2018 – THE ‘CANCELLATION’ PROBLEM

KATE THOMPSON

SIR ROBERT STOUT LAW LIBRARY

FEBRUARY 2018
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1. **DESCRIBE YOUR TOPIC (AND CHECK JURISDICTION)**

“The cancellation provisions in the Contract and Commercial Law Act 2017 (Part 2, Subpart 3) which were originally enacted in the Contractual Remedies Act 1979 were intended to clarify when a party may cancel a contract in New Zealand and the relief the courts may grant when a contract is cancelled. In your opinion, are there any aspects of the Act that have been misapplied by the courts or where additional requirements on cancellation have been imposed? Are these justifiable?”

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<table>
<thead>
<tr>
<th>CONCEPT 1</th>
<th>AND</th>
<th>CONCEPT 2</th>
<th>AND</th>
<th>CONCEPT 3</th>
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<th>CONCEPT 4</th>
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<tbody>
<tr>
<td>grant! AND relief</td>
<td></td>
<td>“Contractual Remedies Act 1979”</td>
<td></td>
<td>cancel</td>
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<td>New Zealand</td>
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<td>Law</td>
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<td>“grant relief”</td>
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<td>“Contract and Commercial Law Act 2017”</td>
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<tr>
<td>Cancel!</td>
<td></td>
<td>Use a database with a NZ focus</td>
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<td></td>
<td>Use a database with a legal focus</td>
</tr>
</tbody>
</table>

Each column represents synonyms, or broader or narrow terms within the same subject. The 4th column is only relevant if you are searching for NZ content in an international law database such as Lexis.com or Westlaw. The 5th column is only relevant if you are using a search engine or database that contains content beyond law, for example, Library Search | Ketu.

The concepts represent all the elements needed for your searching to achieve the most relevant results. You might only think up three concepts and their synonyms – or you might need ten concepts, (although that would be a bit extreme!). When you are constructing a search, however, you may only need to search on one or two concepts to get what you want, especially if you are dealing with known statutes or cases.

The search process can be quite circular and labyrinthine, so to save time and duplication you might also want to keep track of your processes using something like this:

<table>
<thead>
<tr>
<th>STARTING POINT….</th>
<th>LEADING TO…</th>
<th>LEADING TO…</th>
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<tbody>
<tr>
<td>Statutes</td>
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<td></td>
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<tr>
<td>Cases (full citation)</td>
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<td></td>
</tr>
<tr>
<td>Keywords</td>
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</tbody>
</table>

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1 LAWS202 exam question 2013
2. FIND THE STATUTE (THE KEY PRIMARY SOURCE)

For an up to date, official statute, try the government website Legislation NZ.

However, for legal research, you need to find and use more than just the statute in question. Commercial databases such as CCH, Lexis Advance and WestlawNZ provide extra analysis by connecting you to other useful materials such as cases citing the statute, or supporting secondary sources, which can guide you to key cases, journal articles, and more.

From Law Subject Guide, choose a NZ-based legal database to begin your search.

2.1 WESTLAWNZ

This suite of databases includes statutes, regulations and several law reports. It has sophisticated case analysis functionality: Briefcase and Citecase.

BASIC SEARCH – BROWSE

Browsing is a good way to find “I'll know it when I see it” content.

For this problem, we will browse the Legislation and Commentary link for the Contract and Commercial Law Act 2017, and see if a section about the powers of the court to grant relief for cancellation (or perhaps a related phrase) appears.

Browse by content type, product title, practice area, jurisdiction or classification.

Explore these – you might find them quick and handy.

Scroll down until you see a section or sections of the Act.

It's good practice to jot down what you have found into your research pathway, so you can come back to it later, or definitively cross it out if it appears irrelevant.

That covers concepts 4 & 5 in your search strategy!
EXPLORE RESULTS (GATHER CLUES)

Select a section about granting relief. WestlawNZ immediately connects you to analysis of the statute via cases, commentary, and articles.

NOTE: In this example, the statute is newly in force. There is not much case law – or commentary! However, this Act is an amalgamation of the four Contract Law acts from the 1970s, and many sections on the new Act use exactly the same words and phrases as the old. WestlawNZ provides a cross-reference to the parallel section of the repealed act. Why is this important? Because cases referring to this legislation are associated with the old version of the Act.

Note: Check for updates. When the old 1979 contractual remedies Act was on its way to obscurity, an Updater Tab was added to the viewing options in WestlawNZ, to provide a time-line for the proposed changes. The Updater Tab only appears at the top title-level of the Act.

If you ever see an Updater Tab during your search for specific legislation, take a close look: it could be important, especially if the Act involved impacts on other statutes.
Browsing is not always the most efficient. Advanced search offers a targeted search option. From the WestlawNZ homepage, select Search template – Legislation and Commentary. Find the Act, and use free-text keyword phrases to target the right section.

Use Terms & Connectors link to learn the ‘rules’.

Use free-text keywords and phrases to help narrow your search, if you do not know the section.

Legislation field uses autofill.

Note all the options you can choose regarding the status of the Act.

There are several search results, all within the one Act. Use the Document Path and Hit Terms in Context to help choose. Click on Legislation for details.

In this result, the words of s43 match our problem question; however, no section of an Act operates in isolation. Read around the section. In this example, s36 also looks good: it explains when a party may cancel.

“Provision” equals section, or clause, or rule.

Click on Legislation for details.

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These are clumped together because all commentary provides statutory interpretation, using leading cases and expert opinion.
EXPLORE RESULTS (GATHER CLUES)

Click on the hot link to the old Act. (WestlawNZ provides a hotlink; Lexis Advance does not)

Explore the Cited Documents tab and the Related Documents tab.

This statute has been in force for only a short time.
Therefore, very little supporting or cross-referenced data has built up.

Use the Compare: 1979 No. 11 s7(2) link.
This is short-hand for the Contractual Remedies Act 1979 s7(2).
This is where cases and commentary will be hiding.

Repealed! – but the cases are still good law.

Statutes do not cite cases, so Cited Documents refers to cases cited in the Commentary, about s7 of the old Act.
In this situation, even though the statute is repealed, the words between old and new are the same, so the case law associated with the old statute is still good law.

The Related Documents Tab will point you to all cases citing s7, plus other links to secondary sources. The cases listed can be quite long, and there is no way to filter or narrow the results.

The Commentary Tab will help you identify the substantive cases that have interpreted s7, with some analysis from the expert authors. Note, sometimes there is no Commentary – because the section is too new, not ambiguous, or no-one has written anything on it!
2.2 LEXIS ADVANCE (NZ)

Login. You must login with your student credentials when prompted. This means you can tailor many features of Lexis Advance to your own preferences, including creating ‘favourites’ list of resources, and choosing how results will display.

This suite of databases includes statutes and regulations, thousands of unreported decisions, and several law reports, including the New Zealand Law Reports (the official reports for NZ), plus expert opinion (Analytical Materials) in the form of Commentary, journal articles, and legal encyclopaedias.

This is a very new platform, so is still a little ‘buggy’. Results will often include ‘false positives’, and need extra filtering. Repeat your searches across other databases to improve accuracy.

**BASIC SEARCH – BROWSE**

There are several different ways to find a statute in Lexis Advance. The Browse option is good if you don’t know the exact title of the statute, but will recognise it when you see it. The Browse method of finding NZ Legislation is still in development. Therefore, if you do NOT find what you’re looking for, try a different method – or a different database provider!

For this problem, we will browse the NZ Legislation link for the Contract and Commercial Law Act 2017, and see if a section about the powers of the court to grant relief for cancellation (or perhaps a related phrase) appears.

Below is the Browse pathway to NZ Legislation.

Click on Browse legislation.
Start typing the name of the Act and select it. However, if you want the search result to be only the Act, and not other sources referring to it, apply a search filter before you start the search.
The first result is usually the correct one. Click on the title link, then go to the Table of Contents Tab to drill down to the section you want.

Or, narrow your search using Search Within Results, e.g. by using key words or phrases from the statute.

The phrase might appear a few times, in different context, so choose carefully.
ADVANCED SEARCH – TEMPLATES

Using a template means you do not have to work so hard building up the elements of your search – but you do need to put the ‘right’ words in the right places.

Follow the instructions.

Start typing in the name of the Act.

The second box is for the section number – you just type in the number.

For Tax, type in the Letter -Number combination.

Australian content is here too, so if you are searching on a statute with the same title in both jurisdictions, you need to specify New Zealand.
EXPLORE RESULTS (GATHER CLUES)

Once you have selected a specific section, explore the View Legislation Citator link. This is another way to find cases citing the statute. Sometimes there limited data, e.g. if the statute is very current, or uncontentious.

**Legislation Citator** links you to cases and secondary sources citing this section. In this example as of January 2018, there is only one case listed. (see below) Why?

Because this statute has only been in force for a few months.

If a new statute has close ties with an historic (repealed) statute, in relation to legal words and phrases, a “compare” citation is provided.

There is no hot link. To link easily from new to old, try WestlawNZ instead.

The Legalisation Citator is produced by LexCite, and in theory, will link you to secondary sources and cases that have cited the section of the statute you are interested in. In this example, the Act is very new (it is four old contract statutes from the 1970’s blended into one new one).

To find information around a statute, for example cases that have cited it, or expert opinion about it, the best way to search is to use the Big Red Box, type in the statute, then once the results appear, use the filters to narrow down to cases or expert opinion. See below for more details, under the Cases chapter of the workbook.
This suite of databases focuses on commercial and tax law for Australia and New Zealand. It contains cases, statutes and commentary.

**SEARCH – BROWSE**

Drill down through the contents on the left, by clicking on the + signs, until you find the statute. If you also know the relevant section of the Act, just continue to drill down through the contents, and select it from the list. This technique requires some knowledge of the purpose of the Act.

When you select (tick) the statute, the search box will become contextualised to search only within the Act. Add keywords too, if that helps.

Click on the section title for more details

Note the Compare link at the bottom of the section. Why? Because the words – and therefore rules – between new and old statutes are unchanged, so other supporting content such as cases and commentary will reside behind this link.
SEARCH – FREETEXT

Search across all content, then filter (narrow) your results after the search. Remember to place “” around the statute title, and any phrases. Use the Help feature to create more complex searches.

EXPLORE RESULTS (GATHER CLUES)

If the section you want appears easily, click on it, otherwise scroll through the TABLE OF SECTIONS to find the section you want. This example is a search of the old Act, so you can see examples of cases.

Results here are reduced from 249 to 13, through application of the Document Type filter: Legislation.

Related Documents lists cases, statutes and commentary.

Note, the cases listed are only those published in a CCH law report.

Cases are referred to only by their CCH reference, so always check Lexis AdvanceNZ to see if the case is also reported in the NZLRs.

Why? Because the NZLRs are a more authoritative law report series.
3. FIND (UNKNOWN) CASES

Sometimes there is a huge amount of case law directly associated with the particular sections of an Act. The challenge is to recognise the substantive cases. Sometimes, however, there will be very little case law associated with a statute. Why?

Find cases from scratch using keywords from your search strategy, or leapfrogging off the statute. Evaluate carefully.

The freely accessible database NZLII (New Zealand Legal Information Institute) is a great place to find cases.

However, for legal research, you need to find and use more than just the judgment in question. Commercial databases such as CCH, Lexis Advance and WestlawNZ provide extra tools to show the relationships between cases and statutes, and expert opinion to both. The database companies are also publishers, providing direct access to reported cases.

3.1 WESTLAWNZ

BASIC SEARCH – FREETEXT

Although the basic search seems quick and easy, you often need to apply many filters and extra keywords to get the focus you need. The example below is done using keywords and phrases.

ADVANCED SEARCH

Start the search via the Cases Search template. This will immediately eliminate search results for statutes and commentary. Use “ “ around phrases. Use OR to find either/or phrases. Use the Terms & Connectors search tips provided to construct more complicated searches. The example below uses the Legislation Cited fields to find cases citing the exact (repealed) statute, and a limit to results solely from Briefcase, as a way to control the numbers.
Try the Classification search to filter the results. Careful though: a person is creating these topic pathways, so human error is possible.

In this search result, the 574 results are further reduced to 10, by filtering (narrowing) using Supreme Court.

The results appear using the ‘last in first out’ method.

More evaluation is needed. Ten results might be too few.

This is a good time to look more closely at the results.
EXPLORE RESULTS (GATHER CLUES)

One way to evaluate results is whether the judgment has been reported (aka published), as it is a signal from the profession that the case is worthy. If a case has been reported in the NZLR (New Zealand Law Reports), the official report series for New Zealand, it is good and proper practice to find and use that version.

However, unreported cases might be useful for research. Sometimes it takes time for the judgment to become important to a body of law. The symbols or letter beside the party names provide a rough clue about how the case has been used.

Scan the BriefCase description, look at the legislation followed and the cases cited to help you decide its usefulness. Then read the full case!

There are also several good clues in this Court of Appeal example below.

Tracking older and newer lines of cases via BriefCase and CiteCase might help you build a good picture of the development of a certain law.

There is some overlap in the data provided across the 4 tabs, and yet also a lot of unique data, as each tab takes a different perspective.

Be sure to explore them all.

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This sort of searching feels quick, but usually means you have to narrow the results to get a more accurate and relevant set of results. Make good use of the filters down the left, such as Court of Appeal, adding more keywords, or targeting specific topics.

The case listed second in this result might tell you more about the name of the statute, and the section number, so that you can do a different search. Click on the highlighted words to drop into that part of the judgment and see for yourself.

Note these ideas in your search strategy or research pathway.

Be prepared to search other combinations of your keywords.

The results are by “relevance”, which usually equates to the number of times your search terms appear in a single record. You could re-sort this by Date.

430 results is a lot, so filter by court, dip into some results, and add more terms to narrow your search further.

Scroll down to filter by topic.

Click on the keywords in context to get to the relevant fulltext.
BIG RED BOX SEARCH – FIND CASES VIA THE STATUTE

If you know what the governing statute is, you can use that as a starting point to find cases citing that statute. Note the formulation of the search. This will find s9 within five words of the full name of the Act.

In the current settings for Lexis Advance, cases are the default source in the results list. You can change this setting in the ... wait for it... More > Settings drop down, top right.

Why search the old Act?

Remember when we found the section about the power of the court to grant relief in the Contract and Commercial Act 2017, it had a note: Compare 1979 No 11 s 9(1), (2)?

And, when we found it in WestlawNZ, there was a hot link back to the repealed statute, and its title. These are clues that the old Act might be useful to look at, to see the case law at that time.

The results are by “relevance”, which usually equates to the number of times your search terms appear in a single record. You could re-sort this by Date.

270 results is a lot, so filter by court, dip into some results, and add more terms to narrow your search further.
For targeted searching, use the Advanced Search Templates.

Click on Advanced Search to see the template options – they’re all different, reflecting the different sources they support.

This template includes many options, however, with this type of search, sometimes it is easier to start wide, and narrow later, using the built-in filters. If you fill in every field, you’re likely to get zero results!

The Advanced Search Templates also provide more search clues, such as the format of the connectors, how to recognise the different parts of a document, and FAQs.

This template includes the ability to focus on a specific court.

Tick the Jurisdiction to get this:

Then make your selections.
Let’s take a closer look at the third result in the Relevance list. View Casebase. Note the signalling system similar to WestlawNZ.

This search result was narrowed to New Zealand Law Reports, assuming that the cases reported here include substantive content about the courts power to grant relief.

From this page, you can usually see information about the court and the judgment date.

The coloured symbols by the party names are indicators of treatment by the court. Hover over the icons for more information.

Note the various links such as CaseBase, and four different citations. The citations are usually in order of importance. If there is no hot link, it is either because we do not subscribe, or the reference belongs to a competing database.

View CaseBase entry.

Scroll down for details.

Look at the cases referring to or considered by this case.

One ‘good’ case leads to another.
The best way to search for cases in CCH is to perform a Browse / Search combination search.

In this example, the whole of Business Law has been ticked. The search box is now contextualised, so the phrase and truncated keywords will only appear in the Business Law section.

This means the results will include Australian content – to be filtered out later if necessary.

EXPLORE RESULTS (GATHER CLUES)

The CCH case results are only those reported in their own law reports, e.g. NZBLC (New Zealand Business Law Cases).

Many cases in NZBLC are reported only in this series, but cases decided in superior courts such as the Court of Appeal will often be of interest to other publishers, particularly Lexis Advance, and the NZLRs. Check other databases.
4. FIND A KNOWN CASE

If you have the correct citation or reference to a case, it is fairly easy to find on most platforms.

A full case citation is comprised of several parts: the names of the parties, plus a systematic and unique series of numbers and letters. Think of it as an address.


You usually only need the latter part of the citation, to find the case within. But if that fails, try the party names.

4.1 WESTLAWNZ

Find a known case by citation by using the quick citation search on the homepage.

For example, [2001] 3 NZLR 355 is the citation element needed to find *Thompson v Vincent* in the New Zealand Law Reports – the official report series for NZ.

The citation is unique to that case, so should result in one answer. WestlawNZ does this function well. Note, the two references are not active links, because only the rival companies have reported this case.

If the citation search does not work (perhaps it is incorrect), then try the search by party names, and any other information you have, using the Advanced Cases search template. Less is more! The template ensures you search for the case itself, not cases citing the case, which can get tedious if the one you want is old and important! You might get more than one result, as searching by party name is not a unique search option.

The Party name field uses autofill to help you select the case.

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5 See NZLSG Rule 3 for details about citing cases, and the different forms of citation. For more information, read Penk and Russell, *New Zealand Legal Method Handbook* 2014, Ch 18.

6 Not sure what ‘NZLR’ or ‘NZBLC’ means? Look them up in the Cardiff Index of Legal Abbreviations.
Find a known case by citation by typing it into the Big Red Box. Look for the most authoritative version of the case.

For example, [2001] 3 NZLR 355 is the citation for Thompson v Vincent in the New Zealand Law Reports – the official report series for NZ, and published by Lexis.

The citation is unique to that case. The first result is usually the ‘best’. There are two Thompson v Vincent results because the citation to this case appears in two collections: the New Zealand Law Reports, and BCL (a digest). The rest of the results are cases citing Thompson v Vincent.

If the citation search does not work (perhaps it is incorrect), then try the search by party names.

There are fewer results due to the way the data is being scraped. It is good practice to use the connector AND not v Why?

Get the full text, court-ready version by clicking on the ‘best’ link below the Party Names. In the example below, it is the NZLR reference, because the New Zealand Law Reports are the official reports for New Zealand, and should be used if present.
CCH provides full text access only to those cases they have published (reported) in their own law reports. Therefore, to find the case *Thompson v Vincent* [2001] 3 NZLR 355, (2001) 7 NZBLC 103,389 you will need to search using the CCH citation (2001) 7 NZBLC 103,389. Searching for the case using the NZLR citation, or the party names will bring up other cases and commentary that have cited this case.

For interests sake, here’s what a search result using the NZLR citation looks like.

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14 results!

These results include expert opinion on this case, and cases citing this case. Try searching with the NZLR citation to see more results.

A search by party name also does not always work well – although it has in this case. See also the commentary, which provides good expert opinion about *Thompson v Vincent’s* role in the laws around cancellation.

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7 This is where knowledge about law report abbreviations and their publishers becomes very helpful. Start with the *Cardiff Index to Legal Abbreviations*. 
5. FIND A CASE FROM ANOTHER COUNTRY

5.1 WESTLAW

This USA-focused database is vast and complicated: it is really a ‘meta’ database of 100s of databases! USA content is easily found using the search box, but for everything else, you need to drill down into the jurisdiction or content-type first, then search.

All non-US content is most easily accessed via the link “International Materials”.

Use this search box for US cases, statutes and secondary sources.

For non-US content, start at the International Materials link.

Drill down to the specific jurisdiction and source type.

Note the search box becomes more and more contextualised.

At the most granular level – you’re now in the BC database of cases – you get an Advanced Search template, plus instructions to connect your search terms.

Note the breadcrumbs to retrace your steps.

For more help, go to the Law Guide > Research strategies Tab > Database guides.
5.2.1 LEXIS ADVANCE – US RESEARCH

When you access Lexis Advance, you will first be redirected to a login page. This means that much of your experience in this database can be customised to your own preferences.

The US Research database is accessed via Lexis Advance, and via the dropdown on the left of the Big Red Box.

It is a bit confusing, so think of Advance as a mega platform, with various ‘buckets’ of data, and within the buckets are a variety sources.

It is also quite a new version of Lexis, so sometimes misbehaves when searching beyond pure US content. Below are also search tips for the old platform.

FINDING CASES

This USA-focused database is vast and complicated: it is really a ‘meta’ database of 100s of databases! USA content is found using the search box, but for everything else, you need to drill down into the jurisdiction or content-type first, then search.

To find US content, type your search terms into the Big Red Box. Note the US flag to the left of the box, to remind you what ‘bucket’ you are in.

For more help, see in-text help, or view Tutorials.
To find non-US content in Lexis Advance – US Research, click on the International Tab, select the Country, then select the collection of databases you wish to interrogate. Notice how the Big Red Box shows you exactly which bit of the ‘bucket’ you are in.

Note, even though NZ appears, it is still only the content accessible via the US Research ‘bucket’. If you want to search for NZ content properly, change the flag in the Big Red Box back to NZ.

5.2.2 LEXIS.COM

FINDING CASES

This USA-focused database is vast and complicated: it is really a ‘meta’ database of 100s of databases! USA content is found using the search box, but for everything else, you need to drill down into the jurisdiction or content-type first, then search.

To find US content, Click on the Legal Tab, then select the collection of databases you wish to interrogate.

For more help, see in-text help, or view Tutorials.
FINDING CASES – WITH A REFERENCE

If you know the name of the Law Report your case is in, find the source first, then search within that small data set.

For example, *Mabo v Queensland (No 2) (1992) 175 CLR 1; 107 ALR 1*

First, you will need to know what these abbreviations, CLR or ALR are in full, so that you can find the source.

Type the abbreviations into the *Cardiff Index to Legal Abbreviations*, from the Law Subject guide.

Use your knowledge of the case to select the correct title, i.e. Australian Law Reports looks feasible.

To find non-US content, click on the Foreign Law Tab, or Find Laws by Country or Region, select the Country, then select the collection of databases you wish to interrogate.
Now in Lexis.com, Click on the Search > dropdown menu and choose Find a Source, and type in the Report title: Australian Law Reports. Select it from the list.

For more help, see in-text help, or view Tutorials.
5.3 ICLR ONLINE – CASES FROM ENGLAND AND WALES

The best resource for UK cases is ICLR Online. The Incorporated Council of Law Reporting holds the publishing rights for the official UK law reports (e.g. AC, Fam, PC, QB), and hosts a large number of unreported judgments.

Statutes are here too.
6. TIPS & TRICKS

6.1 PUBLISHERS

Legal publishers are very protective, and are not into sharing. This means you need to learn who publishes what so that you interrogate the correct database when you are looking for something specific. The Library catalogue, Library Search | Ketu (LSK) will provide information about the publishers. However, to search LSK you need the full name of the publication: you can’t search by an abbreviation.

There are 3 key publishers of NZ law.
Knowing who publishes what will SAVE TIME in 2 ways:
1. Decoding a law report abbreviation, e.g. NZLR
   Look at the abbreviations, and the location of the ‘NZ’.
   • NZXX = LexisNexis
   • XNZ = Brokers
   • XXXC = CCH
2. Matching a print publisher with their database partner
   • Lexis / LexisNexis / Butterworths / Mathew Bender
   • Brokers / Westlaw / Wests / Thomson Reuters / Sweet & Maxwell / Law Book Co
   • Wolters Kluwer / CCH

For example, if you want to find the online version of Kumar v Station Properties Ltd - [2016] 1 NZLR 99, how do you know which database?

Two ways:

1. The report is NZLR, which means it is Lexis Advance (see above), OR
2. Go to the Law Subject Guide http://otago.libguides.com/law
3. Select Cardiff Index of Legal Abbreviations
4. Type in NZLR, search and copy the full title [New Zealand Law Reports]
5. Paste the title into Library Search | Ketu
6. Identify the publisher

8. Select Lexis Advance – type the reference into the Big Red Search Box.