Writing a research paper
(Seminar paper/independent study)

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Process

1. Picking a thesis
   a) Deciding on a topic
   b) Researching the topic to determine the thesis
2. Writing an outline & abstract
   – Refining the thesis
   – Figuring out the logical process of your arguments
3. Writing a draft
4. Polishing
   – Fix writing style/typos/grammar, add useful footnotes

1. Picking a Thesis
The most important part

- A law professor gave the following Jurisprudence exam:
  - Define a question related to the material taught in class (but that we did not raise in class), and answer it.
  - Grade: 50% for the question, 50% for the answer

- Essentially, students were asked to write a mini-research paper.
- The question you ask (the thesis) is by far the single most important thing in your paper
  - Everything else exists only to either support your thesis or make it clear and interesting

1. Picking a Thesis
Topic vs. Thesis

- Topic: A narrow area of law; E.g.,
  - Shareholder voting for directors in a corporation
  - State action doctrine in antitrust law
  - The loss causation element in a Rule 10(b)-5 violation
  - **Not**: "Mergers & Acquisitions", "Limited Liability Companies"
  - Rule of thumb: if your topic can be the name of a course, it's too broad
- Thesis: A **claim** about something within your topic; E.g.,
  - Case X should be interpreted in the following way…
  - Football players' contracts and law professors' contracts share the following characteristics… because…
  - Muslim law did not independently develop corporate law because…
  - Business ventures are organized in the following way in virtual worlds…

1. Picking a Thesis
(a) Deciding on a Topic

1. Choose a topic in which you have some **competitive advantage** over others in researching. E.g.,
   - Knowledge of methodology
   - Knowledge of language and/or culture
   - Contacts with people that can give you access to information that is otherwise hard to access
2. Choose a topic that **interests** you
   - It takes a lot of discipline to do adequate research, and it's easier to gather this discipline when you enjoy the topic you are researching
3. Choose a topic that is **researchable**
   - I.e., make sure that you are able to access the information needed for your research

1. Picking a Thesis
(b) Researching the topic to determine the thesis

- Thesis can be analytical or synthetic
  - **Analysis**: Use various evidence to prove a new claim
  - **Synthesis**: Survey others' analyses regarding the claim
- All else equal, analytical theses are better
  - Good paper w/analytical thesis → Excellent paper
  - Good paper w/synthetic thesis → Adequate paper

1. Picking a Thesis
(b) Researching the topic to determine the thesis

Synthetic thesis should be:
- Thorough
  - All significant relevant sources presented
- Fair
  - Each source is accurately presented
- Organized
  - Fit others' scholarship into categories & patterns

1. Picking a Thesis
(b) Researching the topic to determine the thesis

Analytical thesis should be:

- **Novel**
  - A claim no one has made before
  - New type of evidence supporting a disputed claim
  - Expanding an existing claim to new areas

- **Non-obvious**
  - Isn't automatically accepted as true without supporting evidence

- **Sound**
  - The evidence you present would persuade a reasonable person that your claim is correct
  - Rule of thumb: If it sounds like a debate or an op-ed, it's not "sound"

1. Picking a Thesis
Normative vs. Descriptive

- Descriptive: Your claim describes the situation <u>as it is</u>
  - Relies on access to a lot of data that sheds light on the thesis
  - Doesn't have to be quantitative; can be qualitative (interviews, reports, case studies)

- Normative: claim describes how situation <u>should be</u>
  - Relies on knowledge of all previous arguments made regarding or related to the claim
  - Adds new evidence or insight and places it in context with other people's arguments
  - Pitfall: The $20 bill on the floor – Explain why the situation is not they way you say it should be

1. Picking a Thesis
Common Pitfalls

- The over-broad thesis (raises too many sub-issues)
  - E.g., Characteristics of the LLC
- Thesis on a matter that cannot be generalized
  - E.g., Should CEOs be fired for backdating stock options?
- Falling in love with your thesis
  - Ignoring evidence that thesis is wrong or not novel
- Unclear whether thesis is descriptive or normative
- Thesis lacks supporting evidence, relies on persuasion
  - E.g., The adoption of law X will improve the economy
  - Remember: This is a research paper, not a brief!

1. Picking a Thesis
Process

1. Pick a topic (competitive advantage, interest, researchable)
2. Conduct initial research (at least 5 different sources)
   - Treatises, legal encyclopedias are a crash course to the law
   - Law review/SSRN articles flag current debates & "hot issues"
   - Talk to reference librarians (not only at the law library)
3. Pick a tentative thesis
   - Analytical (novel, non-obvious, sound) or synthetic (thorough, fair, organized)?
   - Descriptive (rely on data) or Normative (rely on theory)?
4. The "Add/Drop Period" - Focus your research to:
   - Ensure that the thesis is novel & correct
   - Fine tune or change the thesis if it's not novel or not correct
5. Decide on a final thesis

1. Picking a Thesis
Tips

- Start with the narrowest topic and expand if necessary, rather than the other way around
  - Cuts down on research time
  - Narrow topics by:
    - "Tool kit": Historical/Political/Economic/Sociological/Statistical
    - Scope of comparison: Between countries/states, time periods, bodies of law (e.g., LLCs vs. LPs), etc.
- Taking a contrary position to an established view almost ensures that your thesis is novel, non-obvious and important
  - Pitfalls: Relying on persuasion; falling in love with the thesis
- SEC's EDGAR database has a tremendous amount of information about publicly listed companies
  - 10-Ks, 10-Qs, 8-Ks, etc.

1. Picking a Thesis
Tips

- Most important: Seek your competitive advantage

2. Writing an Outline & Abstract
Organizing the logic of your argument

- Abstract: Summary of the paper (1-3 paragraphs)
  - Writing stage: Allows you to briefly describe your paper to someone else
  - Publishing stage: A "teaser" to create interest in your work
- Outline: Title/content of each section and sub-section
  - The future "Table of Contents" of the paper
  - Typical depth: 2-3 levels
  - Breaks down the research into manageable pieces

3. Writing a Draft
Filling in the outline

- Usually start with an introduction that addresses:
  - What is your thesis
  - How is it different from what was written before
  - Example for why it is important
  - Outline of the paper's structure
- Focus on each sub-section at a time
  - Before writing, have an idea of what this sub-section will say
  - Don't get bogged down in details at this stage – drop a footnote or highlight a note to yourself when you need to find a minor reference/citation

4. Polishing
Final Touches

- Go over all highlighted notes and fill necessary references/quotes/text
- Re-read your paper
  - Typos
  - Grammar
  - Unnecessary Repetition
  - Confusing language
  - Disconnect between sub-sections of your paper
- If possible, have a friend read the paper to pick up places in which you are unclear

How-to Books

- Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, and Seminar Papers* (2d ed., Foundation Press 2004)

- Elizabeth Fajans & Mary L. Falk, *Scholarly Writing for Law Students: Seminar Papers. Law Review Notes, and Law Review Competition Papers* (3d ed., West 2005)