

Legal Analysis *and* Writing

Third Edition

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Fundamentals of Writing

Outline

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| I. Sentences | V. Punctuation |
| II. Paragraphs | VI. General Considerations |
| III. Word Selection and Usage | VII. Key Points Checklist: <i>Successful Legal Writing</i> |
| IV. Grammar | III. Application |

Learning Objectives

After completing this chapter, you should understand:

- Sentences and paragraphs
- Word selection and usage
- Grammar and punctuation
- Formal writing conventions



Your professional reputation and job performance evaluations are usually determined by the quality of your work. If the job involves legal writing, your reputation as a paralegal is based primarily on the quality of your writing. The value of the finished product depends not only on the accuracy and thoroughness of legal research and analysis but also on the manner of its presentation. Excellent research and analysis skills are undermined if you cannot present the results of the research and analysis clearly and free of mechanical errors. Therefore, good writing skills are equally as important as good research and analysis skills.

Writing skills are also important because a poorly written product affects more than the paralegal's reputation. It also affects the reputation of the

law firm. A law firm's reputation is affected, either positively or negatively, when a written product is directed to an audience outside the law firm, such as the client. A writing that contains grammatical or other mechanical errors reflects poorly on the firm. The client may wonder whether the errors extend to the quality of the research and question the firm's ability to handle the case. Opposing counsel may conclude that the firm is not capable of mounting an effective opposition and be less inclined to settle a case they otherwise would settle.

The creation of a professionally written product requires knowledge of the fundamentals of writing. This chapter summarizes some of these fundamentals and highlights areas where writing errors commonly occur. In this regard, the chapter presents

general information on sentences, paragraphs, word selection and usage, grammar, punctuation, and some formal writing conventions. The chapter does

not provide a comprehensive, in-depth exploration of these topics. For additional guidance, refer to the sources listed at the end of the chapter.

sentence

The fundamental building block of writing. It is composed of a group of words that convey a single thought. It is usually a statement in which the actor (subject) performs some action or describes a state of being (the predicate).

I. SENTENCES

The **sentence** is the fundamental building block of writing. It is usually a statement that conveys an idea or ideas. Good writing skills include an understanding of the basics of proper sentence construction.

A. Sentence—Structure/Pattern

A sentence is usually a statement in which the actor (the subject) performs some action or describes a state of being (the predicate).

For Example

Subject
John
John

Predicate
wrecked the car.
is ill.

The predicate is composed of the verb and object of the verb, such as a direct object (if necessary). An object of the verb may be required to receive the action of the verb.

For Example

Subject
John

Predicate
wrecked the car.

The car is a direct object that receives the action of the *verb wrecked*.

At a minimum, a sentence must have a subject and a predicate. In its simplest form, a sentence requires a noun and a verb.

For Example

Judges rule.

Make sure your sentences have a subject and a predicate.

B. Sentence—Basic Rules

The following subsections introduce some basic rules involving sentences and sentence structure. Exhibit 11-1 presents a list of topics covered by these rules. Keep this list in mind when drafting or reviewing sentences.

1. Subject/Verb Distance

Keeping the subject and verb as close together as possible makes a sentence easier to

Keep the following in mind when drafting sentences

Subject/ Verb Distance	Keep the subject and verb as close together as possible.
Sentence Length	A shorter sentence is easier to understand. A good average sentence length is 20 to 25 words.
Active/Passive Voice	The general rule is to draft sentences using active voice. Active voice is easier to understand and more powerful than passive voice. Active—“Steve keeps the records.” Passive—“The records are kept by Steve.”
Action Verbs	Select verbs that are active rather than verbs that show a state of being or are passive. Action—“Mary keeps the books.” State of being—“The bookkeeper is Mary.” Action—“Mary concluded that Tom was guilty.” Passive—“Mary reached the conclusion that Tom was guilty.”
Transitions	Use transitional words and phrases to connect sentences and to establish the relationship between the subjects of sentences.

Exhibit 11-1

*Topics to Keep in Mind
when Drafting Sentences*

understand. Intervening words, clauses, or phrases disrupt the action and make the sentence more difficult to understand.

For Example **Intervening words in italics:** John, *apparently upset and in a bad mood*, hit James.

Revision: Apparently upset and in a bad mood, John hit James.

Intervening clause in italics: The argument that the good faith exception applies *because the officers were acting in good faith and the warrant was defective as a result of magistrate error* is supported by the facts.

Revision: The argument that the good faith exception applies is supported by the facts. The officers were acting in good faith and the warrant was defective as a result of magistrate error.

2. Sentence Length

Although there is no rule governing sentence length, the shorter a sentence, the easier it is to understand. The length of a sentence will vary according to the nature of the information it must convey. A good average for sentence length is from fifteen to twenty-five words. If you find that your sentences are too long, eliminate extra words or break the sentence into shorter sentences.

For Example **Sentence too long:** The evidence should be suppressed because the warrant did not authorize unannounced entry, and there were no exigent circumstances at the scene that provided justification for the officers' actions of entering the residence unannounced.

Revision: The evidence should be suppressed because the warrant did not authorize unannounced entry. In addition, the circumstances at the scene did not provide justification for unannounced entry.

Watch out for run-on sentences. Each sentence should contain one main idea. It is often tempting to pack more than one idea into a sentence. This usually occurs when the ideas being conveyed are related. If the sentence you are reviewing is very long, it may be that it is a run-on sentence, and you are attempting to convey too many ideas in one sentence.

For Example **Run-on sentence:** “Thomas does not dispute the fact that the court properly resorted to estimating a plant quantity for the 1991 grow, his dispute concerns the basis for the court’s estimation.” Note that this sentence conveys two related ideas: what he does not dispute and what he does dispute. Each idea should be presented in a separate sentence.

Revision: “Thomas does not dispute the fact that the court properly resorted to estimating a plant quantity for the 1991 grow. His dispute concerns the basis for the court’s estimation.”

3. Active/Passive Voice

Active Voice. The general rule is that you should draft sentences using active voice. When **active voice** is adopted, the subject of the sentence is the actor. When passive voice is used, the subject of the sentence is acted upon.

For Example **Active voice:** “The automobile hit the child.” “The construction workers built the dam.”

Passive voice: “The child was hit by the automobile.” “The dam was built by the construction workers.”

active voice

The subject of the sentence is performing the action in the sentence. (The automobile hit the child.)

Active voice is easier to understand and is more powerful. It is easier to understand because the doer of the action is mentioned at the beginning of the sentence prior to the action. Readers do not have to read the entire sentence before they learn who is performing the action. Active voice is more powerful because, at the outset, it identifies the performer of the action. This focuses attention on the actor and emphasizes the actor’s actions. When passive voice is used, the actor is removed from the action or not identified at all.

For Example **Active voice:** The defendant breached the contract when he failed to deliver the goods on time.

Passive voice: The contract was breached when the goods were not delivered on time. (The actor is not identified.)

passive voice

The subject of the sentence is acted upon. (The child was hit by the automobile.)

Passive Voice. There are situations where it is appropriate to use passive voice. You may use **passive voice** when the actor is unknown or unimportant or when you do not want to emphasize the actor’s conduct. See Chapter 14 for a discussion of the appropriate use of passive voice in court briefs.

For Example **Actor unknown:** A portion of the transcript was lost.
Actor unimportant: The bank deposit was found by a passerby.
Actor de-emphasized: The vase was broken and the plaintiff injured when the vase slipped from the defendant's hand.

4. Action Verbs

Whenever possible, select verbs that are active rather than verbs that show a state of being or are passive.

For Example **Passive:** Mary reached the conclusion that Tom was guilty.
Revision: Mary concluded that Tom was guilty.
State of being: The record keeper is Steve Jones.
Revision: Steve Jones keeps the records.

5. Transitions

Transitional words and phrases connect sentences and serve to establish the relationship between the subjects of the sentences. **Transitions** are important because they guide the reader and make the writing cohesive.

For Example **No transition:** The statute requires that fences exceeding five feet in height must be located no closer than ten feet from the property line. Your fence will be six feet high; you must build it ten feet from the property line.
With transition—transition in italics: The statute requires that fences exceeding five feet in height must be located no closer than ten feet from the property line. *Therefore, because* your fence will exceed five feet, you must locate it ten feet from the property line.

Examples of transitional words and phrases include the following:

However	even so	but	still
Furthermore	nevertheless	so	and
Although	simply put	for	on the other hand
Conversely	moreover	that is	in other words
contrary to	above all	clearly	more importantly
initially	meanwhile	finally	all the same
specifically	therefore	thus	consequently
arguably	in contrast	instead	to illustrate
likewise	allegedly	unlike	subsequently
undoubtedly	in addition	likewise	in conclusion
in summary	nonetheless	since	without question

paragraph

A group of sentences that address the same topic.

II. PARAGRAPHS

A **paragraph** is a group of sentences that address the same topic. Paragraphs are important because they organize the writing according to topic. They make it easier for the reader to understand the material by separating it into manageable units. Start a new paragraph when a new idea or topic is being addressed. You should use transitional phrases or sentences to link new paragraphs.

A paragraph usually consists of the following elements:

- A topic sentence
- The body
- A closing sentence

Every paragraph does not always require each of these elements. A short paragraph, for example, may not have a closing sentence. The following subsections discuss the elements of a paragraph and other considerations to keep in mind when writing paragraphs (see Exhibit 11–2).

Keep the following in mind when drafting paragraphs

Topic Sentence	Use a topic sentence to introduce the subject and provide the focus of the paragraph.
Body	The body of the paragraph should support or develop the subject introduced by the topic sentence. Generally a paragraph should address a single idea or topic rather than several different topics.
Closing Sentence	End with a closing sentence that summarizes or applies the topic addressed in the paragraph.
Transition Sentence	Include transitional words, phrases, or sentences to connect the subjects discussed in the different paragraphs.

Exhibit 11–2

Topics to Keep in Mind when Drafting Paragraphs

A. Paragraph—Topic Sentence

The **topic sentence** identifies the subject of the paragraph. It introduces the subject and provides the focus of the paragraph for the reader. The topic sentence is usually placed at the beginning of the paragraph.

For Example

- Topic sentence of a paragraph that discusses why the exclusionary rule is necessary: “The Supreme Court has identified several reasons that the exclusionary rule is necessary.”
- Topic sentence of a paragraph that discusses Mr. Smith’s actions: “Mr. Smith’s actions do not constitute a breach of contract.”
- Topic sentence of a paragraph that addresses required conditions: “A warranty of fitness for a particular purpose is created when the following conditions are present.”

B. Paragraph—Body

The body of a paragraph is composed of a sentence or sentences that support or develop the subject introduced by the topic sentence. The sentence(s) should develop the subject clearly and in a logical manner.

For Example The topic sentence in this example is printed in italics to separate it from the body. "*In order to support a negligence claim against Mrs. Jones, four elements must be proven.* First, we must establish that she had a duty to keep the tree on her property trimmed. Next, we must show that she failed to trim the tree properly. Then it is necessary to prove that as a result of her failure to trim the tree, a branch fell and struck Mr. Thompson. Finally, we must establish that Mr. Thompson's injuries resulted from the branch striking him."

Notice in this example that the sentences in the body are presented clearly and in logical order. Remember, when preparing the body of a paragraph, the goal is to draft it clearly, concisely, and logically.

C. Paragraph—Closing Sentence

A paragraph should end with a **closing sentence**. The content of the sentence varies according to the subject matter covered in the paragraph. It should summarize the topic addressed in the body or apply the subject discussed to the facts of the case.

For Example **Summary:** Therefore, to establish a claim for negligence, we must show that Mrs. Jones had a duty, the duty was breached, the breach caused the accident, and the accident caused the harm that resulted.

Application of subject to the facts of the case: The rule of law adopted in the *Craig* case clearly applies in this case because Mr. Smith failed to warn Mr. Jones that the brakes were defective.

D. Paragraph—Transition Sentence

Transitional words, phrases, or sentences are required to connect the subjects discussed in different paragraphs. They serve as a guide for the reader by linking the paragraphs, thereby improving the coherence of the overall writing. Transitional words, phrases, and sentences are usually placed at either the beginning or the end of the paragraph.

For Example **Transitions at the beginning of a paragraph. The transitional language is in italics:**

- "If the *above mentioned* requirements are not met, breach of contract may not be claimed."
- "There are, *however*, exceptions to this rule."
- "In *addition* to a cause of action for negligence, Mr. Smith may allege ..." (where the body of the paragraph addresses the other possible causes of action, and the previous paragraph discusses the negligence cause of action.)

- “The *second* element of the statute requires ...” (where separate paragraphs are used to discuss separate elements.)

Transitions at the end of the paragraph. The transitional language is in italics:

- “The statute, *however*, does not define ‘publication’; therefore, case law must be consulted.” (where the next paragraph introduces the case law.)
- “In *addition* to this case, there are other cases that discuss the requirements of the statute.” (where the following paragraph discusses the other cases.)

E. Paragraph Length

As with sentences, there is no rule establishing a standard length for paragraphs. Paragraphs usually are three to six sentences in length. Most paragraph topics can be covered comfortably in six to seven sentences, although a paragraph may be as short as one sentence or as long as ten sentences. Determine the length by keeping in mind the goal of covering the topic of the paragraph clearly and completely. The reader may have difficulty understanding or become confused by extremely long paragraphs. A series of extremely short paragraphs may lack transition and distract the reader. Therefore, extremely long and short paragraphs should be the exception in legal writing. The following are examples of short paragraphs.

For Example **One-sentence paragraph:** The second element of the rule requires that the witness be present at the signing.

Two-sentence paragraph: Section 2(b) of the statute addresses the requirement of the number and presence of witnesses. It requires that there must be a minimum of two witnesses and both must be present at the signing.

Notice that the examples lack transition language or sentences that connect the paragraphs to the paragraphs that follow.

III. WORD SELECTION AND USAGE

Not only is it necessary to be skilled in sentence and paragraph construction, but you must be skilled in selecting and using words. This section discusses some guidelines on word selection and usage.

A. Excessive/Redundant Words

Avoid the use of excessive or redundant words. Check each sentence for words that can be eliminated. Simplify the finished product.

For Example **Excessive words:** The statute provides individuals protection against the use of evidence obtained by warrantless wiretaps.

Revision: The statute prohibits the use of evidence obtained by warrantless wiretaps.

Redundant words: The sole and exclusive remedy provided by the statute is criminal prosecution.

Revision: The exclusive remedy provided by the statute is criminal prosecution.

The following is a list of some commonly used redundant pairs. Any *one* of the terms can be used; the use of both terms is not required or appropriate.

full/complete	merged/together	cease/desist
each/every	null/void	true/correct
due/owing	exact/same	end/result
alter/change	descend/down	and/moreover
sole/exclusive	specific/example	join/together

B. Noun/Verb Strings

A **noun/verb string** is the use of a group of related words to convey information. It is a form of redundancy that should be avoided when a single descriptive word will accomplish the same end.

For Example **Noun/verb strings:** “The distributor is not responsible for failures to perform as a result of *riots, floods, earthquakes, and acts of God.*”

“A stockholder may not *grant, give, sell, or assign* her interest in the stock without the consent of the other shareholders.”

Revisions: “The distributor is not responsible for failure to perform caused by events beyond the distributor’s control.” “A stockholder may not transfer her interest in the stock without the consent of the other shareholders.”

C. Nominalizations

A **nominalization** is a noun created from a verb.

nominalization

A noun created from a verb (e.g., *realization* from the verb *realize*).

For Example

<i>Verb</i>	<i>Noun</i>
determine	determination
realize	realization
possess	possession
important	importance

Nominalizations weaken a sentence by taking the action away from the actor. They make the sentence passive and less forceful.

For Example **Nominalizations:** “He came to the *realization* that the assignment required more work.” “The *importance* of the opinion is that”

Revisions: “He *realized* that the assignment required more work.” “The opinion is *important* because”

D. Legalese

Legalese as used here refers to terms of art used in the legal profession that are not generally known outside the profession. The goal of legal writing is to communicate information effectively. Writing in plain English usually accomplishes this goal, and plain English should be used when possible.

The audience governs the extent to which you incorporate legal terminology in legal writing. Legal terms are appropriate when communicating with others in the field. If the reader is trained in the law, using legal terms or phrases, such as *res ipsa loquitur*, is much easier than providing a definition or explanation. When the recipient is a nonlawyer, however, the use of legal terms should be avoided. You *must* define legal terms when communicating with nonlawyers if the meaning of the term is not obvious.

For Example **Legalese in italics:** The constitution requires *probable cause* before the police can conduct a search of your residence.

Revision: The constitution requires the police to have a valid reason before they can search a house. An example of a valid reason would be if a reliable person informed the police that they saw illegal drugs in the house.

E. Archaic Words

Archaic terms are words or phrases frequently used in the past that are being phased out of legal writing. Do not include such terms in your writing. Some of these terms are *saith*, *party of the first part*, *aforesaid*, *hereinbefore*, *hereinafter*, *henceforth*, and *the said party*.

For Example **Archaic and excess verbiage in italics:** Upon the signing of the Agreement, *the party of the first part will hereinafter cease* and desist from attending hearings where the *party of the second part* acts as chairperson.

Revision: Upon the signing of the Agreement, Mr. Smith will not attend hearings where the Ms. Carson acts as chairperson. (Assume that names, Mr. Smith and Ms. Carson, are mentioned earlier in the Agreement. Rather than use the phrase *party of the first part* and *party of the second part*, simply repeat the names of the parties or use a pronoun such as he or she when it is clear to which party the pronoun refers.)

F. Sexist Language

In any form of writing, using gender-specific language is prejudicial and not appropriate unless it refers to a specific person and the gender is known. **Sexist language** has no place in legal writing. The following guidelines will help ensure gender-neutral writing.

I. Words

Change gender-specific terms to gender-neutral terms.

For Example

<i>Gender-specific</i>	<i>Gender-neutral</i>
chairman	chairperson
wife/husband	spouse
draftsman	drafter
forefathers	forbearers
housewife	homemaker
mankind	people, human beings
workman	worker
anchorman	anchor
congressman	congressperson, representative

2. Restructuring Sentences with He/She

You can use *he* or *she* in place of *he* to render a sentence gender-neutral. The result, however, may be awkward.

For Example

The rule requires the plaintiff to file his or her response within fifteen days.

There are several alternatives that you may adopt to avoid the use of *his or her*, *he/she*, and so on.

- a. Restate the sentence so the antecedent is plural.

For Example

The rule requires the *plaintiff* to file *his* pleadings ...

Revision: The rule requires *plaintiffs* to file their pleadings ...

- b. Eliminate the use of the pronoun.

For Example

The officer is responsible for the actions of *his* troops.

Revision: The officer is responsible for the actions of *the* troops.

- c. Repeat the name.

For Example

Before the client may liquidate the assets of the company, *he* must ...

Revision: Before the client may liquidate the assets of the company, the *client* must ...

d. Use *one*, *you*, or *your* when possible.

For Example “Everyone has a right to *his* personal preferences.”
Revisions: “Everyone has a right to personal preferences.” “You have a right to *your* personal preferences.”

e. Rephrase the sentence.

For Example A legal assistant should not communicate with the litigants he knows we do not represent.
Revision: A legal assistant should not communicate with litigants we do not represent.

3. Appropriate Reference to Gender

Reference to gender is appropriate only when you intend to refer to one sex.

For Example Each member of the women’s basketball team had her name printed on the back of her uniform.

G. Specific Words—Problem Areas

Some words are commonly misused. You can avoid problems of misuse by following some basic rules.

1. Affect/Effect

Affect is a verb meaning “to influence.” *Effect* is either a verb or noun. As a verb, it means “to bring about or cause”; as a noun, it means “result.”

For Example “His actions will not *affect* (not *effect*) the outcome of the case.” The meaning of *affect* is “to influence.” “He tried to *effect* (not *affect*) an agreement.” Here, the meaning of *effect* is “to bring about.”

“The test did not bring about the desired *effect* (not *affect*).” The meaning of *effect* is “result.”

2. And/Or

When the word *and* is used in regard to a list of words, all the items listed are included and required.

For Example “The case law requires the plaintiff to prove duty, breach of duty, proximate cause, *and* damages.” The use of *and* means that all four elements must be proved. All the listed items are included in the requirement.

When *or* is used, all the items listed are not required to be included. Any one or all of the items are included.

For Example “The case law requires the corporate president to provide notice orally, by mail, *or* by facsimile.” All the listed items are not required. Only one of the items is required. The president has the choice of giving notice by one or all of the means listed.

The use of *and/or* creates an ambiguity and is not proper.

For Example “The statute requires that the notice be given orally, by mail, *and/or* by facsimile.” What does the statute require? Are all the listed items required? If so, *and* should be used. If only one of the items is required, *or* should be used.

3. Lie/Lay

Lie is an intransitive verb that means to rest or recline. (An intransitive verb is verb that does not take a direct object.) Its forms are *lie, lay, lain, lying*.

For Example I think I will *lie* (not *lay*) down.
He was so tired he *lay* (not *laid*) down.
She has been *lying* (not *laying*) around all day.

Lay is a transitive verb that means “to put or place.” A transitive verb takes a direct object. Its forms are *lay, laid, laid, laying*.

For Example I think I will *lay* (not *lie*) the paper down.
He *laid* (not *lay*) the paper down.
He has been *laying* (not *lying*) brick all day.

4. Shall and May

The word *shall* is used to impose a duty that is mandatory. The performance of the duty is not optional.

For Example “Mr. Smith *shall* terminate all contact with Mrs. Black.” The duty to terminate all communication is mandatory. Mr. Smith has no option.

The word *may* indicates that the performance of an act is not mandatory. The performance of the act is optional.

For Example “Mr. Smith *may* terminate all communication with Mr. Black.” The act of terminating all communication is optional for Mr. Smith. He has a choice whether to terminate the communication.

5. That/Which

Use *that* to introduce restrictive clauses and *which* to introduce nonrestrictive clauses. A restrictive clause is a clause that is necessary to the meaning of the sentence.

For Example “You must perform all the steps *that are listed in the statute.*” The italicized clause is a restrictive clause. It informs the reader that the required steps are the steps listed in the statute. It is necessary to an understanding of the steps that must be taken.

A nonrestrictive clause is a clause that is not necessary to the meaning of the sentence. It can be set off from the rest of the sentence with commas without changing the meaning of the sentence.

For Example “I always buy his products, *which usually are high quality.*” The italicized clause is a nonrestrictive clause. It is not necessary to the meaning of the sentence.

IV. GRAMMAR

The rules of **grammar** govern the construction of sentences. This section introduces some of the basic rules of grammar to keep in mind when performing a writing assignment.

A. Subject/Verb Agreement

The subject and verb should agree in person and number. This means that singular subjects require singular verbs and plural subjects require plural verbs.

For Example **Incorrect:** “The decision in the case *require* the defendant to give notice to the plaintiff.” This sentence has a singular subject, *decision*, and a plural verb, *require*.

Correct: “The decision in the case *requires* the defendant to give notice to the plaintiff.” The singular subject *decision* agrees with the singular verb *requires*.

The basic rules concerning subject/verb agreement include the following:

1. Two or more subjects joined by *and* usually require a plural verb.

For Example Mary and Joan *were* present.
The president, secretary, and treasurer are going to the conference.

2. Two or more subjects joined by *or* or *nor* require a verb that agrees with the subject closest to the verb.

For Example Tom or his brothers *are* going to attend. Either the brothers or Tom *is* the responsible party. Neither Tom nor his brother *is* going to attend.
To accept the contract or to draft a new one *is* your option.

3. Most indefinite pronouns require singular verbs. Indefinite pronouns are pronouns that do not refer to a specific person or thing, such as *anyone*, *everybody*, *nobody*, *someone*, *each*, and *something*.

For Example Everybody *is* responsible. Each of the members has a specific task.

4. Some indefinite pronouns require a verb that matches the noun to which they refer. Some of these pronouns are *all*, *none*, *most*, *some*, and *any*.

For Example All of the property *is* distributed. None of the items *are* missing.

5. Plural indefinite pronouns such as *both*, *few*, *many*, *several*, and *others* require a plural verb.

For Example Few *are* selected.
Although there were multiple presentations, several employees *were* not in attendance.
The others *are* not required to be present.

6. Collective nouns usually require a singular verb. A collective noun is a noun that refers to a group: *jury*, *family*, *crowd*, *majority*, and so on.

For Example “The jury *was* deadlocked.” “The family *is* present.”

7. Nouns that are plural in form but have a singular meaning require a singular verb, for example, *politics*, *news*, and *tactics*.

For Example “The news *is* bad. “The politics of the party *is* corrupt.”

8. The title of a work takes a singular verb.

For Example *Military Tactics* is wonderful reading.

9. A relative pronoun requires a verb that agrees with its antecedent. A relative pronoun is a pronoun that refers to another noun in the sentence. *Which*, *who*, and *that* are examples of relative pronouns. The noun the relative pronoun refers to is called the antecedent.

For Example “Our *client* is one of the persons *who* has been indicted in the case.” *Who* is the relative pronoun, and *client* is the antecedent.

If the antecedent is singular, the verb should be singular. If the antecedent is plural, the verb should be plural.

For Example **Singular:** “Our *client*, *who* was present at the scene, *has* been indicted.” The antecedent (*client*) of the relative pronoun (*who*) is singular; therefore, *who* takes a singular verb (*has*).

Plural: “The *clients*, *who* were present at the scene, *have* been indicted.” The antecedent (*clients*) of the relative pronoun (*who*) is plural; therefore, *who* takes a plural verb (*have*).

B. Verb Tense

Verb tense is the time in which a verb’s action occurs. Events happening in the present use the present tense, events that occurred in the past use the past tense, and events that will take place in the future use the future tense. Usually sentences and paragraphs are written in the same tense. You should check to ensure that your writing does not have inappropriate changes in verb tense.

For Example **Inappropriate change in verb tense:** “The complaint *was* filed on January 1, 1997. The defendants *move* to dismiss the complaint. The motion *was* denied.” Notice that the verb tense in this sentence moves from past to present, then back to past tense.

Revision: “The complaint *was* filed on January 1, 1997. The defendants *moved* to dismiss the complaint. The motion *was* denied.” Notice that all the verbs are in past tense.

Guidelines on correct verb tense include the following:

1. When presenting your position or legal analysis, use present tense.

For Example Plaintiff *contends* that the rule *requires* thirty days' notice.

2. When addressing a court opinion that has already been decided, use past tense.

For Example The provisions of section 44-556 *require* a contractor to give thirty days' notice.

3. When discussing a law or rule still in effect, use present tense.

For Example The provisions of section 44-556 *require* a contractor to give thirty days' notice.

C. Parallel Construction

Parallel construction means that the items listed are similar in grammatical structure. It means that in sentences that include a list, a group of activities, and so on, each of the items must use the same grammatical form, that is, all the items or members of the group should agree in verb tense, number, and so on.

For Example **Lacks parallel construction:**

- The defendant is a trained officer with fifteen years' experience who has won several service medals.
- The goals of the association are the following:
 - a. educating the public about crime,
 - b. to provide support for the police, and
 - c. improvement of local neighborhood watch groups.
- Most states have passed uniform laws for corporations, partnerships, and that allow limited liability companies.
- The client gave consideration not only *to the* exclusion term but also *the* waiver clause.

Revisions with parallel construction:

- The defendant is a trained officer *who has* fifteen years' experience and *who has* won several service medals.
- The goals of the association are the following:
 - a. *to educate* the public about crime,
 - b. *to provide* support for the police, and
 - c. *to improve* local neighborhood watch groups.
- Most states have passed uniform laws for corporations, partnerships, and limited liability companies.
- The client gave consideration not only *to the* exclusion term but *to the* waiver clause.

D. Superfluous Verbs

Avoid the use of verb constructions that are unnecessarily wordy.

For Example Superfluous verbs in italics

- He decided to *perform an investigation* into the matter.
- The arbitrator decided to *give consideration* to the argument.
- The judge *reached a decision* on the question.
- The contractor *made an attempt* to complete the contract on time.

Revisions without superfluous verbs

- He decided to *investigate* the matter.
- The arbitrator *considered* the argument.
- The judge *decided* the question.
- The contractor *attempted* to complete the contract on time.

modifier

A word or phrase that provides a description of the subject, verb, or object in a sentence.

E. Modifier and Infinitives

Modifiers are words or phrases that provide descriptions of the subject, verb, or object in a sentence. The four types of problems involving modifiers that frequently occur are presented in Exhibit 11–3.

Four types of problems involving modifiers

Misplaced modifiers	Words or phrases that are placed in the wrong location in a sentence and may create ambiguity or cause a loss of clarity. “If we contend that the contract applies, it will be attacked by the defense.” What will be attacked, our contention or the contract?
Dangling modifiers	Modifiers that do not modify any other part of the sentence. “To determine whether the contract was breached, the provisions of the statute must be referred to.” The italicized modifier does not refer to or modify any part of the sentence.
Squinting modifiers	A modifier located in a position in the sentence that makes it unclear whether it modifies the word that precedes it or the word that follows it. “The report that was prepared routinely indicates that the structure was unsafe.” Was the report prepared routinely, or did the report routinely indicate the structure was unsafe?
Split infinitives	An adverb is placed in an infinitive after “to” and before the verb. “Stephanie began to rapidly climb.” The adverb “rapidly” is placed between the infinitive “to” and the verb “climb.” Correct: “Stephanie began to climb rapidly.”

Exhibit 11–3

Problem Modifiers

1. Misplaced Modifiers

A misplaced modifier is a word or phrase that is placed in the wrong location in a sentence. Because of its placement, it appears to modify one word or phrase when it is intended to modify another. You may create an ambiguity or cause a loss of clarity by misplacing a modifier. The solution is to rephrase the sentence or to move the modifier to ensure clarity. Usually this means placing the modifier before or after the word or phrase it modifies.

For Example **Misplaced modifiers**

- “If we contend that the contract applies, it will be attacked by the defense.”
What will be attacked, our contention or the contract?
- “Present the client’s counterargument only in the third section of the brief.”
Does this mean the counterargument should be presented in the third section and no other section, or does it mean that the third section should consist only of the counterargument?

Revision—sentence rephrased

- If we contend that the contract applies, the contention will be attacked by the defense.

Revision—modifier moved

- In the third section of the brief, present only the client’s counterargument.

2. Dangling Modifiers

Modifiers that do not modify any other part of the sentence are dangling modifiers.

For Example **Dangling modifier in italics:** *To determine whether the contract was breached*, the provisions of the statute must be referred to.

The italicized modifier does not refer to or modify any part of the sentence. It refers to a contract mentioned in another sentence. The problem may be corrected by rewriting the sentence to make sure modifiers refer to a noun or nouns in the sentence.

For Example **Dangling modifier eliminated:** To determine whether the terms of the contract violate the statute, the statutory provisions must be referred to.

3. Squinting Modifiers

A squinting modifier is a modifier located in a position in the sentence that makes it unclear whether it modifies the word that precedes it or the word that follows it. Avoid squinting modifiers when you edit your writing.

For Example **Squinting modifier in italics:** “The report that was prepared *routinely* indicated that the structure was unsafe.” Was the report prepared routinely, or did the report routinely indicate the structure was unsafe?

Revision: The report that was routinely prepared indicated that the structure was unsafe.

Limiting modifiers such as *only*, *even*, *almost*, *nearly*, and *just* are often misplaced. These modifiers should be placed in front of the word they modify.

For Example “The lawyer *only* prepared the document.” As the sentence reads, the lawyer prepared the document and nothing else. If the sentence is intended to mean that the lawyer and no one else prepared the document, *only* is misplaced. The correction reads: “Only the lawyer prepared the document.”

4. Split Infinitives

An infinitive is a verb form that functions as a noun or as an auxiliary verb, such as *to argue*, *to understand*, and *to consider*. The general rule is that infinitives should not be split, that is, an adverb should not be placed after the *to* and before the verb.

For Example **Split infinitives:** In each of the following examples, the infinitive is split: “to completely understand,” “to rapidly climb,” “to thoroughly test.” An adverb is placed between the *to* and the verb.

Revisions: “To understand completely,” “to climb rapidly,” “to test thoroughly.”

F. Noun/Pronoun Agreement

Pronouns must agree in number (singular/plural) and gender (feminine/masculine/neuter) with the nouns to which they refer, their antecedents. A list of pronouns follows: *I*, *me*, *mine*, *my*, *we*, *us*, *our*, *you*, *yours*, *your*, *he*, *him*, *his*, *she*, *her*, *hers*, *it*, *its*, *they*, *them*, *their*, and *theirs*.

The following guidelines can help to ensure noun/pronoun agreement.

1. Pronouns must agree with their antecedents. The noun the pronoun refers to is the antecedent.

For Example “The *workers* put on *their* helmets when they entered the building.” The pronoun *their* agrees in number (plural) with its antecedent *workers* (plural).

“*Mary* was required to wear *her* helmet.” The pronoun *her* agrees in number and gender with the antecedent *Mary*.

2. Pronouns that do not refer to a definite person or thing are indefinite pronouns. Some examples of indefinite pronouns are *all*, *anyone*, *anybody*, *each*,

everyone, someone, somebody, everything, something, and none. Indefinite pronouns are usually singular.

For Example *Everyone* has the freedom to select *his or her* candidate.

3. Antecedents joined by *and* require a plural pronoun.

For Example “Tom and Mary are separating *their* property.” “Tom, Jon, and Mary are going *their* separate ways.”

4. Antecedents joined by *or* or *nor* require a pronoun that agrees in number and gender with the antecedent closest to the pronoun.

For Example “Mary or the other defendants must conduct *their* investigation.”
“The defendants or Mary must conduct *her* investigation.”

When it appears awkward, as the second sentence does, consider rephrasing the sentence.

For Example Mary or the defendants must conduct an investigation.

5. The number of a pronoun that refers to a collective noun is determined by the function of the collective noun. A collective noun is a noun that refers to a group. If the collective noun functions as a unit, the pronoun is singular.

For Example “The *committee*, after reviewing the matter, presented *its* conclusion.” In this sentence, the collective noun, *committee*, functions as a unit; the report is the act of the committee as a whole; and therefore, the pronoun *its* is singular.

If the collective noun does not function as a unit, that is, the members of the collective noun are acting separately and not as a unit, a plural pronoun is required.

For Example “The *team* have stated *their* various positions on the question of whether *they* should wear the new helmets.” In this example, the collective noun, *team*, does not function as a unit. The reference is to the team as individual members; therefore, the sentence takes the plural pronoun *they*.

punctuation

Marks or characters used in writing to make the meaning clear and easy to understand (e.g., period [.], comma [,], semicolon [;], and colon [:]).

V. PUNCTUATION

Punctuation is designed to make writing clear and easy to understand. Poor punctuation may cause the reader to misunderstand the context or be distracted by the errors and not focus on the context. Poor punctuation usually causes the reader to question the competence of the author. A comprehensive discussion of all the rules governing punctuation would require an entire text. This section discusses the major elements of punctuation and summarizes some of the rules that apply to problem situations commonly encountered.

A. Comma (,)

The function of a comma is to separate the parts of a sentence so that the meaning is clear. It is the most frequently used punctuation mark. Basic rules that apply to commas include the following:

1. Use a comma before a coordinating conjunction that joins two main or independent clauses. An independent clause is a clause that could stand alone as a complete sentence.

For Example

The statute provides that the contract must be witnessed, but it does not require that the contract be in writing. (Note that each clause of the sentence could be a complete sentence: The statute provides that the contract must be witnessed. It does not require that the contract be in writing.)

2. Set off introductory phrases or clauses with a comma.

For Example

Introductory phrase in italics: *After the prosecutor concluded his opening statement,* the court declared a recess.

3. Use a comma after each item in a series of three or more items, and place a comma before *and* or *or* at the end of the series.

For Example

“The defendant had no identification, money, or other possessions.”
“Bicycles, tricycles, unicycles, and other nonmotorized vehicles are covered by the statute.”

4. Use a comma to avoid a misreading of the subject.

For Example

Instead of rule A, rule B applies in this situation.

5. Separate coordinate adjectives with a comma. Coordinate adjectives independently modify the same noun. To determine if the modifiers are coordinate, reverse their order or insert *and* between them. If the meaning is not changed, they are coordinate.

For Example **Coordinating adjectives in italics:** “The *correct, concise* interpretation is that . . .” “The *concise, correct* interpretation is that . . .”

6. Set off transitional or interpretive words or phrases with a comma. These are words or phrases that provide qualification or clarification but are not essential to the meaning of a sentence.

For Example “The plaintiffs, *however*, have failed to comply.” “The correct course, *therefore*, is to settle the case.”

7. Set off nonrestrictive clauses with a comma. A nonrestrictive clause is a clause that is not necessary to the meaning of the sentence.

For Example **Nonrestrictive clause in italics:** The court of appeals denied the appeal, *finding that the evidence was properly admitted*.

8. Use a comma to set off appositives. An appositive is a noun or noun phrase that further identifies another noun or noun phrase.

For Example **Appositives in italics:** “The client, *Ms. Smith*, was elected to the position.” “The plaintiffs, *Mr. Evans and Ms. Thompson*, were present at the hearing.”

9. Set off contrasting phrases with a comma or commas.

For Example **Contrasting phrase in italics:** “Mr. Jones, *not Ms. Smith*, was the guilty party.”

10. Use commas when required to set off quotations. Place the comma between the quotation and the attribution.

For Example He said, “I did not do it.”

11. Place a comma inside the closing quotation, not outside the quotation.

For Example “Witnessing is not required,” he said.

12. Place a comma before and after descriptive titles, such as M.D., Ph.D., and Esq.

For Example The doctor in this case is Mary Place, M.D., who attended medical school at Yale Medical School.

Note: Do not use a comma before Jr. II, and so on, after a personal name.

For Example Mr. Steven Jones Jr. and Arthur Cleaver II delivered the closing address.

13. Do not use a comma before parentheses.

For Example All employees (executives and assistants) shall arrive at work at 8:00 a.m.

14. Do not use a comma after a short prepositional phrase. If the phrase is short (usually three words or less) and the meaning of the sentence is clear, the comma may be omitted. A prepositional phrase is a phrase consisting of, at a minimum, a preposition and a noun that is the object of the preposition.

For Example **Incorrect**—the prepositional phrase is in italics: *In every situation,* you should read the contract. After the test, I'm going to sleep.
Correct: *In every situation* you should read the contract. After the test I'm going to sleep.

B. Semicolon (;)

A semicolon is used primarily in two situations.

- To separate major elements of complex sentences
- To separate items in a series if the items are long or if one of the items has internal commas

In regard to these situations, note the following rules:

1. Use a semicolon to separate main or independent clauses in a sentence that are *not* joined by a coordinating conjunction. Both main and independent clauses have a subject and a verb. Each could be a separate sentence. A conjunction is a word that is used to connect words and phrases. A coordinating conjunction, such as *and*, *but*, and *or*, is a conjunction that connects like elements.

For Example **Incorrect:** “The shareholders held their meeting at noon, the board of directors met immediately thereafter.” The use of the comma is incorrect because there is no coordinating conjunction, such as *and*, connecting the two clauses. The coordinating conjunction is in italics in the following sentence.

Correct—coordinating conjunction used: The shareholders held their meeting at noon, *and* the board of directors met immediately thereafter.

Correct—semicolon used: The shareholders held their meeting at noon; the board of directors met immediately thereafter.

2. Use a semicolon when independent clauses are joined by a conjunctive adverb. The following are examples of conjunctive adverbs: *therefore*, *however*, *furthermore*, *consequently*, *likewise*, and *nevertheless*.

For Example The rule requires that the will must be witnessed in writing; *however*, there are three exceptions.

3. When a series of items is long or commas are already used in some of the items in the series, use a semicolon to separate the items.

For Example **Long items:** The plaintiffs must prove the following to establish that the will was validly witnessed:

- a. there were two witnesses to the will;
- b. the witnesses were present in the room when the will was signed; and
- c. the witnesses were not related to the testator or were not bequeathed anything in the will.

List of items with internal commas: The stockholders present were Mary Hart, the president; Tom Jones, the secretary; and Monica Murton, the treasurer.

4. At the end of sentence, use a semicolon to separate an appositive introduced by such terms as *that is*, *for example*, *namely*, and so on.

For Example For the instrument to be validly executed, there are three requirements; namely, the signature of the maker, the signature of two witnesses, and notarization.

C. Colon (:)

Use a colon when you want to introduce or call attention to information that follows, such as lists, conclusions, explanations, and quotations. The function of a colon is to introduce what follows.

1. Use a colon to introduce a list or series. When a colon introduces a list or series, it must be preceded by a main clause that is grammatically complete, that is, a complete sentence.

For Example **Incorrect:** “The statutory requirements are: the will must be witnessed by two witnesses, the witnesses must be present when the testator signs the will, and the witnesses must sign the will.” The sentence is incorrect because the use of the colon is not preceded by a main clause that is grammatically complete; the clause lacks an object.

Correct: The statutory requirements are the following: the will must be witnessed by two witnesses,

For Example The statute provides that three steps must be performed before the water right is established: (1) a permit must be obtained from the state engineer; (2) the water must be applied to a beneficial use; and (3) the beneficial use must be continuous for a period of three years.

2. A colon may be used to introduce quotations. A colon may be used to introduce a short quotation introduced by an independent clause.

For Example **Introduce short quotation:** Standing in open court, Smith loudly entered his plea: “I am not guilty.”

A colon may be used to emphasize a quotation.

For Example **Emphasize a quotation:** The Senator concluded his remarks with the following statement: “I do not choose to run for reelection.”

A colon is usually used to introduce block quotations, transcripts, statutes and so on.

For Example After reviewing the matter at length, the court adopted the following rule:
(Block Quotation)

3. A colon may be used to join two separate but related clauses. In this instance the colon is used to emphasize the information that follows.

For Example The client made a major mistake: he failed to file the annual report.

D. Apostrophe (')

An apostrophe serves to indicate possession or to form a contraction. Some of the basic rules governing the use of apostrophes to indicate possession are the following:

1. Make singular nouns possessive by adding an apostrophe and an *s*.

For Example “the officer’s car” “Mr. Jones’s house”

Singular nouns ending in *s* take an apostrophe and an *s* just like any other singular noun. Note the possessive of Mr. Jones in the preceding example.

2. Make plural nouns possessive by adding an apostrophe after the *s*.

For Example “the players’ uniforms” “the workers’ organization”

3. Use an apostrophe and an *s* after the last word of a compound word or word group.

For Example “attorney general’s office,” “Fred and Tom’s car” (where Fred and Tom own the same car), “Fred’s and Tom’s cars” (where Fred and Tom own separate cars)

4. The possessives of personal pronouns do not require an apostrophe.

For Example *yours, his, hers, ours, its* (possessive of *it*), *whose* (possessive of *who*)

An apostrophe is also used to form contractions. Contractions are generally not used in formal writing. To make a contraction, use an apostrophe in place of the omitted letter or letters.

For Example *they’re* (they are), *can’t* (cannot), *don’t* (do not), *who’s* (who is), *it’s* (it is)

Note the difference between *it’s* and *its*. *It’s* is the contraction for *it is*. *Its* is the possessive pronoun form for *it*.

E. Quotation Marks (“ ”)

Use quotation marks to identify and set off quoted material. Note the following guidelines when quoting material.

1. Long quotations are not set off by quotation marks. Instead, they are set off from the rest of the text by a five-space indentation (0.5-inch indentation) from the left and right margins. They are also single-spaced. These quotations are called block quotations and, according to the *Bluebook*, should be used for quotations of fifty words or more.

For Example The court made the following statements in regard to the requirement of the presence of the witness:

The statute requires the witnesses to be present when the testator signs the will. The witnesses must be in the same room with the testator, not in a separate room from which they can see the testator. The witnesses also must actually see the testator sign the will. Their presence in the room is not sufficient if they do not actually see the testator sign the will.

As readers tend to skip over or skim long quotations, use them sparingly and only when the entire language, verbatim, is essential.

2. Place periods and commas inside the quotation marks.

For Example He was described as “a dangerous individual.”

Other punctuation, such as semicolons, colons, question marks, and exclamation marks, are placed outside the quotation marks unless they are a part of the quotation.

For Example The court defined publication as “communication to a third party”; therefore ...

The victim then shouted, “I’ve been hit!” (The exclamation mark is part of the quotation; therefore, it belongs within the quotation marks.)

3. You may use quotation marks to indicate that a word is used in a special way or is a special term.

For Example The attorney acted as a “hired gun” in the case.
The term “oppressive conduct” has a special meaning in corporation law.

4. When quoting a quote within a quote, use single quotation marks.

For Example The court held that “the term ‘oppressive conduct’ requires that the shareholder engage in some wrongful conduct.”

When the quote within a quote is part of a block quotation, use double quotation marks to set off the quote.

For Example The court made the following statements in regard to the requirement of the presence of the witness:

The statute requires the witnesses to be present when the testator signs the will. The witnesses must be in the same room with the testator, not in a separate room from which they can see the testator. The witnesses also must “actually see” the testator sign the will. Their presence in the room is not sufficient if they do not actually see the testator sign the will.

5. Quotation marks may also be used to indicate a term is informal or questionable.

For Example William “Wild Bill” James. The only “injury” sustained in this lawsuit was the cost of the litigation.

F. Ellipses (...)

The function of an ellipsis (three spaced dots) is to indicate the omission of part of a quotation.

For Example The statute provides that skiers are “responsible for ... snow and ice conditions ...”

Note the following rules regarding the use of ellipses:

1. When the omission occurs inside a quotation, use three ellipsis dots. Use hard spaces after the last quoted word, between each ellipsis dot, and the next quoted word.

For Example “When I went on my trip, I first went to the tower ... and saw the mountains on the horizon.”

Retain any punctuation that appears before or after the omitted material if it is grammatically necessary for the restructured sentence.

For Example “When I went on the tour of the villa, ... we also visited the famous gardens.”

2. When the end of a quoted sentence is omitted, add a period for the punctuation to end the sentence. Follow the last word with a space, the three ellipsis dots, and a period. Place a hard space between each dot and the period.

For Example The statute requires that “the majority shareholder must refrain from engaging in oppressive conduct”

3. When the omission is at the beginning of a quote, do not use an ellipsis. In legal writing the bracketed first letter signals that the beginning of the quote has been left out.

For Example **Incorrect:** In this case, the court stated that "... the act does not require specific intent."

Correct: In this case, the court stated that "[t]he act does not require specific intent."

4. If the quote is a phrase or clause, no ellipsis is required.

For Example **Incorrect:** The state must establish "... specific intent."

Correct: The state must establish "specific intent."

G. Brackets ([])

Brackets usually perform two separate functions.

- To show changes in or add information to quotations, usually for the purpose of providing clarification to the quotation
- To indicate an error in the original quotation

For Example **To show changes in a quotation:** "The privilege [against self-incrimination] allows an individual to remain silent."

To indicate an error in the original quoted material: "The bord [sic] of directors voted against the proposal."

In legal writing do not use brackets to indicate parenthesis that fall within parenthesis.

For Example **Incorrect:** (When the annual meeting was held [June of 2004], it was decided to call for a vote of the members.)

Correct: (When the annual meeting was held (June of 2004), it was decided to call for a vote of the members.)

H. Parentheses "()"

Use parentheses to add additional information to the sentence that is outside the main idea of the sentence or of lesser importance.

For Example The cost of the paper (only \$2) was not included in the invoice.

When referring the reader to other cases, attached material, or an appendix, or when providing summary information following a case citation, you may use parentheses.

For Example **Reference to an appendix:** (See Appendix A.)
Reference to other cases: *See also Smith v. Jones*, 981 N.E.2d 441 (N. Wash. 1993) (where the court required specific intent in a similar situation).

I. Hyphen (-)

A hyphen is required to form compound modifiers and compound nouns. There are numerous words that may or may not require hyphenation.

For Example ex-judge, well-known personality, self-defense

Consult a dictionary when you are unsure whether a word must be hyphenated. Be sure to consult a recently published dictionary. This is an area of the English language that frequently changes.

J. Dash (—)

The dash is often referred to as the em dash or long dash. Use a dash in the following situations:

- To emphasize something
- To set off lists or briefly summarize materials containing commas
- To show an abrupt change of thought or direction

For Example **To emphasize:** The child—only eight years old—was clearly not capable of understanding what he was doing.

To set off a list: The items located at the scene—the knife, the drugs, and the scarf—have disappeared from the evidence room.

To show a sudden break: Basel Corporation—primarily known for its herbs—is involved in the manufacture of glassware.

K. Slash (/)

The slash is not frequently used in legal writing. Note the following when using slashes.

1. Use a slash to separate one option from another or indicate alternatives.

For Example The either/or option is not acceptable. The course was offered on a pass/fail basis.
 Ms. Darling was the writer/producer.

2. Use a slash when writing dates informally.

For Example His birthday is 9/6/86.

3. Use a slash to separate line breaks in poetry.

For Example Yes! We can turn the tide / Break the waves that rush to the shore /
And undo the way of things.

VI. GENERAL CONSIDERATIONS

Three additional matters that require attention when you are performing a writing assignment are spelling, use of numbers, and formal writing conventions. These matters are addressed in the following subsections.

A. Spelling

Obviously, you must correctly spell all the words you use. If you are in doubt about the spelling of a word, use a dictionary. Legal writing requires the use of both a regular and legal dictionary.

If you use a computer that checks spelling, you still must carefully check for word usage errors. The computer may catch a spelling error, but generally it will not catch the wrong word or typographical errors that result in the wrong word.

For Example **Use of a wrong word:** You may have used the word to when you intended use too. A computer's spelling check function will not catch the use of the wrong word.

Typographical error that results in the use of a wrong word: You may have typed *cast* when you meant to type *case*. *Cast* is a word, and the spelling check function will not consider this an error.

B. Numbers

Several rules dictate the presentation of numbers. Some of these rules are listed here.

1. Spelled-out Numbers: The general rule is to spell out numbers that can be spelled out in one or two words.

For Example *one, twenty-seven, ninety-nine*. The contract has twenty-seven clauses.

Use numerals for numbers that are more than two words long.

For Example *379; 1,300; 145,378*. The contract has 379 clauses.

Exceptions: If there is a list of numbers and one of the items on the list should be written with numerals, use numerals for all the items listed.

For Example The numbers in the code are 16, 44, 397, and 1,001. (Sixteen and forty-four are not spelled out.)

As a general rule do not spell out the following numbers: dates, statute numbers, section numbers; volume numbers, exact times and sums of money, addresses, percentages, scores, identification numbers, ratios, statistics decimals and fractions, and measurements with symbols or abbreviations.

For Example

Date: May 6, 2005

Statute: Title 18 of the code

Section: Section 3212, § 3212

Percentage: 75 percent

Score: The final score was 2–1

Exact sum of money: \$34.21

Decimal: 9.38

Fraction: $9\frac{1}{4}$

Measurement with symbol: 9°

Exact time: 5:45 a.m.

Note: Times are spelled out when the time is accompanied by *o'clock*.

For Example **Incorrect:** 11 o'clock
Correct: eleven o'clock.

2. Numbers Beginning a Sentence. Spell out numbers that begin a sentence.

For Example **Incorrect:** 506 paralegals were present.
Correct: Five hundred six paralegals were present.

3. Hyphenated Numbers: Hyphens are used for fractions and numbers from twenty-one to ninety-nine.

For Example Fifty-six of the stockholders were present. The thirty-seven shareholders represented three-fourths of the outstanding shares.

Do not use *and* when writing whole numbers.

For Example **Incorrect:** Two hundred and seventy-five dollars was needed to pay the debt.
Correct: Two hundred seventy-five dollars was needed to pay the debt.

Hyphenate fractions that are spelled out.

For Example One-fifth of the student body attended the meeting.

4. Plural and Possessive Numbers: To make a number plural, add an *s*.

For Example 1990's
There were three 1900's in the paragraph.

Possessive numbers are not frequently encountered. If you have to form the possessive of a number, add an 's.

For Example The instructor illustrated his point by referring to the 1920's Black Friday.

5. Numbers Appearing Together: When two numbers appear together that are not of the same kind, the general rule is to spell out the first number.

For Example **Incorrect:** There were 190 \$50 bills.
Correct: There were one hundred ninety \$50 bills.

C. Formal Writing Conventions

Most legal writing is considered formal, and formal writing conventions apply, especially to legal briefs and memorandums. Two of these conventions relate to the use of contractions and personal pronouns.

As mentioned in the subsection addressing the use of apostrophes, the use of contractions is not considered acceptable in formal writing. Do not use contractions unless instructed to do so.

The general rule is that you should draft legal memoranda or briefs in the third person. Also, unless instructed otherwise, use the third person in correspondence to clients.

For Example **Incorrect:** "It is my position the court should grant the motion." "We feel that the contract has been broken."

Correct: "The court should grant the motion." "It is Mr. Black's position that the contract has been broken."

When presenting your position or legal analysis, use present tense.

For Example Plaintiff *contends* that the rule requires thirty days' notice. It *is* the defendant's position that the contract is void.

When addressing a court opinion that has already been decided, use past tense.

For Example In *Smith v. Jones*, the court *held* that the rule does not require thirty days' notice. The court *listed* three possible solutions to the problem.

When discussing a law or rule still in effect, use present tense.

For Example The provisions of section 44-556 *require* a contractor to give thirty days' notice. The statute *provides* that the notice must be signed by the owner of the property.

VII. Key Points Checklist: *Successful Legal Writing*

- The goal of legal writing is to prepare a professional product. A professional product is free of substantive and mechanical error. Perform the number of edits and redrafts necessary to attain this goal.
- Use short, clear sentences whenever possible. Fifteen to twenty-five words is a good average length for sentences. Excessively long sentences are difficult to understand.
- A paragraph should address one topic and should usually range from three to six sentences.
- Keep the reader in mind when drafting. Avoid legalese when possible, especially when the reader is a person not trained in the law.
- Make sure the writing is grammatically correct. Check for subject/verb agreement, parallel construction, and so on.
- Check the punctuation. Are commas and other punctuation devices used correctly?
- Check the spelling to ensure that all words are spelled correctly.

VIII. Application

A. Check Sheet

The check sheet presented in Exhibit 11-4 may be used as a guide to help you proof-read and correct your legal writing.

Checklist to be used when proofreading legal writing**General Considerations**

- Spelling
- Numbers
- Formal Writing Conventions

Sentence Structure/Pattern

- Subject/Verb Distance
- Sentence Length
- Active/Passive Voice
- Action Verbs
- Transitions

Punctuation

- Commas
- Semicolon
- Colon
- Apostrophe
- Quotation
- Ellipses
- Brackets
- Parentheses
- Hyphen
- Dash

Grammar

- Subject/Verb Agreement
- Verb Tense
- Parallel Construction
- Superfluous Verbs
- Modifiers and Infinitives
- Noun/Pronoun Agreement

Paragraphs

- Topic Sentence
- Body
- Closing
- Transition Sentence
- Paragraph Length

Word Selection and Usage

- Excessive/Redundant Words
- Noun/Verb String
- Nominalizations
- Legalese
- Archaic Words
- Sexist Language
- Specific Words—Problem Areas

Exhibit 11-4*Proofreading Checklist***Quick References**

action verbs	000	passive voice	000
active voice	000	punctuation	000
and/or	000	sentence	000
closing sentence	000	sexist language	000
grammar	000	shall/may	000
legalese	000	subject/verb agreement	000
modifier	000	that/which	000
nominalization	000	topic sentence	000
noun/verb string	000	transitions	000
numbers	000	transition sentence	000
paragraph	000	verb tense	000
parallel construction	000	writing conventions	000

Summary

One of the requirements of a legal writing assignment is the preparation of a final product that is free from mechanical errors. The value of quality research and analysis is undermined if the written presentation is poorly assembled. This chapter presents an overview of some of the fundamental writing skills essential for good writing. The chapter addresses sentence and paragraph structure, word selection and usage, grammar, punctuation, and other general considerations involving the mechanics of good writing.

A sentence is the fundamental building block of writing. It is usually a statement; at a minimum, it must have a subject and a predicate. Sentences are most powerful when they do not exceed twenty-five words in length and are written in active voice. A sentence is written in active voice when the subject performs the action.

The second fundamental component of writing is the paragraph. A paragraph is a group of sentences that address the same topic. Paragraphs are usually composed of a topic sentence, a sentence or sentences discussing the topic, and a closing sentence. Transition words, sentences, or phrases are used to link paragraphs and provide coherence to the writing.

The proper selection and use of words are critical elements of good writing. Action verbs enhance and stimulate the writing. The improper use of words or the use of sexist language or legalese detracts from the quality of the writing.

Rules of grammar guide the drafting of legal writing. Subject-verb agreement, parallel construction, proper verb tense, noun-pronoun agreement, and so on are all necessary to good writing.

Spelling and punctuation are the final subjects addressed in the chapter. Proper spelling and punctuation are basic requirements of proper writing. The correct uses of commas, semicolons, apostrophes, and other punctuation devices are summarized in the chapter.

All of the rules and guidelines discussed in the chapter are essential to good writing skills. You must learn and employ them when engaged in legal writing. The chapter addresses only briefly the rules and guidelines that apply to legal writing; you should refer to other resources for detailed coverage of each topic.

Internet Resources

There are thousands of Web sites about writing fundamentals. Some sites refer you to books; some offer self-help handouts; some present tips, guidelines, and examples; some are English course materials; some are articles on specific writing topics; some are tutorials or workshops; and some advertise writing services and courses. As with most topics on the Web, the problem is not the lack of sites but too many sites. The best strategy is to search for a specific writing topic such as “parentheses.” If you will do a lot of writing, you might purchase a comprehensive text such as *The Elements of Style* (listed in For Further Reading at the end of this chapter).

Exercises

Additional assignments are located on the Online Companion and the Student CD-ROM accompanying the text.

ASSIGNMENT 1

Discuss the essential requirements of a well-crafted sentence.

ASSIGNMENT 2

Discuss the elements and requirements of a well-crafted paragraph.

ASSIGNMENT 3

What is the difference between active voice and passive voice?

ASSIGNMENT 4

Draft the following sentences in active voice.

- The defendant was attacked by the plaintiff at the beginning of the argument.
- It is a requirement of good writing skills that active voice be used.
- Payment must be made by Mr. Smith no later than May 15, 1997.

ASSIGNMENT 5

What is a nominalization? What are some examples of nominalizations?

ASSIGNMENT 6

What is legalese? Give three examples of legalese.

ASSIGNMENT 7

Rephrase the following sentences using nonsexist language.

- A paralegal may draft a letter to the client informing him of an upcoming hearing.
- The lawyer must file his response within thirty days.
- The chairman of the committee conducted a private hearing.
- Each person must bring his records to the conference.
- Everyone must bring his records to the hearing.

ASSIGNMENT 8

Discuss the proper use of *shall/may*, *and/or*, and *that/which*.

ASSIGNMENT 9

What are the basic rules concerning subject-verb agreement, proper verb tense, and noun-pronoun agreement?

ASSIGNMENT 10

What is parallel construction?

ASSIGNMENT 11

What are squinting modifiers? List some examples of squinting modifiers.

ASSIGNMENT 12

What are the rules concerning the proper use of commas, colons, semicolons, and apostrophes?

ASSIGNMENT 13

Correct the following sentences and identify why they are incorrect.

1. The statute requires the witnesses to be present when the testator signs the will, and the witnesses must be in the same room with the testator, not in a separate room, and watch the testator sign the will.
2. Mary reached the conclusion that she had made a mistake.
3. A relative pronoun requires a verb which agrees with its antecedent.
4. Either the cousins or Darryl are going to the party.
5. Sara, after giving careful consideration to the matter, reached the conclusion that she should buy the business.
6. He decided to thoroughly and completely test the theory.
7. Neither the members of the board nor Steve had reached their conclusion.
8. The statute requires stockholder approval for merger but it does not require approval for multiple real estate purchases.

9. The key executives, (president, secretary, and treasurer) are required to attend the board meeting.
10. The corporation statute requires: an annual board of directors meeting, an annual shareholder meeting, and the filing of an annual report.
11. Tom and Pam decided there going to buy stock in the corporation.
12. The law requires a partner to "...share partnership profits equally with the other partners"
13. Joseph and Claire decided they were going to there cabin for two weeks.
14. Fifty-five of the partners attended the partnership meeting.
15. The law provides that profits should be shared equally, however, the law allows the partners to provide otherwise in the partnership agreement.

ASSIGNMENT 14

Correct the following sentences by properly using colons and semicolons.

- The court's instructions to the respondent are: to refrain from contacting the plaintiff in person, by telephone, or by mail; to pay monthly child support, and to perform one hundred hours of community service.
- The following statutes govern the issue, section 29-9-516, section 29-9-517, and section 29-9-544.

ASSIGNMENT 15

Summarize the rules governing the use of quotations, ellipses, brackets, parentheses, hyphens, and dashes.

ASSIGNMENT 16

Correct the paragraphs presented in part A and part B. Use the proofreading checklist presented in Exhibit 11-4.

Part A

The governments' first witness at Bean's sentencing were the DEA Task Force Officer Tony Silva. He testifies that in his debriefing Luiz had told him about four separate marijuana "grows" in which Luiz had participated. The first was in 1986

In Tress, Texas: this "grow" produced 700 marijuana plants. The second was in 1987 in the Tonto wilderness; and it produced approximately 1500 marijuana plants. The third "grow" was in 1988 in Sies Colorado and they produced approximately 900 marijuana plants.

The final "grow" was in 1991, also at the Sies site.

Before the plants in this grow had been harveted, a Colorado State Police aircraft was spotted doing a "fly-over" of the property. This prompted Luiz to completely destroy the crop, only fifty two plants were seized. As they were seized the officers noted that two or three plants were in a single grow site. Approximately 1,000 "grow holes," with sprinkler heads connected to an extensive irrigation system, were found another one thousand uninstalled sprinkler heads, two water tanks and fertilizer also was found on the property.

Part B

The trial court sentenced Smith well within the statutory limits. Therefore the sentence is legal.

The record thoroughly, clearly and positively shows that Smith and his attorney have ample time to thoroughly review Smiths' sentence report prior to sentencing. They did so and had: "no problems with it." It is shown by the record that Smith never appealed his conviction or sentence. His section 2255 Motion were his first and only attempt to challenge his sentence. Any objections to the sentence report as submitted were clearly waived by Smith. The defendant have the responsibility to advise the Court of any claimed errors in the sentence report. His failure to voice any objections waive any issue not properly presented. It has been long held by this court that "Section 2255 is not available to test the legality of matters which should have been raised on appeal. Unless good cause can be shown why a defendant did not appeal or raise

a particular issue on appeal; the defendant is barred from raising that issue in a section 2255 Motion

FOR FURTHER READING

Block, Gertrude. *Effective Legal Writing*. 4th ed. Westbury, NY: Foundation Press, 1992.

Good, Edward. *Mightier Than the Sword*. Charlottesville, VA: Blue Jeans Press, 1989.

Strunk, William, Jr., and E. B. White, *The Elements of Style*. 3rd ed. New York: MacMillan, 1972.

Tepper, Pamela R. *Basic Legal Writing*. Lake Forrest, IL: Glenco, 1992.



For additional resources, visit our Web site at www.paralegal.delmar.cengage.com



Additional assignments are located on the Student CD-ROM accompanying the text.