

3. Grammar and Punctuation

Grammar and punctuation are tenets of clear and concise communication; improper use can lead to confusion and misunderstanding on the reader's part. Legal writing requires particular care and consideration due to industry-specific grammar and punctuation rules and guidelines. This section will cover common grammar and punctuation mistakes, explore different strategies for correction, and provide best practices for proofreading and editing.



Grammar

Proper grammar use minimizes the potential for misunderstanding and contributes to the clarity of written communication. Small grammar mistakes can add up quickly and become distracting. To avoid ambiguity and improve clarity when writing, there are a few rules to keep in mind.

Who vs whom

In a sentence, “who” is used in reference to the subject of a sentence, and “whom” is used in reference to the object of a verb or preposition. When deciding which form to use, a common trick is to replace the word with a pronoun. Use who if “he/she/they” can be substituted and the sentence still makes sense. If “him/her/them” makes more sense, use whom. For example, consider the sentence:

“Who/whom can I speak to about my eviction notice?”

In this example, the correct form will be easier to identify when the sentence is converted to the form of a declarative statement:

“I can speak to she/her about my eviction notice.”

In this case, the sentence makes sense with the “her” pronoun. Thus, “whom” is the correct form in the original sentence.

Pronouns and Antecedents

In a sentence, the noun that the pronoun refers to is the antecedent. For example, in the sentence: “the author typed her sentence,” author is the antecedent, and her is the pronoun. The overuse of pronouns can lead to confusion about who or what is being referenced. For example:

“The attorney told her client that she needed to be honest with her.”

Who needs to be honest with whom, here? The attorney or the client? The context required to understand who is being referenced is only obvious to the writer. There are a few ways to re-work this sentence:

1. Re-Work the Sentence:

“The attorney advised her client to be honest during their conversations.”

2. Use Fewer Pronouns:

“The attorney advised her client to tell the truth.”

3. Add Context:

“The attorney advised her client to tell her the truth, then reminded the client of attorney-client privilege.”

Take the time to experiment with different sentence structures to find the best. The goal should always be clarity, not brevity.

Modifiers

Aptly named, a modifier is a part of a sentence that modifies or changes the meaning of another element in that sentence. Watch for dangling modifiers where the subject of the modifier is missing from the sentence. Dangling modifiers often lead to ambiguous phrasing. Consider the following sentence:

“When evicting a tenant, many steps are required by law.”

While this is technically true, the meaning of the sentence is muddled. What are the steps? Who needs to take them? In this case, landlords are the subject referenced in the modifier “when evicting a tenant.” So, the sentence should read as:

“When evicting a tenant, landlords must take the many steps required by law.”

Now, the modifier introduces the subject, which gives the reader more information with the addition of only a few words on the writer's part.

Another common misuse of modifiers occurs when the modifier is used in the wrong part of a sentence, inadvertently changing its meaning – this is usually called a misplaced modifier. Put simply, misplaced modifiers are parts of a sentence placed incorrectly, causing confusion regarding who or what is taking the action being described. For example:

“Due to improper following of procedure, the court dismissed the landlord's eviction case.”

In this example, it is not clear who did what improperly. Was the court's dismissal of the case due to improper procedure? Remember that modifiers should be placed next to the subject that they modify.

“Due to improper following of procedure, the landlord's eviction case was dismissed by the court.”

Here, it is obvious that the landlord is the one that followed procedure improperly.

Nominalizations

Nominalizations refer to verbs, adjectives, or adverbs used as nouns in a sentence. In other words, it is the process of turning action words into noun forms, which can complicate and lengthen sentences. An easy way to identify a nominalization is to check the suffix, or group of letters at the end of the noun. For example, many common nominalizations contain one of the below suffixes:

- ion
- ant/ent
- ance/ence
- ity

It should be noted that this is not a fixed rule, and many nominalizations are trickier to identify. This trick, however, helps the writer identify the nominalizations which are most likely to junk up a sentence. Overuse of nominalizations can lead to ambiguity and increase the length and complexity of a sentence. For example:

"Legal aid providers engage in the facilitation of access* to justice* by means of the provision of legal representation and advocacy* services, which are integral components of the legal aid framework*."

While grammatically correct, this sentence is wordy and convoluted. Writers may be drawn to nominalizations for their ability to add a formal tone to a sentence. When used sparingly, nominalizations can add to the meaning of a sentence instead of obscuring it:

"Legal aid providers help people access* justice* by offering legal representation and advocacy* services, essential parts* of the legal aid system." ¹⁷

Removing the excessive nominalizations immediately improves the sentence's clarity. Nominalizations should be used sparingly to avoid ambiguity.

This is not an exhaustive list of rules – readers are encouraged to seek additional guidance and to take advantage of free online spelling and grammar checkers, which are discussed in depth later in this toolkit.



Punctuation

Much like grammar, punctuation contributes to the overall precision and clarity of legal writing. Misusing punctuation can lead to run-on sentences and awkward breaks in thought, both of which take away from the meaning of a document. Some common punctuation mistakes and fixes are explored below.

The Oxford comma

The Oxford comma has been the focus of many a heated debate. Located immediately before the conjunction (such as and, or, or nor), the Oxford comma serves to distinguish items in a list.

The Oxford comma is not a grammatical requirement, and its usage depends mostly upon personal preference and organizational standards. Proponents of the Oxford comma advocate its use to avoid ambiguity. Consider the following example:

“The Judge questioned a witness, a tenant and the property manager.”

In this sentence, it is not clear how many people the Judge intends to question. Is the witness the tenant? Are the tenant and the property manager two different people? While this distinction is likely to be made with additional context, the Oxford comma eliminates the confusion altogether:

“The Judge questioned a witness, a tenant, and the property manager.”

Here, it is immediately obvious that the witness, the tenant, and the property manager are three separate individuals who the Judge intends to question.

Period Spacing

A common misconception is that two spaces are required at the end of a sentence in formal legal writing. This practice originated from the use of typewriters and their equally spaced fonts. Using two spaces at the end of a sentence helped to distinguish one sentence from the next. The proportionally spaced fonts of computers have rendered this practice unnecessary. ¹⁸

Closing Punctuation

In legal writing, rules on where closing punctuation should be placed differ slightly from other forms of writing. Best practice dictates that periods and commas should always be placed before the last quotation mark. Other punctuation – such as question and exclamation marks – are placed outside of the quotation unless they are used in the source quote. For example,

According to the authors of this toolkit, “Proper legal citation is a crucial aspect of legal writing...”!

The use of ellipses in place of one or more words that have been removed from the middle of a quote is customary practice. This is also the case when the quoted text serves as the end of a sentence but is not the end of the source quote, as in the above example above. In practice, a quote could look like:

“In legal writing . . . periods and commas should always be placed before the last quotation mark. Other punctuation . . . are placed outside of the quotation . . .”

When using ellipses, most writing styles require that a space be placed before the first dot, as well as in between each (as shown in the above example. For more details on when and how to properly use ellipses, visit <https://www.thepunctuationguide.com/ellipses.html>

Block Quotations

In legal writing, best practice dictates that any quote containing fifty or more words be displayed as a block quotation. Formatting specifics like spacing and font size vary from style to style, but the block must always be indented on the left and the right by 0.5, without quotation marks. For example, this quote by Elle Woods in *Legally Blonde*¹⁹:

And wouldn't somebody who had, say, 30 perms before in their life be well aware of this rule, and if in fact you weren't washing your hair as I suspect you weren't because your curls are still intact, wouldn't you have heard the gunshot, and if in fact you had heard the gunshot Brooke Windham wouldn't have had time to hide the gun before you got downstairs. Which means you would have had to found Brooke Windham with a gun in her hand to make your story plausible, isn't that right?

Formatting large quotes as a block contributes to the flow of a document. Block quotations create a clear visual distinction between the writer's own words and those of another.

Built-in word count tools in Microsoft Word and Google Docs can be particularly useful when determining the need for a block quotation. In Microsoft Word, the word count is available on the status bar at the bottom left of the screen and on the Review Tab (word count button in the proofing group). In Google Docs, the word count will appear at the lower left corner of the document window. When a portion of text is selected in Google Docs, the count will temporarily change to show the number of words in the selected text. To find more detailed word count information in Docs, click tools in the menu bar and select word count.

17 The author would be remiss not to mention that in this example, “access,” “justice,” “advocacy,” and “parts” are also, technically, nominalizations. However, their usage here does not obfuscate the meaning of the sentence in the way that the bolded examples do.

18 Konya, Kelly. "How Many Spaces After a Period? Ending the Debate." Grammarly. Last modified January 4, 2023. <https://www.grammarly.com/blog/spaces-after-period/#:~:text=The%20origin%20of%20using%20two,automatically%20use%20proportionally%20spaced%20for>

19 Legally Blonde directed by Robert Luketic (MGM, 2001)

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