

Legally Minded Technical Communicators: A Case Study of a Legal Writing Course

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Abstract

Understanding the law and its impact on the practice of technical communication has been an important scholarly thread in technical and professional communication (TPC) for more than two decades. Technical communicators recognize the impact of their work on stakeholders as well as the potential liability issues associated with composing technical communication documents. While this scholarship is widespread, relatively few pedagogical resources are available to prepare students for success in a litigious world or to guide instructors in teaching legal writing. This article offers a case study of a legal writing course that prepares TPC students to develop legal literacy and succeed in the workplace.

Keywords

legal literacy, law, ethics, pedagogy, liability, legal writing, legal discourse

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Discussions about the law and its implications for the practice of technical communication have been widespread in technical and professional communication (TPC) scholarship for more than two decades (Andrus, 2011; Bailey, 2007; English, 1995; Hannah, 2011; Helyar, 1992; Helyar & Doudnikoff, 2003; Herrington, 2003, 2011; Lipus, 2006; Markel, 2001, 2011; Porter, 1987, 1997; Ross, 1981; Smith, 1990; Smith & Shirk, 1996). This scholarship has often emphasized the need for technical communicators to be mindful of how their work might trigger litigation in organizational contexts (see Bailey, 2007; Smith & Shirk, 1996; Walter & Marsteller, 1987) or liability issues for those who compose documents (Helyar, 1992). In addressing these issues, scholars typically encourage technical communicators to write effective instructions (Helyar, 1992; Lipus, 2006) or use due diligence (English, 1995; Helyar, 1992; Smith & Shirk, 1996) in the composing process.

But others have stressed the importance for students to have legal literacy (Hannah, 2011; Taylor, 1996). While these aspects of the scholarship are important (and should be emphasized), much work remains to be done to establish best practices in pedagogy or model legal writing courses that will guide teachers and prepare students. Except for Taylor's (1996) and Hannah's (2011) pedagogical work, scholarship provides little meaningful pedagogical strategies to enable TPC students to practice legal writing or see the "legal potentiality in rhetorical situations" (Hannah, 2011, p. 12) in the communication they design to support products. Thus, to prepare teachers to teach legal writing and students to develop legal literacy in order to be ready for the world of work, we need to focus our efforts on sharing these best practices.

In this article I build on the work of scholars such as Taylor (1996) and Hannah (2011), but I also argue that while it is important to emphasize students' potential complicity in legal liability issues, we need to explore best practices that can facilitate students' meaningful and efficient development of legal literacy so that they can succeed in the ever-litigious workplace. I begin by defining the law, legal writing, and legal literacy in sketching the relationship between law and technical communication over the last two decades. Then I discuss the merits and challenges of enacting a legal writing pedagogy. Next, I share a case study of a legal writing course I developed to prepare both majors and nonmajors for their specific purposes. And finally, I discuss the implications and future directions for the pedagogical activities in the course.

The Law, Legal Writing, Legal Literacy, and Technical Communication

The law refers to “the body of enforceable rules that govern individual or group conduct” (Putman & Albright, 2018, p. 3). These rules apply to both common law (i.e., customs and judicial precedents) and statutes. In essence, the law draws inspiration from two overarching sources:

1. *Enacted, or statutory, law* describes the set of laws adopted by a people or enacted by legislative bodies. Such enacted laws include constitutions, statutes and ordinances, and regulations (i.e., practices and actions of administrative and regulatory bodies) that have the authority of law.
2. *Case, or common, law* is a creation of the courts based on past legal decisions. Such law, which is typically used in the absence of statutory law, is created when courts apply or interpret the law.

I define *legal literacy* here as an understanding of the law—with its broad sets of statutory and case laws—in order to efficiently interpret the law and apply it to professional practice, especially in the contexts of traditional and nontraditional work spaces. *Legal writing*, on the other hand, comprises the systematic research and analysis of the law (statutory or case law) to determine how the law can be used to apply to a specific legal problem (Trautman, 2018). Legal writing persuades and educates, and most law schools highlight the need for emerging lawyers to acquire legal writing skills (Abel, 1957; Thrower, 2007). Such writing is typical of the legal professions and is mostly used to support the activities of lawyers and judges. As Trautman argues, “While highly developed communication skills contribute substantially to success in other professions and in our personal relationships, legal research and writing is the likely foundation for a successful career in the law” (p. 696). In contrast, paralegal writing is done by individuals who are not lawyers but are hired by law offices, lawyers, or organizations to perform delegated legal writing tasks.

In preparing students to succeed in the global marketplace, TPC instructors need to understand the law and its impact on the practice of technical communication. Of course, technical communicators do not need to be lawyers; rather, they need to recognize the relevance of the law, understand it, and apply that understanding to their work. Technical communication raises potential legal issues concerning how professional documents and information products would be interpreted and applied according to the law.

The quality of technical communication can affect the lives of end users, and it can either expose an organization or prevent an organization from being exposed to expensive legal liability (Strate & Swerdlow, 1987, p. 136). In many organizations, technical communicators are at the frontline of documents that organizations use to connect with the outside community. They create communication to support complex computer applications, environmental regulations, medical procedures, software products, and so on, and this communication can affect how stakeholders use the products and raise legal issues for which technical communicators might also be liable. For example, Smith and Shirk (1996) noted that such liability can occur

when physical harm to persons or to their property is causally related to the unsafe condition of a product claimed in some way defective. The injured persons may have a legal claim against the person(s) who designed, manufactured, sold, or furnished the product or who wrote documentation concerning. (p. 190)

Thus, in an increasingly litigious world, legal claims are frequent concerns for organizations. “Today, the average company is involved in 400 lawsuits at any given time” (*Legal Issues and Communication*, n.d., para. 2), and the cost of lawsuits and image repair for organizations drains their resources. When a writer, in designing communication to support a product, fails to include adequate warnings and directions for use, “then the writer is the original tort-feasor, the party who legally caused the damages, and thus always remains liable for the tortious conduct” (Smith & Shirk, 1996, p. 191). And legally, documents produced in workplace contexts reflect the commitment of the organization to enact them. So more often than not, in product liability cases, technical communication becomes central. In *Niedner v. Ortho-McNeil Pharmaceutical* (2016), for example, the judge in the Appeals Court of Massachusetts had to decide a case of breach of warranty, failure to warn, and design defects against the manufacturer of a contraceptive patch that had failed to sufficiently warn users of the dangers of blood clots. Cases such as this abound, and typically both the organization and the technical communicator can be held liable for breaches.

These concerns have been the focus of much TPC scholarship. As early as 1987, Bedford and Stearns explored the concept of “defective product” (p. 127) and the role of technical communicators in preparing legally sufficient warnings and instructions. Also in 1987, Walter and Marsteller investigated the connection between defective products and instructions

liability. Nearly 10 years later, Gale (1996) edited a special issue of this journal that aggressively argued for legal writing to be recognized as a form of technical communication. After the turn of the century, Lipus (2006) detailed processes for writing effective instructions for global audiences. Five years later, a special issue of *Technical Communication Quarterly* investigated the interstices of the law and technical communication, taking up issues such as legal literacy (Hannah, 2011), privacy (Markel, 2011), copyright and free speech (Herrington, 2011), and the discourses of transparency (Andrus, 2011). Taken together, these scholarly works pointed TPC to the many areas of the legal process that connect with technical communication and exposed students and practitioners to some challenges they might face on the job and how they should more efficiently design communication.

But other than the works by Taylor (1996) and Hannah (2011), limited scholarship addresses best practices in pedagogy that facilitate students' legal literacy—a skill that is required by technical communicators. More than two decades ago, Taylor bemoaned “the almost complete exclusion of legal writing from most undergraduate professional writing classes” (p. 239), charging the field of TPC to integrate legal literacy in those classes in order to address the needs of students who were considering careers in the legal profession. Taylor examined several approaches for integrating legal writing and its discursive practices into the undergraduate classroom, including the “closed-universe” approach to legal writing: selecting a group of legal cases relevant to technical communication.

Drawing from Taylor's (1996) work, Hannah (2011) emphasized the relevance of the closed-universe system but also highlighted other approaches: asking students to read case law (p. 17), implementing a write-aloud protocol to have students practice discerning legal potentiality in their composing (p. 18), and using examples of student writing to think about the law (p. 18). Although Taylor and Hannah provided useful resources for teachers and students in facilitating their legal literacy, much of what they discuss are tweaks to existing technical communication courses. Unfortunately, the introduction of units into courses, while useful, can lead to what Mikelonis (2000) described as “ghettoization” of content, treating legal content as separate from day-to-day technical communication practice. But by including full courses on legal writing, technical communication programs could offer a wider platform to globally explore the many ways technical communicators can interact with the law in an exhaustive manner.

Enacting a Legal Writing Pedagogy

Curriculum development affords educators a platform for broaching complex subjects, introducing new concepts, contesting ideas, building knowledge, and engaging students in meaningful learning in any discipline. It also affords educators the structure for developing sound pedagogy that will prepare students for the marketplace and to be functional global citizens. “To teach is to engage students in learning” (Christensen et al., 1991, p. xiii), so in many ways, sound pedagogical strategies do so by enabling students to negotiate ideas in the classroom—whether traditional or virtual—throughout the learning process. The discourses of law present challenging but rewarding opportunities for teachers to address legal subjects and topics in a curriculum, especially for those of us who teach in technical communication programs but are not familiar with the specialized subject matter of law.

Efficient pedagogical approaches, including course design, assignments, and activities, can engage students in the law so that they can understand how it will affect their work in the workplace. Because technical communicators have an advocacy role that directly affects users, legal discourses need to inform our efforts in pedagogical practices. Such legal writing provides the platform for us to build into our curriculum effective courses, assignments, and resources that enable students to develop legal literacy. Taylor (1996) suggested two reasons for including legal discourses in technical communication curriculum:

1. to promote the types of literacy most writing teachers wish to encourage today—critical literacy as well as analytic professional literacy (p. 246)
2. to illustrate the nature and power of rhetoric to affect our cultures, communities, and professionals (p. 246)

In enacting the promise of Taylor’s (1996) work, Hannah (2011) argued that the focus of any pedagogy that integrates legal literacy must be to help students understand the law and identify and work “through the ways that law shows up in technical communication contexts.” In other words, in our curriculum, we must both facilitate students’ understanding of the law and how it applies in rhetorical situations and provide “strategic opportunities” (p. 16) by way of assignments and case studies in real technical communication situations.

Essentially, the intellectual work of Taylor (1996) and Hannah (2011) suggests the relevance of promoting legal literacy in our curriculum and how it could be done. But despite their positive direction, few resources exist in our field. In the following sections, I present and discuss a model legal writing course that can be used to help students develop legal literacy and be successful in the workplace. But first I provide an institutional context for the course, its goals, and associated learning outcomes.

Institutional Context

Like many technical communication programs, the program I teach in is housed in an English department. At the University of Houston–Downtown, the legal writing course TCOM 3308 is offered only at the undergraduate level; until recently, it was taught by adjuncts who were mostly lawyers. But in the spring 2015 semester a full-time, tenured faculty member in the English department developed and taught his version of the course. An elective course, TCOM 3308 is popular with technical communication, criminal justice, communication studies, psychology, and sociology majors. Students who enroll in the course typically want to survey the discourses of law, explore how the law applies to their lines of work, or simply fulfill a degree requirement. Others take it to prepare for law school or law enforcement. Here is the catalog description for the course:

A study of the principles of analytical writing, with special emphasis on the strategies of legal persuasion and the techniques and appropriate style of legal writing. Students will learn to brief (summarize) published cases as well as to write legal memoranda.

Essentially, the two primary emphases for the course are writing and analysis. When students enter the course, they are asked to consider ways in which their fields of research and work intersect with the law.

Although this was my first time teaching the course, I began preparing for it about three years before I taught it in 2019. I am not a lawyer, but I began reading about the law and legal materials in the spring 2016 semester when I thought about making a career change and realized that interest in the course had significantly increased. During that period, I researched statutory and case law, read almost every major legal case that appeared on the U.S. legal landscape, and began putting together a portfolio of communication practices (e.g., landmark liability cases) that connected with the law. Following these forays, in fall 2016 I applied for and was awarded a faculty

development grant from my institution to pursue an advanced legal writing and research program that would enable me to learn the requisite legal terminology, conduct legal research, and interpret legal authorities and cases.

After completing the course, I was awarded another grant, the Carnegie African Diaspora Fellowship, for which I worked with faculty in the Department of English at the University of Ghana to develop a curriculum in technical communication. A significant component of this curriculum was a legal writing course we designed for undergraduate students at the university. This curriculum initiative ignited my interest and bolstered my expertise in developing the course at my institution. Thus, using the model we developed at the University of Ghana, I designed my own materials for a legal writing course at my institution.

Legal Writing: Outcomes, Assignments, and Pedagogical Practices

I designed this legal writing course to serve three student groups: students who wanted to pursue legal careers, those who needed to develop legal literacy in their fields of work, and those who needed to fulfill a degree requirement. The course focused on developing students' legal writing, analytical, and research skills. When I taught the course, I broadened the emphasis while still fulfilling the description that appears in our university's course catalog:

This course will introduce students to terminology, research, and writing in the legal field with a careful examination of the principles that inform effective and ethical legal research and writing. It will specifically expose students to how to use the trio of legal terminology, research, and writing to identify sources of law, find legal documents using online resources, read and interpret cases, statutes, and regulations, and compose legal documents for different audiences. Using the principles learned in the course, students will analyze and compose legal documents such as memoranda of law, statutory analyses, and correspondences.

As this description shows, I expanded the focus of TCOM 3308 to include research, now giving the course a three-part emphasis: writing, research, and analysis (i.e., composing legal genres, analyzing legal cases, and researching the law to support analysis and writing). In using this approach, I wanted students to not only know the law and the legal terminology but also use the law to engage in their own analysis, research, and writing. Thus, by the end of the course, I wanted students to be able to

- learn (about) legal terminology
- apply the principles of rhetorical situation in composing legal documents
- analyze, interpret, and use statutory and case law to construct legal arguments
- search legal databases to conduct legal research
- apply an understanding of legal research and principles to search, write, and analyze legal cases
- apply ethical principles in writing and analyzing legal documentation

To accomplish these outcomes, I drew from case studies, court opinions on liability cases, and textbooks. Two required texts that I found useful and accessible during the planning stages of the course were *Legal Research, Analysis, and Writing* (Putman & Albright, 2018) and *Writing for the Legal Audience* (Schiess, 2014). Putman and Albright’s text provided the structure for the course because it included a comprehensive road map of legal discourses and rhetorical contexts for legal issues and explained where and when the law can be applied. Schiess’s text provided detailed and useful strategies for communicating with stakeholders in the legal system: attorneys, judges, clients, mediators, and so on. Drawing from the outcomes and the required texts of the course, I divided the course into three parts (see Table 1): legal research and terminology, legal analysis, and legal writing.

The first few weeks of the course focused on getting students familiar with legal terminology, the various sources of law, and ways that such sources are evident in their lines of work. At this stage, the primary focus was on statutory and case law. In addition to taking quizzes and posting discussions to test their knowledge about these laws, students worked in groups, picked cases, and looked for relevant laws to apply to these cases. They also became familiar with various databases for searching and conducting legal research. Once students had some foundation of legal language, they began the legal analysis phase. During this phase of the course, students spent a good amount of time examining legal analytical theory (e.g., IRAC—issue, rule, application, and conclusion) and how the tools of analysis facilitated the analysis of a sample legal case.

Because students were from different disciplines, a useful pedagogical approach was Taylor’s (1996) “case study approach” that dedicates aspects of the course to a “team-based solution of a specific problem developed according to real circumstances in the professional world” (p. 246). Working in groups, organized by majors, students picked any case (either a

Table I. Legal Writing Course Structure.

PART
Focus

Part I. Legal research and terminology

- Introduction to legal language, principles, and authorities
- Introduction to legal research and analysis
- The law and court rules
- Sources of law
- Computers and Internet legal research

Part II. Legal analysis

- Legal analysis—key facts
- Legal analysis—issue identification and spotting the issue
- Case law analysis
- Counter analysis

Part III. Legal writing

- Fundamentals of writing
 - The writing process for effective legal writing
 - Memoranda
 - Case briefs
 - Legal correspondence
-

court opinion or a workplace scenario), chose a statutory or case law, and then applied the law in their analysis. The third part of the course was devoted to composing legal documents such as legal memoranda and correspondence used in courts and by attorneys in their internal and external communication. In doing this work, students developed an understanding of the design, writing, and research processes involved in composing legal documents.

Course Assignments and Activities

To build knowledge and competence in these areas of the course, I gave students five assignments: a statutory analysis, a case brief, a demand letter, legal document editing, and a memorandum of law. To prepare students for these assignments, I included in-class analyses of cases and court opinions and discussion posts asking students to apply their understanding of course discussions and readings to specific prompts and texts.

Statutory Analysis

For the statutory analysis case, students were asked to identify the issues presented by a client's case and determine what law applied and how it

applied to the case. Thus, they were given a specific scenario (e.g., a driving while intoxicated case, a liability case) and asked to identify a law and use it to determine the liability, guilt, or otherwise of the alleged offending party.

The Case Brief

For the case brief, students were asked to analyze a court opinion by identifying its essential components. I assigned the *Britton v. Britton* (1983) case although students, with my approval, could pick another case. In the assigned case, the petitioner (June Britton) filed a petition in the Bernalillo County District Court to reduce accrued and unpaid child support arrearages in a previous judgment. Students were to analyze the case and brief it using analytical components discussed in the course: facts, issues, reasoning, disposition, and holding. To facilitate their work, before the students completed this assignment, we used Taylor's (1996) "closed-universe" approach, in which I presented and we analyzed several landmark cases decided by courts. See Appendix A for a sample student-written case brief.

Demand Letter

This assignment used a traditional technical communication artifact, a letter, to build students' technical writing skills, knowledge of the law, and research skills. Students were asked to compose a demand letter (also called an advocacy letter) to persuade someone to take action favorable to the interests of a client or cease acting in a manner that was detrimental to the client (Putman & Albright, 2018, p. 536). Specifically, they were to advocate for a client by demanding that a refund be issued or an item be repaired for that client. Thus, they were provided a scenario with two laws (i.e., a case law and a statutory law) that they could use as the basis for making or supporting their argument. See Appendix B for a sample student-written demand letter.

Legal Document Editing

For this editing assignment, students were asked to choose a legal document and revise it for lay audiences based on plain language guidelines, particularly in the context of the Plain Writing Act of 2010 and the discussions in one of the course texts, Schiess's (2014) *Writing for the Legal Audience*.

Memorandum of Law

For their final assignment, students were asked to compose a memorandum of law, one of the major genres used in legal practice and writing. The *memorandum of law* is a summary of the law and how it applies to the facts of a case (Putman & Albright, 2018, p. 447). In this assignment, students needed to summarize the research and analysis of the legal issues raised by the facts of a client's case. Thus, to compose this traditional form of technical communication, the memo, students were required to conduct research about a client's case, drawing from the law to analyze the case. An important component of this assignment was for students to find three pieces of statutory law and three pieces of relevant case law to support their arguments.

Students' weekly coursework was thematic, and I assigned reading and activities to facilitate their understanding of theories, concepts, and terminologies. The activities within the course included sample cases and scenarios of legal cases: from the workplace, daily life situations, and court opinions. For example, in discussions of legal analysis, I assigned cases such as captured in the case law, *Mutual Pharmaceutical Company v. Bartlett* (2013). In this case, students were able to read and analyze liability issues involving drug labels and warnings and the complicity of designers of such information. In other cases, I provided scenarios such as driving without a license or under the influence and asked students to use a law that applies to the case to determine guilt or otherwise of those involved. On the discussion board, students posted their responses to prompts and engaged with each other on their varying and divergent positions in these responses.

Challenges, Limitations, and Assessments

In teaching this course, I had both challenges and successes. Students generally agreed that the course helped them develop some legal literacy. For example, in the end-of-semester course evaluations, a student noted, "I loved this course because I enjoy[ed] all of the legal readings and mock legal documents that were required for this course," and another shared, "Thank you so much for the excellent content taught. I definitely learned a lot." That said, the course could benefit from some adjustments. This was my first time teaching the course. I created the schedule, reading materials, and assignments from scratch. Although there was a previous version of the course in my department, the focus of my course was unique in preparing students to acquire specific legal competencies and compose specific legal

artifacts. Now, having benefited from this initial attempt, I will reconsider the course structure and assignments in order to include more current legal issues within the course.

Also, given the specialized nature of legal writing, the material was obviously complex and challenging for students. And due to the different readiness and skill levels of students enrolled in the course, it was more challenging for some students than others. Thus, students might be better prepared for assignments if the course included more in-class discussions and practice, PowerPoint presentations, and activities in order to demystify and address legal terminologies that are complex but foundational to students' understanding of legal writing.

Finally, the different disciplinary backgrounds of the students presented another major challenge. Because the course is an elective offering, students came from different disciplines, including technical communication, communication studies, criminal justice, psychology, and sociology, and had a wide breadth of experiences. While these diverse fields provided a wider scope of artifacts to analyze, the diversity made for a less focused approach to the course. Given this limitation, I insisted that students draw from artifacts in their own discipline for our in-class analyses. For instance, students from criminal justice usually located cases related to topics such as surveillance technology, juvenile waiver laws, inmate litigation, and drug testing as samples for their analyses. For technical communication students, one source of material was legal cases on product liability.

In the future, I plan to teach a version of this course to only technical communication majors to allow for a more focused exploration of themes and topics specific to legal issues and genres that intersect with technical communication. Such genres and topics could include legal correspondence and memoranda, intellectual property rights, copyright law, privacy rights, Internet research, and policies and procedures. Technical communicators either work in contexts that create content in these areas or they produce communication that is shaped by these topics. As St. Amant and Rife (2010) noted, technical communicators "are often the ones who create the original informational and instructional content that is distributed across the globe" (p. 249). When discussing legal correspondence, for example, we will explore the role of letters in legal communication contexts (e.g., information letters used to provide information to a client, opinion letters used to provide information about a specific statutory or case law, and demand letters used to persuade someone to take a specific course of action favorable to a client). Legal correspondence and memoranda have some elements and semblance of the letter and memo genres we focus on in traditional

technical communication courses, in which students learn about persuasion, analytical writing, memos, letters, and research. Thus, assignments such as the demand letter and memorandum of law are familiar technical communication genres, except that in this legal writing course, students use the familiar technical communication genre simply as a platform for conducting and sharing research in the legal field.

In exploring intellectual property laws and rights, we will focus on how both local and international laws inform and guide ownership of intellectual property, what rights individuals or groups have over their intellectual creation, and specific permission requests for the use of such intellectual property. I will include policies and procedures as an assignment also to get students to consider how a familiar genre that they might create in the workplace could raise potential legal concerns. Thus, besides investigating the sources of authority that create and inform policies and procedures in the workplace, we will also analyze and discuss how policies and procedures affect the procedural or substantive rights and duties of those in the workplace.

Implications and Future Directions

Preparing students to develop legal literacy is a challenging undertaking—the terminology can be daunting and so can the analysis, writing, and research involved; however, students become better prepared and empowered to address the legal challenges that come with their work if we approach the pedagogy strategically. Students need to know the law—not necessarily to become lawyers but to practice and analyze potential scenarios and cases that apply to their lines of work (what Hannah, 2011, refers to as “seeing legal potentiality in rhetorical situations” p. 12).

Overall, the discourse of law holds much promise for our field in a number of ways. First, it teaches students that their work does not occur in a vacuum. Technical communication has obvious legal consequences, so students will learn to be careful and thoughtful in designing and composing communication to support products. Second, legal discourse allows students to interrogate their role as user advocates. Beyond thinking about their own liability in the composing process, students will also consider the stakeholders, particularly users, who might have more to lose than gain from using technical communication. Third, legal discourse exposes students to a broad set of career options beyond just the traditional service support roles of technical communicators. As Cook (2002) argued, “Today, technical communicators need to be multiliterate, possessing a variety of literacies that encompass multiples ways people use language in producing

information, solving problems, and critiquing practice” (pp. 5–6). Finally, legal discourse empowers and positions technical communicators as coproducers of the law (Hannah, 2011, p. 10) because it enables them to develop legal literacy in and about the law so that they can apply it to their work.

Although the course I have presented is specific to the contexts of my institution and the needs of the students who typically enroll in the course, the broader goals, assignments, activities, and resources are useful for all efforts aimed at building students’ legal literacy. Beyond students who are the direct targets and beneficiaries of these pedagogical efforts, teachers who have interests in and are planning to design a course in legal writing will also find useful the materials I have presented in this article. I hope other scholars and teachers of legal writing in our field will share their own best practices to guide teaching on the subject.

Appendix A

Sample Case Brief Assignment

TCOM 3308

Case Brief

Citation:

Britton v. Britton. 671 P.2d 1135 (1983) 100 N.M. 424, 1983

Parties:

June F. BRITTON, Petitioner-Appellee, v. H.R. BRITTON, Respondent Appellant.

Facts:

Both parties were married on September 4, 1952. During their marriage, they had four children all of whom required special care and treatment due to developmental disabilities. In 1964, the youngest and oldest of the four children were committed and remained under the care of Los Lunas Training School until both attained majority 1971 for the oldest and 1977 for the youngest. The remaining two children stayed under the Petitioner’s care from time of the divorce until one child was transferred to a group home in 1976, and the other voluntarily living with the Respondent in 1972.

Both parties decide to get a divorce. On May 26, 1970 their divorce was finalized by judge Edwin Swope of the Bernalillo County District Court. The original decree from 1970 awarded the four children to the Petitioner and stated a 100-dollar child support figure (per-child). On June 28, 1971 a

different judge gave an amended final decree that added “per month” to the 100-dollar child support figure. The original decree lacking “per month” phrasing was a clerical mistake. This mistake was rectified on the motion of the Petitioner.

Prior Proceedings:

This all started at the Bernalillo County District Court where Petitioner-Appellee, June Britton filed a petition to receive unpaid child support owed by H.R. Britton. The district court concluded that the divorce decree requiring the child support of \$100 per-month per-child until the youngest child reaches the legal age of adulthood in the state of New Mexico, and that there was no statute of limitation period that prevents any action on obtaining the arrearages that are owed. The court did not give H.R. Britton offset. The court set both arrearages and final judgment in the amount of \$7900.00 with no interest. The court did not award the Petitioner attorney’s fees. The Petitioner filed and appeal because they did not award attorney’s fee. The Respondent also filed an appeal because the district court’s determination awarding arrearages.

Issue:

1. Could the Respondent file a clam for the final decree not needing
2. Can a statute of limitations be placed on the payments due?
3. Can the Respondent seek offset for any arrearages not barred by statute of limitations due to the fact he was taking of one of his children since December 1972?
4. Can the Petitioner seek attorney’s fees for both the instant appeal and her presentation at the district court level?

Holding:

1. The court ruled that the Respondent could not file a clam on the original decree.
2. The court ruled that a statute of limitations could be placed on the money that was owed by the Respondent.
3. The court ruled that the Respondent could not seek off-set.
4. Lastly the NM Supreme Court upholds the lower court’s ruling of not awarding the Petitioner attorney’s fees.

Reasoning:

1. The supreme court of New Mexico said that the original final decree was a clerical mistake. The court states that the original

- decree was not ambiguous. The court also said that if the Respondent found the original decree to be ambiguous had failed to act. Since the Respondent did not act in a timely manner to seek modification of the original decree, it is far too late for him to do so now. The NM Supreme Court concluded that the original decree was not ambiguous and that their original terms were enforceable.
2. The Supreme Court takes a look at statute of limitations and if they apply to the Respondent's due child support. The NM Supreme Court after looking at other states' ruling on similar cases, decided that a statute of seven years can be applied to the case. The court concluded that the Petitioner can not collect any arrearages prior to December 15, 1974 and the last payment would be on January 28, 1977 the day the youngest child attained majority in the state of New Mexico. The final amount that is owed to the Petitioner is a total of \$2500.00 from the twenty-five months between December 15, 1974 and January 28, 1977.
 3. The Respondent sought after offset for any arrearages that fell out of the range of the statute of limitations. The Respondent does this because he had made substantial expenditures while taking care of one of the children that was living with him since December 1972. Similar to the ambiguity the Respondent took too long to apply for an offset and cannot do so after installments accrues. The court also stated that what the Respondent did was admirable but voluntary and as such not relieved from the obligations of the original decree.

Overall, this is a good brief of the case. The assignment did ask that you address four areas: facts, issues, reasoning, and holding. You have addressed these fairly well, although I do have concerns in three of the four areas. For example, there are five legal issues overall. See below here:

1. Whether the amended final divorce decree was unambiguous and therefore enforceable;
2. Whether accrued and unpaid child support installments are deemed final judgments; thereby rendering action on them subject to a statute of limitations period;
3. Whether Respondent should have been allowed an offset against the arrearage judgment;

4. Whether laches bars any recovery of the accrued child support installments;
5. Whether Petitioner should have been awarded attorney's fees for her presentation at the district court level.

My other main concern with the draft is the quality of writing, especially the sentence-level issues such as fragments that come up quite frequently in the draft. In a lot of cases I have offered some notes for consideration. Please review the draft carefully and address these issues. Let me know if you have any questions.

Appendix B

Sample Demand Letter

Mr. Terry Spear
Owner/President
Inki Appliances Company
1001 Maple Drive
Friendly, NW 00065

Re: Possibility of a lawsuit against Inki Appliances Company for failure to observe implied warranty

Dear Mr. Spear,

This letter is to advise you of the possible filing of a motion by my client, Mrs. Tatum, against Inki Appliances Company for failure to observe New Washington statute Section 50-102-314 regarding the implied warranty of a microwave oven that was purchased from Inky Appliances Company on September 13, 2019.

Facts

Mrs. Tatum purchased a new microwave oven from Inki Appliances Company on Friday September 13, 2019. When the sale was made, no written or oral warranty was communicated to Mrs. Tatum regarding the product she purchased. On Friday September 20, 2019, one week after Mrs. Tatum purchased the item and brought it to her home for personal use, the microwave stopped working. On Monday September 23, 2019, Mrs. Tatum returned to the Inki Appliances Company store to return the defective microwave. Mr. Terry Spear, president and owner of Inki Appliances Company, refused to repair, replace, or refund the microwave for Mrs. Tatum.

Answer

Based on the facts stated, Mrs. Tatum has legal standing to pursue lawful action against Inki Appliances Company as the company failed to provide a response to the implied warranty that is granted to customers under New Washington statute Section 50-102-314.

Explanation

Statutory law Section 50-102-314 of the New Washington statutes states that “a warranty that the goods shall be merchantable is implied . . . if the seller is a merchant with respect to the goods of that kind.” Mr. Spear’s Inki Appliances Company is a merchant of appliances; therefore, a warranty is implied with the sale of the products sold by Inki Appliances Company.

Further, Mrs. Tatum did not misuse the microwave or promoted any actions that caused the item to stop working. For this reason, it can be implied that the item sold was defective and a breach of contract was made when Inki Appliances company refused to honor the warranty for this item.

In the case of *Smith v. Appliance City*, 56 N. Wash. 162, 868 N. E. 997 (1996), the New Washington supreme court ruled that the seller has three options when an implied warranty is breached. The options include the return of the full purchase price to the buyer, repair of the merchandise, or replacement of the merchandise.

Mrs. Tatum bought the microwave oven from Inki Appliances Company with the understanding that the product would be of quality and would work as intended. Mrs. Tatum was in possession of the item for one week when the item failed to work as promised. At this time, Mrs. Tatum followed the process of bringing the item back to the store to claim the implied warranty.

Mr. Spears, as the merchant, must now fulfill his obligations under the statutory Law Section 50-102-314 of the New Washington statutes and either issue Mrs. Tatum a full refund, repair the microwave, or replace the microwave.

At this time, Mrs. Tatum is asking that the item be repaired or replaced, or that a full refund be issued to her within the next ten business days. I would request that your acknowledgement and confirmation that one of these three actions will take place is received by Friday November 8, 2019 in order to avoid further action.

Sincerely,
Alice Black
Attorney at Law

Overall, this is a strong draft of the demand letter assignment. You display a good awareness of the case, and you also draw from the relevant laws provided to seek redress for your argument. Let me know if you have any questions.


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