CHAPTER II

LEGAL METHODOLOGY

The first task of this chapter is to inventory the various forms that sources of law take in the United States and place them in the appropriate hierarchy of authoritativeness. We will then examine the two most frequently encountered sources of law — common law and statutes — and will explore their interrelationship and methodology. Finally, we will examine briefly the practical questions of how lawyers find and research the law and argue legal points.

A. Sources of Law and Their Hierarchy

1. Enacted Law

Constitutions The structural provisions of the federal Constitution were discussed in Chapter I, as was the increased "constitutionalization" of the law that has taken place since 1953. As will be evident from later chapters, there is scarcely any area of the law that has not been touched by the growth of federal constitutional limitations on government action. Federal constitutional law is discussed in more detail later in this book.[1]

Challenges to state laws and practices based on *state* constitutional grounds have been increasingly successful. Development of state constitutional rights for years was overshadowed and made unnecessary by vigorous development of federal constitutional rights. However, some state courts have chosen to provide their residents with greater protections.[2] Even where federal and state constitutional provisions have exactly the same wording, state courts have sometimes interpreted their state's versions to provide more protection than their federal counterparts.[3] This is important because state action, to be valid, must satisfy both federal and state constitutional requirements. In addition, the United States Supreme Court has no power to decide any issue of state law, so such state supreme court constitutional rulings are immune from reversal by the United States Supreme Court.

Statutes Statutes are laws enacted by federal, state, and local legislative bodies. Generally proposed statutes, called "bills," must survive close scrutiny from specialized legislative committees and gain the approval of the appropriate head executive official. The collection of federal statutes is called the United States Code, while collections of state statutes are called compiled laws or statutes. Statutes and statutory interpretation are discussed in more depth later in this chapter.[4]

Treaties Treaties with foreign nations, concluded by the President and ratified by the Senate, and executive agreements — treaty-like documents that need not be ratified — are another source of law, though not a major one. All treaties are federal law, as states are prohibited by the federal Constitution from entering into treaties with

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1 *See* Chapter IX.

2 William Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV.L.REV. 489 (1977); Jennifer Friesen, *Recovering Damages for State Bills of Rights Claims*, 63 TEX. L. REV. 1269 (1985).

3 *Compare Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) *with Sitz v. Dept. of State Police*, 506 N.W.2d 209 (Mich. 1993), discussed in Chapter VIII, p. 295 , note 158 (unreasonable searches). *See* Utter, *State Constitutional Law, the U.S. Supreme Court and Democratic Accountability*, 64 WASH.L.REV. 19 (1989) (finding 450 such decisions).

4 *See infra* pp. 49-63.

foreign nations.[5] Unlike the situation in some other countries, treaties in the United States are on the same hierarchical level as federal statutes, meaning that Congress can change a treaty by simply passing a contrary statute — arguably not a firm basis on which to build good international relations. In addition, some treaties are not "self-executing" and cannot be enforced unless Congress has passed implementing legislation.[6]

Court Rules Court rules govern the procedures to be followed in courts. For example, the federal courts are governed by the following bodies of court rules adopted in the following years: Federal Rules of Civil Procedure (1938), the Federal Rules of Criminal Procedure (1946), Federal Rules of Appellate Procedure (1968), and the Federal Rules of Evidence (1975).

Federal court rules are the primary responsibility of the Judicial Conference of the United States, a supervisory and administrative arm of the federal courts. The Conference appoints an Advisory Committee of legal academics, judges and practitioners who draft the rules. The rules are then reviewed and revised by the United States Supreme Court and, if Congress does not intervene, they become law. Federal court rules have the same force as federal statutes. Some of the federal rules related to civil and criminal procedure and evidence are discussed in later chapters.[7]

States also have court rules, which are adopted by various means, usually by the supreme court of the state. Often in states, the court rule (if it truly deals with matters of procedure) has higher status than a statute passed by the legislature and, if there is a conflict, the court rule will prevail.[8]

Administrative Agency Rules and Decisions Administrative agencies make law primarily through rules they promulgate. In addition, administrative hearing decisions may have some lawmaking effect in the same manner as judicial caselaw, discussed next. Some federal administrative agencies make policy almost exclusively by way of case-by-case adjudication. Agency rule-making and adjudication are discussed in the chapter on administrative law.[9]

2. Caselaw

In a common law system, caselaw court decisions of individual cases are a source of law and are referred to as a whole as "caselaw." Thus, court decisions not only resolve past controversies; a decision of a case is considered to be a "precedent" that has legal effect in the future. This effect comes from the principle of *stare decisis* — the idea that future cases should be decided the same way as past cases.[10] Caselaw is

5 Art. I §10. States may, however, with Congressional approval, enter into "compacts" with foreign nations, as they may with sister states. Pursuant to this authorization, some American states have entered into compacts with neighboring Canadian provinces.

6 *See Frolova v. U.S.S.R.*, 761 F.2d 370 (7th Cir. 1985) (U.N Charter and Helsinki Accord concerning the reunification of married couples were not self-executing, so American wife of a Russian citizen could not sue the Soviet Government for its refusal to allow her husband to emigrate) and Chapter 17, p. 673.

7 *See* Chapters VII, pp. 227-240 (Federal Rules of Civil Procedure) and Chapter III, pp. 110-116 (Federal Rules of Evidence).

8 See, e.g. *Winberry v. Salisbury*, 74 A.2d 406 (N.J. 1950) (court rule governing the time period within which an appeal could be taken governed over a contrary statute) and *Ammerman v. Hubbard Broadcasting, Inc.*, 551 P.2d 1354 (N.M. 1976) (since evidence law in New Mexico was considered procedural rather than substantive, statute establishing a privilege in favor of newspaper reporters was ineffective).

9 *See* Chapter VI, pp. 197-202.

10 *Stare decisis* is discussed in greater detail *infra* pp. 65-67.

sometimes referred to as "unwritten" law, because the rule established by the court decision is often only implicit in the decision.

There are two kinds of caselaw: common law caselaw and caselaw interpreting enacted law. The two types of caselaw occupy different places in the hierarchy of sources of law, so they are treated separately here.

a. Common Law Caselaw

"Common Law" as Used Here The term "common law" is sometimes used to refer to *all* judicial decisions in a system where those decisions have precedential effect. In this book, the term is used in a more narrow sense to mean only that body of law developed and articulated *solely* through judicial decisions. As such, unlike caselaw interpreting statutes, common law constitutes a separate and distinct source of law independent of enacted law. The history and nature of common law and its relationship to statutory law are discussed in more detail below.[11]

Common law is on the lowest level of the hierarchy of sources of law in a given legal system. At one point in history, there was a suggestion that the common law prevailed over contrary statutory law.[12] However, the principle of legislative supremacy has won out. Consequently, a legislature has the power to abolish or modify the common law as it sees fit. Common law may also be displaced by a constitutional provision or by an administrative agency rule properly promulgated and within the agency's statutory authority.

State and Federal Common Law As discussed in Chapter I, the legislative powers of the state and federal governments are different in nature. States have the general power to pass legislation in any area and are limited only by limitations imposed on them by the Constitution. The federal government, on the other hand, is one of limited legislative powers. Similar restraints have been said to operate on judicial law-making as a result of both separation of powers and federalism factors.[13] Thus, state common law governs many areas of the law of a given state, such as torts, contracts and property. Federal common law's domain is narrower. Federal judicial lawmaking is proper only under two circumstances: (1) where Congress directs its application pursuant to a proper exercise of its enumerated powers and (2) where there are clear and strong uniquely federal interests that need to be protected.

An example of the first category is Federal Rule of Evidence (FRE) 501, which provides that the privilege of witnesses from testifying, *e.g.*, doctor-patient privilege, "shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." Examples of the second category are as varied as the federal interests involved: maritime and admiralty law, international relations, disputes between the states, and federal government property and financial paper. In addition, in areas where Congress has legislated, even the most comprehensive statutes have gaps. In some cases, those gaps are filled by state common law. However, federal common law built on promotion of the federal interests behind the statute is most often the preferable solution.[14]

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11 *See infra* pp. 44-48 and 49-54.

12 *See Dr. Bonham's Case*, 77 Eng. Rep. 646 (C.P. 1610) (Coke, J.).

13 *See* Chapter I, pp. 35-36.

14 *See generally* ERWIN CHEMERINSKY, FEDERAL JURISDICTION, 4TH ED. §§6.1-6.3 (Aspen 2003) and sources cited therein.

While state and federal common law deal with different subject matters, they are identical in their methodology. Consequently, no further mention will be made of the distinctions between them in the discussions of common law that follow.

b. Caselaw Interpreting Enacted Law

Caselaw interpreting enacted law, like common law caselaw, follows the rule of *stare decisis*. Consequently, a case decision interpreting a statute is a source of law and will control later cases arising under the statute that involve similar facts.

Caselaw construing enacted law is listed here as a separate source of law apart from the enacted law it interprets. This reflects the understanding that a case decision interpreting and applying enacted law adds something to the law beyond the effect of the enactment standing alone. The amount of law that is added by judicial decision depends on how much interpretation of the enacted law is needed. But that is only a matter of degree. Some lawmaking is taking place.

As a *source of law*, however, caselaw interpreting enacted law is considered to be derivative of the law it interprets. As such, this form of caselaw takes on the hierarchical level of the enacted law that it interprets. Thus, caselaw interpreting the Constitution prevails over a conflicting statute, caselaw interpreting a statute prevails over common law, and so on. Caselaw interpreting a statute can be overruled by later action of the legislature, just as the statute itself can be amended. Caselaw interpreting the Constitution is reversible only by amending the Constitution.

Common law and caselaw interpreting statutes employ much the same reasoning process. For that reason, the two are discussed together when the nature of caselaw reasoning is discussed.[15]

3. The Hierarchy of Sources of Law

Adding the supremacy clause of the Constitution to the points about hierarchy mentioned above, a complete hierarchy of sources of law can be constructed. From highest to lowest, they are (1) the federal Constitution, (2) federal statutes, treaties and court rules, (3) federal administrative agency rules, (4) federal common law, (5) state constitutions, (6) state statutes and court rules, (7) state agency rules, and (8) state common law. It is understood that each level of enacted law includes the caselaw interpreting that enacted law. If two sources of law on the same level of the hierarchy conflict, then the later in time will govern.

This hierarchy of law should be viewed with caution. First, a law's superior position in the hierarchy is not an indication of its importance or the frequency of its use. As discussed in Chapter I, while there is more federal law now than ever before,

15 *See infra* pp. 67-74. The precise boundary between common law caselaw and statutory interpretation is sometimes difficult to discern. There are at least three "hybrid" forms. As mentioned earlier in the discussion of federal common law, *supra* p. 40, the legislature may delegate the power to make common law without limitations. Or the legislature may so delegate with the understanding that such common law will be consistent with prevailing legislative principles in the area. *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) (construing §301 of the Taft-Hartley Act as a congressional direction to federal courts to make a federal common law of collective bargaining contracts that is responsive to federal legislative policy on labor-management relations). Or the legislature may use general statutory language and signal its intent that courts interpret that language in accordance with pre-existing common law understandings of its meaning. *See* Sherman Antitrust Act, 15 U.S.C.A. §1, and *National Society of Professional Engineers v. United States*, 435 U.S. 679, 688 (1978) (Congress intended that §1, prohibiting all agreements "in restraint of trade or commerce," would be "shape[d]" by "drawing on common law tradition"). *See also* Chapter XVII, p. 713 (definition of "commercial activity").

it is still true that most everyday transactions and occurrences affecting most people and companies in the United States are governed by state law.[16]

A second caveat regarding this hierarchy is that some conflict combinations in the hierarchy are more likely than others. It is not uncommon for courts to find that a state statute or regulation conflicts with a federal statute and is consequently invalid. It would be rare that a federal administrative rule would override a right guaranteed by a state constitution. The subject matters addressed by the typical federal agency rule and the typical state constitution are so dissimilar that such a conflict is unlikely.

In the next sections, we will focus in more depth on common law and statutes. There are several reasons to do this. First, common law and statutory law together govern the overwhelming majority of legal questions that arise in the legal system. Second, the relationship between common law and statutory law is important, as the role of one affects the nature of the other. Third, the judicial processes involved in common law and statutory interpretation serve as paradigms for dealing with other sources of law: reasoning applied in common law caselaw applies generally to all caselaw, and statutory interpretation principles have applicability to interpretation of other forms of enacted law.

G. Legal Research Techniques and the Form of Legal Argument

1. Library Resources for Finding Primary Materials

Caselaw The percentage of appellate court decisions that are published varies widely and has in general been declining in recent years as the number of appeals has increased. Among the federal courts of appeal, fewer than half of their decisions are published. The rest are disposed of summarily or by means of an unpublished opinion. The judges who decided the case make the decision whether to release their decision for publication. Even if not published, opinions are generally available nonetheless from one of the computerized legal research services, discussed below. However, local

rules generally prohibit citation to them, maintaining that such opinions have no precedential effect.[179]

Published judicial opinions in cases are published in chronological order and can be found in books known as "reporters" or "case reports."[180] Case reporting in the United States began informally and on a selective basis just as it did in England. However, it soon became more systematic with "official" reports issued by states and the United States Supreme Court. West Publishing Company, a private company, began an effort to be more comprehensive and systematic in the 1880s. Today West publishes "regional reporters" covering all the states. In addition, it publishes the only readily available reporters of lower federal court decisions. Because the West reporters publish all opinions released for publication, many states have abandoned publication of official reports. State trial court decisions are generally not published even on a selective basis except in a few states.

On the federal level, United States Supreme Court opinions are published in three places: the official reporter, United States Reports (U.S.); the Supreme Court Reporter (S.Ct.) published by West Publishing; and U.S. Supreme Court Reports, Lawyer's Edition (L.Ed.), a reporter series published by Lawyer's Cooperative Publishing Company, another private legal publisher.[181] Selected federal district court opinions are reported in reporters entitled Federal Supplement (F.Supp.) and, if they deal with issues of federal court procedure, in the Federal Rules Decisions (F.R.D.). Federal appellate opinions available for publication are published in Federal Reporter, now in its Third Series (F.3d). A federal court of appeals opinion might be cited as *Fligiel v. Samson*, 440 F.3d 747 (6th Cir. 2006). The parenthetical material indicates that the court was the U.S. Court of Appeals for the Sixth Circuit.

Enacted Law State and federal constitutions, statutes, and regulations are published in volumes arranged topically. State and federal statutes are published by governmental publishers and by private publishers in annotated volumes providing reference to cases interpreting the statute, citations to legislative history, pertinent articles in legal periodicals, and references to computer data bases. For example, on the federal level, statutes are contained in the government publication entitled United States Code (U.S.C.) and in two privately published and annotated versions entitled United States Code Annotated (U.S.C.A.) and United States Code Service (U.S.C.S.). Annotations are brief summaries of cases that have been decided that interpret each section of the statute. State statutes are presented in a similar manner, and both federal and state codes are updated regularly by the insertion of a pamphlet known as a "pocket part" into the back of the applicable volume. These pocket parts contain new statutes and summaries of new caselaw explaining existing statutes.

The legislative history accompanying a federal statute is reprinted in two sources. The first is the United States Code Congressional and Administrative News (USCCAN),

179 The issue of unpublished opinions without precedential effect was highlighted when one circuit court of appeals found it to be unconstitutional in *Anastasoff v. United States*, 223 F.3d 898, *vacated as moot on reh'g en banc*, 235 F.3d 1054 (8th Cir. 2000), but another found it constitutional. *Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001).

180 Case citation form is discussed in the Bibliographic Introduction and Reader's Guide of this book. For more on legal research *see* ROBERT C. BERRING & ELIZABETH EDINGER, LEGAL RESEARCH SURVIVAL MANUAL (West 2002); MORRIS L. COHEN & KENT C. OLSON, LEGAL RESEARCH IN A NUTSHELL, 8TH ED. (West 2003); RUTH ANN MCKINNEY, LEGAL RESEARCH: A PRACTICAL GUIDE AND SELF-INSTRUCTION WORKBOOK, 4TH ED. (West 2003).

181 Only official U.S. Supreme Court cites are given in the text of this book, but for those whose libraries have one of the other reporting services, parallel cites are set out in the Table of Cases in Appendix C to this book.

which contains selected documents pertaining to the statute. The second and more exhaustive source is the Congressional Information Service (CIS). It contains transcripts of committee hearings, committee reports, and congressional debates accompanying the passage of federal laws. This source of legislative history is immense and is contained on microfiche.

Federal regulations promulgated by administrative agencies are contained in the Code of Federal Regulations (C.F.R.) where they are arranged by subject matter. Any changes to existing regulations or the addition of new regulations are published daily in the Federal Register and the C.F.R. is completely revised every year.

2. Secondary Authorities

Secondary authorities are used to supplement the primary sources. These include treatises, hornbooks, restatements of the law, law reviews, and other legal periodicals, which summarize, restate, review, analyze, and interpret the law. Secondary sources are only persuasive authority, that is, they can influence a court to the extent that the court is persuaded by the reasoning in them. They are also consulted as a finding aid by lawyers or judges seeking citations to statutes, cases or other primary sources of law.

Attorney General Opinions In many states state officials have the right to request an opinion of the state's Attorney General on a particular point of law. These opinions are published in a set of books labeled in most states Opinions of the Attorney General (OAG). No such practice exists with the federal Attorney General. These state attorney general opinions are cited and sometimes relied upon by courts and lawyers as secondary authority. However, like other forms of secondary authority, they are influential in courts only to the extent that they demonstrate thorough analysis of the issues involved.

Texts and Treatises Treatises are books written about a particular area of the law with the needs of the practitioner in mind. Many treatises are multi-volume. For example, the treatise on Federal Practice and Procedure by Wright, Miller and Cooper extends to some 23 volumes. Treatises strive to summarize in narrative form all the applicable law touching on a particular area, from statutes and regulations to common law or constitutional law. They also contain analysis and commentary by the authors, including their opinions and criticisms of various rules adopted by courts and legislative bodies.

Restatements of the Law These are compilations or summaries in statute form of the common law in designated areas of the law, such as torts, contracts, property, judgments and conflicts of laws.[182] Restatements are prepared by the American Law Institute, an organization of eminent scholars and practitioners in the given fields. The overall form is a set of statements of the "black letter" law on the subject arranged in sections and stated in the form of a statute.[183] After the "black letter" statement of the law on a particular point, there are scholarly comments on the application of each of the rules just stated, complete with appropriate hypotheticals drawn from actual cases that illustrate the rule stated. These are followed by annotations, updated regularly, that summarize the cases deemed relevant to the subject matter in the section.

182 Currently there are Restatements of Torts, Contracts, Property, Judgments, Agency, Conflicts of Laws, Foreign Relations, Restitution, and Trusts.

183 The expression "black letter" law refers to any clear, simple statement of a rule of law on a particular point without a statement of the reasons for the rule or how to apply the rule to other circumstances. Law students, confused by a conflicting and seemingly endless number of court opinions in a given area of law, often yearn for the professor to give them the applicable "black letter law" on a point, that is, a simple statement of the legal rule established by all those decisions.

Restatements are supposed to do just that — restate or summarize common law rules derived from caselaw. However, that has not prevented some restatement authors from stating what they believe is the more enlightened rule of law, even if it is not the majority view in current caselaw. Thus, some restatements have been less a reflection of *current* law than a statement of what the authors of them think the rule of law *should* be. Restatements have had an influence on the shape of the law. Particularly influential has been the Restatement of Torts, which was largely responsible for establishing strict liability for injuries caused by defective products.[184]

Law Review Articles Law reviews or law journals, usually published by law schools, contain articles by law teachers and scholars analyzing and discussing issues in various areas of the law. If these articles provide a useful analysis of a particular problem that may be facing a court, they can have an impact on the law. Treatises, law review articles and other works by scholars in the United States generally have a greater impact on the law than their counterparts in England do, and less impact on the law than at least some of their counterparts in continental Europe.[185] Generally, in both England and the United States, a judge searching for authority is more likely to turn to another judge's judicial opinion than to a scholar's work.

One-Volume Treatises and Student Texts Single volume treatises and other student texts were introduced in the Bibliographic Introduction and Reader's Guide following the Preface to this book. The "Hornbook" published by West are the most numerous of the one-volume treatises. These works are written primarily by law teachers for law students and therefore are used in judicial opinions only for relatively general propositions of law.[186] However, they are useful as departure points for research and have footnotes that can be used by the reader to locate more specific authority. There are also student aids, such as "nutshells," outlines and review problems, but these are much less likely to be consulted by a lawyer or judge or cited in a judicial opinion. Casebooks — collections of edited cases and statutes with commentary and discussion questions used in law school courses — are rarely relied upon by courts.[187] If a summary of the pertinent law is desired, a treatise will generally be used.

Other Secondary Authorities Legal encyclopedias can be used as secondary sources of law, but they usually serve as a beginning point of research. Legal encyclopedias in the United States contain short general entries written by unnamed authors. The two national encyclopedia series available, Corpus Juris Secundum (CJS) and American Jurisprudence, Second (Am. Jur. 2d), were discussed in the Bibliographic Introduction and Reader's Guide. Most states also have at least one encyclopedia of its own law. These encyclopedias provide a rudimentary description of the law by breaking it into subjects which are arranged and presented alphabetically. Their purpose is to provide background on a particular legal topic and direct the researcher to pertinent case law and enacted law as well as secondary sources such as restatements and legal periodicals.

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184 *See* Chapter XI, pp. 438-440.

185 *See* Chapter IV, p. 134, and pp. A4-A7 of the majority opinion and p. A12 of the dissent in *Hoffman v. Jones*, reprinted in the Appendix.

186 The term "hornbook" was originally defined as "A leaf or written or printed paper pasted on a board, and covered with horn, for children to learn letters by, and to prevent their being torn and daubed." *Pardon's New General English Dictionary* (1758). Later, the hornbook was replaced by primers in book form for children to learn basic information.

187 One example of a casebook that gets cited relatively frequently by courts is HART & WECHSLER, *supra* note 143.

Somewhat similar to the encyclopedia are the American Law Reports (ALR). The ALR contains "annotations" in the form of short articles with summaries of the law and citations for selected legal topics. ALR started originally as a selective reporter of important cases, but is now used principally for its annotations.[188]

3. How Legal Research is Approached

Lawyers doing legal research are usually in one of two positions. The lawyer may have only a general understanding of the law governing the problem and may wish to find the specific cases and statutes that address the problem at hand. Or the lawyer may already have a specific case or statute that addresses the issue involved — or at least addresses some aspect of the issue — and must find other cases, statutes or authorities and more general support. While the research tools used in both instances are the same, they are used differently.

If the lawyer has a general idea of the law and wants to narrow the issue and the search, the first step is often to refer to a treatise in the general area involved or, if a treatise cannot be found, to one of several legal encyclopedias or the ALR. The researcher can then obtain citations to the principal cases and statutes in the area or to other more specific secondary authorities.

The researcher who already has an applicable case or statute may use one of several finding aids to locate other similar authorities. One way to do this is by looking for cases that cite the cases or statutes with which the researcher is already familiar. This is traditionally done by using Shepard's Citations, which show what other court decisions have cited the particular case, statute, court rule or other source of law. Beneath the citation will be a list of the citations of all the later cases that have cited the case. If these later opinions have discussed the cited case, their treatment of it will be indicated in the margin next to the citation (e.g., criticized, distinguished, followed). Such "Shepardizing" of a case is not just a useful way to find other cases. Before relying on any case, it is essential to "Shepardize" the case to determine whether it has been reversed or overruled.[189]

Another method of finding cases is to use state or federal "digests" published by West, the major reporter of opinions. West publishes "headnotes" with every case. Headnotes are brief summaries of the points of law contained in the case that are written by an editor. The headnotes appear at the beginning of the opinion and are serialized with a "key number" assigned to that particular topic throughout all West's publications. The state and federal digests then contain the listings of these headnotes organized by subject matter with the key numbers. The researcher who has a case need only take the pertinent key number from a known case that deals with the issue to be researched and look it up in the appropriate digest, which lists the headnotes from all the other cases that have addressed the same issue. Key numbers and cases may also be found in the digest by looking up key words or terms in the digest's general index similar to the method used for encyclopedias and ALRs.[190]

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188 Rules for all forms of citation are set out in two competing books, the "Blue Book" put out by Harvard Law School and the "Maroon Book" put out by the University of Chicago Law School.

189 A competing, completely computerized service since 1997 is West "Keycite" system.

190 Examples of two of the headnotes with key numbers published with *Hoffman v. Jones*, the case in Appendix A, are set out on p. A2. *See also* p. A1, note 4. It is perhaps a continuing legacy of the common law bias against statutes that there is no similar comprehensive system for nationwide indexing and classification of statutes.

4. Computerized Legal Research

Clearly, finding authorities and parsing the results of a search are made much easier when done by computer. There are two on-line legal research databases: Lexis-Nexis (by Reed Elsevier) and Westlaw (by West Group and Thomson). Subscribers can access both on the Internet. In addition to speeding up use of traditional methods of legal research just outlined, the computer services permit word searches and have hyperlinks to authorities cited in research results and a wider range of more specific information about how the case has been used or treated in other cases. Computer data bases are also updated more quickly than books and contain materials — particularly unpublished court decisions — that are not available in any books. The disadvantage of computer research services is that they are relatively expensive. There are monthly charges and charges by the minute for time spent doing research.[191]

191 Access to free legal materials is possible on the Internet. However, search engines are not very sophisticated and there is often no guarantee that those materials are up to date. Appendix B of this book sets out a few of these sites. *See also* Reader's Guide, p. xxxiii.