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1

ESSENTIAL BACKGROUND

INTRODUCTION

The purpose of this book is to teach legal research — how and when to use the wide range of research tools that are available to you. With the large number of free and easy-to-find legal materials on the internet, it is tempting to think that legal research can be successfully conducted using only free online sources. In this book we describe the tools you will need to master legal research — both free and commercial online materials, as well as the print materials that continue to be essential in conducting accurate and efficient research.

Before beginning your actual research, there are certain basics you need to know about the nature of law and the legal system to be able to discriminate between law that is ‘binding’ and law that is merely ‘persuasive.’ The common law is based on the principle of ‘*stare decisis*’¹ which requires judges to follow the prior decisions of specific courts. These earlier cases serve as precedent; they are binding and *must be followed* by the courts.

While some cases are binding, others may be considered persuasive. Law that is persuasive might influence judicial decisions, but courts are *not required to follow* these decisions. For a researcher to be successful, it is not enough to simply know how to locate cases, statutes, and treatises on a topic. The researcher must be able to ascertain what law is binding or persuasive in his or her jurisdiction. In addition, when the case law and the wording of a statute on a given topic seem to be in conflict, the researcher must be able to determine which takes precedence.

This chapter aims to provide researchers with the background they need to assess when law is binding and when law is merely persuasive. The following topics will be examined:

1. What is the difference between primary and secondary sources of law?
2. What weight is attributed to the various types of primary sources of law?
3. How does jurisdiction determine whether or not law is binding?
4. How does the court structure determine whether or not law is binding?

¹ Susan Ellis Wild, *Webster’s New World Law Dictionary* (Hoboken, NJ : Wiley, 2006) s.v. “‘Stare decisis’ n. *Latin*. ‘To stand by what was decided.’ The doctrine of common law under which courts follow the earlier judicial decisions made on the same points of litigation; following precedent.”