

PERSPECTIVES PAPER

Legal Writing, Citation and Proof Reading in Legal Research

BETHEL UZOMA IHUGBA

AFFILIATIONS:

Legal Research Division, Department of Legislative Support Services, National Institute for Legislative and Democratic Studies, National Assembly, Abuja, Nigeria

CORRESPONDENCE:

Dr. Bethel Uzoma Ihugba
Head, Legal Research Division,
Department of Legislative Support
Services, National Institute for
Legislative and Democratic Studies,
National Assembly, Abuja, Nigeria
Email: bethelihugba@gmail.com
=234(0)9037074135

ABSTRACT

This paper reasserts the value and guides readers in the use of three tools to effective legal research: legal writing, citation and proofreading. In the communication of research reports, especially in legal research, scholars must be very careful in ensuring that every statement or proposition in the research is logical and properly backed by evidence either from the law or empirical data that supports or evidences the proposition. This is important given the potential impact of research finding on the rights of individuals, duties of government and public officials and in the administration of justice. This is the case because public officials, judicial officers and even the legislature rely on such research reports. Legal researchers must therefore be careful to ensure that the research and its findings are valid, reliable, authentic and credible. These are achievable through proper understanding and deployment of the three tools of legal research: legal writing, citation and proof reading. To explain and present a guide on these, this paper adopts an instructional and descriptive approach. The paper explains in chronological order legal research, legal writing, citation and proofreading, exploring their uniqueness, importance, process and challenges. The paper also proffers recommendations on how to resolve any challenges to improve legal research output including considering the use of AI tools when necessary.

KEYWORDS:

citation, legal research, legal writing, proofreading, writing techniques

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INTRODUCTION

This Perspectives paper reasserts and rekindles expertise and interest in effective communication of legal opinions, positions, expectations and proposals in a legal research paper. Research in law requires consistency, coherence and validity of referenced authority. These are important because legal writings could be the basis for ascription or denial of legal duty, right, function or imposition of sanction. To sustain the validity of a legal writing, it is also necessary to proofread. It enhances the credibility of the legal opinion or proposal. Reasserting the value of these three tools to legal research, i.e., legal writing, citation and proofreading and how they may be deployed is the purpose of this paper.

To meet this purpose, this paper adopts a descriptive analysis to demonstrate the processes.¹ This is deployed to highlight and succinctly describe each of the three tools, their roles in legal research, application and challenges. The descriptive approach includes a discussion on some artificial intelligence tools that could be deployed for optimal applications of the three tools to effective legal research. Secondary data drawn from texts and author's practical experiences as a legal research methodology and law lecturer are used to demonstrate application of the tools discussed. To complete this paper, the remaining part is structured as follows: the next section explains the concept of legal research, its uniqueness and purpose; next is an examination of the three tools to effective legal research: legal writing, citation and proof reading; this is followed by a discussion of some challenges that may impede effective deployment of these tools and proffers solutions. The paper ends with a conclusion.

MEANING OF LEGAL RESEARCH

Research in most of other disciplines deals with universal doctrines that may not be affected by legal systems. This is different with legal research because legal research deals mainly with the ascertainment of the nature of law on a particular subject or how it impacts on relationships within an identified legal system. This peculiarity of legal research is best demonstrated by highlighting some of the main reasons

for legal research. These include finding out any or combination of:

- a. The rule for a particular set of facts
- b. The principle guiding a particular conduct or relationship
- c. Why a particular rule is applied to certain scenarios
- d. What led to the adoption of a particular rule
- e. What and how the rule affects the dispensation of justice
- f. Whether the rule is suited to certain condition(s)
- g. How the rule can be improved
- h. Whether the rule needs to be replaced entirely by a new rule²

Each of these issues can only be effectively addressed by contextualizing the answer to the legal system of a particular state. The effect of contextualizing answers to legal systems is that the answer to any of the above questions may vary depending on the legal systems. This gives legal research its uniqueness thus making clear writing, proper citation and proof reading very important. This informs the definition of legal research as a *systematic finding or ascertaining of the law on an identified issue within an identified legal system with a view to arriving at a justifiable legal solution or towards making advancement in the understanding of the law.*³ This definition confirms the necessity for reflexivity in the presentation of the research, an objective resolved by legal writing technique; certainty in the source of the law, an objective resolved by citation; and consistency and coherence in the presentation, an objective resolved by proof reading. These tools are discussed below.

LEGAL WRITING

Choice of techniques is influenced by the purpose of the legal writing. For example, while doctrinal research highlights the law and legal arguments in support of a position, empirical research highlights the lived experiences or opinions of individuals as they are affected by law or as they affect the law.⁴ Thus for doctrinal research in law, the primary data are the direct sources of the legal provision or principle in questions and these include the Constitution, Statute, Acts and Laws, Regulation, Delegated Legislation, Case Laws,

Government Circulars and Government Gazettes. Secondary data, on the other hand, are indirect sources that seek to explain the law or provide a guide and these include literature, journal papers, people's opinion, law digest, law index and reference materials.

Conversely, for non-doctrinal and empirical research in law, the primary sources are direct opinions on an issue, accounts of experience or observation or interpretation of issues in question. Secondary sources are information sourced indirectly, reported information or analysis of the issues in question. These include literature, people's report or accounts of observations not made by them, opinions expressed on the subject and provisions of the law on the subject matter. Presenting any of these data in legal research requires specific structure.

There are generally two structures following the two general classifications of legal research: Doctrinal and Non-doctrinal logical structures.

In doctrinal research, the logical structure is often referred to as the IRAC or IFAC method (which stand for Issues, Rules, Application and Conclusion; and Issues, Facts, Application and Conclusion respectively). Legal (doctrinal) reasoning (as against empirical reasoning) is so called because of its reliance on the logical presentation of issues and conclusions guided by applicable legal principles (including constitutional and statutory position) and the relationship of the legal principles with the facts that lead to the need for resolution of any specific legal question.⁵ This method requires logically and chronologically following the IRAC or IRFAC path as follows:

1. Issue – Restatement of legal problem in question;
2. Rule – Statement of the legal provision, constitution, case law or statute applicable to the legal problem;
3. Facts – Presentation of the facts within which the legal question arose;
4. Analysis – Application of the rule to the facts;
5. Conclusion – Making a finding based on the fit or otherwise of the facts to the rule.⁶

In non-doctrinal/empirical legal research, the writing seeks either to test extant theory or to develop new

theory. Where a theory already exists and is being tested, then the logical approach is deductive approach wherein the researcher identifies a theory (and or hypothesis) and proceeds to test its validity. Where a new theory is sought to be developed, then an inductive approach wherein a researcher first collects data, analyses the data result and based on it proposes a theory.⁷ In either of the above methods, the reasoning approach is deductive or inductive depending on the logical movement between known facts, analysis and theory.

The Writing Process

Writing up a research report requires a lot of care. For clarity in communication, the following are suggested:

- a. In completing a legal research report, authors should avoid complicating the report with too much words and technicality. Amongst many guides, the following would be helpful.
 - Use short sentences to convey complicated thoughts
 - Use active voice verbs.
 - Remove unnecessary or extra words.
 - Avoid foreign words
 - Avoid jargon
 - Use conventional punctuation marks properly
- b. The structure of the research should highlight the logical flow from objective to question, to evidence and resolution as follows:
 - *Introduction*: Purpose of the paper, significance, specific objectives, structure.
 - *Background*: empirical, philosophical, jurisprudential foundation
 - *Literature Review*: extant scholarly discourse indicating gaps, justification, support, logic etc.
 - *Methodology*: Research approach, data collection and analysis methods and justification
 - *Presentation of Principles/Doctrines/Frameworks*: Explanation/examination of the key legal principles, doctrines, frameworks or proposals.

- *Findings/Analysis:* Position of the law, principles, framework, doctrine on the research objectives
- *Recommendations:* Resolutions to observed gaps.
- *Conclusion:* Restatement of research, contribution and areas for further studies (if any). There are also ICT tools and digital algorithms which can assist researchers in writing up research reports. This include developing the first sentences, outlines of the study and potential logical argument for the research. This is deductive reasoning. A logical movement of analysis from known facts to conclusions

CITATION

Citation is the process of referring to legal authorities used in support of argument or proposals in legal research. For doctrinal research they include primary sources of law and secondary sources which seek to explain, direct or reflect on the law. For non-doctrinal research, they include primary sources of respondents' experiences about the law, reflections, opinions and statements about the law and secondary sources which are reported or indirect sources.⁹

Value of Citation in Legal Research

Citation is very important and invokes validity, authenticity, reliability and credibility. This is especially the case with research within the common law traditions where great premium is attributed to judicial precedence. To ensure that arguments made on the strength of judicial precedence is accurate, it is necessary to supply the details of the authority used. Based on this background, the value additions of citation in legal research include:¹⁰

- a. Clear identification of the referenced authority.
- b. Assure authors and readers of the veracity and validity of a proposal or position
- c. Provide a guide or pathway for further research.
- d. Provide information for evaluation of the research contribution, and
- e. Avoid accusation of plagiarism.

When Citation is Necessary

Not every statement or expression in a legal research or scholarly work requires a citation. Citation is only required to play any of the roles identified above. The circumstance for playing any of these roles depends on what the researcher seeks to achieve. These include the following:

- a. Whenever a categorical statement is made
- b. To support a conclusion based on logical and legal analysis of extant knowledge
- c. To counter a stated position or proposition with an evidence-based conclusion
- d. To acknowledge the thought and ideas of others
- e. To demonstrate an established legal position
- f. To counter a proposed legal position

Import of Absence of Citation

Similarly, absence of citation to support non-original ideas, concepts or categorical statements that have no empirical evidence may invoke the following:

- a. *Questions about the validity of conclusions:*
- b. *Suggest disregard to legal system/principles:*
- c. *Derogates research and scholarship to journalism:*

Citation Styles

Different jurisdictions have their citation styles for citing legal authorities like the Constitution, Statutes, Case laws and Regulations. There is the Harvard style, Indian Blue Book Reference Style, Oxford University Standard for Citation of Legal Authorities (OSCOLA), Chicago Style etc. For Nigeria only two are usually recognised for legal research. These are Nigerian Association of Law Teachers (NALT) research and citation guide and OSCOLA. NALT is the recommended and compulsory citation and reference style for legal research in faculties of law in Nigerian universities and legal research institutes.

PROOFREADING

Proofreading is the final check for and formatting of writing problems and other small mistakes that may detract from the quality of the writing or confuse the reader.¹¹ Proofreading does not emphasize substantive argument or legal coherence per se. It is more interested in those little grammatical and spelling

mistakes that may impact negatively on effective communication.

Basics of Proofreading

These basics are especially good for persons proofreading their own work. These include the following:

- a. Allow lapse of time after completion of the work before proof reading.
- b. Find a place and time to concentrate:
- c. Develop a routine or series of routines.
- d. Identify the most accessible document format: For paper format, use red pen or pen of different colour from that of the document.
- e. Identify and establish a purpose for proof reading each section of the manuscript
- f. If authors find it helpful, voicing out the words make assist you make sense of them and identify spelling errors. Especially for words with similar sounds but different spellings.
- g. Create and use a proof-reading check list for guidance. This may be adapted to each type of legal document. The checklist helps provide a methodological process and ensures no significant issues are omitted.

There are also ICT and artificial Intelligence tools that are helpful in proof reading. Basic examples include MS Word, Grammarly, GMAIL workspace etc.¹² More advanced ICT and Artificial Intelligence tools exist.

CHALLENGES AND RECOMMENDATIONS TO EFFECTIVE LEGAL WRITING, CITATION AND PROOFREADING

These tools have their challenges. The key guide is to identify them and seek ways to resolve the challenges or reduce their negative impact as much as possible. The challenges include: *Citation of foreign legal sources*: Poor understanding of the abbreviations in the citation of foreign legal sources may impact on the accuracy of the citation. To resolve this challenge, it would be better to only cite foreign legal sources only when absolutely necessary. They are usually most necessary in comparative legal research. In other cases, they are only persuasive. If domestic authority exists then use those. However, where one must cite foreign case law, it would be more helpful to understand

the citation formula first and ensure that keys to the citation are provided for readers.

Citation of unpublished work and unreported cases: Unpublished sources and unreported case laws often times contain groundbreaking information but because they are unreported (e.g., case laws of High Courts in Nigeria), they deprive research reliable citation. The trick is to provide as much information as possible that will assist in the identification and location of the source.

Writer's block: Some people may find it very easy to think up complicated legal arguments but find it difficult to articulate these thoughts in writing. In other cases, a writer's mind goes blank and unable to process new thoughts or ideas. To resolve these challenges, authors should concentrate on writing something down irrespective of its logic or validity. This can be corrected later. In instances where a writer's mind goes blank; the writer should stop writing and exercise his or her brain with other fun activities. Examples include reading up on any interesting and fun material. This will help relax the brain and may trigger new thoughts and ideas on how to address the work.

Time management: The first resolution is to set a timeline and stick to it. A timeline or schedule of activity will remind the scholar of what needs to be done before the paper is publishable or set for submission.

Use of ICT tools, AI and digital algorithm in Legal Research

Despite the great benefits of ICT, AI or digital algorithm as tools to effective research, they also pose a lot of danger. First is the transfer of researcher bias. For example, issues like gender bias and racial bias may unwittingly be transferred to the research.¹³ This is because AI work is based on data fed into it. To resolve the challenges, a researcher must first understand that in many cases AI operates based on data supplied by other persons. Second, is that these tools are meant to assist, not to take the wheel. Third, is that data is to be interpreted by the researcher with the assistance of AI not solely by AI. Finally, output must be reviewed, revised and updated.

CONCLUSION

This Perspectives paper aimed to remind legal researchers of the value of legal writing, citation and proofreading. The deployment of these tools is not devoid of challenges, some of which are serious but are always resolvable. Resolution starts with writing. Get something out first before addressing any identified gaps. One cannot cite or proofread a nonexistent document. Writing is a very important skill which one cannot avoid in any aspect of legal practice - whether litigation, advocacy or academic writing. Appreciating this then means one must do all within one's power to ensure that written documents are comprehensive,

ACKNOWLEDGMENTS

The inputs of the Editor-in-Chief and reviewers are greatly appreciated. Also thank you to all participants at workshops were some of the points made in this paper were presented. Your feedback confirms the value addition of the paper and improves the quality of the paper.

CONFLICT OF INTEREST

No potential conflict of interest relevant to this article was reported

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valid and effective. These can be achieved through proper citation and effective proof reading. There are also several AI tools available to assist. Writers should take time to review and revise every work including using peer review, if available. The recommendations provided may not be exhaustive; however, they are reassurances that solutions are available. As a perspectives paper, its purpose is to reassert and rekindle interest in the application of citation, legal writing and proof reading in legal research by discussing them together in one brief paper. This is important as most legal research texts, including that of the author do not give them prominence. This paper provides that prominence.

7. These include: ChatGPT, Research Rabbit - ResearchRabbit <https://www.researchrabbit.ai/>; Rayyan - <https://www.rayyan.ai/>; Scholarcy - <https://www.scholarcy.com/>; Lateral - <https://www.lateral.io/>; Scite - <https://scite.ai/>; Consensus - <https://consensus.app/>; Semantic Scholar - <https://www.semanticscholar.org/>; RAX - <https://www.semanticscholar.org/>; Iris AI - <https://iris.ai/>; EXPLAINPAPER <https://www.explainpaper.com/> All were last visited on 17th September 2024
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11. Grammarly: <https://www.grammarly.com/>; Gmail; Quillbot. Also important for proof

reading are plagiarism check software. They assist to reduce plagiarism; help find citation for sources and generally improve the quality of the paper when properly deployed. These include turnitin: <https://www.turnitin.com/>; unicheck: <https://unicheck.com/>; plagiarism detector: <https://plagiarismdetector.net/>; and

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