Implementing Best Practices & Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum

Workshop 2E

Integrating Writing into Casebook Courses without Significantly Increasing Grading

Karen Sneddon

Walter F. George School of Law, Mercer University

Karen J. Sneddon is an assistant professor at Mercer University School of Law where she teaches trusts and estates, trusts and estates drafting, legal writing, and introduction to counseling. She graduated summa cum laude from Tulane Law School. Karen practiced law in the area of trusts and estates at Schulte Roth & Zabel LLP in New York City, and she was a Forrester Fellow at Tulane Law School before joining the Mercer Faculty in 2006.

In addition to writing in the area of trusts and estates, she writes in the area of legal writing. Karen co-authors a regular column entitled “Writing Matters” in the Georgia Bar Journal.
Integrating Writing into Casebook Courses
without Significantly Increasing Grading

Karen J. Sneddon
Assistant Professor
Mercer University School of Law
sneddon_kj@law.mercer.edu

Institute for Law Teaching and Learning Summer Conference
June 23, 2009
Checking the Pulse

Examples of Writing Prompts:

- The topic I understood the least today is ______________________.
- The topic I understood the best today is ______________________.
- The case that confuses me the most is________________________.
- The case that I found the most helpful is_________________________.
- The one question I wished someone had asked today is__________________.
- At this point in the semester, the concept/doctrine that I understand the best is_____.
- At this point in the semester, the concept/doctrine that I understand the least is_____.
- When it comes to comma usage, I feel______________________.

Multiple Choice Questions

A partner has asked you to write a memo about whether the client’s sister-in-law can successfully petition for custody of the client’s minor children. Select the best answer for each of the following questions.

1. **Considering tone, the following sentence would be appropriate to include in the office memo.**

   A. The father demonstrates a flagrant disregard for his children when he suggests cutting ties with the aunt.
   B. The father is planning to uproot his children again.
   C. By contemplating a move at this sensitive juncture in the children’s tender lives, the father is negligent of the feelings of his children.
   D. None of these sentences should be included in an office memo.

2. **Considering style, the following sentence should be included in an office memo:**

   A. The court looks to weigh the factors to determine if the nonparents rebut the parental presumption that the legal parent acts in the best interests of the child.
   B. The court determined that the nonparents did not rebut the presumption.
   C. The court said the nonparents did not rebut the presumption.
D. None of these sentences should be included in an office memo.

**Streamlining**

*Review the following traditional introduction. Determine the function and purpose of each of the words or phrases used. Then decide which words or phrases may be omitted.*

In the name of God, amen. I, JESSICA CARPENTAR, residing in Bibb County, Georgia, being now of sound and disposing mind hereby declare, make, and publish this as my Last Will and Testament, hereby revoking all prior wills and codicils by me heretobefore made.

---

**What’s the Word?**

**Word Bank**

A. *Using the designated word bank, write the specific bequest. You must use all the words in the word bank. Insert the appropriate punctuation.*

<table>
<thead>
<tr>
<th>to</th>
<th>antique</th>
<th>Maria</th>
<th>survives</th>
<th>brooch</th>
<th>my</th>
<th>favorite</th>
<th>me</th>
<th>niece</th>
</tr>
</thead>
<tbody>
<tr>
<td>if</td>
<td>give</td>
<td>diamond</td>
<td>my</td>
<td>she</td>
<td>I</td>
<td>sapphire</td>
<td>Sanchez</td>
<td>and</td>
</tr>
</tbody>
</table>
B. Using the designated word bank, write a Perpetuities Savings Clause. You must use all the phrases in the word bank.¹

| all property of every trust created under this Will | who was in life at the date of my death unless sooner vested as provided herein. | to prevent any possible violation of the Rule against Perpetuities |
| and this provision should be so construed. | at the expiration of twenty-one (21) years | The purpose of this provision is |
| after the death of the last surviving beneficiary of this Will | Anything in this Will to the contrary notwithstanding, | shall vest in and be distributed to the persons then entitled to the income from such property |

**Fill-in-the-Blank**

*Complete the draft provision.*

All the _____________________________(insert definition of residuary estate), I give to _____________________________(identify initial taker/s—either by name or by class), if _____________________________(insert survivorship language). If _____________________________(identify initial taker/s) does not survive me, then I give _____________________________(identify property) to _____________________________(identify alternate taker/s—either by name or by class), _____________________________(insert survivorship language), or, if none of _____________________________(identify alternate taker/s—either by name or by class) survive me, _____________________________(insert cross reference to remote taker/s provision).

¹ This provision is based on the Perpetuities Savings Clause found in Mary F. Radford, 2 REDFEARN: WILLS AND ADMINISTRATION IN GEORGIA § 17:40(7th ed. 2008).
Mr./Ms. Fix-It: Using Cases to Present Drafting Opportunities

Below is an excerpt of Dr. Shapira’s will from Shapira v. Union National Bank, 315 N.E.2d 825 (Ohio Ct. Common Pleas 1974). Without changing the meaning of the excerpt, streamline the wording of the excerpt. If needed for clarity, you may insert additional language.

All the rest, residue, and remainder of my estate, real and personal, of every kind and description wheresoever situated, which I may own or have the right to dispose of at the time of my decease, I give, devise and bequeath to my three (3) beloved children, to wit: Ruth Shapira Aharoni, of Tel Aviv, Israel, or wherever she may reside at the time of my death; to my son, Daniel Jacob Shapira, and to my son, Mark Benjamin Simon Shapira, in equal shares.
Below is an excerpt of an engagement letter. Review and revise the excerpt for accuracy, clarity, style, tone, and grammar.

Thank you very much for choosing us. By this letter, we are thrilled to confirm and acknowledge agreement to retain Nelson & Murdock LLP (sometimes hereinafter referred to below as the “Firm”) and advise you in connection with your Estate Planning (hereinafter referred to the “Matter”).

Like most good law firms, we charge for legal services based on principally on hourly rates of the performing attorneys. I, together with Franklin Nelson, will be primarily responsible for representing you. Its our pleasure to help you with the Matter. My billing rate is $150 per hour; Mr. Franklin’s billing rate is $200 per hour. Periodically, these rates may be adjusted and the applicable rates will be those in effect at the time the services are rendered. The Firm will forward you a bill approximately each month for legal services performed through the last day of the preceding month. The Firm will also bill you approximately monthly for other client charges incurred.
Lost in Translation

Translating Legalese to Standard English

Last week, you provided the client with a draft prenuptial agreement. Your client has now emailed you regarding a specific provision. The specific provision appears below. Due to travel commitments, the client is not available via phone. The client would like you to email a summary of the provision—in standard English.

5. A. Each party to this Agreement hereby consents that the estate, property, assets, and trust of the other party of this Agreement may be disposed of on the death of that party by any Last Will, Codicil, or Trust to the person or persons chosen by that same party as if the marriage had not taken place, or in the absence of a Last Will, Codicil, or Trust, that the estate of each party to this Agreement will descend to the heirs of the deceased party as if the marriage had not taken place. Each party's aforementioned Estate and any Trusts in which the party is either the Settlor or the Beneficiary will be free of any claim or demand of curtesy, dower, elective share, exempt property, homestead, family allowance, inheritance, pretermitted spousal rights, widow's allowance or any spousal or other claims given by law or statute, irrespective of the marriage and any law to the contrary. Each party to this Agreement expressly waives any and all rights, including but not limited to the above referenced rights, in and to the other party's Estate and the other party's Trusts.

B. Neither party to this Agreement intends by said Agreement to thereby limit or restrict the right to give or receive an inter vivos or testamentary gift from the other party to this Agreement. Either of the parties to this Agreement may elect to make an inter vivos gift to the other by a Last Will, Codicil, or Trust without in affecting the continued effectiveness of this Agreement.

---

2 This provision is based on the “Prenuptial Agreement—Detailed Form” found in 11 FLORIDA JURISPRUDENCE FORMS LEGAL & BUSINESS § 36:7. However, some modifications (including, but not limited to, the insertion of additional “legalese”) have been made to facilitate the introduction of specific teaching points.
Translating a Client’s Words to Legal Provisions

You are drafting a Will for a new client. The client has told you the following information:

My parents, Mark and Louisa Boudreaux, have been a real inspiration. I know that they sacrificed a lot for me when I was growing up. If I die before they do, I want to make sure that they are able to do something they have always wanted to do. I want to give them $15,000 to take a luxury cruise, emphasis on luxury.

Based on the client’s comments, draft the specific bequest.
Self-Assessment Worksheet

Identify two pages of your written assignment. Review the two pages and answer the following questions. Unless otherwise directed, write your responses on this worksheet.

(1) The longest paragraph has _____ sentences, and the shortest paragraph has ______ sentences. [write the exact number of words in the blanks]

(2) The longest sentence has ______ words, and the shortest sentence has ______ words. [write the exact number of words in the blanks]

(3) Locate one sentence with 20 words or more. Trim two words from the sentence and write the revised sentence below.

(4) Write one sentence that you consider needs the most revision:
   [write complete sentence as it appears in the original paragraph]

(5) Explain why the sentence is the most in need of revision:

(6) Write a possible revision of the sentence that addresses the concern in the preceding question:

(7) Identify the concept that you had the hardest time articulating:

(8) Explain your reasons for identifying the concept in Question 7.

(9) Identify the concept that you articulated the best:

(10) Explain your reasons for identifying the concept in Question 9.

(11) Identify one word or phrase that is either too casual or strikes an improper tone.
Structured Peer Review

You will be switching draft engagement letters with a colleague in the class. Once you have switched drafts, review your colleague’s draft and complete the following questions. Unless otherwise directed, write your responses on this worksheet. The draft and this worksheet will be given to the author.

(1) The number of times first person (I, We) is used:______________.

(2) The number of times second person (You) is used:______________.

(3) The number of times the client’s name is used:______________.

(4) The longest paragraph has _____ sentences, and the shortest paragraph has ______ sentences. [write the exact number of words in the blanks]

(5) The longest sentence has ______ words, and the shortest sentence has ______ words. [write the exact number of words in the blanks]

(6) Other than professional, I would describe the overall tone of the draft as:______________________.

(7) Write one sentence that you consider to be one of the strongest: [write complete sentence as it appears in the original paragraph]

(8) Explain why you selected the sentence in the immediately preceding question:

(9) Write one sentence that you consider needs the most revision: [write complete sentence as it appears in the original paragraph]

(10) Explain why the sentence is the most in need of revision:

(11) Write a possible revision of the sentence that addresses the concern in the preceding question:

(12) Select the word or phrase that you would most like to incorporate into your letter:

(13) What, if anything, is missing from the excerpt: [insert topics, concepts, phrases, or words that could be included in the paragraph]

(14) Circle any grammar, punctuation, and spelling mistakes on the original.

(15) Write any additional comments in the space below:
Selected Bibliography

- Andrea A. Curcio, Gregory Todd Jones, & Tanya M. Washington, Developing an Empirical Model to Test Whether Required Writing Exercises or other Changes in Large-Section Law Class Teaching Methodologies Result in Improved Exam Performance, 57 J. LEG. EDUC. 195 (2007).
- Carol McCrehan Parker, Writing is Everybody’s Business: Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum, 12 LEG. WRITING 175 (2006).
- Carol McCrehan Parker, Writing throughout the Curriculum: Why Schools Need It and How to Achieve It, 76 NEB. L. REV. 561 (1997).
- Scott A. Schumacher, Learning to Write in Code: The Value of Using Legal Writing Exercises to Teach Tax Law, 4 PITT. TAX REV. 103 (2007).