the primary goal of legal research?
2. What is a legal research process?
3. Why is it important to use a legal research process?
4. What are the three sections of Part A of the research process?
5. What two questions must be considered when reviewing the assignment?
6. What three major constraints on the performance of an assignment should be considered?
7. Why does the use of an outline make research and writing easier?
8. What are the two steps for integrating an outline into the research and analysis process?
9. What five-step approach is recommended for conducting research and analysis?
10. What are the parts of Step 1: Preliminary Preparation?
11. What three-part process is recommended for conducting legal research?
12. When is secondary authority relied upon by a court?
13. What are the four considerations discussed in the chapter concerning when to stop researching when you find nothing?
14. What two general considerations and guidelines that may prove helpful when analyzing a legal issue are discussed in the chapter?

PART III ASSIGNMENTS

ASSIGNMENT 1

Reread the Intellectual Honesty subsection of the chapter. Identify the personal views, beliefs, preconceived notions, or prejudices that you may have that could affect your ability to research and analyze a problem objectively. Are there events that have occurred in your life, such as the one presented in the example included in the subsection that could affect your objective analysis of a problem?

ASSIGNMENT 2

The facts and rule of law presented in this assignment are similar but not identical to the facts and law presented in Student Companion Site in Chapter 1, Assignment 3. Facts: The client, a resident of State A, is charged in state court with embezzlement in violation of a 1982 State A embezzlement statute. The company he works for manufactures products for the federal government and private businesses. His employer kept the company checks in a locked filing cabinet. All the employees knew where the key to the locked filing cabinet was located. The employer would often presign several
blank checks when he left town. He authorized department heads to access the cabinet, fill in checks, and use them to pay invoices and other business expenses. The department heads, on occasion, would tell employees to open the cabinet and bring the checkbook to them. The client was not a department head and was not authorized to fill in the checks. He took the key to the locked filing cabinet, filled in one of the blank checks with his name, and cashed and spent it to pay his personal bills. The client claims that he did not commit embezzlement because he was not “entrusted” with the check within the meaning of the state statute.

**Rule of Law:** Section 18-6-22 of the state criminal code provides: “Embezzlement consists of the embezzling or converting to one’s own use of anything of value, with which one has been entrusted, with fraudulent intent to deprive the owner thereof.”

**Case Law:** *State v. Kelley*—a 2000 decision by the highest court of State A. In this case, three office employees were informed of the location of the key to a locked cabinet wherein cash was kept. The employees were authorized to open the cabinet and remove the cash in case of a fire. When no one was present, the defendant opened the cabinet and took the cash. The court held that the defendant was entrusted with the cash within the meaning of the embezzlement statute.

**Assignment:**
Based upon the information presented in the problem, prepare a complete and detailed analysis of the question of whether the client committed embezzlement.

**ASSIGNMENT 3**

The facts and rule of law are the following:

**Facts:** We represent Michael Smart. Smart is the owner of a home in the River View Subdivision. Mr. Smart is the president of the River View Homeowners Association. The subdivision is a private residential community consisting of approximately 200 homes. Each home is located on a 1-acre lot. The subdivision is subject to the covenants and restrictions contained in the Declaration of Covenants, Conditions, and Restrictions of River View Subdivision recorded on June 1, 2001. The relevant portions of the covenants and restrictions provide as follows:

The following covenants and restrictions shall run with the land and shall bind the purchasers, their heirs, successors, and assigns, until abrogated by a duly recorded agreement executed by the owners of a majority of the residential lots affected by the restrictions.

1. **USE.** No lot shall be used except for residential purposes. No commercial or business activity shall be conducted within the subdivision with the exception of a personal home office.

   Last year Mr. Gordon Carpenter purchased a home in the subdivision. The deed to the property includes a notation that the property is subject to the Conditions and Restrictions of River View Subdivision. Mr. Carpenter operates a welding business. When they are not in use, he parks two of his 1.5-ton welding trucks on a large parking area he has cleared next to his residence. He uses the trucks solely in conjunction with his business. At the residence, Mr. Carpenter performs routine maintenance and minor repairs on the trucks.
Mr. Smart, acting as president of the homeowners association, advised Mr. Carpenter that parking the trucks on the property violates the restrictive covenant limiting the use of the property to residential use. Mr. Carpenter refuses to stop parking the trucks at his property.

**Statutory Law:** There is no Pennsylvania statutory law governing the assignment. The general legal principles governing the question are set out in the case of *Jones v. Park Lane For Convalescents*, where the court noted that land use restrictions are not favored and are strictly construed.

**Case Law:** *Baumgardner v. Stuckey*

In *Stuckey*, the defendant, Mr. Stuckey, purchased residential property in a property development that was governed by restrictive covenants. One covenant provided that no lot could be used except for residential purposes. Mr. Stuckey knew about the restrictive covenant when he purchased the lot. Mr. Stuckey, a truck driver, parked his truck-tractor and one or more trailers on the property when they were not in use. The truck-tractor and trailers were used in conjunction with his business. The court enforced the restrictive covenant and held that Stuckey’s storing of the truck-tractor and/or trailers on the property violated the covenant requirement that the property be used solely for residential purposes.

**Assignment:**

Based on the information presented in the problem, prepare a complete and detailed analysis of the question of whether Mr. Carpenter is in violation of the restrictive covenants. Note that the validity of the covenants is not in question.

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**PART IV  WEB ASSIGNMENTS**

**WEB ASSIGNMENTS**

The assignment memo, statutory law, and case law are reprinted here. For each assignment:

1. Describe in detail the application of the three sections of Part A—Analyze the Assignment—of the research process.
2. For the organization step of Part A, prepare an expanded outline based on the outline presented in the “Use of an Outline” section of the chapter. Based on the information presented in the assignment, fill in the expanded outline; do not perform additional research. Include in the issue section of the outline a broad statement of the issue and at least one narrow statement of the issue.

**ASSIGNMENT 1**

The assignment is to prepare an interoffice memorandum for the supervisory attorney. The memo is due in five days and there is a five-page limit.

To: Research Assistant
From: Supervisory Attorney
Re: *Dixon v. Cary*
Probate of holographic will
We represent Holly Dixon, the widow of Thomas Dixon, in the case of Dixon v. Cary. She wishes to challenge the probate of the holographic will of Thomas Dixon. Mary Cary, the sister of Thomas Dixon and personal representative of his estate, has submitted for probate a holographic will prepared by Mr. Dixon.

The first half of the will is in the handwriting of Mr. Dixon. The second half is typewritten. It was typed by the next-door neighbor, Edgar Mae. Mr. Mae states that Mr. Dixon asked him to finish the will because Mr. Dixon was too weak to continue. The will is signed by Mr. Dixon. There are no subscribing witnesses to the will, but it includes a self-proving affidavit that meets the requirements of the statute.

Is the will admissible to probate under Texas law?

**Statutory Law**

Tex. Prob. Code. Ann. Sec. 59 Requisites of a Will (Vernon 1980). “Every last will and testament ... shall be in writing ..., and shall, if not wholly in the handwriting of the testator, be attested by two (2) or more credible witnesses....” Tex. Prob. Code. Ann. § 60 Exception Pertaining to Holographic Wills (Vernon 1980), provides: “Where the will is written wholly in the handwriting of the testator, the attestation of the subscribing witnesses may be dispensed with. Such a will may be made self-proved at any time during the testator’s lifetime by the attachment or annexation thereto of an affidavit by the testator to the effect that the instrument is his last will; that he was at least eighteen years of age when he executed it...; that he was of sound mind; and that he has not revoked such instrument.”

**Case Law**

Dean v. Dickey, 225 S.W.2d 999 (Civ. App. Tex. 1949) (see Appendix C of the text).

**ASSIGNMENT 2**

The assignment is to prepare an interoffice memorandum for the supervisory attorney. The memo is due in seven days and there is a six-page limit.

To: Research Assistant

From: Supervisory Attorney

Re: Eldridge v. Eldridge

Modification of child support

We represent Gwen Eldridge in the case of Eldridge v. Eldridge. The Eldridges were divorced in 1992. Mrs. Eldridge was awarded custody of their two minor children. Mr. Eldridge was ordered to make child support payments in the amount of $700 per month. He lost his job in January of 1993 and was unemployed from that date through October of 1993. He then obtained employment as an electrician.

Mr. Eldridge did not make child support payments for the months he was unemployed. In January of 1994, Mrs. Eldridge filed a motion with the court that entered the divorce decree, seeking an order forcing Mr. Eldridge to pay the child support payments due for the months he did not make payments; the amount totaled $7,000. Mr. Eldridge countered with a petition to modify his child support obligation. The petition requested that he be
excused from having to pay the obligations that accrued during the 10 months he was unemployed. The court ordered Mr. Eldridge to pay one-half of the amount due, $3,500, and excused him from paying the remaining $3,500. The court stated that Mr. Eldridge did not have to pay the full amount because he was unemployed during the months the child support accrued. The attorney that represented Mrs. Eldridge in the trial court told her that there is no basis for an appeal of the court order.

Please check the statutory and case law to determine whether the trial court acted properly when it excused Mr. Eldridge from paying $3,500 of the back child support.

**Statutory Law**

Ind. Code § 31-2-11-12. Modification of delinquent support payment, provides:

(a) Except as provided in subsection (b)..., a court may not retroactively modify an obligor’s duty to pay a delinquent support payment.

(b) A court with jurisdiction over a support order may modify an obligor’s duty to pay a support payment that becomes due:

(1) After notice of a petition to modify the support order has been given ... to the oblige ... and

(2) Before a final order concerning the petition for modification is entered.

**Case Law**


**ASSIGNMENT 3**

The assignment is to prepare an interoffice memorandum for the supervisory attorney. The memo is due in 10 days and there is an eight-page limit.

To: Research Assistant
From: Supervisory Attorney
Re: *Commonwealth v. Jones*

Assault by means of a dangerous weapon—lightning

This is a bizarre case to say the least. We have been appointed by the court to represent Sedrick Jones in the case of *Commonwealth v. Jones*. Mr. Jones is charged with attempted murder, battery, false imprisonment, and assault with a dangerous weapon. Mr. Jones has had a stormy 10-year relationship with Elizabeth Steward. The relationship has been marked by multiple instances of domestic violence. They live in a cottage located on a bluff overlooking the Atlantic Ocean. On April 5 of this year, after an extended bout of drinking and arguing, Mr. Jones dragged Ms. Steward outside and tied her to the lightning rod attached to the cottage. This took place during a violent electrical storm. When he tied her to the pole he said, “I’ll fix you, you’re gonna fry.” Lightning did not strike the pole. This act is the basis of the assault by means of a dangerous weapon charge. The state claims that the dangerous weapon is lightning.

Please prepare a memo addressing the question of whether there is a sufficient basis to support the assault by means of a dangerous weapons charge.
Statutory Law
G.L. c. 265 § 15A. Assault and Battery with Dangerous Weapon. (State of Massachusetts), provides: “(b) Whoever, by means of a dangerous weapon, commits assault and battery upon another shall be punished by imprisonment in the state prison for not more than five years....”

Case Law

PART V CHAPTER SUMMARY

Contrary to popular belief, the bulk of the practice of law involves research and writing. Legal research is often complex, requiring in-depth research and detailed analysis. The complexities of an assignment, time constraints, and heavy workloads dictate the necessity of following a process when engaging in legal research. There is no established standard research process. Each individual should adopt or create a process that works. This chapter recommends a two-part legal research process and guidelines to follow when engaging in legal research. The first part involves analyzing the assignment; the second part is conducting research.

The first part of the process, analyzing the assignment, is composed of three sections: the assignment, constraints affecting the assignment, and organization of the assignment. When approaching an assignment, you should first review the assignment and consider any constraints that affect the assignment, such as time, length, and format.

After these matters are addressed, prepare an expanded outline and use it when engaging in the research and analysis of the assignment. An expanded outline consists of a separate notebook page or computer-generated page for each topic and subtopic of the outline.

The second part of the research process is the research component of the research process. This part is composed of three steps: preliminary preparation, identification of the issue, and locating the law that answers the question raised by the issue. Research and analysis are entered in the expanded outline as material is gathered and analysis conducted. The result is that a rough draft of any writing that may be required is developed while research is being conducted.

Next, the chapter presents guidelines to follow for determining when to stop researching. This involves two situations. The first is when to quit researching a specific source when you find nothing. The second is when to stop researching after finding several legal sources that address the research topic.