

2012

Good Practice Guide (Bachelor of Laws)

RESEARCH SKILLS

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Introduction

This Good Practice Guide was commissioned by the Law Associate Deans Network to support the implementation of Threshold Learning Outcome 4: Research Skills.

The Threshold Learning Outcomes (TLOs) for the Bachelor of Laws were developed in 2010 as part of the Learning and Teaching Academic Standards (LTAS) Project, led by Professors Sally Kift and Mark Israel.¹ TLO 4: Research Skills is one of six TLOs developed for the Bachelor of Laws. All six TLOs are:

- TLO 1: Knowledge
- TLO 2: Ethics and Professional Responsibility
- TLO 3: Thinking Skills
- TLO 4: Research Skills
- TLO 5: Communication and Collaboration
- TLO 6: Self-management

The TLOs were developed having reference to national and international statements on the competencies, skills and knowledge that graduates of a degree in law should have, as well as to the emerging descriptors of the Australian Qualifications Framework (AQF) for Bachelors Degrees (Level 7) and Bachelors Honours Degrees (Level 8).²

TLO 4: Research skills

Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

It is noted that there is a substantial degree of overlap, both between the four internal elements of this TLO and between this TLO and others, such as TLO 3 Thinking Skills and TLO 5 Communication and Collaboration.

This Good Practice Guide seeks to assist legal educators and library professionals in their endeavours to integrate legal research skills into the Law School curriculum by:

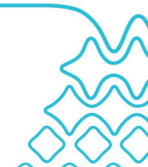
- synthesising the key considerations of each of the four named elements of legal research;
- providing a concise summary of existing research and good practice in the area;
- providing some examples of the way in which legal research can be included in the Law School curriculum, and
- identifying areas in which further research is needed.

Author

This Good Practice Guide was written by Dr Clare Cappa, TC Beirne School of Law, The University of Queensland; with research assistance from Ms Angela Allen, The University of Queensland Library.

¹ Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning & Teaching Academic Standards Statement December 2010*, Australian Learning & Teaching Council (December 2010) <http://www.altc.edu.au/system/files/altc_standards_LAW_110211.pdf>.

² Ibid. See relevantly the Notes on TLO 4 at 19-20 and the sources and relevant equivalent or contributing statements to TLO 4 that are summarised at pages 42-45.



The Elements

Proficiency in legal research is a life-long skill which will enable law students to investigate any legal issue as it arises. Comprehensive legal research is more than just finding the law; it is a holistic process that involves a consistent methodology, and requires an understanding of the informational interrelationships inherent in both print based and electronic legal research, as well as an appreciation of the context in which the research results will be applied so as to be able to contextualise and communicate the possible solutions.

It is important to make the disclaimer at the outset that this Guide is concerned with the type of legal research engaged in by law students rather than that engaged in by legal scholars. The former is concerned with finding the law as stated by others, analysing those statements, synthesising those results to apply them to the object of the research and presenting the result. It is usually done in the context of law school assignments. In shorthand, it can be called text-based doctrinal research. The latter is concerned with breaking new ground; with building on what is already known and adding a significant intellectual component to create a novel output. Put simply, the difference is that the former is the quest to find knowledge that is unknown to the individual, but is commonly known to others. The latter is research into the commonly not known.³

Element 1: Identify / Question

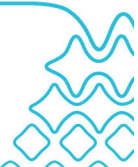
Graduates of the Bachelor of Laws will have the ability to identify the issues which need to be researched, and to understand the social, political and theoretical contexts in which they are relevant. Although variously labelled in the literature, this can be characterised as the **pre-analysis** stage of the research process. It requires a familiarisation with the conventions of the legal system within which the researcher is operating; knowledge about the reference sources available as a product of that system; and an understanding of the dynamics which may influence the way the legal research question has been asked.

Although in many ways the easiest stage, this first stage is often skipped when research is being conducted in a time-poor environment. As in many other spheres of academic endeavour, taking the time to think carefully about the issues to be researched and their relevant context is essential.

This step involves going beyond the information given and asking questions about the way facts are presented. It may even involve being comfortable with questioning the context in which the facts have been presented, and testing the application of an alternative analysis (eg socio-legal, feminist, critical race theories) to the facts. It certainly involves reading the facts carefully and with an open mind. Law is a socially constructed institution which reflects the underlying political and community beliefs, and it is necessary that the legal researcher generate meaning from the facts by reference to, and within the intellectual parameters of, his or her current knowledge and socio-legal context.

However, contextualisation of a legal problem is not always easy to achieve. In law school, legal problems are usually situated within the paradigm of the 'block' of law currently being considered, and students are not encouraged to explore

³ Paraphrased from John Willison and Kerry O'Regan, 'Commonly Known, Commonly Not Known, Totally Unknown: A Framework for Students Becoming Researchers' (2007) 26(4) *Higher Education Research and Development* 393.



outside this paradigm for possible solutions, or complicating factors. Contextualisation of a legal research problem involves being aware of how the various aspects of the relevant law fit together. This may involve assessing jurisdictional and statutory limitation issues, thus placing the legal problem within the context of the law as a whole.

Element 2: Research / Planning and Gathering

Graduates of the Bachelor of Laws will be able to conduct research, using the variety of print based and electronic resources available, in an intelligent and practical manner. This step includes formulating a research strategy to utilise the available bibliographic tools and demonstrating the bibliographic skills taught in legal research classes. This process is variously referred to in the literature as doctrinal research, library-based research and bibliographic research.

There is no substitute for formulating a research plan before beginning the research process. Experienced researchers keep a note of the rationalisation which they are applying to the research process, a step which is increasingly necessary in the face of the plethora of resources available in the electronic age. A search strategy which includes a list of sites to be interrogated; the search string proposed (and its refinements once the most successful strategy is perfected); keywords identified; and any false starts or dead-ends will prove essential for an efficient research process.

Element 3: Evaluate

Graduates of the Bachelor of Laws will be able to evaluate the currency, jurisdiction and authority of the sources they use and the material they locate. This involves a process of interpretation and critical analysis.

Legal resources differ in their relative authority. Some are binding (cases from the highest court in the hierarchy, which have not been overruled); others are only persuasive (cases from another jurisdiction); others are only useful as background information (journal articles and textbooks).

The advent of technology has meant that a different emphasis needs to be placed on what has been termed 'cognitive authority'⁴ – the conferring of trust upon a source. In the past, despite the centrality of legal information to the legal culture, there has never been a serious attempt to question the authority of legal information. Researchers assumed that certain sets of books were authoritative and reliable, and if used correctly, they would provide the 'correct' information. There was no need to look behind the publication for motives for publishing, or to evaluate its worth. However, that security is no longer available, if it ever was. It is now imperative that every legal researcher be informed about legal information – what constitutes it, who controls it and how it is changing – and most importantly, how that impacts on the legal research process.

Element 4: Synthesise

Graduates of the Bachelor of Laws will be able to synthesise the arguments from the material located by analysing how the cases and statutes located fit together and how the principles distilled from that synthesising process apply to the legal problem they are resolving.

⁴ Robert C Berring, 'Legal Information and the Search for Cognitive Authority' (2000) 88 *California Law Review* 1673 at 1676.



This element is the most important, but often the least emphasised. The literature suggests that it is not until law students are able to properly contextualise their research – for example because they are working on a client file in a clinic situation, or having to research an issue from the point of view of either a plaintiff or defendant – that the importance of efficient research and the relevance of effective research becomes apparent.



Part 1: Literature Review

This literature review is divided into three sections.

The first includes background material on the ongoing debate which has taken place over the past decade about the nature of legal research in a law school context. Although many believe that the debate has largely been settled in favour of a holistic approach to legal research which incorporates a theoretical, critical and interdisciplinary approach, as opposed to an applied practical problem-solving approach, much of this background material is essential reading to understand the place of legal research in law school curricula.

The second section details the available textbooks, or substantial sections of introductory texts, on legal research, which are aimed at law students. These are largely self-explanatory, and are most often centred around the concept of doctrinal research.

The third section highlights a cross section of the literature available on how to teach legal research, specifically the experiences from various legal educators (including law librarians).

Background Material

Australian Learning & Teaching Council, *Learning and Teaching Academic Standards Project: Bachelor of Laws: Learning and Teaching Academic Standards Statement (2010) 19-20.*

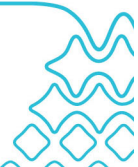
Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

Section 4.2 'Notes on the Threshold Learning Outcomes for the Bachelor of Laws' states that TLO 4: Research Skills blends the requirements of the Committee of Australian Law Deans (CALD) standard of 'the intellectual and practical skills needed to research and analyse the law' with those of the AQF Level 7 that graduates have the 'cognitive skills to critically review, analyse, consolidate and synthesis knowledge'.

The terminology adopted suggests that intellectual and practical skills include information literacy skills and recognising the need for research, the ability to select and use appropriate information sources, and a determination of their authority. The ability to **identify** ... factual, legal and policy issues is the skill of distinguishing between relevant and irrelevant issues as part of the legal research process. The ability to **research** ... factual, legal and policy issues includes the ability to find and use primary and secondary legal and non-legal sources relevant to the identified issues. The ability to **evaluate** ... factual, legal and policy issues require an assessment of the currency and authority of the material located. The ability to **synthesise** ... factual, legal and policy issues involves the skill of linking or collating the issues to the problem to hand.

Council of Australian Law Deans, *Statement on the Nature of Legal Research (October 2005).*

This document gives an historical perspective of the understanding of the term 'legal research' starting with the *Pearce Report* in 1987. In line with its objective (it is taken from the much more detailed CALD submissions to the Department of Education, Science and Training (DEST) in relation to the Research Quality



Framework (RQF) published in May and October 2005) the statement outlines the distinctiveness of doctrinal legal research, as well as its interrelationship with the social sciences and humanities, in terms of the ease of evaluation of quality. Because it is concerned with published research, the main emphasis of this statement is on legal research engaged in by legal scholars rather than law students.

Student Texts

Bott, Bruce and Ruth Talbot-Stokes, *Nemes and Coss' Effective Legal Research* (LexisNexis Butterworths, 5th ed, 2012).

As the current authors say in the Preface to the fifth edition, this how-to guide has a 'down-to-earth, practical style and touches of humour' which makes it a very useful resource.

The book covers the major Australian research resources, both print-based and electronic, and also mentions many other, less well known, but valuable resources. There is also a whole chapter (Chapter 3) on strategy and technique which includes a useful schematic diagram of the research process. But perhaps its greatest strength is the worked examples based on contextual problems, coupled with the numerous screen shots and boxed snippets of information such as 'handy hints' and 'warnings'.

Hutchinson, Terry, *Researching and Writing in Law* (Lawbook, 3rd ed, 2010).

This work is now in its third edition, and the recent version maps the developments that have taken place in legal research over the last few years. In doing so, this work provides keys to the web-based electronic sources of legal research, as well as exploring traditional doctrinal methodologies. It also includes expanded discussion of the process of formulating a research proposal, undertaking a literature review and planning research methodologies. Included in this edition are extensive checklists for locating and validating the law in Australia, England, Canada, the United States, New Zealand, India and the European Union.

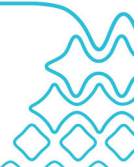
James, Nick and Rachael Field, *The New Lawyer* (Wiley, 2013).

This new introductory text is divided into two parts, the second of which is entitled 'doing' which focuses on the 'fundamental legal skills required by every law student and lawyer'. Chapter 6 deals with legal research skills and emphasises the over-arching skills of independent learning and transferable skills which are emphasised throughout the book.

The authors divide the legal research process into five principles: adopt a systematic approach; know where to look; access good-quality information; read actively and efficiently; and apply your research. The text adopts a conversational style, directly addressing the student of law in an informal way, with many helpful diagrams and tables to break up the pages. The authors provide helpful tips and hints, and also many examples of research topics to guide the student through the process.

Milne, Sue and Kay Tucker, *A Practical Guide to Legal Research* (Lawbook, 2nd ed, 2011).

This comprehensive compendium of legal problem solving and legal research methodology uses a factual scenario, which concerns the relocation of children of a marriage, to outline the steps necessary for research and analysis of the law. As



the authors say in the introduction, the first edition of the book was based on the teaching materials for advanced legal research courses offered at Monash and Adelaide Law Schools, so it is very much a teaching tool. However, this second edition has expanded that original concept to provide a comprehensive and detailed overview of every aspect of the doctrinal legal research process.

The text introduces sources of legal information, the major commercial players in the field of legal publishing, and developments in online and internet based legal research. Each chapter focuses on an aspect of the legal research process; from analysing a research problem, through effective ways of identifying and locating relevant primary and secondary sources, finishing with examples on citing particular types of resources. New to this edition are tips in relevant chapters on how to incorporate research results into the writing process. Worked exercises based on the research problem are provided to enable practise using the featured online resources.

Section 1 of the book covers Australian jurisdictions, while Section 2 covers comparative jurisdictions of both public and private (conflict of laws) international law, the United Kingdom, New Zealand and Canada, the United States and the European Union. This is an invaluable resource for legal researchers who need to conduct multi-jurisdictional research.

Watt, Robert and Francis Johns, *Concise Legal Research* (Federation Press, 6th ed, 2009).

Now in its sixth edition, this classic book on legal research has been updated in acknowledgement of the centrality of electronic methods of legal research, without losing a sense of the hierarchical and highly structured nature of the legal research process. Although using the word 'concise' in the title, this is in fact a comprehensive guide to legal research covering all sources in detail and providing extensive examples from both print and electronic sources.

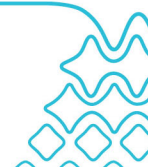
Articles and Books about Methodology

Beljaars, Ben, 'Implementing Legal Information Literacy: A Challenge for the Curriculum' (2009) 37(3) *International Journal of Legal Information* 320.

This perspective, from a Dutch academic, posits that law schools currently pay little attention to legal information literacy in the curriculum and that the application of specialised information literacy skills is 'taken for granted in degree courses and its basic principles are dealt with summarily, if at all' (at 321). Although many Australian law schools do take a much more proactive approach to legal research literacy, his call for increased collaboration between faculties and libraries in order to narrow the gap between university and professional practice is universal.

Callister, Paul D, 'Time to Blossom: An Inquiry into Bloom's Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills' (2010) 12(3) *Law Library Journal* 102.

The main premise of this article is that there is an over-abundance of literature which describes teaching methods and courses offered in legal research, but that few of these offerings have a sound basis in pedagogical theory. 'While the literature in our field boasts considerable description of various methods for teaching legal research, noticeably absent is any theory drawn from leading pedagogical or educational theorists, particularly from outside of law and librarianship' (at 191). As a result, the foundation on which the body of literature is built is 'suspect'.



To open the dialogue of a 'scholarly engagement on the underlying pedagogy at the heart of legal research instruction' (at 192), the author adapts Bloom's Taxonomy (which distinguished types of learning and the teaching styles required for each) to categorise legal research skills. This is a thoughtful and thought-provoking article, which provides a number of tables which illustrate how the schema can be applied to both simple and complex legal research undertakings. Although the examples are based on the law of the United States, it is a schema that could be readily adapted to legal research instruction in any jurisdiction.

Cappa, Clare, 'A Model for the Integration of Legal Research into Australian Undergraduate Law Curricula' (2004) 14(2) *Legal Education Review* 43.

This article is based on the author's thesis on the same topic, and provides a more accessible explanation of the five stage model for the conduct of legal research. The article utilises a wider concept of legal research, explaining that basic doctrinal research, or bibliographic skills, forms only one part of the continuum of legal research methodology, which involves the five stages of analysis, contextualisation, bibliographic skills, interpretation and application. Although the article dates itself through its premise that legal research is marginalised in Australian law schools, it foreshadows the more modern understanding of legal research as necessarily integrated into law school curricula in a meaningful way by the employment of teaching and learning theory which focuses on student-centered learning.

Chancellor, Renate L, 'Legal Information Seeking in a Time-Constrained Environment: A Conceptual Model for Lawyers' (2010) 38(3) *International Journal of Legal Information* 282.

This paper investigates the information seeking behaviour of legal practitioners and posits that the specific processes of information retrieval represent a dynamic relationship between lawyer (or law student) and information professional.

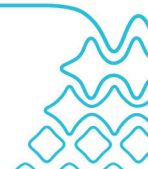
Chiorazzi, Michael and Cynthia Condit, 'Legal Research Boot Camp: One Approach to Meeting the Research Needs of Law Students' (2011) 30(4) *Legal Reference Services Quarterly* 299.

The authors of this article observe that the pressures on the first year curriculum are such that 'all we can hope to do is give first-year law students the basic research skill-set they will need to develop their analytical and writing skills' (at 300). In recognition of the fact that first year students are therefore often ill prepared for summer clerkships, the University of Arizona offers an intensive, one week course in the first week of the summer break.

The article provides a comprehensive description of the philosophy, planning, and organisation that went into designing the course; discusses the logistical and pedagogical considerations; outlines the teaching arrangements; details the current structure of the course; is honest about the success and failures; and finishes with detailed notes. This is an invaluable resource for any law school considering offering a similar course.

Cinch, Peter, *Teaching Legal Research* (UK Center for Legal Education, 2nd ed, 2006).

This book has as its stated intention the provision of guidance and advice for tutors on how to develop and run a legal research skills course. Although the discussion is based on the situation in England and in Wales, most of the information readily translates to other jurisdictions. One of the most useful aspects



of this book is the reproduction of many teaching resources, including lesson plans, instructors' notes, handouts and guidelines on using teaching aids. Another is the chapters on assessment and course evaluation.

Condon, Matthew C, 'Task Mastery in Legal Research Instruction' (2011) 103(3) *Law Library Journal* 395.

This article starts out by chronicling the development of legal research skills in US law schools since the *MacCrate Report*, providing references to summaries and list of resources focussing on legal research in that country. The article then goes on to summarise the seven habits possessed by highly effective researchers as detailed in Conlin and Cusimano (eds), *Litigating Torts Cases* (2010), concluding that neither a process-orientated approach to legal research or the more traditional bibliographic method of instruction is as effective 'as what the student teaches herself during the actual research process' (at 402). This translates as 'task-mastery' and the author details the application of this concept in the advanced legal research course he teaches through the use of research logs in which students are required to identify research strategies, articulate the steps in the research process and engage in self-evaluation.

Davies, Jackie and Cathie Jackson, 'Information Literacy in the Law Curriculum: Experiences from Cardiff' (2005) 39(2) *Law Teacher* 150.

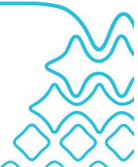
It is often said that the library is to a law student what the laboratory is to the scientist. Are we teaching students not only to find their way around this laboratory, both physical and virtual, but to evaluate what they find and use it effectively? Skills of research, analysis, synthesis and presentation are fundamental to the successful study of law and beyond. How can we ensure that students develop these skills without sacrificing substantive content in an already crowded curriculum? This paper discusses the concept of 'information literacy' and how Cardiff Law School used the concept to integrate legal research, IT and other legal skills training into a coherent module with an English Legal System focus.

Gallacher, Ian, 'Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation' (2006) 39 *Akron Law Review* 151.

The author writes that 'this article is a meditation on contemporary legal research and possible changes in the way the subject should be taught' (at 4). Although it covers a lot of ground already covered in other articles about the importance of legal research, it does reflect on possible pedagogic strategies and proposes that we 'recalibrate our approach to the subject' (at 6).

Germain, Claire M, 'Legal Information Management in a Global and Digital Age: Revolution and Tradition' (2007) 35(1) *International Journal of Legal Information* 134.

The transformation of legal information due to the impact of the internet and globalisation, although not new topics, are dealt with in this article in terms of how information specialists are dealing with the consequent information overload in the context of legal research. Easy access to the 'inflation of information, augmented by an inflation of legal issues' (at 136) is less reliable than fully indexed and classified tools and systems that used to be the basis of legal research. Issues of authentication and verification now need to be an integral part of legal research methodology.



Hutchinson, Terry, 'Developing Legal Research Skills: Expanding the Paradigm' (2008) 32(3) *Melbourne University Law Review* 1065.

This article advocates placing an emphasis on the research process rather than on research resources; broadening the paradigms of legal research so as to involve other methodologies rather than the traditional doctrinal approach; and enhancing law school research skill training using a 'point of need' approach. The author identifies the two different models of legal research which take place in law schools as representing two different types of research endeavour. The first is academic research, which she terms the 'scholarship-driven' model and is focused on that small cohort of undergraduates who will go on to postgraduate study. The second is the 'practitioner-driven' model which is specific training for praxis.

Kauffman, Blair, 'Information Literacy in Law: Starting Points for Improving Legal Research Competencies' (2010) 38(3) *International Journal of Legal Information* 339.

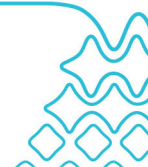
This article outlines four approaches for improving legal research skills of law students used in US Law Schools – (1) offering mandatory law school courses in legal research; (2) offering additional elective credit based courses in legal research; (3) offering non-credit courses to students at their identified 'point-of-need'; and (4) testing prospective lawyers on their legal research competencies as a requirement to being licensed to practise law – and discusses their potential for application within the international community of library professionals.

McNamara, Judith, Rachael Field and Natalie Cuffe, 'Designing Reflective Assessment for Effective Learning of Legal Research Skills in First Year' (Paper presented at the 11th Pacific Rim First Year in Higher Education Conference, Hobart, 30 June-2 July 2008)
<http://www.fyhe.qut.edu.au/past_papers/papers08/FYHE2008/index.html>.

This paper recommends the use of reflective assessment as a way of providing students with a positive way of demonstrating their learning in the context of legal research skills. The authors write: 'The legal research skills context is particularly apt for achieving an effective introduction to reflective practice for students because legal research is a process students must accept as cyclical and oftentimes, especially in the early stages of skill development, problematic. That is, legal research needs to be acknowledged by students as a process that almost never occurs in a straight line, but rather is one where answers are not always obvious, or found quickly or simply. The subject area, therefore, provides a strong hook on which to hang the introduction of reflective practice processes' (at 3/9).

Meredith, Sandra, 'First Year Law Students, Legal Research Skills and Electronic Resources' (2006) *Oxford Legal Studies Research Paper No 42/2006* ((2007)15(1) *Legal Education Digest*, 49).

Describes a case study of a stand-alone model of fulfilling the research skills requirements utilised at Oxford University Law Faculty. The unit provides training in legal information resources, legal research and teamwork. The author outlines the methodology used in the case study to evaluate what law students actually do with what they learn in legal research skills programmes.



Puttick, Keith, Rhonda Hammond-Sharlot and Janet Spence, 'Enquiring Minds: The "Project" and Strategies for Promoting (Better) Research, Autonomy and Deployment of Skills at Level 3' (Paper presented at the LILAC Annual Conference 'Concepts of Culture in Legal Education', University of Warwick, January 2009).

This paper argues the case for a more ambitious agenda for student research, by treating undergraduates as part of the 'community of researchers' and exploring strategies for making a reality of the idea that law students' information literacy should transcend competence in using IT systems.

The authors evaluate a student-focused model for developing students' capabilities as researchers and integrating them as student researchers into institutions' research communities. The model is based on the three requirements of:

1. Continuing development of research and research-related skills;
2. Deployment of those skills in ways that promote genuine autonomy and meet the full range of expectations, including the need for students to be information literate; and
3. Effective assessment, both formative and formal, of research skills.

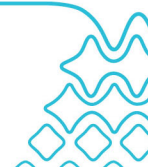
They argue that systems for assessing evidence of effective deployment of research skills need to extend beyond traditional methods of formally assessing research skills (such as the coursework assignment and the examination) to a more diverse range of assessment forms.

Siems, Matthias M, 'The Taxonomy of Interdisciplinary Legal Research: Finding the Way out of the Desert' (2009) 7(1) *Journal of Commonwealth Law and Legal Education* 5.

This article presumes that the intellectual tension between 'black-letter' academic lawyers who use traditional modes of legal analysis, and interdisciplinary scholars who use ideas and techniques borrowed from other disciplines, has resolved itself into the recognition that it is necessary to incorporate interdisciplinary research into the legal research process. The interdisciplinary aware legal researcher can gain a deeper understanding than someone who is only interested in the 'law as such' as it can lead to a more informed and more balanced judgment. The author identifies four different types of interdisciplinary legal research and outlines the advantages and disadvantages of each.

Talbot-Stokes, Ruth, 'Scuse me Miss! What's an Unreported Judgment?: Relating Graduate Attributes to Legal Research Skills in the Workplace' (2008) 16(4) *Australian Law Librarian* 264.

Anecdotal evidence that law graduates don't emerge from law school with high-level research skills is traced to the advent of online research platforms. Law students 'can find "stuff", but not necessarily the right stuff, rather, the stuff that is the easiest or the quickest to find' (at 264). This article outlines a series of questions asked of law firm library managers about the skills set of recent graduates, and offers advice to law schools on how to overcome some of the shortfalls indicated.



Tucker, Kay and Trish Hughes, 'Collaborating on Teaching the RAW Materials for a Law Degree – Research and Writing' (2008) 16(4) *Australian Law Librarian* 256.

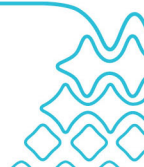
Among other useful things, this article provides an overview of the various models employed by Australian law schools for the teaching of legal research and writing (although that is now somewhat dated). It goes on to detail the methods employed by Monash University, which requires collaboration between Law Librarians and Law Faculty staff, to offer a Research and Writing Unit which includes, besides the obvious research and writing skills, the skills of critical thinking and critical reading.

Wardell, Kayleen, 'From Caveman to Casebase: The Evolution of Legal Research through the Technological Age' (2010) 18(1) *Australian Law Librarian* 10.

Traces the shift in the practice and teaching of legal research due to the evolution and advancement of online legal resources and advocates the involvement of law librarians in the development of new pedagogical approaches to the teaching of legal research.

Willison, John and Kerry O'Regan, 'Commonly Known, Commonly not Known, Totally Unknown: A Framework for Students Becoming Researchers' (2007) 26(4) *Higher Education Research and Development* 393.

This paper is largely concerned with the ability of students to display good research skills after they graduate. As a means to this end, it outlines strategies for developing undergraduate research skills. The authors present a framework for the 'Research Skill Development' (RSD) of coursework students, which can be used to chart and monitor students' research skill development. The framework 'provides a way of planning an environment that encourages inquiry of a deeper understanding, greater synthesis, more applied, more thoroughly analysed, and better evaluated' than is currently possible.



Part 2: Summary of Key Points from a Review of the Literature

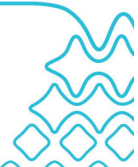
The literature review reveals some interesting points. The number of articles which decry the state of legal research teaching across Australian law schools has diminished; by far the greatest number of articles along the lines of ‘they still don’t know anything, what are we doing wrong?’ are emanating from the United States.⁵ This could be the result of a number of things, including the fact that recent endeavours by law schools, law librarians and legal publishers (both commercial and not-for-profit) have improved the state of legal research instruction in Australia.

However, while there are certainly fewer negative recent articles and papers, what is available suggests that there are still some issues which require improvement:

1. Law graduates are not able to demonstrate a sophisticated level of research skills that go beyond the ability to interrogate an electronic database and a familiarity with Google. Information retrieval is a problem-solving process in which students must be able to articulate their information needs and discover how to meet those needs. The assumption that legal research is an easily obtained ‘lower-order’ skill which could be picked up virtually by osmosis has been disproved by the recent dissatisfaction with the research skills of law graduates. Legal research courses should be designed to empower students to be able to translate their skills into any research environment and to become lifelong learners. To achieve this end, research skills need to be taught, and learned, in the context of legal problem solving.
2. Relatedly, there is an identifiable skills gap between the increasing complexity of socio-legal resources and the declining level of authoritative and reflective research skills amongst students; what Berring⁶ refers to as a lack of concern for the ‘cognitive authority’ of a source.
3. Legal research teaching is largely the responsibility of library professionals, with often only marginal input from law academics. The advent of information technology has made the task of ensuring that law students have well developed research techniques at once easier, and also more difficult for law academics who do not devote the time to keeping up with technological changes. Collaboration and co-operation between law academics and library professionals is essential to achieve their commonality of purpose.
4. The emphasis on a doctrinal approach to legal research is out-dated and incorrectly emphasises sources rather than process. Covering research skill techniques in first year is not enough as there is limited capacity to familiarise earlier year students of the context in which effective legal research takes place. Legal research skills should be integrated throughout the curriculum. The alignment of skills and competencies within different year levels, involving increasingly complex research tasks and outcomes, is recommended.
5. Although most, if not all, law schools offer legal research classes, there is little evidence that there is any assessment of the outcomes of these classes. Legal research is most often assessed through a research essay where the main emphasis is on the content. Further research into the optimal way to assess legal research skills is needed.

⁵ Of the 11 resources listed in the *Learning and Teaching Academic Standards Project: Law* under the TLO4, 9 were more than 5 years old.

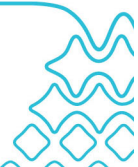
⁶ Berring, above n 4.



Part 3: Further Work

There is no shortage of articles written in general terms about the importance of legal research skills for law students in both their tasks as undergraduate students as well as their future endeavours as either postgraduate students or members of the legal profession. However there is very little in the way of empirical studies into how this is being done; nor is it easy to obtain quantitative or even qualitative analysis of the results of such endeavours.

It is now over 10 years since there was any comprehensive survey of legal research in Australian Law Schools. Undertaking an audit of the way legal research is being taught today would reveal the variety of strategies being employed. The results of such a survey would form the benchmark documents which outlined the best practice model for the teaching of research skills to law students including practical examples of how the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues are incorporated into the law school curriculum. This would be an invaluable tool, not only for those law schools already engaged in such an endeavour, but also for those law schools who are still struggling to achieve the threshold requirements for TLO 4.



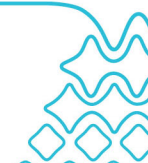
Part 4: Some Templates

In recognition of the fact that the Good Practice Guides are designed as a resource for academics responsible for facilitating student legal research skills, some practical examples of the ‘mapping’ of research skills into the curriculum are provided below.

University of Newcastle⁷

Law Graduate Profile	Levels of achievement for students	Where and how taught in the curriculum?	How assessed?	Weighting
1 Provide high quality service to employers, government, and individual clients, demonstrating: (a) the capacity to engage in legal research	1.(i) Collects primary and secondary legal data effectively. (ii) Uses databases and print sources accurately and effectively to retrieve data. (iii) Uses citations effectively and accurately	1. (i) & (ii) Legal System and Method (Legal Research) - Lectures and Labs (iii) Legal System and Method; Legal Communication	Quizzes on Blackboard Writing test week 4	10% LSM
	2. (i) Prepares a <i>systematic</i> bibliography of print <i>and</i> online sources for a legal topic specified by teacher (ii) Prepares a literature review based on the bibliography for a legal topic specified by teacher	2. Property Law (LAWS4011) position paper	1000 words + Bibliography + 100 words on top 5 sources + referencing	3% LSM
	3. Uses the results of research to develop an effective legal argument in a research paper.	3. Family Law (LAWS5063) Law reform submission	1500 words+ biblio+ referencing	25%
	4. EITHER (i) demonstrates effective and efficient legal research techniques and approaches for legal practice OR (ii) Develops a research question and prepares an appropriate bibliography, literature review and written argument in a sophisticated research paper.	4. Legal Practice II exercise 5. Public International Law (5 th year compulsory) And/or LAWS5005 Advanced Legal Research and Writing		30%
				Ungraded Pass

⁷ With thanks to Katherine Lindsay, Program Convenor, Bachelor of Laws, Newcastle Law School.



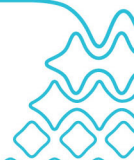
	A. Students embark on inquiry and so determine a need for knowledge / understanding.	B. Students find/generate needed information/data using appropriate methodology.	C. Students critically evaluate information/data and the process to find/generate this information/data.	D. Students organise information collected/generated and manage the research process.	E. Students synthesise and analyse and apply new knowledge.	F. Students communicate knowledge and the processes used to generate it, with an awareness of ethical, social and cultural issues.
Level I Students research at the level of a closed inquiry* and require a high degree of structure / guidance.	Respond to questions /tasks arising explicitly from a closed inquiry.	Collect and record required information / data using a prescribed methodology from a prescribed source in which the information / data is clearly evident.	Evaluate information / data and the inquiry process using simple prescribed criteria.	Organise information / data using a simple prescribed structure and process.	Synthesise and analyse information / data to reproduce existing knowledge in prescribed formats. Ask questions of clarification / curiosity.	Use mainly lay language and prescribed genre to demonstrate required knowledge and understanding for lecturer / teacher as the audience.
Level II Students research at the level of a closed inquiry* and require some structure / guidance.	Respond to questions / tasks required by and implicit in a closed inquiry.	Collect and record required information / data using a prescribed methodology from prescribed source / s in which the information is not clearly evident.	Evaluate information / data and the inquiry process using prescribed criteria.	Organise information / data using a recommended structure and process.	Synthesise and analyse information/ data to reorganise existing knowledge in standard formats. Ask relevant, researchable questions.	Use some discipline-specific language and prescribed genre to demonstrate self-selected knowledge and understanding from a stated perspective and for a specified audience.
Students research independently at the level of a closed inquiry.*	Respond to questions / tasks generated from a closed inquiry.	Collect and record required information / data from self-selected sources using one of several prescribed methodologies.	Evaluate information / data and the inquiry process using criteria related to the aims of the inquiry.	Organise information / data using recommended structures and self-determined processes.	Synthesise and analyse information / data to construct emergent knowledge. Ask rigorous, researchable questions based on new understandings.	Use mostly discipline-specific language and appropriate genre to demonstrate knowledge and understanding within a field from a scholarly perspective and for a specified audience.
Level IV Students research at the level of an open inquiry* within structured guidelines.	Generate questions / aims / hypotheses framed within structured guidelines.	Collect and record self-determined information / data from self-selected sources, choosing an appropriate methodology based on structured guidelines.	Evaluate information / data and the inquiry process comprehensively using self-determined criteria developed within structured guidelines.	Organise information / data using structures and processes suggested by provided guidelines.	Synthesise, analyse and apply information / data to fill recognised knowledge gaps.	Use the language of the discipline and appropriate genre to address knowledge and understanding gaps from several perspectives for a self-selected audience.
Level V Students research at the level of an open inquiry* within self-determined guidelines in accordance with the discipline.	Generate questions / aims / hypotheses based on experience, expertise and literature.	Collect and record self-determined information / data from self-selected sources, choosing or devising an appropriate methodology with self-structured guidelines.	Evaluate information / data and the inquiry process rigorously using self-generated criteria based on experience, expertise and the literature.	Organise information / data using self-determined structures and processes.	Synthesise, analyse and apply information / data to fill self-identified gaps or /extend knowledge.	Use the language of the discipline, choosing appropriate genre to extend knowledge and understanding, from diverse perspectives for a range of audiences.

* Inquiry may range from closed (lecturer specified) to open (student specified) in terms of: i) question, hypothesis or aim of research; ii) procedure or equipment; iii) answer, resolution or further inquiry (Jones, et al, 1992).

⁸ The Research Skill Development Framework was devised by John Willison and Kerry O'Regan; with poster design by Peter Murdoch. It can be downloaded at www.adelaide.edu.au/clpd/resources/projects/rsd 27/08/12.



Level	Skills	Resources	Competencies
Legal Method 1 Legal Method	Familiarity with basic legal reference tools; use of abbreviation guides; how to write a case brief; how to correctly cite primary & secondary sources	Legal dictionaries; Legal encyclopaedias Legal thesauri; Abbreviation Guides; <i>Legal Referencing</i>	The first year student will be able to: <ul style="list-style-type: none"> • Locate the legal dictionaries and thesauri • Understand the format of the legal encyclopaedias • Demonstrate the use of the electronic and print versions of the legal encyclopaedias • Find out what the abbreviations mean • Correctly use whichever legal citation tool is selected by the Law School.
Case Law 1 Torts 1 st semester	Knowledge of the elements of case law citation; Use of printed law report series; Use of electronic law report series; Use of case citators to locate cases. Use of case citators to trace judicial history of a case; Ability to locate Australian reported and unreported decisions	Case Citators; Unreported Judgments Database; Qld, Cth & UK Law reports, both print and online	The first year student will be able to: <ul style="list-style-type: none"> • Correctly identify the elements of a case citation • Tell whether the citation is for a reported or unreported case • Know when is it appropriate to use square or round brackets • Tell whether the citation is for an electronic or print version of the case • Locate a case citation when: <ul style="list-style-type: none"> ▪ only party names are given ▪ the given citation is incorrect or incomplete ▪ an alternative citation is needed • Know the importance of the difference between authorised and unauthorised reports • Articulate the difference between reported and unreported cases • Locate a Queensland, Commonwealth or UK case in print using a case citation • Locate a Queensland, Commonwealth or UK case in electronic format
Legal Literature 1 1 st semester	Familiarity with Australian legal journal indexes	AGIS Plus Text; AGIS; Legaltrac; Casebase	The first year student will be able to: <ul style="list-style-type: none"> • Use database searching strategies to locate journal articles <ul style="list-style-type: none"> ▪ on a particular topic of law ▪ by author ▪ by case name
Legislation 1 Torts 1 st semester	Understanding of the legislative process; location of print and electronic versions of Queensland and Commonwealth legislation	OQPC handout House of Representatives Factsheet 'Making Laws'; OQPC site; AustLII; ScalePlus	The first year student will be able to: <ul style="list-style-type: none"> • Know how legislation is created • Identify the passage of a bill through parliament • Identify the role of explanatory memoranda and Hansard • Locate Queensland legislation • Locate Commonwealth legislation
Legal Literature 2 Contract Law & Practice B 2 nd semester	Familiarity with foreign legal journal indexes; full text journal databases and specialised legal literature from foreign jurisdictions	Lexis; Legal Journals Index; Quicklaw; Proquest	The second year student will be able to: <ul style="list-style-type: none"> • Distinguish between search strategies for full text articles and journal indexes • Find journal articles from a variety of jurisdictions on a particular subject
Case Law 2 Criminal Law 1 st semester	Subject access to case law; Updating case law	Australian Digest; ACL Reporter; AustLII; ScalePlus; BAILII; UK Court Service; Smith Bernal; CaseBase; Australian Case Citator	The second year student will be able to: <ul style="list-style-type: none"> • Discover whether a case has been judicially considered • Locate a Queensland or Commonwealth case on a specific section of an Act • Find reported and unreported Queensland and Commonwealth cases on a specific topic of law • Locate High Court transcripts and special leave applications in electronic format • Locate UK cases in print and electronic form
Legislation 2 Constitution Law B 2 nd semester	Knowledge of the legislative process; ability to update legislation from Queensland and the Commonwealth; find print & electronic versions of explanatory memoranda and Hansard; understand the role of subordinate legislation and how to find it	OQPC website; Austlii; ScalePlus; TimeBase; Parliament of Australia website; Queensland Government website; Queensland; Statute Annotations	The second year student will be able to: <ul style="list-style-type: none"> • Identify legislative material and its uses <ul style="list-style-type: none"> ▪ Acts ▪ Bills ▪ Explanatory Memoranda ▪ Hansard ▪ Subordinate Legislation • Identify the differences between Reprinted Acts, Numbered Acts and Consolidated Acts • Correctly identify the main elements of an Act • Successfully locate an Act in hard copy or electronic form <ul style="list-style-type: none"> ▪ By Act Name ▪ By Act Number ▪ By Subject • Identify the latest amendment to a piece of legislation



Level	Skills	Resources	Competencies
Case Law 3 Trusts 2 nd semester	Locating case law from foreign jurisdictions; using case citators and digests from foreign jurisdictions	Lexis; Quicklaw; Current Law; Current Legal Information; UK Court Service; Smith Bernal	The third year student will be able to: <ul style="list-style-type: none"> • Discover whether a foreign jurisdiction case has been judicially considered • Locate a foreign jurisdiction case on a specific section of an Act • Find foreign jurisdiction cases on a specific topic of law
Legislation 3 Civil 1 st semester	Specialised legislation resources and loose-leaf services	AustLII noteup; loose-leaf services; Court homepages	The third year student will be able to: <ul style="list-style-type: none"> • Find commentary and cases on particular sections of Acts • Locate and use various forms of subordinate legislation, especially Court Forms and Rules
Case Law 4 Companies 1 st semester	Specialised case law resources and loose-leaf services	Queensland Legal Indexes; loose-leaf services	The third year student will be able to: <ul style="list-style-type: none"> • Understand the structure and use of loose-leaf services • Locate case law from lower courts

