Case-Finding Techniques: Instructor's Notes

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Available at: https://works.bepress.com/lee_ryan/1/
Six Ways to Find Cases — Overview
Techniques for Finding Cases Relevant to Your Client’s Issue

Introduction

This overview accompanies the “Six Ways to Find Cases” videos, which will be available at the Zief Library’s research guides site, https://legalresearch.usfca.edu.

These days the typical go-to case-finding tactic is to run keyword searches in case law sources. And because keyword searches are so popular, when they don’t perform as hoped, it can sometimes be hard to come up with a Plan B. But there are lots of way to find cases relevant to a client’s issue, and full text keyword searching is just one.

This overview and the video series it accompanies cover six major ways to find cases.

Six Major Case-Law Finding Methods

There are at least six major methods for finding case law, each of which has its advantages and disadvantages. Which methods you choose will depend on what you need at the time. For some projects you might use a few of the methods, or just one. For others, you might need to use all of them.

The six major case-finding methods are:

1. Consulting secondary sources on your topic/issue to find the cases they cite.
2. Checking annotated codes to see what cases have interpreted a code section you’re researching.
3. Retrieving cases cited by a case you’ve already found, simply by reading the case, or by using the “Table of Authorities” functions on Lexis and Westlaw.
4. Using Shepard’s or KeyCite with a case (or other type of document, such as a statute or code sections) to see what cases cite to it.
5. Using the West Key Number System to find cases addressing particular topics, issues, or points of law.
6. Running full-text keyword searches in case law sources on Lexis, Westlaw, or similar legal research platforms.

This overview touches on when you might want to use each method, together with each method’s advantages and disadvantages.
1. Secondary Sources

The major purpose of most secondary sources is to explain the law and lay out the broader black-letter rules that courts will apply. 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 for every legal research project. For case-finding, use them when —
- You’re hoping to find cases stating general rules that you can apply to your client’s unique facts.
- You’d like to see case citations in the context of some analysis, explanation, or discussion.
- You don’t necessarily need to see every single case on an issue.

Advantages of secondary sources as case-finding tools
These include —
- Selection of “leading” cases.
  Secondary sources often do a good job stating the general “black letter” rule that will apply in your client’s unique situation, and in citing cases that state that rule.
- Presentation of case citations in a larger context to help you understand the legal framework in which your issue falls.
- Discussion and analysis of what cases have held, and how cases might relate to one another.

Disadvantages of secondary sources as case-finding tools
These include —
- Selectivity.
  Usually at least some relevant cases will have to be left out, due to space constraints. (This is less likely when you’re working with law review articles or, sometimes, with ALR annotations.)
- A 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.

2. Annotated Codes

Annotated codes give you citations to cases that interpret specific statutes / code sections.

When to use annotated codes to find cases
Annotated codes are useful whenever you need to know how the courts have interpreted statutes or code sections at issue in your client’s situation.

If your client’s problem involves a statute, always use an annotated code to find citations to cases.

Annotated codes, however, do not comprehensively cite to cases that interpret a statute. So, be sure to use Shepard’s or KeyCite with your statute as well.
Viewing cases annotations in annotated codes on Lexis and Westlaw

In annotated state codes and statutes on Lexis, select “Notes to Decisions” from the “Go to” menu to see citations to cases. In the annotated U.S. Code on Lexis, select “Case Notes” from the “Go to” menu to see citations to cases.

In annotated state and federal codes and statutes Westlaw, use the “Notes of Decisions” tab to see citations to cases.

Advantages of annotated codes as case-finding tools

Advantages of annotated codes include —

• Access to lots of cases.
  The editors try to include as many citations as they can to published cases that substantively interpret the code section you’re researching. Plus, in California (and for federal law), having two publishers’ codes means that you can use one to cross-check and supplement what you have found in the other.

• Organization of citations.
  The annotated code editors organize the case citations by topic, to help you identify cases that might apply to your client’s issue or situation.

• Brief description of cases.
  Annotated codes include short descriptions (from headnotes) of the cases they cite, so you can get at least some idea of what a case might be about before you read it.

Disadvantages of annotated codes as case-finding tools

These include —

• Lack of analysis, explanation, context.
  You get only the very brief headnotes from the cases. The lack of analysis is mitigated, however, by the publishers’ practice of also citing selectively to secondary sources (law review articles, practice guides, legal encyclopedias, and sources like the Witkin publications) that discuss your code section.

• Access to lots of cases (!)
  Where the annotated code cites to hundreds or thousands of cases interpreting the code section, it can be hard to sift through the citations to find cases applicable to your client’s issue.

• Lack of utility if your issue is common law / non-statutory — of course!

3. Tables of Authorities

A table of authorities in online research is a list of all of the cases cited by the case you’re viewing. Conceptually, it’s somewhat similar to the table of authorities in a brief.
(You can, of course, also read the case and note the cases it cites as you go along. That lets you see the cited cases in context, whereas the “Table of Authorities” feature on Lexis or Westlaw simply lists those cases in alphabetical order.)

When to use the Table of Authorities to find cases

This simple method is especially useful when you have a recent case from a lower court and want to find earlier leading cases from higher courts in the same jurisdiction.

If you have one decent case, it will probably cite at least some prior cases that might also be relevant to your issue.
One case isn’t likely to cite all of the prior relevant cases on an issue, but it probably will cite to at least one leading case from the jurisdiction, which you can then use as a springboard for further research.

The Table of Authorities method is not comprehensive, and it only looks backward in time. (To look forward in time, try Shepard’s or KeyCite, use the West Key Number System, or try a keyword search.)

**Viewing the table of authorities on Lexis and Westlaw**

On Lexis, click the “Shepardize this document” link that’s to the right of the case you’re viewing. Then, in the Shepard’s display, click the “Table of Authorities” link at the top, left-hand side of the screen.

On Westlaw, when you’re viewing the case, click the “Table of Authorities” tab.

**4. Shepard’s and KeyCite**

Shepard’s and KeyCite have dual functions. They help you verify the status of authorities, and they help you expand your research by linking you to documents that cite to whichever case or other type of document you’re 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, statute, or other relevant document you already know about.

Shepard’s and KeyCite only look forward in time. If you want to find earlier relevant authority, try the Table of Authorities method, the West Key Number System, or a keyword search.

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

These include —

- Comprehensiveness.
  - Both Shepard’s and KeyCite include all later published cases that cite to your case or statute.
  - Both also include citations to many unpublished cases.

- Editorial judgment (for cases, to a degree).
  - If you’ve started with a case, Shepard’s and KeyCite tag the citing cases according to the issue or point of law from your case that they discuss. This helps filter the citing cases.

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

These include —

- Lack of any real analysis, explanation, context.
  - (KeyCite and Shepards may, however, lead to practice guides, articles, etc. that will have explanations and analysis.)

- Lack of access to cases that are similar to the case you started with, but don’t cite to that case.

- Comprehensiveness(!)
  - Where there are hundreds or thousands of cases that cite to “your” case or statute, it can be hard to sift through them. This is mitigated somewhat by the filters — including the “Search within Results” filter — on both KeyCite and Shepard’s.
5. West Key Number System

The West Key Number System began in the 19th century and has evolved into a highly organized and extremely detailed structure that sorts cases — all published cases, and some unpublished cases — according to the points of law that they discuss. It is sometimes also called the West Key Number Digest or simply the Digest.

The editors of the Key Number System have divided all of United States law into seven major subdivisions, and broken these subdivisions down into about 400 “Topics.” Some Topics are very broad (e.g., “Constitutional Law”). Some are quite narrow (e.g., “Sunday” or “Riot”).

Then, the West editors have thoroughly outlined and divided each Topic 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 about 100,000 Key Numbers in the 400 or so Topics in the Key Number System! (To avoid confusion and ambiguity, Key Numbers are properly referred to both by the name of the Topic they fall under, and by their number. So, Key Number 137 of the Topic “Products Liability” is referred to as “Products Liability Key Number 137.”)

Finally, headnotes and citations from cases are “classified” under the appropriate Topics and Key Numbers — the Topics and Key Numbers that best represent the points of law addressed in the headnotes.

Overall, the West Key Number System cites to: every point of law from every published case!

This makes the Key Number system a powerful, comprehensive search tool.

When to use West Key Number System to find cases

Use the Key Number System whenever you want to find cases that have specific issues or points of law in common, regardless of whether they cite to one another or are from the same jurisdiction.

Also, use the Key Number System whenever you want to take advantage the human-curated editorial structure that has sorted all of the case citations within it according to the issues the cases discuss.

How to get into the West Key Number System

Westlaw offers many access points for the Key Number System. Two of the most useful are:

• via the Topic and Key Number information that accompanies each headnote of a case; and

• via the “Key Numbers” link on Westlaw’s home screen.

(The direct link is: https://1.next.westlaw.com/Browse/Home/WestKeyNumberSystem.)

Advantages of the West Key Number System

The Key Number System is very useful for —

• Comprehensive case law research.

As noted above, the Key Number System includes citations to every point of law from every published case.

• Finding 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 Key Number System can help when that strategy comes up empty.

• Finding cases addressing the broader concepts related to your client’s problem/issue.

• Finding cases dealing with issues that can only be described with common words or words with ambiguous meanings.

• Finding dictum to use as persuasive authority when you’re convinced that there are no cases directly on point.
Disadvantages of the West Key Number System

Disadvantages of the Key Number System include —

- Comprehensiveness (!)
  Because the Key Number System covers all published cases (and some unpublished cases), its sheer size of can make it overwhelming. And because there are almost 400 topics and around 100,000 key numbers it can be hard to pinpoint the best Topic(s) and Key Number(s) for your client’s issue.

- A traditional approach to legal issues.
  The Key Number System’s division of law into topics represents a very traditional, non-cutting-edge approach to the law. And it takes time for the Key Number System to adapt to new areas of law and new legal theories. There will always be a lag between developments in the law and updates to the Key Number System.

- Rigidity — to a degree.
  It may be hard to find cases on issues or points of law that don’t fit well into the Key Number 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 Key Number System might not be useful to you in researching that issue.
  (West does, however, update the Key Number System by revising Topics and adding new Topics as the law changes. For example, in 2018, West rolled out a new Topic, “Finance, Banking and Credit”—moving into it headnotes from other more general topics, such as Antitrust and Trade Regulation, Banks and Banking, Building and Loan Associations, and Consumer Credit.)

Using the West Key Number System to find relevant cases

Here are several ways to use the Key Number System to find cases relevant to your issue.

- Start with “One ‘good’ case.”
  If you have one relevant case (even if it’s only marginally helpful) that you found via a secondary source, a keyword search, or any other method, there will be Key Number System links within that case’s headnotes. You can follow those links to retrieve headnotes from and links to other cases addressing similar points of law.

- Search the Key Number System.
  In the West Key Number System feature of Westlaw, use the “Search for Key Numbers relevant to your issue” box to enter some search terms that describe your issue.
  The results of this search will list possible Topics and Key Numbers. Click on any that look helpful to bring up headnotes from and links to other cases.

- Browse the entire Key Number System for relevant Topics and then browse those Topics for relevant Key Numbers.
  Start in the West Key Number System. Pick a Topic that appears to encompass your issue, and drill down in that Topic to find Key Numbers specifically related to that issue.

- Run “synopsis,digest” ("sy,di") key word searches.
  These searches are, in a way, a byproduct of the Key Number System.
  In cases on Westlaw, there’s a “synopsis” field that contains a brief summary of the essence of the case. And there’s a “digest” field that contains the text of the headnotes, along with information about where those headnotes are classified in the Key Number System.
  The West editors don’t waste any words in the synopsis and headnotes of a case. So if terms from your keyword searches appear in the synopsis or digest fields of a case, it’s much more likely that the case will actually be about the issue those search terms describe.
In case law on Westlaw you can run searches that will find your search terms — terms related to your issues or facts — only in the synopsis and/or digest fields.

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" /p parking or garage)
```

or —

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

or —

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

or —

```
 sy,di(refugee /p "well-founded fear" /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, suppose you’re researching whether parody can be raised as a defense in a trademark infringement action.

The search `sy,di(parody /p trademark)` leads to cases whose relevant headnotes about the parody defense are labeled with the Topic “Trademarks” and the Key Number 1524(2).

6. Full-Text Keyword Searching of Case Law

Like every method for finding cases, there’s a place for full-text searching of case law databases. This method, like all the other methods, has its pros and cons, so the key is to use keyword searching in combination with the other case-finding methods, rather than relying on it exclusively.

When to use full-text keyword searching of case law databases

Online searches of case law are useful whenever you’re looking for cases relevant to your client’s issue. They’re particularly useful when —

- You’re looking for cases with facts similar to your case.
- Your likely search terms are not too common, or vague, or ambiguous.

Advantages of full-text keyword searching of case law databases

Advantages include —

- Access to all published case law from state and federal courts, and a substantial amount of unpublished case law (particularly for California and federal courts).
- Freedom from categorizations and analyses imposed by other authors or editors. Because you pick your search terms, you can create searches for concepts or fact-patterns not covered in secondary sources, the Key Number System, or other ways of organizing and describing case law.
- A choice of search methods. Most legal research platforms offer both “terms and connectors” (Boolean) or natural language searching.
• Ability to search for rare or unusual words or terms. This can be especially useful for finding cases dealing with specific facts, and also for finding cases dealing with emerging areas of law (provided that the terms of art in those emerging areas are not too common or ambiguous).

• 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.

Disadvantages of full-text keyword searching of case law databases

These include —

• Comprehensiveness(!) Because of the sheer volume of case law available for most U.S. jurisdictions, even well-crafted searches may return too many relevant cases to review.

• A lack of analysis of or context for the cases in your results. (But once you do find relevant cases, Shepard’s or KeyCite may link to practice guides, law review articles, or other secondary sources that discuss or analyze cases in your results.)

• 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 outcome, such as evidence being admitted (versus excluded), or a motion being granted (versus denied).

(As their search engines become more sophisticated, and incorporate more elements associated with AI, the major legal research platforms should be better able to cope with the last three disadvantages.)

Full-Text Keyword Searching of Case Law — Tips & Techniques

These tips will help you get the most out of full-text keyword searching of case law.

1. Practice smart source selection

   Pick the narrowest source/database that fits your needs. Look for:
   
   • A source that is limited to your jurisdiction. For state-law projects, look for a state-specific source first. Go to a non-state-specific source only if no good state-specific option exists.
   
   • A source that is restricted to the area of law or topic you are researching.

Consider carefully whether you want to include or exclude certain types of cases, such as —

• Unpublished cases, or

• Federal cases. For state-law projects, there may federal diversity cases interpreting state law. These cases are persuasive (not mandatory) authority, but they can give you useful guidance when there are no cases from your state courts that are directly on point.
2. **Customize your searches — to type of material, size of source, billing plan**

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

   - **The type of material** being searched.
     For searches of case law, you may want to consider using more search terms, more alternatives, and more fact-based terms.
     (By contrast, when you’re searching statutes & regulations, you can often 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. Likewise, when searching secondary sources, especially practice guides, you will often succeed with shorter searches that have fewer, more general terms.)

   - **The size of database/source.**
     The more documents there are in a database/source (e.g., a California cases source), the more precise and narrow your search may need to be.
     The fewer documents there are in a database/source (e.g., the Witkin publications for California, or a practice guide), the less elaborate your search needs to be.

   - **Your billing plan.**
     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 helpful to run one broad search and then use “Search Within Results” to see if your large result set includes the types of cases 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 “California State Cases, Combined” [Lexis] or “California State Cases” [Westlaw] — Search:
   
   "community of interest" /p certification /p "class action"

   In the “California Class Actions and Coordinated Proceedings” source on Lexis, or in the “Cohelan on California Class Actions” source 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 in the class-action context, so “certification” can probably be safely omitted from a search of a short, specialized class action practice guide.

3. **Use both Natural Language searching and Terms & Connectors**

   Switch between Terms & Connectors and Natural Language as needed.

   **Natural language searching** is useful when —
   - you’re not yet familiar with the precise language used in the area of law you’re researching; or
   - there are multiple ways to state your issue; or
   - you’re searching for broad concepts or topics, rather than a specific facts or documents; or
   - you only need a few relevant documents to get a start on a project.

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

   In “California State Cases, Combined” [Lexis] or “California State Cases” [Westlaw] — Search:
   
   "conflict of interest" "class action"
Terms & Connectors searching is useful when —
- there’s specialized terminology related to your facts or legal issue; or
- you’re looking for very specific facts; or
- you’re searching for a particular document; or
- basically, any time you want to have maximal control of the search process.

Advice on Terms & Connectors Searches
Keep in mind that perfection is not required — and in fact it’s not even possible. Even the best searches can fail to retrieve useful/relevant documents. (But remember that if you find one good document, especially on Lexis or Westlaw, you can use it to find others, often by using another of the six ways to find cases.)

4. Exploit “Search Within Results”
When your search gets a lot of results, use “Search Within Results” to look for cases dealing with specific facts, terms, or legal concepts — and also to keep costs down. (On transactional billing plans, there is no additional cost for running using the “Search Within Results” feature.) 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 “Search Within Results” 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 “Search Within Results” to narrow down the results cases dealing California’s unfair competition law (Business & Professions Code § 17200 et seq.).

In “California State Cases, Combined” [Lexis] or “California State Cases” [Westlaw]

Search —

“community of interest” /p certification /p ”class action”

Search within results —

”unfair competition” or 17200

Using “Search Within Results” with natural language searching.
You can use “Search Within Results” after you run a natural language search, but note that on Westlaw “Search within results” searches must be written as “Terms and Connectors” searches.

Example — Natural Language search in “California State Cases” [Westlaw]

Search —

“community of interest” certification ”class action"

“Search within results” using Terms & Connectors syntax —

”unfair competition” or 17200

5. Take advantage of Field searching (Westlaw) and Segment searching (Lexis)
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.
**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 “California State Cases, Combined” [Lexis] or “California State Cases” [Westlaw] — Search:

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

synopsis("community of interest" /p certification /p "class action") [Westlaw]
```

[And now try “Search Within Results” — “unfair competition” or 17200 ]

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

In “California State Cases, Combined” [Lexis] or “California State Cases” [Westlaw] — Search:

```
writtenby(george) and ln-summary("death penalty" or "capital punishment" or (sentenc! /2 death) or "capital murder") [Lexis]

judge(george) and synopsis("death penalty" or "capital punishment" or (sentenc! /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 expressed 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 State Cases [Westlaw] — Search:

```
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 State Cases [Westlaw] — Search:

```
wcn(constitutional! or unconstitutional! or valid! or invalid! and 290)
```

(The second example shows how to incorporate the citation to the code section you’re researching into the wcn() field search.)

6. **Use “Metadata” in your searches**

Exploit “metadata” where it is available.

What is metadata?

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

Metadata for a document — like a case — helps describe what the underlying document is actually about.

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. The West Key Number system creates a detailed structure of metadata for case law. Westlaw searches involving Key Number System Topics and Key Numbers all exploit this metadata.
Example: Summary and Synopsis case-law searches

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