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Legal Writing (Quickstudy: Law)

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LEGAL WRITING

HOW TO WRITE A LEGAL MEMORANDUM

LEGAL MEMO: FOUNDATIONS OF ALL LEGAL ANALYSIS

SINGLE MOST IMPORTANT SKILL FOR LAW STUDENTS TO LEARN

1. Lawyer's basic work product — it gives a legal opinion
2. Combines organization, issue framing, and legal analysis in a professional format

EXAMPLES IN THIS CHART

1. Issues in *italics* usually are requests to identify what immediately follows them as a first teaching purpose
2. Issues not in *italics* are things that you would have to supply, i.e. proper citations to legal authority

SAMPLE HEADING

This sample heading follows a typical format; the "TO" and "FROM" items identify who wrote the memo for whom; the "DATE" items give the effective date of the legal research and analysis — a key fact on which future readers will rely; the "RE" item specifies the case name, the internal file number, and the memo's general purpose.

Memorandum of Law

TO: Thomas Jefferson
FROM: Patrick Henry
DATE: September 1, 1997
RE: *State v. Kellage*, file no. 5797; Defendant's potential criminal liability for larceny under Virginia law.

DEFINING THE ISSUE

SPOTTING AND DEFINING "ISSUES" IS CRUCIAL

1. An "issue" is a question about how law applies to a set of facts
2. In the legal memo, the issue section presents the legal question using the key facts
3. To draft the issue for the memo, follow these three steps:

Step 1: From your initial research, identify the elements of the legal principle.
(Example) Larceny is (1) the taking (2) and carrying away of (3) another person's property, with (4) intent to permanently deprive that person of it.

Step 2: Locate the key facts that might either prove or disprove the elements of the crime or legal theory. Before starting to write the memo, make an outline that matches the facts with the elements of the legal theory.
(Example outline of elements and facts)
factorem 1) Del. picked up purse
factorem 2) Del. carried away purse
factorem 3) Mrs. Harris owned purse
Del. said he was going to turn it in
factorem 4) Del. still had it 45 minutes later
Del. did not tell police until asked
Del. explained his plan to turn it in
Purse was unopened, plainly visible in the car

Step 3: Write the question that the memo will answer, in one concise sentence (if possible) using the key facts that apply to the elements of the jurisdiction.

ELEMENTS OF A LEGAL MEMORANDUM

HEADING

1. Standard form
2. Identify case, date, from legal issue, writer

ISSUE

1. States the legal question which the memo answers
2. Usually one sentence that also mentions the key facts that underlie the legal problem

CONCLUSION

1. Gives the brief answer to the question stated in the issue
2. If a sentence that sets the key facts and legal points that support the answer

FACTS

1. Sets forth the facts which the legal analysis will use, plus enough background facts to give context
2. Not a detailed recitation of all of the facts of the case

DISCUSSION

1. Organizes and explains the analysis of the facts and law that leads to the Conclusion

TIP: Try writing the memo in this order:

- (1) Write the **Heading**
- (2) Write the **first draft of the Facts** section
- (3) Research the legal theories that apply
- (4) Write the **Issue** section
- (5) Write the **Discussion** section (legal analysis)
- (6) Write the **Conclusion** section
- (7) **Revise and trim** the Facts section to include only the relevant facts and necessary background

EXPLAINING THE FACTS

ELEMENTS

1. The Facts section should contain the facts important to the legal analysis, plus background information for context
2. In most memos, explain the facts in chronological order
3. Use all relevant facts, whether favorable or unfavorable to the client
4. Do not argue or draw conclusions; just tell the story in this section

SAMPLE FACTS SECTION (LARCENY PROBLEM)

"Memories are the following events at about 4:30 p.m. on July 1, 1997. Mrs. Harris's purse was on the sidewalk outside the grocery store. Defendant stood near the purse, looked around in all directions, then picked up the purse, he carried the purse to his car, put it in the back seat, and drove away."

"At about 4:15 p.m. the same day, a policeman stopped Defendant on a tip from one witness. When the policeman came up to Defendant's car window, Defendant did not say anything about the purse until he was specifically asked. Defendant then told the policeman that, 'I was going to take the purse to the police station tomorrow as soon as it is 1 letter even opened.' The policeman reported that the purse was sitting on the back seat in plain view, and was closed."

"Once the purse was in custody, Mrs. Harris inspected it but found nothing missing from its contents. Mrs. Harris suggested, however, the district attorney to charge Defendant with larceny."

SAMPLE ISSUE SECTION

1. *Good example* Did Defendant commit larceny under Virginia law when he picked up the shopper's purse, put it into his car and drove away, but explained that he was planning to turn the purse into the police the following day?
2. *Poor example* Did Defendant commit larceny under Virginia law? (Missing are the key facts — issue is too broad)
3. *Poor example* Did Defendant commit a crime by taking a purse that did not belong to him? (Missing are the jurisdiction, the actual legal theory, and key facts for each element)
4. *Poor example* Can a Defendant be convicted of larceny under Virginia law? (This is a different issue — the correct issue involves the particular facts of this case, not all defendants generally)

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Synopsis

A "must" for getting better grades on exams. Legal writing teaches the student to think like a lawyer and write those thoughts in an orderly manner. Â

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BETTER THAN ANY LAWYER I HAVE MET

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