

Academic Legal Writing for Students: Notes, Comments, and Write-on Competitions

Typical Structure of a Note, Casenote or Article

- I. **Introduction:** one to several pages; describes the subject and states the author's thesis; includes an explicit road map
- II. **Background:** whatever is necessary for a law-trained reader to understand the Analysis section.
- III. **Analysis:** the author's original analysis of the subject
- IV. **Conclusion:** short; summarizes the author's views; may suggest related issues or consequences.

Bibliography: Suggested Reading on Note-Writing and Writing Competitions

Jessica L. Clark & Kristen E. Murray, *Scholarly Writing: Ideas, Examples, and Execution* (2010).

Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. Rev. 445 (1986).

Elizabeth Fajans and Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* (4th ed. 2011).

Wes Henricksen, *Making Law Review: The Expert's Guide to Mastering the Write-On Competition* (2008).

Pamela Samuelson, *Good Legal Writing: Of Orwell and Window Panes*, 46 U. Pitt. L. Rev. 149 (1984).

Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* (4th ed. 2010).

Categories of Law Review Articles, Comments, and Notes

Adapted from Delgado at 446-47

Just as there are different reasons for writing law review articles, there are different types of articles. Here are ten.

1. First, there is the “**case cruncher**”– the “typical” article. This type of article analyzes case law in an area that is confused, in conflict, or in transition. Doctrine is antiquated or incoherent and needs to be reshaped. Often the author resolves the conflict or problem by reference to policy, offering a solution that best advances goals of equity, efficiency, and so forth.
2. Next, there is the **law reform** article. Pieces in this vein argue that a legal rule or institution is not just incoherent, but bad – has evil consequences, is inequitable or unfair. The writer shows how to change the rule to avoid these problems.
3. There is also the **legislative note**, in which the author analyzes proposed or recently enacted legislation, often section by section, offering comments, criticisms, and sometimes suggestions for improvement.
4. Another type of article is the **interdisciplinary** article. The author of an interdisciplinary article shows how insights from another field, such as psychology, economics, or sociology, can enable the law to deal better with some recurring problem. Professor Charles Lawrence’s . . . article on theories of unconscious motivation and their relation to race relations law falls within this category.¹
5. There is the **theory-fitting** article. The author examines developments in an area of law and finds in them the seeds of a new legal theory or tort. Warren and Brandeis’s famous article on privacy is a well-known example of this type of writing.²
6. **Discussions of the legal profession, legal language, legal argument, or legal education** form yet another category of law review writing. Lawyers are like most people – they enjoy reading about themselves. There is a brisk market in such pieces.
7. There are the bookish, **learned dialogues that continue a pre-existing debate**.³ These pieces take the following form: “In an influential article in the *W Law Review*, Professor *X* argued *Z*. Critics, including Professor *Y*, attacked her view, arguing *A*, *B*, and *C*. This Article offers *D*, a new approach to the problem of *Z* (a new criticism, a new way of defending *X*’s position in the face of her critics, a way of accommodating *X* and her critics, or something of the sort).”
8. Another category consists of pieces on **legal history**. The origins and development of a legal rule or institution may shed light on its current operation or shortcomings. Similarly, **comparative law** articles are often valuable and engrossing for many of the same reasons: it will sometimes happen that other legal systems treat a problem more effectively or more humanely than does ours. Friedrich Kessler’s famous article on contracts of adhesion is a well-known example of a piece that draws on the experience of foreign systems to improve the quality of American justice.⁴
9. The **casenote** examines a recent decision, together with its antecedents, argument, deficiencies, and likely consequences.
10. The **empirical research** article is, in some ways, the most useful of all, if one can manage the logistical problems it presents, because it enables the writer to expand knowledge beyond the armchair confines limiting most legal writing. An example of this type of article is Bea Moulton’s article on the development of small claims courts as vehicles for oppression of the poor by the petite bourgeoisie.⁵

Footnotes:

1. Charles R. Lawrence, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).
2. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).
3. E.g., David Dolinko, Comment, *Intolerable Conditions as a Defense to Prison Escapes*, 26 UCLA L. REV. 1126 (1979); George P. Fletcher, *Should Intolerable Prison Conditions Generate a Justification or an Excuse for Escape?*, 26 UCLA L. REV. 1355 (1979).
4. Friedrich Kessler, *Contracts of Adhesion: Some Thoughts About Freedom of Contract*, 43 COLUM. L. REV. 629 (1943).
5. Beatrice A. Moulton, Note, *The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California*, 21 STAN. L. REV. 1657 (1969).

Typical Theses of Casenotes

From Fajans & Falk at pages 9-10

- The result was correct, but the court proposed no clear standard for guidance in future; XYZ would be a workable standard.
- The result was incorrect; the court creates an exception to a constitutional provision that could swallow the rule.
- The result was correct, but it must be narrowly construed or it will have a chilling effect on remedial measures by the legislature.
- The result was incorrect; further, the court's standard is so complex that the outcome of future cases cannot be predicted; ABC would be a better standard.
- The result was correct, but the court never stated the real reason for its decision, which is X.
- The result was correct, but the court's reasoning obscured the proper inquiry.
- The result was incorrect; the court relied unconsciously on long repudiated constitutional tenets.
- The result was incorrect; the court failed to consider a significant issue which would have been dispositive.
- The result was correct; however, the decision appears to overrule *sub silentio* an important line of cases.
- The result was incorrect; it will result in an inefficient allocation of resources.
- The result was incorrect; the court misconstrued or misused precedent.

Examples of Good Student-Written Articles

From Fajans & Falk at page 13

Rachel Braunstein, Comment, *A Remedy for Abortion Seekers Under the Invasion of Privacy Tort*, 68 BROOK L. REV. 309 (2002).

John Cocchi Day, Comment, *Retelling the Story of Affirmative Action: Reflections on a Decade of Federal Jurisprudence in the Public Workplace*, 89 CAL. L. REV. 61 (2001).

Steve Finzio, Comment, *Prison Cells, Leg Restraints and "Custodial Interrogation": Miranda's Role in Crimes that Occur in Prison*, 59 U. CHI. L. REV. 719 (1992).

James Forman, Jr., Note, *Driving Dixie Down: Removing the Confederate Flag from Southern State Capitols*, 101 YALE L.J. 505 (1991).

Kelly K. Gelein, Note, *Are Online Consultations a Prescription for Trouble? The Uncharted Waters of Cybermedicine*, 66 BROOK L. REV. 209 (2000).

Eric J. Grannis, Note, *Fighting Words and Fighting Freestyle: The Constitutionality of Penalty Enhancement for Bias Crimes*, 93 COLUM. L. REV. 178 (1993).

Andrea Lewis, Note, *Drug Testing: Can Privacy Interests Be Protected Under the Special Needs Doctrine*, 56 BROOK L. REV. 1013 (1990).

Michael J. Mazza, Comment, *Should Clergy Hold the Priest-Penitent Privilege?*, 82 MARQ. L. REV. 171 (1998).

Meredith R. Miller, Note, *Southworth v. Grebe: The Conservative Utilization of "Negative" First Amendment Rights to Attack Diversity of Thought at Public Universities*, 65 BROOK L. REV. 529 (1999). (Article analyzes one case.)

Eileen M. Mullen, Note, *Rotating Japanese Managers at American Subsidiaries of Japanese Firms: A Challenge for American Employment Discrimination Law*, 45 STAN L. REV. 725 (1993).

Edith L. Pacillo, Note, *Getting a Feminist Foot in the Courtroom Door: Media Liability for Personal Injury Caused by Pornography*, 28 SUFFOLK L. REV. 123 (1994).

Stephan J. Schlegelmilch, Note, *Ghosts of the Holocaust: Holocaust Victim Fine Arts Litigation and a Statutory Application of the Discovery Rule*, 50 CASE W. L. REV. 87 (1999).

Brendan Linehan Shannon, Note, *The Federal Magistrates Act: A New Article III Analysis for a New Breed of Judicial Officer*, 33 WM. & MARY L. REV. 253 (1991).

Mary M. Sheridan, Note, *In Re Fauziya Kasinga: The United States Has Opened Its Doors to the Victims of Female Genital Mutilation*, 71 ST. JOHN'S L. REV. 433 (1997). (Article analyzes one case.)

Deirdre M. Smith, Comment, *Confronting Silence: The Constitution, Deaf Criminal Defendants, and the Right to Interpretation During Trial*, 46 ME. L. REV. 87 (1994).

Laurie Stearns, Comment, *Copy Wrong: Plagiarism, Process, Property, and the Law*, 80 CAL. L. REV. 513 (1992).

Comparison of Citations in Practitioner and Academic Writing

	PRACTITIONER WRITING	ACADEMIC WRITING	COMPARISON
Placement of citations	In text	In footnotes	Different
Case, full citation	<i>Jackson v. Metro. Edison Co.</i> , 348 F. Supp. 954, 956-58 (M.D. Pa. 1972), <i>aff'd</i> , 483 F.2d 754 (3d Cir. 1973), <i>aff'd</i> , 419 U.S. 345 (1974).	Jackson v. Metro. Edison Co., 348 F. Supp. 954, 956-58 (M.D. Pa. 1972), <i>aff'd</i> , 483 F.2d 754 (3d Cir. 1973), <i>aff'd</i> , 419 U.S. 345 (1974).	Only difference is in typeface of case name
Case, short forms	<i>Jackson</i> , 348 F. Supp. at 959. - or - <i>Id.</i> at 959.	<i>Jackson</i> , 348 F. Supp. at 959. - or - <i>Id.</i> at 959.	No difference
Statute, full citation	Cal. Veh. Code § 11509 (West 2000).	CAL. VEH. CODE § 11509 (West 2000).	Only difference is in typeface of code abbreviation
Book, full	Deborah L. Rhode, <i>Justice and Gender</i> 56 (1989).	DEBORAH L. RHODE, JUSTICE AND GENDER 56 (1989).	Only difference is in typeface of author and title
Periodical, full	David Rudovsky, <i>Police Abuse: Can the Violence Be Contained?</i> , 27 Harv. C.R.-C.L. L. Rev. 465, 500 (1992).	David Rudovsky, <i>Police Abuse: Can the Violence Be Contained?</i> , 27 HARV. C.R.-C.L. L. REV. 465, 500 (1992).	Only difference is in typeface of journal abbreviation
<i>Supra</i> and <i>infra</i>	Sometimes used for internal cross-references to other parts of the document you are writing	Frequently used for internal cross-references, <i>see</i> R.3.5, and as part of a short form for some kinds of authorities, <i>see</i> R.4.2	Never used for cases, statutes and certain other authorities, except in extraordinary circumstances