## Contents

Preface Acknowl	ledgments		xix xxi
Part I:	Introduct	ion	1
Chapter	r l: Mak	ing the Transition	3
§ 1.1	Understa	anding the Purpose of a Piece of Legal Writing	4
§ 1.2		or Legal Readers	6
§ 1.3	_	ınding Your Role as a Legal Writer	8
§ 1.4		the Conventions of Legal Writing	9
§ 1.5	9	or Specific Groups	10
	§ 1.5.1	English Majors	10
	§ 1.5.2	Philosophy Majors	11
	§ 1.5.3	Journalism Majors and Journalists	11
	§ 1.5.4	Science Majors and Scientists	12
	§ 1.5.5	Writers from Other Cultures	12
§ 1.6	The Poss	ibilities and Perils of Artificial Intelligence in	
	Legal Wi	riting	13
	§ 1.6.1	Rules That Might Govern Use of the Technology	13
	§ 1.6.2	Understand the Limitations of the Technology	15
	§ 1.6.3	Stay Current on Technological Updates	15
Chapte	r 2: The	United States Legal System	17
§ 2.1	The Thre	ee Branches of Government	18
0	§ 2.1.1	The Executive Branch	18
	\$ 2.1.2		18
	§ 2.1.3	The Judicial Branch	19
	0	a. The Hierarchical Nature of the Court System	19
		b. The Federal Courts	22
		c. State Courts	24
§ 2.2	The Rela	tionship Between the Federal and State	
	Governm		25
	§ 2.2.1	A Short History	25
	§ 2.2.2	The Relationship Between Laws Enacted by	
	v v	Congress and Those Enacted by State Legislatures	26
	§ 2.2.3	The Relationship Between Federal and	
	~	State Courte	26

xii Contents

§ 2.3	§ 2.2.4 Tribal Leg	The Relationship Among Federal, State, and Local Prosecutors gal Systems	27 28
Chapter		datory vs. Persuasive Authority	29
§ 3.1	Which In	risdiction's Law Applies?	30
§ 3.2		w" Will Be Binding on the Court?	30
	§ 3.2.1	Issue Governed by State Statute and Cases That Have Interpreted and Applied That Statute	3]
	§ 3.2.2	Issue Governed by a Federal Statute and Regulations and Cases That Have Interpreted	
	§ 3.2.3	That Federal Statute and the Federal Regulations Issue Governed by Common Law	33 35
Chapter	4: Read	ling Statutes	37
§ 4.1	How Stat	rutes Are Enacted	37
	§ 4.1.1	Federal Statutes	38
	§ 4.1.2	State Statutes	40
§ 4.2		ulations Are Promulgated	40
§ 4.3		tionship Among Statutes, Regulations, and Cases	4]
	§ 4.3.1	Federal Statute Governs	4]
	§ 4.3.2	State Statute Governs	42
	§ 4.3.3	Both Federal and State Statutes Govern	43
	§ 4.3.4	Party Argues That a Statute Is Unconstitutional	44
	§ 4.3.5	Party Argues That an Agency Exceeded Its	
		Authority in Promulgating a Particular	
0.4.4	D 1	Regulation	44
§ 4.4		and Analyzing Statutes	46
	§ 4.4.1	Finding Statutes Using the Citation	46
	§ 4.4.2	Distinguishing Between the Text of the Statute	
		and Other Material Provided by the Publisher	47
	§ 4.4.3	Making Sure You Have the Right Version of the	
		Statute	48
	§ 4.4.4	Identifying the Elements or Requirements	48
_	5: Read		51
§ 5.1		orneys Use Cases	5]
	§ 5.1.1	Cases as Authority for Rules	5]
	§ 5.1.2	Using Analogous Cases to Illustrate How the	
		Courts Have Applied a Statute or Common	
0 7 5	n :	Law Rule	53
§ 5.2		and Analyzing Cases	54
	§ 5.2.1	Finding Cases Using the Citation	55
	§ 5.2.2	Distinguishing Between the Text of an Opinion	
	0 7 5 5	and Material Added by the Publisher	56
	§ 5.2.3	Reading the Opinion	61

			Contents
Part II:	Legal Res	earch	67
Chapter	6: Prima	ary Authority	69
§ 6.1	Constitut	ions	70
	§ 6.1.1	United States Constitution	70
	§ 6.1.2	State Constitutions	70
	§ 6.1.3	City and County Charters	70
6.2	Statutes		70
	§ 6.2.1	Sources for Federal Statutes	71
		a. Session Laws	71
		b. Unannotated Codes	72
		c. Annotated Codes	72
		d. Using the Citation to Locate the Statute	72
	§ 6.2.2	State Statutes	73
		a. Session Laws	73
		b. Unannotated Codes	73
		c. Annotated Codes	74
		d. Using the Citation to Find the Statute	75
6.3	Regulatio	ns	75
	§ 6.3.1	Federal Regulations	75
		a. The Federal Register	76
		b. The Code of Federal Regulations	76
	§ 6.3.2	State Regulations	76
§ 6.4	Cases		76
	§ 6.4.1	Federal Cases	77
		a. Supreme Court Cases	77
		b. Other Federal Courts	78
	§ 6.4.2	State Cases	79
6.5	Rules		80
	§ 6.5.1	Federal Rules	80
		a. United States Code, United States	
		Code Annotated, and United States	
		Code Service	81
		b. Free Internet Sites	81
	§ 6.5.2	State Rules	81
Chapter	7: Secon	ndary Authority	83
7.1	Backgroup	nd Reading	83
y / .1	§ 7.1.1	The Internet and Generative Artificial	0)
	J / . 1. 1	Intelligence (GenAI)	84
	§ 7.1.2	Practice Manuals	85
	§ 7.1.3	Hornbooks and Nutshells	85
	§ 7.1.4	Pattern Jury Instructions	86
	§ 7.1.5	Restatements	86
	§ 7.1.6	Legal Encyclopedias	86
§ 7.2		Depth Research	87
, , <u></u>	§ 7.2.1	Law Reviews and Journals	87
	§ 7.2.2	Briefs	87
	§ 7.2.3	Attorney General Opinions	87
	0	- /	~ ,

xiii

xiv Contents

	§ 7.2.4 § 7.2.5	American Law Reports Treatises	88 88	
OI .	, and the second			
Chapter	r 8: Find	ing Tools	91	
§ 8.1	Finding a	a Statute	91	
	§ 8.1.1	You Know the Citation	91	
	§ 8.1.2	You Do Not Know the Citation	92	
		a. Free Websites	92	
		b. LexisNexis® and Westlaw®	92	
§ 8.2	Finding a	n Regulation	93	
	§ 8.2.1	Federal Regulations	93	
	§ 8.2.2	State Regulations	93	
§ 8.3	Finding (		94	
0	§ 8.3.1	Finding Cases That Interpret and Apply a		
	Ø.	Statute or Regulation	94	
		a. Case Notes/Notes of Decisions	94	
		b. Free Websites	95	
	§ 8.3.2	Finding Cases That Set Out, Interpret, or		
	Ø.	Apply a Common Law Rule	96	
		a. Digests	96	
		b. West's Key Number System®	96	
§ 8.4	Online S		97	
		a. Fee-Based Services	97	
		b. Natural Language Searches	98	
		c. Terms and Connectors Searches	98	
§ 8.5	Using Ar	tificial Intelligence (AI) as a Finding Tool	99	
Chapter	r 9: Cita	tors	101	
§ 9.1	Introduct	tion to Citators	101	
§ 9.2	Types of		101	
§ 9.3		ecking Using <i>Shepard</i> 's®, KeyCite®,	102	
§ 7.5	and BCit		103	
	and DON		10)	
Chapter	r 10: Deve	eloping Effective Research Strategies	105	
§ 10.1	Creating	a Research Plan	105	
§ 10.2		ing Issues Governed by a Statute	108	
§ 10.3	Finding (	9	110	
§ 10.4		Organizing Your Research Notes		
§ 10.5		Read as You Go		
§ 10.6	Know Wl	hen to Stop	119	
§ 10.7		re That You Understand the Law	119	
	§ 10.7.1	Make Sure You Understand the Big Picture	119	
	§ 10.7.2	Make Sure You Understand the Statute,		
		Regulation, or Court Rule	120	
	§ 10.7.3	Make Sure You Understand the General and		
		Specific Rules	120	

Contents	X

Part III:	Formal Memos, E-Memos, and Advice Letters	123
Chapter		125
§ 11.1	Audience	126
§ 11.2 § 11.3	Purpose Conventions	126 126
§ 11.3	Drafting Memos with Generative Artificial Intelligence	120
J 11. 1	(GenAI)	127
§ 11.5	Sample Memos	127
	§ 11.5.1 Example 1: Formal Memo	128
	§ 11.5.2 Example 2: Formal Memo	136
	§ 11.5.3 Example 3: E-Memo in Which There Is	
	an Answer	143
	§ 11.5.4 Example 4: E-Memo	143
Chapter	12: Getting the Assignment	147
Chapter	13: Drafting the Heading and Statement of Facts	149
§ 13.1	Drafting the Heading	150
§ 13.1	Drafting the Statement of Facts	150
J 17.2	§ 13.2.1 Decide What Facts to Include	151
	a. Legally Significant Facts	151
	b. Emotionally Significant Facts	152
	c. Background Facts	153
	d. Unknown Facts	153
	§ 13.2.2 Select an Organizational Scheme	153
	§ 13.2.3 Present the Facts Clearly and Concisely § 13.2.4 Present the Facts Accurately and Objectively	155 155
OI.		
Chapter	14: Drafting the Issue Statement and Brief Answer	157
§ 14.1	Drafting the Issue Statement	157
	§ 14.1.1 The "Under-Does-When" Format	158
	a. Reference to the Applicable Law	158
	b. Statement of the Legal Question	159 160
	c. The Key Facts § 14.1.2 The "Whether" Format	162
	§ 14.1.3 Multi-sentence Format	163
	§ 14.1.4 Make Sure Your Issue Statement Is Easy to Re	
§ 14.2	Drafting the Brief Answer	164
	§ 14.2.1 Set Out Your Conclusion and Reasoning	165
Chapter	15: Drafting the Discussion Section	167
§ 15.1	Make Sure That You Understand the Big Picture	167
	§ 15.1.1 Know What Your Readers Expect	168
C 15 2	§ 15.1.2 No Two Memos Are Alike	169
§ 15.2	Review Your Outline	169

xvi Contents

§ 15.3	Draft the 1 § 15.3.1	Introductory, or General Rule, Section Step 1: Decide What Information You Need	174
	§ 17.7.1	to Include	174
	§ 15.3.2	Step 2: Order the Information	174
	§ 15.3.2	Step 3: Prepare the First Draft	175
	§ 15.3.4	1 1	1/)
	) 17.5. <del>T</del>	Step 4: Include a Citation to Authority for Each Rule	177
§ 15.4	Draft the l	Discussion of the Undisputed Elements	178
0 ->	§ 15.4.1	Decide Where to Put Your Discussion of the	1,0
	0	Undisputed Elements	178
	§ 15.4.2	Prepare the First Draft of Your Discussion of	
	0	the Undisputed Elements	179
§ 15.5	Draft the l	Discussion of the Disputed Elements	181
§ 15.6		ne Specific Rules	182
§ 15.7		the Analogous Cases	183
		a. Selecting Analogous Cases	191
		b. Deciding How Much to Say	192
		c. Using Parentheticals	193
§ 15.8	Draft the	Arguments	195
§ 15.9		ach Side's Arguments	195
	§ 15.9.1		196
	§ 15.9.2	Analogous Case Arguments	196
	§ 15.9.3	Policy Arguments	197
§ 15.10	Present th	e Arguments	199
§ 15.11	The Scrip		199
	§ 15.11.1		200
	§ 15.11.2	Predict How the Court Will Decide the Element	207
§ 15.12	Integrated		208
§ 15.13		Common Problems	214
	§ 15.13.1		214
	§ 15.13.2	Write Sentences That Are Easy to Read	214
Chapter	l6: Drafti	ing the Formal Conclusion	217
§ 16.1	Summariz	e Your Conclusions	217
§ 16.1	Present Yo		218
J 10.2	11000111110	ar rarree	210
Chapter	17: Revisi	ing, Editing, and Proofreading the Memo	219
§ 17.1	Revise You	ır Draft	219
	§ 17.1.1	Check Content	220
	§ 17.1.2	Check to Make Sure That the Information Is	
		Presented Accurately and Objectively	220
	§ 17.1.3	Check to Make Sure That the Discussion	
		Section Is Well Organized	220
	§ 17.1.4	Check to Make Sure That the Connections	
		Are Explicit	221
		a. Roadmaps	221
		b. Topic Sentences, Signposts, and Transitions	221
		c. Dovetailing	223
		d. Coherence	223

		Contents	xvii
§ 17.2	Edit Your Draft	224	
J 17.1=	§ 17.2.1 Writing Effective Sentences	225	
	a. Passive Constructions	225	
	b. Nominalizations	227	
	F 1 O	227	
		228	
	d. Dangling Modifiers	231	
	§ 17.2.2 Write Concisely	232	
	§ 17.2.3 Write Precisely		
	a. Select the Correct Term	232	
	<ul><li>b. Use Terms Consistently</li><li>c. Make Sure the Subjects and Verbs Go</li></ul>	233	
	Together	234	
	d. Compare or Contrast Like Things	234	
	§ 17.2.4 Writing Correctly	235	
§ 17.3	Proofreading	236	
§ 17.4	Citations	236	
§ 17.5 § 17.6	Checklist for Memo Written Using the Script Format Checklist for Formal Memo Written Using an Integrated	237	
o .	Format	240	
Chapter l	8: Drafting Memos Requiring Other Types of Analysis	243	
§ 18.1	Factor Analysis	243	
	§ 18.1.1 Outlines for Issues Involving a Factor Analysis	244	
	§ 18.1.2 Draft the Introductory or General Rule Section	248	
	§ 18.1.3 Draft the Discussion of the Undisputed Factors	249	
	§ 18.1.4 Draft the Discussion of the Disputed Factors § 18.1.5 Draft the Paragraph or Block of Paragraphs in	249	
	Which You Weigh the Factors	249	
§ 18.2	Balancing of Competing Interests § 18.2.1 Outlines for Issues Requiring the Balancing of	251	
	Competing Interests	251	
	§ 18.2.2 Draft the Introductory or General Rule Section § 18.2.3 Draft the Discussion of the Competing		
	Interests	253	
§ 18.3	Issues of First Impression	255	
J 10.	§ 18.3.1 Circuit Split	255	
	§ 18.3.2 The Statute Is Ambiguous, and There Are No Regulations or Cases That Have Interpreted		
	That Statute	257	
	§ 18.3.3 Policy Arguments	257	
Chapter l	9: E-Memos	261	
§ 19.1	Audience	261	
§ 19.2	Purpose	261	
§ 19.3	Conventional Formats for E-Memos	262	
§ 19.4	Getting the Assignment	263	
§ 19.5	Researching the Issue	263	
§ 19.6	Drafting the Subject Line	269	

• • •	
XVIII	Contents

\_\_| |

§ 19.7	Drafting the Introductory Sentence or Paragraph	269
§ 19.8	Drafting the Summary of Facts	
§ 19.9	Summary of the Applicable Law	271
	§ 19.9.1 The Rules	271
	§ 19.9.2 The Analogous Cases	272
§ 19.10	Application of the Law to the Facts	274
§ 19.11	Concluding Paragraph	277
§ 19.12	Writing Style	277
§ 19.13	Client Confidentiality	278
§ 19.14	Checklist for Critiquing E-Memos	278
Chapter	r 20: Drafting Advice Letters	281
§ 20.1	The Assignment	281
§ 20.2	Know Your Audience and Your Purpose	282
	§ 20.2.1 The Audience for an Advice Letter	282
	§ 20.2.2 The Purpose of an Advice Letter	282
§ 20.3	Prepare the First Draft of the Letter	283
	§ 20.3.1 The Introductory Paragraph	284
	§ 20.3.2 Statement of the Issue	285
	§ 20.3.3 Opinion	285
	§ 20.3.4 Summary of the Facts	286
	§ 20.3.5 Explanation	286
	§ 20.3.6 Advice	287
	§ 20.3.7 Concluding Paragraph	287
	§ 20.3.8 Warnings	287
§ 20.4	Revising, Editing, and Proofreading the Advice Letter	288
	§ 20.4.1 Drafting a Well-Written Letter	288
	§ 20.4.2 Using an Appropriate Tone	288
	§ 20.4.3 Checklist for Critiquing the Advice Letter	289
§ 20.5	Sample Client Letters	290
Glossary	of Terms	297
Index		313