

Identifying the Rule (What Does a Legal Rule Look Like?)

Legal Skills:

- Identify legal rules
 - Identify *sources* of legal rules
 - Identify rule-making roles of each branch of government
 - Define “*elements*” of a legal rule
 - Define secondary *sources*
 - Name basic components of a *citation*
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PART I. THE LEGAL RULE IS A PRIMARY *SOURCE*

This chapter aims to make it easier to understand, recognize, and find legal rules in all forms. You will examine each *source of law* so that you can begin to recognize the format for each one, as well as some of the visual and substantive characteristics for each form. This examination should help you know what you are seeing on the screen, and later, will help you when doing your research and analysis tasks. So, let’s get started.

Let’s start with the thing itself. I often start my introductory law class with the question, “What is law?” It is fun to think about for a moment. Inevitably, a student will point out that law is the rules we live by. But rules that we may live by differ from laws that rule society

because laws are enforced either directly or indirectly by the government.

This explanation is certainly the foundation, but the next step is a harder one to take—that laws that rule society, legal rules, are created by a variety of *sources* that can be found in a variety of contexts. Most students can quickly learn that there are four “*sources*” of law—*statutes*, *administrative regulations*, *case law*, and *constitutions*. This makes sense, and it correlates with the branches of government that create the different types of law: legislative branch (*statutes* and, on rare occasions, *constitutional* amendments); executive branch agencies (*administrative regulations*); judicial branch (*case law*); and with the originator of these branches, *constitutional* conventions (*constitutions*). See Diagram 1, which includes each *source of law* and the branch or originator of government to which it correlates.

Diagram 1:
Primary Sources and Branch/Originator of Government

<i>SOURCE OF LAW</i>	BRANCH/ORIGINATOR OF GOVERNMENT
<i>Statutes</i>	Legislative Branch
<i>Administrative Regulations</i>	Agencies/Executive Branch
<i>Case Law</i>	Judicial Branch
<i>Constitution</i> <i>Constitutional</i> Amendments	<i>Constitutional</i> Conventions/Founders Either Congress (legislative branch) passes a proposed amendment by 2/3 vote or a <i>constitutional</i> convention is convened by vote of 2/3 of state legislatures

Further, the legal rules in the different *sources of law* look different from each other. Typically, the first *source of law* many students learn becomes their “go-to,” or their model, for recognizing law. For example, generally, first year law students all take courses—contracts, torts, property, etc.—that teach the substance of the law by having them read *case law*. Subsequently, when asked to research, they naturally gravitate to *case law*, and unsurprisingly overlook the other sources of law—*statutes*, *administrative regulations*, and *constitutions*. It’s easy to make that mistake. We all look for the familiar. And it’s not easy, initially, to understand that law comes in different shapes and sizes—from different branches of our government, in different formats, and with different looking *citations*.

This chapter will explain and demonstrate each *source of law*—*statutes*, *administrative regulations*, *constitutions*, and *case law*—and offer some visual and substantive cues for identifying each type of *source*. Before we get to that material, however, there are certain things it is helpful to know about *sources of law* and the legal rules in them.

First, let’s review the basic nature of legal rules. We all know what rules are—**if** this, **then** that. For example, **if** you stay out past midnight, **then** you will be grounded. We intuitively know that legal rules work the same way—if/then. For example, on the *criminal* side of things, **if** a person knowingly enters a building with the intent to commit a crime, **then** that person has committed burglary and is guilty of a crime. Or, on the *civil* side of things, **if** a driver violates the duty to drive at a safe distance and rear-ends you, causing injuries, **then** that driver is negligent and liable for your injuries. Rules are rules.

Second, legal rules typically have multiple parts. The legal term we use to describe the separate and distinct parts of a legal rule is “*element*.” According to Black’s Law Dictionary (11th ed. 2019), an *element* is a “constituent part of a claim that must be proved for the claim to succeed.” In subsequent chapters when we discuss researching a legal rule and using a legal rule as the basis of analysis, we will focus more on identifying and working with the separate *elements* of a legal rule. For

now, you need to know that each legal rule has separate and distinct parts, or *elements*.

Third, the *sources of law* are identified (and found) by legal *citations*. By *citation*, we mean how we refer to these *sources of law*—the identifying name, volume number, page number, section number, and year. Legal *citation* is a peculiar breed, and there is no other system of *citation* like it. Don't be discouraged if *citations* look strange to you or if it takes a while to master them. For now, at the outset, let them serve as a tool to help you figure out the *source of law* (eventually, citations will be tools that also help you figure out *jurisdiction*, and for *case law*, the weight of the precedent.)

In general, *citations* for all the *sources of law* have the same components: 1) an indication (often abbreviated) of the type of source—*statute*, *administrative regulation*, *constitution*, or *case law*; 2) the geographic *jurisdiction* of that source (federal or a particular state or locale); and 3) a relevant date. *Jurisdiction* is another one of those fundamental legal terms that has many different layers. According to Black's Law Dictionary, "*jurisdiction*" means "A court's power to decide a case or issue a decree" or, in other words, the specific geographical place or court in which the authority applies. When we talk about *jurisdiction* with respect to a *citation*, we are referring to the place (such as the federal or particular state or municipal locale) where the *source of law* comes from and where it applies.¹

For a thorough guide that walks you through *citations* and shows you how to use them to identify your legal *source*, see Appendix A. This text relies on The Bluebook: A Uniform System of Citation (Columbia Law Review Ass'n et al. ed., 20th ed. 2015), but individual *jurisdictions* may rely on different *citation* guides or conventions, especially in the legal practice (as opposed to academic) arena. The descriptions below of each type of *source* will include a basic description of its *citation*.

¹ In Chapter 2, we will look at another type of *jurisdiction*—subject matter—in addition to geographical *jurisdiction*.

Hopefully, learning, observing, and reviewing the different characteristics of each source, as well as its *citation*, will help you to distinguish one source from another when you are looking at the computer screen.

Fourth, a word about *primary sources of law* versus *secondary sources of law*. In law, the different types of *sources of law* that have been discussed here are *primary sources*. A *statute* is a *primary source*, a *case* is a *primary source*, a *regulation* is a *primary source*, and the *Constitution* is a *primary source*. In other words, a *primary source* is THE LAW itself—in any format—because each *source of law* is a form of legal rule. This will be important to remember when we start researching to solve problems.

In contrast, *secondary sources* are **NOT** THE LAW. *Secondary sources* are *sources* where someone—other than a branch of the government—is explaining, discussing, or questioning the law, but not creating it. As you start doing even basic research, you will run across *secondary sources*, and it is important that you know you are looking at a *secondary source*, **not** THE LAW. Some examples of *secondary sources* include legal encyclopedias, treatises, form books, and periodicals like law reviews or law journals. Because their purpose is to explain the law, these sources are often a great place to start your research. For example, all states have a state law encyclopedia that contains outlines and explanations of that state's law.

You may see *secondary sources* referred to in *case law* or included in the *annotations* following the text of a *statute*. (*Annotations*, addressed below in the discussion of *statutes*, are the cross-references to *primary* and *secondary sources* that accompany *statutes* in some publications.) You will also see *secondary sources* among the results when you do searches either on free legal sites or on subscription legal databases. Again, it's important to know what you are looking at—*secondary sources* are supremely helpful in assisting you to understand the law, and to find other relevant *sources of law*, but alas, *secondary sources* are **not** THE LAW. *Secondary sources* are more fully explained and discussed in Chapter 2, Part II.

The balance of this chapter will focus on *primary sources*, looking in more detail at each of the four *sources of law* already described. Part of your initial look at these *primary sources* will include learning how to distinguish them from *secondary sources*. Fortunately, visual and substantive clues help distinguish one from the other.

As an example, one hallmark of *secondary sources* to keep in mind is the idea of personal authorship. With *secondary sources*, whether written by a group of lawyers that are managed by an editor, like an encyclopedia, or written by one scholar or expert practitioner, such as a practitioner's resource or a treatise, generally authorship is personal. In other words, people acting as people author *secondary sources*—not people acting as a branch of government.

Therefore, when you look at a *statute*, *regulation*, or *constitution*, there will not be lawyers' or judges' names listed as authors. Slightly trickier is *case law*, because court decisions often (not always) list the name of the judge who wrote the opinion. But with such *cases*, the judge who wrote the opinion is considered to be acting as the court, not as an individual.

Now, we will look at each *source of law*.

A. Statutes (Legislative Branch)

Statutes can be short and simple, like the one used as an example below, or long and complex, with many definitions and subparts. Unlike *case law*, a *statute* is ALL RULE—there is no need to separate the relevant from the irrelevant, and there is no opportunity to observe legal reasoning (the application of a legal rule to the facts). Like *case law*, a *statute* can be about *civil* matters, such as laws spelling out the requirements for getting a divorce, or the requirements for different types of contracts, or a *statute* can be about a *criminal* matter. Also like *case law*, *statutes* can be from the federal or state *jurisdictions*. *Statutes* are the laws that are passed by legislatures (whether state legislatures or federal legislatures).

Here is a sample state *criminal statute*, starting with its title:

Third Degree Burglary

A person is guilty of burglary in the third degree when he knowingly enters or remains unlawfully in a building with the intent to commit a crime therein.

* * *

What are some readily observable characteristics of this *statute*?

- The heading or title (in bold) indicates the subject matter—***Third Degree Burglary***.
- A *statute*, like any legal rule, can be divided into *elements*, or parts. The *elements* of this rule are *person; knowingly enters OR remains unlawfully; building; intent to commit a crime therein*.
- A *statute*, like any legal rule, has the “if/then” quality—IF this, THEN that. Here, IF you enter a building with the intent to commit a crime, THEN you have committed burglary in the third degree.
- The *statute* does not include facts—unlike a *case*, which usually tells a factual story, the *statute* is just a rule waiting to be applied;
- In other words, the *statute* is ALL RULE;
- AND, therefore, within the text of the *statute* is nothing but *statute*. Unlike a case, which can include multiple *citations* to all the different sources of law (*statutes, administrative regulations, constitutions and case law*), a *statute* is just a *statute*, and does not itself usually directly reference any other legal sources.
- Publications of *statutes* can be *annotated* or *unannotated*. *Statutory annotations* add cross-references and links to related *primary* and *secondary sources* after the statute. (The verb “annotate” means to add explanatory notes, and that is what the cross-references to other legal sources are supposed to do.) For example, when you look up a

statute in a volume of *annotated statutes*, there may be a TON of annotations after it: references to other *sources*, including an explanation of the *statute* by a noted legal scholar, *citations* and blurbs of *cases* that have interpreted the *statute*, cross-references to similar topics and helpful *secondary sources*, links or references to legal databases, and plain old *citations* of multiple sources.

- If you have a choice, you always want to use *annotated statutes* when you are looking up a *statute*; *unannotated* publications include only the language of the statute itself. Remember, you don’t want to do work you don’t have to—make sure you take advantage of all the legal research that’s already been done for you!
- Although the *statute* in this example is a short declarative statement, which can be typical of well-written *statutes*, *statutes* can also be long and complex. A full version of such a *statute* usually includes separate sections laying out the definitions of statutory terms, for example, as well as the legal rule or rules. There can be paragraphs, sub-paragraphs, sub-sub paragraphs, and sub-sub-sub paragraphs (usually indicated with alternating letters and numbers).

For the example statute, a sample *citation* might be: State Crim. Code § 111.222 (1980). This *citation* has all three components: 1) the *jurisdiction*; 2) the type of source; and 3) the year. Often, words in citations are abbreviated.

State	Crim. Code § 111.222	(1980)
<i>Jurisdiction</i> (in reality, would use a specific state’s abbreviated name)	“ <i>Code</i> ” indicates —or at least hints at— type or <i>source of law</i>: <i>statute</i>	Year of the book’s edition (for versions in print) OR currency date of the database (for online versions)

You can recognize the *source of law* by the word “*code*.” Other cue words—*statutes*, revised *statutes*, laws, consolidated laws, annotated *statutes* (or *statutes* annotated), or compiled laws—are also used to refer to *statutes*. The word “*code*” is often used to refer to *statutes* because after a law is passed by the legislature, it is then “codified”—organized (usually by topic) to fit in with the existing statutes in the jurisdiction. According to Black’s Law Dictionary, “codification” means “The process of compiling, arranging, and systematizing the laws of a *jurisdiction* . . . into an ordered *code*.” Note also the inclusion of the section sign (the “§”), which you often see in *statutory citations*.

The geographical *jurisdiction* “State” would be a reference to a specific state, and “1980” is the year the book you found the statute in was published. According to The Bluebook, what to put in the parenthetical part (the end part, between parentheses) of the *code citation* is different depending on whether you are looking at a book version or an electronic version of the *code* (see Bluebook Rules 12.3.2 and 12.5; see also Appendix A for a full explanation). Both Westlaw and Lexis (subscription legal databases) indicate a “currency date” for the electronic database in which a *statute* is found, which can be the date included in the parenthetical.

In summary, a *statute* is passed by a legislature in a particular jurisdiction (state or federal) and lays out legal rules that can be simple and short, or lengthy, with multiple paragraphs, sections, sub-sections, and sub-sub-sections.

B. Administrative Regulations (Executive Branch)

An *administrative regulation* is another type or form of law that is adopted by an administrative agency in the Executive Branch. *Regulations* can have a similar look to *statutes*—both tend to come in sections with numbers, letters, and section signs. Both *administrative regulations* and *statutes* also commonly use the words “Title” and “Chapter” for ordering themselves, as if they are books (and yes, the

“Title” of a regulation or statutory series is the main idea, and the “Chapter” is simply a section of the overall “Title”).

There are two major distinctions between *administrative regulations* and *statutes*: many times, *administrative regulations* will be more detailed than *statutes*, and all of the time, *administrative regulations* derive their authority from a *statute* and amplify the idea of the *statute* with the necessary details. Another distinction is the author—the legislature writes and passes *statutes*; the proper administrative agency then composes the *administrative regulations* that explain or fill in the details regarding that *statute*. Like statutes, however, *administrative regulations* can come in annotated form.

For example, for those of you who drive a car and have obtained your driver’s license, you may recall the agency called the Department of Motor Vehicles. It is this agency’s job to regulate and administer the process for obtaining a driver’s license. It is the legislature’s job to determine that a person must have a driver’s license in order to drive.

Here is a sample motor vehicle regulation for driver’s licensing loosely based on the New York *Code of Rules and Regulations*:

General Driver Licensing Procedure.

(a) Original licensing.

The provisions of this subdivision shall apply to a person who is not the holder of a valid or renewable driver license.

(1) An appropriate learner’s permit shall be issued upon passage of a vision test, submission of all documentation required with respect to age, identity and fitness, payment of all fees required by section 503 of the Vehicle and Traffic Law, the taking of a photo image, and passage of a knowledge test appropriate for the license for which application is being made. An applicant shall be entitled to make an appointment to take a skills test upon submission of evidence of completion of the required prelicensing driver training and highway safety course as provided in Part 7 of this Title.

* * *

In general, how would you describe this section of an *administrative regulation*? What characteristics does it have?

- The heading or title indicates the subject matter—General Driver Licensing Procedure.
- A *regulation*, like any legal rule, can be divided into *elements*. Here, the *elements* are: *passage of a vision test; submission of all documentation required; payment of fees; and passage of a knowledge test.*
- A *regulation*, like any legal rule, has the “if/then” quality—IF this, THEN that. Here, IF you submit all the items listed, THEN you are entitled to receive a learner’s permit.
- We see that this regulation gives directions on how people can obtain driving licenses, such as the tests that have to be passed and the documentation that has to be submitted.
- The directions may seem detailed—and if you cannot imagine elected members of a legislature setting out this type of detail, your instincts are right. Instead, the authors of this rule were employees of the Department of Motor Vehicles agency.
- There is a reference to another law—note that section (1) the regulation refers to “section 503 of the Vehicle and Traffic Law.” “Section 503 of the Vehicle and Traffic Law” is a reference to a *statute*. Remember, this regulation exists or “serves” the *statute* passed by the legislature. So one way to identify regulations is the reference to the *statute* or law (usually when we say “law” we mean a *statute* that has been passed by a legislature).
- In addition to the reference to the *statute* (“section 503 of the Vehicle and Traffic Law”), we see references to a “subdivision,” and “Part 7 of this Title.” These terms

indicate that the *regulation* has difference parts and different sections. As with a *statute*, these segments and divisions make it different from *case law*, which usually tells a factual story. Also as with a *statute*, a *regulation* is just a rule—ALL RULE—waiting to be applied.

A sample *citation* to a regulation might be: State Admin. Code R. 1234 (1990). This *citation* has all three components: 1) the *jurisdiction*; 2) the type of *source*; and 3) the relevant year.

State	Admin. Code R. 1234	(1990)
<i>Jurisdiction</i> (in reality, would use a specific state’s abbreviated name)	“Admin. Code R.” indicates—or at least hints at— type or source of law: regulation	Year of the book’s edition (for versions in print) OR currency date of the database (for online versions)

The type of source is indicated by “Admin. Code R.” which stands for Administrative *Code* Rule. The geographical *jurisdiction* is indicated by “State,” which would include the name of the actual state, and the relevant year is in the parenthetical. (See Appendix A for a more complete discussion about the *citation* rules for regulations, including the proper year to put in parentheticals).

Remember, an *administrative regulation* is a detailed set of directions, laid out, similar to a *statute*, in sections and subsections. It provides the detail needed to implement a *statute*’s directives.

C. *Constitutions* (Constitutional Conventions)

We all probably think we know the U.S. *Constitution*—free speech and the founding fathers, for example. But how many of us have ever actually read it? Would we recognize it if we were to see an excerpt? Keep in mind, too, that there are state constitutions in addition to the U.S. *Constitution* that perhaps even fewer of us are familiar with.

Constitutions are unique documents. Their main purpose is to set up how government will work. Our state and federal *constitutions* organize our government in three branches so that no single branch has all the power. That is what is meant by “checks and balances”—each branch can “check” the other branch (read: stop/overturn/thwart)—so power is “balanced” between branches and no one branch has all of it. State *constitutions* cannot take away rights and privileges provided by the U.S. *Constitution*; they can, however, offer more rights and privileges. Thus, the U.S. *Constitution* applies to both state and federal governments, and it offers a floor of basic rights guaranteed to all citizens.

Many people do not know that the U.S. *Constitution* is not just the Bill of Rights, which consists only of the first ten amendments to the *Constitution*. Many people also would not recognize the Preamble, do not know there are multiple “Articles” in the first part of the *Constitution*, and do not know that there are multiple amendments to the *Constitution* beyond those in the Bill of Rights.

Here is an excerpt—the first part of an Article from the U.S. *Constitution*:

Article II

Section 1, Clause 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and together with the Vice-President, chosen for the same Term, be elected, as follows.

Here is the second clause of Article II, Section 1:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

How is this excerpt from Article II of the *Constitution* different from the above two sources of law—*statutes* and *administrative regulations*? What do you observe both in format and in substance about this excerpt?

- A *Constitutional clause*, like any legal rule, can be divided into *elements*. Here, the *elements* of the first sentence of the first clause of Section I of Article II are: *Executive Power, shall be vested, in President*. The second sentence provides: *He, shall hold his Office, during Term of four Years, and together with Vice-President, chosen for the same Term, be elected, as follows*. Then, the *elements* of the second clause of Section I go on to state: *state, shall appoint; Number of Electors; equal to the whole Number of Senators and Representatives*.
- Note that a *Constitutional clause*, UNLIKE other legal rules, DOES NOT necessarily have the “if/then” quality. This is because the *Constitution* primarily lays out the duties and structure of our three branches of government, not the consequence(s) of certain actions or events. For example, the above clauses set out the terms of the President and Vice President and the structure of the Electoral College. This information organizes the government by providing term limits and explaining a representative body like the Electoral College.
- However, note that other clauses of the *Constitution*, such as the Due Process Clause and Equal Protection Clause provisions of the Fourteenth Amendment, do indeed have the “if/then” quality. For example, the clause from the Fourteenth Amendment that contains those provisions states: *[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws*. So, IF you deny anyone life, liberty or property without Due

Process, THEN you have violated the *Constitution*, specifically, the Fourteenth Amendment. Or, IF you deny any person equal protection of the laws, THEN you have violated the *Constitution*, specifically, the Fourteenth Amendment.

- The *Constitution* is a unique legal document because it includes both information about the structure and exercise of power in the branches, and, in the Amendments, “if/then” rules protecting people’s rights.
- On a superficial level, we can notice that the capitalization in the U.S. *Constitution* is not conventional for today’s usage—many items that do not seem like proper nouns are capitalized. What might this be evidence of? Hint: this *Constitution* was written at a time when the usage and capitalization rules were different. (In other words, this *Constitution* was written a long time ago.)
- Like a *statute* and an *administrative regulation*, the U.S. *Constitution* is ALL RULE—there is no extraneous or irrelevant factual information that you need to sift through like you do for *case law*.
- Try to identify what the section of the U.S. *Constitution* we started with pertains to. Because it refers to how a president gets elected, the Electoral College, and how we select the delegates to the Electoral College, you can observe that a *constitution*—or at least, this *Constitution*—describes the process of governing.

The U.S. *Constitution* is therefore a form of law fundamentally distinct from a *statute*, which can be civil or criminal and can range in topic from making burglary illegal to governing the issuance of driver’s licenses. For future reference, remember that much of our *Constitution*, such as the Commerce Clause or the Bill of Rights, impacts our daily lives but is only generally (although eloquently) stated. As a result, many

parts of the *Constitution* have been brought before the courts, which then clarify and explain the provisions in *case law* for today’s audiences. The U.S. Supreme Court is the final and authoritative word on the meaning of the U.S. Constitution.²

A sample *citation* to a *constitution* might be: State Const. art. X, § 3. This *citation* has only two of the three components: 1) an indication of the type of source, and 2) the *jurisdiction*. The Bluebook does not require us to include a parenthetical with the year. We have an easy reference here to “Const.” for *constitution*, and “state” indicates the *jurisdiction*.

Here is a visual depiction of the *citation*:

State	Const. art X, § 3	
<i>Jurisdiction</i> (in reality, would use a specific state’s abbreviated name)	“Const.” indicates the type or source of law: constitution	Year The U.S. <i>Constitution</i> does not include the year in the citation, although state <i>constitutions</i> do

Remember, in addition to our U.S. *Constitution*, each state has a *constitution*, and all *constitutions* are ratified at *constitutional* conventions and provide our governmental framework.

D. *Case Law* (Judicial Branch)

This section will examine *case law*, found in judicial opinions. Don’t be confused by the legal profession’s use of the word “case” to mean multiple things. For example, legal professionals use “case” in the statement, “Here at our law firm we’ve got a new case,” to mean a new client and the corresponding legal problem. But “case” also means a

² The official U.S. Supreme Court website says it well when it states: The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.

court opinion, written by a judge. And to make matters worse, the following terms are used interchangeably: *case*, *decision*, *court opinion*, *judicial opinion*, and *case law*.

A *case*, by definition, contains a legal rule. Unhappy parties bring their legal issue to a court, asking how a specific legal rule applies to their problem. The court discusses and then applies that legal rule. Most court opinions you will read are from appellate courts because appellate court opinions are published more frequently and carry precedential value. An *appellate court* (a panel of appellate judges) is more apt to write an opinion; a *trial court*, with one judge, is not as likely to write a lengthy decision or to submit a decision for publication. Because a *case* is the application of a legal rule to facts, we can always count on a *case* to contain at least one legal rule; often they contain more than one.

There are roughly two types of *cases* in the state law world: 1) *cases* that interpret or apply a legal rule that comes from another *source of law*, such as a *constitution*, an *administrative regulation*, or a *statute*; and 2) *cases* that rely on, and develop, legal rules solely from another *case* (or multiple *cases*).

When that legal rule comes from other *cases*, or *case law*, and not a *statute*, *administrative regulation*, or *constitution*, we call the legal rule *common law*. Students of the law may call this “judge-made law.” *Common law* is the body of law based on judicial opinions or *cases*. We call our American legal system a *common law* system, and *common law* courses still form the bulk of the first year law school curriculum. So this is a term with a rich definition. You will explore the different types of *cases* more fully in Chapter 3, Part I, Section C.

Here is a sample civil case in a state court. This example is a case about someone named Phyllis Carr who was injured in an auto accident and brought a lawsuit against Arlo Buss. As you will see, this case relies on a legal rule that is in another case and is therefore *common law*. In state law, negligence is usually a *common law* topic. Can you spot the legal rule? Look for it.

*State Mid-level Appellate Court**Phyllis Carr, Plaintiff, v. Arlo Buss, Defendant**Opinion.**Memorandum by the Court.**J. Denman, J. Jackson and J. Dillon.*

Plaintiff sued for damages for personal injuries suffered as a result of a two-car collision in which the aqua Volkswagen bus owned by the defendant, Arlo Buss, rear-ended plaintiff's red Chevrolet Malibu sedan. The Plaintiff, Phyllis Carr, suffered a broken sternum, whiplash, and various bruising. The accident occurred on May 5th, 2019, on Elmwood Avenue, in Buffalo, New York.

A rear-end collision with a stopped automobile establishes a prima facie case of negligence on the part of the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to explain how the accident occurred. See Gambino v. City of New York, 205 Official State Reporter 583, 613 Unofficial/Regional State Reporter 417 (1990).

Here, although the defendant Buss had the duty to explain how he rear-ended the plaintiff in order to avoid the conclusion that he was negligent, he was not able to do so. According to the police report, Buss simply told the officer that he was “grooving to the music” and lost track of where he was. In the absence of any reasonable explanation, the rear-ending vehicle is negligent. Therefore, the trial court’s grant of summary judgment to the plaintiff, Phyllis Carr, is affirmed.

* * *

Did you spot the legal rule? It is the long sentence in the second paragraph:

A rear-end collision with a stopped automobile establishes a prima facie case of negligence on the part of the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to explain how the accident occurred.

The first part of this sentence—“A rear-end collision with a stopped automobile establishes a *prima facie* case of negligence on the part of the operator”—means that a driver whose car runs into a

stopped car in front of it is assumed to be negligent, or at fault. The Latin phrase “*prima facie*” can be roughly translated to mean “at first sight” or “on the face of it.”

The second part of the rule “and imposes a duty on the operator of the moving vehicle to explain how the accident occurred” simply means that the driver of the offending car must give an acceptable explanation for what happened to avoid being held at fault. In other words, unless the driver of the offending car has a very good reason for smacking into the rear-end of the stopped car in front of it—perhaps the offending car was hit from behind itself—the driver of the offending car is negligent.

One way to recognize a legal rule from a case is by the *citation*, or reference, to the case, because whenever a court mentions a legal rule in its decision, that rule must be followed by a *citation*. You can see in the body of the case that this rule was followed by a *citation* to the Gambino v. City of New York case.

In addition to recognizing a *case citation*, it is also important to be able to distinguish a case from other types of legal sources. Look again at the *Carr v. Buss* case. Observe. Evaluate. What characteristics does the case have? What can you say about it?

- First we see the “*caption*” or heading with the *parties*’ names at the beginning.
- Like the other legal rules, case holdings can be divided into *elements*, or parts: *rear-end collision* plus *stopped automobile* = *prima facie negligence*.
- Like all other legal rules, this rule has an “if/then” quality—IF you collide with the rear end of a stopped vehicle THEN you are *prima facie* negligent.
- This case is just one decision issued by a court resolving one dispute between two *parties*. At least part of a *case* may resemble a story: where it lays out facts about what happened to cause one of the *parties* to initiate a lawsuit.

Remember, this is the only *source of law* that includes facts!

- Given the extent of information, it may be hard to tell what facts are important. In other words, you may have to separate the relevant from the irrelevant.
- There is a lot of information here, which can make it difficult to read.
- A *case* might have vocabulary you don't understand, especially procedural information, which includes the specific legal mechanism the court used to resolve the case. In our *case* example of *Carr v. Buss*, the *plaintiff's* case was resolved by summary judgment—something the *plaintiff* would have requested in a motion. However, typically a summary judgment motion is made by a *defendant*, after the discovery process (exchange of information between both sides), in order to get rid of—dispose of—a case. The *defendant* basically argues that there is no way the plaintiff can win at trial. For a more legal and technical definition, see Black's Law Dictionary.³ Additionally, the opinion mentioned the term *prima facie* case. As noted above, *prima facie*, Latin for “at first face” or “at first appearance,” means that on the first try, without looking at the other side's evidence, the party has enough evidence to establish its claim.⁴ Procedural information can also include the way a *case* got to that particular court.

³ Black's Law Dictionary defines summary judgment as “a judgment granted on a claim or defense about which there is no genuine issue of material fact and on which the movant is entitled to prevail as a matter of law.”

⁴ Black's Law Dictionary defines *prima facie case* as “a party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.”

Finding all these characteristics together usually means you are reading a case (although perhaps the last two bullet points about encountering challenges can be true for other primary sources as well).

A sample case *citation* would be: *Carr v. Buss*, 123 Official State Reporter 456, 789 Unofficial/Regional State Reporter 111 (1990). This *citation* has all three components: 1) the *jurisdiction*; 2) an indication of the type of source; and 3) the relevant year. The *jurisdiction* is sometimes indicated by the name of the *reporter*—when the name of the *reporter* indicates the state. (*Reporters* indicating only the region do not show the specific state jurisdiction.) One indication of the type of source is the reference to the “Official State Reporter” and the “Unofficial State Reporter.” Here, a *reporter* is a book that *cases* are published in (not a person with a note pad!). *Cases* can be “*reported*” (published in one or two *reporters*), by different publishers; if it’s an “official” *reporter*, that means the publication is by the government; if it’s an “unofficial” *reporter*, that means it’s published by a private company.

The most obvious indication of the type of source is the first piece of information—a name versus another name. The “v.” stands for versus, and that should make it clear that this is the resolution of a dispute, unlike the other sources of law, which are all law. The relevant year is in the final parenthetical. Some *citations* have additional information about the specific level of state court deciding the issue within that same parenthetical.

Here is a visual depiction of the *citation*:

123 Official State Reporter 456, 789 Unofficial/Regional State Reporter 111	<i>Carr v. Buss</i>	(1990)
<i>Jurisdiction</i> The name of the State <i>Reporter</i> indicates the state (or indicates that it's federal). Remember, in reality, an abbreviation for the specific state, such as New York, would be in the place of "State."	Names of the <i>parties</i> plus the "v." for "versus." Indicates the type or source of law: case . Remember, only <i>cases</i> involve people and the application of law to facts.	Year This is the year the decision was made.

Remember, a *case* is decided by a court, which applies a legal rule to a dispute between two or more *parties*. See Chapter 3 for a thorough discussion of the court structure.

Remember that all the *primary* legal *sources* we have reviewed exist in both the federal and state worlds, and likewise exist in all subject areas, including *civil* and *criminal*.

Congratulations on finishing your introduction to primary legal sources.

CHAPTER 1 LEGAL SKILLS

- Identify legal rules
- Identify *sources* of legal rules
- Identify rule-making roles of each branch of government
- Define "*elements*" of a legal rule

- Define secondary *sources*
 - Name basic components of a *citation*
-

CHAPTER 1 VOCABULARY

- Administrative agencies
- Administrative regulations
- Annotations
- Appellate court
- Caption
- Cases (synonyms: judicial opinions, case law, court decisions, judicial decisions, court opinions)
- Cause of action
- Citation (also called: cite)
- Civil
- Code
- Common law
- Constitution (Articles, Bill of Rights)
- Criminal
- Defendant
- Element
- Jurisdiction
- Official versus unofficial
- Party/parties (in a case)
- Plaintiff
- Prima facie
- Primary source
- Reporter
- Secondary source
- Source of law
- Statute
- Trial court

SKILLS DEVELOPMENT**Tips on Improving Reading Comprehension**

It can be difficult to read dense material with a lot of new words in any discipline. Law is no exception. The writing can be archaic, inflated, or positively cryptic. To gradually improve your reading comprehension, try these tips:

- 1. Preview:** figure out what you will be reading. What type of source? How many items? What is the date? What is the historical context? Where is the material placed according to any table of contents?
- 2. Skim:** provide yourself with an outline of the material by reading just the topic sentences first. That way, you familiarize yourself with the basic subject-matter.
- 3. Active Reading:** read through carefully, highlighting key words, visualizing events, and annotating the text (or taking notes in a separate notebook) with questions and comments that come to mind.
- 4. Review:** review all the information you have learned and try to summarize what you have read in your own words. Try summarizing in writing, or verbally in class.

CHAPTER 1 RESEARCH AND ANALYSIS EXERCISES

(Can Use Westlaw, Lexis, free legal internet sites, or the Books)

Research skills introduced:

- Use simple key word searches
- Make sure the results of your searches are up-to-date and current
- When you search most databases using quotes around words, you will find those specific, literal words
- Follow the trail of a case that relies on another case
- Use state legal encyclopedias to find background on a specific legal topic

- Use online legal dictionary or key word searches on internet search engines to find definition of legal terms (* Do NOT rely on non-legal sources)
- Draft a summary

Directions:

Before diving in to these exercises, acquaint yourself with your databases and/or your library. Do the basic tutorial, get a tour from the librarian, and listen to your professor's introduction to your available sources. If you are using free databases, investigate their search techniques (full-text or key word) if you can. For online sources, when you find a source that looks applicable, try to ensure that it is up-to-date by ensuring there is no red flag or red stop sign (Westlaw, Lexis), or checking to see how recently the website was updated. One of the most important things for legal research is making sure that your source is up-to-date.

Because these exercises are basic ones to introduce you to different sources, simple key word searches should work. A simple “key word” search means you use the basic terms or names you are looking for to search a database. Here, we are not trying to solve legal problems, but rather, just trying to find basic legal resources. So it is fine to search for these sources by name. Try a variety of key word searches, see what you get, and make sure if you are using a subscription database that you have chosen to search the correct jurisdiction and/or database with the sources you need. Remember that you can use an online legal dictionary for any terms you don’t know, and that you can also use key word searches on internet search engines to see what trustworthy and reliable legal sources you can find that may provide basic explanations or definitions for term or subjects. Be sure to review the Appendix to see some examples.

Remember that Appendix 1 includes much more detail about the differences in citation form for each source, as well as sample citations for some states and federal sources, so refer freely to this Appendix to help you.

I. Investigating your state jurisdiction:

To help you identify and become familiar with the different sources of law in your state, with the help of your professor:

1. Find an example of each primary source from your state from a non-subscription source in order to acquaint yourself with free online sources and state-specific online sources such as court websites and legislative websites.

2. Find the following primary sources and answer the questions about each source:

a. **Constitution:** Constitution for your state. Use simple key word searches such as “(your state) constitution”; “last modification of (your state) constitution.” On free and subscription databases, there may be lists of all the primary and secondary sources available for your state.

i. How long is it?

ii. When was it written? Last modified?

iii. Can you find a secondary source comparing one (or many) aspect of your state constitution with the U.S. Constitution?

iv. How many different ways can you find your state constitution? List each successful pathway to your state’s constitution using free internet sources, the books, and the subscription databases available to you. (Note: this exercise can be done for each source you find here).

v. List the three main components of a citation to your state’s constitution: an indication of the type of source (or its Bluebook abbreviation), the jurisdiction, and a relevant date.

b. **Statute:** Your state’s general burglary statute (any degree). Use simple key word searches such as “(your state) burglary statute.” In order to answer the questions, be sure to review the pages in the chapter that discuss statutes and that define annotations.

- i. Does your state have an annotated version of its statutes? Does it have a version of statutes without annotations?
 - ii. Does your state have a version of its statutes that are published by the state and is therefore considered an “official” version? Is that version annotated or unannotated?
 - iii. Summarize, in your own words, the general meaning of the statute.
 - iv. List the three main components of a citation to this statute: an indication of the type of source (or its Bluebook abbreviation), the jurisdiction, and a relevant date.
- c. **Case law—common law:** Since negligence tends to be a common law topic across states, try searching negligence cases that cite the basic elements of negligence—duty, breach of duty, causation, damages—and therefore relies on another case.

You can try simple key word searches such as “(your state) highest court in the state and common law negligence,” or various combinations of that search.

- i. Does your state have official reporters AND unofficial reporters?
 - ii. Summarize, in your own words, the factual problem that occurred in this case and the court’s decision. We will learn how to “brief” a case in Chapter 8 (this is an organized way to analyze a court decision), so for this exercise try to do a basic summary
 - iii. List the three main components of a citation to this statute: an indication of the type of source (or its Bluebook abbreviation), which for cases means the name of the reporter, the jurisdiction (your state and the name of your state’s highest court), and a relevant date.
- d. **Administrative Regulation:** Your state’s Department of Motor Vehicle regulations on the criteria to get a driver’s license.

Again, use simple key word searches. If you search “(your state) and driver’s licenses” you should probably pull up, among other things, the relevant state regulations.

- i. Does that regulation refer to the statute it is based on? If not, try searching for “statutory basis for (your state’s) driver’s license regulations,” or any variation of that, to see if you can find the statute that seems to correspond to the regulation you are looking at.
 - ii. Summarize, in your own words, the meaning and requirements of this regulation.
 - iii. List the three main components of a citation to this statute: an indication of the type of source (or its Bluebook abbreviation), the jurisdiction, and a relevant date.
- e. **Compare:** Develop a chart that lists each source of law and the characteristics of each form of law. Include one column in the chart with the basic three components of a citation for each source: the name of the source, the jurisdiction, and the relevant year.

3. **Common law:** Investigate the root of common law, a primary source, and with the case you found in #1, note the case that your case relies on, and continue to do that as you follow the trail of cases back to the English common law. In an electronic database, usually you can do that by simply clicking on the hyperlink for the case the court is relying on. Hint: use decisions from your state’s highest court for this exercise, and be ready for the trail of cases to go back to the 1800s.

- a. As you identify the trail of cases, keep track of each case by noting the name of each case, the name of the court that decided it, and the year the case was decided.
- b. How many cases are in your trail to English common law (or the “first” case to come up with the rule in your state)?
- c. What is the name and date of the English common law case (or the “first” case to come up with the rule in your state)?

4. **Secondary source—state legal encyclopedia:** You were introduced to the concept of secondary sources in this chapter. Secondary sources explain the law, and are often a good place to begin your research. For state law issues, practitioners may start with the state law encyclopedia, which virtually every state has. These are available in book form and on subscription databases.

- a. What is the name of your state’s legal encyclopedia?
- b. Using the index or a key word search, find out whether your state has social host liability. Use the internet to supplement your search. If your state has a social host liability statute, find the summary and explanation of this area of law in your state encyclopedia.
- c. If your state does NOT have social host liability, find the summary and explanation of your state’s dram shop statute and how courts have interpreted that statute. You can start by using a law dictionary and/or internet search engines to get an idea of what “social host” or “dram shop law” means in YOUR STATE.
- d. Note the central components of a citation to your state encyclopedia—the name of the source, the jurisdiction, and the relevant year.
- e. Identify some differences in appearance, style or substance between this secondary source and the primary sources you investigated above in #1.

II. Now, the same with the Feds:

1. Find the following primary sources using a combination of internet search engines, books, and subscription databases if they are available to you.
 - a. **Constitution:** Find the U.S. Constitution.
 - b. **Statute:** This time you will use the citation for this well-known and oft-used federal civil rights statute in free legal

databases, using your favorite search engine, or using your subscription database.

- i. Find and compare [42 U.S.C. § 1983](#) (official U.S. code—this is the version that should be cited) and [42 U.S.C.A. § 1983](#) (the “A” indicates “annotated”).
 - ii. What is the difference between the unannotated and the annotated? Remember there should be NO difference in the text of the code. However, looking at the end of the statutory text, what is the difference in what follows? What are some of the things you can find out using an annotated version?
 - iii. List the required citation components for the citation—the name of the source, the jurisdiction, and the relevant year.
 - iv. Read the statute and list some observable qualities about the text: is it short or long? Does it have subsections? What type of vocabulary does it use? Can you understand the purpose of the statute?
- c. **Case law:** Since you haven’t learned about federal jurisdictions yet, you will now find out how easy it is to locate a U.S. Supreme Court case. If you use a simple key word search in your internet search engines or subscription databases “Supreme Court cases” your search should pull up Supreme Court cases in your subscription database, and on the internet this basic key word search should pull up several websites that have summaries or the full text of Supreme Court opinions. You can also go to the Supreme Court website (see Appendix F).
- i. Based on the blurbs or the names of the cases, choose a Supreme Court case that interests you.
 - ii. List the necessary components for the citation: an indication of the type of source, which for cases means the name of the reporter, the jurisdiction, and the year of the decision.

- iii. Look at the decision and observe its characteristics: is it long or short? Multi-sections? Sub-headings? How does it compare to the statute above?
- d. **Administrative Regulations:** Take a look at the federal regulations, formally known as the Code of Federal Regulations (C.F.R.). Again, if you do a basic key word search on an internet search engine, such as “code of federal regulations” or “interesting federal regulations” you will pull up a number of government sites and free legal research sites that include the C.F.R.
 - i. Find a regulation pertaining to the Endangered Species Act, a federal statute, using basic key word searches. Specific federal regulations are more difficult to find than U.S. Supreme Court cases, so you will have to dig a little, and may have to learn about some specific terms to search. Hint: try using the keyword “title,” since the C.F.R. is organized by titles, and throwing that into your search might help.
 - ii. Once you find a regulation, make some observations of its characteristics. Is it long, short, complicated, straightforward, easy or complex vocabulary? How does it compare to a statute, a case, or a constitutional provision?
 - iii. List the three required components for a citation: an indication of the type of source (here, the Code of Federal Regulations should do it), the jurisdiction, and the relevant year.

III. Oral presentation for groups:

You can do these exercises in your state jurisdiction or the federal government.

1. State government processes: Find free legal resources that explain the three different processes of our three government branches, executive, legislative, and judicial, and, without copying and pasting ANY

material from your sources, prepare a 5–10 minute presentation that explains and teaches the process to your classmates.

- a. Executive:
 - i. Who is your top executive, and what parts of the government are in the executive branch?
 - ii. What source of law can the executive branch create?
 - iii. How do they do so? What are the different stages in the process?
 - iv. Provide an example.
 - v. Provide visual aides to explain the process.
- b. Legislative:
 - i. What are the legislative bodies in your state called?
 - ii. What source of law can this branch of government create?
 - iii. How do they do so? What are the different stages in the process?
 - iv. Provide an example.
 - v. Provide visual aides to explain the process.
- c. Judicial:
 - i. What is the highest court in your state called?
 - ii. What source of law can this Court create?
 - iii. How do they do so? What are the different stages in the process?
 - iv. Provide an example.
 - v. Provide visual aides to explain the process.

IV. Sources of law for ethics:

1. Identify the specific statute(s) that prohibits the unauthorized practice of law in your state and which would apply to paralegals or lawyers without a license.

- a. List the three main components of a citation to this statute: an indication of the type of source (or its Bluebook abbreviation), the jurisdiction, and a relevant date.
2. Identify your state's ethical code for attorneys. Investigate whether there is a separate state ethical code for paralegals.
 - a. Identify the source of law for this code (statute, common law, administrative regulations, or constitution).
 - b. List the three main components of a citation to this statute: an indication of the type of source (or its Bluebook abbreviation), the jurisdiction, and a relevant date.
3. Using a legal dictionary, find out what a model code or model rules are.
 - a. Explain the difference between model codes and primary sources.
 - b. Find a model ethical code for lawyers.
 - c. Find a model ethical code for paralegals.