

INTELLECTUAL AND FORMAL STANDARDS  
OF SCIENTIFIC LEGAL RESEARCH AND WRITING

Contribution to the course *Methodology of Legal Research and Legal Writing*  
from the perspective of European, in particular German legal education

### § 3 Intellectual standards of scientific legal research and writing

- Note: The intellectual standards derive directly from the idea and the inherent laws of scientific research. Some standards, in particular those of intellectual thoroughness, are different for the *different types of scientific work*: a student's course paper, an article in a scientific journal, or a bachelor thesis, master thesis, doctoral thesis or habilitation thesis. Most standards, however, apply to any kind of scientific legal research.

#### I. Standards of intellectual authenticity and originality

##### 1) *Intellectual honesty*

- the main idea: no copying or leaning on without quoting!
  - a) No presentation of information gathered by other authors as the result of one's own work
    - in particular: the duty to indicate if and to what extent one's own compilation of relevant jurisprudence is based on preparatory works of other authors
  - b) No presentation of other authors' reasoning as one's own thoughts
    - the duty to inform about the reasoning of other authors and to indicate precisely, to what extent one is following it
  - c) No quoting without own reading
    - a standard difficult to comply with in Southeast Asia because the relevant literature is usually not available
    - if possible, use online publications, contact the author directly or ask friends studying abroad to help you to get copies of important contributions unavailable in your country
  - d) No hiding of inconvenient theories or positions
    - a widespread but very serious violation of scientific fairness
    - all positions have to be presented, even if they are not "political correct", collide with religious or moral views in your country or are difficult to discuss

##### 2) *Intellectual independence*

- a) Independent dealing with scientific literature and jurisprudence
  - not just reporting but analysing, classifying, categorizing, contextualising, assessing and evaluating the relevant literature and jurisprudence
  - more difficult in the limited volume of a course paper or short article than in a bachelor, master or doctoral thesis
- b) Independent reasoning
  - aa) Developing one's own reasoning without regard to "authorities"
    - references to "authorities" cannot substitute one's own reasoning!
  - bb) In particular: not following court decisions without own reasoning
    - a court decision is an opinion about but not a source of law...
  - cc) Considering, integrating and modifying but not just copying the arguments of others

### 3) *The need for a scientific added value*

#### a) General remarks

- no successful scientific work without new scientific findings
- science is more than a new compilation of existing knowledge
- the scientific added value will vary strongly according to the type of the scientific work
  - student papers are often too short to provide a real scientific added value but must at least simulate it using scientific methodology
- examples for a scientific added value (e.g. in doctoral theses):
  - scientifically-based solutions for practical problems
  - new theories providing for a better (deeper, more consistent etc.) understanding of a field of law, in particular introduction of new legal notions, concepts or principles
  - proposals for improvements (in theory or practice) making use of foreign innovations well-adapted to the specific features of the national law
  - proposals for a "cleaning up" in a field of law (elimination of inconsistencies, paradoxes, unsuitable elements imported from foreign law etc.)
  - critical inventory of the existing knowledge, its limits and deficits, and of the state of science (currents, developments, deficits, inconsistencies etc.)

## II. In particular: the fight against plagiarism

- definition: plagiarism is the presentation of another author's findings, thoughts, ideas or formulations as one's own original work
  - short extracts from other sources (e.g. a certain formulation, a part of a sentence or one or two sentences) are admissible if the source and the original author is clearly and precisely specified; each extract must be documented separately
  - long extracts from other sources are generally inadmissible (no plagiarism in the strict sense but also no independent own work); exception: if the compilation of the various extracts itself represents a scientific work (example: casebooks with numerous large but well-documented and -systematised extracts from jurisprudence and scientific texts)
- spectacular cases and the *rigorous fight against plagiarism in Germany*
  - the revocation of the doctoral degrees of two Federal Ministers and one German Member of the European Parliament for plagiarism in the early 2010s: the GUTTENBERG CASE, SCHAVAN CASE, KOCH-MEHRIN CASE
  - the Joint Position Paper "Good academic practice in the context of theses submitted for a degree" of three leading German academic organisations of 2012<sup>1</sup>

## III. Standards of intellectual accuracy, consistency and precision

### 1) *Accurate information based on references*

- an essential requirement often ignored in Southeast Asia, the disregard of which deprives the text of its scientific quality
- **every single information** in the whole text **which is not evident (obvious)<sup>2</sup> must be backed by a reference which allows to verify it**
- this requires usually at least one or two references in every paragraph
- often it will be necessary to cite several reliable sources to back your information

---

<sup>1</sup> *Deutscher Hochschulverband* (German Association of University Professors and Lecturers); *Allgemeiner Fakultätentag* (Combined Faculties Association); *Fakultätentag* (Faculties Association), Good academic practice in the context of theses submitted for a degree, 09.07.2012, [www.hochschulverband.de](http://www.hochschulverband.de) (at "Presse", "Resolutionen"). See also, for up-to-date standards, *Purdue University Global, Plagiarism and Paraphrasing*, [www.purdueglobal.edu/blog/online-learning/plagiarism-and-paraphrasing](http://www.purdueglobal.edu/blog/online-learning/plagiarism-and-paraphrasing), 2016 (elaborated online guide with citation guides and guide on integrity expectations).

<sup>2</sup> E.g. common scientific knowledge which is not anymore scientifically disputed - you do not need to prove that the Earth is round and more than 4 billion years old or that the coronavirus can cause a deadly disease...

2) *Logically and dogmatically consistent structure*

- a) The importance of the structure for the quality of a scientific work
  - the *structure reflects the ability to think correctly and precisely* - and therefore the intellectual capacity of the author
  - a convincing, consistent structure allows an easy access to the reasoning of the author and may even conceal shortcomings in the argumentation; a defective structure leads a skilled reader directly to the weak points
  - the necessity of a detailed structuring
- b) The standards of a logically consistent structure
  - no dealing with sub-subjects at the same level as the main subject
  - no introduction of a new subordinated level within the structure if there are not two or more subordinate points
  - identify any remarks outside the line of thoughts as "excursus"
- c) The standards of a dogmatically consistent structure
  - the whole structure must be in line with the dogmatic structure of the relevant field (or sub-field) of law
- d) Standards for correct headlines (titles) within a consistent structure
  - precise reflection of the content in the correct dogmatic context
  - systematic coherence; in particular: *homogeneity of headlines at the same level*
  - headlines must make the line of thoughts transparent and prevent misunderstandings

3) *Precise and logical reasoning in accordance with the laws and principles of legal methodology*

- transparent reasoning indicating which legal method is applied in which context with which results
  - indicating at which points the conclusion could have been different
  - indicating subjective elements in the reasoning (which are unavoidable but must be disclosed)
- discussing and justifying the method if it is not generally acknowledged or not generally acknowledged in the relevant context
- precise and differentiated reasoning
- no reasoning which is incompatible with the laws of logic (→ absolutely inadmissible in any scientific work!)
- a widespread mistake: presenting logically possible as logically compelling conclusions

4) *Intellectual coherence*

- a) Use of a coherent terminology
- b) Coherent use of legal methods
- c) Coherence and consistency of the developed theories and positions
  - no combination of incompatible elements adopted from theories of different authors

## IV. Standards of intellectual thoroughness

1) *Comprehensive consideration and appreciation of relevant jurisprudence and literature*

- of the most relevant jurisprudence and literature in a course paper
- of all important jurisprudence and literature in a scientific article or other short contribution
  - in particular of the newest jurisprudence and literature (check before submitting your article!)
- of *all* relevant jurisprudence and literature in a doctoral thesis
  - *every single publication* which directly concerns the subject must be consulted and mentioned
  - every idea in the relevant publications which concerns the subject must be taken into consideration and related to one's own reasoning

- all *fundamental theories* on basics of backgrounds which have an impact on the subject must be presented and discussed in the given context
- for this reason, the careful determination (and limitation) of the subject is crucial
- in developing countries, *foreign legal literature* should be taken into consideration too if it directly concerns the subject, is fundamental or important and the presented arguments can be effective in the own legal system too

2) *Comprehensive discussion of all relevant aspects and arguments*

a) Comprehensive discussion of all relevant aspects

- in particular of those mentioned in jurisprudence or literature (→ the need for a *multi-perspective approach*); one of the most common deficiencies of scientific publications is a one-sided, too narrow perspective
- consideration of old and new aspects (including the possible impact of new legislation)
- the quantity of aspects to be considered varies according to the type of scientific work and the limitation of the subject
- consideration of all aspects with all their connections at the same time (→ the need for a *well-balanced approach*, in particular in a doctoral thesis)

b) Comprehensive discussion of all relevant arguments

- arguments which are difficult to rebut must not simply be ignored...

3) *Getting to the bottom of the questions (only in a doctoral or habilitation thesis)*

- thorough thinking without limits...
- in particular: foreseeing (and considering or even discussing in advance) any possible objections and counterarguments
- also considering all *possible consequences* of a proposed solution in advance (and checking compatibility with *ethical standards*)

## V. In particular: How to find all relevant literature

1) *Access through references in specialised literature*

- in articles in law journals, working papers, monographies

2) *Access through references in general literature on the relevant field of law*

- in textbooks, commentaries, works of reference, specialised encyclopaedias, handbooks, expert websites etc.

3) *Access through information on legal literature in the internet*

a) Online catalogues of legal literature for sale

- in particular *Amazon* (search the different catalogues for the different countries)

b) Online catalogues and databases of libraries

- in particular comprehensive *national libraries* with a 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)
- in particular *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 European Legal History (Frankfurt)

c) Metacatalogues (integrated search in various library catalogues)

- Karlsruhe Virtual Catalogue (KVK, Univ. of Karlsruhe) - integrated search in all important German, Austrian and Suisse catalogues and in the most important library catalogues throughout the world
- Library Hub Discover (Jisc) - integrated search in the catalogues of UK and Irish libraries

d) Specialised databases

- commercial databases (access via the Law Library)
- GlobaLex (NYU) - database on international, comparative and foreign Law
- CommonLII (Commonwealth Legal Information Institute) - database on law in common law countries
- Electronic Research Guide (ERG, ASIL) - database on international law
- Foreign and International Law Research Guide (Library of Congress)

More information on this course contribution at [www.thomas-schmitz-yogyakarta.id](http://www.thomas-schmitz-yogyakarta.id). For any questions, suggestions and criticism please contact me via WhatsApp (+62.852.14029884), e-mail ([tschmit1@gwdg.de](mailto:tschmit1@gwdg.de)), Skype (Dr.Thomas.Schmitz) or in my office (Building A, room A.IV.11).