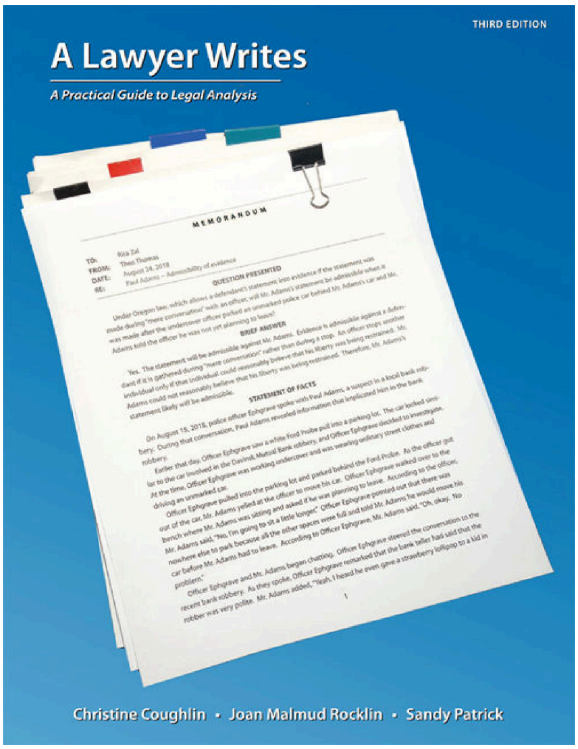
A Lawyer Writes_ A Practical Guide to Legal Analysis



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2. Procedural facts
C. The Court's Analysis
1. The issue or issues
2. The rule of the case
3. The holding or holdings
4. Reasoning
5. Dicta
6. The judgment or disposition
D. Concurring and Dissenting Opinions
II. Reading a Judicial Opinion for Comprehension
A. Get Context
B. Skim the Case
1. Determine relevance
2. Print relevant cases
3. Get an overview of the case
C. Read the Opinion Critically
Practice Points

Chapter 4 · Finding Your Argument
I. Identify the Governing Rule
A. A Statute as the Governing Rule
B. Common Law as the Governing Rule
C. A Synthesized Rule as the Governing Rule
II. Inventory the Governing Rule
A. Elements
B. Factors
C. Red Flag Words
D. Diagramming the Governing Rule
E. Tests
1. Elemental analysis
2. Balancing test
3. Totality of the circumstances test
4. Prong test

III. Think Like a Lawyer: See the Governing Rule as Individual Legal Arguments
Practice Points

Chapter 5 · Organizing Your Legal Authority
I. Step 1: Organize Your Research
A. Case Charts
B. Case Notes
II. Step 2: Organize by Element or Factor
A. Charts
B. Outlines
C. Mind Maps
III. Step 3: Prepare to Write
A. Outlines
B. Mind Maps
IV. Write for Your Audience
Practice Points

Chapter 6 · One Legal Argument

Chapter 7 · Explaining the Law
Section 7.1 · Explaining the Law: Rules
I. The Role of Rules
II. Finding the Rules
A. Explicit Rules
B. Implicit Rules
1. When to synthesize an implicit rule
(a) Example 1: Finding an implicit rule from consistent decisions
(b) Example 2: Finding consistency in seemingly inconsistent cases
(c) Example 3: Bringing parts together to form a whole
2. Dare to explicitly state an implicit rule
III. Writing the Rules
Practice Points

Section 7.2 · Explaining the Law: Case Illustrations
I. The Role of Case Illustrations
A. Clarifying Rules
B. Proving Rules
C. Foreshadowing the Application
D. Representing Legal Principles
II. The Parts of a Case Illustration
A. The Hook
B. Trigger Facts
C. The Court's Holding
D. The Court's Reasoning
E. Order of the Parts
F. The Length of Case Illustrations
III. Determining Whether a Case Illustration Is Necessary
IV. Using Case Illustrations
A. Parameters of Behavior
B. Threshold of Behavior
V. Choosing Prior Cases
VI. Organize Around Legal Principles
VII. The Order of Case Illustrations
VIII. Writing Case Illustrations
Practice Points
Section 7.3 · Explaining the Law: Citing and Avoiding Plagiarism
I. Citing
II. Avoiding Plagiarism

Chapter 8 · Applying the Law
Section 8.1 · Applying the Law: Rule-Based Reasoning
I. When to Use a Rule-Based Argument
II. Crafting a Rule-Based Argument
Practice Points
Section 8.2 · Applying the Law: Analogical Reasoning
I. When to Use Analogical Reasoning
II. How to Construct an Effective Analogy

A. State Your Point
B. Construct Your Comparison or Distinction
1. Determine which facts make your client's case similar to or different from the prior case
2. Describe facts from your client's case in concrete detail
3. Determine the trigger facts from the prior case that need to be recalled
4. Introduce no new information about the prior case in your analogy
5. Help your reader see the comparison
C. Explain Why the Comparison Matters
III. Using Analogical and Rule-Based Reasoning Together
Practice Points
Section 8.3 · Applying the Law: Counter-Analyses
I. The Role of a Counter-Analysis
II. Crafting a Counter-Analysis
A. Explain the Opposing Argument
B. Explain Why a Court is Unlikely to Adopt the Opposing Argument
C. Return to Your Initial Conclusion
III. When to Include a Counter-Analysis
IV. Where to Include a Counter-Analysis
V. The Counter-Analysis and Your Explanation of the Law
Practice Points
Section 8.4 · Applying the Law: Organizing Your Application of the Law
Practice Points

Chapter 9 · Conclusions to One Legal Argument
I. Using a Conclusion to Begin a Legal Argument
II. Using a Conclusion to End a Legal Argument
III. Using a Conclusion to Introduce Your Application
IV. Drafting Conclusions
Practice Points

Chapter 10 · Policy
I. When to Include Policy in a Legal Argument
II. Identifying Legislative Policy in a Statute
A. Policy Codified in a Statute
B. Policy Recorded in Legislative History
C. Legislative Policy Discussed in a Judicial Decision
III. Identifying Judicial Policy in the Common Law
IV. Where to Include Policy in Your Legal Argument
Practice Points

Chapter 11 · Statutory Analysis
I. Statutory Analysis: A Multi-Step Process
II. Reading the Statute
III. Interpreting the Statute
A. Understanding Methodologies
B. Sources of Evidence
1. Intrinsic evidence
(a) Text and the plain meaning rule
(b) Text and context
(c) Textual canons of construction
(d) Cases
2. Extrinsic sources
(a) Cases
(b) Agency interpretations and regulations
(c) Legislative history
(d) Non-textual canons of construction
(e) Other sources
IV. Drafting a Statutory Analysis
Practice Points

Chapter 12 · The Discussion Section: Introducing and Connecting Legal Arguments
I. Introduce Your Legal Argument: The Roadmap Section
A. State Your Conclusion to Your Client's Legal Question
B. Explain the Governing Rule

1. State the governing rule
2. Explain how courts interpret or apply the governing rule
3. Provide necessary background information
C. Dispose of the Obvious and Uncontroversial (if Necessary)
D. Map and Assess the Remaining Arguments (if Necessary)
E. Conclude Again (if Necessary)
II. Create Informative Point Headings
A. Make Point Headings "Work"
B. Restate the Conclusion after the Point Heading
C. Create Professional-Looking Point Headings
III. Use Mini-Roadmaps to Introduce Sub-Arguments
Practice Points

Chapter 13 · Question Presented and Brief Answer
I. The Role of a Question Presented and Brief Answer
II. The Form of a Question Presented and Brief Answer
III. Writing a Question Presented
A. Structuring the Question Presented
1. Structuring a Question Presented with under/does/when
(a) "Under" the controlling law
(b) "Does/Is/Can" this question or legal consequence occur
(c) "When" these legally significant facts occurred
(d) Vary the order of the three parts if it makes the Question Presented clearer
2. Structuring a Question Presented with statements and a question
(a) Describe the determinative facts in chronological order
(b) Describe the controlling law and pose the legal question
B. Tools for Drafting an Effective Question Presented
1. Create one Question Presented for each main issue in the memorandum
2. Describe the facts that will be determinative to the court
3. Describe determinative facts in concrete detail
4. Avoid legally significant phrases that assume the answer
5. Avoid "whether" when introducing your Question Presented

6. State the question concisely
IV. Writing a Brief Answer
Practice Points

Chapter 14 · Statement of Facts
I. The Role of the Statement of Facts
II. Types of Facts to Include
III. Organizing Your Statement of Facts
IV. Reviewing for Thoroughness
V. Writing the Statement of Facts
VI. Examples
Practice Points

Chapter 15 · Conclusion to the Memorandum
Practice Points

Chapter 16 · Editing and Polishing
I. Edit Your Memorandum
A. Edit the Content of Each Legal Argument
1. Separate the explanation of the law from the application
2. Compare the explanation to the application and check for omissions and excess
(a) Verify that ideas explained are applied
(b) Remove elegant variation
(c) Check the completeness of your case illustration
B. Edit the Organization of Each Legal Argument
C. Edit the Discussion Section for Context and Flow
1. Insert roadmaps and signposts
2. Check topic sentences
3. Check paragraph cohesion
4. Check transitions between arguments
II. Polish Your Memorandum
A. Strengthen Sentences
1. Find and revise overly long sentences
(a) Revise sentences with too many ideas

(b) Revise wordy sentences
2. Create clear subject-verb pairs
(a) Bring subject and verb close together
(b) Minimize passive voice
(c) Minimize nominalizations
B. Proofread Your Work
C. Check Your Citations
III. Customize Your Editing Checklist

Chapter 17 · Client Letters
I. The Types of Letters Lawyers Write
II. The Basic Parts of a Letter
A. Date
B. Return Address
C. Recipient Address
D. Subject Line
E. Salutation
F. The Body of the Letter
1. Opening paragraph
2. Background facts
3. Analysis
4. Options
5. Next steps
G. Closing
H. Confidentiality Warning
III. Editing and Polishing Your Letter
A. Create a Conversational, yet Professional Tone
B. Omit Legalese. Explain Legal Terms as Necessary.
C. Eliminate Errors
D. Choose a Traditional, Reader-Friendly Format
IV. Letters vs. Emails: Which to Send When?
Practice Points

Chapter 18 · Professional Emails
I. Correspond Professionally

II. Decide Whether Email Is the Best Mode of Communication
A. Administrative Matters
B. Difficult Conversations
C. Legal Analyses
III. Crafting a Professional Email
A. The Basic Components of an Email
1. The recipients' addresses
2. Subject line
3. Salutation
4. Body
5. Closing
6. Name and signature block
7. Confidentiality warning
8. Attachments
B. Creating an Effective Email Through Content, Tone, and Style
1. Keep the content short, clear, and readable
2. Keep the tone polite and professional
3. Keep the style formal
IV. Sending a Legal Analysis via Email
A. Using an Attached Memorandum vs. the Body of the Email
1. Consider your recipient's needs and preferences
2. Consider the formality you wish to convey
3. Consider the length of your analysis
B. Crafting a Condensed Email Analysis
1. The introduction
2. The legal analysis
3. The closing
V. Stop and Think Before You Press Send
Practice Points

Chapter 19 · The Transition from Objective to Persuasive Writing
I. Objective vs. Persuasive Writing
A. A New Perspective: The Advocate
B. A New Audience: The Judge

C. A New Format: The Brief
D. A New Focus: The Theme
II. The Parts of a Trial Brief: An Overview
III. The Caption
IV. The Introduction
V. The Statement of Facts
A. Organizing the Statement of Facts
B. Choosing Which Facts to Include
C. Refining the Statement of Facts
1. Place favorable facts strategically
2. Describe favorable facts in detail
3. Pair favorable facts with unfavorable facts
4. Avoid overstating or misrepresenting the facts
5. Avoid characterizing the facts
6. Identify individuals by their roles
7. Cite the facts
VI. The Argument
A. Organizing the Argument
1. Multiple claims
2. Multiple legal arguments
B. Developing Persuasive Rules
1. Step one: Determine your rule
2. Step two: Craft your rule strategically
C. Developing Persuasive Case Illustrations
D. Developing Counter-Analyses: Addressing Weaknesses from Your Client's Perspective
E. Other Ways to Shape Your Argument
1. Use location strategically
2. Use assertive point headings
3. Create paragraph-level persuasion
a. Thesis sentences
b. The middle of the paragraph
c. Final sentences
4. Create sentence-level persuasion