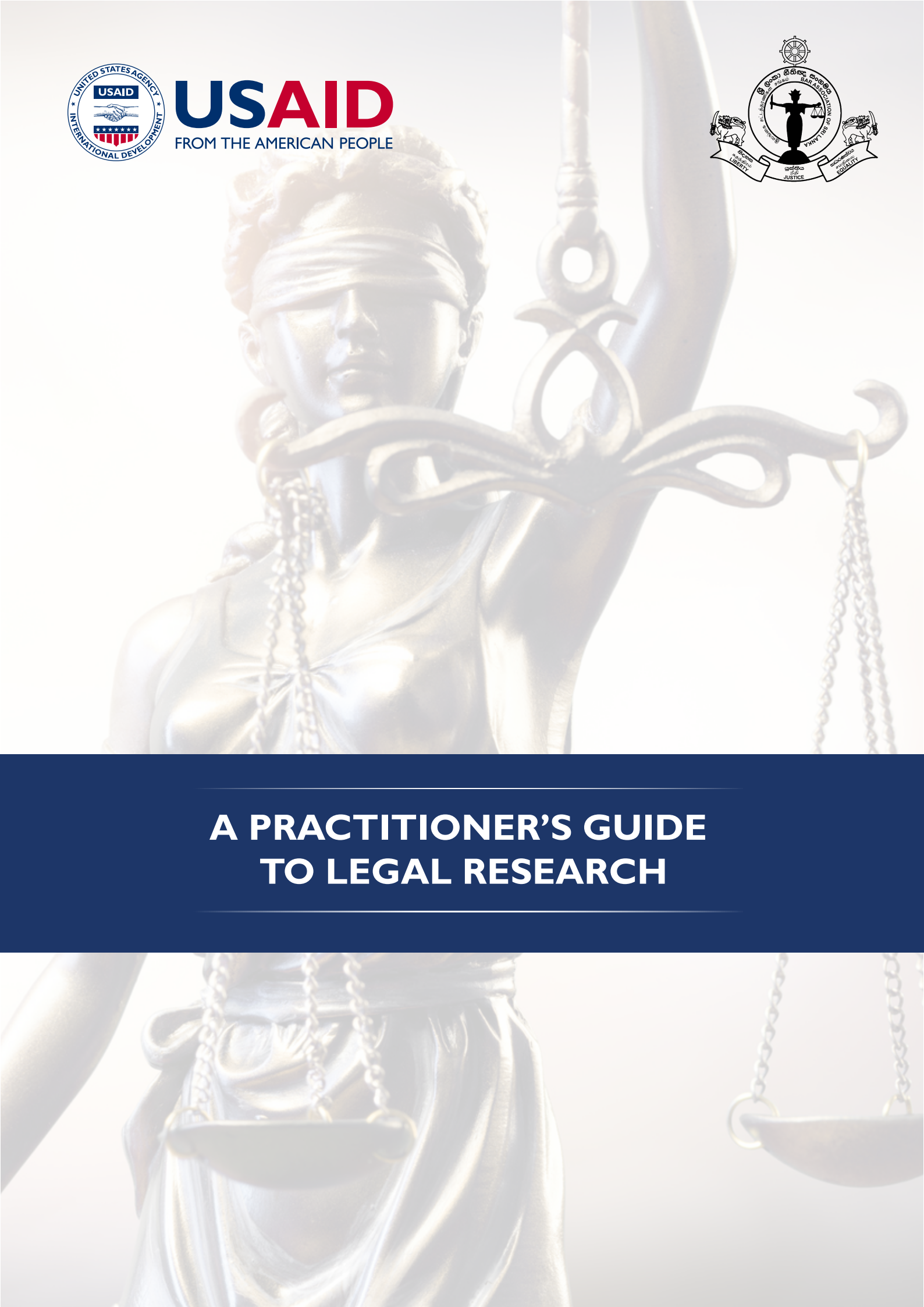

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A PRACTITIONER'S GUIDE TO LEGAL RESEARCH

A Practitioner's Guide to Legal Research

Acknowledgments

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A Practitioner's Guide to Legal Research

Glossary

Arbitration An alternative method of dispute resolution in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who issue a binding decision on the dispute. In choosing arbitration, the parties opt for an alternative to litigating before a court of law.

Arbitral award The decision of the arbitral tribunal or the arbitrators is referred to as an arbitral award.

Automatism Involuntary conduct caused by some external factor. A person is not criminally liable for acts carried out in a state of automatism, as their conduct is involuntary, e.g. actions carried out while sleepwalking or in a state of concussion or hypnotic trance, a spasm or reflex action, and acts carried out by a diabetic who suffers a hypoglycemic episode. Automatism is not a defence if it is self-induced (by taking drinks or drugs).

Averments A statement of fact which is set out in the plaint. Every averment is something that the party sets out to prove in the action.

Binding authority A source of law that binds future courts to follow.

Cloud storage A service model in which data is transmitted and stored on remote storage systems, where it is maintained, managed, backed-up, and made available to users over a network – typically, the internet. Users generally pay for their cloud data storage on a per-consumption, monthly rate. Dropbox, Google Drive, and OneDrive are examples of cloud storage.

Conciliation An alternative dispute resolution mechanism where an independent third party, the conciliator, helps people in a dispute to identify the disputed issues, develop options, consider alternatives, and try to reach an agreement. A conciliator may have professional expertise in the subject matter in dispute and will generally provide advice about the issues and options for resolution. However, a conciliator will not make a judgment or decision about the dispute. Conciliation may be voluntary, court-ordered, or required as part of a contract.

Due diligence A measure of prudence, activity, or assiduity as is to be expected from and ordinarily exercised by, a reasonable and prudent person under the particular circumstances.

Legal authorities Statutes, precedents, judicial decisions, and textbooks of the law, which may be cited in the course of making an argument.

Legal opinion	An opinion from lawyers issued in letter form expressing legal conclusions about and/or legal analysis of a transaction or matter raised by the addressee of the opinion.
Mediation	An alternative dispute resolution mechanism in which a neutral third party assists parties to work towards a negotiated settlement of their dispute, with the parties retaining control of the decision as to whether or not to settle and on what terms.
Obiter dicta	Latin: "that which is said in passing" - remarks made by a judge in passing while setting out the judgment.
Persuasive authority	A source of law that is not binding on the court but may be instructive for the court.
Petition	A written address, embodying an application or prayer from the person or persons preferring it, to the power, body, or person to whom it is presented, for the exercise of their authority in the redress of some wrong, or the granting of some favor, privilege, or licence.
Precedent	An adjudged case or decision of a court of justice, considered as providing an example or authority for a similar later case arising on a similar question of law.
Ratio decidendi	Latin: "the rationale for the decision" - the basis on which the court reaches its decision. The ratio of a case must be deduced from its material facts, the reasons the court gives for reaching its decision, and the decision itself.
Research method	The techniques and tools with which one may research a subject or a topic.
Research methodology	The overall approach that specific research techniques and tools fall under.
Stare decisis	Latin: "to stand by things decided" - a doctrine that allows a court to follow precedent established by previously decided cases with similar facts and issues to provide certainty and consistency in the administration of justice.
Written submission	A document submitted to a court with the relevant facts, the law, and analysis on behalf of a litigant. Written submissions contain the arguments that will be presented in court and a list of authorities that will be cited.

Sources for the above explanations include Black's Law Dictionary (8th Edition, 2004); A Dictionary of Law (Oxford, 2008); Cornell Law School, Legal Information Institute, Wex at https://www.law.cornell.edu/wex/question_of_law; Thomson Reuters Practical Law: A Glossary; The Oxford Pocket Dictionary of Current English; T he Law Dictionary.com; USLegal.com.

Background

Legal research is undertaken in a variety of contexts. Legal practitioners engage in legal research in the context of advancing justice for their clients. Such legal research differs from the type of research undertaken by a legal academic or student for the purpose of producing an essay, article, or thesis.

The primary learning objective of this guide is to engage legal practitioners in the usefulness of sound legal research in the execution of their professional duties and to inculcate in practitioners the habit of engaging in legal research in the normal course of their work. The guide will serve as a comprehensive reference for future educational efforts of the legal fraternity. In essence, it aims to strengthen the professionalism of justice sector actors.

The guide is organised under four headings: (1) an introduction to legal research; (2) accessing resources and organizing research; (3) interpretation and analysis; and (4) practical guidance.

1. Introduction to Legal Research

Learning Outcome: A better understanding of the importance of legal research to the law practitioner, and the relevance of research to effective legal practice.

1.1 Defining legal research

Black's Law Dictionary defines legal research as the "finding and assembling of authorities that bear on a question of law".[1] In other words, legal research involves ascertaining the law on an identified topic or a particular area.

1.2 The purpose of legal research

The exact purpose of legal research may vary depending on the legal practitioner's specific task at hand. However, in essence, the aim of legal research as far as a practitioner is concerned boils down to ascertaining the law so it can be applied to a particular legal problem. Therefore, a practitioner approaches legal research in a practical and methodical manner with a view to deriving an answer to a particular legal question. In doing so, a practitioner will also benefit practically, as correctly identifying relevant legal issues can help the proper organization and maintenance of case files, which can ensure proper case management.

On occasion, the practitioner will discover that the law on a particular legal question does not provide a clear answer, either because the interpretation of the relevant statute or judgment is contested, or because there is no clear legal answer to the question. Therefore, legal research can contribute towards the development of the law. Legal questions with multiple possible answers or no answers at all can be discovered through legal research and can eventually be resolved either through subsequent judiciary interpretation or legislative reform.

[1] Black's Law Dictionary (8th Edition, 2004).

1.3 The importance of legal research

The skill to conduct legal research is vital for practitioners regardless of their area of practice. Every case, appeal, opinion, and advisory engagement would require varying degrees of legal research. For instance, a practitioner's understanding and analysis of a case begins with identifying the facts and determining the issue(s), i.e., the precise legal question(s) raised by the facts. Once the issues are identified, the next step for the practitioner would be to find the legal sources that relate to those issues. These legal sources will help the practitioner determine the applicable law and understand how the law should be interpreted.

The overall expectation is that the practitioner, through extensive research, would be in a better position to provide responses to and argue on behalf of clients. A client would expect the practitioner not only to give right advice but also to impress upon the judge that the practitioner's arguments are sounder than that of their opponent.[2]

A practitioner's foremost duties to their clients require them to act with due diligence and reasonable swiftness and courtesy while maintaining their client's confidence and avoiding conflict of interest. Therefore, a practitioner who neglects to conduct thorough legal research may run the risk of failing in their duty to the client and to the court. Poor research may deprive the relevant actors from gaining a better understanding of the law. Practitioners should thus commit themselves to continue developing their research skills and knowledge of the law.

Figure 1 below presents an overview of the usual process a practitioner would undertake when locating the law on a particular issue.[3]

[2] Khushal Vibhute and Filipos Aynalem, Legal Research Methods: Teaching Materia (Justice and Legal System Research Institute 2009), at *https://chilot.files.wordpress.com/2011/06/legal-research-methods.pdf*.

[3] Anubha Bakhsi, 'Legal Research Importance and Benefits in the Legal Industry', Complete Legal Outsourcing, 30 December 2021, at *https://www.completelegaloutsourcing.com/legal-research-importance-and-benefits/*.

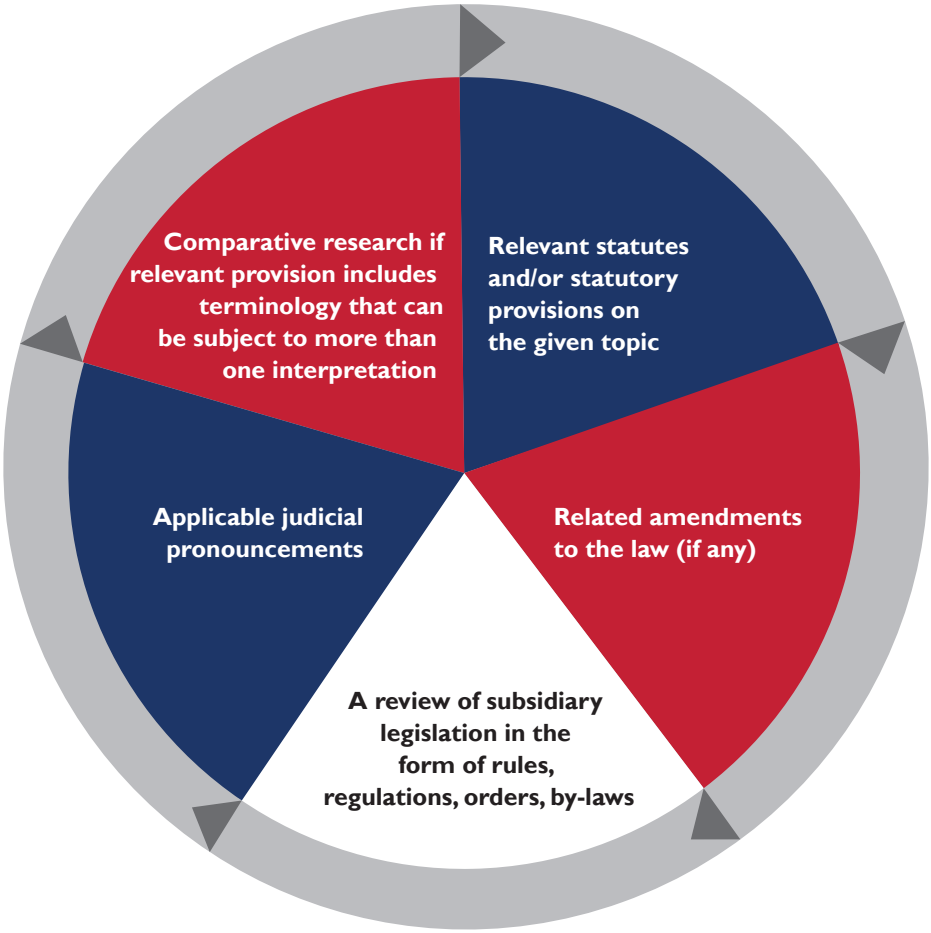


Figure 1

1.4 Types of research

a. Distinction between legal research and research in other disciplines of the humanities

Legal research can differ from academic research associated with other disciplines of the humanities. Legal research (including academic legal research) tends to focus on legal doctrine (and occasionally on legal theory) and does not usually include empirical research of an observational or consultative nature, i.e., primary research involving quantitative research or qualitative research. However, legal research has evolved significantly in recent times to include 'socio-legal' and 'law in context' approaches that have strong parallels with other disciplines in the humanities. Therefore, it may not be correct to say that modern legal research always differs from research in other social science disciplines.

b. Distinction between academic and non-academic legal research

Some distinctions between legal research of an academic nature and non-academic legal research that a practitioner would undertake ought to be noted.

First, the central purpose of academic legal research is to contribute towards the development of legal knowledge. Therefore, legal academics are usually expected to arrive at new conclusions by examining legal doctrine or to develop new legal theories by analyzing and critiquing existing ones.

A successful thesis in law must say something new. Of course, such a requirement may not always be met, and in some cases, legal explanations or descriptive accounts of the law may be undertaken by legal academics to teach or inform their readers. By contrast, the main purpose of non-academic legal research undertaken by a legal practitioner is to present an argument on behalf of their client or to explain a legal position to their client. The end of such legal research is argumentative, analytical, and explanatory, and does not need to be a new contribution to legal knowledge. However, it should be noted that in the process of presenting legal arguments and opinions, and especially in the context of litigation before superior courts, legal practitioners may contribute to the development of the law, as their arguments are often reflected in judgments.

Second, the methods and methodology of academic legal research differ from non-academic legal research that is undertaken by practitioners. These distinctions are explained further in the next subsections of this guide.

c. Distinctions based on the nature of legal research

Legal research may also be classified according to the nature of the research. While a practitioner does not engage in all types of legal research (identified below), there may be instances where the practitioner's work may involve more than one type of legal research.

The table below presents some of the main types of legal research.

Type	Description
Descriptive Research	Describes the law as it exists. Much of legal research is descriptive in nature, as it involves ascertaining what the law on a particular question is and describing such law. For instance, describing the contents of a particular statutory provision involves descriptive research. E.g. the sentence "Article 14A of the Sri Lankan Constitution guarantees to every citizen the right of access to any information as provided for by law" is a reflection of descriptive research, as it explains what article 14A of the Constitution provides.

Analytical Research	Analyzes the law and offers a critical evaluation of the law. Analytical research takes descriptive research a step further and evaluates some aspect of the law. E.g. the sentence, "Article 14A of the Sri Lankan Constitution does not guarantee to non-citizen of Sri Lanka the right to information, as it applies only to Sri Lankan citizens" is an analytical sentence reflecting an analysis of the relevant legal provision. It does more than merely explain what the provision states and provides an additional insight into the scope of the provision.
Quantitative Research	Focuses on quantity, i.e. what can be expressed in numerical form of results. Legal research is rarely quantitative. However, there may be some quantitative elements to legal research. E.g. if a legal argument is being made about value of a digital tax, a datapoint on the number of countries that have introduced the said tax may strengthen the argument.
Qualitative Research	Focuses on the reasons behind a particular legal position or phenomenon. Some aspects of legal research contain a qualitative element. For instance, an explanation of the jurisprudence on (or the legal philosophy behind) a particular aspect of law involves a qualitative assessment of the caselaw. In Common Law jurisdictions such as Sri Lanka, there is invariably a qualitative approach to ascertaining what the law on a subject is. E.g. an assessment whether, under Roman Dutch Law (RDL), the father has preferential custodial rights over a child above a certain age may require an qualitative analysis of the relevant caselaw on the subject. This analysis will reveal several contextual and historical factors that influenced the courts to gradually move away from the preferential right of the father (relied on in cases such as Calitz v. Calitz (1939) AD 63, Ivaldy v. Ivaldy(1956) 57 NLR 568) to the modern approach, which is centered on the principle of the best interest of the child. This modern approach is evident in cases such as Weragoda v. Weragoda (1961) 59 CLW 59, Fernando v. Fernando (1968) 70 NLR 534, and Jeyaranjan v. Jeyaranjan (1999) 1 Sri. L.R 113.
Conceptual Research	Involves research on an abstract notion or idea. In some instances, legal research will need to examine specific legal concepts. E.g., the concept of public order may be relevant to the legal question of whether particular types of speech can be restricted to prevent public unrest. Research on the concept of public order can help the practitioner formulate their argument on whether or not a particular restriction on freedom of speech was justified on the grounds of public order.

Empirical Research	Involves data-based research, to arrive at research conclusions that can be verified by observation or experiments. Academic legal research may involve empirical components. For example, a study on prison overcrowding may involve observing prison conditions and gathering data on the prison system. Empirical research is rarely relevant to non-academic legal research undertaken by practitioners. However, practitioners may need to be familiar with what empirical research involves if such research forms the subject matter of a case. E.g., if a case concerns the infringement of a client's intellectual property comprising empirical research, the practitioner will need to understand how and why the research forms the intellectual property of the client.

Table 1

1.5. Legal research methods and methodology

Academic legal research usually involves the development of a research proposal and the development of a research hypothesis. By contrast, non-academic legal research involves the presentation of an argument on behalf of a client or an explanation of a legal position to a client. Both forms of legal research would involve some level of argumentation, but the final output differs. An academic legal research output would usually be an essay, article, or thesis, whereas non-academic legal research by a practitioner would result in a petition, written submission, or a legal opinion.

Some of the techniques and approaches of academic legal research can be applied to non-academic legal research undertaken by practitioners. Therefore, there is value in a practitioner's understanding of legal research methods and methodology.

The distinction between methods and methodology should be noted. Research methods refer to the techniques and tools by which one may research a subject or a topic. Research methodology refers to the overall approach that specific research techniques and tools fall under. For example, conducting focus group discussions and case studies may be the methods undertaken in research. The overall methodology in this regard may be termed as qualitative research methodology. Similarly, an analysis of statutes and cases may be the main research method that a practitioner uses. The methodology in this respect may be termed doctrinal as the method focuses on interpreting legal doctrine.

The specific legal research methods applicable to a practitioner are discussed in greater detail in sections 2 and 3 of this guide.

Some specific reasons for understanding legal research methods and methodology are listed below:

1. The knowledge of methods and methodology provides good training to practitioners, as it helps the practitioner to develop disciplined thinking in terms of building an argument; and

2. The knowledge of methods and methodology helps consumers of research output to evaluate it and make decisions based on it. In the case of legal practitioners, the main consumers of research output would be clients and courts.[4]

[4] Vibhute and Filipos Aynalem, (n 2).

2. Accessing Resources and Organizing Research

Learning Outcome: Enhanced knowledge of how to access legal resources and improve skills in organizing information and research.

2.1 Types of legal sources

The most frequent research method used by a practitioner entails the interpretation and analysis of legal sources (discussed in section 3 below). Before interpretation and analysis, the practitioner must know how to access and organize such sources. There are several key legal sources routinely used by practitioners:

- **Statutes:** A statute is a law enacted by a legislature.

  E.g. the Right to Information Act, No. 12 of 2016 is a statute.

- **Subsidiary legislation:** Subsidiary legislation includes rules, regulations, by-laws, proclamations, letters patent, orders, notices, notifications, declarations, resolutions, forms, warrants, schemes, and any other document made under a statute.[5] Such subsidiary legislation is usually formulated by executive officials acting under a statute.

  E.g. the United Nations Regulations, No. 1 of 2012 issued under the United Nations Act, No. 45 of 1968 is an example of subsidiary legislation.

- **Caselaw:** Caselaw is made up of judicial decisions arising from cases before the courts.

  E.g. the decided case Joseph Perera v. the Attorney-General and Others [1992] 1 Sri.L.R 199 is an example of caselaw.

  Caselaw from Commonwealth countries including the United Kingdom and India are of particular value to legal argumentation in Sri Lanka.

- **Treaty law:** Black's Law Dictionary defines a treaty as an agreement formally signed, ratified, or adhered to between two countries or sovereigns; an international agreement concluded between two or more states in written form and governed by international law.

  E.g. the International Covenant on Civil and Political Rights.

As Sri Lanka adopts a dualist system, an enabling law (an Act of Parliament) is required to domestically incorporate international instruments that the state ratifies or accedes to. For example, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment Act, No. 22 of 1994 incorporates the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into domestic law.

[5] Interpretation section, Revised Edition of the Legislative Enactments (Sri Lanka).

Similarly, the International Covenant on Civil and Political Rights Act, No. 56 of 2007 incorporates certain provisions of the International Covenant on Civil and Political Rights into domestic law. The Sri Lankan Constitution, through its fundamental rights chapter, also incorporates certain provisions of the Covenant into domestic law. By contrast, the provisions of the International Covenant on Economic, Social, and Cultural Rights have not been incorporated into domestic law despite being ratified by Sri Lanka. However, such international treaties are binding on Sri Lanka at the international level, and international bodies as well as other states may refer to these obligations in their discussions on Sri Lanka's human rights record. For example, the United Nations Human Rights Council may refer to Sri Lanka's obligations under the International Covenant on Economic, Social, and Cultural Rights regardless of whether Sri Lanka has incorporated the treaty into domestic law. In any event, even treaties that have no domestic incorporation have persuasive value within the domestic legal system and may be referred to by a practitioner in the course of making legal arguments.

- **Treatises:** A treatise (not to be confused with a 'treaty') is an extensive and exhaustive book on a specific subject, usually a legal topic. It is a thorough analysis of a field of law, detailing its principles and rules, and illustrating those principles and rules through examples.

  E.g. G.L. Peiris, The Law of Evidence in Sri Lanka (1974) is an example of a treatise.

- **Legislative preparatory work, such as Hansard:** Hansard is the traditional term for the transcripts of parliamentary debates in Britain and many Commonwealth countries. Hansard is a 'substantially verbatim' report of what is said in Parliament. It can be a useful legal source to identify the precise intent of the legislature when a statute was enacted. Hansard is occasionally relied upon by courts to interpret statutes.

2.2 Locating legal sources

A crucial step in legal research involves the process of locating relevant legal sources. Legal sources include:

01. Primary sources: These are the most important and often binding (i.e. authoritative) sources of law. Primary sources of law comprise statutes, subsidiary legislation, and caselaw.

02. Secondary sources: These are sources that are persuasive (i.e. they are not authoritative but have notable weight in ascertaining the law). These sources help obtain background or supporting information about the legal topic under consideration. Secondary sources include treaty law, legal treatises, law reviews, legal dictionaries, legal encyclopedias, and preparatory work.

The table below contains a list of legal sources, and where they can be located.

Type of resource	Resource	Location
Primary	The Constitution (consolidated version)	Official website of the Parliament of Sri Lanka *https://www.parliament.lk/constitution/main*
	Legislation (domestic) Acts and Bills of Parliament	Official website of the Parliament of Sri Lanka *https://www.parliament.lk/business-of-parliament/acts-bills?view=actsandbills* Lawnet – a legal database maintained by the Ministry of Justice: *https://www.lawnet.gov.lk/* Subscription based legal databases: ■ Lawlanka.com: *https://www.lawlanka.com/lal/welcome?menuValue=homePage* ■ Srilankalaw.lk: *https://www.srilankalaw.lk/*
	Rules and regulations issued through Extraordinary Gazettes	Department of Government Printing: *http://documents.gov.lk/en/exgazette.php*
	Case law (domestic)	Official website of the Supreme Court of Sri Lanka (judgments from 2009 onwards): *https://www.supremecourt.lk/* Official website of the Court of Appeal of Sri Lanka (judgments from 2011 onwards): *http://courtofappeal.lk/* Subscription based legal databases: ■ Lawlanka.com: *https://www.lawlanka.com/lal/welcome?menuValue=homePage*
	Case law (international)	Subscription based legal databases: ■ LexisNexis: *https://www.lexisnexis.com* ■ Westlaw: *https://www.westlawinternational.com/*

	Treaties and international agreements	For example, UN treaty database: *https://treaties.un.org/*
Secondary	Legal encyclopedias	Halsbury's Laws of England Halsbury's Laws of India American Jurisprudence Forms & Precedents Words & Phrases
	Legal dictionaries	Black's Legal Dictionary Stroud's Legal Dictionary Wharton's Law Lexicon Aiyar's Advanced Law Lexicon
	Digests (India)	Supreme Court Yearly Digest (SCC) A.I.R. Yearly Digest Supreme Court of India Nominal Index and comparative tables
	Journal articles (domestic)	Bar Association Law Journal Junior Bar Law Review
	Journal articles (international)	LexisNexis Online Westlaw International JSTOR Social Science Research Network HeinOnline Global Legal Information Network
	Hansards (Parliamentary debates) Standing Committee/ Joint/Select Committee reports Reports of the Committee appointed by the ministries for enacting/reviewing any existing enactments	Official website of the Parliament of Sri Lanka: *https://www.parliament.lk/en*

	Cabinet decisions	Official website of the Cabinet of Ministers: *http://www.cabinetoffice.gov.lk/cab/index.php?option=com_content&view=article&id=59&Itemid=102&lang=en*

Table 2

While online databases usually offer access to most research material, on occasion, physical copies may be required. The following resource centers are useful for accessing legal material:

1. National Archives of Sri Lanka
2. Colombo Law Library
3. Bar Association Law Library
4. Library, Centre for the Study of Human Rights
5. The Nadesan Centre
6. Library, Law and Society Trust
7. The Marga Institute

The following hypothetical example explains the process through which a practitioner can make use of legal sources.

Shani, a junior lawyer has been requested by her senior to compile a brief note on the legal framework on sexual harassment in the workplace.

Step 1: Shani begins with general research with respect to the primary sources of law on the topic. Shani identifies the Penal Code as a possible statute that might refer to sexual harassment. She accesses a soft copy of the Code and conducts a word search on the term "harassment". Through this step, Shani discovers that section 345 of the Penal Code, which sets out the offence of sexual harassment, also covers sexual harassment at the workplace. Shani also examines the reported caselaw to inquire whether the Supreme Court or Court of Appeal has dealt with section 345.

Step 2: Shani then examines secondary sources of law, which may provide further insights into relevant caselaw. This includes treatises on criminal law with a specific focus on section 345, journal articles covering sexual harassment at the workplace, and legal dictionaries. As Shani was not able to find reliable material online, she visits the Law Library, Bar Association Law Library, Centre for the Study of Human Rights, and the Law and Society Trust Library. By conducting manual research during these physical visits, Shani locates journal articles that refer to relevant unreported cases. From these sources, Shani uncovers the legal definition of sexual harassment, and the related caselaw, as they have been discussed by the authors of the articles. Shani discovers a recent unreported Supreme Court decision, Manohari Pelaketiya v. H.M. Gunasekara and others, SC (F.R.) 76/2012, which offers important insights on the scope of section 345.

Practice Tip

There are two instances in which a practitioner may use an Internet search engine:

(i) Preliminary search: a quick search to locate background information or relevant vocabulary;
(ii) Specific search: when the practitioner knows exactly what they are looking for, for example, a particular official document, they may search for that document on the Internet.

Practitioners need to be very careful when using the Internet as a source of information during legal research. Searches should always be confined to official or reputable websites. Unknown or unverified internet sources should generally be avoided.

Step 3: Shani reviews the caselaw and legislation. Shani does this as a measure to make sure that she has been thorough in her research.

Step 4: Shani takes an extra measure to ensure that the caselaw still stands and the law has not been amended by talking to other lawyers, including those who have written on the topic, and others who are knowledgeable in this area of the law. Practitioners, particularly junior practitioners, should take advantage of the benefit of speaking to others within the legal fraternity to discuss the law.

Step 5: Shani prepares the note on the legal framework on sexual harassment in the workplace.

2.3 Use of AI tools

Artificial intelligence (AI) has made significant advancements in the field of law in recent years and has provided legal practitioners with powerful tools to enhance their research capabilities. These AI tools assist lawyers, legal researchers, and other legal professionals in conducting comprehensive and efficient research. Some examples of AI tools available for research purposes are discussed below.

a. ChatGPT

ChatGPTis a general language model[6] developed by OpenAI. It can respond to legal queries, assist in legal research, and generate draft documents. ChatGPT can analyze reasonably complex legal questions, offer insights, and provide relevant information based on its extensive training on a wide range of legal texts. Similar large language models (LLMs) include GPT-4, Bing Chat, and Bard.

b. Legal research platforms

There are several AI-powered platforms developed specifically for legal research. These platforms use natural language processing (NLP) algorithms and machine learning techniques to analyze vast quantities of legal documents, including case law, statutes, regulations, and legal opinions. There are several examples of AI tools designed to assist legal practitioners in legal research and related tasks:

[6] A general language model is a system that can produce writing based on probabilities in a sequence of words.

ROSS Intelligence: ROSS is an AI-powered legal research platform that uses NLP and machine learning to locate relevant case law, statutes, and other legal information. It can help lawyers save time in finding relevant legal precedents and in analyzing documents.

LexisNexis Context: Context is an AI-enhanced legal research tool offered by LexisNexis. It uses machine learning algorithms[7] to analyze legal documents and extract relevant themes and citations. This tool can help lawyers discover connections between legal sources and gain deeper insights into legal issues.

Westlaw Edge: Westlaw Edge is a legal research platform that also incorporates AI-powered features. It utilizes algorithms to provide predictive analytics and legal research suggestions. It also includes features such asKeyCite, which flags negative treatment of cited cases. For example, it will provide information on whether a case has been overruled by a later decision.

Casetext: Casetext is an AI-driven legal research platform that carries out document review, prepares legal research memos, and analyzes contracts. Its Case Analysis Research Assistant technology uses NLP to analyze uploaded legal documents and recommend relevant cases and authorities.

Legal practitioners have at their disposal a range of general and specific AI tools. For example, a practitioner who needs to conduct a quick comparative analysis of the law of trusts in Sri Lanka and the United Kingdom (UK) may opt to ask an AI-based tool a question, such as, 'what are the similarities and differences between the law on trusts in Sri Lanka and the United Kingdom?' The answer received on ChatGPT was as follows:

> Trust law in Sri Lanka and the UK exhibits both similarities and differences. Sri Lanka's Trusts Ordinance of 1917, based on English common law, governs trust law in the country, while the UK's trust law is founded on centuries of case law and equitable principles, supplemented by statutes. Trusts in Sri Lanka can be created through oral or written declarations, while the UK requires written formalities and the transfer of assets. Both jurisdictions recognize discretionary trusts, but Sri Lanka allows for beneficiaries to be determined at the trustees' discretion, whereas the UK distinguishes fixed and discretionary trusts. Individual and corporate trustees are permissible in both countries, with fiduciary duties owed to beneficiaries. Variations and terminations of trusts differ slightly, with Sri Lanka requiring unanimous consent of beneficiaries and the UK providing various mechanisms for modifications or terminations. Taxation of trusts also varies, with specific provisions and rates applicable in each jurisdiction.

[7] A machine learning algorithm is a mathematical model that can learn patterns from data and make predictions or judgments. It examines data and adjusts its settings, and it can be supervised, unsupervised, or reinforcement-based, helping computers to improve their performance and make informed predictions or decisions.

Legal practitioners ought to take note of the pros and cons of using AI tools for the purposes of legal research.

Pros	Cons
Efficiency : AI tools can speed up the research process by quickly analyzing vast amounts of legal information and extracting relevant insights. This saves time and enables legal practitioners to focus on more complex tasks.	*Dependence on data quality:* The accuracy and effectiveness of AI tools rely on the quality and relevance of the data they are trained on. If the training data contains biases, errors, or incomplete information, the results provided by the AI tools may be compromised.
Accuracy: AI tools can assist in finding relevant cases, statutes, and legal precedents with a reasonably high degree of accuracy. They can perform comprehensive searches, identify key information, and reduce the risk of overlooking important details.	*The lack of legal expertise:* AI tools can provide valuable insights and suggestions, but they cannot replace the expertise, experience, and critical thinking of legal practitioners. Legal research often involves complex judgment; relying solely on AI tools may overlook important nuances or legal interpretations.
Access to extensive databases: AI tools have the capability to process and analyze large databases, thereby facilitating better access to these extensive sources. Such access can enable comparative legal research through which practitioners can gain a deeper understanding of legal principles, precedents, and emerging trends in other jurisdictions.	*Limited contextual understanding:* While AI tools can process and analyze large volumes of legal texts, they may struggle to understand nuanced contexts or ambiguous language. Effective legal research often requires deeper contextual understanding, which may still depend on human expertise and experience.
Cost-effective: By automating certain research tasks, AI tools can help reduce some of the direct costs and opportunity costs of research. This benefit is particularly relevant to smaller law firms or legal practitioners with limited resources.	*Cost-effective:* By automating certain research tasks, AI tools can help reduce some of the direct costs and opportunity costs of research. This benefit is particularly relevant to smaller law firms or legal practitioners with limited resources.
Mitigation of language barriers: Sri Lanka has a multi-lingual legal system, with legal resources available in Sinhala, Tamil, and English. AI tools can assist in translating legal texts, enabling legal practitioners to access and analyze legal information that are originally in languages that they may not be fluent in.	*Outdated:* AI models that are broadly available rarely have the dual capacity to identify and access the latest versions of the legal source materials that shape the proper interpretation of facts. Therefore, many AI tools can become outdated, and the practitioner would need to ensure that the AI tool they are using is up to date. For example, the initial opensource version of ChatGPT sourced information from a database that only had data up to 2021.

Table 3

While AI tools offer significant advantages in terms of efficiency, accuracy, and access to information, they also pose challenges related to data quality, higher level analysis, contextual understanding, and ethical concerns. While AI tools can assist legal research, they should not be seen as alternatives to rigorous human research. These tools are best deployed when the legal practitioner already possesses the knowledge and experience to identify the correct position in the law, and only relies on the tool to speed up the process of legal research. Ultimately, legal expertise, professional judgment, and ethical considerations remain crucial to the practice of law, and AI tools should only be utilized in a manner that complements these priorities.

2.4 Organizing research

a. Importance of organizing research

Legal research is a repetitive process. A practitioner may continuously reflect, review, and refocus the research material to ensure that they are well-versed with the legal issue in question.[8] It is imperative that the research process is well organized. Such organization will help with the case or legal assignment at hand and will also assist in optimising the practitioner's knowledge over time by gradually building a research library for all future cases. A practitioner should keep track of the sources and develop a method for referencing them easily.

b. Modes of organizing legal research

A practitioner may opt to organize and store legal research manually or digitally.

A manual mode of organizing legal research means that the practitioner maintains copies of all research material, related analysis, and the final research output. The material will be labelled and filed according to a filing system familiar to the practitioner.

A digital mode of organizing legal research usually involves a basic cloud storage option, such as Google Drive, OneDrive, Dropbox, or SharePoint, or the use of a document management system.

When using a basic cloud storage option to organize legal research and related files, a practitioner may create a set of top-level folders, and thereafter, a new folder for each client or matter. All the documents would be stored in their respective folders and accessed via a web browser or application.

[8] Sandra Whitney, 'Legal Research: How to Organise Your Research', State Bar of Wisconsin, 6 September 2017, at *https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=9&Issue=17&ArticleID=25839*

Figure 2 below illustrates how legal research can be organized digitally.

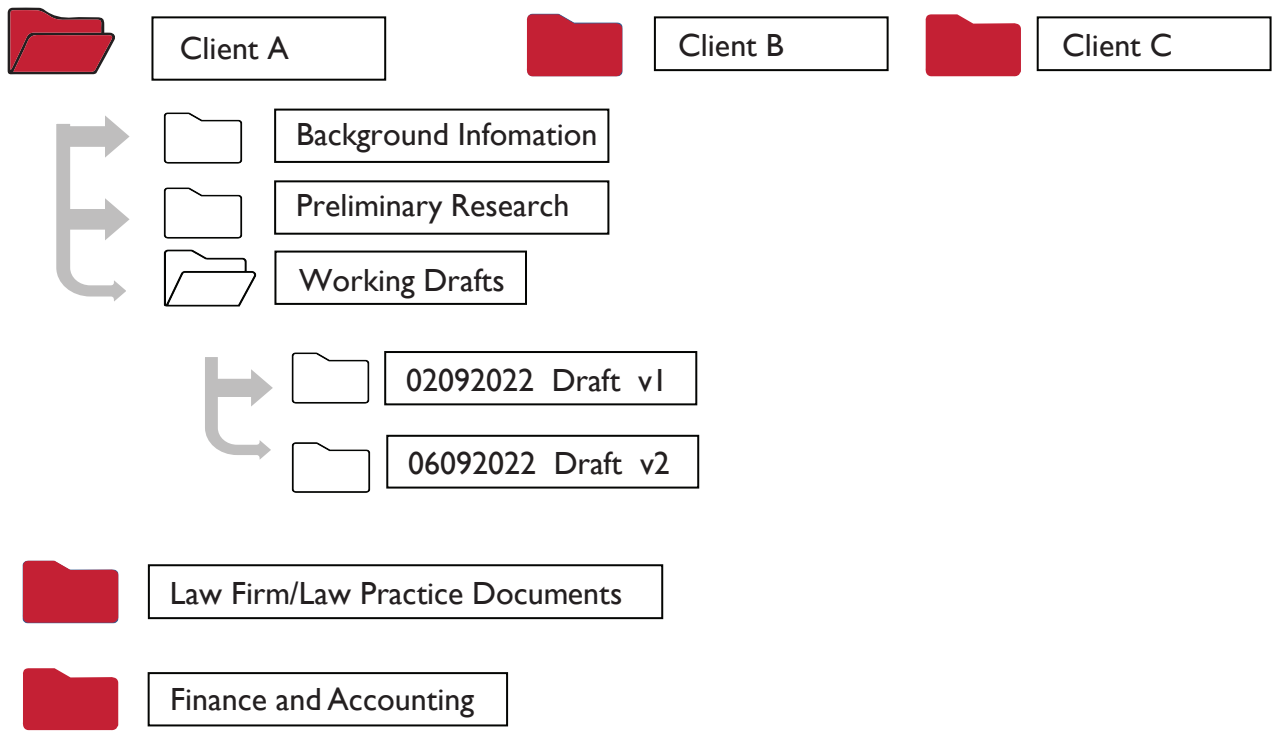


Figure 2

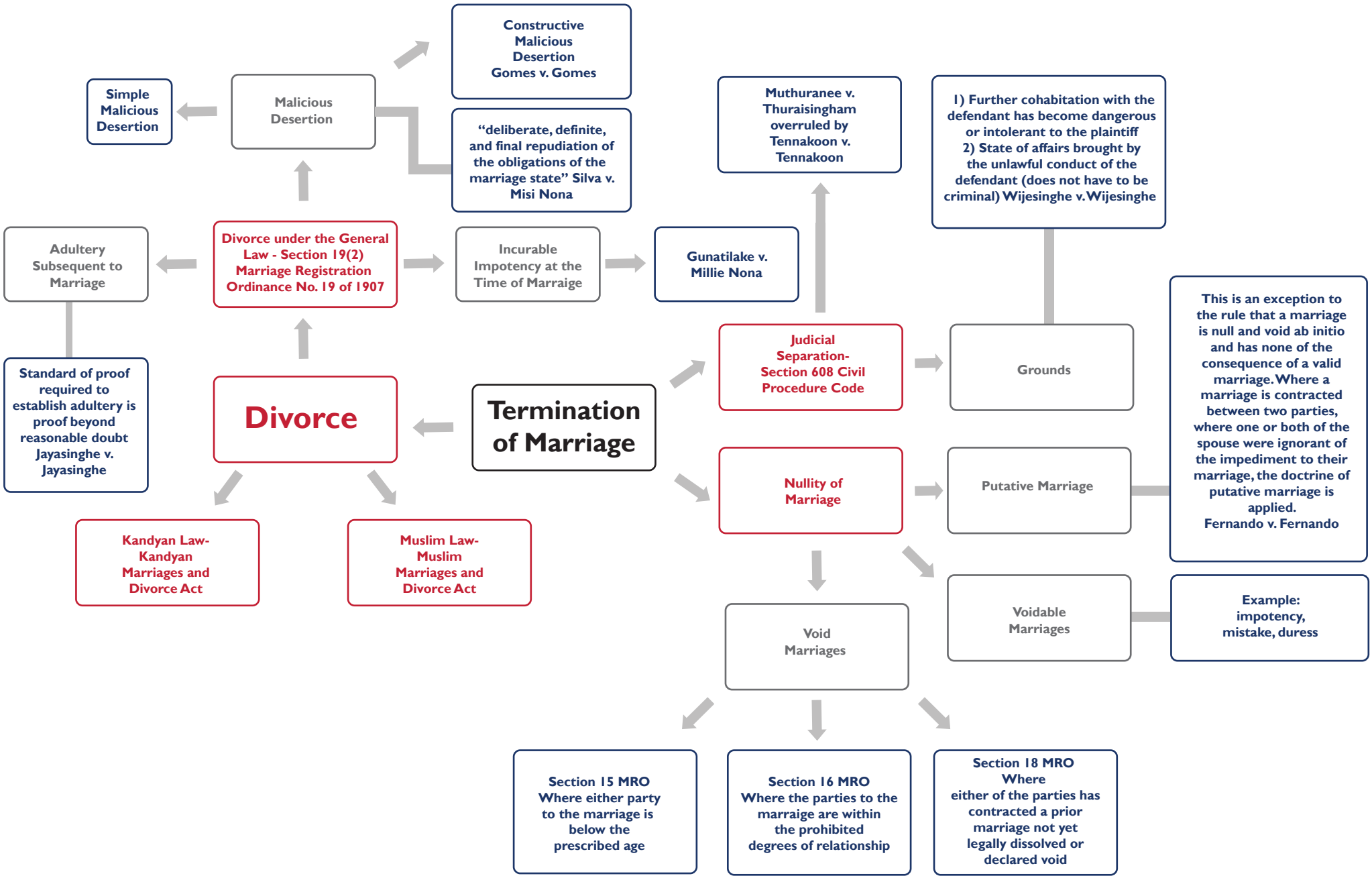
A practitioner may also use a document management system to organize their research. A document management system is a robust system that not only stores your documents but enables you to manage them effectively. Generally, these systems manage legal files, including emails. They offer a wide range of features, including client/matter-centric organization, document tagging, full-text search, file check-in/out, permissions/access management, and email management. A data management system also can automatically organize files by legal matter.

c. Filing and labeling

Each practitioner may use a filing and labeling system (file naming convention) that is familiar and convenient. The following general points may prove useful for filing and labeling:

1) Record the date and time on each research note page;
2) Record the database searched or bibliographic information of a print item consulted (including pages referenced and call number of the item);
3) File research items in reverse chronological order, as it would allow for the most recent content to be on top and, where possible, use book tabs to separate different points;
4) Place the research material in a file folder and label the folder according to the topic; and
5) The research may either be filed according to correspondence, motions, pleadings or client names, or in terms of date, and keyword description of the file.

A practitioner could also consider a nonlinear style of note-taking such as mindmapping which would allow for a color-coded, graphical representation of research notes. Figure 3 below illustrates an example of mind mapping.


Termination of Marriage
Divorce
Divorce under the General Law - Section 19(2) Marriage Registration Ordinance No. 19 of 1907
Malicious Desertion
Simple Malicious Desertion
Constructive Malicious Desertion Gomes v. Gomes
"deliberate, definite, and final repudiation of the obligations of the marriage state" Silva v. Misi Nona
Adultery Subsequent to Marriage
Standard of proof required to establish adultery is proof beyond reasonable doubt Jayasinghe v. Jayasinghe
Incurable Impotency at the Time of Marraige
Gunatilake v. Millie Nona
Muthuranee v. Thuraisingham overruled by Tennakoon v. Tennakoon
Kandyan Law- Kandyan Marriages and Divorce Act
Muslim Law- Muslim Marriages and Divorce Act
Judicial Separation- Section 608 Civil Procedure Code
Grounds
1) Further cohabitation with the defendant has become dangerous or intolerant to the plaintiff 2) State of affairs brought by the unlawful conduct of the defendant (does not have to be criminal) Wijesinghe v. Wijesinghe
Nullity of Marriage
Putative Marriage
This is an exception to the rule that a marriage is null and void ab initio and has none of the consequence of a valid marriage. Where a marriage is contracted between two parties, where one or both of the spouse were ignorant of the impediment to their marriage, the doctrine of putative marriage is applied. Fernando v. Fernando
Void Marriages
Voidable Marriages
Example: impotency, mistake, duress
Section 15 MRO Where either party to the marriage is below the prescribed age
Section 16 MRO Where the parties to the marraige are within the prohibited degrees of relationship
Section 18 MRO Where either of the parties has contracted a prior marriage not yet legally dissolved or declared void

3. Interpretation and Analysis

Learning Outcome: Understanding the steps and process of engaging in legal reasoning and developing a sound argument based on legal authorities.

3.1 Developing a fact pattern

A practitioner will gather the facts and documents relating to the client's issue after the initial consultation. Thereafter, setting out a clear, chronological account of all relevant facts of the case or client inquiry (i.e. developing a fact pattern, is useful to a practitioner) as the facts generally form the descriptive part of the final legal output. This output could range from a petition, written submission, or a legal opinion. Figure 4 below traces the general steps of a practitioner when engaging a client.

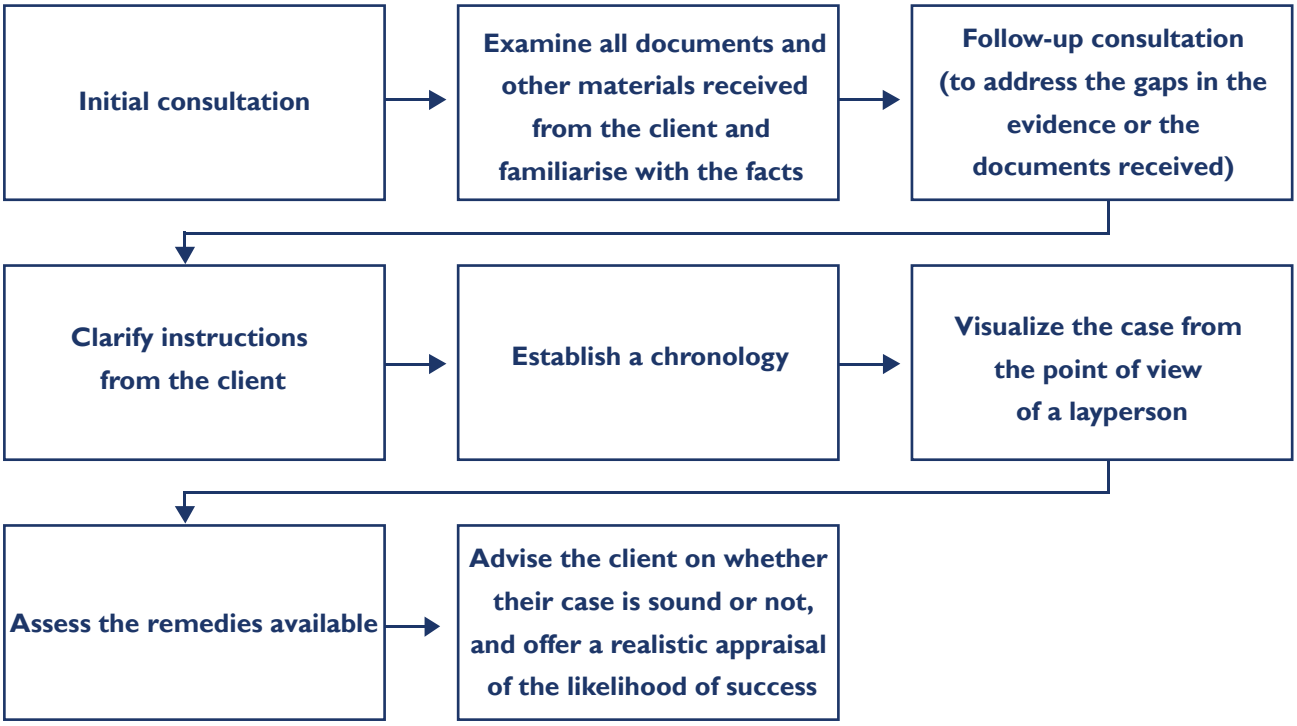


Figure 4

Figure 5 below presents a detailed step-by-step guide to developing a fact pattern.

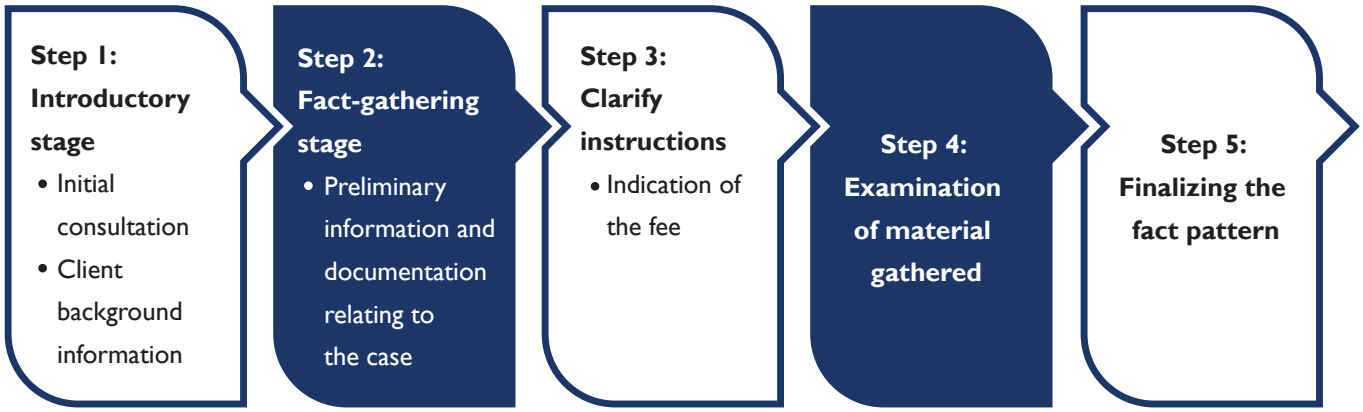


Figure 5

Step 1: Introductory stage

Obtaining basic client information: During the initial consultation, the client must be addressed in a manner that puts them at ease. It is the stage at which a practitioner introduces themselves and exchanges a few courteous remarks. (See the box on good practice tips below)

Simple questions should be used to confirm important details and client background information. Depending on the nature of the case, client information can include name, address, date of birth, period of time at current address, family relationships, educational history, employment history, criminal history, immediate medical needs, and emergency contact information. The practitioner should exercise discretion on the extent of client information required. They should not request irrelevant information, which could amount to an intrusion into the client's privacy.

Practice Tips

Questioning technique is very important during a client consultation. Some sample questions are listed below:

- *"I see you're having an issue with X; can you tell me more about that?"*
  - It is essential to allow the client to explain what their problem is. Instead of asking detailed questions at the outset, ask the client to explain the facts of their case. This approach can help identify what is most important to them and to obtain a general picture of the issue.
  - Do not make assumptions. Listen to what the client has to say.
  - If the client is vague or unclear about certain things, always follow-up for more details.

- *"What are you most concerned about?"*
  - A client consultation allows a practitioner the time to learn what concerns the client. This could be the outcome of the case, or it could be the cost of legal services. Knowing the client's concerns can help the practitioner proceed in a way that will best serve the client's interests and priorities.

Step 2: Fact-gathering stage

The next step is to obtain more specific information about the matter the client wishes to discuss and obtain advice on.

Bear in mind that the practitioner is not responsible for discovering the facts of the case. The client must provide all the facts during consultations. Once the client provides all the relevant information, the practitioner should maintain clear correspondence where the client has confirmed the facts and authorised the practitioner's use of the facts. When there are areas of doubt in the facts, the practitioner should seek clarification from the client. Preliminary information and documentation gathered may include:

- The circumstances leading up to the alleged event or issue;
- The precise nature of the event or issue;
- Documentary evidence, such as correspondence, reports, or financial documents;
- The details of the persons present during the event(s) – whether or not they participated in any of the alleged acts;
- Details of any witnesses who can testify as to the events; and
- Secondary sources, such as media reporting on the event or issue.

    E.g. if the client wishes to challenge a new regulation on public health requirements for new businesses issued under Sri Lanka's Quarantine Ordinance, news reports on the new regulation may form part of the preliminary information.

Practice Tips

Note-taking

- A practitioner must try to take selective notes during the consultation, as there will not be enough time to write everything down. Too much writing can distract the practitioner from listening to the client attentively.
- A practitioner should brief and take clear notes on the main points and facts. Keywords and phrases can be underlined to reflect what needs further information or details.
- A practitioner should also maintain a detailed file note of what was discussed and agreed upon, what was advised, and what further action is to be taken by the practitioner and the client.

Clarification: The practitioner must check that they fully understand what the client is saying. Such clarification involves referring to something the client has said and getting the client to provide further specific information about it.

Keeping the focus: The practitioner should keep the conversation focused on relevant matters by building on what the client has said. On occasion, a client may digress, and the practitioner should gently refocus the conversation on the relevant issue at hand.

Step 3: Clarify instructions

The next stage of the consultation should clarify the instructions from the client. For example, a practitioner should clarify the dispute resolution mechanism the client wishes to pursue. The mechanism could either be litigation or an alternative dispute resolution mechanism, such as negotiation, mediation, conciliation, or arbitration (see section 4.2 on practical tips for a legal practitioner for more information). A practitioner should also clarify the client's willingness to settle the matter.

If the client wishes to pursue legal action, then ascertain the course of legal action the client wishes to pursue. Depending on the issue, the client may wish to institute legal action, or if they are the responding party, to contest the other party's claim. In the event that the client wishes to institute action, there may be more than one legal remedy available. The practitioner should initiate any preliminary legal steps that need to be taken to safeguard the best interests of the client. These preliminary legal steps would also involve evaluating the suitability and potential of resolving the dispute at hand using alternative dispute resolution mechanisms. In certain cases, the facts of a case will preclude the institution of an action. Based on the facts of the case, the practitioner has a duty to inform the client of the available modes of dispute resolution.

If the client wishes to settle, then steps should be taken to ensure that the best possible settlement is secured for the client.

At this stage of the process, the practitioner should provide an estimate of the fees that would be

Step 4: Examination of documents, persons, and scenes, and follow-up consultations

Inspect and thoroughly examine all documents, exhibits, and other materials made available. If possible, interview eyewitnesses to the alleged event to obtain their version of the facts and any other potential witnesses who may have information relevant to the case. If applicable, examine the scene of the alleged event.

Practice Tips

Make a list of the documents handed over by the client. Then request the client to sign off on what they have handed over.

As far as possible, avoid accepting original documents. A legal practitioner can be held in contempt of court for misplacing an original document.

Step 5: Finalizing the fact pattern

Once the practitioner receives and records all information with respect to the facts of a case, they should prepare a written fact pattern or chronology (i.e., a detailed account of the timeline of the event, and the key facts leading up to the event). This fact pattern will feed into a legal output such as a plaint or petition.

3.2 Spotting issues

When the fact pattern is finalized, a practitioner can identify the issue. i.e., the precise legal question(s) raised by the facts. The issue indicated by the fact pattern can reveal either an issue or question of law or an issue or question of fact. The terms issue and question are often used interchangeably.

- **What is an issue of law?**

An issue of law is an issue regarding the application or interpretation of a law or an issue on what the relevant law is.[9] An issue of law can relate a substantive element of a law. For example, the question of what constitutes public order under article 15 of the Constitution is a substantive issue of law. Moreover, an issue of law can be procedural. For example, the question of whether a respondent is statutorily entitled to raise the time bar objection (i.e., where the appellant has delayed in filing the appeal) before a court may be considered an issue of procedural law.

- **What is an issue of fact?**

An issue of fact is an issue concerning the factual elements or the material facts of the dispute. For instance, whether or not a party accepted a gift is an issue of fact.

- **What is the difference between an issue of law and an issue of fact?**

  - An issue of law arises when "the doubt or difference centres on what the law is on a certain set of facts." An issue of fact arises "if the doubt centers on the truth or falsity of the alleged facts."[10]

  - A court's decision on an issue of fact has generally no precedential value (in common law jurisdictions), whereas its decisions on an issue of law may have precedential value.

  - In common law jurisdictions, the appellate court is permitted to review only the lower court's decisions pertaining to an issue of law, and not an issue of fact. For instance, article 128 of the Constitution of Sri Lanka states:

"An appeal shall lie to the Supreme Court from any final order, judgment or decree or sentence of the Court of Appeal in any matter or proceedings, whether civil or criminal, which **involves a substantial question of law,** if the Court of Appeal grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings" (emphasis added).

[9] Cornell Law School, Legal Information Institute, Wex at *https://www.law.cornell.edu/wex/question_of_law.*
[10] Pagsibigan v. People, et al. [2009] 606 Phil 233.

A practitioner may begin 'issue spotting' by asking several preliminary questions. These can be a mix of the following questions:

- Who are the parties?
- If applicable, what is their relationship to each other?
- What were their actions?
- Who was affected by their actions?
- How were they affected?

Thereafter, a practitioner can use the following steps for issue identification:

i. Identify each area of law possibly involved
ii. Identify the elements necessary for a cause of action under each law identified
iii. Apply the elements of the law to the client's facts to determine the key facts
iv. Identify the relevant legal issue(s)[11]

Once the issues of law and fact are identified, the practitioner should follow a methodical approach to conduct their analysis. The analysis should lay out the issue to be discussed, the legal rule relevant to the issue, the analysis of the pertinent facts based on that rule, and the overall conclusion.[12] The analysis can be presented using the IRAC system, which is a widely used method of organizing legal writing.

[11] Cengage Learning, 'Legal Research, Analysis, and Writing' at *http://www.delmarlearning.com/companions/content/0766854558/resources/chapter10.asp* .
[12] Columbia Law School, 'Organizing a Legal Discussion (IRAC, CRAC, ETC.)' at *https://web.law.columbia.edu/sites/default/files/microsites/writing-center/files/organizing_a_legal_discussion.pdf*

3.3 The IRAC system

Issue: What is the legal question that needs to be analyzed? Why does this issue need to be analyzed? In the legal output, this first section would give the reader an understanding of what the practitioner intends to discuss and why they must discuss it.

Rule (relevant law): What are the relevant legal principles derived from statutes and case law tied to the issue identified? Establish the governing legal rule(s) that the court will employ to resolve that issue.

Application of relevant law to the facts: Apply the rule to the facts, using the statutory provisions and cases discussed in the rule section to draw analogies or distinctions. What is the evidence that supports the client's position? Are any of the defenses relevant?

Conclusion: Concisely state the outcome of the analysis based on the application of the rule(s) to the facts of the case.

An example of how to use the IRAC method is provided below.

Scenario: Ruvini has come to you for a legal consultation. She claims to have injured someone with her car after suffering a blackout while driving. While the police have filed a case against her under the Motor Traffic Act, Ruvini fears that a civil case will also be filed by the victim's family. She seeks your advice regarding the latter issue.

Issue: What is the issue regarding Ruvini? Has she hit someone with her car after suffering a blackout while driving? Write it down; the issue here is whether Ruvini will be held liable for negligence while driving.

Relevant law: What are the relevant legal principles tied to the issue identified? E.g. duty of care, breach of duty, causation. Lay each one out. Are there any defenses that may be applicable?

Application of relevant law to the facts: Referring to the law laid out in the relevant law section, apply the (relevant) facts to the law. What evidence do you have in support of Ruvini owing a duty of care, and of breaching that duty? What evidence applies to causation, i.e., the chain of events that led to Ruvini breaching that duty? Are any of the defenses relevant?

Conclusion: Assuming that Ruvini hit someone with her car, it is likely that she owed a duty of care and breached it. However, Ruvini may be able to successfully rely on the defense of automatism, if it is established that she was incapacitated through no fault of her own.[13]

[13] Automatism: Involuntary conduct caused by some external factor . A person is not criminally liable for acts carried out in a state of automatism since his conduct is altogether involuntary. For instance, actions carried out while sleepwalking or in a state of concussion or hypnotic trance, a spasm or reflex action and acts carried out by a diabetic who suffers a hypoglycaemic episode. Automatism is not a defence if it is self-induced (by taking drinks or drugs).

3.4 The authoritative value of sources

Once the relevant legal issues have been identified, the legal practitioner must identify all relevant legal authorities, i.e., statutes, judgments, and other sources of law that can be presented in support of an argument. The authorities can help answer the questions arising from the identified issues. Bear in mind that legal authorities may have portions that will strengthen or weaken one's case. It is the practitioner's task to take a relevant argument and meld it into their case in a manner that is beneficial to their case. (See section 2 for more information on the types of legal sources that can be presented as legal authorities)

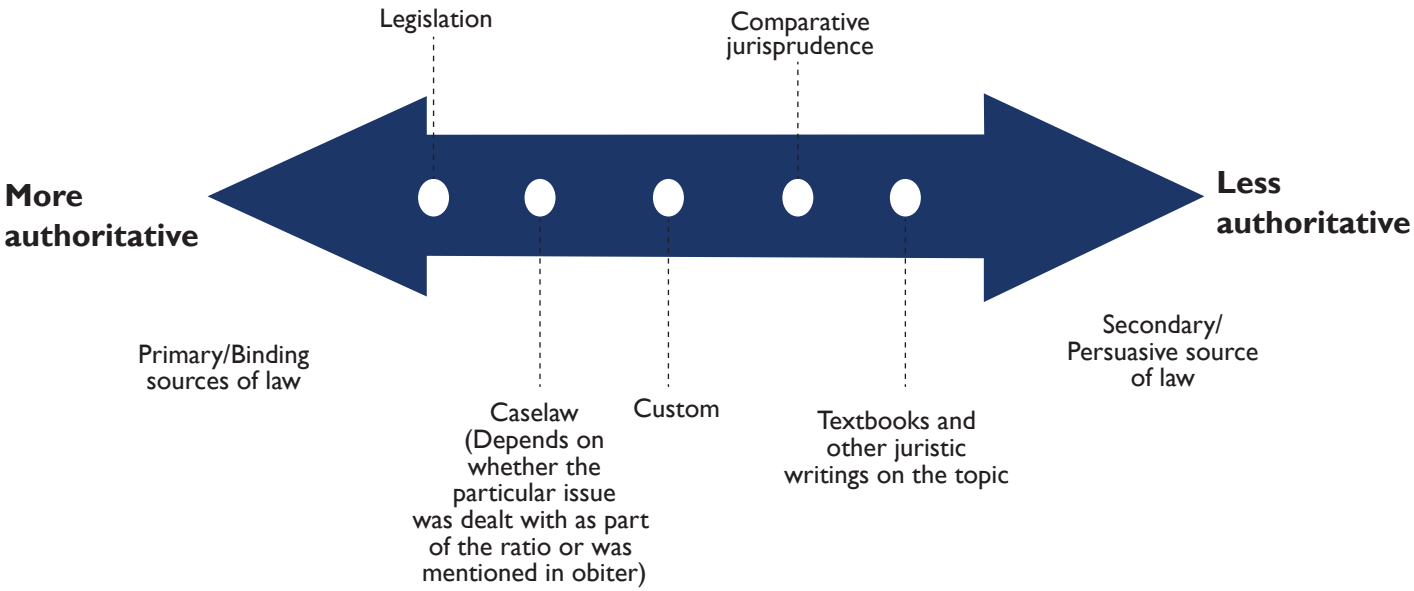


Figure 6
The spectrum of authoritative value of legal sources

The authoritative value of sources depends on the types of sources that take precedence over others. The more authoritative a source is, the more likely it would be recognised and accepted by a court.[14] The authoritative value of a source is also dependant on whether the specific legal authority is regarded as binding or persuasive and which court was involved in its development. The location of a court within a hierarchy is especially important in this regard. These points are explored further below.

[14] 'Authoritative Sources', USLegal.com, at *https://legalresearch.uslegal.com/authoritative-sources/#:~:text=An%20authoritative%20source%2C%20in%20the, Primary%20sources%20articulate%20the%20law.*

a. Binding authority v. persuasive authority

As discussed in Section 2.2, a practitioner must be familiar with all the authorities described as binding sources of law (also known as hard law) and persuasive sources of law (also known as soft law). Binding sources of law or a source of law that has binding authority is binding on the court. In other words, these are the sources of law that a court must follow because they bind the court.[15] By contrast, sources of law with persuasive authority are those that are not binding on the court but may be instructive for the court.

Exercise

Classify the following sources of law as binding authorities or persuasive authorities.

No.	Source	Binding (Y/N)	Persuasive (Y/N)
01.	R v. Clegg [1995] 1 AC 482		
02.	International Covenant on Civil and Political Rights		
03.	Emergency (Miscellaneous Provisions and Powers) Regulations issued by Extraordinary Gazette No. 2289/07		
04.	G.L. Peiris, The Law of Evidence in Sri Lanka (1974)		

b. Hierarchy of courts and jurisdictions

A practitioner must be mindful of the role of the courts when relying on certain legal authorities. For instance, if the practitioner is building their case purely on authoritative caselaw, then they should be mindful of the court that decided the case. Table 4 below revisits the court hierarchy and court jurisdictions in Sri Lanka.

[15] Georgetown University Law Center, 'Which court is binding?' at *https://www.law.georgetown.edu/wp-content/uploads/2018/07/Which-Court-is-Binding-HandoutFinal.pdf.*

Court	Jurisdiction
Supreme Court	■ Jurisdiction in respect of constitutional interpretation ■ Jurisdiction for the protection of fundamental rights ■ Final appellate jurisdiction ■ Appeals from judgments, sentences, and orders pronounced at a High Court Trial at Bar by virtue of the Code of Criminal Procedure (Amendment) Act, No. 21 of 1988 ■ Consultative jurisdiction, i.e., the president may consult the Supreme Court on any legal matter ■ Jurisdiction in election petitions (Presidential Elections) ■ Jurisdiction in respect of any breach of privileges of Parliament ■ Sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution.[16] ■ Jurisdiction in respect of such other matters that Parliament may by law vest [17] ■ Admission, enrolment, suspension, and removal of Attorneys-at-Law
Court of Appeal	■ Appeals from the High Court in the exercise of its appellate or original jurisdiction[18] ■ Appeals from any court of first instance and any tribunal or other institution. Sole and exclusive cognizance by way of appeal, revision and restitution, power and authority to inspect and examine records of any court of first instance[19] ■ Jurisdiction to grant and issue according to law, writs of certiorari, prohibition, procedendo, mandamus, and quo warranto[20] ■ Jurisdiction to hear other matters relating to the exercise of the powers of the Elections Commission established under article 103 of the Constitution ■ Jurisdiction to grant and issue writs of habeas corpus[21] ■ Jurisdiction to grant injunctions[22] ■ Jurisdiction to try election petitions in respect of the election of Members of Parliament[23] ■ Jurisdiction to hear appeals from decisions of the Right to Information Commission

[16] The Constitution of the Democratic Socialist Republic of Sri Lanka, article 120.
[17] Ibid. Article 118.
[18] Ibid. Article 139.
[19] Ibid. Article 145.
[20] Ibid. Article 140.
[21] Ibid. Article 141.
[22] Ibid. Article 143.
[23] Ibid. Article 144.

The High Court Inclusive of the High Court of Civil Appeal; Provincial High Court and the Commercial High Court	■ Possesses both civil and criminal jurisdiction ■ Original jurisdiction over prosecution of offences committed within a particular province ■ Admiralty jurisdiction ■ Commercial jurisdiction, which is vested by the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 ■ Jurisdiction to hear cases involving attempts to influence the outcome of a decision made, or an order issued, by the Judicial Service Commission[24] ■ Applications for the return of, or access to, a child, under the Hague Convention, is handled by the High Court of the Western Province (Civil Aspects of International Child Abduction Act, No.10 of 2001) ■ Appellate jurisdiction over convictions, sentences, and orders imposed by the Magistrate Courts and Primary Courts within the province ■ Write jurisdiction in respect to powers exercised under any law or statutes enacted by the Provincial Council of that province, with regard to an issue delineated in the Provincial Council List ■ Appeals of decisions reached by Labour Tribunals, Agrarian Tribunals, and Small Claims Courts ■ Jurisdiction with respect to the enforcement of arbitral awards
District Court	Original civil jurisdiction E.g. tort and delict; money recovery; insolvency cases; testamentary cases; marital disputes; divorce and nullity of marriage; guardianship over persons of unsound mind; care of minors and their property.
Magistrate Court	Original civil and criminal jurisdiction E.g. criminal cases filed under the Penal Code and other laws within its jurisdiction; post-mortem examinations; issue of warrants to arrest and produce suspected persons; the issue of search warrants; ordering persons to enter into bonds of good conduct; preventive jurisdiction on public nuisance.

Table 4

Exercise

Scenario: Tehani and Ramesh were married in 2010. They bought their first home to begin a family. They have three minor children. Subsequently, Tehani and Ramesh no longer wish to be married to each other.

Tehani seeks legal advice on how to dissolve the marriage. Trace the steps a practitioner must take in developing the fact pattern, issue spotting, and deciding on authoritative sources of law.

[24] Article 111 L (2).

3.5 Interpreting statutes

The main task of legal research is to interpret legal authorities and apply them to the given facts of the case. This step is the most important part of legal research. The legal practitioner is required to read the relevant statutes and subsidiary legislation and apply relevant provisions to the identified issues.

The following sections briefly discuss the literal approach and the purposive approach to interpretation, which are the most commonly used approaches to statutory interpretation.

Based on the facts of a case, a practitioner may opt to take either a literal approach or a purposive approach to interpretation. The core features of these two approaches are noted below.

Literal Approach	Purposive Approach
• Based on the ordinary grammatical meaning of words. • May be deviated from only in exceptional and definitive circumstances. E.g. to avoid absurdity and to resolve ambiguity. • In all other cases where the language is clear, the ordinary meaning of the words should be given effect.	• The focus is on promoting the general legislative purpose underlying the provision. • Allows one to look beyond the ordinary meaning of the words and delve into the intention of the legislature.

Figure 7

Example of the literal approach:

Impersonating "any person entitled to vote" at an election is an offence under the Elections Act. X impersonated someone whose name was on the register of electors but who had died between the date on which the register had been compiled and the date of the election.

Since dead persons are not, literally speaking, "entitled to vote", a literal approach to interpreting the Act suggests that X has not committed an offence.[25]

[25] This approach was taken in the case of Whiteley v. Chappell (1868) LR 4 QB 147.

Example of the purposive approach:

The Administration of Estates Act provides for the order of inheritance in cases in which a person dies without making a will. In literal terms, the effect of the Act would have been that a murderer (if they were an heir to the estate) could inherit the estate of their victim.

However, it could be argued that the legislature could not have intended for a murderer to benefit from their own act and therefore benefit from the victim's will. Therefore, a purposive approach to interpreting the Act may lead to the conclusion that the murderer cannot inherit from the victim, despite the Act being silent on the issue.[26]

3.6 Interpreting judgments

When using caselaw, the practitioner must be able to differentiate between the main rationale of the judicial decision (the ratio decidendi) and other ancillary judicial pronouncements (obiter dicta). Moreover, special consideration ought to be given to the status of the court within the judicial hierarchy, and the number of judges who decided the case, when determining the authoritative strength of the judgment.

A decision of a judge has two components:

- The decision on the dispute between the litigants who are currently before the judge; and
- The reasons for the decision. This second component is likely to be a statement of the legal rules that the judge applied. These rules and principles may be treated as authoritative statements of the law for the purpose of future precedent, i.e., that it is necessary to abide by this precedent when the same points arise again in litigation.[27]

Usually, courts are reluctant to depart from previous decisions because such deviations cause legal uncertainty.

a. Stare decisis

Stare decisis (to stand by things decided) is a traditional doctrine employed by the courts to ensure legal certainty. In other words, a court should "follow precedent established by previously decided cases with similar facts and issues to provide certainty and consistency in the administration of justice."[28] This principle requires respect for precedent as a matter of principle while "nevertheless allowing exceptions subject to imposing the burden of argument on anyone who proposes to make an exception."[29]

[26] This approach was taken in the case of Re Sigsworth [1935] 1 Ch 98.
[27] L.J.M. Cooray, An Introduction to the Legal System of Sri Lanka, (Stamford Lanka (Pvt) Ltd, 2003) 157.
[28] Thomson Reuters Practical Law, Glossary at *https://uk.practicallaw.thomsonreuters.com/3-509-2489?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=Latin%20term%20that%20means%20%22to,in%20the%20administration%20of%20justice.*
[29] Ibid.

What is precedent?

Precedent refers to an adjudged case or decision of a court of justice, considered as providing an example or authority for an identical or similar case afterwards arising a similar question of law.[30] Precedent is incorporated into the doctrine of stare decisis and is limited to the decision itself and as to what is necessarily involved in it.

For the doctrine of stare decisis to apply in a legal system, two conditions are necessary:

i. A hierarchy of courts: a decision is binding on a bench of lesser authority. Thus, it is necessary for there to be a clearly graded hierarchy of authority.
ii. System of law reporting. E.g. the New Law Reports, Sri Lanka Law Reports.[31]

b. Ratio decidendi

Ratio decidendi (the rationale for the decision) is the principle of law on which the court reaches its decision. The ratio of a case must be deduced from its material facts, the reasons the court gives for reaching its decision, and the decision itself. Only the ratio of a case is binding on inferior courts, by reason of the doctrine of precedent.[32]

The task of extracting and applying the ratio of a case will fall on a judge in a subsequent case. In Quinn v. Leathem, a landmark House of Lord's case in the United Kingdom, a question arose on the applicability of a past decision (Allen v. Flood [1989] AC 1) of the same House. In this case, the court noted:

> "Every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of expressions which may be found there are not intended to be expositions of the whole law but are qualified by the particular facts of the case in which such expressions are found. The other is that a case is only authority for what it actually decides." [33]

In other words, when deducing the ratio of a potentially applicable case, all involved parties should consider the key fact that a principle laid down in a case shall be understood in the 'context of the peculiar facts and circumstances of that case. Such principles have no universal application unless the facts and circumstances in both cases are on all fours.'[34]

c. Obiter dicta

Obiter dicta (that which is said in passing) are remarks made by a judge in passing while setting out the judgment. It was not essential to the decision in the case. It does not create a binding precedent, as it does not form any part of the ratio.

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[30] Black's Law Dictionary (8th Edition, 2004).
[31] Cooray (n 26).
[32] Elizabeth A Martin & Jonathan Law, A Dictionary of Law (Oxford, 2008).
[33] Quinn v. Leathem [1901] UKHL 2.
[34] A.H. Sisira Kumara and others v. A.H. Dayliya Kanthi and others [2021] S.C. Appeal No. 138/2016.

Example (Fictional case extracted from Legal Technique by Christopher Enright).

Applicable statute: Section 6 of the Dog Act of 1947 states that "a person may bring an action against the owner of a dog if it enters the premises or the land owned by that person".

Judgment (applying a literal approach to interpretation): Elisabeth owns a meadow. Elisabeth sues Kit Walker because Kit allowed his pet wolf, Devil, to walk into her meadow and molest her pet rabbit. Elisabeth now brings proceedings under section 6 of the Dog Act. Three things are clear regarding a breach of section 6. First, Elisabeth's meadow constitutes 'land'. Second, Elisabeth is the owner of the land, so she is entitled to bring the action in her own right. We add that this would be the case even if Elisabeth had not discharged her mortgage to the Rural Bank some years ago. Third, Devil has entered Elisabeth's land.

What is not immediately clear is whether Devil, a wolf, is a dog within the meaning of section 6. From a zoological perspective, a wolf is a member of the dog family. On the surface, this may seem conclusive on the question of whether a wolf is a dog. However, a number of provisions of the Dog Act referring to dogs clearly mean only dogs of a type which are ordinarily domesticated. In this context, section 6 may have to be interpreted in the same way. Therefore, in section 6 'dog' means only a dog of a type which is ordinarily domesticated.

In this case, the offending animal is a wolf. While the particular wolf was domesticated, as a species wolves are not usually domesticated. For this reason, Devil, is not a dog within the meaning of section 6 of the Dog Act, so the plaintiff fails in her claim.

Ratio decidendi: the interpretation of the word 'dog' in the section of the Dog Act means only a 'dog of a type which is ordinarily domesticated' and did not extend to wolves.

Obiter dicta: Elisabeth retains the ability to institute action even if she had not discharged her mortgage to the Rural Bank some years ago.

d. Comparative jurisprudence

Indian, South African, and English cases are of persuasive authority in Sri Lanka.[35] However, they are not considered binding authorities. Although South African judicial decisions interpret Roman-Dutch Law and English cases in areas in which our law is similar to English law, a court in Sri Lanka cannot be bound by a foreign decision. According to L.J.M. Cooray's An Introduction to the Legal System of Sri Lanka, there were two qualifications to the above point: (1) An appeal court in a colony is bound by the decision of the House of Lords in a jurisdiction where the English law applies, and (2) when interpreting a local statute based on an English statute, the local courts are bound to follow the interpretation of that statute by an English Court of Appeal.[36] These rules would be less relevant to Sri Lanka today, as it is no longer a British colony.

[35] Cooray (n.26).
[36] Ibid.

Comparative jurisprudence allows a legal practitioner to study and analyse a similar law in a foreign jurisdiction. This would involve the comparison of laws, norms, and regulations of other countries. Comparative jurisprudence can have additional benefits. For example, it may reveal an area of the law that requires reform.

Example:

A recent case where comparative jurisprudence was used by the Supreme Court: Gomes v. Gomes.[37] In this case, the plaintiff instituted an action for divorce on the grounds of constructive malicious desertion in 2001. The action was filed after disagreements between the parties and following an incident that took place in 2001. The District Court held that a "degree of matrimonial relationship" had continued after the incident, and on that basis, dismissed the plaintiff's claim. The Provincial High Court of Civil Appeal affirmed this decision. In its decision on appeal, the Supreme Court noted that the couple had continued to occupy the same house and was involved in the activities of the household. The Court further held that the "failure of a marriage" is not a ground for divorce in Sri Lanka. Citing several cases from South Africa, India, and England, the Supreme Court made the following observation:

> …the restriction of the grounds on which a divorce may be granted to the solely "fault-based" grounds set out in section 19 of the Marriage Registration Ordinance, is alien to our traditional laws which allowed for divorce to be granted on the ground of the breakdown of a marriage or upon consensus …Yet, it appears that these initially alien ideas based on European theological values which were introduced by the colonial powers, have embedded themselves into the value system of this country during the time Ceylon [as Sri Lanka then was] was governed by these colonial powers and persist unchanged, to this day and, indeed, are often espoused as our very own traditional values.
>
> However, the **Law in England,** which enabled a divorce only on "fault-based" grounds from the time of the passing of the Matrimonial Causes Act of 1857, was changed in 1969 with the enactment of the Divorce Reform Act of 1969, later replaced with the Matrimonial Causes Act of 1973, both of which provides for divorce on the ground that a marriage has irretrievably broken down…
>
> …**in South Africa,** the law enabled a divorce only on "fault-based" grounds until 1979…The recommendations and report of the South African Law Commission led to the passing of the Divorce Act No. 70 of 1979 which did away with the "fault-based" approach and enabled divorce on the ground of irretrievable breakdown of the marriage where the Court is satisfied that, "the marriage relationship between the parties has reached such a stage of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them."
>
> **…In India,** in addition to the provisions of section 13 of the Hindu Marriage Act, 1955 and section 27 of the Special Marriage Act, 1954 which state that a non-consensual divorce may be obtained by an aggrieved spouse who establishes adultery, cruelty, desertion for not less than two years and some other limited and specific grounds. Section 13B of the Hindu Marriage Act and section 28 of the Special Marriage Act provide for spouses to obtain a "no-fault" consensual divorce by mutual consent if they have lived separately for one year or more and satisfy the Court that the two spouses

[37] *Gomes v Gomes,* (2018) S.C. Appeal No. 123/14.

"have not been able to live together and that they have mutually agreed that the marriage should be dissolved." Although the statute law of India does not list "irretrievable breakdown of the marriage" as a ground for granting a divorce, the Supreme Court of India has, on occasion, taken the view that the continuance of a marriage which has irretrievably broken down is tantamount to cruelty, which [unlike in our law] is a statutorily recognized ground for divorce in India…"

3.7 Preparing legal arguments and output

The final stage of legal research involves developing the legal output. This output will contain the legal argument that the practitioner intends to present on behalf of their client. This stage would entail writing a petition or written submissions in the context of litigation or writing a legal opinion in the context of a client inquiry.

The legal authorities used in the legal output must be appropriately cited so that a reader can understand the basis for a particular argument. Legal practitioners must develop skills in clear, concise, and simple writing, which is accessible to a diverse set of readers. 'Legalese', where the language used is highly technical and inaccessible, should be avoided. The clearer the writing, the more compelling the argument. See Section 4 for more tips on writing.

a. Writing a petition or written submission

In Sri Lanka, the Rules of the Supreme Court drafted by the Chief Justice and three judges from time to time contain specific information, instructions, and templates pertaining to the practice and procedure of the Court.[38] These rules contain guidelines on the following:

i. Structure and content of a petition or written submission;
ii. The template in which it has to be drafted; and
iii. The documents that should be annexed.

The Supreme Court Rules specify that a petition is filed with an affidavit in support of the averments and should also contain the originals of the documents crucial to the application (or duly certified copies) in the form of exhibits.

In terms of written submissions, the following graph presents the layout as provided in the rules.

[38] Official website of the Supreme Court of Sri Lanka, at *https://www.supremecourt.lk/images/scrules.pdf*.

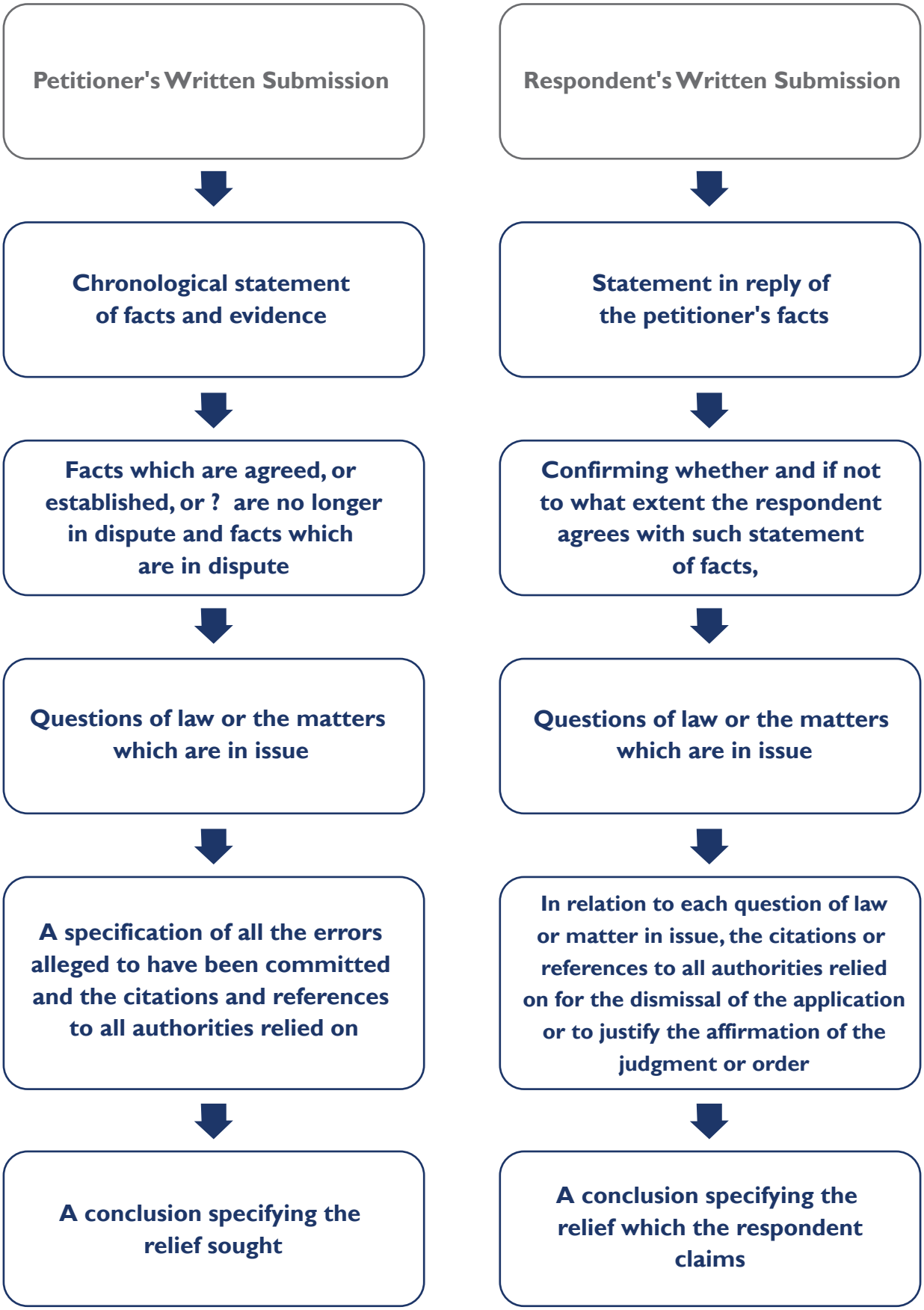

Figure 8

[39] University of Tasmania, A Guide to Writing Submissions, at *https://www.utas.edu.au/__data/assets/pdf_file/0008/738611/A-guide-to-writing-submissions.pdf* .

The following general tips are extracted from A Guide to Writing Submissions.[38]

Practice Tips

Clear – sentences should make sense to the judge and opposing counsel on a first reading.

Logical – the argument should follow a logical sequence and make logical sense.

Structured – there should be clarity in terms of how the arguments are organized and presented to enable the reader to easily follow and understand them.

Concise – written submissions need to be concise, i.e., to the point. They need to flag the client's position and set out the legal grounds, authorities, and the main argumentative points that need to be raised before the judge. Concise written submissions help guide proceedings and allow the judge and practitioner to move through the main arguments during oral proceedings. The practitioner will usually expand on their written submissions during their oral submissions.

Evidence-based – Any assertions about what the law is or how the law applies must be supported by proper authorities, e.g. statutory provisions and caselaw.

Opinionated – The written submissions reflect the position of the client and are therefore one-sided. However, it is vital that counterarguments are anticipated and rebutted. In essence, the written submissions should be presented in a manner that frames the practitioner's arguments as correct or sound and the counter arguments as incorrect or unsound.

b. Writing a legal opinion

A legal opinion by a practitioner is generally issued in the form of a letter "expressing legal conclusions about and a legal analysis of a transaction or matter that is relied on by the addressee of the opinion."[40] The recipient of a legal opinion is often a layperson. The purposes of a legal opinion are usually to:

- Inform the client of the legal effect of a transaction or assess the lawfulness of an action; or
- Identify legal risks that the client should consider further and evaluate.

[40] Thomson Reuters Practical Law, Glossary- Legal Opinion, at *https://uk.practicallaw.thomsonreuters.com/1-200-1399?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=Also%20called%20an%20opinion%20letter,the%20addressee%20of%20the%20opinion.*

General structure of a legal opinion

- **Instructions**: The instructions would usually entail the facts as conveyed by the client. Any fact that has not been supplied should not be included in the narration. However, any natural interface or presumption the practitioner has made from the facts may be included in the opinion.

- **The questions**: List out the specific questions that the client wishes to have answered.

- **The analysis**: The relevant provisions of the law should be stated. The analysis should then elaborate on how the law applies to the facts. Indicate where the client stands regarding the law applicable.

  Note: To simplify the analysis, number all paragraphs. This practice will relieve the practitioner of the burden of repeating previously written information.

- **The answer**: To answer the client's questions, the practitioner will rely on the fact and analysis sections. Answers should be clear and to the point. If the question requires a 'yes' or 'no' answer, provide such an answer and elaborate where necessary.

  E.g. A client wishes to understand whether a gaming license can be obtained in Sri Lanka. The answer to the question may be 'yes', and the opinion should then elaborate on the conditions, fees, and terms applicable to such a license.

- **Disclaimers**: Disclaimers can safe-guard the practitioner's reputation in case the opinion becomes outdated or is premised on incorrect facts. Under the disclaimer, state that the opinion provided is based on the law applicable at the time of drafting the opinion, and on the facts and documents provided by the client. List all the documents that the client provided for the purpose of seeking legal opinion.[41]

Practice Tip

Citing statutory provisions or case law in the body of a legal opinion is rare. Such in-text citations should be included only if necessary. The general practice is to include references in the form of footnotes or endnotes.

[41] Martin Luenendonk, Legal Opinion, *https://www.cleverism.com/lexicon/legal-opinion-definition/*.

4. Practical Guidance

Learning Outcome: Gain practical skills in conducting legal research and in legal writing and argumentation.

4.1 Guidance on legal writing

Regardless of whether a practitioner is working on a petition, written submissions, or a legal opinion, most legal writing involves the analysis of a set of facts using legal rules taken from several sources, including statutes, case law, and secondary sources.

This section offers four tips for legal writing.

1. Use plain English

There is an increasing trend towards the use of plain English in legal drafting. Complicated and obscure terms should generally be avoided.

Example:
"The freedom of expression is **unremittingly debased** in Sri Lanka." This sentence uses two terms ('unremittingly' and 'debased') that are too complicated and obscure.

Use alternative, simpler terms to convey the same meaning: "The freedom of expression is **frequently violated** in Sri Lanka."

2. Use an appropriate style

The vocabulary a practitioner uses, the way they arrange words and the length of the sentences they write, form their own personal writing style. Style varies according to the purpose of writing, even for the same subject matter. For instance, a practitioner may find that the style used for a law essay is different to the style used in petitions, written submissions, and legal opinions.

Typically, a practitioner should use a simple style of writing where the sentences are direct and clear. Avoid unnecessary adjectives and hyperbole.

Example:
"It is altogether astounding how often the freedom of expression is violated in Sri Lanka." Although the phrase "it is altogether astounding" may add a certain degree of flair to the sentence, and may even be appropriate in an essay or article, it should be avoided in legal writing undertaken by a practitioner. Instead, the style should be sparser and more direct. For instance, the sentence could be: "The freedom of expression is frequently violated in Sri Lanka."

3. Pay attention to the sentence structure

a. Short sentences: There are two good reasons for keeping sentences short. First, shorter sentences are more reader-friendly. Longer sentences can be very taxing, and readers would often be compelled to re-read them. Second, shorter sentences leave less room for error. The longer the sentence, the harder it is to keep track of proper grammar and syntax.[42]

b. One idea per sentence: Try to ensure that each sentence conveys only one idea or thought. The less complicated the sentence, the better. Empathize with your readers. Remember they are reading your work for the first time, and do not have the benefit of the background thinking that underlies each sentence.[43]

c. Prioritize: A practitioner's overall written work should address each topic and issue in a logical order, and each sentence should also follow a logical structure. Sometimes the practitioner may need to include more than one idea in a sentence. When this need arises, they should present the primary idea first and the secondary idea later. Lead with the central point and conclude with secondary points, such as reasons, caveats, and clarifications.[44]

See the following example:[45]

Sentence: A defense to a claim form must, within 14 days from the date the defendant receives the claim form, be filed in court.

The same information can be conveyed in a clearer way by revising the structure of the sentence to place the subject and verb closer together and placing the intervening words at the end of the sentence.

Revised sentence: A defense must be filed in court within 14 days from the date on which the defendant receives the claim form.

4. Clearly explain the legislation, caselaw, and other materials

To provide a logical analysis of the legal issues related to a problem, question or opinion, a practitioner needs to understand and refer to legislation, case law, and other materials about the law. For example, a practitioner should be able to distill the key legal principles and findings contained within a judgment (i.e., the ratio decidendi).

[42] Gehan Gunatilleke, 'Build a City: How to Communicate Research Effectively' at *https://gehan-dg.medium.com/build-a-city-how-to-communicate-research-effectively-fdb718a34a26.*
[43] Ibid.
[44] Ibid.
[45] William R. Mckay, Helen E. Charlton and Grant Barsoum, Legal English: How to Understand and Master the Language of Law (Pearson Longman, 2011) 14.

4.2 Practical tips for a legal practitioner

1. Client management

When a practitioner undertakes a case, they should consider the following measures when managing their client.

- **Advise the client on maintaining records:** Advise the client to collate and keep the relevant evidence in a safe location. The advice may vary depending on the type of evidence. If it is documentary evidence, a client may be instructed to keep it locked in a safe. For electronic or digital evidence, a client may be advised to protect their storage devices and or encrypt their hard drive.

- **Advise the client on what they can and cannot do:** Advise the client on whether they should communicate with the opposing party. If the client must communicate, then advise the client on what they should say and should not say.

- **Schedule recurring consultations during the length of the case:** For instance, if the client will be cross-examined by the opposing party, meet with the client a few days before the cross-examination, and help the client prepare for potential questions.

- **Always keep the client informed of the progress of the case and what the future steps are:** Keep the client informed of the next court date.

2. Maintaining professional boundaries

A practitioner must bear in mind the professional boundaries that define the appropriate interaction between an Attorney-at-Law and a client. A legal practitioner must always ensure that they remain within their area of expertise.

If a practitioner provides special treatment to a client, such as meeting at odd hours, providing a home telephone number, permitting unscheduled drop in appointments, agreeing to unusual requests, or finding themselves drawn in and personally involved in their client's issues, then the practitioner may be at risk of violating professional boundaries.[46] In order to avoid the above situation, the following strategies for setting boundaries at the outset may be considered.

- **Structure:** Clear and predictable communication. Clarify relationship roles and responsibilities at the beginning.

- **Consistency:** Make predictability a priority in how meetings are scheduled and conducted, client communication takes place, billing is handled, and tasks are assigned.

- **Manage expectations:** It may be necessary to anticipate and repeat to the client what legal proceedings will be like, the cost of the work, the required tasks and level of involvement, and what the practitioner's role will be during a legal matter.

- **Set limits:** Areas such as your personal availability, the practitioner's professional role as the legal expert, and the extent of their involvement may need to be clearly outlined. [47]

[46] Washington State Bar Association, Are you Setting Boundaries with Your Clients?, at *https://www.wsba.org/for-legal-professionals/member-support/wellness/boundaries*.
[47] Ibid.

3. Alternative dispute resolution mechanisms

Prior to opting for litigation, a practitioner should evaluate the suitability and the potential of resolving the dispute at hand using alternative dispute resolution mechanisms. In certain cases, the facts of a case will preclude the institution of an action. Based on the facts of the case, the practitioner has a duty to inform the client of the available modes of dispute resolution.

These mechanisms range from negotiation (informal or formal), conciliation, mediation, and arbitration.

For example, in Sri Lanka, community mediation boards established under the Mediation Boards Act, No. 72 of 1988, can be an option for certain commercial matters, such as non-repayment of micro and medium scale loans and non-settlement of hire purchase and lease payments. This law also provides for certain minor criminal offences in the Penal Code Ordinance, No. 2 of 1883 to be resolved through either voluntary mediation or mandatory court-referred mediation (depending on the offence).

If the relevant contract has an arbitration clause, a practitioner must inform the client that the matter can only be resolved through arbitration.

A practitioner should also assess whether the given facts of a case present a situation where the matter cannot be litigated. This generally would apply in the case of prescription. For instance, section 8 of the Prescription Ordinance states that the action to recover any goods sold, shop bills, book debt, or work and labor should be brought before court within a period of one year.

4.3 Exercises

The following examples deal with several types of issues that a practitioner may encounter. In each case, the manner in which the research is conducted will differ.

Discuss how a legal practitioner would go about the required legal research to produce the required output and the steps they should take during and after the consultation.

a. Company M wishes to consult you on filing an action against Company W to recover money due on fertilizer supplied two years ago.

   Task: Trace the steps that a legal practitioner will take during and after the consultation.

b. Your client is a foreign national. She wishes to move to Sri Lanka for the foreseeable future and begin an IT start-up. The client seeks your legal opinion on the following issues:

   (i) What are the visa categories that she can apply under?
   (ii) Can she fund an IT start-up in Sri Lanka?
   (iii) What are the legal and regulatory steps she must take to incorporate a company in Sri Lanka?

Task: Identify the steps you will take in conducting research and set out the main points that will go into a legal opinion for your client.

c. Several months ago, substantive amendments were introduced to the Electricity Act. Your client owns a rooftop solar company, and he seeks a legal opinion to find out if his company will be affected by the recent amendments.

   Task: Identify the steps you will take in conducting research and set out the main points that will go into a legal opinion for your client.

d. The Naagama Municipal Council introduced signage with respect to a lake that is under its control. The Council was aware that the lake is used for recreational purposes including boating and water skiing. Part of the lake contained deep water while other parts were shallow. The Council erected a sign saying "Deep Water" to indicate a part of the lake that is deep. The client, an inexperienced water skier, was under the impression that the water all around the sign was deep. The client fell from his ski in shallow water near the sign and suffered substantial injuries to his spine as a result. He has come in for a consultation to find out whether he can claim damages from the Council.

   Task: Trace the steps that a legal practitioner will take during and after this consultation.

Efficient and Effective Justice Activity