

**LA TROBE LAW**



**Short Guide to**

**Finding the Law**

**2<sup>nd</sup> edition**

**La Trobe Law Short Guide No. 2**

## ***Contents***

- 1. Introduction**
- 2. Basic legal research questions**
- 3. How do I Find ...?**
- 4. Legal research tools**
- 5. Some tips**
- 6. Next steps**

# 1. Introduction

## What is this Short Guide about?

It is sometimes said that a good lawyer does not have to carry much law around in their head — but they will know how to *find* the law when they need it. This is perhaps even more so these days when there is an ever-increasing amount of law, much of which can change very quickly. This means that the ability to find the law is a core legal skill, and one in which law graduates will be expected to have a high level of proficiency.

Knowing how to do legal research means knowing your way around the law. A lawyer's more general understanding of the law is itself a great aid to legal research — and, at the same time, developing your legal research skills is also a very important way of getting to know more about the legal system more generally.

This *Short Guide to Finding the Law* has been written for beginning law students to help introduce you to the basic research task of finding the law. This *Short Guide* is not, however, a research manual — it does not offer detailed, step-by-step procedures on how to do various legal research tasks. Rather, it seeks to “prime” you for the “hands on” task of doing basic legal research by briefly explaining when and why you may be called upon to find the law, with a few pointers as to how to start finding it.

This means that this *Short Guide* is only a first step along the way to doing legal research and does not stand on its own. In order to start developing your legal research skills, you will need to refer to other publications and resources. Section 6 below will give you more information about where to go next.

## Who is this Short Guide for?

This *Short Guide* has been written specifically for La Trobe University's law students. La Trobe legal studies students should also find it helpful. It will assume the reader has access to the La Trobe University Library's Legal Research website. More detailed information about how to perform a number of legal research tasks is found via that website at < <http://www.lib.latrobe.edu.au/help/subject-res/law/> >

## What is basic legal research?

Please note that this *Short Guide* is concerned only with finding the law, i.e. finding cases and legislation. This is what we mean by “basic legal research”. This means that this *Guide* does not cover the more extended or complex research tasks that lawyers or academics might pursue. In particular, it is not a guide to the more academic legal research one might pursue for a research essay or thesis in law or legal studies. Guides for that kind of advanced legal research are found elsewhere. (See Section 6 below.) Nonetheless, basic legal research usually forms the foundation for more advanced legal research.

## **2. Basic legal research questions**

As all first-year law students learn, in Australia's legal system "the law" comes in two basic kinds: legislation and case law. This is "the law" that we want to find.

But why does one want to find the law? What, more specifically, are you looking for when you set out to find the law? Understanding one's purpose here is vital, and so it's best to think first about what the question is that you want to answer when you "look up the law". Here is a list of the main basic legal research questions that you may ask or be asked. (The questions will be explained shortly.)

### **Questions about case law**

- "Is there any case law on this particular subject or issue?"
- "Has this case been subsequently judicially considered?"
- "Has this case been reported?"
- "Where do I get a copy of a case?"

### **Questions about legislation**

- "Is there any legislation on this particular subject or issue?"
- "Where do I get a copy of this legislation?"
- "When did this Act commence?"
- "Have there been any amendments to this Act?"
- "Has this legislation been judicially considered?"
- "What is the legislative history of this Act?"

### **More general questions**

- "Where do I start if I don't know anything about a particular legal subject or issue?"
- "Has this word or phrase been legally defined (in case law or in legislation)?"

- “Has there been any official Government or Parliamentary announcement or report on this matter?”
- “Has there been any important commentary on this issue by the legal profession, law reform or lobby groups, or academics?”

## **The questions explained**

These questions form the basis of nearly all legal knowledge, but they are not especially difficult or arcane. And precisely because they are fairly basic, law graduates will reasonably be expected to know what these questions mean and, more importantly, how to go about answering them. Though some of these will be fairly clear already to some beginning law students, we will briefly explain these questions here. (But note we are not yet answering the questions.)

### **Questions about case law**

- “*Is there any case law on this particular subject or issue?*”

Often you will have a good enough idea of the issue that you are interested in (e.g. whether provocation is a defence against an assault charge), but have little idea how the law actually addresses it. Other times, you may not have much of an idea about particular issues, but just want to know the law on a general topic (e.g. the law on provocation). In either situation, you want to get hold of any leading cases (and relevant legislation) on the topic or issue. Getting leading cases is important: you want, if they exist, cases from the higher courts (the High Court if possible) that provide precedents for all other courts lower in the hierarchy. Cases, if they exist, are often more useful to lawyers than legislation because they contain more extended discussion and application of the law, whether it be case law or legislation that is under consideration.

- “*Has this case been subsequently judicially considered?*”

It’s all very well to get hold of a case that answers your question, but what is its current status as a precedent case? In our common law system the precedent value of a case can change overnight if a later court decides to overturn it or in some way limit or alter its application. So it’s vital to know whether the case you have found has been further considered by later courts. Otherwise, you may be holding only a dead letter in your hand.

- “*Has this case been reported?*”

When a judgment is first handed down by a court, it will be as yet “unreported”. *Unreported judgments* are first made available online on AustLII and in the unreported judgments services from LexisNexis Butterworths and FirstPoint. For recent cases, it is often only the unreported judgment which is available.

A small number of unreported judgments are selected for reporting by the editors of the various *non-authorised law report series*. These law reports are produced within a

short time-frame. Non-authorised law reports include the *Australian Law Journal Reports*, *Australian Law Reports*, *Federal Law Reports*, *Australian Family Law Cases*, *Australian Criminal Law Reports*, etc. Reported cases will have “headnotes” outlining the facts, the decisions and the reasons for the decision.

A small number of cases are then selected to be reproduced in the *authorised series of law reports*. The authorised reports are those where the judges themselves have approved the copy of the published report. Non-authorised judgments have not been vetted in this way. This means that authorised reports contain the most authoritative versions of cases, and so the authorised version of a judgment should be cited before any others. This means that knowing whether a case has been reported in an authorised series is important. Authorised reports are usually by court or jurisdiction. For example, the authorised reports for the High Court of Australia are the *Commonwealth Law Reports*, those for the Federal Court of Australia are the *Federal Court Reports*, and those for the Supreme Court of Victoria are the *Victorian Reports*.

- “Where do I get a copy of a case?”

So where do you actually find copies of these cases? At the end of the day, what you want is a copy of the case in front of you, either in print or electronic copy, so that you can read it for the law that’s in it. Print copies will usually be in the library, electronic copies via the internet. (More details below.)

### **Questions about legislation**

- “Is there any legislation on this particular subject or issue?”

As with finding case law on an issue or topic, you will often want to know simply “what the law is”, and more and more often this will be found in legislation, whether statutes made by parliament or delegated legislation.

- “Where do I get a copy of this legislation?”

Again, it’s not enough to know the name of the relevant Act or the section number: you will want to have in your hand or before your eye the actual text of the Act. Again, print and electronic copies are available.

- “When did this Act commence?”

One of the tricky things about legislation is that it does not always commence operation on the day it becomes law. Just because the Governor gives the royal assent does not mean that the Act commences actual operation. Often the Act or some of its provisions will commence “on a day to be proclaimed” or on some default future date. It can make a big difference to your answer to a legal question if you start citing legislation that is not yet applicable, so getting the commencement date right is important.

- *“Have there been any amendments to this Act?”*

Statute law, like case law, does not stand still. Amendments are made frequently and can often radically alter the law. You need to be sure that the text of the Act that you have in front of you is up to date and incorporates any amendments made to it.

- *“Has this legislation been judicially considered?”*

It is not yet enough to get hold of the up-to-date text of some Act in force: you will also need to know what (if anything) the courts have said about it. In our system, Parliament can make law that overrides case law, but it is still up to the courts to authoritatively interpret the law, including legislation. This means that it is vital to know how the courts have interpreted the particular piece of legislation you are dealing with, as it can fundamentally alter the Act’s actual legal meaning.

- *“What is the legislative history of this Act?”*

Often you will want to know what Parliament’s intention was in passing some Act. For this, various sources external to the Act itself can be consulted. Among the key “extrinsic” materials are the Parliamentary debates concerning the Act’s passage through Parliament, including the explanatory memorandum, the Minister’s Second Reading Speech and the subsequent debates.

### **More general questions**

- *“Where do I start if I don’t know anything about a particular legal subject or issue?”*

Sometimes (especially in the beginning stages of learning about an area) you really don’t know where to start, and just going straight to some relevant cases or piece of legislation won’t throw much light on things, because you don’t have enough background or overview knowledge to put the more specific knowledge into context. What you want is a quick overview for beginners to the area.

- *“Has this word or phrase been legally defined (in case law or in legislation)?”*

Learning the law is like learning a foreign language. This is because many legal words and phrases have their own peculiar legal meaning, which may not be obvious to the ordinary English speaker. Often these meanings are a matter of law, decided by the courts. This means that you often need to check that you have correctly understood the correct legal meaning of some word or phrase.

- *“Has there been any official Government or Parliamentary announcement or report on this matter?”*

Even for fairly basic legal research, it can sometimes be important to have up-to-date information on what the Government has said or is doing, as this may have a fundamental effect on the content or operation of the law. Also Parliamentary committees (such as the Victorian Parliament's Law Reform Committee or the federal Senate's Legal and Constitutional Committee) are sometimes important sources of information or indicate the views of the legislators.

- “*Has there been any important commentary on this issue by the legal profession, law reform or lobby groups, or academics?*”

Sometimes in basic legal research, it can be helpful to know the broader debates about the law, especially in more contentious or important areas, and so it can be useful to research the views of some of these other groups outside the judiciary, the legislature and the executive government. The legal profession often has important practical insights into the operation of the law, while bodies such as the Australian Law Reform Commission or lobbyists like the Victorian Council for Civil Liberties are often at the cutting edge of law reform issues. Academic publications are another source of independent analysis and commentary. (Note that commentary on an important case may be published soon after the case is first decided, but before the case has appeared in a reported series. You must check if the case was subsequently reported.)

\*

It's all very well, of course, to know what these questions mean. How do you answer them? As we said, this Short Guide will give you only a brief indication (in Section 3) of how to go about answering these basic legal research questions. Your skills in this task will really begin to develop through your practise in using the various legal research tools and in using legal research manuals.

## **When would a lawyer need to ask such questions?**

Much of this sort of basic legal research you will do at some stage in your law studies. Especially if you are doing research assignments, you are likely to find yourself having to answer at least some of the sorts of questions posed above. This is likely to be the case both when you are doing “black letter law” research, and when you are ranging more widely. So this *Short Guide* should be of some use to you in your academic work.

However, it is also important to have a sense of when a practising lawyer would need to ask (and be able to answer) such questions, and to appreciate that this sort of legal research is not just some arid academic exercise that we force you to do at university and which has little connection to real life as a lawyer. To illustrate the practical, professional context for such questions, here are a few scenarios in which a practising lawyer might be faced with some of these questions.

- You are a second-year solicitor working for a law firm. One of the senior partners pops into your office after lunch and says, “You know the guarantor's case we're working on? Someone told me over lunch that there might have

been a new case on the problem about a guarantor not having legal capacity — from the High Court, I think — or maybe it was the Court of Appeal. Anyway, somewhere important, they said, just in the last year or two, I think. Could you find it for me and tell me what it says, say by six tonight? And make sure you bill the time to the client, but not more than half an hour.” Is there any such case law on this topic?

- Or you are a barrister, in your chambers at 5.30 am, preparing for an appeal to be heard in the Court of Appeal at 10.30 am. You’ve stumbled across a very helpful precedent case from a single judge of the Supreme Court’s Trial Division from 1995. You think it will win your case for you, but you notice that the judge expressed some misgivings about her decision. Has the case been subsequently overturned or read down? You also note that you’ve only seen an unreported version of the case, and you know the Court of Appeal expects to be given citations of reported cases if available. Has the case been reported, especially in the *Victorian Reports*?
- Or you are a sole-practitioner with a comfortable solicitor’s practice in a leafy suburb. You do a lot of property conveyancing, and for many years you’ve done it according to long-established rules. Over your morning coffee today you are idly browsing a copy of the *Law Institute Journal* from last year and notice an article about changes to the regulations governing the conveyancing of residential properties. You read that transactions conducted according to the old rules will be invalid after the commencement of the new regulations. Your blood runs cold. Have the new regulations commenced yet?
- Or you are a solicitor doing some volunteer work on Tuesday evenings at a community legal centre. You have a client in front of you who is in tears and in fear of her ex-husband’s violence. She says she has an “apprehensive violence order” against him from New South Wales, and wants to make sure that she is protected in Victoria as well. You have never practised in this area. The other volunteer solicitor has called in sick and you are on your own. You are pretty sure there’s Victorian legislation on domestic violence, but don’t know its title. Which Act do you need and which sections are relevant to the client’s needs?

These are just some of the situations that arise in legal practice which require skills in basic legal research. Of course, not every lawyer will be faced with such questions every day. Different lawyers can end up in very different areas of work, some of which will involve more legal research than others. But knowing where to find the law remains an essential part of a lawyer’s set of professional skills. (Of course, in some of the scenarios, a good lawyer would have done the necessary research much earlier, and possibly have been able to enjoy their morning coffee.)

### 3. How do I Find ...?

So, how do you go about answering those basic legal research questions? Here we will give you a brief and non-exhaustive checklist of the main tools and/or practical steps that you would most likely use to answer the basic legal research questions we've been discussing. Note that the various tools and steps here are not a sequential series of steps; many of them overlap or are independent ways of locating the relevant information.

Please also note that here in this *Short Guide* we just identify *which* research tools or steps you could take. Details about *how* you use those tools or take those steps are for other guides and experience to teach you. Nonetheless, we shall explain a little bit more about some of the tools mentioned here in Section 4 below.

Finally, please note that we focus here on researching *Australian* law.

#### Case law

- “How do I find whether there is any case law on this particular subject or issue?”
  - consult legal textbooks, legal encyclopaedias, loose-leaf services, the Australian Digest or FirstPoint
  - check on CaseBase
  - check Australian Current Law – Reporter
  
- “How do I find whether a particular case been subsequently judicially considered?”
  - check on CaseBase
  - check the Australian Case Citator or FirstPoint
  - check Australian Current Law – Reporter (print and online)
  
- “How do I find whether a particular case has been reported?”
  - check on CaseBase
  - check the Australian Case Citator or FirstPoint
  
- “How do I get a copy of a particular case?”
  - if the case has been reported, get it from:
    - the print version of the relevant law report series, or
    - the online version of the relevant law report series (if available)
      - online reports can be accessed through:
        - the Library’s online subscription to the relevant report series, or
        - (for some series) databases such as CaseBase and FirstPoint

- if the case is unreported, get it from:
  - AustLII
  - databases such as CaseBase and FirstPoint
  - the website of the relevant court (often simply linked back to AustLII)
    - Victoria's Supreme Court Library catalogue has now made available in PDF format many of the Court's unreported judgments from the pre-electronic era

## **Legislation**

- “How do I find whether there is any legislation on this particular subject or issue?”
  - consult legal textbooks, legal encyclopaedias, loose-leaf services
  - check the Subject Index on LAWLEX (covers all jurisdictions)
  - check Index to Subject Matter of Victorian Legislation (print)
  - check Wicks Subject Index to Commonwealth Legislation (print)
- “How do I get a copy of this legislation?”
  - go to the relevant legislature's or government's website (for latest online version), e.g. “Victoria Law Today” for Victorian legislation or “ComLaw” for Commonwealth Legislation
  - go to AustLII
  - go to a loose-leaf service that covers the topic as it will often include the relevant legislation
  - go to the library for printed copy, either of the original Act as passed (in Statute Book by year) or as separate reprint incorporating amendments
  - buy a copy of new Acts and reprints from Information Victoria (government bookshop, now includes Commonwealth legislation)
- “How do I find when this Act commenced?”
  - check the latest reprint's endnotes
  - for Victorian Acts, check Acts Commencement Book (via website of the Office of the Chief Parliamentary Counsel)
  - for Commonwealth Acts, check Legislation Tables / Table of Commonwealth Acts (via ComLaw website)
  - check Victorian Statutes Annotations (LexisNexis Butterworths) and Federal Statutes Annotations (LexisNexis Butterworths) (both available in print and online)

- “How do I find whether there have there been any amendments to this Act?”
  - check Victorian Statutes Annotations (LexisNexis Butterworths) and Federal Statutes Annotations (LexisNexis Butterworths) (both available in print and online)
  - check the legislature’s website for Acts passed since date of original Act or since date of the copy of the Act you have
  
- “How do I find whether this legislation has been judicially considered?”
  - check CaseBase
  - check FirstPoint
  - check a loose-leaf service
  - check Victorian Statutes Annotations (LexisNexis Butterworths) and Federal Statutes Annotations (LexisNexis Butterworths)
  - check Australian Current Law – Reporter (print and online)
  - check Australian Digest (print)
  
- “How do I find the legislative history of this Act?”
  - check endnotes for dates of the Second Reading Speeches
  - check Victorian Statutes Annotations (LexisNexis Butterworths) and Federal Statutes Annotations (LexisNexis Butterworths)
  - check legislature’s own website
  - check Hansard (once you know some of the key dates)

## **More general questions**

- “How do I get started if I don’t know anything about a particular legal subject or issue?”
  - consult legal textbooks, legal encyclopaedias, loose-leaf services, academic journals (using an index)
  - consult the Fitzroy Legal Service’s *Law Handbook* and/or the Springvale Legal Service’s *Lawyers Practice Manual*
  - ask someone who knows
  
- “How do I find whether this word or phrase been legally defined (in case law or in legislation)?”
  - consult legal dictionaries, legal textbooks, legal encyclopaedias
  - check Australian Legal Words and Phrases
  - check the Words and Phrases index to the Australian Digest

- “How do I find whether there has been any official Government or Parliamentary announcement or report on this matter?”
  - check websites of relevant government departments(s)
  - check library catalogue
  - check the Law Reform Database (a website via La Trobe Legal Research website)
  - check Victorian Government Gazette (print or online)
  - Commonwealth Government Notices Gazettes (online)
  - check Parliamentary committee websites (via relevant Parliament websites)
  
- “Has there been any important commentary on this issue by the legal profession, law reform or lobby groups, or academics?”
  - consult legal textbooks, legal encyclopaedias, loose-leaf services, academic journals
  - check websites of relevant professional, reform or lobby organisation
  - check library catalogue

## 4. Legal research tools

It will be helpful to briefly explain some of the legal research tools identified above. Remember, though, that we are not giving a detailed user’s guide here, just introducing some of the main tools.

One of the important things to note here is that the tools available for legal research frequently change. The electronic age has seen a revolution in legal research, and the pace of change is very rapid. This is one reason why it’s important to have an understanding of the basic questions and rationale for legal research, and not just be familiar with a particular tool — for the tools may change but the questions largely stay the same. If you have a good understanding of the questions, then you should be able to adapt to new tools.

These days most research tools are available online. Most services require a subscription (which La Trobe University library has paid for). You’ll need your student number to access these databases off-campus.

But it is still useful — and sometimes essential — to know some of the printed tools as well.

**AustLII** <<http://www.austlii.edu.au>>

AustLII (the Australasian Legal Information Institute) provides online access to unreported cases and legislation from all Australian jurisdictions. Many judgments on AustLII have also been reported, and so you will often need to check a case citator to

see if a particular judgment has been subsequently reported. AustLII's legislation resources are not, however, as reliable as the various legislatures' own official websites for legislation. AustLII also has a number of other useful databases, e.g. the Indigenous Law Library and the Military Law and Peacekeeping Library, and online versions of a number of law journals

## **Case Citators**

Case citators provide a list of cases with details of where they have been reported, with a further listing of cases which have considered the main case.

- The Australian Case Citator (and the online version called FirstPoint) provides a list of reported cases from 1825.
- CaseBase (an online tool) covers reported and unreported cases.

## **Australian Digest**

The Australian Digest provides a summary of all reported decisions of superior courts since 1825. Decisions are arranged by subject so it can be used to find cases on a specific subject. There are also indexes for defined words and statutes judicially considered.

## **FirstPoint**

FirstPoint, from Thomson Lawbook Co, is a useful online database which integrates information from The Australian Digest, the Australian Case Citator and the Australian Legal Monthly Digest.

## **LAWLEX**

An online database used for research involving Australian legislation. For each Act, it gives links to the Act and other information.

## **Legal Encyclopaedias**

Use a legal encyclopaedia to read up on the area of law that you are interested in. Always remember to check when the chapter you are reading was last updated. Use either:

- Halsbury's Laws of Australia (available in print and online) or
- The Laws of Australia (available in print and online).

## **Australian Words and Phrases**

A legal dictionary that lists words that have been defined in legislation and in case law.

## **5. Some tips**

Here we offer just a few basic things to remember when you are setting out to find the law. Not every legal research task is very complex, but it will sometimes be helpful for you to bear the following tips in mind.

### **Clarify what your question is**

Your research efforts can go astray if you are not clear on what it is you are actually looking for. Take the time to write down exactly what question or questions you are wanting to find the answer to. Of course, other questions may arise in the course of your researches. Get clear on them, too.

### **Make a plan of your research steps**

It helps to be systematic when setting out to find the law. Take the time to make a brief plan of your research. This will help you make sure that you cover the research terrain thoroughly and systematically. Especially when you end up concluding negatively that there is no case on some specific issue, you want to be sure that you have looked in all the right places. But be flexible and be prepared to alter and adapt your plan as you go.

### **Keep a record of your research**

A plan is only half useful if you don't keep track of which bits of it you've followed and what you found when you followed them. It can be very frustrating to have a vague memory of seeing a case on some issue, but not have a note of where to find it or what it actually said. Keep your record reasonably orderly so that you can follow it later.

### **Present the results of your research clearly and logically**

If you have followed the above advice, then presenting the results of your research in an orderly, logical way will be much easier. Especially where you need to explain and justify your results, you will be much more convincing if you have posed clear research questions, set and followed a clear research plan, and kept a clear record of your researches. Of course, the particular format for presenting your research results will vary greatly depending on the precise context of the task. Sometimes, both in law school and in legal practice, it need not be very elaborate.

## 6. Next steps

### **The La Trobe Library's Legal Research website**

La Trobe University law students have the benefit of an excellent legal research website, maintained by the law librarian, Dennis Warren. The address is:

< <http://www.lib.latrobe.edu.au/help/subject-res/law/> >

Bookmark this site. It provides links to a wealth of legal research materials. It also contains further web-based guides on Finding Cases and Finding Legislation.

### **Books and chapters on legal research**

There are many books and online resources providing more detailed guides to conducting legal research. We recommend the following.

- B Wolski, *Legal Skills: A Practical Guide for Students* (2006) ch 4
- M Brogan and D Spencer, *Surviving Law School* (2004) ch 10
- C Cook et al, *Laying Down the Law* (6<sup>th</sup> ed, 2005) chs 12–15
- R Watt, *Concise Legal Research* (5<sup>th</sup> ed, 2004)
- E Campbell et al, *Legal Research: Materials and Methods* (4<sup>th</sup> ed, 1996)
- B Bott, J Cowley and L Falconer, *Nemes and Coss' Effective Legal Research* (3<sup>rd</sup> ed, 2007)
- T Hutchinson *Researching and Writing in Law* (2<sup>nd</sup> ed, 2006)

### **Online resources on legal research**

A very useful website is Weblaw, a gateway providing links to a wide range of online legal research tools on specified legal subject areas. Its address is:

< <http://weblaw.edu.au/> >

The La Trobe Library's Legal Research website maintains a link to Weblaw.

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Disclaimer: While the information in this booklet is as accurate as we could make it at the time of production (February 2007), users should confirm its accuracy for themselves, and should not rely on it as their sole source of information and advice.

The first (2006) and second editions of the *La Trobe Law Short Guide to Finding the Law* were written by Dr Steven Tudor and Mr Dennis Warren. Various staff members of La Trobe University's School of Law, including Dr Savitri Taylor and Ms Alikki Vernon, assisted in the preparation of the first edition.

In preparing this work we have drawn on a format used in the "Legal Research Reference Guide" (1997) prepared by Peter Cotter (Co-ordinator, Information Services at Leo Cussen Institute)

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