

# 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 (3) The case is nonprecedential.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?