I. Commentary/Expanded Definition

Plagiarism is the intentional, knowing, or reckless use of another person’s words, phrases, citations, ideas, arguments or organization (1) in a manner that improperly creates the impression that they originated with the writer or speaker or (2) otherwise without proper attribution.¹

A. What Does it Mean to “Use” Another’s Words, Phrases, Ideas, Citations, or Arguments

Students often erroneously believe that attribution or citation is necessary only when the exact words of another are used. That is not the case. While attribution, including quotation marks, is surely required when the exact language or a close paraphrase of another is used, attribution is also required whenever an idea or argument you use originated with another. Thus, neither paraphrasing another’s idea or argument by changing a few words nor even thoroughly rewording another’s words, idea, or argument eliminates the need for a full and proper source

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Students sometimes claim that they failed to properly attribute their use of another’s words, phrases, arguments or ideas because they forgot where they acquired the information, misplaced or misidentified the source notes, or took notes in such a way as to confuse the source’s ideas with their own. Poor notetaking, however, is reckless conduct and is not a defense of plagiarism. As a researcher and writer or speaker, you are responsible for the appropriate and adequate documentation of the source of all borrowed materials and ideas. Good research and notetaking skills are, therefore, essential to avoiding plagiarism and are the responsibility of each student.

B. Plagiarism and Scholarship

Our experience as educators tells us that students often are afraid that they have no original ideas to contribute or they perceive that their original ideas are somehow of no moment. As a result, a student writing a paper will collect, read, and take notes on all existing articles, books, and other sources on a topic and then simply recompile, rearrange or restate the existing scholarship. Not only does this procedure invite plagiarism because one inevitably will neglect to attribute every single idea in his paper; its result is merely a rephrasing or reorganization of others’ ideas and work. As such, it contributes little or nothing to the overall scholarship in the
field and fails to present any original thought or critique.

Just as you would not mindlessly repeat something just stated in an oral conversation and represent it as your original thought or work, you should not restate or merely rearrange other written work and present it as the product of your independent research, work, and thought. To do so is to steal ideas.

II. How to Avoid Plagiarism

Students can avoid plagiarism by learning and using good research and notetaking skills, devoting adequate time and effort to each scholarly endeavor, and employing proper attribution and citation rules.

A. Research and Notetaking Skills

While you are reviewing a source, you should formulate in your mind the ultimate use for that source in your work. Is the source background information? Will you directly use or relate the author’s ideas, organization or outline to your work? Will you use the author’s exact words or phrases?

The use you will make of a source dictates the type and detail of the notes you must take on that source. Sometimes an outline of the source contents or a precis is appropriate. Other times a paraphrase of the author’s words with a notation that you have used that author’s general wording or ideas, or a transcription of a direct quotation to the author’s words is
necessary. Whatever notetaking is appropriate in a given situation, it is essential that your system of notetaking adequately distinguishes your own ideas, words, and arguments from another person’s.

B. Time and Effort

It is not easy to write a scholarly paper, draft an eloquent brief or prepare and deliver a presentation on a legal topic for a seminar. The task is not lightened by waiting until the deadline is upon you to begin. Procrastination not only increases the temptation and likelihood of committing plagiarism, it removes the opportunity for consideration, deliberation and innovation in the topic area. In other words, procrastination usually removes the opportunity for original thought and ideas in addition to the obvious consequence of depleting time for polishing and cite-checking your work.

By devoting the appropriate time and energy to your work, you will create the environment for the germination of your own thoughts and ideas. Innovation can result from doing your own primary research -- interview the lawyer, jurors and judge, the bank examiner, the Missouri legislators who sponsored the bill; look through the pleadings and court documents; conduct a survey. Good scholarship can also result from currying collateral support for your ideas from other disciplines.

Note that one cannot do any of the aforementioned research
in the week or final few days before the project is due. If left to write a semester-long project in a week, all one can do is digest and rehash the existing articles in the field, or even worse, commit plagiarism.

C. Attribution and Citation

The words, phrases, ideas, citations and arguments of another may be used only when accompanied by proper attribution to the source. Note that it is not the use of another’s words, phrases, ideas, citations or arguments that is prohibited; it is the unattributed use that is prohibited.

In legal writing, proper attribution is usually accomplished by following “the bluebook” citation format. While the bluebook provides a consistent and comprehensive citation style and format for use by lawyers and other users of legal sources, the correct style and format of attribution is not usually as critical as the fact of correct attribution.

D. Words, Phrases and Ideas

While most students recognize that the exact words of another must be placed in quotation marks and properly attributed to the author, many do not recognize that this is not the extent of the obligation to attribute to other authors. Phrases that originate with another must be quoted and attributed also. For example, if a writer or speaker first uses the words “Teflon
President” to refer to a certain politician, you may not use that term or phrase without attributing it to its originator or use it in such a way as to create the impression that you coined the moniker.

Taking a sentence or phrase from another and changing a few words or paraphrasing does not obviate the need for attribution. Even the use of a thoroughly reworded phrase, sentence or paragraph of another requires attribution because the author’s idea is still being used. Even if you expand upon the idea of another or apply it to a new situation, the originator of the idea must be given credit. Likewise, if the argument you are making originates with another, credit must be given to the source.

E. Citations

Sometimes, what students perceive as merely “improper citation form” is actually plagiarism. For example, often a source, such as a law review article or ALR annotation (the “citing” source), cites to or uses language from another source (the “cited” source). While it is a useful and an appropriate research technique to find sources through other sources, it is plagiarism to use citations gleaned from a citing source and to attribute only to the cited source. By attributing to only the cited source, 1) you are representing that you have read the cited source when you have not, and 2) you are using the citing source author’s idea or compilation (as to how the internal
source related to the issue or topic) without giving proper credit or attribution. Not only is this plagiarism, it is risky (the author of the citing source may have misquoted or misread the cited source), and it is poor scholarship (you may have not contributed any original thought or ideas to the topic area).

Similarly, it is plagiarism and not merely sloppy citation form to use an entire passage or the ideas represented therein from a source and to attribute or cite to the source only occasionally, such as after the first sentence or in the middle, or at the end of the passage. Each phrase, statement or idea must be attributed to the source. It is plagiarism to create the impression that the uncited sentences or portion of the passage originated with you when they did not.

III. Examples of Plagiarism

What follows is a two paragraph section taken directly from a law review article, Note, Legal Fictions Mask Human Suffering: The Detention of the Mariel Cubans Constitutional, Statutory, International Law, and Human Considerations, 62 So. Cal. L. Rev. 1733, 1754-55 (1989) (footnotes renumbered) (emphasis in original). Then, several examples are used to illustrate how a fictional writer may use this law review article to commit plagiarism in the writing of a brief or memorandum. These examples are provided to illustrate commonly occurring instances of plagiarism so that you will avoid these usages. The examples given do not
represent every possible unattributed use of another’s work, but are intended to clear up confusion in some areas.

Original:

Even if the Mariel Cubans are not being “punished,” their civil detention still denies them their liberty interest in being free from prolonged detention. The Fourth and Eleventh Circuit Courts of Appeal have held that excludable aliens have no liberty interest in freedom from prolonged detention, and therefore, are not entitled to due process of law. These courts reason that detention, even for as long as seven years, is merely a part of the exclusion process. These courts inaccurately rely on the well-settled principle that “an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.”

The problem with these circuit court decisions is that they fail to distinguish between an alien’s interest in his or her “initial admission” or “application” for admission, which in most cases has already been processed and denied, and his or her interest in being free from arbitrary and prolonged detention; these two interests are distinct. Consider that the courts have long recognized that an alien’s interest in admission is distinct from his or her interest to be free from arbitrary and prolonged criminal detention, the latter of which is protected by the due process clause. A criminal sentence can only be handed down in accordance with the due process clause, but why aliens should only receive the protections of the due process clause after violating our criminal laws, and not prior to civil detention, has never been satisfactorily explained.

Footnotes from original (renumbered here)

1. Landon v. Plasencia, 459 U.S. 21, 32 (1982) (emphasis added). Further, at least one commentator has suggested that this principle is not well settled at all and is, in fact, incorrect. See Note, The Measure of a Nation, 73 Va. L. Rev. 1501 (1987) (authored by Christopher R. Yukins) (suggesting that the history of Supreme Court decisionmaking indicates that aliens do have an interest in admission to the United States, but that
the process due is defined by those procedures which Congress has provided to an alien).


3. See Jean v. Nelson, 472 U.S. 846 (1985) (Marshall, J., dissenting). Justice Marshall presents an impassioned critique of a logic behind the Fourth and Eleventh Circuit decisions. The paradoxical nature of this distinction becomes more obvious, and less tolerable, when one considers that the conditions of the “civil” confinement are often worse than the criminal confinement, not to mention the fact that the civil confinement is open-ended. See supra notes 25-39 and accompany.

**PLAGIARISM EXAMPLE 1**

Several federal appellate courts have held that excludable aliens have no liberty interest in freedom from prolonged detention and, therefore, have no due process rights.

**Comments:** This is plagiarism because the writer of Example 1 has used the exact words of the source’s author (first paragraph, second sentence of original) without quotation marks and without attribution. Furthermore, even the paraphrase at the beginning of the sentence needs attribution.

**PLAGIARISM EXAMPLE 2**

In holding that the due process clause does not apply to the Mariel Cubans, the courts have failed to distinguish between two interests, the Cubans interest in freedom from arbitrary and prolonged detention and their interest in the initial application for admission into the United States.
Comments: This is plagiarism because the writer of the example has used the idea of another without attribution. Even the act of thorough paraphrasing does not “save” the writer. Even the thorough rewording of another’s idea must be attributed to the source of that idea. The passage above uses another’s idea—that the problem with the circuit court decisions is that they fail to distinguish between two distinct interests, an alien’s interest in initial admission and his interest in freedom from arbitrary and prolonged detention -- without attribution. Thus the author of Example 2 is creating the impression that this notion is his original idea rather than another’s idea.

PLAGIARISM EXAMPLE 3

Those federal appellate courts that have denied a due process liberty interest in freedom from prolonged detention reason that prolonged detention, even for several years, is just a part of the exclusion process. In so holding the federal appellate courts erroneously rely on the Supreme Court’s holding that “an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” Landon v. Plasencia, 459 U.S. 21, 32 (1982).

Comment: This example is a typical technique that many students use without recognizing that it is plagiarism -- the use of
another author’s words and ideas.

Here, the author of Example 3 has actually located the quote from the Landon case in context in the law review article. By citing to the case itself and not also to the law review article, the writer is representing that he has read the case and created the context or placed the case within the context of this idea. In fact, he may have done neither. Even if the writer goes to read the Landon case (as he must), he must attribute the compilation or combination of this case with this idea to the author of the law review article. If he does not, he has used another’s idea (the compilation) without attribution.

PLAGIARISM EXAMPLE 4

As one recent commentator has noted, these circuit court decisions are problematic because they fail to make the distinction between an alien’s interest in his initial admission and his interest in freedom from arbitrary detention. See Note, Legal Fictions Mask Human Suffering: The Detention of the Mariel Cubans Constitutional, Statutory, International Law, and Human Considerations, 62 So. Cal. L. Rev. 1733, 1754-55 (1989). The United States Supreme Court has, however, long recognized that these two interests are distinct because the freedom from arbitrary and prolonged detention in the criminal context is protected by the Fifth Amendment due process clause. See, e.g., Wong Wing v. United States, 163 U.S. 228 (1896).
Comments: The writer of this example has committed plagiarism in at least two ways. While appropriately citing to the law review article after the first sentence, the writer then neglects to attribute or cite to the article again after the second sentence. The failure to attribute the second sentence to the author of the law review article creates the erroneous impression that the example writer developed this idea independently when in fact he is using the idea represented in the law review article.

The writer also has committed plagiarism as exemplified above in Example 3 by citing only to Wong Wing rather than to the law review article.
1. This is the UMKC Law School faculty-approved definition of plagiarism.


3. Friedman, Plagiarism Among Professors or Students Should Not Be Excused or Treated Gingerly, 34 Chronicle of Higher Education A48 (Feb. 10, 1985).


6. Id.


8. Fink Vargas, supra note 5, at 43-44.

9. Id.


11. The format for these examples is inspired by Ralph D. Mawdsley, Legal Aspects of Plagiarism (National Organization on Legal Problems of Education 1985) (using examples from H. Bond, T. Seymour and J. Stewart, Sources: Their Use and Acknowledgment (Trustees of Dartmouth College 1982)).