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EFFECTIVE LEGAL RESEARCH

THIRD EDITION

John Knowles



SWEET & MAXWELL

EFFECTIVE LEGAL RESEARCH

3rd edition

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Preface

A new law student is faced with a potentially bewildering variety of sources of law. A recent case mentioned in a lecture might be found in a database of law reports, a printed report, or a website providing access to recent court judgments. There might be journal articles or newspaper reports that discuss the case. The text of an Act can be found in a number of different ways, using both online sources and editions of statutes found in a law library. It can be difficult to know where to start. This book aims to help you make effective use of the law resources to which you have access. Online sources are placed alongside traditional print sources in each of the chapters of the book and their use explained, in order that you can make the best possible use of both.

In a sense, this book is a labour-saving device. Use it as a reference throughout your time as a student, or indeed thereafter, should you decide to go into legal practice. Though some of the more detailed coverage is most likely to be of use if you are embarking on a legal research module (or a post-graduate qualification), it is not intended to be a textbook associated with a particular course. It is a reference aid to be consulted whenever you have a problem. Consequently, you might use the book selectively, referring to those sections which are useful at a particular point in your studies, or when recommended to look up a case, statute or issue by a member of the teaching staff.

The book concentrates on the law in England and Wales. Detailed coverage is also given of European human rights law and the law of the European Union. A brief appendix covers online sources of Scots and Northern Ireland law, along with sources of international law.

This edition of *Effective Legal Research* owes much to the contribution made by Philip A Thomas, as co-author, not only of the first edition of *Effective Legal Research*, but also of the four editions of *Dane & Thomas: How to Use a Law Library*. The coverage of print resources is based, in large part, on the coverage of print materials in *How to Use a Law Library*. The coverage of online sources was largely re-written for earlier editions of *Effective Legal Research* and extensively revised for this one.

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D 1

Making the most of a law library

INTRODUCTION

A law library might seem the most traditional of libraries. A university law library contains many shelves of heavy bound volumes of statutes and law reports, along with a wide variety of academic journals and textbooks. Sometimes the law library will be housed in a separate building; more often it will form one area within a larger library.

D 1.1

Imposing as these print collections can be, however, they constitute only one part of what a law library offers. The library is also a gateway to online collections of legal materials. Sometimes the extent of these materials can even surpass what is available in print. To learn how to research the law efficiently and effectively is to learn how to make use of both the online and the print collections of a law library.

THE LIBRARY CATALOGUE

The online library catalogue is your guide to the extent of the print and online materials available to you. It will also be supplemented by library web pages which usually provide access to online services. Online catalogues are easy to use and computers providing catalogue access will be available throughout the library building. You should also be able to connect to the catalogue online from wherever you are using your own computer, smart phone, or other mobile device. Find the library catalogue and web pages as soon as you can and familiarise yourself with the way they work. If you are not already well acquainted with the law library, make use of library induction talks and seek out guides provided for you, both in print and on the library website. Remember that librarians are there to support you and so do not be afraid to ask for help, especially at the start of your course.

D 1.2

BOOKS

The books held in a university library are usually the best starting point for legal research. Making good use of them can save a great deal of wasted effort.

D 1.3

You will find three different kinds of book on the library shelves. Textbooks designed for undergraduates explain the fundamentals of law in a particular area. These are complemented by research texts (sometimes called monographs) which offer detailed descriptions of the law and usually a more advanced level of discussion. These often assume the knowledge set out in undergraduate textbooks. Practitioner texts and looseleaf updating services, in

contrast, aim to provide a detailed, authoritative, statement of the law in a particular area. They are designed first and foremost for the legal profession. All three types of book can be useful to legal research. Check dates of publication, to ensure that you are using the most recent edition.

Books of all kinds are usually grouped on the shelves according to their subject. The subject dealt with in each book is indicated by numbers, or letters and numbers, which are usually printed on the spine of the book. These symbols indicate the exact subject matter of each volume. They are known as the classification number or classmark and bring together, in one area of the library, all books dealing with the same subject, such as torts, criminal law and constitutional law.

There may be a number of separate sequences in the library. Large books (folios and quartos) and very thin books (pamphlets) may be kept in a separate part of the library. As a result, the size of the book may be important in helping you to find it on the shelves. There will normally be some indication on the catalogue entry for a book, if a book is shelved separately.

E-books

- 1.4** It is no longer the case that you are restricted to print volumes when searching for books that might be of value to your research. Significant numbers of books are now available online from most university libraries. These e-books are purchased by your library in much the same way as print volumes and can usually be accessed through the library catalogue. Instead of providing a library location for a book, the catalogue displays a link to an online version of the book's printed text. In many cases complete collections of e-books can be searched from a single dedicated search page. Examples include the ebrary collection of e-books and MyiLibrary. Check library web pages to confirm their availability. Access restrictions will be similar to those for subscription database services (see para.2.8).

It is not usually possible to download the full text of library e-books. Unlike e-books held on hand-held book readers, these books are designed to be read online from a networked computer. In some cases a relatively limited amount of text can be downloaded and retained, but if substantial downloads are permitted, there will be time limits placed on your access to the text. Printing is restricted to relatively brief sections of the book. It is usually possible however to set bookmarks and add your own notes to a library e-book. You will need to create a personal account on the e-book website to do this, but once you have done so, you will be able to search and annotate an online e-book in much the same way as you would an e-book held on an e-book reader.

You will not, unfortunately, find online versions of key student textbooks in the library catalogue. These are only available for e-book readers. Publishers usually only release e-book versions of research texts to libraries. They also tend to make them available some time (usually at least a year) after the print version. Many legal practitioner texts are however

TIPS • Use keyword or "keyword in title" searches to find books in the library catalogue. Combine keywords with the author surname if known.

available in current updated versions from the Lexis Library (para.2.3) and Westlaw UK (para.2.4). These include titles such as *Rayden & Jackson on Divorce and Family Matters* from the Lexis Library and *Archbold: Criminal Pleading, Evidence and Practice* from Westlaw UK. Using these books online means that you no longer have to check edition dates, or look

for supplementary volumes to the main print editions to be sure that the statement of the law you are reading is completely up to date. If the print version of the text you are reading comes in a looseleaf format, it means you no longer have to check that the latest versions of the pages you are using have been filed into the binder volume.

Searching the library catalogue

Library catalogues allow you to search for books by the author's name, or the title of the book. It is usually easier and quicker to search by title (ignoring words such as "The" or "A" in the title), or alternatively by a combination of author surname and title. If you do not have the exact title, a "keyword search" enables you to search for words occurring anywhere in the title. In many cases, the initial search page of the library catalogue contains only a single search box. If this is so, enter author surnames and title words in a single search phrase. Further search options can usually be found under an "advanced search" link. These usually include searches by subject area or classification (see para.7.29).

If the library has the book you want, the catalogue entry will give you its full details (e.g. its publisher, the date of publication and the length of the book in pages) and the location of the book on the shelves.

Author searches which display search results as an author index should be used with care. Even if you are sure of the author of the book, you may need to check a number of author entries before you find the right one. Suppose you have a reference to a book written by John Jackson. If you use the author search and enter "Jackson, J" you will see index entries that might feature the following variations of the name (among others):

Jackson, J.A., John Archer, 1929–
 Jackson, J.D, John Dugland, 1955–
 Jackson, J.E., John Ellwood
 Jackson, John, 1887–1958
 Jackson, John E.

You need to start with "Jackson, J.A." and work down the list in order to find the right author. In this case, the second author listed is a writer on legal subjects, but a search using "Jackson, John" would have missed the correct entry. The index display would begin with "Jackson, John, 1887–1958".

Another potential cause of confusion is the tendency of law books which have run to a number of editions to be known by the name of the original author, even though that author may no longer be involved in the writing of the book. This is something you will need to take account of when using the catalogue. *Winfield and Jolowicz on Tort*, for example, is in its 18th edition and Winfield has not been involved with the work for many years, but his name is still associated with the book. You will usually find an author entry under Winfield, but there will also be an entry under Rogers, W.V.H. who is the author of the current edition. If you are using a title search you need to search for "Winfield and Jolowicz on Tort", not "Tort", which was the original title of the book.

Many law books have been written jointly by two or more authors. You may be referred for example to Craig and de Burca (*EU Law*) or Clayton and Tomlinson (*The Law of Human Rights*). There will be an entry in the catalogue for both authors, and title searches should be for "EU Law" or "Law of Human Rights".

Sometimes a book does not have an individual as the author. It is published by an organisation or society and the organisation is, in effect, the author. In this case, you will find an entry in the catalogue under the name of the body, e.g. Law Commission, Law Society, Legal Action Group, United Nations.

Finding and borrowing books

- 1.6** The classification number for a book appears prominently in the library catalogue entry. It is usually combined with letters and numbers based on the author's name which enable you to trace the precise place the book should appear on the shelves. Remember to check also for any indication that the book you wish to find may be shelved in a separate sequence—(pamphlets, large-sized books etc.).

If the book is on loan to another reader, the library catalogue will give the current return date for the book. It is usually possible to request the book using the catalogue, in which case the book will be recalled from its present borrower.

A book may be mis-shelved or missing, or have been removed by library staff for some reason, e.g. re-binding. If you have any problems finding a book, ask a member of the library staff for help.

When you borrow a book from a library issue desk (or use a self-service issue machine), you will be given a return date for the book. Remember that you could be asked to return the book before that date if another reader has requested it. There will also be fines for late return. These fines can be expensive if the book has been borrowed from a short-loan, reserve, or consultation collection.

LAW REPORTS AND JOURNALS

- 1.7** In the course of your legal studies you will often need to look at reports of cases which have been heard in courts, both in the UK and abroad. These reports are published in a number of publications called law reports. Amongst the best known series of law reports are the *All England Law Reports*, the *Weekly Law Reports* and the *Law Reports*. These are examined in more detail in Ch.3. There is a standard form of writing references to law reports, and this is explained in para.3.3.

The bound volumes of law reports found on library shelves are usually held in a separate sequence. These volumes are not for loan. In a well-established library, the collections of law reports will be extensive. A single series of these reports, the *Law Reports*, first published in 1864, occupies many metres of shelving in the law library. Although this is the most extensive series, there are many others. In addition to the shelves containing such bound volumes, the library will also have prominently located display shelves for recent, unbound issues of law reports.

Most law reports are also available online and access is provided almost exclusively by database services such as the Lexis Library and Westlaw UK. These are described in para.2.2. It is worth keeping in mind just how much information these services contain. The *Law Reports* are almost certainly available to you online and they form only one part of a single database within the Lexis Library and Westlaw UK.

You will find, in addition, that you are referred to articles and case notes in journals (or

periodicals). Journals provide commentary on cases and advanced discussion of legal issues. They are published for the most part either weekly, monthly or quarterly (hence the name, periodical). A journal reference should give you the author and title of a journal article, the year, the volume number, an abbreviation for the title of the journal in which the article appeared and the page number of the first page of the article itself, e.g.:

P O'Connell "The death of socio-economic rights" (2011) 74 M.L.R. 532

Law database providers such as the Lexis Library and Westlaw UK provide access to the full text of journal articles as well as to law reports. However, not all UK journals are available online from these databases. Many other journals can be accessed directly from publishers' websites or through intermediary sites. If your library has a subscription for online access, the full text of articles will be available.

As is the case with law reports, the bound print volumes of printed journals are usually shelved in a separate sequence in the library. There is usually a display area for recent unbound issues similar to the display area for unbound law reports.

Abbreviations

The tradition adopted by lecturers and authors of referring to journals and law reports only by an abbreviated form of their full title can present a major difficulty for new students. Instead of writing the name of the journal or law report in full, they are invariably shortened to such cryptic abbreviations as:

(2011) 74 M.L.R. 532

[2011] 3 W.L.R. 322

This may make it difficult for you to know whether you are looking for a law report or a journal article. To make things even more difficult, library catalogues use the full unabbreviated title of a journal or law report. As a result, abbreviations need to be de-coded before you can use them to check for online or print access. If you are in any doubt as to the nature of a reference, ask a member of the library staff for advice. Many of the references are also confusingly similar, e.g. L.R. can be the abbreviation for both "law report" and "law review". This can be frustrating if you are looking for print volumes in the library. The law reports are shelved together, but separately from the law reviews, which are journals. Consequently, if you are looking along the shelves of bound volumes for a publication, you could find yourself looking in the wrong sequence. A common mistake, for instance, is to assume that a reference to a report of a case in "Crim. L.R." means that you must search amongst the law reports for a series entitled the *Criminal Law Reports*. There is no such series (although there is a series called the *Criminal Appeal Reports*). The reference "Crim. L.R." is to the *Criminal Law Review*, which is a journal shelved with the other journals. It contains both articles and reports of cases.

The meaning of abbreviations can be checked both online and in print and key sources are noted in para.3.5.

Tracing journals and law reports

- 1.9** A title search using the library catalogue can usually establish which journals and law reports are available either online or in print. Often a specific journal title search will be provided. An A-Z list of journals available online may also be available. It is important to search using the full title of a journal or law report, not its abbreviation.

If you are looking for a journal which includes the name of an organisation in its title, you may be unsure of the precise title to use. Is it the *American Bar Association Journal*, for example, or the *Journal of the American Bar Association*? In these cases it is usually possible to search for the journal by the name of the organisation that produces it. If the publication you wish to find has "Bulletin", "Transactions" or "Proceedings" at the start of its title, retain these words when you make your search or use a "keyword" search.

Most libraries are likely to have significantly more journal titles available online than they hold in print, as explained in para.5.2. However, it is important to remember that your access to journals will be limited to those for which the library has a subscription. This is just as true for journals and reports accessed online as it is for the journals and reports held in print on the library shelves.

If your search is successful, you will find a catalogue entry which displays a link to the appropriate online source, or the location of a print journal or report in the library. There are usually separate entries for the online and print versions of a journal or report. Catalogue entries for print journals or reports display library locations and classmarks, which work in much the same way as book locations and classmarks. Just as for books, look for any indication that a journal or report might be shelved apart from the main sequence, in an area for large-sized journals for example, or in library special collections. Be sure, in addition, to check the precise holdings the library has of a particular journal or report. Whether online or in print, it is not always the case that the library has a report or journal from its first volume or issue onwards. Cancellations and limitations on archive subscriptions may also mean that the current year is not available.

Some, but by no means all, of the journals available online from your library may also be found in the journals sections of the Lexis Library (para.2.3) and Westlaw UK (para.2.4), assuming these services are available. However, journals and reports available from Lexis and Westlaw should also be listed in the library catalogue. Browse options within the journals section of each database service, will establish which journals can be accessed online and the year of publication of the first available issue (para.5.3). Tracing law reports online using Lexis, Westlaw and other online sources is covered in Ch.3.

REFERENCE SOURCES

- 1.10** A number of reference sources are available for legal research, both online and in print. The key legal encyclopedia is *Halsbury's Laws of England* (para.7.3), accessed online from the Lexis Library.

Dictionaries

- 1.11** Lawyers have a language of their own, which is a mixture of Latin, French and English. There are several small single volume dictionaries of law which may be useful for your research.