

**OUTLINE FOR SUSAN KOSSE
NUTS & BOLTS OF TEACHING LEGAL WRITING –
DESIGNING LEGAL WRITING PROBLEMS
OPTIONAL ONE DAY AALS WORKSHOP ON TEACHING LEGAL WRITING
JUNE 29, 2003**

Overall Description: This part of the presentation will provide participants with the tools and steps necessary to develop assignments for their first year legal writing courses. We will also discuss common mistakes in designing assignments and how to avoid them.

After this session participants should be able to more easily:

1. Identify, select, and create a list of goals for a particular assignment;
2. Design an assignment appropriate to the skills and abilities of the students for whom it is designed considering characteristics such as length, complexity, subject matter, planned level of feedback, and time for completion;
3. Distinguish, where appropriate, between reflecting real-life law practice and creating a problem that will more effectively teach an identified goal or target skill;
4. Assess the assignment in light of overall course goals and other assignments; and
5. Decide whether and how to incorporate lessons on professionalism, ethics, and other practice skills into a memo or brief assignment.

I. Characteristics of the Ideal Memo¹

The Ideal memo should:

- A. Teach, and allow students to practice, specific skills;
- B. Be neither too difficult nor too easy;
- C. Involve subjects that are interesting, familiar, and realistic;
- D. Be well researched; and
- E. Be sensitive in its treatment of issues and individuals.

II. Top Ten Mistakes In Designing Memos²

- A. The assignment is too boring.
- B. The assignment is “all flash and no cash.”
- C. The assignment is too highly charged.
- D. The assignment is created without consultation.
- E. The assignment requires resources that are not available.
- F. The assignment is not adequately researched.
- G. The assignment is ill-defined.
- H. The assignment is too long.
- I. The assignment fails to develop skills.
- J. The assignment is TOO DIFFICULT.

¹ This list was taken from Lorraine Bannai, Anne Enquist, Judith Maier, Susan McClellan, *Sailing Through Designing Memo Assignments*, 5 J. Legal Writing Inst. 193, 200 (1999).

² *Id.* at 193-199.

- III. The process of Putting An Assignment Together³
- A. Determine Goals.
 - 1. Limit the number of goals for each assignment.
 - 2. Have realistic goals about what first year students can produce.
 - 3. Each assignment should build on knowledge gained from the previous assignment.
 - B. Determine the Schedule.
 - 1. Plan the number and type of assignments before designing each individual assignment.
 - 2. Be aware of the time constraints that you and the students have.
 - 3. Determine whether you will use the same fact pattern for each assignment.
 - C. Gather Ideas.
 - 1. Consider first year topics for expository problems.
 - 2. Consider whether you want to use a real case or make up a problem.
 - 3. Sources for problems: faculty who teach first year courses, treatises, looseleaf services, United States Law Week, advance sheets, LWI problem bank, newspapers, NPR, “60 Minutes”
 - D. Rule Out Ideas.
 - 1. Evaluate the ideas using the top ten mistakes.
 - 2. Make sure you are comfortable teaching it.
 - E. Rule In ideas.
 - 1. Do thorough research to see if idea is a good one.
 - 2. Evaluate the ideas using the attributes of a good memo.
 - F. Topic Selected.
 - 1. Keep in mind students may use their assignments for writing samples.
 - 2. Determine the precise issues, facts, grading and critiquing criteria.
 - 3. Briefing exercise and analysis memo topics that work well: service of process, specific performance, burglary, dog bites, one element of false imprisonment, and one element of negligent infliction of emotional distress.
 - 4. Closed universe memo topics that work well: false imprisonment, intentional infliction of emotional distress, statute of frauds, implied or expressed warranties, adverse possession, easements, personal jurisdiction, and statutes of limitations.

³ *Id.* at 208-224; Some of the ideas in this section also came from Grace Tonner & Diana Pratt, *Selecting and Designing Effective Legal Writing Programs*, 3 J. Legal Writing Inst. 163 (1997) .

5. Open research memo: look for jurisdictional conflicts, a statute that has been construed.
- G. Prepare the Fact Pattern.
1. Closed memo: Usually you give the facts
 2. Open memo: Use a record to present the facts including pleadings, depositions, excerpts, contracts, and other documents
- H. Prepare Assignment Handout.
1. Fact pattern materials
 2. Policies and Procedures governing the completion of the assignment
 3. Expectations of the grading standards for the assignment
 4. Assignment's learning goals
 5. Schedule or time line
 6. Amount of assistance that is permitted for the assignment.
- I. Assemble An Assignment Notebook.
1. 1. Copy of the assignment handout
 2. Specific goals of the assignment
 3. Lesson plans
 4. Copies of significant cases/authorities
 5. Citation sheet
- J. Evaluation of the Assignment.
1. What were the problems with the assignment?
 2. Did the students like it?
 3. Is it worth repeating?
 4. Keep copy of an "A" memo.

IV. Bibliography⁴

There is a substantial amount of literature which contains suggestions about how to design an LRW program, and specifically, writing assignments. We recommend that you review some of this literature to obtain additional ideas and guidance. Legal writing textbooks as well as articles in *The Second Draft, Legal Writing, Perspectives Teaching Legal Research and Writing* (referred to as *Perspectives*), and the *Journal of Law and Education* may be particularly relevant.

Here are several selections which relate directly to our discussion and might be helpful.

Lorraine Bannai, Anne Enquist, Judith Maier & Susan McClellan, *Sailing Through Designing Memo Assignments*, 5 Leg. Writing 193 (1999)

⁴ This bibliography was taken from Judith B. Tracy & Dan Barnett, LWI conference presentation, *Designing Legal Writing Problems: Balancing Pedagogy and the Realities of Law Practice* (Seattle, WA., July 2000)(copy of bibliography available at www.lwionline.org).

Beth D. Cohen, *Instilling an Appreciation of Legal Ethics and Professional Responsibility in First-Year Legal Research and Writing Courses*, 5 Persps. 94 (1995)

Pamela Lysaght, Byron Cooper, Christina Lockwood, Denise S. Hudson & Ann Stirling, *Integrating Theory with Practice at University of Detroit Mercy*, 77 Mich. B.J. 684 (1998)

Jan M. Levine, *Designing Assignments for Teaching Analysis, Research and Writing*, 3 Persps. 58 (1995)

Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997)

Kenneth F. Ripple, *Legal Writing in the New Millennium: Lessons From a Special Teacher and a Special "Classroom"*, 74 Notre Dame L. Rev. 925 (1999)

Helene S. Shapo & Mary S. Lawrence, *Designing the First Writing Assignment*, 5 Persps. 94 (1997)

Grace Tonner & Diana Pratt, *Selecting and Designing Effective Legal Writing Problems*, 3 Leg. Writing 163 (1997)