

Book Review

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BOOK REVIEW

Fundamentals of Legal Research. J. MYRON JACOBSTEIN & ROY M. MERSKY. Mineola, New York: The Foundation Press, 1977. Pp. xxxviii, 660.

How to Find the Law. Edited by MORRIS L. COHEN. St. Paul, Minnesota: West Publishing Co., 1976. Pp. x, 542.

New editions of two of the three major American legal research guides, Cohen's *How to Find the Law*¹ and Jacobstein & Mersky's *Fundamentals of Legal Research*,² are recent additions to the international lawyer's research tools. This review will evaluate and compare these books with the third outstanding research work, Price & Bitner's *Effective Legal Research*,³ giving special attention to their relative treatment of foreign domestic law, comparative law, and international law materials.

Before analyzing the differences in format and content among the three books, I will describe briefly the new features of the two recent editions. *Jacobstein & Mersky*, while preserving its earlier outline and approach, contains new chapters on Canadian law, microforms, and computer-assisted legal research, and expanded coverage of looseleaf services. The enlarged, reorganized appendices provide more information on citation forms and abbreviations. *Cohen's* unique features include new chapters on comparative law, social sciences, foreign domestic law outside the common-law area, and general reference materials. *Cohen* has also added a chapter on microforms and computers. Since *Cohen* is a product of so many authors, each one is able to focus on a more specific area, with the aim of ensuring greater currency and accuracy.⁴ To minimize repetition,

1. HOW TO FIND THE LAW [hereinafter referred to as *Cohen*] is presently in its seventh edition. The product of 21 authors, this edition represents a complete revision of the 1965 version edited by William Roalfe. HOW TO FIND THE LAW should not be confused with the mini-guide authored by Cohen: M. COHEN, LEGAL RESEARCH IN A NUTSHELL (3d ed 1978).

2. FUNDAMENTALS OF LEGAL RESEARCH [hereinafter referred to as *Jacobstein & Mersky*] is in reality the fifth edition of the work begun by the late Ervin Pollack. Pollack died after the third edition of the work appeared under his name. Jacobstein and Mersky subsequently published a fourth edition under Pollack's name.

3. M. PRICE & H. BITNER, EFFECTIVE LEGAL RESEARCH (1953 ed., Prentice-Hall, Inc., Englewood Cliffs, N.J.—1969 ed., Little, Brown & Co., Boston, Mass.). Unless otherwise noted, all references in the text to *Price & Bitner* are to the 1969 edition.

4. There are disadvantages as well as advantages to having so many authors contribute to one book. The variety of writing styles may tend to diminish the unity of the work, and repetition and gaps may occur. Fortunately, the hand of an able editor in Cohen keeps such problems to a minimum.

Cohen frequently cross-refers to full discussions of specific points.

The format of a legal research book is perhaps the key to its usefulness. All three books have detailed tables of contents and single page summaries of contents. *Price & Bitner* and *Cohen* repeat the appropriate sections of the tables of contents at the beginning of each chapter; *Jacobstein & Mersky* contains the proven pedagogical device of chapter summaries. The internal organization and contrasting typeface enable the reader to follow readily both *Cohen's* and *Jacobstein & Mersky's* chapter outlines; the same cannot be said of *Price & Bitner*.

All three books also aid the researcher through the use of clearly reproduced "sample page" illustrations. However, the usefulness of the illustrations varies. Some use arrows to indicate specific points, while others appear without sufficient indication of their relevance. While *Price & Bitner* and *Cohen* place illustrations in close proximity to their textual reference, *Jacobstein & Mersky* fails to do this, leaving the reader to scan illustrations at the end of the unit in an attempt to match them to the text. Moreover, *Jacobstein & Mersky's* explanatory overprint on almost every illustration, although helpful, is jarring.

Only *Cohen* lists additional sources at the end of many chapters. This feature makes *Cohen* useful for reference work without destroying its readability for instructional purposes. In addition, *Cohen* contains a one page appendix of legal research guides for eleven specific states.⁵

All three books are reasonably well indexed. *Cohen* and *Jacobstein & Mersky* employ contrasting typeface to make their indexes more readable. The index of *Jacobstein & Mersky* is only one-half the length of that of either of the other books, and, unfortunately for the international practitioner, titles of English, Canadian, and international law can only be located by a subject approach. *Cohen's* index does not consistently reflect titles examined in its text. In the areas of international, comparative, and foreign law, works discussed rather than merely listed in the text will probably be indexed. *Price & Bitner's* detailed index follows the subject approach; references to major tools are subsumed under the title of the work. Specific titles appearing in textual discussion of English, Canadian, and international law materials are generally indexed individually.⁶

A cross-check of the books' contents reveals that, with a few exceptions, each work includes all topics traditionally found in legal research

5. The states listed are: California, Florida, Illinois, Louisiana, Michigan, New Mexico, North Carolina, Pennsylvania, South Carolina, Texas, and Wisconsin. *Cohen* at 519.

6. *Jacobstein & Mersky* lists English and Canadian citators under the index term "citators"; *Cohen* places them under "English law" and "Canadian law"; *Price & Bitner* indexes all available citators.

texts, but important differences appear in the format and treatment of each topic. For example, each book deals with constitutions, but only *Jacobstein & Mersky* groups all relevant material in one chapter. This treatment is particularly useful due to the importance of constitutions in the United States legal system. *Jacobstein & Mersky* has no reference to historical materials.⁷ The 1969 edition of *Price & Bitner* and *Cohen* both include a moderate but smaller number of references to historical materials than does the 1953 *Price & Bitner*.

Price & Bitner and *Cohen* each provide sources for the meanings of maxims and cover them sufficiently, each listing some sources not found in the other. However, *Jacobstein & Mersky* gives no clues to ways of finding a maxim's meaning. Similarly, both *Price & Bitner* and *Cohen* deal with legal writing, while *Jacobstein & Mersky* ignores this topic. Although *Cohen's* treatment of the writing of memoranda and briefs is better, both *Cohen* and *Price & Bitner* provide samples of each.

Of the three publications, only *Cohen* defers to *A Uniform System of Citation*⁸ (the Blue Book) in matters of citation form. *Jacobstein & Mersky* and *Price & Bitner* each propose alternative approaches to the Blue Book in their citation appendices.⁹ All three books discuss the nature of the legal process as it relates to the methodology of legal research. Particularly helpful are the summary chapters in *Price & Bitner* and *Jacobstein & Mersky* which recapitulate research techniques in a coordinated fashion.

Price & Bitner's treatment of available citators is the most comprehensive of the three books. Both *Price & Bitner* and *Cohen* do a better job than *Jacobstein & Mersky* in giving the novice the idea that Shepard's Citations do not constitute the sum total of the genre. *Jacobstein & Mersky* fails to mention the citator functions of looseleaf services and the Code of Federal Regulations in the citator chapter, although these methods are touched on in the chapters dealing with looseleaf services and administrative law.

Of particular interest to the international practitioner is *Cohen's* unique treatment of comparative law and the law of non-common-law countries. Its chapter on foreign and comparative law is superb. Not only do the authors discuss research in both English and foreign language materials, but they also analyze differences between the common and civil law systems.

7. In this review, "historical materials" are defined as predecessors of current American encyclopedias, selected and annotated reports, and federal statutory compilations.

8. HARVARD LAW REVIEW ASSOCIATION, *A UNIFORM SYSTEM OF CITATION* (12th ed. 1976).

9. *Price & Bitner* draws on Price's 1958 study on legal citations.

The chapters on English and Canadian law in *Jacobstein & Mersky* are logically presented and more likely to assist the novice than similar chapters in the other two books.¹⁰ Both *Cohen* and *Jacobstein & Mersky* illustrate their sections on English and Canadian law; *Price & Bitner* provides illustrations of English law only. All three texts essentially neglect the domestic law of Ireland, Scotland, Australia, New Zealand, and South Africa.¹¹

Practitioners who wish a sound grounding in international law should first examine this section in *Cohen*. Its treatment of this area is by far the best among the three books. The chapter on international law begins with a treatment of general reference works and bibliographies and is followed by an excellent discussion of the treaty sources of many nations. Additional topics include international organizations, sources of case law and arbitral decisions, and a listing of the principal serial publications. The examination of international law in *Jacobstein & Mersky* should also be quite adequate for American attorneys; it is oriented primarily to United States materials but also refers to other sources. *Price & Bitner's* treatment of international law is detailed, but limited to United States treaties, with a brief discussion of English treaties. With respect to the law of the European Communities,¹² *Cohen* is good, *Jacobstein & Mersky* is fair, dealing only with its effect on English law, and *Price & Bitner* is silent.

None of these three books is a reasonably definitive *reference* text in American legal bibliography. *Price & Bitner's* 1953 edition was widely acclaimed as the premier American legal reference text, although its authors hoped to fulfill both reference and instructional needs.¹³ The

10. For an in-depth treatment of Canadian legal research, I recommend M. BANKS, *USING A LAW LIBRARY: A GUIDE FOR STUDENTS AND LAWYERS IN THE COMMON PROVINCES OF CANADA* (2d ed. 1974).

11. The 1953 edition of *Price & Bitner* discussed Scottish statutes and reports and Irish reports. Volumes IV and V of SWEET & MAXWELL, *A LEGAL BIBLIOGRAPHY OF THE BRITISH COMMONWEALTH* (2d ed. 1956) contain a comprehensive listing, without commentary, of works for Ireland and Scotland. Only in discussing HALSBURY'S LAWS OF ENGLAND do *Price & Bitner* and *Cohen* mention Australia. For a text on Australian legal research, see E. CAMPBELL, *LEGAL RESEARCH: MATERIALS AND METHODS* (1967). *Cohen* now lists bibliographies for Nigeria and Ethiopia, but none for Australia and New Zealand. Other common law areas were omitted in the preparation of *Cohen* when one author was assigned to describe English and Canadian materials while two others were jointly assigned non-common and comparative law. England and Canada each merit a separate chapter in a legal research text, while another chapter should properly be devoted to the law of Ireland, Australia, New Zealand, South Africa, and Scotland. Although Scotland and South Africa were considerably influenced by the civil law, some general outline of their law is desirable. Such a chapter has yet to be written.

12. Law of the European Communities refers to the law of the European Economic Community as a whole rather than to the domestic law of its individual member nations.

13. By the use of smaller typeface for notes which were integrated into the body of the text, Messrs. Price and Bitner hoped to meet both reference and instructional needs. Other law librarians generally perceived it as a reference work rather than as a teaching text.

updated and abridged editions of *Price & Bitner* (1962 and 1969)¹⁴ were specifically aimed at meeting instructional needs; the 1969 *Price & Bitner*, packed with detailed information, is more useful, however, for reference purposes. *Price & Bitner* 1953, the basic work, remains definitive for historical materials but not for current materials.¹⁵ *Jacobstein & Mersky* is designed for teaching rather than reference and meets that need in an excellent fashion. If limited to one legal research book, I would opt for *Cohen*. Current and well-balanced, *Cohen* treats both strictly legal sources and law-related materials. Of essential concern to the international lawyer, *Cohen* covers both common and civil law. *Cohen* is both the best available current legal reference book and an adequate teaching text.¹⁶

*Dale Alan Diefenbach**

14. Since all three publishers allow the authors to make minor changes in successive printings of the same edition to update their work, the 1969 publication date of *Price & Bitner* does not mean that subsequent material is automatically excluded.

15. I do not feel competent as a reviewer to comment on the relative accuracy of the works. Suffice it to say that *Price & Bitner* is falling behind in terms of currency. Although up-to-date, the citators chapter of *Cohen* leaves the reader with the impression that there is no way to shepardize the C.F.R. One can use Lexis to locate case citations to the C.F.R., or many other types of materials for which there is no established printed citator. Foreign statutes and cases (especially British Commonwealth cases) can also be shepardized to American cases through the use of Lexis.

16. Legal research texts such as these cannot be all things to all men, but the remark of a Cornell scholar on legal institutions, Professor David Danelski, is of interest. He noted that even *Cohen's* unique chapters on general reference and the social sciences are written from the standpoint of those operating within the legal system. Nowhere was it suggested that those tools could be used to examine the system and the institutions themselves.

* Reference Librarian, Cornell Law Library. B.A. 1955, Baldwin-Wallace College; M.L.S. 1970, University of Hawaii.

