## Contents

Acknowledgments  xxii  
Introduction  xxiii  

### Part A  Introduction to Law

1 **Rules and Policies**  3
   - Legal Rules  3
   - Law and Policy  4
   - Exercise 1-A  8
   - Exercise 1-B  8

2 **Sources of Law**  11
   - The Hierarchy of Laws  11
   - The Hierarchy of Jurisdictions  13
   - The Hierarchy and Jurisdiction of Courts  13
   - Source Material for Researching the Law  16
   - Primary Authority  16
   - Secondary Authority  18
   - Exercise 2-A  20
   - Exercise 2-B  21

3 **Case Analysis and Case Briefs**  23
   1. Read the opinion carefully.  26
   2. Identify the holding.  26
   3. Identify the issue.  28
   4. Identify the rule.  30
   5. Identify the facts.  32
   6. Identify the disposition of the case.  34
   7. Identify the reasons and policies.  35
   8. Check for congruency.  36
   9. In multiple-issue cases, analyze each issue separately.  37
   - Exercise 3-A  40
   - Exercise 3-B  40
   - Exercise 3-C  41
4 Precedent and Stare Decisis 43
Exercise 4-A 49
Exercise 4-B 50
Exercise 4-C 51
Exercise 4-D 52

5 Reading and Understanding Statutes 55
1. Read the statute carefully. 58
2. Identify the purpose of the statute. 59
3. Identify the scope of the statute. 61
4. Understand how terms are defined. 63
5. Identify the requirements of the statute. 65
6. Identify any exceptions. 68
Exercise 5-A 70
Exercise 5-B 71

Part B Basic Concepts of Legal Method

6 Understanding Legal Rules 75
How Rules Are Constructed 75
   Elements of a Rule 76
   The Result and Its Relationship to the Elements 77
   Exceptions in a Rule 77
   Sub-Elements 78
Developing a Rule from Multiple Sources: Synthesis 79
Exercise 6-A 87
Exercise 6-B 87
Exercise 6-C 88
Exercise 6-D 88

7 Identifying and Selecting Issues for Analysis 91
1. Focus only on questions within the scope of the problem. 94
2. Identify all relevant questions. 95
3. Exclude “givens” from detailed discussion. 103
4. Separate issues and sub-issues. 104
Exercise 7-A 107
Exercise 7-B 109
Exercise 7-C 112

8 Common Law Analysis 117
1. Determine how the facts of the decided cases support your client’s position. 123
2. Determine how the facts of the decided cases support your opponent's position. 124
3. Determine how the reasons and policies of the decided cases support your client's position. 124
4. Determine how the reasons and policies of the decided cases support your opponent's position. 125
5. Evaluate the strength of your client's case. 127

Exercise 8-A 128
Exercise 8-B 128
Exercise 8-C 129

9 Statutory Analysis 133
1. Determine how the language of the statute, and the facts of any cases interpreting the statute, support your client's position. 138
2. Determine how the language of the statute, and the facts of any cases interpreting the statute, support your opponent's position. 139
3. Determine how the policies of the statute, and the policies of any cases interpreting the statute, support your client's position. 139
4. Determine how the policies of the statute, and the policies of any cases interpreting the statute, support your opponent's position. 140
5. Evaluate the strength of your client's position. 142

Exercise 9-A 144
Exercise 9-B 144
Exercise 9-C 144
Exercise 9-D 145
Exercise 9-E 146

10 Reaching a Conclusion 149
1. A position is stronger to the extent that it involves little or no extension of existing law. 150
2. A position is stronger to the extent that it furthers the policies or purposes of the law. 153
3. When the law does not require a particular result, a position is stronger to the extent that it involves a fair or just outcome for the parties. 154

Exercise 10-A 157
Exercise 10-B 157
Exercise 10-C 157
Part C  Basic Concepts of Legal Writing

11  Organization  161
1.  Address “givens” at the outset of your analysis.  162
2.  Discuss each issue separately.  165
3.  Discuss each sub-issue separately.  168
4.  For each issue or sub-issue, describe the applicable
    law before applying it to the factual situation.  171
5.  State the reasons supporting your conclusion on an
    issue or sub-issue before discussing counterarguments.  173
6.  When there is more than one issue, discuss the issues
    in a logical order.  175

Exercise 11-A  179
Exercise 11-B  181
Exercise 11-C  183

12  Describing the Law  187
1.  Be accurate.  187
2.  Describe only the relevant law.  190
3.  Describe the law in enough detail to enable your
    reader to understand the discussion.  191
4.  Summarize the law whenever appropriate.  193
5.  Synthesize the law whenever necessary.  196

Exercise 12-A  203
Exercise 12-B  203
Exercise 12-C  203
Exercise 12-D  203

13  Applying the Law  205
1.  Be precise.  205
2.  Show every step in your analysis.  206
3.  Describe every reasonable basis for your conclusion.  209
4.  Explain the context.  212

Exercise 13-A  215
Exercise 13-B  215
Exercise 13-C  215
Exercise 13-D  215

14  Signposting  217
1.  Use thesis statements to set out your conclusion
    for each issue and sub-issue.  217
2.  Use paragraphs to divide the discussion into
    manageable parts.  218
3. Use a topic sentence to define the purpose of a paragraph. 222
4. Use transitions to show the relationship between ideas. 223

Exercise 14-A 227
Exercise 14-B 228

15 Drafting the Analysis 231
Purpose 231
Process 231
Audience 234
1. For each issue, state your conclusion and set up your discussion of the issue in an introduction. 235
2. For each sub-issue, state your conclusion in terms of the rule and the relevant facts. 237
3. Describe the law relevant to your conclusion for each sub-issue. 238
4. Explain why the law supports your conclusion for each sub-issue. 240
5. Describe any reasonable counterargument for each sub-issue and state why it is unpersuasive. 242
6. Describe how the law supports the counterargument for each sub-issue. 243
7. Explain why the counterargument does not change your conclusion for each sub-issue. 245
8. Edit the discussion to include signposts. 247

Exercise 15-A 255
Exercise 15-B 259
Exercise 15-C 259
Exercise 15-D 259
Exercise 15-E 259

16 Revising and Editing 261
1. Be direct and precise. 262
2. Blend precision with simplicity. 263
3. Use verbs whenever possible to make your writing forceful. 264
4. Be concise. 265
5. Edit intrusive or misplaced words and phrases. 271
6. Use correct grammar, punctuation, and spelling. 272

Exercise 16-A 273
Exercise 16-B 274
### Part D  Office Memoranda and the Opinion Letter

#### 17 Objective Writing  
Principles of Objective Writing  
1. Think like a judge.  
2. State your conclusion on each issue or sub-issue objectively and candidly.  
3. Describe the law objectively.  
4. Explain the analysis objectively.  

**Special Considerations for Email Communication**  
1. Be professional.  
2. Take your time.  
3. Proofread before sending.  
4. Honor the need for client confidentiality.  

<table>
<thead>
<tr>
<th>Exercise</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-A</td>
<td>289</td>
</tr>
<tr>
<td>17-B</td>
<td>289</td>
</tr>
<tr>
<td>17-C</td>
<td>289</td>
</tr>
<tr>
<td>17-D</td>
<td>289</td>
</tr>
</tbody>
</table>

#### 18 Elements of a Summary-of-the-Law Memorandum  
Work Requested or Question Presented  
Brief Answer  
Summary of the Relevant Law  
1. State the relevant legal rule or rules at the outset of your summary.  
2. State the elements(s) or sub-issue(s) relevant to the question.  
3. Explain the law relevant to each element or sub-issue.  
4. Conclude by summarizing the key points of the law or explaining how the law answers the question.  

<table>
<thead>
<tr>
<th>Exercise</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-A</td>
<td>299</td>
</tr>
<tr>
<td>18-B</td>
<td>299</td>
</tr>
<tr>
<td>18-C</td>
<td>299</td>
</tr>
</tbody>
</table>

#### 19 Elements of an Analytical Legal Memorandum  
1. Heading  
2. Questions Presented  
3. Brief Answer(s) (optional)  
4. Statement of Facts  
5. Discussion  
6. Conclusion  

<table>
<thead>
<tr>
<th>Exercise</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>19-A</td>
<td>301</td>
</tr>
<tr>
<td>19-B</td>
<td>302</td>
</tr>
<tr>
<td>19-C</td>
<td>302</td>
</tr>
<tr>
<td>19-D</td>
<td>303</td>
</tr>
<tr>
<td>19-E</td>
<td>303</td>
</tr>
</tbody>
</table>
20  **Statement of Facts**  
1. Identify the legally significant facts.  
2. Identify key background facts.  
3. Organize the facts intelligibly.  
4. Describe the facts accurately and objectively.  
   Exercise 20-A  
   Exercise 20-B  

21  **Questions Presented**  
Questions Presented in a Summary-of-the-Law Memo  
Questions Presented in an Analytical Memo  
1. Be understandable.  
2. Be objective.  
   Exercise 21-A  
   Exercise 21-B  

22  **Opinion Letters**  
1. Begin by addressing your client’s question or concern.  
2. Summarize the facts upon which your opinion is based.  
3. Explain the law and its application.  
4. Be objective.  
5. Adopt a style and tone appropriate for your reader.  
   Exercise 22-A  
   Exercise 22-B  

23  **Elements of a Brief**  
1. Caption or Title Page  
2. Table of Contents  
3. Table of Authorities Cited  
4. Opinions Below  
5. Jurisdiction  
7. Standard of Review  
8. Introduction  
9. Questions Presented  
10. Statement of Facts  
11. Summary of Argument  

---

**Part E  Briefs and Oral Argument**
12. Argument 351
13. Conclusion 351
14. Appendices 352

### 24 Structure of an Argument 355

1. Present your strongest issues, sub-issues, and arguments first. 356
2. When issues are of equal strength, present the most significant issues first. 358
3. Present your client’s position on each issue or sub-issue before answering counterarguments. 360

Exercise 24-A 364
Exercise 24-B 365

### 25 Point Headings 369

1. State your legal conclusions and the basic reasons for these conclusions. 370
2. Structure point headings to be both specific and readable. 372
3. Place headings at logical points in your brief. 373

Exercise 25-A 376
Exercise 25-B 376

### 26 Statement of Facts for a Brief 379

1. Describe the facts from your client’s point of view. 384
2. Vividly describe favorable emotional facts and neutralize your opponent’s emotional facts. 384
3. Organize your statement to emphasize favorable facts and de-emphasize unfavorable facts. 385

Exercise 26-A 390
Exercise 26-B 390
Exercise 26-C 392

### 27 Persuasive Writing 393

1. Be professional and honest. 393
2. Fully argue your client’s position. 398
3. Present arguments from your client’s point of view. 402
4. Craft sentences and choose words to persuade. 406

Exercise 27-A 411
Exercise 27-B 411
28 Briefs to a Trial Court

1. Focus more on the applicability of legal rules than on policy.
2. Emphasize that fairness requires a decision in your client’s favor.
3. Be brief.
4. Write for the court.

Exercise 28-A
Exercise 28-B
Exercise 28-C

29 Briefs to an Appellate Court

1. Focus on the claimed errors of the lower court.
2. Base your argument on the appropriate standard of review.
3. Emphasize that a decision in your client’s favor would further the policies underlying the law.
4. Explain how a decision in your client’s favor would foster harmony or consistency in the law.

Exercise 29-A
Exercise 29-B

30 Preparing and Presenting an Oral Argument

Preparing for Oral Argument
1. Know your case.
2. Know your audience.
3. Plan within the court’s time limit for oral argument.
4. Develop a theme when appropriate.
5. Select for presentation your strongest and most essential arguments.
6. Plan and practice your argument.

Presenting an Oral Argument
1. Begin with a strong opening.
2. Make your basic arguments as simple and direct as the material allows.
3. Make effective use of questions.
4. Manage your time.
5. Present your argument in a professional manner.
6. Close with confidence.
7. Use rebuttal time effectively.

Exercise 30-A
Exercise 30-B
## Appendices

| Appendix A | Summary-of-the-Law Memos Concerning Tyler’s Possible Fraud Claim | 475 |
| Appendix B | Analytical Memorandum Concerning Tyler's Possible Fraud Claim | 483 |
| Appendix C | Opinion Letter to Tyler | 495 |
| Appendix D | Defendant’s Brief to the Trial Court | 499 |
| Appendix E | Plaintiff’s Brief to the Trial Court | 507 |
| Appendix F | Trial Court’s Decision | 513 |
| Appendix G | Appellant’s Brief | 519 |
| Appendix H | Appellee’s Brief | 533 |
| Appendix I | Selected Books on Style and Grammar | 545 |
| Bibliography | Sources of Law | 547 |
| Index | | 557 |