

BENCHBOOK FOR TRIAL COURT JUDGES

JUDICIAL REASONING, WRITING AND RESEARCH

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I. METHODS OF REASONING

1. Analogy: drawing a conclusion on the basis of a similarity between cases.

1.1

Caution: For any conclusion to be validly drawn, the two cases must in fact be similar on all significant points. Any significant difference may make the conclusion in one case inapplicable to another.

1.2

Example: In *People v. X* (hypothetical case), the Supreme Court upheld the conviction of a person who had issued bad checks in connection with a financing scheme for the purchase of a car. The case before a particular Judge's Bench/Court likewise involves bad checks issued by a purchaser under a financing scheme. Conclusion: A conviction is in order.

1.3

Ruling on the basis of judicial precedent is reasoning by analogy.

1.4

Procedure:

1.4.1

Research for a decided case of the Supreme Court that, by heading or topic, deals with the case before you.

1.4.2

Determine whether or not the fact-pattern in the decided case and in the case before you is the same.

1.4.3

Determine whether or not the laws cited in the decided case are still in force.

1.4.4

In case of identity or substantial similarity in fact-pattern, and if the laws cited in the decided case are still in force, apply the rule in the decided case.

1.5 Analogy may also be the basis for filling in lacunae in the law.

Example:

Ozoa v. Vda. de Madula

An employer who was held subsidiarily liable for the civil liability of an employee in a criminal case wished to appeal from the adverse decision. There is no rule fixing the period for appeal. The Supreme Court applied the same rule governing appeals in criminal cases: fifteen days from notice or promulgation, by filing a notice of appeal.[1]

2. Induction: the process of forming a general conclusion by examining a number of particular instances.

2.1

It is basically the search for an explanation of a pattern.

2.2

It is the process of reasoning at work in the following and similar situations:

2.2.1

Impeaching a witness on the basis of previous instances of untruthfulness or unreliability.

2.2.2

Establishing the status, dignity or worth of a person by the use of character testimony.

2.2.3

Generalizations about human behavior that enable a court to determine what does or does not conform with human nature and human conduct.

2.2.4

Generalizations about 'customs' or 'business practices.'

2.3

Pitfalls of inductive reasoning:

2.3.1

Hasty generalization; conclusions drawn from an examination of too few samples; cursory and occasional observations do not legitimize a generalization.

2.3.2

The possibility that a human person may indeed behave in an extraordinary manner or in a way that does not conform to the general pattern of behavior.

3. Deduction

3.1

The classic form of deductive reasoning is the syllogism:

M is P.

S is M.

Therefore: S is P.

All common carriers are bound to exercise extraordinary diligence in the care of passengers and of cargo.

This jeepney is a common carrier.

Ergo: It is bound to exercise extraordinary diligence in the care of passengers and of cargo.

3.2

It is in virtue of their identity or non-identity with a third term, called the 'Middle term' that the subject and predicate terms of the conclusion are either joined (in affirmations) or separated (as in denials).

Example:

Rubio v. People's Homesite and Housing Corporation

Officials and employees 'under the civil service' whose positions are abolished shall be granted separation pay equivalent to one month's salary for every year of service. (Section 76, B.P. 337)

Petitioners were officials and employees under the civil service whose positions were abolished.

Therefore: Petitioners are entitled to separation pay.[2]

3.3

The development of mathematical logic has also allowed for 'formal proofs of validity' of deductive reasoning.

Example:

The Rule of 'Modus Tollens' coupled with the Theorems of De Morgan and the Rule of Addition allow the following argument:

If the marriage of Filipinos solemnized abroad is to be considered valid, then it must conform with the laws of the jurisdiction where celebrated the Filipinos must have capacity to contract under our laws. (?)

But Julia was only sixteen at the time of the marriage and therefore lacked capacity.

Therefore: the marriage was not valid.

II. FREQUENTLY COMMITTED FALLACIES

1. Misplaced Authority

Expertise in one area of law is not necessarily expertise in another area of law. Before one cites an author's position to resolve a disputed question, his expertise in the particular area of law must be established.

2. Post hoc, ergo propter hoc

One event following another is not necessarily caused by the antecedent event. The fact that Juan and Pedro were earlier overheard talking about Pedro's dislike for the murder victim does not establish that the subsequent death of the victim was the handiwork of Pedro.

3. Tu quoque

A rule applied to one is not necessarily applicable to all others unless:

3.1

There is substantial similarity between all other parties.

3.2

The situations are similar.

3.3

The first party is legally and factually entitled to the application of the rule.

4. Dicta simpliciter

This is the fallacy of applying a general rule to cases that actually constitute exceptions to the rule. Example: It will not do to apply the rules on the prosecution of bigamy and the proscription of divorce to Muslims who are covered by a different law.

5. Argumentum ad populum

This is the fallacy of solving an issue by adopting the clamor of the masses as the solution to the problem.

6. Argumentum ad baculum

This is the fallacy of arguing from the undesirable consequences of a proposition.

III. THE LOGICAL FLOW IN CASE-ANALYSIS:

1. What claim is it that the parties make? What are the parties' respective claims? What are the claims of the parties?

1.1

"The defendant is liable in damages'. This is an example of a claim. So is: 'The accused is liable for homicide through reckless imprudence'.

1.2

In the first place, the claim must be something the law allows the court to entertain or a relief that laws allow the court to grant.

2. What are the grounds on which the opposing claims rest? What are the grounds relied upon by the opposing parties?

2.1

What facts are advanced by the parties as key facts?

2.2

What facts are in issue? Which facts directly relate to the issue?

2.3

Not all facts the parties urge upon the court are key facts. Decisions are unduly long at times because they tackle facts that are not key facts at all.

2.4

Which facts are key facts also depends on the factual grounds that the law requires to support certain claims.

Example: In suing against a common carrier for the death of a passenger, the law sets forth the key facts for consideration:

a)

Did a contract of carriage exist?

b)

Is the passenger or are the goods in the same condition as they were at the time of the inception of the journey or voyage?

c)

In case not, can the common carrier account for the passenger or for the goods?

3. What is the warrant for the claims?

3.1

Which laws or rules are cited by the parties that allow them to raise their claims on the grounds they advance?

3.2

Are the laws so cited still good law? Have there been repeals or amendments? Are the laws still effective?

3.3

If equity is the warrant for the claim, is equity properly invoked? (Note: Equity can never be invoked to disregard the prescriptions of law.)

4. What backing is there for the use of the warrant? Is there existing jurisprudence? If so, what is it?

4.1

Is the interpretation of law acceptable?

4.2

Is it in accordance with judicial doctrine? How has the Supreme Court interpreted the law?

4.3

Does the interpretation satisfy the standards of legal hermeneutics, particularly of statutory construction?

5. When a case is analyzed, it is useful to identify:

5.1

The parties:

5.1.1

their identities

5.1.2

their relevant relations

5.1.3

their litigation statuses: Who is plaintiff? Who is defendant? Who is the intervenor? Who is the cross-claimant? Who is the third-party defendant?

5.2

Their objectives:

5.2.1

What is it that they ask of the court? What reliefs do they seek from the court?

5.2.2

If the objective is procedural (e.g., a writ of injunction), what is the substantive objective that the party pursues (e.g., the abandonment of a construction project)?

5.3

Their theories:

5.3.1

Is the defense using the theory of self-defense? Is alibi is being used? Is the accident victim suing on the basis of the contract of carriage or of tort?

5.3.2

How good are these theories?

5.4

What are the key facts?

5.4.1

Which are those facts which, if otherwise, would produce a different result?

5.4.2

Which are those facts that alter the relations between the parties?

5.4.3

Which are those facts that create new rights or impose new obligations?

5.5

What are the issues?

5.5.1

What are the issues of fact? What are the issues of law?

5.5.2

It is at pre-trial that the issue should be definitely set forth.

5.5.3

It is the issues that became the basis of determining relevance or irrelevance of evidence

6. When a judge resolves an issue of fact, the result is a finding. When the judge resolves an issue of law, the result is a holding.

[1] No. L-62955, December 22, 1987, 156 SCRA 779.

[2] G. R. No. 31469, May 22, 1990, 185 SCRA 656.

JUDICIAL REASONING, WRITING AND RESEARCH: JUDICIAL WRITING

I. INTRODUCTION

Judicial writing is the basic tool of judicial communication or the transmission of information by the courts. There are two kinds of judicial communication: the internal and external. The former is the communication within the agency, like the communication emanating from the Supreme Court to the lower courts (vertical communication) and the communication between the Justices or the offices in the Supreme Court (horizontal communication). The latter is the flow of information between the courts and the public.

External judicial communication is done mainly through decisions and orders. There should be no misunderstanding as to what a Judge means in his decisions or orders. The main objective of judicial writing is precisely to make oneself understood.

There are guidelines that help us achieve effective communication, as there are barriers that impede the smooth flow thereof.

II. POINTERS FOR JUDICIAL WRITING

1. The Three 'Cs' In Judicial Writing

In judicial writing, there are three 'Cs' to be borne in mind – Corto, Claro and Conciso.

A judicial writing must be as brief (corto) as the nature of the subject and the intelligible presentation thereof will permit. It should not be unnecessarily repetitious.[1] Verbose and prolix statements should be avoided. Matters stated in a paragraph need not be reproduced in succeeding paragraphs but may just be referred to as having been mentioned.[2]

A judicial writing must be clear (claro). It must be stated with definiteness, certainty and clarity. The facts must be stated by direct and positive averments and should not be left to be deduced by arguments and inferences.[3] Two

things that can make any writing unclear are vagueness and ambiguity.

A judicial writing must be concise (conciso). The word 'concise' refers to the style and manner of writing. A pleading is concise when it comprehends much in a few words.[4] The word 'style' comes from the Latin word 'stylus,' which refers to a writing instrument, one end of which was used to writing in wax and the other for erasure. Hence, we have a useful analogy: style is related to writing as well as to revision, drafting and re-drafting.[5]

By observing the three 'Cs,' a judge can achieve simplicity in his judicial writing. As Bernard Shaw says: Simplicity without substance is childish, but great thoughts achieve much of their effectiveness and power through simplicity.[6]

1.1

Use of Single Words in Place of Several Words

(1)

like

-

along the lines of

(2)

when

-

at the time at which

(3)

help

-

be of help to

(4)

by

-

by means of

(5)

while

-

during the time that

(6)

by

-

in accordance with

(7)

although

-

notwithstanding the fact that

(8)

until

-

until such time as

(9)

now

-

at this point in time

(10)

want

-

have the desire to

1.2 Diction

The process of choosing the correct word to use in a sentence to express one's thoughts, specially with regard to clearness and efficacy, is called 'diction.'

Every time a writer wants to express his thoughts, several words quickly come to mind but only one may be the correct or appropriate one. A word may contain a nuance not found in its synonyms. Some words may describe the same action but imply different relationships among the parties concerned.

Some words may be similar in sound but different in meaning. Others may be synonymous but one can only be used in formal writing and the other is informal writing.

1.2.1 Choice of Correct or Appropriate Word

ABJURE/ADJURE

The former means 'to renounce' or to avoid. The latter means 'to charge or entreat.'

A FEW/ FEW

Both words mean 'not many' but the former emphasizes the positive side while the latter, the negative side.

- There are FEW honest politicians now, but, at least, we should be thankful that there are still A FEW.

A LAW/THE LAW

The former refers to a specific piece of legislation (The Anti-Fencing Law); the latter, something more general and abstract (The Law on Torts).

A NUMBER OF/ THE NUMBER OF

The former is always followed by a plural verb; the latter by a singular verb.

AFFLICT/INFLICT

Both mean 'to cause distress, or pain,' but the former is used in an emotional, while the latter, in a physical sense.

AGREE TO/AGREE WITH

The former means to give consent to something. The latter means 'to be in accord with it.'

ALL RIGHT/ ALRIGHT

The former, as an adjective, means 'in proper working order' or 'correct,' and as an adverb, 'adequately' or 'very well.' The latter is a nonstandard alternative that should be used only in informal writing.

BLUBBER/MOAN

Both mean 'to weep,' but the latter implies contortion of the face that is accompanied with inarticulate sound, while the latter just implies a low, prolonged sound.

CAN/MAY

The former is used to express the ability or capacity to do something, and the latter is used to express permission.

CONTEMPORARY/CONTEMPORANEOUS

The former refers to persons or things; the latter, to events.

CONTENTION/DISSENSION

Both words denote a disagreement, but the former suggests a verbal strife, while the latter suggests differences in opinion, particularly between opposing groups belonging to the same body.

CRY/SOB

The former implies the expression of sorrow, pain or distress by making mournful and convulsive sounds and shedding tears. The latter is to weep aloud with a catch in the voice and short gasping breath.

DAMAGE/DAMAGES

The former refers to the harm done by the illegal acts, while the latter, to the compensation to be paid by the wrongdoer.

DESTROY/DEMOLISH

The former is the term of broader application, meaning the tearing down or bringing to an end by killing, wrecking, eradication, etc. The latter stresses the force used to completely smash the thing destroyed to pieces.

DISCERN/PERCEIVE

Both words suggest a recognition of something, but the former implies that the recognition is either visual or mental, while the latter implies keen understanding or insight.

HISTORIC/HISTORICAL

The former refers to something important that happened before; the latter, while also concerned with history, does not distinguish between what is important and what is not.

IMPLY/INFER

The former is what one does to suggest something indirectly. The latter is what one concludes from the evidence or circumstances.

IMPRACTICABLE/IMPRACTICAL

Both mean 'impossible to put into practice,' but the former stresses the impossibility to do or carry out, while the latter stresses the fact that the act, even if possible, is 'not sensible or realistic.'

MATERIAL/RELEVANT

In the law on evidence, the former means 'having some logical connection with the facts of consequence,' while the latter means 'tending to prove or disprove a matter in issue.'

NAUSEATED/NAUSEOUS

The former means that the person it refers to looks sick, while the latter means that the appearance of the person referred to makes others sick.

ORAL/VERBAL

Both adjectives can refer to spoken words; however, the former is limited to spoken or uttered words (by mouth) while the latter may refer to both spoken and written words.

OVERCOME/OVERTHROW

The former stresses the overpowering of an antagonist or the surmounting of difficulties. The latter stresses the fact that there was a prevailing power that was dislodged by force.

SIMULTANEOUS/SYNCHRONOUS

Both refer to the occurrence at the same time but the latter stresses the exact correspondence in time of occurrence.

WAIL/WHIMPER

Both mean 'to cry,' but the former implies the making of loud, prolonged, and mournful sounds, while the latter implies the making of subdued, broken, and whining sounds.

1.2.2. Words to be Used with Extreme Caution.

ALIBI means 'a defense that the accused was elsewhere than at the scene of the crime.' It can not be used to mean 'an excuse' or any other kind of defense.

CLAIM means 'to demand something as rightfully belonging to one.' It can not be used to mean 'to put up a defense.'

DUE TO, an adjective, modifies or refers to a particular noun. It should not be used for 'through,' 'by' or 'because of' or to introduce a causal phrase.

WHERE has been misused in place of 'when,' 'in which,' 'when' or 'wherein.' It should be used only to express place, as in the 'countries where the Common Law is followed,' but not in referring to cases, as in 'In the case of Reyes v. Cruz, 10 SCRA 100, where the court held that x x x.'

AS TO has been used to convey so many meanings that it is hard to tell which one the writer has in mind. Instead of 'as to' in the sentence 'Suggestions as to the remedies can be submitted,' use 'for.'

1.2.3 Words with Similar Sound but Different Meanings

These are words with similar sound but which have different meanings, e.g.,

COARSE/COURSE

The former, an adjective meaning 'crude;' the latter, a noun, 'path or 'route.'

FLAUNT/FLOUT

The former means 'to show off proudly or boastfully,' the latter, 'to treat something or somebody with contempt.'

FLIGHT/PLIGHT

The former means 'the act of moving through space,' the latter, 'a predicament.'

LATH/LATHE

The former means 'a piece of wood used as building material,' the latter, 'to cut with an rotating machine.'

PORTABLE/ POTABLE

The former refers to one that can be carried; the latter, to something that is drinkable.

1.2.4 Illiteracies

Do not use illiteracies. There are decisions that use words which are not in the dictionaries because they are not accepted in the English language, e.g., 'dismissible'[7] and 'imposable.[8]

1.3. Spell Words Correctly

1.3

Spell Words Correctly

(1)

Reglementary not reglamentary

(2)

Motu proprio not motu propio

(3)

Illegible not ilegible

(4)

Unappealable not inappealable

(5)

Accessible not accessable

1.4

Verbs not followed by prepositions

The following verbs are not followed by prepositions:

(1)

furnish

-

not furnish with a copy

(2)

request

-

not request for a copy

(3)

explain

-

not explain about

(4)

await

-

not await for the Judge

(5)

seek

-

not seek for assistance

(6)

climb

-

not climb up

(7)

join

-

not join together

(8)

start

-

not start out

(9)

use

-

not use up

(10)

mounted

-

not mounted up the horse

2. Writing Style

According to Fogiel, style is the art of creative writing that flows effortlessly and gives the reader the feeling that the writer knows the subject.[9] He is referring to the manner a writer presents his thoughts. While style is personal to a writer and is said to be a window of his personality, still there are basic rules that may help a writer in forming his own style.

2.1 Stages of Writing Process

The writing process incorporates five stages: prewriting, writing, rewriting, revising and polishing.

The pre-writing stage consists of the organization in outline form of the ideas that have to be translated from the writer's mind into written form.

Next, is the preparation of the writer-oriented first draft. The writer should keep on writing without stopping to

correct anything.

Rewriting towards a reader-oriented final draft follows the writing stage.

Revision comes after the rewriting of the draft. It concentrates on sentence structure, grammar and punctuation.

The last stage of the writing process is polishing, which includes checking for grammatical and typographical errors. Failure to polish the legal writing can erode the meaning and import of the writing.

2.2 Pointers on Style

2.2.1 Use Economy of Words

The simplest way of saving words is to throw out all the words you don't need – this is the 'weeding out method.' Just discard all the words that do not add any meaning to what you are writing.

If you write something about a 'tiny little room,' strike out the word 'little' and leave the words 'tiny room.' A tiny room is always little.

Economy in the use of words may be achieved through the following methods:

(a)

Change adjectives into nouns. Instead of writing 'What impressed me most was the fact that he was very frank.' (12 words), write 'What impressed me most was his complete frankness' (8 words)

(b)

Change adjectives into adverbs. Instead of 'The crowd cheered in a way that was wild.' (9 words), write 'The crowd cheered wildly.' (4 words)

(c)

Change verbs into nouns and use gerunds. A verb-noun ending in '-ing' is called a gerund. Instead of 'Often the beauty of a dress lies in the way it is worn.' (12 words), write 'Often the beauty of a dress lies in the wearing.' (10 words)

(d)

Change verbs into adjectives. Use the suffixes '-able,' '-ed.' And '-ing' to change verbs into adjectives. Instead of writing 'That was a play you could really enjoy seeing.' (8 words), write 'That was really an enjoyable play.' (6 words)

(e)

Use the infinitive phrase instead of a clause beginning with 'that' or 'so that.' Instead of writing 'Open the window so that you get some fresh air.' (10 words), write, 'Open the windows to get some fresh air.' (8 words)

(f)

Remove words like 'who has' or 'which is' in relative clauses. Instead of writing 'Our neighbor, who was the mayor of the town, was always very friendly to us.' (15 words), write 'Our neighbor, the town mayor, was always very friendly to us.' (12 words)

(g)

Use word-saving syllables. There are some syllables that can take the place of several words. Examples are 'y,'

'full' and 'less' that can turn clauses into adjectives.

Instead of 'Let's go over to the side of street that is in the shade.' (14 words), write 'Let's go over to the shady side of the street.' (10 words)

You left out the words 'side of the ' and 'that is in' and added the syllable 'y' to 'shade'.

Instead of 'We were greeted with a smile that was full of joy.' (11 words) write 'We were greeted with a joyful smile.' (7 words)

Instead of 'A little hall that has no windows makes a good darkroom.' (11 words), write 'A little windowless hall makes a good darkroom.' (8 words)

Other word-saving syllables are: '-ment' (as in astonishment); '-ion' (as in creation), '-ize' (as in modernize); and '-fy' (as in fortify)

There are combinations of these syllables, like '-izement' (as in aggrandizement) or '-fication' (as in fortification)

(h)

Use a single adjective to do the word of a phrase (a brave man for a man of bravery). There are cases, however, when the phrase is better than the single word as when it yields emphasis or rhythm. (A thing of beauty instead of beautiful thing)

(i)

Delete redundant or unnecessary words. Avoid redundant words.

· old adage

-

adage means "old saying"

· advance planning

-

plan means "to foresee" or "to advise ahead"

· to discuss about

-

to discuss means to talk about

· end result

-

result in the end itself of previous acts or events

(j)

Use short words, which are usually clearer, crisper, and more exact. If you have a choice between a short and a

long word conveying the same meaning, use the former. But when a longer word is clearer and more exact, by all means, use it.

(k)

Be consistent in using the same word for the same idea. Once you use a word in a writing, do not use its synonyms in the subsequent portions thereof, for the reader will be wondering if you are changing the sense of what you have said before.

2.2.2 Be Accurate in the Choice of Words.

Express clearly what you have in mind. Do not say: 'The evacuees are provided with portable water.' when what you mean is that the evacuees are provided with 'potable' water. In using synonyms, be sure they carry the same connotations as the words you want to replace.

(a)

Do not use 'while,' in place of 'although.'

Although he does not have all the answers, he does know the questions. (With 'while,' the sentence can mean during the time he does not have the answers.)

(b)

Do not use 'as' in place of 'because.'

He cannot finish the brief this week because he is going to Tokyo. (With 'as,' the sentence can mean that he cannot finish the brief during his trip).

(c)

Do not use 'since' in place of 'because.'

Because he has talked with the lawyer, we have decided they are serious. (With 'Since' instead of 'Because,' the sentence can refer to time, i.e., 'Since the day he talked with the lawyer,...')

2.2.3 Repeat important words for emphasis.

Example: Give! Give money when you see that women and children are hungry. Give sympathy when you can cheer a beaten man. Give time to study conditions in your own community. Give your whole self in an attempt to change and better the life of all humanity.

(a)

State the points to be emphasized in concrete and specific terms. The minds of the readers respond more readily to the specific, the tangible, and the concrete. Conversely, the use of abstract terms serve to de-emphasize a point. A hungry man is not interested in an academic discussion, like nutrition or nourishment; uppermost in his mind are sizzling steak, crispy pata, or hamburger.

(b)

Place the more important part in a prominent position, which is either the beginning or the end of the sentence.

(c)

Transitive words shall not be placed at the beginning or end of a sentence, unless the sentence is very short.

(d)

The main thought in the sentence should be put in the main clause in order to be emphasized.

2.2.4 Use parallelism, which is the repetition of like words in the same order. Parallelism means like construction for like ideas. Present equal ideas in similar sentence structure. If you use a prepositional phrase for one idea, use another prepositional phrase for the second idea. If you use a clause for the first idea, use also a clause for the second. Examples of parallelism are Julius Caesar's 'I came, I saw, I conquered.' (instead of 'After I arrived, I looked and then I conquered.') and Patrick Henry's 'Give me liberty or give me death.'

Absolute parallelism is not always required, as in 'He talked slowly and with a stammer.'

Parallelism may be formed with two or more words, phrases, dependent clauses, independent clauses or sentences.

(a)

Use balance structures. Unlike using similar words as in parallelism, a balance structure uses words which are roughly of the same length and which sound rhythmical to the reader's ear. Rhythmic pattern within sentences increases readability. The Bible uses abundantly the device of balance structure.

(b)

Another way of attaining a rhythmic flow or sequence of sound is the use of an alternation of stressed and unstressed syllables.

To determine the subject, predicate and object of a sentence, ask yourself the question: 'Who is doing what to whom?' Then focus on these three key elements: the actor ('who'), the action (doing what), and the object (to whom).

2.2.5 Avoid 'wordy' sentences. There are words which are not redundant, but which can be deleted from the sentence without changing the thought conveyed and on the other hand, making the sentence crisper and clearer.

Use a short sentence to emphasize a point. A short sentence is easier to read and makes a stronger statement. But, do not use such emphatic sentence in a row because this can cause an impression of an impatient, angry tone. And, do not use choppy sentence which read like telegrams.

2.2.6 Avoid archaic or obsolete words.

2.2.7 Avoid vulgar words.

2.2.8 Use connecting words to relate one sentence element to another (either-or, neither-nor, whether-or).

Separated: The police could not explain how the accident occurred. They could not find an eyewitness.

Combined: The police could not explain how the accident occurred nor could they find an eyewitness.

2.2.9 Whenever possible, use action words instead of linking words.

Linking word: The retirement plan was offered by the company.

Action word: The company offered the retirement plan.

2.2.10 Use subordinating words to combine ideas (e.g., after, although, as, because, if, since, though, unless, when, where). These words are useful in showing that one idea in a sentence is less important than another idea in the same sentence.

2.2.11 Be consistent in using the same word for the same idea. Once you use a word in a writing, do not use its synonyms in the subsequent portions thereof, for the sake of variety because the reader will be wondering if you are changing the sense of what you have said before.

2.2.12 Avoid coupled synonyms. Coupled synonyms are like redundant words, only the former involve nouns with the same meaning joined together while the latter involve words modified by adjectives already implied therein. An example of coupled synonyms is 'null and void and of no further force and effect,' a phrase of pompous lawyers. Use either 'null and void' and delete 'of no further force and effect.'

2.2.13 Avoid multiple words or compound construction when a single word will do. One word is usually more effective than several words expressing the same thought.

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More specially

-

Nothing is more special than "specially."

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Protracted delay

-

"Protracted" means "delay". "Protracted hearing" and "protracted negotiations" are however correct.

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Actual facts

-

All facts are actual.

.

Present incumbent

-

"Incumbent" means one who holds office at the present time.

.

Unauthorized trespassing

-

All trespassing are unauthorized.

2.2.14 Avoid slang, colloquial and dialectical usages in formal writing. 'Ain't' meaning 'am not' has not been accepted in standard English, both written and spoken. It is unlike 'isn't (for is not), 'aren't (for are not), or 'weren't (for were not).

'About' when used in the sense of 'almost' is a colloquial.

2.2.15 Avoid illiteracies, like 'irregardless,' 'inappealable,' and 'dismissible,' which are not found in the dictionary.

2.2.16 Avoid making impossible comparisons like comparing Philippine laws with Japan, instead of the laws of the Philippines with the laws of Japan.

2.2.17 Modifying adjectives, adverbs, phrases and clauses should be placed close to what they are talking about and the relationship between these words and their antecedents should be clear and logical. Otherwise, you will have dangling modifiers.

.

Wrong

:

Lying in the sun, the day was clear.

.

Correct

:

Lying in the sun, I enjoyed the clear day.

Do not use a conjunction followed by a pronoun when linking a subordinate clause to a main clause. A conjunction can only be used when linking grammatical units of the same kind. A phrase cannot be joined to a clause.

2.2.18 Put your minor ideas in subordinate clauses or phrases and your main ideas in the main clauses or phrases.

2.2.19 Avoid mixing metaphors. Mixed metaphors result when the writer uses incongruous words in comparing objects.

.

Wrong

:

The long arm of the law smelt the criminals in their hideouts.

.

Correct

:

The long arm of the law caught the criminals in their hideout.

2.2.20 Start a sentence with a prepositional phrase, instead of an adverbial phrase. Instead of 'As soon as summer comes, we will go up the mountains every Sunday.' (13 words), write 'In the summer, we will go up the mountains

every Sunday.' (11 words).

2.2.21 Avoid overworked clichés and weak expressions in formal writing:

- After all is said and done
- All in all
- All the farther (meaning "as far as")
- All the faster (meaning "as fast as")

2.3 Effective Sentences

To write effective sentences involves such matters as unity, completeness, coordination, word order, and transition. A sentence has unity when it contains a single thought or a group of closely related words. A sentence to be complete must have both a subject and predicate.

Coordination is the placing of important thoughts in main clauses and minor ideas in subordinate clauses.

2.3.1 The usual word order of the elements of a sentence is: first, the subject; second, the predicate; and third, the object. Open the sentence with its subject. If the subject is placed at the end of the sentence, the reader will have to comprehend all the words that precedes it before it appears. For emphasis, the elements of the sentence may be inverted with the predicate at the beginning and the subject at the end. This is the periodic sentence, where the full meaning is not initially apparent and appears only at the end. The reader is kept in suspense.

Keep the subject and the predicate closely together. The sense of the sentence cannot be understood unless the subject and the predicate are used as a unit. In the subject-verb-object pattern, the doer of the action is in the subject position, the receiver of the action is in the object position, and the verb is in the middle position. Transition refers to the method by which writers bridge gaps between what has been covered and what is to come.

2.3.2 Pointers to be observed in writing effective sentences

(a)

Avoid choppy sentences that read like telegrams.

(b)

Avoid boring and bland sentences. A writer can easily detect these sentences once he reads them.

(c)

Avoid run-on sentences that do not know where to stop.

(d)

Avoid beginning or ending a sentence with weak and relatively unimportant words or ideas. This is where the attention of the reader is most keen. Reserve the beginning position for the more emphatic word. There are times when a transitional word like 'and' or 'but,' ordinarily weak words, have to be placed at the beginning of a sentence for emphasis.

(e)

Avoid continuous use of only one kind of sentence structure. Intersperse long sentence among short sentences, compound sentences among single sentences, sentences with modifiers at the end among sentence with modifiers

at the beginning or in the middle.

(f)

Avoid shopworn quotations or proverbs.

(g)

Avoid ambiguity in sentences.

Does the sentence 'Jose plays the piano as well as Juan.' mean that Jose's playing is as good as Juan's or simply that he too plays the piano?

Does the sentence 'The College President and the Dean of Women have decided to stop kissing in the campus.' mean that the two had been kissing in the campus before or that students had been the ones doing the kissing?

Does the traffic sign 'No parking on both sides' mean that cars can park on the street as long as they use only one side of the street or that they cannot park on any side of the street?

Express your thoughts in affirmative, not negative sentences.

(h)

Avoid mixed or mangled metaphors (e.g., 'The proof of the pie is in the pudding.' instead of 'The proof of the pudding is in the eating.'

(i)

Sentences should vary in length. Using several short sentences in succession or in a row can create an impression of an impatient, angry tone. Using only short sentences makes the writing monotonous.

In this connection, use periodic sentences only for emphasis. A periodic sentence is so constructed that the emphatic word is placed at the end of the sentence and its full meaning is not initially apparent. The reader is kept in suspense.

(j)

Put the point to be emphasized in a short sentence. Such sentence is easier to read and makes a stronger statement. But do not use several emphatic sentences in a row because this can cause an impression of an impatient, angry tone.

(k)

Use the active voice. It does not only shorten but strengthens the sentence.

(l)

Use balanced sentences. A balanced sentence is one in which related action, description or ideas are presented in the same form.

Incorrect

:

He liked biking and to jog.

Correct

:

He liked biking and jogging.

He liked to bike and to jog.

Incorrect

:

Betty is bright and has intelligence.

Correct

:

Betty is bright and intelligent.

Incorrect

:

Jose is not only a good pianist but a fine conductor.

Correct

:

Jose is not only a good pianist but also a fine conductor.

(m)

Do not use compound sentences if simple sentences can explain your thoughts better. Of course, there are cases when using compound sentences will produce a fuller expression of the message you want to convey.

(n)

Do not use long sentences. Neither should you use very short, telegraphic sentence, except for emphasis.

(o)

End your sentences swiftly and effectively. Put significant words at the end of the sentences and avoid prepositions as much as possible in the final position.

JUDICIAL REASONING, WRITING AND RESEARCH:

GLOSSARY OF LEGAL TERMS

This glossary includes selected legal terms, which a judge comes across in his readings or which he may need to use in his writings.

a contrario sensu

from the contrary sense

a converso

conversely

a gratis argumentis

for the sake of argument

a mensa et thoro

from bed and board

a quo

from which or whom

ab inconveniente

from hardship, from what is inconvenient

ab initio

from the beginning; from first to last

aberratio ictus

wandering or stray blow; a blow received by a person which is intended for another

abusos deshones

abuse of chastity

accessio cepit principa

an accessory follows the principal

accion publiciana

an action for recovery of possession filed after one year of the dispossession

accion reivindicatoria

an action for recovery of title or ownership

acto nulo

a void act

ad damnum

the statement of damages in a pleading

adhesion contract

a contract drafted by the stronger party, then presented for acceptance to the weaker party, who has no power to modify its terms

ad litem

just for a particular action ; a 'guardian ad litem' is a guardian appointed to represent a minor or an incompetent

just for a particular action.

amicus curiae

A friend of the court, one who appears in a legal action to give his views on the legal issues raised in the case. Note the spelling of 'curiae'

arguendo

for the sake of argument

assumpsit

A common law term to recover damages for the non performance of a contract

case at bar

the case being tried by a trial court in the exercise of its original jurisdiction

case at bench

the case being heard before an appellate court

causa sine qua non

the determining cause, without which something could not have occurred

cestui que trust

a beneficiary of a trust; pronounced set-a-ku-trust

chattels

a common law term for movable things, as in Chattel Mortgage Law

chose in action

right to sue for money or property; the instrument evidencing such right (promissory note)

color

mere semblance of a legal right (color of title)

damnum

damage

de mesne

possession of real property in one's own name; pronounced 'de-men'

dictum

something said in passing, not essential to the decision (see holding)

ejusdem generis

of the same kind

ex parte

at the instance of one party only, without representation of the other side

en banc

that is, when all the judges in a division or collegiate court are seated

fee simple

shortened form of 'estate in fee simple,' referring to an absolute form of ownership

feme sole

a single woman

ferae naturae

wild animals

fungible goods

Goods of a kind in which all units are identical

holding

the precise issue or principle decided in a case (see dictum)

id est

that is

in esse

in being; existing

in haec verba

in the very words

in initio

in the beginning

in invitum

without consent

in pare materia

on the same topic

in personam

in person, said of an action to make someone personally liable

in propria persona

in his own behalf, representing oneself, not by an attorney

in re

in regard to

in rem

said of an action to subject specific property to liability

inter alia

among other things

Intestate

said of someone who dies without having made any will

lex loci

law of the place, the law of the place where the court is

lex loci actus

the law of the place of the act

lex loci contractus

the law of the place of the contract

lex loci rei sitae

the law of the place where the thing is located

lis pendens

a pending suit; the jurisdiction acquired by a court over property involved in a suit pending the action

mens rea

criminal intent

mutatis mutandis

the same except for a change in details

nil

nothing; zero

nunc pro tunc

now for then, as in backdating

per curiam

by the court acting unanimously, hence there should be no dissent

plurality

it refers to a case when three or more persons are involved in an election and no one receives more than fifty (50) percent of the votes

presents

a legal document as in 'Know All Men By These Presents'

pro se

for oneself representing oneself without an attorney; the same as in propria persona

Puissne

subordinate, associate Judge; pronounced as py-u-n.

Scienter

Knowingly a party's guilty knowledge

Seriatim

[adv] serially in a series; [adj] following

stare decisis

stand by what is decided; Judges are bound by the decisions of their predecessors

tabula rasa

a clean slate; used in decisions to mean 'This issue has been passed upon clearly in other decisions'

terminus a quo

the starting point

vel non

or not

JUDICIAL REASONING, WRITING AND RESEARCH:
JUDICIAL RESEARCH

I. INTRODUCTION

The purpose of legal research is to ascertain the legal consequences of a specific set of actual or potential facts. It is always the facts of any given situation that suggest – indeed dictate – the issues of law that should be the subject of research.

The key to successful legal research is organization. As with any simple task, one needs a 'game plan' that helps accomplish and complete the job as quickly, efficiently and thoroughly as possible. For legal research, the best 'game plan' is to break down the process into basic steps.

II. CONDUCTING LEGAL RESEARCH

1. Critical Fact-Related Steps That Must Precede Research In Law Books

1.1

Gathering the facts;

1.2

Analyzing the facts;

1.3

Identifying the legal issues raised by the facts; and

1.4

Arranging the legal issues in a logical order for research.

1.1 Gathering the facts

- People – clients, witnesses, victims to an event
- Tangible Evidence – contract, weapon, etc.
- Books, periodicals and reports
- Expert witness, if any

In gathering facts from various sources in a particular case, use the '5 W and 1 H' technique:

- Who did it and to whom?
- What was done?
- When was it done?
- Where was it done?
- Why was it done?
- How was it done?

1.2 Analyzing the facts – the TARP rule:

T

THING or SUBJECT MATTER in controversy –

Property? Will? Automobile? Contract?

A

CAUSE OF ACTION or GROUND OF DEFENSE

Breach of contract? Negligence? Torts? Estoppel? Impossibility of performance?

R**RELIEF SOUGHT**

Civil suit for damages? Injunctive or declaratory relief? Abatement of nuisances? Rescission of contract?

P**PARTIES, PERSONS, PLACES**

Do they fit within a group or class – Infancy or incapacity?

Relationship between parties – husband & wife?

Employer employee? Attorney & client? doctor & patient?

Landlord and tenant?

Commercial activities or professional activities -

Insurance? Banking? medicine? Shipping?

1.3 Identifying the Legal Issues

Combining summaries of analysis would determine the specific legal problem.

These issues are questions that the legal research process will attempt to answer.

1.4 Organizing the Legal Issues In a Logical Order.

This will increase the efficiency and effectiveness of your research.

1.5 Doing Legal Research

1.5.1

Finding the Law

1.5.2

Reading the Law

1.5.3

Updating the Law

2. Law Finding Techniques

2.1 Approaches

2.1.1

Specialized approach

2.1.2

Words and phrases or definition approach

2.1.3

Generalized approach through

2.1.3.1

encyclopedias

2.1.3.2

treatises/textbooks

2.1.3.3

law reviews

2.1.3.4

other secondary legal sources

2.1.4

Or Utilizing One of Four Methods

2.1.4.1

Index/Descriptive word or fact word approach

2.1.4.2

Known authority/statute or case method

2.1.4.3

Known topic/table or contents or analytical method

2.1.4.4

Definition method

3. Classifying The Issues Involved In The Problem

Is it a constitutional law problem? Statutory? Administrative law? Case law problem?

4. Finding The Law

4.1

Sources of Law

4.1.1

Primary Materials

These consist of the law itself, as expressed in the provisions of the Constitution, statutes, courts decisions, etc. They are mandatory authorities and are cited first. Materials are classified into:

4.1.1.1

Statute law

4.1.1.2

Case law

4.1.2 Secondary Materials

All other written expressions of the law which interpret or analyze primary authorities are secondary sources and are considered persuasive materials. Other secondary sources include legal periodical articles in the Philippine Law Gazette, National Law Review, Ateneo Law Journal, Far Eastern Law Review, Philippine Law Review, San Beda Law Journal, other bar publications, and proceedings of law conferences.

4.1.2.1

Books of Search

a

Annotated Reports/Statutes with annotations as secondary authority

-

Supreme Court Reports Annotated (SCRA)

Consult the Index to SCRA Annotations, Volumes 1 – 287 (1961-1998) published by the U.P. Institute of Judicial Administration or the SCRA annotations on individual subject fields which are published separately by the Central Law Book Co.

-

Philippine Annotated Laws (PAL)

-

American Law Reports (ALR)

-

U.S. Code Annotated (USCA)

-

U.S. Code Service (USCS)

b

Loose-leaf Services

-

U.S. Law Week

-

Publications of the Commerce Clearing House and Prentice Hall deal on labor law, taxation, etc.

c

Encyclopedias

-

Corpus Juris Secundum (CJS)

-

American Jurisprudence (Am. Jur.)

4.1.2.2

Books of Index

a

Books of Definitions

-

Moreno, Philippine Law Dictionary

-

Sibal, Philippine Legal Encyclopedia

-

Black's Law Dictionary

-

Ballentine's Law Dictionary

-

Bouvier's Law Dictionary

-

Stroud's Judicial Dictionary of Words and Phrases. (4th ed., 1974). 5 v.

-

Words and Phrases. 45 v.

-

Consult digests under the term 'words and phrases'

b

Digests

-

Martinez, Summary of Supreme Court Rulings

-

Philippine Digest/Republic of the Philippine Digest

-

SCRA Quick Index Digests

-

Case Digests of Supreme Court Decisions published by the Supreme Court.

-

American Digest System (topic, case and descriptive approach) Decennial Digests up to the 10th Decennial Digests, 1986 – 1996 are published every 10 years, with the current volume entitled General Digests in three to four volumes per year

-

ALR Digest, 1[st] to 4[th] series

c

Citations

-

Dizon's Philippine Citations (1937)

-

Paras, Philippine Citations

-

Shepard's Citations to various U.S. federal, state reports and particular National Reporter Series.

d

Form-books/practice books

-

Tañada & Rodrigo, Philippine Legal Forms

-

Guevara, Philippine Legal Forms, Annotated

-

Fisher's Philippine Business and Legal Forms

-

Sia, Legal Forms in English and Filipino

-

Martin, Handbook of Legal in Judicial Forms

-

Peña, Legal Forms in Real Estate Conveyancing

-

American Jurisprudence Legal Forms Annotated, 1953 – 1963

-

14 v. in 15. 2[nd] edition, 1971 – 1974. 22 v. in 20

-

American Jurisprudence Pleadings and Practice Forms

-

Rabkin & Johnson, Current Legal Forms, with Tax Analysis. 12 v. in 22.

e

Indexes

-

Magsino's Compendium of Philippine Jurisprudence; Supreme Court Decisions form 1945-1980

-

Supreme Court Library Service, Subject Index to the Official Gazette (1945-1985. 2 v. (1993)

f

Tables

-

National Reporter Blue Book

4.1.2.3

Opinions of Legal Experts

4.1.2.4

Other State & Foreign Sources

-

Example: U.S. jurisprudence in Constitutional Law

5. Research in Statutory Law

5.1 Constitution

The Constitution being the fundamental law of the land sets the standard against which all statutes are ultimately measured.

5.1.1

1935 Constitution

-

V. 1 and 2 of Philippine Annotated Laws (PAL)

-

S. Laurel, Proceedings of the Philippine Constitutional Convention, 1966. 7 v. (sponsor, subject and provision approaches)

-

Constitutional Convention Records, 1966. 11 v. (House of Rep. ed.)

-

Journal of the Constitutional Convention of the Philippines (ed. by V.J. Francisco), 1961-65. 5 v.

-

Philippine Lawyers Association, Philippine Constitution, origins, making, meaning and applications, 4 v. (Subject approach)

5.1.2

1973 Constitution

-

Con-con Archives in the U.P. Law Library through its indexes

5.1.3

1987 Constitution

5.1.3.1 To know how certain provisions in the 1987 Constitution were interpreted by its framers, it is best to consult the five-volume Records of the Philippine Constitutional Commission and its three-volume Journals. Access can be had to these by using the computerized index in the U.P. Law Library arranged according to the

number of the Article of the provision, subject and name of the sponsor/discussant.

5.1.3.2

Secondary sources:

-

Bernas, Joaquin, The 1987 Constitution of the Republic of the Philippines 1988. 2 v.

-

Cruz, Isagani A., Philippine Constitutional Law (1997).

-

Padilla, Ambrosio B, The 1987 Constitution of the Philippines with Comments and Cases, Manila, Philippine Graphic Arts, 1987. 2 v.

5.2

Treaties and International Agreements

5.2.1

Texts of treaties to which the Philippines is a party are published in the:

-

Official Gazette (O.G.)

-

Philippine Treaty Series (PTS) published by the U.P. Law Center

-

United Nations Treaty Series (U.N.T.S.)

5.2.2

Indexes:

-

Philippine Treaties Index, 1946-1982 published by the Foreign Service Institute. Divided into two sections: Bilateral Treaties arranged alphabetically by country or international agency; and Multilateral Treaties arranged alphabetically by subject.

-

Index to U.N.T.S. is published for every 100 volumes and can be used through its alphabetical and chronological indexes.

-

U.N. Multilateral Treaties Deposited with the Secretary-General; Status as of 3 December 1997. This is published every three years.

-

International Legal Materials (Published by the American Society of International Law) Contains recent treaties and conventions as well as decisions dealing on international law.

5.3 Statutes Proper

As of June 14, 2000, 17,027 statutes had been enacted since 1900. One could locate any Philippine statute through the LEX LIBRIS, and PHILJURIS which are computerized-assisted legal research tools containing text of laws through number-title or subject approaches. The Republic Acts are printed in the Official Gazette and the Laws and Resolutions volumes of which are published by the House of Representatives and the National Printing Office.

5.3.1 Terminology of Statutes:

-

-Acts or Public Acts (1900-1935) - 4,275 laws

-

Commonwealth Acts (1936-1946) - 733 laws

-

Republic Acts (1946 – Sept. 21, 1972) - 6,635 laws

-

Presidential Decrees (Sept. 21, 1972 – Feb. 20, 1986) - 2,035 laws

-

Batas Pambansa (July 23, 1984 – Feb. 1, 1986) - 891 laws

-

Executive Orders (Feb. 23, 1986 – July 26, 1987) - 302 laws

-

Republic Acts (July 27, 1987 to present)

-

RA 6636 to R.A. 8800 (July 19, 2000) which is the Safeguard Measures Against Import Surge Act - 2,156 laws

5.3.2

Indexes

-

Philippine Annotated Laws, 20 v. and 1963 Suppl. 4 v.

-

Albert & Daga, Philippine Laws Made Easier to Find. 1954

-

U.P. Law Center, Philippine Permanent and General Statutes (PPGS) (Revised ed., 1978). 5 v.

-

Moran's Index to Republic Acts with 1957 Suppl.

-

Office of the President, Presidential Decree Guide & Subject Index, Nos. 1-1,000. 1976

-

Feliciano, Subject Guide to Presidential Decrees and other Presidential Issuances 1972-1975. With 4 Supplements July 1975-1986 by M. Feliciano & A. Santos

-

Vital Legal Documents Index Guide, 1976.

-

Juan Rivera, Index to Republic Acts, 1946-1965

-

V. Aguirre, Subject & Title Index to Executive Orders Feb. 25, 1986-July 26, 1987.

-

B.C. Arroyo & P.S. Frianeza, Topical Index to 1987 Presidential Issuances February 25, 1986-July 26, 1987, U.P. Law Center, 1987-1990 2 v.

-

Current Legal Resources Services Bulletin, weekly update of Philippine laws, Supreme Court Decisions and Administrative Rules and Regulations, no. 1, 2000

-

Computer Assisted Legal Research with such products as LEX LIBRIS and PHILJURIS

5.3.3

Texts

-

Philippine Annotated Laws (PAL)

-

Philippine Permanent and General Statutes U.P. Law Center, 5 v.

-

Official Gazette (O.G.), v. 1, 1902 to date

-

Public Laws Passed by the Philippine Commission. 31 v.

-

S. Guevara, Public Laws Annotated, 7 v.

-

S. Guevara, Commonwealth Acts Annotated. 3 v.

-

Jacobo & Sons. Public Laws of the Commonwealth. 4 v.

-

Laws and Resolutions of the Republic of the Philippines, 1946-1972; 1987 to date

-

1986 & 1987 Presidential Issuances; An Annotated Compilation of Executive Orders, Proclamations, Memorandum Circulars and Administrative Orders, edited by B.C. Arroyo & P.S. Frianeza, U.P. Law Center, 1987-1990. 2 v.

-

Vital Legal Documents of the New Society. 114 v.

-

Acts and Resolutions passed by the Batasang Pambansa, 1978-1986. 6v.

-

Computer Assisted Legal Research through LEX LIBRIS & PHILJURIS (does not contain laws prior to 1946)

5.3.4

Legislative History of Laws

To determine legislative intent, there are two approaches:

5.3.4.1

Use the index to the Congressional Record or Journal

5.3.4.2

Use History of Bills and Resolutions of the House of Representatives or Senate volume which is arranged numerically by bill no. Examples:

H. No. S. No. P.B. No. C.B. No.

Locate the date of the second reading where the debates/discussions on the law are reproduced.

5.4

Administrative Regulations and Rules

5.4.1

The text of Administrative Regulations are found in the:

-

Official Gazette

-

The National Administrative Register, v. 1. 1990 to date (quarterly)

-

Publications of particular administrative agencies such as:

-

SEC Folio, 1946-1976

-

SEC Bulletin

-

Civil Service Reporter

-

Financial Journal

-

Central Bank Annual Reports and Compilations

-

Implementing Rules and Regulations the Labor Code

-

Comprehensive Agrarian Reform Program and Presidential Issuances

-

Dangerous Drugs Board Regulations

-

Omnibus Investment Code and Implementing Rules

-

Insurance Reporter

-

LEX LIBRIS has CD-ROMs on: Taxation; Local Autonomy and Local Government; Labor and Social Legislation; Election Law; Trade, Commerce and Industry; and Environment and Natural Resources; Department

of Justice Opinions of the Secretary. Each thematic disc contains laws, administrative regulations and decisions of the Supreme Court.

5.4.2

Digests and indexes are provided by Current Legal Resources and Services; and Weekly Bulletin, issue number 1 of which was published in 2000.

5.5

Ordinances

5.6

Court Rules

5.6.1

Revised Rules of Court (1965)

-

1991 Revised Rule on Summary Procedure, as amended

-

1997 Rules of Civil Procedure

-

2000 Rules of Criminal Procedure

-

Supreme Court issuances are compiled in Supreme Court Circulars, Orders, Resolutions (Supreme Court Printing Service, Oct. 1999). It consists of: Part I: 1973-1989; Part II: 1990-1999 with subject index

5.7

Military Rules

6.

Researching in Case Law

6.1

Case Law is divided into:

6.1.1

Conventional decisions – all rulings made by regularly or specially constituted courts.

6.1.2

Subordinate decisions – all rulings made in accordance with law by administrative and legislative tribunals

6.2

Supreme Court Decisions

Court decisions are collected chronologically in volumes called case reports, and summarized by subject matter in reference works called case digests.

6.2.1

Texts of Supreme Court Decisions

-

Philippine Reports, v. 1, 1901 –

-

Official Gazette, 1901 to date.

-

Supreme Court Reports Annotated (SCRA),

-

v. 1, 1961 (v. 307, May, 1999 published to date)

-

Supreme Court Unpublished Decisions; 1946-1960. (D.G. Nitafan, comp.) v.1, March, 1946 - March 1952 & v.2, March 12, 1952 -March 30, 1954.

-

Computerized legal resources

- CD-ROM products like LEX LIBRIS and PHILJURIS

- The official website of the Supreme Court, www.supremecourt.gov.ph contains most recent decisions

6.2.2

Subject Approach

-

Case Digests of Supreme Court Decisions. v. 1, 1989 - Quarterly. (Published by the Supreme Court).

-

D. Martinez, Summary of Supreme Court Rulings, 1986 – 1996. Published annually in three to four volumes, it is arranged according to the eight bar subjects and "Research Aid" in every topic gives previous decisions on the subject matter.

-

C.L. Magsino, Compendium of Philippines Jurisprudence (Supreme Court Decisions from 1945 to 1980). 9 v. with two-volume 1989 Supplement.

-

SCRA Quick Index – Digest, 1961 – 1976. 5 v. with annual Indexes

-

Philippine Law Report, 13 v. 1, 1974 to date, published monthly

-

Republic of the Philippines Digest 18 v. with 10 v. (1967-1971) Supplements.

-

Velayo's Digest of Supreme Court and Court of Appeals Decisions. new series. (1942-1960). 25 v. with annual supplements, 1961-1977.

-

Current Legal Resources and Services; Weekly Bulletin, no. 1, 2000 -

6.2.3

Case Approach

-

Philippine Digest. V. 6, 9, 11 & 13.

-

Republic of the Philippine Digest. v. 8, 18 and Supplement to volume 18.

-

Santos-Ong, Title Index to Supreme Court Decisions, 1945-1978. 2 v. with 1978-1982 Supplement.

-

Aguirre, Title Index to Supreme Court Decisions 1982-1985.

-

LEX LIBRIS and PHILJURIS

6.3

Court of Appeals Decisions

6.3.1

Texts

-

Official Gazette (selected decisions only)

-

Court of Appeals Reports New Series. 24 v. (1961 – 1979)

-

Court of Appeals Reports Annotated (CARA). v. 1, 1986

6.4

Other Courts

-

Sandiganbayan Reports, v. 1, 1979.

6.5

Decisions of Administrative Agencies and Boards.

-

SEC Decisions, 1977-1981

-

COA Decisions

-

Rivera, Decisions of The Civil Service Board of Appeals, 1941-1960

6.6

American Setting

6.6.1

U.S. Federal Supreme Court Decisions

-

U.S. Reports

-

U.S. Supreme Court Reports, Lawyers Ed.

-

Supreme Court Reporter (West Pub.)

-

U.S. Law Week

6.6.2

Federal Appellate and District Courts Decisions

6.6.2.1 Texts:

-

Federal Reporter

-

Federal Supplement

6.6.2.2 Indexes:

-

U.S. Supreme Court Digest

-

American Digest System

-

ALR Digest

-

Federal Law Digest

6.6.3

State Courts Decisions – 50 states

6.6.3.1 Texts:

-

Official State Reports

-

National Reporter System

6.6.3.2 Indexes:

-

American Digest System

-

State Digests

-

Legal Research

-

LEXIS

-

WESTLAW

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FIND LAW

7.

Reading The Law

7.1

Internal Evaluation through:

7.1.1

Surveys

7.1.2

Legal Periodicals

7.1.3

Annotations

7.1.4

Loose-Leaf services

7.1.5

Treaties

8.

Updating The Law

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Shepards Citations

-

Paras/Dizon's Citations

-

RP Digest Citator Volume

-

Computer-Assisted Legal Research

9. Writing Your Decision

Pay attention to the grammar, the substantive content, the lucidity of arguments and its development, the preciseness of the words used, and the accuracy and completeness of the citations.

10. General Pointers In Legal Research

In finding the law, your ultimate goal is to find mandatory primary authorities bearing on your legal problem. If these are either scarce or nonexistent, your next priority should be to find persuasive primary authorities. Finally, if all else fails, you might rely on relevant secondary authorities.

10.1 Whenever your research focuses on primary sources, you should normally start with statutes, because they can control the other kinds of primary law (except for constitutional provisions); administrative regulations exist only by virtue of a statute authorizing their promulgations, and court decisions can be and often are overturned or at least modified by statutes

10.2 Do not rely on summaries (e.g., case headnotes, statutory annotations, generalizations in legal encyclopedias) as necessarily being either accurate or authoritative statements of the law. Although such summaries are helpful guides, they can never substitute for the primary authorities themselves. To determine precisely what a summarized primary authority says or means, you must read it for yourself.

10.3 Remember that titles of sub-topics listed under the various topics in case digests, as well as indexes in secondary reference works (e.g., legal encyclopedias) do not classify legal subject matter with scientific precision. Consequently, when you have found an entry you think is relevant to your research problem, you generally should examine neighboring entries also.

10.4 When doing a descriptive or fact word search in an index of a set of annotated statutes, an administrative code, case digest; or some other primary search complete as soon as you find your first word listed, even if it has several index entries under it. Try some of your other descriptive words, too; they may lead you to still other relevant sources.

10.5 Whenever you do your research in a secondary source of the law, start by reading the table of contents, preface, or other introductory remarks, or any section with a title like 'Scope Note' or 'Scope Analysis.' These sections will explain the reference work's coverage and may help you determine at the outset whether the book will be useful in your research. Spending a few minutes determining a reference's scope before investing extensive time reading through it will often prevent wasted research efforts.

10.6 Finally, always look for authorities that undermine the position for which you are contending as well as those that support it. In legal research, you need to discover not only the law that helps you, but also the law that will hurt you, so you can anticipate and answer objections that may arise to the arguments you advance.

10.7 Always begin your research from the latest to the earliest in order not to waste your time. But put the date of your research so that when the same problem occurs, you need only to update your research from that date.

III. CONCLUSION

There are non-legal materials which could be used depending upon the nature of the problem. Skills in legal research are focused on the researcher's critical need to know how to draw effectively or how to select from the myriad of lawbooks, the one book required at any given point in solving a problem.

There is no uniform rule as to how extensive the research should be in solving a legal problem. This is influenced by the nature of the problem, the available sources, the legal measures being adopted and of course, the research habits and attitudes of the lawyers or researchers. But in any situation, please take note that common sense has a significant bearing on the research procedure.

[1] 41 Am Jur 408.

[2] *Lo Sui v. Wyatt*, 5 Phil. 496 [1906].

[3] 41 Am Jur 308-9, *Go Occo and Co. v. De la Costa*, 63 Phil. 445 [1936]. [4] Library of Universal Knowledge, 38.

[5] Bell, *Style in Judicial Writing*, 15 Journal of Public Law, 214.

[6] Shaw, *A Complete Course in Freshman English*, 38.

[7] *Widows and Orphans Association, Inc. v. Court of Appeals*, G. R. No. 91797, August 7, 1992, 212 SCRA 360.

[8] *Dioquino v. Cruz*, No. L-38579, September 9, 1982, 116 SCRA 451; *Morales v. Court of Appeals*, G. R. No. 126623, December 12, 1997, 283 SCRA 211.

[9] Fogiel, M., *Handbook of English Grammar, Style and Writing*, 146-7 [1993].

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