

# Preemption Checking on the LexisNexis® services



**Getting Selected for Publication**—Preemption checking is the most important part of the publication process. A thorough preemption check assures the “Originality” of an article or note. The more original an article is, the more likely it will be selected for publication.

## STEP 1:

### How to Conduct a Preemption Check by Topic

A good preemption check always starts with your topic. Searching by topic rather than terms is easier in the early stages of preemption checking. This is because you may not have all the “terms of art” necessary to run a comprehensive term search.

#### Preemption Checking by Topic

- From the Search tab click **by Topic or Headnote** in the bar beneath.
  - Select your Topic using :
    - Option 1: Find a Legal Topic**  
Find a Topic through a terms search (e.g., type minimum contacts and click the **Find** button to get all the topics related to minimum contacts).
    - Option 2: Explore Legal Topics**  
Find a Topic by drilling down through all the categories (e.g., Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > In Personam Actions > Minimum Contacts).
  - Select your **Topic** then your **Jurisdiction** in the search form.
-  After selecting a relevant source or sources you can simply click the **Search** button to get the most relevant articles on your topic.

## STEP 2:

### How to Conduct a Preemption Check with Terms

After conducting the preliminary topical search you should have learned all the “terms of art” necessary to complete a comprehensive word search on your topic.

#### Preemption Checking in Law Reviews

- From the Search tab click **by Source** in the bar beneath.
  - Click **Law Reviews & Journals** under the Secondary Legal link.
  - Select **U.S. & Canadian Law Reviews, Combined** as your source.
  - Type **Cyberlaw** or your own terms in the box to the right.
-  You can use the **FOCUS™ Terms** bar to narrow your search results to a more specific issue.

#### Preemption Checking in Legal News

- From the Search tab click **by Source** in the bar beneath.
  - Click the **News & Business** tab.
  - Click **Legal News Publications** under Combined Sources.
-  Use the **HLEAD** segment to search the Headline and Lead Paragraph only to find the most relevant legal news articles.

## Originality

*For an excellent discussion on Preemption Checking and Originality see, **Note, Originality, 115 Harv. L. Rev. 1988 (2002).***

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## STEP 3:

### What to do if Your Topic is Preempted

If you find an article preempting your topic check to see if it is still valid before you discard the topic. You can use the *Shepard's*® Citations Service to see if an article and the authority cited by it is still valid.

#### Checking the Authoritative Value of an Article

*Shepardizing*™ a law review article provides a report detailing how many times it has been cited in other articles.

- Click the **Shepard's**® tab at the top of the LexisNexis® Research System.
- Type **115 Harv. L. Rev. 1988** or your own citation and click **Check**.

 In the **Shepard's Report** there are several articles citing it suggesting this is an authoritative article.

#### Checking the Validity of Authority Cited by an Article

*Shepard's* Table of Authorities provides a report on the validity of the authority cited by a law review article.

- Click the **Shepard's**® tab at the top of the LexisNexis Research System.
- Type **115 Harv. L. Rev. 1988** or your own citation and click **Check**.
- Click the **TOA** link at the top of the *Shepard's* Report.

 The **Table of Authorities Report** lists all the authority cited by this article with *Shepard's* Signal™ Indicators attached for quick viewing.

## STEP 4:

### Keeping Your Topic Current

Preemption checking requires you to make sure your topic is not preempted throughout the entire writing process not just the research stage. You can use Alerts to automatically track topics, issues and cases for preemption.

#### Search Alerts: Track issues through term searches.

- Run a **Search** on any issue in any source.
- Click the **Save As Alert** link at the top of the search results.
- Fill out the Alert form:

**Name**—name for the Alert.

**Frequency**—how often the Alert will update you.

**Delivery**—where your update will be delivered.

**Notification**—do you want notification of your update?

- Click the **Save** button then confirm your Alert settings.

 You can retrieve and edit your Alert by clicking the **Alerts** tab at the top of the LexisNexis Research System.

#### Shepard's Alert®: Track cases, statutes and law reviews for changes and citations.

- *Shepardize*® **390 U.S. 629** or your own citation.
- Click the **Save as a Shepard's Alert**® link at the top of the report.
- Fill out the *Shepard's* Alert form:

**1. Name**—the name for the Alert.

**2. Monitor**—the type of analysis the Alert should look for.

**3. Delivery**—where the Alert is sent.

**4. Run**—the frequency the Alert is run.

- Click the **Continue** button then confirm your Alert settings.

 You can retrieve and edit your **Shepard's Alert** by clicking the **Alerts Tab** at the top of the LexisNexis Research System.

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