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Practical Guidelines to Legal Writing for Young Researchers and Professionals

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Cover Page Footnote

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Abstract

Research about the law requires a degree of mastery of both the existing knowledge about the topic of research and the necessary methodological tool-kit to communicate the analysis and the findings to the targeted audience. This paper aims to provide young researchers and professionals in law with a step-by-step guide to write different types of legal writings.

This research starts from the assumption that well situating the topic of the research within an appropriate context and adopting an adapted analysis condition a cogent structure that reflects the degree of consistency between the research gap and the aim of the research, on the one hand, and the findings and the recommendations, on the other.

Keywords: Legal Writing, Context, Baseline, Method, Structure

المبادئ التوجيهية العملية للكتابة القانونية للباحثين الشباب والمهنيين

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ملخص البحث باللغة العربية

يتطلب البحث القانوني درجة من التمكن في المعارف المتوفرة حول موضوع؛ كما يتطلب ايضا امتلاك مجموعة الأدوات المنهجية اللازمة لإجراء التحليل المناسب للموضوع و توصيل النتائج للجمهور المستهدف.

تهدف هذه الورقة إلى تزويد الباحثين و المهنيين الشباب في مجال القانون بدليل تفصيلي لتحرير أنواع مختلفة من الكتابات القانونية.

ينطلق هذا العمل من الافتراض بأن وضع موضوع البحث في سياق مناسب بطريقة جيدة واعتماد المنهجية المناسبة يحدد الهيكل الملائم للبحث و يعكس درجة الاتساق بين إشكالية البحث و الهدف منه، من ناحية، و بين النتائج والتوصيات، من ناحية أخرى.

الكلمات المفتاحية: الكتابة القانونية ، السياق ، منطلقات البحث ، المنهجية ، هيكل البحث

I. INTRODUCTION

Writings in legal studies are of two major types: legal drafting that is rule formulation (Constitutions, statutes, regulations, common law…) and legal writing, [1] that is rule analysis, taking many forms (writing for academic journals, dissertations, legal essays, white papers, lawyers' notes and memoranda, case notes...). Legal writings aim to better understand the existing legal knowledge or the acts of public authorities but also to propose better solutions to theoretical and/or practical problems.

This paper is dedicated to legal writings, [2] which differ from each other in some respects; still, they share common features. Academic papers are destined for an academic audience[3], as a contribution to the state of the art in some discipline, while white papers [4] are, rather, scientific reports,

1) Simply put, law is a set of rules; legal drafting has to do with their formulation; whereas, legal writing aims to understand the content of these rules from different perspectives and for various purposes: have a profound understanding of the rules, ameliorate the legal system, provide a legal opinion about a legal issue, lodge an appeal…

2) In the last decades, there has been great interest in legal research because it has become more international, comparative and interdisciplinary in character, which requires making the utilized methods explicit to the international audience. *See* Wibren van der Burg, *The Merits of Law: An Argumentative Framework for Evaluative Judgments and Normative Recommendations in Legal Research* (February 22, 2018). Archiv für Rechts- und Sozialphilosophie, Forthcoming, Erasmus Working Paper Series on Jurisprudence and Socio-Legal Studies, No. 17-01, February 22, 2018, https://ssrn.com/abstract=3020624 (June 11th, 2021, 9:18 AM).

3) Mathias M. Siems & Daithí Mac Síthigh, *Mapping Legal Research*, 71 Cambridge L.J., 651, (2012), at 651 (In some languages, a legal researcher has only one appellation; for instance in German, it is 'Rechtswissenschaftler'; however, in English, in addition to ' legal researcher', there is 'legal scholar', 'legal scientist' , 'academic lawyer', 'legal academic').

4) The term whitepaper (also written white paper) derives from the term white book that goes back to the British White Paper of June 1922, the first document that officially clarified that Palestine should not be converted into a Jewish National Home, but that such a Home should be founded 'in Palestine. See The Churchill White Paper, June 3rd, 1922, UK Secretary of State, (September 11th, 2021, 9:15 AM), https://unispal.un.org/UNISPAL.NSF/0/F2CA0EE62B5680ED852570C000591BEB (July 21st, 2021, 8:00 PM).

solicited by decision-makers[5] from well-versed experts to assist them in opting for the best actions or policies.[6] On the other hand, lawyers' writings,[7] provide opinions on certain legal questions before taking actions that require legal guidance, like concluding legal acts, providing legal opinions or representing clients…

There is a huge amount of materials relating to scientific research and writing in different disciplines. In the field of legal studies, a lot of scattered materials exist about writing about the law. Some of them focus on a certain type of legal writing, while others contain too much detail that they lose the big picture.

There are too many articles and books written about legal writing to cite them all here, but after reviewing the current state of legal writing,[8] this paper [9] is meant to be at the interface between voluminous researches, rich

5) Public or private persons.
6) M. Stelzner, a guru of white paper writing, defines white papers as persuasive documents that usually describe problems and how to solve them. See Michael A. Stelzner, *Writing White Papers: How to Capture Readers and Keep Them Engaged*, WhitePaperSource Pub. (2007), http://catshuler.net/engl421fa08/sites/default/files/WhitePaperPrimer.pdf (August 15th, 2021, 7:20 PM).
7) Lawyers' writings sometimes intersect with legal drafting, particularly contract drafting.
8) Regardless of their volume, legal researches may be conducted in the light of different legal theories: legal formalism, legal realism, Feminism… and in conjunction with different disciplines: Law and anthropology, law and history, law and sociology….*E.G.* Frans L. Leeuw & Hans Schmeets, *Empirical Legal Research: A Guide Book for Lawyers, Legislators and Regulators*, 308 (2016). *Compare* Nicola Lacey, *Feminist Legal Theory*, 9 Oxf. J. Leg. Stud., 383 (1989), (An interesting classification of legal researches is also proposed based on a distinction between 'law as a practical discipline', 'law as humanities', 'law as social sciences' and 'law as a conceptual framework'). *See also* Siems & Síthigh, *supra* note 3, at 651 – 676.
9) The paper does not pretend that its aim is unique. Some voluminous works have nearly the same aim with sample writings and exercises to teach students how to perform legal research in the law library and on the computer, to use correct citation form and to communicate clearly with the targeted audience. Carol M. Bast, Introduction *to Legal*

of details with the risk of making young researchers lose the common features of legal writings,(10) and less voluminous researches, focusing on one type or two of legal research.(11) After years of teaching law and supervising research works, it seems that students, especially doctoral candidates, do not want to drown in theories and methodology that do not respond directly to their need for a practical step-by-step process to start their research endeavors. A need that justifies a niche for the present research, destined to law researchers, as a general audience, to aid them in their legal writing in Arabic, in English or in any language; whereas, its particular audience is young researchers and professionals, to provide them with a step-by-step process that may guide them in writing different types of legal papers to have a comprehensive idea about legal research, but also to enhance preparedness to dive into a particular type of legal writing.

Research and Writing (2020). For much less voluminous works, *see also* Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 Stetson L. Rev., 1193 (2000).

10) Some voluminous researches suggest even scenarios, examples, exercises, and other features that clarify concepts and fine-tune writing abilities. *E.G.* William H. Putman & Jennifer Albright, *Legal research, Analysis, and Writing* (4th ed., 2017). Others stress the need for an interdisciplinary approach between law, sociology and method, which reflects an appeal to a wide variety of methods in studying law and legal phenomena and the need to be informed by a profound understanding of debates about theory and method in mainstream social science. *E.G.* Reza Banakar & Max Travers, *Theory and Method in Socio-Legal Research* (2005). *But see* other legal writings that tend to present an overview of interdisciplinary domain, going back to legal realism and evaluation studies: Leeuw & Schmeets, *supra* note 8. Whereas, in the face of realists' claim that law has no internal consistency, the link between the literature of the law and formalism continues to tempt many writers, as an accepted jurisprudential theory, incarnated by famous digests of law, such as the American Digest System. Barbara Bintliff, *Context and Legal Research*, 99 L. Library J., 249 (2007), at 265-66.

11) As concerns white paper writing, M. Stelzner reveals precious secrets about elaborating compelling reports. Stelzner, *supra* note 6. To get published in peer-reviewed journals, many outstanding writings suggest different strategies. *E.G.* Pat Thompson & Barbara Kamlar, *Writing for Peer-Reviewed Journals, Strategies for Getting Published* (2013). *See also*, A. Parise who suggests 13 steps to write academic pieces. Parise Agustín, *The 13 Steps of Successful Academic Legal Research*, 38 Int'l J. Leg. Info., 1 (2010).

This research starts from the fact that the different types of legal researches must begin with setting the chosen topic into context, [12] that is the existing knowledge about the topic, whether in legal sciences or other disciplines. Such primordial task helps the researcher, essentially, to:

- maintain the topic of the research, modify it or even abandon it;
- define the scope of the research, [13] which enlightens the researcher about the perspectives from which the topic may be perceived;[14]
- crystallize the research problem [15] that translates the research gap;
- determine the aim of the research;
- find the starting points of the research; i.e., the assumptions and the established findings upon which the researcher builds his legal argument; some researches might dig as far as the philosophical and the historical origins of the studied rules and principles, [16] while others might be confined within the statute, in which the studied rules and principles are provided, or in the established realities that surround the situations governed by those rules and principles;[17]
- and, finally, decide on the appropriate research method.

12) Veda Charrow *et al.*, *Clear and Effective Legal Writing* 89-96 (2001).

13) Putman & Albright, *supra* note 10, at 325 (Broad statements present the question in the context of the general area of the law; whereas, narrow statements present the specific question in the context of the relevant law and the specific facts).

14) Agustín, *supra* note 11 (First readings are necessary starting points to broaden the researcher's perspectives).

15) Leeuw & Schmeets, *supra* note 8, at 47 (Well understanding the type of the research problem is primordial to the choice of the adequate research designs and data collection methods).

16) Thompson & Kamlar, *supra* note 11, at 20 (Such profound researches might arrive at revolutionary results in the field of expertise. They require deep expertise because, in a way or another, when the researcher writes, particularly in social or human sciences, (s)he is, in fact, writing about herself/himself).

17) These researches might bring about practical solutions to practical problems. One feature that reflects the importance of applied researches is the considerable number of scientific bodies, dedicated to this type of researches. *E.G.* Centre for Applied Legal Studies - Wits University; Center for Applied Legal Studies, Georgetown Law; The Center for Applied Legal Studies (CFALS), Bulgaria…

This research also starts from the fact that the different types of legal writings are the result of researches about the law, which aim to test the consistency or the efficiency of its rules and principles. Researches that focus on consistency find their context in the surrounding legal system(s) (doctrinal researches) and utilize, essentially, an argument-based method. (18) As for researches that focus on efficiency, they find their context, not only in the surrounding legal system but also in other realities in different disciplines: anthropology, history, sociology, politics, economics…(19) and utilize essentially a data-based method.(20)

The first two points (context and method) condition the structure of legal writings. It is in the introduction that the researcher exposes the context of the research;(21) in the remaining sections of the body, the headings and subheadings reflect the steps of the adopted method; as for the conclusion, it encapsulates a summary of the analysis that fills in the research gap; finally, in the recommendations, the researcher attempts to approach the aim of the research.

Consequently, this paper is, respectively, structured around these three points: the context of the research, the adopted method and the general

18) *E.G.* Carol M. Bast & Margie A. Hawkinspp, *Foundations of Legal Research and Writing* 20 (5th ed., 2013).

19) Some legal researchers, who view the law as social science, construct models of legal rules and evaluate their impact on different facets of society. Siems & Síthigh, *supra* note 3, at 658.

20) Some legal researches require an empirical approach grounded in facts, rather than in pure legal information. Vincent Geeraets & Wouter Veraart, *What is Wrong with Empirical-Legal Research into Victimhood? A Critical Analysis of the Ordered Apology and the Victim Impact Statement*, 41 Oxf. J. Leg. Stud., 59 (2021), at 59-79. *See also*, about a mainly psychological-based legal approach: Graham M. Davies & Anthony R. Beech, *Forensic Psychology: Crime, Justice, Law, Interventions*, 482 (3rd ed., 2017). However, this evidence-based type of researches is challenged by an insufficient normative evaluation since the researcher drowns in facts and does not dedicate much attention to rule evaluation.

21) Siems & Síthigh, *supra* note 3, at 675 (To ascertain a clear niche to their topics, researchers shall better position their works within the triangle: social sciences, humanities and practical researches).

structure of the legal writing.

II. THE CONTEXT OF THE RESEARCH

The existing knowledge about the preliminary topic sheds light on the key elements of the research. (22) As it has been mentioned above, the first steps provide useful information to decide whether to maintain, modify or change the topic. (23) Once the choice of the topic is confirmed, the researcher works on well situating it within the existing knowledge and on conducting a sound evaluation of the available information.

A. Choice of a Research Topic

The choice of a research topic may either be the result of:

- a unilateral decision, taken by:
  - the researcher herself/himself, inspired from her/his readings or real problems related to her/his field of expertise (academic writings, for example);
  - the person who assigns the topic to a researcher to test her/his research abilities (legal essays, problem-solving…);
- an agreement, sought by:
  - the researcher, with a research sponsor (a university…) to fulfill the requirements of graduation (students' dissertations…);
  - research sponsors (research centers, decision-makers…), with an expert to conduct research for their benefit (white papers, for example);
  - clients asking for a legal opinion, legal guidance or legal representation from lawyers (lawyers' writings).

22) The research encounters the risk of being decontextualized if the researcher ignores the importance of context. For more insights about the importance of context, *see* Bintliff, *supra* note 10, at 252.

23) Some authors propose to make a choice between four topics and write four abstracts and after consulting appropriate sources of information, the decision to start with one of them becomes easier. *E.G.* Thompson and Kamlar, supra note 11, at167.

The topic may be chosen among many options; sometimes, one topic is maintained and the others are excluded and sometimes, all or some of the topics are tempting, so they are all considered, even in a certain order of priority. The choice of the topic(s) is determined by many considerations, particularly a theoretical consideration that is the importance of the research as a contribution to the state of the art and/or a practical consideration, such as the evaluation of students' research abilities or the complexity of an action that requires prior scientific research. (24)

To facilitate the choice of a research topic, the researcher shall start setting it into an appropriate context. Hence, it is better to give each topic a working title and an initial brief abstract that describes the topic, its scope, the specific problem it addresses, (25) the aim of the research and how it may develop towards its aim. The working title and the initial abstract (26) help decide whether a certain question is worth being the subject of scientific research or not. For example, simple questions (27) that require simple answers without conducting a complex analysis are not the subject of scientific research. Similarly, consumed topics cannot be the subject of new researches;(28) indeed, a preliminary examination of the existing knowledge informs whether the central question still needs answers or not, knowing that the researcher can deal with old issues from new perspectives by discussing the pros and cons of the already existing conclusions and recommendations about the same topic. Inversely, vague questions that require extensive

24) The urgency of the action may affect the priority of the topic, compared to other interesting topics.
25) Some resources can be relied on to learn how to formulate objective unbiased research questions that fit each type of writing. *E.G.* Mike McConville, *Research Methods for Law* 40-50 (2007).
26) The abstract, as a succinct theoretical framework of the study, is a provisionary device that is revised throughout the research to keep up with the development of the analysis and develops towards the conclusions and recommendations. *Id*., at 105.
27) The simplicity or not of a question depends on the researcher's abilities and the perspective from which it is perceived; sometimes, a question is considered simple by a freshman, while it seems philosophical and requires deep extensive research by a law scholar.
28) However, researchers may opt for replication researches that revisit the same topic from new angles of view.

research and very broad contexts, may not be relevant to be conducted by inexperienced researchers. Even seasoned researchers, interested in such complex questions, may not accept to conduct such researches without adequate resources or because of other obstacles: lack of assistance, narrow time frame, (29) as compared to the volume and depth of the research. (30)

Therefore, depending on the degree of extensiveness of the research, the research topic is chosen based on its theoretical and/or practical importance and tackled by researchers having an adequate degree of expertise, equipped with the necessary resources and allowed a reasonable time limit to realize the research.

Once the topic of the research is chosen, the next step of scientific research is to well set it into an appropriate context.

B. Situating the Topic Within the Existing Knowledge

The topic has already a working title, an initial abstract and a central research problem, (31) so the researcher is ready to dig further to well situate it within the existing knowledge. (32) One way to do this is by creating (a) schema(ta), developed in a cluster of keywords. From the title and the central question, synonyms and definitions of the keywords are searched, using dictionaries and encyclopedias, (33) which will guide the search for sources

29) Agustín, *supra* note 11 (Some researches must meet deadlines or they just lose their novelty; this is particularly true for cutting-edge topics).
30) In such extensive researches, the central question may be studied from multidimensional perspectives, in different legal regimes, with different time horizons and by using different designs and methods. Leeuw & Schmeets, *supra* note 8, at 250.
31) Putman & Albright, *supra* note 10, at 468 (The reader must grasp the question to well understand the context).
32) *Id.*, at 431 (A rough outline of the research provides an organized frame within which information and ideas are placed).
33) Lists of databases by subject can help identify appropriate sources.

and references [34] related to the topic and shape the literature review.[35]

The literature review reflects the researcher's awareness about the different dimensions of the context that frame the scope of the posed problem (theoretical, sociological, political, legal, economic…), which ensures a niche for the topic within the field(s) of expertise that is enough broad for scientific research, but not too broad for the researcher, to not lose direction and, possibly, abandon the research. Situating the topic within a context does not stop at the mere collection of related sources and references; it also requires submitting the gathered information to evaluation to refine the existing knowledge about the topic.

C. Evaluating the Existing Knowledge About the Topic

The comprehensiveness, depth and relevance of sources and references, mainly those discussing seminal and/or mainstream ideas about the topic, including those that contradict the researcher's scientific orientation,[36] inform about her/his degree of mastery of the existing knowledge about the topic and her/his objectivity.[37] A rigorous evaluation of relevant materials will develop towards a deep and clear understanding of the context of the research and an accurate definition of the research gap, which the central question of the research is intended to crystallize.[38]

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34) Primary sources are well covered by Westlaw (https://legal.thomsonreuters.com/en/westlaw) and LexisNexis (https://www.lexisnexis.fr).
35) The search must be conducted from the most general to the most specific. Familiarity with traditional library catalogs and digital ones will equip the researcher with the necessary skills to narrow the research to the needed sources and references.
36) Siems & Síthigh, *supra* note 3, at 673 (In some jurisdictions, legal research has evolved as a practical discipline outside universities, but this has gradually changed towards the emergence of socio-legal and interdisciplinary researches).
37) Indeed, a strong legal base is of utmost importance to understand the legal world in general and, in particular, the context of the discussed topic. *See* Yashprada Joglekar, *Legal Education and Pedagogy in Contemporary Era*, 9 Nirma Univ. L. J., 43 (2020), at 47.
38) *See* van der Burg, *supra* note 2 (To make their own arguments, researchers shall be able to evaluate other researchers' arguments. This is done by fine scrutiny of the links between data and results).

The best thing that helps beat time is to be organized;[39] therefore, the evaluation of data may be conducted in a four-step-process that spares much time.

- First, the researcher shall look for a sufficient number of relevant references of different types in accordance with the nature, depth and volume of the research [40] to ensure the comprehensiveness of the research sources. In the case of long researches, the researcher may focus on sufficient references for each chapter or section.

- Second, to examine the appropriateness of the collected references,[41] the researcher is not meant to read the integrality of each reference or read the detailed biography of each author; it would be enough to be reassured about the standing and the scientific orientation of the author(s), the reputation of the publisher, the originality of the work and detect key pieces of information that are relevant to the research from tables of contents, tables, graphs, diagrams, illustrations, appendices, and especially from the abstract, the introduction and the conclusion. The bibliography of each reference may help the researcher to extend the list of sources and references [42] and to locate seminal works, if any, particularly if the research is a developmental study that follows the different stages that shaped the subject. The references of each consulted work dissipate any doubts about plagiarism, as a form of academic misconduct. [43]

- Third, in each reference, a close look is dedicated to the relevance

39) Agustín, *supra* note 11.
40) Charrow *et al*., *supra* note 12, at 123 (The researcher shall continually question the pertinence between the volume of the research and the quantity of information (s)he needs to reach the set objective).
41) Joglekar, *supra* note 37, at 33 (There should be an appropriate amount of intersecting ideas about the discussed topic to forge a multidimensional picture about the research).
42) The researcher shall refer to those sources and references to take the needed information and, if not possible, mention in the footnote that the information is cited in another reference. *E.G.* York University, *OSCOLA Style, Referencing with Confidence As Used In York Law School*. www.york.ac.uk/integrity (June 24th, 8:17 PM).
43) Citing and referencing source material is a crucial aspect of academic integrity. *Id.*

between the analysis of the data and the proposed answers to the research question; the researcher focuses on the appropriateness of the adopted method and how it structures the analysis from the starting points of the research to its findings: the researcher examines the validity of the starting points, the relevance of the data, distinguishes between views or opinions, based upon intuition, and findings, grounded in arguments.

- Fourth, the researcher reconstructs, as faithfully as possible, the different narratives, in the different materials, using her/his logical reasoning skills and persuasive abilities to build the state of the art, which sheds more light on the context of the research.

Finally, the researcher becomes ready to build up her/his own argument and structure it towards filling the research gap, using a pertinent method.

III. THE RESEARCH METHOD

It is mentioned in the introduction that young researchers would not prefer to delve into research theories and methodology; rather, they would prefer a clear step-by- step process to guide them in their research task. However, a flash review on methodology in legal sciences may anchor the proposed process in solid grounds and facilitate its adaptation to each type of legal writing.

A. Methodology in Legal Sciences

Legal writings are of different degrees of complexity: some of them require a relatively limited number of references and an easy road map, as it is the case for legal essays, problem-solving tasks, some lawyers' writings…; whereas, deep scientific researches, such as academic writings or white papers, require a much larger amount of resources and rigorous scientific methods.

Scientific methods have, essentially, a two-fold objective: organize systematically the research work [(44)] and, relatively, convince the community of scientists in the same field of expertise about the validity of the results of

44) Charrow *et al.*, *supra* note 12, at 136.

the research. It is imperative to manage the researcher's intellectual effort and the available resources to make the best use of the existing knowledge germane to the research topic, (45) to settle the posed problem and to reach the targeted objective within an acceptable time limit, at a reasonable cost.

The choice of the method depends, essentially, on the type of the research, though researches might also be challenged by ethical and political constraints. (46)

In the field of legal studies, these methods may be classified into two categories, in accordance with two generic types of legal research. Pure legal researchers adopt methods that are based upon subjective narratives because the validity of their results rests upon their acceptance by law scholars, specializing in the related branch of law, as a contribution to the state of the art.(47) The legal argument consists, essentially, in interpretation methods that aim to understand the surrounding legal context to propose a better understanding of the studied rules and principles or/and to introduce some revisions for better consistency of the legal system.

As for legal researches that are related to other disciplines, like anthropology, history, social sciences(48) economics, political sciences…, they add to the subjective argument-based methods objective data-based

45) Jules L. Coleman, *Beyond the Separability Thesis: Moral Semantics and the Methodology of Jurisprudence*, 27 Oxf. J. Leg. Stud., 581 (2007), at 607 (Legal resources are chosen according to the line of the research, sometimes referred to as 'pedigree').
46) McConville, *supra* note 25, at 135.
47) There is no consensus about quantitative criteria to assess the importance of scientific researches; rather, qualitative evaluation prevails in the field of legal research. Some works are considered significantly important or a breakthrough in the field of expertise, such as seminal works, while others are not of the same eminence, but still important, in a way or another, as a contribution to the state of the art.
48) Gustav Radbruch, *Law's Image of the Human,* 40 Oxf. J. L. Stud., 667 (2020), at 674-5 (The relationship between law and sociology is now so crucial. The ancient and medieval ages' way of thinking of the self-centered individual, free from all sociological ties, unless (s)he consents to be bound by them, is over).

methods,(49) inspired from sociology. In this type of legal research, the legal argument does not only depend on legal facts but also external realities, and the validity of the results depends, in the first place, upon their relative ability to be verified, which justifies their acceptance by scholars, specializing in the related fields of expertise, as a contribution to the state of the art.

B. Method Adaptation to Legal Writings

In accordance with the type of legal research, the researcher adapts the chosen method to answer the posed problem. Whether the chosen method tests consistency or efficiency, the researcher does not count on pure intuition, rather (s)he uses a rigorous legal argument grounded in logic or/and in quantitative /or qualitative data (50) that flows fluidly towards the findings, within the framework of the chosen method.

A three-step process may guide the researcher in structuring his research:

1- well, frame the topic of the research by setting it into context, using all relevant and verified information that attracts the readers' attention and stimulate them to react favorably to the analysis.

2- determine the starting points of the research; i.e., the assumptions on which the topic finds its theoretical and/or practical justification, such as moral, (51) political or legal grounds, established realities…

3- use the appropriate method to ensure coherence between the starting

49) Bast & Hawkinspp, *supra* note 18, at 64-.
50) The researcher shall distinguish between empirical and non-empirical researches for this will affect the robustness of the research design and the data collection methods and instruments, including software, used to analyze certain types of data. Leeuw & Schmeets, *supra* note 8, at 12-14.
51) H. L. A. Hart, *The Concept of Law* 185-6 (1997) (There are many aspects and dimensions of law and morality and many potential connections between them. Hart concisely puts it: 'it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though they have often done so').

points of the research and the findings;[52] i.e., the legal argument must develop from the baseline of the research towards filling the theoretical, sociological, economic, political or legal gap, making use of the different techniques of legal argument, whether narratives that establish verisimilitude, coherence, a sense of fit, a feeling of identification… or logical reasoning (deduction, induction, abduction, analogy) to verify facts and well interpret the relevant legal principles to provide an account of how the law operates in the realm of reason.[53]

This process may be enough guiding for academic writings, [54] but the below succinct examples may provide more guidance to write other types of legal writings, namely: legal essays, white papers, lawyers' writings, and case notes.

1 Legal essays

To write a legal essay, the researcher shall read the assigned topic carefully to:

1- form an idea about its dimension(s) and, if the assigned topic does not provide a precise question, formulate the central question of the research and clarify the objective of the research;

2- infer the starting point(s) of the research, relying on previous legal knowledge or/and from available resources, [55] if this is allowed;

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52) These three points may be considered as a basis for qualitative criteria to accept or not a legal writing as reliable scientific legal research. In fact, the legal system represents values of non-quantifiable character, as it is the case for human dignity or humiliation. *E.G.*. Geeraets & Veraart, *supra* note 19, at 68.

53) Coleman, *supra* note 45, at 597.

54) Academic writings, for example, are themselves of different types, depending on the criteria of classification. For example, they may either be confined within the field of law (doctrinal researches) or test the efficiency of law in different fields (history, sociology, politics, economics…), pursue the evolution of a legal phenomenon or situation (developmental or historical researches) or compare legal rules and principles, within the same legal system or involving other legal systems…

55) Agustín, *supra* note 11 (Cutting-edge topics are generally addressed in journal articles, and then they appear in books).

3- formulate secondary questions whose answers develop, in a coherent narrative, towards proposing an answer to the main question and realizing the objective of the research.

2 White Papers

As it has been mentioned above, white papers are reports, solicited by decision-makers from experienced experts to provide them with sound opinions in a particular field of expertise, which assists them in opting for the best actions or policies. (56) The suggested three-step process would apply to white papers as follows:

1- start by examining the state of the art to understand the theoretical, sociological, economic, political, legal context to accurately precise the research gap and how previous researches, if any, dealt with the same problem;

2- use established realities and reliable findings in the target discipline and adjacent disciplines as starting points of the analysis;(57)

3- rely on rigorous quantitative /or qualitative analysis, grounded in data and logic, that develops fluidly in the direction of filling the theoretical, sociological, economic, political or legal gap to persuade the beneficiaries of the paper about a decision or a policy option.

3 ***Lawyers' writings****(58)*

Lawyers' opinions serve their clients to proceed legally, (59) taking into account the balance between costs and benefits. Lawyers may guide their clients to conclude legal acts in a way that responds to their objectives, while

56) Stelzner, *supra* note 6 (White papers are of different types: technical, business benefits, hybrid: technical/business benefits and governmental).
57) Because knowledge is cumulative, but this does not mean that such findings remain immune from critique.
58)Bast & Hawkinspp, *supra* note 18, at 332 (The appearance of lawyers' writings should be inviting with enough headings to allow the reader to have an overview on the flow of the reasoning).
59) *Id.*, at 272-

being aware of any possible harmful effect on them; they may also advise their clients to take a dispute to court or recommend an out-of-court amicable settlement. (60)

Lawyers' writings are at the interface of legal drafting and legal writing. They are themselves of different types,(61) but when a lawyer is asked to provide a legal opinion about a factual situation, to represent clients or to assist them to draft a legal act, the proposed three-step process would apply, too.

1- Starting from the facts(62) provided by the clients, the lawyer understands the clients' problem or objective and the context(63) of the situation at hand,(64) being aware that:

- not all facts provided by clients are relevant to their claims or objectives, so irrelevant ones must be excluded because they only burden the file;(65) however, the lawyer shall have particular attention to details to not exclude a detail that may, in a way or another, strengthen the clients' position and/or weaken the opponents' position;
- not all relevant facts benefit the clients, so (s)he has to keep those that benefit them and exclude ones that are detrimental to them, but (s)he has also to be aware that the excluded facts, or facts that have not been

60) Pretrial settlements are also possible. *Id.*, at 260
61) Rowe, *supra* note 9 (A lawyer may start his career after law school, by a Bar exam, which might not be simple multiple-choice questions, but problem-solving tests that require showcasing real legal writing and drafting competencies).
62) Davies & Beech, *supra* note 20, at 380 (Sometimes, fact-finding becomes predominantly a psychological process and may lack logic).
63) Bintliff, *supra* note 10, at 251 (Litigant parties may agree on the context, but, sometimes, the context is not shared and each party tries to impose its vision of the facts and the issues they raise).
64) Putman & Albright, *supra* note 10, at 314 (A reader understands the importance of the facts in a dispute within the context of the law).
65) Also called coincidental facts. *Id.*, at 268.

mentioned by her/his clients, might be raised by their opponents;

- not all facts that benefit the clients can be proven, pursuant to the evidentiary rules, so the lawyer must make the difference between those that can be proven and those that cannot and those that need more effort to decide on them; the lawyer decides whether to mention or not the last two types of facts within her/his narrative to establish some kind of verisimilitude, depending on whether they may weaken her/his clients' position or not; if yes, they must be excluded; if not, their use would not harm the clients and may benefit them.

2- Once, the lawyer refines the facts(66) and determines the legal issues,(67) (s)he attributes the facts and the issues they raise to the legal framework that governs them and determines the possible causes of action;(68) the lawyer, then, proceeds in the opposite direction, using a top-down process by searching for the best interpretation of legal rules and principles that benefit the clients, whether for those that apply to facts that (s)he retained or those that may be raised by the opponents. The top-down process allows the lawyer to have a full grasp of the legal basis of the case at hand (legislation, case law, customary rules, policy…) with substantiation. Lawyers use the logical argument to convince judges to retain certain facts and to disregard others and to direct them to apply certain rules and principles with the meaning that is in favor of their case.

3- The lawyer well understands the content of relevant legal rules and principles, using interpretative skills to apply them correctly to the identified

66) In the event of litigations, judges may disregard irrelevant facts or facts that are not enough sustained and retain only relevant sustained ones.
67) Putman & Albright, *supra* note 10, at 124, 244-7 (The most critical step in the research process is framing the issue into the context of the specific facts of the case, notably background facts).
68) In drafting contracts, the lawyer shall be familiar with the relevant legal rules and principles governing contracts in general and those governing the drafted type of contracts whose disregard would undermine the clients' interest or the validity of the contract itself.

issues to meet her/his clients' expectations.(69) In the event of litigation, the lawyer anticipates how the court would consider the strength of the case and advises her/his clients to go to court or not.(70) It would be better to not rush to court with weak evidence and/or weak legal grounds, exposing the clients to a high risk of losing the case, while an out-of-court settlement might be possible.

4 Case Notes

Case notes writing is a critical analysis of a court decision that aims to explain how the decision is reached. (71) It may be written by law students and scholars. Lawyers, also, refer to precedent cases to understand how decisions are reached but also, if their clients are not satisfied with the court decision, search for possible loopholes to introduce appeals. The three-step process (72) may also apply to writing case notes.

1- The researcher shall be familiar with the structure of court decisions to situate material facts that raise the legal issues to be decided and to understand the context of the case. The case note shall provide a quick review about the identification of the case (Name of the case, the court, the judges…); the procedural history of the case, if applicable, such as the judicial instances through which the case went through before it is brought before the present court and possibly the judge or judges who heard the case; the summary of the facts retained by the court and possibly those that were excluded if the researcher considers them critical to the case and may be raised on appeal; the legal issues raised by the parties to the litigation; the review of the legal arguments (*rationes decidendi*),(73) applied to the facts to

69) In contract drafting, lawyers shall have proper use of legal skills to translate the will of the parties into a binding contract that takes into account the best interest of the clients and avoid, as much as possible, the risk of misinterpretation, which may lead to litigation.
70) Davies & Beech, *supra* note 20, at 374 (The lawyer shall also anticipate cross-examination strategies, which may lead to an adverse effect on her/his clients).
71) Bast & Hawkinspp, *supra* note 18, at 119-21.
72) Some legal researchers suggest more steps to write case notes or briefs, but the objective remains the same. E.G., *Id.*, 202-205.
73) *Id.*, at 120.

decide the disputed issues, with the necessary clarifications (*obiter dicta*),[74] if necessary; the final decision of the court, which resolves the different issues and order relief.

2- The researcher follows, step by step, the analysis of the *rationes decidendi*, upon which the case is based, and *obiter dicta*, if applicable, and material facts that raise the legal issues. (S)He may also provide a critique of each step to detect the strong and weak points of the court's analysis, starting from the jurisdiction of the court, the validity of the procedure, thoroughness, relevance and sustainability of the facts, thoroughness, relevance and good understanding of the legal grounds of the case, clarity of the disputed issues, correct application of law to the case, effectiveness of the court's order(s)[75] to settle the litigation.

3- The critique ends with providing a simple understanding of the case, the pros and cons of the judgment and, possibly, how a better resolution of the issues and a more effective order might have been delivered.

IV. THE GENERAL STRUCTURE OF LEGAL WRITINGS

The structure of the research is not a mere technical action; it is an outcome of fine alignment between the research problem, taken in an appropriate context, the objective(s) of the research, the theoretical framework [76] of the study and the chosen method(s).[77] It is this alignment that must condition the structure of the paper, not pure intuition.

74) *Id.*, at 24 (Because not all the arguments expressed in a judgment are precedents, the author may provide explanations and comments on the *rationes decidendi*, even beyond the issues to be settled).
75) Putman & Albright, *supra* note 10, at 101 (It is worth noting that court opinions address legal questions that arise in the context of the litigation process, either before, during or after trial and, hence, explain what conduct is appropriate).
76) McConville, *supra* note 25, at 53,54 (In quantitative studies, in particular, the choice of the theoretical framework casts light on the research central question and the hypotheses; these are tentative answers to the research problems that are expressed, at the beginning of the research, in a plain relationship between independent and dependent variables and can only be verified at the end of the research).
77) Leeuw &Schmeets, *supra*-8, at 43, 216.

All legal writings must have a title that summarizes the content of the writing, an introduction, a body and a conclusion. An academic writing, a dissertation or a white paper contains an abstract, of about 5 to 10 % of the volume of the writing, that gives a concentrated global image of the work. Less voluminous writings, such as short essays, would not need an abstract.

The Introduction

In all types of legal writings, the introduction has a two-fold objective: to catch the readers' attention to the addressed topic and to maintain their attention to continue reading the analysis in the further sections.

The introduction foreshadows the proposed contribution.(78) It contains different elements, depending on the type of legal writing, but the key elements of the introduction are: a) the motivations underpinning the choice of the topic, whether subjective, relating to the researcher's scientific interests, or objective, precising the theoretical or practical importance(79) of the research, b) the context of the topic, c) the specific research gap which the research intends to fill, formulated in d) a plain central question, e) the objective of the research, f) the starting points of the research, g) the adopted method, h) a general overview on the remaining sections of the research, explaining how the paper is structured to answer the central question(80) and, if need be, i) possible further researches that may be more adapted to the needs of future researchers.(81) Whereas, the most important element of the above may be a successful presentation of the literature review because it reflects the researcher's awareness about the context of the discussed topic,

78) Thompson & Kamlar, *supra* note 11, at 95.
79) As quoted by Oliver Wendell Holmes Jr : 'The life of law has not been logic, it has been experience'. Nandini Garg and Siddhant Garg, *Analysis of the Challenges Posed by Legal Education and the Need of Transformation in the Contemporary Times*, 9 Nirma Univ. L. J., 31 (July 2020), at 33.
80) *Id.*
81) Radbruch, *supra* note 48, at 673 (A legal order cannot be tailored to the actual, real human being). Indeed, a legal order and the researchers conducted about it transcend the present time frame, which opens the door to prospective studies.

especially the scope of the research,[82] the particular research gap and the objective of the research. Consequently, great care must be dedicated to the literature review in the introduction.

The paragraphs [83] of the introduction are organized in an inverted pyramid, from general to specific, in the same order mentioned above. Each paragraph starts with a topic sentence [84] and its content develops the same idea.

A. Headings and Subheadings

The body develops the succinct road map of the research, as mentioned at the end of the introduction. The order of the headings and subheadings reflect the cogence of the legal argument and each of them signposts the writing and discusses a side of the analysis, but they must not be overused; instead, paragraphs may be numbered [85] to facilitate reference, particularly in court decisions. [86]

As it has been mentioned for the paragraphs of the introduction, every paragraph, in each section or subsection, has a topic sentence; its content relates to the same topic sentence with a smooth transition to the next paragraph.

B. Conclusion

The conclusion is a concentrated summary of the analysis, developed in the body of the research. It is not meant to add new content to the analysis. It simply ties everything that is said in the introduction and the body

82) Thompson & Kamlar, *supra* note 11, at 100.
83) It is better to avoid one-sentence paragraphs, but some legal researchers tolerate this option. E.G. Bast & Hawkinspp, *supra* note 18, at 268.
84) *Id.*
85) *Id.*, at 386 (pinpoints are mentioned in several ways, depending on the type of writing).
86) For example, the pinpointed paragraphs 42 and 45 of a judgment are cited thus: Callery v Gray [2001] EWCA Civ 1117, [2001] 1 WLR 2112 [42], [45]. York University, *supra* note 42.

together.[87] However, the researcher may imagine that some readers would jump directly to the conclusion, so (s)he has to guide them step by step through the conclusion. [88]

First, the researcher reminds the reader of the context of the addressed topic, its purpose, the necessity of the research and, maybe, the urgency to take action.[89] After this reminder, the researcher summarizes the conclusions of each section in the research in a way that reminds the reader of the general guidelines of the analysis. Finally, the researcher arranges the conclusions together in a narrative that persuades the readers about the proposed answer to the main question.

C. Recommendations

After the conclusion, in which the researcher develops others' arguments in his own narrative, (s)he provides recommendations that reflect her/his own views about the topic. [90] In academic writings, dissertations, essays and policy reports, the researcher presents propositions to develop new ideas about the topic or to proceed differently to tackle the posed problem.

The recommendations must be specific to the posed problem, not expressed in general terms, anchored in the research analysis, not based on pure intuition and must fit into the legal framework with its proper epistemic, institutional, and normative peculiarities. [91]

If the researcher foresees future researches that should be conducted in the future about the same topic, (s)he mentions them in the section dedicated to the recommendations, too.

In particular, policy papers are meant to provide specific recommendations that can be used to make better decisions or adopt better

87) Bast & Hawkinspp, *supra* note 18, at 315.
88) Rowe, *supra* note 9.
89) This is particularly important in white papers.
90) *Id*., at 10.
91) van der Burg, *supra* note 2.

policies. After, comparing the pros and cons of different options of decisions and policies in the body of the report, the most relevant options are proposed to the posed problem on the basis of criteria deriving from the method(s) of the research (cost/benefit, risks/gains, legitimacy/efficiency…).(92) The proposed options must be translated in clear-cut practical steps to follow(93) to implement the proposed action, indicating the possible difficulties surrounding each step and the degree of such difficulties, if applicable.

As for lawyers' notes, memoranda or case notes, the recommendations reflect pieces of advice, usually made for clients on how to handle a legal issue, or a critique of how a legal issue is handled, proposing a different course of action.(94) On this basis, the lawyer advises the clients whether to conclude an act or not, go to court, as a claimant or have an out-of-court settlement and if some action is needed, how to implement it, step by step, pursuant to the relevant legal rules and principles.

V. INFORMATION MANAGEMENT

Any scientific research relies on sources and references to substantiate the information, therein.(95) The appropriate use of primary and secondary materials saves effort and time, especially with the shift from the traditional print resources paradigm to the electronic databases one.(96) Therefore, the researcher shall abide by the recognized guidelines and protocols proper to each discipline, particularly those required by the sponsor or the publisher of the research who may provide templates, according to which the writing is formatted. Anyway, there is no one prevailing source for citation of legal

92) Stelzner, *supra* note 6 (white papers are persuasive documents that usually describe problems and how to solve them).
93) *Id.*
94) Bast & Hawkinspp, *supra* note 18, at 137.
95) Agustín, *supra* note 11 (Law schools and journals in the USA are more rigorous than other jurisdictions in this regard. Each idea that is not produced by the researcher must be attributed to its source).
96) For a sound comparison between print resources and digital ones, see Hanson, F. Allan, *From Key Numbers to Keywords: How Automation Has Transformed the Law*, 94 L. Library J., 563 (2002).

authorities;(97) guidelines of keeping a record of human experience are cultural devices that differ from the West's styles to other traditions.(98) Using her/his legal citation skills,(99) the legal researcher shall keep a full record of the primary resources (statutes, regulations, case law, customary law…) and/or secondary resources (different types of writings about primary resources), not only to, precisely, indicate the sources of information but also to dissipate any doubts about scientific dishonesty. Some writings include appendices comprising surveys, charts, graphs and other raw data; the researcher shall substantiate these appendices and if they are realized by the researcher, (s)he shall indicate so, and demonstrate how (s)he arrived to produce such data.

It might be worth noting that with automation of legal resources, the researcher must be competent in her/his choices because electronic legal research demands a distinctive understanding of the subject matter which is not always clear in the digital sources, whether in Westlaw and Lexis, for example, or in other web sources(100) because these automated sources are less meaningful, as bases of collective consciousness.(101) On the other hand, unlike print sources, digital sources propose more options that are thematically related, even out of the realm of law.(102)

The researcher organizes the used resources in respect of two golden

97) LexisNexis, *INTERACTIVE CITATION WORKBOOK FOR The Bluebook: A UNIFORM SYSTEM OF CITATION AND INTERACTIVE CITATION WORKBOOK FOR ALWD GUIDE TO LEGAL CITATION*, https://www.lexisnexis.com/documents/pdfstore/New_York_Bluebook_and_ALWD_Final.pdf (July 17th, 11:06 AM).
98) Hanson, *supra* note 96, at 569-570.
99) Citing accurately distinguishes the researcher's thoughts and words from other researchers. York University, *supra* note 42.
100) Hanson, *supra* note 96, at 573.
101) *Id.*, at 599.
102) *Id.*, at 587.

rules: consistency and consideration for the reader,[103] whether for the citation style (in-text notes, footnotes or endnotes) or the listing of the bibliographic resources.[104] Some manuals of renown may be followed, depending on the venue of the legal research: the Harvard Format Citation Guide,[105] the Bluebook style,[106] the Chicago Manual of Style Online,[107] the Oxford University Standard for the Citation of Legal Authorities (OSCOLA),[108] the Australian Guide to Legal Citation (AGLC),[109] the Association of Legal Writing Directors (ALWD) guide…[110]

VI. EDITING

Editing a legal writing allows the researcher, [111] or someone else, such as (a) co-author(s) or students' supervisors, [112] to spot possible pitfalls and to ensure accuracy, precision, succinctness and consistency. The editing task

103) Oxford University Standard for the Citation of Legal Authorities (OSCOLA), Fourth edition, https://www.law.ox.ac.uk/oscola (December 6th, 2021, 7:09 PM).
104) Bibliography, selected Bibliography, works Consulted… stand for the list of sources and references, used in a legal writing, whether cited in the research or just consulted.
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111) Agustín, *supra* note 11 (The researcher must, first, edit her/his own work and this is better implemented if done part by part, to allow enough time to detect eventual mistakes).
112) Garg & Garg, *supra* note 79, at 41 (Supervisors assume an important role in enhancing students' research skills by providing them with theoretical knowledge and practical skills that are necessary to the implementation of their research work).

comprises essentially the correction of the language and the revision of the content: filling possible gaps and loopholes to ensure thoroughness, trimming and pruning to omit irrelevant items that burden the writing or create confusion, avoiding wordiness and redundancy, moderating the excessive use of antiquated words, long sentences or paragraphs, ensuring formality (formal tone), gender-neutral [113]...

VII. CONCLUSION

In addition to the scientific difficulties related to each research topic, the researcher faces methodological difficulties. In fact, legal writing is a complex task that requires a degree of mastery of the state of the art in the targeted branch of law, but it also requires some acquaintance with research theories and methodology.

The present paper is intended to be a contribution to provide young legal researchers and professionals with practical guidelines of legal writing via a step-by-step process, anchored in sound theory and methodology; it particularly aims to guide researchers to:

- choose the topic of the research on the basis of sound criteria that consider the scientific needs of the researcher and her/his degree of expertise, as well as the theoretical and/or practical importance of the topic;

- ensure a particular niche for the chosen topic within the existing knowledge, using a four-step process that helps to understand the surrounding context and to verify the reliability of the collected information about the subject, particularly those considered as starting points in which the researcher's analysis is grounded;

- adopt a method that is adapted to the type of research and writing, using the suggested three-step process;

- structure the writing to reflect the mastery of the literature review about the topic, the cogency of the analysis and the consistency of the findings and the recommendations with the posed question and the aim of the research;

113) *E.G.* Rowe, *supra* note 9.

- organize information to keep a good record of the used resources, inform the readers about the sources of information and ensure a consistent referencing style and formatting instructions that meet the sponsors or the publishers' requirements;

- self-edit the writing, and, preferably, get it revised by someone else in both form and content.

Further researches, having the same aim with narrower targets, may pinpoint each type of legal writing, making the suggested step-by-step process delve into as much detail as each type of writing requires.

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