

Chapter 11: The Desperate Researcher

Chapter Outline:

- ✓ § 11.1 "I can't find anything!"
- ✓ § 11.2 Interactive Study: Treatises
 - *Assignment*
- ✓ § 11.3 Interactive Study: Legal Periodicals
 - *Assignment*
- ✓ § 11.4 Interactive Study: Federal Regulations

§ 11.1 "I CAN'T FIND ANYTHING!"

It's bound to happen. You get a research assignment from your attorney. You check all the traditional sources for research. You research in *American Jurisprudence, 2d*, *American Law Reports*, *Corpus Juris Secundum*, case law, statutes. You have cartwheeled the issue. Yet, you find nothing that appears relevant. The frustration mounts! You have become the epitome of the desperate researcher.

The tools in this chapter all have one thing in common: They are not used by the typical paralegal researcher. If you use these tools, you will have an advantage over other researchers. You will also have an excellent chance of breaking through your frustrations and locating relevant authority.

In this chapter, we will discuss

- *Overcoming Common Research Roadblocks*
- *Researching Legal Treatises*
- *Researching Legal Periodicals*
- *Researching Federal Regulations*

Overcoming Common Research Roadblocks

Following are examples of potential problems that may arise for the legal researcher and several possible solutions.

I know the name of a case. How do I find the full citation?

Your attorney approaches you and says, "I need a case I used a couple of years ago. Its name is *Trammel v. U.S.*, but I don't know the cite." This is not an uncommon problem at all. Use the following steps if this problem ever happens to you.

Westlaw Next

A simple process. A researcher can find a case, and its citation, if he or she knows the names of the parties, or even just one of the parties.

- Login to *Westlaw Next*
- Enter the names of the parties in the *Search Query Box*
- Select a case from the recommendations

Lexis Advance

Again, a very simple process. A researcher can find a case, and its citation, if he or she knows the names of the parties, or even just one of the parties.

- Login to *Lexis Advance*
- Enter the names of the parties in the *Search Query Box*
- Select a case from the recommendations

Law Library

Not as easy as going online, but still a rather simple process with a couple of options.

- Shepard's Case Name Citators*
(Applies for those law libraries that subscribe to Shepard's.) Every set of *Shepard's* has a case name citator that lists all the cases found in that specific set of *Shepard's*. While your library may not contain all of the case name citators, it probably has the citator for your region and state and the federal citators. The case may be accessed by either the plaintiff or defendant.

□ *Digest Table of Cases*

Every set of *West's Digests* has a volume or volumes with a *Table of Cases*, kept usually at the end of the set of digests. Again, the case may be researched using either plaintiff's name or defendant's name.

□ *Digest Plaintiff/Defendant Table*

As with the *Table of Cases*, the *Plaintiff/Defendant Table* is kept at the end of the set of digests. The book provides the full cite to any cases in which a specific party was involved if the case is printed in that specific set of digests. This is helpful when a party is not included in the title to a case. (Example: When there are multiple plaintiffs.)

□ *Call the Court*

If you know the court from which the opinion was rendered, call the court. The staff will probably have the case listed by docket number, case name, and the names of all parties.

I have just one or two cases and can't find anything else.

The answer is to expand your research.

First, the obvious

Be sure you have checked all your regular resources and that you have used *KeyCite* or *Shepardized* any cases you have found. These can provide additional cases that deal with the same topic, and perhaps even some cases within your jurisdiction.

Authority within Authority

If you have even one case, you have more than you think. That case must have relied on authority, so check for cases and statutes within the opinion itself. Also check the headnotes for *Key Numbers* that will lead you to digests or enable you to conduct an online search for cases using the *Key Number Tool* in *Westlaw*.

Statutory Research Tools

Check any statutes you have found. They might contain research tools, such as references to *Key Numbers* or cases, as well as other statutes.

Legal Treatises

If you have not already done so, research legal treatises on your topic.

Administrative Regulations

If your case involves an administrative matter, such as immigration, consider researching administrative regulations and decisions.

§ 11.2 INTERACTIVE STUDY | LEGAL TREATISES

A legal treatise is a book that covers a specific area of law. There are thousands of legal treatises. Some are single volume, some are a few volumes, and some are massive.

It may be helpful to think of a legal treatise as the inverse of a legal encyclopedia. While a legal encyclopedia includes a little information about almost every area of law, a legal treatise attempts to provide almost all information about a single area of law.

The structure of a legal treatise is very similar to that of an encyclopedia. Once relevant commentary has been found, footnotes will provide references to additional authority, including primary authority. A legal treatise is itself, though, secondary authority.

Restatements of the Law

Possibly the most respected of all treatises is *Restatements of the Law*, a series of individual sets of treatises on selected areas of law, published by *American Law Institute* (A.L.I.) Although considered secondary authority, they are very highly regarded by both the court and attorneys. One set of *Restatements* may differ slightly in structure from another, so flexibility is required. Researching within *Restatements* will impress any attorney.

Sets of *Restatements* include:

- Restatement of the Law - Agency*
- Restatement of the Law - Conflict of Laws*
- Restatement of the Law - Contracts*
- Restatement of the Law - Employment Law*
- Restatement of the Law - Foreign Relations Law of the United States*
- Restatement of the Law - Judgments*
- Restatement of the Law - The Law Governing Lawyers*
- Restatement of the Law - Products Liability*
- Restatement of the Law - Property*
- Restatement of the Law - Restitution*
- Restatement of the Law - Security and Suretyship and Guaranty*
- Restatement of the Law - Torts*
- Restatement of the Law - Trusts*
- Restatement of the Law - Unfair Competition*

Restatements are cited as such: *Restatement (Third) of Agency*, §43.

QuickView § 11.2 | Restatements of the Law**Westlaw Next**

1. Go to the *Home Page* of *Westlaw Next*
2. Click on *Secondary Sources* in the *All Content* tab in the main window
3. Under the *By Type* section, select *Restatements & Principles of the Law*
4. Select an article from list of search *results*
5. After clicking on a relevant title link, review the *Restatement Rule*, read the *Comments* that include your search term, and review *Reporter's Notes* and *Cross References* for case law and to broaden your research

Lexis Advance

1. Clear all filters
2. Type *restatements* in *Search Query Box*
3. In initial *Results Page*, click on *Restatements* in left *Narrow* column
4. Use *Search Within Results* feature at left to type search query and click *Search* button
5. Select a relevant article from *Results Page*, review the *Restatement Rule*, read comments that include your terms, and review *Reporters Notes* and *Cross References* to broaden research

Law Library

1. Locate the index in one of the main volumes (usually the last)
2. The index leads to the *main volume* using *section numbers*
3. In the main volume, read the *Rule*, *Comments*, and *Illustrations*
4. Always check the *pocket part* (supplement)
5. Use the same section number in the *Appendix* for citations to cases

Assignment § 11.2(a) | Restatements on *Westlaw Next*

1. *Locate the Restatement Database*

The easiest way to research Restatements in Westlaw Next is to use the suggested links to locate the Restatements database (which results in filtering your eventual search query).

- a. In the *All Content* tab on the *Home Page*, click on *Secondary Sources*



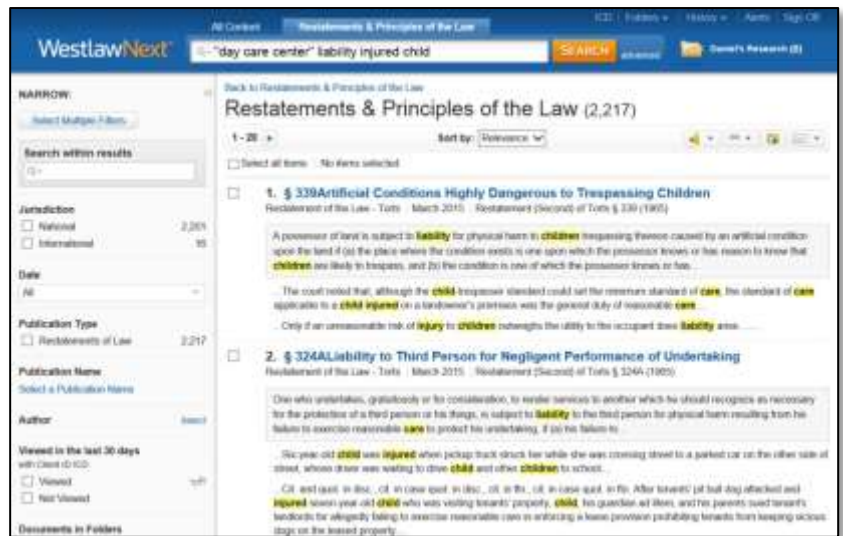
b. In the *By Type* section at the top of the window, click on *Restatements & Principles of the Law*



c. You are now in the *Restatements* database. Using the *Search Query Box* at the top of the page, type your search query and click the *Search* button.



d. In the Results Page, select any relevant articles to review

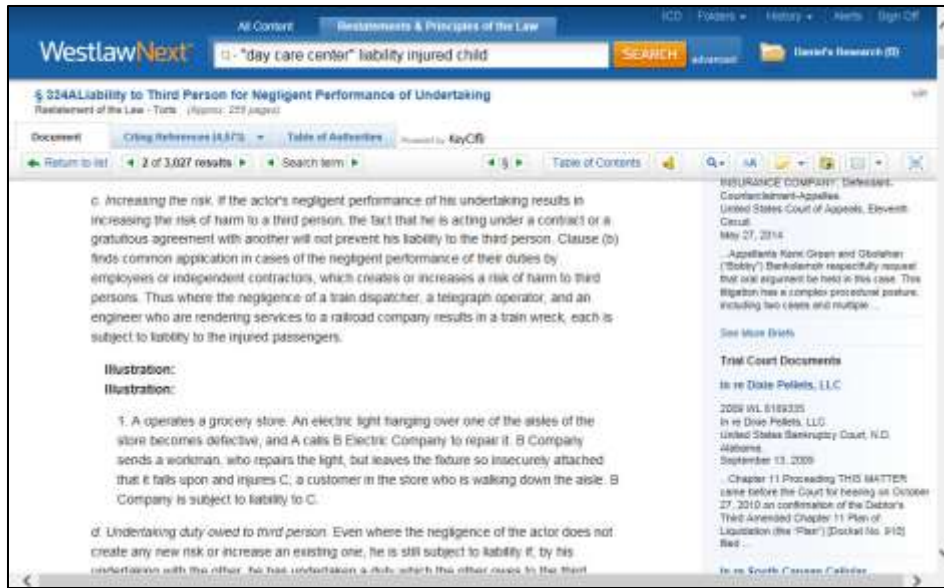


2. *Review the Restatements Rule*
 For every section, *Restatements* provides its own *Rule*. This is not typically very long, and restates what *American Law Institute* believes the law is, or even sometimes what it should be. The *Restatement Rule* is in bold face immediately following the section number and title of that section.



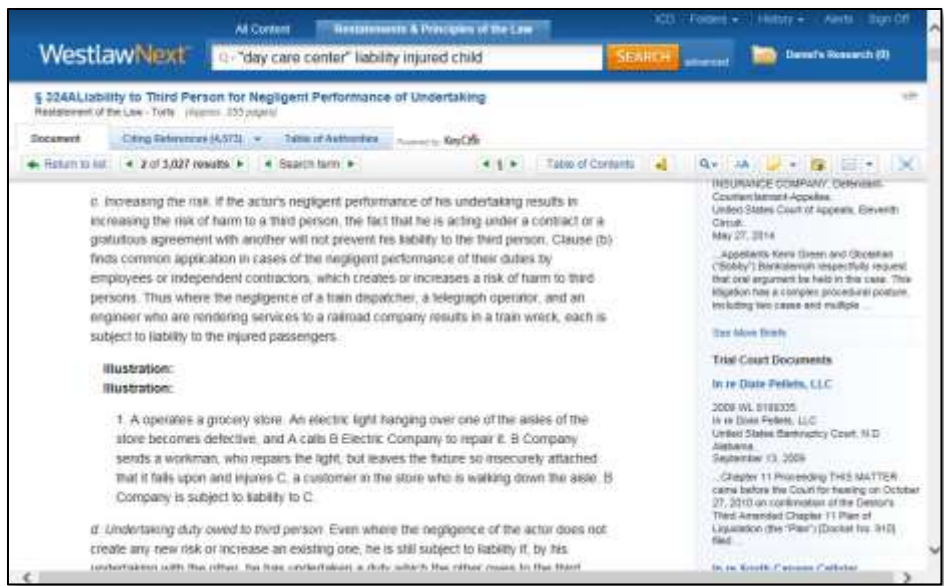
3. If a relevant Rule is found, review associated Illustrations and Comments

The beauty of Restatements is that, after a Rule has been “restated,” it follows that up with examples and commentary to help the researcher grasp the Rule’s concept and application.



4. Use Reporter’s Notes to locate relevant primary authority

The Reporter’s Notes provide references to court opinions that have actually quoted that Restatement Rule. A fantastic tool to quickly locate relevant authority (assuming the Rule is relevant to your research topic).



5. *Restatements are updated automatically*

When researching in the traditional hardbound set of books in the law library, it would be important to check the pocket part of any volume being researched for updates. For online versions of *Restatements*, the *Rule*, *Cross References*, and other material are all updated automatically. Thus, there is no need to look for a supplement section (as with encyclopedias).

Checklist § 11.2(a) | Restatements on Westlaw Next

- On the *Home Page* click *Secondary Sources*
- Choose the desired set of *Restatements* in which to search
- Under the *By Type* section, select *Restatements*
- In *Results Page* select an article
- Read the *Restatement Rule* and use the *Comments* and *Illustrations* to help understand the *Rule*
- Use the *Reporter's Notes* to locate primary authority

Tasks & Questions § 11.2(a) | Restatements on Westlaw Next

1. Detail how you located the *Restatements* database.
2. What search query did you use?
3. When you saw the *Results Page*, were you satisfied with the outcome of your search query, or did you need to modify it?
4. When you viewed a *Restatements Rule*, did you switch to *Results List* view on the left side of the page?
 - 1.
5. Did the *Rule* you researched have *Comments* and *Illustrations*? Were they helpful in understanding the *Rule*?
6. Were you led to any relevant primary authority in the *Case Citations*? If yes, make note of those authorities.
7. Did you have a document *delivered*? If so, in what manner? (Print? Email? Download?)

Assignment § 11.2(b) | Restatements on Lexis

Researching *Restatements* on *Lexis Advance* is a bit cumbersome. This is likely due to the fact that *Westlaw's* parent company now owns *Restatements*. In any case, you will need to make an extra effort to research *Restatements* in the *Lexis Advance* environment, but if you find a relevant *Rule* it will certainly be worth it.

1. *Clear your filters*

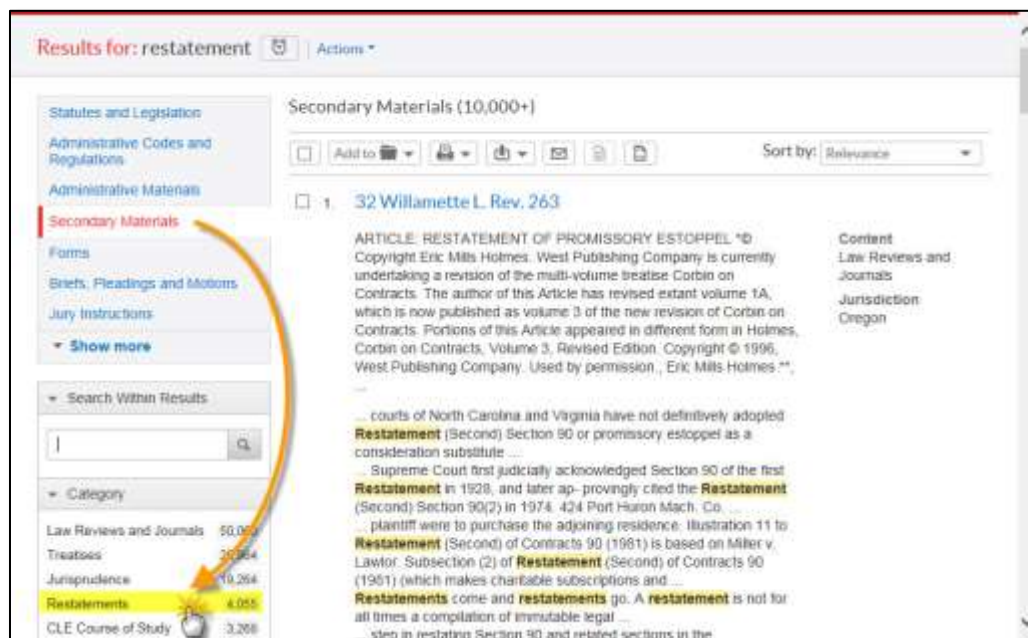
Instead of identifying a filter as usual, you will want to clear all filters before starting your research.

2. *In the Search Query Box, type "restatements"*

This will open up an initial *Result Page* that includes articles and other authority with the term *restatements*.

3. *Use the Narrow column to limit the results to Restatements*

On the left side of the window you will see the *Narrow* column. This is where you can further focus your research results. In this case, click on *Restatements* to add that publication to your filters.



4. Search within results

Now that you have limited the search results to all sets of Restatements, you will want to use the Search Within Results feature. Type your search query in that text box and press enter (or click the search button which looks like a magnifying glass.)

The screenshot shows a legal research interface. On the left, there is a sidebar with 'Secondary Materials' and 'Narrow By' options. Under 'Narrow By', 'Restatements' is selected. Below that, 'Search Within Results' is expanded, showing a search box with the text '"day care center"' and a magnifying glass icon. An orange arrow points from the search box to the search results. The search results on the right show a snippet from the 'Restatement of the Law, Third, Torts: Liability for Physical and Emotional Harm (Tentative Draft No. 6, March 2, 2009) Chapter 9 - Duty of Land Possessors'. The snippet discusses the duty of a land possessor and mentions 'day care center' in the context of entrants onto property.

5. Select a relevant article from the Results Page

Review the short sections provided by the results and click on the title link to any relevant articles.

The screenshot shows a legal research interface with search results. On the left, there is a sidebar with 'Statutes and Legislation', 'Administrative Codes and Regulations', 'Administrative Materials', and 'Secondary Materials'. Under 'Secondary Materials', 'Forms', 'Briefs, Pleadings and Motions', and 'Jury Instructions' are listed. Below that, 'Narrow By' options are shown, with 'Restatements' and '"day care center"' selected. The search results on the right show a list of results under the heading 'Secondary Materials (5)'. The first result is 'Restat 3d of the Law, Torts: Liability for Physical and Emotional Harm, § 40'. The snippet for this result discusses the duty of a land possessor and mentions 'day care center' in the context of entrants onto property. The text 'a day-care center who the children for whom it is caring, see' is circled in orange.

6. Read the Restatement Rule and use research tools

For every section, *Restatements* provides its own *Rule*. This is not typically very long, and restates what *American Law Institute* believes the law is or even, sometimes, what ALI thinks the law should be. The *Restatement Rule* is in bold face immediately following the section number and title of that section.

Following the *Rule*, *Restatements* will provide both explanatory and reference tools. The explanatory tools include *Comments*, *Illustrations*, and *Reporter's Notes*. The reference tools provided by *Restatements* are the *Cross References* and *Case Citations*.

Comments

Explain the reasoning of the *Rule*

Illustrations

Examples of how the *Rule* applies to a hypothetical fact scenario

Reporter's Notes

References to authorities that have actually cited the *Rule*.

The screenshot shows a legal research interface. At the top, it says "Restat 3d of the Law, Torts: Liability for Physical and Emotional Harm, § 40". Below this is a "Copy Citation" button. The main content area displays the text of the rule: "(a) An actor in a special relationship with another owes the other a duty of reasonable care with regard to risks that arise within the scope of the relationship." and "(b) Special relationships giving rise to the duty provided in Subsection (a) include: (1) a common carrier with its passengers, (2) an innkeeper with its guests, (3) a business or other possessor of land that holds its premises". Below the rule text is a section titled "COMMENTS & ILLUSTRATIONS" with a "Comment:" section. The comment includes a history of the rule and court determinations. On the right side of the page, there is a sidebar with "About This Document" and "View reports (2)".

Checklist § 11.2(b) | Restatements on *Lexis Advance*

- Clear all filters
- Type *restatement* in *Search Query Box*
- In initial *Results Page*, click on *Restatements* in left *Narrow* column
- Use *Search Within Results* feature at left to type search query
- Select relevant article from *Results* and review the *Restatement Rule*
- Read comments that include your terms, and review *Reporters Notes*

Tasks & Questions § 11.2(b) | Restatements on *Lexis Advance*

1. Detail how you located the *Restatements* database.
2. What search query did you use?
3. When you saw the *Results Page* did you need to modify your query?
4. Did the *Rule* you researched have *Comments* and *Illustrations*? Were they helpful in understanding the *Rule*?
5. Were you led to any relevant primary authority in the *Case Citations*? If yes, make note of those authorities.
6. Did you have a document *delivered*? If so, in what manner? (Print? Email? Download?)

Assignment § 11.2(c) | Restatements in the *Law Library* (Optional)

1. *Select a set of Restatements in which to research*
As mentioned earlier in this chapter, there are several sets of *Restatements* to choose from. *Restatement of the Law - Torts* is the most frequently used, and for most students conducting this assignment, that set would be the most likely to provide relevant results.
2. *Locate the Index, usually within the Main Volumes (not a separate set)*
Find the main volumes of *Restatements*. These are the only volumes with section numbers on the spine. In the *last* main volume, *Restatements* usually provides an index for that series. The index will provide a *section number*.
3. *Go to the Main Volume*
The researcher should find the corresponding section within the main volume. *Restatements* “restates” the law, then discusses the law in depth. The main volume may include the following:

Comments

Explain the reasoning of the *Rule*

Illustrations

Provide examples of how the *Rule* applies to a hypothetical fact scenario

Reporter’s Notes

Provide references to authorities that helped to shape the creation of the *Rule*.

Cross References

Relevant *Key Numbers* and annotations.

4. *Always check the Pocket Part (Supplement)*
The main volumes are updated with the most recent material by use of pocket parts, also called supplements. Always check the pocket part for any new updates.

Look up the corresponding section number in that supplement.

5. *Use the Appendix to find case law that has cited the Rule*

After finding relevant commentary in the main volumes, the researcher may want to discover whether the material has been cited within court opinions. *Restatements* provides this information in the *Appendix*. Locate the volume that has *Appendix* on the spine, then research the same *Restatements* section number that was researched in the main volume.

Depending on the set, *Restatements* may have multiple appendices. The researcher must check each appendix volume for that section number.

Flexibility

When using *Restatements*, the researcher must be flexible.

- ✓ Sometimes the index is not where you expect it to be.
- ✓ Sometimes there are several indexes, one for each volume.
- ✓ Sometimes there is no appendix to a specific series and that set contains footnotes instead of an appendix.
- ✓ Sometimes there are separate volumes for topical areas within a single set of *Restatements*. For instance, in *Restatements of Property*, Landlord/Tenant issues are covered in separate volumes.

Even considering these inconsistencies, *Restatements of the Law* are worth the effort. If you find relevant material, you will impress your attorney.

Again, always check the pocket part in each volume researched, including appendices.

Checklist § 11.2(c) | Restatements in the Law Library

- Locate the *index* within the main volumes and research your terms
- Using the section number provided by the index, find that section number in the *main volume*
- In the main volume, read the *Restatement Rule*, and use the *Comments* and *Illustrations* to help you understand the *Rule*
- Always check the *Pocket Part* for any updated material
- If the *Rule* is relevant, locate the *Appendix* and turn to the corresponding section number for references to *Case Citations* that have quoted the *Rule*

Tasks & Questions § 11.2(c) | Restatements - Law Library (Optional)

1. If you located a relevant *Rule*, take note of the citation.
2. If there were relevant *Case Citations*, list them.

§ 11.3 INTERACTIVE STUDY | LEGAL PERIODICALS

There is no way a researcher can search each of the hundreds of legal periodicals individually. Even if the researcher had the time and energy, only a few periodicals have indexes. The researcher must rely on two major indexes to legal periodicals, or they must use the periodicals provided on *Westlaw* or *Lexis*.

QuickView § 11.3 | Researching Legal Periodicals

Westlaw Next

1. In the *Search Query Text Box*, type *law reviews*, *law journals*, or any other periodical name
2. Select one of the recommendations that appears below the text box
3. In the *Law Reviews and Journals* database page that opens, type your search query in the *Search Query Text Box* at the top, and click the *Search* button
4. In the *Results Page*, narrow your search by selecting a jurisdiction in the left *Narrow* column, or focus your search further by using the *Search within results* feature
5. Review any relevant *Article* by clicking on the title link

Lexis Advance

1. Select the *Filters* menu next to the *Search Query Box*
2. Under the *Category* option, check the box next to *Secondary Materials* and click the *Search* button
3. Select *Law Reviews and Journals* in the *Narrow By* column at left
4. Select an *Article* from the list of search results
5. Review the *Article*, and, if relevant, note any useful primary sources in the footnotes

Law Library

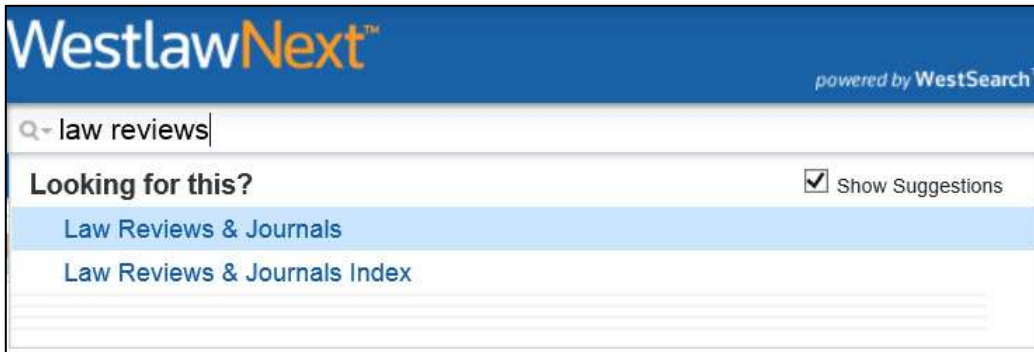
1. Locate the *Index to Legal Periodicals* or the *Current Law Index*, and determine the years which you wish to research
2. If researching an author or title of an article, use the *Title/Author* volume
3. If researching a topic of law, use the *Subject Matter* volume
4. In the main volume, locate any relevant articles and collect what appear to be relevant citations
5. Locate the legal periodical corresponding to the citations you located

Assignment § 11.3(a) | Legal Periodicals on *Westlaw Next*

Periodicals, such as law reviews and law journals, are almost always secondary authority, the exception being, arguably, periodicals that include primary authority, such as United States Law Week.

1. *Locate the databases for periodicals*

Using the *Search Query Box* at the top of the *Home Page*, type the words *law reviews*, or *law journals*, or a specific periodical, such as *Texas Law Review*. Recommended filters or databases will appear below the text box. Select one that fits your search.



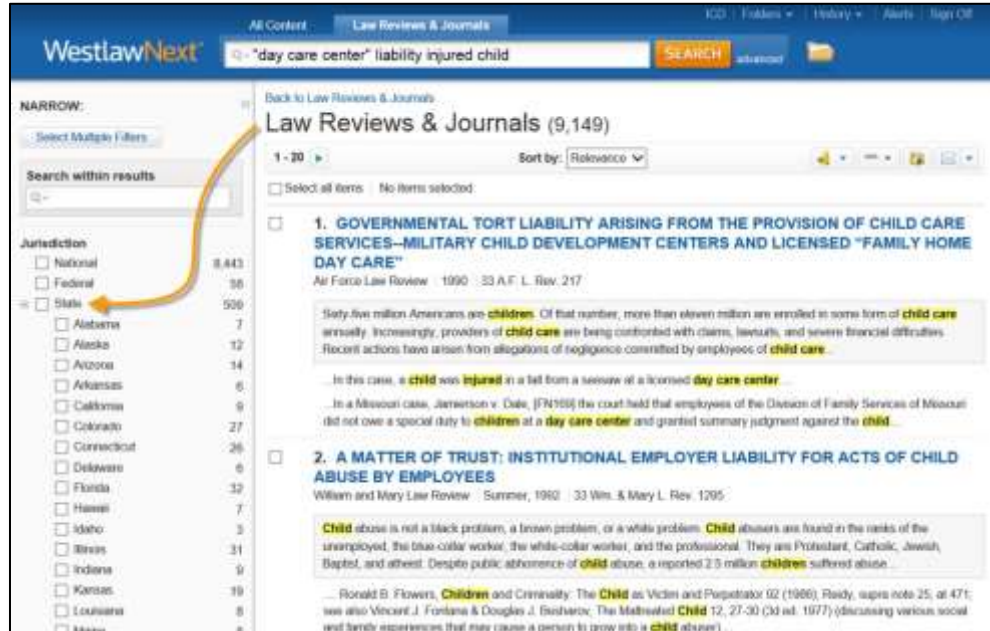
2. *Enter your search query*

In the database page that opens, type your query in the *Search Query Text Box* at the top, and click the *Search* button.



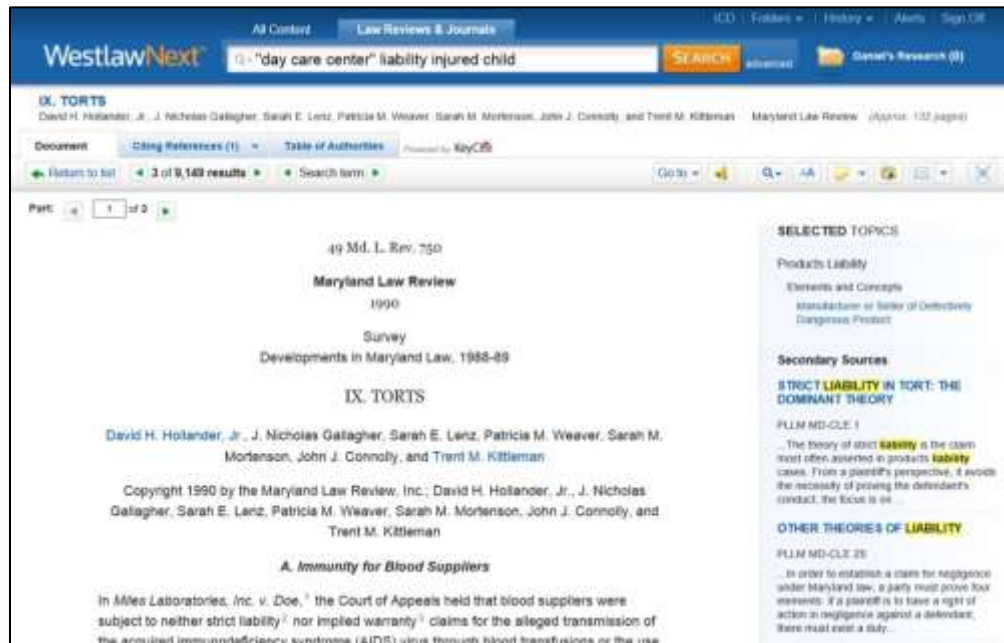
3. *Narrow your search by selecting a jurisdiction in the Results Page*

In the *Results Page*, narrow your search by selecting a jurisdiction in the left *Narrow* column, or focus your search further by using the *Search within results* feature.



4. *Select an article from the Results Page*

Using the summaries, select an article by clicking on its title link.



5. *Identify primary authority by referring to the footnotes*

If a section is relevant, use the links in the body of the article that lead to the *footnotes*. The *footnotes* refer to authority, usually primary.

Checklist § 11.3(a) | Legal Periodicals on Westlaw Next

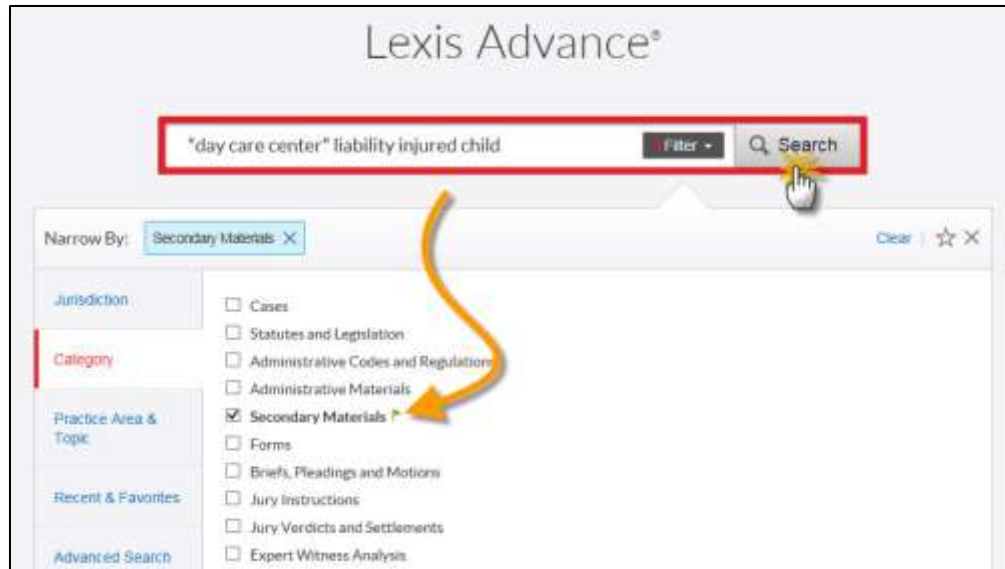
- In the *Search Query Text Box*, type the name or type of periodical, such as *law reviews*, or *Duke Law Review*, and select one of the recommendations that appears
- At the top of the database page that opens, type your query in the *Search Query Text Box* and click the *Search Button*
- Narrow* your search as needed by selecting a jurisdiction or using the *Search within results* features
- Review the *Article*
- Use the *Footnote References* to locate additional authority

Tasks & Questions § 11.3(a) | Legal Periodicals on Westlaw Next

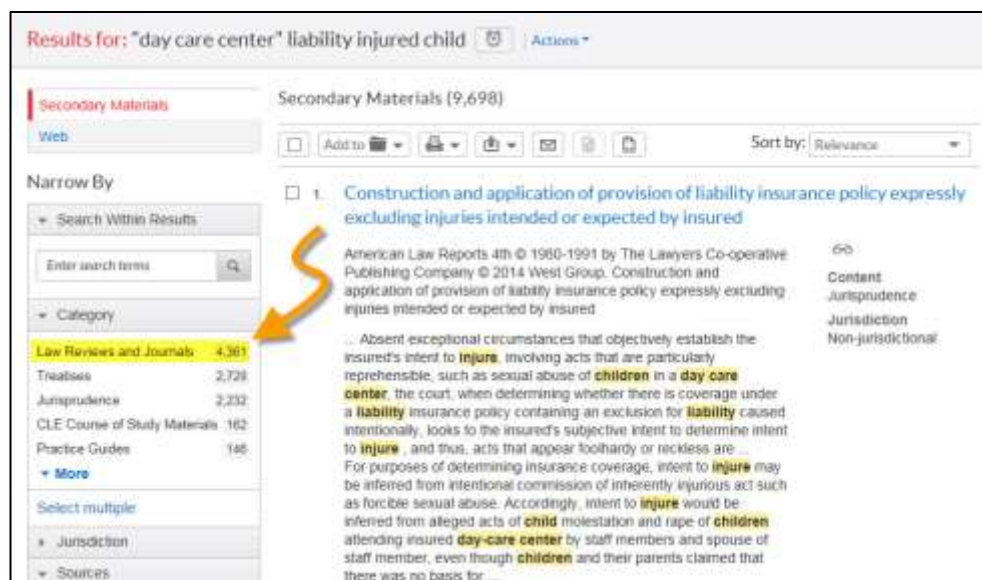
1. Detail how you located a *Legal Periodicals* database.
2. What search query did you use?
3. When you saw the *Results Page*, were you satisfied with the outcome of your search query, or did you need to modify it?
4. When you viewed an *Article*, did you focus your search further using the *Narrow* column on the left side of the page?
5. Was the *Article* you researched relevant?
6. Were you led to any relevant primary authority in the *footnotes*?
7. Did you have a document *delivered*? If so, in what manner? (Print? Email? Download?)

Assignment § 11.3(b) | Legal Periodicals on Lexis Advance

1. *Select your Filter*
Using the *Filters* menu, click *Category* and then select *Secondary Materials*
2. *Enter your search query*
After checking the box for *Secondary Materials* in the *Filters* menu, type your search query the *Search Query Box* at the top of the screen

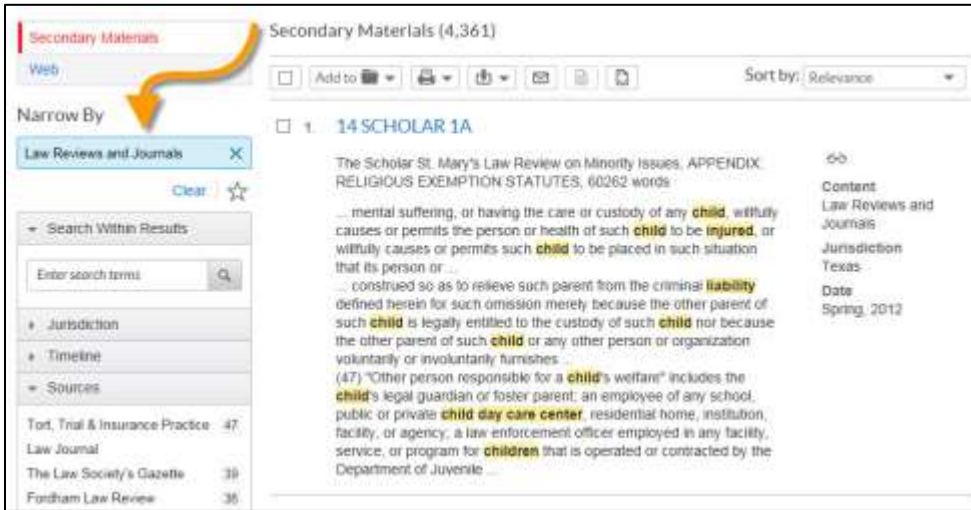


3. *In the Results Page, click on Law Reviews in the Narrow By column*
Using the *Narrow By* column on the left of the screen, click on *Law Reviews and Journals* to limit the results.



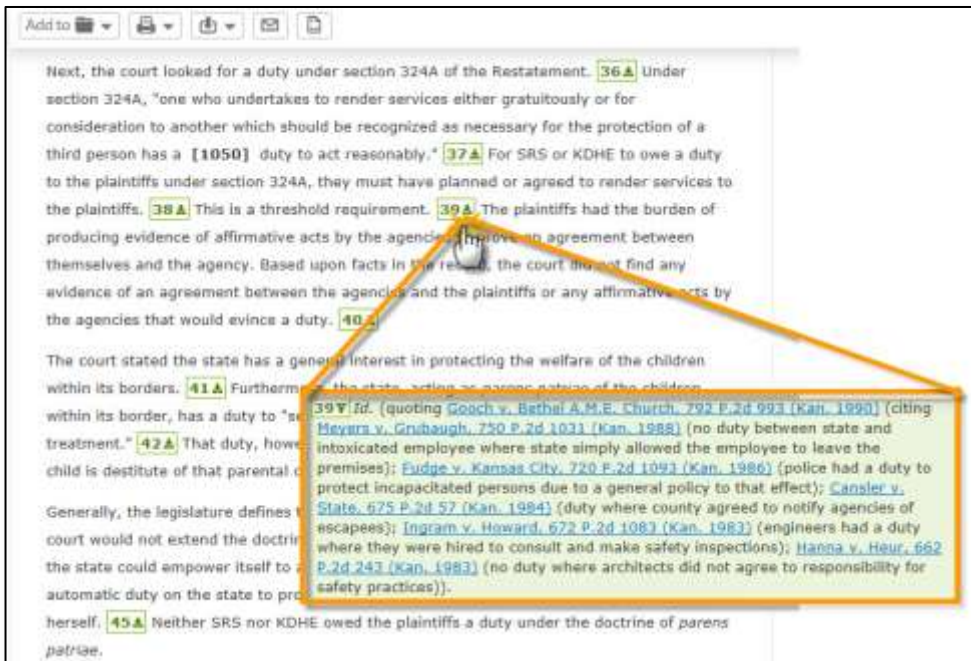
4. Select a relevant Article

Click on the title link to any relevant articles that you find.



5. Locate additional authority by using footnote links

If a section is relevant, use the links in the body of the article that lead to the footnotes. The footnotes refer to authority, usually primary.



Checklist § 11.2(b) | Legal Periodicals on Lexis Advance

- Select the *Filters* menu next to the *Search Query Box*
- Under the *Category* option, check the box next to *Secondary Materials* and click the *Search* button
- Select *Law Reviews and Journals* in the *Narrow By* column at left
- Select an *Article* from the list of search results
- Review relevant *Articles*, noting primary sources in the footnotes

Tasks & Questions § 11.3(b) | Legal Periodicals on Lexis Advance

1. Detail how you located a *Legal Periodicals* database.
2. What search query did you use?
3. When you saw the *Results Page*, were you satisfied with the outcome of your search query, or did you need to modify it?
4. Was the *Article* you researched relevant?
5. Were you led to any relevant primary authority in the *footnotes*?

Assignment § 11.3(c) | Legal Periodicals in the Law Library (Optional)

1. *Use either the Index to Legal Periodicals or Current Law Index*
Both the *Index to Legal Periodicals* and the *Current Law Index* are accessed using the same steps. Thus, we will demonstrate the *Current Law Index* here, but keep in mind that the same steps apply to the *Index to Legal Periodicals*.

The *Current Law Index* (CLI) is very easy to use, but the researcher must be thorough. When beginning research in CLI, you must have the following:

- ✓The name of the author, the title of a specific article, or the general subject matter
- ✓A specific year or period of years in which the researcher wants to check for periodicals

The researcher will sometimes have either an author or title of an article that needs to be researched. It is more common, however, for the researcher to have only a topic or general subject: For instance, articles written by an expert witness who is expected to testify.

2. *Locate the volumes covering the desired year*
CLI volumes are arranged by year. The researcher must choose what year to search within. Each year will have two volumes. One for the *Author or Title* of the articles, and one for the *Subject Matter* being researched.

3. *If the researcher has the name of the author or the title of an article, research in the Author/Title volume*

On the spine of the book, underneath the year of the volume, select the Author/Title volume. Within that volume, the researcher may look up titles of articles or specific authors.

4. *If the researcher has no name or title, research the Subject Matter volume*

A more traditional method of researching is by subject matter. Use the standard process of researching terms relevant to your client's case.

5. *Write down any citations to periodicals that CLI provides*

CLI does not actually contain articles. It leads the researcher to publications, such as law reviews and law journals, that publish the articles. The biggest obstacle for the researcher is that no law library contains all law reviews, journals, or other periodicals. There is no more frustrating feeling than finding a citation to what appears to be a great article, then discovering your library does not subscribe to that periodical.

If this happens, you do have a couple of options. First, if the publication is a law review, contact the law school, or see if their law review is published on their Web site. The *Harvard Law Review*, for example, publishes all its editions online at no cost in the form of PDF downloads (www.harvardlawreview.org).

If that does not work, phone a larger public law library (such as your state's Supreme Court Law Library) and ask if they have the publication. If they do, ask if they will fax you a copy of the article. (You will be amazed how helpful law librarians can be if treated with respect and courtesy.)

Checklist § 11.3(c) | Legal Periodicals in the Law Library

- Determine the year to be searched
- Choose either the *Author/Title* or *Subject Matter* volume for that year
- If the researcher locates a desired article, take note of its citation
- Try to find the periodical, and look up the citation

Tasks & Questions § 11.3(c) | Legal Periodicals - Law Library (Optional)

Your attorney remembers reading an article on the subject of sexual harassment by an author named Jenero or Generro, or something to that effect. He thinks it was between 1995 and 1998. Can you find such an article? Was the *Article* you researched relevant to that issue?

§ 11.4 REGULATORY RESEARCH (for Reference Purposes)

Only a fraction of paralegals engage in regulatory research. Thus, this section is not required or tested on but is instead provided as a reference in case it is needed by the paralegal at some point in his or her career.

The *Code of Federal Regulations* (C.F.R.) and the *Federal Register* (F.R.) are the federal government's mechanisms to provide the public with publications containing the rules and regulations issued by federal agencies and the President. Each serves a different purpose. The *Federal Register* is a record of the day-to-day activities of federal agencies, and the *Code of Federal Regulations* is an annual compilation of the rules and regulations passed by those agencies. Please note that the *Office of Federal Regulations*, which publishes both the *Federal Register* and C.F.R., makes no distinction between the terms regulation and rule.

The Federal Register

The *Federal Register* is the working account of the activities of federal agencies. Thus, the publication is chronological in nature. The daily record of each agency is usually published within 10 to 14 days after the date of the record. (In other words, the record of federal agency activity on June 1 will usually be published by between June 11 and June 15.) This publication consists of hundreds of white, softbound booklets. Each volume of the *Federal Register* is usually divided into three sections. (The section is indicated at the top right of each page.) The sections are:

Rules and Regulations

These are the final rules and regulations approved by agencies. The final print version of these documents are first published here. In addition to the actual regulation, a summary of the rule is provided along with supplementary information providing relevant background information of the new law. After publication here, the regulation will be printed in the next annual set of the *Code of Federal Regulations*.

Notices

This is where agency comments, meeting times and dates, selected agendas, and selected comments that agency members want placed on the record are provided.

Proposed Rules

The *Federal Register* publishes proposed regulations, along with commentary about the purpose and background of those proposed rules.

On rare occasions, one of the above sections becomes too large and may be published as a separate booklet. In addition, additional sections are sometimes added when the subject matter does not fit neatly into one of the above sections, such as *Presidential Proclamations* or *executive orders*. These additional sections are usually simply titled "Part 2" and will follow the three standard sections mentioned above.

How to Cite to the Federal Register

The *Federal Register* is cited by volume number, publication, page number, and publication date. For example:

56 F.R. 38489 (June 28, 1995)

The citation is not underlined or italicized. You may have noticed the rather large page number. The number is high because every year the first set of *Federal Registers* starts numbering over at page 1, and continues numbering consecutively in subsequent volumes. Thus, if issue 1 ends on page 500, the first page of issue 2 will be 501.

The Code of Federal Regulations

The *Code of Federal Regulations* (C.F.R.) is a collection of the final rules and regulations approved by federal agencies. Unlike the *Federal Register*, no introductions or explanations are provided, only the rule itself.

These soft bound sets of books are arranged in similar fashion to the *United States Code* (U.S.C.). The U.S.C. is broken into 50 titles, as is the C.F.R. The C.F.R. attempts to correlate agency regulations with relevant subject matter covered by a corresponding title from the U.S.C. For example, if the *Environmental Protection Agency* passed a regulation requiring that all cars start using Ethanol as fuel, that rule would be published in the following manner:

1. The proposed rule is printed in the *Federal Register*
2. Agency meetings are documented in the *Federal Register*
3. The final rule, with supplementary information about the rule, is published in the *Federal Register*
4. The final rule is published in the C.F.R. Since the part of the federal statutes relating to the *Environmental Protection Agency* is "U.S.C. Title 40," the final rule will be published in Title 40 of the C.F.R.

The subject matter of the rule does not always match perfectly with the subject matter of the federal code title, but using this system at least provides some organizational structure to the publication process.

The C.F.R. is published annually, sort of. Actually, the C.F.R. is divided into sections and each section is revised in a different quarter of the year. Titles 1-16 are revised on January 1 of each year. Titles 17-27 are revised on April 1 of each year. Titles 28-41 are revised on July 1 of each year, and Titles 42-50 are revised on October 1 of each year. These softbound volumes are colored, with each year starting a new hue.

How to Cite to the C.F.R.

The C.F.R. is cited by title, publication, section number (or part number), and publication date. For example:

67 C.F.R. § 84 (1998) - *Bluebook*
or
67 C.F.R. pt. 84 (1998)

The citation is not underlined or italicized. When the government cites the C.F.R., its publications omit the periods (Example: CFR).

QuickView § 11.4 | Researching Federal Regulations

Westlaw Next

1. In the *Search Query Text Box*, type *cfr* and select the CFR database
2. Type your search query in the *Search Query Text Box* at the top, and click the *Search* button
3. In the *Results Page*, select any relevant regulations to review

Lexis Advance

1. In the *Search Query Box*, type *cfr* and add it as a *Filter*
2. Enter your query in the same *Search Query Box* and click *Search*
3. In the *Results Page*, select any relevant regulations to review

Law Library

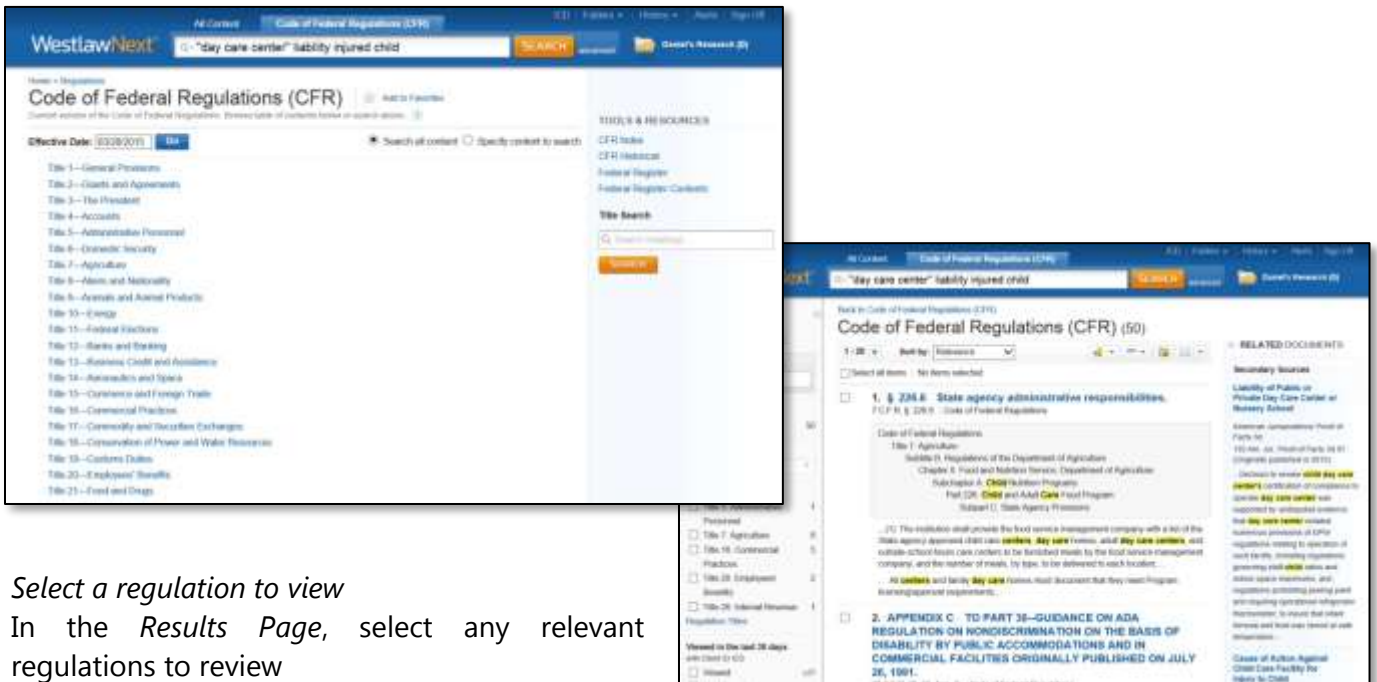
1. In the *Federal Register Index*, locate the section covering the relevant federal agency, (such as the *Federal Aviation Administration*)
2. The index will provide a cite, such as: FR 68330
3. Look up the page in that same year's *Federal Register*, such as: 68330

Assignment § 11.4(a) | Federal Regulations on Westlaw (Optional)

1. *Locate the Regulations database*
In the *Search Query Text Box*, type *cfr* and select the CFR database.



2. *Enter your search query*
Type your search query in the *Search Query Text Box* at the top, and click the *Search* button



3. *Select a regulation to view*
In the *Results Page*, select any relevant regulations to review

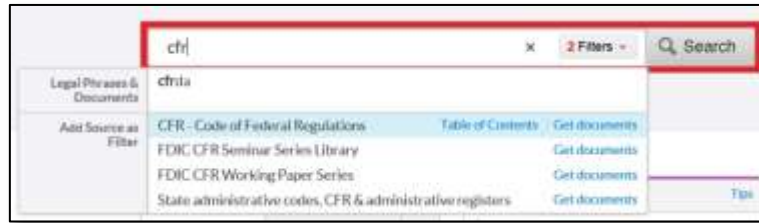
Checklist § 11.4(a) | Researching Federal Regulations on Westlaw Next

- Type *cfr* in the Search Query Box to set that filter
- Enter your *search query*
- Review the *Results Page* to quickly determine applicability

Assignment § 11.4(b) | Federal Regulations on Lexis (Optional)

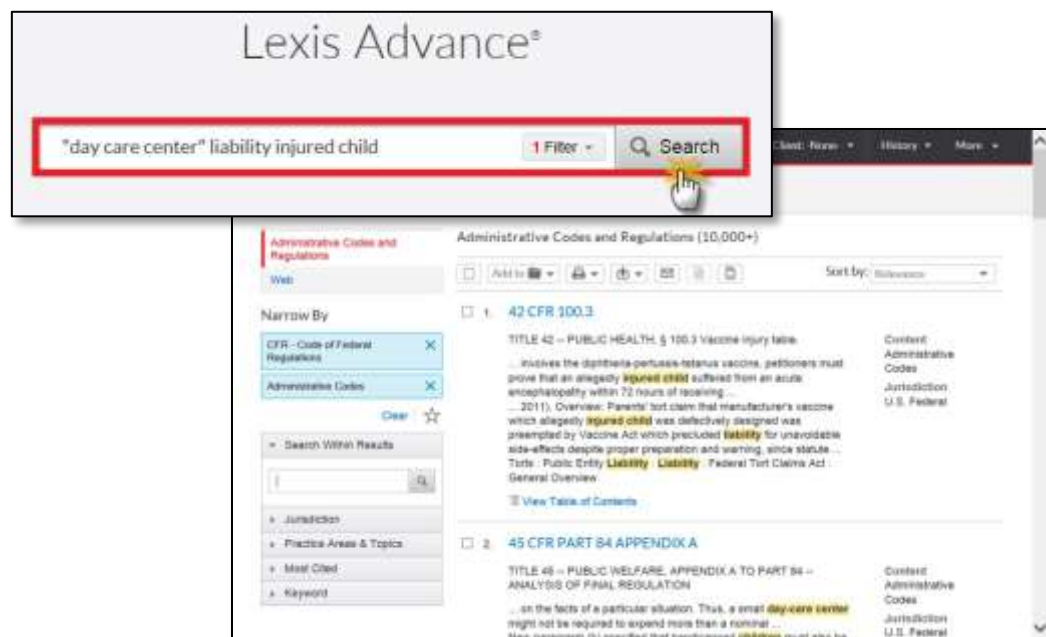
1. *Set your filter*

In the *Search Query Box*, type *cfr* and add it as a *Filter*



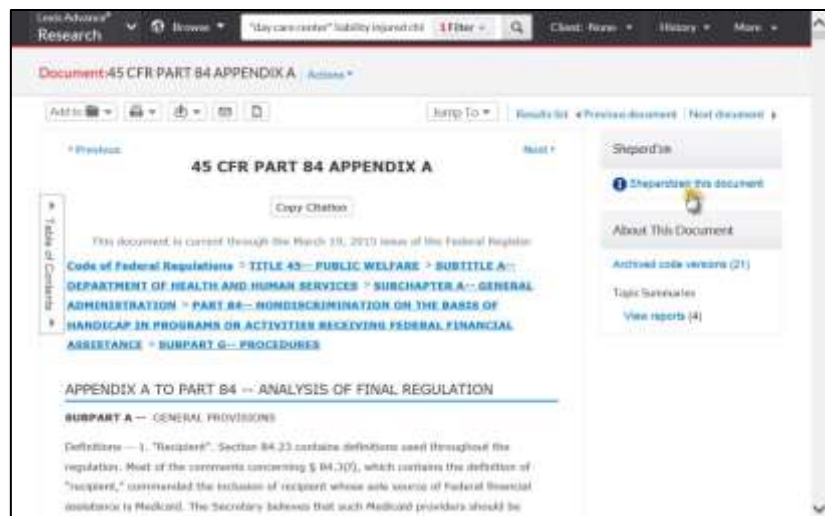
2. *Enter your search query*

Enter your query in the same *Search Query Box* and click *Search*



3. *Select a regulation to view*

In the *Results Page*, select any relevant regulations to review



Checklist § 11.4(b) | Researching Federal Regulations on Lexis

- Set the CFR Filter
- Enter your *search query*
- Review the *regulation*

Assignment § 11.4(c) | Federal Regulations in the Law Library (Optional)

The Federal Register

The *Federal Register* has always been accompanied by an annual *Federal Register Index*. The *Index* is organized by agency. Under the agency heading you may find three groups of listings: Rules and regulations, proposed rules, and notices. (*Take note of these.*)

For example, if you are researching in the *Federal Register Index* for changes in a rule involving air traffic controllers, the following steps would be taken:

1. *Begin in the index*
In the *Federal Register Index*, locate the section covering the agency you are researching (such as the *Federal Aviation Administration*)
2. *Use the page number provided by the index to access the Register*
If a relevant rule is applicable, the index will provide a cite, such as: FR 68330 (FR is the government abbreviation for the *Federal Register*.)
3. *Go to the main pamphlets (thin softbound volumes)*
The researcher would now look up page 68330 in that same year's *Federal Register*. It's that simple.

The Code of Federal Regulations

The C.F.R. publishes a single annual volume called the *C.F.R. Index and Finding Aid*. There is also a *Parallel Table of Authorities and Rules* which allows you to look-up C.F.R. sections by code title number.

Another way to find the section of the C.F.R. you are looking for is to use the *United States Code Annotated* (U.S.C.A) and the *United States Code Service* (U.S.C.S.). Both list citations to the C.F.R. in the annotations after each code section. Therefore, if you are already working with a federal law, the easiest way to locate the regulations that will implement the law is to use one of the annotated codes.

A very helpful research tool for the C.F.R. is the *List of CFR Sections Affected* (LSA), found at the end of the C.F.R.'s. The LSA is organized by C.F.R. title and contains page references to the annual *Federal Register* volumes that publish changes, or proposed changes, to final rules in the C.F.R. Thus, if the rule you are tracking is in Title 22 of the C.F.R., you would check the section covering Title 22 in the annually published LSA for references to proposed or actual changes to the regulation.

The LSA helps researchers track newly proposed or established regulations. For example, if you are a bankruptcy paralegal, periodically checking the LSA for Title 44 (relevant to the topic of bankruptcy) will keep you apprised of the most current final and proposed amendments, revocations, or newly-established regulations.

One limitation to the LSA is that while it details changes or provisions for final rules, it does not provide such information for proposed rules (or for IRS rules, for some reason). For proposed rules and IRS rules, LSA informs the researcher that the rule may in some way have been affected and provides a cite to the *Federal Register*, but does not tell the researcher how the rule has been affected. In these cases, the researcher must look up the rule, or proposed rule, in the referenced *Federal Register* for him or herself. (Use LSA online at www.gpoaccess.gov/lisa/about.html)

In addition, the *General Printing Office* (GPO) has created the *Electronic Code of Federal Regulations* service, or *e-CFR*. Just Google: *e-cfr gpo* (Much easier than typing in the long link we could provide here.)

All of the major online commercial resources provide search access to the C.F.R., including *Lexis*, *Westlaw*, *Loislaw*, *itislaw.com*, *VersusLaw*, and others. These services are not free, but usually provide more sophisticated search mechanisms than sites provided by the government.

1. *Begin in the index*
The C.F.R. publishes a single annual volume called the *C.F.R. Index and Finding Aid*. Look up your topic as you would in any index.
2. *Access the main volumes*
The index will provide a Title and Section number for the main volumes of the C.F.R.

Checklist § 11.4(c) | Code of Federal Regulations in the Law Library

- Research the *C.F.R. Index and Finding Aid*.
- Go to the *main volume* using the *Title and Section Number* provided by the index
- Review the regulation to determine applicability

CHAPTER 11 WRAP-UP

WHAT YOU SHOULD KNOW...

After reading this chapter you should know the following:

- Options for researching nontraditional sources
- How to research treatises, including *Restatements of the Law*
- How to research legal periodicals
- How to research regulations

ASSIGNMENTS

For this chapter you will be required to complete the following (unless otherwise instructed):

- Assignment § 11.2** Due Date: / /
- (a) *Researching Treatises using Westlaw Next*
 - (b) *Researching Treatises using Lexis Advance*
 - (c) *Researching Treatises using the Law Library (Optional)*

- Assignment § 11.3** Due Date: / /
- (a) *Researching Legal Periodicals using Westlaw Next*
 - (b) *Researching Legal Periodicals using Lexis Advance*
 - (c) *Researching Legal Periodicals using the Law Library (Optional)*