

University of San Francisco

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February 2014

The West Digest / Key Number System - Instructor's Notes

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California Legal Research
Spring 2014

The West Digest/Key Number System

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February 19, 2014

Introduction

For more information...

For more details about and background on the West Digest system:

Morris L. Cohen & Kent C. Olson, *Legal Research in a Nutshell*, 10th ed. (West, 2013)
KF 240 .C54 2013 Law Open Reserve. See chapter 3, § 3.5.

Kent C. Olson, *Principles of Legal Research* (West, 2009), KF 240 .C53 2009
Law Open Reserve. See chapter 8, § 8.2.

Steven M. Barkan, Roy M. Mersky & Donald J. Dunn, *Fundamentals of Legal Research*, 9th
ed. (Foundation Press, 2009) KF 240 .J32 2009, on Course Reserve. See chapter 7.

Robert C. Berring, "Legal Research and the World of Thinkable Thoughts," 2 J. APP. PRAC. &
PROCESS 305 (2000) Discusses how the Digest system may have shaped the ways lawyers
conceive of and think about the law and legal issues. [Available on HeinOnline.]

The required CALI lesson:

How to Find Case Law Using the Digests, by Brian Huddleston
(<http://www.cali.org/lessonlink/588/LWR29/3147/jq>). This lesson focuses on print
Digests. Though the intended audience is first-year students, it is still a useful and
thorough review of how the Digests work.

Accompanying slides

The slideshow for this class is on TWEN, and can also be found at:
http://works.bepress.com/lee_ryan/

Learning Goals

Students will understand —

- The place of the West Digests among the various ways to find case law.
- The origins of the West Digest/Key Number System.
- How the West Digest/Key Number System is created and organized.

Students will be able to —

- Use the Topic and Key Number information from the headnotes of one case to find other, similar cases.
- Search for Key Numbers on Westlaw to identify Topics and Key Numbers that relate to the issues they are researching.
- Browse the West Digest to find Topics and Key Numbers that relate to the issues they are researching.
- Create a Westlaw "synopsis/digest" ("sy,di") field search to retrieve relevant cases based on words that appear in cases' synopsis and headnotes fields

Case-Law Finding Methods — Placing Digests in Context

There are at least six different methods for finding case law. You rarely have to — and rarely should — make do with just one. Which you choose will depend on what you need at the time.

The six major case-finding methods and the tools associated with them are:

1. Consulting **secondary sources** on your topic/issue to find the cases they cite.
2. Looking in the **annotated codes** to see what cases have interpreted a code section you are researching.
3. Retrieving **cases cited by a case** you already have found, simply by reading the case, or by using the “Table of Authorities” function on Lexis or Westlaw.
4. Using **Shepard’s or KeyCite** with one case (or other type of document) to see what cases cite to it.
5. Conducting **online “free-text, full-text” searching of case law** sources / databases on Lexis, Westlaw, Bloomberg Law, Fastcase, or similar services.
6. Using the **West Digest / Key Number system** to find cases that address particular topics, issues, or points of law.

The bulk of this class will deal with the West Digest / Key Number system.

Online Full-Text Searching of Case Law — A Review of Pros and Cons

Like all other methods for finding cases, online searching of full-text case law databases has its pros and cons. These are neatly offset by the pros and cons of the West Digest system. Combining Digest research with online searching is a good way to enhance your confidence in the comprehensiveness of your case law search results — especially if you also take full advantage of annotated codes (where possible) and KeyCite or Shepard’s.

Advantages of online searches of case law databases for case-finding

Advantages include —

- Access to all published state and federal case law and a substantial amount of unpublished California and federal case law.
- Ability to search within certain portions of the case (called “fields” on Westlaw and “segments” on Lexis), such as the judges’ names, the summary or synopsis, or the headnotes.
- Ability to escape categorizations and analyses imposed by other authors or editors.
- Ability to search for rare or unusual words or terms. This can be especially useful for finding cases dealing with emerging areas of law, provided that the terms of art in that area are not too common or ambiguous.
- Ability to choose either “terms and connectors” (Boolean) or natural language ` plain language searching.

Disadvantages of online searches of case law databases for case-finding

These include —

- The sheer volume of case law available for most U.S. jurisdictions. Even well-crafted searches may return too many cases to review.
- A lack of analysis of or context for the cases. (although related content, such as Related Documents (WestlawNext) / ResultsPlus (on Westlaw Classic), as well as Shepard's and KeyCite, may provide links or citations to law review articles, practice guides, or other secondary sources that relate to or cite "your" case.)
- The difficulty the search engines have with common terms, such as "summary judgment" or "standard of review." [Regarding the pre-class worksheet: one problem with creating a fully-effective terms and connectors search is that the issue involves such common words.]
- The difficulty the search engines have with ambiguous terms, such as "release" (the verb) and "release" (the document).
- The difficulty the search engines have isolating cases with a certain result (such as evidence being admitted, or a motion being granted).

Where the Digest / Key Number System comes in / why it is useful

With the Digest as a research option, you don't always have to depend on key word searches to find cases. In the Digest, human editors have already organized *all* published cases according to the issues they address.

The Digest counterbalances:

- the word-matching / computer algorithm methods of online free-text / full text searching

with

- a human-created and curated scheme for organizing case law according to the issues the cases deal with.

Because of its unique scheme of organizing cases by issue, the Digest can help you be more confident that you have found all of the cases that address an issue.

West Digest / Key Number System

What is the West Digest / Key Number system?

The Digest has origins in the late 19th century and early 20th centuries, at a time when the volume of published cases had become so large that practitioners were having trouble finding relevant cases amongst the sea of case law.

The West Digest system works as a sort of “index” to case law. In print, a West Digest is a multi-volume publication organized alphabetically by topic and containing citations to all published case law from the jurisdiction the Digest covers. The West Digest system is available (and woven into case law) on WestlawNext and Westlaw Classic.

All West Digests taken together cite to:

every. point. of. law.
from.
every. published. case.

This is what makes the Digest system such a powerful, comprehensive search tool.

Why the West Digests are useful / when to consider using them

They can help you —

- Find analogous cases (involving the same rules, regardless of facts), even if those cases arose from very different facts than your case.
Often researchers start by doing online, full-text case law searches for cases that are factually similar to their client’s situation. The Digests can help when that strategy comes up empty.
- Look at the broader concepts related to your client’s problem/issue.
- Find cases dealing with issues that can only be described with common words or words with ambiguous meanings.
- Find dictum to use as persuasive authority when you are convinced that there are no cases directly on point.
- Convince your supervisor that you have looked “everywhere.”

Characteristics (and pros and cons) of the West Digest system

The West Digests together comprise a highly organized case-finding tool.

The Digest System is...

Comprehensive

The Digest System covers *all published cases* (and some unpublished cases). The sheer size of the Digests can make them overwhelming. (The West federal digests in print contain over 800 volumes; *West’s California Digest* in print has over 225 print volumes.)

Organized (by human intelligence / human decisions / human sorting)

- Citations to all cases are organized into Topics.
- All Topics are outlined in great detail.

Flexible (but see below) — an advantage

- There are Digests that let you search for cases from the whole country, Digests for the federal courts, for selected jurisdictions, and Digests for some discrete areas of law (like bankruptcy or education).
- The Digests allow for multiple search methods.
- West updates the Digests by revising Topics and adding new Topics as the law changes.

For example:

The “Marriage” Topic now has Key Numbers for “Same-sex and other non-traditional unions” (Marriage, Key Numbers 17.5(1) and 17.5(2)).]

and

in 2009, West rolled out a completely new Topic, “Privileged Communications and Confidentiality” — moving into it headnotes from other more general topics, such as Federal Civil Procedure, Pretrial Procedure, and Witnesses.

Rigid (but see above) — a disadvantage

- It takes time for the Digest system to adapt to new areas of law and new legal theories.

Consider the 1963 *Greenman* case!

Early products liability cases, such as *Greenman v. Yuba Power Products*, were shoehorned into the “Negligence” topic. Only after some years did West create a more specific “Products Liability” topic.

There will always be a lag between developments in the law and updates to the Digest system.

- It may be hard to find cases on issues or points of law that do not fit well into the Digest System’s scheme for outlining the law.

The West editors see law a certain way. If your issue doesn’t fit neatly into their legal worldview, the Digest might not be useful to you in researching that issue.

How the West Digests are organized

Knowing how the Digests are organized will help you use them effectively.

1. The law is divided into 7 main “Divisions.”

These 7 Divisions mirror the classic law school curriculum and are further subdivided.

2. The 7 Divisions are divided into “Topics” (with “Topic” in this instance being a term of art).

There are about 400 Topics. Some Topics are very broad (e.g., “Constitutional Law”). Some are quite narrow (e.g., “Sunday”).

The Topics are arranged in alphabetical order in the Digest volumes and in the “West Key Number Digest” on Westlaw.

West’s division of law into topics represents a very traditional, non-cutting-edge approach to the law.

3. Each Topic is thoroughly outlined and divided into as many specific legal concepts (points of law or legal principles) as necessary to cover that topic.

These individual, specific legal concepts are the West “Key Numbers.” Overall there are between 90,000 and 100,000 Key Numbers in the 400 or so Topics in the West Digest System.

All Topics have a similar structure, and contain —

- A definition of the Topic (“subjects included”).
 - References to other related Topics (“subjects excluded and covered by other topics”).
 - A broad “analysis” (outline) — for lengthier, more complex Topics.
 - A detailed “analysis” (outline), giving specific Key Numbers for each point of law covered in the outline.
 - Case citations, plus text from headnotes, listed under each Key Number. These citations are what researchers want to get out of the Digest.
4. Headnotes and citations from cases are “classified” under the appropriate Key Numbers (representing the points of law addressed in the headnotes).

The editorial process underlying the West Digest system

How do case citations get into the Digests under the “right” Topics and Key Numbers?

West’s process for editing cases produces the materials for its Digests. It’s in the editorial process that cases get assigned to the appropriate Topics and Key Numbers.

The process is:

1. A West “attorney-editor” reads a new case (for example: *Harris v. Time Inc.*).
2. The West editor writes one or more headnotes for the new case. Each headnote summarizes a point of law addressed (even in *dictum*) in the case.
3. A different West attorney-editor “classifies” the headnotes by Topic and Key Number.

For each headnote, this involves deciding, which Topic — and which Key Number of that Topic — it should be listed under in the Digest.

The editors who do this work often have expertise in specific areas of law. They strive to be very consistent so that cases that address similar points of law all end up under similar Topics and Key Numbers. The goal is for researchers to be able to use the Digest to find all cases dealing with a particular issue or point of law.

4. The headnotes and the citation to the case are inserted into the Digest in the place(s) — Topics and Key Numbers — specified by the second attorney-editor.

The final published case (in print and on Westlaw) also includes these headnotes, along with the Topics and Key Numbers to which the headnotes are “classified.”

A researcher can enter the process at any point — with a case or just with a Topic and Key Number — to find relevant information.

West Digests on WestlawNext

The West Key Number system is significant part of the algorithm that underlies WestlawNext's WestSearch search engine. (West calls it "the foundation of WestSearch.")

You can also browse and search within the West Digests on WestlawNext. To do so, start at the WestlawNext home page and select the "Tools" tab. Then, select the "West Key Number System" link.

West Digests on Westlaw Classic

The Digest is available via the "Key Numbers" link on the top center of every screen on Westlaw Classic.

Once you select the "Key Numbers" link, the two most useful features are—

1. A "Search for Key Numbers" function. This lets you run a simple search within the Topic/Key Number outline to find Topics and Key Numbers whose description contains your search terms.

For example, if you wanted to know where in the West Digest system to find topics and key numbers covering community property and commingling, you could search here for:

"community property" commingle

[or, for example, to find topics and key numbers covering the protection of endangered species, you could search here for: "endangered species."]

2. A "West Key Number Digest Outline." This lets you browse all 400 or so alphabetical Topics, and to drill down within any Topic to see all of its Key Numbers. You can apply what you have found to search for cases that are "classified" according to particular Topics and Key Numbers.

West Digests in print

There are multiple West Digests. Each covers a certain jurisdiction or area of law.

No matter what the jurisdiction or area of law, each Digest uses the same Topic-and-Key-Number scheme. There is a Digest for the entire country as well as Digests for federal cases, for the West "Regional" reporters of state court cases, for some individual states (like California), and for some specific areas of law (such as bankruptcy, education law, employment, family law, federal claims, immigration, insurance, military justice, personal injury, workers' compensation).

The West Digests for California are:

West's California Digest, 1850-1950, KFC 57 W47 Law Stacks

West's California Digest, 2d 1950-, KFC 57 W471 Law Stacks

West Digests in print have become so outrageously expensive to maintain that it's an open question whether they have any long-term future.

Is There a Digest on Lexis? Sort of ...

The West Topic and Key Number system is proprietary and online it is exclusive to Westlaw. But, after years of scoffing at this system, Lexis has taken tentative steps to create a digest of its own.

To find this “digest” on Lexis Advance, select the “Browse Topics” link immediately above and to the right of the search box.

[To find this “digest” on Lexis.com, select the “Search” at the top, left-hand side of the screen, then select the “Search by ... Topic or Headnote” from the pull-down menu. You can then either run a simple word search to “find a legal topic,” or you can browse (“explore”) the legal topics to find those that might address your issue.]

Lexis’s “digest” has far fewer topics (about 40, versus about 400), and each topic is divided into fewer subdivisions.

Compare:

Lexis’s “Family Law” topic

to

West’s many family law Topics, e.g., “Child Custody,” “Child Support,” “Divorce,” “Husband and Wife,” and “Marriage”

Using the West Digest system to find relevant cases

There are several methods for using the West Digest system to find cases addressing an issue or problem, depending on whether you are using the Digest in print or on Westlaw. There is also a method for using the West Digest System to find cases that define words.

1. The “One Good Case” method – Westlaw or print

This requires one case that is at least marginally relevant or useful — one case that states a point of law about which you’d like to find similar cases. The “one good case” needn’t be very good at all. It can be from another jurisdiction, or it can state the point of law in *dictum*.

The case should have at least one headnote that summarizes the point of law that interests you.

The process on WestlawNext is —

- a. Locate the headnote stating the point of law that is relevant to your research.
- b. Select the Topic/Key Number link in that headnote.

The next screen will show headnotes from cases that have headnotes with that same Topic/Key Number.

These cases will initially be from the same the jurisdiction as the case you started with. Change jurisdictions via the “Change” link at the top of the results list.

And, once you know one good Topic and Key Number, you can go back to the West Key Number System and browse the outline for that Topic to see if there are other Key Numbers relevant to your issue.

The process on Westlaw Classic is —

- a. Locate the headnote stating the point of law that is relevant to your research.
- b. Select the Topic/Key Number link in that headnote.

- c. At the next screen ("Custom Digest") —
 - i. Select either "Most Recent Cases" or "Most Cited Cases."
 - ii. Select your desired jurisdiction.
- d. Click "Search."

And, once you know one good Topic and Key Number, you can go back to "Key Numbers" and the "West Key Number Digest Outline" to browse the outline for that Topic to see if there are other Key Numbers relevant to your issue.

"One good case" examples

For cases on the validity of release of liability signed by participant in leisure sports activity: starting from *Bertotti v. Charlotte Motor Speedway, Inc.*, **893 F.Supp. 565** (W.D.N.C. 1995) and using headnotes 3 and 5, we find the Topic "Public Amusement and Entertainment" and the Key Number 130 (315Tk130). This Topic and Key Number can be used to find similar cases from any jurisdiction.

— or —

For cases on the application of the "sophisticated user" doctrine in products liability cases in California, starting from Massachusetts case: *Carrel v. National Cord & Braid Corp.*, **852 N.E.2d 100** (Mass. 2006). Headnotes 2–5 lead to the Topic Products Liability and the Key Number 137 (313Ak137). This Topic and Key Number can be used to find similar cases from any jurisdiction.

2. "Search West Key Number System" on WestlawNext

This method lets you run a search within the Key Number System to find relevant cases and use those cases to identify helpful Topics and Key Numbers.

The process on WestlawNext is —

- a. Start at the WestlawNext home page.
- b. Select your preferred jurisdiction from the jurisdiction pull-down menu.
- c. Select the "Tools" tab.
- d. Select the "West KeyNumber System" link.
- e. Enter some terms that describe your issue in the search box.
 - (Generally plain language/natural language searches *should* work. But due to an occasional glitch, they sometimes fail. If so, try an "advanced" / terms-and-connectors search, using the "AND" connector to join your search terms. For example:
 - adv: "search terms" and "key words")

The next screen will show headnotes from potentially relevant cases.

You can browse these results for helpful cases, or you can apply the "one good case" method to the cases you find in order to identify the most helpful Topic(s) and Key Number(s). You can then use those Topic(s) and Key Number(s) to find every case from your jurisdiction (or another) that addresses the same point of law. To do this:

- i. Identify the best headnote(s) in a relevant case.
- ii. Select the Topic / Key Number link in that headnote.
Your results will be cases from your jurisdiction to which the West editors have assigned the same Topic and Key Number. These cases should all address the same point of law as the case you started with.
If desired, change jurisdictions by using the "Change" link at the top of your results list.

Also, once you know one good Topic and Key Number, you can go back to the West Key Number System and browse the outline for that Topic to see if there are other helpful Key Numbers.

3. The "Descriptive Word Index" method – for Digests in print

It can be hard to find where your issue or problem might be dealt with in the 400 or so Topics of the West Digests. Descriptive Word Indexes exist to help researchers find which Topics and Key Numbers address the problem at hand.

The "Descriptive Word Index" method allows you to use the *print* Digests to look for relevant cases without already having a case on point.

The process is —

- a. Locate the Descriptive Word Index volumes near the end of the Digest set.
- b. In the Descriptive Word Index, look up terms related to your issue or problem. Look up terms having to do with legal issues (causes of action, defenses, relief sought, etc.) and/or facts (parties, places, objects, etc.).
The terms you find in the Descriptive Word Index will lead you to specific Topics and Key Numbers.
- c. Go to the Topic outline ("analysis"), and check to see if the Key Number the Descriptive Word Index referred you to is in fact relevant to your research.
Also take a second to skim the Topic outline to see if there are other relevant Key Numbers.
(At this point, you can also sign on to Westlaw and browse the West Key Number System to get to the Topic and Key Number(s) you found in the Descriptive Word Index.)
- d. Turn to where case citations are listed under the Key Number(s), skim the case headnotes, and get citations to any potentially useful cases.
(If you are now on Westlaw, you can follow any useful Topic/Key Number links to pull up cases.)

3a. Synopsis / Digest ("sy,di") field searching – for Westlaw

On Westlaw there is no exact equivalent of the Descriptive Word Index. So, some researchers use the Descriptive Word Index in print to find useful Topics and Key Numbers, and then go to Westlaw to continue their research using those Topics and Key Numbers.

In case law on Westlaw (Next and Classic), you can *approximate* a Descriptive Word Index search by searching for terms related to your issues or facts in the "synopsis" and/or "digest" fields. The "synopsis" field contains a brief summary of the essence of the case. The "digest" field contains the text of the headnotes, and information about where those headnotes are classified in the West Digest System.

A "Synopsis/Digest" ("sy,di") field search searches both fields at the same time.

A typical "synopsis digest" field search looks like:

synopsis,digest("slip and fall" w/p parking or garage)

or —

sy,di("slip and fall" w/p parking or garage)

or —

synopsis,digest(refugee w/p "well-founded fear" w/p "social group")

or —

sy,di(refugee w/p "well-founded fear" w/p "social group")

You can use "sy,di" field searches to identify the best possible Topic and Key Number for cases addressing an issue.

For example, if you are researching whether parody can be raised as a defense in a trademark infringement action:

The search **sy,di(parody w/p trademark)** leads to cases with the Topic "Trademarks" and the Key Number 1524(2) [382Tk1524(2)]

Lexis (Lexis.com) equivalents

There are two equivalent "segments" (fields) Lexis.com — the "In-headnote" (LexisNexis headnote) segment and the "In-summary" (LexisNexis summary) segment. Searches with these segments look like:

In-headnote(custody and child and religio!)

or

In-summary(disab! and limit and "major life activity")

It's not yet possible to search the "In-headnote" and "In-summary" fields on Lexis Advance, but it should be sometime in the near future.

4. The "Browsing a Known Topic" method (a.k.a. "Topic Analysis" method)

If you can identify which of the Digest System's 400 or so Topics might cover your issue, you can browse the outline of that Topic to see what helpful Key Numbers exist.

The process is:

a. Identify a likely Topic.

- WestlawNext —

The Topics are listed alphabetically in the "West Key Number System."

To get to the "West Key Number System,"

- Start at the WestlawNext home page.
- Select the "Tools" tab.
- Select the link "West Key Number System."

- Westlaw Classic —
The Topics are listed alphabetically in the “West Key Number Digest Outline.”
To find the Digest on Westlaw Classic:
 - Select the “Key Numbers” link at the top of the Westlaw screen.
 - Select the link “West Key Number Digest Outline.”
- Digests in print —
The Topics are listed in the “Outline of the Law” and the alphabetical list of Topics at the beginning of each and every print digest volume.
A list of Topics by practice area appears at the beginning of *West’s Analysis of American Law*, KF 240 .W47 Law Reference Desk.

- b. Scan or drill down into the outline of the Topic for relevant Key Numbers.
- c. Turn to or select the Key Number(s) to find citations to cases.

On WestlawNext, simply click on the Key Number link.

On Westlaw, check the box(es) next to applicable Key Numbers, then click the “Search selected” button at the bottom of the screen. At the next screen, select the jurisdiction you need, and click the “Search” button.

Example — on the issue of who may adopt someone:

Adoption [Topic]

Persons who may adopt others [Key Number 4]

5. Words & Phrases — using Digests to find definitions

If you need a case that gives a definition of a word or phrase (especially of a common term, like “send” or “willful misconduct”), use West’s “Words & Phrases.” Words & Phrases are not technically part of West’s Topic and Key Number structure, but they exploit the fact that the West editors add special codes to headnotes that summarize courts’ definitions of words.

The search techniques are:

- a. “Words & Phrases” on WestlawNext:
 - i Select the jurisdiction you want.
 - ii Use the “words-phrases” field to restrict your search.

For example,

words-phrases(thing)

— or —

wp(thing)

- b. “Words & Phrases” in Print —

Find the Digest for the jurisdiction you need, locate the alphabetical “Words & Phrases” volumes near the end of the set, and look up your word / term.

- c. "Words & Phrases" on Westlaw Classic — two methods:
 - i Use the "words-phrases" field to restrict your search.
Example, in the CA-CS or CA-CSR databases:
words-phrases(thing)
— or —
wp(thing)
 - ii If your subscription agreement includes it (some Westlaw contracts don't), select the "Words and Phrases" (WORDS-PHRASES) database, and run your search there.