

Chapter 2: Legal Research Resources

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2.1 The law library

The extent (or existence) of firms' law libraries will vary enormously. A library may consist of a few out-of-date books, it can encompass practitioner's texts and an electronic resource, or it can be a wealth of material both electronic and printed. There can often be access to other resources through a local law society or court.

The competent legal researcher should have sufficient knowledge of the range and types of sources available.

In recent years there has been an explosion in the range of legal research tools available electronically. There is a wealth of material available on the internet. It should be recognised that not all sources are equal in scope and reliability.

This chapter identifies the sources of law and the resources available to researchers. In this chapter, a "source" describes a source of law as legislation or case law and a "resource" as a tool for researching the content of the law, whether a text or electronic resource.

2.2 Sources of law

Sources of law can be subdivided into secondary sources and primary sources.

2.2.1 Primary sources

Primary sources cover the legislation made by Parliament and decided cases.

2.2.1.1 Legislation

Primary legislation includes **Acts of Parliament**, for example:

- **Criminal Justice and Public Order Act 1994;**
- **Employment Rights Act 1996;**
- **Wills Act 1837.**

Secondary legislation includes **Statutory Instruments (SIs)** or **Codes of Practice**.

SIs are often described as "delegated legislation". SIs are used to add detail to the primary legislation and are important as they can contain criminal offences, amend financial eligibility limits or make conditions for licences. Some examples:

- the **Compensation Act 2006 (Commencement No. 3) Order 2007;**
- the **Bananas (Interim Measures) (Revocation) Regulations 1993;**
- the **Road Vehicles (Authorised Weight) (Amendment) Regulations 2000.**

Similarly, **Codes of Practice** give practical guidance to those implementing the law and an example is the **Codes of Practice – Police and Criminal Evidence Act 1984**.

One key issue for legal researchers is ensuring that legislation is up-to-date. Legislation is amended, revised or repealed and the researcher must ensure that he has the current version of the law and be aware of any proposed future changes.

2.2.1.2 Case law and Practice Directions

Only a very small proportion of all decided cases are reported in case reports. In legal research, cases can be used to find out how the courts have treated a particular piece of legislation and to help to predict the likely outcome of a particular issue for a client.



Key cases

- ***Re B (Children) [2008]*** – discussed the standard of proof required in care cases;
- ***R v Dica [2004]*** – a decision on GBH and the transmission of HIV;
- ***Mosley v News Group Newspapers Limited [2008]*** – discussed **Art 8 European Convention on Human Rights** and privacy.

Cases must be read in full in order to cite them authoritatively. Most reported cases have a “head note”, which summarises the case and the decision of the court. Do not be tempted to read this alone as it is simply a summary and a researcher risks missing important parts of the judgment.

Practice Directions are a form of guidance produced by the judiciary on issues coming before the courts on a particular topic or piece of legislation and can be considered alongside case law. Practice Directions support relevant rules. They set out procedures that mean to achieve uniformity in practice. In addition, they tell parties what the courts expect of them and what the parties can expect of the courts if, for example, they do not comply with the courts’ directions.

Some examples:

- **Director’s Disqualification Proceedings;**
- **Fixed Costs in the Court of Protection;**
- **Pre-action Protocol for Judicial Review Cases.**

2.2.2 Secondary sources

Secondary sources are commentary on the law written by legal authors, academics, judges and others with expertise in a particular area of law. Secondary sources simply comment on the law and cannot be cited as the law; as tempting as it may be, do not quote a secondary source as authority for your advice; a researcher **must** quote a primary source of law.

Secondary sources are an interpretation or explanation of the law and, as such, should be treated as an excellent place to find out what the law is and what primary sources will need to be consulted. As noted in **Chapter 1**, it is suggested that legal research is commenced using secondary sources. It is not often that a legal research exercise starts with primary sources of law as it is not wise to assume that a researcher knows exactly which law applies. This does not apply, of course, to a simple check of a statute or case, for example, if a lawyer needs to clarify the wording of a piece of legislation.

It is not sufficient to read the secondary sources and advise the client on the information found in them. Those who write secondary sources have to select which information they include, and it is impossible to cover every aspect of every topic of law, even in a specialist text. Authors are **occasionally** wrong, sometimes interpret law in different ways or leave out material that may be essential to the client's case. This does not make the secondary sources unreliable; it simply means that they are used as a guide to the law; a competent legal researcher will check the primary sources too.

It is simply impossible to know at the start of a problem **exactly** which primary sources will apply to the case. Even if a researcher has a good idea of what the primary sources are in a particular area, secondary sources can reveal a new piece of legislation, cases or Acts of which the researcher was unaware or avenues that the researcher should explore. Assumptions are very rarely useful to anyone and can lead to trouble. It is wise to read more than one secondary source. By reading two or more secondary sources a researcher will cover a topic fully and each source will contain slightly different information.

2.3 Legal research resources

The resources used by a researcher to find out what the law is can be broken down into two different types: hard copy and electronic resources. There are considerations for both resources that a researcher should be aware of before beginning research.

2.3.1 Hard copy resources

Traditionally, legal research resources were contained in books, and many still are. Their publishers' reputation and ability to sell such products rests upon their reputation for reliability and authority.

Many researchers prefer hard copy resources rather than electronic resources as they find them easier to read and find the index easier to manage than a search engine. Hard copy resources have the advantage of being able to be used even when the internet or computers are not working! Another advantage is that, when reading an entry found via the index, it is easier to read the surrounding paragraphs for information than it is on screen.

The main disadvantage of hard copy resources is that there is often a final step to update them, unlike most electronic resources, but this is generally not too onerous. Hard copy resources can be very expensive and consume a great deal of space.

Hard copy resources include the following:

2.3.1.1 Case reports

Reports of decided cases are often printed and bound into collections of law reports. These are, of course, **primary sources** of law. They look very impressive on the shelves of a law library. There are many different reports: some law reports specialise in a particular practice area, for example, shipping, while some deal with a general range of important cases. The cases are reported by specialist writers and the reports are checked by the bench before their publication.

Examples of case reports include:

- *All England Law Reports*;
- *Weekly Law Reports*;
- *Industrial Case Report*;
- *Banking Law Reports*;
- *Planning Law Reports*.

If using a case in court, the court will generally accept only the official case report rather than a summary from a newspaper or text.

It is also important that the full case is read and to avoid the temptation of reading only the head note. The head note is only a summary of a case and does not necessarily reflect all of the nuances of a judgment. The client's case may depend upon the exact wording of a judgment and this will not be reflected in a summary of the case.

Each law report will have its own citation and they must be translated. A useful tool is *Raistrick's Index to Legal Abbreviations*, which contains a comprehensive list of abbreviations in alphabetical order. Some legal dictionaries also carry tables of abbreviations, for example, *Stroud's Judicial Dictionary*. An excellent free online resource is the *Cardiff Index to Legal Abbreviations*, found at <http://www.legalabbrevs.cardiff.ac.uk/>. This provides a fast and accurate translation of abbreviations and is worth exploring.

2.3.1.2 Encyclopaedias

The most common hard copy encyclopaedia is *Halsbury's Laws of England* ("*Halsbury's*"). It is a **secondary source** of law. *Halsbury's* is also available as an electronic resource. The advantage of such a work is that it covers a very wide number of topics and is often an excellent place to start to find information on a topic. It cannot be completely comprehensive and will offer a general treatment of law, but is an excellent resource for a researcher. A great deal of information is repeated in various parts of the work in order to provide full coverage. As a result, it is wise to check all references carefully to ensure that you have read all that *Halsbury's* has collated.

Halsbury's in hard copy is subdivided into a number of volumes as it is a large publication.

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Published in 2011 by:
ILEX Tutorial College Ltd
College House
Manor Drive
Kempston
Bedford
United Kingdom
MK42 7AB

British Library Cataloguing in Publication Data

A catalogue record for this manual is available from the British Library.
ISBN 978-1-84256-575-9