Preemption Checks for Law Review Articles

A law review article or note must present original research. To ensure that your research will be original, you must conduct a preemption check.

**What is a preemption check?**
A preemption check is the process of determining whether another article has already been written on your topic. If you do not find such an article, your topic has not been preempted, and you can proceed with your research.

If you do find any articles on your topic, you may still be able to proceed if you plan on addressing the topic from a new perspective or a different point-of-view from the already-written article. The more articles that have been written on your topic, the more difficult this will be.

**When is the preemption check conducted?**
A preemption check is conducted after you have chosen a potential article topic but before you begin your actual research. It also is worthwhile to perform the check before submitting your paper for publication.

**How is a preemption check conducted?**
First, a word of warning: **Do not rely only on the full-text Westlaw and Lexit law journal databases.** While using these databases is a good start, many law reviews are not included in these databases. Furthermore, the coverage for many law reviews included in these databases does not extend all the way to the first volume of the law review. In sum, relying only on Westlaw and Lexis will result in an incomplete preemption check.

**Step One: Search law journal and legal periodicals for articles on your topic.**

1. Search the full-text Westlaw (Journals and Law Review Database) and Lexis (U.S. Journals and Law Reviews) law review databases. Although there is a large amount of overlap between these two databases, you should check both since the coverage is not exactly the same.

2. Search the Hein Online Law Journal Library. Hein Online, a full-text searchable database of law journals, is available through the Law Library’s Subscription Database webpage (http://www.law.miami.edu/library/databases.php). Hein Online contains some titles that are not available on Westlaw or Lexis and also contains older volumes of law reviews that are also unavailable on Westlaw or Lexis.

3. Search for your topic on Index to Legal Periodicals (ILP) which indexes articles from thousands of legal periodicals (beginning as early as 1908, depending on the periodical) and indexes law books (since 1993). ILP is available on the Library’s Subscription Database page (http://www.law.miami.edu/library/databases.php) or as a link from the library’s catalog (Baron) (http://baron.law.miami.edu/) or through Westlaw or Lexis.
4. LegalTrac indexes over 800 legal periodicals by subject or keyword. Coverage begins around 1980 for most journals. Bar journals and periodicals are covered more heavily in LegalTrac than in the other indexes and databases. Legal Trac is available from the Library’s Subscription Database page (http://www.law.miami.edu/library/databases.php), as a link from Baron (http://baron.law.miami.edu/), or through Westlaw or Lexis.

5. If your topic is an international or foreign legal topic, check Index to Foreign Legal Periodicals. This database indexes articles from more than 450 legal periodicals from 1985 to the present and covers international law (public and private), comparative law, and municipal law of countries other than the United States. This index is available from the Library’s Subscription Database page (http://www.law.miami.edu/library/databases.php), as a link from Baron (http://baron.law.miami.edu/).

6. If your topic is likely to also be addressed in non-legal journals, check databases of such journals through the Richter Library Database page (http://www.library.miami.edu/). Examples of databases likely to contain law-related articles include Social Science Citation Index and JSTOR.

Step Two: Search for Working Papers on your topic.

1. Legal Scholarship Network (LSN) contains abstracts of working papers or papers recently accepted for publication. LSN is a valuable resource to check whether an article on your topic is likely to be published shortly. LSN is available though the Subscription Database page (http://www.ssrn.com/lsn/index.html). From LSN you can also search the non-law working paper database called Social Science Research Network (SSRN).

2. Bepress Legal Depository (http://law.bepress.com/repository) provides links to the full text of more than thirty universities’ working papers series.

Step Three: Search for books on your topic.

1. Check the local library catalogs: Baron (http://baron.law.miami.edu/) and IBISWEB (http://ibisweb.miami.edu/).

2. Other law school and university library catalogs. If your topic is related to a case or issue that is regional in nature, you should search a law school library catalog from that region. Remember that some books are edited compilations of chapters on varying but related legal topics. If such a book is related to your topic, it will be necessary to consult the table of contents to be sure that no individual chapter will preempt your topic. Index Master, which is available through the subscription database page, indexes the contents of monographs by different authors. It does not include all monographs.

Step four: Conform your preemption check to the guidelines of your individual law review.

Be sure to document each step of your preemption check in accordance to the guidelines and requirements of your individual law review. If you have questions about those guidelines or requirements, please consult with your editors.

If you have any questions about conducting the preemption check or using any of the resources described in this guide, feel free to consult with a reference librarian. Good luck!