

## Assignment 1

### Searching for Case Law Online

The following scenario should be used to answer Question 1 below. Our client's daughter died from carbon monoxide poisoning while visiting a friend who had sublet a lake cabin for two weeks from a party who rented the cabin for the summer. The carbon monoxide came from a defective heater. The original tenant and sublessee have no assets but the owner of the cabin has assets and insurance. The cabin is located and all persons involved reside in a state called Northland. There is no controlling law on this issue in Northland. You have been asked to locate any cases from any jurisdiction that are factually identical to this scenario.

I want to discuss both Lexis and Westlaw without making everyone use both, so **if your last name begins with A through L, please answer question 1 below using Lexis; if your last name begins with M through Z, please answer using Westlaw. For question 2, please switch to the other service.** Feel free to run the searches in both databases if you wish.

1. Develop the legal issue. Write two versions of the issue: one broad and the other narrow.

**Owner: landlord or lessor**  
**tenant: lessee or subtenant or sublessee**  
**guest: invitee or consent**  
**defect: danger**  
**stove: furnace or heater**

**Broad: What is the liability of an owner for the death of a guest of a tenant or subtenant caused by a defect in the premises?**

**Owner or landlord or lessor and tenant or lessee or subtenant or sublessee and guest or invitee or consent! and defect! or danger!**

**Middle: What is the liability of an owner for the death of a guest of a tenant or subtenant caused by a defective heater?**

**Owner or landlord or lessor and tenant or lessee or subtenant or sublessee and guest or invitee or consent! and defect! or danger! and stove or furnace or heater**

**Narrow: What is the liability of an owner for the death of a guest of a tenant or subtenant from carbon monoxide poisoning caused by a defective heater?**

**Owner or landlord or lessor and tenant or lessee or subtenant or sublessee and guest or invitee or consent! and defect! or danger! and stove or furnace or heater and monoxide**

A. Run the searches; how many cases did each one retrieve? **See chart at end.**

B. Explain what you did with the results of each search to identify the relevant cases

**Use the focus or locate with segment searches or changing the**

C. How many cases are relevant? Please list the relevant cases.

**The queries below were run in the *allstates* database on Westlaw and the *State Court Cases, Combined* database on Lexis. At least four cases are relevant to our problem: *Mathes v. Robinson*, 469 P.2d 259 (Kan. 1970), *Jackson v. Wood*, 726 P.2d 796 (Kan. Ct. App. 1986), *Gaida v. Hourgettes*, 67 So. 2d 737 (La. Ct. App. 1953), and *Ragland v. Rooker*, 183 S.E.2d 579 (Ga. Ct. App. 1971).**

**Natural language searching compared:**

**The most specific search run as a natural language search on Lexis, with the default number set to fifty, retrieves three of the four relevant cases; Jackson v. Wood was second on the list, Ragland was 37<sup>th</sup>, and Gaida was 48<sup>th</sup>.**

**This same search, with the same parameters on Westlaw, retrieved all four cases; Gaida was number 4, Jackson was seventh, Mathes was 5<sup>th</sup>, and Ragland was 30<sup>th</sup>.**

**The following search, run more like a typical “Google” search, retrieved two of the four relevant cases (Gaida and Mathes): Is the owner of an apartment liable for the death of a guest of a tenant from monoxide poisoning.**

2. For each scenario listed below, write a search you think is best designed to find the relevant information. For each, indicate the database, the terms and connectors you would use, and all steps you took to formulate the query. **Remember to switch to Lexis if you used Westlaw to answer the previous question; switch to Westlaw if you used Lexis to answer the previous questions.**

A. Find the case where Justice Rehnquist wrote the opinion that decided whether Title VII applies to employment practices of United States employers who employ U.S. citizens abroad.

**You should always select the narrowest database that will retrieve the results you want; in this case the Supreme Court database would be best.**

**The search on Lexis should look something like this: opinionby(rehnquist) and title vii and abroad or extraterritorial!**

**The search on Westlaw would look like this: ju(rehnquist) & “title vii” & abroad extraterritorial!**

The relevant case is *EEOC v. Arabian American Oil Co.*, 499 U.S. 244 (1991).

B. You are practicing law in Washington state and need to research whether a criminal defense counsel's misunderstanding of a statute constitutes ineffective assistance of counsel. You have read *State v. Aho*, 975 P.2d 512 (Wash. 1999) and want to know whether any later Washington state cases discuss this issue.

1. Assuming you have no access to Lexis or Westlaw or any other online database, what is your best strategy for locating the information you want. Please be specific.

**Your best option is to locate and read the case first; identify the relevant headnotes for this issue (headnote 16 in this case). The topic and key number assigned this headnote is Criminal Law #641.13(2.1). You need to use this topic and key number in a digest; since you want Washington cases only it makes sense to use the Washington Digest.**

**You will find a number of cases on this issue in the Washington Digest. You would have to read through the headnote entries to identify similar cases. You could also see if any articles have been written on this.**

**You could also Shepardize in print.**

2. Assume you have access to and have retrieved *State v. Aho* in the database I have asked you to use for this question. Which course of action would you recommend now for answering these questions online? Please be specific.

**On Westlaw, click on the topic and key number assigned to headnote 16, limit to Washington cases, and incorporate additional terms like "ineffective assistance" /p statut! or similar terms. You could also KeyCite, limiting your display to the specific headnote and jurisdiction.**

**On Lexis, Headnote 9 has the following topic assigned: Criminal Law & Procedure > Counsel > Effective Assistance > Trials.**

3. You are asked to locate all cases discussing legal issues related to identity theft. Which terms and connectors search below would work best on Westlaw?

- A. identity theft
- B. theft +s identity
- C. Theft /s identity
- D. theft steal stol\*\* /3 identity
- E. "identity theft"

**C is the correct answer because it allows for the greatest flexibility in the way**

**in which the court discusses the issue.**

4. You are writing a brief to be filed with the United States Court of Appeals for the 7<sup>th</sup> Circuit. Judge Ripple will be on the panel. Your client is alleging age and sex discrimination. You have been told that this action involves two statutes: 42 U.S.C.A. § 2000e, known as the Civil Rights act of 1964, and 29 U.S.C.A. § 62, known as the Age Discrimination in Employment Act of 1967. The common law may, in addition to the statutes, provide a basis for the action.

You are asked to locate relevant cases, authored by Judge Ripple, using Westlaw. What are the different options for locating relevant cases? For the search option, please write an appropriate search. Which cases are relevant?

**Select the the 7<sup>th</sup> Circuit database and run the following search: writtenby(ripple) and 42 +5 2000e or civil rights act or 29 +5 62 or age discrimination in employment act or (age or sex w/2 discriminat!)**

**You could also Shepardize the statute and limit by locate/focus - we will learn more about that later.**

5. Assume the search you wrote above retrieved 1100 cases; what is your next step? Assume you are doing this research using a standard, transaction based, Lexis contract.

**Use the Locate feature on Westlaw/Focus on Lexis. These features are available for no cost under most commercial contracts with Westlaw/Lexis.**

6. Using Citators Effectively

Problem: An Illinois state criminal statute passed in the early twentieth century made it unlawful for a person to exhibit signs that suggested that persons of a certain race, creed, color or religion were depraved, criminals, unchaste, or lacked virtue. This type of law is frequently referred to as a “group libel law.” The defendant was charged with and convicted of violating this statute; he appealed his conviction to the Illinois Supreme Court, claiming the statute violated his right of free speech under the First Amendment to the Constitution of the United States. In 1951, the Supreme Court of Illinois upheld the defendant’s conviction in People v. Beauharnais, 97 N.E.2d 343. The court decided the statute did not violate the First Amendment because speech designed to breed hatred against persons of a specific race is not protected by the U.S. Constitution.

Assume you represent the State of Illinois in defense of a statute similar to the one involved in Beauharnais. You are preparing your brief to be filed with the Illinois Court of Appeals and must determine whether the rule on this subject in Beauharnais is still good law. **Answer the following question using only Shepard’s or KeyCite and the materials referenced in the citators.**

Would you as an attorney cite the Illinois Supreme Court decision in Beauharnais as good law on this issue for the Illinois Court of Appeals? Explain your answer. (Be sure to discuss which authorities are mandatory and which are persuasive in your answer.)

Shepardizing 97 N.E.2d 343 alone does not indicate any negative history or treatment. Both citators indicate that it was appealed to and affirmed by the United States Supreme Court. Shepard's assigns the orange Q to the U.S. Supreme Court case; KeyCite assigns a yellow flag. This suggests there may be some issues we need to investigate surrounding the U.S. Supreme Court decision.

When you KeyCite the U.S. Supreme Court decision in Beauharnais, you see that it was "called into doubt" by Dworkin v. Hustler Magazine Inc., 867 F.2d 1188 (9<sup>th</sup> Cir. 1989) The Dworkin case says that Beauharnais stands in support of the group libel claim but that it has been "so weakened by subsequent cases such as New York Times" that it might no longer represent good law. The New York Times case referenced here is a United States Supreme Court decision from 1964. On Lexis, Shepard's indicates that Beauharnais has been questioned by 7 cases, one of them being Dworkin, and criticized by three others.

An examination of these negative cases indicates substantial doubt among the lower federal courts that the U.S. Supreme Court would decide the issue in Beauharnais the same today as it did in the 1950's. They draw this conclusion from subsequent Supreme Court case law even though the U.S. Supreme Court has not directly overruled or even questioned their earlier decision in Beauharnais. The fact that Beauharnais has not been overruled by the U.S. Supreme Court only tells you one thing: it hasn't been overruled. You cannot read any more into that fact. Even if the U.S. Supreme Court has denied certiorari on a case exactly on point does not mean the Court agrees with its original decision in Beauharnais. It also doesn't mean they disagree. It tells you nothing that you can use in your legal argument.

Now, back to the facts of our hypothetical. If you were arguing this case before the Illinois Court of Appeals, you would have some decisions to make. This question involves both state and federal law: whether a state statute conflicts with the U.S. Constitution. However, the federal question is the critical issue. For an Illinois appellate court, any decision on point from the State Supreme Court or U.S. Supreme Court would be mandatory authority on the federal issue. Both the state and federal Supreme Courts have authored opinions (Beauharnais) supporting your side. But we have all these pesky lower federal courts, which are not mandatory for the Illinois appellate court, casting doubt on the validity of the legal rule. You can, in good faith, say that Beauharnais remains good law. However, you would be vulnerable to criticism by opposing counsel if that was all you said. It would be important to understand the "lay of the land" on this issue.

It would be one thing if the lower federal courts were just critical of the law. However, the lower courts are basing their criticism on U.S. Supreme Court interpretations of the U.S. Constitution decided since Beauharnais. You must anticipate the opposition's arguments and develop your own theory that would either support the validity of the principles explicated in Beauharnais and reconcile it with later Supreme Court decisions, or develop alternative constitutional theories that would allow the court to rule in your favor while rejecting the rule of law in Beauharnais.

This exercise is designed to emphasize the following:

1. Don't mechanically rely on Shepard's or KeyCite status indicators for determining the validity of the case you are reading. The citators alone don't warn you of the possible problems associated with Beauharnais.
2. Don't assume that you know all there is to know once you have read all decisions from courts that are mandatory for you. As in this problem, lower courts can have an impact upon your issue, especially when the mandatory

**law is rather old.**

**3. Use Shepard's and KeyCite as tools for determining the context and nature of the legal arguments surrounding your issue. Shepardize all cases to find all that is available and relevant.**

## Terms and Connectors Results Comparison

Lexis			Westlaw		
<b>Broad</b>	<b>w/o seg</b>	<b>w/seg</b>		<b>w/o field</b>	<b>w/field</b>
and	> 3000	570(2 of 4)	&	>10000	4474 (4 of 4)
w/p	> 3000	570 (2 of 4)	/p	3954 (4 of 4)	2161 (4 of 4)
w/s	1335 (2 of 4)	134 (1 of 4)	/s	2056 (4 of 4)	1490 (4 of 4)
<b>Middle</b>					
and	2590 (4 of 4)	8 (1 of 4)	&	2744 (4 of 4)	180 (4 of 4)
w/p	124 (3 of 4)	8 (1 of 4)	/p	105 (3 of 4)	41 (3 of 4)
w/s	17 (2 of 4)	2 (1 of 4)	/s	17 (2 of 4)	13 (2 of 4)
<b>Narrow</b>					
and	54 (4 of 4)	2 (1 of 4)	&	57 (4 of 4)	13 (3 of 4)
w/p	4 (1 of 4)	2 (1 of 4)	/p	8 (3 of 4)	8 (3 of 4)
w/s	1 (0 of 4)	1 (0 of 4)	/s	2 (1 of 4)	2 (1 of 4)

Broad, Middle, and Narrow refer to the search terms used. The segment search on Lexis used the overview segment, the field search on Westlaw used the synopsis/digest fields. The numbers in parentheses indicate how many of the four known cases are contained in the results.