

LEGAL PROBLEM SOLVING

Reasoning, Research
and Writing

Fifth Edition

Maureen F. Fitzgerald



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Legal Problem Solving

Reasoning, Research & Writing

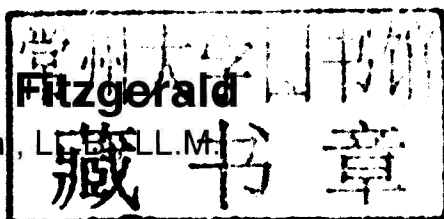
Fifth Edition

Maureen F. Fitzgerald

Ph.D., B.Comm., LL.B., LL.M.

with

Susan Barker



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Legal Problem Solving: Reasoning, Research & Writing, Fifth Edition

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To my life partner Paul Clay Quinn

MFF

To James, Kim and Evan

SB

Preface

Legal problem solving is the backbone to all that lawyers do. Every lawyer is engaged in some form of legal problem solving, every day. Without the skills to be able to solve legal problems, lawyers would be unable to access or understand the law. Every law school in Canada teaches legal problem solving through a first-year legal research and writing course.

This book was designed as a textbook for that course. Unlike other textbooks, this book:

- places legal research in the context of solving legal problems;
- teaches the fundamental steps to all legal research;
- provides enough detail to enable any researcher to solve a legal problem from beginning to end;
- introduces a step-by-step problem-solving process (FILAC) to make research more systematic and memorable; and
- includes learning objectives, examples and exercises to engage students in their learning.

Almost 20 years ago I created the concept of FILAC — a problem-solving technique to teach legal research and writing — after several years of teaching Legal Research and Writing at both the University of Victoria and the University of British Columbia. As a lawyer I understood the importance of making student learning relevant and immediately applicable. I decided that I would teach them the whole process of legal problem solving.

At that time in Canada the course was taught primarily by librarians and the content was essentially about how to find laws in books in a law library. The critical piece that was missing was context. I discovered over the years that to make learning most effective, students needed to understand **why** they were looking for the books and **what** they would do with the books once they located them. I slowly began to understand how to better teach the course and translated that knowledge into this book.

Who This Book Is For

This book can be used by anyone who wishes to solve a legal problem. This includes lawyers, law students, legal assistants and the general public. It is written in a way that should be easily understandable to those who are not familiar with the law.

The Format of This Book

This book teaches the entire process of legal problem solving. All legal problems begin with a set of facts or circumstances. The researcher's task is to analyze facts, determine legal issues, find relevant law, analyze the law, apply the law to the facts and communicate the results.

Each chapter begins with a set of learning objectives and ends with a self test. This enables the reader to quickly see what is covered in each chapter and understand the learning expectations.

Since the skills of factual analysis, issue identification, finding the law, legal analysis and legal writing are learned best through repeated practice, examples and problem-based exercises have been included. In addition to doing these exercises, researchers should practise the skills on their own time or in small groups where the skills can be simulated and feedback can be received.

Enjoy the learning!

Maureen F. Fitzgerald
Vancouver, May 2010

Acknowledgments

When I wrote this book almost 20 years ago I did not imagine that it would go into a fifth edition. I am deeply honoured to be able to help law students learn about this very important skill. Even though my law practice has evolved into one of conflict resolution exclusively, I still believe that legal research is one of the most important skills a lawyer can possess. It's not so much about finding books as it is about *thinking about what you need to solve a problem and how you will use that information once you find it*. It is about being effective and efficient, and not simply about finding relevant cases and statutes. Even today, I go back to the fundamentals contained in this book and have the confidence of knowing that I have all the information I need to solve my legal problem.

I have not wavered from my thinking that legal research is necessarily about legal problem solving and I am proud to say that the success of this book is in the fact that so many law faculty are using it to teach their Legal Research and Writing courses. I have received many complimentary e-mails from students, faculty, law librarians and legal researchers in law firms. Thank you.

I wish to thank those who supported me over the years: Susan Barker, whose brilliance made this edition possible; Melinda Renner, whose endless help is not forgotten; Kathleen McIsaac, who taught me the important things; the students at the University of Victoria and University of British Columbia; Monica Beauregard; John Fairlie; Nancy Hannum; Pat Pitsula; Pat Nelson; Anne Morrison; Joan Honeywell; Joan Fraser; Penny Hazelton; Michael Lee; Emily Quinn; Paige Quinn; Jennifer Leslie and Paul Quinn.

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Finally, thanks to those publishers who generously granted their permission to reproduce information contained in this book, as well as those organizations that generously provided funding for the first edition in 1996: the Legal Research Foundation (B.C.); the Faculty of Law at the University of Victoria; the Office of the President at the University of Victoria; and the Law Foundation of British Columbia.

I welcome comments and feedback on the book, and can be reached via e-mail at Maureen@CenterPointInc.com.

Maureen F. Fitzgerald
Vancouver, May 2010

I wish to thank, first of all, Maureen for her wise words, humour and support and for giving me the opportunity help out with this cool book. Equal thanks go to Nancy McCormack for her mentorship and encouragement. All my friends

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Susan Barker
Toronto, May 2010

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