

LEGAL RESEARCH

A Guide for Hong Kong Students

JILL COTTRELL



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Unit 1

Welcome to the Study of Law

(Readers other than new law students should perhaps go directly to Unit 2.)

There is a risk that the formal study of any subject can make it sterile and boring — people who love reading novels may decide they don't want to be university students of literature because they do not want to lose the beauty in the process of analysing the techniques and dissecting the language. Rather the same thing can happen with the study of law.

But the chances are that you do not think of law as having beauty. There are certain legal devices which have a certain elegance. There are some judges who have expressed themselves with wit and style. But I would not dream of suggesting to you that you are likely to become fascinated with law as an aesthetic matter — especially not the common law which is the system which applies in Hong Kong. This has developed in so haphazard a fashion, so dependent upon history, and sometimes even accident, that it often seems to lack coherence. It is very different from systems of law which use codes — formal statements of the law which are prepared often by scholars and may achieve elegance of concepts and organization, or even of language, which can be satisfying in a way the common law rarely is.

As I say, I don't imagine that 'beauty' is a word you would associate with law. What do you associate with law?

❖ Try it now. Jot down the words which come to your mind when you think of law. It might be interesting to keep the piece of paper and do the exercise again at the end of your first year of studies and see whether the word associations have changed.

I wonder whether one of your words was 'justice' or 'fairness'. This is one of the ideas that I fear may be driven out of your head by the study of law. The process will begin as soon as you begin classes. Even, I am afraid, as soon as you move further in this book! Law as a subject of study is necessarily divided into categories. And within each category, or 'subject', it is again divided. You will break it down into little pieces; it will be dissected and desiccated for you and by you. You may well be seduced by the pleasures of learning new techniques, and new words (or old words in odd new meanings). You will be a little like the

blind men (let us say blind people) in the old story, who encountered an elephant. One felt its tail and said 'It's a bell-rope'; one felt a leg and said 'It's a tree'; one felt the trunk and said 'It's a snake'. But, I am not telling you that somewhere there is some large and majestic creature which is **THE LAW**. I am afraid there is no elephant!

But there is a bigger picture. Some people will tell you that you have to learn to 'think like a lawyer'. To the extent that this means thinking logically, learning to sort out the relevant from the irrelevant, this is a good thing. But the question — or one question — must be: what is relevant?

This is a book not about studying law generally, but about how to find materials relevant to your studies (and ultimately relevant to the practice of law) and how to use them. But before you allow yourselves to be swallowed up by the machine of legal education, while you are still thinking like people and not like lawyers, I suggest you might try to get a glimpse of the larger picture, and to do it in ways which reflect legitimate concerns of this book — that is, through looking at materials which might prove later to be useful in your studies.

❖ First, get hold of a copy of today's newspaper. You might do this with a friend or two. Go right through the paper, beginning from page 1 and proceeding right through the rest including the sports pages and the cinema announcements and the weather forecast. (If there is a big classified section of jobs, I don't seriously expect you to look at every one, but do look at a few.) Think about the possible connection between all the items and the law. Notice how many items actually mention law. You may be surprised; these days it is not uncommon to find legal items on the sports pages. But go further: how many news items, or advertisements (including those for jobs) might have legal aspects to them. Imagine how someone might complain about the events recounted in the news, or even about the report in the paper.

I am not going to suggest that law is some sort of intrusive monster that invades all our lives. Most people go through life having very little contact with law, and, a good thing too! But you can get a sense of the potential of law for affecting almost every aspect of life. It is a tendency which is sometimes to be resisted. But maybe sometimes you can see the good that law could do.

❖ Second, go for an exploratory stroll through your Law Library. I hesitate to suggest you do this with a friend as I fear that may lead to gossiping! Take your time — don't rush. You have the time now to begin to get to know it. This will pay off in the future when you need to find books quickly.

Wander all the way round. ☹ Take at least an hour looking at books of various kinds. Don't say to yourself, 'I don't think I shall ever need to use that!'. What sorts of books are in the library? Some of them are in serried ranks of identical volumes. Maybe they say 'Law Reports' or 'Law Review' on the spine. Pick up one or two of each type. See what is in them. Look at the sorts of stories that may lie behind the law, what range of issues the law touches on. In fact the best place to look at law journals (or law reviews) may be on the display

shelves where you will find current, unbound issues. You can easily see from the covers of many what sorts of articles they contain. Look at the variety of things people are writing about. Some you probably won't understand, but don't worry about this. Look for things you do understand and which sound interesting.

You will also see shelves of books which are not uniform. These are probably textbooks and books of essays or book length studies of different aspects of law. Wander right through these. You will be asked to look at a very small proportion of these as a student. But that does not mean you should not read them! Can you get a sense of different styles of law book? Can you see books that look at law in a theoretical way? (Many of them ask, 'What is law?') Or books which marry law and another discipline such as economics or sociology? Or empirical studies (what actually happens)? Books on comparative law — comparing the legal systems of different countries, for example. Or international law?



❖ Finally, for the moment — the computers. Are you confident in the use of computers? Have you ever used a computer library catalogue before? Sit down at a computer that allows you to use the library catalogue. ☹ Take about ten minutes to begin to familiarize yourself with this valuable facility. (The two universities with law faculties have differently organized computer catalogues so it is difficult here to suggest something that will work for everyone.)

Can you find out how to search for an author? If you are at the City University of Hong Kong, type in Tyler, E. You will undoubtedly see a few books which Professor Tyler has written or edited. If you are at the University of Hong Kong, type in Wesley-Smith. You will see what Professor Wesley-Smith has written. Of course you can try any name; I just chose one for each place whom I think you would be interested to see and because I know they would have several books listed.) Can you get back to the Main Menu? If so you will see that you can actually get through to the catalogue of the other university (and of all the universities in Hong Kong!).

While you are at the computer, can you find one which allows you to use the World Wide Web? This will require you to use Windows (see box on p. 4).

☹ Give yourself at least 15 minutes to look at what is available on the Web. Some of you may be familiar with this from your home computer, but you may not have realized how much law there is on the Internet. Follow the instructions for your particular institution. At the time of writing the best strategy for getting access to legal materials is to find your way either to the University of Hong Kong Law Library 'Home Page' or to that of the Faculty of Law at the University of Hong Kong.

► There is a tendency for the addresses of web sites (known as the url address) to change. At the time of writing, the address for the HKU Law Library list of web sites by subject is: **<<http://www.hku.hk/lib/in/law.html>>**.

That for the Law Faculty list of 'Other law related web sites' is: **<<http://www.hku.hk/law/other.html>>**.

City University has a similar set of links at **<<http://www.cityu.edu.hk/lib/subject/law/general.htm>>**.

If you have reached a Law Faculty or Law Library list site you will find a long list of different sites. There are other law schools in several countries, legal periodicals, entries from law firms, collections of laws and cases from various countries including the US, Australia, Canada, as well as a site for the laws of Hong Kong (**<<http://www.justice.gov.hk/>>**). There are several pages of information from various agencies in Hong Kong. Try for example the Legislative Council page: you will find it under 'Hong Kong Information Network' on the HKU home page; its url address is: **<<http://legco.gov.hk/>>**).

That is probably enough for a very elementary welcome to the study of law and some of the materials you may use.

Windows

This is the computer software which is supposed to be easier to use. You move a little pointer around the screen by means of moving a mouse or a tracker ball with your hand, and then clicking a button to carry out an operation.

It is this I refer to when I say 'click on ...'. Sometimes you need to click twice — once to identify what you want, and the second time to activate it. Sometimes also this needs to be done twice very quickly, a knack which you will develop quickly unless you are very clumsy!

You should be able to find a short tutorial on using Windows on your institution's computer network.

Unit 2 This Book: Its Organization, Purposes and Assumptions

OBJECTIVES

At the end of this Unit you will:

- understand the purposes for which this book is written
- know what elements the book contains and how to find the bits of it you need
- understand the symbols used in the book

☉ How long will it take you? It should not take you more than about 30 minutes to read through this short Unit, even if you do try to answer the self-test questions at the end.

The style adopted is intended for students beginning their study of law. I hope other users will not find this too irritating (for I think other users will find this book useful too). There is currently no other publication describing the use of Hong Kong legal materials.¹ Practitioners, especially those in the early stages of their careers, or those unfamiliar with Hong Kong materials because they have come from another jurisdiction, or even the older members of the profession for whom CD-ROM and On-line databases are new, and possibly intimidating, things may also find it valuable. I hope so!

THE PHILOSOPHY OF THE BOOK

Perhaps that is a bit grandiose for a book on such elementary issues! However, I want to make it clear that this book is not intended only to introduce law students to the ‘nuts and bolts’ skills of the lawyer. A lawyer is not a mere technician who should have no care for the social implications of the law, and a law student is not someone who is being trained to be such a technician. A student is going through a process of education, and will be expected to (and, I hope, would be interested to) think about the origins of law, the social, economic and

¹ Since I wrote this sentence, there has appeared Dobinson and Roebuck *Introduction to Law in the Hong Kong SAR* (Hong Kong: Sweet and Maxwell, 1996) which does have a chapter (5) on this topic.

political implications of law. Students will write essays on topics for which legal materials alone will not be enough. This book therefore gives some elementary introduction to ways of finding material on subjects such as history and the social sciences.

It is also the assumption of this book that the sorts of skills involved in research cannot be learned by reading about them. Legal research is the sort of thing which ultimately is learned by doing. In the past it was learned by a process of trial and error, and what this book can perhaps best achieve is to reduce the amount of error involved in the trial! The chances are very strong that if you simply read a Unit you will have forgotten all the information by the following morning if not sooner. I would strongly urge you to do three things designed to make the information 'stick'.

- If possible read this in the library and go to look at the materials mentioned. Pick them up. Become familiar with their appearance. Learn where they are on the shelves. Look inside so you can see what they contain.
- Do the small exercises which are suggested at various points in most chapters.
- Try to answer the questions at the end. The purpose of these is to make you go back straight away to the material in the Unit.

What you have read three times and have tried to put into practice will stay in your head more than three times as long as something you simply read once!

ORGANIZATION OF THE BOOK

This book begins with some of the skills law students are likely to need at the earliest stage of their study, and then moves on to the more demanding ones. Thus Units 3 to 9 are concerned with the most basic matters which a beginning law student needs to know about the use of legal materials. Unit 3 simply tries to explain and illustrate what legal research for law students is about, and the rest of these early Units assume that the student is trying to find material which someone else has suggested that he or she find — because a class teacher or a textbook has suggested that a particular case or a piece of legislation should be looked at.

At the end of these Units a student should also be able to discover for himself or herself how later courts have treated a case (specifically a Hong Kong student might wish to know how, if at all, an English case has been treated in the courts of Hong Kong). He or she should also be able, with some imagination, to find out whether there is in Hong Kong the equivalent of a particular piece of English legislation. Finally he or she should be able to ensure that he or she has absolutely the most up-to-date version of the law.

Early Units (specifically 4 and 9) are designed to help students to begin learning how to read a case or a statute. Please understand that it is not basic literacy that I am talking about — but to know what it is one should be getting out of a case or statute.

I hesitate to call these 'research' skills. They really are the most elementary techniques. There is nothing difficult about them. It is, however, impossible to exaggerate their importance. It is often said that a lawyer does not need to know the law, just to be able to find it. This is a serious over-simplification: you must have some knowledge in order to get started. But the law you learn will be out-of-date by the time you graduate (even perhaps by the time you take your examinations!). In future you will need to know how to find the law for yourselves. This is even more important in Hong Kong where the literature of the law is rather underdeveloped. For now you need to know these things in order to be a good law student.

Although I say they are basic and not difficult, all too many lawyers, not to mention law students, have difficulty with these things. What you should do is to gain such familiarity with the library and the most important materials in it that you can go straight to the cases and statutes you need.

While these techniques are not difficult, they do require some of the characteristics of a good researcher: most importantly persistence and meticulousness. Good habits developed now will save you enormous amounts of time and frustration, not to mention avoid risking accusation of professional incompetence in the future!

These materials are designed to be an adjunct to the tasks of learning the law. You should use them when you need to. When you are first asked to read cases, read Unit 4. When you are first asked to read a provision of a statute, whether it is just a short section or a whole Ordinance, read Unit 9. Do not delay in reading Unit 9 just because you have not yet read Unit 8.

Subsequent Units look at secondary sources, works of reference which will give you a discussion on the topic, will help you find which cases and legislation are relevant to your work, will offer criticism of the cases, legislation or general state of the law. One could say that we are now beginning to look at something which could genuinely be called 'research'. These are the tools you will need to find something out, as opposed to finding what someone else has suggested you find. We look first at the works of reference which are the research tools of the practising lawyer. But before that we look briefly at the intellectual tasks you must undertake when faced with any new question: what is it you are looking for? How do you formulate your question in a way which will extract the material you need from the literature? (These are addressed in Unit 11.) These Units also deal briefly with the research material of some other important jurisdictions, with non-legal materials, and finally with how to cite material you have found out, and how to present written work.

TREATMENT OF ELECTRONIC SOURCES

It has not been easy to decide how best to deal with these. Clearly the age of the CD-ROM and On-line database is upon us. Future generations of lawyers will never see some publications in any other form even though they originated as paper publications. Students

like to use these things and given a chance will not use the paper version! I sympathize — the electronic version are often more effective. I still believe that where possible students should become familiar with the paper version before going on to the electronic versions. When you can hold a book in your hands and turn its pages you can get a much better idea of what it contains than from the manual, or the help screen, of a database. Searching techniques (not only those of law students) are often unsophisticated, and much relevant material is not found because the searcher does not think carefully or imaginatively enough about what to look up. There will be times when you will **have** to use paper sources — the library in which you are working may not have the electronic version, or ‘the computer may be down’, or someone else is using the only terminal. And sometimes it is quicker to go straight to a book, rather than loading a CD.

However, having read (in the *Sunday South China Morning Post* for 2 June 1996) of the plans to put the Hong Kong statutes onto the Internet, I decided that it no longer made sense to try to postpone students’ use of electronic sources. I have tried therefore to integrate consideration of the paper and non-paper version of material. In each case, however, I have put the paper versions first, and ► I strongly urge students to become familiar with these first before trying the electronic versions.

1997

This is a book for Hong Kong users. But much of the law of Hong Kong is derived from that of the United Kingdom, or more specifically from that of England. Therefore the assumption is made that the reader will need to find material from the UK as well as from Hong Kong.

Under the Basic Law which came into operation on 1 July 1997,

Article 8

The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained ...

Though English statutes do not apply as such after the handover, applying the ‘common law’ still involves using the reports of decision in English courts. And lawyers may still wish to refer to English statutes because Hong Kong Ordinances have very often been based on them. However,

Article 84

The courts of the Hong Kong Special Administrative Region ... may refer to precedents from other common law jurisdictions ...

This may mean that courts are more willing to make use of reported decisions from countries like Canada, Australia, New Zealand, Malaysia, Singapore and India which are common law jurisdictions. Indeed, in some areas they already do so.

There is no material in this book on the law of China. This is mainly because I am not competent to deal with it. It is to be hoped that guides will appear in the next few years to the material on Chinese law.

THE LAW LIBRARIES IN HONG KONG

This book originated as materials for a course at the University of Hong Kong on 'Legal Research and Writing'. But in its published form it will, I hope, be used by other people as well. I have sometimes included information about the holdings of the four 'public' law libraries in Hong Kong: those of the two Universities with Law Faculties — the City University of Hong Kong and the University of Hong Kong, and those of the Supreme Court and the Attorney-General's Chambers. Some of the big law firms and chambers have good libraries of their own, but law students and many practitioners will be reliant upon these four libraries. You will find Appendix I on the Law Libraries of Hong Kong indicating in general terms the way in which their collections are organized and what their strengths and weaknesses are.

SYMBOLS AND CONVENTIONS

Throughout the book I have used certain symbols or formatting styles to draw your attention to particular features, or to point out to you where else in the book you may find information. Here is a list of them.

- ⌚ This little watch will always be used when I am suggesting how long a task might take.
- This indicates something I think you should note especially: something important, or a hint or tip for successful research.
- ❖ This indicates a task I suggest you perform to put into practice the information.
- 📖 You will sometimes find in a note information about the arrangement in, or contents of, one or more of the law libraries in Hong Kong. This will be represented by this symbol.



I use this to indicate materials available on computer.

I

Is it not rather casual, not to say self-centred, to use the first person pronoun like this? Traditionally it was much more common to use 'we', or to use formulations such as 'It is suggested ...'. Nowadays it is acceptable, and much more straight-forward, to say 'I'. But there may be formal contexts in which this would not be appropriate. In my view it is entirely appropriate for a book of the style of this one.

Words in **CAPITAL LETTERS** like this will be found in the Dictionary of Useful Words which is Appendix II.

REVERSE TYPE Words in type like this mean that you should find further information in this book on this topic. Look in the Contents page.

Material in a grey box is supplementary material that is important, though it may not fit easily into the flow of what I am saying.

Material in double bordered box is usually something interesting I want to draw to your attention, or possibly some opinionated comment of my own!

Unit 3

Legal Research: Preliminary Thoughts

OBJECTIVES

At the end of this Unit you will:

- have an elementary idea of some of the sorts of writing you will be likely to do as a law student
- understand something about the sorts of things you might specifically be expected to write as a first year student
- have a clearer idea of what is meant by 'Research' in the context of law study

⊗ Something over one hour if you do everything you are asked to.

At this point (assuming this point is an early stage in your undergraduate career), you may be unclear about what is meant by 'Research', and this may seem an intimidating and even pretentious term for the sorts of activities you expect to be involved in as a student. So let us think for a few minutes about the tasks which law students, and ultimately practitioners of law, will carry out which involve 'research'.

A **law student** will be required to write:

- essays
- answers to problem questions
- exams

You will also participate in 'moots' (see box on p. 12), even perhaps an international mooting competition, such as the Jessup Moot.

(Maybe you will also want to write an article for the *Hong Kong Student Law Review*, edited by students at the University of Hong Kong.)

Moot

Probably ‘**moot**’ is another mysterious term to you. A moot is an exercise in which students argue a case as though they were in court. You will probably be required to participate in at least one competition in your law school and there are outside competitions including the Deacons Cup competition between the two Hong Kong law schools, and the Jessup Moot — an international competition organized from the United States. Participating teams in the latter are expected to set out their argument in written form, known as a ‘brief’.

A lawyer will:

- advise clients as to their legal position
- draft documents
- negotiate
- prepare arguments for a court case
- argue a case in court

to mention only the tasks which may involve research.

ESSAYS AND PROBLEMS

Essays may be quite short things of 1500 words, or as long as 10 000. However, before you get terrified at the idea, let us look at some of the writing enterprises you may be engaged in as a first year student. Here are a few examples of the sorts of things which you might be expected to write about:

- (A) Consider the case of *Wilkinson v Downton*. Academics have written that its significance goes far beyond the facts of the case itself. Does it play a significant role in the modern law of tort, and what are the implications for the law of tort today?
- (B) Discuss the views of Weber concerning the importance of law in the development of capitalism.
- (C) Why does Hong Kong have two legal professions (barristers and solicitors), and should that situation continue?
- (D) A works in a factory. Because the factory is rather remote, A’s employer provides a bus which takes the employees to the nearest MTR station. One day A had left the factory premises and was in the process of boarding the bus (in fact she had one hand on the

handle at the door of the bus, though both her feet were still on the ground) when a car came by at great speed. A was knocked over, but the car did not stop. No one knew who was driving the car. A was seriously injured. Advise A whether she has any chance of claiming compensation for the injuries. (Assume there was no negligence on the part of the employer or the bus driver.) Is the state of the law as you describe it satisfactory? (This is what we would call a **problem question**. It is also a simplified version of a task which a lawyer might have to do in practice.)

What would you be expected to do in answering these questions? In the left hand column of the following table are some of the research and writing tasks which you may find you need to do as a student.

❖ In each of the right hand boxes, put the letter or letters of the questions which you think would involve the task in the corresponding left hand box. This would be best done in collaboration with others. ☹ This could well take over 30 minutes if done thoroughly.

Task	Required by
To find out what the law is on a particular practical question	
To find out and understand the views of a particular writer	
To find out what criticisms have been made of a particular writer's views	
To find out what comments or criticisms have been made about a certain rule of law or institution	
To think about whether a particular rule or set of rules is suitable for Hong Kong	
To think about whether a particular rule seems to you to be fair	
To apply some rules to a particular set of facts	
To find out how it is that a particular rule or institution came to be part of Hong Kong law	
To suggest whether going to law is the best solution for problems	
To evaluate the evidence in support of a particular statement or viewpoint	

RESEARCH

So what do we mean by 'Research'? We do not mean experiments which scientists tend to mean by 'research'. The word 'research' means 'to find things out'; according to one of my dictionaries, it comes from the Medieval French word meaning 'to investigate'. If you think about it, the answers to most of the questions above involve finding things out. You will find most of them out in the library, or from the teaching materials distributed to you, or from a textbook.

Let us think a little more about some of the sorts of questions you will be asking when you are doing research. If we take question D, which I reprint here for convenience:

A works in a factory. Because the factory is rather remote, A's employer provides a bus which takes the employees to the nearest MTR station. One day A had left the factory premises and was in the process of boarding the bus (in fact she had one hand on the handle at the door of the bus, though both her feet were still on the ground) when a car came by at great speed. A was knocked over, but the car did not stop. No one knew who was driving the car. A was seriously injured. Advise A whether she has any chance of claiming compensation for the injuries. (Assume there was no negligence on the part of the employer or the bus driver.) Is the state of the law as you describe it satisfactory?

A has been injured. You are told that she has no idea who the driver of the car was or who it belonged to. Do not waste time discussing what would be the position if she did know this. One of the things which must be learned by a lawyer (and indeed anyone else involved in intellectual activity) is how to be relevant — to discuss only what is required by the enterprise in hand.

Before going any further to think about who might be under a legal duty to pay A compensation, think about the word 'compensation' for a moment: what would A be looking for? 'Money' is the crude answer. The law cannot give A another job, or a new leg, which might be the only way to compensate A for the loss. The law can only give A money which will support her if she has no job, or pay for her doctor's bills, an artificial leg or a wheel chair, or which will buy her a holiday, or nourishing food (or comforting bottles of whisky if that is her tendency) to make her feel less unhappy. So A wants to find someone who will pay her money because A has had expenses, or has lost a job or some income, or has suffered physically and emotionally from the accident.

So what other possibilities are there if the driver who was actually responsible cannot be found? I can think of five:

- Can she claim any compensation from her **employer**, since she was just leaving work?
- Is there any system sponsored or operated by the government which provides compensation for people injured in **accidents of any type**?

- Is there any system which provides compensation for people who are injured by **hit-and-run drivers**?
- Is there any system which provides compensation for people who are injured by **criminal** activities of other people, even if the other people are not identified?
- Is there any system of government operated or sponsored payments to people who are **out of work**, whether for injuries or other reasons?

Look back at the other questions as well. Ask what sorts of things you would be looking for. Take question C:

Why does Hong Kong have two legal professions (barristers and solicitors), and should that situation continue?

The first part of this question invites you to look at history. The second does not ask simply just for your opinion (though you are entitled to give your **informed** view, which means a view taking account of the evidence and of the views of previous writers). It should lead you to find out what interested parties have said on the subject in Hong Kong in the past and currently (views of the two legal professions and academic writers, even of newspapers), and also what is the practice in other countries which operate a legal system, like Hong Kong's, based on the common law of England.

So, to answer all these questions, what sorts of material would you need for your research? Much of it would be in books, using that word in a wide sense — by which I mean anything which looks like a book, in that it consists of paper, between covers or in a file, which includes journals and loose-leaf publications. There may be electronic publications too, in the form of databases whether in the form of a CD-ROM or on a computer, locally or far away. We need a word which includes books as well as these non-paper sources. ► In future I shall use the word 'resources' if these may be in paper or electronic format, and 'book' if I mean a paper resource. Materials you would need for your research include:

- resources which describe the rules
- resources which tell you where to find the rules
- resources which give you the **actual rules** (i.e. resources **of** rules, not resources **about** rules)
- cases which may make the rules or apply them
- resources which evaluate the rules and institutions
- resources which may give you the history of the rules or institutions
- resources which answer certain questions about Hong Kong society or economy (so you can make informed observations about how appropriate certain rules and institutions might be for Hong Kong)
- books which are written by Weber
- resources which tell you what Weber wrote (especially helpful as an introduction or if Weber's views are very difficult)
- dictionaries

You might also need materials in written form but not books, such as newspapers. And if you are doing a major research project (thought not for a first year essay of 1500 words), you might even want to interview some people about their views, for example, about the legal professions.

Let me take you through the process in question D:

– You are going to need to find some resources, probably some **Legislation**, and possibly in the end some cases which deal with compensation for personal injuries. You are not quite sure what field of law this is (tort, criminal law, contract, etc.).

❖ So make a note of your ideas about possible topics to look up.

⌚ This might take you about five minutes.

My suggestions would be:

- compensation
- personal injury
- damages
- road accident
- hit-and-run-driver
- accident at work
- employer
- compensation for crime
- insurance
- unemployment pay

➤ Note that the first thing you do before looking for the law is to think carefully about the facts. This is a very important part of the skill of being a lawyer — or a law student. All the legal research skills in the world will not get you far if you are not asking the right questions because you have not thought fully about the facts.

– You may think that compensation for a personal injury looks a bit like tort. So perhaps you look for a book on the law of tort in Hong Kong (in terms of my suggestions above ‘a book **about** the law’). There are now three: Martin, *Law of Tort in Hong Kong*, recently superseded by Bachner, *Hong Kong Tort Law*, and Srivastava and Tennekone, *The Law of Tort in Hong Kong*.

– Having found a relevant book you need to find the right place in it. If you have found Martin you would find that rather irritatingly it has no index. Bachner has an index which does not include any of the words listed above. Srivastava and Tennekone has an index which is rather more helpful, and does, for example, have entries under ‘Compensation’ and ‘Employees’. If you look at the contents pages of the first book, you will find a chapter on personal injury damages. That turns out to be not much help because it deals only with

compensation for torts, and really no-one against whom A can claim has committed a tort (the hit-and-run-driver has but he is nowhere to be found!). **Don't give up (that is one of the most important things to remember in legal research!)**. Look at the contents page again, and you will find a chapter on Employers Liability, a topic which also appears in Bachner. Under that you will find a section about the Employees Compensation Ordinance. Turn to that page, and you will find that it says that an employee can claim compensation from his employer, even if the employer was not negligent (which he was not in A's case) provided that the injury arose 'out of and in the course of his employment'.

– Maybe you ought to go and read the Ordinance. (You will find this in **The Laws of Hong Kong** — a book of rules.)

When you do that you find that in s. 5 it says this:

(4) For the purposes of this Ordinance—

(d) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee while he is, with the express or implied permission of his employer, travelling as a passenger by any means of transport to or from his place of work and at the time of the accident, the means of transport is being operated—

- (i) by or on behalf of his employer or by some other person pursuant to arrangements made with his employer; and
- (ii) other than as part of a public transport service;

– How do you make sure you have the latest version of the Ordinance?

– Now you need to think about this provision: Was A covered by this provision? How do you decide?

– Partly you use your common sense. Was A a passenger at the time of the accident? What do you think?

– You could try a **dictionary**.

– Maybe there is a **case** which decides whether someone crossing the road to get onto his employer's bus is a passenger for the purposes of this section. How do you find such a case? Maybe such a case is decided in Hong Kong. (In fact one such case is *Check Chor-ching v Wik Far East Ltd.* [1991] 2 HKLR 224. (See next Unit.)

- But the same language may be used in laws in other countries, especially England, so maybe there is an English case which discusses the same question. How do you make sure you have the most recent cases? Clearly you need some types of **reference resources** or other materials which list cases by topic.
- How about my other suggestions — about compensation for victims of crime or compensation for the victims of hit-and-run drivers or schemes for compensating unemployed people? The tort books are no help on this.
- How about a book on criminal law? The only ones on Hong Kong law — Findlay and Howarth, *Criminal Law in Hong Kong: Cases and Commentary* or the *Digest of Hong Kong Criminal Law* — are no help on this topic.
- So try an English book. You might find something there.
- But if there is, how do you find out whether there is similar law in Hong Kong?

There is in fact a book called Atiyah, *Accidents, Compensation and the Law* which would give you some useful ideas. It is an English book. How would you know it exists unless I tell you?

- Could you go straight to the *Laws of Hong Kong* — the Ordinances — and hope to find something relevant? Is there an index to the Ordinances?

The lawyer and the law student would have been pursuing the same route so far. The lawyer will probably stop here — at least for the purpose of advising a client. The law student still has more to do: the question still asks you to **discuss** the law.

- So you might want to read something which is critical of the law on personal injuries (again, Atiyah would help).
- But has anyone written anything which discusses the law in Hong Kong in a critical way? You know there is nothing in the books, but how about periodicals? There is in fact some material in *The Hong Kong Law Journal*, and it may be worth your while to look in *Law Lectures for Practitioners*. But how will you know there is something useful without sitting down and looking at the contents pages of all the volumes of these two series? And suppose someone has written about the law of Hong Kong, but not in something published in Hong Kong? How do you find this?
- When you are asked to discuss whether the law is satisfactory, it can quite often be useful to look at the law of other countries and see whether they have any valuable experience. Atiyah's book will in fact give you some idea for this particular topic, although his book was written and published in England. But for a topic where there is no such thoughtful book, how would you find out about the law of Canada, Australia and New

Zealand, for example? Can you get hold of resources about or resources of the law of those countries? How about cases from those countries? (Another question, which we shall return to and which might be puzzling you at this stage, is why do I suggest those three countries?)

- Finally, when you have read what people have suggested for other countries, or what the law is in other countries, you might want to consider the economic and social conditions of Hong Kong and ask whether other countries' ideas and solutions are appropriate for Hong Kong.
- Where can you get **resources about Hong Kong society, politics and economy**?
- Or up-to-date **statistics** (like how many road accidents there are in Hong Kong or how many people claim for compensation for injuries at work)!

A Good Legal Researcher

- Plans the research before starting.
- Is imaginative.
- Is thorough.
- Is flexible.
- Keeps her 'eye on the ball' — does not lose sight of the objective; the amount of work done for a 1500 word essay should not be the same as for a 10 000 word dissertation.
- Is curious — that is **wants** to find things out.
- Is meticulous in being up-to-date.
- Is meticulous in recording references, always making a full note of the source of any material, and putting direct quotations into inverted commas (so as to avoid risks of plagiarism later).
- Having looked in several places for materials, makes a note of the ones looked at, even if they yielded nothing. This saves looking in the same place more than once.
- Has a good system for keeping notes; doesn't let them get dog-eared, dirty and ultimately lost.

SELF-TEST QUESTIONS

⊙ Five minutes.

1. What sorts of activities which may involve research would a law student do which a practising lawyer would be unlikely to do?
2. What sorts of activities which may involve research would a practising lawyer do which a law student would be unlikely to do?
3. What (according to this Unit) is a brief?
4. What is the origin of the word 'research'?

Appendix I Law Libraries in Hong Kong

Many law firms have good libraries of their own. These notes relate only to what might be described as ‘public’ law libraries, in the sense that they are publicly funded.

- The City University of Hong Kong
- The University of Hong Kong
- The Supreme Court
- The Legal Department

The first two are open to the members of the University, to approved visitors and to members of other tertiary institutions in Hong Kong by the use of the appropriate card obtained from one’s ‘home’ institution.

The Supreme Court Library is open to the judiciary (though judges also have small libraries in their own chambers) and to the legal profession, and access by members of the public has recently become easier.

The Legal Department Library is intended for the use of lawyers in the Department but is also open to others by agreement with the librarian.

Students are unlikely to have need of these latter two libraries and undergraduate students especially are likely to find everything they want in their home institution library, unless they are preparing for an esoteric topic for a moot, maybe!

FINDING OUT ABOUT HOLDINGS

The two University Libraries (and other tertiary institutions in Hong Kong, including the Chinese University of Hong Kong, the Polytechnic University of Hong Kong and the University of Science and Technology, all of which have some courses or research involving law) are linked electronically and one can peruse their library catalogues through computers in the libraries of any of the other institutions.

For serial publications, one can consult the *Union List of Hong Kong Serials*, which includes law reports as well as journals. This is inevitably not quite up-to-date, but is a good place to start. It lists journals alphabetically, and then indicates by abbreviations which libraries have holdings. All the libraries mentioned here are included.

Below are a few notes about each library indicating features that might be useful. Inevitably the holdings of the various libraries are the same in terms of their core collections, especially of Hong Kong and UK materials. Equally inevitably each library has some special features. A few of these are pointed out.

CITY UNIVERSITY

Organization: The Law Library occupies part of the Main University Library, though a separate suite.

Holdings: You will find some series of law reports here which are not in the other libraries. Also the holdings of journals will be different. A couple of special strengths of this library are:

- English legal history
- US journals on environmental law

Electronic material: World Wide Web stations in a main part of the library; CD-ROMs include Legal Journals Index, Index to Foreign Legal Periodicals, etc. LEXIS terminal in law library.

Classification: Library of Congress

UNIVERSITY OF HONG KONG

Organization: The Law Library is separate from the Main University Library and housed in the same building as the Law Faculty. There is also a sizeable collection of law books, and a few law-related periodicals in the Main Library, especially in the areas of constitutional law and construction law.

Holdings: Areas of special strength include:

- Human Rights (including law reports)
- Aviation Law

Electronic sources: World Wide Web access available from Law and Main Libraries; most of the CDs mentioned in this book; LEXIS and Westlaw to be available shortly (already available to library staff).

Classification:

- Law Library: Moys
- Main Library: Dewey Decimal

Classification Systems

In a small library it is possible to keep the books in alphabetical order of author, and that is the way you will usually find a fiction collection shelved. But it is usual in large libraries to keep the books on similar topics together. This has the advantage that having found one book on a topic, you are likely to find other books on the same topic close by. It helps the process of finding things by happy accident — a very important research technique (known by the delightful name of ‘serendipity’)! Each book will have a unique number or combination of letters and numbers which enables you to identify the right one.

There are three common classification systems used for law books, and all of them are found in Hong Kong! Many university libraries use what is called the Library of Congress system — used by the Library of the US Congress. This is the one found at City U. Different disciplines have different letters: all law books, identification numbers begin with K. The University of Hong Kong Law Library uses the **Moys system**. This was designed by a University Librarian in the UK before the Library of Congress had got to the letter K. It is designed to accommodate more easily books from a range of jurisdictions. It is actually quite different from the City U **Library of Congress system** though all law books’ call numbers still begin with K. The University of Hong Kong Main Library classification system is not the Library of Congress one but the **Dewey decimal system**, so law books there have different identification marks from in the Law Library. The Dewey system used only numbers, except for the initial of the author’s name. Law comes in the range 340-349. Thus we find that a book on the law of contract in Hong Kong by Carole Pedley Chiu is at KT5376 C559 in the HKU Law Library and at 346.202 C55 in the Main Library (in each case the C refers to the initial letter of the author’s surname). In the City U Library the same book’s call number is KYQ1370.C47.

SUPREME COURT

Holdings: The emphasis is naturally on works for the practice of law; thus it has fewer monographs than the university libraries. The main area of strength is:

- law reports, including series from the UK not available elsewhere (many nominate reports), and also from other jurisdictions.

Electronic sources: A few CD-ROMs

Classification: Law reports and other primary materials by jurisdiction. The main oddity of this library is that the books and monographs (ie not law reports, journals, legislation) are organized alphabetically by order of author. Indeed, by the first three letters of the author's name only! And occasionally there is a book which is organized by title and not by name of author.

LEGAL DEPARTMENT

This is the smallest library among those discussed here. However, it does have holdings of some materials which might be difficult to find elsewhere, such as:

- UK Hansard in paper format
- Irish Reports
- law reports from a number of African countries (though not very up-to-date — strongest in the 1960s)

Classification: Library of Congress

Appendix IV Case Reference Numbers in Hong Kong

Every case started in the courts has a reference number. The number is prefaced by letters which indicate the court and the type of proceeding. Sometimes you will see the letters for the court omitted (you may see just A for action instead of HCA or PI for personal injury instead of HCPI, for example). Recent circulars from the judiciary have tidied up the system and clarified the situation.¹

Each magistracy has its own two letter abbreviation: ES (Eastern) FL (Fanling) KT (Kwun Tong) NK (North Kowloon) SK (South Kowloon) SP (San Po Kong) TM (Tuen Mun) TW (Tsuen Wan) and WS (Western).

Many of these you will never see, at least while a student. Criminal cases at first instance are virtually never reported and decisions are not circulated (in the case of jury trial the decision is not reasoned, in the sense that no reasons are given by the jury).

The court letters are followed by a letter or letters indicating the type of proceeding — except in the case of the Labour Tribunal.

Here is a list of the full set of letters for the most important types of cases, plus a few that are interesting or new or which illustrate how the system works. Since you will still see older cases I have given the old and the new prefixes.

¹ I am grateful to Professor Michael Wilkinson for providing this information.

Type of Case and Court	Old Prefix	New Prefix
Civil Appeal in CFA		FACV
Criminal Appeal in CFA		FACC
Miscellaneous Proceedings in CFA - Civil (used for applications for leave to appeal)		FAMV
Miscellaneous Proceedings in CFA - Criminal		FAMC
Civil Appeal in CA	Civ App	CACV
Criminal Appeal in CA	Cri App	CACC
Application for Review of Sentence in CA (under s. 81A of the Criminal Procedure Ordinance)	AR	CAAR
Secretary for Justice's Reference		CASJ
Reservation of Question of Law		CAQL
Attorney-General's Reference	AG's Reference	CACG
Civil Action in CFI	HCA	HCA
Administrative Law Proceedings	HCAL	HCAL
Admiralty Action	HCAJ	HCAJ
Commercial Action	HCCL	HCCL
Companies Winding Up	HCCWU	HCCW
Matrimonial Causes in CFI	HCDJ	HCMC
Miscellaneous Proceedings in CFI	HCMP	HCMP

Type of Case and Court	Old Prefix	New Prefix
Personal Injuries Actions in CFI	HCPI	HCPI
Criminal Case in CFI	HCCC	HCCC
Magistracy Appeal in CFI	HCMA	HCMA
Small Claims Tribunal Appeal in CFI	SCTA	HCSA
Probate Action in CFI	HCAP	HCAP
Civil Action in District Court	DCCJ	DCCJ
Employee Compensation Claim in DC	DCEC	DCEC
Criminal Case in DC	DCCC	DCCC
Matrimonial Cause in Family Court	FCDJ	FCMC
Application for possession under Part I of Landlord and Tenant (Consolidation) Ordinance	H, K HE or KE	LDPA
Application under Building Management Ordinance	BM	LDBM
Obscene Articles Tribunal Classification (Comics book)	OAT/CB	OACC