

LEGAL WRITING AND LANGUAGE

Contribution to the courses from the perspective of European, in particular German legal education

Types of academic literature and finding them

A. Preliminary remarks

I. *The necessity of continuous extensive reading of academic literature in the study of law*

- studying at university inevitably requires a huge amount of reading...
 - studying law essentially means reading, processing of what has been read, and thinking - that's it!
- the freshman's shock: no easy reading, as in social media, but painstaking processing of difficult, intellectually challenging and mentally exhausting long texts in an unfamiliar, scientific style
- don't worry - you will get used to it!

II. *The difficult but necessary distinction between academic (= scientific) sources and non-scientific sources*

- legal issues are often discussed in an unqualified manner in all kinds of media, but this is irrelevant for legal work:
- **only professional legal literature**, which follows a scientific approach, must be considered and processed in legal work, but not:
 - political documents (of political parties, religious groups, economic stakeholders, civil society organisations and other lobbies)
 - journalistic documents (newspaper articles, news media websites, articles in magazines etc.)
 - information websites of public and international institutions (except content of clearly scientific nature)
 - social media contents (except, in rare cases, contents of clearly scientific nature)
 - course materials, lecture scripts and other teaching materials (except those of clearly scientific nature)
- *sources of scientific nature* are those who comply with the internationally recognized intellectual and formal standards of scientific legal research and writing¹, in particular:
 - back every single information in the paper by a reference in a footnote which allows to verify it (most obvious criterion)
 - do not contain unmarked text written by artificial intelligence
 - present a legal, not political or moral reasoning
 - show a logically and dogmatically consistent structure with precisely formulated headlines (not as in journalistic articles)
 - are written in an objective and precise style of writing and specify the relevant legal norms precisely
 - usually include a bibliography
- with internet sources, the distinction can be challenging for students
 - in case of doubts, discuss with colleagues or the lecturer!

III. *Always a priority: the thorough study of the text of the law*

- *only the law* itself is decisive for the work of the lawyer, not its presentation by others
 - therefore, you must in any case study the text of the law carefully yourself!
 - good law lecturers do not tolerate students in their classes who do not have the text of the law with them
- the text of all laws is available at *online databases*, but for intensive work, *law collections in bookform* are more practical
 - unfortunately, sophisticated *law collections in smartphone apps* are in most countries still missing

IV. *Never forget: the study of the relevant jurisprudence of the courts*

- unlike in common law systems, in continental legal systems, such as in Indonesia, *court decisions* are not "*case-law*" but only express the court's opinion about the underlying legal question (there is no doctrine of precedent/stare decisis)
- nevertheless, decisions of supreme, constitutional and international courts enjoy an *intellectual authority*: you are free to deviate but must at least mention and discuss them thoroughly
- comprehensive references to the relevant jurisprudence can be found in commentaries, textbooks and handbooks

B. The types of academic (scientific) legal literature (→ see examples shown in the lecture!)

- note that in legal science different types of literature prevail than in the neighbouring political and social sciences!
- *print publications still dominate*, but more and more literature of all types (even books) is published online
 - for the more important and sophisticated legal literature you still need to go to the library
 - online publications do not reflect the whole spectrum of the debate and are sometimes of lower quality

I. *Textbooks*

- the student's most important gateway to a new field of law
- *systematic and didactic presentation* of an entire field of law (criminal law, private law, constitutional law etc.)
 - can be short and concise for a brief introduction or longer and more in-depth for further study
 - often with overviews, diagrams and case presentations and a learning-friendly visual design
 - need to be updated with a new edition every few years

¹ Underlined text passages indicate links to relevant internet resources. Just click on the link in the pdf file!

- in big countries with advanced legal education, students can choose from a wide selection of textbooks for each field of law
- best practice: *read one concise textbook for each field of law completely* and consult others from time to time for a different perspective

II. Commentaries

- the expert's tool for a quick look-up of information and jurisprudence
- *article-by-article presentation of a law*, constitution or international treaty
 - a wide range, from short to large books to numerous volumes; also as loose-leaf editions or online
 - often published by an editor and written by a group of authors
 - need to be updated with a new edition every few years
- very useful, but using them requires to know already the relevant legal provisions

III. Handbooks, encyclopaedias and works of reference

- a valuable resource for legal practitioners and scientific research
- detailed or in-depth *presentation by key terms*, for a quick look-up and for advanced studies
 - often several volumes, published by several editors and written by a large group of authors
 - less frequently updated than textbooks and commentaries

IV. Monographs

- books containing *in-depth studies on specific legal topics*
- especially doctoral theses, habilitation theses, publication series by universities and conference proceedings
- nowadays also often published online (esp. conference proceedings)
- note that ignoring a monograph relevant to your topic would be a serious shortcoming in your bachelor thesis!

V. Articles in law journals

- popular among students, but in the field of law *not the most important type* of academic literature
 - no substitute for consulting textbooks, commentaries and handbooks!
- *short texts on specific legal topics*
 - usually on more current topics and more up-to-date, but also *more superficial* than other types of legal literature
 - new topics are first discussed here, but space is limited
 - articles in Southeast Asian law journals are often too short to discuss a topic thoroughly
- submitted articles undergo a peer review by legal scholars to ensure quality
- a broad variety:
 - national law journals (in the domestic language) and international law journals (mostly in English)
 - general law journals, specialised law journals and journals especially for legal education
 - print journals (often the best), online journals and hybrids
- see also the *working papers* published online in working paper series by university institutes and individual lecturers
 - their quality often corresponds to that of law journal articles
- in exceptional cases, articles of scientific nature are also published on the websites of public or international institutions or in newspapers and magazines

VI. Exercises in legal case-solving and other didactic materials

- didactically streamlined print and online literature especially for students
 - e.g. training materials to prepare for moot court competitions (common in common law countries and intern. law)
 - e.g. practical cases and case solutions for training legal case-solving (very common in Germany)
 - e.g. didactic materials with brief tutorials, visual overviews, diagrams and examination schemes for individual cases
- helpful for easy understanding and learning the law and for training how to apply it correctly and precisely

VII. Law reports and casebooks

- the lawyer's professional access to jurisprudence (important court decisions)
- *law reports* are the *official reports of court decisions* of supreme, constitutional, international and other courts
 - nowadays often published online and as print version
- selections of landmark decisions are also published with short annotations in handy books by private editors
- *casebooks* are *excerpts of selected landmark decisions* integrated, systematically presented and commented in a book

VIII. Compendiums of laws

- essential equipment for an easy and practical access to legal texts in everyday work
- *systematic compilations of important laws*, international treaties and other legal provisions in a field of law
 - in the form of a book (most practical), online database or app (still rare)
 - the better ones include helpful short annotations on previous versions or the constitutional review of important provisions
- must be updated frequently
- in some countries (e.g. France, Germany), specialised compendiums in bookform are available for almost every field of law

C. How to find the relevant legal literature for your research

- **problem:** while it may be easy to identify relevant literature, this literature may not be available at the university or in the country

I. Access through references in specialised legal literature

- start looking for references to legal literature on your topic in relevant recent articles in law journals, working papers, conference proceedings and monographies
- find these initial sources *with the help of AI chatbots or Google search* or by browsing the online content directories of journals
- this is the best way to identify literature on brand new topics

II. Access through references in general literature on the relevant field of law

- look for references in up-to-date editions of textbooks, commentaries, handbooks, legal encyclopaedias and works of reference
 - check the index for quick access to the relevant pages in these works
- this is the best way to identify literature on topics that have been discussed for a while, since these initial sources are most likely to refer to the most important publications on the topic that cannot be ignored
- look also for references on *expert websites* of legal scholars (e.g. course websites), university institutes, law firms etc.

III. Access through information on legal literature in the internet

1) Searching with Google Scholar

- a specialised search engine that focuses on scholarly literature
- practical: allows to filter by period or year (and, thus, to start with the newest publications)

2) Browsing scientific web repositories

- comprehensive collections of *older* academic articles that are republished and freely available online
- often milestone articles that once have shaped the scholarly debate
- most important web repositories:
 - JSTOR by ITHAKA
 - ResearchGate by ResearchGate GmbH
 - SSRN by Elsevier

3) Searching in online catalogues of bookstores and publishers

- a quick and easy way to find books that are still on sale
- a practical tool: the *catalogue of Amazon* (amazon.com; see also amazon.de, amazon.fr, amazon.nl etc.)
 - helpful: it often *provides the table of contents* of the offered book

4) Searching in online catalogues and databases of libraries

- the traditional way to find important books and print journals, also from the past
- the library of the Law Faculty and the university library
- the National Library of Indonesia in Jakarta [Perpustakaan Nasional Republik Indonesia]
- national libraries with a particularly large stock of domestic and foreign legal literature
 - Library of Congress (Washington D.C.)
 - Bibliothèque nationale de France / National Library of France (Paris)
 - Deutsche Nationalbibliothek / German National Library (Berlin, Frankfurt, Leipzig)
 - British Library (London)
- leading *research libraries* with a focus on comparative and international law
 - Max Planck Institute for Comparative and International Private Law (Hamburg)
 - Max Planck Institute for the Study of Crime, Security and Law (Freiburg)
 - Max Planck Institute for Comparative Public Law and International Law (Heidelberg)
 - Max Planck Institute for Social Law and Social Policy (Munich)
 - Max Planck Institute for Legal History and Legal Theory (Frankfurt)
- very practical: searching in *metacatalogues*
 - Karlsruhe Virtual Catalog (Univ. of Karlsruhe) - simultaneous search in the most important library catalogues worldwide

5) Searching in specialised databases

- in commercial literature databases (access via the Law Library)
- in literature databases for individual fields of law (nowadays rare)

IV. Access through the use of artificial intelligence chatbots

- a convenient but unreliable way that *cannot replace but complement* other methods
- be aware that AI chatbots "hallucinate" (deliver wrong information)
 - they tend in particular to "invent" court decisions
 - so you need to verify carefully yourself every single reference
- be aware that AI chatbots do not list the relevant literature exhaustively
 - so you still need to continue your own research
- be aware that AI chatbots may not list the best literature on your topic
 - so you need to check yourself if there are better publications available
- be aware that AI chatbots can be politically manipulated
 - so there is a risk that they refer to disinformation portals and fake articles on sensitive topics
- anyway, if you use them carefully and as a supplement only, they are helpful