

Developments In Business Simulation & Experiential Exercises, Volume 17, 1990

USING A LEGAL DATABASE TO DESCRIBE THE LEGAL ENVIRONMENT OF MARKETING (AND BUSINESS)

Fred W. Morgan, Wayne State University
Karl A. Boedecker, University of San Francisco

ABSTRACT

The use of Lexis, a computerized legal database, is suggested and described for classroom in this paper. Several examples of the application of Lexis in different marketing classes are provided. Specific Lexis-generated PC screens will be presented to demonstrate the use of Lexis for understanding the legal environment of business.

INTRODUCTION

To refer to the legal environment when instructing marketing students is to allude to an amorphous concept that almost everyone recognizes, but few really understand. Most marketing activities are influenced by legal developments and trends; hence, textbook authors are increasingly formulating materials about legal guidelines. For example, in *Principles of Marketing* by Kotler and Armstrong (1989), more than 50 references to the legal environment appear in the Subject Index, and nine of the 23 chapters contain discussions of legal topics. In *Sales Management: Analysis and Decision-Making* by Ingram and LaForge (1989), 40+ index references to the law accompany related discussions in six of 16 chapters.

Thus, marketing instructors must (1) improve their own backgrounds regarding the legal climate so they can (2) discuss and explain the implications of the legal environment within the classroom. The focus of this paper is to assist educators with both of these requirements with emphasis on the latter: creating lecture, discussion, and experiential materials which further students' understanding of the legal dimension of marketing topics. In addition, a secondary goal is to provide students with an interesting perspective about the legal environment. Without the proper encouragement, students may see the law as a collection of rules and regulations they have been forced to memorize for other classes

ORGANIZATION OF LEGAL DATABASES

The two most popular legal data retrieval systems are Lexis (1985) and Westlaw (1985). Both databases contain the texts of published judicial decisions for both federal and state courts at all levels (trial and appellate). Access is also available to several specialized reference encyclopedias, most of the major legal journals, the Congressional Record, federal and state laws and regulations, plus other specialized materials. While subtle differences between the two networks do exist, these do not affect their use as described here. Thus, only the Lexis system will be discussed.

Lexis is organized into four levels, libraries, files, documents and segments (going from broadest to narrowest in scope). A library contains all materials in a particular research area and is subdivided into several files, which contain several documents (composed of various segments). For example, a complete listing and sample descriptions of Lexis libraries appear in Exhibit 1. A partial listing of files within the General Federal Library, along with a sample file description is presented in Exhibit 2. Exhibit 3 includes a listing of the files with the law Review file.

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EXHIBIT 1 LEXIS LIBRARIES AND SAMPLE SUBJECT MATTER

GENFED	CODES	STATES	ALR	OTHER-SR	
NAARS	ASSISTS	ADMRTY	FEDCOM	MILTRY	CORP
LAWREV	PRACT	BANKNG	FEDSEC	PATCOP	
EMPLOY	ABA	BKRTCY	FEDTAX	PUBCON	
HEALTH	BNA	ENERGY	ITRADE	TRADE	
INSRLW	CCH	ENVIRN	LABOR	TRANS	
PUBEMP	CCHSKY	FEDSEN	STSEC	INCORP	
STTAX	LIENS	UTILTY	ALA	GA	MD
NJ	SC	ENGGEN	COMCAS	INTNAT	ALAS
HAW	MASS	NM	SD	UKTAX	AUST
LOIREG	ARIZ	IDA	MICH	NY	TENN
ENGIND	NZ	PRIVE	ARK	ILL	MINN
NC	TEX	ENGLG	PUBLIC	CAL	IND
MISS	ND	UTAH	UKIP	REVUES	COLO
IOWA	MO	OHIO VT	UKJNL	LEXIS-EC	
CONN	KAN	MONT	OKLA	VA	SCOT
EURCOM	DE	KY	NEB	ORE	WASH
DC	LA	NEV	PA	WVA	
LEXIS-IR	FLA	MAINE	NH	RI	WISC
IRELND	WYO	NILAW	LEXIS-UK	LEXIS-CW	
LEXIS-FR					

GENFED The General Federal library contains all federal materials, including cases tried in federal courts (Supreme Court, appeals courts, district courts, and specialty courts), all federal laws and regulations, recent congressional information, and federal court rules and procedures (see Exhibit 2).

STATES The States library contains all cases tried in all state courts at every level (from trial court to each state's highest court), plus various laws and regulations from each state. Individual state libraries, e.g., Mich for Michigan, contain similar material, but only for that specific state.

LAWREV The Law Review library contains the text of articles printed in the leading law journals, plus certain specialty legal publications.

Information retrieval using Lexis is similar to the processes utilized to search for material with any typical database found in university libraries. The appropriate search phrases must be formulated in order to find relevant information. Search phrases which are too general will produce too many documents to examine, while too restrictive phrases will result in the omission of important documents.

With Lexis, the researcher (faculty member or student) can streamline the process by knowing in advance the library and files in which relevant information is likely to appear. For example, if the topic involves federal law, the Genfed library would be the starting point, not the States library. If the topic relates

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to improper salesperson behavior within the state of Michigan, the Michigan (MICH) library, containing both federal and state cases tried in Michigan, would be the focal point.

Thus, Lexis involves two primary decision areas: the choice of search phrase(s) and the selection of libraries and files in which to search. Lexis is quite user friendly in terms of formulating search phrases. Key words (1 to 20 characters) can be combined in various ways, according to rules governing the use of character and connector terms. These are described in Exhibit 4. Words and character and connector terms can be grouped using parentheses as they are used in algebraic computations.

SAMPLE LEXIS RESEARCH PROJECTS

We use Lexis to prepare classroom materials in two ways: to develop statistics to describe the significance of legal issues and to locate examples of the impact of law on marketing behavior. Each of these uses for Lexis is illustrated.

Punitive Damages for Outrageous Marketing Behavior

The application of punitive damages for particularly offensive businessperson behavior has been discussed extensively in the popular press in the past couple of years (*Wall Street Journal* 1989a,g). A subset of this issue is the appropriateness of punitive damages when

EXHIBIT 2 LEXIS FILES IN THE GENERAL FEDERAL (GENFED) LIBRARY

---COURT GROUP FILES---	---U.S. COURT FILES---	-----LEGISLATIVE-----	----ADMINISTRATIVE----
COURTS Fed Cases & ALR CURRNT Cases aft 1987 NEWER Cases aft 1944 SUPCIR US,USAPP & CAFC	US US Supreme Court 1790 - present USAPP Court of Appeals 1789 - present DIST District Courts 1789 - present CLCT Claims Court 1940 - present	USCS US Code Service PUBLAW US Public Laws USCODE USCS & PUBLAW RECORD CongRec aft 1984	ALLREG FEDREG & CFR FEDREG Fed. Register 7/1/80-present CFR Code of Fed.Reg
-----NEWS----- USLW US Law Week USLWD US Law Wk Daily BNAWI BNA Hot Legis		-SUPREME COURT BRIEFS- COMGEN Comp.Gen.Decs. BRIEFS Argued aft 9/79 GUIDE Library Guides	-CIR & DIST-- 1ST 8TH 1DIST 9DIST 2ND 9TH 2DIST 10DIST 3RD 10TH 3DIST 11DIST 4TH 11TH 4DIST DCDIST 5TH CADC 5DIST CIT 6TH FED 6DIST CLCT 7TH 7DIST CUSTCT 8DIST BANKR
-----CONGRESSIONAL RECORD-----	---CIRCUIT---		
RECORD Cong. Record 1985 - present 101ST 101st Congress 100TH 100th Congress 99TH 99th Congress 10ISEN 101st Senate 10IHSE 101st House 10IRMK 101st Remarks 10IDIG 101st Digest	SENATE 101st,100th & 99th Senate HOUSE 101st,100th & 99th House REMARK 101st,100th & 99th Remarks DIGEST 101st,100th & 99th Digest	1CIR 8CIR 2CIR 9CIR 3CIR 10CIR 4CIR 11CIR 5CIR DCCIR 6CIR CAFC 7CIR	-----FEDERAL COURT RULES----- RULES All Rules FRCRP Crim. Proc. FRCP Civil Proc. TAXRUL Tax Rules FRE Evidence CLRUL Claims Ct. SUPCIR US, USAPP &CAFC FAR Fed.Acq.Reg. FRAP App. Proc. DOD DOD FAR Supp
---OTHER LEGIS MATERIAL--	-----GROUP FILES-----	-----CFR-----	
CNGRES All CNGRES Files CNGVOT CNGRES Votes CNGFIN CNGRES Financial CNGMEM CNGRES Backgrnd BLCAST Current Forecast BLARCH Prior Forecast	CURRNT Cases aft 1987 NEWER Cases aft 1944 OLDER Cases bef 1945 COURTS US,USAPP,DIST, CIT,CLCT,CUSTCT, BANKR & ALR USCS US Code Service RECORD Cong. Record 1985 - 1989 ALLREG FEDREG & CFR FEDREG Fed. Register 7/1/80-present	CFR Current CFR Current CFR87 1987 CFR CFR86 1986 CFR CFR85 1985 CFR CFR84 1984 CFR CFR83 1983 CFR CFR82 1982 CFR CFR81 1981 CFR ALLCFR 81-87CFR COURTS US,USAPP,DIST, CIT,CLCT,CUSTCT BANKR & ALR COURT2 US,USAPP,DIST, CIT,CLCT,CUSTCT & BANKR PRESDC Pres. Documents DOSSUL DOS Bulletin	
--LEGAL PUBLICATIONS----	----USAG OPINIONS-----		
BUSLAW ABA Bus. Lawyer INTLAW ABA Int'l Lawyer	USAG 1791 - Current COURTS US,USAPP,DIST, CIT,CLCT,CUSTCT, BANKR & ALR USCS US Code Service RECORD Cong. Record 1985 - 1989 ALLREG FEDREG & CFR FEDREG Fed. Register 7/1/80-present		

COURTS The Courts file contains the texts of all reported cases in federal courts (trial, appeals, and U.S. Supreme Court), plus material on selected legal topics appearing in the Annotated Law Reports, a legal encyclopedia which is updated regularly.

USAG Opinions of the U.S. Attorney General.

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EXHIBIT 3 LEXIS FILES IN THE LAW REVIEW (LAWREV) LIBRARY

ALLREV	Combined Law Review files	CORLR	Cornell Law Review	ANNO	ALR and Led2d Annotations
DELJCL	Delaware Jnl. of Corp. Law	LGLIND	Legal Resource Index	DUKELJ	Duke Law Journal
AMERU	American Univ. Law Review	EMORY	Emory Law Journal	BOSULR	Boston Univ. Law Review
ENVLAW	Environmental Law	BRKLR	Brooklyn Law Review	ELRNEW	Env. Law Rptr. News (ELI)
BUSLAW	ABA Business Lawyer	FORDLR	Fordham Law Review	CALLR	California Law Review
GEOLJ	Georgetown Law Journal	CATHLR	Catholic Univ. Law Review	GWLR	George Wash. Law Review
COLBUS	Columbia Business Law Review	HARV	Harvard Law Review	COLUM	Columbia Law Review
HASTLJ	Hastings Law Journal	COMLAB	Comparative Labor Law Jnl.	HOFSLR	Hofstra Law Review
HOWARD	Howard Law Journal	INSLJ	ABA Tort & Insurance Law Jnl	NCLR	North Carolina Law Review
IOWALR	Iowa Law Review	NWULR	Northwestern Univ. Law Review	JNLACC	Jrnl of Accty. (AICPA)
NOTRE	Notre Dame Law Review	JLCRIM	Jnl of Crim. Law & Crim'logy	OHSTLJ	Ohio State Law Journal
INTBUS	Jnl of Int'l Law & Business	PTCLAW	ABA Pat Trademark & Cpyrt	LAWTEC	Jrnl of Law & Technology
PITTLR	Univ. of Pitt. Law Review	LOULR	Louisiana Law Review	STANLR	Stanford Law Review
MARLAW	Tulane Maritime Law Journal	SOCALR	Southern Cal. Law Review	MICHLR	Michigan Law Review
TAXADV	The Tax Advisor (AICPA)	MLR	Military Law Review	TAXLAW	ABA Tax Lawyer
MINNLR	Minnesota Law Review	TULLR	Tulane Law Review	UVA	Univ. of Virg. Law Review
UCHIC	Univ. of Chicago Law Review	VANDLR	Vanderbilt Law Review	UCINLR	Univ. of Cincin. Law Rev.
UVATAX	Virginia Tax Review	COMLAW	UCLA Federal Communications	WASHLR	Washington Law Review
UCLALR	UCLA Law Review	WISLR	Wisconsin Law Review	UMIALR	Univ. of Miami Law Review
YALEJR	Yale Journal on Regulation	UPENN	Univ. of Penn. Law Review	YALE	Yale Law Journal
COURTS	Combined US,USAPP,DIST	FTC	FTC Rpts., 3/50 to present	US	U.S. Rpts., 1890 to present
USAPP	Cts. App., 1938 to present	DIST	Dist. Cts., 1948 to present	USCS	Title 15 Commerce & Trade
BNAATD	BNA Antitrust & Trade	CFR	Title 16 as of present date		Title 21 Food & Drugs
ATRUST	ABA Antitrust Law Journal	COLBUS	Columbia Business Law Review	TRADRG	BNA Antitrust & Trade 4/81 to present
BUSLAW	ABA Business Lawyer				

EXHIBIT 4 LEXIS CHARACTERS AND CONNECTORS AND THEIR USES

Lexis Items	Description
plurals	Lexis automatically searches for the plural forms or words which are pluralized by adding <i>s</i> or <i>es</i> . Both singular and plural forms must be included to search for words which are pluralized in some other manner (e.g., child and children).
apostrophes	Lexis automatically searches for the singular and plural possessive forms of words which are pluralized as described above. Other possessive forms must be listed individually (e.g., child retrieves child's, but not children's).
hyphen	Lexis treats hyphens as spaces.
*	Lexis searches for any word that has an asterisk(s) embedded as a substitute for a letter(s) (e.g., ga*e retrieves gale, game, gape, gate, gav*). A search word cannot begin with an asterisk.
!	Lexis searches for any word beginning with the prescribed letters before the exclamation point (e.g., advertis! retrieves any word formed by adding characters to advertis, such as advertise, advertising, advertisement, etc.).
or	Lexis retrieves documents containing at least one of the words/phrases connected by <i>or</i> .
and	Lexis retrieves documents containing words/phrases connected by <i>and</i> .
and not	Lexis retrieves documents containing the word/phrase before <i>and not</i> but not containing the word/phrase after <i>and not</i> .
w/n	Lexis retrieves documents where the word/phrase before <i>w/n</i> appears within <i>n</i> words of the word/phrase after <i>w/n</i> .
not w/n	Lexis retrieves documents where the word/phrase before <i>not w/n</i> does not appear within <i>n</i> words of the word/phrase after <i>not w/n</i> .
w/seg	Lexis retrieves documents where the word/phrase before <i>w/seg</i> appears within the same document segment as the word/phrase after <i>w/seg</i> .
not w/seg	Lexis retrieves documents where the word/phrase before <i>not w/seg</i> does not appear within the same document segment as the word/phrase after <i>not w/seg</i> .
pre/n	Lexis retrieves documents where the word/phrase before <i>pre/n</i> appears no more than <i>n</i> words before the word/phrase after <i>pre/n</i> .

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the unacceptable behavior involves the intentional marketing of faulty products. How serious is this problem? How often are marketers sued when the damages claim involve a punitive request? To prepare to discuss these questions with students in a marketing strategy, we collected the data shown in Table 1:

TABLE 1
FREQUENCY OF PUNITIVE DAMAGES CLAIMS IN
REPORTED PRODUCT LIABILITY LITIGATION

Year	Mentioned in Cases		Total Cases	Discussion Significance		
	Federal	State		Brief ^a	Detail ^b	Award Granted
1988	70	60	130	78	36	16
1987	61	56	117	70	34	13
1986	83	62	145	84	40	21
1985	67	63	130	80	33	18
1984	54	69	123	72	35	16
1983	37	45	82	51	20	11
1982	36	49	85	52	22	11
1981	29	28	57	31	16	10
1980	15	22	37	15	15	7
1979	13	28	41	14	18	9
1978	10	16	26	10	11	5
1977	9	14	23	11	8	4
1976	10	14	24	8	11	5
1975	12	13	25	13	9	3
1974	5	8	13	6	4	3
1973	6	6	12	5	3	4
1972	-	3	3	-	1	2
1971	-	3	3	1	-	2
1970	2	3	5	1	2	2
1969	1	1	2	-	-	2
1968	1	1	2	-	-	2
1967	1	2	3	-	1	2
1966	-	-	-	-	-	-

^aPunitive damages were mentioned during a summary of the plaintiff's claim or briefly discussed and dismissed.

^bPunitive damages were discussed in detail and were either disallowed or remanded to a lower court for reconsideration.

Note: These data resulted from a search of the Lexis (1985) data base, Genfed and States libraries, on 8/7/89 for all reported cases containing the phrase "punitive damage(s) (within 255 words of) product liability or strict liability" for each year listed.

Clearly for marketers, punitive damages is a growing issue, perhaps worthy of greater discussion and analysis. At least the trend suggests that marketers are increasingly exposed to punitive damages claims.

Alternatively, aggregate data from Lexis imply that the frequency of the punitive damages problem is perhaps not too important. Using the search phrase "product liability or strict liability or negligence," one finds 3,061 federal and 6,435 state cases reported for 1983. From Table 1 we note that only 130 reported cases in 1988 involved marketers in product liability litigation with punitive damages claims. Thus, only 1.37% of the cases for 1988 (130/(3,061+h, 435)) involved punitive damages.

Survey Research

In a discussion of the importance of survey research, a student once suggested that courts would have little use for survey results because such information would be "hearsay," one person's statement about another person's statement--generally inadmissible testimony. Our experiences suggested otherwise, but we had no concrete data to back up our impressions. We immediately assigned this student the task of verifying his contention. The eventual search phrase was "(consumer or opinion)(poll or survey) for both Genfed and States libraries. Between 1900 and 1979, survey research was discussed in 159 federal and 109 state reported cases. From 1980 through 8/1/89, survey research was considered in 282 federal and 158 state cases. Thus, the use of such research has clearly increased in the last decade.

To follow up on this topic, several students located specific cases in which survey evidence was presented in great detail (*Harlequin v. Gulf & Western* 1980; *Keith s'. Volpe* 1988; *Saliba v. Indiana* 1985; *Trump v. Caesars World* 1986; *U-Haul v. Jartran* 1984; *NFL v New Jersey Giants* 1986; *Miller V. Anheuser-Busch* 1987; *Quality Inns s'. McDonald's* 1988). The discussion resulting from these cases was quite useful and resulted in our looking into issues which we would not have investigated had we not located these cases. For example, courts have different views, as compared with survey researchers, regarding certain research procedures. Courts rely very heavily on face validity for assessing adequacy of sample size. Courts view probing questions to gather additional information very suspiciously--seeing them as leading questions.

Salesperson Misstatements

To investigate the incidence of unethical and dishonest by salespersons, we assigned a student group the task of searching Lexis for cases on this topic. Their first task was to determine the search words and phrases, which would uncover important litigation. The initial choices were various forms for salesperson, including salesman, saleswoman, salespeople, sales agent, manufacturer agent, and manufacturer representative. But without associating salesperson with some forms of wrongdoing such as negligence, cases were found in which the salesperson played a minor or merely; was mentioned in passing. Eventually, after reading several cases, the students utilized some of the connectors noted in Exhibit 4 and developed several complex search phrases. Based on the student's initial work, we reconducted their search and formulated the problem as presented in Table 2. While students cannot be expected to generate such detailed findings, they can begin the search process. Table 2 and its outdated predecessors) has served as a very useful discussion vehicle in several sales management sections,

APPLICATION OF LEXIS TO OTHER BUSINESS DISCIPLINES

Lexis is by no means limited to marketing problems. An instructor with a labor relations class can easily develop assignments based on employment discrimination cases. Lexis contains an enormous tax-related case section, providing many opportunities for accountants or attorneys to select materials. Naturally business law professors already have found Lexis very helpful.

CONCLUSION

The examples and data can be brought to class to bolster lecture material. We have also assigned students the task of searching Lexis armed with the appropriate search phrases, and at other times we have asked them to develop the search phrases themselves before query-

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TABLE 2
AN OVERVIEW OF SALESPERSON STATEMENTS WHICH CAN CREATE
LEGAL OBLIGATIONS FOR THE FIRM

Legal Issues	Illustrative Cases	Salesperson Indiscretions	Consequences
Creation of Unintended Warranties	<i>Lindemann v. Eli Lilly</i> (1987)	salesperson inadvertently overstated overstated chemical product's technical capabilities	\$6,000 (total price of product) awarded to plaintiff
	<i>Carpetland v. Payne</i> (1989)	salesperson promised a one-year warranty for carpet, although sales agreement expressly denied any warranty	\$2,388 (total price of product) awarded to plaintiff
Dilution of Warning Effectiveness	<i>In re First Commodity</i> (1987)	salesperson told clients that warnings in securities prospectus were unimportant	plaintiffs certified for class action litigation (prior cases settled for \$260,000 to \$3,000,000)
	<i>Stevens v. Parke, Davis</i> (1973)	salespeople vigorously promoted drug product without mentioning warnings	\$400,000 awarded to plaintiff in wrongful death claim
Disparagement of Competitive Offerings	<i>Systems v. Scientific</i> (1976)	salespeople claimed that rival's gam tickets could be "read" without tampering	defendant's sales staff prohibited from making such claims
	<i>Testing v. Magnaflux</i> (1987)	salespeople made unverified negative statements about rival's chemical products	plaintiff's claims ruled actionable--trial delayed until proper forms filed with court
Misrepresentation of Own Offerings	<i>Dunn v. Honeywell</i> (1982)	salesperson intentionally overstated the capabilities of computer software of computer software	\$61,573 actual + \$30,768 punitive damages + legal fees (\$24,628) awarded to plaintiff
	<i>Scott v. Mid Carolina</i> (1988)	salesperson lied to buyer regarding the condition of a mobile home a mobile home	\$3,600 actual + \$6,400 punitive damages awarded to plaintiff
Tortious Interference with Business Relationships	<i>Leigh v. Isom</i> (1982)	sales agent made false accusations about franchisee before franchisee's customers	\$65,000 actual + \$35,000 punitive damages awarded to plaintiff

These five categories are the legal causes of action where salesperson behavior has been a prominent factor--based on a 8/1/89 review of the Lexis (1985) legal database for all reported federal and state cases since 1940 involving salespeople. The search phrase included: "sales representative, salesperson, salesman, saleswoman, salespeople, sales agent, manufacturers representative, and manufacturers agent."

ing Lexis, Generally, it is desirable to supply the search phrases because students usually lack familiarity with legal terminology, making it difficult for them to determine which search phrases would be best.

Another approach is to provide alternative search phrases which will yield different numbers of located documents, Students should then be asked to describe the outcomes are different, perhaps even determining which search phrase is "most useful." Such an exercise forces students to think through the nature of the problem being researched, generally resulting in their understanding the problem in greater depth.

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