

Michigan Library Association
Foundations of Legal Information and Research
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What is “legal authority”?

Primary Authority

Cases and codes

It's the law . . . somewhere.
(Can be binding)

Secondary Authority

Legal encyclopedias, treatises, and law review/journal articles;
American Law Reports (ALR);
Restatements of the Law

It's not the law.
(Can never be binding)

Where does “the law” come from?

Cases

Cases involving common law

Cases interpreting codified law

Cases addressing the interaction of common law and codified law

Can be binding or persuasive if
“on point” (legally analogous)

Codes

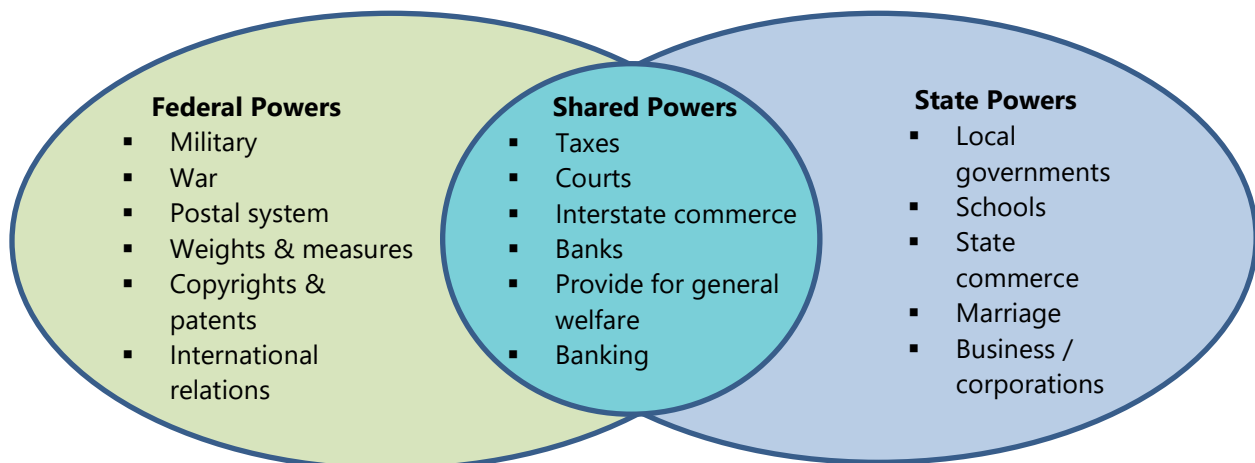
Constitutions
(The People via Legislative branch)

Statutes
(Legislative branch)

Administrative Rules & Regulations
(Executive branch)

Court Rules
(Judicial branch)

Does everyone follow the same law?

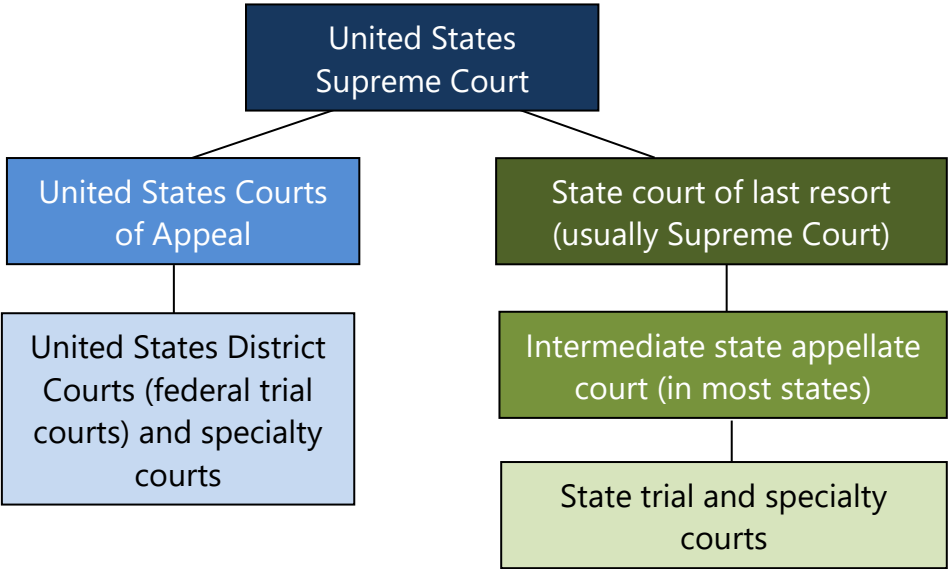


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Where can I find the answer to my legal question?

- Step 1: Preliminary Analysis
- Step 2: Search for Codified Law
- Step 3: Search for Binding Precedent
- Step 4: Search for Persuasive Precedent

Which court cases should I look at?



I followed the steps, so why can't I find the answer?



FOUR STEPS IN THE RESEARCH PROCESS

JULIE CLEMENT, JD

Using a strategic approach to legal research will help you avoid (1) getting tangled up in the detail, and (2) wasting time unnecessarily. But beware: legal research is usually not a linear process. Each time you learn something new, you'll think about the legal question in a new way, so you'll often need to backtrack – go back to a previous step and approach it from your new perspective. Something you learn in Step 3, for example, might prompt you to go back and do more Step-1 research.

Step 1: Preliminary Analysis

You must start somewhere! Unless you're an expert in a certain area of law, it's best to start by reading something an expert has written. This is the fastest way to get an overview of the law. You'll use "secondary authority" to accomplish this: legal encyclopedias, journals, treatises, and similar sources. This step helps you narrow your research, so you don't waste a lot of time reading *irrelevant* codes and cases later.

Secondary authority is not the law, though. It exists to help people understand the law and to find "primary authority," which is the law itself.

Step 2: Search for Codes

Once you have a better understanding – an overview – of the legal issue, look for relevant codes in your jurisdiction (usually, this means your state, but sometimes you'll be analyzing situations controlled by federal law or local ordinances, for example).

Helpful hint: If you did your preliminary analysis well, you'll have already found the most relevant codes, if they exist.

Sometimes, this is the end of the road – you'll find codified law that answers your question completely. But that's not often the case. "Codified law" is primary authority, and it includes constitutions, statutes, administrative rules and regulations, and court rules.

Step 3: Search for Binding Precedent

If you didn't find any codes that answered your question, you can move on to the court decisions (also referred to as "cases," "case law," or "precedent") that help explain the codes you found. Cases can be "binding," which means courts in your jurisdiction must follow those decisions. Sometimes, cases are merely "persuasive," which means that another court may be guided by the case, but is not required to follow it. Look for cases that are from courts in your jurisdiction and that are as similar to your case as possible.

If courts in your jurisdiction haven't addressed your specific issue, you'll need to find cases that come as close as possible. These will help you predict how your case will be decided if it ends up in court.

Step 4: Search for Persuasive Precedent

Finally, you can look for cases that your court isn't required to follow but that might help anyway – "persuasive precedent." If the law isn't completely clear as to how your case should be decided, it's sometimes helpful to look at other courts' analyses in similar cases. But only do this when your jurisdiction hasn't decided your precise legal issue.

LEGAL RESEARCH SOURCES

Legal authority is generally classified as either *primary authority*, which is the law (at least somewhere) or *secondary authority*, which can be helpful but is not the law.

Primary authority can be *binding* (meaning that it must be adhered to), or it can be *persuasive* (meaning that it merely offers guidance on what courts have done in the past or on how legal scholars view the law). Secondary authority can never be binding, but it is sometimes persuasive.

A Michigan Supreme Court opinion, for example, must be followed by (is “binding on”) parties in Michigan when the same situation arises again (or when a legally analogous situation arises). But where the law is unclear, courts may look to other jurisdictions or to secondary authority for guidance. Below are the main categories of legal authority.

- I. **Primary authority** (= the law, at least somewhere)
 - A. Cases (also called case law or precedent) – can be binding or persuasive. A single case can address more than one area of law (and usually does).
 1. Common law (typically based on British common law)
 2. Interpretation of codified law
 - B. Codes (= the law, at least somewhere) – can be binding but are never persuasive (cases interpreting non-binding codes can be persuasive, though)
 1. Constitutions (the People, through the Legislative branch)
 2. Statutes (Legislative branch)
 3. Administrative rules and regulations (Executive branch)
 4. Court rules (Judicial branch)
- II. **Secondary authority** (is not the law, and therefore can never be binding)
 - A. Law reviews and law journals (high-level secondary authority)
 - B. Restatements (high-level secondary authority)
 - C. Treatises (high-level secondary authority) – available at the state level (e.g., *Cameron on Michigan Property Law*) and national level (e.g., *Corbin on Contracts*)
 - D. ALRs (*American Law Reports*) (low-level secondary authority) – sorted by jurisdiction within each report
 - E. Legal encyclopedias (low-level secondary authority) – available at the state level (e.g., *Michigan Civil Jurisprudence*) and national level (*American Jurisprudence and Corpus Juris Secundum*)
- III. **Other sources** (not always included in discussions of legal authority but can support legal research, especially as a way to find primary or secondary authority)
 - A. Dictionaries (lay dictionaries, legal dictionaries, and other specialty dictionaries)
 - B. Attorney General opinions (can provide guidance until the courts or legislature weigh in)
 - C. Digests – print and online (collections of one-sentence summaries about various legal aspects of individual cases)
 - D. *Words & Phrases* (a Thomson Reuters source organized by legal words and phrases)
 - E. Other, e.g., books on law-related history, *Michigan Manual*, books on other legal topics and written by respected authors

A few hypotheticals to test your knowledge . . .

Where might you look for the answers to these common questions?

- My neighbor's tree keeps dropping branches in my yard. How do I get this to stop?

- My favorite restaurant just put up a sign that says, "Under Michigan law, you may not enter without shoes." I heard that this isn't really the law. How do I find out?

- The State is trying to take my kids away. Where can I find information about the process and my rights?

- The judge in my case was completely unfair, and I want to appeal. How do I do that?

- The judge in my case was completely unfair, and I want to file a complaint. How do I do that?

- The condominium association says I have to cut down my favorite tree because it's blocking my neighbor's view of the lake. That seems ridiculous to me. Can they make me do that? And if so, can I make them pay for it?