

Legal Writing I: Legal Writing, Skills, and Values Course Description and Learning Objectives

Overview

Legal Writing I: Legal Writing, Skills, and Values is a 6-credit course that focuses on legal research and citation; legal reading, analysis, and synthesis; and the principles of effective writing. In addition, the course incorporates discussions of professional identity and professionalism and the values of cultural competence and reflection. Finally, it introduces students to lawyering skills including client interviewing and counseling, fact development, and negotiation. These skills will be taught in the context of drafting predictive memoranda and other legal documents.

Core Skills: Legal Research, Analysis, and Writing

Effective **writing** is key to a lawyer's success. Lawyers communicate in writing with their clients, with other lawyers, with judges, and with myriad other people within and outside the legal system. This course focuses on predictive writing; that is, it focuses on situations in which lawyers are asked to assess a legal question and make a prediction as to the outcome of that question based on the lawyer's legal research; the lawyer's ability to read, understand, analyze, and synthesize the law; and the lawyer's application of the law to the facts of the case. The course will also focus on the principles of effective legal writing including clarity, conciseness, and precision. Finally, the course emphasizes that writing is not only a tool for communicating, but also a tool for developing **analytical skills**.

By the completion of the LWSV course, students should be able to do the following:

1. Identify the primary components of the U.S. legal system, navigate sources of legal information, and find sources of law relevant to a specific legal problem;
2. Gather information through effective and efficient research strategies;
3. Critically evaluate research and other information;
4. Decipher and understand legal citations in context, use a legal citation manual, and form proper legal citations;
5. Read, analyze, and synthesize primary and secondary legal authorities;
6. Apply law to fact to reach a well-supported prediction;
7. Write predictive memoranda, client letters, and other legal documents with appropriate content, using the formats that lawyers would expect; and
8. Write precisely, concisely, and correctly.

Values: Professionalism, Reflection, and Cultural Competence

As law students become members of the legal profession, they need to develop their "**professional identities**." That is, they need to figure who they want to be as lawyers. This course will help them develop those identities in ways that allow them to meet the expectations of the legal profession for professional conduct while maintaining their personal identities and values. Although **professionalism** may be defined in many ways, it includes "civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rule of law, the courts, clients, persons who work within the legal profession, witnesses, and unrepresented parties."¹

¹ Commission on Professionalism, State Bar of New Mexico, at <https://tinyurl.com/y9gea347>. See also Washington State Bar Association's Creed of Professionalism at <https://tinyurl.com/ybgvogef>.

Reflection is essential to developing both professionalism and professional identity. Reflective lawyering promotes autonomous learning, self-awareness, and critical thinking skills. Students will learn to think in an intentional, disciplined manner about what lawyers do, so that they can comprehend and integrate new knowledge that will become the basis for future actions. In addition, students will learn to use reflective skills to develop professional judgment, increase productivity, and build capacity to identify and address implicit biases.

By the completion of the LWSV course, students should be able to do the following:

1. Reflect on the influence of internal, external, and societal factors² on their roles as lawyers and on the legal system itself;
 - Internal factors include each person's preferences, experiences, biases, and characteristic.
 - External factors include the preferences, experiences, biases, and characteristics of other people involved in the legal system.
 - Societal factors include systemic power dynamics, political and social realities, hierarchies, biases, and economic forces.
2. Understand the importance of acting professionally as a law student and a lawyer and demonstrate professionalism in their assignments in this class; and
3. Begin developing professional identities as members of the legal profession and integrating their personal values with the values of the legal profession.

Practicing law is often a cross-cultural experience; thus, lawyers need to develop awareness, knowledge, and skills that enhance the lawyers' and clients' capacities to form meaningful relationships and to communicate effectively. **Cultural competence** is not simply appreciation for cultural diversity or the absence of racism or other discriminatory behaviors. Rather, it encompasses developing awareness and skills to avoid acting with cultural ignorance or bias; deepening powers of cultural observation and broadening cultural vocabulary; and cultivating skills to mitigate culturally ineffective interactions that a lawyer observes, experiences, or contributes to.³

By the completion of the LWSV course, students should be able to do the following:

1. Reflect on their own cultural backgrounds and identities as well as the cultural backgrounds and identities of those people with whom they come into contact, such as other lawyers, clients, and fellow students, and
2. Recognize the ways that culture can affect their work as lawyers, their relationships with clients, their legal analyses, and their search for solutions for the client.

² These stages of reflection are drawn from Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 *Clinical L. Rev.* 317 (2014).

³ Adapted from *Race, Culture, Psychology, & Law*, Chapter 4: Five Habits for Cross-Cultural Lawyering by Sue Bryant & Jean Koh Peters.

Introductory Skills: Client Interviewing and Counseling, Fact Development, and Negotiations

Effective communication between a client and that client's lawyer is the foundation of the lawyer-client relationship. By engaging in effective **client interviewing**, the lawyer (1) builds confidence and understanding between the client and the lawyer and (2) helps the client solve problems. When engaging in effective **client counseling**, the lawyer (1) listens actively and empathetically, (2) communicates alternative solutions to meet the client's goals, and (3) helps the client make his or her own decisions.

By the completion of the LWSV course, students should be able to demonstrate their understanding of the following goals of client interviewing and counseling:

1. Building trust, confidence, and mutual understanding to facilitate a relationship that will allow open communication and that will enhance decision-making;
2. Obtaining information from the client;
3. Discerning the client's potentially changing goals, both legal and non-legal, to facilitate solving the client's problem;
4. Providing information to the client regarding the lawyer-client relationship, the legal process, and the progress of the client's case;
5. Creatively analyzing the law and the client's goals to generate potential solutions; and
6. Explaining to the client in plain language alternative solutions, including their respective advantages and disadvantages.

After conducting the initial interview and any necessary legal research, a lawyer must develop a theory of the case and **develop facts** to support that theory of the case. The lawyer must determine what evidence is needed to confirm and prove that case theory. The lawyer must also determine what evidence is needed to disprove the opposition's case theory and claims. Finally, the lawyer must determine the methods – both formal and informal – to use to locate and develop that evidence.

By the completion of the LWSV course, students should be able do the following:

1. Understand what a "theory of the case" is and be able develop one based on initial client interview and legal research;
2. Identify the factual propositions which, if proven, would allow the client to prevail on the cause of action or defense;
3. Identify some types and sources of evidence and some of the formal and informal methods to obtain that evidence; and
4. Understand the distinctions between facts and inferences and between direct and circumstantial evidence.

Negotiation is a pervasive element of law practice. Whether a lawyer is engaged in litigation, transactional work, or policy-making, the lawyer must have the ability to work with other parties to craft mutually advantageous solutions.

By the completion of the LWSV course, students should be able do the following:

1. Articulate critical concepts relevant to negotiation, including the difference between positions and interests; the difference between a BATNA (Best Alternative to a Negotiated Agreement) and a bottom line; and the features that distinguish distributive bargaining from integrative bargaining and when one approach is preferable to the other;
2. Evaluate a matter to be negotiated from the perspective of the client and that of other parties;
3. Recognize and choose among numerous “communication moves”; and
4. Reduce a negotiated agreement to writing.