WEEKLY TIPS IN LEGAL RESEARCH – STATUTORY, REGULATORY, & CASE LAW RESEARCH – A PRACTICAL APPROACH

• William Shirley & Dana Neacsu
INTRODUCTIONS

• Why is Dana here?
• Why is Bill here?
If you remember that your research
• Is as good as your understanding of the underlining doctrinal issue;
• Depends on your familiarity with legal information repositories;
• Is informed by your research skills

Click on the globe to start
The Way This Workshop Will Work

– Bill will introduce a legal/regulatory subject from his practice
– Dana will introduce the related sources and methods of research
– Dana will pose a specific research exercise
– You will have 10-15 minutes to do the exercise, in real time (no extensive preparation needed)
– Dana and Bill will lead a Q&A about your results
The Doctrinal Topic of the Workshop – Bill’s Expertise

- Overview of the legal/regulatory subjects
  - Swap transactions
  - Bankruptcy law treatment of swaps—qualified financial contracts or “QFCs”
  - Financial regulation of swaps
  - Banking regulation of swaps and other QFCs
Aside from its Doctrinal Aspect, This Workshop Will Instill the Same Research Practice Skills as Any Research Workshop:

First Step: Macro-management = Map Your Expectations = Create a Research Plan
Second Step: Execute your plan = Micro-management

1. In this workshop we will work with simple examples: find a statute, or a case; or locate a particular set of documents;
2. Nevertheless, you still need a plan;
3. Your research plan will be dictated by a) area of law; and b) the legal repositories (databases) available to you
4. BUT before you plan, consider using secondary sources
   - Research aids (dictionaries)
   - Scholarship or practitioners’ narratives about the law providing context & citations to primary sources)*

*Major drawback: year of publication!
First legal/regulatory subject:

- Bankruptcy Code (Chapter 11)
- Federal Deposit Insurance Act (FDIA)
- Orderly Liquidation Authority (OLA) under Dodd-Frank
- State insurance company law
How to Research First Legal/Regulatory Subject – Federal Statutory Research

- Federal statutes are published as
  1. session laws (Public laws) sequentially – Pub. L. 111-203
  2. codifications – topically - 12 USC 5381.

- Federal statutes can be located:
  a. By citation (three citations for each codification:
     a. USC/ https://www.bloomberglaw.com/legal_search/browser/24221#25947
     b. USCA/  
     c. USCS  
  b. By name: Dodd- Frank Wall Street Reform and Consumer Protection Act
  c. By subject matter: 12 USC 5301
     a. Use the index/
     b. TOC  
     c. full text searches
HOW TO RESEARCH FIRST LEGAL/REGULATORY SUBJECT – STATE STATUTORY RESEARCH

• State statutes are published as
  1. session laws (Public laws) sequentially
  2. codifications – topically – McKinneys’.

• State statutes can be located:
  a. By citation (three citations for each codification:
     a. New York State Statutes
     b. New York Statutes & Court Rules
     c. New York Consolidated Session Laws
  b. By name: Sometimes not that easy: NY State Insurance company receivership law
  c. By subject matter: NY INS § 7401
     a. Use the index/ dissolution
     b. TOC
     c. full text searches
First In-class exercise:

- Look for the definitions of “qualified financial contract” and “swap agreement” in the Bankruptcy Code, the FDIA, OLA and at least one state insurance law statute.
- Can you explain the connection between the two concepts?
SECOND LEGAL/REGULATORY SUBJECT:

- The Lehman Brothers’ bankruptcy and the judiciary;
The interplay between Chapter 11 and swap claims.
Preliminary Issues

- Cases are published in case law repositories: reports or reporters;
  - In what court are bankruptcy claims filed?
  - Why?
  - Where are such trial court cases appealed?
  - Is there an official repository of all federal cases?
  - What about commercial repositories?
Methods of Case law research

– 1. Citation: # Reporter Abbreviation #
– 2. Name of the Case: Plaintiff v. Defendant
– 3. topic: one good case scenario + using the databases’ topics / indexes
What is the most efficient way to find specific bankruptcy cases?

Practice area: Secondary sources
Can you find if there are any bankruptcy cases related to LB's insolvency where the creditors attempted to raise safe harbor status for their swaps and bypass the automatic stay imposed by bankruptcy rules?

Use Lexis Advance / start with secondary materials/practice area/search terms

Use Westlaw Edge / start with “key numbers”/ search terms
How would you find a 2010 bankruptcy court case discussing the examiner’s report and the trustee’s obligations in the Chapter 11 litigation against Lehman Brothers?
Questions/Suggestions:

• Questions/Suggestions: Please email Dana - edn13@columbia.edu or Bill - wshirley@sidley.com.

• Next Week: Statutory and regulatory research. The QFC rule and its enabling statute.