THE CONTEMPORARY LAW FORUM

GUIDE TO LEGAL RESEARCH AND WRITING

In this guide

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GUIDE TO LEGAL RESEARCH AND WRITING

Introduction

Legal Research and Writing are two skills that are considered indispensable to law students and lawyers alike. At the same time, writing a well-crafted article/blog post/case-comment etc. is not an easy task. To communicate one's views/opinions in simple yet influencing terms is an art. In line with its aim to promote quality legal research and writing, The Contemporary Law Forum is delighted to present to you all the "**Guide to Legal Research and Writing".**

The fundamental aim of this guide is to provide a brief understanding of the basics of legal research, analysis and writing. The guide is divided into 5 parts; **Part I** covers the basics of legal research, **Part II** intends to cover the basics of legal writing, **Part III** briefly highlights and explains the essential characteristics of different forms of legal writing, **Part IV** relates to referencing and finally, **Part V** mentions some in depth resources on the subject.

I. Basics of Legal Research

PRELIMINARY TIPS

Rather than commenting on the general importance of legal research for law students and professionals, we are going to comment on the importance of legal research for the purposes of excelling at the skill of legal writing. To put it in the simplest of terms; no good piece of writing can ever come about without extensive research on the specific claim/ argument/ issue that one intends to cover through the relevant piece of writing. Solid research and resulting authorities on the issue provide a backing to the arguments put forth by the author. Furthermore, to convince and influence your readers about a particular claim, you must establish some ground by using authorities that you can use to support that claim or engage with.

To begin with, remember these two preliminary tips on legal research:

Research precedes Writing: Understanding the law, important principles, case laws and the overall picture relating your topic is very important before you start the writing process. An omission to do so might result in misinterpreting the entire issue which is likely to misguide readers along with the chances of presenting a claim which is not complete and is half-baked.

Research doesn't stop once the writing part begins: Realize, though, that starting writing doesn't mean stopping your research—it just means shifting your primary energies to writing. While you're writing, you'll find yourself supplementing your initial research as you realize that your original searches didn't address some important aspects of the problem. And this extra research might well have been impossible at the outset, because you didn't know that it was needed until you really thought through the question, and you couldn't really think through the question until you had to write down your answer.[1]

STEP-BY-STEP RESEARCH PROCESS

While there is no uniform/straightjacket process to research on a particular topic, you may choose to follow the below-mentioned process:

Understand the Law: A good way to start your research would be to understand the law behind a particular claim/topic. It is important to note that at this stage, there is no need to go into the specifics of the claim but to understand the legal context behind the topic. For example: If you intend to write on the need for increased regulation of social media platforms, it would be a good step to start your research by understanding what an intermediary is, what is the law relating to intermediary liability etc.

Dive into the specifics: Once you're done understanding the general legal context behind a particular topic, you need to learn about the specific topic in much more detail. Continuing the aforementioned example relating to regulation of social media; now you must read about the various models of regulation, merits/demerits of each model, drawbacks of the existing intermediary liability framework and the criticism against increased regulation.

Find other articles/literature relating to the topic: After understanding the specifics of the law, it would be a good step to read existing literature on your topic or topics incidental to your topic. Doing so is extremely important in order to: (a) engage with existing literature in your analysis, (b) ensure that your perspective is something novel/unique and (c) understand different views relating to your topic.

[1] Eugene Volokh, 'Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review' (Thomson Reuters/Foundation Press, 4th ed. 2010)

Identify relevant case laws/incidents: The next step in the research process would be to identify relevant case laws relating to your claim/topic. The catchword here is 'relevant'. These case laws would help you figure out what you think about the problem, introduce you to the arguments that have been made by the judges and lawyers in those cases, show you what related problems your topic might implicate and help you make the topic concrete for readers.[2]

It must be ensured that the case laws you intend to use to further your claim have not been recognized as bad law by superior courts or benches and subsequently over-ruled. Lastly, you should be able to justify the relevance of a particular case law to your claim and for that, it is extremely important to differentiate between the ratio decidendi of the judgment and the obiter dicta.

Compile your research using a proper structure: Once you have understood the law and, different perspectives relating to your topic and identified relevant case laws/incidents, it would be a good idea to compile your research using a proper structure. Doing so would be extremely helpful in: (a) crafting a structure for your draft and (b) generating a clarity of thought with regards to the topic. Extensive research stored in a haphazard manner can be extremely detrimental to your draft.

Discuss your topic and research with your teachers, mentors and close friends: Discussing your idea and research relating to it always helps. The discussion can lead to identification of certain gaps in your research alongside giving you another person's perspective on the issue. It would be a good opportunity for you to test your proposed argument/idea.

Critical Thinking: This is the last and probably the most important step in the research process. It is essential to re-read your research and critically think about your topic. Doing so might lead to the identification of a novel issue which hasn't been covered previously. It may also lead to the identification of questions for future analysis or questions that might intrigue the readers to critically engage with your article.

[2] Eugene Volokh, 'Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review' (Thomson Reuters/Foundation Press, 4th ed. 2010)

WHAT RESOURCES TO REFER TO DURING THE PROCESS?

You may refer to the following resources in the research process[3]:

1) Short Guides/Treatises
2) Books/Commentaries
3) Digests
4) Law Review/ Journal Articles
5) Commission Reports
6) Statutes/Rules/Regulations
7) Case Laws

HOW TO FIND THESE RESOURCES?

While there exist many ways to find relevant material in relation to a particular topic, some of the popular ones are:

Google/Normal Search Engine Search: A smart google search using relevant and connecting terms would be a good way to find some initial material relating to your topic.

Libraries: Do not underestimate the value of libraries. Regular visits to your university/nearby law library in search of relevant books, journal articles etc. will definitely help you in the research process.

Legal Databases: After reading up on the initial material, you must find specialized and in-depth material using legal databases like SCC Online, Manupatra, Westlaw, Lexis Nexis, HeinOnline, Jstor etc. Remember, finding relevant literature and case laws relating to your topic using legal databases requires comprehensive knowledge of using such databases and therefore, it would be a good idea to brush up your skills in that regard by going through tutorials.

Talking to lawyers, professors and even friends that have worked on the particular area of law might prove out to be extremely helpful.

[3] William H. Putman & Jennifer R. Albright, 'Legal Research, Analysis & Writing' (Cengage Learning, 4th ed. 2018)

Bonus Tip: Be tactical with your research. Look out for specific terms that may lead to relevant material on search engines and databases.

Note: The aforementioned steps, tips etc. apply to all forms of legal writing, however, you may choose to skip out on the compilation and discussion part for smaller pieces, i.e. blogs, short-articles etc.

II. Basics of Legal Writing

WHAT IS LEGAL WRITING?

Legal writing refers to the analysis of a fact, pattern or development and presentation of certain arguments or suggestions.[4] The purpose of legal writing may differ, from being a balanced analysis of a legal issue, to being argumentative, critical or persuasive. It can include academic writing, such as articles, blogs and comments or professional writing such as drafting arguments, written submissions, legal briefs or client notes. The following will focus mainly on academic legal writing, which focuses on scholarly analysis and argumentation as opposed to one in furtherance of a professional aim for a client.

WHAT ARE THE FUNDAMENTALS OF GOOD LEGAL WRITING?

Novelty of argument

If an author is writing an analytical piece (as opposed to a descriptive one, such as a case brief), there must be a novel argument. This does not have to be a new theory or astute observation, but merely a different perspective to the issue. This is important for two reasons; ***First***, the central argument guides the writing. The nature of cases used, the tone of language and flow of writing depends on what the argument is. It helps the author remove redundancy, and including only the relevant research in the correct chronology. ***Second***, it will help one's writing stand out. If a topic is interesting, there will inevitably be pre-existing literature. If it is contemporary, then there will be several competing pieces published at the same time.

While reading case laws and pre-existing literature on a topic is necessary for research, the final piece should not be a restatement of such research. It should contain some unique

[4] https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-interest-work-types/legal-writing/

recommendation/analysis/observation/way forward for it to make a substantive contribution to the pool of knowledge.

Structure

Having a clear structure is essential for good legal writing. Structure entails having a basic introduction, explanation of the relevant legal principles and context and then going into the main analytical portion. The piece must have a conclusion that summarizes the key points and states the argument in a concise manner. The conclusion should not introduce new material, but highlight the most crucial parts of the piece. If the author has made certain suggestions or recommendations, they can either form a part of the conclusion or a separate component preceding the conclusion.

A good way to structure legal analysis is to follow the ***IRAC method*** – Issue (legal issues as well as the relevant facts/background), Rule (the relevant provisions of law), Analysis and Conclusion. While the IRAC format is most highly recommended for case notes, it can be a useful guide for any legal analysis via articles, blogs or reviews.

Clarity

Good legal writing is fundamentally ***simple***.[5] A common mistake is to conflate the complexity of the topic/argument with its expression - one's argument can be nuanced or complex, but the argument's expression should be clear.

Clarity entails the usage of simple words and sentences. ***Punctuations*** within a sentence should be kept to the minimum, and ***long-winding sentences should be avoided.*** While editing, ask yourself if an idea can be conveyed in simpler or fewer words. While one should always use the technical term or phrase for a *legal concept* to ensure precision and accuracy, general ideas should be conveyed using ***plain language***. A common mistake is to use philosophical phrases while writing about practical or contemporary legal developments.

A tip to help ensure clarity in one's writing is to constantly re-imagine its purpose.[6] While there are different types of legal writing (as elaborated below), the fundamental ***purpose is to***

[5] Mark Osbeck, 'What is "Good Legal Writing" and Why Does it Matter?' (2012) Drexel L. Rev. 4(2) 417, 428.
[6] Ibid 431.

communicate a particular idea to an audience. Thus, write in a manner that ensures that the reader can follow the language and is not confused.

Efficiency

An important characteristic of good legal writing is efficiency in conveying the author's point. Contrary to general writing, legal writing must be ***concise*** and analyze a particular issue ***without the use of superfluous words***.[7] Thus the author must balance explaining an argument with sufficient level of detail, without unnecessary repetition or description.

A common mistake is to repeat the same idea in different ways or sentences, in the hope that one of them sticks with the reader. While that may be a good strategy to develop an argument or write a first draft, the final piece must contain the best, most efficient sentences only. If an idea is worth repeating, it may be highlighted in the introduction or conclusion.

Paragraphs must be thoughtfully organized – They should not be unnecessarily long, and every paragraph should have a central theme or purpose. It should be ensured that they logically flow together.[8] This ensures coherency, while maintaining efficiency.

Engaging

It is important for authors to ensure that their writing is engaging. This does not mean using complex language or structure, but instead making sure that one's ***writing flows from, and towards, the core argument***. Even non-analytical portions of one's writing, like the introduction or the background, should be tailored to the 'core theory' or central argument. Thus, an introduction should not be a general introduction to the area of law chosen, but rather an introduction to the argument/analysis the author is going to make in the *context* of relevant laws and principles. This is why having a novel argument or claim before one starts writing is important (as explained above). Without one, the writing will appear disjointed, and will not engage a reader.

Another way to make legal writing engaging, especially if it is on a more theoretical topic, is to ***provide relevant examples***. This may not be suitable for every piece, but explaining practical

[7] Ibid 437
[8] Eugene Volokh, Academic Legal Writing (4th Ed, 2010) Foundation Press

facets of one's arguments through legal precedents, real life or even hypothetical examples can help break down a complex issue to simpler, easily understood components.

Further, writing clearly does not mean that it should get boring or monotonous. Developing '***style', 'authenticity' and character***[9] in legal writing have been commonly recommended as ways to ensure engagement. While they may seem too abstract, one way an author to develop their style is to *try and read their writing out loud*. This will help the author identify whether there is appropriate variation in the sentence structures, whether syntax is correct and there are smooth transitions between sentences, which can easily be translated into verbal expression.

Critique

Steer clear of generic critique - While writing a legal piece, one might be inclined to use blanket statements of critique for a particular law/practice. However, an essential component of good legal writing is for the author to refine the argument and critique to the specific issue.[10] For example, it is not enough to say that that a particular law will have adverse effects – the author must specify what these effects are, which section of society will be impacted and why it is worse than status quo. If the argument is about how a particular right will be infringed, explain why that right is important (even if it's intuitive) and why restrictions on that right would not be applicable.

Authors must also ***avoid disguising unsubstantiated personal opinions as critique***. Critique of a law or practice must be founded on some legal principles, even if they emanate from subjective notions.

Further, ***critique should be in neutral tone***. The writing style should not come off as aggressive, even if the author has taken a firm stance. Avoid critiquing the weakest version of an opposing argument. This practice is known as making a ***'straw man'***, and can make the author's own argument easily rebuttable.

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[9] See Stephen V. Armstrong and Timothy P. Terrell, 'Understanding Style in Legal Writing' (2008) Perspectives: Teaching Legal Research and Writing 17(1) 43-47.

[10] Eugene Volokh, Academic Legal Writing (4th Ed, 2010) Foundation Press

WHAT NOT TO WRITE?

Descriptive pieces – A descriptive piece is one that merely describes a legal issue or recent development, re-iterates known problems in a particular area of law or makes generic critique (like that explained above). While it is important to give a background of the issue, purely descriptive pieces are likely to get rejected for failing to add a new dimension to pre-existing literature.

Summaries – Author's should also avoid writing summaries on legal developments or cases laws, which are common in newspapers and would not suffice as legal writing.

Assertions – A common mistake in legal analysis is to give examples of when a particular practice has been used in other jurisdictions, or recommended in case law or articles. While examples are helpful, they must be backed up by analysis on why it is a good example, why X country follows that practice and how that is similar to the issue or society the author is talking about. Without such analysis, the argument is merely assertive and thus unconvincing.

Personal views – Another major red flag in legal writing is when an author presents personal views as an argument, without backing is up with authority or using inadequate authority. While one's claims reflect their views on the subject, it is necessary for such views to emanate from some legal theory, case laws or demonstrated trend.

III. Forms of Legal Writing and What Makes Them Different?

Why is it necessary to figure out the form of legal writing? The answer is really simple. Different forms of legal writings have different structure and flow making it necessary for the author to determine the form. Every form of legal writing requires a different approach and prescribes a standard word limit. Some of the most common types of legal writings are-

Blog Post: It is very important to choose a topic/area of law that requires a knowledge gap to be filled or has a built-in interest for the readers. Blog posts generally include writings that cover novel analysis of recent developments and contemporary issues of law. The fundamental purpose of blog posts is to help the readers understand any recent development of law succinctly. Blogs are generally concise in nature and can range from 1500-2000 words. The

structure or format of a blog post *can* ideally be - **Introduction of the topic**, **Legal analysis of the Issue** and **Conclusion** (including insights from the author). It is suggested to keep the nature of the blog post more analytical than descriptive.

Research Paper: To start with, research papers or research articles can range from 3000-8000 words. Any research paper is the representation of the legal thinking of an author which is backed by reliable sources and authorities. Unlike all other forms of legal writing, a research paper starts with an **abstract** which is essentially a brief introduction to the topic and a road map to the paper. The abstract *should* ideally be limited to 175-300 words. The **introduction** *should* include the purpose of the paper, a short and relevant literature review and a clear statement about the aim of the paper. The **body** of the paper should aim at analyzing multiple legal aspects of the same topic for instance cross-jurisdictional implications of a particular law, comparative analysis of the laws in different jurisdictions, the present and past approach with regard to the enforcement of the law, etc. Avoid extensively discussing published literature, rather make unexplored aspects of law, the focal point of discussion. The **conclusion** should be directly supported by the data that you present. Avoid making generalized conclusions that have not been substantiated by your research.

Case Comment: Case Comments are short pieces of academic writings about judicial decisions and are commonly categorized as extended commentaries. They vary from circa 2000-3000 words. The author should always keep in mind that the purpose of a case comment is to provide an academic insight into judicial decisions. He/she should have a rough idea of the possible ways of analyzing the case, for instance, a comparative analysis of the case at hand with different cases on the same subject matter or in relation to the current social and political situation. A successful case comment combines descriptions and analysis. The case itself needs to be described succinctly.

It should *ideally* start with a **short introduction paragraph**, setting out the context for discussion. Followed by **description or background information** which should include facts of the case, a brief legal history, the main legal issues and judgments. The next segment should include **case analysis** where the author should critically examine the reasoning behind the decision of the judge and explain the implications of such decision in the recent times.

Case note: Case note is the simplest, shortest, most descriptive account of a case. A case note can range from 300-800 words. The author should use discursive argument to synthesize a wider body of material to establish a position on some law related point. The writing of a case note follows a specific format unlike a case comment and materials which are irrelevant for a case note, might be relevant for a case comment. It is important for the author to know how to deconstruct any judgment into **facts**, **issues**, **legal procedure**, **arguments of the parties** and **points of law provided by the judge**. After the deconstruction method, the author should reconstruct and organize the pieces in a manner which would highlight the reasoning behind the judgment.

Legislative Comment: Legislative comment is **similar** to case comment and follows the **same format**. Legislative comment includes an analysis of any act, amendment, regulation, notification, circulars or guidelines. The author should provide a **background of the legislation**, **its implication on the society** and his/her **insights on the same** with reference to the recent times.

Legal Essay: It is very important for the author to have an in-depth knowledge of the relevant law for accurately describing it in an essay. Legal Essays are generally short pieces of writing where the author provides a personal opinion on a narrow aspect of a wide legal issue. It is pertinent for the author to provide a clear structure to the essay and include less obvious laws or arguments. It is always **advisable** to highlight and discuss controversial or less discussed arguments. The author can facilitate such analysis by including relevant policy considerations, historical development or genesis of the law and academic controversies surrounding the same.

Book/Movie Review: A book/movie review is a **very personal** and **critical analysis** of the plot. The author should *ideally* start with the Introduction which can include the title, release date and the background followed by the summary of the story. It is highly suggested to analyze legal plot elements in the book/movie which will form the foundation of the opinion put forward by the author. At the end, the author should provide an evaluation and suggestive solutions.

IV. Referencing

Footnotes & Endnotes - Footnotes and endnotes are popular ways of referencing in legal writing. They appear at the end of a claim, sentence or word to indicate its authority, in accordance with the uniform reference format chosen by the author. They may also be used to represent non-bibliographic sources like comments or observations.

The main difference between the two is that footnotes appear at the bottom of the same page, whereas endnotes appear at the end of the entire paper all together. Their advantages and disadvantages are corollaries of this difference - footnotes are easily located and guide readers to the authority directly, but on the other hand footnotes can appear cluttered, distract the reader and disrupt the format. On the other hand, endnotes do not clutter the page and allow the reader to access all the authorities in one section - which may also be cumbersome or confusing for someone looking for a specific source.

When choosing between the two, one should keep in mind their purpose of referencing - is it critical to have that source cited on the same page? Are there too many citations compromising the format of the paper? Another important consideration is the length of the paper itself - for shorter pieces like essays and short articles, endnotes are preferable as they don't break the readers' flow and are easy to locate. This is also why most blog articles use endnotes for referencing non-digital sources, if at all. For longer pieces that are divided into various chapters or sections, footnotes may be more convenient to guide readers to an authority or further information. Both footnotes and endnotes tend to be supplemented by a bibliography or works cited page.

In Text Citation - This style includes the full citation to the authority immediately after the relevant text, directly or in parentheses (depending on the referencing format). If one plans to refer to the source later, a short form is provided alongside the citation. Alternatively, just the short form is used throughout the text and the complete citation is provided in the bibliography/works cited section (as in the APA format).

Bibliography - A Bibliography is a *complete, alphabetical list of all sources* used for an academic piece, which appears at the very end. It can include sources that may not have been cited directly in the piece itself, but were referred to by the author for the purpose of research and writing.

Bibliography serves a different function than footnotes or endnotes, the latter providing more specific information than the entry in the bibliography. Accordingly, the format also different and cannot be copy pasted in the end. For example, a footnote cited in OSCOLA format can be - H.L.A. Hart, *The Concept of Law* (OUP 1961) 55. In the bibliography, it is Hart, H.L.A., *The Concept of Law* (OUP 1961)

Hyperlinking - Hyperlinks are usually used in short, informal and digitally published legal pieces such as blog articles, case notes or online newspaper articles. Any source available on the internet is hyperlinked to the relevant words in the text, and allows the reader to directly access the source of a particular claim by clicking on the hyperlinked portion. This method has gained popularity for its convenience and simplicity, but is discouraged in academic writing (even for e-journals).

Citation Formats*:*

There are many citation formats that can be used to cite the sources supporting your research. The most commonly accepted ones are:

OSCOLA - The Oxford University Standard for Citation of Legal Authorities (OSCOLA) is a guide to legal citation and not a style guide. OSCOLA is updated every two to three years and the latest edition is the Fourth Edition. Note that OSCOLA does not purport to be very comprehensive but provides rules and examples for citing primary as well as secondary sources in footnotes.

Link: <https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf>

The Bluebook - The Bluebook System of Citation is published by the Harvard Law Review Association in conjunction with the Columbia Law Review, the University of Pennsylvania Law Review, and the Yale Law Journal. 20th Bluebook is the latest edition. Note that bluebook is a style guide and is widely used in the USA.

Link: < https://www.legalbluebook.com/>

Standard Indian Legal Citation - Standard Indian Legal Citation (SILC) is a manual curated by Indian lawyers and academicians to usher in uniformity in legal citation practices across

India. SILC aims to fill up the gaps by comprehensively providing the style to cite Indian Legal sources and materials which the foreign citation systems fail to cover.
Link:<https://docs.google.com/viewer?a=v&pid=sites&srcid=aG5sdS5hYy5pbnxsaWJyYXJ5Y29tbWl0dGVlfGd4OmY2NGE5MzA1MmMyZjc3ZA>

Modern Language Association (MLA) - MLA method of citation follows the author-page method of in-text citation. The Eighth edition of the MLA citation format prescribes a uniform and standard format for all sources. The MLA style of citation makes it easier for the reader to not only look at the citations to understand them, but to possibly explore them as well.
Link: <http://style.mla.org/ >

V. Useful Resources

There are a number of brilliant books/papers/guides available on the subject. We would recommend the following resources:

1. Eugene Volokh, 'Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review' (Thomson Reuters/Foundation Press, 4th ed. 2010)

2. William H. Putman & Jennifer R. Albright, 'Legal Research, Analysis & Writing' (Cengage Learning, 4th ed. 2018)

3. Stephen V. Armstrong and Timothy P. Terrell, 'Understanding Style in Legal Writing' (2008) Perspectives: Teaching Legal Research and Writing 17(1) 43-47.

4. Mark Osbeck, 'What is "Good Legal Writing" and Why Does it Matter?' (2012) Drexel L. Rev. 4(2) 417, 428.

5. Richa Kachhwaha, 'The Art of Legal Writing: Practicing Lawyers to Successful Professionals' (OakBridge Publishing)

6. Deborah E. Bouchoux, 'Concise Guide to Legal Research and Writing' (Wolters Kluwer, 3rd. ed.)

7. Bryan A. Garner, 'Legal Writing in Plain English' (University of Chicago Press, 2nd ed. 2013)

8. Ross Guberman, ‘Point Made: How to Write Like the Nation’s Top Advocates’ (Oxford University Press, 2nd ed. 2014)

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