

Appendix 1

Study Guide Questions

Robin Wellford Slocum, *Legal Reasoning, Writing, and Other Lawyering Skills* (3d ed., LexisNexis 2011).

Unless assigned, you do not need to do the exercises in the chapter. You may, however, find them helpful in checking your understanding, much like using the study guide questions.

Chapter 1: Introduction to Legal Writing and Other Lawyering Skills

1. What are the varying roles that a lawyer must play? What are the characteristics of those roles?
2. What types of written communication are most common?
3. What type of expertise does a new lawyer need to develop competency in preparing common legal documents?
4. What does a lawyer need to understand about a client in order to provide effective representation?
5. What are some of the most important skills to prospective employers?
6. What is the general progression of a legal matter, and what types of documents do lawyers prepare along that progression?

Chapter 2: Introduction to American Legal System

1. What is a general definition of “law”?
2. Identify four ways in which legal rules are made.
3. Identify four kinds of legal rules.
4. Why are legal rules applied differently depending on given factual situations?
5. Do you think it is appropriate for courts to consider social consequences of their decisions?
6. What is the highest authority of federal law?

7. What is the “common law”?
8. When a federal law and state law conflict, which law controls?
9. What are the three tiers of courts in the federal system and most state court systems?
10. What does it mean that a court has “jurisdiction” to hear a case?
11. In a question of state law, would a state court’s opinion be preferable over a federal court decision? Why?
12. Can state courts hear matters of federal law?
13. What is the difference between mandatory authority and persuasive authority?
14. Identify four examples of primary authorities—two state and two federal.
15. What is the difference between precedent and *stare decisis*?

Chapter 3: Reading and Briefing Cases: The Basics

1. In what ways do the case reading habits of high-performing law students differ from those of low-performing law students?
2. What type of role should you take when reading cases? What are the characteristics of that role?
3. Why is context important when reading cases? What type of context should you try to obtain when reading cases?
4. What different categories of facts are important in developing a case brief?
5. What is the difference between legally relevant facts and procedurally relevant facts?
6. What are “outcome-determinative” facts?
7. What types of issues do cases involve?
8. Are holdings from cases absolute, or flexible?
9. Some statements made by the court do not address this issues are called *dicta*. What does this mean?
10. What is the difference between rationale and dicta?

11. What is the difference between a holding and a rule?
12. Identify three reasons why you should brief a case.
13. Identify the components of a case brief.

Chapter 4: The Lawyer as Advisor: “Human” Factors That Complicate Your Role

1. What are some hidden biases that undermine perspective when evaluating a client’s problem?
2. What are the implication(s) of those biases in terms of lawyering?
3. What are some ways to overcome these biases?

Chapter 6: Evaluating Rules of Law

1. What is an *original* rule of law?
2. How do you understand a legal rule?
3. What are elements of a rule?
4. What is a factors test?
5. What are guidelines?
6. How do you determine when a rule has sub-elements?
7. How would you identify exceptions to a legal rule?
8. Why would you outline a rule of law?
9. Why is identifying the structure of a legal rule important?
10. What should you know about the *result* relating to a legal rule?
11. How do you identify the *issues* related to a rule of law?

Chapter 7: Evaluating a Case

1. What is the difference between the *original* rule of law and the *processed* rule?
2. What is a law-centered definition/interpretation?
3. What is a fact-centered holding?
4. How does a lawyer’s evaluation of a case differ from that of a law student?

5. As a lawyer reading a case, what distinguishes the aspects of the case you can skim from those that require more of your focus?
6. Identify three categories of information that might be revealed in reviewing a court's commentary about what an original rule of law means.
7. When we identify legally significant facts that seem to influence the court's holding, why do we then group them together?
8. How do lawyers formulate rule statements from individual cases?

Chapter 8: Evaluating How an Earlier Case Affects Your Client

1. What are some of the reasons a case might be useful to you?
2. How do you compare the facts of an earlier case to the facts of your client's case?
3. What should you do when the facts of an earlier case do not seem analogous with the facts of your client's case?
4. How and why do lawyers evaluate the policy statements underlying particular rules of law or holdings in a case?

Chapter 9: The Office Memorandum: An Overview

1. Why do lawyers prepare office memoranda?
2. Who is the typical audience for a legal memo and what are the expectations of those readers?
3. What is the essential information conveyed in an office memo?
4. What is the biggest mistake new lawyers make in drafting office memos?
5. What is the predictive function of an office memo?
6. What is the structural format of an office memo?

Chapter 10: The Discussion Section: The Basic Template for Analysis

1. What is inductive analysis?
2. What is deductive analysis?
3. Is the analysis of an office memo deductive or inductive?
4. What provides the template for the discussion section of an office memo?

Chapter 11: The Discussion Section: Drafting the Analysis (Single Case)

1. How do lawyers use thesis sentences to introduce factually analogous cases?
2. What type of facts from analogous cases do lawyers include in rule explanation? What type of facts should they exclude?
3. How do lawyers incorporate the holding and rationale in rule explanation?
4. How do lawyers write rule application paragraphs? What information do they include?
5. How do lawyers include opposing arguments in rule application paragraphs?
6. What are elements in the rule explanation/rule application paragraphs? How are they organized and expressed?
7. What are factors in the rule explanation/rule application paragraphs? How are they organized and expressed?
8. Where do rule statements appear in office memos?

Chapter 12: Evaluating Multiple Cases

1. Why do lawyers have to synthesize cases?
2. What are the steps a lawyer takes in order to synthesize a number of cases?

3. How do you synthesize the court's language?
4. How do you synthesize factors from prior cases?
5. How do you synthesize individual rule statements from prior cases?
6. What does "case reconciliation" mean?

Chapter 13: The Discussion Section: Drafting the Analysis (Multiple Cases)

1. How is drafting the analysis section of a legal memo with multiple cases similar to that of a single case memo?
2. What are some options for discussing cases in a multiple cases memo? How do you determine what option might work best?

Chapter 14: The Discussion Section: Drafting Roadmap Paragraphs

1. What is an overview paragraph and why do we use them in office memos?
2. When is an overview paragraph unnecessary?
3. What type of information is included in an overview paragraph?
4. What is the purpose of a thesis paragraph and how does it differ from an overview paragraph?
5. How do you determine when a thesis paragraph is necessary?
6. What is the organization of a thesis paragraph?
7. What is the content of a thesis paragraph?

Chapter 15: Drafting an Office Memo: Completing the Draft

1. What does the heading of a legal memo look like?
2. What is the purpose of the question presented? What information should be included?

3. What is the purpose of the short answer? What information should be included?
4. What is the purpose of the statement of facts? Which facts should be included?
5. What are some options for organizing the statement of facts?
6. What should you consider with regard to factual inferences?

Chapter 16: Revising and Finalizing the Memo: Content & Organizational Structure

1. Can a lawyer simply rely on a first draft? Why?
2. What are some initial considerations in connection with the revision process?
3. What should you consider in connection with revising the substantive content of a memo?
4. What are some considerations when revising the organization of a memo?
5. What are the characteristics of a well-drafted overview paragraph?
6. What are the characteristics of a well-drafted thesis paragraph?
7. What are the characteristics of a well-drafted thesis sentence?
8. What are the characteristics of a well-drafted rule explanation paragraph?
9. What are the characteristics of a well-drafted rule application paragraph?

Chapter 17: Revising & Finalizing the Memo: Sentence Structure & Word Choice

1. What are some strategies for polishing sentences in a memo?
2. What are some strategies for polishing transitions in a memo?

3. When is it appropriate to use the passive voice?
4. Why do legal writers often prefer the active voice?
5. What are some editing strategies to make sentences more accessible to the reader?
6. What are some strategies for ensuring accessible word choice?
7. How can you remove excess information from writing?
8. What are some strategies for ensuring that rule explanation paragraphs are accessible to the reader?
9. Why is conciseness important to your audience?
10. What are some considerations for ensuring the proper tone in a memo?
11. What are some strategies for editing and revising quotations in legal writing?

Chapter 18: Selecting Cases for the Memo

1. Identify key ways that a prior case might be helpful to your analysis of a client matter.
2. How could definitions or interpretations of law be helpful to your analysis?
3. How could the policy considerations of a prior case be helpful to your analysis?
4. What are analogous facts?
5. How can analogous facts from prior cases be helpful to your analysis of a client problem?
6. What are some ways to determine which cases provide a more beneficial predictive function?

Chapter 20: Professional Email Communications

1. What are some considerations in striking the appropriate tone in email correspondence?
2. What are some considerations in determining whether email is the best manner of communicating information?

3. What is the appropriate way to include a greeting in email communications in law practice?
4. What is the appropriate way to include an ending in email communications in law practice?
5. What are some considerations in how you refer to recipients of email correspondence?
6. What are some confidentiality considerations in email communications in law practice?

Melissa H. Weresh, *Legal Writing: Ethical and Professional Considerations* (2d ed., LexisNexis 2009).

You should pay attention to any footnotes included in the cases, and the notes following the cases. These are all designed to further your understanding of how the ethical and professional rules and conventions influence the process of legal research and writing.

Chapter 1: Attorney Regulation: Sources of Ethical and Professional Considerations

1. Who is responsible for regulating lawyers?
2. Where do the ethical rules come from? Are they binding?
3. What is the difference between the Model Rules and the Model Code?
4. What is the difference between an ethical rule and a professional consideration?
5. What are ethos, pathos, and logos? How are these concepts related to the ethical rules?
6. How do the ethical rules relate to legal writing?
7. How does adherence to the ethical rules impact the satisfaction a lawyer has with her practice?

Chapter 2: Engaging the Client—Conflicts

1. What is a conflict of interest? Why is this a concern in law practice?
2. Can conflicts be waived? Under what circumstances?
3. What are the different types of conflicts? What types of issues do these conflicts present?
4. How does the issue of client conflicts relate to the first semester course on predictive memos?

Chapter 3: Email Communication

1. What type of email communications do lawyers send?
2. Who do lawyers communicate with via email?

3. What are some content-based considerations associated with legal email correspondence?
4. Is confidential information the same as privileged information?
5. Can lawyers send confidential information via email?
6. What is a lawyer's responsibility if she received confidential information inadvertently?
7. What are some format considerations associated with professional email correspondence?

Chapter 4: Predictive Memoranda

1. How are predictive memoranda regulated by the ethical rules?
2. How do the ethical and professional rules impact the process of preparing legal memoranda?
3. What obligations are imposed on lawyers by the rule on competence?
4. What obligations are imposed on lawyers by the role of the lawyer as advisor?
5. How do lawyers obtain facts relevant to client matters?
6. Can a lawyer rely solely on representations by the client with regard to facts?
7. What is the lawyer's obligation with regard to research?
8. What is a Rule 11 sanction?
9. Can lawyers ever rely on routinized research, or research performed in a prior matter? Under what circumstances?
10. What is a lawyer's role when she determines a client is not likely to prevail in a client matter?
11. What is the lawyer's role in terms of advice when the law is not clear or is unsettled?
12. What is the allocation of responsibility between lawyer and client?

13. How does the client's responsibility for determining the ends of representation influence the lawyer's role in terms of explanation?
14. What is the extent of the lawyer's role in terms of providing advice?

Chapter 5: Client Letters

1. What kinds of letters do lawyers prepare for their clients?
2. What are the primary ethical rules that influence the preparation of client letters?
3. What are the primary purposes of attorney discipline? How are those purposes advanced by the rules on diligence? On competence?
4. What is *professional burnout syndrome*?
5. What types of circumstances excuse a lawyer from discipline for failing to adhere to the ethical rules?
6. What is the lawyer's obligation to respond to a particularly demanding client?
7. How do the rules on explanation and candor impact client letter writing?
8. What is the scope of the lawyer's responsibility to advise?
9. Under what circumstances might a lawyer be obligated to provide advice not requested by the client?

Chapter 6: Demand Letters

1. What is a demand letter?
2. What are some of the primary ethical rules that impact the preparation of demand letters?
3. To whom does the prohibition on threatening criminal process in a civil matter apply?
4. What is the rationale for prohibiting a lawyer from threatening criminal process in a civil matter?
5. What is the litigation privilege? How does it impact the preparation of demand letters?

6. What are some of the format considerations in preparing demand letters?

Chapter 7: Complaints

1. What types of rules (in addition to the ethical rules) impose ethical burdens on lawyers who prepare complaints?
2. What are the primary ethical considerations in preparing complaints?
3. Complaints are often filed before a full analysis of the client matter is concluded. What is the extent of the obligation to perform research in complaint preparation?
4. What is the relationship between zealous representation and the limitation on frivolity in legal practice?
5. How are Rule 11 allegations evaluated?
6. What is an “abusive tactic” in terms of legal representation?

Chapter 8: Appellate Briefs

1. What are the primary rules that influence the ethical behavior of attorneys who prepare appellate briefs?
2. What are some content-based considerations in preparing appellate briefs?
3. What are the policy considerations that influence fee-shifting statutes?
4. Are fee shifting statutes preferred? Why?
5. Is the standard for evaluating a Rule 11 sanction objective or subjective? Explain.
6. Why does the court consider the degree of frivolity when assessing costs for a Rule 11 sanction?
7. What is the relationship between Rule 11 and 42 U.S.C. § 1988?
8. What is the relationship between the Rule 11 limitations and creative lawyering?

9. What is the extent of the lawyer's obligation to present the facts accurately?
10. What impact does dishonesty or misrepresentation have on a lawyer's credibility?
11. What is the extent of the lawyer's obligation to present the law accurately?
12. What is the extent of the lawyer's obligation to cite adverse authority?
13. What are the benefits of citing adverse authority?
14. Does a lawyer have to cite a case she can distinguish?
15. What is the difference between "adverse" and "controlling" or "dispositive"?
16. What are the differences between plagiarism in law school and in law practice?
17. Why is adherence to the rules regarding appellate brief formatting important?

Chapter 9: Drafted Documents

1. What are some types of drafted documents?
2. What are the primary content-based ethical considerations in contract drafting?
3. What is the lawyer's responsibility in terms of communicating with her client as she engages in drafting an agreement?
4. What are the lawyer's responsibilities to third parties in the context of contract drafting?