

California Western School of Law

Student Acknowledgment

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(As updated in 2018 by Prof. Roberta Thyfault, J.D.)

You must not plagiarize. Because legal writing requires such extensive reliance on authority, however, it uniquely lends itself to plagiarism--both overt and covert. You must commit neither form of plagiarism. California Western School of Law expressly prohibits it and may impose sanctions for student plagiarism.^[1] The American Bar Association proscribes as professional misconduct any activity involving misrepresentation.^[2] The Ethics Committee of the State Bar Association will ask you to account for any charges of plagiarism leveled against you. Should you publish plagiarized work, you will be subject to statutory penalties for copyright infringement.^[3] Most importantly, plagiarism undermines both your academic integrity and personal credibility. It further serves to cast suspicion on your own understanding of what you write. If you cannot properly appropriate and correctly reference the authority for what you say, you have likely not understood what you are talking about.^[4] Conversely, properly acknowledging the authority for your ideas places your writing within a wider historical-legal context and therefore permits the reader a fuller appreciation for the depth of your research and the compass of your work.^[5]

Meaning originally “to kidnap,” plagiarism is the act of taking the work of another and passing it off as one’s own.^[6] This may occur with or without intent.^[7] Proper acknowledgment requires conformity to these conventions:^[8] 1) Cite borrowed language, facts, or ideas--whether quoted or paraphrased; 2) Use quotation marks for lengthy phrases or distinctive phraseology;^[9] 3) Follow Bluebook format for when to use quotation marks or block quotes;^[10] 4) If the authority you have researched cites to another authority for the point you wish to make, either research the other source yourself or cite to it through citation of the source you have researched.^[11]

^[1]California Western School of Law, Statement of Academic Policies ' 2.08 (Aall written work submitted in any course or independent study shall be the student’s own original work product.”); Honor Code, art. II (proscription against Amisrepresentation.”).

^[2]ABA Model Rules of Professional Conduct, Rule 8.4(c). See also ABA Model Code--DR 1-102(A)(4).

^[3]See 17 U.S.C. § 501.

^[4]See Sandy Olken, *Verbatim: Where does analysis end and plagiarism begin? A guide for careful writers*, STUDENT LAW. MAG. 48, 48-49 (1991).

^[5]See ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS 127 (5th ed. 2017).

^[6]*Plagiarism*, Black’s LAW DICTIONARY (9th ed. 2009).

^[7]Although lack of intent is often a mitigating factor in determining sanctions, many regard the negligent or reckless appropriation of another’s work as plagiarism, even when it is the inadvertent product of careless research and note-taking.” FAJANS & FALK, *supra* note 5, at 127-28 (citing Terri Le Clereq, *Intent to Deceive*, 8 THE SECOND DRAFT 3 (1993)).

^[8]*Cf. id.* at 128-29 (a more exacting and less discretionary delineation of these same citation conventions).

^[9]See *id.* at 129 (employs the five-word rule of thumb: borrowing five or more consecutive words requires use of quotation marks).

^[10]THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 5 (Columbia Law Review Ass’n et al. eds., 20th ed. 2015).

^[11]*E.g.*, *supra* note 7.

Legal writing is subject to two kinds of plagiarism: overt and covert.^[12] Overt plagiarism is usurpation of another's work without any acknowledgment at all. It is the most blatant form of plagiarism, and may occur two ways: the unattributed quotation and the unattributed paraphrase.^[13] The first involves quoting another's work without citing the source of the quotation; the second involves paraphrasing another's work without citing the source of the ideas.^[14]

Covert plagiarism is usurpation of another's work through misleading acknowledgment. It is a more subtle form of plagiarism, and occurs in numerous ways. Perhaps the most common form of covert plagiarism is the cited use of another's work, but which use so closely resembles the language and phraseology of the work cited that it effectively amounts to quotation. Substituting some slightly different verbiage, varying the grammatical structure in some insignificant way, or interspersing a few transition words does not constitute a paraphrase. Properly to paraphrase means to appropriate the ideas expressed in another's work and re-articulate them in your own words.^[15] If you cannot write your own words, quote.^[16]

A second common form of covert plagiarism is research plagiarism. When you cite to a source, you indicate that you have researched that source. Research plagiarism involves citing to a source you have not researched yourself, but which you have found through another intermediary source. In order properly to cite to the original source, you must cite to the intermediary source as citing to the original source. You have otherwise plagiarized the research of the intermediary source.^[17]

A third common form of covert plagiarism involves placing the footnote indicators in such a way as to mislead the reader regarding what you have actually borrowed. Quoting a select phrase in the midst of a larger paraphrase, for example, but citing in such a way as to suggest that you have only appropriated the quoted portion, amounts to covert plagiarism of the paraphrase.^[18]

Avoid plagiarism of any sort. If you are found to have plagiarized, the repercussions are especially drastic for law students. You will face not only academic sanctions, but professional sanctions as well. Your law degree, career, and personal integrity are certainly worth the effort to do your own work and exhibit proper regard for the work of others.

I have read and understood the above proscription against plagiarism, and hereby affirm that no portion of my submission is plagiarized.

Date: _____ Signature: _____

^[12]See FAJANS & FALK, *supra* note 5, at 130-31.

^[13]Olken, *supra* note 4, at 48-49.

^[14]*Id.*

^[15]Although there exist no clear linguistic means to distinguish a proper from an improper paraphrase, employ the "comfort rule": if you would feel uncomfortable with the reader having the language of the cited source next to your paraphrased version, you should re-write your paraphrase.

^[16]This covert form of plagiarism is often exacerbated by a lack of confidence in one's writing ability. But if you can think the idea expressed, you can re-express it in your own way.

^[17]See FAJANS & FALK, *supra* note 5, at 131-32. See *supra* note 7: citing directly to Le Clereq would be improper absent having researched that work. Le Clereq must be therefore cited through citation of Fajans & Falk.

I. COPYRIGHT PENALTIES

Pursuant to the Higher Education Opportunity Act (“HEOA”), California Western School of Law (“CWSL”) must provide an annual disclosure on its policy related to the use of copyrighted materials and the steps CWSL takes to enforce its policies. Every year, a copy of this notice is sent to students and employees. Additional information can be found on the HEOA webpage at <https://www.cwsl.edu/about-us/required-disclosures/higher-education-opportunity-act> under Copyright Infringement. Students are also subject to our Copyright and File Sharing rules and sanctions, which can be accessed here https://www.cwsl.edu/-/media/files/aba-509/material_filesharecompliance.ashx?la=en.

In order for students to keep their CWSL student network account and privileges active, they must sign an acceptable use policy (AUP) that will be emailed to them upon account activation. The text of the AUP is located on the CWSL Student Computing website: <https://www.cwsl.edu/-/media/files/library/student-computer-services/labrules.ashx?la=en>. Paragraph 6 of the AUP sets forth the campus policy and procedures relating to the Digital Millennium Copyright Act.

This information is not intended to be a comprehensive treatment of the copyright laws; it is intended to provide basic information to help with understanding the differences between legal and illegal file sharing.

SUMMARY OF CIVIL AND CRIMINAL PENALTIES FOR VIOLATION OF FEDERAL COPYRIGHT LAWS:

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or “statutory” damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For “willful” infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys’ fees. For details, see Title 17, United States Code, Sections 504-505. Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense.

You have many alternatives to illegal file sharing and downloading in order to avoid civil, criminal, and policy entanglements. One of the best sources for a list of legally downloadable online content is <http://www.educause.edu/legalcontent>.

If you have any questions about the annual disclosure, the AUP, or CWSL policies relating to the same, please contact Barbara Glennan, Associate Director for Educational Technology & Strategic Initiatives at bglennan@cwsl.edu, or Daniel Starnes, Student Network Systems Manager dstarnes@cwsl.edu.