

2020 LAW REVIEW

TRANSFER WRITE-ON

COMPETITION

INSTRUCTION PACKET

DISCLAIMER: This packet conveys the instructions by which your submission will be graded. Therefore, refer to these instructions only (and not any instructions previously provided to you).

Remember:

- By submitting your entry, you represent that you have neither sought nor received any outside assistance with the Write-On Competition.
 - This includes, but is not limited to, any assistance from current law journal members, faculty members, other entrants, attorneys, or other law students.
- Include your name and SMU ID number on ONLY the *Candidate Information Form*.
- Except as otherwise required by the *Honor Pledge Form*, do NOT place your name, SMU ID number, or any other identifying mark on any other page of your entry.
 - Doing so will result in an automatic disqualification of your entry.
- Submit your Problem Packet ONLY once, **and do not include this Instruction Packet**.

If you have any additional questions, email Evan Rios (emrios@smu.edu)

Note—Make sure that each component of the actual competition packet is complete. The first page of each section of the competition packet will tell you how many pages should be included.

RULES AND REGULATIONS

- The Write-On Competition begins on Thursday, July 16, 2020 at 9:00 AM CST
- All entries **must be submitted** by **9:00 AM on Monday, July 20, 2020**
- **NO LATE ENTRIES WILL BE ACCEPTED**

Obtaining your Problem Packet:

- (1) Download the packet at: <http://smulawjournals.org/write-on-competition/>
 - NOTE: the packet contains multiple component parts. Please make sure you download each part of the packet!

Submitting your Problem Packet:

IT IS IMPERATIVE THAT YOU FOLLOW THESE STEPS IN SUBMITTING YOUR COMPETITION ENTRY.

(1) Create a folder entitled “[Your Name] -- Write-On Submission”

- (2) Within the folder, you should have **SIX** total files (four files containing your packet submission—titled as Section I ATL Edits, Section I BTL Edits, Section II, and Section III, and two additional files containing the signed **Honor Pledge** and the completed **Candidate Information Form**). **ALL PACKET ANSWERS SHOULD BE SAVED IN YOUR FOLDER AS WORD DOCUMENTS.** If possible, please fill out and upload the Candidate Information Form as a Word document

- (3) Email your **entire folder** (with all six files as described in step #2) to smulr-woc@mail.smu.edu (please note that there have been some server errors in the past when sending large files to this email address, so please plan accordingly!).

HONOR PLEDGE FORM

****Note: Please submit the Honor Pledge as a Word document! It is downloadable in that format with the rest of the packet's component parts.****

Entrants must sign the Write-On Competition Honor Pledge when returning their entry for the Write-On Competition. By initialing the Honor Pledge, the entrant represents as follows:

- (1) I, the undersigned, have not sought nor received any outside assistance with the Write-On Competition other than such assistance as allowed by the Write-On Competition Instructions. Such prohibited outside assistance includes, but is not limited to, any assistance from current law journal members, faculty members, other Write-On Competition entrants, attorneys, and other law students.
- (2) I, the undersigned, have not accessed, used, or attempted to use, online services to assist in the preparation of my Write-On Competition Entry. Online Services includes, but is not limited to Google, Bloomberg, Lexis, Westlaw, Citation Machine, and Citeus Legalus.
 - This specifically excludes accessing and using “The Bluebook” online.
- (3) I, the undersigned, represent that I have acted in accordance with the Southern Methodist University School of Law Honor Code, of which I have accepted or am deemed to have accepted prior to admission to the Southern Methodist University School of Law.
- (4) As a current student of the SMU Dedman School of Law, I, the undersigned, understand that this is the only competition I may participate in to become a member of an SMU law journal. As such, I pledge that I will not participate in the Transfer Student Write-On Competition.
- (5) I, the undersigned, agree that if I have breached any portion of this Honor Pledge, I will immediately notify Eli Brook (SMULRA’s Programming Editor) or Evan Rios (SMULRA’s President) of such breach, and I will immediately withdraw my entry from consideration in the Write-On Competition.
- (6) I, the undersigned, understand the representations made in this Honor Pledge, and I agree to be bound by the provisions herein.

Initials of Entrant

Date

Printed Name of Entrant

CANDIDATE INFORMATION FORM

****Note: Please submit the Candidate Information Form as a Word document! It is downloadable in that format with the rest of the packet's component parts.****

Name: _____

Email: _____

SMU ID No.: _____

Phone Number: _____

**Cell phone where you can readily check your voicemails—Journal offers must be promptly accepted/declined*

Class Level as of Fall 2020: 2L 3L

Expected Graduation Date: _____

Journal Ranking Preference (“1” being your first pick):

___ SMU Law Review

___ International Law Review

___ Science & Technology Law Review

For Office Use Only

Method of Submission

Time Submitted

Number Issued

FORMAT OF ENTRY

Note: For all three exercises, you **MUST** use the Bluebook rules specific to the *law review* typeface convention (not the practitioner's typeface convention for memos and briefs). Read **BB Rule 1.1** and **Rule 2** to better understand the law review typeface convention that you will be required to apply throughout the Write-On Problem Packet.

Please use size 12 Times New Roman font for each part of your submission.

The **ONLY** resources that you are permitted to use in completing the three exercises are:

- (1) The Bluebook 20th Edition (hard copy and digital versions)
- (2) Texas Rules of Form, 14th Edition (The Greenbook)
- (3) Legal or English Dictionary
- (4) Texas Law Review Manual of Usage and Style (MoUS) (this includes both the hard copy and the digital version through UT's Rulebook app)

You may **NOT** use any other sources, including the cited sources themselves. Use of any outside sources is a **violation** of the Honor Code and will result in your disqualification from the Write-On Competition.

RULES AND EXPLANATION – Part I (Editing)

PART I: EDITING EXERCISES

These three exercises help to determine your ability to edit text and citations.

IMPORTANT PRELIMINARY NOTE: **Identifying information MUST be removed from your edits!** To do this, use the following steps *after* completing ALL of your tracked change edits.

- If using Word for **Mac**:
 - Save your work (this is a necessary precaution)
 - Click the “Review” tab
 - Click “Protect”
 - Select “Protect document”
 - Under “Privacy” check the box that says “remove personal information from this file on save” and then click “OK”
 - Once you save your document, your track changes will be anonymous! (Note: it won’t look like anything has changed. Save your document and then re-open it. You’ll notice that any track changes comments will be under a generic pseudonym.)

- If using Word for **PC**:
 - Save your work (this is a necessary precaution)
 - Select the “File” tab and choose “Info”
 - In the **Inspect Document** section, select **Check for Issues**
 - In the drop-down menu that opens, select **Inspect Document**. The Document Inspector window will open.
 - Select **ONLY** the **Document Properties and Personal Information** check box
 - Select **Inspect**
 - Wait while the Document Inspector checks the document
 - In the **Document Properties and Personal Information** section, select **Remove All** to remove the document and author properties associated with that file
 - When you next save the document, this information is removed! (Note: it won’t look like anything has changed. Save your document and then re-open it. You’ll notice that any track changes comments will be under a generic pseudonym.)

You should have TWO separate WORD files that you submit for the Editing Section, titled:

- “Section I ATL Edits”
 - This will be one file that includes your above the line edits for **all three** edited excerpts
- “Section I BTL Edits”
 - This will be one file that includes your below the line edits for **all three** edited excerpts

RULES AND EXPLANATION – Part I (Editing)

EDITING EXERCISE – GENERAL INSTRUCTIONS:

- **The ONLY resources you are permitted to use in completing this section are:**
 1. Bluebook, 20th Edition
 2. Texas Rules of Form, 14th Edition (Greenbook)
 3. Texas Law Review Manual on Usage and Style 14th Edition (MoUS)
 - a. MoUS Available here: <https://law.utexas.edu/publications/books/manual-onusage-and-style-mous/>
 4. Legal or English dictionary
- You may NOT use any other sources, including the cited sources themselves. Use of any outside sources is a violation of the Honor Code and will result in your disqualification from the competition as well as a referral to the Honor Council.
- You are only responsible for making format, punctuation, and grammatical changes. You are **NOT** responsible for making stylistic changes (such as a passive voice).
- When editing the footnotes, please use the Bluebook rules specific to law review typeface conventions (NOT practitioner’s typeface convention). **Do NOT follow any rules on typeface conventions in the Greenbook that conflict with those of the Bluebook.**
- For purposes of the Editing Exercise, “recommended” or “encouraged” usage in the Bluebook is mandatory.

PLEASE READ ALL INSTRUCTIONS BEFORE STARTING. FAILURE TO FOLLOW INSTRUCTIONS WILL RESULT IN OUR INABILITY TO GRADE THIS PORTION OF YOUR WRITE-ON.

RULES AND EXPLANATION – Part I (Editing)

EDITING EXERCISE – DIGITAL EDITING INSTRUCTIONS:

Your goal is to ensure that the next level editor understands the change you made, and the authority (Bluebook, Greenbook, MOUS rule) you used to make that edit. Try to make your edits as easy for your editor to understand as possible.

Acronyms for editing authority:

- MR / MOUS = MOUS Rule
- BBR = Bluebook Rule
- BT = Bluebook table
- BBB = Bluebook Bluepages (rarely if ever used)
- GBR = Greenbook Rule
- GBA = Greenbook Appendix

Caveat: If any of these acronyms do not capture your authority accurately, please use your judgment to decide one that makes the most sense.

Above the line (ATL) edits (see attached sample ATL edits)

You must review the ATL text of each assigned excerpt. During this stage of editing, you will read the text for technical errors (e.g., grammar, punctuation, capitalization). Refer to the MOUS handbook and cite the appropriate rule (or multiple / an explanation) any time you suggest an edit.

Turn on your track changes and make any edits you see fit.

PC users:

- Open the document
- Click the “review” tab at the top of the screen
- Select “track changes” (alternatively, click Ctrl+Shift+E)

Mac users:

- Open the document
- Click View → Toolbars → Reviewing
- Select “track changes”

Cite to the rule for any edit you make

For any edit you make, create a comment bubble at the end of the sentence (can highlight the footnote or punctuation if that’s easiest), cite to the appropriate rules in the order in which your edits appear in the sentence. If a sentence cuts off before the end, simply highlight the last word in the sentence (see sample).

- EXAMPLE: One space, not two, should be used between sentences // MOUS ##
- EXAMPLE: Consider hyphenating phrasal adjective to avoid miscues // MOUS ##

RULES AND EXPLANATION – Part I (Editing)

Below the line (BTL) edits (see attached sample BTL source chart)

NOTE: THERE IS A BLANK SOURCE CHART FOR YOUR BTL EDITS INCLUDED IN THE ACTUAL PROBLEM PACKET)

Any edits below the line will be graded solely based on your BTL edits source chart table. Try not to make any edits BTL on the actual document, but it's not a big deal if you accidentally do so. However, any edits you make BTL will not be graded nor will they count toward your score.

All cites must be in Bluebook form in a row with the corresponding footnote number. Include any signal or parenthetical associated with the footnote. For string cites or talking footnotes, provide a separate row for each cite (and if applicable, its accompanying parenthetical) between the semicolons or sentences.

If a citation is correct, please indicate the rule(s) you checked to ensure it's correct.

Texas cases and statutes must be in Greenbook form. List in the margin which rule is invoked for every change. Greenbook trumps the Bluebook for Texas cases/laws only, and Bluebook trumps MoUS. As detailed in the sample source chart, reviewing Bluebook form includes:

- Signals such as *see*, *see also*, etc.
- Adding missing source components (dates, times, quotes should have an associated pin cite). If a component is missing, just include a placeholder.
- For string cites, ensure that citations are in the correct order. If you need to make a correction, use your source chart both to comment and make the appropriate edit.
 - **General note on all BTL edits: DO NOT make track changes comments below the line! Any comments that you need to make regarding BTL edits should be made in the source chart!**

EXAMPLES

Two important notes on the examples that follow:

1. If the edits in the examples conflict with anything in the Bluebook, Greenbook, or MoUS, defer to the books—not this document.
2. Any edits made in the examples are purely illustrative and should **not** be taken as authoritative. Always doublecheck with the Bluebook, Greenbook, or MoUS before making an edit.

ABOVE THE LINE EDITS -- EXAMPLE

I. INTRODUCTION

In *WesternGeco LLC v. ION Geophysical Corp.*¹ the U.S. Supreme Court revisited one of the presumption against extraterritoriality's most vexing issues: "how to interpret a statute's silence about its territorial scope."² The Supreme Court originally sought to resolve this problem in *Morrison v. National Australia Bank Ltd.*,³ which established the beginnings of a two-step framework directing lower courts on whether the extraterritorial application of a statute might be permissible.⁴ However, application of this framework has proven to be a daunting task, as globalization has forced lower courts to interpret statutes with an increasingly "international dimension" that typically "do not specify a territorial scope."⁵ Courts' continued struggles

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Commented [A3]: MOUS ## (quotations)

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¹ 138 S.Ct. 2129 (2018).

² George T. Conway III, *Morrison at Four: A Survey of Its Impact on Securities Litigation*, in *FEDERAL CASES FROM FOREIGN PLACES* 4 (2014); *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129 (2018); see Franklin A. Gevurtz, *Determining Extraterritoriality*, 56 WM. & MARY L. REV. 341 (2014) ("The most difficult issue presented ... is determining when a proposed application of a statute actually involves extraterritoriality so as to trigger the presumption").

³ 561 U.S. 247 (2010).

⁴ *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2101 (2016) (citing *Morrison*, at 267).

⁵ Andrew K. Woods, "Extraterritorial" Is Not a Bad Word, Even on the Internet, JUST SECURITY (Feb. 20, 2018), <https://www.justsecurity.org/52755/extraterritorial-bad-word-internet/>; see Julie Rose O'Sullivan, *The Extraterritorial Application of Federal Criminal*

ABOVE THE LINE EDITS -- EXAMPLE

with the presumption against extraterritoriality and the two-step framework have culminated in multiple circuit splits regarding the jurisdictional scope of various statutes, forcing the need for clarification on “the territorial limits of a number of American laws.”⁶ As this article explains, much of this can be directly attributed to the ambiguous and subjective “focus test.”⁷

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Most recently, *WesternGeco* revisited the presumption against extraterritoriality and the focus test in the context of the Patent Act’s general damages provision,⁷ a statute silent as to its jurisdictional reach. Applying the two-step framework for deciding whether a silent statute rebuts the presumption against extraterritoriality,⁸ the Court’s decision turned solely on the

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Statutes: Analytical Roadmap, Normative Conclusions, and A Plea to Congress for Direction, 106 GEO. L.J. 1021, 1060 (2018) (“The test is difficult to apply because Congress does not normally identify a statutory focus.”); Vasundhara Prasad, *The Road Beyond Kiobel: The Fifth Circuit’s Decision in Adhikari v. Kellogg Brown & Root, Inc. and Its Implications for the Alien Tort Statute*, 59 B.C.L. REV. E-SUPPLEMENT 369, 389-90 (2018) (“Most modern-day violations of international law ... are perpetrated through a coordinated and concerted effort made by several players across the world”).

⁶ Woods, *supra* n.5. Over the years, the Supreme Court has considered the territorial limits of title VII of the Civil Rights Act, the Sherman Act (multiple times), the Alien Tort statute (multiple times), the Racketeer Influenced and Corrupt Organizations Act (RICO), the Securities and Exchange Act, “and more.” *Id.*

⁷ 35 U.S.C. §284 (2012). Specifically, the case involved infringement under 35 U.S.C. § 271(f)(2).

⁸ See *RJR Nabisco*, 136 S. Ct. at 2101.

BELOW THE LINE EDITS -- EXAMPLE

FN #	Correct Citation	Rule / explanation
1	138 S. Ct. 2129 (2018).	BT ## (corrected reporter, date, etc etc)
2A	<i>Id.</i> at PINCITE.	BBR ## - (note changed order of citations and commented in)
2B	George T. Conway III, <i>Morrison at Four: A Survey of Its Impact on Securities Litigation</i> , in <i>FEDERAL CASES FROM FOREIGN PLACES</i> 4 (2014) (“The most difficult issue presented . . . is determining when a proposed application of a statute actually involves extraterritoriality so as to trigger the presumption.”).	BBR ## (small caps, etc etc)
2C	Franklin A. Gevurtz, <i>Determining Extraterritoriality</i> , 56 WM. & MARY L. REV. 341, 344 (2014) (“The most difficult issue presented . . . is determining when a proposed application of a statute actually involves extraterritoriality so as to trigger the presumption”).	BBR ## (small caps, add pincite, etc)
3	561 U.S. 247 (2010).	BBR ##
4	<i>RJR Nabisco, Inc. v. European Cmty.</i> , 136 S. Ct. 2090, 2101 (2016) (citing <i>Morrison</i> , 561 U.S. at 267).	BBR ##
5	Andrew K. Woods, “ <i>Extraterritorial</i> ” <i>Is Not a Bad Word, Even on the Internet</i> , JUST SECURITY (Feb. 20, 2018, time), https://www.justsecurity.org/52755/extraterritorial-bad-word-internet/ .	RULE
5	see Julie Rose O'Sullivan, <i>The Extraterritorial Application of Federal Criminal Statutes: Analytical Roadmap, Normative Conclusions, and a Plea to Congress for Direction</i> , 106 GEO. L.J. 1021, 1060 (2018) (“The test is difficult to apply because Congress does not normally identify a statutory focus.”)	RULES
5	Vasundhara Prasad, <i>The Road Beyond Kiobel: The Fifth Circuit's Decision in Adhikari v. Kellogg Brown & Root, Inc. and Its Implications for the Alien Tort Statute</i> , 59 B.C. L. REV. E-SUPPLEMENT 369, 389–90 (2018) (“Most modern-day violations of international law . . . are perpetrated through a coordinated and concerted effort made by several players across the world.”).	RULES
6	Woods, <i>supra</i> note 5.	RULES
6	Over the years, the Supreme Court has considered the territorial limits of Title VII of the Civil Rights Act, the Sherman Act (multiple times), the Alien Tort Statute (multiple times), the Racketeer Influenced and Corrupt Organizations Act (RICO), the Securities and Exchange Act, “and more.” <i>Id.</i>	RULES
7	35 U.S.C. § 284 (2012).	RULES
7	Specifically, the case involved infringement under 35 U.S.C. § 271 (f)(2). <i>Id.</i>	RULES
8	See <i>RJR Nabisco</i> , 136 S. Ct. at 2101.	RULES

PART II: BLUEBOOKING EXERCISES

In the Problem Packet, you will find 10 sources (numbered in the upper right-hand corner). Please list the sources in numerical order by the number they have been assigned in proper Bluebook/Greenbook Form. **Some sources ask you to provide pincites—do so where the pincites are marked (indicated by a red box) within the source.**

Although you will refer primarily to the Bluebook, you should refer to the Greenbook when citing Texas-specific material. If there are discrepancies between the two, cite all Texas-specific material according to the rules found in the Greenbook. The first few pages of the Greenbook indicate that you should follow Bluebook typeface conventions. For any other material, the Bluebook governs and must be followed.

Assume that all citations are appearing in footnotes in a law review article. Therefore, for example, case names ought to be abbreviated.

If the sources provided lack some information that you feel is necessary for a complete and accurate citation, do not guess or locate the source yourself to gather the additional information. Instead, just complete the citation to the best of your ability with the information you have. Leave placeholders if needed.

For Texas cases, any necessary petition/writ history will be provided to you on the page of the source.

Be aware that the Bluepages at the beginning of the Bluebook largely correspond to the practitioner's typeface convention. As such, you must NOT use the Bluepages as guidance for creating or editing the text and footnotes in your Write-On entry. But, you may use the Bluepages to help point you to the correct Bluebook rule if you wish.

The template for your Part II submission is attached *infra*.

PART II: BLUEBOOKING EXERCISES

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Assume that all citations are appearing in footnotes in a law review article. Therefore, for example, case names ought to be abbreviated.

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The template for your Part II submission is attached *infra*.

PART III: WRITING EXERCISE

For the Writing Exercise, you must agree or disagree with the majority opinion in the main case, and explain your reasoning based on the other sources provided to you. You must develop the strongest legal argument for your side. You have three sources total. The sources and background information will be provided to you with your problem packet

Technical Requirements:

- This is a CLOSED writing exercise. Use the included sources and ONLY the included sources. Do NOT do any additional research or your entry will be disqualified.
- Your writing entry should be **4-5 pages**, double-spaced, 12-point Times New Roman font, with 1-inch margins on all sides. Anything over 5 pages will not be graded.
- You **MUST** use footnotes. The footnotes must also be double-spaced and in 12-point Times New Roman font. Your footnotes are included in your page limit. (Mac users: command-option-f creates a footnote)

Stylistic Notes:

- The Writing Exercise requires persuasive writing rather than objective writing. You are arguing what you think the law should be, bolstered by sound legal arguments, NOT what the law is. ^[1]_[SEP]
- THERE IS NO RIGHT OR WRONG ANSWER. The purpose of the writing section is to evaluate your ability to analyze legal arguments and communicate your conclusions in a clear and intelligent manner.
- There is NO mandatory authority since there is no designated jurisdiction in which you are making your argument. You are merely fashioning the best legal arguments you can with the sources provided to you. The strength of the arguments, not the sources from which they are derived, is what is most important.
- The source materials are intended to provoke critical thought and encourage you to shape creative legal arguments. Therefore, you should not simply summarize the main case or the other sources. Your essay should reflect command of the materials you use, as well as very careful reasoning in the development of a thesis and supporting arguments.
- You are not required to read every source provided. Use them as tools to help you formulate LEGAL arguments.
- Do not hesitate to criticize court decisions if you believe a court's analysis is flawed.

PART III: WRITING EXERCISE (Cont'd)

Structure of the Writing Exercise:

Introduction. Begin with a brief introduction, containing the facts and holding in the main case and explaining the issues you will seek to resolve.

Critically Analyze. Determine whether the majority correctly or incorrectly decided the case.

- If the court decided the case incorrectly, critique and distinguish the court's reasoning based on the other legal arguments in the other sources you are given.
- If the court decided the case correctly, your analysis should be *original* based on the court's holding and the other sources and not merely a recitation of the court's analysis.
- In your analysis, you may (but are not required to) address:
 - Whether the court reinterpreted, affirmed, overruled, modified, narrowed, or broadened the prior law and whether doing so was correct or incorrect
 - Whether the court correctly interpreted authorities on which it relied
 - How the court handled opposing arguments
 - The concerns of the concurring or dissenting opinions
 - The extent to which the court's holding will create future ambiguities in the law
 - Whether the court's reasoning is logical
 - The assumptions, not necessarily articulated, that the court made to arrive at the conclusion that it did
 - The weaknesses in the arguments contrary to your own conclusion
 - The implications and ramifications of the court's decision and how your own analysis and conclusion may affect this area of law

Briefly Conclude. Address the main holding of the case, the major theories relied upon by the court, and the general desirability (or undesirability) of the court's holding. You may (if you so choose) address whether the holding creates confusion or provides clarification, and to what extent the new rule promotes justice or merely substitutes one evil for another. Due to the general nature of the statements in this section, the conclusion need not include many footnotes.

TEMPLATES FOR SUBMISSIONS

- For all sections, please create a new Word document for each “Part” of your submission (and you’ll create two files for Part I – explained in greater detail above).
- The “template” for Part II is attached on the next page—as your answers to this portion **must be typed** and this is a PDF, recreate the template in word (12 pt. double-spaced).
- Please end each “Part” of your submission with **“END OF PART”** at the bottom.

PART II: BLUEBOOKING EXERCISE

Your answers to this portion must be typed in this format.

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END OF PART II

**END OF THE
INSTRUCTION PACKET**