Legal Research and Writing: An Integrated Approach
Wednesdays, 6:30 to 8:10 p.m.
Fall 2024
Professor Michael Kovac
Syllabus

Office: Online
Office Hours: Weekends (dates and times to be announced) and by appointment
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INTRODUCTION AND OVERVIEW

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, i.e., 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 three 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 three Units all include instruction and practice in proper legal citation formatting.

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 citation format with constitutions, statutes, cases, and regulations.

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* (4th ed. 2018)
3. Association of Legal Writing Directors & Carolyn V. Williams, *ALWD Guide to Legal Citation* (7th ed. 2021)

Core Grammar for Lawyers:

On or before December 1, 2024, at 11:59 p.m. (EST), you must earn a score of at least 85% on the Core Grammar for Lawyers Post-Test in order to pass this course.

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. Unless otherwise approved by me, 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.

Use of Generative AI (e.g., ChatGPT and others):

Legal research and writing are unlike most other academic and professional activities you may have undertaken in the past. Some of the most important skills connected to an attorney's

success are to be able to find, evaluate, analyze, and synthesize authority and arguments and to communicate those results effectively. Using tools that complete any of these processes for you before you have become proficient with them on your own–no matter how sophisticated, accurate, or ubiquitous those tools are–will shortcut critical cognitive steps in your legal training and can put you at a significant disadvantage.

Artificial Intelligence (AI) is only going to continue to improve and will impact the practice of law in ways we cannot predict. Once you have learned on your own to separate relevant information and authority from that which is irrelevant and to formulate, weigh, and communicate the merits and shortcomings of different arguments, you will be operating from a foundation of knowledge and in a strong position to critically evaluate and accept, reject, or modify AI-generated output. One of my goals is to help you build that knowledge foundation so that you can make the most of these profoundly important tools in the future, no matter what they morph into along the way.

In the first semester of law school, though, we are not quite there yet. Therefore, **the use of generative AI (including but not limited to ChatGPT, GPT4-based tools (whether standalone or incorporated into a third-party platform), or any other product that uses AI to generate blocks of text or answers to questions) is <u>prohibited</u> in connection with your work <u>in all aspects of this class</u> except in situations where I have expressly given permission to do so**. If you are not sure whether something is permitted, ask.

Collaboration Policy:

Students are permitted to discuss assignments and share their ideas with each other. In fact, collaboration at the idea stage is encouraged. However, the work product that students hand in (for graded and ungraded assignments) must be their own.

What you can do: You are permitted to talk about all assignments with other students. You are also permitted *and encouraged* to discuss the issues, research, and analysis, and share materials unless instructed otherwise by me. You are permitted to consult librarians for research projects. And you are permitted to share your writing with the writing specialist (see below for information on contacting the writing specialist).

What you cannot do: You are not permitted to collaborate in the writing process, and you may not read the written work of another student. The written product must be your own work; you are not permitted to copy another student's work and hand it in as your own. <u>You are not permitted to seek assistance on any written assignment from anyone other than me (with the exception of the writing specialist, as noted above and below).</u> This means that you cannot have another person read your written work (including a spouse, an attorney, or anyone else). While you are permitted and encouraged to discuss and share ideas with other students, you are not permitted to divide up assignments or research tasks with other students.

<u>The Writing Specialist</u>:

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

<u>Guidelines for course work</u>:

Written assignments must comply with the following requirements:

1. Citations and formatting must comply with the ALWD rules (unless the assignment instructions state otherwise);

2. Documents must be 8.5" x 11";

3. You must use Times New Roman, twelve-point font;

4. Double space your work unless otherwise directed or the ALWD requires single spacing (such as with block quotations);

5. You must number all pages, with the page numbers appearing at the bottom-center of each page;

6. Margins must be one inch;

7. Margins must be fully justified;

8. The first line of each paragraph must be indented; and

9. You must follow the word limits set forth in the assignments (any words over the limit will not be considered).

This course requires active and respectful participation. During class, you must have your camera activated, and you must be viewable throughout the duration of class. Some weeks, you will have to complete assignments that will be discussed in class.

<u>Grading</u>:

Letter grades are based on the course assignments (90%) and class activities (10%). Class activities include attending classes, participating in class discussion, meeting all deadlines, and completing all the projects and exercises listed in the schedule below.

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

(1) Unit 1 Assignment   15%

(2) Unit 2 Assignment   20%

(3) Unit 3 Assignment   55%

(4) 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 ten percent 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.

For all LRW classes, the final grades are curved so that the class averages a B to a B+.

Attendance Policy:

Under ABA standards, a student may not miss more than 20% of a course's classes. For a fifteen-class course (such as Legal Research and Writing), you can miss no more than three classes. Pursuant to Vermont Law and Graduate School academic regulations, any student who is absent from more than 20% of regularly scheduled classes will be withdrawn from the course with a grade of F-Wd (VLGS Academic Regulations, II.A.1.b.).

COURSE SCHEDULE

Unit 1: Finding the law

ACTIVITIES/ASSIGNMENTS	PERCENT	DUE DATE
Module 1 (week of August 26): Introduction to the course, the American legal system, legal research, and citations		
Read *Researching the Law*, chapter 1		Before class for Module 1
Read *A Lawyer Writes*, chapter 2		Before class for Module 1
Review *ALWD Guide to Legal Citation*, pp. 54, 112, 185, 214, 235 (note the differences in the citations for these various legal authorities)		Before class for Module 1
Read Section I excerpt from *June Med. Servs. v. Russo*, 591 U.S. 299 (2020) (included with Module 1 materials on Canvas)		Before class for Module 1
Install Microsoft 365 from VLGS IT (free)		Before class for Module 1
Attend the Westlaw training session (Microsoft Teams) – see Module 1 materials on Canvas for link		See Canvas for dates/times
Attend the Lexis training session (Microsoft Teams) – see Module 1 materials on Canvas for link		See Canvas for dates/times
Module 2A (September 6, 2:15-3:30 p.m.): Research strategies; secondary sources		
Read *Researching the Law*, chapters 3-6, 8		Before class for Module 2A
Review handout: Online Legal Research (included with Module 2A materials on Canvas)		Before class for Module 2A
Complete Research Exercise, Part 1		After class for Module 2A
Module 2B (September 7, 1:45-3:00 p.m.): Finding the law (cases, statutes, and regulations)		
Read *Researching the Law*, chapters 4-5, 9, 11, and pages 130-34		Before class for Module 2B
Complete Research Exercise, Part 2		After class for Module 2B

Module 2C (September 8, 9:15-10:30 a.m.): Case reading; introduction to legal analysis		
Read *A Lawyer Writes*, section 3.2 and chapter 6		Before class for Module 2C
Complete CREAC Exercise		After class for Module 2C
Module 3 (week of September 9): Core Grammar; citations NO CLASS		
Review *ALWD Guide to Legal Citation*, rules 1-5, 11, 12.1-12.7, and 14.1-14.5, as well as appendix 3.E		Before class for Module 4
Watch *Creating Correct Citations*		Before class for Module 4
Complete Core Grammar for Lawyers Pre-Test		By September 14, at 11:59 p.m. (EST)
Module 4 (week of September 16): Citators; prioritizing research results; research review		
Read *Researching the Law*, chapters 2, 10		Before class for Module 4
Complete Research Exercise, Part 3		After class for Module 4
Unit 1 Assignment (collaboration prohibited)	15	Sunday, September 22, by 11:59 p.m. (EST) (upload through Canvas)

Unit 2: Constructing one legal argument (CREAC)

ACTIVITIES/ASSIGNMENTS	POINTS	DUE DATE
Module 5 (week of September 23): Introduction to discussion sections; understanding the client's problem; organizing research results		
Read *A Lawyer Writes*, chapters 3, 5		Before class for Module 5
Review *Researching the Law*, part III		Before class for Module 5
Review Clean Water Act case (Unit 2 Assignment)		Before class for Module 5
Review handout: Effective Research Notes		Before class for Module 5
Have completed Research Exercise (parts 1, 2, & 3) accessible		During class for Module 5

Complete Authorities Exercise		After class for Module 5
Module 6 (week of September 30): Pre-writing; finding your argument		
Read *A Lawyer Writes*, chapters 4, 6		Before class for Module 6
Have completed Authorities Exercise accessible		During class for Module 6
Draft Clean Water Act case outline		After class for Module 6
Module 7 (week of October 7): Synthesizing rules; explaining the law		
Read *A Lawyer Writes*, chapter 7		Before class for Module 7
Review *ALWD Guide to Legal Citation*, rules 1-5, 11, 12.1-12.7, and 14.1-14.5, as well as appendix 3.E		Before class for Module 7
Review handout: Formulating Holdings & Legal Principles for Case		Before class for Module 7
Have Clean Water Act case outline accessible		During class for Module 7
Draft R & E of Clean Water Act case		After class for Module 7
Module 8 (week of October 14): Quoting in legal documents; clear, concise, & correct writing; A sections; C sentences		
Read *A Lawyer Writes*, chapters 8-9		Before class for Module 8
Review *ALWD Guide to Legal Citation*, rules 38-40		Before class for Module 8
Have R & E for Clean Water Act case CREAC accessible		During class for Module 8
Draft and add C's & A to your Clean Water Act case draft		After class for Module 8
Module 9 (week of October 21): Editing & proofing; writing workshop		
Review handouts: Editing Tips & Tricks; E-editing		Before class for Module 9
Have complete CREAC for Clean Water Act case accessible		During class for Module 9
Edit, polish, & proof your CREAC for the Clean Water Act case		After class for Module 9
Unit 2 Assignment (collaboration prohibited)	20	Sunday, October 27, by 11:59 p.m. (EST) (upload through Canvas)

Unit 3: Interoffice memorandum

ACTIVITIES/ASSIGNMENTS	POINTS	DUE DATE
Module 10 (week of October 28): Introduction to interoffice memos; introducing & connecting legal arguments		
Read *A Lawyer Writes*, chapter 12		Before class for Module 10
Review *A Lawyer Writes*, chapters 4-5		Before class for Module 10
Review ADA case (Unit 3 Assignment)		Before class for Module 10
Conduct research for the ADA case (Unit 3 Assignment)		After class for Module 10
Module 11 (week of November 4): Pre-writing; revisit R, E, & A		
Review *A Lawyer Writes*, chapters 7-8		Before class for Module 11
Have research findings for ADA case accessible		During class for Module 11
Draft ADA case outline		After class for Module 11
Module 12 (week of November 11): Question Presented & Brief Answer; Statement of Facts; Conclusion section(s)		
Read *A Lawyer Writes*, chapters 13-15		Before class for Module 12
Review handouts on writing		Before class for Module 12
Have ADA case outline accessible		During class for Module 12
Draft entire memo for ADA case		After class for Module 12
Module 13 (week of November 18): Conference week (NO CLASS)		

Module 14 (week of November 25): Conference week & Thanksgiving break (NO CLASS)

Core Grammar for Lawyers – By December 1, 2024, at 11:59 p.m. (EST), you must complete the Core Grammar for Lawyers Post-Test and earn a score of at least 85%.

Module 15 (week of December 2): Finalizing the memo; editing and polishing

Read *A Lawyer Writes*, chapter 16		Before class for Module 15
Review handouts on editing		Before class for Module 15
Unit 3 Assignment (collaboration prohibited)	55	Friday, December 6, by 11:59 p.m. (EST) (upload through Canvas)

Learning Outcomes

Unit 1 Outcomes – 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 citation format with constitutions, statutes, and cases.

Unit 2 Outcomes – Constructing one legal argument (CREAC)
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 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 counterarguments.
6. Practice using key principles of Plain English to express your analysis clearly and concisely.
7. Practice proper citation format with constitutions, statutes, and cases.