

# Legal Writing and Drafting

**ATP 103**

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# Effective Writing

- Legal writing relies on organisational patterns and traditional ways of organising ideas.
- Decisions of the legal writer must depend on the reader, the purpose of the writing, and conventions of the type of document being written.
- Legal writing differs from other types of writing because it is formal.

# Planning your writing

- Research
- Creating an outline/notes
- First draft
- Revising
- Editing
- Proof reading



# Research

# Formulation of Legal Questions

If you have been bitten by a dog and are looking for information about dog bites:

- What kind of dog? Where did this happen? What time? How? Why?
- Who is responsible for injury caused by a biting dog?
- What facts do I have to prove to sue and win compensation for the dog bite?
- Is there a statute that covers dog bites?
- Does it make any difference if the dog has or has not ever bitten anyone before? Witnesses?
- Police report? Medical report?
- What are the available legal options?

# Key aspects

- Parties
- Actions
- Reliefs

# Categorize Your Research Questions

- Which area of law is this?
  - Tort
  - Company law
  - Administrative law
  - Common law
- Is the Problem Substantive or Procedural?
  - Civil proceedings
  - Criminal proceedings
  - Tribunals
  - ADR

# Look for Statutes

- Hierarchy of laws
  - Constitution, statutes, rules and regulations, case laws, policies, international law, county laws



# Case Law - Principles

- The doctrine of stare decisis
- Obiter Dictum
- Holding
- Majority Decisions
- Dissenting Opinions

# Case Law - Overview

- Facts that gave rise to the dispute
- Issues arising
- Law applicable to the dispute
- Holding
- Reasoning behind the decision

# Case Law

- Citation
- Name of the Case
- The Court
- The Date
- Editorial Summary
- Head notes
- Name of lawyers

# Case Law

- Name of the judges
- Judge who wrote the majority decision
- Procedural issues
- Facts
- Issues
- Law
- Standard of proof
- Reasoning
- Holding

# Find a Relevant Case

- Hierarchy of courts
  - Territorial jurisdiction
  - Pecuniary jurisdiction
  - Legislative jurisdiction
  - Constitutional jurisdiction
  - Subject matter jurisdiction
  - ADR clauses
- Reported Cases (law reports, online...)
- Unreported Cases

- The greater the similarity between the cases, the stronger the precedent.
- English Case Law (<http://www.bailii.org/>)
  - Barret v Enfield LBC [2001] 2 AC 550
  - X v Y [2003] UKHL (now SC) 5
- Kenya ([www.kenyalaw.org](http://www.kenyalaw.org))
- Verify
  - Dates
  - Parties
  - Holding

# Secondary Sources of Law

- Case comment
- Book
- Dictionary definition
- Law journal/review article
- Government publication

- Have you logically answered the question you wanted answered when you began?
- Are the laws and facts in the cases you have found pertinent to the facts of your situation?
- Do the cases you found refer to (cite) each other?
- Are the materials you've found to support your answer as up-to-date as you can get?
- Have you used all major research resources that might improve your understanding or make your answer more certain?



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- Can you explain your reasoning in writing?

# Notes

- it helps if research notes are organised in a way that facilitates writing.
- Organise research around the law or points you want to make.
- Under each point, list the statutes, cases or authorities on which you rely and a quick summary of how they support your point.
- create an outline or a writing plan at the outset to save time.
- An outline or plan prevents back-tracking, repetition and missing of key points

# First Draft

- Write what you know best first

# Revision

- Revision – “see again”.
- Step back from the project and give it a new look.
- Rethink the whole document not just small bits like sentence structure.
- Develop a revision checklist.
- Checklist helps focus on the large issues of writing.

# Revision Checklist

- Will document meet reader's needs?
- Is the tone right for the document and the reader?
- Is the document well organised?
- Are the ideas well developed?

# Revision Checklist

- Is the analysis conclusive or superficial?
- What else could be included?
- What can be omitted?
- Is the theme evident in all sections of the document?

# Revision Checklist

- When revising rethink the organisation of your work.
- Read each paragraph and sum up the point it makes.
- Are there repetitions? Is any information missing? Etc
- Do a self critique?
  - Can you punch holes in the document? Where?
  - What are its weaknesses?
- Then return to the document and improve it.

# Revising

- Check for unity and coherence.
- Entire document, each paragraph and section must have coherence and unity.
- Unity: every part of the document contributes to the overall thesis (conclusion).
- Coherence is crucial both at document and paragraph level.



# Revising

- Good revision strategy – check both levels: are you using appropriate devices for creating coherence. These devices are:
  - Logical organisation: chronology, topical, general to specific, specific to general, IRAC

# Editing

- An examination of the smaller issues in writing.
- Step out of the role of the drafter.
- Look at the writing with a critical eye.
- ☉Look at: sentence structure, word choice.

# Editing Checklist

- Titles
- Headings/sub-headings
- Numbered paragraphs for certain documents
- The pages are numbered
- The line spacing
- The margins
- The word count/length of the document if need be
- A bibliography and/ or list of references if need be
- Document looks complete

# Editing Checklist

- Spelling
- Grammar
- Punctuation
- Vocabulary
- Dates
- Numbers

# Proofreading

- Proofreading is the process of reviewing the final draft of a piece of writing to ensure consistency and accuracy in grammar, spelling, punctuation, formatting and readability.
- Proofreading is about finding errors both small and large that were either missed or introduced during editing.
- Proofreading ensures that the document's final draft is completely free of grammatical errors as well as formatting and typographical errors.
- Proofreading makes sure the document adheres to the chosen style guide

# Key Points

- Pin-point specific weaknesses in your writing.
- Read your draft once for each of these weaknesses.
- When proof-reading, you can use spell check: But do not rely on it to capture all spelling errors.
- Label your drafts carefully.
- Good writing is effective communication.
- Remember your audience.
- Remember your purpose.
- Follow expected format of document.
- Professionalism and competence are reflected in both content and presentation of writing.