

Write a Publishable Note for your Law Review or Journal



Law review or journal membership and article publication will strengthen your resume and advance your legal career. So how do you craft a compelling note that will be picked for publication?

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.

The screenshot shows the Lexis Advance Research interface. The search bar contains the text "circuit w/2 split or disagree". The search results are displayed in a list format. The first result is "Brown v. Nucor Corp., 2015 U.S. App. LEXIS 7739". The second result is "Steering Comm. v. BP Exploration & Prod. (In re Horizon), 2015 U.S. App. LEXIS 7668". The interface includes a "Snapshot" section on the left with a table of search results, a "Narrow By" section, and a "Search Within Results" section. The search results are sorted by date, and the first result is highlighted.

Category	Count
Cases	14
Statutes and Legislation	425
Administrative Codes and Regulations	95
Administrative Materials	1,272
Secondary Materials	10,000+
Forms	62

Narrow By

- U.S. Federal
- Jan 01, 2014 to Dec 31, 2015
- circuit w/2 split or disagree w/25 class w/2 certification

Search Within Results

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.
- Under **Sources**, Select multiple, choose **Law360 Legal News** or **New York Law Journal**.

The screenshot shows a search interface for Lexis Advance Research. The search query is "law or legislation or statute w/25 challenge or lawsuit". The results are filtered to "Legal News (4,458)". The left sidebar shows various sources, with "Legal News" selected. The "Narrow By" section is expanded, showing "Jan 01, 2014 to Dec 31, 2015" and "Law360 Legal News or New York Law Journal" selected. The main results list two items:

- 6 Calif. Anti-SLAPP Fights To Watch In 2015**
Law360
... California lower courts wrestle with how far the state's anti-Strategic **Lawsuit** Against Public Participation **law** extends to protect free speech rights in lawyer misconduct and ...
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... in exchange for political donations can seek refuge under the **statute**, experts say. California enacted the anti-SLAPP **law** more than 20 years ago to curb **lawsuits** that arise from activity that falls within the rights of ...
Jurisdiction: Non-judicial
Date: Feb 13, 2015
- Federalism Obstacles to Advancing Renewable Energy**
New York Law Journal (Online), 2786 words
... renewable energy." The decision did not itself invalidate the Michigan **law**, because the **lawsuit** did not directly involve that **law**, but it certainly cast a cloud over that **law** and others that favor in-state generators. This is no small ...
... V. Markell, a fuel cell manufacturer based in Connecticut is **challenging** a Delaware **statute** that gives various preferences under the state's renewable portfolio standard ...
... received substantial relief from this burden under the settlement. Another **challenge** to RGGI, Thrun v. Cuomo.
Jurisdiction: New York
Date: May 08, 2014

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)**.

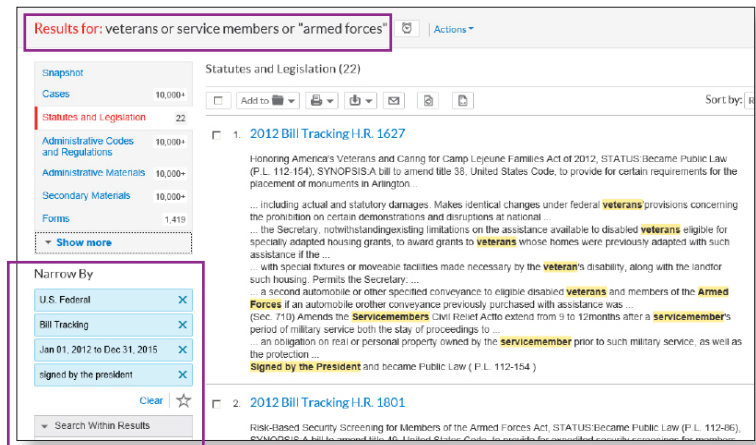
The screenshot shows a search interface for Lexis Advance Research. The search query is "first impression w/25 second circuit". The results are filtered to "Legal News (1,022)". The "Sort by" dropdown is set to "Date (newest - oldest)". The main results list two items:

- REDUX ABOUT NEVER FILING YOUR OWN FINANCING STATEMENT: OFFICIAL COMM. OF UNSECURED CREDITORS OF MOTORS LIQUIDATION CO. V. JPMORGAN CHASE BANK, N.A.**
THE PRACTICAL LAWYER American Law Institute-American Bar Association Committee On Continuing Professional Education, 5869 words
... N.A., 103 A.3d 1010, 1014 (Del. 2014). Rather, the **Second Circuit** certified a question of **first impression** to the Supreme Court of the State of Delaware dealing ...
Jurisdiction: U.S. Federal
Date: Jun 01, 2015
- REDUX ABOUT NEVER FILING YOUR OWN FINANCING STATEMENT: OFFICIAL COMM. OF UNSECURED CREDITORS OF MOTORS LIQUIDATION CO. V. JPMORGAN CHASE BANK, N.A.**
THE PRACTICAL LAWYER American Law Institute-American Bar Association Committee On Continuing Professional Education, 5390 words
... N.A., 103 A.3d 1010, 1014 (Del. 2014). Rather, the **Second Circuit** certified a question of **first impression** to ...
Jurisdiction: U.S. Federal
Date: Jun 01, 2015

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.

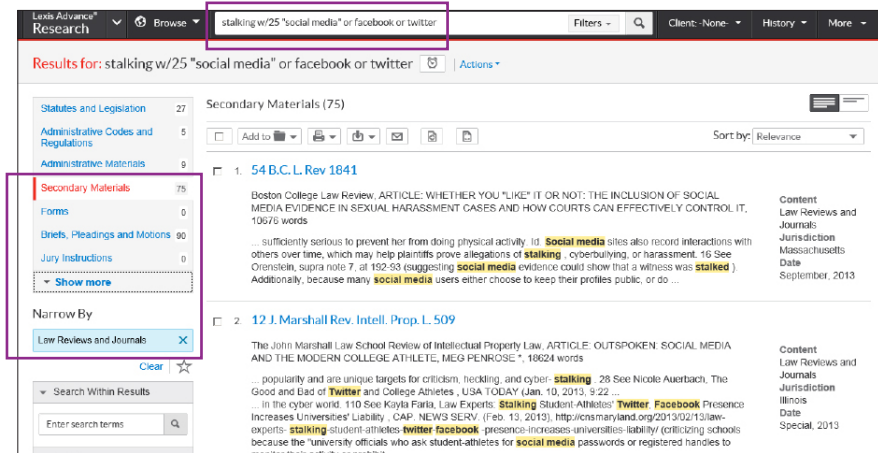
An initial preemption check can help refine a broad topic by showing you what has already been argued and discussed. Once you have found a topic that interests you, it is important to determine that the topic and its issues have not been written about extensively. If they have, the odds that you are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



Get more research tips at
[YouTube.com/LexisNexisLawSchools](https://www.youtube.com/LexisNexisLawSchools)

