

Legal Writing & Research

Citators: KeyCite and Shepard's

Why do legal researchers use citators?

- For **verification**:
 - What is the **direct history** of your case?
 - How do **other courts** view your case?
 - Is the point of law you want to use **still good law**?
- For **research**:
 - Are there other cases that cite your case positively? (You may be able to use those cases, too.)
 - Are there secondary sources that cite or explain your case?





Important notes

- You can use citators for **statutes** as well as **cases**.
- The flags and citator reports are **tools** to help you identify potential weaknesses, but they don't do the analysis for you.
- Make sure you allocate **sufficient time** to review citator reports for **each case and statute** you will rely on. You may have to review and analyze treatment of your source by **many** other cases so do not leave it to the last minute!

Citators: A Step-by-Step Guide





Westlaw (KeyCite)

1. Select **History** to view the direct history of your case, including any appellate history.
 - If there is a red flag, you must determine which point of law is no longer good law.
 - You cannot use the case if it has been overturned for the same point of law.
2. Click on the **Negative Treatment** (if applicable) and **Citing References tabs**
 - **Negative Treatment** shows the negative direct history and negative citing references.
 - **Citing References** shows all sources citing your case.
 - Filter by Cases (citing references can also be secondary sources)
 - Filter by Headnote or search within results as necessary
 - For any negative history, you must read and determine for every case citing your case:
 - a. Is it from a court in the direct line of appeal?
 - b. Is it on the same legal issue?
 - c. Is the holding actually negative? Or can the other court's holding be explained by a difference in facts?

-  A red flag warns that the case or administrative decision is no longer good law for at least one of the points it contains.
-  A yellow flag warns that the case or administrative decision has some negative history, but has not been reversed or overruled.
-  A blue-striped flag warns that the case has been appealed to the U.S. Court of Appeals or the U.S. Supreme Court (excluding appeals originating from agencies).
-  An Overruling Risk warning indicates that a case or administrative decision may no longer be good for at least one point of law based on its reliance on an overruled or otherwise invalid prior decision.

Lexis (Shepard's)

1. Click on **Shepardize document**.
2. Select the **History tab** to view the direct history of your case.
 - If there is a warning or caution sign, you must determine which point of law is no longer good law.
 - You cannot use the case if it has been overturned for the same point of law.
3. Select the **Citing Decisions tab** to view a list of the cases that have cited your case.
 - Filter by Headnote or search within results as necessary
 - If there is negative history (under Caution), you must read and determine for every case citing your case:
 - a. Is it from a court in the direct line of appeal?
 - b. Is it on the same legal issue?
 - c. Is the holding actually negative? Or can the other court's holding be explained by a difference in facts?

-  **WARNING:** Negative treatment is indicated
-  **WARNING:** Negative case treatment is indicated for statute
-  **QUESTIONED:** Validity questioned by citing references
-  **CAUTION:** Possible negative treatment
-  **POSITIVE:** Positive treatment is indicated
-  **NEUTRAL:** Citing references with treatment is available
-  **CITED BY:** Citation information is available