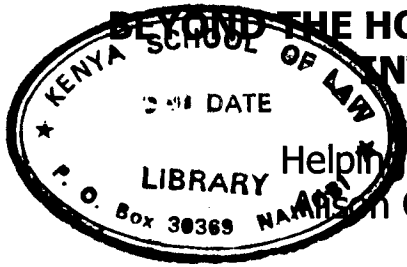


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BEYOND THE HORIZON: LEGAL WRITING APPROACHES FOR INTERNATIONAL LAW STUDENTS

Helping International Students Avoid Plagiarism
Alison Craig, J. Reuben Clark Law School, BYU
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Our Experience Learning to Avoid Plagiarism

- Avoiding plagiarism is a complex skill that we learned over years of schooling.
- Our expertise may blind us to international students' problems learning this skill.¹

International Students' Experience

- International students may come from countries where the concept of plagiarism does not exist.
- International students may come from a culture where cheating is the accepted norm in school.

What International Students Need

- International students need explicit, detailed instructions on how to incorporate information from other sources into their writing.²
The two-tiered system explained in my article. (See bibliography.)
Terri LeClerq's \$100—Terri gave each LLM student "\$100." They had to "pay" \$10 to use and document each authority's information. They didn't get to keep any money they didn't spend.
- International students need opportunities to practice without consequences.
My attached exercise.
Susan Katcher's conferences where the students bring in a source they've used, and she goes over it with them, helping them understand how to use properly quote, paraphrase, summarize, and cite.
- Teachers should state clearly and explicitly where they think a student is plagiarizing in a paper. (Don't say, "Are these your own words?" or "Where did you get this information?"')

¹ For a discussion of the problem of experts conveying their knowledge, see Paul E. Johnson, *The Expert Mind: A New Challenge for the Information Scientist*, in *Beyond Productivity: Information Systems Development for Organizational Effectiveness* 367, 368 (Th. M. A. Bemelmans, eds., Elsevier Science Publ. Co., Inc. 1984).

² For an example of explicit instructions, see Mark Haddon, *The Curious Incident of the Dog in the Night* 29-30 (Vintage Contemporaries 2004).

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- International students should be taught what these indirect comments actually mean. (“I think you are plagiarizing here. You need to properly cite and use quotations marks, or your grade will suffer; in fact, you may fail the class.”)
- When international students are writing graded work, they need clear and detailed information about the consequences. (See Nedzel in bibliography.)
- International students often need instruction on how to incorporate their own ideas into their writing.

PROPER ATTRIBUTION EXERCISE

Explanation for Teacher

Although I created this exercise to teach international students about plagiarism, I have also used it to teach U.S. students, many of whom have not been carefully schooled in proper attribution.

I created this exercise so that it uses a single one-page source on a simple legal issue. (Ritesh Patel, Student Author, *Getting Cited For Trespass In Cyberspace*, 2002 UCLA J. L. & Tech. Notes 16.) As you will see on the next page, I created a scenario to explain my using just one source, and I found I needed to explain it to the students; otherwise they found it confusing that we were using just this student note from a law review rather than looking at the cases it mentions.

The exercise requires the students to summarize, paraphrase, and quote from the source. Although we talk about how to format a long quote, I do not have them use one in the exercise. Instead, we talk in class about why they should avoid using long quotes.

In the LLM class, I went over the assignment with the students, and we looked at the Proper Attribution Examples together and discussed them. For each of the paragraphs, Example A shows a clearly plagiarized example. Example B shows an example with sloppy attribution, and Example C shows a meticulous example.

The different examples give plenty to discuss: Why is there an apostrophe missing in 1.A.? Why is a cite just at the end of the paragraph problematic? Are there too many cites in Example C? Do I really need to put quotation marks around “negligible”? Why are there four ellipses at the end of a sentence?

The assignment also asks the students to make a recommendation on what their firm should tell a client based on the information in the note. Of course, students are required to make a prediction in an office memorandum, but this element of the assignment is important to discuss with international students. It's not enough to repeat what an authority says—as it may have been in their country. In the U.S., students must include their own ideas not just in office memos but in academic papers as well.

I spent a 50-minute class period on this with LLM students last fall; I had them e-mail me their four paragraphs. I made comments and returned them to the students. I plan to do the same this fall.

If you use this material, I'd love to hear how it works.

PROPER ATTRIBUTION EXERCISE

Imagine that you work for a law firm in Kansas that represents a number of high-tech companies that do business on the Internet. A senior partner has become aware of recent cases in New York and California where defendants were accused of “trespassing” on a web-site. The senior partner has assigned you to research this subject and write an office memo that addresses the following question: “Based on current case law on trespass, will a company with a web site recover in a law suit against persons who use ‘web crawlers’ to access information on the company’s site?”

The first thing you find in your research is this law journal note, and before you even have time to look up the cases cited, your senior partner has a client who wants to discuss the issue of trespass with her. She has asked you to prepare a draft of your memo, using only this law journal source.

To begin your draft, you will create four paragraphs that you will incorporate into your finished memo. Your assignment here is to write the four paragraphs described below, using only this law journal note and your ALWD manual. (In my example, I note where a cite is needed—you must look up how to cite the note correctly and how to use subsequent cites correctly.)

1. Using Patel’s opening paragraph, **summarize** his ideas in an interesting introduction for your discussion section. Remember that a summary should be shorter than the original and should be written in your own words, using your own sentence structure. If you do use words from Patel, use just a few and indicate the ones you have used with quotation marks. Cite to Patel at the end of the first sentence where you use material from the article and at the end of your summary.
2. In order for the senior partner to understand how the tort of trespass applies to Internet use, you need to explain ordinary trespass and then show how the plaintiffs applied the concept to Internet use. Using the information given in paragraph 2 of Patel, correctly introduce and **directly quote** from Patel, but be sure the quote is under four lines long. Correctly use ellipses to indicate omissions, and use quotation marks correctly. Cite to Patel at the end of the first sentence you quote from him and at the end of each sentence where you have quoted material from the article.
3. From paragraph 3 in the note, **paraphrase** Patel’s explanations of what the plaintiffs alleged and what the defendants claimed. Be sure you write the information in your own words and with a different sentence structure. If you use words or phrases that are recognizable from Patel, put them in quotation marks. Cite to Patel at the end of the first sentence where you use material from the article and at the end of the paraphrase.
4. Finally, **conclude** your office memo with a prediction of what Kansas courts will consider in deciding such a case. Be sure to cite to Patel for any information you use from his article. (You may want to use information from paragraphs 3 and 4 in Patel.) Decide if you would recommend that clients with such a problem should sue or not. Explain why you came to that decision.

When you have written your four paragraphs, e-mail them to me at _____.

PROPER ATTRIBUTION EXAMPLES

- 1.A. Would it be illegal for someone to constantly ping your web-site and slow down the performance of your internet server? This is a question that has surfaced of late as a result of the expansion of the internet and emerging creativity in programming. Three recently decided cases, *eBay v. Bidders Edge*, *Register.com v. Verio*, and *Ticketmaster Corp. v. Tickets.Com, Inc.* took the old established theory of trespass and applied it to situations in which their clients web-sites were being unacceptably used.
- 1.B. Is it illegal for someone to constantly access your web-site and slow down your internet server? This question has surfaced because of an expanding internet and creativity that is emerging in programming. Three cases have taken the theory of trespass and used it in instances in which clients' web pages were used in an unacceptable way. Cite.
- 1.C. Recently lawyers have relied on the theory of trespass to prosecute defendants who were "constantly pinging [a client's] web-site and slowing down the performance of [a client's] internet server." Cite. Two California cases and one New York case indicate courts' differing responses to these trespass claims: *eBay v. Bidders Edge*, *Register.com v. Verio*, and *Ticketmaster Corp. v. Tickets.Com, Inc.* Cite.
- 2.A. One does not think of accessing a web site as trespass. Trespass is interfering with or damaging someone else's property. What comes to mind when thinking of trespass is walking across a neighbor's yard without their permission. That is what is happening when one visits a website, except that we are utilizing the company's internet program as well as their internet infrastructure. Cite.
- 2.B. "[O]ne does not think of accessing a web site as a trespass. . . . [What] comes to mind when thinking of trespass is . . . walking across a neighbor's yard without their permission. That is exactly what is happening when one visits a website, except that we are utilizing the company's internet program as well as their internet infrastructure. . . . We have not been given bright lines on what we can and can not do and how long and how many times we can use their web-site." Cite.
- 2.C. Using the theory of trespass to prosecute internet users requires a broadening of our understanding of trespass: from "walking across a neighbor's yard without . . . permission" to "what happen[s] when one visits a website [B]ut we no [sic] . . . a web page . . . is open for all users [So] how far users can go?" Cite.
- 3.A. The three cases all present situations where the plaintiffs thought someone went too far when using their web-sites. Each plaintiff claimed the defendants exceeded their implied right to use their site and caused damage or interfered with their property without permission because they created and used web-crawler programs. The plaintiffs claimed that these programs that are made to access, collect, and send out high amounts of data within minutes were burdening their website and their hardware. The defendants, on the other hand, said that they were not creating a burden to the internet servers in the

slightest degree. They said their web crawlers did use resources but that the effects were negligible. Cite.

- 3.B. The companies sued because they claimed that by using web-crawler programs, “programs . . . designed to access, accumulate, and send a high volume of data within minutes,” the defendants “went beyond the scope of their implied right of access to their site” According to the plaintiffs, these web-crawler programs “placed an unneeded burden on their website and hardware.” According to the defendants, however, the web-crawler use of resources did not burden[] the internet servers . . . at all,” and their use of resources was only “negligible.” Cite.
- 3.C. The companies sued because they claimed that the web-crawler programs the defendants used, “designed to access, accumulate, and send a high volume of data within minutes,” unduly “burden[ed]” their sites and thus exceeded the defendants’ “implied right of access” to them. Cite. The defendants defended their use of the web-crawler programs and noted that the programs did not harm the plaintiffs’ web sites because the programs’ effects were merely “negligible.” Cite.
- 4.A. The results in these cases are not yet clear. Both *eBay* and *Register.com* held that the plaintiffs had full and complete control of their property and any unauthorized damage, noticeable or negligible, constituted a trespass to chattels. However, *Ticketmaster.com* held that the damages needed to be noticeable. The time will come when this issue will be resolved, but it is impossible at this point to predict what the courts will do in such a case.
- 4.B. The courts do not yet agree in this new area of case law. In the two California cases, the courts held that “any . . . damage . . . constituted a trespass” Cite. However, the New York court found that damage must be “noticeable.” Cite. In the future, courts may well come to a consensus and law firms will have a clear sense of how to deal with this new area of trespass; however, at the present time, law firms have no clear guidelines to follow. Cite.
- 4.C. Although the courts do yet agree in this new area of case law, some results are clear from the three cases. The two California cases held that “any . . . damage . . . constituted a trespass” Cite. But the New York court found that damage must be “noticeable.” Cite. No doubt in the future the case law on this question will become clearer. Cite. For now, based on this small sampling of cases, our firm may consider pursuing any cases where an internet site receives damage of any kind; however, a cause of action will be on firmer ground where the damage is clearly noticeable.