**Legal Writing Fundamentals**

**Cognitive and Affective Reorientation in Learned Composition**

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**Course Objectives**

1. To persuade participants to join the plain English movement in legal writing
2. To expose legalese and verbosity in conventional legal writing to the ridicule they deserve
3. To teach techniques for trimming fat off legal writing and discarding legalese
4. To instil grammar, style, syntax, and usage improvements that enhance persuasive power in legal writing
5. To teach clarity in legal prose

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**Prologue: Lawyer’s language is pretentious**

The witness swore to tell the truth, the whole truth, and nothing but the truth, so help him, God. The clerk asked him whether he understood English. The witness said yes. The lawyer for his side did the direct examination. Then the opposite lawyer gathered her papers and came over to start cross:

Lawyer: Is the defendant’s land ***contiguous*** to your father’s farm?

Witness: (No response, looking blank, glancing pitiably at the judge)

Lawyer: Answer the question! Is the defendant’s land ***contiguous*** to your father’s farm?

Witness: Sorry, I don’t understand.

Lawyer: You don’t understand? But you told this honourable court that you understood English.

Judge (to counsel): Why not rephrase your question in plain English?

Lawyer (turning towards the bench): My lady, he said he understands English. I’m speaking English to him now and he’s moping like a cow!

(Turning belligerently back to the witness): Is your father’s farm ***contiguous*** to the defendant’s land?

(Back to the judge): My lady, I’ve rephrased the question. Let him answer it. He must answer the question.

Witness: I’m sorry, my lady. I do not understand the question.

When I was a kid growing up in Onitsha, occasionally I would go to the courthouse to observe proceedings. The prologue and epilogue were actual scenes I saw in court.

Some of the lawyers were quite impressive, the judges awe-inspiring. The lawyers used many big words. I had never heard most of the words. And I did not have a big dictionary- I only had *Michael West*. I looked forward to growing up to become a lawyer so I could use words like that. I wanted to speak the kind of English that would make people dive for their fat dictionaries.

Later, when I went to university, the community encouraged pompous language with big words.

|  |  |
| --- | --- |
| **Plain English** | **University translation** |
| *Birds of like feather flock together* | *Birds of identical plumage congregate in the same equilibrium* |
| *A rolling stone gathers no moss* | *A travelling geological formation acquires little vegetative growth* |
| *Charity begins at home* | *Eleemosynary contributions commence with one’s domicile* |
| *Turn off lights before close of work* | *Illumination is required to be extinguished before these premises are closed to business* |

Now I know better. The purpose of language is to communicate, not to impress, oppress, repress, or suppress. (See, I’m doing it again!)

The judges in the prologue above and epilogue below were right: lawyers should use plain English.

**Introduction: I Give You That Orange**

Legal language is a mess.

Lawyers and law students conspire to make their writing as difficult and impenetrable as possible. They deploy convoluted constructions like missiles aimed at their readers. They actually make efforts (sometimes consciously, other times unconsciously) to render their writing hard to understand. They believe their writing should be arcane and esoteric, comprehensible only to the initiated.

But if there is any field of human knowledge in which writing should be simple, that field is law. Law is not just for lawyers, but for all members of the community. The era of the law as a clannish, closed, almost-cultish club is over. This is the age of open communication and respect for lay clients. Like other businesses, law is a service, and clients paying for legal services should understand precisely what they are paying for.

The disease of bad writing afflicts all segments of the legal community, and all generations. The older lawyers often write worse than their younger colleagues. The younger ones naturally look up to their seniors for guidance on all professional matters, including writing. They read judgments of the highest courts, believing, often mistakenly, that those frowning, revered men and women in black must be gurus. Unfortunately, the men in black are at times blank. Nigerian law reports are riddled with poor writing.

The result of the younger looking up to the elder for writing guidance has been a cascading degeneracy in the language of law. Much good law gets lost in bad writing. Terribly written judgments, poorly drafted statutes, and grossly deficient briefs are inflicted on the profession, clients, and the general public by Nigeria’s highest academic, judicial, legislative, and professional authorities.

Until The Write House was set up, nobody was in a hurry to address this problem. Few Law Faculties in Nigeria teach legal writing. The Nigerian Law School does not teach legal writing. Law students’ written assignments are not graded for composition, grammar, spelling, style, syntax, or usage; only for doctrinal content. Few law teachers have the inclination, training, or skill to coach or mentor students in writing, and fewer do.

Legal writing should be a course of study in academic training from start to finish, in practical and vocational legal training, in judicial training, and in continuing legal education programs. Legal writing is an academic and professional discipline in its own right, with superior standing to the doctrinal subjects. It is not an adjunct to any other subject.

The only semi-serious writing required in the training of a Nigerian lawyer is the LLB essay. The student lawyer enters university to read law, does little writing for 4 years, receives little training in writing, and then suddenly, in the 5th year, he or she is commissioned to write a project. Most project supervisors are not diligent or cannot write themselves. After all, they underwent the same kind of training that neglected writing.

We should teach legal writing from the first year, with writing assignments, essays, exercises, tasks, and tests featuring regularly in the life of our law students. Employers of legal labour should be able to request and receive several writing samples from every applicant.

The Write House was set up to fill the writing gap in legal education by providing continuing professional development in legal writing. The Write House pioneered the Plain English movement in Nigeria. The Write House is Africa’s frontline team of legal-writing coaches, consultants, experts, and mentors.

Lawyers are forever writing. Language and writing dominate lawyers’ professional lives. Reading and writing are almost all we do. Columbia University Law Professor Douglas Abrams puts it this way, “Law is a literary profession. Briefs, motion papers and transactional documents dominate client representation; judges speak through written opinions; and lawyers draft legislation, administrative regulations and other government documents.”[[1]](#footnote-1) And in some parts of the world, including Abrams’: “Lawyers and judges write treatises, law journal articles, and continuing legal education materials.”[[2]](#footnote-2)

Writing is a lifelong discipline in the life of a lawyer. Just as we need continuing training in doctrinal courses (constitutional law, contracts, corporations, crime, property, tax, torts, trusts, etc.), so also do we need it in skills courses. And legal writing is the most critical of the skills-based subjects. The US is ahead in legal writing scholarship- they even have tenured professors in legal writing. In that country, law students are active and important members of the legal community. They do a lot of writing. Their law reviews (edited by the students themselves) are cited in the US all the way to the Supreme Court. As a law student, US President Barack Obama was President of the Harvard Law Review.

Writing, language and communication skills are the decisive skills set in the discipline of law.

No matter a law student’s career destination or a lawyer’s career path in law, he or she will be doing lots of writing. There is no escape from it. A lawyer could be one or some of the following: ADR practitioner, facilitator or neutral; advocate; arbitrator; barrister; corporate counsel; diplomat; judge; law enforcement professional; law teacher; law reporter; legal journalist; legislative drafter; legislator; or solicitor. Every one of these careers requires thousands of pages of written work. Addresses, affidavits, agreements, arbitral awards, articles, assignments, book reviews, books, briefs, claim forms, contracts, decisions, deeds, emails, essays, franchises, joint ventures, judgments, leases, letters, memoranda, minutes, orders, pleadings, powers of attorney, reports, rulings, settlements, statements of case, statutes, submissions, treaties, trusts, wills, and writs are a few of the types of writing that define lawyers.

Although some of the listed forms of writing belong in the special arena of writing known as legal *drafting*,the fundamental skill necessary to execute them soundly, the mother skill, is writing. Drafting is primarily writing. Drafting is just a special kind of writing. In drafting, you cannot use or continue to use forms or precedents mindlessly or slavishly. You need writing skills to tailor precedents to your precise task and context, and at times to complete or modernise forms. And in some cases, there may be no pertinent or helpful form or precedent available.

You and I need training or further training in writing. But many senior or accomplished lawyers think legal-writing training is for their juniors, or for other lawyers, or for other law firms. Most lawyers who think they write well do not. A learned writer memorably said, “Lawyers have two common failings. One is that they do not write well, and the other is that they think they do.”[[3]](#footnote-3)

Today’s legal world is writing-biased. The era of the orator has gone. Written argument is required at trial and appellate courts. Writing also dominates arbitration and alternative dispute resolution. There is no better predictor of likely success in law than writing.

Learn to write. Learn the art of learned composition.

Is this a matter of life and death? No, it’s more important than that.

Conventional legal writing is awful. Conventional legal writing is what you, your courts, judges, law professors, lawyers, SANs, and supervising partners have been doing. Conventional legal writing is sinful. Repent, for the Kingdom of Plain English is at hand.

The plain English movement in legal writing is lively in some of the most advanced jurisdictions, common-law and civil-law alike. The European Union (herself civil-law-dominant) is part of this movement. EU Directives are drafted in better and clearer legal prose than traditional legislation. Australia, Canada, the UK, and the US are all in on the plain English revolution.

In the US, the plain English movement is over 100 years old. Professor Judith Fischer reports, “A movement for plain English in the law has gathered momentum in the United States for more than a hundred years. A few lawyers advocated plain English in the nineteenth century.”[[4]](#footnote-4)

**I give you that orange- the transactional clause from Hell**

One of those lawyers was Timothy Walker, an Ohio judge. The article I just quoted from was published in the *Montana Law Review*. In it, learned author Judith Fischer continues: “. . . Timothy Walker . . . parodied a lawyer saying ‘I give you that orange’:

I give you all and singular my estate and interest, right, title and claim, and advantage of and in that orange, with all its rind, skin, juice, pulp, and pips, and all right and advantage therein, with full power to bite, cut, suck, and otherwise eat the same, or give the same away, as fully and effectually as I, said A.B., am now entitled to bite, cut, suck, or otherwise eat the same orange, or give the same away, with or without its rind, skin, juice, pulp, and pips, anything hereinbefore, or hereinafter, or in any other deed or deeds, instrument or instruments of what nature or kind soever, to the contrary in any wise notwithstanding.

Walker concocted this legalese to illustrate the virtues of its opposite, plain English.”[[5]](#footnote-5)

I could do “better” than Tim Walker.

I wasn’t always a plain English writer. Before I became a born-again legal writer, I could have “improved” on Walker’s legalese. After collecting a fat deposit towards my professional fees, I would have drafted the orange-gift deed as follows:

By this instrument under my hand and seal, I hereby bestow, confer, confirm, donate, give, grant, present, provide, and transfer unto you, whole and entire, all and singular, my claim, estate, interest, power, right, and title, in, over, and to, and advantage of and in, all that orange fruit, botanically known as *Citrus sinensis* of the genus *Citrus* of the family *Rutaceae*,more particularly described and delineated in the schedule to these presents, with all the rights, privileges, and immunities appertaining thereto, in accordance with and to the maximum extent of the law for the time being in force, with all its rind, skin, juice, pulp, fibre, membrane, and pips, together with all the liquid, solid, and gaseous components, elements, and ingredients thereof, and all other appurtenances appertaining thereto, and all right and advantage therein, with full, total, absolute, and complete power and right to bite, cut, eat, kiss, osculate, lick, masticate, chew, munch, suck, inhale, and otherwise consume the same, or give the same away, or sell or dispose of the same, or bequeath the same, with or without its rind, skin, juice, pulp, fibre, membrane, or pips, with some or all of its liquid, solid, or gaseous components, elements, and ingredients, and with some or all of its other appurtenances, as fully and effectually in all respects as I myself could, anything hereinbefore, or hereinafter, or in any other deed or deeds, instrument or instruments whatsoever, to the contrary in any wise notwithstanding, on the date first above mentioned.

1. **Legalese and verbosity ruin legal writing**

Judges hate verbosity. They wish they could penalize verbose lawyers. Over 400 years ago, one judge did just that.

The case was *Mylward v Welden*[[6]](#footnote-6). The plaintiff filed pleadings running into 120 pages. The learned judge was not happy. The learned judge struggled through the volumes of jargon. The judge then assessed that all the pertinent material could have been contained in 16 pages. He asked who wrote this mumbo jumbo. When told that the culprit was the plaintiff’s son Richard Mylward, the learned judge imposed severe sanctions on Richard for his annoying verbosity which, in the judge’s view, amounted to an abuse of court process. The sanctions included perforating the offending mass of documents and inserting poor Richard’s head through the hole made in the paperwork[[7]](#footnote-7) (a legal loophole!), and then leading him about the court premises during court sittings for all to ridicule, with the large pack of documents hanging around his shoulders.

Richard Mylward’s sins of legalese and verbosity continue to plague the legal profession to this day. Today there is no penalty for these professional sins. Maybe there should be. Nigerian judges are too diffident.

Don’t write like Richard Mylward. Write concisely. Concise writing is more persuasive than fatty tissue. When you garnish your prose with too much cream, you tend to descend into clichéd expressions. Smart judges and supervising partners hate clichés. Clichés weaken your writing, taking the punch out of it. To quote Professor Fischer again, “A document may be grammatically correct but still lack punch. ... If you’re trying to persuade someone - perhaps a court – you’ll want to make your writing as strong as you can. Eliminating wordiness and legalese” will help strengthen your writing.[[8]](#footnote-8)

Latinisms, legalese, excessive language, and excessive detail are some of the major causes and features of verbosity. The theme of this paper is not merely to describe the problem or list its causes, but also to proffer solutions.

Let’s look at simple sample causes of verbosity.

Avoid lame phrases like: *It should be noted that, it must be emphasized that, it is trite law that, it is obvious that, the question as to whether, the fact that*. Start your sentence without these meddlesome and mushy interlopers.

*As*, *to be*, *being* and *of* cause verbosity.Legal-writing aficionado Judge Gerald Lebovits advises, “Delete ‘as’ and ‘to be’, if possible. *Examples*: ‘Some consider cigarette smoking as a crime.’ *Or*: ‘Some consider cigarette smoking to be a crime.’ *Become*: ‘Some consider cigarette smoking a crime.’”[[9]](#footnote-9)

*Being* tends to cause verbosity. Lebovits says, “Delete ‘being’. *Example*: ‘The attorney was regarded as being a good writer.’ *Becomes*: ‘The attorney was regarded as a good writer.’”[[10]](#footnote-10) Here you can’t do without the *as*.

The word *of* is one of the shortest words in the English language. But the way lawyers over-use it, it contributes inordinately to the unnecessary length in much legal writing. Judge Lebovits recognizes *of* as “a big part of the wordiness problem. Deleting *of* is a big part of the solution.”[[11]](#footnote-11) *Of* is often verbiage. Off with *of*.

One way of minimizing using *of* is to use possessives. For some obscure reason, lawyers deem possessives beneath their dignity. So instead of writing *the court’s order*, most lawyers would write *the order of the court*. It is more concise to say *the court’s order* or *the claimant’s wife* or *the deponent’s law firm*, than to use the alternative *of* constructions: *the order of the court*, *the wife of the claimant* and *the law firm of the deponent*.

You could also get rid of *of* by changing word order: *I am a student of law* becomes *I am a law student*; *she is the Minister of Finance* becomes *she is the Finance Minister*; *because of Olachi’s status as a senator* ... becomes *because Olachi is a senator*; *the High Court of Lagos State* becomes *the Lagos State High Court*.

You can minimize *of* constructions by using *. . . ing* verbs and gerunds. Instead of *the arrest* of *Anini ended a frightening phase in criminal activity*, write *arresting Anini ended a frightening phase in criminal activity*. Instead of *the building* of *a fourth Mainland Bridge will bring relief to Lagos motorists*, write *building a fourth Mainland Bridge will bring relief to Lagos motorists*.

Jettison *of* abstractions like *character of, element of, factor of, kind of, manner of, matter of, nature of, sort of, state of, system of,* and *type of*. For example, rather than write *she is the type of boss who screams at her staff*, consider *she screams at her staff*. Sometimes, emphasis may justify an *of* abstraction like *type of*, but at least ponder before using it.

Eliminate negative *of* phrases. If the negative or opposite of a word can be formed by inserting a prefix like *dis-, i-, in-, non- or un-*, then do just that. Be stingy with the negative *of* phrase *lack of*.

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| ***Of* negativity** | **Recommended alternative** |
| *lack of unity* | *Disunity* |
| *lack of regularity* | *Irregularity* |
| *lack of discipline* | *Indiscipline* |
| *lack of consistency* | *inconsistency* |
| *lack of conformity* | *nonconformity* |
| *lack of happiness* | *Unhappiness* |

But remember that your goal is brevity *with clarity*. So do not change *lack of skill* or *lack of will* as suggested above. *Unskillfulness* is dubious, and it is neither shorter nor clearer than *lack of skill*. *Unwillingness* is not the same as *lack of will.*

Delete *of* in ages, dates, years, and amounts of money. Say *Vicky is 18 years old*, not *Vicky is 18 years of age*. Prefer *March 2013* to *March of 2013*. Don’t write *the 1st day of June 2013*- write *1 June 2013*.Forget *sum of N1 million*- just write *N1 million*.

Replace *of* prepositional phrases with more concise words or expressions, or convert them to adverbs or adjectives. *By means of* becomes *by*; *during the course of* becomes *during* or *while*; *for the period of* becomes *for*; *for the purpose of* becomes *for* or *to*; *the issue of whether* or *the issue as to whether* becomes *whether*; *on the grounds of* becomes *because*. And remember that *ground* is a countable noun, and so if you must use *grounds*, write *ground* if you have only one basis.

Never say *what of if . . .?* - the correct expression is *what if . . .?*

Avoid leprous legalese like rattlesnakes and earthquakes. Leprous legalese includes *the said, same,* and *such* used as adjectives or pronouns. Instead of using *said, same* or *such* as adjectives, use the articlesand pronouns *it, that, the, them, these,* or *those.*

Do not use *such* as a demonstrative adjective when it is not. Consider whether *the* or *that* won’t do the job as well or even better. Thus having referred to *a book* in a previous sentence or paragraph, say *the book* or *that book*, not *such book*. And never write *the said book*. Professor James C Raymond warned, “‘Said’, ‘same’ and ‘such’ never add precision. They just call attention to themselves.”[[12]](#footnote-12)

A Nigerian politician once said on television, “The beginning of wisdom is the realization of one’s shortcomings and the acknowledgment of **same**.” Do not use *same* this way- it is leprous usage. And notice how that creed commits the writing sin of *of* verbosity- redraft to read *wisdom starts with realizing and acknowledging one’s shortcomings* or *wisdom starts with realizing one’s shortcomings and acknowledging* ***them***. But parallelism may excuse that politician- he might have been thinking of the Solomonic dictum *the fear of God is the beginning of wisdom*. If I had been King Solomon’s scribe, I might have written *wisdom starts with fearing God*, but that would miss the majestic cadence of the Scriptural tenet.

Do not say *we have filed the application and undertake to serve* ***same***. Say instead *we have filed the application and undertake to serve* ***it***, or reconstruct.

Time and money phrases result in much verbosity.

Verbose: *Onyinye promised the clients she would file the brief in 2 weeks’ time.*

Concise: *Onyinye promised the clients she would file the brief in 2 weeks.*

*Fact* is a major villain in verbosity. Judge Lebovits instructs, “Delete the following: ‘in fact’, ‘in point of fact’, ‘as a matter of fact’, ‘the fact is that’, ‘given the fact that’, ‘the fact that’, ‘of the fact that’, and ‘in spite of the fact that’. Save ‘in fact’ to state facts, not opinions. *Incorrect*: ‘The opinion [or judgment] relies on the fact that testimonial statements are inadmissible at trial.’ *Correct*: ‘The opinion [or judgment] relies on the rule that testimonial statements are inadmissible at trial.’”[[13]](#footnote-13)

*Who, which,* and *that,* and their derivatives cause verbosity. Lebovits directs us to“strike the non-structural ‘who’, ‘who are’, ‘who is’, ‘whoever’, ‘whom’, ‘whomever’, ‘which’, ‘which is’, ‘which are’, ‘which were’, ‘that’, ‘that is’, ‘that are’, and ‘that were’. *Example*: ‘The point that I’m making is that ....’ *Becomes*: ‘The point I’m making is that ....’”[[14]](#footnote-14)

Verbose: *The author, who is 32 years old, is a brilliant lawyer.*

Concise: *The author, 32, is a brilliant lawyer.*

The simple word *to* causes much verbosity in legal writing. It was Judge Gerald Lebovits who inspired the table below:[[15]](#footnote-15)

|  |  |
| --- | --- |
| ***To* verbosity** | **Alternatives** |
| *help to prepare* | *help prepare* |
| *in an attempt to* | *To* |
| *in an effort to* | *To* |
| *in order to* | *To* |
| *so as to* | *To* |
| *Unto* | *To* |
| *with a view to* | *To* |
| *with the object being to* | *To* |
| *in a position to* | *Can* |
| *in addition to* | *And* |
| *in order for* | *For* |
| *in regard to* | *In* |
| *in relation to* | *about, concerning, with* |
| *is able to* | *Can* |
| *is applicable (to)* | *applies (to)*, *controls, governs* |
| *is authorised to* | *May* |
| *is empowered to* | *May* |
| *is mandated to* | *Must* |
| *is required to* | *Must* |
| *is permitted to* | *May* |
| *is allowed to* | *May* |
| *is unable to* | *Cannot* |
| *make application to* | *apply to, request* |
| *similar to, in a manner similar to* | *Like* |
| *where is she going to?* | *where is she going?* |
| *with reference to* | *About* |
| *with regard to* | *About* |
| *with respect to* | *about, on* |
| *had occasion to* | *(rephrase or delete)* |
| *previous to* | *Before* |
| *prior to* | *Before* |
| *proceeded to* | *went (or delete)* |
| *pursuant to* | *Under* |
| *subsequent to* | *after, later* |
| *to the effect that* | *that (or rephrase)* |

Replace compound prepositions (or prepositional phrases) with more concise words or expressions. Compound prepositions include *in connection with*, *in relation to*, *pertaining to*, *in case of*, *in the instance of*, *on the basis of*.

Convert prepositional phrases to adjectives or adverbs.

|  |  |
| --- | --- |
| **Prepositional phrase** | **Corresponding adjective or adverb** |
| *are in need of* | *Need* |
| *at that point in time* | *Then* |
| *at this point in time* | *Now* |
| *at your earliest convenience* | *as soon as possible, at once, immediately, now, soon* |
| *in connection with* | *About* |
| *in relation to* | *About* |
| *of extreme importance* | *extremely important, vital* |
| *of great complexity* | *Complex* |
| *on a regular basis* | *Regularly* |
| *on many occasions* | *Often* |
| *one of the things* | *one thing* |
| *pertaining to* | *About* |

What *manner* of lawyer are you?

Lawyers overuse *manner* phrases. They write *the lawyer addressed the judge in a rude manner*, instead of the smarter *the lawyer addressed the judge rudely.*

Prefer *the defendant acted negligently* OR *the defendant was negligent* to *the defendant acted in a negligent manner.*

Minimize *nature* and *character* phrases. Write *hostile acts*, not *acts of a hostile nature*.[[16]](#footnote-16)

Do not abuse prepositions

Prepositions are words that describe relationships between other words. Examples are *about, above, across, after, against, around, at, before, behind, below, beneath, beside, besides, between, beyond, by, during, except, for, in, inside, near, of, off, on, out, outside, through, throughout, till, toward, under, until, upon, with,* and *without*.

This 21-word sentence repeats the preposition *of* 5 times:

*Knowledge of the Rules of Professional Ethics is the duty of all of the members of the bar of this country.*

That’s too many prepositions. Watch out for abuse of prepositions. Rewrite:

*All bar members must know professional ethics.*

Now we have “a more vigorous sentence” with no prepositions.[[17]](#footnote-17)

Trim out verbose word clusters. Develop a dislike for surplus words, and you will find many common word clusters you can trim from your sentences without loss of meaning.

Prefer:

*Her punctuality impressed the panel*

to:

*The fact that she was punctual impressed the panel*.

The phrase *the fact that* is almost always verbose. Hunt it down. There are similar culprits. Wayne Schiess, a legal-writing scholar, lists a few: “Likewise, the words *case* and *instance* spawn verbosity . . . . The words *which*, *who*, and *that* often signal an opportunity to reduce a clause to a phrase.”[[18]](#footnote-18)

In the following table[[19]](#footnote-19), prefer the phrases in the right column to those in the left column:

|  |  |
| --- | --- |
| **Verbose** | **Concise** |
| *the fact that she had died* | *her death* |
| *he was aware of the fact that* | *he knew* |
| *despite the fact that* | *although* or *though* |
| *because of the fact that* | *Because* |
| **in some instances** *the parties can* | **sometimes** *the parties can* |
| **in many cases** *you will find* | **often** *you will find* |
| **in that case** *the court held . . .* | **there** *the court held . . .* |
| *fundamental rights claims are more frequent* **than was formerly the case** | *fundamental rights claims are more frequent* **now** |
| *injunctive relief is required* **in the case of** *. . .* | *injunctive relief is required* **when** *. . .* |
| *in* ***the case of***Amobi v Nzegwu | *in* Amobi v Nzegwu |
| **it is not the case that she wrote** *the brief* | **she did not write** *the brief* |
| **while the trial was in progress***, the clerk escorted the child from the courtroom* | **during the trial***, the clerk escorted the child from the courtroom* |
| *the question was designed to impeach the credibility of the prosecution witness,* **who had been convicted of [having committed] a felony***.* | *the question was designed to impeach the prosecution witness,* **a convicted felon***.* |
| *the Act*, **which had been enacted** *during the Jonathan Administration, abolished the death penalty.* | *the Act,* **enacted** *during the Jonathan Administration, abolished the death penalty.* |
| *the title search did not disclose the easement* **that had been granted** *many years before.* | *the title search did not disclose the easement* **granted** *many years before.* |

An adjective or adverb can take the place of whole clauses in some constructions. Plain English advocate Professor Wydick points out, “Sometimes you can clean out surplus words by replacing a clause with an adjective or adverb”.[[20]](#footnote-20) In the following example, the compound adjective *interim-injunction* replaces the clause *which prayed for interim injunction*, thus shortening the sentence.

|  |  |
| --- | --- |
| **Verbose** | **Concise** |
| *The trial judge dismissed the claimant’s motion,* **which prayed for interim injunction***.* | *The trial judge dismissed the claimant’s* **interim-injunction** *motion.* |

Minimize double negatives. The legal-writing intelligentsia abhor the double negative. I agree it should mostly be avoided, but I allow its rare use for effect.

|  |  |
| --- | --- |
| **Avoid double negatives** | **Use single positives** |
| *not uncommon* | *common* |
| *failed to show inability* | *showed ability* |
| *not insignificant* | *significant* |
| *not uncomplicated* | *complicated* |
| *no small part* | *large part* |
| *not incapable* | *capable* |
| *not inappropriate* | *appropriate* |
| *I have no doubt he is not alive* | *I believe he is dead.* |

Prefer an affirmative statement “to a negative one. The reader may doubt the scope of the negative.”[[21]](#footnote-21) Judge Gerald Lebovits advises writing even negatives in the positive such that “‘Do not write in the negative’ *becomes* ‘Write in the positive’.”[[22]](#footnote-22) But this may not always be feasible. Many commands that forbid conduct are best phrased negatively: *You must not commit adultery*. Recasting this to *be faithful to your spouse* does not express any censure on adultery. As a statutory interdiction, *you must not commit adultery* is superior drafting to some spineless moral injunction like *be faithful to your spouse*, which sounds like a suggestion or a piece of advice. And to stiffen it by saying *you must be faithful to your spouse* entails elongating the sentence without adding much fibre. The message is not complete.

As a general rule, though, affirmative writing is much to be preferred. *The cases support this argument* is certainly better than *this argument is not without support in the cases*.[[23]](#footnote-23) Now there’s a double negative: *not without*.

Lebovits again, “*Prefer negational antonyms to negatives*. Write *false* instead of *not true* and *true* instead of *not false*. ‘Respondent was not present’ *becomes* ‘Respondent was absent’.”[[24]](#footnote-24)

Low-fat and low-sugar language is preferable to legalese and verbosity.

1. **Prefer the active voice**

One cure for verbosity is to prefer the active voice. The passive voice causes verbosity in legal writing. “Every passive verb contains at least two parts: a form of the verb *to be* (*be, is, am, are, was, were,* or *been*) and a past participle.”[[25]](#footnote-25) This often elongates the sentence.

In English grammar, the normal order of a simple sentence is subject-verb-object. The subject is the person or thing doing something, and the object is having something done to it, in grammatical terms. In *Mustafa sued Ovie*, *Mustafa* is the subject, *sued* is the verb, and *Ovie* is the object. In the sentence, *Lord Denning invented the Mareva injunction*, *Lord Denning* is the subject, *invented* is the verb, and *Mareva injunction* is the object.

Of course not all sentences are that simple, but when a sentence is or can be made simple, it should, as a general rule, be rendered according to this subject-verb-object equation. Most lawyers prefer: *The Mareva injunction was invented by Lord Denning*. This passive construction violates the natural order of the grammatical universe. It is more complicated and more verbose. You often need more words to speak or write in the passive voice. And your words have less effect and force, in a profession where the effect or force of words can mean the difference between victory and defeat.

So instead of:

*This legal-writing workshop was organized by the Write House*

*write:*

*The Write House organized this legal-writing workshop.*

Prefer:

*The defendant requested a summary trial*

to:

*A summary trial was requested by the defendant*.

In some contexts, the passive voice may be better. It all depends on the desired emphasis. At times lawyers prefer the passive voice because of its knack for hiding their wicked clients. Only in the passive voice can you avoid naming the subject, for example: *Mary was raped* (this is a double passive). The defendant’s counsel prefers to say *Mary was raped,* but the state or prosecution counsel prefers *James raped Mary*.To use the active voice, you have to say who raped Mary, as in: *James raped Mary.* Litigation psychology shows that the more you repeat the villain’s name, the more the judge or jury detests him or her, and the harsher the sentence. Repeating the villain’s name can influence, not just sentencing, but also conviction- it can even result in a wrongful conviction. When a particularly heinous crime is committed, the whole realm (represented by the judge or jury) is eager to punish someone. In that state of mind, a court is readier to accept incomplete proof against a visible and identifiable villain, with a name, repeated with a deepening frown by the indignant, self-righteous state counsel.

Conversely, the defence counsel in that class of criminal defence would prefer to bury his client’s name in passive constructions. This is sound psychology. The fewer times the court hears the defendant’s name, the less it associates that name with the crime charged. As a defence counsel, you do not want the judge to go to bed having nightmares about your client. If your client’s name ruins the judge’s conjugal conviviality, you can expect a conviction.

So you can see that using either the active voice or the passive voice is not always merely a matter of style- it can have serious repercussions. It can be a matter of forensic strategy. Preferring the active voice can win you your case. Conversely, the passive voice can spell defeat in litigation, both civil and criminal.

There have been instances. In *Coroles v Sabey[[26]](#footnote-26)* some investors complained they had been “falsely told” that substantial investors in a business venture included sports celebrities. The court noted that this allegation was stated in “the passive voice . . . failing to identify exactly who made the alleged misrepresentations.” The court affirmed the dismissal of the investors’ fraud claim, holding that they had not pleaded it with sufficient particularity. Again, in *Zito v Leasecomm[[27]](#footnote-27)* the allegation stated that a disputed infomercial “was transmitted by electronic means . . . in violation of” statute. The court observed that this phrasing stated the allegation in the passive voice and thus failed to finger any particular defendants as having committed the crime.

Literary strategy, as opposed to forensic strategy, may indicate a preference for the passive voice. You should use the passive voice to aid continuity and transition. The following example comes from Professor Judith Fischer of the University of Louisville School of Law[[28]](#footnote-28):

*The court held that a key element of the tort is intent. Intent was defined by the appellate courts in a succession of cases . . .*

The structure of the passive voice helps link ideas. The first sentence in the above example is in the active voice, and the last word in that sentence is *intent*. To enhance linkage to the next sentence, the author starts it with that last word and concept from the previous sentence. To do so the author has to write in the passive voice. The active *the appellate courts defined intent . . .* would not have been as effective a linkage. The “passive structure puts the key word *intent* in the position of emphasis at the beginning of the second sentence, effectively linking it to the first one.”[[29]](#footnote-29) So the construction achieves the second rhetorical goal of emphasis by placement.

This linkage technique in writing is called transition by repetition. You should learn it. It is useful not only for moving from sentence to sentence, but also from paragraph to paragraph. And it does not always involve passive constructions.

When you use the passive voice, you may inadvertently (as opposed to strategically) omit the actor.

But you can use the passive voice when the actor is unknown (*The house was mysteriously burnt down*),or the actor is unimportant, or you want to deflect attention from the actor (as in the *Mary was raped* example). Again, use the passive voice to stress the result over the actor, when the result is more important than who did the deed.

Writing in the active voice forces you to name the actor. An active construction constrains you to identify the actor or subject.

Active constructions also give more prominence to your verbs, which in turn strengthens your writing. Law Dean Richard Bales says, “Verbs are where the action is. They are the key to holding your reader’s attention. To strengthen your verbs, avoid the passive voice and excessive nominalizations.”[[30]](#footnote-30) We shall deal with nominalizations later.

Often in passive constructions the actor is missing from action not for strategic or other good reason but from pure bad form. Vague communication is the result. But the result we prefer in legal writing is strong, precise, clear, and quick communication.

Convert most passive to active constructions. Judith Fischer offers the following guide on passive-to-active conversions[[31]](#footnote-31):

* Identify the true actor in a sentence;
* Put the noun representing the actor at the beginning of the sentence (for example, in the sentence *the bailiff was assaulted*, if a defendant did the assaulting, the active voice version would be *the defendant assaulted the bailiff*; another example: *an incorrect analysis of the pending issue has been advanced herein*- an active voice redraft would be the leaner and handsomer *the lawyer advanced the issue incorrectly.*)
* “Then decide whether the new version is better- more direct, crisper, and less awkward. If it is, consider whether you have a good reason for using the passive voice. If you don’t, make the change to the active voice.”

***Exercises***

1. ***Convert, or try to convert, the following passive constructions to active voice (improve the sentences in other ways, too):-***
2. ***This matter is further adjourned to 8 March 2014.***
3. ***The Respondent has been served.***
4. ***A learned silk is being prosecuted by the EFCC for corruption.***
5. ***An application for substituted service was made by the claimant.***
6. ***The young man was brutalized.***
7. ***The Supreme Court’s decision in* Idowu *was severely criticized in an article published internationally.***
8. ***Legal writing is not taught at the Nigerian Law School.***
9. ***The Appellant was ostracized by the Agbalanze Society of Onitsha on 26 December 2004.***
10. ***The Appellant was employed as a fork-lift operator in the Respondent company.***
11. ***Freedom of religion is guaranteed by the Nigerian Constitution.***
12. ***The appointment of a person to the office of Chief Judge of the Federal High Court shall be made by the President.***
13. ***You are an intellectual property advocate and expert. Nearly all your IP litigation has been for the ‘good guy’, or the honest victim of IP violations. Now a client of yours, Boot Camp, is the defendant in a massive open-and-shut patent case. The claimant is PH Software. Which of the following constructions would proceed from you and which from the claimant’s counsel? Explain your answers.***
    1. ***Boot Camp robbed PH Software of their intellectual property rights.***
    2. ***PH Software’s patent was infringed.***
14. **Don’t hide the subject**

Weak, or “passive”, legal writers also try to bury the subject. The subject identifies the doer of the action in the sentence. Attempts to place the doer of the action elsewhere in the subject cause verbosity. Sometimes this is because the writer employs the help of expletives to hide the doer of the action. Expletive constructions include *there is, there are, there was, there were, it is*, and *it was*. Avoid them like rattlesnakes, unless the point of the sentence is that something exists rather than that somebody did something or something happened.

*She planned to apply for judicial review*

is better than

*It was her plan to apply for judicial review*.

In the first sentence, *she* is the subject and the doer of the action in the sentence. In the second sentence, *she* is MIA or AWOL- missing in action or away without leave.

When you commit one legal-writing sin, you tend to commit more in the same context. One sin leads to another.

The sentence

*Negotiation for the discount was initiated by the Practice Manager*

set out to commit just the passive-voice peccadillo, but ends up with at least one other related sin as well: hiding the subject.

Redraft to read

*The Practice Manager initiated negotiation for the discount.*

Here we find the doer of the action in the sentence, the Practice Manager, up front where she belongs- in the subject. We also see her taking the action directly- the sentence achieves this by the active voice.

Clarify your thinking and simplify your writing. “Don’t write convoluted sentences. Each sentence should contain a subject, a verb, and an object. Put the subject at the beginning of most sentences.”[[32]](#footnote-32)

* *The court convicted the first defendant*.
* *The witness produced a video recording*.

Your subject should be a word or two in length or a very short phrase. Minimize compounded subjects, even if this entails splitting your sentence into two. “Use a short subject. Put the verb immediately after the subject. Don’t put words between the subject and the verb: keep your subjects next to their verbs.”[[33]](#footnote-33)

* *The claimant applied ...*
* *The judge ruled ...*
* *The respondent objected ...*

You do not have to start every sentence with a subject, though. Variety is the spice of composition. “Don’t begin every sentence with a subject. From time to time substitute subjects with subordinate clauses, also called dependent clauses, to assure flow and to rank ideas by importance. Then place the main idea in the main clause, after the dependent clause. A subordinate clause begins with a subordinate conjunction (‘after’, ‘although’, ‘as’, ‘because’, ‘before’, ‘if’, ‘though’, ‘until’, ‘when’, ‘where’, or ‘while’) or a relative pronoun (‘that’, ‘which’, ‘who’, ‘whoever’, or ‘whom’) and will contain a subject and a verb.”[[34]](#footnote-34)

* *After the attorney filed the claim form, his client fired him.*
* *If Dozie gets the brief, he will relocate to Nigeria.*
* *Because Ronke came late, the panel refused to interview her.*

1. **Avoid nominalizations and adjectivizations**

Nominalization turns verbs into nouns, often involving *of*, and causing wordiness. Prefer strong verbs and avoid nominalizations.

Instead of

*The judge reached the conclusion that the defendant was a liar*

write

*The judge concluded that the defendant lied*.[[35]](#footnote-35)

*Reached the conclusion* nominalizes the simple verb *concluded* into the noun *conclusion* with the aid of the extra words *reached the*; *was a liar* nominalizes the even simpler verb *lied* into the noun *liar* with the aid of the extra words *was a*. The extra words you need to nominalize promote verbosity.

Create a strong subject-verb unit. To achieve a lean writing style, put the real action in the verb, and the real doer of that action in the subject. Poor legal writers bury the real action in the sentence in a noun. Instead of *this case illustrates my point*, they write *this case is an illustration of my point.* Nominalization is the crime of verbicide- the killing of a verb by a lawyer.

Nix nominalizations.

Prefer

*The President violated the Constitution*

to

*The President perpetrated a violation* of *the Constitution.*

Prefer

*The applicant’s detention infringed her fundamental right to prompt arraignment*

to

*The applicant’s detention is tantamount to an infringement of her fundamental right to prompt arraignment.*

Lawyers suffer the malady of forcing innocent, happy verbs to behave like contorted nouns, sad and fat and limp. When, instead of saying *I paid*, you say *I made payment*, you nominalize the verb *pay* into the noun *payment*. *I paid* is simpler and sharper. Similarly, please do not write *made provision for* when you can easily say *provided (for)*. Instead of *conducted a search on*, say *searched*. In place of *provide responses*, say *respond*. Rather than *provide assistance*, write *help*. Do not *make an examination of* when you can simply *examine*. Do not *reach a resolution*, just *resolve*. Don’t *effect service on*, just *serve*. Instead of *despite the lawyer’s protestations*, say: *although the lawyer protested*. In your professional correspondence, do not say *we are in receipt of your letter dated . . .* , write *we received your letter* or *thank you for your letter*. Your readers will breathe fresh air and wonder how come you’re so nice.

Emulate good legal writers like Judge Gerald Lebovits by keeping your verbs alive. The judge-cum-professor says of himself and others, “Good writers prefer verbs to nouns.”[[36]](#footnote-36) Try rendering the classical lawyers’ expression *sue the bastard!* without the strong verb *sue*. Legal research and writing professor Mark Cooney illustrates the bizarre results of that experiment: *Bring a cause of action against the bastard! Initiate legal proceedings against the bastard! Commence a legal action naming the bastard as a defendant!*[[37]](#footnote-37)

Nominalization can be akin to abstraction. But the law is not abstract. It is concrete. Professor Richard Wydick makes this point when he says, “At its core, the law is not abstract; it is part of a real world full of people who live and move and do things to other people. Car drivers *collide*. Plaintiffs *complain*. Judges *decide*. Defendants *pay*. To express this life and motion, a writer must use verbs- action words. The purest verb form is the base verb, like *collide*, *complain*, *decide*, and *pay*. Base verbs are simple creatures. They cannot tolerate adornment. If you try to dress them up, you squash their life and motion. Unfortunately, that is done all too easily. The base verb *collide* can be decked out as a derivative noun, *collision.* Likewise, *complain* becomes *complaint*, *decide* becomes *decision*, and *pay* becomes *payment*. Lawyers love to ruin base verbs. Lawyers don’t *act* – they *take action*. They don’t *assume* – they *make assumptions*. They don’t *conclude* – they *draw conclusions*. With too much of this, legal writing becomes a lifeless vapour.”[[38]](#footnote-38)

Like passives, nominalization can obscure the actor in a sentence. In *the injury occurred last month*, the verb *injure* has been nominalized to *injury*, enabling the writer to hide the actor. To use the verb, the writer would have to reveal the actor: *Ngozi injured Ogechi.* The writer could of course use passive speech to shield Ngozi from view: *Ogechi was injured*.

Major news organizations that should know better, like CNN, use the nominalization *take a listen* when they should say *listen*. *Listen* is a verb, not a noun. But CNN has, without poetic licence, converted it into an illicit noun- just because we can say *take a look*.

Ajectivization turns verbs into adjectives.

*The judge was dismissive of counsel’s argument*

adjectivizes the verb *dismiss*. Like nominalization, adjectivization requires extra words, similarly causing prolixity.

Redraft as

*The judge dismissed the counsel’s argument.*

1. **Fear not: you may start sentences with *and*, *because, but*, *nor*,and *or***

You may start a sentence with *but*. “Many legal writers believe that *but*, if used to begin a sentence, is either incorrect or loosely informal.”[[39]](#footnote-39) It is neither. Sentences can begin with *and*, *because*, *but*, *nor*,or *or*. *But* is the best way to introduce a contrast.[[40]](#footnote-40) Most lawyers prefer *however* for introducing contrasts (*where* however means *but, nevertheless* or *on the other hand*). In almost all contexts where you find *however* at the beginning of a sentence, *but* would do a better job. *But* is also easier on the eye. While *however* at the beginning of a sentence is invariably followed by a comma, *but* needs no comma:

* Instead of: *However, the defendant decided to change his counsel.*
* Write: *But the defendant decided to change his counsel.*

The *but* construction reads faster. Drastically minimize, if not totally eliminate, your use of *however* (in the sense of *but, nevertheless* or *on the other hand*, the sense in which it usually appears in sentences, often at the beginning).Prefer *but* whenever it works fine.

*However* is alright in the adverbial sense of *in whatever manner or way* or *to whatever extent*, whether at the beginning of the sentence or elsewhere:

* *However he did it, he was very clever.*
* *The States have begun, however reluctantly, to acknowledge the importance of local government.*
* *Dress however you like.*
* *However you read the Criminal Code, you must agree that it is outdated.*

Writing in the *Michigan Bar Journal*, Judge Mark Painter says,“And do not be afraid to start sentences with ‘and’ or ‘but’. This signifies good writing. The reason your grammar-school teacher told you not to start a sentence with ‘and’ was because you wrote, ‘I have a mother. And a father. And a dog.’ The last two weren’t sentences. Use ‘but’ rather than ‘however’ to start a sentence, and see how much better it reads. Almost any example of good writing pulled at random will contain numerous examples. ... Pick up any work by a good writer, and you will find countless examples.”[[41]](#footnote-41)

The belief that you should never start a sentence with *and* is a superstition. Dispel it. Ignore it. “There is a persistent belief that it is improper to start a sentence with *And*, but this prohibition has been cheerfully ignored by standard authors from Anglo-Saxon times onwards.”[[42]](#footnote-42)

The Holy Bible is good authority on starting sentences with *but* and *and*.Psalm 94 verses 22 and 23 each forms a sentence. Verse 22 starts with *but*. Verse 23 starts with *and*. Check out the King James Version:

22: But the LORD is my defence; and my God is the rock of my refuge.

23: And he shall bring upon them their own iniquity, and shall cut them off in their wickedness; yea, the LORD our God shall cut them off.

1. **Uphold the Oxford comma: the Pope and Mother Teresa**

In a list of 3 or more items, “always insert the serial comma. Some writers insist on omitting the last comma, before the ‘and’ [or *or*]. Do not omit the last comma- doing so can cause misinterpretation.”[[43]](#footnote-43) That serial comma is also known as the Oxford comma. Deploy it to good use.

Write: *affidavits, briefs, and pleadings*

Not: *affidavits, briefs and pleadings*

Write: *arbitrators, attorneys, mediators, and judges*

Not: *arbitrators, attorneys, mediators and judges*

Write: *civil procedure, criminal law, real estate, or intellectual property*

Not: *civil procedure, criminal law, real estate or intellectual property*

Without the Oxford comma, the last 2 items in any of the lists seem to have an incestuous relationship. They appear separated from the earlier items in the list. They seem to have a special affinity not shared with the rest. Leaving out the Oxford comma “creates strange bedfellows at the end of sentences.”[[44]](#footnote-44)

The Oxford comma clarifies meaning especially when the listed items are not single words.

*The Write House teaches academic writing, brief writing, court documents, decision writing, legislative drafting, letters and memos, and transactional drafting*.

This sentence might be confusing without the Oxford comma.

Some authorities and style guides, including the *New York Times*, oppose the Oxford comma. Yet others suggest discriminatory use, saying it should only be used where it could resolve ambiguity. Don’t mind either camp. The Oxford comma should be mandatory in legal writing. Bryan Garner, the legal writing pope and editor-in-chief of *Black’s Law Dictionary*, endorses the Oxford comma, saying, “Use a comma to separate words or phrases grouped in a series of three or more, and include a comma before the conjunction.”[[45]](#footnote-45) I would add, or disjunction- the Oxford comma is also applied when the last item in a list is preceded by *or* rather than *and*. So write *the Federal High Court, the Court of Appeal, or the Supreme Court*; not *the Federal High Court, the Court of Appeal or the Supreme Court*.

In *People v Walsh*, unreported,*[[46]](#footnote-46)* the judge, upholding the Oxford comma, said, “For example, in an author’s dedication ‘to my parents, the Pope and Mother Teresa’, the absence of a comma between ‘Pope’ and ‘and’ indicates that the author’s parents are the Pope and Mother Teresa ...” - a blasphemous dedication! So, unless the author is of virgin birth, the correct dedication would read: *To my parents, the Pope, and Mother Teresa*- the work is dedicated to 4 people: the author’s two parents, the Pope, and Mother Teresa.

**The ampersand exception to the Oxford comma rule**

When you use symbol *&* for *and* instead of spelling out the conjunction, then you should not insert the Oxford comma. The logogram *&* is called an ampersand.

Write: *Enemuo, Kola & Ibrahim*

Not: *Enemuo, Kola, & Ibrahim*

Write: *Adepetun, Caxton-Martins, Agbor & Segun*

Not: *Adepetun, Caxton-Martins, Agbor, & Segun*

But you should not ordinarily use ampersands in your writing. Never insert ampersands in legislative or transactional drafting. Reserve them for unavoidable use, as in the names of firms which already spell their name that way- with an ampersand.

1. **Eschew intensifiers: a tiger does not declare his tigritude**

Preferring verbs and nouns to adjectives and adverbs will sharpen your writing. You should use “strong nouns and verbs, not weak nouns and verbs held afloat by adjectives and adverbs.”[[47]](#footnote-47)

Instead of: *The lawyer vehemently maintained that the defendant’s conduct was obnoxious*

Write: *The lawyer denounced the defendant’s conduct*

Instead of: *The witness intentionally testified untruthfully about the accident*

Write: *The witness lied about the accident*

In a fundamental rights suit, do not seek a declaration that the respondent’s conduct was *tantamount to a blatant and outrageous violation of the applicant’s divine right to personal dignity*. Courts are tired of screaming adjectives. The High Court will be happier if your prayer was for a declaration that *the respondent breached the applicant’s right to personal dignity*.

Avoid adjectival and adverbial excesses: *absolutely, actually, certainly, completely, extremely, greatly, obviously, plainly, really, surely, truly, undoubtedly, vehemently,* and *verily*.

Write House intern Lolade Olukowi taught me this one: in your affidavit or other document, do not *verily believe*- just *believe*.

In your pleadings (statement of claim, defence, counterclaim, reply, rejoinder) do not put the opposite side to *strict proof* or *strictest proof.* They already have the onus of proving everything they say in their pleadings.

By the way, when you rely on a document in your pleadings, you have pleaded it. Never write *the claimant [or defendant] hereby pleads the arbitration agreement.* And you do not have to say *rely* or *place reliance on*! If you aver that the parties entered a written contract for the supply of toys, you have pleaded that contract and may rely on it at trial.

Discard words like *clearly* and *very*. If a point is clear, then display its clarity. When some judges see *clearly* in briefs, they suspect the writer has no authority or support for the point he claims to be clear. “And what is the difference between *angry* and *very angry*? Instead of writing ‘The witness was very angry’, try the stronger ‘The witness was enraged.’”[[48]](#footnote-48)

Weak, verbose, suspect: *The man is very large.*

Strong, concise, persuasive: *The man is huge.*

Weak, verbose, suspect: *These allegations are completely untrue.*

Strong, concise, persuasive: *These allegations are false.*

Remember Wole Soyinka. When invited to join the Negritude poets, his brilliant retort was, “A tiger does not declare his tigritude. He pounces.” Pounce on your opponent with the bite of your court documents and the sagacity of your writing, not by adverbial excesses.

Adverbial excesses are cowardly little spirits. They are timorous souls. Eliminate them from your writing. They “weaken and obscure. They suggest that those who disagree with you are stupid. They also make a good, sceptical reader question whether you’re right. . . . Eliminate ‘absolutely’, ‘actually’, ‘almost’, ‘apparently’, ‘basically’, ‘certainly’, ‘clearly’, ‘completely’, ‘extremely’, ‘incontestably’, ‘nearly’, ‘obviously’, ‘plainly’, ‘quite’, ‘really’, ‘seemingly’, ‘surely’, ‘truly’, ‘undeniably’, ‘undoubtedly’, ‘utterly’, ‘various’, and ‘virtually’. The exception is if you’re confessing an error: ‘I’m clearly wrong’ is clearly O.K.’”[[49]](#footnote-49)

Do not *vehemently* oppose any application. Just pounce, like Soyinka’s tiger. Use subtle brutality, not voluble pomposity. Do not shoot all over the place. Take careful aim. Deploy understatement for rhetorical effect.

1. **Shorten your sentences and paragraphs**

Long sentences can be effective when used sparingly and judiciously. “But (long sentences) can create at least two problems. You may start to lose control of the syntax of a long sentence; and a long sentence may hide a point you want to emphasize. In those instances, dividing the sentence into two or more short sentences can add punch to your writing.”[[50]](#footnote-50)

Complex constructions cause unnecessary length in sentences. Simplify most of your constructions, without dumbing down your prose. Several short sentences that take the place of one lengthy sentence may be more concise, although taken together they are longer than the one sentence. Break down an unduly long sentence into several short sentences.

Complex constructions result from parenthetical expressions or embedded clauses. Parenthetical expressions or embedded clauses are internal word groups with their own subjects and verbs. They are mini-sentences and meddlesome interlopers. Transfer a parenthetical expression or embedded clause to a next sentence. “Doing so shortens your sentence and thus is concise, even though it might add text. *Example*: ‘The judge’s chambers, which has a view of the Empire State Building, is on the ninth floor.’ *Becomes*: ‘The judge’s chambers is on the ninth floor. It has a view of the Empire State Building’.”[[51]](#footnote-51) In the first sentence, the embedded clause or parenthetical expression (so called because it could conveniently be placed in parentheses) is the internal word group *which has a view of the Empire State Building*. It can form a new sentence, and should.

Also avoid qualifying phrases and run-on sentences. Stay in control of your sentences. Do not let them destabilize you. Never let them run on. According to Volokh and Tanford, “Bad legal writers use run-on sentences containing numerous qualifying phrases.”[[52]](#footnote-52) The learned authors of the legal-writing guide ‘How to Write Good Legal Stuff’ offer the following example of a run-on sentence with qualifying phrases:

“The court in *Chester v Morris*, a case involving a similar traffic accident, held that a person riding a bicycle must adhere to the same standards as a person driving a car, although it limited its holding to the facts of that case, which included the fact that the bicyclist was intoxicated.”

Translated into good English, the above passage now has several short sentences instead one long, run-on sentence:

“*Chester v Morris* involved a similar traffic accident. The court held that a bicyclist must adhere to the same standards as a person driving a car. The opinion is limited to situations in which the bicyclist is intoxicated.”[[53]](#footnote-53)

Do not complicate your sentences by inserting qualifying phrases in their midst. The general rule is: avoid qualifying phrases; but if you must use them, put them at the end of sentences. To use Volokh and Tanford’s samples,

prefer:

*The court held that a bicyclist must adhere to traffic rules, although it limited its holding . . .*

to:

*The court, although it limited its holding, held that a bicyclist must adhere to traffic rules*.

The qualifying phrase is *although it limited its holding.* Putting it in the middle, as in the first sentence, causes a disconcerting or irritating pause in the reader’s mind. Consigning it to the end enables the reader to grasp the main thought swiftly before confronting exceptions or limitations. The reader first digests the main point, and then notes, by the way, whatever exceptions or limitations there might be. This writing style is very useful in legislative and transactional drafting.

Keep your sentences short and focused. Most sentences should contain only one main thought. Keep your average sentence length below 25 words, ideally between 15 and 18 words. But a string of short sentences will sound staccato. As Wydick said, “A succession of short, simple sentences sounds choppy.”[[54]](#footnote-54) You need an occasional longer sentence with several, but never many, main thoughts. And you also need a sprinkling of *very* short sentences, far below 15 words in length. As you get bolder, you might one day write a one-word sentence. Perhaps.

Write short paragraphs. Short paragraphs give readers a break to digest what they have read thus far. Make your paragraphs 3 to 5 sentences long, on the average. Each sentence must introduce some new information, and every piece of information should build on an old piece. Build on context- build on prior knowledge.

Of course your paragraphs should not be uniformly short. An occasional long paragraph will do little harm. And as you mature in writing, you will be bold enough to write occasional 1-sentence paragraphs, and a rare 1-word paragraph.

1. **Bullets, capitals, italics, numbers, tabulation, and underlining**

Used correctly, bullets, capitals, italics, numbers, tabulation, and underlining can help clarify or simplify legal text.

**Bullets**

Shift bulleted paragraphs from the main body of text by one line, following a colon. The general rules of punctuation for bullet points are as follows.

Rule 1: If the bullet point makes a complete sentence, start with a capital letter and end with a full stop.

Rule 2: If the bullet point is not a complete sentence, start with a small letter and end with a semi-colon. (In some contexts, a comma may be more appropriate than a semi-colon.) Example:

*Legal-writing curricula should cover the following:*

* *academic or scholarly writing;*
* *brief writing;*
* *court documents;*
* *decision or judicial writing;*
* *emails, letters, and memos;*
* *legislative drafting; and*
* *transactional drafting.*

Rule 3: If a bullet ends in an exclamation or question mark, do not add any other punctuation.

*As a legal-writing scholar, I have these concerns:*

* *the sheer volume of literature on the subject;*
* *the cacophony of divergent opinions on style!*
* *lawyers' resistance to change; and*
* *judges’ superiority complex.*

An exception to the rules of punctuation: if you are a bold and mature writer, you may omit punctuation at the end of bullet points:

*A decent LLB program should teach these core law subjects within the first 2 years:*

* *Contracts*
* *Criminal Law*
* *Equity and Trusts, and*
* *Torts*

When you do so, you must still insert a comma before the conjunction or disjunction linking the penultimate item with the last item, as in the above example.

The logic for this advanced format is that since commas or semi-colons indicate pauses, they are not necessary with most bullet points as the pauses are already indicated by the ending of the line, as in much poetry. The same rationale explains the absence of commas after salutations and complimentary closes in modern British English letter writing: *Dear sir* and *Yours faithfully* instead of *Dear Sir,* or *Yours faithfully,*

A bullet should not be too long. It should not last for longer than a couple of sentences. Otherwise, you are creating a paragraph and not a bullet. An overlong bullet is liable to misfire and hurt someone, usually you.

**Capitals**

Use CAPITALS for:

* The first letter in all references to God:
  + *Allah*
  + *Almighty*
  + *Creator*
  + *God*
  + *Father*
  + *He, Him, His*
  + *Holy Spirit*
  + *Jehovah*
  + *Jesus Christ*
  + *Lord*
  + *Sovereign Lord*
  + *Supreme Being*
  + *Yahweh*;
* The first person singular pronoun *I;*
* The first letter in a sentence;
* The first letter in a direct question or creative quotation within a sentence:
  + *She asked, “*W*ho won the patent litigation?”* BUT: *She asked* w*ho won the patent litigation.*
  + *He wrote: “*L*awyers love being deferential to judges.”* BUT: *He wrote that* l*awyers loved being deferential to judges;*
* The first letter in a quotation, if it is capitalised in the original and the quotation is an independent clause:
  + *The judge wrote, “In applying the rule against bias, image is everything. The appearance of judicial independence and impartiality is as important as the reality of those attributes”;*
* The first letters in proper names (proper nouns):
  + *Assisi Asobie*
  + *Chibuzo Ekwekwuo*
  + *Microsoft Corporation*
  + *Mobil Producing Unlimited*
  + *Tayo Oyetibo;*
* The first letters of the salutation in a letter:
  + *Dear Madam*
  + *Dear Sir*
  + *Dear Chinedu;*
* The first letter of the complimentary close of a letter:
  + *Yours faithfully;*
* The first letter in words derived from proper nouns (proper names):
  + *Lagosian*
  + *New Yorker*
  + *Zikist;*
* The first letter in titles that precede proper names:
  + *Chief Justice Alooma Mukhtar,*
  + *Reverend Father George Ehusani;*
* The first letter in C*onstitution* when referring to the highest law of any jurisdiction, but note that c*onstitutional* starts with lower case*;*
* The first letters of the key words (but not the articles, conjunctions or prepositions) in titles of statutes and similar instruments:
  + *Advance Fee Fraud and Other Fraud-Related Offences Act*
  + *Economic and Financial Crimes Commission Act*
  + *High Court of Lagos State (Civil Procedure) Rules*
  + *Land Use Act*
  + *Proceeds of Crimes Act*
  + *Statute of Frauds;*
* The first letters in the names of countries, languages, nationalities, religions, and races:
  + *African*
  + *African-American* (BUT b*lack- Ebony* magazine uses big *B* *though*)
  + *Australia*
  + *Buddhism*
  + *Canada*
  + *Caucasian* (BUT w*hite*- *Ebony* uses upper-case *W*)
  + *Christianity*
  + *Efik*
  + *English*
  + *Igbo*
  + *Islam*
  + *Ivorian*
  + *Nigerian*
  + *Tiv*
  + *Yoruba*
  + *Zoroastrianism;*
* The first letters in the titles of (college) courses, but not academic disciplines:
  + *I took Political Science 101 in my first year at Nsukka.* BUT: *I studied political science*
  + *She teaches Legal Writing Fundamentals.* BUT: *She teaches legal writing;*
* The first letters in the key words (but not the articles, conjunctions or prepositions) forming the names or titles of historic or historical documents, eras, and events:
  + *Aburi Declaration*
  + *Biafran War*
  + *Dark Ages*
  + *French Revolution*
  + *Great Depression*
  + *Magna Carta*
  + *Renaissance*
  + *Universal Declaration of Human Rights;*
* The first letters in the key words (but often not the articles, conjunctions or prepositions) forming the titles of works:
  + Ben Nwabueze, *The Presidential Constitution of Nigeria*
  + Chinua Achebe, *Things Fall Apart*
  + Orojo and Ojomo, *Law and Practice of Arbitration and Conciliation in Nigeria;*
* The first letters in the key words (but often not the articles, conjunctions or prepositions) forming the names of buildings, institutions, organizations, and ships:
  + *Empire State Building*
  + *Nigerian Institute of Advanced Legal Studies*
  + *Awka-Etiti Improvement Union*
  + *M V Parnomous Bay;*
* Artistic works, brand names, and trademarks:
  + *Coca Cola*
  + *Nike;*
* The first letters in words referring to offices, organizations, or bodies (except when the reference is general or non-specific):
  + *Litigation Committee of the International Bar Association* BUT *the* *International Bar Association resolved to set up a litigation committee*
  + *Legal Education Committee of the Nigerian Bar Association* BUT *the Nigerian Bar Association should consider establishing a legal-education committee*
  + *Managing Director of First Bank* BUT *the company does not yet have a managing director;*

Avoid using all-capitals for emphasis, for instance to highlight your prayer or relief in an application or other court document, or to set out the issue for determination in a brief. All caps is shouting in print, and judges do not appreciate being shouted at. Besides, all caps is not easy to read, not too kind on the eye.

***Italics***

Use *italics* for:

* book titles (but not the author’s name, publication data, or cited page):
  + Chinua Asuzu, *Fair Hearing in Nigeria*, Lagos, Malthouse, 2010, page 102;
* case names (but not the citation):
  + *Ekyo v Toyo* (2012) 8 NWLR (Part 1303) 460;
* foreign words and phrases, but
  + you do not have to italicize if the word or phrase has virtually become part of English by common or long usage;
  + if in doubt as to whether to italicize a foreign word or phrase, it is safer to italicize;
  + ‘foreign’ in this context means other than English- so Igbo and Latin words are foreign;
  + examples: *de minimis non curat lex*, *forum non conveniens, nzuko umunna, res ipsa loquitur*;
* journal, magazine, and newspaper names or titles:
  + examples: *Lagos Bar Journal*, *University of Nigeria Law Review*, *Newswatch*, *Daily Independent*;
* mathematical formulas and variables.

Now, suppose a passage is already in italics. You wish to emphasize or highlight a word or phrase within that passage. If the passage was in regular font, you would have used italics. You emphasize by using regular text.

Examples:

*Chinua Achebe’s* Things Fall Apart *captures the sociological context in Igboland at the start of the European invasion of that part of Nigeria.*

*Lord Denning said in* Candler v Crane, Christmas & Co *that some judges were timorous souls, while others were bold spirits.*

**Numbers**

As a general rule, write numbers in figures, especially when they refer to measurements- coordinates, dates (but spell out the month), demographics, depth, distance, formulae, girth, height, money, size, speed, statistics, temperature, time, volume, weight, width, and so on. Do not spell them out in words. Use figures except when that could confuse the reader or it would be inelegant- for example, the figure *1* could be confused with the first person pronoun *I* depending on its context or placement. If there is no risk of confusion or inelegance, prefer figures.

WRITE *Pregnancy is divided into three 3-month periods called trimesters.*

NOT *Pregnancy is divided into 3 3-month periods called trimesters.*

Using figures highlights your numbers, bringing them into sharp relief and making them more memorable. They stand out in your text.

Do not use figures and words, one in regular text and the other in parenthesis. Do not write *10,000 (ten thousand)* or *ten thousand (10,000)*. Just write *10,000*. But when you are talking large numbers, you can combine figures and words, but not the way shown in the last sentence- repeating what you have just said. Just to be easy on the eye, write *6 billion*, not *6,000,000,000*. You should not assign to your innumerate readers the task of counting zeros. Most lawyers do not like math. So:

Unwise: *She made N50,000,000 within 2 years of law business.*

Ill-advised: *She made fifty million naira within 2 years of law business.*

Irksome: *She made N50,000,000 (fifty million naira) within 2 years of law business.*

Irritating: *She made fifty million naira (N50,000,000) within 2 years of law business.*

Good: ***She made N50 million within 2 years of law business****.*

WRITE *The world’s population may reach 20 billion in 200 years.*

NOT *The world’s population may reach 20,000,000,000 in 200 years.*

If the number is complex, please write it out in full, following the general rule about numbers.

*37,814,204*

*16,734,892.15*

If it is fairly simple, say 5,250,000, you can write 5.25 million.

**Tabulation**

Use tabulation to split up long sentences, especially in legislative and transactional drafting. With tabulation, a grammatical sentence may remain long without losing readability. This sentence is too long:

*The Governor may, with the approval of the Board of Directors and by notice published in the Gazette, revoke any licence granted under this Act if a bank ceases to carry on in Nigeria the type of banking business for which the licence was issued, or goes into liquidation or is wound up or dissolved, or fails to fulfil any condition of the licence, or has insufficient assets to meet its obligations, or fails to meet any obligation imposed on it by this Act or under the Central Bank of Nigeria Act*.

Tabulation will improve it:

*The Governor may, with the approval of the Board of Directors and by notice published in the Gazette, revoke a bank’s licence in any of the following cases:*

1. *the bank ceases to do the type of banking business it was licensed to do;*
2. *the bank goes into liquidation, is wound up or dissolved;*
3. *the bank fails to fulfil any condition of the licence;*
4. *the bank does not have enough assets to meet its obligations; or*
5. *the bank fails to meet any obligation under this Act or under the Central Bank of Nigeria Act.*

The following example is from *The Art of Plain Talk* by Rudolf Flesch*[[55]](#footnote-55)*. Rudolf Flesch is a readability expert and the creator of several readability tests, some of which are now computer applications. Flesch also wrote *The Art of Readable Writing.[[56]](#footnote-56)*

*Sick leave shall be granted to employees when they are incapacitated for the performance of their duties by sickness, injury, or pregnancy and confinement, or for medical, dental or optical examination or treatment, or when a member of the immediate family of the employee is affected with a contagious disease and requires the care and attendance of the employee, or when, through exposure to contagious disease, the presence of the employee at his post of duty would jeopardize the health of others.*

[Flesch then offers this tabulated redraft:]

*Employees shall be granted sick leaves for these four reasons:*

1. *They cannot work because of sickness, injury, or pregnancy and confinement;*
2. *They need medical, dental, or optical treatment;*
3. *A member of their immediate family is affected with a contagious disease and needs their care and attendance;*
4. *Their presence at their post of duty would jeopardize the health of others through exposure to contagious disease.*

When using tabulation to list items, the items must be *ejusdem generis* (of the same kind). Do not draw up a list of (a) cats, (b) dogs, and (c) refrigerators.

**Underlining**

Underlining inside your text is useful when you write with a pen. It was useful when your grandfather typed on a typewriter. Now, you emphasize, when you must (which should be very rarely) with **bold**, CAPITALS, or *italics.* Minimize emphasis- it is not very polite. Capitals are not as easily readable as lower case.

Avoid using underlining for emphasis, for instance to highlight your prayer or relief in an application or other court document, or to set out the issue for determination in a brief. Underlined text is not as easy to read as free text. Underlined text is tough on the eye.

You might find some new use for underlining; if so, please tell me.

For headings, prefer **bold font** to underlining, as in this paper.

1. **Avoid double-past constructions**

I attended the University of Nigeria decades ago.

Correct: *I am a former student of the University of Nigeria*.

Wrong: *I was a former student of the University of Nigeria.*

Now, I *am* a former student.

*I was a student of the University of Nigeria.*

My law partner Patrick Kola used to be a Crown Prosecutor in England. That was ages ago.

Correct: *Patrick is a former Crown Prosecutor*.

Wrong: *Patrick was a former Crown Prosecutor*.

Now, Patrick *is* a former Crown Prosecutor.

*Patrick was a Crown Prosecutor*.

1. **Use possessives to introduce gerunds and solve fused-participle difficulties**

When you use the *. . . ing* participle form as a noun, it is called a gerund. *Writing*, *coming*, *going,* and *painting* are usually verbs in their present continuous tense, and in that sense they usually take an auxiliary verb. In *Lolade is drafting a witness statement*, the verb *drafting* needs the auxiliary verb *is* to complete the sentence. But in the sentence *drafting is an art*, the word *drafting* has been used as a noun. It is a gerund.

Use the possessive form of a noun or pronoun to introduce a gerund. This enhances clarity and comprehension. Instead of *I hate Peter visiting that monastery every Saturday*, say *I hate Peter’s visiting that monastery every Saturday*. Otherwise someone might think you hate Peter.

Fused participles result when you use a noun or pronoun instead of its possessive form to introduce a gerund, as in the *I hate Peter visiting . . .* example, or in *I hate him visiting that monastery every Saturday*. This fuses the noun or pronoun into the gerund. “Use logic to solve fused-participle problems by eliminating miscues. Ask yourself where the reference and stress should be. *Incorrect*: ‘The People objected to the defendant leaving the courtroom a free man.’ The gerund ‘leaving’ is fused into the noun ‘defendant’. ‘Leaving’ is the object of the preposition ‘to’; ‘leaving’ doesn’t modify the noun ‘defendant’. In this sentence, the reader might incorrectly believe that the People objected to the defendant. *Therefore*: ‘The People objected to the notion that the defendant would leave the courtroom a free man.’ Or insert an apostrophe: ‘The People objected to the defendant’s leaving the courtroom a free man.’ Fused participles affect pronouns. *Incorrect*: ‘Do you mind us getting all these cases?’ In this example, the writer didn’t mean to write ‘Do you mind *us*?’ But that’s what the reader understands. *Becomes*: ‘Do you mind *our* getting all these cases?’ *Incorrect*: ‘The police objected to them possessing contraband.’ In this example, the writer did not mean, ‘The police objected to *them*.’ *Becomes*: ‘The police objected to *their* possessing contraband.’ *Incorrect*: ‘My parole officer objected to me living alone.’ The writer did not mean to write, ‘My parole officer objected to *me living*.’ *Becomes*: ‘My parole officer objected to *my* living alone.’”[[57]](#footnote-57)

Gerunds have other uses. “Use gerunds to avoid nominalizations, or converting verbs into nouns.”[[58]](#footnote-58) Instead of *Avoid conversion of verbs into nouns*, write *Avoid converting verbs into nouns*. This incidentally helps you to reduce the occurrence of *of* in your writing. *Of* is a frequent villain in verbosity.

1. **Replace redundant expressions with alternatives supplied**

Avoid redundancy. “Redundancy is the unnecessary repetition of words or ideas.”[[59]](#footnote-59)

|  |  |
| --- | --- |
| **Redundant Expressions** | **Boiled Down Alternatives** |
| *absolute guarantee* | *guarantee* |
| *absolutely clear* | *clear* |
| *accidental slip* | *slip* |
| *actual experience* | *experience* |
| *adequate enough* | *adequate* |
| *advance planning* | *planning* |
| *advance warning* | *warning* |
| *agree and covenant* | *agree* |
| *all and singular* | *all* |
| *any and all* | *any* |
| *appreciate in value* | *appreciate* |
| *as at that time* | *then* |
| *as at when* | *when* |
| *ascend up* | *ascend* |
| *as of this date* | *today* |
| *as of yet, as yet* | *yet* |
| *as to whether* | *whether* |
| *at about* | *about* |
| *at a later date* | *later* |
| *at an early date* | *soon* |
| *at approximately* | *about* |
| *at the present time* | *now* |
| *at this time* | *now* |
| *at this particular point in time* | *now* |
| *at the time when* | *when* |
| *basic assumption* | *assumption* |
| *basic fundamentals* | *basics* |
| *because of the fact that* | *because* |
| *both Kehinde as well as Taiye* | *both Kehinde and Taiye* OR *Kehinde as well as Taiye* OR *Kehinde and Taiye* |
| *by the time* | *when* |
| *class-action lawsuit* | *class action* |
| *collide together* | *collide* |
| *combine together* | *combine* |
| *come in contact with* | *meet, touch* |
| *completely destroyed* | *destroyed* |
| *completely finished* | *finished* |
| *complete stop* | *stop* |
| *consensus of opinion* | *consensus* |
| *contract agreement* | *contract* OR *agreement* |
| *cooperate together* | *cooperate* |
| *crisis situation* | *crisis* |
| *current incumbent* | *incumbent* |
| *current trend* | *trend* |
| *deliberate lie* | *lie* |
| *depreciate in value* | *depreciate* |
| *descend down* | *descend* |
| *different kinds* | *kinds* |
| *direct confrontation* | *confrontation* |
| *divide up* | *divide* |
| *due to the fact that* | *because* |
| *duly noted* | *noted* |
| *during the course of* | *during* |
| *during the time that* | *during, while* |
| *during such time as* | *during* |
| *during the month of September* | *during September* or *in September* |
| *during the year of 2012* | *during 2012* or *in 2012* |
| *each and every* | *each* OR *every* |
| *each separate incident* | *each incident* |
| *eight in number* | *eight* |
| *emergency situation* | *emergency* |
| *empty space* | *space* |
| *enclose(d) herewith* | *enclose(d)* |
| *end result* | *result* |
| *eradicate completely* | *eradicate* |
| *essential element* | *element* |
| *essential ingredient* | *ingredient* |
| *estimated to be about* | *about, estimated to be, estimated at* |
| *estimated roughly at* | *estimated at* |
| *exactly analogous* | *analogous* |
| *exactly the same* | *the same* |
| *excessive number of* | *too many* |
| *excess verbiage* | *verbiage* |
| *false illusion* | *illusion* |
| *false misrepresentation* | *false representation* OR *misrepresentation* |
| *false pretences* ? | *pretences* |
| *few in number* | *few* |
| *filled to capacity* | *filled* |
| *final result* | *result* |
| *final outcome* | *outcome* OR *result* |
| *final destination?* | *destination* |
| *first and foremost* | *first* OR *foremost* |
| *fit and proper* | *fit* |
| *force and effect* | *force* |
| *foreign import* | *import* |
| *forward progress* | *progress* |
| *free gift* | *gift* |
| *free of charge* | *free* |
| *fused together* | *fused* |
| *future plans* | *plans* |
| *general public* | *public* |
| *give, devise, and bequeath* | *give* |
| *good and ready* | *ready* |
| *green in colour* | *green* |
| *healing process* | *healing* |
| *honest truth* | *truth* |
| *indicted on a charge* | *indicted* |
| *I would appreciate it if [you could]* | *please* |
| *if and when* | *if* OR *when* |
| *if that is the case* | *if so* |
| *important essentials* | *essentials* |
| *in addition to ... also* | *and, also* |
| *in any way, manner, shape, or form* | (delete) |
| *in the event that* | *if* |
| *in the month of May* | *in May* |
| *in the near future* | *soon* |
| *in rare cases, in rare instances, on rare occasions* | *rarely* |
| *in routine fashion* | *routinely* |
| *insofar as* | *so far as* |
| *integral part* | *part* |
| *interpersonal relationship* | *relationship* |
| *inveigh in strong terms* | *inveigh* |
| *is currently in progress* | *is in progress* |
| *is now pending* | *is pending* |
| *join together* | *join* |
| *keep and maintain* | *keep* |
| *kills (something or someone) dead* | *kills (something or someone)* |
| *large in size* | *large* |
| *large number of* | *many* |
| *last but not least* | *last* |
| *last will and testament* | *will* |
| *lift up* | *lift* |
| *live audience* ?? | *audience* |
| *lucrative profits* | *profits* |
| *lying, being and situate* | *at* |
| *made and entered into* | *made* |
| *mass exodus* | *exodus* |
| *mass media* | *media* |
| *merged together* | *merged* |
| *mix together* | *mix* |
| *mutual cooperation* | *cooperation* |
| *necessary essentials* | *essentials* |
| *necessary requirements* | *requirements* |
| *never at any time* | *never* |
| *never before in the past* | *never before* |
| *new innovation* | *innovation* |
| *next following* | *next* OR *following* |
| *nothing whatsoever* | *nothing* |
| *null and void* | *void* |
| *null, void, and of no effect* | *null* OR *void* |
| *on a timely basis* | *timely* |
| *on the condition that* | *if* |
| *on the ground that* | *because* |
| *one and the same* | *the same* |
| *one of the purposes* | *one purpose* |
| *one of the reasons* | *one reason* |
| *ongoing process* | *process* |
| *old adage* | *adage* |
| *old proverb* | *proverb* |
| *own opinion* | *opinion* |
| *outstanding balance* | *balance* |
| *overall total* | *total* |
| *over with* | *over* |
| *part and parcel* | *part* |
| *passing phase* | *phase* |
| *past experience* | *experience* |
| *past history* | *history* |
| *past records* | *records* |
| *period of 2 years* | *2 years* |
| *period of time* | *period, time* |
| *permeate throughout* | *permeate* |
| *personal belongings* | *belongings* |
| *personal opinion* | *opinion* |
| *personal friend* | *friend* |
| *personal friendship* | *friendship* |
| *plan ahead* | *plan* |
| *please be good enough to forward* | *please send* |
| *point of view* | *opinion, perspective* |
| *postponed until later* | *postponed* |
| *pre-planned* | *planned* |
| *prim and proper* | *prim* OR *proper* |
| *probed into* | *probed* |
| *proceed ahead* | *proceed* |
| *protest against* | *protest* |
| *qualified expert* | *expert* |
| *raise the question* | *ask* |
| *rational reason* | *reason* |
| *reason why* | *reason, why* |
| *recur again* | *recur* |
| *refer back (to)* | *refer (to)* |
| *reflect back* | *reflect* |
| *regard as being* | *regard* |
| *reiterate again* | *reiterate* |
| *remaining balance* | *balance* |
| *remand back to* | *remand to* |
| *remind again* | *remind* |
| *repeat again* | *repeat* |
| *rest, residue and remainder* | *all other property, balance, rest* |
| *resultant consequence* | *result* OR *consequence* |
| *resultant effect* | *effect* |
| *revert back (to)* | *revert (to)* |
| *risk factor* | *risk* |
| *round in shape, round in form* | *round* |
| *rise up* | *rise* |
| *sad tragedy* | *tragedy* |
| *save and except* | *except* |
| *separate and apart* | *apart* OR *separate* |
| *several in number* | *several* |
| *shoddy in appearance* | *shoddy* |
| *shooting incident* | *shooting* |
| *shun and avoid* | *avoid* |
| *similar to* | *like* |
| *something else besides* | *something else* OR *besides* |
| *small in size* | *small* |
| *sooner than later* | *soon* |
| *sooner rather than later* | *soon* |
| *specific example* | *example* |
| *standard cliché* | *cliché* |
| *still goes on* | *continues, goes on* |
| *still remains* | *still, remains* |
| *strict proof* | *proof* |
| *strictest proof* | *proof* |
| *sudden outburst* | *outburst* |
| *suddenly exploded* | *exploded* |
| *suffered the loss of* | *lost* |
| *sufficient (amount, number) of* | *enough* |
| *sum total* | *sum* OR *total* |
| *surrounded on all sides* | *surrounded* |
| *surviving widow* | *widow* |
| *sworn affidavit* | *affidavit* |
| *temporary respite* | *respite* |
| *temporary reprieve* | *reprieve* |
| *temporary suspension* | *suspension* |
| *terrible tragedy* | *tragedy* |
| *10.30am in the morning* | *10.30am* OR *10.30 in the morning* |
| *to all intents and purposes* | (delete or rephrase) |
| *totally devoid* | *devoid* |
| *to the effect that* | *that* |
| *true and correct* | *true, correct* |
| *true facts* | *facts* |
| *underlying assumption* | *assumption* |
| *unexpected surprise* | *surprise* |
| *unsolved problem* | *problem* |
| *unless and until* | *unless, until (or rephrase)* |
| *until such time as* | *until* |
| *usual custom* | *custom* |
| *utterly false* | *false* |
| *visible to the eye* | *visible* |
| *where are you at?* | *where are you?* |
| *will and testament* | *will* |

1. **Let’s go *which* hunting!**

*Which* is a repeat offender in legal-writing verbosity. Drop *of which* legalese. Write *the Law School, whose Deputy Director is Bob Osamor*, not *the Law School, the Deputy Director of which is Bob Osamor*.

Avoid abuse of *which* in other instances too. Instead of *the lease between Assizes Lawfirm and The Write House, which lease provides . . .*, write: *the lease between Assizes Lawfirm and The Write House provides . ...*

A clause is a group of words that contains a subject and a verb. An independent clause can stand alone as a sentence. A dependent clause has to be attached to an independent clause to make a sentence. Unlike a phrase, a clause, including even a dependent clause, makes sense on its own.

*That* introduces a restrictive clause. A restrictive clause is a clause that limits meaning. *Which* introduces a non-restrictive clause. A non-restrictive clause merely adds information. A non-restrictive clause can be dispensed with- the sentence can live without it.[[60]](#footnote-60)

This sentence is ambiguous:

*For my 50th birthday, Patrick gave me a wristwatch which I liked*.

It could mean that I like receiving wristwatches or similar gifts from my law partner, and if so there should be a comma before *which*:

*For my 50th birthday, Patrick gave me a wristwatch, which I liked*.

This redraft stresses that it was the giving that I liked.

The sentence could mean that I liked this particular gift of a watch, and if so kill the *which* and write:

*For my 50th birthday, Patrick gave me a wristwatch that I liked.*

This redraft emphasizes the gift, not the giving. And there is no comma.

*That* is a demonstrative pronoun. *That* is restrictive or defining. *That* points to a given item. *Which* is an interrogative pronoun. *Which* is not restrictive. At any rate, not always.

When you want to refer to one of several items, whether all of them are named in the sentence or not, use *that* after the one you do name. When the item is all there is, use *which*. There is usually a comma before *which*, but *that* needs no comma.

*Please send Ben Nwabueze’s constitutional-law book that I told you about.*

This means Nwabueze has several published constitutional-law books, and the speaker is specifying the one she wants.

*Please send Ben Nwabueze’s constitutional-law book, which I told you about.*

Ben Nwabueze has published just one book on constitutional law. The speaker merely reminds her friend to send it over.

This *which-that* dichotomy is not iron-clad. It is more commonly observed in American than in British English. If in doubt, play it by the ear- pick the one that sounds right.

Place a modifying *which* next to the words it modifies.

Wrong: *The Taraba State High Court gave judgment for the claimant, which the Court of Appeal affirmed.*

In this sentence, *which* modifies *judgment*, not *claimant*, and so should not be placed next to *claimant* but to *judgment*. In this example this would lead to a tortuous construction:

*The Taraba State High Court gave for the claimant a judgment, which the Court of Appeal affirmed.*

Because this is not elegant, redraft by killing the *which*:

*The Court of Appeal affirmed the Taraba State High Court’s judgment for the claimant.*

Improve your legal writing by killing lots of *which*es (*which*icide is not a crime in Nigeria):

Wicked *which*: *This brief, which was written by Nasiru Tijani, is excellent*.

Dead *which*: *This brief, written by Nasiru Tijani, is excellent.*

Illicit *which*: *The parties entered into an arbitration agreement in March 2013, which agreement provides for a sole arbitrator.*

Dead *which*: *The parties entered into an arbitration agreement in March 2013, and the agreement provides for a sole arbitrator.*

Dead *which*: *The parties entered into an arbitration agreement in March 2013*. *The agreement provides for a sole arbitrator.*

Dead *which*: *In March 2013, the parties entered into an arbitration agreement with provision for a sole arbitrator.*

Often, the only good *which* is a dead *which*.

Kill *that which*.

Bad form: *Go and do* **that which** *you must do*.

Good form: *Go and do* **what** *you must do.*

In some contexts *whatever* may be better than *what* as a replacement for *that which*. Choose whichever sounds better in the context and syntax.

1. **Modifiers and Mismatched Apposition**

A modifier could be a word, a phrase, or even a clause.

Judge Lebovits identifies 4 modifier problems: “(1) misplaced modifiers; (2) squinting modifiers; (3) dangling modifiers; and (4) awkward separations.”[[61]](#footnote-61) You might find this classification pedantic. I do.

Avoid misplaced modifiers by placing modifiers close to the words they modify. “A misplaced modifier occurs when you improperly separate a word, phrase, or clause from the word it describes. Some commonly misplaced words: ‘almost’, ‘even’, ‘exactly’, ‘hardly’, ‘just’, ‘merely’, ‘nearly’, ‘only’, ‘scarcely’, and ‘simply’. *Example of a misplaced word*: ‘She almost sold all her used law books at the garage sale.’”[[62]](#footnote-62) The sentence means *she almost sold*, which in turns means *she did not sell*. *Almost* modifies sold. But the writer meant to say *she did sell*. *She sold almost all her used law books at the garage sale*. Here, *almost* modifies *all her used law books*, as the writer intended.

Consider this sentence: *Paul served wine to Timothy in a glass cup.* Was young Tim inside a glass cup? Of course not! But that’s what this sentence could be saying, because the modifying phrase *in a glass cup* has been separated from the word (*wine*) that it modifies. So: *Paul served wine in a glass cup to Timothy.*

*Being insane, the judge ordered the defendant’s transfer to a mental hospital.*

*Because the defendant was insane, the judge ordered his transfer to a mental hospital.*

A squinting modifier sits mid-sentence and can be read to modify either what precedes it or what follows it.[[63]](#footnote-63) “A squinting modifier is a modifier that might refer to a preceding or a following word. Like a misplaced modifier, a squinting modifier creates confusion. Unlike a misplaced modifier, the adverb might function perfectly in the sentence structure but its meaning might be ambiguous. *Example*: ‘Eric told his daughter when the meeting was over he would play with her.’ Is it that Eric spoke to his daughter when the meeting was over? Or that Eric told his daughter he would play with her after the meeting? Two correct versions: ‘Eric told his daughter he would play with her when the meeting was over.’ Or: ‘When the meeting was over, Eric told his daughter that he would play with her.’”[[64]](#footnote-64)

The position of a squinting modifier in a sentence affects the whole sentence. Squinting adverbs include *almost*, *even*, *exactly*, *hardly*, *just*, *merely*, *nearly*, *only*, *scarcely*, *simply*, and *solely*. The sentence *Mr Emuwa only nominated Ms Sofola for partner* is ambiguous because the modifier *only* squints. Does the sentence mean that only Emuwa nominated Ms Sofola, or that Emuwa nominated Ms Sofola and did nothing else, or that Emuwa nominated Ms Sofola and nobody else? If the first sense is meant, the sentence should read *Only Mr Emuwa nominated Ms Sofola for partner*; if the second, the sentence needs to be redrafted: it could read *Mr Emuwa nominated Ms Sofola for partner, but did not vote at the* selection; if the last, re-position the modifier and write *Mr Emuwa nominated only Ms Sofola for partner*.[[65]](#footnote-65)

*A solicitor who steals clients’ funds often cannot be punished*.

What does *often* modify- the crime or the punishment?

*A solicitor who often steals clients’ funds cannot be punished.*

*A solicitor who steals clients’ funds cannot often be punished.*

*The contractor must be notified immediately to cancel all outstanding work orders.*

*The contractor must be immediately notified to cancel all outstanding work orders.*

*The contractor must be notified to immediately cancel all outstanding work orders.*

**Only** *she said that he shot her.*

*She* **only** *said that he shot her.*

*She said* **only** *that he shot her.*

*She said that* **only** *he shot her.*

*She said that he* **only** *shot her.*

*She said that he shot* **only** *her.*

*She said that he shot her* **only***.*

With a dangling modifier, the modified noun or pronoun is in the wrong place or even absent. The dangling modifier itself could be at the beginning or at the end of the sentence. Avoid dangling modifiers by placing the targets for modification close to their modifiers. In the sentence *on her 20th birthday last week, Wura bought Lolade a Blackberry*, it is not clear who has just turned 20- Wura or Lolade? So redraft *on Lolade’s 20th birthday last week, Wura bought her a Blackberry* or *on Wura’s 20th birthday last week, she bought Lolade a Blackberry*, whichever you mean.

Consider the following example from New York Judge and legal-writing expert Gerald Lebovits: “‘When just five years old, my father taught me how to cross-examine my sister.’ Because ‘when just five years old’ is positioned next to ‘my father’, the sentence suggests that ‘my five-year-old father taught me how to cross-examine my sister.’ *Therefore*: ‘When I was just five years old, my father taught me how to cross-examine my sister.’”[[66]](#footnote-66)

In the sentence *the highway is only for buses and trucks weighing less than 1000kg*, does the modifier *weighing less than 1000kg* apply to buses and trucks or just trucks?

Resolve the ambiguity with tabulation:

*The highway is only for:*

* + 1. *buses, and*
    2. *trucks weighing less than 1000kg*

Or: *The highway is only for:*

1. *buses, and*
2. *trucks*

*weighing less than 1000kg*

The following sentence is ambiguous:

*The lawyer is Mohammed Sanusi, partner of Chigbo Odimegwu, who later married Negoli Zokari.*

Do not clear this ambiguity by this unattractive redraft (the ambiguity goes but the result is inelegant verbosity):

*The lawyer is Mohammed Sanusi, partner of Chigbo Odimegwu, which said Mohammed Sanusi later married Negoli Zokari.*

Often you can avoid ambiguity by placing the relative pronoun (*who*, *which*, *that*) right after the word it relates to. In the above example, if Negoli’s husband were Mohammed, rearrange the sentence to read:

*The lawyer is Chigbo Odimegwu’s partner Mohammed Sanusi, who later married Negoli Zokari.*[[67]](#footnote-67)

Sometimes a relative pronoun just has to go, as it will cause trouble no matter where you place it:

*Associates’ claims for expenses,* **which***must not exceed N50,000, must be made within 21 days.*

What must not exceed N50,000 – the claims or the expenses? By getting rid of the relative pronoun *which*, you can clarify:

Claims not to exceed N50,000:

*Associates’ claims for expenses must not exceed N50,000 and must be made within 21 days.* OR

*Associates’ expense claims must not exceed N50,000 and must be made within 21 days.*

Expenses not to exceed N50,000:

*Associates’ expenses must not exceed N50,000. Claims for expenses must be made within 21 days.[[68]](#footnote-68)*

So: “Keep modifiers next to the words and thoughts they modify.”[[69]](#footnote-69)

1. **Pronoun confusion**: *you and I* or *you and me*?

Correct: *The claimant and I went to the courtroom.*

Wrong: *The claimant and me went to the courtroom.*

Wrong: *The claimant and myself went to the courtroom.*

Correct: *The Okaurus have done so much for my wife and me*.

Wrong: *The Okaurus have done so much for my wife and I.*

Wrong: *The Okaurus have done so much for my wife and myself*.

Correct: *She and the kids moved to Akure.*

Wrong: *Her and the kids moved to Akure.*

Correct: *He and I were always arguing.*

Wrong: *Me and him were always arguing.*

Wrong: *He and me were always arguing.*

Wrong: *I and him were always arguing.*

Correct: *Between you and me, ...*

Wrong: *Between you and I, ...*

When confused or unsure, do this. Take the first of several pronouns, or nouns and pronouns, out of the picture. Then ask what pronoun the rest of the sentence would take if it was the whole sentence. In the first example, if you get rid of *the claimant*, the sentence would read *I went to the courtroom*, not *me went to the courtroom* or *myself went to the courtroom.* In the second example, when you take *my wife and* out of the picture, the sentence would read *The Okaurus have done so much for me*, not *The Okaurus have done so much for I* or *The Okaurus have done so much for myself*.

Lebovits urges this formula: “Here’s a tip when you write a sentence with two or more pronouns: Delete the first pronoun. Then ask whether the sentence reads with an ‘I’, ‘me’, ‘he’, ‘him’, ‘she’, ‘her’, ‘they’, or ‘them’. *Incorrect*: ‘She and him went to court.’ Delete ‘she’. The sentence makes sense if you say ‘He went to court.’ *Therefore*: ‘She and he went to court.’ *Incorrect*: ‘He and them argued the motion.’ Delete ‘he.’ The sentence makes sense if you say ‘They argued the motion.’ *Therefore*: ‘He and they argued the motion.’ *Incorrect*: ‘Mary and me went to court.’ In this example in which ‘Mary’ replaces a pronoun, follow the same rule: Delete ‘Mary.’ The sentence makes sense if you say ‘I went to court.’ *Therefore*: ‘Mary and I went to court.’ *Incorrect*: ‘The judge played softball with Henry and I.’ The sentence doesn’t make sense if you delete ‘Henry and.’ The sentence would be, incorrectly: ‘The judge played softball with I.’ *Therefore*: ‘The judge played softball with Henry and me.’”[[70]](#footnote-70)

To determine whether to use the pronouns ‘we’ or ‘us’, drop the associated noun. “*Incorrect*: ‘Us attorneys can no longer tolerate the firm’s policies.’ If you drop the noun ‘attorneys’, the sentence wouldn’t make sense: ‘Us can no longer tolerate the firm’s policies.’ *Correct*: ‘We attorneys can no longer tolerate the firm’s policies.’ If you drop the noun ‘attorneys’, the sentence makes sense: ‘We can no longer tolerate the firm’s policies.’ *Incorrect*: ‘The firm has given we paralegals no alternative.’ If you drop the noun ‘paralegals’, the sentence wouldn’t make sense: ‘The firm has given we no alternative.’ *Correct*: ‘The firm has given us paralegals no alternative.’ If you drop the noun [‘paralegals’], the sentence now makes sense: ‘The firm has given us no alternative.’”[[71]](#footnote-71)

1. **Elegant Variation and Pig-headed Consistency**

Avoid ‘elegant variation’.

Elegant variation is using different words or terms to mean the same thing, in the same sentence, passage, or context. Someone somewhere actually thought it was cute to avoid repeating the same word to refer to the same thing, just to show that you could find another way of saying it. I call it inelegant variation. Example: a TV announcer, speaking in October 2012, said something would go on “from the 12th day of October to the 17th day of the current month”. He should have said: “from the 12th to the 17th October” or “from the 12th to the 17th of this month”. By using a different term *current month* to mean the same thing *October*, the TV announcer produced linguistic confusion.

Do not vary terms unnecessarily. “Any term that needs defining, in particular, but also any noun of import should go by the same name from start to finish. Call like things likewise. Keep terminology simple and consistent.”[[72]](#footnote-72)

Follow the Golden Rule of Drafting- use the same word to describe the same thing. If your high school English teacher told you not to use the same word twice in one sentence, forget that piece of conventional folly.

The rule against elegant variation applies to all kinds of legal writing, but it is critical in drafting, whether legislative or transactional. Precision is critical in legislative and transactional drafting. Vary the terms only if you intend to vary the meanings. “The reader of a formal instrument is entitled to assume that a shift in terms is intended to signal a shift in meaning . . . .”[[73]](#footnote-73)

I will call the converse source of confusion ‘pig-headed consistency’: using the same word or term to mean different things. Example:

*The judge gave no consideration to the defendant’s failure to furnish consideration for the claimant’s promise.*

The word *consideration* is repeated in two completely different senses. The second *consideration* is contract-law language and is a term of art. So:

*The court ignored the defendant’s failure to furnish consideration for the claimant’s promise.[[74]](#footnote-74)*

1. **Jettison ‘fatuous lawyerisms’ like *aforesaid* and similar antiquated expressions**

Avoid obsolete formalisms and antiquated expressions like: *aforementioned*, *aforesaid*, *as per, foregoing*, *forthwith*, *henceforth, herebetween, hereby, herein, hereinabove, hereinafter, hereinbefore, hereof, herewith, hitherto, howsoever, inasmuch, in pursuance of, per, prior to, provided that, pursuant to, said, same, such, thenceforth, thereat, therebetween, thereby, therefor, therefrom, therein, thereof, therewith, to wit, whatsoever, whereas, whereby, wherefore, wherein, whereinbefore, whereupon, wherewith, and witnesseth.*

If you must use *hence* and *whence* (I use them sparingly), at least use them correctly. *Hence* means *from here* or *from now* or *because of this*; *whence* means *from where*. *From whence* is tautology, equivalent to saying *from from where*.

I am yet to find context in which the word *before* or *earlier* cannot handsomely take the place of *prior to*. Lawyers inordinately love *prior to*.

Forget *prior to*. It has been widely condemned by the legal-writing elite.Hear them:

*Prior to* is a ‘‘faddish affectation for ‘before’. Would you say ‘posterior to’ in place of ‘after’?’’[[75]](#footnote-75)

‘Prior to’ is ‘‘pompous in the sense ‘before’.’’[[76]](#footnote-76)

‘‘‘Prior to’ is a terribly overworked lawyerism. Only in rare contexts is it not much inferior to ‘before’.’’[[77]](#footnote-77)

‘‘There is no good reason to use ‘prior to’ as a preposition instead of ‘before’. ‘Before’ is simpler, better known and more natural, and therefore preferable.’’[[78]](#footnote-78)

‘‘‘Prior to’ takes the booby prize for the most common inflated phrase in legal and official writing. Why would anyone prefer it to ‘before’? Try to think of a single literary title or line that uses ‘prior to’....By itself, ‘prior to’ may seem insignificant. But it often leads to clumsy, indirect constructions....More important, a fondness for ‘prior to’ may indicate a fondness for jargon—and a blind resistance to using plain words. That resistance, that cast of mind, is in large part responsible for the [poor] state of legal writing.’’[[79]](#footnote-79)

1. **Let’s talk about sex . . .**

No, it’s not what you’re thinking!

Sex must be distinguished from gender. Sex means the condition of being male or female. Only humans and animals can possess this attribute. A notice at the gym where I work out reads *Male Changing Room*. This is a wooden falsehood. A room cannot be male or female. It lacks the equipment. The notice should read *Men’s Changing Room*. Sex characterizes a human being or animal.

Gender characterizes a noun or pronoun. Even if the noun or pronoun refers to a person or animal, gender stresses the noun or pronoun itself, not the person or animal behind it. Gender is masculine or feminine. In French, a table is a feminine noun- *la table*. In English, *he* is a masculine pronoun. *Ship* is feminine, not female. Names of countries are feminine nouns and take feminine pronouns.

A human being’s sex is determined at birth, their gender not necessarily.

God doesn’t have a sex; He has a gender. We use masculine pronouns for God. However this originated, it is now a matter of usage.

Gender and sex are now often used synonymously. This usage has, unfortunately in my view, become acceptable.

In law, persons include individuals of both sexes as well as artificial persons (entities like corporations that possess legal personality). Some laws, rules, or statements can only apply to persons of one particular sex, or to natural persons, or to artificial persons. Examples are those dealing with fathers, mothers, or companies. But most laws apply to all kinds of persons. And most words in legal language are not concerned with the sex of the subject, or its artificiality. A *trustee* could be a male, a female, or a corporation.

In legal writing, what pronoun is appropriate to refer to a person who has already been identified earlier in the passage? If the statement is about a male, then the pronoun is of course the masculine *he*, along with *him*, *himself*, and *his*. If a female has been identified, *she*, *her*, *hers*, and *herself* will be the appropriate pronouns- they are feminine pronouns. When a company has been named, *it*, *its*, and *itself* come in handy. Apart from contexts where the subject person’s sex or capacity has been identified, the appropriate pronouns are used when it is clear from the context whether the subject is male, female, or an artificial person.

But when the person identified could be male, female, or juristic, what is the appropriate pronoun? Stop and think before you jump to *he*.“Avoid using masculine singular pronouns when the referent is not necessarily male.”[[80]](#footnote-80)

Conventional legal language, especially in Nigeria, is a man’s world. This world is decaying and being replaced by a gender-balanced and gender-sensitive world. Learn to use nouns and pronouns that respect both sexes. Following are just a few examples of how you can mitigate the inbuilt gender bias of the English language.

|  |  |
| --- | --- |
| **Avoid** | **Use** |
| *man’s basic liberties* | *basic human liberties* |
| *reasonable man* | *reasonable person* |
| *the wisdom of man* | *human wisdom* |
| *the rights of man* | *human rights* |
| *workman* | *worker* |
| *policeman* | *police officer* |
| *foreman* | *supervisor* |
| *newsman* | *reporter, journalist* |
| *draftsman* | *drafter* |
| *headmaster* | *head teacher* |
| *administratrix* | *administrator* |
| *executrix* | *executor* |
| *prosecutrix* | *prosecutor* |
| *testatrix* | *testator* |
| *actress* | *actor* |
| *poetess* | *poet* |

Look at the table again. The last 6 entries on the left do not contain *man*, *master*,or anything that suggests the masculine or excludes the feminine. So why change them? Each of those entries emphasizes the feminine gender as if promoting women. But it discriminates against women by saying- look, it’s a woman! as if surprised that a woman could be a *poet,* an *actor*, a *testator*, an *executor*, or an *administrator*. Should we call a female teacher a *teachess*?There is nothing exclusively masculine about the suffixes *–or* or *-er*.

Going out of one’s way to point out the female gender of a noun is not gender equality but subtle discrimination.

Nigerian bench and bar speak quirky legal language. They address female lawyers as ‘gentlemen’ on the long-dead fiction that ‘there is no lady at the bar’. This is absolute rubbish. I know some bars of ill-repute where few ladies may be found, but if by ‘bar’ they mean the profession of barristers, I say there are thousands of ladies in Nigeria and all over the world and they deserve to be addressed as ladies.

Some members of the Nigerian legal community also refer to female judges as ‘he’, ‘his lordship, ‘lords’ and ‘their lordships’. These sexist forms of address are used with the support of and by allegedly educated and supposedly enlightened Nigerian women. One would expect women to be proud of their sex and gender, and be keen to be recognized for whom and what God has, in His infinite wisdom, made them.

The sexist language originated in ancient England in an era when, truly, there were no females at the bar, let alone the bench. Well, we live in a different era now- one of open, clear, comprehensible, and user-friendly communication, with thousands of ladies in the profession.

I once published a short piece in *Next* titled ‘Miss or Mrs- what’s the court’s business?’ It read:

And she confessed, and denied not; but confessed, I am not the MRS (compare John 1: 20).

When I appear in court, I proudly announce myself as “Chinua Asuzu, [usually] for the Defendant.” I am visibly male, and extremely proud of it. I am not rich. I am not handsome. Just male. And proud. The judge, observing my maleness etched on my rugged face, jots my name down as “***Mr*** Chinua Asuzu”. Knowing this, I smile in silent gratitude for the judge’s graciousness. I never introduce myself to the court as *Mr*. The judge respectfully assigns the title to me. Unknown to many Nigerian Alhajis, Architects, Barristers, Chiefs, Doctors, Engineers, Pharmacists, and Professors, “Mr” is a title of high respect and honour for gentlemen. The judge puts this title in front of my name. I am a man of respect. I am a gentleman.

The title “Mr” does not indicate my marital status- only my sex, or gender, and the fact that I am deemed worthy of respect by the honourable judge. The judge is not interested in my marital status. He couldn’t care less. He respects me whether I’m married or single, no matter my age. He’s just waiting to hear whether I’ll talk cool law or hot air.

But let a female colleague announce herself as, say, “Fatima Bala”, and the judge retorts, as if a fatal omission had been made: “Miss or Mrs?” If she is single, the lady would then confess in an apologetic whisper: “Miss” as if being single was comparable to leprosy, or as if the title of Miss was a matter of intense personal shame. Female lawyers are supposed to announce their court appearances with a clear and loud indication of their marital status summed up in the title *Miss* or *Mrs*, for example, “Nkechi Olajide (MRS)” or “MRS Nkechi Olajide”. When they are married, the title is shouted or said in capital letters: *MRS*; when they are single, especially if they are not under thirty, they whisper … *miss* … as if something is amiss with *Miss*.

What’s the purpose of this inquiry into the marital status of female attorneys in Nigerian courts? Is it to decide how much respect to accord them, or to assess (from whether there is a man behind her) whether they’re sufficiently submissive to deserve judicial consideration, or to exercise care in dealing with them in case they’re married to some ‘big gun’, or to grade their advocacy skills according to how much male guidance they have had at forensic homework, or to isolate ‘safe’ targets for sexual harassment from the bench?

Whether a lawyer, male or female, is married should not be the concern of any court or judge. But if it must be, then they should be interested not only in the marital statuses of female attorneys but also in those of males.

*Ms* should do for women what *Mr* does for men: as married and single men use *Mr*, so married and single women should adopt *Ms*. Women all over the world should reject any discriminatory or unjustifiably differential treatment in forms of address. *Ms* is a woman’s best and smartest title.

As in other phases of gender issues, women are often their own worst enemies. Why must you advertise your marital status on your business card and in other business and social contexts when your men do not announce theirs? Men introduce themselves as, say, Jonathan, or Mr Goodluck, while women scream Mrs Abiola. Women should demand and expect respect on their own footings as individual human persons and not as appendages to some man.

The egregious discrimination built into the judicial inquiry about female lawyers’ marital statuses is a subtle and nuanced assault on the spirit of section 42(1) of the Nigerian Constitution and articles 3 and 18(3) of the African Charter on Human and Peoples’ Rights. These statutory provisions and treaty obligations frown severely on any species of discrimination, no matter how disguised, against women.

“And now, Ms Okorodudu, what were you saying about the case of *Heaven v Pender*?”

By the way, correct titles for lawyers are *Mr* or *Ms*, never *Barrister*. *Barrister* is not a title. Please stop calling me *Barrister Chinua Asuzu*. I am *Mr Chinua Asuzu*. If I did only solicitor’s work, would you call me *Solicitor Chinua Asuzu*?

(Please note that *to solicit* and *soliciting* do not mean doing solicitor’s work- those words relate to other, even older professions than law: begging and prostitution. I have heard some young female lawyers say: “I’m into soliciting” or “I solicit”, and I have had to wonder which they meant- begging or prostitution. If you solicit, you may belong to the oldest profession, but if you are a solicitor, you certainly belong to the noblest.)

*Would* you call your mechanic *Mechanic Tunde Agoro*? Ambassadors, architects, engineers, surgeons (general medical practitioners are *Dr*), and surveyors are all *Mr* or *Ms*. An ambassador, whether serving or retired, is *Mr* or *Ms*. Doctorate degree holders are *Dr*.

1. **Metadiscourse and expletives cause verbosity**

Do not sprinkle your writing with officious or obnoxious prefatory phrases. Do not fill out your syntax. “‘Expletive’ means ‘filled out’ in Latin. Avoid expletives: ‘there are’, ‘there is’, ‘there were’, ‘there was’, ‘there to be’, ‘it is’, and ‘it was’. *Examples*: ‘*There are* three issues in this case.’ *Becomes*: ‘This case has three issues.’ ‘*There is* no fact *that* is more damaging.’ *Becomes*: ‘No fact is more damaging.’ ‘The court found *there to be* prosecutorial misconduct.’ *Becomes*: ‘The court found prosecutorial misconduct.’

Also eliminate double expletives: ‘*It is* obvious that *it will* be my downfall.’ *Becomes*: ‘My mistake will be my downfall.’ *Exceptions*: Use expletives for emphasis; for rhythm; to climax (end with emphasis); or to go from short to long or from old to new. *Emphasis examples*: ‘It was a full metal jacket bullet that killed John.’ Here, the author emphasizes the object that killed John, not that John was killed. ‘It was Judge Beta who wrote the opinion.’ Here, the author emphasizes Judge Beta’s authorship even though it would have been more concise to write ‘Judge Beta wrote the opinion.’ *Rhythm example*: ‘To everything there is a season.’ This example would have been different had the author written ‘To everything is a season.’ *Climax example*: ‘There is a prejudice against sentences that begin with expletives’ is better than ‘A prejudice against sentences that begin with expletives exists.’ The climax should not be on ‘exists’.”[[81]](#footnote-81)

The Lord Jesus Christ used the expletive *there are* for poetic effect when He said, “In my Father’s house there are many mansions.”

Edit out expletives like *it is important to point out that . . .* , *it is important to note that . . .* If it is important to point something out, do just that, without clearing your throat first. Similarly offensive are constructions like: *it is obvious that*, *it is important to add that*, *it is clear beyond dispute that*, *it may be recalled that, it must be borne in mind that, in this regard it is of significance that*, *it is interesting to point out that, I might add that, Needless to say, there can be no doubt that, I would like to point out that, I would argue that, it should be noted that, it has been determined that, it is obvious that, it is clear that, it is important to add that, it may be recalled that,*

Replace *it seems more likely than not that* with *probably*. Say *presumably*, not *it can be presumed that*. For *it may be argued that*, prefer *arguably*.

Go straight to the heart of the matter. Do not indulge in metadiscourse, which is “discourse about discourse. It’s throat clearing. Get to the point without a running start that occupies space but adds nothing. Delete the following: ‘After due consideration’, ‘as a matter of fact’, ‘bear in mind that’, ‘for all intents and purposes’, ‘it appears to be the case that’, ‘it can be said with certainty that’, ‘it goes without saying that’, ‘it is clear that’, ‘it is important (or *helpful* or *interesting*) to remember (or note) that’, ‘it is significant that’, ‘it is submitted that’, ‘it should be emphasized that’, ‘it should not be forgotten that’, ‘the fact of the matter is’, and ‘the point I am trying to make is that.’ *Example*: ‘Please be advised that your hair is on fire.’ *Becomes*: ‘Your hair is on fire.’”[[82]](#footnote-82)

1. **Minimize authorial self-reference, but . . .**

The conventional wisdom is to *minimize* self-reference (*I, me*), and reference to reader (*you*). Saying “*the author . . .*” does not minimize self-reference. It *is* self-reference: you are the author. Write in a way that engages your reader with the topic, not with you as well. Avoiding or minimizing personal interjection into your topic enables your reader to “respond ‘This is true’ or ‘This is nonsense’”. Interposing yourself makes the reader “respond, ‘I agree with this guy’ or ‘This guy’s nuts’”. The author “should be in his work like God in the universe: everywhere present but nowhere apparent.”[[83]](#footnote-83)

Minimize self-reference not only in descriptive but also in normative writing. “Even when the article shifts from objective, descriptive exposition to the normative (what should be done about the problem discussed) . . . the writer’s presence is a distraction. The writer might think first person is called for when she is stating her opinion; yet it is almost always obvious that any opinion stated in the article is her own because she is, after all, its author.”[[84]](#footnote-84)

If you preface some of your sentences or paragraphs with *I think, I believe,* or *“I submit”*, is the reader to assume that the other sentences and paragraphs are not your thoughts, beliefs, or submissions? “The argument poised in terms of its own virtues rather than in terms soldered to the writer’s self is the more powerful and persuasive one.”[[85]](#footnote-85) The proposal or suggestion phrased without the author’s intrusion (*I submit*) inspires the reader to relate directly with the idea and mentally respond: “I think something must be done”. The other variety, prefaced with “I propose” or similar phrasing keeps the reader out of it and mentally respond: “Oh, [the author] thinks we should tackle this problem this way; I see.”[[86]](#footnote-86)

You do not have to *eliminate* self-reference. When you do refer to yourself, do it plainly and call yourself *I* or *me*. “One of the style quirks that inevitably detracts from the forcefulness and clarity of law review writing is the taboo on pronouns of the first person. An ‘I’ or a ‘me’ is regarded as a rather shocking form of disrobing in print. To avoid nudity, the back-handed passive is almost obligatory:- ‘It is suggested-’, ‘It is proposed-’, ‘It would seem-’. Whether the writers really suppose that such constructions clothe them in anonymity so that people cannot guess who is suggesting and who is proposing, I do not know.”[[87]](#footnote-87)

Again, when you take a controversial position in an expository or descriptive work, self-reference helps to isolate that position as yours. This enables the reader to know that on that point you are not sharing knowledge but giving an opinion.

For some strange reason, some writers are too shy to say, “During my research I interviewed Professor Akin Oyebode at the Faculty of Law, University of Lagos.” They claim it sounds arrogant or self-serving. They prefer: “The writer interviewed Professor Akin Oyebode at the Faculty of Law, University of Lagos.” This stems from a false humility concealing genuine arrogance. Sheer humbug, I call it.

Don’t talk like Bob Dole. Call yourself *I* or *me*. In your article, essay or book, refer to yourself in the first person singular, as *I*, not in the third person, as *the author, the writer,* or *the researcher*. Professor Ben Nwabueze calls himself *I* and *me* in at least some of his legal writing, and what is good enough for the great Nwabueze is good enough for you.

Quit talking like Bob Dole. The one-time Republican presidential candidate in the US used to ask the voters to “vote for Bob Dole”, instead of “vote for me.” He also kept saying: “Bob Dole would do this” or “Bob Dole would do that”. No wonder he lost the election.

And, for goodness sake, do not call yourself *we* in your article or book, unless you are one of several joint authors. You are neither a king or queen nor a pope, so you cannot resort to the royal plural. Even if you are pregnant, please use the first person singular, *I* or *me*, as appropriate- the babe in your womb is not learned in law.

Address your readers or audience as *you*, not *the reader* or *the audience*. But, particularly in academic writing, you should minimize or avoid addressing or making references to the reader. References to the reader may be explicit (“you will agree that . . .) or implicit (“note that . . .) but these may commit another legal-writing sin- expletives or metadiscourse.

When you do address the reader, do so in the second-person pronoun. Rudolf Flesch, the readability expert, urges writers to use “the second-person pronoun whenever you can. Translate everything into ‘you’ language. [Instead of:] ‘This applies to citizens over 65’, [write:] ‘if you're over 65, this applies to you.’ [Rather than:] ‘It must be remembered that’, [write:] ‘you must remember.’ [For:] ‘Many people don't realize’, [consider:] ‘perhaps you don't realize.’ Always write directly to ‘you,’ the person you're trying to reach with your written message. Don't write in mental isolation; reach out to your reader.”[[88]](#footnote-88)

Related to the fear of plain self-reference is the fear of taking a position. “Bad legal writers are afraid of being wrong and use weasel words in an effort to avoid taking a clear position.”[[89]](#footnote-89) Volokh and Tanford list the following examples of weasel terms: *alleged, maybe, quite possibly, at best/at least, might be, seems to, appears to, perhaps, so-called, implicates, probably, tends to*. Old-time Yale Law Dean Fred Rodell calls them “fuzzy-wuzzy words that seem to apologize for daring to venture an opinion”.[[90]](#footnote-90)

*Respectfully* disagreeing with colleagues, courts, judges, or professors has been carried to an idiotic level by legal communities in the common-law world. Law-review contributors in the US are a prime example of this mutual-deception conspiracy. Professor Fred Rodell says, “Suppose a law review writer wants to criticize a court decision. Does he say ‘Justice Fussbudget, in a long-winded and vacuous opinion, managed to twist his logic and mangle his history so as to reach a result which is not only reactionary but [also] ridiculous’? He may think exactly that but he does not say it. He does not even say ‘It was a thoroughly stupid decision.’ What he says is- ‘It would seem that a contrary conclusion might perhaps have been better justified.’ ‘It would seem-’, the matriarch of mollycoddle phrases, still revered by the law reviews in the dull name of dignity.”[[91]](#footnote-91)

Fred Rodell, a great law teacher and dean, wrote *Woe Unto You, Lawyers* in 1939. The title says it all.

Because of our excessively *respectful* and too-subtle criticisms of some of the arrant nonsense that our courts, judges, partners, and professors spew out, bad legal writing persists.

1. **Transition techniques in legal writing**

Transition words link sentences or paragraphs to show their connection. Transition words are guiding words. The best have just one syllable: *also, and, but, nor, or, so, then, thus,* and *yet*. Do not be afraid to start a sentence with any of these words to show the relation between the sentence and the previous one. The relation may be similarity, continuity, or contrast. Prefer these “lite connectors”[[92]](#footnote-92) to heavy transition words like *accordingly, additionally, consequently, finally, furthermore, however, moreover, nevertheless, on the other hand*,and *therefore.* Heavy, multi-syllabic transition words slow down your reader. Light, monosyllabic transition words move the reader along.[[93]](#footnote-93)

In place of *however, on the contrary, on the other hand* or similar transition words or phrases, try *but* or *yet* without a comma:

Not terrible: *The lawyer’s argument sounded very persuasive. However, the judge dismissed the application.*

Not criminal: *The lawyer’s argument sounded very persuasive. The judge, however, dismissed the application.*

Excellent: *The lawyer’s argument sounded very persuasive. But the judge dismissed the application.[[94]](#footnote-94)*

Instead of *additionally, furthermore,* or *moreover*, try *and* without a comma. Replace *accordingly, consequently,* and *therefore* with *thus*. If you are a confident writer, you can use *so* without a comma. You may replace *nevertheless* with *still* if it works. *Besides*, while not monosyllabic, has its attractions as well.[[95]](#footnote-95)

You do not have to use transition words at all to smoothen the flow of your prose. Indeed, avoid them whenever you can. They can substitute for thinking. Connect ideas with ideas, not single “magic” verbal formulas. “Transitions link sentences, paragraphs, and ideas.”[[96]](#footnote-96) They are a technique for moving your readers forward. “The best way to move a reader forward is not to link with transitional words like ‘however’ or ‘but’. The best way is to use thesis paragraphs, topic sentences, and thesis sentences, and then to join sentences by ending them with a thought or word used in the beginning of the next sentence or paragraph.”[[97]](#footnote-97)

Deploy paragraphing adroitly. “Start each paragraph with a topic or transition sentence. A topic sentence introduces what you’re going to discuss in your paragraph. Every sentence in each paragraph must relate to and amplify your topic sentence.”[[98]](#footnote-98) You may find that the last sentence of a paragraph in your initial draft would make a good topic sentence in the next paragraph. If so, move it there.[[99]](#footnote-99)

Similarly, transition sentences move readers along. “A transition sentence links the end of one paragraph to the start of the next paragraph by linking or repeating a word or concept.”[[100]](#footnote-100) Remember Fischer’s example[[101]](#footnote-101):

*The court held that a key element of the tort is intent. Intent was defined by the appellate courts in a succession of cases . . .*

**Epilogue Drama: Lawyers’ language is pompous**

The witness swore to tell the truth, the whole truth, and nothing but the truth, so help him, God. The clerk asked him whether he understood English. The witness said yes. After direct examination, cross-examination started:

Lawyer: Did the plaintiff’s mother ***predecease*** your grandfather?

Witness: (No response, looking blank, staring plaintively at the judge)

Lawyer: Answer the question! Did the plaintiff’s mother ***predecease*** your grandfather?

Witness: Sorry, I don’t understand.

Lawyer: You don’t understand? But you told this honourable court that you understood English.

Judge (to counsel): Why not recast your question in plain English?

Lawyer (turning towards the bench): My lady, he said he understands English. I’m speaking English to him now and he’s looking like a zombie.

(Turning back to the witness): Did the plaintiff’s mother ***predecease*** your grandfather? (Back to the judge): My lady, I’m not speaking Swahili. Let him answer the question.

Witness: I’m sorry, my lady. I do not understand.

**Conclusion and Summary**

This course has shown that legalese and verbosity are avoidable ills in legal writing. They are ills because they make writing less clear, even to lawyers. They are avoidable because an alternative exists- plain English.

The course has also provided a few of the guides to dropping legalese and adopting plain English:

* Preferring the active voice
* Displaying the subject
* Avoiding nominalizations
* Eliminating intensifiers
* Avoiding ‘elegant variation’ and stubborn consistency
* Preferring shorter sentences and paragraphs

The course also supplies style and usage guides for making legal writing clearer:

* Deploying clarification tools like bullets, capitals, italics, numbers, tabulation, and underlining
* Avoiding double past
* Introducing gerunds with possessive forms of nouns or pronouns
* Replacing redundant expressions with superior alternatives

The training displayed style preferences in modern legal writing, including

* the active voice
* avoiding nominalization
* the Oxford comma
* starting sentences with *and*, *because, but*, or *or*
* eschewing intensifiers
* shorter sentences and paragraphs, and
* minimizing double negatives.

The presentation covered some basic language rules that are apt to confuse, like:

* proper use of bullets, capitals, italics, numbers, tabulation, and underlining
* avoiding double-past constructions
* using possessives to introduce gerunds and solve fused-participle difficulties
* replacing redundant expressions with alternatives supplied
* abuse or overuse of *which*, and its frequent confusion with *that*
* modifiers and mismatched apposition, and
* pronoun confusion: *you and I* or *you and me*?

The trainer tackled specific legal-writing problems:

* ‘elegant variation’ and ‘pig-headed consistency’
* ‘fatuous lawyerisms’ like *aforesaid* and similar antiquated expressions
* gender balance in legal writing
* metadiscourse and expletives- major causes of verbosity
* authorial self-reference, and
* transition techniques in legal writing.

Bibliography

Bryan A. Garner, ‘On Beginning Sentences with *But*’, Plain Language column, *Michigan Bar Journal*, October 2003

Bryan A. Garner, *A Dictionary of Modern Legal Usage* 692 (2d ed. 1995)

Bryan Garner, *The Redbook: A Manual on Legal Style*, 2nd edition, 2002

*Clarity Newsletter*, No. 2, January 1984

Ernest Gowers, *The Complete Plain Words* 110 (Sydney Greenbaum & Janet Whitcut eds., rev. ed. 1986)

Eugene Volokh and J. Alexander Tanford, ‘How to Write Good Legal Stuff’, 2001, 2009

Fred Rodell, ‘Goodbye to Law Reviews, 23 *Virginia Law Review*, 1936-1937, 38, 39; *Faculty Scholarship Series*, Paper 2762, Yale Law School, 1936

Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Do’s – Part I’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 79, No. 4, May 2007

Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Do’s – Part II’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 79, No. 5, June 2007

Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Don’ts – Part I’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 79, No. 6, July/August 2007

Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Don’ts – Part II’, The Legal Writer column, *New York State Bar Association Journal*, Volume 79, No. 7, September 2007

Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Grammar – Part I’, The Legal Writer column, *New York State Bar Association Journal*, Volume 79, No. 9, November/December 2007

Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Grammar – Part II’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 80, No. 1, January 2008

Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Usage Controversies – Part I’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 80, No. 5, June 2008, page 64.

Gerald Lebovits, ‘”Of” With Their Heads: Concision’, *New York State Bar Association Journal,* November/December 2001, Vol. 73, No. 9

Gerald Lebovits, ‘That’s the Way It Is: “That” and “Which” in Legal Writing’, The Legal Writer column, *New York State Bar Association Journal*, Vol. 76 No. 3, March/April 2004

Gerald Lebovits, ‘The Department of Redundancy Department: Concision and Succinctness - Part II’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 78, No. 7, September 2006

James C Raymond, ‘Writing to be Read’, a presentation at the New Zealand Law Conference, Wellington, 1993

Joan Ames Magat, ‘Beware the Monological Imperatives: Scholarly Writing for the Reader’, Duke Law School Legal Studies Research Paper Series #162, August 2007, page 19 (available for free download from <http://ssrn.com/abstract=1004606>)

Joseph Kimble, ‘A Modest Wish List for Legal Writing’, 79 *Michigan Bar Journal* 1574, 1577 (2000)

Judith D. Fischer, ‘Add Punch to Your Writing’, Effective Legal Writing SERIES, *Bench and Bar*, May 2008

Judith D. Fischer, ‘The Straight Scoop on the Passive Voice’, Effective Legal Writing Series, *Bench and Bar*, July 2010

Judith D Fischer, ‘Why George Orwell’s Ideas about Language Still Matter for Lawyers’, *Montana Law Review*, volume 68

Lillian B. Hardwick, ‘Classical Persuasion through Grammar and Punctuation’, *Journal of the Association of Legal Writing Directors, Volume 3, Fall 2006*

Mark Cooney, ‘Just *Sue* ‘Em!’, Plain Language column, *Michigan Bar Journal*, May 2006

Mark Cooney, ‘Stay Active! (Part Two)”, Plain Language column, Michigan Bar Journal, June 2005

Mark Painter, ‘Writing Smaller’, Plain Language column, *Michigan Bar Journal*, October 2010

Mark P. Painter, ’30 Suggestions to Improve Readability, or How to Write for Judges, Not Like Judges’, page 19, www.judgepainter.org/publications

Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3

Rick Bales, ‘Active Writing’, Effective Legal Writing series, *Bench and Bar*, January 2002

1. Roy H. Copperud, *American Usage and Style: The Consensus* 305 (1980)

Theodore M. Bernstein, *The Careful Writer* 346 (1972)

Wayne Schiess, ‘Lite Connectors’, 13 *Austin Lawyer*, December 2008/January 2009

Wayne Schiess, ‘Mind Your Prepositions’, 13 *Austin Lawyer*, October 2007

William Zinsser, *On Writing Well: The Classic Guide to Writing Non-Fiction*, 6th ed., Quill Press, 2001

1. Douglas E. Abrams, ‘The Right to a Reader’, *The Precedent*, Winter 2007, 38; Research Paper No. 2007-10, Legal Studies Research Paper Series, School of Law, University of Missouri- Columbia. [↑](#footnote-ref-1)
2. Douglas E. Abrams, ‘The Right to a Reader’, *The Precedent*, Winter 2007, 38; Research Paper No. 2007-10, Legal Studies Research Paper Series, School of Law, University of Missouri- Columbia. [↑](#footnote-ref-2)
3. Carl Felsenfeld, ‘The Plain Language Movement in the United States’, 6 *Canadian Business Law Journal*, 1981-82, 408, 413. [↑](#footnote-ref-3)
4. Judith Fischer, ‘Why George Orwell’s Ideas about Language Still Matter for Lawyers’, University of Louisville School of Law Legal Studies Research Paper Series No. 2007-02; *Montana Law Review,* vol. 68, page 132. [↑](#footnote-ref-4)
5. ibid. [↑](#footnote-ref-5)
6. (1596) 21 Eng Rep 136 (Ch) [↑](#footnote-ref-6)
7. “Gives a whole new meaning to the expression ‘legal loophole’, doesn't it?” quipped the Editor of *Clarity Newsletter* (‘Now There’s a Good Idea’, *Clarity Newsletter*, No. 2, January 1984, page 4.) [↑](#footnote-ref-7)
8. Judith D. Fischer, ‘Add Punch to Your Writing’, Effective Legal Writing SERIES, *Bench and Bar*, May 2008, page 80. [↑](#footnote-ref-8)
9. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Do’s – Part I’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 79, No. 4, May 2007, page 56. [↑](#footnote-ref-9)
10. ibid. [↑](#footnote-ref-10)
11. Gerald Lebovits, ‘”Of” With Their Heads: Concision’, *New York State Bar Association Journal,* November/December 2001, Vol. 73, No. 9, page 64 (italics in original). [↑](#footnote-ref-11)
12. James C Raymond, ‘Writing to be Read’, a presentation at the New Zealand Law Conference, Wellington, 1993, page 7. [↑](#footnote-ref-12)
13. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Do’s – Part I’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 79, No. 4, May 2007, pages 56-57. [↑](#footnote-ref-13)
14. ibid, page 57. [↑](#footnote-ref-14)
15. ‘Do’s, Don’ts, and Maybes: Legal Writing Do’s – Part I’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 79, No. 4, May 2007, 57 AND ‘The Department of Redundancy Department: Concision and Succinctness- Part II’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 78, No. 7, 64. [↑](#footnote-ref-15)
16. Gerald Lebovits, ‘The Department of Redundancy Department: Concision and Succinctness - Part II’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 78, No. 7, September 2006, 64. [↑](#footnote-ref-16)
17. Adapted from Wayne Schiess, ‘Mind Your Prepositions’, 13 *Austin Lawyer*, October 2007. [↑](#footnote-ref-17)
18. Wayne Schiess, ‘Mind Your Prepositions’, 13 *Austin Lawyer*, October 2007. [↑](#footnote-ref-18)
19. Adapted from Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, page 727 at 732-733. [↑](#footnote-ref-19)
20. Richard C Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, page 727 at 734. [↑](#footnote-ref-20)
21. James D. Hopkins, ‘Notes on Style in Judicial Opinions’, 8 *Trial Judges Journal*, 1969, page 49, reprinted in Robert A. Leflar, *Quality in Judicial Opinions*, 3 *Pace Law Review*, 1983, pages 579, 585. [↑](#footnote-ref-21)
22. Gerald Lebovits, ‘Getting to Yes: Affirmative Writing’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 73, No. 8, October 2001, page 64 (italics in original). [↑](#footnote-ref-22)
23. Gerald Lebovits, ‘Getting to Yes: Affirmative Writing’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 73, No. 8, October 2001, page 64. [↑](#footnote-ref-23)
24. Gerald Lebovits, ‘Getting to Yes: Affirmative Writing’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 73, No. 8, October 2001, page 64. [↑](#footnote-ref-24)
25. ibid. [↑](#footnote-ref-25)
26. 79 P3d 974, 981 (Utah App 2003), cited in Mark Cooney, ‘Stay Active! (Part Two)”, Plain Language column, Michigan Bar Journal, June 2005, 38. [↑](#footnote-ref-26)
27. No. 02 Civ. 8074 (GEL), 2003 WL 22251352, at 10 (SD NY Sept 30, 2003), cited in Mark Cooney, ‘Stay Active! (Part Two)”, Plain Language column, Michigan Bar Journal, June 2005, 38. [↑](#footnote-ref-27)
28. Judith D. Fischer, ‘The Straight Scoop on the Passive Voice’, Effective Legal Writing Series, *Bench and Bar*, July 2010, 33. [↑](#footnote-ref-28)
29. ibid. [↑](#footnote-ref-29)
30. Rick Bales, ‘Active Writing’, Effective Legal Writing series, *Bench and Bar*, January 2002, page 43. [↑](#footnote-ref-30)
31. Judith D. Fischer, op. cit. [↑](#footnote-ref-31)
32. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Do’s – Part II’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 79, No. 5, June 2007, page 64. [↑](#footnote-ref-32)
33. ibid. [↑](#footnote-ref-33)
34. ibid, pages 64, 53. [↑](#footnote-ref-34)
35. ibid. [↑](#footnote-ref-35)
36. Gerald Lebovits, ‘”Of” With Their Heads: Concision’, New York State Bar Association *Journal,* November/December 2001, Vol. 73, No. 9, page 64. [↑](#footnote-ref-36)
37. Mark Cooney, ‘Just *Sue* ‘Em!’, Plain Language column, *Michigan Bar Journal*, May 2006, page 52. [↑](#footnote-ref-37)
38. Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, 727, 745. [↑](#footnote-ref-38)
39. Bryan A. Garner, ‘On Beginning Sentences with *But*’, Plain Language column, *Michigan Bar Journal*, October 2003, page 43. [↑](#footnote-ref-39)
40. William Zinsser, *On Writing Well: The Classic Guide to Writing Non-Fiction*, 6th ed., Quill Press, 2001, page 74. [↑](#footnote-ref-40)
41. Mark Painter, ‘Writing Smaller’, Plain Language column, *Michigan Bar Journal*, October 2010, page 55. [↑](#footnote-ref-41)
42. R W Burchfield (ed), *The New Fowler’s Modern English Usage*, 3rd edition, 1996, 52. [↑](#footnote-ref-42)
43. Judge Mark P. Painter, ’30 Suggestions to Improve Readability, or How to Write for Judges, Not Like Judges’, page 19, www.judgepainter.org/publications. [↑](#footnote-ref-43)
44. Alexandra Petri, ‘Save the Oxford comma! A Grammar Nazi’s plea’, ComPost, [www.washingtonpost.com](http://www.washingtonpost.com), 30 June 2011 (last accessed 13 November 2013). [↑](#footnote-ref-44)
45. Bryan Garner, *The Redbook: A Manual on Legal Style*, 2nd edition, 2002, page 3. [↑](#footnote-ref-45)
46. 2008 WL 724724 (NY Criminal Court Jan 3, 2008) [↑](#footnote-ref-46)
47. Richard C. Wydick, op. cit. 727, 754. [↑](#footnote-ref-47)
48. Judith D. Fischer, ‘Add Punch to Your Writing’, Effective Legal Writing SERIES, *Bench and Bar*, May 2008, page 81 (italics in the original; footnote omitted). [↑](#footnote-ref-48)
49. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Don’ts – Part II’, The Legal Writer column, *New York State Bar Association Journal*, Volume 79, No. 7, September 2007, page 58. [↑](#footnote-ref-49)
50. Judith D. Fischer, ‘Add Punch to Your Writing’, Effective Legal Writing SERIES, *Bench and Bar*, May 2008, page 81. [↑](#footnote-ref-50)
51. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Do’s – Part I’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 79, No. 4, May 2007, page 56. [↑](#footnote-ref-51)
52. Eugene Volokh and J. Alexander Tanford, ‘How to Write Good Legal Stuff’, 2001, 2009, page 2. [↑](#footnote-ref-52)
53. ibid. [↑](#footnote-ref-53)
54. Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, 727, 743. [↑](#footnote-ref-54)
55. New York, Harper & Row, 1946, 36-37 [↑](#footnote-ref-55)
56. New York, Harper & Row, 1949. [↑](#footnote-ref-56)
57. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Grammar – Part I’, The Legal Writer column, *New York State Bar Association Journal*, Volume 79, No. 9, November/December 2007, page 75. [↑](#footnote-ref-57)
58. ibid, page 76. [↑](#footnote-ref-58)
59. Gerald Lebovits, ‘The Department of Redundancy Department: Concision and Succinctness- Part II’, The Legal Writer column, *New York State Bar Association Journal*, Vol. 78, No. 7, September 2006, 64, 51. [↑](#footnote-ref-59)
60. Lillian B. Hardwick, ‘Classical Persuasion through Grammar and Punctuation’, *Journal of the Association of Legal Writing Directors, Volume 3, Fall 2006,* 86. [↑](#footnote-ref-60)
61. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Grammar – Part II’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 80, No. 1, January 2008, page 74. [↑](#footnote-ref-61)
62. ibid. [↑](#footnote-ref-62)
63. Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, 727, 749. [↑](#footnote-ref-63)
64. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Grammar – Part II’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 80, No. 1, January 2008, page 74. [↑](#footnote-ref-64)
65. Adapted from Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Grammar – Part II’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 80, No. 1, January 2008, page 74. [↑](#footnote-ref-65)
66. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Grammar – Part II’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 80, No. 1, January 2008, page 74-75. [↑](#footnote-ref-66)
67. Adapted from Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, 727, 750. [↑](#footnote-ref-67)
68. Adapted from Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, 727, 750. [↑](#footnote-ref-68)
69. Gerald Lebovits, ‘That’s the Way It Is: “That” and “Which” in Legal Writing’, The Legal Writer column, *New York State Bar Association Journal*, Vol. 76 No. 3, March/April 2004, 64, 60. [↑](#footnote-ref-69)
70. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Grammar – Part I’, The Legal Writer column, *New York State Bar Association Journal*, Volume 79, No. 9, November/December 2007, page 74. [↑](#footnote-ref-70)
71. ibid, pages 74-75. [↑](#footnote-ref-71)
72. Joan Ames Magat, ‘Beware the Monological Imperatives: Scholarly Writing for the Reader’, Duke Law School Legal Studies Research Paper Series #162, August 2007, pages 11-12 (available for free download from http://ssrn.com/abstract=1004606). [↑](#footnote-ref-72)
73. Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, 727, 751. [↑](#footnote-ref-73)
74. Adapted from Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, 727, 752. [↑](#footnote-ref-74)
75. Theodore M. Bernstein, *The Careful Writer* 346 (1972). [↑](#footnote-ref-75)
76. Roy H. Copperud, *American Usage and Style: The Consensus* 305 (1980). [↑](#footnote-ref-76)
77. Bryan A. Garner, *A Dictionary of Modern Legal Usage* 692 (2d ed. 1995). [↑](#footnote-ref-77)
78. Sir Ernest Gowers, *The Complete Plain Words* 110 (Sydney Greenbaum & Janet Whitcut eds., rev. ed. 1986). [↑](#footnote-ref-78)
79. Joseph Kimble, ‘A Modest Wish List for Legal Writing’, 79 *Michigan Bar Journal* 1574, 1577 (2000). [↑](#footnote-ref-79)
80. Richard C. Wydick, ‘Plain English for Lawyers’, 66 *California Law Review*, 1978, Issue 4, Article 3, 727, 753. [↑](#footnote-ref-80)
81. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Don’ts – Part I’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 79, No. 6, July/August 2007, page 64 (footnote omitted). [↑](#footnote-ref-81)
82. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Don’ts – Part II’, The Legal Writer column, New York State Bar Association *Journal*, Volume 79, No. 7, September 2007, page 64. [↑](#footnote-ref-82)
83. Robert Scholes, James Phelan, and Robert Kellog, *The Nature of Narrative*, 40th edition, 2006, 268, cited in Mary Ann Becker, ‘What is Your Favourite Book? Using Narrative to Teach Theme Development in Persuasive Writing’, 46 *Gonzaga Law Review*, 2011, 575, 580. [↑](#footnote-ref-83)
84. Joan Ames Magat, ‘Beware the Monological Imperatives: Scholarly Writing for the Reader’, Duke Law School Legal Studies Research Paper Series #162, August 2007, page 19 (available for free download from http://ssrn.com/abstract=1004606). [↑](#footnote-ref-84)
85. ibid, page 20. [↑](#footnote-ref-85)
86. ibid. [↑](#footnote-ref-86)
87. Fred Rodell, ‘Goodbye to Law Reviews, 23 *Virginia Law Review*, 1936-1937, 38, 39; *Faculty Scholarship Series*, Paper 2762, Yale Law School, 1936, 38, 39. [↑](#footnote-ref-87)
88. Rudolf Flesch, How to Be Brief: An Index to Simple Writing 114 (1962).  [↑](#footnote-ref-88)
89. Eugene Volokh and J. Alexander Tanford, ‘How to Write Good Legal Stuff’, 2001, 2009, page 4. [↑](#footnote-ref-89)
90. Fred Rodell, ‘Goodbye to Law Reviews, 23 *Virginia Law Review*, 1936-1937, 38, 39; *Faculty Scholarship Series*, Paper 2762, Yale Law School, 1936, 38, 39. [↑](#footnote-ref-90)
91. ibid. [↑](#footnote-ref-91)
92. Wayne Schiess, ‘Lite Connectors’, 13 *Austin Lawyer*, December 2008/January 2009. [↑](#footnote-ref-92)
93. ibid. [↑](#footnote-ref-93)
94. Adapted from Wayne Schiess, ‘Lite Connectors’, 13 *Austin Lawyer*, December 2008/January 2009. [↑](#footnote-ref-94)
95. Wayne Schiess, ‘Lite Connectors’, 13 *Austin Lawyer*, December 2008/January 2009. [↑](#footnote-ref-95)
96. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Usage Controversies – Part I’, The Legal Writer column, *New York State Bar Association* *Journal*, Vol. 80, No. 5, June 2008, page 64. [↑](#footnote-ref-96)
97. ibid. [↑](#footnote-ref-97)
98. Gerald Lebovits, ‘Do’s, Don’ts, and Maybes: Legal Writing Do’s – Part II’, The Legal Writer column, New York State Bar Association *Journal*, Vol. 79, No. 5, June 2007, page 64. [↑](#footnote-ref-98)
99. ibid. [↑](#footnote-ref-99)
100. ibid. [↑](#footnote-ref-100)
101. Judith D. Fischer, ‘The Straight Scoop on the Passive Voice’, Effective Legal Writing Series, *Bench and Bar*, July 2010, 33. [↑](#footnote-ref-101)