

Legal Writing: Style & Organization

AUTUMN SCHOOL OF GLOBAL LEGAL SKILLS AND LEGAL WRITING 2020
 PROFESSOR KIMBERLY HOLST
 ARIZONA STATE UNIVERSITY SANDRA DAY O'CONNOR COLLEGE OF LAW

1

IRAC

I=Issue
R=Rule
A=Application
C=Conclusion

Structure of Legal Analysis

2

Analysis within a legal document

Memoranda	Briefs
Caption	Caption
Legal Questions Presented	Introduction
Brief Answers	Facts
Facts	Arguments (this is where the IRAC is located)
Discussion (this is where the IRAC is located)	Conclusion
Conclusion	Signature Block

3

Substantive Conciseness

- Focus on legally relevant information**
- Facts**
Legally relevant—what facts are necessary to determine the legal issue
 Necessary background—what facts are necessary to provide the reader with context to understand what happened
- Rules**
Synthesize rule from binding authority; use persuasive authority if needed
 Illustrate rules by focusing on the relevant facts, reasoning, and holding of the precedent case
- Analogies & Distinctions**
Use specific and direct analogies
 Analogize to specific facts
 Only analogize to relevant facts

4

Substantive Conciseness

Looking at the dog bite hypothetical and other materials—what are the relevant facts?

What are the legally relevant facts, reasoning, and holding from the cases?

What facts should be analogized or distinguished?


The Art of Concision




5

Effective writing

- Roadmaps
- Signposts
- Transitions
- Thesis sentences



6



Roadmaps

Gives reader the "big picture" overview of the paper/section
 Overall structure of the document
 Emphasize what's important
 Creates an expectation for the reader about where to start, where to go, where to conclude

More sophisticated roadmaps avoid self-referential statements like "I" or "This memorandum"—make the court the actor

Ex. In determining whether X occurred, the court will examine three factors. First,

7

Signposts


The words and phrases that keep readers oriented as they progress through a piece of writing.

Use language consistently—if you say questions—keep using questions. Don't switch to issues

Ex. This legal theory can be broken into three issues.

- The first issue...
- Secondly, the issue of...
- The final issue...

Headings are also important tools in orienting a reader as to where s/he is in the document.



8

Transitions

The primary connectors between sentences.

- Generic transitions
- Orienting transitions
- Substantive transitions

Help tie the writing together

Guides the reader—helps them to follow your train of thought

9

Generic Transitions

- Used in all types of writing
- Used to signal a shift in the reasoning
- Place them before “the bend”—before the shift in the reasoning
- For example, therefore, in general, similarly
- X is the appropriate rule of law in this jurisdiction. For example, in ABC case,

10

Orienting Transitions

- Provides a context for the writing
- Physically, logically, or chronologically
- References to times/dates
- References to cases
- In X case...
- During the past 20 years,

11

Substantive Transitions

- Like interlocking links of a chain (usually within a paragraph)
- Make a connection and provide content
- Downstairing—interlock ideas by creating an overlap of language
- Common uses are when applying law to facts and applying another court's rationale
- The defendant need not insure the plaintiff's safety; he need exercise only reasonable care. *Patterson v. Madison Tavern*, 466 P.2d at 322. If he has not exercised reasonable care, he has breached his duty to the plaintiff.

12

Thesis sentences

- Topic v. Thesis**
- Topic sentence**—identifies what a sentence will be about
- Thesis sentence**—asserts a position. A paragraph centered on a thesis sentence will support or explain this position.
- At a minimum, every paragraph you write should have a topic sentence. To write more effectively, you should be trying to use thesis sentences rather than topic sentences where applicable.

13

Thesis Sentences

In X, the court looked at the legal theory and found that it was satisfied by ABC. The court held:

When ABC are present, then legal theory is satisfied. For example, in X, the court held...

14

Editing and Style

- You should spend as much time editing your work as you spend writing it.
- You need to practice editing.
- You need to train yourself to write concisely and edit with an eye to conciseness.
- Write using your own style and then edit to make it more concise and direct.
- CLARITY is the number one goal and concern in legal writing. (Don't get too focused in style techniques that you impede the clarity of your message.)




15

Effective Writing—
conciseness

There are a number of strategies to make your writing more concise.

16

Strategies

- 
Don't state the obvious
"Now I am going to discuss the cases that are relevant to this issue."
- 
Don't overuse quotations
Only use when necessary or so well stated that paraphrasing would not capture the same concept
- 
Create a strong subject-verb unit
This case is an illustration of this point. This case illustrates this point.




17

Strategies

- Avoid Throat-clearing Expressions**
 - It is _____ that (it seems more likely than not that)
 - Probably
- Don't repeat yourself needlessly**
 - (current) trend
 - (future) plans
- Clean out the clutter**
 - Look out for extraneous prepositional phrases
- Focus and combine**
 - The defendant lived in a room that was over the garage.
 - The defendant lived in a room over the garage.
 - Because of the fact that _____ Because
 - in the absence of _____ without

18

Strategies

-  BUT—watch out for excessive conciseness
-  Does it hinder the readability of sentences?
-  Are there “noun strings?” A broad prior conviction evidence exclusion rule
A broad rule excluding evidence of prior convictions

19

Use	Use short sentences
Avoid	Avoid unnecessary modifiers (clearly, obviously, etc.)
Avoid	Avoid “conversational” style

Eliminating Wordiness and Awkward Phrasing

20

Eliminate *be*-verbs

State of being verbs (am, is, are, was, were)

- Park’s advice was in contradiction with the available case law.
- Park’s advice contradicted the available case law.

21

Avoid passive voice



Use passive voice sparingly and intentionally



Passive voice is when the subject of the sentence is not the "doer" of the action.

The child was bitten by the dog.
The child was bitten.
The dog bit the child.

22

Diagnosing Passive Voice



Find Verb



Ask who or what is "verbing"

If subject is verb-ing, active voice
If subject is being verb-ed, passive voice
If verb-er (or pronoun for verb-er) is not in sentence, generally passive voice



Common Markers of Passive Voice:

To be +
Past tense form of verb

23



Or, add "by zombies" to the end of the sentence

- Makes sense—passive voice
 - The child was bitten by zombies.
 - The victim was struck on the face by zombies.
- Doesn't make sense—not passive voice.
 - The dog bit the child by zombies.
 - The assailant struck the victim's face by zombies.

24



Avoid nominalizations

Don't turn a verb into a noun if you don't need to

-ion words

- The person was in violation of the law.
- The person violated the law.

25

Eliminate prepositions






Prepositional phrases can often be replaced by a more direct statement.

- Anderson knew of the existence of the documents that implicated the defendant in the crime. (15 words)
- Anderson knew documents existed that implicated the defendant. (8 words) or
- Anderson knew implicating documents existed. (5 words)*

*You may need more/less specificity—again, be clear.

26

Suggestions for better editing

-  Fresh eyes—give yourself time to step away from the document (15 minutes to multiple days)
-  Start in the middle (more mistakes happen later in the document)
-  Read on the computer and in print
-  Proofread multiple times
-  Read the document in its entirety

27

Suggestions for better editing

Use the tools on the computer

- Pronoun search
- Apostrophe and quotation mark searching
- Citation search
- Spell-check, and check for similar words (search statue, probably, etc.)

28

Suggestions for better editing

The print copy

- Look at paragraph length—overly long paragraphs are easier to spot in print
- Look at sentence length
- Review the verbs
- Review signals (transitions, thesis sentences, roadmaps)
- Ruler-read—use a ruler under each line—breaks up your short-term memory and requires focus on the actual document
- Repeat!

29

Suggestions for better editing

Proofread revisions

- If words have been replaced, make sure the sentence still makes sense.
- Read around the revised sections—does the larger context still make sense?

Read it out loud

- Read it aloud and out of order
- Pay attention to whether each individual section makes sense

30