

ASPEN CASEBOOK SERIES

# **Basic Legal Research Workbook**

**Fifth Edition**

**2019 Replacement Pages**

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# Introduction

The 2019 replacement pages for Basic Legal Research Workbook Fifth Edition are found on the following pages. By replacing those same pages in the workbook, you will have the current information needed to complete the problems. Please be sure to make these substitutions since the old pages contain citations or sources that no longer can be found using the old questions.

The Table of Contents on the previous pages highlight the chapters and sections where replacement pages are needed. These replacement pages reflect changes through July 2019. Please feel free to refer back to the workbook webpage for subsequent updates at [www.aspenpublishing.com/Sloan-LR-workbook5](http://www.aspenpublishing.com/Sloan-LR-workbook5). Database and publisher changes may inevitably result in the need for further updates.

The current workbook includes text on the front and back of the pages. Updated pages were prepared so that by duplexing the pages in printing it is possible to replace the entire page in the workbook. The Table of Contents of this update lists which pages were revised so that if you print single-sided you need only print pages with corrections.



Problem Set G	<i>Official Code of Georgia Annotated § 11-2-302</i>
Problem Set H	<i>West's Florida Statutes Annotated § 672.302</i>
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Arizona	§ 13-1902	Nevada	§ 200.380
Arkansas	§ 5-12-102	New Hampshire	§ 636:1
California	Penal § 212.5	New Jersey	§ 2C:15-1
Colorado	§ 18-4-301	New Mexico	§ 30-16-2
Connecticut	§ 53a-133	New York	Penal § 160.00
Delaware	tit. 11, § 831	North Carolina	§ 14-87
Florida	§ 812.13	North Dakota	§ 12.1-22-01
Georgia	§ 16-8-40	Ohio	§ 2911.02
Hawaii	§ 708-840	Oklahoma	tit. 21, § 791
Idaho	§ 18-6501	Oregon	§ 164.415
Illinois	ch. 720, § 5/18-1	Pennsylvania	tit. 18, § 3701
Indiana	§ 35-42-5-1	Rhode Island	§ 11-39-1
Iowa	§ 711.1	South Carolina	§ 16-11-325
Kansas	§ 21-5420	South Dakota	§ 22-30-1
Kentucky	§ 515.020	Tennessee	§ 39-13-401
Louisiana	§ 14:64	Texas	Penal § 29.02
Maine	tit. 17-A, § 651	Utah	§ 76-6-301
Maryland	Crim. Law § 3-402	Vermont	tit. 13, § 608

Massachusetts	ch. 265, § 17	Virginia	§ 18.2-58 (Hint: Locate § 18.2-58, not 18.2-58.1.)
Michigan	§ 750.530	Washington	§ 9A.56.200
Minnesota	§ 609.24	West Virginia	§ 61-2-12
Mississippi	§ 97-3-73	Wisconsin	§ 943.32
Missouri	§ 570.023	Wyoming	§ 6-2-401

1. Provide the name of the section. You will find this next to the section number.
2. Briefly describe what this section provides.
3. Give the name of the code you used to find the answer and the copyright date of the volume.

### C. State Cases

As noted above, state court opinions, like federal court opinions, are published in books called “reporters.” Some states publish reporters containing only cases decided by the courts of that state. There are also sets of reporters called “regional reporters” that compile cases from several states within a particular geographic region. To answer the following questions, you will need to find the regional reporters.

Locate the state case for your problem set, and answer the questions below. (Hint: The regional reporters have multiple series (2d, 3d). When you locate the reporter, be sure you are looking in the correct series.)

#### State Case

Problem Set A	<i>Winters v. State</i> , volume 848, <i>South Western Reporter</i> , 2d series, page 441
Problem Set B	<i>Gebhart v. State</i> , volume 525, <i>North Eastern Reporter</i> , 2d series, page 603
Problem Set C	<i>Wheeler v. State</i> , volume 826, <i>Southern Reporter</i> , 2d series, page 731
Problem Set D	<i>State v. Gregory</i> , volume 869, <i>Pacific Reporter</i> , 2d series, page 292
Problem Set E	<i>People v. Toole</i> , volume 576, <i>North Western Reporter</i> , 2d series, page 441
Problem Set F	<i>Iamartino v. Avallone</i> , volume 477, <i>Atlantic Reporter</i> , 2d series, page 124
Problem Set G	<i>Stefan Jewelers, Inc. v. Electro-Protective Corp.</i> , volume 288, <i>South Eastern Reporter</i> , 2d series, page 667
Problem Set H	<i>Credit Alliance Corp. v. Westland Mach. Co., Inc.</i> , volume 439, <i>Southern Reporter</i> , 2d series, page 332
Problem Set I	<i>Davis v. M.L.G. Corp.</i> , volume 712, <i>Pacific Reporter</i> , 2d series, page 985



## II. Westlaw

### A. Searching a Legal Encyclopedia Using the Table of Contents

One resource that can be a useful starting point for a research project is a legal encyclopedia. Legal encyclopedias simply report on the state of the law in a very general way. They are helpful for obtaining general background information on your research topic and for locating limited citations to primary legal authority.

To obtain an overview of the doctrines of vicarious liability and respondeat superior, you might begin your research with a legal encyclopedia. Both the Am. Jur. 2d and C.J.S. legal encyclopedias are available online in Westlaw. Am. Jur. 2d is also available online in Lexis. One way to research using a legal encyclopedia is to browse the publication's table of contents.

In Westlaw, find "American Jurisprudence 2d." (Hint: In the search box, start typing American Jurisprudence until it populates as a listed title, and then select it. You also could click "Secondary Sources" and then "Jurisprudence & Encyclopedias.") You should see the table of contents.

From the main table of contents, one subject that might help with your research into the client matter is "Employment Relationship." From the "Employment Relationship" entry, drill down through each of the following choices to retrieve a section from Am. Jur. 2d:

Liability of Employer to Third Party  
 Vicarious Liability  
 In General  
 Liability of employer under respondeat superior

1. Review the section of Am. Jur. 2d that you retrieved. Provide the section number.
2. What does the respondeat superior doctrine state generally?
3. According to the section you retrieved, the principles of respondeat superior apply when the claim is based in tort or negligence and the plaintiff alleges that the employer is liable for the conduct of an employee because the employee was acting within the scope of employment. Provide the name and citation of a case from Kentucky that supports this proposition.

(Hint: In Westlaw, place the cursor over the footnote number to display the footnote information supporting the textual statement. Use the reporter abbreviations to identify a case decided by a Kentucky (Ky.) court.)

4. Use the link near the top of the screen to advance to the next section of Am. Jur. 2d. (Hint: Look for the arrows next to the §.)

According to this section, what are the four general factors that bear upon whether a master-servant relationship exists for purposes of the doctrine of respondeat superior?

### B. Locating A.L.R. Annotations Using Word Searches

American Law Reports, or A.L.R., Annotations collect summaries of cases, typically from a variety of jurisdictions, to provide an overview of the law on a narrow topic. Unlike legal encyclopedias, which

usually focus on very broad topics, A.L.R. Annotations tend to focus on narrower legal questions. A.L.R. Annotations are also more detailed than legal encyclopedia entries because they include summaries of specific cases. Like encyclopedia entries, however, they do not contain much analysis. They simply report the results of decisions. A.L.R. Annotations can be a helpful way to begin your legal research to give you an overview of your research topic as well as providing authorities on both sides of an issue. They can also direct you to primary authority from the controlling jurisdiction and persuasive authority from other jurisdictions.

Although most A.L.R. Annotations are also available in Lexis, the first series is not, so Westlaw should be used on this exercise.

You decide to continue your research on respondeat superior in the A.L.R. Annotations in Westlaw. You are especially interested in learning more details about how the doctrine applies in medical malpractice cases, and whether Granville could be vicariously liable for Dr. Villar's negligence. A.L.R. Annotations are a good place to look for this kind of information.

To answer the questions below, you need to locate the A.L.R. database.

In Westlaw, find "American Law Reports." (Hint: In the search box, start typing American Law Reports until it populates as a listed title, and then select it. You also could click "Secondary Sources" and then "American Law Reports.")

Execute the following search:

When can a hospital be vicariously liable for the negligence of a physician?

1. Review the first 10 items in the search results. Provide the title and citation of the Annotation that seems most relevant to the question when a hospital can be liable for the negligence of a physician.
2. Click on the link to open this Annotation. Provide the name of the author of the Annotation.
3. To locate information in an Annotation, you can scroll through the document or use the links to the navigation tools listed in the "Table of Contents" section near the beginning of the document. For this question, use the Article Outline to locate the link to the heading for "Where physician is independent contractor." Click on the section for "Rule of nonliability, generally." What do the cases in this section hold or recognize?
4. Now return to the Article Outline and the section discussing "Where physician is independent contractor." What is covered by the other three sections and why might you want to review them?

### C. Researching Multiple Secondary Sources

Using Westlaw, you can research a variety of secondary sources, including encyclopedias, A.L.R. Annotations, and treatises with a single search. The search results can be limited by jurisdiction, but the search will retrieve many types of authority (statutes, cases, secondary sources, etc.). The advantage to this approach is that it allows you to retrieve multiple forms of authority in a single search. When you are not sure what type of authority will help you answer a research question or when you know you need multiple types of authority, a global search can be effective. The disadvantage is that having all

results in a single search may make it difficult to focus on the most relevant or most authoritative sources. You must evaluate the results carefully to make sure you locate and use the best authority available to resolve your research issue.

To continue your research into secondary sources that discuss vicarious liability and respondeat superior, enter the following search in the Westlaw search box:

vicarious liability and medical malpractice

(Hint: If you have just completed Section A or B of this part of the exercise, be sure to reset your content. You can do this by clicking the content box to the left of the search box and selecting “All Content.” Also be sure to reset your jurisdictions. You can do this by clicking the jurisdiction box to the right of the search box and selecting “All States” and “All Federal.”)

1. Using the filtering options under “Content types,” display the “Secondary Sources” results. Using the additional filtering options, limit the “Publication Type” to ALR. (Hint: After checking the box for “ALR,” click “Apply.”) This will limit the display to A.L.R. Annotations. (Hint: Be sure the “Sort” drop-down menu is set to “Relevance.”) Review the search results. (Notice that the annotation relating to negligence that you located for Question B1, above, also appears in these search results.) Provide the author, title, and citation of an annotation on health maintenance organizations and their liability for negligence of member physicians.
2. Because Westlaw aggregates sources in the search results, you can also find treatise entries on the subject you are researching. Using the filtering options, clear the filter limiting the display to A.L.R. Annotations, and scroll down to select the option to filter your results by “Publication Name.” From the list, enter or select “New York Practice Series Publications” and apply it as the filter. Review the filtered search results, and locate a section of the treatise that deals with “Vicarious liability of hospitals, clinics, medical professionals and HMOs.” Review the section of the treatise, and answer the following questions:
  - a. Do new rules apply to impose vicarious liability simply because a person is a medical professional?
  - b. What must there be in order to impose vicarious liability upon a hospital for the malpractice of another physician or health care professional?

### III. Lexis

#### A. Locating Legal Periodicals Using Word Searches

Although this question directs you to use Lexis, you can also locate legal periodicals in Westlaw.

The material you have located so far provides some information about vicarious liability and respondeat superior, but you clearly need more. You decide to research legal periodicals to learn more. In particular, you want to learn more about problems in applying vicarious liability and respondeat superior to medical malpractice cases.

One way to locate legal periodicals is through word searches. To do so you will first want to narrow the scope of the search to Secondary Materials. Go to the main Lexis search screen, and set the filter for “Secondary Materials” (in the “Content Type” tab). After setting a filter for Secondary Materials, search for:

vicarious liability and medical malpractice

Narrow those search results to only Law Reviews and Journals. (Hint: Use the “Filters” menu, and click “Law Reviews and Journals” under “Category.”)

1. Browse the search results (sorting by “Relevance”), and locate a 2010 article in the *Quinnipiac Health Law Journal*. Click on the link to the article. Provide the full citation to the article.
2. According to the Introduction, what can widespread acceptance of the apparent agency doctrine lead to?

## B. Locating Restatements of the Law Using Word Searches

Although this question directs you to use Lexis, you can also locate Restatements in Westlaw.

You would like to continue your research into vicarious liability and respondeat superior. You decide to research Restatements to see if they offer any new information on when an employer is liable for an employee acting within the scope of employment.

Browse Sources by clicking the “Browse” button near the top of the screen and clicking “Sources.” Click “By Category” and “Secondary Materials.” Search for “Restatement of the Law, Agency 3d—Official Text” using the “Search Within Sources” box (or scroll down under the “R” choices). From the drop-down menu to the right of “Restatement of Law, Agency 3d—Official Text” add this source as a search filter. Now execute the following search:

respondeat superior and vicarious liability and scope of employment

1. Provide the number of the Restatement section that discusses an employee acting within the scope of employment.
2. Click on the link for this Restatement section. When you conduct a word search, one way to locate relevant information within a document is by using the navigation box and arrows at the top of the screen to locate to your search terms within the document. The navigation function, which is available in both Lexis and Westlaw, allows you to jump to the portion of the document where the search terms appear. To use this function, select your navigation terms in the drop-down box and click on the up or down arrow to move through your document.

Select “respondeat superior” from the drop-down navigation menu. Click the down arrow until you see the sentence: “In contrast, respondeat superior subjects an employer to vicarious liability for employee torts committed within the scope of employment, distinct from whether the employer is subject to direct liability.” Under this doctrine, what enables the employer to take measures to reduce the incidence of tortious conduct?

### C. Researching Other Secondary Sources

The red search box in Lexis allows you to search all content without specifying a database. As you have just seen, the search results can be limited by type of authority, jurisdiction, or practice area or topic. Without these limits, however, the search will retrieve many types of authority (statutes, cases, secondary sources, etc.).

Continue your research on vicarious liability and respondeat superior and medical malpractice. Using the drop-down menu to the right of your search terms in the red search box limit the “Category” to “Secondary Materials.” (Hint: Be sure to clear any other filters.) Enter the following terms in the red search box and execute the search:

respondeat superior and vicarious liability and medical malpractice

1. Use the “Filters” options to view Practice Guides. (Hint: Look in the “Category” tab.) Further narrow your results by selecting the LexisNexis Practice Guide on Illinois Personal Injury Litigation and locating the section dealing with “Vicarious Liability.” Click on the section title to view the full text of the section. Locate the heading for “Apparent Agency” and the subsection below it for “Apparent Agency Applicable to Hospitals.” According to the Illinois Supreme Court in *Gilbert*, what three elements must a plaintiff establish in order to hold a hospital liable under the doctrine of apparent authority?
2. Return to the search results list. Use the “Filters” options to open Jurisdiction and select Illinois to see if additional secondary sources may be available. Under “Filters” select Treatises and open one covering medical malpractice. Within that section, search for the phrase “vicarious liability” in quotes. What must a plaintiff prove for a hospital to be liable for a physician’s negligence under the doctrine of *respondeat superior*? Cite the treatise and section where you found this information.

### IV. Subscription Databases for Legal Periodicals

Having examined several secondary sources, you now would like to research the most recent scholarly writing on vicarious liability and respondeat superior. Law review articles are a good place to look for the latest writing on topics like these.

You can use Westlaw and Lexis to locate law review articles (as you did above). You can also use subscription services available through your law school library to locate law review articles. Popular subscription services include HeinOnline, LegalTrac, and the Index to Legal Periodicals (or “ILP”). This exercise directs you to use ILP. LegalTrac may be used if your library does not subscribe to ILP.

From your library’s portal, locate the Index to Legal Periodicals. (Hint: If you have access to more than one database, choose Index to Legal Periodicals–Full Text.) Click on the link to the Index to Legal Periodicals or follow any other instructions on your library’s portal to access the service. Choose the option for “Advanced Search.” Enter the following search phrase in the first search box as a Text search:

vicarious liability and respondeat superior and medical malpractice

Execute the search by clicking the “Search” button. Find a 2008 article in the *Wake Forest Law Review*. Click on the PDF Full Text, and answer the following questions.

- A. Provide the title of the article.
- B. Browse the first two paragraphs of the article. Briefly, according to the article, what did the North Carolina Court of Appeals hold in *Diggs v. Novant Health, Inc.*?
- C. Briefly, according to the article, how does the patient see the hospital, and what is the reality?

<b>Problem Set H</b>	You work for the state police. Your supervisor has asked you to research employment discrimination in police forces in order to design uniform policies to help the state police avoid illegal discrimination in the future.
<b>Problem Set I</b>	You represent the plaintiff in an automobile injury case. You need to research whether your client can collect for pain and suffering as a result of her injuries.
<b>Problem Set J</b>	You are counsel to the state legislative committee with responsibility for elections, voting, campaign finance, and similar issues. The chair of the committee has asked you for a briefing book on laws prohibiting felons and ex-felons from voting. You need to research felon disenfranchisement.
<b>Problem Set K</b>	Your client saw her employer dump toxic waste in an illegal manner. She reported the information to state authorities. The next day, she was fired from her job. You need to research whether she has a valid cause of action against her former employer for wrongful discharge under state whistleblower protections.
<b>Problem Set L</b>	Your client quit her job three years ago to care for her mother, who suffered from Alzheimer's disease. Your client's mother recently died, and your client has learned that she was cut out of her mother's will. She wants to challenge the validity of the will, which was executed while her mother was ill. You need to learn what evidence would be necessary to show that Alzheimer's disease affected your client's mother's capacity to execute the will (and thus the validity of the will).
<b>Problem Set M</b>	You work for a non-profit organization that promotes consumer rights. You are particularly interested in consumer protection laws as they relate to non-English speakers and individuals for whom English is a second language. You need to research consumer protection laws in general, as well as their effects on these individuals.
<b>Problem Set N</b>	You work for the public defenders office. Your client is a juvenile who was convicted of delinquency without the benefit of a lawyer. You are appealing her conviction. Part of your claim is that she did not receive her constitutional right to counsel at her trial and that she did not validly waive that right. You need to research these issues.
<b>Problem Set O</b>	You represent the mother of two young children in a custody dispute with the children's father. You need to research the factors that courts use to award custody and to change custody between biological parents.

## I. Review Questions

- A. Would you be most likely to begin your research on a topic about which you knew very little with a legal encyclopedia or an A.L.R. Annotation? Explain your answer.
- B. Would you be most likely to use a legal encyclopedia or an A.L.R. Annotation to research the law of multiple jurisdictions? Explain your answer.

- C. Which of the following statements is false? (a) C.J.S. and Am. Jur. 2d are national encyclopedias that contain references to cases from across the country; (b) state-specific encyclopedias contain references to cases from an individual state; (c) A.L.R. Annotations address only questions of state law, not federal law.

## II. Researching by Citation in Legal Encyclopedias

One resource that can be a useful starting point for a research project is a legal encyclopedia. Legal encyclopedias simply report on the state of the law in a very general way. They are helpful for obtaining general background information on your research topic and for locating limited citations to primary legal authority.

This section requires you to locate material in a legal encyclopedia from a citation. You can locate material by citation online or in print.

### A. Retrieving a Source by Citation

Identify the legal encyclopedia and citation assigned to your problem set in the chart below. Using only the citation, retrieve your assigned section.

If you are researching online, simply type the encyclopedia abbreviation and citation into the search box to retrieve the section assigned for your problem set. For example, for Problem Set A, type the following into the search box:

Am. Jur. 2d Freedom of Information Acts 55

If you are researching in print, locate the appropriate topic in the main volumes of the encyclopedia assigned to your problem set, and turn to the assigned section.

Problem Set	Encyclopedia	Citation
Problem Set A	Am. Jur. 2d	Freedom of Information Acts § 55
Problem Set B	C.J.S.	Obscenity § 12
Problem Set C	Am. Jur. 2d	Products Liability § 860
Problem Set D	C.J.S.	Mental Health § 49
Problem Set E	Am. Jur. 2d	Searches and Seizures § 89
Problem Set F	C.J.S.	Damages § 242
Problem Set G	Am. Jur. 2d	Unemployment Compensation § 70
Problem Set H	C.J.S.	Civil Rights § 239
Problem Set I	Am. Jur. 2d	Damages § 213
Problem Set J	C.J.S.	Elections § 47



Problem Set	Encyclopedia	Citation
Problem Set K	Am. Jur. 2d	Wrongful Discharge § 116
Problem Set L	C.J.S.	Wills § 750
Problem Set M	Am. Jur. 2d	Consumer and Borrower Protection § 278
Problem Set N	C.J.S.	Criminal Procedure and Rights of the Accused § 680 (Hint: On Westlaw, you also could use the C.J.S. Table of Contents to locate this provision.)
Problem Set O	Am. Jur. 2d	Divorce and Separation § 797

Read the section, and answer the Legal Encyclopedia Questions assigned to your problem set in the chart below.

### Legal Encyclopedia Questions

Problem Set A	1. Does the FOIA make distinctions based on who is requesting the information?	2. Under the FOIA, each agency must make nonexempt records available to any person who requests them if the request is made properly. In making any record available to a person, an agency must provide the record in what form or format?
Problem Set B	1. A publication must have certain characteristics to be obscene under the principles enunciated by the United States Supreme Court. What are those characteristics?	2. How may a state not define obscenity?
Problem Set C	1. Name two types of advertising statements that may serve as a basis for imposing liability for negligent misrepresentation on a defendant seller or manufacturer, or in other words, are actionable.	2. When is there no cause of action against a manufacturer of a product based on that manufacturer's advertising?
Problem Set D	1. What are the goals of civil commitment or confinement?	2. What are the two legal foundations or justifications for the exercise of authority to confine the mentally ill?
Problem Set E	1. What does an investigatory or <i>Terry</i> stop usually involve?	2. What level of suspicion must an investigatory stop be supported by?
Problem Set F	1. What is to be considered in determining whether exemplary damages will be awarded?	2. What must be the justification of punitive damages?

Problem Set G	1. What is the basic element to be considered when interpreting and applying the provisions of unemployment compensation statutes?	2. What types of acts constitute misconduct warranting denial of unemployment compensation?
Problem Set H	1. Under what conditions may an employer give and act upon the results of an ability test for job applicants?	2. When does a test have a disparate impact?
Problem Set I	1. According to this section, “pain and suffering” has served as a convenient label for several specific conditions. List two of these conditions.	2. Under what conditions may pain and suffering be psychosomatic in origin?
Problem Set J	1. Under what circumstances did a provision disenfranchising persons convicted of crimes involving moral turpitude violate the Equal Protection Clause?	2. What purpose do felon disenfranchisement laws serve?
Problem Set K	1. What must a plaintiff demonstrate under some states’ acts to establish a prima facie case of retaliatory discharge under the whistleblower statute?	2. What must the court look at to determine whether an employee’s report of a violation or suspected violation of law is made in good faith for purposes of a state whistleblower statute?
Problem Set L	1. What type of evidence may be sufficient to carry the issue of testamentary capacity to the jury?	2. Does evidence that relates only to the testator’s physical condition compel a conclusion of unsoundness of mind?
Problem Set M	1. Under an unfair-trade practices act, when is an act “unfair”?	2. Generally when is a transaction not unfair?
Problem Set N	1. What are the purposes of the constitutional guarantee of the right to effective assistance of counsel?	2. To whom does the right to counsel belong?
Problem Set O	1. In some jurisdictions, under what conditions do courts give a preference to the mother in custody disputes?	2. In many jurisdictions, there is no prima facie presumption in favor of the mother. In those jurisdictions, what consideration are the parents to receive for custody of a minor child?

1. Answer the first legal encyclopedia question for your problem set.
  2. Answer the second legal encyclopedia question for your problem set.
- B. If you are researching in print, update your research by checking the pocket part for the main volume. (If you are using Westlaw or Lexis, simply enter “not applicable” as your answer.) Does the pocket part contain any additional information? If so, provide the name of a case or other resource cited in the pocket part. If not, answer “None.” (Hint: Volumes published within the past year will not have pocket parts. If the volume you use is too new to have a pocket part, answer “None.”)

### III. Researching by Word Search or Index in A.L.R. Annotations

American Law Reports, or A.L.R., Annotations collect summaries of cases, typically from a variety of jurisdictions, to provide an overview of the law on a narrow topic. Unlike legal encyclopedias, which usually focus on very broad topics, A.L.R. Annotations tend to focus on narrower legal questions. A.L.R. Annotations are also more detailed than legal encyclopedia entries because they include summaries of specific cases. Like encyclopedia entries, however, they do not contain much analysis. They simply report the results of decisions. A.L.R. Annotations can be a helpful way to begin your legal research to give you an overview of your research topic as well as providing authorities on both sides of an issue. They can also direct you to primary authority from the controlling jurisdiction and persuasive authority from other jurisdictions.

This section directs you to research A.L.R. Annotations using a word search (online) or an index search (in print).

If you are searching online, you will use bold terms to form a word search to retrieve relevant annotations.

**In Westlaw:** From the “All Content” tab, follow the links to “Secondary Sources” and click on American Law Reports. Click on “Advanced,” enter the bold terms and phrases in the “Title” box separated by “and,” and execute the search. Sort by relevance. (For example, in Problem Set A you would enter: records and agency and Freedom of Information Act.)

**In Lexis:** From the Explore Content menu and the “Content Type” tab, select “Secondary Materials” and then click on “American Law Reports (ALR).” Enter the bold terms and phrases in the “Title” box separated by “and” and execute the search. Sort by relevance. (For example, in Problem Set A you would enter: records and agency and Freedom of Information Act.)

Locate the A.L.R. Annotation with a title that most closely corresponds to the search terms for your problem set.

If you are researching in print, locate the A.L.R. Index in your library. Use the search terms assigned for your problem set to locate the citation to an A.L.R. Annotation in the A.L.R. Index. Retrieve the Annotation from the main A.L.R. volumes.

<b>Problem Set</b>	<b>A.L.R. Search Terms</b>
Problem Set A	Freedom of Information Acts; Agency records; what are “ <b>records</b> ” of <b>agency</b> which must be made available under <b>Freedom of Information Act</b> (5 U.S.C.A. § 522(a)(3))
Problem Set B	Lewdness, Indecency, and Obscenity; Zoning; validity of ordinances restricting <b>location</b> of “ <b>adult entertainment</b> ” or sex-oriented businesses
Problem Set C	Products Liability; Advertising; statements in <b>advertisements</b> as affecting <b>liability</b> of manufacturers or sellers for injury caused by product other than <b>tobacco</b>
Problem Set D	Incompetent or Insane Persons; Civil rights and discrimination; commitment, right to relief under Federal <b>Civil Rights Act</b> of 1871 (42 U.S.C.A. § 1983) for alleged wrongful <b>commitment</b> to or confinement in mental <b>hospital</b>
Problem Set E	Drugs and Narcotics; courier profile; testimony, admissibility of <b>drug courier profile</b> testimony in criminal prosecution
Problem Set F	Punitive Damages; Malice; false imprisonment and arrest, defendant’s state of mind necessary or sufficient to warrant award of <b>punitive damages</b> in action for <b>false arrest</b> or imprisonment
Problem Set G	Unemployment Compensation; Conduct; off-duty, conduct or activities of employees during <b>off-duty</b> hours as misconduct barring <b>unemployment</b> compensation benefits
Problem Set H	Age Discrimination; Law enforcement employment, actions under Age <b>Discrimination in Employment Act</b> (29 U.S.C.A. §§ 621-634) challenging hiring or <b>retirement</b> practices in <b>law enforcement</b> employment
Problem Set I	Pain and Suffering; Mental or <b>psychological</b> damages, excessiveness or adequacy of <b>damages</b> awarded for injuries causing mental or psychological damages
Problem Set J	Elections and Voting; Conviction; voting rights, effect of <b>conviction</b> under federal law, or law of another state or country, on right to <b>vote</b> or hold public office
Problem Set K	Discharge from Employment or Office; Damages; at-will employment, <b>damages</b> recoverable for wrongful discharge of <b>at-will</b> employee; excessiveness or <b>adequacy</b> or damages under state law
Problem Set L	Wills; <b>Alzheimer’s</b> disease as affecting testamentary <b>capacity</b>
Problem Set M	Trademarks, Tradenames, and Unfair Trade Practices; Consumer protection; <b>practices</b> forbidden by state <b>deceptive</b> trade practice and <b>consumer</b> protection acts, generally
Problem Set N	Attorneys; Children and minors; waiver of right to counsel, validity and efficacy of minor’s waiver of right to <b>counsel</b> —cases decided since Application of <b>Gault</b> , 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed.2d 527 (1967)
Problem Set O	Custody and Support of Children; Religion and religious societies; <b>custody</b> of children, <b>religion</b> as factor in child custody cases

- A. Provide the title and A.L.R. citation of the Annotation you located.
- B. Browse the Annotation, and answer the two A.L.R. Annotation questions below for your problem set.

### A.L.R. Annotation Questions

Problem Set A	1. Using the Article Outline or Index for this Annotation, locate the “Summary and comment” section. The United States Supreme Court in <i>U.S. Dep’t of Justice v. Tax Analysts</i> held that in order for requested materials to qualify as “agency records” for purposes of FOIA, they must meet two conditions. List the two qualifications or conditions.	2. Locate the section dealing with “Personal notes or letters.” Why did the Supreme Court in <i>Kissinger v. Reporters Committee for Freedom of the Press</i> reject the argument that material acquired the status of agency records when it was removed from White House files and taken to the party’s office at the Department of State?
Problem Set B	1. Using the Article Outline or Index for this Annotation, locate the section on “Summary and comment—generally.” What dimension is added when zoning regulations exclude a sexually oriented business such as an “X-rated” movie theater or an adult bookstore?	2. Locate the section on “Summary and comment—Practice pointers.” What should an adult business client do when a federal forum is desired for the trial of constitutional claims?
Problem Set C	1. Using the Article Outline or Index for this Annotation, locate the section on “Summary and comment—Practice pointers.” What question does products liability litigation often present initially?	2. Why is this question critical?
Problem Set D	1. Using the Article Outline or Index for this Annotation, locate the section on “Tort elements: Duty.” In <i>Campbell v. Glenwood</i> , what did the court say was an essential element in tort liability (and consequently in an action for deprivation of civil rights)?	2. Locate the section on “Background, summary, and comment—Practice Pointers.” What does the federal statute 28 U.S.C. § 1343(3) do?
Problem Set E	1. Using the Article Outline or Index, locate the section on “Summary and comment—Generally.” What do characteristics of the drug courier profile include?	2. Locate the section on “Summary and comment—Practice pointers.” What should defense counsel consider in situations when a drug courier profile is, or may be, admissible in part or for certain purposes?

Problem Set F	1. Using the Article Outline or Index for this Annotation, locate the section on “Summary and comment—generally.” Some courts have specifically held that the requisite malice may be inferred from two circumstances. What are those two circumstances?	2. What has been said to warrant an award of punitive damages in an action for false arrest or imprisonment?
Problem Set G	1. Using the Article Outline or Index for this Annotation, locate the section on “Arrests or convictions—Public employees—Benefits allowed.” What did the court hold in <i>Beaty v. City of Idaho Falls</i> ?	2. Locate the “Practice pointers” section. Why must unemployment security law be liberally construed in many jurisdictions?
Problem Set H	1. Using the Article Outline or Index for this Annotation, locate the section on “Background, summary, and comment—Background.” What is an exception to the prohibition on age discrimination against employees or applicants for employment who are between the ages of 40 and 70?	2. Locate the section on “Background, summary, and comment—Practice pointers.” What is a preliminary procedural issue of which counsel in an ADEA law enforcement action should be aware?
Problem Set I	1. Using the Article Outline or Index for this Annotation, locate the “Summary and comment—Practice pointers” section. What is the first step an attorney must take, after determining that the person has a cause of action for personal injuries, and after establishing an attorney-client relationship?	2. Locate the section on “Summary and comment—Preparation for settlement discussions.” After an attorney has determined the nature of the client’s injuries and the various elements arising out of the injuries and related matters which can be the basis for damages, what is the attorney ready to do?
Problem Set J	1. Using the Article Outline or Index for this Annotation, locate the section on “Convictions under law of another state: Held disqualification.” According to the court in <i>Application of Smith</i> , what is the purpose of the disqualifying statute?	2. Locate the “Summary and comment—Practice pointers” section. How may a person convicted of a crime and not allowed to register to vote raise the issue of his qualifications?

Problem Set K	1. Using the Article Outline for this Annotation, locate the “Summary and comment” section. Under exceptions to the at-will doctrine, a remedy is available in most states for wrongful discharge when the employee has engaged in what kind of conduct?	2. What types of damages are available to an employee for wrongful discharge?
Problem Set L	1. Using the Article Outline or Index for this Annotation, locate the section on “Summary and comment—Generally.” What does the presence or absence of testamentary capacity determine?	2. Locate the section on “Summary and comment—Practice pointers” section. Which witnesses’ testimony can be critical in a case where the testamentary capacity of the testator is questioned because of Alzheimer’s disease?
Problem Set M	1. Using the Article Outline or Index for this Annotation, locate the section on “Background, summary, and comment—Generally.” The past decade has seen the enactment of myriad state statutes intended to do what?	2. Locate the section on “Background, summary, and comment—Practice pointers.” Why is the body of case law considering questions as to what acts or practices violate state deceptive trade practice and consumer protection statutes relatively limited?
Problem Set N	1. Using the Article Outline or Index for this Annotation, locate the section on “Summary and comment—Generally.” Which party bears the burden of proof as to a valid waiver?	2. Locate the section on “Summary and comment—Practice pointers.” When may the issue of whether a juvenile was adequately advised of the right to counsel typically be reviewed for the first time?
Problem Set O	1. Using the Article Outline or Index for this Annotation, locate the section dealing with “Consideration of religious factors generally.” In custody proceedings involving contests between natural parents of a child, what view have courts held or expressed with respect to religious factors?	2. Locate the section on “Summary and comment—Practice pointers.” Typically, in a custody determination, what does the court assume?

1. Answer the first A.L.R. Annotation question for your problem set.
  2. Answer the second A.L.R. Annotation question for your problem set.
- C. Locate the table listing the jurisdictions from which the Annotation cites authority. What is the first jurisdiction listed? (Hint: A.L.R. uses a variety of labels on the table listing jurisdictions. It may be called Table of Jurisdictions Represented, Table of Cases, Jurisdictional Table of Cited Statutes and Cases, or something else to that effect.)
- D. If you are researching in print, check the pocket part to the main volume to update your research. If you are using Westlaw or Lexis, check “Research References” on Westlaw or the section on Lexis labelled “Related matters” or “Related annotations.” Does the pocket part or “Research References” or “Related matters/annotations” list any related A.L.R. Annotations? If so, provide the title and citation of the first Annotation listed. If not, answer “None.”



# Chapter 4

## CASE RESEARCH

### Exercise 4.1

#### Researching Cases Online with Word Searches

#### Learning Outcome

After completing this exercise, you should be able to research cases online using word searches.

#### Instructions

1. An answer sheet is provided at the end of the questions for your convenience while you are working on the exercise. After you finish your research, submit your answers in typewritten form on a separate answer sheet. Do not retype the questions. Your answer sheet should contain only the answers to the questions.
2. If you spend more than 15 minutes trying to find the answer to any individual question, use the troubleshooting hints in the General Instructions for this Workbook. If you are still unable to find the answer, stop and seek assistance.

There are no separate problem sets for this exercise.

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#### THE ASSIGNMENT

For this exercise, you will conduct case research using online resources. You can research cases online in a variety of ways. Three common search techniques are: (1) retrieving a case from its citation; (2) searching by subject area; and (3) executing a word search. Exercise 1.2, Introduction to Online Research, illustrates how to retrieve a case from its citation. Exercise 4.2 covers searching by subject area. This exercise focuses on word searching with Lexis, Bloomberg Law, and Internet sources. Virtually every online source for cases, including Westlaw, allows word searching.

When you retrieve cases online, often you will see symbols next to the case citations, including red or yellow flags in Westlaw and red stop signs or yellow triangles in Lexis. You will learn about these

symbols when you learn about a research tool called a citator. In this Workbook, citators are covered in Chapter 5, Research with Citators.

## I. Review Questions

- A. Are headnotes added by publishers at the beginning of a case ever authoritative?
- B. Assume you located a case reported in F.3d. Which of the following statements about this case is true? (1) The case was decided by a federal court. (2) The case was decided by a trial court. (3) The case was decided by a state court.
- C. Assume you located a case reported in Fed. Appx. Which of the following statements about this case is false? (1) The case was decided by a federal court. (2) The case was decided by a trial court. (3) The case is nonprecedential.

## II. Legal Question

Your client has come to you with the following problem:

Your client, Sanford Millstein, lives in a small condominium complex in Waterbury, Vermont. He keeps Madagascar Hissing Cockroaches as pets. Although the insects are unusual pets, Mr. Millstein names them and cares deeply for them. Mr. Millstein's next-door neighbor, Shania Westerfeld, does not like the cockroaches. She says she can hear them hissing and is generally uncomfortable with having cockroaches housed in the unit next to hers. She has told Mr. Millstein that, given the opportunity, she would "kill all of those disgusting bugs" he keeps. One day, Mr. Millstein left the screened top covering the tank he uses to house the insects slightly ajar. Two of his favorite insects escaped. Mr. Millstein asked Ms. Westerfeld to keep an eye out for them and to tell him if she saw them so he could recapture them. As it happened, the insects found their way into Ms. Westerfeld's unit. When she discovered them, she killed them immediately, and then told Mr. Millstein what had happened. Mr. Millstein is extremely distraught over the situation and has contacted you to find out if he has a valid claim against Ms. Westerfeld.

## III. Word Searching in Online Databases

To conduct a word search in most legal research services, you enter a search in the search box. You do not have to specify any filters before you conduct your search; but you have the option to limit the results by type of authority, jurisdiction, practice area, or topic. Without at least some limits, the search will retrieve many types of authority (statutes, cases, secondary sources, etc.). The advantage to this approach is that it allows you to retrieve multiple forms of authority in a single search. When you are not sure what type of authority will help you answer a research question, or when you know you need multiple types of authority, a global search can be effective. The disadvantage is that having all results in a single search may make it difficult to focus on the most relevant or most authoritative sources. You must evaluate the results carefully to make sure you locate and use the best authority available to resolve your research issue.

## A. Lexis

To conduct a word search in Lexis, enter a search in the red search box.

For this part of the assignment, you will research two common law issues; therefore, your search results will be limited to cases. One possible claim Mr. Millstein could raise under Vermont law is conversion of personal property because pets are normally treated as the owner's property. But the damages for this type of claim are likely to be low because the value of each cockroach is roughly \$2-3. You need to research whether Mr. Millstein can recover either for the emotional distress he has suffered as a result of the loss of his pets or punitive damages.

Using the filters in Lexis, limit the search to Vermont Supreme Court cases. (Hints: Click the tab for "State." Select "Vermont" and then select "VT Supreme Court Cases from 1826.")

Execute the search below by entering the terms in the red search box at the top of the screen (not in any of the other search boxes).

damages conversion property

Sort the search results by relevance, and review results.

1. Provide the name and citation of a case decided by the Vermont Supreme Court in 1986 regarding the sale of a truck that addresses damages for conversion generally and entitlement to punitive damages. (Hint: You can narrow the search results with the filters on the left side of the screen to search for 1986 cases using the "Timeline.")
2. Review the case. What is the measure of damages for conversion generally, and under what circumstances will punitive damages be awarded?
3. Return to your search results. Filters on the left side of the screen enable you to narrow your results. Be sure that you filter only for Vermont Supreme Court cases and not by date. Filter the results of your search further by searching for specific terms within the search results. In the Search within Results search box, enter the following search terms:

"pets" or cat or dog

Execute the search, and review the search results.

- a. Provide the names and citations of three cases summarized in the search results that discuss conversion of a pet or other animal.
- b. Based on your research, analyze briefly whether your client is likely to be able to recover either noneconomic (emotional distress) or punitive damages for conversion of his pet cockroaches. (Hint: Base your analysis only on the research you have done so far; do not conduct additional research into recoverable damages.)

## B. Bloomberg Law

To conduct a search in Bloomberg Law, enter terms in the "Search All Bloomberg Law Content" search box.

For this part of the assignment, assume that Mr. Millstein’s claim arises in Alaska. You now need to research Alaska law. Specifically, you need to determine whether Mr. Millstein might be able to pursue a claim of intentional infliction of emotional distress based on Ms. Westerfeld’s actions.

From the Bloomberg Law home page, use the “Select Sources” drop-down menu to “Select Sources by U.S. Jurisdiction.” Choose the option to search “State Law,” and then select Alaska. Enter the search terms and connectors below in the “Keywords” search box:

“emotional distress” /p pet or animal

Options for filtering the search results appear on the left. Because the search was not pre-filtered by type of authority, the results are not limited to cases (which Bloomberg Law calls court opinions).

1. Use the filtering options to limit the results to “Court Opinions” from Alaska. Review the search results. Would an Alaska court recognize a claim for intentional infliction of emotional distress resulting from the loss of a pet? Provide the name and citation (as it appears in Bloomberg Law) for at least one case to support your answer.
2. If Mr. Millstein were to proceed with a claim of intentional infliction of emotional distress, what threshold determinations would the trial court make? Provide the names and citations (as they appear in Bloomberg Law) for two cases to support your answer.

#### IV. Internet

Many cases are available on the Internet. Depending on the source you use to search, you may be able to search by date, citation, or party name. Some sites also permit word searches. One source for Internet case research is Google Scholar.

Another possible claim Mr. Millstein might assert is negligent infliction of emotional distress if Ms. Westerfeld’s actions were negligent rather than intentional. For this part of the assignment, access Google Scholar to research whether Vermont would allow him to recover for negligent infliction of emotional distress based on the destruction of his pets. (Hint: You can access Google Scholar from the main Google search engine page or at scholar.google.com.)

Select the “Case law” button under the search box and check Vermont state courts. Enter the following search in the search box:

negligence and “emotional distress” and pet

Execute the search. Review the search results.

- A. Provide the name and citation of a 2009 case in which the court discussed a negligent infliction of emotional distress (NIED) claim based on the death of pet cats.
- B. Review the case. What must the plaintiff show to make out a prima facie case for NIED?
- C. Based on your review of this case, is Mr. Millstein likely to succeed with an NIED claim? Why or why not?

2. If you conducted research in print, were any of the cases you listed for Question C1, above, summarized in the pocket part or cumulative supplement? If so, list the case(s). If not, answer “no.” If you conducted research with Westlaw, answer “not applicable.”
- D. Look up one case you listed for Question C1, above, in Westlaw or the appropriate print reporter.
1. Briefly describe the facts of the case. (Hint: If the case is long, focus on the facts relevant to nuisance.)
  2. Using only this case, explain briefly whether Ms. Westerfeld is likely to be able to show interference with her property sufficient to constitute a nuisance. (Hint: You may not be able to reach a definitive conclusion with the information you have. Make your best assessment using the information you have.)

### III. Searching by Topic or Using the Descriptive Word Index

You do not have to locate a case on point to access the digest. You can also search the West Key Number System in Westlaw or use the Descriptive Word Index in print to find relevant topics and Key Numbers. Assume you learned the following new facts about your client’s situation:

Mr. Millstein again accidentally left the screened cover off one of the tanks holding the insects he was breeding, and several insects escaped. Fearing that they would travel to Ms. Westerfeld’s unit, Mr. Millstein wanted to enter her unit to look for the insects. He knocked on the door, and when she answered, rushed past her into her unit to look for the insects. He found them and removed them. Ms. Westerfeld has now served Mr. Millstein with an amended complaint that adds a count for trespass to land based on the entry of both the insects and Mr. Millstein into her condominium. You need to find out the elements of a claim for trespass to land.

- A. In Westlaw, access the West Key Number System by following the link to “Key Numbers” under the Content tab. Once you are in the West Key Number System, set the jurisdiction to the jurisdiction for your problem set (using the links immediately below the search box). Enter the term “Trespass” in the search box and execute the search.

In print, locate the Descriptive Word Index for the digest set you used for Part II, above. Look up “Trespass,” focusing on entries involving “real property.”

Review the Key Number search results or index entries. You should see a variety of subheadings, most or all of which refer to a single topic. To which topic do the subheadings refer?

- B. In Westlaw, review the list of subtopics from the Westlaw Key Number search results. In print, look up the topic you identified for Question A, above, in the digest and review the topic outline.

Which Key Number summarizes cases relating to the Entry requirement for trespass to real property (or land)? (Hint: The Key Number is the number following the key symbol.)

- C. In Westlaw, click on the link to the Key Number. In print, locate the case summaries under the topic and Key Number in the digest. Review the case summaries, and provide the information requested below for your problem set. (Hint: More than one case may apply. You only need to list one case. If you are conducting research in print and find no cases, be sure to update your research and, if necessary, consult an earlier series of the digest for summaries of older cases.)

## Westlaw Key Number or Digest Question

Problem Set	Question
A	Provide the name and citation of a state case that discusses whether substantial certainty that an entry onto land will occur is sufficient for trespass.
B	Provide the name and citation of a state case that discusses whether the entry of a thing (rather than a person) can constitute a trespass.
C	Provide the name and citation of a state case that discusses how an actor may commit a trespass without entering the land him- or herself.
D	Provide the name and citation of a state case that discusses the nature of the intrusion upon the property necessary for trespass.
E	Provide the name and citation of a state case that explains whether trespass requires that the property owner suffer harm.
F	Answer the question provided by your professor. If Indiana, provide the name and citation of a state case that discusses whether release of noxious chemicals can be a trespass.
G	Provide the name and citation of a state case involving trespass caused by toxic chemicals.
H	Provide the name and citation of a state case that explains the gist of a trespass action.
I	Provide the name and citation of a state case that discusses trespass caused by chemical discharges.
J	Provide the name and citation of a state case that discusses whether invasion of land by smoke, noise, light, and vibration is sufficient to constitute a trespass.
K	Provide the name and citation of a state case that discusses entry of a thing beneath the surface of the land.
L	Answer the question provided by your professor. If Iowa, provide the name and citation of a state case that discusses the observable or physical invasion necessary for trespass.
M	Provide the name and citation of a state case that discusses trespass caused by cigarette smoke.
N	Provide the name and citation of a state case that explains what the plaintiff has the burden of showing in a trespass claim.
O	Provide the name and citation of a state case that explains what intent refers to in the context of trespass.
P	Provide the name and citation of a state case that discusses the entry of a thing on the land.
Q	Provide the name and citation of a state case that discusses whether trespass requires damage to be done.
R	Answer the question provided by your professor. If Alabama, provide the name and citation of a state case which discusses whether an entry on land in the possession of plaintiff, actually or constructively, without express or implied authority, is necessary to sustain an action for trespass to realty.

have dangerously high levels of lead in their blood. After some investigation, Ms. Menendez discovered that the walls and trim in her apartment unit are painted with lead-based paint. She believes that the lead-based paint in her unit has caused her children to have high levels of lead in their blood. She asks you if she can hold the landlord liable for her children's condition. You need to research whether and how a landlord who uses lead-based paint can be held liable for Carlos's and Emily's condition.

Assume that you located the case listed below for your problem set. You need to find out whether your case is still valid and whether it can lead you to additional cases relevant to your legal question. In the questions below, the phrase "original case" refers to the case listed below, and the phrase "citing sources" refers to sources citing the original case. Locate the original case for your problem set, and answer the questions below.

### Original Case

Problem Set A	<i>Antwaun A. v. Heritage Mutual Ins. Co.</i> , 596 N.W.2d 456 (Wis. 1999)
Problem Set B	<i>Juarez by Juarez v. Wavecrest Management Team Ltd.</i> , 672 N.E.2d 135 (N.Y. 1996)
Problem Set C	<i>Gore v. People's Savings Bank</i> , 665 A.2d 1341 (Conn. 1995)
Problem Set D	<i>Dunson v. Friedlander Realty</i> , 369 So. 2d 792 (Ala. 1979)
Problem Set E	<i>Polakoff v. Turner</i> , 869 A.2d 837 (Md. 2005)

#### A. Checking Case Citations with KeyCite in Westlaw

Using the universal search box in Westlaw, retrieve the case for your problem set. (Hint for Problem Set B: Be sure to view the case in its North Eastern Reporter version, cited above, and not in its New York Official Reports version.)

1. Briefly, in a sentence or two, explain why this case might be relevant to your research.
2. A status flag appears near the caption of the original case. Describe the notation, and explain what it signifies about the case.
3. View the information under the "Negative Treatment" tab. Briefly, in a sentence or two, describe the negative treatment that your case has received.
4. View the "Citing References." Notice that they are organized by cases, trial court orders, secondary sources, and other categories. It is important to pay attention to the type of document in the entry because some have no effect on the continued validity of the citing case (e.g., cases decided by courts outside the controlling jurisdiction or motions filed in related cases), while others may be critical to your understanding of the law in your jurisdiction. Click on "Cases" under "Content types" in the menu on the left side of the screen. Under "Filter" (also on the left side of the screen), open the state jurisdictions. (Hint: Under "Jurisdiction," click on the + by "State.") How many of the cases are from the same state as the original case? (Hint: Look for cases from the state's courts, not cases from the federal courts from the state. The number of cases from each state is listed to the right of each state's name.)

5. KeyCite entries contain references to West headnotes. A headnote summarizes a point of law discussed in the original case. A headnote reference in a KeyCite entry identifies a proposition of law for which a citing source cites the original case. Thus, if a point of law discussed in the original case is summarized in headnote 1, and the KeyCite entry lists a citing case with a reference to headnote 1, you know that the citing case cited the original case for the proposition summarized in headnote 1 of the original case. Headnote references can help you identify authorities that cite the original case on specific issues.

You can limit the KeyCite display to show only the information most relevant to your research. You want to display state cases from the same state as the original case and then show only cases that cite the original case for the proposition summarized in the headnote listed below for your problem set. To do so, be sure the “Citing References” tab is selected. On the left side limit the “Content types” to “Cases.” Using the “Filter” options, look under “Jurisdiction” and click open “State” to select the checkbox for state cases from the same state as the original case. Once the state box is checked, look under the “Headnote Topics” to find one matching the topic in bold below. Check the box for “citing references,” click “Continue,” and click “Apply.” (Hint: If your Headnote Topic is listed more than once, click the checkbox for “citing references” for each listing.)

## Headnote Reference

Problem Set A	Headnote 10	( <b>Landlord and Tenant</b> headnote on Walls and paint)
Problem Set B	Headnote 3	( <b>Landlord and Tenant</b> headnote on Walls and paint)
Problem Set C	Headnote 3	( <b>Negligence</b> headnote on Standard established by statute or regulation)
Problem Set D	Headnote 6	( <b>Landlord and Tenant</b> headnote on Walls and paint)
Problem Set E	Headnote 10	( <b>Landlord and Tenant</b> headnote on Walls and paint)

The display will be limited to those cases from the same state as the original case with the headnote reference for your problem set.

Click on the link to one of the cases to see what the citing source says about the original case.

Provide the name and citation of the case you selected, and briefly explain what the citing case says about the original case.

(Hints: You may find more than one case from the appropriate jurisdiction that discusses the headnote for your problem set. You can choose any case that discusses the appropriate headnote. It does not matter whether the case also discusses other headnotes.)

6. Go back to the Citing References page for your original case. Clear the filters by clicking “Clear” under “Filter.” Under “Content types,” select “Secondary Sources” and “ALR.” Provide the citation (as it appears in KeyCite) of an ALR Annotation that cites the original case. (Hint: The entry may list more than one ALR Annotation. You only need to provide one citation to answer this question. Do not cite an annotation that has been superseded.)



## B. Checking Case Citations with Shepard's in Lexis

Shepardize the original case for your problem set. (The citations are repeated below.) In the red search box, type “shep:” followed by the citation for the original case for your problem set (e.g., shep: 369 So. 2d 792). Execute the search.

### Original Case

Problem Set A	<i>Antwaun A. v. Heritage Mutual Ins. Co.</i> , 596 N.W.2d 456 (Wis. 1999)
Problem Set B	<i>Juarez by Juarez v. Wavecrest Management Team Ltd.</i> , 672 N.E.2d 135 (N.Y. 1996)
Problem Set C	<i>Gore v. People's Savings Bank</i> , 665 A.2d 1341 (Conn. 1995)
Problem Set D	<i>Dunson v. Friedlander Realty</i> , 369 So. 2d 792 (Ala. 1979)
Problem Set E	<i>Polakoff v. Turner</i> , 869 A.2d 837 (Md. 2005)

1. A Shepard's signal appears near the case name and citation. Describe the notation and explain what it signifies about the case.
2. Lexis adds headnotes to cases as research references just like West and many official state reporters do. Review the Citing Decisions and identify one or more cases from the same state as the original case with the LexisNexis Headnote reference below for your problem set. To do so, click “Citing Decisions,” and in the “Narrow By” options in the left margin click on the headnote number for your problem set. Provide the name and citation of one case from your problem set jurisdiction.

(Hints: You may find more than one case that discusses the headnote for your problem set. You can choose any case that discusses the headnote. It does not matter whether the case also discusses other headnotes. Be sure to choose a case from the same state as the original case.)

### LexisNexis Headnote Reference

Problem Set A	Headnote 4
Problem Set B	Headnote 10
Problem Set C	Headnote 13
Problem Set D	Headnote 2
Problem Set E	Headnote 25

3. If the original case has been cited in secondary sources such as treatises or law review articles, Shepard's will include those sources in the entry. Select “Other Citing Sources” and then narrow to “Law Reviews.” Provide the title and citation (as it appears in the Shepard's entry) to the first document in the Shepard's entry.

4. In addition to viewing the full entry, you can customize the display in Shepard's to identify sources that treat the original case in a specific way. Select "Citing Decisions." Use the "Narrow By" options in the left margin to limit the display to cases from the same state as your original case and as indicated below for your problem set. (Hints: Open the "Analysis" menu for additional limiting options. Be sure to clear the "Narrow By" option for the LexisNexis Headnote from Question 3, above.)

Provide the name and citation of a Citing Decision that treats the original case in the manner indicated for your problem set.

(Hint: You may find more than one case that treats the original case in the manner indicated for your problem set. You only need to list one case in answer to this question.)

### Restricted Display Option

Problem Set A	Followed by
Problem Set B	Distinguished by
Problem Set C	Explained by
Problem Set D	Followed by
Problem Set E	Distinguished by

### C. Checking Case Citations with BCite in Bloomberg Law

Retrieve the case for your problem set in Bloomberg Law. The citations are repeated below.

Problem Set A	<i>Antwaun A. v. Heritage Mutual Ins. Co.</i> , 596 N.W.2d 456 (Wis. 1999)
Problem Set B	<i>Juarez by Juarez v. Wavecrest Management Team Ltd.</i> , 672 N.E.2d 135 (N.Y. 1996)
Problem Set C	<i>Gore v. People's Savings Bank</i> , 665 A.2d 1341 (Conn. 1995)
Problem Set D	<i>Dunson v. Friedlander Realty</i> , 369 So. 2d 792 (Ala. 1979)
Problem Set E	<i>Polakoff v. Turner</i> , 869 A.2d 837 (Md. 2005)

Bloomberg Law contains a citator that works much like KeyCite in Westlaw and Shepard's in Lexis. (Unlike those services, Bloomberg Law does not have a headnote system for all cases, however.) Bloomberg Law also contains other material not in Westlaw and Lexis, such as docket entries for cases that cite your original case. The buttons on the right side of the case provide access to the BCite displays.

1. Click on the "BCITE ANALYSIS" button, and open the "Case Analysis" link. This link contains a list of all the cases that cite your original case. Use the "Filters" options in the left margin to limit the display to those citing cases that have a negative status. (Hint: Under "Citing Case Status," check "Negative.") Provide the name and citation (as it appears in Bloomberg Law) to the earliest (oldest) case listed. (Hint: Be sure the "Sort" drop-down menu is set to "Date (Newest).") The earliest (oldest) case is the one at the bottom of this list.)

2. Open the “Table of Authorities” tab, located directly above your search results. (Hint: You can also get to the table of authorities by going back to the original case view, clicking on the “BCITE ANALYSIS” button, and opening the “Table of Authorities” link.) This link contains a list of all the cases cited within your original case. How many cases are cited within your original case?
3. Open the “Direct History” tab, also located directly above your search results. (Hint: You can also get to the direct history by going back to the original case view, clicking on the “BCITE ANALYSIS” button, and opening the “Direct History” tab.) Review the direct history of your case by reading the summary or summaries in the numbered box or boxes under the “Direct History Summary” heading. (Hint: The numbered box or boxes include subsequent citations to your case and any earlier and lower-court decisions relating to your case, accompanied by a description of how your case affected those decisions.) Describe the most recent entry in the direct history of your case (affirming, reversing, etc.).
4. Open the “Citing Documents” tab, also located directly above your search results. (Hint: You can also get to the citing documents by going back to the original case view, clicking on the “BCITE ANALYSIS” button, and opening the “Citing Documents” link.) Clear any selected filters. Use the “Filter by Content Type” option to limit the display as indicated below for your problem set. What is the title of the earliest (oldest) entry in your results? (Hint: If multiple entries are given and dates are not displayed, give the last entry listed.) If there are no citing authorities for your problem set, simply state “no citing authorities.”

### Restricted Display Option

Problem Set A	Law Report Articles
Problem Set B	Law Report Articles
Problem Set C	Books & Treatises
Problem Set D	Books & Treatises
Problem Set E	Books & Treatises



## Exercise 5.2

### Researching Statutes and Secondary Sources with Citators

#### Learning Outcome

After completing this exercise, you should be able to access and interpret Shepard's, KeyCite, and Bloomberg's Case Analysis entries for statutes and secondary sources.

#### Instructions

1. An answer sheet is provided at the end of the questions for your convenience while you are working on the exercise. After you finish your research, submit your answers in typewritten form on a separate answer sheet. Do not retype the questions. Your answer sheet should contain only the answers to the questions.
2. If you spend more than 15 minutes trying to find the answer to any individual question, use the troubleshooting hints in the General Instructions for this Workbook. If you are still unable to find the answer, stop and seek assistance.

There are no separate problem sets for this exercise.

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#### THE ASSIGNMENT

Exercise 5.1 shows you how to use Shepard's, KeyCite, and Bloomberg Law in conjunction with case research. This exercise illustrates how to use Shepard's, KeyCite, and Bloomberg Law in conjunction with research on other forms of primary and secondary authority.

#### I. Shepard's in Lexis

You can use Shepard's to update your research on a statute and to retrieve authority that cites the statute. (You can also use KeyCite and Bloomberg Law to update your research on a statute and retrieve citing sources. Each of these services contains slightly different features and information.) Shepard's provides current information about amendments and other legislative actions affecting the statute's status, as well as citations to cases and other sources citing the statute.

Retrieve the following federal statute in Lexis and answer the questions that follow:

42 USCS § 3604

- A. Briefly, in a sentence, explain what the statute prohibits.
- B. Shepard's tells you if there is any pending legislation that might affect this statute. Look for an upside-down yellow triangle with an exclamation point, accompanied by the phrase "Pending Legislation," on the upper-right side of the page. Is there any pending legislation that might affect this statute? If so, provide the citation to the most recent bill, as it appears in Shepard's.

- C. Shepardize the statute by clicking the “Shepardize this document” link in the right margin. The Supreme Court ruled on this statute in 2015. What is the name of the Supreme Court case?
- D. Select the option for “Other Citing Sources” in the left margin. Narrow your search results to “Court Documents.” The statute is cited in several briefs filed in September 2015 in a case before the U.S. Supreme Court. What is the name of that case?

## II. KeyCite in Westlaw

You can use KeyCite in Westlaw to retrieve authorities that cite to secondary authorities. (You can use Shepard’s for this purpose, too.) This is useful to locate additional secondary authorities relevant to your research, or to determine whether a particular secondary authority is persuasive to courts in your jurisdiction.

- A. Enter the following citation to a law review article in the universal search box in Westlaw:

63 Am. U. L. Rev. 357

1. Provide the author, title, and year of the article.
  2. Select the tab for “Citing References.” Provide the name of a U.S. Supreme Court case that cites this article.
- B. Enter the following citation in the universal search box in Westlaw to locate the provision of the *Restatement (Second) of Agency* addressing “When Master is Liable for Torts of His Servants”:

rest 2d agency s 219

1. Briefly, in a sentence, what does this section provide?
  2. Provide the name and official citation to a 2003 U.S. Supreme Court case that cites this section. (Hint: Provide the official citation to United States Reports (U.S.).)
  3. Briefly, in a sentence, what does this case hold?
- C. KeyCite is available for A.L.R. Annotations. Retrieve the following A.L.R. Annotation from its citation and answer the questions below:

100 alr fed 97

1. What is the title of the Annotation?
2. View the Citing References. Provide the name of a 2008 case from Indiana that cites the Annotation.

## III. Citations in Bloomberg Law

You can use Bloomberg Law to retrieve authorities that cite to a statute by using the “Smart Code” function. (You can use Shepard’s in Lexis and KeyCite in Westlaw for this purpose, too.) Retrieve the following federal statute in Bloomberg Law, and answer the questions that follow:

42 U.S.C. § 3605

- A. Briefly, in a sentence, explain what the statute prohibits.
- B. Click the “SMART CODE” button in the menu on the right side of the statute, and click on “Launch Smart Code.” Using the filters in the menu on the left side of the results, provide the name and citation of a 2000 case from the United States Court of Appeals for the Seventh Circuit on the Topic of “Damages and Remedies.”





To determine whether federal law protects the medical center or a volunteer from negligence claims, begin by accessing the index to *United States Code Annotated*, the version of the federal code available in Westlaw. From the home page, choose the option to search United States Code Annotated (USCA). You can do this by following the link to “Statutes & Court Rules” under the “All Content” tab or by clicking on the “Federal Materials” tab. Once you access the USCA, look on the right margin for the list of “Tools & Resources.” Click on the link to “United States Code Annotated Index” in the “Tools & Resources” list.

Once you have accessed the USCA statutes index, you will see an alphabetical list of index topics. Locate the index entry for “Volunteers” and subtopic “Privileges and Immunities.” (Hint: Open the entry for Volunteers to see the subtopics listed under it.)

The index refers you to a section, followed by the notation “et seq.” This means that the section referenced and following sections may be relevant to your research. Click on the link to the section referenced to view the section, and answer the questions below.

1. This is the first section of an act with multiple sections. Review the section you retrieved and the Historical and Statutory Notes under the History tab’s Editor’s and Revisor’s Notes. What is the name of the section, and what is the short title of the act of which it is a part?  
(Hint: The short title appears in the Editor’s and Revisor’s Notes.)
2. Go back to the Document tab for this section. This section does not answer your research question. To view an outline of the rest of the sections in the act, click on the “Table of Contents” link. Provide the first and last section numbers of the act as listed in the table of contents.
3. Review the sections of the act, and answer the questions that follow:
  - a. Is Mr. Whitehead a “volunteer” under the act? Provide the number of the section you used to answer this question. Be sure to explain your answer.
  - b. Is Mr. Whitehead protected from liability for gross negligence under the act? Provide the number of the section you used to answer this question. Be sure to explain your answer.
  - c. Is the medical center protected from liability for negligence under the act? Provide the number of the section you used to answer this question. Be sure to explain your answer.

## B. Updating Statutory Research with KeyCite

Once you retrieve a section of a statute, you can use KeyCite to check it. The KeyCite entry will contain information on the history or status of the section, as well as the most complete listing of sources that have cited the section.

View the same section of the act you retrieved for the prior question (Question A3c), and answer the questions below.

1. Review the annotations accompanying the statute. Are any cases summarized in the annotations? If so, how many? (Hint: Use the Notes of Decisions tab. Note that a case may be summarized more than once in the annotations. Be sure to count the total number of cases summarized (not the number of individual summary paragraphs) to answer this question.)

2. Although the Notes of Decisions can contain summaries of cases that cite a statute, not all are listed there. A citator will list all citing cases. To view cases citing the section, click on the “Citing References” link. How many citing cases appear in the KeyCite entry?

### C. Word Searching

In Westlaw, you can conduct a word search with or without selecting a database for your search. Because your search will retrieve many types of authority (statutes, cases, secondary sources, etc.), you can retrieve multiple forms of authority in a single search. If you are not sure what type of authority will help you answer a research question, or when you know you need multiple types of authority, a global search can be effective. But having all results in a single search may make it difficult to focus on the most relevant or most authoritative sources. You must evaluate the results carefully to make sure you locate and use the best authority available to resolve your research issue.

Continue your research into Ms. Murillo’s claims by using a word search to determine whether state law applies to your research situation. Specifically, you need to determine whether state charitable immunity law protects the medical center from liability for Ms. Murillo’s claim.

Locate the global search box. Use the jurisdiction selection box next to the search box to limit the jurisdiction to New Jersey. (Hint: Check the box for New Jersey and uncheck all other boxes.)

Enter the following search in the global search box, and execute the search:

charitable immunity

Review the search results. Notice that it retrieves thousands of documents organized by document type. Review the statutory results, and locate a statute that provides immunity from liability for negligence to nonprofit entities such as hospitals.

1. Provide the number of the section and the name of the annotated code.
2. Briefly describe what the section provides.
3. To claim charitable immunity, the medical center must qualify as a charitable institution. You need to find out whether this is a question for the court, or for the jury. The statutory language of the section you located for Questions 1 and 2, above, does not answer this question. Therefore, you must look for case law applying the statute to see if this question has been addressed.

Review the Notes of Decisions accompanying the section. Is the determination of an entity’s charitable status a question for the court or the jury? Provide the name and citation of a case that supports your answer. (Hint: The case summaries are organized by subject. Look for a subject heading that pertains to questions of law, or for the court. Click on the subject heading to go directly to case summaries under that heading.)

## III. Lexis

In this part of the exercise, you will continue your research by using Lexis to research Florida state statutes to answer the following research question:

A patient received an organ transplant at a branch of the medical center located in Florida. The patient required a blood transfusion during the procedure. Although the transplant was successful, the patient developed a rare form of hepatitis from the blood transfusion and is seriously ill. Instead of bringing a tort claim, the patient has filed a breach of contract claim against the medical center. The patient alleges that the provision of blood constituted a contract for the sale of goods and that the medical center's use of tainted blood violated an implied warranty in the contract. You need to research Florida state law to determine whether any statutory provisions address the exclusion or modification of implied warranties to blood provided for transfusions.

### A. Word Searching

For this part of the exercise, you need to research Florida state statutes. Use the drop-down menu on the right side of the red search box to limit the Jurisdiction to Florida and the Category to Statutes and Legislation.

Enter the search below:

blood and implied warranty

1. Review the search results. Provide the section number of the code section that seems most applicable to your research situation. (Hint: Identify a section in the Florida code, not a bill.)
2. Retrieve the section you listed in your answer to Question 1, above. Briefly summarize the relevant language from the statute.
3. Review the annotations accompanying the section. Scroll down until you find LexisNexis Notes and Case Notes. What must the plaintiff allege to maintain an action for breach of an implied warranty based on transfusion of tainted blood? Provide the name and citation of a case that supports your answer. (Hint: The case summaries are organized by subject. Look for a subject heading that pertains to blood and organ donations. Click on the blue downward arrow next to the subject heading to go directly to case summaries under that heading.)
4. The section you viewed is one section in a chapter comprised of multiple sections. To view an outline of sections in the chapter, scroll to the top of the document and click on the Table of Contents tab on the left side of the screen. Browse the table of contents to locate two additional sections in this chapter of the code, one that addresses the implied warranty of merchantability and one that addresses the implied warranty of fitness for a particular purpose. Provide the numbers of the sections in the annotated code.

### B. Shepardizing Statutes

You can check a statutory citation with Shepard's to locate information about the status of the statute and citations to sources that have cited the statute. Return to the statute you found for Question A1, above. Close the Table of Contents and click on the "Shepardize this document" link in the right margin.

Review the Shepard's entry, and provide the name and citation of a case decided by the Florida Supreme Court that cites the statute.

## IV. Bloomberg Law

In this part of the exercise, you will continue your research by using Bloomberg Law to research federal statutes to answer the following research question:

Additional blood tests on the patient who developed hepatitis revealed high levels of lead. The patient has lived for several years in an older home built in 1950 where lead-based paint might have been used. However, when the home was purchased the seller did not indicate lead-based paint was present. Is there a federal law that addresses lead-based paint in homes?

For this part of the exercise, you need to research federal statutes. From the Bloomberg Law home page, click on Select Sources (Select Sources by Content Type), and under U.S. Legislative, select U.S. Code.

In the “Keywords” search box enter the search below:

lead-based paint

- A. Review the search results. Skim the Results to find the chapter dealing with Residential Lead-Based Paint Hazard Reduction. (Hint: Click “View All” to see the entire list.) Which chapter covers that topic?
- B. Open the chapter you listed in your answer to Question A., above. Review the sections within the subchapters to see which one addresses the disclosure of information concerning lead when residential property is transferred. (Hint: Click the gray plus-sign next to a subchapter to view the individual sections within that subchapter.) Cite the section of the United States Code that covers that disclosure.
- C. Review the statutory disclosure provision you found in Question B. A lead warning statement is required if a residential dwelling being transferred was built prior to what year? What are the five penalties for violating this section of the law?
- D. Open the Smart Code tab for the statutory section in Question C. How many cases have cited that section of the statute? Review the filtering options under the Smart Code Criteria for that section. From the Torts topic cases, provide the case name and citation of a 2015 case from the Eastern District of New York (E.D.N.Y.).

## V. Statutory Research on the Internet

The federal code and most state codes are available in unannotated form on the Internet. Depending on the source you use, you may be able to browse the code’s table of contents, execute a key word search, or search for acts by popular name.

For this exercise, you are continuing your research into organ donation in your role as general counsel for a major medical center and must research the following situation:

The medical center’s doctors have a patient (Patient A) who needs a kidney transplant. The patient’s cousin (Donor A) is willing to donate a kidney but is not a biological match. The doctors’ colleagues at a New York hospital have another patient (Patient B) who also needs a

kidney transplant. Patient B's spouse (Donor B) is willing to donate a kidney but is not a biological match. As luck would have it, however, Donor B is a biological match to Patient A and could donate a kidney to Patient A, while Donor A is a biological match to Patient B and could donate a kidney to Patient B. The donors are willing to donate to their biological matches so that both patients can receive the transplants they need. The doctors know, however, that it is illegal to sell or trade organs for compensation, and they are not sure whether this proposed arrangement is legal. You need to locate state and federal law regarding organ sales to see whether this type of paired donation is permissible.

### A. State Statutory Research

For purposes of this exercise, assume that the procedures, if they are legal, would take place at the New York hospital, so you need to research New York law. You can locate New York statutes on the Internet in a variety of ways. One way is through Cornell Law School's Legal Information Institute website:

[www.law.cornell.edu](http://www.law.cornell.edu)

From the home page, use the drop-down menu from "Get the Law" to access "Law by Jurisdiction" and then "State Law." From the "State Law" page, follow the link to "Listing by jurisdiction," and select New York. On the page listing New York Legal Materials, follow the link for "New York Statutes," which takes you to the New York State Legislature site. Using the drop-down menu at the top of the page, select "Laws," and select "Laws of New York." This will bring up a search screen. You can execute a word search in the box above the listing of subjects covered in the consolidated laws. Execute the following search:

human organ

1. Provide the subject name and section number of the provision that prohibits the sale of human organs.
2. Review the section. Does it specifically authorize or prohibit the type of paired donation the medical center's doctors want to perform? Be sure to explain your answer.

### B. Federal Statutory Research

Having reviewed state law, you now need to research federal law to see if paired organ donation violates prohibitions on organ purchases. To research this issue, access the U.S. House of Representatives' website containing the United States Code:

<http://uscode.house.gov>

Choose the option to search the U.S. Code, and enter the following terms in the box for Search Word(s):

human organ donation purchase

1. Review the search results. Provide the title and section number of the U.S.C. that is most relevant to your research.
2. Is the type of paired donation the center's doctors would like to perform permissible under the statute? Be sure to explain your answer.
3. After the text of the statute, you will find historical notes about the statute, including notes about some amendments to the statute. Congress has amended the statute. How was the statute amended in 2007?

## B. Using a Statutory Outline

As noted above, statutory research ordinarily requires you to research a complete statutory scheme. You will need to locate an additional section of the statute you located for Question A, above, to complete your research into the following matter:

In addition to determining the applicability of state anatomical gifts laws to tendon transplant procedures, you also need to evaluate the medical center's procedures for organ donations. The existing policy places no restrictions on which physicians may participate in an organ donation procedure. You are concerned that this policy may need to be revised to comply with state law.

Often, a code will provide an outline of the sections in a particular chapter or title. A good way to find related code provisions (including the provision you need to answer the questions below) is to use the statutory outline that appears at or near the beginning of the article, subchapter, chapter, or title of the code. (Hint: On Westlaw look for the "Table of Contents" or the hot-linked headings at the top of the statute. In a print set the outline usually appears in the main volume of the code. If the statute has recently been enacted or substantially modified, you may find a full or partial outline in the pocket part or soft cover supplement.)

1. Locate the section of the act addressing which physicians may participate in an organ donation procedure. This information appears in a provision that relates to procurement organizations, and more specifically, addresses rights and/or duties of an organ procurement organization upon the donor's death.

(Hint: for Problem Sets E and K: Locate the section involving rights and duties at death.)

(Hint for Problem Set F: Review the table of contents for the entire act, including Article 5.)

(Hint for Problem Set L: Review the table of contents for the entire act, and locate the section involving rights and duties at death.)

(Hint for Problem Set N: Locate the section concerning physician removal of donated body parts.)

Provide the section number. Which physicians, if any, are prohibited from participating in procedures to remove or transplant a donated organ?

2. Based on what you found, does the medical center need to revise its policy? If not, why not? If so, how does the policy need to be changed?

## II. Federal Codes

The process of federal statutory research is similar to the process for state statutory research. To answer the questions below, locate one of the following sources:

*United States Code Annotated* (U.S.C.A.) in print or Westlaw

*United States Code Service* (U.S.C.S.) in print or Lexis

*United States Code* (U.S.C.) in Bloomberg Law

You can research the federal code using a subject index. The subject index will refer you to titles and sections within the federal code that pertain to the subject you are researching. Sometimes Congress names an act. These acts, such as the USA Patriot Act, are known by their popular names. If you know the popular name of an act, you can find its citation in the Popular Name Table in U.S.C.A. or the Table of Statutes by Popular Name in U.S.C.S. These tables list statutes alphabetically by name and will direct you to the title(s) and section(s) where the act is codified.

For this part of the exercise, you are continuing your research into matters affecting the medical center. You need to research the federal code to answer the questions for your problem set. Using *either* the subject index *or* the popular name table for *either* U.S.C.A. *or* U.S.C.S., locate statutory provisions that answer the federal statutory question for your problem set.

**If you are conducting research with Westlaw:** Follow the link to “Statute & Court Rules” under the “All Content” tab or click on the “Federal Materials” tab to access the USCA. Once you access the USCA, look on the right margin for the list of “Tools & Resources” to find the United States Code Annotated Index and United States Code Annotated Popular Name Table.

**If you are conducting research with Lexis or Bloomberg Law:** Lexis and Bloomberg Law do not include a statutory index, so you should use the popular names table.

In Lexis, under “Explore Content” choose “Statutes and Legislation,” “Federal,” and then “Codes” to see the USCS Popular Name Table.

In Bloomberg Law, select “Federal Law,” then “Federal Legislative,” and then “United States Code (USC).” Scroll to the bottom of the table of contents and place the cursor over “United States Code (USC) Popular Name Table” to access the search function.

## Federal Statutory Question

Problem Set A, B, C, D, & E	<p>You are continuing your review of the medical center’s policies and procedures. The medical center offers ophthalmic services and operates its own optometry office. The individuals who work in the optometry office are licensed by the state to prescribe corrective lenses and dispense glasses and contact lenses. You need to find out whether the optometry office is subject to the Fairness to Contact Lens Consumers Act. Specifically: (1) Are the individuals who dispense contact lenses through the optometry office considered contact lens “prescribers”? (2) Under what circumstances are contact lens “prescribers” required to provide a patient with a written copy of the patient’s contact lens prescription? (Hint: If you search a popular name table online, use the name of the act in quotation marks as your search to locate the entry for the act within the table.)</p>
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<b>G</b>	<b>Indiana</b>	<ol style="list-style-type: none"> <li>1. What is the definition of telemedicine under Indiana's health insurance laws?</li> <li>2. Does the use of a telephone constitute a telemedicine service?</li> </ol>
<b>H</b>	<b>Iowa</b>	<ol style="list-style-type: none"> <li>1. Under Iowa law can a telepharmacy site operate within ten miles of another pharmacy? List any exceptions in which the mileage rule would not apply.</li> <li>2. If the telepharmacy site applicant does not meet the mileage distance requirement from another pharmacy or an exception, is there any other way to pursue a license? Explain your answer.</li> </ol>
<b>I</b>	<b>Maryland</b>	<ol style="list-style-type: none"> <li>1. What is the definition of telehealth in terms of health care services under Maryland's health insurance laws?</li> <li>2. Does the law permit patients in rural and urban locations to be treated differently?</li> </ol>
<b>J</b>	<b>Missouri</b>	<ol style="list-style-type: none"> <li>1. What is the purpose of using telehealth technology in the Volunteer Health Services Act's ECHO program?</li> <li>2. What is the full name of the ECHO program and who manages it?</li> </ol>
<b>K</b>	<b>New York</b>	<ol style="list-style-type: none"> <li>1. What is the definition of telehealth under New York's public health laws generally (and not specific to health maintenance organizations)?</li> <li>2. Does the law provide a separate definition for telemedicine? If so, give it.</li> </ol>
<b>L</b>	<b>Pennsylvania</b>	<ol style="list-style-type: none"> <li>1. What is the definition of telemedicine under Pennsylvania's Patient-Centered Medical Home Advisory Council Act?</li> <li>2. How was telemedicine expected to assist the advisory council in its duties to develop an organizational model?</li> </ol>
<b>M</b>	<b>Virginia</b>	<ol style="list-style-type: none"> <li>1. What is the definition of telemedicine services under Virginia laws governing health insurance coverage?</li> <li>2. Are Virginia insurers required to provide coverage for telemedicine services?</li> </ol>
<b>N</b>	<b>Washington</b>	<ol style="list-style-type: none"> <li>1. What is the definition of telemedicine under Washington's laws governing home health care?</li> <li>2. Does the law provide for reimbursement for the cost of purchasing or leasing telemedicine equipment?</li> </ol>
<b>O</b>	<b>Jurisdiction assigned by your professor; or Michigan</b>	<ol style="list-style-type: none"> <li>1. What is the definition of telemedicine under the state's health insurance laws?</li> <li>2. Who can provide telemedicine services?</li> </ol>

## **I. Conducting Research**

Record all the steps in your research process.

## **II. Determining Which Statute Applies**

List the statutory provision(s) you located.

## **III. Answering the Legal Questions**

Answer the legal questions using the code section(s) you located. Be sure to explain your answers.

# Chapter 7

## FEDERAL LEGISLATIVE HISTORY RESEARCH

### Exercise 7.1

#### Researching the Legislative History of a Federal Statute Using Statutory Annotations

#### Learning Outcome

After completing this exercise, you should be able to locate documents in the legislative history of a specific federal statute by statutory annotation in Westlaw.

#### Instructions

1. An answer sheet is provided at the end of the questions for your convenience while you are working on the exercise. After you finish your research, you must submit your answers in type-written form. Do not retype the questions. The answer sheet should contain only the answers to the questions.
2. If you spend more than 15 minutes trying to find the answer to any individual question, use the troubleshooting hints in the General Instructions for this Workbook. If you are still unable to find the answer, stop and seek assistance.

#### Problem Sets

A B C D E

For letters F to O use the top letter above yours in the chart below unless directed otherwise. For example, letter M does problem set C.

A	B	C	D	E
F	G	H	I	J
K	L	M	N	O

## THE ASSIGNMENT

You can research federal legislative history in two ways: You can search for the history of a specific statute, or you can search legislative history by subject. This exercise covers research into the legislative history of a specific statute, which is the way lawyers most frequently conduct legislative history research. Exercise 7.2 covers research into legislative history by subject.

For this exercise, you need to conduct research on legislative history related to your Client Matter, below. Although secondary sources, related statutes, and cases interpreting the statute can help you understand the statute, you have decided that you need to research the statute's legislative history to understand fully how the statute applies to your client's situation.

While you can conduct legislative history research in print, this exercise requires you to use only online sources.

### I. Review Questions

- A. List four sources of federal legislative history.
- B. Rank the four sources you listed for Question A, above, in order from most authoritative to least authoritative, with source number 1 being the most authoritative and source number 4 being the least authoritative.
- C. Briefly explain why the source you ranked first in Question B, above, is considered the most authoritative source of legislative history.

### II. Using Statutory Annotations to Research the Legislative History of a Specific Statute

To research the legislative history of a specific federal statute, you first need to locate the statute and review the legislative information provided with the statute. U.S.C.A. annotations in Westlaw contain references to the statute's Public Law (Pub. L.) number and its *United States Statutes at Large* (Stat.) citation, which are useful in researching legislative history. The annotations' "History" tab includes selected committee reports, *Congressional Record* entries, and other documents concerning the legislation. Annotations in Lexis and Bloomberg Law include references to the Public Law number and *United States Statutes at Large*, but not to committee reports. (Lexis and Bloomberg Law include recent and selected historical committee reports. In Lexis you can Browse Sources for "Federal Legislative Bill History." In Bloomberg, from the Select Sources pull-down, click Select Courts by U.S. Jurisdiction and go to Federal Law>Federal Legislative>U.S. Congress. Reports are found under the House and Senate headings.)

Review the Client Matter. Use the search box in Westlaw to retrieve the provision in U.S.C.A. for your problem set.

## Client Matter and Statutory Provision

Problem Set A	You work for an organization that promotes leave policies for workers who wish to take time off work in order to have a child, raise a child, or care for a sick or ailing family member. You seek to research federal law providing for such leave.	29 U.S.C.A. § 2612
Problem Set B	You work for an organization that advocates for the rights of individuals with disabilities. You seek to research federal law prohibiting employment discrimination against persons with disabilities.	42 U.S.C.A. § 12112
Problem Set C	You work for an organization that promotes free and fair elections in the United States. You wish to research federal law establishing standards for voting systems.	52 U.S.C.A. § 21081
Problem Set D	You work for an organization that advocates against human trafficking. You seek information on federal programs to combat human trafficking.	34 U.S.C.A. § 20705
Problem Set E	You work for an organization that advocates for easier voter registration and voting procedures. You wish to research federal requirements for voter registration.	52 U.S.C.A. § 20504

- A.** Briefly, in a sentence or two, describe what the section provides.
- B.** The Public Law number and *United States Statutes at Large* citation for the section as originally enacted and for any subsequent amendments appear in parentheses immediately after the text of the statute and before the annotations.
- Review the parenthetical following the text of the section you located for Question A, above, to answer the following questions.
- Provide the Public Law number and *United States Statutes at Large* citation for the section as it was originally passed (not for any subsequent amendments).  
(Hint: Look for the earliest Public Law number and *United States Statutes at Large* citation.)
  - Click on the Public Law number link of the original Public Law to bring up the text of the original Act. (Hint: Click on the earliest linkable Public Law number.) What is the name of the Act?
  - Now go back to the statute. Has the statute been amended by later acts of Congress? If so, how many times has it been amended?
- C.** Access the committee report for your problem set. Locate the link to the committee report under the “History” tab. The report you need may appear in the “Legislative History Materials” section, the “Editor’s and Revisor’s Notes” section, or both.

Click on the link to the report, and answer the following questions.

### Committee Report Citation

Problem Set A	Senate Report No. 103-3, January 27, 1993
Problem Set B	House Report No. 101-485(II), May 15, 1990
Problem Set C	House Conference Report No. 107-730, October 8, 2002
Problem Set D	House Report No. 109-317(I), November 18, 2005
Problem Set E	House Report No. 103-9, February 2, 1993

1. Provide the name of the committee that issued the report you located.
2. Before the statute was passed into law, it was assigned bill numbers in both the House of Representatives and the Senate. Provide the bill number for the version of the bill considered by the congressional committee that issued the report you located. (Hint: Look for the “S” number for bills considered by a Senate committee, and look for the “H.R.” number for bills considered by a House committee.)
3. Provide the date of the Act’s consideration in the Senate. If more than one date is listed, provide the latest date. (Hint: Be sure to provide the latest date, not the earliest (first) date.)
4. Skim the document, and answer the committee report question for your problem set below. (Hint: Go past the full text of the bill if it is reproduced at the beginning of the report to answer the question.)

### Committee Report Question

Problem Set A	According to the section on Background and Need for Legislation, what problems does this legislation address?
Problem Set B	According to the section on Summary of the Legislation, what is the purpose of the ADA?
Problem Set C	According to the first paragraph of the report, what is the purpose of this legislation?
Problem Set D	According to the Purpose and Summary, what does the Act do?
Problem Set E	According to the Findings, what were some of the techniques developed to discourage participation in the late nineteenth and early twentieth centuries?

## Congressional Record Questions

Problem Set A	1. According to Representative Reed, in which state is this legislation already the law?	2. According to Representative Reed, in a word, does the legislation work in this state?
Problem Set B	1. According to Representative Hoyer, what has the ADA been designed to do?	2. Briefly, according to Representative Hoyer, what do the last remaining amendments deal with?
Problem Set C	1. According to Representative Ney's summary of the bill's purposes, why does the bill's program provide funds to the States?	2. According to Representative Ney's introductory remarks, what new Commission assists in the administration of Federal elections and provides assistance with the administration of certain Federal election laws and programs?
Problem Set D	1. According to Senator Leahy, what does this reauthorization confirm?	2. According to Senator Leahy, how has the reauthorization package been significantly improved?
Problem Set E	1. According to Representative Swift, what is the rather unfortunate tradition in this country that the Act is designed to eradicate?	2. According to Representative Swift, what does the legislation do for those in economic distress?

- B. Answer the first *Congressional Record* question for your problem set.
- C. Answer the second *Congressional Record* question for your problem set.

## II. Locating Legislative History in Committee Testimony

This section requires you to locate committee testimony using ProQuest Congressional or ProQuest Legislative Insight. Locate the home page for ProQuest Congressional or ProQuest Legislative Insight on your library's portal. (Hint: ProQuest Congressional and ProQuest Legislative Insight are subscription services. Therefore, you may need a password or code to access these services from a computer outside the library.)

Click on the "Advanced Search" link under "Congressional Publications" (which may be "Legislative & Executive Branch Publications" in some libraries) or the "Guided Search" link. Change the pull-down menu to "All fields *including* full text," and search only for "Hearings." (Hint: Uncheck the boxes for Publication Type, and check only "Hearings.")

Enter the search phrase below in the first search box. Execute the search, and locate the document indicated for your problem set. (Hint: Use the Narrow filters to limit your results by date.)

## Search Phrase and Document

Problem Set A	Search Phrase: "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001" Document: Hearing on "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001," February 7-8, 2001
Problem Set B	Search Phrase: "Sports Agent Responsibility and Trust Act" Document: Hearing on "Sports Agent Responsibility and Trust Act," May 15, 2003
Problem Set C	Search Phrase: "Animal Fighting Prohibition Enforcement Act" Document: Hearing on the "Animal Fighting Prohibition Enforcement Act of 2005," May 18, 2006
Problem Set D	Search Phrase: "Fair Pay Restoration Act" Document: Hearing on "Fair Pay Restoration Act: Ensuring Reasonable Rules in Pay Discrimination Cases," January 24, 2008
Problem Set E	Search Phrase: "health care reform" Document: Hearing on "America's Need for Health Reform," September 18, 2008

If you are using **ProQuest Congressional**:

For Question A, use the Contents page of the hearing to go to the Testimony to review the list of witnesses.

For Question B, select "Retrieve selected transcripts" and review the testimony of the indicated witness.

If you are using **ProQuest Legislative Insight**:

Click on the "PDF" link to pull up the full committee report.

For Question A, use the Table of Contents near the beginning of the report to review the list of witnesses.

For Question B, turn to the corresponding page in the report, and review the testimony of the indicated witness. (Hint: You can use the witness's actual statement or his or her prepared remarks to answer this question.)

## Committee Testimony Questions

Problem Set A	A. What is the name and position of the U.S. Chamber of Commerce official who testified on February 7, 2001?	B. According to the official, what is the "primary factor," or a "substantial factor," driving the rise in bankruptcies?
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## **Exercise 8.2**

### **Researching Federal Administrative Regulations Using Government Websites**

#### **Learning Outcomes**

After completing this exercise, you should be able to locate federal administrative materials in the *Code of Federal Regulations* (C.F.R.) and *Federal Register* using the Federal Government's govinfo.gov and agency websites.

#### **Instructions**

1. An answer sheet is provided at the end of the questions for your convenience while you are working on the exercise. After you finish your research, submit your answers in typewritten form on a separate answer sheet. Do not retype the questions. Your answer sheet should contain only the answers to the questions.
2. If you spend more than 15 minutes trying to find the answer to any individual question, use the troubleshooting hints in the General Instructions for this Workbook. If you are still unable to find the answer, stop and seek assistance.

**There are no separate problem sets for this exercise.**

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#### **THE ASSIGNMENT**

This exercise requires you to use government websites to locate federal administrative materials. For this exercise, you will use online sources to research legal issues raised by your client, Newton Financial Services.

#### **I. Researching Federal Regulations Using an Agency Website**

The federal government makes much administrative material available free of charge via the Internet. Like federal legislative history, federal administrative law research is easily accomplished using government websites. Some government websites, such as the Federal Government's govinfo.gov site, contain the full text of the C.F.R. Others, such as agency websites, limit their coverage to laws, regulations, and other materials in the subject area the agency regulates. If you practice regularly in an area of law regulated by a federal agency, you will become familiar with the agency sites and the unique types of information they contain. A list of agency websites is at [www.usa.gov](http://www.usa.gov).

Use the federal government websites listed below to research the following question raised by your client:

Your client, Newton Financial Services, is a brokerage corporation subject to a number of federal laws, including the Occupational Safety and Health (OSH) Act and the Consumer Financial Protection Act of 2010. Consequently, it must comply with Occupational Safety and Health Administration (OSHA) standards and regulations. Newton Financial Services received a citation from an OSHA inspector for several violations of the OSH Act. Newton Financial Services has asked you whether it must notify employees of the citation. You need to research OSHA citations to find out what your client's obligations are with respect to notifying employees.

- A. First you need to find the provisions of the OSH Act of 1970. You know that OSHA provides access to occupational safety laws and regulations, so you decide to begin with the agency's website. Go to [www.osha.gov](http://www.osha.gov) to locate the information you need.

There are several ways to locate the act. You can locate the act by using the search box to search for the OSH Act of 1970 or by searching through the A-Z Index. Drop-down menu options may also direct you to OSHA Law and Regulations.

1. Click on the link for the OSH Act. (Hint: If you navigate from the drop-down menu, you may need to scroll down the page to find a link to the OSH Act.) Review the table of contents for the OSH Act and locate the section regarding citations. Provide the section number.
2. Click on the link to the section. The section describes the process for issuing citations. Where must an employer post a citation?
3. In the version of the Act on the OSHA website, the sections are numbered as they appear in the Public Law enacted by Congress. The OSH Act is also codified within U.S.C. The codified citation appears in the right margin. Provide the citation to the section on citations as it appears in U.S.C.

- B. Because the statute gives the Secretary of Commerce authority to issue regulations regarding posting citations, you must research regulations to see if Newton Laboratories must fulfill any additional requirements in posting the citation. You can locate regulations on the OSHA website in several ways. You may use the drop-down menu under "Standards" to locate "Law & Regulations." You can also look up "Regulations & Laws" or "Standards" in the A-Z Index. (Hint: Be sure to choose the option to view "All.")

Locate the link to Title 29 of the C.F.R., Part 1903, addressing Inspections, Citations, and Proposed Penalties. Click on the link to bring up an outline of C.F.R. sections within Part 1903. Locate the regulation that addresses posting citations.

1. Provide the number of the section (also called a "Standard") you located.
2. Review the section. For how long must Newton Financial Services post the citation?

## II. Researching Federal Regulations Using General Government Research Websites

- A. Although an agency website is a convenient source for administrative information, it is not an official source for the regulations. The Government Printing Office (GPO) is the official online source for federal regulations. To continue your research in an official database, access official regulations at:

govinfo.gov

One reason Newton Financial Services received a citation was because it failed to post required information about the OSH Act where employees could see it. Newton Financial Services wants to correct this violation by posting a copy of a poster approved by the state's Department of Labor and has asked you how large the poster must be to comply with OSH regulations. Using the search functions on govinfo.gov, look up 29 C.F.R. § 1903.2, concerning requirements for informing employees about OSH Act protections. (Hint: You should be able to retrieve the regulation from its citation using the "Most Recent" version of the C.F.R.)

1. What is the title of this section?
  2. Review the regulation. What are the size and type requirements for the poster?
- B.** The official source for all federal regulations is the C.F.R. GPO provides online access to official regulations. Unlike commercial sources such as Lexis and Westlaw, the official print and online versions of the C.F.R. are not continuously updated to include changes published in the *Federal Register*. However, GPO does provide online access to C.F.R. Parts Affected as recently as the past 24 hours.

The government also has a version of the C.F.R. that is continuously updated: the Electronic CFR (e-CFR). The e-CFR is a version of the C.F.R. that is updated daily to incorporate changes to regulations published in the *Federal Register*. You can use the e-CFR to update research from an official version of the C.F.R. To answer the questions below, access the e-CFR at:

www.ecfr.gov

1. Read the "User Notice" at the beginning of the e-CFR. Although the e-CFR is updated daily, it is not a source you should cite for a regulation. Why?
2. Newton Financial Services has been informed that a former employee has filed a complaint with OSHA alleging that the company retaliated against her for reporting violations of the Consumer Financial Protection Act of 2010. Browse the e-CFR to locate 29 C.F.R. Part 1985, which contains regulations governing retaliation complaints. Identify the "Source" of the regulations at the beginning of the part. Provide the *Federal Register* citation and date.
3. Now go back to govinfo.gov. Use the citation you found for Question 2, above, to retrieve the *Federal Register* entry for the final rule. Were any changes made to the final rule based on comments submitted regarding the interim rules? Why or why not? (Hint: Search for the phrase *public comment* within the document to locate discussion of comments submitted.)



# Chapter 9

## ONLINE SEARCH TECHNIQUES

### Exercise 9.1

#### Online Search Techniques

#### Learning Outcomes

After completing this exercise, you should be able to

1. Explain how differences in database coverage affect search results.
2. Explain how to limit and refine search results.
3. Demonstrate appropriate use of Boolean search techniques in Westlaw, Lexis, and Bloomberg Law.

#### Instructions

1. An answer sheet is provided at the end of the questions for your convenience while you are working on the exercise. After you finish your research, you must submit your answers in type-written form. Do not retype the questions. The answer sheet should contain only the answers to the questions.
2. If you spend more than five minutes trying to find the answer to any individual question, use the troubleshooting hints in the General Instructions for this Workbook. If you are still unable to find the answer, stop and seek assistance.

**There are no separate problem sets for this exercise.**

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#### THE ASSIGNMENT

The purpose of this exercise is to illustrate how online search results differ depending on the scope of the database you select and the Boolean (terms and connectors) search options you use.

To illustrate the effects of the search options, some of the searches in this exercise will retrieve very large numbers of documents, while others will retrieve very few. Remember, however, that a search is neither effective nor ineffective based solely on the number of documents it retrieves. If many authorities are relevant to your research, you want to retrieve all the relevant documents. If few authorities are relevant, you want to be able to target those few authorities. The purpose of this exercise is simply to show you how various search options will affect your search results. In each research project you do, you will have to decide which approaches are most likely to retrieve the information you need.

The first step in online searching is selecting an online service in which to search. For this exercise, you will use Westlaw, Lexis, and Bloomberg Law. The questions that follow direct you to execute a variety of searches.

## I. Westlaw

### A. Selecting a Database or Jurisdiction

If you decide to research in Westlaw, you may select a database in which to execute a search. The database you select defines the content through which Westlaw will look for your search terms. The scope of your research project will determine the appropriate database(s) in which to search.

In Westlaw you can designate a database (including a jurisdiction) for your search by selecting from the “Browse” box. You can also designate a jurisdiction in the jurisdiction box next to the universal search box. Finally, you can designate a jurisdiction *after* you execute your search by using the “Narrow” filters on the left side of the search results screen.

For the questions below, assume that you need to research state case law concerning crimes associated with illegal drug use among students at school.

1. Select the jurisdiction for “All States.” (Hint: Be sure to de-select any federal jurisdiction.) Execute this search:

student and school and drug and illegal

How many cases does the search retrieve?

2. Now change the jurisdiction to “California,” and execute the same search. How many cases does this search retrieve?

If you were researching the law of all 50 states, “All States” might be an appropriate jurisdiction for your search. If you were researching only California state law, however, “California” would be a better choice, because it would limit the search results to authority from California state courts.

3. Assume that you decided to change the scope of your search to include cases from the California state courts and federal cases from the Ninth Circuit. From the jurisdiction menu, select “California” and “9th Circuit.” Execute the same search as above. How many cases does the search retrieve? (Note that this search will also automatically retrieve relevant U.S. Supreme Court cases and federal district court cases within the Ninth Circuit.)

4. Now assume that you want to search only California state cases, cases from the United States Court of Appeals for the Ninth Circuit, and all federal district court cases from California. Click the View for Cases on the left side of the search results screen. Use the “Narrow” filters to designate your jurisdictions to include all California state cases, all Ninth Circuit cases, and all cases from the federal district courts in California. (Hint: Be sure to select all the federal district courts in California.) How many cases does the search retrieve?

## B. Constructing and Executing a Search—Boolean Search Techniques

After you select a database, the next steps are constructing and executing a search. Westlaw allows you to search with or without Boolean search commands. Effective use of Boolean search commands can improve your search results. The following questions illustrate the use of connectors and search phrases.

### 1. Connectors

The connectors you use to connect search terms can greatly affect the search results.

For questions a and b, below, assume that you need to continue your research into crimes associated with illegal drug use among students at school. Now, however, you are researching all federal law.

- a. From the jurisdiction menu, select “All Federal.” (Hint: Be sure to uncheck California in the jurisdiction menu.) Type this phrase into the search box, and execute the search:

student and school and drug and illegal

How many cases does the search retrieve?

- b. Now change the connectors from “and” to “/p” (meaning “within the same paragraph”). (Hint: You can also use the “Advanced Search” option and type this phrase into the box designated for “All of these terms.”) Execute this search:

student /p school /p drug /p illegal

How many cases does the revised search retrieve?

The more restrictive the connectors, the fewer documents the search retrieves. The broader the connectors, the more documents the search retrieves. “And” is the broadest connector.

### 2. Search phrases

Another way to alter your search results is to group terms together in search phrases.

The notion of a bona fide residence may arise in cases involving qualifications for municipal employment, voting, taxing, licensing, and other areas. Assume that you are researching bona fide residences in Illinois and want to research Illinois cases.

- a. Designate “Illinois” as your jurisdiction. (Hint: Be sure to uncheck All Federal in the jurisdiction menu.) Type this phrase into the search box and execute the search:

bona fide residence

How many cases does the search retrieve?

- b. Click on “Advanced” next to the search box to access the “Advanced Search” page. Type that same phrase into the box designated for “This exact phrase,” and execute the search. How many documents does the revised search retrieve?

To search for a particular phrase in Westlaw, use the Advanced Search box designated for “This exact phrase.” Do not use the boxes designated for “Any of these terms” or “All of these terms” because the results will include irrelevant cases.

### C. Limiting and Refining Search Results

You can limit and refine your search by using the “Document Fields” in the Advanced search option or the “Narrow” filters on the left side of the case results screen.

1. A “document field” is an individual component of a document, such as its citation or title. When you use a field restriction, the search is run only within the specified component of the document.

Assume you need to research federal court cases within the Seventh Circuit in which the State of Illinois is a party. Designate “7th Circuit” in the jurisdiction box next to the search box. (Hint: Be sure to uncheck Illinois in the jurisdiction menu.)

Click on “Advanced” next to the search box to access the “Advanced Search” page. Delete the search terms from the prior search. Type “Illinois” into the “Name/Title” box under “Document Fields.” Execute the search. How many cases does the search retrieve?

Note that this search retrieves every case in which the term “Illinois” appears in the case name. Although this will retrieve decisions in which the State of Illinois is a party, it retrieves many other decisions, too.

2. Now refine your search to find cases involving quid pro quo (literally “this for that”) in employment discrimination. Click on “Advanced” to gain access to the advanced search options. Type “quid pro quo” into the box designated for “This exact phrase.” (Hint: Be sure that “Illinois” still appears in the “Name/Title” box.) Execute the search. How many cases does the revised search retrieve?
3. Refine your search further by using the “Narrow” filters on the left side of the search results screen. (Hint: Be sure to designate “Cases” as your “View.”) Select the United States Court of Appeals for the Seventh Circuit as your Jurisdiction, and select the practice area “Employment & Labor.” How many cases does your revised search retrieve?



4. Click on the “View” for “Secondary Sources.” Provide the title and citation of a law review article from 1995 that has “sexual harassment” in the title. (Hint: Filter by “Law Reviews & Journals” and date.)

Note that you may narrow your case search using other filtering criteria, including date, reported status, judge, attorney, law firm, Key Number, party, and docket number. These options appear under “Narrow” on the left side of the search results screen.

## II. Lexis

### A. Selecting a Database or Jurisdiction

Just as you can select a database or jurisdiction for your search in Westlaw, you can select a database or jurisdiction for your search in Lexis. You can select a database or jurisdiction using the drop-down menu to the right of the red search box. The “Explore Content” box also allows you make those selections. You can also select a database or jurisdiction using the browse options above the red search box. Finally, you can select a database or jurisdiction *after* you execute your search by using the “Narrow By” options on the left side of the search results.

Assume that you are researching adverse possession.

1. Using the drop-down menu to the right of the red search box, limit your initial search to the United States Supreme Court. Enter the following search in the red search box:

adverse possession

Execute the search, and click on the “Cases” sub-tab. How many cases does this search retrieve?

2. Now change the jurisdiction filter to “Virginia” and execute the new search. (Hint: Be sure to remove the United States Supreme Court filter.) How many cases does this new search retrieve?
3. Assume that you wish to research only Virginia Supreme Court cases. Using the “Narrow By” options on the left side of the search results screen, find the “Court” options. Click on the link for the Virginia Supreme Court. How many cases does this new search retrieve?
4. Assume that you decide to expand the scope of your search to include federal cases. In the drop-down menu next to the search box, modify the jurisdiction by checking the box to “Include related Federal content.” Execute the new search. How many cases does this new search retrieve?
5. To find related secondary sources, click the sub-tab “Secondary Materials.” Provide the title and citation of a 2012 law review article from the *Virginia Journal of Social Policy and the Law*.

### B. Constructing and Executing a Search—Boolean Search Techniques

Like Westlaw, Lexis allows you to search with or without Boolean search commands.

## 1. Connectors

Just as you can use connectors in Westlaw to refine your search, you can use connectors in Lexis to refine your search.

- a. Clear the search box. (Hint: Be sure that your jurisdiction is set to “Virginia” and “related Federal content.”) Type this phrase into the search box, and execute the search:

adverse /s possession

How many cases does the search retrieve?

- b. Now replace the “/s” with “/2” so that the new search phrase reads as follows:

adverse /2 possession

How many cases does this search retrieve?

The connector “/s” tells Lexis to search for any document in which the word “adverse” appears in the same sentence as the word “possession.” As a result, your search results may include documents that have nothing to do with adverse possession (because the words are used in an entirely different context, even if in the same sentence). In contrast, the connector “/2” tells Lexis to search for any document in which the word “adverse” appears within two words of the word “possession.” These results are more likely to include documents that use the phrase “adverse possession.”

Lexis allows you to use other connectors to refine your search. These are displayed by selecting “Advanced Search.”

## 2. Search Phrases

In Lexis you can also refine your search using Boolean commands by selecting “Advanced Search.”

- a. Return to the home page. Set your jurisdiction to “Virginia” and “Include related Federal content.” Click on “Advanced Search.” Type the phrase below in the “This exact phrase” box and click “Add.” (Note that the phrase appears in quotation marks in the red search box.)

adverse possession

Execute the search. How many cases does the search retrieve?

- b. Now assume that you wish to eliminate results that involve adverse possession of housing. In the top search box you can add a restriction to do so. Following “adverse possession” add: and not hous! The search phrase in that box should now read:

“adverse possession” and not hous!

Execute the search. How many cases does the search retrieve?

The extender “!” tells Lexis to search for any word that starts with “hous,” including “house,” “houses,” and “housing.” Lexis has other extenders, which are listed under “Use Connectors” in the “Advanced Search” tab. Note that this search may eliminate more results than you wish, because a document may use the words “house,” “houses,” or “housing” even if the document does not involve adverse possession of housing. The same results can be achieved by entering this search in the top search box: “adverse possession” and not hous!

### C. Limiting and Refining Search Results

You can limit and refine your search results in Lexis using the content category, jurisdiction, and practice-area menus in the “Explore Content” box, “Browse” drop-down, and red search box drop-down filters. You can also use the “Narrow By” options on the left side of the search results screen.

1. From the home page under “Explore Content” select “Briefs, Pleadings and Motions.” Click on “Federal” and then “U.S. Supreme Court Briefs.” Enter the following search phrase in the red search box:

“adverse possession” and not hous!

Provide the name of any United States Supreme Court case from 2007 in which a party filed a brief using the phrase “adverse possession,” but not the words “house,” “houses,” or “housing” (as required by your search parameters).

2. Use the drop-down filter in the search box and check “Virginia” and “Include related Federal content.” (Lexis will ask you to confirm that you want to replace the existing filter for U.S. Sup. Ct. Briefs; click “Continue.”) Using the same search phrase from C.1, above, execute the search. After selecting “Cases” on the left side of the search results screen, use the “Narrow By” options below that and go to “Timeline.” Designate dates from January 1, 2000, to December 31, 2010, and click “OK.” How many cases does this search retrieve?

## III. Bloomberg Law

### A. Selecting a Database or Jurisdiction

Just as you can select a database or jurisdiction for your search in Westlaw and Lexis, you can select a database or jurisdiction for your search in Bloomberg Law. From the “Select Sources” drop-down menu you can drill down to the database you want to search. You also can choose “Browse All Content” to select a database. Finally, you can select a database or jurisdiction *after* you execute your search by using the “Filters” on the left side of the search results screen.

For the questions below, assume that you need to research state case law concerning comparative negligence.

1. Select “Illinois” as your jurisdiction. (Hint: From the “Select Sources” drop-down menu you can drill down to U.S. Courts, Court Opinions, State Court Opinions. Click on “Illinois” to make that your database.) Enter this phrase in quotes in the “Keywords” search box:

“comparative negligence”

How many cases does this search retrieve?

2. Now assume you only want to look at Illinois Supreme Court cases on the issue. Look under “Filter Your Results” on the left and check the box for Illinois Supreme Court. How many cases are given?
3. Assume that you want to see if there are any cases from the United States Court of Appeals for the Seventh Circuit on the issue. Change the jurisdiction to “Seventh Circuit Court of Appeals,” and run the same search. (Hint: Click “Edit Search” and drill down to U.S. Courts, Court Opinions, Federal Court Opinions, U.S. Circuit Court of Appeals, and then click on Seventh Circuit Court of Appeals. Be sure that Illinois is no longer selected by unchecking that box.) How many cases does this search retrieve?

## B. Constructing and Executing a Search—Boolean Search Techniques

Like Westlaw and Lexis, Bloomberg Law allows you to search with or without Boolean search commands.

### 1. Connectors

Just as you can use connectors in Westlaw and Lexis to refine your search, you can do so in Bloomberg Law.

- a. Select “Illinois” as your jurisdiction. (Hint: Be sure to remove Seventh Circuit as a source.) Click open the “Search Help” under “Keywords” and click “More” to review the complete list of search operators. Which search proximity connectors enable you to retrieve results with search terms within the same sentence?
- b. Type this phrase in the “Keywords” box and run the search:

comparative /s negligence

How many cases does the search retrieve?

- c. Now assume that you also wish to find cases that mention “comparative fault” as well as “comparative negligence.” Add the words “or fault” to your search phrase in the “Keywords” box so it reads:

comparative /s negligence or fault

Execute the search. How many Illinois Supreme Court cases does the search retrieve?

## 2. Search phrases

Another way to alter your search results is to group terms together in search phrases. To retrieve the exact phrase in Bloomberg Law use quotation marks to surround the phrase.

Although some jurisdictions use the comparative negligence or comparative fault doctrine, others apply the contributory negligence doctrine. Assume that you are researching contributory negligence in Maryland and want to find cases that also mention “assumption of the risk.”

- a. Select “Maryland” as your jurisdiction. Type the following into the “Keywords” search box and execute the search:

“contributory negligence” and “assumption of the risk”

How many cases does the search retrieve?

- b. After reviewing your search results it occurs to you that a court might have used the phrases “contributorily negligent” and “assumed the risk.” Type the following into the Keyword search box and execute the search:

contributor! /2 negligenc! and assum! /s risk

How many cases does the search retrieve?

The multiple character wildcard/expander “!” tells Bloomberg Law to search for any word that starts with the root given. For example, “assum!” retrieves “assume,” “assumed,” and “assumption.” The “/2” connector requires that the words “contributor!” and “negligen!” be within two words of each other.

## C. Limiting and Refining Search Results

You can refine your search results in Bloomberg Law using the “Edit Search” tab above the results or the tools on the left side of the search results screen. From the “Narrow by Date” pull-down you can restrict your results by date. In the “Filter” box you can limit case results by court, topic, or judge.

1. Assume you now want to find federal district court cases from Maryland using the same search phrase from B.2.b, above. Select the “District of Maryland” as your jurisdiction. (Hint: Drill down to U.S. Courts, Court Opinions, Federal Court Opinions, U.S. District Courts, and then click on District of Maryland.) Execute the search. How many cases are given?
2. Now assume you need to find a case involving products liability from those you have retrieved in C.1, above. Use “Filter” and check the box next to “Products Liability.” Provide the name and citation to a case involving a truck rental company listed under the topic “Products Liability.”

