



Constitutions



Court decisions



Statutes



Executive action



Regulations

Primary sources of law

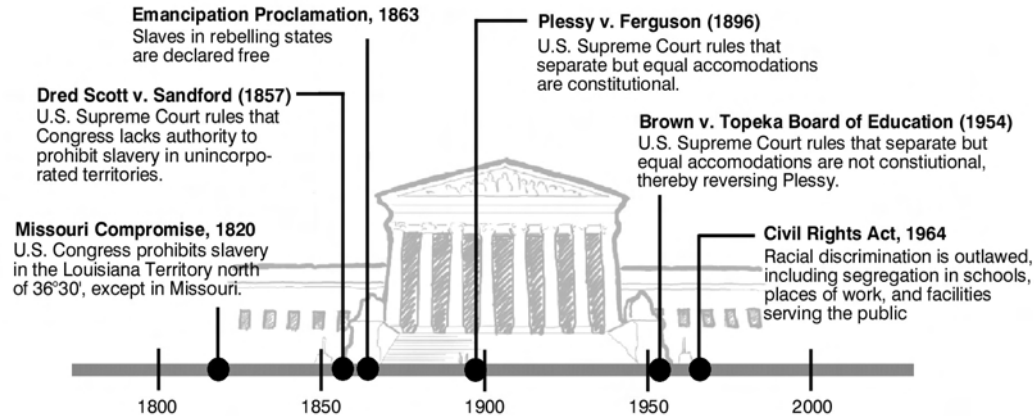
Find one good case.

Legal argument must be supported by **primary sources of law**. If unsure where to begin research, start with **secondary sources**—legal dictionaries and encyclopedias, hornbooks (treatises on an area of the law), practice guides, and law review articles. These will provide an overview of your research topic and usually reference primary sources, including legal precedents. Once a useful precedent has been identified, almost every case that subsequently cited it can be identified by entering the case into an online citator service such as Westlaw's Keycite or Lexis's Shepherds.

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Only the U.S. Supreme Court may overrule the U.S. Supreme Court.

As society advances, discrepancies become apparent between the laws established by court precedents and more universal notions of justice. This can lead to a court reversing its previous decisions. However, when a court “reverses itself,” it doesn’t rewrite its earlier decision. Rather, it makes a decision in a new case that contradicts the earlier decision, thereby overruling the precedent and establishing a new precedent.

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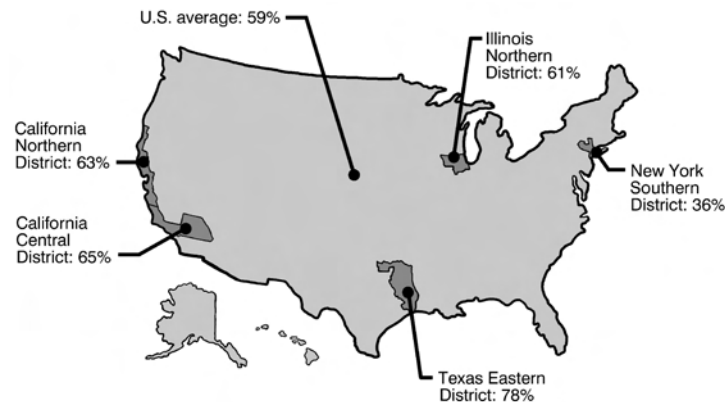
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Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)

Harry Tompkins was walking in the dark on an Erie Railroad right-of-way in Pennsylvania. A protrusion from a passing train knocked him to the ground, where a train wheel crushed his arm. Pennsylvania law would have deemed Tompkins a trespasser and required that he show Erie had acted toward him with “wanton negligence” in order to hold it liable. But Tompkins sued in federal court in New York, where Erie was incorporated. Erie argued the federal court should apply Pennsylvania state law, but Tompkins successfully argued it should apply a more general federal standard that required he prove that Erie had acted with only “ordinary negligence.”

The decision was upheld on appeal by Erie. But on its subsequent appeal to the U.S. Supreme Court, the decision was reversed, with the court stating that courts must apply the law of the state in which an incident occurs.

The decision greatly limited **forum shopping**, in which a plaintiff files suit in the venue most favorable to its claims. However, many litigants still have access to several federal courts. Some, because of the influence of the internet, are now turning to foreign courts. Defamation suits by American citizens, for example, are increasingly being filed in the United Kingdom, where laws are more favorable to plaintiffs.



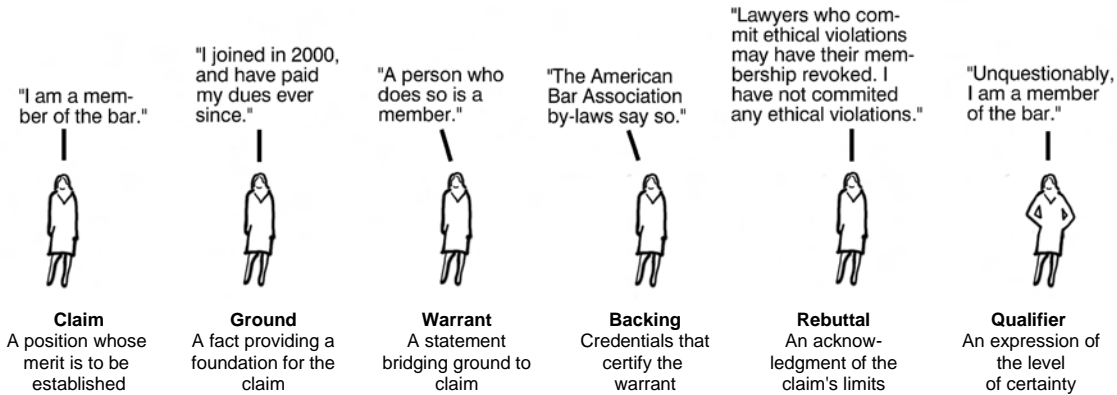
Patentee victory rates in federal patent infringement claims, 1991-2006

[source: LegalMetric, via “So Small a Town, So Many Patent Suits,”
New York Times, 24 September 2006]

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The Toulmin Model of Argument

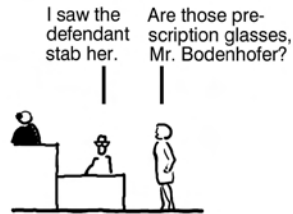
Don't try to prove you are objectively right; show that your position is preferable to the alternative.

It is always possible to make at least some arguments for or against a legal position. An argument requires logic, but legal argument is not a purely logical form of argument that promises a universal, absolute conclusion. Rather, it is a practical form of argument that aims to establish one claim as more probable or reasonable than another.

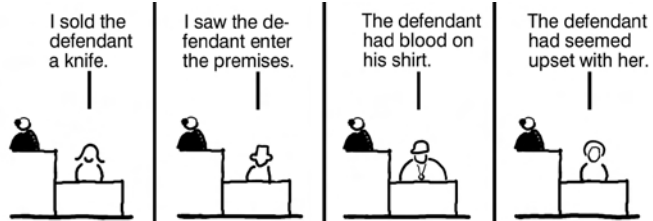
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Direct evidence

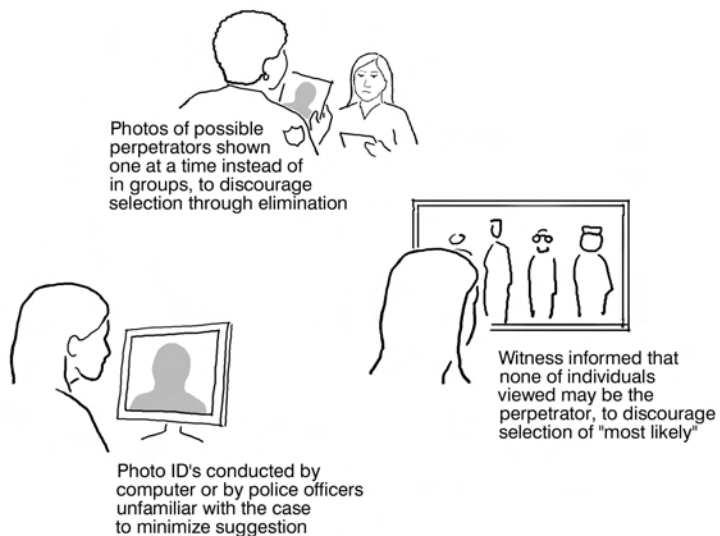


Circumstantial evidence

Circumstantial evidence can be more damning than direct evidence.

Direct evidence supports an assertion without need for other evidence or inferences. Eyewitness testimony is a common form of direct evidence: "I saw the defendant stab the victim" directly supports the prosecution's case against a defendant.

Circumstantial evidence has more than one possible interpretation, and therefore must be connected to other evidence or inferences to support an assertion. "I saw the defendant enter the building" does not indicate a defendant's direct connection to a crime. But if multiple sources provide related testimony such that each checks and reinforces the others, a convincing argument may be made. By contrast, a single instance of direct eyewitness testimony may be mistaken or driven by ulterior motives.



Some reforms in eyewitnesses identification

Memory is a crime scene.

According to the Innocence Project, more than three-fourths of convicts exonerated by DNA testing were found guilty on the basis of eyewitness testimony. Once thought highly accurate, eyewitness memory of an event is now known to be distorted by subsequent events, including the manner in which police conduct questioning, photo identifications, and line-ups. Like an unprotected crime scene, one's memory of a crime is a record that can be irrevocably altered by later events taking place in the same space.

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