

Legal Research and Writing: An Integrated Approach

Syllabus

Fall 2023

Professor Greg Johnson

Office: Debevoise Hall, Room 315

Office Hours: Tuesday, 9:00-10:00 am

Wednesday, 3:00-4:00 pm

By appointment (email me at gjohnson@vermontlaw.edu)

This is the first course in a yearlong cycle of instruction introducing you to the fundamentals of effective legal research, writing, and citation. In this course, you will learn and practice the basic skills necessary to succeed in the practice of law, whatever your chosen field. In the spring semester, in Legal Writing II, you will build on these basic skills to develop more sophisticated researching, writing, and citation practices. The premise of both courses is that research, writing, and citation weave together like a triple helix, each informing the other in the process called legal writing. We therefore teach the topics of research, writing, and citation as three aspects of the same process: your work product in both courses requires that you practice researching, writing, and citation skills.

We use a spiraling method of instruction in these courses: We first introduce core concepts such as hierarchies of authority, precedent, and *stare decisis*, as well as effective legal research and writing processes. Then, throughout the two semesters, we circle back to these concepts with increasingly complex analytical assignments. This semester, we focus on “objective” writing: The essential skill of predicting the likely outcome of a legal dispute based on an accurate and unbiased analysis of binding precedent applied to your client’s facts. In Legal Writing II, we turn to the art of advocacy. You will draft persuasive arguments using the same skills you develop in this course, but in a writing style designed to persuade a court to rule in your client’s favor.

This course is divided into four Units. In Unit 1, we introduce you to the structure of – and relationship between – American legal systems and legal research systems. Understanding the hierarchies of authorities and the appropriate use of primary authority – and how to access that authority – is an essential predicate to effective legal analysis, so we begin there. Unit 2 focuses on how to construct a legal argument using the CREAC organizational structure (Conclusion/Rule/Rule Explanation/Analysis/Conclusion) and researching a project from start to finish. We also introduce the key principles of writing in plain language in Unit 2. Unit 3 synthesizes the lessons of the semester with a final writing project using the Office Memorandum format. The first three Units all include instruction and practice in proper legal citation format. The course concludes in Unit 4 with an oral skills exercise, in which you present your legal analysis and advice to a supervising attorney.

Learning Outcomes:

By the end of this course, you will be able to:

1. Describe the structure, components, and functions of legal systems in the United States.
2. Describe the relative weight of different types of primary and secondary authority.
3. Demonstrate efficient, thorough, and deliberate research processes for primary and secondary authority in federal and tribal jurisdictions.
4. Identify sources of authority relevant to a complex fact pattern, including constitutional provisions, statutes, regulations, and rules of common law.
5. Identify material facts within a complex fact pattern when given a legal issue.
6. Demonstrate rule-based reasoning skills to analyze the potential outcomes of a legal dispute.
7. Demonstrate analogical reasoning skills to analyze the potential outcomes of a legal dispute.
8. Apply statutes, cases, regulations, and other forms of primary authority to analyze the potential outcomes of a legal dispute.
9. Identify and dismiss counter-analysis.
10. Practice using key principles of plain language to express your analysis clearly and concisely.
11. Practice proper *Bluebook* citation format with constitutions, statutes, cases, and regulations.
12. Practice oral presentation skills.

Required Texts:

1. Amy E. Sloan, *Researching the Law: Finding What You Need When You Need It* (4th ed. 2023)
2. Christine Coughlin, et al., *A Lawyer Writes: A Practical Guide to Legal Analysis* (3d ed. 2018).
3. Richard C. Wydick & Amy E. Sloan, *Plain English for Lawyers* (6th ed. 2019).
4. Harvard Law Review et al., *The Bluebook: A Uniform System of Citation* (21st ed. 2020).

Honor Code:

The Vermont Law and Graduate School Honor Code governs your work and conduct in this course. Whenever you use the words or ideas of another writer, you must acknowledge the original source. Cite the original source even when you are paraphrasing the language of a judicial opinion or another person's ideas. The assignments you submit must be your own work product. You may not give an outline or a draft of an assignment to anyone else for their review and comment, including other students, friends, partners, etc.

The Writing Specialist:

Vermont Law and Graduate School's Writing Specialist, Professor Meg York, is available to help you with the mechanics of your writing, including grammar, punctuation, sentence structure, paragraph structure, and organization. Professor York meets with students online on Teams. You may meet with Professor York before you submit a draft for my review. Contact Professor York at WritingSpecialist@vermontlaw.edu for an appointment.

Grading:

Letter grades are based on the course assignments (90%) and class activities (10%). Class activities include attending classes, participating in class discussion, the first draft of your Unit 3 Assessment (Office Memorandum), meeting all deadlines, and completing all the projects and exercises listed in the schedule below.

The grade distribution in Legal Research and Writing is as follows:

(1) Unit 1 (Research and citation assignment) (due on September 24)	20%
(2) Unit 2 (Discussion Section assignment) (due on October 22)	20%
(3) Unit 3 (Office Memorandum) (first draft due on November 10; final draft due one week after our individual conference)	40%
(4) Unit 4 (Oral skills assignment) (week of November 27)	10%
(5) Class Activities (across all units)	10%

Students are responsible for submitting assignments on time. Any student who fails to submit an assignment on time will receive a grade reduction for that assignment. The grade reduction is five points per day for each day that the assignment is late. Assignments turned in more than five days past the assignment's deadline will receive a zero.

Attendance Policy

Pursuant to Vermont Law and Graduate School academic regulations, students who are absent from more than four regularly scheduled classes shall be automatically withdrawn from the course with a grade of F-Wd.

Unit 1: What is Law? (And How to Find It)

Tuesday, August 29

An introduction to American legal systems

A Lawyer Writes, 15-22 (Sources of Law) (through “Weave a Tapestry”)

Researching the Law, 3-7 (Introduction to Legal Research)

Constitution of the Standing Rock Sioux Tribe (on Canvas)

The Bluebook, review ix-xvi (Table of Contents), read 1-4 (Introduction and Rule B1.1) and Rules B11 and 11

Assignments:

1. In a paragraph of 100-150 words, compare/contrast the Preambles of the United States Constitution and the Constitution of the Standing Rock Sioux Tribe.
Due on Sunday, September 3, by 11:59 pm (upload to Canvas)
2. Install (free to you) Microsoft Office 365 from VLGS’s IT website if you do not already have it.

Westlaw and Lexis Training Schedule – Fall 2023

J.D. students should attend *one* Westlaw and *one* Lexis training session.

Westlaw Training Option 1

Monday, August 28, 2023 5:00 – 6:00 pm

[Click here to join the meeting](#)

OR

Westlaw Training Option 2

Wednesday, August 30, 2023 6:30 – 7:30 pm

[Click here to join the meeting](#)

Lexis Training Option 1

Tuesday, August 29, 2023 5:00 – 6:00 pm

[Click here to join the meeting](#)

OR

Lexis Training Option 2

Wednesday, September 13, 2023 6:30 – 7:30 pm

[Click here to join the meeting](#)

Thursday, August 31

Hierarchies of authority; legal research process

A Lawyer Writes, 22-28 (Systems of Law)

Researching the Law, 21-26 (Defining a Research Question)

Legal Research Process Chart (on Canvas)

United States v. Cooley, ___ U.S. ___, 141 S. Ct. 1638 (2020). (on Canvas)

Tuesday, September 5

An introduction to *stare decisis*; citing case names (with workshop)

A Lawyer Writes, 29-31 (*Stare Decisis*)

June Med. Servs. v. Russo, ___ U.S. ___, 140 S. Ct. 2103 (2020) (Roberts, C.J. concurring). (on Canvas)

Teaching Non-Precedential Federal Appellate Opinions (on Canvas)

Researching the Law, 27-33 (Pre-Search Filtering)

The Bluebook, Rules B2, B10.1.1, 10.2, and Table 6 (Case names in citations)

Thursday, September 7

Reading statutes; research search terms and techniques

A Lawyer Writes, 33-43 (Reading Statutes)

Researching the Law, 35-45 (Research Tools and Search Techniques)

United States Constitution, Art. VI, cl. 2 (Supremacy Clause) (find online)

McGirt v. Oklahoma, ___ U.S. ___, 140 S. Ct. 2452 (2020). (on Canvas)

The Bluebook, Rules B.12.1.1, 12.1-12.3.2 (Citing statutes)

Tuesday, September 12

Reading cases; managing research results; in-class citation exercise

A Lawyer Writes, 45-59 (Reading Judicial Opinions)

Researching the Law, 47-62 (Working with Search Results; Keeping Track of What You Find)

The Bluebook, Rules B10.1.2-1.3, 10.3-10.5, Table 1 (Reporter, court, and year)

In-class citation exercise (see Canvas for the cases to cite)

Thursday, September 14

Finding your argument; researching secondary authority

A Lawyer Writes, 61-72 (Finding Your Argument)

Researching the Law, 65-81 (Legal and Nonlegal Secondary Sources)

In the Matter of Gentile, 15 Am. Tribal L. 469 (Navajo Nation 2019). (on Canvas)

The Bluebook, Rules B10.1.5-1.6 and 10.6-10.7 (Parenthetical information)

Tuesday, September 19

Organizing your legal authority; researching cases

A Lawyer Writes, 73-91 (Organizing your legal authority)

Researching the Law, 83-96 (Cases)

The Bluebook, Rules B10.2, B12.2 10.9, 12.10 (Short form cites for cases and statutes)

Thursday, September 21

One legal argument; using citators to update your research

A Lawyer Writes, 93-97 (One Legal Argument)

Researching the Law, 97-108 (Citators and Other Updating Tools)

When to Stop Researching (on Canvas)

Unit 1 Assessment will be released on Friday, September 22, at 8 am, and is due by Sunday, September 24, by 11:59 pm (upload to Canvas)

Unit 2: Constructing a Legal Argument (CREAC)

Tuesday, September 26

The Discussion Section of an Office Memo: Roadmap and rules (the R of CREAC)

Researching statutes; an introduction to the plain language movement

A Lawyer Writes, 3-9, 99-112, 211-20

Researching the Law, 109-21

Plain English for Lawyers, 3-6

Thursday, September 28

Introduction to the Unit 2 Assessment (Discussion Section) (on Canvas)

Explaining the law: Case illustrations (the E of CREAC)

A Lawyer Writes, 113-32

Plain English for Lawyers, 7-20 (Omit surplus words)

The Bluebook, Rules B6 and 6 (Abbreviations, numerals, and symbols)

Document Template (on Canvas)

Assignments:

1. Begin researching the Clean Water Act on your own (no collaboration with others). Bring your research results to class on Tuesday, October 3.
2. Complete *Plain English* Exercises 1-4 (on Canvas) and bring your edits to this class.

Tuesday, October 3

Research workshop; applying the law (the A of CREAC)

A Lawyer Writes, 141-61, 175-77

Plain English for Lawyers, 23-26 (Use strong verbs)

Assignment: Complete *Plain English* Exercise 6 (on Canvas) and bring your edits to class.

Thursday, October 5

Applying the law: Counter-analysis (the hidden C of CREAC)

A Lawyer Writes, 163-74

Plain English for Lawyers, 27-32 (Use the active voice)

The Bluebook, Rules B8 and 8 (Capitalization)

Assignment: Complete *Plain English* Exercise 8 (on Canvas) and bring your edits to class.

Tuesday, October 10 NO CLASS FALL BREAK

Thursday, October 12

The conclusion to your analysis (the first and last C of CREAC); short sentences; choosing words carefully

A Lawyer Writes, 175-84

Plain English for Lawyers, 33-38 (Use short sentences)

Plain English for Lawyers, 39-41, 55-68 (Choose your words carefully)

Optional: *A Court Would Likely (60-75%) Find . . .* (on Canvas)

Assignment: Complete *Plain English* Exercises 10 and 13 (on Canvas) and bring your edits to class.

Tuesday, October 17

Outlining the Discussion Section; citation parentheticals (revisited)

Workshop on outlining the Discussion Section

The Bluebook, Rules B1.3 and 1.5 (Parenthetical information in case citations)

SCOTUS (cleaned up) (on Canvas)

Thursday, October 19

Citing effectively and avoiding plagiarism

A Lawyer Writes, 133-39 (Citing and Avoiding Plagiarism)

In-class Unit 2 citation workshop

Unit 2 Assessment is due on Sunday, October 22, by 11:59 pm (upload to Canvas)

Unit 3: Applied Legal Analysis (The Office Memorandum)

Tuesday, October 24

Introduction to the Unit 3 Assessment (Office Memorandum) (on Canvas)

Wooden v. United States, ___ U.S. ___, 142 S. Ct. 1063 (2022).

Plain English for Lawyers, 71-84 (Use commas carefully and correctly)

The Bluebook, B3 and 3.2-3.3 (Sections and paragraphs)

Thursday, October 26

Writing the Question Presented and Brief Answer

A Lawyer Writes, 229-44 (Question Presented and Brief Answer)

Plain English for Lawyers, 87-102 (Punctuate carefully and correctly)

Assignments:

1. Draft a Question Presented and Brief Answer for the Office Memorandum. Bring your drafts to class on Tuesday, October 31.
2. Complete *Plain English* Exercise 18 (on Canvas) and bring your edits to this class.

Tuesday, October 31

Writing the Statement of Facts and Conclusion to the Office Memorandum

A Lawyer Writes, 245-57 (Statement of Facts)

Researching the Law, 130-34 (Federal Administrative Regulations)

In-class workshop on the Question Presented and Brief Answer

Thursday, November 2

The place of policy in legal arguments

A Lawyer Writes, 185-92 (Policy)

Outlining workshop for the Unit 3 Assessment

Tuesday, November 7

Editing your memorandum

A Lawyer Writes, 259-72

In-class Unit 3 citation workshop

Thursday, November 9

Polishing your writing; question/answer on the Unit 3 Assessment
A Lawyer Writes, 272-83
Question and Answer session on the Unit 3 Assessment

First draft of Unit 3 Assessment is due on Friday, November 10, by 11:59 pm (upload to Canvas)

Tuesday, November 14

No Class— 30 minute conferences on your draft Office Memorandum

Thursday, November 16

No Class— 30 minute conferences on your draft Office Memorandum

Final draft of Unit 3 Assessment is due one week after your individual conferences, by 11:59 pm (upload to Canvas) (40% of total grade for the course)

Unit 4: Expressed Legal Analysis (Supervisor-Staff Attorney Meeting)

Tuesday, November 21

How to explain your analysis to a supervisor
Presenting Your Legal Research to a Partner (on Canvas)

Tuesday, November 28

No Class— 15 minute Supervisor/Staff Attorney meetings

Thursday, November 30

No Class— 15 minute Supervisor/Staff Attorney meetings

Tuesday, December 5

Final Class—Course evaluations and a look ahead
Advanced Legal Writing: Metaphor (on Canvas)

See next page for Unit Outcomes

Unit 1 Outcomes – Systems of law and finding the law

1. Describe the structure, components, and functions of legal systems in the United States.
2. Describe the relative weight of different types of primary and secondary authority.
3. Demonstrate efficient, thorough, and deliberate research processes for primary and secondary authority in federal, state, and tribal jurisdictions.
4. Practice using key principles of Plain English to express your analysis clearly and concisely.
5. Practice proper *Bluebook* citation format with constitutions, statutes, and cases.

Unit 2 Outcomes – Constructing a legal argument: The Discussion Section

1. Identify sources of authority relevant to a complex fact pattern, including constitutional provisions, statutes, regulations, and rules of common law.
2. Identify legal issues within a complex fact pattern when given a legal issue.
3. Demonstrate analogical reasoning skills to analyze the potential outcomes of a legal dispute.
4. Practice using key principles of Plain English to express your analysis clearly and concisely.
5. Practice proper *Bluebook* citation format with constitutions, statutes, and cases.

Unit 3 Outcomes – Applied legal analysis: The Office Memorandum

1. Identify sources of authority relevant to a complex fact pattern, including constitutional provisions, statutes, regulations, and rules of common law.
2. Identify material facts within a complex fact pattern when given a legal issue.
3. Demonstrate rule-based reasoning skills to analyze the potential outcomes of a legal dispute.
4. Apply statutes, cases, regulations, and other forms of primary authority to analyze the potential outcomes of a legal dispute.
5. Identify and dismiss counter-arguments.
6. Practice using key principles of Plain English to express your analysis clearly and concisely.
7. Practice proper *Bluebook* citation format with constitutions, statutes, and cases.

Unit 4 Outcomes – Expressed legal analysis: Supervisor-staff attorney meeting

1. Practice oral presentation skills.
2. Identify legal research practice tools