

**2010-11
LEGAL RESEARCH AND WRITING I and II
STUDENT MANUAL and CODE OF CONDUCT**

**FALL 2010 SYLLABUS
and
COURSE MATERIALS**

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Note: This is a preliminary syllabus. You will receive a bound copy of the syllabus, Code of Conduct, and Student Manual at the first class meeting. The required textbooks and assignments included in this document will not change.

Introduction and Course Learning Objectives

To be an effective lawyer, you must be both a thorough researcher and a clear, precise writer. Most lawyers, and particularly associates and judicial clerks, spend more time engaged in research and writing than in any other professional task. They research and write letters, memoranda, pleadings, briefs, contracts, wills, trusts, and numerous other types of documents. Inadequate research and imprecise writing can result in lost cases, malpractice claims, and court-imposed sanctions. Over the next three semesters, Hamline's Legal Research and Writing program will help you develop the legal research and writing skills necessary to become a competent lawyer.

In the first semester you will learn the fundamentals of legal research and citation. You will learn the difference between primary and secondary sources and between binding and persuasive sources. Most importantly, you will begin to learn how to select the proper authorities for your case and how to create proper legal citations for those sources. You will be introduced to basic drafting skills and client interviewing.

In the first semester you will also learn the basic structure of a legal document as you write an objective office memorandum. Your understanding of this basic structure will be developed throughout your three semesters of Legal Writing.

The second semester will focus much more heavily on writing and legal analysis. You will continue to acquire research and citation skills, including those related to statutes. You will continue to develop your understanding of the structure of a legal writing document and will have the opportunity to apply those skills in a persuasive document. Additional drafting skills will also be learned.

Fall 2010 Required Texts

Louis J. Sirico and Nancy L. Schultz, Legal Writing and Other Lawyering Skills (5th Edition, Aspen Publishers 2010) (hereinafter referred to as “Sirico”)

Christina L. Kunz, Deborah A. Schmedemann, Ann. L. Bateson, Matthew P. Downs & Susan L. Catterall, The Process of Legal Research (7th Edition., Aspen Publishers 2008) (“Process”)

The Bluebook (19th Edition, Harvard Law Publishers 2010) (“Bluebook”)

McGaugh and Hurt, Interactive Citation Workbook for Bluebook Citation Manual 2010 Edition (LexisNexis) (“Interactive”)

Text Notes:

1. If you purchase a used copy of “Process”, you need not be concerned about whether the accompanying cd is included, as we will not be using the cd in this course.
2. Make sure you purchase the 19th edition of The Bluebook, as that edition was just released.

Week of 8/23

Reading Assignments:

Sirico, Ch.1, 2, and 4

Interactive, *Using the Interactive Citation Workbook* (pp. ix-x),

Class Topics:

Introduction to Legal Writing.

- Overview of the course. Description of classes, books, goals, and policies of the course
- Discussion of the Research and Citation Exercises

Discussion of the legal system, including the court system, the sources of the law, and the interaction between the sources of the law.

Introduction to the Office Memorandum

Due: (NOTE: All research and citation exercises are completed on-line and are not physically turned in. For research and citation exercises, “due” means completed by 5:00 p.m. on the due date)

1. Online Intro Quiz for the citation exercises – to be completed by Monday 8/30
2. Research Exercise – Closed Memorandum (outlined on the following page) to be completed by the start of class on Monday 8/30 (**NOTE:** details on this assignment in the first class session/not included here)

Week of 8/30

Reading Assignments:

Sirico, Ch. 6 and 10

Interactive, Chapters 1, 2, and 3

Closed Memorandum Assignment Packet (distributed in class)

What is a Rule of Law? (essay included on the following pages)

The Student Manual (not including the syllabus portion)

Class Topics:

Introduction to legal structure – rules of law

Introduction to objective writing

Introduction to case law citation

Due: (NOTE: All research and citation exercises are completed on-line and are not physically turned in. For research and citation exercises, “due” means completed by 5:00 p.m. on the due date)

1. Closed Memorandum Research Exercise - Find and Brief the XXX case (details on the previous page) (NOTE: details on this assignment in the first class session/not included here)

2. Begin/Continue working on Citation exercises 1 (problems 1-10), 2 (problems 1-7), and 3 (problems 1-7)(**Due on 9/17**)

What is a Rule of Law?

The rule of law is the section of legal analysis where you provide the legal principles that apply to the factual and legal scenario of your issue. The process of legal analysis can be put very simply: how does the law apply to a certain factual scenario? For example, let's say Joe drove his car 100 mph down an interstate highway. The rule of law is that the speed limit is 55 mph. The application of that rule to the facts of our case is simple: Joe drove more than 55 mph.

Of course, as you suspect, and certainly will come to realize, the law that is applicable to most legal scenarios is much more complex than a black and white speed limit. Complex disputes between individuals, corporations, and governments (or any mixture of the three) require and demand more complex legal rules to resolve disputes and provide guidance.

What does a rule of law look like?

First of all, do not be confused by the term "rule of law" because the rule that is applicable to any one legal issue is rarely going to be only one sentence (unlike our very simple speed limit hypothetical above). Instead, a better term would be "rules of law." The rule of law section will normally consist of multiple paragraphs and, in more complex legal issues, sometimes even consist of multiple pages of legal principles.

Here is an example of a rule of law for an issue involving an employee noncompete agreement:

Where a noncompete agreement is signed after an employment contract, it can be sustained only if it is supported by independent consideration. *National Recruiters, Inc., v. Cashman*, 323 N.W.2d 736, 740 (Minn. 1982). The adequacy of consideration for a noncompete agreement signed during ongoing employment will depend upon the facts of the case. *Freeman v. Duluth Clinic, Ltd.*, 334 N.W.2d 626, 630 (Minn. 1983). Continuation of employment after signing may be sufficient to uphold a noncompete agreement. *Davies & Davies Agency, Inc., v. Davies*, 298 N.W.2d 127, 130 (Minn. 1980). However, where other employees in similar positions are not asked to sign, continuation of employment alone is inadequate consideration. *Jostens, Inc., v. National Computer Systems, Inc.*, 318 N.W.2d 691, 703-04 (Minn. 1982). Furthermore, continuation of employment may be sufficient consideration if the agreement is bargained for and provides the employee with real advantages beyond those previously secured by the employee had they not signed the agreement. *Midwest Sports Marketing, Inc., v. Hillerich & Bradsby of Canada, Ltd.*, 552 N.W.2d 254, 265 (Minn. App. 1996).

We will be spending the next three semesters of legal writing learning how to pull together legal principles from various sources to create the basis for the application of the law to a particular legal scenario.

Where do I find rules of law?

The rule of law section will normally consist primarily (if not solely) of statutes (if one or more are applicable to your issue) and rules from case law. Finding an applicable statute is a matter of doing thorough and appropriate statutory research, carefully reading any statutes that might be applicable, and determining which statute is pertinent to your issue. Finding, reading, and selecting statutes are skills that will develop through the three semesters of legal research and writing, beginning primarily in the second semester.

Finding applicable case law rules begins with appropriate and thorough case law research to find cases that are analyzing your legal issue. Once you find an appropriate case, you read through the case itself to determine what law the court is relying upon to analyze the issue. One easy way to determine what law the court is relying upon is to look for legal citations in the case; these indicate the legal principles the court is utilizing to reach its decision. Of course, an appellate court decision itself is also rendering new law, so you must read the opinion to determine if the court is creating any new legal principles in the opinion. Making an analysis of the broader legal implications of a court's opinion is not a technical science; rather, it is part of the art of legal analysis and different attorneys may and will argue on how a court's opinion should be interpreted for the following cases.

If possible, of course, these statutes and case law rules should come from binding sources. However, sometimes the law in your jurisdiction is not fully developed on your issue and you need to look to other jurisdictions for additional guidance. Occasionally, rules may also be taken from secondary sources such as treatises, law review articles, and other secondary sources. The appropriate use of persuasive case law and statutes and secondary sources is an issue that we will return to again and again over the next three semesters of legal writing.

Week of 9/6

****The second class this week will be on either Thursday or Friday – time/place to be announced**

Reading Assignments:

Sirico, Ch. 3

Process, Ch.1

What is a Case Illustration? (essay included in this packet)

The Writer's Corner: Presenting Case Law Effectively (article included in this packet)

Class Topics:

Class 1

Introduction to Legal Structure – Case Illustrations

Class 2

Librarian Lecture: *Introduction to Legal Research and Research Process*

Due: (NOTE: All research and citation exercises are completed on-line and are not physically turned in. For research and citation exercises, “due” means completed by 5:00 p.m. on the due date)

- Rule of law Assignment – Wed.