

# *Montana Law Review*

## **2016 Write-on Information**

Montana School of Law first and second year students who are interested in joining the *Montana Law Review* may write and submit a case note for evaluation by current *MLR* staff.

- Choose one of the two cases listed below. No other cases will be considered for write-on submissions.
- We strongly recommend that applicants read several previously published case notes before beginning the write-on process. Previously published case notes can be found in back issues of *Montana Law Review* (available in the *MLR* office), on Westlaw, LexisNexis, HeinOnline, or in print in the Jameson Law Library. Please note that case notes are different than Legal Shorts and are listed under Notes in the Table of Contents of each issue of the *Montana Law Review*.
- Submissions must be original material prepared solely for *Montana Law Review* write-on purposes; no previous work from other classes or projects may be submitted.
- Use the latest edition of the ALWD citation manual as a guide for citation and style, but use footnotes rather than in-text cites. Be sure to pay attention to the special rules for law review citations. The form of the case note should be similar to that of case notes appearing in recent issues of the *Montana Law Review*. Note: older *Montana Law Review* case notes may conform to Bluebook citation and style, but applicants **MUST** use the ALWD citation style.
- The Honor Code mandates **NO HELP FROM ANYONE** in writing the case note (except in very limited circumstances discussed below). Applicants may not receive help from classmates, family members, professors, or friends during any phase of writing the case note. Applicants' case notes may not be edited or cite-checked by others, nor may applicants receive help with substantive issues.
- The current second year staff will select about 8–12 submissions based on the quality of the submission. If necessary, selected attorneys and professors may also evaluate submissions.
- All submissions must be anonymous. Applicants must not discuss their case note, or the fact that they are writing a case note, with any current second year staff member. Do not put any identifiable information anywhere on the submission. Failure to keep a submission anonymous will disqualify the submission.

### **2016 Cases and Secondary Sources (choose one case):**

*State v. Root*, 359 P.3d 1088 (Mont. 2015).

*Milky Whey, Inc. v. Dairy Partners, LLC*, 342 P.3d 13 (Mont. 2015).

### ***State v. Root* Prompt Secondary Sources:**

Kate Weisburd, *Prosecutors Hide, Defendants Seek: The Erosion of Brady Through the Defendant Due Diligence Rule*, 60 UCLA L. Rev. 138 (2012).

Daniel S. Medwed, *Brady's Bunch of Flaws*, 67 Wash. & Lee L. Rev. 1533 (2010).

### ***Milky Whey, Inc. v. Dairy Partners* Prompt Secondary Sources:**

Geoffrey P. Miller, *In Search of the Most Adequate Forum: State Court Personal Jurisdiction*, 2 Stan. J. Complex Litig. 1 (2014).

Michael Vitiello, *Limiting Access to U.S. Courts: The Supreme Court's New Personal Jurisdiction Case Law*, 21 U.C. Davis J. Int'l L. & Pol'y 209 (2015).

### **Case Note Research and Authority Citation Guidelines:**

The research process is OPEN. All relevant material may be cited in your case note. Provided are two “prompt” secondary sources provided by the *MLR* staff. In addition to the briefs submitted by the parties and the authority cited in each case, these secondary sources are an excellent starting point for your research. The fact that we have provided these secondary sources does not imply that you must use these sources. Your case note will not be evaluated on your ability to use every source provided. Rather, it will be evaluated primarily on your ability to synthesize and critically analyze the issues of either *State v. Root* or *Milky Whey, Inc. v. Dairy Partners, LLC*.

### **Submission Guidelines:**

- All submissions are DUE Monday, April 11, 2016 at 5:00 p.m. to Student Services.
- Submissions should be no more than 16 pages in length, including footnotes.
- Submissions must be typed, double-spaced using twelve-point Times New Roman font, with one-inch margins on all sides.
- The applicant’s Spring 2016 Midterm Anonymous Number 9 should appear on the front page of the submission. Do not put the applicant’s name or any identifiable information on the submission.
- Submit twelve (12) printed copies of the case note to Student Services with the anonymous number on the front page of each copy.

### **Submission Assistance:**

- Questions about the application process may only be addressed to the designated third year student, Paige Griffith at [paige.griffith@umconnect.umt.edu](mailto:paige.griffith@umconnect.umt.edu). Assistance will be limited to questions about the application process—substantive, research, and citation questions will not be answered. Do not ask any second year staff member any questions about your case note.
- Library staff may provide general assistance with instruction in or location of a particular research tool, but not detailed assistance in finding particular information.

## **Case Note Information:**

A case note analyzes a recent court decision and its legal context. A case note examines the relationship between the decision and the existing law and discusses important issues, cases, and legislation within that area.

A case may be chosen for the write-on competition because it represents an important change in the law, creates significant effects, or displays interesting judicial reasoning. It is the applicant's responsibility to identify the significance of the case. NOTE that cases often address several issues. Not all of the issues will be noteworthy. You only have 16 pages, so choose carefully when deciding which issue(s) to discuss. Case notes will be evaluated in part on the ability of the author to spot which issues are significant.

A case note begins with a brief introduction and then clearly states (in the author's own words) the important facts and procedural history of the case. Next, the case note states the case's specific holding on each important issue, summarizing the court's reasoning for each holding. The author's analysis of the case follows in the substantive portion of the case note, which describes relevant existing law and the arguments both supporting and opposing the holding of the case. The case note ends with a legal conclusion. Please note that this basic framework may be adjusted, depending on the case, legal arguments, and author's style.

## **WRITING A CASE NOTE**

### **I. What is a Case Note?**

The basic difference between a case note, a comment, and an article is the breadth of the subject matter covered. A case note should analyze a single case. In contrast, a comment addresses an area of the law, focusing on specific issues, cases, and legislation. An article is broader still and, unlike a case note or comment, is a non-student legal essay written either by a noted legal authority or a person with expertise in a certain area.

In selecting a case for the write-on, the Law Review Staff looks for a "noteworthy" case. A case of first impression or a case that represents a significant departure from precedent both qualify as noteworthy. Please note, however, that a selected case may merely present a noteworthy aspect. For example, a case where the court reached the right conclusion for the wrong reasons also qualifies as noteworthy. The following list of possible noteworthy aspects should assist you in understanding this fundamental feature of a case note.

- An area of significant concern;
- The possibility of intriguing results in later cases;
- The court ignores logical reasoning or common sense;
- The court fails to follow the majority of jurisdictions;
- The first case in a newly legislated area; and
- A likely effect on an extra-legal area such as business, consumers, employment, or education.

Note: A case note does not have to address every aspect or issue in the selected case but should address all those that are significant.

## II. Where do you begin?

The Law Review Staff suggests the following plan of attack. First, read the case carefully and attempt to recognize and fully understand the “noteworthiness” of the case. Second, read all relevant authority cited by the court. Third, check the court’s use of authority for accuracy. Fourth, if available, read the briefs of counsel to familiarize yourself with the opposing arguments. Additional guidance and authority may also be found elsewhere—treatises, law reviews, etc.

## III. How is a case note organized?

A quality case note requires good organization and clear analysis. The Law Review Staff believes one lends itself to the other. Generally, a case note is divided into topical sections. The following organization is a flexible guideline. You may wish to refer to other law reviews for alternative organizations.

The particular format you use matters less than the format’s contribution to the readability and substance of your note.

**A. Introduction.** Briefly introduce the reader to the area of the law and the organization of the case note. Begin forcefully, a few lines may suffice. Explain the “noteworthiness” of your case.

**B. Facts.** Include only the relevant facts presented in a clear, concise, and interesting manner. The idea is to focus the reader’s attention on those critical facts controlling the issue(s). Remember, courts often distinguish cases on their facts. Also, describe the lower court’s holding, appeals, and any subsequent action.

**C. Holding.** State the court’s holding on each relevant issue.

**D. Background or Discussion of Prior Law.** In this section, provide the reader with the relevant background law relating to the issues regardless of whether discussed in the decisions. Describe the existing law and its development. In closing this section, relate the selected case to the prior law to illustrate how, if at all, the selected case affects prior law.

**E. Reasoning or Analysis.** Describe and critically analyze the court’s reasoning and decision. Remain objective, but do not be afraid to express original ideas. If by some accident the reasoning makes sense, say so and support your conclusion. If not, say so and support your conclusion. Present in its full context the law as you contend it is or ought to be. If appropriate, attempt to predict the impact your case will have on future decision. Furthermore, address any ambiguous statements made by the court and questions the court left unanswered. This section affords you the opportunity to demonstrate legal skill and prowess by dissecting the case and raising important issues involved.

**F. Conclusion.** This section is reserved for your exclusive use as an author. Just as each topical section requires a conclusion, so should the case note itself. Bring your case note full circle, reinforcing the “noteworthiness” of the selected case.

#### **IV. Final Comments**

The *Montana Law Review* attempts to provide research, information, and original thinking to our readers. We do not attempt to instruct judges, courts, or the legislature. You must support your statements fully by logic, authority, or, where possible, by both. Know the law. If you cite to a case, be certain the case stands for the proposition or rule of law you intend. Do not depend on or cite to the head notes. While you need not agree with the court, remember you need not always disagree.

**Below is last year's grading rubric. This rubric is included as a courtesy and is subject to modest changes at the discretion of the *MLR* staff.**

**2015 WRITE-ON EVALUATION FORM**

**SUBSTANCE**

\_\_\_\_\_/3 Succinct, well-structured introduction that encompasses major points to be addressed

\_\_\_\_\_/7 Appropriate and accurate summary of factual and procedural history

\_\_\_\_\_/7 Appropriate and accurate summary of the Court's decision and any relevant dissents or concurrences

\_\_\_\_\_/30 Detailed, thorough, creative, and well-reasoned analysis

\_\_\_\_\_/3 Succinct, well-structured conclusion that encompasses major points of analysis

\_\_\_\_\_/50 (Section Total)

**WRITING**

\_\_\_\_\_/5 Appropriate and effective word choice, clear sentences, avoids unnecessarily complicated syntax

\_\_\_\_\_/5 Clear paragraph structure with consistent use of thesis sentences \_\_\_\_\_/10 Grammar, spelling, and punctuation

\_\_\_\_\_/10 Overall organization: logical subdivisions; effective transitions between sections; descriptive point headings; general "flow" of the paper

\_\_\_\_\_/20 Citation style and format

\_\_\_\_\_/50 (Section Total)

\_\_\_\_\_/100 TOTAL SUBMISSION SCORE

**COMMENTS:** \_\_\_\_\_  
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