

Chapter 8

CITATORS

Before relying on a case, statute, or regulation, a researcher must determine whether that authority is still valid, or as some legal professionals put it, “is still good law.” The importance of verifying the validity of the law cannot be overstated. Without checking on a law’s status, the researcher risks relying on authority that no longer has the force of law or that is viewed unfavorably in the jurisdiction. Instead, legal researchers must verify that the law they are citing for a particular proposition is valid in their jurisdiction.

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General Information About Citators

Legal researchers use citators to check on the status of laws. The laborious process of using citators in print has generally been replaced by using online methods, with the availability of citators like Shepard’s Citations Service (referred to as Shepard’s) in Lexis

Advance, KeyCite in Westlaw, and BCite in Bloomberg Law. Using the Shepard's citator has become known as Shepardizing, while using the citator in Westlaw is sometimes referred to as KeyCiting. These citators are not available free of charge online. However, Shepard's (in Lexis Advance or in print) and KeyCite may be available for free in law libraries that offer the use of legal research resources to the public.

A citator compiles a list of primary and secondary sources which cite to the law the researcher wants to rely on. By reading the documents in the list and understanding how they treat the cited law, the researcher develops an understanding of the law's validity and reputation. The law that the researcher "Shepardizes" is the cited source (usually a case, code section, or regulation). The sources that cite to that law are the history (often called the appellate or subsequent history)¹ and the citing sources. Assuming that the researcher is checking the validity of a piece of primary law (a case, code section, or regulation), the history will be comprised of primary sources. The citing sources may be comprised of primary and/or secondary sources. It is also possible that a law has no prior or subsequent history for the citator to report – citators do not report the prior history from state trial court cases – and that there are no other sources that cite to the law. In that case, the citator will produce no results to read.

History

The history of a law in part determines whether the researcher should cite to the law. The history section provided by a citator tells the researcher if any activity affecting the status of the law has occurred in the law's chain of events, or history, since the law came about. For instance, with regard to a case, has a rehearing been granted which could change the outcome of the decision? Has the case been appealed and is now pending review by a higher court? Has the case been reversed on appeal by a higher court? In terms of a code section, has the legislature passed a statute which repeals part or all of that section? Is a proposed statute (a bill) pending in the legislature which might affect the section? Has a case declared the section unconstitutional? For a regulation, has it been repealed or is a proposed regulation pending which might affect its authority? Has a case found the regulation to be unconstitutional?

¹ Previous or prior history may also be a part of the law's chain of events and may be included by the citator in the history. Because state trial court cases are generally not published, it is unlikely that history from those cases will appear in citator results.

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As these questions indicate, researchers must carefully review the history provided by a citator because the types of events described above affect or may affect the validity of the law. In addition, when drafting documents to submit to a court, researchers must consult that court's rules for any restrictions on the citing of opinions. Restrictions may apply based on the publication status of a case or because a case is pending rehearing or review.

Citing Sources

Citing sources or references are the other part of the results provided by a citator. The citing sources list may include multiple types of documents which cite the law: laws that are not part of the history of the cited source, secondary sources, and court documents. Although not a part of the law's history, cases, statutes, and regulations in the citing sources list could have a great bearing on the authority of the law being researched. Cases in the citing sources list which are from a higher court in the same jurisdiction as the cited source must be given appropriate deference. This idea of deference comes from the doctrine of stare decisis which is followed in the United States. "Under the doctrine of stare decisis, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction."²

For instance, if the court of last resort (for purposes of California, the California Supreme Court) in the same jurisdiction as the cited case disapproves of reasoning in the cited case, then the cited decision is invalid in that jurisdiction for that legal argument. Similarly, if a citing decision from the same court as the cited decision has overturned the cited case, then the cited case is no longer considered valid according to that court. If one of the citing sources is a statute which overturns or supersedes the cited source, the cited source is no longer considered "good law," and it will be rejected if offered to support a legal argument.

If a citing decision from a court of equal authority in the same jurisdiction as the cited case disagrees with the reasoning in the cited case, then the researcher must decide whether to use the cited case in a legal argument. The 1997 California case *Wolfe v. Dublin Unified School Dist.* refers to the fact that one Court of Appeal is not required to follow the decisions of another Court of Appeal, although the doctrine of stare decisis encourages

² *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County*, 57 Cal.2d 450, 455 (1962).

appellate courts to follow others' decisions for the sake of "stability in the law and predictability of decision."³

In the alternative, cases, statutes, and regulations in the citing sources list may cite the law positively or may be neutral towards it. Then again, a case might reach a different conclusion from the cited law but explain why it should be distinguished from the cited source. In that situation, the citing source would not reflect negatively on the law in question. In addition, a citing source may treat negatively an issue in the cited case that is unrelated to the issue the researcher wishes to use the cited case for. In that situation, a researcher may decide that it is still useful and appropriate to use the cited source.

What to Do with the Results Provided by Citators - Read Them

After compiling a list of citations to a case (or other document), first the researcher should read the documents that comprise the history and the relevant citing sources. Relevant citing sources are likely those sources which are from jurisdictions that have influence over the jurisdiction of the cited case and which address the same legal issues and/or facts as the law being "Shepardized." Researchers themselves must read the documents provided by the citator to determine how they believe the documents affect the cited case and if the case should be used to support a legal argument. It is not sufficient to rely on analysis by the citator's editors who assign editorial enhancements like status symbols and treatment phrases to the documents. (See the section below on Subscription-based online citators for more on these editorial enhancements.) An editor could be mistaken regarding how one law treats another. Furthermore, only the researcher will be responsible if he or she relies on a law that a court finds invalid or questionable.

Second, whether using a print or online citator, the researcher must be sure to check not only the reputation of the law in question but the validity of the citing sources; it is possible that a citation in the history or a citing source is itself no longer good law. The law is ever-changing; the cited source and citing sources are continuously affected by laws that come after them.

³ 56 Cal.App.4th 126, 137 (1997).

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An Additional Benefit of Using Citators

Using a citator not only helps the researcher determine the validity of a law, it may introduce the researcher to additional relevant primary and secondary sources on a subject. Checking the citing sources can lead to a wealth of new material that addresses the same subject as the case, code section, or regulation at hand.

Citator Formats

Print Citators

Whether using a print or online citator, the researcher begins with a citation, such as 26 Cal 4th 598. If using the print method, the researcher has one option; Shepard's is the only citator available in print. A set of Shepard's print citators for a particular jurisdiction may consist of multiple (perhaps even twenty or more) volumes. If Shepardizing in print, the researcher must be sure to use the Shepard's citator(s) which covers the jurisdiction for the citation.

<i>COURT</i>	<i>NAME</i>	<i>REPORTER (PRINT PUBLICATION)</i>	<i>SHEPARD'S CITATOR (PARTIAL LIST)</i>
<i>Supreme Court</i>	U.S. Supreme Court	<i>United States Reports Supreme Court Reporter U.S. Supreme Court Reports, Lawyers' Edition U.S. Law Week</i>	Shepard's United States Citations (various sets)
	California Supreme Court	<i>California Reports California Reporter Pacific Reporter</i>	Shepard's California Reporter Shepard's California Citations

<i>Appellate Courts</i>	U.S. Courts of Appeals	<i>Federal Reporter Federal Appendix</i>	Shepard's Federal Citations, Part 1 Shepard's United States Citations (various sets)
	California Courts of Appeal	<i>California Reporter California Appellate Reports</i>	Shepard's California Reporter Shepard's California Citations
<i>Trial Courts</i>	U.S. District Courts	<i>Federal Supplement Federal Rules Decisions</i>	Shepard's Federal Citations, Part 2 Shepard's United States Citations (various sets)
	California Superior Courts	n/a	n/a

The citation 26 Cal 4th 598 comes from the case reporter *California Reports* (4th series), but this California Supreme Court case can also be found in the *Pacific Reporter* and the *California Reporter*. The Tables of Contents of Shepard's citators list the reporters that are included in that citator as cited sources. Citations to *California Reports* and the *Pacific Reporter* are found in *Shepard's California Citations*. Citations to the *California Reporter* are included in *Shepard's California Reporter Citations*. Thus, a researcher checking the validity of a California case citation in print may want to check both of these Shepard's sets. If the citation can be found in more than one citator, as is the case with many citations in California, the "Scope of Citing Sources" list at the front of each Shepard's volume can also be helpful in determining which citator(s) to use because the list indicates the titles which that citator checks for references to the cited law. Checking the lists of citing sources in the two Shepard's California citators indicates that the lists are nearly the same.

After choosing the correct Shepard's citator(s), the researcher should consult the latest pamphlet in the set and be sure that all the volumes and pamphlets listed in the "What Your Library Should Contain" section on the cover of that pamphlet are available. The

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researcher should be sure all the volumes and pamphlets are available to be checked because updating a citation with a print citator usually requires checking more than one volume or pamphlet. Reading the spines of each volume, the researcher will notice that each one covers different reporters and different series of the reporters. So next the researcher should read the spine of each volume in the set and pull those volumes that cover the citation to be checked. In the case of the citation 26 Cal 4th 598, one would pull volumes with spines that include Supreme Court Reports Fourth Series Vols. 19-45. (The court reference is to the California Supreme Court.) The researcher must also pull all the pamphlets that contain the citation. One can determine which pamphlets need consulting by reviewing the Table of Contents inside each pamphlet.

The last step is the heart of Shepardizing: looking in each appropriate volume and pamphlet for the citation by finding the page that correlates to the source (i.e., *California Reports*), volume, and page number for the citation. For 26 Cal 4th 598, one would turn to the pages in the Shepard's volume that cover California Supreme Court Reports, 4th Series, and specifically volume 26 and page 598 of that reporter.

Under the heading for page 598, one finds a list of citations: parallel citations, the history of the case, and sources which are not part of the case's history but which cite to the case. Some of the citations are tagged with symbols. Understanding the significance of each citation in this list and its treatment of the cited source involves interpreting the symbols. If one is unfamiliar with Shepardizing or a particular symbol, it is best to consult the guide and other materials at the beginning of each volume to learn how to interpret the information for the citation one is Shepardizing.

Online Citators

As noted in Chapter 3: Basic Legal Research Techniques, online citators are more up-to-date than their print counterparts. In addition, the process of using an online citator is simpler, as discussed below. Online citators include subscription-based citators like Shepard's in Lexis Advance, KeyCite in Westlaw, BCite in Bloomberg Law, and V.Cite in VersusLaw, as well as a few free citator-like tools, such as the How Cited tab in Casetext, the matching opinions section in Ravel Law, and the How Cited feature in Google Scholar.⁴ The free tools are relatively recent additions to the world of legal research and

⁴ Fastcase also offers a citator-like tool for a fee. V.Cite is not covered in this chapter.

are not considered as robust or trustworthy as the fee-based citators. In addition, although the fee-based resources are generally relied on by legal professionals, it is in a researcher's best interest to use more than one of the subscription-based citators, if possible; even these citators may produce different results because they use different algorithms to generate the lists and because they check for references to the citation in different secondary sources.⁵

Subscription-based Online Citators

To use the online citators Shepard's, KeyCite, or BCite, the researcher simply types a citation such as 26 Cal 4th 598 into the citator search box and clicks search. This search brings up the document as well as links to several lists of citations: a list of the prior and subsequent history of the case and a list of sources which cite to the case. (In Lexis Advance and Bloomberg Law, click the link Shepardize this document, and the BCite tab, respectively, to pull up these lists.) The subscription-based citators attach a status symbol to the document, i.e., a flag in KeyCite, a status symbol in Shepard's, and a square in BCite. The color of the symbol indicates the status which editors have assigned the case based on their analysis of the case's appellate history and treatment by other cases (or codes). For brief explanations of the symbols, mouse over the symbol. For more extensive explanations, in Lexis click the Legend button at the bottom of the Shepard's results webpage, in Westlaw click the Powered by KeyCite reference at the top of the webpage with the case or KeyCite results, and in Bloomberg Law click the Description of BCite Indicators link. Treatment phrases such as 'followed by,' 'declined to extend by,' and 'discussed by' are often attached to the history and citing sources to explain whether those sources reflect positively, negatively, or neutrally on the cited source. The researcher will notice that the citing sources themselves have status symbols. As stated before, the researcher should also check the validity of these citing sources.

Because these symbols and treatment phrases are editorial enhancements provided by the legal research companies rather than the courts, the researcher should read the relevant documents that the citator locates and make independent decisions on how the history and cited sources reflect on the law in question. A researcher might disagree with

⁵ Susan Nevelow Mart, *The Relevance of Results Generated by Human Indexing and Computer Algorithms: A Study of West's Headnotes and Key Numbers and LexisNexis's Headnotes and Topics*, 102 LAW LIBR. J. 221 (2010).

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the citator on how a citing source treats the cited source and, thus, the status symbol attached to the cited case. In addition as stated earlier, results amongst citators can differ in terms of the actual citing sources located and the status the citator assigns to the cited source.

Not only is the process of compiling the history and list of citing sources simpler online than with the print volumes, the online subscription services allow the researcher to narrow the list of citing sources through filters such as jurisdiction, type of document (cases, secondary sources, etc.), type of treatment (negative, positive, neutral), amount of discussion of the cited source, topic, date, keyword, and publication status such as reported and unreported cases. These sophisticated filtering options provided by fee-based online citators allow the researcher to pinpoint the types of citing sources that the researcher believes are most important and do so more systematically than if the researcher had to rely on a print citator.

Free Online Citator-like Tools

Casetext's How Cited tab, Ravel Law's citations section, and Google Scholar's How Cited link are free resources which give a researcher some idea of the treatment of a case. Except for Casetext, they do not provide the history or treatment of California code sections or regulations. In addition, these tools vary in the degree to which they provide editorial enhancements like status symbols or treatment phrases. For that reason, they might even be described as citator-like tools rather than as citators per se. Besides reading the information below and testing the resources for yourself, it is a good idea to consult a law librarian to learn more about the plusses and minuses of each citator.

Casetext

[Casetext](#) is a "legal research and publishing service,"⁶ with a database of cases, codes, and regulations. But Casetext is a legal research engine with a distinguishing feature, CARA A.I., an artificial intelligence tool.

⁶ Zach Abramowitz, *Casetext's New Feature Could Have Kept Me in Biglaw*, ABOVE THE LAW, Aug. 1, 2016, <http://abovethelaw.com/2016/08/casetexts-new-feature-could-have-kept-me-in-biglaw/>. (quoting Jake Heller)

This tool seeks to facilitate contextual research by allowing researchers to submit a document like a brief or complaint to Casetext, which Casetext analyzes to provide researchers with results tailored to the issues in the document. The idea is to find relevant cases and other primary law and analysis that competing research systems that do not offer this feature might miss. This search technique also minimizes the need to use Boolean (or terms and connectors) searches because the relevant terms and concepts are contained in the uploaded document itself. After analyzing the document, Casetext provides a list of cases, etc., which are relevant to the issues in the document but which are *not* cited in it.

Casetext's citator is its How Cited tab. The How Cited feature includes a red flag for all overturned cases in Casetext's database. The citator results can be viewed by depth of treatment, newest to oldest and vice-versa, and cite count (number of times the citing case cites the cited case). The results can also be filtered by keyword or jurisdiction.

CARA A.I. also plays a part in Casetext's citator. Researchers can upload the complaint or a brief from the litigation they are working on and CARA will rank the list of citing cases according to what is most relevant to the facts and legal issues in that litigation (the uploaded document).

Researchers can subscribe to Casetext, including the How Cited feature, for free. However, CARA A.I. is not included in a free account. Accessing CARA A.I. for purposes of searching and using the citator requires a subscription. An annual subscription is \$65 per month. Monthly subscriptions are \$89 per month. It is important to note that Casetext, including CARA A.I., is free to the judiciary and law schools.

Ravel Law

Ravel Law describes itself as a "tool that combines legal research and analytics."⁷ One of Ravel Law's distinguishing features is its use of data to depict the citation history of cases visually and to create profiles of judges.

⁷ *Our Story*, RAVEL LAW, <https://home.ravellaw.com/who-we-are> accessed on Aug. 28, 2018. Ravel Law representatives encourage researchers to use Mozilla Firefox or Google Chrome to access Ravel Law.

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With a free account, a researcher can put a citation into the database and Ravel Law provides a list (“matching opinions”) of all the cases it finds which include that citation. Clicking the link for a case in this list does not lead directly to the cited reference within the citing case. Instead one can use the keyboard function control F to locate the reference. Additional Ravel Law features which provide some information similar to citators require a paid Ravel Advanced account: an Opinion History bar graph, a How this page has been cited section, and a Case Map.⁸

Google Scholar

Google provides access to some state and federal case law through [Google Scholar](#). Each case in Google Scholar contains a How Cited tab which opens to a webpage with some citator-like features. The How Cited page is organized into three sections: a list called How this document has been cited, which consists of ten quotes from cases that cite the case, a Cited By list which includes cases, articles, and books, and could be assumed to provide all the cases Google Scholar finds in its database which reference the cited case, and a Related Documents section which links to more relevant cases, articles, and/or books.

The one editorial enhancement Google Scholar provides on the How Cited page is the horizontal bar symbol to the left of each case citation in the Cited By list. The symbol indicates the amount of discussion by the citing case of the cited case. Unfortunately, the researcher cannot filter the list to view only those cases with the most discussion. The list can be sorted by relevance and date.

In addition, the researcher can narrow the Cited By exclusively to case law, by court, and by date. Narrowing by keyword is another option by using the search box and clicking the Search within citing articles checkbox. Although Google Scholar uses the word articles, the list will be narrowed to any case, article, or book that contains the keyword(s).

Although the free features in these citator-like tools do not have the editorial treatment of Shepard’s, KeyCite, or BCite (such as status symbols and treatment phrases) and although they do not provide an appellate history of cases, they give the researcher a

⁸ More information about these fee-based features is available in the Ravel Law Quick Start Guide, <http://tinyurl.com/jutlkoc>, accessed on Aug. 28, 2018.

starting point to begin researching how courts have treated the cited case, and they are free.

Annotated Codes

Citators use algorithms to systematically locate sources within their databases which cite to the law in question. Although not as rigorous for cite-checking as those citators, annotated codes like *West's Annotated California Codes* and *Deering's California Codes Annotated* bear some similarity to citators, for purposes of checking the validity and reputation of code sections. Annotated codes, as the name indicates, provide California codes which are annotated or supplemented with references to sources like cases and secondary sources that cite to the code sections. While not a substitute for citators, a researcher without immediate access to a citator could start by checking for citing references in an annotated code. By consulting these references, a researcher can glean how other sources treat the case in which they are interested. Another option is to look in a secondary source's table of cases or statutes for a case or code section to find relevant commentary in that source.



Internet Sources Cited in This Chapter

- Bloomberg Law: <https://www.bna.com/bloomberglaw/>
- Bloomberg Law's BCite: <https://www.bna.com/bcite/>
- Casetext: <https://casetext.com/>
- Fastcase: <http://www.fastcase.com/>
- Google Scholar: <http://scholar.google.com/>
- Lexis Advance: <http://www.lexisadvance.com>
- Lexis Shepard's Citations Service: <https://tinyurl.com/y75nqqh3>
- Ravel Law: <http://ravellaw.com/>
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- VersusLaw's V.Cite: <http://www.versuslaw.com/products/caselawpremium.aspx>
- Westlaw: <http://westlaw.com>
- Westlaw's KeyCite: <https://tinyurl.com/yc3e8z8c>