

A close-up, high-contrast image of an owl's face, centered and filling the background. The owl's large, round eyes are prominent, and its feathers are detailed. The image is in a light blue/teal color scheme.

PART 2

Doing

In Part 2, 'Doing', we focus upon the fundamental legal skills required by every law student and lawyer. On completing Part 2 you will be able to exercise:

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CHAPTER 6

Legal research skills

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CHAPTER OBJECTIVES

Upon completion of this chapter you should be able to explain:

- the importance of legal research skills for law students and lawyers,
 - how to take a systematic approach to legal research,
 - how to find the various sources of legal information,
 - how to identify good-quality legal information,
 - how to read legal information actively and efficiently, and
 - how to apply the results of your research.
-

Legal research skills

There is certainly a lot of law out there, and as a law student and lawyer you need to know where to find it, how to read and understand what you find, and how to apply the results of your research to whatever legal issue you are addressing.

Imagine, for example, that you are a junior legal policy officer working in the Attorney-General's Department. The Attorney-General has been approached by a lobby group advocating for law reform in the area of neighbourhood dispute resolution options. The lobby group has been very persuasive, and the Attorney-General is interested in the issue. His adviser instructs you to prepare a written advice about the current law in your State and about law reform proposals that have been considered in other parts of Australia and internationally. You are told to provide the advice by the following day and that it cannot be more than two pages long (because the Minister will not have time to read more than that).

Or imagine that you are a first-year solicitor working in a mid-tier law firm. You are working with one of the partners in the family law section. The partner is managing a complex matter involving the divorce of two wealthy business people, Mr and Mrs Wing. Your firm acts for Mr Wing. Mr and Mrs Wing own and manage one of the largest and most successful yum-cha franchises in Australia. Their relationship broke down a year ago and they wish to get a divorce and organise a property settlement. A dispute has arisen in relation to their respective superannuation funds and how this should be managed as part of the property settlement. Your partner wants you to urgently prepare a memorandum of advice.

In both of these situations you are going to have to exercise your legal research skills. Legal research skills are an essential part of every lawyer's skill set. In fact, it has even been said that 'legal research underpins almost everything that is done in law'.¹

As explained in chapter 1, the Australian Learning and Teaching Council's *Bachelor of Laws Learning and Teaching Academic Standards Statement* sets out six 'Threshold Learning Outcomes' (TLOs) for the Bachelor of Laws degree. These six TLOs represent what a Bachelor of Laws graduate is expected 'to know, understand and be able to do as a result of learning'. They cover 'knowledge' (TLO1), 'ethics and professional responsibility' (TLO2), 'thinking skills' (TLO3), 'research skills' (TLO4), 'communication and collaboration' (TLO5) and 'self management' (TLO6).

The following is TLO4 in full:

Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.²

This TLO reflects the consistent acknowledgement by legal educators and legal practitioners around the world that legal research skills are an essential component of

1. Barbara Bintliff, 'Context and Legal Research' (2007) 99 *Law Library Journal* 249, 257.

2. Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2011) 19.

any lawyer's toolkit. For example, legal research skills are emphasised in the 1992 US *MacGrate Report*, the 2002 *Joint Statement* issued by the UK Law Society and General Council of the Bar, the 2007 UK QAA *Subject Benchmark Statement for Law*, the 2007 Latin American *Tuning*, the 2009 *Council of Australian Law Deans (CALD) Standards*, the 2009 *Task Force on the Canadian Common Law Degree*, the 2010 *European Tuning*, and the 2010–11 *American Bar Association Standards Report*.

The nature of legal research has changed significantly in a very short period of time. This is due to the advent of new legal research tools such as digital collections of legal sources of information, online search engines and online databases. An example of a recent development is the new Westlaw online legal research tool.³ It is promoted as supporting intelligent and intuitive legal research and is said to provide 'content you can trust' through tools that are 'designed with you in mind'.

You may find this hard to believe but, when the authors of this textbook were at law school in the mid to late 1980s, legal research was almost exclusively conducted using printed sources, i.e. hard copies of case reports, reprints of legislation, loose-leaf services in ring binders and bound journal articles. We had to physically go to the shelves of the law library to find legal information — and hope that what we were looking for was not already in the hands of another student. These days, of course, most legal research is conducted online.

While the internet has made the process of legal research much faster and simpler in many ways, developments in technology have also introduced new challenges in managing the enormous amount of information that is now accessible and making decisions about what information is good quality and what is not. It has always been the case that, in conducting legal research, law students and lawyers need to ensure the quality of the information they access, and the new research tools have not necessarily made this any easier.

In chapter 10, we will examine the importance of *independent learning* as a self-management skill. We will explain why it is important that you become an independent learner while you are at law school and how independent learning will be essential to your personal wellbeing and professional success as a lawyer. Independent learning skills are the skills that you use to take control of and responsibility for your own learning. An independent learner is an autonomous learner; they have the knowledge, confidence, motivation and ability to ensure that they learn effectively, without having to be told explicitly by a teacher what to do.

Many textbooks about legal research offer detailed and specific advice about how to use particular research tools such as specific search engines and databases. They often provide screenshots of the types of internet interfaces you will encounter and guide you step by step through exactly what to do when conducting particular types of searches. This can certainly be helpful and informative. However, this approach does not necessarily develop your independent learning skills in relation to legal research.

In this chapter, we adopt a different approach, one that we believe will be more useful for you in the long term because it is designed to help you to become an independent learner. This is critical if you want to be able to conduct legal research well and for you to develop legal research skills that are transferable from one research tool to another into the future. *Transferable research skills* are important because the design, nature and functions of legal research tools change periodically with advances and developments in technology. The specific tools that you use at the moment will almost certainly have changed by the time you graduate.

Independent learning and transferable research skills also support you in coping with the many unexpected twists and turns your legal research may take; they help you to manage the many things that do not go as planned. The process of legal research can be

3. <http://westlaw.thomsonreuters.com.au>.

time consuming and frustrating. However, with a capacity to learn independently and transfer your research skills to new environments, you are better prepared to cope with the frustrations associated with legal research. Independent learning and transferable research skills are thus important tools for stress management in law school and beyond.

Independent learning and transferable research skills are also important because not everyone conducts legal research in exactly the same way. There is enormous diversity in legal research styles and approaches among lawyers, legal academics and law students. The more you do legal research, the more you will find that particular search engines and databases suit you better than others, and you will discover your own research tricks and strategies that work well for you. You will develop your own individual *research method*.

Before that can happen, however, you need to take on board two important points. The first is that it is vital that you take personal responsibility for development of your legal research skills while at law school. It is up to you to put in the hours and the effort to become proficient at legal research, to hone your skills and to develop your individual research method. There are no short cuts to becoming an effective and efficient researcher; it takes time, practice, and trial and error. The second point is that, if you do put in the hard work, you will almost certainly become proficient at legal research and you will enjoy the many benefits that come with being a good legal researcher. It is well worth the effort.

One final point is worth making here. Independent learning does not mean *isolated* learning. When we say that responsibility for becoming a proficient legal researcher lies with you, we do not mean that you must take on that challenge alone. In chapter 9 we will explain the importance of collaboration to your learning at law school. Many of the challenges of legal education can be overcome by working with your peers, talking over challenges and difficulties and engaging in collaborative problem solving. Learning the skill of legal research is no exception. You could, for example, take the initiative by establishing a legal research study group or pairing up with a fellow student and setting aside an hour or so each week to do independent but collaborative legal research. Doing this will certainly expedite the development of your legal research skills.

In this chapter we will assist you to independently develop your legal research skills using five relatively simple principles. These five principles together form the foundation for your personal research method. The principles are set out in figure 6.1.

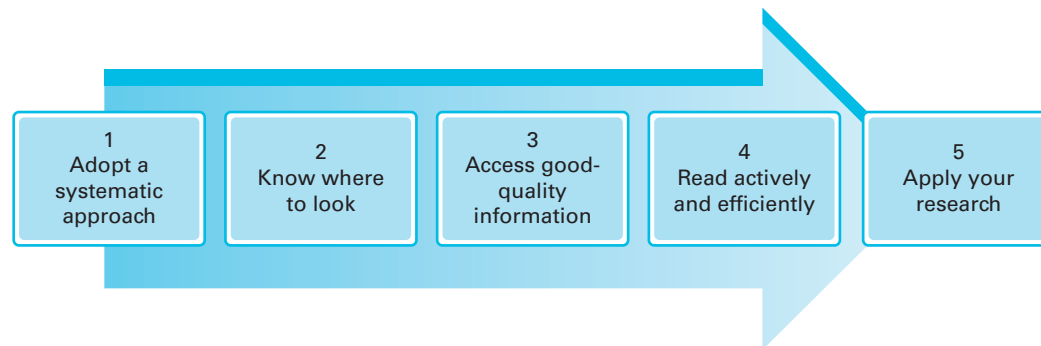


FIGURE 6.1 A systematic approach to legal research

Principle 1: Adopt a systematic approach. Take a structured and systematic approach to your legal research. Plan your research carefully. Undertake some background reading and then narrow your focus. Think carefully about your key search terms.

Principle 2: Know where to look. Ensure that you understand the various primary and secondary sources of legal information and where these sources can be located, both online and in hard copy. Ensure that you understand the research tools you are using.

Principle 3: Access good-quality information. Recognise the advantages and disadvantages of online and hard-copy sources. Ensure that the information you access is current, authoritative and relevant. Be patient. Know when to stop looking.

Principle 4: Read actively and efficiently. Finding quality information is only the first step. Once you have found the information you then need to be able to read it and make sense of it.

Principle 5: Apply your research. You may have found good-quality information and understood it, but you also need to be able to apply the results of your legal research to problem solving and academic writing. You also need to provide evidence of your research in the form of referencing.

These five principles are explained in detail in the following sections.

Principle 1: Adopt a systematic approach

Legal research can be a difficult process, even when you are experienced at it. Students often complain that legal research is frustrating and time consuming, with sometimes little to show for hours of effort. One of the main frustrations of modern legal research — particularly online legal research — is knowing what to do with the enormous quantities of information that are now so readily accessible.

The best way to reduce the likelihood of frustration, and to manage frustration when it does arise, is to adopt a systematic approach to your research. This then is the first principle of effective and efficient legal research: adopt a planned, structured and systematic approach to your research from the very beginning.

When faced with a legal research task, one possible starting point is to simply Google a relevant term or phrase. However, this approach would probably produce more results than you can handle and leave you confused about what is relevant and unsure about what you can safely use. For example, you may have been instructed to find out whether the Queen is subject to the rule of law. Googling the question, ‘Is the Queen subject to the rule of law?’, produces more than ten million results. When we did this, the first five results were:

1. a government website about Australia’s constitutional, legal and government framework,
2. the Crime Victims’ Support Association page about the rule of law,
3. a Wikipedia page about the rule against perpetuities,
4. a WikiAnswers page about the question ‘What is the Queen’s Nationality?’, and
5. the Australian Federal Treasury page on the preconditions for effective financial sector supervision.

You could spend hours trawling through each of these results, looking for an authoritative answer to your question like the proverbial needle in the haystack. Clearly, simply Googling for an answer to a legal question is not necessarily the most efficient or effective way of conducting legal research.

When your legal knowledge has become more comprehensive, and you are better able to identify relevant and reliable sources of information, you might find that Google is in fact a useful legal research tool. For example, when we conducted the Google search above, well down the list of results we found a Yahoo Answers UK and Ireland forum where the issue was being discussed. There were many conflicting, confused and incorrect opinions espoused there, and the postings provided little or no authority for their assertions. However, one particular posting did make sense to us and contained a hyperlink to the article from the *Guardian* set out below. We recognised that the article explained the

legal situation relatively clearly, albeit in basic terms, and that it would serve as a useful starting point for conducting further research on the issue.

Is the Queen above the law?

The Guardian, 17 May 2007 <<http://www.guardian.co.uk/uk/2007/may/17/monarchy.stephenbates>>.

Michael Mansfield QC has raised the possibility of the Queen being asked to confirm at the Diana inquest what she may, possibly, once have said to former butler Paul Burrell at a private meeting that may once have taken place at Buckingham Palace. The Queen is alleged to have told the lachrymose flunky that Diana could have been the victim of ‘powers at work in this country about which we have no knowledge’.

The prospect of Her Majesty appearing to give evidence in what is technically her own court — Regina in Regina, as it were — may seem enticing. It might even be legally possible. But the likelihood of it happening — whatever Mohamed Fayed and his legal representative might hope — is next to zero.

No monarch has appeared in court since Charles I in 1649, and that didn’t set a happy precedent, as he was executed for high treason. Nor have they ever been asked to give evidence.

Nowadays, the Queen in her personal capacity is considered for legal purposes the Crown as Sovereign and as such immune to prosecution. That’s the same as other heads of state, at least during their terms of office — and the Queen holds her office for life. That means that if she found herself without money to buy something and decided to do a runner — an unlikely prospect — she would not get done for shoplifting. There is an alternative possibility, the prosecution of the Crown as Executive, but here the Queen’s ministers act on her behalf and would take the rap.

Whether Mansfield’s request is ever forwarded to Buckingham Palace will be up to the coroner. A spokesman for the attorney general’s office, which represents and advises the Queen, said yesterday: ‘We have made it clear that the coroner will be afforded every assistance. We’ll just have to wait and see.’

THINK

After reading the article ‘Is the Queen above the law?’, identify what you might do next to find an authoritative answer to the question of whether the Queen is subject to the rule of law. For example, you could use the article to identify some possible search terms. What are they?

A Google search is far from optimal as a starting point for effective and efficient legal research, particularly when you are not yet knowledgeable about the law and do not yet have the ability to distinguish useful results from those that are not so useful. A more systematic approach to legal research is required.

We offer below three strategies for achieving a systematic approach.

1. *Plan your research.* The time you invest in planning definitely pays off later.
2. *Undertake some background reading.* Background reading provides you with a broad understanding of the issue you are researching and, as your understanding of the issue improves, you can gradually focus upon more specific aspects of your research question.
3. *Think carefully about your search terms.* This can be a critical factor in finding the right information. Getting your search terms right also saves you a lot of time and avoids wasted effort.

We now consider each of these strategies in more detail.

Plan your research

There are many reasons to plan your research. Planning ultimately saves you time and gives you a better chance of quickly locating quality information. Devoting some careful thinking time to your research task at the beginning, and considering the task in an open-ended way, ensures that your research is thorough and organised, and you are less likely to miss important information.

Planning your research involves thinking laterally about the information you need to locate and carefully considering the sources you need to consult. The initial planning process can be undertaken in six steps.

Step 1: Consider the nature of the research task. The first step is to consider the nature of the task. Are you advising a client about how to undertake a transaction or about their rights in relation to a dispute? Are you answering a question, constructing an argument, drafting a document or solving a problem? Each type of task requires a different approach to planning your research.

Step 2: Consider the research question. The second step is to write down the research question (or questions) to which you need to find an answer and to think carefully about it. What is the general area of law to which it relates? Can you identify more specific areas of law? For example, your research question might be: ‘What legal options are available to a person whose former spouse is breaching a parenting order by not giving them time with the children of the marriage?’ The research task relates to the general area of family law. Specifically, it is a parenting matter, and more specifically it is an issue regarding contravention of a parenting order.

Step 3: Consider your pre-existing knowledge and relevant experience. The third step in planning your research is to consider your pre-existing knowledge and experience and how it might be of help. If you are an older student, you may have a wealth of previous knowledge and experience that can inform how you approach your legal research. On the other hand, if you are in your first year of university, and particularly if you have come straight from high school or a gap year, you may feel as though you have limited knowledge and experience that can inform your research planning. This is not necessarily the case. You may have done some reading or studied something previously that can inform your understanding of the research task and help with your research planning. You may also have had some previous experiences that can help you to think through how best to approach the research task. Take care, however, not to rely too much upon your own knowledge and experience, otherwise your research may not be sufficiently rigorous and thorough.

Step 4: Consider some possible search terms. It is a good idea in the planning stage to conduct some initial ‘brainstorming’ of possible search terms for your research. This can be as easy as thinking of the main words and phrases that come to mind when you think about the research question and its elements. We consider the identification of search terms in more detail below.

Step 5: Consider your time frames. At law school you are expected to independently learn time-management skills. There is not going to be a law subject about how to appropriately allocate your time to different study and assessment tasks. When you are given a research task — either as a class exercise or as part of an assessment item — it is a good idea to consider the time frame in which you must complete it. Even apparently simple research tasks take some time, especially when you are new to the study of law. More complex research tasks need you to set aside blocks of focused time. With assessment items, you usually have a due date that you need to work towards and comply with. It is important to keep this date in mind and to work backwards from it with your planning so that you are not rushing to complete the task at the last minute.

Step 6: Consider the steps to take next. When you have thought through the other five steps, you are well placed to identify the steps you need to take next. Sometimes the nature of the research task, your consideration of the research question and your pre-existing knowledge and experience result in your knowing immediately what sources of information you need to access, and you can go straight to them. At other times, your planning process indicates that you need to do some background reading and familiarise yourself with the relevant area of law before you can proceed further.

These six steps are set out in table 6.1, together with some relevant questions.

TABLE 6.1 Planning your research

Step 1: Consider the nature of the research task	<p>What have you been asked to do?</p> <ul style="list-style-type: none"> • Advise about a transaction? • Advise about a dispute? • Answer a question? • Construct an argument? • Draft a document? • Solve a problem? <p>Think about:</p> <ul style="list-style-type: none"> • Who are the parties/stakeholders? • What is their relationship? • What happened: when, where and how? • What do the parties/stakeholders want?
Step 2: Consider the research question	<p>What is the general area of law? (Hint: Sometimes this is as easy as the subject you are studying.)</p> <p>What is the specific area of law? (Hint: Look for clues in the words and phrases in your instructions.)</p>
Step 3: Consider your pre-existing knowledge and relevant experience	<p>Do you already have some knowledge of this area?</p> <p>Have you had any relevant past experiences to inform your research?</p>
Step 4: Consider some possible search terms	<p>What are the key words and phrases that come to mind regarding the research question and its elements?</p>
Step 5: Consider your time frames	<p>How complex is the task?</p> <p>How much time is necessary to complete the task?</p> <p>Is there a due date to work towards?</p>
Step 6: Consider the steps to take next	<p>What are the next steps you need to take?</p> <p>Do you need to do some background reading, or do you already know enough to go to the relevant sources of information?</p>

When conducting research in legal practice rather than at law school, there are some additional factors to consider when planning your research:

- How much of your time should be allocated to the research task? (This question relates to how much the client is charged for your time.)
- Do you need to consider whether there are any other costs associated with completing the research task?
- What is the practical purpose of the research? Different levels of detail and depth are required depending on whether you are drafting a brief to counsel, court documents, a client letter, a policy document or a legal memorandum.

THINK

What other differences exist between conducting legal research at law school and conducting legal research in legal practice?

Undertake some background reading

Later in your career, when you have acquired practical experience and legal expertise, your approach to legal research will probably be quite different from the method we espouse here. You will have an extensive knowledge of relevant case law and legislation upon which you can draw when dealing with a range of commonly encountered legal issues, and you will be up to date with recent legal developments. There will be legal questions you can answer and legal problems you can solve without doing any research at all. Even when you do need to do some research, your background knowledge means that you can often go straight to an authoritative source.

For now, however, you are still acquiring that practical experience and legal expertise, and you often know little about the specific law relating to the legal research tasks you are instructed to undertake. That does not mean you do not have any relevant knowledge or experience, as we noted earlier, but you are unlikely to know the law in depth.

For this reason, while you are at law school and in the early years of legal practice, an important part of taking a systematic approach to your research is doing some background reading in the relevant area. You do not always need to do extensive background reading because you may already be able to go fairly quickly to the primary sources, but sometimes background reading is necessary to find out about the key legislation, cases and journal articles relevant to your research task.

In order to undertake effective background reading, you must first identify the broad areas of law relevant to the research task. You do this by drawing upon your knowledge of the various categories of law such as contract law, torts law and criminal law (see chapter 2). Background reading in the broad area of law assists you to work out the best way to conduct further legal research to identify more precise legal information.

Online research tools such as the CCH, LexisNexis and Westlaw databases (described in more detail in the next section) can lead you to some useful background reading. When conducting an online search you can locate the useful background reading more quickly if as part of your research planning you identify the relevant area of law as precisely as possible.

For example, imagine that your research question is to identify the differences between a company director's fiduciary duties and their duty of care. Your consideration of the research question tells you that it relates broadly to company law, the law of equity and tort law. However, if you conduct online searches of, say, the CCH database using the terms 'company law', 'equity' and 'tort law', you will be presented with thousands of pages of material. Clearly you need to identify the relevant area of law more precisely before you can begin your background reading.

Searching in the CCH database using a more precise category of law, such as 'directors' duties', narrows your focus but still produces an unwieldy number of results. This is because the results include the vast amount of material held in the database about that topic. The results include any mention of 'directors' duties' not only in the various commentaries but also in case reports, legislation, and court rules and forms. Understanding how to use the particular online research tool is useful here. When using the CCH database, for example, you can limit your search to the CCH commentary on an issue — the most useful source of information for background reading — and you can use multiple search words with Boolean connectors to refine your search and make the list of results more manageable. We did a search for 'directors' duties AND duty of care', limiting the results to commentary, and came up with approximately 200 results. This is still quite a lot to look through, but it is more manageable. The results are listed by relevance, and the way they are presented makes it relatively easy to identify the more useful links to get you started in your background reading.

The commentary that you access through a broad search gives you a better understanding of the area of law relevant to your research question. Importantly, it also

leads you to the relevant case law and legislation. You should still locate these primary sources of law yourself (and we explain how to do so in the next part of the chapter) in order to verify their relevance and ensure you have the most up-to-date law, but this is easier to do after your background reading. Even if you already know some of the primary sources of law relevant to your research question, until you are an expert in the field you can still benefit from doing some background reading of the commentaries.

Another useful source of background reading is the most recent edition of a textbook about the relevant area of law. You can gain quite a bit of background and contextual information by searching the table of contents or the subject index and reading the relevant pages. For example, if you were given the research task regarding directors' duties described earlier, you could consult the *Company Law Guidebook* by Michael A Adams and Marina Nehme. This book was published in 2010 and has a chapter on company officers and management.⁴

The following are some additional points about making the most of your background reading:

1. Make sure that the secondary sources you choose for your background reading are current and reliable.
2. Use the background reading to lead you to the relevant primary sources.
3. Use the footnotes and references in your background reading as a way to find relevant journal articles and other useful sources of information.
4. Use the background reading to confirm your understanding of the relevant legal issues.
5. Use the background reading to confirm or revise your search terms.

THINK

You have been instructed to draft a memorandum of advice about debt recovery in Victoria. You are unfamiliar with the rules regulating debt recovery. Describe how you would identify some appropriate background reading.

Think carefully about your search terms

Choosing the right search terms is essential to conducting effective and efficient online legal research. If you do not use the right search terms you can spend hours trying to find useful and relevant information. It is not always easy to come up with the right search term, and the process often involves a degree of trial and error. Sometimes what you think is an obvious search term produces irrelevant results or no results at all, and you have to try again.

Your initial research planning will provide you with some search terms. Your background reading will also help. Sometimes your background reading will lead you directly to the relevant primary sources and other authoritative materials. At other times you will have to do some more searching.

We describe in this section two strategies to help you to identify useful search terms: mining the background reading and using Statsky's cartwheel.

Mining the background reading

The first strategy is to 'mine' your background reading for useful search terms. For example, if you are conducting research into 'intent to murder' and the source of your background reading is *Halsbury's Laws of Australia*, you will find intent to murder discussed in general terms under the heading 'Intention — General'. We have reproduced

4. Michael A Adams and Marina Nehme, *Company Law Guidebook* (Oxford University Press, 2010).

the relevant commentary below and underlined some of the possible search terms that can be extracted from the text:

Intention: [130-3245] General: The criteria for assessing intention are subjective: whether the accused had an intention to kill or inflict grievous bodily harm, not whether an ordinary or reasonable person in the position of the accused would have had the intent. Intention is not the same as motive, although evidence of motive may be admissible and relevant to proving intention. An awareness of the likelihood of death or grievous bodily harm is not necessarily the same as an intention to kill or inflict grievous bodily harm, although it may constitute recklessness.⁵

The mining process requires a focused approach to your background reading, but it is relatively quick and effective. It is helpful to use a legal dictionary to ensure you understand the terms you identify.

Statsky's cartwheel

'Statsky's cartwheel' (also known as 'Statsky's chartwheel') is a technique for identifying search terms that was devised in 1980 by Bill Statsky, a prolific US legal writer. The technique involves the application of various forms of word association with an original term to identify a range of useful and relevant search terms (see figure 6.2). According to Statsky, once you have mastered the use of this technique, '70 per cent of the research battle is won'.⁶

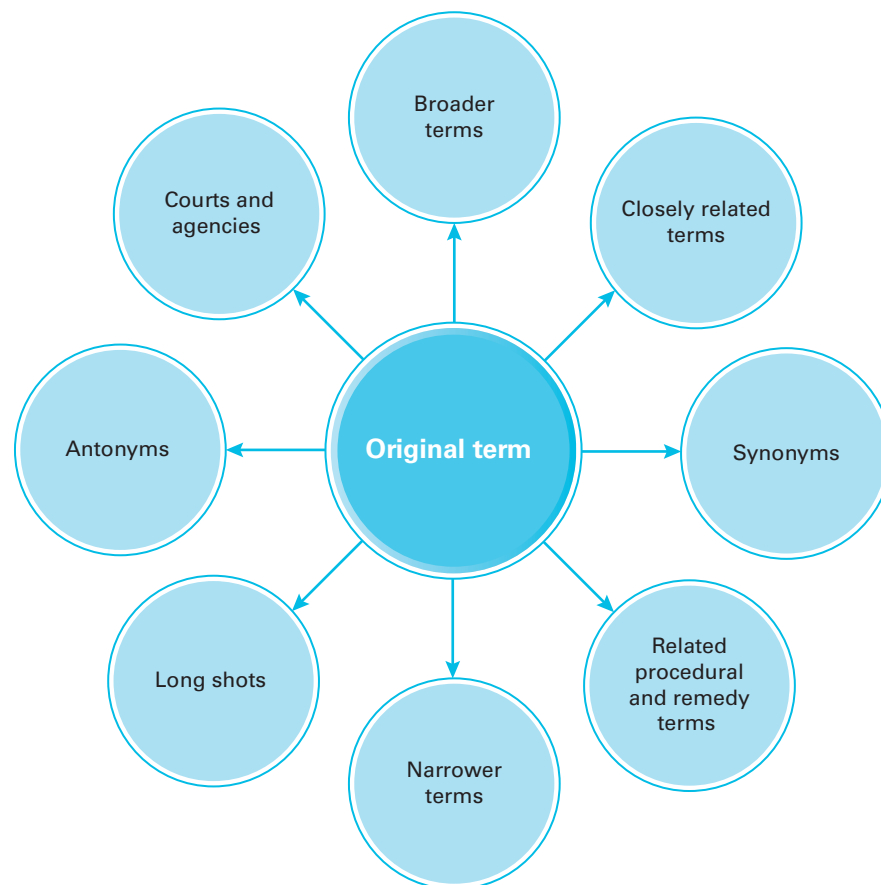


FIGURE 6.2 Statsky's cartwheel

5. *Halsbury's Laws of England* (5th ed, LexisNexis, 2008) 130-3245.

6. See <http://statsky.blogspot.com.au>.

An example offered by Statsky uses the original term ‘wedding’ (see table 6.2).

TABLE 6.2 Example of Statsky’s cartwheel

Original term	wedding
Broader terms	celebration, ceremony, rite, ritual, formality, festivity, union
Narrower terms	civil wedding, church wedding, golden wedding, proxy wedding, sham wedding, shotgun wedding, formal wedding, informal wedding
Synonyms	marriage ceremony, nuptial
Antonyms	alienation, annulment, divorce, separation, legal separation, judicial separation
Closely related terms	license, blood test, contract, minister, matrimony, monogamy, intermarriage, marital, conjugal, domestic, husband, wife, bride, anniversary, custom, children, premarital, spouse, relationship, family, home, consummation, cohabitation, sexual relations, betrothal, espousal, hand, wedlock, oath, community property, name change, domicile, residence, troth
Related procedural terms	action, suit, statute of limitations, complaint, discovery, defence, jurisdiction
Related remedy terms	damages, divorce, injunction, partition, rescission, revocation, specific performance
Courts and agencies	trial court, appellate court, superior court, county court, court of common pleas, court of appeals, supreme court, justice of the peace court, magistrate court, bureau of vital statistics, county clerk, department of social services, Social Security Administration, license bureau, secretary of state
Long shots	dowry, common law, single, blood relationship, fraud, religion, illegitimate, remarriage, antenuptial, alimony, bigamy, polygamy, pregnancy, gifts, chastity, impotence, incest, virginity, support, custody, consent, paternity

You can imagine that, if you were doing a search with just the word ‘wedding’, you would find a very large number of results, most of which would be irrelevant to your research task. By using Statsky’s cartwheel you can identify some more useful search terms that make it easier for you to find the information that you are looking for.

Not every heading on the cartwheel is relevant to every research task, and you do not always have to complete every part of the cartwheel. The cartwheel is simply a tool to assist you, and you should use it only to the extent that it is actually helpful. Remember, however, that even briefly considering each category ensures a more thorough and methodical approach to your research and may produce a search term that you might otherwise have failed to consider.

REVISION

Before proceeding, ensure that you can answer each of the following questions.

1. What does it mean to adopt a ‘systematic approach’ to legal research?
2. What are the benefits of a systematic approach to legal research?
3. Explain each of the six steps in the initial research planning process.
4. What are the benefits of undertaking background reading as part of the legal research process?
5. Describe how you would identify useful background reading.
6. Why is it important to use the right search terms when engaging in online research?
7. What does it mean to ‘mine’ for search terms?
8. What is Statsky’s cartwheel and why is it useful?

Principle 2: Know where to look

It is unlikely that you will be able to complete a research task by relying upon a single source of information. You usually need to consult several sources, and evaluate and synthesise the information that you find. In order to find these various sources of information, you need to know where to look.

A good place to start is the webpage for your law school library. They are also likely to have useful tip sheets, FAQs and online tutorials to help you learn how to use the various online legal research tools.

RESEARCH

Go to your law library website and access the various tip sheets and FAQs. What are (a) a 'legal citator', (b) a 'legal annotator' and (c) a 'loose-leaf service'?

It is important that you take the time to familiarise yourself with the resources you can access through your law library. Many law schools offer library training classes and online modules, but these are not always part of the formal curriculum so it is important that you take the initiative. It is certainly worth spending at least a few hours of your time exploring the law library website as well as the physical library itself.

Primary and secondary sources

Sources of information about the law fall into two categories (see figure 6.3).

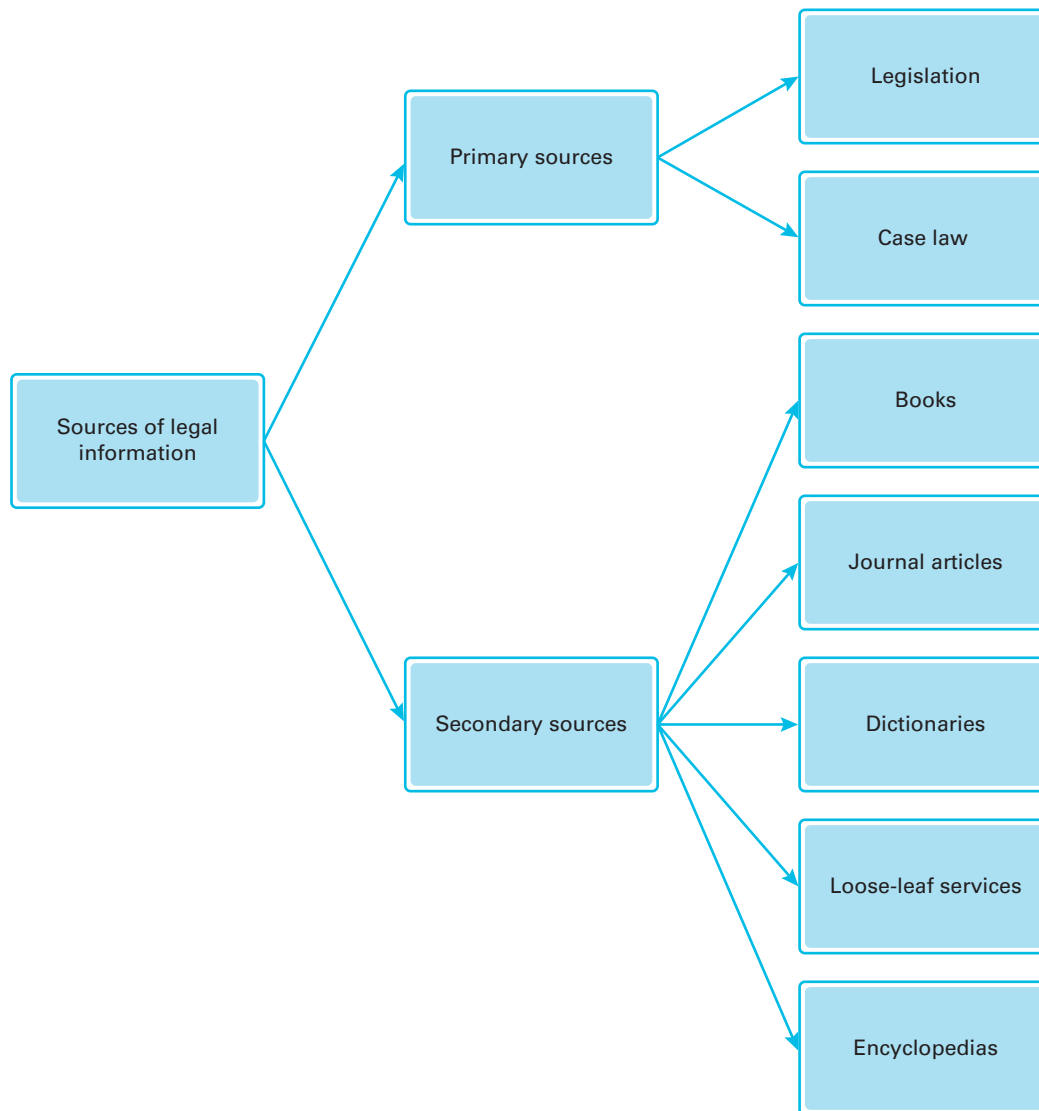


FIGURE 6.3 Sources of legal information

The **primary sources** are legislation (the law made by parliaments) and case law (the law made by judges). These sources *are* the law itself, rather than a description of it or a commentary. These are the authoritative sources upon which you rely when completing your research task.

The **secondary sources** are not the law itself. They are summaries, explanations, opinions and analyses of the primary sources. Examples of secondary legal materials include:

- law textbooks and monographs (scholarly books),
- law journal articles,
- legal dictionaries,
- loose-leaf services, and
- legal encyclopaedias.

Secondary sources provide you with background information, commentary, explanations and critiques of the primary sources of legal information. They can also point you towards the primary sources if you are not yet sure what they are. Secondary sources such as journal articles and scholarly books can themselves be authoritative statements about what the law is or how it should be understood.

Legal research tools

Sources of legal information can be accessed online or in hard copy.

Hard copy

Legal research is now almost always conducted online, but an understanding of paper-based ways of researching can be useful as a back-up — for example, when online access is not available. The tools of paper-based legal research include hard-copy case citators, annotators, loose-leaf services and encyclopaedias. Conducting paper-based legal research also requires that you are familiar with the layout, format and structure of hard-copy legal sources — case reports, legislation and legal reference tools. We strongly encourage you to access a tutorial or workshop via your law library to have these tools explained to you in more detail. We also encourage you to physically examine the tools in your law library.

Online

At the time of writing the three main online legal research tools used in Australia are those provided by LexisNexis, Westlaw and CCH. As an independent learner you should take the time to familiarise yourself with the use of these tools.

You can access these tools via your library website, but you have to login to use them; access is by subscription only, and your university will have to paid that subscription on your behalf. Make sure that you access the Australian versions of these research tools. Both LexisNexis and Westlaw have American versions as well, and it can be confusing if you end up searching in the wrong one. The Australian tools are usually denoted by the letters 'AU' after the name.

Each online research tool offers you a range of different ways to search for legal information. For example, LexisNexis allows you to search for legal information by:

- *topic area* — Starting with 'Administrative Law and Judicial Review', it covers a range of legal topic areas in alphabetical order down to 'Welfare, Housing and Social Security Law'. You also have the option of searching for particular types of information within each topic: cases, legislation, commentary, forms and precedents, citators and digests, and journals.
- *practice area* — The available practice areas include 'Banking and Finance', 'Commercial Law', 'Consumer, Competition and Trade Practices', 'Corporate law', 'Criminal Law', 'Family Law', 'General Practitioner Law', 'Intellectual Property', 'Litigation,

Evidence and Procedure’, ‘Planning’, ‘Real Property’, ‘Succession’ and ‘Workplace and Employment Law’.

- *source directory* — This allows you to directly search the various sources such as law reports.

The best way to learn how these tools work is to actually start using them. You can also explore the search options, consult the ‘Help’ functions, take an online tour or complete an online tutorial.

RESEARCH

Access the LexisNexis site via your law library website. Locate a recent Australian case involving euthanasia by searching by topic area. (Hint: Under the Topic tab, choose ‘Health Law’ and select the ‘Case law’ box.)

Other search options on the LexisNexis home page include:

- *Quick search* — This allows you to find cases using their name or citation; commentaries by key word; legislation by title or provision; journal articles by title; forms or precedents by title; definitions or terms by key word; and sources by title.
- *General search* — This allows you to search all the databases using key words and phrases (with the option of limiting your search to cases, legislation etc.).
- *Forms* — This helps you to find both Australian and international forms and precedents.
- *Dictionaries* — You can use this to look up the meanings of legal words and terms.

RESEARCH

Access the Australian LexisNexis site via your law library website. Locate a recent journal article about child labour and human rights using the ‘Quick search’ tool. Then conduct the same search on the US LexisNexis site.

Another useful source of online legal information is the group of publicly accessible websites provided as part of the Free Access to Law movement. This is the umbrella name for a collective of law projects across several jurisdictions that seek to provide free online access to legal resources including case law and legislation. Most of these projects use the name ‘Legal Information Institute’ prefixed by the name of the jurisdiction (see table 6.3). When using these websites, however, you should check the currency of the material, as they are not always updated in a timely way.

TABLE 6.3 Legal information institutes

Institute	Website
Asian Legal Information Institute	www.asianlii.org
Australasian Legal Information Institute	www.austlii.edu.au
British and Irish Legal Information Institute	www.bailii.org
Canadian Legal Information Institute	www.canlii.org
Commonwealth Legal Information Institute	www.commonlii.org
Cyprus Source of Legal Information	www.cylaw.org
French Legal Information Institute	www.droit.org
Hong Kong Legal Information Institute	www.hklii.org
Irish Legal Information Institute	www.ucc.ie/law/irlil/index.php
Italian Legal Information Institute	www.ittig.cnr.it
Jersey Legal Information Board	www.jerseylaw.jc
Legal Information Institute (United States)	www.law.cornell.edu
New Zealand Legal Information Institute	www.nzlii.org

(continued)

TABLE 6.3 (continued)

Institute	Website
Pacific Islands Legal Information Institute	www.paclii.org
Philippine Laws and Jurisprudence Databank	www.lawphil.net
Southern African Legal Information Institute	www.saflii.org
Uganda Legal Information Institute	www.ulii.org
World Legal Information Institute	www.worldlii.org

RESEARCH

Go to the US Legal Information Institute site and access the US Constitution.

In the sections below we explain how to locate the various sources of law, both online and in hard copy.

Finding secondary sources

Secondary sources of information about law are the sources that summarise, explain and critique the primary sources. You often start with secondary sources when conducting legal research. Most secondary sources can be found online and in hard copy. However, some secondary sources, such as textbooks, monographs and older journal articles, are available only in hard copy, and other secondary sources, such as some recently published law journals, are available only online.

Hard copy

Most law libraries have a reference collection that contains legal dictionaries, legal encyclopaedias such as *Halsbury’s Laws of Australia* and *The Laws of Australia*, and other reference tools. We encourage you to physically visit the law library and explore the reference collection. Getting a copy of, say, *Halsbury’s* off the shelf, physically holding it in your hands and working out how the index system works will help you to better understand the resource when you use the online version.

You have to physically visit the library in order to access monographs and textbooks, since most of these are not available online. Using the library catalogue is the best way to locate books. When you locate a book in the library catalogue, check that it is the most current edition. If it is a textbook or a monograph about a particular area of law, make sure that it was published within the last 5 years or so — the law is always changing and many books very quickly become out of date. Take note of the title and call number, and locate the book on the shelves of the library. If you have trouble navigating the catalogue or the physical space of the library, the law librarians are available to assist you.

If you are looking for a hard copy of a journal article, it will be in your law library if the library has a subscription to that journal. (If your library does not have a subscription, the librarian may nevertheless be able to help by ordering a copy from another library.) Law libraries usually have a section devoted to academic journals. They are usually kept in alphabetical order by journal title.

RESEARCH

Visit your law library. Locate physical copies of (a) *The Laws of Australia*, (b) the latest issue of the *Melbourne University Law Review* and (c) H L A Hart’s *The Concept of Law*.

Online

A large range of secondary sources can now be found online. Westlaw, LexisNexis and CCH provide online access to legal encyclopaedias and journal articles, as well as reference materials such as dictionaries.

Access to online secondary sources through Westlaw, LexisNexis and CCH is by way of a paid subscription. This means that you need to go through your library's databases, using your student login, to get access.

Journal articles can be found on LexisNexis or Westlaw by searching using search terms, by searching a particular journal title or by searching using the title of the article, the author's name or the citation of the article. Articles found by these searches are listed by relevance. The results that use the search words more frequently are ranked nearer to the top. If your search terms are too broad, it can sometimes take time to work through the results to locate articles that are directly relevant to your research task.

You can also use online journal databases to access full-text articles. Again, these databases are usually accessible only by subscription and so you need to access them through your library's website. Databases such as HeinOnline provide access to hundreds of full-text journal and law review articles, although the emphasis is on US materials and they rarely go back further than 1980. For many articles published before this time, you need to access the hard copies on the shelves of your library.

Many online journals can also be accessed directly through your library catalogue.

RESEARCH

Locate online the latest issue of the *Torts Law Journal*.

Finding case law

Background reading in an area of law often alerts you to the key cases on a particular legal point. You can also identify relevant cases using case law digests, case law indexes, case citators and legislation annotations. While you can usually read *about* the cases in secondary sources, it is usually necessary that you locate and read the case report itself.

You are more likely to search for cases online, but once again it is important that you also know how to find cases in hard copy.

Hard copy

The decisions of judges have for centuries been reported and published in bound volumes referred to as law reports. There are a large number of law report series published in Australia and overseas. Some of the more important case decisions are published in more than one law report series. Some law report series are the authorised series of a particular court, while others are published by commercial publishers and collate the case decisions concerned with a particular area of law.

THINK

It is only the decisions of intermediate and superior courts that are recorded and published. Why are the decisions of judges in the lower courts generally not recorded and published?

Hard copies of many law report series can be found in your law library. To locate a particular case in hard copy, you refer to the case citation. Here is an example of a case citation:

Donoghue v Stevenson [1932] AC 562

‘Donoghue’ and ‘Stevenson’ are the names of the parties to the trial. If the case was being heard for the first time, the first name would be that of the *plaintiff* and the second name would be that of the *defendant*. If the case was one being heard on appeal, the first name would be that of the *appellant* and the second name would be that of the *respondent*. The ‘v’ is short for ‘versus’, but in relation to civil cases is pronounced ‘and’.

The fact that ‘Donoghue’ and ‘Stevenson’ are the names of individuals tells us that this is a report of a civil trial rather than a criminal trial. If the report is of a criminal trial, the name of one of the parties would be ‘the Crown’, usually shortened to ‘R’ (for Rex if there was a king at the time and Regina if there was a queen at the time). A case citation for a criminal trial would therefore look like this:

R v Clarke (1927) 40 CLR 227

In a criminal case citation, the ‘R’ is pronounced ‘the Crown’ and the ‘v’ is pronounced ‘against’.

There may be more than one plaintiff and/or more than one defendant. If the name in the citation is, for example, ‘Smith et al.’ or ‘Smith & Ors’ it means the parties are Smith and a number of other people.

The date following the names of the parties is the year in which the case was decided, and the letters following the date are the abbreviation for the law report series in which the decision was published. If the date is in square brackets, as in the first citation, it means that the volumes of the law report series are organised by year. If the date is in parentheses (round brackets), as in the second citation, it means that the volumes of the law report series are organised by volume number, which is the number immediately following the date. The final number in each citation is the page number where the actual case report is located in the volume.

To summarise: The case report for *Donoghue v Stevenson* (pronounced ‘Donoghue and Stevenson’) can be found by locating the ‘Appeal Cases’ law report series in the law library, finding the ‘1932’ volume of that series and going to page 562. The case report for *R v Clarke* (pronounced ‘the Crown against Clarke’) can be found by locating the ‘Commonwealth Law Reports’ series in the law library, finding volume 40 of that series and going to page 227.

RESEARCH

Go to your law library and locate hard copies of *Donoghue v Stevenson* and *R v Clarke*.

Online

To find cases online you can use any of a range of online tools, including:

- FirstPoint via Westlaw,
- Casebase via LexisNexis,
- Westlaw using the ‘Cases’ link,
- LexisNexis using the ‘Cases’ tab,
- legal indices online,
- legal encyclopaedias, and
- indices to law reports.

Online tools such as LexisNexis and Westlaw allow you to search for cases using a general search function with key search words, or using:

- the name of the case you are looking for,
- the citation of the case,
- the year, jurisdiction and court in which the case was decided,
- the surname of the judge who decided the case,

- the representatives of the parties in the case,
- references to other cases,
- words and phrases judicially considered,
- catchwords, or
- legislation judicially considered.

The tools also provide you with an opportunity to update your results by checking unreported judgements that are related to the case you are searching for using the ‘case update’ and ‘related cases’ functions.

Many courts in Australia and overseas now publish their decisions on their own official websites. For example, decisions of the Supreme Court of Queensland can be accessed at www.courts.qld.gov.au. When courts publish their own decisions, they often make use of a simplified system of citation, such as:

Whitehead v Griffith University [2002] QSC 153

‘Whitehead’ and ‘Griffith University’ are the names of the parties; ‘2002’ is the year of the trial; ‘QSC’ tells you that the trial was heard in the Supreme Court of Queensland; and ‘153’ is the citation number, a number that identifies a particular case in a particular year. However, care should be taken using court websites because the database of court decisions is often incomplete in that it includes only decisions made after a particular date. For example, the Queensland Courts website includes only decisions of the Supreme Court (Trial Division) from January 2000. To locate older decisions you will need to search more widely.

RESEARCH

Locate an online copy of *Donoghue v Stevenson*.

Finding legislation

To identify relevant legislation, you can use secondary sources such as legal annotators, legal indices, *Australian Current Law*, *Australian Legal Monthly Digest* and encyclopaedias.

As with case law, background reading often alerts you to the key legislation on a particular legal point. And, as with cases, while you can read *about* the legislation in secondary sources you should also access the legislation itself to confirm its content and to check for recent amendments.

The following are some tips on searching for legislation:

- Whenever you search for legislation always check to see if the legislation has recently been amended or repealed.
- It is useful to look for cases that have considered the legislation or similar legislation.
- To better understand the policy behind the legislation, consult the explanatory memorandum or notes. It can also be helpful to consult any relevant parliamentary debates (records of which can be found in *Hansard*) or law reform materials (such as the report of a law reform commission).
- If you cannot locate recent legislation that you are sure exists, check the Bills currently before parliament — it may not yet have been passed.

RESEARCH

What is *Hansard*?

Hard copy

Hard copies of legislation can be found in bound volumes in a law library, a State library or a court library. Legislation is usually organised by jurisdiction and in alphabetical or

chronological order. Whenever you locate legislation in hard copy it is vital that you check to see if the legislation has been amended since the date of printing.

RESEARCH

Locate a hard copy of the *Acts Interpretation Act 1901* (Cth). Have there been any amendments to the Act since the date it was last printed?

Online

Although it is helpful to know how to find legislation in hard copy, it is much easier and quicker to locate legislation online, and the online version is more likely to incorporate recent amendments.

The Commonwealth, State and Territory parliaments all make their legislation available online (see table 6.4). As this is the government-sanctioned version of legislation, it is also the most up to date and reliable. These sites also allow you to access cumulative updates that record weekly changes made to legislation.

TABLE 6.4 Legislation online

Jurisdiction	Website
Commonwealth (Cth)	www.comlaw.gov.au
Australian Capital Territory (ACT)	www.legislation.act.gov.au
New South Wales (NSW)	www.legislation.nsw.gov.au
Northern Territory (NT)	www.nt.gov.au/lant/harsard/harsard.shtml
Queensland (Qld)	www.legislation.qld.gov.au
South Australia (SA)	www.legislation.sa.gov.au
Tasmania (Tas)	www.thelaw.tas.gov.au
Victoria (Vic)	www.legislation.vic.gov.au
Western Australia (WA)	www.slp.wa.gov.au

Legislation can also be accessed online via the various free legal information institute websites such as Austlii.

RESEARCH

Locate and download an online copy of the Interpretation Act of your State or Territory.

REVISION

Before proceeding, ensure that you can answer each of the following questions.

1. What are the ‘primary sources’ of legal information?
2. What are ‘secondary sources’ of legal information?
3. Briefly describe the range of online research tools.
4. What tools are available to help you conduct legal research in hard copy?
5. Explain how you would locate secondary sources of legal information (a) in hard copy and (b) online.
6. Explain how you would locate case law (a) in hard copy and (b) online.
7. Explain how you would locate legislation (a) in hard copy and (b) online.

Principle 3: Access good-quality information

The third principle of effective and efficient legal research is to be committed to conducting quality legal research. This commitment is a key component of your professional identity and is essential to your success as a lawyer. It is a commitment that you should make from your first year of legal education.

At law school, poor-quality legal research leads to poor results in your subjects. This is certainly not something you want. More importantly, as a lawyer you will be conducting legal research for clients. If your legal research is conducted sloppily and produces unreliable results, you run the risk of not only disadvantaging your client in terms of the ultimate outcome of their legal matter, but also facing allegations of unprofessional conduct and even misconduct.

Although this is a serious and sobering point to consider, ensuring that your research results are of a good quality can be achieved relatively simply by appreciating:

- the advantages and disadvantages of online and hard-copy sources of legal information,
- that quality research is research that is up to date and current,
- that quality research relies on information from authoritative sources; that is, sources with legal credibility,
- that quality research is relevant to the requirements of the research task, and
- that, to produce quality research, you need to be patient and embrace the inevitable uncertainty of the task.

Online versus hard-copy sources

These days, most law students and lawyers conduct legal research using online research tools and methods. The many benefits of online research include:

- speed and accuracy,
- breadth and depth of the legal information you can access,
- the ability to cross-reference material,
- the ability to easily browse and search through legal materials,
- the ability to expand or contract the ambit of your search,
- the ability to save materials electronically for future reference and use, and
- general reliability and ready access.

However, there can be disadvantages with online researching. Foremost among these are the vast numbers of results that can eventuate and the need to carefully assess and evaluate any information that you find online. If you are in a hurry you may be tempted to use the first results that you find (or even Wikipedia!) but, like any form of legal research, online research involves carefully checking the accuracy, authority and relevance of the information.

While online legal research methods are certainly dominant in contemporary legal education and legal practice, there are benefits to being familiar with hard-copy methods. As explained earlier, knowing how to find legal materials in hard copy is important if for some reason access to online materials is unavailable. Not all legal information is available online — there are older case reports and journal articles that you have to locate in hard copy. And there is much to be said for actually holding a resource such as a case citator in your hands and reading the paper version; as we said earlier, doing so can give you a better understanding of the online version of the resource and make your online searching more meaningful.

The following are some further general tips for ensuring your online research produces quality results:

- Get to know the legal research tools that you are using. Use the help pages and tip sheets, use the FAQs sections, and complete the online tutorials that are available.
- Think about any specialist organisations or bodies with websites that might contain, or point you towards, the type of material you are looking for.
- Think strategically before you start typing. Choose your search terms wisely.
- When conducting an online search, try using a specific phrase in quotation marks. This reduces the number of results that you retrieve.
- Use Boolean operators to broaden or limit your search.
- Use the advanced search option if you need to refine your search: for example, by limiting it to particular fields or types of information such as the title or date.
- Include synonyms or alternative spellings in your search statements.
- Always check your spelling.
- Limit your search by date or to pages from Australia.

THINK

You arrive at your office in the Department of Communities and Housing and find an urgent request for advice from the Minister on the most recent cases in the area of vicarious liability of government employers. Access to the internet is unavailable and you are not sure when it will be available again. What are your options?

Use current information

Ensuring that you access current legal information is a critical but relatively simple quality assurance process. Relying on out-of-date law in your legal work is completely unacceptable. Many online resources are updated regularly — certainly more regularly than hard copy sources — but it is still important that you deliberately and methodically check the currency of the sources you are relying on.

Secondary sources

When accessing secondary sources of legal information you should check the date that the information is current to. With online loose-leaf services and encyclopaedias, this is usually indicated in relation to each section or page of information with a note that says something like: ‘This material is current to [date]’. If that date is not a recent one, you need to access other sources to check for possible changes to the law since that time.

When you are using legal encyclopaedias, it is a good idea to check more than one on any given topic, as they are updated at different times and some are more current than others.

With journal articles, you can easily ascertain the date the article was published by checking the year of the journal volume. One thing to remember, however, is that the publication process for journal articles can take some time. Something written in 2012 might not be published and available in a journal until 2013, or even later in the case of some journals. It is always important, therefore, when reading journal articles to be conscious of the possibility that the law may have changed since the time of writing. This does not mean that you should ignore or dismiss articles written some years ago; some articles are seminal works in a field and need to be cited as the original source of discussion about an issue.

Primary sources

When accessing primary sources (case law and legislation), using the various online research tools correctly usually produces up-to-date results. Most online research tools

have an ‘update’ function that enables you to easily check to see if a particular source has been subsequently updated.

With legislation, you should always ensure that the statutory provisions you are accessing are the most current versions. Check that you are working with the latest reprint and that no subsequent amendments have been made to the provision since the date of that reprint.

With case law, ensure that you locate the cases that are the most recent authority regarding the relevant point of law. When you find a case, use your online research tool to search for recent consideration of that case. Check also for the latest unreported judgments in the area.

THINK

What would be the implications of relying upon out-of-date legal information when (a) answering an exam question and (b) advising a client?.

Use authoritative information

Primary sources of legal information are the most authoritative sources, and it is usually necessary for you to refer to them directly in your legal research. Of course, the authority of primary sources is conditional upon them being current.

When it comes to secondary and other sources of legal information, their authority depends on where they are from and who created them. When accessing these other sources you should always ensure that they are credible and reliable. As a general rule, the secondary sources described earlier are credible and reliable, although not as authoritative as primary sources.

The credibility and reliability of other sources of information are variable. When accessing information from websites, government websites (.gov) and the websites of universities and other educational institutions (.edu) are more credible and reliable than commercial websites (.com). Personal blogs, online forums and Wikipedia are certainly not authoritative legal sources — although they might help you to achieve an initial, basic understanding of a legal topic.

RESEARCH

How does Wikipedia work? How credible and reliable is the information on the site?

When it comes to journal articles and monographs, the authority of the source depends upon the academic standing of the author. Articles and books written by senior academics and members of the judiciary have more authority than those written by junior academics and legal practitioners. Google the names of authors to check their credentials.

Use relevant information

The word ‘relevant’ is one that is used a lot in relation to law. Evidence must be relevant for it to be admissible in court. Precedents must be relevant if they are going to persuade a judge. When we use the word relevant in relation to locating legal information, we mean that the information must be pertinent, relate directly to your research question and be on point.

Hjørland and Sejer Christensen’s definition of ‘relevance’ is useful:

Something (A) is relevant to a task (T) if it increases the likelihood of accomplishing the goal (G) which is implied by T.⁷

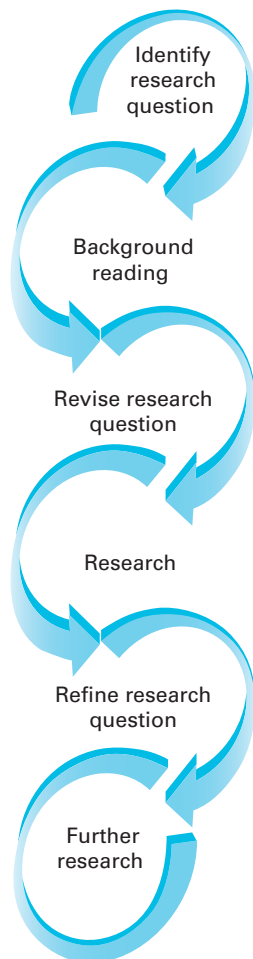
7. B Hjørland and F Sejer Christensen, ‘Work Tasks and Socio-cognitive Relevance: A Specific Example’ (2002) 53(11) *Journal of the American Society for Information Science and Technology* 960.

Your goal with legal research is generally to answer a particular research question. According to the definition above, then, the materials you find are relevant to your research task if they increase the likelihood of being able to answer that question. Therefore, the question you should ask yourself whenever you access legal information is: Will this information help me to answer the research question?

The research process

We come now to one of the most important things to realise about legal research. Legal research is not a simple linear process. Rather, it is a cyclical process.

The basic steps of effective legal research are often thought to be: (1) identify the research question, (2) conduct the research and (3) answer the question. However, it is often the case that in order to clearly identify the research question you have to do some preliminary research. Undertaking your background reading, in particular, informs your understanding of the initial legal issue or problem and helps you to identify the precise research question. As you do more research in an effort to answer that question, what you learn may lead to recognition of the need to revise or refine the research question (see figure 6.4).



REPHRASE

Think carefully about figure 6.4. Express the information in the diagram in your own words.

Evaluating the relevance of information

When you are an experienced legal professional, it will be easier for you to evaluate the relevance of legal information. In the meantime, there are two strategies that can assist you: (1) capitalising on your background reading and (2) the ‘one good case’ strategy.

Capitalise on your background reading

At the risk of labouring the point, undertaking some background reading is critical to successful legal research. Using the general information to be found in a legal encyclopaedia, loose-leaf service or textbook not only gives you a better understanding of your legal issue and helps you to identify your research question, but also points you towards the authoritative primary sources and useful secondary sources, which in turn help you evaluate the relevance of the materials that you access.

‘One good case’

The ‘one good case’ strategy is one that Cornell Law School in the US promotes to its students as an efficient and effective way to search for case law.⁸ It can be useful when searching for other legal sources as well.

The research strategy involves building upon a known authoritative case on a legal point. You find one good case

FIGURE 6.4 The research process

8. Cornell University Law Library, *How to Do Legal Research: The Basics* <http://library.lawschool.cornell.edu/WhatWeDo/ResearchGuides/upload/One_Good_Case.pdf>

and use it to find other related and relevant cases. This approach can help avoid some of the frustrations associated with not knowing where to start, whether you are on track and whether the material you are considering is relevant. It can help you to conduct research efficiently and to evaluate the relevance of the material that you find.

The first step is to find the ‘one good case’. Two suggestions are offered by Cornell Law School.

1. *Someone tells you.* Asking colleagues for advice or information is something that happens commonly in the legal profession. At law school you should be willing to consider whether there is someone you can ask about the ‘one good case’ on the question you have been instructed to research. There is no harm in asking your lecturer or tutor, a fellow student or a more senior student who may have already completed the subject. The lecturer or tutor may tell you that you should find it for yourself, but it is worth a try — and you can always tell them that you are using a research method promoted at Cornell.
2. *Background reading.* Your background reading often includes sources that cite the leading cases in the area. This way of finding your ‘one good case’ is helpful not only because you get the name of the case, but also because it is accompanied by some commentary and explanation.

THINK

Can you think of any other ways to find your ‘one good case’?

The next step is to use the ‘one good case’ to find more legal authorities on point. Find and read the ‘one good case’. Look at the headnotes at the beginning of the case, and use it to identify topics and key words to take you to other cases on point. Consider also the analysis of the legal issue in the case and the authorities it cites.

If you look up the case using an online research tool such as LexisNexis or Westlaw, you can search for related cases, the latest cases and subsequent cases that have considered your ‘one good case’. These cases can improve your understanding of the legal issue and help you to identify other relevant sources.

RESEARCH

(a) If you were conducting research into native title in Australia in order to answer the question: ‘Who is entitled to make a native title claim?’, what would be the ‘one good case’? (b) Use the ‘one good case’ method to identify five other sources of direct relevance to the research question.

Be patient

The next point we wish to make about accessing quality information is that you need to be patient. Quality research takes time, tenacity and persistence.

Some people are born with patience, but patience is also a skill that you can develop. The following are some tips on achieving patience when engaging in legal research.

Remind yourself not to hurry

As a law student you are likely to be ‘time poor’. You will probably struggle to balance your study commitments with your family life, sports or community interests, and work commitments. This can result in feelings of frustration and impatience with the amount of time legal research takes, especially in the early days of law school when you are only beginning to develop your own legal research method.

Remind yourself that quality legal research takes time. It is just one of those things that cannot be rushed. And remember that the more time you spend engaging in legal research, the better at it you will become and the easier it will get. Making the effort in

the early years of law school to carefully develop your legal research skills is not a waste of your time. Think of it as an investment in your success at law school and in your professional legal future. As Michelangelo said, ‘genius is eternal patience’.

Manage your legal research tasks intelligently

Legal research can sometimes seem overwhelming, but managing the tasks you have to do helps. Set aside an hour or two at a time for legal research. Make a clear to-do list of the research tasks you need to complete in the time you have. Organise the tasks into manageable components. Working with peers in a legal research study group can also help. Learn to share the learning load — especially when the process is new to you.

COLLABORATION

Form a study group that meets each week to practise using online research tools such as Westlaw, LexisNexis and CCH.

Take a break

When you are engaged in legal research and it is taking you longer than expected to find what you need, or you have found too much information and you are struggling to work out what is relevant and what is not, it can be a good idea to take a break. When you realise that you are losing your patience and that you are starting to feel anxious, worried or unhappy, stand up and stretch, get some water, or go outside or walk around for a few minutes.

When you are starting to feel impatient, it is also a good idea to check that you are breathing properly, to stop and take a few deep breaths and to clear your mind.

Embrace uncertainty

You may be a very organised person and always take a carefully planned approach to completing legal research tasks. Nevertheless, you will sometimes find that nothing works out as you planned and that there are days when you feel very uncertain about what you are doing. Accept that legal research involves a lot of twists and turns. Keep your expectations realistic about what you might be able to achieve in the allotted time. Don’t expect too much of yourself. Remember, as Emerson said, ‘patience and fortitude conquer all things’.

THINK

Reflect on the times when you have felt impatient while doing research. Develop a strategy for when you find yourself feeling frustrated or impatient.

Know when to stop looking

One of the more difficult aspects of conducting legal research is knowing when to stop looking. It can be very hard to know when you have found all of the legal information necessary to complete your research task, especially when you are new to the study of law. This issue certainly becomes easier to manage as you become more experienced at legal research.

Here are some questions that you can ask yourself to help decide if you have done enough research:

- Are your results becoming repetitive; that is, are they producing the same information and sources?
- Have you found a wide variety of legal information?

- Are the legal materials you have found, particularly the primary sources, directly relevant to your research task?
- Do you have enough information to confidently answer your research question?
- Are your materials up to date?
- Have you run out of time?

REVISION

Before proceeding, ensure that you can answer each of the following questions.

1. What are the advantages and disadvantages of online and hard-copy research?
2. Why is it important that the legal information you access be up to date?
3. How can you ensure that the legal information you access is up to date?
4. Which sources of legal information are the most authoritative, and why?
5. How can you assess the credibility and reliability of (a) secondary sources and (b) other sources of legal information?
6. What does it mean to say that legal information must be 'relevant'?
7. Is the research process linear? Why or why not?
8. How can your background reading help you to assess the relevance of legal information?
9. What is the 'one good case' method?
10. Describe four techniques for remaining patient when conducting legal research.
11. How do you know when to stop looking for legal information?

Principle 4: Read actively and efficiently

Locating relevant and reliable legal information is a large part of the research task. However, legal research does not stop there, because the goal of legal research is to apply the information that you find to answering a legal question or solving a legal problem. In order to be able to do that, you need to understand the legal information that you find.

You will probably find that on occasion, when reading a particularly complex statute, case report or legal text, you suddenly realise that you have not taken anything in for the last few minutes. This is understandable; not all legal material is engaging or easy to comprehend. This is also unfortunate, because it is a terrible waste of your time.

The Harvard Reading Report

As an experiment, Dr. Perry (psychologist), Director of the Harvard Reading-Study Center gave 1500 first year students a thirty-page chapter from a history book to read, with the explanation that in about twenty minutes they would be stopped and asked to identify the important details and to write an essay on what they had read.

The class scored well on a multiple-choice test on detail, but only fifteen students of 1500 were able to write a short statement on what the chapter was all about in terms of its basic theme. Only fifteen of 1500 top first year college students had thought of reading the paragraph marked 'Summary', or of skimming down the descriptive flags in the margin.

This demonstration of 'obedient purposelessness' is evidence of 'an enormous amount of wasted effort' in the study skills of first year students. Some regard it almost as cheating to look ahead or skip around. To most students, the way they study expresses 'their relationship to the pressures and conventional rituals of safe passage to the next grade'.

Students must be jarred out of this approach. The exercise of judgment in reading requires self-confidence, even courage, on the part of the student who must decide for himself (or herself) what to read or skip. Dr. Perry suggested that students ask themselves what it is they want to get out of a reading assignment, then look around for those points. Instructors can help them see the major forms in which expository material is cast. Students should also ‘talk to themselves’ while reading, asking ‘is this the point I’m looking for?’⁹

Active and efficient reading is reading with purpose. It is reading to achieve understanding without spending too much time on the task and without wasting time with inefficient approaches. In the next section we explain how to read actively and efficiently.

Reading actively and efficiently

There are steps you can take to avoid being ‘obediently purposeless’, as Dr Perry puts it. One way to be purposeful with your reading is to take notes at the same time. Recording your thoughts about what you are reading as you go ensures that you are focused, and it means that you have to read the document only once to get what you need out of it.

You should adopt an organised approach to taking notes. Doing so makes it much easier to later use the results of your research. For example, if you are reading a case report, you could use a format such as the one set out in table 6.5.

TABLE 6.5 Format for notes

Case citation		Comments, reminders, links to other readings
Summary		
Key issues		
Issue 1 notes		
Issue 2 notes		
Main arguments		
Decision		
Reasons for decision		

RESEARCH	Read the decision in <i>Donoghue v Stevenson</i> [1932] AC 562 and take notes using the format set out in table 6.5.
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The following are five further strategies for ensuring that your reading is active and efficient.

1. Once you have decided that a legal text is worth reading, ask yourself what it is that you want to get out of it. What is your goal or purpose with this particular reading in relation to completing your overall research task? Do you want to know what the law is, do you want to understand how a particular law works or is applied in certain circumstances, or do you want to access some critical perspectives or commentary on the law? As you are reading through the text, you can stop occasionally and ask yourself whether the text is giving you what you are looking for. If it isn’t, then you might re-assess whether it is actually worth reading.
2. If there is an abstract, summary or head note, read that first because it provides a succinct overview of what the text is about and what the key issues, points of analysis and arguments are. Make a brief note of these.

9. Dartmouth College Academic Skills Centre, *Harvard Report* (2001) <http://www.dartmouth.edu/~acskills/docs/harvard_reading_report.doc>

3. Review the headings and subheadings. If it is a book, review the chapter titles. If it is a statute, review the headings of the various parts, divisions and sections. These give you an overview of the text and of its major points, which provide a framework for the more detailed points.
4. Read the introduction to understand the rationale for the text and its overall structure. At this point, you might also skip to the conclusion to see how the argument or main points are summarised and brought together. This gives another broad overview and informs your understanding of the text as you read through it more precisely. It is helpful to write your own brief summary of the gist of the introduction and conclusion.
5. As you read through the text, use subheadings and other ‘signposts’ to identify the main points in each section. Look for topic sentences under each heading that introduce the main points in a particular section and present the gist of the argument or an outline of the ideas to be discussed. Look for key words and signal words — these are often italicised or otherwise emphasised. Look for helpful summaries and lists of points beginning with phrases such as ‘the three most important issues are ...’. Look for instances of the author being repetitive or restating the same point using different words, as this often indicates an important point.

Extracting direct quotations can be an efficient strategy as you read through the text. Direct quotations can work as an effective summary of the main points. They can be used as an authority for statements made in your own work, or you can paraphrase or summarise the quotation later in your own words. You should always make sure that you make a note of the page number on which the original quote appears, as this is needed when you insert references into your own work. (This is explained in more detail below.)

Myths about reading

In this section we examine three myths about active and efficient reading.

Myth 1: You have to read every word

You do not have to read every word of a legal text to understand it and to get what you need from it for the purposes of your legal research. Legislation is often an exception, but the point certainly applies to cases, journal articles and books. Active and efficient reading is selective reading. Selective reading helps you achieve the purpose of your reading more quickly and ensures that your time and energy are put into reading material that is relevant and useful to your research goal.

‘Speed reading’ is a collection of techniques to enable fast yet efficient reading. It involves skimming sections of a document and making choices about phrases that deserve more time and attention than others. Less important phrases are generally those that are required for the flow of grammar to be correct but which do not convey key concepts or meaning. A good strategy is to look for key passages, topic sentences and summaries of arguments to ensure you achieve a high level of comprehension without reading every single word.

Myth 2: Reading once is enough

It may take a little longer but, when you locate a source of legal information that is current, authoritative and relevant, it is a good idea to read it at least twice. On the first reading, skim through it quickly to get the main issues and points. This helps you identify the sections of the document that require more careful reading. On the second reading, focus on the important sections you have identified and read them carefully. You should also re-read and review anything that is unclear or confusing.

Myth 3: If you skim a document or read it quickly you won’t understand it

Research on reading has shown that there is less correlation between the rate of reading and level of comprehension than you might expect. You can train yourself to read more

quickly, and you can train yourself to focus on the most relevant parts of a text to get the most meaning out of it as quickly as possible. Reading a summary or abstract carefully, and then skimming a text to get to the key points, is a better investment of time than doggedly reading every word on every page.

To ensure that you have good comprehension of what you do read, you need to read in a way that allows you to extract and retain the most important facts, ideas and concepts. This does not necessarily depend on how quickly or slowly you read. One of the principles of speed reading is to ensure that your reading environment is comfortable, well lit and conducive to focused engagement.

If you are able to keep your purpose for reading in mind and employ some of the strategies suggested here, including taking notes while you read, you should be able to read quickly yet actively and efficiently.

THINK

Consider your approach to reading legal materials. What strategies suggested in this section could you adopt to improve your understanding?

Reading case law

Reading case law is considered by many law students to be one of the more tedious aspects of the study of law. Many judgements are very detailed, use a lot of legal jargon and are very long. But reading case law is an important part of your work as a law student and as a lawyer. In this section we offer five strategies for reading case law actively and efficiently.

1. We have emphasised in this chapter the importance of researching with purpose. The reading of cases should also be done with purpose and focus. The first thing to do before you start reading a case is to think about why you are reading it. Reflect upon your research task. Remember that you are seeking an answer to a research question. Read the case with this overall goal in mind.
2. Read the case with a clear focus upon working out what the case can tell you. Is it the leading authority in the area? Is it a minor case providing an example of the application of an earlier authority? Does it create new law or affirm or diverge from a longstanding legal proposition? What were the main issues considered? What principle can it be cited as an authority for? Reading through a summary of the case before you read the whole case itself is certainly helpful.
3. Read the facts and make sure you understand them. Who are the parties and what is their story? What brought this matter about? What is the complaint? What have the parties asked the court to decide? What remedy do they want? The facts of some cases are fairly straightforward, but some cases have very complicated facts that are difficult to work out. It can be helpful to draw a mind map or a diagram for these cases (see chapter 8) or to make lists from the facts, such as the issues involved or the remedies sought. Reading the summary of the case in the head note, or a case summary in a textbook, can be helpful if you are having trouble understanding the facts.
4. Having established and understood the facts clearly, you need to identify the key legal issues addressed. You can then move to reading the judgement itself and its discussion of these issues. As we said above, some of this reading can be achieved effectively by skimming the judgements. You do not necessarily need to read every single word. As you read more cases you will see that judgements can be repetitive, go off point, include lengthy examples or quotes that may not be relevant, and embark on discussion of tangential points of law of only vague relevance to the principle point of the case.

In order to cope with this, keep the specific issue and purpose of your own research in mind, and look through the text for key words that connect with the question you are seeking to answer. When you do find sections of the judgement that are on point, slow your reading down and read each word. Consider how what the judge is saying helps to answer the question you are researching. How has the legal principle been articulated? How has it been related to the facts of the case?

5. Finally, ensure that after reading a case you are clear about what the case decided and what proposition or rule it is an authority for. The head note can be used to confirm your understanding.

As with any legal text, as you read a case it is a good idea to take notes. Remember that the focus should always be on recording information that is relevant to your research task.

Reading legislation

Reading legislation is probably not your first choice for fun and enjoyment, but it can be interesting if you are engaged with the goal and subject area of your legal research. As with reading case law, the ability to read legislation actively and effectively is critical for both law students and lawyers.

Many pieces of legislation, especially those written in more recent times, are drafted in plain English and are relatively straightforward, well structured and easy to understand. Legislation that does pose a greater challenge tends to be complicated because of its complex construction, which can make the overall meaning and intention of the Act difficult to identify. For example, some provisions are made up of long convoluted sentences, some have numerous cross-references to other sections of the Act, some include numerous subdivisions that are interdependent, and some have many exemptions or exceptions to the Act's application.

We will explain the process of statutory interpretation in detail in chapter 7. We offer here a few practical tips about reading legislation actively and effectively.

1. As with all your reading, approach the legislation with a clear sense of purpose. What is your research question? How is this piece of legislation going to help you to answer that question? How is this legislation relevant to your overall research task?
2. Read the legislation more than once. Your first reading should be a quick skim through, taking in the general gist and structure of the Act, looking for key words and noting the numbers of particular sections that may seem relevant. Use the table of contents and the short and long titles of the Act to understand its purpose and use the division and section headings to understand the content. Take notes of these points as you go. Your second reading should be a more methodical reading, focusing on going directly to, and understanding, the particular sections that are relevant to your research question. Pay attention to each word, as skipping words could lead to a misunderstanding of the provision.
3. To understand the meaning of particular words in an Act, look for a definitions section, which is a dictionary for the key words used in the statute. (Other methods for interpreting the words of a statute will be explained in chapter 7.)
4. Be alert for words that signal exceptions to the application of the statute, such as 'unless'.
5. When reading lists of requirements or elements in a provision, note whether the word at the end of the penultimate item in the list is 'and' (which means that all of the requirements must be satisfied) or 'or' (which indicates that only one of the requirements must be satisfied).
6. If a section is cross-referenced to another section in the statute, check that cross-reference and ensure you understand its implications.

REVISION

Before proceeding, ensure that you can answer each of the following questions.

1. Explain each of the five general strategies for reading actively and efficiently.
2. Why is it useful to take notes while reading?
3. Assess each of the three myths about active and efficient reading.
4. Explain each of the five strategies for reading case law actively and efficiently.
5. Explain each of the five tips for reading legislation actively and efficiently.

Principle 5: Apply your research

The final principle for effective and efficient legal research is to apply your research. Legal research does not take place in a vacuum. You conduct legal research in order to complete some task. That task may be advising a client about how to undertake a transaction, advising a client about their rights in relation to a dispute, answering a specific legal question, constructing a legal argument, drafting a legal document or solving a legal problem.

In order to apply your research, you need to organise the results of your research. If you take organised notes as you are reading, this is a relatively straightforward process. It is also important that you evidence your research appropriately; you show the reader of your work what research you have done and the authorities for your arguments by citing the primary and secondary sources to which you have referred.

Applying research to legal problem solving

Just as you should take a methodical approach to conducting legal research, you should also take a methodical approach to using the results of your legal research to solve legal problems. In chapter 8 we will explain the CIRAC method of legal problem solving:

1. Conclusion: State your conclusion.
2. Issue: Identify the legal issue.
3. Rules: Identify the relevant legal rules.
4. Application: Apply the legal rules to the facts.
5. Conclusion: Restate the conclusion.

In our experience, the step that most law students and new lawyers find the most challenging is the application of the law to the facts. This is the stage where you apply the results of your legal research to the facts of the problem at hand. It is your ability to apply the law to the facts that demonstrates the true extent of your understanding of the law and its operation.

The following tips are offered to help you make the most of your legal research when you apply the law to the facts.

1. To come up with an appropriate legal conclusion, you should apply only the *relevant* law to the *material* facts. This means that you need to take care to use the results of your legal research accurately and selectively. Do not simply reproduce all the things that you have found out about the law. You must engage in a process of selective application in order to apply the law successfully.
2. It is helpful to approach the application of the law to the facts in two stages. The first stage is to consider how the relevant law you have identified relates to the material facts. The second stage is to consider how the law can be applied as part of your construction of a logical legal argument on a point. This helps you to explain clearly and

argue persuasively why a particular rule applies, or does not apply, to the material facts of the legal problem you are considering.

THINK

Why is it that many new students struggle to apply the law they have researched to the facts of a problem?

Applying research to writing a paper

At law school and in legal practice, a lot of your time will be spent engaged in legal problem solving, but you will also use the results of your legal research for other purposes. At law school, you will use the results of your legal research in writing essays, assignments and research papers.

When you are asked to write a research paper you are usually expected to construct a logical and focused argument in response to a set topic. This means you need to ensure the following:

1. Include an introduction that contextualises the topic, states what your argument is and provides a road map for how your argument will be made out. The introduction also foreshadows what your conclusions are going to be.
2. Clearly define your key terms, but do so succinctly; you want to move from descriptive material to analytical material as quickly as possible.
3. Use headings that clearly articulate the relevant issues you have chosen to consider. Use the headings strategically to reinforce your argument and ensure that, at the end of each major section, you make clear how your discussion has developed your argument. Make periodic references back to the topic with an explicit restatement of your argument. This is a good way to bring a positive reinforcing rhythm to your legal argument. Making explicit links between the content of your paper under the various headings also makes the flow of your argument stronger.
4. Include frequent references to the various sources of legal information that you accessed in your legal research. Good legal writing provides authority for statements and assertions wherever possible.
5. Make your conclusion persuasive so that the reader agrees with you.

Doing all of these things is easier and more effective if you have done quality legal research first.

Citing your research

Citing your research, or ‘referencing’, is a very important skill for law students and lawyers. When you cite a source that you have relied on or that has informed your thinking, you are demonstrating academic integrity (see chapter 1) and establishing authority for your argument or line of analysis.

THINK

List three reasons why you need to be thorough in citing your research.

There are many different citation styles. The citation style used in most Australian law schools is the *Australian Guide to Legal Citation* (AGLC). According to the AGLC, references are not inserted into the body of the text. Rather, they are included in footnotes like this one.¹⁰

10. And here is where the reference would go.

THINK

Work out how to insert footnotes into a document using your preferred word processing software.

RESEARCH

Download and read through the AGLC: <http://mulr.law.unimelb.edu.au/go/AGLC3>.

While there is quite a lot of specific detail in the AGLC, it is possible to break that detail down into manageable pieces. The citation process can seem overwhelming at first, but it is really quite simple. In this section we set out a few basic principles to help you manage the citation process.

There are five main categories of legal citation that you need to be familiar with:

1. cases,
2. legislation,
3. journal articles,
4. books, and
5. online sources.

With all of these categories, the main requirements are that your citations contain all the necessary information and that they be thorough, consistent, accurate and rigorous. This ensures not only that your work looks professional, but also that any reader of your work can locate any of the sources you have referred to in your research.

Cases

Some cases are reported in a law report, and some are not reported in a law report, known as ‘unreported cases’. The citation process for both is very similar.

To cite a reported case:

1. Put the names of the parties in italics, e.g. ‘*Dietrich v R*’.
2. Add the year in brackets. If the law report series is organised by volume number, put them in round brackets, e.g. ‘(1992)’. If the law report series is organised by year, put them in square brackets.
3. Add the volume number of the law report, e.g. ‘177’.
4. Add the abbreviated name of the law report series, e.g. ‘CLR’ (*Commonwealth Law Reports*).
5. Add the page number on which the judgement starts, e.g. ‘292’.
6. If quoting a statement from the judgement or referring to a specific part of a judgement, add the pinpoint page number, e.g. ‘299’. The pinpoint page number is preceded by a comma.

The full citation looks like this:

Dietrich v R (1992) 177 CLR 292, 299

The process for citing an unreported case is very similar: begin with the case name in italics, add the year in square brackets, add the abbreviated name of the court, add the judgement number, add the date in round brackets, and if relevant add the pinpoint page number. The full citation looks like this:

Quarmby v Keating [2009] TASSC 80 (9 September 2009) 11

RESEARCH

Visit your law library, take any volume of any law report series from the shelf and open it at the starting page of any judgement. Use the six steps to put together the citation for that case.

Legislation

To cite an Act:

1. Begin with the short title of the Act in italics, e.g. '*Family Law Act*'.
2. Add the year it was passed in italics, e.g. '*1975*'.
3. Add the jurisdiction in an abbreviated form in round brackets, e.g. '(Cth)'.
4. If referring to a particular section, add the section number preceded by an abbreviated 's' (for section), e.g. 's 5' (or, for example, 'ss 5–9' if you are referring to multiple sections).

The full citation looks like this:

Family Law Act 1975 (Cth) s 5

A Bill is cited in the same way, but without the italics:

Domestic and Family Violence Protection Bill 2011 (Qld)

Journal articles

To cite a journal article:

1. Begin with the authors' full names. If the citation is in a footnote, the first name precedes the surname, e.g. 'Jon Crowe and Rachael Field'. If the citation is in a bibliography at the end of the document, the first name follows the surname.
2. Add the title of the article in single quotation marks and with each word capitalised, e.g. 'The Problem of Legitimacy in Mediation'.
3. Add the year of the article's publication in brackets, e.g. '(2008)'.
4. Add the volume number of the journal, e.g. '9'.
5. If there is an issue number, add it after the volume number in round brackets, with no space between volume number and issue number, e.g. '9(1)'.
6. Add the full title of the journal in italics and with each word capitalised, e.g. '*Contemporary Issues in Law*'.
7. Add the page number of the journal on which the article starts, e.g. '48'.
8. If quoting from the article or referring to a particular page, add the pinpoint page number, e.g. '57'. The pinpoint page number is preceded by a comma.

The full citation looks like this:

Jonathan Crowe and Rachael Field, 'The Problem of Legitimacy in Mediation'
(2008) 9(1) *Contemporary Issues in Law* 48, 57

If the article appears only on the internet, add the URL in angle brackets: '< >'. The full citation looks like this:

Kathy Douglas and Rachael Field, 'Looking for Answers to Mediation's Neutrality
Dilemma in Therapeutic Jurisprudence' (2006) 13(2) *eLaw Journal* 177 <https://elaw.murdoch.edu.au/archives/issues/2006/2/elaw_Douglas%20and%20Field.pdf>

Books

Citing a book is even simpler than a journal article. To cite a book:

1. Begin with the author's full name, e.g. 'Nickolas James'.
2. Add the title of the book in italics, e.g. '*Critical Legal Thinking*'.
3. Add the publisher, edition (unless it is the first edition) and year of publication in brackets and separated by commas, e.g. '(Pearson, 3rd ed, 2011)'.
4. If quoting from the book or referring to a particular page, add the pinpoint page number, e.g. '7'. The pinpoint page number is *not* preceded by a comma.

The full citation looks like this:

Nickolas James, *Critical Legal Thinking* (Pearson, 3rd ed, 2011) 7

To cite a chapter in an edited book:

1. Begin with the author's full name, e.g. 'Nickolas James'.
2. Add the title of the chapter in single quotation marks, e.g. 'Embedding Graduate Attributes Within Subjects: Critical Thinking'.
3. Add the word 'in'.
4. Add the names of the editor or editors of the book, followed by 'ed' or 'eds' in brackets, e.g. 'Sally Kift, Michelle Sanson, Jill Cowley and Penelope Watson (eds)'.
5. Add the title of the book in italics, e.g. '*Excellence and Innovation in Legal Education*'.
6. Add the publisher, edition (unless it is the first edition) and year of publication in brackets and separated by commas, e.g. '(LexisNexis Butterworths, 2011)'.
7. Add the page number of the book on which the chapter starts, e.g. '69'.
8. If quoting from the book or referring to a particular page, add the pinpoint page number, e.g. '70'. The pinpoint page number is preceded by a comma.

The full citation looks like this:

Nickolas James, 'Embedding Graduate Attributes Within Subjects: Critical Thinking' in Sally Kift, Michelle Sanson, Jill Cowley and Penelope Watson (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 69, 70

THINK

How would you cite the information on this page of this textbook?

Online sources

You should cite an online source only if it is not accessible in hard copy.

To cite an online source:

1. Begin with the author's full name, e.g. 'Australasian Legal Information Institute'.
2. Add the title of the document in italics, e.g. *News*.
3. Add the full date on which the page was last updated (or, if unknown, the date of creation) in brackets, e.g. '(22 December 2009)'.
4. Add the name of the website, e.g. 'AustLII'.
5. Add the URL in angle brackets, '< >'.

The full citation looks like this:

Australasian Legal Information Institute, *News* (22 December 2009) AustLII <<http://www.austlii.edu.au/austlii/news/20091222.pdf>>

THINK

Identify the three errors in each of the following citations.

1. Donoghue versus Stevenson [1936] AC 562; [1932] UKHL 100.
2. *r v clarke* 40 Commonwealth Law Reports 227 (1927).
3. Field, Rachael, Family Dispute Resolution and Victims of Family Violence: Looking to Ensure a Safe Process and Safe Outcomes (2010) 21 Australasian Dispute Resolution Journal 185.
4. Rachael Field, (2010) "Exploring the Potential of Contextual Ethics in Mediation". In F. Bartlett, R. Mortensen and K. Tranter (eds) *Alternative Perspectives on Legal Ethics*, Routledge.

REVISION

Before proceeding, ensure that you can answer each of the following questions.

1. How do you apply the results of your research to problem solving?
2. How do you apply the results of your research to writing a paper?
3. Why is it important to cite your research?
4. How do you cite (a) cases, (b) legislation, (c) journal articles, (d) books and (e) online sources?

Checklist

Now that you have worked through the chapter you should be able to explain:

- ☐ the importance of legal research skills for law students and lawyers,
- ☐ how to take a systematic approach to legal research,
- ☐ how to find the various sources of legal information,
- ☐ how to identify good-quality legal information,
- ☐ how to read legal information actively and efficiently, and
- ☐ how to apply the results of your research.

Exercises

Exercise 6.1

We began this chapter with the following scenario.

You are a junior legal policy officer working in the Attorney-General's Department. The Attorney-General has been approached by a lobby group advocating for law reform in the area of neighbourhood dispute resolution options. The lobby group has been very persuasive, and the Attorney-General is interested in the issue. His adviser instructs you to prepare a written advice about the current law in your State and about law reform proposals that have been considered in other parts of Australia and internationally. You are told to provide the advice by the following day and that it cannot be more than two pages long (because the Minister will not have time to read more than that).

Develop a plan to complete this research task.

Exercise 6.2

Complete a Statsky's cartwheel for each of the following key words: theft, fraud, personal injury, discrimination, employment, parenting.

Exercise 6.3

Locate one case, one piece of legislation and one journal article relating to 'insider trading'.

Exercise 6.4

Critically evaluate the claim that all legal research should be conducted by junior lawyers, leaving senior lawyers free to do the actual advising and advocating.

Exercise 6.5

Design a handout for first-year law students that succinctly summarises the five principles of effective and efficient legal research presented in this chapter.

Further reading

Bott, B and R Ralbot-Stokes, *Nemes and Coss' Effective Legal Research* (LexisNexis, 4th ed, 2010)

Gallacher, I, 'Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation' (2006) 39 *Akron Law Review* 151

- Hutchinson, T, 'Developing Legal Research Skills: Expanding the Paradigm' (2008) 32(3) *Melbourne University Law Review* 1065
- Hutchinson, T, *Researching and Writing in Law* (Lawbook, 3rd ed, 2010).
- Knowles, J, *Effective Legal Research* (Sweet and Maxwell, 2012)
- Macken, C, *Law Student Survival Guide: 9 Steps to Law Study Success* (Thomson Lawbook, 2006)
- Maxwell, Martha, *Six Reading Myths* (Academic Skills Center, 2001) <www.dartmouth.edu/~acskills/docs/6_reading_myths.doc>
- Wardell, K, 'From Caveman to Cavebase: The Evolution of Legal Research through the Technological Age' (Paper presented at the Australian Law Librarians' Association (ALLA) Evolution Conference, Darwin, Northern Territory, 2–4 September 2009)