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## On Specialized Legal Research

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## On Specialized Legal Research\*

Mary Whisner\*\*

*Ms. Whisner describes what specialized legal research is and how students are initially exposed to the various topics that fall within the category, including taxation, intellectual property, and health law. She then provides strategies for learning about specific bibliographic sources and about the specialized vocabulary used to perform the necessary research.*

¶1 To help our law library interns get up to speed, we reference librarians give them one-hour “reference talks” at intervals throughout the year. Even a bright student who has completed law school and perhaps practiced law doesn’t always know enough to respond effectively to the range of questions that come into the reference office. And although their research class will address some topics we cover, such as state legislative history, that lesson might not come until after patrons have already needed help. One of those reference talks each year is “Specialized Legal Research.” Since it generates an interesting conversation with the students, I thought it would be worth a brief essay.

### What Is Specialized Legal Research?

¶2 Although it’s easy enough to put “Specialized Legal Research” in the list of topics, it’s a little harder to say what it is. When I ask the students, they have a variety of answers. They might start with their own subjective experience (it’s hard), institutional factors (it’s research done by attorneys in a law firm practice group), or bibliography (it’s an area that has unique publications or online resources). Each perspective captures something useful about specialized legal research.

¶3 The subjective response isn’t a bad place to start. Specialized legal research does seem hard to many researchers because it’s unfamiliar. Most legal research classes don’t cover it or introduce it only briefly. Classes aimed at first-year students typically base problems on topics accessible to those students, either because they stem from first-year classes, like Torts and Contracts, or because they (like some *Law & Order* plots) are “ripped from the headlines.”<sup>1</sup> Even “advanced” legal

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1. See *Ripped from the Headlines*, N.Y. TIMES, May 23, 2010, <http://www.nytimes.com/slide-show/2010/05/21/nyregion/20100523-ripped-slideshow.html> (“Many of the 456 episodes that made up the stunning 20-year run of “Law & Order” were based on real, recognizable news stories—loosely

research courses, aimed at second- and third-year students, have plenty to cover without venturing too far into specialized areas. Because “students [enter] the second and third years of law school with lower levels of training in legal research sources and methods than might have been true at earlier times,”<sup>2</sup> upper-level courses have to cover the basics as well as adding breadth and depth. Even if the students had some exposure to researching cases and statutes in their first year, review and elaboration are appropriate. And if the first course did not reach administrative regulations or legislative history, then they should be introduced. Students who can use the “type in the box” features of Lexis Advance and Westlaw probably have little idea of Boolean searching, let alone alternative services like Fastcase, Casemaker, and Ravel Law. And so on. It’s just not likely that students have had much instruction in or practice with specialized legal research.

¶4 Moreover, specialized legal research involves work in substantive areas, like securities regulation, tax, and environmental law, that are generally covered in elective classes—classes that seem technical and scary and that students might have avoided. So specialized legal research seems hard to the interns because they haven’t been taught it and because it’s connected with difficult classes.<sup>3</sup>

¶5 Thinking institutionally, the students suggested that specialized legal research is research in an area within a law firm practice group. That’s a good start, but it’s not a perfect match. Many firms have practice groups that map onto what I think of as specialized legal research—for example, labor and employment, intellectual property, or banking. But some firms have practice groups that do not correlate with specialized legal research skills—for example, litigation, real estate, family law. Of course, practitioners in those areas may use some specialized sources, but not to the same extent as, say, attorneys specializing in environmental law.

¶6 I looked at a few firm websites (see table 1) to sample practice areas. White & Case lists under Practices some specialized subject areas like banking and tax, but also lists practice groups defined by type of client—Private Clients<sup>4</sup> and Pro Bono—clients who might be affected by virtually any area of law.<sup>5</sup> K & L Gates, another very large national firm, lists dozens and dozens of practice areas. You can view them in alphabetical order (Advertising & Marketing, Africa, Agribusiness, AIM—The World’s Leading Growth Market in the London Stock Exchange, Alternative Dispute Resolution, etc.)<sup>6</sup> or grouped by broad area (e.g., Corporate and

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based, at least.”). The pedagogical parallel is basing memo assignments or moot court problems on same-sex marriage, frozen embryos, sexting, or other topics from the news.

2. Christopher A. Knott, *On Teaching Advanced Legal Research*, 28 LEGAL REFERENCE SERVS. Q. 101, 105 (2009).

3. Some technical and scary classes, like Federal Courts, don’t involve specialized legal research. But most technical and scary classes do. Like “specialized legal research,” “technical and scary class” is an ambiguous term—but I think students know a technical and scary class when they see one.

4. “We assist high net worth individuals and families worldwide with the accumulation, management, transfer and protection of personal wealth.” *Private Clients*, WHITE & CASE, <http://www.whitecase.com/law/practices/private-clients> [<https://perma.cc/5N4H-XVCE>].

5. Depending on the pro bono project, there might be some specialized resources needed, but it would depend more on the subject (e.g., immigration law, environmental law, or employment law) than the fact that the firm is working pro bono. Some firms might encourage lawyers doing pro bono work to use low-cost sources, but thrifty legal research is not the same as specialized legal research.

6. *Practices*, K & L GATES, <http://www.klgates.com/services/xpuServiceList.aspx?xpST=ServicesAlpha> [<https://perma.cc/MX25-ZUY8>].

Transactional, Intellectual Property, Litigation and Dispute Resolution).<sup>7</sup> The cluster under Cross-Practice Services includes some geographic regions (e.g., Africa, Indonesia) and some areas defined by industry (e.g., Agribusiness, Higher Education Institutions). Africa is too big to be an area of specialized legal research: its jurisdictions include civil law, common law, Islamic law, and mixed systems; legal issues might be as diverse as employment law in South Africa, piracy off the coast of Somalia, or mining in Liberia. The industry groups also would research in different areas—for example, a higher education group might advise clients on employment, cybersecurity, and intellectual property law, each an area of specialized legal research on its own.

**Table 1**

**Sample Law Firm Practice Areas**

<b>White &amp; Case<sup>8</sup></b>	<b>K &amp; L Gates<sup>9</sup></b>	<b>Miller Nash Graham &amp; Dunn<sup>10</sup></b>
Antitrust/Competition	Corporate and Transactional	Admiralty & Maritime
Asset Finance	Energy, Infrastructure and	Bankruptcy & Creditors' Rights
Banking	Resources	Business Condemnation & Real
Capital Markets	Finance	Estate Valuation
Commercial Litigation	Financial Services	Construction & Design
Construction	Intellectual Property	Education: Higher Education
Data, Privacy & Cyber Security	Labor, Employment and	Education: K–12
Employment, Compensation &	Workplace Safety	Employee Benefits
Benefits	Litigation and Dispute Resolution	Employment Law & Labor Relations
Environment & Climate Change	Policy and Regulatory	Environmental & Natural Resources
Financial Restructuring and	Real Estate	Franchise & Distribution
Insolvency	Cross-Practice Services	Government & Regulatory Affairs
Intellectual Property		Intellectual Property
International Arbitration		International Business & Dispute
International Trade		Resolution
Islamic Finance		Land Use
Mergers & Acquisitions		Litigation (Overview)
Private Clients		Native American Tribes &
Pro Bono		Organizations
Project Finance		Petroleum
Regulatory & Compliance		Real Estate
Sourcing & Technology		Tax
Transactions		Trusts & Estates
Tax		
White Collar/Investigations		

7. *Id.* (click on link to sort by category).

8. *Services*, WHITE & CASE, <http://www.whitecase.com/law#practices> [<https://perma.cc/L2H6-5WTN>].

9. *Practices*, *supra* note 6.

10. *Practices*, MILLER NASH GRAHAM & DUNN, <http://www.millernash.com/services/xpqPracticeLandingMN.aspx?xpST=PracticeLanding> [<https://perma.cc/66WJ-YATE>]. Business and Litigation have subdivisions, omitted here. There's also a sidebar listing industries.

¶7 Law firms aren't the only institutions whose structure could suggest areas of specialized legal research. Law school LL.M. programs or concentration tracks often mark specialized research areas as well—at least those in subject areas like tax, intellectual property, and health law.<sup>11</sup>

¶8 Institutionally, we can also look at how lawyers organize themselves. Many of the ABA's sections—for example, Antitrust Law, Health Law, Taxation—reflect subjects where specialized research skills are needed.<sup>12</sup> We might also look to other professional associations, such as the American Immigration Lawyers Association: AILA ([www.aila.org](http://www.aila.org)) or the Copyright Society of the U.S.A. ([www.csusa.org](http://www.csusa.org)). Again, the match isn't perfect (think of associations based on locality or ethnicity), but it's a start.

¶9 Bibliographically, an area is specialized if significant print or online resources are devoted to it. Take tax.<sup>13</sup> It has three major topical services (*Standard Federal Tax Reporter*, *U.S. Tax Reporter*, *Federal Tax Coordinator*) available in print (loose-leaf) and on online platforms (CCH IntelliConnect and Checkpoint), plus the *Tax Management Portfolios*, available in print (spiral-bound portfolios) and online (Bloomberg BNA's web product and Bloomberg Law). There are agency issuances you don't meet in other subject areas (Revenue Rulings, Letter Rulings, General Counsel Memoranda, and more). A novice could stumble along with general sources (e.g., legal encyclopedias, an annotated *United States Code*, and case law databases), but effective, efficient, thorough research requires familiarity with these special sources.

¶10 Another bibliographic approach is to look at areas that have separate research texts or research guides devoted to them. Or we might say that specialized legal research includes (at least) those topics that have chapters in *Specialized Legal Research*: securities regulation, the Uniform Commercial Code, federal income taxation, copyright law, federal labor and employment law, environmental law, admiralty and maritime law, immigration law, military and veterans law, banking law, federal patent and trademark law, federal government contract law, customs law.<sup>14</sup>

¶11 We can also look at these areas in terms of legal authority. Typically, specialized legal research topics are statutory rather than common law. National guides focus on the federal statutes, but practitioners also need to be familiar with the state frameworks. For instance, in labor and employment law, major federal statutes include the National Labor Relations Act, Title VII of the Civil Rights Act of 1964, and the Occupational Safety and Health Act. But each state may have labor laws (especially for public employees), antidiscrimination laws, and industrial safety or workers' compensation laws. Administrative agencies typically play a big

11. See *Post J.D. Programs by Category*, AM. BAR ASS'N, [http://www.americanbar.org/groups/legal\\_education/resources/llm-degrees\\_post\\_j\\_d\\_non\\_j\\_d/programs\\_by\\_category.html](http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_category.html) [https://perma.cc/2L4D-C3PN]. Programs categorized as “general” and those designed to introduce the U.S. legal system to foreign lawyers do not define specialized legal research areas.

12. See *Sections*, AM. BAR ASS'N, <http://www.americanbar.org/groups/sections.html> [https://perma.cc/7MNZ-GKG5].

13. Or, paraphrasing Henry Youngman: Take tax, please.

14. SPECIALIZED LEGAL RESEARCH (Penny A. Hazelton ed., 2014 ed.).

role in these areas, perhaps with a large body of regulations, administrative decisions, and agency guidance.<sup>15</sup>

¶12 Finally, there's a linguistic perspective. Specialized areas have their own vocabulary, often peppered with acronyms. Just for fun, match the following strings of jargon with their legal fields:

- a. PRP, EIS, LUST, FONSI, brownfield<sup>16</sup>
- b. sweetheart contract, zipper clause, open shop, wildcat, impasse<sup>17</sup>
- c. home copy, plant application, pseudo mark, kind code<sup>18</sup>
- d. innocent spouse, generation-skipping<sup>19</sup>
- e. ECI, FDAP, BEPS, C-by-C reporting<sup>20</sup>
- f. "primarily geographically deceptively misdescriptive," PHOSITA, transformativeness<sup>21</sup>

### How Can You Get Up to Speed in a Specialized Area?

¶13 So we know that an area of specialized legal research might be practiced by lawyers in a practice group or students in an LL.M. program, that it has print and

15. See Mary Whisner, *Some Guidance About Federal Agencies and Guidance*, 105 LAW LIBR. J. 385, 2013 LAW LIBR. J. 19. Just an aside: self-citation isn't always about vanity. It can also stem from laziness. I cite articles that I know without having to go discover and read something new.

16. "PRP" (potentially responsible party under Superfund), "EIS" (environmental impact statement), "LUST" (leaking underground storage tank), "FONSI" (finding of no significant impact under the National Environmental Policy Act), and "brownfield" (a former industrial site that might be contaminated) are all from environmental law. Thanks to Todd Wildermuth, who gave me some of these examples. He adds "NPDES" (National Pollutant Discharge Elimination System), which he says is more confusing than average "because (a) it is hard to turn into a phonetic sound ('Nip-Deez' is what most people try; it does not roll off the tongue) and (b) it stood for the proposition that we were going to rid our nation's waters of all pollution by a date certain, now passed (1990?)." E-mail from Todd Wildermuth, Dir. Envtl. Law Program & Pol'y Dir., Regulatory Envtl. Law & Pol'y Clinic, Univ. of Wash. Sch. of Law, to author (June 10, 2016, 12:21 PM PDT) (on file with author).

17. Labor law. See, e.g., *Definitions for Common Labor Terms*, TEAMSTERS, <https://teamster.org/content/definitions-common-labor-terms> [<https://perma.cc/V4FU-C59M>].

18. Intellectual property. See, e.g., *Glossary*, U.S. PATENT & TRADEMARK OFFICE, <http://www.uspto.gov/learning-and-resources/glossary> [<https://perma.cc/CQ4T-HKSH>].

19. Estate and gift tax. See, e.g., Diana S.C. Zeydel, *Gift Splitting: A Boondoggle or a Bad Idea? A Comprehensive Look at the Rules*, 106 J. TAX'N 334 (2007).

20. International tax. "ECI" is Income that is Effectively Connected to a trade or business. "FDAP" (pronounced "F-Dap" or "fudap") income is Fixed, Determinable, Annual, and Periodical. "BEPS" refers to Base Erosion and Profit Shifting, "tax planning strategies that exploit . . . gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid." *About Base Erosion and Profit Shifting* (BEPS), OECD, <http://www.oecd.org/ctp/beps-about.htm> [<https://perma.cc/N4YC-KLLR>]. "C-by-C" reporting is done country by country; a quick Google search reveals that it's also spelled "CbyC." I am grateful to Shannon McCormack and Scott Schumacher who shared these terms. I don't know anything about international tax, but I know some people who do.

21. Intellectual property again. The four-word tongue-twister is right out of the Trademark Act, 15 U.S.C. § 1052(e)-(f) (2012). "PHOSITA" stands for Person Having Ordinary Skill In The Art. The acronym was coined by Cyril Soans, who asked rhetorically: "Would the patents subcommittee of the House Judiciary Committee have approved H.R. 3760 of the 82nd Congress if they had known that the person skilled in the art in Section 103 of the 1952 Act would turn out to be the superhuman Frankenstein monster Mr. Phosita? I think not." Cyril A. Soans, *Some Absurd Presumptions in Patent Cases*, 10 IDEA 433 (1966-1967). My thanks to Zahr Said, who offered these gems of jargon.

online resources devoted to it, that one or more statutes govern it, that agencies regulate it, and that it has its own vocabulary. So what? Does any of that help us get past that first reaction that it's hard? I think it does because it gives novice researchers in an area some structure and ideas about where to turn.

¶14 When entering an unfamiliar area, look for a research guide—from a brief one on a library website to an entire book.<sup>22</sup> The guide should tell you the chief sources of authority, the important agencies, and key vocabulary words. If you want to talk to an expert, think institutionally: can you ask the lawyers in your firm's practice group or the professors in your school's LL.M. program? If you're stuck in the quest for an obscure source, consider calling the librarian at the relevant agency.

¶15 Recognizing the commonalities in specialized research areas can help a researcher move from one to another. Once you learn to look for a statute and a regulatory agency in one area, you know to do that in another. Since each area is likely to have at least one loose-leaf service (or online topical service), you can transfer the skills you learn using one to another. For instance, if you know how to use the digest system for BNA's labor law cases, then you can quickly see how BNA organizes cases in *United States Patents Quarterly*. If you can navigate the *Standard Federal Tax Reporter* (in print or on IntelliConnect), then you will be able to use CCH services in banking or securities regulation.

¶16 If you are going to be working in a specialized area for a while—for instance, if you'll be helping faculty and students from an LL.M. program again and again—you can educate yourself about the subject you once thought was difficult and scary. You don't need to become an expert, but skimming a *Nutshell* or otherwise picking up some basics will help you recognize terms and concepts. Research is much easier when your head isn't spinning. Consider subscribing to a newsletter or following a topical blog so you will know the hot topics, even before the questions about them roll in.

¶17 Specialized legal research can be challenging. But it can also be rewarding because it's satisfying to face the unknown and sail through.<sup>23</sup>

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22. E.g., Gail Richmond, *FEDERAL TAX RESEARCH: GUIDE TO MATERIALS AND TECHNIQUES* (9th ed. 2014).

23. See Peggy Roebuck Jarrett & Mary Whisner, "Here There Be Dragons": *How to Do Research in an Area You Know Nothing About*, 6 PERSP.: TEACHING LEGAL RES. & WRITING 74 (1998). Although this piece is eighteen years old, I find I don't have much to add to its advice besides using the online versions of loose-leaf services.