

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?