

Methodology for Drafting Legal Documents

Introduction

The skill of drafting legal documents is one of the most important skills that law students, lawyers, and judges must master. Legal drafting is not merely the writing of texts, but rather a precise art that combines a deep understanding of the law, proficiency in the English language, and the ability to express oneself clearly and coherently. The quality of legal drafting directly reflects on the effectiveness of a legal document and its legal force before courts and relevant authorities.

Section I: Concept of drafting legal documents

1.1 Definition of legal drafting

Legal drafting is the art and science of translating legal ideas and intentions into written texts in proper and clear language, characterized by accuracy, organization, and logical sequence. It is not limited to the drafting of laws and legislative regulations, but includes all legal documents, including:

- Contracts of various types (sale, lease, partnership, employment)
- Legal memoranda and advisory opinions
- Court judgments and decisions
- Administrative documents and reports
- Appeals, defenses, and petitions.

1.2 Importance of Legal Drafting

The importance of legal drafting lies in:

- **Ensuring clarity and understanding:** preventing ambiguity and vagueness that may lead to different interpretations.
- **Achieving justice:** providing correct wording that accurately expresses the will, rights, and obligations of the parties.
- **Strength of legal argument:** good drafting strengthens the legal argument before the courts and competent authorities.
- **Reduce disputes:** Accurate drafting limits disputes and disagreements over the interpretation of the terms of a contract or document.

- **Professionalism and expertise:** Reflects the competence of the lawyer, judge, and administrator and the quality of their professional work.

Section II: Basic Principles

2.1 Basic principles of legal drafting

A) Principle of clarity and accuracy

This refers to the use of clear and unambiguous language, where every phrase and every word has a specific meaning that is not open to interpretation. Legal sentences should be as short and simple as possible:

Incorrect example: “The second party undertakes to pay the financial consideration arising from this contract in accordance with what has been agreed between them and in a manner that does not conflict with the applicable laws and regulations.”

Correct example: “The second party undertakes to pay the amount of (X) dinars at the end of each month.”.

b) Principle of comprehensiveness and completeness

The legal document must include all the essential elements related to the subject matter, without omitting any part that may affect the understanding or implementation of the document.

c) Principle of objectivity and impartiality

Legal writing must be objective and impartial, especially in judicial rulings and advisory opinions, free from emotions and personal opinions.

d) Principle of professionalism and coordination

A legal document must follow a uniform professional format that is easy to read and understand, using organized numbering and clear headings.

e) Principle of adherence to legal terminology

Recognized and established legal terminology in jurisprudence and jurisprudence should be used, giving the document additional legal force.

2.2 Linguistic characteristics that must be present

- **Correctness of the English language:** Writing must respect the rules of grammar, morphology, and spelling.
- **Clarity and simplicity:** Simple and familiar words and structures should be chosen.
- **Avoid ambiguity:** Avoid unfamiliar words and complex structures.

- **Accuracy in wording:** Use words that accurately convey the intended meaning.
- **Balance and consistency:** Balance conciseness and detail according to the needs of the subject matter.

Section III: Types of legal documents and methods of drafting them

3.1 Main types of legal documents

A) Contracts and contractual documents

A contract is an agreement between two or more parties to create certain legal obligations

It must include:

- Introductory preamble (identifying the parties, subject matter, and purpose)
- Accurate identification of the parties to the contract (full names, addresses, legal status)
- Basic terms and conditions
- Mutual rights and obligations
- Methods of payment and financial consideration
- Guarantees and insurance
- Terms of termination and dissolution
- Dispute resolution and legal settlement clause.
- Signature, witnesses, and date.

b) Legal memoranda and opinions and advisory legal

A legal memorandum is a document containing a legal analysis of a specific issue and providing legal advice. It consists of:

- Introduction (identifying the issue under consultation)
- Presentation of the facts and circumstances relating to the issue
- Identification of the legal problem (issue)
- Applicable legal rules (from laws, legislation, and court rulings)
- Application of the rules to the facts
- Conclusion and legal opinion.

c) Administrative documents and reports

Reports that are edited in an organized and documented manner for administrative and legal purposes.

3.2 Stages of editing a legal document

1. **Planning and preparation:** Gathering information and data related to the subject and familiarizing oneself with the relevant laws.
2. **Drafting the initial draft:** Writing the initial text of the document in a simplified form.
3. **Review and revision:** Reviewing the text for accuracy, clarity, and consistency.
4. **Proofreading and language:** Correcting linguistic, grammatical, and spelling errors.
5. **Final drafting:** Rewriting the text in a final, professional form.

Section IV: Basic methods and techniques

4.1 IRAC Method (Objective Method)

This method is widely used in briefs, advisory opinions, and judgments:

- **I (Issue):** Identify the legal issue at hand
- **R (Rule):** State the applicable legal rule
- **A (Application):** Apply the rule to the facts of the case
- **C (Conclusion):** Conclusion and outcome.

4.2 FIRAC Method

An extension of the IRAC method, beginning with:

- **F (Facts):** The facts and circumstances of the case
- **I (Issue):** The legal issue
- **R (Rule):** The legal rule
- **A (Application):** Application
- **C (Conclusion):** Conclusion.

4.3 The dialogical (argumentative) method

Used in appeals and defenses, where:

- The opponent's position is presented
- It is responded to with strong legal arguments
- The opponent's evidence is refuted.

4.4 Descriptive Analytical Method

- Accurately describe the facts and circumstances.
- Analyze the elements and data.
- Draw logical conclusions.

4.5 Important Drafting Techniques

Direct Drafting:

State the facts and obligations directly and explicitly without ambiguity.

Example: “The seller is obligated to transfer ownership to the buyer upon payment of the price.”

Model (standard) drafting:

Use established and reliable legal models and formulas.

Accurate use of terminology:

Distinguish between similar terms:

- The difference between “right” and “duty”
- The difference between “acceptance” and “offer”
- The difference between ‘conclusion’ and “execution”.

Section V: Common problems and errors

5.1 Common linguistic errors

Error	Example	Correction

Ambiguity and confusion	“The party may pay”	“The party is obligated to pay”
Long, complex sentences	“The second party, which is obligated...”	Divide the sentence into several short sentences
Ambiguous pronouns	“He and she decided”	Clarify who “he” and “she” refer to
Unusual constructions	“In the manner described " above”	“As mentioned above”
Spelling errors	‘Commit’ (instead of “commit”)	Use of dictionary and proofreading

Table 1: Common linguistic errors and their corrections

5.2 Common legal errors

- **Use of outdated and obsolete language:** For example, “as mentioned above” instead of “as agreed”.
- **Inaccuracy in transposing laws and texts:** citing incorrect or distorted texts.
- **Confusion between legal concepts:** confusing different legal concepts.
- **Omission of essential elements:** failure to refer to a specific legal basis or important condition.
- **Imbalance in rights and obligations:** Imbalance between the rights and obligations of the parties.
- **Failure to respect logical order:** Failure to follow a logical sequence in presenting ideas.
- **Unnecessary verbosity:** Excessive use of words at the expense of clarity.

5.3 Assessing the quality of drafting

The quality of legal drafting can be assessed by:

1. **Clarity:** Is the text clear and easy to understand?
2. **Accuracy:** Is every word in the right place?
3. **Completeness:** Does the document include all the necessary elements?
4. **Professionalism:** Does the document follow professional standards and conventions?
5. **Legal strength:** Does the document provide the required legal protection?

Conclusion

Editing legal documents is an essential skill that requires a combination of a deep understanding of the law, proficiency in proper English, and continuous practice. This skill begins with understanding the basics and fundamental principles, then learning about the different types of legal documents and how to edit them, and finally familiarizing oneself with the methods and techniques used, while being careful to avoid common mistakes.

A successful lawyer, or administrator is one who can formulate legal ideas and rules in a clear, precise, and legally sound manner. This comes through regular study, continuous practice, and benefiting from opinions and constructive criticism.