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 postgraduate employment. We hope to demonstrate in Volume I 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.

Volume II 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, Volume II Parts I through III 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 IV provides a step-by-step approach to drafting simple contracts, advice letters, and demand letters. Finally, the extensive citations in footnotes, most of which first-year law students can pass over, will provide attorneys with a valuable source of authorities.

Volume I addresses matters of style at 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 Volume II at Chapter 3.
Of course, this book reflects our own style quirks and biases, especially those of the sole author for the first seven editions: He freely splits infinitives but always uses the serial comma, and he dislikes sexism in language. While writing this book, we encountered the problem of sexism in language most often in the form of personal pronouns in the third person. 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 (and we are not yet ready to match “they” or “their” with a singular noun). As a provocative response to the problem, 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.” This approach may distract readers at one time or another, perhaps because it catches readers assuming that a judge or a senior partner is male. If so, perhaps the distraction is constructive: It may help us to envision a profession so well integrated that feminine pronouns and ethnic names will sound natural and commonplace.

The text is heavily footnoted with source material and with acknowledgments to others whose ideas inspired the text. Readers may find some of the additional information in the footnotes 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 footnotes without missing any significant points.

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