California Legal Research
Spring 2011

Finding Case Law I
Emphasizing Annotated Codes & Lexis/Westlaw Search Techniques
February 23, 2011

Introduction

For more information...


A suggested CALI lesson:
Introduction to Search Logic and Strategies, http://www.cali.org/lessonlink/1121/LR59/1699/flash

Agenda for class on February 23

Today we’ll cover some common ways of finding cases. We’ll pay particular attention to annotated codes, and to Lexis and Westlaw search techniques and tips.

Learning Goals

After this class, students will:
• be able to list a variety of different methods for finding case law
• understand the advantages and disadvantages of the major methods for finding case law
• be able to use annotated codes to find case law that interprets statutes
• be able to exploit field/segment searching and case-law metadata to retrieve cases relevant to the issues they are researching
• be able to use Focus and Locate to search within Lexis and Westlaw search results.

Online Research Survival Kit

This outline refers often to the Online Research Survival Kit. This collection of useful information and tips is available in the “General Course Materials” section of the class TWEN site.
Six Major Case-Law Finding Methods

There are at least six different methods for finding case law. 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, or similar services.
6. Using the West Digest / Key Number system to addressing particular topics, issues, or points of law.

This class will focus on secondary sources, annotated codes, and the West Digests, and will look at when you would use each method, together with each method’s advantages and disadvantages.

Secondary Sources

Although the major purpose of most secondary sources is to explain the law and lay out the general rules that will be applied, all good secondary sources will cite to at least some cases to support the assertions they make.

When to use secondary sources to find cases

Secondary sources are useful when —

• You are hoping to find cases stating general rules that you can apply to your client’s unique facts.
• You’d like some analysis, explanation, or discussion along with your case.
• You do not necessarily need to see every single case on an issue.

Advantages of secondary sources as case-finding tools

These include —

• Selection of “leading” cases. (The Witkin publications are particularly strong here.) The author(s) may have cited to cases that do a good job stating the general “black letter” rule, and that you can apply to your client’s unique situation.
• Presentation of case citations in a larger context to help you understand the legal framework in which your issue falls
• Discussion of what cases have held, and how cases might relate to one another.
Disadvantages of secondary sources as case-finding tools

These include —

- Lack of comprehensiveness. Usually some relevant cases will be left out. (This is less likely to be the case when you are working with law review articles or, sometimes, with ALR annotations.)
- A tendency to focus on general rules (the “big picture”) that can make it hard to find cases that are factually similar to your client’s issue.
- The possibility that for some issues or even whole areas of law, there may be no useful secondary source.

Examples of secondary sources leading to useful case law citations

7 B. E. Witkin, et al., Constitutional Law in Summary of California Law § 72 (10th ed. 2005). This section cites cases that discuss the distinction between amendments and revisions of the California constitution.


Annotated Codes

A major purpose of annotated codes is to give you citations to cases that interpret specific code sections.

The two annotated codes for California are:

West’s Annotated California Codes, KFC 30.5 .W4 Law Stacks. On Westlaw as the “California Statutes - Annotated” (CA-ST-ANN) database.

Deering’s California Codes Annotated, KFC 30.5 .D4 Law Stacks. On Lexis as the “CA - Deering’s California Codes Annotated, Constitution, Court Rules & ALS, Combined” (CAL;CACODE) source, or, for code provisions only, without rules or Constitution, the “CA - Deering’s California Codes Annotated” (CAL;CODE) source.

Both list citations to case law under “Notes of Decisions.”

When to use annotated codes to find cases

Annotated codes are useful —

— whenever you need to know how the courts have interpreted code sections/statutes at issue in your client’s situation.

Advantages of annotated codes as case-finding tools

The chief advantage is —

— Comprehensiveness. The editors strive to include citations to every published case that substantively interprets the code section you are researching. Plus, in California (and for federal law), having two publishers’ codes means that you can use one to cross-check what you have found in the other. (Lexis’s Deering’s
California Codes Annotated and West’s Annotated California Codes differ slightly in their coverage of cases. Deering’s “Notes of Decisions” include Court of Appeal cases that are pending before the California Supreme Court. West’s does not include these cases.

Disadvantages of annotated codes as case-finding tools

These include —

- Lack of analysis, explanation, context. All you get is the very brief headnotes from the case. This is mitigated, however, by the publishers’ practice of citing selectively to law review articles, practice guides, legal encyclopedias, and sources like the Witkin publications that discuss the code section.

- Comprehensiveness(!). Where there are hundreds or thousands of cases interpreting a code section, it can be hard to sift through the “notes of decisions” to find cases applicable to your client’s issue.

- Lack of utility if your issue is common law / non-statutory.

Examples

Compare the Notes of Decisions to Cal. Civ. Code § 3294 (punitive/exemplary damages) on Westlaw and Lexis. Because each publisher organizes the Notes of Decisions differently, you may find that one of these questions is easier to answer using one publisher’s code, and the other is easier to answer in the other publisher’s code.

Suppose you want to know how the courts address punitive damages from joint tortfeasors, and if so how those damages might be allotted?

Suppose you are looking for cases on punitive damage awards in malpractice cases?

For any given project where you are annotated codes to find cases, one publisher’s code may work better for you — and which publisher’s code will be more helpful will vary from project to project.

Table of Authorities

If you have one decent case, it will probably cite at least some cases that would be relevant to your issue. In addition to simply reading the one case, you can also use the “Table of Authorities” (TOA) feature on Lexis or Westlaw to pull up a list of the cited cases.

This method is not comprehensive, and it only looks backward in time.

One case isn’t likely to cite all of the relevant cases on an issue, but it will probably cite to at least one leading case from the jurisdiction, which you can then use as a springboard for further research.
Shepard’s and KeyCite

Shepard’s and KeyCite have dual functions; they help you verify the status of authorities, and they help you find other materials that cite to the case (or other document) you are Shepardizing or KeyCiting.

When to use Shepard’s or KeyCite to find cases

Shepard’s and KeyCite are useful —

— Whenever you want to find any later cases that cite to a case you already know about.

Advantages of Shepard’s and KeyCite as case-finding tools

These include —

• Comprehensiveness. Both Shepard’s and KeyCite have as a goal to include all later published cases that cite to your case. In addition, both also include citations to unpublished cases.

• (Some) editorial judgment. The later citing cases are tagged according to the issue or point of law from your case that they discuss.

Disadvantages of Shepard’s and KeyCite as case-finding tools

These include —

• Lack of any real analysis, explanation, context. (But, KeyCite and Shepards may lead to practice guides, articles, etc.)

• Lack access to cases that are similar to your case but do not cite to your case.

• Comprehensiveness(!). Where there are hundreds or thousands of cases that cite to “your” case, it can be hard to sift through them. This is mitigated somewhat by Shepard’s “Focus – Restrict By” feature and by KeyCite’s “Limit KeyCite Display” feature.

Online Full-Text Searching of Case Law — Overview

Like all other methods for finding cases, online searching of full-text case law databases has its pros and cons.

When to use online searches of case law databases to find cases

Online searches of case law are useful —

— When you are looking for cases with facts similar to your case

— When you are looking for cases dealing with an issue, and your likely search terms are not too common, or vague, or ambiguous
Advantages of online searches of case law databases for case-finding

Advantages include —

- Access to all published California case law and a substantial amount of unpublished California case law (along with all published state and federal case law and a substantial amount of unpublished 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 searching. On Lexis, there’s a choice of two natural language search options: regular natural language and “Easy Search.” So-called Classic Westlaw has only one natural language search option. WestlawNext gives searchers the option of the completely new “WestSearch” search engine, which is partially bases on natural language algorithms.

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. (But Related Content and ResultsPlus, as well as Shepard’s and KeyCite, may provide some 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.”
- 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).
Online Full-Text Searching of Case Law — Tips & Techniques

Smart Source Selection

Pick the narrowest source/database that fits your needs. Look for:

A source that is limited to your jurisdiction.

For California projects, look for a California-specific source first. Go to a non-California-specific source only if no good California option exists.

A source that is restricted to the area of law or topic you are researching.

For California projects, look for a California-specific source that is restricted to the area of law or topic you need.

For case law: consider carefully whether you want to include or exclude:

Unpublished cases

Federal cases

For California projects, there may be federal diversity cases interpreting California law. These are persuasive (not mandatory) authority and can give you useful guidance when there are no cases from the California courts that are directly on point.

Natural Language Searching

Switch between Terms & Connectors and Natural Language as needed.

(On Lexis, consider using both Natural Language and EasySearch.)

For factors affecting when to choose which type of searching, see: “Natural Language and Terms & Connectors: Choosing Between Them” in the “Survival Kit.”

Example — a natural language search designed to find cases generally discussing conflicts of interest in class action lawsuits:

In “CA Published Cases, Combined” [Lexis] or “California Reported Cases” (CA-CSR) [Westlaw] — Search:

"conflict of interest" "class action"

Crafting Terms & Connectors Searches

Keep in mind:

Perfection is not required — and in fact is not even possible. Even the best searches can fail to retrieve useful/relevant documents.

If you find one good document, especially on Lexis or Westlaw, you can use it to find others. (We’ll do more of this later in the term.)

Don’t rely on Terms & Connectors case law searches for all of your research on a problem or issue. There are many other ways to find cases.

Use the “Handy All-Purpose” search form (included in the “Survival Kit”) to remind you of the various steps and factors that go into building a good search.

For more advice on creating searches, see the handout: Issue-Based Searching (also included in the “Survival Kit”).
Customizing Terms and Connectors Searches

For any given issue, the search you draft will vary depending on several factors. These include:

The type of material being searched.

For case law, you may want to consider using more search terms, more alternatives, and more fact-based terms.

For statutes & regulations, you should start with more broad, general terms. Statutes and regulations are often drafted to apply broadly in many contexts and situations. If your search terms are too specific to your client’s facts you may miss relevant documents.

For secondary sources, especially practice guides, you may want to consider using shorter searches with fewer, more general terms.

The size of database/source.

The more documents there are in a database/source (e.g., a California cases database), the more precise and narrow your search may need to be.

The fewer documents there are in a database/source (e.g., Witkin publications, or a practice guide), the less elaborate your search needs to be.

Your billing plan. [More on this in the session on Cost-Effective Research]

On hourly plans, you can try a lot of different searches in a short time to get at what you need.

On transactional plans, it’s best to try for one broad search and then use Focus (Lexis) or Locate (Westlaw) to search within your results for what you were hoping to find.

Examples — terms and connectors searches designed to find cases discussing the “community of interest” requirement for certifying class actions.

In “CA Published Cases, Combined” [Lexis] or “California Reported Cases” (CA-CSR) [Westlaw] — Search:

"community of interest" w/p certification w/p "class action"

In the “California Class Actions and Coordinated Proceedings” source on Lexis, or in the “Cohelan on California Class Actions” (CACLASSACT) database on Westlaw — Search:

"community of interest"

Note that the search in the practice guides eliminates "class action," which is redundant because the guides are already limited to class actions. It also eliminates "certification" because "community of interest" usually implies certification so "certification" can probably be safely omitted from a search of a short, specialized class action guide.
Locate (Westlaw) and Focus (Lexis)

Use Locate/Focus to search within results and to keep costs down. (On transactional billing plans, there is no additional cost for running Locate/Focus searches.) The technique is:

1. Run a search that is fairly broad and may retrieve a relatively large number of documents among which you believe there are documents relevant to your topic, problem or issue.
2. Use Locate/Focus to search within those documents to try to tease out the relevant documents that you need.

Example — Terms and Connectors searches of cases involving the “community of interest” requirement for certification of class actions, using focus/locate to narrow down the results cases dealing California’s unfair competition law (Business & Professions Code § 17200 et seq.).

In “CA Published Cases, Combined” [Lexis] or “California Reported Cases” (CA-CSR) [Westlaw]

Search —

"community of interest" w/p certification w/p "class action"

Focus (Lexis) or Locate (Westlaw) —

"unfair competition" or 17200

Using Locate/Focus with natural language searching. It is possible to use Locate/Focus after you run a natural language search, but note that Locate/Focus searches are always “Terms and Connectors” searches.

Example — Natural Language search in “CA Published Cases, Combined” [Lexis] or “California Reported Cases” (CA-CSR) [Westlaw]

Search —

"community of interest" certification "class action"

Focus (Lexis) or Locate (Westlaw) using Terms & Connectors syntax —

"unfair competition" or 17200

Field (Westlaw) and Segment (Lexis) Searching

Field/Segment searches let you search for documents where your search terms appear only in certain portions of your document. These searches can give you better, more precise results.

Field/Segment searches of the “editorial enhancements” of case law (the synopsis/summary and the headnotes) are good ways to find cases that are actually about your issue, problem or fact pattern — as opposed to cases that contain your terms but do not actually address your client’s situation.

For more information, see: “Fields and Segments on Lexis & Westlaw” in your “Survival Kit.”
**Example** — Terms and Connectors case-law searches using the summary or synopsis segment/field to find cases that are more likely to be about the "community of interest requirement for certification of class actions.

In "CA Published Cases, Combined" [Lexis] or "California Reported Cases” (CA-CSR) [Westlaw] — Search:

\[
\text{In-summary("community of interest" w/p certification w/p "class action") \[Lexis]} \\
\text{synopsis("community of interest" w/p certification w/p "class action") \[Westlaw]} \\
\text{[And now try Focus or Locate: "unfair competition" or 17200 ]}
\]

**Example** — Terms & Connectors case-law searches to find death penalty cases by former California Chief Justice Ron George.

In CA Published Cases, Combined [Lexis] or California Reported Cases (CA-CSR) [Westlaw] — Search:

\[
\text{writtenby(george) and In-summary("death penalty" or "capital punishment" or (sentenc! w/2 death) or "capital murder") \[Lexis]} \\
\text{judge(george) and synopsis("death penalty" or "capital punishment" or (sentenc! w/2 death) or "capital murder") \[Westlaw]} \\
\]

**Examples** — Using West-Codenotes (wcn) field. This field contains information indicating when a court has ruled a statute to be unconstitutional or has otherwise cast serious doubt about the validity of the statute. The field contains a description of the court's action and a citation to the statute. As with all field searching, you can combine a West-Codenotes field search with any other search terms.

To find cases involving schools/education in which statutes were struck down, using California Reported Cases (CA-CSR) [Westlaw] — Search:

\[
\text{wcn(constitutional! or unconstitutional! or valid! or invalid!) and sy,di(school or education)}
\]

To find cases addressing the constitutionality of Penal Code § 290, using California Reported Cases (CA-CSR) [Westlaw] — Search:

\[
\text{wcn(constitutional! or unconstitutional! or valid! or invalid! and 290)}
\]

(The second example shows how to incorporate into the wcn() field search the citation to the code section you are interested in.)

**Using “Metadata”**

Exploit “metadata” where it is available.

What is metadata?

Metadata is information about information. It includes, for example, information in the synopsis/summary of a case, in case headnotes, in the titles of articles, in the prelim/heading portion of statutes and regulations.

Why metadata?

Searching the “metadata” helps you find documents that are actually about the concept or idea or topic your search terms are meant to convey, as opposed to documents that happen to contain your terms but are actually about something else.

Specialized field/segment searches let you search “metadata” on Westlaw and Lexis.

For more information, see: “Metadata in Online Research” in your “Survival Kit.”
Example: Summary/Synopsis Search — Terms & Connectors case-law searches (like the ones above under “Field & Segment Searching”) using the Lexis summary segment or Westlaw synopsis field to find cases that are more likely to be about the “community of interest” requirement for certification of class actions.

- `In-summary("community of interest" w/p certification w/p "class action")`  [Lexis]
- `synopsis("community of interest" w/p certification w/p "class action")`  [Westlaw]