1. What is a research essay? [click]

2. Purpose behind a research essay [click]

3. Skills tested in a research essay [click]

4. How to write a research essay [click]

5. How is a research essay marked? [click]
I. What is a research essay?

- A research essay is an academic assignment where a student answers an “application question”, or writes on a given topic, by conducting “independent research” and by writing an “academic essay”.

- An “application question” relates to either hypothetical or real-life problems that may have an number of solutions. This type of question entails a factual situation to which students must apply their theoretical knowledge to provide a legally informed answer.

- A topic is an area of the law that is uncertain and/or controversial. The purpose of doing research into this topic is to clarify the legal position and to stimulate debate with the aim of improving the law.
“Independent research” is conducted by reading, interpreting and applying various primary and secondary legal sources that will inform, formulate, and substantiate a student’s argument.
2. Purpose behind a research essay

The purpose behind writing a research essay is to assist law students “to develop some degree of comfort with ambiguity”.

W Binford ‘How to be the world’s best law professor’ in 64 Journal of Legal Education (2014 – 2015) 542 at 551.

By specifically choosing a controversial topic students are required to engage with difficult legal questions and to convince the reader of their legal argument.
A research essay illustrates that

“important legal questions often do not have clear and easy answers... Law, perhaps unlike some fields of study, does not allow us simply to dismiss issues because we cannot nail them down with the certainty we might prefer.” It forces us to inhabit that space between arrogant certainty and empty relativism. What we need is the willingness and ability to ask hard questions rather than duck them – to wrestle with what we know we cannot pin down. This capacity is central to the work of law, and thus to legal education.

SJ Clark “Law School as Liberal Education” 63 Journal of Legal Education (2013) 235 at 241
3. Skills tested by a research essay

Critical thinking skills:

• Critical thinking skills are mainly developed in the research essay. Law students are encouraged to think critically, independently, and creatively. Students should not merely regurgitate what the textbook says or repeat opinions voiced during a lecture.

• What relates to critical thinking is creative thinking: research essays pertain to questions which have no “perfect” answers, which is often the case with law in practice. A student therefore has to substantiate his or her argument to convince the reader one way or the other.
Research skills:

Students have to conduct independent research on a topic or legal question and write an essay where they present their arguments or opinions and provide possible solutions to a topic/problem question.

Research skills include being able to read, interpret, and apply a variety of primary and secondary sources of law, being able to write well, and being able to communicate effectively. Research skills are further reflected in a student’s ability to identify appropriate primary sources and contextually relevant and sufficient secondary sources.

Writing skills and literacy

It is extremely important that law students learn to use language efficiently, as language is the main tool of lawyers. Students’ writing skills are mainly honed in the research essay, but the semester test is often a true reflection of a student’s writing abilities.

Writing skills are reflected in a student’s ability to follow a coherent structure in the essay that illustrate a logical flow between the constituent parts, as well as correct and clear use of language, punctuation, grammar, sentence structure and use of paragraphs.
Ethics, integrity, honesty and professionalism

At the Law Faculty we strive to promote a culture of ethics, integrity, honesty, and professionalism in our students. Law students should start acting as the professional lawyers they will become in everything they do: from the way they treat others on and off campus, to generally making a point that students follow instructions, whatever the source of the instructions may be.

Plagiarism

Plagiarism is a very serious offence in terms of the University of Johannesburg’s rules and regulations. This offence is dealt with in accordance with the University policy: please refer to Rule 2.2.35 of UJ’s Academic Regulations 2013 for a definition of plagiarism, which can be accessed at http://www.uj.ac.za/EN/Faculties/Documents/University-of-Johannesburg-Academic-Regulations.pdf.

Students must ensure that their research essays are entirely their own work, and that the work and ideas of others are always properly acknowledged.
Writing a research essay can be a daunting task. With so many sources (case law, legislation, books, and journal articles) available one can easily feel overwhelmed. Don’t succumb to this feeling of powerlessness!

Always start by considering the essay topic. An example of a possible essay topic is “Discuss the constitutionality of the marital power”

Secondly, obtain clarity regarding the hypothesis (and legal question) that arises from the topic.

Thirdly, write the main body of the essay.

Finally, write the conclusion and introduction.
Essay topic: identifying the hypothesis

- In a research essay a student will normally be given a topic on which he or she has to write.

- In the present example the topic requires a student to discuss whether the marital power, which forms part of family law, complies with the Constitution.
  - For purposes of this presentation it may be assumed that the marital power is still in force.

- To fully comprehend the topic and legal question that it raises, it is necessary to formulate a hypothesis. This is done by doing legal research, which allows one to obtain knowledge of the substantive law governing the topic.

Substantive law

- Knowledge of substantive law will enable a student to formulate a hypothesis which, in turn, allows him or her to identify the research question.

- In order to acquire knowledge of the substantive law on the topic it is necessary to search the catalogue of the UJ Library for sources ([https://ujlink.uj.ac.za/](https://ujlink.uj.ac.za/)).

- Here a student can filter his or her search (use the advanced search function) according to a number of criteria, such as the surnames of authors, titles of books, and the subject of the legal field.
A student must therefore use keywords such as “South African family law” and “Bill of Rights” for purposes of the present topic. It will mostly be sufficient to only focus on South African sources, unless the topic requires legal comparison.

Research into family law reveals that the marital power allows a husband to administer both his wife’s separate property and their community property if they are married in community of property. A wife therefore does not have the capacity to act (ie to leave a will, enter into a contract or to sue or be sued) without obtaining permission from her husband. However, the same does not apply to women married out of community of property.

It follows that the law (through the common law) afforded women a subordinate legal position when compared to men – and women married out of community of property – if they were married in community of property.
• Research into the Bill of Rights reveals that the applicable constitutional provision (section 9, also known as the equality clause) provides that everyone is equal before the law and has the right to equal protection and benefit of the law. Neither the state nor private parties may unfairly discriminate against anyone.

• It follows that the marital power affords women a subordinate position to men when they are married in community of property. This amounts to unequal treatment before the law (or discrimination), since women in this context does not have the capacity to act. The same, however, does not apply to women married out of community of property, which means the marital power is discriminatory. Section 9, in turn, forbids discrimination which is unfair.
Legal question: hypothesis

• Once the student has a sufficient grasp of the substantive law, it is possible for him or her to formulate a hypothesis.

• The Oxford Dictionary defines hypothesis as “[a] supposition or proposed explanation made on the basis of limited evidence as a starting point for further investigation.”

• In other words, a hypothesis is a provisional assumption, normally based on one or more premises, which warrants further investigation.
  o A premise is an assertion or proposition which forms one of the bases for research.

• The two premises of the present topic are the following:

  • Premise 1: The marital power results in unequal treatment of women married in community of property.
  
  • Premise 2: The equality clause prohibits discrimination by the state or private parties which is unfair.
These two premises lead to the hypothesis (or provisional assumption), which is the synthesis (or product) of the two premises on the previous page:

The marital power, which allows unequal treatment, is therefore potentially in conflict with section 9 of the Constitution, which forbids unfair discrimination.

In view of the hypothesis the following research question may be identified:

Does the marital power amount to unfair discrimination contrary to section 9 of the Constitution?

Successful identification of the research question allows a student to focus his or her research so as to obtain the best sources for answering the research question.
Writing the main body

• Once a student identified the hypothesis and research question, he or she will be able to focus on sources that pertains to the specific research question. This, in turn, allows him or her to formulate a case for (i.e., the marital power is conflict with section 9 of the Constitution) or against (i.e., the marital power is not in conflict with section 9 of the Constitution) the research question.

• It is preferable to first write the main body of the essay, i.e., the parts that set out the position in South African law and the relevance of the research question.

• The first substantive heading (which is not the introduction) should preferably focus on the current legal position and why the legal problem is worth investigating (here the possible unconstitutionality of the marital power).

• The student should then set out his or her argument regarding the research question. This will by done with the aid of case law (primary source), books (secondary source), and journal articles (secondary source).
The headings of an essay such as the present might be as follows:

1) Introduction

2) The marital power in South African family law

3) The role and application of the equality clause

4) Does the marital power amount to unfair discrimination?

5) Conclusion

Section 1 (the introduction) briefly introduces the reader to the topic, sets out the current legal position and explains what the research problem is. It is helpful to write this section first so as to get a clear picture of where the essay is heading.

Section 2 sets out the marital power and the fact that it only affects women married in community of property. It will also indicate that the marital power has a discriminatory effect.

Here the student must make use of case law (primary source), books (secondary source), and, where possible, journal articles (secondary source).
• Section 3 provides an oversight of the equality clause, the major Constitutional Court cases on this provision, and the two-step approach for determining the constitutionality of discriminatory legislation.
  o Here student must again make use of case law (primary source), books (secondary source), and, where possible, journal articles (secondary source).

• Section 4 then investigates the constitutionality of the marital power in view of the equality clause. Here the student must again refer to books, court cases and, where possible, journal articles and properly substantiate his or her argument(s).
  o Please note: it is possible that the mentioned sources might not address the research question directly. In such a case the student must formulate his or her own argument(s) with the aid of the relevant sources.
Section 5 concludes the essay by setting out the answer to the research question in view of what has been discussed under the headings of the essay.

- It is advisable to write the conclusion last, as a student will then have the clearest view – in light of what is written under the previous headings – of exactly what the conclusions are.

The final aspect entails revisiting the introduction. This is to ensure that the research question posed in the introduction is answered in the conclusion.

- The student must ensure that the answer(s) in the conclusion correspond(s) with the research question posed in the introduction. Providing answers in the conclusion that does not follow on the research question is a logical fallacy known as a non sequitur.
  - A non sequitur is a statement that does not logically follow from a previous statement.
An essay written by a student is provided on uLink (under the “Essay” tab) and may be accessed to help you understand the guidelines set out in this presentation.
Research essays are marked by assessing a student’s work against a “marking rubric”.

• Students are assessed roughly according to the following:
  o Conformity with the instructions in general: for example, the research essay was submitted on the due date and time, the length and style of the essay conforms with the instructions, footnotes and a bibliography was used, and all the required annexures were attached;
  o The structure of the essay illustrates a logical flow between the constituent parts: for example, descriptive headings were used, and the essay flows from an broad introduction to a concrete final argument;
The referencing style in both the footnotes and in the bibliography follows the Tydskrif vir die Suid-Afrikaanse Reg (TSAR)-style guidelines. There should be no suspicion of plagiarism, as the student has provided adequate acknowledgment of sources of authors of ideas, writings, works or inventions;

Research conducted by the student reflects the ability to identify the correct primary sources and contextually relevant and sufficient secondary sources. Sources are interpreted and applied appropriately to substantiate the argument;

The student’s use of language, punctuation, grammar, sentence structure, and use of paragraphs are correct and clear;

The essay contains a strong, persuasive, substantiated, legal argument, and reflects critical thinking.

See pages 31-32 of the Property Law essay writing guide (available on uLink under the “Essay” tab) for the marking rubric that will be used to mark this year’s essays.