Show, Don't Tell: Legal Writing for the Real World (Chapter Outline)

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SHOW, DON’T TELL: LEGAL WRITING FOR THE REAL WORLD

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INTRODUCTION

CHAPTER ONE: Waters v. Harrison

CHAPTER TWO: TIPS FOR WRITING IN THE REAL WORLD

I. THE WRITING PROCESS

A. The Writing Stage

B. The Re-Writing Stage

C. The Revising Stage

II. TIPS FOR THE WRITING AND RE-WRITING STAGES

A. Don’t Talk so Much

B. Exposition and Legal History

C. Don’t Be Unnecessarily Repetitive

D. Omit Unnecessary, Lengthy Words and Phrases

E. Don’t Writer Like a Lawyer—Write Like a Writer

1. Don’t Use Legalese

2. Check Pronouns

3. Avoid SAT Words

4. Tense and Tone

5. Terms

6. Adjectives

7. Don’t Be Artificial

8. Don’t Be Rhetorical
9. Watch Sentence and Paragraph Length and Structure

10. Passively Yours

III. TIPS FOR THE REVISION PHASE

A. Editing for Grammar, Spelling, and the Like

B. Footnotes

CHAPTER THREE: TIPS FOR PERSUASIVE WRITING IN THE REAL WORLD

I. GOOD WRITERS ARE GREAT NARRATORS

A. Choosing a Theme

B. Introduction

C. Don’t Wait to Persuade

D. Language Choice

E. Sentence Length

F. Metaphor

G. Emotion

H. Personalize your Client

I. Alternative Arguments

J. Never Attack a Lawyer or a Court

II. THE FACTS OF LIFE

A. Don’t Fudge the Facts

III. THE STORY OF THE LAW

A. Don’t Fudge the Law

1. Holding v. Dicta

2. Altering Quotes
3. Hard-to-Find Authorities

B. The Analysis

C. Make Strategic Concessions

D. The Conclusion

IV. FRIENDLY REMINDERS

A. Checklists

B. Comply with Deadlines and Local Court Rules

CHAPTER FOUR: THE LEGAL MEMORANDUM

THE LEGAL MEMORANDUM CHECKLIST

I. YOU’RE A DOCTOR—DON’T ARGUE. DIAGNOSE.

II. IRAC IS NOT A COUNTRY

III. ELEMENTS OF A LEGAL MEMORANDUM

A. The Question Presented

B. The Brief Answer

C. The Statement of Facts

D. The Legal Discussion

1. The Rule

2. Knowing what law to look for

3. Writing the Rule section

4. Citing Cases

5. Quoting versus Paraphrasing

6. Comprehensiveness

7. The Legal Analysis
CHAPTER FIVE: THE COMPLAINT

THE COMPLAINT CHECKLIST

I. DO YOUR HOMEWORK
   A. Those Local Rules—Again
   B. Do Your Research

II. WRITING A COMPLAINT THAT DOES ENOUGH, BUT NOT TOO MUCH
   A. Short and Plain Statements
   B. Factual Allegations about the Defendant
   C. Allegations About Jurisdiction and Venue
   D. Factual Allegations
   E. Use subheadings for lengthy, complicated facts
   F. Attaching and incorporating documents
   G. Asserting Causes of Action
   H. Draft a Separate Count for Each Cause of Action
   I. Heightened Pleading Standards
   J. Expert Affidavits and Support

III. CAUSES OF ACTION FOR SPECIAL TYPES OF DAMAGES, SUCH AS PUNITIVE DAMAGES

IV. REQUESTING RELIEF

CHAPTER SIX: THE MOTION TO DISMISS

THE MOTION TO DISMISS CHECKLIST

I. WHEN—AND WHY—TO FILE A MOTION TO DISMISS

II. MAXIMIZING PERSUASION
   A. Use an introduction to outline your strongest arguments
B. Use Strong Headings and Subheadings

C. Know the standard and state it persuasively

D. State the facts persuasively—but only the facts that are relevant

E. Outline the law accurately, focusing on law that is favorable

F. Analyze the facts

G. If you get a reply brief, consider waiting to address certain counterarguments

CHAPTER SEVEN: THE ANSWER

ANSWER CHECKLIST

I. LOCAL RULES—THEY’RE BACK

II. Do Your Research

A. Introduction

B. Plead Affirmative Defenses

C. Respond to Allegations in the Complaint

D. Respond to causes of action

E. General denials

F. Filing a Special Appearance Answer

G. Make Counterclaims, Crossclaims, and Third-Party Claims

CHAPTER EIGHT: DISCOVERY

DISCOVERY CHECKLIST

I. YOU GUESSED IT—THE RULES

A. Know the number and types of questions you can ask

B. Instructions and definitions
C. Types of Questions and Requests

II. KNOWING WHAT TO ASK, AND KNOWING HOW TO ANSWER

A. Avoid unhelpful responses, non-responses, and objections
B. Avoid Overly Broad Questions
C. Avoid Overly Narrow Questions
D. Responding to Interrogatories
E. Responding to RPDs
F. Try to Avoid Discovery Disputes

CHAPTER NINE: THE MOTION FOR SUMMARY JUDGMENT

THE SUMMARY JUDGMENT CHECKLIST

CHAPTER TEN: PRETRIAL MOTIONS—THE MOTION IN LIMINE

THE MOTION IN LIMINE CHECKLIST

A. THE PURPOSE OF A MOTION IN LIMINE
B. DON’T ARGUE THE MERITS OF YOUR CASE

CHAPTER ELEVEN: THE COURT’S DECISION IN WATERS V. HARRISON

CHAPTER TWELVE: THE APPELLATE BRIEF

THE APPELLATE BRIEF CHECKLIST

I. DID YOU PRESERVE THE ISSUE FOR APPEAL?

II. WE KNOW YOU HAVE STANDARDS—APPELLATE COURTS HAVE THEM TOO

A. I KNOW I SCREWED UP, BUT HEY, ’NO HARM NO FOUL.’
B. FACTS ARE FACTS—AND USUALLY STAY THAT WAY
C. Laws Are People Too

D. I Don’t Know Which One It Is!

III. Here I Go Again—Writing and Re-Writing

IV. It’s An Encore Performance, Not A New Movie

V. If It Doesn’t Fit, You Must Omit

VI. Law, Like Life, Requires Balance