#### CONTENTS

| Ackn<br>Intro<br>I.<br>II.<br>III. | ace to the Eighth Edition bowledgments boduction Who Me? A Writer? Pliable Authority Ethics Plagiarism   | xxi<br>xxiii<br>1<br>1<br>1<br>3<br>4 |
|------------------------------------|--|---------------------------------------|
|                                    | CHAPTER 1 FIRST THINGS FIRST   |                                       |
| II.<br>III.                        | Adult Learning: Incremental Learning, the Writing Process, and "Flipped" Classrooms Understanding Your Role  Exercise 1-1 Recognizing Your Role Reading Cases: Introduction  Exercise 1-2 Finding the Parts of a Case How Lawyers Think  Exercise 1-3 Forms of Reasoning | 7<br>10<br>12<br>12<br>13<br>13       |
|                                    | PART I THE PROCESS OF WRITING PREDICTIVELY:  |                                       |
|                                    | STAGE ONE ORGANIZING FOR ANALYSIS: OUTLINING YOUR WORKING DRAFT CHAPTER 2  |                                       |
| II.                                | Outlining a Rule: Overview Common Rule Structures A Few Hints About Outlining Rules  | 21<br>22<br>25                        |

|      | Exercise 2-1  | 27 |
|------|---|----|
|      | Exercise 2-2  | 27 |
|      | Exercise 2-3  | 28 |
|      | Exercise 2-4  | 28 |
|      | Exercise 2-5  | 28 |
|      | CHAPTER 3   |    |
|      | USING RULES TO ORGANIZE YOUR ANALYSIS                         |    |
| I.   | Organizing a Working Draft                                    | 29 |
| II.  | Hints for Organizing the Draft                                | 30 |
| III. | Rules Within an Umbrella Rule                                 | 33 |
|      | Exercise 3-1 Rule Outlining                                   | 34 |
|      | Exercise 3-2 Rule Outlining                                   | 35 |
|      | Exercise 3-3 Rule Outlining                                   | 36 |
|      | Exercise 3-4 Rule Outlining                                   | 36 |
| IV.  | Organizing by Rule: Special Circumstances                     | 36 |
|      | CHAPTER 4   |    |
|      | FINDING A RULE IN A STATUTE                                   |    |
| I.   | Reading Statutes  | 39 |
| II.  | Identifying Issues  | 41 |
|      | Exercise 4-1  | 42 |
|      | Exercise 4-2  | 43 |
| III. | Interpreting Statutory Language                               | 43 |
| IV.  | Interpreting Statutory Language: Canons of Construction       | 45 |
|      | CHAPTER 5   |    |
|      | FINDING A RULE IN A CASE                                      |    |
| I.   | Why Formulate a Rule from a Case?                             | 47 |
| II.  | A Slippery Task   | 49 |
| III. | Inherited Rules and Processed Rules                           | 50 |
| IV.  | Tools for Finding New Information About the Rule              | 52 |
| V.   | Choosing the Rule's Breadth                                   | 53 |
| VI.  | Holding Versus Dicta  | 56 |
|      | Exercise 5-1 Formulating and Outlining a Rule from an Opinion | 57 |
|      | Exercise 5-2 Distinguishing Holding from Dictum               | 58 |
|      | CHAPTER 6   |    |
|      | FINDING A RULE FROM MULTIPLE AUTHORITIES                      |    |
| I.   | The Continuing Search for a Rule                              | 59 |
| II.  | Comparing Precedential Values                                 | 61 |
|      | A. Primary Authority: Is This "Law"?                          | 61 |
|      | B. Mandatory Authority: Is It Binding?                        | 62 |
|      |   |    |

|             | C. Subsequent Treatment: Is It Still "Good Law"?  | 64   |
|-------------|---|--|
|             | D. Any Other Factors?   | 65   |
|             | Exercise 6-1 Comparing Precedential Values  | 67   |
|             | Exercise 6-2 Comparing Precedential Values  | 68   |
| III.        | Reconciling Authorities: Pulling Them All Together  | 69   |
|             | Exercise 6-3 Reconciling Opinions   | 71   |
|             | STAGE TWO   |  |
|             | <b>DRAFTING FOR ANALYSIS:</b>   |  |
|             | WRITING THE WORKING DRAFT   |  |
|             | CHAPTER 7   |  |
|             | ANALYZING A SINGLE ISSUE: RULE EXPLANATION  |  |
| I.          | What Is a Single-Issue Discussion?  | 77   |
| II.         | $\mathcal{E}$   | 79   |
|             | Exercise 7-1 Identifying and Labeling the Parts of the Paradigm   | 81   |
|             | Explaining the Rule   | 81   |
|             | Rule Explanation Using a Single Case  | 83   |
| V.          | Counteranalysis   | 87   |
|             | Checklist for Rule Explanation  | 90   |
|             | Exercise 7-2 Writing the Rule Explanation   | 91   |
|             |   |  |
|             | CHAPTER 8   |  |
|             | ANALYZING A SINGLE ISSUE: RULE APPLICATION  |  |
|             | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section   | 95   |
| II.         | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section  Content of Rule Application  | 96   |
| II.         | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies   | 96<br>97   |
| II.         | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter?   | 96<br>97<br>97                                   |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies   | 96<br>97<br>97<br>98                             |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application  | 96<br>97<br>97<br>98<br>100                      |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application   | 96<br>97<br>97<br>98<br>100<br>104               |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies  | 96<br>97<br>97<br>98<br>100<br>104<br>105        |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies Exercise 8-2 Practicing Analogies and Counter-Analogies  | 96<br>97<br>97<br>98<br>100<br>104               |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies Exercise 8-2 Practicing Analogies and Counter-Analogies Exercise 8-3 Writing the Rule Application, Using Analogies   | 96<br>97<br>97<br>98<br>100<br>104<br>105        |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies Exercise 8-2 Practicing Analogies and Counter-Analogies  | 96<br>97<br>97<br>98<br>100<br>104<br>105        |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies Exercise 8-2 Practicing Analogies and Counter-Analogies Exercise 8-3 Writing the Rule Application, Using Analogies and Counter-Analogies  CHAPTER 9  | 96<br>97<br>97<br>98<br>100<br>104<br>105        |
| II.<br>III. | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies Exercise 8-2 Practicing Analogies and Counter-Analogies Exercise 8-3 Writing the Rule Application, Using Analogies and Counter-Analogies  CHAPTER 9 ANALYZING A SINGLE ISSUE:  | 96<br>97<br>97<br>98<br>100<br>104<br>105        |
| II. III.    | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies Exercise 8-2 Practicing Analogies and Counter-Analogies Exercise 8-3 Writing the Rule Application, Using Analogies and Counter-Analogies  CHAPTER 9  ANALYZING A SINGLE ISSUE: USING MULTIPLE AUTHORITIES                            | 96<br>97<br>97<br>98<br>100<br>104<br>105<br>105 |
| II. IIV.    | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies Exercise 8-2 Practicing Analogies and Counter-Analogies Exercise 8-3 Writing the Rule Application, Using Analogies and Counter-Analogies  CHAPTER 9  ANALYZING A SINGLE ISSUE: USING MULTIPLE AUTHORITIES  Investigating the Options | 96<br>97<br>97<br>98<br>100<br>104<br>105<br>105 |
| II. III.    | ANALYZING A SINGLE ISSUE: RULE APPLICATION  Two Approaches to Writing the Application Section Content of Rule Application Analogies A. Which Similarities and Differences Matter? B. Choosing a Format for Your Analogies Common Trouble Spots in Rule Application Checklist for Rule Application Exercise 8-1 Recognizing Analogies and Counter-Analogies Exercise 8-2 Practicing Analogies and Counter-Analogies Exercise 8-3 Writing the Rule Application, Using Analogies and Counter-Analogies  CHAPTER 9  ANALYZING A SINGLE ISSUE: USING MULTIPLE AUTHORITIES                            | 96<br>97<br>97<br>98<br>100<br>104<br>105<br>105 |

## CHAPTER 10 ANALYZING MULTIPLE ISSUES

| I.   | Writing the Analysis of an Umbrella Rule with Subparts          | 115 |
|------|---|-----|
|      | A. The Umbrella Section   | 116 |
|      | B. The Discussion of Each Subissue                              | 117 |
|      | C. The Overall Conclusion                                       | 117 |
| II.  | Writing the Analysis Without an Umbrella Rule                   | 118 |
| III. | Variations  | 119 |
|      | A. Order of Elements  | 119 |
|      | B. Whether to Cut Short the Analysis                            | 119 |
|      | C. Whether to Combine Rule Explanation and Rule                 |     |
|      | Application for All Elements                                    | 120 |
|      | Exercise 10-1 Identifying the Parts of a Multi-Issue Discussion | 121 |
|      | Exercise 10-2 Writing a Multi-Issue Discussion                  | 121 |
|      | STAGE THREE   |     |
|      | <b>CONVERTING YOUR WORKING DRAFT</b>                            |     |
|      | TO AN OFFICE MEMO   |     |
|      | CHAPTER 11  |     |
|      | THE OFFICE MEMO AND THE   |     |
|      | LAW-TRAINED READER  |     |
| I.   | Observations About Readers                                      | 125 |
|      | A. Focus on the Reader  | 125 |
|      | B. Attention Levels   | 126 |
|      | C. Road Maps  | 127 |
|      | D. Law Professors as Readers                                    | 127 |
| II.  | An Overview of the Office Memo                                  | 128 |
|      | A. Function   | 128 |
|      | B. Format   | 128 |
|      | C. Degree of Formality  | 130 |
| ***  | D. Ethical Requirements   | 130 |
| Ш.   | E-Memos   | 131 |
|      | CHAPTER 12  |     |
|      | <b>ORGANIZING FOR YOUR READER:</b>                              |     |
|      | THE DISCUSSION SECTION  |     |
| I.   |   | 133 |
| II.  |   | 134 |
|      | A. Dispositive Issues   | 135 |
|      | B. Important Issues   | 135 |
|      | C. Threshold Issues   | 135 |
|      | D. Familiar Order   | 136 |
| III. | Check Subsection Lengths  | 136 |

|      |   | Contents |  |
|------|---|----------|--|
|      |   |          |  |
| IV.  | Revise Headings                                     | 137      |  |
| V.   | Insert a Thesis Sentence or Paragraph               | 137      |  |
|      | CHAPTER 13 COMPLETING THE DRAFT OF                  |          |  |
|      | THE OFFICE MEMO                                     |          |  |
| I.   | The Heading   | 139      |  |
| II.  | The Question Presented                              | 140      |  |
|      | A. Content and Format                               | 140      |  |
|      | B. Generic Versus Specific References               | 141      |  |
|      | C. Degree of Detail                                 | 142      |  |
|      | D. Role   | 142      |  |
|      | Exercise 13-1 Drafting a Question Presented         | 143      |  |
| III. | The Brief Answer                                    | 143      |  |
|      | A. Content and Format                               | 143      |  |
|      | B. Generic Versus Specific References               | 144      |  |
|      | C. Degree of Detail                                 | 144      |  |
|      | D. Degree of Certainty                              | 144      |  |
| IV.  | The Facts Section                                   | 145      |  |
|      | A. Fact Selection                                   | 145      |  |
|      | B. Organization                                     | 146      |  |
|      | C. Remembering Your Role                            | 147      |  |
|      | Exercise 13-2 Critiquing a Facts Section            | 147      |  |
| V.   | The Conclusion                                      | 149      |  |
|      | Checklist for an Office Memo                        | 149      |  |
|      | STAGE FOUR  |          |  |
|      | REVISING TO ACHIEVE A FINAL DRAFT                   |          |  |
|      | CHAPTER 14  |          |  |
|      | CITATIONS AND QUOTATIONS                            |          |  |
| T    | Citation in Legal Writing                           | 155      |  |
| 1.   | Exercise 14-1 Recognizing Ideas That Need Citations | 156      |  |
| II   | Citation Form                                       | 157      |  |
| 11.  | A. Using the <i>ALWD Guide</i>                      | 157      |  |
|      | 1. Sections of the ALWD Guide                       | 158      |  |
|      | 2. How to Locate the Rules You Need                 | 159      |  |
|      | B. Using the <i>Bluebook</i>                        | 159      |  |
|      | 1. Sections of the <i>Bluebook</i>                  | 159      |  |
|      | 2. How to Find the Rules You Need                   | 160      |  |
|      | C. Several Key Concepts                             | 160      |  |
|      | D. Introduction to Citation Form                    | 161      |  |
|      | D. IIII GAUCHOII to CIMHOII I OIIII                 | 101      |  |

164

165

E. Matching the Citation to the Text

Exercise 14-2 Identifying the Text the Citation Supports

|      | F. Citing with Style and Grace  | 165 |
|------|---|-----|
|      | Exercise 14-3 Editing the Placement of Citations  | 167 |
|      | G. Editing Citation Form  | 167 |
|      | Checklist for Editing Citations   | 168 |
|      | Exercise 14-4 Editing for Citation Form   | 173 |
| III. | Quotations  | 174 |
|      | A. When Quotation Marks Are Required  | 174 |
|      | B. Choosing to Use Quotation Marks  | 175 |
|      | C. Overquoting  | 176 |
|      | D. The Mechanics of Quoting   | 177 |
|      | E. Editing Quotations   | 179 |
|      | Checklist for Editing Quotations  | 180 |
|      | CHAPTER 15 REVISING FOR USAGE AND STYLE   |     |
| Ī.   | Professional Tone and Level of Formality  | 182 |
|      | Legal Usage and Customs   | 183 |
|      | Gender-Neutral Writing  | 185 |
|      | A. Nouns: Eliminate or Substitute   | 185 |
|      | B. Pronouns (He, She, His, Hers, They, Them, Theirs)                                      | 186 |
|      | C. Proper Names and Titles  | 187 |
| IV.  | Clear Subjects and Strong Verbs   | 188 |
|      | Avoiding Wordiness  | 192 |
|      | Miscellaneous   | 194 |
|      | Checklist for Language and Usage Errors   | 195 |
|      | PART II   |     |
|      | PROFESSIONAL CORRESPONDENCE   |     |
|      | CHAPTER 16  |     |
|      | WRITING PROFESSIONAL CORRESPONDENCE   |     |
|      | General Characteristics of Professional Legal Correspondence                              | 199 |
| 11.  | Letters to Clients  | 202 |
|      | A. General Considerations   | 202 |
|      | B. Retainer Letters   | 203 |
|      | C. Advice Letters   | 203 |
| TTT  | D. Status Letters   | 204 |
| 111. | Letters to Other Lawyers  | 205 |
|      | A. General Considerations   | 205 |
|      | B. Demand Letters   | 206 |
| 17.7 | C. Confirming Letters  Letters to Clients Other Leurens and the Court Transmittel Letters | 207 |
| IV.  | Letters to Clients, Other Lawyers, and the Court: Transmittal Letters                     | 208 |

| V.                 | Texts and E-mails: Special Considerations A. Texts B. E-mails  | 209<br>210  |
|--------------------|--|---|
|                    | B. E-mails   | 211   |
|                    | PART III   |   |
|                    | THE PROCESS OF WRITING   |   |
|                    | PERSUASIVELY: THE BRIEF  |   |
|                    | STAGE ONE STRUCTURING FOR PERSUASION: OUTLINING THE WORKING DRAFT  |   |
|                    | CHAPTER 17 ETHICS, JUDGES, AND BRIEFS  |   |
| II.                | The Ethics of Brief Writing Judges as Readers Overview of a Brief  | 220<br>222<br>223   |
|                    | CHAPTER 18 STRUCTURING THE ARGUMENT: FIRST STEPS   |   |
| II.<br>III.<br>IV. | Formulating and Structuring a Rule: Review Using the Rule to Begin to Organize the Draft Identifying Issues Identifying and Drafting Working Point Headings A. Identifying Working Point Headings B. Variations on Identifying Point Headings 1. Arguing an Important Threshold Issue 2. Arguing Two Major Issues C. Drafting Working Point Headings  Exercise 18-1 Evaluating Working Point Headings Identifying and Drafting Working Subheadings | 230<br>232<br>233<br>234<br>234<br>235<br>236<br>236<br>237<br>238<br>239 |
|                    | CHAPTER 19 STRUCTURING A MORE FAVORABLE RULE   |   |
| I.                 | Formulating a More Favorable Rule A. Discounting Troublesome Cases B. Synthesize the Authorities into a More Favorable Rule  | 241<br>242<br>244   |
| II.                | Structuring a Favorable Rule A. Subparts 1. Choosing Subheadings for Emphasis  | 248<br>248<br>248   |
|                    | <ul><li>2. Subheadings as a Tallying Mechanism</li><li>B. Example: Structuring a Favorable Rule from <i>Fox</i> and <i>Clein</i></li></ul>   | 249<br>249  |

# STAGE TWO DRAFTING FOR PERSUASION: WRITING THE WORKING DRAFT

#### CHAPTER 20 WRITING THE WORKING DRAFT: FIRST STEPS

| Т    | Getting Ready to Write   | 255        |
|------|--|------------|
|      | Review of the Paradigm   | 257        |
| 11.  | Exercise 20-1 Identifying and Labeling the Parts of the Paradigm                     | 258        |
| TTT  | Using Cases to Explain the Rule  | 258        |
|      | Arguments About Statutes   | 260        |
|      | Counteranalysis of the Rule  | 263        |
|      | Writing the Rule Application: Two Approaches   | 263        |
|      | Overall Content of Rule Application  | 264        |
|      | Making Factual Inferences  | 265        |
|      | Using Case Comparisons   | 266        |
|      | Common Trouble Spots in Rule Application   | 268        |
|      | Counterapplication   | 268        |
| 211. | Counterapplication   | 200        |
|      | CHAPTER 21   |            |
|      | <b>REFINING THE ARGUMENTS</b>  |            |
| т    | Identifying the Standard of Davier   | 271        |
| 1.   | Identifying the Standard of Review   | 271<br>272 |
|      | <ul><li>A. Categories of Trial Court Decisions</li><li>1. Ouestions of Law</li></ul> | 272        |
|      | 2. Questions of Fact   | 272        |
|      | 3. Mixed Questions of Law and Fact   | 272        |
|      | 4. Questions Within the Trial Court's Discretion                                     | 273        |
|      | _  |            |
|      | B. Advocating a More Favorable Standard of Review                                    | 275        |
|      | C. Editing Headings to Conform to the Standard of Review                             | 275        |
| TT   | Exercise 21-1 Identifying Categories of Trial Court Decisions                        | 276        |
| 11.  | Drafting the Question Presented  | 277        |
|      | A. Purpose and Function  | 277        |
|      | B. Traditional Content and Format  | 278        |
|      | C. "Deep" Issue Statements   | 281        |
|      | D. Drafting Hints  | 282        |
|      | Exercise 21-2 Critiquing Questions Presented   | 282        |
|      | Persuading Using Policy  | 283        |
| IV.  | Rule Application with Factors or Guidelines:   |            |
|      | Advanced Techniques  | 285        |
|      | A. First Organizational Option: By Factor  | 285        |
|      | B. Second Organizational Option: By Party  | 285        |
|      | C. Third Organizational Option: By Theme   | 286        |

### STAGE THREE CONVERTING THE WORKING DRAFT TO A BRIEF

#### CHAPTER 22

#### ORGANIZING FOR YOUR READER: THE ARGUMENT SECTION

| I.   | Umbrella Section  | 291 |
|------|---|-----|
|      | Exercise 22-1 Labeling the Components of the Umbrella Section | 292 |
| II.  | Choosing an Order for the Arguments                           | 293 |
|      | A. Ordering Point Headings                                    | 293 |
|      | 1. Strength on the Law  | 293 |
|      | 2. Strength on the Equities                                   | 294 |
|      | 3. Your Reader's Priorities                                   | 294 |
|      | B. Ordering Subheadings                                       | 295 |
| III. | Converting Working Headings to the Brief's Point Headings     | 295 |
|      | A. Adding the Key Facts                                       | 295 |
|      | Exercise 22-2 Evaluating the Content of Point Headings        | 297 |
|      | B. Editing for Persuasion                                     | 297 |
|      | C. Editing for Readability                                    | 299 |
|      | Exercise 22-3 Editing Headings for Readability                | 300 |
|      | CHAPTER 23  |     |
|      | COMPLETING THE DRAFT OF THE BRIEF                             |     |
| I.   | Statement of Facts  | 303 |
|      | A. Ethics, Readers, and the Conventions of Fact Statements    | 304 |
|      | 1. Reminders About Ethics                                     | 304 |
|      | 2. Reminders About Readers                                    | 305 |
|      | 3. The Conventions of a Statement of Facts                    | 305 |
|      | B. Developing a Theory of the Case and Selecting Facts        | 307 |
|      | 1. Developing a Theory of the Case                            | 307 |
|      | 2. Selecting Facts  | 308 |
|      | C. Organization   | 309 |
|      | 1. Formats  | 309 |
|      | 2. Subheadings  | 310 |
|      | 3. Procedural History   | 310 |
| II.  | Techniques for Persuasion                                     | 310 |
|      | A. General Principles   | 310 |
|      | B. Large-Scale Organization                                   | 311 |
|      | 1. The Beginning  | 311 |
|      | 2. The Middle   | 312 |
|      | 3. The End  | 312 |
|      | C. Paragraph Organization                                     | 312 |
|      | D. Techniques with Sentences                                  | 313 |
|      | E. Other Small-Scale Techniques                               | 314 |

| Checklist for Statement of Facts                           | 317 |
|--|-----|
| Exercise 23-1 Critiquing a Statement of Facts              | 318 |
| III. Formatting the Brief                                  | 321 |
|  |     |
| STAGE FOUR   |     |
| REVISING TO ACHIEVE A FINAL DRAFT                          |     |
| CHAPTER 24   |     |
| EDITING THE BRIEF  |     |
| I. Persuasive Style  | 325 |
| A. Degree of Formality                                     | 325 |
| B. Competence and Clarity                                  | 326 |
| C. Tact and Good Judgment                                  | 327 |
| II. Writing with Confidence                                | 328 |
| Final Checklist  | 329 |
| PART IV  |     |
| COURTROOM ADVOCACY   |     |
| CHAPTER 25   |     |
| ORAL ARGUMENT  |     |
| I. The Purpose of Oral Argument                            | 333 |
| II. Formalities and Organization of Oral Argument          | 334 |
| III. The Content of the Argument                           | 337 |
| IV. Preparation  | 339 |
| V. Handling Questions from the Bench                       | 341 |
| VI. Presentation   | 344 |
| APPENDICES   | 345 |
| Appendix A Sample Office Memorandum                        | 347 |
| Appendix B Sample Office Memorandum                        | 353 |
| Appendix C Sample E-memo                                   | 359 |
| Appendix D Sample Correspondence                           | 361 |
| Appendix E Sample Trial-Level Brief                        | 369 |
| Appendix F Sample Appellate Brief                          | 377 |
| Appendix G Sample Appellate Brief                          | 389 |
| Appendix H Cases Used in the Text's Examples and Exercises | 407 |
| Coffee System of Atlanta v. Fox                            | 407 |
| Goldman v. Kane  | 410 |
| Clein v. Kapiloff  | 412 |
| Jacobson v. Kamerinsky                                     | 414 |
| Lucy v. Zehmer   | 416 |
| T 1  |     |
| Index  | 421 |