

# LLMC: Legal Research on Westlaw and Lexis

Spring 2020



# What we will cover

- Differences between primary and secondary sources
- Types of secondary sources
  - Legal Encyclopedias (AmJur, CJS, Cal Jur, and Witkin Summary of California Law)
  - Treatises and Practice Guides (Witkin Treatises, Matthew Bender Practice Guides, CEB Practice Guides, Rutter Practice Guides)
  - American Law Reports
  - Legal Periodicals
- Searching for secondary sources: using natural language & filtering by source type.

# What we will cover

- Using the Annotated Code
- Finding and using caselaw on Westlaw and Lexis
  - Using Topic and Key Numbers on Westlaw
- Citators – making sure the law you're using is still valid

**In-Class Research Problem: Medical Marijuana**

# Primary sources (primary authority)

- Examples: Caselaw and statutes & codes
- Created by the courts and the legislature
- It's the law!
  
- Binding / mandatory vs. nonbinding / persuasive
  - Jurisdiction
  - Weight of authority (level of court)

# Secondary sources (secondary authority)

- Secondary sources are background resources.
- Examples: encyclopedias, treatises and practice guides, A.L.R. annotations, journal or law review articles, and restatements of the law.
- Secondary sources are NOT binding, but they can be a good way to start research as they contain valuable citations to primary sources.  
**Secondary sources are huge time-savers!**

# Secondary Sources

# Legal Encyclopedias

- Report on the general state of the law in different subject areas.
- There are two multi-state legal encyclopedias: *American Jurisprudence* (Am. Jur.) and *Corpus Juris Secundum* (C.J.S.).
- In addition, California has two state encyclopedias: *California Jurisprudence* (Cal. Jur.) and *Witkin's Summary of California Law*.

# Treatises and Practice Guides

- Essentially, single-subject legal books.
- Treatise examples: Corbin on Contracts, Products Liability in a Nutshell, Witkin California Criminal Law.
- Practice guide examples: California Landlord-Tenant Practice, California Civil Practice.
- Popular practice guide publishers include Matthew Bender ([Lexis](#)), CEB ([OnLaw](#)), and Rutter ([Westlaw](#))



# American Law Reports (ALR)

- Contains articles called “Annotations.”
- Annotations collect summaries of cases from a variety of jurisdictions to provide an overview of the law on a topic.
- They are more detailed than encyclopedias.

# Legal Periodicals

- Law journals or law reviews
- Contain detailed articles on very specific topics, e.g. *Last Resorts and Fundamental Rights: The Substantive Due Process Implications of Prohibitions on Medical Marijuana*, 118 Harv. L. Rev. 1985 (2005)
- Generally, not a good place to start your legal research if you are just getting familiar with a topic.

## Searching for secondary sources

In Westlaw and Lexis you have two options for accessing secondary sources.

**Option 1:** Type in the name of the item (e.g. California Jurisprudence, American Law Reports, etc.) and select one of the populated options, and search within the item.

**Option 2:** Search by **natural language** and **filter** by clicking on secondary sources, jurisdiction, and/or type.



# In-Class Research Problem

## Fact Pattern:

Calvin is a resident of San Diego and suffers from chronic back pain. He has a valid medical marijuana card and often smokes in the morning to alleviate the pain. His employer routinely administers drug tests. Calvin is worried that he could be fired for failing a marijuana drug test even though he has a medical marijuana card.

- What is California's law regarding medical marijuana?
- Should Calvin be worried about failing a drug test even though he has a medical marijuana card?

# Primary Sources

# Annotated Codes - Federal

- Most researchers rely on one of two commercially published, annotated editions of the code (You may need to check both for thorough research of a particular statute):
  - United States Code Annotated (USCA) published by West and available on [Westlaw](#), or
  - United States Code Service (USCS), published by LexisNexis and available on [Lexis](#).
- Beyond the **text of the law** and **notes of court decisions\***, these commercial editions also provide references to **legislative history**, **administrative regulations**, and various **secondary sources**.

\* The number of notes of decision can vary. Some sections of the U.S. Code are subject to much judicial interpretation and have many cases in the notes of decision. Others are uncontroversial, and have not led to litigation, while others may be too new for any reported cases.

# Annotated Codes - State

- Most researchers rely on annotated codes containing summaries of relevant court decisions and other references, published in most instances by either West or LexisNexis. Several states have competing codes from both publishers.
- For example, California has both West's California Annotated Codes available on [Westlaw](#), and Deering's California Annotated Code available on [Lexis](#).

# Searching for Cases

- Before searching for new cases, make sure you have reviewed the cases already identified in your secondary source literature and annotated codes.
- To start a new search, start with the smallest database you can (e.g. California state cases, or 9<sup>th</sup> Circuit cases).
- Focus on published cases.



Enter terms, citations, databases, questions, anything ...



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U.S. Courts of Appeals

Federal District Courts

Federal Bankruptcy Courts

U.S. Tax Court

U.S. Court of Federal Claims

U.S. Court of International Trade

U.S. Court of Appeals for Veterans Claims

Military Courts

Judicial Panel on Multidistrict Litigation (JPML)

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1st Circuit

6th Circuit

10th Circuit

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# Using Key Numbers to Find More Cases on Westlaw

- After conducting a word search on Westlaw, you find a relevant case with an on-point headnote.
- You can use the key number assigned to this headnote to retrieve other cases discussing the same point of law.

# Using editorial headnotes



For example, you can search for cases assigned to any specific key numbers under the subheading.

# Why do researchers use citators?

- To find the direct history of a case
- To find negative treatment
- To find positive treatment

Note what point of law is being treated positively or negatively

- To identify similar cases or useful secondary sources
- Citators can also be used to update statutes