

Sailing Through Designing Memo Assignments

Lorraine Bannai, Anne Enquist, Judith Maier, and Susan McClellan*

Sailing and designing memo assignments¹ have a lot in common. At first, both can seem overwhelming—so much to learn, so much to organize sequentially, and so much to get right in a short period of time. Mistakes mean instability, lost time, and possibly capsizing. Avoiding the mistakes, a good skipper can break through to clean water and good air, and teaching writing can be exhilarating. Exhilaration is contagious.

The students and teacher both benefit from and enjoy working with an ideal memo assignment. Although the ideal memo may take many forms, several assumptions underlie the authors' concept of the ideal. First, sailors start by venturing out in a small boat, on flat water, in a light breeze. Similarly, legal writing assignments need to start with a topic that requires very simple structural analysis, usually a statutory elements analysis that teaches basic skills. From there, the wind increases and the next memo assignment is more difficult. It reinforces the skills students learned by completing the first memo, and it adds new skills in research, analysis, and writing. This process of designing writing assignments that both reinforce old skills and add new skills results in a spiral curriculum.² The

* Lorraine Bannai, Anne Enquist, Judith Maier, and Susan McClellan teach in the Legal Writing Program at the Seattle University School of Law. Lorraine Bannai previously taught in the Legal Research and Writing Program at the University of San Francisco School of Law.

¹ This article focuses on the objective interoffice legal memorandum, which forms the basis of Seattle University School of Law's program for first year students. Each writing assignment relates to a specific legal memorandum, which is similar to an assignment a new associate would receive in practice. For each memorandum, the students are required to research, analyze, and write. For an approach focusing on more discrete skills, see Gail A. Kintzer et al., *Rule Based Legal Writing Problems: A Pedagogical Approach*, 3 LEGAL WRITING 143 (1997).

² See JEROME S. BRUNER, *THE PROCESS OF EDUCATION* (1960) (reporting the major themes that emerged from the Woods Hole Conference of scientists, scholars, and educators). Bruner describes the spiral curriculum as teaching the basic ideas first and then revisiting them "repeatedly, building on them until the student has grasped the full for-

spiral curriculum process also charts the course for a semester or for an entire year.

The process is critical, but the destination is key. No memo assignment is effective if it results in capsizing or getting lost. Memos are effective only when they help students meet the goals set for research, analysis, and writing. The three sections of this article provide concrete ideas for reaching the destination. The first section outlines the top ten mistakes in designing memo assignments. The top ten designation refers not only to the importance of the mistake but also to the frequency with which the mistake is made. The second section discusses the ideal assignment, and the third section presents strategies for working through the process of designing a memo. The completed memo assignment that appears in Appendix 2 illustrates concepts discussed in both sections two and three. Following the ideas in these three sections should lead to exhilarating sailing through legal writing for both teachers and students.

I. TOP TEN MISTAKES IN DESIGNING ASSIGNMENTS

Novice and even experienced legal writing faculty find that designing assignments is one of the more challenging parts of their jobs. Like the skipper who is trying to think about destination, weather, obstacles, and the needs and ability of the crew, the legal writing professor designing an assignment has so many different things to consider that it is all too easy to be so focused on achieving one objective that another equally important objective gets completely overlooked. For that reason, the authors have assembled a "top ten" list of mistakes in designing assignments as a quick checklist against which legal writing faculty can test an assignment. The mistakes are listed in ascending order.³

mal apparatus that goes with them." *Id.* at 13. Although Bruner's discussion relates to teaching children, the concepts have been applied in legal writing courses. See, e.g., LAUREL CURRIE OATES ET AL., *THE LEGAL WRITING HANDBOOK, TEACHER'S MANUAL* 39 (2d ed. 1998).

³ Any resemblance to David Letterman's "top ten" lists is unintentional. In determining which mistakes to include on the list, the authors considered both how frequently the mistake is made and how important the mistake is to the overall learning objectives for the legal writing course. A one-page summary of the top ten mistakes appears in Appendix 1.

*Number 10: The assignment is too boring.
(sailing with no wind)*

When a legal writing professor selects a topic or legal problem for students to solve, it is important to remember that both the students and the teacher will be spending a considerable amount of time living and working with this assignment. If the subject matter has some natural intrinsic interest, it will be easier for the students to get into and stay fully engaged in the assignment, and consequently, their learning will be enhanced.⁴

*Number 9: The assignment is "all flash and no cash."⁵
(sailing with a hot boat and an inexperienced crew)*

The companion problem to the "too boring" assignment is, of course, the assignment that is selected primarily because it is "sexy" or the hot topic of the day. Although the topics and legal problems in legal writing assignments should be interesting, they must also help the legal writing professor and students meet their pedagogical goals. Avoid the temptation to design a problem based on a headline without thinking through whether it will help students learn what they need to know about legal research, analysis, and writing.

*Number 8: The assignment is too highly charged.
(avoiding rocks hidden under the surface)*

Law students are not fragile, nor do they need to be coddled. Nevertheless, some topics are so highly charged that they interfere with some, even many, students' learning. For this reason, it is best to avoid certain types of legal writing problems, for example, fact patterns with gruesome assaults on children. Selecting such a fact pattern will inevitably mean that the students will be immersed not only in the facts of the case in the assignment but also in the facts of the analogous cases.

Another fact pattern that many legal writing faculty avoid using in their assignments is one concerning rape. With so many other topics to choose from, it seems unwise to force the victim of a crime like rape to deal all over again with his or her earlier personal experience while trying to learn how to do re-

⁴ See OATES ET AL., *supra* note 2, at 288; Jan M. Levine, *Designing Assignments for Integrating Legal Analysis, Research, and Writing*, 3 PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING 59 (1995).

⁵ Our colleague Professor Ramona Witt nicknamed this mistake for us.

search and analysis.⁶

*Number 7: The assignment is created without consultation.
(not discussing the course with the crew)*

As a general rule, consider consulting with two people before designing and distributing any assignment in legal writing. First, consult with an experienced legal writing professor and ask whether the assignment will work. Another set of experienced eyes might head off a disaster or, at the very least, spot a minor problem that can be solved before the assignment is given to the students. Second, consult with the faculty member who is teaching the same students the doctrinal course associated with the legal writing assignment.⁷ This second consultation is important as a professional courtesy, and it can head off potential political problems.⁸ From a pedagogical standpoint, this consultation with the doctrinal professor is important so that the students do not have unnecessary confusion about the law, particularly if there are differences between how it is taught in the doctrinal course and how it will be applied in the legal writing assignment.

*Number 6: The assignment requires resources that are not available.
(what do you mean there aren't enough lifejackets?)*

Most law school libraries have multiple copies of the resources for their own and nearby states, but they may have limited copies of the resources for distant jurisdictions. Before plac-

⁶ One possibility is to have an alternative assignment for an individual student whose past experiences are a serious obstacle to his or her working on a given assignment.

⁷ See OATES ET AL., *supra* note 2, at 288. There is always the potential danger that a doctrinal professor will see such a consultation as opening the door to having the legal writing professor cover some content from the doctrinal course. We are not recommending the consultation for this reason. In fact, we urge legal writing faculty to resist any pressure to cover material for a doctrinal course because covering topics for doctrinal courses would be at the expense of teaching the many research, analytical, and writing skills that need to be covered in legal writing. RICHARD NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY AND STYLE, TEACHER'S MANUAL* 205 (3d ed. 1998); J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 81-82 (1994); Grace Tonner & Diana Pratt, *Selecting and Designing Effective Legal Writing Problems*, 3 LEGAL WRITING 163, 168 (1997).

⁸ Knowing in advance about an assigned legal writing problem in his or her subject area will help a doctrinal professor if questions related to the legal writing problem surface in the doctrinal class.

ing a problem in a particular jurisdiction, consider whether the library has an adequate number of copies of the necessary resources for the students to do the assignment.⁹ Also remember to consult with other legal writing faculty about which library resources their students will need. Too many students, whether they come from the same class or from different classes, competing for the same set of books creates unnecessary headaches for the students, the librarians, and the legal writing professors involved.

Many legal writing programs delay introducing computer-assisted legal research until after the students have learned to research using the books. It goes without saying that students should not be given assignments that require computer-assisted legal research until after they have had the necessary training.

*Number 5: The assignment is not adequately researched.
(check the charts and the weather first)*

New legal writing faculty sometimes think that giving students a legal writing assignment is like a partner giving an associate or intern a legal problem to research. Using that analogy, they may think they can simply assign a problem, turn the students loose, and then see what they find. This approach is seriously misguided.¹⁰ Unless the legal writing professor has researched the problem himself or herself, the professor will not know if the problem helps students learn the skills he or she wants to teach.

By thoroughly researching the problem before assigning it, the legal writing professor will have an opportunity to make any necessary revisions to the assignment before distributing it to the students. By knowing what the students will find before sending them out to do research, he or she can ensure that the teaching goals of the course are met.¹¹

⁹ One alternative is to place copies of a limited resource on reserve.

¹⁰ OATES ET AL., *supra* note 2, at 288.

¹¹ Even when a legal writing professor has carefully researched a problem, the students often uncover unforeseen issues and complications. Researching a problem before assigning it just cuts down on the number of surprises the legal writing professor may have to handle.

*Number 4: The assignment is ill-defined.
(any way the wind blows)*

In designing an assignment, legal writing faculty need to make sure that it is focused on the issues they want the students to discuss.¹² Students can still be given a realistic, multi-faceted fact pattern and then told to assume that another associate will handle one or more of the issues, for example, whether there was a contract.

In addition to defining the issues in the assignment, it is wise to define the logistics of the assignment. Put everything—due dates, format requirements, length requirements—in writing.

*Number 3: The assignment is too long.
(are we there yet?)*

If an assignment requires too many cases or too many parts to the analysis, the students will not be able to do a good job researching and writing in the time they have. Equally important, overly long assignments add to the legal writing professor's critiquing and grading burden.¹³ For both reasons, then, it is crucial to consider approximately how many pages it will take to do the assignment and, if necessary, adjust the assignment so that it is not too burdensome to the students or the legal writing professor.

*Number 2: The assignment fails to develop skills.
(we're sailing in circles)*

From a learning standpoint, this is the most serious mistake in designing legal writing assignments. Assignments are not there simply as work for the students. They need to be carefully designed and sequenced¹⁴ so that they provide a vehicle through which students can learn the foundation skills in legal research, analysis, and writing.¹⁵ The key, of course, is for legal

¹² Linda Holdeman Edwards recommends making the first assignment a single-issue assignment. LINDA HOLDEMAN EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION, TEACHER'S MANUAL* 38 (1996).

¹³ *Id.*

¹⁴ See OATES ET AL., *supra* note 2, at 287; RALPH L. BRILL ET AL., *SOURCEBOOK ON LEGAL WRITING PROGRAMS* 13 (1997); Helene S. Shapo & Mary S. Lawrence, *Designing the First Writing Assignment*, 5 *PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING* 94, 94-95 (1997); Kintzer et al., *supra* note 1, at 144, 145, 151.

¹⁵ See NEUMANN, *supra* note 7, at 200; BRILL ET AL., *supra* note 14, at 15; Levine,

writing faculty to plan ahead and think through exactly what it is that they want to teach. Then they can devise assignments that naturally require students to use the various research tools and resources, to do increasingly more sophisticated analysis, and to develop all the aspects of their writing.¹⁶

Number 1: The assignment is too difficult.

(trying to go around the world on your first sail!)

The number one and most common mistake in designing legal writing assignments is creating an assignment that is too difficult. The reasons why legal writing faculty tend to create overly difficult assignments are numerous. Sometimes it is a sign of insecurity on the part of a new teacher. A tough assignment may make a new teacher feel like he or she is sufficiently "rigorous." Often the mistake comes from the legal writing professor simply forgetting how much more he or she knows than a brand new law student knows.

Unfortunately, the mistake of creating an overly difficult assignment often happens with the very first assignment of the year. The result is that the course begins on the wrong foot, with the students unnecessarily frustrated and the professor spending most of the class time trying to remedy the problem. If the legal content is completely unfamiliar, the legal writing professor may end up teaching the substantive law needed for the problem. If the analysis is too difficult, he or she may end up walking through the analysis rather than having the students figure it out. Small wonder that experienced legal writing faculty often say that a first memo problem cannot be too easy.¹⁷

II. THE "IDEAL" MEMO ASSIGNMENT

Given the top ten "mistakes" just discussed, what makes an "ideal" memo assignment? Just as a captain must ensure that her boat is in sailing condition and that the course is appropriate to the winds, weather, and experience of the crew before sailing, a legal writing professor must ensure that the legal writing assignment is effective and engaging before handing it

supra note 4, at 58.

¹⁶ See, e.g., BRILL ET AL., *supra* note 14, at 13-16; NEUMANN, *supra* note 7, at 204; Tonner & Pratt, *supra* note 7, at 163-165; Laurel Currie Oates, *Designing Effective Writing Assignments*, Handout for Northwest Regional Legal Writing Conference (1995); Kintzer et al., *supra* note 1, at 152.

¹⁷ Shapo & Lawrence, *supra* note 14, at 94.

out to students. Instead of addressing each of the top ten mistakes in turn, we instead identify five main attributes an "ideal" memo assignment might have. The "ideal" memo assignment should (1) teach, and allow students to practice, specific skills; (2) be neither too difficult nor too easy; (3) involve subjects that are interesting, familiar, and realistic; (4) be well researched; and (5) be sensitive in its treatment of issues and individuals.

A. *The Ideal Memo Assignment Should Teach, and Allow Students to Practice, Specific Skills*

The memo assignment can be viewed as a secondary "text" for a Legal Writing class.¹⁸ While the texts for the course will explain to students how to conduct legal research, how to analyze and synthesize various sources of law, and how to draft legal analysis, the assignment itself allows the students to apply this knowledge.¹⁹ The assignment can be used in class to illustrate the concepts being taught, and the students' drafts, coupled with the professor's critique, provide students with their own "personalized texts" for their work in the class. If the assignment is not designed to teach specific skills (Mistake Number Two of the "Top Ten Mistakes," above), it is not designed to help the students master the course material.²⁰

Viewing the assignment as a supplementary text, the professor must have a clear idea of what the assignment is intended to teach. The first step in identifying the goals or objectives for any one assignment is to identify the goals or objectives for the entire course. Then, determine how each memo assignment will help teach those goals or objectives.²¹

The chart set forth below²² may be a useful tool for mapping out both course and assignment objectives. Read as a whole, the chart identifies course objectives, that is, what students should learn regarding research, analysis, and writing by the end of the course. Each column lists the specific objectives for any given assignment, also in terms of research, analysis, and writing. Note that each assignment is designed to build on knowledge

¹⁸ Rideout & Ramsfield, *supra* note 7, at 89.

¹⁹ See Levine, *supra* note 4, at 58.

²⁰ See NEUMANN, *supra* note 7, at 200; BRILL ET AL., *supra* note 14, at 15; Levine, *supra* note 4, at 58.

²¹ See NEUMANN, *supra* note 7, at 204; Tonner & Pratt, *supra* note 7, at 163-165; Oates, *supra* note 16; Kintzer et al., *supra* note 1, at 152.

²² See Oates, *supra*, note 16; OATES ET AL., *supra* note 2, at 287.

gained in the prior assignment and that each assignment is designed to be more challenging than the assignment before it.²³ While this chart is designed for a program that assigns three memoranda and one brief (trial or appellate), it can easily be adapted to any program that has multiple assignments.

OBJECTIVES FOR EACH ASSIGNMENT

	First Memo	Second Memo	Third Memo	Brief
Research	Encyclopedias Hornbooks Constitutions Codes	Digests ALR Law Reviews Cite Checking	Uniform Laws Restatements Treatises Loose-leaf Services	Practice Books
Analysis	Reading and analyzing statutes and cases Elements analysis using the script format Factual arguments Arguments based on analogous cases Policy arguments	More sophisticated reading and analysis of statutes and cases Elements analysis using integrated format More sophisticated arguments	More sophisticated reading and analysis of statutes and cases Balancing of competing interests or issue of first impression More sophisticated arguments	More sophisticated reading and analysis of statutes and cases Theory of the case Standard of review Harmless error More sophisticated arguments
Writing	Format of memo Large-scale organization Paragraphing and transitions Grammar and punctuation	Sentence construction Precision Conciseness	Bias-free language Plain English style	Persuasive techniques Eloquence

Appendix 2²⁴ contains an assignment sheet for a second memo problem that incorporates the objectives discussed above. The assignment asked students to research whether a release signed before a river rafting trip is enforceable under California

²³ See BRILL ET AL., *supra*, note 14, at 13; Shapo & Lawrence, *supra* note 14, at 94-95; Kintzer et al., *supra* note 1, at 144, 145, 151.

²⁴ Appendix 2 is an assignment sheet for a second memo problem assigned in the fall of 1996 by Professor Lorraine Bannai at Seattle University School of Law. We recommend reading through the assignment before reading the rest of this article, as reference will be made to it.

common law. While we do not suggest that this is an “ideal” memo assignment, it does provide a useful example for the purposes of discussion.

This second memo assignment was designed to achieve several objectives.²⁵ The first memo assignment had been designed to teach students how to research statutes and a handful of cases interpreting and applying a statute; how to draft an elements-based analysis; and the basic format of an office memorandum. The second memo needed to build on the skills learned as a result of the first memo assignment and to teach new material with regard to legal research, analysis, and writing.

First, with regard to legal research skills, the assignment was designed to teach students how to research a common law, as opposed to a statutory, problem, introducing them to using digests and a range of secondary sources. In addition, this assignment was designed to introduce students to researching out-of-state cases, since the students’ first memo had been placed in Washington State, where our law school is located.

Second, with regard to legal analysis skills, the problem was designed so that students had to analyze a larger number of cases than the handful they had to analyze for their first memo, as well as learn how to synthesize the case law in a more sophisticated manner. As with all legal writing assignments, the assignment was designed so that it fit “between” authorities, requiring the students to address and weigh arguments on both sides. In other words, as Richard Neumann has discussed in his teaching manual and in the Sourcebook on Legal Writing Programs, “tension” had to be built into the assignment.²⁶ Tension existed in this assignment because the analysis was fact intensive; because the case law gave both parties rich policy arguments; and because, as a result, both the plaintiff and the defendant had good arguments.

Lastly, with regard to legal writing skills, early assignments should involve a rule with a fairly clear organizational approach, while subsequent assignments might require the students to work harder at organizing the analysis. This release assignment involved one issue that was easier to organize and one that was more difficult to organize. The former issue, which was organizationally similar to the work students had done on their

²⁵ The objectives can be explained in the memo assignment itself. See page 28 for the section of the assignment setting forth the assignment’s goals.

²⁶ NEUMANN, *supra* note 7, at 199; BRILL ET AL., *supra* note 14, at 15.

first memo, allowed students to demonstrate mastery, and the latter required them to stretch, working harder at organizing concepts where no clear organizational structure was suggested by the existing case law.

For assignments to be effectively used as a “text” for the course, they ideally should involve at least two issues: one, which the professor can work on with students in class, and others, which the students can work on themselves. For the risk release memo assignment, the simpler issue was used in class to illustrate points about, for example, drafting case descriptions and showing the application of law to fact. The students worked on the more complex issue themselves, applying the concepts discussed in class.

B. The Ideal Memo Assignment Should be Neither too Difficult nor Too Easy

Top Ten Mistake Number One, discussed above, warns that an assignment should not be too difficult. Just as novice sailors cannot be expected to navigate rough waters or cross the Pacific while first learning to sail, novice legal writers will learn only if given an assignment that is appropriate to their skill level. Difficulty can be presented in a memo assignment in a number of ways.

First, the assignment can be too difficult if it calls for an exceedingly long, involved memo to analyze the problem adequately. As Top Ten Mistake Number Three cautions, avoid drafting an assignment that is too long. Try not to draft an assignment that calls for a twenty- to thirty- page memo, addressing numerous issues and subissues and/or a large number of cases when a shorter, more focused assignment would still teach the skills the students need to learn. The assignment attached as Appendix 2 suggested a ten-twelve page limit; realizing that the analysis was more complex than anticipated, the legal writing professor increased the suggested length to thirteen-fourteen pages.

Consider two suggestions to help avoid the need for a lengthy memo. First, legal writing professors can make sure that they are drafting focused assignments by researching the problems themselves in advance of handing the assignments out to their students, thereby acquiring a clear understanding of what the research will produce. A legal writing professor might even draft the discussion section of the memorandum, or at least prepare an outline of the discussion section, to get a sense

of the likely content and length of the finished product. Further, as Jan Levine has discussed in his work, consider building walls around the assignment by telling the students which issues to focus on, as well as which issues will likely not be disputed or which issues the students should not address.²⁷ The release assignment set forth in Appendix 2 told students to focus solely on the issue of the enforceability of the release, and not to discuss the underlying claim of negligence or any possible defenses.

Second, a memo assignment might be too difficult because it requires too much background knowledge of the law or facts. Certain issues require an understanding of specialized terminology or an understanding of a comprehensive statutory, regulatory, or administrative scheme before even tackling a specific issue to be researched. For example, securities law, insurance law, banking law, and tax law each require knowledge of certain terminology and concepts.²⁸ In the same vein, some fact situations may be too difficult for students to grasp if they require specialized technical, medical, or scientific knowledge.

To avoid these problems, try to draft assignments that involve areas of law as well as fact patterns with which students are familiar or can easily become familiar. (This topic will be discussed further below in section 3). The release assignment set forth in Appendix 2 involved aspects of both contract and tort law, both first-year courses the students were taking at the time this assignment was distributed. In addition, the assignment involved a recreational risk release, a fact situation that many students have encountered since many probably signed such risk releases before engaging in recreational activities.

A third circumstance where memo problems can become too difficult arises when the assignment requires the use of resources with which the students are not yet familiar or to which they do not have ready access. For example, a research assignment might require an understanding of the legislative history behind a statute, but the students might not have yet learned how to research a legislative history or might not have ready access to relevant materials. Similarly, an issue might require use of a statute or secondary source, but there might be insufficient

²⁷ See Levine, *supra* note 4, at 60.

²⁸ See OATES ET AL., *supra* note 2, at 288. For example, a memo assignment requiring knowledge of the concept of "basis" in tax law or the complex state and federal regulatory schemes involved in banking, environmental, and insurance law might be unduly difficult.

copies of the required book available. Again, to avoid these problems, know exactly which resources the students will need to analyze the issues adequately before assigning the problem. Further, if there are insufficient copies for all students to use, consider making copies of relevant resources available on reserve.

Even though it is important to avoid assignments that are too difficult, try to design assignments so that they are challenging for students with different skill levels.²⁹ While an assignment should be designed so that it is "do-able" by most students, it can still have some built-in issues or arguments that can challenge the strongest students.

The risk release assignment set forth in Appendix 2, while meeting many of the criteria of a good assignment, was a somewhat difficult assignment. The professor assigning this problem had to help the students work through some challenging organizational issues and through some ambiguous language in the case law. Even if an assignment is not perfect (in the sense of meeting all the objectives discussed in this article), it is likely to have fewer flaws and less important flaws if it is designed with these objectives in mind.

C. *The Ideal Memo Assignments Should Involve Subjects that are Interesting, Familiar, and Realistic*

Memo assignments should be interesting to both the students and the professor. Just as mastering sailing is easier with an energetic instructor who focuses on practical skills and the joy of the sport, learning legal writing is easier if the assignment captures the student's interest. Avoiding Top Ten Mistake Number Ten, which cautions against boring assignments, will help keep both the students and professor engaged in the course material.³⁰

Select fact situations with which students are or can readily become familiar.³¹ Doing so will help the students focus more on the skills of legal research, analysis, and writing than on learning about the subject matter of the problem. For example, consider drafting assignments that involve the students' first-year subjects. Using first-year subjects will help the students see how

²⁹ See Levine, *supra* note 4, at 60.

³⁰ See OATES ET AL., *supra* note 2, at 288; Levine, *supra* note 4, at 59.

³¹ See NEUMANN, *supra* note 7, at 200; BRILL ET AL., *supra* note 14, at 15; OATES ET AL., *supra* note 4, at 288; Shapo & Lawrence, *supra* note 14, at 94; Oates, *supra* note 16.

their courses work in application, thereby reinforcing learning in both the doctrinal course involved and the Legal Writing course.³² Also consider using topics that students might be familiar with from everyday life, whether from common personal experiences or popular media.³³ For example, assignments raising family law, probate, criminal law, or employment issues are ones that many students can readily understand. Draft problems involving issues and concepts that students can grasp intuitively.³⁴ Finally, consider drafting assignments involving the regulation of the legal profession, for example, attorney admissions and disbarment proceedings. Students can readily relate to these issues as they know they will soon be subject to these rules.

Also make sure that the fact patterns are realistic, that is, fact patterns that might well be a real client's case.³⁵ Selecting realistic problems will give the students a sense of the type of work they might actually start doing as new associates, and students will likely take the assignment more seriously.³⁶ The risk release assignment set forth as Appendix 2 was a real case that a legal writing professor had handled while in practice, modified, of course, to protect the client's identity and to better meet the professor's teaching goals.

D. *The Ideal Memo Assignment Should be Researched*

In order to avoid Top Ten Mistake Number Five (the assignment is not adequately researched), legal writing professors should research the problem themselves³⁷ in advance of handing

³² See BRILL ET AL., *supra* note 14, at 14; NEUMANN, *supra* note 7, at 200; Levine, *supra* note 4, at 60; Tonner & Pratt, *supra* note 7, at 168. In assigning problems based on first-year courses, become familiar with how the students' doctrinal professor is approaching the subject matter, and caution students if the law applicable to the problem differs in material respects from doctrine taught in their substantive course.

³³ However, avoid Top Ten Mistakes Number Nine, which cautions against selecting problems that are interesting but fail to teach skills.

³⁴ Levine, *supra* note 4, at 60.

³⁵ See BRILL ET AL., *supra* note 14, at 15; NEUMANN, *supra* note 7, at 201; OATES ET AL., *supra* note 2, at 288; Levine, *supra* note 4, at 59.

³⁶ An added side benefit of selecting realistic problems is that the students can more easily use the work they do on such problems as writing samples when they are applying for jobs. See Tonner & Pratt, *supra* note 7, at 165-66.

³⁷ Some legal writing professors have teaching assistants who research the problem in advance. While using teaching assistants in this manner will give a legal writing professor a more realistic idea of how first year students will approach the research, the legal writing professor should also research the problem so that he or she knows what the research will produce, knows how to narrow the issues, and knows the problem well

the problem out to make sure the problem works.³⁸ One would rarely set out on a voyage without knowing the course that will be traveled. "Making sure the problem works" means that the assignment teaches students the skills the professor intends to teach; that students will find the resources the professor intends them to find; and, finally, that students will not end up researching issues the professor does not intend them to research.³⁹ Most importantly, legal writing professors should do the research as their students will do the research, making sure that students will find the relevant authorities in the resources that they want the students to use.

Finally, as mentioned above, another aspect of researching the problem is to touch base with other professors teaching the same material to the same students, in order to avoid Top Ten Mistake Number Seven, creating the assignment without consultation.⁴⁰ Doctrinal professors teaching the same material involved in the memo assignment should be consulted as a matter of professional courtesy to help them know how to handle questions they may receive about the assignment, as well as to discover any potential conflicts between the way the analysis will be taught in the doctrinal course and the way the analysis is handled in the specific jurisdiction's case law.

E. *An Ideal Memo Assignment should be Sensitive in its Treatment of Issues and Individuals*

In order to avoid Top Ten Mistake Number Eight, which cautions that the assignment should not be too highly charged, avoid potentially offensive language in the fact pattern and be careful about assigning problems that may be highly sensitive⁴¹ or gruesome. When drafting the assignment, avoid stereotypes based on, for example, gender, race, ethnicity, or disability. Avoid continually making the wrongdoers men or ethnic minori-

enough to teach it.

³⁸ See OATES ET AL., *supra* note 2, at 288; Oates, *supra* note 16.

³⁹ See EDWARDS, *supra* note 12, at 38; NEUMANN, *supra* note 7, at 201. To avoid a more lengthy memo, the assignment set forth as Appendix 2 specifically told the students not to discuss the related issues of whether the risk release was unconscionable, whether the defendant was negligent, and whether the plaintiff was comparatively negligent or assumed the risk of harm. See Appendix 2.

⁴⁰ See NEUMANN, *supra* note 7, at 205; OATES, *supra* note 4, at 288; Rideout & Ramsfield, *supra* note 7, at 81-82; Oates, *supra* note 16; Tonner & Pratt, *supra* note 7, at 168.

⁴¹ See Tonner & Pratt, *supra* note 7, at 166.

ties and stereotyping women as helpless or ignorant.⁴² Also, be careful in the use of labels describing individuals. For example, avoid using the term "Oriental" for a person of Asian heritage; instead, use the term most preferred by the ethnic group to which it refers, for example, "Asian American" or "Japanese American." In short, model the use of bias-free language in drafting the assignment.

As discussed earlier, when designing the assignment, also be careful about choosing highly charged areas that may adversely affect the ability of some students to focus on the main tasks of learning research, analysis and writing. Avoid, for example, assignments involving violent crimes against children and brutal sexual assaults.

As mentioned above, few, if any, assignments will end up being "ideal" in all respects. A legal writing professor, however, should strive to design an assignment that will have as many of these listed attributes as possible.

III. THE PROCESS OF PUTTING AN ASSIGNMENT TOGETHER

The production of an assignment is a lot like sailing, for it, too, requires careful planning. Just as a sailor seeks to plan a voyage by charting a course that gets the boat to the destination intact and in a challenging manner, so also should the legal writing professor seek to follow a plan that will provide a good result for both the student and teacher. Here, then is a such a plan.⁴³

Step 1: Determine goals

Begin by determining precise research, analysis, and writing goals.⁴⁴ For example, will this assignment involve research using reporters, legal encyclopedias, statutes, legislative history, or other types of secondary sources? Will it involve common law

⁴² Conversely, consider using individuals from non-traditional backgrounds as parties even when those backgrounds have no specific bearing on the issues in the problem. In the assignment set forth as Appendix 2, the plaintiff has a Japanese surname. Neither her name nor her ethnic background had any bearing on the problem. However, persons of all ethnic backgrounds have legal problems, and names should reflect the rich diversity of our country.

⁴³ The material presented in this section derives from the authors' experiences in teaching in the Legal Writing Program at Seattle University, which has as its foundation the text authored by Laurel Currie Oates, Anne Enquist, and Kelly Kunsch. See OATES ET AL., *supra* note 2.

⁴⁴ See OATES ET AL., *supra* note 2, at 287-88; Tonner & Pratt, *supra* note 7, at 163.

or statutory analysis, an issue of first impression or a split of authority? Finally, what level of writing expectation will it involve—a simple elements analysis or perhaps a more complex discussion?

The research, analysis, and writing goals establish the core or the foundation of the assignment. Without these goals, not only will it be quite difficult to design the assignment, but students will find such an assignment confusing and difficult to complete.

Step 2: Determine the schedule

As in any project, having an established schedule to follow is critical to the success of the project. The students must know the overall length of the assignment, due dates, and return dates. So too must the legal writing professor know when to expect material for critiquing, how much time will be allowed for critiquing, and when material may be available for class use.

To establish a schedule, begin by determining the “return date”—the date on which the assignment will be returned, critiqued and graded, to the students. Next, determine the period of time required to complete the critiques and determine the grades and from it predict the “final due date”—the date on which the students will turn in their completed assignments.

Next, examine the manner in which the students will prepare the various parts of the assignment. For example, when will they prepare the Statement of Facts, the Discussion section, the Issue statements? For each part of the assignment, decide whether the students’ work will be used to support class discussion and whether it will be individually critiqued. If it will be a part of class discussion, make certain that the due date for that part permits time for thoughtful review and selection of student samples in time for class discussion. If it will be critiqued, make certain that there is sufficient time built into the schedule to permit thoughtful critiquing while returning the critiqued material to the students in sufficient time to be of assistance to them. Finally, consider the students’ other class demands!

The schedule that flows from this process will provide a good working basis for the assignment. Do not be afraid, though, to revisit it to make adjustments as the assignment is further defined.

Step 3: Gather Ideas

Armed with assignment goals and a schedule, it is time to begin the search for a specific idea or topic for the assignment. Idea sources include annotated codes and digests; legal journals; practice experience; practice experience of friends; other faculty members; popular press; Internet; source books and old assignments. Be wary, however, of using old assignments for they pose a potential problem. If an assignment is repeated too soon, there may be too much help available to the students in the form of assignments already critiqued and graded. Consider that completed assignments may have even been posted on the Internet. Delaying the repeat of a problem until at least the class to which it had been previously assigned has graduated is the more prudent approach.

Step 4: Rule out Ideas

Assuming that the gathering step produced several possible ideas, the legal writing professor should now eliminate those that will not be suitable. Evaluate the ideas against the Top Ten Mistakes as discussed above. Consider whether conflicts may exist between the idea and other classes the students are taking. For example, if the idea relates to adverse possession and the property law professor prefers that it not be addressed until he or she covers it, the topic may not be the best one to select. Finally, the topic selected should be a topic that the legal writing professor feels comfortable teaching.⁴⁵

Step 5: Rule in Ideas

At this point, the goal is to whittle the remaining ideas down to a single one. Begin by evaluating the remaining ideas against the attributes of the Ideal Memo as discussed above. Consider discussing the ideas with the doctrinal professors who teach those subjects.

Finally, and most importantly, conduct detailed research. There simply is no shortcut or substitute for this step, for it reveals the merits and teaching opportunities inherent in the topic as well as identifies any problems associated with the idea, which should cause the idea to be discarded.

⁴⁵ See OATES ET AL., *supra* note 2, at 288.

Step 6: Topic Selected

Next, flesh out the idea. Determine the key cases and authorities on which the students should rely to complete the assignment. Determine the precise issue or issues that they should raise and, in turn, what facts will be required to engage those issues. Determine also the relationships between the cases/authorities and the assignment's goals and issues and ensure that they are in concert. Finally, determine the grading and critiquing criteria for the assignment. This step should help the legal writing professor identify and correct potential problems with the assignment and avoid being surprised by their appearance in the classroom.⁴⁶

Step 7: Prepare the Fact Pattern

Facts may be presented to students in a variety of ways, including written narrative, components of a typical client file, video, interview, or role play.⁴⁷ The choice of method, however, should be made by carefully considering two things. First, consider the level of control over the facts. The legal writing professor has the most control over the interpretation of the facts when they are presented in a written narrative. As the amount of material presented and the cast of players presenting it increases, the legal writing professor's control over the students' interpretation of the facts decreases. Accordingly, it may be best to employ the written narrative in first assignments, leaving the other methods for later assignments.

Second, consider the students' skill level.⁴⁸ Remember that the beginning student is faced with the daunting task of learning many new things simultaneously—a new language—the law; new writing formats; new research tools; and new analytical skills. Amid this barrage, a multi-media presentation of facts may simply be too much. For the beginning student, the written narrative may be the optimum method. Additionally, use of a method in which the student is not yet skilled, such as the interview format, may serve to raise frustration levels for the student and could reinforce bad habits. Thus, an interview format

⁴⁶ *Id.*

⁴⁷ *Id.*, at 289. For additional comments regarding the format for presenting the facts, see NEUMANN, *supra* note 7, at 202; Rideout & Ramsfield, *supra* note 7, at 72, 85; Levine, *supra* note 4, at 61-62.

⁴⁸ See OATES ET AL., *supra* note 2, at 287.

should be reserved for a time when the legal writing professor can be assured that the students have acquired the requisite skill level.

Step 8: Prepare Assignment Handout

The assignment's requirements must be presented to the students in an organized and written fashion. Such a handout should include the fact pattern materials; the various policies and procedures governing the completion of the assignment; the expectations and grading standards for the assignment; the assignment's learning goals, and schedule or time line; and the amount of assistance that will be permitted for the assignment.⁴⁹ In addition to providing a copy to each student, it is wise to share copies of the assignment handout with librarians, writing/academic support advisors, and any doctrinal professor who is teaching that subject so that he or she will be prepared to address students' questions.⁵⁰

*Step 9: Assemble an Assignment Notebook*⁵¹

In order to have the pertinent materials quickly available from which to address students' questions, assemble an assignment notebook. It should include a complete copy of the assignment handout; the specific goals identified for the assignment; lesson plans; copies of the significant cases/authorities on which the students are likely to rely in completing the assignment; and a citation sheet. The last, the citation sheet, forces the legal writing professor to confront the details of the citation form early on to enable him or her to deal more effectively with students' questions.

Step 10: Evaluation of the Assignment

Although the legal writing professor may well conclude that upon return of the graded assignments, the assignment is complete—such a notion is a bit premature. For while the students' portion is complete, the legal writing professor has one important task remaining—evaluation of the assignment. Regardless of whether the legal writing professor is considering recycling

⁴⁹ For examples of assignment handouts see, OATES ET AL., *supra* note 2, at 72-73, 83-84, 88-89, 135-36; Appendix 2, pages 27-30.

⁵⁰ See OATES ET AL., *supra* note 2, at 288.

⁵¹ See *id.*, at 289.

the assignment, important lessons can be learned from it. It is from this step that the legal writing professor learns how to avoid the problems encountered and repeat the successes. Consider carefully the problems that crept up during the assignment: how could they have been avoided⁵²; how were they handled? How did the students react to the assignment—did they find it engaging and challenging or boring and frustrating? Did the assignment fulfill all of the goals set? If not, how can the unfulfilled goals be folded into the next assignment(s)? Is this assignment worth repeating? Finally, regardless of whether the assignment is a candidate for repetition, file a copy of it, the completed evaluation, and a copy of an “A” memo in a project notebook or file drawer to serve as a source from which to gather ideas in the future.

An exhilarating legal writing assignment can be achieved with some careful thought and design. Although, at first blush, the project can seem daunting, the evaluation techniques and assembly steps presented here should make the legal writing professor’s task more manageable as well as more rewarding. By seeking to avoid the top ten mistakes and working to meet the criteria of the ideal assignment, the legal writing professor should be able to develop assignments more easily that provide both the students and the teacher with a successful legal writing experience. And as the sailor’s maxim wishes, may you, too, enjoy fair winds, following seas, and a safe harbor in the design of all your legal writing assignments.

⁵² See, e.g., Kintzer et al., *supra* note 1, 154-55, 161-62 (recognizing difficulty in a particular constitutional problem and a complicated proof model combined with the summary judgment posture in another problem in retrospect).

APPENDIX 1**Top Ten Mistakes
in Designing Legal Writing Assignments**

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10. The assignment is too boring.
9. The assignment is "all flash and no cash."
8. The assignment is too highly charged.
7. The assignment is created without consultation.
6. The assignment requires resources that are not available.
5. The assignment is not adequately researched.
4. The assignment is ill-defined.
3. The assignment is too long.
2. The assignment fails to develop skills.
1. The assignment is **TOO DIFFICULT**.

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APPENDIX 2

Lorraine Bannai
Assignment

Legal Writing I, Section B1 Second Memo
Fall 1996 ASSIGNMENT SHEET

Your second memo involves researching the enforceability of a release agreement. Enclosed find a memo requesting your assistance and part of the client's case file in *Yoshida v. Tatum*, a case filed before the Alameda County Superior Court in Oakland, California.

I. Due Dates: The due dates for the various parts of the assignment are set forth below. In the event of any inconsistency between the syllabus due dates and these due dates, these due dates control.

Complete Research

**By class Monday,
November 4, 1996**

Of course, understand that research is a continuing process. You should, however, have a substantial portion of your research done by this time and have a fairly clear idea of what cases speak to what issues.

**Prepare Outline of
Discussion Section**

**Put a copy in my locked
box by 10:00 a.m.
Wednesday, November 6,
1996**

For each issue, include what you will put in each section of the Discussion Section and, to the extent possible, each paragraph. Remember the format for structuring a Discussion Section. Students who have not turned in outlines will not be able to attend subsequent classes in which the problem is

discussed. This will not be individually critiqued.

Prepare First Draft of Discussion of whether language clear and explicit issue (not typeface or placement issue)

Due in my locked box by 10:00 a.m. Tuesday, November 12, 1996

Students who have not turned in this draft will not be able to attend subsequent classes in which the problem is discussed. This will be individually critiqued.

Prepare Final Draft of Second Memo.

Due in my locked box by 1:00 p.m. Friday, December 6, 1996.

Attach the critiqued draft of your discussion of the "clear and explicit" issue to the final memo when you submit it. If your memo is late, see Lori Lamb and fill out a late form. Review the policies and procedures handout for grade penalties for late papers.

II. Learning Goals:

Research and Analysis: Your first memo involved researching Washington statutory law. In researching this memo, you will learn how to research common law and to research law in another jurisdiction. This memo will also require you to read, understand, and synthesize a greater number of cases. Finally, as a result of your work on this assignment, you should learn how to look for and use policy arguments.

Writing: You should learn how to integrate your discussion of the law and facts, moving from the script format to a more integrated format. Also, we will focus more on writing at the sentence and word levels - writing more concisely and precisely.

III. Grading and Expectations:

Please review the hand out "Checklist for an Effective Memo" for what I will look for in evaluating your memo. Also, consult the course Policies and Procedures for the grading standard I will apply. I will review your citations more carefully on this memo than I did for your first memo assignment. They should all be in Bluebook form.

IV. Form:

1. Use the following format, as set forth in the text and in class.
 1. Heading (modify form on attached memo from me to you)
 - Statement of Facts
 - Question(s) Presented
 - Brief Answer(s)
 - Discussion Section, and
 - Conclusion
 2. Your memo should be no longer than 10-12 double-spaced, letter sized pages.
 - Use true double-spacing between lines, not space-and-a-half. You may single space your Question(s) Presented and Brief Answer(s), but double space between the two sections and between the individual questions and answers.
 - Use no smaller than 12 point typeface.
 - Leave at least one-inch margins at the top, the bottom and on each side.
 - Number each page at the bottom center (do this on drafts, as well).
3. Use Harvard Bluebook citation form (16th Edition).

V. Assistance:

You may work together to the following extent: you may discuss the law and how the law applies to our facts. You should not, however, give each other authorities, that is, copies of cases or other authorities or citations to them (unless the authorities are ones that I have put on reserve for you).

Your written work must be your own. Do not share a computer disk with another student, let another student read your paper, or read another student's written work, unless directed to share portions as part of a class exercise. I encourage you to see me about any questions you may have about your research, analyzing the problem and your writing. You may also see Professor

Enquist for writing advice. Before you make an appointment to see one of us, prepare an agenda for the conference.

To: Law clerk

From: Lorraine Bannai

Date: October 28, 1996

RE: *Yoshida v. Tatum*, our file number LB 96-250, Alameda County Superior Court Case No. 15607

Enforceability of release

I just met with our client, Joellen Yoshida, who was injured during a river rafting trip earlier this year. I'd like you to research the enforceability of a release that she signed before embarking on her river rafting trip. I think we can expect that the defendants will file for summary judgment fairly soon, claiming that the case (based on negligence) should be dismissed because the release bars the action.

This area of the law involves a combination of contract law and tort law. A release (also known as an exculpatory clause) is a contract by which the potential plaintiff purportedly agrees to relieve the potential defendant of tort liability. I am primarily interested in whether the release is enforceable.

Several issues come to mind that I think you should look into:

(1) Whether the physical layout (the type size and placement) of the exculpatory clause presents any problems in terms of the enforceability of the release.

(2) Whether the exculpatory language used (as opposed to the physical layout of the terms) is clear enough to show that the plaintiff released the defendant from an action for negligence, or that plaintiff expressly assumed the risk of harm.

I will help you with the second issue, but see what you can find on both issues first.

In your research, you will find some cases that deal with setting aside releases based on the arguments that they (1) are unconscionable and (2) violate public policy (Civil Code Section 1668 and the *Tunkl* decision). At this time, I don't think we can prevail on these arguments, so I don't want you to address them in your memo. You may want to understand these issues, however, if they help you understand the overall area of enforceability of releases. I have put copies of Civil Code Section 1668 on reserve.

Further, as stated above, I want you to focus on whether the release is enforceable to bar Ms. Yoshida's suit. Do not research or discuss whether the Art Tatum School was negligent or whether Ms. Yoshida impliedly assumed the risk of harm or was contributorily or comparatively negligent. I will have one of the other clerks look into these issues. Further, do not concern yourself with summary judgment procedure.

Note: We have filed our suit in the Alameda County Superior Court, which is in the 1st Appellate District. Use citation form for citing out of state cases to a Washington court.

Monday, July 22, 1996

Transcript of Interview with Joellen Yoshida
Attorney: Good morning, Ms. Yoshida.

Ms. Yoshida: Good morning. It's nice to meet you.

Attorney: I understand you live in Oakland, California. When we spoke on the phone, you told me that you are staying up here in Tacoma to care for your mother. I think we can help you start your case out and then transfer the case to our San Francisco office for litigation, if necessary. You told me that you were involved in a river rafting accident.

Ms. Yoshida: Yes, back on June 8, 1996.

Attorney: Let's back up and let me get some general information. You've already given us your address and phone number in Oakland. Are you married?

Ms. Yoshida: Yes, and I have 2 children, a boy who is 5 and a girl who is 7.

Attorney: How old are you?

Ms. Yoshida: I will be 29 years old in December.

Attorney: Are you presently employed?

Ms. Yoshida: Yes. I am an elementary school teacher in Oakland.

Attorney: Can you tell me about how you ended up on this river rafting trip?

Ms. Yoshida: Yes. In April of this year, I saw an advertisement for a whitewater river rafting trip in the Oakland Times. I called the Art Tatum School of River Rafting - it was the company that placed the advertisement and it has its offices in Berkeley, California. I made reservations to join a trip on June 8, 1996.

Attorney: Tell me what happened then.

Ms. Yoshida: Well, I drove up to the Whitecap River to meet instructors from the school and my fellow students early in the morning on June 8, 1996. When I got there, I reported to a tent set up at a base camp to register. Ms. Gina Cheasty - who worked for the school, was in charge of registering guests. I paid my fee and Ms. Cheasty gave me a life vest and a helmet. Oh, yes, she also gave me this [handing attorney piece of paper]. This is a copy of the registration card that I got from them when they told me they couldn't cover my medical bills.

[The paper is a two-sided registration card. A copy of the registration card is attached. The front side of the registration card is in 13 point type. On the back side of the registration card: the heading is in 14 point type, the first paragraph and last line are in 12 point type, and the rest of the document is in 7 point type.]

Attorney: Did Ms. Cheasty say anything to you when she handed you this card?

Ms. Yoshida: Yes. As she handed me the card, she said something along the lines of "please fill out, read and sign this and bring it back to me when you're done." I really wanted to get started with the class and so I just glanced over the document. I have to admit that I did not read it carefully. I filled out the front side of the card and signed it, just like it shows on the copy. The only part that I recall noticing on the back side of the form was the part that asked if I could swim. I then returned the form to Ms. Cheasty.

Attorney: And what happened then?

Ms. Yoshida: Well, then Jacob Rentz, the coordinator of this trip, called all of the participants together and then divided us into groups for instruction. I was assigned to a new instructor,

Donna - her name was Donna Soper. Ms. Soper told us the schedule of events for the day, told us how to put our life vests and helmets on and told us how to sit in the raft. She told us to wedge our feet under the pontoon at the edge of the raft to brace ourselves against the movements of the raft. I think that that wasn't the right instructions. I think I ended up breaking my ankle because my foot was lodged under the pontoon when I got thrown forward.

Attorney: So, let me get this right. Your instructor told you to place your feet under the pontoon and your foot then got lodged under the pontoon.

Ms. Yoshida: Yes.

Attorney: Then what happened?

Ms. Yoshida: Well, like I said. I wedged my foot under the pontoon and the rafting trip began. At a rough spot in the water, the raft lurched and I was thrown forward. My foot, which was wedged under the pontoon, was struck and I broke my ankle.

Attorney: Did you get medical assistance?

Ms. Yoshida: Yes, everyone was very nice and helpful. They stopped the raft and I got airlifted to the hospital.
[Balance of interview, which covered nature of injuries, medical bills, wage loss information and fee arrangement omitted.]

RIVER RAFTING REGISTRATION CARD

Name:

Address:

Phone:

Name and Phone Number of Emergency Contact:

Name and Phone Number of Doctor:

Medical Insurance Information:

(Front side of Form)

RIVER RAFTING REGISTRATION CARD

Welcome to the ART TATUM SCHOOL OF RIVER RAFTING! We are delighted that you have chosen us to introduce you to the fabulous world of river rafting . . . you are in for a real treat. We hope to join you in hours of enjoyment.

River rafting is an exciting, challenging recreational activity. There are also some dangers attendant to it. It is never the intention that anyone become injured, but, occasionally, accidents happen. Release: Without any duress or coercion and understanding that your participation in this river rafting trip is entered into of your own free will and choice, make the following representations: I, the undersigned, for myself, my personal representatives, heirs and estate, hereby discharge, covenant not to sue, release and hold harmless the Art Tatum School of River Rafting, its officers, agents, and employees (hereinafter Releasees) from all liability to the Undersigned for all loss or damage and any claim or demand therefore (including, but not limited to claims for negligence in the maintenance of equipment, in piloting the raft, in providing transportation back to the base camp, etc.), whenever such claim may arise in the future, on account to injury to person (including, but not limited to, drowning, exposure to cold, injury to limbs and other parts of the body, and death) or property of the Undersigned, whatever the cause.

I understand and accept the hazards and risks inherent in river rafting.

I can swim.

If my picture is taken, I will allow it to be used for promotional purposes.

I HAVE READ AND UNDERSTAND THIS ENTIRE AGREEMENT.

(Back side of Form)

[Enlargement of the above language]:

River rafting is an exciting, challenging recreational activity. There are also some dangers attendant to it. It is never the intention that anyone become injured, but, occasionally, accidents happen. Release: Without any duress or coercion and understanding that your participation in this river rafting trip is entered into of your own free will and choice, make the following representations: I, the undersigned, for myself, my personal representatives, heirs and estate, hereby discharge, covenant not to sue, release and hold harmless the Art Tatum School of River Rafting, its officers, agents and employees (hereinafter Releasees) from all liability to the Undersigned for all loss or damage and any claim or demand therefore (including, but not limited to claims for negligence in the maintenance of equipment, in piloting the raft, in providing transportation back to the base camp, etc.), whenever such claim may arise in the future, on account to injury to person (including, but not limited to, drowning, exposure to cold, injury to limbs and other parts of the body, and death) or property of the Undersigned, whatever the cause.

I understand and accept the hazards and risks inherent in river rafting.

___ I can swim.

___ If my picture is taken, I will allow it to be used for promotional purposes.

DECLARATION

I, Wendall Johnson, state,

I live at 157 Friendship Lane, Sonoma, California, and am employed at the Safeway Store in Sonoma.

On June 8, 1996, I went to the Art Tatum School of River Rafting with several of my friends from work. I met a woman before the class began and she introduced herself to me as Joellen Yoshida. Our instructor was Donna Soper. Ms. Soper told our class to wedge our feet under the pontoon of the raft to brace ourselves against the movement of the raft.

After we started our rafting trip, the raft hit some white water and lurched forward. Ms. Yoshida, who was sitting in front of me, fell forward.

Ms. Soper then pulled the raft over to the shore. Ms. Yoshida was crying and appeared to be in a great deal of pain.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on August 15, 1996, in Sonoma, California.

DECLARATION

I, Howard Larson, declare:

I am the owner and operator of Larson's River Rafting in Sacramento, California. I have been in the river rafting business for ten years and have enjoyed river rafting as a sport for twenty years.

Whenever I instruct people on how to ride in river rafts, I always tell them to brace their feet against the pontoon and not under the pontoon. If they lodge their feet under the pontoon, they will get their feet stuck and risk injury when the raft lunges forward.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 14, 1996, at Sacramento, California.

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