

DRAWING UP ACADEMIC ARTICLES ON LEGAL MATTERS

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ABSTRACT: *This paper aims to outline the major steps in drawing up legal articles as a response to the students' request for guidance when having to complete assignments such as academic articles. The major principles used in academic legal writing are tailored to the specifics of article writing and reference is made to resources that the authors may use when embarking on academic legal writing.*

KEY WORDS: *academic legal writing, law article, claim, novelty, soundness, utility*

JEL CLASSIFICATION: *K 0*

A blank page and a deadline for filling it; any law student has experienced this at least once when having to complete assignments such as writing articles. Actually this kind of situation may be experienced by any type of author whether a student, lawyer, expert or academic who are all compelled to follow certain steps in order to produce a piece of writing that aspires to the status of academic writing. Stephen Carter best summarizes the basics of this type of writing by stating that “good legal scholarship should make a claim that is novel, non-obvious, useful and sound.”¹

The key element of the article is the claim which refers to what all types of writing must have, namely the basic thesis which functions as the originality mark of the article and around which the main arguments are building up. The claim may be descriptive (for example a statement about law's effects or about how courts are applying the law), prescriptive (about how a law should be interpreted or how a law should be changed), or a combination of these two, which may be the best choice as this can render a more interesting and valuable article that answers not only to the “what” question but also to the “so what?” one. Another important aspect as regards the claim is to keep it as short as possible, preferably in one sentence as this will be remembered by many readers, especially by those who only read the Introduction.

Another issue that the author of the article needs to deal with is the problem identification which represents the basis for formulating the claim. Where to look for the

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¹ Stephen Carter. *Academic Tenure and “White Male “Standards: Some Lessons from the Patent Law*, Yale, 1991, p.2065

problem? This can be identified in the unsolved cases you have read about, in class discussions, in recent court cases that create ambiguity; you may even ask the faculty members what fields of law they consider are not dealt adequately, ask legal professionals what problems they are facing, check the websites with legal debates. You can also attend conferences, symposiums to hear about hot topics in your field² or you can “find mentors with good ideas and co-author a piece with them.”³ However, it is essential that the identified problem meets your interest as “this will fuel your drive when your project becomes rocky and tiresome,” while, at the same time, this interest must be balanced with the topic’s usefulness to the profession.⁴ Once the problem has been identified, make sure you check with your faculty advisor or any faculty member specialized in that field that this issue is novel and can generate a sound and useful claim. For the descriptive part a sound explanation of the facts is expected and for the prescriptive part the solution could be a new rule, a new interpretation of a rule, a new enforcement practice. This solution should be tested against many scenarios thus demonstrating its strength.

For the article to be valuable it must say something that hasn’t been said by others before. This is novelty, namely your claim and the way you support it must be novel. One way of reaching novelty is by extending your claim. Thus you can identify special factors that are not present in other claims, or you may find that your arguments work in certain situations but not in others; thus you should adjust your claim, or you can come up with answers in between which consider different perspectives, even opposing ones. Extending your claim can also help you avoid situations where your claim is too obvious and could generate comments like: ‘you’re right but I could have told you that myself.’ You may add questions to your claim such as: could it be more efficient in some situations but not in others? Could it interact with some other laws?

As mentioned before one key element of the article is its usefulness to the profession. Why invest so much time in writing it when there is no applicability. After reading the article the readers should be left with something that is professionally valuable. This can be done in different ways: you can refer to issues that have been left open, for example an erred court decision, you can address the questions that the court left unsolved and provide a solution as expected by the professionals who will read your article. Another way is to apply your argument to other jurisdictions and thus to prove its real applicability. One trap you should avoid is making radical claims. Switch to a more modest claim as small and constant steps are more likely to win the battle with the readership. Also try to find precedents that support your claim as they will render it more convincing.

The language used in your article is essential in making it a valuable piece of writing. You should bear in mind that you create this for a certain “market” and you have to make it as appealing as possible. However you need to avoid using rhetoric and jargon that “unnecessarily alienate your audience.”⁵ The language has to be as neutral as possible;

² Heather Meeker. *Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers*, 1996, Utah L.Rev. p. 917,933

³ Gerald Lebovits, “The Legal Writer. Academic Legal Writing: How to Write and Publish”, NYSBA Journal, January 2006, p. 50

⁴ Id.

⁵ Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review*, Foundation Press, New York, 2005, p.17

avoid using strong words, avoid labeling, find the middle way that is acceptable both to you and to most of your readers.

The last, but not least important characteristic of the article is its soundness. When developing your claim you may easily fall into the trap of the ‘tunnel vision’ thus focusing only on the situation that made you write about this topic and ignore other situations where your proposal might apply as well. In this situation your claim is no longer sound. How can this be avoided? First you can extend your claim to other scenarios by using the method of test suite.⁶ This is a method used in computer programming and it is a set of cases that programmers enter into their program to see whether the results look right. If they generate no error then the program is good, if not they need to fix it and improve it. The same can be done to your article: you can design various cases (scenarios) where your proposal might apply, test it and see what results the proposal reaches. This testing may generate different results: error, vagueness, surprise or confirmation.⁷

Thus when the result is error this means that your proposal did not consider the countervailing concerns that may be present in other cases. In this situation you can limit the scope of your claim. If you apply your claim to other cases generating vagueness this may even lead to wrong results and therefore you need to clarify the issues. Surprise is when you reach a result that you thought at the beginning as wrong and you discover that it is right; in this situation include this proposal in the article. Finally one expected result is confirmation; this is when your proposal fits the results you think are proper and this can contribute to your article with some more and useful examples.

The test suite that the author of the article must devise needs to address several issues. First the author must identify what needs to be tested, namely to collect a number of several cases to which the proposed rule can be applied. The test should also be plausible, namely the situation might actually happen (for this reason it would be good to use a real incident, a court decision, a newspaper article, etc.). It should include famous precedents in the field that are meant to indicate that the proposal is consistent with those cases or, on the contrary, what cases should be reversed under this principle. The cases selected to form the test suite should differ from each other in order to generate a broad test and these cases in turn should generate different results. Thus if the article addresses the constitutionality of a law, you should identify some laws that you consider as unconstitutional, some constitutional and some whose constitutionality is a close question. All these various tests primarily check the functionality and the soundness of the claim and furthermore they give more variety and substance to the entire article.

To conclude an academic legal piece of writing is considered valuable if it is based on a strong claim that is novel, non-obvious, useful and sound. All these characteristics are linked to each other and they assure the functionality of the respective piece of writing by turning it into a reference material for the readership and a valuable instrument for the practitioners in the field.

⁶ Id. p. 19

⁷ Id. pp. 21-22

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