

Legal Writing



Lisa Webley

CHAPTER 5

HOW TO USE YOUR RESEARCH FINDINGS IN YOUR WRITING

You will need to research relevant law and related issues in order to answer your essay or problem question.¹ Research can be daunting, as there is much information available and it is difficult to know how to find relevant information. You should be able to navigate your way through the research process successfully if you break down the research process into manageable steps. The key stages in good library-based research for essays and problem questions are as follows:

KEY STAGES IN THE RESEARCH PROCESS

Identify your question and dissect it.

Carry out background research if necessary to ensure that you understand the question. This should usually include reading through any lecture and tutorial notes on the topics covered by the question.

Carry out textbook reading on the topic, making notes relevant to the question.

Carry out research using the library catalogue to find any other texts relevant to the question. Make any relevant additional notes.

Research cases and legislation that are relevant to the question and read important ones in full. Important cases will often be highlighted in your textbook. It is good practice to read these in full and in the original (rather than in the textbook).

Research academic opinion on the topic by reading journal articles or academic texts and make notes on any issues raised that are relevant to the question.

Read through all your notes and make a list of key issues from your notes that are relevant to answering the question.

Highlight any evidence you have in your notes in support of or against the key issues you will discuss in your essay.

Make sure that you keep a record of all the sources you have used, including the page references of the material you have noted down.

Plan your essay.

Begin writing your essay.

¹ Unless, of course, you are in an exam, in which case you will have done this before you enter the exam room through revising the law and academic opinion on the law and legal concepts that you are likely to address in your exam answers.

You should spend a considerable period of time considering what the question is asking you to write about. This is the diagnostic phase of your role, and your ability to do well in the essay is dependent on correctly diagnosing the legal or socio-legal issues you are being asked to discuss.

HOW TO START YOUR RESEARCH: WHAT IS YOUR QUESTION?

If you have been given a question, dissect this first and make sure that you are clear on what it is asking you to write about. This will make it easier to be focused during your research phase.

If you have to set your own question for a dissertation, then define your research area in broad terms but make sure you have translated your research into a question rather than a statement to begin with.

As indicated earlier, understanding the question is the key to success. Either rewrite the question in different terms to be sure that you have understood it, or list the main issue that is the subject of the question and then any sub-issues that you should consider in the light of the main question. If you have not been given a question, then you need to define one for yourself. There is some guidance on this in the previous chapter.

USE YOUR EXISTING NOTES

Pull out your lecture notes and any other notes you have on the main subject of the question and read those through. This is your background research.

Look back at the question.

Write down any things from your notes that are relevant to the question, including any evidence you have that backs up the points you have noted down.

You will hopefully now have a piece of paper that has the question written out on the top with a few lines underneath that set out what the question is asking you to do. It is now time to turn to your lecture and tutorial notes to consider what material may be relevant to the question. This stage of your research will be made considerably easier if you have a complete set of good quality notes. You will be taught for the most part of your degree programme through lectures and tutorials, sometimes referred to as seminars. You need to make the most of the limited contact time you have with staff as this will reduce the amount of extra reading you need to do yourself in order to understand the basics of each topic. The lecture should take you through the key issues of a topic and, if you have made useful notes, these will form the basis of your background research.

Note-taking in lectures and tutorials

Lecturers usually make a point, then expand on the point and then provide evidence to back it up and further explanation to illustrate it. You do not need to write all of this down and the chances are that you will not be able to keep up even if you do try to take down notes verbatim. It is better to listen to what the lecturer is saying, to write down the point that is being discussed, take a note of any evidence that is provided to back up the point (usually this will be a case, a piece of legislation or a theorist's view-point), rather than all the detail. This is not easy, and will take practice, but a transcript of the lecture will not make that much sense either. Most lecturers will use visual aids or handouts to highlight the important issues, or will repeat the issues so that you can take them down. You will be able to supplement these notes with notes from textbook reading, so do not panic if you think that you have missed a point. You can check with the lecturer at the end of the lecture as well, if need be. You will not be tested on whether you can remember everything that has been said in the lecture, but you will be tested on whether you understand the topic. Try not to miss lectures as someone else's notes will not be written in the same way as your own and will be no substitute for missing the lecture. Finally, do not ask your lecturer for his or her notes. You will not make yourself popular by admitting that you have missed the lecture and the chances are that the lecturer will not have a set of notes that make any sense to you any way. Many of us talk from bullet points or the PowerPoint presentation we are using, rather than having a set of written notes in front of us.

Preparation for tutorials

It is a long-standing sport amongst students to see who can 'wing' the tutorial the most effectively. Of course, you may find that you can get through a tutorial or seminar unprepared, but it will be of very little use to you in the long run, sadly. Tutorials and seminars are designed to test your knowledge and to make sure that you understand the tutorial topic. The questions that have been set are the vehicle for your tutor to examine your understanding and to deal with areas of misunderstanding or confusion. They are not designed for a tutor to give you an answer that you can learn for the exam. In fact, if they were, then you would most likely do very badly indeed in the exams, unless you were asked exactly the same question again. As I hope this book illustrates, legal writing is about demonstrating your understanding, not your memory. Consequently, good preparation for tutorials and seminars allows you to test your understanding and to practise your question dissection technique and essay and problem question planning skills, even if you do not write full answers to all the questions that have been set. You may be asked to hand in a written answer to the question, but even if this is not the practice in your law school, it is as well to write an answer to the question, even if only in note form, so that you get used to working out what questions are asking. Writing an essay or problem question plan, with evidence under each issue, will make it easier for you to participate in the class and also for your tutor to check whether you understand the topic fully. It will also develop your diagnostic technique.

Compiling lecture and tutorial notes with textbook notes

You may wish to allow space in your lecture notes for any textbook notes that you make later on the topic. That way you will have all your notes in one place, which will make preparation easier for tutorials and also for assessments. There is guidance later on in this chapter on making notes from textbooks and other sources. The next step is to plan your research by working out what else you need to know or you need to consider further.

PLAN YOUR RESEARCH

Plan your research.

What sub-questions do you have? Where will you find the answers? Do you have a range of sources including books, cases, legislation, academic opinion from journal articles?

A good essay will contain information from a range of sources including book-based sources, cases and legislation and from journal articles and other forms of academic writing. You may also include your own fieldwork if you have done a questionnaire survey or you have interviewed people as well. Most undergraduate research for coursework will be library-based, although extended essays and dissertations do lend themselves to empirical research as well as library-based research.

It is hard to know where to look for information in a large library at first, particularly if you are not used to doing research. Consider the range of sources available in the library and what these could contribute to your essay or problem question answer. Write a list of sources and what these could give to you. Next, you need to consider the issues that should be researched for your essay.

LEGAL RESEARCH: HOW TO GO ABOUT IT

Plan your research.

What do you need to know? What is your question/are your questions?

Do you have a general understanding of the topic yet?

Do you understand the sub-question or sub-issues you have been asked to consider? If not, where will you look for information on these?

What sources may assist you to answer the question?

Plan which sources you will use to answer your sub-question.

Keep a reference for each source, author, title, etc and the page number at which you found the information.

Your lecture and textbook notes are a good place to start your research but they should not be the only sources that you refer to. You also need to read the important cases in their full reported form (rather than in the textbook) and read any relevant legislation in its original form as well. Journal articles are a good source of information on current academic debates on the law and legal theory and government reports may provide evidence of proposals for legal reform. You need to refer to a variety of source to give depth to your understanding and to your written work.

WHERE TO LOOK FOR THE ANSWERS TO YOUR RESEARCH QUESTIONS

Actual law: legislation and cases.

Legal opinion/arguments/theories: books and journal articles.

Public opinion: newspapers.

Research findings by academics: books and journal articles.

Government policy: official reports and consultation documents.

A good piece of written work refers to a variety of sources in order to prove the points that are being made in each paragraph. Some points will be backed up with reference to case law or legislation, some with references to legal opinion in books or law journals. You will need to look through the library catalogue to find books that are relevant to your research. The library catalogue will also provide details of the journals that are held in the library. The key is to make sure that the books you use are current, not out of date, as law books tend to be updated frequently as the law changes.

Cases can be found in the law report bound volumes in the library or via one of the electronic facilities such as All England Direct, LEXIS, WESTLAW, Lawtel. Legislation can be found in *Halsbury's Statutes* and *Halsbury's Statutory Instruments* in print form or via Halsbury's Direct in electronic form. Some of the electronic facilities also have recent legislation contained within their databases. European legislation can be found in the *Official Journal L Series*, which is available in print form or in electronic form via the Europa website.² Law libraries are becoming increasingly electronic; however, many sources are still available in book form as well. Your law school is likely to run training in how to use the law library and the electronic sources and it is as well to get to grips with your research tools as soon as you can and preferably before you need to use them for your coursework. Ask at the library counter if you are in any doubt, as they will be able to point you in the right direction, refer you to research guides or tell you when training takes place. More detailed information on legal

2 This can be found at www.europa.eu.int.

research is provided in books by other authors, references for some of which are given towards the end of this book.

Many students are very adept at using the internet as a research tool. This is a great skill and can prove extremely useful, as long as you locate authoritative sources. Most law essays and the vast majority of problem question answers should rely heavily on the research evidence from authoritative sources such as judicial comment in cases, the text of legislation, academic opinion from textbooks and from journal articles. Official reports may provide evidence of government policy or other state agencies. That is not to say that you cannot provide evidence from other sources, but it is important to consider what these sources tell you. Newspaper reports are evidence of what has come to the public's attention or of public opinion itself. They are not legal authority and they should not be used to support comments of what has happened in a particular case (unless they are from the 'Law Reports' section); nor are they necessarily evidence of facts, as we know that newspapers can get things wrong. Internet pages are also potentially difficult to use as evidence for certain propositions you may be making. The content of an internet page is only as authoritative as the author. Anyone with some computer skills can post information on the internet. It does not mean that the information is accurate, so do not rely on anything unless you are sure that the source is a good one and is very likely to be accurate.

Equally, some internet sites and other publications are funded by groups with very particular political agendas. The content of their sites will reflect their political views. This does not mean that the information cannot be used in written work, but it is important to understand the authors' standpoint and to explain that the material may be partial. It may only put forward evidence in favour of their views, while leaving out evidence that is equally valid but against their views. The standpoint of any author tells the reader about how he or she will have used evidence in the document. Your arguments will have added weight if you are able to explain the author's standpoint and subject the author's arguments to analysis yourself.

Finally, textbooks are a good source of information, but a piece of coursework should contain a range of sources, not just references to the set textbook. Revision aids are just that, revision aids. They are good sources of basic information but they are not sufficiently authoritative to be a major source of evidence for a piece of coursework. Try to broaden your research to include a range of sources, authors from a range of standpoints, and to use authoritative sources.

WHAT NEXT?

Make notes on the issues that you need to answer in the question from your sources.

Do not make general notes on the topic as you will not use that information and your effort will be wasted.

Note down the full citations as you will need to reference your work.

Once you have found sources of information relevant to your essay or problem question, you need to begin making notes on the sources. Photocopying the material and highlighting passages in the text is not the same as making notes! You may find it useful to highlight sections but then you need to translate those sections into something that you can use. Your notes need to state the point that the highlighted section proves or disproves, as a quote is only evidence for the point you are making; it is not a point in itself. Return to your question frequently to refresh your memory about the task you have been set, and make notes according to the question rather than according to the topic. Ask yourself whether you will use the material you are writing down, and if not then do not take the time and energy to make notes on it.

HOW DO I MAKE NOTES FROM MY READING?

Do not make notes straightaway. Read a paragraph or short section through first.

Identify what point each paragraph is making.

Make a note of that point, but do not write out the paragraph again in your own words! Make a note of any evidence the author uses to back up the point.

Write down the page reference so that you can find it again if you need to and so that you can footnote your source in your essay or problem question answer.

Repeat for each short section.

It is often more effective to read a section in the book or case report and then write notes about the main points at the end of the section rather than writing at the same time as reading (and therefore simply copying out the whole book in your own words). It is more important that you know the general principles and have evidence to support those in your written answer than that you have hundreds of facts to write about. Your notes should be angled towards general principles rather than containing large quantities of factual information, which is really evidence for the points being made for the author of that work rather than the points that you need to make in your essay or problem question answer. You

do need to note down evidence to support the points being made by the author, but this is evidence and should not be confused with the point being made.

HOW MUCH DETAIL AND WHAT NEXT?

You do not need all the detail in the textbooks, and you will remember more than you think if you read it through and concentrate on what you are reading, rather than reading and writing at the same time.

It is more important that you understand an area of law than whether you can remember the detail but not understand the important points.

Read through your notes and organise them into themes or display them as diagrams if that helps you.

Cases are an important part of the study of law. They are evidence of what the law is. You do need to read cases and to know their *ratio* and any important points made by judges in their *obiter dicta*. It will be sufficient for most cases to have a basic understanding of the facts as well as an understanding of the legal reasons for the decision – why, in legal terms, X won the case and Y lost the case. This is the information that you will need in problem question answers. In essay answers you are more likely to need to know the general principles of law that were established as a result of the case.

Academic articles give you a much deeper understanding of a subject area, although you may find them difficult to read to begin with. They are particularly useful if you are writing essays rather than problem questions. You should aim to read one article on each tutorial subject area to deepen your knowledge, but only after you have completed your textbook and case reading. The same rules apply for reading articles as for reading textbooks: read to understand and not simply to remember. You will not need detailed notes on articles, but you will need to understand the main points that the writer was making.

ORGANISE YOUR IDEAS

Read through all your notes and collate your information into themes or issues.

Return to the question and review your information.

Organise the themes you have ready to assist in planning your essay.

Include the evidence relating to these issues.

Collate your information by reading through all your notes again and pulling together the themes you identify. Write down each one with any discussion you have found, as well as the sources you have referred to. Return to the question and consider the themes you have from your notes. What do these themes tell you as regards the question? What issues are relevant to the question and why?

What evidence do you have for your thoughts about relevant issues? Evidence may be in the form of judicial opinion from a case, sections from a statute or other piece of legislation or the views of a commentator – academic or practitioner – or other relevant spokesperson. Organise the evidence under each theme ready to begin your writing.

MAKE SURE YOU REFERENCE THE WORK OF OTHERS

What is it?

It is attributing the work that belongs to someone else to which you refer in your essays and presentations.

Why?

It should be possible from your references for someone else to go to look up the other's work and read it in its original source.

You need to take down the reference of any source you will use as part of your writing so that you are able to provide a reference to it in your written work. A full reference will include the page number from the page you have taken the information, so write this down at the time you are doing the research next to any notes you are making, otherwise you will have to go back to the library to try to find it before you can hand your work in. The next chapter will take you through correct referencing.

PREPARATION PRIOR TO YOUR RESEARCH: LIBRARY FAMILIARITY

You may find it useful to familiarise yourself with your law library and research sources before you begin your research. Pick up copies of your library's guidance leaflets or work your way through the following task to familiarise yourself with the sources of information available to you and where they are located.

Textbooks

What subjects are you studying this year? Where would you find textbooks for those subjects in the library? Where would you find study guides to help you with your skills development?

Law reports

What law reports does your library hold? Which ones are available in bound volumes on the shelves? Which are available in electronic format? Which electronic databases are available to you and how do you use them to search for cases?

Legislation

Where can you find copies of *Halsbury's Statutes*, *Halsbury's Statutory Instruments* and the *Official Journal*? Do you have access to these sources in electronic form in your university and if so what do you need to do to be able to access these sources?

Journals

What journals does your library subscribe to? Where are they located? Which ones are available in electronic form? How do you search them for relevant articles?

Other library sources and services

What other sources of information are available in your library? How do you access them? Is training provided for you in the use of the databases and search facilities and how do you go about getting the training you need?

SUMMARY

CHAPTER 5

You may find that you can save time on research and find relevant material by following these key stages in the research process.

Identify the task set out in the question, by dissecting it word for word.



Carry out background research if necessary to ensure that you understand the question. This should usually include reading through any lecture and tutorial notes on the topics covered by the question.



Carry out textbook reading on the topic, making notes relevant to the question.



Carry out research using the library catalogue to find any other texts relevant to the question. Make any additional notes that are relevant.



Research cases and legislation that are relevant to the question and read important ones in full.



Research academic opinion on the topic by reading journal articles or academic texts and make notes on any issues raised that are relevant to the question.



Read through all the notes that you have made and make a list of key issues that are relevant to answering the question.



Highlight any evidence you have in your notes in support of or against the key issues you will discuss in your essay.



Make sure that you keep a record of all the sources you have used, including the page references of the materials you have noted down.



Turn this information into a plan, as discussed in Chapters 2, 3 and 4.



Begin writing your essay.

