

ASPEN COURSEBOOK SERIES

Legal Reasoning, Research, *and* Writing *for* International Graduate Students

THIRD EDITION

Nadia E. Nedzel



Wolters Kluwer
Law & Business

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*LEGAL REASONING,
RESEARCH, AND WRITING
FOR INTERNATIONAL
GRADUATE STUDENTS*

Third Edition

Nadia E. Nedzel, J.D., LL.M.
Southern University Law Center



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To my husband, Nicholas Capaldi, for his encouragement; my children, Chantal and Michael, for their patience; and my LL.M. students, for their insight and comments.

PREFACE

This book was conceived as a response to a perceived need, and I have been delighted and gratified by students' enthusiasm about it, and by how widely it has been adopted – I have been told that I am now famous in Afghanistan and the book has been translated into Chinese! I hope this third edition proves to be even more helpful. I have tried to make it more user-friendly by providing an introduction that provides students with the study skills they will need immediately in U.S.-style doctrinal law classes: reading techniques, briefing cases, outlining, and even scheduling study time. My belief is that LL.M. students should be acquainted first with what is different about U.S. law schools, and then, in Chapter 1, why those differences exist. Another aim was to introduce students to the vast changes technology is bringing to the practice of law both in the United States and around the globe, above and beyond computer-assisted legal research. Chapter 9 introduces some of those changes.

When I first began teaching Legal Reasoning, Research, and Writing to LL.M. candidates in 1999, I quickly found that the existing textbooks were inappropriate for this particular group of students. Despite their many virtues, textbooks designed for J.D. students presumed a reader unfamiliar with law. Thus, they seemed patronizing to LL.M. candidates, many of whom had already practiced law in their native countries. Additionally, they moved too slowly and corrected writing problems non-native English speakers were unlikely to have, and failed to address the reasoning, organizational, and writing problems my students were likely to face. Furthermore, those textbooks did not address the differences between civilian and common law methodology, something I understood well because of my background in comparative law and Louisiana's bi-jural law, which mixes elements of both legal systems. Already finding it difficult to read large amounts of material in their doctrinal classes, my students were further frustrated by having to use one textbook for writing and another for research, plus the Bluebook and a style book. As a result, they felt mired in extraneous reading and unnecessary detail, and were losing focus on the most important part of a LRR&W course, developing active common-law lawyering skills.

In the fall of 2000, I was faced with an additional, exciting challenge: teaching basic U.S. LRR&W in a distance program to law faculty at the *Instituto Tecnológico y de Estudios Superiores de Monterrey* (ITESM) in Mexico. Out of necessity, I reduced the number of assignments to a bare minimum: four research assignments, a closed-universe memo, one rewrite of it, and an open memo. From this core, a book slowly grew. The introduction and first three chapters introduce the knowledge and skills an LL.M. candidate most needs in order to approach common-law courses effectively: (1) how to manage large amounts of reading, brief a case, participate in class, and develop a course outline; (2) how a common law system differs from traditional civilian legal systems; (3) how to locate authorities as needed, either in a library or

on-line; and (3) how to synthesize several sources into an operative legal rule through IRAC analysis and a short closed-universe memorandum. Chapter Four provides a simple introduction to U.S. Civil and Administrative Procedure, as the differences between civilian and common law civil procedure are probably more profound and significant than differences in subjects such as torts and contracts. Chapters Five through Eight further develop research, reasoning, and writing skills for secondary sources, case law, and legislative or administrative law. Chapter Nine discusses technological changes in courts, legal practice, legal research, and legal drafting. Chapters Ten through Twelve introduce skills that, while extremely useful, may not be needed for all courses or all students: scholarly writing, advocacy, and preventive writing. The appendixes explain how to prepare for and do well on U.S.-style essay exams and how to draft advisory memos on non-U.S. law for attorneys in the United States.

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I would like to thank Chancellor Freddie Pitcher of Southern University Law Center for the sabbatical and summer research stipend that allowed me to address this project (among others). I would also like to thank Professors Mark E. Wojcik and William B.T. Mock of John Marshall Law School for their enthusiasm and continued support, and John Mayer, the Executive Director of the Center for Computer-Assisted Legal Instruction (CALI), whose course “Topics in Digital Law Practice” brought the on-going revolution in the legal profession to my attention and was the inspiration for the new Chapter 9. Improvements could not have been made without the able assistance of Aspen editor Dana Wilson. Mistakes remain mine alone. Finally, I would like to thank LL.M. students of U.S. law all over the world, to whom the book is dedicated.

Nadia E. Nedzel
Southern University Law Center

July 2012

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