

THE ACHIEVEMENT OF GOOD LEGAL WRITING



At the end of this study unit you must be able to:

- ✎ Describe the features of good legal writing.
- ✎ Employ proper grammar and spelling when writing.
- ✎ Describe *legalese* and the Plain Language Movement.
- ✎ Avoid resorting to *legalese* when engaged in legal writing.
- ✎ Employ proper sentence and paragraph structure when writing.

WHAT MAKES LEGAL WRITING GOOD?

As previously mentioned, good legal writing exhibits the following features:

- ✎ **Clarity**
- ✎ **Conciseness**
- ✎ **Engaging¹**

Whether you are an attorney in a firm, an advocate in the Bar, a judge, magistrate, prosecutor, legal advisor, member of the legislator, human rights advocate, estate agent, academic or law student, answering an examination question, you will use words as your primary professional weapon. Your writing therefore has to comply with these requirements to ensure your success.

CLARITY

How is clarity achieved in legal writing?

¹ Osbeck 2011:16,28,34.

Proper grammar and punctuation.

In the absence of correct grammar, punctuation and spelling, there will always be the risk that the reader will not share the meaning of your words. The more the writer deviates from rules of grammar and spelling, the less likely the reader is to understand what exactly the writer meant to say.² This completely nullifies the objective of legal writing, which is to inform and persuade.

Proper word choice and sentence structure.

Using ordinary, uncomplicated words. Simple sentence structures are the best recipe for good legal writing.

Avoid *legalese*.³

'*Legalese*' refer to words and phrases that a legal practitioner might use in drafting contracts, pleadings, court documents, letters and opinions, but would not use in a conversation with his family or friends. Some characteristics of *legalese* include:

- *The use of archaic language*

For example: hereafter, whereby, hereinafter, hereinabove, hereby, hereunder, therein, thereafter, whereas, whereupon, aforementioned, forthwith, henceforth, pursuant to, whence.

- *The use of foreign words*

While some foreign words are employed so often that it has fallen into common usage, many foreign (most often Latin) words should not be used in legal writing.

Examples: *sui generis* (unique); *viz* (namely); *prima facie* (at first sight).

- *The use of unnecessary complex words and sentences* (Also known as '**padding**')

² Osbeck 2011:18.

³ Oates and Enquist 2009:49-53.

While not all long sentences are bad sentences, you should always take care that sentences are not clumsy and excessively verbose.

- *The use of the words 'said' and 'such'*

Never use 'said' in sentences like:

“The said plaintiff heard a noise as said watermelons rolled to the back of the said trolley.”

Legalese is no longer welcome in legal writing. This movement away from old, heavy, unintelligible language in law towards plain, concise and clear expression, is mostly a result of the '**Plain Language Movement**'.⁴

The Plain Language Movement is a group of legal scholars, judges and legal practitioners worldwide that dedicated themselves to the clarification of legal writing by purging it of overly complex sentence constructions and empty legal jargon,⁵ and making it accessible to more readers.

This movement is not without its detractors. Critics are of the view that the *precision* of legal writing suffer because of simplified writing, and that the use of technical terms may add increased clarity and precision to a document.⁶ When the writer wants to indicate that *estoppel*, for example, would be the appropriate remedy in a specific situation, would it not be in the interest of good legal writing to simply state '*estoppel*' instead of trying to explain what it is in simple language?

It certainly will. This leaves one slightly confused and pondering the question: how simple must simplified legal writing be?

⁴ Osbeck 2011:21.

⁵ Osbeck 2011:21.

⁶ Osbeck 2011:21.

The rule of thumb is **to use legal writing that would not move a judge to take out his dictionary.**⁷ This, of course, is subject to the determination of who your audience is. In the event that you are writing a letter to an illiterate client, for example, it stands to reason that your language should be adjusted for that client. Informing such a client with words he cannot understand would again prevent your goal from being achieved. Your client, too, should not cling to a dictionary when reading a letter from his legal representative.

We can therefore adjust the rule of thumb as follows:

Never use language in your writing that would move the *reader* to take out a dictionary!

NB! STUDY:

Palmer and Crocker⁸ describe clarity in writing as '***stating what you mean***'.

Study the following in order to know precisely how to state what you mean, and add clarity to your writing.

PALMER R and CROCKER A

2003. *Becoming a lawyer: Fundamental Skills for Law Students*. Durban: LexisNexis.

⁷ 'Garner and Scalia' in Osbeck 2011:24.

⁸ Palmer and Crocker 2003:33-45.

5

Writing Skills

5.1 Introduction

We write¹ for many purposes, but the bulk of the lawyer's writing work is writing to *inform* and writing to *persuade*. In this chapter, we are primarily concerned with developing *general* writing skills, not with *legal* writing and drafting (legal 'drafting' is the process of constructing specific legal documents).

These general skills are the foundation upon which all legal drafting skills are built. The methods used to convey information, or to attempt to persuade in writing, are numerous: they include memoranda, letters,² legal opinions, documents exchanged before a trial commences (pleadings and notices), court documents containing your main points (or 'heads') of argument when appealing to a higher court against the decision of a lower court, and representations (formal requests made in writing to some authority on behalf of clients). Also, as a law student, you will have to write essays and assignments and write answers to examination questions.

Whatever the kind of writing you are doing, and whether your goal is to inform or to persuade, the fundamental skill you have to develop is to *state what you mean* when you write.

5.2 The key writing skill: 'State what you mean'

The ability to express yourself clearly and concisely in writing is one of the most important, and neglected, of all communication skills. Writing, after all, is merely the expression of your thoughts on paper. The reason most people have a problem with expressing themselves on paper is that when writing, they have to be far more disciplined than when speaking. When articulating thoughts orally, people are not forced to economize or choose words that express exactly what they want to say. They know they can keep talking to clarify anything that may be unclear, and that the person to whom they are speaking will ask questions if something is not understood.

When writing, you have to be certain that you are able to express yourself unambiguously. Your watchword must always be to *state what you mean*. If you have written a sentence, reread it and ask yourself if it reflects *exactly* what you want to say. If

1 The use of the term 'write' in this chapter includes keyboard typing – the focus is on how to transmit your thoughts on paper.

2 The use of the term 'letter' includes letters and documents sent by electronic mail (e-mail).

not, rewrite it until it does. Don't be satisfied that 'the reader is bound to get the gist of it'. Submit yourself to a rigorous standard – if a sentence does not reflect exactly what you intend to convey, rewrite it.

5.3 The components of writing: Letters, words, clauses, sentences and paragraphs

5.3.1 Letters: Vowels and consonants

A letter is a symbol that represents a sound. Letters are classified into vowels (a, e, i, o, u) and consonants (b, c, d, f, and the remaining letters of the alphabet, excluding vowels).

5.3.2 Words

A word is a collection of letters that has a meaning, thus: cat; house; eat; run; justice; happy. Abstract words describe general ideas or concepts: for example, 'transport' (a general word that includes concepts of 'moving') and 'proceed' (a general word that means to move from one point to another). Concrete words describe specific actions or things: for example, 'flying in a plane' (a specific method of transport), and 'walk' (a specific method of proceeding).

5.3.3 Clauses

A 'clause' is a small group of words with an independent meaning, which forms part of a sentence, but which is itself not a whole sentence. (In this book, we confine the use of the term 'phrase' to indicate a pithy saying or idiomatic expression that may be in the form of a clause or a whole sentence: for example, 'You can add another string to your bow by ...'.)

A clause contains both a subject (thing or person) and a predicate (action). For example, in the clause 'John went home', 'John' is the subject, and 'went home' is the predicate.

5.3.4 Sentences

A sentence is a group of words in sequence that conveys information. A complete sentence consists of at least one subject and of at least one verb. For example, 'John went home at 9 o'clock' and 'I do' are complete sentences.

5.3.5 Paragraphs

A paragraph is a sentence or collection of sentences dealing with one issue or topic. It is a distinct section of writing, set apart from other sections of writing in the same document by numbering, indenting or spacing. (For example, the three sentences contained in this paragraph are, taken together, an example of a 'paragraph'.)

5.4 Six rules to apply in order to state what you mean

By applying the following six rules, you will ensure that you always state what you mean in writing:

- 1 Use the shortest meaningful word you can.
- 2 Avoid using unnecessary phrases or clauses.
- 3 Use short sentences.
- 4 Deal with only one issue per paragraph.
- 5 Know how to use punctuation marks.
- 6 Consider the physical presentation of your writing.

5.4.1 Rule 1: Use the shortest meaningful word you can

(a) *The word must reflect the exact nuance of meaning required*

When choosing a word to convey your intended meaning, use the shortest word available to convey the exact meaning you intend. For example, let us assume that a

written police report contains the following statement (based on the example in Chapter 3 above):

I observed the accused proceeding in the direction of the trees, where he obtained a wooden object, and proceeded to assault the complainant.

Consider the meaning conveyed by the word 'observed': did the policeman *carefully watch* because he had been observing the accused for some time; did he merely *happen to see* what the accused did; or did he see the accused act suspiciously, and then carefully watch him? To convey his exact meaning, he should choose words that exactly match his actions.

For example, if he had merely 'happened to see' the accused, the most appropriate word to reflect this meaning would be 'noticed'. Thus, 'I noticed the accused ...'. (Although 'saw' is shorter, it does not reflect the exact nuance of meaning required.)

(b) *Use concrete rather than abstract words*

Consider the example above, again: the mental images evoked by abstract words such as 'proceed', 'wooden object', 'obtained' and 'assault' will differ greatly from reader to reader. As your aim is to avoid ambiguity – that is, your chosen words must contain only the meanings you intend – you will have to replace those abstract terms with concrete words. For example, replace 'wooden object' with 'large stick'; 'obtained' with 'picked up'; and 'assault' with 'hit him on the head with the stick'.

Note, however, that sometimes very short words may also lack meaning. For example, if the policeman had said 'where he got a wooden stick' instead of 'where he obtained a wooden stick', the meaning is not improved: 'got' merely means that it 'came into his possession' – we still do not know *how* it came into his possession.

Be aware, however, that sometimes the abstract word is best suited to your needs: for example, you may use the abstract words 'unreasonable behaviour' because you do not want to confine yourself to certain kinds of unreasonable behaviour only.

(c) *Avoid jargon and 'legalese'*

'Jargon' describes a common language of specialized words used within a specific subject or profession as short-cut words for communication among members of that profession. For example, one lawyer will know what another lawyer means when he says his client acted *mala fide* ('in bad faith'). However, although these words aid communication within the profession, they tend to confuse, intimidate and exclude people outside the profession concerned. When writing for people outside the profession, one must, therefore, ensure that jargon is avoided.

'Legalese' is a reference to words that can be classified as legal jargon: for example, the overuse of words like 'the aforementioned', 'whereas', 'hereinafter', 'the said document', etc. Often, the use of these words is essential to ensure that all possible contingencies are covered in a piece of legal writing (for example, a written contract). In most cases, however, their use is unnecessary and even confusing.

(d) *Avoid tautology*

Tautology is the repetition of different words with the same meaning. For example, 'Please return my book back to me' is tautologous as the word 'return' means 'give back'. Other examples are 'in actual fact', 'mutual co-operation', 'forward planning', 'revert back' and 'group together'.

(e) *Beware of qualifying words and overemphasis*

Rylance³ advises as follows:

Qualifying words can be overused. When we wish to emphasize a point, words like 'absolutely', 'completely', 'really', 'totally', and even 'very' appear when they are

³ Paul Rylance 1994 *Legal Writing and Drafting* London: Blackstone Press, p 44.

inappropriate. Once identified, you can delete them without losing any meaning. For example:

Counsel's advice *totally* convinced me that a change of tactics was *definitely* needed. —
is improved without loss of emphasis by deleting the qualifying words:

Counsel's advice convinced me that a change in tactics was needed.
Similarly, the word 'very' is often best deleted. For example:

My client is *very* determined to appeal this decision
is better as:

My client is determined to appeal this decision.

When you wish to give your writing special emphasis, select a stronger or more descriptive word that needs no qualification, rather than qualifying a neutral or moderate word. For example:

The plaintiff's claim was *totally* unrealistic
is better as:

The plaintiff's claim was absurd.

(f) *Qualifying an absolute*

Words such as 'crucial' and 'supreme' are absolute words – 'crucial' means absolutely essential and can, therefore, not be qualified by your saying 'very crucial'. Similarly, 'supreme' means as high 'as you can go' – it cannot be qualified as 'extremely supreme'. Other absolute words like 'unique', 'true' and 'unanimous' can likewise not be qualified: for example, 'very unique', 'completely unanimous', and 'absolutely true'. (Note, however, it is acceptable when speaking colloquially to emphasize the truth of the statement you are making by saying, 'It's *absolutely* true!')

(g) *Be consistent in your use of words*

Do not use *different words* intended to mean the same thing in one piece of writing. For example, if you start out by referring to the *agreement* Abel and Ben entered into, don't, later in the same piece of writing, refer to this agreement as a 'contract': the reader may think that the choice of a new word implies a change in intended meaning (this habit is also referred to as 'elegant variation').

(h) *Avoid 'buzz-words'*

Avoid buzz-words that have been popularized by the media, especially as these are often intentionally vague: for example, 'feedback', 'redeploy', 'input', 'interface'. Another favourite is the overuse of the word 'discourse' (which means written or spoken communication).

(i) *Using gender-neutral language*

Try to use gender-neutral language whenever possible. It is preferable to use neutral terms, such as 'manager' (which can denote both a male or female manager), 'firefighter' (rather than 'fireman'), and 'police officer' (rather than 'policeman'). Sometimes, however, a gender-neutral construction can sound artificial: for example, 'waitron' ('waiter' is gender-neutral and perfectly acceptable) and 'home executive' (for 'housewife'). However, relatively new usages such as 'spokesperson' (for 'spokesman') and 'chairperson' (for 'chairman') have become generally acceptable and are not jarring.

A problem that often arises is whether to use, 'he and she' and, 'his and her' rather than just the conventional, 'he' and 'his'. A way to avoid this dilemma is to use the plural ('they') where possible and where it is grammatically correct to do so. (Note that when interpreting parliamentary statutes, the masculine term 'he' must be read to include the feminine 'she'.)

(j) *Know how to use the dictionary and thesaurus*

You must be fully conversant with the use of the dictionary (see Chapter 1). Another useful aid to finding the exact word to fit your intended meaning is a word-finder (or 'thesaurus') of which the best known is *Roget's Thesaurus*.⁵

Be particularly aware of words that are often confused with each other. For instance, don't use 'disinterested' (meaning 'neutral') when you mean 'uninterested' (which means 'lacking interest'), and don't use 'refute' (that is, 'prove an allegation to be false') when you mean 'deny' (that is, 'allege that an allegation made is not true').

Other words that are often confused with each other are:

- 'abdicate' (formally renounce an office) vs 'abrogate' (repeal or cancel);
- 'bi-annual' (twice a year) vs 'biennial' (once every two years);
- 'amiable' (good-natured) vs 'amicable' (friendly, pleasant);
- 'compliment' (sincerely praise) vs 'complement' (add to; to complete);
- 'effect' (to cause or bring about) vs 'affect' (to influence);
- 'forego' (go before) vs 'forgo' (do without);
- 'infer' (conclude or deduce) vs 'imply' (insinuate);
- 'principal' (chief - in charge) vs 'principle' (general rule);
- 'license' (verb: to license) vs 'licence' (noun: licence document or disc);
- 'practise' (verb: to practise) vs 'practice' (noun: a medical/legal/dental practice);
- 'rebate' (discount or deduction) vs 'refund' (reimbursement); and
- 'stationary' (not moving) vs 'stationery' (writing materials).

Finally, be especially vigilant about words such as 'may', 'shall', 'will', 'must' and 'can', as they may mean different things in different contexts. For example, 'may' could mean any of the following:

- (i) That you have a *choice* in whether to do something. For instance, a statute may provide that 'a court *may* order . . .' – this wording gives the court the choice (or 'discretion') to make (or not make) a particular order;
- (ii) That you are *permitted* to do something: 'Yes, you *may* go to town'; or
- (iii) That you *might* do something, if the mood strikes you: 'I *may* go to town later'.

Do not use 'can' (which means something is possible) when you mean 'may' in the sense of 'permit': for example, 'May I have an apple?' rather than 'Can I have an apple?'.

5.4.2 Rule 2: Avoid using unnecessary phrases or clauses

We often clutter our writing with meaningless or confusing phrases and sayings which only serve to obscure the meanings we intend and to lengthen sentences. Avoid such 'padding' wherever possible. Be especially careful to avoid clichés (hackneyed phrases that have become virtually meaningless through overuse), for example:

- 'in actual fact' (all facts are 'actual' – rather say 'in fact');
- 'it goes without saying' (then don't say it!);
- 'the bottom line' (the reader can see the bottom line – you need not mention it).

Ryland puts it as follows:

The danger with clichés is that they provide prefabricated phrases that can become tired substitutes for original thought. They have a nasty habit of suggesting themselves as we write. If you begin to write 'alliance', somehow 'unholy' might slip in or if there is an 'irony', it might easily become a 'bitter irony'. Used with care, an occasional cliché will not harm your writing. If you use one, use it because it expresses your meaning clearly and not simply because it is familiar.

⁵ 3 ed (Random House, 1998). You may also use *The Oxford Paperback Thesaurus* (Oxford University Press, 2001), which is a companion volume to *The Concise Oxford Dictionary*, the dictionary we recommend in Chapter 1.

⁶ Ryland *op cit*, p 61.

⁷ Ryland *ibid*, p 42.

5.4.3 Rule 3: Use short sentences

The longer the sentence, the more difficult it becomes to remember what has been read. Consequently, long sentences frequently result in misunderstandings and confusion, and are best avoided. (Consider how difficult it is to make sense of section 2(7)(a) of the Apportionment of Damages Act, 1956, due to the over-long sentences used: see Chapter 4.7 above.)

In general, the following rules should be applied:

- (a) *Each sentence should contain no more than two items of information*

To ensure that meanings contained in a sentence are easy to follow, a general rule is that a sentence should not contain more than two items of information. For example, the sentence, 'Mr Reddy was present when the will was signed, and was still there when Mrs Reddy left the room', contains two items of information:

- (1) Mr Reddy was present when the will was signed; and
- (2) Mr Reddy was present when Mrs Reddy left the room.

- (b) *Use the active rather than the passive voice*

Compare, for example, 'Peter kicked the ball' (active voice) to 'The ball was kicked' (passive voice). We notice that the sentence in the active voice is clear and unambiguous, whilst the sentence in the passive voice is ambiguous, as we do not know *who* kicked the ball.

Although the preference for the active voice is a general rule, Wydick⁸ suggests five situations where the use of passive voice is appropriate:

- (1) When the *thing* done is important and *who* did it is not: 'The subpoena was served on the 19th of January';
- (2) When you don't know who did it: 'The ledgers were mysteriously destroyed';
- (3) To place the emphasis at the end of a sentence: 'As he walked through the door, the man was shot';
- (4) When a sense of detached abstraction is appropriate: 'In the eyes of the law, all people are equal'; and
- (5) When you intentionally want to reduce the emphasis on an aspect. For example, to avoid stating outright that your client knocked out the plaintiff's teeth, you could say, 'The plaintiff's teeth were knocked out'.

- (c) *The word-order in a sentence can affect the meaning of a sentence*

In many languages, the sequence of words within a sentence does not affect its meaning. In English, however, meaning is affected by the order of the words. Consider the following examples:

- 'The defendant was arrested for fornicating under a little-used municipal ordinance';
- 'My client has discussed your proposal to fill the drainage ditch with his partners';
- 'Beyond any doubt insane, Judge Weldon ordered the applicant's transfer to a mental hospital'.

The word order of these examples will have to be changed to remove ambiguity or absurdity, for example:

- 'The defendant was arrested, in terms of a little-used municipal ordinance, for fornicating';
- 'My client has discussed, with his partners, your proposal to fill the drainage ditch';
- 'Judge Weldon ordered the transfer of the applicant, who was beyond any doubt insane, to a mental hospital'.

⁸ Wydick RC 1994 *Plain English for Lawyers* 3 ed Durham, NC: Carolina Academic Press, p 30.

⁹ *Ibid.* p 48.

(d) *Beware of 'squinting' modifiers: 'often' and 'only'*

Wydick¹⁰ explains as follows:

Beware of the 'squinting' modifier – one that sits mid-sentence and can be read to modify either what precedes it or what follows it. A trustee who steals dividends often cannot be punished.

What does *often* modify? Does the sentence tell us that crime frequently pays? Or that frequent crime pays?

Once discovered, a squinting modifier is easy to cure. Either choose a word that does not squint, or rearrange the sentence to avoid the ambiguity. For example:

'When workers are injured frequently no compensation is paid.'

If that means that injured workers frequently receive no compensation, the squinting modifier could be moved to the front of the sentence, like this:

Frequently, workers who are injured receive no compensation.'

The word *only* is a notorious troublemaker. For example, in the following sentence the word *only* could go in any of seven places and produce a half a dozen different meanings:

'She said that he shot her.'¹¹

To keep *only* under control, put it immediately before the word you want it to modify. If it creates ambiguity in that position, try to isolate it at the beginning or ending of the sentence:

Ambiguous	Not ambiguous
Lessee shall use the vessel only for recreation.	Lessee shall use the vessel for recreation only.
Shares are sold to the public only by the parent corporation.	Only the parent corporation sells shares to the public.

(e) *Master the rules of English grammar*

The correct use of grammar is important for both the presentation and the meaning of your writing. A full discussion about the general rules of English grammar is, however, beyond the scope of this book.¹²

5.4.4 Rule 4: Deal with only one issue per paragraph

A paragraph is a series of sentences dealing with the same issue. The initial sentence of the paragraph usually states your contention or point of view, whilst the remaining sentences usually support, explain or illustrate the contention. (Sometimes this initial sentence is called the *topic sentence*.) Note that a paragraph can also consist of a single sentence if the issue concerned is self-contained.

5.4.5 Rule 5: Know how to use punctuation marks

(a) *The power of punctuation*

How you use punctuation marks in a sentence may drastically affect its meaning. Consider, for example, the effect on meaning caused by the placement of the punctuation marks in the following unpunctuated sentence:

'A woman without her man is nothing.'

Compare: 'A woman without her man, is nothing.'

with: 'A woman; without her, man is nothing.'

¹⁰ Wydick *op. cit.*, p. 48.

¹¹ (1) *Only* she said that he shot her [she, and nobody else said it]; (2) She *only* said that he shot her [she said this, and nothing else]; (3) She said *only* that he shot her [same as (2)]; (4) She said that *only* he shot her [he, and nobody else shot her]; (5) She said that he *only* shot her [he shot her, and did nothing else to her]; (6) She said that he shot *only* her [she was the only one who was shot by him]; (7) She said he shot her *only* [same as (6)].

¹² A simple, straightforward introduction to English grammar is contained in Chapter XI of *Master your English* by Ian Bruton-Simmonds (Ivy Publications: London, 1990).

Even moving a single comma one word along in a sentence may result in exactly the opposite meaning. For instance, a woman, in anticipation of her husband's future death, buys a gravestone and has it inscribed as follows:

HERE LIES JOHN TAKEN TO HEAVEN HE IS NOT NEAR HELL SHALL HE DWELL.

Now, when her husband dies, and if she has had a good marriage, she will punctuate the inscription as follows:

HERE LIES JOHN TAKEN TO HEAVEN HE IS, NOT NEAR HELL SHALL HE DWELL.

If the marriage has been bad, she could punctuate the gravestone thus:

HERE LIES JOHN TAKEN TO HEAVEN HE IS NOT, NEAR HELL SHALL HE DWELL.

(b) *The main functions of punctuation marks*¹³

(1) The comma (,)

The primary function of a comma is to indicate a short pause; for example, 'Justice must be done, and also be seen to be done'. It is also used to separate nouns (especially in lists) and to separate clauses within sentences.

(2) The semi-colon (;)

This indicates a pause longer than a comma, but not as long as a full stop. It is also used to connect two sentences that are closely related; for example, 'The defendant did not intend to break the plaintiff's leg; he was only trying to stop him from fleeing'.

(3) The colon (:)

A colon is usually used to introduce a list or to introduce further clarification of what precedes the colon; for example,

'To prove the crime of Murder, the State must prove the following:

1. An unlawful act;
2. Done with intention;
3. That causes the death;
4. Of a human being'.

Another example:

'The intruder's intention was clear: he wanted to steal the money'.

(4) The full stop (.)

The full stop indicates the end of a sentence.

(5) The ellipsis (...)

The ellipsis is a series of three spaced dots used to indicate omissions in quotations. It is also used to indicate an unfinished sentence.

(6) The exclamation mark (!)

The use of an exclamation mark should be avoided unless it is part of a quotation. This is because it is the written equivalent of shouting. It is often misused in attempts to indicate emphasis or excitement (for example, 'Next week, I'm on holiday!').

(7) The question mark (?)

The question mark is self-evident. It indicates that a question is being asked (for example, 'What is the time?').

¹³ For a full discussion of all the functions of the various punctuation marks, see MB Ray and JJ Ramsfield 1993 *Legal Writing: Getting it Right and Getting it Written* 2 ed. West, St Paul.

(8) The dash (—)	The dash is dangerous as it can be used as a substitute for a colon, brackets or a pair of commas, and therefore has the potential to cause confusion (for example, 'Naomi is on a diet of fruit – bananas, pears and apples – and is rapidly losing weight', or 'The doctor's decision – although understandable – was, nevertheless, illegal').
(9) The hyphen (-)	The hyphen is a short dash. Its main purposes are to indicate that one word is modified by another (for example, 'The high-powered executive'), or to prevent confusion (for example, 'At the end of the lease, the flat was re-leased').
(10) Round brackets ()	(Also called 'parentheses') Round brackets should only be used to indicate information that may disrupt the flow of the sentence : for example, 'Crimes against persons (murder, rape and robbery) generally carry heavier sentences than crimes against property (theft, fraud and forgery)'. Do not use parentheses to include information in the text that should properly be contained in a footnote.
(11) The apostrophe (')	The apostrophe is used to indicate possession . In the case of a singular noun , append an 's to the end of the noun: "It is James's horse"; "The horse's owner is James". In the case of plural nouns , add just the apostrophe to the end of the word: "The boys' parents". (Remember to make the singular noun plural <i>before</i> adding the apostrophe: for example, if referring to two boys named James who are co-owners of the same horse: "It is the Jameses' horse".) ¹⁴ The apostrophe is also used to indicate a contraction of two words: for example, 'don't' for 'do not', 'you're' for 'you are'; 'it's' for 'it is'. Apostrophes are also used to indicate plurals where confusion would otherwise result: for example, 'He said, "The word 'assassin' has two a's".
(12) Quotation marks (' ' or ''')	(Also called 'inverted commas') Quotation marks are used to enclose the actual words of others – in other words, when you quote them <i>verbatim</i> : for example, 'Queen Victoria said: "We are not amused"'. Quotation marks are also used when referring to a word itself rather than to what the word represents – usually when defining a word: for example, 'Comity' is a reference to the good relations between countries. Further rules for usage of quotation marks: <ul style="list-style-type: none"> • Use single quotation marks (' ') for a quotation within a quotation. • Quotations of fifty words or more should not be contained within quotation marks but be indented and typed in single-line spacing.

¹⁴ When referring to something belonging to more than one person, the rule is to first *pluralise* (eg. The Family of Tim Jackson becomes the Jacksons), then add the apostrophe: The Jacksons' house.

- If you wish to indicate an error in the item you are quoting (to show that it was not your mistake), put '[sic]' immediately after the error; for example, 'Professor Jackson said, "Edwin Aldrin [sic] was the first man on the moon"'. (Neil Armstrong, was, of course, the first man to step on the moon)
- If you wish to emphasise part of a quotation, you should underline that section and indicate that the underlining is yours, by adding '(my emphasis)' immediately after the quote. For example, 'It is said that "lawyers have two common failings. One is that they do not write well, and the other is that they think they do" (my emphasis)'. Note that, if you prefer, you can indicate emphasis by italicising the relevant section instead of underlining it.

5.4.6 Rule 6: Consider the presentation of your writing

(a) *Spelling*

Remember to spell-check your writing before finalizing your draft, as spelling errors can affect the meanings of sentences. Remember that doing a spell-check cannot replace careful proof-reading: the spell-check will not detect words correctly spelled but used in the wrong contexts (for example, 'The first car to arrive was bigger than [instead of 'than'] the second' and 'The frantic children couldn't find there [instead of 'their'] puppies'). Pay particular attention to words that are commonly misspelt: 'liaise' (not 'liase'); 'disappoint' (not 'dissappoint'); 'monies' (not 'moneys'); 'adviser' (not 'advisor'); 'omission' (not 'ommision'); 'fulfil' (not 'fulfill'). Remember to use Standard British spelling and not the American standard: for example, 'behaviour' (not 'behavior'), 'cheque' (not 'check'), and 'sceptical' (not 'skeptical').

(b) *Margins and white space*

Leave generous margins, and do not cram the page with writing. Dense, closely printed text that covers the entire page is intimidating to the reader and is also difficult to read. Don't lose a good message in bad packaging.

(c) *Headings, sub-headings, numbering, indentation and line-spacing*

Headings and sub-headings help provide order and structure, and make the text more readable. Ensure that your numbering and indentation are consistent throughout the piece of writing, to prevent confusion. The standard line-spacing for legal-writing purposes is double-line spacing. This is also recommended for student essays and assignments as it makes marking easier.

(d) *Font choice and size*

The font (shape of the letters used) must be appropriate for the type of writing: for example, do not use Brush Script (which looks like this: *Do not use Brush Script*) for legal-writing purposes. Also, the size of your text must be easily readable in the context of the size of the page: for example, the minimum font-size on an A4 page should not be smaller than 11 points.

(e) *Tabulation*

It is useful to tabulate long and complicated pieces of writing - this will immediately clarify the relationships between the sentences (does one sentence qualify another

15 Carl Felsenfeld 1982 "The Plain English Movement in the United States" *Canadian Business Law Journal* vol 6.

or not?), and also help to clarify understanding, as the act of tabulating converts long sentences into shorter ones. (See the example –The ‘First Rule of Ethics’ – in paragraph 5.5 below).

5.5 Applying the six rules of effective writing to specific examples

(a) *The swimming pool notice*

Reread the section on reading comprehension in Chapter 4. The swimming pool notice reads as follows:

NOTICE!

Children of members using the playground and swimming pool are the responsibility of the parent and if they do not behave or remove or break any equipment they will be held liable for the replacement thereof.

After applying the three comprehension steps, we determined that the **intention of the drafters** of the notice was to make club-member parents responsible for their children’s behaviour and liable for any losses caused by their children. In order to redraft the notice to reflect *exactly* what the drafters intended, we shall apply the six ‘State what you mean’ rules. In applying these rules, we shall do the following: break up the single sentence used in the notice into two sentences; convert the passive to the active voice; correct the grammar (that is, refer to ‘parents’ to be consistent with the plural word children); and change the heading to ‘Notice to members’:

NOTICE TO MEMBERS

Parents are responsible for supervising their children when their children use the playground or the swimming pool. If they break or remove any equipment, the parents concerned will be held legally liable to repair or replace it.

(b) *The ‘First Rule of Ethics’ example*

Let us assume that the following rule of ethics is contained in the General Code of Ethical Conduct applicable to all legal practitioners in South Africa. You are required to interpret the rule to establish what was intended by the drafters of this rule (see the three steps of reading comprehension in Chapter 4) and, thereafter, to apply the six ‘State what you mean’ rules to improve the rule’s expression and presentation. The rule (adapted from an example used by Wydick)¹⁶ reads as follows:

THE FIRST RULE OF ETHICS

It goes without saying that every legal practitioner has a mandatory ethical duty not to disclose what he or she learns in confidence about his or her clients.

Clearly the aforementioned ethical requirement includes information that the client informs his lawyer about on a confidential basis. But of equal importance, the said duty imposed by the rules of ethics encapsulates what third parties relate to the legal practitioner concerning his or her client, in the event that the client has asked that such material be kept secret, or where revealing the third-party-derived, client-related information would cause harm or embarrassment to the client.

¹⁶ Wydick *op cit*, p 62.

Comprehension:

To assist us to determine the intended meaning of this rule in the given context, it is useful to construct a block diagram setting out how the various sentences in the rule relate to each other:

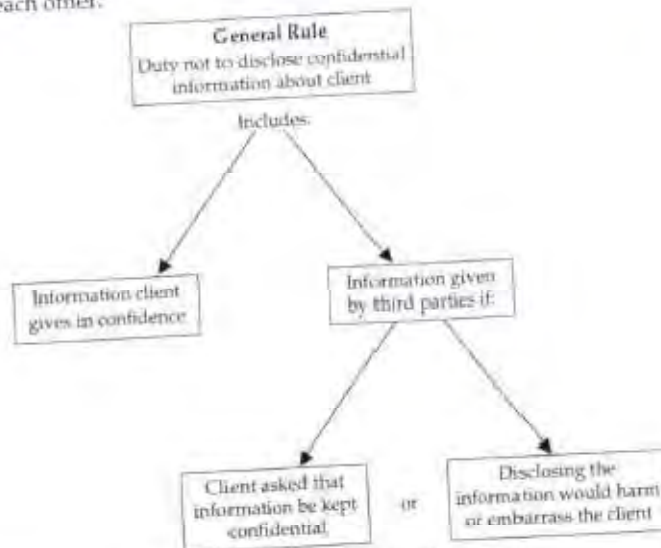


Figure 5.1 Block diagram illustrating the argument

Now, apply the six 'State what you mean' rules:

- All redundant phrases and words that do not affect the meaning of the rule are crossed out (indicated in the text below).
- All words referring to the same thing or concept are circled and numbered – only one word per concept must be chosen to ensure consistency (that is, avoid elegant variation).
- Long sentences are shortened by tabulating them: the re-written rule will, therefore, have a similar format to the block diagram above.

THE FIRST RULE OF ETHICS

It goes without saying that every legal practitioner has an mandatory ethical duty not to disclose what he or she learns in confidence about his or her clients.

This ethical duty clearly the aforementioned ethical requirement includes the duties: (a) Not to disclose information the information that he client informs his lawyer about on a confidential basis, and (b) not to disclose information that third parties relate to the legal practitioner, concerning his or her client, in the event that the client has asked that such material be kept secret, or where revealing the third-party-derived-client-related information would cause harm or embarrassment to the client.

Figure 5.2 The edited text of the First Rule of Ethics

The rewritten rule now reads as follows:

THE FIRST RULE OF ETHICS

Every legal practitioner has an ethical duty not to disclose confidential information about his or her clients. This ethical duty includes the duties:

1. Not to disclose information the client gives the legal practitioner in confidence; and
2. Not to disclose information that third parties give the legal practitioner, if:
 - 2.1 The client has asked that this information be kept confidential, or
 - 2.2 If disclosing this information would harm or embarrass the client.

NB! ALSO STUDY:

Study the following complicated and foreign words or expressions and their simpler, shorter replacements. (You need not know which words are archaic and which are repetitive. Just study the words so that you are able to use it in your writing.)



BAD	GOOD
Difficult words	
Equitable	Fair
Consequently	Then
Remand (a case in court)	Postpone
Finding (of a judge / magistrate)	Decision
Duress	Force / pressure
Albeit	Though / even if
Moreover	Also
Nevertheless	Yet
Provided that	If / but
Accordingly	So
Afforded	Given
Shall (future)	Will
Shall (Imperative)	Must
Archaic words and expressions	
Forthwith	Immediately
Hereinafter	After this
Hence	So
Whosoever	A person who

Repetitive words	
Due and payable	Owing or due
Will and testament	Will
Fit and proper	Suitable
Null and void	Void
Until such time as	Until
Save and except	Except
Unnecessary words / Simplification	
In connection with	About
In the case of	With
In order to	To
At this point in time	Now
In the final analysis	Finally
On a monthly (yearly) basis	Monthly (Yearly)
Enclosed please find	We enclose
For and on behalf of	For
Foreign words	
<i>Bona fide</i>	Good faith / genuine / honest
<i>Mutatis mutandis</i>	With the necessary changes
<i>Prima facie</i>	At first glance
<i>Mens rea</i>	State of mind
<i>Uberrimae fide</i>	Utmost good faith
<i>Res ipsa loquitor</i>	It speaks for itself

CONCISENESS

Writing in a concise manner does not mean writing briefly. It simply means getting to the point you wish to make as quickly as possible.