

Introduction

A good lawyer is much more than a professional. A good lawyer is a crafts-person, applying his or her talents with imagination, diligence, and skill. Although the practice of law requires a combination of negotiation, counseling, research, and advocacy skills, there is one skill upon which all others depend: The good lawyer, the crafts-person, must be able to write effectively.

Effective legal writing combines two elements—legal method and writing. Legal method is the process of understanding legal rules, applying them to specific factual situations, and drawing justifiable and well-organized conclusions. Law school, it is often said, is designed to teach you to “think like a lawyer.” The myriad legal rules presented in torts, civil procedure, property, and other courses are important, but law school courses should also instill the logic or method of law. A good lawyer knows how to resolve a particular problem, even though he or she may not yet know the relevant legal rules.

A thorough understanding of the legal problem-solving process is of little value, however, unless the analysis can be communicated on paper. Good legal writing is in many ways the same as good writing in general. Legal writing should be clear, precise, and complete, yet fully understandable to a layperson. Contrary to what many people think, good legal writing is not a legalistic style of Latin phrases and archaic words.

Effective legal writing is hard work. Nothing is included without good reason, and nothing of significance is omitted. Each word, each sentence is chosen or structured with care. If a document reads smoothly and intelligently, it is not usually because it was easy to write. The reverse is more often true: a document that was easy to write is often muddled. The beauty of well-crafted writing is that the final product masks the painstaking and difficult process by which it was created. The good writer—the crafts-person—makes it *look* easy.

The good writer also understands his or her audience. Not surprisingly, the audience for most legal writing is most often lawyers. They may be friendly or supportive lawyers, lawyers for the opposing side, lawyers who are judges, and lawyers who are clerks. They have different experiences and legal skills, but you should assume that they understand legal method and legal writing and that they bring certain expectations to what they read. They don’t necessarily know the law relevant to a particular problem, so they expect that a memorandum or brief will explain it. They have good noses for the strengths and weaknesses of legal conclusions, so they expect

conclusions to be explained and counterarguments answered. They are sensitive to the real-world consequences of decisions based on legal documents, so they take these documents seriously. And they are busy—often extremely busy and working under a deadline—so they expect memos and briefs to be as direct, easy to read, and understandable as the material will allow.

This book is designed as a legal writing text that provides practical guidance in the basic skills of legal writing and legal method.¹ Although intended primarily for first-year law students, it integrates and synthesizes many of the fundamental lessons of other law courses. It explicitly states the basic principles of legal method and provides a way of learning this method by explicating the thinking and writing necessary to analyze specific legal problems.

The book is based on two classroom-tested premises. First, the fundamental principles of legal writing and legal method can be reduced to a series of fairly simple guidelines. Second, these guidelines can best be learned by practice, particularly by working through highly focused exercises. More than forty years with the first six editions of this book have confirmed these premises.

Each chapter covers a specific topic, such as organization or precedent. Most chapters set out a short series of principles or guidelines that are explained and illustrated with hypothetical legal problems. The book shows good and bad ways of applying these guidelines and explains why one example is better than the others. Exercises of varying complexity at the end of each chapter afford an opportunity to learn and apply the rules. Most of the illustrations and exercises are based on altered or abridged versions of real cases and statutes, citations to which are set out in the Bibliography.

Although the book offers a step-by-step approach to legal writing and legal method, you need to be aware that legal writing is a recursive process. You may outline a memorandum or brief, begin writing, and then find you need to change your outline. You may find, as you revise your explanation of how a particular statute is applicable to your case, that the statute actually is *not* applicable. The steps in this book, in other words, do not move inevitably from “earlier” to “later.” You will often find yourself going back to “earlier” steps as your understanding of the law and how it applies deepens.

The book is divided into five parts. The first three parts focus on analytical and writing lessons common to most legal documents. These three parts introduce the law (Part A), and explain basic concepts of legal method (Part B) and legal writing (Part C). Although many of the examples used in these parts are based on legal memoranda, these guidelines also apply to briefs and other legal documents. The fourth part (Part D) shows more

1. Legal research, basic grammar, and citation form are not discussed. These subjects are covered in detail elsewhere, and there is little value in summarizing them here.

specifically how these guidelines apply to objective memoranda written for a supervisor or judge and opinion letters written to a client. The fifth and final part (Part E), provides additional guidelines for writing persuasive briefs to a trial or appellate court.

In addition, Appendices at the end of the book show several examples of emails, legal memoranda, and a client letter, as well as a trial court opinion, trial court briefs, and appellate briefs. These appendices are intended to be helpful models of the kind of writing taught in this text—not only for class but afterwards in the practice of law.

Because legal writing and legal method are skills, they are best learned and improved through the type of practice provided here. Many different skills are involved, but you need to master each of them and you must be able to use many of them in a single document. While mastery of basic knowledge about writing and legal method is also essential, simply memorizing that information will not do. If you cannot apply that information in a particular problem, you do not know it.

Learning new skills is often difficult, particularly at first. This is true of all skills, such as riding a bicycle, keyboarding (or typing), driving, playing a musical instrument, or participating in a sport. But as with these skills, the more you practice legal writing and legal method skills, the better you will get and the more you will enjoy using them. With time and practice, the finer points of legal writing and legal method can be mastered.

The materials in this book are intended to be straightforward, manageable, and easy to understand. The guidelines provided can be applied to legal writing assignments, as well as to more complex situations you will encounter as your experience with the law grows. Ultimately, this book provides tools that will help you develop the skills required by the good lawyer, the skilled craftsman, and will serve you well wherever you go in the practice of law.