

Common Mistakes

Here are some of the mistakes I repeatedly find in formal legal writing. Please avoid these even in the draft you submit in connection with your seminar papers. You are forewarned.

1. *Grammatical errors.* These are distracting at best and, to many readers, signal an inadequately trained writer. When in doubt, check with a style manual. The Internet is an excellent resource for answering even obscure grammar questions. At your level, there is no excuse for grammatical errors.
2. *Passive voice.* The passive voice often leaves important questions unanswered. Use the active voice unless the use of the passive voice is absolutely necessary.
3. *Failure to Bluebook.* Some readers do not care if you Bluebook or not, but you would be surprised at the number that do care—and those that care tend to care a great deal. For the latter group, a failure to Bluebook materially reduces the persuasiveness of the paper. I fall in this latter category. Get a Bluebook and use it.
4. *Misciting authority.* Make sure that the authority you cite stands for the proposition cited. In particular, when you drop a footnote with authority at the end of the sentence, make sure that the authority supports the sentence. If the authority only relates to a portion of the sentence, make sure that you make clear the limitations of the authority in a parenthetical.
5. *Failure to use proper bluebook introductory signals.* These are critical to precise legal writing. Memorize Rule 1.2.
6. *Citing secondary sources as authority.* Do not cite secondary sources as authority for a legal proposition. Courts do not accept secondary sources as authority. Cite primary sources (e.g., statutes, opinions, regulations, the Congressional Record) as legal authority.¹ If you think that a secondary source is helpful to explain a concept further or elaborate on an argument, you can cite it at the end of the primary authority citations.²
7. *Misuse of footnotes.* As a general rule, try to limit your footnotes to citations of authority for propositions in the text. Do not make substantive points important to your analysis in a footnote—those points belong in the text. Footnotes can be used for asides that are likely to be interesting to the reader but not important to your argument. But use these sparingly: substantive footnotes distract the reader, disrupt the narrative flow of your argument, and hence can make your paper less persuasive.

¹ As a point of information, the United States Code (U.S.C.) is a primary source; the United States Code annotated (U.S.C.A.) is a secondary source.

² A middle ground is occupied by PHILLIP E. AREEDA & HERBERT HOVENKAMP, *ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION* (updated annually). In the absence of good primary authority, courts will cite to Areeda-Hovenkamp.