## Research Refresher

Have you already forgotten everything you learned in LARW? Before you start that summer job, join the reference librarians for a series of lunchtime research workshops. These Research Refreshers will review techniques for locating key legal resources in both print and electronic formats.

All classes will be held from 12:15-1:15 p.m. in Room 4000 (Braxton Craven seminar classroom). Desserts and drinks will be provided on a first-come, first-served basis. Attendees are encouraged to bring a lunch.

<table>
<thead>
<tr>
<th>Day</th>
<th>Date</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday</td>
<td>2/26</td>
<td>Cases (Including Shepard's/KeyCite)</td>
</tr>
<tr>
<td>Thursday</td>
<td>3/29</td>
<td>Statutes &amp; Legislative History</td>
</tr>
<tr>
<td>Monday</td>
<td>4/2</td>
<td>Regulations &amp; Administrative Materials</td>
</tr>
<tr>
<td>Tuesday</td>
<td>4/3</td>
<td>Practice Materials &amp; Secondary Sources</td>
</tr>
<tr>
<td>Thursday</td>
<td>4/9</td>
<td>Peer-Reviewed Literature &amp; Legal News</td>
</tr>
</tbody>
</table>

### Get to Know

#### Legal Research Treatises

Your LARW textbooks were just the tip of the iceberg—there are a number of great research treatises that can assist you in locating legal information. A subject keyword search of the Duke Libraries catalog (http://catalog.library.duke.edu) for legal research United States will retrieve classic research texts like Noma Cohen’s How to Find the Law (5th ed., Reserve). Although this handbook was last published in 1989, it remains the gold standard for historical legal research techniques. It is updated, at least in part, by the Robert Berring/Elizabeth Edinger textbook Finding the Law (12th ed., Reserve), which distills many of the topics in How to Find the Law and also includes discussion on the use of more recent electronic resources.

For more in-depth treatment of advanced legal research topics, you may wish to consult Specialized Legal Research (Law Reference Desk, E241, 5544), a handbook.
DON'T PANIC!

You know more than you think you do.
UNDERSTAND YOUR ASSIGNMENT

- Facts
- Resources
- Time Frame
- Result
MAKE FRIENDS WITH YOUR FIRM/COURT LIBRARIAN

- Make sure to attend the library orientation.

- Ask about in-house databases and newsletters or other practitioner-oriented materials on your topic.

- Don’t be afraid to ask questions (even “stupid” ones).
STEP 1: ANALYZE THE FACTS

- Who is involved?
- What is involved?
- When did the important events occur?
- Where did the important events happen?
- Why did people act as they did?
STEP 2: FRAME THE ISSUE

- PRELIMINARY ANALYSIS
  - Inter-relationship between the legal theory and the facts (who, what, when, where, why)
  - Relief the client is seeking
  - Procedure

- MAKE AN OUTLINE
STEP 3: MAKE A RESEARCH PLAN

- How much time?
- Which resources?
- Terms of art?
- Search queries?
STEP 4: START WITH SECONDARY SOURCES

- law review articles
- encyclopedias
- treatises
- nutshells
- hornbooks
- ALR annotations
STEP 5: FIND PRIMARY MATERIALS

- Use two independent methods to find statutes, regulations and cases.
- Always update statutes, regulations and cases to make sure they are still good law!
WHICH SOURCE IS BEST?

- **Secondary sources** give you a coherent picture of the law, but may not be comprehensive.

- **Digests, annotated codes, keyword searches** are more exhaustive, but don’t evaluate the material.

- **West topic/key number searches** are more efficient for finding cases by issue than by fact pattern.

- **Keyword searches online** are good for finding cases by fact pattern, but it can be hard to find cases on procedural issues, and they are not always accurate or complete.
LEARN TO SEARCH EFFECTIVELY

- Make sure to ask if you may use Lexis or Westlaw for a particular project.
- Before you go online get some background knowledge of your topic and determine what your search will be.
- Search in the smallest database possible.
PRICING ARRANGEMENTS

- **Traditional Pricing Plans** – These plans allow you to choose between transactional and hourly pricing for each Westlaw® session. This flexibility allows you to choose the most efficient pricing method for the task you are performing. Database charges are based on your subscription plan.
- **WestlawPRO® Plans** – These plans are designed for small firms or solo practitioners. They are flat-rate agreements allowing access to materials from a specific state or practice area.
- **Special Offers** – These arrangements include access to specific databases for a fixed monthly fee.
- **Government Agency Plans** – These plans have their own special pricing arrangements.
- **Federal and State Court Plans** – These plans have their own special pricing arrangements.

CHOOSING A PRICING METHOD

Use transactional pricing if
- you want to read retrieved documents online
- you intend to retrieve many documents with one search
- you are performing multiple tasks with other software

Use hourly pricing if
- you want to retrieve a list of documents for later review
- you intend to research an issue from many angles
- you need to run multiple searches in a database
- you plan to retrieve many documents by citation

TRANSACTIONAL PRICING

Plan 1 Subscription

- No connect time or communications charges

Database charges – per search
- Federal Case Law (ALLFEDS) $70
- Journals and Law Reviews (JLR) $70
- Individual State Cases (XX-CS) $36
- The Wall Street Journal (WSJ) $14

Find service – per search $5

Nonchargeable transactions
- Locate requests
- Key Number Service
- Westlaw Directory
- Scope and IDENT
- Documents in Sequence

Citator service charges – per search
- (no printing charges)
- KeyCite® $3.75

HOURLY PRICING

Plan 1 Subscription

- Connect time and communications charges – $0.80 per minute

Database charges – per minute
- Federal Case Law (ALLFEDS) $8.42
- Journals and Law Reviews (JLR) $6.58
- Individual State Cases (XX-CS) $4.33
- The Wall Street Journal (WSJ) $4.33

Find service – per minute $4.33

Citator service charges – per minute
- (no printing charges)
- KeyCite® $4.33
The Internet is most useful for finding recent documents and information that’s likely to be on a specific site.

The Internet can be hard to search, and web sites must be evaluated for reliability.

“On the Internet, nobody knows you’re a dog.”
Law Library

Welcome to the Duke Law Library website. Duke is ranked among the finest academic law libraries in the United States and offers its users the resources of an outstanding collection of legal materials, an elegant modern study environment, and direct access to a variety of sources of electronic legal information. More about the Law Library

D.U.L.L. News

- Headline: Research Refresher Workshop series
- Research Tip: LexisNexis password extensions

Services & Forms

- Circulation Services
- Exams on File
- Faculty Services
- Interlibrary Loan
  - Book/Article Request Form
  - Frequently Asked Questions
- Missing Item Report Form
- Library Suggestion Box

Research Help

- Ask a Librarian
- Duke Libraries Catalog
  - Legal Databases & Links
- More Research Databases
- Online Full-Text Journals
- Research Guides

Quicklinks

http://www.law.duke.edu/lib/resources
### Legal Databases & Links

<table>
<thead>
<tr>
<th>Law Databases</th>
<th>Finding Articles</th>
<th>Legal Links</th>
<th>Law Portals</th>
<th>General Research</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beck Online</td>
<td>Citation Linker</td>
<td>North Carolina Law</td>
<td>Cornell's Legal Information Institute</td>
<td>Catalog</td>
</tr>
<tr>
<td>BNA Federal Regulatory Resources</td>
<td>Current Index to Legal Periodicals</td>
<td>Foreign &amp; International Law</td>
<td>FindLaw</td>
<td>Duke Libraries</td>
</tr>
<tr>
<td>CALI</td>
<td>Hein-Online</td>
<td>Intellectual Property Law</td>
<td>Guide to Online Law</td>
<td></td>
</tr>
<tr>
<td>CCH Business &amp; Finance Library</td>
<td>Index to Foreign Legal Periodicals</td>
<td>Internet Legal Resource</td>
<td>Guide to Online Law</td>
<td></td>
</tr>
<tr>
<td>CCH Medicare &amp; Medicaid Guide</td>
<td>Index to Legal Periodicals</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CCH Tax Research Network</td>
<td>Index to Legal Periodicals Retro</td>
<td>Jurist Novis Law Blog Links</td>
<td>Jurist</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Legal &amp; Local News</td>
<td>Law.com</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Highlighted:** Federal Law
UNITED STATES CODE

- [Official U.S. Code](#) - 2000 edition and annual supplements offer a variety of search options. Prior versions of the U.S.C. are also linked to this site.
- [Cornell Legal Information Institute's hypertext version of U.S.C.](#) - Search by citation, by popular name, keyword and Boolean operators and several other methods. Cross references are in hypertext. Once you find a code section, browse backwards and forwards in numerical order.
- [Law Revision Counsel U.S.C.](#) - Complete chapters can easily be downloaded here.

BILLS

- [Thomas](#) full text bills from 1989-
  - Browse by topic, popular name, bill number or search by keyword and bill number.
  - Separate files for each Congress. Hypertext links to committee reports and Congressional Record.
- [Bill Status for 109th Congress](#) search by subject, bill number, sponsor, stage of legislation or committee.
- [GPO Access](#) search bills for 103rd - current Congresses. To browse bills by title see
Internet Research

Download PDF version of guide for print

I. General Legal Research Sites

There are many free legal research sites on the Internet. The sites described below are generally considered to be some of the best for legal research. Nearly all of these sources are free but a few are only available to you through Duke’s subscription or require an individual subscription.


- LexisONE (<a href="http://www.lexisone.com">http://www.lexisone.com</a>) Legal information from Lexis for free but requires registration. Geared towards small firms but anyone can register. Its Legal Web Site Directory provides links to more than 20,000 law-related Web sites that were selected for their relevancy by legal practitioners. Access to many legal forms including about 8,000 that are free. Another feature is the "Loop" which is an online discussion group for lawyers.

- Internet Legal Research Guide (<a href="http://www.ilrg.com">http://www.ilrg.com</a>) Comprehensive index of more than 4000 websites with an emphasis on United States material. However, it provides access to an extensive collection of legal material from...
NO LUCK?

- Ask if there are other sources you should look at.
- Make sure you understand the question.
- “10 minute rule”
WHEN AM I DONE?

- deadline/budget
- review your assignment and research plan
- look in the really important places (secondary sources, annotated code(s), 2 case finding methods)
- update primary materials
- analyze the most recent documents
- “closure”
1. **Under what circumstances can a successor corporation be held liable for products of its predecessor in a products liability case?**

- **When you’re not an expert, start with secondary sources to get an overview of the topic and cites to cases/statutes:**
  - *Nutshells*
  - encyclopedias (*AmJur* [Lexis & Westlaw], *CJS* [Westlaw])
  - *ALR* annotations [Lexis & Westlaw]
  - books/articles
1. 63 Am. Jur. 2d Products Liability § 116


... American Jurisprudence, Second Edition Products Liability Kimberly Castelaz, J.D., Paul Clemente, J.D., Laura Dietz, J.D., Marcella Hines, J.D., Tammy Hinson, J.D., Richard Kaye, J.D., Cheryl Laing...

...A.L.R. Library Liability of Successor Corporation for Injury or Damage Caused by Product Issued by Predecessor, Based on "Product Line" Successor Liability. 18 A.L.R.6th 629 The general rule of successor liability provides that a corporation which acquires all or part of the assets of another corporation does not acquire the liabilities...

...the traditional corporate law approach have examined the nature and consequences of an asset acquisition in order to determine whether successor liability can be imposed upon the purchasing corporation under one or more of the exceptions to the general rule of nonliability...

2. 63 Am. Jur. 2d Products Liability § 117

liability of Successor Corporation for Injury or Damage Caused by Product Issued by Predecessor, Based on Successor's Independent Duty to Warn Third Party of Danger or Defect

David J. Marchitelli, J.D.

92 A.L.R.5th 227

SUMMARY:

Though it is a general rule that a corporation is not liable for damages caused by products issued by its predecessor, successor corporations have been charged with liability under certain circumstances. A distinct theory of successor liability, namely the successor's independent duty to warn of the defective or dangerous condition of products issued by its predecessor, is based largely on the relationship that the successor established with the customers of the predecessor company, rather than on the relationship between successor and predecessor. For example, in the case of Foster v. Cona-Blanchard Mach. Co., 450 Mich. 696, 597 N.W.2d 506, Prod. Liab. Rep. (CCH) P 15601, 92 A.L.R.5th 707 (1999), rehe'd, 461 Mich. 1205, 602 N.W.2d 576 (1999), while finding no liability on the part of a successor corporation, the court recognized that a successor may be liable for failing to warn of dangers associated with use of products issued by its predecessor if the successor had established a special relationship with the owner or user of the product, and if the successor has actual or constructive knowledge of the defective or dangerous condition of the product. This annotation collects and analyzes the cases in which the courts have determined if successor corporations had such an independent duty to warn of the defective or dangerous condition of products issued by their predecessors.

JURISDICTIONAL TABLE OF STATUTES AND CASES
Results for Advanced Search: (ke (products liability)) And (ke (successor))

Academic Journals | Magazines | Reference | News | Multimedia | Expand/Limit

Sort by: Publication Date

1. **Successor liability law in products liability actions: a 50-state survey.** Jeffrey Zager and David L. Johnson.  
   *For the Defense* 47.12 (Dec 2005): p63(6).

2. **Product line continuity and successor corporation liability.** Jerry J. Phillips.  
2. HOW DO YOU FIND THE CITE FOR *INGRAHAM v. WRIGHT*?

- **Use the features of Lexis & Westlaw**
  - **Westlaw**: FIND or “field” search
  - **Lexis**: GET A DOCUMENT or “segment” search

- “Table of Cases” in print digest

- Google
SEGMENT/FIELD SEARCH
Get by Party Name

If you know one party, use the first box. ingraham v. wright

Party Party

Jurisdiction: Coverage Dates

- Federal and State Courts: All Federal & State Courts, Combined
- Combined Federal Courts: All Federal Courts
- US Supreme Court
- US Courts of Appeals: All US Courts of Appeals
- US District Courts: All District Courts
- US Special Courts: US Court of Federal Claims
- State Courts: All State Courts, Combined
- Canadian Cases: All Canadian Cases

Optional: Restrict by Date

- No Date Restrictions
- From To

Search
2. HOW DO YOU FIND MORE CASES THAT DEAL WITH THE SAME ISSUE AS INGRAHAM v. WRIGHT?

- Use terminology from a case to do key word searching
- Look at cases cited in the case
- Shepardize of KeyCite the case
- **Use the features of Lexis & Westlaw!!!**
  - **Westlaw**: Topic/key number search using headnotes from your case
  - **Lexis**: “More like this” / “Headnotes - Core Concepts” / “Core Terms”
Ingraham v. Wright
430 U.S. 651, 97 S.Ct. 1401
April 19, 1977 (Approx. 29 pages)

Florida scheme for imposition of corporal punishment in public schools, whereby teacher and principal must exercise prudence and restraint when they decide that corporal punishment is necessary for disciplinary purposes and, if punishment is later found to be excessive, they may be held liable in damages or be subject to criminal penalties, considered in light of openness of school environment, afforded significant protection against unjustified corporal punishment of school children and comported with requirements of due process. U.S.C.A, Const. Amend. 14.

[8] KeyCite Notes

[92] Constitutional Law
[92k318] Due Process of Law
[92k318] Administrative Proceedings
[92k318] In General. Most Cited Cases

Where state has preserved what has always been the law of the land, case for administrative due process is foreclosed. Where state has not preserved what it always was, due process is not yet the law of the land. Where state acts, there is always some policy that is or may be violated and, by its nature, varies with every action.
PROCEDURAL POSTURE: Petitioner students sought review of the United States Court of Appeals for the Fifth Circuit’s decision that respondent school administrators use of corporal punishment did not constitute cruel and unusual punishment in violation of U.S. Const. amend. VIII and that petitioners were not entitled to prior notice and an opportunity to be heard under the Due Process Clause of U.S. Const. amend. XIV.

OVERVIEW: Petitioner students filed an action against respondent school administrators for violations of petitioners’ constitutional rights. Petitioners argued that the use of corporal punishment was cruel and unusual punishment and violated the Eighth Amendment. However, the United States Supreme Court held that U.S. Const. amend. VIII was intended to apply to criminal procedures and was not applicable to corporal punishment in public schools. In so holding, the court noted that public school teachers and administrators were privileged at common law to inflict only such corporal punishment as was reasonably necessary for the proper education and discipline of the child; any unishment going beyond the privilege could have resulted in both civil and criminal liability. As long as the schools were open to public scrutiny, the court saw no reason to believe that the common-law constraints would not effectively remedy and deter excess punishment. Furthermore, petitioners were not entitled to prior notice and an opportunity to be heard pursuant to the Due Process Clause of U.S. Const. amend. XIV.

OUTCOME: The United States Supreme Court, in affirming the lower court’s decision, held that the Eighth Amendment was inapplicable to corporal punishment imposed by public school administrators. Furthermore, the Due Process Clause did not require notice and a hearing prior to the imposition of corporal punishment in public schools, as the practice was authorized and limited by the common law.

ORE TERMS: corporal, Eighth Amendment, teacher, safeguard, public schools, common-law, cruel, discipline, disciplinary, inflicted, paddling, excessive, severe, prisoner, public school, deprivation, schoolchildren, punished, arrest, due process, cruel and unusual punishment, fourteenth amendment, infliction, prison, misconduct, inflict, school authorities, common law, suspension, moderate
Corporal punishment in public schools implicates a constitutionally protected liberty interest, but the traditional common-law remedies are fully adequate to afford due process. More Like This Headnote | Shepardize: Restrict By Headnote

Due process is required only when a decision of the State implicates an interest within the protection of U.S. Const. amend. XIV and to determine whether due process requirements apply in the first place, the court must look not to the "weight" but to the nature of the interest at stake. More Like This Headnote | Shepardize: Restrict By Headnote

Where school authorities, acting under color of state law, deliberately decide to punish a child for misconduct by restraining the child and inflicting appreciable physical pain, the court holds that Fourteenth Amendment liberty interests are implicated. More Like This Headnote | Shepardize: Restrict By Headnote
HEPARD'S SUMMARY  ♦ Hide Summary

Unrestricted Shepard's Summary

No subsequent appellate history. Prior history available.

Citing References:

- Cautionary Analyses: Distinguished (24), Not Followed (1)
- Positive Analyses: Followed (81)
- Neutral Analyses: Concurring Opinion (21), Dissenting Op. (60), Explained (28), Hamonized (1), Quest. Precendent (1)
- Other Sources: Law Reviews (953), Restatements (1), Secondary Sources (4), Statutes (12), Treatises (71), American Law Rpts/Lawyers' Edition Anons (8), Other Citations (1), Court Documents (11)

LexisNexis Headnotes: HN2 (44), HN3 (2), HN4 (431), HN5 (161), HN6 (496), HN7 (205), HN9 (352), HN9 (346), HN10 (152), HN11 (60), HN12 (189)

RIOR HISTORY (4 citing references)  ♦ Hide Prior History

Select for Delivery

3. Where would you look for citations to cases that say there has to be consideration to make a binding contract?

- **To find cases that define terms:**
  - *Words & Phrases* [Westlaw]

- **If you can't find a case:**
  - *Restatement of Contracts* [Lexis & Westlaw]
  - *Law Dictionary (Black's)* [Westlaw]
  - Major treatise (e.g., *Corbin on Contracts*) [Lexis & Westlaw both contain selected treatises]
Investment Properties of Asheville, Inc. v. Norburn
281 N.C. 191, 188 S.E.2d 342
May 10, 1972 (Approx. 5 pages)

It is well-settled law in this State that in order for a contract to be enforceable it must be supported by consideration. A mere promise, without more, is unenforceable. Scott v. Foppe, 247 N.C. 67, 100 S.E.2d 238 (1957); *196 Jordan v. Maynard, 231 N.C. 101, 56 S.E.2d 26 (1949); Stonestreet v. Southern Oil Co., 226 N.C. 261, 57 S.E.2d 675 (1946); Strong, N.C.Index 2d, Contracts s 4. As a general rule, consideration consists of some benefit or advantage to the promisor or some loss or detriment to the promisee. However, as stated by Chief Justice Stacy in Stonestreet v. Southern Oil Co., supra:

'... It has been held that 'there is a consideration if the promisee, in return for the promise, does anything legal which he is not bound to do, or refrains from doing anything which he has a right to do whether there is any actual loss or detriment to him or actual benefit to the promisor or not.' 17 C.J.S Contracts, s 74, p. 426; Spencer v. Byrum, 169 N.C. 119, 65 S.E. 216; Baskerterey Stores v. Public Indemnity Co., 204 N.C. 537, 168 S.E. 622; Grubb v. Ford Motor Co., 209 N.C. 88, 182 S.E. 730, and cases cited.'

It is not necessary that the promisor receive consideration or something of value himself in order to provide the legal consideration sufficient to support a contract. Forbearance to exercise legal rights is sufficient consideration for a promise given to secure such forbearance even though the forbearance is for a third person rather than that of the promisor. Myers v. Allsbrook, 229 N.C. 786, 51 S.E.2d 629 (1949). In a guaranty contract, a consideration moving directly to the
Look for a Source

Add/Edit Tabs

Legal

News & Business
Public Records
Find a Source

Legal > Secondary Legal > Restatements of the Law

Use checkboxes to select sources for searching across categories, pages, and tabs. Show Me...

Agency
Conflict of Laws
Contracts
Employment
Foreign Relations
Judgments
Law Governing Lawyers
Property
Restitution
Security
Suretyship & Guaranty
Torts
Trusts
Unfair Competition

Use checkboxes to select sources for searching across categories, pages, and tabs. Show Me...

* Category Id: 3002002
Restatement 2d, Contracts - Rule Sections

Search: Full-text of source documents

Chapter 1. Meaning of Terms

Chapter 2. Formation of Contracts -- Parties and Capacity

Chapter 3. Formation of Contracts -- Mutual Assent

Chapter 4. Formation of Contracts -- Consideration

Topic 1. The Requirement of Consideration

Section 71. Requirement of Exchange; Types of Exchange

Section 72. Exchange of Promise for Performance

Section 73. Performance of Legal Duty

Section 74. Settlement of Claims
71 Requirement of Exchange; Types of Exchange

1) To constitute consideration, a performance or a return promise must be bargained for.
2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.
3) The performance may consist of

a) an act other than a promise, or

b) a forbearance, or

c) the creation, modification, or destruction of a legal relation.

4) The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.

COMMENTS & ILLUSTRATIONS: Comment:

Other meanings of "consideration." The word "consideration" has often been used with meanings different from that given here. It is often...
Illustrations:

A offers to buy a book owned by B and to pay B $10 in exchange therefor. B accepts the offer and delivers the book to A. The transfer and delivery of the book constitute a performance and are consideration for A's promise. See Uniform Commercial Code §§ 2-106, 2-301. This is so even though A at the time he makes the offer secretly intends to pay B $10 whether or not he gets the book, or even though B at the time he accepts secretly intends not to collect the $10.

A receives a gift from B of a book worth $10. Subsequently A promises to pay B the value of the book. There is no consideration for A's promise. This is so even though B at the time he makes the gift secretly hopes that A will pay him for it. As to the enforcement of such promises, see § 86.

A promises to make a gift of $10 to B. In reliance on the promise B buys a book from C and promises to pay C $10 for it. There is no consideration for A's promise. As to the enforcement of such promises, see § 90.

A desires to make a binding promise to give $1000 to his son B. Being advised that a gratuitous promise is not binding, A writes out and signs false recital that B has sold him a car for $1000 and a promise to pay that amount. There is no consideration for A's promise.

A desires to make a binding promise to give $1000 to his son B. Being advised that a gratuitous promise is not binding, A offers to buy from B for $1000 a book worth less than $1.
BARGAIN THEORY OF CONSIDERATION

bargain theory of consideration. The theory that a promise or performance that is bargained for in exchange for a promise is consideration for the promise. • This theory underlies all bilateral contracts. See bilateral contract under CONTRACT. [Cases: Contracts c=50, C.J.S. Contracts § 87.]

"[C]lassical contract theory tended to associate the doctrine of consideration with the concept of bargain. The emphasis of classical law shifted away from actual benefits and detriments to the mutual promises which constitute a wholly executory contract. American lawyers developed from this trend a 'bargain theory of consideration' and similarly in English law a more modern basis for the doctrine of consideration was found by some lawyers in the notion that a contract is a bargain in which the consideration is the price of the bargain. Allied to this is the supposed rule that nothing can be treate as a consideration unless it is seen by the parties as the 'price' of the bargain." F.S. Atiyah, An Introduction to the Law of Contract 119 (3d ed. 1981).

© 2004 West, a Thomson business

Bryan A. Garner, Editor in Chief

END OF DOCUMENT
5.1 Meanings of the Terms "Consideration" and "Nudum Pactum"

The term "consideration" has been used in a number of different ways. In a broad sense, it has been used to cover all the reasons deemed sufficient to render a promise enforceable, in other words, "to express the legal conclusion that a promise is enforceable."¹ In a narrow sense, it has been used to denote one reason deemed sufficient for enforcement of promises: the bargained-for exchange.

For many years these uses coexisted with resulting confusion and potential for injustice. There was a danger of a court's concluding, without considering whether there may have been another reason for enforceability, that because there was no consideration in the narrow sense (bargained-for exchange) there was no consideration in the broad sense (basis for enforcement). The prior edition of this treatise, in § 109, warned against this danger: "In making use of [the term "consideration"], it is necessary to consider the purpose for which it is used and to make sure that justice is not being defeated by using it in accordance with some narrow and limited definition."

Furthermore, the use of a single word "consideration" in the broad sense to express the conclusion that a promise was enforceable may have fostered the misconception that there is a single doctrine by which enforceability of an informal promise can be deductively determined. Immense effort has been expended in a futile attempt to discover a specific and definite origin of such a doctrine.

Some of our most able and learned scholars have searched the past, looking for "origins" of the doctrine of consideration.² In the early history of English law, informal promises may not have been enforced at all. But one cannot dogmatically assert that they were not enforced. Records

²
4. Where do you look to see which states have laws that govern interest rates on consumer contracts, and to get cites for the statutes?

If your first reaction to a research assignment is: “Yikes, I don’t know where to begin!”

Your first step should be to talk to a librarian.
4. Where do you look to see which states have laws that govern interest rates on consumer contracts, and to get cites for the statutes?

- **National Survey of State Laws** [Westlaw: SURVEYS database]
- **Martindale-Hubbell Digest of State Laws** [Lexis: MARHUB;MHDIG]

Other Secondary Source:
- Subject compilations of state laws
- Law Review Articles
- Encyclopedias, ALR, and treatises
1. INTEREST RATES

Every state has very specific limits on the amount of interest that may be charged on consumer contracts, ranging anywhere from 5 to 15 percent. But because parties may always agree to interest rates that are above the legal limit, most consumer contracts include interest rates that are above that limit. Thus few states have limits on what can be expressly agreed to in a contract. For example, Alaska limits express contract terms to 5 percent over the legal rate, while the District of Columbia has the highest stated ceiling, at 24 percent. A number of states allow the limit to be pegged to the rate set by the Federal Reserve Board; most of these states have limits of 5 percent above the Federal Reserve. Potentially, these may be much higher than the District of Columbia’s 24 percent. Overall, it appears that the more rural the state, the lower the limits. Presumably, farmers are protected and are more secure with lower interest rates than citizens of generally urban states with larger economies. Usury is an unconscionable and exorbitant rate or amount of interest which exceeds those permitted by law. There is a great variety of statutory remedies for usury. A few states class usury as a crime and prescribe prison for violations of its usury laws. The majority of states provide for economic remedies such as forfeiture of all interest paid, recovery of double the usurious amount, payment of a fine, or making the contract unenforceable. Some states even specify that banks or savings and loans pay penalties. North Dakota has one of the more extreme usury penalties: it requires payment of all interest plus 25 percent of the principal. For the most part there are myriad exceptions to the legal interest rate, which may be tied to the character of the lender, borrower, loan amount, the nature of the contract, or the matter that is the subject of the contract. Effectively, legal interest rates are no more than general guidelines for all transactions rather than the specific limits placed on them. There are so many exceptions in many states that it is often necessary to find a different rate for every conceivable situation.
<table>
<thead>
<tr>
<th>State</th>
<th>Legal Maximum Rate of Interest</th>
<th>Usury Penalty</th>
<th>Judgments</th>
<th>Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALABAMA</td>
<td>If agreed upon in writing, up to 8% per year, otherwise 6% per year (§8-8-1)</td>
<td>Forfeiture of all interest and interest paid deducted from principal (§8-8-12)</td>
<td>Other than costs, dollar judgments bear interest from date of entry at 12%; judgment on contract action bears interest at rate in contract (§8-8-10)</td>
<td>Loans over $2000 (§8-8-5); debts under National Housing Act. Veterans’ Benefits acts (§8-8-6); industrial development boards and medical clinic boards (§11-54-97, 11-58-15); bonds issued by public or non-profit organizations (§8-8-7); public housing bonds, State Board of Education Securities (§§24-1-32; 16-3-28); public hospital corporations (§22-21-6)</td>
</tr>
<tr>
<td>ALASKA</td>
<td>Absent contract: 10.5%; express contract agreement: 5% over legal rate (§45.45.010)</td>
<td>One paying usurious interest may recover double amount thereof within 2 years (§45.45.030)</td>
<td>3% above 12th Federal Reserve District’s discount rate on January 2nd of year in which judgment is entered, unless contract action</td>
<td>Contract where principal amount exceeds $25,000 (§45.45.010)(b)</td>
</tr>
</tbody>
</table>
source: Find a Source > 6 Results

Terms: MARHUB;MHDIG (Edit Find)

Find a Source Results

egal > States Legal - U.S. > Combined States > Treatises & Analytical materials >
  - Martindale-Hubbell(R) Law Digest [MARHUB;MHDIG]

egal > Area of Law - By Topic > Homeland Security > Treatises & Analytical materials >
  - Martindale-Hubbell(R) Law Digest [MARHUB;MHDIG]

egal > Secondary Legal >
  - Martindale-Hubbell(R) Law Digest [MARHUB;MHDIG]

egal > Secondary Legal > Martindale-Hubbell(R) Law Directory

 egal > Public Records > People, Business & Asset Locators > Person Locator >
 Martindale-Hubbell Law Directory > Law Digests >
  - Martindale-Hubbell(R) Law Digest [MARHUB;MHDIG]

egal > Reference > Martindale-Hubbell(R) > Law Digests >
  - Martindale-Hubbell(R) Law Digest [MARHUB;MHDIG]

Key:
- Click the link next to these icons to see that folder’s contents.
- Click the link next to these icons to search within that source.
- Click the link next to these icons to access that source.

http://www.lexis.com/research/form/bool?_m=4eed1ca1759b6c8914dc0b033e8dc8496_cat=3002902&_src=142730.3002902&wchp=dGLzVzz-tSkAb
CATEGORY: BUSINESS REGULATION AND COMMERCE

OPIC: INTEREST

EXT: Legal rate in absence of written contract fixing rate 6 per annum. (8-8-1).

Maximum Rate. - Interest up to 8 per annum may be contracted for. (8-8-1). Interest that is prima facie usurious under §8-8-1 may be lawful under Consumer Credit Act, §§5-19-3. See topic Consumer Credit. Interest up to 5 per annum for entire period of loan may be computed in advance and added to principal even though loan is to be repaid in monthly or other installments. (8-8-2). Lender may charge if provided in contract: (a) Interest surcharge of not more than 6 of part of amount financed, which is not in excess of $2,000; (b) as alternative to other applicable interest limits, prime rate plus 2 ("prime rate" defined as average of prime rate charged by three largest banks in New York City at close of business three days prior to loan); and (c) on open-end credit, 1 3/4 per month on amounts under $750, and 1 1/2 per month on excess of any unpaid balance. (8-8-14). Any person, corporation, trust, partnership, or association, may agree to pay any rate of interest on loans of $2,000 or more, provided that no law relating to unconscionability in consumer transactions is violated. (8-8-5). State board of education and State institution where education part of program permitted to pay interest not exceeding 15 per annum on loans of $100,000 or more. (8-8-4). Debts under National Housing Act and acts providing veteran's benefits exempt from usury and interest restrictions. (8-8-6). Industrial development boards organized under §§11-54-80. et seq. and medical clinic boards organized under §§11-58-1. et seq. exempt from
OTHER SECONDARY SOURCES

- subject compilations of state laws
- law review articles
- encyclopedias, ALR
- treatises
5. How do you determine if there is an N.C. state statute that protects new car buyers?

- **Check a Secondary Source:**
  a state legal encyclopedia is a good place to start
FOR EDUCATIONAL USE ONLY

3 N.C. Index 4th Automobiles and Other Vehicles § 292

Strong's North Carolina Index 4th Database updated February 2007

Automobiles and Other Vehicles
Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc., Mary G. Leary, J.D and Leonard I. Reiser, J.D.

III. VEHICLE OWNERSHIP
C. Transfers Of Ownership
2. Warranties of Quality
a. Express Warranties

§ 292. Generally

West's Key Number Digest

West's Key Number Digest, Consumer Protection 9
§ 292. Generally
Approx. 3 pages

Natural background: As to manufacturers liability, generally, see Am. Jur. 2d, Products Liability §§ 83; as to warranty liability, generally, see Am. Jur. 2d, Products Liability §§ 659 to 884; as to express warranties, generally, see Am. Jur. 2d, Sales §§ 655 to 675.

Statutes:

The New Motor Vehicles Warranties Act[FN1] provides state and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.[FN2]

Express warranties for a new motor vehicle must remain in effect at least one year or 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties during the applicable period, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer, the manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to the express warranties, whether or not those repairs are made after the expiration of the applicable warranty period.[FN3]

Cases:

In order to recover a refund under the New Motor Vehicles Warranties Act, a lessee or purchaser must establish:[FN4]

(1) the terms of the manufacturer's express warranty;
(2) that the vehicle failed to conform to those terms in the warranty;
(3) that after a reasonable number of attempts to remedy that breach of the warranty; and


Forms


A.L.R. Library

Validity, Construction and Effect of State Motor Vehicle Warranty Legislation (Lemon Laws), 88 A.L.R. 5th 301.

5. How do you determine if there is an N.C. state statute that protects new car buyers?

- Search in a statute book or database.

- Annotated codes include research aids and summaries of cases decided under the statutes.
N.C.G.S.A. § 20-351

§ 20-351. Purpose


ed by Laws 1987, c. 385.

\[ REVIEW \text{ COMMENTARIES} \]


SEARCH REFERENCES

Library

ULP 5th 301, Validity, Construction and Effect of State Motor Vehicle Warranty Legislation (Lemon Laws).

Citation and Practice Aids

N.C.G.S.A. § 20-351

§ 20-351 Purpose

Approx. 1 page

ES OF DECISIONS

Construction and application 1

Construction and application

As consumer receives refund under lemon law, whether by request to manufacturer or through judicial action, consumer may not retain defective article. Buford v. General Motors Corp., 1994, 339 N.C. 396, 451 S.E.2d 293. Consumer Protection <= 30


licent of "Lemon Law," New Motor Vehicles Warranties Act, to lease executed prior to effective date of statute would be retroactive and inoper, even if no defects existed prior to enactment of statute; nothing indicated express or implied intent of Legislature for retroactive licent. Estridge v. Ford Motor Co., 1991, 401 S.E.2d 85, 101 N.C.App. 716, review denied 404 S.E.2d 867, 329 N.C. 267. Consumer Protection <= 1

 § 20-351, NC ST § 20-351

ent through S.L. 2006-264 (End) of the 2006 Regular Session
20-351. Purpose

This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties.

HISTORY: 1987, c. 385, s. 1.

NOTES:

EGAL PERIODICALS. --For note on North Carolina’s automobile warranty legislation, see 66 N.C.L. Rev. 1080 (1986).

ASE NOTES

LEGISLATIVE INTENT -- EFFECTIVE DATE. --The legislature did not express the intent that G.S. 20-351 to 351.10 be applied retroactively; nor was there any clear implication from the statute that the legislature intended to apply the statute retroactively. Instead, the legislature passed the statute in June of 1987 and made its intention clear that the statute become effective in October of 1987. Estridge v. Ford Motor Co., 101 C. App. 716, 401 S.E.2d 85 (1991), cert. denied, 329 N.C. 267, 404 S.E.2d 667 (1991).

CT IS INAPPLICABLE TO LEASES EXECUTED PRIOR TO EFFECTIVE DATE. --Plaintiff’s claim based on the New Motor Vehicles Warranties Act was properly dismissed even though no defects existed prior to the enactment of statute. Application of “Lemon Law” to lease executed prior to enactment would offer no benefit to plaintiff.
Search the public law and bill databases by key word or using the cite as a search query.

Use *Shepard’s* or *KeyCite*.

Check pocket parts (or pamphlets) & advance sheets for print code.
NC General Statutes

The Statutes on the North Carolina General Assembly web site are updated through the 2006 session.

BROWSE

- NC Statutes Table of Contents
- NC Statutes and Session Laws affected by ratified bills

LOOK-UP

Example: 17D-4

SEARCH?

- All Chapters
- enter search criteria
- Return Sections
- Search

Caveats

NOT OFFICIAL
While every effort was made to ensure the accuracy and completeness of the statutes available on the North Carolina General Assembly's web site, the North Carolina General Assembly will not be responsible for any errors or omissions which may occur in these sites. Please notify NCpedia for any irregularities in the statutes on this web site. NCpedia will relay the information to appropriate staff members of the North Carolina General Assembly to investigate the irregularities.

SERVICE
The North Carolina General Assembly offers access to the Statutes on the Internet as a service to the public. The Webmaster is unable to assist users of this service with legal questions. Additionally, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts from anyone except members of the North Carolina General Assembly. Therefore, to understand and protect
Article 15A
New Motor Vehicles Warranties Act.

0-351. Purpose.
This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties (1987, c. 385, s. 1.)

This document (also available in PDF and RTF formats) is not an official document. Please read the caveats on the main NC Statutes page for more information.