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Book Review: Essential Legal Skills: Legal Research, 27 J. Marshall L. Rev. 949 (1994)

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BOOK REVIEW

ESSENTIAL LEGAL SKILLS: LEGAL RESEARCH. BY
DAVID STOTT. *CAVENDISH PUBLISHING*
LIMITED, LONDON, 1993.

REVIEWED BY MARK E. WOJCIK*

Law students and lawyers in the United States often confront endless difficulties when they search for English law. Local law libraries may hide their collections of English cases and statutes in dark, secret rooms that even circulation desk assistants are not allowed to visit. Even when not hidden, collections may be incomplete or out of date. Without a specific citation, a researcher who has come to rely upon the "West Digest System" of key numbers may never penetrate the musty books of English law. A researcher who does pin down a *Queen's Bench* citation may be unable to find the case without parallel cites to the *Weekly Law Reports* or the *All England Law Reports*. A researcher who does find a case report will not know whether it is still good law; there is no *Shepard's Citations* for English cases. A researcher who finds a statute of England or Wales may be unable to determine whether it has been amended. Library staff are usually unable to help the researcher overcome these myriad difficulties. Often the researcher must even educate the library staff on English law.

Despite the problems of research, lawyers and law students occasionally need to know how to find laws of England and Wales and determine whether they are current. Lawyers in transnational legal disputes may need to research choice of law issues. Students of public or private international law may need to find English law for international moot court competitions such as the Philip C. Jessup International Law Moot Court Competition, the Niagara Competition between the United States and Canada, or the Space Law Competition (presumably between planets). Scholars may need to consult English law for comparative legal analysis. Indeed, all lawyers can often benefit from seeking out alternative solutions to common legal problems.

David Stott's new legal research book can help researchers overcome many of the difficulties of finding English law. His book

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is not intended for a U.S. audience, however. It is written for lawyers and law students in the United Kingdom, where the very first courses in legal research and writing emerged in the 1993-94 academic year.¹ The text is useful beyond its intended audience. Researchers in the United States are the unintended third-party beneficiaries of Mr. Stott's work.

Legal Research is one work in a new series of texts on essential legal skills. It is a companion book to a text on legal writing.² These books claim that "legal skills education in the United Kingdom is still in its infancy" and that other jurisdictions, including the United States, can share their "longer history of the use of practical and experience-based teaching methods. . . ."³ References for further reading in legal writing include several U.S. texts that will be familiar to American teachers of legal writing and research.⁴

Although Stott designed his book for students and practitioners in the United Kingdom, its concise and straight-forward presentation can assist researchers in the United States as well. He analyzes research as a simple three-phase process of planning, implementation, and presentation. His prescription for research planning comprises eight tasks: fact collection, legal knowledge, problem identification, legal analysis, factual analysis, further fact collection, identification by avenues of research, and generation of critical search terms.⁵ None of these planning steps are surprising to U.S. researchers. What is surprising is their concise and effective presentation. The book includes several exercises that explain each of these points of planning legal research. There is also an interesting example of "mind mapping," which some U.S. students and teachers will recognize as a variation of "ladders of abstraction."⁶

The steps of research implementation include identification of legal problems for resolution, identification of relevant source materials, effective use of English source materials, analysis of research findings, application of those findings to the problems, and, for completeness, identification of further problems. It is the descriptions of the source materials that are most useful to the U.S.

1. DAVID STOTT, *LEGAL RESEARCH* (Julie Macfarlane ed. 1993).

2. MARGOT COSTANZO, *LEGAL WRITING* (Julie Macfarlane ed. 1993). Other books in the "Essential Legal Skills" series cover negotiation, advocacy, interviewing and counseling, drafting and problem solving.

3. STOTT, *supra* note 1, at v.

4. These include CHARLES R. CALLEROS, *LEGAL METHOD AND WRITING* (1990); JILL J. RAMSFIELD, *GETTING IT RIGHT AND GETTING IT WRITTEN* (1989); CHRISTOPHER G. WREN & JILL R. WREN, *THE LEGAL RESEARCH MANUAL* (2d ed. 1986).

5. STOTT, *supra* note 1, at 4.

6. See CHRISTINA L. KUNZ ET AL., *THE PROCESS OF LEGAL RESEARCH* 18 (3d ed. 1992).

audience, specifically for location and effective use of relevant source materials. Stott explains use of the *Current Law Services*, *Case Citators*, *Legislation Citators*, *Year Books* (something similar to the Digest System in the United States), *Current Law Statutes Annotated*, *Current Law Week* and the *Monthly Digest* for updating the law of England, Wales, Northern Ireland, Scotland, and the European Community. The sections also explain effective use of the *European Current Law Monthly Digest*, the *Halsbury's Laws of England* (and its updates), and the *Halsbury's Statutes*. One caveat is that the explanations may not be meaningful without access to these actual volumes. They are intended explanations for hands-on instruction with the reference works discussed. Stott succinctly describes reference works for researchers to locate the books that will be most helpful, and how then to learn to use those references effectively. Stott also describes several indices to secondary legal literature, including the United Kingdom's *Legal Journals Index*, the United States' *Index to Legal Periodicals*, and the *Index to Foreign Periodicals* for articles from countries other than the United Kingdom, the United States, and the Commonwealth states.

Omitted from *Legal Research* is a chapter concerning legislative history. This omission may be due more to British jurisprudence than to oversight. The House of Lords only recently relaxed the rule that actually prohibits courts from referring to parliamentary materials as an aid to statutory construction. The relaxed rule, as announced by Lord Browne-Wilkinson in *Pepper (Inspector of Taxes) v. Hart*,⁷ now allows courts to consult parliamentary materials in interpreting a statute where "(a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied on consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other parliamentary material as is necessary to understand such statements and their effect; [and] (c) the statements relied on are clear."

This new rule permitting recourse to extrinsic materials in statutory interpretation is not especially surprising for American lawyers. For British solicitors and barristers, however, the new rule may point out a need to consult parliamentary materials in the course of legal research. The need for additional research was decried by the Lord Chancellor, Lord Mackay, in his dissenting opinion in *Pepper*. His view was that permitting recourse to parliamentary materials would simply extend the scope of legal research in the preparation of clients' cases. This, he feared, would only prolong litigation and increase costs to clients.

Stott's book thus excludes a section on legislative history because, at least before the *Pepper* decision, legislative history was

7. [1993] 1 All E.R. 42, 69 (Lord Browne-Wilkinson).

largely irrelevant to the English legal researcher. Stott focuses only on what students and practitioners need to know about governing law. For example, the book identifies the need to consult laws of the European Union,⁸ an important consideration given the primacy of EU law in the United Kingdom.⁹ The book does not, however, describe the full scope of research sources available for community law and English law. Then again, research sources for legal research of the European Union may require a book all of its own. What is important for researchers, at least in Stott's view, is at least to remember to consult European Union law before rendering an opinion on what the applicable law provides.

Stott does not neglect the often special research needs of practitioners. He describes English form books, specialist encyclopedias, practitioner reference works, and standards of professional conduct. To my mind, the section on professional conduct¹⁰ is too brief and should be expanded to describe the ethical responsibilities of legal research.

Computers play an important role in research, and Stott's book could not neglect computer information retrieval systems. He describes LEXIS databases relevant to United Kingdom law, Commonwealth law, European community law, and international law. There are references to other databases, including JUSTIS for United Kingdom and European community law, CELEX and JUSTIS OJC for European community law, LAWTEL for current British statutes and pending legislation, and POLIS for an index (but not full text) of Parliamentary proceedings.¹¹

Stott's book should find an appreciative audience in the United States. Expanded research of English law may assist our own jurisprudence when we consider similar legal issues. Using English research may also help international forum shoppers who may find more favorable (or favourable) laws in the United Kingdom. In sum, this book is a welcome introduction to the mysterious research of English law.

8. See, e.g., STOTT, *supra* note 1, at 49-52, 87, 101, 119-20.

9. See *Kirklees Metro. Borough Council v. Wickes Building Supplies Ltd.*, [1992] 3 All E.R. 717, 732-33 (Lord Goff of Chieveley).

10. STOTT, *supra* note 1, at 81-83.

11. STOTT, *supra* note 1, at 119-21.