Preface to the Seventh Edition  xxi
Acknowledgments  xxiii
Introduction  1
  I. Who me? A writer?  1
  II. Pliable Authority  1
  III. Ethics  2
  IV. Plagiarism  3

CHAPTER 1
FIRST THINGS FIRST  5
  I. Adult Learning: The Writing Process, Incremental Learning, and “Flipped” Classrooms  5
  II. Understanding Your Role  8
  III. Reading Cases: Introduction  9
    Exercise 1-2 Finding the Parts of a Case  10
  IV. How Lawyers Think  10
    Exercise 1-3 Forms of Reasoning  13

PART I
THE PROCESS OF WRITING PREDICTIVELY: THE OFFICE MEMO  15

STAGE ONE
ORGANIZING FOR ANALYSIS: OUTLINING YOUR WORKING DRAFT  17

CHAPTER 2
OUTLINING RULES  19
  I. Outlining a Rule: Overview  19
  II. Common Rule Structures  20
  III. A Few Hints About Outlining Rules  23
    Exercises in Formulating a Rule from a Statutory Format  25
Exercise 2-1
Exercise 2-2
Exercise 2-3
Exercise 2-4
Exercise 2-5

CHAPTER 3
USING RULES TO ORGANIZE YOUR ANALYSIS

I. Organizing a Working Draft
II. Hints for Organizing the Draft
III. Rules Within an Umbrella Rule
   Exercises in Rule Outlining
   Exercise 3-1  Rule Outlining
   Exercise 3-2  Rule Outlining
   Exercise 3-3  Rule Outlining
   Exercise 3-4  Rule Outlining
IV. Organizing by Rule: Special Circumstances

CHAPTER 4
FINDING A RULE IN A STATUTE

I. Reading Statutes
   Exercise 4-1
II. Identifying Issues
   Exercise 4-2
III. Interpreting Statutory Language
IV. Canons of Construction

CHAPTER 5
FINDING A RULE IN A CASE

I. Why Formulate a Rule from a Case?
II. A Slippery Task
III. Inherited Rules and Processed Rules
IV. Tools for Finding New Information
V. Choosing the Rule's Breadth
VI. Holding Versus Dicta
   Exercise 5-1  Formulating and Outlining a Rule from an Opinion
   Exercise 5-2  Distinguishing Holding from Dictum

CHAPTER 6
FINDING A RULE FROM MULTIPLE AUTHORITIES

I. The Continuing Search for a Rule
II. Comparing Precedential Values
   A. Primary Authority: Is This Really “Law”?
B. Mandatory Authority: Is It Binding? 60
C. Subsequent Treatment: Is It Still “Good Law”? 62
D. Any Other Factors? 62
Exercise 6-1 Comparing Precedential Values 64
Exercise 6-2 Comparing Precedential Values 65
III. Reconciling Authorities: Pulling Them All Together 66
Exercise 6-3 Reconciling Opinions 69

STAGE TWO
DRAFTING FOR ANALYSIS:
WRITING THE WORKING DRAFT 73

CHAPTER 7
ANALYZING A SINGLE ISSUE:
RULE EXPLANATION 75

I. What Is a Single-Issue Discussion? 75
II. The Paradigm for Legal Analysis 77
   Exercise 7-1 Identifying and Labeling the Parts of the Paradigm 79
III. Explaining the Rule 79
IV. Rule Explanation Using a Single Case 81
V. Counteranalysis 86
   Checklist for Rule Explanation 88
   Exercise 7-2 Writing the Rule Explanation 89

CHAPTER 8
ANALYZING A SINGLE ISSUE: RULE APPLICATION 93

I. Two Approaches to Writing the Application Section 93
II. Content of Rule Application 94
III. Analogies 95
   A. Which Similarities and Differences Matter? 95
   B. Choosing a Format for Your Analogies 96
IV. Common Trouble Spots in Rule Application 98
   Checklist for Rule Application 102
   Exercise 8-1 Recognizing Analogies and Counter-Analogies 103
   Exercise 8-2 Practicing Analogies and Counter-Analogies 103
   Exercise 8-3 Writing the Rule Application, Using Analogies and Counter-Analogies 103

CHAPTER 9
ANALYZING A SINGLE ISSUE:
USING MULTIPLE AUTHORITIES 105

I. Investigating the Options 105
II. Organizational Options: Rule Explanation 106
CHAPTER 13
COMPLETING THE DRAFT OF THE OFFICE MEMO

I. The Heading

II. The Question Presented
   A. Content and Format
   B. Generic Versus Specific References
   C. Degree of Detail
   D. Role
      Exercise 13-1 Drafting a Question Presented

III. The Brief Answer
   A. Content and Format
   B. Generic Versus Specific References
   C. Degree of Detail
   D. Degree of Certainty

IV. The Fact Statement
   A. Fact Selection
   B. Organization
   C. Remembering Your Role
      Exercise 13-2 Critiquing Fact Statements

V. The Conclusion
   Checklist for an Office Memo

STAGE FOUR
REVISION TO ACHIEVE A FINAL DRAFT

CHAPTER 14
CITATIONS AND QUOTATIONS

I. Citation in Legal Writing
   Exercise 14-1 Recognizing Ideas That Need Citations

II. Citation Form
   A. Using the ALWD Guide to Legal Citation
      1. Sections of the ALWD Guide
      2. How to Locate the Rules You Need
   B. Using the Bluebook
      1. Sections of the Bluebook
      2. How to Find the Rules You Need
   C. Several Key Concepts
C. Confirming Letters 201
IV. Transmittal Letters 201

PART III
THE PROCESS OF WRITING PERSUASIVELY:
THE BRIEF 205

STAGE ONE
STRUCTURING FOR PERSUASION: OUTLINING THE
WORKING DRAFT 207

CHAPTER 17
ETHICS, JUDGES, AND BRIEFS 209
I. The Ethics of Brief Writing 210
II. Judges as Readers 212
III. Overview of a Brief 213

CHAPTER 18
STRUCTURING THE ARGUMENT: FIRST STEPS 217
I. Formulating and Structuring a Rule: Review 218
II. Using the Rule to Begin to Organize the Draft 220
III. Identifying Issues 221
IV. Identifying and Drafting Working Point Headings 222
   A. Identifying Working Point Headings 223
   B. Variations on Identifying Point Headings 224
      1. Arguing an Important Threshold Issue 224
      2. Arguing Two Major Issues 224
   C. Drafting Working Point Headings 225
      Exercise 18-1 Identifying Working Point Headings 226
      Exercise 18-2 Evaluating Working Point Headings 227
V. Identifying and Drafting Working Subheadings 227

CHAPTER 19
FINDING AND STRUCTURING A
MORE FAVORABLE RULE 229
I. Formulating a More Favorable Rule 229
   A. Discounting Troublesome Cases 230
   B. Synthesize the Authorities into a More Favorable Rule 232
II. Structuring a Favorable Rule 236
   A. Subparts 236
      1. Choosing Subheadings for Emphasis 237
      2. Subheadings as a Tallying Mechanism 237
   B. Example: Structuring a Favorable Rule from Fox and Clein 237
# STAGE TWO

**DRAFTING FOR PERSUASION:**  
**WRITING THE WORKING DRAFT**  

## CHAPTER 20  
**WRITING THE WORKING DRAFT: FIRST STEPS**  

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Getting Ready to Write</td>
<td>243</td>
</tr>
<tr>
<td>II. Review of the Paradigm</td>
<td>245</td>
</tr>
<tr>
<td><em>Exercise 20-1  Identifying and Labeling the Parts of the Paradigm</em></td>
<td>246</td>
</tr>
<tr>
<td>III. Using Cases to Explain the Rule</td>
<td>246</td>
</tr>
<tr>
<td>IV. Arguments About Statutes</td>
<td>248</td>
</tr>
<tr>
<td>V. Counteranalysis of the Rule</td>
<td>251</td>
</tr>
<tr>
<td>VI. Writing the Rule Application: Two Approaches</td>
<td>251</td>
</tr>
<tr>
<td>VII. Overall Content of Rule Application</td>
<td>252</td>
</tr>
<tr>
<td>VIII. Making Factual Inferences</td>
<td>252</td>
</tr>
<tr>
<td>IX. Using Case Comparisons</td>
<td>253</td>
</tr>
<tr>
<td>X. Common Trouble Spots in Rule Application</td>
<td>255</td>
</tr>
<tr>
<td>XI. Counterapplication</td>
<td>256</td>
</tr>
</tbody>
</table>

## CHAPTER 21  
**REFINING THE ARGUMENTS: THE STANDARD OF REVIEW AND THE QUESTION PRESENTED**  

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Identifying the Standard of Review</td>
<td>259</td>
</tr>
<tr>
<td>A. Categories of Trial Court Decisions</td>
<td>260</td>
</tr>
<tr>
<td>1. Questions of Law</td>
<td>260</td>
</tr>
<tr>
<td>2. Questions of Fact</td>
<td>260</td>
</tr>
<tr>
<td>3. Mixed Questions of Law and Fact</td>
<td>261</td>
</tr>
<tr>
<td>4. Questions Within the Trial Court's Discretion</td>
<td>262</td>
</tr>
<tr>
<td>B. Advocating a More Favorable Standard of Review</td>
<td>263</td>
</tr>
<tr>
<td>C. Editing Headings to Conform to the Standard of Review</td>
<td>263</td>
</tr>
<tr>
<td><em>Exercise 21-1  Identifying Categories of Trial Court Decisions</em></td>
<td>264</td>
</tr>
<tr>
<td>II. Drafting the Question Presented</td>
<td>265</td>
</tr>
<tr>
<td>A. Purpose and Function</td>
<td>265</td>
</tr>
<tr>
<td>B. Traditional Content and Format</td>
<td>266</td>
</tr>
<tr>
<td>C. “Deep” Issue Statements</td>
<td>269</td>
</tr>
<tr>
<td>D. Drafting Hints</td>
<td>270</td>
</tr>
<tr>
<td><em>Exercise 21-2  Critiquing Questions Presented</em></td>
<td>270</td>
</tr>
<tr>
<td>III. Persuading Using Policy</td>
<td>271</td>
</tr>
<tr>
<td>IV. Rule Application with Factors or Guidelines: Advanced Techniques</td>
<td>273</td>
</tr>
<tr>
<td>A. First Organizational Option: By Factor</td>
<td>273</td>
</tr>
<tr>
<td>B. Second Organizational Option: By Party</td>
<td>273</td>
</tr>
<tr>
<td>C. Third Organizational Option: By Theme</td>
<td>274</td>
</tr>
</tbody>
</table>

---
CHAPTER 22
THE STATEMENT OF FACTS 277

I. Ethics, Readers, and the Conventions of Fact Statements 278
   A. Reminders About Ethics 278
   B. Reminders About Readers 279
   C. The Conventions of a Statement of Facts 279

II. Developing a Theory of the Case and Selecting Facts 281
   A. Developing a Theory of the Case 281
   B. Selecting Facts 282

III. Organization 282
   A. Formats 282
   B. Subheadings 283
   C. Procedural History 284

IV. Techniques for Persuasion 284
   A. General Principles 284
   B. Large-Scale Organization 285
      The Beginning 285
      The Middle 285
      The End 286
   C. Paragraph Organization 286
   D. Techniques with Sentences 286
   E. Other Small-Scale Techniques 288
      Checklist for Statement of Facts 291
      Exercise 22-1 Critiquing a Statement of Facts 292

STAGE THREE
CONVERTING THE WORKING DRAFT TO A BRIEF 297

CHAPTER 23
CONVERTING THE DRAFT TO A BRIEF 299

I. Umbrella Section 299
   Exercise 23-1 Labeling the Components of the Umbrella Section 300

II. Choosing an Order for the Arguments 301
   A. Ordering Point Headings 301
      1. Strength on the Law 301
      2. Strength on the Equities 302
      3. Your Reader's Priorities 302
   B. Ordering Subheadings 303

III. Converting Working Headings to the Brief's Point Headings 303
   A. Adding the Key Facts 303
      Exercise 23-2 Evaluating the Content of Point Headings 304
   B. Editing for Persuasion 305
C. Editing for Readability 307
   Exercise 23-3 Editing Headings for Readability 308
IV. Formatting the Brief 309

STAGE FOUR
REVISING TO ACHIEVE A FINAL DRAFT 311

CHAPTER 24
EDITING THE BRIEF 313

I. Persuasive Style 313
   A. Degree of Formality 313
   B. Competence and Clarity 314
   C. Tact and Good Judgment 315
II. Writing with Confidence 316
   Final Checklist 317

CHAPTER 25
ORAL ARGUMENT 319

I. The Purpose of Oral Argument 319
II. Formalities and Organization of Oral Argument 320
III. The Content of the Argument 323
IV. Preparation 325
V. Handling Questions from the Bench 326
VI. Presentation 329

APPENDICES 331
Appendix A Sample Office Memorandum 333
Appendix B Sample Office Memorandum 339
Appendix C Sample Letters 345
Appendix D Sample Trial-Level Brief 353
Appendix E Sample Appellate Brief 361
Appendix F Sample Appellate Brief 373
Appendix G Cases Used in the Text’s Examples and Exercises 391
   Coffee System of Atlanta v. Fox 391
   Goldman v. Kane 394
   Klein v. Kapiloff 396
   Jacobson v. Kamerinsky 398
   Lucy v. Zehmer 400

Index 405