# Preface

## Introduction

**Legal research.** Legal research is likely the most "hands on" subject you will take in the course of your legal education. Although numerous books discuss research methods and techniques, there is no substitute for actually performing the task of legal research. Thus, you will learn the most about legal research only by *doing* legal research.

Today's legal research projects are simultaneously easier and more difficult than they were years ago. They are easier because there are numerous sources for researchers to consult (including conventional print sources, the computerized legal research systems such as Lexis and Westlaw, and the Internet), and they are more difficult for the same reasons. There are so many sources to consult that deciding where to begin and what resources to use calls for careful analysis of the quality of sources and the economics of a research project so you can obtain the best answer to a legal question in the most efficient manner and at the lowest cost to the client.

To that end, library assignments are placed at the conclusion of each chapter so you can see and use the books discussed in each chapter. Similarly, each chapter includes an Internet Assignment, requiring you to locate information pertinent to the chapter by accessing well-known Internet sites.

Performing legal research can be both frustrating and gratifying. It can be frustrating because there is often no one perfect answer and because there are no established guidelines on how much research to do and when to stop. On the other hand, legal research is gratifying because you will be engaged in a task that requires you to *do* something and one in which you will be rewarded by finding the right case, statute, or other authority.

View legal research as an exciting treasure hunt—a search for the best authorities to answer a question or legal issue. In this sense, the task of using and exploring the law library, Lexis or Westlaw, or the Internet for answers to legal issues or questions should be a welcome relief from the assignments of other classes, which may be passive in nature and involve copious amounts of reading. Take the time to explore the books by reviewing the foreword, table of contents, and index found in each volume.

Familiarize yourself with all of the features of the books or electronic resources you use, and you will simplify your traditional legal research and enhance your electronic research skills when you begin using sources such as Lexis and Westlaw.

Consider researching with other students if you are comfortable doing so. Often you will learn a great deal by comparing notes with others who may be able to share successful strategies for effectively using various resources or finding the answers to research problems. Naturally, sharing ideas and tips for research techniques should not be viewed as an excuse not to do the work yourself or a license to use answers discussed by others. In other words, you should research with other students (if you find it useful to do so), but you should never share or copy answers from others. Not only is this practice dishonest, but it will prevent you from effectively learning the skill of legal research. Ultimately, an employer is not interested in how many "points" you obtained on a class exercise or what grade you obtained in a class, but in whether you can be depended upon to research an issue competently.

**Legal writing.** The legal profession rests on communication and requires its professionals not only to know the law but also to write about it. Legal writing takes many forms. Some documents, such as internal office memoranda, are intended to explain the law to the reader. Other documents, such as court briefs, are intended to persuade the reader. No matter what the form of the document, however, it must be accurate, clearly presented, readable, and concise.

The good news is that good legal writing is simply good writing. It should not differ greatly from other forms of writing. On the other hand, there are some quirks to legal writing that deserve special attention. Legal writing is more formal than other forms of writing. For example, the use of contractions is rare, and the use of the personal pronouns *I*, *we*, and *our* is uncommon (because the focus of most legal documents is on the client's position, not on the writer's opinions).

The writing chapters in this text are designed to be a thorough guide that legal writers can use to answer not only the "big" writing questions (such as determining the elements of a court brief) but the many "small" questions that continually occur during the writing process (such as when a comma precedes the words *and* and *but* and when a writer should indent quotations).

Writing is a skill that you can master by repeated practice. If you are inexperienced at writing, keep practicing. Enjoy writing and understand that your writing not only says something about the topic you discuss but also something about you. Make sure your finished project is understood by the reader and reflects well on you.

## Structure of the Text

You will be expected "to hit the ground running" when you get a job, yet there is often a significant gap between what is learned in the classroom and the way to apply this knowledge in the real world of a law office

environment. *Concise Guide to Legal Research and Writing* is meant to bridge this gap by combining a thorough grounding in legal research with a pragmatic approach to the types of legal research and writing assignments you will find in the "real world."

The text is divided into six main sections: The first section begins with a review of the American legal system and discusses the primary authorities used in legal research (namely, cases, constitutions, and statutes that are binding on courts); the second section covers the secondary sources used in legal research that are used to comment upon, explain, and help you locate the primary sources; the third section focuses on computer-assisted legal research using Lexis, Westlaw, and the Internet; the fourth section covers citation form for the authorities previously introduced and how to ensure that these sources are still "good law"; the fifth section provides an overview of the legal research process, discussing how to begin and end research projects; and the sixth section covers legal writing so you can put your research to work.

Each chapter and section builds on the previous one. For example, once you read Chapter 2's discussion of the federal and state court structure, you will be ready to understand Chapter 3's discussion on reading cases that interpret statutes, paying special attention to cases from higher courts. Similarly, once you read Chapter 4 and understand the elements of cases and how they are published, you will be ready for the discussion in Chapter 5 about how to locate cases using digests. The chapters on writing begin with the mechanics of writing: grammar, punctuation, and spelling. Once a writer has mastered or reviewed these basics, the writer will be ready to address the characteristics of effective legal writing and how to prepare various legal documents.

The coexistence of both Lexis and Lexis+ may cause some confusion. For simplicity, the discussion in this text focuses on the newer, more advanced platform Lexis+. A comparison of Lexis and Lexis+ can be found at www .lexisnexis.com/community/insights/legal/b/thought-leadership/posts /lexis-vs-lexis-plus-the-comparison.

## Features of the Text

The text includes a number of features to enhance learning. Each chapter includes the following features:

- **Chapter Overview.** Each chapter begins with a preview of the material that will be presented in the chapter.
- **Key Terms.** The key terms and concepts used in the chapter are presented in italics and are defined in the Glossary at the end of the text.
- **Practice Tips.** Most chapters include one or more pragmatic practice tips, linking the material in the chapter to "real-world" experience.
- **Ethics Alerts.** Most chapters include an ethics note or comment relating to the material discussed in the chapter.

to point you to relevant authorities and disclose authorities you might have missed.

- Coverage of the use of analytics tools now used by legal professionals, such as Lexis+ Context, which identifies language a specific judge has relied on in issuing options so writers can craft a winning argument using language the judge has already endorsed.
- An entirely new section in Chapter 8 on the use of artificial intelligence (AI) in legal research, explaining the differences between extractive AI and generative AI, describing how AI can be used to enhance your research and check your opponent's research, cautioning of the dangers and pitfalls of relying on unvetted nonlegal AI sources such as ChatGPT, and discussing pending proposals for regulation of AI.
- Discussion of whether the duty of technology competence required of legal professionals extends to a "duty to Google."
- Complete treatment in Chapter 13 of the use of the singular *they* as well as an expanded section on techniques to achieve gender-inclusive language.
- A new section in Chapter 14 on using tech tools such as ProWriting Aid, BriefCatch, WordRake, NoRedInk, and Cooley GO to improve writing.
- A new section on texting and confidentiality issues in Chapter 15.
- A completely revamped and expanded discussion in Chapter 16 on e-memos.
- New ethics alerts, such as complying with the duty of candor owed when submitting briefs to a court and that presenting another's brief to a court as one's own is sanctionable as plagiarism.
- New and updated figures, including new screenshots for Lexis+ and Westlaw Edge, new sample pages from the *Code of Federal Regulations* and the *Federal Register*, new screenshots for Justia and Court Listener, as well as numerous other new and sample pages.
- All new end-of-chapter research questions and Internet questions and a new Appendix C featuring a recent federal court trial brief and its table of authorities.
- Optional questions in the Instructor's Manual introducing students to the use of ChatGPT for both general and legal-related questions and which disclose ChatGPT's limitations in finding cases, summarizing the law, and "hallucinating" by making up fictional materials.

Additionally, new ethics alerts are included, such as an ethics alert in Chapter 16 relating to the use of generative AI (such as ChatGPT) violates the duty of competency and diligence and a brief discussion in Chapter 9 as to whether there is a duty to Google when conducting research.

Finally, references to helpful websites and blog sites have been updated, and numerous new sample documents are included. Chapter 12

(which provides an overview of the legal research process) includes a full range of open-ended research questions, requiring readers to use and apply all skills learned in previous chapters to obtain answers to these research questions.

## Textbook Resources

Instructor resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides. All of these resources are available for download at the Product Page for this text at aspenpublishing.com.

## Final Thoughts

When you begin reading this book, most of you will be unfamiliar with cases, statutes, constitutions, or the numerous other legal authorities. As you advance in class and complete the assignments in the text, you will readily be able to measure your progress. When you complete this text and your legal research and writing class, you will have gained thorough mastery of both legal research and writing techniques to ensure you can locate the legal authorities you need and then use them to make your legal writings accurate, clear, readable, and concise.

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