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Legal Reasoning, Writing, and Other Lawyering Skills
Legal Reasoning,
Writing, and
Other Lawyering Skills

Third Edition

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Professor of Law
Chapman University School of Law
To Joe — in gratitude for your unwavering support and love. I am truly blessed.
ACKNOWLEDGMENTS

I would like to thank my students at both Washington University and Chapman University, without whom this book would not have been possible. It is through their questions, challenges and breakthroughs that I am inspired to try new approaches and become a more effective educator. I would also like to express my gratitude to numerous former and present colleagues who were the source of ideas that appear as exercises in this book and who provided editorial support and constructive criticism. They include, Heidi Brown, Jenny Carey, Jacline Evered, Breana Frankel, Jeff Hanslick, Stephanie Hartley, Jayne Kacer, Jo Ellen Lewis, Tomea Mayer, Ann Shields, and Dana Underwood. I would also like to thank and acknowledge New York University School of Law and their Moot Court Casebook, whose hypothetical problems inspired some of the appellate and trial court brief examples that appear in the Appendices.

I am blessed to be a part of the national legal writing community, a community in which colleagues so generously share their innovative ideas and expertise. Many of these ideas have inspired teaching approaches, exercises and examples that appear in this book. I also owe a debt of gratitude to so many people in the legal writing field for their encouragement and support as I grow as a teacher, writer and human being. I am also so appreciative of the Deans and faculty at Chapman University School of Law. They have fully supported my efforts and created a work environment in which it is a true pleasure to teach and write.
Evaluating a client’s legal problem and communicating that analysis to the client is the cornerstone of any lawyer's practice. However, this fundamental role requires that you be proficient in a number of different roles — that of investigator (eliciting the relevant facts that give rise to a legal issue and researching the relevant law), advisor (assessing how the law impacts your clients, and advising them of their legal rights and obligations), and advocate (advocating for your clients’ interests). Day in and day out, in every field of law, you will have the opportunity to practice and master these skills. Legal Reasoning, Writing, and Other Lawyering Skills is designed to help you develop these fundamental lawyering skills.

Legal writing is challenging, in part, because the clarity and effectiveness of the final product depends on the clarity of the underlying legal reasoning. Thus, this book teaches and illustrates the underlying skills of legal reasoning and analysis that are integral components of effective legal writing. The forms of written communication in legal writing are also new and challenging. In fact, even though you have been writing most of your life, the legal writing terrain is deceptively challenging for that very reason. To become a skilled legal writer, you must be willing to abandon writing techniques that have worked well in other disciplines, and be open to learning new ways of expressing yourself. Therefore, this book is also designed to help you become a skilled writer by teaching and illustrating effective templates for written legal analysis and argument. It is my hope that you will not only find this book to be a valuable learning guide during law school, but that it will also serve as a useful resource to you as you begin practicing law.

Like learning to play a musical instrument, you will become expert at legal writing by practicing — the more you practice, the more accomplished you will become. To help you learn and then master the skills of legal reasoning and writing, this book emphasizes the process of legal reasoning and writing, from the reading and thinking stages, through the outlining and drafting stages, to the final written product itself. Taking the musical analogy a step further, no one would expect a novice musician to master Beethoven’s Ninth Symphony without first having practiced and mastered more basic musical scores. Similarly, law students learn legal writing most easily by first mastering basic skills, and
then building gradually towards mastery of more complex skills. Therefore, the chapters incorporate a building block approach, demonstrating how to evaluate a single case before evaluating how to synthesize a group of cases, and how to draft a simple memo based on one case before drafting a more complex memo based on multiple cases.

Because illustrations are a critically important component of the learning process, this book liberally illustrates every step of the process, from reading a case, to evaluating how a case affects a client’s problem, to synthesizing a group of cases, to outlining a template for your written product, to the drafting process itself. Comments are inserted alongside each illustration to help you understand the reasoning, logic and drafting decisions that underlie each part of the illustration. To help you evaluate the illustrations at a deeply comprehensive level, the book uses several repeating hypothetical problems to illustrate each pre-drafting and drafting step. These illustrations are also linked to the sample office memos and court briefs illustrated in the Appendices. Thus, you will have the opportunity not just to review sample documents, but to study the underlying analysis, logic, and choices that influence drafting decisions in the final products.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>ix</td>
</tr>
<tr>
<td><strong>Chapter 1</strong> Introduction to Legal Writing &amp; Other Lawyering Skills</td>
<td></td>
</tr>
<tr>
<td>I. <strong>The Lawyer’s Different Roles</strong></td>
<td>1</td>
</tr>
<tr>
<td>A. The Role of an Investigator</td>
<td>1</td>
</tr>
<tr>
<td>B. The Role of an Advisor</td>
<td>2</td>
</tr>
<tr>
<td>1. Nature of This Role</td>
<td>2</td>
</tr>
<tr>
<td>2. Types of Communication</td>
<td>3</td>
</tr>
<tr>
<td>C. The Role of an Advocate</td>
<td>4</td>
</tr>
<tr>
<td>D. A Suggestion</td>
<td>5</td>
</tr>
<tr>
<td>II. <strong>The Client</strong></td>
<td>5</td>
</tr>
<tr>
<td><em>Exercise 1-1: Your Role with Future Clients</em></td>
<td>7</td>
</tr>
<tr>
<td>III. Employers’ Expectations</td>
<td>10</td>
</tr>
<tr>
<td>IV. Time Line of Documents Lawyers</td>
<td>11</td>
</tr>
<tr>
<td>Routinely Prepare</td>
<td></td>
</tr>
<tr>
<td><strong>Chapter 2</strong> Introduction to American Legal System</td>
<td>15</td>
</tr>
<tr>
<td>I. <strong>Introduction</strong></td>
<td>15</td>
</tr>
<tr>
<td>A. Two Basic Court Systems</td>
<td>15</td>
</tr>
<tr>
<td>B. Sources of Law</td>
<td>16</td>
</tr>
<tr>
<td>1. Constitutions</td>
<td>16</td>
</tr>
<tr>
<td>2. Statutes &amp; Administrative Regulations</td>
<td>17</td>
</tr>
<tr>
<td>3. Common Law</td>
<td>17</td>
</tr>
<tr>
<td><em>Exercise 2-1: Nature of the Law</em></td>
<td>17</td>
</tr>
<tr>
<td>C. How the Branches of Government Work Together</td>
<td>18</td>
</tr>
<tr>
<td><em>Exercise 2-2: Nature of the Law</em></td>
<td>19</td>
</tr>
<tr>
<td>D. Our System of Stare Decisis</td>
<td>20</td>
</tr>
<tr>
<td><em>Exercise 2-3: Nature of the Law</em></td>
<td>20</td>
</tr>
<tr>
<td>II. <strong>Stare Decisis—Mandatory &amp; Persuasive Precedent</strong></td>
<td>22</td>
</tr>
<tr>
<td>A. The Jurisdictional Part of the Test</td>
<td>22</td>
</tr>
<tr>
<td>1.Federal Courts</td>
<td>22</td>
</tr>
<tr>
<td>2. State Courts</td>
<td>23</td>
</tr>
</tbody>
</table>
B. The Court Hierarchy Part of the Test................................. 23
   1. Federal Court System.................................................. 25
      (a) Federal District Courts ........................................... 26
      (b) United States Courts of Appeal ......................... 26
      (c) United States Supreme Court ............................ 26
   2. State Court Systems .................................................... 27
C. Illustration of the Federal and State Court Structures.............. 29

Exercise 2-4: Mandatory and Persuasive Precedent .......................... 30

Chapter in Review.................................................................. 33

Chapter 3 Reading and Briefing Cases: The Basics....................... 35
I. Developing the Skill of Reading Cases.................................. 35
   A. Actively Resolve Confusion ...................................... 36
   B. Assume the Role of a Lawyer Solving a Problem .......... 37
   C. Establish Context .................................................... 38
II. Components of a Court Opinion........................................ 40
   A. An Overview ......................................................... 40
   B. Individual Components of a Case — An Explanation ....... 41
      1. Case Facts .......................................................... 41
         (a) Procedural Facts ............................................ 41
         (b) Evidentiary Facts ........................................... 41
      2. Issues .................................................................... 42
         (a) Law-Centered Issues .................................... 42
         (b) Fact-Centered Issues .................................... 43
      3. Holdings .............................................................. 43
      4. Rationale .............................................................. 44
      5. Judgment .............................................................. 45
III. Illustration of a Court Opinion.......................................... 45
       Jo Ann Nelson v. George N. Lewis ............................ 46
IV. Briefing a Case .................................................................. 49
   A. What is a Case Brief? ................................................ 49
   B. The Components of a Case Brief for a Doctrinal Class ....... 50
      Illustration: Nelson v. Lewis .................................... 50
      Nelson v. Lewis ....................................................... 50
   C. Suggestions for Drafting Case Briefs ............................ 52
      1. Case Facts: Evidentiary Facts ............................... 52
      2. Issues ................................................................... 52
      3. Holdings .............................................................. 54
      4. Rationale .............................................................. 55
      5. Judgment .............................................................. 55
      Exercise 3-1: Briefing a Case ................................... 56
       State v. Haley ......................................................... 56
      Exercise 3-2: Briefing a Case ................................... 59

Chapter in Review.................................................................. 62
Chapter 4  The Lawyer as Advisor: “Human” Factors that Complicate your Role .................................................... 65

A. The Problem: Hidden Biases that Undermine Perspective ................................................................. 65
   1. Leaping to Premature (and Inaccurate) Conclusions ........................................................................... 65
   2. Stubbornly Clinging to Premature (and Biased) Conclusions ................................................................. 66
   3. The Implications for You as a Law Student and Lawyer ............................................................................. 67

B. The Solution: Prosecute Your Thinking ................................... 69
   1. Look for Red-Flags .......................................................... 69
      (a) Your Reactions ......................................................... 69
      (b) Your Judgments & Biases ....................................... 71
   2. “Complexify” Your Understanding ................................ 74
   3. Assume Your Initial Conclusion is Inaccurate ................. 76
   4. Actively Search for Evidence that Supports the Opposite Conclusion .................................................. 76

Chapter 5  The Lawyer as Investigator: the Client Interview .............. 79

I. The “Human” Factors that Complicate Your Role as Investigator .............................................................. 79
   A. The Client’s Biases Create Inaccurate, One-Sided Stories ........................................................................ 80
   B. Fear of Judgment ................................................................................................................................. 81
   C. Fear of Bad News ............................................................................................................................... 82
   D. Emotional Trauma ............................................................................................................................... 83
   E. Failure to Identify Information as “Relevant” ....................................................................................... 83

II. The Phases of the Client Interview ........................................... 84
   A. Setting the Stage — Building Rapport and Trust ............ 84
      1. Genuine Regard for the Client ....................................... 84
      2. Active Listening Techniques ......................................... 85
         (a) Encouragers ............................................................. 85
         (b) Client Recognition and Validation ......................... 86
         (c) Normalizing Client Discomfort .............................. 86
         (d) Open Questions & Broad Invitations ...................... 87
   B. The Overview Phase .......................................................... 87
      1. Asking the Client for an Overview of the “Problem” .................................................................. 87
      2. Giving the Client an Overview of What to Expect ........ 89
   C. Eliciting Detailed Facts — The Time-Line Approach ........ 89
      1. Ask Open Questions ................................................... 89
      2. Follow-Up with Closed Questions .............................. 90
      3. Probe for the “Other” Side of the Story ....................... 91
a) Look for Inconsistencies and Illogical or One-Sided Explanations ........................................... 91
b) Ask Probing Questions about Each Inconsistent or Illogical Aspect of the Story ............................................................... 91
c) Ask about Potential Evidence Concerning Each Possible Defense ............................................. 92
d) Use a Combination of Open and Closed Questions to Explore Every Possible Hole in Your Client’s Story ............................................. 93

D. Eliciting Detailed Facts — Verifying Possible Legal Theories .......................................................... 94
E. Concluding the Interview .................................................................................................................. 96

Chapter 6 Evaluating Rules of Law .......................................................................................... 99
I. What are Rules of Law? .................................................................................................................. 99
A. Original Rules of Law .................................................................................................................. 99
B. The Structure of Original Rules of Law ..................................................................................... 100
   1. More about Elements, Guidelines and Factors ........................................................................ 101
      (a) Elements .......................................................................................................................... 101
      (b) Factors and Guidelines .................................................................................................. 101
   2. Some Commonly Used, Important Terms .............................................................................. 102
      (a) The Importance of “And” and “Or” .............................................................................. 102
      (b) The Importance of “Shall” and “May” ........................................................................ 103

II. Outlining Rules of Law .............................................................................................................. 104
A. Outlining Rules of Law with Elements ...................................................................................... 104
   1. Elements ............................................................................................................................. 104
   2. Result .................................................................................................................................... 107
B. Outlining Rules of Law with Factors ......................................................................................... 108

III. Exercises in Outlining Rules of Law ......................................................................................... 109
    Exercise 6-1 ............................................................................................................................. 110
    Exercise 6-2 ............................................................................................................................. 110
    Exercise 6-3 ............................................................................................................................. 110
    Exercise 6-4 ............................................................................................................................. 111

IV. Identifying Issues From Rules of Law ...................................................................................... 111
    Illustration: Residential Burglary Problem ............................................................................... 111

Chapter in Review .......................................................................................................................... 113

Chapter 7 Evaluating a Case ........................................................................................................... 115
I. How Courts Process Original Rules of Law .............................................................................. 115
A. Evolution of Rule Enactment and Refinement ........................................................................... 115
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>II.</td>
<td>Evaluating Cases in Your Role as A Lawyer</td>
<td>118</td>
</tr>
<tr>
<td></td>
<td>Illustration: Residential Burglary Problem</td>
<td></td>
</tr>
<tr>
<td></td>
<td>People v. Thomas</td>
<td>119</td>
</tr>
<tr>
<td>A.</td>
<td>Identify Useful Interpretations of the Original Rule of Law</td>
<td>123</td>
</tr>
<tr>
<td>B.</td>
<td>Identify How the Court Applied the Rule of Law to Facts</td>
<td>125</td>
</tr>
<tr>
<td>1.</td>
<td>Identify the Fact-Centered Holding</td>
<td>125</td>
</tr>
<tr>
<td>2.</td>
<td>Identify Relevant Case Facts and Factors</td>
<td>126</td>
</tr>
<tr>
<td>(a)</td>
<td>Identify the Legally Significant Facts</td>
<td>126</td>
</tr>
<tr>
<td>(b)</td>
<td>Identify the Underlying Factors that Support the Court’s Holding</td>
<td>126</td>
</tr>
<tr>
<td>3.</td>
<td>A Word about Elements, Standards, and Facts</td>
<td>128</td>
</tr>
<tr>
<td>(a)</td>
<td>Elements and Standards</td>
<td>129</td>
</tr>
<tr>
<td>(b)</td>
<td>Case Facts</td>
<td>130</td>
</tr>
<tr>
<td>C.</td>
<td>Formulate a Rule Statement</td>
<td>130</td>
</tr>
<tr>
<td>Chapter in Review</td>
<td></td>
<td>134</td>
</tr>
<tr>
<td>Chapter 8</td>
<td>Evaluating How an Earlier Case Affects Your Client</td>
<td>137</td>
</tr>
<tr>
<td>I.</td>
<td>Evaluating Cases with Analogous Facts</td>
<td>137</td>
</tr>
<tr>
<td>A.</td>
<td>Comparing Case Facts to the Client’s Facts</td>
<td>137</td>
</tr>
<tr>
<td></td>
<td>Illustration: Residential Burglary Problem</td>
<td></td>
</tr>
<tr>
<td></td>
<td>People v. Thomas and the Stripe Garage</td>
<td>138</td>
</tr>
<tr>
<td></td>
<td>Exercise 8-1: Social Host Liability</td>
<td>142</td>
</tr>
<tr>
<td>B.</td>
<td>When Case Facts and Client Facts Do Not Seem Analogous</td>
<td>143</td>
</tr>
<tr>
<td></td>
<td>Exercise 8-2: Finding an Analogy between Dissimilar Fact Patterns</td>
<td>143</td>
</tr>
<tr>
<td>II.</td>
<td>Evaluating Policy Statements</td>
<td>144</td>
</tr>
<tr>
<td></td>
<td>Illustration: Residential Burglary Problem</td>
<td></td>
</tr>
<tr>
<td></td>
<td>People v. Silva and the Stripe Garage</td>
<td>145</td>
</tr>
<tr>
<td>Chapter in Review</td>
<td></td>
<td>146</td>
</tr>
<tr>
<td>Chapter 9</td>
<td>The Office Memorandum: An Overview</td>
<td>149</td>
</tr>
<tr>
<td>I.</td>
<td>Introduction</td>
<td>149</td>
</tr>
<tr>
<td>II.</td>
<td>Information Conveyed in an Office Memo</td>
<td>150</td>
</tr>
<tr>
<td>III.</td>
<td>The Predictive Function of the Office Memo</td>
<td>151</td>
</tr>
<tr>
<td>IV.</td>
<td>The Structural Format of the Office Memo</td>
<td>152</td>
</tr>
<tr>
<td>Chapter 10</td>
<td>The Discussion Section: The Basic Template for Analysis</td>
<td>155</td>
</tr>
<tr>
<td>I.</td>
<td>Chapter in Focus</td>
<td>155</td>
</tr>
<tr>
<td>II.</td>
<td>The Deductive Writing Pattern</td>
<td>156</td>
</tr>
</tbody>
</table>
A. The Shift from Inductive to Deductive Analysis ................... 156
B. The Deductive Pattern in Legal Analysis............................... 158

III. ORIGINAL RULE OF LAW AS THE TEMPLATE ...................... 159
A. Outline of the Single-Issue Memo ......................................... 159
B. Template of the Multi-Issue Memo........................................ 161
C. Template of the Multi-Claim Memo ...................................... 163

Chapter 11 The Discussion Section: Drafting the Analysis
(Single Case) ......................................................................... 165

I. CHAPTER IN FOCUS ............................................................ 165
II. SINGLE CASE/SINGLE ISSUE MEMO ........................................ 166
A. Drafting the Rule Explanation .............................................. 166
1. A Typical Format for Discussing a Factually Analogous Case ............................................................. 166
(a) The Thesis Sentence .............................................. 166
(b) The Relevant Case Facts ........................................ 167
(c) The Court’s Holding & Rationale .................. 168
2. An Alternative Format for Discussing a Factually Analogous Case .............................................. 169
B. Rule Application .................................................................... 170
1. Outlining the Framework for Analysis ....................... 171
(a) Consider the Relative Weight of Each Factor ............................................................. 171
(b) Opposing Arguments ............................................. 171
   (i) Unfavorable Arguments that Are Related to Favorable Arguments ............... 171
   (ii) Unfavorable “Stand-Alone” Arguments ....................................................... 172
2. Filling in the Framework for Analysis ....................... 173
3. Drafting the Rule Application — Favorable Arguments ....................... 175
   (a) Introduce Each New Idea with a “Legally Significant” Thesis Sentence...................... 175
   (b) Prove Why the Premise in the Thesis Sentence is Valid ............................................. 176
4. Drafting the Rule Application — Unfavorable Arguments ....................... 178
   (a) Introduce the Argument with a Thesis Sentence....................................................... 178
   (b) Explain the Basis for the Unfavorable Premise....................................................... 178
   (c) State Your Premise, or Conclusion, about the Unfavorable Argument.......................... 179
   (d) Prove Why Your Favorable Premise is Valid ....................................................... 179
III. SINGLE CASE/MULTI-ISSUE MEMO ................................................ 180
Illustration: Residential Burglary Problem ............................ 181
 CHAPTER IN REVIEW .............................................................................. 183

Chapter 12 Evaluating Multiple Cases ................................................. 187
 I. CASE SYNTHESIS........................................................................ 187
Illustration: Residential Burglary Problem
Thomas, McIntyre and Silva Cases........................................ 189
1. People v. McIntyre Case ........................................................ 189
   (a) Court Opinion ........................................................ 189
   (b) Notes from McIntyre Case ...................................... 193
2. People v. Silva Case ............................................................. 194
   (a) Court Opinion ........................................................ 194
   (b) Notes from People v. Silva Case ........................... 196
3. The Process of Case Synthesis .............................................. 196
   (a) Synthesize the Courts' Language ........................... 197
   (b) Synthesize Factors ................................................ 198
   (c) Synthesize Your Individual Rule Statements ......... 199
 Exercise 12-1: Case Synthesis Exercise ........................... 200
 II. CASE RECONCILIATION ............................................................ 201
Exercise 12-2: Social Host Liability ..................................202
 CHAPTER IN REVIEW .............................................................................. 204

Chapter 13 The Discussion Section: Drafting the Analysis (Multiple Cases) ................................................. 207
 I. CHAPTER IN FOCUS ................................................................. 207
 II. MULTIPLE CASE MEMO .............................................................. 208
   A. Similarity to Single Case Memo ................................. 208
   B. Deductive Analytical Pattern Becomes Fluid ............. 208
      1. Option 1: Discuss Cases as a Group Before
         Moving to Rule Application .................................. 209
      2. Option 2: Insert Rule Application Following
         Each Case .................................................................. 211
      3. Hybrid of Options 1 & 2 ............................................ 212
      4. Option 3: Organizing the Entire Discussion
         by Factors ................................................................. 213
         Exercise 13-1: Formatting Option Exercise .............. 216
   CHAPTER IN REVIEW .............................................................................. 219

Chapter 14 The Discussion Section: Drafting Roadmap Paragraphs ................................................................. 221
 I. CHAPTER IN FOCUS ................................................................. 221
 II. DRAFTING THE OVERVIEW PARAGRAPH ................................................. 222
   A. The Overview Paragraph ........................................... 222
   B. When an Overview Paragraph is Unnecessary ............ 223
C. Structural Format of an Overview Paragraph .................. 223
   The Overview Paragraph Checklist .............................. 224
   Illustration: Residential Burglary Problem
   An Overview Paragraph............................................. 224

III. DRAFTING THE THESIS PARAGRAPH .............................. 225
   A. Content of the Thesis Paragraph ............................... 225
   B. When a Thesis Paragraph is Necessary...................... 226
   C. Organizational Format of a Thesis Paragraph ............... 227
      The Thesis Paragraph Checklist .............................. 227
      Illustration: Residential Burglary Problem
      A Thesis Paragraph............................................. 227
      Exercise 14-1: The Social Host Problem ................... 228

Chapter in Review.......................................................... 228

Chapter 15 Drafting an Office Memo: Completing the Draft........... 231

I. CHAPTER IN FOCUS ...................................................... 231

II. DRAFTING THE HEADING ............................................... 232

III. DRAFTING THE QUESTION PRESENTED ........................... 232
   A. Purpose.................................................................. 232
   B. The Question Presented in a One-Issue Memo ............... 233
      1. Content................................................................. 233
      2. Format .................................................................. 233
      3. Avoiding a Common Trap....................................... 234
      4. Personalizing the Question Presented ........................ 235
   C. The Question Presented in a Multi-Issue Memo ............... 235

IV. DRAFTING THE SHORT ANSWER ..................................... 236
   A. The Short Answer in a One-Issue Memo ....................... 236
   B. The Short Answer in a Multi-Issue Memo ...................... 238
      Exercises 15-1 through 15-4 ..................................... 239
      Exercise 15-1........................................................... 239
      Exercise 15-2........................................................... 240
      Exercise 15-3........................................................... 240
      Exercise 15-4........................................................... 241

V. DRAFTING THE STATEMENT OF FACTS ............................. 241
   A. Purpose................................................................. 241
   B. Content................................................................... 242
   C. Format.................................................................... 243
      1. Chronological Order.............................................. 243
      2. Grouping Facts per Issue or Factor .......................... 244
      3. Combining the Two Formatting Strategies .................. 245
   D. Deducing Inferences from Facts ................................. 245
      Exercise 15-5: Factual Inferences .............................. 247

Chapter in Review.......................................................... 249
Chapter 16 Revising and Finalizing the Memo: Content & Organizational Structure ........................................ 251

I. THE IMPORTANCE OF THE REVISION PROCESS .................................. 251

II. REVIEWING THE SUBSTANTIVE CONTENT ..................................... 253

III. EVALUATING THE ORGANIZATIONAL STRUCTURE ......................... 254

A. Macro-Organization of the Discussion ....................................... 254

B. The Micro-Format of Each Paragraph ........................................ 254

1. Thesis and Transition Sentences ............................................. 255
   (a) Thesis Sentences ............................................................... 255
      (i) Thesis Sentences Introducing a Case Discussion ............... 256
      (ii) Thesis Sentences Introducing Rule Application .................. 256
   (b) Transition Sentences ...................................................... 258

2. Remainder of Each Paragraph: Illustrating the Thesis .............. 258
   (a) Rule Explanation Paragraphs ............................................ 258
      Exercise 16-1:The Micro-Organization of a Paragraph ........... 259
      Exercise 16-2:Editing a Rule Explanation Paragraph ............... 260
   (b) Rule Application Paragraphs ............................................ 260
      Exercise 16-3:Editing a Rule Application Paragraph ............... 263

CHAPTER IN REVIEW.............................................................................. 264

Chapter 17 Revising & Finalizing the Memo: Sentence Structure & Word Choice ................................................... 267

I. SENTENCE STRUCTURE .................................................................. 267

A. Use “Micro” Road Maps Within Sentences to Transition Reader ..................................................................... 267

1. Writing Tips ............................................................................. 267
   (a) Repeat Part of the Prior Sentence’s Content .................. 267
   (b) Use Transitional Words and Phrases ............................ 268

2. Examples of Transitional Expressions .................................. 268
   Exercise 17-1:Using Internal Roadmaps ................................. 270

B. Use the Active Voice ................................................................. 271

   1. Example of Passive Voice that Hides the Actor ............... 271
   2. Example of How Passive Voice Requires More Words ........ 272

C. Keep Sentences Relatively Short .............................................. 272

   1. Make Dependent Clauses “Independent” ......................... 272
   2. Eliminate Superfluous Statements ................................... 273

D. Keep the Actor, Verb, and Object Together ............................ 275

   1. Example of Moving the Dependent Clause ....................... 275
2. Example of Breaking the Sentence
   Into Two Sentences .................................................. 275
E. Use Parallel Structure ................................................. 275
II. Clarity of Word Choice .................................................. 276
   A. Substitute Simple Words for Longer Words ............... 276
   B. Use Active Verbs, Not Nominalizations .................. 276
   C. Use Concrete, Specific Words Rather
      Than Vague, Abstract Language .............................. 277
D. Use the Proper Tense .................................................. 278
   1. Client’s Factual Situation ....................................... 278
   2. Discussion of Precedent Case ................................. 279
      (a) Description of Actual Case
          “Events” — Past Tense ........................................ 279
      (b) Description of Rule Statement
          — Present Tense ............................................... 279
E. Strike the Appropriate Tone of Formality ......................... 280
   1. Eliminate Colloquialisms and Jargon ...................... 280
   2. Refer to Adults by Last Names ............................... 280
   3. Avoid Using the First Person ................................. 280
F. Avoid Sexist Language .................................................. 281
   1. Avoid the Generic Use of the Pronoun “He” ............... 281
      (a) Use the Plural Form ........................................ 281
      (b) Substitute Another Pronoun ................................ 282
      (c) Omit Pronouns Altogether ................................. 282
      (d) Substitute Articles or Nouns for the Pronoun ......... 283
      (e) Repeat the Original Name ................................ 283
      (f) Refer Generically to Each Gender .................... 283
   2. Avoid Generic Use of Gender-Specific Nouns .............. 284
III. Effective use of Quotations ............................................ 284
   A. Quotations from Cases ............................................. 285
      1. Example of Effective Case Quotations ................... 285
      2. Example of Ineffective Case Quotations ................. 285
   B. Quotations from Statutes ........................................... 286
      1. Example of Selective Quotation
         of Statutory Language ....................................... 286
      2. Example of Full Quotation of Statutory Language ..... 286
Chapter 18 Selecting Cases for the Memo ................................. 289
I. Assessing the Value of Each Case ................................... 289
   A. Cases with Useful Definitions or Interpretations
      of the Law .......................................................... 290
   B. Cases that Describe the Underlying Purpose
      or Policy of the Law ............................................. 291
C. Cases with Analogous Facts .................................................. 292
   1. Consider the Standard or Factors that Each Case Emphasized .................................................. 292
   2. Consider Which Cases Serve a More Useful Predictive Function ............................................. 294
      (A) General Rule of Thumb ......................................... 294
      (B) When a Case with Less Desirable Facts Produces a Favorable Result ......................... 295
         Exercise 18-1................................................................. 295
   3. Consider the Rationale in Each Case ............................. 297
D. Consider the Level of Court ................................................... 297
E. Consider the Date of Decision ............................................... 297
   Exercise 18-2.................................................................. 298

CHAPTER IN REVIEW ...................................................................... 299

Chapter 19 Drafting Short Memos: The Thin-Sliced Analysis......... 301

I. Pre-Drafting Process ................................................................. 302
   Illustration: Residential Burglary Problem .......................... 303
   Step 1: Identify the Rule of Law & its Elements ..................... 303
   Step 2: Select the Cases to Include in Your Short Memo ......... 304
   Step 3: Jot Down the Holding, Rationale & Key Facts of Each Case .................................................. 304
   Step 4: Formulate Rule Statements for Each “Primary Emphasis” Case ............................................. 306

II. Drafting Process ................................................................. 307
   Step 1: Introductory “RoadMap” Paragraph(s) ....................... 307
   Steps 2–4: The Discussion: Rule Explanation, Rule Application & Conclusion .............................. 307
   Illustration: Residential Burglary Problem .......................... 309
      1. Roadmap Paragraph .................................................. 309
      2. Rule Explanation: Discuss the Important Cases ............... 309
      3. Rule Application: Apply the Law to Your Factual Situation ............................................. 311
      4. Rule Application: Discuss Important Opposing Arguments ............................................ 313
      5. Repeat Your Conclusion ............................................. 316
   Exercise 19:1 The Kidnapping Problem ............................... 317

Chapter 20 Professional E-Mail Communications ................................ 319

I. Professionalism Concerns ......................................................... 319
   A. Striking the Appropriate Tone ....................................... 319
   B. Emotionally Sensitive Conversations ................................ 320
      1. When E-Mail is Not the Appropriate Medium ........................ 320
      2. Problems Associated with “Flaming” ................................ 321
         A Cautionary Tale ......................................................... 322
C. Balancing Speed with Professionalism Concerns .......................... 325
D. Other Professionalism Issues: Courtesy & Respect .................. 326
  1. Greetings & Endings ................................................................ 326
  2. The Dilemma of First Names vs. Surnames ............................ 328
  3. Acknowledgments .................................................................. 329

II. SPECIAL ISSUES OF CONFIDENTIALITY ........................................ 329

Chapter 21 Drafting Client Letters ........................................................ 333
I. TYPES OF CLIENT LETTERS ........................................................... 333
II. CLIENT ADVISORY LETTERS .......................................................... 334
   A. Introductory Paragraph ............................................................ 334
      1. Setting the Tone ................................................................... 335
      2. Stating the Issue and Answering the Question ...................... 336
   B. Factual Statement ................................................................... 337
   C. Discussion of the Law ............................................................. 339
      1. Roadmap Paragraph(s) ....................................................... 340
         (a) RoadMap Paragraph(s) in an Extended Legal Discussion .. 340
         (b) RoadMap Paragraph(s) in an Abbreviated Legal Discussion 342
      2. Discuss the Relevant Law: Rule Explanation ....................... 342
      3. Apply the Relevant Law to the Client’s Facts: Rule Application 343
         (a) Rule Application: Evaluating Favorable & Unfavorable Law 344
         (b) Rule Application: Brief “Rule Explanation” Woven In ....... 345
      4. Discussion of the Available Options ................................. 346
      5. Conclusion and Recommendation ...................................... 349

Chapter 22 The Lawyer as Advisor/ Collaborator: Counseling the Client ........................................ 351
I. UNDERSTANDING YOUR ROLE ...................................................... 351
   Illustration of the Respective Roles:
   Business Setting ........................................................................ 353
   Illustration of the Respective Roles:
   Litigation Setting ...................................................................... 354
II. THE CLIENT COUNSELING MEETING .......................................... 355
   A. Preparation for the Meeting ................................................. 355
   B. The Overview Phase ............................................................ 356
      1. Confirm the Client’s Goals & Concerns ............................... 356
      2. Give the Client an Overview of the Meeting ....................... 357
      3. Summarize the Important Aspects of the Law .................... 357
C. Evaluate the Options Phase ................................................. 358
   1. Provide a Roadmap of the Options ................................. 358
   2. Discuss the Advantages & Disadvantages
      of Each Option ................................................................ 359
D. The Decision Phase ............................................................ 360

Chapter 23 Persuasive Writing Style Strategies .......................... 363
I. Persuade Through Word Choice ............................................ 363
   A. Verbs and Adverbs ......................................................... 364
   B. Nouns and Adjectives .................................................... 365
   C. Use Verbs and Nouns with Subtlety ............................... 366
      Exercise 23-1 ................................................................. 366
II. Persuade Through Active/Passive Voice and
    Action Verbs .................................................................. 366
    Exercise 23-2 ................................................................. 367
III. Persuade by Using Conclusive, Rather than
    “Opinion” Statements ...................................................... 367
    Exercise 23-3 ................................................................. 368
IV. Persuade by Using Affirmative, Rather than
    Defensive Statements ...................................................... 368
    Exercise 23-4 ................................................................. 370
V. Persuade by Using Juxtaposition and Parallelism ................. 371
   A. To Attack Opponent’s Credibility or Legal Theory .......... 371
   B. To Emphasize Similarities to Precedent Cases ............... 371
VI. Persuade by De-Emphasizing Negative Information .......... 373
   A. Make Negative Information Implicit ............................. 373
   B. “Bury” Negative Information ........................................ 373
      Exercise 23-5 ................................................................. 374
      Exercise 23-6 ................................................................. 375
Chapter in Review .................................................................. 376

Chapter 24 Fact-Centered Arguments: Pre-Drafting Strategies .... 379
I. The Case Selection Process .................................................. 379
   A. Mandatory or Persuasive Precedent ............................... 379
   B. Holding and Analogous Facts ....................................... 380
      1. Favorable Result Cases ............................................. 380
      2. Unfavorable Result Cases ........................................ 381
         (a) Consider the Case Facts ....................................... 381
         (b) Consider the Court’s Rationale ............................ 381
         (c) Consider Ethical and Pragmatic Factors ............... 382
      3. Case Holdings and Facts at a Glance ......................... 383
   C. Rationale ....................................................................... 384
D. Date and Level of Court ......................................................... 384  
   Illustration: Spousal Wiretap Problem ................................... 384  
   1. Cases that Are Not Factually Analogous ....................... 385  
   2. Cases that Are Factually Analogous .............................. 386  
      (a) The Williams Case ............................................. 386  
      (b) The Griggs-Ryan Case .................................... 387  
      (c) The Campiti Case ....................................... 387  

II. Formulating Favorable Interpretations of the Law ........ 389  
   A. Identify Favorable “Back-Drop” Statements ....................... 389  
      Illustration: Spousal Wiretap Problem ................................... 389  
   B. Formulate Favorable Rule Statements ................................ 390  
      1. Cases with Clearly Expressed Standards ....................... 391  
         (a) Plaintiff’s Favorable Slant ................................ 392  
         (b) Defendant’s Favorable Slant .............................. 393  
      2. Cases with Ambiguous Standards ............................. 393  
         (a) The Griggs-Ryan Case .................................... 394  
            (i) The Plaintiff’s Favorable Slant ....................... 394  
            (ii) The Defendant’s Favorable Slant .................... 395  
         (b) The Campiti Case ....................................... 395  
            (i) Plaintiff’s Favorable Rule Statement .............. 396  
            (ii) Defendant’s Favorable Rule Statement ............ 396  

Chapter in Review ................................................................. 397  

Chapter 25  Fact-Centered Arguments: Drafting the Argument .... 401  
I. Creating a Template of the Argument ........................................ 401  
   A. Determining the Number of Issues .................................. 401  
      1. Evaluate the Original Rule of Law ............................ 401  
         Illustration: Spousal Wiretap Problem ............................ 401  
      2. Formulate a Synthesized Rule Statement(s) .................. 402  
      3. Identify the Separate Components of Each  
         Synthesized Rule Statement .................................. 404  
            (a) Rule Statement that Suggests  
               Separate Issues ......................................... 404  
            (b) Rule Statement that Suggests Single Issue .......... 405  
   B. The Persuasive Paradigm ................................................. 406  
   C. Filling in the Template of Your Argument ....................... 407  
      1. Clarify the Ultimate Conclusion .............................. 408  
      2. Consider the Cases that Will Explain and  
         Illustrate Each Favorable Rule Statement .................. 408  
         Illustration: Spousal Wiretap Problem .......................... 408  
      3. Consider the Interplay Between the  
         “Rule Explanation” and “Rule Application”  
         Paragraphs .................................................... 410  
      4. Consider the Organization of the “Rule  
         Application” Paragraphs ...................................... 412  
         Illustration: Spousal Wiretap Problem .......................... 412  
         Exercise 25-1 .................................................... 413
II. **DRAFTING THE ARGUMENT** ............................................................ 415
   A. **Roadmap Paragraphs** .............................................................. 415
      1. **Introduction Section** .......................................................... 415
      2. **Overview Paragraph** ......................................................... 416
      3. **Thesis Paragraph** .............................................................. 417
   B. **Rule Explanation Paragraphs** ................................................. 418
      1. Begin with a Favorable Thesis Sentence ............................... 418
         (a) Plaintiff’s Favorable Thesis Sentence .............................. 419
         (b) Defendant’s Favorable Thesis Sentence ......................... 419
      2. Highlight Favorable Facts & De-Emphasize Unfavorable Facts .......................................................... 420
         (a) Plaintiff’s Description of the Facts
         in *Griggs-Ryan* .................................................................. 420
         (b) Defendant’s Description of the Facts
         in *Griggs-Ryan* .................................................................. 420
      3. Persuasively Frame the Holding .......................................... 421
         (a) Plaintiff’s Statement of the *Griggs-Ryan* Holding ........... 421
         (b) Defendant’s Statement of the *Griggs-Ryan* Holding .......... 422
      4. Highlight Favorable Rationale .............................................. 422
         (a) Plaintiff’s Portrayal of the *Griggs-Ryan* Rationale .......... 422
         (b) Defendant’s Portrayal of the *Griggs-Ryan* Rationale ........ 423
         *Exercise 25-2* .................................................................. 424
   C. **Favorable Rule Application** ................................................... 424
      1. Begin with a Favorable Thesis Sentence ............................... 424
      2. Prove Why the Factual Premise is Sound ............................. 424
         (a) Plaintiff’s Favorable “Rule Application” ......................... 424
         (b) Defendant’s Favorable “Rule Application” ...................... 425
         *Exercise 25-3* .................................................................. 426

**CHAPTER IN REVIEW** ........................................................................... 427

**Chapter 26**  **Law-Centered Arguments: Working with Mandatory Case Precedent** ............................................................ 431
I. **INTRODUCTION** ............................................................................. 431
   A. Options When Evaluating Each Individual Case ...................... 432
      1. Arguing that a Prior Mandatory Case Has Adopted Your Favorable Rule Interpretation ...................................................... 433
         *Illustration: Fifth Amendment Problem* ............................ 433
      2. Arguing that a Prior Mandatory Case Failed to Resolve the Legal Issue at All .............................................................. 434
   B. Constructing an Argument Strategy for a Group of Cases ........ 436
      1. Each Case Within the Group (or the Highest Level Court) Has Adopted Your Favorable Interpretation ...................................................... 437
2. Some Cases Adopt Your Favorable Interpretation & Remaining Cases Fail to Resolve...439
3. No Case Within the Collective Group Has Resolved the Issue...440
4. The Cases Conflict...441

II. MOTIVATING ARGUMENTS...442
A. Motivate the Judge to Adopt Your Interpretation...442
   1. Argue the Favorable Implications of Your Interpretation...442
      (a) Argue Policy...442
      (b) Statutory Arguments...442
   2. Incorporating Motivating Arguments into the Argument Structure...443
      (a) Weave the Motivating Arguments into the Case Justification Argument...443
      (b) Argue Case Justification and Motivating Arguments Separately...445
      (c) The Hybrid Option...446
B. Motivate the Judge to Reject the Opponent’s Case Law...446

CHAPTER IN REVIEW...447

Chapter 27 Law-Centered Arguments: Working With Policy...449
I. FORMULATING FAVORABLE INTERPRETATIONS OF THE LAW...449
   Illustration: Criminal Wiretap Problem...451
   A. Government’s Lawyer...451
   B. Defendant’s Lawyer...452

II. CONSTRUCTING PROOF...452
   A. Social Policy Arguments...453
   B. Equity Arguments...454
   C. Prudential Concerns...454

CHAPTER IN REVIEW...455

Chapter 28 Law-Centered Arguments: Working with Statutes...457
I. PRELIMINARY ASSESSMENT OF THE STATUTE...457

II. CONSTRUCTING PROOF...458
   A. Language of the Statute...459
      Illustration: Title VII Problem...459
      1. Example of Argument Based on Statutory Language — Plaintiff...460
      2. Example of Argument Based on Statutory Language — Defendant...461
B. The Statutory Scheme as a Whole ......................................... 462
   Example of Argument Based on Statutory Scheme .......................... 463
C. Legislative Purpose ................................................................. 463
   Example of Argument Based on Legislative History ........................ 464
D. Canons of Construction .......................................................... 466
   1. Criminal Statutes Narrowly Construed .............................. 466
   2. Remedial Statutes Broadly Construed ............................... 466
   3. Ejusdem Generis ............................................................ 467
   4. Expressio Unius ............................................................. 467

Chapter in Review .............................................................................. 467

Chapter 29 Drafting Law-Centered Arguments Based on Statutes & Policy ............................................................. 471

I. Your Favorable Interpretations of the Law as the Focal Point .................. 471

II. Assess the Persuasive Appeal of Your Separate Arguments ................................. 472
   A. When a Statute is the Source of Law ..................................... 472
   B. Weaving in Persuasive Precedent ........................................... 473
      1. Generally, Use Persuasive Precedent Merely to Support Your Arguments ........... 473
      2. When Persuasive Precedent Can be its Own Argument ....................... 474
      3. Sometimes, Emphasize the Identity of the Court Itself ..................... 475

III. Outlining Your Argument .................................................................. 475
   A. Create a Skeleton Outline of Your Argument ........................ 476
   B. Fill in the Broad Supporting Points that Prove Each of the Major Premises .............. 477
   C. Fill in the “Proof” for Each Broad Supporting Point ..................... 478
      1. Template of the Argument ............................................. 478
      2. Illustration of Detailed Outline for the Title VII Argument ................ 479
         Exercise 29-1 .......................................................... 480

IV. Roadmap Paragraphs.................................................................. 481
   A. The Introduction Section — Briefs Before Courts ............ 481
   B. The Overview Paragraph ................................................... 481
   C. The Thesis Paragraph .......................................................... 481

Chapter in Review .............................................................................. 483
Chapter 30  Addressing Unfavorable Law and Arguments .......... 485
I. DIRECT REBUTTAL .............................................................. 486
   A. Direct Rebuttal of the Other Side’s
      Potential Arguments .................................................. 486
   B. Direct Rebuttal of an Adverse Case Itself ............ 487
      1. Attack the Unfavorable Court’s Reasoning .......... 487
      2. Argue that the Unfavorable Case is No Longer “Good Law” ................. 489
   C. Drafting Strategy .......................................................... 491
      1. Affirm Client’s Position First ......................... 491
      2. A Note about Reply Briefs ................................. 492
II. ANTICIPATORY REBUTTAL ........................................ 492
   Illustration: Spousal Wiretap Problem .................. 493
   A. Direct Rebuttal .......................................................... 496
   B. Anticipatory Rebuttal ................................................. 497
      Exercise 30-1 ............................................................. 499
Chapter in Review ................................................................. 500

Chapter 31  Trial & Appellate Court Briefs ......................... 503
I. OVERVIEW OF A BRIEF .................................................. 503
II. STRUCTURE OF A TRIAL COURT BRIEF ...................... 504
   A. Introduction .............................................................. 504
   B. Statement of Facts ..................................................... 504
   C. Argument ................................................................. 504
III. STRUCTURE OF AN APPELLATE COURT BRIEF .......... 505
   A. Cover Page ............................................................... 505
   B. Table of Contents ...................................................... 505
   C. Table of Authorities .................................................. 506
   D. Statement of Jurisdiction ........................................ 506
   E. Statement of the Issues ............................................. 507
   F. Constitutional and Statutory Provisions .................... 507
   G. Preliminary Statement ............................................... 507
   H. Statement of the Case ................................................. 508
   I. Summary of the Argument ....................................... 508
   J. The Argument ........................................................ 508
   K. Conclusion ............................................................... 508

Chapter 32  Trial & Appellate Court Briefs: The Factual
         Statement .................................................................. 511
I. PRE-DRAFTING CONSIDERATIONS ............................... 511
   A. Working with the Record ......................................... 511
   B. Ethical Considerations ............................................. 512
Table of Contents

1. Legally Significant Facts ................................................ 512
2. Factual Inferences .......................................................... 512

II. DRAFTING FACTUAL STATEMENTS ............................................. 513
   A. Create an Appealing Story ..................................................... 514
   B. Emphasize Favorable Facts that Advance the Theory of the Case ..................................................... 516
      1. Pre-Drafting Strategy ..................................................... 516
      2. Drafting Strategy: Highlight Favorable Facts ................ 517
   C. De-Emphasize Unfavorable Facts .......................................... 520
   D. Organize the Facts to Present a Compelling Story ............ 521
      1. Emphasize Favorable Facts ............................................ 521
         (A) Front-load Favorable Facts .................................... 521
         (B) End with Favorable Facts ....................................... 522
      2. Providing Context within the Story:
         Chronological Order ...................................................... 522
      3. Issue Grouping ............................................................... 523
         Exercise 32-1.................................................................. 523

Chapter in Review .............................................................................. 524

Chapter 33 Trial & Appellate Court Briefs: Drafting Roadmaps of the Argument ................................................ 527
I. PERSUASIVE POINT-HEADINGS ................................................. 527
   Exercise 33-1.................................................................. 531
II. SUMMARY OF ARGUMENT .......................................................... 531
   A. Importance of the Summary of Argument ...................... 531
      Exercise 33-2.................................................................. 535

Chapter 34 Appellate Court Briefs: Scope of Review & Statement of the Issues ................................................ 537
I. THE STANDARD OF REVIEW ON APPEAL ............................................. 537
   A. Questions of Law .............................................................. 537
   B. Questions of Facts ............................................................. 538
      1. Factual Questions Resolved by a Jury ......................... 538
      2. Factual Questions Resolved by a Trial Court .......... 538
   C. Mixed Questions of Fact and Law:
      Ultimate Facts ........................................................................ 539
   D. Questions Within the Trial Court’s Discretion .......... 539
II. STATEMENT OF THE ISSUES .......................................................... 540
   A. Law-Centered Issues .......................................................... 541
   B. Fact-Centered Issues .......................................................... 542
      Exercise 34-1.................................................................. 543
      Exercise 34-2.................................................................. 543
Chapter 35  Oral Arguments ................................................................. 545
I. Preparation for the Oral Argument.............................................. 545
   A. Preparing an Outline of the Argument................................... 545
      1. The Detailed Outline.................................................. 546
      2. The Condensed Outline.............................................. 546
      3. Preparing for “Hot” and “Cold” Courts......................... 547
   B. Outlining Your Responses to Questions .............................. 548
      1. Positional Questions.................................................. 548
      2. Questions that Probe the Weaknesses in Your Theory ..... 549
   C. Preparing a Notebook for the Argument............................ 551
   D. Rehearsing Your Argument............................................... 551
   E. Final Details ...................................................................... 552
      1. Updating the Law....................................................... 552
      2. Observing an Argument............................................. 552
II. The Oral Argument .................................................................. 552
   A. Setting of the Argument.................................................... 552
   B. The Structure of the Argument.......................................... 553
      1. Introduction............................................................. 553
      2. Roadmap of the Argument.......................................... 554
      3. Factual Statement...................................................... 555
      4. Presentation of the Argument..................................... 556
      5. Conclusion.................................................................. 556
   C. Responding to Questions................................................... 557
   D. Appearance and Delivery.................................................. 558
      1. Dress ....................................................................... 558
      2. Maintain Eye Contact................................................ 558
      3. Body Language......................................................... 558
      4. Voice........................................................................ 559
      5. Demeanor.................................................................. 559
      6. References.................................................................. 559

Chapter In Review........................................................................... 560

Chapter 36  Demand & Settlement Letters ........................................... 563
I. Achieving the Proper Tone....................................................... 563
II. Format and Content................................................................. 565
   A. Introductory Paragraphs................................................... 566
   B. Factual Support.............................................................. 567
   C. Legal Support — Explain the Law and Then Apply it to the Client Facts ........................................ 568
   D. Conclusion ...................................................................... 569
      Exercise 36-1.................................................................. 570
      Exercise 36-2.................................................................. 573
<table>
<thead>
<tr>
<th>Appendix</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appendix A</td>
<td>Sample Memos:</td>
<td>575</td>
</tr>
<tr>
<td>Appendix B</td>
<td>Sample Client Letters:</td>
<td>605</td>
</tr>
<tr>
<td>Appendix C</td>
<td>Sample Briefs (Fact-Centered):</td>
<td>613</td>
</tr>
<tr>
<td>Appendix D</td>
<td>Sample Briefs (Law-Centered):</td>
<td>631</td>
</tr>
<tr>
<td>Appendix E</td>
<td>Sample Appellate Court Brief</td>
<td>649</td>
</tr>
<tr>
<td>Appendix F</td>
<td>Sample Settlement Letters</td>
<td>665</td>
</tr>
<tr>
<td>Index</td>
<td></td>
<td>1-1</td>
</tr>
</tbody>
</table>