

1-1-2008

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Robin Schard

University of Miami School of Law, rschard@law.miami.edu

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Recommended Citation

Robin Schard, *Legal Research in the Americas: Where to Begin*, 39 U. Miami Inter-Am. L. Rev. 269 (2008)

Available at: <http://repository.law.miami.edu/umialr/vol39/iss2/3>

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Legal Research in the Americas: Where to Begin

Robin Schard*

I. INTRODUCTION

Different languages, different legal systems, similar names but different functions. . . research can be difficult for one not accustomed to researching in foreign jurisdictions. The researcher should not take for granted that similarly-named documents have the same function or weight of authority in another country. Most of the countries in the Americas are civil law systems which produce different legal resources than common law systems. As the researcher will note from the Citator, most of the nations will have a constitution, several codes (e.g. a civil code, a commercial code), an official gazette, which typically includes new legislation and other legal information, and case reports.

This guide will not provide a comprehensive description of how to do research in all of the countries in the Americas. It only supplies starting points for this type of research. For the researcher doing thorough research in a foreign jurisdiction, there will be many focused resources, including specific treatises and subscription databases, to which the non-specialist will have no access. Some more general, widely-accessible subscription databases have, however, been included below.¹

II. UNDERSTANDING THE LEGAL SYSTEM

Since most states in the Americas are civil law systems, the researcher should have a general understanding of the difference between common law and civil law systems. This will help the researcher in knowing which resources are the most important for their research project.

If the researcher is not sure of the type of legal system in the

* Robin Schard is the Assistant Library Director for Public Services at the University of Miami Law Library. She received her B.A. and M.L.S. degrees from Rutgers University and her J.D. from the University of Miami.

1. For the U.S. researcher, this is also true of Lexis and Westlaw which have limited coverage of foreign law jurisdictions in their general U.S. products. Both companies have specialized databases to which the specialist or practitioner in that jurisdiction might subscribe, such as LexisNexis Argentina. These databases are not included in this guide.

country being researched, he/she can start by locating the country on the **WORLD LEGAL SYSTEMS** map (<http://www.droitcivil.uottawa.ca/world-legal-systems/eng-monde.php>) published by the University of Ottawa. This site broadly identifies which of six types of legal systems, each country best matches.

John Henry Merryman and Rogelio Pérez-Perdomo, THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA (Stanford University Press 2007) will assist the uninitiated in understanding how civil law systems operate. In particular, chapter IV, entitled *The Sources of Law*, and chapter V, entitled *Code and Codification*, are most helpful.

M.C. Mirow, LATIN AMERICAN LAW: A HISTORY OF PRIVATE LAW AND INSTITUTIONS IN SPANISH AMERICA (University of Texas Press 2004) generally explains the development of legal systems in this region. For those without the time to read the entire volume, Chapter 22 on sources of law in the 20th century is particularly descriptive. **LAW AND JUDICIAL SYSTEMS OF NATIONS** (World Jurist Association 2002) provides a short description of the legal system for over 190 countries. For each nation, this source outlines the legal profession, legal education, the court system, and the legal system.

III. START HERE

There are a few sources that are designed to get the researcher the right answer to a foreign law question. Using these sources first will make the research process more efficient. They tend to provide not only citations directly to the law(s) on point, but they may also provide a description of the law itself.

Foreign Law Guide Current Sources of Codes and Basic Legislation in Jurisdictions of the World (<http://foreignlawguide.com/> - subscription required) although not specific to the Americas, does include sections for over forty countries in the Western Hemisphere. The nations are listed in alphabetical order, and there are sections which generally describe Latin America, Central America, the Caribbean, and the Andean Community. The entry for each state starts with a description of the development of the state's legal system, a listing of important publications, such as codes, court reports, laws, and internet sites. This listing includes translations of these publications where available. The cited translations may be of the entire source (e.g. the **MEXICAN CIVIL CODE**), or compilations, such as **COMMERCIAL**

LAWS OF THE WORLD. After the Major Publications section for each country, the site provides the citation to laws for up to eighty specific subjects, such as company law or service of process. These entries cite to the actual law as well as where it can be located in a compilation, such as **ENFORCEMENT OF FOREIGN JUDGMENTS**, if available. The web page also has a rudimentary search function in addition to the alphabetical listing.²

Martindale Hubbell International Law Digest Lexis (Path: Reference > Martindale-Hubbell > Law Digests > Martindale-Hubbell International Law Digest) covers eighty countries, about 20 of which lie in the Americas. It provides the citations to laws on about fifty different topics, as well as summarizing the actual law in each topic. For researchers using Lexis, the easiest way to search is by using the country segment (e.g. Country(Brazil)). Each of the topics is returned as a separate document. Although the print version is no longer published, the online version is current.

IV. GENERAL SOURCES

The resources listed below basically identify places to find information without much discussion of the law itself. Even though many of them do not focus on the Americas, they include most or all of the countries therein. The sources are listed in order of comprehensiveness.

Political Database of the Americas (<http://pdba.georgetown.edu/>) (Georgetown University) has links to relevant information divided by branch of government: executive, judicial and legislative. It also has special sections on constitutional law and the electoral system. The focus of this site is not on law, but it will provide links to the major law-making bodies for each country.

Government Gazettes Online (<http://www.lib.umich.edu/govdocs/gazettes/>) (University of Michigan) lists and describes the contents of gazettes available on the web from around the world. The list is arranged alphabetically by country. The listing for each gazette also includes any useful search features found on the web page. Gazettes typically publish new laws, decrees and notices.

Nations of the World (<http://www.loc.gov/law/help/guide/>)

2. There is a print version of this publication. It is no longer being updated after August 2007.

nations.html), created at the Law Library of Congress, has an alphabetical list of countries with links to their law-related institutions and other useful sites.

Jurist - World Law (<http://www.jurist.law.pitt.edu/world/>) not only provides links for legal bodies around the world, but also has a short description of the legal system and legal news for many countries.

Global Legal Information Network (GLIN) (<http://www.glin.gov>), published by the Library of Congress, has free, searchable citations to foreign legislation many of which also have English language summaries. Additionally, some countries allow free access to the full-text of the legislation, but some countries only let members view the full-text. There is judicial information for a few nations, but not many in this region.

Natlex (<http://www.ilo.org/dyn/natlex>) is a database of laws on labor, social security and related legislation presented by the International Labour Organization. It can be browsed by subject or by country.

World Legal Information Institute (<http://www.worldlii.org/>) is a catalog in legal web sites. The Americas are divided into Central, North and South, or go to this page: <http://www.worldlii.org/catalog/56243.html>, for all of the Americas. Each section will typically have a link for legislation, government, case law, and others.

Parliamentary Confederation of the Americas (<http://www.copa.qc.ca/>) is an association of congresses and parliaments throughout the region. About 35 members participate in this group. In the Who are we? section of the web site, there is information on the parliamentary group for each country with a link to the home page for each parliament.

GUIDE TO INTERNATIONAL LEGAL RESEARCH published annually by the George Washington University Law School International Law Review has a section (Section 5.08 in the 2007 edition) on Latin America. Despite its name, this guide does list many general resources in print and some internet sites related to Latin American law.

Todo el Derecho en Internet (<http://www.todoelderecho.com/>) only provides information for some countries in the Americas, but, of particular interest, it provides links to various Codes that can be found on the web within the section called *Códigos Jurídicos*. Some of the information on this site does require a subscription.

Latin American Network Information Center (<http://lanic.utexas.edu/la/region/law/>) (University of Texas) provides a list of internet links by country for legal and political information, but it includes no description of the resources. There are also a set of links for regional resources, such as the Inter-American Court of Human Rights.

Global Courts (<http://www.globalcourts.com/>) provides links to the highest courts from around the world. Although there are links for many American nations, most of those courts do not have information beyond addresses and staff information. The countries are listed in alphabetical order.

V. SPECIAL SUBJECTS

A. *Constitutions*

Constitutions and Comparative Constitutional Study (<http://pdba.georgetown.edu/Constitutions/constudies.html>) is part of the Political Database of the Americas described above. It provides the text of the current constitution (in the original language). The constitutions are listed alphabetically by country. In some cases, prior versions of the constitutions are available.

Constitutions of the Countries of the World (Oceana 2007) (<http://www.oceanalaw.com> – subscription required) gives an English version of the constitution for each nation. The print version is arranged alphabetically by country; the online version allows the researcher to browse alphabetically or to search the full text of the constitutions. The site also has historical versions of some states' constitutions.

Constituciones Hispanoamericanas (<http://www.cervantesvirtual.com/portal/constituciones/>) provided by the Miguel D. Cervantes Virtual Library Foundation, this site includes constitutions for about 20 different American nations. All of constitutions are only available in Spanish. The list is in alphabetical order, and historical versions are available.

B. *Private International Law Sources*

Organization of American States (http://www.oas.org/DIL/treaties_subject.htm) The link goes directly to the OAS list of multilateral treaties by subject. The most relevant subject is International Private Law. The site provides the full text of the treaty in all official languages, as well as which states have signed and ratified the agreement. This site also hosts bilateral treaties. See

also the section called Private International Law, which describes the work of the Inter-American Specialized Conferences on Private International Law. Additionally, the OAS Foreign Trade Information System (<http://www.sice.oas.org/>) has citations to national legislation for several trade-related issues, such as intellectual property, antidumping and investment.

Electronic Information System for International Law (EISIL) (<http://www.eisil.org/>), sponsored by the American Society of International Law, has a section on private international law. The site has links to treaties as well as relevant information (citations, dates, etc.) on the agreements. For a better understanding of the topic, the researcher may also wish to read the Private International Law chapter of the ASIL Guide to Electronic Resources for International Law. Moreover, EISIL has a section called States & Groups of States which includes information on the Andean Community, the Caribbean Community and Common Market, and the Latin American Integration Association.

VI. FOR MORE INFORMATION

Claire Germain, **GERMAIN'S TRANSNATIONAL LAW RESEARCH: A GUIDE FOR ATTORNEYS** (Transnational Publishers 2006).

Globalex (<http://www.nyulawglobal.org/globalex/>) published at NYU School of Law has research guides for many countries in the Foreign Law Research section, including about 20 nations from the Western Hemisphere.

The Basic Guide to Researching Foreign Law by Mary Rumsey (http://www.nyulawglobal.org/globalex/Foreign_Law_Research1.htm).

Marci Hoffman & Mary Rumsey, **INTERNATIONAL AND FOREIGN LEGAL RESEARCH: A COURSEBOOK** (Martinus Nijhoff Publishers 2008).