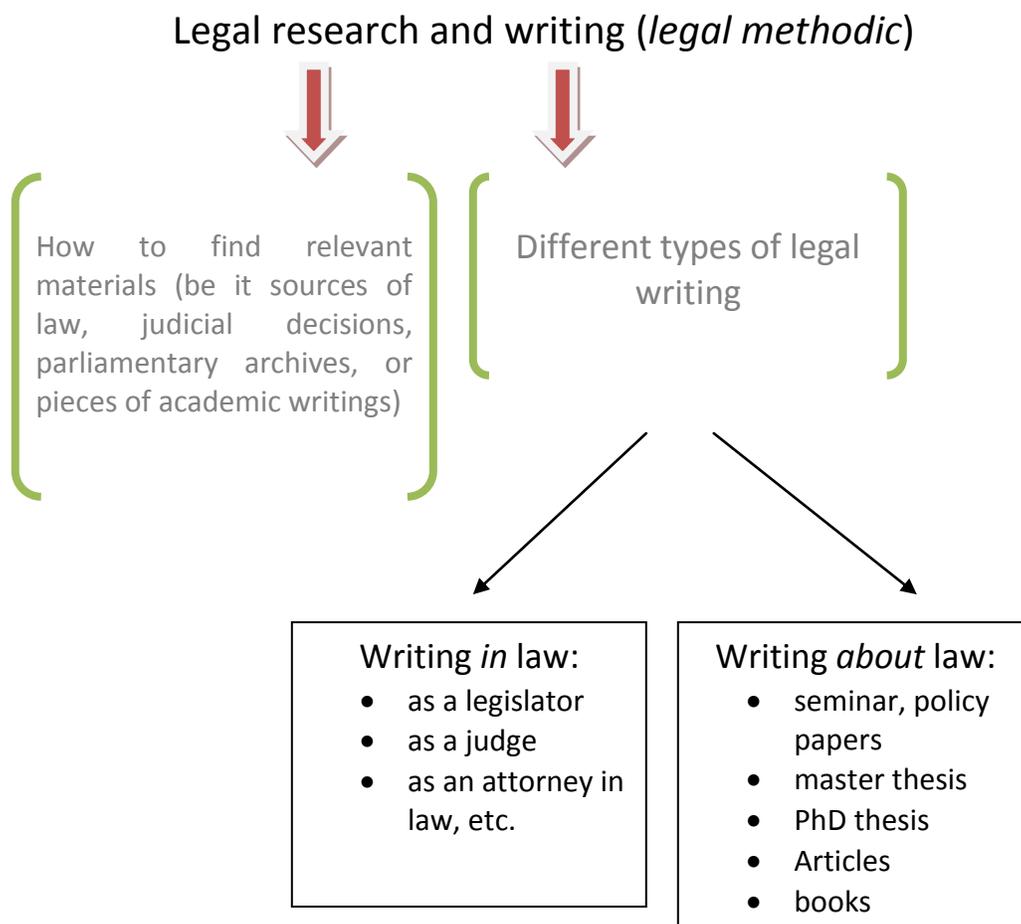


Legal Methodology & Legal Research and Writing

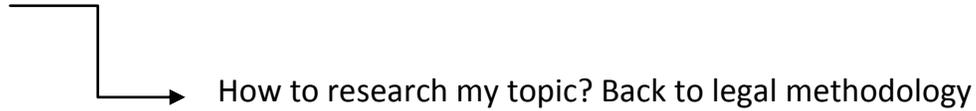
A Very Short Introduction

- Methodology is a scientific discipline which pertains to defining and systematizing methods, that is, appropriate ways of discerning the subject of investigation. Accordingly, legal methodology is a scientific discipline dealing with methods of discerning law and legal phenomena.



- Legal research and writing is a discipline dealing with adequate skills and techniques for finding relevant legal materials and using them in the process of writing either in law or about law

- Key questions: How to pick up the subject? How to find relevant materials – e.g. sources of law + judicial practice? How to make a plan of work? How to write? How to cite? How many chapters (sub-chapters)? How to make an abstract?



- Most common methodological approaches in writing about law:

1. Method of description

Descriptive research, as its name suggests, describes the state of affairs as it exists at present. It merely describes the phenomenon or situation under study and its characteristics. The techniques commonly used in descriptive research are survey methods of all kinds, including comparison and fact-finding enquiries of different kinds.¹

2. Method of conceptual analysis

Conceptual research is related to some abstract idea(s) or theory. It is generally used by philosophers and thinkers to develop new concepts or to re-interpret the existing ones. Accordingly, two dominant forms of conceptual analysis are: “(1) analysis of the existing conceptual framework of and about law; (2) construction of new conceptual frameworks with accompanying terminologies.”²

3. Method of evaluation

Evaluative research concerns “testing whether rules work in practice, or whether they are in accordance with desirable moral, political, economical aims, or, in comparative law, whether a certain harmonisation proposal could work, taking into account other important divergences in the legal systems concerned.”³

Other specific methodological approaches: rational choice theory, game theory, economic analysis of law, etc.

¹ Khushal Vibhute & Filipos Aynalem, *Legal Research Methods*, 2009, p. 16.

² Robert S. Summers, ‘The New Analytical Jurists’ (1966) 41 *New York University Law Review*: 865.

³ Mark Van Hoecke (ed.), *Methodologies of Legal Research – Which Kind of Method for What Kind of Discipline?* (Oxford and Portland, OR: Hart Publishing, 2011), v.