

## § 11.2

## Legal Treatises

*Interactive Study*

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.

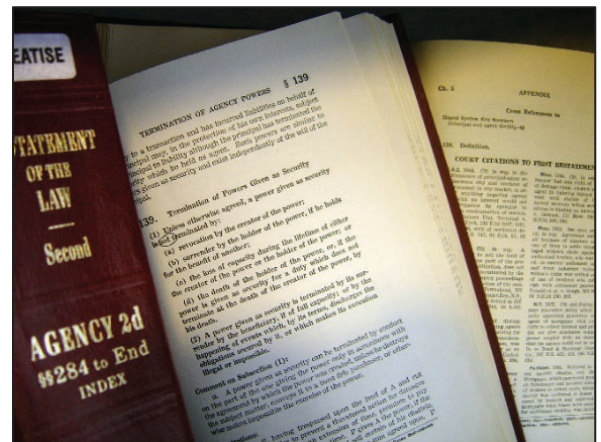
It may be helpful to think of a legal treatise as the inverse of a legal encyclopedia. While a legal encyclopedia includes a little information about almost every area of law, a legal treatise attempts to provide almost all information about a single area of law.

The structure of a legal treatise is 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 - Criminal Law*
- 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 - Insurance Law*
- Restatement of the Law - Law Governing Lawyers*
- Restatement of the Law - Liability Insurance*
- Restatement of the Law - Nonprofit Organizations*
- 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*  
*Restatement of the Law – U.S. Law of International Commercial and Investment Arbitration*

In addition, at the time of publication there are topics that are in the “draft” stage, meaning that they are being created in article form in anticipation of becoming fully published sets of *Restatements*.

*Restatement of the Law – Children and the Law*  
*Restatement of the Law – The Law of American Indians*  
*Restatement of the Law – Consumer Contracts*

If these areas are of interest to you make a note. When published, be among the first to examine them. *Restatements* are cited as: *Restatement (Third) of Agency*, §43.

## QUICKVIEW § 11.2 – RESTATEMENTS OF THE LAW

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### Westlaw

1. Go to the *Home Page* of Westlaw
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. Enter a search query in the text box at the top, then select an article from list of search results
5. After clicking on a relevant title, review the *Restatement Rule*, read *Comments* that include your terms, and review *Reporter’s Notes* and *Cross References* for cases to broaden your research

### Lexis

1. Go to the *Lexis Home Page*
2. Type *restatements* in *Search Query Box* and select “All Restatements”
3. Enter your search query at the top and click *Search*
4. 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

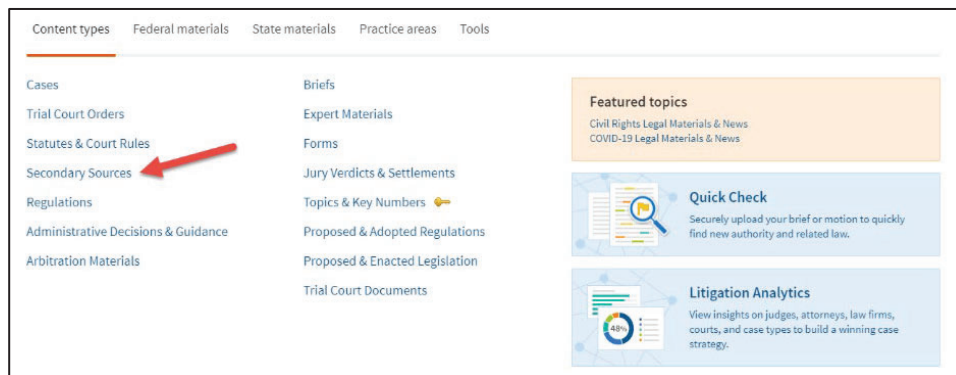
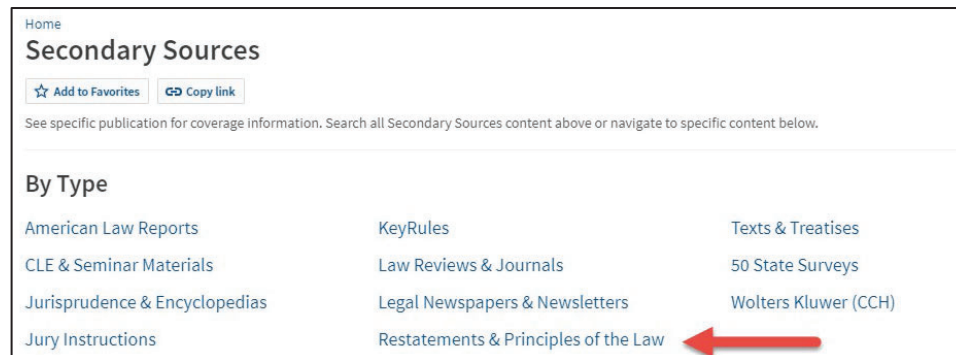
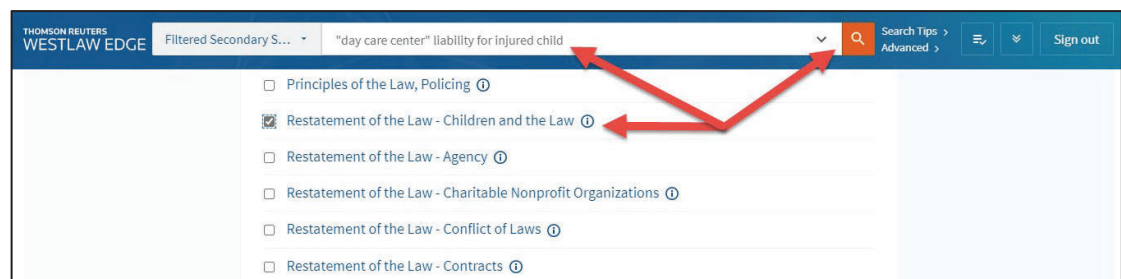
### Law Library

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

1. *Locate the Restatement Database*

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

a. In the *Content Types* window 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. In the main window **select** any of the *Restatements* in which you want to research by clicking the checkbox next to that set. If you do not select any boxes, *Westlaw* will search in all sets. Enter your **search query** and click the **Search button**.

- d. The results page will provide you with articles in the sets you selected that are most relevant. After reviewing the summaries on the *Results* page, click any title to view that article, or select the check box and have those articles delivered by email or download.
- e. The layout of the *Restatement* article is beautiful in its simplicity, both online and in the original book format. In *Westlaw*, each *Restatement* section does only 4 things:
- I. **The Restatement Rule**
- For every section, *Restatements* provides its own Rule. This is typically short and restates what *American Law Institute* believes the law is, or even sometimes what it thinks the law *should* be. The *Restatement Rule* is in bold face immediately following the section number and title of that section.

§ 164 When a Misrepresentation Makes a Contract Voidable  
REST 2d CONTR § 164 | Restatement of the Law - Contracts (Approx. 77 pages)

Document Citing References (1,757) Table of Authorities Powered by KeyCite

View Full TOC

Restatement (Second) of Contracts

Chapter 7. Misrepresentation, Duress and Undue Influence

Topic 1. Misrepresentation

← § 164. When a Misrepresentation Makes a Contract Voidable

U.S.  
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C.A.10

**§ 164 When a Misrepresentation Makes a Contract Voidable**

Comment:  
Reporter's Note  
Case Citations - by Jurisdiction

(1) If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.

(2) If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by one who is not a party to the transaction upon which the recipient is justified in relying, the contract is voidable by the recipient, unless the other party to the transaction in good faith and without reason to know of the misrepresentation either gives value or relies materially on the transaction.

Comment:

a. *Requirements.* A misrepresentation may make a contract voidable under the rule stated in this Section, even though it does not prevent the formation of a contract under the rule stated in the previous section. Three requirements must be met in addition to the requirement that there must have

- II. **Comment**
- 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.

**§ 164 When a Misrepresentation Makes a Contract Voidable**  
REST 2d CONTR § 164 | Restatement of the Law - Contracts (Approx. 77 pages)

Document Citing References (1,757) Table of Authorities Powered by KeyCite

Reading Mode

View Full TOC

Restatement (Second) of Contracts

Chapter 7. Misrepresentation, Duress and Undue Influence

Topic 1. Misrepresentation

§ 164. When a Misrepresentation Makes a Contract Voidable

U.S.  
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C.A.1  
C.A.2  
C.A.3  
C.A.4  
C.A.5  
C.A.6  
C.A.7.  
C.A.7  
C.A.8.

**Comment:**

a. *Requirements.* A misrepresentation may make a contract voidable under the rule stated in this Section, even though it does not prevent the formation of a contract under the rule stated in the previous section. Three requirements must be met in addition to the requirement that there must have been a misrepresentation. First, the misrepresentation must have been either fraudulent or material. See Comment b. Second, the misrepresentation must have induced the recipient to make the contract. See Comment c. Third, the recipient must have been justified in relying on the misrepresentation. See Comment d. Even if the contract is voidable, exercise of the power of avoidance is subject to the limitations stated in Chapter 16 on remedies.

**Illustrations:**

1. A, seeking to induce B to make a contract to buy a tract of land at a price of \$1,000 an acre, tells B that the tract contains 100 acres. A knows that it contains only 90 acres. B is induced by the statement to make the contract. Because the statement is a fraudulent misrepresentation (§ 162(1)), the contract is voidable by B, regardless of whether the misrepresentation is material.
2. The facts being otherwise as stated in Illustration 1, A is mistaken and does not know that the tract contains only 90 acres. Because the statement is not a fraudulent misrepresentation, the contract is voidable by B only if the misrepresentation is material (§ 162(2)).
3. A and B agree that A will buy a tract of land from B for \$100,000 and will assume an existing mortgage of \$50,000. In reducing the agreement to writing, A intentionally omits the provision for assumption but tells B that the writing correctly expresses their agreement. B does not notice the omission and is induced by A's statement to sign the writing. The misrepresentation is both fraudulent

### III. Reporter's Notes

*Restatements* provides citations to authorities upon which the *Comment* was based. The *Reporter's Notes* are what other publications would call footnotes, but the *Reporter's Notes* are collected separately from the *Rule* and *Comments*.

**§ 164 When a Misrepresentation Makes a Contract Voidable**  
REST 2d CONTR § 164 | Restatement of the Law - Contracts (Approx. 77 pages)

Document Citing References (1,757) Table of Authorities Powered by KeyCite

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Chapter 7. Misrepresentation, Duress and Undue Influence

Topic 1. Misrepresentation

§ 164. When a Misrepresentation Makes a Contract Voidable

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C.A.7

before learning or acquiring reason to know of the fraudulent misrepresentation.

**Reporter's Note**

This Section is based on former §§ 476(1), 477. See 12 Williston, Contracts §§ 1486, 1490, 1518 (3d ed.1970).

*Comment b.* See James & Gray, Misrepresentation—Part II, 37 Md.L.Rev. 488, 536-38(1978). Illustrations 1 and 2 are new. Illustration 2 is supported by *Seneca Wire & Mfg. Co. v. A.B. Leach & Co.*, 247 N.Y. 1, 159 N.E. 700 (1928); *Stern v. Satra Corp.*, 539 F.2d 1305 (2d Cir.1976) (dictum). Illustration 3 is supported by *Hollywood Credit Clothing Co. v. Gibson*, 188 A.2d 348 (D.C.Ct.App.1963); *Saylor v. Handley Motor Co.*, 169 A.2d 683 (D.C.Ct.App.1961); *Bixler v. Wright*, 116 Me. 133, 100 A.467 (1917); *Providence Jewelry v. Crowe*, 113 Minn. 209, 129 N.W. 224 (1911). That this Comment may not apply to an attempt by an insurer to avoid an insurance policy, see, e.g., *Employers' Liability Assurance Corp. v. Vella*, 366 Mass. 651, 321 N.E.2d 910 (1975); *Sommer v. Guardian Life Ins. Co.*, 281 N.Y. 508, 24 N.E.2d 308 (1939).

*Comment c.* See *Handy v. Beck*, 282 Or. 653, 581 P.2d 68 (1978) (false statement in required report to State Engineer is a misrepresentation sufficient to support a fraud action without proof that plaintiffs or their predecessors in interest ever became aware of the false statement; court also makes reference to active concealment by defendants).

*Comment d.* Illustration 4 is based on Illustration 1 to former § 477; see also Illustration 2 to former § 477. Illustration 5 is derived from Illustration 1 to former § 476.



## IV. Case Citations – by Jurisdiction

Lists cases which have cited that exact *Restatement* section by jurisdiction. It may surprise you to learn that *Case Citations* make up ninety percent of the pages in *Restatements*. If you find a *Restatement*, you will likely find a case from your jurisdiction, as well.

The screenshot displays the Westlaw interface for the Restatement (Second) of Contracts, specifically § 164, "When a Misrepresentation Makes a Contract Voidable". The left sidebar shows a hierarchical navigation menu with the following items: Restatement (Second) of Contracts, Chapter 7. Misrepresentation, Duress and Undue Influence, Topic 1. Misrepresentation, and § 164. When a Misrepresentation Makes a Contract Voidable. Below this, a list of jurisdictions is provided: U.S., C.A.1, C.A.1, C.A.2, C.A.3, C.A.4, C.A.5, C.A.6, C.A.7, C.A.7, C.A.8, C.A.8, C.A.9, C.A.9, C.A.9, Bkrtcy.App., C.A.10, C.A.11, C.A.11, C.A.D.C., C.A.Fed., and U.S.C.I.C. The main content area is titled "Case Citations - by Jurisdiction" and lists cases under three jurisdictions: Mo.App., Neb., and N.J. Each jurisdiction entry includes a brief summary of the case and a citation to the relevant case.

## CHECKLIST – RESTATEMENTS OF THE LAW USING WESTLAW

- 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 the *Results Page*, select an article
- Read the *Restatement Rule*, then use the *Comments* and *Illustrations* to help understand the *Rule*
- Use the *Reporter's Notes* to locate primary authority

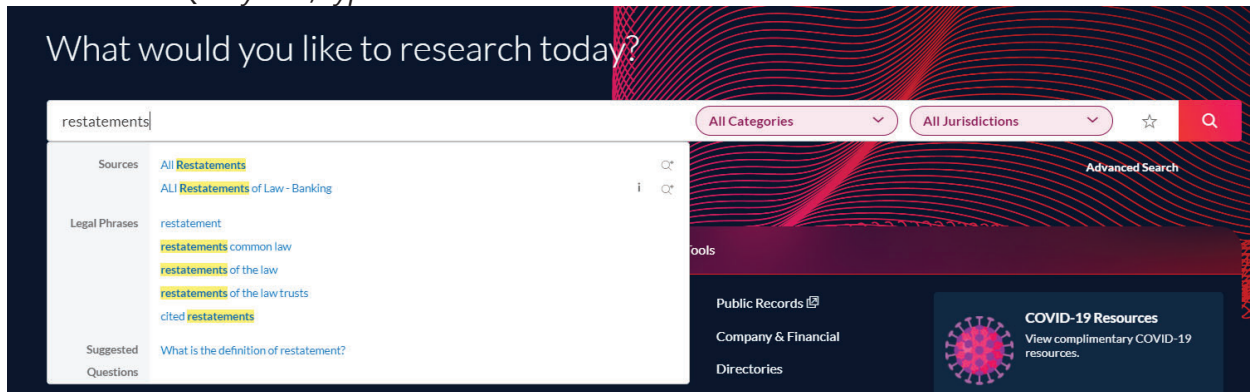
**REVIEW QUESTIONS – RESTATEMENTS OF THE LAW USING WESTLAW**

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 try any of the other tools on the page, such as *Reading Mode*, or the *green search arrows* that go to the next appearance of an original search query term (in the bar above the article)?
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 USING LEXIS

Researching *Restatements* on Lexis 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 environment, but if you find a relevant *Rule* it will certainly be worth it.

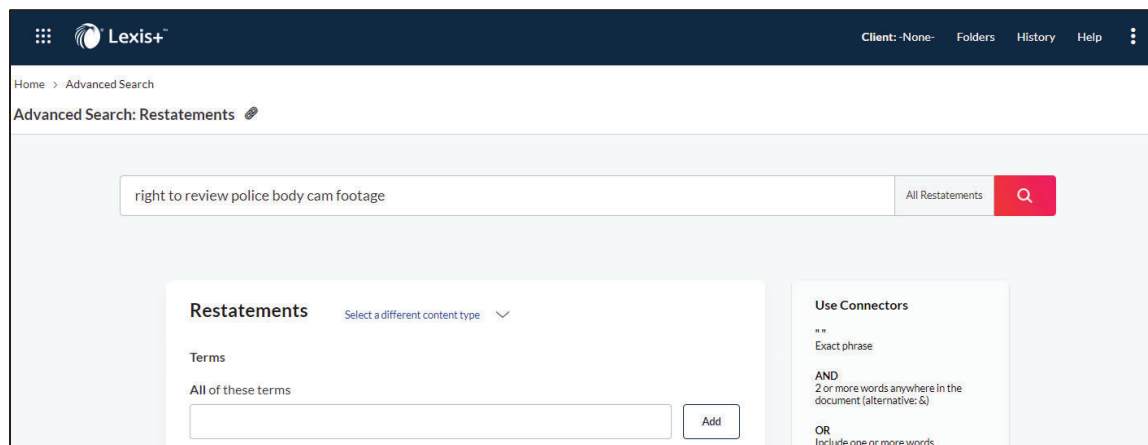
1. In the Search Query Box, type "restatements"



**DO NOT CLICK THE SEARCH BUTTON OR YOUR RETURN KEY.** Doing so will result in a search for the word "restatements" in whatever filters you have set. Instead, wait for the drop-down box to appear below the search query text box. Click on **All Restatements**.

2. Enter your search query in the text box

You are now in the *Restatements* database. Use the text box at the top of the page to enter your search query. Click on the *Search* button.





3. *Review the summaries in the Results Page*

If you find any *Restatements* that look relevant, click on the title to view the entire section. Now that you have limited the search results to all sets of *Restatements*, you may want to use the Search Within Results feature found in the left column.

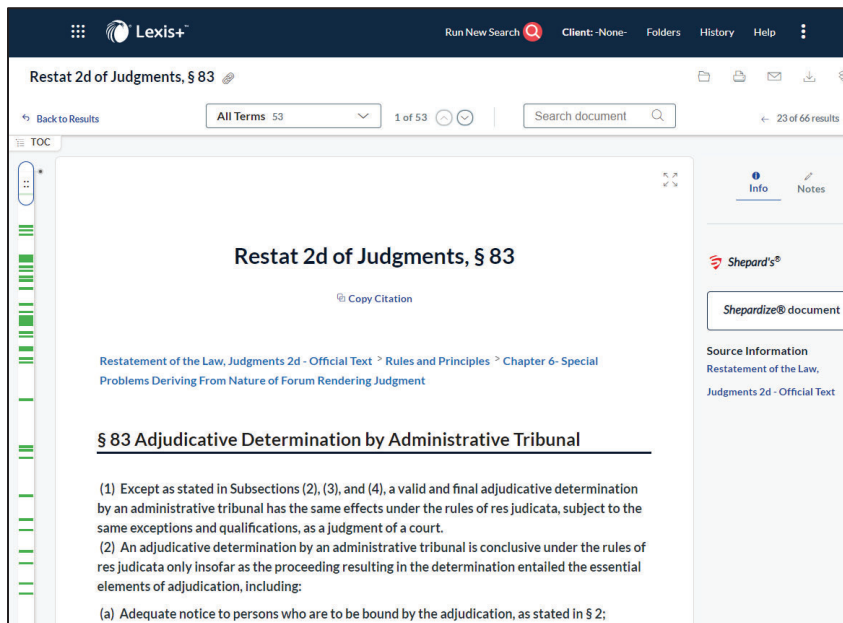
The screenshot shows the Lexis+ search interface. The search query is "right to review police body cam footage". The results are filtered to "All Restatements". The left sidebar shows filters for Category (Secondary Mat...), Jurisdiction, Sources, Practice Area & Topics, Keyword, Judge, and Publisher. The search results are sorted by Relevance. Two results are displayed, both titled "§ 4-34 Appeal in Post-Award Action" from the Restatement of the Law, The U.S. Law of International Commercial and Investment Arbitration - Drafts. Each result includes a text snippet and a search bar overlay.

4. *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.

5. *Read the Restatement Rule and use research tools*

For every section, *Restatements* provides its own *Rule*. The *Rule* is not typically very long. The *Restatement Rule* is in bold face immediately following the section number and title of that section.



- a. The layout of the *Restatement* article is beautiful in its simplicity, both online and in the original book format. In *Lexis*, each *Restatement* section does only 4 things:
- I. **The Restatement 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.
  - II. **Comment**  
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.
  - III. **Reporter’s Notes**  
Provides citations to authorities upon which the Comment was based.
  - IV. **Cross References**  
These are research tools that lead to additional secondary authority.

**Note:** At the time of this publication *Lexis* does not include access to *Case Law by Jurisdiction* references found in both the *Westlaw* and Law Library versions of the publication. However, it does include the *Cross-Reference* tool, which *Westlaw* does not.

**CHECKLIST – RESTATEMENTS OF THE LAW USING LEXIS**

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- Type *restatement* in *Search Query Box* and select *ALL RESTATEMENTS* in *drop-down*
- In the *Restatements* database, type your search query and click the *Search* button
- In the *Results Page*, click on the title of relevant articles
- At the top of the article, review the *Restatement Rule*
- Read *Comments* that include your terms and review *Reporter's Notes*

**REVIEW QUESTIONS – RESTATEMENTS OF THE LAW USING LEXIS**

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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. Did you find any *Cross-References*? 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*  
Provides references to authorities that helped to shape the creation of the *Rule*.
  - Cross References*  
Relevant *Key Numbers*, annotations, and other secondary authority.
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 age and topic of the set being researched, *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 – RESTATEMENTS OF THE LAW USING THE LAW LIBRARY**

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- 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*

**REVIEW QUESTIONS – RESTATEMENTS OF THE LAW USING THE LAW LIBRARY**

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



**SEPARATE YOURSELF FROM THE PACK**

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Make no mistake. *Restatements of the Law* is a powerful research tool. In fact, its volumes are often used instead of textbooks in many law schools. If you use *Restatements*, and especially if you rely on it, your attorney will be impressed, and you will be elevated in his or her eyes.

If you are motivated and want a challenge to add another powerful resource to your bag of research tricks, there is one more publication you might want to consider.

**PRINCIPLES OF THE LAW**

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*Principles of the Law* is published by the same publisher as *Restatements of the Law*, the American Law Institute (A.L.I.). The look and format are similar to *Restatements*, but it has a slightly different strategy.

- **Restatements** are addressed to courts and others applying existing law. *Restatements* aim at clear formulations of common and statutory law and reflect the law as it presently stands or might plausibly be stated by a court. In other words, *Restatements* assumes the stance of describing the law as it is.
- **Principles** may be addressed to courts, legislatures, or governmental agencies. They assume the stance of expressing the law as it should be, which may or may not reflect the law as it is.

*Principles* will not be as useful to you as a paralegal except for one area: they may provide an idea of where the law is heading. That is because *Restatements* and *Principles* are the most highly respected form of secondary authority. What they say matters.

*Principles of the Law* includes the following sets:

*Principles of the Law, Corporate Governance*  
*Principles of the Law, Family Dissolution*  
*Principles of the Law, Aggregate Litigation*  
*Principles of the Law, Intellectual Property*  
*Principles of the Law, Software Contracts*  
*Principles of the Law, Election Administration*  
*Principles of the Law, Government Ethics*  
*Principles of the Law, Policing*  
*Principles of the Law, Student Sexual Misconduct*  
*Principles of the Law, Transnational Civil Procedure*

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- > Principles of the Law of Intellectual Property - Official Text
  - § 201 Defendant's Residence
  - § 202 Choice-of-Court Agreements
  - § 203 Appearance by a Defendant Not Resident in the Forum
  - § 204 Infringement Activity by a Defendant Not Resident in the Forum**
  - § 205 Agreements Pertaining to Intellectual Property Rights
  - § 206 Personal Jurisdiction over Multiple Defendants
  - § 207 Insufficient Grounds for Jurisdiction over Transnational Disputes

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## Intellectual Property: Principles Governing Jurisdiction § 204

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[Copy Citation](#)

[Principles of the Law of Intellectual Property - Official Text](#) > [Part II- Jurisdiction](#) > [Chapter 1- Personal Jurisdiction Over the Defendant](#)

### § 204 Infringement Activity by a Defendant Not Resident in the Forum

(1) A person may be sued in any State in which that person has substantially acted, or taken substantial preparatory acts, to initiate or to further an alleged infringement. The court's jurisdiction extends to claims respecting all injuries arising out of the conduct within the State that initiates or furthers the alleged infringement, wherever the injuries occur.

(2) A person may be sued in any State in which that person's activities give rise to an infringement claim, if that person directed those activities to that State. The court's jurisdiction extends to claims respecting injuries occurring in that State.

(3) A person who cannot be sued in a World Trade Organization-member State with respect to the full territorial scope of the claim through the application of §§ 201-204(1) may be sued in any State in which that person's activities give rise to an infringement claim if:

- (a) that person directed those activities to that State, and
- (b) that person solicits or maintains contacts, business, or an audience in that State on a regular basis, whether or not such activity initiates or furthers the infringing activity.

The court's jurisdiction extends to claims respecting injuries arising out of conduct outside the State that relates to the alleged infringement in the State, wherever the injuries occur.

**COMMENTS & ILLUSTRATIONS**

**Comment:**

*a. Infringement actions generally.* This provision seeks both to restate the traditional criteria for jurisdiction over claims for the tort of infringement (place from which the harmful conduct originated; place of impact of the injury), and to adapt the traditional criteria to the digital environment. It does so without having the tests propounded turn on technologically specific factors, such as the "interactivity" of a website. It applies to violations of any intellectual property right covered by these Principles, including moral rights and claims of secondary liability.

If you utilize research sources such as *Restatements of the Law* and *Principles of the Law*, you will be more likely to stay ahead of the game.