Contents

Preface Acknowledgments			
Pa	rt O	ne: Lawyers and the Legal Landscape	1
1.	Ove	rview of the Lawyer's Role	3
	I.	Writing and a Lawyer's Roles	3
	II.		5
		Ethical Duties	8
	IV.	Legal Citation	9
		A. Plagiarism B. When to Cite	9 11
			11
2.		Legal System, the Common Law Process, and	
	Kin	ds of Authority	13
	I.	1	13
		A. The Federal Court System	13
	YY	B. State Court Systems	14
	II.	The Functions of Trial and Appellate Courts A. The Functions of Trial Courts	15 15
		B. The Functions of Appellate Courts	16
	III.		17
		A. Stare Decisis	17
		B. Holdings	18
		C. The Breadth of Holdings	19
		D. Holdings Versus Dicta	21
	IV.		23
		A. Primary Authority Versus Secondary Authority	23
		B. Mandatory Authority Versus Persuasive AuthorityC. Other Characteristics Affecting the Persuasive Value of Cases	25 26
		C. Other characteristics Affecting the reistasive value of cases	20
Pa	rt T	wo: Reading and Analyzing the Law	29
3.	Brie	fing and Synthesizing Cases	31
	I.	Introduction to Case Briefing	31
	II.	A Format for Case Briefing	32
	III.	Synthesizing Cases	36
		A. Using Consistent Cases A. Sample Case Brief	37
		B. Reconciling Seemingly Inconsistent Cases	37
4.	Inte	rpreting Statutes	45
	I.	Reading Statutes	45
	II.	Identifying Issues	49
	III.	Interpreting the Statute's Language	51
	TV	Canons of Construction	52

5.	Forn	ns of Legal Reasoning	55	
	I. II. III. IV.	RuleBased Reasoning Analogical Reasoning (Analogizing and Distinguishing Cases) Policy-Based Reasoning Principle-Based Reasoning	55 56 58 59	
	V.	Custom-Based Reasoning	59	
	VI.	Inferential Reasoning	60	
	VII.	Narrative	62	
Pa	rt T	hree: Writing the Discussion of a Legal		
Qu	esti	on	65	
6.	The	Writing Process and Law-Trained Readers	67	
	I.	The Writing Process	67	
	П.	Law-Trained Readers	71	
		A. Focus on the Reader	71	
		B. Attention Levels	72	
		C. Road Maps	73	
		D. Readers as Commentators	74 74	
		E. Judges as Readers F. Law Professors as Readers	77	
7.	Larg	e-Scale Organization: Creating an Annotated Outline	79	
	I.	Rule Structures	79	
	II.	Creating an Annotated Outline A. The First Level: The Legal Questions You Have Been	85	
		Asked to Address	85	
		B. The Second Level: Governing Rules	85	
		C. The Third Level and Beyond: The Rule's Structure	86	
		D. Omitting Issues Not in Dispute	87	
		E. Uncertainty About Which Rule Your Jurisdiction Will AdoptF. Annotating Your Outline	87 88	
8.	Sma	ll-Scale Organization: Explaining the Law	91	
	I.	An Overview of the Paradigm for Legal Analysis	91	
	II.	Stating the Conclusion	92	
	III.	Stating the Governing Rule	93	
	IV.	Explaining the Rule: Five Components	94	
	V.	Guidelines for Rule Explanation	95 97	
11	VI.	Organizing a Pure Question of Law		
9.		ill-Scale Organization: Applying the Law	103	
	I.	Two Approaches to Writing the Application Section	103	
	II. III.	Content of Rule Application	104	
	IV.	Common Trouble Spots in Rule Application Sections Evaluating Your Draft	106 109	
10.	Disc	Discussing Multiple Issues: Putting It All Together		
	I.	Ordering for Your Reader	113	
		A. Accounting for Elements Not at Issue	113	
		B. Selecting an Order for the Remaining Issues	114	
	П.	Umbrella Sections	115	
	III.	The Conclusion	118	
	IV.	Editing Subsection Lengths	118	
	V.	Variations of the Multi-Issue Paradigm	119	

			Contents		
11.	1. Deepening Your Analysis				
	I.	Using Policies and Principles in Rule Explanation	121		
	II.	Using Analogical Reasoning in Rule Application	124		
		A. Deciding Which Similarities and Differences Are Significant	124		
		B. Choosing a Format for Your Case Comparison	125		
	III.	Using Factual Inferences in Rule Application	128		
Par	rt F	our: Predictive Writing	131		
12.	Writ	ing an Office Memo	133		
100	I.	The Function of an Office Memo	133		
	II.	An Overview of the Memo Format	133		
	III.	Drafting the Heading	135		
	IV.	Drafting the Question Presented	135		
	V.	Drafting the Brief Answer	139		
	VI.	Drafting the Fact Statement	141		
	V 1.	A. Fact Selection	141		
		B. Organization of Fact Statement	142		
	VII.		145		
		Writing an Email Memo	147		
13.	Writ	ing Professional Letters and Emails	149		
	I.	General Characteristics of Professional Letter Writing	149		
	II.	Letters to Clients	152		
	221	A. General Considerations	152		
		B. Advice Letters	152		
		C. Status Letter	154		
	III.	Letters to Other Lawyers	154		
	111.	A. General Considerations	154		
		B. Demand Letters and Responses	156		
		C. Confirming Letters	156		
	IV.	Transmittal Letters	157		
	V.	Emails	159		
		The state of the s			
Pa	rt F	ive: The Shift to Advocacy	165		
14.	Intro	oduction to Brief-Writing	167		
	I.	Ethics and the Advocate's Craft	167		
	II.	Judges, Briefs, and Persuasion	170		
	III.	The Components of a Trial-Level Brief	172		
	IV.	The Components of an Appellate Brief	175		
15.	Que	stions Presented and Point Headings	179		
	I.	Writing the Question Presented	179		
	II.	Point Headings	184		
		A. İdentifying Point Headings	184		
		B. Drafting Point Headings	187		
		C. Editing Point Headings for Readability and Persuasion	189		
		D. Identifying Subheadings	193		
16.	Writ	ting the Argument Section	195		
	I.	Arguments for Different Kinds of Legal Issues	195		
		A. A Pure Question of Law	195		
		B. An Issue of Statutory Interpretation	196		

xiii

		C. An Issue of Common Law Case Synthesis	196
		D. A Case of First Impression on Your Jurisdiction	197
		E. Seeking a Change in the Law	198
		Tour to Doct	198
		F. An Issue Applying Law to Fact	199
	II.	Honing Your Argument for the Court's Rule	199
		A. The Trial Judge	199
		B. Appellate Judges and the Appellate Process	200
	III.	Reminders About Organization	203
	IV.	Using Case Comparisons to Support Your Argument	205
	V.	Rebutting Your Opponent's Arguments	
17.	Stan	dards of Review	207
	I.	Categories of Trial Court Decisions	207
	II.	Advocating a More Favorable Standard of Review	211
	III.	Conforming Headings to the Standard of Review	213
10			217
18.	Writ	ing a Fact Statement	218
	I.		218
		A. Fact Ethics	218
		B. The Conventions of a Statement of Facts	
	II.	Developing a Theory of the Case and Selecting Facts	220
		A. Developing a Theory of the Case	220
		B. Selecting and Citing to Facts	221
	III.	Organization	222
		A. Formats	222
		B. Procedural History	223
	IV.		223
	14.	A. General Principles	223
		B. Large-Scale Organization	224
		C. Paragraph Organization	225
		D. Techniques with Sentences	226
		- 1 0 1 m 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	227
		Statement of Facts on Behalf of Carrolton	230
		Statement of Facts on Behalf of Watson	231
		Statement of Facts on Behalf of Watson	
19.	Usir	ng Legal Theory to Sharpen Your Arguments	235
	I.	Natural Law	236
	II.	Formalism	237
	III.	Legal Realism	240
	IV.	Legal Process	243
	V.	Fundamental Rights	244
	VI.	Law and Economics	246
	VII.	Critical Legal Theory	248
	VIII.	1 - 1 - 1 - 1 - 1	249
Pa	art S	Six: Style and Formalities	251
		ations and Quotations	253
20			253
	I.		255
	Π.		255
		A. Using the ALWD Guide to Legal Citation	256
		B. Using the Bluebook	
		C. Several Key Concepts	257
		D. Introduction to Citation Form	259

			Contents
		E. Matching the Citation to the Text	261
		F. Citing with Style and Grace	261
		G. Editing Citation Form	262
	III.	Quotations	264
		A. When Quotation Marks Are Required	271 271
		B. Choosing to Use Quotation Marks	273
		C. Overquoting	273
		D. The Mechanics of Quoting	274
		E. Editing Quotations	276
21.	Par	agraphs, Sentences, and Style	279
	I.	0 1 0	279
	II.	oudjects and verbs	282
		A. Active Voice	282
		B. Nominalizations	284
		C. Throat-Clearing	285
	TTT	D. Sentences Beginning with Forms of "It Is" or "There Is"	286
	III.	0	287
		A. Revise Phrases That Can Be Replaced by a Single Word B. Avoid Legalese	287
		B. Avoid Legalese C. Avoid Redundancies	288
		D. Avoid Intensifiers	289
	IV.	Other Characteristics of Good Style	289
		A. Keeping the Subject and Verb Close Together	289
		B. Avoiding Long Sentences	289
		C. Unnecessary Variations	290
		D. Parallelism	291 291
	V.	Gender-Neutral Writing	292
		A. Techniques for Nouns: Elimination or Substitution	293
		B. Techniques for Pronouns	293
		C. Techniques for Proper Names and Titles	294
Pai	rt S	even: Oral Advocacy	297
22.	Oral	Argument	299
	I.	The Purpose of Oral Argument	
	II.	Formalities and Organization of Oral Argument	299 300
		A. Preliminary Formalities	300
		B. The Appellant's Argument	300
		C. Argument of Co-Counsel for the Appellant	301
		D. The Appellee's Argument	301
		E. Argument of Co-Counsel for the Appellee	302
		F. Concluding the Argument	302
		G. Rebuttal	303
	III.	The Content of Argument	303
		A. The Standard of Review	303
		B. The Burden of Proof	303
		C. The Trial-Level Procedural Posture	304
	IV.	D. Themes	304
	IV.	Preparation A. The Record	305
		B. Outline Your Argument	305
		C. Prepare Your Folder	305
		S. Trepare rour rouci	305

		D.	The second of th	
		-	Prepared Rebuttal	306
		E.		306
		F.	Visit the Courtroom	306
	V.		andling Questions from the Bench	306
		Α.		307
		B.		307
		C.	- B I P - o x Questions	307
		D.	Listen Carefully to the Question	308
		E.	Clarify the Question	308
		F.	Begin with a Clear, Direct Answer	308
		G.	Returning to Your Prepared Presentation	308
		H.	danger our road do confisci 3 13300	308
		I.	Handling a Question for Which You Do Not Have an Answer	309
		J.	Agreeing When You Can	309
		K.	Referring to Earlier Questions or Comments from the Bench	309
	VI.	Pre	esentation	310
		A.	Dress	310
		В.	Body, Hands, and Eyes	310
			Voice	310
		D.	References	310
		E.	Nervousness	310
Appe	endic	ces		311
App	end	ix A	Sample Office Memorandum	313
App	end	ix B	Sample Trial-Level Brief	
App	end	ix (Sample Appellate Brief	319
App	end	iv I	Sample Letters	325
Ann	and	iv D	Cases	341
whh	CIIU.	LA C	Gases	349
Index				359
				229