

“But I Found it on Google!”: Legal Research in the Age of Digital Amnesia

Legal research has transformed in the 20 years since the current generation of managing partners took office. This article examines the different approaches to a piece of legal research likely to be pursued by three typical personas in the corporate department of a top-end law firm and compares them with the kind of process-optimised approach that a professional legal project manager could be expected to recommend.

At the firm where I trained, the expression “legal research” was banned in favour of “case analysis”, largely driven by the belief that clients will object less to paying for it when seen on a bill (sadly, this is probably less effective now that most large company GCs have graduated from firms that told them the same thing).

However presented to clients, continuing legal research is a fact of life for practitioners. Clients hire, and fire, for commercial awareness: excellence in research is sadly just assumed.

The point of this article is that legal research doesn’t have to be a painful, unrewarding process. In the last 20 years, the process of legal research has transformed into something unrecognisable. By making the right use of some pretty nifty tech, it can mean more recoverable time billed, a better relationship with clients and maybe, just maybe, fewer unproductive hours in the office and more time with friends and family.

Welcome to Haigh & Loh LLP

Just like we learned at law school, abstract concepts are hard to make stick: our brains are hardwired to remember people. So borrowing the thought experiment used by legal knowledge management pioneer Matthew Parsons back in the early 2000s,¹ let’s look at how a complex legal question would be approached by four different people, adapted for a fictional top-tier 2016 Singapore firm, Haigh & Loh LLP (“HLL”).

Meet Our Corporate Practice Team:

- **Gloria Loh.** Gloria is a 51-year-old senior partner and is widely admired as a “rainmaker”. It has been some time since she was involved in hands-on transactional

work, as practice management and client care take up her time. Warm and personable, Gloria graduated from NUS and is qualified in Singapore.

- **Cheng Wai Lim.** Cheng Wai is 32 and is pushing for partnership this year. He is still significantly involved in running transactions. Ambitious and driven, Cheng Wai holds a law degree from NUS and a JD from Columbia, and is qualified in Singapore and the State of New York.
- **Cecilia Chua.** Cecilia is the millennial of the group; she recently joined the firm as a trainee after graduating from SMU. Bright but new, Cecilia is still learning how a law firm operates. She is better informed than Cheng Wai or Gloria about electronic search tools, but as a digital native she suffers more severely than the older lawyers from some bad digital habits (see *What is digital amnesia?*, below).

In addition to the corporate team, we have one more person. **Ay Leen Ng** is a professional legal project manager, a career that didn’t exist when Gloria or Cheng Wai qualified. She joined HLL from the Singapore office of a multinational law firm headquartered in London, to replicate the best practices for HLL’s benefit.

A Question of Structure

Gloria (rainmaker) has brought in another acquisition: she is representing a Singaporean state-owned investment fund that wants to buy a minority stake in a Shanghai-based internet business.

Her first task, while waiting for conflicts to clear and the client to be onboard, is to pass the day-to-day running of the matter over to Cheng Wai so that she can focus on her other responsibilities. Before doing that, she reads through

the term sheet and client e-mails and quickly realises that this is going to be a major task. Among the dozens of minor research points that need to be addressed at this early stage, one stands out: does the corporate structure the client is proposing even work, and if so is it the smart way to structure the deal?

Answering the question requires not just her practising knowledge of M&A, but also Cheng Wai's detailed understanding of company law and valuable input from local counsel in China. She sends a quick e-mail to Cheng Wai, "How do we do this? Need to know by 5pm. Thank you," and then goes onto a call with another client.

Cheng Wai in turn forwards the e-mail to Cecilia with the headnote "Let's discuss. My office."

At this point, each of the three of them is operating under a specific mental model about how the research will work. They all know the high level question. But how would they each go about answering it?

What Would Gloria Do?

Gloria is an old-school partner. It has been some time since she was actively involved in any legal research, but if you asked her what it involved you would get a short answer: "You've got to read the books." Gloria's expectation of legal research would be something like this:

- Work out what legal issues are involved (identify relevant legislation and leading cases) and think about the scenario in the light of these. For her, this would mean having a general sense of the area of law involved and then reaching for the copy of the most relevant practitioner textbook on her shelf.
- Check that the position has not changed since the text she consulted was published, by reading the relevant loose-leaf binders and checking the relevant law reports.
- Reviewing the text of the relevant legislation and case law to make sure that her understanding is correct.

Report Card: Gloria

Step	Process	Source	Time
1	Identify and refresh knowledge of legal issues involved	Practitioner textbook	0.9h

2	Check that position in practitioner textbook is up to date	Loose-leaf binder, case citations	0.7h
3	Re-read original text of legislation and key cases to confirm understanding	Annotated version of legislation	0.6h
4	Understand commercial context and apply relevant practicing experience	Deal bibles, prior advice memos	0.6h
5	Prepare short note	–	0.5h
TOTAL TIME			3.3h

The advantage of Gloria's approach is that it is thorough, and will result in a technically correct and factually useful answer. It is, however, time-consuming: it would take the better part of an afternoon to finish.

What Would Cheng Wai Do?

Cheng Wai is an expert in company law and a specialist M&A practitioner. As such, he not only has the names of the relevant sections of the company law and the leading cases in each area at his fingertips, he is also familiar with how they translate into what actually needs to be done in a transaction. So he is able to give Cecilia some pointers on what to check.

He is also of the generation that grew up using online search tools such as Westlaw Asia, and is familiar with using keywords and structured searches to zero in on the key concepts and avoid laborious thumbing through of texts.

When he calls Cecilia into his office and explains the scenario he is, therefore, expecting her to approach the task like this:

- Log in to Westlaw Asia at her desktop.
- Use keyword search to quickly locate the main legal concepts and refresh her memory of the key issues, legislation and cases.
- While still online, search for the key legislation and run citation queries on cases she has identified to check they are all up to date.

He would also expect Cecilia to check in with him as she does not have enough real-world practice experience to do a sense check on the results of her research.

Report Card: Cheng Wai

Step	Process	Source	Time
1	Search for main concepts and identify key legislation and cases	Westlaw online books	0.7h
2	Online updating	Westlaw	0.4h
3	Understand commercial context and apply relevant practising experience	Deal bibles, prior advice memos	0.8h
4	Prepare short note	–	0.5h
TOTAL TIME			2.3h

By using familiar tools to take the search online and eliminating time spent flipping through textbooks, Cheng Wai has reduced the time spent by around one-third. Some years ago, it would have been necessary to supplement this with a search through books, but more information is now available online.

What Would Cecilia Do?

Now we come to Cecilia. Emerging from Cheng Wai's office, what does she think her next steps are?

- Cecilia is a digital native: while still at primary school she internalised the concept that Google is the fount of all knowledge. Law school has dented this belief, but not eradicated it completely.
- It is important to her to look competent and efficient. In this case, that means trying to anticipate the impact of her answer on the deal structure. Unfortunately she doesn't have the experience to do this well.
- Cecilia is in the habit of keeping all of the information she needs to refer to regularly on her

What is digital amnesia?

Digital amnesia is "The experience of forgetting information that you trust to a digital device to store and remember for you." It has had a profound influence on how we seek and retrieve information; in a 2015 study, researchers found nearly 80 per cent of European consumers now use the internet "as an extension of their brain", and over a third (36 per cent) will go online to search for information in preference even to **trying to remember it!** In a legal research context, this can mean ignoring non-digital sources entirely.

various iDevices. This has left her with quite pronounced digital amnesia.

So when Cecilia sets about the task, she does this in a way that is very different from what Cheng Wai intended or Gloria would have imagined. Cecilia aspires to give immediately usable legal advice, because she knows that if she gets this right, it will build her a reputation for competence so she wants to jump ahead, and get straight to the application of the law.

- Her first stop is Google. That leads her to a Wikipedia article that explains how and why transactions like the one she is working on are structured. It is from a US perspective so some of the terms are unfamiliar, but she grasps the essentials and is able to identify some of the key issues.
- She then reads a couple of the other Google hits, which are articles from Singapore law firms on how those issues are resolved in Singapore.
- Finally, she sits down and tries to put all of this information together in her head and writes an e-mail to Cheng Wai summarising her findings.

She then starts another project, secure in the knowledge that she has done more than was required. It is therefore a surprise to her when Cheng Wai sends a terse e-mail to "see me", and explains to her that she failed to consider a couple of Singapore-law issues (that only exist under English-style company law systems and were not mentioned in the US article). Worse, the Singapore law articles from law firms that she found online are out of date. As a result, the structure she has proposed does not work, a fact she would have realised if she had substantive practising experience, and he has had to redo much of her work (including the research), making them late in delivering to Gloria.

Report Card: Cecilia

Step	Process	Source	Time
1	Google search for relevant articles applied law	Google	0.1h
2	Reading relevant articles	Wikipedia and law firm websites	0.8h
3	Prepare short note	–	0.8h
4	Redo work (Cheng Wai)	See above	2.0h
TOTAL TIME			3.7h

An important point is that Cecilia's end-goal was not wrong. HLL's client isn't paying for the research; they are paying for a solution to their transaction structure. If she can get to that answer quicker, she is doing the right thing. Unfortunately, the signal-to-noise ratio for legal information on the internet is incredibly low, and information goes stale very fast. So in looking for a shortcut, she has actually undermined the firm's ability to deliver on time to their client.

A Professional Opinion: What Would Ay Leen Do?

At this point we are going to take a step away from what people actually do in practice in most firms, and look at process optimisation.

As an experienced project manager, Ay Leen's basic skillset is to break a high level task down into its constituent elements and rearrange them in the most efficient manner. Ay Leen recognises that Cheng Wai is proposing a conventional division of labour (that is, Cecilia should focus on research, using the available tools, and hand it over to Cheng Wai to think about how to apply it.)

This is a safe option but Ay Leen has worked in large firms before and knows that they routinely delegate exactly this kind of high value work to junior staff. They do this by having robust know-how that is kept up to date by PSLs² for the key types of matters that they do, supplemented by external databases (for the world's largest firms, this is Practical Law). The very best-designed systems integrate the internal and external data so that users can carry out a single search from the firm's intranet and get straight to what they are looking for. This lets trainees and other junior staffs prepare the initial client briefing fast and without concerns over accuracy, and frees up partners such as Cheng Wai to focus on client-facing work.

So in Ay Leen's mind, there is a much faster workflow that looks something like this:

Step	Process	Source	Time
1	Intranet search of curated know-how databases	HLL intranet	0.1h
2	Read relevant know-how	Firm's previous memos, knowledge articles, Practical law	0.8h
3	Prepare first draft of short note	—	0.5h

4	Cheng Wai review note and send to Gloria	—	0.1h
TOTAL TIME			1.5h

The advantage of this approach is twofold: it not only is the quickest way of getting the answer into Gloria's hands to be passed on to the client, it also frees up the greatest amount of Cheng Wai's time that can then be reallocated to business development.

A Means to an End

Legal research, in the context of a transactional practice, is a means to an end, and that end is practical advice. Efficiency means giving that advice at the lowest level of seniority possible, to free up senior people for critical activities that only they can do (such as business development). Professionalism means doing this without cutting corners.

The time has come and gone when a digital strategy meant moving a firm's library online. As more firms make substantial investments in know-how, those that haven't done so may worry that they are falling behind. They are right to be concerned.

▶ **Peter Davies**
Thomson Reuters

Peter Davies joined Thomson Reuters in 2013 as an editor to launch the Practical Law China service. He is now a legal solutions manager for North Asia. Prior to Thomson Reuters, Peter practised law as an associate in the Hong Kong private equity team of Paul, Weiss, Rifkind Wharton & Garrison.

Notes

- 1 M Parsons, *Effective Knowledge Management for Law Firms*, Oxford University Press, 2004.
- 2 Professional support lawyers: senior associates, counsel or partners who have given up client facing work to focus on organising the firm's know-how.