

LEGAL RESEARCH

What's Not to Like?

Susan Lupton, State Law Library of Montana

2/2015

What's Not to Like?

Positives

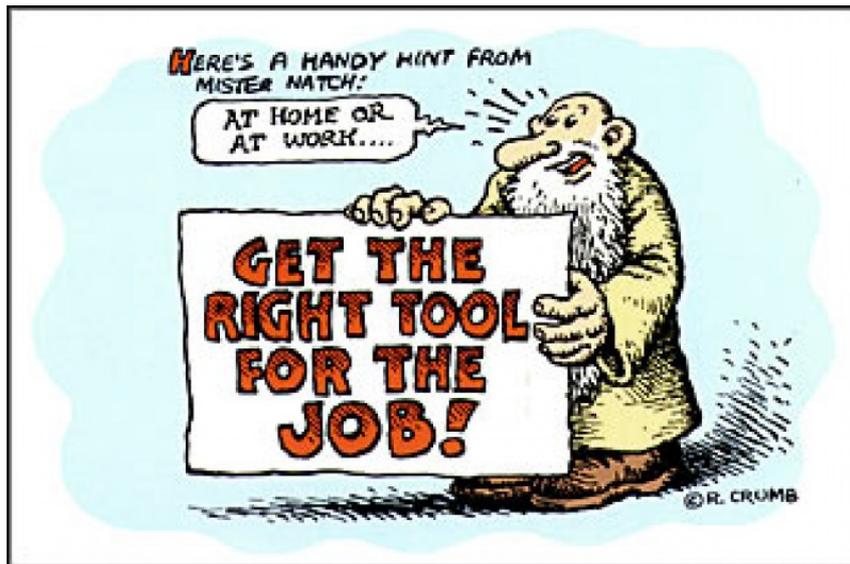
- Doing effective Legal Research can:
 - make you more productive
 - help you win cases
 - enhance your reputation in the legal community

In other words

“In my experience, legal research is just as important as factual research. Unfortunately, the emphasis is often on the facts, not the law. I suppose that is because the factual investigation is perceived as more exciting. For the same reason, legal research is often conducted after the factual research. When that happens, the factual research is sometimes found to be insufficient. For these reasons, I think it critical to conduct the necessary legal research before you file your complaint or answer and not wait until you are ready to file a motion for summary judgment or until you have to defend against one.

Success in motions practice is based upon solid legal research. Judges, like jurors, base their decisions in part on trust. Like a juror who comes to trust a lawyer from his straight forward, unexaggerated and honest presentation of the facts, a judge comes to trust a lawyer from his careful research and honest presentation of the law.”

Name Partner in Well Respected Firm



“In general, I have found that I have had positive results from my efforts in fully researching a topic on behalf of clients. Whenever I come across a topic that is new or unfamiliar, I have had success by looking at treatises and other secondary materials available at the law library. By doing so, I am able to get a good idea of what it is I’m looking for, can find new search terms that I had not previously thought of, and identify case law which provides a starting point for where I want that research to go.

Also, I have found that my extensive research and citations I use in briefs provide a stark contrast to the Court where an opposing party will state a proposition, but without any legal support of what they are arguing. I cannot comment on behalf of those Courts which have granted motions in my favor, but I would assume that by presenting the court with a brief that is supported by numerous citations, it provides a strong basis for whatever it is that I am arguing.”

An up and coming young Associate

Negatives

- Not doing your Legal Research or doing it poorly can get you:
 - judgeslapped
 - sanctioned under Rule 11
 - sued for malpractice
 - disbarred

In other words

“The Court also openly wonders about Plaintiffs' counsel's performance of due diligence, initial research, and proper inquiry before filing this 10-count action... The law with respect to many of Plaintiffs' claims is well established and contrary to Plaintiffs' claims. The Court believes that the performance of some initial research and investigation into these claims may have resulted in a determination that the claims were likely not warranted by existing law...”

US District Court Judge, Montana

SECONDARY SOURCES

Secondary Sources

- A Secondary Source is information written by someone about the law. Basically, anything other than primary law – statutes, cases and regulations - is a secondary source.
- It can be as informal as a blog on the internet to an expensive multi-volume treatise written by acknowledged experts.
- The trick is sorting out the reliable, reputable secondary sources.

Why go to Secondary Sources First

- “Secondary sources contain a world of information. Using them intelligently can save an enormous amount of time”.
Bob Berring, the esteemed guru of legal research
 - Fast way to figure out and frame your legal issues.
 - You do not have to reinvent the wheel by reading all of the supposedly relevant cases.
 - Some secondary sources are citable, persuasive authority.

STARTING SIMPLE

Gun Trusts

Question was –

- Do you have forms for a Gun Trust?

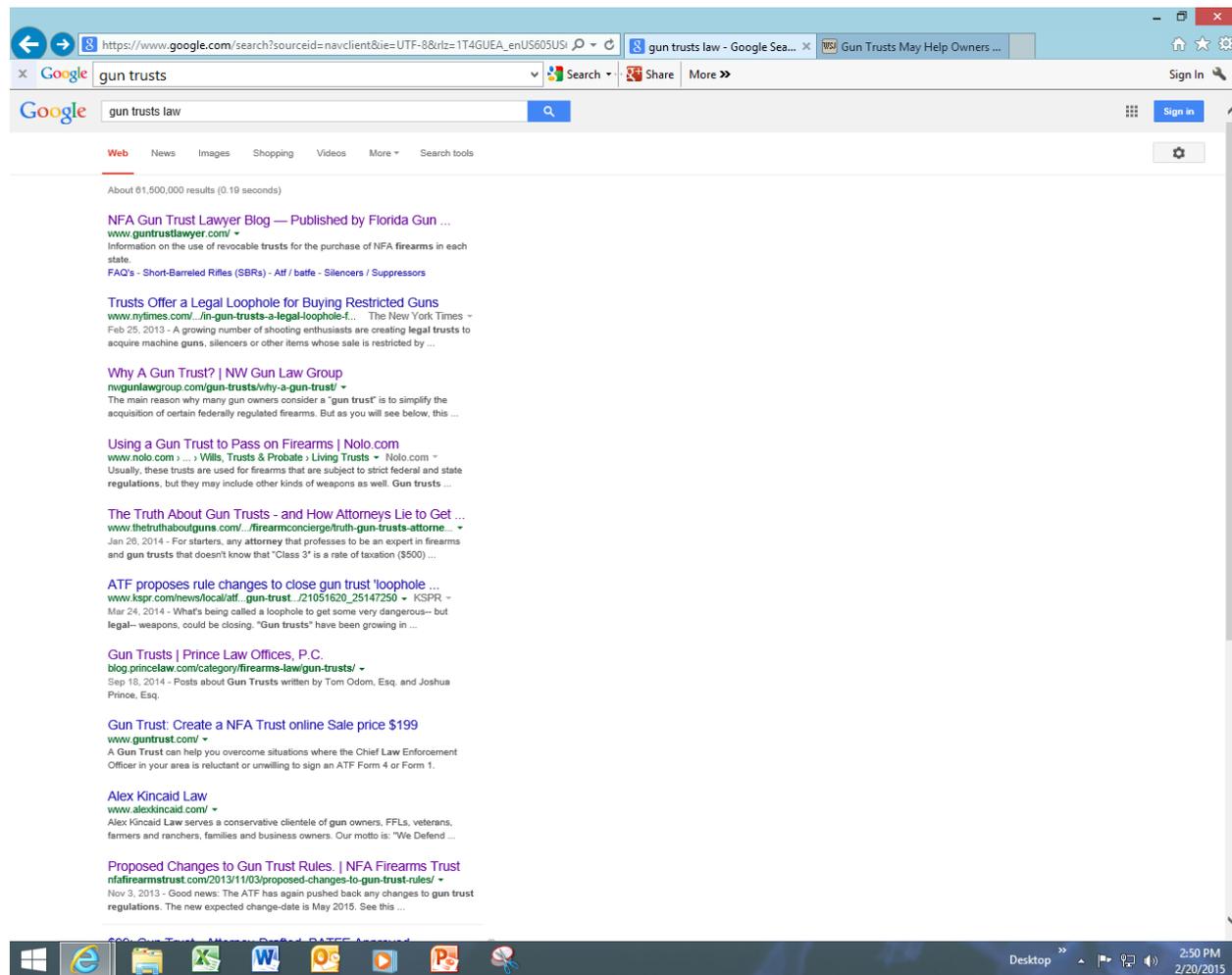
Initial mental reaction –

- Huh? What are you talking about?

Answer –

- No. You should consult with an attorney knowledgeable in the subject

Simple Google Search



About 55,200,000 results (0.39 seconds)

How to Fill out an ATF FORM 4 - NFA Gun Trust Lawyer Blog
www.guntrustlawyer.com/form4
How to fill out an ATF FORM 4 (5320.4) For a transfer from to a Gun Trust. While this guide and information may be appropriate with other trusts, the information ...

The Truth About Gun Trusts - and How Attorneys Lie to Get ...
www.thetruthaboutguns.com/...firearmconciierge/truth-gun-trusts-attorne...
Jan 26, 2014 - Most of the people who form trusts for NFA acquisitions do so for several popular reasons, the most common being that it's a lot easier to do a ...

[PDF] Sample Gun Trust - WealthCounsel
https://www.wealthcounsel.com/...2014-10-MO_Sa... WealthCounsel LLC
a gun trust intended to own a collection of firearms and accessories. ... By executing this trust document, my Trustee accepts and agrees to hold the cash and ...

Do It Yourself Documents - NFA Firearms Trust (Gun Trust)
www.doityourselfdocuments.com/Estateplanning/Trust/nfaTrust.aspx
The complete do-it-yourself NFA Trust (Gun Trust) kit with instructions. ... Do It Yourself Kit; Forms; Instructions and Samples; Downloadable; Available for many ...

Setting Up an NFA Gun Trust - The Firearm Blog
www.thefirearmblog.com/blog/2014/11/26/setting-nfa-gun-trust/
Nov 26, 2014 - I opened up a browser and googled for "setting up a Gun Trust", ... This is the form you will need to send in with your fee for a NFA item. Unless ...

NFA Gun Trust - For Sale - Silencer Shop
www.silencershop.com > Services
Apr 24, 2014 - For people who want to save some time & money, you can create a trust on your own. The NFA Gun Trust on this page is a great example of a ...

6 Do-It-Yourself NFA Gun Trust Mistakes that Could Put You ...
www.keylaw.com/arizonawills/do-it-yourself-gun-trust-mistakes/
An NFA gun trust is a special type of revocable living trust that is created for the ... relate to form an orderly plan for the disposition of the trust maker's property.

The Difference Between Form Trusts and Lawyer-Drafted Gu...
thefiringline.com > The Hide & NFA Guns and Gear

Ads
\$134: Gun Trust
www.nfafirearmtrust.com/
Lawyer-Drafted. BATFE Approved.
Easy to Complete. Ready to Sign.

Save on NFA Gun Trusts
www.guntrustdepot.com/
(435) 238-4977
Protect Your Class 3 Weapons.
Quick & easy setup. BATFE Approved.

Arsenal Gun Trusts \$189+.
www.arsenalattorneys.com/
(800) 670-3575
Personal Consultations Available.
Full attorney-client relationship.

Sample NFA Trust
www.wow.com/Sample+NFA+Trust
Search for Sample NFA Trust
Look Up Quick Results Now!

NFA Trust Template
www.izito.com/NFA+Trust+Template
Find NFA Trust Template
In 6 Search Engines at Once.

NFA Trust Template
search.1and1.com/NFA+Trust+Template
Look for: NFA Trust Template?
Get results on search.1and1.com!

NFA Trust Template
www.alhea.com/NFA+Trust+Template
NFA Trust Template On Alhea.
Great Results For You on Alhea.com!

Breach of Contract

Research Tip

Learn to visually sort out:

- Reputable from Junk
- Lay vs Lawyer focus
- Repetitive info

By looking at the Web Addresses.

• Another Google Search

The screenshot shows a Google search results page for the query "breach of contract impossibility to perform". The search results are as follows:

- Scholarly articles for breach of contract impossibility to perform**
 - Breach of contract and the common law duty to perform** ... - **Burton** - Cited by 772
 - Impossibility and related doctrines in contract law: An** ... - **Posner** - Cited by 525
 - ... **breach and contract discharge due to impossibility: A** ... - **White** - Cited by 81
- Grounds for Contract Termination: Impossibility of ...**
www.legalmatch.com > ... > **Breach of Contract** ▾
Apr 9, 2013 - **Impossibility of performance** is often raised as a defense for **breach of contract**. For example, the party that is accused of breach may be ...
- Breach of Contract Defense of Impossibility | LegalMatch ...**
www.legalmatch.com > ... > **Breach of Contract** ▾
Apr 4, 2014 - **Breach of Contract Defense of Impossibility**. Generally, the parties who have entered into a valid contract must **perform** their end of the deal or ...
- Impossibility - Wikipedia, the free encyclopedia**
en.wikipedia.org/wiki/Impossibility ▾ Wikipedia ▾
This article is about the excuse for non-performance of a contract. For the criminal defense, see **Impossibility defense**. For logic which discusses **impossibility**, contingency and necessity, see modal logic. ... **Breach of contract** - Anticipatory ...
- impossibility legal definition of impossibility - Legal Dictionary**
legal-dictionary.thefreedictionary.com/impossibility ▾
A legal excuse or defense to an action for the breach of a contract; less frequently, **Impossibility of Performance as Defense in Action for Breach of Contract**.
- Impossibility of Performance**
www.west.net/~smith/imposbl.htm ▾
Contracts. Impossibility of Performance ... causing the breach has rendered performance so vitally different from what was anticipated that the contract cannot be ...
- Contract law: impossibility and frustration (1) - TransLegal**
<https://www.translegal.com/lesson/7053> ▾
A breach of contract is thus defined as non-performance. There are many reasons for which a contract might not be performed. These include **impossibility** and ...
- [PDF] Supervising Impossibility of Performance as a Defense**
ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1089&context=fllr ▾
The civil law recognized supervening impossibility of performance as a complete defense ... as an Excuse for Breach of Contract (1901) 1 COL. L. REV. 529. 4.

A green arrow points to the "Impossibility of Performance" result.

At the bottom of the screenshot, the Windows taskbar is visible with the following icons: Start, Internet Explorer, File Explorer, Microsoft Word, Outlook, PowerPoint, a search icon, a taskbar icon, and a system tray icon. The system tray shows "Desktop", volume, network, and the date/time "6:31 PM 2/23/2015".

Pay Dirt

Solid Secondary
Analysis from Known
Source - West

Cases - primary

UCC - primary

Bookmark worthy link
<http://www.west.net/~smith/index.html>

The screenshot shows a web browser window with the address bar displaying <http://www.west.net/~smith/imposbl.htm>. The search bar contains the text "breach of contract impossibility to perform". The page content includes a navigation menu with "Contracts" selected, a Spectrum advertisement, and a main heading "Contracts Impossibility of Performance". The text on the page discusses the legal principle of impossibility to perform, citing cases like *Taylor v. Caldwell* and *Transatlantic Financing Corp. v. U.S.* It also mentions UCC 2-615 and provides a definition of a force majeure clause.

law school help .com

Contracts

Impossibility of Performance

In contracts in which the performance depends on the continued existence of a given person or thing, an implied condition is that the perishing of the person or thing shall excuse performance. (*Taylor v. Caldwell* 122 Eng. Rep. 309 (1862).)

One is not excused from performance merely because performance becomes more expensive than originally contemplated. Mere unforeseen difficulty or expense does not constitute impossibility and is not ordinarily an excuse. (*Transatlantic Financing Corp. v. U.S.* 363 F.2d 312 (1966.)) Where one agrees to do, for a fixed sum, a thing possible to be performed, he will not be excused or become entitled to additional compensation, because unforeseen difficulties are encountered. (*Day v. U.S.*, 245 U.S. 159) However, if the contractor is bound to build according to plans and specifications prepared by the owner the contractor will not be responsible for the consequences of defects in the plans and specifications. (*U.S. v. Spearin*, 248 U.S. 132 (1918). The modern trend is to allow the defense of impossibility when performance is impracticable because of excessive and unreasonable difficulty or expense. The impossibility must be in the nature of the thing to be done (objective impossibility) and not in the inability of the promisor to do it (subjective impossibility).

Where contracts for the sale of goods are concerned **UCC 2-615** sets forth three conditions which must be satisfied before performance is excused: (1) a contingency has occurred; (2) the contingency has made performance impracticable; and (3) the nonoccurrence of that contingency was a basic assumption upon which the contract was made.

What is a *force majeure* clause?

An exculpatory clause that excuses performance upon the occurrence of an event beyond a party's control.

A typical such clause might read: "The Company shall not be liable for any failure in the performance of its obligations under this agreement which may result from strikes or acts of labor unions, fires, floods,

IDENTIFYING MORE SPECIFIC SECONDARY SOURCES

State Law Library Catalog

The screenshot displays the State Law Library of Montana website. At the top, the browser address bar shows the URL http://mtsc.sdp.sirsi.net/client/en_US/MT-LAW/. The website header features the logo for the Montana Shared Catalog and the title "State Law Library of Montana". Navigation links include "Log In", "My Account", "My Lists", "Library Information", and "Sign In".

The main content area includes a search bar with a dropdown menu set to "State Law Library" and "All Fields". A "Search" button and a link to "Advanced Search" are also present. On the left, a sidebar provides links to "State Law Library Information" and "State Library Digital Publications", along with a list of resources such as "State Law Library Home Page", "Ask a Law Librarian", "Montana Code Annotated", "Montana Supreme Court Opinions and Briefs", and "Catalog of US Govt Publications". Below this is a "Montana Indian Law Portal" image.

The central section highlights "Law Library Recently Added" with a featured book: "American law 101 : an easy primer on the U.S. legal system" by Kim, Jasper, author, published in 2015 (ISBN: 9781627228589). A "Find In My Library" button is provided. Below the book is a carousel of other titles, including "The environmental law sourcebook", "AMERICAN LAW 101", "A practitioner's guide to real estate and", "Child-custody jurisdiction: the UCC/JEA", and "A sheet & happy guide to being a law student".

On the right, there are promotional banners for "Get eBooks with your State Law Library card.", "CLE Continuing Legal Education", and "HEINONLINE HeinOnline One Box Search Widget". Social media links for "RSS Feed" and "Twitter" are also visible.

At the bottom, a footer states: "The Montana Shared Catalog is facilitated by the Montana State Library, in partnership with member libraries located throughout the state." and "Copyright 2014 SirsiDynix - Portfolio Version 4.3 (32169)". The Windows taskbar at the very bottom shows the system time as 6:52 PM on 2/23/2015.

Research Guides

Some of My Fav's

UWashington

<http://lib.law.washington.edu/ref/guides.html>

Georgetown

<http://www.law.georgetown.edu/library/research/guides/index.cfm>

UMinnesota

<https://library.law.umn.edu/researchguides.html>

Law Library of Congress

<http://www.loc.gov/law/help/how-find.php>

The screenshot shows a web browser displaying the Gallagher Law Library website. The page title is "Uniform Commercial Code Research: Secondary Sources". The page is updated as of April 8, 2011, and was prepared by Cheryl Nyberg, updated by Tania Schriwer, Law Librarianship Intern (2009). The page provides an overview of secondary sources and lists several key titles:

- Basics**: Study aids, outlines, and other one-volume introductions. Current editions are located in the Reference Area.
 - Uniform Commercial Code in a Nutshell*, 7th ed. KF889.3 S68 2008
 - Sales and Leases of Goods in a Nutshell*, 4th ed. KF915.Z9S7 2003
 - White & Summers, Uniform Commercial Code*, 6th ed. (Hornbook series) KF890.W45 2010
 - The Portable UCC*, 4th ed. KF890.U47 2005
 - Blond's Commercial Law*. KF889.3.K57 1995
 - Casenote Law Outlines, Sales*. KF915.Z9S36 1992
- Treatises**: More detailed, in-depth analysis and commentary. Located in the Reference Area unless otherwise indicated.
 - Bender's Uniform Commercial Code Service*. 25+ vols. Some volumes updated annually. Includes *Sales and Bulk Transfers under the UCC*. 2 vols. (Vols. 3 and 3A). KF885.B4 at Classified Stacks & LexisNexis: **MATBEN;UCCSBT**
 - Lawrence's Anderson on the Uniform Commercial Code*, 3d ed. 25+ vols. updated annually. KF879.514.A53 1981 & Westlaw: **ANDR-UCC**
 - Hawkland's Uniform Commercial Code Series*. Westlaw: **HAWKLAND**
 - Williston on Sales*, 5th ed. 4 vols. updated annually. KF915.W5 1994

The page also features a "Contents" sidebar with links to Cases & code, Secondary sources, Articles, Basics, Forms, History, and Treatises. The browser's address bar shows the URL: <https://lib.law.washington.edu/ref/ucc1.html#basics>. The taskbar at the bottom shows the system time as 6:58 PM on 2/23/2015.

Law Reviews

Google Scholar –
<http://scholar.google.com/>

HeinOnline –
If you are on a state
computer, free automatic
access into Hein
<http://home.heinonline.org/>

JSTOR –
<http://about.jstor.org/rr>

SSRN –
<http://www.ssrn.com/en/>

Google Scholar - Articles

The screenshot shows a Google Scholar search for "ucc 2-615" with approximately 93 results. The search interface includes the Google logo, search bar, and navigation options. The results list includes:

- Extending Good Faith: Does the UCC Impose a Duty of Good Faith Negotiation Under Changed Circumstances?** (PDF from stjohs.edu)
JP Bermingham - St. John's Law Review, 2012 - scholarship.law.stjohns.edu
... 1 UCC § 2-615 (1978). ... Commercial impracticability under UCC Section 2-615 is analogous to common law concepts of "impossibility of performance" and "frustration of purpose," but distinguishable by "the commercial character of the contract" utilized in the Code. ...
Related articles All 2 versions Cite Save
- Teaching Contract Law through Common Law Analysis: The UCI Law Experiment**
GS Crespi - SMUL Rev., 2013 - HeinOnline
... mon law authority regarding the important impracticability excuse defense has been displaced for sale of goods contracts by UCC section 2-615.30 which has also been accorded significant persuasive authority outside of the UCC. Finally, as to remedies, a student's ...
Related articles All 2 versions Cite Save
- Contract Formation and Performance Under the UCC and CISG: A Comparative Case Study** (PDF from stjohs.edu)
KM Saunders, L Rymysza - Journal of Legal Studies Education, 2015 - HeinOnline Library
... Article. Contract Formation and Performance Under the UCC and CISG: A Comparative Case Study. ... Additional Information. How to Cite. Saunders, KM and Rymysza, L. (2015), Contract Formation and Performance Under the UCC and CISG: A Comparative Case Study. ...
Cite Save
- Uniformity and Politics: Interpreting and Filling Gaps in the CISG**
HM Flechtner - A chapter in, 2014 - papers.ssrn.com
... 32 See Official Comment 6 to UCC § 2-615 ("In situations in which neither sense nor justice is served by either answer when the issue is posed in flat terms of 'excuse' or 'no excuse,' adjustment under the various provisions of [UCC Article 2] is necessary, especially the sections ...
Related articles Cite Save
- Commercial Impracticability in Contracts** (PDF from stjohs.edu)
P Walter - St. John's Law Review, 2012 - scholarship.law.stjohns.edu
... to UCC § 2-615 (1978). ... LJ 75 (1974); Henszey, UCC Section 2-615-Does "Impracticability" mean "Impossibility", 10 UCCLJ 107 (1977); Hurst, Freedom of Contract in an Unstable Economy: Judicial Reallocation of Contractual Risks under UCC Section 2-615, 54 NCL REV. ...
Related articles All 2 versions Cite Save
- Exclusivity and Requirements Contracts: Michigan's Muddled Law, the Majority Rule of Other States, and Their Impact on Automotive Suppliers** (PDF from michbar.org)
DN Sharkey, BW Warner - Business Law Journal, 2012 - michbar.org
... 2. In most circumstances, volume fluctuations and rising costs of production, by themselves do not constitute a sufficient basis to terminate an automotive supply contract because of "impracticability" under UCC § 2-615. These ...
Cited by 1 Related articles All 3 versions Cite Save More

Three arrows point to specific results: a blue arrow points to the first article, a green arrow points to the second article, and a large green arrow points to the right side of the page.

Google Scholar – Related Articles

http://scholar.google.com/scholar?q=related:WuP_TzDwARo/scholar.google.com/&hl=en

ucc 2-615

Google Scholar

About 101 results (0.10 sec)

My Citations

Related articles

[\[PDF\] Commercial Impracticability in Contracts](#) [\[PDF\] from stjohns.edu](#)

P Walter - St. John's Law Review, 2012 - scholarship.law.stjohns.edu
This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized administrator of St. John's Law Scholarship Repository. For more information, ...
Related articles All 2 versions Cite Save

[Commercial Impracticability in Contracts](#)

P Walter - . John's L. Rev., 1986 - HeinOnline
As a basic premise of the common law, the Latin dictum pacta sunt servanda commands that contracts should be performed absolutely. 1 The sanctity of a contract, manifested in a party's absolute liability for obligations assumed thereunder, is its recurring refrain. This ...
Cited by 14 Related articles Cite Save

[\[CITATION\] The Developing Law of Contractual Impracticability and Impossibility: Part 1](#)

Siriani - UCCLJ, 1981
Cited by 2 Related articles Cite Save

[Commercial Hardship and the Discharge of Contractual Obligations under American and British Law](#)

JJ Gorman - Vand. J. Transnatl L., 1980 - HeinOnline
In 1917, Justice Holmes noted as follows: "One who makes a contract never can be absolutely certain that he will be able to perform it when the time comes, and the very essence of it is that he takes the risk within the limits of his undertaking." 1 This single ...
Related articles Cite Save

[Application of the Doctrine of Commercial Impracticability: Searching for "The Wisdom of Solomon"](#) [\[PDF\] from upenn.edu](#)

SW Halpern - University of Pennsylvania Law Review, 1987 - JSTOR
Important shifts in contract doctrine may be traced to certain decisions. Judge Traynor's opinion in Drennan v. Star Paving Co. gave new, different, and permanent life to the principle of reliance as a formative device. Judge Cardozo's words in Wood v. Lucy, Lady ...
Cited by 96 Related articles All 5 versions Cite Save

[Allocation of Risk in Gas Purchase Contracts after Golsen v. ONG Western, Inc., The](#)

RN Barnes, RJ Wood - Okla. City UL Rev., 1988 - HeinOnline
The 1980's have witnessed many changes in the demand for natural gas. Beginning in the mid 1970's through 1981, demand for natural gas outstripped readily available gas supplies. As public utilities, large industries and other natural gas consumers throughout the country ...
Cited by 1 Related articles Cite Save

[Commercial Impracticability under the Uniform Commercial Code: Natural Gas Distributors' Vehicle for Excusing Long-Term Requirements Contracts](#)

Desktop 7:22 PM 2/23/2015



Alas, AmJur2d and CJS are not available for free on the open internet.

Those of you who have Lexis subscriptions under the state contract, have online access to AmJur2d.

Since you are here today, remember you can walk over and use the books. With the new scanner you can send copies back to your email. For those not here, we can scan/email.

- Online Legal Encyclopedias

- Wex, <https://www.law.cornell.edu/wex>
- Nolo <http://www.nolo.com/legal-encyclopedia>

Good sources for basic, readable explanations of terms and concepts.

Treatises

Those of you in Helena are lucky as you can walk into the Law Library.

Sign up for a State Law Library of Montana Library Card which will get you access to the available eBooks.

If you are out of area, the Law Library can scan and email sections of treatises or ship volumes directly to registered users.

- Books printed on paper are still an important part of legal research.
- Not everything in the Law Library is available in digital format for free.
- However, many of our current Lexis titles are available for check out as eBooks; check the list of titles. Easiest access is directly from Law Library Homepage, <http://courts.mt.gov/library/default.mcpX> , then scroll down a bit.

Research Tip

Choose the right size tool:

Baby Bear

- UCC in a Nutshell (1 volume)

Mama Bear

- White and Summers, Uniform Commercial Code (4 volumes)

Papa Bear

- Hawkland, Uniform Commercial Code Series (22 volumes)

Remember Mr. Natural's Advice Get the Right Tool for the Job

- What size questions do you have?
- What size budget do you have?
 - Rule of Professional Conduct 1.5 has been interpreted to say that you cannot charge the client for getting up to speed
- Are you going to use the information to educate your self or cite to the Court?

Do not use a sledgehammer to kill a fly – not resource efficient.

PRIMARY SOURCES

Cases

There are currently many sources of free online access to cases.

These are some of the biggies:

Findlaw

<http://caselaw.findlaw.com/>

Justia

<https://www.justia.com/PLOL>

<http://www.plol.org/Pages/Search.aspx>

• Google Scholar – Cases

The screenshot displays the Google Scholar homepage in a web browser. The address bar contains the URL <http://scholar.google.com/>. The search bar is empty. Below the search bar, there are radio buttons for 'Articles (include patents)', 'Case law', 'Federal courts', and 'Montana courts'. A yellow arrow points to the 'Select courts...' link. The text 'Stand on the shoulders of giants' is visible below the search options. The Windows taskbar at the bottom shows various application icons and the system clock indicating 8:23 PM on 2/23/2015.

Browser window showing the Google Scholar homepage. The address bar contains <http://scholar.google.com/>. The search bar contains the text "100 Mont 1". Navigation links include "Web", "Images", and "More...".

My library My Citations Alerts Metrics Settings



Search input field containing "goetz" and a search button.

- Articles include patents Case law
- Federal courts Montana courts [Select courts...](#)

Stand on the shoulders of giants

Windows taskbar showing application icons (Windows, Internet Explorer, File Explorer, Word, PowerPoint, etc.) and system tray information including "Desktop" and the date/time "8:28 PM 2/23/2015".



goetz



Scholar

About 242 results (0.04 sec)

My Citations

Articles

State v. Goetz

2008 MT 296, 191 P. 3d 489, 345 Mont. 421 - Mont: Supreme Court, 2008 - Google Scholar
¶5 On May 19, 2004, Matt Collar (Collar), a detective with the Missouri River Drug Task Force (Task Force), made contact with Suzanne Trusler (Trusler), who previously had agreed to act as a confidential informant for the Task Force. Trusler informed Collar she had arranged ...
Cited by 54 How cited Related articles All 2 versions Cite Save

Case law

Federal courts

Montana courts

Select courts...

My library

Goetz v. Harrison

457 P. 2d 911, 153 Mont. 403 - Mont: Supreme Court, 1969 - Google Scholar
Plaintiff's complaint briefly alleges that he is denied the equal protection of the laws under the Fourteenth Amendment to the United States Constitution, in that this Court regularly admits graduates of the 912 Law School of the University of Montana to practice law in Montana without ...
Cited by 15 How cited Related articles Cite Save

Any time

Since 2015

Since 2014

Since 2011

Custom range...

Goetz v. Harrison

462 P. 2d 891, 154 Mont. 274 - Mont: Supreme Court, 1969 - Google Scholar
James H. GOETZ, Petitioner, v. Hon. James T. HARRISON, Hon. Frank I. Haswell, Hon. Wesley Castles, Hon. John Conway Harrison, Hon. John W. Bonner, as administrative agents of the State of Montana, Respondents. ... 892 James H. Goetz, argued, Bozeman, for petitioner.
Cited by 11 How cited Related articles Cite Save

Sort by relevance

Sort by date

include citations

Create alert

State v. Jones

199 P. 3d 216, 2008 MT 440, 347 Mont. 512 - Mont: Supreme Court, 2008 - Google Scholar
... 9 Jones moved the District Court to suppress the tape recording of the telephone conversation between she and Brown, relying on two cases—State v. Goetz, No. 05-676 (Mont. filed Oct. 12, 2005) and State v. Hamper, No. 05-539 (Mont. filed Aug. ...
Cited by 8 How cited Related articles Cite Save

State v. Allen

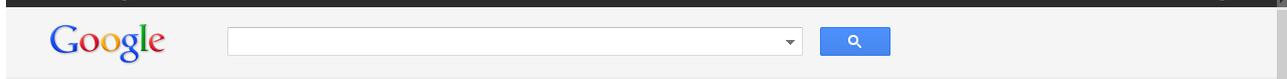
241 P. 3d 1045, 2010 MT 214, 357 Mont. 495 - Mont: Supreme ..., 2010 - Google Scholar
... As a CI, Golle surreptitiously recorded her cell phone conversations with Allen. Law enforcement did not obtain a search warrant to record the conversations at issue. Before trial, Allen moved (pursuant to State v. Goetz, 2008 MT 296, 345 Mont. ... B. Analysis under Goetz, ...
Cited by 20 How cited Related articles All 2 versions Cite Save

Boe v. Court Adm'r for the Mon. Jud. Branch

150 P. 3d 927, 2007 MT 7, 335 Mont. 228 - Mont: Supreme Court, 2007 - Google Scholar
... 04-186 (Mont.2004). Additionally, the State points out that Goetz v. Harrison, 153 Mont. ... As such, we have exclusive jurisdiction over it and a district court cannot invalidate, modify, or replace any or all of it. ¶ 11 We also agree that Goetz provides support for this conclusion. ...
Cited by 9 How cited Related articles All 2 versions Cite Save

Helena Elementary School Dist. v. State

789 P. 2d 684, 236 Mont. 44 - Mont: Supreme Court, 1989 - Google Scholar



Scholar About 54 results (0.02 sec) My Citations

All citations

Articles

Case law

Federal courts

Montana courts

Select courts...

My library

Any time

Since 2015

Since 2014

Since 2011

Custom range...

Sort by relevance

Sort by date

include citations

Create alert

State v. Goetz, 2008 MT 296

Search within citing articles

State v. Allen

241 P. 3d 1045, 2010 MT 214, 357 Mont. 495 - Mont: Supreme ..., 2010 - Google Scholar
... Law enforcement did not obtain a search warrant to record the conversations at issue. Before trial, Allen moved (pursuant to **State v. Goetz**, 2008 MT 296, 345 Mont. ... **State v. Goetz**, 2008 MT 296, ¶ 9, 345 Mont. 421, 191 P.3d 489. ...

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State v. Ferris

244 P. 3d 732, 2010 MT 252, 358 Mont. 244 - Mont: Supreme Court, 2010 - Google Scholar
... sentenced Ferris according to the plea agreement. ¶ 6 After Ferris entered his guilty plea but before he was sentenced this Court decided **State v. Goetz**, 2008 MT 296, 345 Mont. 421, 191 P.3d 489. That case held that a search ...

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State v. Reichmand

243 P. 3d 423, 2010 MT 228, 358 Mont. 68 - Mont: Supreme Court, 2010 - Google Scholar
... 2 On appeal we consider whether our recent decision in **State v. Goetz**, 2008 MT 296, 345 Mont. ... STANDARD OF REVIEW. ¶ 6 Reichmand's appeal requires us to consider the retroactivity of **State v. Goetz**, which is a question of law. We review questions of law de novo. ...

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State v. Andrews

236 P. 3d 574, 2010 MT 154, 357 Mont. 52 - Mont: Supreme Court, 2010 - Google Scholar
... 576 ¶ 9 On August 20, 2008, after Andrews was adjudged guilty but before he was sentenced, this Court announced its decision in **State v. Goetz**, 2008 MT 296, 345 Mont. 421, 191 P.3d 489. ... 26 Our decision in **State v. Goetz**, 2008 MT 296, 345 Mont. ...

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State v. Foston

2009 MT 191, 351 Mont. 85, 209 P. 3d 262 - Mont: Supreme Court, 2009 - Google Scholar
... Foston urges reversal of his conviction based on the decision in **State v. Goetz**, 2008 MT 296, 345 Mont. ... Admitting the actual warrantless electronic evidence would clearly run afoul of this Court's decision in **State v. Goetz**, 2008 MT 296, 345 Mont. 421, 191 P.3d 489. ...

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State v. Stewart

291 P. 3d 1187, 2012 MT 317, 367 Mont. 503 - Mont: Supreme ..., 2012 - Google Scholar
... The Allen Court overruled this line of cases based on the recent decision in **State v. Goetz**, 2008 MT 296, 345 Mont. 421, 191 P.3d 489, and held that warrantless participant recording is subject to the strictures of Article II, Sections 10 and 11 of the Montana Constitution.

State v. Goetz, 2008 MT 296 - Mont: Supreme Court 2008



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- “—the Montana Supreme Court held warrantless electronic monitoring and recording of defendants’ face-to-face conversations with confidential informants constituted searches under the state constitution and, notwithstanding the informants’ consent, violated state constitutional provisions on privacy and search and seizure.”
- in [State v. Loh, 2010](#) and 8 similar citations
- “In determining whether a state action constitutes an unreasonable or unlawful search or seizure in violation of the Montana Constitution, we look to three factors: “(1) whether the person challenging the state’s action has an actual subjective expectation of privacy;(2) whether society is willing to recognize that subjective expectation as objectively reasonable; and (3) the ...”
- in [State v. Ellis, 2009](#) and 7 similar citations
- “—holding that Montana Constitution requires warrant to support electronic monitoring of consenting informant’s conversations”
- in [US v. Christensen, 2013](#) and 5 similar citations
- “Having determined that a search occurred, we must next consider whether the search was reasonable; that is, whether it was justified by a narrowly tailored, compelling state interest or subject to adequate procedural safeguards.”
- in [State v. Allen, 2010](#) and 5 similar citations
- “—we held that the warrantless electronic monitoring and recording of face-to-face conversations with the consent of one of the participants violates the other participants’ right to privacy and to be free from unreasonable searches and seizures guaranteed by Article II, Sections 10 and 11 of the Montana Constitution.”
- in [State v. Meredith, 2010](#) and 6 similar citations
- “—we concluded-based on language of the Montana Constitution and the convictions expressed by delegates to the 1972 Constitutional Convention-that society is willing to recognize as reasonable “the expectation that conversations held in a private setting are not surreptitiously being electronically monitored and recorded by government agents.”
- in [State v. Allen, 2010](#) and 3 similar citations
- “Under the first prong, we concluded that the defendants did have actual subjective expectations of privacy in their conversations.”
- in [State v. Allen, 2010](#) and 4 similar citations
- “A party also may establish, through convention transcripts and committee reports, that the delegates to the Montana Constitutional Convention intended to provide the alleged, broader protection.”
- in [State v. Covington, 2012](#) and 4 similar citations
- “—reiterating that Montana’s constitution provides heightened privacy rights in the search and seizure context as compared to those rights provided pursuant to the Fourth Amendment to the United States Constitution”

Cited by

- [State v. Allen](#)
241 P. 3d 1045 - Mont: Supreme Court 2010
 - [State v. Ferris](#)
244 P. 3d 732 - Mont: Supreme Court 2010
 - [State v. Reichmand](#)
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236 P. 3d 574 - Mont: Supreme Court 2010
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2009 MT 191 - Mont: Supreme Court 2009
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Related documents

- [State v. Brown](#)
755 P. 2d 1364 - Mont: Supreme Court 1988
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198 P. 3d 254 - Mont: Supreme Court 2008
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2007 WL 4482159 - 2007
 - [CITATION] [State v. Minor](#)
2007 WL 196504 - 2007
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FastCase and Hein have teamed up to provide access going back and forth as to certain Hein data libraries.

The screenshot displays the FastCase research platform interface. At the top, the browser address bar shows the URL: <https://apps.fastcase.com/Research/Pages/Results.aspx?LTID=FPV3h1WkEmV16yVO5Rgr>. The page header includes navigation links like 'Start', 'Search', 'Results', 'Document', 'Print', 'My Library', 'Options', and 'Help'. Below the header, there are search filters and a 'Jurisdiction' dropdown set to 'All Jurisdictions'. The main content area shows a list of search results with columns for 'Relevance', 'Case', and 'Decision Date'. A yellow 'Authority Check' box is overlaid on the right side of the results, showing counts for 'These Results' and 'Entire Database'. A yellow arrow points to the 'Authority Check' box. The 'Suggested Results' section on the right lists related legal decisions.

Relevance	Case	Decision Date	These Results	Entire Database
100%	1. Miller v. Goetz, 375 Mont. 281, 327 P.3d 483 (Mont., 2014)	June 10, 2014	0	0
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55%	5. Goetz v. Harrison, 462 P.2d 891, 154 Mont. 274 (Mont., 1969)	December 2, 1969	0	4
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1. [State v. Indreland, 2015 MT 25 N \(Mont., 2015\)](#) January 27, 2015
State v. Goetz, 2008 MT 296, ¶ 16, 345 Mont. 421, 191 P.3d 489; State v. Boyer, 2002 MT 33, ¶ 26, 308 Mont. 276, 42 P.3d 771. Therefore, the State did not violate Indreland's constitutional Page 4 rights to privacy or to freedom from unreasonable searches by responding to his public advertisements and hunting with him on his ranch. Law enforcement officers are not required to know that a person has committed a crime before conducting an investigation, Boyer, ¶ 23, and courts recognize the need...
2. [State v. Stewart, 367 Mont. 503, 291 P.3d 1187 \(Mont., 2012\)](#) December 27, 2012
...decision in Goetz. The Goetz case was factually and legally similar to Reichmand's case: both involved warrantless electronic surveillance of the defendants by means of a confidential informant or undercover agent equipped with a transmitting device which enabled officers to surreptitiously monitor and record the conversations between the defendant and the informant/agent. The recordings were played at Reichmand's trial. Thus, following the issuance of Goetz, Reichmand filed a motion to set aside...
3. [State v. Covington, 2012 MT 31, 272 P.3d 43, 364 Mont. 118 \(Mont., 2012\)](#) February 8, 2012
State v. Goetz, 2008 MT 296, ¶¶ 33-35, 345 Mont. 421, 191 P.3d 489 (determining that the Montana Constitution provides enhanced protection against electronic monitoring due to the delegates' expressed fear, as stated in the convention records, of technology's infringement on individual privacy). A party further may illustrate his claim for broader protection by establishing that the right must not be read in isolation, but rather, in conjunction with rights that are uniquely Montanan. [364 Mont. 124]...
4. [Billings Gazette v. City of Billings, 39 Media L. Rep. 2633, 267 P.3d 11, 362 Mont. 522, 2011 MT 293 \(Mont., 2011\)](#) November 23, 2011
State v. Goetz, 2008 MT 296, ¶¶ 35-36, 345 Mont. 421, 191 P.3d 489, however, that the "underlying purpose or content of the conversation" should not affect a person's expectation of privacy in a conversation within their home or other private setting. Likewise, reasonableness of the privacy interest in a personnel document should not turn on whether the document accuses or exonerates the employee of wrongdoing. In the same manner that "police conduct may not be justified on the basis of the fruits..."
5. [State v. Finley, 362 Mont. 35, 260 P.3d 175, 2011 MT 218 \(Mont., 2011\)](#) September 6, 2011
State v. Goetz, 2008 MT 296, ¶ 40, 345 Mont. 421, 191 P.3d 489. ¶ 16 Finley conceded the validity of the probationary search of the residence. Finley argues only that the search of the safe exceeded the scope of the authorized probationary search. We have concluded that the probation condition authorized the probation officer's warrantless search of Finley's residence, including the search of the unlocked and open safe. ¶ 17 Affirmed. We Concur: MIKE McGRATH, C.J., BETH...
6. [Foston v. State, 2010 MT 281, 245 P.3d 1103, 358 Mont. 469 \(Mont., 2011\)](#) January 25, 2011
State v. Goetz, 2008 MT 296, 345 Mont. 421, 191 P.3d 489. We held in Goetz that warrantless electronic monitoring and recording of face to face conversations between informants and defendants in the defendants' home, in the absence of an exception to the warrant requirement, violated Montana Constitution Article II, Sections 10 and 11. Foston, ¶ 11; Goetz, ¶ 54. ¶ 8 We did not decide Goetz until after Foston's trial had finished. The Court refused to apply Goetz retroactively to...
7. [State v. Ferris, 244 P.3d 732, 358 Mont. 244, 2010 MT 252 \(Mont., 2010\)](#) December 1, 2010
State v. Goetz, 2008 MT 296, 345 Mont. 421, 191 P.3d 489. That case held that a search warrant was required for electronic monitoring of a defendant's conversations with an informant in his home notwithstanding the informant's consent. Neither the attorneys nor the District Court mentioned Goetz at the sentencing hearing. ¶ 7 In May, 2009, Ferris requested appointment of counsel to raise Goetz issues. The Public Defender appeared for Ferris and on June 29, 2009, filed a motion to withdraw...
8. [State v. Reichmand, 2010 MT 228, 358 Mont. 68, 243 P.3d 423 \(Mont., 2010\)](#) October 27, 2010
...determined by Goetz did not exist at the time of Reichmand's trial, and Goetz has now been determined to be retroactive, meeting the last requirements of the statute. ¶ 31 It is clear that § 46-20-701(2)(a), MCA allows this Court to "notice" Reichmand's Goetz issue on appeal and to determine whether use of the warrantless electronic surveillance evidence against him warrants reversal of his conviction. ¶ 32 Goetz is substantially similar to this case legally and factually. I concur...
9. [State v. Allen, 2010 MT 214, 357 Mont. 495, 241 P.3d 1045 \(Mont., 2010\)](#) October 6, 2010

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Federal and State Statutes are available from many sources online:

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- The Best Internet Law Library
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The screenshot shows a web browser window displaying the 'Ask Bill' website. The browser's address bar shows the URL <http://www.lb7.uscourts.gov/reflinks.htm#stctop>. The page title is 'Library of the U.S. Courts of the Seventh Circuit'. The main content area is titled 'Ask BILL! - The Best Internet Law Library' and provides a comprehensive list of legal resources. A sidebar on the left lists various libraries within the Seventh Circuit, including Chicago, East St. Louis, Indianapolis, Madison, Milwaukee, and South Bend. The main content is organized into several sections: Federal Legal Resources, State Legal Resources, Selected Legal Subject Resources, and Other Legal Resources. Each section contains a grid of links to specific legal materials.

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Ask Bill provides links to legal information on the Internet for legal researchers in the Seventh Circuit, which includes the states of Indiana, Illinois and Wisconsin. The sites have been reviewed, selected and annotated. Official government sites have been selected wherever possible.

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