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This handout describes legal research materials available on-line and in print in New York Court Public Access Law Libraries.

The information provided should be considered a starting point in your research and should not be interpreted as a comprehensive review of the subject or issue in question

Doctrine of Stare Decisis

Legal research does not stop after finding a case opinion. The history of that case, whether it was heard by a higher court, and how later cases have applied the opinion, must be found through a citation service. Citation services support the legal doctrine of stare decisis: once a legal point has been decided, subsequent decisions must follow that earlier precedent or authority unless there is a worthy reason to not follow that earlier decision. Stare decisis requires understanding the concepts of authority and precedent. The references at the end of the handout comprehensively explain stare decisis.

LexisAdvance's citation service is Shepard's. Westlaw's citation service is Keycite. See the handouts and on-line guides for these services.

Preferred Citations

Judge Lebovits wrote the following checklist for citation decisions. .

- Prefer a higher court to a lower court. In New York, prefer the Court of Appeals most of all. If you cite a Court of Appeals or Appellate Division opinion on point, you'll rarely need to cite a trial-court opinion.
- In New York, prefer a New York State court to a federal court (unless your issue raises a federal constitutional question and the federal courts have set a threshold).
- In New York, prefer the Second Circuit to another federal circuit.
- In New York, prefer any federal court to any non-New York State state-court.
- In New York, prefer your Appellate Division Judicial Department or Appellate Term Judicial District to another Appellate Division Department or Appellate Term District.
- Prefer a court of coordinate jurisdiction in your appellate jurisdiction to a court of coordinate jurisdiction in another appellate jurisdiction.

- Prefer fully affirmed opinions to those modified on other grounds.
- Prefer unanimous opinions to majority opinions.
- Prefer majority opinions to plurality opinions.
- Prefer plurality opinions to concurring opinions.
- Prefer concurring opinions to dissenting opinions.
- Prefer a case on all fours to a case with distinctions.
- Prefer most cases to most secondary authority.
- Prefer signed opinions to memorandum opinions.
- Prefer memorandum opinions to per curiam opinions, except when the per curiam opinion allows no reservations and contains no wriggle room.
- Prefer unanimous authority to split authority.
- Prefer newer cases to older cases, unless the older case is seminal authority. Then site the seminal authority and the new case.
- Prefer a case that goes your way to a case that goes the other way, even when citing black-letter law.
- Prefer a famous, highly regarded judge or author to a less highly regarded judge or author. Cite a disgraced judge's opinion only if you have no other authority on point, and even then beware.
- Prefer a holding to a finding.
- Prefer ratio decidendi to obiter dictum.
- Prefer a published opinion to an unpublished opinion.
- Prefer an officially reported opinion to an unofficially reported opinion, such as a *New York Law Journal* opinion. When you cite a *New York Law Journal* opinion, always verify whether the opinion has been reported officially and whether the decision has been reversed.
- Prefer a constitution to a statute.
- Prefer a statute to a rule or regulation.
- Prefer a statute to a case, but cite both (citing the statute first) if the case explains how to apply the statute.
- Prefer a reference in the text of a case or secondary authority you're citing to a reference in a footnote of a case or secondary authority.

Gerald Lebovits, Write the Cites Right - Part I, N.Y. St. B.J., October 2004, at 64, 60–61

Terms that apply to Stare Decisis

holding n. (15c) 1. A court's determination of a matter of law pivotal to its decision; a principle drawn from such a decision. Cf. obiter dictum; ratio decidendi. 2. A ruling on evidence or other questions presented at trial. HOLDING, Black's Law Dictionary (10th ed. 2014)

obiter dictum (ob-i-tər dik-təm) [Latin "something said in passing"] (18c) A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). — Often shortened to dictum or, less commonly, obiter. See dictum. Cf. holding (1); judicial dictum under dictum; ratio decidendi. Pl. obiter dicta. OBITER DICTUM, Black's Law Dictionary (10th ed. 2014)

persuasive authority (1842) Authority that carries some weight but is not binding on a court, often from a court in a different jurisdiction. AUTHORITY, Black's Law Dictionary (10th ed. 2014)

primary authority (1826) Authority that issues directly from a law-making body; legislation and the reports of litigated cases.- secondary authority (1826) Authority that explains the law but does not itself establish it, such as a treatise, annotation, or law-review article. — Also termed secondary source. AUTHORITY, Black's Law Dictionary (10th ed. 2014)

References:

Gerald Lebovits, Write the Cites Right, Part I, 76 NY St B.J. 64 (Oct. 2004) (Westlaw)

Gerald Lebovits, Advanced Judicial Opinion Writing: A Handbook for New York State Trial and Appellate Courts, ed 7.4 "Legal method" chapter starting at page 241 (Internet)

American Jurisprudence, Courts, § 131 et seq. Judicial Precedents as Binding or Persuasive (Westlaw, LexisAdvance)

Carmody-Wait 2d, Doctrine of Stare Decisis 2:312 et seq Westlaw) (Westlaw)

McKinney's Statutes § 72 Construction as part of statute

New York Jurisprudence, Courts and Judges, Doctrine of Stare Decisis § 207-235 (Westlaw, lexisAdvance)

Siegel's New York Practice (6th ed) § 449 (Westlaw)

Westlaw Practical Law, Statutory Interpretation: Overview (Westlaw)

Important Disclosures:

Legal Advice

NY State Court System staff are pleased to provide you with basic legal information of relevance to New York State courts, caselaw, statutory and regulatory materials from standard legal reference sources. Our court employees, however, may not provide legal advice, interpret the law or assist with the processing of specific motions or cases.

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