

The Legal Profession: Writing Under Pressure (081-R01)

Winter 2024 Syllabus

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1 Credit - CR/NC

Course Description

Welcome to *The Legal Profession: Writing Under Pressure*. This class is focused on preparing for the types of short writing assignments you see as a legal intern, law clerk, or junior associate. While writing longer pieces with far off deadlines is a critical component of most legal jobs, the day to day work of lawyering often involves much faster turnaround and shorter output. Each assignment during this short course is similar to a task you'll likely find yourself performing some day.

Offering legal advice, or writing a memo that a senior attorney will rely on, can be stressful and nerve wracking as a junior attorney. Practicing quick turnarounds during our class sessions should help prepare you for the day you find yourself receiving assignments or fielding questions that require some fast research and the ability to craft concise, clear, and to the point responses.

The skill of asking questions of a supervising attorney and being able to capture your assignment can take time to develop, and so this course offers a chance to practice and to prepare yourself for the types of quick-turn around assignments that are common in legal internships and the first few years of work as an attorney. You will need to listen and capture the relevant details accurately.

The ability to write up clear and on-point legal guidance also requires practice. How much background information would you include in a short email? Can you draft a summary that a senior attorney could read and understand on their phone? We will practice this skill here first, so that you have more confidence in your ability to execute similar assignments well in your first internship, clerkship, or job.

Drafting legal advice or documents for a client or senior attorney on a rapid turnaround is important, especially as you will almost certainly need to provide the senior attorney time to read your work, flag sections for improvement, and then make those corrections. This class will help you exercise your drafting and editing skills so that you will feel more prepared when you're first called upon to provide legal guidance for a paying client.

Learning Outcomes

At the conclusion of this course, students should have the ability to quickly summarize and clearly communicate answers to real world legal questions they may encounter.

Students should feel confident in their abilities to express complex legal topics in an understandable manner for non-attorney coworkers, and have

a solid understanding of the types of communication a business attorney will encounter.

Reading Assignments

Before our first class session, you should read the first day's reading assignment. You may want to read ahead and review further days when you have time as well.

You should also read Read Bryan Garner's *Legal Writing in Plain English*, which contains a plethora of good advice for writing about legal topics without sounding like a stultifying and confusing attorney.

You will notice that each day focuses on a general area of what might loosely be described as "tech law," and this is intentional. Almost all of these assignments are based on actual work I've done for my clients, who often have interesting and crazy problems they would like advice on. At the same time, each one of these topics should be able to be discussed by any law student, without any prior exposure to technology law topics, or the tech industry itself. Outside perspectives are incredibly valuable here, as are your normative and descriptive views on this rapidly changing area of law.

Class plan & Writing assignments:

Each day's reading is meant to provide you with a closed universe of research for that class session, although you are welcome to read more widely or bring your real world experiences and knowledge to bear. At the start of each class, we will discuss the reading materials and any written samples provided for the first hour of the class session.

Next, we will review that day's writing prompt, and you will compose your first draft. Note that it is your responsibility to take notes on the in-class assignments, which will be delivered orally.

I will read to you any additional relevant facts and give more detail on the document or documents you will be drafting. You will need to take notes on the assignment and ask useful follow-up questions, because you will not be able to confirm or correct any errors after the assignment is given out over the class Zoom.

On most nights, we will take time during the class to compose an initial draft and submit it via email, followed by reviewing a few samples. You should turn on track changes on your document, and begin making edits as we review the samples. You will then submit your updated version, with track changes enabled, an hour after class ends that night.

You are welcome to prepare in advance by creating rough drafts or outlines before class begins- as you'll find out soon if you haven't yet, preparation can be critical to success as an attorney, and if you have time to set yourself up for success, use it!

Preparing for Class

You should have Microsoft Word available during class for our in class writing assignments, and Word or some other way to capture in text our nightly writing assignment. Please also bring your brain (or what you have remaining in the evening!), your curiosity and questions, and your thoughts on our legal topic. Your dogs, kittens, and young children are not required but are welcome to drop by. **We are a pet and child friendly class; if your pet appears on camera please introduce us to them! We**

would also love to say hello to any children, although we understand some are shy.

Breaks and General Class Plan

We may stray a bit from this at times, but in general, our class plan will be as follows (times in Eastern Time Zone):

6:05 PM - 6:55 PM: class discussion of the evening's topic

6:55 PM: class assignment is given

7:00 PM - 8:00 PM: cameras off, write your first draft, submit by email to weverett@gmu.edu by 8:00 PM

8:00 PM - 8:55 PM: Sample review and discussion; begin edits on your writing

10:00 PM: Your final draft, with track changes turned on, will be due at this point. If you need an extension due to internships, family emergencies, etc, please reach out as soon as possible for alternate arrangements.

Syllabus

Session 1: Wednesday January 3, 6:05 - 9:00 PM EST via Zoom Writing Advisory Emails & HIPAA

In our first class, we'll explore the idea of providing legal advice to non-lawyers, writing clearly and succinctly, and how to make sure that your colleagues and clients understand the advice you're offering.

We will also explore the Health Insurance Portability and Accountability Act ("HIPAA"), which is a regulation that covers the privacy of medical information. For our class session, you should read the HHS's Breach

Notification Rule and Guidance linked below, which our assignment will be based on.

In class assignment:

Your assignment will be to send a succinct email to a non-lawyer business colleague answering their legal question in a short email. You will find out the specific legal question in class, but it will be fully answerable using the information in the web pages linked below. Your focus will be on composing an email to a colleague who is not a lawyer, who has asked you to share your legal expertise on a topic.

Pre-class Reading:

- *Product Counsel: How to be THAT kind of lawyer*
<https://www.linkedin.com/pulse/product-counsel-how-kind-lawyer-adrienne-go/>
- *Legalese: A Lamentable Necessity or a Mere Impediment to Efficient Communication?*,
<https://medium.com/@somanshushukla2002/legalese-a-lamentable-necessity-or-a-mere-impediment-to-efficient-communication-do62096849c8>
- Example short email answering a legal question:
<https://wendyk.org/LegalWritingExampleEmail.pdf>
- Tips on drafting legal emails:
<https://www.toewslegal.com/blog/2018/12/4/7-tips-for-writing-better-legal-e-mails>
- HIPAA Breach Notification Rule:
<https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html>

- Breach Notification Guidance:
<https://www.hhs.gov/hipaa/for-professionals/breach-notification/guidance/index.html>
- Robert Dougherty, *HIPAA Breach [What It Is & How to Handle the Aftermath]*,
<https://www.kiteworks.com/hipaa-compliance/hipaa-breach/>
- HHS, *Submitting Notice of a Breach to the Secretary*,
<https://www.hhs.gov/hipaa/for-professionals/breach-notification/each-reporting/index.html>
- *HIPAA Basics for Providers: Privacy, Security, & Breach Notification Rules*,
<https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/HIPAAPrivacyandSecurity.pdf>

Session 2: Thursday January 4, 6:05 - 9:00 PM EST via Zoom

Privacy Policy Review

Privacy Policies on websites are often dense walls of text. They get that way, many times, due to competing requirements imposed by the GDPR or other regulations. The California Consumer Privacy Act (“CCPA”) is one of the most recent examples of a regulation that includes specific text to be included in privacy policies of entities in California.

In class assignment:

Our assignment today will be a short email to a client about their current Privacy Policy, based on the CCPA’s Privacy Policy requirements.

Pre-class Reading:

- California's Attorney General, *How to read a privacy policy*
<https://oag.ca.gov/privacy/facts/online-privacy/privacy-policy>
- Berkley's Requirements for Privacy Policies
<https://security.berkeley.edu/how-write-effective-website-privacy-statement>
- New York Times on Privacy Policy legibility, *We read 150 Privacy Policies...*
<https://www.nytimes.com/interactive/2019/06/12/opinion/facebook-google-privacy-policies.html>
- *Drafting Privacy Policies*
<https://www.lexisnexis.com/practicalguidance/the-journal/b/pa/posts/drafting-privacy-policies>
- California's CCPA FAQ, including Section D, Required Notices
<https://oag.ca.gov/privacy/ccpa>
- Hyperlinked version of the CCPA's text: <https://theccpa.org/> (see in particular §1798.130(a)(5), §1798.135)
- CCPA Privacy Policy Sections
<https://www.privacypolicies.com/blog/ccpa-privacy-policy-checklist/>
- Sample Privacy Policy:
<https://wendyk.org/Sample%20Privacy%20Policy.pdf>

Session 3: Monday January 8, 6:05 - 9:00 PM EST via Zoom
Legal Issues Outline

Many times as a law clerk or a junior associate, you will be tasked with the job of reading all of the comments in an administrative docket, or all the pleadings in a case, and asked to summarize the legal arguments that are made, for a senior attorney. Generally, this attorney is simply seeking a

neutral summary of the one of the arguments being made, including the important holdings of the cases and the relevant facts of the case.

In class assignment:

Your task is to locate the pertinent information in the cases & surrounding documents and summarize both sides of the argument in a clear and concise manner. Today you will create an extremely short (one to two pages) outline on a legal issue. You will find out the exact argument in class, but you may want to prepare beforehand by highlighting or otherwise noting the key points of the legal issues in these cases.

Pre-class Reading:

- Alexander Macgillivray & Nicole Wong, *Product Counsel: Origin Story*
<https://www.bricoleur.org/2020/04/product-counsel-origin-story.html>
- Eric Goldman, *There Are Multiple Types of “Clickwrap.” They Should All Be Enforceable—Calderon v. Sixt*
<https://blog.ericgoldman.org/archives/2021/04/there-are-multiple-types-of-clickwrap-they-should-all-be-enforceable-calderon-v-sixt.htm>
- Venkat Balasubramani, *Poorly Executed “Sign-in-Wrap” Contract Formation Process Fails—Berman v. Freedom Financial*,
<https://blog.ericgoldman.org/archives/2022/04/poorly-executed-sign-in-wrap-contract-formation-process-fails-berman-v-freedom-financial.htm>
- *Are my online agreements valid? Part 1: Clickwrap*
<https://www.pactsafe.com/blog/are-my-online-agreements-valid-part-1-clickwrap>

- *Are my online agreements valid? Part 2: Sign-in-wrap*
<https://www.pactsafe.com/blog/are-online-agreements-valid-part-2-sign-in-wrap>
- Eric Goldman, *An E-Commerce Site Tried to Form Its TOS Three Different Ways. None of Them Worked—Chabolla v. ClassPass*,
<https://blog.ericgoldman.org/archives/2023/07/an-e-commerce-site-trying-to-form-its-tos-three-different-ways-none-of-them-worked-chabolla-v-classpass.htm>
- Eric Goldman, *More Chaos in the Law of Online Contract Formation*,
<https://blog.ericgoldman.org/archives/2023/08/more-chaos-in-the-law-of-online-contract-formation.htm>
- Kieran McCarthy, *California Appellate Court Rejects Poorly Executed “Sign-In Wrap”—Sellers v. JustAnswer*,
<https://blog.ericgoldman.org/archives/2022/02/california-appellate-court-rejects-poorly-executed-sign-in-wrap-sellers-v-justanswer-guest-blog-post.htm>

Session 4: Tuesday January 9, 6:05 - 9:00 PM EST via Zoom
Argument Summary Memo

Today, you're an in house attorney at a company that builds GPS trackers for the commercial trucking industry. There are a variety of privacy and legal issues in this area, especially around worker privacy and employee attempts to circumvent the tracking devices through the use of cell phone jammers or faraday cage devices. Your company provides some guidance during the sales and setup process on privacy oriented best practices for trucking companies as they roll out the trackers. They have scheduled a question & answer session and are asking you to prepare to answer questions from their customers about a legal issue that has arisen.

In class assignment:

During class, you will learn about one legal issue in particular, and draft guidance for your colleagues on this issue. You will prepare an argument summary memo for your client.

Pre-class Reading:

- Christopher Boyd, *Strava heatmap loophole may reveal users' home addresses*,
<https://www.malwarebytes.com/blog/news/2023/06/strava-heatmap-loophole-may-reveal-users-home-addresses>
- *SmarTrack: How to deal with Privacy Concerns*:
<https://smartrak.com/how-to-deal-with-privacy-concerns/>
- Jen Caltrider, Misha Rykov and Zoë MacDonald, *It's Official: Cars Are the Worst Product Category We Have Ever Reviewed for Privacy*,
<https://foundation.mozilla.org/en/privacynotincluded/articles/its-official-cars-are-the-worst-product-category-we-have-ever-reviewed-for-privacy/>
- *Monitoring your employees through GPS: What is legal, and what are best practices?*
<https://www.greensfelder.com/business-risk-management-blog/monitoring-your-employees-through-gps-what-is-legal-and-what-are-best-practices>
- *Is GPS Tracking an Invasion of Your Employees' Privacy?*
<http://www.carnewscafe.com/2020/01/is-gps-tracking-an-invasion-of-your-employees-privacy/>
- Bellovin, Steven M. and Hutchins, Renee M. and Jebara, Tony and Zimmeck, Sebastian, *When Enough is Enough: Location Tracking, Mosaic Theory, and Machine Learning*, NYU Journal of Law &

Liberty, Vol. 8, U of Maryland Legal Studies Research Paper No. 2013-51, Available at SSRN: <https://ssrn.com/abstract=2320019> or <http://dx.doi.org/10.2139/ssrn.2320019>

Session 5: Wednesday January 10, 6:05-9:00 PM EST via Zoom
Breach Notification & Ransomware Email & Slack Message

Today, we are back with our HIPAA client, who would like further guidance around the reporting requirements for breaches, particularly those involving ransomware. HHS has provided specific ransomware guidance to companies, which you should review.

In class assignment: Your goal will be to send a succinct email to a non-lawyer business colleague answering their legal question in a short email. You will also draft a short Slack message to the colleague, letting them know that you sent your guidance in an email and providing an **extremely** short summary of your conclusion.

Pre-class Reading:

- HIPAA Ransomware Guidance
<https://www.hhs.gov/sites/default/files/RansomwareFactSheet.pdf>
- HIPAA Encryption Guidance
<https://www.hhs.gov/hipaa/for-professionals/faq/encryption/index.html>
- Paying the Ransom in Response to a Ransomware Attack can Sometimes Backfire,
<https://www.databreaches.net/paying-the-ransom-in-response-to-a-ransomware-attack-can-sometimes-backfire/>

- OCR Updates Ransomware Guidance,
<https://www.jdsupra.com/legalnews/ocr-updates-ransomware-guidance-1790089/>
- *Once More Unto the Breach: How the Growing Threat of Ransomware Affects HIPAA Compliance for Covered Entities*, Connor McLarren, 15 Ind. Health L. Rev. 305 (2018), available at <https://journals.iupui.edu/index.php/iplr/article/view/22883/22245>
- <https://www.hhs.gov/sites/default/files/cyber-attack-checklist-06-2017.pdf>

Grading:

This course is credit/no credit. Your writing assignments count for $\frac{1}{3}$ of the class grade, while class participation counts for $\frac{2}{3}$. Note that, indeed, participation is highly subjective -but you are very unlikely to get a bad grade if you do the reading, provide your impressions and ideas in class, comment thoughtfully on the drafts we review, and volunteer answers to questions asked in class.

You are responsible for attending the number of class sessions required by our school's regulations (they are available on the school website) and for submitting a writing assignment for each session to be eligible for course credit. If you will miss a class session, or part of one, you are responsible for emailing before the session, or as soon as you are online again after an emergency prevents you from attending, to make arrangements to complete any missed assignments.