

VALIDATING

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CHAPTER OVERVIEW

This chapter teaches you how to ensure that a case that you find is good law and how to find additional cases using citators. To ensure that a case is current or is still good law, you must validate or update your research findings. A case is good law if its ruling has not been reversed or overruled by another court's decision. Validating or Shepardizing, as it is commonly called, is one of the most important tasks you must do as a researcher. It is also referred to as cite checking. To do this, you must review citators.

A. *SHEPARD'S*[®]

▼ What Is a Citator?

Citators are services that note when a court has mentioned or relied on a case. They also note when a law or statute is mentioned. The citator may be found on the computer or in print, however, print citators are

not used often. Most law firms and libraries no longer subscribe to these print resources. In addition, some states require that online resources be used to supplement any print citator research. To ensure that an authority is current, online citators must be reviewed. The *Shepard's citator system* has long been one of the most pervasive. It can be accessed through Lexis Advance. KeyCite is a well-regarded and widely used citator offered by Thomson Reuters Westlaw, more commonly referred to as Westlaw.

Citators are used to validate an authority such as a case. In addition, you can use them to locate relevant primary authorities, including cases and statutes, and secondary authorities, such as law review articles that may assist you in finding additional primary authorities or in understanding the legal issues presented in your research. You also can review citators to determine the direct history of a case. This history describes the progress of a specific case and all of the decisions made by different courts pertaining to it.

▼ Why Use *Shepard's*?

Shepard's can be used to research almost every federal and state case reported in print in the past 200 years. It includes some cases considered unreported because they only appear online. Among the authorities that can be Shepardized are cases, statutes, constitutions, codes, jury instructions, administrative decisions, copyrights, trademarks, patents, and regulations as well as secondary authorities including Restatements. More information about Shepardizing statutes can be found in Chapter 7

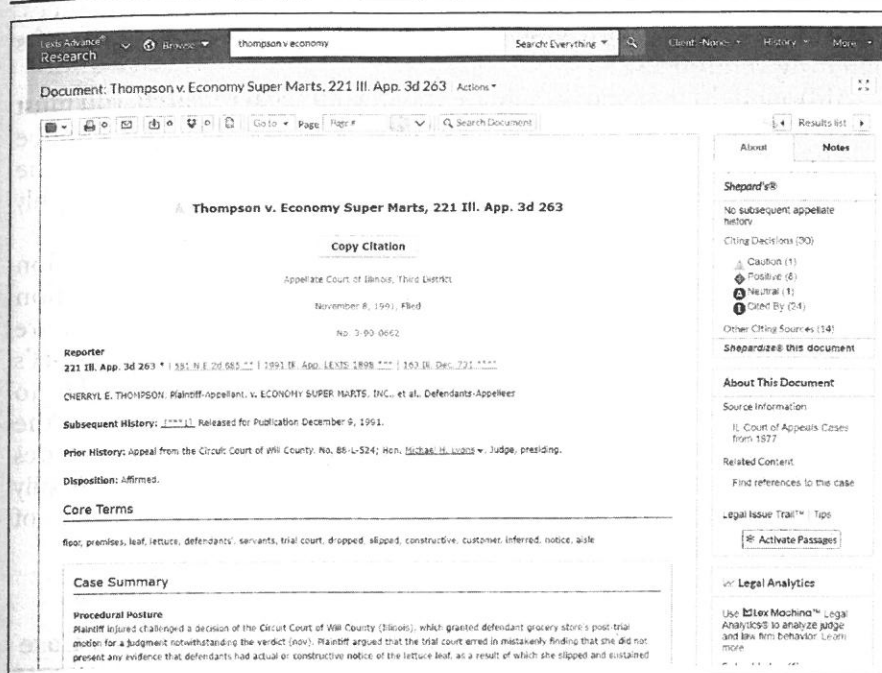
▼ What Information Does *Shepard's* Provide for Researchers and How Do You Use *Shepard's* Online?

Shepard's provides a list of parallel citations and the history of the case you are reviewing. The **case history** explains whether the case has been appealed and the results of that appeal. If it is a trial court case, *Shepard's* indicates whether it was appealed and lists the appellate citation.

The biggest benefit of *Shepard's* is that it provides a detailed report of all of the cases that mention or cite the case you are Shepardizing or reviewing.

You can access *Shepard's* online at Lexis Advance during any point in your research. It cannot be accessed through Westlaw. When you are reviewing a case, a *Shepard's* preview box is shown on the side of the screen. This preview box provides a summary of the treatments of decisions that cite the decision you are viewing. See Illustration 5-1. These treatments are represented by graphics called *Shepard's* signals.

ILLUSTRATION 5-1. Lexis: Screen Shot of the Top of the Thompson Case



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subscribe to these online resources to ensure that an individual. The *Shepard's* database. It can be stored and widely used more commonly

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Researchers

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- A red stop sign warns researchers that a case may be overruled in whole or in part. This also indicates that the case may have been superseded or departs from the case you are Shepardizing without explicitly overruling the case.
- An orange "Q" indicates that a portion of the case has been questioned by a court—meaning that the validity or precedential value of the case is in question.
- A yellow triangle cautions the researcher about a case. This means that a case may have been criticized by a court, limited, modified, corrected, or clarified.
- A green diamond with a plus sign indicates that the case has received positive treatment from a citing court. This type of treatment could be that the court affirmed the case or followed it.
- An "A" in a blue octagon indicates that the citing case reference is a neutral treatment but it interprets or clarifies the case being Shepardized.
- An "I" in a blue octagon indicates that the case was cited, but that the case did not merit analysis.

Within this preview box, you can see how many cases have been designated as negative, positive, or neutral types of treatments. *Shepard's* also will designate what its editors consider to be top citing references. *Shepard's* is designed to allow you to easily access the cases selected as top citing references.

Although these signals can guide you in your legal research, you must determine for yourself whether a case is still good law. A case may not be good law concerning one point of law, however, you still need to determine whether that point concerns the issue you are researching. To thoroughly do your job as a researcher, you need to read the case yourself.

When you are reviewing the *Shepard's* report itself—see Illustration 5-2, the *Shepard's* Report for the *Thompson* case shown in Illustration 3-4—*Shepard's* indicates all of the cases that mention the case you are Shepardizing. You also can filter results by headnote, court, court's analysis, or timeframe. The *Shepard's* screen shows tabs similar to those found when using Internet search engines. In addition to the tab of citing cases, there is a tab for Other Citing Sources that includes secondary sources such as treatises and Restatements that can be easily accessed through the link provided and a tab for the Table of Authorities—a list of cases cited in the case you are Shepardizing

ILLUSTRATION 5-2. *Shepard's* Report of the *Thompson* Case

LexisNexis® Research

shep. 221 Ill. App. 3d 263

Search Everything

Client: None

History

More

Shepard's®: A. Thompson v. Economy Super Markets, 221 Ill. App. 3d 263

Parallel Citations

Actions

Appellate History

Citing Decisions

Other Citing Sources

Table of Authorities

Narrow By

Analysis

Caution 1

Disputed by 1

Positive 8

Followed by 8

Neutral 1

Cited in Dissenting Opinion at 1

Cited by 24

Select multiple

Court

Federal Courts 15

7th Circuit 15

Select multiple

State Courts 15

Illinois 14

California 1

Select multiple

Publication Status

Unreported 15

Reported 11

Citing Decisions (30)

No subsequent appellate history

Sort By: Court (Highest known)

Illinois Appellate Court

1. Mackley v. Wal-Mart Stores, Inc., 2017 IL App (1st) 160103-U, 2017 Ill. App. Unpub. LEXIS 1267

Followed by

1800 v. General Growth Properties, Inc., 2012 IL App (1st) 110919-P, 21, 966 N.E.2d 1160, 359 Ill. Dec. 472

When a business invitee is injured by slipping on the premises, liability on the part of the defendant may arise if (1) the substance was placed there by the negligence of the proprietor or his servants or (2) the proprietor or his servants knew of its presence on the substance was there a sufficient length of time so that, in the exercise of ordinary care, its presence should have been discovered, i.e., the proprietor had constructive notice of the substance. *Thompson v. Economy Super Markets, Inc.*, 221 Ill. App. 3d 263, 265, 581 N.E.2d 885, 163 Ill. Dec. 731 (1991). [HN1]

Discussion

Court: Ill. App. Ct. 1st Dist.

Date: June 23, 2017

Headnotes: HN1

2. Hurtado v. Costco Wholesale Corp., 2016 IL App (1st) 161038-U, 2016 Ill. App. Unpub. LEXIS 2523

Cited by: 2016 IL App (1st) 161038-U p 23

648 N.E.2d 98, 207 Ill. Dec. 642 (1994). Where the substance is on the premises through the acts of a third party, the time element to establish knowledge or notice to the proprietor is a material factor. *Thompson v. Economy Super Markets, Inc.*, 221 Ill. App. 3d 263, 265, 581 N.E.2d 885, 163 Ill. Dec. 731 (1991). However, a store owner is not the insurer of the safety of its customers merely because they are on the premises. *Olinger v. Great Atlantic & Pacific Tea Co.*, 21 Ill.

Discussion

Court: Ill. App. Ct. 1st Dist.

Date: Nov. 26, 2016

Headnotes: HN1

3. Baker v. Costco Wholesale Corp., 2016 IL App (1st) 152736-U, 2016 Ill. App. Unpub. LEXIS 1162

Followed by

Discussion

Court: Ill. App. Ct. 1st Dist.

Date: Nov. 26, 2016

Headnotes: HN1

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Thompson Case

None History More

Sort by: Court (highest lowest)

LEXIS 1267

Discussion
Court
18 App Ct 1st
Date
June 25, 2017
Headnotes
H01

sub. LEXIS 2523

Discussion
Court
18 App Ct 1st
Date
Nov 26, 2016
Headnotes
H01

LEXIS 1162

Discussion

ILLUSTRATION 5-2. Continued

The screenshot shows the Lexis Advance search results for the case *Thompson v. Economy Super Marts, 221 Ill. App. 3d 263*. The interface includes a search bar at the top, a sidebar with filters, and a main content area displaying the case details.

Search Results:

- Case:** *Thompson v. Economy Super Marts, 221 Ill. App. 3d 263*
- Court:** 18 App Ct 1st
- Date:** June 25, 2017
- Headnotes:** H01

Table of Authorities:

- Writings:** 1
- Cases:** 1
- Books:** 1
- Periodicals:** 1
- Other:** 1

Case Details:

1. Mackin v. Wal-Mart Stores, Inc., 2017 IL App (1st) 160103-U, 2017 IL App. Unpub. LEXIS 1267

2. Hurtado v. Costco Wholesale Corp., 2016 IL App (1st) 161038-U, 2016 IL App. Unpub. LEXIS 2523

3. Baker v. Costco Wholesale Corp., 2016 IL App (1st) 152736-U, 2016 IL App. Unpub. LEXIS 1162

4. Strick v. Tex. De Braz. Co., 2015 IL App (1st) 142157-U, 2015 IL App. Unpub. LEXIS 2225

The screenshot shows the 'Appellate History' for the case *Thompson v. Economy Super Marts, 221 Ill. App. 3d 263*. The interface includes a search bar at the top, a sidebar with filters, and a main content area displaying the case details.

Search Results:

- Case:** *Thompson v. Economy Super Marts, 221 Ill. App. 3d 263*
- Court:** 18 App Ct 3d Dist
- Date:** Nov 8, 1991
- Headnotes:** H01

Appellate History (1):

- 1. Citation you Shepardized™**
- Thompson v. Economy Super Marts, 221 Ill. App. 3d 263, 581 N.E.2d 885, 1991 Ill. App. LEXIS 1898, 163 Ill. Dec. 731**

Legend:

- 1**

At the top of the *Shepard's* result for the *Thompson* case is a yellow triangle. That triangle indicates that a researcher should use caution before relying on the *Thompson* case. That is because of the possible negative treatment of this case.

After you retrieve the *Shepard's* report of citing cases, you will be able to perform searches to narrow your results or use the set filters *Shepard's* provides. Review the left side of each of the pages in Illustration 5-2. You can see the set filters *Shepard's* provides. You can filter the *Shepard's* report so that you retrieve only the cases that have a negative impact on your case. You also can retrieve cases that contain only a particular headnote or are decided by a specific court. You also may filter your search results to include a particular jurisdiction, published or unpublished status, headnote, vital points of law, or fact patterns, dates, or other *Shepard's* treatments such as *followed by* or *overruled*. On page 5 of Illustration 5-2, the *Shepard's* search is limited to the headnote topic Negligence and the result shown is a list of eight cases that cite to the *Thompson* case concerning that topic. In contrast, page 2 of Illustration 5-2 shows a report that is limited to Illinois appellate court cases. Page 3 of Illustration 5-2 shows only the appellate history for the *Thompson* case. It is the appellate history tab of this *Shepard's* report. Another type of search you can perform is to seek opinions by a particular judge. You also can narrow the result to search for briefs, pleadings or motions.

Shepard's also will provide a graphic of trends in courts treatment of a case. For example, it can tell you that two of 69 decisions rendered by the Court of Appeals for the 7th Circuit received red stop-sign warnings indicating that the case may not be good law. This view can be accessed by clicking on the Grid View. See Illustration 5-3. You can get an overview of the analysis by court or by date. Again with a simple click, you can access cases with a specific treatment.

Shepard's also provides links to other citing references such as treatises. Review page 3 of Illustration 5-2. That shows the other citing sources tab of the *Thompson Shepard's* report on Lexis. *Shepard's* also allows you to email, download, send to Dropbox, or print the full text of multiple citing cases for a particular treatment at one time. New information is added to *Shepard's* every 15 minutes. *Shepard's* also allows you to immediately access the citing cases online by clicking the mouse on the hyperlinked number.

PRACTICE POINTER

Note that the *Shepard's* citations are not *Bluebook* abbreviations for the reporters and that the number for each series is placed on top of the reporter abbreviations.

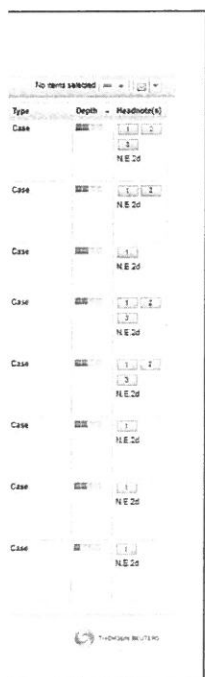
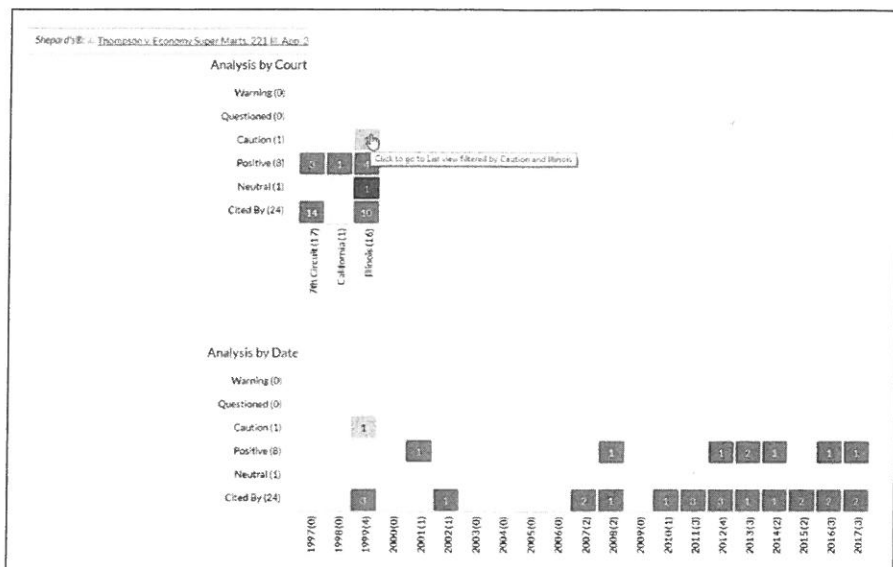


ILLUSTRATION 5-3. Example of the Grid View for the Thompson Case



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ETHICS ALERT

Some courts may sanction attorneys if they provide cases that are no longer good law to support their claims. Disciplinary action may be taken against an attorney who fails to use online resources to validate an authority.

Shepard's Alerts provide information about changes to a *Shepard's* report of a particular case. These alerts are emailed to researchers at whatever interval the user specifies. These alerts can be tailored to provide specific information only, such as the negative treatment of a case or changes to the citation. To receive this, you set up a *Shepard's* alert online. It can be done by clicking "*Shepard's Alert*" found within the *Shepard's* report.

B. KEYCITE

Thomson Reuters Westlaw provides a service called **KeyCite** that competes with *Shepard's*. KeyCite, however, is not offered in print. KeyCite provides the direct history of a case as well as any case that impacts the

2011(2)	1	2	1		1	1
2012(4)	1	1	1	1	1	2
2013(3)						
2014(2)						
2015(2)						
2016(3)						
2017(3)						

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- History indicating the case history for the case that is the subject of the KeyCite.
- Citing references indicating all cases, trial court orders, administrative decisions, secondary sources, appellate court documents, and others that have cited the case that is the subject of the KeyCite.
- Negative Treatment shows all of the cases that have provided a negative treatment of the case.
- Filings.
- Table of Authorities.

For example, Illustration 5-4 page 4 shows the Negative Treatment of the *Thompson* case. Illustration 5-4 page 1 shows the tab that contains decisions that cite to the *Thompson* case. Next to the citing decision, the KeyCite report indicates the treatment KeyCite's editors thought was merited based on the citing case's comments about the *Thompson* case. For example, the notation next to the first two cases indicates the case received negative treatments. You also can see that those two cases were distinguished from the *Thompson* case. It provides a citation for the citing case and a link to the full case. In addition, the KeyCite report shows the date of the case and indicates the West headnotes in the *Thompson* case that are referenced in the citing case.

KeyCite uses a system of colored flags to alert you to the history:

- A red case flag warns that the case is no longer good law for at least one of the points of law.

- In addition, Westlaw has developed a more in-depth treatment indicator that involves green bars that note the depth of the treatment a court provides to a case. This treatment is noted in the column in Illustration 5-4 under Depth. Four bars means that the case was examined. Three bars mean it was discussed, and two bars indicate it was cited. One bar means that the case was mentioned. Westlaw's headnotes and topics and key numbers also are incorporated into the KeyCite display under the column called "Headnotes."

THOMPSON REUTERS
WESTLAW

AL Content Enter terms, citations, databases, anything AL Federal Q Advanced

Thompson v. Economy Super Marts, Inc.
Appellate Court of Illinois, Third District November 9, 1991 215 Ill App 2d 263, 591 N.E.2d 1159, 187 Ill Dec 711, 719 P.2d 816

Document Case Page Negative Treatments (2) Citing References (152) Table of Authorities KeyCite

KeyCite Citing References (25) 1-26 Sort By: Depth Highest First No items selected

VIEW:	Treatment	Title	Date	Type	Depth	Headnote(s)
Cases	Discussed by	1 Jones v Grigalis Arts Finishing Co 2010 WL 2499514 *N D MI	Jan 15, 2010	Case	4 5	N E 2d
Trial Court Orders		TORTS - Premises Liability A genuine issue of material fact existed as to whether a business was liable for an inmate's injury at their place of business.				
Secondary Sources						
Appellate Court Documents	Discussed by	2 Wegman v MacKenzie Post of Libertyville, Inc 721 NE 2d 814, 624 Ill App 3d 2d	Oct 13, 1994	Case	4 5	N E 2d
Trial Court Documents		REAL PROPERTY - Premises Liability Jury could find that water on floor presumably caused home guest fall at bottom of stairway.				
All Results						
NARROW	Discussed by	3 Sirelli v Texas Oil Well Drilling Corp 2013 WL 5761176 *N D TX	Sep 30, 2013	Case	2 3	N E 2d
Select Multiple Filters		"I heard Summary judgment in favor of defendant affirmed in slip-and-fall negligence case where plaintiff presented no evidence that defendant's employees caused substance on."				
Search within results						
Jurisdiction	Discussed by	4 Miner v National Ass'n of Realtors, II 540 N.E.2d 882, 150 Ill App 1d 3d	Nov 30, 1994	Case	2 5	N E 2d
+ Federal		Slip and Fall Tenant owner may have negligently allowed cardboard to remain on delivery ramp.				
+ State						
Data	Discussed by	5 Jackson v U.S. Postal Service 2007 WL 1385961 *N D HI	May 02, 2007	Case	1	N E 2d
All		Plaintiff Martha L. Jackson slipped and fell walking up the steps to the Evanston post office and sued the U.S. Postal Service for negligence in state court. Plaintiff's suit was				
Depth Of Treatment						
Discussed Only						
Discussed In Detail						
Discussed Extensively						
Headnote Topics						
Injury/Negligence (2)						
Treatment Status						
View Negative Only						
Hide Negative						
Reported Status						
Reasoned						
Unreported						
Select Multiple Filters						
	Credited by	6 Murdock v Costco Wholesale Corp 2012 WL 1032111 *N D CA	June 23, 2012	Case	2 3	N E 2d
		"I held The circuit court of Cook County did not err in granting summary judgment to defendant where plaintiff failed to present an adequate factual basis to support her..."				
	Credited by	7 Hurd v Costco Wholesale Corp 2016 WL 1022111 *N D CA	Nov 26, 2016	Case	2 3	N E 2d
		"I held The affirmance of the trial court's grant of summary judgment in favor of defendant Costco Wholesale Corporation. Plaintiff has forfeited review of the same."				
	Credited by	8 Blakey v Costco Wholesale Corp 2016 WL 1022111 *N D CA	June 23, 2016	Case	2 3	N E 2d
		TORTS - Premises Liability Testimony elicited from patron as to effect that patron's medical bills were unpaid did not entitle patron to personal injury case.				
	Credited by	9 Flynn v Cemural 2012 WL 5840125 *3 Ill App 3d 2d	Nov 01, 2013	Case	-	
		"I held Summary judgment in favor of the estate of a homeowner in a slip and fall case was upheld on appeal because although there was evidence of prior water accumulations in..."				

ILLUSTRATION 5-4. *Continued*

The screenshot displays the Westlaw KeyCite interface. At the top, the search bar shows 'Thompson v. Economy Super Mart, Inc.' with a search button. Below the search bar, the document information is displayed: 'Thompson v. Economy Super Mart, Inc.', 'Appellate Court of Illinois, Third District', 'November 5, 1991', '121 Ill. App. 3d 241', '511 N.E.2d 855', '182 Ill. Dec. 721', 'Appellate 6 pages'. The interface includes a 'KeyCite' section with 'Citing References (2)' and a 'Treatment' section with 'Discontinued by' and 'Discontinued by' links. The 'VIEW' section on the left shows a list of results: 'Cases' (2), 'Treatises' (1), 'Secondary Sources' (6), 'Appellate Court Documents' (80), 'Trial Court Documents' (65), and 'All Results' (152). The 'NARROW' section on the left includes filters for 'Jurisdiction' (Federal, State), 'Date' (All), 'Depth of Treatment' (2), 'Headnote Topics' (Negligence, 2), 'Treatment Status' (View Negative Only, 2; Hide Negative, 27), and 'Reported Status' (Revised, 1; Unrevised, 1). The 'Search within results' section is also visible. The bottom of the interface shows the footer: 'Westlaw © 2017 Thomson Reuters. Privacy Statement, Accessibility, Support Us, Contact Us, 1-800-REPLY (1-800-733-2889), MyWestlaw'. The footer also includes links for 'Products', 'Pricing & Support', and 'Sign On'.

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KeyCite allows you to receive automatic status updates concerning cases. You can indicate how often you would like to be updated and results can be sent to you via e-mail. Also similar to *Shepard's*, you can save or e-mail research results.

▼ What Is the Difference Between *Shepard's* and KeyCite?

Researchers have noted recently that the services are very similar in nature. However, some citing references, such as some secondary authorities or treatises, may be unique to one system or the other.

▼ Why Would You Use Both KeyCite and *Shepard's*?

Using both services provides an additional check on the accuracy of the citation. Each also provides different references to secondary sources that might assist you in your research. For more information about secondary sources, consult Chapter 6.

▼ How Do I Access KeyCite?

From any Westlaw screen, you can access the KeyCite for a particular case. If you are already viewing a case, you can access KeyCite with a click of the mouse. You also can enter a KeyCite request in the Westlaw search box that is similar to a Google Search. It is referred to as the Global Search Box.

C. OTHER CITATORS

Various services such as Fastcase, Casemaker, and Bloomberg offer citators, but the databases are smaller than those offered by Westlaw and Lexis Advance. These services have fewer features and may not provide the same level of analysis provided by the big two in the marketplace.

Case Cite-Checking Checklist

1. Make a list of the cases you need to cite check.
2. To be thorough, search cases in both of the following sources or services: *Shepard's* and KeyCite.

Shepard's Checklist

1. Click on the *Shepard's* citation button and type in the citation.
2. Check for red, orange, or yellow signals and review citing references.
3. Click on the hyperlink to review any citing authority that may challenge the validity of the case.

KeyCite Checklist

1. Type in the citation in the search box.
2. Check for red or yellow signals and review citing references.
3. Click on the hyperlink to review any citing authority that may challenge the validity of the case.

CHAPTER SUMMARY

In this chapter, you learned that you must ensure that the law or authority you are citing is still current or valid. To determine this, you must validate or update your research findings. This process often is called Shepardizing. Citators not only assist you in validating the law but also provide you with citations to other authorities. You can validate an authority in both print and online.

The next chapter discusses resources called secondary authorities that help you understand legal issues and find primary authorities.



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