

Westlaw

Secondary Sources Certification Training – Spring 2009

Belynda Ortiz, Academic Account Manager: Belynda.ortiz@thomsonreuters.com

Student Reps

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Traditional secondary law sources:

- a. are statements about the law by legal experts; they are not the law
- b. analyze, explain, interpret, develop, locate, or update primary law
- c. can be analytical or practical
- d. can be persuasive authority, never binding or mandatory authority

If secondary sources are not binding, why use them?

- a. They often provide an objective overview of an area of the law; therefore, they are a good place to start research in an unfamiliar area of the law
- b. They provide the terms of art, black-letter law and major concepts needed to search indices, tables of content, and primary sources.
- c. They may raise issues not previously considered
- d. They cite or link to relevant cases, statutes, and other secondary sources
- e. Some secondary sources are sufficiently respected that they can be used as persuasive authority when primary source authority cannot be found.

Issue: Your client throws a party where alcohol is freely served. Several of the guests become intoxicated. Your client guides one such guest to his car, helps him into the car, and warns him to “drive carefully.” The guest drives off but within minutes crashes into another car, causing severe injuries.

Can your client be held liable?

Secondary Sources are grouped together within two of the database finding aids on Westlaw, the “Law School” tab and the Westlaw “Directory.”

Click **<Law School> Tab** at the top of your screen. Several of the most respected and widely used secondary sources are located under *Secondary Sources* in the right frame of the Law School tab page. (If you use the Law School Classic tab page, scroll down to Secondary Sources and Forms under *Select Databases* in the right frame.)

Click **<Directory>** on the toolbar at the top of the screen. This is another way to locate secondary source databases. Many secondary source databases are located under the *Treatises, CLE's, Practice Guides*, and the *Legal Periodicals & Current Awareness* sections of the Directory.

I. Analytical Secondary Sources

1. ALRs (American Law Reports)

Click **<ALR> (American Law Reports)** under *Treatises, CLE's, Practice Guides* in the Directory.

- * ALR editors select cases that represent legal issues that are emerging, unsettled, or changing and that are of interest to many lawyers.

- * A legal scholar writes an article (annotation) using a lead case as the basis of the article.
- * The article objectively explores the law of the jurisdictions that have dealt with the specific issue.
- * The ALR database contains the full text of annotations included in the 1st, 2nd, 3rd, 4th, 5th, 6th, and Fed. 1st and 2d Series of the ALRs and the Index to Annotations that cover these series.
- * The online version of the American Law Reports (ALR) is included in Westlaw's KeyCite citation service.

1. **Natural Language:** "host liability for injuries caused by guest who was drunk."

- a. **ResultsPlus** in right column = additional secondary sources that expand your research and include articles from the ALR, Am Jur 2d, Am Jur Proof of Facts, Causes of Action, and relevant West Key Numbers.
- b. Open "62 ALR4th 16" and click on "**Best**" **Arrow** at bottom of screen to see best section of document where the words used in your search are most concentrated. Here you learn that:
 - i. the relevant term of art for host is "social host,"
 - ii. the legal term of art for drunk is "intoxicated," and
 - iii. social host liability is analyzed in the context of "dram-shop liability" for commercial providers of alcohol.

1. Click <**Index**> (top of document) → scroll down to "**Aid or Assistance**" → click on <**13**>.

This is the section of the ALR article discussing the liability implications of a social host helping an obviously intoxicated guest to his car and allowing him to drive away.

To see a list of cases discussed in the article, organized by jurisdiction:

2. Click <**Table of Cases, Laws, and Rules**>.

* ALR articles are included in Westlaw's KeyCite citation service. "62 ALR4th 16" has a blue H in the upper left corner, indicating that it has some history.

c. **KeyCiting ALRs:**

Click <**History**> in the KeyCite box. This article has superseded, in part, three earlier lines of ALR articles. If an online article has been fully superseded, it will have a red flag.

KeyCite includes:

- a. History and Citing References for ALR
- b. Citing References for law reviews and journals

d. **Citing References** for ALRs:

Click <**Citing References**> in the KeyCite box. The article has been cited over 100 times.

2. Legal Encyclopedias

Legal encyclopedias, such as American Jurisprudence 2d (Am Jur 2d) and Corpus Juris Secundum (CJS) feature:

- a. alphabetically arranged topics, with each topic divided into short sections
- b. general, rather than in-depth, discussions of the law

c. cross-references to primary law

<Law School> Tab → <Am Jur> under Secondary Sources → <Natural Language> → enter “social host” liability for injuries caused by intoxicated guest”

1. Open “45 Am Jur 2d Intoxicating Liquors § 469.” * Note the links to various finding aids at the top of the document, i.e., “**Topic Summary**,” “**Correlation Table**,” and “**References**.”
2. <Table of Contents> on left side of screen shows how your section fits into the hierarchy of Am Jur 2d topics.

3. Restatements:

- * the American Law Institute’s attempt to clarify the ever-increasing complexity of case law.
- * provide concise, clear black letter law statements, often followed by comments and illustrations.
- * are separated and classified by various topical areas of the law
- * cite to cases that have cited to Restatement sections.

<Law School> Tab → <Restatements> under Secondary Sources → <Natural Language> and enter “social host’ liability” and “**Restatement of the Law – Torts**” → open § 318 (notice the short and general black letter statement of the law followed by a Comment section) → click right <Best> arrow to get to best portion of the document.

4. Black’s Law Dictionary:

- * is the best-known and widely used law dictionary.
- * identifies words in the context of legal usage
- * includes cross references to West Key Numbers and Corpus Juris Secundum sections

<Law School> tab → <Black’s Law Dictionary> (BLACKS) under Secondary Sources → enter “dram-shop” in the template field and <Search> → open <dram-shop liability>.

* Note the links to West Key Numbers and Corpus Juris Secundum sections.

* The template search is in the caption field of the documents and requires that the term is what is defined and not just mentioned.

* Using a Terms and Connectors search, ca(dram-shop) will retrieve only entries in which “dram-shop” is part of the definition.

5. Legal Periodicals

Legal periodicals include:

- a. law reviews and journals
- b. bar association journals
- c. legal newspapers and newsletters

From <Law School> tab, look at:

“**Journals & Law Reviews (JLR)**” database contains:

- a. all student-edited law reviews and journals
- b. CLE course materials
- c. bar journals on Westlaw.

“**All Law Reviews, Texts & Bar Journals (TP-ALL)**” database contains:

- a. all periodicals = law reviews, journals, ALRs, etc.
- b. all CLE materials
- c. texts and treatises.

TIP: Due to the sheer number of articles, these databases are good places to find an article on an obscure issue.

<Law School> → <Journals & Law Reviews> → enter: ti(“social host”) and <Search> → open <27 Wm Mitchell L. Rev. 1353: Torts-Social Host Duty to Protect Guests>

- The green “c” in the upper left corner means it has citing references, most likely other secondary sources. <Citing References> will show them.

II. Practical (Non-Analytic) Secondary Sources

Various types of practice aids may be loosely regarded as secondary sources, in that they are non-primary law resources for lawyers. This type of secondary source should never be cited in a formal memo, brief, or pleading.

Practical secondary sources:

- a. are never considered primary authority
- b. include practice guides and checklists
- c. are often linked to analytical sources
- d. all of the above

Am Jur Proof of Facts: Articles authored by attorneys and experts that identify the essential facts and how to prove them in a variety of civil litigation and criminal defense actions.

From <Law School Tab>, click on <Am Jur Proof of Facts> → enter “ti(“social host”) in terms and connectors → click on <3 Am Jur Proof of Facts 3d 697>.

* Notice in the document’s outline of all the practical litigation subjects covered in this article, including:

- a. elements of proof
- b. sample interrogatories
- c. testimony guidelines by experts, the police, and the plaintiff

Other practical secondary sources can be found under <Directory> → <Litigation>.....

1. **Forms-All:** combines all Westlaw national and state-specific forms databases, including legal and business, transactional, litigation, pleading and practice and statutory forms

<Directory> on the toolbar → <Litigation> → <Forms> → <Forms-All> → enter “social host” in the “Enter the name of the form” template box → <Search>
Open and scroll down “14C Am. Jur. Pl. & Pr. Forms Intoxicating Liquors § 131.”
Select and highlight the text of the form → <Tools> at bottom right corner of screen → <Copy with Reference> → <Copy>. The form is now ready to be pasted into a word-processing document.

2. **Causes of Action:** 479 articles on as many causes of action in 61 volumes

<Directory> on the toolbar → <Litigation> → <Practice Materials> → <Causes of Action> → enter: ti(“social host”) and <Search>.

Open and scroll down “15 Causes of Action 1 (2005)” to review the “**COA Article Outline,**” which provides an overview of the section and hypertext links to additional information.

Click on <§ 19 Sample Complaint>. This form can be copied and pasted into a word-processing document.

References to West Key Numbers and more secondary sources under “ResultsPlus” are located on left side of screen.