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Legal guidelines for business writing

How to write with legal discovery in mind / legal dictionary

NOVEMBER 1992

UNDER ATTORNEY'S

Call - for your information. This was handed out on Friday

Chm

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Legal Guidelines for Business Writing

1. Assume that whatever you write will be read by the entire world. It probably will be.

2. Do not make admissions against the interest of Westinghouse.

3. Take the time to write it correctly in the first place. If it is in the file, it is often too late to make changes.

4. Stick to the facts of a situation. Don't give your opinion unless your task specifically requires it, and then be cautious.

5. Don't make qualitative asides or additions to what you have to say. The more straight-forward and business-like you are, the better. This also helps you to communicate more clearly and efficiently.

6. Avoid unnecessary derogatory remarks and comments. Especially avoid those of a personal nature, that you do not want to become public knowledge. Invariably they will.

7. Avoid legal buzzwords and jargon. The first must, at best, be explained away. Leave the second to the lawyers. The word "defect" has a legal meaning.

8. If you document a product problem stick to the facts and avoid conclusions. If corrective actions are suggested, be sure to follow through with the solution and document that as well.

PLAINTIFF'S EXHIBIT WH 333

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9. Watch out for express warranties. Promises, descriptions and affirmations of fact about products, all can qualify for warranty status.

10. Just because a lawyer told it to you doesn't mean that it is exempt from discovery. Legal advice that you receive generally should not be written about.

11. Nothing that is written is "off the record." This is a concept without legal meaning. As a practical matter it does not mean anything with the news media either.

12. Remember, if it is a division or part of Westinghouse, even if it is not your own, in the eyes of the world, and the law, it is Westinghouse. Use care in what you write about it.

13. Document your legitimate sources for competitive information. If the source is not legitimate you should not be using it.

14. Don't be fooled into thinking a Westinghouse proprietary stamp, or anything similar, will protect a document. It may only draw attention to it.

15. Don't waste time documenting the independent opinion syndrome or try to cover yourself with "memos to the file."

16. Think about how a writing will appear to others in future years who may not even be around today.

17. Be sensitive to informal outside requests for writings and documents. If in doubt, contact the Law Department.

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ACCEPTANCE

The receiving of something offered with the intention of keeping it, such receipt generally being considered an unspoken agreement to some earlier act or understanding. For example, acceptance of a delivery of furniture means that the person who accepts it makes himself liable to pay the price that had been agreed upon with the furniture store. Acceptance of an offer is essential to the existence of a contract.

ACCORD AND SATISFACTION

An agreement between two persons for the delivery of acceptance of something, usually worth less than the amount legally owed or enforceable, in settlement of a debt or as damages for a wrong.

ACTION

The legal demand of one's right to recover from another person or party made before a court; a lawsuit.

ASSUMPTION OF RISK

A legal defense against a claim of negligent injury. It arises where the plaintiff was not directly responsible for the injury but risks some by acting voluntarily and with full knowledge of the danger in question.

ANSWER TO A COMPLAINT

A pleading by which the defendant in a lawsuit endeavors to resist the Plaintiff's complaint.

ATTORNEY-CLIENT PRIVILEGE

A right or privilege whereby oral or written statements made by a client to his attorney, or by the attorney to his client in the course of the attorney's representation of the client, need not be disclosed to the other parties during the litigation.

ATTORNEY WORK PRODUCT PRIVILEGE

Mental impressions, opinions, conclusions, and legal theories of an attorney concerning pending litigation need not, in most instances, be disclosed or produced during the course of the litigation.

BOYCOTT

A form of coercion directed against an individual, corporatior or group, especially used in labor disputes. A primary boycott occurs when employes of an organized union, acting in concer refuse to have anything to do wit the products or services of an employer in order to force that employer to accept certain conditions desired by the union. A secondary boycott occurs when pressure is applied on customers, actual or prospective, to coerce them to withhold or withdraw patronage from a particular business. In the antitrust context, a "group boycott" is an agreement or understanding betwee two or more parties to refuse to deal with a third person or group

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CAVEAT EMPTOR

A Latin phrase meaning "let the buyer beware." It is a legal doctrine which warns that in the absence of a warranty a purchaser must make sure that goods which he purchases are what they purport to be, the purchase being made at his risk. Recent laws have considerably weakened the doctrine.

CHANGE OF VENUE

The change of the place of a trial, for good cause, from one county or district to another; sometimes the change of the place of a trial from one court to another court in the same county or district.

CIRCUMSTANTIAL EVIDENCE

Evidence consisting of facts and circumstances that furnish reasonable ground for inferring the existence of some other connected fact or facts.

CIVIL ACTION

A lawsuit brought by a private individual or group to recover money or property, to enforce or protect a civil right, to prevent or redress a civil wrong. It differs from a criminal action in which the state prosecutes an individual for committing an offense against all the people.

CLAIMANT

A person or organization who claims or asserts a right, demand, or claim against another person or organization.

CLASS ACTION

An action brought by one or more plaintiffs on behalf of other persons who are similarly situated or have suffered a similar wrong. For example, a group of stockholders in a corporation may bring a class action on behalf of all other stockholders who have a similar grievance.

COMBINATION IN RESTRAINT OF TRADE

Any combination of two or more individuals or corporations having as its purpose the illegal restraint of trade or commerce in some particular commodity, as by the regulation of production, restriction of sales, establishment and maintenance of prices or the stifling or the exclusion of free competition.

COMMON LAW

(1) In a wide sense, that system of law generally in force in a nation or state, as distinguishe from regulations of local or specific application. (2) A system of jurisprudence based on custom, traditional usage and precedent, rather than on codified written laws; especially, the ancient unwritten law of England.

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COMPARATIVE NEGLIGENCE, Doctrine of

A legal doctrine in negligence lawsuits wherein the degree of negligence of parties in a lawsuit is compared; thus, in some instances, permitting recovery on the part of an injured party even when the injury may have been caused in part by his own negligent actions.

COMPLAINT

A document filed in court by the plaintiff, which begins a lawsuit by setting forth the facts and legal theories upon which the injured party will base his action against the defendants.

CONSEQUENTIAL LOSS

Financial or economic loss including, but not limited to, lost production due to downtime, continuing expenses during downtime, loss of sales or profits, damage to property resulting from equipment failure or malfunction, cost of capital or other intangible loss suffered by any person or organization.

CONSIDERATION

An inducement offered and accepted in the formation of a CONTRACT; a thing given or done, or to be given or done or abstained from, by one party to a contract, which is accepted by the other party as an inducement to him to perform his part of the agreement.

CONSPIRACY

A combination or agreement between two or more persons to commit an act punishable by law or to effect a legal purpose by criminal or unlawful means.

CONTRIBUTORY NEGLIGENCE Doctrine of

A doctrine in the law of negligen by which the negligent actions of the injured party that led to his injury provide a complete bar to any recovery. This doctrine is not applicable in states that have adopted some form of comparative negligence or fault doctrine nor to actions based on strict liability.

CONTINGENT

Possible; questionable; dependent upon some uncertain future event. A contingent liability, thus, is one that will come into being only upon the occurrence of some uncertain future event.

CONTRIBUTION

In common law, the reimbursement of one person who has paid a debt or suffered a liability that was the responsibility of several persons. Such reimbursement is normally made by each of the co-debtors, co-sureties or the like, in proportion to his share of the obligation.

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COUNTERCLAIM

A claim alleged by a defendant that seeks to reduce the plaintiff's claim or provide grounds for a judgment in favor of the defendant to whatever extent the counterclaim exceeds plaintiff's claim. If the plaintiff's claim is defeated, judgment may be given on the counterclaim as if it were an entirely separate lawsuit.

CROSS-CLAIM

A claim brought by a defendant in an action against a plaintiff or a codefendant or both in the same action. Such a claim concerns matters in question in the original complaint.

DAMAGES

That sum awarded a plaintiff for an injury to some legally protected right.

DEFECT

In products liability law,
(1) shortcomings in design such that a product does not meet the reasonable expectations of the ordinary consumer as to safety;
(2) as manufactured variations in one product which are distinguishable from other products in the batch or group causing an injury or loss;
(3) incomplete or inadequate warnings, instructions or recommendations (sometimes called marketing defects).

DEFENDANT

The party against whom relief or recovery is sought in a lawsuit.

DEMURRER

In a lawsuit, a statement by one party that, even if the facts stated by the other party are true, they do not constitute an effective or enforceable claim and do not require an answer.

DEPONENT

A person under oath who gives testimony that is set down in writing.

DEPOSITIONS

Attorneys for all parties to an action may ask questions of one of the parties, an employe of one of the parties, a witness to the incident, or an expert. These usually occur in an attorney's office and questions and answers are recorded by a Court Reporter.
Note: In New York State, depositions are known as examinations before trial.

DISCOVERY

The entire process whereby each side learns about the facts upon which the other parties will base their case. It includes primarily depositions and interrogatories.

ET AL

An abbreviation of et alii which means "and others."

EXCLUSIVE DEALING ARRANGEMENTS

The practice where one or both parties to a contract agree to deal exclusively with the other with respect to the subject matter hereof.

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INCIDENTAL DAMAGES

Reasonable commercial expenses incurred by the non-breaching party as the result of a breach of contract. They typically include costs for transportation, inspection, stopping delivery, effecting cover and the like.

INDEMNITY

(1) A contract or agreement by which one party agrees to pay another for an anticipated loss, or to protect him from the legal consequences of the act or omission of one of the parties or of a third person or from the consequences of a condition beyond the control of any of the contracting parties. (2) Compensation given for loss or damage already sustained.

INDEPENDENT CONTRACTOR

A person who contracts to do certain work according to his own methods without control by his employer except as to the result or product of his work.

INFRINGEMENT

Any breaking in upon, or violation of, a right, privilege, regulation, law or contract: used particularly in reference to the violation of rights secured by copyrights, patents and trademarks.

IN RE

A Latin phrase meaning "in the case or matter of," used in the title of certain law cases in which there are not opposing parties.

INSURABLE INTEREST

An interest in property (such as the likelihood of financial dama at its loss) or in person (as on based on a blood tie) sufficient to prevent an insurance contract taken out by the interested person from being a mere wager policy.

INTER ALIA

A Latin phrase meaning "among other things."

INTERROGATORIES

Written questions from one part to a lawsuit to another party wi must be answered in writing and are usually file in court.

INTERVENING CAUSE

An act or omission which occurs after the alleged wrongdoing (i sale of a defective product) or negligence which in some way causes the resultant damage or injury. An example is alterati or modification of a product subsequent to its sale.

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IPSO FACTO

A Latin phrase meaning "by the fact itself" or "by the mere effect of an act or fact."

JOINT AND SEVERAL

Binding two or more persons both collectively and individually. In a suit against joint and several tort feasors (persons who have committed TORTS), a successful plaintiff could recover his damages from any defendant or from all of them.

JUDGMENT

The official decision of a court adjudicating the rights and claims of parties to an action; the sentence or final order of the court in a civil or criminal proceeding.

JURISPRUDENCE

The science or philosophy of law, treating the principles of positive law and legal relations.

LACHES

Such neglect, omission or unreasonable delay in asserting a right or claiming a privilege as to warrant or justify the withholding of relief. Laches is a defense against various kinds of lawsuits.

LATENT

Not visible or apparent; hidden; concealed. A latent defect, for example, is one so concealed as to be undetectable by a reasonably careful inspection.

MISREPRESENTATION

Any representation by words or conduct that misleads the party to whom it is made; especially, in a contract or other document, a statement made that is not in accordance with fact.

MITIGATE

To make less severe; lessen. Circumstances that do not justify or excuse an act but may be properly considered in reducing the damages in a civil lawsuit.

MONOPOLY

The power to exclude others from carrying on a trade or business, or manufacture a product. Such power may be obtained by government grant (as a franchis or a patent) or defacto through the possession of a particular market advantage such as a superior product. Monopolies may be obtained or maintained both lawfully and unlawfully.

MORAL TURPITUDE

Action or behavior contrary to the accepted rules of right and duty between a man and his fellowman or man and society. Moral turpitude is characterized by baseness, immorality or depravity.

MOTION

An application to a court or judge to obtain an order or rule directing some act to be done.

IN THE ARBITRATION November 1992

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NEGLIGENCE

Failure of a manufacturer to exercise reasonable care in design, manufacture, testing and repair as well as warning of dangers in its products and supplying adequate instructions or the failure to use reasonable care when there is a legal duty to do so.

NONFEASANCE

The failure to perform some act that one ought or is required to perform.

NONSUIT

(1) Termination of a lawsuit without any judgment on the issues involved. (2) A judgment against the plaintiff in a lawsuit because he cannot prove his case or does not proceed to trial.

OCCURRENCE (or outage)

An accident including injurious exposure to conditions which results in bodily injury, property damage or consequential loss as herein defined.

OFFER

A proposal to make a contract, containing within itself all the terms of the contract. Acceptance of such a proposal creates the contract.

PATENT

(As distinguished from latent) Open, obvious, visible, capable of discovery upon inspection.

PERJURY

The willful giving of false testimony by a witness under oath in a judicial proceeding about some matter material to the issue or point of inquiry. Such testimony may be given in open court or in an affidavit or otherwise.

PER SE

A Latin phrase meaning "by itself; intrinsically; inherently."

PLAINTIFF

The person who brings a lawsuit.

PLEADING

(1) The art, science or system of preparing the formal written statements of a party to a legal action. (2) Any one of those statements, the aggregate of which are termed "the pleadings". (3) Oral advocacy of a cause in court.

PREDATORY CONDUCT

(In antitrust law) In permissib business conduct intended to injure or disable business competition. Commonly applied t pricing policy.

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PRECEDENT

An adjudged case or judicial decision that furnishes a rule or model for deciding a subsequent case that presents the same or a similar legal problem.

PREPONDERANCE OF EVIDENCE

In a case of contested facts, superiority in weight (determined by value and not by amount) of the evidence presented by one side over that of the other.

PRIMA FACIE

A Latin phrase meaning "at first view; on first appearance." Something that is assumed to be true or factual in the absence of evidence to the contrary.

A prima facie case is a case strong enough that it can be overthrown only by contradicting or rebutting evidence.

Prima facie evidence is evidence that, if unexplained or uncontradicted, would establish the fact alleged.

PRIVITY

The relationship of mutual interest existing between parties to a contract.

PRODUCT LIABILITY

Liability of a manufacturer or someone else in the chain of distribution for personal injury, property damage, or possibly economic loss caused by the sale or use of a product. It can be based on allegations of negligence, breach of warranty, or strict liability.

PROPERTY DAMAGE

Destruction or damage to the property of others (other than property owned or supplied by the Seller) caused by alleged failure or malfunction of products supplied under a contract.

PROXIMATE CAUSE

That which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. The direct, immediate cause to which an injury or loss can be attributed and without which the injury or loss would not have occurred.

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PUNITIVE DAMAGES

Damages which can be awarded by a jury over and above those to compensate the injured party for injuries or damages. These damages are awarded to punish or make an example of the defendant to deter others from acting in the same way (malicious, fradulent, disregard for safety of others or the like). These are also known as exemplary damages.

RATIFICATION

(1) The act of approving, confirming or sanctioning. (2) The acceptance or adoption of that which has been done by another acting as representative or agent, especially where the other did not have original authority.

RECIPROCITY

The practice whereby a buyer conditions the purchase of one commodity on the Seller's purchase of a different commodity from the Buyer.

REJECTION

(In contract law) The buyer's right to refuse delivery of non-conforming goods. Upon rightful rejection, a buyer may sue for damages.

RELEASE

The act of surrendering or relinquishing some claim, privilege or right to the person against whom such claim may have been exercised or enforced.

RESCIND

To make void; abrogate; annul; cancel; especially, to abrogate a contract from its beginning, restoring the parties to the positions they occupied before the contract was made.

RES IPSA LOQUITUR

A Latin phrase meaning "the thing speaks for itself," used in reference to a negligence case where a defendant's negligence is inferred from proof that the thing which caused injury was under the exclusive control of the defendant and, further, that the accident was of a kind that does not ordinarily occur in the absence of negligence.

RES JUDICATA

A Latin phrase meaning "a matter decided," used in reference to an issue or point of law that has been previously decided in respect to the parties involved by a court of authoritative or competent jurisdiction. Once decided, the point is not to be decided again.

RESTRAINT OF TRADE

Agreements or understandings between companies that are designed to stifle competition fix prices or otherwise obstruct the natural course of commercial and business activity.

IN THE AMES November 1992

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RISK OF LOSS

The hazard or danger of a loss or damage to the property or goods in question.

SERVICE OF PROCESS

The legal communication of a judicial process to the designated person. Such communication may be made by personal or constructive service. Personal service is made by personally delivering a copy of the process to the person concerned. Constructive service is made by sending the process through the mails, delivering it to an authorized representative or publishing it in a newspaper.

SET OFF

A counterdemand that is made by the defendant to reduce or defeat the plaintiff's demand and that is unconnected with the plaintiff's cause of action.

SPECIFIC PERFORMANCE

The actual carrying out, or a proceeding to compel the actual carrying out, of an agreement, as, for example, the purchase and sale of real estate. A plaintiff may often wish to sue for specific performance rather than for damages.

STARE DECISIS

A Latin phrase meaning "to stand by decided matters." It refers to the judicial policy of following legal principles, established by previous court decisions.

STATE-OF-THE-ART DEFENSE

A legislative enactment which requires the jury to consider only the state of the art - such as technological developments and governmental and industrial standards which were in effect at the time of manufacture in deciding whether the product was defective on the date of the accident.

IN THE ARMS November 1992

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STATUTE OF FRAUDS

A statute requiring that certain classes of contracts and engagements, and certain memoranda of sales, be in writing and signed by the party to be charged or by his agent.

STATUTE OF LIMITATIONS

Legislative enactment which sets a time after which a lawsuit may not be brought. Usually the time period ends after the accident has occurred but, in some instances, the time may run out before the accident occurs. (Statute of Repose)

STRICT LIABILITY

Doctrine embodied in Section 402A of the Second Restatement of Torts which provides that anyone who manufactures or sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer or to his property. This rule applies even though the seller has exercised all possible care in the preparation and sale of this product.

SUBPOENA

A formal announcement of a legal proceeding and a command for a witness to appear and give testimony.

SUBROGATION

The substitution of one person for another with reference to a claim. For example, an insurance company has a subrogation claim against a wrongdoer after payment of money to its insured.

SUMMONS

Written notice that a legal action has been commenced against a defendant. It requires that a defendant make an appearance and answer to the charges in the legal action.

SURETY

A person who agrees to be responsible for the obligation default or wrongdoing of another.

TIE-IN SALES

The practice of conditioning the sale of one product (the tying product) on the purchase by the customer of another product (the tied product).

TORT

Private or civil wrong or injury by act or omission. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction.

UNITED AIRLINES November 1992

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TRESPASS

(1) Broadly, any voluntary transgression of law or rule of duty; any offense done to another's person or property. (2) More specifically, any unlawful act accompanied by force, either actual or implied, such as unauthorized entry on another person's land either intentionally or unintentionally.

TURPITUDE

Behavior that is contrary to justice, honesty or morality.

UNIFORM COMMERCIAL CODE

The codified sales law applicable to commercial transactions in forty-nine of the fifty states (Louisiana is the sole exception).

VENUE

The country or geographical division (such as a county, state or federal district) in which a legal action or lawsuit is brought to trial.

VERDICT

The definitive answer given by the jury to the court concerning the matters of fact submitted to them.

VOIR DIRE

A preliminary examination of a person, especially of a proposed witness or juror, as to his qualifications for the function or duty in question.