

# Finding Foreign Law: It's Not Just for the Experts

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As the forces of globalization reshape the world, finding the law of jurisdictions other than our own has grown in importance. Legal issues that once were exclusively in the domain of state or federal United States law may now involve transnational law questions in subjects as diverse as family law, criminal law, or business and trade. Foreign law has been used as precedent in U.S. courts<sup>1</sup> and a growing number of law schools integrate the teaching of international and transnational law into the traditional first-year courses.

Finding primary sources of foreign law is much easier today than it was five or 10 years ago, as many governments and international organizations post materials on the Web. However, contrary to popular belief, not everything is on the Internet. Even official materials posted by governmental agencies may not be complete or up-to-date. And then there is the language problem. But do not be discouraged; it is possible to find foreign law.

One of the biggest problems in researching foreign law is the same as when researching domestic law: knowing what to look for. If seeking a fairly recent legislative act or presidential decree with a citation of some sort, a brief search of the Web may produce the document in full text. More often the task is to find what law governs a specific situation or transaction in a given jurisdiction. First, it is important to take the time to carefully define the legal issue being investigated. A focused search has a much greater chance of producing relevant results.

Second, it is important to ascertain what the sources of law are in the jurisdiction under consideration. The classic example is recognizing that while case law is a source of primary law in common law systems, it is a secondary law source in civil law systems. Third, it helps to know the legal terminology that is used in that jurisdiction. Never underestimate the importance of legal dictionaries, bilingual or polyglot dictionaries such as Maria Chaves de Mello's *Dicionário Jurídico Português- Inglês, Inglês-Português* (2002), or legal dictionaries in the vernacular of the foreign country, such as Alfred Romain's *Wörterbuch der Rechts- und Wirtschaftssprache* (2002). And consider that although the United States, the United Kingdom, and Australia are English-speaking, common law jurisdictions, the spelling, the use, and the meaning of legal terminology can vary. A few hours of fruitless research may well be avoided by five minutes spent consulting a legal dictionary. Fourth, seek professional help. Two well-known, professional foreign and international law librarians have written guides on how to conduct foreign legal research. Mary Rumsey's Web-based article is *Basic Guide to Researching Foreign Law*,<sup>2</sup> and Marci Hoffman's University of California–Berkeley course materials on foreign and comparative legal research are publicly available on the Web.<sup>3</sup>

For a crash course on a foreign legal system, look for a country-specific legal research guide from a credible source. The availability of such guides has increased tremendously in the last few years and many are freely available on the Internet. Research guides created by law librarians, law professors, and lawyers can be found on LLRX.com,<sup>4</sup> on academic

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<sup>1</sup> See Austen L. Parrish, *Storm in a Teacup: The U.S. Supreme Court's Use of Foreign Law*, 2007 U. Ill. L. Rev. 637; Eric Engle, *European Law in American Courts: Foreign Law As Evidence of Domestic Law*, 33 Ohio N.U. L. Rev 99 (2007).

<sup>2</sup> <[www.nyulawglobal.org/globalex/Foreign\\_Law\\_Research1.htm](http://www.nyulawglobal.org/globalex/Foreign_Law_Research1.htm)>.

<sup>3</sup> <[www.law.berkeley.edu/library/classes/iflr/foreignlaw.html](http://www.law.berkeley.edu/library/classes/iflr/foreignlaw.html)>.

<sup>4</sup> <[www.llrx.com/category/857](http://www.llrx.com/category/857)>.

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law library Web pages,<sup>5</sup> and on law firm Web pages.<sup>6</sup> Legal research guides are also published in legal journals<sup>7</sup> and in treatises such as Danner’s *Introduction to Foreign Legal Systems* (1994) and the looseleaf publication *Germain’s Transnational Law Research* (1991–). The leading multivolume looseleaf set with a fairly detailed overview of each country’s legal system and legal history is Reynolds and Flores’ *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World* (1989–). The electronic version of this set is the subscription database Foreign Law Guide.<sup>8</sup>

Research guides are time-saving devices because they identify the sources of law for each jurisdiction (are contracts covered in the civil code?) and name the publications where these sources can be found (Peruvian legislation gets printed in the official gazette *El Peruano*.) Most research guides written for English speakers will also detail what materials are available in English. While a growing number of statutory materials and individual case reports are being translated,<sup>9</sup> the majority of primary law from foreign jurisdictions is not.<sup>10</sup>

If language is a problem or if full text is not available, it is possible that there will be an English summary of the law in question. Summaries may be found in looseleaf publications such as *Modern Legal Systems Cyclopaedia, Digest of Commercial*

*Laws of the World, Foreign Commerce and the Antitrust Laws, Company Law in Europe, Tax Laws of the World*, and the hardcover *Martindale-Hubbell International Law Digest*. The multivolume looseleaf series *International Encyclopaedia of Laws* provides important background information and covers various subjects, from family law to intellectual property to civil procedure. Take, for example, the article on Morocco in the civil procedure series. It is more than 300 pages long and gives detailed information on the political and judicial systems, administration of the courts, and organization of the bar in addition to detailed commentary on issues of civil procedure. The Global Legal Information Network (GLIN)<sup>11</sup> is a public database with official texts of laws, regulations, and judicial decisions submitted by government agencies and some international organizations. The documents are in the official language of the contributing party but English summaries of each document are included. Access to some of the full text may be restricted to GLIN members but the summaries are freely available.

Westlaw® and LexisNexis® have relatively few comprehensive primary law databases but do offer many secondary source materials, such as legal newspapers, journal articles, and the occasional treatise. Not surprisingly, coverage of English-speaking, common law countries and the European Union is greater than other jurisdictions. LexisNexis offers more primary law materials than Westlaw but content is always changing so it is worth checking to see what is available. When using legislative materials and case reports on either service, be sure to check the database description to see how often it is updated and what it actually covers.

There are many resources for finding foreign law on the Web. Silke Sahl’s *Finding Foreign Law Resources on the Internet*<sup>12</sup> and Charlotte Bynum’s *Foreign Law: Subject Law Collections on the Web*<sup>13</sup> are good

<sup>5</sup> See, for example, GlobaLex, on the Hauser Global Law School Program, New York University Law School page, <[www.nyulawglobal.org/globalex/index.html](http://www.nyulawglobal.org/globalex/index.html)>; Cornell’s Legal Information Institute guides, <[www.law.cornell.edu/world](http://www.law.cornell.edu/world)>; the University of California–Berkeley Law Library, <[www.law.berkeley.edu/library/online/foreign/general.html](http://www.law.berkeley.edu/library/online/foreign/general.html)>; and Chicago’s D’Angelo Law Library guides, <[www.lib.uchicago.edu/e/law/intl/foreign.html](http://www.lib.uchicago.edu/e/law/intl/foreign.html)>.

<sup>6</sup> See, for example, The Virtual Chase, sponsored by the law firm of Ballard, Spahr, Andrews & Ingersoll, LLP, and posted at <[www.virtualchase.com/topics/foreign.shtml](http://www.virtualchase.com/topics/foreign.shtml)>.

<sup>7</sup> See, for example, *Legal System of Brazil*, 40 St. Louis U. L.J. 1337 (1996).

<sup>8</sup> <[www.foreignlawguide.com](http://www.foreignlawguide.com)>.

<sup>9</sup> See, for example, *Civil Code of the Russian Federation*, translated from Russian with an introduction by William E. Butler (2002).

<sup>10</sup> It is important to remember that law that has been translated into English is not “the law.” It is merely the translation of the law.

<sup>11</sup> <[www.glin.gov/search.action](http://www.glin.gov/search.action)>.

<sup>12</sup> <[www.law.columbia.edu/library/Research\\_Guides/foreign\\_law/forlawresources](http://www.law.columbia.edu/library/Research_Guides/foreign_law/forlawresources)>.

<sup>13</sup> <[www.nyulawglobal.org/globalex/Foreign\\_Collections.htm](http://www.nyulawglobal.org/globalex/Foreign_Collections.htm)>.

places to start. Other Web resources with links to collections of foreign law include the Law Library of Congress' Nations of the World<sup>14</sup> and Washburn University School of Law's WashLaw: Legal Research on the Web, with a page devoted to foreign and international resources.<sup>15</sup> Some international organization Web sites also have subject-specific legislation. For example, the International Labour Organization has NATLEX,<sup>16</sup> a database with abstracts of, and some links to, the text of national laws on labor and related human rights issues. Similarly, the World Intellectual Property Organization's Web site hosts CLEA, Collection of Laws for Electronic Access,<sup>17</sup> which has national intellectual property legislation from various countries as well as intellectual property treaties.

A growing number of Web sites are being created by and for legal researchers with the express aim of making legal information freely available. Global Courts<sup>18</sup> is a gateway to supreme court decisions from around the world as well as to information about the courts, electronic filing, and electronic courtrooms. The World Legal Information Institute (WorldLII)<sup>19</sup> is practically a one-stop-shopping site. It has links to material from more than 860 databases from 123 countries and is adding new content on a regular basis. The Web site offers access to constitutions, legislation, case law, treaties, international organizations, and electronic journals and can be searched by topic, country, region, or language. However, like everything on the Web, it is limited to what is available electronically.

Print materials and the Web are usually the best tools when looking for foreign law. Thanks to the Internet, foreign legal research is not just for experts anymore. Of course, sometimes it helps to know one. When all else fails, ask a law librarian for help.

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### Another Perspective

“Legal research should pervade the law school curriculum in much the same ways as do legal analysis, legal writing, oral advocacy, and professional responsibility. It cannot be taught only as a discrete unit early in a student's law school career and then be allowed to atrophy until it is needed again in practice. Nor can an advanced legal research elective be considered the cure-all. Many important electives compete for a student's needs and interests. Fill-in-the-gap 'advanced topics in research' sessions, remedial 'refreshers,' and summer associate training programs, while helpful, also serve to illustrate preexisting deficiencies.”

—Donald J. Dunn, *Why Legal Research Skills Declined, or When Two Rights Make a Wrong*, 85 *Law Libr. J.* 49, 62–63 (1993).

<sup>14</sup> <[www.loc.gov/law/guide/nations.html](http://www.loc.gov/law/guide/nations.html)>.

<sup>15</sup> <[www.washlaw.edu/forint/forintmain.html](http://www.washlaw.edu/forint/forintmain.html)>.

<sup>16</sup> <[www.ilo.org/dyn/natlex/natlex\\_browse.home](http://www.ilo.org/dyn/natlex/natlex_browse.home)>.

<sup>17</sup> <[www.wipo.int/clea/en/index.jsp](http://www.wipo.int/clea/en/index.jsp)>.

<sup>18</sup> <[www.globalcourts.com/index.html](http://www.globalcourts.com/index.html)>.

<sup>19</sup> <[www.worldlii.org/](http://www.worldlii.org/)>.