

Recommendations for the formal design of juristic scientific papers¹

I. General

For the preparation of legal term papers and thesis (Bachelor's and Master's theses), it is recommended that the following rules be applied.

1. (German) reading recommendations

Keep in mind that the form and content of a scientific paper are closely connected. Therefore, you should familiarize yourself more thoroughly with the technique of scientific work by reading at least one relevant work.

Eco, Umberto: Wie man eine wissenschaftliche Abschlussarbeit schreibt, 10th edition, Heidelberg 2005
good and almost classical introduction to the basics of scientific work

Theisen, Manuel: Wissenschaftliches Arbeiten – Technik, Methodik, Form, 14th edition, München 2008
contains all the „technical“ details that Eco falls short on

Möllers, Thomas: Juristische Arbeitstechnik, 4th edition, München 2008

Schimmel, Roland; Juristische Themenarbeiten, Heidelberg 2007
Weinert, Mirko;
Basak, Denis:

Putzke, Holm: Juristische Arbeiten erfolgreich schreiben, 2. edition München 2009
all three specifically legal, also give advice on source research, structure of the paper, topic identification, etc.

Byrd, Sharon; Zitierfibel für Juristen, München 2007
Lehmann, Matthias:
detailed advice on almost all details of legal citation technique

Franck, Norbert: Handbuch wissenschaftliches Arbeiten, Frankfurt am Main 2004
for reference, not intended for reading in because of the lexicon-like structure

¹ This is an abbreviated and modified version of Schimmel, Juristische Klausuren und Hausarbeiten richtig formulieren, 8th edition, Köln 2009, Rn. 476 ff.

Noltensmeier, Silke; Hinweise zum Abfassen von (Pro-) Seminararbeiten, in:
Schuhr, Jan: JA 2008, 576 ff.
the most important info on eight pages, again: specifically legal²

For questions regarding the form of the thesis (e.g. with regard to the structure, citation technique, references, etc.), it is advisable to follow the procedure in law dissertations. Coordination with the examiners is also advisable because of possible special features of the topic from a formal point of view.

There are a number of similar instructions on the **internet**³.

This guide addresses the customs of **legal theses writing**. Other standards have evolved in other disciplines.

So be a little careful with the guidelines for writing scientific papers that your big sister handed you when she studied education or physics or economics.

2. Practice and prepare!

For the technique of collecting sources and representations (e.g. on the basis of index cards or by means of an EDP program), prior practice is recommended, and for dealing with library holdings and electronic databases, a library tour is recommended.

The effort required to work with scientific texts is often underestimated. Especially in term papers, arguments of different authors are often just strung together. This is not enough. In a scientific paper, arguments must also be organized, weighed against each other, and examined for their underlying explicit and implicit assumptions. The achievement of a thesis therefore consists in a critical examination of the already existing points of view; this can lead to a new point of view, but just as well to the fact that the author (well-founded) agrees with a point of view already held. The latter, however, must not be done with the blanket indication that it is the *prevailing opinion*.

² With a similar approach, e.g. *Dietrich Jura* 1998, 142 ff.; *Jaroschek JA* 1997, 313 ff.; *Jahn JA* 2002, 491 ff.; *Garcia-Scholz JA* 2000, 956 ff.; *Rollmann JuS* 1988, 242 ff.; *Gas Nds. VBl.* 2007, 255 ff., 314 ff.; *Putzke*, Juristische Arbeiten erfolgreich schreiben, 2nd edition 2009 Short version: *Putzke / Küll / Weinzierl*, Gut in Form, www.ruhr-uni-bochum.de/kriminologie/pdf/gut_in_form_formalia.pdf; *Mankowski*, http://www2.jura.uni-hamburg.de/sipr/dateien/dateien_mankowski/zitierempfehlung.doc *Möllers*, www.jura.uni-augsburg.de/prof/moellers/downloads/arbeits technik_jur/Richtiges_Zitieren.pdf.

³ www.jura.uni-bielefeld.de/Lehrstuehle/Rolfs/Begleitmaterial/ha.doc also contains a small sample term paper. We recommend *Bürge's* instructions at <http://gaius.jura.uni-sb.de/Klausuren/Merkblatt/>, which is best read online but can also be printed. Also www.intrecht.euv-frankfurt-o.de/hinweise.htm; www.uni-wuerzburg.de/dreier/seminar/hinweisejurar-beit.pdf. The list here is necessarily incomplete.

3. **Structure and thought leadership**

Most structure questions arise from the topic itself. In general:

The paper should be preceded by an outline of the problem. Avoid generalities (not only in the introduction). Orientate yourself towards a reader who has been trained in the subject; a good paper is, however, at least in the introductory section still comprehensible even for non-specialists.

The reader must always be able to recognize the red thread of the author. Especially in the case of extensive works, which the author has been working on for a longer period of time, it is advisable to guide the reader, i.e. to give short (!) summaries, outlooks and reasons for the procedure.

The paper must conclude with a summary of the results.

4. **Style**

A scientifically sober, simple style is to be used. Avoid colloquial expressions or a style alien to the genre (journalistic or literary writing).

Pay attention to the correct use of legal and other technical terms. If necessary, unusual terms must be explained / defined, sensibly at the first use.

Avoid long and convoluted sentences as well as noun clusters and the unattractive *Palandt*-style abbreviations.

Writing in the **first person** is unusual among lawyers (to indicate one's own point of view, at most, an *in my opinion* is permissible).

Most legal research consists of text with headings and footnotes - and nothing else. Nevertheless, **tables** and **charts** are desirable if they are necessary (e.g., for statistical information whose reproduction in the text would cause unnecessary length). Preferably, they should be placed in the appropriate place in the text; if their size does not permit this, they should be included in an appendix. They are to be named with a signature, numbered consecutively, explained in the text and included in an index, which should be placed after the bibliography.

II. Formal rules

Term papers are written on a **PC**⁴.

The **font size** is usually 12 pt (i.e. like a normal typewriter type), for the footnotes 10 pt, but not smaller.

Too small font sizes are tiring for the reader in the long run. Attempts to save space are transparent and unnecessarily annoy the proofreader.

As **font**, choose Arial (sans serif and emphatically businesslike) or Times (supposedly the easiest to read of all). You can easily do a whole paper with only one typeface - and at most make the headings a bit larger or bold.

Use **DIN A4 paper** that you write on **one side**.

This is a waste of paper, but quite common and allows the proofreader to continue longer notes on the reverse side (unfortunately rare in practice). **Environmental paper** is a matter of taste, but generally harmless.

You do not have to have your work bound, but a **loose-leaf binder** is helpful and quite common - who likes to work with flying sheets? A nice stapler of the somewhat sturdier variety leaves a better impression than the very flimsy ones often encountered. But at least a stapling strip is a must - it's really not a big investment. You can get a **spiral binding** for little money in a photocopy store; it is mechanically more reliable than a bad adhesive binding.

Please do **not** put each sheet in a separate **clear plastic sleeve**. This protects against coffee stains when correcting - but for every little correction remark you have to fumble the sheet out and back in again.

1. Cover sheet

Every written paper begins with a **cover sheet**. On it, one indicates - usually at the top left - the name, address, subject semester of the author and - usually at the top right - the submission date. In the middle of the page is the topic of the paper, the title of the course, the name of the lecturer and the current semester.

It is an always disregarded commandment of politeness to inform oneself, if necessary, about the correct spelling of proper names⁵. After all, almost every reader gets annoyed when they read their name misspelled. As a rule, the lecturer is called by their academic degrees (i.e. mostly *Prof. Dr.*), but omits *Mr./Mrs./Ms.* for this purpose.

⁴ If you are doing this for the first time and do not use a format template downloaded from the internet (e.g. http://www.wordbuch.de/s_dl.html; www.jura.uni-duesseldorf.de/lehre/studium/ha/; www.jura.uni-bielefeld.de/Studium/Wordvorlagen.htm; <http://lawwww.de/Library/havorlage/vorlage.doc>; www.fu-berlin.de/defo/fb/buecher.html#hausarbeiten; <http://www.juraconcept.net/Lehre/Arbeiten/HA-Vorlage.doc>), read *Nicol / Albrecht Wissenschaftliche Arbeiten schreiben mit Word*, or *Krämer / Rohrlich Haus- und Examensarbeiten* (short version in the JuS magazine 2006-2008) or *Müller / Schallbruch PC-Ratgeber für Juristen*. If you do not want to buy and read a whole book, try *Schallbruch Jura1996*, 498 p.; *Müller Jura 1996*, 52 p.; *Knoop jur-pc 1995*, 3417 ff.; www.kortstock.de/word/.

⁵ Check the course catalog, the lecture notes, the Internet, etc. You cannot rely on the spelling correction function of the word processor for proper names. However, you can include proper nouns in the user dictionary - if you also take the opportunity to check them carefully for correct spelling.

2. Task

This is followed by the **task** or the **subject matter** on a separate sheet. From here on, the pages are numbered in **roman numerals**.

Where you place the page numbers and how you format them (header or footer, center or right, with or without indents) is a matter of taste. Some readers find it silly if you write page in front of the page number each time (in fact, the word contains no real new information for the reader).

When **formatting** the subject matter, outline, and bibliography, the norms on margins and line spacing that apply to the main text are not binding. For the sake of clarity, the left margin may be smaller than 7 cm and the line spacing smaller than 1.5. Suggestion: left margin 3.5 cm, line spacing 1.2 lines. This way, the outline and the bibliography remain legible. It is best to arrange the bibliography in a two-column table, which facilitates the uniform and clear formatting of the entries.

3. Outline

Next⁶ an **outline** is required. It receives the moderately original **superscript outline**; in a text of several hundred pages, it may also be called a *table of contents*.

Not enough care can be taken with the outline. As a "shop window" of the work, it shows whether it is structured sensibly or at least comprehensibly. You can assume that the reader will look at the outline carefully before starting the actual reading. Although a successful outline will rarely earn extra points in the grade, deficiencies in the outline will inevitably drag down the grade. For example, an outline with only one level of structure will immediately indicate that you have not put enough effort into understanding the logical relationship between the individual sections of your paper.

The individual bullet points must be arranged **hierarchically**.

Errors often occur in this process - and proofreaders pay very close attention to this. Those who address all relevant aspects but do not systematize them will always be penalized with a deduction of points. This applies all the more if the order of the individual points of view is not comprehensible or even seems arbitrary.

It must be recognizable that you have developed an idea of the logical relationship between the individual sections of your discussion.

Example: If the claim for damages of A against B from § 280 I BGB is assigned the heading level 1., its preconditions (obligation, duty, breach of duty, obligation to represent etc.) must not have the same level (2., 3., 4. etc.), but must be on a logically subordinate level (a), b), c) etc.).

On each level of the hierarchy there are always **at least two structure points** (in for a penny (a), in for a pound (b))⁷.

⁶ Sometimes it is suggested to put the bibliography before the outline. Also good. But rather unusual, if you look at a reference book for comparison.

The headings must be **consistent**. Use either complete sentences (almost never required or even useful) or **keywords**.

Examples: Of course, a heading can be worded like a claim examination heading: *A may have a claim against B for ... from ...*. This is not nice. Better is *claim of A against B to ... out of ...*. Rather *objection to fulfillment, § 362 I BGB* than *A's claim may be extinguished by fulfillment*.

In the outline, the headings from the main text are not analogous, but **verbatim**. It contains all headings, not only those of the first three levels⁸.

Use only one type of bullet point.

There are two common types of heading numbering:

decimal	and alphanumeric
1.	A.
1.1.	I.
1.1.1.	1.
1.1.2.	2.
1.1.2.1.	a)
1.1.2.1.1.	aa)
1.1.2.1.1.1.	(1)
1.1.2.1.1.2.	(2)
1.1.2.1.2.	bb)
1.1.2.2.	b)
1.2.	II.
2.	B.

The latter is traditionally more common in legal texts. The former is more modern and has the advantage that it is always unmistakably clear at which point the reader is. However, in the case of an outline with seven or more levels, this can also turn into an imposition of the type 2.3.17.4.3.1.7.

Combinations of the two outline types and your own inventions only cause unnecessary confusion. Please refrain from them.

When outlining, be careful to take only one step at a time as long as you are going down the stairs; going up may be different⁹.

Example: In the alphanumeric outline just shown, 1. must be followed by a) - only at the next level is aa) permissible and required; skipping an outline level is wrong and confusing. After b), however, you can jump back to II. if a heading is no longer required on the 3rd outline level.

The corresponding page number from the text section should be placed behind each outline heading - preferably right-justified - so that it can be found quickly. It is best to assign each outline level on the left a 0.5 cm larger indent compared to the higher one - this makes it clearer.

⁷ This rule is often violated.

⁸ If you use the outline function of the word processor, you have to make sure that as many levels are displayed in the outline as were actually used.

⁹ If you find the jump from the fifth level back to the second level unattractive, you can avoid this by inserting (intermediate) results on the levels in between.

By the way, this can be done almost effortlessly if you use style sheets for the headings and the outline entries. If you familiarize yourself with the outline function of the word processing program you are using, you will need fifteen minutes to familiarize yourself with it, but you will save time and nerves before handing it in, because the creation of an outline will then run automatically and only take a few seconds.

Be careful not to include all the formatting of the headings in the outline. Otherwise, you will quickly end up with a confusing orgy of bold, underlined, italicized entries and entries set in font sizes that are far too large. It is better to use a uniform formatting in which the different outline levels are only marked by indents (and of course the outline numbers).

The information for the cover sheet, the facts and the outline itself are **not** to be **included** in the outline. The bibliography can be included, but does not have to be.

As a guideline for the **size** of the outline, we recommend a maximum of 10-15% of the text (measured in pages), for longer texts rather less, altogether a maximum of three or four pages.

In a first step, the size can be reduced by not including the formatting features of the headings in the text (font size 20 point, bold, one and a half lines, spacing before and after one and a half lines, etc.) in the outline.

In the case of a twenty pages long paper, you should become suspicious after the fifth **level of outline**, and restructure after the sixth; in the case of a fifty-page paper, seven levels of outline may still be tolerable. Excessive attention to detail in outlining is a beginner's mistake.

During editing, it may be useful to subdivide the text more thoroughly. This makes it easier to find what has already been said and enables a quick orientation about the completeness. Also, some mental mistakes are only noticed when you try to find a heading for them. The resulting work headings should be removed before handing in the paper.

If you need **illustrative material** for the outline and list of publications, take a good doctoral thesis or post-doctoral thesis.

Textbooks and commentaries also work; however, they do not always have exemplary bibliographies. The bibliography at the front of this book is intentionally designed so that you can use it as a guide.

4. List of publications

The outline is followed by a bibliography. It is headed with *bibliography*¹⁰ (recently also with *list of sources*, if you absolutely have to cite sources from the Internet).

¹⁰ Legal texts seldom meet the requirements that are always associated with *literature*.

Only what is really cited in the footnotes is included.

To ensure this (and everything else is perceived by the proofreader as an embarrassing and easily visible show-off), you have to go through the list of publications once again with a rake when the finished text is printed in front of you. What is not cited, flies out.

With some exceptions, **everything** that is cited in the footnotes belongs in the bibliography¹¹.

In order to ensure this (and anything else leaves the proofreader with the avoidable impression of sloppy work), you must also check the index for completeness in this direction when the printed text is in front of you. What is not in the index will be added. Matching is easy with the search command of the word processor. You can make it even easier for yourself if you record the evaluated literature in a database, the field contents of which you copy over to the word processor as required when creating footnotes. With a bit of skill, you can have a macro do this for you.

You can make a list of publications clearer by leaving a blank line between the entries. On the other hand, it helps the eye to orientate if the directory is cast into a table so that each column always contains the same information. For this, a two-column table is sufficient, in whose first column the name of the author and in whose second column all other information are accommodated¹².

a) Basic information

What information must be included in the bibliography - and what does the individual entry look like?

Rule of thumb: The reader must be given all the information he needs to identify the cited text unambiguously and to find it in the library¹³.

The general structure of an entry looks like this:

Author (last and first name); Title; Edition; Place of publication; Year of publication.

What you need to know beyond that, you will find afterwards.

The cited texts are arranged **alphabetically** according to the **surnames** of the authors¹⁴, in case of surname equality according to the first names, several texts of the same author according to the titles.

¹¹ Monographs and commentaries (not only legal ones) sometimes deviate from this practice by including only those sources that are cited several times and are considered important in the index, while those cited are listed only once with all the necessary information. In examination papers, this is strongly discouraged, no matter how commendable the necessary selection effort may be.

¹² Those who do not want to become acquainted with the table function of the word processor exclusively because of the list of publications can also achieve the same effect with the tab key, if the tab stops in the line ruler are set correctly.

¹³ This criterion should help to overcome the worst uncertainties; detailed information on the bibliography, citation technique etc. can be found in *Byrd / Lehmann Zitierfibel für Juristen* (critically reviewed by *Bergmann / Sturm NJW 2008, 742*).

¹⁴ The **first names** are also to be given - not only as a matter of politeness: Look in the library catalog under *Meyer* or *Smith* if you do not know the first name. There are more name similarities (and more dynasties of scholars) than you think. Do you know offhand which texts were written by Jörn *Ipsen* and which by Hans Peter *Ipsen*, which by Hans and which by Christian *Hattenhauer*, which by Ludwig and which by Thomas *Raiser*, which by Manfred and which by Eckard *Rehbinder*? If you omit the first names anyway, you should omit them uniformly.

The correct spelling of names should be observed not only out of politeness, but also so that the identification of the cited text does not become a guessing game for the reader. In the bibliography, the surname is usually prefixed, because this is the easiest way for the reader to find the entry he is looking for.

Example: *Medicus*, Dieter instead of Dieter *Medicus*

This is also the easiest way to sort by hand. If you use the sorting function of a database, you can of course also use the second name notation. In this case, however, the last name should be bolded to facilitate quick orientation.

Example: Dieter **Medicus**, General Part ...

Whether the list of publications is divided into individual sections for textbooks and monographs, commentaries, essays, and contributions from collected works depends on personal taste and the scope of the list. The more extensive the list of publications is, the more likely it is that no **subdivision** should be made (and it looks a bit silly even with very narrow lists) ¹⁵.

If one does not know how to classify a title, one should orient oneself on the handling of legal literature or on the CIP data set of the **German National Library**¹⁶. Some books contain a **suggestion for citation** in the front. If this is not completely at odds with your own handling, you should follow it.

a) Names

Names of **natural persons**: Omitted - in the bibliography and footnotes - are **academic titles**.

Example: Not *Prof. Dr. Wilhelm Schulz*, but *Schulz, Wilhelm*.

This is common practice and signals that you are less impressed by the title than by the substantive persuasiveness of the author's viewpoint - i.e., arguments rather than authorship. Besides, academic titles do not help you find a book - feel free to try it....

The name is usually followed by a colon as a separator from the book title.

Noble titles and the like are part of the name and are therefore not omitted; however, they are usually ignored when sorting alphabetically¹⁷.

Example: *Friedrich Graf von Westphalen* is thus classified under *Westphalen, Friedrich Graf von*. The same applies to princes, knights, barons *von* and *zu, de, ter, ten, van*, etc.

In case of **name similarities**, sometimes a clarifying reference to the relationship helps.

Example: *Dahs, Hans jun.* and *Dahs, Hans sen.*

¹⁵ Advantages of a purely alphabetical arrangement: it is easier to conceal the fact that the processing of problem-specific monographic literature is somewhat thin; in addition, the reader finds the individual title more quickly because they do not have to worry about which genre of literature the cited text belongs to (and does not have to think about the tiresome question of whether a handbook should be included with *textbooks*, with *monographs* or perhaps with *commentaries*); advantage of the subdivision according to text genres: simple orientation of the reader about the scope of the literature evaluation. Overall, the subdivision by text genres is lately going out of fashion.

¹⁶ It is reproduced in the front of the book or can be queried via the OPAC of the German National Library (<http://dispatch.opac.d-nb.de/DB=4.1/>).

¹⁷ Of course, you may think otherwise if you think kings, emperors, princes and dukes are great and doubt anyway whether democracy is actually the best form of government.

Omitting the first names, which can be found again and again, is impolite, leads to confusion and is not recommended.

For the sake of clarity, the **last names** can be **emphasized** by capital letters (versalia), bold type, or similar.

This makes it easier for the reader, whose gaze has just wandered from a footnote to the bibliography, to quickly identify the title he is looking for.

Several names are separated by semicolons or slashes¹⁸. Depending on the formatting of the list of publications, they can also simply be written one below the other. **All** author names are to be given; usually there are not more than two, e.g. for essays. In the case of monographs, however, there may be quite a few.

Pseudonyms are quite rare in legal texts; they are most likely to be found once in a dispute. If they can be decoded by means of a simple search in the library catalog¹⁹ or are uncovered historically, Examples: Hermann Kantorowicz published his text *Der Kampf um die Rechtswissenschaft* (Heidelberg 1906, reprint Baden-Baden 2002) under the pseudonym Gnaeus Flavius, Theo Raschorn *Im Paragraphenturm. Eine Streitschrift zur Entideologisierung der Justiz* (Neuwied 1966) as Xaver Berra.

one should cite the true name, otherwise the pseudonym, where useful adding a reference to the pseudonym character.

Names of legal entities: If the text is published in the name of a legal entity (without mentioning the name of the author), this entity is named instead of the author,

Example: VDI, SPD-Bundestagsfraktion etc.²⁰

if necessary supplemented by the addition (*ed.*).

If the author is not mentioned at all, the text usually does not need to be cited or is not citable. If it is, the author's name is replaced by either N.N.²¹ or by *no author's name* and the source is classified alphabetically under N or O.

b) **Title and other bibliographic information**

The title is given in full; the **subtitles** could be omitted because they do not contribute to the identification of the text and only inflate the bibliography. Often, however, they offer the reader useful additional information to help him decide whether he wants to read the text in question. The indication is therefore a matter of taste, but should be handled uniformly. In most cases, the subtitle is separated from the main title by a hyphen or period.

Putting the title in quotation marks is neither necessary nor usual.

¹⁸ This allows the hyphen to be used where it belongs: *Leutheusser-Schnarrenberger* refers to a person, *Leutheusser/Schnarrenberger* to a team of authors. If you put hyphens between the single persons, you have to mark double names with an =-sign (e.g. *MüKo-BGB-Mayer=Maly*). Also works.

¹⁹ For example, in the joking use of the pseudonym *Civis Romanus* by Klaus Adomeit (as in the bibliography).

²⁰ However, the abbreviations should be resolved - unlike here in the example. Not every reader is familiar with every abbreviation of an interest group.

²¹ Abbreviation for Latin *nomen nescio*, so *the name I do not know*.

The **edition** of the text must be indicated if it is not the first edition.

The first edition of a book is not addressed as such, because the omission of this information allows the unambiguous conclusion that it is the first and so far only edition. If you like it, you can abbreviate *4th edition* to *4th ed.* or *4th E.*

You should omit the information *unchanged reprint / reprint of the x. edition*. Edition. For the reader it makes no difference whether you have quoted from the original or the reprint published years or decades later²². On the contrary, he wants to know when the view you refer to was originally or last held.

If a text is not updated edition by edition, but by **supplementary deliveries** (namely in the case of loose-leaf commentaries and the like), one indicates the supplementary delivery and the status instead of the edition (or additionally, if supplementary deliveries take place within an edition).

Example: *Westphalen*, Friedrich Graf v. (ed.), *Vertragsrecht und AGB-Klauselwerke*, Munich, as of June 2003 (13th supplementary edition).

Use and cite the **current editions**: The text should be as up-to-date as possible and not reflect the legal situation of the late 1960s. If you cite an older edition, e.g., because it contains a different opinion,²³ you must indicate the edition in the footnote (e.g., with a superscript number after the title). In the list of publications, the book must then be listed in both the old and the new edition.

When stating the edition of a commentary, textbook, etc., the *additions improved, supplemented, expanded, updated, revised*, etc. should be omitted.

If you need to make statements about an **earlier legal situation**, it is mandatory to refer to older literature. Sometimes you only need an old edition in order to substantiate a particularly well-pointed statement that is no longer found in later versions of the text due to changes in the law in the meantime.

In general, the most recent edition is considered authoritative because it reflects the state of the text that the author last intended to be valid. Exceptionally, however, the **first edition** is cited if it is a historical text (which is usually reprinted unchanged and for which the reference to a recent edition would promote misunderstandings regarding the time of origin)²⁴.

²² The same applies to **offprints** (separata, e.g. from *Festschriften*, conference proceedings, etc.): The reader needs the information that leads him to the original source; which source you have used individually is not important for him.

²³ This is always an indication that this point of view is perhaps no longer held today and should therefore not be discussed too widely in your work (or at least marked as an opinion that has been abandoned in the meantime). However, things are different if, for example, the editor of the relevant standard has changed in a commentary: Then you may treat a view not abandoned by the previous editor as still held. - Likewise, it is permissible to cite an edition that is no longer current if it contains a particularly catchy formulation that the editor later dropped.

Example: The popular quotation of Julius v. Kirchmann (*Three correcting words of the legislator, and whole libraries become wastepaper*) could of course be quoted according to the currently latest edition (Dornbirn 1999); but it is historically more meaningful to quote the first edition (Berlin 1848). In this way, the reader has an impression of the historical context in which the statement is to be placed. Those who politely want to give the reader easy access, name in the list of publications the most recent edition next to the historical one²⁵ (or the anthology available in the library instead of the non-existent journal with the first publication). Since the page numbers are usually not identical, it is advisable to add a suffix in the list of publications, such as *cited after the Zurich 1983 edition*.

According to convention, the **name of the publisher** is not given in lists of legal publications.

In the meantime, it is no longer always considered necessary to state the **place of publication**; however, in view of the habits of the probable readers, it should be included²⁶.

If a publishing house has **branches** in different cities in Germany or world-wide, the **indication of the first city** with a *etc.* suffices. To identify the cited title with the help of the library catalog, the first named place of publication is sufficient. Of course you may also write down all cities, if it does not tire you too much.

The year of publication follows the **place of publication** (without comma).

Nicer and more confusion-proof than *91* and *05* are *1991* and *2005*.

If you are citing a multi-volume work whose individual parts appear scattered over the years, you can either cite each cited volume with its specific year of publication or give the publication time span for the entire work. The former is preferable because it allows the reader to be more precisely informed about the status of the cited commentaries.

Example: Münchener Kommentar zum BGB (ed.: ...), 4th edition, Munich 2001-2006; 5th edition, Munich 2007 ff.

The latter is sufficient for identification and is generally considered sufficient, the former needs a bit more work and space, but has the advantage that the reader can inform himself exactly about the current status of the cited material²⁷.

²⁴ It is probably even rarer that neither the current nor the first edition is cited - but one in between, for example the last edition still obtained by the author himself. However, the effort of comparing the text is usually only undertaken if it is to be expected that the quoted idea has been revised or even omitted. After all, this can happen: For example, if one wants to explicitly attribute a formulation or thought to *Larenz*, one should not cite the version of the *Methodenlehre* revised by *Canaris*.

²⁵ One should proceed similarly with a quotation from non-legal literature; anyone interested in the *Soldaten sind Mörder* quotation from *Tucholsky*, for example, will want to know first and foremost that the text was originally published in 1931, and only secondarily that the now authoritative edition of his works was first published in 1960 and has been reprinted ever since.

²⁶ This also has a practical advantage: If you cite texts with a place of publication in Vienna or Zurich, you may have inadvertently processed information on Austrian or Swiss law. This happens from time to time. In the same way, the indication of the place of publication of English-language texts allows the reader to easily find out whether the books deal with English, Scottish, Irish, American, Australian, etc. law.

²⁷ This is not so far-fetched: if you consider, for example, the overlapping publication periods of the editions of major commentaries of the *Staudinger* type, a clear indication is definitely an advantage.

If **information** such as the name of the author, the place of publication or the year of printing is **missing**, this is indicated by the words *o.V.*, *o.O.* and *o.J.*

Texts published without an author's name must be classified alphabetically under O. This is quite rare with standard legal literature. If it occurs, you should always first consider whether it is a citable text at all.

Missing first names - until the first half of the 20th century, first names were often omitted, especially in journal articles - must either be researched elsewhere or omitted²⁸. If one has found out the first name, one should point out the addition of the data by own hand by a square bracket.

Example: Staudinger, J[ulius] v. (ed.), BGB, ...

The **genre of the text** (essay, monograph, etc.) is not indicated, since this can be deduced from the other bibliographic data, if the list of publications is not sorted by genre anyway. An exception may be appropriate for some small texts; for example, a letter to the editor can be marked as such in parentheses.

Foreign language sources can be included either according to the citation practices of the foreign legal system or according to the local rules. The latter is recommended. If you want to follow the citation rules of foreign legal systems, you have to inform yourself about them²⁹.

If a text is available in German **translation**³⁰ this should be cited.

Example: *Maine*, Henry Sumner: Das alte Recht, Baden-Baden 1997 (Translation of: Ancient Law, London 1861)³¹

This will seldom apply to legal literature, but rather to fiction and popular science texts. In addition to the bibliographic information for the German edition, at least a reference to the place and year of publication of the original edition should be included in the bibliography. This makes orientation easier for the reader.

²⁸ To put the indication (*without first name*) instead of the first name (so the recommendation of *Putzke*, *Arbeiten*, 42) is not necessary and on closer inspection wrong, because the persons concerned had first names, even if one does not know them. - The effort of research can be considerable in the case of E. Müller; but to find out that the notoriously abbreviated *J.v.Staudinger*, the editor of a major commentary on the BGB, was called *Julius*, is really not an impossibility (and perhaps even a matter of general legal education).

²⁹ For Anglo-American law, see *The Harvard Law Review Association* (ed.), *The Bluebook, A Uniform System of Citation*, 18th edition, Cambridge / Massachusetts, 2005.

³⁰ This is only rarely the case with foreign-language textbooks on current law, but much more frequently with texts in the basic sciences of legal theory, history, and sociology. While in the case of translations from English (which are probably most of them) one can perhaps still assume that the reader will also be able to read the original (and could therefore also quote the original if necessary), this is no longer true in the case of Russian, French and Spanish.

³¹ For better information of the reader, one could also mention the translator (Heiko Dahle), as well as the new editions (here: numerous) or the internet location of the full text (http://en.wikisource.org/wiki/Ancient_Law). However, since you are not writing a literary-historical work, this information is not necessary. If you want to prove the idea *from status to contract*, it is sufficient for the reader to know when it was first published - and where he can find the German translation.

c) Special features of individual text genres

Experience has shown that what has been explained up to this point is sufficient for 75% of the entries in the list of writings; the details below should cover another 23% of all questions that arise³².

Monographs:

The monograph is the normal case of the book, namely one that deals with one subject (hence the name) and is usually written by only one author.

Name, first name, title, edition, place of publication, year.

Examples:

Textbook: *Flume*, Werner: Allgemeiner Teil des Bürgerlichen Rechts, Bd. II: Das Rechtsgeschäft, 4th edition Berlin 1992;

Doctoral thesis: *Sartowski*, Rafael: Pflichtenkollision bei der Effektenberatung, Norderstedt 2005

Postdoctoral thesis: *Thüsing*, Gregor: Wertende Schadensberechnung, München 2001

The **series** in which a book was published is usually not mentioned. It is not necessary for identification - and mostly not helpful.

Oftentimes, monographs written as **doctoral theses** or **postdoctoral theses** are marked as such (namely with the additions *Diss. jur.* or *Habil.*). However, this does not provide the reader with any gain in knowledge, so that these designations can also be omitted. They only help to find the book in question if it has not been published by a publishing house, but by private print. Then the reader can obtain a copy at least at the university place of the thesis³³.

Collective works are classified either according to their title or according to the name of the publisher.

If there are several editors, it is sufficient to mention the first three. To show that there are more than those mentioned, one adds *et al.*

Festschrift (FS)

Natural persons (scientists, judges, politicians), institutions (courts, associations, publishers) and laws (KO, GmbHG, BGB each on the 100th anniversary) receive Festschriften³⁴, when they become old enough.

Example: *Perspektiven des Geistigen Eigentums und Wettbewerbsrechts - Festschrift für Gerhard Schricker zum 70. Geburtstag*, ed. by Ansgar Ohly, Theo Bodewig, Thomas Dreier, Horst-Peter Götting and Michael Lehmann, Munich 2005, cit.: FS Schricker³⁵

Some are honored by several Festschriften (e.g., for the 65th, 70th, 75th birthday, for the 25th, 50th, etc. anniversary). Then the cited publication must be identified by specifying the occasion³⁶.

Example: Festschrift for Karl Larenz on his 80th birthday.

³² The remaining 2% you either decide according to your own taste or consult one of the texts mentioned in fn. 2, 13 for supplementation.

³³ Therefore, it is best to use the designation *Diss.* (in the case of a *Habil.* it happens only very rarely that no publisher can be found for it) only for self-published (i.e. copy-shop produced) doctoral theses. Then the reader knows that he does not have to search elsewhere.

³⁴ On the history of the legal Festschrift as a literary genre Lahusen *myops* 4/2008, 64 ff.

³⁵ The occasionally encountered spelling with hyphen (*FS-Schricker*) is illogical and not recommended.

³⁶ Otherwise *Festschrift for <Jubilar>* is also sufficient. But one never knows what comes next: Before the Second World War, the First World War was simply called the *World War*.

Memorial publications (Gedächtnisschrift – GS)

Example: Gedächtnisschrift für Meinhard *Heinze*, ed. by Alfred *Söllner*, Munich 2005

Collections of essays, regardless of whether they contain the essays of one author

Example: *Kötz*, Hein: *Undogmatisches*, ed. by Jürgen *Basedow*, Klaus *Hopt* and Reinhard *Zimmermann*, Tübingen 2005

or - similar to a *Festschrift*, but without an occasion - collect essays of different authors on a major topic,

Examples: *Festgabe Zivilrechtslehrer 1934/35*, ed. by Walther *Hadding*, Berlin 1999; particularly ingenious, because appearing in the guise of a *Festschrift*: *Das wahre Verfassungsrecht - Zwischen Lust und Leistung - Gedächtnisschrift für Friedrich Gottlob Nagelmann*, ed. by Dieter *Umbach*, Richard *Urban* and Roland *Fritz*, Baden-Baden 1984.

Collected volumes of conferences and symposia etc.

Example: *Stalking - Legal Perspectives*, International Kassel Stalking Symposium on 11.11.2005, ed. by Volkmar *von Pechstaedt*, Kassel 2005

are not included independently, but only listed with the respective article cited from them³⁷.

Example: Karl-Nikolaus *Pfeiffer*: *Internet-Suchmaschinen und das Recht auf freie Meinungsäußerung*, in: *Perspektiven des Geistigen Eigentums und Wettbewerbsrechts - Festschrift für Gerhard Schrickler zum 70. Geburtstag*, ed. by Ansgar *Ohly*, Theo *Bodewig*, Thomas *Dreier*, Horst-Peter *Götting* and Michael *Lehmann*, Munich 2005, p, 137 ff., cit: *Pfeiffer*, in: *FS Schrickler*³⁸

If an anthology does not contain (as is usually the case) first publications, such as the contributions to a *Festschrift* or to a lecture series,

Example: *Dreier, Ralf / Sellert, Wolfgang (eds.), Recht und Justiz im Dritten Reich*, Frankfurt am Main 1989

but the previously published, but poorly accessible and scattered texts of an author or a group

Example: *Böckenförde, Ernst-Wolfgang / Lewald, Walter, Adolf Arndt - Gesammelte juristische Schriften*, Munich 1976

one takes as reference for the cited contribution primarily the original publication, supplemented only out of politeness by the more convenient reference in the anthology. For the reader it is more important when and where the idea was published for the first time.

Texts with proper name³⁹

Examples: *Karlsruher Kommentar zum OWiG*, *Münchener Kommentar zum BGB*, *Alternativkommentar zur ZPO* etc.

are preferably classified according to the proper name. This makes it easier for the reader to find them⁴⁰.

³⁷ Some authors think differently and include the anthology as such in the list of publications. This is also possible. However, this unnecessarily inflates the list.

³⁸ Abbreviations such as *FS* for *Festschrift* and *GS* for *Gedächtnisschrift* are common in law. However, if you are producing a list of abbreviations anyway, you should include them.

³⁹ According to legal custom, often - but not necessarily - a city name.

⁴⁰ It may be that you do not have to facilitate anything for the reader because he knows or should know all the titles cited - but you never really know.

Since these texts usually have several editors and even more editors, listing the authors would be permissible, but impractical. The advantage of placing the text under its proper name is that it is easy to find for the reader, who will find it cited in abbreviated form in the footnote.

The same applies to books that are still named after their long-dead original authors or editors.

For example: Palandt, Kommentar zum BGB is rubricated with *Palandt* and not with the present authors (although they would have deserved it long ago).

In these cases, one deviates from the doctrine, because all professionals do so out of politeness or thoughtlessness.

Comments

For editors: Last name, first name (ed.), title, edition, place, year.

Examples: *Palandt*, Otto, BGB Kommentar, 69th edition, Munich 2010; *Jauernig*, Othmar, BGB, 12th ed., Munich 2007

for commentaries with "proper names": title of work, ed. by: Surname, first name, other as above

Example: *Erfurter Kommentar zum Arbeitsrecht*, ed. by *Dieterich*, Thomas et al., 8th edition, Munich 2008

In the case of **multi-volume commentaries**, it is not so necessary to indicate the specific volumes cited: Once the reader stands before the complete work in the library, it is reasonable for him to take the correct volume from the shelf alone.

Whoever handles this differently and lists the individual volumes of, for example, a commentary published over several years in the list of publications, can thus easily indicate the respective processing status for the reader.

However, only those volumes that have really been used should be mentioned. Inflating the list of publications by listing all volumes of *Staudinger* is a futile labor of love.

It is neither necessary nor sensible to list all **editors** of a commentary.

This only fills space unnecessarily. But you can try it, best at *Staudinger*, BGB. In addition, you should name the respective commentator of the relevant provision in the footnote.

You may use (common) **abbreviations** in the title. You do not have to write out *Handelsgesetzbuch* every time, but you may of course. If you are unsure, choose the spelling in the book itself or in the catalog of the German National Library.

Essays

Name, first name, title, journal, year, page

Example: *Reifner*, Udo: The adjustment of variable interest rates in the credit relationship, in: JZ 1995, 866 ff. ⁴¹

⁴¹ Instead of 866 one can of course also write *p. 866*. Whether one wants to mark the extent of the text by adding *f.* or *ff.* or using the format *866-871* is a matter of taste. For the identification of the reference only the indication of the beginning page is necessary.

in collective works: Name, first name, article title, in: name, first name (ed.), book title, edition, place, year, page.

The **name of the journal** is given only in abbreviated form both in the list of publications and in the footnotes.

Examples: NJW, MDR, DB, etc.

The number of the issue is superfluous, since the pages of the issues of journals are numbered by year.

In addition to the year of publication, archival journals (e.g. AcP, ARSP, AöR, GA, RabelsZ, ZHR, ZStW) usually indicate the **year**.

Example: *Hilger*, Norbert: Die verspätete Annahme, in: AcP 185 (1985), 559 ff.

In the few journals that are filed thematically, one cites by subject and page.

Example: *Horst*, ZAP Fach 12, 23 ff.

In the case of journals that only appear on the Internet, either the deep link to the specific reference should be given or at least the main page of the journal.

Example: *Basak / Schimmel*, ..., in: ZJS 2008, 435 ff. (www.zjs-online.com/dat/artikel/2008_4_94.pdf) or *Basak / Schimmel*, ..., in: ZJS 2008, 435 ff. (accessible via www.zjs-online.com)

Decision notes are also included in the list of publications if they do not have their own title.

Example: Jahn, Joachim: Comment on BGH v. 10.2.2005, III ZR 294/04 (= WM 2005, 810), in: EWIR 2005, 485 f.⁴²

This often occurs in educational journals (Jus, Jura, JA) that review decisions in a standardized format for didactic purposes, as well as in journal publications that exclusively contain annotations (e.g. LMK, EWiR, WuB).

Book reviews are cited similarly to decision annotations⁴³.

Example: Merkt, Hanno: Review of Patrick Leyens, Information des Aufsichtsrats, Tübingen 2006, in: NJW 2007, 1862.

However, not all bibliographic information is needed to identify the reviewed book, because the review can be found via the reference.

If there are several publications by one author in the index, which are not already clearly identifiable by the reference (e.g. in a journal or a Festschrift), the **citation references** must be added to the entries. This is done either by placing a *citation*: <name>, <short title> (in the case of commentaries e.g. *cited: Palandt-Bearbeiter*) behind or below the entry (perhaps in italics, preferably in brackets and/or in a smaller font) or by visually highlighting (bold, italic, underlined) the name of the author and the short title (expediently the first noun of the title) or by indicating name and short title in the left column and the complete reference in the right column.

⁴² It is advisable, as in this example, to identify the decision by file number and date (and not only by citing the reference), because in this way the reader can identify it even if he has a parallel reference available.

⁴³ This will not be necessary too often, because in this country, comprehensive reviews in which the content is argued are rarely published.

When specifying the citation method, care must be taken to ensure that the reader can find the information in the footnote that will enable him to immediately and clearly identify the cited title in the list of publications. Thus, the word at the beginning of the short citation, when sorted alphabetically, must lead to the correct entry in the bibliography. The effort still seems a bit silly for a beginner's paper with twenty titles in the bibliography. Keep in mind that your thesis will list a three-digit number of sources.

It is popular in student papers, but unnecessary and actually nonsensical, to mention that you are citing by page or by margin number when you indicate the citation method.

The name of the author can be listed anew each time. More usual and clearer it is however to write *the same*, which is usually abbreviated with *Id*, the latin abbreviation for *idem*⁴⁴.

Multiple texts by the same author are sorted either alphabetically (by the first letter of the title or the first letter of the first noun in the title) or by the year of publication (and then alphabetically within the year of publication).

The list of publications does not include

Court decisions (judgements, orders)⁴⁵,

Example: *Judgment of the Federal Court of Justice (BGH) of 3.11.2004, ref. XIII ZR 375/03.*

Collections of decisions as such,

Example: *Official collection of decisions of the Federal Court of Justice in civil matters – BGHZ*

Trade journals as such,

Example: *Betriebs-Berater* or *NJW Volume 1993*

Laws,

Example: Second Act Amending the Laws on Compensation for Damages of July 19, 2002, BGBl. I, 2674

Law collections

Examples: dtv edition BGB, 66th edition; Schönfelder, German Laws, as of January 2008

and other sources such as **newspaper articles**

Example: *press release of dpa, in: FAZ v. 30.2.2003, p. 109*; other sources apply at most in the case of longer articles identified by name, which also have a "correct" headline.

These are assumed to be known. If they are not, the abbreviation used in each case should be shown in the list of abbreviations.

Festschriften, Gedächtnisschriften and similar **collective works** are also not included as such, but only cited in connection with the authors of the individual contributions.

⁴⁴ In German, the abbreviation for *Id*. is *ders*, or *dies*. (*derselbe/dieselbe*), which are gendered. In order to decide which one to use, one must have an estimate of the gender of the author. This can be difficult with unusual first names. It almost always helps to look in the first footnote of the essay — (or in the blurb of the monograph), where there is usually a brief introduction.

⁴⁵ For these, a decision index is occasionally required.

There are no fixed written rules for the **citability** of a work, but there are some quite reliable practical procedures. Usually, **casebooks with solutions**

Example: Olaf *Werner*, Fälle mit Lösungen für Anfänger im Bürgerlichen Recht, 12th edition, Munich 2008

and **instruction books** are not cited (but read, evaluated and weighed).

The same is true of scholarly lightweights,

Examples: The book series ... - *made easy*; ... *quickly grasped*; The schemes; The books from the publishers *AchSo!*, *Der Fall-Fallag*, *Richter*, *Rolf Schmidt*, *Jan Niederle* - Rule of thumb: The more squeaky-colorful the cover, the less citable the content. Second rule of thumb: Books, whose authors talk to you on familiar terms (in German: Addressing you with "du" instead of "Sie") and use interjections such as "Alright?" continuously, are not quotable⁴⁶.

Second rule of thumb: books, whose authors duzen your readers and again and again with interjections such as Alles klar? make happy, are not quotable⁴⁶.

the scripts of the legal Repetitoren

Examples: *Alpmann & Schmidt*, *Hemmer & Wüst*, *Abels & Langels*, and *Jura Intensiv* are the best known and most common - but there are several more.

and the **lecture notes** of your lecturer.

The latter is a working tool for you, but not a citable source. If your instructor wants to bring the statements it contains into the academic discourse, they will publish them as an essay, monography, or textbook. Until then, you will need to find another source of evidence for your citations. Be carefree: your instructor does not expect their script to be cited out of vanity.

They are all considered ineligible for citation because they are not scientific⁴⁷.

In addition to the titles just mentioned, which are, as it were, absolutely not citable, there are texts which will have to be regarded as **relatively not citable**. These are books whose authors are scientifically credentialed and whose content is competently presented, but which are well below the level of difficulty of the particular exercise.

Examples: Introductory legal literature (e.g. Hans-Joachim Musielak, Grundkurs BGB; Gert Brüggemeier, Zivilrechtlicher Grundkurs; Harm-Peter Westermann, Grundbegriffe des BGB) is unsurpassed if one wants to familiarize oneself with it; however, because it does not go into detail according to its purpose, one uses the more specialized textbooks in the exercise. Those who still cite such "beginners' textbooks" in their final thesis are lagging behind the competition.

Despite their designation as **gray literature**, the typescripts of associations and government institutions that are not intended for publication are usually mentioned in the list of publications.

Such texts

Example: minutes of meetings, internal papers from governmental and non-governmental institutions are more likely to serve as a source of information, e.g., for statistical purposes, than as a source of evidence for problem-solving approaches discussed in legal scholarship.

⁴⁶ Third rule of thumb: If the author has written only one text (namely the script at hand), they do not (yet) belong to the scientific community, but rather to the repetitor community.

⁴⁷ This does not imply any judgment on the didactic qualities of these texts, nor on the question whether occasionally a good script does not contain wiser arguments than a bad textbook.

However, if they are cited, they also belong in the list of publications. Since they are generally not available in bookstores or libraries, it may be useful to indicate where they can be obtained (unless they are excerpted in the appendix or quoted verbatim in the text).

Wherever possible, cite **primary sources**, i.e., monographs, textbooks, commentaries, etc., rather than sample cases in educational journals and case collections.

This is not the case if the author's own arguments appear in such a case, which are not already represented elsewhere. However, this is statistically the exception.

Get into the habit of using **technical literature** from the first semester on.

Even the large serious encyclopedias⁴⁸ do not offer the depth of information of relevant technical literature. Taking advantage of their advantage in comprehensibility for the introduction to a problem can be useful. However, the reader must not notice this. Legitimate, on the other hand, is access to encyclopedias, where the general language content plays a role in the interpretation of a term in addition to the technical language content.

Likewise borderline are the texts, which turn (indeed specifically juridically, but to the "wrong" target group, i.e.) to trainees and lawyers⁴⁹. For the most part, they do not contain scientific arguments about the views presented, but essentially work instructions.

Unrestrictedly, the requirement to use technical literature applies initially only to legal problems, information and statements.

If your work needs information from astrophysics or structural engineering, it is in principle reasonable to consult reference books from these sciences as well. But there are limits to what is reasonable. If you can understand the terminology of other sciences only with a second degree, it is reasonable and permissible to switch to general sources of information. However, if possible, always make sure that the source is reputable. If you do not have scientific texts available, at least quote popular scientific ones.

Popular, but scientifically unserious (and as a trick rather transparent) is the **pumping up** of the literature list. In the simplest case, this means: If you have spent the entire term paper with three commentaries and two textbooks (and a repititor's script), you quickly invest an evening in citing all other potentially citable commentaries and textbooks exactly once in order to be allowed to name them in the list and thus to create the impression of a comprehensive evaluation of the material. This goes wrong. Your reader needs only a few seconds to skim your footnote apparatus. And already they have caught you in clumsy tricks - and is in a bad mood and suspicious for the rest of the correction.

Internet sources should be cited with caution and restraint. They are scientifically problematic in - at least - two respects. First, they are frequently **volatile** (because internet addresses change or pages go completely offline and because content on the Internet is easy to change, while it remains the same in printed form⁵⁰) and therefore verifiable only to a limited extent. Therefore, **printed sources are preferable** if the content is the same.

⁴⁸ Brockhaus, Meyers, Encyclopedia Britannica, all now also on CD-ROM; free and often surprisingly good, some also impressively up-to-date: <http://de.wikipedia.org/> (but bear in mind the lack of editorial support and the associated loss of reliability).

⁴⁹ Thus, books of the type Handbuch des Fachanwalts Familienrecht, Formularsammlungen etc.

⁵⁰ With a little luck, internet archives such as the *wayback machine* at <http://web.archive.org/collections/web.htm.l> can help.

Rule of thumb: If possible, citations should be made from printed sources; otherwise, internet citations are also permissible.

If the information or statement in question is (still) only available on the internet, it must be proven in the footnote with a comprehensible reference.

If the author himself doubts whether the reader will still find the page in question, he must make a printout and attach it to the paper in the appendix (with the date of the last visit and the address). Wherever possible, a deep link should be used for URLs, because the reader will get lost in his search if he only receives the home page. Otherwise, the URL should be supplemented by the menu item where the information in question can be found. A net finding place must be identified at least just as clearly as a finding place in a printed text⁵¹, so that the reader is to be equipped with the information, when the looked for information was still at the place concerned. Only in such a way he can try with an Internet archive afterwards to verify your finding place.

The second problem is the **reliability**. On the Internet there is an unbelievable amount of false, bad, inferior, incomplete information and advertising that masquerades as information but contains no information. Often, then, the Net is simply a **source of inferior quality**⁵².

The easy availability of information in the Internet tempts students fast to prefer the electronic source to the printed one, because one must look for the latter laboriously in the library. This is something to be warned against. The laborious way is the right way.

Special caution is required where information fished from the net **cannot be assigned to an author**. If - unlike in a scientific text - no one is willing to take responsibility as the author, the source tends not to be citable. Sometimes, however, the author is named elsewhere, for example in the imprint.

Since the Internet (in general and increasingly also for scientific contexts) is discovered more and more as a fast medium, it is often superior to printed sources in **topicality**. Here lies a legitimate reason for citations from the net.

You can cite a **parallel Internet source**, but you do not have to.

Texts from the **daily press** (newspapers, magazines, etc.) can be quoted.

If they do not have an author as press releases, they are not included in the list of publications, but only cited in the footnote.

Example: Press release dpa, FAZ v. 13.10.2005, p. 6

If they are longer texts, for example from the feature section, they also belong in the list of publications, with the name of the author and the title⁵³.

Example: Dietmar *Kammerer*, Zeit der Zäune, taz v. 24.11.2005, p. 15 f.

⁵¹ Recommendations on Internet citations in *Byrd / Lehmann Zitierfibel*, 70; *Putzke*, Arbeiten, 54 f.; supplementing on the correct citation of electronic documents *Walther* NJW-CoR 2000, 298, 302; *Willamowski*, jur-pc Web-Dok 78/2000 (www.jurpc.de/aufsatz/20000078.htm) as well as *Niederhauser* Die schriftliche Arbeit; *Bleuel*, www.bleuel.com/ip-zit.pdf; www.jurawiki.de/RichtigZitieren

⁵² In more detail, e.g. *Zimmer* Library, 72 ff.

⁵³ The longer reportages, which are also marked by name, are usually used more as information sources for facts and appear only in the footnote, while an article belongs in the bibliography if it has an opinion that is dealt with in the text. This also applies to letters to the editor, interviews, etc.

5. Further directories

After the list of publications, further lists may be required. For the most part, they are dispensable.

a) List of abbreviations

In general, you can dispense with a list of abbreviations. If the task or circumstances require one, place it after the outline so that it is listed - with Roman page numbering - at the beginning of the outline.

It is true that there are abbreviations that are not obvious to the reader at first glance, For example, ZIP is an abbreviation for *Zeitschrift für Wirtschaftsrecht* (Journal of Commercial Law), but you can only guess that it was first called *Zeitschrift für Insolvenzpraxis* (Journal of Insolvency Practice).

but you are writing for professionals who can be expected to know or look up the abbreviation.

b) List of figures

A list of figures is needed when a longer paper contains graphics that you have created yourself. This is rather unusual in legal texts.

c) List of legal precedents

Creating a case law index takes effort. This should only be done if the task requires it or if you want to practice. Similar to the bibliography, a table⁵⁴ (here: three columns) is used for clarity. In the first column, the court is listed by instance, starting with the higher courts, and sorted alphabetically by place of jurisdiction within an instance, if necessary separated according to legal practice. The second column contains the information required to identify the decision: Type of decision (judgment, order), date and file number. The third column contains the reference number.

⁵⁴ Example in *Putzke, Arbeiten*, 71 f.

6. Main text

There are fewer rules for the **text part** of the paper. A margin of **one third of the width** - that is seven centimeters - must be left blank on the **left side** of the paper. Only this margin provides the space for correction remarks⁵⁵. On the right, the margin can be quite narrow⁵⁶. A small margin is also sufficient at the top and bottom of the page. The text must be written with one and a half line spacing in a 12 pt font.

Page numbering will be **Arabic** from here on (again, in the header or footer).

The text is structured following the outline. At the individual outline points, the outline headings are repeated verbatim (not just in spirit).

If you use the function "Create table of contents" in your word processing software, this is self-evident.

The paper ends with your **handwritten signature** on the last page.

If the relevant examination regulations require an assurance of the contents that you have written the paper yourself without outside help, etc., this should be at the end (signed!), usually on a separate page.

7. Appendix

Your work only needs an appendix if you have cited material that you suspect the reader will not find, or will find with considerable difficulty.

This does not apply to books that you had to order via interlibrary loan. What is available in a library, you may treat as accessible to the reader.

However, if you have requested an **unpublished judgment** from a court, for example, you should include a copy of it in the appendix of the paper⁵⁷. Perhaps this also applies to decisions that are only available through **juris**. As unpublished one will have to also regard judgements, which you found in an internet forum⁵⁸.

In any case, texts that you have found on the **Internet** and which you fear will not be available or will only be available in a modified form when the proofreader reads your work should be printed and included in the appendix.

⁵⁵ The fact that the proofreader does not always use this option as extensively as you might wish is another matter.

⁵⁶ But a small amount of distance between the header and the text is permissible.

⁵⁷ Not least out of courtesy to the reader and the court's office, who would otherwise have to do the work a second time. In addition, this sending of judgments costs money.

⁵⁸ This is because (predominantly lower court) judgments are usually posted there by the parties involved or their lawyers; since the source is not infrequently ephemeral, it is advisable to include it in the appendix.

"Gray" literature that is not available in any library should also be included in the appendix, in excerpts where appropriate.

Be careful, however, not to overload the appendix. The reader assumes that everything he finds in the appendix is to be read. His mood will not improve if he has to read 50 pages of appendix in addition to a twenty-page paper. For longer texts, excerpts can suffice.

It is advisable to number several appendices in order to be able to refer to them precisely in the running text. Depending on their size, they must be given page numbers; the designation

Example *Appendix 4: Minutes of the meeting of the Society for ... of ...*

should be placed at the top of the page or on a preliminary page so that the reader does not have to search too long.

III. Footnotes as part of the scientific apparatus

This section outlines what footnotes are good for and what they should look like⁵⁹.

The possibilities for documenting the level of one's performance through professional use of footnotes are numerous; unfortunately, they are used both ways. Practiced readers recognize already with a fast view over the footnotes of a term paper, how this will be approximately to be evaluated. Who observes the following hints will avoid most of the mistakes⁶⁰. The examination experience teaches that students underestimate the trouble of the footnote mostly. Sometimes the opposite happens⁶¹.

1. Why footnotes?

Footnotes contain **evidence** for foreign views or asserted facts referred to in the text.

In the scientific text, the indication of supporting documents is indispensable. The reader must find evidence for the statement in question wherever he might have doubts.

Together with the bibliography, the footnote apparatus forms the **scientific backbone** of your work.

⁵⁹ In this regard, also e.g. *Möllers* JuS 2002, 828 ff; nice concise summary on citation rules and technique in *Noltensmeier / Schuhr* JA 2008, 576, 581 f.; if the following section is too boring for you, you can simply read a few essays in a legal journal instead. From their view, it becomes quite clear where footnotes are required and what they should look like. In the latter respect, however, journal articles are not quite exemplary, because the citation method used there must take into account the fact that - unlike in a final paper - there is no preceding bibliography.

⁶⁰ Beginners often find the mass of rules on scientific citation an imposition. Mostly they are already proud if they have found and learned to use the footnote function of their word processors. But that is not enough. Really not.

⁶¹ The **overrated footnote** is also dangerous. This applies to the inflationary footnote and the overloaded footnote in terms of content. On the one hand, the reader easily gets the impression that you lack the ability to concentrate on the essentials (which may well be true...). On the other hand, he does not want to be outshone by you in terms of scientificity. Unless you are writing your doctoral thesis, it is hardly ever necessary to put three footnotes in a single sentence. There are also self-evident facts which, according to convention, you no longer have to prove. The fact that the BGB as such is applicable is only addressed and proven in assignments with a focus on international private law.

In the matter scientificness requires at least **objectivity and honesty**⁶². From a formal point of view, the scientific approach of the author to the problem to be discussed can be recognized by the comprehensible proof of the points of view, sources and authorities with which he has dealt. The footnotes and the list of publications serve this purpose.

2. Where footnotes?

Everything must be substantiated that your reader can reasonably doubt.

Rule of thumb: What is not in the law (a norm citation is sufficient for this) and is important for your argumentation should be footnoted.

These are, in detail:

1. Statements of **facts**

A proof is needed - potentially - for all information that is not given by the task. This is especially true for facts of experience that you want to use to substantiate an argument.

Self-evident facts are not proven. The same applies to general knowledge.

Example: A statement of the type *About 50 % of the German resident population are women* will only be footnoted if you need a statement that is exact to the second decimal place and that you have taken from the Statistical Yearbook.

2. Statements about the **law**

The content of the law itself is never footnoted, but only quoted as precisely as possible in the text. However, as soon as it comes to opinions about what the correctly understood content of the law is, you need evidence.

What needs to be substantiated can vary a bit depending on who you are writing for: In a professional discourse among experts on very specific issues, trivialities do not require evidence, or at most only very exceptionally. Where the layperson would ask "*What does that mean?*" or "*Who says that?*", a footnote is appropriate and belongs (or a cited legal norm).

It also belongs where the train of thought would have led to a different result if it had turned in a different direction than the one chosen. It is precisely at these critical points that the reader demands not only statements, but also supporting documents.

⁶² It is not superfluous to mention this. As you can see from the daily press, it happens again and again that also well-known scientists falsify or completely invent research results (e.g. 2004 / 2005 the Frankfurt anthropologist Reiner *Protsch (von Zieten)* and 2005 / 2006 the South Korean clone researcher *Hwang Woo-Suk*, who at first was still a Nobel Prize winner). More at *Finetti / Himmelrath* *Der Sündenfall - Betrug und Fälschung in der deutschen Wissenschaft*. Very descriptive on the generous handling of foreign intellectual property *Lahusen* KJ 2006, 398 ff; *Frankenberg*, KJ 2007, 258 ff. (both re: *Schwintowski* Methodenlehre); on the consequences and non-consequences of plagiarism and non-plagiarism http://de.wikipedia.org/wiki/Hans-Peter_Schwintow-ski# and *Schwintowski*, www.rewi.hu-berlin.de/jura/ls/swt/_pdf/oeffentlicheErklaerung.pdf.

There must be a footnote everywhere where one describes possible ways of looking at the problem - if someone has already looked at the problem from just this angle. The reader must therefore be enabled to deal with each important aspect in depth, even at the risk of arriving at different results than the author.

Example: A footnote must therefore always be placed at After the ...theory and at The ... theory *on the other hand* ...

3. Where no footnotes?

Conversely, there are some places where logically or conventionally no footnote reference may be placed.

A constantly recurring annoyance when correcting examination papers are footnotes **after sentences in which subsumptions are made.**

Example: *Since S can see that E is exposed to the same dangers as G in the execution of the contract, this is a contract with protective effect for third parties (footnote with reference).*

This should not have to be mentioned in any more words - but experience teaches the opposite. Such footnotes are unprofessional and wrong: The authority cannot make any statement about the examined (fictitious!) facts. While some examiners have resigned themselves - at least in this respect - to the unteachability of students, most continue to react allergically. Caution is therefore urgently required.

Those who catch themselves using such footnotes can proceed as follows: Either the text in the footnote is changed in such a way that the document no longer refers directly to the content of the sentence at the end of which the footnote is placed.

Example: ... *Protective effect for third parties (footnote: On the current development of case law on the recognizability requirement <voucher>).*

or the footnote is moved to the place where it belongs,

Example: *In addition, it must be recognizable for the debtor that, in addition to his contractual partner, third parties are also equally exposed to the dangers of the execution of the contract (footnote with supporting document). Since it is easy for S to recognize that in addition to G also his wife and children are to use the apartment and the associated traffic areas, all requirements for the inclusion of E in the scope of protection of the lease are met.*

or the footnote is omitted.

The same problem arises if the **upper sentence** is already recognizably formulated with **case reference** (which is generally recommended).

Example: *Further, E, as a non-contracting party, must be exposed to the dangers of the execution of the contract to a similar extent as G (footnote with citation).*

Again, whoever is cited in the footnote says nothing about E, G, and S. The remedies are those just described. Of course, one can also abstract the supersentence.

Example: *Further, the injured party, as a non-contracting party, must be exposed to the dangers of performing the contract to a similar degree as the contracting party (footnote with citation). For G this means that ...*

The reverse error is not quite as common. But sometimes it does happen that the **subsumption is moved to the footnote**. No matter how great the temptation...

Example: because the main clause is so complicated and the simple subsumption under one of its conditions in a footnote (which then usually begins with *here* or *available at*) seems to make the presentation easier to grasp

this is a mistake. The footnote is the place for the evidence, not for the thought to be evidenced.

Repetitions: If you need the same definition several times in the course of the discussion, you do not have to prove it each time with a thick footnote, but may rely on the reader's memory.

This alone saves space for more important things. If you also omit the definition itself in case of repetition or keep it very short and immediately start with the subsumption, the text becomes even leaner. This is good for it.

But if your heart is set on it, you may also put the same footnote every time. It just doesn't look quite as professional. To indicate that you are aware of the boring repetition, you can also write in the footnote *References as above Fn.x*. One can arrange the reference dynamically with the reference function of the text processing, so that one does not have to check at the end laboriously whether it is also correct⁶³.

4. **Where exactly footnotes?**

The footnote sign stands in the text behind the statement, which is to be occupied.

It does **not** commonly stand **behind a heading**, because this does not contain yet a statement.

It is less informative for the reader if you place footnotes only at the end of paragraphs or sections.

However, a single footnote at the end of a paragraph is better than five identical footnotes at the end of each sentence in that paragraph. If necessary, you can indicate that the footnote is intended to support the full idea referenced in that paragraph.

If the footnote in a longer sentence is not intended to prove the entire statement, but only to explain a concept, it is placed after the word in question. The reader should be able to infer as clearly as possible from the position of the footnote what is being substantiated. This is especially important when there are several footnotes in a sentence.

Whether the footnote character is placed after or before the period at the end of the sentence is left unchanged-unless the purpose is to indicate a distinction: Some authors place the footnote mark after the punctuation mark when they want to occupy the whole sentence or respective part of the sentence, and before the punctuation mark when only the last word is to be occupied.

The footnote itself is always placed **at the bottom of the page** and not at the end of the paper.

This makes reading easier, even if it makes the text page look more unstable at first glance. Endnotes, on the other hand, are unusual in legal texts.

Set up your word processing program so that footnotes are not dragged onto subsequent pages at the program's discretion⁶⁴.

⁶³ On the other hand, the pseudo-dynamic reference *as in the previous fn.* often turns out to be unfortunate, if and because a footnote slips in during editing or a whole piece of text is moved to another place.

⁶⁴ In MS Word, the line spacing must be set to an exact value in pt (e.g. 18) instead of 1.5 lines in the formatting of the text; see *Krämer / Rohrich*, 85 ff.

5. What do footnotes look like?

The footnote contains at least one reference for the respective statement in the text. If necessary, it must be moderated.

The information in footnotes can be considered to be legally standardized to a certain extent. Despite some differences in the details, the following always applies: Two pieces of information are required for each reference:

Who has commented

Examples: Flume; Scholz; BGH; BVerfG; VII Civil Senate of the BGH.

And **where** can it be read?

Examples: JZ 1987, 224, 227; NJW 1995, 34; BGHZ 34, 212, 215?⁶⁵

They look like this:

In the case of independent publications (**monographs**, i.e. textbooks, handbooks, dissertations, postdoctoral theses, etc.):

Author name, (short title), margin number or outline number, alternatively: Page

Examples: *Brox / Walker*, Schuldrecht AT, § 12 marginal no. 34; *Sartowski*, Pflichtenkollision, 106 f.; Scholz, p. 34.

For **commentaries**: Name or abbreviation of the commentary/*editor*, § ... Rn. ...

or *editor* in: Abbreviation of the commentary, marginal no. ... to § ,

Examples: Münchener Kommentar zum BGB-Schmidt, § 104 Rn. 3 or MünchKommBGB-Schmidt, § 104 Rn. 3 or *Schmidt* in MüKoBGB, Rn. 3 to § 104.⁶⁶

In the case of dependent publications, i.e.

Essays in professional journals:

Author's name, journal, year, first page of the article, if necessary, title page.

Example: *Tiedtke / Schmitt*, JZ 2004, 1092, 1093.

If the journal only appears **on the Internet**, a reference to the net address should be included either in the list of publications or in the list of abbreviations or in the first footnote in which it is cited.

Example: Basak / Schimmel, ZJS 2008, 435, 437 (accessible via www.zjs-online.com).

Not quite as nice, but equally possible is the indication of the deep link.

Example: Basak / Schimmel, ZJS 2008, 435, 437 (www.zjs-online.com/dat/artikel/2008_4_94.pdf)

In collective works:

Author's name, abbreviation of the collective work, first page, citation page if necessary.

Example: Pfeiffer, in: FS Schrickler, 137, 140.

⁶⁵ This alone should make it clear: Footnotes like *JuS*, p. 178 or *NJW* 2007, 2421 leave the reader alone with his inquisitiveness. In the first case, he has to search through more than forty volumes of periodicals; in the second, he can easily find the cited volume, but he has to go to the library or to the computer, even if he only wants to know who is cited.

⁶⁶ The repeatedly observed omission of the name of the editor (*Palandt*, marginal note 4 to § 2303) is not only careless and impolite, but also wrong: the commentary was not written by *Palandt*, but by *Edenhofer*.

The examples show that the footnote does not repeat all bibliographic information from the list of publications, but only as much as is necessary to identify the text on the basis of the list of publications. For example, **first names**⁶⁷ and edition details⁶⁸ are omitted.

Instead, information is added that serves to identify the specifically cited text, such as the page number. Actually, this is a simple principle - isn't it?

The indication of a **short title** (usually the first noun of the title) is only necessary if different works of the same author are cited and therefore there is a danger of confusion.

This indication must then be proven in the list of publications as a citation (*cited as: ...*) in order to allow a clear assignment.

Textbooks, commentaries, manuals, etc. have **margin numbers** so that you do not have to cite by page. If the reader happens to have only the previous edition at hand, he will probably not be able to do anything with a page number, while the margin number at least refers to the correct - even if perhaps outdated in content - reference. So cite according to marginal numbers⁶⁹.

Examples: *Palandt-Heinrichs*, marginal no. 4 to § 254 or *AK-BGB-Dubischar*, before § 275, marginal no. 12.

For the word margin number use a uniform abbreviation: usual are

Rdnr., Rn., Rz.⁷⁰. Whether you quote *Rn x to § y* or *§ y Rn x*, you decide.

In some textbooks and handbooks, the margin numbering starts anew chapter by chapter. Then you have to indicate chapter and margin number.

Example: *Brox / Walker*, SchuldR BT § 43 Rn. 5

If there are no margin numbers, one quotes after **structure levels**, best with following page reference in brackets

Example: *Flume*, Allgemeiner Teil II, § 16 1.d) (p. 300).

⁶⁷ Exceptionally, however, it makes sense to give the first name at least abbreviated in the case of names that cause confusion.

⁶⁸ Here, too, there is an exception: If an old edition is cited, it is mentioned in the footnote (preferably together with the year of publication) - the current editions, on the other hand, can be found in the list of publications.

⁶⁹ Unfortunately, even margin numbers are not always reliable: Many authors and editors of textbooks etc. feel bound to their margin numbering across editions only as long as nothing really new occurs to them. However, if the text is substantially supplemented, the marginal numbering often changes as well.

⁷⁰ Rz. is actually nonsense: They are not *Randziffern* but *Randnummern*,

Monographs, essays, and all texts that are not reprinted or are reprinted only with unchanged page count (e.g., usually doctoral theses⁷¹) can be cited by **page** without further ado.

Rule of thumb: Where there are margin numbers, use them, alternatively cite by outline, if both are not available, by page number.

If the page numbering changes, you should indicate in the list of publications which edition you have cited.

Example: Rütters, Bernd: Die unbegrenzte Auslegung, Tübingen 1968, cited after the 6th edition Tübingen 2005.

Often the abbreviation *P.* for *page* is omitted. This saves space for more important things.

If **several texts by the same author** are cited one after the other, one puts *Id.* to identify them⁷².

Examples: *Schultz*, JZ 1982, 544, 545; *Id.*, MDR 1984, 212, 217; *Meyer*, BB 2004, 2717 f.; *Id.*, DB 2008, 12, 14; *Klein / Groß*, NZM 1999, 177, 178; *Id.*, NJW 2001, 1444, 1449.

Quotations from the fine arts (**belletristic**) **literature** follow the same rules as quotations from professional literature.

For **court decisions** (judgments, decisions, etc.):

Court, collection, or periodical with year, opening page, citation page(s) if necessary;
Examples: BAGE 28, 255, 257 et seq.; BGH NJW 2000, 144, 148; BGH LM § 133 BGB No. 17; BAG EzA § 1 KSchG No. 24.

If necessary, unofficial name of the decision (e.g. *Höllengeuer*, *Lüth*, *Holz Müller*, etc., but do not invent your own name - such as *Schweinepanik* for BGHZ 115, 84)⁷³

One can emphasize the deciding court by setting it in italics or choosing a font type with capitals. However, this should be done in a uniform manner (i.e., also applied to the authors' names), so that the reader can really find his way around more quickly.

Example: *BGH* NJW 2000, 144, 148 f.

The easiest way to do this is to define a format template for it.

Often the name of the deciding court is separated from the reference by a comma. This is not necessary, but permissible. Sometimes the page with the concrete quotation is put in (normal or square) brackets. This is also possible. Please be consistent.

⁷¹ But there are exceptions: Leo *Rosenberg's* doctoral dissertation *Die Beweislast auf der Grundlage des Bürgerlichen Gesetzbuchs und der Zivilprozessordnung* (The Burden of Proof on the Basis of the Civil Code and the Code of Civil Procedure, Breslau 1900) has gone through an impressive five editions over the decades; Robert *Alexy* *Theorie der juristischen Argumentation*, Frankfurt am Main 1978, has appeared in its third edition. Such texts are usually developed further by the authors over the decades - and in everyday scholarly citation are usually no longer even identified as doctoral theses, but as standard works, e.g., the habilitation treatise by Claus *Roxin* *Täterschaft und Tatherrschaft*, Hamburg 1962, now in its 8th edition, Berlin 2006.

⁷² Routine proofreaders notice, by the way, if you mix up the German gendered versions of *Id.* (*ders./dies.*). This is often taken as an indication of a blind quotation.

⁷³ Such keywords are common for judgments in competition law and industrial property law (i.e., at the Federal Court of Justice for the judgments of the first civil senate), as well as for personality rights infringement disputes of celebrities (*Caroline 1* to *Caroline 38*) and less celebrities (*Esra*), and for judgments of the European Court of Justice (which are often named after the plaintiffs). Such practices can be followed quietly.

Example: BGH, NJW 2000, 144 (148).

In general, only the court is indicated, not the panel (i.e. the senate or chamber that rendered the decision in question), i.e. *BGH* instead of the *III Civil Senate of the BGH*. The indication of the panel is only informative for the reader if the case law of the BGH may not be equated with that of the III. civil senate, because there are divergent decisions of different senates. However, such divergences must usually also be addressed in the main text; they are then only further specified in the footnote information⁷⁴.

In most cases, the type of decision (**judgment, order**) is not specified. Partly, however, this is handled differently, for example often in labor law. It makes sense to follow the conventions of the legal field in which one is working.

To facilitate reliable identification, it is customary to first indicate the page on which the print begins, and then the page(s) with the specific citation referred to. If the quoted passage is so important that it has been elevated to the rank of a leading sentence preceding the judgment, it is nevertheless not only the opening page with the leading sentence that is quoted, but always also the passage from the reasons for the judgment, because the arguments there are generally more precise and the context is clearer than in the leading sentence. If the cited passage is already on the first page, only this passage is cited⁷⁵.

If one has several references for the same decision available, one can indicate them all - that is comfortable for the reader.

Example: BGHZ 159, 30 = NJW 2004, 1860 = NZG 2004, 571.

It is however laborious, because one sets oneself thereby under pressure to hold it always in such a way⁷⁶. In addition, this takes up an unnecessary amount of space and inflates the text without making it any wiser in terms of content. And sometimes there are dozens of references.

In general one quotes preferentially⁷⁷ the imprint in the **official collection**⁷⁸.

Example: Better BGHZ 111, 23, 25 than *BGH* NJW 1992, 313, 314.

Something else applies, if the reproduction in the official collection follows shortened, while the text is printed elsewhere completely. Priority is given to the **most easily accessible** reference and to the place where the decision is **printed in full**.

There are no official collections for the lower courts; however, the problem often does not arise because the decision is published in only one place anyway.

If the official collection indicates which court is cited, the additional indication of the court is omitted.

⁷⁴ In some cases, it is recommended that decisions of the Grand Senate (and then also the Joint Senate of the Supreme Courts of the Federation) be identified as such by the words *GS* or *GmS-OGB* (e.g. *Noltensmeier / Schuhr* JA 2008, 576, 582 with fn. 82).

⁷⁵ Note that in the official collections of decisions, the lead sentence and the facts usually take up so much space that the reasons almost always begin on a page further back. Attentive readers know this and then assume that you have not read the judgment.

⁷⁶ With a database such as *beck online* or *juris online*, it is now easy to find out where the parallel findings are. However, you may assume that not only you have access to such a database, but also your readers.

⁷⁷ In labor law, however, the reference work of the BAG - Arbeitsrechtliche Praxis (AP) rather than the BAGE.

⁷⁸ Whether a judgment is reproduced in the official collection can be quickly determined for the BGH, BVerwG and BPatG at www.recht.com. However, it is often the case that a year can easily pass between the publication on the Internet and the publication in the official collection.

Example: Instead of BGH BGHZ 34, 244, 247 one writes only BGHZ 34, 244, 247.

The court designation is also omitted for the sake of brevity if several decisions of the same court are cited in succession.

Example: BGH NJW 1992, 324, 325; NJW 2004, 1415, 1417; BB 2007, 88, 89.

If possible, a German-language version of the judgment should be chosen. This is particularly practical in the case of decisions of the **ECJ**. In the first place, these are cited according to the German collection (deutsche Sammlung, *Slg.*), in the second place according to the text in the German edition of the EC Official Journal.

In order to quote a court decision unambiguously and at the same time in a reader-friendly manner, one would actually have to indicate the date, file number and a source of the imprint⁷⁹.

Example: BGH v. 22.6.2005, Az. VIII ZR 281/04 = NJW 2005, 2852

In some scientific works (in particular doctoral theses), in some specialist journals and in labor law literature, citations are made in this way. Since this has not become generally accepted, it is not required in student papers, especially since it takes up more space. If you want to cite this way, stick to it throughout. The effort you put into it is worth it in at least one respect: the reader sees that you actually had the cited decisions in hand. You can make the search easier for the reader by providing an **index of decisions**. So far, this has hardly been requested. However, if you have taken the trouble to create a concordance table during the writing process, you can also attach it to the finished draft as a courtesy.

If the decision is completely new and therefore not yet printed anywhere, it is cited according to the **reprint**, i.e. according to the form in which the court issued it (identical to the pdf version that may be available on the Internet).

It is not mandatory, but helpful, to mark an unpublished decision with a note such as (*unpublished*) or *n.d.* after the court, the date of the decision and the file number. The reader then does not even begin to search laboriously. However, if the decision seems important to you, attach it in the appendix.

Example: BGH v. 22.6.2005, Az. VIII ZR 281/04 (unpublished), p. 12 or (better): marginal no. 23.

If a decision is only published in the **juris** database, it should be cited with the date and acronym and the juris document number. Usually, the decision is attached to the paper as a printout.

Both applies also and even more to completely **unpublished decisions**, which one has obtained in anonymous form from the deciding court.

In most cases, the reasons for the decision are so long that the exact reference must be given (otherwise the reader must always read the entire decision, even if they are only looking for a single sentence).

When quoting from a collection of decisions, the **page** with the reference is sufficient; when quoting from a specialist journal, the **column** is sometimes also given.

Example: BGH NJW 2006, 296, 297 r.sp.

That is not compelling, but polite⁸⁰. More practical for the reader, who wants to read at another than the indicated reference, is the indication of the **outline number**.

Example: BGH NJW 2006, 296, 297 under II.2.a)aa)

When quoting from the reprint or the pdf version, the **margin numbers** should be given (if available⁸¹), otherwise the structure numbers or pages. In the latter case, the addition of p. x of the reprint is recommended.

⁷⁹ As well as the type of decision (judgment or order), because occasionally both a judgment and an order are issued under the same file number and the same date, e.g. BGH v. 6.12.2006 Az. XII ZR 97/04 (NJW 2007, 909 ff. and 912 f.).

⁸⁰ In general, however, the reader can be trusted to find the quoted statement on the page itself.

If you have cited foreign sources, you should adapt the citation method to the local customs. This saves the reader from having to familiarize themselves with a citation method that may be foreign to them.

The **formatting** of footnotes is not particularly complicated. It is preferable to use a style sheet for this purpose as well. The font size should be 10 pt (not smaller!), the font should be the same as in the text, the margins as well. A smaller line spacing can save a bit of space if you have set many multi-line footnotes. If the line spacing between the footnotes is a little larger than within the footnotes, this helps to keep the text clear.

In the text, the footnote character is generally set smaller and superscript. The parenthesis behind the footnote sign is out of fashion⁸². The same formatting can be used at the foot of the page. It is best to set up a hanging indent there so that the footnote numbers appear highlighted on the left and the eye can orient itself more easily. If you use justification in the text, you should do the same in the footnotes (do not forget to hyphenate before printing).

6. Some popular bad habits in footnotes

The footnote should make it **easy to find** the reference. Therefore, references to whole chapters (p. *ff*) or even the whole publication (*passim*) are almost always unnecessary. The reader does not want to have to read the whole text to easily find a statement somewhere that supports your argument.

In addition, heaped citations of this type seem slightly (involuntarily?) boastful, because they always give the impression that the author is juggling with hundreds of already read and fully understood fundamental monographs.

If, for once, an entire text really serves as evidence for your statement, *passim* is of course fine.

Secondary citations are not very helpful

Example: If you want to prove the statement *It's better to burn out than to fade away*, don't write *Young, Hey hey my*, quoted from *Cobain*, Letter to Posterity, but quote directly from Young⁸³.

In order to find out the real source, the reader must unnecessarily first reach for another book. Exceptionally, such a secondary citation is permissible if the primary source is only unusually difficult or no longer accessible. In this case, however, you should take care to identify the source in the primary source as precisely as possible - even if it is only by copying completely from the secondary source.

⁸¹ The ECJ and the BVerfG have been using it for a long time; in 2005, the BGH also started using it, and the courts of instance are following suit in some cases (unfortunately, not all journals adopt it when printing the judgments). In the future, this will make it much easier to specify the exact text passage cited. Although one could limit oneself to the indication of the margin number and omit the reference altogether, it is more practical and polite for the reader to indicate at least an easily accessible reference.

⁸² It goes back to the days of the typewriter, when superscript was already difficult - and even more so the choice of a smaller typeface. Today, it is omitted to save space.

⁸³ This is an advanced exercise: if you want to quote a rock'n'roll song, you must first consider whether it is actually quotable and then decide what information is required for identification.

Example: *Kant*, On Perpetual Peace, p. 33 ff, quoted from *Wilhelm*, p. 225.

In such cases, consider reproducing the source in an appendix.

However, these are exceptions. As a rule, citations of type *A with reference to B* are hidden secondary citations, which signal to the reader that you did not feel like following up on the reference in A.

The unidentified form of the secondary citation is called **blind citation**. Although it may save a lot of time to rely on the clean working method of the person from whom you take the unchecked quotation, this is of course scientifically indiscutable. Besides, blind quoting is an art that wants to be mastered. If your proofreader catches you, you will not get bonus points for blind citations.

Example: Taking over references from the popular *Palandt* commentary is not that easy: The editors of *Palandt* always quote only the text page on which the reference is found, but not the initial page of the judgment. Citations copied from the *Palandt* are therefore easy to recognize.

Neither beautiful nor practical are the references *a.a.O.* and *ibid.* (*at the place indicated* and *ibidem*) in footnotes in which the same source is cited for the second or more frequent time. Even if they are - and that is the least! - are provided with a different page number or margin number,

Example: BGH loc. cit., marginal no. 27

they force the reader to look elsewhere. This may seem reasonable when it comes to the immediately preceding footnote. Unfortunately, another footnote constantly slips in during the course of the text. Because the reader does not know this, the whole thing becomes a guessing game for him. In the worst case, you delete the referenced footnote without noticing that several references are lost. To avoid this, simply retrieve the complete reference.

Do not footnote your **own opinion** - unless you have already expressed it in legal or other literature⁸⁴. Then you can cite yourself if you are not too embarrassed.

Footnotes in the style *So auch Flume, Medicus and Larenz; furthermore BVerfG and BGH (each with references)* after one's own arguments are basically okay, but sound slightly presumptuous from the pen of a fourth-year student.

In general, the fourth-semester student agrees with Medicus' view - and not vice versa.

However, if you - as is so often the case - endorse a point of view that has already been expressed elsewhere, you must of course provide evidence for this point of view. So, if you find out after some reading of sources that others have already come up with the same idea before, you may no longer claim the idea as your own, although it is self-developed in the best sense⁸⁵.

⁸⁴ This means a printed text that can be found in a library.

⁸⁵ After all, it was much the same for the many heroes who bravely sailed from Europe to America after Columbus.

It does not seem very well thought-out to introduce all footnotes with a general "*compare*", "*similar*", "*see*" or similar. The information value of this filler is very low. In short, it is a waste of space and time.

Cf. (i.e.: *compare!*) is used when a passage is not considered to be directly relevant, but only relevant in meaning (so that the reader has to do the work of transferring the thought from one problem to the other - and this is also implied in the footnote). *Cf.* does not mean *Read after at ...*, although often used in that sense.

The introductory *representative* is almost always nonsense. Hardly ever one can really enumerate all relevant references (or even know whether one has found all of them), so that practically always the references are *representative*. The same applies to e.g., which is partly used just as formulaically. It makes sense to use *representative* if you want to point out a *predominant* or *unanimous* opinion in the text and spare the reader the numerous references that are actually required for this.

Footnotes with a **representative selection of literature** on a problem⁸⁶ are honorable, but unnecessary - unless you have actually read the cited titles (at least in the relevant excerpts). You will find such footnotes in textbooks, commentaries and doctoral theses; that is exactly where they belong.

Also, use introductions such as *Instructive to this* or *Worth reading* with extreme restraint, preferably not at all. Such **reading recommendations** are easily misunderstood as patronizing the reader.

In a doctoral thesis, a seminar paper, or a journal article, this is different, because the reader reads the text with a different interest in knowledge.

The popular reference *w.f.e.* ("*m.w.N.*") means *with further evidence* ("*mit weiteren Nachweisen*") and is in principle meaningful. However, it should not be used in an inflationary manner. It must not be used to burden the reader with the effort that the author should have made. The greatest justification for *m.w.N.* is where a "chewed-out" problem is to be documented by footnotes, but it is clear to all concerned that the emphasis lies elsewhere. Then one can show with *m.w.N.* that one also considered the small problems, but would like to spare the reader the indication of many boring references in favor of one or fewer selected (!).

The variant *with numerous further references* is often used to prevent footnotes, which already contain several references anyway, from getting completely out of hand, for example from three or four lines upwards.

Actually, cited literature should predominantly, if not without exception, contain *further evidence*. Texts of which this cannot be said are often not of a scientific nature, so that it should be reconsidered whether they should be cited at all.

One quotes **verbatim** only where the wording is important. This is the case when one wants to interpret a passage of text as one would interpret the law.

⁸⁶ Gladly introduced with *deepening*...

This is rare. Many papers get by without literal citations at all. In particular, you should consider which text has such authority that you want or need to interpret it. However, in the case of an unclear passage from a BGH ruling, this may well happen. Do not quote others just out of uncertainty, because you do not know what you want or should say yourself. If you quote verbatim, the quotation is regularly in the main text, not in the footnote.

Otherwise, **avoid literal quotations**. Your examiner cannot grade a paper that is composed primarily or exclusively of verbatim quotations because they cannot determine whether you have understood the meaning of the quoted text.

Literal quotations are marked by quotation marks (sometimes by italics, but quotation marks are clearer). Longer quotations are usually indented, usually to the right and left, so that they are immediately recognizable. The verbatim quotation must⁸⁷ be followed by a footnote giving evidence of the author and the place where it was found. Omissions in literal quotations are to be indicated by three dots (...); sometimes this rule is handled in such a way that a single omitted word is symbolized by two dots (..). Errors in the quotation can be marked with a (*sic!*) inserted in brackets behind the error⁸⁸. To insert errors into a quotation is rightly considered embarrassing⁸⁹. If the quotation is connected to an own sentence, thereby becoming necessary grammatical changes (Flektion) must be marked. Usually square brackets are used for this purpose.

In the case of **foreign-language** citations⁹⁰ it is advisable to include a German (or rather English) translation in the text, while the foreign-language text is included in the footnote together with the reference. In this way, the text remains readable in German throughout - and the reader can save himself the trouble of translating from a language he may not be familiar with.

By the way, an undocumented quotation is called **plagiarism**. Detected plagiarism leads to very bad mood of your examiner. Really very very bad mood⁹¹. So avoiding them is not only a question of scientific decency, but also one of tactical cleverness⁹².

⁸⁷ And that does not mean *can* or *should* or *may*, but must. Only in the case of legal norms is it sufficient if it is clear from the context of the text what you have quoted. Citing norms in footnotes is considered beginner-like in legal texts.

⁸⁸ It means *so* in Latin and means *so wrong in the original*.

⁸⁹ E.g., Juliane Pätzold, Die gemeinschaftliche Adoption Minderjähriger durch eingetragene Lebenspartner, 111 at fn. 498, who imputes a *dass* instead of a *das* to the BVerfG (German grammar error)

⁹⁰ These are most likely to be required in texts with comparative law or international private law implications. In works on national law, you will rarely need foreign-language citations once, such as when you cite a foreign judgment or textbook on a problem that is still little known here.

⁹¹ Copyright infringement is increasingly sanctioned not only by administrative offences, but also by university law, in the worst case with exmatriculation (e.g. § 65 V HG NRW).

⁹² Of course, in the age of the Internet, undisclosed adoption of other people's intellectual output is even easier than it was before. But do not underestimate your readers. Sometimes they know their way around amazingly well. Besides, they don't all live on the moon in terms of technology: just take a look at www.plagiarism-finder.de, www.turnitin.com, as examples of commercial software and <http://plagiat.fhtw-berlin.de/html/links/aufdeckung.html> to see how attentive your readers - perhaps - are. On the consequences of scientifically impure work (1. failure to pass the exam, 2. later revocation of the acquired degree, 3. inclusion in black lists and 4. eternal damnation) worth reading Slapnicar, in: Engel / Slapnicar, Diplomarbeit, 252 ff. Assume that even sympathetic and seemingly harmless professors will display intolerance, impatience, and persecutory zeal in this regard. For more details on the technique and possible consequences of plagiarism, see e.g. Finetti / Himmelrath Sündenfall, esp. 90 ff.; on the methods of taking over other people's work in legal texts, which have recently become more popular, Derleder NJW 2007, 1112 ff.

Incidentally, the fact that a text does not or not immediately reveal its author does not mean that there is no author. Even unnamed texts that you have fished out of the Internet may therefore not simply be copied into your work⁹³.

Ideally, there should be **no text in the footnotes**. As a rule, the main text should not be continued there with secondary thoughts,

Example: *It would be different if ...*

but only the evidence for what is said in the text.

Exceptions: Of course, the communication of a proof may be moderated. It can be useful and necessary not only to throw a reference to the reader without comment, but to explain briefly how to deal with it or in which context the reference plays a role.

Example: Thus to the parallel lying problem of the ... expressly BGH NJW 2003, 2112 f. with responsible note Schulz, 2206 f.

In contrast to the legal opinion, one may also use a footnote in a thesis in order to indicate an interesting secondary idea that would disturb the flow of thoughts in the text. Not in every footnote, of course, but occasionally.

The content of the footnote must be appropriate to the text it supports.

Example: If the text states ... *the case law now also allows ...* and this sentence is supported by a footnote, the footnote must also contain at least one reference to case law, preferably at the beginning. If "only" literature is cited there, the reader rightly has the impression that the author has not examined any case law, but has only had textbooks in her hands.

Footnotes are not a graveyard for what has been done with legal history, what is obsolete, or even just outdated. Current references are preferable to old references. Of course, older decisions and essays may be cited; they even should be, if they are better substantiated and more informative than the more recent ones. However, if only older references are cited, the reader is suspected of not having researched them himself, but of having taken them from an older text. Once the reader has this suspicion, he will look more closely everywhere.

7. Beautiful footnotes

Professionalism can be signaled by getting into the habit of ordering the evidence into references⁹⁴. For example, the case law can be listed first, followed by the literature, with the case law of the highest court being listed first and the more recent case law at the beginning of the footnote. This facilitates the orientation in longer footnotes - and corresponds to a widespread handling.

The reason why the references from the **case law** are usually listed first is that a court, as a governmental body, has a different legitimation to interpret the law than the author of a legal textbook.

⁹³ For the most part, however, anonymously written texts are not suitable sources for scientific work.

⁹⁴ Of course, the question only arises if there is more than one reference per footnote. If this is never the case, you have made too little effort.

Nevertheless, it can easily happen that a source from the literature has more and wiser things to say about the problem in question than a court judgment: the court cannot go on as far as it likes, if only because it is bound by the subject matter of the dispute and the motions of the parties (although obiter dicta are often found, especially in judgments of the higher courts, i.e. statements that would not actually have been necessary to substantiate the body of the judgment. In addition, the courts in the lower instances often have only limited time for research and justification⁹⁵) of the verdict.

In most cases, the **highest federal courts** are cited first, because their decisions have the strongest binding effect. In addition, the judgments are usually longer and - not surprisingly after passing through the courts of appeal - more problem-focused. In the last instance, the focus is usually on legal issues, while the first instances have more to do with establishing the facts in dispute.

Within **legal writing**, the lines run a bit differently. An important difference lies in the **competence** of the author.

It matters only marginally whether the author is a well-known and recognized authority whose word can always claim weight, as it were. More important is the question of how intensively the problem is discussed in the respective text. A habilitation thesis is more detailed than a doctoral thesis than a journal article than a judgment note than a short judgment note with didactic background. Most of the time, anyway. And the focus of a practice manual is on different aspects than that of a monograph by a university lecturer. In the first place, therefore, one should pay attention to the **relevance** of the remarks in the cited text with regard to the problem to be dealt with. The size of the relevant part of the text is at least an indication of this.

In this context, the **neutrality** of the writer must also be considered.

Beyond the observance of scientific standards, there are different forms of self-interest. Whether an uninvolved scientist writes or a lawyer who professionally only represents the interests of a certain group can make a difference. (However, university professors also have opinions and preferences.) This becomes particularly clear when the outcome of a legal dispute is commented on by someone involved in the proceedings.

The longer the footnote becomes, the more appreciative the reader's eye is for the emphasis on courts and authors recommended above, for example, by italicizing the sentence.

Whether or not to put a **period at the end** of the footnote is something you should keep as you wish - but consistent.

It is nicest and most common to always start footnotes with a capital⁹⁶ and end them with a period. This has the advantage that you don't have to think over every time whether the text in the footnote is a complete sentence (because then the first word must be capitalized and a period at the end is mandatory) or not. You simply treat them as complete sentences according to convention.

⁹⁵ Incidentally, one should point out that one has quoted an obiter dictum (because what is said in passing enjoys less authority than what is required to justify the verdict). However, this is slowly going out of fashion.

⁹⁶ Exception: If the footnote text begins with a proper name with *von* or similar.

Number and scope of footnotes: Because the need for evidence and the meaningful extent of the evidence result from the matter itself, rules of thumb must suffice here. A proper legal exercise paper has on average four or five footnotes per page. However, the distribution over the text can be quite uneven. Some footnotes need only one (often: substitute) document, many will require several documents. If about one fifth of your text consists of footnotes - you can see that quite quickly when you leaf through it - at least you do not give the impression of superficial work at first glance.

The composition of your footnote conveys false information if you merely quote a proof from the literature on a problem. Then the reader thinks that there is no case law on the issue. To avoid this impression, you must either add *m.w.N. on recent case law* to the reference or take the trouble to actually cite the case law.