

# Legal Research

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## INTRODUCTION

Legal research is the investigation of information necessary to support legal decision-making. Although legal research is usually conducted by the judge and/or city attorney, it is helpful for clerks and court administrators to have an understanding of the principles behind legal research, the resources available, and the procedures to follow. For example, a judge may request that a clerk research whether a waiver for jury trial must be in writing or where in the law it states who has the authority to dismiss a case.

The clerk should bear in mind, however, that he or she should always consult the city attorney or a judge before adopting a policy or procedure. While court clerks may read and seek to understand the law, they must avoid the unauthorized practice of law for which they might be prosecuted or expose their courts to liability.

This study guide provides a summary of the necessary tools and approaches to legal research. Clerks should also review the glossary, which contains important information in the explanation of terms.

## PART 1 TYPES OF LAW

There are three types of law that prevail at the federal, state, and local levels of government in the United States: statutory law, case law, and administrative law. The three branches of government—legislative, judicial, and executive—create these three types of law.

The following sections discuss the three types of law and the entities that create the law. The chart below includes the branches of government, kind of laws created, and types of law assembled from each branch of government.

Government Entity	Kind of Law	Type of Law Assembled
Legislature	Statutory Law	Session laws (chronological by date of enactment of statute) Statutory codes (by subject)
Judiciary	Case Law	Case reporters (chronological by date of issuance of rules) Case digests (summaries arranged by subject)
Executive	Administrative Law	Administrative registers (chronological by date of issuance of rules) Administrative codes (by subject)

### A. Statutory Law

Statutes are defined as laws passed by Congress and the various state legislatures. The legislatures pass statutes, which are signed into law by the executive branch and are later put

into the federal code or pertinent state code. Statutory law also includes local ordinances, which are statutes passed by a county or city government on local issues not covered by federal or state laws. States cannot pass statutes contrary to federal law and municipalities cannot pass ordinances contrary to state statutes or federal law.

## **B. Case Law**

The United States has a legal system that is part of the common law tradition. Common law is the body of law that originated and was developed in England and spread to the colonies that England settled or controlled. Common law consisted of oral traditions derived from general customs, principles, and rules handed down over the years and reflected in the decisions of the courts. Historically, common law was unwritten law, as opposed to statutory law, which was written. During the formation of the United States, the colonists relied on common law to define what behaviors were criminal. But, as states began to take form, most states enacted statutes to cover most of the common law crimes.

Case law is based upon the idea of judicial precedent, the idea that previously decided cases are seen as examples, or authorities, for judges' decisions in later cases with similar questions of law. *Stare decisis*, a Latin phrase meaning to "stand on what has been decided," is the principle that the decision of a court is a binding authority on the court that issued the decision and on lower courts in the same jurisdiction for the disposition of factually similar cases.

A court's interpretation of a statute may also become a precedent that lower courts must follow in issuing their decisions. Under the doctrine of precedent, it is the statute as interpreted by the court that is applied in future cases. If a legislature disagrees with the way a court has interpreted a statute, the legislature must revise the statute or recommend a constitutional amendment to the voters.

In this manner, statutory law and common law become one, since courts must interpret statutory law. So, while statutory law provides the framework by which our judicial system operates, it coexists in a way that allows interpretation even of these laws and forms the basis of common law. In the legal system, there are gray areas where there is need for interpretation. A statute may appear to stand alone and speak for itself, but there will always be someone who will attempt to contest it and make a convincing argument.

The doctrine of precedent results in fairness because it encourages similar cases to be treated alike and leads to predictability and stability in the legal system. It also saves time and energy because it enables courts to use previous research and wisdom. The written opinions of courts are considered primary sources of authority and are usually the main object of legal research.

In order to fully understand jurisdiction and how precedent applies, it is necessary to first understand the hierarchy of courts (see chart on page 9-6). The American court system is hierarchical in organization and higher courts have authority over lower courts.

Trial courts are courts of original jurisdiction that make determinations of law and of fact, often with juries. Documents are prepared by the parties involved and are called pleadings (complaints, answers, interrogatories, etc.). Motions are filed before and during trial. Exhibits may be submitted into evidence during the trial and a record or transcript is made in trial courts of record. Trial courts issue judgments or decisions. On occasion, a trial court may

release a written opinion that is rarely published or made generally available to the public. In Texas, the trial courts include the municipal, justice, constitutional county, probate, county courts at law, and state district courts. On the federal level, the trial courts are the U.S. district courts.

Intermediate appellate courts (courts of appeal) have authority over lower courts in a specified geographical area or jurisdiction. Appellate courts generally do not review factual determinations made by lower courts, but do review claimed errors of law that are reflected in the record. Appellate courts accept written briefs (statements made by counsel arguing the case) and frequently hear oral arguments. In Texas, the intermediate courts of appeal may hear cases en banc (the entire court) or in a panel of judges.

The court of last resort, often called the Supreme Court, is the highest appellate court in a jurisdiction. In Texas, there is a bifurcated system: the Texas Court of Criminal Appeals, which hears criminal appeals on questions of state law; and the Texas Supreme Court, which hears appeals of civil matters involving state law. The U.S. Supreme Court is the court of last resort for cases involving federal law.

There are certain matters over which a state or federal court has exclusive jurisdiction and certain matters over which a state court has concurrent jurisdiction with federal courts

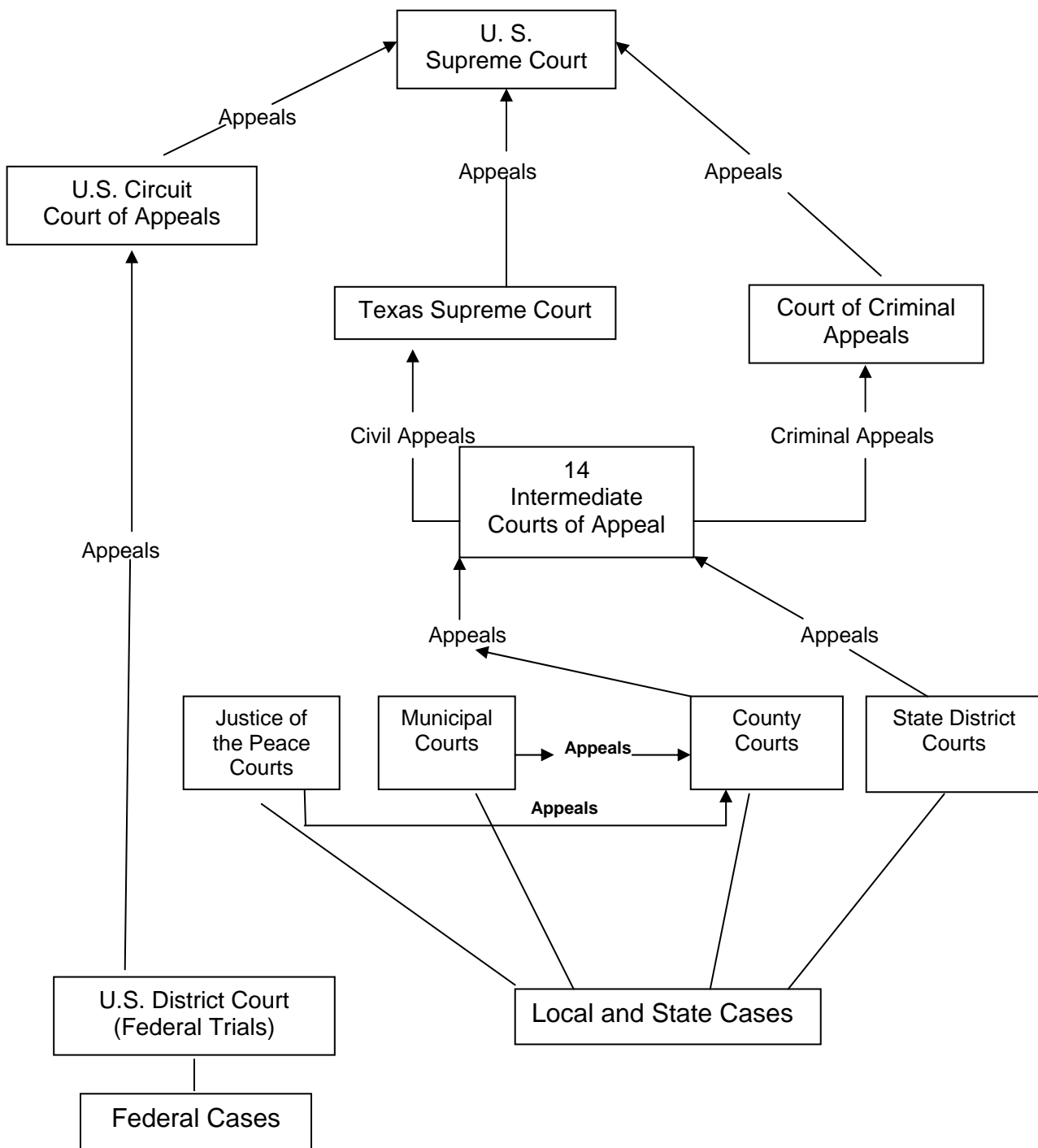
### **C. Administrative Law**

The executive branch of government dispenses administrative law. The President of the United States and the Governor of the State of Texas issue orders and create other documents with legal effect. Executive departments and offices and some state agencies, such as the Department of Public Safety (DPS), Texas Department of Health Services, and Texas Parks and Wildlife Commission, create administrative rules. Under the authority of a statute, administrative agencies often create and publish rules and regulations that further interpret statutes. These rules and regulations are published in the *Texas Register*, a publication of the Secretary of State's Office and most often codified into the Texas Administrative Code.

For example, DPS has established a set of rules and procedures for the Failure to Appear Program under Section 706 of the Transportation Code. This program allows cities to contract with DPS to deny the renewal of a driver's license to a person who fails to appear or fails to pay upon conviction of a fine-only offense. The proposed rules and procedures for this program were published in the *Texas Register*. In addition, these rules and procedures are now codified in 37 Texas Administrative Code 15.111-15.124. For more information on DPS, visit its website - [www.txdps.state.tx.us](http://www.txdps.state.tx.us).

- |       |   |
|-------|---|
| Q. 1. | What does common law refer to? _____<br>_____<br>_____  |
| Q. 2. | Which is the general name that refers to laws made by the legislature: statutory law or administrative law? _____ |

### Hierarchy of Courts



Q. 3. Explain the principle of stare decisis. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Q. 4. When can a court reject a decision of a higher court? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Q. 5. What is meant when it is said that a case is “on point”? \_\_\_\_\_  
\_\_\_\_\_

Q. 6. What is dictum? Why might a judge include dictum in his or her opinion? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Q. 7. What is the result of following the doctrine of precedent? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

True or False

Q. 8. The American court system is hierarchical in organization and higher courts have control or authority over lower courts. \_\_\_\_\_

Q. 9. Appellate courts review the facts of a case, hear testimony, and determine the weight of the evidence. \_\_\_\_\_

End True/False

Q. 10. Where are Texas administrative proceedings typically published? \_\_\_\_\_  
\_\_\_\_\_

## PART 2 SOURCES OF LAW AND LEGAL AUTHORITY

### A. Sources of Law

The source of law in the United States emerged from a variety of places. In the context of legal research, the term “source of law” can refer to three different concepts:

- First, source of law can refer to the origins of legal concepts and ideas. Customs, traditions, principles of morality, and economic, political, philosophical, and religious thoughts may manifest themselves in law. Legal researchers may regard such sources of law when examining issues related to public policy.
- Second, source of law can refer to the governmental institutions that formulate legal rules. Under federalism, the U.S. government consists of one national government, 50 autonomous state governments, and the local government of the District of Columbia. Each of these entities has an executive, legislative, and judicial branch that creates legal information that is subject to legal research. Municipal courts, for example, must frequently look to new statutes passed by the Texas Legislature, as well as state and federal court decisions affecting municipal court procedures.

- Third, source of law can refer to the published manifestations of law in books, legal databases, law reviews, newsletters, and journal articles.

## B. Legal Authority

Legal authority is any published source of law setting forth rules, legal doctrine, or legal reasoning that can be used as a basis for legal decisions. The term legal authority refers to both types of legal information and to the degree of persuasiveness of that legal information. When used to describe types of legal information, legal authority can be categorized as primary or secondary.

- Primary authorities are authorized statements of law by governmental institutions, such as written opinions of the courts, constitutions, legislation, codes, and rules of court. For example, citing a provision from the Transportation Code would be citing a primary authority.
- Secondary authorities are statements about the law and are used to explain, interpret, develop, locate, or update primary authorities. An example would include citing an excerpt from the *TMCEC Recorder* on how to apply a provision of the Transportation Code.

Q. 11.	Explain the three meanings of the term “source of law.” _____ _____ _____
Q. 12.	What is the difference between primary legal authority and secondary legal authority? _____ _____
Q. 13.	What is meant when it is said that a legal authority is binding or mandatory? _____ _____ _____

## PART 3 MATERIALS OF LEGAL RESEARCH

There are three broad categories of published legal resources:

- primary sources;
- secondary sources; and
- index, search, or finding tools.

Primary sources are authoritative statements of legal rules by governmental bodies. They include court opinions, constitutions, statutes, and rules of court. Refer to the chart below regarding sources of primary law.

## Primary Sources of Law

Government Entity	Chronological Compilation	Topical Compilation (i.e., Subject Matter)
<b>FEDERAL:</b>		
U.S. Supreme Court	<i>U.S. Reports</i> (U.S.) <i>Supreme Court Reporter</i> (S.Ct.) <i>U.S. Supreme Court Reports, Lawyer's Edition Second Series</i> (L.Ed.2d) <i>U.S. Supreme Court Reports Lawyer's Edition</i> (L.Ed)	<i>U.S. Supreme Court Digest</i> <i>U.S. Supreme Court Digest, Lawyers Edition</i> <i>West's Federal Practice Digest 3d</i> <i>West's Federal Practice Digest 2d</i> <i>Modern Federal Practice Digest</i> <i>Federal Digest</i> <i>Decennial Digests</i>
U.S. Courts of Appeals	<i>Federal Reporter, Second Series</i> (F.2d) <i>Federal Reporter</i> (F.) <i>Federal Cases</i> (F. Case)	<i>West's Federal Practice Digest 3d</i> <i>West's Federal Practice Digest 2d</i> <i>Modern Federal Practice Digest</i> <i>Federal Digest</i> <i>Decennial Digests</i>
U.S. District Courts	<i>Federal Supplement</i> (F. Supp.)* <i>Federal Reporter, Second Series</i> (F.2d)** <i>Federal Reporter</i> (F.) <i>Federal Cases</i> (F. Case) <i>Federal Rules Decisions</i> (F.R.D.)***	<i>West's Federal Practice Digest 3d</i> <i>West's Federal Practice Digest 2d</i> <i>Modern Federal Practice Digest</i> <i>Federal Digest</i> <i>Decennial Digests</i>
Agencies (independent and executive branch agencies)	<i>Federal Register</i> (Fed. Reg.)	<i>Code of Federal Regulations</i> (C.F.R.)
Congress	<i>Statutes at Large</i> (Stat.)	<i>United States Code</i> (U.S.C.)
<b>STATE:</b>		
Courts	State Reporters Regional Reporters – <i>South Western Reporter, Third Series</i> (S.W.3d)	State Digests <i>Texas Digests</i> Regional Digests <i>Decennial Digests</i>
Agencies (independent, executive branch, and constitutional agencies)	Administrative Registers – <i>Texas Register</i>	Administrative Codes
Legislatures	Session Laws	Statutory Codes – <i>Vernon's Annotated Texas Statutes</i>

\* Since 1932    \*\* Until 1932    \*\*\* Decisions on procedural rules only

Secondary sources are materials about the law that are used to explain, interpret, develop, locate, or update primary sources. Examples include law reviews, legislative histories,

journal articles, newsletter articles, bench books, and procedure guides. These secondary sources can be interpretative and may include analysis and critical commentary.

See Part 4 of this guide for a list of primary and secondary sources for municipal courts.

Indexes and search tools help locate and update primary and secondary sources. The major types are digests that locate cases discussing similar points of law, annotations in annotated statutes and codes, *Shepard's Citations*, and legal periodical indexes. These tools should not be cited as authorities.

Legal resources can be found in multiple medias, including printed books, computer databases, videos, CD-ROMs, and others. Many of the resources contain more than one type of information and serve multiple functions. For example, computerized legal research systems such as Westlaw and LexisNexis are tools used to access legal information, but they contain verbatim text of primary source materials that are primary sources and secondary sources that can be persuasive.

## **A. Paper Resources**

Traditionally, legal research was done in a law library or legal office that contained all paper forms of law. Although computer-assisted research has become more popular among researchers, some still prefer to have paper copies of the law. *Vernon's Texas Revised Civil Statutes and Codes*, *Texas Cases*, *West Keynote Digest*, and *West Criminal Practice* are all bound copies of the law that are available from West Group.

Bound copies or paper resources are updated through inserts, often called “pocket parts” for statutes and slip opinions, or advance sheets for cases. They are updated once a year and are found in the back of each volume or code. When the pocket parts get too bulky, a new hard cover volume is published. When a researcher is using a paper resource, he or she should check for updates or changes to the law in the pocket parts or slip opinions.

Up-to-date case law can be located through computer-assisted research sites, such as LexisNexis or Westlaw. If using paper sources, appellate cases are typically located in the *South Western Reporter*, 3rd (Texas Cases). U.S. Supreme Court decisions are reported in the *United States Reports*, *Supreme Court Reporter*, and *United States Supreme Court Reports*. Lower federal court decisions are reported in the *Federal Reporter* and *Federal Supplement*.

Texas statutes can be found in a number of places. First, TMCEC worked with LexisNexis Mathew Bender Publications to develop the *Texas Criminal Law and Traffic Law Manual*, which is helpful to municipal courts in that it contains the codes or excerpts of the codes most frequently used in municipal courts.

Another excellent resource is a set of “Black Statutes” (*Vernon's Texas Revised Civil Statutes and Codes*) available from West Group. “Black Statutes” are so called because of the black cover of the volumes. This set includes the complete text of the law, case annotations that provide interpretations by courts, cross-reference sections, historical notes and commentaries that give background interpretations of the law, a general index, some individual volume or code indexes, an annotation index, and law review article citations. For an example of a page from “Black Statutes,” see below.

## Example of “Black Statute”

### RULES OF THE ROAD

545.060

Ch. 545

Note 1

§ 545.060. Driving on Roadway Laned for Traffic

(a) An operator on a roadway divided into two or more clearly marked lanes for traffic:

- (1) shall drive as nearly as practical entirely within a single lane; and
- (2) may not move from the lane unless that movement can be made safely.

(b) If a roadway is divided into three lanes and provides for two-way movement of traffic, an operator on the roadway may not drive in the center lane except:

- (1) if passing another vehicle and the center lane is clear of traffic within a safe distance;
- (2) in preparing to make a left turn; or
- (3) where the center lane is designated by an official traffic-control device for movement in the direction in which the operator is moving.

(c) Without regard to the center of the roadway, an official traffic-control device may be erected directing slow-moving traffic to use a designated lane or designating lanes to be used by traffic moving in a particular direction.

(d) Official traffic-control devices prohibiting the changing of lanes on sections of roadway may be installed.

*Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.*

### HISTORICAL AND STATUTORY NOTES

Prior Laws:  
Acts 1947, 50th Leg., p. 967, ch. 421.

Acts 1971, 62nd Leg., p. 723, ch. 83.  
Vernon’s Ann.Civ.St. art. 6701d, § 60.

### NOTES OF DECISIONS

Other vehicles in vicinity 1

#### 1. Other vehicles in vicinity

Police officer who observed defendant’s vehicle weaving between lanes of traffic had reasonable suspicion of unusual activity related to criminal activity, thus justifying investigative detention, despite defendant’s contention that, because there were no other cars around, weaving did not affect safety of any other motorists and thus did not violate any traffic law; traffic laws are designed to protect not only safety of other persons in other vehicles, but also safety of the driver in question, and defendant by his behavior was telling officer that he was unable to safely operate vehicle, and that if he continued to operate vehicle, he was danger to himself or others; moreover, provision of Transportation Code dealing with travel on laned roadway is not limited to circumstances in which other vehicles are in immediate vicinity. *Gajewski v. State* (App. 14 Dist. 1997) 944 S.W.2d 450.

## **B. Electronic or Computer-Assisted Resources**

Generally, when referring to computer-assisted legal research, two types of storage mediums exist: CD-ROM and online resources.

### **1. CD-ROMs (or DVDs)**

Publishers, such as West Group, publish legal material on CD-ROM. A CD-ROM can store thousands of pages on one disk, but the researcher must have a CD-ROM drive on his or her computer to read the disk. According to which publisher originates the material, updated CD-ROMs are mailed out at set time periods, typically quarterly. Even at that frequency, CD-ROMs may not be as up-to-date as online mediums. Lexis Nexis / Matthew Bender offers a DVD with almost all Texas law that is relevant to Municipal Courts.

### **2. Online Legal Research**

Online services can search millions of words in a second to find a specific topic for a researcher. A researcher can narrow or broaden his or her search easily. The computer gives the researcher a list of results that he or she can print or save. Online services function by storing the legal information remotely on a large mainframe computer that the researcher accesses through an Internet connection. LexisNexis and Westlaw offer on-line research tools.

#### **a. LexisNexis, Westlaw, and Loislaw**

The three primary sources for Internet legal research are LexisNexis, Westlaw, and Loislaw. All three offer complete libraries of primary source materials and several secondary authorities. They offer a variety of pricing options depending on the number of persons using the system, the amount of time, and libraries accessed. Texas judges and their staff are eligible for reduced rates.

To access LexisNexis, Westlaw, or Loislaw, a court needs a personal computer, an Internet connection, and an access number or a password. These companies offer training on using the systems efficiently, conducting searches, and using commands. Computerized searches are especially helpful when researching new areas of the law or topics that have not received significant legal attention in the past. The searches can find obscure references often not included in the indexes and digests.

Two types of searches are typically used. One is referred to as “Terms and Connectors,” which use as connectors between terms to specify the relationships that should exist in a particular query. The other is “Natural Language,” where the query is stated as a question in plain English.

#### **b. Legal Search Engines**

Legal search engines are available on the Internet to help focus searches within known databases related to legal issues and topics. Listed below are excellent starting points for exploring the Internet for legal information:

- [www.hg.org](http://www.hg.org) (Hieros Gamos)
- [dir.yahoo.com/Government/Law](http://dir.yahoo.com/Government/Law) (Yahoo – Government Link)

- [www.atlanet.org](http://www.atlanet.org) (Law Resources)
- [www.lawsources.com](http://www.lawsources.com) (American Law Sources Online)
- [www.lawguru.com](http://www.lawguru.com) (LawGuru)
- [www.ilrg.com](http://www.ilrg.com) (Internet Legal Research Guide)

To research a Texas issue, either of the following should be explored:

- [www.tarlton.law.utexas.edu](http://www.tarlton.law.utexas.edu) (University of Texas Law Library)
- [www.sll.state.tx.us](http://www.sll.state.tx.us) (State Law Library)

### c. State Resources

Texas statutes can be found at:

- Texas Statutes: [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us)
- Texas Constitution: [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us)
- Administrative Code: [www.sos.state.tx.us/tac](http://www.sos.state.tx.us/tac)
- Rules of Evidence: [www.courts.state.tx.us/rules/tre-toc.asp](http://www.courts.state.tx.us/rules/tre-toc.asp)

Texas decisions and opinions can be found on several websites, including:

- [www.cca.courts.state.tx.us](http://www.cca.courts.state.tx.us)
- [www.courtstuff.com/5th](http://www.courtstuff.com/5th)

Most Texas state agencies have Internet addresses. There is an information site with direct links at:

- [www.tsl.state.tx.us/trail/agencies.html](http://www.tsl.state.tx.us/trail/agencies.html)

Others sites of interest are shown below:

- [www.tmcec.com](http://www.tmcec.com) (TMCEC Home Page)
- [www.sos.state.tx.us](http://www.sos.state.tx.us) (Secretary of State - *Texas Register*)
- [www.courts.state.tx.us](http://www.courts.state.tx.us) (Office of Court Administration)
- [www.tsl.state.tx.us](http://www.tsl.state.tx.us) (Texas State Library and Archives Commission)

### d. Federal Resources

Federal sites offer Supreme Court decisions, Fifth Circuit decisions, federal legislation, and the United States Code.

- [www.law.cornell.edu](http://www.law.cornell.edu)
- [www.loc.gov/index.html](http://www.loc.gov/index.html) (Library of Congress)

### e. General Resources

Find every law in the land—and every state and federal court decision. Available on the Internet at:

- [www.findlaw.com](http://www.findlaw.com)
- [www.legalengine.com](http://www.legalengine.com)

Additional information about technology is found in the TMCEC Level II Study Guide, *Court Technology*.

Q. 14. Name the three broad categories of published legal resources. \_\_\_\_\_

\_\_\_\_\_

Q. 15. Explain the difference between primary and secondary sources and give an example of each. \_\_\_\_\_

\_\_\_\_\_

True or False

Q. 16. The verbatim text of a statute can be cited as a primary source. \_\_\_\_

End True/False

Q. 17. What are pocket parts? \_\_\_\_\_

\_\_\_\_\_

Q. 18. Give examples of the type of information found in “Black Statutes” and the formal title of this publication. \_\_\_\_\_

\_\_\_\_\_

Q. 19. What company offers CD-ROM libraries of statutes? \_\_\_\_\_

Q. 20. What three companies are the main sources for computer-assisted legal research? \_\_\_\_

\_\_\_\_\_

Q. 21. What does a court need to access an on-line service? \_\_\_\_\_

\_\_\_\_\_

True or False

Q. 22. Texas statutes are accessible on the Internet. \_\_\_\_

#### **PART 4 LEGAL RESOURCES FOR MUNICIPAL COURTS**

Municipal court clerks and court administrators will often conduct legal research by using codebooks as primary source materials supported by secondary materials, such as TMCEC course materials, newsletters, and Attorney General (A.G.) Opinions. Although an extensive law library is not necessarily needed in the clerk’s office, the clerk should have access to legal resources via the prosecutor’s office, the county law library, or the Internet. Listed below are essential resources needed by all municipal courts.

##### **A. Primary Source Materials**

- Transportation Code
- Penal Code

- Code of Criminal Procedure
- Family Code (Title 3: Juvenile Justice Code)
- Alcoholic Beverage Code
- Education Code
- Government Code
- Health and Safety Code
- Local Government Code
- Texas Administrative Code
- *Code of Judicial Conduct* (State Commission on Judicial Conduct)
- *Rules for Judicial Education* (Texas Court of Criminal Appeals)
- *Rules for Professional Conduct* (State Bar of Texas)

## **B. Secondary Source Materials**

- Selected A.G. Opinions
- *Forms Book* (TMCEC)
- *Bench Book* (TMCEC)
- *Municipal Judges Book* (TMCEC)
- *Municipal Judges' Quick Reference Trial Handbook* (TMCEC)
- *The Municipal Court Recorder* (TMCEC)
- Various TMCEC Videotapes / DVDs
- *Annual Report of the Commission on Judicial Conduct*
- Legal Ethics Opinions of the Judicial Section of the State Bar
- A legal dictionary, such as *Black's Law Dictionary* from West Group
- *Judicial Conduct Reporter* (American Judicature Society)
- *Judicature* (American Judicature Society)

## **PART 5 FINDING AND CITING SOURCES OF LAW**

To have easy access to statutes and cases, a common system of reference has been adopted. This reference to a law or case is generally called the citation. A citation is a reference to a source of legal authority that allows a researcher to locate a cited source.

With experience, a researcher will find that there are several ways to abbreviate statutes and codes. Questions about the form or meaning of citations, as well as determining the proper way to reference and cite legal material may be answered by consulting any of the following reference guides.

- *The Bluebook: A Uniform System of Citation* (18<sup>th</sup> ed.), Harvard Law Review Association.
- *Texas Rules of Form (The Greenbook)*(12<sup>th</sup> ed.), intended as a supplement to the *Bluebook*, dealing exclusively with Texas case citation.

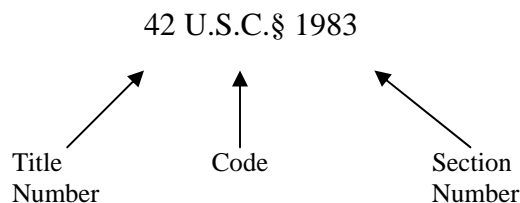
- *ALWD Citation Manual: A Professional System of Citation* (3<sup>rd</sup> ed.), Association of Legal Writing Directors, Darby Dickerson, Stetson University College of Law; Aspen Publishers.

## A. Federal Statutes

Court clerks should be able to recognize the following abbreviations for federal codes and statutes:

- §-Section
- U.S.C.-United States Code
- U.S.C.A.-United States Code Annotated

The citation below shows the form for a federal statute:

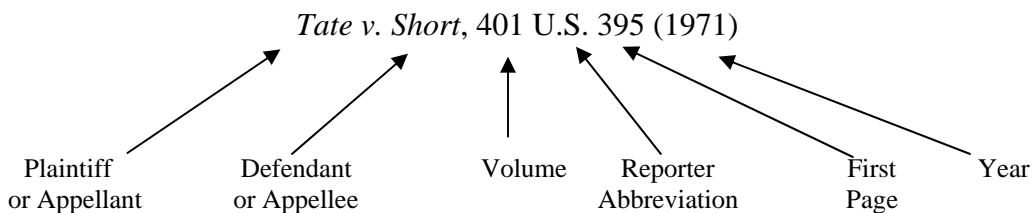


## B. Federal Cases

The abbreviations and names of the publications that contain chronological compilations of the court decisions at various levels are shown in Part 3 of this guide. Court administrators and clerks should recognize the following abbreviations as they apply to cases:

- U.S. *United States Reports*
- S. Ct. *Supreme Court Reporter (U.S.)*
- L. Ed *Lawyers' Edition, U.S. Supreme Court Reports*
- L. Ed .2d *Lawyers' Edition, U.S. Supreme Court Reports, Second Series*
- F. *Federal Reporter (U.S.)*
- F.2d *Federal Reporter, Second Series*
- F. Supp. *Federal Supplement*
- Fed. Case *Federal Cases (U.S.)*
- Fed. Reg. *Federal Register*

The citation below shows the form for a federal case.



When the case starts in trial court, the first name is the plaintiff's or the State's and the name following the *v.* is the defendant's. The *v.* stands for versus. Upon appeal, the name of the party who is appealing the case is usually listed first.

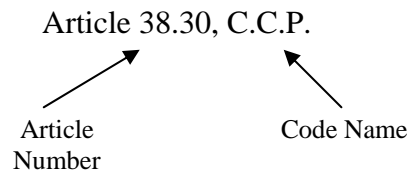
### C. State Statutes and Codes

Clerks and court administrators should recognize the following abbreviations used for state codes and laws frequently used in municipal courts.

- A.B.C. Alcoholic Beverage Code
- C.C.P. Code of Criminal Procedure
- E.C. Education Code
- F. C. Family Code
- G.C. Government Code
- H.S.C. Health and Safety Code
- L.G.C. Local Government Code
- P.C. Penal Code
- O.C. Occupations Code
- T.A.C. Texas Administrative Code
- V.A.T.S. Vernon’s Annotated Texas Statutes

In general, Texas codes are organized by titles, chapters, and sections. Most Texas codes use § (section) to refer to a specific statute, but not all codes. For example, The Code of Criminal Procedure uses “Article” and the Administrative Code uses “Rule” when referring to a specific statute.

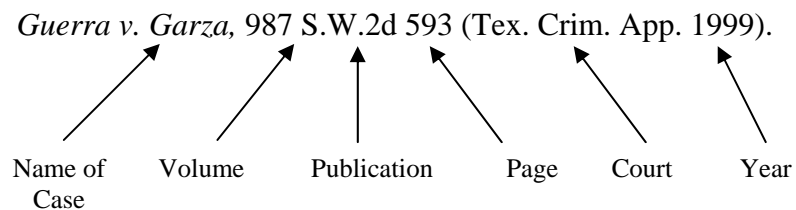
The citation below shows the form for a State statute:



### D. State Cases

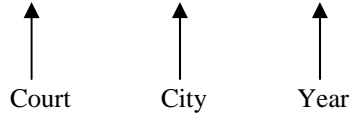
Texas court cases are typically published in the *South Western Reporter* (frequently referred to as the South West Reporter). The compilation of case law has grown into three volumes: S.W., S.W.2d, and S.W.3d.

The citation below shows the form for a state case in which the opinion was issued by the Texas Court of Criminal Appeals.



The citation below shows the form for a state case in which the appellate court, 1<sup>st</sup> District in Houston, issued the opinion. The last notation “no pet.” means that it was not appealed to the Texas Court of Criminal Appeals.

*State v. Johnson*, 896 S.W.2d 277 (Tex. App.–Houston [1st] 1995, no pet.).



Q. 23.	What is a citation? _____ _____
Q. 24.	What are the <i>Bluebook</i> and <i>ALWD</i> , and what are they used for? _____ _____
Q. 25.	Identify what the following abbreviations stand for: U.S.C.; S.Ct.; F.2d; S.W.2d; and v. _____ _____ _____
Q. 26.	Identify what codes the following abbreviations stand for: <i>A.B.C.</i> ; <i>C.C.P.</i> ; <i>E.C.</i> ; <i>F.C.</i> ; <i>G.C.</i> ; <i>H.S.C.</i> ; and <i>P.C.</i> _____ _____ _____

### PART 6 EVALUATING LEGAL RESOURCES

When inspecting and evaluating legal resources, the purpose of the resource must first be determined. The author or editor should be noted and the types of legal authority (primary and secondary) should be distinguished.

Often, as an individual becomes experienced in researching legal questions that arise in a municipal court, many “gray areas” of the law that do not reflect a specific statute or precedent to follow will be encountered. When this occurs, examining secondary source materials may be helpful. Recall that common law tradition gives the judge a significant amount of discretion to run the court.

Q. 27.	How should one evaluate legal resources? _____ _____
--------	---

### PART 7 READING AND INTERPRETING STATUTES

A statute, often referred to as legislation, is a statement of a legal rule enacted by the Legislature and signed by the Governor.

## **A. Code Construction Act**

### **1. Purpose**

The Code Construction Act, now codified in Chapter 311 of the Government Code, applies to all laws passed from the time of the 60<sup>th</sup> Legislative Session, including amendments, repeals, revisions, or reenactments of any provision of all Texas statutes, including the Code of Criminal Procedure and the Penal Code. Sec. 311.002, G.C. See TMCEC Level II Study Guide, *Code of Criminal Procedure and Penal Code* for a discussion of the application of the Code Construction Act.

## **B. Monitoring, Locating, and Reading New Legislation**

The Texas Legislature meets in regular session every two years in the odd-numbered years for 140 days. The regular session starts on the second Tuesday in January. The Texas Constitution allows the Governor to call special sessions when needed, but these sessions cannot exceed 30 days and may only consider legislation specified by the Governor. Like most other states, Texas has a bicameral system with a 31-member Senate and a 150-member House of Representatives. State senators and representatives are elected from single-member districts to serve four-year and two-year terms, respectively.

A proposed law is called a bill. It may be drafted by a legislator or by the Texas Legislative Council, a state agency that provides bill drafting services, research assistance, computer support, and other services for the House and Senate. Attorneys, lobbyists, and citizens may also draft bills that may only be introduced by a legislator or be substituted by a legislative committee.

The chart that follows outlines the lengthy legislative process. In both houses, bills must be heard at three readings, be assigned to a committee, and go through a process of committee review and floor action. The bill may be amended at many steps throughout the process, but the final enrolled bill that is sent to the Governor for signature must be agreed upon by both houses.

Most bills are amended frequently, thus, it is important that court personnel understand how to read proposed legislation. Underlining indicates new language that is to be added to a statute or code. “Strike-thru” indicates language to be deleted or changed. An example of a House Bill is below.

After the close of the session, all of the laws passed during each session are published in volumes referred to as session laws. The West Group prints each session’s laws in paperback in chronological sequence. After the legislative session, the laws are then incorporated into Vernon’s *Texas Annotated Civil Statutes and Codes*.

The Texas Municipal Courts Education Center offers a legislative issue of *The Recorder* in August after each session [http://www.tmcec.com/Resources/The\\_Recorder](http://www.tmcec.com/Resources/The_Recorder). This publication summarizes all of the pertinent legislation affecting the municipal courts. A similar publication is available from the Office of Court Administration who may be reached at 512.463.1625 or [www.courts.state.tx.us/oca](http://www.courts.state.tx.us/oca). Summaries of new laws of general interest to cities are also found in the newsletter of the Texas Municipal League. Copies of enrolled bills passed by each session are available online at the Texas Legislative Council website ([www.tlc.state.tx.us](http://www.tlc.state.tx.us)).

## Sample House Bill

**H.B. No. 1158**

### AN ACT

relating to the address to which notice of the forfeiture of a bail bond is delivered.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 22.03(b), Code of Criminal Procedure, is amended to read as follows:

(b) A citation to a surety who is an individual shall be served to the individual at the address shown on the face of the bond or the last known address of the individual.

SECTION 2. Chapter 22, Code of Criminal Procedure, is amended by adding Article 22.035 to read as follows:

Art. 22.035. CITATION TO DEFENDANT POSTING CASH BOND. A citation to a defendant who posted a cash bond shall be served to the defendant at the address shown on the face of the bond or the last known address of the defendant.

SECTION 3. Article 22.05, Code of Criminal Procedure, is amended to read as follows:

Art. 22.05. CITATION AS IN CIVIL ACTIONS. If service of citation is not waived under Article 22.03, a surety is entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the citation shall return the same as in civil actions. It shall not be necessary to give notice to the defendant unless he has furnished his address on the bond, in which event notice to the defendant shall be deposited in the United States mail directed to the defendant at the address shown on the bond or the last known address of the defendant.

SECTION 4. The changes in law made by this Act apply only to a citation of forfeiture issued on or after the effective date of this Act. A citation of forfeiture issued before the effective date of this Act is governed by the law in effect on the date the citation of forfeiture is issued, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2007.

The Texas Legislature Online website ([www.capitol.state.tx.us](http://www.capitol.state.tx.us)) allows for the viewing and downloading of Texas statutes, codes, and Constitution. In addition, users can research filed bills, read current and past legislation, and find out more about the legislative process.

In addition, there are at least two commercial providers of recent legislation. The services offered by these providers vary from paper copies of bills, online services with full text of bills, legislative tracking, record votes, weekly bulletins, committee schedules and reports, floor calendars, clipping services, and more.

Texas Legislative Service  
P.O. Box 100  
Austin, Texas 78767  
512.476.7596  
[www.telicon.com](http://www.telicon.com)

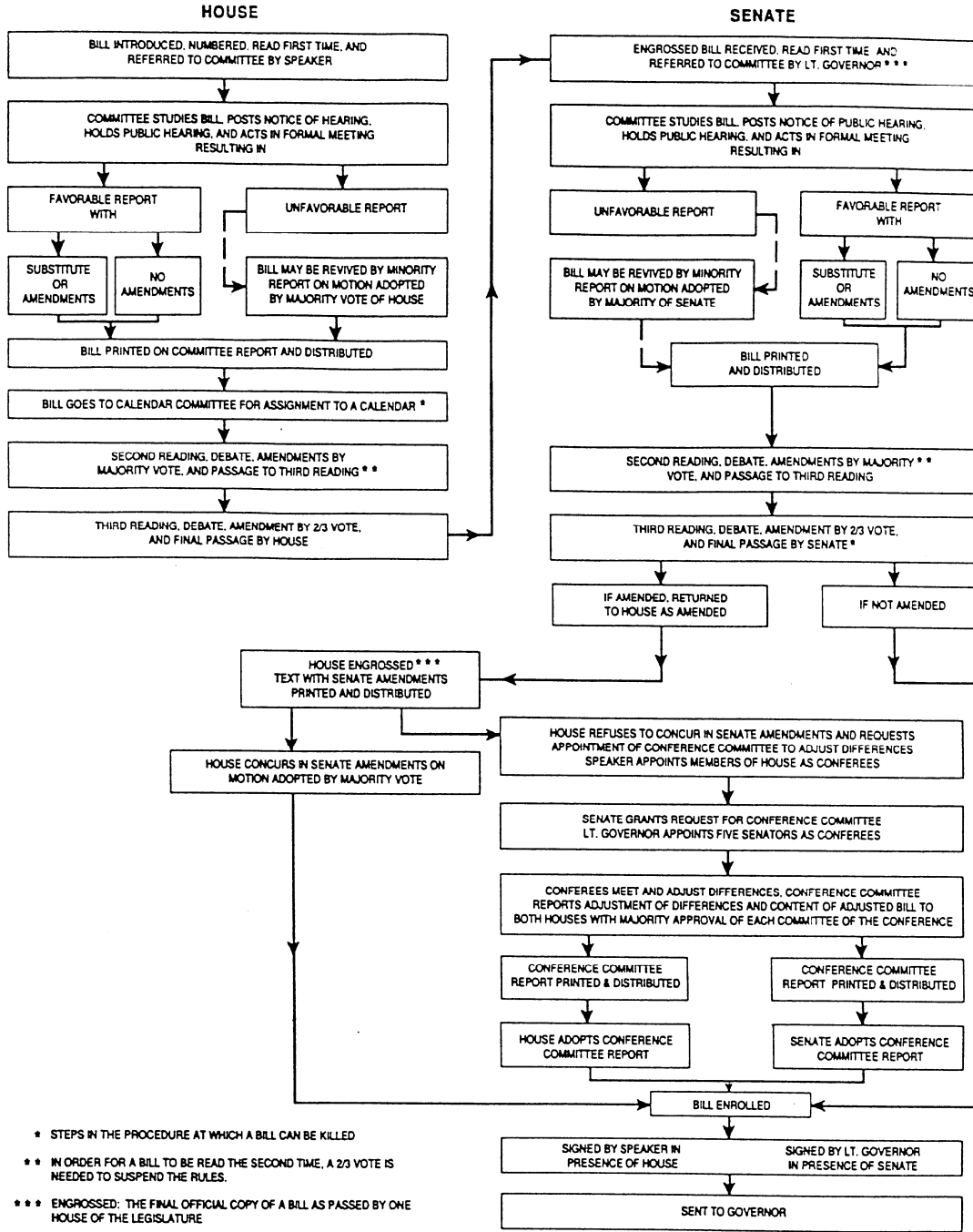
Gallery Watch  
620 Congress Street, Suite 320  
Austin, Texas 78701  
512.320.1525  
[www.gallerywatch.com](http://www.gallerywatch.com)

Legislative Update seminars are typically offered after each session by the following groups:

- Texas Municipal Courts Education Center
- Texas Municipal Courts Association
- Texas Courts Clerks Association & their local chapters
- Texas District & County Attorneys Association
- Texas Juvenile Probation Commission
- Texas Municipal League

## BASIC STEPS IN THE TEXAS LEGISLATIVE PROCESS

THIS DIAGRAM DISPLAYS THE SEQUENTIAL FLOW OF A BILL FROM THE TIME IT IS INTRODUCED IN THE HOUSE OF REPRESENTATIVES TO FINAL PASSAGE AND TRANSMITTAL TO THE GOVERNOR. A BILL INTRODUCED IN THE SENATE WOULD FOLLOW THE SAME PROCEDURE IN REVERSE.



- \* STEPS IN THE PROCEDURE AT WHICH A BILL CAN BE KILLED
- \*\* IN ORDER FOR A BILL TO BE READ THE SECOND TIME, A 2/3 VOTE IS NEEDED TO SUSPEND THE RULES.
- \*\*\* ENGROSSED: THE FINAL OFFICIAL COPY OF A BILL AS PASSED BY ONE HOUSE OF THE LEGISLATURE

TexasBusinessToday

Q. 28. How often does the Texas Legislature meet? \_\_\_\_\_

\_\_\_\_\_

Q. 29. What are the two houses that compose the Texas Legislature called? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

True or False

Q. 30. A bill must be approved in identical form by both houses before being sent to the Governor. \_\_\_\_\_

End True/False

Q. 31. Below is an excerpt from a recent piece of legislation. Which phrases were added? Which were deleted?

SECTION 1. Article 102.017, Code of Criminal Procedure, is amended by amending Subsections (d) and (d-1) and adding Subsections (d-2) and (f) to read as follows: (d) Except as provided by Subsection (d-2) [(d-1)], the clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer, as appropriate, for deposit in a fund to be known as the courthouse security fund or a fund to be known as the municipal court building security fund, as appropriate. Money deposited in a courthouse security fund may be used only for security personnel, services, and items related to buildings that house the operations of district, county, or justice courts, and money deposited in a municipal court building security fund may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts. For purposes of this subsection, operations of a district, county, or justice court include the activities of associate judges, masters, magistrates, referees, hearing officers, criminal law magistrate court judges, and masters in chancery appointed under:

- (1) Section 61.311, Alcoholic Beverage Code;
- (2) Section 51.04(g) or Chapter 201, Family Code;
- (3) Section 574.0085, Health and Safety Code;
- (4) Section 33.71, Tax Code;
- (5) Chapter 54, Government Code; or
- (6) Rule 171, Texas Rules of Civil Procedure.

(d-1) For purposes of this article, the term "security personnel, services, and items" includes [A fund designated by this subsection may be used only to finance security personnel for a district, county, justice, or municipal court, as appropriate, or to finance items when used for the purpose of providing security services for buildings housing a district, county, justice, or municipal court, as appropriate, including]: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Q. 32. What are session laws? \_\_\_\_\_

\_\_\_\_\_

Q. 33. Where can you get a copy of a bill? \_\_\_\_\_

\_\_\_\_\_

## PART 8 READING AND INTERPRETING CASES

When researching a legal question, it is imperative that the researcher look for related case law cases. As discussed earlier, the term case law refers to the idea that the opinions from cases have precedent and therefore can be a binding authority for judges deciding a matter of law. Judicial opinions also have an affect on how a statute is applied. Judicial opinions can declare a statute unconstitutional, giving guidance and direction as to how that law would then be applied.

### A. Parts of a Case

Whether the case is read as a slip opinion (an individual court decision published separately as soon as it is rendered), on an advance sheet (a pamphlet of court decisions circulated prior to the bound volumes), or in a bound volume, the following elements of a case are usually found. Refer to the case on the following page to see the parts of a case labeled.

#### 1. Name or Title of the Case

Cases generally are identified by the names of the parties to the lawsuit, for example, the citation *Tate v. Short*, 401 U.S. 395 (1971) indicates that the parties involved are Tate and Short.

Some cases are shown as *In Re Gault*, 87 S. Ct. 1428 (1967), which signifies that there were no adversary parties in the proceeding. Such a designation usually indicates a habeas corpus case, a guardianship matter, a contempt case, disbarment, a bankruptcy, or a probate case. The *Gault* case, for instance, involved a juvenile. The words *In Re* mean in the affair; in the matter of; concerning.

Cases may also be shown as *Ex Parte Minjares*, 582 S.W.2d 105 (Tex. Crim. App. 1978). The *ex parte* means that a special proceeding was involved. Here *ex parte* means by or for one party; done for; on behalf of. This case involved an appeal from an order entered by a county court at law denying the petitioner's application for habeas corpus. On rehearing, the Court of Criminal Appeals ordered the court to set aside its order denying habeas relief to the petitioner. The cause was remanded.

#### 2. Docket Number

A docket number is assigned by the clerk when the case is filed with the court.

### 3. Decision Date

The decision date refers to the date that the court hearing the case posted an opinion.

#### SAMPLE CASE

582 S.W.2d 105

Court of Criminal Appeals of Texas, Panel No. 2.

Ex parte Rafael MINJARES, Jr.

No. 57136.

April 12, 1978.

Opinion on Rehearing March 23, 1979.

earned by petitioner only against aggregate punishment. Vernon's Ann.Civ.St. art. 5118a.

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[2] Prisons □ 15(3)  
310k15(3)

Absence of formal sentence in municipal court prosecution does not render inapplicable statute which provides that prisoner under two or cumulative sentences shall be allowed commutation as if they were all one sentence, and thus petitioner was entitled to such good time credits as he had earned while inmate of county jail against his municipal court traffic fines and costs and absence of formal sentence could not be used to deny him that credit. Vernon's Ann.Civ.St. art. 5118a.

[3] Fines □ 11  
174k11

Petitioner, who after hearing had been found to be indigent, could not be imprisoned because he was too poor to pay his accumulated traffic fines, and thus was entitled to immediate discharge from custody.

\*106 W. Stephen HERNSEBERGER, El Paso, court appointed, for appellant.

Before ONION, P. J., and DOUGLAS and ODOM, JJ.

OPINION

DOUGLAS, Judge.

Rafael Minjares appeals from an order denying relief on his application for a writ of habeas corpus. On September 23, 1977, petitioner was convicted in the municipal court of El Paso upon his plea of guilty to seven traffic law violations. The court assessed the

**Title of Case**  
**Docket #**  
**Case Synopsis**

**Decision Date**

The County Court at Law, El Paso County, John L. Fashing, J., denied application for habeas corpus, and petitioner appealed. On motion for rehearing, the Court of Criminal Appeals, Odom, J., held that: (1) for fines and accumulated jail terms, good time credits cannot be earned concurrently against each fine or jail term, but to contrary, treating them as one, good time credits could be earned by petitioner only against aggregate punishment, and (2) petitioner was entitled to such good time credits as he had earned while inmate of county jail against his municipal court traffic fines and costs, and absence of formal sentence could not be used to deny him that credit.

Motion for rehearing granted, order denying release set aside, and cause remanded.

Douglas, J., filed a dissenting opinion on motion for rehearing.

**Head Notes**

West Headnotes

[1] Prisons □ 15(3)  
310k15(3)

**Key Number**

Statute which provides that prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence did not transform petitioner's nine traffic fines into one but merely provided that, for commutation purposes, fines were to be treated as if they were one, and thus good time credits could not be earned concurrently against each fine or jail term, but to the contrary, treating them as one, good time credits could be

**Names of Counsel**

**Statement of Facts**

### 4. Synopsis

The synopsis reviews the facts of the case, its disposition in the lower court, the name of the lower court, and the holding in the case in the appellate court (*Affirmed*, *Reversed*, *Affirmed in Part*, *Reversed in Part*, and so forth), the last name of the judge who authored the opinion, and the last names of the judges who authored or joined in a concurring or dissenting opinion.

## **5. Headnote**

The legal editor writes a headnote, which is a summary of all the points discussed in the case. Each headnote represents a point of law extracted from the decision. If there are many headnotes, there are many points of law in the opinion. The West Group, for example, assigns sequential numbers in brackets [1], [2], or [3], etc., before the headnote summary and places these in the opinion to help the reader locate the discussion on that point of law. West also assigns key numbers to names and phrases and codes the headnotes in this manner.

## **6. Names of Counsel**

The names of counsel are the attorneys who were active in the case, both on the side of the State and the side of the defendant.

## **7. Statement of Facts**

Prior to the opinion of the case, a statement of the facts is presented. This is a summary of the case, including both parties' basic arguments. The statement of facts is important to a researcher because the researcher gets a review of the case without reading the opinions of the lower courts or the original petitions sent to the court.

## **8. Opinion of the Court**

The opinion of the court is the explanation of the court's decision, conclusion, or result in the legal controversy before the court.

The various types of opinions are explained below:

- A majority opinion is usually written by one judge and represents the principles of law that the majority of the court deemed operative in a given decision. It has the greatest precedential value.
- A separate opinion may be written by one or more judges and indicates that he or she concurs in or dissents from the majority. A judge can also dissent or concur without writing a separate opinion.
- A concurring opinion agrees with the results reached by the majority, but disagrees with the precise reasoning of the majority opinion.
- A dissenting opinion disagrees with the result and the reasoning of the majority. Dissenting opinions are not law in a case; nor are they binding as precedent. They assume the characteristics of dictum and serve as persuasive or secondary authority. Occasionally, the controlling opinion may later be overruled and the dissenting opinion is accepted as law.
- A plurality opinion (called a judgment by the Supreme Court) is agreed to by less than a majority as to the reasoning of the decision, but it is agreed to by a majority as to the result.
- A per curiam opinion is an opinion by the court which expresses its decision in the case but whose author is not identified.
- A memorandum (mem.) opinion is a holding of the whole court in which the opinion is very concise.

## 9. Decision with Judgment or Decree

The decision contains one of the following terms: affirmed, reversed, reversed and remanded, or modified. “Affirmed” denotes that the appellate court reached a decision that agrees with the result reached in the case by the lower court. “Reversed” denotes that the appellate court disagrees with the result reached by the lower court in the case. “Reversed and remanded” denotes that the appellate court disagreed with the lower court and that the case is to be returned to either a lower appellate court or trial court for further proceedings. “Modify” denotes that the appellate court is reforming part of the decision of the lower court.

### B. Shepardization of a Case

The law is ever changing; therefore researchers must have an avenue to check the case or statute to determine if it is still “good” law (a law that has not been overturned by case law or a change in the statute). Shepardizing is the easiest and quickest way to determine if a case can be relied upon and has not been reversed by a higher court or overruled by a subsequent decision of the same court. This is done using *Shepard’s Citations*, which are available on CD-ROM, on legal research websites, and in bound volumes in most law libraries.

The *Shepard’s Citators* or *Citations* serve numerous purposes, including the following:

- to verify that the case still has precedential value and has not been overturned;
- to locate parallel citations;
- to identify other primary and secondary sources of legal information on the topic; and
- to review writ and petition history notations.


For a more in-depth look at shepardizing, visit the *Shepard’s* help website at <http://helpcite.shepards.com/howtoshep/howframe.htm>.

**Note:** The Level II examination will not contain questions on the actual abbreviations used by *Shepard’s Citations* shown in the illustrations, but clerks and court administrators should understand the reasons why a researcher would shepardize a case.

See the following example of a *Shepard’s* citation.

Shepard's Citation  
582 S.W. 2d 105

Ex parte Minjares, 582 S.W.2d 105, 1978 Tex. Crim. App. LEXIS 1112, 1979  
Tex. Crim. App. LEXIS 1360 (Tex. Crim. App. 1978)

Signal:  Caution-Possible negative treatment indicated

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**PRIOR HISTORY** (0 citing references) ◆

▶ (CITATION YOU ENTERED):

Ex parte Minjares, 582 S.W.2d 105, 1978 Tex. Crim. App. LEXIS 1112, 1979 Tex. Crim. App. LEXIS 1360 (Tex. Crim. App. 1978)

**CITING DECISIONS** ( 13 citing decisions )

**TEXAS COURT OF APPEALS**

Cited by: Brown v. State, 1999 Tex. App. LEXIS 4711 (Tex. App. Dallas June 25, 1999)  
Kirk v. State, 949 S.W.2d 769, 1997 Tex. App. LEXIS 3447, 97:29 Tex. Crim. Op. Serv. 147 (Tex. App. x  
Weishaupt v. State, 1996 Tex. App. LEXIS 4449 (Tex. App. Dallas Oct. 7, 1996)  
Rocky Mountain v. State, 789 S.W.2d 663, 1990 Tex. App. LEXIS 982 (Tex. App. Houston 1st Dist. 1990)

Followed by: Southern Political Consulting, Inc. v. State, 788 S.W.2d 452, 1990 Tex. App. LEXIS 809 (Tex. App.  
Houston 1st Dist. 1990)  
Gunstanson v. State, 666 S.W.2d 183, 1983 Tex. App. LEXIS 5524 (Tex. App. Dallas  
1983)

Distinguished by: Foster v. State, 633 S.W.2d 326, 1982 Tex. App. LEXIS 4073 (Tex. App. Eastland 1982)

**TEXAS COURT OF CRIMINAL APPEALS**

Followed by: Ex parte McGowen, 645 S.W.2d 286, 1983 Tex. Crim. App. LEXIS 863 (Tex. Crim. App. 1983)

**TEXAS**

Cited by: 2001 Tex. Op. Att'y Gen. JC-0393  
1988 Tex. Op. Att'y Gen. JM-977  
1983 Tex. Op. Att'y Gen. JM-73  
1983 Tex. Op. Att'y Gen. JM-107

**5TH CIRCUIT - U.S. DISTRICT COURTS**


Cited by: Doe v. Angelina County, 733 F. Supp. 245, 1990 U.S. Dist. LEXIS 3080 (E.D. Tex. 1990)

**LAW REVIEWS AND PERIODICALS** (1 Citing Reference)

Cited by: 22 S. Tex. L.J. 249

**ALR ANNOTATIONS** (1 Citing Annotation)

Withdrawal, forfeiture, modification, or denial of good-time allowance to prisoner, 95 A.L.R.2d 1265, supp sec. 12

Signal:  Caution-Possible negative treatment indicated

Citation: 582 SW 2d 105

View: Full

Date/Time: Friday, February 22, 2002 - 12:01 PM EST

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## C. Guidelines for Reading Case Law

Presented below are general guidelines on how to analyze and apply case law.

- Whether the court deciding the case creates precedent for the trial or appellate court in an area being researched should be determined. For example, Texas is in the 5th Circuit Court of Appeals in the federal system and thus, all 5th Circuit Court decisions would apply to Texas municipal court proceedings.
- The facts of the case being researched should be understood.
- The legal reasoning employed by the court in deciding the case should be understood.

- The court’s actual decision on the issues and the legal principles that are necessary to arrive at the decision should be identified. These may be precedent or persuasive authority.
- The facts of the situation should be compared to the facts of the case.
- The issues in the situation should be compared with the issues in the case.
- Whether the case serves as direct precedent for or against the situation should be determined.
- Whether the legal reasoning of the case provides any guidance as to whether the court would decide differently on the facts of the situation should be determined.
- If the issues are the same and the facts are the same or similar, then the case stands as a precedent in the situation.
- If the issues are the same, but the facts are different, then the case will not have much effect on the situation.

Q. 34.	How are cases named or identified? _____
Q. 35.	What is the significance of In Re when shown in a cited case? _____ _____
Q. 36.	What is the significance of Ex Parte when shown in a cited case? _____ _____
Q. 37.	Does the court usually write the headnote to a case? _____
Q. 38.	What is contained in the headnote? _____ _____
Q. 39.	What is the main difference between a majority and concurring opinion? _____ _____
Q. 40.	What is a plurality opinion? _____
Q. 41.	Why should a researcher shepardize a case or statute? _____ _____

**PART 9**  
**READING AND INTERPRETING ATTORNEY GENERAL OPINIONS**

Many municipal courts rely on Attorney General (A.G.) Opinions for guidance. The Attorney General is granted the power to issue opinions on questions of law in Sections 402.042 and 402.043 of the Government Code. Sections 402.042 and 402.043 also set out which state and local officials can request opinions. Those authorized by statute to request opinions include:

- the Governor;
- the head of a department of state government;
- the head or board of a penal institution;
- the head or the board of an eleemosynary institution;
- the head of a state board;
- a regent or trustee of a state educational institution;
- a committee of a house of the Texas Legislature;
- a county auditor authorized by law; and
- the chairman of the governing board of a river authority.

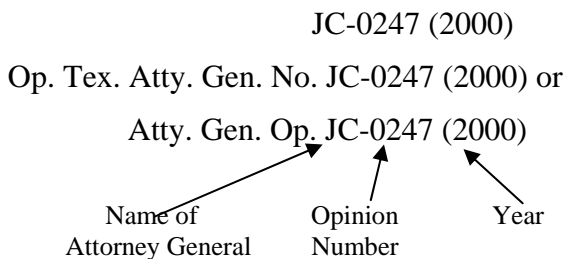
The Attorney General also advises district or county attorneys in certain instances. Attorney General Opinions are primary authorities of law, in that a governmental institution creates them, but they should be read as having the lowest authority as a primary source. Courts may view Attorney General Opinions as persuasive, but not binding on the court.

The opinions are organized by the name of the Attorney General at the time the opinion was released and numbered chronologically.

Shown below are the Attorneys General who have served Texas in the last 65 years and their approximate years of service.

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| • GA: Greg Abbott - 2002 to present | • C: Waggoner Carr - 1963 to 1966     |
| • JC: John Cornyn - 1999 to 2002    | • WW: Will Wilson - 1957 to 1962      |
| • DM: Dan Morales - 1991 to 1998    | • S: John Ben Sheppard - 1953 to 1956 |
| • JM: Jim Mattox - 1983 to 1990     | • V: Price Daniel - 1947 to 1952      |
| • MW: Mark White - 1979 to 1982     | • O: Grover Sellers - 1944 to 1946    |
| • H: John Hill - 1973 to 1978       | • O: Gerald Mann - 1939 to 1943       |
| • M: Crawford Martin - 1967 to 1972 |                                       |

Attorney General (A.G.) Opinions are cited in one of the three formats below.



A bounded set of opinions is an excellent resource to keep on hand in each court. Copies of opinions can be obtained from the Attorney General's website or by calling or writing the Attorney General's Office.

Attorney General's Office  
P. O. Box 12548  
Austin, Texas 78711-2448

800.252.8011  
*Opinions Committee* – 512.463.2110  
*Municipal Affairs Division* – 512.463.2057  
[www.oag.state.tx.us/opin/opindex.shtml](http://www.oag.state.tx.us/opin/opindex.shtml)

Q. 42. Are Attorney General Opinions binding on the court? \_\_\_\_\_

Q. 43. How are Attorney General Opinions organized? \_\_\_\_\_

Q. 44. Where can a court get a copy of an Attorney General Opinion? \_\_\_\_\_

## PART 10 THE LEGAL RESEARCH PROCESS

There are many different acceptable approaches to legal research. Legal research guides are available for persons anywhere on the experience continuum. Shown below are the four steps most commonly applied.

### **A. Step 1: Gathering, Identifying, and Analyzing the Facts**

To start, the facts must be gathered, identified, and analyzed. It is often helpful to ask: Who? What? When? Where? Why? and How? Recall that the rules stated by courts are tied to specific fact situations and must be considered in relation to those facts. Because the facts of a legal problem will control the direction of the research, the investigation and analysis of facts must be incorporated into the research process. Analyze what you want to accomplish and what results you want. Again, the facts of any given situation will dictate the issues of law that need to be researched.

### **B. Step 2: Framing the Legal Issues to Be Researched**

The goal is to classify or categorize the problem into general and increasingly specific subject areas and to begin to hypothesize legal issues. Consider the following questions:

- Which branch of government is involved: legislative, judicial, or executive?
- Is the matter civil or criminal?
- Does it involve federal law, state law, or local ordinance?
- Is it substantive or procedural?
- Who has jurisdiction?
- Are the sources being consulted binding or persuasive?

Often, it is useful to consult secondary sources for an overview of the relevant areas. These might include past issues of the *TMCEC Recorder*, a chapter in *The Judge's Book*, a handout from a TMCEC seminar, or a law review article. The search should start with the most general and progress toward the specific.

A clear, concise statement of each legal issue raised by the significant facts of the case should be written. It is preferred to err on the side of too many issues rather than too few. Insignificant issues can be eliminated later.

A systematic and methodical approach is essential to the research process. Keeping organized notes and records is critical. For each issue, it is important to decide which sources to use and the order in which to examine them. Notes should be kept regarding sources searched on each issue, even if the sources are repeated in earlier searches. As information is found, where it was found and why it is relevant should be recorded. A list of sources consulted, sources to be consulted, terms and topics checked, and steps to update should be maintained. This will prevent inefficient use of time and overlooking information.

### **C. Step 3: Finding the Law**

Once a list of questions has been developed, take from those questions a list of key terms. Key terms are words and phrases that may lead a researcher to a legal answer. Often, it helps to phrase each key word in as many different ways as possible to find more leads to useful information. While researching, continue to add key words to the list as they are realized.

In searching for applicable law, using the key terms, look in the table of contents and the index. If the particular provision is not found in the index or table of contents, the next step is to identify the time reference the provision falls under. For example in locating information in the Code of Criminal Procedure, whether the provision falls in the pre-trial, trial, or appeal process should be determined. Once the time reference has been established, which part of the Code or of Chapter 45 to search will be identified, since the Code of Criminal Procedure is organized according to the sequential steps in a trial. Or, if researching a provision relating to witness subpoenas, searching the end of the Code that contains the appellate provisions would be unproductive, since witness subpoenas would issue before the trial.

If, after these steps have been followed, the statute has not been located, the question should be rephrased, new key terms should be developed, and the entire process repeated.

If a statute is found that appears to answer the question, the next step involves evaluating and determining if the facts of the question fall into the statutorily specified factual elements of the statute. The meaning of the words should be considered to establish if they are defined in the statute or elsewhere in the Code. It may be necessary to determine legislative intent behind the statutes using the context of the statute. To do this, a researcher will need to review the legislative history of the statute—documents such as revised versions of bills, legislative debates, committee reports, and committee hearings.

All relevant case law should be identified, read, and updated. The search should not be limited to cases that support the position taken. Instead, both sides of an argument and contrary conclusions should be anticipated and identified. Cases that offer both binding and persuasive authority should be located. Cases that interpret statutes can be identified in several ways:

- Annotated statutes and codes list interpretative cases after each statutory provision. An example of a codified statute in *Vernon's* is shown in Part 3 of this guide.
- *Shepard's Citations* provides a list of cases that cites a statute or other cases on a particular issue.
- Computer-Assisted Legal Research from Westlaw, LexisNexis, or Loislaw.

As each case is read and briefed, its full citation, parallel citations, the judge and court issuing the opinion, the date of the decision, the relevant facts, the holding, a summary of the court's reasoning, key numbers assigned, and the sources cited by the court should be noted. Each of the sources cited should be read, briefed, and shepardized and new cases added to the list. Each case briefed should be incorporated into the outline. Cases that are "on point" (have facts that are substantially similar) should be registered, so that the opinion will guide the court.

After identifying, reading, and organizing the primary sources, the secondary sources should be investigated to refine the search and expand the argument.

#### **D. Step 4: Updating**

The law is modified or changed constantly. Pocket parts, supplements, and advance sheets should be assessed for modifications or changes that may have occurred since initiating a search. Computerized databases such as LexisNexis, Westlaw, and Loislaw are helpful to make certain that significant changes or cases are not overlooked.

At this point, the search is ready to be presented to a supervisor, city attorney, or presiding judge.

True or False

Q. 45. There is only one correct method in conducting a legal research project. \_\_\_\_

End True/False

Q. 46. Name at least three questions that should be asked to help frame the legal issue. \_\_\_\_

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Q. 47. Why would a secondary authority be consulted in planning a legal research? \_\_\_\_\_

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Q. 48. What should a legal researcher include in his or her research notes to document a systematic, methodical approach? \_\_\_\_\_

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True or False

Q. 49. Since case law interprets statutes, courts should research cases and statutes when determining how to administer statutes. \_\_\_\_

End True/False

Q. 50. After completing a legal research, why is it important to update the search one last time? \_\_\_\_\_  
\_\_\_\_\_

## CONCLUSION

This study guide was written as an introduction to legal research. For more information on fundamentals of legal research, see *Fundamentals of Legal Research, 8<sup>th</sup> Ed.*, Jacobstein and Mersky, which served as a resource for this chapter. All court personnel are advised to consult the city attorney or presiding judge before adopting policies and procedures. Court clerks should not substitute their own independent legal research for the advice of an attorney or the judges in their court. Nor should clerks ever place themselves in the position of giving legal advice to the public, friends, or any person appearing before the court.

This guide has not addressed the following legal research tools because they are less frequently used in municipal courts: digests, administrative regulations, annotated law reports, loose-leaf services, hornbooks, legal encyclopedias, legal periodicals and indexes, treatises, and model codes.

Additional training in legal research may be obtained from law schools and educational programs for paralegal and legal assistants. The State Bar of Texas (512.463.1463) and American Bar Association maintain lists of both.

## ANSWERS TO QUESTIONS

### PART 1

- Q. 1. Common law consists of oral traditions derived from general customs, principles, and rules handed down over the years and reflects in the decisions of the courts.
- Q. 2. Statutory law.
- Q. 3. Stare decisis, which means to “stand on what has been decided,” is the principle that the decision of a court is binding authority on the court that issued the decision and on lower courts in the same jurisdiction for the disposition of factually similar cases.
- Q. 4. A court can reject a decision of a higher court as not being binding by distinguishing the cases on their facts or issues, and thus, finding that the previous cases are different in some significant way.
- Q. 5. A case is “on point” if it shares the same significant facts with the case at issue and does not differ in any significant facts from the instant case.
- Q. 6. Dictum, language in an opinion that is not necessarily essential to the holding of the decision, is usually written in a dissenting opinion and does not embody the determination of the court; thus, it is not binding on the courts. Researchers also look to relevant decisions of other jurisdictions and states. Decisions that are not binding, either because they have different fact situations or because they are from another jurisdiction can be persuasive because of the depth of analysis and quality of the reasoning in the opinion.
- Q. 7. Following precedent results in fairness to parties in different cases because it assures that the law will be interpreted in a similar manner by different or the same judges in similar cases.
- Q. 8. True.
- Q. 9. False.
- Q. 10. In the *Texas Register* produced by the Secretary of State or in the Texas Administrative Code.

### PART 2

- Q. 11. Answers will vary in detail. The phrase “source of law” can mean:
- the general origins of legal concepts and ideas, such as traditions;
  - the governmental institutions that formulate legal rules; and
  - the published law.
- Q. 12. The differences between primary legal authority and secondary legal authority are:
- Primary authorities are authorized statements of law by governmental institutions, such as written opinions of the courts, constitutions, legislation, codes, and rules of court.
  - Secondary authorities are statements about the law and are used to explain, interpret, develop, locate, or update primary authorities.
- Q. 13. When the term is used to describe the degree of persuasiveness of legal information, authority is an estimation of the power of information to influence a legal decision. In this sense, authority can be termed binding or mandatory, meaning that a court believes the authority applies to the case and must be followed. Or, the authority can

be considered persuasive, meaning that a decision-maker can, if so persuaded, follow it.

### **PART 3**

Q. 14. The three broad categories are:

- primary sources;
- secondary sources; and
- index, search, and finding tools.

Q. 15. Primary sources are authoritative statements of legal rules by governmental bodies. They include court opinions, constitutions, statutes, and rules of court. Secondary sources are materials about the law that are used to explain, interpret, develop, locate, or update primary sources. Examples include law reviews, legislative histories, journal articles, newsletter articles, bench books, and procedural guides.

Q. 16. True.

Q. 17. Bound copies or paper resources are updated through inserts, often called pocket parts for statutes and slip opinions, or advance sheets for cases. They are updated once a year and are found in the back of each volume or code. When the pocket parts get too bulky, a new hard cover volume is published.

Q. 18. “Black Statutes” (*Vernon’s Texas Revised Civil Statutes and Codes*) is available from The West Group and includes the complete text of the law, case annotations that provide interpretations by courts, cross-reference sections, historical notes and commentaries that give background interpretations of the law, a general index, some individual volume or code indexes, an annotation index, and law review article citations.

Q. 19. The West Group.

Q. 20. Three companies that are the main sources for computer-assisted legal research are:

- LexisNexis;
- Westlaw; and
- Loislaw.

Q. 21. A court needs a computer and Internet connection. You also need the software and an access number or password.

Q. 22. True.

### **PART 5**

Q. 23. A citation is reference to a source of legal authority that allows a researcher to locate a cited source.

Q. 24. They are reference guides that explain the form and meaning of legal citations.

Q. 25. The following abbreviations stand for:

- U.S.C.        *United States Code*;
- S. Ct.        *Supreme Court Reporter*;
- F.2d         *Federal Reporter, 2<sup>nd</sup> Series*;
- S.W.2d      *South Western Reporter*,
- v.             *versus*

- Q. 26. The following abbreviations stand for:
- A.B.C.: Alcoholic Beverage Code;
  - C.C.P.: Code of Criminal Procedure;
  - E.C.: Education Code;
  - F.C.: Family Code;
  - G.C.: Government Code;
  - H.S.C.: Health and Safety Code;
  - P.C.: Penal Code

#### **PART 6**

- Q. 27. The purpose of the resource must first be determined, the author or editor should be noted, the types of authority (primary and secondary) should be distinguished, and if necessary a secondary source should be consulted.

#### **PART 7**

- Q. 28. Every two years for 140 days and when the Governor calls a special session.
- Q. 29. The House of Representatives and the Senate.
- Q. 30. True.
- Q. 31. The following phrases were added: Money deposited in a courthouse security fund may be used only for security personnel, services, and items related to buildings that house the operations of district, county, or justice courts, and money deposited in a municipal court building security fund may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts. For purposes of this subsection, operations of a district, county, or justice court include the activities of associate judges, masters, magistrates, referees, hearing officers, criminal law magistrate court judges, and masters in chancery appointed under:
- (1) Section 61.311, Alcoholic Beverage Code;
  - (2) Section 51.04(g) or Chapter 201, Family Code;
  - (3) Section 574.0085, Health and Safety Code;
  - (4) Section 33.71, Tax Code;
  - (5) Chapter 54, Government Code; or
  - (6) Rule 171, Texas Rules of Civil Procedure.
- (d-1) For purposes of this article, the term "security personnel, services, and items" includes

The following was deleted:

~~[A fund designated by this subsection may be used only to finance security personnel for a district, county, justice, or municipal court, as appropriate, or to finance items when used for the purpose of providing security services for buildings housing a district, county, justice, or municipal court, as appropriate, including]:~~

The underlined text is new language that is to be added to a statute or code. The "strike-thru" it indicates language that is to be deleted or changed.

- Q. 32. All of the laws passed by a legislative session that are published by The West Group in paperback and chronological sequence.
- Q. 33. The Texas Legislative Council website, House and Senate distribution offices, and commercial providers.

### **PART 8**

- Q. 34. By the names of the parties to the lawsuit.
- Q. 35. In Re is used in a case citation to show that there are not adversary parties. It means in the affair; in the matter of; concerning.
- Q. 36. Ex Parte in a case citation is used to show that a special proceeding was involved. It means by or for one party; done for; on behalf of.
- Q. 37. No. The legal editors (rather than the court) write the headnotes.
- Q. 38. All the points discussed in case. Each headnote represents a point of law extracted from the decision. If there are many headnotes, there are many points of law in the opinion.
- Q. 39. The main differences are:
- A majority opinion is usually written by one judge and represents the principles of law that the majority of the court deemed operative in a given decision. It has the greatest precedential value.
  - A concurring opinion agrees with the results reached by the majority but disagrees with the precise reasoning of the majority opinion.
- Q. 40. A plurality opinion (called a judgment by the Supreme Court) is agreed to by less than a majority as to the reasoning of the decision, but it is agreed to by a majority as to the result.
- Q. 41. The law is ever changing; therefore researchers must have an avenue to check the case or statute to determine if it is still “good” law (a law that has not been overturned by case law or a change in the statute). Shepardizing is the easiest and quickest way to determine if a case can be relied upon and has not been reversed by a higher court or overruled by a subsequent decision of the same court.

*Shepard's Citations* serve numerous purposes:

- to verify that the case still has precedential value and has not been overturned;
- to locate parallel citations;
- to identify other primary and secondary sources of legal information on the topic; and
- to review writ and petition history notations.

### **PART 9**

- Q. 42. Courts may view Attorney General Opinions as persuasive, not binding on the court.
- Q. 43. Attorney General Opinions are organized by the name of the Attorney General at the time the opinion was released and then numbered chronologically. Example: DM-1 (1991) would refer to the first opinion released by Dan Morales when he took office as the Texas Attorney General.

Q. 44. Copies of opinions can be obtained from the Attorney General's website or by calling or writing the Attorney General's Office at:

Attorney General's Office  
P. O. Box 12548  
Austin, Texas 78711-2448  
800.252.8011  
Opinions Committee – 512.463.2110  
Municipal Affairs Division – 512.463.2057  
www.oag.state.tx.us

#### **PART 10**

Q. 45. False.

Q. 46. Some questions that should be asked to help frame the legal issue are:

- Which branch of government is involved: legislative, judicial, or executive?
- Is the matter civil or criminal?
- Does it involve federal law, state law, or ordinance?
- Is it substantive or procedural?
- Who has jurisdiction?
- Are the sources being consulted binding or persuasive?

Q. 47. Often it is useful to consult secondary sources for an overview of the relevant areas. These might include past issues of the TMCEC newsletter, a chapter in the clerks' study guides, a handout from a TMCEC seminar, or a law review article. The search should start with the most general and progress toward the specific.

Q. 48. List of sources consulted, terms, and topics checked on each issue as well as any efforts to update. This will prevent inefficient use of time and overlooking information.

Q. 49. True.

Q. 50. The law is modified or changed constantly. There may be, for example, a new Attorney General's Opinion or case on the issue since the search was initiated.