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# Mastering Legal Analysis and Drafting

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*To Carolyn and Don*



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# Series Editor's Foreword

The Carolina Academic Press Mastering Series is designed to provide you with a tool that will enable you to easily and efficiently “master” the substance and content of law school courses. Throughout the series, the focus is on quality writing that makes legal concepts understandable. As a result, the series is designed to be easy to read and is not unduly cluttered with footnotes or cites to secondary sources.

In order to facilitate student mastery of topics, the Mastering Series includes a number of pedagogical features designed to improve learning and retention. At the beginning of each chapter, you will find a “Roadmap” that tells you about the chapter and provides you with a sense of the material that you will cover. A “Checkpoint” at the end of each chapter encourages you to stop and review the key concepts, reiterating what you have learned. Throughout the book, key terms are explained and emphasized. Finally, a “Master Checklist” at the end of each book reinforces what you have learned and helps you identify any areas that need review or further study.

We hope that you will enjoy studying with, and learning from, the Mastering Series.

Russell L. Weaver  
Professor of Law & Distinguished University Scholar  
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## About the Authors

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# Introduction

Legal drafting is different from other forms of writing. It is purposeful writing meant to inform, persuade, and memorialize events and legal analysis. Good legal drafting is marked by precision, exactitude, lack of ambiguity, and an absence of unnecessary vagueness. Many of the legal drafting books on the market are especially suited for those that have already mastered the basic skills of legal drafting and, especially, for those that seek to instruct others in that field. This book does not seek to replicate what those books and their authors have already accomplished. Rather, it is meant as a first tier, comprehensive book on legal drafting in a variety of contexts. As a result, we seek to emphasize the fundamental structures and methods of legal writing, which are grounded in a surprisingly few, elemental rules and techniques of legal analysis and presentation.

This book is unabashedly a *how to* book. It is designed to help the beginning or intermediate legal drafter identify those elemental rules and techniques and show how they are used to prepare effective legal writing in different formats, which share common elements and structures. The goal is to provide a plan of attack to produce quality work product of the type most commonly encountered in private practice and public service in the United States today. The focus is largely structural, as the structure of legal analysis drives the form and substance of all legal work product.

It is important for the legal drafter to lay aside habits that have been successful in other venues, primarily the habit of jumping to conclusions. Outside of the legal profession, being able to reach the right answer or course of action quickly, even instinctively, is rewarded. In the restaurant trade, the larger the number of meals or drinks served or dishes washed in a given time period, the better. In business, the ability to scan the market and competitors, quickly identifying your company's strengths, weaknesses, opportunities, and threats is rewarded. Although these abilities have a place in legal work, unlike these other fields, in law and legal drafting you need to *slow down and show your work*. Each step in the analysis should be explicitly stated, and no assumption beyond a common understanding of American English usage and style should be presumed. Law students frequently run up against this requirement of explicitly balanced reasoning when they receive the negative comment "conclu-

sory” on their work product. This same sentiment, when expressed by a court, comes in the form of “motion denied—counsel has failed to make her case,” and when expressed by a reviewing court as “the decision below is vacated and remanded for proceedings consistent with this opinion.”

All legal analysis and writing should be concerned with explicitly identifying every link in a chain of reasoning. As was the case with long division in grade school, even if you get the right answer, you are not awarded points if you do not show your work. A court’s legal opinion in support of a ruling is an obvious example. There, the court lays out the facts, lays out the applicable law as urged by the parties in their motions and briefs, and then applies that law to the facts at issue to reach a conclusion. The opinion, if it is well written, captures the whole chain of reasoning and allows an appellate court to examine each link on appeal to determine if the decision is sound.

The same can be said of motions and briefs. The goal of these documents is to persuade the court to rule a certain way and, ideally, adopt the lawyer’s reasoning in the court’s opinion. The audience is the court, which will examine the motion or brief and the chain of reasoning it contains to determine if it is sound. Letters to clients or opposing counsel or to an agency are no different. They seek to inform and persuade by providing a chain of reasoning to support their request, demand, or conclusion. For each, the audience expects to be able to examine the chain of reasoning.

The book begins with a discussion of legal analysis, followed by a chapter on legal drafting in general, and a chapter on citation form. These are followed by chapters on specific forms of legal drafting: letters, research memoranda, motions and supporting documents, appellate briefs, contracts and instruments, and legislation. It closes with some final thoughts on writing for the record—which is what legal analysis and drafting is all about.

The book is intended for reading and reference and is also suited for a law school legal drafting class if supplemented by appropriate problems and other assignments. The authors are happy to share past experience and discuss assignments with instructors using the book for such as class. You can contact them via email at [gkuney@utk.edu](mailto:gkuney@utk.edu).

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