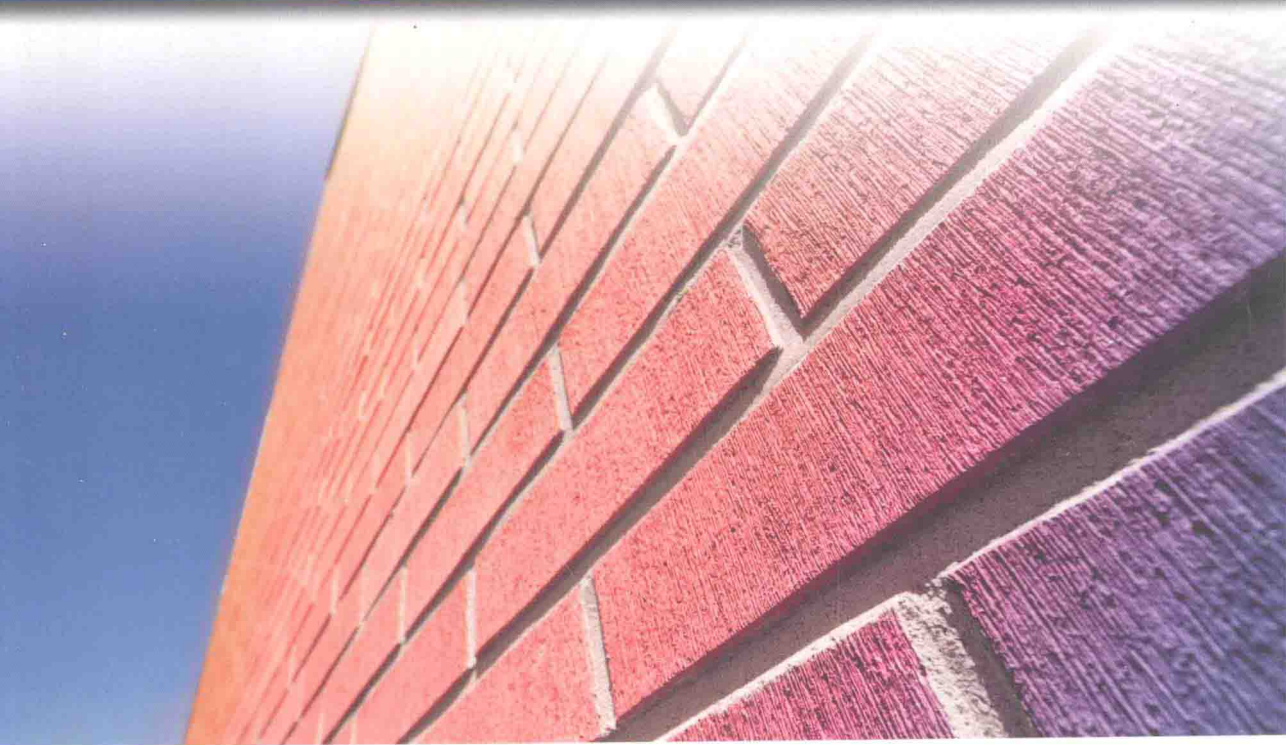


Aspen Coursebook Series

Legal Method and Writing



Charles R. Calleros

SIXTH EDITION



Wolters Kluwer
Law & Business

Aspen Coursebook Series

LEGAL METHOD AND WRITING

SIXTH EDITION

CHARLES R. CALLEROS

**PROFESSOR OF LAW
ARIZONA STATE UNIVERSITY**



Wolters Kluwer
Law & Business

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Dedicated to my wonderful mother, Emily Calleros,
with love and gratitude

PREFACE

The activities of practicing attorneys speak volumes about the importance of legal writing classes in law school. Although analytic skills and a general knowledge of legal principles form the intellectual foundation of the practice of law, legal analysis is only as effective as the quality with which it is expressed. In your practice, you undoubtedly will devote a substantial proportion of your time and effort to drafting legal documents such as office memoranda, letters, pleadings, motions, briefs, contracts, and wills. Moreover, techniques of expression are closely linked to the underlying substantive analysis; indeed, problems in writing style often betray confusion in the analysis.

Unfortunately, as a first-semester law student, you may have difficulty seeing the relationship between your efforts in legal writing classes and your short-term objectives for success in law school. With this book, I hope to reassure you that the work in your first-year legal writing courses will directly contribute to your success with law school exams as well as with legal documents that you draft in a summer clerking position or in postgraduate employment. I attempt to achieve that objective in two ways. First, I hope to eliminate any mystery in the study of law by comprehensively examining the three critical components for success in law school: (1) briefing and synthesizing cases, (2) reorganizing and summarizing course materials in course outlines, and (3) analyzing and answering essay examinations. Second, I demonstrate in Parts I through V that the skills you develop in analyzing a client's legal problem and drafting an office memorandum are directly transferable to your task of analyzing an essay exam and writing the exam answer.

Additionally, this book examines techniques of advocacy and client representation that should appeal to a broad spectrum of readers: participants in a first-year moot-court program, students in an advanced writing seminar, student law clerks, and practicing attorneys. For example, Parts VI through VIII examine written advocacy in the context of pleadings, pretrial motions, and appellate briefs. Moreover, they thoroughly examine principles of writing and persuasion that apply generally to any litigation document. Part IX provides a step-by-step approach to drafting simple contracts, advice letters, and demand letters. Finally, the extensive citations in footnotes, most of which first-year law students can pass over, will provide attorneys with a valuable source of authorities.

Chapters 1, 12 through 14, and 17 of this book address matters of style. They use problems and examples to outline a general approach to style that focuses on the policies underlying conventions of composition. In these chapters, I encourage you to adopt the following philosophy: We should

not memorize and mechanically apply rules of composition any more than we would mechanically apply “black letter” rules of law. Instead, we must understand the goals and purposes of the conventions of legal writing, and we should apply them flexibly to satisfy those goals and purposes.

Of course, this book reflects my own style quirks and biases: I freely split infinitives but always use the serial comma, and I dislike sexism in language. While writing this book, I encountered the problem of sexism in language most often in the form of personal pronouns in the third person. If I constantly resorted to an ostensibly generic pronoun normally associated with the male gender, such as “his” or “him,” I would offend those readers who do not view the pronoun as gender generic and who believe that the increasing number of female attorneys and judges deserves specific recognition. On the other hand, the disjunctive phrase “his or her” often needlessly clutters already complex sentences, and plural pronouns such as “they” are not always consistent with content. As a provocative response to the problem, I have alternated between male and female pronouns, for example, by referring to an associate in a law firm with the pronoun “he” and to his assigning attorney with the pronoun “she.” This approach may distract readers at one time or another, perhaps because it catches readers assuming that a judge or a senior partner is male. If so, perhaps the distraction is constructive: It may help us to envision a profession so well integrated that feminine pronouns and ethnic names will sound natural and commonplace.

The text is heavily footnoted with source material and with acknowledgments to others whose ideas inspired the text. Readers may find some of the additional information in the footnotes to be illuminating or to be helpful in practice as a starting point for research. Otherwise, however, busy students can focus on the text and skip the footnotes without missing any significant points.

Charles R. Calleros

December 2010

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My interest and enthusiasm for legal writing stem largely from the inspiration and training that I received as a court law clerk at the Office of Central Staff Attorneys for the United States Court of Appeals for the Ninth Circuit. In particular, I am grateful to United States Court of Appeals Judge Procter Hug, Jr., who sowed the seeds of my current views on flexible, policy-oriented approaches to legal writing.

Other attorneys, judges, and colleagues contributed to my first edition with their comments on early drafts. In particular, I thank the late Thomas Gordon, who was a staff attorney for the Arizona Court of Appeals, fellow legal writing instructor, and former classmate at the University of California at Davis School of Law. Mr. Gordon's keen analytic insights into the art of legal writing contributed greatly to this book. Other important contributors include the rigorous reviewers who strongly influenced the organization and content of the book, and Janet Wagner, an attorney who skillfully and artfully critiqued my writing style. Several colleagues contributed to selected portions of the book. They include Fred Cole, Amy Gittler, Mark Hielman, Susan E. Klemmer, Christopher Mason, William Monahan, Roger Perry, Frank Placenti, Thomas Quarelli, Jeffrey P. Travers, Paul Ulrich, Sherin Vitro, Judge Noel Fidel, and Professors Jane Aiken, Rebecca Berch (now Chief Justice of the Arizona Supreme Court), Paul Brand, Betsy Grey, Mark Hall, David Kader, Amy Langenfeld, Robert Misner, Cathy O'Grady, Mary Richards, Judy Stinson, Bonnie Tucker, James Weinstein, and Larry Winer.

The truly indispensable contributors to the early editions of this book, however, are the students and attorneys who accepted my instruction and used the early versions of the teaching materials from which this book is derived. I especially acknowledge the Phoenix law firm of Streich, Lang, Weeks & Cardon, now merged with Quarles & Brady, for its dedication to continuing education in legal writing during those years.

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**LEGAL METHOD
AND WRITING**

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