

Law and Order: Using Court Records in Your Family History Research

Class 1: Understanding Court Systems and Records

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Why Use Court Records?

- Establishes your ancestor at a certain place and a certain time
- Provides information about family connections and relations not found in other records (ex. may explain paternity or even disappearance of ancestor)
- Overlooked source in early published genealogies
- Adds to the life story of your ancestor

Brief History of the U.S. Legal System

- English common law was used as a baseline standard for our legal system until additional case law could be created in the United States starting in the mid-nineteenth century
- It relied on precedent versus a set of codified laws.
- Each state in the United States uses common law, except for Louisiana, which used the civil law system from France (Napoleonic code).
- Three Main Colonial Systems
 - Virginia
 - English common law was not recognized
 - “Lawes Divine, Morall, and Martiall” – the governor ruled the colony with an iron fist to help colony survive until the General Assembly was created in 1619
 - New England
 - First act of legislation was the Mayflower Compact, a set of rules to help govern Plymouth Colony for passengers that arrived on the *Mayflower*
 - Body of Liberties - first legal code in New England; precursor to the Bill of Rights
 - Different courts were established, starting with the General Court, county or jurisdictional courts, and then local town governments
 - Maryland
 - Settled in 1634
 - Adopted English law
 - Provincial Court established in St. Mary’s City
 - Act for the Liberties of the People adopted in 1638
 - Maryland Toleration Act of 1649 passed

- Judiciary Act of 1789
 - Established federal court system separate from state courts
 - Supreme Court handled appeals from federal circuit courts and certain appeals from state courts

Women's Legal Rights

- **Key Legislation Milestones:**

- 1662 (Virginia) – A law was passed that stated the children of enslaved mothers would be born into slavery, regardless of their father's race or freedom status
- 1664 (Maryland) – Any English woman who married an enslaved person was required to live as an enslaved person of her husband's master
- 1701 (New York) – In Albany, New York women serve with men on a jury
- 1771 (New York) - Act to Confirm Certain Conveyances and Directing the Manner of Proving Deeds to be Recorded
 - Required a wife's signature on a deed to property before it was sold or transferred.
 - Required a judge to meet privately with the wife to confirm her approval of the transaction.
- 1787 (Massachusetts) - Allowed married women to act as femme sole traders to conduct business when husband was out to sea or away for home for an extended period.
- 1809 (Connecticut) - Married women could execute a will
- 1839 (Mississippi) - Women have the right to hold property in their own name, with their husbands' permission
- 1848 (New York) - Married Women's Property Act
 - Conduct business independently
 - Sole ownership of gifts
 - File lawsuits
- 1860 (New York) - Act Concerning the Rights and Liabilities of Husband and Wife – mothers were acknowledged as joint guardians of their children
- 1869 (Wyoming) – First women's suffrage law is passed
- 1870 – The first sexually integrated grand jury hears cases in Cheyenne, Wyoming
- 1890 (Wyoming) – Grants women the right to vote in all elections
- 1920 – Nineteenth Amendment to the U.S. Constitution is ratified, granting women the right to vote across the United States.



Native American Treaties and Laws

- The United States managed the British system of treaty making with Native American tribes, who were considered sovereign nations.
- The treaties set forth the boundaries of the lands and the compensation to be received by the tribes for the taking of the lands
- Congress was required to approve the treaty
- Not all treaties were ratified by Congress, which made it difficult to enforce.
- By 1871, the United States ceased to recognize Native American tribes as sovereign nations to contract with by treaty.
- Native American treaties can be researched on the National Archives web site (<https://www.archives.gov/research/native-americans/treaties/viewing-treaties>)
- Contemporary legislation can be researched through the National Conference of State Legislatures web site via the Statewide Tribal Legislation database (<https://www.ncsl.org/quad-caucus/statewide-tribal-legislation-database>)

Locating Historical Legislation

- Where to Find Historical Laws?
 - State Archives website
 - State Library website
 - Colonial Laws – Bowling State Green University Research Guide
 - HathiTrust – Records of the American Colonies
 - The Avalon Project (Yale Law School)
 - Library of Congress
 - Law libraries

Understanding the Law

- Legal Terminology:
 - Black's Law Dictionary is considered the “gold standard” of legal language
 - Georgetown University has digitized many legal dictionaries
- Tip: Make a timeline of your ancestor's life and research the history and the laws that would have impacted them.

Types of Court Records

- Types of Courts
 - Civil - Plaintiff and defendant named
 - Criminal - “The People” vs. the defendant
 - Equity - Chancery records, that can stem out of probate cases

- Docket Books
 - A list of all cases by term for a court
 - Short chronological entries summarizing the court proceedings
 - Will note if case was continued or if a decision was made.
 - Used as an index to locate other relevant documentation.
 - Some dockets are split out by type of proceeding (ex. Criminal, civil, etc.)
- Types of Dockets
 - Several different types of dockets including appearance, continuation, appeals, etc.
 - Appearance docket – list of people involved in a court case and a summary of court proceedings; includes each appearance in court; will note a continuance or judgment
 - Execution docket – records the final judgment of the court
 - Preferred docket – prioritizes cases for trial
 - There may be separate docket books for cases that are continued (continuation docket) or being appealed (appeals docket)
- Minute Books
 - A summary of a court proceeding
 - Identified by case numbers and court term
- Order Books
 - Detailed records of the court proceedings
 - Includes the specific judgements of the court
 - May contain notations in the margins
 - More likely to be indexed than minute books
 - Often used as an alternative record when the record books (ex. Will books, deed books are missing or destroyed by fire, etc.)
 - Also known as journals
- Case Files
 - Contains all the documents related to a court case
 - Ex. A probate packet is a form of a case file.

How to Research Your Ancestor in Court Records

- Tips for Research:
 - Exhaust court records category on FamilySearch under the county/town/probate district
 - Use the docket books as an index to locate a relevant case file
 - Contact the State Archives and local courthouses for documents not yet digitized online
 - Check catalogues for Transcribed and Published Court Records
 - Use the execution dockets first as they're usually indexed
 - Check the minutes or journal index to confirm that you have found all the relevant documentation for a case

Published Sources, Indexes, and Guides

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- Ancestry <https://www.ancestry.com>
- Avalon Project (Yale Law School) <https://avalon.law.yale.edu>
- Bowling Green State University Colonial Laws Research Guide <https://libguides.bgsu.edu/ColonialLaws>
- California State Library <https://library.ca.gov>
- FamilySearch <https://www.familysearch.org>
- Georgetown University Legal Dictionaries <https://repository.library.georgetown.edu/handle/10822/559416>
- HathiTrust: Records of the American Colonies <https://babel.hathitrust.org/cgi/mb?a=listis;c=855228657>
- Library of Congress: United States Statutes at Large <https://www.loc.gov/collections/united-states-statutes-at-large/about-this-collection>
- Massachusetts Historical Legal Documents and Laws <https://www.mass.gov/info-details/massachusetts-historical-legal-documents-and-laws#documents:-1620-1799>
- National Archives <https://www.archives.gov>
- National Conference of State Legislatures <https://www.ncsl.org>
- New Jersey Legislative Histories <https://repo.njstatelib.org/handle/10929.1/2>
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