

The Writing Center

University of Maryland School of Law

Scholarly Writing

I. The Two Genres of Legal Writing

- A. Instrumental writing
 - 1. serves a specific purpose in legal practice
 - 2. memoranda, briefs, pleadings, contracts, etc.
- B. Critical (scholarly) writing
 - 1. shares new ideas about the law with the larger legal community
 - 2. innovative and introspective
 - 3. seminar papers, cert papers, casenotes, law review articles, etc.

II. Characteristics of Legal Scholarly Writing

- A. Advocates a legal or social goal
 - 1. informed by a desirable goal (equal educational opportunity, economic efficiency, etc.)
 - 2. recommends or disapproves some means to that goal
 - 3. does not merely describe or interpret the law
 - 4. seeks to persuade the legal community of the soundness of the author's conclusions
- B. Some more common species of legal scholarly writing
 - 1. the "case cruncher"
 - a. analyzes case law in area that is confused, in conflict, or in transition
 - b. resolve the conflict or problem by offering a solution that best advances the desirable goal of equity, or efficiency, or ...
 - 2. the law reform article
 - a. argues that a legal rule or institution is not just incoherent, but is fundamentally inequitable or unfair
 - b. demonstrates how to change the rule to avoid the perceived evil
 - 3. the legislative note
 - a. analyzes proposed or recently enacted legislation
 - b. offers comments, criticisms, and/or suggestions for improvement
 - 4. the interdisciplinary article
 - a. applies insights from another field, such as psychology, economics, sociology, or philosophy
 - b. shows how these extra-legal insights can enable the law to deal better with some recurring problem

5. the explication of legal history
 - a. uncover the origins and development of a legal rule or institution
 - b. illuminates its current operation and/or shortcomings

C. typical four-part structure

1. introduction
 - a. describes the subject matter of the paper
 - b. plainly states the author's thesis
 - c. provides explicit roadmap through the rest of the paper
2. background
 - a. supplies whatever information a law-school-educated person will need to understand the section that follows: the author's original analysis
 - b. should not assume any but the most general knowledge of the law
3. analysis
 - a. the focal point of the paper
 - b. original: says something new -- no matter how modest -- about the law
 - c. closely and carefully reasoned
 - d. builds to a convincing conclusion
4. conclusion
 - a. summarizes the author's views
 - b. may suggest related issues or invite the reader to further reflection

D. Extensive use of footnotes

1. legal scholarly writing is thick with footnotes -- few textual sentences stand without them
2. three functions of footnotes
 - a. to document the text -- providing both authority and bibliography
 - b. to attribute borrowed ideas to their sources -- avoiding plagiarism
 - c. to embellish the main text -- permitting the author
 - i. to engage in creative digressions
 - ii. to offer personal, even humorous asides to the reader

III. How to Get a Feel for Scholarly Writing

- A. Do a lot of scholarly reading -- read articles in law reviews, including student notes and comments.
- B. See ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS, West (1995).