

ASPEN PUBLISHERS

Legal Reasoning and Legal Writing

Structure,
Strategy,
and Style

Sixth Edition

Richard K. Neumann, Jr.



Wolters Kluwer
Law & Business

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LEGAL REASONING AND LEGAL WRITING

**Structure, Strategy,
and Style**

SIXTH EDITION

Richard K. Neumann, Jr.
Professor of Law
Hofstra University



Wolters Kluwer
Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

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While rewriting your work to turn it into a final draft, consider these questions and the ones on the inside back cover:

Organization—Have you . . . ?

- 13-A stated your conclusions (p. 128)?
- 13-B stated the rule or rules on which your conclusion is based (p. 128)?
- 13-C proved rules in an appropriate amount of depth (p. 128)?
- 13-D applied rules to the facts in an appropriate amount of depth (p. 128)?
- 13-E completed rule proof before starting rule application (p. 129)?
- 13-F varied the sequence of the paradigm only where truly necessary (p. 129)?
- 13-G organized a multi-issue presentation so that the reader understands how everything fits together (p. 129)?
- 13-H organized around tests and elements, rather than around cases (p. 129)?
- 13-I avoided presentation authority in chronological order unless you have a special need to do so (p. 129)?
- 13-J collected closely related ideas, rather than scattering them (p. 130)?

Paragraphing—Have you . . . ?

- 18-A told the reader, near the beginning of each paragraph, the paragraph's thesis or its topic (p. 211)?
- 18-B gotten rid of throat-clearing introductory sentences (p. 211)?
- 18-C given each paragraph a unified purpose (p. 211)?
- 18-D within each paragraph, expressed your ideas in a logical and effective sequence (p. 212)?
- 18-E broken up paragraphs that were so large that the reader would have gotten lost (p. 212)?
- 18-F rewritten paragraphs that were so short that no thesis or topic is developed (p. 212)?
- 18-G shown the reader how each paragraph is related to the surrounding material (unless the relationship is implied by the context (p. 212)?

Quotations—Have you . . . ?

- 20-A quoted and cited every time you use the words of others (p. 257)?
- 20-B quoted only the essential words (p. 257)?
- 20-C been careful not to quote out of context (p. 260)?
- 20-D quoted accurately (p. 260)?
- 20-E placed quotation marks exactly where they belong (p. 260)?
- 20-F been careful not to quote from a headnote (p. 260)?

See back cover for other topics.

LEGAL REASONING AND LEGAL WRITING

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for

*Richard K. Neumann, Sr. and
Marjorie Batter Neumann,*

*who taught everything
on which this book is based*

The power of clear statement is the great power at the bar.

—Daniel Webster
*(also attributed to
Rufus Choate,
Judah P. Benjamin,
and perhaps others)*

Preface

Students learn legal reasoning and legal writing better when the two are taught together than when they are taught separately. The act of writing forces the writer to test thought in order to express it fully and precisely, and thus complex analysis cannot be said to be complete until it becomes written and written well.

This text is designed to help students learn how to make professional writing decisions, how to construct proof of a conclusion of law, and how to develop their own processes of writing. The writing process is introduced in Chapter 6 and developed more fully in the remainder of the book.

Part I of the text introduces students to basic concepts of law as well as judicial opinions and methods of briefing them. Legal writing in general is introduced in Part II. Part III explains how to write an office memorandum. A chapter on client interviewing is included for those programs that provide an assignment's facts through a simulated interview. Parts IV, V, and VI explain analytical writing skills, including organizing proof of a conclusion of law, using authority, analyzing facts, and using paragraphing, style, and citations. Part VII covers lawyers' letters and law school examinations. Part VIII introduces advocacy skills. Appellate briefs are covered in Part IX; and oral argument in Part X.

On the inside covers of the book is a list of questions that students should ask themselves while working through successive drafts of a document. Each question represents a recurring problem in student writing—the sort that a teacher marks over and over again on student papers. Students can use these questions to make sure they have attended to likely problems. And teachers can use them to ease the burden of writing so many comments on student papers. Rather than write the same or a similar comment over and over again on students' papers, a teacher can circle problem passages and write a question number (“9-A,” for example) in the margin. The

inside front and back covers will give a page number in the text, where the student will find a complete explanation of the problem, what causes it, and how to fix it.

Richard K. Neumann, Jr.

January 2009

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