

LEGAL RESEARCH

Encyclopedias

Possibly the easiest legal information to find, read, and understand is that information found in legal encyclopedias. The information presented is general in nature (the 'majority' rule with exceptions noted) and represents an overview of 'the law' as it currently exists.

There are two popular national legal encyclopedias in existence, and most libraries, including a typical county law library, will have at least one set in their reference section. West Publishing Co. publishes *Corpus Juris Secundum* cited as *C.J.S.* (the initial series is known as *Corpus Juris* and is arranged identically); and Lawyer's Co-operative Publishing Co. publishes *American Jurisprudence, Second Series* cited as *Am.Jur.2d* (the initial series is known as *American Jurisprudence*).

Any general topic can be looked up in a fashion similar to that used to look up information in a general encyclopedia, namely, alphabetically. In fact, the most satisfactory method will often be a simple three-step process: List all pertinent descriptive words; look up each descriptive word in the general index (general index volumes are an integral part of the encyclopedia set); and refer to the encyclopedia volume and topic referenced in the general index. Descriptive words of interest to surveyors include:

1. Adjoining Landowners (2 *C.J.S.* Adjoining Landowners §1 *et seq.* and 1 *Am.Jur.2d* Adjoining Landowners §1 *et seq.*) [In other words, the section entitled Adjoining Landowners found in volume two of *Corpus Juris Secundum* and the section entitled Adjoining Landowners found in volume one of *American Jurisprudence, Second Series*.]
2. Adverse Possession (2 *C.J.S.* Adverse Possession §1 *et seq.* and 3 *Am.Jur.2d* Adverse Possession §1 *et seq.*)
3. Boundaries (11 *C.J.S.* Boundaries §1 *et seq.* and 12 *Am.Jur.2d* Boundaries §1 *et seq.*)
4. Waters (94 *C.J.S.* Waters §1 *et seq.* and 78 *Am.Jur.2d* Waters §1 *et seq.*)

Other descriptive words include: Abandoned and Lost Property, Abstracts of Title, Common Lands, Dedication, Deeds, Easements, Fences, Highways, Navigable Waters, Negligence, Public Lands, Reversions, etc.

Once the text related to the specific descriptive word(s) has (have) been found, it is important to carefully read the information to determine whether it is applicable to the situation at hand. Additionally, by referring to the footnotes found on nearly every page, it is possible to determine whether the editor of the encyclopedia text has cited specific cases and case situations from the surveyor's jurisdiction.

In addition to the national encyclopedias mentioned *supra*, many states have their own law encyclopedias. For instance, in Indiana a surveyor will find the *Indiana Law Encyclopedia* published by West Publishing Co. in most county law libraries. In Texas, the state law encyclopedia is known as *Texas Jur[isprudence] III* which is published by the Bancroft-Whitney Co. The arrangement of information in the state encyclopedias is similar to the format in the national encyclopedias and varies only slightly based on the publisher. The fundamental difference between the national encyclopedias and the state encyclopedias is that the state encyclopedias contain information only from the specific state.

It is very important to use the most up-to-date legal information available. Publishers of legal encyclopedias update their publications by publishing pocket parts, generally found in the back of each volume, on a periodic basis. Surveyors should always check to see if there is any applicable recent change (recent meaning since the encyclopedia was published) in the general rules of law by referring to the most recent pocket part.

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CAVEAT: Legal encyclopedias are considered a secondary source of legal information. As a result, the information found should be treated as being general in nature (some writers use the term ‘weight of authority’) and the surveyor should avoid making and adapting ‘black letter’ rules of law based solely on encyclopedia research.

Reporters

A considerable portion of land boundary law has evolved from the English common law. Essentially, this is the “law of precedent”¹ and the courts follow the doctrine of *stare decisis*.²

In order to read and understand these concepts of law, it is necessary to research and study actual court decisions. To do so, it is necessary to know how decisions are reported. Generally, only decisions that have been appealed are reported. Each state and, for that matter, the United States, has a system for reporting the decisions that are made by its appellate courts. For instance, the decisions of the Texas Supreme Court were formerly officially reported in *Texas Reports*, a publication of the State of Texas. Similarly, the decisions of the Texas Court of Civil Appeals were published in the *Texas Civil Appeals Reports*. Texas no longer publishes its own reports. Instead, they and a growing number of other states rely on West’s National Reporter System. This National Reporter System reports virtually all cases from state and federal appellate level courts.

In the National Reporter System, decisions from the various state appellate courts (both middle level and highest level) are reported in one of seven regional reporters. The *Atlantic Reporter* (cited as A. & A.2d) includes decisions from Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont. The *North Eastern Reporter* (cited as N.E. & N.E.2d) includes decisions from Illinois, Indiana, Massachusetts, New York, and Ohio. The *North Western Reporter* (cited as N.W. & N.W.2d) includes decisions from Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin. The *Southern Reporter* (cited as So. & So.2d) includes decisions from Alabama, Florida, Louisiana, and Mississippi. The *South Eastern Reporter* (cited as S.E. & S.E.2d) includes decisions from Georgia, North Carolina, South Carolina, Virginia, and West Virginia. The *South Western Reporter* (cited as S.W. & S.W.2d) includes decisions from Arkansas, Kentucky, Missouri, Tennessee, and Texas. The *Pacific Reporter* (cited as P. & P.2d) includes decisions from Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming.

Each case is given a title (sometimes referred to as the ‘style of the case’) which is generally “plaintiff versus defendant.” However, some jurisdictions title their cases “plaintiff in error v. defendant in error.” Other jurisdictions use “appellant v. appellee.” Still others use “petitioner v. respondent.” In the Texas case of *Pruett v. Robison*, Pruet was the appellant (the party which initiated the action) and Robison was the appellee. The proper citation for this case would be *Pruett v. Robison*, 108 Tex. 283, 192 S.W. 537 (1917). The first portion of the citation refers to the official *Texas Reports* published by the State of Texas. The first number (108) is the volume number, the word (Tex.) is an abbreviation for the name of the reporter, and the last number (283) is the page in the volume where the case can be found. Abbreviations used for the various state reports generally include the state abbreviation if they report the decisions of the highest level court, but use the abbreviation “App.” along with the state abbreviation if they report the decisions of the middle level appellate court. Therefore, “Tex.” refers to the Texas Supreme Court. The second portion of the citation refers to the National Reporter System mentioned above. The first number (192) is the volume number, the word (S.W.) is an abbreviation for the name of the reporter, and the last number (537) is the page in the volume where the case can be found. Finally, “1917” is the date of the proceeding. Because Texas no longer publishes its own official reports, a recent case would be referenced only to West’s National Reporter System and would be cited as: *Nemir v. Batts*, 594 S.W.2d 139 (Tex. Civ. App., 1979). In addition to the reference to the national reporter, the citation includes information which informs the reader of the court in which the case was heard.

104 Case decisions are published in the various reporters based on the date they are submitted to the publisher.
105 Because of this, it is not uncommon to find a criminal case printed immediately following a family law case which
106 in turn is printed immediately following an estate case. Obviously, it would do little good to simply pick up a
107 reporter and begin paging through it hoping to find a case which related to a specific boundary law problem.
108 Fortunately, there are finder tools available to help. One possibility would be to refer to a legal encyclopedia for
109 typical citations. The preferred procedure, however, is to refer to the “index” for the reporters.
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111 In just about every state, the index to case law, called a digest, is published by West Publishing Co. As an example,
112 there are two digests for Texas case law - *Texas Digest* (covering the period through 1934) and *Texas Digest 2d*
113 (covering the period since 1934). A digest is used similarly to any index - fact words are looked up alphabetically
114 in the applicable digest volume. By finding the digest which includes the topic “Boundaries,” a surveyor can
115 review the scope note which appears at the beginning of the topic for applicable sub-categories. As an example,
116 suppose it is desired to determine the relative status of adjointers and other boundary monumentation. By
117 referring to the scope note at the beginning of the topic “Boundaries,” a sub-category of “Control of calls for
118 adjointers over other elements” will be found **[note the outline number of this sub-category: 7(3)]**. The
119 surveyor can then turn to the sub-category to determine whether there appear to be any applicable cases. Each
120 entry within the sub-category will include the date, the name of the court (refer to the front of the digest for a key
121 to interpretation of the various court name abbreviations), a paragraph which includes a succinct statement of the
122 facts of the case and the holding of the court, **the name of the case, and the full citation to the case**. It is
123 these **last two items** that allow a surveyor to find the case in the referenced reporter. The surveyor would
124 continue to research the digest until all descriptive words have been looked up and the applicable case names and
125 citations have been tabulated. At that point, the surveyor would refer to each of the referenced reporters and the
126 specified page for the full text of the judge’s opinion. Only after reading the entire series of cases, can a surveyor
127 determine what the general rule of law is with respect to the issue and whether there are exceptions.
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129 Other methods exist to aid in “finding” cases. In fact, numerous authorities suggest that the first step should
130 always be to look up descriptive words in the *Descriptive Word Index*, an integral part of the digest system. To use
131 the *Descriptive Word Index*, a surveyor would ask herself “What words describe the pertinent facts of the issue?”
132 Each of these words would then in turn be looked up in the *Descriptive Word Index*. The information found
133 following each descriptive word would refer the surveyor to the topic and sub-category within the digest system.
134 In other words, a typical reference in the *Descriptive Word Index* would be “Bound[arie]s 7(3)”, which simply means
135 look in section 7(3) of the topic “Boundaries” which is found in the appropriate volume of the digest.
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137 Remember the reference to the sub-category outline number mentioned above? This is West’s key number and it
138 will always refer to the same topic in every digest. In other words, **“Bound[arie]s 7(3)” will always refer to**
139 **“control of calls for adjointers over other elements.”** This can be quite helpful when reviewing numerous
140 digests and cases.
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142 In addition to the state digests, there are regional digests which cover the region implied in the name, as well as a
143 national digest. The latter digest is known as the *American Digest* and covers **all** case law for the United States.
144 Components of the *American Digest* include the *Century Digest*, numerous *Decennial Digests*, and *General Digests* to
145 cover the period from the issue of the last *Decennial Digest*. These digests are used identically to the state digests.
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147 On occasion, an article/treatise writer will inadvertently fail to list the parallel citation and list only the State
148 citation for a case that she has referred to. This creates a problem for the majority of surveyors wishing to read
149 the entire case when they only have access to the reporters of the National Reporter System. Fortunately, this
150 problem can be overcome if the surveyor has access to the *National Reporter Blue Book*. This book and its

151 supplements contain reference tables which allow a surveyor to find the citation to the National Reporter System
152 using the official State citation.

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154 **Annotated Reports**

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156 Some cases are also reported in *American Law Reports* (cited as *A.L.R.*), a major series of annotated reports
157 published by The Lawyers Co-operative Publishing Co./Bancroft-Whitney Co. (LCP BW).

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159 An *A.L.R.* annotation³ is a thorough and orderly discussion of a single, specific area of the law based upon **all**
160 reported appellate cases **from every State** through the date of the annotation. In this respect, an *A.L.R.*
161 annotation is more comprehensive and easier to follow and understand than any material discussed previously.
162 Each annotation organizes, analyses, summarizes, and evaluates every aspect of the applicable case law. Each
163 annotation generally starts with a representative case which is reported in full. The case is followed by a listing of
164 references to other volumes of the publisher. This in turn is followed by a schematic outline of the annotation.
165 The discussion of the point of law follows with its numerous references to cases from all jurisdictions that have
166 taken a position on the particular point of law which is the subject of the annotation.

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168 Currently, *A.L.R.* is in its fourth series (*A.L.R.4th*). Previous series were *A.L.R.*, *A.L.R.2d*, and *A.L.R.3d*.
169 Annotations in *A.L.R.* can be found by looking in volumes titled *A.L.R. Quick Index[s]* for each of the series.
170 Descriptive words are looked up and the citation to the annotation is noted.

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172 Whether a supplemental or superseding annotation has been issued can be determined by consulting the
173 Annotation History Table found in each *Quick Index* and by consulting the *A.L.R. Blue Book of Supplemental*
174 *Decisions* and the *A.L.R.2d Later Case Service*. The heading used in the various supplements will correspond to the
175 heading used in the original. *A.L.R.3d* & *4th* indexes are kept current through the use of pocket parts.
176 Annotations are kept up-to-date by the publisher through the issuance of supplements.

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178 Annotations of specific interest to land surveyors include “What will disprove acquiescence by owner essential to
179 easement by prescription in case of known use” 5 *A.L.R.* 1325; “Constitutionality of statute regulating land
180 surveyors or civil engineers” 55 *A.L.R.* 307; “Property rights in respect of building, fence, or other structure
181 placed upon another’s land through mistake as to boundary or location” 130 *A.L.R.* 1034; “Fence as a factor in
182 fixing location of boundary line” 170 *A.L.R.* 1144 [superseded by “Fence ... boundary line - modern cases” 7
183 *A.L.R.4th* 53]; and “Surveyor’s liability for mistake in, or misrepresentation as to accuracy of, survey of real
184 property” 35 *A.L.R.3d* 504.

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186 **Statutes**

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188 In addition to researching case law, surveyors often have a need to look up a State statute⁴ to determine a specific
189 point of law. Statutes are often published by the State as an official code. However, the State code most often
190 simply states the statutes in “black letter form.”

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192 To better understand a statute and its application, it is often more helpful to refer to an annotation of the statutes.
193 Annotated statutes are compiled in volumes referred to by various names. For instance, The Bobbs-Merrill
194 Company, Inc. publishes *Burns Indiana Statutes Annotated*. As another example, West Publishing Co. publishes
195 *Vernon’s Texas Codes Annotated*. In an annotated statute, the text of the statute is printed followed by historical
196 notes showing the derivation of each section of the statute. The historical notes are followed by references to
197 actual cases which interpret the various sections of the statute and show how the statute has been applied.

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199 An index, typically of several volumes, is generally used to find the statute(s) of interest. However, some codes are
200 indexed in the code volumes themselves. The method of looking up descriptive words (discussed earlier) can be
201 used to find the applicable statute(s). States use different systems to reference their statutes. In Indiana, the

202 citation of *I.C. 29-1-2-1* would be interpreted as follows: *I.C.* refers to the *Indiana Code*, the 29 refers to Title 29
203 (Probate), the 1 refers to Article One (Probate Code), the 2 refers to Chapter Two (Intestate Succession) and the
204 last 1 refers to section one (general rules of descent). The surveyor would then look for the volume that included
205 Title 29.
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207 In Texas, a citation of *V.T.C.A.*, Property Code §13.001 would refer to section 0.001 (Validity of unrecorded
208 instruments) of Chapter 13 (Effects of Recording - actually a part of Title 3, Public Records) found in volume one
209 of *Vernon's Texas Codes Annotated* - Property Code. Because a statute may be known by its "popular name," the
210 index often contains a table of "Popular [Statute] Names." As in many legal references, the annotated code and its
211 index are updated with supplemental pocket parts.
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213 Citators

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215 A surveyor will want to locate, read, and study numerous legal cases to facilitate her understanding of real
216 property boundary law. Of utmost importance, however, is that each case read, studied, and relied on must still be
217 "good law." Each case must be checked to insure that it has not been reversed or overruled by the same court. It
218 is also possible that a case from a middle level appellate court was appealed to the state supreme court, and that
219 the state supreme court either affirmed or reversed the lower appellate court's decision. Further, the decision
220 from the state supreme court may have been appealed to the U.S. Supreme Court, which may have affirmed or
221 reversed the decision. [Use of "bad law" can lead to embarrassing situations. See *Rosenstiel v. Rosenstiel*, 43
222 Misc.2d 462, 251 N.Y.S.2d 565 (1964). "The court was **astounded** to find that [the] case ... which [was relied on]
223 by defendant's counsel was **reversed** by [a higher court]" (emphasis added) *Id.* at 578.]
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225 The step of checking to determine whether a relevant case is still "good law" can be accomplished by using a
226 series of books called *Shepard's Citations* published by McGraw-Hill, Inc. A separate series of *Shepard's Citations* is
227 published for **each** series of reporters.
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229 *Shepard's Citations* will list **every** case which has cited (made reference to) the case being researched. The case being
230 "Shepardized" is listed by volume and page number in bold type in the applicable series of *Shepard's*. Listed under
231 the case citation are the citations to every subsequent decision which has cited the referenced case. This is, in
232 effect, the judicial history of the case and the treatment of the case by other courts.
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234 The judicial history of the case is indicated by abbreviations showing whether the case was affirmed, reversed,
235 dismissed or modified on appeal. The treatment of the case by other courts is shown in a similar manner.
236 Abbreviations of interest to surveyors will include: **a** (affirmed); **r** (reversed); **c** (criticized); **f** (followed); **e**
237 (explained); and **o** (overruled). The meanings of all abbreviations can be found in the introductory pages of each
238 volume of *Shepard's*.
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240 *Shepard's Citations* may be used for other purposes also. The first citation listed (within the parenthesis) will be the
241 parallel citation to the State or regional reporter. If the citator being used is for a State reporter, it will also list
242 legal periodicals and Attorney-General's opinions which cited the case. If the citator being used is for the *National*
243 *Reporter System*, it will list **any** case throughout the *National Reporter System* which has referred to the case. Citations
244 to *A.L.R.* annotations incorporating the case are shown in all Shepard citators.
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246 When reviewing the list of cited cases, note the small **superscripted** number following the abbreviation for the
247 reporter. This **superscripted** number relates to the point of law covered in the headnote of the same number in
248 the original reported opinion. Referring to these **superscripts** will save time when looking up subsequent cases.
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250 **Caveat:** Look to the paper cover of the most recent *Shepard's Citations* update to determine which volumes are
251 necessary to completely "Shepardize" your case.
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253 **Periodicals**

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255 Surveyors living near law schools or near large law libraries will want to investigate the many scholarly articles
256 found in various bar journals, law journals, and law reviews. While articles appearing in these periodicals are not
257 primary legal authority, their scholarly interpretations are often relied upon by American courts and lawyers. Also,
258 the copious footnotes and other citations in each article offer a useful collection of references to court decisions,
259 statutes, and other authorities.

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261 Law school periodicals (**law reviews**) are of significant value. Virtually all law schools publish law reviews as a
262 part of their educational program. As such, the typical law review traditionally has emphasized the scholarly
263 approach.

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265 The typical law review consists of leading articles, notes or comments, case notes or comments, and book
266 reviews. The leading articles are usually written by lawyers, judges, professors, or specialists. Generally, each
267 leading article contains an analytical treatment of a single subject, exhaustive footnotes, and citations to other
268 authorities. Notes or comments are similar to leading articles; however, they are generally shorter in length and are
269 usually written by upper-class law students. Case notes or comments normally deal with a recent court decision
270 and are generally written by law students. Finally, book reviews deal with law books or other publications of
271 interest to the subscribers/readers.

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273 Some periodicals are published by private companies and are usually devoted to a special subject. Typical
274 examples include **The Labor Law Journal** published by Commerce Clearing House, Inc. and **Defense Law**
275 **Journal** published by the Allen Smith Co.

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277 Associations also publish periodicals. Association periodicals vary greatly in kind and quality and generally contain
278 articles and newsworthy information of interest to practicing attorneys.

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280 Finding information in these various periodicals requires the use of comprehensive indexes. The two main
281 indexes are the **Jones-Chipman Index to Legal Periodicals** and **Index to Legal Periodicals**. The **Jones-**
282 **Chipman Index to Legal Periodicals** consists of six volumes and covers the period from 1886 to 1937. The
283 **Index to Legal Periodicals** consists of numerous volumes and covers the period from 1908 to the present. Each
284 volume of the **Jones Chipman Index to Legal Periodicals** contains an author section and a subject section.
285 The first 12 volumes of the **Index to Legal Periodicals** also contain an author section and a subject section.
286 Since Volume 13, the **Index to Legal Periodicals** has combined the author section and the subject section.

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288 Typically, the surveyor will conduct her search using the subject section or subject headings in the particular
289 index. The subject headings correspond roughly to those used by the West Publishing Company in the various
290 digests, and are arranged alphabetically. Therefore, the search procedure for finding relevant articles is similar to
291 the procedure followed when using a digest. In other words, descriptive words are chosen and each descriptive
292 word is, in turn, looked up in each of the index volumes. The entries under the descriptive word are then studied
293 to find articles of interest. Applicable descriptive words include adverse possession, adjoining land owners, deeds,
294 easements, highways, water courses, etc. Near the front of each volume of the index is a list of the abbreviations
295 used within the various citations.

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297 Hundreds of interesting articles exist, including: *Boundaries: Description v. Survey*, **53 Michigan Law Review 647**
298 **(1955)**; L. Maley, *et al.*, *Fundamentals of Legal Descriptions*, **42 Illinois Bar Journal, 672 (1954)**; *Conflict Between Courses*
299 *and Distances*, **38 Kentucky Law Journal 298 (1950)**; C. Orn, *Vanishing Footsteps of the Original Surveyor*, **4 Baylor**
300 **Law Review 273 (1952)**; etc. (Please note that the typical citation always includes the volume number, title of the
301 volume, page number, and year.)

302 **Caveat: Using the most recent legal material is imperative. If you don't know how the material you are**
303 **using is updated, inquire!!!**
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305 ¹ **precedent** - previously decided case which is recognized as authority for the disposition of future cases. Gifis,
306 *Law Dictionary* (1975).

307 ² **stare decisis** - to stand by that which was decided. Courts are "slow to interfere with principles announced in ...
308 former decisions ... even though they would decide otherwise were the question a new one." Gifis, *Law Dictionary*
309 (1975).

310 ³ **annotation** - a remark, note, or commentary on [a case, statute, etc.], intended to illustrate its meaning. H.
311 Black, *Black's Law Dictionary* (4th ed. 1968).

312 ⁴ **statute** - an act of the legislature, adopted pursuant to its constitutional authority. S. Gifis, *Law Dictionary* (1975).
313

314 **Technical References**

315
316 _____, *The Living Law* (1981) published by LCP BW.

317
318 _____, *West's Law Finder* (1980) published by West Publishing Co.

319
320 M. Cohen, *How to Find The Law* (7th ed. 1976).

321
322 J. Jacobstein & R. Mersky, *Fundamentals of Legal Research* (4th ed. 1973).