

Legal Research & Writing Unit 1 Assessment

INSTRUCTIONS - Please read and follow all instructions carefully.

All submissions must be in either Microsoft Word or PDF. Submit your work through Canvas.

For this assignment, **you must work independently**. This assignment is open book. You *may not* consult any other person. Your responses to each of the questions must be your own.

Please review the *Vermont Law and Graduate School Honor Code*, Title XII of the Academic Regulations. Certify by marking an X in the spaces provided and enter your name and date below.

_____ I certify that I have read and understand the *Vermont Law and Graduate School Honor Code*.

_____ I certify that this Legal Research and Writing Assessment represents my work, and mine alone, and my work complies with *Vermont Law and Graduate School Honor Code*.

Name:

Date:

True / False (20 points; 2 points each)

- ____ 1. All primary sources are binding authority.
- ____ 2. The citation "808 F.2d 1410" refers to a case decided by the Florida Supreme Court.
- ____ 3. The Latin term *stare decisis* means “to stand by things decided” and relates to the judicial doctrine of binding precedent.
- ____ 4. Annotated statutory codes often include constitutions and court rules.
- ____ 5. Researchers choose to search for statutes through the codified versions when they are seeking the current law and when they prefer a topical organization.
- ____ 6. The proper approach to reading legal documents includes getting context, skimming the text, and then reading the text critically.
- ____ 7. The United States Code Service is the “official” version of the United States Code.
- ____ 8. Legislative history materials (bills, hearings, debates, and committee reports) are always secondary authority.
- ____ 9. Premium research services, such as Westlaw or Lexis, provide exhaustive legal materials for all legal research needs.
- ____ 10. Researchers choose to search for session laws when they need to see versions of a law that have since been repealed or amended.

Multiple Choice (20 points; 2 points each)

- ____ 1. Which of the following is **not** a time-efficient way to begin researching a complex legal issue that you are unfamiliar with?
 - (a) Run case searches using as many different combinations of terms as you can think of.
 - (b) Locate an entry on the topic in a legal encyclopedia.
 - (c) See if there’s a treatise on the subject for your jurisdiction.
 - (d) None of the above - all of these are equally time-efficient first steps.
- ____ 2. Regulations differ from statutes because:
 - (a) Regulations emerge from executive branch agencies while statutes emerge from

the legislative branch

(b) Regulations provide the details of how to administer a broadly written statute

(c) Both (a) and (b)

(d) Neither (a) or (b)

_____ 3. Which of the following is **not** a citation to a United States session law?

(a) 92 Stat. 3069

(b) 25 U.S.C. § 1901

(c) Pub. L. 95-608

(d) all of these are session law citations

_____ 4. Unpublished opinions may be found in:

(a) The files of the court where the case was heard

(b) Online services such as Westlaw and Lexis

(c) The jurisdiction's official reporter(s)

(d) (a) and (b) only

(e) (a), (b), and (c)

_____ 5. Which of the following is not a secondary source?

(a) American Jurisprudence 2d

(b) American law Reports (A.L.R.)

(c) Corpus Juris Secundum

(d) Federal Supplement

(e) Restatement of the Law of Property

_____ 6. Which of the following is not a primary source?

(a) Dissenting Opinion

(b) Harvard Law Review article by Justice Sotomayor

(c) Municipal Ordinance

(d) Federal Rule of Evidence

_____ 7. Which part(s) of a court case may be binding authority (select all that apply)?

(a) Headnote from a case on Westlaw

(b) Opinion

(c) Concurrence

(d) Dissent

- _____ 8. Citators are used in legal research to:
- (a) Verify that a document is still “good law”
 - (b) Identify related primary and secondary documents
 - (c) Both (a) and (b)
 - (d) Neither (a) or (b)
- _____ 9. You want to cite an Alaska Court of Appeals case, *Choi v. Fletcher*, for a particular point of law. *Choi* has been overruled by the Alaska Supreme Court for a different point of law, and as a result, a citator service shows a red flag on *Choi*. Can you still cite *Choi* to support your point of law?
- (a) No.
 - (b) Yes.
 - (c) Yes, but you must indicate that the Alaska Supreme Court overruled the opinion on other grounds in the subsequent history portion of the citation to the case.
 - (d) Yes, but you must indicate that the Alaska Supreme Court overruled the opinion in the subsequent history portion of the citation to the case.
- _____ 10. The following illustration (which may be on the next page of this document) is an example of a(n):
- (a) Statute
 - (b) Annotation
 - (c) Regulation
 - (d) Headnote

Effective: October 1, 2012

23 U.S.C.A. § 146

§ 146. Carpool and vanpool projects

Currentness

(a) In order to conserve fuel, decrease traffic congestion during rush hours, improve air quality, and enhance the use of existing highways and parking facilities, the Secretary may approve for Federal financial assistance from funds apportioned under [section 104\(b\)\(2\)](#) of this title, projects designed to encourage the use of carpools and vanpools. (As used hereafter in this section, the term “carpool” includes a vanpool.) Such a project may include, but is not limited to, such measures as providing carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, acquiring vehicles appropriate for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use as preferential parking for carpools.

(b) A project authorized by this section shall be subject to and carried out in accordance with all provisions of this title, except those provisions which the Secretary determines are inconsistent with this section.

CREDIT(S)

(Added Pub.L. 95-599, Title I, § 126(a), Nov. 6, 1978, 92 Stat. 2705; amended Pub.L. 105-178, Title I, § 1103(l)(1), June 9, 1998, 112 Stat. 125; Pub.L. 112-141, Div. A, Title I, § 1105(b), July 6, 2012, 126 Stat. 432.)

Short Answer (24 points total)

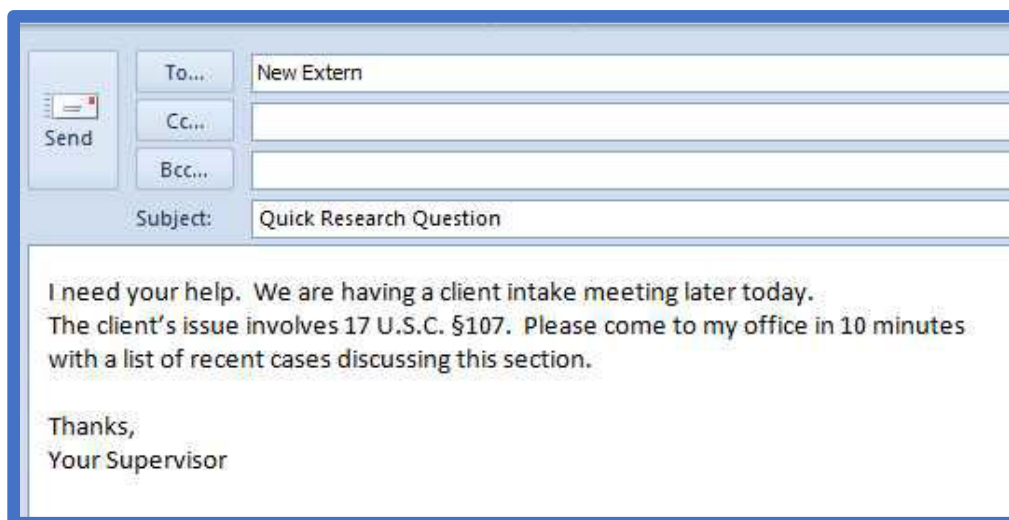
- 1) **(6 points)** You represent a client who wants to file a lawsuit that would be heard in a Virginia District Court, which is a state trial court. As you research the claim, you encounter cases from a number of different courts and jurisdictions. Which of the following courts produce authority that is mandatory in your Virginia state trial court? Which would be persuasive? Place an X or other mark in the appropriate column for each court.

Court	Mandatory	Persuasive
Virginia Supreme Court (the highest state court in Virginia)		
Virginia Court of Appeals (the intermediate appellate court)		
A Virginia District Court (the same court as where your case is being heard)		
Maryland Supreme Court (the highest state court in Maryland)		
Federal District Court in Norfolk, Virginia, when applying Virginia state law		
U.S. Court of Appeals for the Fourth Circuit, when applying Virginia state law (Virginia is in the 4 th Circuit)		

2) **(6 points)** Sometimes it can be difficult to know when you have thoroughly researched a topic. List three instances that can signal it is time to stop researching. (Answer using 100-150 words)

3) **(6 points)** You receive a new research project from your supervisor. When assigning the project to you, they provide you with the citation to a seminal case to get you started. You look it up on Lexis or Westlaw. Besides reading the opinion, how can you use that case to find other relevant authority? Name three ways. (Answer using 100-150 words)

4) **(6 points)** Your externship supervisor sends you the following email:



What is the most efficient and effective way to fulfill this request? How will you use the next 10 minutes? Be specific about your process and research tools you plan to use. No need to conduct the research, but I want to know how you would proceed given the short window of time. (Answer using 100-150 words)

Practical Questions (21 points total)

1. **(6 points) (Legal Encyclopedia)** You are a new associate at a law firm representing Evergreen School District, a public school system. The district superintendent has contacted your firm about a recent incident involving a high school student's social media post. The student, using their personal smartphone while at home, created and shared a digitally altered image on a popular social media platform. The altered image depicts a classmate lying in a coffin with the caption "Can't wait for Jamie's funeral next week. Might even help to make it happen. #RIP." The post quickly spread among students, causing significant distress and anxiety. Several parents called the school expressing concern for their children's safety, and attendance dropped by 30% the following day. Jamie, who is very much alive and well, has not been back to school since the picture appeared.

The superintendent wants to know if the district has any authority to discipline students for social media posts like this one. The student who created the post argues that the school can't punish them for off-campus speech.

Use **American Jurisprudence (AmJur) 2d** on Lexis or Westlaw to find a section that discusses the issue. NOTE: Make sure you are using AmJur 2d to answer this question. Do NOT use an ALR, law review article, treatise, or other source.

Indicate the answer to the superintendent's question and include the Topic and Section from AmJur 2d that answers it.

2. **(6 points) (Annotated Code)** Your friend drove through New York state recently on a road with a posted speed limit of 60 miles per hour. She was driving within that limit when suddenly the car in front of her rapidly and unexpectedly decelerated. To avoid a collision, your friend took evasive action by swerving into the oncoming lane. She sped up as she did so in order to get back out of that lane as fast as possible without causing an accident herself.

Immediately after she returned to her lane, a police officer observed your friend traveling at 77 miles per hour and pulled her over. Your friend explained the situation and although the officer acknowledged that his radar had picked up a car that was travelling much slower several seconds behind her, he issued her a speeding ticket pursuant to N.Y. Vehicle & Traffic Law § 1180, a state statute.

Your friend has asked you if you think she might have an excuse since she sped up solely for the purpose of avoiding the slower car.

Use **the New York Statutes on Lexis or Westlaw to find a case annotation** that answers your friend's question. In answering the question, provide:

- 1) The answer to the question of whether she has an excuse based on the information in the annotation,
- 2) the name and citation for the case, and
- 3) the Notes to Decisions (Lexis) or Notes of Decisions (Westlaw) topic under which you found it.

You do not need to read the case you find for this question.

3. **(9 points) (Citor)** You're researching an issue involving potentially fraudulent misrepresentations made by the seller in a real estate transaction in Vermont. Your case will be heard in a Vermont state court.

During your research, you discover *Silva v. Stevens*, 156 Vt. 94, 589 A.2d 852 (1991).

Use **either KeyCite (on Westlaw) or Shepard's (on Lexis)** to answer the following questions. Make sure you answer all parts.

- a) Which citator did you choose?
- b) Is this case still good law?
- c) How do you know?
- d) If there's any negative treatment from subsequent citing courts, indicate how those case(s) impact or do not impact your ability to use *Silva* as valid authority in your matter.

Attribution Questions (15 points total)

The following paragraph is from a legal memo:

The Copyright Act’s fair use doctrine, found in § 107 of title 17 of the U.S. Code, enables creators to use portions of a copyrighted work without infringing on the owner’s rights if that use meets certain criteria and is for “criticism, comment, news reporting, teaching . . . , scholarship, or research” Fair use can, however, also encompass purposes that are not expressly enumerated in § 107. The United States Supreme Court ruled in Campbell v. Acuff-Rose Music, Inc. that parodies may be permissible under fair use if the parody’s appropriation from the original work is limited only to as much material as is needed to establish the parodical connection between the two. In Campbell, recording artists 2 Live Crew had written a satirical version of Roy Orbison’s song “Oh, Pretty Woman” which incorporated the first line of the lyrics and the widely recognized bass riff from the original work. However, the Court noted that a large portion of the parody included 2 Live Crew’s own distinctive sounds, drumbeats, lyrics, vocals, and key changes. The Court held that while 2 Live Crew’s use may have borrowed from the heart of Orbison’s song through the appropriation of the emblematic bassline, the resulting parody markedly departed enough from the original to satisfy the fair use doctrine’s requirement to take no more than is necessary to create a relationship between the two songs.

Many of this paragraph’s sentences require attribution. Each sentence is reproduced in the table below. Indicate which source belongs with which sentence by entering the source’s corresponding letter in the spaces provided.

- A. Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994) or one of its short forms, with pin cite if needed
- B. 17 U.S.C. § 107 or one of its short forms
- C. No attribution needed

Sentence	Attribution (A, B, or C)
The Copyright Act’s fair use doctrine, found in § 107 of title 17 of the U.S. Code, enables creators to use portions of a copyrighted work without infringing on the owner’s rights if that use meets certain criteria and is for “criticism, comment, news reporting, teaching . . . , scholarship, or research”	
Fair use can, however, also encompass purposes that are not expressly enumerated in § 107.	

<p>The United States Supreme Court ruled in <u>Campbell v. Acuff-Rose Music, Inc.</u> that parodies may be permissible under fair use if the parody's appropriation from the original work is limited only to as much material as is needed to establish the parodical connection between the two.</p>	
<p>In <u>Campbell</u>, recording artists 2 Live Crew had written a satirical version of Roy Orbison's song "Oh, Pretty Woman" which incorporated the first line of the lyrics and the widely recognized bass riff from the original work.</p>	
<p>However, the Court noted that a large portion of the parody included 2 Live Crew's own distinctive sounds, drumbeats, lyrics, vocals, and key changes.</p>	
<p>The Court held that while 2 Live Crew's use may have borrowed from the heart of Orbison's song through the appropriation of the emblematic bassline, the resulting parody markedly departed enough from the original to satisfy the fair use doctrine's requirement to take no more than is necessary to create a relationship between the two songs.</p>	