

A LAWYER'S GUIDE TO WRITING WELL

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Legal writing is known for its verbosity and archaic phrases. It is notoriously difficult to understand. It doesn't have to be; you can (and should) write in plain English.

PLAIN ENGLISH

Well-written, ordinary English is concise and clear. It uses words that the average person not only understands but uses in everyday conversations. It is easy to read. It uses fewer words, making it easier to meet any page limitations.

BREAK BAD HABITS

Break your bad writing habits by following these rules.

1. BE CONCISE

Concise writing is not only easier to read, but it is also beneficial when your brief is running up against the page limit. Legal writing is typically filled with needlessly wordy expressions. Check your writing for evidence of these bad habits:

"THE FACT THAT"

The phrase "the fact that" is usually irrelevant and should be stricken from your writing.

DON'T WRITE: Defendant is guilty because of the fact that he ran the red light.

In this example, "the fact that" is irrelevant.

REWRITE IT: Defendant is guilty because he ran the red light.

Striking "the fact that" reduces the total number of words (making it more concise) and makes it easier to read.

"IT IS"

Often, when used in legal writing, the "it" in "it is" does not refer to anything specific.

DON'T WRITE: It is a challenge to accept Defendant's position.

The "it" in this sentence does not refer to anything specific.

REWRITE IT: Defendant's position is hard to accept.

The rewritten sentence is more concise and easier to read.

COUPLED SYNONYMS

Legal writing is filled with coupled synonyms (words used together that mean the same thing). Most of these have roots in the early days of civilization. Often, the phrases contain a Latin or French word and its Old/Middle English synonym (for example: "free and clear"). Other times, the phrases are alliterative and date back to when transactions were oral to aid memory (for example: "to have and to hold"). Sometimes, the phrases just sound impressive (for example: "ordered, judged, and decreed").

Watch for coupled synonyms in your writing and reduce them to a single word:

- Free and clear
- Ordered, judged, and decreed
- Last will and testament
- Give, bequeath, and devise

NEEDLESSLY WORDY PHRASES

There are other phrases that are simply wordier than they need to be. For example, "a sufficient number" can normally be replaced with "enough," "in the amount of" can be stricken from your writing, and "for the purpose of" can be replaced with "to."

2. USE ACTIVE VOICE

Using active (rather than passive) voice makes your writing more concise and clearer. It shows action, which makes your writing most interesting to read. Passive voice typically uses a form of the verb "to be." When writing in active voice, the subject does the action.

DON'T WRITE: John was struck by Adam's car.

In this sentence, the action is "to strike." Adam's car is doing the striking, but John is the subject of the sentence.

REWRITE IT: Adam's car struck John.

DON'T WRITE: This is supported by the facts.

In this sentence, the action is "to support" and the facts are doing the supporting.

REWRITE IT: The facts support this.

3. USE LISTS

Break long sentences into numbered, lettered, or bullet-pointed lists. While lists can be numbered or lettered within a paragraph, they are easiest to read when each item is on its own line. When listing things, be sure to use parallel structure: each item in the list should start with the same form of speech (such as a noun or verb).

4. AVOID AND/OR

While lawyers use "and/or" for clarity, it is actually less clear to use and/or. Use "and" or use "or" to improve clarity. Several courts have expressed distaste for "and/or."

DON'T WRITE: Talking and/or eating are prohibited in the library.

If you replace "and/or" with "and," nobody would argue that you could eat in the library if you weren't talking.

REWRITE IT: Talking and eating are prohibited in the library.

5. ELIMINATE SHALL

Not only is "shall" not plain English, but it is also ambiguous. Black's Law Dictionary defines "shall" as "...generally imperative or mandatory, but it may be construed as merely permissive or directory, (as equivalent to may)..." Replace "shall" with words like "must" or "may."

DON'T WRITE: Employees shall enter their time every day.

Replace "shall" with "must."

REWRITE IT: Employees must enter their time every day.

DON'T WRITE: No unqualified person shall enter the quarantined area.

Replace "shall" with "may."

WRITE IT: No unqualified person may enter the quarantined area.

6. SAID IS THE PAST TENSE OF SAY

Using the word "said" is fine if someone said something. Don't use it otherwise.

DON'T WRITE: Said agreement is subject to renegotiation.

REWRITE IT: The agreement is subject to renegotiation.

7. REPLACE SAME WITH IT

"Same" is not any more precise than "it."

DON'T WRITE: I received your email and responded to same.

REWRITE IT: I received your email and responded to it.

8. USE NAMES

Replace legal labels (Plaintiff, Defendant, Lessor, Lessee, etc.) with names. Good writing is about telling a story, and stories use names. However, it is fine to use legal labels when discussing other cases or referring to classes of people.

DON'T WRITE: Plaintiff's car struck Defendant.

REWRITE IT: Smith's car struck Jones.

EDIT YOUR WRITING

To become a better writer, you need to make time to edit your writing. Editing is not the same thing as proofreading. When proofreading, you look for typos and obvious errors. When editing, you look for ways to improve your writing beyond the obvious. It's best if you can set aside your writing for a few days between drafting and editing; you'll bring a fresher set of eyes to editing and get better results.

1. SPECIFIC WORDS AND PHRASES

Compile a list of words and phrases you want to eliminate from your writing. When you are done drafting a document, review it for that list. Use your word processor's search utility to search for each word/phrase. Suggested words and phrases to get you started include:

- The fact that;
- It is;
- Free and clear;
- Last will and testament;
- Give, bequeath, and devise;
- Ordered, judged, and decreed;
- A sufficient number;
- In the amount of;
- And/or;
- Shall;
- Said;

- Same;
- Plaintiff;
- Defendant;
- Lessor; and
- Lessee.

2. PASSIVE VOICE

While you can search your writing for forms of the verb "to be," you'll need to read each sentence to determine when it uses active or passive voice. Many active voice sentences use forms of "to be."

3. READ OUT LOUD

Take a moment to read your writing out loud. Listen to how the words sound. In particular, listen for wordy sentences and phrases.

TOOLS TO HELP

WORD GRAMMAR CHECKER

Microsoft Word's grammar checker has improved significantly. If you previously turned it off, try turning it back on and see what it catches. On Windows: under the file menu, option your Word options. On the Proofing page, check the box to mark grammar errors as you type. On macOS: Word menu, preferences, Spelling & Grammar. Under Grammar, check the box to mark grammar errors as you type.

WORD RAKE

Word Rake is a Word add-in that edits your writing for grammatical errors and style. It runs on both Windows and macOS but does not work on mobile devices or your internet browser. It makes suggestions using a feature similar to track changes. It does not explain why it is recommending the change.

GRAMMARLY

Grammarly is similar to Word Rake. It can be installed on up to 5 devices, including mobile devices. There is also a web interface. It opens a pane next to your document with suggestions. It explains why it is making those suggestions and often makes multiple suggestions for you to choose from.

RESOURCES

- Legal Writing in Plain English by Bryan A. Garner
- Plain English for Lawyers by Richard C. Wydick and Amy E. Sloan
- Just Writing by Anne Enquist and Laurel Currie Oats
- The Elements of Style by William Strunk Jr. and E.B. White