

Law methodology

*Law for Academy Profession
Programmes*



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Preface

This e-chapter is a part of a series of chapters, which covers juridical subjects relevant for students studying at Academy Profession Programmes.

The chapters can be read independently or together with the other chapters. The authors are both experienced Masters of Laws and are employed at Dania Academy of Higher Education, where they have worked as Professors for several years.

All chapters are structured the same way:

- First, you get an outline of the content of the subject.
- Then there will be a overview of the relevant sources of law.
- Finally, there will be some cases made for the students to check their knowledge and some cases where you can use your knowledge in a more proactive way.

Our intentions are to help the students understanding the basic juridical disciplines so that they can participate to the daily decisions as a part at the Danish labour market.

In the series ***Law for Academy Profession Programmes***, we will publish the following chapters in autumn 2015.

- § ***Law Methodology***
- § ***Contract Law***
- § ***Danish and international Sales Law***
- § ***Marketing Law***
- § ***Data Protection law***

The chapters are originally written in a Danish version. We will like to thank Anne Bager, Professor at Dania Academy of Higher Education, to make this possible and to help us to spread knowledge of the Danish legal system to international students.



[Link to LawLab](#), which is a Danish public facebook group, where the authors and the students share juridical news and debate juridical issues.



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Introduction

In this chapter, you can read about legal method. The word originates from the Greek "methodos", meaning "road" or "going for something" – i.e. a systematic and fixed procedure which is to be used when work is to be done or a problem must be solved.

Legal method thus covers the procedure which is used by the courts, lawyers, legal advisors and anyone else who needs to take a stand on a specific legal issue to find the right solution to a legal problem *from a legal perspective*.

Firstly, the method consists of a description and an identification of the sources of law, which form the valid base of the legal argument: Secondly, it is the theory of how the sources of law are to be interpreted. Legal method contains significant elements of assessment and estimation and is consequently less exact than the methods used within many other subject areas.

Legal method is about making qualified choices and about understanding accomplished facts (the factual circumstances of a case) and *jus practicandi* (the relevant legal regulations and the correct understanding of these). In addition, legal method is also about being able to make a sufficiently qualified subsumption of the accomplished facts according to *jus*, which subsequently provides the right legal result.

The basic structure of legal methodology:

1. Accomplished facts (identification of problem/the factual circumstances)
2. Choice of law
3. *Jus practicandi* (argumentation as to why the law is suitable for dealing with the problem in question)
4. Conclusion (decision) and possibly sanction (punishment, compensation)

Example of legal method:

A full time employed accounts assistant has been unreasonably dismissed. The question is now whether she/he is to receive severance pay. The assistant in question has been working for the company for altogether nine months.

According to section 2b of the Salaried Employees Act, you have to have been working for the company for a year before you are entitled to receive severance pay for unreasonable dismissal. The answer to whether the former employee is to receive severance pay is "no" – the reason being the far too short period of employment.

The method of finding the answer is:

1. Choice of facts: Description of the situation by means of different key words: salary employee, unreasonably dismissal, period of employment of nine months.
2. Choice of law: The Salaried Employees Act because the work functions of the accounts assistant are best covered by this, cf. section 1.
3. Argumentation as to why the law is suitable for the problem in questions (facts): He/she has not been working for the company for an entire year cf. section 2b.

4. Choice of conclusion: No severance pay.

Re item 1

First and foremost, it is about identifying the legal problem. The example with the accounts assistant is relatively simple. Often, however, the problem is far more complex – and the same goes for the laws that form the basis for a solution.

Re item 2

After this, you must find out which law/source of law holds information about the legal problem – and where the law/source of law can be found.

Re item 3

Thirdly, the law has to be applied. How does the law fit with the problem in question (accomplished facts)? This is where you take a look at the interrelationship between the legal sources, how they are interpreted and which principles are to be used?

Especially the latter point may cause a number of problems to most people. A fundamental principle is that a rule/law which is placed lower in the hierarchy cannot be in disagreement with a law that is ranked higher in the hierarchy. In other words, the highest ranked law is the one that should be applied.

The rules, too, may cause problems. As an example, the rules appear relatively alike, and it may be difficult to distinguish between the different sections. Often, however, the attentive reader will see that most rules follow the same ‘template’. Typically, the scope (purpose) of the rule is noted in the first section. After this, the regulatory rules – i.e. the rules stating what is allowed, forbidden or mandatory – follow. Finally, the clauses of commencement are written.

Re item 4

At last, you have to make a decision (conclusion) based on the assessment you have made on the basis of the sources of law, the interpretation of these and the estimates you have made along the way. In case the applied result is supported by several legal considerations, all of these must be noted. A conclusion is also required even though the legal status on the matter is unclear.

Outline of subject area

After the introduction to legal method, the following topics will be covered:

- The structure of the legal system
- National sources of law
 - Laws/statutes and rules
 - Travaux preparatoires
 - Caselaw
 - Other types of practise
 - Other sources of law
- International sources of law