# JETLaw’s Guide to Note Development

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## Introduction

All 2L members of the VANDERBILT JOURNAL OF ENTERTAINMENT & TECHNOLOGY LAW are expected to write a note of publishable quality. This Guide will help you get started and provide a reference for you throughout the process. Your Notes Editor is also available to help you along the way and should be your first point of contact when you have questions. The Senior Notes Editor and Executive Editor are also available to support you.

Writing a Note should be a valuable part of your legal education. You should come away from the process an expert in a narrow area of the law and with a highly-polished piece of writing that you can use as a writing sample in the future.
To remain in good standing with the Journal, and to receive one academic credit as a 3L, you must write a Note of “publishable quality.” This means JETLaw must be able to publish your Note—that is, it must conform to all the guidelines discussed below (e.g. within JETLaw’s subject matter, not preempted, well-written). However, your Note need not actually be published. Only around nine Notes from the Class of 2019 will actually be selected for publication.

What is a Note?

A Note is a student-written piece intended for publication in a law journal. Its professor-written (or practicing attorney-written) counterpart is called an Article. Some law journals also publish student-written Comments, which tend to focus more specifically on one legal development (usually a Supreme Court case). A Note is generally 28–32 pages in length, discusses a legal problem, and proposes a solution. A Note should contribute meaningfully to an academic conversation with thoughtful discussion of the problem and a creative solution. Your target audience consists mostly of law professors and judges, although practicing attorneys, other law students, and possibly policy-makers or non-lawyers with an interest in the area may also read your Note.

Choosing a Topic

You have lots of freedom when selecting a topic, as long as (1) you remain within the boundaries of JETLaw’s subject matter and (2) your Note is not preempted. Your topic should be timely, unresolved, and original. Great topics come from great legal questions.

Consider going after “low-hanging fruit”—if nobody has published about a specific topic, your solution will be novel no matter what it is. This is significantly easier—and more likely to lead to publication—than straining to find an original solution to an unoriginal topic. Your guiding principle in topic selection should be the ability to propose a novel solution. The classic note topic is a circuit split. While there is clear need for a legal solution in such an instance, your Note is very likely to be unoriginal, so proceed with caution if you choose to write about a circuit split.

Do not forget you will be spending at many months on your Note. Write about a topic that interests you. You will produce your best work product if you find a topic that excites you and is important to you.

Subject Matter

JETLaw only publishes legal scholarship pertaining to the fields of entertainment, technology, and intellectual property law. However, these fields are quite broad. They encompass patent, copyright, trademark, sports, music, and film/television law to name a few. Anything having to do with computer hardware, software, or new gadgets is also fair game for publication in JETLaw.
This does not mean that topics like Constitutional law, international law, or criminal law are off-limits. If you are passionate about a particular field, you can probably find a technological solution or some other way to tie a topic to JETLaw’s subject matter.

Scope

You have 30 pages to make a meaningful contribution to scholarship. That is not a lot of space. Try to keep your topic narrow enough to let you engage in thoughtful analysis and propose a creative solution.

Preemption Checks

JETLaw will not publish notes that are “preempted.” Preemption occurs when somebody suggests your solution before you do. This can be in the form of a scholarly publication, but a court opinion, agency guidance, a proposed bill, and other sources can also preempt your Note. A preempted solution is unoriginal and does not meaningfully contribute to scholarly dialogue. You can publish on topics previously written about so long as your solution is original.

You should check for preemption frequently, but you need to do so at least three times: once before you propose your topic, again about midway through the writing process, and again before you submit your Note for publication. It is better to catch preemption early because it gives you more time to adjust your solution in response.

A preemption check is essentially a series of searches in Westlaw (or LexisAdvance or Bloomberg), Google, and SSRN to see if anyone else has published on your topic or if there is new law in the area. It is important to search Google because Westlaw does not update law journal publications in real time and because solutions may be proposed in lay publications. SSRN may have forthcoming scholarly pieces available. If someone has published on your topic or if there is new law available, check their solution to make sure yours is still original. This is also an opportunity to find and cite valuable new sources.

If your Note is preempted, even after your Note is mostly written, you can modify your solution to keep your Note original.

Research

Researching for your Note will be similar to how you research any legal problem. Start with a treatise or other secondary source that provides an overview of the topic. Then, start looking at specific primary materials, like statutes and cases. Go directly to the source rather than relying on commentary from other scholars.

Finally, you should read academic publications on your subject. The goal of your note is to make a substantive contribution to the legal and scholarly debate on
a topic. Therefore, you need to understand the current state of that debate, including previously-proposed solutions and their strengths and weaknesses. Scholarship outside the law can also be helpful, and using economic, psychological, statistical, and other studies can help lead judges to cite your work.

When you publish your Note, you are holding yourself out to be an expert in an area. Therefore, you should learn everything there is to know about your topic. Consider keeping a list of sources with notes. Many sources might seem irrelevant at first but become crucial later on. This method allows you to go back and quickly find a point you want to cite.

You should not aim to complete all of your research before beginning to write. There is a certain back in forth that should naturally occur between your research and your writing. As you write the background section, you should read the court cases and regulations on a subject and summarize them for your reader. As you write the analysis, you should read other law review articles and have a solid understanding for the different possible solutions to your problem. As you write the solution, you can draw on other areas of laws and other disciplines. You should also return to your research as your writing raises new questions that need to be answered.

**Structure**

The basic structure of every Note includes five sections: (1) introduction, (2) background, (3) analysis, (4) solution, and (5) conclusion. This is a time-tested formula that should not be disregarded lightly (although you can and should be creative in your headings). However, there is some flexibility for adjusting the basic structure to fit the contours of your topic. If your note takes a law and economics perspective, then you might have two separate background sections dealing with the current state of legal and economic issues. In general, though, only deviate from the traditional formula if you have good reason to do so, and discuss it with your Notes Editor first.

Each section plays its own role in presenting and resolving the legal dispute. The background brings the reader up to speed on the relevant area of law and presents the basic problem. The analysis draws out the problem and provides novel conclusions about its nature and the pitfalls of other solutions. The solution section then draws from the conclusions reached in the analysis to argue for a new solution.

**Introduction**

Your introduction should be about two pages (these page estimates are rough and should yield to the contours of your own Note). Try to start with a compelling opening that will hook your reader, but do not diminish your Note by trying to be too cute or clever. Anecdotes can work well. The first paragraph should make your reader want to continue reading. Concisely introduce the broad topic, then explain
the problem you will solve. This is where you sell your topic. Convince the reader that this issue is important: important to society, important to the legal literature, and important to individuals living the world today.

The last paragraph of the introduction is a formulaic roadmap. Introduce the endgame of your Note, and then give about one sentence to each part saying what it does. State your proposed solution straightforwardly. Importantly, do not talk about what your Note “will” do. Talk about what your Note “does.” For example, say “Part III argues . . .,” not “Part III of this Note will argue . . .” In subsequent Parts, do not include an explicit roadmap under each heading. Your umbrella paragraphs should foreshadow what you are going to discuss and its importance; there is no need for an explicit roadmap of the Part.

Ideally, the reader should get the gist of your Note from the introduction—they should have a basic understanding of the topic and your proposed solution from reading the introduction alone.

Background

This part should be about ten pages. The facts in this part should explain the background of your issue, not the broadest concerns in your field. Your goal is to set up the legal climate in which your analysis and solution operates. This is not a literature review. Set up the relevant facts and dynamics such that your analysis and solution make sense.

Discuss important cases, statutes, regulations, etc. Do not worry about making original points—focus on what the state of the law is more than on what it should be. Save your discussion and criticism of other academic solutions for your analysis section.

Remember, your Note is not valuable because of the background section. Your Note is valuable for the analysis and solution. Allocate fewer words here and avoid superfluous background info. Your goal is to give the reader what the reader needs to know to understand your analysis and solution.

That said, this section is still important—your reader cannot understand and appreciate your solution without understanding the state of the law and your identified problem. Use direct quotes when necessary, but try to put things in your own words and, of course, the section should demonstrate good legal writing.

Analysis

The page allocation between the analysis and solution sections will largely depend on your topic, but you should have around 16–17 pages between those two sections. This is where you illuminate the legal issue and assess the dynamics that have generated this new or persistent problem. Be thoughtful, be creative, and be
critical. This is another place to make your topic seem important and pressing such that the reader is ready to embrace a new solution.

The analysis section should examine other proposed solutions, such as proposed, or even enacted, legislation; tests applied by different courts; attempts to solve a problem with new technology; or solutions proposed by other scholars. Make novel arguments about other solutions—this strengthens your argument and leads others to cite your Note. You can also bring in the ideas of another discipline to show how it would solve the legal issue.

Points in an analysis section often take the form of policy arguments, but do not make solely policy arguments at the expense of legal arguments. The purpose of this section is to put on your nitpicky creative lawyer hat and tell your target audience that the current legal landscape falls short, and you should be original and creative in this endeavor.

Solution

The solution section is your big contribution to legal scholarship. Prior to writing this part, perform another preemption check to make sure your solution is still novel. If it is not, change your angle (you must submit a publishable, i.e., non-preempted, Note for credit). Explain your solution clearly and justify it. Think about policy and practical considerations and convince the reader that your solution is the best theoretically and practically.

Creativity is key. For example, if addressing a circuit split, advocating that Supreme Court should adopt the Fifth Circuit’s test is a solution, but it is hardly novel. Combining part of the Fifth Circuit’s test and part of the Sixth Circuit’s test is more creative. More creative still is coming up with an entirely new test or proposing a statutory solution that would moot the need for a Supreme Court decision.

Be bold and think outside the box. Consider looking to other areas of the law and appropriating a rule that has worked elsewhere but has never been proposed in the context of your problem. Do not be afraid to say that a court was wrong, or that a statute should be changed.

No solution will be perfect. If there were a simple solution, your problem would not be worth writing about. Anticipate criticisms and show why, despite them, your solution is still the best path. Your solution will not make everyone happy—stick to your guns and show why it works even if some people will disagree.

Conclusion

This should be one or two paragraphs, less than a page total. Reiterate the issue you set out to address, emphasizing its importance and the need for a solution.
Briefly state why the current regime is insufficient. State your solution and provide the key justifications succinctly. If appropriate, suggest areas for further study/analysis.

**Tone**

Remember that a Note is academic writing. Thus, the tone should be formal, but not stuffy. Use the third person. Do not use contractions. Define terms that readers may be unfamiliar with. Follow basic principles of good legal writing, and look to prior Notes and Articles for examples. You can assume the reader’s basic familiarity with the law in general, but do not assume particularized knowledge of specific topics. Defining terms and explaining concepts will help your reader and will also help you develop a more thorough understanding of the topic.

**Footnotes**

A Note is academic legal writing and thus should conform to the White Pages of *The Bluebook*. Keep up with your footnotes as you write, both substance and formatting, to maximize efficiency.

**You must cite any unoriginal propositions.** Academic honesty and integrity are essential to JETLaw. When in doubt, cite. Properly-Bluebooked citations ensure that you do not violate the Honor Code, that JETLaw’s reputation for excellent legal scholarship continues, and that your Note is as persuasive as possible.

Footnotes are also an opportunity to explain background, digress from your main point, or address potential counterarguments. Just make sure your footnotes do not distract from the main thrust of your Note.

**Citing JETLaw**

It is acceptable, and even encouraged, to cite to prior JETLaw Articles and Notes. We publish excellent legal scholarship, so use it when you can. Citation to JETLaw can also help JETLaw climb in journal rankings. You may also cite JETLaw’s blog, including any blog posts you yourself publish.

**Formatting**

Your Note should conform to the following specifications:

- 28–32 pages, double-spaced
- 12-point Times New Roman body text
- 10-point Times New Roman footnote text
Getting Published

Typically, JETLaw publishes around six 3L Notes a year (which the 3Ls wrote when they were 2Ls and polished for publication as 3Ls) and around three 2L Notes (selected for Fast Track publication, discussed below).

The Notes Publication Committee looks for a variety of things in determining whether to publish a Note. The Note must be within JETLaw’s subject matter and must be well-written. However, the Committee is also looking for notes that are original, cite-able, and contribute meaningfully to legal scholarship. A mere rehash of a circuit split that dozens of others have written about, or a Note that slightly alters an existing solution to a problem, is unlikely to be published.

JETLaw will probably not publish two Notes on the same topic in quick succession. So, if two 2Ls write about copyright, most likely only one will be selected unless both are fantastic and novel. Notes about patent law tend to be the most cite-able, while Notes about sports law tend to be less cite-able. The Committee will consider these factors when deciding which Notes to publish, but there is no one dispositive consideration if a Note is well-written and within JETLaw’s subject matter. Pick a topic that excites you, do thorough research, write well, proof your work repeatedly, cite appropriately, meet your deadlines, and generally be easy to work with to maximize your chances of publication.

Fast Track

Most 2Ls will submit their notes for publication consideration some time near the middle of their 2L spring semester. If your Note is selected for publication on the regular track, it will be published some time during your 3L year and the time between submission and publication will be used for revisions and edits.

One to three 2Ls will be selected for JETLaw’s Fast Track program. All 2Ls are invited to apply. Selections take place in the fall of your 2L year. Those selected write their Notes on an expedited schedule and are published in the final issue of their 2L year.
Fast Track is the same amount of work as writing a published Note on the regular track, but the work occurs in a shorter period of time. The benefit to you is you know you will be published, while members on the regular track must submit their notes for consideration later in the year.

Selection is competitive. The Fast Track Selection Committee considers a variety of factors, including the Note’s publishability, timing concerns with the topic, and a 2L’s ability to meet the expedited deadlines. Having a specific, original, publishable topic increases your likelihood of being selected. So does urgency—for example, if an issue may be preempted by your 3L fall, the Committee might decide to publish it before then. The Committee also considers your schedule and ability to meet deadlines to ensure we publish Notes of the highest possible quality.
Appendix A: Topic Selection Resources

- Professors
  - Professors at Vanderbilt are especially interested in students’ journal experience and are probably willing to meet with you to help you select or refine a topic.
  - Please do not abuse a professor’s generosity with their time. You should meet first with your Notes Editor and come to the professor ready to discuss specific ideas. You should not sit down in a professor’s office and ask simply “What ideas do you have?” It is much better to go to a specific professor with a specific idea. For example, if you have one idea that has to do with property law and one that has to do with corporate law, you should ask a Property professor about the property topic and a Corporations professor about the corporate topic.
  - If a professor seems interested in your topic early in the process, that professor may be willing to stay involved. This can be a great way to build a valuable relationship with a professor and get good feedback on your Note later in the writing process.

- Other JETLaw members

- JETLaw Blog
  - Rather than looking to old JETLaw Notes and Articles, which would inspire unoriginal topics, explore JETLaw’s blog. Blogposts cover topics briefly, leaving room for Note authors to build and create more in-depth novel legal scholarship.

- Other Websites, Legal Blogs, and other Journals (below are only a few examples, with many more available online)
  - Yale Journal of Law & Technology, or YJOLT Blog: http://vjolt.org/blog
• Berkley Journal of Entertainment & Sports Law, or BJESL Blog: http://bjesl.net/blog/

• Columbia Science & Technology Law Review: http://stlr.org/

• Richmond Journal of Law & Technology: http://jolt.richmond.edu/

• Duke Law & Technology Review: https://dltr.law.duke.edu/


• The Columbia Journal of Law & the Arts: https://lawandarts.org/

• SCOTUS Blog: http://www.scotusblog.com/

• How Appealing, Above the Law: http://howappealing.abovethelaw.com/

• The Volokh Conspiracy: https://www.washingtonpost.com/news/volokh-conspiracy/?utm_term=.1fd08438d950

• Law360: http://law360.com/

• News Articles (even articles that are not about the law)

• Cert petitions

• Friends, both in and out of law school
  
  o Your friends and family are a great resource for ideas. If they are not in law school, they may not see a legal connection to a problem or a piece of technology, but you might be able to find one.
Appendix B: Published & Forthcoming Notes by the JETLaw Class of 2018

This list is to let you know what Notes JETLaw has published recently, or will publish in the coming year.


• Tom Johnson, Enter Sandman: The Viability of Environmental Personhood to American Soil Conservation Efforts

• Reity O’Brien, Free Speech or Slavery Profiteering?: Solutions for Policing Online Sex Trafficking Advertisement

• J.T. Parisi, Following Footsteps: How Federal District Court Jurisprudence Protects Health Data in the Workplace

• Meg Fowler, Linking the Public Benefit to the Corporation: Blockchain as a Solution for Standard-Setting in an Age of “Do-Good” Business

• Jenna Rowan, Equal Protection for Equal Play: A Constitutional Solution to Gender Discrimination in International Sports

• Vid Sankar, Robots Violate the Constitution? Revisiting the Qualified Immunity Standard for Excessive Force Litigation under § 1983 For Fourth Amendment Violations Perpetrated by Robots
Appendix C: Other Useful Sources

- http://www.law.nyu.edu/students/studentwriting/topicselection
- http://guides.lib.uw.edu/law/writinglawreview
- http://guides.lib.uchicago.edu/substantial
- Eugene Volokh, Writing a Student Article, 48 J. LEGAL ED. 246 (1998)