

## Brief Research Notes for LL.M. Students

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### **Some Suggestions to Facilitate Your Academic Legal Research and Writing**

While in many cases there may be no hard and fast rules about legal research and writing and what may work for one may not work for another, the following basic points may be useful for your legal writing and research course as well as your professional life. If you read them carefully, you would probably note that some of these are some sort of rules you are suggested to follow and some others are only suggestions which you may follow or ignore. And of course, there are individual stylistic matters in researching and writing which would vary from one person to another.

- i. Setting your research questions is very critical as this exercise will set the boundaries of your research and writing. Please do not make research questions to be dealt with too narrow or too broad. You should endeavour to cover that many questions that you can deal with thoroughly. As a general rule, in academic writing, focusing on a narrow topic and delving deep into it is preferred over cursorily dealing with too many issues. In short, a good topic is something that is interesting to the researcher, manageable by her/him, and significant.<sup>1</sup>
- ii. To get background information, it may be a good idea to begin your research by consulting secondary sources and then to move on to the primary sources. Primary sources include statutes, regulations, case laws, decisions awarded by administrative bodies, treaties, decisions awarded by international judicial or quasi-judicial bodies etc. Secondary sources include treatises, journal articles, encyclopaedias, practitioner books, popular magazine and newspaper articles etc.

You should not rely on the readings of secondary sources; you should endeavour to read the primary sources yourself. Please avoid referring to *secondary sources exclusively* when *primary sources* may be readily available. Using secondary sources when primary sources are readily available may imply that the author is too lazy or unable or unwilling to analyse primary sources. Again, not all primary sources are of equal authority. You should appreciate which primary sources have mandatory authority with respect to your research topic and which ones are merely persuasive.

- iii. Please pay attention to every detail, no matter how trifle a point may seem to you. This would go a long way in enhancing your credibility to the reader.
- iv. Your reading for research should be purposeful that is you should always bear in mind that you are not reading for reading's sake. You should have a clear aim as to what you are looking for in a material. However, the reading for your research should not be focused on just absorbing the content. Your reading should be critical that is not to accept things at face value, and ask questions. However, some basic, established facts in areas that are beyond

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<sup>1</sup> Richard Delgado, 'How to Write a Law Review Article' (1986) 20 *University of San Francisco Law Review* 445, at 448.

your expertise (e.g. because they belong to other disciplines) may be absorbed and referred to with due regard to the authority.

- v. Please be consistent in your style; e.g. if you use British spelling, use it throughout the paper. Please also use a uniform style in your footnotes; e.g. if you follow the *Bangladesh Style of Citation of Legal Authorities*,<sup>2</sup> all citations in the paper must follow that.
- vi. As a general rule, please try to write in active voice. Sentences written in active voice are generally shorter and more direct. However, it is not that you should never write in passive voice. Passive voice may be used about something on which you want to express an impersonal view.
- vii. Please work hard, there is no short cut to success. You should not expect that you will just somehow write your paper shortly before the deadline and obtain a good grade. Working steadily throughout the semester would give you the scope for planning your paper. Last minute's rush to finish your writing may ruin all your hard work.
- viii. Once you have finished your reading and formulated your research questions, you should try to write regularly. Even if your ideas may be fussy, you should not hesitate to put them in writing. You can always polish your ideas and expression at a later stage. You may wait in the quest for a never-ending best moment and somehow deceive yourself as has been brilliantly put:

I wonder sometimes how many aspiring writers there are wandering around in winter limbo, hoping to make an august start, unwilling to touch pen to paper or finger to keyboard until they have achieved the inaugural mot juste, [the exact word which is appropriate for the situation] the Flaubertian word for just exactly right. I wish I could reach out to them and pat them on the shoulder and tell them it'll be all right, and that *there is no time for starting like now*.<sup>3</sup>

- ix. Please regularly read well written works. Attentive reading of good works will inculcate good practices in you without even you barely noticing it.
- x. Please remember that footnotes and bibliography are *integral parts* of your work. Please pay as much attention to them as you would to your text.
- xi. Please try to minimise the use of quotations to secondary sources. You should only quote someone else's work when there are compelling reasons, e.g. that the quote is very relevant

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<sup>2</sup> Md. Rizwanul Islam, Nauriin Ahmed, and K. Shamsuddin Mahmood, *Bangladesh Style of Citation of Legal Authorities* (Daily Star Books, 2018) [BSCLA], this is what we would follow in this course. However, this is just one of many, for instance, *The Bluebook: A Uniform Style of Citation* (20<sup>th</sup> ed, 2015) is followed in most academic legal writings in the USA. Among others, *Chicago Manual of Style*, also known as the Maroon Book is followed by some law journals. Another one used by some US outlets is *ALWD Guide to Legal Citation* (Wolters Kluwer, 6<sup>th</sup> ed, 2017). Australian Guide to Legal Citation (Melbourne University Law Review Association, 4<sup>th</sup> ed, 2018) is widely used in Australia. The *Canadian Guide to Uniform Legal Citation* (Carswell, 9<sup>th</sup> ed, 2018) is widely used in Canadian scholarly legal writings. The *Oxford University Standard for Citation of Legal Authorities* (Hart, 4<sup>th</sup> ed, 2012) is used by many law schools and journals in the UK. Of course, the list here is not exhaustive.

<sup>3</sup> Mark Edmundson, *Why Write?: A Master Class on the Art of Writing and Why it Matters* (Bloomsbury, 2016) at 8.

and there is no way that you could express the essence of the quote in your own words.<sup>4</sup> However, the same does not necessarily apply to quotations of primary legal authorities, as has been explained by a scholar:

Whether you're a judge, advocate, or a journalist, stringing together quotations is not "writing". A surgical strike with lean quoted language will often beat a bulky block quotation bursting all over the page. And yet sometimes, when binding precedent is worded just right, even an economical judge will want to preserve the language in the original court's own words.<sup>5</sup>

However, even in cases where a block quotation may be desirable, it is undesirable to simply dump them i.e. it is not a good idea to use them without explaining the readers the context of the use of the quotations adequately.

- xii. In scholarly writings, please try to use and refer to scholarly materials. Please try to at least minimise, if not eliminate, the use of materials obtained through a random search of the internet (e.g. Wikipedia) as many of those sources may lack authenticity and objectivity. For searching scholarly materials, you are strongly encouraged to use scholarly databases subscribed by the University. In particular, you may consider using the following databases: Academic Search Premier, EBSCOHost, Blackwell Publishing, Business Source Premier EBSCOHost, Cambridge University Press, JSTOR, Oxford Journals, Policy Press, Project Muse, Springer eJouranls, Wiley-Blackwell, Wiley Inter Science, World Bank Online Resources.

You may also consider using the freely accessible sources, Australian Legal Information Institute, <<http://www.austlii.edu.au/>>, Digital Commons Network, <<https://network.bepress.com/law/>> Legal Information Institute <<http://www.law.cornell.edu/>>, the Public Library of Law <<http://www.plol.org/>>.

- xiii. Please remember that a good title is of paramount importance. A good title should be informative as well as catchy. It should give the readers a clear idea as to what the work is about.
- xiv. Please make your abstract succinct. It should discuss what your work is about, why it is important and how you would deal with the issues and what your conclusion is.
- xv. Please remember that a good introduction is of utmost importance. Often readers have time pressure and would promptly decide whether or not to go for reading the whole piece. If you think of your own reading habit, you would perhaps recall that your decision to read or not to read a work is more often than not prompted by a quick skimming through of the very first or first few paragraphs. It is not enough to write a good introduction; in subsequent parts you should do what you said that you would do. If because of new findings in the course of

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<sup>4</sup> Although in many ways, this note may be accused of not following the adage 'Practice what you preach', you should note that this is not a *scholarly writing*, but a guide for students. Secondly, some great writers' insights are included in it to raise some points to look more authoritative and also because they have expressed wisdom that the author of this note is unable to do with comparable elegance.

<sup>5</sup> Ross Guberman, *Point Taken: How to Write Like the World's Best Judges* (Oxford University Press, 2015) at 140 [Guberman].

research, your direction changes, you should adapt your introduction to reflect those subsequent changes.

- xvi. Please pay close attention to factual accuracies. No matter, how persuasive arguments you present or how novel your ideas are if your writing is replete with factual inaccuracies, you are bound to lose the reader's trust. It would also harm your reputation and in some extreme cases may expose you to legal liabilities.
- xvii. Please consider your institution's policy on ethical issues regarding research. Please read them attentively and adhere to them strictly. For example, if you need to obtain any ethics clearance, please get prepared, submit your application early, and obtain the clearance.
- xviii. Please familiarise yourself very well with the concept of *plagiarism*. To put simply, to use someone else's work or idea without any proper attribution amounts to plagiarism. If any part of a work does not cite another's work/ some other sources in support of a proposition, the reader is entitled to assume that this part represents either the author's ideas or common knowledge. To form a very clear idea as to what constitutes plagiarism and how to avoid it is a must for legal research. If you plagiarise, you will *fail the course* and may be subject to disciplinary action.

Please note that not knowing about plagiarism would not be a valid excuse. As plagiarism can sometimes be a tricky issue for graduate students and young researchers, you are strongly encouraged to read the following sources to know more about plagiarism:

- a. Writing Tutorial Services, Indiana University, Bloomington, *Plagiarism: What It is and How to Recognize and Avoid It*, <<https://wts.indiana.edu/writing-guides/plagiarism.html>> accessed 30 January 2019
- b. Plagiarism and How You Can Avoid It <<http://www.cdtl.nus.edu.sg/success/sl7.htm>> accessed 30 January 2019
- c. Emily Finch and Evan Fafinski, *Legal Skills* (Oxford University Press, 5<sup>th</sup> ed, 2015) inadvertent plagiarism, 261 <[https://fdslive.oup.com/www.oup.com/orc/resources/law/skills/finch5e/student/practical/finch5e\\_ch12\\_practical\\_plagiarism\\_p261.pdf](https://fdslive.oup.com/www.oup.com/orc/resources/law/skills/finch5e/student/practical/finch5e_ch12_practical_plagiarism_p261.pdf)> accessed 30 January 2019

- xix. Please remember that *original thinking* is very important. However, please remember that the threshold of originality in legal writing is not as high inventiveness in scientific research. And there may be many mundane ways of achieving the threshold of originality required in legal writing.
- xx. Please bear in mind that you may impress your client by writing a long brief and may even be able to charge higher fees for ostensible hard work but brevity in academic writing (and maybe in some writings in legal practice too) *is preferred*. Please do not add irrelevant pieces of information merely to fulfil the required number of words. What you can say in one sentence, you should not use two sentences for saying that. Otherwise, you are wasting your and your readers' time. And in an academic writing exercise where you have a strict word

limit, by using redundant words, you are giving yourself not a fair shot of being able to say as many things as you could. Long sentences may also make your expressions to become obscure to your readers.

You may consider the following example of unnecessary legalese:

Know all men by these presents that I hereby give, grant, bargain, sell, release, convey, transfer, and quit claim all my right, title, interest, benefit, and use whatever in, of, and concerning this chattel, known as an orange, or citrus orantium, together with all the appurtenances thereto of skin, pulp, pip, rind, seeds, and juice, for his own use and behoof, to himself and his heirs, in fee simple forever, free from all liens, encumbrances, easements, limitations, restraints, or conditions whatsoever, any and all prior deeds, transfers, or other documents whatsoever, now or anywhere made, to the contrary notwithstanding, with full power to bite, cut, suck, or otherwise eat the said orange, or to give away the same, with or without its skin, pulp, pip, rind, seeds, or juice.<sup>6</sup>

Indeed, the above could simply be written as ‘I give you this orange.’<sup>7</sup> Let us also compare the United States government’s memo: [s]uch preparations shall be made as will completely obscure all Federal buildings and non-Federal buildings occupied by the Federal government during an air raid for any period of time from visibility by reason of internal or external illumination’,<sup>8</sup> and the and the converted from as asked by Franklin D. Roosevelt ‘that in buildings where they have to keep the work going to put something across the windows.’<sup>9</sup> Thus, it seems that the pomposity and verbose are, after all, not the monopolies of lawyers.

- xxi. If you are writing for a particular outlet, e.g. a journal; keeping in mind of that outlet’s style guide and tailoring your work accordingly would spare your time.
- xxii. Please remember that the quality of the sources used in your writing, particularly in academic writing is important. For instance, an article in a refereed journal would be preferred to an anonymous post in a website.
- xxiii. Please try to research and write on a topic that you know is relatively under-researched. By doing this, you would enhance the chance of your work being noticed by others. This should not encourage you to embark on researching a topic about which you have little or no background knowledge which may make your task too daunting to accomplish.
- xxiv. Please remember that you not only need to attribute other’s works. You must also attribute it when you refer to your own previous work/s. If you take academic writing as a profession or keep on writing on a specific area, this would more and more important for you as you progress.

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<sup>6</sup> James D. Gordon III, ‘How Not to Succeed in Law School’ (1991) 100 *Yale Law Journal* 1679, 1689 quoting Plain Wayne, *Wisconsin Bar Bulletin* (February 1975) 61.

<sup>7</sup> *Ibid.*

<sup>8</sup> William Zinsser, *On Writing Well: The Classic Guide to Writing Well* (Harper Perennial, 7<sup>th</sup> ed, 2006) at 7.

<sup>9</sup> *Ibid.*

- xxv. While you are encouraged to express your opinion, your opinion should not be subjective and should be an informed opinion. In other words, you must not only say that you subscribe to a view, but also justify your viewpoint.
- xxvi. Often in legal research there may be multiple ways of addressing a question or strikingly opposing views on a subject, and the researcher may subscribe to only of those, the counterarguments should not simply be brushed aside, rather acknowledged and addressed to the extent possible.
- xxvii. As a general rule, you should make substantive arguments, particularly those that are relevant to the main theme of your work, in the body of your text, not in footnotes, lest a very important point be overlooked by a hurried reader.
- xxviii. Please try to maintain any submission deadline that you may have set or been set with. If you are sure that you cannot submit by the deadline, then please consult with the person/ authority to whom you are due to submit your work as early as you can, explain your issues and try to arrange a new deadline.
- xxix. Please remember that the mere inclusion of a list of sources in a bibliography with no footnoting for materials used from these sources is not sufficient acknowledgement.
- xxx. Please include in your bibliography all those sources that you have consulted for your work, not just those that you have used in your footnotes. For this reason, you may want to make a note of the sources that you are consulting as you move along.
- xxxi. Please honour the intellectual property rights of others.
- xxxii. Please do not assume that your readers are familiar with the topic and try to provide them with background information.
- xxxiii. If you do not find enough materials on your research topic, please do not jump into the conclusion that you are the first or among the pioneers to work on the topic. It may be that you are not searching at the right places or your search terms are too narrow. If you are lost, please seek help from your teacher/ supervisor/ peers.
- xxxiv. Please do not fall into the temptation of reading and reading without critical thinking. It is likely that you have chosen a topic for research because in one way or the other it attracts you. So, you may just carry on reading without reflecting on your reading. This may delay embarking on your writing and therefore, the whole project may not get finished in due time.
- xxxv. Your writing should be gender neutral. For example, you should write chairperson, instead of chairman.<sup>10</sup>

**Question:** Why may gender-neutral language be important?

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<sup>10</sup> For more on this, *see* above note 2, BSCLA, at 29-30.

xxxvi. Please preferably write in plain but formal English. Please do not use informal, colloquial or special expressions often used in online communications (e.g. brb, lol etc.). However, using formal English does not mean that your writing should be replete with legalese.

xxxvii. Please remember that your arguments are intangible and on their own they convey no message. Hence, your expressions are very important. Shoddy expressions may ruin your excellent arguments. Hence, please take care in your use of words, particularly verbs. Often, similar verbs can have subtle but crucial variations in meaning. For example, if you say that an author X has *noted* something; you are implying that this point has been mentioned in passing by the author. This would be quite different from saying that the author X has *discussed* something which would imply that the author has treated the subject extensively. Again, if you say that the author X has *contended*..., you are implying that the author has only claimed something and you are not sure whether that claim is plausible or not. This would be somewhat different if you say that the author X has *implied* that..., in this case you are signifying that the author has said something indirectly.

A rushed or reckless author may ignore the subtle but significant variation in meaning of the seemingly similar words, [for example, sometime (at a time in the future or in the past though not known exactly when)/ some time (a while/ an amount of time in a period of time)/ sometimes (occasionally),] and in the process fail to convey the message that she/he intended to. If in doubt, please consult a reputed dictionary or a thesaurus.<sup>11</sup>

xxxviii. You should bear in mind that some words may have unpleasant or uncomfortable historical origins and hence, all linguistically correct expressions are not necessarily acceptable or appropriate expressions. For example, using the word ‘Mongol’ to refer to a person with ‘Down’s syndrome’ is linguistically correct; however, because of its obvious derogatory implication for Mongolians, you should avoid using it. However, some expressions such as ‘calling a spade a spade’ though clearly have racist origins; their use may not be so offensive because the link may be more covert or indirect.

xxxix. Accuracy apart, there is also a question of persuasiveness in your writing. A writing that is dull would likely to fail to persuade anyone. As Lord Denning has said:

You must cultivate a style that commands attention. No matter how sound your reasoning, if it is presented in a dull and turgid setting, your hearers – or your readers – will turn aside. They will not stop to listen. They will flick over the pages. But if it is presented in a lively and attractive setting, they will sit up and take notice. They will listen as if spellbound. They will read you with engrossment.<sup>12</sup>

xl. Some dosage of allegory, simile, analogy, allusion, rhetoric etc. can liven up your prose and help you to clutch your reader’s attention. You may consider the following examples to appreciate the value of this point:

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<sup>11</sup> Good sources may include Bryan A. Garner, *Black’s Law Dictionary* (Thomson Reuters, 10<sup>th</sup> ed, 2014); Bryan A. Garner, *Garner’s Dictionary of Legal Usage* (Oxford University Press, 3<sup>rd</sup> ed, 2011), Merriam-Webster, *Merriam-Webster’s Dictionary of Law* (2016).

<sup>12</sup> Lord Denning, *The Family Story* (Lexis Law Publishing, 1981) at 216.

In *Towne v Wesner*, instead of simply saying that ‘words are subject to changing meanings, Justice Oliver Wendell Holmes, chose to say ‘A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.’

In a similar vein, in *Rock Island A. & L. R. Co. v United States*, instead of saying in a dry fashion ‘bureaucracy poses innumerable challenges to citizens who deal with the government’, opted to say ‘Men must turn square corners when they deal with the Government.’<sup>13</sup>

- xli. Generally, a good work would not just identify problems or keep issues discussed hanging, it would have a conclusion. If the issues remain unresolved because the law is uncertain on some point/s, a good work would still give some indication as to what the ideal situation should be or at least what the potential solutions are.
- xlii. While as a researcher, you would want to be relevant to your intended audience, you should bear in mind that often relevance in a professional legal context is different from what is relevant in academic context. For example, while a dissenting or separate opinion may not be professionally too significant, such an opinion may more important for academic legal research even the majority opinion.
- xliii. Last, but not the least, please never lose heart. Acquiring good research and writing skill is a gradual process. If you are honest to yourself, your next writing should be better than your current one. The grade is important, but trust me, in the long run your honest effort to learn is no less important. And while great legal writing may or may not be attainable for all of us, a presentable degree of quality is probably within the reach of *all* of us,<sup>14</sup> provided that we are ready to invest our time and effort in achieving that feat.

Happy researching!

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<sup>13</sup> The examples are taken from Guberman, above note 5, at 238.

<sup>14</sup> As Natalie Goldberg puts it in *Writing Down the Bones: Freeing the Writer Within* (Shambhala Publications:2<sup>nd</sup> ed, 2016) at xxiv, ‘[b]elieve me, you, too, can find your place inside the huge terrain of writing. No one is so odd as to be left out.’