

LEGAL WRITING

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

How to write a course paper (basic rules)**A. The functions of course papers in academic studies***I. The ordinary functions of all university course exams*

- see material "How to answer exam questions", part A.
- in particular the functions to examine your accumulated knowledge, your deeper understanding of the subject matter, your analytical skills and your presentation skills

II. The function to examine your ability to do scientific work

- your ability to plan, prepare, implement and accomplish a research project in time
- your ability to produce a scientific paper that meets all intellectual and formal standards of scientific work (see infra, C.)

B. The steps and stages of writing a course paper*I. Preparation for the project and determination of the subject*

1) Preparation of your working environment

- update your IT environment (notebook, printer, smartphone, software, internet connections) and make sure that everything is working smoothly
- make arrangements with friends who will discuss your ideas with you and assist you technically (making copies, borrowing books from the library etc.) in case of time pressure
- buy, borrow or copy important books and journal articles in advance
- prepare a collection of browser bookmarks of reliable relevant internet resources

2) Preparation of your living environment

- make sure that there will be no time consuming private obligations during the last week or days of your project
- it is helpful if friends or family members care for you in the last days of your project in case of time pressure

3) Careful determination of the subject

- choose your subject carefully to prevent complications; avoid a too broad subject that will demand too much of you!
- if possible, first choose a temporary working title and determine the definite title later, when you know exactly what you want to write about
- the contents and the title of your paper must under any circumstances match with each other!

II. Preparation of the writing down

1) Familiarisation with the subject and the relevant law

- an essential step that must precede the gathering of materials and the going into details

2) Gathering and management of information and materials

- of relevant literature, laws, jurisprudence, international treaties, foreign laws and other relevant information and materials
- get access through specialised literature, general literature on the field of law, library catalogues, expert websites and databases

3) Scientific reflection and time and text volume management on the basis of a draft outline

- set up a framework in the form of an *exactly tuned draft outline for your whole text* in a separate file
 - focus on an appropriate, clear and logical, dogmatically consistent structure and a comprehensible line of thoughts, which allows easy orientation
 - split up complex questions into separate sub-questions that are easier to handle
 - *plan the amount of time and text* (pages, words) you want to spend on the individual parts and sub-parts in your paper; allow for reserves and later check frequently if your planning is still realistic
- reflect thoroughly all topics and aspects on the basis of your draft outline
- process all information, develop all important ideas and note them at the correct place in the draft outline
- be aware that insufficient preparation before the writing down usually leads to
 - wordy, non-focused and poorly weighted text which does not clearly show your ideas
 - text passages which are not in line with each other and therefore later need to be reformulated
 - text passages which have caused a lot of work but later turn out to be redundant and must be deleted

III. The writing down

- 1) Writing the text on the basis of the constantly updated draft outline
 - focus on the main aspects, avoid an imbalanced presentation!
 - update the draft outline constantly, in particular with regard to the remaining time and volume
 - delete less important details if you run out of time or allowed text volume
- 2) Structuring the text by well-coordinated, precise headlines
 - often ignored but important to show your deeper understanding, prove your advanced analytical skills and allow quick and easy orientation
 - reading just the headlines must make clear your line of thoughts
 - avoid unstructured text of more than two or three pages in a course paper
- 3) Adding a table of contents and a bibliography
 - use the automatic function of Microsoft Word to produce and update the table of contents
 - in a larger course paper, in order to show your professionalism, you may also add a list of abbreviations, an index, a table of jurisprudence or laws or an appendix
 - if there is a text volume limit for the course paper, ask the lecturer if these documents will be included in the calculation

IV. The final check

- reserve one day for a thorough final check - you will lose little time but may gain much!
- Does the text really match the title of the paper?
- Is the structure coherent and consistent?
- Have you processed all important information and ideas noted in the draft outline?
- Have you discussed the various aspects in the right order?
- Does your line of thoughts become apparent in the text?
- Should you delete some unnecessary details that might be confusing?
- Have you referred in footnotes to all jurisprudence and doctrine you draw upon?

C. The standards for a scientific paper

I. Intellectual standards

- 1) Standards of intellectual authenticity and originality
 - intellectual honesty (→ no plagiarism, no quoting without own reading, no hiding of inconvenient theories or positions)
 - intellectual independence (in particular independent reasoning)
 - considering, discussing, integrating and modifying but not just copying the arguments of others
 - in a scientific paper you are free to criticise the positions of your lecturer, of famous scholars, the Supreme Court, the Constitutional Court or other "authorities" - you just must give good reasons!
 - *references to "authorities" cannot substitute your own reasoning!*
- 2) Standards of intellectual accuracy, consistency and precision
 - accurate information based on references
 - an essential standard of scientific work often ignored in Southeast Asia and East Europe
 - general rule: **every single information** in the whole paper which is not evident (obvious) **must be backed by a reference which allows to verify it!**
 - this will usually require one or two footnotes in most paragraphs of your text
 - *logically and dogmatically consistent structure*
 - the structure of your text reflects your ability to think correctly and precisely
 - no dealing with sub-subjects at the same level as the main subject
 - no introduction of a new subordinated level if there are not two or more subordinate points
 - identify any remarks outside your line of thoughts as "excursus"
 - use correct, well-formulated headlines for the parts and sub-parts that go well together
 - use a *coherent pattern of division and subdivision* that allows easy orientation and is familiar to the reader
 - e.g. A./I./1/a) or I./A./1./a); sometimes confusing but admissible: 1./1.1/1.1.1/1.1.1.1.
 - the common patterns differ considerably depending on discipline and country
 - *precise and logical reasoning* in accordance with the laws and principles of legal methodology
 - reveal, which legal methods you apply in which context in your legal reasoning and why
 - *intellectual coherence* (coherent terminology, coherent use of legal methods, coherence and consistency of your positions)
- 3) Standards of intellectual thoroughness
 - comprehensive consideration and appreciation of the most relevant jurisprudence and literature
 - comprehensive discussion of the most relevant aspects and arguments
 - it is better to *narrow the subject and discuss it thoroughly* than to choose a broad subject and present it superficially

II. Formal standards¹

- 1) The purpose of formal standards
 - to ensure intellectual honesty, accuracy and precision
 - to allow *easy orientation*, provide *quick access to information* and allow *easy verification* of your information
 - there are variations in formal standards depending on the scientific discipline and the national scientific culture
 - however, unprecise or unaccurate quoting is unscientific - in any discipline, country or language...
- 2) The formal structure of the course paper
 - proposed structure for a short course paper: • table of contents, • bibliography, • main text
 - proposed structure for a longer course paper: • table of contents, • bibliography, • list of abbreviations, • main text, • index, table of quoted jurisprudence, table of quoted laws and other legal sources, • appendix (where appropriate)
 - the table of contents must allow to find any relevant passage in your course paper within a few seconds; the listed headlines must correspond exactly to those in the main text
- 3) The scientific style of writing
 - an *objective and precise style of writing*
 - precise and exact formulations, smart and correct use of prepositions, conjunctions, verbs etc.
 - no emotional expressions, strong language or exaggerations ("certainly", "of course", "without doubts", "very" etc.)
 - no use of subjective style ("we", "I" etc.)
 - specify legal norms as exactly as possible (article, section, sub-section, no., lit. etc.)
 - avoid transcribing long passages of statutes or other legal acts
 - a structured, purposeful style of writing
 - a *concise style of writing*
 - a scientific paper is not an essay - it should be short, compact and concentrated but not entertaining...
 - nevertheless, try to achieve an eloquent, fluent linguistic style
 - if possible, avoid long and encapsulated sentences
 - if possible, use active voice instead of passive voice
- 4) The bibliography
 - list all *cited legal literature and other scientific literature*, including internet publications
 - do not list non-scientific resources (e.g. non-scientific websites and Wikipedia articles or social media sites)
 - however, important parliamentary or other official materials may be listed separately at the end of the bibliography
 - necessary information: • full name of the author(s) or editor(s), • title and subtitle of the publication (if applicable, with specification of the quoted volume), • edition (if it is not the first edition), • year (and optionally place) of publication
 - specify for articles in legal journals the volume or year of the publication and the page where the article begins
 - specify for internet publications the exact web addresses with *deep links* and indicate when you verified them
 - pay attention to the *correct spelling* of the names and titles (including special characters and diacritical marks)
 - add a *translation of the title and subtitle [in brackets]* if it is in a foreign language but not in English
 - all *bibliographical specifications*, except those on the names of the authors and editors and on the titles and subtitles, must be *in the language of your paper* (e.g. "editor", "volume", "page"), not in the language of the publication
- 5) The art of scientific citing
 - prove all information or considerations you draw upon by correct citations
 - indicate *where exactly* the information can be found
 - always **refer to the exact page**, *marginal number, paragraph, recital, footnote etc.*
 - when citing judgements, refer preferably to official margin numbers
 - when citing journal articles, refer to the page where the article begins and to the cited page
 - the titles of journal articles and the web addresses of internet resources are usually only specified in the bibliography
 - indicate *what exactly* is the information or consideration in the cited source
 - pay attention to the *correct context*: the sentence substantiated by the citation must have the same contents as the cited passage!
 - place the footnotes accurately (behind the paragraph, the sentence, the relevant part of the sentence, a special term etc.) to indicate the context as precisely as possible
 - often, clarifications are necessary to elucidate the context; in English, a vague context can be marked by "cf." (for "confer")
 - *verify all citations* you find in your materials before copying them - they will often prove incorrect or the quoted statement will not fit into the concrete context of your work!
- 6) The formatting of the scientific text
 - an appealing formatting shall provide for a clear and easily readable presentation of the text
 - make restrained and graduated use of modern formatting options
 - emphasize important keywords *in italics* (so that the reader will not miss them)
 - insert at least *one empty line in front of every headline*
 - the headline and the following (not the preceding) text constitute one unit!
 - strictly *no headlines standing alone at the bottom of the page*, separated from the corresponding text!

(Date: Write a course paper (LegalWriting))

¹ See for a thorough presentation of the formal standards my course material "Introduction to legal case-solving", Hanoi, Semester 2013/14, p. 11 ff., www.thomas-schmitz-hanoi.vn/Downloads/Schmitz_Case-solving_introduction.pdf.