Case Law - Citators

In this part of the tutorial, you will learn: why it is important to update cases, how to update cases using Lexis’ Shepard’s tool and Westlaw’s KeyCite, and how to use citators to find additional cases on point.

Updating a case will give you two pieces of important information: 1.) you will learn if the case is still good law or if it has been subsequently overruled. If a case is still good law, its authority will be verified. 2.) You will also learn how other courts have treated the case – in other words has it been distinguished and/or extensively discussed.

Even if a case has not been overruled, you may not want to cite it if it has been distinguished so often that it is limited purely to its facts, or if it has been criticized.

Beginning on Lexis, updating here is known as “Shepardizing.” First of all, notice that when you pull up a case on Lexis, it usually has a symbol at the top next to the citation that indicates whether it is good law. In this case, there is a yellow triangle.

To find a quick guide to all the symbols Lexis uses to tell you the status of the case, search for “Shepard’s signal” in the help function. You can then save this document for later reference.

Note that it is possible for a later case to overrule, criticize, or praise your case regarding one issue it addresses, without affecting the validity of your case for other issues. The symbol next to the case name will refer to the most negative portion of the discussion, so it is crucial that you only use them as initial indicators, not as a substitute for reading the substance of the case.

To Shepardize the Martin case on Lexis, type shep: in the search box and then enter the case citation. Lexis first gives us the appellate history of the case. You can click on the “Map” link to view a graphical representation of the case’s history. Click on “Citing Decisions” to see a list of cases that have cited Martin and how those cases treated Martin.

296 cases have cited Martin. The list is initially organized by court. Attorney-editors at Lexis have identified possible negative treatment of Martin in other subsequent cases. Clicking “Distinguished by” allows you to view those 15 cases.

Notice that Carpenter v. Potter cites Martin for the issue represented by Headnote 15 in Martin which deals with the Americans with Disabilities Act. If you do not know what legal issue is represented by a particular headnote, hover your cursor over the headnote number for a look at the topic outline, or click “View text of headnotes” for the outline and text of the headnote. You can also get an idea of how detailed the discussion is using the depth of discussion indicator bars. Lastly, Lexis gives you a pinpoint citation to the specific page of Carpenter that discusses Martin. By clicking the link we go directly to that text.
Updating on Westlaw is referred to as KeyCiting. Like Shepard’s on Lexis, KeyCite gives you symbols at the top of each case that give you a quick indication of whether a case is still good law.

To KeyCite a case from the homepage, type keycite: or kc: in the search box and enter the case citation.

Negative history and negative citing references appear first. Attorney editors have identified 14 negative citing references. Notice that this is slightly different from the 15 cases identified as “Distinguished by” in Lexis. The two platforms’ assessments of negative treatment are not always exactly the same.

Like Lexis, KeyCite provides an overview of information about the citing references on the results page: how the citing case treats Martin, the depth of treatment and discussion, and the headnotes of the issues for which the case cites Martin.

Quotation marks means the citing case quotes Martin. KeyCite indicates which case is the most negative, although this might not be the most negative case for your purposes, depending upon which point of law you are interested in.

The “History” tab gives a graphical representation of the case’s appellate history.

And “Citing References” allows you to see all cases and other documents (such as secondary sources) that cite Martin.

Usually, one case cites an earlier case because the later case is trying to resolve an issue that is similar to one addressed in the earlier case. For this reason, using citators like Shepard’s or KeyCite is one good way to find additional relevant cases. When using citators to find more cases on an issue, it is a good idea to limit the citing references displayed by headnote. This allows you to see only cases that cited your case for a specific legal issue.

In Lexis, Shepardize the case and go to Citing Decisions. Then use the “Narrow by…” feature to limit by headnote. Click the headnote that addresses your legal issue. If you do not know which headnote is relevant, go to “View text of headnotes.” Headnote 10 is added to the Narrow function and you are only viewing the cases that cite Martin for the legal issue addressed in that headnote.

In Westlaw, go to Citing References and click “Cases.” Then narrow the results by Headnote. You can select all headnotes assigned to a particular topic in the Topic & Key Number system (such as “Civil Rights”) or click “Specify” to choose specific headnotes.