Legal Research and Writing: An Integrated Approach
Syllabus
Fall Term 2024
Professor Greg Johnson

Office: Debevoise Hall, Room 315
Office Hours: Monday, 9:00-10:00 am
                Thursday, 11:00 am – Noon
                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 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. All three Unites include instruction and practice in proper legal citation format.

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.

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. 2024).
3. Richard C. Wydick & Amy E. Sloan, *Plain English for Lawyers* (7th ed. 2024).
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.

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 finding, evaluating, analyzing, and synthesizing authority and arguments and communicating 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 disrupt the practice of law in ways we cannot yet predict. Once you learn on your own how to separate relevant information and authority from that which is irrelevant and how 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 the goals of this course 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, you are prohibited from using generative AI, or any other product that uses AI to generate blocks of text or answers to questions, in connection with your work in all aspects of this class.

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 22)   20%

(2) Unit 2 (Discussion Section assignment) (due on October 20)   20%

(3) Unit 3 (Office Memorandum)   50%
(first draft due on November 13; final draft due one week after our individual conference)

(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 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.

<u>Attendance Policy</u>:

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.

<u>Class Assignment Schedule</u>:

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

<u>Tuesday, August 27</u>

An introduction to American legal systems
A Lawyer Writes, 15-23 (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, 1-4 (Introduction and Rule B1.1) and Rules B11 and 11

<u>Assignments</u>:

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.
<u>Due on Sunday, September 1, by 11:59 pm (upload to Canvas)</u>

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 2024
J.D. students should attend *one* Westlaw and *one* Lexis training session.

Westlaw Training (choose one)
Monday, August 26, at 5:00 pm ET
Join the meeting now
Meeting ID: 275 026 973 719
Passcode: NMx5XM

Tuesday, August 27, at 1:00 pm ET
Join the meeting now
Meeting ID: 287 226 281 607
Passcode: BraYnd

Lexis Training (choose one)
Wednesday, August 28, at 5:00 pm ET
Join the meeting now
Meeting ID: 249 745 129 488
Passcode: dpL4hA

Thursday, August 29, at 1:00 pm ET
Join the meeting now
Meeting ID: 281 447 169 410
Passcode: QMG7wS

Thursday, August 29

    Hierarchies of authority*; legal research process; citing case names (with workshop
        A Lawyer Writes, 23-32 (Systems of Law)
        Researching the Law, 21-26 (Defining a Research Question)
        Legal Research Process Chart (on Canvas)
        The Bluebook, Rules B2, B10.1.1, 10.2, and Table 6 (Case names in citations)
        In-class citation workshop on case names (on Canvas)

Tuesday, September 3

    Reading statutes; pre-search filtering; citing case names (with workshop)
        A Lawyer Writes, 33-43 (Reading Statutes)
        Researching the Law, 27-33 (Pre-Search Filtering)
        The Bluebook, Rules B12.1.1, 12.1-12.3.2 (Citing statutes)
        In-class citation workshop on statutes (on Canvas)

Thursday, September 5

    Statutory analysis; research search terms and techniques; citing statutes
        A Lawyer Writes, 215-31 (Statutory Analysis)
        Researching the Law, 35-45 (Research Tools and Search Techniques)
        Teaching Non-Precedential Federal Appellate Opinions (on Canvas)

Tuesday, September 10

    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 12

    Finding your arguments; researching secondary authority
        A Lawyer Writes, 65-78 (Finding Your Arguments)
        Researching the Law, 65-81 (Legal and Nonlegal Secondary Sources)
        The Bluebook, Rules B10.1.5-1.6 and 10.6-10.7 (Parenthetical information)

Tuesday, September 17

Organizing your legal authority; researching cases; short-form cites
A Lawyer Writes, 79-97 (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)
Complete short-form citation exercises (on Canvas)

Thursday, September 19

One legal argument; using citators to update your research
A Lawyer Writes, 99-103 (One Legal Argument)
Researching the Law, 97-108 (Citators and Other Updating Tools)
When to Stop Researching (on Canvas)

We will release the Unit 1 Assessment on Friday, September 20, at 8 a.m. You have until Sunday, September 22, at 11:59 p.m., to complete the assessment and upload it to Canvas.

Unit 2: Constructing a Legal Argument (CREAC)

Tuesday, September 24

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, 105-18, 235-44 (Explaining the Law/The Roadmap)
Researching the Law, 109-21 (Statutory Research)
Plain English for Lawyers, 3-6 (Why Plain English?)
Document Template (on Canvas)

Thursday, September 26

Introduce the Unit 2 Assessment (Discussion Section) (on Canvas)
Explaining the law: Case illustrations (the E of CREAC)
A Lawyer Writes, 119-40 (Explaining the Law: Case Illustrations)
Plain English for Lawyers, 7-20 (Omit surplus words)

Assignments:

1. Begin researching the Clean Water Act on your own (no collaboration with others). Bring your research results to class on Tuesday, October 1.

2. Complete *Plain English* Exercises 1-4 (on Canvas) and bring your edits to this class.

Tuesday, October 1

      Research workshop; applying the law (the A of CREAC); citation parentheticals
          A Lawyer Writes, 155-76, 197-99 (Applying the Law)
          The Bluebook, Rules B1.3 and 1.5 (Parenthetical information in case citations)
          SCOTUS (cleaned up) (on Canvas)
          I will assign sources to read for the following three classes (October 3, 8, 10)

Thursday, October 3

      Applying the law: Counter-analysis (the hidden C of CREAC); use strong verbs
          A Lawyer Writes, 181-95 (Applying the Law: Counter-Analysis)
          Plain English for Lawyers, 21-24 (Use strong verbs)
          The Bluebook, Rules B6 and 6 (Abbreviations, numerals, and symbols)

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

Tuesday, October 8

      The conclusion to your analysis (the first and last C of CREAC); the active voice
          A Lawyer Writes, 201-05 (Beginning and Ending One Legal Argument)
          Plain English for Lawyers, 25-29 (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.

Thursday, October 10

      Outlining the Discussion Section; write short sentences; arrange words carefully
          Workshop on outlining the Discussion Section
          Plain English for Lawyers, 31-36 (Use short sentences)
          Plain English for Lawyers, 37-39, 44-49 (Arrange your words carefully)
          The Sentence (on Canvas)

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

Tuesday, October 15   NO CLASS: FALL BREAK

Thursday, October 17

      Citing effectively and avoiding plagiarism; in-class citation workshop
          A Lawyer Writes, 141-54 (Citing and Avoiding Plagiarism)
          Plain English for Lawyers, 53-68 (Choose your words carefully)
          In-class Unit 2 citation workshop

Unit 2 Assessment is due on Sunday, October 20, by 11:59 pm (upload to Canvas).

Unit 3: Applied Legal Analysis (The Office Memorandum)

Tuesday, October 22

      Introduce the Unit 3 Assessment (Office Memorandum) (on Canvas)
          Plain English for Lawyers, 71-85 (Use commas carefully)
          The Bluebook, B3 and 3.2 (pages and footnotes)

Thursday, October 24

      Writing the Questions Presented and Brief Answers; punctuate carefully
          A Lawyer Writes, 251-67 (Question Presented and Brief Answer)
          Plain English for Lawyers, 87-104 (Punctuate carefully)

Assignments:

1. Draft the Questions Presented and Brief Answers for the Office Memorandum. Bring your draft to class on Tuesday, October 29.

2. Complete *Plain English* Exercise 18 (on Canvas) and bring your edits to this class.

Tuesday, October 29

      Writing the Statement of Facts and Conclusion to the Office Memorandum
          In-class workshop on the Questions Presented and Brief Answers
          A Lawyer Writes, 269-83 (Statement of Facts and Conclusion)
          Researching the Law, 130-34 (Federal Administrative Regulations)

Thursday, October 31

      The place of policy in legal arguments; outlining workshop for the Unit 3 Assessment
          A Lawyer Writes, 207-14 (Policy)
          Outlining workshop for the Unit 3 Assessment

Tuesday, November 5

      Editing your memorandum; citation workshop for the Unit 3 Assessment
          A Lawyer Writes, 285-98
          In-class Unit 3 citation workshop

<u>Thursday, November 7</u>

> Polishing your writing; question/answer on the Unit 3 Assessment
>> *A Lawyer Writes*, 298-309
>> Question and Answer on the Unit 3 Assessment

<u>First draft of Unit 3 Assessment is due on Friday, November 8, by 11:59 pm (upload to Canvas).</u>

<u>Tuesday, November 12</u>

> No class—thirty-minute conferences on your draft Office Memorandum

<u>Thursday, November 14</u>

> No class—thirty-minute conferences on your draft Office Memorandum

<u>Final draft of Unit 3 Assessment is due one week after your individual conferences, by 11:59 pm (upload to Canvas).</u>

<u>Tuesday, November 19</u>

> No class

<u>Thursday, November 21</u>

> No class

<u>Tuesday, November 26</u>

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

<center>See next page for Unit Outcomes</center>

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.

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-analysis.
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.