DOWNLOAD PDF THE U.S. LEGAL SYSTEM AND LEGAL RESEARCH

Chapter 1 : legalresearch - The U.S. Legal System-A Common Law System

The U.S. Legal System In the United States, laws are made at the federal and state levels. Laws adopted by legislative bodies - Congress and state legislatures - are called "statutes.".

Process[edit] This article is in a list format that may be better presented using prose. You can help by converting this article to prose, if appropriate. Editing help is available. August There is no one right way to do legal research. There are however practices that have proven to be more efficient and cost effective. A general search strategy might be: You may have to make do with a quick and dirty resource instead of an in-depth, ever so scholarly one decide which format to use print or electronic- this often just depends on what you have access to locate, read, and update secondary sources locate read and update primary authority cases, statutes, and regulations look up rules of procedure, ethics, non-legal and other materials if needed repeat the above steps, as needed, depending on your search results. You may be able to find a topic-specific research guide by searching online, or from a local library. Primary sources[edit] Primary sources of law are the original sources of the law. Such sources include statutes, government regulations, case law and the text of the state and federal constitutions. Each jurisdiction in the U. On the federal level, there is a Supreme Court of the United States , United States court of appeals , and a trial court, which is known as the United States district court. The federal appellate courts are subdivided into numbered "circuits. In general, the decisions of a higher court in a court system may be considered "binding" on the lower courts in that court system. The decisions of the Supreme court of a particular state are binding on the courts within that state. However, the decisions of a Pennsylvania state court may or may not be followed by a federal court in the Third Circuit, which includes Pennsylvania. The status of United States Supreme court opinions is complex, but U. Supreme Court decisions are final on both federal disputes and federal issues raised in state courts. The most published decisions are issued by the United States Supreme court. State trial courts produce the lowest percentage of published cases. Some courts provide copies of their decisions free on the web while others do not. Even if they are on the web they seldom go back before , when the web first became popular. The only exception is with U. Cases on the web can often be found via the website of the individual court. The Supreme Court of the United States , for example, provides the text of recent opinions on its website. It is one of the best places to obtain new opinions. The United States court of appeals and State courts can also be a source of free legal information. In print, to find the cases, legal researchers use indexes of various types. Classification systems provide index terms. For example, there may be a category of law, torts non-crime injuries to people. There are many types of torts, or causes of Action , such as slander. These causes of actions have various elements which must be proved to establish a claim there may also be various defenses. The general category, the cause of action and the various elements of the cause of action and defenses may all be index terms. The major classification for finding law cases is the West American Digest System. The key to using legal indexes is to identify not only the key facts but the legal issues which are central to the case. Keyword searches in databases may also be a challenge, because people may describe legal concepts in varying ways. For the layperson, reading secondary sources, such as books and journal articles, can help. Once a case has been found, legal researchers must make sure that it has not been overturned by a higher court. Citators track resources, written at a later point in time, which cite back to a particular case. Because cases cite to related cases, citators can be used to find cases which are on the same topic. A common research strategy is to use "one good case" to find related cases. Legal forms can be some of the hardest documents to find because one person may call a form by one name while another person knows it by an entirely different name neither of which may be the actual, official name of the form. The same form may be known by a different name in a different jurisdiction. Law libraries often have many sets of formbooks to search. Legal researchers may also need the briefs and other background materials connected with a case, which are included in docket records. Other types of documents may exist in databases which cannot be searched with search engines such as Google. Legislative branch sources Statutes [edit] Some jurisdictions provide copies of their statutes online while others do not. You can often find new, or "slip laws" on the web arranged in chronological order , as well as the subject arrangement of the statutes, known as the

codified version, or code. The official code for federal statutes, the United States Code is usually one to two years out of date both in print and on the web. They may also include references to journal articles, legal encyclopedias and other research materials. In addition to the text of the current law itself, legal researchers may also have to research the background documents connected with the statute, which is known as Legislative history. Legislative history is used to find what is known as the "legislative intent," or purpose behind statutory language. Again, legislative history documents may be found both in print in law libraries and government documents libraries, as well as in online formats such as Lexis and Westlaw. THOMAS the Library of Congress legislative information service, provides the fulltext of proposed bills , bill status information did it become a public law? The Library of Congress provides access to legislative documents from through as part of its American Memory Project Century of Lawmaking for a New Nation digital library. Executive branch sources Regulations [edit] A legislature usually has neither the time nor the expertise to administer all of the details of a particular statute. It may, for example, pass a statute mandating clean water. However, it delegates the authority to actually implement the statute to a Government agency , such as the United States Environmental Protection Agency. Agencies issue administrative Regulations to implement the details of the "enabling legislation" that gave the agency authority to act. The challenge with the executive branch is to track down the rules and regulations of federal and state administrative agencies. Luckily administrative regulations have a "life cycle" that is very similar to that of statutes. Regulations start out as an agency document, which many agencies now post on the web. Similar to statutes, regulations are often published in chronological order in registers, and finally are published in subject order in codes. Federal regulations, for example, are first printed in the Federal Register , before they are published in subject order in the Code of Federal Regulations. Because of this "publication pattern" in order to find out if there has been a change with respect to a particular regulation a print CFR user has to go through a two step process of checking 1 the List of Sections Affected LSA and 2 the latest issue of the Federal Register for the current month. The foremost executive branch entity is, of course, the Office of President of the United States. The White House has its own website. The relationship between statutes and regulations means that one can usually never consider just a regulation alone. This intertwined grouping of regulations, statutes, and cases is often best deciphered using secondary sources such as books and journal articles. Secondary sources[edit] Legal reference books and journal articles are available at some public libraries and at law school libraries. In law libraries books known as "legal treatises" are available that summarize the law on specific subjects. Law school libraries also hold legal encyclopedias , such as Corpus Juris Secundum or American Jurisprudence and resources such as American Law Reports. Many major legal research materials may be found online, through both free and commercial services. Law dictionaries can be found in many libraries, online commercial services, and some are free on the Internet. Many law reviews , other legal journals and magazines, and legal newspapers place content on the web. Not all law journals provide their text on the web, and some content may be placed behind a paywall. Legal citation[edit] Legal citations direct readers to the source of information cited within a legal document. The vendor neutral citation movement has developed to try to make citations more broadly understandable without specific reference to a particular guide to legal citation. However, it is important to use citations that will be understood by the audience for the legal research project.

Chapter 2 : South Carolina Case Law - Circuit Riders - LibGuides at University of South Carolina School of

F. Allan Farnsworth, An Introduction to the Legal System of the United States, 4 th ed. (Reserves KFF37) - discusses the culture of legal education and legal practice in the U.S, explains the U.S. legal system and procedure, summarizes common areas of U.S. law, and has an appendix on how to reading case law and statutes.

A Comprehensive Research Guide, 3rd ed. An exhaustive study of such a complex social institution is far beyond the scope of this work. This work, as the title implies, is a guide to the legal system of Mexico. It is meant to serve as the point of departure for the study of the legal system of Mexico and not as the final point for such a study. The guide is arranged by legal topic and points to primary and secondary sources. Primary and secondary English language sources were sought out especially for inclusion in this guide. Sources for obtaining the primary and secondary materials print and electronic cited in the work are provided. It is important to be aware of some of the most important concepts of the civil law tradition in order to formulate research strategies in conducting research into Mexican law. The Civil Law Tradition is the oldest and most widely used legal tradition in the world today. Its foundations were developed in the Italian universities of the Renaissance when Roman law was rediscovered. Other important historical contributors to the Mexican legal system were Roman law, canon law, and medieval commercial law. They are most evident in constitutional law, administrative law, and the judiciary. Private law concerns the legal relationships between individuals. Public law concerns the legal relationships between individuals and the state. The link to Pre-Colombian indigenous law is traced through the Aztec Empire which was the dominant political power in Mexico at the time of the arrival of the Spaniards. The Spanish conquistadores found an advanced indigenous legal system in place when they conquered the Aztec Empire. The Spanish Crown did not do away completely with the indigenous legal system. Instead the Crown kept the indigenous laws and legal institutions that did not go directly against established Spanish customs or against Church doctrine. The results of these efforts were the: In the Constitution of Apatzingan was issued. Although this constitution never came into effect, many "ideas it expressed served as a model for future changes. The crux of secular natural law and secular positive law is that all individuals are created equal with natural rights to property, to liberty, and to life. It is the responsibility of the government, which should be divided into separate, independent powers, to recognize and secure these rights for the individual. Nationalistic fervor also formed part of the new political philosophy. Mexico achieved independence in and adopted its first constitution in The Constitution provided for a Federal Republic consisting of 19 states, four territories, and a Federal District. The Constitution also provided for: The Constitution was never applied strictly because of internal armed conflict between the conservative and liberal elements of the newly independent Mexican nation. In a new constitution was adopted which was drafted by the liberal elements who had ascended to power. The most important contribution of the Constitution was the writ of "amparo" see page 10 for an explanation of the writ of "amparo". It was not until after the triumph of the Mexican Revolution that the Constitution was replaced by the current Mexican Constitution of The current Mexican Constitution is commonly referred to as the Constitution. The Constitution adopted from the Constitution the chapters on territorial organization, civil liberties, democratic forms, anti-clerical clauses, and anti-monopolies clauses. Although the Constitution served as a foundation for the Constitution, there are major, fundamental differences between them. They differ basically in approach. Both constitutions define and articulate democratic political rights and duties, but the Constitution goes on to include economic, social, and cultural rights. The Constitution called for a politically neutral federal government, a federal government that would be passive in relation to economic and social matters and a federal government that respected the status quo. The Constitution, on the other hand, calls for a federal government that has a moral obligation to take an active role in promoting the social, economic, and cultural well-being of the people. The Federal Constitution is the most important political document in Mexico. It is the source and origin for all Mexican law. The Mexican Constitution calls for a "federal, democratic, representative Republic composed of free and sovereign States. Mexico City, the national capital, is located in the Federal District. There is a centralized federal government, and individual state governments and a Federal

District government. The Mexican Constitution is based on seven basic principles: It is seen as an instrument to be used to bring about social change. The government is very active in the national economy and promotes change through ownership, regulations and legislation. It is estimated that in almost 97 percent of the arable land in Mexico was in the hands of no more than 1, families, while 2 percent belonged to small land holders, and 1 percent belonged to municipalities. The first paragraph of Article 27 gives the nation original ownership "of the lands and waters within the boundaries of the national territory. Article 27, Section II contains clauses restricting real property ownership by religious organizations. Religious organizations cannot "acquire, hold, or administer real property or mortgages there on; such property held at present either directly or through an intermediary shall revert to the Nation. Section II of Article 27 also restricts the real property that private and public charitable institutions and commercial stock companies may acquire. All that changed with the amendments to the Constitution and the reform of the Law of Religious Associations and Public Worship that started about One of the most important changes that came about with reforms was the granting of legal status to religious organizations. There are still some restrictions in place on the Church, such as limits on the amount of property the Church can own, and it is barred from political action and the area of education. Property rights of foreign citizens and foreign corporations are covered by Section I of Article In case of noncompliance by foreign citizens and foreign corporations, their property or mining concessions are forfeited to the nation. Foreign ownership of real property is further limited by the last sentence of Section 1. The section on property of this work gives more details. Constitutional Article 27 altered "the theory of the inviolability of private property" in the Mexican legal system. The "economic interest" of the people and the nation were viewed as paramount when compared against the rights to private property by the framers of the Constitution. But Paragraph 1 of Article 14 of the Constitution seems to conflict with Article Paragraph 1 of Article 14 reaffirms the sanctity of private property in the constitution. Article consists of 31 paragraphs. The article was written with the intent of incorporating "extensive constitutional protections for labor. Workers are entitled to compensation by their employers for injuries, death, or occupational diseases incurred as a result of their employment. There is no requirement to show fault or negligence "and contributory negligence is no defense. The third part concerns labor management relations. Workers are given the right to organize and bargain collectively. Workers also have the right to strike, with few reservations. Workers are entitled to profit sharing, and the percentage of profits workers are entitled to are set by a national committee. Finally, workers cannot be fired except for certain causes set out in statutes. Another article of the Constitution that is important is Article 49 which established the organization and division of the powers of the federal government. The federal government is divided into executive, legislative, and judicial branches. Each branch is independent of the other, and two or more of the powers shall never be united in one single person or corporation. The executive is empowered to assume sole control of the government in case of emergencies. The emergencies and procedures for the executive to assume sole control of the government are defined and articulated in Article Article 80 of the Constitution deals with the executive branch of government. The executive branch is the branch of government in Mexico with the most political power. The office of the presidency is "the most important political and constitutional office" in Mexico. The legislative branch of the federal government is comprised of the Senate and the Chamber of Deputies. There are two senators per state and one deputy for every , people in a state. Senators are elected by direct popular vote to a 6-year term. Deputies are elected to a 3-year term. Three-fourths of the deputies are elected by direct popular vote, with the remaining one-fourth selected in proportion to the votes received by each political party. Senators and deputies cannot be reelected for an immediately succeeding term. Regular legislative sessions begin on September 1 and must end by December 31 of each year, although a special session may be called. The special session must be called by the Permanent Committee. The Permanent Committee is composed of 15 deputies and 14 senators. The members of the Permanent Committee are elected by their respective chambers at the end of each regular legislative session. During adjournment the Permanent Committee remains to handle housekeeping chores. The Mexican Constitution empowers both the executive and the legislative branches to initiate legislation, but only the Chamber of Deputies can initiate bills concerning loans, taxes, imposts, and the recruitment of troops. However, in practice the executive branch initiates almost all legislation and certainly all legislation of any

consequence. The president has the power of the veto, which the legislative branch can override by a two-thirds vote in each Chamber. Once a piece of legislation is passed by the Senate and Chamber of Deputies, the bill is sent to the president for promulgation of the bill. Promulgation consists of the president "recognizing the authenticity and regularity of the legislation. The president also issues the "reglamento" for the new law-the rules and regulations that give effect to the more general provisions of the new law. The "reglamento" has the same force as the new law to which it refers. The Mexican Federal Judiciary is based on a three tier system similar to our own federal judiciary. There are circuit courts Tribunales de Circuito which are the federal appellate courts.

Chapter 3 : The United States Legal System â€“ Sources of American Law

The U.S. legal system belongs to the common law tradition and it shares its principles and the core of its legal norms with the other common law systems. It is a development of the old English common law, which Beryl Harold Levy, aptly described as "the cumulative rules about law as expressed and altered from case to case, from precedent to.

Summary of Basic American Legal Principles What follows are some of the fundamental principles that comprise the American legal system. Each of these is discussed in greater detail in this and other chapters of this book. They are summarized below in order to give the reader an overview of some of the basics of American common law. Impact of Precedentâ€"The Principle of Stare Decisis The defining principle of common law is the requirement that courts follow decisions of higher level courts within the same jurisdiction. It is from this legacy of stare decisis that a somewhat predictable, consistent body of law has emerged. Court Hierarchy Court level or hierarchy defines to a great degree the extent to which a decision by one court will have a binding effect on another court. The federal court system, for instance, is based on a three-tiered structure, in which the United States District Courts are the trial-level courts; the United States Court of Appeals is the first level court of appeal; and the United States Supreme Court is the final arbiter of the law. Although the term most often is used in connection with the jurisdiction of a court over particular matters, one may also speak of matters being within or beyond the jurisdiction of any other governmental entity. For instance, while there is only one Supreme Court, the court of appeals is divided into 13 circuits, and there are 94 district courts. The issue of whether authority is mandatory or persuasive relates directly to the application of stare decisis principles. Primary versus Secondary Authority The various sources of law may also be broken down into primary and secondary sources of law. Primary sources of law may be mandatory on a particular court, or they may be merely persuasive. Whether they are binding or persuasive will depend on various factors. Secondary authority is not itself law, and is never mandatory authority. A court may, however, look towards secondary sources of law for guidance as to how to resolve a particular issue. Secondary authority is also useful as a case finding tool and for general information about a particular issue. Dual Court Systems The American legal system is based on a system of federalism, or decentralization. Most states have court systems which mirror that of the federal court system. Interrelationship Among Various Sources of Law One of the more complex notions of American jurisprudence is the extent to which the various sources of law, from both the state and federal systems, interrelate with one another. There is a complex set of rules that defines the relative priority among various sources of law and between the state and federal systems. What Is Common Law? Civil law systems rely less on court precedent and more on codes, which explicitly provide rules of decision for many specific disputes. Cases are legal determinations based on a set of particular facts involving parties with a genuine interest in the controversy. In cases of pure decisional law, there is no applicable statute or constitutional provision that applies. Court interpretation may rely upon prior decisional law interpreting same or some other constitutional provision. Court interpretation may rely upon prior decisional law interpreting the same or similar statute. A higher level court opinion will in effect abrogate the lower level court opinion in the same case. Has it been followed? Applied in a specific way? The American Judicial System: A System Based on Advocacy and the Presence of Actual Controversy The American legal system is adversarial and is based on the premise that a real, live dispute involving parties with a genuine interest in its outcome will allow for the most vigorous legal debate of the issues, and that courts should not have the power to issue decisions unless they are in response to a genuine controversy. Threshold Issues Designed to Preclude Advisory Opinions Given the prohibition against advisory opinions by the federal courts, there are certain threshold prerequisites which must be satisfied before a federal court will hear a case. Issues surrounding the applicability of these prerequisites may also arise in state courts and on petitions for review of agency orders. The principal prerequisites to court review are the following: Standingâ€"The parties must have an actual, cognizable, usually pecuniary or proprietary, interest in the litigation. Finalityâ€"In the case of appeals or agency review, the action by the trial court or administrative body must be final and have a real impact on the parties. Exhaustionâ€"The parties must have exhausted any possible avenues for relief available in the trial

court or administrative body. Ripenessâ€”The dispute must present a current controversy which has immediate rather than anticipated or hypothetical effects on the parties. Mootnessâ€”The dispute must not have been resolved. Nor must the circumstances have changed in any way that renders the dispute no longer subject to controversy. No Political Questionsâ€”Courts will not involve themselves in nonjusticiable disputes that are between the other two branches of the federal government and are of a political nature. While these prerequisites are well-established, the courts tend to apply them in a pragmatic way and allow exceptions to these requirements when warranted by the facts. Courts Generally Confine Themselves to the Dispute Presented for Resolution As a jurisdictional matter, courts are supposed to restrict their holdings to the narrowest terms possible in resolving a dispute. This limitation relates to the principle of dictum, under which portions of the opinion not required for the resolution of the precise issues before the court on the facts presented by the parties are of diminished precedential value. Tendency to Avoid Constitutional Issues When Possible Federal courts also tend to avoid deciding constitutional issues when they are able to decide a case on a procedural, statutory, or some other ground. Institutional Roles in the American Legal System 1. In each of these roles, the lawyer will need to engage in factual investigation. With respect to each of these roles, the lawyer will do the following: Lawyer will work with opposing counsel to try to get a favorable resolution for the client with respect to a pending dispute. The parties may already be in litigation when they negotiate, or the parties, through their attorneys, may be negotiating a resolution to a dispute not yet in court. The art of negotiating involves many techniques individual to particular attorneys and the circumstances. The client always retains the right to accept or reject a settlement negotiated or offered by the opposing party. In litigating, the attorney will help pick a jury and participate in pretrial motions. At trial, the attorney will present evidence through testimony of witnesses, documents and perhaps demonstrative evidence e. The lawyer will also present an opening statement and closing argument, and will make and respond to evidentiary objections lodged by the opposing party. The lawyer may also make motions, sometimes supported by a memorandum in support thereof before the court, and propose to the court a set of jury instructions. Judge The judge is the final arbiter of the law. The judge is charged with the duty to state, as a positive matter, what the law is. The judge must also make evidentiary rulings, and charge the jury as to the law to be applied. In addition, the judge is to maintain order in the courtroom. Occasionally, when the parties agree, the judge may also act as trier of fact. Many state court judges are elected by popular vote. Jury The jury, a group of local citizens, is the fact-finder in most trials. The jury will receive instructions from the judge as to the law, and its members will assess the facts as they perceive them in light of the law as instructed, to return a verdict. Have questions about law school? Check out our Facebook page , follow us on Twitter or start networking with law students and lawyers on LexTalk.

Chapter 4 : Mexican Legal System | Daniel F. Cracchiolo Law Library

(KFB87) - explains the structure of the U.S. legal system, sources of U.S. law, and legal procedure, including a short history for context, and covers main law school course subject areas such as torts, property, and contract law; also includes a section on the effect of.

Download PDF version of guide for print I. Introduction This guide is targeted at international LLM students who might be unfamiliar with common law systems and the U. However, this guide is also useful to other individuals who are looking to attain a basic understanding of the U. Many of these books will cover topics in more than one of the subject listed above, but are grouped based on their primary focus. This guide is a curated selection of useful resources in the library. To find additional resources you can search the catalog by author for Legal Analysis Research and Writing International to find other recommended resources for LLM students. B87 â€" explains the structure of the U. F37 â€" discusses the culture of legal education and legal practice in the U. S, explains the U. H86 â€" teaches the legal system by following a real world case from beginning to end explaining the process and legal problems faced at various stages of a case. Outline of the U. Legal System Online â€" explains the history and organization of the U. Legal Language Translation dictionaries in a number of languages can be found in the Reference section starting with the call number K Reserves and Reference KF B53 â€" considered the most authoritative American legal dictionary. Cardiff Index to Legal Abbreviations http: H35 â€" discusses grammar and syntax in a legal context as well as common language in difference legal context; includes a useful section titled What to Avoid that explains common mistakes and issues. An Introduction to the U. Common Law System KF B76 â€" targeted at LLMs, this book discusses best practices for taking notes in class, outlining in preparation of finals, how to stress and culture shock, and reading and briefing cases; also covers writing, research, and other legal skills. David Hricik, Law School Basics Online â€"provides an overview of law school in chapter 2 and explains the structure of US legal education and how that structure is linked to the common law system of the US in chapter 5; remainder of the book has historical information, discusses legal reasoning, research, and writing, and has a section on Bluebooking. E â€" advises on many situation LLMs may face during law school such as financing their education, immigration issues, and options after graduation. Introduction to the Study and Practice of Law in a Nutshell, 7th ed. H4 â€" short review of the case analysis and legal argumentation using simplified faux cases; includes advice on studying and outlining for law school. The United States Legal System: An Introduction, 4th ed. J64 â€" introduces legal education, the legal profession, the legal system, and primary sources of the law. Office of Judges Programs, Admin. Office of the U. Courts Online â€" written for foreign legal practitioners, this booklet covers U. C54 â€" used as the research textbook, this is a condensed guide provides a good summary of U. F36 â€" explains the interplay between the judiciary and legislature in making US law chapter 3 and the way the law can evolve over time. H64 â€" brief guide to language in law and how it differs depending on the interaction, such as avoiding jargon during client communications. N43 - provides an initial comparison between civil law and common law, and then covers the research and writing process; includes charts and summaries for reference. S52 â€" the textbook used in the LLM legal research and writing course; advises on the structure of legal writing as well as tone, content, and editing. Ramsfield, Culture to Culture: A Guide to U. R â€" includes clear visual depictions of U. Foreign Language Resources More resources are forthcoming. Advanced Legal Skills Anne M. B87 â€" covers advanced skills such as litigation practice, client communication, professional responsibility, and negotiations. Fandl, Lost in Translation: Effective Legal Writing for the International Legal Community Reserves K94 F36 â€" covers contracts drafting and academic legal writing and provides exercises to practice legal writing skills.

Chapter 5 : List of national legal systems - Wikipedia

The legal system in the United States is an often-uneasy balance of national government and the governments of the fifty states. There are parallel systems of executive, legislative and judicial branches of government, and shared powers among the states and the federal governments.

Assess how the structure of the legal system frames research. In fact, the average lawyer spends much of her work time researching. This makes sense when one considers that American law as a field is too vast, too varied, and too detailed for any one lawyer to keep all of it solely by memory. Furthermore, the law is a living thing; it tends to change over time. Several things make legal research different from the types of research most law students performed prior to law school. First, rules of law tend to be both highly detailed and highly nuanced, so legal research often includes acts of interpretation even at the research stage. Second, the rules of law derive from a myriad of sources, many of which may be unfamiliar to students. Furthermore, because legal research is so important to the practice of law, the publication of legal materials has long been a profitable field. As such, there exists a long history of publishing the various sources of law. As part of the publishing history, legal sources developed their own information systems. In large part legal information systems predate the information systems most familiar to students, like the Dewey Decimal System or Library of Congress Classification. As such, the organization of legal materials tends to differ from that of other materials. Finally, the process of legal research itself tends to be different. In other fields, researchers often investigate ideas in the abstract. Because legal research differs so substantially from other types of research, the American Bar Association requires that law schools specifically instruct students in legal research. However, legal writing falls outside the scope of this text, which focuses on the research portion of legal practice. Throwing students into the deep end by having them read cases without explanation or context and then teasing understanding out of them via the Socratic Method remains the educational method of choice for most law classes. This text will not follow that method. In fact, this text seeks to do the opposite, namely to provide enough explanation and context to demystify the art of legal research. By knowing what each of the various sources of law is, and by knowing how the various types of authority interact with each other, law students will avoid being overwhelmed by the level of detail and nuance inherent in the law and will be able to research the law in a calm, efficient manner. Thus, this text will introduce and explain the major sources of American law one at a time. As it does so, it will provide insight into how publishers arrange the sources of law. Because legal publishers originally developed their methods of organization before the advent of electronics, each source of law will be initially introduced by referencing its print form i. Once students become familiar with the sources of lawâ€”and so will know for what they are looking when they researchâ€”the text will proceed to explain the processes of modern legal research, which mostly involves computer-assisted research. Before introducing the sources and processes involved in legal research, however, a few words must be said about the shape and peculiarities of the United States legal system. After all, it is the unique shape of our system that gives rise to the different sources of law. Furthermore, lawyers conduct research to solve legal problems, and those problems play out in the legal system. You have to know the rules to play the game. As anyone who follows American politics can tell you, federalism means different things to different people. However, the legal definition of a federal state is: A composite state in which the sovereignty of the entire state is divided between the central or federal government and the local governments of the several constituent states; a union of states in which the control of the external relations of all the member states has been surrendered to a central government so that the only state that exists for international purposes is the one formed by the union. Of course, federal states differ from one another in precisely how the central and local governments share law-making power. To understand how the federal and state governments share sovereignty in the U. The vast distances of America especially compared to the relatively smaller scale of England combined with the slow speeds of pre-Industrial Revolution travel to leave each colony effectively governing itself for large portions of the 17th and 18th centuries. The Articles of Confederation created the United States as a confederation, which resembles a federal state only with a weaker central government and

more independent local governments. In particular, the fledgling United States struggled economically. Enumerated Federal Power Taxation partially shared with states art. Enumerated Powers of the Federal Government 1. First, for any given territorial point in the United States, a researcher may need to look at two completely different sets of laws, as both federal law and state law will apply throughout the same territory. For example, federal law, and federal law only, clearly governs copyright 15 , a fact familiar to most lawyers off the tops of their heads. For instance, states typically define and punish crimes, such as robbery, committed inside their boundaries. Of course, American law comprises many more than two sets of law. While there is only one federal government, each of the fifty states produces its own set of law. Even 51 is too small a number to describe the sets of law contributing to the U. The District of Columbia possesses its own laws, as do other Federal territories. Because most of the sets of law present in the U. Federalism impacts legal research not only by providing multiple sets of laws for which researchers must account, but also by providing multiple fora for the settling of disputes about the applications of laws. In other words, in addition to worrying about the possibility of multiple sets of laws affecting their clients, lawyers need to be aware of the options presented by multiple, independent court systems operating over the same geographic area. Sometimes a client may be advantaged by trying a case in federal court as opposed to state court, or vice versa. This is known as choice-of-law. Choice-of-law matters to the legal researcher because some cases will involve applying bits of multiple sets of laws to the same facts. For example, a criminal defendant facing prosecution under state law may raise a federal constitutional defense. In such a case, the way the bits of law interact with each other changes depending upon which court system tries the case. Before we can cover more detail on the interaction between bits of law, however, we need to examine where those bits, or sources, of law originate by looking at the other key feature of the U. They did so in the hopes that the various branches would serve as checks and balances on each other and prevent the sort of tyranny that the former colonists rejected from the unified British government. The division of governmental authority into three branches of governmentâ€”legislative, executive, and judicialâ€”each with specified duties on which neither of the other branches can encroach; a constitutional doctrine of checks and balances designed to protect the people against tyranny. Constitution, each of the states in the United States adopted similar provisions in their own constitutions. Indeed, every state government in the U. American government, therefore, features three distinct branches at both the state and federal levels: In the process of governing, each of the branches contributes rules to the body of law of its jurisdiction. The legislative branch passes statutes, the judicial branch issues opinions, and the executive branch drafts regulations. However, a constitution underpins each of the other sources and serves as the ultimate source of law. Legal positivism is a theory of jurisprudence that essentially states that all law is human-made and is only valid in a state because people accept that it is. Hart, a twentieth century British legal philosopher, wrote perhaps the clearest articulation of legal positivism in his seminal work, The Concept of Law, which was quoted at the beginning of this chapter. Thus, in the United States, the U. Constitution serves as the rule of recognition for the federal government. Similarly, state constitutions serve as the rules of recognition for their respective state governments. Under positivism, constitutions derive their authority from the will and acceptance of the people. Thus, for the American legal researcher constitutions represent the ultimate source of law. Of course, our constitutions do flesh out the processes by which our governments may create other sources of law. We have already seen how constitutions separate the various American governments into three distinct branches. Logically enough, the constitutions also provide each branch a method by which it can create legal rules. The GPO also divides the Public Laws into their constituent parts by topic and fits them into a topically-organized publication of all federal laws in force called the United States Code. State legislatures follow the same process as the federal legislature, but the nomenclature varies. For instance, in Kentucky the legislature is called the General Assembly, which is comprised of the House of Representatives and the Senate. Bills that pass both houses become Acts, which researchers can find in chronological order in the Kentucky Acts or in the topically-organized Kentucky Revised Statutes. Meanwhile, bills that pass both houses of the Texas Legislature become General Laws published in the Texas General Laws before being folded into one of a number of different codes named for the topics they cover. Thus, while the processes resemble each other, each state may call its statutes by slightly different terms. As

such, they are the next most important source of law after constitutions and typically control legal problems over other sources of law. Statutes will be covered in greater detail in Chapter 2. This ambiguity occurs because generally legislatures write statutes in broad, abstract terms in order for the statute to cover as many scenarios as possible. Thus, abstract statutes typically require interpretation in order to apply them to specific controversies. Under Separation of Powers, the judicial branch takes on the role of the interpreter of laws. The judicial branch typically comprises several levels of courts, with a high court at the top, trial courts at the bottom, and one or more levels of intermediate appellate court in between, though the names of the various courts vary by jurisdiction. At the federal level, the United States Supreme Court acts as the high court, District Courts serve as the usual point of entry to the system, and Courts of Appeal also sometimes called Circuit Courts connect the two. As the casebook remains by and large the tool of choice for legal instruction in the United States, law students will tend to be most familiar with this source of law. Although subservient to the statutes they interpret, judicial opinions create their own rules of law through the force of precedent. Precedent works through the principle of stare decisis which is defined as: The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation. Following earlier decisions as precedents leads to greater consistency. Thus, if courts begin interpreting a statute in a certain way, society benefits if they continue to interpret the same statute in the same way. Sometimes judicial opinions create legal rules through precedent even absent a statute. This happens often when courts interpret constitutional sections. It also happens when courts apply legal rules that predate the widespread use of statutes. Thus, through the force of precedent, judicial opinions contribute legal rules to the various bodies of American law, both through statutory interpretation and common law. Indeed, many lawyers spend the majority of their research time on case research. Judicial opinions will be covered in more depth in Chapter 3. At the federal level the President of the United States acts as the chief executive, and at the state level the Governor fills the same role. A constitution usually charges the chief executive with enforcing or executing the laws of its jurisdiction.

Chapter 6 : US Case Law, Court Opinions & Decisions :: Justia

For these reasons, legal researchers should keep the structures of the U.S. Legal System firmly in mind as they research. Concluding Exercises for Chapter 1 Try your hand at putting legal authorities into hierarchical order!

The collection includes oral histories, biographical information, tables for each Congress indicating Committee assignments, voting statistics. The Supreme Court was organized in with judicial power to review cases arising under the Constitution, the Laws of the United States and treaties. Statutory authority for the Court can be found in 28 U. The Constitution gives Congress the authority to create additional federal courts. The hierarchical system, which evolved, is Courts of Appeal and lower level trial courts, Federal District Courts. The federal courts have the judicial responsibility to rule on the constitutionality of federal laws, to interpret and to apply the laws to resolve disputes. That means the federal courts decide cases interpreting the Constitution, all federal laws, federal regulations and rules, and controversies between states or between the United States and foreign governments. Guides to the US Federal Courts System Administrative Office of the US Courts maintains an educational outreach program that publishes materials to be used in learning about the federal courts. Federal Judicial Center is the research and education center for the federal judicial system. Includes information about federal judicial procedures, court operations and the history of the courts. Biographical database of all judges. Federal Trial and Appellate Courts The federal district courts are the trial courts, both civil and criminal, in the federal system. There are 94 federal district courts. Each district includes a bankruptcy court. In the federal court systems, these intermediate courts are the United States Courts of Appeal. The 94 federal district courts are organized into 12 regional appellate courts and the US Court of Appeals for the Federal Circuit. These courts hear appeals from the district courts and federal administrative agencies. The Court of Appeals for the Federal Circuit, located in Washington, has nationwide jurisdiction to hear appeals from specialized cases, like patent cases, as well as appeals for the Court of International Trade and Court of Federal Claims. GovInfoOpinions from selected US appellate, district, and bankruptcy courts. Search by full text, court, and docket number. Coverage varies by Court. Coverage varies, for appellate cases; district court cases Google Scholar Federal district, appellate, tax and bankruptcy decisions from ; US Supreme Court coverage, Public Library of Law Federal Courts of Appeals decisions retrievable by name, citation, docket number. Biographical Database for all federal judges appointed by the President, - Repositories of judicial papers noted. Cases heard by the Supreme Court usually involve questions about the Constitution or federal law. Cases may begin in the federal or state courts. The court has discretionary power to decline review of cases from lower courts by denying petitions of certiorari or dismissing appeals.

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The American legal system is adversarial and is based on the premise that a real, live dispute involving parties with a genuine interest in its outcome will allow for the most vigorous legal debate of the issues, and that courts should not have the power to issue decisions unless they are in response to a genuine controversy.

South Carolina courts also resolve disputes that serve as an independent source of legal rules called "common-law. These explanations, called holdings, are followed by future courts deciding similar cases. This concept is called precedent. The result is a body of written opinions known as case law. In that case, the trial court in Marion County held that S. Cases in South Carolina begin in trial level courts such as circuit, family, probate, or magistrate court. The South Carolina Supreme Court is the highest court in the state. It reviews decisions of the South Carolina Court of Appeals and certain appeals, such as death penalty decisions, directly from South Carolina circuit courts. Weight of Authority Weight of Authority, or whether or not a decision is mandatory binding or persuasive non-binding , is determined by the jurisdiction and heirarchy of the court that decided the case. Jurisdiction Jurisdiction is the power of a court over the parties and the subject matter of cases that come before it. For example, a South Carolina court has no power over Georgia citizens or the application of Georgia law and a South Carolina family court has no power to hear probate matters. A Georgia court may be persuaded by a decision from a South Carolina court, but it is never required to follow precedent from another jurisdiction. Hierarchy of Authority The effect of a prior court decision within a given jurisdiction depends on the level of court that decided it. The decision of an appellate court is binding precedent for all lower courts in its jurisdiction. However, a South Carolina trial court decision is not binding on either the appellate courts or other trial courts in South Carolina. Researchers can access county court records by contacting the Clerk of Court where the case was tried. State appellate court opinions are first printed individually as slip opinions. Next, the opinions are published in chronological order in state and regional reporters. As part of its National Reporter System, West publishes state appellate court opinions in seven regional reporters. It adds editorial enhancements to the official opinions, including headnotes, which are summaries of the legal issues contained in each opinion. Citing South Carolina Cases South Carolina cases are first published in advance sheets as slip opinions and then later in the official South Carolina Reports and the unofficial regional South Eastern Reporter. The proper citation for a South Carolina case always includes: The case name last names of the parties in italics or underlined; 2. The year the case was decided. For example, the Williams v. Smalls trespassing cows case should be cited as: It is not necessary to include S. Rule also recommends The Bluebook: Division for additional guidance.

Chapter 8 : UPDATE: A Guide to the U. S. Federal Legal System Web-based Public Accessible Sources -

Legal research is the process of identifying and retrieving information to support legal arguments and decisions. Finding relevant legal information can be challenging and may involve the use of electronic research tools as well as printed books and materials.

Chapter 9 : Introduction To U.S. Law & Methods I: The U.S. Legal System | @WashULaw

Case law (common law) is the root of our legal system and is what separates ours from the legal systems in most of the rest of the world. It is the law produced by our appellate courts, in the form of opinions that announce the judgment of the court resolving a particular issue of the application of law.