

Legal Writing: A Systematic Approach

FIFTH EDITION

Diana V. Pratt

LEGAL WRITING: A SYSTEMATIC APPROACH

Fifth Edition



by

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*To my family, students and colleagues who have
supported and enriched this endeavor*

PREFACE TO THE FIFTH EDITION

The major changes in this edition are updates to the Federal Rules of Civil and Appellate Procedure and statutes, more emphasis on computer based research, and a new more complicated memorandum sample in Appendix B. The complicated memo included in previous editions of this text was outmoded both scientifically and legally. The other changes include selective revision for clarity in the sections dealing with analysis, writing, and persuasion.

DIANA PRATT

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Ann Arbor, Michigan

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SECTION I

INTRODUCTION TO THE LAW

■ ■ ■

The five chapters in this section form a brief introduction to the American legal system: the sources of the law, the structure of the court system, the time course of a typical civil case, and general information that will help you understand the cases and statutes you will be reading at the beginning of your law school career. While the discussion is by no means comprehensive, it provides context and some terminology for the legal analysis and writing that follow.

CHAPTER 1

SOURCES OF THE LAW



American Law comes from two primary sources, legislative law and case law. **Legislative law** is the collection of rules written explicitly to govern behavior within the society. These rules apply to society as a whole. The early colonial legislatures created the first American legislative law. A Massachusetts colonial ordinance from 1641–47, for example, divided up ownership of the Atlantic shoreline and shallow waters. The Massachusetts Supreme Judicial Court used this ordinance as the basis for a 1974 decision. *Opinion of the Justices*, 365 Mass. 681, 313 N.E.2d 561 (1974). Legislative law includes constitutions, statutes, and administrative regulations. These are arranged in a hierarchy of importance, specificity, and life span. All three categories of legislative law exist both at the federal and state levels.

The United States **Constitution** is the source of our federal system of government and the basic policy that prescribes the rights of individuals and the relationship between the states and the federal government. The Constitution has been in existence for over two hundred years. The system and much of the policy are as valid today as they were two hundred years ago. The document was designed to set the parameters of government but not to deal with the daily operation of government. The Constitution is the most general of the three types of legislative law and the one with the longest life span. It is the hardest to amend. Many of the framers were direct descendants of settlers who had emigrated from other countries to escape persecution for religious or political views. By requiring more than a simple majority for amendments to the Constitution, they intended to protect groups holding beliefs not shared by the majority. A three quarters majority of the state legislatures must approve an amendment to the U.S. Constitution. The Equal Rights Amendment, which would have given women rights equal with those of men, failed to muster the requisite majority. By making the Constitution so difficult to amend, the framers wanted to insure that the document would only be changed when necessary to reflect basic policy changes in the society. Because of its general nature, the Constitution is regularly subject to interpretation by the courts. The United States Supreme Court regularly interprets the Constitution in a variety of factual settings.