

PREFACE

The activities of practicing attorneys speak volumes about the importance of legal writing classes in law school. Although analytic skills and a general knowledge of legal principles form the intellectual foundation of the practice of law, legal analysis is only as effective as the quality with which it is expressed. In your practice, you undoubtedly will devote a substantial proportion of your time and effort to drafting legal documents such as office memoranda, letters, pleadings, motions, briefs, contracts, and wills. Moreover, techniques of expression are closely linked to the underlying substantive analysis; indeed, problems in writing style often betray confusion in the analysis.

Unfortunately, as a first-year law student, you might have difficulty seeing the relationship between your efforts in legal writing classes and your short-term objectives for success in law school. With this book, we hope to reassure you that the work in your first-year legal writing courses will directly contribute to your success with law school exams as well as with legal documents that you draft in a summer clerking position or in post-graduate employment. We hope to demonstrate in Parts I-IV that the skills you develop in analyzing a client's legal problem and drafting an office memorandum are directly transferable to your task of analyzing an essay exam and writing the exam answer.

The remainder of the book examines techniques of advocacy and client representation that should appeal to a broad spectrum of readers: participants in a first-year moot-court program, students in an advanced writing seminar, student law clerks, and practicing attorneys. For example, Parts V through VII examine written advocacy in the context of pleadings, pretrial motions, and appellate briefs. Moreover, they thoroughly examine principles of writing and persuasion that apply generally to any litigation document. Part VIII provides a step-by-step approach to drafting simple contracts, advice letters, and demand letters. Finally, the extensive citations in endnotes, most of which first-year law students can pass over, will provide attorneys with a valuable source of authorities.

Apart from special considerations in advocacy, the book addresses general matters of writing style in Chapters 1 and 8-10. These chapters use problems and examples to outline a general approach to style that focuses on the policies underlying conventions of composition. They encourage you to adopt the following philosophy: We should not memorize and mechanically apply rules of composition any more than we would mechanically apply "black letter" rules of law. Instead, we must understand the goals and

purposes of the conventions of legal writing, and we should apply them flexibly to satisfy those goals and purposes. Much the same can be said about persuasive writing style, addressed in Chapter 13.

Of course, this book reflects our own style quirks and biases. We freely split infinitives but always use the serial comma, and we wish a gender-neutral singular pronoun in the third person would win universal acceptance. Unfortunately, the disjunctive phrase “his or her” often needlessly clutters already complex sentences, and plural pronouns such as “they” are not always consistent with content— although we no longer comment on student papers that pair “they” or “their” with a singular noun. When some reference to gender is inevitable, we have alternated between male and female pronouns, for example, by referring to an associate in a law firm with the pronoun “he” and to his assigning attorney with the pronoun “she.” We hope this technique permits readers to identify with characters in the text regardless of gender identity. And, for those whose identify as nonbinary, we simply avoid gender references when possible, such as by using plural nouns and pronouns or by avoiding pronouns when possible.

The notes at the end of each chapter cite to source material and acknowledge the brilliant colleagues whose ideas inspired the text. Readers may find some of the additional information in the endnotes to be illuminating or to be helpful in practice as a starting point for research. Otherwise, however, busy students can focus on the text and skip the endnotes without missing any significant points.

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