

ND Law Library Guide

Preemption Checking

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Why Do a Preemption Check?

As an author, you want to make an original contribution to the scholarship in an area. Therefore, before settling on a topic, you should do a preemption check to see if someone has already written an article, book, working paper or dissertation on your topic. Hopefully, your preemption check will confirm that your proposed topic is original. If someone else has beaten you to the punch, the preemption check may help you adjust your topic to give it a unique twist. As an added bonus, your check of the prior literature should give you “an extensive bibliography with which to begin your research.”

Checking for Articles

Use the full-text journals and journal indexes on [LexisNexis](#) and [Westlaw](#) to check for previously published legal periodical articles.

Westlaw’s **JLR** database and the **U.S. Law Reviews and Journals, Combined** database on LexisNexis contain full-text legal periodical articles. Each database covers over 400 journals. Date coverage varies with each publication. For some, it starts as early as the 1980’s, but for many, it begins with the mid-1990’s. Sometimes, only selected articles from a volume are included.

Both LexisNexis and Westlaw also contain **Legal Resource Index (LRI)**, an index for American law journal articles published since 1980. The advantage in searching LRI over the full-text journal databases on LexisNexis and Westlaw is that LRI covers more journals and generally covers more issues of each journal. Remember, however, that LRI is only an index — not a full-text journal database. So when you search it, you are only searching an index entry which typically includes title, author, and subject heading information—not the full text of the article. Once you identify relevant articles through LRI, use **HeinOnline** (contains more than 1,530 law and law-related periodicals in PDF) or go to the library to retrieve the full text of the article. (LRI on Westlaw does have links to the full text of articles already available in JLR.)

Although LRI is a third-party database available on both LexisNexis and Westlaw, you may find that you get different results when searching one system or the other. So consider running a similar LRI search in each product. By the way, you will probably want to set up automatic ECLIPSE (LexisNexis) or WestClip (Westlaw) searches to monitor new articles published during your writing process.

Would legal periodical articles published before 1980 be useful? If so, search [Index to Legal Periodicals Retrospective](#). This electronic resource indexes over 500 Anglo-American legal periodicals published from 1918 to 1981.

You can also search [Encore](#) --- the new law library discovery tool --- for individual journal articles. Encore searches **HeinOnline**, **LegalTrac**, **LexisNexis Academic**, and **Index to Legal Periodicals Retrospective** for relevant articles. (**LegalTrac** is essentially the same source as LRI. **LexisNexis Academic**, available campus-wide, contains a journal database somewhat comparable to **U.S. Law Reviews and Journals, Combined** on the LexisNexis law school subscription.)

If your topic involves foreign or international law, use **Index to Foreign Legal Periodicals** which indexes articles from 1985 to present published principally in non-Anglo-American law journals, essay collections, yearbooks, etc. Articles are in a number of languages.

Does your topic overlap with political science, philosophy, religion, economics, education, or history? Depending upon the interdisciplinary nature of your topic, you may want to consult non-law journal databases available through the Hesburgh Libraries. General interdisciplinary databases such as Academic Search Premier and Expanded Academic ASAP can be useful. Academic Search Premier provides full text for more than 4,500 publications, including full text for more than 3,600 peer-reviewed journals. Expanded Academic ASAP provides indexing, abstracts, and selected full text for 3,500+ scholarly journals and general interest periodicals embracing all academic disciplines. In addition, click on **Articles by subject** under the **Articles** tab on the [Hesburgh Libraries](#) home page to see available journal indexes for specific academic disciplines.

Checking for Books or Book Chapters

Use Encore --- the new law library discovery tool --- to find resources held in the Kresge Law Library including books and journals available electronically and in print, microform materials, DVD/Video resources, and more. As mentioned above, you can even search for individual articles. The catalog record for most books published after 2000 contains detailed table of contents information to help you identify relevant book chapters. Search the Hesburgh Libraries' [CatalogPlus](#) to expand your search to materials in other Notre Dame campus libraries (as well as the libraries at Saint Mary's College, Holy Cross College, and Bethel College). With [Worldcat](#), you can broaden your search to libraries worldwide.

Checking for Working Papers

You don't want to be preempted by a published article or book. But should you avoid writing on a topic already covered in someone's article draft or working paper? Get your journal editor's opinion. After all, even if someone else has posted a draft, you could still win the race to publication. If nothing else, checking for drafts and working papers will help you find out what

people are working on, and it may help you focus your topic. The Social Science Research Network ([SSRN](#)) is an excellent source for working papers and drafts. SSRN is composed of several research networks in each of the social sciences — including the Legal Scholarship Network. The SSRN eLibrary contains both “an Abstract Database of over 371,800 scholarly working papers and forthcoming papers and an Electronic Paper Collection currently containing over 304,100 downloadable full-text documents.” Some article drafts remain in SSRN even after publication, so there may be duplication in your search results from SSRN and from the Lexis or Westlaw journal databases.

Checking for Dissertations

As with searches for working papers and article drafts, a search for doctoral dissertations and masters theses may provide valuable research sources and help you focus your topic. Use the **Dissertations and theses** database available through [Hesburgh Libraries](#). (Click on **D** under the **Databases** tab on the Hesburgh Libraries homepage.) **Research Tools**, see **Resources by title** on the Hesburgh Libraries home page.) This database indexes dissertations and theses published since 1861 and provides abstracts (dissertations: (1980 – present); theses: (1988 – present).

Additional Sources on Preemption Checking

- 1) Eugene Volokh, Academic Legal Writing (2007).
Law Library call number: KF250 .V6 2007
- 2) Heather Meeker, Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers, [1996 Utah L. Rev. 917](#).
- 3) Lexis, Preemption Checking on the LexisNexis Services (2008),
http://www.lexisnexis.com/documents/LawSchoolTutorials/20080711120407_small.pdf
- 4) Westlaw, “Using Westlaw to Write a Law Review Article,” (2010),
<http://west.thomson.com/documentation/westlaw/wlawdoc/lawstu/lslrwl06.pdf>
- 5) Elizabeth Fajans & Mary R. Falk, Scholarly Writing for Law Students (3d ed. 2005).
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* This is an update of Lucy Payne’s “Preemption Checking” ND Law Library Guide (1999).