

Using Citators

What is a Citator?

A citator allows a researcher to do two things: (1) check the history of a case, and (2) check how subsequent courts have treated the principles of law in the source case over time. As to the first capability, history includes any previous or subsequent activity in a case, such as reported activity upon remand, any previous appellate activity, whether or not the case has been reversed or affirmed, and other such notable events relevant to the litigation as it moves through the courts.

As to the second capability, a citator will provide lists of cases that have cited the source case and, through various signals, provide an analysis as to the viability of the cited decision through the present. The analysis includes references as to whether subsequent courts have followed, distinguished, harmonized, overruled, or essentially ignored a previous decision. Understanding the treatment of a case by subsequent courts is essential to determining how viable that case may be as authority. It is one thing to cite a case that appears to squarely support an advocated proposition. However, if later courts have distinguished the source citation to the point where they effectively ignore it, any reliance on it in an argument will not be strong. A good citator will give the tools to make a detailed citation analysis.

There are many specialized citators in existence, covering areas such as tax, labor, trade, intellectual property, among others. As the use of citators expanded, they started to cover other legal materials including statutes, administrative regulations, and law review citations.

For the longest time, however, there was only one general case citator publisher that covered citations to and in all reported case law to the same extent as West Publishing had with the National Reporter System. That publisher was Shepards of Colorado Springs. As Shepards had no serious competition for the citation analysis market, the term “Shepardize” was coined for the process of scanning citation lists for case history and treatment.

Shepards in Print

Shepards publishes volumes for every state (e.g., Shepards Illinois Citations) and regional reporter (e.g., Shepards Northeastern Reporter Citations) covering all reported decisions within that jurisdiction. The books are easily identifiable by their distinctive deep red cover binding with gold lettering. A jurisdictional set for a state such as Illinois will contain multiple hard-bound volumes for case and statute citations. These in turn are supplemented by annual, semi-annual and monthly pamphlets.

One of the reasons why Shepards in print is confusing to use is the fact that a citation list for an older case may start in one volume and continue in supplemental volumes. Newer cases may only appear in supplemental volumes and pamphlets, as they appear after the

main volume has been published. To help identify which of the volumes are necessary for a citation search, Shepards places a list of contents on the volume spine, including coverage by date, reporter, and volume range. The most recent paper pamphlet will have a description of the complete volumes in the set printed on its front cover in a box labeled “What Your Library Should Include.”

Once you have located a citation, the list will give parallel and case history citations first. These are followed by the treatment citations – those courts that have subsequently cited the case. One point about interpreting these citations is that they are to the page in the reporter where your cited case appears and not to the first page of the case.

There will be several alphanumeric symbols associated with treatment citations, if appropriate. You will find symbols that indicate whether the citing court followed, distinguished, explained, declined to follow, and other treatments. There is a series of tables in the inside front cover and opening pages that shows example citations. Short commentary explains the meaning and effect of these symbols in more detail.

A different symbol set will tell you which headnote of the cited case (and by extension, the point law it contains) was considered by the citing court. This feature helps when navigating large lists of citing cases where multiple points of law are considered through multiple headnote references. It becomes fairly easy, for example, to identify all citations to a specific headnote and thus pull those citations from the list for priority checking.

As different reports of the same case may have different numbers of headnotes, Shepards created headnote references specific to the original citation. For example, a citation list for an Illinois Reports citation was geared towards the headnotes in the official reports. A citation list for the same case in the Northeastern Reporter would be geared towards the number of headnotes in the West version of the report.

Shepards Online

Shepards was purchased by Lexis in the early 1990’s, and since 1997 has appeared exclusively on Lexis. This was partially in reaction to West having created KeyCite, the online competitor to Shepards.

The benefits of Shepards have carried over to the online version, and have been enhanced and expanded without the limitations of the print product. Instead of dealing with multiple volumes, all citations to a given item appear on one report. Unlike the paper version, a citation list is created at the moment of request. The report list includes citations not only to published opinions, but also to opinions that only appear in the Lexis database. Citations to one report of a case will retrieve all citations to all reported versions of the same case. The headnote issue is solved by software filters which can limit headnote citations to a particular version of the case. The various filters can select cases based on other parameters as well. The citation treatment is spelled out in clear words rather than symbols. Any cases cited are hyperlinked to the online version of the citing case and pinpoint directly to the cited opinion in the online text.

KeyCite

West took a slightly different approach to KeyCite. Instead of using treatment symbols or language, KeyCite evaluates the treatment of a citation by how extensive a citing court has examined that citation. They assign a series of stars, ranging from four, meaning the citing court has spent a significant amount of verbiage examining the case and its impact, with lesser and lesser reference and examination represented by three, two, and one star, meaning the citing court has mentioned the case without necessarily going into any detail (such as a “See <citation> or string cite reference).

There are other identifiers, such as the quotation mark symbol, which means a case was quoted. There are headnote lists that appear with each citation and these also can be filtered to a particular citation. Additional filters are available, such as jurisdiction, dates, and many others. KeyCite is only available on Westlaw. There is no print counterpart.

Some Differences (and Similarities) between Shepards and KeyCite

Citation lists will vary between the two services, to some degree based on the variations in unreported cases, or how fast recent cases have been added to the system. Each will generate a report of citations to secondary sources that are available through their respective systems. As Lexis and Westlaw have either licensed different publications or include their own titles exclusively in their databases, secondary source citations will have a greater variation between the two research services. West has expanded their full KeyCite lists to include briefs and records that appear on Westlaw, with some of these items exclusive to Westlaw. Other than coverage and approach to analysis, the general concept of the citator is the same for Shepards and KeyCite: they both give history and treatment of a case. Given the immense amount of documents on Lexis and Westlaw respectively, and given the amount of duplication of primary legal materials, both Shepards and KeyCite offer fairly substantial and reliable results for the service that they provide.

Both use symbols to indicate summary treatment of a case. Shepards will use a red “stop sign” symbol to indicate severe negative treatment. A yellow triangle means caution, some negative treatment. West does similar things with multi-colored pennants. Placing the cursor over one of these symbols will display a small temporary window with a brief explanation of the symbol.

For tutorials on how to use Shepards, visit <http://www.lexisnexis.com/infopro/training/> and select the appropriate links.

For a tutorial on KeyCite, visit <http://west.thomson.com/documentation/westlaw/wlawdoc/web/kcwlcg04.pdf>.