Mainstreaming Legal Research Skills into a New Zealand Law School Curriculum

Mary-Rose Russell

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Abstract

In any jurisdiction the body of law grows exponentially: new cases decided, new legislation passed, new areas of law being opened up. The inherent complexity of New Zealand's common law heritage is compounded by an increasing internationalisation of its law via treaties and conventions. Globalisation within the legal publishing world has expanded the range and type of legal material which is now accessible. Developments in delivery media, especially digitisation, have enabled more immediate access to unlimited amounts of information. Concurrent with these facets of our knowledge-economy, there are new expectations in both the tertiary educational and legal environments for graduating students to have skill-sets which have not been the traditional focus of law schools. Additionally, the law schools themselves are under both internal and external pressure to develop their curricula for reasons as diverse as revenue-generation for the university to narrow profession-centric demands. All these factors impact directly on the teaching and learning of legal research skills within the New Zealand law curriculum.

Legal research skills programmes within the main common law jurisdictions have been the subject of an extensive body of literature from the late-1970s. The discourse has touched on all relevant issues including why such programmes should be taught, what their content should be, who should teach them, and when they should be taught. But for the most part, the discourse has focused on the ineffectiveness of programmes which have been taught.

This thesis investigates how legal research skills may be effectively and sustainably mainstreamed within the New Zealand law curriculum. Two principal methods, expository analysis and empirical research, are used in this study. The law curriculum is viewed within its historical and current context. Methodologies which have traditionally been employed in the teaching of legal research skills are discussed, and rationales for their seemingly systemic ineffectiveness highlighted and explained. Empirical research was undertaken examining attitudes towards the teaching of legal research skills within three distinct populations: New Zealand legal academics, a cohort of summer clerks working in national law firms during the summer of 2003-4, and national law firm library managers. The results of this research are detailed and analysed.

Finally, a model programme, and methodology for mainstreaming legal research skills into a New Zealand law curriculum is proposed.

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Chapter I: Introduction

Overview

This thesis examines the status of legal research skills within New Zealand law curricula. The study first considers factors that have influenced the development of the New Zealand law school curriculum, analyses the present-day pressures on law curricula, then discusses the current position of legal research skills within New Zealand law curricula and, finally, proposes a new model programme for the mainstreaming of legal research skills.

This topic is one in which I have an abiding passion; my experiences as law student, legal practitioner, law librarian and teacher, within two different legal systems, have enabled me to look at the subject from diverse perspectives, and I have found that my views, although modified over the years, have remained fundamentally constant. My viewpoint of the 'why' in 'why should legal research skills be mainstreamed into the law curriculum?' has been unwavering; the 'how' in 'how should legal research skills be mainstreamed?' has evolved through extensive trial and error and acquired knowledge. Law students need to be taught legal research skills; these skills do not develop instinctively; the learning of these skills needs to be mainstreamed into a law curriculum; the skills need to be reinforced and practised.

Frame of Reference

This study is largely confined to the New Zealand situation and its recommendations are designed for a New Zealand law curriculum. Obviously, because of our historical

legal heritage and our membership in the common law jurisdictional family, the research is, by its nature, multi-jurisdictional. The mainstreaming of legal research skills continues to be a matter of debate, in Australia, England, Canada and the United States. Where appropriate, reference is made to relevant experiences in these countries.

Definitions

Legal research

The term 'legal research' is generally used loosely to cover a variety of activities that include some form of investigation or examination of a legal issue. It is this very vagueness that has caused underlying problems for proponents of a formal role for legal research skills within law curricula. From one perspective historically, legal research has been aligned with legal scholarship, the rightful province of the legal academic or legal jurist.[1] At the other end of the spectrum, a law student is likely to regard legal research as 'finding law library material'.[2] Both components are facets of a much more complex framework.

In 1983, the Arthurs Report[3] recognised that legal research was generally distinguishable as research 'in' (doctrinal research) or research 'on' (inter-disciplinary research) law and identified four types of legal research:

- Expository legal research designed to collate and organise legal data, to extrapolate legal rules and to provide "exegesis upon authoritative legal

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1 Peter Clinch *Teaching Legal Research* (UK Centre for Legal Education) http://www.ukcle.ac.uk/resources/tlr/concept.html (at 3 April 2006).

2 This definition has been provided to the author by numerous students.

3 Consultative Group on Research and Education in Law *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada* (Social Sciences and Humanities Research Council of Canada, Ottawa 1983).

sources". This type of taxonomic research is perhaps the most popular form, reflected in most 'conventional treatises and articles'.

- Legal theoretical research which provides a theoretical prism through which legal rules may be viewed or understood.

- Law reform research aimed at effecting changes in the law.

- Fundamental research, a form of inter-disciplinary research which concentrates on "law as a social phenomenon"[4] or law viewed in its wider societal context.

Arthur acknowledges that categorising legal research into discrete forms is artificial; legal research realistically crosses the different typologies. What is specifically excluded from the Arthur's definition is the recognition of student or law firm type legal research, which is largely of an investigative nature, designed to provide a solution to a given issue. This type of research could be viewed as a restricted form of doctrinal or expository research.

The Pearce Report[5] in Australia adopted the doctrinal, reform-based, and theoretical categorisations of legal research, but firmly rejected the fundamental research classification, this latter category not having been fully defined and explored within the Arthurs Report.[6] Within the Pearce Report there is recognition of the student-type legal research which falls generally under the umbrella of doctrinal research.

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4 Ibid 65-66.

5 Dennis Pearce, Enid Campbell, and Don Harding *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Services, Canberra, 1987).

6 Ibid 2.308-9.

In New Zealand, the definition of legal research within the law school context has been said to be even narrower: either doctrinal or theoretical[7].

In this thesis I am principally concerned with skills which enable students to undertake legal research of whatever category, and do not feel impelled to choose between Arthurs' or Pearce's typologies.

Legal Research Skills

There is a widely held misconception that legal research skills are simply those that enable a person to find legal information. Whilst this finding activity is a core component of legal research it is merely one in a basket of skills which together comprise the concept 'legal research skills'. This wider collection of skill-sets is that which enable a person to undertake the legal research process, and which may be defined as:

- The ability to **analyse** the legal issue or topic to be researched.
- The ability to **identify the contexts** within which the research is to be conducted.
- **Bibliographic skills** which are evidenced in the finding of appropriate primary and secondary sources.
- The ability to **evaluate** the information found.
- The **application** of the information found to the legal issue in question and the construction of reasoned arguments.

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[7] Scott Davidson 'Writing for Academic Purposes' in Margaret Greville, Scott Davidson and Richard Scragg *Legal Research and Writing in New Zealand* (2nd ed, LexisNexis NZ, Wellington, 2004) 346.

- The **communication** of the results of the research in the desired format in compliance with research principles and standards.[8]

Law School

Throughout the common law world, law is taught either at Law Schools or Faculties of Law; a distinction which is fiercely guarded by Faculties, in particular. The distinction is largely one of status within the parent university. In New Zealand there are three Faculties of Law and two Law Schools. For ease of reference within this thesis, the term Law School is used to denote both types of institutions.

Mainstreaming

The term 'mainstreaming' within this thesis is used to indicate equality of status within the law curriculum. The underlying premise is that legal research skills should be regarded as important as, and of equal value to, black letter law subjects within the law curriculum. Mainstreaming has been used throughout this thesis to obviate confusion and alignment with two other concepts currently employed in discourse on this topic, namely embedding and integrating. These latter concepts are used extensively in the literature, but there is seemingly a lack of consistency in their usage, particularly between the American and Australian schools of thought. I have elected to use mainstreaming for the purposes of clarity.

Hypothesis

Within any jurisdiction the body of law grows exponentially. New cases are decided, new legislation is passed, and new areas of law are being opened up. The sheer volume of our law increases. Our common law heritage compounded by an increasing

[8] This type of exposition of the skill-sets inherent in legal research skills is not new. A number of authors have used a variety of similar constructs. See Clare Cappa "A Model for the Integration of Legal Research into Australian Undergraduate Law Curricula" (2004) 14 Legal Education Review 44 where a five stage construct is propounded.

internationalisation of our law via treaties, conventions and the like has meant that we frequently are required to consult the law in a variety of jurisdictions. Globalisation within the legal publishing world has expanded the range and type of legal material which is now accessible. Developments in delivery media, especially digitisation, have enabled more immediate access to unlimited amounts of information. These facets of our knowledge-economy, have created new expectations in both the tertiary educational and legal environments for graduating students to possess corresponding skill-sets. These skills have not been the traditional focus of law schools. Additionally, the law schools themselves are under both internal and external pressure to develop their curricula for reasons as diverse as revenue-generation for the university to narrow profession-centric demands.

My hypothesis is: how can legal research skills be effectively and sustainably mainstreamed within the New Zealand law curriculum?

Methodologies

Three main research methodologies were employed in the writing of this thesis: legal historical, expository and empirical.

A legal historical approach was employed in Chapter II in the discussion of the development of the law curriculum in the New Zealand law school in order to establish why the curriculum has its present structure and content, and to frame in context the pressures to which the curriculum is now being subjected.

Chapters III and IV provide an expository account of legal research skills. This begins with the rationale for their being mainstreamed, and the issues which traditionally have surrounded this debate. The influence and effect of government and profession-directed reviews on legal education and legal research skills across the main common

law jurisdictions are discussed and finally there is a brief overview of the current status of the teaching of legal research skills in New Zealand, Australia, the United States and the United Kingdom.

Empirical research, mainly in the form of anonymous questionnaires, was employed to gather data to substantiate the hypothesis. Questionnaires were delivered to three disparate groups: all full-time legal academics within New Zealand; students employed as summer clerks over the summer of 2003-2004 in the major New Zealand law firms; and library managers in national law firms and legal consultants who had first-hand experience of working with summer clerks straight from law schools.

Over one hundred legal academics were canvassed in order to gauge their attitudes to the importance of legal research skills for students, and to the requirement for the mainstreaming of these skills. Legal academics were also asked to assess their level of confidence with their own legal research skills. Over two hundred summer law clerks were chosen as an ideal subject group. As law students having their first experience of undertaking legal research within a professional environment they were optimally placed to provide valuable experiential data. They were asked to assess their levels of confidence in tackling legal research before their summer clerkship and afterwards, and to give their opinions on the mainstreaming of legal research skills into the curriculum. Sixteen library managers, whose firms had summer clerk intakes in the 2003-2004 time frame, and library consultants were asked their opinions on the levels of legal research skills they encountered in their dealings with summer clerks. These library managers provide on-the-job training in legal research to the summer clerks and were in an ideal situation to make informed assessments as to skills levels.

Additionally, over the years I have had many discussions with colleagues in the common law world about teaching legal research skills and I have drawn on these conversations.

In Chapter VI, a model programme for the mainstreaming of legal research skills into the law curriculum is presented. The programme is presented as a modular construct, in which the content is presented as a series of topics. However, the programme content must not be viewed in isolation, but read in conjunction with the proposed methodology and pedagogical framework which precedes it.

Literature review

The merits of mainstreaming legal research skills into law curricula has been debated widely in common law legal literature over many years. In fact, in the United States it has been the subject of extensive discourse from the 1980s. In England, Australia and New Zealand, it was really only in the 1990s that serious discussion of this topic started.

Much of the debate, especially in the United States, is centred on the relative merits of the bibliographic versus the process style of teaching legal research. This may be simplistically explained as a ‘product v process’ debate and will be extensively discussed in Chapter IV. Fuelling the debate in all these jurisdictions has been government- or profession-initiated reviews into legal education; the Ormrod, Marre and ACLEC reports in England, the Pearce report in Australia, the Arthurs report in Canada and the Gold report in New Zealand. This thesis draws extensively on these reports, together with a growing body of periodical literature especially from England and Australia.

Chapter II: Development of the New Zealand Law School Curriculum

Introduction

The formal teaching of legal research skills has not traditionally been catered for in the New Zealand law school curriculum. This chapter examines that curriculum, beginning with an overview of its historical development. This historical perspective provides insights into the influences and philosophies that have shaped the current form of the curriculum. Against this backdrop, the present-day pressures, which are now being exerted internally and externally on the curriculum, will be canvassed.

The term 'law school curriculum' is used in the Chapter as a singular concept. Whilst each of the five New Zealand law schools has its own curriculum, four are substantially similar in providing traditionally focused training for the legal profession. The fifth law school, Waikato, established in 1990, consciously set out to provide an alternative type of legal education, with a focus on Maori jurisprudence.[9] Admission requirements for the profession have, however, meant that the curriculum at Waikato, in structure and content, bears strong points of similarity with the other law schools.

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[9] Margaret Wilson "The Making of a New Legal Education in New Zealand: Waikato Law School" (1993) 1 Waikato Law Review 6.

Early Development of the Law Curriculum

The first legal practitioners who came to New Zealand were trained in the English tradition, either as barristers or solicitors. Early regulation of the legal profession occurred in 1841 with the Supreme Court Ordinance of that year. Eligibility for admission in New Zealand as barristers or solicitors was set out in section 13 and was based on valid admission in either branch in England or Ireland.[10] Local admission was briefly considered, but only in respect of solicitors; they would have to serve articles of clerkship under a qualified solicitor. The Supreme Court Rules Ordinance of 1844 set five years as the requisite period for which articles were to be served but it was silent as to any qualifying examination prior to admission.

Local admission for barristers was overlooked in the 1841 Ordinance, and received scant attention in the 1844 Ordinance with the provision that eligibility was subject to qualification under any New Zealand prescription. In fact, no prescriptive rules existed until the passing of the Law Practitioners Act in 1861.[11]

In 1859 the local judges voiced their common concern at the parlous state of regulation of the New Zealand legal qualification and recommended reforms[12]. These reforms were largely enacted in the Law Practitioners Act 1861, which not only set out the formal structure of legal qualification in New Zealand, but also, in a notable echo of English heritage,[13] reserved to the judges the responsibility for the

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10 It is interesting to note that New Zealand pre-empted England in the usage of the term 'solicitor', as the generic term for those practising in England and Ireland was attorneys and proctors. In England it was only on 1 November 1875 when 'every attorney woke up a solicitor' with the coming into operation of the Judicature Act 1873. See Robin Cooke *Portrait of a Profession* (Reed, Wellington, 1969) 138.

11 Peter Spiller "The History of New Zealand Legal Education: A Study in Ambivalence" (1993) 4 Legal Education Review 224.

12 [1860] AJHR A p3 as cited in Peter Spiller "The Legal Profession" in Peter Spiller, Jeremy Finn & Richard Boast *A New Zealand Legal History* (2nd ed, Brookers, Wellington, 2001) 291.

13 See Spiller, ibid 291-292.

qualification and examination of candidates for admission to the profession.[14] The subsequent judges' rules, promulgated in 1848, established the requirement for specific legal education in addition to a more general education.[15] Locally admitted barristers who did not have a degree in arts or law, and solicitors were required to pass an examination in general knowledge covering Ancient and Modern History, the Feudal System, the British Constitution, English Composition and Etymology, Latin and Algebra.[16] Barristers or solicitors who had been admitted overseas were required to sit an examination in New Zealand law, at least in those aspects which differed from English law. Locally admitted barristers had to demonstrate knowledge of the Theory and Practice of Civil and Criminal Law of England and New Zealand, as well as "a knowledge of the leading decisions of the Court of Appeal in New Zealand".[17] The examinations were both written and oral, and were conducted by the judge for the district where admission was sought. The judges were assisted by a practitioner and another "literate person". Local candidates for admission as solicitors were additionally required to complete a period of articles of clerkship.[18] This latter requirement was dropped in the Law Practitioners Act 1882.

Statutory provision for a formally structured system of qualification and examination was one thing; the provision of enabling mechanisms for training was quite another. New Zealand had no law school or even any institution or body capable of providing legal education. Candidates were left to make their own way; "they had no means of qualifying themselves for their profession beyond the aid with which books can

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14 Law Practitioners Act 1861, ss 6-13 for barristers and ss 25-30 for solicitors.

15 See Spiller, above n 11, 225-6. Cullen says that these legislative provisions "marked the coming of age of legal training in New Zealand". MJ Cullen *Lawfully Occupied : The Centennial History of the Otago District Law Society* (Otago District Law Society, Dunedin, 1979) 114.

16 [1864] New Zealand *Gazette* pp 62-4, Rules 6 and 13. These subjects were identical to those prescribed in the English 1846 Report as cited in Peter Spiller above n 11, 225.

17 "The Chief Justice's New Examination Papers" [1975] 1 Colonial Law Journal 34.

18 See Spiller, above n 11, 226.

provide them."[19] Even the reality of the examination did not match the statutory expectation; another classic example of the triumph of form over substance. Cullen[20] cites an opinion written in the *Otago Guardian* that the examination was "of such a superficial description as to be utterly valueless as a test of a candidate's fitness to assume the duties and responsibilities of a legal practitioner."

Against this depressing backdrop, some hope of relief was offered by the establishment of the University of Otago in 1869[21] and the University of New Zealand in 1870.[22] The University of Otago was established as a self-governing body empowered to grant degrees in arts, medicine, law and music. Comparatively speaking, the legal profession in Dunedin was healthy[23] and classes in common law and contracts commenced in 1873. The following year, the University of Otago became a constituent college of the University of New Zealand[24] as did the Canterbury University College, and law students were allowed to substitute university arts courses for the general knowledge examination.

Regulations for the Bachelor of Laws degree (LLB) to be taken over a three year period, were passed by the Senate of the University of New Zealand in 1877. The degree prescriptions were less than onerous, primarily because a separate examination in New Zealand law, administered by the judges, was still an admission requirement under the Law Practitioners Act 1861.

Notwithstanding these positive developments, legal education came under the spotlight of a Royal Commission on the University of New Zealand in 1879 and

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19 As quoted in Spiller, ibid.
20 See Cullen, above n 15, 114-115.
21 University of Otago Ordinance 1869.
22 University of New Zealand Act 1870.
23 In 1869 there were between 30-40 law students in Dunedin alone. See Cullen, above n 15, 228.
24 The University of Otago was permitted to retain the title of 'University'. See Cullen, above n 15, 116.

1880.[25] The issue of the establishment of a national law school was investigated, but ultimately the Commission declined to nominate any one centre over another.

In 1883 Auckland University College also became a constituent college of the University of New Zealand, and Victoria College affiliated in 1897. By the turn of the century the LLB was offered in all four main centres, but this fact offered no reassurance of its quality, relevance or indeed acceptance by the legal profession.

After its establishment in 1877, the content of the LLB was reviewed periodically, so that by 1888 it covered all the subjects required for admission as a barrister. The degree now comprised three examinations, to be taken over a minimum of a three-year period.[26]

<u>First Examination</u>

1 Latin language and literature
2 English language and literature or Mental Science
3 Jurisprudence and Constitutional History

<u>Second Examination</u>

4 Roman Law
5 International Law and Conflict of Laws
6 English Law – Contracts and Torts

<u>Third Examination</u>

7 Real and Personal Property
8 Evidence
9 Criminal Law
10 Equity
11 Statute Law of New Zealand
12 Practice and Procedure of the Courts of New Zealand

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25 *University of New Zealand Royal Commission* [1879] AJHR H1.

26 Brian Coote "Qualifications for Admission to the Legal Profession in New Zealand" (1996) 17 NZULR 146.

This was the impetus for the judges to delegate their statutory responsibility for examining candidates for admission to the University of New Zealand.[27] Equivalency was now possible. For admission as a barrister the First Examination was the equivalent of the general knowledge requirement, and the remaining two Examinations covered the law prescription. As far as admission as a solicitor was concerned, matriculation within the school education system constituted sufficient general knowledge and the Third Examination together with English Law equated to the law professional examination.[28]

Despite the availability of the LLB, entry into the legal profession via the solicitors' examinations remained the preferred route. It was the easier option, given that solicitors had the right to practise in both branches of the profession. The provision in the Law Practitioners Amendment Act of 1889 of the 'back door principle' whereby solicitors could be admitted as a barrister after five years of practice without having to complete the barristers' qualifying examinations, reinforced this anti-academic trend.[29]

The quality and popularity of the law degrees at the different University Colleges waxed and waned with the quality and popularity of the lecturers. Student numbers fluctuated; numbers of classes and student attendance at classes were, at times, erratic. Contributing to this situation were the combination of practical issues: most of the teaching was done by part-time lecturers, who also had legal practices, a student body which was also part-time and a significant number of whom would not have been

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27 Judges Rule 3 [1899] New Zealand *Gazette* 725-6 as quoted in Spiller, above n 11, 227.

28 Peter Spiller "The Legal Profession" in Peter Spiller, Jeremy Finn & Richard Boast above n 12, 293.

29 Ibid.

employed in law offices[30], and completely inadequate resourcing by the central college administrations. Law examinations were not set by the practitioner-teachers, but by other practitioners employed by the University.[31] The prospects for legal education, which had looked so promising in the 1870s, were looking somewhat parlous by the 1920s.

Almost inevitably another Royal Commission on University Education in New Zealand was appointed in 1925. The Commission reported that legal education was lacking a "sound and liberal course of general education" and "intensive training of high quality in the principles and in the practice of legal work".[32] Recommendations included a revision of the legal courses, and the establishment of a properly staffed and equipped national law school.

The University reacted to the criticism of the content of the LLB with remarkable alacrity and in 1926 approved a new degree structure which greatly strengthened the solicitors' qualification. The degree moved from three to four divisions comprising fifteen subjects:

<u>Division I</u>

1 Latin
2 English or Philosophy
3 Jurisprudence
4 Constitutional History and Law

<u>Division II</u>

5 Roman Law
6 Property (2 papers)
7 Contracts (2 papers)

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30 Ibid 295.
31 See Coote, above n 26, 148.
32 [1925] AJHR E7A p 44 as cited in Spiller above n 11, 235.

Division III

8 Torts

9 Criminal Law

10 Company Law and Bankruptcy

11 Trusts, Wills, Intestate Succession and Administration

Division IV

12 Evidence

13 Practice and Procedure

14 International Law

15 Conflicts of Law

Solicitors could only omit three subjects, Roman Law, International Law and one other. Matriculation grade Latin could replace Latin I. Both barristers and solicitors were required to complete a course in Bookkeeping of Trusts Accounts and a certificate in Conveyancing as well. This effectively closed down the back door entry into the profession, although it was only abolished by statute in 1942.

The Royal Commission also recommended the establishment of a Council of Legal Education as a watchdog body for legal education. This recommendation was embodied in the New Zealand University Amendment Act 1930, as a result of which the judges' powers over legal education were passed on to the Council of Legal Education. The Council settled the nagging question of the establishment of a national law school, by deciding that such a development would likely lead to inconvenience and undue hardship, so the four constituent colleges continued to provide law degrees.

The LLB curriculum was subjected to further numerous amendments[33] until the dissolution of the University of New Zealand and the enfranchising of the constituent colleges as independent Universities.[34] The law degree expanded to five years; Latin,

[33] These occurred in 1935, 1943, 1948, 1949,1952, 1955, and 1959. See Cullen, above n 15, 131-136.

[34] Universities Act 1961.

which had always been part of the degree, ceased to be a compulsory subject in 1952[35], and Roman Law was replaced by the Legal System as a foundation course.

Concern over potential incompatibility between the four universities' law degrees had precipitated prior agreement between them for the continuation of the Council of Legal Education. Representation on the Council would include the Deans of each of the four universities' law faculties, as well as members of the New Zealand Law Society and the judiciary. The Council would be the final arbiter of qualifications for admission, and would be responsible for advising the universities on matters relating to legal education.[36] The universities would retain full control over their law degrees. Law teachers would be responsible for setting and marking their examinations, with an added safeguard of external assessment.[37]

The 1960s witnessed a huge uptake in tertiary education from the post-war baby-boomers' generation with university enrolments increasing threefold.[38] This was compounded in 1965 when the Council of Legal Education dealt the final blow to the old order by decreeing that a law degree from a university was the only route to admission and "[t]his development effectively unified local qualifications of barristers and solicitors". [39] This inevitably fuelled the push for academic legal education. There was a concomitant shift from part-time to full-time study and this proved the catalyst for the law schools to move not only to a full-time academic teaching body but also to a more comprehensive curriculum which included a range of elective courses.[40]

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35 See Coote, above n 26, 150.
36 See Peter Spiller, Jeremy Finn and Richard Boast, above n 28, 298.
37 Law Practitioners Amendment Act 1961.
38 See Coote, above n 26, 150.
39 PBA Sim "The Ormrod Report and Legal Education in New Zealand" (1973) 3 Otago LR 77.
40 See Coote, above n 26, 150.

From the early 1960s, students generally studied full-time for the first three years of the degree with the later years completed part-time. Within a decade, the trend to total full-time study was well entrenched.[41]

With the move to full-time study for the degree, the 'practical' elements of practice were catered for by the creation of a post-degree certificate year which included subjects such as Law of Civil Procedure, Conveyancing and Draftsmanship, Legal Ethics and Advocacy, Office Administration and Accounting. Two other examination courses Law of Evidence, and Taxation and Estate Planning could either be taken as part of the degree or later in the practical training year.[42]

From 1973 there were eight core subjects prescribed for the law degree. The law schools negotiated with the Council of Legal Education for greater flexibility in the number and range of elective subjects which could be offered to students.

The practical skills required for practice were reviewed in 1986[43] and were set by regulation the following year.[44] The law schools declined to teach these courses, largely on resourcing grounds, and this function was passed by the Council of Legal Education to the Institute of Professional Legal Studies, a body created by the Council itself.[45]

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41 See Spiller, above n 11, 242.
42 See Coote, above n 26, 150.
43 Neil Gold *Report on the Reform of the Professional Legal Training in New Zealand for the New Zealand Law Society and the Council of Legal Education* (unpublished, 1987). This report is discussed in more detail in Chapter III.
44 Professional Examinations in Law Regulations 1987, r 3(2)(b).
45 See Coote, above n 26, 154.

Current Law School Curriculum

The content of the degree again came under scrutiny by the Council of Legal Education in 1987[46] and the core courses required for admission were reduced to six: the Legal System, the Law of Contracts, the Law of Torts, Criminal Law, Public Law, Property Law (or its equivalent Land Law, Equity and the Law of Succession). The remainder of the curriculum is a matter of decision for the individual law schools; some add their own compulsory subjects as discussed below but, for the most part, the remainder takes the form of a range of elective subjects from which students may select in order to make up the required points for the degree.

An addition to the core was made by the Council of Legal Education in 1998 with the prescription that Ethics and Professional Responsibility was required for all students who wished to enter legal practice.[47]

These prescriptions remain in place today.

In all the universities in the first year of study, law students are required to complete a number of non-law papers.[48] This may be seen as a modern equivalent to the general education requirement recommended by the Royal Commission in 1925.[49] Apart from the University of Waikato, the other universities use this first year as a threshold year, thereby restricting entry into the law degree proper to students who pass the designated threshold.

Some law schools designate subjects as core to their law degrees, additional to those prescribed by the Council of Legal Education. Conferment of the degree is dependent

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46 This was in response to recommendations made in a report undertaken by Professor Neil Gold of Canada. See Gold, above n 43.

47 Resolution of Council of Legal Education Meeting of April 1998 with effect from mid 2000.

48 These are the equivalent to three full-year courses and are taken from the first-year of another under-graduate degree.

49 *University of New Zealand Royal Commission*, above n 25.

on the successful completion of these subjects. The University of Waikato stipulates Jurisprudence, Corporate Entities, Public Law B (Administrative Law) and Dispute Resolution;[50] the University of Auckland stipulates Jurisprudence, Law of Personal Property, Legal Research and Writing;[51] the University of Otago stipulates Jurisprudence, as well as completing the Research and Writing and Advocacy Skills programmes.[52]

All law schools offer an extensive range of elective subjects; this selection serves a double purpose: to provide academics with the opportunity to teach subjects within the areas of their research specialties, and to provide students with as wide a choice as possible, allowing them, within limits, to structure the content of their law degree.

In all the law schools the degree is the equivalent of four years full-time study, with the Council of Legal Education core subjects, excluding Legal Ethics and Professional Responsibility, being year long courses.[53]

As stated, outside the Council of Legal Education 'core' prescriptions, the curricula of the five law schools vary both in courses required for the degree and workloads. The University of Auckland law curriculum may be viewed as an exemplar of curriculum content.[54]

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50 See *The University of Waikato 2004 Calendar* 159-160.

51 As at 2004; the Law of Personal Property will cease to be compulsory from 2006

52 *University of Otago Calendar 2004*, 496.

53 At Victoria University of Wellington and the University of Waikato, Legal System has been reorganised into three semester-long courses which fulfil the Legal System prescription of the Council of Legal Education. See *Victoria Unievrsity of Wellington Calendar 2004* 326 and *University of Waikato 2004 Calendar* above n 50, 159.

54 Correct at time of writing. Changes are forecast for 2006.

	Subjects	Duration
Part 1	Legal System Non-law subjects	Full year Full year equivalency
Part II	Law of Contract Law of Torts Public Law Criminal Law	Full year Full year Full year Full year
Part III	Jurisprudence Land Law Law of Personal Property Equity 3 electives	Full year Full year 1 semester Full year 1 semester each course
Part IV	7 electives	1 semester each course

If students are accepted into the honours programme the curriculum expands with the addition of a dissertation and an honours seminar course.

In addition to formal lectures, students are required to attend tutorials from some courses, participate in mooting, produce written work for assessment as well as complete examinations. There are also many extra-curricula opportunities for skills development for law students, such as participating in national or international skills-based competitions for mooting, client-interviewing and witness examination. The full-time curriculum may reasonably be viewed as challenging.

Over the last two decades there was been a significant increase in the numbers of law students combining their law degree with another degree[55] and this, practically, has direct impact on the number of subjects which are able to be designated as compulsory within the curriculum by any law school.

[55] Discussed in more detail on page 34 below.

Pressures on the Law School Curriculum

The curriculum is subjected to a number of competing pressures. The environments and constituencies within which the law school operates all exert influences on the curriculum. These pressures may be viewed from two perspectives: internal, and external, to the law school. Effecting change within the curriculum in part depends on the source(s) of the pressure being applied.

Internal Pressures

Within the Law Schools

The modern common law law school, located within the university, and serving as the main entry point to the legal profession, is a comparatively recent development. Whilst American law schools were carving out this niche in the late 19th century, in England, Canada, Australia and New Zealand, these types of law schools were largely a 20th century development[56]. This neophyte status has meant that law schools within the universities have had to struggle to gain credibility and acceptance in the academy. The latent memory of these struggles poses a barrier to skills-based curriculum reform.

Legal practitioners traditionally gained entry to the practice of their profession via an apprenticeship model, which evolved erratically over centuries. The evolution to the academic model in New Zealand was imposed by legislation rather than by free choice of the profession.[57] The university, or academy, is a place of higher learning and of scholarship. Practical training for a profession, by part-time teachers who were also legal practitioners, for students, many of whom, in earlier years, were part-time

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[56] In fact, the modern law school with full-time academic staff in both England and its former colonies are predominately post-World War II institutions. William Twining "Law in the Universities" in William Twining *Blackstone's Tower* (Stevens & Sons, 1994) 26.

[57] See above n 31.

students also employed in legal offices, did not fit naturally within the ideals of the academy. Although there has been an almost complete reversal of this situation, it is understandable that law school academics still present mixed messages about what their purposes as law teachers are.[58] The umbilical tie to the profession is strong. Twining encapsulates the predicament in which legal academics find themselves:[59]

> In all Western societies law schools are typically caught in a tug of war between three aspirations: to be accepted as full members of the community of higher learning; to be relatively detached, but nonetheless engaged, critics and censors of law in society; and to be service-institutions for a profession which is itself caught between noble ideals, lucrative service of powerful interests and unromantic cleaning up of society's messes.

Law schools have long struggled with their orientation: whether they should be the so-called service institution for the profession or a purely academic institution for the advancement of learning.[60] Whilst some law schools are explicit about their orientation there are significant numbers which seemingly have left the issue unresolved, but would probably agree that their primary function is to educate students for legal practice.

It is the very purpose of legal education or what law schools are educating for, that lies at the heart of continuing tensions faced by law schools and their academics. As noted, most would regard their principal role as providing the main educational entry route to the profession and, the United States aside, this is via an undergraduate degree. This view of the law school's role is what Twining describes as the 'primary

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58 See the diversity of opinion in PBH Birks (ed) *Pressing Problems in the Law. Volume 2: What are Law Schools For?* (Oxford University Press, Oxford, 1996).

59 William Twining "Law in Culture and Society" in William Twining *Blackstone's Tower* (Sweet & Maxwell, London, 1994) 2.

60 Ibid 52.

school image'.[61] But legal education by its very definition – seen as including an education in law, its role in society, legal rules, legal institutions and how law works or should work – is just as important to other students, not just aspirant legal practitioners. How far down this road of universal legal education a law school should go is a continuing issue for academics and the law curriculum.

Most frequently, the debate within law schools is restricted to the extent to which the content of the law degree itself should be set free from the confines of black letter law and opened up into the more contextual world. The question whether Jurisprudence should be retained as a 'core' subject within the degree typifies this debate.[62] Common law schools generally hold themselves out as providing liberal legal education, although there is some debate just how 'liberal' the education really is.[63] Dawn Oliver, an advocate for liberal legal education, states that it enables students "not merely [to] *know or know how* to but *understand* why things are as they are and how they could be different".[64] A liberal legal education is one that upholds learning as an end in itself. Law schools, nevertheless, seem fixated on the notion that they should teach law students to 'think like lawyers" and this perspective tends to dilute the liberality of teaching. In fairness, law schools are constantly hearing the demand from the legal profession and the student body for students to be taught 'to think like lawyers'.[65]

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61 William Twining *Law in Context* (Clarendon Press, Oxford, 1997) 300-301. It is noted that there is an increasing trend in Australian law schools to offer a JD degree, a part coursework part research doctorate, which may be seen as countering the 'primary school image'.

62 Dawn Oliver "Teaching and Learning Law: Pressures on the Liberal Law Degree" in PBH Birks (ed) *Reviewing Legal Education* (Oxford University Press, Oxford, 1994) 77.

63 Anthony Bradney "Liberalising Legal Education: in Fiona Cownie (ed) *The Law School – Global Issues, Local Questions* (Ashgate, Aldershot, 1999) 1-25.

64 See Oliver, above n 62, 78.

65 Discussed later in this chapter see pages 33- 41.

Even legal education for the purposes of legal practice is more extensive than a primary degree. In addition to the academic component there are also vocational and continuing education requirements that should be supplied. Vocational education is aimed at teaching students how to function within a legal practice, and continuing education is aimed at up-skilling the qualified practitioner. Law schools underplay their potential role in providing these forms of legal education and indeed question whether they should be involved at all. Peter Birks criticises this 'abbreviation of the law schools' responsibilities':[66]

> [U]niversities have themselves encouraged the false and dangerous antithesis between academics and practical, an antithesis which fathers the doctrine that practice has its own needs and nothing to gain from expensive academic study of the law.

From 2000 onwards there has been an increasing trend in both Australia and New Zealand to offer post-graduate study options which may be seen as a partial recognition of the law schools' obligation to the continuing education of practitioners.[67] The timing, duration and content of many papers offered as part of a LLM degree by course work are highly attractive to the profession, and indeed are promoted as such. Whilst these papers are officially part of the curriculum of the LLM, a number of them operate as de facto continuing education units taken by practitioners who have no intention of pursuing an LLM.

In a curriculum which is already full, the opportunity to include vocational training or indeed any skills-based training is limited and impossible to achieve without significant active support from the legal academics.

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66 Peter Birks "Short-Cuts" in Peter Birks (ed) *Reviewing Legal Education* (Oxford University Press, Oxford, 1994) 20-21.

67 For example, the University of Melbourne offers an extensive range of post-graduate qualification options. This trend is also a manifestation of creeping credentialism, which will be discussed later in the chapter.

Pressure from the Universities

Within many universities, law as a discipline has relatively low visibility; it is often considered a "technical" and very esoteric field of study.[68] The role and status of the law school has often been questioned by academic colleagues in the sciences, social sciences and the humanities because it is perceived largely to be a "trade school" [69] and its subject unscientific.[70]

Situating the law school within the academy has forced legal academics to confront the issue of just how 'scientific' the study of law is. The view that law is a discipline that can be learned by rote and by the application of learned analytical skills places law schools into the trade school category and endorses Thorsten Veblen's view that "Law schools belong in the modern university no more than a school of fencing or dancing".[71] American law schools were the first actively to promote law as science. Langdell, appointed to Harvard Law School in 1870, was its major protagonist. Law had to lend itself to its systematic study as a science, otherwise "a university will best consult its own dignity in declining to teach it. If it be not a science it is a species of handicraft and may best be learned by serving an apprenticeship to one who practises it."[72] Langdell enlarged on the study of law as science:

> Law, considered as a science, consists of certain principles or doctrines. To have such mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs is what constitutes a true lawyer, and hence to acquire

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68 See Twining, above n 59, 10.

69 See Twining, above n 56, 27.

70 Andrew Goldsmith "Legal Education and the Public Interest" in (1998) Legal Education Review 160.

71 T. Veblen *The Higher Learning in America* (BW Huebsch, New York, 1918) 211 cited in Andrew Goldsmith "Standing at the Crossroads: Law Schools, Universities, Markets and the Future of Legal Scholarship" in Fiona Cownie (ed) *The Law School – Global issues, Local Question.* (Ashgate, Aldershot) 73.

72 Address of 1886, cited in William Twining "Pericles and the Plumber" in William Twining *Law in Context: Enlarging a Discipline* (Clarendon Press, Oxford, 1997) 70.

> that mastery should be the business of every earnest student of law.[73]

Other American legal academics pursued the law-as-science philosophy by the publication of legal treatises, which aimed at developing the principles of their science in a systematic way.[74] Treatise writing "was regarded as the highest form of American legal scholarship"[75]. This law-as-science approach is probably the origin of the higher degrees in the United States being styled Doctor of Juridical Science.

English and other common law law schools have continued this vital tradition of legal scholarship. "Ever since the … nineteenth century, textbooks have borne the responsibility for restraining the centrifugal tendencies of case-law."[76] Peter Birks points to the development of the university jurist as irrefutable proof of the legal academic's coming of age as legal scientist. "The juristic function of controlling the dynamic of law's development, which entails criticizing, explaining, understanding and justifying can no longer be done from the bench alone"; this is now very much the territory of the law academic in partnership with the judiciary. Similarly, "the legislator expects to be able to turn to the universities for help in understanding the problems of every particular intersection of law and policy." In short, "[T]he university jurists have modernized the literature of the law". [77]

If the law school is a stand-alone faculty, it is frequently the smallest faculty within the university[78] and not infrequently, in New Zealand, is subject to the ever-present economic-driven spectre of amalgamation with another faculty, particularly

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73 Preface to "A Selection of Cases on the Law of Contracts" cited in Twining, ibid.

74 Gareth Jones " 'Traditional' Legal Scholarship" in PBH Birks (ed) above n 57, 9. Examples of 'major' legal treatises include *Wigmore on Evidence*; *Scott on Trusts*, *Corbin on Contracts.*

75 John Langbein "Scholarly and Professional Objectives in Legal Education: American Trends and English Comparisons" in Birks, ibid 2.

76 Peter Birks *An Introduction to the Law of Restitution* (Clarendon Press, Oxford, 1985) 2.

77 Peter Birks "Editor's Preface" in Birks, above n 58, vi-vii.

78 See Twining, above n 56, 28.

commerce or business.[79] Size and status issues have largely meant that law, for a myriad of statistical purposes within the university, is normally allied to arts or the social sciences.

Whilst small in size, from the financial perspective the law school more than justifies its existence to the university. Traditionally, law schools have been treated as the milch cow of the university; providing the greatest per capita income for the least outlay. There is a recurrent fiction that law schools are cheap to run and support, because there are no obviously specialised equipment-type resourcing demands.[80] There is seemingly a constant demand for legal education, which in Australia and New Zealand shows no present sign of abating.[81] Universities use 'profits' generated by the law school to fund other resource-hungry faculties and departments.

Where a law school does not appear to be able financially to perform, in contrast to other faculties, is in its ability to attract large research funding; nor does it generally garner large amounts of research income for the university. The reason for this is that legal research has traditionally been doctrinal or expository – analysing and synthesising the common law. Expository legal research is applied research – used by judges and jurists in the development of the common law, but it is often not regarded as being valuable research to others outside those confined interest groups. It is often disparaged by the wider academy as insular research and by the legal practitioner as being too academic, and too narrow in focus, not catering to the wide sweep of legal

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79 At the University of Waikato, the attempted amalgamation of the Law School with the School of Management was successfully challenged in New Zealand High Court because it had not been approved by the Academic Board. See *Association of University Staff of New Zealand v University of Waikato* [31 March 1999] HC, Hamilton, CP12-99. The Law Faculty at the University of Otago falls under the Humanities Division, one of four Academic Divisions within that University.

80 Any serious investigation of the funding requirements of a properly resourced research law library should quickly dispel this myth.

81 All New Zealand law schools have some form of restricted entry.

practice.[82] Not much has changed from 1967 when Professor Brian Coote said New Zealand legal academics were "regarded by the profession as hopelessly academic and by their university colleagues as hopelessly unacademic".[83]

This view of academic lawyer is not confined to New Zealand. In 1989, a study of academic culture in the United Kingdom included this negative observation:[84]

> The predominant notion of academic lawyers is that they are not really academic – one critical respondent described them as "arcane, distant and alien: an appendage to the university world". Their personal qualities are dubious; they are variously described as vociferous, untrustworthy, immoral, narrow, arrogant and conservative, though kinder eyes see them as impressive and intelligent. Their scholarly activities are thought to be unexciting and uncreative, comprising a series of intellectual puzzles scattered among "large areas of description".

Within at least some New Zealand universities, statistics are recorded documenting the amount of external research funding acquired by each faculty or department. Law schools tend to be conspicuous by their poor showing in these records, thereby cementing views within the wider university that legal academics do not do research or choose not to do research.[85]

As members of the academy, legal academics have a three-fold responsibility; research, teaching and administration. Of these three, the research activity is generally considered to be the most important.[86] An academic's research output directly influences his/her status, promotion and peer esteem.[87] In spite of legal scholarship

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82 See Twining, above n 59, 17.

83 Brian Coote "A Law Teacher looks at His Trade" (1968) 3 NZULR 37.

84 See Goldsmith, above n 71, 85-86.

85 Anecdotal comments gleaned from legal academics. The irony here is that the scientific disciplines which attract external funding generally do so on the basis of 'practical' and perhaps less academic research.

86 See PBH Birks (ed), above n 58, vi..

87 Fiona Cownie "Searching for Theory in Teaching Law" in Fiona Cownie ed *The Law School – Global issues, Local Questions* (Ashgate, Aldershot, 1999) 41.

being a 'large-scale burgeoning enterprise'[88] the new funding models for university research place the law school in a less favourable position than other faculties, particularly the sciences. Research assessment exercises favour the more scientific approach to research, with preference given to publications in peer-reviewed international journals, and prestige given to favourable citations in such journals. The long-standing top-tier common law law journals, such as the *Law Quarterly Review*, the *Cambridge Law Journal* and the *Modern Law Review* are not peer-reviewed in the same sense as scientific journals, and citation indices pay scant regard to legal journals.[89] Because law is jurisdictionally specific, much of the important critical expository writing done by legal academics is published in national rather than international law journals.

The new funding models in New Zealand appear to be directly influencing the research process both in terms of content and methodologies employed. Interdisciplinary research attracts external funding as does research which is seen actively to advance societal knowledge. Empirical research is not the methodology of choice for legal jurists. Again the law school is faced with competing external pressures; attracting more government money for the university versus contributing to the juristic development of the national legal system.

From the university's perspective, the law school is well placed to survive in the market-driven post-modern world. There is a seemingly inexhaustible demand for legal education. Even the restricted entry quotas into both law schools and the legal profession have not reduced the demand. A legal education is seen as desirable for a

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88 William Twining 'Legal Scholarship and the Role of the Legal Jurist' in William Twining *Blackstone's Tower* (Sweet & Maxwell, London, 1994) 123.

89 Only 10% or so of the journals included in the Social Science Citation Index are law journals; and these are heavily weighted towards American legal journals.

variety of vocations. Flood opines that "[i]t is one of the ultimate portable skills" and notes that most of the major western institutions, from governmental to supranational, employ persons with legal training.[90] Indeed, a not insignificant number of law graduates either do not enter legal practice or have no more than a brief career in the profession.[91] They use their legal qualifications to obtain employment in a wide variety of other sectors. As long as the law degree remains valuable currency for other employment purposes, numbers of students seeking entry to law schools are unlikely to diminish. (This situation may change if law schools in New Zealand were to offer a legal studies type qualification catering for those who wish to study law but who have no intention of pursuing a career as a legal practitioner.)

University administrations have been quick to see this potential and anecdotally law schools have been pressured into increasing intakes. Law schools are frequently averse to expansion; staff-student ratios tend to be higher than in other faculties or departments and the traditional orientation of the law school militates against mass education. The law profession has never been a large scale employer; numbers of students who could be absorbed into legal practice in any year are limited. Since the 1950s, law schools have used the Socratic style of teaching because[92]

> ….we wanted the student to learn actively by doing, not passively by repeating; because we wanted him to learn the techniques, the way of doing law and not so many legal rules; because we wanted him to learn for keeps, not to pass examinations.

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90 John Flood "Legal Education, Globalization and the New Imperialism" in Fiona Cownie (ed) *The Law School – Global Issues, Local Questions* (Ashgate, Aldershot, 1999) 131.

91 As far back as 1970 only 35% of students questioned at the University of Auckland said that they had definite intentions of going into legal practice. DAR Williams "Current Issues in Legal Education" in Legal Research Foundation *Legal Education in the Seventies* (Legal Research Foundation, School of Law, Auckland, 1971) 8. In Australia, a survey within the last decade revealed that fewer than half of the final year law students were intending to enter private practice. See Christopher Roper *Career Intentions of Final Year Law Students* as cited in Mary Keyes and Richard Johnstone "Changing Legal Education" (2004) 26 Sydney L Rev 557.

92 RO McGechan "The Case Method of Teaching of the Law" (1953) 1 VUWLR 11.

This case method is still employed in law schools, though in a limited number of courses. It is both a critical and contextual method of teaching; a process of dialogue and interaction betweens student and teacher and its success relies on smallish class numbers and students' willingness to participate in the process by the prior reading of set material to be discussed in class. This method is entirely unsuited to large classes.

New Zealand aside,[93] within the main common law jurisdictions, the numbers of law schools have expanded dramatically. In England alone, thirty-five new universities, formerly polytechnics, have been created since 1992, most offering legal education.[94] In Australia the number of law schools increased from twelve in 1987[95] to twenty-eight in 1997.[96]

In New Zealand, all law schools impose some form of entry threshold and the reluctance of law schools to move to open-entry intake for the law degree at undergraduate level has prevailed. However, the scenario is different at post-graduate level. Here, for reasons of economic reality amongst other considerations, law schools are actively competing to expand their intakes into post-graduate programmes.

Law has always been offered as training for the legal profession and law schools are now capitalising on the increasing specialisation of legal practice by offering post-graduate courses which provide training in areas not covered in the primary law degree. The variety of specialist law courses offered at post-graduate level provides

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93 The University of Waikato Law School has been the only new law school to open in New Zealand in the 20th century.

94 Patricia Leighton "New Wine in Old Bottles or New Wine in New Bottles?" (1998) 25 Journal of Law and Society 87.

95 Commonwealth Tertiary Education Commission *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, Canberra, 1987) Ch.1, 1

96 Christine Parker and Andrew Goldsmith "'Failed Sociologists' in the Market Place: Law Schools in Australia" (1998) 25 Journal of Law and Society 36.

the credentialism the market place demands. Opening the door for advanced specialist legal education also affords legal academics the opportunity to teach in areas which previously may have been only areas of research interest or may engender research interests in areas previously taught at undergraduate level. Benefits from these courses accrue to the university, the law school and the legal profession. The profession is benefiting from this development as law firms use their staff who have attended specialist courses to expand the range of the firm's expertise. There is growing interest in 'foreign' law masters courses from international students and this trend is assisting universities in their relentless pursuit of economic performance.

Pressure from the Student Body

As student numbers in law schools burgeoned towards the end of the 20th century, law students began to look further afield than general professional practice at the completion of their degrees. The profession had finite capacity to absorb new practitioners; new career paths in research, government and commerce beckoned law graduands. Student reaction to this trend has generally been to maximise their employability by combining their law studies with studies in another discipline or field of study. The numbers of law students undertaking conjoint or double degrees has increased markedly, so much so that, at the University of Auckland, for example, the percentage of law students enrolled for conjoint degrees has exceeded the number enrolled for just the LLB since 1992.[97] The range of conjoint degrees that may be

[97] "Over eighty percent of the persons who graduate in law from Auckland graduate with a degree in another discipline as well as law" per Grant Hammond in "Auckland Law School: Speeches from the Opening Ceremony" [1992] NZLJ 195. In 2004 twelve percent of students at the University of Auckland were enrolled in the LLB only.

combined with law have also expanded from the traditional Arts or Commerce, to Engineering, Medical Science, and Science.[98]

The student body is demanding and receiving greater say in the law curriculum. There is intense competition among universities to attract and retain students and this, together with the current student-as-paying-client philosophy, has meant that students are having input into curriculum decision-making. Student representatives are commonplace on a number of law school committees and are consulted as a matter of course on curriculum issues.

The demands from law firms for legal staff to include certain elective subjects within their law degrees (discussed further below) are actioned by the student body who tend to 'vote with their feet' when choosing their electives. The more liberal or contextual electives attract fewer student enrolments than the more commercially-oriented subjects. Classes such as Employment Law or Company Law are virtually guaranteed to be offered at least once every year, whilst other such as Conflicts of Law or Comparative Law may only be offered every two or three years. This is what Andrew Goldsmith describes as a "student moral and financial economy". The students quickly ascertain the "market value" of curriculum components and elect accordingly.[99]

Students obviously prefer a greater range of elective subjects within their law degree as this facilitates curriculum choices across the conjoint degrees. This means that law schools are subjected to demands to reduce the compulsory components of the degree, to lessen workloads and to offer differing modes of teaching.

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[98] At the University of Auckland in 2004, 54% of conjoint degrees were BA/LLB, 35% BCom/LLB, 7% BSc/LLB, 2.1% BHSc/LLB, 0.5% BProp/LLB.

[99] See Goldsmith, above n 71, 81.

A small but increasing number of law students are reverting to part-time study for a variety of reasons, mainly economic. This is influencing the curriculum in terms of scheduling of classes and tutorials with particular notice having to be taken of this sector of the student body.

External Pressures

Council of Legal Education Requirements

From its creation by statute in 1930[100], the Council of Legal Education has exerted major influence over the law school curriculum. It prescribes the core subjects which must be taught for admission purposes. These subjects are regarded as the indispensable building blocks of general professional practice. The core is reviewed periodically, and as the needs of the profession change, so too may the core. An example of this was the introduction of Ethics and Professional Responsibility as a new core subject in New Zealand for all students wishing to be admitted to practice after 31 July 2000.[101]

The Council also exercises a supervisory role over the legal curriculum. Not only does it prescribe the core but it supervises the quality and content of the teaching of the core, which means external control over the content and examination of these courses. This supervision is done by means of external moderation of course outlines for core subjects and external moderation and assessment of examination papers.[102] Internal assessment marks for these papers are restricted to 40%, with Council approval

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100 New Zealand Universities Amendment Act 1930.

101 Resolution of Council of Education Meeting of April 1998 noted in Brian Brooks "Ethics and Legal Education" (1998) 28 VUWLR 157.

102 Professional Examinations in Law Regulations 1987. Legal System courses are not moderated.

required for an internal assessment mark over 25%. “The final examination must count for at least 60% of the final grade.”[103]

Whilst the Deans of the law schools are members of the Council ex officio, they are outnumbered by legal practitioners. [104] This weighting in favour of the profession is potentially problematic for law schools. Because the law degree must contain the core prescribed by the Council of Legal Education,[105] law schools are restricted in the way in which they can offer a more general, liberal legal qualification designed for students who do not wish to practice law. Any degree which did not contain the prescribed core subjects could not be designated as a Bachelor of Laws degree (LLB), but would require a different title, such as a Bachelor of Legal Studies or similar.

A bill, presently going through the legislative process, proposes the renaming of the Council of Legal Education to the New Zealand Council of Legal Education, and an obligation for the funding of the Council to be borne by the profession.[106] This latter requirement reinforces the tie between the profession and legal education; if the profession is funding the Council then it is inevitable that they will take a greater interest in legal education, and possibly may demand greater input into the law curriculum.

In Australia, law schools must include the following eleven ‘areas of knowledge’ in their curriculum, if their students are to be eligible for admission to the profession: civil procedure, evidence and professional conduct, criminal law and procedure, torts,

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103 Council of Legal Education Moderation Procedure Guidelines for NZCLE Moderators and University Examiners 2004.

104 Law Practitioners Act 1982, Part 2. Section 31(2) stipulates membership of the Council as two High Court Judges, one District Court Judge, five practitioner members, one lay member nominated by the Minister of Justice and two student (or young lawyer) members nominated by the New Zealand Law Students' Association. The Deans of the Law Faculties of the five New Zealand Law School Universities are ex officio members s 31(2).

105 Law Practitioners Act 1982 s 38.

106 Lawyers and Conveyancers Bill (2006 59-3), cls 250 and 252 respectively.

contracts, property (real and personal), equity, administrative law, federal and state constitutional law, and company law. These eleven subjects are known as the 'Priestley Eleven'.[107] None of these subjects are skills-based nor is their constituent content detailed in the Report.

Pressure from the Legal Profession

> Despite the variety of producers and consumers of legal discourse, it is what the judges say and the supposed needs of the legal profession as narrowly defined that have had the greatest magnetic pull over the nature and form of legal education and scholarship.[108]

In England the profession's acceptance of the need for education for practitioners stemmed from its desire for status and respectability; education made gentleman.[109] This education was not a legal education but a general education. The legal profession traditionally exerted dominance over legal education because it provided education for the profession by the profession in the profession,[110] as exemplified by the apprenticeship model. This was the essence of the concept of 'profession'. The apprenticeship model reinforced in-house control over the profession. In effect it operated as a self-renewing, self-regulating 'cluster group'[111] which not only maintained control of entrants to the profession but also ensured that those entrants were inculcated with the values, mores and attitudes which the profession wished to

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107 The Consultative Committee of State and Territorial Law Admitting Authorities was established to develop uniform admission rules under the chairmanship of Justice Priestley. In its present form as the Law Admissions Consultative Committee, it now has expanded its membership to include Law Deans and practical legal training providers. This group is known as the "Priestley Committee". Discussed in more detail in Chapter III.

108 Per David Sugarman "Legal Theory, the Common Law Mind and the Making of the Textbook Tradition" in William Twining (ed) *Legal Theory and Common Law* (Blackwell, Oxford 1986) 27.

109 Andrew Boon "History is Past Politics: A Critique of the Legal Skills Movement in England and Wales" (1998) 25 Journal of Law and Society 152.

110 HW Arthurs "The Political Economy of Canadian Legal Education" (1998) 25 Journal of Law and Society 19.

111 Charles Rickett "Legal Ethics in General Legal Practice" in Legal Research Foundation *Legal Ethics* (Legal Research Foundation, Auckland, 1994) 41-43.

perpetuate.[112] Even when the universities first took on the responsibility for legal education, the teaching was provided by practising members of the profession for students who were already working in legal practice.

The profession has always been ambivalent about university based legal education, preferring to regard it, at best, as supplementary to the apprenticeship model.[113] The universities were not thought to be able to replicate the profession in the same way as the profession itself could.

Whilst the profession cannot exercise control over students embarking on law studies, it does directly influence what they are taught in the law degree. They do this in New Zealand via the Council of Legal Education, whose membership, as already stated favours the legal profession over legal academics.[114] Whilst the Council prescribes the core subjects, outside this core law schools are free to teach other legal subjects to complete the degree in accordance with the constituent university regulations. In practical terms, however, the other subjects making up the undergraduate degree are also frequently determined by the wishes and demands of the profession. This influence is often exercised in subtle ways: many law firms, in hiring law graduates, stipulate which subjects they prefer their employees to have as part of the degree; frequently law graduates who have a number of contextual legal courses within their degrees find it more difficult to find employment in the large commercial law firms than those with more standard commercial law courses.

The large array of elective subjects offered across the law degrees has also meant that law schools are again calling upon members of the profession to be part-time

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112 See Boon, above n 109, 153.
113 Ibid.
114 See above n 104.

practitioner-teachers. This provides a direct channel for profession input into the law curriculum. The subject will be determined by the law school, the content and focus will largely be determined by the practitioner-teacher who, almost inevitably, will introduce elements of 'law in action' experience into the lecture. This is not to be regarded as negative per se, but may serve for students as a point of unfavourable comparison with the subjects taught by full-time academics.[115]

The growth in interdisciplinary scholarship within the law schools, and the large numbers of students reading for conjoint degrees, have concomitantly given rise to an increasing divide between the profession and the academy – many of the extra-core electives offered within the degree are now the practising ambit of the professions, and an increasing number of law students are not entering legal practice upon completion of their degree. This divide or 'creative distance' between the law schools and the profession is viewed by Webber as both healthy and necessary.[116] He opines that the law schools are not merely the 'teaching and research arm of practice', but should be viewed as a 'parallel branch of the profession'. Without diminishing their role as the educators of intending legal practitioners, the law schools' educational and research responsibilities extend far beyond this facet.[117]

Notwithstanding the diminution in direct influence that the profession can bring to bear on legal education, the profession nevertheless continues to make its wishes and views known to the university and the law school. The links between 'town and gown' are actively fostered through socialisation at academic and professional

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115 Claude Thomasset and Rene LaPerriere "Faculties Under Influence: The Infeudation of Law Schools to Legal Professions" in Fiona Cownie (ed) *The Law School – Global Issues, Local Questions* (Ashgate, Aldershot, 1999) 196.

116 Jeremy Webber "Legal Research, the Law Schools and the Profession" (2004) 26 *Sydney Law Review* 568.

117 Ibid, 585.

gatherings. New Zealand is a small country with a low total population. This effectively means that legal practitioners, members of the judiciary and legal academics are constantly interacting and exchanging views. The perceived shortcomings in the 'training' of law students are frequently a matter of discussion.[118]

Law firms offer financial sponsorships to students and law schools, which is a powerful conduit for influence. Central funding from the University is hard won by law schools, in spite of the law schools' being generators of large income streams for the universities, so funding from external sources is always welcome and necessary. In the United States, particularly, law schools within private universities rely heavily upon alumni donations for much of their resourcing.

A significant number of legal academics maintain their membership in the profession, by keeping their practising certificates current and by undertaking some limited form of active participation in practice either directly as a barrister and/or solicitor or through consultancy work. Some even maintain offices within law firms. These academic-practitioners are generally more open and receptive to the concerns, needs and aspirations of the profession because they identify themselves as part of the practising profession.[119]

Summary

The law school curriculum is the product of competing pressures. It may be seen as a compromise designed to balance statutory requirements, professional demands, institutional standards, academic and student expectations, and political dictates. Within such a sensitive environment, the prospects for making significant changes to

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[118] This interaction and discussion happens at a parallel level between academic and corporate (law firm) law librarians.

[119] See Arthurs, above n 110, 22.

the curriculum without significant support from the profession, the legal academics, the student body and the university, are limited. Throughout the 150 or so years of development of the legal curriculum in New Zealand, one focus has remained largely intact: the teaching within the law schools is profession-directed and profession-driven.

Chapter III: Legal Research Skills Within the Law Curriculum

> [M]any lawyers are failing in their research responsibilities, with the consequence that valuable sources of the law are simply being ignored.
>
> Justice Robert Chambers[120]

Introduction

Much has been written in legal literature about legal skills, and the stage within the continuum of legal education at which they are best taught and acquired. A number of these sources form the basis of the exposition within this chapter. However, the literature is noticeably reticent about what is meant by the word 'skills'. The *Concise Oxford English Dictionary* defines a skill as "the ability to do something well; expertise or dexterity"[121]. This definition, prima facie, omits any mention of an intellectual component that is part of the ability. Wade identifies three elements in defining skills: action, practice, and a ''degree of competence".[122] The linguistic heritage of 'skill' both from Old English 'scele' meaning knowledge, and Old Norse 'skil' meaning discernment, point to a far more complex integration of understanding and ability than that alluded to in the simple definition of the word skill. It is this more complex view which I understand to be intrinsic to any discussion of skills. Legal skills involve not only the ability to do something, but also the fundamental

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120 Robert Chambers "Current Sources of Law: A Commentary" in Rick Bigwood (ed) *Legal Method in New Zealand: Essays and Commentaries* (Butterworths, Wellington. 2001) 135.

121 Judy Pearsall (ed) The Concise Oxford English Dictionary (10th rev ed, Oxford University Press, London, 2002) 1344.

122 John H Wade "Legal Skills Training: Some Thoughts on Terminology and Ongoing Challenges" (1994) 5 Legal Education Review 173.

understanding of context, and why, how and when something needs to, or should be, done.[123]

Mackie warns that the word 'skill' is a convenient term when used to describe lawyering activities, but it should not be regarded as a term of art. The term has a protean quality that is seized upon to denote a "continuum of 'practical expertise'".[124]

Within the common law world it now seems to be generally accepted that legal research skills should be taught within the degree, although at which stage and whether it should be core within the curriculum continues to be a matter of debate. The rationale for teaching legal research skills grows more pressing as the sheer volume of legal information grows exponentially each year, fuelled largely by the globalisation of information and developments in digital technology. This chapter will examine the reasons for including legal research skills within the law curriculum.

Within the legal world there is no uniform agreement as to the content of the skill set which should be covered within a legal research course. But apart from this content definition aspect, there are a number of other issues which surround the debate about the formal integration of legal research skills into the curriculum; these, too, will be explored.

Within the last 50 years a number of both government and profession-sponsored bodies have reviewed legal education and made recommendations about the skills components which should be grounded in the law curriculum. These reviews in so far as they relate to legal research skills will be discussed in this chapter. Also canvassed

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123 A similar view, although different perspective may be found in Robertson as quoted in John H Wade, ibid 187.

124 Karl Mackie "Lawyers' Skills: Educational Skills" in Neil Gold, Karl Mackie and William Twining (eds) *Learning Lawyers' Skills* (Butterworths, London, 1989) 10-11.

will be the current status of legal research skills within law curricula in New Zealand, Australia, England, and the United States.

Why do Legal Research Skills Need to be Taught?

The necessity for teaching legal research skills within the law curriculum is curiously more readily accepted by the legal profession than the legal academy. This may be partly driven by self-interest - the more the law student learns during the degree, the less she/he will need to learn within the corporate law firm environment - but may also be an experiential reflection. The realisation that the years spent in learning the law and qualifying for admission to practice do not automatically inculcate the skills to be able to do what lawyers have to do, comes as something of a shock to an aspirant lawyer. As Ethan Katsh says "[t]he law is an institution built on the creation, storage, processing, and communication of information."[125] Learning to do what lawyers must be able to do with legal information is inherent within the concept of learning the law and is fundamental to the law school experience. Tjaden[126] says "one of the strongest rationales for the support of legal research and writing education is that legal research and writing is at the very core of what law students do."

The rationale for teaching legal research skills is founded on four premises: the complex nature of law, the evolutionary nature of information delivery media, the exponential growth of information, and the new expectations within the modern tertiary educational sector.

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125 M Ethan Katsh *The Electronic Media and the Transformation of Law* (OUP, New York, 1989) 6.

126 Ted Tjaden "The Paradox of Legal Research and Writing in Law School" Paper presented at the CALT Conference, Vancouver June 22-24 2005. *http://www.acpd-calt.org/shared_docs/2005_tjaden.pdf* (at 04 April 2006).

Complex Nature of the Law

Common law regimes are by their nature complex. Professor Michael Tilbury describes it eloquently as "….the law is a patchwork whose diverse pieces have not been specifically designed to fit together."[127] Unlike their civil law counterparts where the law is codified and readily accessible, common law regimes derive their law from both statute and case law. Our law, fundamentally, has a pragmatic rather than ideological basis, with its case-by-case incremental growth aided by the doctrine of precedent. [128] It is this fact which underpins the requirement for the teaching of legal research skills. In order to determine what the law is in a particular area, one has to employ a number of diverse skills, one of which is finding it. The finding of the law may take on Everest proportions: there may be no relevant legislative provision; not all New Zealand case law is reported; there may be no cases on point within the jurisdiction; reference may need to be made to decisions from other common law jurisdictions which are usually of persuasive value. Finding the law is just one aspect. Understanding it, extrapolating new concepts from it, and applying it are also legal research skills. The legal writings of jurists from different jurisdictions may be relevant as an aid to understanding our New Zealand law. Students need to learn strategies how to deal with the nebulous nature of the common law.

Added to the inherent complexities of the common law, is the increasing internationalization of our law. Treaties are frequently incorporated into domestic law; international law principles are being applied in our courts. The jurisprudence of non-common law countries is increasingly an important component of legal research.

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[127] Michael Tilbury "A Difficult Legal Question" Consent to Medical Treatment by Young People (Sydney, 17 May 2004) http://www.lawlink.nsw.gov.au/lrc.nsf/pages/seminar10601 (at 31 August 2005).

[128] Robert Fisher "New Zealand Legal Method: Influences and Consequences" in Rick Bigwood (ed) *Legal Method in New Zealand* (Butterworths, Wellington, 2001) 26.

" A real strength of the New Zealand legal method is the eclecticism with which it draws its authorities and writings from other jurisdictions."[129] Students do not know what they do not know; the world of legal information has to be learned, and the skills of dealing with it have to be honed.

Evolutionary Nature of Information Delivery Media

Benjamin Disraeli said "Change is inevitable ... change is constant."[130] This has certainly been the hallmark of information delivery media in the 20th and 21st centuries. Print was the medium for centuries; changes were reflected in methods of printing and production. Media changes started impacting on legal information in the 1960s with the adoption of microfiche and microfilm technology.[131] Twenty years later, the personal computer (PC) came onto the market. The marriage of the PC with the online databases, such as Lexis and Westlaw, revolutionised legal research, especially in the United States. As the databases grew their content, the world of resources available for research exploded. New technologies, such as the CD ROM, added to the array of possible resources, and the development of the Internet and the World Wide Web have added enormous capabilities for storage and research, and made legal information accessible to everyone.

The result of all this rapid technological change is that legal research has in fact become far more complicated. In earlier days print resources provided a reasonably confined arena within which legal research was conducted. The scope of the research was largely restricted to sources that were accessible. Browsing and indexes provided the main entry points to information. The shift to digital technology, enabled access to

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129 Ibid 44.

130 Benjamin Disraeli *Speech*, (Edinburgh, 1867) http://www.quotationspage.com/quote/29768.html (at 1 September 2005).

131 Donna Tuke Heroy "Legal Research 1981-2001: Twenty Years – Twenty Changes" (2001) 20 Legal Information Alert 1.

greater amounts of information and new skills were being demanded to locate and use the information. The evolution of digital technology continues unabated, and it continues to grow in sophistication. New technologies, new upgrades, changes in platforms all necessitate the learning of new skills. But, in addition to this obvious aspect, which is underrated by today's 'net generation',[132] the digitising of legal information is challenging traditionally held notions about how law works.

The Effect of Computer-Assisted Legal Research (CALR)

The term 'CALR' is an American construct and is found predominantly within American legal literature. In New Zealand the more prosaic 'electronic research' is used. Whatever the terminology, all jurisdictions have had to grapple with the effect of digitisation on legal research. Legal databases contain overwhelmingly vast amounts of information. Finding a specific item of information, such as an unique word or case, or legislative provision, is relatively quick and simple. When information about a subject is required or commonplace terms, such as 'action', 'commission' or 'contract' are used, searching takes on a different hue. In order to search effectively, and reduce the number of irrelevant hits, the composition of search strategies takes on critical importance. Within legal databases, information is organised by words, rather than legal concepts. The search string must be precisely constructed, or the results will be either irrelevant or incomplete. The computer, a creation of logic and mathematics, provides exactly what is asked of it even if it is not what was originally intended. Many of the 'net generation', by the time they reach law school, will have been seduced by Google's shotgun-type searching which lulls them into thinking that online legal research is deceptively easy.[133]

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[132] Term refers to children born 1977-1997 who have grown up with the Internet. See Don Tapsell *Growing up Digital* (McGraw-Hill, New York, 1998).

[133] Thomas Keefe "Teaching Legal Research from the Inside Out" (2005-6) 97 Law Libr J 122.

> Google ….has taught us that it is no longer necessary to go through the effort of defining our information need. We just put in a word or two into the search box and let a search engine disambiguate the query and provide an answer…. We have given up the need to think through the reason for our query or clearly articulate the gap in our information.[134]

The skills of constructing search strategies are not intuited; they must be learnt.

In the current environment LexisNexis and Westlaw are only two, albeit the larger two, providers of online primary and secondary legal resources. New Zealand law schools may have access to the products of more than fourteen different legal database providers. Each of these database providers uses with its own software platform including its own syntax. Students may need to learn how to use each database. However, this is not a one-off learning experience. As each digital product evolves with new upgrades, or new platforms, the user is faced with learning new skills. Because many of these databases are idiosyncratic, regular usage is required to keep skills honed. But even before this is mastered, students must learn how to discern the meaning of what they are being asked to research. No legal database will be able to supply this answer.

Prior to the advent of electronic legal databases, finding relevant case law was largely a controlled process. Jurisdictions had their official law reporting series, whose use was mandated.Unreported judgments were not permitted to be cited as authority. The enforcement of this latter rule was aided by the fact that unreported decisions were difficult to identify and even harder to obtain. The advent of electronic law reports, many of which are available within a short time of the judgment being handed down, have broken down these time-honoured practices. Many courts are publishing their

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[134] In a study it was found that "student's existing knowledge of Web search engines was, in the main, around one third to 40% incorrect or unknown across a variety of questions about how they worked" per John Buschman and Dorothy A Warner "Researching and Shaping Information Literacy Initiatives in Relation to the Web" 31 Journal of Academic Librarianship 15.

judgments online with their own unique medium-neutral citation. Myriads of unreported judgments are readily available online,[135] calling into question the notion of 'unreported'. In fact, the only discernible difference between a case published online and one published in a law reporting series is the value-added editorial content found in a reported case.

The repercussions of a plethora of case law's being readily available and an inability by lawyers to understand how it should be used has been the subject of judicial comment. In *Michaels v Taylor Woodrow Developments Ltd* Laddie J, in a four-page postscript said: [136]

> Large numbers of decisions, good and bad, reserved and unreserved, can be accessed. Lawyers frequently feel they have an obligation to search this material. Anything which supports their clients' case must be drawn to the attention of the court. This is so even when it is likely that the court which gave the judgment probably never intended it to be taken as creating a new legal principle.… It seems to me that the common law system, which places such reliance on judicial authority, stands the risk of being swamped by a torrent of material, not just from this country but from other jurisdictions, particularly common law ones.

Similarly, Justice Robert Chambers has commented on the unthinking citation of cases too easily found "…error commonly made by counsel when presenting the law is the citation of too many cases and not enough principle. As a Judge, one often gets the feeling that every case counsel has looked at is being cited. (One also suspects that many cases are often being cited that counsel have not read.) Good methodology requires a quite different practice. For every source cited, there should probably be ten others that counsel have looked at but have not cited."[137] Students need to be taught

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[135] A significant proportion of case law in New Zealand is unreported.

[136] [2001] Ch 493, 519-520. Laddie J refers to similar comments by Lord Diplock in *Roberts Petroleum Ltd v Bernard Kenny Ltd* [1983] 2 AC 192, 202.

[137] See Chambers, above n 120, 137.

that it is quality not quantity that is important. Discerning the relevant principles and finding the cases which illustrate the principle is at the heart of legal research.

In jurisdictions such the United States, where many of the legal resources, including older materials – case law, journals and commentary - have been digitised, a large amount of legal research can be done online. So in this respect learning the online environment does enable the students to undertake a broad spectrum of legal research. But, because of the way the common law functions, there will always be a requirement to access early precedential cases, to conduct legislative histories, to consult the writing of early jurists or consult other jurisdictional materials which may only be available in print. The ease and convenience of CALR is seductive, with the result that some students will not countenance undertaking legal research unless it can all be accomplished online, frequently to the detriment of their research (and, possibly, their clients).

The effect that CALR has had on generations of law students, in particular those in the United States is eloquently expressed in this extract from a student's research paper, in which he was tasked inter alia with providing a reflective research trail:[138]

> As a matter of introductory explanation, I am probably one of the first generation of law students forced away from the library. When I came to school in 1996, all of our classrooms were wired for internet research, and Westlaw/Lexis dominated the legal research landscape. The universities still taught us how to fish the stacks. For the first six months. Then we were free to type keywords, strange / marks, /s marks defining between dates, defining among a select range of topics, and basically refining the search past the point of being required to reflect on why the decision was made. All of us understood the programs were crack, we were addicts, and that a cruel world waited upon graduation. No matter. When the smack is good enough, no sacrifice is too extreme. When I practised for [sic] after school, being chained to Westlaw was a privilege and one that I accepted as a cost of doing business… I have not, and hopefully

[138] Permission to use this extract was given by the student concerned and is on file.

> will never, write another law paper of any kind without the exclusive assistance of the computer. So, unfortunately, although I may have at one point known the specific meaning of a secondary source, the only source for me at this point is just what is available online.

Jurisdictions, such as England and New Zealand, whose legal materials are largely undigitised remain dependent on print resources, not only because this is the only medium within which the material is available, but also because the low level of acceptance of the guaranteed authenticity of digitised material by the judiciary. Print copy still carries the aura of authority, which electronic does not. This will inevitably change, but at the moment, and probably for the immediate future, this is the reality of legal research. Notwithstanding the limited range of full text New Zealand legal materials, many students and practising lawyers are restricting their research to online resources. Justice Chambers remarks on "the heavy reliance of lawyers on the computerised databases of New Zealand decisions" and notes:

> "[s]o much New Zealand material is now available on them that many lawyers do not bother looking elsewhere…. Does any one nowadays look at the old hard copy indexes and digests of New Zealand law? The reason why today nearly all New Zealand cases cited are of recent vintage is … because the two principal electronic databases started in the early 1980s, and contain cases from that time forward only."[139]

The reality is that many law graduates are still being employed in law firms which do not have access to electronic legal databases; 'old-fashioned' finding skills are still needed.

In CALR all information looks the same – one dimensional on a screen. Apart from layout or editorial add-ons there is nothing to distinguish one source of information from another. This may have two serious consequences for the aspirant practitioner, if

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[139] See Chambers, above n 120, 133.

CALR is all that is learned and available. The first is that without a mental construct of a law report, statute, or journal article, the difference between a primary source and a secondary source becomes blurred. Information asked for, is found, and used; appropriateness of the source tends not to be questioned. The second consequence flows from the first. Without knowing what a printed law report looks like, why it looks like it does, how can a student distinguish between reported and unreported case law and understand why this is important? Without handling assent versions of statutes, amendment acts and reprinted statutes, how can students comprehend this difference and distinguish between them? The precious traditions underpinning the comprehension and use of legal information are being lost to next generations of lawyers.

Another example of disjuncture that arises with CALR is that especially for legislative instruments, where a statute or regulation may be retrieved one section at a time, students do not have the advantage of seeing the entire statute or regulation at one viewing. This leads to disassociation and information being taken and used out of context. Databases which provide part-by-part retrieval are less problematic, but the inability to contextualise the whole, diminishes understanding.

Legal research is much more than learning how to be efficient and effective at online searching, as, as stated earlier, the finding of legal information is just one skill within the basket that is legal research skills. The advent of CALR has highlighted the importance of the analysis, application and evaluation steps within the legal research process. The oft-heard cry ‘there’s no need to teach students how to find it; it’s all on the Net’ is simplistic and dangerous, both for the researcher and their potential clients.

Clear articulation of search strategy, discrimination in the selection and intelligent use of information sources found are all learnt skills.

Exponential Growth of Legal Information

Concomitant with the evolution of legal information delivery media, has been the exponential growth of legal information. This is not a new phenomenon. Even in the 18th century a country lawyer commented "When he was a student he could carry a complete library of books in a wheelbarrow, but that they were so wonderfully increased in a few years that they could not then be drawn in a wagon." [140] By the end of 19th century, another commentator noted that the "proliferation of reported cases had virtually transformed the profession from a class of lawyers able to practice without books to a class almost entirely dependant on the adjudged cases."[141]

LexisNexis and Westlaw began initially providing online full-text legislation and case law; within two decades these two databases had added the whole gamut of secondary sources; treatises, encyclopaedias, journal articles, news and so on. Globalisation within the legal publishing world has meant that legal information is now available not just within the jurisdiction of the United States, but multi-jurisdictionally. However, the United States focus and emphasis remains dominant. Westlaw advises that at present there are more than 2.98 billion unique documents on Westlaw, as compared with just 160 million in 1998, and there are more than 19,000 databases on Westlaw, as compared with over 5,000 in 1990. Millions of new records are being added daily.[142] All electronic legal database providers are similarly engaged in

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[140] 5 Mod xi quoted in Pollock *First Book of Jurisprudence for Students of the Common Law* (2nd ed, Macmillan, London, 1904).

[141] Quoted in Maureen Spencer, John Spencer and Penelope Kent "Practitioners' Use of Online Law Reports: Implications for Law Schools" [2002] 2 Web JCLI http://webcjli.ncl.ac.uk/2002/issue2/spencer2.html (at 22 June 2005).

[142] Information supplied by Westlaw as at 20 May 2005. Email on file with author.

growing their businesses. Likewise, the print market share is still strong and publishers are continuing the flood of printed material. The consequences of this for the legal researcher is that it is not only the finding of information which poses the challenge now, but also the ability to make informed decisions about which information source to use. This realities of this situation were patently demonstrated in *Copeland v Smith*[143] in which counsel failed to find and advise the Court of a recent highly relevant decision. On appeal Brooke LJ said:[144]

> It is essential for advocates who hold themselves out as competent to practise in a particular field to bring and keep themselves up to date with recent authority in their field. By 'recent authority' I am not necessarily referring to authority which is only to be found in specialist reports, but authority which has been reported in the general law reports. If a solicitors' firm or a barristers' chambers only take on set of the general reports … they should …have systems in place which enable them to keep themselves up to date with cases which have been considered worthy of reporting in the other series.

The nature of the common law, the proliferation of legal information both print and electronic, enabled by new technologies, have all meant that for the untrained researcher undertaking legal research is increasingly a complex and non-intuitive activity. All law students need to learn how to be astute and discerning legal researchers; how to find their way through the rampant jungle of legal information.

Expectations within the Tertiary Educational Sector

The post-modern market-driven university is quite explicit about the attributes it expects of its graduates. Universities' strategic and or academic plans profile the qualities that its graduates take with them into society. The language employed in these documents seems invariably to include the elements inherent in the concept of 'information literacy'. An information literate person has the ability to recognise

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143 [2000] 1 All ER 457.
144 Ibid 462.

when information is needed, a capacity to locate, evaluate and use information effectively and ethically[145]; he/she is enabled to function within a world of diverse information choices. The ultimate goal is lifelong learning – engendering the notion that the process of learning never stops. The enshrining of such graduate attributes in its constitutive documents enforces compliance by universities. A person has to learn how to be information literate: legal research skill programmes are a vehicle for learning legal information literacy.

Issues Surrounding the Mainstreaming of Skills Debate

Definition Issues

One aspect which is fundamental to the whole debate on legal skills, is - legal skill for what or whose purpose? Understanding the rationale for, and articulating the objectives of, incorporating legal skills within the law curriculum is an essential first step. Academics must first look to the mission and role of their law school to identify whether its law degree is primarily profession-focused and aims at producing "effective legal practitioners" or whether it is "to provide a good general education in the discipline of law".[146] The skill sets of these two objectives differ but some skills are common to both[147]; legal research skills are just one example. Wade opines that many of the "awesome goals of law schools", which he "limits" to fourteen, involve the teaching of skills – for example "the ability to sytematise and criticise rules and policies", "the development of broad abilities of research into legal materials; "writing clearly".[148] Throughout the law curriculum, students are required to produce

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145 Alan Bundy (ed) *Australian and New Zealand Information Literacy Framework* (Australian and New Zealand Institute for Information Literacy, Adelaide, 2004) 3.

146 William Twining " Legal Skills and Legal Education" (1998) 22 Law Teacher 13.

147 Nigel Duncan "Why Legal Skills – Whither Legal Education?" (1991) 25 Law Teacher 142.

148 See Wade, above n 122, 175-6.

written work, ranging from opinions to dissertations. Much of this writing is expository or doctrinal, the content of which is garnered from efforts at legal research.

What are legal research skills? It is apparent from the literature and personal experience that many view legal research skills as simply bibliographic skills, or the ability to find legal information. Whilst these finding skills are an essential component they are merely one facet of a more complex skill-set. Restricting the concept of research skills merely to finding information in existing information products and resources is severely limiting and the teaching of such skills ultimately a waste of resource. If the products used to find information (print or electronic) change, the students have no basis on which to adapt their finding behaviour, and will require more training.

Students must be able to analyse their information need, understand the legal and social environment in which it is situated, know where and how to search for appropriate information, as well as to evaluate and update that information, before applying it to the information problem or question and communicating their answer in an principled manner either orally or in writing. All these activities form the legal research process, which is the subject of legal research skills teaching. In effect, the generic term ‘legal research skills’ comprises a number of discrete skills, not merely a finding skill.

Another viewpoint is that adopted from the information literacy discourse. Information literacy may be defined as “the ability to locate, evaluate, manage and use information from a range of sources for problem-solving, decision-making and

research."[149] From an educator's perspective this approach is closely aligned to the legal research process outlined above.[150] In my opinion, there are law schools overseas which predicate their legal research skills courses on information literacy principles but, on closer inspection, they still seem to retain a lingering adherence to the primacy of the bibliographic phase. (Possibly this is an inevitable result of non-legally qualified librarians taking the teaching responsibility for many facets of legal research skills courses. The bibliographic skills component is their comfort zone, and issues of analysis, contextualisation, application and communication may not be within the ambit of their knowledge or experience.)

My thesis is that legal research skills embrace all the elements that comprise the legal research process: analysis, identification of relevant contexts, bibliographic skills, evaluation, application, and communication and that information literacy principles should be applied in the course design. [151] My methodology for this will be covered in Chapter V.

Academic v Vocational Argument

The shift from the apprenticeship model of legal training to the academy model of legal education involved the law school disengaging itself from most of the practical elements of legal practice, a shift implied in the change of terminology from legal 'training' to legal 'education'. The taint attached to the jibe 'trade school' spurred law schools on to embrace law as science and an intellectual pursuit; and it lies at the heart of the debate about the appropriate focus of academic legal education. Those

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149 Per Christine Bruce as quoted in Robyn Carroll and Helen Wallace "An Integrated Approach to Information Literacy in Legal Education" (2002) 13 Legal Education Review 135.

150 G. Boelens "Legal Research Skills Education Based on the Principles of Information Literacy" (2002) 10 Australian Law Librarian 127.

151 Clare Cappa identifies similar components, analysis, contextualisation, bibliographic skills, interpretation and analysis of results in *Legal Research in Australian Law Schools* (LLM thesis, University of Queensland, 2002).

opposed to integrating skills into the curriculum are resisting the return to legal training, albeit in a modern guise. The main reasons for opposition are:

- The fear that integrating skills into the curriculum would 'dumb down' the intellectual element of law and lead to mediocrity in thought and application.[152]

- The academy raison d'etre – "the purpose of the university is knowledge in its own right and that to concern oneself with being useful is to subvert that purpose."[153] Skills, from this perspective are seen as banausic: "low level techniques that are beneath the dignity of an institution of higher learning".[154]

- Teaching legal skills is unnecessary – they are automatically learnt in the course of the degree. This argument has been expressed to me a number of times, by legal academics, particularly in regard to legal research skills – students are expected to obtain these skills via osmosis - the process of writing opinions and research papers automatically inculcates legal research skills.

- One commentator has denigrated the "teacher training mentality that would accompany any introduction of 'skills programmes"'.[155]

Twining says that when the issue of incorporating skills into the law curriculum is raised, arguments for and against are constructed around apparently competing

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[152] David Jabbari "Reform of Undergraduate Legal Education" in Richard Buckley (ed) *Legal Structures: Boundary Issues between Legal Categories* (John Wiley, Chichester, 1996) 211.

[153] Anthony Bradney "Ivory Towers or Satanic Mills: Choices for University Law Schools" (1992) 17 Studies in Higher Education as quoted in Nigel Duncan "The Skill of Learning: Implications of the ACLEC First Report for Teaching Skills on Undergraduate Law Courses" [1997] 5 Web JCLI (accessed at http://webjcli.ncl.ac.uk/1997/issue5/duncan5.html on 28 Feb 2003).

[154] William Twining "Legal Skills and Legal Education" in William Twining *Law in Context: Enlarging a Discipline* (Clarendon Press, Oxford, 1997) 188.

[155] See Jabbari, above n 144, 211.

dichotomies - "liberal/vocational; theory/practice; book learning/experience; academic/practical; educational/training; clinical/intellectual; skills/understanding".[156] The use of such polarised language implies that these terms are mutually exclusive and that there is no shared ground between "acquiring knowledge and learning how to use it".[157] In reality, a judicious combination of both theoretical and practical elements provides for a more balanced and realistic approach to learning:[158]

> The sterile framing of the debate as to whether law school out to be turning out scholars or practitioners, and therefore whether "theory" has any place in "practice" related courses misses the point that LRW necessarily inhabits both these realms. The relationship between LRW and other "substantive" courses should be symbiotic, not supplemental; doctrinal courses depend on students knowing how to brief and synthesize a case, to research and write up a legal problem, just as LRW depend on students knowing how to identify the legal issues embedded in a judicial decision, … and to analyse the doctrinal issues surrounding the area of law they are asked to research.

Not 'Real' Law

One of the arguments against including skills teaching into the law curriculum is that legal skills are not 'real law'. 'Real law' is generally perceived to be black letter law or law-in-context. 'How to' or skills classes do not fit into this profile. In a curriculum constrained by core subject requirements and a myriad of competing substantive law electives, the inclusion of a course which is not real law faces an uphill struggle, from both the academics and the student body. The main focus of many law schools is to teach the students to "think like lawyers"; that the honing of legal research skills is an integral contingent part of this process is largely overlooked. It is interesting to note that law schools which have no objection to providing

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156 See Twining, above n 154, 181.

157 See Duncan, above n 153.

158 Lorne Sossin "Discourse Politics: Legal Research and Writing's Search for a Pedagogy of Its Own" (1995) 29 New England Law Review 888. Note that LRW means Legal Research and Writing.

advocacy or negotiation / dispute resolution courses, both of which are largely skills based, within the curriculum should baulk at including legal research classes.

Legal writing is another skills-based course which traditionally has competed for curriculum space. However, unlike legal research skills, it has generally been perceived as mainstream. Lawyers need to be able to write. Some law schools set a high premium on the amount of legal writing required from their students. It is ironic that the substance of legal writing is founded in legal research, which tends to be a more devalued skill.

In many law schools where legal research classes are included within the curriculum they, nevertheless, do not enjoy the same level of legitimacy as other 'real law' courses. This aspect will be canvassed in greater detail in Chapter IV where the reasons for the ineffectiveness of legal research courses are discussed.

Government / Profession-based Reviews on Legal Education

Over the last 30 years there has been unprecedented concern about legal education, its format, content and mode of delivery, throughout the common law world. This concern resulted in a number of official reviews which were conducted in England, Canada, Australia, New Zealand and the United States. That these reviews were either government or profession instigated speaks to the almost universal dissatisfaction with aspects of legal education. However, the effectiveness of these various reviews has ranged from almost zero to partial implementation, largely because of internecine rivalries between branches of the profession (in the United Kingdom) or a profound lack of governmental commitment to achieving the aims of the recommendations, or professional / academic opposition.

England

The Ormrod Committee[159] was the first of the major reviews to look at legal education in the second half of the 20th century, although in the previous century there had also been other reviews of legal education. The Ormrod Committee's main objective was to "advance legal education in England and Wales by furthering co-operation between the different bodies now actively engaged upon legal education". Ormrod acknowledged that historically there had been 'unfortunate acrimony' between the Law Society and the Bar concerning legal education for different branches of the profession. His Committee started from two fundamental premises: the problems of legal education in England could not be understood without reference to its historical development, and that there needed to be clear 'understanding what the profession actually *did*'.[160]

The Ormrod Report took a bold stance, laying down a model for the 'relationship between academic and professional legal education'[161] by recommending that notwithstanding the tradition of the apprenticeship model, the preferred route of entry into either branch of the English legal profession was via a law degree. However, cognisance was taken of the wider training that legal practice in either branch demanded. The law degree or academic stage was merely one of three stages of legal education recognised by the Committee; the other two being the vocational or professional stage comprising institutional training and in-house training, and the continuing education or training stage to ensure currency and relevancy of legal

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[159] Committee on Legal Education, chaired by Sir Roger Ormrod, was appointed in 1967 and reported in 1971 see *Report of the Committee on Legal Education.* Cmnd 4595 (HMSO, London, 1971).

[160] Roger Ormrod "The Reform of Legal Education" in (1971) 5 Law Teacher 79.

[161] Anthony Bradney "Raising the Drawbridge: Defending University Law Schools" [1995] 1 Web JCLI *http://webjcli.ncl.ac.uk/articles1/bradney1.html* (at 01 April 2006).

knowledge. The academic stage was vital to both branches because it was designed to:[162]

> Provide the student with three of the essential requirements of the practitioner: a basic knowledge of the law and where to find it; an understanding of the relationship of law to the social and economic environment in which it operates; and the ability to handle facts and to apply abstract concepts to those facts. The first requires specific training in law; the second requires that the training be broadly based with some exposure to other disciplines and techniques; and the third, which is rooted in the ability to reason logically and analytically, is the product of intellectual training and experience.

The Report recommended that there should be a basic core of subjects which should be regarded as compulsory components of the law degree. This list was surprisingly short: constitutional law, contract, tort, criminal law and land law (the latter including trusts).

The acquisition of intellectual skills was seen as a concomitant of the academic stage:[163]

> [T]he student has acquired a sound grasp of legal principle, a sufficient knowledge of the basic law subjects and the ability to handle law sources so that he can discover for himself with reasonable accuracy, and without unreasonable expenditure of time and effort the law which is relevant to any problem and with which he is likely to be called upon to deal with in his years of practice.

The vocational / professional stage is limited to preparation for practice and the acquisition of practical skills; further substantive law tuition was not considered appropriate to this stage.

An even more radical recommendation was put forward; apprenticeships, even limited ones, should be abolished for solicitors, although a limited period of pupillage should be retained for barristers.

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[162] Ormrod Report above n 150, 43.
[163] Ibid 61-62.

Post-Ormrod

Whilst the Ormord Report offered a new way of looking at legal education, it was criticised and there was insufficient support from both branches of the profession so that few of the recommendations have been implemented.[164] Seventeen years later, the Marre Committee undertook a major review of legal education, as a result of 'turbulence in the legal profession'.[165] This Committee found that the Bar and the Law Society were dissatisfied with the status quo and that reform, particularly of the vocational stage, was required.[166] Once again the resultant report was heavily criticised, but its findings that vocational courses needed to concentrate more on the practical skills and on new ways of teaching and examining them, were welcomed by both branches of the profession and ultimately spurred on the needed change.

The Marre Report was followed by a Green Paper on the Legal Profession in 1989 produced by the Lord Chancellor's Office. The Green Paper endorsed the acquisition of practical legal skills and recommended the creation of an advisory committee in the Lord Chancellor's Department to 'play a central role in educational policy making'. The Green Paper led to the Courts and Legal Services Act 1990 (UK) and formalised the establishment of the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC). The Advisory Committee's role is to advise on the education and training of legal service providers.[167]

ACLEC immediately embarked on a wide-ranging review of legal education. In 1996 it produced its *First Report on Legal Education and Training.*[168] The Committee

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164 Maureen Fitzgerald "Stirring the Pot of Legal Education" (1993) 27 the Law Teacher 15.
165 Ibid.
166 A Report of the Committee on the Future of the Legal Profession, 1988.
167 Schedule 1 paragraph 1 as quoted in Richard Grimes "The ACLEC Report – Meeting Legal Education Needs in the 21st Century" (1996) 7 Legal Education Review 282.
168 *ACLEC First Report on Legal Education and Training* (ACLEC, London, 1996).

noted that there had been significant changes in legal education since the Ormrod Report, and that the tertiary education environment had altered radically. There had been dramatic growth in law student numbers,[169] and universities and colleges had taken on expanded roles in vocational and postgraduate education. The Report identifies what it sees as "serious structural weaknesses" in English legal education: "the artificially rigid" division between the academic and professional stages of legal education and the widely held perception that the law degree is a first step to professional practice. This, in effect, was an outright rejection of the Ormrod Report. ACLEC suggested reforms which Arthurs summarises as follows: [170]

- Greater flexibility, variety and diversity in programmes, curricula and methods of instruction.
- The introduction of multiple entry and exit points to ensure greater accessibility for students from diverse backgrounds and with diverse needs and resources.
- Better preparation of students for a wide range of occupational destinations.
- Greater intellectual rigour at all levels.
- Greater measure of common professional education and training.
- More effective partnership between universities and professional bodies.

Greater academic autonomy for law schools was recommended, with the injunction that they should provide "an independent liberal education in the discipline of law, not

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[169] In 1996 P Harris noted a 50% increase in law student numbers in the UK, cited in Grimes, above n 167, 283.

[170] HW Arthurs "Half a League Onward: The Report of the Lord Chancellor's Advisory Committee on Legal Education and Conduct" (1997) 31 The Law Teacher 1-2.

tied to any specific vocation". Neither of the two branches of the profession should exert any influence on the undergraduate degree and the initial professional training, but remain at arm's length.[171]

The teaching function of the law school garnered most of ACLEC's attention. The adoption of more active teaching styles within the degree was recommended as was the expansion in the skills taught. ACLEC identified a cohort of skills which it recommended should form part into the legal curriculum:[172]

> (i) the construction of logical argument.
>
> (ii) the capacity for abstract manipulation of complex ideas.
>
> (iii) the systematic management of complex factual information.
>
> (iv) intelligent, critical reading of texts.
>
> (v) the use of English language at all times with scrupulous care and integrity.
>
> (vi) the related ability to communicate orally and in writing in a clear, consistent and compelling way.
>
> (vii) competence in retrieving, assessing and using legal texts and information including information technology skills.[173]

The ACLEC report made specific criticism of what it saw was the current norm in legal research skills training:[174]

> A third area of deficiency in the current system of legal education is in relation to legal research skills. This entails more than a simple ability to 'find the law', whether it is statute or case-based. It

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171 ACLEC at 57-58 as cited in Arthurs, ibid 2.

172 ACLEC, 1996, Annexure to Chapter 4 as quoted in Duncan, above n 153.

173 All these skills recommended by ACLEC may be linked to the skill-set which I have identified as part of the legal research process – see page 162 below.

174 ACLEC, 1996, para 1.15 as quoted in Duncan, above n 153.

> requires that all intending lawyers be trained to take a problem, often presented in non-legal terms, and through a process of investigation to provide a range of legal solutions, each accompanied by an analysis of its benefits and risks to the particular client.

The Report went further and recommended that students should engage in active learning, rather than the more traditional passive learning model, and that the theoretical and practical elements should be melded so that theoretical understanding informed the practical application.[175]

The ACLEC Report was innovative, challenging and radical. It was too radical for the profession, which recoiled at the suggestion of commonality of vocational training, and this and many other recommendations have not been adopted. There has been a greater uptake of legal research skills training within United Kingdom law schools within universities and this will be discussed later in this chapter.

Australia

By the time the Australian Commonwealth Tertiary Commission set up a committee to undertake a discipline assessment of legal education in 1985 with Professor Pearce as Convener, there had already been two previous reviews which had looked at aspects of legal education in Australia. As early as 1964 the Martin Report had recommended the academy model as the preferred route for admission to the profession.[176] In 1979 the Bowen Committee issued a report on legal education in New South Wales in which it supported the Ormrod stance on legal education.[177] The Pearce Committee, having more legal education-focused and comprehensive terms of

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175 ACLEC, 1996, para 2.2 as quoted in Duncan, ibid.

176 *Report of the Committee on the Future of Tertiary Education in Australia* as cited in Pearce, Campbell & Harding, above n 5, 1.1. David Derham was the only lawyer member of the Committee.

177 See Pearce, Campbell & Harding, above n 5, 1.28.

reference than either of the earlier committees, took two years in its deliberations, reporting back in 1987.[178] The review was largely driven by concerns about the quality and efficiency of legal education in the higher education sector: significant federal investment demanded public accountability. The Pearce Report investigated, inter alia, all aspects of law schools, and their legal educational aims and content. It recognised that legal education within the university environment should provide students with a general education which would equip them for a variety of careers within the broadly defined legal profession, and indeed criticised the law schools for not paying enough attention to 'critical and theoretical perspectives' of law in a social context. However, the Report unequivocally reiterates "It does not follow from the fact that a range of careers may be available to a law graduate that law schools can or should deny responsibility for the provision of basic university education for the legal profession, or that they should do as they please regardless of vocational implications".[179] It was emphasised that "Law schools [must] recognise their obligations to educate students for careers requiring full legal qualifications". The Pearce Report acknowledged with concern that there were real unresolved tensions within law schools about the purposes and aims of a university-based legal education but offered no constructive lasting solutions. [180]

The de facto control by the profession over the content of the curriculum was discussed, in particular the differing admissions requirements for the various States. The recommendations of the Ormrod Committee as to the compulsory core required for practice was offered as a solution and it was noted that the 1982 McGarvie Report

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178 See Pearce, Campbell and Harding, above n 5.
179 Ibid 1.60.
180 Ibid 1.146.

which recommended 12 core subjects had been adopted by the Australian Legal Education Council.[181]

The Pearce Report made recommendations about the mode and content of teaching in the law schools. The traditional lecture style of teaching was not considered appropriate across the spectrum of subjects taught in the law schools. Small group teaching was recommended particularly for first year studies and classes where skills are taught.[182] The place of skills training received detailed consideration in the Report.[183] It was explicitly acknowledged that training in intellectual skills (as opposed to more purely practical professional skills) lay within the province of the law schools.

Shortly after the Pearce Report, there was another period of rapid expansion of higher education in Australia, resulting mainly from the abolition of the binary system of tertiary education. Law schools increased from 13 in 1987 to 29 in 1997.[184] The large numbers of law students in the law schools are far in excess of the profession's ability to absorb new practitioners. This proliferation has meant that the strong tie between the law schools and the profession has loosened and that law schools have increasingly sought to pursue divergent aims in their legal education.

The success of the Pearce Report was evaluated by McInnis and Marginson, who found that generally its impact was positive and had led to improvements in a number of areas especially the place of skills teaching within the law curriculum. The Report did not succeed in achieving recognition of the need for greater resourcing, nor the importance of more diversity amongst law schools, and, perhaps most significantly, it

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181 Ibid 2.72.
182 Ibid 1.16.52.
183 Ibid 1.61-1.67; 2.132 – 2.204.
184 Ibid 1.2; See also Parker and Goldsmith, above n 96, 36.

failed in its recommendation against a rapid expansion in the numbers of law schools.[185] Law as a discipline was, and still is viewed as a low-cost provider, high-income earner within universities, so the law school as milch-cow remains the driver for under-resourced universities.

Post-Pearce Report

In 1992 a profession-instigated review by the Consultative Committee of State and Territorial Admitting Authorities under the chairmanship of Justice Priestley, re-examined the requirements for professional admission to the bar. The resultant report identified eleven mandatory 'areas of knowledge' which serve as an uniform admission standard for legal practice.[186] All of these prescribed subjects are doctrinal; there was no recognition of, nor provision for, any skills component. This was, perhaps, a not unexpected outcome considering that the committee was composed of judicial officers.

In 2000 the Law Admissions Consultative Committee in association with the Australasian Professional Legal Education Council set out competency standards for practical legal training, which encompass skills, practice areas and values.[187] The skills component covers:

- Oral communication skills.

- Legal interviewing skills.

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185 C. McInnis and S. Marginson "Australian Law Schools After the Pearce Report"(Centre for the Study of Higher Education, University of Melbourne, 1994) as cited in Eugene Clark and Martin Tsamenyi, above n 58, 20. Sixteen new law schools were created in Australia within a single decade post Pearce.

186 The eleven 'areas of knowledge' are referred to as the 'Priestley Eleven' and comprise: civil procedure, evidence and professional conduct, criminal law and procedure, torts, contracts, property (real and personal), equity, administrative law, federal and state constitutional law, and company law.

187 *http://www.aplec.asn.au/Pdf/Competency_Standards_for_Entry_Level_Lawyers.pdf* (at 04 April 2006) Colloquially known as the 'Priestley Twelve'.

- Advocacy skills.
- Negotiation and dispute resolution skills.
- Letter writing skills.
- Legal drafting skills.
- Fact and law analysis.
- Provision of legal advice.
- Legal problems solution.
- Managing personal time.
- Managing risk.
- Managing files.

Competency statements for fact and law analysis are stated to include researching legal issues using law libraries, online searches, electronic databases, legal citators and digests. This is a disappointingly minimalist view of legal research and cannot be seriously regarded as a complete statement of requisite legal research skills.

In fact, submissions criticising both the Priestley Eleven and the Priestley Twelve were included in the Australian Law Reform Commission (ALRC) Report *Managing Justice*[188] asserting that both are now outmoded and unnecessarily constraining on law curriculum and skills development. ALRC noted that the Priestley Committee chose to focus legal education from the perspective of **what lawyers need to know**,

[188] Australian Law Reform Commission *Managing Justice* (ALRC 89) para 2.65.

whilst in other jurisdictions, similar committees, such as the MacCrate Report in the United States (discussed later in this chapter) have moved to the **what lawyers need to be able to do**.[189]

The ALRC report conceded that

> In calling for greater attention to be paid to broad, generic professional skills development, the Commission does not seek to minimise the need for students to receive a solid grounding in core areas of substantive law, the historical organisation (and divisions) of the common law system.[190]

Indeed, the ALRC went to pains to warn against the perpetuation of a 'false polarity between substantive knowledge and professional skills' noting that the former must inform the latter.[191] Recommendation 2 of the ALRC report states:

> In addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility.

The ALRC articulated the requirement that Australian legal education must transform to ensure that law students who enter legal practice have acquired the requisite skills to be able to perform as legal professionals.

Canada

In 1983 the Consultative Group on Research and Education in Law presented its report *Law and Learning* to the Social Sciences and Humanities Research Council of

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189 Ibid para 2.21.
190 Ibid para 2.81.
191 David Weisbrot "What Lawyers Need to Know, What Lawyers Need to Be Able to Do: An Australian Experience" in (2002) 1 Journal of the Association of Legal Writing Directors 38.

Canada.[192] The Consultative Group, under the Chairmanship of HW Arthurs, was commissioned to examine and advise upon legal research and education in Canada.

The Report took an holisitic view of the state of legal education and noted that 'the basic problem of legal education is that it espouses a broad range of goals and that it has opted for no specific structure to achieve any of them.'[193] Law schools held themselves out as offering an humane professional legal education, but their overriding focus on producing graduates for the legal profession meant that this goal was not being achieved. The Arthurs Report recommended that law schools re-examine their "eclectic curriculums" substituting them with clearly defined alternatives, taking care to avoid "narrow vocationalism" and intensifying "their present efforts to transmit liberal and humane intellectual values, encourage interdisciplinary study, and ensure some exposure to legal theory and legal research."[194] The whole spectrum of legal education was considered by the Consultative Committee from the undergraduate first degree through to postgraduate and continuing legal education.

Of the 56 recommendations in the Report, 23 of them are directed at improving legal scholarship, which Arthurs saw as being dominated by "the needs of the profession" and law reform type research. Diversity of research methodologies was encouraged, as were interdisciplinary and cross-disciplinary approaches.

Legal skills also came under scrutiny, with particular emphasis on legal research skills. Three recommendations are specifically devoted to this skill alone:

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192 See above n 3.
193 Ibid 153.
194 Ibid 155 recommendations 1 and 3.

> Student research and writing skills should be cultivated by requiring the production of research papers that are subject to critical evaluation
>
> Recommendation 6
>
> Graduate programs in law should be expanded and intensified especially with a view to the education of ... legal researchers.
>
> Recommendation 10
>
> Law schools should ensure that all graduating students possess legal research skills.
>
> Recommendation 41

The Arthurs Report recommendations were "designed to ensure the better preparation of legal intellectuals, and to improve the quality, quantity and diversity of legal scholarship." Was it successful in achieving these aims? Arthurs himself says that whilst there have been significant changes, such as more "fundamental and interdisciplinary research" and an expansion in graduate programmes, the Report, possibly only through its documentation of the status quo and envisaged future, gave impetus to a climate of change that was already underway in Canadian society. How much that change is directly attributable to the Report is moot.[195]

The United States

The first report on legal education in the United States was commissioned by the American Bar Association (ABA) in 1920. The resulting report *Training for The Public Profession of the Law* by Alfred Reed contained what was to become the 'leitmotif' in almost all other reviews of legal education conducted in the common law world – the need for 'practical' instruction.[196]

Sixty years later, the ABA commissioned a Task Force on *Lawyer Competency: The Role of the Law Schools* under the chairmanship of Roger Cramton. The brief was

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[195] See Arthurs, above n 110, 18.

[196] American Bar Association Law Schools and Professional Education (American Bar Association Press, Chicago, 1980) 5.

wide-ranging, and inevitably included a review of legal education in law schools. Recommendation 3 of the report of the Task Force states:[197]

> Law schools should provide instruction in those fundamental skills critical to lawyer competence. In addition to being able to analyze legal problems and do legal research, a competent lawyer must be able effectively to write, communicate orally, gather facts, interview, counsel, and negotiate. Certain more specialized skills are also important for many law graduates.

In this recommendation, analytical and research skills may be viewed as the fundamental skills within the law curriculum.

The American Bar Association's Section of Legal Education and Admissions to the Bar commissioned a report on *Legal Education and Professional Development – An Educational Continuum* under the Chairmanship of Robert MacCrate. The resulting document bore the title: *The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*. For some time there had been a level of dissatisfaction with the skills competency of law graduates and the fact that law schools did not see it as part of their mission to teach graduates how to practice law. Given the genesis of the Report it is unsurprising to find that its focus is on law in action; realigning legal education within the academy - "from law in the abstract toward the reality of law in the daily work of lawyers."[198] The Report is notable for its Statement of Fundamental Lawyering Skills and Professional Values, which sets out the ten fundamental lawyering skills and four professional values that aspirant legal practitioners should acquire. The Report is at pains to state that these skills and values are not prescriptive but are a discussion starting point.[199] The value of clinical legal

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197 As quoted in ibid 103.

198 Robert MacCrate "Symposium on the 21st Century Lawyer : Keynote Address – The 21st Century Lawyer: Is there a Gap to be Narrowed" (1994) 69 Washington. Law Review 517.

199 Russell Engler "The MacCrate report Turns 10: Assessing its Impact and Identifying Gaps we should seek to Narrow" (2001) 8 Clinical Law Review 109.

education as a vehicle for teaching these skills and values is emphasised. Each law school was encouraged to re-examine its curriculum in light of the recommended skills and values to assess where its gaps lay. Skills instruction in this Report does not refer strictly to the teaching of practical skills but includes analytical instruction and reflection and implies that these skills are wrapped into the normal modus of law teaching.[200]

Already, in 1994, the House of Delegates of the American Bar Association adopted a resolution supporting most of the MacCrate recommendations, notwithstanding opposition from its Section on Legal Education. [201]

Once again it is difficult to assess the success of this Report. Undoubtedly it served as a catalyst for discussion and analysis, generating unprecedented debate within American law schools with supporters and opponents documenting their views in diverse law journals from 1994 – 1997. For law schools with, or developing, clinical programmes, the Report offered a good yardstick against which to measure their extant or proposed curriculum. For other law schools without clinical programmes, the Report provided, at least, some indication of resourcing requirements, and for these schools the cost of implementation would be paramount.

The MacCrate Report has been followed by a number of other reports dealing with aspects of legal education, and most recently by a project of the Clinical Legal Education Association (CLEA) which has produced a draft document entitled *Best*

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[200] Jonathan Rose "The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense" (1994) 44 Journal of Legal Education 554.

[201] William Trail and William Underwood "The Decline of Professional Legal Training and a Proposal for its Revitalisation in Professional Law Schools" (1996) 48 Baylor Law Review 201.

Practices of Law Schools for Preparing Students to Practice Law.[202] In its objectives the project states "Our primary concern is the potential harm from incompetently rendered legal services. A law school's education program should guarantee that each graduate will have the knowledge, skills and values necessary to meet a new lawyer's legal and moral obligations to clients."[203]

The mission of the CLEA project is an holistic statement of best practice for the legal education of students who wish to practice law; legal skills are merely one component of this much wider picture, but they are an integral component.

The draft report criticises the mantra adopted by law schools that they teach students 'to think like lawyers' on the basis that this is a vague and insubstantially defined learning outcome. Law schools are urged in the draft report to move from "content-focused to an outcomes-focused program of instruction".[204] Not only should law schools articulate what students will learn during the course of their studies, but they should also state what they "will be able to do with their knowledge and skills".

In an ironic volte-face, the project steering committee, comprising 18 legal academics, agrees with Alan Watson's comment "…. most law teachers that I am acquainted with deny that law schools are 'trade schools'. But to some extent law schools are and must be trade schools. The result of that denial is that law schools are poor trade schools". The committee goes even further and states "An objective of the Best Practices

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[202] Draft, dated August 25, 2004, may be found at http://professionalism.law.sc.edu This is a work in progress under the chairmanship of Professor R Stuckey. The project began in 2001 and is scheduled to be completed in 2005.

[203] Ibid 1-2.

[204] Ibid 18.

Project is to help law schools become better trade schools in the best sense of the term."[205]

The Project has approved the wording of the Law Society of England and Wales in their consultation document on a *New Training Framework for Solicitors* in respect of the skills outcome statement dealing with legal research, which is seen as being part of general intellectual skills: [206]

> Identify the legal principles and issues presented by a set of facts, diligently conduct legal, factual and other appropriate research, and evaluate and implement legal and non-legal options as appropriate.

This is translated into the Best Practice model as the outcome "The program of instruction helps students develop professional, personal management, and client relationship skills." This is further refined in to specific skill sets including "effective approaches to problem solving", and "effective use of current technologies and strategies to store, retrieve and analyze information."

New Zealand

Unlike other members of its common law family, New Zealand's legal education has, to date, not been subjected to a comprehensive review. That is not to say that there has not been concern about legal education in New Zealand. In 1970, the Legal Research Foundation organised a Forum on Legal Education, participation in which included law students, legal academics, legal practitioners, and members of the judiciary.[207] The Forum was designed to discuss the law course at Auckland and 'the proper aims and purposes of legal education'.[208] Some minor suggestions arising in the Forum were implemented by the law school, and the Law Society acted upon the requests for

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205 Ibid 11.
206 Ibid 40-41.
207 *Legal Education in the Seventies*: Proceedings of the Forum on Legal Education, Legal Research Foundation, Auckland, 1970).
208 Ibid 1.

greater practical skills training for new practitioners. But, the greater issues of New Zealand legal education were outside the sphere of this one-day forum.

In 1987, the New Zealand Law Society and the Council for Legal Education commissioned a report on the reform of its professional legal training regime, by Neil Gold, a Canadian, who gathered material for his report in a three-week visit to New Zealand. In essence, this review was directed towards the vocational training which law graduates received before admission. The law schools, which were already under-resourced, had the responsibility for providing the bulk of the funding for this professional year.

Gold notes that "the academic and practising branches of the profession have not been able to develop an agreement about the nature, structure and objectives for the effective preparation of lawyers."[209] His recommendations included a complete revamping of the professional year, the creation of the Diploma in Professional Legal Education, a greater emphasis on skills training, and less on substantive instruction, the onus for this year, including resourcing, to reside with the Law Society.

The vocational year was regarded as the proper place for skills teaching.

Prima facie, the Gold Report must be viewed as the most successful of all the common law legal education reviews, which is understandable given its limited scope of inquiry. Its recommendations were largely implemented without any great opposition from either the academy or the profession.

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[209] See Gold, above n 43, 3.

Overview of the Current Status of Teaching of Legal Research Skills

At this stage it is useful to have a very brief overview of the current status of teaching of legal research skills in New Zealand, Australia, the United States and the United Kingdom. This overview is intended merely to provide a broad-brush perspective, rather than any in-depth examination. In the following Chapter, the methodologies used in teaching, and the effectiveness of legal research skill programmes is examined in detail.

New Zealand

All five law schools in New Zealand provide some training at undergraduate level in legal research skills, although the timing, methodology, and status of this training vary widely and it is difficult to discern any uniformity. Three law schools have formal courses within the curriculum for legal research and writing, the other two have programmes but these are not detailed as formal papers in their university calendars. The majority of New Zealand law schools do not assign points towards the degree for the legal research and writing course. However, all law schools advise that these courses are a compulsory component and that the law degree is not awarded until the course has been completed.[210] The timing of the teaching of this course varies between years one to three of the law degree, and within those years the classes may be front-ended in the semester. Where legal research skills are taught within the first year of the degree, they tend to be taught as a component of another law course. In most of the law schools the teaching of legal research skills is concentrated on training in the use of electronic databases and the bibliographic phase of the legal research process; this training largely being undertaken by law librarians. Academics

[210] Subject to a decanal discretion.

who teach on legal research and writing courses tend to concentrate their efforts more on the legal writing component, and in some cases this is even delegated to tutors.

At one law school a comprehensive semester-long legal research skills programme has been introduced into the first full-time year of the law degree. This has been incorporated into the existing legal research and writing course, and its focus is on legal research process not just the bibliographic phase.[211]

All law schools have research paper writing requirements, although these requirements also vary substantially. As a rule, marks are not awarded specifically for the quality of the research. This aspect will be covered in greater detail in the review of empirical research in Chapter V of this thesis.

The comparatively under-developed state of skills incorporation in New Zealand law curricula may be attributed to the lack of regular formal reviews of legal education. Law schools generally regulate this aspect of their teaching in-house and are not subject to external professional prescriptions, as they are, for instance, in the teaching of professional ethics for students entering the legal profession.

Australia

Australian law schools have had the benefit of several reviews of legal education which highlighted the requirement for skills teaching.[212] As a result, formal legal research courses have been part of many Australian law degrees since 1991.[213] However, there has been no single model of research skills teaching across the law

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211 In 2006 this course will become a full academic course in its own right, although it will still not carry points towards the degree.

212 See pages 66-67 above.

213 Robyn Carroll and Helen Wallace "An Integrated Approach to Information Literacy in Legal Education" (2002) 13 Legal Education Review 134.

schools[214] apart from the tendency for these classes to be taught in the first year of the degree and to be afforded minimal time in the curriculum.[215] Where legal research courses are offered in the first year, they are frequently stated to be 'threshold' or 'hurdle' courses which must be passed.

Some Australian law librarians and academics were early incorporators of information literacy principles into research skills teaching and this, combined with a increasing uptake by universities of outcomes-focused education principles, has meant that there is now an increasing number of law schools which have re-framed their legal research courses to reflect these tenets.[216] What appears to be the general methodology is that rather than providing separate legal research courses within the curriculum, law librarians are partnering with legal academics to provide legal research training within substantive law courses. Thus, the finding and use of case law may be included in the constitutional law or law of procedure classes. In some law schools, skills are taught at a basic, intermediate and advanced level over the years of the degree integrated in a variety of substantive classes, with the students advised of the competency level they are expected to meet at any level.

Johnstone and Vignaendra undertook a 'stocktake' of legal education in Australia from 2001-2003.[217] They reported that within Australia there are three approaches to teaching skills within the law degree; a minimalist model, a more explicit skills teaching programme, and integrated skills programmes. Legal research skills form part of all three approaches in varying degrees.

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[214] Terry Hutchinson "Where to Now? The 2002 Australasian Research Skills Training Survey" (2004) 14 Legal Education Review 63-91.

[215] Clare Cappa *Legal Research in Australian Law Schools* (LLM Thesis, University of Queensland, 2002) 25.

[216] Two such examples are Queensland University of Technology and the University of Western Australia

[217] Richard Johnstone and Sumitra Vignaendra *Learning Outcomes and Curriculum Developments in Law* http://www.carrickinstitute.edu.au/carrick/go/pid/48 (accessed 1 September 2005).

The United States

Unlike the United Kingdom, New Zealand and Australia, the American law degree is a graduate degree. Students who study law have had previous experience of tertiary research and it is reasonable to assume that they are more aware of the importance of research skills. American law curricula generally include a first-year course for legal research, frequently combined with legal writing.[218] In line with the situation in New Zealand, there is often an imbalance between the research and writing elements with more emphasis placed on legal writing.[219] Research within the legal profession demonstrated that this first year course was not adequately preparing law students for legal practice.[220] In an attempt to correct this imbalance, a significant number of ABA-accredited law schools have introduced advanced legal research classes in second or third years of the degree.[221] The teaching is largely done by law librarians who hold both law and professional library qualifications. However, the courses are elective, not compulsory.

United Kingdom

A recent survey of 100 United Kingdom academic law libraries[222] reveals that some form of legal research skills is taught in the majority of these institutions.[223] The training is largely centred around the bibliographic phase of the legal research process. In line with other Commonwealth jurisdictions, there is a discernible trend towards the integration of these classes within the formal teaching curriculum,

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218 Ann Hemmens "Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools" (2000) 94 Law Libr J 210.

219 Helene Shapiro "The Frontiers of Legal Writing: Challenges for Teaching Research" (1986) 78 Law Libr J 719.

220 Joan Howland and Nancy Lewis "The Effectiveness of Law School Legal Research Training Programs" (1990) 40 Journal of Legal Education 381.

221 According to some 72 of 111 such law schools who responded to a survey. See Hemmens, above n 218, 236.

222 Cathie Jackson "SLS/BIALL Academic Law Library Survey 2002/2003" (2004) 3 Legal Information Management 171-182.

223 Ibid. 81 of the 100 respondents completed this portion of the survey.

particularly at the undergraduate stage.[224] Responsibility for the teaching of legal research skills at undergraduate level within the old universities is more likely to be the province of the law librarians whereas both academic and library staff partner the teaching within the new universities.[225] The vocational year for both aspirant barristers and the solicitors includes legal research skills training.

Summary

Whilst it is generally acknowledged that legal research skills should be taught as part of the law curriculum, there is no real agreement as to the timing, content, methodology or "ownership" of such courses. Because there has never been true consensus between the academy, the legal profession, and the legal academics themselves as to the purpose and aims of the legal education provided by law schools, there is an ever-present residual dissatisfaction that permeates the whole of the legal education process, as evidenced in the extensive literature on the subject. This dissatisfaction flows through to curriculum content and resonates most profoundly around the legal skills debate. Many jurisdictions have attempted to resolve this lingering discontent with reviews of their system of legal education. At best the reviews have stimulated some move towards consensus and resulted in some improvements. Issues, such as skills integration, have been aerated and held up for re-examination, but, on balance, the reviews largely serve as a chronicle of lost opportunities. Government-instigated reviews tend to have a post-modernist agenda – allocations of resources and economies of scale, but seem unable to bring major content-based recommendations to fruition. Legal profession-instigated reviews

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[224] Ibid 77% of respondents indicated their courses were integrated at undergraduate level with only 55% integrated at taught postgraduate level.

[225] Ibid 172. Old universities are those incorporated before 1992; new universities are those incorporated after 1992.

obviously are looking at maximising value for the profession, but frequently fail because of underlying discord between the profession and the academy.

Across the main common law jurisdictions, some features of legal research skills teaching are distressingly similar. There is a discernible lack of agreement and uniformity within jurisdictions, in terms of academic commitment, content, methodology and, most importantly, assessment of effectiveness of courses. The one facet which does seem to be agreed across jurisdictions is the need for greater awareness of, and interest in, the integrating of legal research skills into the mainstream law curriculum.

Within law schools themselves, the reluctance to embrace fully the skills component of legal education may be viewed as a manifestation of misplaced intellectualism that fails to comprehend the highly complex nature of skills teaching. Until legal skills such as the basket of competencies inherent in legal research are afforded equivalent status within the curriculum to substantive black-letter courses they will remain the Cinderellas of the curriculum. The theory of law and competency in the practice of law must be equal partners in the legal education process, or the process is incomplete.

Chapter IV: Legal Research Skills Programmes: Their Methodologies and Their Effectiveness

Introduction

As discussed in the previous chapter a considerable amount of attention has been paid by quasi-governmental and professional bodies to the necessity of including legal research skills into the curriculum, and by law schools across the common law world in developing such programmes. Law schools have adopted a variety of methodologies for teaching legal research skills and these methodologies themselves have been the subject of a vigorous and, at times, bitter debate among their protagonists. This chapter will explore the three main methodologies, which can be distilled from the literature emanating principally from the United States of America and Australia. These three methodologies, the bibliographic, the process-oriented and the information literacy models, have, in turn, spawned a number of variations, which integrate features of each thereby blurring their precise classification. Where relevant, these will also be canvassed.

Despite the debates, and best endeavours, the literature on the subject is a litany of failure and ineffectiveness of these programmes. The reasons for this are manifold and will also be explored in this chapter.

With these considerations in mind a methodology for the teaching of legal research within a New Zealand law curriculum will also be proposed.

Methodologies

The teaching of legal research began in the United States and spread through the common law world, with the same methodologies being generally adopted.

The methods used to teach legal research skills programmes may be divided into three different models: the bibliographic or product-based approach, the process-oriented model, and the information literacy model. Both the bibliographic and process models have their origins in the United States, whilst the information literacy approach has largely developed within Australia.

Bibliographic Model

"Legal bibliography … is the description and identification of the published sources of the law."[226] In essence, this model involves the study of legal information sources, their use, and their historical and contextual significance. It is predicated on the notion that if one person knows why legal resources look and work in a particular way and how to use them, then it is possible to select the right resource to answer a legal research problem. Familiarity with the content and the usage of legal resources empowers the law student to make informed choices in their research tools.

The bibliographic method is inextricably linked with legal research tools, the resources which either contain or explain the law. Because this method is focused on the explanation and use of the various formats in which these legal research it is also referred to as the product-oriented model.

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[226] Steven M Barkan "On Describing Legal Research" (book review) 80 Michigan Law Review 925 note 2.

Of all the models for teaching legal research, the bibliographic approach is the oldest and may be traced back to the ingenuity of American legal publishers, who, in the early 1900s, recognised a marketing opportunity and sent travelling salesmen to law schools to teach the students how to use their books.[227] The sessions run by these travelling salesmen became so popular with the students, that the law schools themselves adopted this model and started legal bibliography classes. According to Berring and Vanden Heuvel, Professor Hicks of Columbia (later at Yale) was largely instrumental in "legitimizing legal research courses in the first-year law school curricula" through his status as both academic and law librarian, his teaching, and his influential writing.[228]

Hicks' rationale of legal bibliography was that: [229]

> There are at least three divisions of the subject which we have spoken of as legal bibliography. They are, first, legal bibliography proper, which deals with the repositories of the law; second, methods of finding this law, which is an art to be acquired; and third, brief-making, which has to do with the orderly presentation of arguments based on authorities, and in conformity with the rules of the court to which they are addrest.

As to how this should be taught, Hicks observed: [230]

> …it is evident that legal bibliography proper, the origin history, and description of the repositories of the law, is susceptible of presentation in the form of lectures… How to find the law is a problem best solved by trying to do it. But this attempt should be under proper guidance… Each student must be given individual problems and must be carefully checked up by the instructor.

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227 Frederick C Hicks "Teaching Legal Bibliography" (1918) 11 Law Libr J 1. One of the earliest salesmen was Roger W Cooley who later became a law professor at the University of North Dakota.

228 Bob Berring and Kathleen Vanden Heuvel "Legal Research: Should Students Learn it or Wing It?" 81 Law Libr J 433. Professor Hicks wrote Materials and Methods of Legal Research

229 See Hicks, above n 227,5. Spelling of 'addrest' not corrected.

230 Ibid 8.

By the mid 1900's legal bibliography was a recognised part of American law school curricula.[231] The bibliographic method of teaching legal research remains largely unchanged to this day: "The method used for teaching legal bibliography is basically that which has been in use ever since courses in legal bibliography began – lectures, library tours and library problems requiring short answers."[232]

In this model, the students are taught about legal information sources, with the classes organised around different information types, for example, law reports, statutes, secondary materials and so on. The medium of the information source is irrelevant; this type of instruction is employed for both print - and electronic legal research. The students are generally given exercises to perform to demonstrate their understanding of, and ability to use, the resources. This type of assessment is frequently referred to in American law schools as 'drill exercises', or 'treasure hunts'[233] and their content frequently has no connection with the content and context of other substantive law classes which the students are taking in the same year.[234]

The crucial fact about this methodology is that it is intrinsically bound to the product or information source being taught and if that product or information source should change then new learning is required before the student can use the replacement. For example, the new regime of reprinting individual statutes in New Zealand has caused problems for students previously taught that all new reprinted statutes appear in the Reprinted Statutes series. Lack of retraining in the new format will result in students either not being aware of or confused by the new form of reprinted statutes. In other

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231 Robin K Mills "Legal Research Instruction in Law Schools, the State of the Art or, Why Law School Graduates Do Not Know How to Find the Law" 70 Law Libr J 343.

232 Ibid 345. "Hicks …set the tone for seven decades of what has been considered legal research training" per Christopher G Wren and Jill Robinson Wren "The Teaching of Legal Research" 80 Law Libr J 26-27.

233 Richard A Danner "From the Editor: Teaching Legal Research" 78 Law Libr J 601.

234 The effect of this disconnection will be discussed later in this chapter when the effectiveness of the bibliographic method is explored.

words, the success of the bibliographic model as a methodology depends on legal information resources remaining constant and largely unchanged for students to continue to use them successfully for legal research.

The bibliographic model is essentially teacher-directed and teaching-focused. The teacher teaches the students what the teacher thinks the students need to know. The students assume that they are taught to know everything they need to know about legal research.

Process-oriented Model

The process-oriented model recognises that legal research is itself a process; a systematic approach to legal problem solving. In contrast to the mechanical approach of the bibliographic model, the process-oriented model offers a more qualitative insight into legal research. Within law librarian literature this model is said to comprise the following steps: fact gathering and analysis, identification of the legal issues involved, organisation of the issues to be researched, the finding of information sources and their evaluation, and the updating of the law.[235] The process remains constant, and once learned can be applied regardless of the subject matter of the legal problem and regardless of the medium or format of the information sources. In this respect it differs fundamentally from the bibliographic model whereby changes to the product (book, database) necessitates new learning as to how that individual product works and is used.

The process–orientation echoes the pattern set at the beginning of a student's legal education – learning the legal process or legal method - and is one which students find familiar. If the purpose of a legal education is to teach students to "think like a

[235] See Wren and Wren, above n 232, 10.

lawyer" then as Anita Morse says "All participants in the core curriculum [including legal research teachers] should assist in preparing the student in lawyer competency."[236]

This method does not totally eschew or undermine the importance of legal information sources. Rather it attempts to place them within the context of the process and the problem to be solved. Patently, legal research involves knowing about legal information resources and how to use them; the process method introduces students to these resources when they are at that part of the process when they need to use them. It recognises that before the students start using resources they have the essential fact gathering, identification of the legal issues, contextualisation of the legal issues, and an identification of the strategies they need to employ in their research. This step, vital to successful legal research is frequently omitted or inadequately covered in the bibliographic method.

The origins of the process-orientation methodology are obscure, but early documented champions were Christopher Wren and his daughter, Jill Robinson Wren, neither of whom were law librarians.[237] The Wrens were resolutely opposed to the bibliographic method[238] and counter proposed the 'legal research as process' methodology. The Wrens recognised that the 'legal research as process' method was ideal for the development of a pedagogical structure in which the process method could

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[236] Anita L Morse "Research, Writing, And Advocacy in the Law School Curriculum" (1982) 75 Law Libr J 253. My words inserted in the brackets.

[237] Significant in that as they did not have a background in the bibliographic method which is ingrained in librarianship training, they approached legal research from a trained lawyer's perspective. As noted earlier, Hicks, the initial propagator of the legal bibliographic method, was a trained law librarian and legal academic. This aspect will be canvassed further on in this chapter .

[238] Possibly having been taught legal research by this method when they respectively went through law school (my surmise), and from their own experiences of both doing legal research and teaching legal research. See Wren and Wren, above n 232,33 footnote 89.

successfully be taught.[239] The structure they proposed comprised three frameworks:[240]

> Briefly, the first framework helps students understand the law-creating institutions as a backdrop to understanding the books used for legal research; the second framework provides students a way to evaluate the legal problems that take them into the law library; and the third framework shows students how to conduct research once they reach the library phase of their research efforts.

These frameworks set out a process which students could follow when researching legal problems. It is only at the third framework stage of the process that law students undertake the 'bibliographic' phase of their research. As the Wrens state: [241]

> Resolving the recurring problem researchers face during the library phase of legal research – i.e., deciding which law book to select at any given point in their research – requires a creative response based on the understanding the legal research process, rather than on descriptions of law books. Because successful legal research depends on making suitable choices among available books, the third framework also clarifies how experienced researchers make their selections.

The frameworks offer a more realistic view of, and pragmatic approach to, the legal research process. Students are given an intellectual map to follow when faced with a legal problem. The Wrens knew that students, once in legal practice, would confront legal problems more complex and diverse than those encountered in law school. The process methodology linked in with the frameworks would provide the new practitioners with a tool for solving those problems.

A decade or so after the Wren article, Paul Callister proposed another pedagogical model for legal research instruction using the process-oriented methodology, loosely

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239 Ibid 7-61.
240 Ibid 33.
241 Ibid 43.

based in part on the Wren frameworks.[242] Callister starts from the fundamental question – what kind of legal research do the students need to learn? While this question was either implicit or mentioned in passing in the Wren article, Callister correctly identifies it as the true starting point.[243] The answer is the difference between teaching legal reference skills and learning how to do legal research. Once this question is answered, Callister moves to what he describes as 'mathetics' – the nature of students and the conditions of learning and it is in this context that Callister presents his frameworks for learning legal research. These frameworks differ from the Wrens' in that they are designed to assist students build their own mental constructs when undertaking legal research. Callister states his essential criteria for developing the frameworks: [244]

> (1) it must relate to something that the students already know…; (2) it must serve as a vehicle for education nor merely training, meaning that the student must be able to effectively adapt the framework to solve a wide range of future research problems and to recognize the utility of new research tools and resources as they are developed; and (3) it must be scalable, such that it can be expressed in a simple form … yet be capable of vast expansion and comprehensiveness.

The process which Callister then proposes is divided into three parts: [245]

- "[U]nderstanding the problem itself". This involves using the familiar who, what, when, where, and how, questions, then classifying the type of legal problem – looking for something known, or something on a particular subject and so on.

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[242] Paul Douglas Callister "Beyond Training: Law Librarianship's Quest for the Pedagogy of Legal Research Education" (2003) 95 Law Libr J 7-45.
[243] Ibid 23.
[244] Ibid 34.
[245] Ibid 35-41.

- "[C]onceptualising the sources in relation to the law". This calls for an identification of the type of legal sources required: primary secondary, or combined legal sources.

- "[C]onducting the search itself, which includes matching the resources to the kind of problem and then updating the results".

This latter part of the process draws together the previous two frameworks and recognises that some types of legal resources are better suited for solving certain types of legal problems. For example online searching in full-text primary sources is more successful when the researcher has an identified, specific information need.

Callister's process model is adaptable for whatever type of legal research is required; the frameworks which support the process are capable of variation and modification.

Bibliographic v Process Debate

When the Wrens published their article in 1998 promoting the process model of teaching legal research, they poured fuel onto a pyre of discontent, which had been steadily smouldering for some decades. The discontent was focused on the lack of effectiveness of legal research programmes and whilst the reasons put forward were many and varied, the methodology of teaching had not really been scrutinised in any great detail. The Wren article began by focusing attention on what was wrong with the bibliographic method; they attacked it in relentless language on a number of grounds including:

- The bibliographic approach takes no cognisance that legal research is, in itself, a process.[246]

[246] Ibid 8.

- A book or product-centred approach incorrectly aligns legal research with "knowing the characteristics of law books".[247]

- Knowing how to use a book is not the same as knowing how to use a book "to solve legal problems".[248]

- The orientation is more suited to the training of law librarians than law students.[249]

- Practical work required as part of the bibliographic instruction usually involves "fetch" exercises rather than illuminating the complex and comprehensive nature of legal research.[250]

- Without a framework or some means of knowing "at what step in the legal research process to apply the information they have acquired about the books" the students will have create for themselves some kind of system for dealing with the information they have. If they are unable to do this or they do it incorrectly, the results may be disastrous for their legal research.[251]

- Hicks exposition of legal bibliography was essentially flawed as he ignored the process nature of legal research[252], he failed to recognise that students do not need in-depth "histories of law books to understand how to do legal research" and he "artificially isolat[ed] instruction about law books from instruction about what lawyers do with them."[253]

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[247] Ibid.9.
[248] Ibid 10.
[249] Ibid. See also Morse, above n 236, 256.
[250] See Callister, above n 242, 11.
[251] Ibid 13.
[252] Ibid 27.
[253] Ibid 32.

- There is no cognisance taken of the "synergistic relationship between course content and context.[254]

The Wrens cited an earlier critique of the bibliographic method:[255]

> The bibliographic approach fails to explain the organization of legal resources, which is a complex system intended to both deliver new information quickly and catalog the information in several places. This system can overwhelm entering law students.
>
> New legal researchers need strategies to put legal sources into context. These research strategies must be more than divided methods for each source. A strategy must … respond to the nature of the problem of the problem by analyzing not only what source[s] are available, but also which ones are most appropriate for that problem: for example, looseleaf services are more useful than hornbooks in researching most tax problems. The bibliographic approach… does not provide strategies.

The Wrens' scathing attack drew a vitriolic riposte from two protagonists of the bibliographic method.[256] They responded to the Wrens' criticisms of the bibliographic method focusing initially on what they viewed as a fundamental misinterpretation of Hicks' premises and writings and proceeded then to attack the Wrens' process-oriented methodology on the following grounds:

- "A process-oriented research program gives students tunnel vision." Because legal research is taught in the context of a particular problem, the "using tool A to answer B" means that students are not taught the big picture approach (all these tools are available for answering legal problems).[257]

- The process method is merely one way to teach research "on the fly". The real issue is one of resource and hours allocation, and the process method disguises

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254 Ibid 22.
255 Jill Ramsfield Book Review Sec Legal Writing, Reasoning & Res News l,. Oct, 1986 at 15 cited in Wren and Wren, above n 232, 17, note 32.
256 See Berring and Vanden Heuvel, above n 228, 431-449.
257 Ibid 439.

> the issue by providing a way to teach research in "vestigial research programs". This method enables law schools to avoid addressing the real issues of ineffective legal research programmes.[258]

Berring and Vanden Heuvel criticised the Wrens' notion of process methodology[259] as propounded in their book, on the grounds that it was being employed by many American law schools as a substitute for a taught legal research programme; students were expected to use it as a self-guided approach to solving legal problems.[260] This criticism is unfounded in that the Wrens could have no influence or control over how their text was used by law schools; they merely championed a methodology of teaching and learning and provided a blueprint.

In addition to the defence and counter-attack, Berring and Vanden Heuvel, like the Wrens before them, proposed their own solution, an advanced legal research course designed in part to overcome some of the shortcomings of the first year course.[261] Inevitably, this sparked another round of attack and counter-attack from both sets of authors before they called for a halt to the hostilities.[262]

The effect of this heated debate was to polarise the teachers of legal research programmes in the United States into either the bibliographic or process-oriented model camps. What it did achieve was vital discussion about how legal research was being taught and this spotlighting of the issue has had beneficial effects with the subsequent revamping of many American legal research programmes. But the debate

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258 Ibid 440-441.

259 Christopher G Wren and Jill Robinson Wren *The Legal Research Manual: A Game Plan for Legal Research* (2nd ed, Adams & Ambrose Publishers, Madison, Wisconsin, 1986).

260 See Berring and Vanden Heuvel, above n 228, 435.

261 In the United States most of the legal research teaching is done in the first year of the degree.

262 Christopher G Wren and Jill Robinson Wren "Reviving Legal Research: A Reply to Berring and Vanden Heuvel" 82 Law Libr J 463-493 and Robert C Berring and Kathleen Vanden Heuvel "Legal Research: A Final Response" 82 Law Libr J 495-496.

died somewhat abruptly as the surge of legal technologies and computer-assisted legal research (CALR) swamped the law school programmes, changing the ground rules and masking the fundamental issues.[263]

Information Literacy Model

Compared with the bibliographic method of teaching legal research, information literacy as a methodology for teaching legal research is a neophyte. The concept of information literacy was first used in 1974 by Zurkowski[264] and described as "People trained in the application of information resources to their work can be called information literates. They have learned techniques and skills for utilising the wide range of information tools as well as primary sources in molding information solutions to their problems." Over the next two decades, the concept of information literacy was discussed, defined and refined and the definition most frequently used today settled upon:[265]

> To be information literate, a person must be able to recognise when information is needed and have the ability to locate, evaluate, and use effectively the needed information …..Ultimately, information literate people are those who have learned how to learn. They know how knowledge is organized, how to find information, and how to use information in such a way that others can learn from them. They are people prepared for lifelong learning, because they can always find the information needed for any task or decision at hand.

The concept of information literacy arose in the wake of the information society; the extraordinary rapidity of technological developments and the exponential growth in information products and sources. The overwhelming upsurge in information demanded a methodology for information use and management and a pedagogy for its

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[263] Discussed in detail in the chapter under the section Effectiveness of Legal Research Programmes.

[264] Shirley J Behrens "A Conceptual Analysis and Historical Overview of Information Literacy" (1994) 55 College & Research Libraries 310.

[265] American Library Association *American Library Association Presidential Committee on Information Literacy Final Report* as quoted in Behrens, ibid 315.

teaching.[266] The education and librarian professions were the logical [repositories] for the information literacy movement to gain credence and support.

Whilst information literacy as a methodology for instruction was gaining momentum throughout the 1980s, it was really only in the mid-1990s that it began to be used within legal research skills programmes. The more accessibly documented accounts emanate from Australia.[267]

Both Australia and New Zealand have adopted a uniform definition of information literacy and identified six core standards which identify an information literate person:[268]

- The information literate person recognises the need for information and determines the nature and extent of the information needed.
- The information literate person finds needed information effectively and efficiently.
- The information literate person critically evaluates information and the information seeking process.
- The information literate person manages information collected or generated.
- The information literate person applies prior and new knowledge to construct new concepts or create new understandings.

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[266] Christine Bruce *The Seven Faces of Information Literacy* (Auslib Press, Adelaide, 1997) 2.
[267] For example see Carroll and Wallace, above n 149, 133-168 and Boelens, above n 150, 125-133.
[268] See Bundy, above n 145, 11-22.

- The information literate person uses information with understanding and acknowledges culture, ethical, economic, legal and social issues surrounding the use of information.

Learning outcomes for each standard are also specified. Within Australian law schools the adoption of the information literacy model in teaching legal research skills has generally meant a more systematic approach to legal research skills teaching. In some law schools this involves a direct correlation between skills taught with the desired outcomes in terms of information literacy standards, the integration of skills teaching with compulsory subjects within the law degree, and a graduated level of skills acquisition from basic to advanced across the degree.[269] It is not clear from the literature whether all standards form part of the legal research skills course. An initial investigation appears to show that most of the emphasis of skill teaching resides around standards one and two – those standards concerned with recognising the need for information and finding it. This in essence equates to the bibliographic model.

Whilst the move to an information literacy model is better documented in Australian literature, some law schools in the United States, England and New Zealand are also using this methodology, although the uptake is not as prevalent as in Australia.

Effectiveness of Legal Research Programmes

For almost as long as law schools have been in existence in the common law world, there has been a mantra repeated down through the years by legal practitioners, academics and formal studies lamenting the inability of law students / lawyers to undertake successful legal research.[270] In the 1970s and 1980s there was an

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[269] See note 42 above

[270] A few representative examples from extensive literature on the subject are: " Why do recent law school graduates have difficulty using a law library? …Why aren't the law schools doing their

outpouring of literature on the subject, principally in American journals. The terminology in the literature began to reflect the disenchantment with legal research programmes and there was recurrent usage of the phrase "the 'problem' of legal research"[271], yet others referred to the legal research programmes as "the neglected orphan"[272] and the "stepchild of legal education – unwanted, starved, and neglected".[273]

In order to put add substance to anecdotal opinion and perception, in 1987-1988 Howland and Lewis undertook an empirical study of the effectiveness of law school training programmes.[274] Other questionnaire surveys had previously been carried out, but these centred more on the quantitative side – who is teaching what, where and how[275] – whereas the Howland and Lewis questionnaire centred on qualitative aspects, specifically, effectiveness. The questionnaire, devised with input from faculty, practitioners, and law librarians, had four main assessment objectives:

- Competency in using basic legal information sources.

- Competency in combining electronic and print resources to solve research problem.

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job? per Mills, above n 231, 343; "Many law graduates are incompetent to perform adequately one of the most vital of lawyerly functions – legal research" per Thomas A Woxland "Why Can't Johnny Research? Or It All Started with Christopher Columbus Langdell"(1989) 81 Law Libr J 451; "No-one seems happy these days with either the quality of the legal research instruction provided by law schools or the quality of the legal research begin conducted by law students and recent law school graduates" per Donald J Dunn "Why Legal Research Skills Declined, Or When Did Two Rights Make a Wrong" 85 Law Libr J 49. Even Berring and Vanden Heuvel described the position as "most current legal research training is abysmal" see above n 228, 438.

271 Joyce Manna Janto & Lucinda D Harrison-Cox "Teaching Legal Research: Past and Present" 84 Law Libr J 285.

272 Jack Achtenberg "Legal Writing and Research: The Neglected Orphan of the First Year" 29 University of Miami Law Review 218-259.

273 See Woxland, above n 270, 459.

274 See Howland and Lewis, above n 220, 381-391.

275 For example, the 'how' was canvassed in Shapiro, above n 219, 719; the 'what' in Bryant G Garth and Joanne Martin "Law Schools and the Construction of Competence" 43 Journal of Legal Education 469-509; the 'what' and 'who' in Susan P Liemer and Jan M Levine "Legal Research and Writing: What Schools are Doing and Who is Doing the Teaching (Three Years Later) (2003-2004) 9 Scribes J Legal Writing 113-163.

- Attitudes of summer clerks and first-year associates re the importance of learning how to research legal problems.

- Perceptions of law librarians as to the quality of the law schools' legal research programmes as demonstrated by the students working in the firms.

Law librarians were the selected respondees as they are "usually the first to recognize the strengths and weaknesses in the legal research skills of those using the firm library."[276] The results of this survey were less than comforting:

- "Eighty percent … found summer clerks less than satisfactory in their ability to attack a legal research problem efficiently."[277]

- "Sixty-four percent of summer clerks and forty-eight percent of the first-year associates were judged … to have less than satisfactory abilities in determining appropriate research sources for a specific subject matter."[278]

- "Comments suggest that both … generally do not have even a basic knowledge of legal bibliography."[279]

- "Forty-six percent … responded that clerks feel legal research skills are not very or hardly important at all."[280]

Howland and Lewis concluded "…research skills of law students and recent law graduates are painfully inadequate", that "the overall results … suggest that law schools are not adequately teaching the basics of legal research" and that "[i]t seems

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[276] See Howland and Lewis, above n 220, 382.
[277] Ibid 383.
[278] Ibid.
[279] Ibid.
[280] Ibid 388.

only prudent to encourage law school administrators to re-examine their first-year legal research curricula in an effort to design a strategy to deal effectively with the problem." [281] Many of the respondents added comments that pointed to a decline over the years in legal research skills taught and learned.[282]

Whilst the findings of the survey bear out the opinions contained in numerous articles on the topic, they are a damning indictment of the then existing programmes. There have been no follow-up effectiveness surveys in the United States, but judging from comments in the literature and from personal research, and conversations with colleagues, the situation has not really changed.

Of course, not all legal research programmes are ineffective; the literature intimates that those taught via the process methodology with adequate resourcing as being effective[283], but this has not been empirically tested. There has not been any formal review of legal research programmes using the information literacy model. Perhaps alone, within the law curriculum, legal research programmes have been subjected to almost regular modification and revamping, as Sossin describes it "like a laundry detergent in the supermarket shelf which boldly announces every few months that it is 'new and improved'."[284] However, there are systemic reasons why many of the legal research programmes fail in their objectives.

Explaining the Ineffectiveness of Legal Research Programmes

Reasons advanced to explain the ineffectiveness of legal research programmes range from resourcing constraints imposed by law schools, status of both the programmes

[281] Ibid 35-41.
[282] Ibid 390-1.
[283] See Janto and Harrison-Cox, above n 271 296-7.
[284] See Sossin, above n 158, 883.

and their teachers, the timing of the classes within the curriculum,[285] assessment issues, to methodology and content. In essence, all these reasons fall into two broad categories: legitimacy reasons and pedagogical reasons.

Legitimacy Reasons

> Law School seems to be the only place where legal research and writing is not taken seriously.[286]

Perhaps the biggest hurdle in the legitimation of legal research programmes is the notion that that legal research is not 'real' law, as discussed earlier in Chapter III.[287] As Sossin says "It lacks pedigree, has no grand theory, and is short on illustrious scholars."[288] Protagonists have often had to battle to obtain space within the law curriculum for legal research programmes. When provision is made within the curriculum, the programme may only be voluntary, rather than compulsory. This defeats the objective of all students learning essential legal research skills.

In law schools where legal research is taught in the first year of study, it is frequently included in a course which is designed to provide an introduction to law generally, or a legal writing course, and inevitably becomes submerged in that other course.[289] Legal research classes have traditionally been partnered with legal writing classes, because of the obvious linkage between these two skill-sets. From about the late 1970s in the United States, as a result of sustained criticism from both the judiciary and the profession, law schools revised their curriculum and as a result "Legal writing and legal research began to take divergent routes: legal writing entered the

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285 As Berring and Vanden Heuvel sum it up "Law schools simply have been unwilling to accord reasonable status, compensation, and time to legal research training" See above n 228, 438.
286 See Sossin, above n 158, 884.
287 Refer to page 59 above.
288 See Sossin, above n 158, 884.
289 See Mills, above n 158, 345.

expressway; legal research took the off-ramp."[290] By way of justification, academics argued that legal writing demanded skilled instruction, but legal research skills could be learnt simply by students being forced to do research for their legal writing. This is a fallacious argument. As Dunn says "students do not know what they do not know".[291] Ineffective legal research remains ineffective research not matter how often it is practised. Because the rest of the common law world largely adopted the United States' lead in their legal writing and research classes, this trend was perpetuated in other countries, including New Zealand. Legal research, as such, was barely taught, while legal writing received the lion's share of the resources.[292]

Regardless of whether the programme is core or not, its level of funding is often little more than barely adequate. Experience shows that skills classes are best taught in small groups, with opportunities for interactive learning. Small group teaching is more resource intensive, in terms of contact teaching time, and financing. This is draining on law schools' budgets and is often regarded as unsustainable in the long term. Many law schools tend to deal with these issues, by either opting for larger classes – even up to 100 or more students - or abdicating the responsibility of teaching by requiring the students to learn these skills by themselves, either with or without using prescribed texts.

In some law schools where legal research skills are taught, especially at undergraduate level, the status of both the courses in which they are located, and the teachers who teach them, underscore the low status of subject. The terminology

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290 See Dunn,above n 270, 51-52.
291 Ibid, 57.
292 Fortunately this situation has largely changed in Australia and New Zealand from the late 1990s.

sometimes used for foundation legal research skills courses, as 'hurdle' courses[293] reinforces the devalued barrier-type mentality which students attach to these courses; they are something that just has got to be completed, otherwise the way ahead is blocked.

The teachers of these courses are frequently low-status academics, or librarians without academic accreditation, and in a number of instances, other students.[294] "'Real' law professors, … generally want no part of it". [295] The lack of hierarchical status within the law school afforded to teachers of legal research programmes is a fairly constant refrain of discontent, especially in the United States [296] and it recognized by Tjaden as problematic in Canadian law schools.[297]

It is not unusual for legal research skills courses, whilst they may have some element of compulsion attached to them, to have no points or credits attached to them in the same way as other degree subjects. In many instances the grade awarded is pass / fail with no incentive for achievement.[298]

Students' perceptions of the 'not real law' status of these courses may be unwittingly enhanced by their teaching location. Many of these courses tend to be taught, either wholly or partially, within the law library environment, generally for the simple expediency that this is where many of the requisite resources are located. This

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293 I have heard this term used a number of times in Australian law schools in reference to such courses.

294 Charlotte Bynum and Claire Germain "Legal Research in the Internet Age" http://www.lawschool.cornell.edu/library/What_is_new/internetage.htm (accessed 22 June 2005).

295 See Woxland, above n 270, 454.

296 For example see Dean Bell & Penelope Pether "Re/writing Skills Training in Law Schools – Legal Literacy Revisited" (1998) 9 Legal Education Review 134.

297 See Tjaden, above n 126, 11.

298 Wendy Elizabeth Ng "Students Legal Research Skills: They only Have Themselves To Blame" (1995) 20 Canadian Law Libraries 206. In two New Zealand universities, law students are awarded a certificate for the successful completion of a legal research skill course in the absence of a grade mark.

dislocation from the 'normal' lecture / seminar rooms compounds an already negative mindset.

Pedagogical Reasons

The effectiveness of some legal research courses is jeopardised by their timing within the semester. The tendency is to front-end the classes as intensive courses early, either even before the semester starts, or immediately after the semester starts. "The students who attend schools where legal research is taught in an intensive course before first semester first-year are the worst."[299] The timing of classes is crucial. If the number of available classes is restricted then they need to be timed when the students are best able to benefit from them, particularly if they are being taught using the bibliographic method. Thus, if students are required to submit written opinions or research papers, the classes should be timed so that the students are able to put into practice the skills they have just been taught. Time of need is the best time to teach; practically within a law library this frequently results in one-on-one instruction at the reference or information desk. It is a recognised phenomenon that students about to embark on employment in a legal office suddenly recognise that they do need to learn how to do legal research.[300] Bringing this understanding to students prior to their final year is the greatest challenge.

Legal research courses completely run as a one-off intensive course with 'all you need to know' packed into a few days, or a course that is shorter than other 'real' law courses, signal to students the inferior nature of such courses. The 'one-shot inoculation' style of teaching legal research is fundamentally flawed. At best it

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[299] See Howland and Lewis, above n 220, 381.

[300] "…summer clerks, and new associates are afraid of being ill prepared for the workplace, not because of poor analytical skills, but because they do not know how to use the primary and secondary authorities that will put that analysis to its best use. They are afraid that they lack a critical lawyering skill, and their fears are legitimate." per Dunn, above n 270, 51-52.

provides an overview of a range of sources, but it does not enable deep learning. A semester-long programme indicates to the students that the legal research classes are of equal standing with other so-called 'substantive' classes as well as providing adequate time for successful learning.

Students need to know that the time and effort they put into their legal research is recognised. Where no credits / points are awarded for the legal research course there is no incentive for students to succeed. The bare minimum for a pass becomes the desired goal. Effort needs to be rewarded. "Students quickly realise that the immediate rewards of long hours spent on legal research are minimal. Most of them understandably concentrate their efforts on the substantive courses."[301] Some programmes set a high threshold for a pass - up to 80% - this provides an incentive of a sort, but not one that is likely to encourage high quality participation.

Many law schools use casebooks or course material handbooks, which contain all the core readings for a particular class. Whilst this is an expedient and practical solution to ensuring students have essential course materials it is an anathema to the legal research teachers, as it actively undermines the learning of research skills, and at times renders it irrelevant.[302] If students do not have constant and repeated opportunities to practice what they are taught then skills are lost. If a law curriculum has frequent, compulsory research-based assignments then the negative effects of casebooks and their ilk may be minimised.

The advent of electronic course management systems, such as WebCT and Blackboard, which are used extensively in law schools, means that legal resources

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[301] See Woxland, above n 270, 454.

[302] Many law schools justify the use of casebooks on the basis that they are designed to save wear and tear on library resources. See also Woxland, ibid 452.

are now available through a simple hypertexted link, requiring neither knowledge nor understanding of how this information is organised or accessed. Careful consideration needs to be made of the level of 'spoon-feeding' provided to students. Another dimension which feeds into this debate is the distance or flexible learner who is not able to use the law school library. Obviously electronic provision of information is the easiest and most practical solution. A distinction in this instance needs to be made between information which is available electronically, which the student, with training, is able to access for herself, and information which must be digitised to enable access. Pedagogically, students should not be provided with hypertexted links to cases, legislative materials, commentary and articles once they have been taught how to find them; the students must reinforce their learning by finding these resources for themselves.

Forms of assessment used in legal research courses must also be seen by the students to be relevant to their learning needs. The time-honoured form of assessment, the so-called 'treasure hunt' where students are given a fact and told to locate its source are frequently perceived by students as 'make-work' and of little practical value. This type of assessment also reinforces the erroneous notions that legal research involves utilising one source and that in researching legal questions there will be only one right answer.[303] Research questions should be constructed to enable students to see relationships between different types of legal material and should rather be problem-based requiring students to use the process they have been taught. Using problem-based questions also accustoms the student to these types of questions, which they will also be faced with in examinations, and they are closer to the real-life situation that they will face in legal practice.

[303] See Janto and Harrison-Cox, above n 271, 290-291.

Where legal research classes are limited to the teaching of online databases and resources, students are deprived of learning an essential component of legal research. Not all legal resources are available electronically; not all firms, institutions or organisations where students will ultimately work will subscribe to the range of electronic resources that the student has learnt in law school; not all courts will accept references to electronic material where a print option is available. The inability to deal with print resources is frequently commented on by library managers in corporate law firms.

Perhaps one of the most telling reasons for the ineffectiveness of legal research programmes is that the information taught is often presented as discrete segments without any linkage between them – the fact is that legal research is often complex involving a variety of resources. Unless the students are provided with some form of framework within which they are taught to solve legal research problems, they will find the whole process difficult and their research will almost inevitably be inefficient and probably ineffective.

Within many law schools the teaching of legal research is undertaken by law librarians, professionals whose training has in a large part centred around 'legal reference', encompassing both the complexities of how legal information is created, organised, stored, accessed and disseminated, and how to negotiate the question asked by a client. When faced with teaching students how to solve legal problems, the danger is that some librarians fail to distinguish between 'legal reference' and 'legal research' and opt to teach students legal reference, as this has been their only experience of legal research. Scholarly legal reference as undertaken by law librarians, especially those in tertiary institutions, generally consists of

comprehensive and broad-based searching through a large variety of resources, without very limiting time restraints. In the lawyer's world, legal research is limited, not only in terms of time, but in resources, be they cost-limits on allowable research, or extent of resources available. The reasons for the research are also very different; scholarly research is driven by the desire to extend the bounds of knowledge; practical legal research is centred on a client's immediate problem. If the requirement is to teach law students to think like lawyers then teaching them scholarly legal research is not going to meet those aims. This is undoubtedly the cause behind many a corporate law firm's cry that law students cannot do research.

Lynch says "Legal research is not merely a search for information; it is primarily a struggle for understanding."[304] The need for deep understanding of, or insight into, the implications of what is found by way of authority, is an essential element in legal research. "The researcher must understand the authorities well enough to form theories and apply them to a set of facts for which they do not present an immediately obvious answer."[305] Argument and persuasion are the lawyers' weapons; legal research skills provide the cutting edges. This is a foreign world to law librarians. Lynch states the position very neatly: [306]

> One pleasant part of the law librarian's job is that interesting problems are presented, some material is located, and then, while the lawyer or law student settles down to the struggle for understanding, the librarian goes on to the next patron. Thus all problems may look, to the librarian, like information problems.

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[304] Michael J Lynch "An Impossible Task but Everybody has to do it – Teaching Legal Research in Law Schools" (1997) 89 Law Libr J 415.
[305] Ibid 418.
[306] Ibid 421.

How Can Legal Research Programmes Be Made More Effective?

If the history of legal research programmes as documented in the literature can be said to provide a cautionary tale for future endeavours, it is that whatever methodology is used, the programme must meet the following citeria:

- It must have full academic status within the curriculum. That is, it must be seen to be a legitimate academic course with relevant course code and, preferably, have points / credits assigned. If no points / credits are assigned then the course must be have a compulsory tag, so that the degree is not awarded without the successful completion of the course.

- It must have the active support and co-operation of academic staff. The preferable solution is for academics and librarians to be involved with the programme – signalling to the student body the essential nature of this partnership. Academics must not only reinforce the importance of acquiring these skills during their substantive law lectures, but also require that their students use the skills in work required for that course whether written or simply accessing required reading material.

- Timing of the programme is crucial. Skills are best learnt when they are needed. Tailoring the programme throughout the degree to meet the incremental informational needs of students ensures better learning receptivity. For example, teaching students how to use correct referencing techniques and the perils of plagiarism is best taught prior to their first written research assignment, rather than at the beginning of the year.

- Learning must be incremental and multifaceted. Students need opportunities to embed their learning; classes should build on prior learning and provide for active learning experiences. Too often, classes are seen as an opportunity to impart as much information as possible. Rather, the 'less is more' philosophy is more successful, with emphasis placed on the 'need to know' aspects. The learning must be structured and take account of students' differing learning styles.

- Law is a complex discipline; in legal practice, answers are rarely simple and involve the use of a plurality of resources. This should be reflected in the teaching of legal research skills. Teaching students to find a 'right' answer from one resource creates unrealistic expectations. Whilst the drill or 'treasure hunt' type of exercise[307] is useful to hone a skill it should be used with caution and with the caveat that finding legal information is rarely a simplistic exercise involving a one-source solution.

- Students should be provided with some conceptual frameworks which they can use to research unfamiliar legal problems. The frameworks can provide a logical mental map to work through the maze.

- The process of legal research is important; the medium of the information is not. Students should be comfortable with locating legal information regardless of whether it is in print or electronic format.

[307] See Mills, above n 231.

- Assessment should be relevant, involve a variety of legal resources, and preferably be structured around 'real' client issues.[308]

Summary

The history of legal research programmes within law schools across the common law world is chequered with stories of failure and ineffectiveness, combined with stories of innovation and best intentions. Legal research as the 'neglected orphan' of the law curriculum has suffered from starvation of resources, lack of perceived legitimacy within the law degree, and as a result it have been consigned to a pedagogical wasteland. Only the literature has flourished, with numerous articles on the relative merits and demerits of the bibliographic and process methodologies for teaching legal research, but many more mourning the lack of effectiveness of programmes in place.

Fortunately, within the last decade there has been a discernible move not only to analyse the problems associated with the teaching of legal research skills from a pedagogical perspective, but also to develop effective teaching programmes.[309] The adoption of the information literacy model within Australian law schools is evidence of this trend.

The Wrens[310] identified the need for students to be provided with intellectual frameworks to assist with the pluralistic nature of legal research. The methodology proposed in this Chapter modifies the process-oriented methodology propounded by the Wrens and enhanced by Callister, to include information literacy principles and

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[308] This view is endorsed in Timothy Terrell "What Does and Does Not Happen in Law School to Prepare Students to Practice Law: A View from Both Sides of the Academic/Practice Dichotomy" (1991) 83 Law Libr J 501.

[309] For example, Callister's pedagogy, see above n 242 .

[310] See Wren and Wren, above n 232.

standards, and adapts and develops conceptual frameworks, for the New Zealand jurisdiction.

Chapter V: Empirical Research: Legal Academics, Law Librarians and Law Students on Legal Research Skills

Introduction

The teaching and learning of legal research skills are problematic. As discussed in previous Chapters, many of the efforts expended in creating and teaching legal research courses have failed to meet the expectations of various branches of the legal profession. Much has been assumed in the legal academy about legal research skills and a student's ability to learn these simply by having to do research. A review of literature reveals that insufficient empirical research has been undertaken to investigate attitudes and experiences of those most directly involved with the teaching and learning of legal research skills: legal academics, law librarians, and law students.

Empirical research that has been undertaken appears to have concentrated on just one of the constituent stakeholders, either law librarians[311] or law students[312] there is no available evidence that prior empirical research has been conducted involving all three constituents.[313] This Chapter discusses the results of such research undertaken in New Zealand in 2003 and 2004.

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311 See Howland and Lewis, above n 220, 381.

312 I am advised that Natalie Cunff at QUT has undertaken such research for a Masters thesis, but have not sighted same.

313 Empirical research into skills requirements of employers' of law graduates was undertaken in 2005. See Elisabeth Peden and Joellen Riley "Law Graduates' Skills – A Pilot Study into Employers' Perspectives" (2005) 15 Legal Education Review 87-124.

The rationale for the research was to test assumptions and beliefs based largely on anecdotal evidence, and personal experience; in particular:

- Legal research is not considered to be an academic subject.
- Legal writing is a more important skill for law students to learn than legal research skills.
- Legal academics generally do not integrate legal research skills into their subject teaching.
- Legal research skills which are taught are not sufficiently comprehensive for newly employed clerks in law firms.
- Law students generally believe that they do not need to be taught legal research skills.
- Law students generally leave law schools with only basic legal research skills.
- First introduction to legal research within the law firm environment results in a new clerk's loss of confidence.
- Law firms have to expend extensive time in training new clerks in legal research skills.

At the start of the research, only legal academics were polled on their attitudes to legal research being included as a formal part of the curriculum. However, it quickly became apparent that a wider perspective was required in order to obtain a more accurate reading of law students' legal research skills. This led to two further inquiries covering law students and law librarians.

The questionnaires combined both open and closed questions. Some questions were common across all three surveys, thereby allowing direct comparison. Other questions were population specific. This Chapter records the findings from each of the populations' questionnaires separately before offering a more holistic interpretation across all three. Where appropriate, verbatim comments have been included to allow the authentic voices of the respondents to be heard. As anonymity for respondents had been assured, care has been taken to excise any comments which might lead either to the identification of the respondent or institution.

Copies of the questionnaires form Appendix A.

Legal Academics' Responses

A questionnaire aimed at ascertaining personal attitudes to the teaching of legal research skills was sent to 151 legal academics in New Zealand law schools. This population was self-identified as full-time academic staff in formal publications of each of the five law schools. There was a 56% response rate with 85 questionnaires returned; the low rate of return perhaps being indicative of the interest in or commitment to students' legal research skills. Not all respondents answered every question.

Section one sought to collect demographics, aimed at discovering whether there were any discernible patterns that might predispose a particular attitude towards legal research skills. This background data is presented first, before any extrapolations from it are attempted.

Demographics

Position Held

The majority of respondents, some 47%, were Senior Lecturers, with 18% Lecturers, 16% Associate Professors, 17% Professors, and others 2%.

Time in the legal academy

The respondents were fairly evenly spread over the proffered time periods:

	Less than 6 Years	**6-10 Years**	**11-15 years**	**More than15 Years**
Responses	19	14	19	10

Table 1: Time spent as an academic in a law school

Gender

Male respondents made up 62% of the population; female 38%. Of note, is that less than 5% of the female respondents held senior appointments, either Associate Professor or Professor positions.

Experience as Legal Practitioner

A significant proportion of legal academics, 79%, advised that they had either prior experience in legal practice or were concurrently practising with their academic appointment. Some respondents noted that they were often called on for opinion work by the legal profession.

Academic Legal Qualifications

The majority of legal academics hold post graduate legal qualifications; 24% hold doctorates, 66% masterates, and 10% hold an LLB degree.

Almost the same percentage of academics with LLB degrees and those with Doctorates reported practical experience, between 77% and 80% respectively. Proportionately fewer academics with Masterates reported practical experience, some 63%. This lower statistic could not wholly be explained on the grounds that this population was composed of new academics, just starting out in their careers, as over 53% of them had worked in the legal academy for more than 10 years. It was expected that those academics who had not had practical experience in the legal profession would not rate legal research skills as highly as those who had. In fact, this expectation was not borne out by the data.

Only 47% of female academics had worked in the legal academy for more than 10 years compared with 71% of male academics.

The data also revealed that there were few deductions that could be made between time in the legal academy, position, gender, or legal qualification, and attitudes to legal research skills. The most telling statistic was that academics with either LLB or Masters degrees were proportionally more likely to consider that students could acquire legal research skills without any formal instruction.

Section Two of the questionnaire sought to elicit personal attitudes to legal research skills within the curriculum.

Most significantly 99% of respondents agreed that legal research skills should be taught within the law curriculum. This statistic was slightly at odds with the finding that only 74% thought that students required formal training in legal research skills; 26% considering that these skills could be acquired simply through osmosis – the process of doing research should teach students how to research. This latter viewpoint disregards the wisdom that students “do not know what they do not know”. It is only

through learning what is available and what is possible that students are able to make informed choices about the tools they use for research.

Academics were asked to rate legal research as a skill that all law students should learn. They were presented with a value rating scale: not important, somewhat important, important, very important, and essential. The responses were all positive. Of the respondents, 11% replied that legal research skills are important, 25% replied they are very important, and 64% regarded them as essential. When asked to rate legal research skills against legal writing as a skill that all law students had to learn, legal academics, when presented a similar five point rating scale, showed greater divergence of opinion. Two percent thought that legal research skills were somewhat less important, 79% thought they were both equally important, 14% thought they were somewhat more important and 5% regarded them as much more important. There was no significant correlating data that could be extrapolated out to identify any portion of the legal academic population as being more likely to underrate legal research skills. On the other hand, of the 4% that identified legal research skills as much more important, all were holders of Masters degrees. This cannot be regarded as being evidence of a trend or other significance as proportionally more legal academics, some 66%, hold Masters degrees.

Academics were asked about their awareness of the current legal research courses being taught in their institutions. This question was phrased in two parts: do you consider it covers the basic legal research skills that law students require? and do you consider it covers all legal research skills law students require? The responses were insightful. The statistics garnered from the two-part question indicate that the majority of academics are either aware of the inadequacies of legal research skills courses or

lack knowledge about them. Just over half the respondents, 51%, agreed that extant courses covered the basic legal research skills that students required. But, just 21% thought that the courses provided students with all the legal research skills that they needed. By far, the most worrying aspect of these responses was the numbers of academics who were unaware of the content of such courses, 33% and 45% respectively. Figure 2 graphically demonstrates these findings.

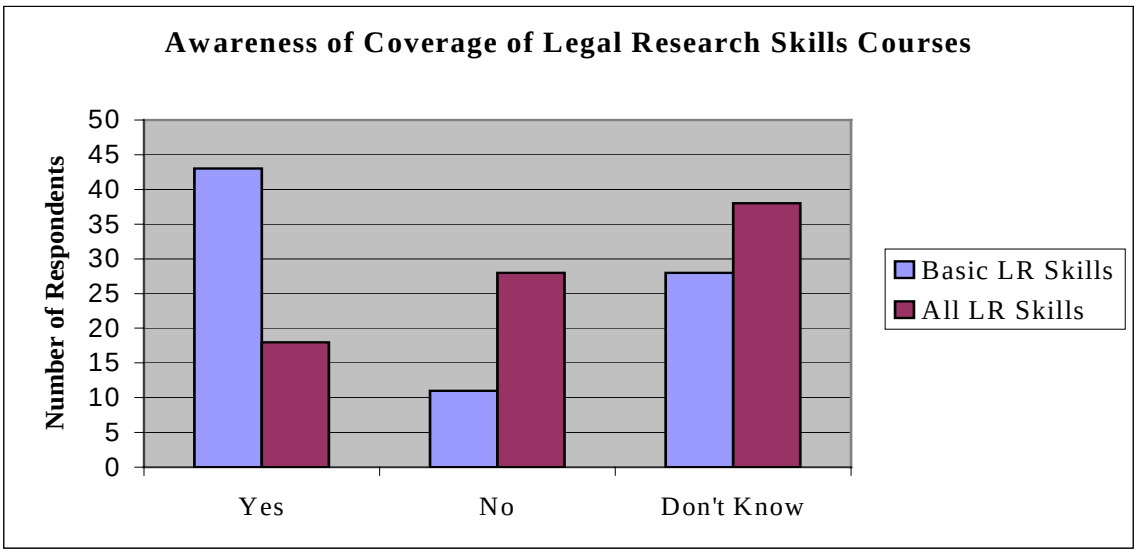

Table 2: Awareness of Coverage of Legal Research Skills Courses

Worryingly, one academic stated, “I don’t know enough about what is taught, but it seems to me that students know more than I do.”

If academics are unaware of the skills students are being taught in classes other than their own, on what do they base their expectations of research abilities? Simply on what they think students ought to be able to do, based on their own experience? The impression is that academics probably have low expectations and rate students from a basic level of using the class-provided materials; any research materials used over and above course materials signal good research skills. (This approach is confirmed by

academics' comments as discussed later in this section.) This is a fundamentally flawed approach; if the bar for legal research is set at a bare average because academics have no real knowledge of the skills students have been taught and could be expected to employ, then, students are unlikely to be able to meet the base standard expected of them once they move into law firms. As will be seen from the responses from law firms' library managers later in this Chapter, this latter standard is considerably higher than the skills' level with which law students graduate.

Only 29 of the 85 respondents proffered opinions on how they would like to see legal research skills taught. A common theme in the suggestions was that training in one year was not sufficient:

- "Ongoing as an aspect of every year of study even every course."
- "Legal research skills should be actively taught in all levels rather than just the first year."
- "It would be good to integrate research skills into higher level courses if possible."

For those who did not aspire to skills being taught in all levels or courses, more specialist courses were preferred:

- "As a separate paper run over the course of a semester incorporating both lectures and appropriate research exercises."
- "As a separate course compensated by a reduction of one elective."
- "Specialist workshops/hands-on training sessions."

- “Would like to see a separate programme as in some US law schools.”

- “There needs to be at least two weekend blocks p.a. Courses to supplement the rather flimsy … course we run.”

Yet others indicated that they would like to see small-group classes for teaching and learning of legal research skills:

- “Integrated into small group 2nd year subjects.”

- “More intimately as part of smaller classes.”

- “I envisage a practical course – small group with students finding and using resources under expert supervision.”

There was some expressed recognition that legal research skills involve more than finding skills:

- “Legal research should involve broad-ranging skills, not just cases and legislation.”

- “Basic skills should be supplemented with more advanced research skills in the context of problem solving and opinion writing in an integrated and sophisticated fashion. It’s not just about ‘finding stuff’ – the hard part is evaluating, synthesizing and analyzing material, then presenting it coherently. All of this constitutes proper research / writing. It is a complex symbiotic process. Undergraduate students do not come within a cooee of it.”

Another respondent suggested that more practical aspects should be included into LLB courses; "… should examine basic relevant documents. Eg contract should look at contracts; equity should look at a deed of trust."

Academics who thought that students required formal courses to learn legal research skills were then asked to choose between a separate course, especially designed, or the integration of legal research skills into substantive law courses. Thirty-nine per cent opted for a separate course, 25% preferred integrated courses, and 36% elected a combination of the two.

In response to the question at which stage of the legal curriculum should research skills be taught, 5% replied that they should be taught in the foundation year or Part I of the degree, 26% opted for the Part II year, 14% for the Part III year, 22% thought they should be taught in more than one year of the degree, but not in all years, and 24% thought they should be taught in all years of the degree. Nine per cent did not respond to the question. This divergence of opinion is largely illusory as the responses may be distilled down to an almost even split; 46% in favour of legal research skills being taught in more than one year of the degree, with 45% in favour of these skills being taught in one year only.

Academics were asked if they actively integrated legal research skills into their classes and, if so, how. Once again the responses were fairly even; 51% replied that they integrated these skills into their classes, whereas 46% responded negatively. Of the 51% who gave a positive response, 43 academics gave an indication of how they integrate legal research skills into their courses. By far the majority advised that they require students to complete assignments with a research component; the academics may provide some prior instruction on how to go about the research:

- “By organising assessment that requires research to be carried out.”

- “I set one long and several short research assignments, differing in their intensity, on which I give prior guidance and ex post feedback.”

- “By providing them with the opportunity to write an independent research paper under my supervision.”

- “Part of my class pre-opinion to have a presentation. I give extensive feedback with opinions on the effectiveness of research.”

A number of academics invite a law librarian into their classes to conduct a session either tailored to the research assignment or to cover the main information resources for that subject:

- “Specialised tailored 2 hour session conducted by head law librarian.”

- “In International Law I get the … librarian to come to class to explain how to do international research.”

One academic advised that “ I do the reverse really – integrate the curriculum into the research skills programme I teach.”

Other academics provided some in-depth assistance:

- “..mechanics in terms of source material and methodology, how to handle research, where to look, how to find what to discover. Constructing a viable thesis and distinguishing a dissertation balancing creative originality with disciplined methodology and a rigorous regard for scholarly and accurate truth with proof.”

- "By making students aware of the variety of sources in different legal systems, the authority of different sources, different historical antecedents as well as the comparative value of different sources, and how to manage the information."

- "Emphasize use of sources and approach to subject matter / use of oral knowledge etc – different research methodologies and how this affects the way research is conducted."

- "Course explicitly teaches students how to identify, analyse and write up a broad range of documentation which forms part of formal assessment."

An issue identified by one academic is the lack of opportunities for some students to write opinions for subjects outside Legal Research and Writing.

When asked to identify the courses in which they integrated legal research skills, by far the majority noted elective courses, for example, international law, environmental law, resource management law, legal history, comparative law. A number admitted that they integrate skills only at Honours and Masters levels. A few academics advised they integrate research skills into core subjects: "Problem solving, research writing all part of course design [in contract]."

As far as being able directly to measure the success of legal research skills that are integrated into the teaching, only 28% of respondents felt they were able to do this.

In an attempt to quantify just how academics credited good research, they were asked to state what percentage they set aside for research skills in when marking assignments. A scant 28% said that they allocated marks for research specifically. Whilst some academics did not elaborate further on the percentage allocated, others did, with the percentage varying drastically from 5%-70%, with the most common

range between 10%-30%. This statistic reveals a remarkable difference in perception as to the importance of legal research skills.

The general impression from comments was that even though a set percentage was not awarded to the research component of an assignment, academics nevertheless took the quality of the research into account in the grading of the paper:

- "Legal research ability directly affects the quality and depth of legal argument – reasonably easy to assess how far and how in depth a student has researched vis-à-vis others."

- "If the research is poor they end up simply failing the research paper."

- "Those who stay within the materials I have supplied may receive a good B grade; those who research well are heading towards an A grade."

- "Overall assessment of quality of work depends on basic research skills – also focus on evidence of extra reading, accuracy of citations, thoroughness of research - if student….. has missed important sources they are significantly penalized."

- "I would mark up well expressed, well researched work and mark down poorly expressed and poorly researched work."

One academic highlighted that students can get away with adequate research as long as their argument is sound; "I can measure it by progression within the paper, but as ever, brilliance in argument will cover paucity of research."

In response to the question who should teach legal research skills within the law curriculum, the response was unequivocal – 92% selected academics and law

librarians jointly, 5% said academics only, 2% said law librarians only and 1% did not respond. The overwhelming selection of a joint enterprise between academics and law librarians is presumably in recognition of the differing skill sets of each group available and useful to students' learning. The impression gained from these answers and those to the following question is that law librarians are perceived as being particularly useful in the teaching of electronic resources:

- "Librarians help with new electronic method."

- "I think it is essential that law librarians be involved in teaching – they are experts and their involvement demonstrates to students that they are the people to ask questions of."

Academics were asked about their own competency in teaching the whole range of legal research skills covering print and electronic sources. Twenty-eight percent felt positively towards their competence; 64% said they were not competent and 7% were unsure.

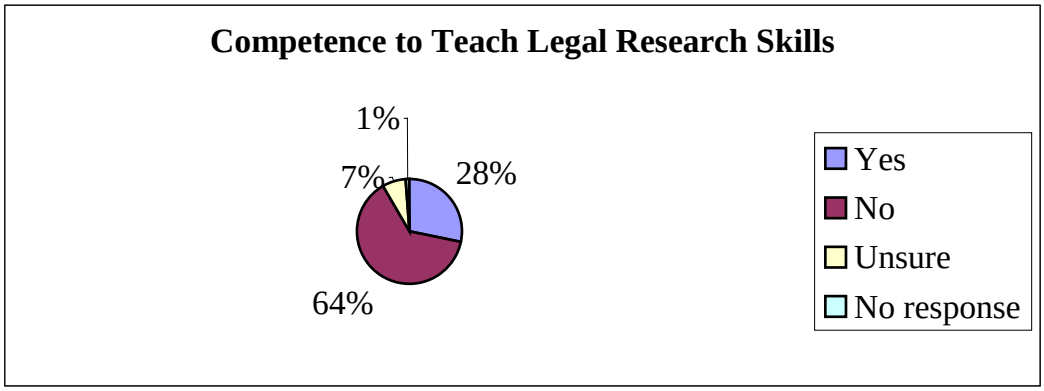

Table 3: Competence to Teach Legal Research Skills

For those who felt incompetent or were unsure of their level of competency the next question asked them what was needed to assist them to achieve such competency. A

significant 69% replied that they needed more training and practice, particularly in electronic resources; 11% said they would need more time, as too busy with academic responsibilities. Yet others eschewed any need to be competent enough to teach:

- “No desire to. Have too much to do already.”
- “I do not wish to achieve it.”
- “I don’t feel any need to achieve such competency.”
- “Should I have this goal? My job is to teach critically and research critically the substance of law.”
- “It would be silly for me to try teaching that.”

Finally, academics were asked for any other comments they would like to make in respect of teaching legal research skills. The following exemplify the range of comments:

- “Maybe it would be a good idea to hire teachers specialized in the subject like the American system of non-tenured professors in legal skills.”
- “Maori legal research requires ‘reo’ to be useful – teachers need competency in reo and tikanga and ability to teach Maori skills.”
- “Law students engage in many different activities when they graduate so it is essential that legal research goes beyond strict black letter style research to include diverse sources both international and multidisciplinary.” This in direct contrast to the following statement.

- "This area is sorely neglected in NZ law schools – particularly at my law school where emphasis seems to be on the transmission and regurgitation of semi-digested legal information rather than on the inculcation of basic black letter legal research skills which are essential lawyers' tools of trade."

- "Computerisation of research has worsened historical research. Students assume if it is not on the computer database it does not exist."

- "Students resist this stuff – they want easy formula on the whole – spoonfeeding. It's depressing. So should such courses be compulsory?"

In summary, the responses from academics were gratifyingly honest and informative. The statistics reveal that there is no 'type' of academic predisposed to deny legal research skills within the law curriculum. On the contrary, there is almost unanimous agreement that they need to be included.

Responses from National Law Library Managers

The second constituent group surveyed was national law library managers and legal information consultants (the "library managers"). This group was chosen for the same reason Joan Howland and Nancy Lewis chose law librarians for their research in the United States in 1987; because law librarians are intimately acquainted with new law clerks, coming into law firms fresh from law school. They see first-hand the skills levels of the new clerks, their reactions to the research expectations that are imposed on them, and they know how much time and money their firms have to expend on training the new clerks in skills that they consider should be taught in law schools.

Questionnaires were sent out to 15 library managers; 14 responses were received, some 93%. Unfortunately it was not possible to collect some seminal data, such as

time spent in training new clerks by law firms, as this was regarded as competitive information by the firms. This data would have potentially offered valuable insights into resources spend in remedial skills training for clerks. In the absence of demographic data collection, the questionnaires concentrated on the both the experiences in dealing with new summer clerks, and personal attitudes of the library managers.

Whilst the library managers were divided, 64%-36%, on whether the clerks began their clerkship confident with their ability to undertake research, they were unanimous that all lost confidence when initially presented with practical legal research. When asked to attribute this loss of confidence to selected criteria, the library managers provided the following ranking to a supplied list:

	Numbers of Respondents
The process of 'how' to research	14
Confused about where to start researching	14
Lack of knowledge of print material	11
Lack of knowledge of electronic resources	6
Time limitation for research completion	4
Costs implications of research time	3

Table 4: Factors contributing to law clerks' loss of confidence

The library managers also highlighted three other factors which directly affect new clerks' confidence:

1 Provision of selected, comprehensive course materials for university courses is having a counter-productive effect: "Confidence often hides a lack of knowledge. Not uncommon to have clerks boast that they did their degrees with limited use of the university library, using course material and handouts

only." "Background material given to them at university limits their need for doing personal research, eg leading cases."

2 Poor communication or perceived intimidating behaviour within law firms inhibit clerks ability to deal with instructions: "Fear factor engendered by partner behaviour in a law firm."; "Not obtaining clear enough instructions from their instructing lawyer (and not being quick or confident enough to do anything about it)."; "Lack of clear communication from instructing solicitor."

3 Teaching students only how to find legal materials is not sufficient. "While often familiar with individual sources they lack understanding of how to identify **which** sources to use **when**."

Library managers were asked if in their experience law clerks' abilities to use legal research tools were limited to those products, especially databases, which were taught or used by their law school. Seventy-one percent responded affirmatively.

In order to gauge the effect of the increased digitisation of legal materials on clerks' abilities to use legal research tools, library managers were asked whether law clerks were able to use print materials as easily as electronic ones. Ninety-three percent agreed that clerks had decreased ability to deal with print materials, especially loose-leaf services.

There has been no available published research that explicitly documents the basic legal research finding skills which library managers expect new law clerks to possess. The questionnaire provided a list of 17 'finding' research skills and asked library managers to state which of them they expected of new clerks. The responses were as follows:

	Numbers of Respondents
Find NZ acts and regulations	13
Find NZ case law	13
Find information on NZ government websites	11
Find NZ journal articles	11
Identify seminal NZ legal texts	10
Update NZ acts and regulations	9
Update NZ case law	8
Use print resources for updating research	8
Find historical NZ legal material	8
Find legislation from other common law jurisdictions	8
Find case law from other common law jurisdictions	8
Locate NZ tertiary legislation	7
Update case law from other common law jurisdictions	7
Use non-legal resources, e.g. electronic newspapers, statistics	7
Find supplementary order papers and Hansard references	6
Use *Parliamentary Bulletin*	6
Identify seminal legal texts from other common law jurisdictions	6

Table 5: 'Finding' Legal Research Skills Expected of Summer Clerks

The level of expectation varied widely among the library managers. One manager did not respond to this question. Two others expected that clerks would be able to perform three only of these skills. Half the managers expected ability in at least half, with four expecting clerks to be able to perform all seventeen. One of the managers commented "We set a low standard of expectation as they [the clerks] are from different universities and have done different papers. We adjust our training to their skill level." Another in explaining her low expectation of just three of the possible seventeen skills, said "This is my current expectation due to my experience of training summer clerks. It shouldn't be, coming into a law firm. They should be able to do all…" Another manager reiterated this sentiment "I would expect them to have the above skills but in reality the majority do not."

The library managers were asked to add any other finding skills to the list that they expected of their clerks. Two additional skills were noted: "Ability to plan and

execute a research strategy, from identifying that research is necessary to collating and presenting findings", in other words, that the clerks are information literate; "Use of reference material – dictionaries, encyclopaedias, directories etc both legal and non-legal, electronic and print."

The responses to this question were the most worrying and completely consonant with the tenor of the findings of Howland and Lewis.[314] None of the above finding skills are unrealistic or represent anything beyond that which law students should be able to perform. This should raise a flag of concern for all New Zealand law schools about the level of research competencies of students, and consequently the expectations of legal academics for students' research content.

In the second section of the questionnaire library managers were asked for their personal attitudes to, and opinions on, legal research within the law curriculum. Many of these questions were identical to those asked of legal academics. What must be borne in mind is that few of the library managers surveyed have undertaken any legal studies; a proportion of them will have completed the Law Librarianship paper taught as part of the Masters of Library and Information Studies; all of them have had significant experience in law librarianship, and have all had to learn legal research skills.

In response to the request that they rate legal research as a skill that all law students should learn, the library managers were unequivocal: 79% rated it as essential, with 21% rating it as very important.

As far as its importance compared with legal writing, library managers' responses were very similar to those of legal academics; 72% regarded both skills as equally

[314] See Howland and Lewis, above n 220.

important. 14% thought legal research skills were somewhat more important, and 14% considered them to be much more important.

All library managers agreed that legal research skills should be taught as part of the curriculum. Similarly they were unanimous that students could not learn research skills without targeted formal training. As far as the method of training was concerned, library managers were divided: 58% thought that a combination of separate formal courses and integration into different law subjects were the most effective means; 21% each elected the single option, either formal courses, or integrated courses. This response was similar to that elicited from legal academics for this question.

Library managers were asked to opine at which stage of the curriculum they thought students should be taught legal research skills. Two felt unable to express an opinion on this point, but more than half replied that the skills should be taught in every year, a further 29% opted for the Part III year, with one respondent electing more than one Part but not every year.

In line with the academics' responses, the majority of library managers thought that the teaching of legal research skills should be a joint partnership between academics and law librarians; the remaining 29% thought that this should be the province of law librarians only.

The final two open questions of the survey allowed library managers to express their own opinions about what they would like to see added to the curriculum and then to offer other comments. The following were provided as possible additions to the curriculum:

- “Time frames learning, that once in practice your research time will be limited by client budget and client time frames.”

- “[Alternative] resource availability – lateral thinking needed if firm doesn’t have all resources [clerks are used to using].”

- “Teach about practising in a legal office. More on New Zealand tools, not American. Learn about textbooks.” This remark about the Americanisation of our graduates’ research knowledge was restated numerous times. A number of managers commented on the clerks’ fixation with LexisNexis.com and their instinctive reaction to turn to an American as opposed to a New Zealand resource.

- “The law firm / law school interface. How it is different in the firm. Perhaps the involvement of top litigators in the profession to Level 3 students to explain their [research] strategy. Involving the senior bar would provide visible and meaningful support to the research role. The synergy between top rate research and the tactic of litigation may be welcome.”

- “Planning a research strategy. Identifying whether their research question requires a search of case law, legislation, commentary or everything.”

- “Background information on how the legislation process occurs. Select Committee, Bills, Readings and Assent.” This was picked up again in another response “Law students seem to have little knowledge of how legislation is made and enacted. We currently have to run sessions on this vital part of the legal process a well as electronic database training, time consuming and a bit scary!”

The general comments proffered were insightful and useful and echo the experiences of law librarians in law firms throughout the common law world, as discussed earlier in this thesis.

- There were several pleas that students should be taught the 'application' of the law. "The biggest problem is the application – they may have used the resources, but don't understand how to decide what to use, and how to apply skills to real-life questions. Something like the old problem-based learning model could be appropriate." "Uni[versities] teach students the law, we train them to apply the law. We complement prior training. We run extensive training programmes on research techniques including using real client matters. We do notice a difference between research capabilities of students from different uni[versities]." "We have to run extensive summer clerk and law clerk programmes so that they can apply the law."

- The selection of appropriate resources to use is also problematic for clerks. "Most clerks and graduates will not have [free] access to Lexis / Westlaw. They have to learn cost effective searching and other sources." "Use of research tools and checklists – use known 'short cuts' to cut through the plethora of online rubbish. Free on the internet does not equal quality, reliable information. 'Just-in-time' research, [how to do] quick and dirty via free sources as partner / client reluctant to pay for 'value-added' online user-pays research."

- Keeping up-to date with changing modes of legal information is also regarded as essential. "The speed of change in the legal information world means students need to know what they should be aware of, sources that are reliable

and keep abreast of this change. The skill of finding the ‘who’ or ‘how’ to keep up-to-date and why they should make this a priority. As legal publishers and their products change the researcher has to be able to keep abreast of the change.”

- The lack of basic research skills remains the greatest concern. “Teach them to strategise; before rushing headlong into research, learn to think of ways to approach a question of research (lateral thinking).” “The ability to get to the ‘heart’ of the question – they get too involved with areas around the edge of the question. More research skills learnt at uni[versity] would give them more confidence. Hands on taking instructions from senior solicitors – again lack of confidence resulting in inability to ask senior solicitors for more details etc.” “Should be required. All students must satisfy university that they have attained a certain level in order to pass the degree course.”

- There was also recognition that, in at least one law firm, expectations of summer clerks’ abilities were low because they were not required to do only research. “Keep it simplistic, too much can and seems to be over-whelming and creates confusion. Our summer clerks also move furniture and books around a well as legal research.”

The responses from the library managers generally confirm many of the anecdotal comments previously heard. Whilst it is a depressing indictment of clerks’ initial research skills generally in the large firms, the data provides positive signposts for future teaching and learning of legal research skills within the law schools.

Responses from Summer Clerks

Summer clerks were chosen as the population surveyed because they were by definition still completing their law degrees and employed in law firms only over the summer break in the academic year. The rationale was to obtain direct evidence of their first experiences of carrying out practical research within a law firm environment. This would provide an unique opportunity to collect data from the very constituency most affected by the extant legal research courses within the universities. There was an ancillary motive, not expressed, further to sensitise them to the necessity of honing their research skills whilst still at university. There were initial difficulties in identifying this population. Because summer clerks are selected from all five New Zealand law schools, there was no direct knowledge of either numbers or participants. The solution was that the Human Resources Departments of all large law firms in the country were contacted and asked whether they would be prepared to post out questionnaires to their summer clerks at the completion of their clerkship. The success of this questionnaire was hence very dependent on the good will of the Human Resources Department within these firms. There were refusals, but the majority acquiesced, expressing interest in the results of the research. Of the 151 questionnaires forwarded to law firms for distribution, 58 were returned, a 38% response rate, considered large enough to be, at least, indicative. One of the returns was not completed.

In line with the academics' survey, and that intended for library managers, the summer clerks' ("the clerks") survey was divided into three sections: demographics, personal attitudes, and experiences. Again, both open and closed questions were asked, many of them identical to the earlier surveys for comparison purposes.

The clerks were at diverse stages of their law degrees as evidenced below, with the majority at fourth year

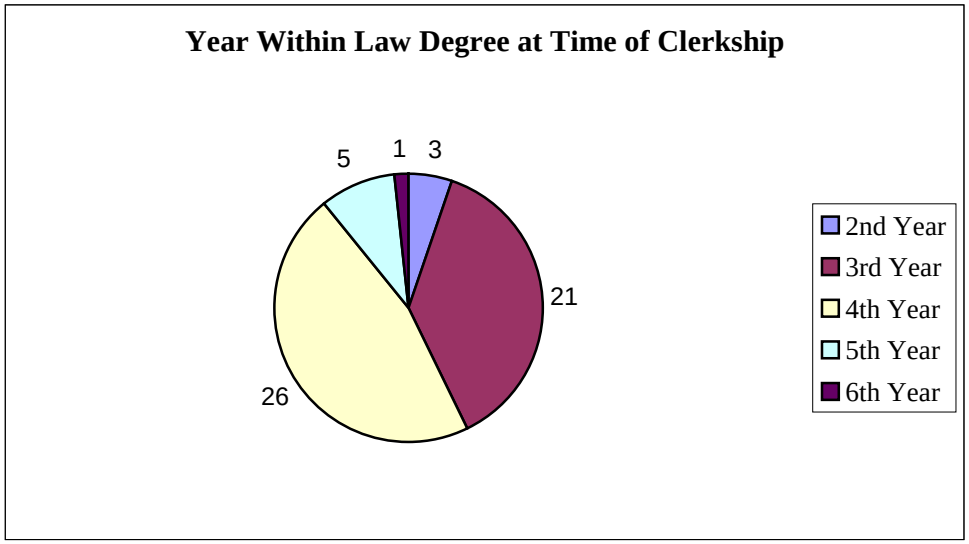

Table 6: Year within Law Degree at Time of Clerkship

Fifty-one of these clerks were doing conjoint or double degrees; 55% of them in conjunction with Arts, 31% with Commerce/Business, 12% with Science and 2% with Health Sciences or Medicine. There were one and half times as many females as males within the sampled population.

In terms of age, the largest percentage of the clerks came within the under 25 years age range, with just three in the 25-30 age range, and four in the 30-45 age range. All clerks over 25 years had successfully completed previous degrees.

Only 21% had had prior experience of either working within a law library or being employed as a research assistant by an academic or law professional. It was hoped that the data might reveal some nexus between this extra-curricula experience of dealing with legal resources and more successfully coping with the clerkship experience. However, the numerical reality of the response pool was that only 12

clerks were concerned and the omission of direct questioning on this point, and no references to these experiences forthcoming in the open questions, meant that the data from this perspective was inconclusive.

The clerks, just as academics and law librarians before them, were asked to rate legal research skills on a five-value scale. Two percent considered them somewhat important, 10% regarded them important, 26% thought them very important and 60% considered them essential. This response is significant as will be demonstrated in the following section when responses from all three populations will be compared.

In comparing the importance of legal research skills with those of legal writing, 12% of the clerks thought that legal research skills were somewhat less important, 76% regarded them as equally important, 5% thought them somewhat more important and 3% considered them much more important.

There was a 95% affirmative response to the question: should legal research skills be taught as part of the curriculum? It was not possible to conclude from the data anything of significance as far as the 5% who thought legal research skills did not need to be taught within the curriculum: the demographics were highly divergent.

The clerks were asked to state whether they considered that the legal research and writing course or similar which was taught at their university adequately covered either the basic legal research skills or all the legal research skills that students required. The results are as follows:

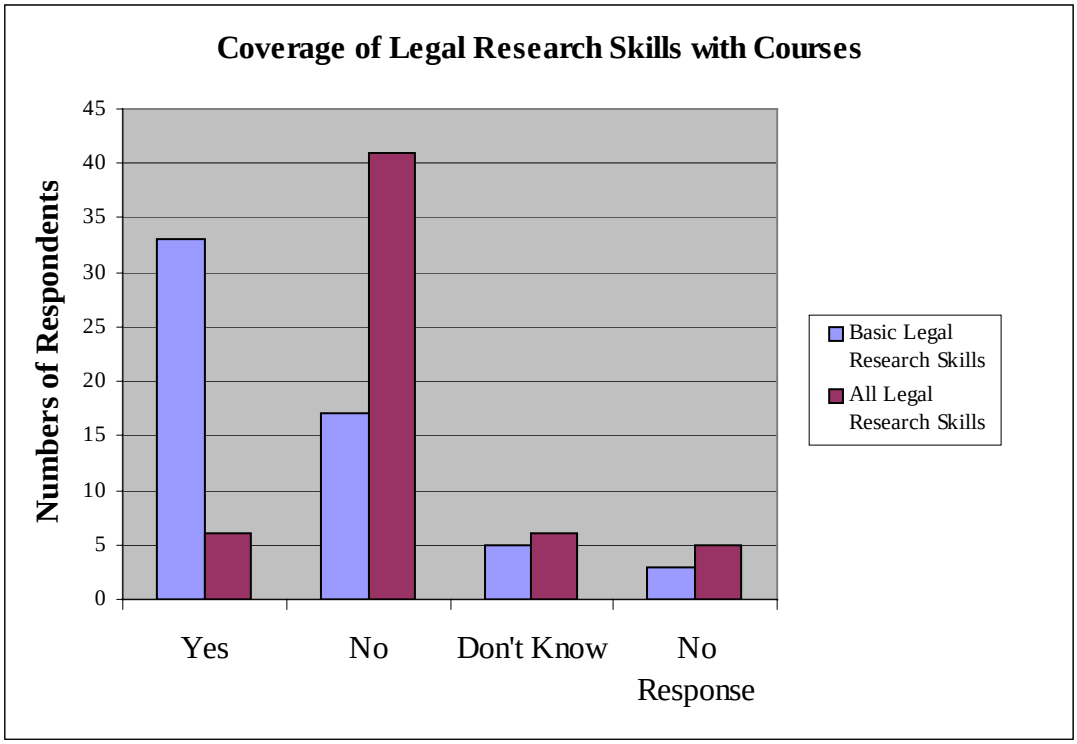

Table 7: Coverage of Legal Research Skills within Courses

Again, this is a highly significant response and will be discussed in the following section of this Chapter.

Clerks were then asked to state how they would like to see legal research taught within the curriculum. There were five main themes that stood out from the responses:

1 Legal research courses should be **compulsory.** "It should be taught as a separate compulsory paper"; "Compulsory for one semester. In the workplace research skills were really important!"

2 The legal research courses should be **ongoing** throughout the degree. "More ongoing as the complexity of research increases with the degree. In Part 2 tutorial essays don't often require much more than the course materials and texts." "All throughout the law degree, not just for a couple of weeks in your

second year – everything just goes over your head and you forget it all by the time you actually need to use the research skills you learnt." "More ongoing teaching, more practical application, better searching skills taught which are often excluded or minimal in training."

3 Legal research courses must be more **comprehensive** covering the range of resources clerks will be expected to deal with in the workplace. This theme was constantly stressed: "More focus on books as opposed to computers. Understanding the official reporting series, more focus on research from start to finish." "Better techniques for researching precedents and case history, and also best methods for online journal searching." "Tutorials at uni[versity] taught just covered the electronic databases. We need to be given more comprehensive integrated tuition on how to approach research from start to finish." "A couple of one hour sessions where everything is rushed through is not enough." More coverage of a variety of sources, overseas jurisdictions and database access, other resources apart from cases eg Parliamentary Bulletin."

4 **Timing** of legal research learning is crucial. "Timing – later on in the course. It is currently taught in 2nd year of law school – you barely write opinions till 300 level papers and can't remember any of it." "It was given to us in Year 2 when we aren't doing much legal writing. There should be some taught in Part III." "Legal research should be taught in conjunction with legal system or at stage 2, ie the earlier the better."

5 Legal research skills must be able to be **practised**. "More practice." "Perhaps requiring a research log to be kept for assignments/essays which would help."

> "No opportunities to practice them. Being taught and being able to do are not the same."

Clerks were asked if they thought that students could acquire competency in legal research skills without targeted formal training. The response was surprisingly equivocal given the responses to the previous questions; 41% replied affirmatively, 50% negatively, with the 'do not knows' making up the other 9%. Perhaps the affirmative response was tainted by the personal experience of the clerk, who may have had to learn such skills without adequate assistance from the law school, and the 'yes' was no more than an intimation that it was possible, even if not desirable. The wording of the question itself may have lacked clarity. There obviously was some confusion, as the next question was intended to be restricted to those students who thought that formal training was necessary, but was answered by more than this constituency, so it is difficult to measure this data accurately. As to how such skills should be taught 12% opted for a separate course, 21% for integrated courses, and 30% for a mixture of the two.

When asked to stipulate at which year of the degree clerks would like to have legal research skills taught, the clerks again were divided with 57% preferring a single year of the degree (which conflicts with comments made by them earlier in the questionnaire) and 42% opting for more than one year.

The clerks stated a decided preference, 74%, to have legal research skills taught by both academics and law librarians. No clerks elected to have these skills taught just by academics, but 19% replied that they would prefer to have them taught solely by law librarians. Three percent thought that legal practitioners should be involved as well. This latter selection is of interest as it indicates that these students do not perceive

their academics as ‘legal practitioners’ despite the fact that 79% of respondent academics indicated that they had or were concurrently legal practitioners.

Also of note is that the clerks were again divided on the question whether specific marks should be allocated in written assignments for the research component. They were 54% - 45% against this proposal. Perhaps a reflection of how they felt they might fare with such a system? Taking into account the view that library managers had of these clerks’ research skills this is not an unreasonable interpretation of this response.

Section three of the clerks’ questionnaire related to their own experiences of clerking. At the commencement of their clerkship 67% advised that they did not feel competent to undertake any research they might be requested to carry out; a mere 29% said they felt competent; the remainder did not respond. One possible explanation for this could have been that they may have been too early on in their law degrees to have built up confidence or to have had requisite training. However, from the demographic data collected it is apparent that the majority of the clerks were in at least their fourth year. This is a disturbing admission. If the question had been in connection with complex pieces of research, then the clerks’ negative response would have been understandable.

The next question asked students if there was a change in their confidence levels during the period of clerkship. Once more the response is equivocal; 45% - 54%, with the majority remaining negative. Those who had experienced a change in confidence levels were asked to state what contributed to this change. Some possible contributors were provided from which the clerks were able to select, but they were also invited to add their own. In fact for some clerks it was a very positive change:

- “Actually I felt more confident as time went on and got used to systems and processes.”
- “Felt more confident about my research ability once I started.”
- “I felt more confident about my skills as the summer progressed.”
- “Attitude changed – became more confident.”
- “Just got better at it.”
- “A new understanding of the nature of the results that the practitioners required from the research.”
- “Gained more confidence as time went on not less – so I gained knowledge of how to research, where to start and how to select print alternatives.”

These comments possibly reflect the increased confidence gained after in-house legal research training was received.

For those who lost confidence over the summer the following reasons were seen as the most important:

Reasons	Respondents
Lack of knowledge of electronic resources	8
Lack of knowledge of print materials	5
Not knowing the process of 'how' to research	10
Confusion about where to start	10
Dependence on electronic media; unable to select print alternative	2
Time limitations on research	5
Costs, implications for research time	1

Table 8: Reasons for Loss of Confidence

In addition to these categories, clerks added the following:

- “The research focus is often on very narrow points of law not general principles and key cases. Knowing the exact resource to locate the particular issue was difficult at times.”

- “Lack of knowledge on specific research databases not available or taught at uni[versity].” This is an important issue to take note of for law school libraries. The databases available for use in firm libraries are not necessarily the expensive international ones, but rather the diverse local products. Law School libraries must take responsibility for ensuring that their students are provided with access to the important tools of our national law, despite perceived budgetary constraints. It is largely a matter of mistaken prioritisation.

- “Uncertainty about when to stop researching, required scope – at law school you can write an essay on what you find, that isn’t good enough in practice.”

Ninety-three percent of clerks reported that their firms provided them with skills training. Only three reported no training and unsurprisingly two of those indicated that did not learn anything new. A high 72% acknowledged that they learnt skills within the law firm which they did not have the opportunity to learn at law school. Of those who reported not learning anything new, proportionally more of them were clerks in the higher age ranges. The clerks were asked to detail new skills they had learnt and they all complied. Apart from the two respondents who seemingly cheerfully replied “Basically everything!” and “Nearly all!”, the responses contain a constant refrain of four words: databases, practical, legislation, and in-depth.

Fifty-five percent of the clerks reported learning new database skills. For some it was completely new databases which they did not have access to, nor training on, within their own law libraries, for example products within LexisNexis New Zealand, or Brookers Online. For many others it was more a matter of improving their searching skills. There was recognition that the poor searching skills were not because they did not have the opportunity to learn them at law school but because there was no understanding that these skills were important to learn. A worrying number reported learning navigational skills, truncation and use of search templates as clerks in law firms. These are very basic database skills.

Nineteen percent of the clerks said that they learnt very practical skills:

- "More focused and practical approach so it could be completed efficiently and competently."
- "I had very little knowledge as to how to go about starting research until I received training at my firm."
- "Overall it was more practical – ie the different ways you can get answers to a question, rather than going through the databases."
- "Uni[versity] gives you information overload; firms teach you simple efficient research."

Several clerks reported learning about the legislative process and the extrinsic aids available to find out about legislative intent. Some of this was at a very basic level – for instance "How a bill becomes law" "How to access parliamentary bills". These comments confirm the responses garnered from the library managers.

A number of other clerks noted the in-depth training with which they were provided:

- “More indept [sic] training than I had ever gained before.”
- “In depth knowledge of resources specific to a team. Perhaps there could be course-specific handouts detailing resources relevant to a course at law school?”
- “[M]ore in-depth ways of accessing cases, commentaries and publications quickly.”
- “Law firm training was more in depth.”
- “Overseas jurisdictions were covered more fully.”

The clerks were asked if there were any aspects of legal research they would like to see added to the curriculum. The following verbatim list is representative of their responses.

- “Evaluating what material is valuable and reliable, the authenticity of websites.”
- “More hands-on with print materials eg Hansard.”
- “How to research.”
- “How to read different citations.”
- “Compulsory training on the databases.”
- “I should suggest that one class per paper should be devoted to researching that particular area of law. The resources relevant to what you are researching

differ depending on what area of law you are researching therefore it would be helpful to be given a run down on what research tools are appropriate for each topic."

- "More extra-jurisdictional material."
- "How to write an opinion for a client as opposed to an academic essay for uni[versity]."
- "Learning how to search rather than just what databases to search."

Finally, the clerks were asked for any general comments in respect of learning and applying legal research skills. Just under 50% of respondents supplied comments, which offer a valuable window into law students' opinions about legal research.

- "I think legal research skills are fundamental at all stages of a law degree and a legal career, and students are almost left to 'fend for themselves' – not enough training and support is given in this area at law school."
- "Having worked at a firm I realized how ill-equipped I was to deal with real research issues. I would have liked a greater foundation to work from which I should have had from law school."
- "When I began my summer internship I had only written 2 opinions during my law degree (I was a 4th year). As a result I had little experience in legal research. … the law papers are often assessed with test and exams there is no opportunity to do any legal research. … As a student I am very concerned about my lack of research skills. … I am not an honours student therefore do

not have any opportunity to gain research skills. … this issue needs to be addressed."

- "General consensus amongst students is that you don't come away from the Legal Research and Writing course really knowing how to research. That needs to be addressed."

- "It's not until you get out into the workforce that you realize how important legal research skills are as you generally get through university knowing only the basics. I therefore think there needs to be a greater focus on teaching research skills while at law school."

- "I think legal research skills are vital in the work-place, so there should be greater emphasis at university. What I learned in my summer clerking experiences has really helped me at university this year also."

- "It's good to have some general legal research classes but I find it most useful and memorable to legal research in connection with particular subjects eg opinions for Part IV electives."

- "They can only be learned by experience. Watch out for those students who have bludged off others as they will be no use to anyone."

- "The library courses at university are very helpful but some skills you need to be shown a few times. Having library staff available and willing to answer these queries in the law firm made learning easier in a way that is not possible at law school."

- “Not only do research skills make it easier to answer the question in front of you they also improve the clarity and depth of that answer.”

Overall the responses from the clerks underscored the necessity of legal research skills being part of the curriculum. The revelation that even basic skills are frequently wanting highlights serious flaws in some of the current courses at New Zealand law schools.

Distillation of Questionnaire Results from Legal Academics, Library Managers and Law Clerks Jointly

A number of questions were common to all three populations’ questionnaires, allowing perceptions from each group to be tested against the responses of the others. In the absence of formal empirical research, there have been many assumptions made about the value of current legal research courses. This section compares data from each population and attempts to distill conclusions that may be drawn from such comparisons.

Each group rated the importance of legal research skills. Although the size of the three populations varied there was remarkable similarity in the rating of legal research skills between legal academics and the clerks.

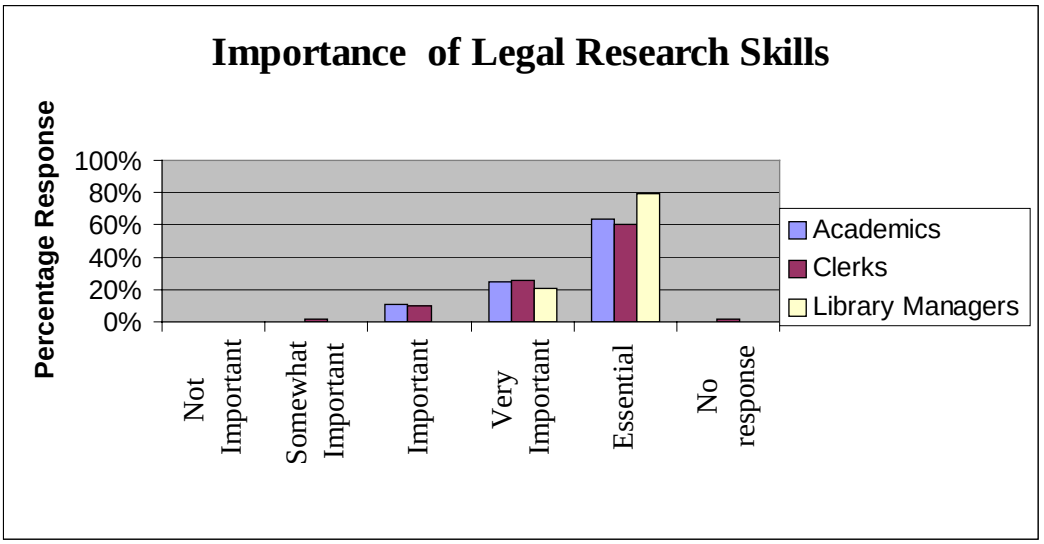

Table 9: Importance of Legal Research Skills

One explanation is pure coincidence, but it is more probable that the clerks as students were influenced by the attitudes of their academics, whether consciously or unconsciously.

All three groups were in agreement that legal research skills were of equal importance for law students to learn as legal writing.

The responses to the adequacy of current Legal Research and Writing courses, or similar programmes, at the five law schools revealed that more clerks than academics considered that students learned basic legal research skills at law school. However, the perspective from which the clerks viewed this question needs to be examined. Academics have stated that students are able to pass their research assignments merely by using course materials and set texts; the mark awarded may not be high, but passing is possible. It could be that in responding to this question, the clerks were influenced by the low standard of research expectation that academics hold.

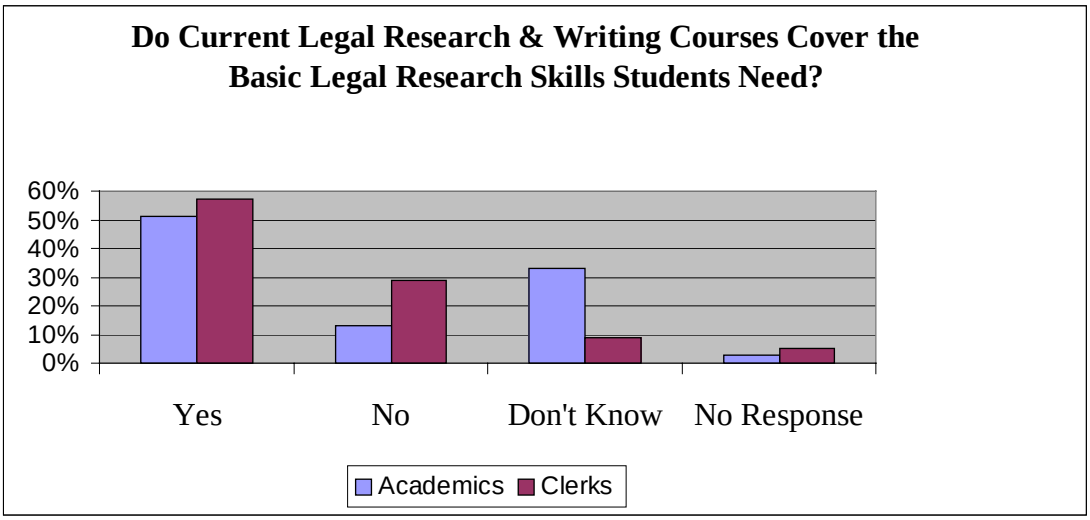

Table 10: Coverage of Basic Legal Research Skills

In response to the question whether the extant courses adequately covered all legal research skills that law students required, the responses showed divergent opinions from legal academics and the clerks.

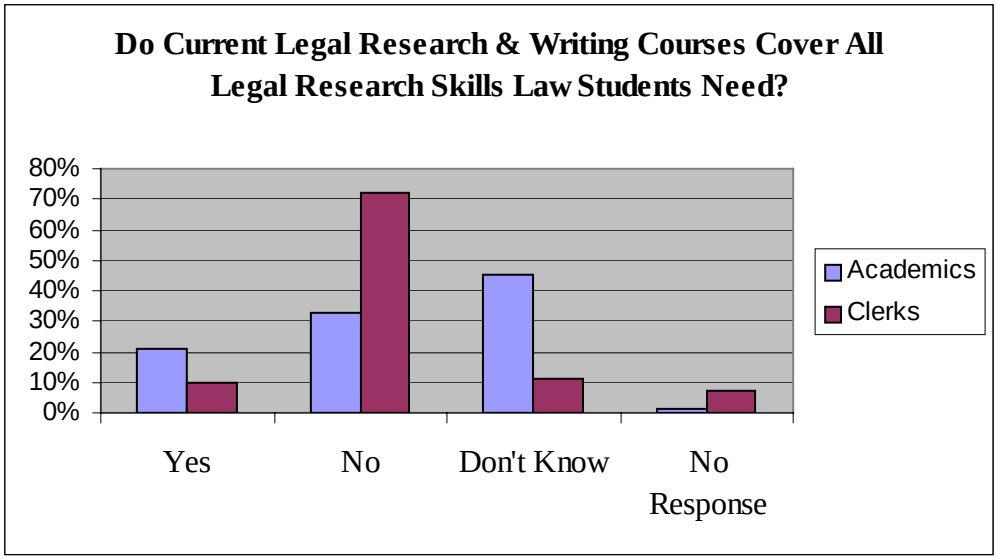

Table 11: Coverage of All Legal Research Skills

The clerks are emphatic that these courses are not adequate in providing them with all the research skills they require. The data is strongly reinforced by the comments made

by the clerks, mentioned in the previous section. This finding is of direct importance to the content designers of the curricula for these courses. Law students are experiencing significant problems with legal research when they begin work as clerks in law firms and this demands some positive response from law schools.

The majority response from all three populations agreed that legal research would best be taught using a combination of separate formal classes specially designed for the learning of legal research skills and the integration of these skills into other law subjects. In determining the most appropriate stage within the degree for legal research skills to be taught, the compared data is indicative only.

	Academics	**Clerks**	**Library Managers**
Foundation Year	4	5	
Part II	22	21	
Part III	12	7	4
Every Part	20	7	7
More than 1 Part	19	17	1
No Response	8	1	2

Table 12: Stage of Degree in which Legal Research Skills should be Taught

Academics and library managers on the whole were more in favour of the skills being taught in more than one Part of the degree. However, when interpreted in light of the responses to the question whether the classes should be separate or integrated or both, it would appear that there is greater consensus for the separate courses to be taught in the Part II year, with presumably integrated courses taught in the succeeding Parts.

When asked to decide who should do the teaching of legal research skills, there was firm agreement that this should be a partnership between academics and law librarians.

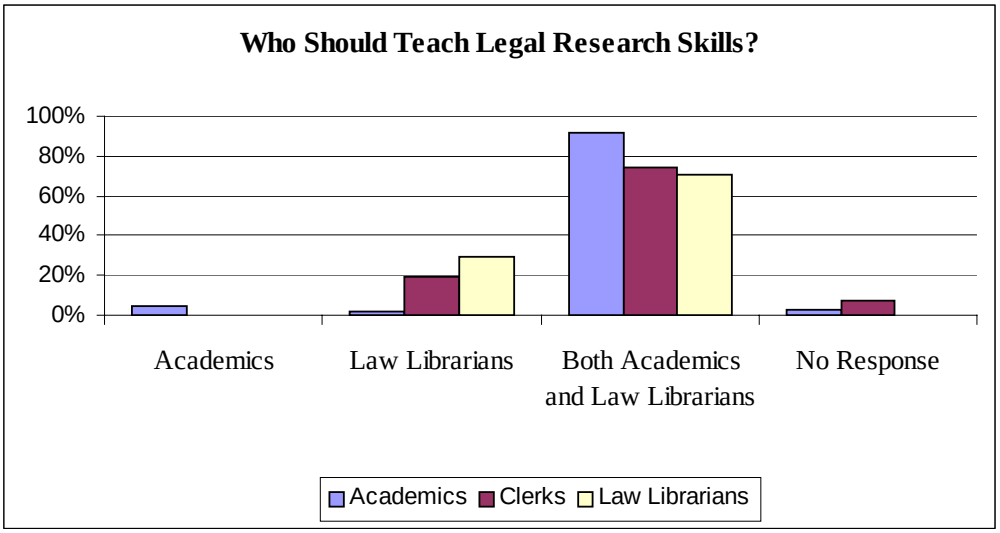

Table 13: Who should Teach Legal Research Skills

Of note in these responses is that the clerks appear to have more confidence in law librarians' abilities to teach legal research skills than academics do. The clerks, from their responses, appear to have had positive experiences with training from law librarians. Conversely, no clerks indicated that they would prefer to have academics only teaching legal research skills.

Summary

The data collected from the three populations provides useful insight into attitudes towards legal research skills within the curriculum. Academics are strongly supportive of their inclusion, but generally do not want to be involved directly in their delivery. This reluctance is largely driven by their lack of knowledge or confidence in using the electronic resources. There remains a strong feeling within the legal academy that these skills can simply be taught by doing more research assignments.

However, this is an erroneous assumption; the academics themselves admit that research assignments may be successfully completed with just course materials and texts being used, particularly if the argument presented is well reasoned. This prevailing attitude provides no incentive for research skills to be learned or practised. The current practices and assumptions need to questioned and changed.

Law students, especially after their clerking experience, are far more conscious of the need for legal research skills to be taught. When cognisance is taken of the fact that the students selected as summer clerks represent the top echelon of the law student body, the skills they reported as 'learning' in the law firms – for example, the legislative process, basic navigational skills for New Zealand databases – are testament to the need for a radical shift in the way legal research skills are taught and learned at law schools.

Library managers provided valuable information on the research skills they expect from law students. At present they have to expend the time teaching these skills, and law firms have to bear the costs.

At the start of the Chapter it was anticipated that the empirical research would verify a number of assumptions:

1. *Legal research is not considered to be an academic subject*. The data showed that academics, law clerks and library managers all accept that legal research skills should be part of the curriculum. The majority also agreed that one of the methods of teaching legal research should be a separate course.

2. *Legal writing is a more important skill for law students to learn than legal research skills.* The majority of all respondents agreed that legal research skills and legal writing are equally important.

3. *Legal academics generally do not integrate legal research skills into their subject teaching.* Despite the fact that a number of academic respondents said that they integrated legal research skills into their courses, in reality many of them offered little more than providing opportunities for writing assignments. Some also provided brief pre- or post-writing feedback. A few academics invited law librarians into their classes to provide instruction on legal research in a specific subject.

4. *Legal research skills which are taught are not sufficiently comprehensive for newly employed clerks in law firms.* This assumption has been amply supported by the data, and calls out for urgent remedial attention.

5. *Law students generally believe that they do not need to be taught legal research skills.* The majority of law students who became clerks were unequivocal about the need for legal research skills to be taught.

6. *Law students generally leave law schools with only basic legal research skills*. This appears to be supported by the data, given that the clerks were still students, and that there has been no significant development in Legal Research and Writing courses since the questionnaire was administered.

7. *First introduction to legal research within the law firm environment results in a new clerk's loss of confidence*. The responses from the library managers and

a proportion of clerks verify this. This is surely an unintended result of a law school education.

8. *Law firms have to expend extensive time in training new clerks in legal research skills*. This assumption could not be tested, because of inability to collect this data. However, anecdotal evidence supports this. The clerks attested to the extensive, in-depth training they received in most of the law firms.

The questionnaires have put into context the issue of legal research skills in New Zealand law schools. Regrettably, the evidence collected from the empirical research demonstrates that there are justifiable grounds for concern about the state of teaching and learning of legal research skills. New Zealand law schools are responsible for ensuring that appropriate courses are in place for their students to learn, acquire and practice their legal research skills.

Chapter VI: Model Programme for Mainstreaming Legal Research Skills into a New Zealand Law School Curriculum

Introduction

The core of the curricula within the five New Zealand law schools is prescribed by the New Zealand Council for Legal Education. Outside the core subjects, the law schools provide a range of elective courses from which students may select to complete the requirements for their university's law degree. Apart from the New Zealand Legal System, which for obvious reasons is mandatory in the first year of study, the other core subjects may ostensibly be taught in any year of the degree. Most law schools prescribe some of the core as pre-requisites for certain elective courses, but there is flexibility in the sequencing of courses of the law curriculum.

The variation in law schools' curricula extends not only to electives offered, the sequencing of subjects, but also the requirements imposed by the universities on non-law subjects which also form part of the degree. Generally, law students undertake prescribed non-law subjects in their first year of tertiary study as well as the legal system course. This first year of study may operate as a selection hurdle for further progression in the law degree. Additionally, the majority of law students undertake conjoint degrees and the imperatives of timetables necessarily influence the timing and sequencing of law courses in any year.

All these factors impact on the provision of a legal research skills programme within the law degree. The extent of resources expended on a first year course which may not be a precursor to a law degree is highly determinative. Skills courses at foundation level are generally resource intensive if taught in small groups, which is preferable. Structured, incremental learning is required for successful skills learning; each year within the degree there has to be opportunity for legal research skills to be taught and learned, but the foundation learning of such skills must be solidly based. Because of the lack of uniformity in the law degree curriculum in New Zealand any proposed programme will perforce have to be sufficiently flexible to cater for all the law schools.

This Chapter provides an overview of a Model Programme, details the rationale for mainstreaming legal research skills primarily through separate academic courses, proposes a methodology for teaching these skills and, finally, formulates the content for the academic courses.

Overview of the Model Programme

The model programme focuses on legal research skills, and does not include legal writing skills, which, although outside the ambit of this thesis, will be discussed briefly later in this Chapter.

It is proposed that legal research skills should be mainstreamed into the law curriculum primarily by way of separate academic courses, which are core in the curriculum.

Separate core academic legal research skills courses have the following advantages:

- The skills course is then accorded the same status as other academic courses within the law degree.

- The core nature of the course means that all students are required to complete it. Where legal research skills are integrated into an elective course, only those students selecting that course have the advantage of learning the integrated skills.

- A core academic course is locked into the curriculum, at least for a certain period of time as stipulated by the University's rules. In contrast, where legal research skills form part of substantive law courses, the lecturers' commitment is highly personal and variable. Some may be fully committed to integrating legal research skills within the course, others may be less committed. Moreover, some courses are team taught, and some are taught by different lecturers from one year to the next. The concept of academic freedom means that there can be no compulsion on one lecturer to follow the content of another or to teach in any prescribed manner. Making the skills course core in the curriculum mandates that the course is taught.

- A separate and independent skills course ensures that the learning is not diluted; where legal research has been inextricably linked with another subject, more emphasis is inevitably placed onto that other subject,[315] as clearly evidenced in literature on the subject.

- Separate academic courses involve their owns forms of assessment specifically tailored to the objectives of the course. Discussions with legal

[315] See Mills, above n 158, 345.

academics have indicated that it is difficult, when assessing a research paper or opinion, to separate out the skills components and assess true competency. For example, an outstanding ability to construct sound legal argument may disguise the fact that a student is insufficiently competent at finding an appropriate range of legal information. Where the assessment of legal research skills competency is but part of the holistic assessment of a research paper, then a true assess will be very dependent on the academic being fully aware of the range of skill sets comprising the concept legal research skills.

The Model Programme envisions two separate semester-long academic courses:

- Legal Research 1 designed to introduce law students to basic legal research. This is a foundation course. The objectives of skills learning at this stage is to provide a solid grounding and to this end the skills are all taught within the context of the New Zealand jurisdiction only.

- Legal Research 2 reinforces and builds on the skills gained in Legal Research 1. Basic skills are now upgraded to more advanced skills, this time within a multi-jurisdictional context. At this level, usually the third year of the law degree, many students will be contemplating applying for summer clerkships within law firms or seeking part time research work. This course recognises this and seeks to widen the scope of research skills beyond black letter legal research.

Patently, no course can cover all the research skills that students require. Depending on the enthusiasm and commitment of lecturing staff, additional courses may be supplemented to the two stand alone academic courses. Some areas of law demand a

specialist or more defined skills knowledge, such as International Law, Legal History or Roman Law. These subjects, invariably taught as electives, provide excellent opportunities for the incorporation of legal research skills within the substantive subject. Other substantive law subjects, such as Resource Management Law or Tax Law, are also suitable candidates for skills teaching within substantive framework. Wherever there are a plethora of competing resources available in a particular area, students often require guidance in discerning the differences between them. In these instances, the partnering of legal research skills teaching in substantive law courses, emphasises the relevance, importance and practical application of those skills.

Further components may be added to the Model Programme; content additions may be made to either course, or an advanced legal research course focusing on different research methodologies could be taught as an elective subject. The extent of the courses would be determined by the law school curricula, student numbers and the degree of academic commitment.

The Model Programme, especially Legal Research 2, is best taught by a partnership of law librarians and academics. Each role brings essential perspectives to the programme. Law librarians through their training are frequently more experienced multi-faceted legal researchers, and are generally well-suited to the teaching of locating and using bibliographic material, referencing style, managing information and clarifying issues such as plagiarism and copyright. Academics, are better suited to the analytical portions of the process, identifying legal issues and the application of research to the legal issues. With both law librarians and academic staff involved in the teaching of legal research, the students are left in no doubt of the importance and the practicality of the subject.

Where legal research skills are incorporated into a substantive law course, again, law librarians and academics should jointly present the content. Personal experience has shown that where the law librarian teaches fully in partnership with academic staff then the students gain the best of both's insights. The academic is frequently able to superimpose an experiential value to the information provided by the law librarian, thereby both contextualising and validating the information.

Legal Research Competencies to be Acquired

The Model Programme is designed to enable students to learn and master the following competencies:

- To recognise and use legal language correctly.
- To define the research question in terms of factual and legal issues and identify limitations or restrictions placed on the research.
- To construct an appropriate strategy for researching the question.
- To select appropriate primary and secondary sources for research.
- To use research sources effectively and efficiently.
- To update research.
- To evaluate information found.
- To manage information found.
- To apply information found to research question.

- To answer a research question in an appropriate form and within stated parameters.

- To use information in a principled and ethical manner.

Within each of these competencies there are a number of discrete skills which must be mastered, as illustrated later in the programme content.

Proposed Methodology for Teaching Legal Research Skills

This proposed methodology embraces facets from each of the methodologies discussed in Chapter Four. The basic format follows that propounded by Callister[316] but allows for bibliographic-style teaching where appropriate and is grounded in information literacy principles. It is structured on the legal research process model and is designed to enable students to learn legal research skills in a systematic contextualised manner. Students need to learn the legal research process, but they need to be able to understand how legal materials work, and they need to be able to apply the skills learnt to solve all types of legal questions and to use legal information in whatever format it appears.

Learning the law differs from learning other disciplines in that it is based on language and the power of argument and persuasion. Students with a science background come to law expecting that law is all about finding the 'right' answer; other students with a social science background want to be comfortable with presenting both sides of any argument. For many, the use of authority to found an argument for one party is a foreign concept and one that must be taught. Firstly, students must understand what makes legal information so different from other types of information and what the implications of this are. The language of law is complex; even everyday English

[316] See Callister, above n 242, J 7-45.

words, such as ‘consideration’ or ‘reasonable’ take different meanings in a legal context. This is not something that is learnt intuitively, and for students for whom English is not their first language, this may be a fundamental stumbling point. An understanding of legal information is core to any legal research skills programme and this aspect needs to be learnt first.

In the workplace, and throughout law school, students will be confronted with legal issues and questions which they will be expected to answer. Following Callister’s pedagogy, legal research skills should be taught within the context of resolving legal questions.[317] This provides a ‘real’ context for learning – the issues and questions to be resolved are those that a student could expect to be faced with in the workplace. This is not to say that the learning must be confined to the parameters of the legal issue at hand, but that the issue serves as the focus and launching point for learning.

In the proposed methodology, at first-year law level, students should be taught legal research skills using only New Zealand legal resources. The first year of legal research should coincide with the first core subjects within the law degree (excluding Legal Method or its equivalent). At this stage students are faced with black letter law in the form of contract, torts, public law or criminal law; they are encountering difficulties with legal language, the mysterious codes of legal citation, and the complexities of the common law. Once basic skills within the local jurisdiction have been mastered, then these skills may be expanded into multi-jurisdictional research in the following year.

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[317] Ibid.

Students, then, should be presented with a multi-layered 'real-life' legal issue in their first class.[318] This allows for discussion and learning around legal language and legal information. Unfamiliar language may be clarified using the relevant legal dictionary. As the question involves an area of law unknown to the students at this stage, the discussion may lead onto the local legal encyclopaedia or relevant texts. In other words, the question is analysed and relevant contexts identified. Thereafter, the same legal issue may be further dissected in classes dealing with:

- case law, where learning may centre around the structure of a reported case, reading law reports, citations, finding case law, and updating cases

- legislation, where learning may centre around the legislative process, statutes (assent version, compiled acts, reprinted acts), finding and reading statutes, and updating statutes

- secondary materials where students learn to distinguish between the different types of secondary sources, and understand when it is appropriate to use which type.

It is vitally important that in the final class, the initial legal issue is again examined as a whole and worked through in light of the learning in the previous classes. This enables students to understand the frequently complex and multi-layered nature of legal research; it may involve a number of different legal issues; it may require research in a variety of legal information resources, the judicious selection of which will determine the efficiency and effectiveness of the research. The requirement for keeping track of all the research steps should be examined and discussed. At the end

[318] Using examples gleaned from practitioner colleagues assists in contextualising the importance and function of legal research.

of the 'finding' and evaluating phases, the students should be required to consider the presentation of their research. This allows for issues such as plagiarism and using correct legal referencing style to be discussed.

Additional examples may be used within the classes to illustrate the principles being taught. These should preferably be taken from recent newsworthy events within the life-experiences of the students. For example, when discussing statutes or the legislative process using current well-publicised legislation to demonstrate principles enables students to transfer their existing knowledge to the learning process. Using this constructivist model of learning enables students to make links between what they already know and skills newly acquired, thereby creating new knowledge and enriching the learning experience.

To embed the learning, students should be required to mirror the process learnt in class in a variety of assessment exercises, again centred on 'real-life' legal issues. Regular feedback on these exercises is essential, so that by the stage of the final assessment, the students are familiar with what is required of them in responding to legal issues or solving legal questions. Assessment will be discussed in more detail later in this Chapter.

Conceptual Frameworks

To assist learning, students should be provided with a series of conceptual frameworks. These frameworks should enable the students to adapt the knowledge they already have to tackle any legal problem. As Callister states:[319]

> [T]he critical objective for legal research instruction is to help law students become educated researchers. This means that their training must not be limited to simply using a given resource, or

[319] See Callister, above n 242, 35.

> solving several different kinds of problems. Rather they must be sufficiently adept in adjusting their own mental construct of legal research to meet new research conditions.

The main purpose of teaching legal research skills is to empower students to become independent and effective legal researchers; the frameworks provide the vehicle through which this is enabled.

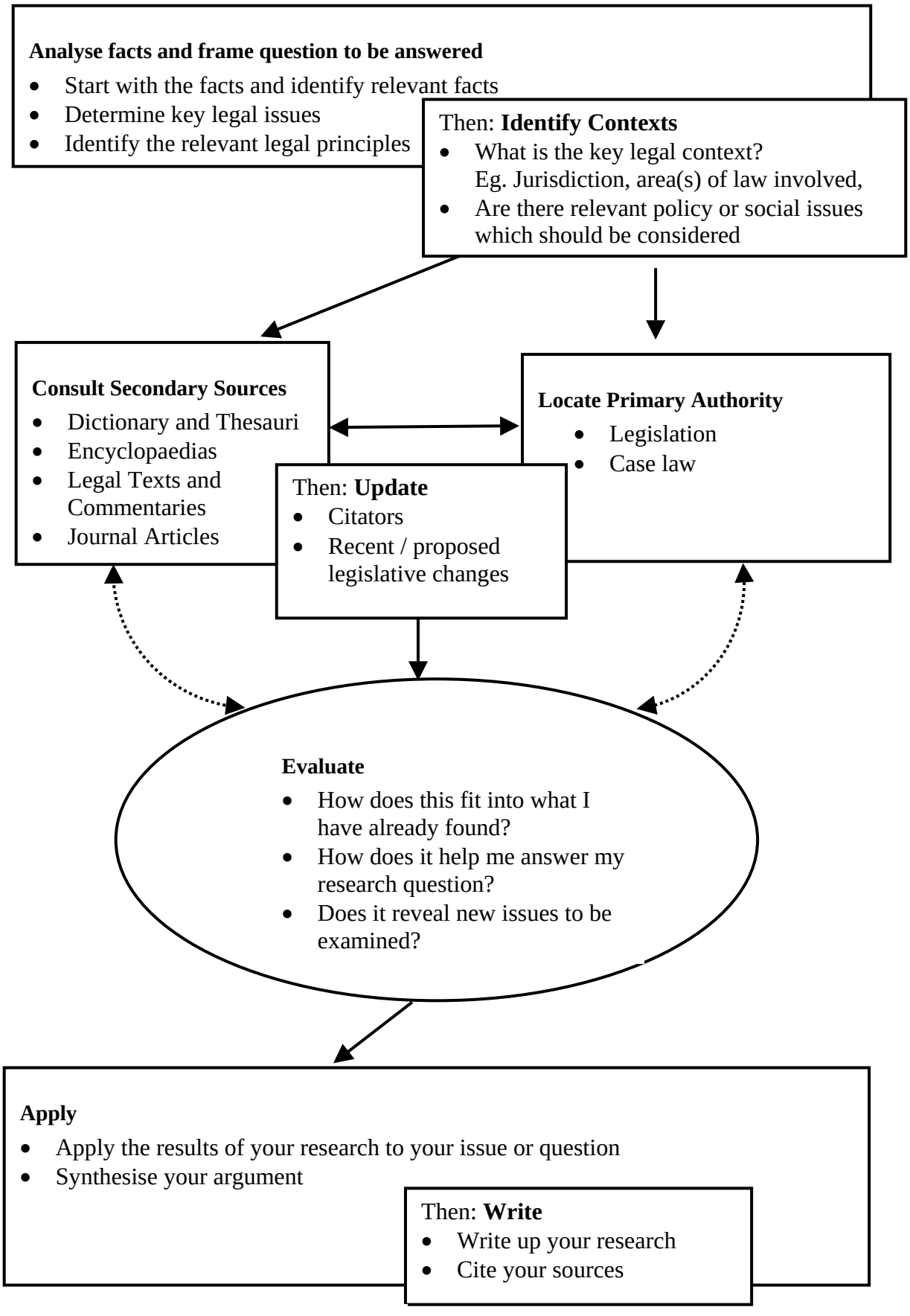
There are four main conceptual frameworks, each designed to help the student understand: the process of legal research; what they are being asked to research; where to start their research; and the identification of appropriate legal information resources to resolve the legal issue.

Structural Framework of the Legal Research Process

This framework details the complete legal research process. This model goes further than that identified by the Wrens[320] extending the process to its logical conclusion of presenting the research in the form required. Although the framework presents the process in a linear form, it is more complex, with the requirement to move between primary and secondary sources, to up-date the information found, and to evaluate results continuously.

[320] See Wren and Wren, above n 232.

Figure 1: *Structural Framework of the Legal Research Process*



Framework for Analysing the Issue or Question to be Answered

This framework provides an essential foundation for all research. It employs familiar interrogative words as prompts for ascertaining the parameters of the research.[321]

What You Need to Know	Ask Yourself	Prompts
Who?	Who is our client? What parties or legal entities are involved?	Are you acting for the plaintiff / defendant etc?
What?	What are the relevant facts? What areas of law are involved? What other relevant contexts are involved?	Identify keywords, synonyms, alternative spellings Familiar area of law, or background information required? Environmental, political, social, policy issues
Where?	Which jurisdiction?	Unitary state or are there federal / state issues to be considered? Are there any conflict of laws issues?
When?	Is time period important in this problem? Is there a time limit on the scope of my research? When is my research required?	Particular time of day or year? Issues of accessibility of research materials
Why?	Why am I doing this research? What is the objective?	Appropriateness of research material
How?	How should the research be presented: verbal, memo, opinion etc? Are print-outs acceptable? How long am I able to spend on this research (costs limit of file)?	Appropriate writing format and writing style. Plagiarism and copyright issues

Figure 2: *Framework for Analysing the Issue or Question to be Answered*

[321] Variations of this framework have been in use for a number of years – their original genesis unknown. This is an adaptation of Paul Callister's table *Applying Familiar Paradigm to Legal Research*. See Callister, above n 242, 36.

Framework for Identifying Starting Point of Research

This framework assists in identifying the appropriate starting point of the required research by classifying the legal issue according to whether the student knows specifically what is being asked for.[322] Some legal problems may identify legislative or case authority; others may merely comprise a recitation of facts. Where specific information is provided which allows students readily to identify what they need to find they can either go directly to the relevant primary or secondary source. The matrix directs the student to assess whether they are able to discern from the legal problem itself where to start their research. Depending on the response, the student is directed to the appropriate starting point.

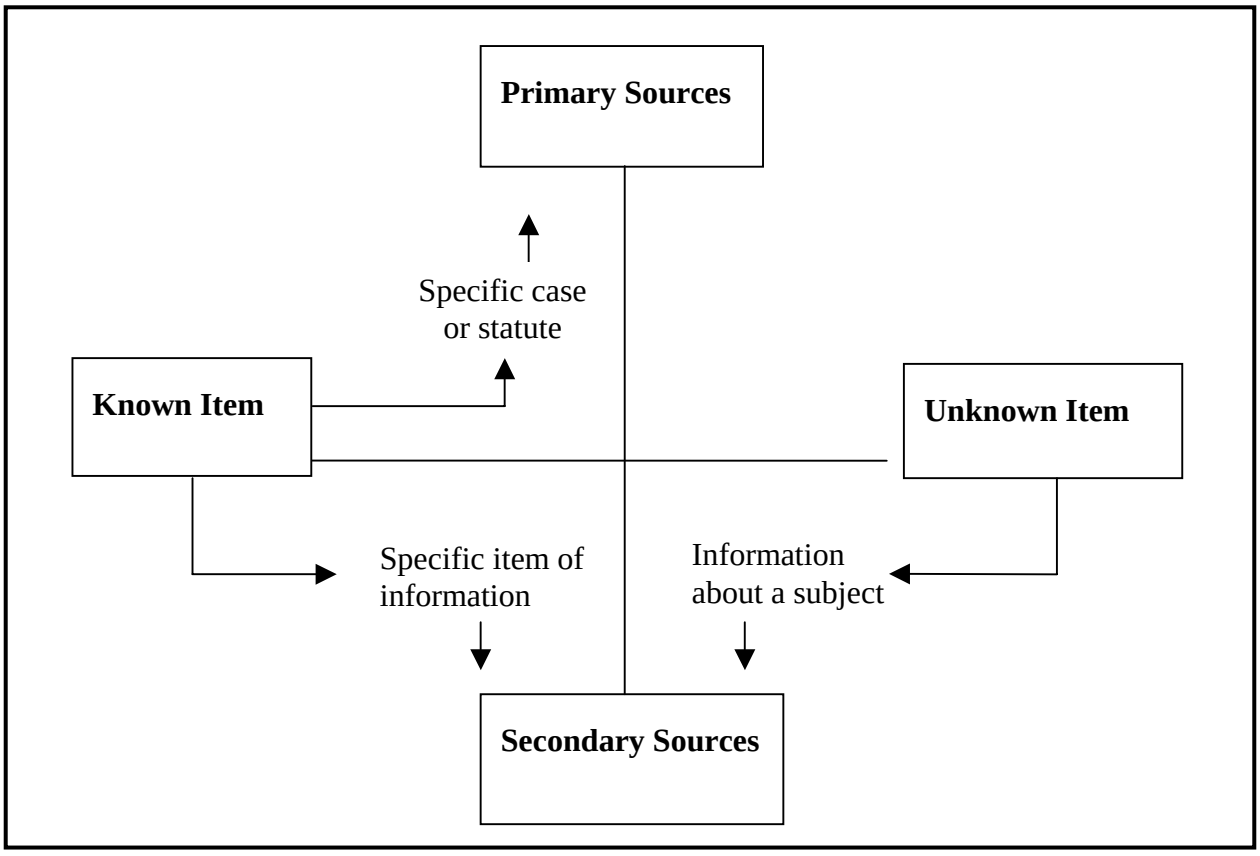


Figure 3: *Framework for Identifying Starting Point of Research*

[322] This framework was developed from an idea taken from Callister, ibid, 37.

Framework for Identifying and Selecting Appropriate Legal Information Sources

This is an associative framework designed to enable students to recognise similarities between problems they know how to solve and those they are being asked to solve.[323] Beginning with the basic division of legal information into primary and secondary sources, this framework helps students deconstruct legal information into manageable and recognisable components. They are then provided with a guide as to the appropriate use of each of these components. To ensure that correct identification of a resource has taken place, they are referred to an example of a legal issue or question where a particular source may be used. When faced with answering a legal research question, students, are able to call on their prior knowledge, and through association, select the most appropriate sources to answer the question. The framework is not a blueprint which provides the answer; rather it is a mental map which offers guidance, providing a illustrative pathway on the legal research journey.

[323] This framework was developed from one proposed by Callister, above n. 242.

Conceptual Framework for Identifying and Selecting Appropriate Legal Information Sources				
Source	**Types**		**Use to find**	**Examples**
Primary	**Legislation**	Statutes / Acts	The name of the piece of legislation, or section of an Act etc. You need to find binding authority	You need to find the section in a statute that says ignorance of the law is no excuse when a person is charged with an offence
		Regulations (Secondary Legislation)		You need to find the High Court Rules
		Rules, codes etc (Tertiary Legislation)		You need to find the Land Transport Safety Rules
	Judicial Decisions	Reported case law	The citation for a case, or parties' names	You need to find *Hosking v Runting*
		Unreported case law		
		Tribunal / Authority decisions		
Secondary	**Finding Tools**	Digests & Abridgements	Case law on a particular subject	You need to find cases which discuss the effect of a discovery of gold on a pastoral lease
		Indexes - Case Law	Reported cases, cited cases, cases by subject, cited legislation	You need to find in which volume of the NZLRs your case has been reported
		Indexes - Journals	Citation to journal articles on legal issues	You need to find citations to legal journal articles on majority verdicts in jury trials
		Indexes - Legislation	Legislation	You need to find the New Zealand Bill of Rights Act
		Legal Dictionaries	The meanings of words or phrases	You need to find the meaning of *habeas corpus*
		Citators	Legal precedents or check that your case is still good law	You need to find how the *ratio* in *Lange v Atkinson* [1997] 2 NZLR 22 has been treated in later case law
	Explanatory Tools	Encyclopaedias	A concise explanation of subject; reference to legal authority	You need to find out about Coroners in New Zealand law
		Treatises / texts	Scholarly in-depth treatment of a subject	You need to learn about the law of contracts in New Zealand
		Commentaries	Explanatory treatment of legislation	You need to find out how s25 of the Crimes Act has been interpreted in case law
		Academic Journals	Scholarly writing on a subject, generally more current than texts	You are researching the defence of superior orders
		Magazines / Periodicals	Recent information on legal issues	You need recent articles on the decriminalisation of cannabis
		Newspapers	Current information, public opinion on a subject	You need to find out current public opinion on a prohibition on parental smacking of children

Figure 4: *Framework for Identifying and Selecting Appropriate Legal Information Sources*

Relational Framework of Proposed Methodology

As stated earlier, this methodology integrates features of the currently accepted methodologies used to teach legal research skills. It is possible to make a direct correlation between the legal research process method and the information literacy model. These are depicted in the relational table shown at Figure 5. The table also graphically demonstrates the inadequacies of the bibliographic model as the sole methodology for teaching legal research skills. This correlation does not appear to have been previously drawn. Where legal research skills classes solely concentrate on finding and using legal information sources they are doomed to fail; the teachers have unwittingly undermined the effectiveness of their programmes. Students are deprived of learning the other essential components inherent in the concept of legal research skills and are consequently unable to perform the complete legal research process.

Legal Research Process	**Information Literacy Model**	**Bibliographic Model**
Analyse facts and frame question to be answered	Recognises need for information Determines the extent of information needed	
Identify context		
Locate and consult primary and secondary sources	Accesses information efficiently	Locate and use legal information
Update		
Evaluate	Critically evaluates information	
Apply	Classifies, stores, manipulates and redrafts information collected or generated Incorporates selected information into knowledge base Uses information effectively, to create new knowledge, solves problems and makes decisions	
Write	Uses information in a principled manner	

Figure 5: *Relational Framework of Methodologies*

Synthesising aspects from all current methodologies provides an experiential basis for current methodology development. All the reasons offered why legal research programmes have failed, the comments and advice offered by law librarians, legal academics, students and members of the profession have provided guidance and illuminated the path.

Grounding legal research programmes in the 'real' world, with practical legal issues or questions, provides context for students; embedding the process of legal research as their learning framework signals its fundamental importance; providing conceptual frameworks for dealing with legal research empowers students to use prior knowledge to solve unfamiliar research issues; integrating legal information literacy principles ensures students are provided with the requisite skills and abilities.

Teaching Modes

The vital importance of the foundation skills comprising Legal Research 1 dictates that these classes should be taught in small groups, preferably not larger than 16 students. This is very resource-intensive in the highly resource-competitive law school environment, but must be viewed as a solid investment in scholarship. Small groups provide a safe hands-on learning environment and allow for individual teacher-student interaction. Concomitantly, there are the added benefits that encouraged student participation cultivates communication skills and collaborative learning styles which are now an integral part of the law firm 'team' approach.

The teaching of Legal Research 1 in small groups inevitably means that the numbers of unique classes are limited; the extent of the content able to be taught will be dictated by available teaching resources. Practical considerations, among them course content and time, mean that other efficient teaching modes must also be employed; the learning of

database functionality and searching techniques are ideally suited to online learning, and current learning management systems allow for online assessment of online learning.

Realistic resource availability will probably dictate that Legal Research 2 be taught lecture style. Larger classes generally preclude the use of hands-on learning, so particular attention must be paid to the quality of visual aids employed. Maintaining student attention and focus is particularly difficult in legal research classes, so all learning styles must be catered for through the use of visual, oral and auditory stimuli. Again, the use of online learning components within the course provides flexibility and individualises learning.

The topics within Legal Research 2,[324] apart from the final two are designed to be taught over a series of classes, so in-depth coverage is possible, with active learning, feedback and iteration part of the learning process. It is essential that the element of active learning is introduced, even if the class is taught lecture-style to large groups.[325]

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[324] Set out below.

[325] See Post Script in Chapter VII. This method is feasible and being employed at the University of Auckland law school.

Model Programme: Legal Research 1

Course Topic	Legal Research Skills	Resources	Learning Objectives
Legal Language and Legal Information	Understanding and knowledge of: • Legal language, its use and complexities • Structure of legal information, differences from other types of information • Varieties of legal information sources • Use of basic legal reference tools, legal dictionary and encyclopedia	*New Zealand Legal Dictionary* *Laws of New Zealand*	On completion of the course the student will be able to: • Outline the complex nature of legal language • Describe how our law is organised • Explain how NZ law is structured • Use the Moys classification system • Use the NZ legal dictionary to find the meaning of words or phrases • Use the *Laws of New Zealand* in both print and electronic formats • Distinguish between primary and secondary sources of law
NZ Case Law	Understanding and knowledge of: • The elements of a reported case • Citation elements, how to decipher them • Correct citation formats for case law, both reported and unreported • Differences between reported and unreported cases • Locating case law in either print or electronic format	*New Zealand Law Reports* Other NZ law reporting series NZ case law databases Citation dictionaries	On completion of the course the student will be able to: • Identify and explain the structural components of a reported case • Identify the different elements of a case citation • Understand and use correct citation for main NZ law reporting series • Understand and decipher abbreviations for NZ law reporting series • Distinguish between official and unofficial law reports • Distinguish between reported and unreported case citations • Find case law, by party names or citation • Find case law by subject using electronic databases • Locate cases when citation is incorrect or incomplete • Find full-text NZ case law using *Briefcase*, *LinxPlus* and the electronic NZLRs

Course Topic	Legal Research Skills	Resources	Learning Objectives
NZ Legislation	Understanding and knowledge of: • The legislative process by which bills become statutes • Different elements of a statute • Statutes in both print and electronic formats	NZ Statutes Wall charts *Tables of New Zealand Acts and Ordinances* NZ legislative databases	On completion of the course the student will be able to: • Explain the structure of legislative information • Describe the process by which a bill becomes a statute • Identify at which stage of the process a bill has reached at a given point in time • Use statutes • Distinguish between compiled acts, reprinted acts and annual acts • Find acts using wall charts, *Tables of New Zealand Acts and Ordinances* and electronic databases • Determine whether an act is in force
NZ Secondary Sources	Understanding and knowledge of: • Differences in types of secondary materials • Appropriate selection of secondary source material • Differences between indexing and fulltext journals databases • Locating full text of a NZ legal journal article • Successful search strategies	Different types of legal journals Extracts from newspapers, journals and books NZ legal journals databases	On completion of the course the student will be able to: • Explain the different types of secondary sources • Select the appropriate type of secondary source to match information need • Find NZ legal journal articles from their abbreviated citation format • Differentiate between NZ indexing and full-text journals databases • Find journal articles on a particular topic using *LinxPlus* and *AGIS Plus Text* • Find NZ legal journal articles by a particular author • Find NZ legal journal articles discussing a particular case • Use appropriate search strategies in databases to find journal articles

Course Topic	Legal Research Skills	Resources	Learning Objectives
Legal Research	Understanding and knowledge of: • The legal research process	*Faculty of Law Legal Writing Style Guide*	On completion of the course the student will be able to: • Explain the legal research process

Model Programme: Legal Research 2

Course Topic	Legal Research Skills	Resources	Learning Objectives
Legal Research Process	Understanding and knowledge of: • The legal research process • Using conceptual frameworks • Using information in a principled and legal manner • Using research logs to document research process		On completion of the course the student will be able to: • Explain the legal research process • Analyse the problem, distinguishing between factual and legal issues • Determine the legal question to be answered • Know where to start with the research • Use conceptual frameworks to assist with research • Devise competent search strategies • Evaluate information found • Explain the issues for researchers concerning plagiarism and copyright • Know when and how to cite from sources • Demonstrate correct referencing techniques for footnotes and bibliographies • Maintain a fully documented research log

Course Topic	Legal Research Skills	Resources	Learning Objectives
NZ Legislation	Understanding and knowledge of: • Appropriate selection from available statutory sources • The legislative process • Historical statute publications • Amendments to statutes • Updating statutory information • Extrinsic resources which aid interpretation • Conducting legislative histories • Finding delegated legislation • Parliamentary publications • Current awareness resources available for legislative information	NZ Statutes *Hansard* Wall charts *Tables of New Zealand Acts and Ordinances* NZ legislative databases	On completion of the course the student will be able to: • Differentiate between the range of statutory sources available and identify the most appropriate statutory source to use • Detail the legislative process • Discuss the historical publication of statutes in NZ • Explain ways in which amendments are made to statutes • Identify and use print and electronic sources available to update statutes • Identify extrinsic resources available to assist with legislative histories and statutory intention • Identify and locate statutory regulations • Identify and locate tertiary legislation • Identify and explain the function of parliamentary debates, select committee reports, supplementary order papers, *NZ Gazette*, Journals of the House of Representatives and Appendices to the Journal, *Parliamentary Bulletin*, Standing Orders • Locate and use the Clerk of the House's website • Locate and use parliamentary debates, both print and electronic versions • Update legislative information

Course Topic	Legal Research Skills	Resources	Learning Objectives
Case Law	Understanding and knowledge of: • Historical NZ law reporting series • Authorised law reporting series in common law jurisdictions • Medium neutral citations • Parallel citations • Using indexes to law reporting series • Updating case law • Finding commentary on cases • Finding cases with judicial consideration of legislation • Finding leading cases • Current awareness resources	*Gazette Law Reports* NZLRs Digests and *Abridgement* Indexes to law reports Citators *The Capital Letter* Case law databases	On completion of the course the student will be able to: • Identify and locate historical NZ case law • Identify authorized / official law reporting series for five main common law jurisidctions • Recognise and decipher medium neutral citations • Locate reported case law sourced from a medium neutral citation • Discuss parallel citations and know when it is appropriate to use them • Identify NZ digests and the *Abridgement* and understand when it is appropriate to use them • Explain the function of law reports indexes and know how to use them • Identify and use the relevant citators for the five main common law jurisdictions • Locate commentary on case law using looseleaf services or their electronic equivalents • Locate cases with judicial consideration of legislative provisions • Locate leading cases on a particular subject • Know how to keep up to date with new case law

Course Topic	Legal Research Skills	Resources	Learning Objectives
Secondary Sources	Understanding and knowledge of: • National bibliographic database • Inter-library loans • Hierarchy of legal journals • Distinguishing between indexing and full-text journal databases • Multi-jurisdictional legal journals indexes • Full-text legal journals databases • Electronic newspapers • Finding articles in non-legal journals • Law Commission reports • Theses and dissertations	*Te Puna* Legal journals Electronic legal journals databases Electronic newspapers *Index New Zealand* Law Commission reports	On completion of the course the student will be able to: • Use the national bibliographic database to find holdings in other libraries • Request material from other libraries • Explain the hierarchy of journals in terms of appropriateness of use for research purposes • Differentiate between indexing and full-text journal databases • Explain the important of using indexing databases • Differentiate between choice of indexing databases • Locate the full-text of a journal article • Understand difference between PDF versions and scanned versions • Locate newspaper articles • Use *Index New Zealand* to locate articles in non-legal journals • Locate theses and dissertations • Understand importance of and locate Law Commission reports from the five major common law jurisdictions

Course Topic	Legal Research Skills	Resources	Learning Objectives
Multi-jurisdictional research	For the jurisdictions of Australia, Canada, the United Kingdom and the United States, understanding and knowledge of: • Constitutional frameworks • Hierarchy of superior courts • Law reporting series and their citations • Updating case law • Legislative process • Finding statutes and their citation • Essential legal research tools	Law reports Citators Statutes Dictionaries Encyclopaedias Websites Electronic databases	On completion of the course, for the jurisdictions of Australia, Canada, the United Kingdom and the United States, the student will be able to: • Understand and outline constitutional frameworks • Recognise constitutional terminology specific to each jurisdiction • Explain the hierarchy of the superior courts and understand the lines of appeal • Identify authorized / official law reporting series • Locate case law in print and electronic formats • Cite case law correctly • Identify and use relevant citators • Outline the legislative process • Locate statutes using parliamentary websites or electronic databases, as appropriate • Cite statutes correctly • Identify and use correct legal dictionaries • Identify and use correct legal encyclopaedias • Locate websites providing more information about relevant jurisdictional sources

Course Topic	Legal Research Skills	Resources	Learning Objectives
Researching in Law Firms	Understanding and knowledge of: • Imperatives driving research in law firms • Alternative sources for locating primary sources • Differences between commercial database providers and free providers • Variety of non-legal resources used in law firms	Almanacs Directories NZ Government websites Web resources	On completion of the course the student will be able to: • Differentiate between academic legal research and practical legal research • Plan a search strategy to suit the information resources available • Select suitable alternatives for primary source research • Understand the differences between commercial and 'free' databases • Understand when to use, and locate, almanacs and directories • Know where to find company and other commercial information
Evaluating Websites	Understanding and knowledge of: • Web published information • Evaluating websites	Internet	On completion of the course the student will be able to: • Differentiate between different types of information available on WWW • Evaluate websites in terms of credibility, currency, accuracy and bias • Recognise domains likely to provide information of an academic, scholarly or reliable nature

Assessment

Assessment of students' progress in learning legal research skills must be continuous and structured and competency in skills must be practically demonstrated. These courses are ideal for internal assessment rather than formal examination-style assessment. Particularly at Legal Research 1 level students should be presented with practical in-class exercises which allow for peer-to-peer learning, and teacher-guided feedback on those exercises, so students have the opportunity to practise and reinforce their learning. For both courses, after-class exercises incorporating all elements of the lesson or course topic should be required to further reinforce learning. It is essential that these after-class exercises be marked and returned with detailed feedback. In this manner, both students and teacher are able to assess the success of the learning and to enable remedial action to be taken.

Where online self-paced learning components are incorporated into courses, these should be followed by some form of online assessment. Each skill learnt must be practised and competency demonstrated.

All coursework, including the after-class exercises and any online assessment, should form part of the final assessment mark. Not only is this a highly motivational factor for students, but it also enables a more realistic and fair assessment of the students' learning throughout the course.

Final assessment for the course should in part be based on practical application of the skills learnt in the form of completion of a piece of research or a detailed research trail or log, incorporating the students' own evaluation and reflection on their research process.

In this way students are called on to demonstrate the variety of legal skills taught. The most valuable form of assessment for Legal Research 2 occurs where the research log is directly tied to a research paper which must be completed for a substantive law subject. In this instance the Legal Research lecturer should partner with the academics teaching in the other substantive law courses requiring research papers, to discuss effective strategies and desired research outcomes.

Where possible both courses should be graded in line with other academic courses. A pass / fail form of assessment provides little motivation for students to do more than the bare minimum to pass the course. Where pass / fail is the only form of assessment mark available then a high pass threshold of 80% is recommended. Personal experience has shown that this is not an unreasonable pass threshold and that it operates as a motivational factor for students.

Legal Writing Skills

A discussion of legal writing skills is strictly outside the parameters of a consideration of legal research skills and this section must be regarded as beyond the scope of the main thesis. However, the reduction of researched argument into legal writing is the final step in the legal research process; legal writing embodies the evidence of competence in the latter. The ability to construct sound and compelling arguments based on authority is the sine qua non of a lawyer's stock-in-trade. Legal research skills courses are not the right environment in which to hone legal writing skills. These belong squarely inside the substantive law courses. The students are then in a position to use the knowledge gained within lectures to found appropriate legal arguments for legal problems presented within that subject area.

The quantity, style and level of legal writing required within the law curriculum vary markedly in the five New Zealand law schools. All the law schools require some legal writing, but for some it is only at Honours level that any substantive legal writing is required. Students need to be proficient in a variety of different legal writing styles: academic opinion writing, case note writing, academic research paper-style writing, file note writing, letter writing, law firm opinion writing, pleadings, document drafting and such like. Many law students are not taught how to write; many lecturers will provide direction as to how a piece of written work should be approached, but few, outside the context of a dissertation or formal research paper, will look at drafts, assist with style, language choice, or argument construction or generally guide the students through the legal writing process.

One solution to teaching legal writing skills is to identify appropriate legal writing styles for the different core substantive courses within the law degree. For example the drafting of a basic form of agreement could be taught within Contract, case note writing could be taught within Criminal Law, opinion writing could be taught within Public Law. Whichever legal writing style was designated for a particular course, that should be the only form of writing expected from the students within that class or its tutorials. Written work should be submitted, corrected, sent back for redrafting and re-submission. In this manner, students are provided with the opportunity to learn and hone requisite legal writing styles.

A concerted approach to teaching legal writing skills will have significant benefits for academics, students and the legal profession. Allied with the mainstreaming of legal research skills, the teaching of legal writing skills will create a culture of skills

competence which will ultimately translate into better academic outcomes. Lecturers will be presented with more appropriate written work, students gain the confidence and competence they require, and the profession will not have to train new clerks in basic legal writing skills.

Summary

The varying landscape of the law curricula within New Zealand law schoolssuggests the need for a pedagogy and a methodology for teaching legal research skills that is flexible and adaptive. The Model Programme seeks to redress the inherent deficiencies that have been shown to exist in many other legal research skills courses. The legal research process itself forms the framework for teaching and learning, and the acquisition of skills is both structured and incremental. This is achieved through the development of two separate academic courses, Legal Research 1 which instills the foundational skills within the New Zealand jurisdiction, and Legal Research 2 which expands the level and range of skills within a multi-jurisdictional context. Conceptual frameworks provide students with an understanding of the legal research process, knowledge of where to start their research, and the identification of appropriate legal information resources to resolve legal issues. Legal research is, by its nature, complex, multi-faceted and non-intuitive; the skills need to be learnt and the students need to be able to apply those skills to solve any type of legal problem.

Chapter VII: Conclusion and Post-Script

The effective and sustainable mainstreaming of legal research skills within the curriculum depends on recognition being taken of the lessons of the previous three decades across the main common law jurisdictions.

The move from an apprenticeship model of learning the law and concomitant legal skills to an academy model of mainly theoretical instruction on substantive law has led to a fundamental division between the practising profession and the academy over the content of the law curriculum. Internal pressures exerted on law schools by the academy itself, legal academics, and the student body constantly compete against the external pressures from both government and the profession. The resultant curriculum is, at best, a compromise between statutory requirements, professional demands, institutional standards, academic and student expectations and political dictates.

Although there is largely agreement in law schools that legal research skills should be part of the law curriculum, there has been little consensus as to timing, status, content, methodology and ownership of such courses. This lack of agreement hints at a more fundamental problem which lies at the core of curriculum decisions: namely, the lack of willingness to grapple seriously with the purpose and aims of legal education provided by law schools. The spectre of the taint 'trade school' hovers close. Government and profession-based reviews of legal education in New Zealand, Australia, Canada, the

United Kingdom and the United States have attempted to provide solutions with largely indifferent results.

Where legal research courses have been provided, the results have also been generally slated as ineffective. The legal literature of last quarter of a century has witnessed a groundswell of discontent with the provision (or lack) of legal research programmes within the law curricula across the common law world. Many reasons for this ineffectiveness have been proffered and these may be distilled broadly into legitimacy and pedagogical reasons. Perhaps the most fundamental issue has been the lack of an agreed definition of the concept legal research skills.

Legal research skills are highly complex: they are so much more than merely finding legal information. In fact, they comprise a number of discrete skill sets: the ability to analyse critically the legal issue or problem at hand; the ability to situate the legal issue within its relevant contexts be they jurisdictional, social, environmental or political; the ability to identify, locate, evaluate and update appropriate information sources; the ability to apply the information found to the legal issue and to synthesise a solid legal argument; and the ability to communicate the argument using information found in a principled manner. Piecemeal training in some of these skills has been shown to be an insufficient and ineffective method of teaching the whole skill set.

Legal research skills must be accepted by law schools as a core component within a law curriculum. They must be taught in way that is both pedagogically and methodologically sound. Being skills, they require demonstration, practice, feedback and frequent iteration.

Empirical research carried out within three stakeholder populations, New Zealand legal academics, summer clerks working in law firms, and law library managers of national law firms, provided confirmatory data that legal research skills should be mainstreamed into the law curriculum. Whilst there was some reluctance evidenced by academics to be involved in the teaching and learning of legal research skills, the responses from summer clerks and the law library managers were unequivocal about the need for these skills to be taught in a variety of modes: separate dedicated courses within the curriculum and combined into substantive law courses.

This thesis provides a model programme for the mainstreaming of legal research skills in a New Zealand law curriculum. The programme, based on the legal research process itself and grounded in information literacy principles, comprises separate semester-length core academic courses across two years of the curriculum: Legal Research 1 at the time of entry into Part II of the LLB (where students are studying Contracts, Torts, Criminal Law, and Public Law) and Legal Research 2 when students are studying in Part III of the degree, completing the remainder of their core courses. Additionally, students are provided with a number of conceptual frameworks which enable them to understand: the legal research process; what they are being asked to research; where to start their research; and how to identify appropriate legal information resources to resolve the legal issue. Within this holistic context students are empowered to transfer their knowledge of legal research carried out successfully within known areas of the law to solve legal problems in unknown subject areas.

Empirical research for this thesis reveals that New Zealand law schools are not currently meeting their responsibilities in providing adequate teaching and learning in legal

research skills within the law curriculum. The Model Programme provides a New Zealand solution, forged in a crucible of international, local and personal experience.

PostScript

The programme as outlined in Chapter VI has been developed over a number of years and tested at the University of Auckland law school throughout the time of writing this thesis. In a curriculum review in 2004-5 the Faculty of Law, in consultation with the student body, agreed to the mainstreaming of legal research skills within the law curriculum beginning in 2006. The Model Programme, as outlined, in Legal Research 1 and Legal Research 2, is currently being implemented.

Appendices

Appendix 1 – Legal Skills Survey. New Zealand Legal Academics

Appendix 2 – Legal Skills Survey. Summer Law Clerks 2003-2004

Appendix 3 – Legal Skills Survey. National Law Firm Library Managers

Appendix 1

Legal Research Skills Survey

This survey explores attitudes of legal academics to the teaching of legal research skills within the law curriculum. It is being administered to all legal academics in the five law schools in New Zealand. The survey is completely anonymous, and no information that identifies individual academics is being collected. Thank you for taking the time to complete and return it.

Legal Research Skills include the ability to be able to discern the essence of the question or issue to be resolved and the ability to identify, locate, evaluate and use appropriate legal information resources to satisfy the information need or requirement.

Please tick in the appropriate box

SECTION ONE : Demographics

1. How long have you been an academic in a law school?
   - ☐ fewer than 6 years
   - ☐ 6 -10 years
   - ☐ 11 – 15 years
   - ☐ more than 15 years

2. What position do you currently hold?
   - ☐ Lecturer
   - ☐ Senior lecturer
   - ☐ Associate Professor
   - ☐ Professor
   - ☐ Other

3. What is your gender?
   - ☐ Male
   - ☐ Female

4. What age range do you fit into?
   - ☐ under 35
   - ☐ 35-44
   - ☐ 45-54
   - ☐ 55 or over

5. Do you have experience in the practice of law either full-time or part-time?
   - ☐ Yes

- ☐ No

6. If your answer to Question 5 was "Yes", please advise the duration of your experience in practice
   - ☐ fewer than 6 years
   - ☐ 6-10 years
   - ☐ 11-15 years
   - ☐ more than 15 years

7. What qualifications do you hold?
   - ☐ LLB
   - ☐ Masters degree
   - ☐ Doctorate
   - ☐ Other qualifications (please list) ……..

SECTION TWO : Personal Attitudes

8. Should legal research skills be taught as part of the law curriculum?
   - ☐ Yes
   - ☐ No

If your answer to question 8 was "No" please do not continue with this survey, but return it in the attached envelope. Thank you for your participation!

If your answer to question 8 was "Yes", please continue….

9. Please rate legal research as a skill that all law students should learn
   - ☐ Not important
   - ☐ Somewhat important
   - ☐ Important
   - ☐ Very important
   - ☐ Essential

10. Is legal research as important a skill for law students to learn as legal writing?
    - ☐ Much less important
    - ☐ Somewhat less important
    - ☐ Both equally important
    - ☐ Somewhat more important
    - ☐ Much more important

11. If your law school has a Legal Research and Writing Course, or similar, do you consider it covers adequately:

11.1 The basic legal research skills that law students require?
   - ☐ Yes

- ☐ No
- ☐ Don't know

11.2 All legal research skills that law students require?

- ☐ Yes
- ☐ No
- ☐ Don't know

12. If you consider your law school's present Legal Research and Writing course does not cover all the legal research skills required by law students, how would you like to see legal research skills taught?

……

……

……..……

13. Do you consider that law students can acquire competency in legal research skills without targeted formal training in such skills?

- ☐ Yes
- ☐ No

14. If your answer to question 13 was "No", should law students be taught legal research skills?

- ☐ In a separate formal course
- ☐ Integrated into different law subjects

15. At which stage of the legal curriculum should legal research skills be taught?

- ☐ Part I (foundation year)
- ☐ Part II (first full year of law)
- ☐ Part III (second full year of law)
- ☐ Every Part
- ☐ More than one Part, but not all Parts – specify (eg 1 and II)

16. Do you actively integrate the teaching of any legal research skills in the courses you teach?

- ☐ Yes
- ☐ No

17. If your answer to question 16 was "Yes" please briefly outline how you do this

……

……

……

……

17.1 If you are able to indicate which courses, please do so

……

……

18. Are you able directly to measure the success of any legal research skills which you integrate into your teaching?

- ☐ Yes
- ☐ No

19. Do you allocate a set percentage of marks for quality of legal research when marking written assignments, opinions, research papers or theses?0

- ☐ Yes
- ☐ No

20. If your answer to question 19 was "Yes" what percentage do you normally allocate?
…….%

21. If your answer to question 19 was "No" do you still take quality of legal research into account? If so, how?

……

……

22. Who do you think should teach legal research skills within the law curriculum?

- ☐ Academics
- ☐ Law Librarians
- ☐ Academics and Law Librarians jointly
- ☐ Others (please specify) …….

23. Do you currently feel competent to teach the range of legal research skills necessary to cover both print and electronic sources?

- ☐ Yes
- ☐ No
- ☐ Unsure

24. If your answer to question 23 was "No" or "Unsure", what is needed to assist you to achieve such competency?

……

……

……

……

25. Any other comments you would like to make in respect of teaching legal research skills

……

……

……

……

Thank you for your time spent in completing this survey. Please return it to me in the attached envelope.

Appendix 2

Legal Research Skills Survey

This survey explores attitudes of summer law clerks within national law firms, to the teaching of legal research skills within the law curriculum and examines their experiences of undertaking legal research within a practical professional environment. It is being administered to all summer law clerks working in national firms in New Zealand. The survey is completely anonymous, and no information that identifies individual law clerks is being collected. Thank you for taking the time to complete and return it.

Legal Research Skills include the ability to be able to discern the essence of the question or issue to be resolved and the ability to identify, locate, evaluate and use appropriate legal information resources to satisfy the information need or requirement.

Please tick in the appropriate box

SECTION ONE : Demographics

1. In which year of your law degree were you at the start of your summer clerkship?

- ☐ 2nd year
- ☐ 3rd year
- ☐ 4th year
- ☐ Other, please state ……..

2. Are you doing a conjoint degree?

- ☐ Yes
- ☐ No

3. If your answer to question 2 is "yes" please indicate your conjoint degree

- ☐ Arts
- ☐ Commerce / Business
- ☐ Engineering
- ☐ Science
- ☐ Health Sciences / Medicine
- ☐ Other, please state ……

4. What is your gender?

- ☐ Female
- ☐ Male

5. What age range do you fit into?
   - ☐ under 25
   - ☐ 25-30
   - ☐ 30-45
   - ☐ 45 or over

6. Have you been employed in a law library?
   - ☐ Yes
   - ☐ No

7. Have you been employed as a research assistant to an academic or law professional?
   - ☐ Yes
   - ☐ No

8. What other qualifications do you hold? Please state……

SECTION TWO : Personal Attitudes

9. Should legal research skills be taught as part of the law curriculum?
   - ☐ Yes
   - ☐ No

10. Please rate legal research as a skill that all law students should learn
   - ☐ Not important
   - ☐ Somewhat important
   - ☐ Important
   - ☐ Very important
   - ☐ Essential

11. Is legal research as important a skill for law students to learn as legal writing?
   - ☐ Much less important
   - ☐ Somewhat less important
   - ☐ Both equally important
   - ☐ Somewhat more important
   - ☐ Much more important

12. If your law school has a Legal Research and Writing Course, or similar, do you consider it covers adequately:

12.1 The basic legal research skills that law students require?
   - ☐ Yes
   - ☐ No
   - ☐ Don't know

12.2 All legal research skills that law students require?
   - ☐ Yes
   - ☐ No
   - ☐ Don't know

13. If you consider your law school's present Legal Research and Writing course does not cover all the legal research skills required by law students, how would you like to see legal research skills taught?

. ……

…….

……..……

14. Do you consider that law students can acquire competency in legal research skills without targeted formal training in such skills?
    - ☐ Yes
    - ☐ No

15. If your answer to question 13 was "No", should law students be taught legal research skills
    - ☐ In a separate formal course
    - ☐ Integrated into different law subjects
    - ☐ Both

16. At which stage of the legal curriculum should legal research skills be taught?
    - ☐ Part I (foundation year)
    - ☐ Part II (first full year of law)
    - ☐ Part III (second full year of law)
    - ☐ Every Part
    - ☐ More than one Part, but not all Parts – specify (eg 1 and II)……..

17. Who do you think should teach legal research skills within the law curriculum?
    - ☐ Academics
    - ☐ Law Librarians
    - ☐ Academics and Law Librarians jointly
    - ☐ Others (please specify) …….

18. Would you like to have specific marks allocated in your written assignments / papers for your legal research at law school?
    - ☐ Yes
    - ☐ No

SECTION THREE : Experiences

19. When you began your summer clerkship did you feel competent to undertake any research you may be asked to do?
    - ☐ Yes
    - ☐ No

20. Did your attitude change during your clerkship (i.e. did you feel less confident about your legal research skills as time went on)?
    - ☐ Yes

☐ No

21. If your answer to question 20 was "yes" what caused your change in attitude?
    - ☐ Lack of knowledge of electronic resources
    - ☐ Lack of knowledge of print material
    - ☐ The process of "how" to research
    - ☐ Confusion about where to start
    - ☐ Dependence on electronic media, unable to select print alternative
    - ☐ Time limitations for research
    - ☐ Costs implications of research time
    - ☐ Other, please state ……..

…….

…….

22. Did your firm's library provide legal research training at the beginning of your clerkship?
    - ☐ Yes
    - ☐ No

23. Did you feel that you learnt anything new in the training offered by the law firm library that you did not have the opportunity to learn at law school?
    - ☐ Yes
    - ☐ No

24. If your answer to question 23 was "yes" please state what new aspects of legal research you learned

……

……

……

25. Are there any aspects of legal research that you would like to see added to your law school curriculum?

……

……

……

26. Any other comments you would like to make in respect of learning and applying legal research skills

……

……

……

Thank you for your time spent in completing this survey. Please return it to me in the attached envelope.

Appendix 3

Legal Research Skills Survey

This survey explores attitudes of national law firm library managers to the levels of knowledge and skills to undertake successful legal research evidenced by summer law clerks. It is being administered to all national law firm library managers, and to legal information consultants. The survey is completely anonymous, and no information that identifies individual library managers or consultants is being collected. Thank you for taking the time to complete and return it.

Legal Research Skills include the ability to be able to discern the essence of the question or issue to be resolved and the ability to identify, locate, evaluate and use appropriate legal information resources to satisfy the information need or requirement.

Please tick in the appropriate box

SECTION ONE : : EXPERIENCES

1. In general, do summer clerks start their clerkship feeling confident about their legal research skills?
   - ☐ Yes
   - ☐ No

2. In general, do law clerks lose their initial confidence when faced with practical legal research?
   - ☐ Yes
   - ☐ No

3. If your answer to question 2 was "Yes" are you able to attribute this to any of the following?
   - ☐ Lack of knowledge of electronic resources
   - ☐ Lack of knowledge of print material
   - ☐ The process of "how" to research
   - ☐ Confused about where to start
   - ☐ Time limitations for research
   - ☐ Costs implications of research time
   - ☐ Other, please state ……

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4. In general, do you find law clerks are "product" bound (i.e. only able to use those legal database products which their law school teaches)
   - ☐ Yes
   - ☐ No

5. In general, are law clerks able to use print legal materials as easily as electronic legal materials?
   - ☐ Yes
   - ☐ No

6. What legal research skills do you expect your summer clerks to have? *(tick all applicable boxes)*
   - ☐ Find NZ Acts and Regulations
   - ☐ Update NZ Acts and regulations
   - ☐ Locate NZ tertiary legislation
   - ☐ Find NZ case law
   - ☐ Update NZ case law
   - ☐ Use print resources for updating research
   - ☐ Find SOPs and Hansard references
   - ☐ Use Parliamentary Bulletin
   - ☐ Find NZ journal articles
   - ☐ Find historical NZ legal material
   - ☐ Find legislation from other Common Law jurisdictions
   - ☐ Find case law from other Common Law jurisdictions
   - ☐ Update case law from other Common Law jurisdictions
   - ☐ Identify seminal NZ legal texts
   - ☐ Identify seminal legal texts from other Common Law jurisdictions
   - ☐ Find information on NZ Government websites
   - ☐ Use of non-legal resources – such as electronic newspapers, statistics
   - ☐ Other, please specify ……

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SECTION TWO : Personal Attitudes

7. Should legal research skills be taught as part of the law curriculum?
   - ☐ Yes
   - ☐ No

8. Please rate legal research as a skill that all law students should learn
   - ☐ Not important
   - ☐ Somewhat important
   - ☐ Important
   - ☐ Very important
   - ☐ Essential

9. Is legal research as important a skill for law students to learn as legal writing?
   - ☐ Much less important
   - ☐ Somewhat less important
   - ☐ Both equally important
   - ☐ Somewhat more important
   - ☐ Much more important

10. Do you consider that law students can acquire competency in legal research skills without targeted formal training in such skills?
   - ☐ Yes
   - ☐ No

13. If your answer to question 10 was "No", should law students be taught legal research skills
   - ☐ In a separate formal course
   - ☐ Integrated into different law subjects
   - ☐ Both

14. At which stage of the legal curriculum should legal research skills be taught?
   - ☐ Part I (foundation year)
   - ☐ Part II (first full year of law)
   - ☐ Part III (second full year of law)
   - ☐ Every Part
   - ☐ More than one Part, but not all Parts – specify (eg 1 and II)……..

15. Who do you think should teach legal research skills within the law curriculum?
   - ☐ Academics
   - ☐ Law Librarians
   - ☐ Academics and Law Librarians jointly
   - ☐ Others (please specify) …….

16. Are there any other aspects of legal research that you would like to see added to the law school curriculum?

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17. Any other comments you would like to make in respect of learning and applying legal research skills

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Thank you for your time spent in completing this survey. Please return it to me in the attached envelope.

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