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THESIS PARAGRAPHS

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Thesis Paragraphs

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An effective way to begin the discussion section of a memo or brief is with a thesis paragraph. A thesis paragraph, a concise summary of the writer's legal analysis, helps both the writer and the reader. Although many of us learned about thesis paragraphs early in



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our education, these helpful tools are often missing or incomplete in legal documents. Legal writers should return to the basics and make sure they draft effective thesis paragraphs in all their documents.

What is a thesis paragraph?¹

The purpose of the thesis paragraph is to set forth the writer's position or conclusion on a legal issue. An effective thesis paragraph provides a clear statement of the thesis, an overview of the analysis, and a roadmap of the organization.

Thesis paragraphs serve the critical role of telling readers what the writer's conclusion is at the outset so they can test it as they read. Readers of legal analysis want to be prepared for the scope and direction of the analysis from the beginning and do not want suspense or mystery. Thesis paragraphs also provide a touchstone for readers. Readers can get lost or confused when reading lengthy or complex legal analysis. By referring back to the thesis paragraph, readers can reorient themselves and get back on track.

What makes a thesis paragraph effective?

Generally, a thesis paragraph is proportionate to the length of the written legal argument and is only as long as necessary to provide the readers with an

overview and roadmap. It should not include inessential details. Good practice is to write the thesis paragraph, or at least finalize it, after the writer has written the rest of the memo or brief or at least finalized her conclusions.

An effective thesis paragraph, in legal writing, usually:

- identifies the legal claim or cause of action;
- tells the reader the applicable rules that govern the claim;
- sets out the rules in the order in which they will be discussed;
- provides a brief summary of how the rules apply to the client or party's facts (brief reasons supporting thesis); and
- states the writer's conclusion (the thesis).²

A comparison of two thesis paragraphs helps illustrate the importance of these components.

Version A (contains no thesis or application to the client's facts)³

Hamilton has not enacted a statute regarding non-competition clauses in employment agreements. Thus, these clauses are governed by decisions of the Hamilton Courts. In evaluating these clauses, the Hamilton courts have stated that they disfavor them because they are restraints on trade and restrict an employee's right to earn a living. The courts, therefore, balance the right of the employee to earn a living with the right of the employer to protect itself from unfair competition from a former employee. In addition, the courts require the employer to have a legitimate interest in restricting the employee with a

non-competition clause and the clause itself must reasonably protect that legitimate interest.

Version B (includes the components of a good thesis paragraph)

Under Massachusetts' child trespasser statute, our client, Mr. Logan, will not be liable for the child's injuries suffered on his property. The statute establishes liability on the part of a landowner if 1) the owner can reasonably foresee child trespassers on the place where the condition exists, 2) the owner knows or has reason to know that conditions pose unreasonable risk to children, 3) children because of their youth are not able to appreciate such risk, 4) the owner's utility in maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children, and 5) the owner fails to exercise reasonable care in eliminating the danger. If only one of the five elements is not met, Mr. Logan is relieved of liability. On his property, Mr. Logan, a geologist, had open research "digs" or "pits" that presented a risk. However, Mr. Logan fenced his property and thereby lessened the likelihood of children being on his property and being exposed to the risk. This child, despite his disabilities, would be expected to understand the risks associated with dirt mounds. The statute's implied goal is to strike a balance between insuring security to foreseeable child trespassers and yet maintaining the utility of property. Mr. Logan's actions in mitigating the risks of his property and the utility of its use tilt the scale in his favor.

The second paragraph provides a better orientation for the reader and will make reading the following discussion much easier.

ENDNOTES

1. The author wishes to thank her colleague Professor Kathleen Bean for providing her class notes for much of this article's text.
2. Helene S. Shapo, Marilyn R. Walter & Elizabeth Fajans, Writing and Analysis in the Law 131 (rev. 4th ed., Found. Press 2003).
3. Daniel Barnett, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 U. Toledo L. Rev. (to be published December 2006).