

1L 2008-2009 Joint
Winter Writing
Competition

These guidelines are
ONLY for 1Ls.

2Ls must use the 2L
2008 Joint Winter
Writing Competition
guidelines.

1L—2008-2009 Joint Winter Write-On Competition

It is time for the Joint Winter Writing Competition for potential membership on the *Florida State University Law Review*, the *Journal of Land Use & Environmental Law*, the *Journal of Transnational Law & Policy*, and the *Business Review*. We hope that all eligible students will participate in this competition.

Please keep in mind that certain journals may have certain membership requirements (i.e., GPA of 77 or above), and those students invited to join must meet those requirements. Participants in the competition are responsible for verifying their eligibility for membership.

Participants must write a Bench Memorandum. This memorandum must make a recommendation as to how a federal district court will rule on a certain issue. Your recommendation to the district court judge will be based on the fact pattern and the provided citations to the available sources. The fact pattern, citations to the sources that you may use in your memorandum, and the template for the memorandum can be found at the end of this packet.

Remember that a quality bench memorandum explains the case at issue and effectively uses the provided case law to predict the action of the court in a thorough manner. **For 1Ls, this competition is CLOSED**, which means that you must only use the cases provided at the end of this packet. **Therefore, you are not allowed to do any outside research, and all citations should come from the materials. Also, you may NOT ask for, or receive, help analyzing, researching, or writing this bench memorandum, nor should you access the briefs or oral argument transcripts related to any of the cited cases.** You may, however, call or email the four editors listed on page 5. Please feel free to ask questions if help is needed with rule clarification. We cannot help with substantive questions. We applaud your participation and wish you the best of luck.

As part of the write-on competition, each participant must take a Bluebook test. This test will be given at the beginning of the spring semester. There will be a Bluebook training session prior to the test. This test will be multiple choice, time pressured, and you are allowed to use your Bluebook. Specific details will follow in the student announcement concerning dates and times. All students with disabilities and need accommodations should contact the Law Review in advance of the test. For all 1Ls, the Bluebook test will be 10% of the overall score. G.P.A. will make up 50% of the score and the write-on score will make up 40% of the total score.

Rules for the 2008-2009 Joint Winter Write-On Competition

* A violation of a single rule constitutes grounds for disqualification—be sure to read all directions very carefully. The 1L Winter Write-On Competition will take place beginning on **Monday, January 5, 2009 and will conclude at 5:00 p.m. on Monday, January 12, 2009.**

BASIC RULES

1. Originality: Your work must be completely your own. You cannot ask anyone for help researching, writing, editing, or proofreading.
2. Anonymity: Use a BAGS number obtained from the Student Affairs office. This BAGS number can be obtained by emailing saffairs@law.fsu.edu. Send an email with your name and request a BAGS number for the write-on competition. Be sure to include whether you are a 1L or a 2L. This BAGS number is specific and exclusive to the Write-On Competition—do *not* use the same BAGS number you used for exams. Place your BAGS number in a footer or header with page numbers on each page of your paper. Do NOT put your name anywhere on the paper.
3. Deadline: The deadline for submissions is Monday, January 12, 2009 at 5:00 p.m. Submissions will be accepted according to the process outlined in rule 4.
4. Turning in your paper and submission to Multiple Journals: You may submit your bench memorandum to any or all of the journals. Submission will be electronic through your FSU mail account. **You must use your FSU email account or your submission will not be accepted.** In the subject line of the email write: **Winter Write-on Competition Submission 1L.** Do not forget to attach your submission to the email. To submit your paper, e-mail it to the following contact for the journal(s) you wish to submit to by 5:00 p.m. on Monday, January 12th:
 - To submit your paper to the *FSU Law Review*: Brenda Ellis at [omitted].
 - To submit your paper to the *Journal of Land Use & Environmental Law* or the *Journal of Transnational Law & Policy*: Jeremy Lightner at [omitted]. Since the Land Use and Transnational journals have the same submission address, please write in the text of your email whether you are submitting to both journals or just one of them.
 - To submit your paper to the *Business Review*: [omitted]. In the text of your email please state that you are submitting to the *Business Review*.
5. Selection: Each journal will evaluate your bench memorandum independently and anonymously. Each journal will then notify you of your acceptance at a date set by that respective journal.
7. Submission of your bench memorandum signifies that you have read and agreed to these rules.

FORM OF THE BENCH MEMORANDUM

1. **Cover Page**: Please include a cover page with your submission. The cover page should contain the title of your paper, the name of the journal you are submitting the paper to (please include all of the journal names you are submitting your memo to on the same cover page), whether you are a 1L or 2L, and your BAGS number. **DO NOT put your name on the cover or anywhere else on the paper!!**
2. **Length**: Your bench memorandum must *not* exceed ten (10) pages of text, *excluding* endnotes. Papers consisting of more than 10 pages will be automatically disqualified. Please do not attempt to circumvent this 10 page limit by cramming extra information into your endnotes.
3. **Endnotes**: You must use endnotes, not footnotes. Endnotes are exactly the same as footnotes, except that they appear at the end of the paper instead of on the bottom of each page. All citations should be to the *Bluebook* Eighteenth Edition—be sure to use the white pages.
4. **Spacing**: Text should be double-spaced. Do not add extra spaces between paragraphs, between endnotes, or after headings. Endnotes should be single spaced with one space between each endnote as illustrated in the example below.

¹ Spears v. Federline, 212 U.S. 21, 26 (2007).

² See Bowden v. Paterno, 144 U.S. 213, 216 (2006).

5. **Page Size and Page Numbers**: Papers must be typed on 8-1/2 by 11 inch paper with 1 inch margins all around. Please include pages numbers on each page in the footer.
6. **Font**: Text and endnotes must be typed in 12-point Courier New font. Papers with improper font/sizes will be *automatically* disqualified.
7. **Content**: You *must* include the following content areas in your Bench Memorandum. The form is attached.
 - Issue Presented
 - Background and Statement of the Facts
 - Discussion
 - Recommendation and Conclusion

JUDGING YOUR PAPER

1. **Writing Style**: Use proper grammar, spelling, punctuation, and tone. Journals cannot tolerate careless proofreading errors. Also, a good writer can communicate ideas very effectively and has a professional and confident tone.
2. **Logical Analysis**: A good writer explores the relationship between the facts, issues, holdings, and reasoning of the case. An analysis should include the history of the legal doctrine, the public policies involved, and other implications of the decision. Focus should be on analysis. This is a critical writing – writing about what lies between the lines.
3. **Substance**: Substantive accuracy and proper identification of the issues are extremely important. A good writer can read, understand, and incorporate all relevant authority.
4. **Organization**: The organization of the bench memorandum will be dictated by the template provided.
5. **Originality and Creativity**: A bench memorandum should not simply report what happened in the sources provided. It should analyze, explain, evaluate, criticize, and/or applaud the cases. Therefore, supporting your arguments with authority is quintessential. Use and application of authority is key.
6. **Technical Accuracy**: All citations must be in correct *Bluebook* form (Eighteenth Edition)—be sure to use the white pages. Attention to detail is absolutely necessary! Do not use ALWD. All journals use the *Bluebook*. Please pay specific attention to this requirement. Technical accuracy is key to a successful journal. As such, the journals consider **TECHNICAL ACCURACY AS A MAJOR JUDGING FACTOR**. However, if you cannot find an exact citation, please use similar stylistic guidelines and be consistent with your choice through out the remainder of your bench memorandum.

Contact Names of Journal Writing & Research Editors:

[omitted]

Journal Membership Requirements

*Please review the following membership requirements for each journal prior to submitting your Write-On Competition paper to that journal. Note that all four journals require members to have a cumulative GPA of at least 77—please do not enter the contest if your GPA is below this threshold.

Florida State University Law Review

- The membership shall consist of those students who are selected on the basis of the Winter Write-On Competition or the Summer Write on Competition, or on the basis of publication in the Law Review—all of which are specified by the bylaws—and who successfully fulfill the training requirements.
- Each member shall maintain a grade point average of at least seventy-seven (77) on a scale of 100 or the equivalent on any subsequently adopted scale.
- Each member shall submit one original piece of “publishable quality” in satisfaction of the Law Review writing requirement no later than the first day of their last semester.
- Each member shall be responsible for completing all assignments thoughtfully, accurately, thoroughly, and promptly.
- Each member shall serve on one committee each academic year.
- Each member shall attend all announced meetings of the membership.

Journal of Land Use & Environmental Law

- **Grade Point Average:** No person will be invited to join the journal unless he or she has a cumulative GPA of 77 or higher. Journal members must maintain a cumulative GPA of 77 or higher. If a journal member’s GPA falls below 77, he or she may be placed on probation.
- **Training Assignment:** All members *must* complete the training program. Students *may* be exempted from completing part of the training program if they successfully complete the *Law Review* training program instead.
- **Subciting:** All members *must* subcite *at least* one article per semester. In rare circumstances, members may be expected to subcite an additional article if the journal requires it. Members may also be required to subcite one article over the summer as well, though this article will usually count toward the member’s fall subciting requirement.
- **Committee Membership:** All members *must* serve on at least one committee per semester. There are several committees to choose from, including the Writing Competition Committee, Manuscript Review Committee, Scholarship Committee, or the Training Assignment Committee. Students may choose which committee to join.
- **Mandatory Events:** All members *must* attend certain mandatory events each semester. Absences *must* be excused in advance by a Board member. Mandatory events include one general membership meeting per semester, the Spring Awards Ceremony recognizing graduating 3L’s and outstanding members, and the Distinguished Lecture Series each semester.
- **Writing Requirement:** All members *must* submit a paper of publishable quality to the Journal before the beginning of their last semester of law school. This paper must be at least 20

pages, excluding endnotes, and must be on an environmental law or land use topic. You may submit your Upper Level Writing Requirement paper only if it is written on an environmental law or land use topic. In lieu of writing a paper, members can also satisfy this requirement by serving as an Articles & Notes editor for at least one semester.

Journal of Transnational Law & Policy

- **Grade Point Average:** No person will be invited to join the journal unless he or she has a cumulative GPA of 77 or higher. Journal members must maintain a cumulative GPA of 77 or higher. If a journal member's GPA falls below 77, he or she may be placed on probation.
- **Term Served:** No person will be invited if he or she has less than three semesters remaining—counting the semester the invitation would be issued—at the College of Law.
- Each member is required to complete all assignments—including all training assignments and subcites—thoughtfully, accurately, thoroughly, and promptly.
- Each member is required to serve on one committee each semester.
- Each member is required to attend all announced meetings of the membership.
- Each member is required to attend the Richard B. Lillich Memorial Lecture.
- Each member is required to submit a “publishable quality” piece prior to the deadline determined by the Board.

Business Law Review

- Each member must maintain a cumulative law school GPA of 77.
- Each member must complete 3 article assignments thoughtfully, accurately, thoroughly, and promptly.
- Each member must be a member of at least one (1) committee.
- Each member must attend all scheduled meetings and training sessions.

THE ISSUE

Background: You are a law clerk for a federal district court judge. A motion to dismiss was filed by the defendant in the case before you, *Yellow Cab Company v. Miami International Airport*. Below is an excerpt from the plaintiff's complaint alleging a breach of contract. You must write a bench memorandum advising your judge on how to rule in this case. Should your judge grant or deny the motion to dismiss? The specific question you must address in making your recommendation is: Does this complaint meet the requirements of Rule 8 of the Federal Rules of Civil Procedure in light of the Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). The federal district courts in the Eleventh Circuit, though they cite to *Twombly*, have not thoroughly discussed the implications of *Twombly*. Your judge would like to add some clarity to this area of the law.

Facts: A taxi cab company entered into a valid contract with a local airport, whereby the cab company leased parking spaces from the airport. The contract contained no provisions, conditions, or terms for what constitutes a breach of the contract. Additionally, the contract has no expiration date. After some time, the airport informed the taxi cab company they could no longer lease the parking spaces. The cab company promptly sued the airport for breach of contract.

Notes: Please note, a copy of the contract is not attached to this packet; however, you are to assume that one was attached to the complaint. The federal district court has jurisdiction based on diversity.

Count I Breach of Contract

1. On October 2, 1995, in the city of Miami, Dade County, Florida, the plaintiff, YELLOW CAB COMPANY, and the defendant, MIAMI INTERNATIONAL AIRPORT, entered into a written agreement, a copy of which is attached as "Exhibit A," and incorporated into this complaint.
2. The consideration set forth in the written agreement was fair and reasonable.
3. On November 20, 2008, the defendant breached this agreement.
4. By reason of the defendant's breach, the plaintiff has suffered damages in excess of \$100,000.
5. The breach of the contract was in bad faith and willful.
6. Wherefore, Plaintiff YELLOW CAB COMPANY demands judgment for damages against the defendant, MIAMI INTERNATIONAL AIRPORT.

Additional Information: Though this case is in federal court, the court will apply Florida law on contracts. According to Florida law, to establish a breach of contract the plaintiff must plead and

prove three elements: (1) the existence of a valid contract; (2) a material breach of the contract; and (3) damages. *Friedman v. New York Life Ins. Co.*, 985 So. 2d 56 (Fla. 4th DCA 2008).

This is a closed universe competition. You may only use and cite to the sources listed below. Note: The citations may not be in the correct Bluebook Format.

1. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).
2. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993).
3. *Conley v. Gibson*, 355 U.S. 41 (1957).
4. *Iqbal v. Hasty*, 490 F.3d 143 (2d Cir. 2007).
5. *Boykin v. KeyCorp*, 521 F.3d 202 (2d Cir. 2008).
6. *Phillips v. County of Allegheny*, 515 F.3d 224 (3d Cir. 2008).
7. *Tamayo v. Blagojevich*, 526 F.3d 1074, 1082-86 (7th Cir. 2008).
8. *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174 (10th Cir. 2007).
9. *Brown v. Sweeney*, 526 F. Supp.2d 126 (D. Mass. 2007).
10. Fed. R. Civ. P. 8.
11. Fed. R. Civ. P. 9.
12. Fed. R. Civ. P. Form 11.
13. Keith Bradley, *Pleading Standards Should Not Change After Bell Atlantic v. Twombly*, 102 NW. U. L. REV. COLLOQUY 117 (2007).
14. Scott Dodson, *Pleading Standards After Bell Atlantic Corp. v. Twombly*, 93 VA. L. REV. IN BRIEF 135 (2007).

This is the list of sources that can be used in the bench memorandum, but you are not required to use all of the sources. Also, if a case mentions an older case that is relevant, you may cite to that case for example *Bell Atlantic v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007) (citing *Crawford-El v. Britton*, 523 U.S. 574 (1998)).

MEMORANDUM

TO: Federal District Court Judge
FROM: Law Clerk
DATE: January 12, 2009
RE: Yellow Cab Co. v. Miami International Airport

Note: The endnotes are intended to serve as examples of the citation format of endnotes only.

ISSUE PRESENTED

This section should include:

- A brief summary of the issue or issues presented in this case.

BACKGROUND AND STATEMENT OF THE FACTS

This section should include:¹

- Discussion of the historical or general background surrounding the issue.
- Discussion of the facts of the problem.²

DISCUSSION

This section should include:

- Discussion of the law involved in the case.³
- Discussion of cases or materials supporting your recommendation.⁴
- Discussion of cases or materials with findings contrary to your recommendation.⁵
- Critical analysis of the sources provided.⁶
- Policy considerations for both⁷ sides.⁸

RECOMMENDATION AND CONCLUSION

This section should include:

- A recommendation of how the Federal District Court should decide this case.
- A brief conclusion.

¹ Smith v. Jones, 35 F.3d 283, 285 (5th Cir. 2008).

² *Id.* at 286.

³ 42 U.S.C. § 1983(a)(1) (2000); Green v. Blue, 88 U.S. 239, 241 (2006).

⁴ Toben v. Jones, 37 F.3d 183 (9th Cir. 2007).

⁵ Smith v. Brown, 36 F.3d 399 (2d Cir. 2008).

⁶ Smith, 35 F.3d at 289.

⁷ *Id.* at 299 (Johnson, J., dissenting) (arguing that the rule of lenity is essential to very foundation of American jurisprudence).

⁸ John v. Smith, *The Policy of the Rule of Lenity*, 38 FLA. ST. U. L. REV. 391, 402 (2007) (stating that the rule of lenity should only be invoked when the statute is ambiguous).