



Legal Research

Legal research is the process by which you will (1) discover the laws that generally apply to your situation – or that might apply if you adjust your actions in certain ways; (2), determined how to mold your actions and legal stance in ways that improve your situation legally and practically; and (3) find support that helps you argue whatever position you have taken. In other words, it is first about discovering the “legal landscape,” second about adjusting yourself to it, and third about arguing to the court in support of whatever position you have taken or want to take.

Two Kinds of Law: Statutes and Case Law

In law school we're taught that there are two types of “law that you can research: “statutes” and “case law.” In everyday reality there is almost no difference between these theoretically different things. Statutes are laws passed by the legislature and duly signed into law by whatever the appropriate executive officer is, depending on the jurisdiction.

Statutes are maintained in books called things like “Statutes of Minnesota” or “Statutes of Missouri” or, again, whatever the jurisdiction is. The useful collections, from our point of view, are the “Annotated” versions of these collections – and almost always from the states, since that's where most debt law is litigated. Annotated collections are “annotated” with case law and interpretations of specific points of the law. That is, the important areas of the statute that have been disputed are noted, along with the cases that have discussed or resolved these issues.

Most annotated state statute collections have about fifty or more books of statutes and case annotations. The federal collection has hundreds of books in it. The Code of Federal Regulations is probably thousands of books. Luckily you probably won't need those! But every so often you will see a reference in a case to “_ CFR _” (where the “_” is a number, of course), and that's what that is.

Why Law is So Complicated

Statutory law is written with a goal of preventing or requiring certain behavior. They have to be specific to the behaviors, but apply to everybody, and that is not easy considering how complex our economy and nation are. It is also true that legislators are constantly writing little loopholes into the law to favor particular groups or disadvantage others. That part – the writing or making of the laws – is not necessarily “fair” at all. *Legal analysis* (research and writing), however should be consistent and rigorous. In other words, the legislators somewhat arbitrarily make the rules to fit specific situations and people, but the courts must read and apply them strictly and fairly.

Case law, as a source of legal research, is as you might guess, opinions written by judges in specific cases. The judges are taking specific statutes or parts of statutes and figuring out exactly what is required of whom. Simple as it sounds, this is a massive task – that's what the cases are all about. People talk about “simplifying” the law, but we live in a complex society. People live in all kinds of different places and do all kind of different things. Plus things are constantly changing. Therefore, much of the difficulty of law is simply a result of our being free.

Legal Research and Analysis

Your goal in legal “thinking” is to find statutes and cases that are as close to your situation as possible, figure out what the courts (or legislature) have considered important principles, and then apply those principles to your case, trying to make sure that your situation fits within those principles. You want to show your judge that what you say or want is either just what some other judge said is right – or that if that judge, thinking the same way, had had your case, he or she would have ruled as you want. That's what the judges are doing in almost every case opinion, comparing cases and ideas to decide what they should do in order to *follow what has already been done*.

It should be obvious that there is zero value placed on doing something new or seeing the law in some new way. The law is supposed to be as obvious and consistent as possible, and people are always trying to fit their behavior into what has already considered acceptable.

That makes sense, doesn't it? You should see that as a main goal in your research.

Knowing the Legal Landscape

I divide these purposes of legal research in the way I did because if you are representing yourself it is easy to overlook the first step – discovering the general legal landscape. Giving you that landscape is why I wrote the *Your Legal Leg Up Litigation Manual*. It is this overall knowledge that helps you form practical, proactive plans. And so I specifically suggest that you look at what the debt collector is suing you for, research the basic elements of its case – that is, what it must prove and how – and come to a *general* understanding of what your case is about. This is the “substantive” law that will determine the outcome of your case.

Legal Research Starts with the Rules

There are two other types of law you need in order to have a general understanding of what you are facing: the rules of civil procedure for your jurisdiction, and the rules of evidence for your jurisdiction. These are called “procedural” law – the Rules of Civil Procedure govern the way the court

and parties conduct themselves throughout the suit; and the Rules of Evidence determine what will ultimately matter as “proof” of the facts the parties allege. These rules vary a little bit from state to state, but spending time on them will help you understand the most basic rules of the game. Knowing the rule against hearsay and your jurisdiction's exceptions to it, for example, is likely to be critical at trial. Long before that it will also affect the way the sides conduct discovery and any motions that are filed. Getting these rules and reading them and beginning to develop an understanding for them is a part of “legal research” that often gets forgotten in the heat of researching and arguing specific motions.

Researching Specific Issues

Most of what people consider “legal research” involves the substantive law: what is allowed or prohibited by the law. There are three general ways to conduct research on specific issues in the law. You could (1) look up cases in the court files where other people have faced the same (or similar) opponent on the same issues; (2) do a computer search, using either Google or a legal data base; or (3) go to a law library. Each method has advantages and disadvantages - I use and suggest all three of them. The advantages of speed and convenience are very attractive... until you miss something important. Don't always take the shortest cut.

Researching Debt Law in Court

Debt law is different than most other types of law. In most types of law, various plaintiffs sue different defendants for all sorts of things; there are lots of different lawyers and lawfirms handling many different kinds of cases, and lots of different kinds of courts. Debt law, on the other hand, is much more streamlined in most jurisdictions. There are so many of these cases, that are so similar, that they are largely handled “in bulk” by both the lawyers and courts. This means, in practical terms, that in most jurisdictions most debt cases will be handled by the same lawyers. For example, maybe four or five law firms in St. Louis file perhaps between 50,000 and 100,000 cases per year in the local courts, and the pleadings all look spookily similar.

Debt Cases Are Filed, and Litigated, “in Bulk”

Anyone seeing the filings must doubt that any lawyer spent individualized attention on any of the cases. At the same time, the courts also handle the cases in bulk, and they might set 500 or more cases for the same courtroom at the same hour of the same day. These cases are all filed and stored, both physically and electronically, in a very small area and receive about the same amount of individualized attention as M&Ms being produced at a candy factory – unless something happens to take them out of the ordinary.

And because the cases are treated so similarly, even the exceptions – those cases that for some reason draw individualized attention – are also very similar. In other words, the same issues come up over and over even when the cases are being disputed by lawyers who know what they are doing.

You Can Find and Look at Them

That also means that if you can figure out how to get to these files, you will probably find a case exactly like yours where a lawyer made all the best arguments that you might need - and supported every point with specific cases that made the point.

And not only that – but you can also find out (by simply looking into the case file) what the judge thought of the point and how he or she ruled on all the issues that might also affect your case. If the lawyer is any good, there will be many cases cited (referred to) in the motion or brief that will tell you even more about the law and your issue. Plus you can see how the debt collector responded to the arguments – AND how the debt defendant's lawyer responded to that response.

Limits

If you are looking at someone else's work, you are limited by that person's insights and arguments. Since most people who have read my Litigation Manual know more about debt law than most lawyers representing debt defendants (debt law is relatively specialized – and a lot of lawyers don't bother to understand it very well before taking the cases, which tend not to involve much money), you should not necessarily trust the briefs you read to have considered every possibility. In other words, reading other briefs is just a starting point.

How to Find the Cases You Need

I can only give you very general guidelines here because the physical and electronic layouts of courts are often different, but as far as I know, every court still requires at least one paper copy of every pleading, motion or brief. Your goal is to find the cases where people are or were being sued for debt, figure out how to read the docket sheets, and then read the contents of the correct files. If you can do that, you can save yourself enormous amounts of time because you will find all the arguments you need to make, plus the other side's responses, and your replies to those arguments already written.

In St. Louis, there are two ways you can do this. First – the cases are almost all litigated in what is called the “Associate” circuit court (meaning that the courts are for cases involving less than \$50,000), and these are all physically located on the same floor of the courthouse. Additionally, the active cases are all kept physically together. Since the public has a right to see any open case, I sometimes go up and physically search through the files. The default cases are new, and the files are thin – because nothing really happens in a default - whereas the cases where lawyers are involved are much thicker, reflecting activity like answers, counterclaims, motions and briefs: the very things you are looking for.

Court Computers

A better way than that, maybe, is to do a computer search on the court computer using the name of one of the debt collectors as a search term. This brings up the names of thousands of cases, and from there I would simply select the court file of each one, working my way down the list till I find one with the materials I want. That is easy but time-consuming. Obviously I want cases that are at least several months old, since it takes some time for a lawyer to get involved and to write the motions I am interested in finding. So I look for active cases filed six months earlier. Next I look at what is called the “docket.” That is a log of every action that has happened in the case where the court was somehow involved. The entry might be “notice of hearing filed” (useless) or “Memorandum in Support of Motion for Summary Judgment” (possibly very helpful). In St. Louis the content of these documents is not stored on computer, so I would simply go to the physical file of any case that had the most interesting materials.

I suspect that in some jurisdictions the search process is easier, and more of the materials are on the computer. In some jurisdictions some or all of this search could even be done through the internet without going to the courthouse at all. I personally find it helpful to go to the court and look at the physical files, though, because computer searches have a sort of precision that makes it possible for you to find everything you're looking for (specifically) but miss related, very important information that's on the page but not picked up by your computer search.

Because of the ease of finding materials that very directly relate to your case and your judge, you should learn how to do a physical file search and find the files as early as possible in your case. These cases are all very similar, so if you get a case involving the debt collector who is suing you, you will also have an excellent idea of the arguments the debt collector likes to make and the way they conduct litigation. This could include valuable information that would tell you what you need to do to make the other side give up.

For more on this subject, please follow this link:

https://yourlegalegup.com/pages/easy_legal_research

Law Library Research

The next type of research I find most helpful is to go to the physical law library and go to the debt law books for my jurisdiction. Specifically, I like to go to the Missouri State Laws or digests. All the books relating to a particular state are in a relatively small part of the library, and all the laws relating to debt law are in a relatively small area of the digests. And the concepts are “annotated.” This means that, for example, if you look up the Fair Debt Collection Practices Act in the Missouri Digest, you will find a hundred or more pages of concepts (blurbs) related to the FDCPA followed by references to specific cases that apply the concepts.

For example, you might find:

Fair Debt Collection Practices Act, 27.21 – Only Debt Collectors

Joe Consumer vs. Smith Construction, 451 S.W.2d 83 (Mo. App. 1999) –
Only debt collectors can be sued under the Fair Debt Collection Practices Act.

Sometimes these references can be extremely specific and helpful. You look for cases that say what you want them to say and cite them in your brief. Or you read the cases to understand why the court ruled as it did so you can see whether it applies to your case or not. You should *always* read the case and verify the quotation before using it – sometimes the case blurb is completely wrong. And you should always hunt down the cases cited by the debt collectors, *because they often totally misstate what the case stands for*.

Most law digests have three things you should be aware of. First, there is an *index*. The index is just what you would expect – an alphabetized listing of laws, including most of the words in the laws. The statutes and case law are arranged and put in the books by “Chapter” and “Number,” and these things follow only the most general sort of order – if at all – they're going to seem pretty much random to you. If you want to know what the chapter and number of the law you're looking for (and if you do not already have it), you will need to look in the index. So for example, in the Missouri Annotated Code, you can look up “Fair Debt Collection Practices Act” a great deal of helpful information on the

FDCPA – even though it's a federal law.

What if you don't know you're looking for the FDCPA, though? All you know is that you're interested in collection practices or whether some way of collecting a debt is fair – where do you look? In this situation you will look in the second place that most digests/collections have: the “Words and Phrases” book or books. There you basically look up the ideas you want to know about, and these books should refer you to the indexed term or the specific section of the digest that refers to what you're looking for.

The third important source of organizational information is the table of contents. There is one at the front of the collection of laws, but this may be too general to be useful at all. If you look at it, though, you will see that the state's code organization is not *entirely* random. But this isn't much help. When you find the thing you're looking for, however, it's different, because each statute will also have its own table of contents, and this can be extremely helpful. This table of contents will show each section of the law and the issues that have been decided or annotated. You should always glance through this table of contents because laws that are closely related as they relate to your case (and in your mind) may not be closely related in the law. Reading the table of contents will help you find the other pieces of the law that apply to you.

Legal Librarians

One thing every person associated with the law wants to avoid is giving legal advice, and librarians are extremely sensitive to this issue. Does that make the law librarian useless to you? Not at all! But it does mean that you must very carefully frame your questions to a law librarian if you want to get any help at all. If you ask for “laws or books showing that yelling at debtors is a violation of the FDCPA” or “for books that will tell you how much time you have to do [something specific],” a law librarian is likely to tell you they can't give you legal advice. *They normally will not then tell you how to ask a better question.* They've had “not giving legal advice” drilled into them in many ways.

You have to ask a better question. Ask where the section on debt collection is, where a specific book is, or where to find out about some specific issue. It can be a fine line. If they think you will take what they suggest as the *only* place to look or as the solution to some specific legal problem or issue, they will probably not answer. Ask your questions **about the library** and the materials in the library. Then you will probably find your librarian extremely helpful.

For more on library legal research, please [click here](#).

Law Libraries

I find law library research the *most convenient and best way to search for cases and laws regarding any specific legal issues* that have not been addressed by other cases I can find by doing the physical search in the court files. The advantage is that the cases are all cases from your jurisdiction (state), and by reading enough of them you can really get a sense of what the courts were considering important. When you are trying to argue that the court should do something new, it really helps to have a thorough knowledge of everything basically similar to your situation, and computer will not give you that thorough understanding nearly as easily. There might be a sort of art to this kind of research, but like so many types of art it is based on hard work more than most other things.

You can probably find a legal library pretty easily. Every major university has a law school, and most of these schools have law libraries that are accessible to the public. The courts themselves also usually have law libraries – often very good ones, but almost always with at least the state digest for your state and the case books. That's really all you need to get started.

Computer or Internet Research

Computer research is the easiest type of research to do, if you have an internet connection. All you have to do is create a good search phrase and Google it. You might be surprised at how many cases and legal discussions are on line and freely available for the public.

On the other hand, there are major drawbacks to computer searching as well. I have already mentioned the false sense of specificity above, namely that you think you are doing a search for a specific idea, but you miss one word and therefore miss large, important kinds of information. In a book you can turn the page and see that information, or look in the table of contents and realize you're looking for the wrong thing. On the computer you get no such clues.

Another drawback is that only a small fraction of the material available in the court files is available by computer unless you have special subscriber access to a service like Lexus. This could give you the wrong impression that there is nothing, or nothing more, on the subject you are researching.

And the final drawback is that of the information that is on the internet is often motivated by political or other purposes. You find the materials you do because the person who put them on the web was good at creating computer search traffic or was connected to a big player in some way. Remember that the law is often a battleground of competing ideas. I believe the debt collectors try to influence this by influencing what comes up in response to computer searches.

That said, there is a great deal of information available on the internet, both from my site and other advocacy sites, and case law that Google and other data sources have simply put on the web. You can conduct your search any time of day or night, from anywhere you have an internet connection. Just remember what I said about not always letting convenience make your choices for you.

Searching

The essence of legal research on the web is in the search that you use. I always start my research on the Google search engine. That's because I am familiar with Google searches, and also because Google has actually put a lot of scholarly and legal information onto the web. You wouldn't want to miss that in case some other search engine wouldn't look there.

Of course the trick is to get the *right* search, and this is not always obvious in any way. Who knows why word order can make a difference in the search? - but it does, and so you should try different versions of the same search words if you aren't finding what you want. Likewise, small differences in search terms can make huge differences in the results. People who develop websites do a lot of thinking and working on “search engine optimization,” so that their searches are more obvious and intuitive. You might do the same. Try several different searches, using similar search terms as you look for the cases you want.

In general, you will want to have your state name and a couple of key words from your description of the problem. So for example, if you want to know the statute of limitations in Tennessee for bringing a breach of contract claim, your search might be: Tennessee, “statute of limitations” “breach of contract”

If you want to know whether a credit card debt can be brought as a breach of contract claim, this search is much more difficult. You'd try something like: Tennessee, “breach of contract” “credit card debt” or something more general: Tennessee, “credit card debt” “cause of action”

For complicated questions of law, internet research can be much more difficult and less productive than law library research, and of course there's no way to know whether you've missed a case that's out there or there is no case out there. That's why I suggest that if you're researching an important, difficult issue, you're probably better off using the law library, which is simply more helpful in finding issues that are related.

Secondary Sources on the Internet

Of course the internet will find “secondary” sources such as YourLegalLegUp.com or my blog, USDebtLawExpert.com (or other sites directed at debt defendants), and these can be very helpful – but still somewhat hit or miss for complicated and specific legal issues. Also – my sites are clearly from the perspective of people being harassed or sued by debt collectors, many of the other sites are actually fronts for the debt collectors and are used to persuade people to give up. Or they may be ideological sites operated by someone with a political mission which may, or may not, actually be helpful.