

J. Paul Lomio, Henrik S. Spang-Hanssen
& George D. Wilson

Legal Research Methods in a Modern World: A Coursebook



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Legal Research Methods in a Modern World: A Coursebook
Third edition

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The reason “why judges and lawyers should divert ... to the principles and decisions of foreign and international law ... is globalization. No institution of government can afford any longer to ignore the rest of the world.”

Former U.S. Supreme Court Associate Justice Sandra Day O'Connor, Southern Center for International Studies, Atlanta, Georgia, 28 October 2003

The greatest consequence of globalization is that there aren't any purely national solutions to global challenges.

*Angela Merkel
German First Chancellor
(Time Magazine, 11 January 2010)*

Lawyers today need to be educated more broadly if they are to serve their clients and society well.

Stanford Law School Dean Larry Kramer

Legal education has changed little over the past century. Yet the challenges today's lawyers must meet are wholly new and different. Lawyers can contribute creative and effective solutions if we prepare them to do so ... with innovative interdisciplinary and international programs, expanded clinical education, and a deepened, nonpartisan commitment to public service.

John L. Hennessy, Stanford University President

It has become more and more obvious that an international operating lawyer cannot rely anymore on his knowledge of the national system only. He must be trained in comparative legal methodology and open minded to legal solutions of other jurisdictions. ... Consequently, the national legal education systems have to adapt to this new generation of lawyers who are not anymore only concentrated on the[ir] own jurisdiction[s] but are global players on the international legal market.

Universiteit Maastricht, The Future of Legal Education (June 2007)

Comparative Legal Studies [should] indeed inspire students to learn more about and rethink the biases of their own cultural and legal education.

Günter Frankenberg, Critical Comparisons: Re-Thinking Comparative Law, 26 Harvard International Law Journal 411, 412 (Spring 1985)

The interest in comparative studies in American law schools is a response to the increasing relevance of foreign law to the concerns of lawyers and their clients on a shrunken, interdependent globe. Both as professionals and as leaders in the public and private sectors, lawyers in the West participate in a continual institutional reconstruction of the relevant world. Now that their relevant world embraces both the common law and the civil law ... a familiarity with other people's law is indispensable to an adequate legal education.

Mauro Cappelletti, Preface to J. Merryman & D. Clark, Comparative Law: Western European and Latin American Legal Systems (Indianapolis: Bobbs-Merrill 1978), at vii

[The] common-law lawyer and [civil-law lawyer] each [has] assumed the modes of thought in which he had been trained to be fundamental and universal ... [leading to] horrible examples of legal provincialism....

Roscoe Pound, The Place of Comparative Law in the American Law School Curriculum, 8 Tulane Law Review 161, 167 (Feb. 1934)

The case-study method paints a wrong picture of the legal profession for law students because of its reliance on using appellate cases to teach legal thoughts or reasoning based on the Langdell (Socratic) method.

Professor Douglas A. Berman, Ohio State University, ABA Journal (July 2007), at page 44

Tomorrow's lawyers will be plucking increasingly valuable data from exponentially-growing fields of information, working with colleagues and clients spanning the globe, and establishing automated systems to leverage scarce legal resources more efficiently.

Law plays a foundational role in American society and increasingly in articulating our global community.

Gene Koo, New Skills, New Learning, at page 24

The global economy is becoming more interconnected, so thinking how to teach comparative and international law becomes more and more important every year.

Columbia Dean David Schizer, The National Law Journal (September 10, 2007)

A comparatist should not limit to the staid and dry juxtaposition of the regulations of one legal system with those of another, with little or no critical analysis; as such, comparatists do not compare, they contrast. What is required is analysis.

Werner F. Menski, Comparative Law In A Global Context (2007)

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Preface

First edition - It is nearly impossible for foreign students, scholars and lawyers/jurists, on visits of some months to either an American university or other research institution, to learn how to do legal research effectively on U.S. material. One has to have experienced American society and, moreover, the U.S. legal research environment, for quite some time to be able to truly understand the way American legal research is conducted.

The same can be said about Americans visiting Europe and its different legal families.¹

This book is an attempt to outline usefully the basic research methods in the United States (overall common-law) and in Europe (overall civil-law). In addition, it tries to point out the salient issues the “visiting” scholar in particular should remember.

The two chapters on European Union resources (Chapter 4) and public international resources (Chapter 5) were deemed by the authors to be pertinent in the context of earlier chapters on U.S. and European sources and legal methods. The subsequent, shorter chapters on legal families (Chapter 6) and on comparative law (Chapter 7) also seemed appropriate.

We have tried to make the content of this book proportionate to the amount of lecture material that would ordinarily be provided in a course on legal research methods.

The process of writing the book has been a collaborative effort between Paul Lomio and Henrik Stakemann Spang-Hanssen. The former took responsibility for Chapter 2. The latter composed the bulk of the draft manuscript and assumed responsibility for Chapters 3-7. The authors have reviewed and discussed each other's contributions.

¹ The American law graduate will likewise find that at least two years is necessary for studying abroad in Europe effectively, and that “the first year is likely to be wasted.” Max Rheinstein, *Comparative Law – Its Functions, Methods and Usages*, 22 ARK. L. REV. 415, 424 (Fall 1968). The organization of legal studies in Europe is “so different” from what it is in the U.S. that “an American student is likely to be lost unless he is individually guided.” *Idem.* at 424-25.

The authors devoted special attention to Sections 2.1. and 3.1. from the perspective of their national legal systems, so as to make sure the different “cultures” in the U.S. and Europe are emphasized for the book’s readers.

We anticipate receiving many suggestions for improvement and we hope, in turn, to be able to bring out improved later editions of the book.

We are extremely grateful to George D. Wilson, reference librarian, attorney-at-law and lecturer in law at Stanford Law School, for his invaluable comments on and contributions to the manuscript and for his careful proof-reading. Also, we would like to thank Alba Holgado at the Robert Crown Law Library for her expert help in making the front-page and several graphics/tables.

If this book will help prevent even just a few students, scholars and lawyers/jurists from making the most common mistakes, our goal will have been fulfilled.

In addition, we hope it will assist students around the world who participate in such activities as the annual Philip C. Jessup International Law Moot Court Competition in Washington D.C. (arranged by the International Law Student Association (ILSA)), who have gained access to Westlaw and LexisNexis databases for international legal materials but who still must gain understanding of how these databases work. To such individuals especially, [3rd ed.: section 5.3, Chapter 11, and Appendix 2 & 5] should be of help

We would like to emphasize that in this book we use the term “law” in the sense it is used in the U.S. (covering the broad body of judicial decisions, legislative enactments, and administrative/executive regulations/rules) and not as in Civil Law countries, where the term is mostly only regarded as the law made by parliaments. For the latter meaning, we generally use the terms “act” or “statute.”

Because the URLs of websites often change, we have chosen only to give references to main/home webpages. Pinpoint URLs can be found at our special website for the book at [now] <www.hssph.net/legalrm>, which will be kept current updated from time to time. As Chapter 2 points out, currency is an obsession with the American lawyer.

Citations in footnotes have generally been made on the basis of the American legal citations system. The bibliography in the appendix has been constructed in accordance with the European system, including full spelling of American law reviews. As this book does not deal with case law decisions in detail, it does not contain a case list.

Robert Crown Law Library, Stanford University, September 2007

J. Paul Lomio & Henrik Stakemann Spang-Hanssen

Preface to **Second edition** - This second edition is primarily an update of Chapter 4 due to the expected changes in the European Union caused by the Lisbon Treaty of December 2007.

Some errors in the first edition have been corrected.

Tips and notes in grey shadings have been included in chapters 1, 3-7.

I would like to thank Professor and Library Director Lee F. Peoples, Oklahoma City University, very much for his suggestion to make a “manual” for teaching European Civil Law. A first draft was published in March 2008 with approval of Professor Peoples and made available through a link from the book’s corresponding website. A new version of this document is attached to this second edition as an Addendum of the book (without copyright for DJØF).²

As my co-author has unfortunately been too much burdened with other tasks, a real revised edition must come later.

The updates – with few exceptions - have been made in chapters of which I am the sole author and I have the full responsibility for any faults made in this second edition.

Because the book's paragraphs are written with justified alignment, text sometimes will occur with large spaces between words in connection with a longer URL for a website. But I have chosen not to cut the (true) URL, which

² This “manual” can also be found as “The Modern Law School's *Uriaspost* - the Post of Danger” at <http://ssrn.com/abstract_id=1102293> (where it may also have been updated from the text printed in this book).

would be the only way to eliminate such large space.

I am extremely grateful to George D. Wilson for his once again careful proofreading.

Great thanks also go to Alba Holgado at the Robert Crown Law Library for her expert help in making several graphics.

Also, it should be noted that websites are often changed, and thus we have chosen not to give pinpoint references to websites' URLs in the book, but rather to announce them at this book's corresponding website at <www.hssph.net/legalrm>, which will be kept updated from time to time.

Leland Stanford Junior University, August 2008

Henrik Stakemann Spang-Hanssen

Preface to current edition – This edition is expanded and revised to a large extent from previous editions; hence, the new title **Legal Research Methods in the Modern World**. Chapters have been reshuffled so the book should correspond more to the curriculum/syllabus for courses on legal research methods in foreign law / finding resources in foreign law and/or how to study foreign law. In this respect, new chapters (e.g., on Russia and China and on researching foreign law) have been included. To help American teachers in this respect, syllabuses have been included for some chapters, see the Appendix. For the same reason, we have at the end of each chapter made a bibliography (“Further Reading”) and removed the full alphabetic bibliography to the book's corresponding website at <www.hssph.net/legalrm>. The Appendix portion on renumbering/equivalences tables of E.U. treaties from previous editions has been removed – for lack of space – to <www.hssph.net/legalrm/Research_book_2-Edition_Appendix_4.pdf> at our special website for the book. Furthermore, previous chapters 2 (U.S. – now chapter 5) and 4 (E.U. – now chapter 9) have been updated to respond to more current facts and circumstances. In the case of American legal research, the book explains the impacts of recent, significant developments, such as the introduction of Bloomberg Law, WestlawNext and the revolutionary Law.gov movement.

Like previous editions, Henrik Stakemann Spang-Hanssen has done the

overall editing, layout and the Index for the full manuscript. Great thanks go again to Alba Holgado at the Robert Crown Law Library for her expert help in making several graphics.

The process of writing this edition has been a collaborative effort between J. Paul Lomio, George D. Wilson and Henrik Stakemann Spang-Hanssen. Messrs. Lomio and Wilson took primary responsibility for Chapter 5 (U.S.). Spang-Hanssen assumed responsibility for all other Chapters. The authors have reviewed and discussed each other's contributions. The authors again devoted special attention to make sure the different legal "cultures" in the U.S. and Europe are emphasized for the book's readers.

We intend to update our special website for the book, now at <www.hssph.net/legalrm>, more frequently.

Leland Stanford Junior University, January 2011

Paul Lomio
Henrik Stakemann Spang-Hanssen
George D. Wilson

We have received many fine suggestions for improvements, for which we are extremely grateful, as to revision of the first edition – which truly was only the authors' first attempt to construct an initial, simple "bridge across the Atlantic Ocean" – and we still hope to receive more comments and suggestions, which will also be highly appreciated and should be sent to:

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About the Authors

J. Paul Lomio is Library Director and Lecturer in Law at Stanford Law School. He holds both a U.S. Juris Doctor degree and an LL.M. degree in Law and Marine Affairs as well as a Masters of Library and Information Science. He was admitted to the Washington State Bar Association and was a member of the Gonzaga Law Review and has published several law review articles. He taught Resources in the Law at San Jose State University (SJSU) for ten years and currently teaches Advanced Legal Research at Stanford Law School (SLS). He was appointed to the Law Librarians Advisory Committee for the California Office of Administrative Law, served a three-year term on the Association of American Law Schools Committee on Libraries and Technology and is a member of the Electronic Court Filing Task Force for the United States District Court, Northern District of California. He currently serves as a member of the West Academic Advisory Board. He has received several distinguished awards, including the Marshall D. O'Neill Award for "exceptional and enduring support of Stanford University's Research Enterprise." See: <www.law.stanford.edu/library>.

Henrik Stakemann Spang-Hanssen is a Danish Supreme Court Attorney-at-law. Since 1998, he has worked as an independent senior researcher and been Lecturer in Law, residing mostly in the United States. He holds masters degrees in law from Copenhagen University in Denmark and Santa Clara University in California. He has clerked for the Chief Justice of the Supreme Court of Denmark. He has taught courses/seminars for law students, paralegals, and attorneys. He practiced law in his own law firm for over 15 years and worked as an external District Attorney in Appeals Courts in Denmark. He has been an elected member of the Attorney Disciplinary Board for the Copenhagen District. He has served as chairperson of a special committee on debt-collecting businesses and been a member of the Danish Law Society's committee concerning foreclosure auctions, debt-collecting businesses, bankruptcies and moratoria. He has several times served as a judge at the international final rounds of the Phillip C. Jessup International Law Moot Court Competition in Washington, D.C. He is a member of The American branch of the International Law Association (ABILA), The American Society of In-