Thinking and Writing About Law

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Introduction & Acknowledgments

This book is about how to think well and write well about law. Because it is written by someone who is both a law professor and a judge, it hopefully blends academic expertise with judicial practicality. Throughout the book, I've done my best to be frank about what matters and doesn't matter when it comes to legal reasoning, legal writing, and influencing judicial outcomes. Hopefully stripping away some of the mystery surrounding these topics will foster better understanding.

The first part of the book focuses on legal reasoning. Chapters 1 and 2 explain how the law works and how to engage in legal analysis in our common-law system. Chapter 3 introduces a technique that provides a visual way to think about the law and the process of legal analysis. In the spirit of candor, I'll admit that Chapter 3 isn't going to be for everyone. Some find the visualization incredibly helpful; others find it mildly bewildering. Give it a try. Just know that the technique described in the third chapter does no more than create a framework for visualizing the principles explained in the first two chapters. I am glad if Chapter 3's visualization technique works for you, but you haven't missed any information if it doesn't.

The second part of the book focuses on communicating a legal analysis. Chapter 4 sets out general precepts of legal communication that will apply no matter which genre of legal document you are writing. It explains, for example, how to organize a written legal analysis. Chapter 5 has guidance that is specific to documents that are primarily meant to be informational. Chapter 6 has guidance that is specific to documents that are meant to be persuasive.

The way you choose to use this book depends on you. You own it, and you can do what you like with it. However, allow me to impose on you with some advice. After all, I wrote it, so I like to think that I have some insight about it.

I expect that the primary consumers of this book will be law students, and likely first-year law students. That's who I primarily had in mind when I was writing it. This book is not meant to be a stand-alone textbook for an introductory legal analysis and writing course, but I do think it can be used as a helpful complement. After all, some legal writing textbooks are quite good, some are so-so, and some aren't very good at all. The same is true of legal writing professors. And, more importantly, what is good and not good is ultimately subjective. What is good for the goose may be very bad for the gander. Your peers may be falling over themselves with rave reviews of your professor and your textbook, but, for whatever reason, you just don't seem to connect in the same way.

If you are a law student, think of this book as a complement to whatever other resources you already possess. Those resources likely comprise at least a legal writing textbook and a legal writing professor. Maybe this book will speak to you in a way that is easier for you to follow because it aligns more closely with the way that you think or learn. If so, I'm pleased. That doesn't mean that this book is better than your other resources, it just means that it's better for you. Either way, this book's relatively petite size hopefully makes it an attractive alternative. For law students, I recommend the book from beginning to end. It is important to ground yourself in a solid understanding of the legal system (Part One) before attempting to communicate about it in a meaningful way (Part Two).

Other consumers may be pre-law students and foreign-trained attorneys who are enrolling in LLM programs in the United States. These audiences may find it more helpful to focus on Part One—understanding our common-law system—and not so much on Part Two—how to write about law. Other consumers may be attorneys, judges, or law professors. These audiences may think that the first couple chapters are too elementary and want to skip ahead to Part Two. I urge you to resist that impulse. After all, most difficulties with communicating about the law stem from difficulties with understanding the law. Reading about how to organize a written analysis isn't going to help you very much if you possess fundamental misconceptions about the way the law works. After all, how much do you really remember about the early days of your law school education? Maybe, just maybe, you would benefit from reviewing the material in Part One, or at least indulge me by giving Chapter 3 a try before you jump headlong into Part Two.

* * *

Finally, a few acknowledgments. My views have been shaped by my own experiences, and I'm grateful to those who contributed to those experiences. That includes the many legal writing professors I've encountered from my own time as a law student to my current academic career. That also includes the judges I worked for as a law clerk and staff attorney, as well as my fellow justices who are now my colleagues on the bench.

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