

## Becoming a Legal Writer



# Becoming a Legal Writer

A Workbook with Explanations  
to Develop Objective Legal Analysis  
and Writing Skills

## Second Edition

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**T**o my husband (Paul Skip Laisure) who uses his legal skills every day to make a difference in this world and to my children (Andrea and Corey) and nieces and nephews, who embody the unlimited potential in today's youthful generation.

—ROBIN BOYLE-LAISURE

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—CHRISTINE COUGHLIN

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—SANDY PATRICK



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## Online Materials

Additional content for *Becoming a Legal Writer* (Second Edition) is available on Carolina Academic Press's *Core Knowledge for Lawyers* (CKL) website.

*Core Knowledge for Lawyers* is an online teaching and testing platform that hosts practice questions and additional content for both instructors and students.

To learn more, please visit:

[coreknowledgeforlawyers.com](http://coreknowledgeforlawyers.com)

Instructors may request complimentary access through the “Faculty & Instructors” link.





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# Introduction

- I. Lawyers Write
- II. Developing as a Legal Writer
- III. Learning Preferences
- IV. Using This Book

Welcome to *Becoming a Legal Writer: A Workbook with Explanations to Develop Objective Legal Analysis and Writing Skills*. This workbook will help you develop two essential lawyering skills: objective analysis and writing.

All lawyers are writers. As an attorney, you will undoubtedly devote a substantial portion of your time to drafting office memoranda, letters, pleadings, motions, briefs, contracts, and wills, as well as client letters, affidavits, and so forth. In a litigation practice, legal writing falls into two main categories: objective analysis and persuasive analysis.

All legal writing begins with an analysis of the law. Analyzing the law includes synthesizing the law from a variety of sources to determine the standards that currently apply. The analysis continues as you assess how that law will apply to a client's problem.

After analyzing the law, you will need to communicate your analysis to someone else—a client, a colleague, or a court. Your analysis may be communicated in a memo, a letter, an email, or a brief to a court.

This workbook will help you develop the skills you need to analyze the law and communicate that analysis. This workbook will help you develop those skills by providing you with practice—lots of practice.

However, before jumping into that practice, some background is in order. This introduction first describes, in Part I, the different kinds of writing that lawyers do. Then, Part II explains what it takes to become an excellent legal writer—namely, lots of practice, making mistakes, receiving feedback, and learning from the mistakes and feedback. Because learning can proceed more smoothly if you understand how you learn best, Part III explains different learning styles and how you can assess your own learning style. At the end of this chapter, Part IV provides advice about how to use this workbook.

## I. Lawyers Write

Simply stated, legal writing encompasses a broad spectrum of legal analysis, objective legal writing, and persuasive legal writing. Lawyers engage in objective legal writing by providing advice to clients about the likely outcome of a legal dispute. Objective legal writing is also called predictive writing because the goal of an objective analysis is to predict how a court would most likely rule if presented with the client's case. Lawyers also engage in persuasive legal writing. When writing persuasively, lawyers advocate on behalf of their client in a court of law.

The fundamental skills of legal analysis and writing remain the same whether writing to predict an outcome or to persuade a court of the appropriate outcome. In both cases, you must first understand the law. Then, your explanation of the law must be organized, accurate, and clear; it should be free from grammatical errors; and it must be cited appropriately. This workbook is intended to introduce you to all of these qualities of legal writing. But the learning does not end within a few months, nor at graduation. For the remaining years of your legal career, you will need to keep within your reach a dictionary and books on grammar, citation, and style.

## II. Developing as a Legal Writer

An essential component of becoming a strong legal writer is to practice that skill and to receive feedback about your writing. The more you write and receive feedback, the more your writing will improve.

Do not feel defeated with critique. All lawyers—including your professors—received plenty of critique, and they will impart critique upon your work. Critique is part of the learning process of legal analysis and writing. To succeed in law school, read your professors' comments on legal writing assignments carefully and take advantage of them. Learn from them and improve your skills. If you are lucky, your work will be continually critiqued—not just in law school but also as you practice. The savvy lawyer learns from the feedback. One day, after your writing and analysis has become sharp, accurate, and organized, the roles will change, and you will be in a position to help other new lawyers who will be just starting off as you are now.

Along the way, you should develop self-confidence in your writing—an aspect of writing that is difficult to teach but that you should nonetheless hope to acquire. Confidence will develop as you learn to make strategic writing decisions. As a first-year law student, you may be surprised how many factors play into a draft and how many decisions you will need to make—such as, “Is the law stated accurately? Have I drawn a conclusion? Have I applied the law to the facts with sufficient clarity? Do I have thesis sentences? Should this broader statement be placed in spot ‘x’ or ‘y’?” One of your goals should be to develop confidence to make macro- and micro-decisions about how you communicate your analysis.

Finally, keep reading. Read for pleasure, and read books that are well written. In doing so, you'll develop a fondness of words as well as an intuitive sense of good writing.

## III. Learning Preferences

Up until 25 years ago, the prevailing view was that all law students learned by listening, and thus, a typical law school classroom had 100% auditory learners. This faulty premise helped to support the predominance of Socratic-method questioning in a traditional amphitheater-styled classroom. That view was shattered with the first empirical study done in a law school, which demonstrated that “law students were diverse in their learn-

ing styles.”<sup>1</sup> The Dunn and Dunn Learning Style Model was used in that study, but there are other models as well. To understand “learning styles,” it is necessary to examine how individuals process and incorporate new and difficult information into their study habits. “Styles” indicate preferences for optimal environment and strategies for learning.

During your experience in law school, it would be helpful for you to pay attention to how you best learn. Although recently skepticism has emerged about the significance learning styles should be given, understanding the strategies through which you best learn and retain information remains a vital part of learning. The science is clear about one thing: repeated practice and engagement with new material leads to more durable, long-term learning.<sup>2</sup> This workbook is intended to give you opportunities for that practice and engagement.

Exploring how you learn and using instructional materials in creative ways would be helpful in gaining the skills of legal writing proficiency. Here are some preliminary questions you may want to ask yourself, based upon five learning-style categories adapted from the Dunn and Dunn Learning Styles Model, but other models also use a variety of categories:

#### **Physiological Factors:**

- Do you learn by listening (auditory)?
- Do you learn by what you see in text (visual) or in a graph/picture mode (visual picture)?
- Do you prefer to work with your hands, as in turning flash cards (tactual)?
- Do you prefer to learn by doing (kinesthetic)?

#### **Psychological Factors:**

- Do you prefer to learn step by step (analytic learners) or through the “big picture” (global learners)?
- Do you find yourself blurting out answers (impulsive) or needing time to think through an answer (reflective learner)?

#### **Emotional Factors:**

- Are you motivated by a desire to succeed that is fueled by your own ambitions or from an external source?
- Are you driven to finish a task or can you leave something unfinished (persistence)?
- Do you follow rules or avoid conformity (responsibility and conformity)?
- Do you feel a need for structure imposed from the outside or do you supply your own way of doing things?

#### **Environmental Factors:**

- Do you require silence when studying new and difficult information, or do you prefer a bit of a hum of noise or music?
- Do you need bright light when studying or dim lighting?
- Does the temperature of the room affect your ability to concentrate?
- When reading something challenging, can you absorb the material while you are seated in a soft beanbag-type chair, or do you need a traditional chair with back support?

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1. Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 Alb. L. Rev. 213, 216 (1998).

2. Jennifer Cooper, *Smarter Law Learning: Using Cognitive Science to Maximize Law Learning*, 44 Cap. U. L. Rev. 551, 560–61 (2016).

**Sociological Factors:**

- Do you learn best while working alone, with one other in a pair, or in small groups?
- Do you prefer to have an expert in the field overseeing your work?
- Do you prefer to learn in a variety of ways, or do you prefer to do the same work in consistent patterns?

As you reflect on your answers to these questions, think about how to create a strong learning experience that incorporates your preferences. Try to experiment on your own by transforming your reading materials into products that you can better absorb. For instance, auditory learners learn by listening; however, they will remember only 75% or less of what they hear in a 40- to 50-minute lecture. Thus, even for students who show a strong preference for auditory learning, they still should be relying upon secondary and tertiary strengths to solidify their note-taking in class. For others, they may be learning by listening but only if they are interested in the topic. And for some, learning by listening may not be effective after a short period of time in the lecture.

Visual learners may have a strong preference for visual pictures, meaning they learn by putting concepts into graphs and pictures, rather than course outlines that are heavy with text and are linear in format. Such learners create charts, graphs, and diagrams. Later in this book, we provide examples of charts and diagrams for mapping cases. Word processing systems and many generative Artificial Intelligence (AI) models can help create visual images that are suitable for this learning style.

Tactual learners use their fine motor skills, fingers, and hands while concentrating. If your assessment shows that you have a strong preference for this type of learning, then the sense of touch is important and working with materials that you can manipulate will help you learn. You can create index cards and flip them over with questions on one side and answers on the other. The creation of materials with your hands will help solidify concepts, and you can experiment with maps, charts, graphs, and timelines.

Kinesthetic learners need to role-play because they experience by doing. Interactive exercises are helpful. In legal writing, the classroom exercises often simulate client counseling or, eventually, courtroom arguments. Kinesthetic learners will benefit from peer teaching, which is a popular exercise in legal writing.

You may find that you have a strong tendency toward one learning style or you may utilize aspects of different learning styles. Ultimately, as you work through this workbook and your first semester of law school, take inventory of your own learning-style preferences and the strategies through which you learn best, and tailor your study habits to maximize your preferences.

You should not be under the impression that you learn through a single modality, such as by learning solely through visual or tactual means, because learners typically do not have just one learning style. Dean Karen Sneddon suggests that although students “may perceive that they are one type of learner,”<sup>3</sup> students will “benefit from various learning style strategies that relate to their learning styles, thinking styles, and multiple intelligences.”<sup>4</sup> In other words, you will better absorb course concepts when you “engage with the material in different ways.”<sup>5</sup>

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3. Karen J. Sneddon, *Square Pegs and Round Holes: Differentiated Instruction and the Law Classroom*, 48 Mitchell Hamline L. Rev. 1095, 1098 (2022).

4. *Id.*

5. *Id.*

Proponents of teaching to a diversity of learning styles have always viewed learning styles as synonymous with learning preferences.<sup>6</sup> This was true when Dr. Rita Dunn and Professor Robin Boyle-Laisure conducted empirical research in the 1990s and is currently the view among proponents today.<sup>7</sup> Professors Rory Bahadur and Liyun Zhang explain how learning preferences, or styles, are “culturally derived”<sup>8</sup> and, therefore, it behooves educators (and students) to be cognizant of the “diversity in the delivery of instruction.”<sup>9</sup>

#### IV. Using This Book

Use this workbook as a supplement to an assigned legal writing text. We have designed the workbook so that you may write inside the book. The goals of this workbook are to reinforce the core principles of good legal analysis and writing and to give you a chance to practice what you are learning.

Cases and other authorities have been adapted throughout the book to work in concise exercise format.

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6. *Id.* at 139. Dr. Rita Dunn would instruct those conducting empirical studies on learning styles that it was about “preferences.” One of the instruments she once administered to assess learning styles was called the Productivity Environmental Preference Survey. Boyle & Dunn, *supra* note 1, at 223.

7. Rory Bahadur & Liyun Zhang, *Socratic Teaching and Learning Styles: Exposing the Pervasiveness of Implicit Bias and White Privilege in Legal Pedagogy*, 18 *Hastings Race & Poverty L.J.* 114, 143 (2021).

8. *Id.* at 146.

9. *Id.* at 148.

