Writing for Law at University

GUIDES FOR WRITING IN SPECIFIC DISCIPLINES

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1 What is law and what do jurists write about?

Law is the body of rules that regulate human relations in society and specify the conditions under which these rules can be enforced by the authorities.

The science of **Law** studies this body of rules and how it is used to resolve conflicts within society.

Law is manifested through **language,** as used by legislators, judges, notaries, lawyers, scholars, and all other legal professionals. Legal norms, court rulings, etc. are crafted using words. This is why it is so important for jurists to treasure language: both written language – the subject of this guide – and spoken language, which is crucial to the activity of both legal professionals and law students. The latter need to seize every opportunity to sharpen their oral communication skills during their studies, by giving talks, presenting research assignments, debating legal issues, etc.

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Broadly speaking, jurists writing can be said to be about law or based on law. In day-to-day legal practice, texts are drafted for a variety of purposes, among which we would highlight that of **persuading** the reader.

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Professionals' main activity in legal proceedings is that of **interpreting** legal texts, and arguing in support of their own interpretation as opposed to the many alternatives. In an ideal scenario, the norms would be so clear that there would be no need to interpret them but, rather, simply apply them in a literal sense (*in claris non fit interpretatio*). In reality, however, a considerable amount of work usually needs to be put into interpretation.

Furthermore, in an ideal scenario there would be no gaps in the law, but in fact we often find that legislators have not regulated a particular area or, if they have done so, that the norm is incomplete or obsolete for the simple reason that society moves too fast for the legislators to keep pace. In such cases the role of the jurist shifts from interpretation to **creation**: one of singular importance in view of the fact that judges and courts have the inescapable duty to resolve the cases brought before them even when there are no norms that can be applied to these.

Law students therefore have to take on the task of studying not just the law itself but also how to interpret it. This means turning to complementary texts as a sound basis for learning to reason legally and argue a case powerfully.

2 General characteristics of legal writing

This is the English version of a guide for law students at the Catalan universities. It describes some of the basic features of legal writing in the context of Catalonia, thus enabling students from other cultures, with other traditions and customs with regard to legal writing, to learn about these features. Even so, most of the reflections and advice in the guide are generic in nature.

Legal writing is **formal**. This is for historical reasons but also because legal language deals with matters that are of importance to society. The legal system serves to resolve serious social conflicts and provides the instruments for performing important acts, such as executing contracts, making a will or getting married. Therefore, when writing a legal text we need always to maintain the appropriate degree of formality.

Another striking characteristic of legal writing is that it is **structured and wellordered**. The actual structure varies in accordance with the type of legal text concerned but, whatever the case, the writing must always follow a logical, systematic order.

The language of legal texts is meant to show **objectivity**, as opposed to emotion, bias or prejudice. This objectivity goes hand-in-hand with the use of impersonal language.

> " In legal writing the message has to be, above all, precise, so the same term may be repeated whenever necessary. "

Legal writing is **technical and precise**. Everyday language does have a part to play in legal writing. However, it is important to distinguish between common everyday terms and phrasing and those that are used in a technical sense. A word or phrase can sometimes have more than one meaning, and some of these meanings could belong to common usage while others are specific to law. For example, the Catalan word *ofici* has several meanings in common parlance and, at the same time, has its own meaning in the field of law: a written message issued by a judicial body and addressed to authorities and officials in the course of an ongoing procedure.

Legal texts display **deliberate redundancy.** Literary authors tend to use synonyms to avoid repeating words as a matter of good style, even though this could mean introducing nuanc-

es that could lead to differing interpretations on the part of readers. On the other hand, in legal writing the message has to be, above all, precise, so the same term may be repeated whenever necessary.

Although legal language is being modernised, changing with the times, it still retains certain traditional features. Thus, it is essential for law students in the Catalan university system to become familiar with the most frequent **latinisms**, so as to understand legal texts and engage in the everyday practice of law. Latin expressions like *ex tunc* (since then), *ex nunc* (from now on), *non bis in idem* (the same cause may not be judged twice), *pacta sunt servanda* (pacts must be respected), or *rebus sic stantibus* (things thus standing), among many others, must inexcusably be learned by jurists.

In addition, certain legal documents often make use of their own **formulaic expressions**. For example, in a statement of claim we can find expressions like *comparec al jutjat* (I appear before the court), *altressí dic* (I further state) or *sol·licito al jutjat* (I request the court).

In legal texts there are also many **conventions**, particularly in relation to the use of capitals, forms of address and abbreviations. Regarding **abbreviations**, these have a practical use in legal writing, since they help to avoid repeating certain forms that can be quite long. Some of those used in law are widely known, such as *ref.* (*referència*), *Sr.* (*senyor*) or *art.* (*article*). Others, meanwhile, refer to conventions that are specific to the field of law, as, for example, in *STSJC* (*sentència del Tribunal Superior de Justícia de Catalunya* – final judgement of the High Court of Justice of Catalonia), *RDGRN* (*resolució de la Direcció General dels Registres i del Notariat* – ruling of the Directorate General of Registries and Notaries) or *LEC* (Llei 1/2000, de 7 de gener, d'enjudiciament civil – the Spanish law on civil procedure).

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Jurists make considerable use of **references**. A good legal text exhibits sound legal reasoning that relies on various sources, and these sources need to be referenced so as to avoid plagiarism and lend credibility and authority to the text. These references can be found in the body of the text or in **footnotes**, which serve not only this purpose but also to complement the text with additional explanations: adding further citations to support an argument, translating a citation, recommending bibliography, etc. Footnotes are an indispensable feature of research texts.

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3 Some tips on drafting good legal texts

One of the first steps to take before writing any kind of legal text is to become familiar with its subject matter: you need to spend the right amount of time studying and searching for various **sources** and collect these for use as **references** to back up your arguments.

Once you have the subject matter under control, it is time to consider who will be your **target reader**, a factor that conditions the style and tone your writing will adopt. For example, if the text is aimed at someone from outside the field of law, you will have to use more simple and accessible language. On the other hand, if the recipients are other legal professionals, as in the case of the academic world, you should prioritise technical rigour.

Another factor to deal with is **the structure** that is appropriate to the type of text you have to write. Articles, petitions, theses and statements of claim do not have the same structure. Furthermore, there are certain **formulae and conventions** that you need to know and follow when drafting legal texts.

In all cases, the important thing is to write **clearly and concisely**. Legal texts can sometimes be obscure and tiresome to read, so you should try to use language that is more modern and effective, without losing sight of technical accuracy. It is important for the necessarily specialised nature of legal language not to be confused with using opaque, archaic language constricted by formulas that impede comprehension.

As pointed out above, legal language is **technical and specific**. As a university student you need to familiarise yourself with it to gain a deep understanding of your subject. Expressing yourself correctly and precisely is fundamental to drafting high-quality legal texts and passing the various examinations that lie ahead. And it will be just as important later on, when working in this profession.

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Although your first instinct as a student may be to avoid **redundancy** in writing, keep in mind that legal texts gain in precision when words are chosen above all for their technical appropriateness. This means that it can be appropriate to repeat terms in these texts, since two synonymous words may not be exact equivalents and subtle differences between them could undermine the technical rigour of the text.

However, while repetition can be justified in the interests of accuracy, it is a different matter for the style of the text to be excessively redundant and mediocre. A good legal text benefits from **polished writing** in addition to the accurate use of technical language.

In short, **legal writing is functional**. A legal text is not to be judged purely on aesthetic grounds, but above all in terms of how effectively it transmits its message.

4 | Common text types in law

The commonest types of legal texts can be divided into four categories, depending on who issues them. These are normative texts, judicial texts, administrative texts and doctrinal texts.

- Normative **texts** comprise written norms at supra-state, state, autonomous-region or local levels and are hierarchical in nature. For example, at Spanish state level we have the Constitution, the *lleis orgàniques* (organic laws), the *lleis ordinàries* (ordinary laws), the *decrets llei* (decree-laws), the *decrets legislatius* (legislative decrees) and the *reglaments* (implementing regulations).

- Judicial **texts** are drawn up by legal professionals in the course of their everyday work in the courts. Some examples of these are lawyers' *demandes* (claims) and *recursos* (appeals), court clerks' *diligències* (proceedings) and *decrets* (orders) and judges' *sentències* (judgements), *interlocutòries* (interlocutory judgements) and *providències* (case management orders).

- Administrative **texts** are those issued by public administration officials or by citizens. Among these are *resolucions* (resolutions), *actes* (minutes), *certificats* (certificates), *informes* (reports), *sol·licituds* (requests or applications), *notificacions* (notifications) and *anuncis* (announcements).

- Doctrinal **texts** are written by law researchers and consist of commentaries, analyses and interpretations of the law. Some examples of these are *manuals*, *tractats* (treatises), *tesis* (theses), *monografies* (monographs), *articles*, *comentaris* and *recensions*.

As a Law student, you will get to know many of these texts as you advance in your studies, especially the normative texts, judgements and doctrinal texts. At the same time, you will be expected to write **academic texts** that demonstrate your ability to organise information efficiently, your knowledge of the sources, and your persuasive skills and mastery of reflective, critical legal reasoning.

5 Publications and websites of interest for writing in law

1. *Diccionari jurídic.* Institut d'Estudis Catalans; Societat Catalana d'Estudis Jurídics.
   http://cit.iec.cat/DJC

   The terms belonging to the various disciplines of present-day law and of legal history, in Catalan and in Spanish. Legal phraseology is also covered.

2. *Diccionari de dret civil.* Departament de Justícia de la Generalitat de Catalunya; Termcat.
   http://www.termcat.cat/ca/Diccionaris_En_Linia/150/

   1,160 terms belonging to the five classic areas of civil law, with designations in Catalan, equivalents in Spanish and, in many cases, explanatory notes.

3. *Diccionari de dret administratiu.* Departament de Justícia de la Generalitat de Catalunya; Termcat.
   http://www.termcat.cat/ca/Diccionaris_En_Linia/169/

   1,130 terms with definitions and explanatory notes in Catalan and equivalents in Spanish.

4. *Diccionari de dret penal i penitenciari.* Departament de Justícia de la Generalitat de Catalunya; Termcat.
   http://www.termcat.cat/ca/Diccionaris_En_Linia/172/

   2,705 terms belonging to criminal law, procedural criminal law, prison law and military criminal law, in Catalan and Spanish.

5. *Vocabulari de dret romà.* Universitat de València (Servei de Política Lingüística); Termcat.
   http://www.termcat.cat/ca/Diccionaris_En_Linia/234/

   398 entries containing 493 Latin terms with the corresponding equivalents in Catalan, Spanish, French and Italian.

6. *Curs de llenguatge jurídic* (segona edició). Departament de Justícia de la Generalitat de Catalunya.
   http://justicia.gencat.cat/web/.content/documents/arxius/cllj_2a_ed.pdf

   A thorough course on Catalan legal language. Includes theory and practice and comes with exercises and answer keys.

7. *Autoaprenentatge de llenguatge jurídic.* Departament de Justícia de la Generalitat de Catalunya.
   http://www.gencat.cat/justicia/llengjur/

   Online course on Catalan legal language. Contains theory, exercises and documents.

8. *Manual de llenguatge judicial.* Departament de Justícia i Interior de la Generalitat de Catalunya; Equip de Normalització Lingüística de l'Àmbit Judicial.
http://administraciojusticia.gencat.cat/web/.content/documents/arxius/doc_88604569_1.pdf

A practical handbook for solving problems in writing legal texts in Catalan.

9. *La citació de les fonts jurídiques en l'àmbit autonòmic, estatal i internacional.* Helena Fontboté Bonilla; Marta Ymbert Cerón.
http://hdl.handle.net/2445/33344

A useful resource for learning to cite legal sources correctly.