Legal Authorities

All lawsuits are about rights. In every single case, one person is claiming that somebody else interfered with something he or she had a right to have. These rights run the gamut from the right to worship as we please to the right not to be injured by the products we buy. Some rights are said to belong to all citizens aggregately. Those rights are enforced by the government and police who are authorized to act on behalf of the government.

The cases you will read in this module concern a conflict of rights. On one side, there is the right of one individual to communicate to others about his business by distributing advertising flyers. On the other side, there is the right of all citizens to have their streets clean and free of litter. The right to communicate freely is stated in the first amendment to the U.S. Constitution. The Constitution also gives authority to protect the health, safety and general welfare to the states. The states delegate authority to cities, counties, etc. New York City used its authority to pass an ordinance prohibiting the distribution of advertising flyers that might end up littering the streets. The question is: which right is more important in our society?

When one person sues another, she must be able to point to some legal authority that gives her the right that is the basis of her suit. If she files a lawsuit without any legal authority to support it, both she and her attorney can be fined and made to pay any expenses the other party has incurred trying to defend against the suit.

The main legal authorities that are the sources of rights are: 1) the U.S. Constitution, 2) state constitutions, 3) statutes enacted by congress and state legislatures, 4) ordinances enacted by city and county governments, 5) administrative regulations, and 6) common law. Common law refers to the entire body of written opinions in cases heard by American courts since the country was founded. Occasionally, the authority may come from as far back as cases tried in Britain while the U.S. was still a colony.

But times change, circumstances change, and social values change. Given the sheer volume of legal authority out there, you’re bound to get some conflicting laws, disparate interpretations of the language and cases that say opposite things. The task falls on the courts to clarify and interpret all the above authorities, their opinions are key elements in the legal system. Even though it sometimes happens, courts aren’t supposed to CREATE the law, only to interpret it. They are supposed to follow the rules set down in prior cases referred to as precedents. In that way, theoretically, our laws will be consistent and predictable. The trick is figuring out which past cases to follow.

Attorneys suggest applicable cases when they write briefs. A brief is a type of research paper. It is divided into two sections: 1) a Statement of Facts and 2) an Argument. In the argument section, the attorney discusses how he believes the law should be applied. He quotes statutes and rules applied in prior cases, and tell why those cases are similar to the present case. Of course, the cases he selects will be the ones that favor his client’s position.

How does he find the cases? Fortunately, there’s a system. Every time an attorney identifies a case in his brief and every time a judge points to one in an opinion, he also writes the book name, volume and page number where the case can be found together with the year in which the case was decided. This is called a citation. They makes it quite easy to search for similar cases going backward in time. Citations also can be traced forward in time using a books called Shepherd’s Citations.
**PRECEDENT POKER**

The game is played by attorneys. The objective of the game is to support your case with the strongest group of case precedents. In this game, the cards are prior court opinions. For some cases, the attorney’s hand will have only a few cards for other cases, a whole stack. For an attorney’s purposes, cases fall into the four basic categories shown below.

- **On point**
  The case has facts very similar to those in the present case and the law applied would result in a favorable outcome for your client.

- **Analogous**
  The overall pattern of the case (A did X to C) is similar to the present case, but the context and circumstances are different. It is arguable that the same law applied there could be applied in the present case.

- **Distinguishable**
  Application of law as the court does in this case would result in an unfavorable for your client. You must find differences in the facts or the wording of a statute or something that makes it arguable that the case doesn’t apply.

- **Not Relevant**
  Both the facts and the application of the law are different from the case although the context may be the same. It is not a case you would mention in a brief.

Within each category, the cases can have different strengths or weights. In other words, a court must consider some prior opinions more heavily than others.

- **On point**
  Only the U.S. Supreme Court can depart from its own prior decisions—and they don’t like to because it erodes their credibility. A U.S. Supreme Court case on-point is binding on all other courts and must be followed.

- **Analogous**
  State Supreme Court cases from the state where the events occurred and Federal Courts of Appeals cases on-point carry a lot of weight, too. They are binding on all lower courts unless they conflict with a U.S.Supreme Court case.

- **Distinguishable**
  A state Court of Appeals case on-point from the state where the events occurred is binding on all lower courts so long as there are no conflicting decisions in higher courts.

- **Not Relevant**
  A well-reasoned Federal District opinion on-point is somewhat persuasive, because the judges who write them are respected. But it isn’t binding on any court because it is only a trial court.

- **Not Relevant**
  On-point State Supreme and Appellate Court cases from states other than the one where the events occurred also are persuasive. Attorneys will point to these cases as the way the law should be applied when they lack stronger cases.