Choose a topic that interests you. You will spend a significant portion of law school working on your note. If published, it will come up in every job interview for the rest of your legal career. Authors are passed over for publication when their article fails to make a real argument.

- When selecting a topic, you don’t necessarily have to know what your argument will be, but you do need to select a topic for which an argument can be made.
- Think current, unique, and arguable. Newly controversial topics should be avoided as they tend to be preempted or not yet ripe.

Choose from four topic categories for a compelling note topic.

1. **Unresolved points of law—Circuit Splits**

A circuit split exists when two or more circuits disagree on the application of law on the same issue. A circuit split makes a great note topic, because it addresses an unresolved issue that could potentially end up in front of the Supreme Court.

- Type circuit w/2 split or disagree in the search box. Select Cases, then select U.S. Federal. Use Timeline to retrieve opinions from the previous 18 months. Use Sort by to sort your search results by Date (newest - oldest).

- Narrow your search results by using Search Within Results. For example, type circuit w/2 split or disagree w/25 class w/2 certification to find circuit splits concerning class certification.
2. Challenged pieces of legislation—start in Legal News
This note topic can explore the piece of legislation, how the courts have interpreted it, and the impact of the dispute.

- Type law or legislation or statute w/25 challenge or lawsuit in the search box. Select Legal News. Use Timeline to retrieve articles from the previous 18 months.

3. Issues or jurisdictions of interest—check Legal News
Look for cases of first impression in a particular jurisdiction. There is no controlling precedent if it is the first time the question or issue has been dealt with for legal interpretation in that jurisdiction.
- Type “first impression” w/25 second circuit in the search box. Select Legal News. Use Sort by to sort your search results by Date (newest - oldest).
4. New legislation—Federal or State

Newly enacted legislation can be a note topic as long as it is controversial or interesting. Recent legislation provides insight as to which issues may be judicially examined in the near future.

- Type an issue of interest to you in the search box. For example, type veterans or service members or “armed forces” in the search box. Select Statutes and Legislation, select U.S. Federal or a particular state jurisdiction, select Bill Tracking under Categories. Use Timeline to restrict your results to the past three years. To narrow results to bills that have become law, type signed by the president (federal) or signed by governor (state) in Search Within Results.

Make sure your note is not preempted.

Preemption checking is the most important part of the publication process. A thorough preemption check assures the originality of a note. The more original a note, the more likely it will be selected for publication.

What does it mean to be preempted?

If someone has already written about your topic, you cannot write about it as well. You are preempted.

You usually are not preempted if:

1. You find an article written on your topic, but it was written several years ago and new and interesting issues have since changed the legal landscape.

2. You find an article written on your topic, but it is making a different argument.

3. You find an article and one of its sections is on your topic. This usually is an overview of the topic and your note will be a more in-depth analysis.

4. You find an article that has a similar introduction or background as your chosen topic. A similar introduction is fine as long as the remainder of your article is unique.

You usually are preempted if:

You find a relatively recent article on your topic that makes the same argument and comes to the same conclusion.
Refine your topic with an initial preemption check.

An initial preemption check can help refine a broad topic by showing you what has already been argued and discussed. Once you have found a topic that interests you, it is important to determine that the topic and its issues have not been written about extensively. If they have, the odds that you are preempted increase significantly.

Sample initial preemption check

- Type stalking w/25 “social media” or facebook or twitter in the search box.
- Select Secondary Materials, then select Law Reviews and Journals.
- You want to have your topic narrowed to the point where this search retrieves a manageable set of results. Too few results indicates that your topic might not yet be ripe or is too novel. Too many results indicates that your topic is so popular that it will be difficult for you to bring something new to the discussion.

Ongoing preemption check

Preemption checking is not a one-time proposition. It is an ongoing process. Once you have refined your topic, please contact your LexisNexis® Account Executive to receive guidance on running your final preemption check and setting up an Alert to monitor your search results for possible preemption in the future.