Legal Research for Retention Schedules

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Introduction

- The Law
- Research Strategy
- Tools

The Law

- Structure
- Sources
- Documentation

The Law - Scope

- 50 Volumes of the United States Code
- 250 Volumes of the CFR
- 70,000 Pages of the Federal Register each year
- 200 Volumes of the California Codes
- 4 million court cases

The Law - Definition

- A binding custom or practice of a community.
- A rule of conduct prescribed or formally recognized as binding and usually enforced by a controlling authority.

The Law - Sources

- Executive
- Legislature
- Judiciary

The Law - Types

- Executive
 - Executive Order
- Legislative
 - Statutes
- Judicial
 - Legal Opinions / Case Decisions

The Law - Executive Order

President Truman integrates the Armed Forces

The Law - Legislative

- Federal Records Act
- Occupational Safety and Health Act of 1970 - PL 91-596
- Clean Air Act
- Civil Rights Act
- Freedom of Information Act

The Law - Judicial

- Armstrong v. Executive Office of the President
- Public Citizen v. Carlin
- Brown v. The Board of Education
- Bush v. Gore

The Law - Other Sources

- Administrative Rules and Decisions
- IRS Revenue Rulings, Procedures
 - Rev. Proc. 98-25
- SEC No-Action Letters, Attorney Generals Opinions

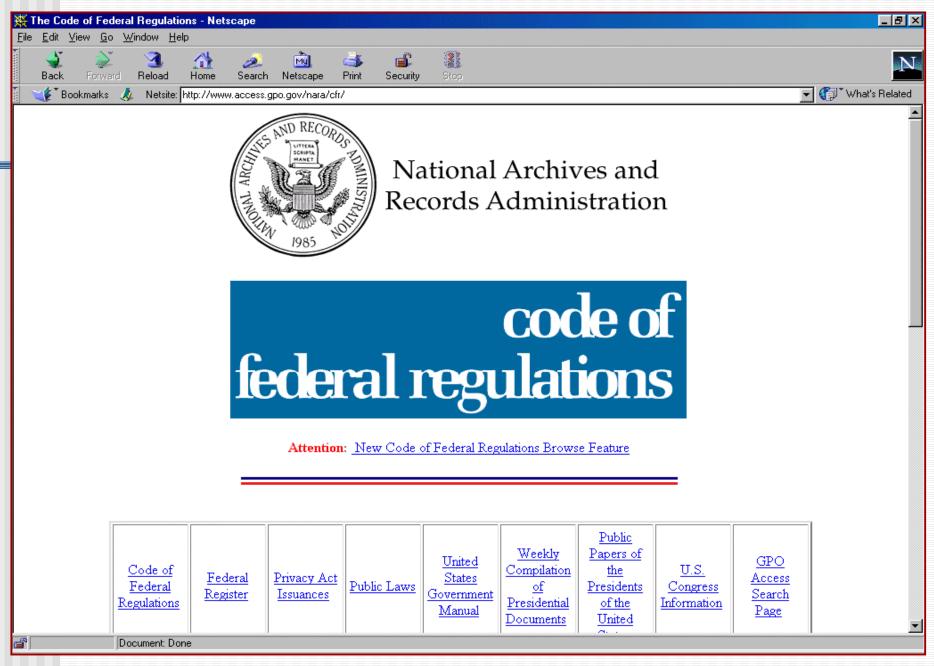
The Law - Sources

Primary

- Constitutions of the U. S. and States
- Statutes
- Court Rules
- Agency Regulations
- Administrative Decisions
- Municipal Charters and Ordinances

The Law - Sources

- Secondary
 - Legal Encyclopedia
 - Topical Index
 - Common Name Table
 - Law Review
 - Law Treatise
 - CFR "List of Sections Affected"



The Law

- Substantive Law
 - Conduct and Relationships
- Procedural Law
 - Enforcing substantive rights

The Law - Applicability

- Laws applicable to all business
- Regulations for a specific industry
- Regulations for specific records of a specific business

- No law discussing records
- Maintain records no retention
- Use "3-year presumption"

- Maintain records specified time
- Example:

26 CFR 31.6001-1(3)(2)

Internal Revenue Code, Employment Taxes and Collection of Income Tax at Source

"Except as otherwise provided...every person...shall maintain such records for at least four years after the due date...."

- Maintain specific record specific time
- Example:

29 CFR 1904.6

The Labor Code, Recording and Reporting Occupational Injuries and Illnesses

"Records provided for...(including form OSHA No. 200...) shall be retained...for 5 years..."

- Statute of Limitations
- Example:

California CCP 337

The Time of Commencing Actions other than for Recovery of Real Property

"Within four years: 1. An action upon any contract, obligation or liability founded upon an instrument in writing..."

- Limitations of Assessment
 Timeframe for imposing taxes
- Pending Litigation/Audit/Investigation
 Discovery
 Document Production
 Legal Hold

- Functional
- Published (codified) by Subject

Codes of Statutes

- 5 USC Government Organization and Employees
- 29 USC Labor
- 31 USC Money and Finance
- California Government Code
- California Labor Code
- California Revenue and Taxation Code

Codes of Regulations

- 5 CFR Administration and Personnel
- 29 CFR Labor
- 31 CFR Money and Finance
- Title 8 CCR Industrial Relations
- Title 22 Social Security

- Example:
- Federal Records Act, 44 USC 2901 et seq
- Authorizes NARA to implement
- 36 CFR 1228, "Disposition of Federal Records"
 - "Sets policies, standards, procedures and techniques" for carrying out the law

The Law - Published

Federal Statutes United States Code (USC)

Regulations Code of Federal Regulations

(CFR)

Cases Supreme Court Reports

(S.Ct.)

Federal Reporter (F.2d)

Federal Supplement

(F.Supp.)

The Law - Legal Citations

- Statute22 USC 2567 (a) (1) (1994)
- Regulation7 CFR 319.76 (1990)

The Law - Case Citations

- Roe v. Wade410 U.S. 113 (1973)
- Armstrong, et al. v. Executive
 Office of the President
 1 F.3d 127
- Akiona v. United States 938 F.2d 158

The Law - Other Citations

- Constitutions
 - U.S. Const. Art. I, § 9, cl. 2
 - Pa. Const. Art. I, § 28 (1968)

- Court Rules
 - Fed.R. Civ. P. 12(b)(6)

Research Strategy

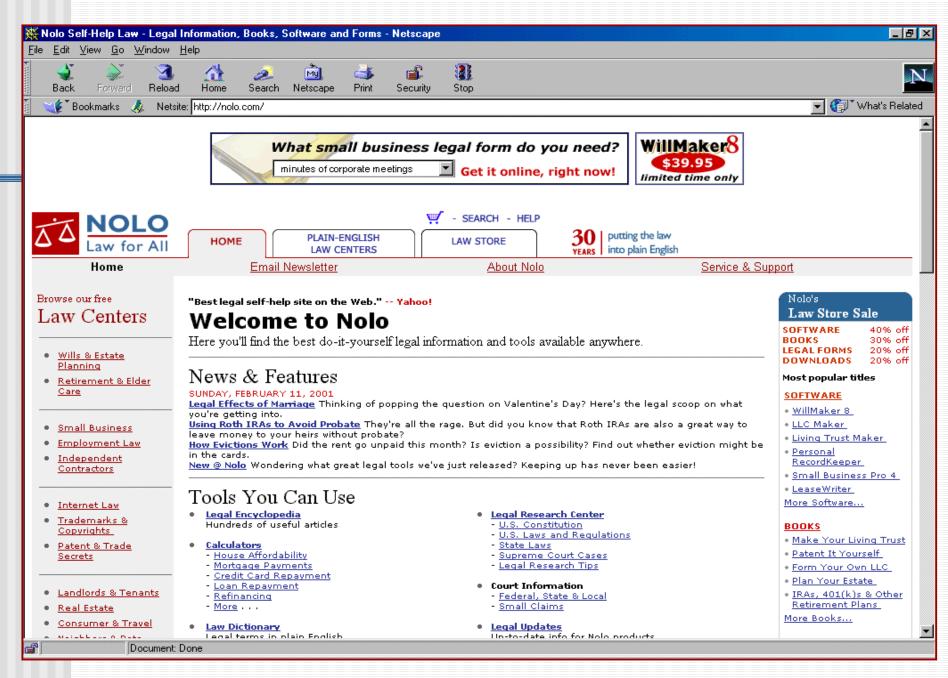
- Purpose
- Responsibility
- Methodology
- Results

Research - Applicability

The law must apply to organization's business

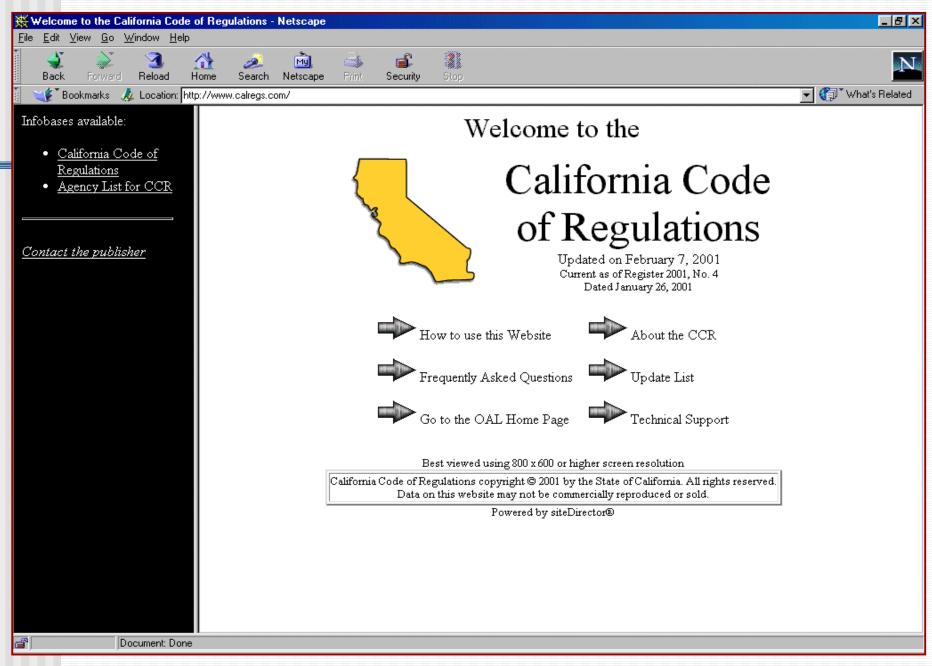
Research - Methodology

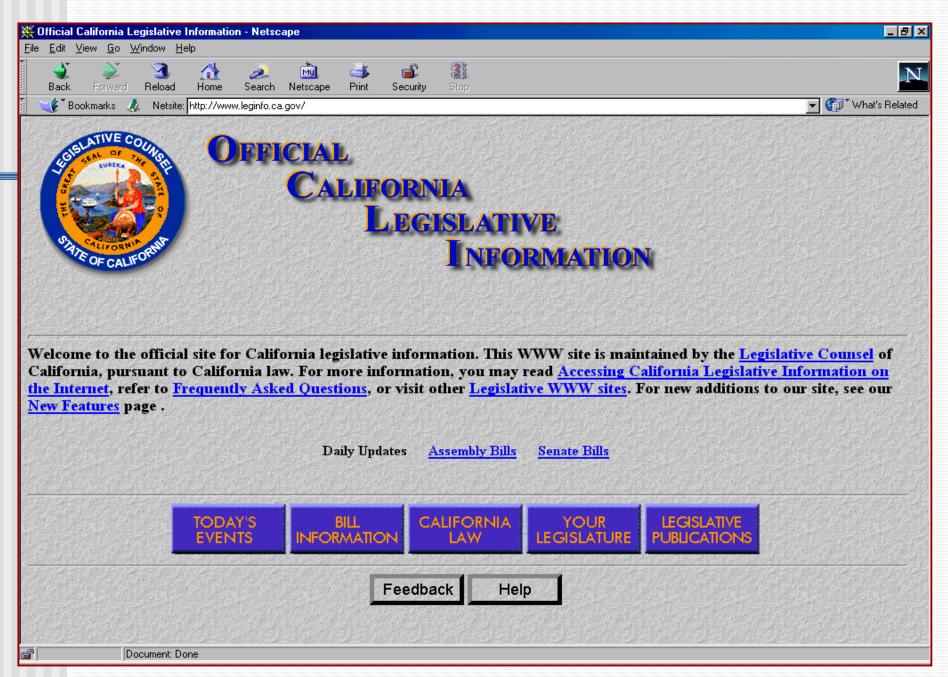
- Identify functions
- Identify jurisdictions / authorities
- Find the law
- Learn the vocabulary



Research - Methodology

- Document the law
 - Law Library
 - Law Librarians
 - Internet
 - Subscription ("Looseleaf") Services





Documenting Legal Research

Record ID 12345

Citation CA LC 1174(d)

Common Name California Labor Code

Jurisdiction California

Records Affected Payroll Records

Retention Period 2 years

Agency Department of Industrial Relations

Topic Labor / Wage and Hour

Text Keep, at a central location...payroll records showing the hours worked

daily by and the wages paid to....These records shall be kept in accordance with rules established for this purpose by the commission,

but in any case shall be kept on file for not less than two years.

Research - Methodology

Decide when to stop

Tools

- Books
- Serial (Subscriptions)
- Shepard's Citators
- Online research
- Software
- Subscription Services



Tools

- Online or CD-ROM Subscriptions
 - LEXIS
 - WESTLAW
 - Skupsky
 - Braincore
 - Zasio
 - BLI

Tools

- Software
- Zasio Retention
- Skupsky IRCH Retention Manager

Legal Research for Retention Schedules

- Identify Jurisdictions
- Identify Areas of Law
- Document the Research
- Maintain