Section 1: Brief Writing

While Chapter 3 breaks down the process for drafting the brief, brief drafting really starts in Chapter 2, with an assessment of the competition problem that raises the factual basis and legal issues implicated in the brief.

Section A of Chapter 3 provides a method for each team member to assess the competition problem, the first step in drafting a brief. While students may want to leap to the legal issues presented, the review of the record presents an opportunity for students to practice their issue spotting skills. Section B expands upon Section A by focusing on the importance of the entire team processing the problem collectively to improve the team’s collaboration.

Section C describes the ways in which advocates can and should use the record in drafting. It suggests ways students can strategically use what is and what is not within the four corners of the record. It also explains the persuasive importance of treating an imaginary record and clients as if they are real-world facts and living and breathing clients.

Section D emphasizes the importance of the individual competition’s rules to the brief-writing process. It also reminds students that they must adapt the Workbook’s advice to their particular competition’s rules. Section E expands upon this material by providing a method to deliberately incorporate the competition’s rules into the brief writing process.

Chapter 3 more directly addresses drafting the competition brief. This chapter is not intended to replace a law school legal writing class. Rather, it offers strategies and exercises designed to hone the skills students learned in those classes with a particular emphasis on appellate brief writing.

Chapter 3 starts off with a guide for students to assess their previous experiences with legal writing to have some idea of their skills and expectations. This assessment is especially important when students are working in a team so that each team member can understand the skills and experiences each bring to the brief-writing process as well as any concerns they have about collaborate brief writing. Through this process, students can better identify their goals in drafting the brief.
Picking up the theme of collaborative brief writing, Section B instructs students on how to work together as a team to draft a winning competition brief. This section asks students to directly assess their expectations for working as a team. Students should use the sample schedule to draft a workable schedule for drafting their team brief. Further, students can complete the Team Building Exercise posted on this Companion Website.

Because the best of plans can go awry, Section C offers a process for students to determine when they need to assess their brief-writing plan and how to implement changes.

Section D starts of the drafting process with a focus on research. While the Workbook assumes students will already be well versed in legal research, this section provides an overview of the review process. Students might wish to use the Blank Charts for Organizing Research to track their research findings.

One of the most challenging parts of drafting a persuasive brief is finding and then incorporating a coherent theme and theory of the case. Section E explains the importance of theory and theme to advocacy and takes students through the process of developing persuasive themes and theories in their competition briefs.

For a selection of readings about Case Theory and Theme, see the following resources:

- Binny Miller, Teaching Case Theory, 9 CLINICAL L. REV. 293 (2002).

Because persuasion is not limited to the legal arguments, Section F instructs students on the use of narrative techniques in drafting the statement of the facts to best highlight their client’s story. Students will learn how to develop the characters in their
client’s story, to express their client’s point-of-view, and how to use fiction techniques of setting and plot to draft a persuasive client narrative.

For a selection of readings about narrative and the appellate briefs, see the following resources:


Questions presented are an art form. They must be easily understood and persuasive while also articulating the legal issue and the key facts in dispute. Section G’s focus is to help students learn the skills necessary to crafting persuasive questions. This section takes students through a step-by-step process to drafting persuasive questions in their own briefs.

The *Workbook* includes examples from the U.S. Supreme Court case of *Locke v. Davey*. The oral arguments are available as follows:


For a selection of further readings about the U.S. Supreme Court case of *Locke v. Davey*, see the following resources:
• First Amendment Center, http://www.firstamendmentcenter.org/locke-v-davey-overview.


• Meredit Mallard, Casenote, Constitutional Law—Free Exercise and Establishment Clauses—A State’s Right to Deny the Use of Public Funds for Devotional Degrees, 72 Tenn. L. Rev. 981 (2005).


For other readings about the question presented, see the following resources:


• Gerald Lebovits, You Think You Have Issues?: The Art of Framing Issues in Legal Writing—Part II, 78 N.Y. St. B.J. 64 (June 2006).

• Gerald Lebovits, You Think You Have Issues?: The Art of Framing Issues in Legal Writing—Part I, 78 N.Y. St. B.J. 64 (May 2006).

Similar to questions presented, point headings are an art form that is best learned by practice. Section H describes the function of point headings and walks students through the process of drafting persuasive headings for their briefs. It also provides point headings from briefs filed in the case of Overton v. Bazzetta. These point headings can be used to facilitate class conversation. For example, students can compare the structure and the phrasing of the point headings in the Reply Brief to the point headings in the Respondents’ Brief. Students can also describe to what extent the point headings compare to and differ from the point headings in the Petitioner’s Brief.


For additional readings on point headings, see the following resources:

- Gerald Lebovits, Getting to the Point: Pointers about Point Headings, 82 N.Y. St. B.J. 64 (Jan. 2010).

Section I describes the importance of the summary of argument and also provides tips for drafting a persuasive summary that effectively encapsulates the most persuasive reasons for a court decision in the client’s favor.
For a selection of readings about the Summary of the Argument, see the following resources:


The Workbook assumes students are familiar with IRAC and similar structures for organizing legal argument. Section J invites students to use IRAC to structure their argument for maximum persuasion. Section J also invites students to move beyond IRAC when appropriate for their particular audience. It discusses when it is appropriate to rely on a differing analytical structure and provides other models that may be used.

In drafting a competition brief, students are tasked with persuading competition judges to their client’s side. Section K provides specific instruction on how to select language that will most persuasively convey the advocate’s message while also providing tips on concision and clarity. Students should also complete the exercise, **Find & Replace for Concision and Clarity**, posted on this Companion Website. Faculty members may wish to use the PowerPoint presentation, **Tips on Editing for Space**, as a tool for helping students fit their briefs within the word or page limits set by the competition rules without sacrificing substance or risking rule violations from creative word-processing. The PowerPoint should be edited to ensure it conforms to the individual competition rules or the faculty member’s expectations.

The final step before submitting a brief is also the most likely to be skipped. However, a final review to polish the brief so it is consistent, free of grammar or typographical errors, and formatted to the requirements of the competition rules is essential. Because this step is often hurried, Section L provides reminders for students of the importance of proof reading and proper formatting. It also provides a framework for students to develop a final brief “checklist” that will help them avoid losing points simply because they forgot or misremembered a formatting requirement. While creating the checklist will take time, ultimately it will save time when it is most critical—in the final hours before the brief is filed, when time to review the rules will be least available.
The **Appellate Brief Pre-Rubric Checklist** and **Appellate Brief Rubric** handouts posted on this Companion Website may be useful for students in this final review phase.