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INTRODUCTION

The Legal Research & Writing Guide (2018) is a new and updated version of the Faculty’s Research Guide (also known as the Little Red Book), originally compiled by Judith Ferguson. It provides introductory guidance on legal writing and legal research. You can use the guide to:

- refresh your memory on the basics of legal writing
- learn about different forms of legal writing
- find out about basic legal research strategies
- learn how to find key legal material, either manually or electronically

To assist you in the current LAWS 398 Research and Writing assignment, please consult the companion documents attached:

- Legal Research Skills at Otago: Primary Sources
- Legal Research Skills at Otago: Secondary Sources

This guide and the above companion documents are also available from the Law Subject Guide, under the Research Strategies Tab.

If you have any questions about the information contained in this guide, please contact either Maria Hook (maria.hook@otago.ac.nz), who is one of the Directors of the Faculty’s Research & Writing Programme, or the Law Librarian, Kate Thompson (kate.thompson@otago.ac.nz).
PART I LEGAL WRITING

What all legal writing has in common is that it is writing about law – about what the law is, or about what it should be, or about the principles or policies of the law, or about its effect. At law school, you engage in legal writing all the time. We ask you to answer essay or problem questions in exams, and occasionally we require you to submit assignments. So it is important that you take active steps to perfect your legal writing skills. Part I of the Research & Writing Guide is designed to help you with this.

SPECIFIC INSTRUCTIONS

This guide offers only general advice on legal writing. You should always follow any guidelines or instructions that are provided in connection with specific assignments. Check with your lecturer or tutor if you are at all unsure what is expected of you.

ACADEMIC INTEGRITY

At its simplest plagiarism involves “copying or paraphrasing another person's work and presenting it as your own”: see University of Otago, Academic Integrity and Academic Misconduct Information for Students: http://www.otago.ac.nz/study/academicintegrity/. The University regards plagiarism as a form of academic misconduct for which there are consequences. It is important that you familiarise yourself with the University's policies against plagiarism and academic misconduct – ignorance is no excuse. A starting point is the Faculty of Law Handbook.

DEADLINES

You are expected to submit your assignments on time. If you think you have grounds for an extension, get in touch with your lecturer. If you fail to submit your assignment by the deadline and you do not have an extension, your lecturer will usually deduct marks or refuse to grade the assignment.

It is crucial that you start on your assignment well in advance of the due date. You want to submit your best possible work, so you need to give yourself enough time to produce several drafts.

WORD LIMIT

Make sure that your assignment is within the word limit. If it is not, then go back and rewrite your draft in a more concise manner. Legal documents often have to comply with word limits (for example, submissions in support of an application for leave to appeal to the Supreme Court may not exceed 10 pages), so this is good practice.
FORMS OF LEGAL WRITING

There are different forms of legal writing, and only some of them are covered in this guide. If you are not sure what is expected of you, contact your lecturer or tutor. The most common form of legal writing at law school is legal opinions. Every time you answer a problem-based question in an exam, you are essentially writing an opinion. Opinion-writing is an elementary skill, because it tests your ability to engage in – and communicate – basic legal reasoning.

LEGAL OPINIONS

The purpose of every opinion is to provide a reasoned answer to a legal problem (ie what are the legal consequences that would result from a given set of facts?). The opinion must identify the issues raised by the facts, identify the law that is of potential relevance to the facts and determine whether it applies to them. At its most basic, the task involves matching the facts of the case to the elements of the applicable rule/cause of action/defence/claim. Where it is uncertain what the elements are, or where it is uncertain whether they apply to the facts, there is a contentious issue, and the bulk of the opinion will be spent on this issue.

For example:

A builds a new house with an unusually large wastewater pipe. Through no fault of his own, the pipe bursts and floods his neighbour B's house, causing damage to the walls and flooring. B comes to you for legal advice. He wants A to pay for the cost of repairs. You will have to tell B what remedies may be available to him and what his chances are of succeeding against A. The only cause of action that is potentially available to B is an action in *Rylands v Fletcher*, because A did not act negligently.

To succeed in this action, B must meet the elements of the rule in *Rylands v Fletcher*. He must show that A brought something on his land that was “likely to do mischief if it escapes”; that the use of the land was "non-natural"; that the thing escaped from A's land; and that it caused damage. Matching the facts of the case to these elements, the only issue that is likely to be unclear/contentious is whether A's use of the pipe was non-natural. So if you were to write an opinion on B's chances of succeeding in his claim, this is the issue that you would focus on once you have dealt with the non-contentious issues.

Opinions are a staple of law school. You will have to write opinions in exams and for assignments. In real life, you might have to write an opinion for a client, or a partner in your law firm, or another lawyer seeking your expertise in a particular area of law. Opinions are not the same as submissions (where lawyers will advocate for a particular legal position on behalf of one of the parties); or judgments (where judges will have to decide the issues in dispute); or legal essays (which usually provide a discussion of an abstract question of law). They are an attempt to predict the legal consequences of a given set of facts; and even though the ultimate purpose might be to advise a client on his best course of action, they must provide a *neutral* account of the problem.

Every good opinion must identify the issue(s), state and analyse the relevant law, determine whether the law applies to the facts, and provide a conclusion as to the legal consequences arising from the facts. The task can seem overwhelming at first. Opinion-writing takes a lot of practice. But there are some steps that you can take that will help to demystify the task.
READ THE FACTS, AND IDENTIFY YOUR CLIENT(S) AND WHAT THEY WANT

The first step is to read the problem question. Pay particular attention to the instructions. What, exactly, have you been asked to do? If you have been asked simply to provide a legal opinion on the facts (for example, “Is Party A liable?” or “Did Party A commit an offence?”), then that is what you should do. If you have been asked to advise a particular party what to do (for example, “Advise Party A whether he should bring a claim against Party B or Party C”), then, in your conclusion, you will have to provide an opinion on Party B’s and Party C’s liability to Party A, and you will also have to advise Party A as to his best course of action. Legal problems may refer to a number of people, all of whom have some role to play in the scenario. In that case you need to read the question carefully to determine who you are advising, and what your client is seeking advice on.

In real life, a substantial part of litigation is concerned with proof of fact. The court (or jury) has to determine what actually happened – whose version of the truth is to be accepted. At law school, we do not usually expect you to deal with matters of proof of fact. Problem questions are to be taken at face value. This means that you should not depart from the provided facts. If the problem states that D knew that P was standing behind his car when he reversed, you should not assume to the contrary that D was unaware of P’s presence.

Sometimes the material facts may not be entirely clear. The facts may state, for example, that D checked his rear-view mirror before he reversed the car and injured P. Can you infer, based on these facts, that D knew that P was standing behind his car? If you do decide that the inference is available, make this assumption explicit in your opinion (ie “This opinion proceeds on the assumption that D knew…”). In most cases, it will be safer to identify the ambiguity and reason in the alternative (What are the legal consequences if D knew that P was standing behind his car? How might the answer change if D had no idea?). Do not give in to the temptation to assume facts that are not there, just to show off your knowledge of the law – particularly if the problem is based on a past event.

EXAMINE THE LAW AND IDENTIFY THE GENERAL ISSUE

Once you have read the facts, make a first attempt at identifying what law might be relevant to the problem (this step can prove particularly challenging when you have to undertake your own research – we will introduce you to legal research in your third year of study). The instructions may tell you to advise Party A in relation to a particular cause of action/offence/defence/remedy (eg would Party A be liable under the rule in Rylands v Fletcher?), in which case you can proceed to identify the elements of the particular cause of action/offence/defence/remedy and the law relating to these elements. Are there any sources that you can discard as irrelevant right from the start – for example, a Court of Appeal decision that has been overruled by the Supreme Court; or a piece of legislation that deals with an entirely separate problem?

Alternatively, the instructions may tell you to advise Party A on whether he is liable or guilty of a crime, or on whether he has a right to damages – or they may simply tell you to “advise Party A”. In that case, you will have to start by “categorising” your facts into relevant causes of action/offences/defences/remedies etc. Note that there might be more than one “category” that is relevant (or that one category may be relevant in relation to more than one party, ie Party A may be liable to Parties B and C). For example, if you are advising Party A on whether he is liable for damage caused to his neighbour by a burst pipe, and it is at least arguable that Party A was negligent in building the pipe, you might have to consider two causes of action in the alternative: negligence and the rule in Rylands v Fletcher.

It is very important to appreciate that this step – identification of the relevant “categories” and their main elements – requires analytical effort. Legal reasoning requires more than simply writing down everything you know about the particular area of law, and then proceeding to consider each element in turn, regardless of
whether or not the law is of any relevance on the facts. For example, if you are advising Party A on whether he is liable for damage caused to his neighbour by a burst pipe, and the facts state that Party A took all reasonable care in building and maintaining the pipe, do not set out the elements of negligence and apply them to the facts – because it is simply not arguable that Party A is liable in negligence; and Party B, in the circumstances, would never bring a claim against Party A in negligence. There are no ready-made “checklists” of elements or issues that you can rely on to solve legal problems. You need to figure out the content of the “checklist” yourself. What are Party B’s arguable claims?

CONTINUE CAREFUL ANALYSIS OF THE LAW AND REFINE YOUR IDENTIFICATION OF THE ISSUE(S)

Once you have identified the general issue, you can continue your analysis of the law and break down the general issue into sub-issues. Remember that you identify issues by matching the facts to the law. An “issue” is a question that determines the legal consequences of a set of facts. What are the elements that need to be established for the claim/action/charge/defence to succeed? Some issues may be easily established, in which case you can deal with them quickly, pointing out the relevant facts that support your conclusion. Other issues will be more contentious (for example, did Party A's unusually large pipe constitute a non-natural use of Party A's land?).

The only way to identify all of the issues is through an iterative process: go back and forth, in your mind and on paper, between the facts and the law that may be relevant. Be ready at all times to revise your identification of the issues, in response to your growing knowledge and understanding of the law. As you examine your legal sources, take notes and keep a record of your analysis. For cases, the best way to do this is to write case briefs. Include the main (not necessarily material) facts, the court’s conclusion and reasoning, and important obiter.

RELATIONSHIP BETWEEN ISSUES

Think about how the issues you have identified relate to each other. For example, are they cumulative (ie if all of the issues are decided in P's favour, he will succeed), or do they operate in the alternative (ie if Issue 1 is not decided in P's favour, he may still succeed under Issue 2)?

UNCLEAR OR CONTENTIOUS ISSUES

Most of your opinion will be spent on issues that are unclear (and hence potentially contentious). It is crucial that you identify the specific issues that are likely to be contentious. Ask yourself how the law might apply to your facts and inquire into any possible sources of uncertainty. What are the questions that are unclear, and why? What is it about the law (or the facts) that makes it uncertain whether the facts will produce particular legal consequences? Try to get to the heart of what is causing the uncertainty.

Broadly speaking, issues may be classified into questions of law and questions of fact. A question of law arises where the meaning of the law is unclear on the facts of the case (what are the elements of the applicable rule, and what do they mean?). You will have to analyse the applicable law to identify the nature of the legal ambiguity. A question of fact is, essentially, a question of evidence for the judge or the jury. For example, if P brings an action in negligence against D because D sold him a contaminated product, it is a question of fact for the court whether D's conduct fell below the standard of a reasonable person. Questions of fact are not subject to precedent. But you will still have to consider whether the court is likely to decide the question in D's or in P's favour.
STATUTE: Where the applicable rule is statute-based, there may be uncertainty whether the elements of the rule are satisfied because the provision in question uses general or vague or ambiguous terms, or because it overlaps with other provisions and requires untangling. For example, is an imitation feeding bottle containing confectionery a “toy” for the purposes of the Product Safety Standard (Children’s Toy’s) Regulations 1992, with the effect that the Regulations apply to prescribe relevant safety standards?¹

CASE LAW: The basic principle underlying the doctrine of precedent, of course, is that like cases should be treated alike. If Court B is faced with facts that do not differ materially from the facts that were before Court A, Court B should generally arrive at the same decision as Court A (and it must arrive at the same decision if it is bound by the rule of stare decisis). Court A’s decision provides a direct precedent. But often, there is no direct precedent that is clearly applicable on the facts:

- A potential uncertainty is whether there are material differences in the facts. Does the precedent apply, or can it be distinguished? For example, Court A decides that a domestic wastewater pipe does not amount to non-natural use for the purposes of Rylands v Fletcher. Court B must decide whether a domestic pipe that is much larger than the pipe in Case A amounts to non-natural use. Will Court B distinguish Case A on the basis that the pipe is unusually large? Or is the ratio of Case A so wide as to encompass all domestic pipes?

- Another source of uncertainty might be that there is no precedent that is directly applicable to the situation. Imagine that, ten years after Donoghue v Stevenson,² D provides negligent financial advice to P. Can he be liable? Strictly speaking, the ratio of Donoghue v Stevenson is confined to the negligent manufacture of foodstuffs. Can it be extended to apply to financial advice?

- The common law is not set in stone, so courts can overrule or decline to follow previous decisions provided they act within the rules of stare decisis. Such changes to existing doctrine are another reason why it may be impossible to provide a definitive answer to a legal problem. An acute example is that of conflicting authorities: where an issue is apparently subject to two or more conflicting authorities, a court will have to choose one authority over the other unless it is able to reconcile them.

DEVELOP ARGUMENTS ON APPLICATION OF THE LAW TO THE FACTS

Once you are satisfied that you have identified all of the main legal issues, you can start thinking in more depth about the different arguments the parties would run to show that the law does, or does not, apply to the facts. Each party would want to have the contentious issue decided in its favour, so you need to identify the best available arguments for each side and then present a reasoned argument for preferring one over the other. This is not a mechanical task – legal reasoning is not a science. Two people writing opinions on the same problem may generate very different arguments and come to opposite, perfectly plausible, conclusions.

Where your issue relates to statutory interpretation, you will be guided by s 5(1) of the Interpretation Act 1999: “The meaning of an enactment must be determined from its text and in the light of its purpose”. While your interpretative focus will be on the text of the ambiguous provision, you should also take account of the ‘scheme’ of the Act as a whole and of the wider legal context. In your first year of legal study, you learnt a number of techniques that can help with identifying, exploring and resolving statutory ambiguity:

- the literal approach: that statutory words be given their ordinary meaning;
- the golden approach: that statutory words be given other than an ordinary meaning in order to avoid absurdity within the statute or a manifest injustice in the community to which the statute applies;

the purposive approach: that words be interpreted by reference to the Parliamentary intent as it appears on the face of the statute, including any purpose section.\(^3\)

You also met some finer tools of interpretation related to the literal approach:

- *noscitur a sociis* (that the meaning of a word is coloured by the words surrounding it);
- *ejusdem generis* (that a general word, at the end of a list of specific words that form a class, is construed as being limited to that class); and
- *expressio unius est exclusio alterius* (the mention of one term is the exclusion of another).

You can also find support for your arguments outside of the statute. Cases on the meaning of statutes operate as precedent; and it is permissible to make use of extrinsic materials such as legislative history, Law Commission reports, other statutes, or New Zealand's international obligations. In addition, courts have regard to certain presumptions of interpretation (for example that legislation does not have extraterritorial effect); and they are required to interpret statutes in a manner that is consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.

Where your issue relates to case law, you might be able to argue that a precedent should be applied; or that it should be distinguished; or that it should be extended or adapted;\(^4\) or that the court should decline to follow the precedent or overturn it.\(^5\) You may find justification for your arguments in binding and non-binding precedent,\(^6\) principle,\(^7\) and policy.\(^8\) You can even make policy arguments about the role of precedent – for example, that a court would not disturb the ratio of a particular case because the law should be certain and predictable; or that a court would be unwilling to extend a precedent to new facts because the issue is one for Parliament to resolve. This is your chance to show original and creative thought. But whatever you do, it is imperative that your arguments take account of the rules of stare decisis. You cannot argue, for example, that the High Court might allow a claim in *Rylands v Fletcher* even though the defendant could not foresee the type of harm, if the Court of Appeal has decided that foreseeability of harm is an element of the action.

More generally, support your arguments with authority, and choose the best authority available (see below for more detail on the use of authorities). If you rely on the legal proposition that foreseeability of the type of harm is an element of *Rylands v Fletcher* in New Zealand, then cite *Hamilton v Papakura District Council*,\(^9\) and not a subsequent High Court decision applying *Hamilton* (unless the High Court decision involves similar facts or provides a relevant addition to the ratio, in which case you should cite both). Arguments tend to be more persuasive when they have some basis in precedent – even if that precedent is a mere obiter dictum.\(^10\)

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\(^3\)The approach has its roots in the ‘mischief’ approach, first stated in *Heydon’s Case* (1584) 76 ER 637 in the 16th century, and is now embodied in s 5(1). Sometimes judges still use the term ‘mischief’, but they usually use it to refer to the underlying societal problem that underpinned the enactment rather than the Parliamentary intent that is inferred/constructed from the text itself.

\(^4\) For example, the appellants in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 argued that *Donoghue v Stevenson* [1932] AC 562 should be extended to negligent misstatements.

\(^5\) For example, in *R v R* [1992] 1 AC 599 the House of Lords abolished the marital exemption to the law of rape.

\(^6\) For example, in *R v Gotts* [1992] 2 AC 412 the House of Lords relied on an obiter dictum in *R v Howe* [1987] AC 417 to hold that duress is not a defence to attempted murder.

\(^7\) In *R v R* [1992] 1 AC 599, the House of Lords abolished the marital exemption to rape on the basis that it was “anachronistic” and “offensive” and did not reflect “the true position of a wife in present-day society”.

\(^8\) See, for example, Lord Atkin in *Donoghue v Stevenson* [1932] AC 562 at 583: “I do not think so ill of our jurisprudence as to suppose that its principles are so remote from the ordinary needs of civilised society ... as to deny a legal remedy where there is so obviously a social wrong”.


\(^10\) “Counsel are likely to fare better with holdings sub silentio, tenuous dicta, verbal analogies, and syllogistic deductions, than with straightforward argument based on the social facts to be regulated and the policies applicable thereto”: Julius Stone *Legal System and Lawyers’ Reasonings* (Maitland Publications, Sydney, 1964) at 236.
system that is based on incremental development of rules and principles, this is hardly surprising. Consider possible arguments about the value of a precedent: is the decision of long standing; has it been followed often; was it given by a full court; were there dissenting judgments? In the absence of precedential support, secondary sources may provide additional (albeit not legal) authority.

A common weakness of student opinions is that their application of precedent does not go beyond a mere fact-matching exercise. Two cases that are very similar factually may still be distinguishable as a matter of law because the reasons that support the decision in case A do not apply to case B; and vice versa. It is necessary to identify the ratio of the decision: what are the material facts of the case, and why? How far can you generalise the facts? Remember that ratios are not static. They are open to interpretation and reinterpretation, in light of the new facts that are now before the court. Party A might argue that a ratio should be interpreted narrowly to exclude the facts of the case – drawing, perhaps, on the court’s reasoning, or on extraneous reasons of principle or policy; and Party B might argue the reverse. Such arguments are much more convincing than a factual comparison of the cases.

START DRAFTING YOUR OPINION

Before you start writing your first draft, it is a good idea to prepare an outline of your opinion. The outline should be structured like an opinion. This will help you develop a clearer picture of your reasoning. Do your points follow logically? Have you identified all of the issues? Have you chosen your best arguments? Make sure that you have covered the four fundamental steps of the legal reasoning process: identification of the issues (I), statement/analysis of the law (L), application of the law to the facts (A), and conclusion (C) = ILAC.

(a) Have you identified the issue(s) that are raised by the problem (ie the questions that will determine whether a given set of facts results in certain legal consequences)? If there is more than one issue, identify the general issue first and then break it up into specific sub-issues. Focus on the issues that are unclear/contentious.

(b) Have you stated/analysed the law that applies to these issues? Only include law that is relevant. Provide authority for your propositions of law, and use the best authority available.

(c) Have you applied the law to the facts? This is not a straightforward exercise because your issue is unclear/contentious. Provide a balanced and fully reasoned argument.

(d) Have you concluded on each issue and on the overall problem? This requires you to evaluate the strength of your arguments. In your final conclusion, draw together the main strands of your reasoning that will determine the legal consequences of your set of facts.

Do not start on your first draft unless you are happy with your outline. Once you take the plunge, be prepared to write several drafts. The first draft is unlikely to be your best work.

ADOPT A LOGICAL STRUCTURE

Try to work your outline into a logical structure that supports your reasoning and answers the question. It might look something like this (but please remember that there is no one-size-fits-all approach for opinion-writing):
I  Introduction

In real life, an opinion would usually begin with a short summary of the facts. This step is almost always omitted at law school. Instead, you can use your introduction to identify the overall problem, set out the contentious issues and deal with any issues that are clear and non-contentious.

For example: “I have been asked to advise D whether he is liable for the flood damage caused by his domestic wastewater pipe to his neighbour’s property. The only claim that may be available to P is the rule in Rylands v Fletcher. Negligence is unavailable because D took all reasonable care in building and maintaining the pipe. In order to succeed under the rule in Rylands v Fletcher, P must show that D brought something on his land that was ‘likely to do mischief if it escapes’; that the use of the land was ‘non-natural’; that the thing escaped from D’s land; and that it caused damage. The only contentious issues are whether D’s unusually large domestic wastewater pipe amounted to a non-natural use of the land; and whether flood damage to P’s valuable bonsai collection was reasonably foreseeable. The other elements of the rule are clearly satisfied, because … .”

It may also be useful to turn your introduction into an executive summary and provide a short summary of your conclusions.

II  [Overall Issue]

Remember to structure your opinion around the unclear/contentious issues. Your opinion should not look like a checklist, listing each element of the rule in turn. Use your introduction to dispose of non-contentious issues instead (see above).

Where each of the issues draws on the same body of law, you could start your analysis with an abstract (but still relevant!) statement of the law before you move into the specific issues. If necessary, clarify the relationship between the issues (for example, do they operate cumulatively, or in the alternative?).

A  [Sub-Issue 1]

Analyse the law for each issue, apply it to the facts/argue, and conclude.

B  [Sub-Issue 2]

III  Conclusion

Use headings and write in paragraphs. If you number your paragraphs, make sure the numbering reflects your overall structure (for example, [1] Introduction; [2] Issue 1; [2.1] Law on Issue 1…).

USE LANGUAGE THAT ACCURATELY REFLECTS YOUR REASONING

Each opinion ultimately consists of a number of legal propositions. Provide authority for these propositions (where available); and watch out for assertions (propositions that lack authority and/or reasoning to support them). Do not leave the law to be inferred from a conclusion on the facts. For example:

- “The defendant’s unusually large pipe does not amount to non-natural use (Transco plc v Stockport Metropolitan Borough Council [2003] UKHL 61, [2004] 2 AC 1)”

- “The House of Lords in Transco plc v Stockport Metropolitan Borough Council [2003] UKHL 61, [2004] 2 AC 1 held that that an unusually large water pipe that provided water to a block of flats was not a
non-natural use because it did not create an exceptional risk. The same reasoning can be applied to D’s pipe, because...”.

○ Example 1 conflates the precedent with its application to the facts. The House of Lords did not hold that the defendant’s unusually large pipe could not amount to non-natural use (courts do not decide future cases!); but the pipe may well fall within the House of Lords’ ratio.

When you are dealing with an unclear or contentious issue, refrain from using language that is inappropriately categorical or definite. Opinions are an evaluative exercise, and your choice of words should reflect this. So when you are concluding on a contentious issue, do not say that the answer is x, because you cannot be sure that a court would agree with your assessment of the issue. Instead, say ‘the answer is more likely to be x than y’, and briefly summarise your reasons for that conclusion. This does not mean that you should avoid coming to a conclusion at all – far from it. Your opinion must provide a prediction of the likely outcome (so do not say, ‘X might face liability, but he might not’).

On the other hand, when you are concluding on a non-contentious issue, you should refrain from using language that is too tentative. Most importantly, do not use language that is contradictory. So when you are applying the law to the facts, do not say, in the first paragraph, that the element is made out, only to turn around and make the opposite claim in the second paragraph. You are not presenting the arguments from the parties’ point of view.

Finally, it is a good idea to avoid a “ping pong”-style of reasoning (ie “The plaintiff would argue... In response, the defendant would argue...” and so forth). It is usually obvious from the context whether the argument would favour the plaintiff or the defendant. If it is not, this may be an indication that you need to do more to clarify the legal implications of your argument.

FURTHER READING

Opinion-writing is not a skill that you can learn overnight, so the key is to keep practising and to take on board any feedback that we give you. If you want more help, check out the library’s resources on legal writing and legal method, including:

○ Stephen Penk and Mary-Rose Russell New Zealand Legal Method (Thomson Reuters, Wellington, 2014)

The best thing that you can do to improve your legal reasoning skills is to read judgments (including the summary of counsel’s argument, if available). What were the arguments relied on by counsel? What kinds of arguments were they? Were they supported by authority? How were they relevant to the issue? How did the court deal with them?
WRITTEN SUBMISSIONS

Opinions provide a reasoned answer to a legal problem. They are advisory in nature. But if the parties to the problem become engaged in legal proceedings, the lawyer’s role is no longer just advisory: she must now advocate on her client’s behalf. She must attempt to persuade the court (or whichever forum the proceedings are in) to find in favour of her client. One of the main vehicles of legal advocacy is written submissions.

Written submissions take the court through the client’s case. They present the court with the client’s key arguments why the court should reach the result that the client desires. This means they are inherently partisan. Below you will find some general information on writing submissions. You will learn more about submissions and advocacy (both written and oral) in the LAWS499 Advocacy Skills course, which you will complete in the year that you take LAWS301 – Law of Torts.

DEVELOP A PERSUASIVE ARGUMENT FOR YOUR CLIENT

Once a case has gone to court, your task as a lawyer is to persuade the court to reach a result favourable to your client. So the first thing you will have to do is to identify what that result is, and the main planks of your client’s case to reach that result. This is easy enough if you have already prepared an opinion on the problem, because you can simply turn your issues and sub-issues into arguments. Assume that your client is a defendant to an action in Rylands v Fletcher, and the only contentious issues are (a) whether the defendant’s unusually large water pipe amounted to non-natural use of the land and (b) whether damage to the plaintiff’s bonsai collection was of a reasonably foreseeable type. When you come to draft your submissions, your two main arguments will necessarily be that the water pipe did not constitute non-natural use of the defendant’s land, and that the damage to the bonsai collection was not of a reasonably foreseeable type. If you have not already prepared an opinion on the problem, you will have to spend some time identifying the contentious issues first.

Once you have worked out your client’s main arguments, it is time to think in more depth about your reasoning to support these arguments. Try to present the law in a manner that suits your case. What are the most favourable authorities? If the law is unclear, can you come up with an interpretation that favours your client? How does the law apply on the facts? Note that, as a lawyer, you would have a duty “to put all relevant and significant law” known to you before the court, “whether this material supports the client’s case or not”.\(^\text{[11]}\) So you cannot simply ignore unfavourable authorities and hope that opposing counsel will not find them. In essence, you have to perform the same task that is needed for the “Law” and “Application” parts of an opinion,\(^\text{[12]}\) except that you argue the case from your client’s perspective. Try to anticipate and defuse the opposing party’s best counter-arguments.

Where possible, argue in the alternative. For example, assume that it is uncertain whether the rule in Rylands v Fletcher requires a reasonably foreseeable escape, and that the escape of water from the defendant’s pipe was, arguably, reasonably foreseeable. Would you put all the defendant’s eggs in one basket and argue that the escape of water was not reasonably foreseeable? No. A much better approach would be to advance as your primary argument that a reasonably foreseeable escape is not an element of the rule, and to argue in the alternative (ie if the court finds against you on your primary argument) that the escape was not reasonably foreseeable.

\(^\text{[11]}\) Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 13.11.

\(^\text{[12]}\) See above, ‘Legal opinions’.
It is a common misconception that submissions will be more persuasive if they are written in an argumentative, aggressive style. But a matter-of-fact, concise style that lets the arguments speak for themselves is much more likely to impress a court. So resist the urge to make arguments for the sake of it. Instead, “find as much neutral and uncontroversial ground as possible” – try to “narrow the battlefield” – by focusing on your best arguments and the most relevant authorities, and by addressing contrary authorities head-on. If you have to make a weak argument, do not embellish it unnecessarily, or it will appear weaker than it actually is. Never make an argument that is hopeless (or unarguable).

ADOPT A STRUCTURE THAT SUITS YOUR ARGUMENT

You will need to structure your submissions in a way that makes your overall argument clear to the court. Just like an opinion, submissions should begin by setting out the problem of the case. What are the main questions to be decided? If you provide a clear statement of the problem, the court will be in a much better position to understand the relevance of your arguments. Sometimes you may also have to provide a summary of the facts (check the instructions).

Before you launch into your individual arguments, it is a good idea to explain to the court the essence of your case. Provide an overview of your key arguments, demonstrating – succinctly – how they produce the result you are after. This summary is sometimes referred to as counsel’s “theory of the case”. It should identify the red thread that runs through your submissions.

The body of your submissions should be structured around your main arguments. Your arguments should follow logically, and in a way that best suits your case. It may be more persuasive to commence with your best or most important points. Try to move from the general to the specific.

End your submissions with a powerful conclusion that draws together your overall reasoning and that reminds the court of the decision and the orders your client seek.

The level of detail you provide depends on the purpose of your submissions. For example, are they meant to be a synopsis of argument that is filed in advance of a hearing, to support your oral submissions; or are they meant to be an exhaustive account of your case, to enable the court to make a decision “on the papers” (ie without a hearing)? Submissions range from skeleton outlines informing the court of the bare bones of the party’s case, to fully developed arguments spanning many pages. Check your instructions to find out what is expected of you.

Note any specific instructions on the formatting of your submissions. Ordinarily, you will have to include a cover page and a list of authorities, number your paragraphs sequentially and begin your submissions with the phrase “MAY IT PLEASE THE COURT, THE PLAINTIFF/DEFENDANT BY ITS COUNSEL SUBMITS”.

FURTHER READING


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ESSAYS

Essays can be a particularly challenging form of legal writing. A good legal essay displays originality of thought and makes a contribution to the existing literature. This means that you will often have a lot of freedom in the way you approach your essay. You may even be able to choose your own topic. The flipside is that there is no safety net. There is no “ILAC” framework to hold on to, like there is for opinions. If you are unsure about what is expected of you, check with your lecturer. Below is some general guidance on writing a law essay.

DECONSTRUCT THE QUESTION (IF THERE IS ONE)

If you have been instructed to write an essay on a particular question, your first task is to deconstruct the question. Have you been asked to “compare”, “evaluate”, “identify parallels” or “discuss”? These terms may not seem like they mean very much, but they are crucial. Imagine you have been asked to “compare” nuisance and the rule in Rylands v Fletcher. If you write an essay that tells the reader everything you know about these torts (in other words, if you engage in “knowledge dumping”), then your essay fails to answer the question. The focus of your essay has to be a comparison of the torts. Or if you have been asked to “discuss” whether the rule in Rylands v Fletcher forms part of the law of nuisance, your essay has to provide a balanced answer to the question, detailing arguments “for” and “against”.

Sometimes it will take a while to work out what the question is asking you to do. Do not worry – this is time well spent. Read every part of the question carefully and ask yourself whether it requires analysis. For example, assume that you have been asked to “discuss” the following quote:

There will never be a case where a plaintiff will succeed in Rylands v Fletcher without also succeeding in nuisance. There will rarely be a case where a plaintiff would succeed in nuisance without also succeeding in negligence. ... If you don't think you'll get home in negligence, settle.

The quote suggests that Rylands v Fletcher adds nothing to nuisance, and that neither Rylands v Fletcher nor nuisance add very much to negligence. Your answer will need to engage with both of these claims, or else it will be incomplete.

IDENTIFY YOUR THESIS

Every good essay should have a thesis – a central point or argument that runs through the essay as a red thread and ties your reasoning together. For example, if you have been asked to compare nuisance and the rule in Rylands v Fletcher, your thesis might be that these actions are fundamentally different because they are concerned with different interests in land.

Having a thesis does not mean that you get to ignore the question – you will still need to “compare” the actions – but it will make your answer more focused and coherent. What is the overall point that you are attempting to communicate? Are nuisance and the rule in Rylands v Fletcher substantially similar, or not? And

14 Robert Chambers “Negligence, Nuisance and Rylands v Fletcher: The struggle for simplicity continues” (paper presented to New Zealand Insurance Law Association Conference, November 2000).
why? Always make it clear to the reader whether your argument is about what the law is, or about what the law should be (or both).

**SUPPORT YOUR THESIS**

Once you have come up with your overall argument, you will need to make your point good. Identify the most persuasive reasons why your argument is valid, deal with the best counterarguments, and engage with the relevant authorities.

For example, if you have been asked to compare nuisance and the rule in *Rylands v Fletcher*, and your thesis is that these actions are fundamentally different because they are concerned with different interests in land, you may need to demonstrate (a) that the actions are, in fact, concerned with different interests in land, (b) that this is a significant point of distinction and (c) that this point of distinction is more significant than the list of superficial similarities that authors often rely on to draw parallels between the two actions. A focused argument along these lines will be far more impressive than a rambling account of similarities and differences that lacks a common thread or reasoned conclusion.

**FURTHER READING**

For further information on essay-writing, you may wish to consult the following resources:

A case note ordinarily serves two functions: it analyses a particular case, and it provides an evaluation of its legal significance or of its wider implications. If you want to get a better idea of what a good case note looks like, have a browse of the journals in the law library. Many law journals publish case notes on a regular basis.

**ANALYSE THE CASE**

The first thing that you will need to do is to inform the reader about the case. What were the material facts? What was the issue to be decided? Where you are dealing with a case on appeal, what was its procedural history? And what was the outcome of the case?

You can then begin to analyse the ratio of the case, and the court’s reasoning more generally. This may be a difficult task, particularly in multi-judgment cases.

Make sure to note any significant obiter dicta and dissents.

**EVALUATE OR CRITIQUE THE CASE**

Once you have analysed the decision, you should explain in more detail why it is significant. How has it changed the law? Do you agree with the decision as a matter of law? Does the decision give rise to notable policy implications?

A case note that emphasises this part is just another type of essay. You can come up with an overall thesis (for example, “This case takes the law of nuisance in an undesirable direction because it is inconsistent with the general principles underlying the tort...”), and you can then use your case note to defend your thesis.

**DISSERTATIONS AND THeses**

If you are looking for information on writing a dissertation or thesis, please consult the Honours Dissertation Year Handbook or ask your supervisor.
Legal writing, by definition, is writing about the law. So an integral part of legal writing is reliance on, and engagement with, legal and non-legal authorities. Legal authorities are primary sources of law, like cases and legislation. Such authorities constitute the law if they are binding. Non-legal authorities are secondary sources, like textbooks and journal articles, which merely analyse or discuss or express views on the law.

How do you know what authorities to use? Broadly speaking, you need to do two things to identify the right authorities: work out whether the authority is relevant to your argument, and evaluate the source to ensure it is the best authority available.

The first thing you need to do is to work out whether the authority is relevant to your argument. What does the authority stand for, and why might you want to rely on it? How does it support your argument? If you do decide to rely on it, remember to explain why it is relevant.

You may have to subject your authorities to close scrutiny before you can determine whether they are properly relevant. This is particularly important when you are researching overseas cases, which may be based on rules or provisions that differ materially from the applicable New Zealand legal framework.

When you are writing an opinion or submissions, you will have to use authorities to support your propositions of law. Propositions of law are statements that the law applicable to a certain issue is x or y. Any proposition of law must be followed by primary authority, unless the law is unclear and you are breaking new ground. For example, imagine you have been asked to write an opinion on a charge of wounding with intent. At some point in your opinion, you will need to identify the elements of the offence. You will need to set out the proposition of law that “[e]very one is liable to imprisonment … who, with intent to cause grievous bodily harm to any one, wounds, maims, disfigures, or causes grievous bodily harm to any person”. But this proposition holds no force unless you also refer to s 188 of the Crimes Act 1961. Section 188 is the source of the offence.

Where the law is unclear and there is no primary authority that is directly applicable, you should draw on persuasive primary authority where possible (in particular, obiter dicta and overseas cases). Your proposition of law – that the law is x or y – will be much more convincing if it is supported by precedent, even if the precedent is non-binding. Secondary authorities – non-legal sources, like textbooks and journal articles – can serve a similar function, particularly in the absence of relevant primary authority.

For example, imagine you have been asked to write an opinion on a claim in *Rylands v Fletcher*. The issue is whether the growing of genetically modified corn is a non-natural use of the land. You have already referred to the key authorities on the meaning of non-natural use, none of which addressed specifically the use of genetically modified material, and the issue is contentious. The High Court, in a relatively recent judgment that did not turn on the issue of non-natural use and that did not involve genetically modified material, made the following obiter dictum: “In the past few decades, the meaning of non-natural use has been circumscribed more and more. But it must be the case that certain uses of land – like the storage of vast amounts of chemicals, and the growing of genetically modified plants – would still be considered non-natural today.” If
you were the claimant, you would be foolish not to rely on this obiter dictum in support of your argument that the growing of genetically modified corn amounts to a non-natural use of the land.

OTHER ARGUMENTS

Pure propositions of law are not the only arguments, of course, that may need to be linked to authority. Some other examples are arguments about general principles of law, legal theory or policy, and arguments about what the law should be. If you argue that the aim of liability in nuisance is commutative justice, you may find support in case law and secondary materials. If you argue that a particular decision of the Supreme Court is bad news for small business owners, and the same point has been made before in a leading text, your argument will be more persuasive if you refer to the text. More generally, if you are writing an essay, you will need to engage with secondary literature to the extent that it is relevant to your particular thesis.

BEST AUTHORITY

Whether you rely on primary or secondary sources, make sure you choose the best sources available, based on their relevance and authoritative weight. Quality, not quantity, is the key.

PRIMARY SOURCES

Primary sources are sources of law. When you are stating and analysing the law, you must do so by reference to primary sources (see above). To assess the authoritative weight of primary sources, ask yourself whether they accurately state the law; whether they are up-to-date; and, for cases, whether they are binding or persuasive precedent; whether they create a precedent or merely apply it; and whether they are the highest authority available. This task requires you to have a working understanding of the doctrine of precedent, and of the relationship between legislation and cases.

For example, imagine you have been asked to write an opinion on a charge of wounding with intent. The offence is contained in s 188 of the Crimes Act 1961. When you set out the elements of the offence, it would be wrong to cite a case on the section instead of the section itself. Section 188 is the source of the offence (but you may still have to refer to case law on the meaning of the section).

Or assume that there are two High Court cases, from 1990 and 2015 respectively, that decided that the law of nuisance requires an ongoing or repetitive interference. The 2015 case referred to the 1990 case by way of precedent. You are writing an opinion and you need authority for the proposition that a one-off interference is not enough to create liability in nuisance. Do you rely on the 1990 case or the 2015 case? In the first instance, you should rely on the 1990 case because this is the founding case that created the precedent. The 2015 case merely applied the precedent. But you may still wish to refer to the 2015 case to demonstrate that the law has remained the same for the past 25 years, or to draw on any similarities of fact between the case and your problem question.
SECONDARY SOURCES

As a rule of thumb, you should not rely on secondary sources to support a legal proposition if primary sources are available. If you wish to rely on a case, it would be wrong to cite to a textbook referencing the case. Your writing will be much less convincing if you rely on secondary materials as a substitute for independent analysis. This is not to say that you should never rely on secondary sources. On the contrary, secondary sources are often indispensable to producing effective legal writing (see above, ‘Authority for what?’).

To assess the authoritative weight of secondary sources, you need to consider a range of possible factors, including the identity of the author; whether the material has been peer-reviewed or has been published by a reliable source; and the age of the material. For example, a Law Commission report is usually much more convincing than a journal article by a PhD student.

CITATION

Correct citation of sources is an essential part of legal writing. It allows the reader to identify and locate the sources; and it provides a range of relevant information, such as date and place of publication or, for cases, the court in which the case was decided.

Citing sources also provides a mechanism to demonstrate academic integrity and avoid plagiarism.

Most papers will require your assignments to comply with the New Zealand Law Style Guide (see below, ‘General Matters of Style’ - ‘NZLSG’).
GENERAL MATTERS OF STYLE

Although different forms of legal writing have different stylistic requirements, the following points are worth bearing in mind for all legal writing.

WHO IS YOUR AUDIENCE?

In real life, if you were to write an opinion for a client who has no legal training, you would adjust your style accordingly. You would explain basic legal concepts and avoid technical jargon. At law school, we do not usually expect you to tailor your writing to a lay audience (rather than, say, a well-informed generalist with legal training) – even when we ask you to advise a hypothetical client. Please check with your lecturer or tutor if you are at all unsure about this.

CLARITY AND CONCISSION

Write as clearly and concisely as possible. Watch out for unnecessarily long sentences, and use active rather than passive voice where appropriate (where there is a clear subject, and the object does not require emphasis – for example “I love public law” rather than “Public law is loved by me”). Older judgments preceding the plain English movement can be good examples of what not to do.

FORMAL ENGLISH

Write in formal English. Do not use contractions (i.e. “hasn’t” instead of “has not”) or colloquialisms. It goes without saying that your opinion should be free from spelling and grammatical errors. There is no excuse for such errors in prepared writing. At worst, they will have the effect of obscuring your reasoning; at best, they will suggest that the content of your argument is unreliable.

NZLSG

Your opinion should comply with the New Zealand Law Style Guide (2nd ed, Thomson Reuters). You may wish to acquire a copy of the Style Guide. Alternatively, you can access it on the New Zealand Law Foundation website: http://www.lawfoundation.org.nz/style-guide/. The print version includes quick-find features which are not available electronically. The Law Library holds several copies @ K 100.

The NZLSG contains numerous rules on style, formatting and citation. It is followed by all New Zealand law schools, by most courts, and by many practitioners and other legal entities. The sooner you familiarise yourself with it, the better.
FORMATTING

Note any particular instructions on the format of your opinion. Some courses may require that you use footnotes rather than in-text citation. Both are used in practice. The NZLSG assumes the use of footnotes (see, for example, the rules on cross-referencing) but can be adapted for in-text citation.

FURTHER READING

If you want to improve your writing skills more generally, you could take one of the University’s writing papers (eg ENGL 127). In addition, the following resources may be of assistance:

PART II LEGAL RESEARCH

In Part I of this guide, we explained the importance of primary and secondary authorities in legal writing. When you are completing a legal task, and you have not been provided with all the authorities that are needed to complete the task, you will have to conduct legal research to find them yourself. The importance of sound research skills – in your law degree and in legal practice – is obvious.

Legal research can be a time-consuming and complex exercise. The pool of legal material to draw from is diverse and ever expanding. How do you work out what you are looking for; and once you know what you are looking for, how do you find it? Part II of this guide provides you with general guidance on these questions.

All online sources discussed in this guide are accessible from the University of Otago Law subject guide: http://otago.libguides.com/law
When you first embark on legal research, understanding the different types of legal material available will save you time and effort. There are two basic categories of legal material: primary sources and secondary sources.

Remember that, before you rely on primary or secondary sources by way of authority, you need to (a) work out whether the authority is relevant to your argument and (b) evaluate the source to ensure it is the best authority available (see above, ‘Use of Authorities’).

**PRIMARY SOURCES**

Primary sources are sources of law: legislation and case law. They are ordinarily published in chronological order, without any particular arrangement by subject.

**LEGISLATION**

Legislation is the highest legal authority and will prevail over any decisions of the courts.

- **Statutes** - Acts of Parliament
- **Regulations** - delegated legislation, from 2014 known as Legislative Instruments

Official versions of legislation are recognisable by the New Zealand Coat of Arms on the first page.

These are available either in print or, for statutes since 2007, from Legislation New Zealand: [http://www.legislation.govt.nz/](http://www.legislation.govt.nz/).

The full text of statutes can also be found in a number of other places, such as:

- Commercial databases, for example:
  - WestlawNZ
  - LexisNexisNZ
- Subject-based annual textbooks, for example:
- Looseleaf services which include text and commentary, for example:
  - Andrew Beck and others *Morisons’ Company Law* (looseleaf ed, LexisNexis)
  - Bruce Robertson (ed) *Adams on Criminal Law* (looseleaf ed, Brookers)

**CASE LAW**

Decisions of the courts are the other main primary source of law. It is the decision of the court itself which holds the authority – not the headnote or a publisher’s summary of the case. So while databases like Linxplus (via LexisNexisNZ) or Briefcase (via WestlawNZ) are a very useful way of locating cases, the full decisions must be examined before the case is relied upon.
Decisions are published in different formats (but the content of the decision will ordinarily be the same). The earliest version obtainable will be the unreported version issued by the court. The decision may then be included in one or several law reports series. In New Zealand, the official, authorised case reports are the New Zealand Law Reports (NZLR). Examples of other, specialist law reports are:

- Human Rights Reports of New Zealand
- New Zealand Conveyancing Cases
- Procedure Reports of New Zealand
- New Zealand Company Law Cases

Law reports and unreported judgments are mostly available in print and/or online via subscription databases such as Westlaw or Lexis, or can be found freely online via NZLII or court websites.

The Library provides access to these and more, and can be easily accessed via the Law Subject Guide – your portal to legal research: http://otago.libguides.com/law.

FURTHER READING


SECONDARY SOURCES

Secondary sources are not sources of law. They merely summarise, analyse, synthesise, discuss or express views on the law. But you can use secondary sources to find relevant primary sources. There is no point diving into the law and starting the research from scratch if somebody else has already done much of the work (of course, you still need to check that the work is accurate).

BOOKS, COMMENTARIES AND JOURNALS

Books, commentaries and journals are often subject-specific and aimed at either practitioners or academic lawyers. Take care in evaluating these publications – sources accessible via subscription databases are usually reputable.

Legal encyclopaedias are a particularly good starting point in subject areas with which you are unfamiliar. Good legal encyclopaedias should give you concise, reliable outlines of the law. The Laws of New Zealand – the New Zealand equivalent of Halsbury’s Laws of England – is available online via LexisNexisNZ.

Commentaries are often published as loose-leaf services, so they may be more up to date than other publications. They also allow you to research nimbly between the commentary and relevant cases and statutes.
OFFICIAL PUBLICATIONS

There are many reports and papers that are issued every year by Parliament and government agencies (such as the Law Commission). They are now increasingly available online.

THESES AND DISSERTATIONS

Theses and dissertations are now often published in university repositories. Take extra care to evaluate their quality before you rely on them.

PUBLICATIONS DESIGNED TO IMPROVE ACCESS TO PRIMARY AND SECONDARY MATERIALS

Indexes, guides and other ‘way-finding’ publications can save you a lot of time and effort, once you know how to use them. What follows is a very brief description of some of these publications. Their application to specific tasks is dealt with later in this guide.

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<tr>
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<td>Digests</td>
<td>Abridgement of NZ Case Law, Butterworths Current Law</td>
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<td>Briefcase, Linx (because they are collections of summaries of cases, rather than the full decision)</td>
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<td>Citators</td>
<td>Australian and NZ citator to UK Reports</td>
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<tr>
<td>Databases</td>
<td>Commercial databases provide full text access to primary and secondary sources, and add value by linking the data in clever ways, such as cases and statutes cited, and links to relevant secondary sources.</td>
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Examples of way-finders for different types of legal material

There are many more publications which are designed to help you to locate the legal material you are seeking. Many of these are referred to in the remainder of this guide.
Legal sources, both primary and secondary, are increasingly published online, though much remains in hardcopy only. In most situations, the format of the material will not affect its strength as authority. The courts are now more prepared to accept online formats, as long as they are the official versions (where available). Many databases provide ‘court ready’ versions of cases, which are locked down PDFs, and many New Zealand statutes are ‘officialised’ on the Legislation New Zealand website, using the New Zealand Coat of Arms. See the website for specific details.

Online content generally appears from the late 1980s, so be prepared to find and use hardcopy sources for research before that time.
RESEARCH STRATEGY

It is essential before you begin your research to define the task in front of you. What authorities do you need in order to carry out the task? And how do you find them? Here is a broad outline of the legal research process.

WHAT DO I NEED TO LOOK FOR?

The goal of any legal research is to identify those authorities that are best able to solve a legal task: the most relevant and authoritative authorities (see above, ‘Use of Authorities’). This means that your research must be focused on the particular task. What is the issue you are trying to resolve, or what is the question you are trying to answer? It is easy to get side-tracked when doing research. The biggest mistake you can make is to research aimlessly without a clear idea of what it is you are seeking to find.

Often, this is easier said than done because your understanding of the task is necessarily shaped by the law. How do you conduct focused research for an opinion if you do not know yet what the real issue is? This is why legal research is so difficult. It is an iterative process: you have to go back and forth between the sources and the task (or, in the case of an opinion, the problem). You have to adapt your understanding of the task to your research, and vice versa. This takes time and effort.

Because research is an iterative process, you will amass a great deal of information. You have to follow various leads and identify many different sources. Most of these sources will turn out to be irrelevant. This is a natural by-product of effective legal research. So do not feel disheartened if you end up discarding most of your research, and do not succumb to the temptation of including irrelevant sources in your assignment to prove that you have “done the work”. Instead, select carefully the few sources that you consider to be relevant.

You also have to ensure that your research is comprehensive. For example, if you are writing an opinion, you need to identify all of the authorities that will allow you to provide a well-reasoned legal opinion. If your research has serious gaps, you will not be able to state and apply the law correctly. You may not even be able to identify all of the contentious issues.

Your research strategy will necessarily depend on the task at hand, and on the amount of familiarity you already have with the particular area of law. But you should always take time to consider and define the task before you begin your research.

WHERE SHOULD I START MY RESEARCH?

You will always be starting with a certain amount of information, even if it is an area of law you are not familiar with. You will have some initial “clues”—a key case, a statute, a particular legal subject, the facts of a problem, or perhaps a key word or phrase.

If you have already identified a key authority, you may want to start with that authority. Imagine you have been asked to advise a client on a problem relating to charities law. You are aware that the law relating to charities is largely contained in the Charities Act 2005. So a good way to start your research would be to find and read the Charities Act 2005.
Alternatively, you may want to start with a secondary source such as an encyclopaedia or textbook – particularly if you are unfamiliar with the relevant area of law. The material may not be exhaustive or completely up to date. But it will probably lead you to some relevant authorities – or it may lead you to other sources that will in turn lead you to relevant authorities.

The Legal Research Process

WHERE SHOULD I GO NEXT?

Use the references (or footnotes) to lead you to related cases, legislation or commentary, as you see fit. Typically, from a specific piece of legislation you can quickly identify related cases and journal articles, and from a specific case you can easily trace journal articles as well as subsequent cases in which the earlier case is considered.

As you progress through your research, your research needs to remain focused on the particular task and adapt to your growing understanding of the law. Be ready to verify or correct your “clue”, or to try a different clue altogether. Evaluate the authorities that you find for relevance and authority (see above, ‘Use of Authorities’), to make sure you are going in the right direction.

WHEN DO I STOP SEARCHING?

At some point you will have to stop searching, but it can be difficult to know whether you have located all relevant authorities. Try to triangulate your search by approaching it from different angles. For example, use alternative indexes to double check. When no further material turns up, it may be time to stop. Always make sure that your research is up to date.
RECORDING YOUR RESEARCH

Recording your research in a format such as a research trail is a good strategy. A thorough record of your research enables you to return to useful sources later on. It also serves as a reminder of all of the sources you have already checked.

There is no fixed format for a research trail. One possible format is included here by way of example. It allows you to track the leads you have followed in the course of your research, particularly starting points and where they have led. It also allows you to “zig zag” back and forth.

<table>
<thead>
<tr>
<th>Starting point</th>
<th>Which lead to…</th>
<th>Which lead to…</th>
</tr>
</thead>
<tbody>
<tr>
<td>WestlawNZ, A to Z topics, ACC, ch 3.4 Lump sum compensation</td>
<td>Accident Compensation Act 1982 s 78</td>
<td>An Analysis and Critique of the 1992 Changes to New Zealand's Accident Compensation Scheme (1992) 5 Canta LR 1 (NZLWI)</td>
</tr>
<tr>
<td>WestlawNZ – All ACC cases</td>
<td>Carter v Accident Compensation Corporation [2015] NZHC 2692</td>
<td>Borst v Accident Compensation Corporation [2014] NZACA 8</td>
</tr>
</tbody>
</table>

Or, mapping out your search strategy might help, like this:

<table>
<thead>
<tr>
<th>concept 1</th>
<th>AND</th>
<th>concept 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broad term</td>
<td></td>
<td>New Zealand</td>
</tr>
<tr>
<td>tort</td>
<td>OR</td>
<td></td>
</tr>
<tr>
<td>OR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>torts</td>
<td></td>
<td>Zealand</td>
</tr>
<tr>
<td>Narrower term</td>
<td></td>
<td>OR</td>
</tr>
<tr>
<td>defamation</td>
<td></td>
<td>NZ</td>
</tr>
<tr>
<td>Specific term</td>
<td></td>
<td>OR</td>
</tr>
<tr>
<td>honest opinion</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>fair comment</td>
<td></td>
<td>zealand</td>
</tr>
</tbody>
</table>

Thus you could type your search like this:

tort! OR (defam! OR “honest opinion” OR “Fair comment”) w/p (Zealand OR NZ)

This means: Tort and any other endings (eg torts, tortious) as a broad term, OR narrower terms (eg defamation, defamed, defamatory) OR the two phrases, w/p (within the same paragraph) as Zealand etc.

Note: Every database has a unique set of rules for searching. Go to the embedded Help guides for details.
FURTHER READING

These texts and more are in the Law Library @ K 79:

WHAT follows is a very basic introduction to ways of finding key legal material, namely:

**Primary Sources**
- Statutes
- Regulations (legislative instruments)
- Cases

**Secondary Sources**
- Articles
- Texts
- Loose leaf services
- Legal encyclopaedias

The main focus is New Zealand material, along with some guidelines for English, Australian and Canadian material. For information on other countries, consult an appropriate reference such as a textbook. Many of the reference materials described in this guide contain their own instructions for use.

Throughout this guide the library location of hardcopy material in the Law library is shown as (eg) @ KG 316. To find these locations, either refer to the map below in Appendix A or ask a librarian.

All online sources referred to are available through the Law Library subject guide:
[http://otago.libguides.com/law](http://otago.libguides.com/law)
TIPS AND TRICKS FOR ONLINE SEARCHING

Every database has its own set of rules and quirks, and some offer very sophisticated ways of searching, finding, and interrogating data. These general guidelines will enable you to approach your online research with efficiency and confidence.

Most databases allow you to search across the entire contents of statutes, cases or texts. Therefore your keywords need to align with the actual words used in those sources, so you will need to think about synonyms, alternative spellings and different forms of words (eg defamatory, defame, defamed). All databases have created short-cuts and devices to make your job easier, but each database has developed its own set of rules. They all provide Help pages.

<table>
<thead>
<tr>
<th>Connector</th>
<th>Symbol</th>
<th>Retrieves</th>
</tr>
</thead>
</table>
| AND                | & (or a space) | Eg trade & mark & registration  
Search terms in the same document: |
| Multiple Character Wildcard | ! | For example: object! will retrieve object, objected, objection, objectionable.  
To search for terms with multiple endings use the ! character. |
| Universal Character | * | For example, withdraw* will return withdraw and withdrew.  
To search for words with variable characters, use the * character.  
When you place the universal character within a term, it requires that a character appear in that position. |
| OR                 | or | Eg car or automobile  
The “or” operator is always processed before the others (even if it isn’t the first search operator you’ve entered)  
The “or” operator is always processed before the others (even if it isn’t the first search operator you’ve entered) |
| Phrase             | ** | Eg “fiduciary duty”  
Phrase Search terms appearing in the same order as in the quotation marks: |
| Numerical Connectors | /n | Eg person /3 jurisdiction  
Search terms within n terms of each other (where n is a number): |
| Numerical Connectors | +n | Eg capital +3 punishment  
The first term preceding the second by n terms (where n is a number): |

Common shortcuts for WestlawNZ
Lexis Advance Search Tips pop-up box

Most databases allow you to narrow or filter your initial search results, e.g., search all cases about tax avoidance, and filter to just Supreme Court cases. Remember, the filters are contextual, so a case law database will have different filters from a journal database.

Lexis Advance: filtered searching

HeinOnline: filtered searching
PRIMARY MATERIALS: STATUTES

NEW ZEALAND

OFFICIAL VERSIONS

- Current statutes are published in hardcopy, first in single act form, then in annual bound volumes (blue binding) @ Law KG 316
- Recognisable by the New Zealand Coat of Arms in the header of each statute.
- Statutes are reprinted occasionally to consolidate amendments @ KG 315:
  - Reprinted Statutes (brown binding) ran from 1979 to 2002
  - Bound Reprinted Statutes (green binding) is the current set @ Law KG 315

INDEXES

The Thomson Reuters’ Wall Index to Statutes (stuck on the book stacks @ KG 316) lists all the Acts in Force.

New Zealand legal database providers, Lexis, Westlaw, CCH and NZLII provide lists of Acts and Regulations in Force, as well as Repealed and Imperial Acts. NZLII also contains unannotated Acts as Enacted.

FIND REPRINTED OR FULLY ANNOTATED STATUTES

To find the print version of a statute, look for it on the wall index.

For example

- if the reference is of the form ‘RS 27’
  - look for it in that volume of the brown Reprinted Statutes of NZ
- if the reference is of the form ‘BRS 16’
  - look for it in that volume of the green Bound Reprinted Statutes
- if the reference is to a year and number
  - find it in the blue annual vols (sometimes, there will be an annotation at the start of the statute which refers you forward to a recent reprint in a BRS volume)
- Look out for pasted-in updates or red lines, which are added twice a year and track the changes over time.
  - Use Butterworths Annotations to the New Zealand Statutes, 2nd ed @ KG 323 or Brookers Advance @ KG 315 and KG 319 to keep up-to-date with more frequent changes.
To find an online (but not necessarily ‘official’) version of a statute, use a commercial database, or LegislationNZ. The content is always up to date, with links to the historical changes and amendments.

<table>
<thead>
<tr>
<th>If you are starting with this:</th>
<th>Try this database:</th>
<th>Using this technique</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference/citation eg Resource</td>
<td>WestlawNZ: Legislation &amp; commentary template</td>
<td>Use the Advanced Search: keywords in Legislation (Title) box; optionally, section number in Legislation (Provision) box.</td>
</tr>
<tr>
<td>Management Act, s 5</td>
<td></td>
<td>Click on highlighted documents to see the Legislation, plus links to commentary, cases, and articles.</td>
</tr>
<tr>
<td>Lexis Advance: Advanced Search &gt;</td>
<td>Act title in the title box, section number in Provision box; scroll down to result.</td>
<td></td>
</tr>
<tr>
<td>Legislation template</td>
<td></td>
<td>Use &quot;View Legislation Citator to find: cases, journal articles, and commentary.</td>
</tr>
<tr>
<td>CCH</td>
<td>Search for the statute title, then refine search by section number. Write the word section in full.</td>
<td></td>
</tr>
<tr>
<td>Note: CCH contains selected statutes eg commercial, tax and accounting.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LegislationNZ</td>
<td>Use the Advanced Search; keywords in the Title field, optional Section Number field.</td>
<td></td>
</tr>
</tbody>
</table>

Track the progress of upcoming and new legislation using these tools – they all provide a slightly different perspective.

- Law databases, WestlawNZ and LexisNexisNZ

37
- *The Capital Letter* @ KG 346 (current year on Reserve)

**UNITED KINGDOM**

An official edition of UK primary legislation is online at [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk).

To find all English statutes on a particular subject, use *Halsbury’s Statutes of England* @ KF 23

For alternative electronic access to full text English legislation, go to Lexis, Westlaw or to BAILII [http://www.bailii.org/](http://www.bailii.org/).

Hard copy versions of the English Statutes by year can be found @ KF 23.C8.

See the Law Subject Guide – Find by Jurisdiction - for more options.

**AUSTRALIA**

Our best access to Australian legislative material is through AUSTLII at [http://www.austlii.edu.au/](http://www.austlii.edu.au/)

See the Law Subject Guide – Find by Jurisdiction for more options.

**PRIMARY MATERIALS: REGULATIONS / LEGISLATIVE INSTRUMENTS**

Regulations or legislative instruments often have the same name as the statute under which they were promulgated.

**NEW ZEALAND**

- Hardcopy volumes, shelved by year @ K 318
  - Find by Year then title
  - Good for earlier content not covered online
- Online via WestlawNZ, Lexis Advance, LegislationNZ or NZLII - browse by year, or search
  - The commercial databases are the most up to date and amended.
  - Check the scope-notes for information about dates and details.
  - Note, NZLII content may not reflect amendments or revocations.

Finding unknown regulations (that is, checking whether a regulation relevant to your problem exists) is relatively simple online, because of the clever linking within commercial databases between statutes, regulations and cases. Start with the statute.

However, if you are looking for a regulation from before 1994, you will have to use hardcopy sources, starting with the statute. Also try using the *New Zealand Statutes Index* @ KG 318
PRIMARY MATERIALS: CASES

Your starting point when looking for case law will vary. You may be looking for cases in which particular legislation is considered, cases which reconsider earlier cases, cases which consider particular legal definitions or cases in a particular subject area. The strategy you adopt and sources you consult may vary according to your starting point. Legal databases provide a very effective method of locating cases from all starting points – provided they are used efficiently. However, not all cases are accessible electronically.

The Law Library holds a comprehensive collection of published case law, online and in hardcopy, particularly from New Zealand, Australia, the United Kingdom, the United States and Canada.

Use the university library search engine Library Search | Ketu http://www.otago.ac.nz/library/index.html to find locations and details of hardcopy sources, and some linking to online sources.

NEW ZEALAND

The Law Subject Guide http://otago.libguides.com/law, provides links to many online sources, including those listed below.

- Privy Council cases: full-text from 1999
- NZLII: for Supreme Court, Court of Appeal and High Court cases, plus many tribunals
- New Zealand Law Reports: on Lexis Advance from volume 1
- Specialist Courts: The Law Library subscribes to services for family, employment, company, tax and criminal cases, and more via WestlawNZ, Lexis Advance, and CCH.
- Briefcase via WestlawNZ contains entries for selected New Zealand cases, both reported and unreported, from 1983 with selected earlier material. Entries include a brief description of the case, statutes and cases cited, words and phrases considered, details of date, court, judge, location and length of the full decision.
- WestlawNZ provides links from Briefcase to the full text of many cases.
- LINX (WestlawNZ) and Linxplus (Lexis Advance) also contain entries for a fairly comprehensive range of cases sourced primarily from the court reports. These include most of the Court of Appeal and High Court decisions since 1984, along with a selection of more recent District Court and Family Court decisions. It also references New Zealand articles and books held by the libraries of the Auckland, Wellington and Christchurch Law Societies. Linxplus provides PDFs for many of the cases.
- Unreported Judgments Index: This service is provided by our own Law Library and references material held by the library. Currently there are over 50,000 judgments in the collection. From 2011, the judgments are available online, and the older material is steadily being retrospectively converted to PDF form.

FIND CASES INTERPRETING STATUTORY PROVISIONS

Having found a New Zealand statute or statutory regulation relevant to your problem you will want to know whether the provision has been applied or interpreted by a court.

For cases from 1986 on, and especially for very recent cases, use the databases and updating services online.
For reported cases, particularly for those decided prior to 1986:

- Consult the case annotations section of Butterworths *Annotations to the New Zealand Statutes* (2nd ed) @KG 323. Note: cases interpreting statutory regulations are noted at the end of the section on the principal Act which authorises the regulation. For example, cases on the Traffic Regulations 1936 are listed at the end of the section on the Transport Act 1962.
- Consult the table of “Statutes” in the volumes of the *New Zealand Law Reports Digest and Index* @ KG 341.

**FIND CASES CITING OTHER CASES**

If working with a particular New Zealand case, ensure that you have not overlooked a more recent case, and check whether the cases which you have discovered have been considered, applied, or distinguished in subsequent New Zealand cases.

Commercial databases such as Casebase (Lexis Advance) or Briefcase (WestlawNZ) provide this function seamlessly.

**Looking for a case cited?**

<table>
<thead>
<tr>
<th>If you’re starting with this:</th>
<th>Try this database:</th>
<th>Using this technique:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case name (you want subsequent cases which cite it)</td>
<td>Lexis Advance</td>
<td>Keywords from the case name in the Big Red Box. Click on Casebase link</td>
</tr>
<tr>
<td></td>
<td>Westlaw NZ: Content type: cases</td>
<td>Find the case itself; check its CiteCase record</td>
</tr>
<tr>
<td></td>
<td>NZLII</td>
<td>Find the case itself; check the Note-up and LawCite info</td>
</tr>
</tbody>
</table>

For reported cases, particularly for those decided prior to 1986:

- use the *New Zealand Case Citator* @ KG 351.
- consult the “Table of Cases Cited” in the *New Zealand Law Report Digest and Index* @ KG 341.

There is a multi-jurisdictional case citator available on NZLII called LawCite with almost 5 million entries.

If you find an important United Kingdom case relevant to your problem, you should check whether it has been cited in any New Zealand case. Try:

- *Australian and New Zealand Citator to UK* @ KF 60
- the “Table of Cases Cited” in the *New Zealand Law Reports Digest and Index* @ KG 341
- WestlawNZ or Lexis Advance

**FIND JUDICIAL DEFINITIONS OF PARTICULAR WORDS AND PHRASES**

Use a reputable source, for example:

- WestlawNZ and Lexis Advance databases
- the tables of “words and phrases judicially considered” in the index to the NZLR @ KG 341
- volume 18 of the *Abridgement of New Zealand case Law* @ KG 351 (for older NZ cases)
- Law Dictionaries @ K 120.5 and K 120.7
FIND CASES BY SUBJECT

Finding the citations to all New Zealand cases on a particular subject requires a thorough search. There is no single comprehensive index. Although the *Abridgement* has reasonable coverage of important cases up to the 1970s and the *WestlawNZ*, *CCH* and *Lexis Advance* databases, taken together, include a wide range of cases retrievable by subject cues from the mid-1980s, no one source can be relied on to throw up every case on a particular subject. The following reference materials comprise the basic research aids.

FIND RECENT NEW ZEALAND CASES

Almost all Supreme Court, High Court and Court of Appeal decisions, and some District and Family Court decisions, are indexed in *WestlawNZ* (from 1986) and *Lexis Advance* (from 1983). Material may be found by subject, by case, statute or regulation cited, or by word or phrase defined.

Websites such as *NZLII*, *Judicial Decisions of Interest*, and *Courts of New Zealand* are also very up to date.

<table>
<thead>
<tr>
<th>Looking for a relatively recent case?</th>
</tr>
</thead>
<tbody>
<tr>
<td>If you’re starting with this:</td>
</tr>
<tr>
<td>Case name and/or reported citation (you want this case)</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Keyword/concept</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Legislation (you want cases which cite the statute)</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
FIND OLDER NEW ZEALAND CASES

The *New Zealand Law Reports Digest and Index* @ KG 341 consists of a set of permanent volumes listing cases under subject headings, each covering a different time period, plus a supplementary index, updated annually.

The *Abridgement of New Zealand Case Law* @ KG 351 contains summaries of selected reported New Zealand cases under subject headings. Volume 17 of the *Abridgement* contains an alphabetical table of cases and citations, and a concise subject index. Volume 18 contains an alphabetical table of New Zealand cases judicially considered, and a table of words and phrases judicially considered in New Zealand. There are also supplementary volumes covering cases decided from 1962 to 2008. The *Abridgement* covers only cases decided in the High Court (formerly Supreme Court), the Court of Appeal, Supreme Court and other New Zealand superior courts.

SPECIALIST SERIES OF NEW ZEALAND REPORTS

Many specialised series of New Zealand reports exist, shelved from KG 342 onwards, alphabetically by title. They perform one of two roles:

- Report decisions of specialist administrative tribunals, for example, the Environment Court, ACC, Tax
- Provide fuller coverage of decisions in particular areas of law or courts, eg *District Court Reports*, *Criminal Reports of New Zealand* (CRNZ), *New Zealand Family Law Reports* (NZFLR), *Family Reports of New Zealand* (FRNZ). Note: unreported Family Court decisions are rarely made available due to suppression order restrictions.

Many series have their own cumulative indexes. Many tribunals publish their decisions online and are accessible via NZLII.

LOCATE CASES USING SECONDARY SOURCES

A textbook, loose-leaf, or journal article is often a good starting point to finding cases on a subject, as the authors will often refer to the current leading case on that topic. Be sure to read the case yourself. The reference will be in a footnote, or sometimes in a table of cases.

Encyclopaedic sources are also a good secondary starting point, for example *Laws of New Zealand* or *Halsbury’s Laws of Australia*. These sources and others are accessible via Lexis Advance (in the Analytics Tab).
ENGLAND

REPORTED CASES

When the citation to an English case is known, look for it online via ICLR Online, Westlaw or Lexis. Note, the English Law Reports (e.g. AC, QB, Fam) are online via the publishers website, ICLR Online. Cases can be tricky to locate online, so finding the shelf copy is comparatively easier. First, use the Cardiff Index to Legal Abbreviations www.legalabbrevs.cardiff.ac.uk via the Law subject guide to decode the citation. Then use Library Search |Ketu to find the location of the report on the shelves.

Use the Law Subject Guide for links to many resources for UK legal data.

UNREPORTED UK CASES

Many UK unreported judgments are now available in full text on ICLR Online, Lexis and Westlaw, or BAILII. See the Law Subject Guide for further options.

FIND CASES INTERPRETING STATUTORY PROVISIONS

Halsbury’s Statutes of England @ KF 23 is the English equivalent of our Annotations services. However, instead of merely listing cases under the names of the statutes considered, Halsbury prints the full text of each statute. Also, in Halsbury the statutes and notes are arranged according to subject matter (instead of alphabetically) and each topic is preceded by a preliminary note. The basic set of Halsbury’s 4th edition consists of 50 volumes. Cumulative supplementary volumes cover statutes passed since the basic set was published. A Current Statutes Service (looseleaf) updates the statutes and annotations in earlier volumes, and contains the text of recent statutes. A looseleaf Noter-up Service covers very recent developments.

Current Law @ KF 85 also has very thorough citator volumes for English legislation, giving references to cases.

FIND CASES CITING OTHER CASES

If you find an English case of interest, the Australian and New Zealand Citator to UK Reports @ KF 60 will provide a list of Australian and New Zealand cases in which that English case has been cited.

FIND JUDICIAL DEFINITIONS OF PARTICULAR WORDS AND PHRASES

- The Law Reports Index (for English cases) @ KF 55
- Law Dictionaries @ K 120.5 and K 120.7
FIND CASES BY SUBJECT (WHEN YOU DO NOT HAVE A CITATION)

DATABASES

Use the Law Subject Guide to link the many commercial databases on offer, and various free websites.

INDEXES AND DIGESTS TO THE LAW REPORTS AT @ KF 55

These consist of a number of permanent bound volumes which provide alphabetical and subject indexes to all cases reported in the various series of the official Law Reports between 1865 and 1990. Since 1911, all major series of English reports, including the All England Law Reports, @ KF 60 have been included in these indexes. The Law Reports Index also includes separate indexes of cases and statutes judicially considered. Words and phrases judicially considered are indexed within the subject index, under the heading “Words and Phrases”.

The Digest @ KF 85 contains summaries of cases from throughout the Commonwealth under subject headings, with a complete consolidated Table of Cases and a consolidated Subject Index. It is invaluable as a source of citations to all reported versions of older English cases, up to 1999.

For more recent cases, try BAILLI, ICLR Online, Westlaw or Lexis.com or Current Law @ KF 85

LOCATE CASES USING SECONDARY SOURCES

A textbook, loose-leaf, or journal article is often a good starting point to finding cases on a subject, as the authors will often refer to the current leading case on that topic. The reference will be in a footnote, or sometimes in a table of cases. Be sure to read the case yourself to check it is still good law. Encyclopaedic sources are also a good secondary starting point, for example Halsbury’s Laws of England @ KF 85 is also accessible via LexisNexisNZ (in the Commentary Tab).
AUSTRALIA

Reported case law can be found in the Australian library of Lexis Advance and WestlawNZ, as well as on the shelves from @ KG 41. AustLII - the Australian Legal Information Institute http://www.austlii.edu.au/ provides access to the full text of much recent case law, including unreported cases, and legislation.

The Australian Digest @ KG 51 contains summaries of all reported Australian cases under subject headings, including an alphabetical table of cases and citations.

For very recent cases use Australian Current Law @ KG 51.

When you find a relevant case, the Australian Case Citator @ KG 51 will lead you to later cases in which your case was considered. (It can also be used to quickly find citations for all Australian cases.) WestlawNZ includes citation information in its Australian cases.

Halsbury’s Laws of Australia @ KG 51 and via Lexis Advance performs the same function as The Laws of New Zealand.

When you find an English case of interest, the Australian and New Zealand Citator to UK Reports @ KF 60 will lead you directly to Australian and New Zealand cases in which the English case has been considered.

CANADA

The Canadian Abridgement @ KH 51 is a comprehensive reference service for Canadian law; an updated version is on Westlaw. For recent and unreported cases, go to the CanLII database at www.canlii.org and to Lexis and Westlaw.

OTHER JURISDICTIONS

Lexis.com and Westlaw are very large databases of full text legal material including case law – in effect massive legal libraries. While the primary focus is American they have useful collections of British, Australian, Canadian and New Zealand (Lexis only) material as well as material from other jurisdictions world-wide. Updated daily, they have powerful search and retrieval features. Best results are achieved if searches are carefully planned and executed. Westlaw also offers a Words and Phrases search option.

See the Law Subject Guide for links to many other sources, including International Law.
SECONDARY SOURCES

Many legal sources in hardcopy and online can be discovered using the Otago University Library search engine Library Search | Ketu [http://www.otago.ac.nz/library/index.html].

Use Library Search | Ketu first, when looking for any secondary sources on your topic. Resources held by the Library have been evaluated by librarians and academic staff to ensure the data meets the research and learning needs of the university community. This is particularly true for textbooks on Reserve.

LAW JOURNALS AND PERIODICALS

Library Search | Ketu can sometimes link you directly to articles, without the need to go to the law databases. However, it is often more efficient and satisfying to search law databases directly.

The Law Subject Guide is an excellent portal for quick access to these databases and more:

- **Linxplus** database indexes articles and books, especially on New Zealand law, published since about 1986 and held by the Auckland, Wellington and Christchurch District Law Societies’ Libraries.
- **LegalTra**: a major international index to law journals from 1980 on, and is updated daily. For full functionality, deselect the filter “limit to full text”.
- **HeinOnline** a database archive of searchable full-text of back runs of over 2000 law journals, (plus 19th century Law Reports and much much more).
- **Westlaw** includes a vast number of journals and journal articles which are not discoverable on Library Search | Ketu. Start via the link called “International Materials”.
- **Legal Journals Index**: available within Westlaw, this gives more detailed UK/Europe coverage than Legaltrac.
- **Lexis** includes a vast number of journals and journal articles which are not discoverable on Library Search | Ketu. Start via the link called “International”.

For articles prior to 1980, use the **Index to Legal Periodicals** @ K 207.

For historical New Zealand legal writing between 1954 and 1985 use the **Index to New Zealand Legal Writing** @ K 28.

LOOSE-LEAF SERVICES: COMMENTARY

Specialist loose-leaf publications fill a similar role to texts, but have the advantage of being updated regularly, and often include the full text of relevant legislation and case law.

Most New Zealand loose-leaves are available online or in print (often on Reserve), and can be found in Library Search | Ketu or via LexisNexisNZ, WestlawNZ or CCH.
OFFICIAL PUBLICATIONS

Many government publications and parliamentary material such as select committee reports, commissions of inquiry, reports, Law Commission reports and Hansard (New Zealand Parliamentary Debates) are available free online and may provide useful background particularly to statutory material.

Online access usually starts around the late 1980s.

FINDING-AIDS FOR HARDCOPY GOVERNMENT PUBLICATIONS

Hansards – Subject Index @ Central Library 3OC5 for access to debates.

Parliamentary Bulletin @ KG 318.5 for exact dates of bills, debates and select committee reports.

The Central Library @ 3OC5 holds a complete set of Hansards and The Appendices to the Journals of the House of Representatives (which includes annual reports and select committee reports).

THE ELEPHANT IN THE ROOM – GOOGLE & WIKIPEDIA

GOOGLE

Is a very powerful search tool, but it cannot find everything. In fact, many of the sources you need for academic study and research are locked behind subscription databases, or are purposefully hidden from Google so as to avoid potential suppression order breaches and embarrassments.

Is not designed as an academic search tool, so there is also a lot of rubbish to wade through, which can be a real time-waster.

Is only as good as your search – and Google learns to find what it thinks you want, so if you do ‘poor’ searches, over time, your results will become less and less useful.

Therefore, critically evaluating your search – and your results – is vital in the Google environment.

GOOGLE SCHOLAR

Use Google Scholar instead, to hone in on academic research. Access Google Scholar via the Library’s homepage (Under the big search box). This way you can get to the full text via the Library subscriptions.

WIKIPEDIA

Treat Wikipedia like any other encyclopaedic tertiary source. The rule in Wikipedia is that all sources used to write an article must themselves be secondary sources. Thus, it is an adequate starting point, but you should always find, read and evaluate the sources they use for yourself.
APPENDIX A: LIBRARY FLOOR PLAN


Tour the library virtually http://www.otago.ac.nz/library/locations/#law

Collection guide

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