

FACULTY PLAGIARISM GUIDELINES Washington University School of Law

Plagiarism is submitting work that uses, without proper acknowledgment, another person's or persons' words, ideas, results, methods, opinions, or concepts. It does not matter whether the appropriated information is published or unpublished; academic or nonacademic in content; or in the public or private domain.

Each of the examples in Part I below constitutes plagiarism. When plagiarism is committed intentionally or after a student has received formal written notice concerning a substantially similar act of plagiarism, as provided in Parts III & IV below, it is an Honor Code violation. When plagiarism is committed without the intent to deceive and without the student previously having received formal written notice concerning a substantially similar act of plagiarism, it is not an Honor Code violation. In such circumstances, the faculty member to whom the work has been submitted is encouraged to discuss the plagiarism with the student and explain why it is plagiarism, making use of applicable example(s) from Part I below whenever possible, and may, if s/he deems it appropriate, give the student formal written notice as provided in Parts III & IV below.

I. EXAMPLES OF PLAGIARISM

A. Appropriation of Another's Words.

1. *Verbatim appropriation or close paraphrase of another's words without citation.*

Source:

First of all, equality explains the Cherokees' abhorrence of any form of coercion; an abhorrence which inhibited the use of official aggression, even to force conformity to policies arrived at by popular consensus and designed to promote the common good.

JOHN PHILLIP REID, A LAW OF BLOOD 64 (1970)

Improper use:

The traditional Cherokee notions of equality and liberty were rooted in an abhorrence for any form of coercion. This abhorrence inhibited the use of official aggression, even to force conformity to policies arrived at by popular consensus and designed to promote the common good.

(No quotation marks or citation to Reid.)

2. *Verbatim appropriation or close paraphrase of another's words with citation but without quotation marks.*

Source:

Actors systematically give too little weight to future benefits and costs as compared to present benefits and costs.

Melvin Eisenberg, *The Limits of Cognition and the Limits of Contract*, 47 STAN. L.REV. 211, 222 (1995).

Improper use:

People systematically grant too little weight to future benefits and costs as compared to present benefits and costs.

(Cited to Eisenberg at 222, but without quotation marks.)

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3. *Verbatim appropriation of another's particularly apt phrase with citation but without quotation marks.*

Source:

Seven months later Governor Telfair, on November 4, 1793, delivered a defiant message . . .

JULIUS GOEBEL, JR., HISTORY OF THE SUPREME COURT OF THE UNITED STATES: ANTECEDENTS AND BEGINNINGS TO 1801, at 735 (1971).

Improper use:

The Georgia Governor also delivered a defiant message to the Court.
(Cites Goebel at 735, but without quotation marks.)

B. Appropriation of Another’s Ideas or Concepts.

1. Appropriation of organizational headings.

Source: The source includes the following headings:

II. POLITICAL VISIONS, POLITICAL RIGHTS

A. The Transactional Justice Vision

- 1. Normative Framework*
- 2. Concept of Rights*

B. The Distributive Justice Vision

- 1. Normative Framework*
- 2. Concept of Rights*

C. Cows, Corn and the Distributive Justice Vision–The Coase Theorem as an End-State Proposition

- 1. The Normative Framework of the Theorem–End-State Propositions, the Status Quo, and the Role of the State*
- 2. The Theory of Rights in the Theorem–Hohfeldian Rights, a “Thin” Theory of Rights, and the Demise of Personal Autonomy*
- 3. The Nature of Disputes in the Distributive Justice Vision–Loss of Party Control and the Independence of Right and Remedy*
- 4. The Coase Theorem and Law and Economics; the Coase Theorem and Conservatism*

Donald H. Gjerdingen, *The Politics of the Coase Theorem and Its Relationship to Modern Legal Thought*, 35 *BUFF. L. REV.* 871, 871-72 (1986)

Improper use: Though citing the source for some specific points, the derivative work employs without citation the following headings:

- 3. The Assumption of Coase Theorem
 - a. Zero Transaction Cost and Positive Transaction Cost
 - b. Its Relationship to Distributive Justice Vision
 - (1) Introduction
 - (a) Transactional Justice Vision
 - (b) Distributive Justice Vision
 - (2) The Relationship Between the Coase Theorem and Distributive Justice Vision
 - (a) Normative Framework – End-State Proposition, the Status Quo, and the Role of the State
 - (b) Theory of Rights – Hohfeldian Rights, a “Thin” Theory of Rights, and the Demise of Personal Autonomy
 - (c) Nature of Disputes – Loss of Party Control and the Independence of Right and Remedy
 - (3) Conclusion

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2. *Appropriation of ideas or of the way an issue is framed.* Other examples of plagiarism might involve fewer or no words in common with the source, but nonetheless use sources' *ideas* or *framing* without appropriate attribution.

In this first example, the derivative work (which elsewhere discusses *Henderson*) gives the misleading impression that while other sources see the split as two-way, the author alone identifies it as three-way.

Source:

The circuits are currently split as to what constitutes an adverse employment action. Although we have yet to articulate a rule defining the contours of an adverse employment action, our prior cases situate us with those circuits that define adverse employment action broadly. Other circuits that define adverse employment action broadly are the First, Seventh, Tenth, Eleventh and D.C. Circuits. An intermediate position is held by the Second and Third Circuits. The most restrictive view of adverse employment actions is held by the Fifth and Eighth Circuits. Below, we set forth the Ninth Circuit's position within this split, and explain the case law in the other circuits.

Ray v. Henderson, 217 F.3d 1234, 1240 (9th Cir. 2000).

Improper use:

Currently, the circuits are split as to which employer actions are included in the definition of ['adverse employment action'].

[FN] This paper discusses the split as a three-way divide. It should be noted, however, that some courts and commentators discuss the split as a two-way split. See Margery Corbin Eddy, Note, *Finding the Appropriate Standard for Employer Liability in Title VII Retaliation Cases: An Examination of the Applicability of Sexual Harassment Paradigms*, 63 ALB. L. REV. 361 (1999) (characterizing the split as two-way), This depends on how one interprets the vague language often used to describe an 'adverse employment action.'

[LATER FN] The Ninth Circuit is joined in its broad stance by the First, Seventh, Tenth, Eleventh, and D.C. Circuits. . . . Although these circuits advocate a 'broad' view of adverse employment action, their articulation of this view is not always the same. This paper groups the circuits this way for comparison purposes.

It would have been more appropriate to begin with something along the lines of:

Some courts and commentators discuss this as a two-way split (FN: See Margery Corbin Eddy, Note, *Finding the Appropriate Standard for Employer Liability in Title VII Retaliation Cases: An Examination of the Applicability of Sexual Harassment Paradigms*, 63 ALB. L. REV. 361 (1999) (characterizing the split as two-way)), but this work discusses it as a three-way split, as does *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir. 2000).

The second footnote quoted above in the "improper use" also should cite *Henderson*.

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In the second example of appropriation of the source's framing of an issue, the source's original contribution was to place the modern statute in an historical context rather than focusing on the plain text of the statute. The improper use appears to appropriate from the source the conceptualization of common law damages doctrine as dividing damages into classes, and the application of that conceptualization to this particular statute. This idea is sufficiently novel to require attribution.

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Source:

The relevant question in interpreting 42 U.S.C. § 1997e(e)'s 'limitation on recovery' for 'for mental or emotional injury' is what kinds of damages claims are 'for mental or emotional injury' and what are 'for' other kinds of injury. The answer can be found in the well established and consistent law of damages, beginning early in the history of modern tort law and continuing right up to the statute's 1996 passage. The leading nineteenth-century damages treatise divided damages into six 'classes': 'injuries to property'; 'physical injuries'; 'mental injuries'; 'injuries to family relations'; 'injuries to personal liberty'; and 'injuries to reputation.' ARTHUR G. SEDGWICK & JOSEPH H. BEALE, JR., *1 SEDGWICK'S TREATISE ON DAMAGES* 50-51 (8th ed. 1891). *This common law classification has maintained its relevance in the law of tort remedies. . . .*

In short, over the past hundred years, common law courts have applied a consistent understanding of the phrase 'mental or emotional injury,' as a category of damages distinct not only from 'injuries to property' and 'physical injuries,' but also from 'injuries to reputation' and – crucially in prison discipline cases – 'injuries to personal liberty.' SEDGEWICK ON DAMAGES, *supra*. *This is the common law backdrop against which Congress legislated. Accordingly, §1997e(e)'s reference to the categories of 'mental or emotional injury' means just that – not physical injury, property injury, reputational injury, or injury to personal liberty.*

Improper use:

Courts interpreting the Prison Litigation Reform Act ("PLRA") provision limiting recovery in cases brought "for mental or emotional injury," 42 U.S.C. § 1997e(e), have erroneously read the phrase in a vacuum. This Note argues that when Congress enacted the PLRA it was building on the well established common law rules governing damages, which divided damages into different classes, among them: injuries to property, physical injuries; mental injuries, and injuries to personal liberty. It is this understanding that has long led common law courts to treat mental or emotional injuries as a category of damages distinct from property injury, physical injury, injuries to liberty. Accordingly, the best interpretation of 42 U.S.C. §1997e(e) is one that does likewise, and allows recovery not only for physical injuries, but also for injuries to property and liberty.

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3. *Appropriation of research.*

It is somewhat difficult to give a self-explanatory example of appropriation of research, because understanding whether there's been appropriation of research requires knowing the substantive field. If some source lists cases relevant to a particular point of law, it is appropriation of research if you simply copy that list into your own work. But if you do your own research, looking at each one of the cases to check that they belong, looking for others to add, and using your own discretion about whether particular cases are in or out, then the list becomes yours – even if, in the end, it turns out to be the same as someone else's list. For example, suppose you're looking for cases in which the issue is the permissibility of racially segregatory celling decisions in prison. If you are working to develop a list, by looking in treatises, Westlaw, ALR, articles, etc., you may include the resulting list as your own work – even if you at some point along the way actually find a source with a string cite of all such cases that is identical or nearly identical to your list. Note, however, that if some source uniquely led you to a particular (probably obscure) citation, it is advisable to acknowledge the referring source. And to include precisely the same results as some source is generally – though not always – a tip off that the underlying research is not original.

In the three examples that follow, each of the footnotes describing the way each circuit interprets “adverse employment action” cites exactly those cases that are cited in *Henderson*, and none of the derivative work's footnotes mention the dozens of *other* cases in those circuits that also explore the same topic. This raises a strong inference of appropriation without proper attribution.

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Source:

The Fifth and Eighth Circuits, adopting the most restrictive test, hold that only “ultimate employment actions” such as hiring, firing, promoting and demoting constitute actionable adverse employment actions. See Mattern v. Eastman Kodak Co., 104 F.3d 702, 707 (5th Cir.1997) (only “ultimate employment decisions” can be adverse employment decisions); Ledergerber v. Stangler, 122 F.3d 1142, 1144 (8th Cir.1997) (transfer involving only minor changes in working conditions and no reduction in pay or benefits is not an adverse employment action).

Ray v. Henderson, 217 F.3d 1234, 1242 (9th Cir. 2000).

Source:

The Second and Third Circuits hold an intermediate position within the circuit split. They have held that an adverse action is something that materially affects the terms and conditions of employment. See Robinson v. City of Pittsburgh, 120 F.3d 1286, 1300 (3d Cir.1997) (“retaliatory conduct must be serious and tangible enough to alter an employee’s compensation, terms, conditions, or privileges of employment ... to constitute [an] ‘adverse employment action’”); Torres v. Pisano, 116 F.3d 625, 640 (2nd Cir.1997) (to show an adverse employment action employee must demonstrate “a materially adverse change in the terms and conditions of employment”) (quoting McKenney v. New York City Off-Track Betting Corp., 903 F.Supp. 619, 623 (S.D.N.Y.1995)).

Ray v. Henderson, 217 F.3d 1234, 1242 (9th Cir. 2000).

Improper use:

The Fifth and Eighth Circuits take the most restrictive view and require the retaliatory action to be an “ultimate employment decision” before it rises to the level of an adverse employment action.

[FN] See Mattern v. Eastman Kodak Co., 104 F.3d 702 (5th Cir. 1997); Ledergerber v. Stangler, 122 F.3d 1142 (8th Cir. 1997).

Improper use:

The Second and Third Circuits articulated a middle- ground construction of adverse employment action in requiring the alleged retaliatory acts to be ‘materially adverse.’

[FN] See Robinson v. City of Pittsburgh, 120 F.3d 1286 (3d Cir. 1997) (AEA must be action that alters compensation, terms, conditions, or privileges); Torres v. Pisano, 116 F.3d 625 (2d Cir. 1997) (AEA must be a materially adverse change in terms and conditions of employment).”

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Source:

These cases place the Ninth Circuit in accord with the First, Seventh, Tenth, Eleventh and D.C. Circuits. These Circuits all take an expansive view of the type of actions that can be considered adverse employment actions. See Wyatt v. City of Boston, 35 F.3d 13, 15-16 (1st Cir.1994) (adverse employment actions include “demotions, disadvantageous transfers or assignments, refusals to promote, unwarranted negative job evaluations and toleration of harassment by other employees”); Knox v. Indiana, 93 F.3d 1327, 1334 (7th Cir.1996) (employer can be liable for retaliation if it permits “actions like moving the person from a spacious, brightly lit office to a dingy closet, depriving the person of previously available support services ... or cutting off challenging assignments”); Corneveaux v. CUNA Mutual Ins. Group, 76 F.3d 1498, 1507 (10th Cir.1996) (employee demonstrated adverse employment action under the ADEA by showing that her employer “required her to go through several hoops in order to obtain her severance benefits”); Berry v. Stevinson Chevrolet, 74 F.3d 980, 986 (10th Cir.1996) (malicious prosecution by former employer can be adverse employment action); Wideman v. Wal-Mart Stores, Inc., 141 F.3d 1453, 1456 (11th Cir.1998)(adverse employment actions include an employer requiring plaintiff to work without lunch break, giving her a one-day suspension, soliciting other employees for negative statements about her, changing her schedule without notification, making negative comments about her, and needlessly delaying authorization for medical treatment); Passer v. American Chemical Soc., 935 F.2d 322, 330-331 (D.C.Cir.1991) (employer's cancellation of a public event honoring an employee can constitute adverse employment action under the ADEA, which has an anti-retaliation provision parallel to that in Title VII).

Ray v. Henderson, 217 F.3d 1234, 1241-42 (9th Cir. 2000).

Improper use:

When it took the broad view of adverse employment actions in *Henderson*, the Ninth Circuit joined the First, Seventh, Tenth, Eleventh, and D.C. Circuits in the current three-way circuit split on this issue.

[FN] See *Wyatt v. City of Boston*, 35 F.3d 13 (1st Cir. 1994) (adverse employment actions (AEA) “include demotions, disadvantageous transfers . . . and refusals to promote”); *Knox v. Indiana*, 93 F.3d 1327 (7th Cir. 1996) (AEA includes transfer to worse office and deprivation of support services); *Corneveaux v. CUNA Mut. Ins. Group*, 76 F.3d 1498 (10th Cir. 1996) (AEA includes making employee go through extra “hoops” to get severance benefits); *Berry v. Stevinson Chevrolet*, 74 F.3d 980 (10th Cir. 1996) (AEA includes malicious prosecution); *Wideman v. Walmart Stores, Inc.*, 141 F.3d 1453 (11th Cir. 1998) (AEA includes denying lunch break, one-day suspension, and changing schedule); *Passer v. Am. Chem. Soc'y*, 935 F.2d 322 (D.C. Cir. 1991) (AEA includes canceling public event in honor of aggrieved employee).

II. AVOIDING PLAGIARISM

A. Develop Good Writing Habits.

1. *Note-taking.* When taking notes, be sure to indicate clearly both words and ideas that are not your own. If you transcribe an author's exact words, use quotation marks at the time you make the notation (and make a note of the page(s) from which the quotation was taken). If you paraphrase, write down the page number in the source you're paraphrasing, so you'll remember that it's paraphrased language. In either case, clearly note the source (author, title, page(s), date) at the top of the page or note card on which you're making notes. If you are making a note about an author's idea(s), include the page(s) or section of the source at which you found the idea.
2. *Organizing your paper.* Organize your paper without reference to your research sources. Borrowing the organization of a topic, or a set of specific headings, can be plagiarism if the source is not credited. (Even when a source is credited appropriately, the use of someone else's organization or headings is not a good writing practice.)
3. *Dealing with sources and notes when writing.* Put away both your sources and your notes when writing. The most common type of plagiarism occurs when a writer reproduces language in a research note without remembering that the note itself consists of someone else's words. You should quote, paraphrase, or cite an author only when the flow of your own argument or analysis calls for reference to that author's words or ideas, as distinguished from your own. Good writing is not a pastiche of others' words and ideas.

B. Make Use of Available Resources and Strategies at Each Stage of a Project.

1. *Before you begin.* Study the examples provided in Part I of these Guidelines and familiarize yourself with the underlying rules. If you have any questions, ask the professor.
2. *As you work.* Use strategies that help ensure proper acknowledgment. For example, if you are going to cut and paste, write the name of the source,
page number(s), etc. in the spot where you will be pasting **BEFORE YOU CUT**, and place quotes around the material **WITHOUT DELAY, IMMEDIATELY AFTER YOU PASTE**; if you are going to paraphrase or summarize, write the name of the source, page number(s), etc. and an attributing phrase ("According to," "X says," etc.) **BEFORE YOU BEGIN**, and then check your version against the original and insert quotes as needed **WITHOUT DELAY, THE MOMENT YOU FINISH YOUR SUMMARY**.
4. *Before you submit your work.* Review Part I of these Guidelines and then read through your work with the examples and underlying rules fresh in your mind before you hand anything

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in. **If you have any lingering questions or doubts, raise them with the professor and get them resolved before you submit the work.**

III. REPORTING PROCEDURES

Students and faculty alike may have occasion to read students' written work, and so may encounter material that constitutes plagiarism under the definition in Part I. When this occurs, the following procedures should be followed:

- A. **Faculty.** A faculty member who finds plagiarized material in a student's work should determine, after conducting whatever investigation s/he deems appropriate, whether there is reason to believe that the plagiarism was committed intentionally. If the faculty member determines that there is sufficient reason for such a belief, the matter should be reported to the Associate Dean for Student Affairs for treatment as a possible violation of the Honor Code. Otherwise, s/he is encouraged to discuss the plagiarism with the student and explain why it is plagiarism, making use of applicable example(s) from Part I whenever possible, and may, if s/he deems it appropriate, give the student formal written notice as set forth in Parts III & IV below.
- B. **Student Publications.** Any student who finds plagiarized material in another student's work should promptly report the matter to the person designated by the respective publication's bylaws, or his or her designee. That person should then bring the matter to the attention of the publication's faculty advisor. The two should determine, after conducting whatever investigation they deem appropriate, whether there is reason to believe that the plagiarism was committed intentionally. If the faculty member and student publication representative determine that there is sufficient reason for such a belief, the matter should be reported to the Associate Dean for Student Affairs for treatment as a possible violation of the Honor Code. Otherwise, they are encouraged to discuss the plagiarism with the student and explain why it is plagiarism, making use of applicable example(s) from Part I whenever possible, and may, if they deem it appropriate, give the student formal written notice as set forth in Part IV below.
- C. **Moot Court Competitions.** Any student who finds plagiarized material in another student's work should promptly report the matter to the faculty advisor of the respective competition. The faculty advisor should then determine, after conducting whatever investigation s/he deems appropriate, whether there is reason to believe that the plagiarism was committed intentionally. If the faculty advisor determines that there is sufficient reason for such a belief, the matter should be reported to the Associate Dean for Student Affairs for treatment as a possible violation of the Honor Code. Otherwise, s/he is encouraged to discuss the plagiarism with the student and explain why it is plagiarism, making use of applicable example(s) from Part I whenever possible, and may, if s/he deems it appropriate, give the student formal written notice as set forth in Part IV below.

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- D. Other Settings.** Any student who finds plagiarized material in work submitted by another student, other than in the context of a student publication (see Part II.B above) or a moot court competition (see Part II.C above), should promptly report the matter to the Associate Dean for Student Affairs. The Associate Dean should determine, after conducting whatever investigation s/he deems appropriate, whether there is reason to believe that the plagiarism was committed intentionally. If the Associate Dean determines that there is sufficient reason for such a belief, the matter should be referred to an Investigative Team. (See Honor Code, Art.III.A.3.) Otherwise, s/he is encouraged to discuss the plagiarism with the student and explain why it is plagiarism, making use of applicable example(s) from Part I of these Guidelines whenever possible, and may, if s/he deems it appropriate, give the student formal written notice as set forth in Part IV below.

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IV. FORMAL WRITTEN NOTICE OF FACULTY PLAGIARISM GUIDELINES

As used in these Guidelines, to issue “formal written notice” concerning an instance of plagiarism means filling out a “Special Notice of Plagiarism” form (see attached), appending the necessary attachments in accordance with the instructions given on the form, providing the completed form plus attachments to the student, and providing a copy to the Associate Dean for Student Affairs. A copy of the “Special Notice of Plagiarism” form is attached.

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SPECIAL NOTICE OF PLAGIARISM

To: _____ (Name of Student)

From: _____ (Name of Faculty Member)

Date: _____

Notice is hereby given that, in the opinion of the above-named faculty member, work submitted by the above-named student contains one or more instance of plagiarism, as defined and elaborated in the Faculty Plagiarism Guidelines, available at <http://intranet.law.wustl.edu/wp-content/uploads/2019/01/Plagiarism-Guidelines.pdf>.

Particulars are as follows:

Work Containing the Plagiarism (e.g., draft of seminar paper for _____ (title of seminar), student note submitted to _____ (name of publication), etc.)

Type of Plagiarism (per the Faculty Plagiarism Guidelines)

Copies of (1) at least one instance of the plagiarism and (2) the relevant provision(s) from the Faculty Plagiarism Guidelines are attached.

Faculty Member's Signature

Date

No adjudication or other formal determination by the Honor Council has been made that the student engaged in the conduct described above. This notice is intended solely to serve as "formal written notice" within the meaning of the Honor Code (see Art. I, § E). Submitting work that contains plagiarism after having received formal written notice concerning a substantially similar act of plagiarism is a violation of the Honor Code. By signing below, the student acknowledges receipt of this notice and the attachments referred to above on the date indicated.

Student's Signature

Date

NOTE: A copy of this notice shall be given to, and retained by, the Associate Dean for Student Affairs.