

PLAGIARISM:

WHAT IT IS;
WHY TO AVOID IT;
HOW TO AVOID IT

Adapted by Margaret A. Leary from material prepared by Professor Phil Frost's handout for the course "Research and Analysis in American Law" September 2010

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The University of Michigan Law School Standards of Conduct and Commentary, on the next two pages, state that academic misconduct includes "presenting another's work as the student's own" and "Plagiarism." The Commentary further states: "Plagiarism most commonly consists of restating, without attribution, either the exact words or the substantive ideas of another person." If plagiarism in violation of the Standards of Conduct is proven, the Law School Student Discipline Committee may impose severe sanctions, including reprimand, denial of academic credit, suspension, or expulsion from the Law School. In addition, the Law School may be required to report the incident to the bar of any jurisdiction to which the sanctioned student applies. This document contains the text of the Standards as of April, 2010, and relevant pages from *Scholarly Writing for Law Students*, by Elizabeth Fajans and Mary R. Falk, 4th ed., 2011.

SPECIAL NOTE TO JOURNAL EDITORS: If you find or suspect plagiarism in the work of a Michigan Law student (in a writing competition or in material submitted for publication), you have the option (but are not required) to refer plagiarism matters to Dean Baum or Dean Gregory.

IF YOU SUSPECT PLAGIARISM AND WANT TO FIND THE SOURCE, another library handout can help. See

<http://www.law.umich.edu/library/students/research/Documents/plagiarism.pdf>

Consult a reference librarian at the Reference/Information Desk, by phone to 734-764-9324, or by email to askalawlibrarian@umich.edu

Law School Standards of Conduct and Commentary

THE STANDARDS

University of Michigan Law School students are expected to maintain high standards of:

Academic conduct in all academic relationships with the Law School and the University, from the application for admission through graduation;

Professional conduct while functioning in a lawyer-like capacity at any time between matriculation as a Law School student and graduation; and

Personal conduct in all matters that touch or affect the Law School, the University, and any member or guest of the Law School or University communities.

These standards apply without regard to possible civil and criminal liability for the same conduct. But an adjudication of civil or criminal liability may establish or support a finding that a student has engaged in misconduct.

A standard may be violated by an unsuccessful attempt to engage in conduct that would be a violation if completed. Assisting another person's violation or attempting to conceal it also may be a violation.

ENFORCEMENT

Departures from these standards of conduct are subject to discipline under the Law School Student Disciplinary Procedures and also under the University Statement of Student Rights and Responsibilities, accessible at <http://www.oscr.umich.edu/statement/>.

COMMENTARY

These Standards of Conduct are expressed in general terms, not as defined rules. A standard often will be given specific content by more detailed rules and policies adopted by the University, offices and programs within the Law School, individual members of the Law School faculty, or the courts and bar associations that regulate lawyers. Beyond such rules and policies, the Standards depend on tradition and an understanding of shared academic and professional values. Most forms of academic and personal misconduct are readily recognized by an honest person exercising common sense and ordinary understanding.

The same conduct may violate more than one standard. Violation of library rules, for example, may in some circumstances violate the academic conduct standard as well as the personal conduct standard. And conduct that violates any one standard may give rise to concerns about fitness to practice law that will be reported to bar authorities.

Academic Conduct

The most readily recognized forms of academic misconduct include these:

Presenting another's work as a student's own.

Submitting substantially the same work for credit in more than one course without informed permission from the instructor for each course.

Plagiarism. Plagiarism most commonly consists of restating, without attribution, either the exact words or the substantive ideas of another person. When in doubt, it is better to cite too much than too little.

Violating the rules for an examination or another academic performance.

Giving information to — or copying or receiving information from — another person in answering an examination question unless the conduct is authorized by the rules for the examination.

Falsification of research information.

Falsification of an official or unofficial Law School transcript.

Misrepresentations, or omissions of material facts, in seeking admission or financial aid, in claiming academic or extracurricular accomplishments, in seeking action by a member of the faculty or administration, or in seeking employment.

Refusal to comply with — or misuse of — the Law School Student Disciplinary Procedures. Misuse most commonly involves knowingly false or malicious reports of misconduct or making knowingly false statements.

Any other conduct intended to put another student at an unfair disadvantage in competing for grades, honors, journal memberships, advancement in competitions, participation in activities open to limited numbers of students, or employment.

The academic conduct standard reaches misconduct in work undertaken outside the Law School for Law School credit.

Professional Misconduct

Professional misconduct while working in a Law School clinic or similar program is measured primarily by the Michigan Rules of Professional Conduct. Professional misconduct in other activities undertaken before graduation — such as paid or unpaid work for a law firm, government office, judge, or other organization that provides legal services — is measured by the rules of professional conduct that apply to lawyers and the rules of judicial conduct that apply to judicial assistants acting where the student conduct occurs.

Personal Misconduct

The University Statement of Student Rights and Responsibilities governs law students and provides examples of personal misconduct. Violations of rules or policies adopted by any University or Law School office or organization (including a recognized student organization) — and any conduct that foreseeably harms another member of the Law School or University community — may be personal misconduct or academic misconduct.

Adopted by Faculty April 16, 2010.

SCHOLARLY WRITING FOR LAW STUDENTS

**SEMINAR PAPERS,
LAW REVIEW NOTES AND
LAW REVIEW COMPETITION PAPERS**

Fourth Edition

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These
pages
attached

as you cut and paste, you may become confused and accidentally cite material to the wrong source or to none at all—thus unintentionally misattributing or even plagiarizing. Moreover, detailed footnotes in all your drafts means you won't have to comb through your sources a second time or, worse still, like the student writer in the anecdote above, conduct a desperate midnight Internet search for something—*anything*—that supports your assertions.

B. ATTRIBUTION, PLAGIARISM, AND FAIR USE

An understanding of attribution begins with the recognition that credit is more than an academic convention.²¹ Like new law, which is constantly being fashioned out of existing rules, scholarly papers commonly build upon and advance ongoing intellectual debates. Thus reliance on the ideas of others is intrinsic to scholarly pursuits and is something to parade, not bury. Indeed, acknowledgment of our intellectual ancestors both establishes the quality of our research and provides useful references for readers who wish to delve into the subject matter.

But acknowledgment is also an ethical imperative, an obligation to give credit where credit is due. When we fail to give credit to scholars whose ideas or language we have borrowed, we commit at least two ethical breaches. First, we are implicitly lying, claiming someone else's work as our own. Second, we are treating the writer disrespectfully by appropriating his work, even when no financial gain is involved. The self-evident wrongness of putting forward someone else's work as our own is underscored by a survey indicating that 90 percent of college students "strongly" view it as unethical.²²

The failure to properly acknowledge the work of another, whether in footnote or text, lays a writer open to charges of plagiarism, most commonly and clearly defined as the representation of the words or ideas of another as one's own. Moreover, and despite dissension on the issue, the legal and academic communities do not routinely regard an intent to deceive as a necessary element of plagiarism. Although lack of intent is often a mitigating factor in determining sanctions, many regard the

21. The discussion of attribution that follows is specifically geared to issues facing student scholarly writers. Much more could be said about proper attribution (or its lack) in law firms and about judges' unattributed use of their clerks' drafts and law professors' use of student assistants' research and summaries. See generally, RICHARD A. POSNER, *LITTLE BOOK OF PLAGIARISM* (Pantheon Books 2007); Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghost-writing, and Authorship*, 42 SO. TEX. L. REV. 467 (2001). Of course, the fact that

some members of the legal profession are in breach of the ethical duty of proper attribution doesn't give permission to emulate them. [Textual/authority footnote.]

22. *Combating Plagiarism: The Issues*, 13 NO. 32 CQ RESEARCHER 776 (2003) (quoting Patrick M. Scanlon & David R. Neumann, *Internet Plagiarism Among College Students*, J. OF COLLEGE STUDENT DEVELOPMENT, May/June 2002). [Authority/attribution footnote.]

negligent or reckless appropriation of another's work as plagiarism, even when it is the inadvertent product of careless research and note-taking.²³

The Internet undoubtedly tempts writers to plagiarize from those billions of websites providing text on every conceivable subject, ready for copying and pasting into our documents with a few mouse clicks. Moreover, some experts on plagiarism think that students feel that "materials found online are free, or somehow inherently different from something you . . . get out of a book or magazine," and that this inevitably means more students will plagiarize.²⁴ Other experts disagree, finding fears of a plagiarism explosion inflated,²⁵ and indeed, studies, largely based on "self-reporting" by students, seem to suggest that the Internet has not created an increase in plagiarism.²⁶

What is not in doubt, however, is that in the academic context, proper acknowledgment of your sources, whether print or Internet, requires you to do the following.

1. Provide a footnote for any borrowed language, facts or ideas whether quoted or paraphrased in your text, whether the source is audio-visual, print or electronic, published or unpublished. If you cite ideas that come from personal communication, be sure to get permission. Letters and emails are private, unpublished material, and it is unethical to use them without the writer's permission.
2. In addition to providing an attribution footnote for paraphrases, introduce the borrowed material with some reference to its source. For example, "One recent commentator points out that. . . ." This way the reader knows where the paraphrased material begins as well as where it ends.
3. Acknowledge the source of a fact that you think is common knowledge if it was unknown to you until you encountered it in that source.²⁷
4. Whenever you cite a source ("source B") that you found in another source ("source A"), you must indicate that source B is cited in source A. (Of course, as a matter of good scholarship,

23. See generally, Terri LeClercq, *Intent to Deceive*, 8 THE SECOND DRAFT 3 (1993). [This footnote provides authority for the proposition made in the text.]

24. 13 No. 32 CQ RESEARCHER, *supra* note 22, at 775-76 (2003) (quoting John Barrie, president of a firm that produces plagiarism-detection software). [Authority/attribution footnote.]

25. *Id.* at 778 (quoting Jim Purdy, assistant director of the Center for Writing Studies at the University of Illinois, Champaign-Urbana). [Authority/attribution footnote.]

26. *Id.* at 778. [Authority/attribution footnote] It is, however, the case that the

Internet has facilitated plagiarism detection, at least Internet plagiarism detection. Several specialized software packages are available to educational institutions. Even without such tools, internet plagiarism can often be diagnosed simply by using a search engine to search a suspect string of words. [Textual footnote.]

27. Of course, you would almost always need an *authority* footnote for such a fact since, as suggested earlier in this chapter, the "common knowledge" rule has very limited application to legal scholarship. [This is a textual footnote.]

you won't cite source B without reading it to be certain it stands for the proposition for which it is cited in source A.)

5. Provide attribution when you copy string cites or parenthetical descriptions of authority. It is unethical to "lift" without attribution a footnote that compiles sources or one that uses sources—even a single source—in an original fashion.
6. Use quotation marks when you borrow five words or more. However, whenever language is used distinctively, use quotation marks for fewer than five words, even for a single word.²⁸ (The text at footnotes 2–4 above provides examples of this situation.)
7. Don't confuse a paraphrase with an altered quotation. Changing a few words does not transform a direct quotation into a paraphrase. It is an altered quotation that requires the differences to be signaled by the use of brackets for changed language, ellipsis for omissions, and quotation marks. For a quotation to become a paraphrase, the language and syntax must be significantly different.

In addition you should format quoted material carefully. Quotations of fewer than 50 words should be run into your text and surrounded by quotation marks. Quotations of 50 words or more should be indented and single spaced. In this "block quote" format, no quotation marks are required.

Following these rules will insure against plagiarizing your sources. In addition, you should also avoid any appearance of plagiarism by conducting frequent preemption searches to be certain that no recent articles on your topic go unacknowledged, especially articles that raise points similar to those in your text. Finally, like authority footnotes, attribution footnotes should always be included in your very first draft: if you wait until the revision stage, paraphrased material may escape attribution altogether, causing inadvertent (but inexcusable) plagiarism.

The examples that follow will help you to distinguish between plagiarism and appropriately attributed use. In addition, you should work through the exercises at the end of this chapter.

28. The publication for which you write or edit may have a rule requiring quotation marks around more or even fewer than five words. Or the rule may not specify any number at all. The vital (and difficult) determination, of course, is whether language is distinctive, the writer's particular cre-

ation. And this is ultimately a case-by-case determination for which no bright-line rule can ever be adequate. Of course, it is still plagiarism to copy longer chunks of even the most workaday, boilerplate prose without attribution and quotation marks. [This is a textual footnote.]

Original Material

The Crisis of Modern Jurisprudence:
Casey v. Planned Parenthood
Paul M. Zimmerman
20 Fictional L. Rev. 1, 13 (1993)

The most promising aspect of the joint opinion in *Casey v. Planned Parenthood*¹ was its sensitivity to critical race and critical feminist studies, specifically to their techniques of "looking to the bottom."² The *Casey* court listened to the stories of women who stood to suffer most when it struck down the spousal notification requirement of the Pennsylvania abortion regulation and affirmed that women have the right to abort pre-viability fetuses. Such a jurisprudential development may restore the court's institutional legitimacy by providing a normative basis for legal analysis.

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1. Casey, 505 U.S. 833 (1992).
 2. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R. - C.L. L.

Overt Plagiarism

The court's acceptance of legal storytelling techniques in *Casey v. Planned Parenthood*¹ was an interesting development. The *Casey* court listened to the stories of women who stood to suffer most when it struck down the spousal notification requirement of the Pennsylvania abortion regulation and affirmed that women have the right to abort pre-viability fetuses. This approach may allow for the reconstruction of a coherent jurisprudence that restores the court's institutional legitimacy.

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1. Casey, 505 U.S. 833 (1992).

This example overtly plagiarizes the original article. The writer usurps the comment's thesis without acknowledgment. The first and third sentences of the passage are paraphrases that require a footnote attributing the content to the source. In addition, the writer retains the exact wording of the original in the second sentence but fails to surround the language with quotation marks.

Covert Plagiarism

The *Casey* court's acceptance of legal storytelling techniques, its decision to "look to the bottom,"¹ was an interesting development. "The *Casey* court listened to the stories of women who stood to suffer most when it struck down the spousal notification requirement of the Pennsylvania abortion regulation and affirmed that women have the right to abort pre-viability fetuses."² This approach may allow for the reconstruction of a coherent jurisprudence that restores the court's institutional legitimacy.

1. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

2. Paul M. Zimmerman, Note, *The Crisis of Modern Jurisprudence: Casey v. Planned Parenthood*, 20 FICT. L. REV. 1, 13 (1993).

This version covertly plagiarizes the original article. First, by citing to Professor Matsuda instead of to the casenote, the writer suggests she has read the cited source, although this may not be the case. Moreover, even if she had read Professor Matsuda, she must also cite the casenote because it was that author who had the idea to use Professor Matsuda in this context. Second, although the writer correctly places quotation marks around the language directly borrowed from the casenote, and also provides the appropriate footnote, the citation gives the erroneous impression that the quoted sentence is the only borrowed material in the paragraph. In fact, the ideas in the first and third sentences are also borrowed. To avoid a charge of plagiarism, the writer needs to acknowledge the author of the casenote at the outset ["As one commentator argues . . ."] and to add a footnote at the conclusion of her summary of the borrowed material, as in the example that follows.

Proper Attribution

As one commentator argues, the *Casey* court's acceptance of legal storytelling techniques, its decision to "look to the bottom," was an interesting development.¹ "The *Casey* court listened to the stories of women who stood to suffer most when it struck down the spousal notification requirement of the Pennsylvania abortion regulation and affirmed that women have the right to abort pre-viability fetuses."² This approach may allow for the reconstruction of a coherent jurisprudence that restores the Court's institutional legitimacy.³

1. Paul M. Zimmermann*, Note, *The Crisis of Modern Jurisprudence: Casey v. Planned Parenthood*, 20 FICT. L. REV. 1, 13 (1993), (quoting Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987)).

2. *Id.*

3. *Id.*

Note that in this passage the author's attribution footnote correctly credits both the original and citing sources.

Finally, above and beyond proper attribution, writers and editors—especially those preparing a manuscript for publication—must be familiar with the concept of fair use in order to avoid copyright infringement. Fair use has to do with the extent to which you may use another's work, whether published or unpublished, without permission from the copyright holder. It balances copyright protection—which provides authors with an incentive for creating work that enriches society—against the public's need to use the work of others to promote knowledge and culture.²⁹ When courts determine whether the use of a work is fair, they consider four statutory factors:

1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.³⁰

29. KENNETH D. CREWS, COPYRIGHT, FAIR USE AND THE CHALLENGE FOR UNIVERSITIES: PROMOTING THE PROGRESS OF HIGHER EDUCATION 22-23 (1993). [Authority and attribution footnote.]

30. 17 U.S.C. § 107 (1988). [Authority footnote.]

Because law reviews have an educational rather than commercial purpose, the first prong of the fair use doctrine does not present many obstacles to legal scholars. Since legal writers tend to borrow from copyrighted work of a scholarly nature, the second factor is also not especially problematic. With respect to the third factor, courts consider the proportion of quoted material in relation to the length of the source. You will almost certainly be safe if you stay within a 5% limit. Finally, note that the Court in *Harper & Row Publishers, Inc. v. The Nation Enterprises* stated that the fourth factor "is undoubtably the single most important element of fair use."³¹ However, it is unlikely that scholarly use of copyrighted material will affect the source material's potential market or value. In general, therefore, fair use is given special deference when copyrighted material is used for a nonprofit educational purpose.³² Nonetheless, when in doubt, seek permission.

C. TEXTUAL FOOTNOTES

Textual footnotes provide discursive commentary supplementing the text. They serve many purposes. Often they provide the reader with an example or illustration of a point made in the text, or they offer a needed definition.³³ Frequently they clarify or qualify an assertion made in the text.³⁴ Sometimes they raise a potential criticism or complication . . . and then proceed to address it or defer it to another day.³⁵ Increasingly, they are used for musing or for sharing with the reader an amusing anecdote or insight. Authors of this latter type of "personal" notes welcome the footnote as an opportunity to break with an objective, formal tone.³⁶

The phenomenon of the "personal" footnote crystallizes the larger debate over the value of textual footnotes. Many readers, especially practitioners and judges, find textual footnotes distracting—fit only for a reader with multiple personalities or split consciousness. The length and complexity of some textual footnotes make it difficult to resume reading the text without backtracking to pick up the threads of the argument.

31. *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 566 (1985). [Authority footnote.]

32. CREWS, *supra* note 29, at 23. [Authority and attribution footnote.]

33. Thus, for example, footnote 4 in this chapter defined a term used in the text. Note, by the way, that footnotes 26–28 in this chapter all serve an illustrative purpose. [Textual footnote.]

34. For example, one writer added a qualifying footnote to the following sentence in the text: "The Supreme Court concluded that both *Smith* and *Jones* have defied consistent application by the lower courts." The footnote observed: "However, in support of the argument that *Smith* and *Jones* have defied consistent application,

the Court could only muster the authority of a concurring opinion of one lower court judge." [Textual footnote.]

35. See, e.g., *supra* note 10 and accompanying text. [Does it bother you to turn back? If so, curb your cross-references.]

36. Indeed, adventurous authors like ourselves have been known to shift in footnotes from the conventional use of the third person to the first person. For an example of "personal" notes, see John Hart Ely, *Another Such Victory: Constitutional Theory and Practice in a World Where Courts Are No Different from Legislatures*, 77 VA. L. REV. 833 (1991). [Textual footnote/authority.]