
CONSOLIDATION ACTIVITY

Formulating a legal research strategy and carrying out legal research using electronic sources (allow 2 hours, including up to 1 hour for the online research)

This activity is based on all the work you have covered in this Unit. Please make sure that you have read and completed all the other activities in the Unit before you attempt this activity.



Consider the following scenario and answer the questions below:

On 31 March 2010, Julia Smith was driving along a dual carriageway in heavy traffic. Ahead of her, on the opposite carriageway, she witnessed a serious crash. She reached for her mobile phone and rang to alert the emergency services. While she was making this call, a police car drew up alongside and indicated to her that she should pull over. She did so, and a police officer then explained that it is an offence to drive while using a hand-held phone.

- 1 Consider Julia's situation, and formulate a strategy for researching the legal issues which it raises.
- 2 Using LexisLibrary:
 - (a) Is it an offence under statute to drive while using a hand-held mobile phone?
 - (b) If so, find a summary of the law that lays out possible defences in Julia's circumstances.

COMMENT

1 There is no 'right answer' as such to this part of the activity. However, the following strategy would be appropriate:

- **Analyse the problem**

The facts of the situation raises the legal issue of whether it is lawful to use a hand-held mobile phone to call the emergency services while driving.

- **Devise search terms**

What search terms will permit you to pin down the law that solves the legal problem?

- **Identify appropriate source(s)**

From the range of sources available to you, which will be most fruitful to search in order to gather the information that will solve the legal problem?

- **Update**

Having carried out the necessary searches, how should you update the information you have gathered to ensure you take account of recent developments?

- **Present findings in a appropriate format**

How best to record and report the outcome of your research?

2 We can now implement the strategy in respect of the two particular questions that we have been asked.

(a) **Is it an offence under statute to drive while using a hand-held mobile phone?**

Problem: is it an offence under statute to drive while using a mobile?

Search terms could include: **hand-held; mobile phone; mobile telephone; drive; driving; offence**

Sources available: LexisLibrary; Westlaw; Lawtel. The question instructs us to use LexisLibrary, which includes a database of *UK Parliament Acts*.

As usual, there is no single 'right way' to carry out a search, and so it is not possible to give a comprehensive list of searches which will identify the relevant material. There is often an element of trial and error. However, the following steps will find the information we seek:

- (i) access LexisLibrary; go to *my bookshelf* and find *UK Parliament Acts*; click *search*
- (ii) in the *search terms* box enter: **driv! and “mobile telephone”**
- (iii) at the time of writing there are three results:
 - the first is section 26 of the Road Safety Act 2006, which creates a statutory offence of contravening or failing ‘to comply with a construction and use requirement . . . as to not driving or supervising the driving of a motor vehicle while using a hand-held mobile telephone’;
 - the second is section 41 D of the Road Traffic Act 1988; this comprises the same text, which was inserted into this act by section 26 of the Road Safety Act 2006, so that the offence of driving while using a mobile phone take its place among other acts of non-compliance with ‘construction and use requirements’;
 - the third is schedule 3 of the Road Traffic Offenders Act 1988, which identifies the offence of using a hand-held mobile phone while driving as a fixed penalty offence.

Updating: as an internet source, the text of UK Parliament Acts on LexisLibrary is updated regularly; however there is sometimes a delay in integrating all the effects of new statutes; if the editors are aware of changes to a particular statute that they have not yet been able to integrate, this will be flagged by a red icon and the words stop press!; at the time of writing no stop press! content applies to the material we are considering.

Recording/reporting: the format that you finally use to report your research will depend on the context (for example, a trainee solicitor may produce a written report for their supervising solicitor in line with an in-house template); however, as noted in paragraph 6 of Part A, it is also important to record your research as you go along; as a minimum you should record:

- the specific question/point that you are researching;
- the date you carried out your research;
- the source(s) you used (here, UK Parliament Acts on LexisLibrary);
- detail of the searches that you carried out, including keywords (here, ‘I entered driv! and “mobile telephone” as a free text search; I obtained three results, all of which were relevant to the problem’);
- your results;
- steps taken to update (here, ‘Regularly updated internet source used. Checked for stop press! alerts associated with sections consulted, none present’).

At this point, you may like to look back at the suggested table for recording research which appears at the end of paragraph 6 in Part A to see one possible way of presenting such information.

(b) If so, find a summary of the law that lays out possible defences in Julia’s circumstances.

Problem: do the circumstances at the time of Julia’s alleged offence give rise to any possible defence? On the face of it, the fact that she was making an emergency call might seem to offer some justification.

Search terms could include: **mobile phone; mobile telephone; drive; driving; defence; emergency; emergency services**

Sources available: LexisLibrary; Westlaw; Lawtel. Halsbury’s Laws on LexisLibrary is a good source for summaries of law.

The following steps will find the information we seek:

- (i) access LexisLibrary; go to *my bookshelf* and find *Halsbury's Laws of England*; click *search*
- (ii) in the *search terms* box enter: **emergency and "mobile telephone" and driv!**
- (iii) at the time of writing, the single result is paragraph 427: Use of Mobile Telephones, within the section dealing with 'Road Traffic'; this defines the offence outlined above, but goes on to state that:

A person does not contravene any of these provisions if, at the time of the alleged contravention:

- (1) he is using the telephone or other device to call the police, fire, ambulance or other emergency service on 112 or 999;
- (2) he is acting in response to a genuine emergency; and
- (3) it is unsafe or impracticable for him to cease driving in order to make the call . . .

(Note that the footnotes to this paragraph make clear that this exception arises from regulations in the form of a statutory instrument. There is no need to read these regulations now. We will consider researching statutory instruments in Unit 15.)

Therefore Julia may be able to rely as a defence on the fact that she used her phone for the purpose of alerting the emergency services to a genuine emergency. However, she would have to prove that it was unsafe or impracticable for her to stop driving to make the call.

Updating: recent developments are recorded in *Halsbury's Laws of England* on LexisLibrary as sections beneath paragraphs, headed UPDATE; at the time of writing, no update is associated with the paragraph we are considering.

Recording/reporting: follow the procedure described under (a) above.