Legal Research, Analysis, and Writing

The Key to Defending and Winning Your Debt Lawsuit

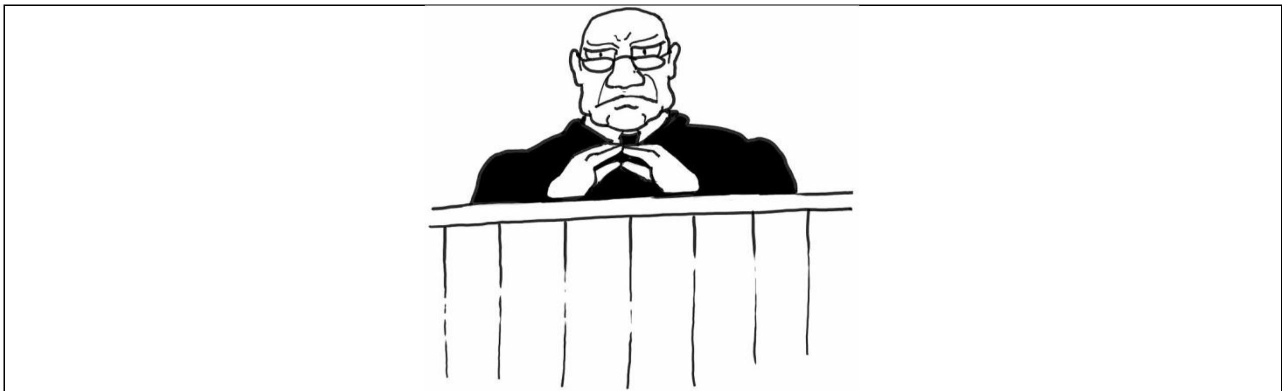
By Ken Gibert/Your Legal Leg Up

Introduction

When ordinary non-lawyers enter the court system, one of the first challenges they face is understanding their rights. Then they must master the facts, decide on the position they plan to take and try to make an argument in support of their position.

All of this will involve reading "case law" (court decisions written by judges in cases), analyzing and evaluating it, using the best arguments available, and in turn supporting these arguments with case law and legal reasoning. When there are facts in dispute, they must analyze court decisions about how to establish the facts they want and attack the facts the debt collector wants.

If it is any consolation, which we doubt, almost every law student regards these tasks as just as scary and difficult as lay persons do.



From the point of view of a teacher and helper, the challenge is almost as difficult. Law students take more than one semester-length course on research and writing, and essentially all of law school is directed towards developing the legal analytical skills.

And most lawyers don't even start learning of the critical importance of the **facts** until they start their careers and hear it from more experienced lawyers – or judges.

Huge numbers of books are written on all these tasks, so how can we give you, in one easy-to-read report, everything you need to know?

Obviously, we can't really do that. Instead, we can hope to give you enough to make an excellent start. Since our work is directed to a small part of law – debt law – we can give you relevant examples and guide you in the process you will face. We can show you the most

important legal resources, remind you of our site and other materials, and get you started. You will need to put in some time and effort to make a start. It wouldn’t be possible for you to perfect the skill if you spent the rest of your life doing it. Luckily, you don’t have to be perfect. Instead, we want to make you good enough to get the job done – the job of kicking the particular debt collectors who are harassing or suing you out of your life. We think we can do that.

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The Facts

Legal research and analysis start with the facts. The main desire of a person writing a motion (or presenting a case at trial) is to have the reader or listener think that the person is right and should win, and must win. Therefore you will note that skilled lawyers pay great attention to what the facts are and how to present them. You will probably notice that facts are presented with only a thin veneer of fairness (but that veneer is very important), and things are described as "non-contested" even when you definitely disagree with them.

So let's consider the three ways facts typically come up. They can typically come up:

1. In motions to dismiss, which are supposedly based entirely on the pleadings (Petition, Answer).
2. They can come up in motions for summary judgment, where a party must establish the facts following evidentiary rules (if you make them).
3. And they can come up at trial, where they must also follow evidentiary rules controlling what is allowed to count (if you make them.

We'll discuss them in order.

Motions to Dismiss

Motions to dismiss for failure to state a claim (i.e., they didn't make a "good" claim against you) are rarely effective in debt law, although they will come up in connection with counterclaims. In motions to dismiss, you must consider all the facts that are pleaded as "true," so it is only a question of figuring out which ones to talk about. And this can actually be a problem for debt defendants, who all too often want to talk about what prevented them from paying, how they lost their jobs, tried to work out a deal with the debt collector, or similar things.

None of these things are a defense to a breach of contract (or account stated) claim, and thus they are not only irrelevant but will also lead you into damaging admissions.

The first thing you must find out is what facts the plaintiff must prove in order to win, and this is the first place legal research really comes into play. You have to know the nature of the claim against you and specifically what they must prove. These are the facts you will want to keep them from establishing. You want to deny them, in other words, and on a motion to

dismiss, allegations of fact you have made in your Answer or in a Counterclaim are taken as true. Thus alleging or disputing the important facts is legally critical, while other facts are less so.

In order to determine what these legally critical facts are, you should determine what the plaintiff is suing you FOR. In debt collection cases, these tend to be variations on two different things: breach of contract and account stated. To state a claim for breach of contract, the plaintiff has to allege facts showing the existence of a contract, its breach (violation) and damages – and in a contract for payment of money, the damage is obviously the money owed that wasn't paid plus any contractually provided interest (and possibly attorney's fees). To state a claim for account stated, they have to allege facts showing that they had a billing relationship with you, that they sent you bills, and that you actually or impliedly agreed to those bills but failed to pay.

You cannot trust this statement of the law for yourself, so the first area of legal research must be to establish what the necessary allegations in your state must be. Then, ask yourself whether the even alleged them. If so, you won't have a good motion to dismiss for failure to state a claim.

Motion to Dismiss for Lack of Jurisdiction

A motion to dismiss for lack of jurisdiction could be more promising and will open up more research for you. There will be two likely bases for such a motion. First, are you being sued in the right court? And second, did they properly serve the lawsuit on you?

If you are being sued in the county where you live, the court probably has jurisdiction. However, you should check to see if they are required to register as debt collectors in your state (and whether they have done so). If you are being sued outside the county where you live, then the question is whether anything in the transaction links you to the court. You'll need to research "personal jurisdiction" and "contacts to forum" or something like that. Then look at the court decisions, see what the courts have decided is necessary, and consider whether those facts exist.

If you were served other than by actual personal service into your hands, then you should research your jurisdiction's requirements for "service of suit." Look at what the courts have said were NOT enough and compare that to your situation. After you read a few of these decisions, you will see how the courts decide what matters. But you must read the cases with great care, because it's all in the language the courts use in their decisions.

The other kinds of motions are "evidentiary" motions. These will require all the same sorts of analysis of what should be alleged, but then there is also a question of whether they have been "proved." In a motion, the real question is whether what they SAY is evidence is actually evidence. Usually it isn't.

Evidentiary Matters

Motions for summary judgment don't depend on the pleadings. Instead, they are based on the proof that is placed before the court. Any research you did on what must be proven will still be critical, of course – it all comes down to whether they allege and can show enough to win. But for evidentiary matters, the primary legal issue becomes what the court is allowed to consider.

The legalism for that is, what evidence is "admissible." You will likely research that question, and it will probably be the most important thing you do research.

For both motions for summary judgment and trial, the issues are likely to boil down to, and depend, on what you understand about the following related evidentiary rules:

- The Rule against Hearsay
- The Business Records Exception
- Authentication of Evidence

We'll discuss them very generally here because they lead into our next big top, "legal analysis."

The Rule against Hearsay

The Rule against Hearsay says that any statement made, other than in court and under oath, is "hearsay" and is not admissible (not allowed as evidence) for the truth of what it says. In plain English, if a statement isn't sworn to in court, then it can't be used as proof of that statement. The classic example is this: John swears that Ellen said he was good looking. That statement cannot be evidence that John is good looking because Ellen didn't say it in court under oath. But it could be evidence that Ellen was able to talk, because John is swearing to the fact that she DID speak in court.

In debt cases, the hearsay is the credit card statement. That's a (written) statement that was not made under oath in court. That makes it hearsay regarding the amount of money supposedly owed, or that any money is owed at all. To be allowed into evidence, the statement will have to be "authenticated" first, and then some basis for getting past the rule against hearsay will have to be shown.

Authentication

Authentication of documents or things requires that someone who knows what it is swears that it really is what it is. This is before you can consider what it is supposed to be saying. In debt collection cases, authentication can present a significant issue because someone has to swear that the statement they're using is actually a statement. And it usually isn't.

How can a statement not be a statement? Simply this: when debt buyers buy accounts, they don't buy paper documents – they buy data. They often then create things they claim are "statements" to use as evidence. But they aren't copies of anything that was actually a statement and might have very different things on them. So you will want to research "authentication" in your state law to see if that is problematic for the debt collector. It should be and sometimes is. See if you can find a case decision rejecting one of these "false statements" because no one can swear that they are actually what they purport to be.

Remember, the person authenticating the document must have actual knowledge of the document and the way it was created. See what courts in your jurisdiction allow or require. Also look up "self-authenticating" to see whether that concept will bail out the debt collector on the

basis that most documents “are what they obviously are” – even when debt collector statements are anything but that.

Business Records Exception

The Business Records Exception is going to be the other main thing you will need to research and consider. Find out what is required for the exception to work in your state. And consider very carefully whether the debt collector has someone who can swear to all these things.

We’ll talk about this, and other evidentiary questions in more detail in the discussion of analysis.

Legal Analysis

Legal analysis is a form of very careful comparison. It is "nit-picking" to the nth degree.

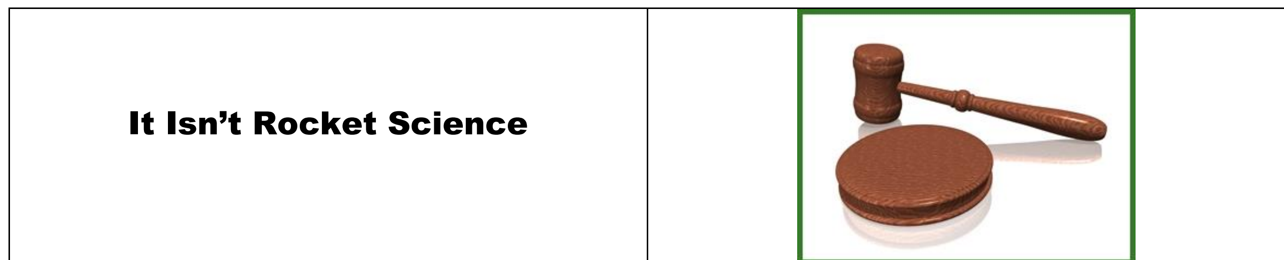
That sounds disrespectful, but it really isn't. You see, law is a practical tradition. It has a long history which the people making laws are expected to know – and which the courts assume they DO know. In fact, Oliver Wendell Holmes said that "a page of history is worth a volume of logic" in understanding the law.

Legislatures make laws, and the courts read and apply them with all this in mind. And what that means is a beautiful thing for someone doing research.

It means that for every question you have, a court somewhere (and probably many courts all over the place) will have considered that question, or one very much like it, already. They'll have said what they thought was important and why they thought that. And they will have compared cases that were like it and contrasted other cases they thought were less like it.

The essence of legal analysis is to look at cases like yours where the court reached a decision like the one you want and tell the court why your case is so much like that case that your judge has to do the same thing.

That should actually sound very familiar to you. Children are very good at making that sort of argument starting at about age two (literally). What do they say? They say, "You let Johnny do it, so I get to, too!"



You can do this. But it's surprisingly challenging to do it thoroughly.

Everybody compares stuff all the time, but your challenge will be to focus in on the things your legal research tells you are important and to "deconstruct" them completely, subjecting each one to an intense analysis.

If, for example, the "business records exception" to the rule against hearsay requires that "someone with knowledge swear that records were made at or about the time of the transaction by someone with a reason to enter the records accurately, in the regular course of business (etc.)," you will have to look at an "affidavit" (sworn statement) to see if it was made by someone with direct knowledge (how did they get it? how long did they do it? how often do they make such affidavits? How much time do they spend reviewing affidavits?). You will also see what, if anything, they mean by "regular course of business," and does what they say match what the courts say about regular course of business? How do they know the records were entered accurately, and so on.

Be warned – most non-lawyers never ever think this way, but most lawyers almost never think any other way. It’s what makes lawyers so obnoxious! It’s a form of precision alien to most types of communication, but there’s actually a very good reason for it. For laws to work, people must be able to figure out what they mean – and this specifically means “what a court would decide if there were litigation *on this very specific point*.” Lawsuits, and whole legal libraries, are dedicated to the gazillion ways this question comes up in myriad circumstances.

Every law creates borders that prevent otherwise profitable or enjoyable behavior, and it makes economic sense to find out exactly where those borders are. That is why there is so much litigation, and when you engage in legal reasoning it’s your job to find out where the important borders are and say why something is on one side or the other. As you read case law in your research you will see that is exactly what almost all the cases are doing almost all the time.

It is what you will need to do.

Legal Writing

Now that you know what legal research is, you mostly know what legal writing is – it's the process of telling the court as quickly and as persuasively as possible what it needs to know to do what you want it to do. The absolute fastest way to do this is to tell it about another very similar case where a judge in a higher court required a trial judge to do the thing you want. They do that by either actually instructing them to do it, or by "reversing" the lower court when they do not do it.

That is called precedent.

Another, more difficult way to do it is to persuade the court that what you want it to do is logical and right – and consistent with the purposes of the law, etc.

In other words, you can use a page of history (precedent) or a volume of logic (argument). You will generally need to do some mixture of both. Here are some things to keep in mind as you do this.

- Originality means almost nothing in the law.
- You don't need to avoid plagiarizing in your arguments.
- Higher courts are more important than lower courts.
- And closer courts are more important than farther away courts.

I will explain all these things.

Originality means almost nothing

Coming up with a dazzling new theory or way to say something sounds so flashy, so great, but it doesn't work in the law. Why? Because the law must be predictable and consistent to work in a practical way, and that is what it is designed to do. This is why the methods we suggest in our website, writings, and other sources, focus on such basic, dull things such as civil procedure and rules of evidence.

According to Plato, Socrates said a good dog barks at a stranger and is comfortable with a friend. Meaning no disrespect, judges are the same way about ideas – if you say something odd or different, they will be suspicious of it. The more you can make it sound like something they've done many times before, the better your chances of winning are. That doesn't mean you're boring, but it does mean that you will want to put even your most daring ideas in ways that will relate to things that have been historically respected.

No Need to Avoid Plagiarizing

Along the same lines of finding familiarity, there is absolutely nothing wrong with taking a whole paragraph from a case, word for word, and using it. You will normally want to attribute it (give credit to the case you're quoting, by including a case citation), but no one is concerned about whether you took someone else's way of putting it. You put the case citation so the judge will know how much respect he HAS to pay it, according to the rules we will discuss below. But lawyers and judges are comfortable with the language of court opinions – they're the old friends

we know the best. So it isn't important, from an intellectual honesty point of view, to give anyone credit.

When you read a court decision (and you know there are millions and millions of them), you can be sure that not ten percent of the words in it came from the judge writing the opinions. What is important in legal reasoning is the message, not the messenger (except for precedential purposes as described below). No one cares whether you thought of any of the words you wrote, either.

Higher Courts are More Important than Lower Courts

The court system is a set of pyramids. The federal courts are a pyramid that has the Supreme Court at the top, the courts of appeal in the middle, district courts and other trial courts at the bottom. Each state has its own judicial pyramid, and these pyramids are mostly independent of all the other pyramids. In other words, Texas is independent of Maine, and in many instances both are independent of the federal courts.

When a higher court has spoken on an issue, a lower court in the same pyramid is required to follow whatever the higher court said. Courts in other pyramids don't have to. So if you are in Missouri, a case citation to a Missouri Supreme Court ruling will be decisive for all other Missouri courts. Therefore, if you have a case like that, you will definitely want to cite it so your court knows it has to follow that rule. And if the rule is close to your situation, you will want to show how the *reasoning* of the higher court controls the lower court.

In another state, the supreme court may have said something else. Your court doesn't have to follow that.

And if a court of appeals in your state has ruled on something differently than the supreme court of another state, your court must follow its court of appeals. Understand that hierarchy?

Nearer Courts are More Important that Farther Away Courts

This rule is not so hard and fast, but in general, judges will pay attention to judges who are closer to them in physical location or in a more theoretical way. So a Missouri court is much more likely to follow another Missouri court (even if they are equals) than a California court. And it's more likely to follow a court in Illinois than a Californian court, too. That is, while they must actually follow the ruling of a court above them in their pyramid, they are likely to respect and agree with the rulings of other courts.

When you look at case decisions, you will see how judges use case references and use them. Try to do things the same way.

The Way an Opinion is Written

In a way, this seems less important and more obvious than many things in this report, but it is absolutely something you need to know in legal writing and analysis. That is, *court decisions are always written in just the same way*. They start with an overall view of the case and often will say what the primary holding of the case is in the first paragraph. But then they get down to brass tacks.

They always start with a discussion of the general facts of the case (usually labeled, "Facts" or "Background," then they may relate the arguments of the parties, and then they always proceed to a section almost always called "Legal Analysis."

The "facts" section is designed to let you know what the basic situation is and, often, what lower courts have decided and done. They are not purely neutral facts, however – they are facts the court considers relevant to its holding. So there will be some facts, maybe, to help you get oriented to the case, but most of them will be particularly important to the decision. In other words, court decisions are designed not to waste your time.

Make sure you do the same thing in your writing.

When the court starts its legal analysis, it will often do so by saying what one side argues. This is the lead up to the balancing that the court is going to do – it will tell you why certain facts or arguments are more important than others. It will "follow" case authority that it likes and will attempt to "distinguish" cases it doesn't like. *That is, it will tell you why the case it is deciding is like one kind of case but different from another.* And this is the heart of legal reasoning and analysis.

When you have an issue of law, find out why courts have decided one way or another, go back to your facts and make sure the ones you talk about are like the ones the court thought were important, and make your arguments based on that.

A Very Simple Example

Let's say you were arguing in favor of the health effects of walking every day. You know some people in poor health and some in good health, and in addition to their exercise habits you also know their eating habits. If your argument is that walking is good for you, you will obviously want to talk about the people who exercise and are in good health. You will probably want to talk about the people who don't exercise and are in bad health. And you will think carefully about whether it makes sense to complicate issues by adding things about diet. You might think it was necessary, but you might think it was a distraction.

Knowing what to talk about is an important part of legal analysis, and the cases you read will guide you on that. They'll talk about some things and not others. You will want to make the facts you allege and prove similar to the ones courts have talked about. And you will want to spend much less time talking about the facts the courts have not considered important.

Legal Research

It should be clear by now that I consider legal analysis and thinking more challenging than research per se. But research and analysis go hand in hand, so we will now discuss various techniques of conducting 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), determine 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. Case law is decisions by courts interpreting those statutes.

Statutes are maintained in books called things like "Statutes of Minnesota" or "Statutes of Missouri" or, again, whatever the jurisdiction is. Most debt law is "state law" – that is, laws developed in and primarily interpreted by various state legislatures and courts. Very little federal law on debt matters (although the consumer protection statutes like the FDCPA are federal law). The useful collections of statutes, from our point of view, are the "Annotated" versions of these collections. 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 thick 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 first "__" is a volume number, and the second is a page number). If you find a reference to a federal regulation, it's usually easier just to google or search case law for interpretation of that regulation, as the regulation itself will be mind-numbing.

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, and you will need to do the same thing.

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.

Your goal in legal research 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*.

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. Still, any motion or argument you will make or defend against will have its basis in a rule of civil procedure or evidence.

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 law firms handling many different kinds of cases, and lots of different kinds of courts. The cases don't tend to be very similar to each other, and it would be crazy to attempt to do research in one case by examining the court files for other suits filed by the same parties.

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. Any time there's a fight, the issues disputed are likely to be the same. That provides a handy shortcut for pro se defendants.

You Can Find and Look at Them

The way the debt plaintiffs file everything in bulk means that if you can figure out how to get to the 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.

The challenge is to find another case like yours (very common) where the defendant got a lawyer and defended (very rare). Once you find that kind of case, you will be able to all-but copy the other defendant's motions and briefs word for word (remember, there is absolutely no value in originality in the law). You will be able to create a powerful motion or brief in little more than the time it takes you to type the pages when that happens.

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 our litigation materials know more about debt law that 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. But it's often a great 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 state 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 go to the disputed cases. In almost all jurisdictions, these cases will be filed in physical form, and they are ALL public records. You have an absolute right to see what's in almost every file in court (the only limitation is where a court has entered a specific protective order preventing that – common or universal in child custody cases, rare in almost everything else).

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. Thus if you can look at the files, you can easily see which ones are disputed.

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.

Law Library Research

The next type of research I find most helpful is to go to a physical law library and go to the debt law books for my jurisdiction. Almost every court has at least some sort of law library, and it will be accessible to the public. Every university with a law school has a law library, usually an excellent one, and almost all of these will be open to the public as well. Don't be bashful. This is too important to be shy: ask if you can go in, and once inside, if you need help finding something don't be at all afraid to ask. University personnel are there to help students, and they treat them with real respect and care, too – and once you're in the door, no one will know whether you're a student or not. Most of them will gladly help you.

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.

The Advantage of 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.

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 Lexis. This could give you the wrong impression that there is nothing, or nothing more, on the subject you are researching, but as I will discuss below, this disadvantage is rapidly going away and for most people won't be significant anymore. I never recommend people subscribing to the special services like Lexis anymore because Google Scholar is so helpful.

And the final drawback is that of the information that is on the internet is often motivated by political, sales, 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.

Google and Google Scholar

No discussion on legal research would be complete these days without discussing Google and Google Scholar. They are NOT the same, and you should not consider your research done until you use them both.

When I initially created this report, Google Scholar did not even exist, so my general rules for computer searching were written with Google in mind. These issues and ideas remain the same: you can do a plain-English search and mention statute or rule and your state's name and likely find very useful information. One of the things you're looking for is the "legalistic" way of stating your search request. Google itself is pretty forgiving about that. If, for example, you search the question: "Does yelling at a debtor violate the FDCPA?" you are likely to get a large number of discussions (and some cases) that could lead to very interesting and helpful materials.

It isn't likely to find exactly the case you want, though, and even if it does it probably won't be in a form you can use for your brief. That's because there are established conventions for the way you must cite case law, and you have to give volume and page numbers when you quote a case. Google Scholar, on the other hand, solves this problem, by telling you what volume

of which legal reporting service you're using and how the pages correlate.

Google in general makes its money by advertising and by selling "pay per click" links, so you will find cases in an order that support that form of money-making when you use regular Google. Google Scholar, on the other hand, seems to make its money (in addition to advertising) by having some sort of profit-sharing arrangement with paid subscription services. I don't know that for a fact, but many of the Google Scholar results will lead to paid services, and they're not cheap.

Here's a secret. Many of the paid results on Google Scholar are free on regular Google. Here's the way that works. Let's say you search "what makes an entity a debt collector?" on Google Scholar and get a **link** to Joe Schmoe's Law Articles with a reference to *Tom Jones, What Makes an Entity a Debt Collector, 45 U.G.A. Law Rev. 90 (2015)*. That is actually quite common, and Joe Schmoe's Law Articles will charge you $20/month for access to its articles. If you then go to Google, however, and search "*Tom Jones, What Makes an Entity a Debt Collector, 45 U.G.A. Law Rev. 90 (2015),"* you will usually find the original, free, version of the article in the University of Georgia Law Review. There is rarely, if ever, a good reason to use a paid service through Google Scholar. I never have.

Research through Google Scholar is generally extremely productive, but there are technical hurdles. For some fairly dry, but quite helpful, videos on how to use Google Scholar, go to _____________________. You will need a passcode to see these videos, and that is _____________.

Although computer searches do have some limits – as far as I'm concerned, nothing beats being able to go through the pages of a book and look for related materials – it will probably be adequate for almost everything you ever do in your case.

Specific Help on Computer Research

We have done a few videos on computer research that you will probably find very helpful. Please take a look at the following videos for specific help on some of the techniques of legal research on either Google or Google Scholar. They aren't the most exciting videos you'll ever watch, but they have extremely valuable information.

Using Google Scholar for Legal Research

A Lesson on Using Google Scholar

Using Google Scholar for Research

Conclusion

After reading this report, you should be able to do almost all the legal research you would ever need to do. More importantly, you should know how to think about what you find in your research and how to use it to your best advantage. If you are not already a member of Your Legal Leg Up, you will find much more help by becoming a member.