# Clarity in Legal Writing:
# Five Techniques to Avoid Ambiguity

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# Agenda

| Topic: Clarity |
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| Situation 1 – Modifiers |
| Situation 2 – References |
| Situation 3 – Repetition |
| Situation 4 – Simplicity |
| Situation 5 – Mystery Item |

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# Clarity – Writing Checklist

## Important Note from the Instructor

I, Ryan, recommend that you wait until after the program to read the checklist on this page and summary on the next page. These materials contain the answers to most of the questions that I will be asking you.

The program will be more engaging and more challenging if you hold off.

**A sentence should have only one interpretation.**

(1) Clarify what modifiers modify → *a prior conviction for Offense 1, Offense 2, or Offense 3 within the last decade* – Does the final phrase modify Offenses 1 and 2?

(2) Avoid ambiguous references → *In Case of [the President's] Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the VP* – Did "Same" refer to "the said Office" or to "the Powers and Duties of the said Office"?

(3) Repeat a word if it makes your writing clearer → *appraised & estimated* – Did the writer intend for those terms to mean the same thing?

(4) Use simple language → *the foregoing triad grounds = the three reasons above*

--- Industry jargon may be unavoidable, but if you are writing to a layperson, you should define your terms of jargon using everyday language.

(5) Be careful when using the word "and" → *review the agreement and highlight the following sentence* – Was the task only to highlight, or to highlight and review?

PUT YOURSELF IN THE SHOES OF YOUR READER 

- **When writing to non-lawyers** → consider their knowledge of the law.
- **When writing to lawyers** → consider whether they are familiar with the file you are working on, in terms of i) its facts and ii) the substantive legal issues.

# Clarity – Summary of Slides

There are two hallmarks of a great sentence:

- Clarity (the focus of this module)
- Attention to Detail

Every sentence must obey the Cardinal Rule of Clarity, which is:

*A sentence should have only one interpretation.*

To adhere to the Cardinal Rule, put yourself in the shoes of your reader. 

**Beware of sentences that can be interpreted in two different ways:**

- E.g., *From a letter of recommendation:* You will be very lucky if you can get this young lawyer to work for you.
  - → Does this mean the young lawyer was hard-working or lazy?
    - A reader's best answer is: "I don't know."

**1. Clarify what modifiers modify:**

- E.g., A longer prison sentence would apply if the defendant had a prior conviction at the state level for Offense 1, Offense 2, or Offense 3 within the last ten years.
  - → Does the phrase "within the last ten years" apply only to Offense 3, or does it also apply to Offense 1 and Offense 2?
- E.g., I am free to meet on Thursday and Friday morning.
  - → On Thursday, are you free all day or only in the morning?

**2. Avoid ambiguous references (such as ambiguous pronouns):**

- E.g., In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President.
  - → What shall devolve: the Office or the Powers and Duties of the Office?
- E.g., When the partner promoted her hardest-working team member, she was delighted over the situation.
  - → Who was delighted: the partner or the team member?
- E.g., Chris had planned to buy concert tickets for two of his clients, but they were unavailable.
  - → Who or what was unavailable: the tickets or the clients?

**3. Use the same word repeatedly when it makes your writing clearer:**

- E.g., Our office building was appraised at $800 million, and our competitor's was estimated at $500 million.
    - → In this context, it is not clear whether the writer intended for the underlined terms to mean the same thing.
- Exception: It is acceptable to use synonyms when the reader does not need to possess specialized knowledge in order to understand the writing.
    - E.g., For the second straight day, bad weather disrupted their plans to go to the beach. They watched a movie and waited for the rain to pass.
        - In that example, it is obvious that the bad weather and the rain are one in the same. The writer does not need to use the same words both times.

**4. Use simple language:**

- E.g., In contemplation of the foregoing triad grounds, we hereby advise that you accept this offer forthwith.

  vs.

  For the three reasons given above, we recommend that you accept this offer without delay.

- Terms of jargon are usually irreplaceable – but, when writing to those who lack technical knowledge, these terms should be explained in plain English.

**5. Be careful when using the word "and":**

- With respect to this word, the guiding principle is: Avoid saying *two* things if you mean only *one*.

- E.g., I need you to review the agreement and highlight this sentence every time it appears: "It is the buyer's responsibility to fulfill this condition."
    - → Was the task only to highlight, or to highlight and review?

## Being clear is the most challenging aspect of legal writing.

When you are not sure whether a sentence you wrote is clear, show it to a firm member and ask the firm member to explain the sentence to you. If the explanation is not what you intended the sentence to mean, then the sentence is unclear.

If you do not have time to involve a firm member, then step away from your draft for as long as possible. When you resume working on it, you will be a better proofreader than you were before.

## In the words of Bryan Garner:

"It takes less time to write a clear message the first time around than it does to follow up to explain what you meant to say."

## Recommended Articles:

1. *Plain English for Lawyers*

   By: Richard C. Wydick

   Richard C. Wydick, "Plain English for Lawyers" (1978) 66 Cal. L. Rev. 727

   https://www.academia.edu/35745868/California_Law_Review_Plain_English_for_Lawyers

2. *Forget the Wind-Up and Make the Pitch: Some Suggestions for Writing More Persuasive Factums*

   By: Justice John I. Laskin

   John I. Laskin, J.A., "Forget the Wind Up and Make the Pitch: Some Suggestions for Writing More Persuasive Factums" (1999) 18:2 Advocates' Soc. J. 3

   https://www.ontariocourts.ca/coa/about-the-court/archives/forget-the-wind-up-and-make-the-pitch-some-suggestions-for-writing-more-persuasive-factums/

# Clarity – Exercise Manual

**Note:** For help with the exercises, consult the hints on the next page.

**Note:** There are many correct answers for each exercise. Your answers will likely differ from the answers found in the Answer Key, below.

**Instructions:**

The following writing samples can be interpreted in two different ways. Rewrite each writing sample twice, clearing up the ambiguity differently each time.

1) Let's review the agreement we received on Wednesday.
2) Being ignorant of the law, counsel argued that his client should not receive a fine.
3) Aphra saw the tourist with binoculars.
4) The firm only holds client meetings in the boardroom.
5) Put the towel on the rack in the closet.
6) This argument overlooks an amendment to the statute that came into force in 1991.
7) Tonight's party is for every single person at the resort.
8) Under Section 309, lawyer fees can only be awarded when a claim is brought in bad faith.

Examples with clumsy modifiers:

9) My two greatest weaknesses are chocolate chip muffins and cookies!
10) Today's agenda includes individual exercises and group sessions that are 75 minutes long.

Examples with ambiguous references:

11) Clarissa showed her grandmother the hole in her sweater.
12) You must remove the paper tray from the printer in order to fix it.
13) Jasper texted Shira to say he would not be able to attend the ceremony. This made her furious.

# Hints

1) Focus on the words *on Wednesday.*
2) Who was ignorant of the law?
3) Who has the binoculars?
4) What does the word *only* apply to? → Does *only* apply to the activities that take place in the boardroom, or does *only* apply to the location where the firm holds its client meetings?
5) Where is the rack?
6) What came into force in 1991?
7) Focus on the words *every single person*.
8) Does that apply to claims under Section 308? Section 310? Etc.

Examples with clumsy modifiers:

9) What type(s) of cookies is the writer referring to?
10) How long are the individual exercises?

Examples with ambiguous references:

11) Whose sweater was it?
12) What is broken?
13) The reader can presume that Shira was furious because Jasper would not be attending the ceremony, but did Jasper do something on top of that to add to her fury?

# Answer Key

**Note:** There are many correct answers for each exercise. Your answers will likely differ from the answers in this Answer Key.

**Note:** The original sentences are reproduced in *italics*.

1) *Let's review the agreement we received on Wednesday.*
    a. The agreement we received on Wednesday needs to be reviewed, so let's attend to it.
    b. On Wednesday, let's review the agreement we received.
2) *Being ignorant of the law, counsel argued that his client should not receive a fine.*
    a. Since his client was ignorant of the law, counsel argued that he/she should not receive a fine.
    b. Counsel, who was ignorant of the law, argued that his client should not receive a fine.
3) *Aphra saw the tourist with binoculars.*
    a. Aphra used binoculars to see the tourist.
    b. Aphra saw the tourist who had binoculars.
4) *The firm only holds client meetings in the boardroom.*
    a. The firm uses the boardroom solely to hold client meetings.
    b. The firm holds all of its client meetings in the boardroom.
5) *Put the towel on the rack in the closet.*
    a. Put the towel on the rack that is in the closet.
    b. Remove the towel from the rack and put the towel in the closet.
6) *This argument overlooks an amendment to the statute that came into force in 1991.*
    a. This argument overlooks an amendment to the 1991 statute.
    b. This argument overlooks an amendment made in 1991 to the statute.
7) *Tonight's party is for every single person at the resort.*
    a. Tonight's party is for everyone at the resort.
    b. Tonight's party is for everyone at the resort who is single.
8) *Under Section 309, lawyer fees can only be awarded when a claim is brought in bad faith.*
    a. Under Section 309, lawyer fees can only be awarded when a claim made under this statute is brought in bad faith.
    b. Lawyer fees can only be awarded when a claim made under Section 309 is brought in bad faith.

Examples with clumsy modifiers:

9) *My two greatest weaknesses are chocolate chip muffins and cookies!*
    a. My two greatest weaknesses are cookies and chocolate chip muffins!
    b. My two greatest weaknesses are chocolate chip muffins and chocolate chip cookies!
10) *Today's agenda includes individual exercises and group sessions that are 75 minutes long.*
    a. Today's agenda includes individual exercises and group sessions, both of which are 75 minutes long.
    b. Today's agenda includes individual exercises and 75-minute group sessions.

Examples with ambiguous references:

11) *Clarissa showed her grandmother the hole in her sweater.*
    a. Clarissa's sweater had a hole in it, which she showed to her grandmother.
    b. Clarissa's grandmother had a sweater with a hole in it, which Clarissa showed to her.
12) *You must remove the paper tray from the printer in order to fix it.*
    a. To fix the paper tray, you must first remove it from the printer.
    b. You must remove the paper tray in order to fix the printer.
13) *Jasper texted Shira to say he would not be able to attend the ceremony. This made her furious.*
    a. Jasper texted Shira to say he would not be able to attend the ceremony. She was furious that he would not be there.
    b. Jasper texted Shira to say he would not be able to attend the ceremony. She was furious that he would not be there and that he told her by text message rather than by telephone or in person.

Thank you for attending the presentation.

## Ryan's Contact Information:

If you have any questions, I can be reached at:

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Sincerely,



Ryan Standil