

Legal Research Roadmap to Success

This is designed as a short reference guide to planning your legal research. At times, legal research can seem daunting, but it is important to have a system or framework that can consistently achieve a high percentage of relevant material. As you will realise, legal research is very important to your success as a law student, academic, lawyer or judge. This has been designed to address legal research at law school and in legal practice. It is a suggested approach only, feel free to modify it.

Step 1: What is the purpose of your research?

Take a moment before you start research to assess why you are conducting this research. Is it to support a task, for example is it to answer a research essay question, or for a problem in legal practice? Do you know which areas you need to research, or do you need to do preliminary research just to get a reasonable idea which areas even require research? This determines the relative importance of the research to the task.

Doing this as early as you can is beneficial for one key reason. It helps assess how much research may be required and that is important because it is the beginning of effective time management of the task.

Step 2: Make a research plan, strategy or methodology

Research should ideally be planned. To reiterate from *Connecting with Law* (see p96):

Legal research necessarily mirrors the way lawyers solve legal problems. This is a common approach to legal problems:

- meet client and ascertain all facts or read research task from lawyer or law school assessment task
- distil client's story, legal brief or law school fact scenario to identify relevant facts and ask questions to reveal detail known but recognised as relevant by the client (for more see the Online Resource Centre notes for Chapter 11)
- using your legal knowledge, identify the legal issues that are suggested by the facts
- once the legal issues are clearer, locate the relevant rules (be they in cases, legislation, treaties etc)
- analyse the results.

When lawyers meet clients they must ensure that they collect the necessary information that can form the basis for the legal issues and research that must follow. After interviewing the client the legal issues may not be clear without research. This is a critical part of lawyering, and whether you clearly identify a legal issue depends to an extent upon your legal research ability. Once a lawyer has a sense of a legal issue, the lawyer must then determine the legal rule or rules that will be submitted to the court as being decisive of the matter. These rules can be found in judgments, in legislation or regulations, in treaties or other instruments. Knowing where those rules are is critical, because if a rule is in legislation it can take precedence to a rule in a judgment (see Chapter 9 of *Connecting with Law* and accompanying resources for more on precedent).

Step 3: Choose your research tools

This is a key factor that seems to be a very large determinant of research success. Just as a tradesperson will select the correct drill bit or screwdriver for a task, you too need to be sure that you are selecting the best tools for your research task. This requires a good working

knowledge of what tools are actually available to you. At times this will be partly influenced by where you work, but at university law schools you generally have very good access to a huge range of research materials. As indicated in the textbook (see p97) the

choice depends on what you are looking for. Unfortunately with legal research, there is not just the one resource that will give you a definitive answer. There are a number of different resources which will help you find different types of information. Which one(s) you use will depend on a number of factors:

Are you looking for a general overview of the law?

Is there legislation on the topic that you need to refer to?

Do you want cases that you can use to back up your arguments?

Do you need Australian information, or would a comparative international perspective be useful?

Do you want an analysis of how the law works or how it might be improved?

How recent does the information need to be?

To decide which to use, you will need to look at what each resource covers – what information it provides - and figure out which ones match what you need to find.

This requires you to visit the law library and to look at the online databases. You should familiarise yourself with these resources, and keep track of any changes to the software interfaces, changes to the library subscriptions (e.g. replacing print materials with electronic subscriptions), and search the law library web page for 'How To' guides for these materials. When you are new to legal research it can help to read some textbooks specifically on legal research.

When conducting legal research try to cross-check a few sources. Many librarians recommend using 2-3 overlapping sources to verify the accuracy and effectiveness of your research. This frequently delivers research materials that you will not find if you rely upon one source. A key tip with using materials is to check their currency – how recent are they, and what timeframe do they cover? Some databases only hold the last 10 or 20 years of cases, so if your research requires you to look further back, be aware of other ways to check this. Similarly, with textbooks always check the campus bookshop, library catalogue, or publisher's website to see that you have the most recent edition.

Finally, work out whether you need a suite of specialised legal resources, or more general ones. If you require specialised sources, you may need to check to see if your library holds them, you may need to visit the Supreme Court library, or you may have to try another law library.

As always, you need to access both printed and electronic materials. Increasingly more and more legal research is possible online. Again, your law librarians can assist you with this.

Step 4: Maximise your use of materials

When you have selected your tools, become a 'power' user. I find that one's ability to master research tools (particularly electronic ones) will make a huge difference to the quality of your research outcomes.

With print materials (e.g. books, encyclopaedias, statutes, case reports) become familiar with how the publisher indexes materials. While there is almost always an index, many texts also have table of contents indexed alphabetically, by date, by legislation, by subject matter and so on. These indexes may be per issue or where many issues are bound into one volume, consolidated at the front or back of a volume. Many other materials have an index volume or an index every few years. Be aware of them and know how to search them.

With electronic materials there are three key issues: finding correct keywords, successfully combining them, and setting correct search parameters. The keywords are

important words used by publishers of legal materials to help classify legal knowledge. Importantly, most legal publishers use the same keywords for their print and electronic materials. While there may be some variations between different publishers, these keywords are usually similar or identical. How you combine these key legal words or phrases is critical. This requires a good working knowledge of searching protocols. You need to learn to truncate words (e.g. type in 'm?n' to find sources with man and men in them. Type 'disab*' to find the words disabled, disability disabling, disable. Learn to combine terms with Boolean logic (e.g. child AND negligence, negligence NOT 'contributory negligence', child OR children...). You can also request information within a certain proximity of other keywords, or adjacent to other material. Run a web search to find out how to better do such searching, or read legal research texts or 'How To' guides in your library. These techniques really work.

Early in your law training you will have difficulty settling on the correct legal keywords. No matter how skilled you are at using a computer, your electronic searching will not reveal much unless you use the correct legal keywords. This requires some lateral thinking, a thesaurus or, as I recommend to my students, using the print index on a legal encyclopaedia. Try to think of keywords for a scenario where a person has fallen off a cliff in coastal area. Many will think of 'cliff', 'fall' 'cliff and fall', 'cliff near fall', 'cliff and fence' and so on. You also need to blend such phrases with 'negligence' 'contributory negligence'. Many of these searches may be fruitless. Instead, you could look up a legal encyclopaedia index under negligence and search until you find headings and keywords that are useful to your search. This is because the term you use may vary from the indexed term (e.g. 'local council' may reveal little but it might be indexed as 'local government') - this is where using a print index or browsing the table of contents on an online source will help you.

Step 5: Choose results with relevance

Research usually supports a higher goal. As indicated in step 1, you need to know what purpose your research has. So too, when reviewing what you uncover, it is important to establish the highest level of supporting material. If you are appearing in court or answering a legal problem you generally need to have the latest cases from the highest courts, or the latest legislation. If writing a legal essay or a higher degree thesis you also need to refer to articles in quality periodicals. Articles that are recent and comprehensive can save you time as they survey a history of legislative change or review the status of relevant precedents. See p98 of *Connecting with Law* for more on this.

Step 6: Update, Update

This step is a key part of your research. In law, cases are continually being decided. The nature of precedent is that newer cases may change existing common law, so you need to be aware of any such new developments. Legislation and delegated legislation is also constantly being enacted. It is important that you utilise all research tools to know about any such developments. Many online services have tutorials that help in this respect, and encyclopaedias often have a guide on how to update.

Step 7: Visit the library

Legal research is increasingly able to be conducted online. With this comes the temptation to avoid visiting the law library. Certainly, at the beginning of your legal studies, I would urge you to spend some time in a law library for a few reasons. First, you meet other students who may share their techniques. Second, you can enlist the help of law librarians who are well trained and know the resources of the library well. They keep up-to-date with new changes and know which new databases the law library has. Third, there is a lot of information pasted up on noticeboards round the library that may be of use to use, including 'How To' guides. Fourth, there is an element of serendipity in browsing new journals, case reports, statutes and books. I have found many very useful items this way.

Law libraries on campus often run information sessions at the beginning of each semester. Attending a session like this is a useful way of familiarising yourself with the library, the staff, and the resources available to you on campus.

Step 8: Embrace your research

Many students often tell me that they put their all into an essay, and they cannot figure out why they did not achieve the grade they expected. When I ask them about what they worked on, they tell me they spent time writing and checking the law, but often did not maximise their efforts in research. If you see research as a skill that gets you marks and wins you cases it becomes more energising. It's an area requiring perseverance and work, but I guarantee you, it will pay off.