

CHAPTER 2

THE FOUNDATIONS OF LEGAL RESEARCH

Chapter Outline

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Chapter 2 Introduction

PUBLICATIONS

As we will discuss in this chapter, the practice of legal research has been shifting to online services over a long period of time. At first, in the 1980s and 1990s, that shift was more like a trickle. In the 2000s, with law schools encouraging online research over law library research, law firms began shifting to primarily online research, but the law library was still a major element of fully researching a topic. In 2020, the pandemic may have finalized the shift to online research. This presents a problem for those teaching, and those learning about, legal research. Even the publications that are offered within the online research sites of *Westlaw* and *Lexis* were originally published as books, not digital data, and they still use the basic research rules and structures that were first incorporated into the hard copy sets of research sources. For example, most online publications still organize their contents by volume

and page number just as would the hard copy version in the law library. To become an excellent researcher, it is necessary to understand the structure and functions of those books. In this chapter, and in all legal research chapters in this volume, we will introduce the following for each publication being introduced:

- *The purpose of the publication*
- *The major features of the publication*
- *The legal research structure used by the publication*

The student will be provided step-by-step interactive exercises for each publication as it is found in *Westlaw* and *Lexis*. It's easy to forget that materials found online and law library books have one very important common foundation: they are all publications. One form is printed on paper. The other is encrypted on a computer server. But they are both publications.

IN THIS CHAPTER . . .

LEGAL RESEARCH THEORY

LEGAL ENCYCLOPEDIAS

AMERICAN LAW REPORTS

§ 2.1

The Theory of Legal Research

Method in the Madness

CRITICAL SKILL-SET

The following are just a few examples of common legal reference materials found in almost every law library:

- annotations
- legal treatises
- form books
- legal encyclopedias
- litigation aids
- digests
- legal periodicals
- legal dictionaries

These are just a fraction of the research materials available in a law library. They serve different purposes.

- *Some comment on areas of law.*
- *Some educate.*
- *Some assist in strategies.*
- *Some assist in research.*
- *Some cover almost all areas of law.*
- *Some cover only a single topic.*
- *Some contain selected primary authority.*
- *Some contain only secondary authority.*
- *Some contain only non-authority.*

ACCESS

The Index

The most common and valuable legal research publications contain hundreds, even thousands, of volumes. The publishers must consider a fundamental problem when they create these sets of research materials. Access.

A set of research books is useless if the material within it cannot be readily accessed by researchers and the court. The foundational system of accessing material within a publication may seem obvious or even trivial, but it was a huge undertaking by multiple publishers when the material was first published for distribution. The problem of access was solved by indexes.

You may understandably ask, “What is so shocking about that? Everyone uses indexes, right?” Well, yes and no. Some publications do not lend themselves to the use of indexes. For example, if a publication is published every month, such as many *legal periodicals* and *reporters*, it is impossible to recreate an index on such a frequent basis.

- **Legal periodicals** are monthly publications arranged by date.
- **Reporters** publish court opinions

If a set of books does not have an index, how can it be said that these books still use the index method of access? As we shall see, the answer is if a set of books does not contain an index, a separate publication *acts as an index* for that publication.

It will be helpful if, as you study legal research, you first and foremost ask yourself the question: *What is the function of this publication?*

Whatever the function of the book being researched, almost all legal research publications are accessed by the same research system. For our purposes, we will call this system the *Unified Theory of Research*. This system is very simple, as the following outline illustrates:

Index to Main Volume to Relevant Authority

The researcher should almost always begin in the **index**. The index will lead to the **main volumes** of that set of books. The main volumes will lead to **relevant (additional) authority**, such as a case or statute.

But what about online research? Does that system still apply? Yes, but with different terms. The equivalent system for online legal research becomes:

Search Query to Results Page to Relevant Authority

The researcher would enter a **search query** (question), the online system would provide a **results page**, which in turn provides links to **relevant authority**.

The power of this system is in its simplicity. In both cases there are three steps with the ultimate result being relevant authority. If you accept this as a foundation and remember it, your journey to learning legal research will be much more enjoyable.