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SYNTHESIS

LEGAL READING, REASONING, AND WRITING *Third Edition*

Deborah A. Schmedemann
Christina L. Kunz



Wolters Kluwer
Law & Business

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*Legal Reading,
Reasoning, and Writing*

Third Edition

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Professor of Law

Christina L. Kuntz

Professor of Law

both of William Mitchell College of Law



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Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

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Aspen Publishers
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-6283-7

Library of Congress Cataloging-in-Publication Data

Schmedemann, Deborah A., 1956-

Synthesis : legal reading, reasoning, and writing/Deborah A. Schmedemann, Christina L. Kunz. — 3rd ed.
p. cm.

Includes bibliographical references and index.

ISBN 978-0-7355-6283-7

1. Legal composition. 2. Law—United States—Interpretation and construction. 3. Forensic oratory. I. Kunz, Christina L. II. Title.

KF250.S36 2007
808'.06634—dc22

2007009695

SYNTHESIS: LEGAL READING, REASONING, AND WRITING

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DEDICATION

We dedicate this book to Professor Ken Kirwin, who has co-coordinated the first-year writing course at William Mitchell with great enthusiasm and creativity; to Darlene Finch, who has administered the course with great skill and dedication; and to the terrific attorneys who take time from the practice of law to teach legal writing at the College.

On a personal note, we dedicate this book to Craig, Mary, Karen, Keith, Anna Mary, Barb, and Joan; and to Rachel, Barbara, Carol, Suzy, Ruth, and Hal.

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P R E F A C E

If you are reading this book, you probably have heard the phrase, “thinking like a lawyer.” This book is about thinking like a lawyer—thinking that is both structured and open-ended, expansive and precise, rigorous and creative; thinking that is grounded in careful reading of legal texts and insightful understanding of the situations of real people; thinking that is both intellectually rewarding in its own right and critically important to the well-being of clients.

We worked on this book for six years before we came up with the first word in its title: synthesis. We chose “synthesis” as the flagship concept for this book for several reasons. According to the eleventh edition of Merriam Webster’s Collegiate Dictionary, “synthesis” means “the composition or combination of parts or elements so as to form a whole.” The two chief forms of law, cases and codes, both consist of parts that form the whole. Legal reasoning consists of three processes: deductive reasoning, reasoning by example, and policy analysis. Every legal document you will write has standard components that work together to form the whole. Furthermore, the overall process of legal analysis combines reading, reasoning, and writing to form a whole.

“Synthesis” also means “the dialectic combination of thesis and antithesis into a higher stage of truth.” In turn, “dialectic” means, “any systematic reasoning . . . that juxtaposes opposed or contradictory ideas and usually seeks to resolve their conflict.” Much of the time, law is about disputes between people, conflicting interests, opposed or contradictory ideas. To resolve conflict in a fair and just way is the purpose of the legal system and the highest calling of a lawyer.

This book is itself a synthesis of elements that, we believe, make for effective learning of the skills discussed here. As you will see, this book:

- describes each skill in general terms, setting out steps to follow, identifying factors to consider, detailing criteria for your work, exploring pertinent ethical principles, and providing insights from studies of legal writing as well as cases discussing unethical legal writing;
- presents many processes and products of legal analysis not only in text but also in drawings or diagrams;
- draws analogies between the skills discussed here and other fields of endeavor, such as architecture;

- demonstrates the skills through the HomeElderCare case file, which documents a case from initial client interview to appellate argument; and
- provides an opportunity for practice in the exercises, which explore an evolving area of tort law.

During each of the fourteen years we have worked on this book or its predecessors, about 300 students have used these materials in the first-year writing course at William Mitchell College of Law. Each year, twenty-five to thirty practicing lawyers, teaching the course as adjunct professors, have taught from these materials. We have learned much from our “co-authors” and are pleased to pass their insights along to you in the following pages.

We hope you are stimulated by the process of learning to think like a lawyer. And we hope you use what you learn from this book to think like a highly competent, creative, and caring lawyer.

Note to professors: For those of you who have read or used the second edition of this text, we hope you will be pleased to discover the following changes:

- We have included a brief preview of deductive reasoning in Chapter 2, so that students better appreciate, right away, why understanding rules is so important.
- We have pulled out IRAC from the chapter on the office memo discussion into its own chapter on rule-driven writing. The new chapter serves as the transition from reasoning to writing. Thus it facilitates assigning a brief IRAC as an early writing exercise and discussing IRAC in the context of a document other than the office memo.
- The discussion of the organization of the office memo is considerably streamlined: in addition to removing the IRAC coverage, we have consolidated the discussion of large- and middle-scale organization.
- To broaden the scope of the book, we have added coverage of deal-oriented practice in the chapters discussing office memos. One of the two memos in the HomeElderCare case and the advice letter are now deal-oriented.
- We have added a chapter on demand letters, which serves as a transition from the advice letter to the motion practice unit. In addition, we have included sample demand letters (a complete letter aimed at a lay reader, a partial letter aimed at the opponent’s lawyer) and exercises pertaining to demand letters.
- The postscript to the exercises, which pertain to dram shop liability, notes several significant developments since the previous edition. Those changes can be the basis for further exercises or discussion of the interaction between court and legislature.

We hope you will let us know how this third edition works for you and your students.

*Deborah A. Schmedemann
Christina L. Kuntz
St. Paul, Minnesota
April 2007*

ACKNOWLEDGMENTS

We had the good fortune to be able to write and revise this book during nearly a decade of classroom use. We were able to revise each chapter many times and to incorporate the valuable suggestions of our students and our legal writing faculty. Also important was the wholehearted and long-term support of this project by Deans James Hogg, Harry Farnsworth, and Allen Easley.

We also had the good fortune of working with talented research assistants, many of whom worked on bits and pieces of the book in the course of their other duties. We note here those who made major contributions: Anthony Massaros and Katie Crosby Lehmann wrote the initial drafts of the HomeElderCare office memos, motion practice memoranda, and appellate briefs; they also delivered the appellate oral argument that appears in transcript form in the HomeElderCare case file. Tony also developed the library for the torts exercises. Lynn Bebeau Psihos, Kerry Cork, Renee Michalow, and Jodi Sharrow worked closely with us to produce this multi-faceted book. We thank them for their excellent work.

Our colleagues generously contributed their insights and feedback on a wide variety of topics: Professor Kenneth Kirwin as a fellow co-coordinator of the first-year writing course, Professor Daniel Kleinberger on rule structure and levels of organization, Professor Russell Pannier on logic, Professors Eric Janus and Robert Oliphant on civil procedure, Professor Phebe Haugen on living wills, and Professor Curtis Stine on legal issues affecting the elderly. Professor Kirwin, Professor Stine, and Professor Denise Roy served as the judges for the appellate oral argument that appears in the transcript in the HomeElderCare case file.

An evolving manuscript of this size and complexity depends on high-quality production work. Cal Bonde contributed superb word processing skills and overall document management for our countless revisions; in recent years she was assisted by Linda Thorstad. Dawn Ives copied and bound each year's manuscript for our students. Early on, Judy Holmes provided excellent administrative support for the first-year course, Legal Research and Writing, as well as this book. More recently, Darlene Finch has done a stellar job of administering the new first-year course, Writing & Representation: Advice & Persuasion, and nurturing the revision of this book. We are grateful to each

one of them for every way in which they helped us bring this project to fruition.

The original encouragement for this project came from some of our favorite people at what was then the law division of Little, Brown and Company. Rick Heuser, Carol McGeehan, and Nick Niemeyer each played an important role in moving this book forward. Carol McGeehan has our special gratitude for bridging the contract transition from Little, Brown to Aspen Law and Business. Elizabeth Kenny, Ellen Greenblatt, and Melody Davies on the editorial end of the process, and Karen Quigley and Kathy Porzio in design and production matters, skillfully brought the first edition to press for Aspen Law and Business. With equal skill, the following teams brought the second and third editions, respectively, to press: Curt Berkowitz, Elizabeth Kenny, Barbara Rappaport, Karen Quigley, and Kathy Porzio; Christie Rears, Peter Skagestad, Elizabeth Kenny, Marla Cook, and Melissa Mathlin.

This textbook owes much of its richness to the ideas of colleagues in the field of legal reading, reasoning, and writing across the country. Their presentations, publications, and personal observations over the years have made legal writing a rigorous and vibrant discipline. We deeply appreciate being part of a national community of legal writing teachers with a strong ethic of teaching each other.

Working on this book requires long hours and intense concentration. From the bottom of our hearts, we thank our families, friends, and colleagues for the many ways in which they supported us and worked around us while we worked on this book.

We also would like to acknowledge those publishers who permitted us to reprint copyrighted material in this book:

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