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Legal Writing & Negotiation Skills

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Part One

First: Introduction to legal writing

Second: Words and phrases

Third: Golden tips to know about

- Apostrophes
- How to distinguish “its” and “it’s.”
- Articles
- Vowel Sounds and Voiced Consonants.
- Brackets
- Clauses – restrictive
- Colons
- Semicolons
- Commas
- That versus Which

Forth: Common Mistakes in the Usage of Certain Prepositions and Words:

- Prepositions of Place
- Prepositions of Time
- Words often confused
- Nouns often confused
- Some Spelling Rules

Fifth: Exercises from Legal Writing skills:

- Omit needless words.
- Prefer the active voice over the passive.
- Avoid multiple negatives.
- Use strong, precise verbs. Minimize is, are, was, and were.
- Turn -ion words into verbs when you can.
- Simplify wordy phrases. Watch out for of.
- Delete every shall
- Replace and/or wherever it appears.
- Prefer the singular over the plural.
- If you don't understand a form provision-or don't understand why it should be included in your document-try diligently to gain that understanding. If you still can't understand it, cut it.

Sixth: Formal Documents:

- Legal forms.
- Documents submitted to the Ministry of Industry and Trade.

Part Two

First: Non Verbal communication and negotiating skills

- Type of characters
- Methods of convincing people
- Seating Arrangement:
- Voice Characteristics and qualities
- The Voice
- Voice and turn taking
- Pause and silence

Second: The Practice of Negotiating:

- International Negotiating.
- Language
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Part One

• FIRST: INTRODUCTION TO LEGAL WRITING

Some legal writing texts start out by explaining how legal writing is different from other writing.

But it should not be. While certain documents—complaints, briefs, deeds— may have a standard form, their content should be in plain English.

Most legal writing is atrocious. Fred Rodell, Dean of Yale Law School before most of us were born, had it right when he said, “There are two things wrong with most legal writing. One is style. The other is content.” This was in a fascinating article, *Goodbye to Law Reviews*, which should be assigned reading for all law students.

Where did we learn to write? Grammar school is certainly not that any more, but we learned rudimentary rules in grade school. Unfortunately, some of those “rules” were not rules at all. The grade-school teacher who told you not to start a sentence with *and* really mean not to write “I have a dog. And a cat. And a parakeet.” As we will discuss later, the use of “and” and “but” to begin a sentence is one mark of good writing.

Some of us honed our writing skills in high school and college. We learned from reading examples of good literature, and other writing, from journalistic to persuasive. Unless we fell victim to academic-jargon illiteracy (a subject

for a separate treatise), we usually got better with practice. Though we may still have been handicapped by some false rules from grade school, some of us became at least passable writers before we entered law school. Then the roof fell in.

One problem in law school is that we read older cases by dead judges. Of course, Cardozo, Holmes, and Jackson were great writers, but most judges are not, especially the older ones. I pulled out a random Ohio Supreme Court case from 1946, and quote the first paragraph:

The appellant complains that the trial court erred in holding that an attorney at law representing a loan association in the distribution of the proceeds of a loan to be made by such association could refuse to answer questions concerning such distribution on the ground that to answer would disclose a confidential communication to his client; and that the trial court erred in holding that a garnishee for examination as to his indebtedness to the judgment debtor was the witness of the judgment creditor and could not be called for cross-examination by the latter.

This is not a terrible example, it is just random. But it could be translated in to plain English fairly easily. Restated, it could be two sentences, and contain about half of its now 100 words.

• **RULE 1. KNOW YOUR AUDIENCE**

In all writing, the first rule is to know your audience. If you are communicating to a court, know the court—be familiar with the local rules and practices, the members of the court, and preferences of those individuals. The first question in all writing is: For whom are you writing?

Are you writing a brief for an appellate court, a trial brief, an opinion letter to in-house counsel, an opinion letter to a highly knowledgeable layperson, or an unsophisticated client?

If the judge is an expert on the law on your issue, then the facts are all the judge should need to process the argument—the facts become most important. If you are before a brand-new judge who practiced probate law for twenty years, then you will probably assume that the judge's knowledge of the law of your trade secrets case

might be less. Then, your brief should contain a more fundamental discussion of the law.

We are here concerned mainly with persuasive writing— drafting and legislation can present particular problems, but also should be in plain language. If you are to persuade a judge to rule in your favor, or an adversary’s lawyer to pay you money or demand less money, you want to be persuasive. And the most important step in persuasion is communicating clearly what it is you are trying to persuade the other person to do.

- **RULE 14. EDIT, EDIT, EDIT**

Edit, edit, edit, and edit again. Typos, bad grammar, and misplaced paragraphs (which were not such a problem before computers) simply take away from your argument.

Keep a copy of Bryan Garner’s excellent book, *A Dictionary of Modern Legal Usage* at your side to answer grammar, syntax, and punctuation questions.

With new technology always comes new pitfalls— following the “spellcheck” or “grammar check” blindly leads to some weird words and constructions. If you have a staff

member do the word processing, it is even more important to read every word. Spellcheck can substitute wrong words—spelled correctly, but not what you mean. You may mean “constitution,” but spellcheck reads it as “constipation.”

Those of us who do our own—or edit by computer—always do final edit— do not let your assistant do the final edit with spellcheck without proofing very carefully again.

Another hint is to program your spellcheck to highlight “trail” so you can determine if you actually mean “trial.” This is probably the most common mistake we see—“the trail judge” was in error. Happy trails!

•**RULE 15. WRITE SHORT SENTENCES—**

Write short, crisp sentences. What is the most underused punctuation mark in legal writing? The period. The most overused is easy—the comma.

More periods, fewer commas—sentence length should average no more than twenty words. Eighteen is better. Word processors have that

feature. Read Cardozo (usually), Holmes, and Jackson—short, crisp sentences.

Long sentences are especially difficult when strung together. Sophisticated readers can understand longer sentences—if they are properly constructed—but no one can wade through ten in a row. Break up the pace—follow a longer sentence with a short one.

Readability is the goal. Keep in mind that Will Rogers’s all-too-often-true comment about legal writing:

The minute you read something and you can’t understand it, you can almost be sure that it was drawn up by a lawyer.

Then if you give it to another lawyer to read and he don’t know just what it means, why then you can be sure it was drawn up by a lawyer. If it’s in a few words and is plain and understandable only one way, it was written by a nonlawyer.

- **RULE 16. USE MAINLY ACTIVE VOICE**

Passive voice is not forbidden. Sometimes you do not need to name the actor—“Many books on this subject

have been published.” Or a smooth transition from one sentence to the next requires you to put the subject first. Or you might want to hide the actor—“Mistakes were made;” “An accident occurred.” But usually active is better; action is easier to understand.

In the schoolyard, “Johnny tried to hit me.” Now, after law school, we would probably say, “An attempt was made by Johnny to assault me.” Somehow, the attempt becomes the focus. This is called nominalization of verbs—taking a perfectly good action verb and turning it into a noun. Probably because we, as lawyers, categorize and name things, “assault” becomes a noun. “A tort was committed.”

Hunt down passive voice and nominalization. If there is no good reason, put your sentence back the way real people would talk.

- **SECOND: WORDS AND PHRASES**

Bad	Good
the means by which	how
entered a contract to	contracted
filed a counterclaim	counterclaimed
filed a motion	moved

filed an application	applied
adequate number of	enough
for the reason that	because
in the event of	if

in light of the fact that	because
notwithstanding the fact that	although
notwithstanding	despite
cause of action	claim
in order to	to
at this point in time	now
until such time as	until
whether or not	whether (usually)
during the month of May	in May
by means of	by
as a consequence of	because of
a distance of five miles	five miles
at a later date	later
is of the opinion that	believes

Part Two

Believing that our conscious is mostly affected with the habits and traditions which we were raised to respect And that our unconscious is connected directly to our pure away of conflict humanity, might be the answer to lots of How's and Why's in our life

Rami Rustom.

General:

As previously mentioned, Communication is either:

- 1. Verbal communication** Writing, Conversation, correspondence
- 2. Non-verbal communication** eye contact, facial expression, gestures

Non-verbal communication: is communication without words it is a study of facial expressions, eye behavior, touch, smell, gestures.

• Type of characters

- 1. Talkative:** May affect the accomplishment of yours work, talks too much, high level of humor, give him

the chance to talk and express himself and his needs and take every possible chance to get his attention by using some of his own words to start you speech.

2. **Rush able:** Always in hurry, interrupts others, make the conversation quickly, avoid going into details and control the conversation using non-verbal communication.
3. **Close-minded:** He is usually station, one-track mind, once he believes in something it is almost impossible to change his beliefs, ask him to give reasons for why he is no close-minded, show your agreement and at the same time ask him about reasons that you may use to convince others and suggest solutions related to reality, facts and evidence.
4. **Nagging:** He ask questions regarding the same point several times from the same person as different persons in the same way, try to contain him, (In social life) leave him done and (In work) keep your correspondence in writing to cover your back.
5. **Silent:** he is always silent, shows no expressions, never talks unless he has to usually wise and good speaker, go directly and clearly to your aim, avoid

close – ended questions (yes/no question), break the ice by carrying him to smile, create a challenge and use non-verbal communication.

A quick guide to the seven classically difficult types

How to sound like an expert in the time it takes to drink a cup of coffee

Read these next few pages - it's all you need for now. You'll be an expert!

Recognize anyone?

There are seven basic personality types that get filed in the difficult tray. Elsewhere in this book I deal with many more types, but they are derivatives of the seven deadly sinners. Here's the quick guide to becoming an expert.

Hostile, aggressive, belligerent and offensive

Charming types: I thought I'd get these out of the way right from the start. These charmers can be frightening, alarming and downright terrifying. They are often bullies and control freaks.

A management guru called Bramson, back in 1988, made the whole thing more complicated by identifying three types of aggressive people:

- the Sherman tank;
- the sniper;
- the exploder.

They are all horrible, in their own way. And each has to be dealt with using a slightly different approach. The tank, sniper and exploder are such good metaphors that they almost explain themselves.

Advice about the Sherman tank:

The term Sherman Tank accurately depicts what a hostile person does. They come out charging. They are abusive, abrupt, intimidating, and overwhelming. They attack individual behaviors' and personal characteristics. They bombard you with unrelenting criticisms and arguments. Sherman Tanks usually achieve their short-run objectives, but at the cost of lost friendships, and longterm erosions of relationships.

Sherman Tanks have a strong need to prove to themselves and others that their view of the world is right. They have a strong sense of how others should act, and they are not afraid to tell them about it.

Sherman Tanks value aggressiveness and confidence. This belief causes them to devalue individuals they perceive as not having those qualities.

The basic core belief of a Sherman Tank is, 'If I can make you out to be weak, faltering, or equivocal, then I will seem, to myself and others, strong and sure.

- Give them a little time to run down.
- Don't worry about being polite; get in any way you can.
- Get their attention, perhaps by calling them by name or sitting or standing deliberately.
- Getting them to sit down is a good idea.
- Maintain eye contact. State your own opinions forcefully.
- Don't argue with what the other person is saying or try to cut them down.
- Be ready to be friendly.

Advice about the Sniper:

A pause has two usages:

a. Grammatical : A Pause is equivalent to a comma

- A comma is used often as a conjunction (and, but, if, when)
- A comma is used often as a relative pronouns (who, whom, whose, which, why)

b. Speech a pause is used same like a comma:

1) In the middle of phrase

Ex. in all of the sections of // our course // we find that // it is an interesting thing to study.

2) To break between words and phrases those are repeated

Ex. The situation with the // with the sales contract

3) In the middle of a verbal compound

Ex. we are // going to the conversation, and then we will // stop in Amman.

We use a pause when we find it different to express our thoughts in words, we will pause more often and for longer periods of time. As a result, listeners will find it more difficult to predict what we will say next. also a pause expresses emotional states

and provides time for problem solving

Using more filled pause than silence

- A filled pause: is a short pause that indicates that there is more to be said.

- An unfilled pause: is a long pause that leads to silence.

The silence is: a concept or process of the mind imposed by people on themselves or on others

Absolute silence does not exist because even a person is not talking or listening to external sounds there may be internal or mental conversation

