

Scholarly Article Preemption Check

What is a preemption check?

Before you begin research on an article topic, you must determine whether the topic has already been covered by another article. This process is called a preemption check.

A thorough preemption check allows you to proceed with confidence that you are analyzing a novel issue and increases your chances for publication.

When should you perform a preemption check?

You should perform a preemption check after you have chosen a potential topic but before you begin your actual research. Keep in mind that the preemption check, itself, is often a good start to research.

If there is a substantial amount of time between your initial preemption check and when you submit your article for publication, you may also want to perform a preemption check before submitting.

How should you perform a preemption check?

A proper preemption check requires you to search many different databases because the various databases cover different content. Searching a variety of databases ensures that you are doing a thorough check.

Step 1. Construct a list of terms and synonyms to describe your topic

Use a legal thesaurus to identify alternative words used to describe your topic. You can find *Burton's Legal Thesaurus* in Tech Law Library LAW-1st Floor - Reference KF156 .B856 2007.

Once you start your preemption check, you might notice terms of art or other language patterns used to describe your topic. You may need to revise your preemption check searches to account for any alternative terms.

Step 2. Organize your preemption check

To keep track of your preemption check searches, keep a running list of the search terms.

You should maintain a record of all journal article citations in your search results that you feel need further investigation.

See the attached preemption checklist for a sample document to help keep you organized.

Step 3. Search a variety of databases for articles on your topic

1. A full-text law reviews and journals database on [WestlawNext](#) & [Lexis](#)

Search the full-text Law Reviews and Journals database on WestlawNext. You should run multiple searches using your terms list.

2. [The Hein Online Law Journal Library](#)

Hein Online's full-text law journal database contains some titles that are not available on WestlawNext and also contains broader coverage of law reviews. Hein Online is available through the Library's Electronic Resources page.

3. [Index to Legal Periodicals \(ILP\)](#)

ILP indexes articles from thousands of legal periodicals and also indexes law books. ILP is available through the Library's Electronic Resources page.

4. Current Index to Legal Periodicals (CILP)

CILP is more current than other journal indexes with topical access to over 500 legal publications. This resource is available on [WestlawNext](#).

5. [SSRN](#) for working papers on your topic

The Social Science Research Network (SSRN) has a Legal Scholarship Network (LSN) that contains abstracts of working papers or papers recently accepted for publication. You should check SSRN for any articles on your topic that might be published soon.

6. [Google Scholar](#), [JSTOR](#), or [ProQuest](#) for multidisciplinary articles

If your topic is likely to be addressed in non-legal journals, check databases of such journals. Google Scholar allows you to broadly search for scholarly literature. You may not have access to the full-text of the articles through Google Scholar, but it will alert you to potential red flags.

The Tech Libraries also subscribe to JSTOR and ProQuest, which are multi-disciplinary databases. These can be accessed through the Tech's main campus library [website](#) and searching the alphabetical list of databases.

If you are interested in the full-text of an article found in a resource that is not available through the Tech Libraries, please see a Reference Librarian for inter-library loan information.

Final Considerations

Generally, searching all of these databases for your topic will be sufficient to perform a thorough preemption check.

When searching, if you find that your topic has been covered, it could be preempted, and you may need to revise the focus of your topic to analyze the issue in a new light. Or you may need to find a new topic altogether. These issues depend on the specific articles that you find during your preemption check.

If you find that there is an article that discusses your topic, but it is old, and there has been substantial change in the area, you may not be preempted because you could update the issue. But if you find a large number of articles analyzing your topic from many different angles, it may be hard to convince a journal that your article is worth publishing. A journal may think that the topic has been overdone and pass on publication.

Preemption Checklist

Part I: Research your topic in specific sources to locate relevant & similar articles.

List all information you consider pertinent, and include as much specific detail as you can (source name, citations, etc.).

1. Sources Checked: For each of the sources listed below, **list the search terms used** in locating relevant materials.

- **A current, full-text U.S. Law Review Database.** This should be the Law Reviews & Journals database on [WestlawNext](#).

TERMS USED: _____

- [Hein Online Law Journal Library](#) is available individually through the Library's Electronic Resources page.

TERMS USED: _____

- [Index to Legal Periodicals \(ILP\)](#) is available individually through the Library's Electronic Resources page.

TERMS USED: _____

- **Current Index to Legal Periodicals (CILP)** is available on [WestlawNext](#).

TERMS USED: _____

- [Social Science Research Network \(SSRN\)](#)

TERMS USED: _____

- **Any Additional Source Searched:** ([Google Scholar](#), [JSTOR](#), [ProQuest](#), etc.), if applicable.

TERMS USED: _____

- 2. Cases:** List below any cases which you have Shepardized, Keycited, or otherwise used as a search for this preemption check. This should especially include cases that are the focus of casenotes:

PART II: Identify & disclose potential preemptions

List below the titles and citations of relevant materials (articles, books, annotations, etc.) you found while searching the above-listed sources. Include all relevant materials with their complete authors, titles and citations. Provide a brief description of how each particular item is similar or dissimilar to your proposed topic. If a source is similar, describe how your article distinguishes itself from the earlier scholarship.

Articles with similar terms/themes located:

1. Title: _____
Citation: _____
Substantially (circle one): Similar Dissimilar
If substantially similar, describe the relevant similarities below:

2. Title: _____
Citation: _____
Substantially (circle one): Similar Dissimilar
If substantially similar, describe the relevant similarities below:

3. Title: _____
Citation: _____
Substantially (circle one): Similar Dissimilar
If substantially similar, describe the relevant similarities below:

4. Title: _____
Citation: _____
Substantially (circle one): Similar Dissimilar
If substantially similar, describe the relevant similarities below:

5. Title: _____
Citation: _____
Substantially (circle one): Similar Dissimilar
If substantially similar, describe the relevant similarities below:

6. Title: _____
Citation: _____
Substantially (circle one): Similar Dissimilar
If substantially similar, describe the relevant similarities below:

