

## REFERENCE

**Petal Kinder**

Monash University Law Library, Melbourne

Email: Petal.Kinder@law.monash.edu.au

### ***Searching for Case Law by Topic: Not all the Sources are Readily Digestible***

Many textbooks on legal research state that when commencing a search for case law by topic the first port of call should be a digest. I believe that this approach, which has been and continues to be taught by librarians as the definitive method to finding cases by topic, should be questioned.

Many practising lawyers and academics do not use the *Australian Digest* when seeking cases on a particular topic. The reason does not, as many would assume, stem from lack of knowledge of how to use the product. Case law for these particular groups of users is gleaned from various sources: word of mouth, a textbook, a looseleaf service, an article, an encyclopaedia, to mention a few. In other words lawyers are using, and have been for some considerable time, secondary sources other than digests to obtain their cases on topic.

Many legal research textbooks, however, still emphasise the use of primary source finding aids such as digests to be the starting point for searching for case law by subject. Some state that the reasons for this approach are that there may be either no relevant material on the topic or, that which is available is not current.

With regard to the first reason certainly if there were no secondary sources relevant to the topic then by all means pursue the avenue of a digest. I doubt that such a situation would present itself all that often, especially nowadays with the burgeoning amount of material being published on a wide range of legal topics by authoritative

authors. The second reason, namely that a secondary source may be available but the currency of the law contained within the source may be a few years out-of-date, does not warrant a total disregard for the consulted source. Whichever source is used, the information gathered from it must still be updated.

The importance of knowing the "cut off" date with regard to both primary and secondary sources is hopefully precision-drilled into the minds of law undergraduates during classes on legal research. The methods and sources used for updating from these "cut off" dates are then explained and demonstrated. Should a case on point be located through any of the means used by the many practitioners and academics, as stated above, it would still be necessary to update the information on the case in order to confirm the current status of the case.

I am not trying to undervalue the use or existence of a digest. One example, among others, for its use would arise if it became necessary to locate all cases considering a particular issue, going back several years, and/or covering all or even certain jurisdictions. Nor am I suggesting it is no longer necessary for librarians to understand the use and purpose of digests.

I am questioning the currency and validity of the approach taken to solving a major legal research question and the tools used to satisfy it. It would appear that practitioners and academics have on the whole forsaken the methodology they were taught in law school with regard to this particular question and are relying on a new approach. Librarians and other teachers of legal research should be taking note, analysing and evaluating the method/s and, if necessary, changing their approach accordingly.

It was reassuring to find that *Legal Research Materials and Methods* by Campbell, Glasson et al

discusses the value of searching for authorities through using a number of different approaches, depending on the information the researcher already has together with the problem to be solved. The book further discusses the advantages of using textbooks and encyclopaedias as a starting point for legal research. The current edition, published in 1988, also mentions the emergence of computerised legal materials and states at this point that "new techniques of legal research adapted to the particular system will need to be learned"

I began this column by noting that secondary sources, other than digests, should be the starting point for researching cases by topic. I was on the whole referring to the print versions of secondary sources, but on reflection find that I also have been using computer assisted legal research aids to locate cases by topic

We have already witnessed and experienced the availability of case law and legislation through CD-ROM and online databases. These formats have allowed for accelerated searching of full text of cases within jurisdictions and/or particular courts. The decision on *Speed v Relevancy* has yet to be handed down

Computerised case law has also begun to proliferate on the Internet. Should you be lucky not only to have access to the Internet but also to one of the World Wide Web (WWW) browsers or clients capable of hypermedia called Netscape, then by simply keying in "supreme court" you will obtain access to the full text of Canadian and United States Supreme Court cases, complete with colour photographs of the judges.

I would welcome comment on this area of legal research, indeed on any area of legal research. It would be beneficial to have open discussion on the methods of researching law either being used, or taught, by librarians. Discussion would be timely as more and varied products have arrived, or are about to make their debut in the legal arena. The question needs to be asked: are they simply the same old products dressed in different clothing?

## *New Reference Titles*

*Compiled by Roy Jordan*

Senior Subject Specialist Librarian (Law)  
National Library of Australia

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This list of recent reference items is a by-product of the compiler's scanning of the National Library's daily intake of incoming material. Titles of ready reference value in the subject areas of law and government documents have been included. General material has been listed when there is substantial law content. "Back of the book" bibliographies are included where these are substantial, ie more than 200 items or about ten pages.

To help the reader the list has been divided by country. The titles of publications included are usually self-explanatory. Annotations have been made in some cases where the subject or legal content is not clear.

Prices and ISBNs appear only if they were easily ascertained. Full addresses have been provided for minor publishers.

### *International*

*Bibliography of international law concerning Asian affairs* J.J.G. Syatauw

In: (1993) 3 *Asian yearbook of international law* (ISSN 0928-432X) 457-470

*Dynamic international regimes institutions for international environmental governance* Thomas Gehring. Frankfurt am Main, Germany: Lang, 1994. 515 p. ISBN 3631476310 (Studies of the Environmental Law Network International; v. 5)

A detailed bibliography is contained on pages 487-513 of books, articles, treaties and acts.

*International economic law and armed conflict* Harry H.G. Post. Dordrecht: Nijhoff, 1994. 215p. ISBN 0792331893

A detailed bibliography is contained on pages 183-196.

*International economic law : basic documents.* Philip Kunig, Niels Lau, Werner Meng 2nd ed. Berlin : de Gruyter, 1993 834p. ISBN 3110134470

*Precautionary legal duties and principles of modern international environmental law : the precautionary principle international environmental law between exploitation and protection.* Harald Hohmann. London : Graham & Trotman, 1994 377p. ISBN 1853339113 (International environmental law and policy series)

A detailed bibliography is contained on p 346-369

*Szladits' Bibliography on foreign and comparative law. books and articles in English 1989-1990* Vratislav Pechota. Dobbs Ferry, New York : Oceana, 1994 3v ISBN 0379140748 (v 1), 0379140756 (v 2), 0379140764 (v 3), ISSN 0067-7329

Contents: v.1 General, Foreign and comparative law, Private law Commercial law, Labor and social law, Law of procedure, Criminal law and procedure v.2 Protection of rights, Public law, Public ownership, regulatory, control and fiscal activities, International organization and integration, Conflict of laws/private international law Geographic index v.3 Name index

The introduction states that this work is no longer limited to entries on non-common law systems, but contains entries for books and articles on all non-US legal systems, including the United Kingdom, Canada, Australia, New Zealand and other common law countries

*Transfer of technology for deep sea-bed mining the 1982 Law of the Sea Convention and beyond* Yuwen Li. Dordrecht : Nijhoff, 1994 332p. ISBN 0792332121

A detailed bibliography is listed on pages 265-280

## Australia

*Concise legal research* Robert Watt 2nd ed. Sydney : Federation Press, 1995 256p. ISBN 1862871655 \$25

Contents: Citation, Primary source material, Delegated legislation, Law reports, Secondary source material, Finding the law in New Zealand, Canada and India, Finding the law in the United States, Finding international law, The legal materials of the European Union, Common case names, together with full citation

*Electronic sources of information for business in Australia and New Zealand.* Janet M. Stewart, Sandra Oxley. 2nd ed. Melbourne : Dept of Information Management and Library Studies, Royal Melbourne Institute of Technology, 1994. 194p. ISBN 0864443692 (Business information series ; no. 3)

Available from the publisher at GPO Box 2476V, Melbourne Victoria 3001

Contents: Newspapers and news magazines, General reference, Management/industrial relations, Industry, Company, Finance and accounting, Law and legislation, Statistical/numerical/economic, Directories, Hosts/distributors

*The force of law : international law and the land commander.* Hugh Smith. Canberra : Australian Defence Studies Centre, 1994 272p. ISBN 0731703030 \$20

The Appendix on pages 235-260 gives a listing and summary of international legal instruments binding upon the Australian Defence Force

*Government publications collections a directory of deposit and exchange collections held in Australian, New Zealand and South Pacific Libraries* Government Publications Subcommittee, Victorian State Committee, Australian Council of Libraries and Information Services. Canberra : ACLIS, 1994 50p. ISBN 1875351132 \$20 Available from ACLIS, PO Box E202, Queen Victoria Terrace A C T. 2600

Covering publications of both national and international jurisdictions, libraries listed are mainly national, state, university and parliamentary. A separate listing is given for intergovernmental organisation publications acquired by the National Library of Australia. Although reasonably easy to follow, the list could have done with a sample record. Without this it is occasionally necessary to refer to the Survey Form reproduced on page 49.

*Holdings list and location guide* Monash University Law Library 2nd ed. [Clayton, Vic] : Monash University Library, 1994.

Covers law reports, legislation, journals, treaties, gazettes, parliamentary debates

*The Law handbook the easy to use practical guide* Tracy Goulding. 5th ed. Redfern, N.S.W. : Redfern Legal Centre Publishing, 1994 1236p. ISBN 0947205411. \$54.95

A concise guide to NSW law aimed mainly at non-lawyers

*List of holdings.* Public Record Office, Victoria  
Laverton North, Vic : The Office, 1994. 659p.  
ISBN 0730648273.

This is a reprint, with corrections and enhanced index, of the 1985 second edition. Court records from 1836 are listed on pages 13-150 and Attorney General records from 1854 on pages 179-202. These latter records tell us that the Ned Kelly historical collection, 1869-1886, is now microfilmed in 4 reels and open for public inspection at the City Search Room. Other records of interest include the Governor and Executive Council.

*Popular Australian and English case names.* Colin Fong, John Rodwell. Sydney : Australian Law Librarians Group, New South Wales Branch, 1994. 71p. ISBN 0959135979. \$15.

Available from the publisher c/o Law Reform Commission Library, GPO Box 3708, Sydney NSW 2001.

*Subject index to Australian Capital Territory legislation draft.* Elizabeth Estbergs. Canberra : Government Law Library, 1995. 39 leaves.  
Available from the publisher at GIO House, City Walk, Canberra City A.C.T. 2601.

## Great Britain

*Administrative law and government action: the courts and alternative mechanisms of review.* Genevra Richardson, Hazel Genn. Oxford : Clarendon Press, 1994. 362p. ISBN 0198762763.  
A detailed bibliography is to be found on p. 337-349.

*Masculinity, law and the family.* Richard Collier. London : Routledge, 1995. 331p. ISBN 0415091942.  
A detailed bibliography is contained on pages 286-324.

## Japan

*Law.* Murayama Masayuki.

In: *An Introductory bibliography for Japanese studies.* Vol IX, part 1. Social Sciences 1990-91. Tokyo : Japan Foundation, 1994. pp 1-32.  
ISBN 4875400152.

A listing of Japanese language titles, some with annotations, divided into : sociology, legal history, civil law, commercial law, labor law, public law and criminal law.

## Taiwan

*Bibliography on selected books and academic articles published in the Republic of China relating to international law and affairs, 1992-1993.* Chun-I Chen, Chun-li Ouyang.  
In: (1992-94) 12 *Chinese yearbook of international law and affairs* (ISSN 0731-0854) 799-821.

As well as providing articles and book reviews on international, this title contains the texts of treaties and agreements concluded by Taiwan during 1993 (pp 397-768).

## United States

*Ethical and legal issues in AIDS research.* Joni N. Gray, Phillip M. Lyons, Gary B. Melton. Baltimore, Md : Johns Hopkins University Press, 1995. 199p. ISBN 0801849101.  
A detailed bibliography is listed on p. 173-193.

*Knowledge-based systems in the legal domain.* Trevor J.M. Bench-Capon.

In: *Encyclopedia of computer science and technology.* New York : Dekker, 1995. v 32, supplement 17, pp 163-185. ISBN 082472285X.  
Contents: Historical overview, Types of legal systems classified by task, Types of legal system classified by formalism, Types of legal systems classified by reasoning method, Current developments and prospects.

*Maintenance of legal knowledge-based systems.* Trevor J.M. Bench-Capon.

In: *Encyclopedia of computer science and technology.* v 32, supplement 17, pp 187-201.  
Contents: The Need for maintenance in knowledge-based systems, Special features of legal knowledge-based systems, Reasons necessitating changes in legal knowledge-based systems, Types of change in a legal knowledge base, Building maintainability into a legal knowledge base, Maintenance of case-based systems.

*Mapping law into hypertext.* Eve Wilson.

In: *Encyclopedia of computer science and technology.* v 32, supplement 17, pp 203-240.  
Contents: What is hypertext?, The Structure of legal documents, Cross-References in legal documents, Concept links and indexing, Distributed hypertext systems, Hypertext and document drafting.

*Modern technology and its effect on research and communication* Marilou M. Righini [et al]. *American Society of International Law Annual Meeting (86th Washington 1992) Proceedings* (ISSN 0272-5377) : p 604-622 [Received in the National Library in February 1995]

In the words of one of the speakers (Stephen Haynes of WESTLAW), these papers are a "quick trip down memory lane and a brief survey of available and future technology". Other speakers included John Johnson of LEXIS and Lyonette Louis-Jacques, Associate Librarian and Foreign and International Legal Reference Librarian at the University of Minnesota. Lyonette will be known to many as the co-moderator of the International and Foreign Law discussion group on Internet.

Also of interest in this issue is the Report of the Committee on Publications of the U.S. Department of State and the United Nations on p 667-675, which includes a list of major international law publications issued by both organisations during 1992.

*National Criminal Justice Reference Service document data base* [computer file]. Rockville, Md : NCJRS, [1994?]- CD-ROM computer laser optical disk.

Superintendent of Documents no. J28 31/2. Distributed free to SUDOC depository libraries worldwide.

NCJRS contains bibliographic records of 125,000 books, research reports and periodical articles related to criminal justice (penology, forensics, police etc).

*The Supreme Court justices illustrated biographies, 1789-1993* Clare Cushman. Washington, D.C. : Congressional Quarterly, 1993. 576p. ISBN 0871877236.

## *Note to Contributors*

**Australian Law Librarian** welcomes the contribution of articles and notes. Articles should be 1500 to 3000 words long and be accompanied by a passport photo of the author.

All material should be submitted on an IBM compatible disk of either size in MS Word, Word Perfect or other major word-processing package. ASCII format is also acceptable. The disk should be accompanied by a hard copy, double-spaced, on A4 size paper.

Please use **upper and lower case on headings** and for space use the "TAB" function and not individual spaces. Please don't use underlining. Contributors should follow the format of the current journal and contact the Editor [Tel: (06) 270 6922 or Fax: (06) 273 2110] to obtain a copy of the **ALL** Style Guide. The Editor would appreciate notice of pending contributions to assist in planning future issues. Acceptance and publication of contributions are at the discretion of the Editorial Committee.

Deadline dates are published in **Australian Law Librarian** several times a year. For the next two issues the dates are:

**1 Sept 1995 Vol.3 no.4/5 (August/October 1995)**  
**10 Nov 1995 Vol.3 no.6 (December 1995)**