

# Legal Writing & Research - Spring 2021

## Lexis and Westlaw Refresher

Remote Reference Spring Semester Hours		<b>Phone:</b> (619) 260-4612
M – Th	9 am – 6 pm	<b>Email:</b> lrcrefer@sandiego.edu
Friday	9 am – 5 pm	
Sunday	12 pm – 4 pm	
		<b>Chat:</b> <a href="https://www.sandiego.edu/law/library/">https://www.sandiego.edu/law/library/</a>

### FACT PATTERN:

Your Client Rivers Phillip, was recently hired to work as an architect with a San Diego architectural firm, Nuts and Bolts (Bolts). The firm has an annual flag football game each September against rival firm, The Ramming Raiders (Raiders). Rivers was hired in February and was told about the longstanding football rivalry by his superiors. Rivers was once a professional athlete but retired after a lackluster football career. Over the course of the summer, his colleagues at Bolts constantly encourage Rivers to compete in the game. One of the partners even implied, presumably in jest, that Rivers' prospects at the firm were dependent on his participation.

At the game, which occurred on a Saturday in September, Rivers was hit while (awkwardly) running the ball and sustained a fractured humerus. He has been unable to draft for the last several months. He has come to you to determine **whether he can claim the injury occurred during a work-related event and would be covered by workers' compensation.**

**JURISDICTION:** California

### FOUR STEP RESEARCH PLAN:

1. Secondary Sources – Treatises and Practice Guides
2. Statutes
3. Cases
4. Citators – Shepard's and KeyCite



**SIGN-ON:** Lexis Law School Page:  
<http://www.lexis.com/lawschool>

# Legal Writing & Research - Spring 2021

## Lexis and Westlaw Refresher

### STEP 1: USING SECONDARY SOURCES TO UNDERSTAND TOPIC

1. Type: **workers' compensation for recreational sports** and hit search
2. Narrow by **Secondary Materials**
3. Narrow by Category to **Treatises** (or select multiple categories)
4. Narrow by Jurisdiction to **California**
5. Click result #5 – **California Workers' Compensation Law § 10.03**
  - a. Click on Table of Contents and expand § 10.03 to reveal **[6] Recreational, Athletic and Social Activities** and click on it **OR** scroll down to that heading in the text – **[6] Recreational, Athletic and Social Activities**
6. Learn more about the elements at issue in your fact pattern – "reasonable expectancy" and "objective reasonableness."
7. Note important statutory sections and cases
  - a. Cal. Lab. Code, 3600(a)(9)
  - b. *Ezzy v. Workers' Comp. Appeals Bd.* (1983); *State Farm Fire & Casualty Co. v. Workers' Comp. Appeals Bd. (Felts)* (1981); *United Parcel Service, Inc. v. Industrial Acc. Com. (Byington)* (1959)

### STEP 2: STATUTES

1. Review statutes from Step 1(7): **Cal. Lab. Code § 3600(a)(9)**
  - a. Note the currency listed at the top of the page
  - b. Review the Notes to Decisions in section 34 Recreational Activity
2. You can also search statutes by natural language, but it is usually not efficient. To view natural language search, return to your search for: **workers' compensation for recreational sports**
  - a. Select the drop-down Category for **Statutes and Legislation**
  - b. Narrow by Category to **Codes**
  - c. Narrow by Jurisdiction to **California**
3. As a third option, you can try a terms and connectors (Boolean) search
  - a. In the main search box type in the following: **recreat! or sport! or athlet! "workers' compensation"**
  - b. Select the drop-down Category for **Statutes and Legislation**
  - c. Narrow by Category to **Codes**
  - d. Narrow by Jurisdiction to **California**

### STEP 3: CASES

1. Review all important cases from Step 1(7) and Step 2(1)(b), starting with ***Ezzy v. Workers' Comp. Appeals Bd.***, 194 Cal. Rptr. 90 (1983).
2. To find more cases like *Ezzy*, or cases that have applied the rule in *Ezzy*, use **LexisNexis Headnotes** and select the headnote that is most

# Legal Writing & Research - Spring 2021

## Lexis and Westlaw Refresher

relevant for your issue (e.g. HN 3) using **Get documents** (in menus to the right of HN 3).

- a. Narrow by Court to **California**
  - b. If there are still too many cases narrow further by using **Search within Results** on the left (e.g. type *sport*)
3. To find even more cases you can use **LexisNexis Headnotes – More like this Headnote**, the **LexisNexis Headnotes - Shepardize - Narrow by this Headnote**, and the **Legal Issue Trail**.
  4. Searching for more cases
    - a. You can also search cases by **natural language**.
      - Return to your search for: **workers' compensation for recreational sports**
      - **Cases** is the default Category
      - Narrow by Court to **California**
      - You could narrow within results or browse and read the brief descriptions of the results, but you will not find Ezzy
      - Be cautious using natural language search for cases, as it is not always the best option
    - b. You may want to try a **terms and connectors (Boolean)** search
      - In the main search box type in the following: **recreat! or sport! or athlet! "workers' compensation"**
      - **Cases** is the default Category
      - Narrow by Jurisdiction to **California**
      - Ezzy is listed due to change in search terms – result #10.

### STEP 4: SHEPARDIZE TO VALIDATE YOUR RESEARCH AND ENSURE GOOD LAW

1. Return to **Ezzy** case
2. Note the Shepard's preview on the right side of the page
3. Click on **Shepardize this document**
4. Note any Appellate History, then click on **Citing Decisions**
5. In this instance, we have one case that has distinguished itself from Ezzy: **Childers v. Shasta Livestock Auction Yard**, 235 Cal. Rptr. 641
  - a. Review **Childers** to understand why it doesn't use the **Ezzy** test
  - b. Return to the Shepard's report and use the facets on the left to limit by **Treatment**, **Jurisdiction** or by **Headnote**

# Legal Writing & Research - Spring 2021

## Lexis and Westlaw Refresher

THOMSON REUTERS  
WESTLAW EDGE

**SIGN-ON:** Westlaw Law School Page:  
<http://www.lawschool.westlaw.com>

### FACT PATTERN:

Sydney Williams was handing out fliers and speaking to passers-by in Balboa Park, protesting a new California state law that bars school employees with concealed carry licenses from bringing firearms on to campus. A police officer approached and asked if she had been issued a permit to demonstrate by the City of San Diego. She did not have a permit and refused to cease the activity when the officer told her she would need to stop. She was arrested for demonstrating without a permit. Ms. Williams is suing the city for violation of her right to free speech.

**JURISDICTION:** Federal, 9th Circuit

### STEP 1: USING SECONDARY SOURCES TO UNDERSTAND TOPIC

1. Browse for sources by clicking on **Secondary Sources** without entering in any search terms
2. Select your Topic: **Constitutional Law** and select Publication Type: **Texts & Treatises**. Click Apply.
3. Examine list of Secondary Sources to see all available options
  - a. Note possible sources, e.g. Constitutional Law Deskbook; The First Amendment: Freedom of Speech; Rotunda and Nowak's Treatise on Constitutional Law-Substance and Procedure; Smolla & Nimmer on Freedom of Speech
4. In this instance, it would be difficult to quickly find relevant results by browsing these titles
5. Click on **Advanced** next to search box at the top of page
  - a. Search within the selection of secondary sources using the fields
    - i. type in All of these terms: **public park**
    - ii. type in This exact phrase: **free speech**
6. Click on **§ 8:18.Examples of public and nonpublic forums—Parks** (Smolla & Nimmer on Freedom of Speech)
7. Note important statutory sections and cases.
  - a. Note 9th Circuit cases
    - i. U.S. v. Baugh, 187 F.3d 1037 (9th Cir. 1999)

# Legal Writing & Research - Spring 2021

## Lexis and Westlaw Refresher

- ii. U.S. v. Griefen, 200 F.3d 1256 (9th Cir. 2000)
- iii. Wong v. Bush, 542 F.3d 732 (9th Cir. 2008)
- iv. Berger v. Seattle, 569 F.3d 1029 (9th Cir. 2009)

### STEP 2: STATUTES

1. Review any important statutes from Step 1(8): **None**
2. Note that with major constitutional issues, it is best to go straight from the secondary sources to cases and skip the annotations. Annotations are too great in number and difficult to use effectively.

### STEP 3: CASES

1. Review important cases from Step 1(8): **U.S. v. Baugh, 187 F.3d 1037 (9th Cir. 1999)**
2. Find more cases starting from this case by using
  - a. **West Headnote 3** – Topic (92, Constitutional Law) and key number (1761, Parks and Forests) – 92 case squibs
  - b. **West Headnote 3** – Keycite this headnote -- 7 cases that cite this headnote
3. You can also search for more cases using natural language or terms and connectors
  - a. Select **Cases** from Content Types
  - b. Select **Ninth Circuit**
  - c. Search for **public park "free speech"**
4. Note that Berger v. City of Seattle is 4th result. Scrolling to the next pages, you would eventually see U.S. v. Baugh and U.S. v. Griefen, but not Wong v. Bush.

# Legal Writing & Research - Spring 2021

## Lexis and Westlaw Refresher

### STEP 4: KEYCITE TO VALIDATE YOUR RESEARCH AND ENSURE GOOD LAW

1. Return to **Baugh** case – Reading through Baugh, you would learn that members of an advocate group for the homeless were convicted of demonstrating without a permit on National Park property. They appealed and the court found in their favor that the National Park Service violated the First Amendment. Specifically, the court addressed the issue of whether failure to apply for a permit deprived the protestors of standing. In reaching its decision, the court applied the standard that prior restraints on speech may be imposed if they amount to reasonable time, place, and manner restrictions.
2. What signal is indicated for U.S. v. Baugh? What is your initial reaction to the signal? Look at the chart to refresh your memory on the value of each signal.
3. Since you cannot determine whether this case is good law without knowing what legal issue to examine, here is the issue: we are most interested in Baugh for its discussion of **prior restraints on speech**. We want to know the standard for determining if prior restraints may be imposed on speech, such as a requirement to obtain a permit, and whether that standard is still valid.

What steps would you take to determine whether Baugh is good law for this issue? Think about your strategy. You can look to #1 above for a review of Baugh.

# Legal Writing & Research - Spring 2021

## Lexis and Westlaw Refresher

Citators are a general class of research materials designed to help you find sources that cite a source that you have identified. The two basic uses for Shepard's and KeyCite are:

1. *Verification*: to make sure that precedent you are analyzing remains good law, i.e., that it has not been overturned; and
2. *Research*: to find other sources that cite to the legal material you are analyzing, in the hopes that these new sources deal with similar subjects as or shed further light on the law you have already found.

While you will use Shepard's and KeyCite to look up, or "cite," cases, understand that you can also use both services to find materials that have cited other research sources, including statutes and some secondary sources.

### ***Online Legal Citators—Treatment Signals***

Remember: when you find or pull up a case or other legal resource on either Lexis or Westlaw, there is a strong likelihood that you will see the citator symbol. These symbols are designed to indicate a snapshot, vague, general precedential value of the case being researched. On both services, the symbols should remind you of the importance of citing the case.

#### **Shepard's Signals on Lexis:**

-  **Strong Negative Treatment, including no longer good law**
-  **Some Negative Treatment for a statute**
-  **Validity questioned**
-  **Some Negative Treatment**
-  **Citing references have some positive treatment**
-  **Citing references provide analysis that is neither positive nor negative**

#### **KeyCite Symbols on Westlaw:**

-  **Some Negative Treatment**
-  **Strong Negative Treatment, No longer good law for AT LEAST ONE point**
-  **Document has been appealed**

#### **RESEARCH TIPS:**

- Choose cases that include good discussion of elements and how they are applied. Look for court to set out tests, standards, or define certain elements.
- Too many results? Focus on specific element in cause of action or a legally significant fact.

# Legal Writing & Research - Spring 2021

## Lexis and Westlaw Refresher

### TERMS AND CONNECTORS

or	Find Synonyms/ Alternatives	=	car or auto or vehicle
and	Require Both Terms in Doc	=	“assumption of risk” and golf
/#	Within a Certain # of Words	=	car /10 injure
/s	Within the Same Sentence	=	copyright /s infringement
/p	Within the Same Paragraph	=	injury /p damages
!	Root expander to search for words with multiple endings like objected, objection, and objecting	=	object!

**Q:** Is it better to use a natural language search, terms and connectors (Boolean), or advanced field/segment search?

**A:** It depends. Natural language is often the most intuitive for new researchers and can yield excellent results after using necessary limiters on jurisdiction and content type. However, a natural language search may not always find all results or even the best results. A well-constructed terms and connectors search may find documents you would otherwise have missed. Using segments/fields can help you retrieve only specific relevant documents. For example, if you are searching for all of the opinions written by Judge John Smith, use the judge segment/field and you will not retrieve cases where the attorney or party is named John Smith.