

TO: THE STUDENT BODY
FROM: CHARLES A. SULLIVAN, ASSOCIATE DEAN
RE: PLAGIARISM
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Given the ubiquity of today's technology, there have been increasing questions concerning plagiarism. These questions have arisen both because the temptations to plagiarize have expanded with the heightened access to all kinds of materials and because the pervasiveness of on-line research has made unintentional copying more likely. In this setting, it seems appropriate for the law school to provide some guidance on this topic for all students.

To begin with, it is important to distinguish plagiarism from inappropriate copying. Copying, per se, is not plagiarism. To plagiarize, the copier must not only copy another's work but also attempt to pass off the copied work as his or her own. Laurie Stearns, Comment, *Copy Wrong: Plagiarism, Process, Property, and the Law*, 80 CALIF. L. REV. 513, 516-17 (1992), writes: "Plagiarism means intentionally taking the literary property of another without attribution and passing it off as one's own, having failed to add anything of value to the copied material and having reaped from its use an unearned benefit."

(Note that I used quotation marks to ensure the reader knows it is Stearns language and a full cite, including pinpoint, to direct her to the exact place where that language can be found. I omitted two of Stearns footnotes, but the reader can easily determine how reliable her summary is by going to the cited page and reading her authorities.)

That means that, if there is proper attribution of the original, there can be no plagiarism. There is also no plagiarism when a work product does not purport to be original. So, for example, when legal forms are adapted, it is understood that the final product may not be entirely original, and there is no need to attribute. Law firms may also borrow without attribution from earlier memoranda or briefs because the resultant product does not purport to be necessarily original work by the attorney who submits it; indeed, it is frequently submitted on behalf of a "firm," which embraces numerous attorneys.

In academic pursuits, however, most work is expected to be original, and so unattributed copying is prohibited. Even when there is attribution and no plagiarism, a professor may view a paper as containing too little original work to merit a passing grade. Unauthorized copying may also raise copyright questions. These problems are real, but they are not plagiarism.

Plagiarism in higher education generally and at Seton Hall Law in particular is taken very seriously. "Plagiarism is an academic capital offense, punishable by academic death for student or faculty," Stearns writes, and goes on:

People despise plagiarism not because it results in inferior works -- by drawing from others plagiarists may produce better works than they could by themselves -- but because

it is a form of cheating that allows the plagiarist an unearned benefit. This benefit could be either tangible, as when the work is of commercial value or fulfills a requirement for an academic degree or tenure, or intangible, as when it adds to the plagiarist's personal or professional reputation. . . .

Id. at 518-19. The key to avoiding plagiarism, therefore, is proper attribution, with the emphasis on "proper."

(Notice that the indented paragraph above was indented precisely to show that it was a quotation and it was cited to alert the reader to the pages on which the passage appeared. Indents substitute for quotation marks.)

Obvious examples of plagiarism are wholesale copying of paragraphs, and even pages, of a source without any attribution. But it would equally be plagiarism to copy such material, even though citing the original source, without indicating that the writer is *quoting* that source. Ms. Stearns quotes the Modern Language Association:

Plagiarism may take the form of repeating another's sentences as your own, adopting a particularly apt phrase as your own, paraphrasing someone else's argument as your own or even presenting someone else's line of thinking in the development of a thesis [as] though it were your own. In short, to plagiarize is to give the impression that you have written or thought something that you have in fact borrowed from another.

Id. at 525 (quoting K.R. ST. ONGE, *THE MELANCHOLY ANATOMY OF PLAGIARISM* 53 (1988) (quoting the MLA HANDBOOK)).

(Notice that I quoted Stearns who quoted St. Onge who quoted the MLA Handbook).

Thus, when one quotes, the use of quotation marks or indentation is necessary; when one paraphrases, a statement to that effect is essential; if one is copying another work's structure, a statement to that effect is needed to avoid plagiarism.

The rigorousness of the definition raises the question of "unintentional plagiarism." To be clear, if you truly originate an idea or phrase, the fact that someone else used it before does not make your work plagiarized. Literature, as well as science, are full of independent discoveries. True plagiarism requires copying, and there are ways in which one can unintentionally copy another's work. The most obvious is by sloppy note-taking, where the student is not careful to distinguish between what her sources say and her own thoughts on the ideas in question. It may also be possible for the one to simply forget the source of his ideas. Ms. Stearns warns, however, that

Observers and critics are sometimes reluctant to accept the plagiarist's claim of lack of intent, but their reluctance is more likely due to an inability to believe the excuse than to a conviction that accidental copying is equivalent to plagiarism.

Id. at p. 533. In other words, do you really want to risk that the Honor Council will decide you were badly-motivated on page 8 rather than just negligent in your note-taking when you repeated, without citation, passages that you did not originate? The best guard against that risk is to be careful not just in your citation in the final product but also in your note-taking. It's fine to cut-and-paste but make sure you use the "copy-with-cite" function so that the language and the source stay together. If you're taking from a source without that function, make sure you enter the source so you can cite it if you decide to use the language.

Two final words. One about drafts. A draft purports to be your work product, so it is equally subject to the no plagiarism rule. And, of course, if you fail to cite in a draft, the chances of your remembering to do so in the final product are not great. Last, when I talk about citing, I'm not talking about bluebooking, which is a form for citing. As long as all the information about your source is present, you are not guilty of plagiarism. That doesn't mean it's not important, and, of course, your instructor might ding you for not adhering to proper citation form!