

CHAPTER 1

THE FOUNDATIONS OF AUTHORITY

Chapter Outline

VOLUME 2, CHAPTER 1

- § 1.1 What is Authority?
- § 1.2 Primary Authority
- § 1.3 Finding Authority
- § 1.4 Locating a Case with a Citation
- § 1.5 How to Read a Case
- § 1.6 Locating a Statute with a Citation
- § 1.7 How to Read a Statute
- § 1.8 Social Media
- § 1.9 Remote Working

ASSIGNMENTS

Assignment §§ 1.4(a),(b),(c)

Locate the assigned case law citations on *Westlaw*, *Lexis*, and, if instructed, in the law library

Assignment §§ 1.6(a),(b),(c)

Locate the assigned statutory citations on *Westlaw*, *Lexis*, and, if instructed, in the law library

Volume 2 Introduction

INTEGRATED LEARNING

Volume 2 of this set has a structure somewhat distinct from Volume 1. There are 12 chapters in this volume, and it is arranged in 3-chapter sets. Each of the four resulting sets contains information on the following (in order):

- *Authority*
- *Legal Research*
- *Legal Writing*

Authority (Chapters 1, 4, 7, 10)

The first chapter of each 3-chapter set will always cover Authority, getting progressively more complex and providing a deeper and broader understanding of the topic.

Legal Research (Chapters 2, 5, 8, 11)

The second chapter in each chapter set will cover Legal Research, beginning with foundational research tools and advancing to more complex and sophisticated sources.

Legal Writing (Chapters 3, 6, 9, 12)

Each chapter set will culminate with Legal Writing, beginning with simple correspondence and progressing to various forms of court-filed documents, including pleadings, discovery documents, motions, and instruments.

You likely don't see it now, but there is a reason for splitting up your learning experience this way. After all, when you are working as a paralegal, those skills (identifying authority, legal research, and legal writing) aren't experienced within a vacuum. They are intricately connected.

Authority is what is sought while conducting *Legal Research*, and the results of the research are used as the foundation of your *Legal Writing*.

We will teach you these skills in the same way you will work with them. Together. Progressively. Integrated.

IN THIS CHAPTER . . .

**BASICS OF
LEGAL AUTHORITY**

**BEGINNING
LEGAL RESEARCH**

**INTRODUCTION TO
LEGAL ANALYSIS**

§ 1.1

What is Authority?

A Powerful Concept

CRITICAL SKILL-SET

Authority

Authority is anything the court can or must use in reaching its decision.

As we will see, there are different kinds of authority: primary, secondary, mandatory, persuasive, and non-authority.

Knowing how to find cases, statutes, and other legal materials is not enough to make you a competent researcher. The lawyer or paralegal must also anticipate the court's probable response to the material. To make an initial determination about the court's response, the researcher must be able to answer two questions:

Is the authority law or non-law?
(*primary or secondary*)

If it is law, what weight will it carry?
(*mandatory or persuasive*)

Non-authority

If *authority* is anything the court can or must use in reaching its decision, then *non-authority* is anything the court would never use in reaching its decision, such as a case that has been overturned.

*Examples: A case that has been reversed by a higher court.
A statute that has been superseded.
A research book that is used as an index or that could never be quoted.*

First Things First

In this chapter, we will concentrate on the identification of **primary**, **secondary**, and **non-authority**. Although we provide definitions for mandatory and persuasive forms of authority within these pages, we will apply those more advanced applications of authority in a later chapter.

SEVERAL TYPES

Authority

Primary or Secondary?

If the authority is law, it is primary. If the authority is not law, it is secondary.

Primary Authority

Any form of valid law is considered primary authority.

Example:

A statute, case, or other form of law.

Secondary Authority

Secondary authority is non-law.

Example:

A comment from a legal encyclopedia.

Mandatory or Persuasive?

Determining what weight an authority carries is important. If the material is from a higher authority than the court in which your client's case is being heard, and within the court's jurisdiction, it is mandatory. In other words, the court must follow the material unless it can be established that the law has been superseded or declared unconstitutional. Material from a court of the same or lower level is persuasive. If the authority is considered persuasive, the court can choose whether to follow it.

Stare Decisis

Stare decisis is a doctrine that holds that a court's previous decision should be followed unless there is a compelling reason not to follow it.