

CONCISE LEGAL RESEARCH (5th ed., 2004, First Indian Reprint, 2009) by Robert Watt. The Federation Press, Australia : Indian Reprint by Universal Law Publishing Co. Pvt. Ltd., C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033. Pp. x + 271. Price: Rs. 275/-.

LEGAL TECHNIQUE (2002, First Indian Reprint, 2009) by Christopher Enright. The Federation Press, Australia : Indian Reprint by Universal Law Publishing Co. Pvt. Ltd., C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033. Pp. xxxvii + 565. Price: Rs. 550/-.

UNIVERSAL'S GUIDE TO UNIFORM LEGAL CITATIONS. (2011). By Meera Kaura Patel. Universal Law Publishing Co. Pvt. Ltd., C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033. Pp. xv + 143. Price: Rs. 175/-.

THE SUBJECT of legal research, research methodology, legal technique and writing and mode of citation used by researchers have no single definite uniform method which can be said to have been universally accepted. The universality is in the divergence followed by all at all levels. There is nothing like 'absolute' right or wrong method of either adopting any legal technique or research methodology or doing research or adopting citations. One thing which, however, does not allow any disagreement is that a research must be 'consistent' in whatever method he/she adopts; inconsistency is not excusable. Moreover, if a journal or report contains its own mode of citation, a researcher or author has no business to adopt a different mode than what has been given in the journal or the report while citing it. The logic for saying so is very simple: if a person gives his/her name, nobody can address him/her with a different name.

There was a time when it was extremely difficult to collect materials for study and, more particularly, for research work. One had to turn over each page of law reports and journals from the library shelves full of dust and filth. Most of the librarians had little knowledge about the availability of even books in their library, not to talk of articles and cases.¹ The situation has now completely changed. Too much of every

1. The librarian of the Indian Law Institute, New Delhi during 1970s and 1980s, Hem Chand Jain, was a rare exception. You name a book, he would immediately

kind of material on every subject is available on a click of mouse. The availability of materials is in such abundance that at times it becomes really difficult to segregate the relevant from irrelevant. This abundance of availability of materials has resulted, in a large number of cases now, in plagiarism. Published books, articles, doctoral theses and master's level dissertations are full of materials stolen from the internet without caring to change even comma and full stops. The copied materials are not acknowledged to avoid detection, forgetting the fact that now techniques are available by which even by hiding the reference to the original sources, a cheater can be caught.²

The above three books, first two written by Australian teachers³ and the third one by an Indian author,⁴ together contain very valuable material on the subject of legal techniques, legal research and uniform legal citations. Together, they provide a handy tool to researchers who are generally unaware of the intricacies of undertaking legal research and/or adopting any research methodology, legal technique and writing and also in adopting uniform and well recognized mode of citations in their writings. As a matter of fact, in all Law Faculties, National Law Schools and colleges in India, research methodology is prescribed as a compulsory course at the post-graduate level but, unfortunately, the teaching of this course is dismal as would be seen from the dissertations, doctoral theses, research publications and published books. Even the judiciary does not seem to pay any attention to the mode of citation of books, articles and cases as would be seen from the judgments of not only subordinate courts but also those of the High Courts and the Supreme Court. In India, in order to maintain uniformity in judgment writing, there is a need to have a

tell you whether it was in the library or not and also the place/shelf where it would be available. His book *Indian Legal Material; A Bibliographic Guide* (Tripathi and Oceana, 1970) has been considered by Robert Watt as 'an essential publication for the full understanding of the complexities of some aspects of Indian legal materials, particularly in the regulatory area.' : Robert Watt, *Concise Legal Research* 153 (5th ed., 2004). To a great extent, his successor Pramod Singh followed him.

2. See, in particular, book reviews by Atul Singh in 53 *JILI* 131-136 (2011); Poonam Pradhan Saxena, 53 *JILI* 367-371 (2011); Vageshwari in 53 *JILI* 385-390 (2011). These reviewers have bitterly criticized the authors of books reviewed by them about the manner in which the authors have copiously copied from other sources without indicating the source of the materials.

3. Robert Watt, *supra* note 1 and Christopher Enright, *Legal Technique* (2002).

4. Meera Kaura Patel, *Universal's Guide to Uniform Legal Citations* (2011).

guide such as the one prepared in Australia.⁵

In India, the students, researchers and authors in general do not seem to bother much about either consistency/uniformity in adopting citations and style in their work or have any rational basis for adopting any one particular mode of citation/style. The only exception perhaps is the *Journal of the Indian Law Institute* and the *Annual Survey of Indian Law*, published by the Indian Law Institute, New Delhi, which generally follow a consistent, uniform and reasonable way of citations though, here again, much remains to be desired.

How much divergence is found among the authors in adopting modes of citation can be seen here. Note below the illustrative examples of citations given in some leading journals and the aforesaid three books under review:

Books:

Dine, *Company Law*, 4th edn. (London: Sweet & Maxwell, 2001), at p.217.⁶

B. Schwartz, *The Supreme Court, Constitutional Revolution in Retrospect* (New York: The Ronald Press, 1957) 354.⁷

STEVEN SHAVELL, FOUNDATIONS OF ECONOMIC ANALYSIS OF LAW 1-4 (2004); ROBERT COOTER AND THOMAS ULEN, LAW & ECONOMICS 293 (5th ed. 2008).⁸

A.P. Herbert, *Anything but Action? A Study of the Uses and Abuses of Committees of Inquiry* (London 1960), p. 20.

S. Khilnani, *The Idea of India* (London 1997), pp. 200-01.⁹

G. Kabreab, *African Refugees: Reflections on the African Refugee Problem* (1985).

A.U. Kalu et. al. (eds.), *Perspectives on Human Rights* 32 (Federal Ministry of Justice, Nigeria, 1992).¹⁰

SL McShane and MA Glinow, 2000, *Organizational Behaviour*, McGraw Hill, pp. 40-41.

5. *Guide to Uniform Production of Judgments* (2nd ed., 1999). This *Guide* was issued under the auspices of the Australian Institute of Judicial Administration Incorporated. See Robert Watt, *supra* note 3 at 3.

6. (2011) 127 L.Q.R. 126.

7. (2011) 74 (1) MLR 82.

8. 124 HARV. L. REV. 527 (2010).

9. [2010] C.L.J. 44-45.

10. (2011) 53 JILL 42.

Lindblom, *The Policy-Making Process* 1980.

Wilson, "The Complexity of Statutes" (1974).

Winfield, 1925, *Chief Sources of English Legal History*, pp. 252-256.¹¹

Smith, G *Administrative Law* 2nd ed Oxford University Press, London, 1970.¹²

Upendra Baxi, *Human Rights in a Post-Human World: Critical Essays* (India: Oxford University Press, 2007) at 42 [Baxi, *Critical Essays*].¹³

Paul L. Davies, *Principles of Modern Company Law* 506-24, para 16-24 (Sweet and Maxwell, London, 2008).¹⁴

Citation of articles in Journals:

Young, "In Defence" (2009) 72 M.L.R. 554 at 576.¹⁵

J.A.C. Griffith, 'The Political Constitution' (1979) 42 MLR 1, 14. See also T. Poole, "Tilting at Wind-mills? Truth and Illusion in "The Political Constitution""¹⁶

Richard A. Posner, *An Economic Approach to the Law of Evidence*, 51 STAN. L. REV. 1477, 1484-87 (1999).¹⁷

Arthur T. von Mehren, "Some Reflections on Codification and Case Law in the Twenty-First Century" (1998) 31 University of California at Davis L.R. 659, 668f.

Hesselink, (2009) 83 Tulane L.R. 925, n. 23.¹⁸

S.N. Singh, "Constitutional Law-I", XLV *ASIL* 136-38 (2009).¹⁹

Mason A, "Future Directions in Australian Law" (1987) 13 MULR 149.

Rogers, B "The Pitfalls in Occupational Health and Safety Law" *Journal of Occupational Health and Safety* Vol. 15 No. 4 1998 at 13.²⁰

See Lucke, "The Common Law: Judicial Impartiality and Judge-Made Law" (1982).²¹

11. Christopher Enright, *supra* note 3 at vii, 204 & 270. [*Book under review*].

12. Robert Watt, *supra* note 1 at 4 [*Book under review*].

13. Meera Kaura Patel, *supra* note 4 at 10. [*Book under review*].

14. 53 *JILI* 115 (2011).

15. (2011) 127 *L.Q.R.* 102.

16. (2011) 74(1) *MLR* 82

17. 124 *HARV. L. REV.* 523 (2010).

18. ([2010] *C.L.J.* 101.

19. (2011) 53 *JILI* 95.

20. Robert Watt, *supra* note 1 at 4.

21. Christopher Enright, *supra* note 3 at 182. This is actually an article published in (1982) 98 *Law QR* 29, see p. 542 of the book.

Parmanand Singh, “Tension between Equality and Affirmative Action: An Overview”, 1 *Jindal Global L Rev* 109 (2009).²²

Citation of cases in articles published in Journals:

Re Southern Counties Fresh Foods Ltd: Cobden Investments Ltd. v RWM Langport Ltd [2008] EWHC 2810 (Ch) at [67].²³

The Director General of Fair Trading v First National Bank plc [2001] UKHL 52; [2002] 1 AC 481. And see the Bank Charges case [2009] EWCA Civ 116 at [13].²⁴

The Schooner Exchange v. M’Faddon, 11 U.S. (7 Cranch) 110, 148 (1872).

Hercaire Int’l, Inc. v. Argentina, 821 F.2d 559, 563 (11th Cir. 1987).²⁵

Progress Property Company Ltd v. Moosgarb Group Ltd [2009] EWCA Civ 629.²⁶

Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 SC 1116.²⁷

London and North Eastern Railway Co v Berrimen [1946] AC 278²⁸.

Donoghue v Stevenson [1932] AC 562, 567 per Lord Buckmaster.

Donoghue v Stevenson [1932] AC 562 at 583.²⁹

Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81: AIR 1979 SC 1360.³⁰

Collins v Repatriation Commission (1980) 48 FLR 198 at 211 - 212³¹

Minerva Mills v. Union of India (1980) 3 SCC 625 at 671.

Quotations/abstract from writings/cases:

Solicitor General observed that this provision would

“allow the status of nominee director to be enshrined in the company’s constitution so that the nominee is able to follow the

22. 53 *JILI* 78 (2011).

23. (2011) 127 *LQR* 126.

24. (2011) 74(1) *MLR* 109.

25. 124 *HARV. L. REV.* 555 (2010).

26. [2010] *C.L.J.* 152.

27. (2011) 53 *JILI* 169.

28. Christopher Enright, *supra* note 3 at 183

29. *Id.* at 215 & 270

30. Meera Kaura Patel, *supra* note 4 at 18.

31. Robert Watt, *supra* note 1 at 4.

instructions of the person who appointed him without breaching that duty.”³²

In Craven’s own words:

Lawyers could rely upon a presumption of validity as a way of insulating themselves against the possibility that consent might all too often be found defective; it was for the politicians to devised ways of ensuring that untoward influence is not exercised at the moment of negotiation (UT, 375).³³

The Court offered a test for lower courts to apply in determining when activity is governed by the exception to immunity:

[T]he question is not whether the foreign government is acting with a profit motive or instead with the aim of fulfilling uniquely sovereign objectives. Rather, the issue is whether the particular actions that the foreign state performs (whatever the motive behind them) are the *type* of actions by which a private party engages in “trade and traffic or commerce.”³⁴

The following response from another prosecutor captures the difficulty of cases on the cusp of gross negligence:

You would have made the decision not to prosecute and it would have been a proper decision, and you could have made the decision to prosecute ... we thought it probably was gross negligence but we thought it was close to the borderline ... and there were some in our office who said prosecute and some who said don’t ... I wouldn’t say it was clear cut and we agonized over the decision to prosecute.³⁵

The court in *M. Nagraj* had observed:¹¹¹

If the extent of reservation goes beyond cut-off point then it results in reverse discrimination. Anti-discrimination legislation has a tendency of pushing towards de facto reservation. Therefore, a

32. (2011) 127 LQR 126.

33. (2011) 74(1) MLR 109.

34. 124 HARV. L. REV. 556 (2010).

35. [2010] C.L.J. 193.

numerical benchmark is the surest immunity against charges of discrimination.³⁶

The book by Robert Watt,³⁷ who had his professional origin as a law librarian in Sydney, is the result of the experience acquired by him from his long association with law libraries and law librarians. Based on his personal experience, Robert has devoted mainly to the legal materials, cases and law reports of selected Australian jurisdictions and has also discussed the position in some Commonwealth and other countries including United Kingdom, India, New Zealand, Canada and United States of America, besides the position of international law. The sources of law and legislation, delegated legislation, law reports, primary and secondary sources and mode of citations have been provided by the author in a comprehensive manner in the first five chapters of the book. The author has devoted chapters 6 and 7 to a discussion of 'Finding the Law in New Zealand, Canada and India' and 'Finding the Law in the United States of America' where he has provided an insight into the legislative, executive and judicial structure in these countries. In so far as India is concerned, the author needs to take care of latest developments, particularly in respect of e-resources which are now available in plenty. Chapter 8 has been devoted to a discussion of 'International Law' which includes the definition, sources and specific areas of International Law. The last chapter of the book discusses the 'Legal Materials of the European Union'. Robert has also provided in the end of the book non-commercial internet addresses for legal research which would be of immense help to the researchers. Though the book is titled as *Concise Legal Research*, it is a treasure of materials and very useful to the law teachers and researchers alike.

Christopher Enright's *Legal Techniques* is a very comprehensive work. Divided into four parts, each further divided into divisions and subdivisions, all running into 45 chapters with a detailed bibliography, subject index, table of cases and table of statutes, the book aims at describing techniques for working with law which, according to Christopher, includes making, interpreting, using, reading and writing law. Thus, the book has a very wide coverage from the stage of making law to their implementation and adjudication. As the technique itself indicates, the book is intended "for all those who work with law regardless of their label as solicitor,

36. 53 *JIL.I.* 94 (2011).

37. *Supra* note 1.

barrister, attorney, judge, corporate lawyer, government lawyer, teacher, writer or law students.”³⁸ Christopher discusses the concept of state, natural law and positivism, common law and statute law. At several places, the book contains mathematical calculations, tables and hypothetical examples to illustrate a particular aspect of discussion. The book requires a serious reading for its comprehension. There can be no doubt that one who reads and understands the contents of the book would become an enlightened person and expertise in “working with law” as pointed out above. The reader gets a fairly good knowledge of rules of not only making of law but also rules of interpretation.

Meera Kaura Patel’s *Uniform Legal Citations* is a good attempt by an Indian author to present at least in some form uniform legal citations which keep boggling the mind of the researchers. In its six chapters, the book contains general citations, legislation, case law, government documents, international law sources and secondary sources. It also contains, in addition to a small bibliography, three appendices with the list of Indian and foreign reporters, periodicals and yearbooks, Though the author has given general notes on citations but the same is neither uniformly accepted as correct nor are any reasons/justifications given for the same. It is difficult to accept the mode of citations given by the author as the correct mode. On the contrary, the mode of citation of legislations and books does not seem to be correct from any angle.³⁹ It is suggested that the author should consult the books of Robert and Christopher reviewed above alongwith some more on the subject of research methodology while revising it in future.

The Indian publishers, Universal Law Publishing Co. Pvt. Ltd., Delhi, deserve to be congratulated for bringing out Indian reprints of books written by foreign authors and published abroad for easy access of these excellent books at reasonable prices. Both the books of Robert and Christopher are highly recommended to the students, researchers, teachers, judges and professionals.

S.N. Singh*

38. Christopher Enright, *supra* note 3 at 1.

39. Meera Kaura Patel, *supra* note 4 at 9-10.

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