

Coding Key

CODING KEY

STATEMENT OF LEGAL HYPOTHESIS

Code any statement of a legal hypothesis by a subject when the subject does not ultimately research the legal hypothesis.

H Statement of legal hypothesis

A subject states a legal hypothesis when he/she, without research, brainstorms whether a substantive legal doctrine or rule exists or applies or posits the *possibility* that a substantive legal doctrine or rule might exist and apply. If a subject ultimately researches the hypothesis, code as a framed search (see below), and do not also code as hypothesis.

Every hypothesis pertaining to a legal concept should also indicate which category of legal concept the hypothesis relates to using legal concept codes that follow below. Thus, if a subject queries whether there might be grounds for a tenant to break her lease without penalty based on fear of physical injury, that would be coded "H-LC1".

FRAMING SEARCHES

Code the method used by a subject to frame, or organize, searches. For each new or refined search conducted by a subject, discern whether the search was organized using legal concepts or rules, facts, or legal sources (cases, statutes, regulations, etc.) and code as indicated below. Codes should be marked on the transcript. As discussed below, after the coding has been reconciled, the codes for search frames will also be sequentially numbered using a color-coded system.

- F1 Search using a legal concept or rule
- F2 Search using facts
- F3 Search directed to a specific legal source

Guidelines:

- A search organized around a legal concept is when a subject uses, for example as a search term or to locate discussion within a book, a legal concept like "warranty of habitability." A fact-oriented search is when a subject uses search terms drawn primarily from facts in the Problem (for example, "rapist and lease") including use of fact terms or the Descriptive Word Index to locate cases within a case digest. If a subject frames a search using both legal concepts and facts, code as "F1." A search organized around a legal source is when a subject identifies a

specific source (for example, a particular housing code) and surveys that source for applicable rules. If a subject frames a search using both legal concepts and legal sources, code as “F1.”

- Ascertaining when a subject takes a new research direction or refines a search may not always be clear. A new direction in research means that the subject begins to conduct research related to a new subject or rule. A subject may refine a search by, for example, identifying a specific legal principle within a larger body of law to research. A new or refined search does not include when a subject chooses to access a new database or source to continue researching the same subject. Merely mentioning that a subject/rule might warrant further research without conducting that research would not qualify. Similarly (a) repeated reference(s) to a search topic while searching the same source, etc. does not constitute a new search and should not be coded again.
- Every search that is coded as a search organized around a legal concept (“F1”) should also indicate which category of legal concept the search relates to using legal concept codes that follow below. Thus, a new or refined search of landlord tenant law relating to the warranty of habitability would be coded “F1-LC1”.

BROWSING

Code when the subject surveys/scans a table of contents, index, or similar to identify topics warranting further research. Examples would include perusing the index of a case digest or reviewing the topics listed in an “Area of Law by Topic” screen. A print subject’s perusal of book titles should not, however, be coded.

B Browsing

ACCESSING LEGAL SOURCES¹

Code when the subject accesses (obtains, views, reviews) a legal source. For print subjects, coding will be conducted using the transcript and video recording, including images recorded using the document reader, and notes from the interviewers. For electronic subjects, coding will be conducted using the transcript and screen/keystroke capture. All of these records of the study sessions should be used to

¹ Note that coding will be conducted for this information using, in addition to the transcripts, video, document reader, and screen capture material. All other coding will be conducted using primarily the transcripts with reference to other recordings only as necessary to resolve ambiguity. Where a coder encounters significant ambiguity in the transcript with respect to the framing of searches, identification of legal concepts, or other coding parameter and the coder believes that ascertaining the source being accessed by the subject may prove useful for resolving that ambiguity, the coder will so note on the transcript.

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discern as best as possible the sources accessed by the subject. Codes should be marked on the transcript. As discussed below, after the coding has been reconciled, the codes for legal sources will also be sequentially numbered using a color-coded system. Additionally, keep a separate list of all sources accessed by the subject. For electronic researchers, also list every search conducted.

- S1 Case law
- S2 Statute/regulation
- S3 Constitution
- S4 Secondary sources

Guidelines for print subjects:

- When a subject simply looked at the title of a source but did not remove it from the shelf or open it, the source need not be coded.
- When the transcript or recording reflects that a subject removed a source from the shelf and opened the source, that source should be coded even if the subject ultimately concluded that the source was not relevant.

Guidelines for electronic subjects:

- When a subject runs a search and thereby pulls up a list of results, the search and the results list should be coded once. A subject's perusal of a list of results should not be coded again unless or until the subject "clicks into" a specific source (for example, a case). A new code (for example, for case law) should be added every time the subject opens a new source (for example, a case).

IDENTIFICATION OF LEGAL CONCEPTS

References made by the subject to a legal concept (subject, doctrine, rule) should be coded using the appropriate legal concept coding category at three different junctures. First, each search that is coded as a search organized around a legal concept ("F1") should also indicate which category of legal concept the search relates to ("F1-LC2"). Second, a subject's reference to a legal concept that includes analysis (as when the subject applies the legal concept to the problem facts) should be coded as a standalone "LC" code. Third, a subject's reference to a legal concept in the problem answer, or conclusion, at the close of the transcript should be coded using the legal concept code prefaced with a "C," as in "CLC1". Note that references to a legal concept that do not fall into one of the above categories (are not part of a search frame, do not include analysis, or do not appear in the answer statement/conclusion) should not be coded.

- LC1 Landlord/tenant
- LC2 Contract
- LC3 Tort/negligence

LC4 Constitutional

LC5 Rules governing sex offender registration/conduct

Guidelines:

- A non-exhaustive list of legal concepts grouped by coding category follows at the conclusion of the Coding Key to assist in identifying the appropriate coding category. When a coder believes that the subject references a legal concept that does not fit within one of the existing coding categories, he/she should consult with the other coder(s) to discuss whether this reference is covered by an existing coding category or needs a new code.
- Specific statutory provisions are identified in some legal concept descriptions. Reference to the statute or specific statute section by the subject is not required for the code to apply; a general description of the legal concept is sufficient. The statutes are identified to assist the coder in identifying the applicable legal concept when a subject refers to a specific statute.
- Concepts relevant to assessing the rights and responsibilities of the landlord/tenant under the lease (for purposes of assessing possible remedies under the lease) overlap with concepts relevant to assessing the possible negligence of the landlord (in support of a potential suit for damages). For example, a landlord's failure to protect a tenant from a dangerous condition can constitute both a breach of the warranty of habitability under the explicit language of the lease or implied requirement of residential landlord/tenant law (subject to remedies under the lease) and support a common law negligence action seeking damages from the landlord in the event that the tenant is harmed. When the purposes for which the subject is researching a concept are clear (lease interpretation/enforcement v. tort liability), code accordingly. If the subject does not reference the warranty of habitability (either by using that terminology or referencing more generally the concept), code under tort.
- Subjects may state out loud a series of legal concepts while reading through a table of contents or similar material. When a legal concept is merely stated or listed but is not otherwise pursued or reflected upon, that passing reference should not be coded.

REFERENCES TO CLIENT INTERESTS

Code all references that the subject makes to the client's interests.

Interests identified or implied in Problem:

- C1 Personal safety
- C2 Eviction of Tom Schmidt
- C3 Retain apartment
- C4 Anonymity (Schmidt does not learn she complained)

C5 Know her options

Other Possible Interests:

C6 Avoid penalties/rent for breaking lease if she elects to move

C7 Peace of mind

C8 Transactions costs of legal process

C9 Leave apartment

C10 Move to another apartment in the building

IDENTIFICATION OF FUTURE STEPS IN THE RESEARCH/INVESTIGATION

Code a subject's identification of future steps in the research or investigation.

ID1 Conduct additional fact investigation

ID2 Conduct additional legal research

ID3 Seek help from librarian

Note that this refers to future steps in the research or investigation to be taken after, as a follow up to, the legal research presently being conducted. A statement "next I will search for cases using the digest" should *not* be coded. A statement "I would probably want to obtain a copy of the lease and review it" *should* be coded.

REFERENCES TO USE OF OTHER RESEARCH MEDIA

Code when a subject refers to the need or interest in researching a matter using a different medium.

DM1 Print subject's reference to electronic media

DM2 Electronic subject's reference to print media

DM 3 Subject's reference to Internet search engines (such as Google)

SEQUENTIAL NUMBERING OF LEGAL SOURCES AND SEARCH FRAMES

After codes have been reconciled, the codes for legal sources accessed and framing searches should be numbered sequentially. The sequential numbering should be added to the existing code and so would read, for example, for the first three legal sources accessed 1.S1, 2.S4, 3.S1, etc. Sequential numbering for legal sources should be entered using red ink; sequential numbering for search frames should be entered using green ink.

Legal concept categories (examples)

REAL PROPERTY, LANDLORD/TENANT	LC1
<p>General reference to warranty of habitability, statutory and/or implied</p> <p>In every lease, a landlord warrants that occupants shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety, Real Property Law § 235-b.</p>	
<p>General reference to duty to protect tenants</p> <p>The landlord has a duty under the lease/landlord-tenant law to protect a tenants from foreseeable harm</p>	
<p>General duty to protect tenants from third party acts</p> <p>A landlord has a duty under the lease/landlord-tenant law to protect a tenant from third party acts.</p>	
<p>Duty to protect requires showing of foreseeability</p> <p>Under a lease/landlord-tenant law, a landlord is only required to protect tenants from a third party's acts only if the acts are foreseeable.</p>	
<p>Specific duty to maintain premises to protect tenants from foreseeable harm by third parties</p> <p>Landlord has a duty under the lease/landlord-tenant law to maintain premises to protect a tenant from foreseeable harm by third parties including maintaining adequate security.</p>	
<p>No duty to evict sex offender</p> <p>Landlord has no authority and no duty under the lease/landlord-tenant law to evict a registered sex offender based solely on that designation to protect tenants.</p>	
<p>General reference to express covenant of quiet enjoyment</p>	
<p>Specific reference to presence of sex offender as giving rise to violation of express covenant of quiet enjoyment</p> <p>Held that landlord failed to satisfy express covenant of quiet enjoyment when registered</p>	

sex offender moved into adjoining apartment	
Property owners liable for damage resulting from unlawful use of property, Real Property Law § 231(2)	
<p>General grounds and procedures for eviction</p> <p>Grounds and procedures for a landlord’s eviction of a tenant including non-payment, holdover, and violation of the terms of a lease</p>	
<p>Termination of tenancy</p> <p>Grounds and procedures for a landlord’s termination of a lease, Real Property Law § 232.</p>	
<p>Surrender of premises</p> <p>Tenant may surrender possession and is not thereafter liable for rent when building destroyed or uninhabitable, Real Property Law § 227.</p>	
<p>Rent regulation</p> <p>Leases for apartments in certain towns, villages, and cities are subject to set rent annual rent adjustments and required lease provisions.</p>	
CONTRACT	LC2
<p>General reference to unconscionability</p> <p>Courts may refuse to enforce or limit the application of unconscionable leases or clauses of a lease, including abandonment clauses, Real Property Law § 235-c(1)</p>	
<p>Specific reference to unenforceability of abandonment clause because of presence of registered sex offender</p> <p>Abandonment clause held unenforceable when there is no good cause exception and family abandons after a registered sex offender moves into adjoining apartment</p>	

<p>General reference to covenant of good faith and fair dealing</p>	
<p>Specific reference to landlord’s violation of covenant of good faith and fair dealing for failing to allow early lease termination because of presence of registered sex offender</p> <p>Landlord violates covenant of good faith and fair dealing by failing to allow early termination of lease when family abandons after a registered sex offender moves into adjoining apartment</p>	
<p>TORT/NEGLIGENCE</p>	<p>LC3</p>
<p>General reference to dangerous condition</p> <p>Landlord can liable for negligence in allowing a dangerous condition to exist in a dwelling.</p>	
<p>Specific reference to third parties as a dangerous condition</p> <p>Allowing dangerous third parties to remain on the property can be a dangerous condition</p>	
<p>Common law duty to take precautionary measures to protect tenant from dangerous condition created by third party</p> <p>Landlord may be negligent/liable for failing to take reasonable precautionary measures to protect tenant from reasonably foreseeable criminal acts of third persons</p>	
<p>Duty to remove third parties from property</p> <p>Landlord may be negligent/liable for failing to remove dangerous parties from property</p>	
<p>Showing required to establish foreseeability</p> <p>For landlord to be liable for negligence, harm by third persons must be foreseeable</p>	
<p>CONSTITUTIONAL LAW</p>	<p>LC4</p>
<p>Due process rights of convicted sex offenders</p>	

SEX OFFENDER REGISTRATION AND CONDUCT	LC5
Rules requiring sex offenders to register and limiting when they can live, work, etc.	