CHAPTER 7

Secondary Authority and Other Research Sources—Encyclopedias, Treatises, American Law Reports, Digests, Shepard’s

PART I STUDY OUTLINE

I. INTRODUCTION

Secondary authority consists of legal research sources that summarize, compile, explain, comment on, interpret, or in some other way address the law. Secondary authority is used for several purposes:

A. To obtain a background or overall understanding of a specific area of the law if you are unfamiliar with an area of law. Legal encyclopedias, treatises, and periodicals are useful for these purposes.

B. To locate primary authority (the law) on a question being researched. American Law Reports (ALR) and digests are particularly useful for this purpose.

C. To be relied upon by the court when reaching a decision.

NOTE: Secondary authority is not the law. It is persuasive authority, not binding on the courts, but courts may rely upon and follow it.

II. LEGAL ENCYCLOPEDIAS

Legal encyclopedias are designed to provide an overview of all the areas of law. Legal encyclopedias provide summary of the law; they do not criticize or analyze it. In legal encyclopedias there is less emphasis on statutes and statutory law than case law.

The two types of legal encyclopedias are national and local or state.

A. National Encyclopedias

There are two national encyclopedias: American Jurisprudence Second, commonly known as Am. Jur. 2d, and Corpus Juris Secundum, referred to as CJS.

1. Features

   The similar and dissimilar features of Am. Jur. 2d and CJS:

   a. Similarities. Both sets share the following similarities:

      • Topic Presentation. Topics are arranged alphabetically, and each topic begins with a table of contents.
• **General Index.** A comprehensive general index accompanies each set, covering the entire set, and each volume has indexes for the topics covered in the volume.

• **Topic Summary.** At the beginning of each topic is a summary of what is covered, what topics are treated elsewhere, and West’s **key number** references.

• **Updates.** Pocket parts are used to update each volume, and replacement volumes are provided as necessary.

• **Tables.** Each set has a table of statutes, rules, and regulations that lists the title and section where specific statutes, rules, and regulations are cited.

b. **Dissimilarities.** The sets are different in the following ways:

• **Size.** *CJS* is larger than *Am. Jur. 2d*; it has more than 100 volumes compared to over 80 for *Am. Jur. 2d*.

• **Emphasis.** *Am. Jur. 2d* emphasizes statutory law somewhat more than *CJS*.

• **New Topic Service.** *Am. Jur. 2d* includes a New Topic Service binder that introduces new topics.

• **Desk Book.** *Am. Jur. 2d* includes the *Am. Jur. 2d Desk Book* that includes general information, such as statistical charts, tables, data, and diagrams.

2. **Research Techniques—National Encyclopedias**

You use a legal encyclopedia to obtain an overview of a specific area of the law and to locate case law in that area. Techniques for locating legal topics:

a. **General Index.** Usually research begins by consulting the General Index that accompanies each set.

b. **Table of Contents.** If you know the area of law that covers the subject you are researching, you can refer to the volume that covers the topic and scan the table of contents for the specific topic.

c. **Statutes, Rules, and Regulations.** If you are looking for a specific statute, rule, or regulation, the Table of Statutes and Rules Cited will direct you to the sections where it is discussed.

    *Always* consult the pocket part to update your research to ensure that the narrative summary in the main text has not changed and to locate the most recent cases.

3. **Computer-Aided Research.**

*Am. Jur. 2d* and *CJS* are available on Westlaw. *Am. Jur. 2d* is also available on LexisNexis and CD-ROM.
B. State Encyclopedias

Some legal encyclopedias are published for individual states. These encyclopedias are organized like the national encyclopedias and include many of the same features, such as a table of contents for each section, a general index, and pocket part supplements. Most states do not have state encyclopedias.

III. TREATISES

Treatises are texts that provide a comprehensive analysis of a single area of law, such as torts or criminal law. Where a legal encyclopedia presents a broad overview of an area of law, a treatise does much more. It provides a much greater in-depth discussion of the law and will explain, analyze, and criticize the law.

A. Types and Features of Treatises

There are several types of treatises, ranging from single-volume texts to multivolume sets. Most treatises have the following features:

1. **Narrative Presentation**
   The subject matter is presented in a narrative format similar to a legal encyclopedia.

2. **Index**
   An index is included at the end of the single-volume treatise or as a separate volume(s) in multivolume sets.

3. **Table of Cases**
   Most treatises include a table of cases arranged alphabetically and a table of contents for each subject area.

4. **Update.**
   Most multivolume treatises are updated annually or semiannually through the use of pocket parts for each volume or separate supplements. Most single-volume treatises are updated through the publication of a new edition.

B. Research Using Treatises

Most law libraries have a treatise section where both the single and multivolume treatises are arranged alphabetically by legal topic.

1. **Use as a Research Tool**
   Use a treatise when you are seeking more than the general summary of the law provided by a legal encyclopedia.

2. **Research Techniques—Treatises**
   Techniques for locating specific topics in treatises:

   a. **General Index.** Usually research begins by consulting the index at the end of the text or the set.
b. Table of Contents/Table of Cases. If you know where the topic you are researching is covered in the treatise, go to the section or volume that covers the subject and scan the table of contents for the specific subtopic. If you are looking for the treatment of a specific case in a treatise, consult the table of cases.

c. Reference from Other Sources. Often another source, such as a citation in a case or legal encyclopedia, may direct you to a specific treatise section.

3. Computer-Aided Research

Many treatises are available on Westlaw or LexisNexis. Many treatises are available on CD-ROM. Treatises, like other copyrighted secondary sources, usually are not available on nonfee-based websites.

IV. AMERICAN LAW REPORTS

The ALR publishes the text of leading state and federal court opinions addressing specific issues. Following the opinion is an analysis (referred to as “annotations”) of the legal issues raised in the opinion and a summary of the cases from every jurisdiction that have addressed the same or similar issues. In addition to the case summaries, the annotations provide references to various other research sources. The ALR will often provide, in one place, all your research: a comprehensive analysis of the issue, references to and summaries of the case law on point, and references to other research sources.

A. ALR Components

The annotations in the third, fourth, fifth, sixth, and federal series are generally similar in format and updating, and they share the following components:

- Prefatory Statement. An annotation begins with a statement that briefly describes the topic of the annotation and cites the case used to illustrate the legal issue discussed in the annotation.

- Table of Contents. Following the prefatory statement is a detailed table of contents for the annotation.

- Research References and Sources. A research section follows that lists references related to the annotation.

- Article Index. Next is an index that lists the subjects and where each subject is covered in the annotation.

- Jurisdictional Tables. Following the index is a table that lists all the cases cited in the annotation by jurisdiction and the statutes relevant to the annotation.

- Scope. The body of the annotation begins with a scope section that identifies what is and what is not covered in the annotation.

- Related Annotations. Next is a reference to related ALR annotations.

- Summary and Comment. This section presents a summary of the topic that includes background and other information helpful in understanding the topic.
• **Practice Pointers.** The next section of the body presents case preparation and other guidelines for practitioners.

• **Substantive Provisions.** The bulk of the body of an annotation is composed of the substantive sections that organize, summarize, analyze, and evaluate the case law on the topic of the annotation.

In addition to the components of each annotation, the *ALR* series have the following general features:

• **ALR Index.** There is an *ALR* General Index that lists terms and phrases alphabetically with references to all related annotations.

• **Table of Laws, Rules, and Regulations.** The index includes a table that indicates where statutes, rules, regulations, and so on are cited in annotations.

• **Annotation History Table.** The last volume of the General Index includes a history table that indicates if an annotation has been supplemented in or superseded by a later annotation.

• **ALR Digests.** There are multivolume *ALR* digests similar to the West digests. In the **digests**, the law is divided into more than 400 topics and arranged alphabetically.

• **Updates.** *ALR* and *ALR 2d* are updated differently than the other *ALR* series.

• **ALR.** You can find updates to *ALR* by checking the *ALR Blue Book of Supplemental Decisions*. Each volume and supplement must be checked to locate all the supplemental cases.

• **ALR 2d.** *ALR 2d* is updated by reference to the multivolume *ALR 2d Later Case Service*. Each volume is updated with a pocket part, so you must check the pocket part as well as the main volume. The *Later Case Service* lists the *ALR 2d* citation followed by a summary of the new cases and lists supplemental or superseding annotations.

• **ALR 3d, ALR 4th, ALR 5th, ALR 6th, and ALR Federal.** *ALR 3d, ALR 4th, ALR 5th, ALR 6th, ALR Federal*, and *ALR Federal 2nd* are updated through the use of annual cumulative pocket part supplements inserted in the back of each volume.

• **Latest Case Service Hotline.** In the front of each pocket part supplement of *ALR 3d, ALR 4th, ALR 5th, ALR 6th, and ALR Federal* is a toll-free number for obtaining cites to cases decided since the publication of the pocket part.

• **Auto-Cite and Insta-Cite.** Cases may be updated through Auto-Cite on LexisNexis and Insta-Cite on Westlaw.

**B. Research Using ALR**

1. **Use as a Research Tool**

   The value of *ALR* as a research tool lies in its comprehensive analysis of specific legal issues.
2. Research Techniques

Research techniques to help you locate specific *ALR* annotations:

a. Index to Annotations. Probably the most frequently used approach to locating annotations is to consult the multivolume index.

b. *ALR* Digest. Like the index, annotations can be located by looking up the topic in the general area of law in the digest.

c. Table of Laws, Rules, and Regulations. If you know the statute that governs the issue being researched, you can refer to the table and be directed to the annotations that discuss the statute.

d. Reference from Other Sources. Often you may be directed to a specific *ALR* annotation from another source, such as a citation in a case, article, or *Shepard's* Citations.

   *Always* consult the pocket part and supplement to update your research and to locate the most recent cases.

3. Computer-Aided Research

The *ALRs* are available on CD-ROM, Westlaw, and LexisNexis.

V. DIGESTS

A digest is not secondary authority; that is, it is not a source a court will rely on to interpret the law. A digest is a set of books that organizes the law by topic, such as corporations or torts, and each topic is divided into subtopics. The digest provides the citation to and a brief summary, or digest, of all the court opinions that have addressed the subtopics. A digest serves as a tool for locating cases on specific questions being researched.

A. West Key Number Digest System

West organizes the law into the following main categories: Persons, Property, Contracts, Torts, Crimes, Remedies, and Government. These broad categories are divided into subcategories, and the subcategories are subdivided into more than 400 topics. Each topic is listed in alphabetical order in the digest. Each topic is subdivided into subtopics and each subtopic is assigned a number called a key number. Each subtopic is referred to by both its topic and key number. To determine the subtopic title of a key number, look to the table of contents of the topic in the digest.

Every court opinion published in West’s reporters is linked to the digests through the use of headnotes. Each headnote is assigned a topic and subtopic key number from the West classification system according to the area of law discussed in the case. The same numbering system is used for all the decisions published by West, essentially all the published federal and state appellate court decisions in the United States.

B. Components of the West Digests

Each topic presented in a digest begins with the name of the topic, such as “ASSAULT AND BATTERY.” After each topic title is the following:
1. **Subjects Included and Excluded**
   
   This section lists the areas covered in the topic and the areas not covered.

2. **Table of Contents**
   
   Next is a table of contents listing the title and key number of all the subtopics.

3. **Case Summaries**
   
   Following the table of contents is the body of the digest that presents a summary by key number of every case reported that has addressed a specific subtopic. The digest presents a summary of only that portion of the case that addressed the specific key number.

   In addition to the components of each annotation, each digest set includes the following:

4. **Outline of the Law and List of Topics**
   
   At the beginning of each digest volume is West’s outline of the law and a list of digest topics.

5. **Topics Covered**
   
   Indicated on the spine are the topics covered in the volume, such as “Gas to Habeas Corpus.”

6. **Descriptive-Word Index**
   
   A comprehensive Descriptive-Word Index accompanies each set.

7. **Table of Cases**
   
   Each digest has a table of cases listing cases alphabetically by the names of the plaintiffs.

8. **Words and Phrases**
   
   Most federal and state digests include a Table of Words and Phrases that lists alphabetically words and phrases that have been interpreted or defined in court opinions and the citation to the opinions.

9. **Updates**
   
   Digests are updated through use of the following:
   
   - **Pocket Parts.** Each digest volume is updated through the use of an annual pocket part placed at the back of the volume.
   
   - **Supplementary Pamphlets.** Supplementary pamphlets with further updates are published between annual pocket parts.
   
   - **Later Cases.** Both the pocket parts and supplementary pamphlets include a “Closing” table that lists the names of all the reporters covered in the digest.

C. **Types of Digests**

   West publishes several different digests, each of which fulfills a specific need.
1. *American Digest System*

The most comprehensive and inclusive digest is the *American Digest System*. This digest presents summaries of all the reported state and federal court decisions.

2. **Digests of Federal Court Opinions**

West publishes separate digests for decisions of the federal courts.

- *United States Supreme Court Digest.* The *United States Supreme Court Digest* provides a summary of all the decisions of the Supreme Court of the United States.

- *Federal Court System.* West publishes several digests that cover the decisions of the United States Supreme Court, the United States Courts of Appeals, and the United States District Courts.
  - *Federal Digest* 1754–1938
  - *Modern Federal Practice Digest* 1939–1961
  - *West’s Federal Practice Digest 2d* 1961–1975
  - *West’s Federal Practice Digest 3d* 1975–1983
  - *West’s Federal Practice Digest 4th* 1983–present

The digest summaries of the Supreme Court cases are listed first, the Court of Appeals next, followed by the United States District Courts and other federal courts.

3. **Regional Digests**

West publishes digests for four of the regional reporters:

- *Atlantic Digest* for cases reported in the *Atlantic Reporter*
- *North Western Digest* for cases reported in the *North Western Reporter*
- *Pacific Digest* for cases reported in the *Pacific Reporter*
- *South Eastern Digest* for cases reported in the *South Eastern Reporter*

Each **regional digest** includes summaries of the cases presented in the reporter organized by state. To locate the cases for the states covered in the *North Eastern Reporter, South Western Reporter, and the Southern Reporter*, you must consult the *American Digest* or the state reporter digests.

4. **State Digests**

West publishes 46 state digests and a digest for the District of Columbia. No state digests are published for Delaware, Nevada, or Utah. The Delaware decisions are included in the *Atlantic Digest*, and the Nevada and Utah decisions are included in the *Pacific Digest*. The decisions of Delaware, Nevada, and Utah along with all the other states are included in the *American Digest System*. The *Dakota Digest* includes both North and South Dakota. The *Virginia and West Virginia Digest* includes both Virginia and West Virginia.
The state digests usually include the reported state court decisions, as well as federal court decisions, arising in the state.

D. Research Using Digests

1. Use as a Research Tool

Digests are used to locate case law that addresses specific point(s) of law. You use digests in two situations:

   a. You know the name of a case that addresses the point of law being researched and are looking for other cases that address the same point.
   
   b. You do not know of any cases that address the point of law being researched.

2. Research Techniques

   a. Case Headnotes. If you already know of a case related to the issue being researched, refer to the topic and key number of the relevant headnote from the case and consult that topic and key number in the digest.
   
   b. Descriptive-Word Index. If you are unaware of a specific case, think of all the areas of law or words and phrases that may be related to the topic being researched and consult the index.
   
   c. Topic Outline. If you know the topic that covers the issue, go directly to the topic in the digest and review the topic outline of all the key numbers under the topic.
   
   d. Table of Cases. If you know the name of a case but do not know the citation, consult the table of cases.
   
   e. Reference from Other Sources. Often, you may be directed to a specific digest topic and key number from another source, such as an ALR citation, encyclopedia cite, or an article. In such cases, you could go directly to the volume and section cited.
   
   f. Update. Always consult the pocket part and supplement to update your research and to locate the most recent cases.

3. Computer-Aided Research

The digests are not available on nonfee-based Internet sites. However, Westlaw provides a Key Number Service database that provides access to all the key number case summaries.

VI. UPDATING AND VALIDATING RESEARCH

The first step to ensuring an authority is “good law” is to use a citator. The two most common citators are Shepard’s Citations in print or online (Lexis) and Westlaw’s KeyCite. In recent years, Westlaw has also developed a citator service called KeyCite. The process of consulting a Shepard’s source to determine the current validity of an authority is called Shepardizing. You Shepardize a case or statute when you check it in
Shepard’s Citations. However, today that term is used whether you are using Shepard’s or you are using Westlaw’s KeyCite.

A. Using Shepard’s in Print

Shepard’s Citations is a set of books that consists of citations to legal authorities such as a court opinion followed by a list of citations to cases and other authorities that discuss, analyze, or in some way affect the legal authority. A Shepard’s will not only tell you whether a case or other authority has been reversed, modified, or overruled, but also will refer you to any other case or authority that has discussed the case. Although it is increasingly common to validate research electronically using Shepard’s online, understanding the layout and functionality of Shepard’s in print eases understanding of online updating. You will find in the front of each volume instructions on how to use Shepard’s. Because a researcher more frequently uses a Shepard’s for case citations, the process of using a Shepard’s in that context will be discussed in detail here.

After you understand the format and components, however, a citator is easy to use. There are various types of Shepard’s citators, and they all share the same basic format and components. The various types of Shepard’s citators and the common components of them all are discussed below.

1. Shepard’s Case Law Citators

Shepard’s publishes a set of citators for each case reporter. Some of the citators and the courts they cover are as follows:

• United States Supreme Court cases—Shepard’s United States Citations

• Lower federal courts, that is, cases from the Federal Reporter, Federal Supplement, Federal Rules Decisions, Court of Claims Reports and United States Claims Court Reporter—Shepard’s Federal Citations

• State court decisions. There is a separate set of Shepard’s covering the decisions of each state and Puerto Rico. In addition, there is a set of Shepard’s for each of the regional reporters.

An advantage of a state citator is that it will direct you to more research sources, such as law review articles and Attorney General opinions. A disadvantage of a state citator is that whereas it includes citations to state and federal cases, it does not include citations from other states.

Case law citators share the following features:

• Abbreviations—Analysis and Introductory Material. At the front of the citator is a table of abbreviations page that identifies all of the abbreviations used in the citatory.

• Case Location. The reporter volume number is printed in the upper right or left corner of each page of the citatory.

• Parallel Citations. Following the case name and year are the parallel citations (if any) in parentheses. When a case is printed in more than one reporter, the
citation to each reporter is called a parallel citation, for example: Commonwealth v. DeMichael, 442 Pa. 553, 277 A.2d 159 (1971).

- **History of the Case.** Following the parallel citation are citations to cases that involve the same case. This is the most important section of the case citations because any subsequent decision dismissing, modifying, or reversing the Shepardized case will be indicated here.

- **Later Case Treatment.** Following the history of the case are citations to every other case that has mentioned the cited case and references to secondary authorities. The cases are arranged in chronological order with the earlier cases mentioned first. The treatment codes are included in the table of abbreviations at the beginning of each Shepard’s citator.

  In addition to the treatment codes, the citations include references to specific points of law discussed in the Shepardized case that are also addressed in the cited case. This is accomplished through the use of small, raised numeral references following the reporter abbreviation in the citation. These numbers correspond to the headnote number of the Shepardized case.

  These reference numbers are invaluable to a researcher because they allow the researcher to compare the treatment of a specific point of law in both cases. If there is no raised number given in a citation, then the case discusses the Shepardized case in general or does not summarize a point of law from the case.

- **Secondary sources.** Following the case citations are references to secondary sources such as ALR annotations that in some way reference the Shepardized case.

2. **Shepard’s Statutory, Constitutional, and Other Enacted Law Citators**

Shepard’s publishes various citators that allow you to Shepardize these types of laws to determine their history, current status, and how the courts have interpreted the law. Some of these citators are listed here:

- **Statutory, Constitutional, and Court Rules.** The Shepard’s citator for a state’s statutes is either included with the Shepard’s state case citator or published as a separate volume.

- **Federal and State Regulations.** You may Shepardize the regulations of the federal agencies published in the Code of Federal Regulations by using Shepard’s Code of Federal Regulations Citations. Some state administrative agency regulations citations are included in the Shepard’s state citations.

Shepard’s citators to enacted law are similar to the case law citators in many respects:

- **Abbreviations—Analysis and Introductory Material.** At the front of the citator is a table of abbreviations page that identifies all of the abbreviations used in the citator.
• **Statute Location.** Printed in the upper corner of each page of the citatory is the statute title, volume, or chapter number.

• **History.** The first entries under a section indicate any legislative action taken that affects the statute.

• **Case Treatment.** After the history of the statute are citations to cases that have mentioned the statute. Preceding the case citations are treatment codes that indicate how the statute was treated in the cited case.

• **Secondary Sources.** Following the case citations are references to secondary sources, such as *ALR* annotations, that in some way reference the statute.

3. **Updating Shepard’s Citations in Print**

   Most sets of *Shepard’s Citations* consist of one or more hardbound volumes accompanied by one or more supplement pamphlets. In most cases, there are advance sheets published between publication of the pamphlets. The pamphlets and advance sheets update the hardbound volumes.

**B. Computerized Updating Using Shepard’s Online**

Traditionally the only way to update and validate your research was through *Shepard’s Citations* in print. Computerized updating is faster, more efficient, and alleviates the need to know what books are needed for each *Shepard’s* set. Computerized updating and validating is more up to date because electronic references are available much more quickly than those in print.

1. **How to Use Shepard’s Online**

   • If you are using Lexis to do case research and you are viewing a case on the screen in the top-left toolbar click the *Shepard’s* link.

   • If you have the citation of a case that you want to Shepardize, log on to Lexis and click on the *Shepard’s* icon. Type in your citation (148 N.M. 330) in the blank field provided and select *Shepard’s* for validation (KWIC). The results will be provided in plain language indicating the history and/or treatment of the case, depending upon which option you chose.

2. **Characteristics of Shepard’s Online**

   • *Shepard’s* for Validation (KWIC). Provides a list of subsequent history and citing references with analysis, which means negative history only. This is used when you only want to determine if the law is still valid.

   • *Shepard’s* for Research (FULL). Provides prior and subsequent history as well as all citing references, including secondary sources. This method provides a list of all authorities referencing the law Shepardized.

   • *Shepard’s* Summary. Provides an overview of the entire report at a glance.

   • Navigation Bar Menu. Located at the bottom right of the results page allows you to jump to particular jurisdictions or sources, such as a particular circuit (10th Circuit) or particular source (*ALR* Annotation).
• Alerts. *Shepard’s* Alerts allow you to set regularly scheduled updates for certain laws. If you set an alert you will be e-mailed on the schedule you choose as to whether there has been a change in the validity of the law.

• Customization. There are numerous ways to customize the report. The “Display Options” link and the “Preferences” link are just a few ways to customize the appearance of a report.

• *Table of Authorities.* This tool analyzes the cases cited by a case you are relying on. Table of Authorities not only shows the cases your case relied on, but the status of those cases.

3. *Shepard’s Signals*

• *Red Stop Sign.* Warns there is significant negative history or treatment, such as reversal of the case on at least one point of law.

• *Yellow Triangle.* Warns of some negative history or treatment, such as being distinguished from another case.

• *Green Plus.* Reveals positive history, such as being followed by another case.

• *Letter “Q” in Orange Square.* Warns that the validity of the case has been questioned by another jurisdiction.

• *Letter “A” in Blue Circle.* Reveals that the case has been analyzed by another case in a neutral manner.

• *Letter “I” in Blue Circle.* Reveals other sources that have referred to your case.

• *Red Exclamation Point.* Warns there is a case that negatively interprets a statute.

C. Other Lexis Validation Products

There are several other tools that complement Lexis’ *Shepard’s* service. They include:

• *BriefCheck.* This is a separate software program which will scan your document (memorandum, brief, etc.) and collect citations from it automatically.

• *Shepard’s Link.* This is another software application which identifies citations in a document.

• *FullAuthority.* This tool will create a Table of Authorities for your document.

D. Using Westlaw’s *KeyCite*

1. How to KeyCite Cases

*KeyCite* is Westlaw’s online citator. When using Westlaw you will use *KeyCite* to validate and update your research. *KeyCite* is obviously a different citatory than *Shepard’s*, but you will find they are similar in the ways they are most used. KeyCiting cases, statutes, and other primary sources of law is similar.
If you are using Westlaw to do a search and you are viewing a case on the screen, you can click on the KeyCite signal for the case which will take you to the KeyCite results.

If you have the citation to a case that you want to KeyCite, log on to Westlaw and click the KeyCite icon in the top tool bar. Type in your citation (148 N.M. 330) and click “Go.” The results will be provided. If you are interested in accessing any case or reference listed, you simply click on it and a new window opens showing the reference in its entirety.

2. How to KeyCite Statutes, Constitutions and Other Enacted Law

Just as you must validate case law you must validate any other primary source of law, such as statutes, constitutional provisions, or administrative regulations. KeyCiting these other sources of law is almost identical to KeyCiting case law.

• How to KeyCite a Statute. Click on the KeyCite icon in the top tool bar.

• KeyCiting for other sources of law has the same characteristics as for KeyCiting cases described below.

• KeyCite signals for statutes. A red flag warns a statute has been amended, repealed, or held unconstitutional. A yellow flag warns there is some negative history such as case law limiting the application of the statute or pending legislation. A green “C” indicates other sources have cited your statute.

3. Characteristics of KeyCite

• Full History. Provides a full history of the KeyCited case.

• Graphical Display of Direct History. Shows in a flowchart the progression of the case from trial through the appellate court system.

• Citing References. Reveals other sources that have cited the case. This includes levels of treatment such as negative treatment, positive treatment, and secondary sources that have referenced the case.

• Depth of Treatment Stars. The list of citing references includes green stars next to the level of treatment.

• Limit KeyCite Display. Use the Limit KeyCite Display icon at the bottom left of the results page to narrow the results by document type, date, jurisdiction, headnote, depth of treatment, etc.

• Quotation Marks. If quotation marks are included in a listing, the case or other source quotes from the KeyCited case.

• Headnote References. References to specific headnotes from Sims are noted. HN: 2, 3, 13 (P.3d) indicates that Cotton discusses the point of law related to headnotes 2, 3, and 13 in Sims.

• KeyCite Alert. KeyCite Alert lets you set regularly scheduled alerts for certain laws.
• *Table of Authorities.* This tool analyzes the cases cited by the case you are KeyCiting.

4. **KeyCite Signals**
   - *Red Flag.* Warns there is significant negative history, such as reversal or the case was overruled on at least one point of law.
   - *Yellow Flag.* Warns of some negative history or treatment, such as being distinguished from another later case.
   - *Green “C.”* Reveals the case has been cited by some other sources but are no negative citing references and no direct history.
   - *Blue “H.”* Reveals the source being KeyCited has some history.

### VII. RESEARCH USING CITATORS

*Shepard’s Citations* and *KeyCite* are used for two purposes:

- To determine if the authority you have located is still “good law.” This is the most important use of a citator.
- To locate case law or secondary sources that have discussed primary authority being researched.

#### A. Researching with Shepard’s Citations

The steps presented here are guidelines for using *Shepard’s Citations* to conduct research.

1. Select the appropriate Shepard’s citator (in print) or select the *Shepard’s* link in Lexis (online).

2. Locate and review the entry for the authority being Shepardized (in print) or review the results of an electronically Shepardized authority (online).

Keep the following in mind:

a. Carefully review the history for subsequent cases or legislative action that have reversed, overturned, repealed, amended, modified, or in any way affected the authority being Shepardized.

b. Carefully review the treatment of the authority in subsequent court opinions.

   If you are concerned with one issue in the Shepardized case, then it only may be necessary to review only those cited cases that addressed that issue.

   c. If a case does not appear in a *Shepard’s* volume (in print) or the inquiry reveals “No Results Found,” it may mean that no court opinion discussed the case. Always check the citation to be sure it is correct.

3. **Update your research** (in print only)

   Check the supplementary pamphlets and advance sheets and perform the research steps previously mentioned.
B. Researching with KeyCite

1. Once you have identified a case, statute, or other primary source of law that you will rely upon in your document, click the KeyCite icon.

2. Enter the citation and click “Go.” Choose “Citing References” in the left margin to review the results.
   a. Review the results for subsequent cases or legislative action that have reversed, overturned, repealed, amended, modified, or in any way affected the authority being KeyCited.
   b. Review the positive and negative treatment of the authority in subsequent court opinions.

PART II  STUDY QUESTIONS

1. What does secondary authority consist of?
2. What is secondary authority used for?
3. What type of authority is secondary authority?
4. What are legal encyclopedias designed to provide?
5. What are the two main national encyclopedias?
6. When do you use a legal encyclopedia as a research tool?
7. What is a treatise designed to provide?
8. What are the features of most treatises?
9. When do you use a treatise as a research tool?
10. Are treatises usually available on nonfee-based websites?
11. What does an ALR annotation provide?
12. What components are included in most ALR annotations?
13. What are the general features of each ALR series?
14. When do you use ALR as a research tool?
15. What is a digest?
16. What does a digest provide?
17. When do you use a digest as a research tool?
18. What is Shepard's Citations?
19. What are the standard features of a Shepard's case law citator?
20. What are two purposes you use Shepard’s Citations for?
PART III  ASSIGNMENTS

ASSIGNMENT 1
The client wants to sue the municipal government for failure to enforce an ordinance. He claims that the neighbor’s barking dog has caused him to lose sleep and become ill. Locate the Am. Jur. section that addresses the tort liability of a municipality for failure to enforce an ordinance.

ASSIGNMENT 2
The client suffered severe emotional distress as a result of sexual harassment by her employer. Your assignment is to locate an ALR annotation published in 2006 that addresses the question of whether compensatory damages are recoverable under state law for the emotional harm caused by the employer’s harassment.

ASSIGNMENT 3
Use West’s Federal Practice Digest 4th to locate a 2006 federal court of appeals case that discusses the elements of embezzlement. What is the citation of the case and how did the court define embezzlement?

PART IV  WEB ASSIGNMENTS

ASSIGNMENT 1
Facts
Client suffered serious injuries at work when she fell 30 feet off a conveyor designed to carry employees from one work level to another. She was injured when the conveyor malfunctioned and failed to stop when she reached the top of the lift. The conveyor had been in use for 25 years, and her employer replaced it the day after the accident. The employer dismantled the conveyor and disposed of many of the important parts. It appears that the employer intentionally disposed of the parts. The disposal of these parts may prejudice the client’s ability to recover in any product liability lawsuits against the corporations involved in the manufacture, distribution, inspection, or servicing of the conveyor.

Questions
The following questions are designed to determine whether there is a possible cause of action against the employer for disposing of the conveyor parts and thus frustrating any tort claims against the manufacturers, distributors, and such of the conveyors. In essence, the actions of the employer involve interference with property rights (the right to bring a lawsuit) and the spoiling of evidence.

A. What section of Am. Jur. 2d addresses this topic?
B. Give the citation to a 1987 Kansas case that addresses this topic.
C. Locate a 2000 ABA Journal article on the destruction of evidence.
ASSIGNMENT 2
Refer to the treatise *The Law of Torts* by Dobbs. In regard to Malicious Prosecution and the institution of criminal proceedings, does a complaint to authorities that does not result in an arrest, indictment, or information constitute the initiation of criminal proceedings?

ASSIGNMENT 3
Refer to the treatise *The Law of Torts* by Dobbs. In what section is *Harrison v. Middlesex Water Co.* discussed?

ASSIGNMENT 4
Refer to Web Assignment 1. Locate an *ALR* citation that discusses interfering with a potential civil action through destroying or spoiling evidence.

ASSIGNMENT 5
Refer to the *ALR* citation located in Assignment 1. Does the state of Arizona recognize spoliation of evidence as a separate tort? Which Arizona court decision answers this question?

ASSIGNMENT 6

ASSIGNMENT 7
A. Which *Am. Jur. 2d* title and section addresses 42 U.S.C.A. § 12101(A)?
B. What is the purpose of the act?

ASSIGNMENT 8
Refer to the *10th Decennial Digest*. What is the title and number of the torts key number that address the destruction or spoiling of evidence?

ASSIGNMENT 9
Refer to the *General Digest* 10th series. Under which digest topics and key numbers is the case of *Hester v. State*, 251 Ga. App. 627, 555 S.E.2d 13 (2001)?

ASSIGNMENT 10
Refer to *Shepard’s Federal Citations*. Which *Federal Reporter Third Series* case follows *United States v. Schuman*, 127 F.3d 815 (9th Cir. 1997)?

ASSIGNMENT 11
ASSIGNMENT 12

The client wants to sue the municipal government for failure to enforce an ordinance. He claims that the neighbor’s barking dog has caused him lose sleep and become ill. Locate the *Am. Jur.* section that addresses the tort liability of a municipality for failure to enforce an ordinance.

ASSIGNMENT 13

The client suffered severe emotional distress as a result of sexual harassment by her employer. Your assignment is to locate an *ALR* annotation published in 2006 that addresses the question or whether compensatory damages are recoverable under state law for the emotional harm caused by the employer’s harassment.

ASSIGNMENT 14

Use *West’s Federal Practice Digest 4th* to locate a 2006 federal court of appeals case that discusses the elements of embezzlement. What is the citation of the case and how did the court define embezzlement?

PART V  CHAPTER SUMMARY

The focus of this chapter is secondary authority; that is, sources of law that a court may rely on that are not the law (not primary authority). Secondary authority consists of legal research sources that summarize, compile, explain, comment on, interpret, or in some other way address the law. Secondary authority is used for several purposes including the following:

- **To obtain a background or overall understanding of a specific area of the law.** Legal encyclopedias, treatises, and periodicals are useful for these purposes.
- **To locate primary authority (the law) on a question being researched.** *ALR* and digests are particularly useful for this purpose.
- **To be relied upon by the court when reaching a decision.** This usually occurs only when there is no primary authority governing a legal question, or it is unclear how the primary authority applies to the question.

There are literally hundreds of secondary sources. This chapter covered those secondary sources that provide the researcher with treatment of the law that ranges from the general to the specific. These sources are legal encyclopedias and treatises.

Legal encyclopedias provide an overview of all the areas of law. They do not provide in-depth coverage, and they are similar to other encyclopedias in their general treatment of topics.

Treatises are single or multivolume texts that provide a comprehensive analysis of a single area of law such as torts or criminal law. Where a legal encyclopedia presents a broad overview of an area of law, a treatise provides a much greater in-depth discussion and explains, analyzes, and criticizes the law.
This chapter also focuses on sources that help a researcher locate and analyze case law:

*ALR* and digests. *ALR* provides a researcher with an exhaustive coverage of specific legal issues. A digest organizes the law by topic and provides a summary or “digest” of all the court opinions that have addressed the topic. It is an excellent case finder when a researcher needs to locate court opinions on specific topics.

Before any primary authority can be relied upon, it must be checked to determine if it is still “good law”; that is, it has not been reversed, modified, or affected by some subsequent opinion or statute. This chapter concludes with a discussion of citators, which allow a researcher to determine if primary authority is still good law and locate other cases and secondary authority that discuss a specific court opinion.