What is Case Law?

Though a case, as defined, is the action or controversy itself, the term is also commonly used to refer to federal and state appellate level opinions or decisions, written explanations of rulings on controversies between parties. The system of cases with legal precedent is case law or common law.

Why Case Law Matters

• Courts interpret statutes
• System of Checks & Balances
• Doctrine of Judicial Precedent
Jurisdiction: Federal v. State

Federal questions:
• Governed by the US Constitution
• Governed by US Statute or common law

State law questions
• Issues not preempted by federal law.

Sometimes the issues are so closely entangled, that a court will have to hear issues traditionally not within its province.

Court Structure

By LEVEL
• Trial Court
• Intermediate Appellate Court
• Highest Court (often called Supreme Court)

JURISDICTIONAL Considerations
• Physical location
• State v. Federal
• Subject matter addressed
• Parties subject to judgment
• Amount in controversy

These will affect how, and even whether, you will find the court’s decisions.

Federal Court Structure

State v. Federal Jurisdiction:
http://www.uscourts.gov/outreach/resources/comparingcts.gif

Federal Court Structure
http://www.uscourts.gov/outreach/structure.jpg

Path to the Supreme Court
http://www.uscourts.gov/outreach/resources/pathsupremect.gif
State Court Structure

Generally much like the federal structure
• Court of First Impression – Trial Court
• Intermediate Level Courts
• State’s Highest Court
• National Center for State Courts

Publication of opinions

• What gets included in a reporter?
• What does “unpublished” mean?
• Timing of publication
  • Slip Opinion - many courts don’t issue these in print anymore
  • Advanced Sheet
  • Bound Reporter

Where Cases are Found (Federal)

• U.S. Supreme Court
  • U.S. Reports (official)
  • Supreme Court Reporter (West)
  • Lawyer’s Edition (Lexis)
• General Federal Courts
  • Fed = Federal Reporter = Appellate
  • Fed Supp = District (since 1932)
  • Fed App – unpublished decisions
  • Historical Fed Cases
• Specialized reporters: bankruptcy, military, federal rules
Federal Circuit Courts

From the US Courts website:
http://www.uscourts.gov

Geographic Boundaries

Where Cases are Found (State)

State Law Reporters
- State’s own official reporters (sometimes)
- West’s Regional Reporters
- How to know?

Regional Reporter System

West’s National Reporter System

West’s National Reporter System is a set of reporters that studies the US States and the District of Columbia and covers regions Atlantic, North, North Central, South Central, Southwest, Mountain, California, and the District of Columbia. The Regional Reporter covers the appellate courts of all the States and the District of Columbia. The Federal Reporter published by West are also part of the National Reporter System.

http://www.paralegalwestlaw.com

Interactive Map
Anatomy of a Case

- **Parties** – who is involved
- **Citation** – the case “address”
- **Docket No.** – how the courts keep track
- **Dates** – dates of argument and decision
- **Summary** - Includes holding, facts, headnotes (if any)
- **Author** – which judge wrote for the court
- **Attorney names**
- **Opinion(s)** – be careful of alt opinions & dicta
- **Disposition** – was the judgment reversed, remanded, affirmed?

Anatomy in a print case

- **Citation** Includes:
  - Party names
  - Docket No.
  - Court Name
  - Date of decision

- **Summary**
  - Includes the court’s disposition
  - Be mindful of its origin

- **Headnotes**
- **Attorneys**

Anatomy con’t

- **Writing Judge**
  - If this were a court w/ multiple judge review, the others would be noted.

- **Discussion**
  - The analysis here matches the headnotes numbered 1 & 2
Anatomy of an Online Case

The electronic version has the disposition up front.
A Note About Strategy – Print v. Electronic

If you have to decide where to use electronic resources, opt for case law, but you must work on your skills.

- Wexis is inclusive
- Don’t have the context issue as with statutes
- Often the first to go when there are cuts
- Enhancements make electronic sources easy to use
  - Headnotes
  - Summaries
  - Specialty databases

Case Finding Strategies

- Known citation
- “One Good Case”
- Segment & Field Searching
  Secondary sources and practice materials
- Full-Text Searching
  Remember, this is the least effective means of finding good case law.

Known Citation

[Image of a citation search screen]
Find from the opening page

Other “Find” options, including a link to “Find & Print”

“One Good Case” Method

Locate a case that is really on point and use it to find other cases factually similar to yours. How do you do it?

• Ask the assigning attorney if there is a case that illustrates the issue
• Look at the annotations to a relevant statute or regulation
• Use a secondary resource
“One Good Case” Method

Once you have your case:

• Update it: Shepard’s or KeyCite
• Check the TOA for earlier cases
• Use other Wexis tools to find similar cases

Say this is your “Good Case”

Full History – all decisions with a direct impact upon the case in question
This includes prior and subsequent decisions in the same law suit.

Citing References – all cases that mention this case

Flag – The indicates there are cases that negatively impact your case.
Citing References Report

Depth of treatment start indicate the extent of discussion of your case in the citing case.

Quotation marks mean that there is a direct quote from Roe in this case.

This tells us there is discussion of headnotes 10, 14 & 15 as denoted in the West version of the case in the citing case.
This legend is on the KeyCite® page

• **Headnote** – only view citations to cases on selected issues

• **Locate** – enter search terms to view cases with specified facts

• **Jurisdiction** – just look at the case law in your jurisdiction

• **Document Type** – only looking for briefs or articles?

• **Depth of Treatment** – find cases that give a thorough analysis

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You can control what is included in your KeyCite® report by selecting your own parameters.
Or limit using KeyCite® Notes.

If this is the only issue of interest, clicking here will limit the citations you find to this single headnote.

Lexis Shepard's®
Only includes citations to associated cases and negative treatment. Answers the question: Is it still good law?

This legend is available at the bottom of each Shepard's page.

Note that the colored indicators in Lexis don't have the same meaning as those in Westlaw. In Westlaw, Roe gets a yellow flag, which indicates the case has some negative treatment but not been overruled. The same case gets the stop sign in Lexis, which means, negative treatment is indicated.
3921 Total cases! You can limit the number of cases you have to review in Lexis too!

Other ways to find more cases in Lexis
More Like…

• More like selected text:
  Highlight the text of interest and the system will do a natural language search of that text.

• More like this headnote:
  Allows you to find cases that closely match the language of a particular LexisNexis® Headnote. Does a natural language search of the text of the headnote.

Getting the best of the information you have

Your buddy worked on a case you’d like to see
• Topic: Tenancy by the entireties
• Attorney on the case: Thomas Bryant
• Decided in 2005
• He’s practicing in SC

Segment & Field Searching

Always start by selecting the most narrow database possible.
Westlaw calls its “segments,” “fields” but it works the same way.
Some things to remember about case law.

Don’t Use an Overinclusive Database

Beware of “ALL”
Unreported Cases

Electronic access has raised the issue of the proper use, if any, of unreported cases. These are traditionally cases that the court did not intend to serve as judicial precedent. Access, however, has raised controversy.

Look out for:
- 185 Fed. Appx. 716
- 2006 U.S. App. LEXIS 28127
- 2007 WL 465219

Free Resources

- Supreme Court Website: http://www.supremecourtus.gov/
- Legal Information Institute: http://www.law.cornell.edu/
- ALT-Law: http://altlaw.org/
- LexisONE: http://www.lexisone.com/

Caveats: 1) Because case law does not “expire” and many resources do not include older cases, free resources will not always be the best route for finding case law. 2) Not all online cases are authenticated or official.

Low Cost Alternatives

Case Finding
- LoisLaw: http://www.loislaw.com
- VersusLaw: http://www.versuslaw.com/
- Case Maker: Supplied as part of some bar association dues: http://www.ncbar.org/casemaker/index.aspx
- FastCase: https://www.fastcase.com/Corporate/Home.aspx

Updating
Shepard’s by Credit Card

Westlaw by Credit Card
http://creditcard.westlaw.com/welcome/frameless/default.wl
Briefs & Other Filings

Compiled Records & Briefs

- Supreme Court
- Microfiche
- Landmark Briefs & Arguments
- Fourth Circuit
- Microfilm – 1983-present
- LSC – 1891-1976
- UNC has an online index
- NC State Courts – we have Ct. of App & Supreme Court: check the catalog or research guide for format available for the date you need

Other Court Documents

- Many are now available electronically – Try Westlaw first
- For S.Ct, try their web site or your local library’s microfiche collection
- PACER, the federal court’s document service, has increasingly more documents, but no court’s docs are complete
- Some courts are more likely to have docs bankruptcy for example
- Transcripts now available: [http://www.uscourts.gov/Press_Releases/judconf091807.html](http://www.uscourts.gov/Press_Releases/judconf091807.html)
- publicresource.org now makes PACER docs others purchased available: [http://dockets.justia.com/](http://dockets.justia.com/)
- It never hurts to ask – call up counsel of record

Questions
## Upcoming Research Refreshers

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<tr>
<td>Thursday 3/26</td>
<td>Regulations &amp; Administrative Law Materials</td>
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<tr>
<td>Friday 3/27</td>
<td>Researching Business &amp; Company Information</td>
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<td>Monday 3/30</td>
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<td>Attorney's Guide to Health and Medical Research</td>
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<tr>
<td>Friday 4/3</td>
<td>Putting it All Together: Taking a Research Assignment from Start to Finish</td>
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All classes take place from 12:15-1:15 in the Fite Room.