

CLEAR AND ACTIVE LEGAL WRITING

Despite the many long, convoluted, and legalese-filled opinions you're likely to read in law school (and perhaps beyond), legal writing has evolved to prioritize clarity and plain English. The following points will help you convey complex arguments and ideas in the simplest way possible.

1. Be Concise
2. Use Active Voice
3. Simplify Legalese Where Possible
4. Limit Nominalizations
5. Omit Unnecessary Words and Phrases
6. Avoid Run-On Sentences
7. Break Apart Overly Long Paragraphs

1. Be Concise

Some arguments are so complex that they require, for example, 20 pages. But if you can deliver your argument in 10 pages rather than 20, do so. Making an effort to shorten your page count will not only help you write concisely and in plain English; it's also good practice for meeting page limits.

Your writing will naturally be more concise if you make your point as simply and directly as possible. First think about the point you want to make, then aim to write it in a way that most people can understand on a quick read.

Example:

- Not concise: The argument made by opposing counsel is one that fails to succeed for reasons including, *inter alia*, the fact that the legislature clearly did not evince an intent to restrict the business activities of the defendant.
- More concise: Opposing counsel's argument fails for several reasons, including the fact that the legislature did not intend to limit the defendant's business activities.

2. Use Active Voice

Writing in the active voice clearly identifies the action and the actor who is performing the action. To train yourself to use the active voice, follow the default sentence structure: **subject** + verb + *object*.

Examples:

- Passive voice: The *penalty* was called by the **referee**.
- Active voice: The **referee** called the *penalty*.

- Passive: The *man* was bitten by the **dog**.
- Active: The **dog** bit the *man*.

However: Passive voice can be appropriate in some circumstances, including the following. Otherwise, the vast majority of your writing should be in the active voice.

- You want to avoid naming the subject in order to diffuse or prevent escalating conflict.
 - Passive: Mistakes were made.
 - Active: [subject] made mistakes.
- The subject is unknown.
 - Passive: The jewelry was stolen last night.
 - Active: [subject] stole the jewelry last night.
- You are talking about a general truth.
 - Passive: Every year, millions of people are entering the job market.
 - Active: [subject] enter the job market every year.
- You want to emphasize the object rather than the subject of the sentence.
 - Passive: Insulin was discovered in 1921 by scientists. It is still widely used.
 - Active: Scientists discovered insulin in 1921. It is still widely used.

3. Simplify Legalese Where Possible

Sometimes using legalese or other complex words or phrases is unavoidable. But whenever you can communicate the same idea using simpler language, you should do it.

It's usually best to avoid Latin words or phrases unless the word or phrase is a term of art, such as *mens rea*, or otherwise necessary or very commonly used. If you can substitute the Latin word or phrase and still retain the meaning, you should do so.

Redundant synonyms are another common form of legalese that can often be easily simplified. However, be aware of terms of art from statutes, regulations, or other legal authority that may need to be left as is.

Examples of Latin Legalese That Can Be Replaced with English:

- *inter alia* → among other things
- *expressio unius exclusio alterius* → when one or more things of a class are expressly mentioned, others of the same class are excluded
- *arguendo* → for the sake of argument

Examples of Common Redundant Synonyms in Legal Writing:

- alter or change
- confessed and acknowledged
- made and entered into
- convey, transfer, and set over
- order and direct
- for and during the period
- force and effect
- free and clear
- save and except
- full and complete
- suffer or permit
- true and correct

Examples of Complex Words That Can Easily Be Simplified:

- aforementioned → previously stated
- utilize → use
- at the present time → now/currently
- subsequent to → after

4. Limit Nominalizations

Nominalization converts a verb into a noun and relies on a weaker verb. Overuse of nominalizations can be confusing and make your sentences longer.

You can often spot nominalized verbs by looking for certain endings:

- -al
- -ment
- -ant
- -ence
- -ion
- -ent
- -ancy
- -ency
- -ance
- -ity

Examples:

- Nominalization: There was committee **agreement**.
- Fix: The committee **agreed**.

- Nominalization: Her **reporting** of the event.
- Fix: She **reported** the event.

5. Omit Unnecessary Words and Phrases

Try to avoid using three or four words (sometimes called “compound constructions”) to say what can easily be said by one or two words. When editing, ask yourself, “Is this word necessary to make the point I want to make?” If not, cut it.

Below is a list of common compound constructions and their simple counterparts.

Compound	Simple
at the point in time	then
by means of	by
by reason of	because of
by virtue of	by/under
for the purpose of	to
for the reason that	because
in accordance with	by/under
inasmuch as	since
in connection with	with/about/concerning
in relation to	about/concerning
in favor of	for
in order to	to
with reference to	about/re
in the event that	if
in the nature of	like
prior to	before
subsequent to	after
with a view to	to

6. Avoid Run-On Sentences

One way to avoid run-on sentences is to focus on one main point per sentence. Sentences can usually be broken into smaller sentences without losing any meaning. A short, concrete sentence following a longer sentence can also be a great device for delivering a strong punch, e.g., “The court could have considered the constitutional issue. It did not.”

Another way to avoid run-on sentences is to use 20 words per sentence as a benchmark (although this is not a hard and fast rule). However, it can be counterproductive to aim for a set number of words as you write. Just write naturally and consider the number of words when you edit.

7. Break Apart Overly Long Paragraphs

A good rule of thumb is one idea per paragraph. It's ok to briefly summarize multiple ideas in a thesis or concluding paragraph, but otherwise try to break up paragraphs that address more than one idea.

Final Note: Using the information above, the following is an example of a piece of writing before and after editing for clarity.

Before

The case before us alleges that the plaintiff was taken to the hospital by paramedics, where she underwent complicated surgery, and where she claims she obtained the infection by means of negligence. The parties are in agreement by stipulation that the only issues in this case are the surgeon's negligence and the hospital staff's negligence. The trial itself should be short as, inter alia, the plaintiff's recollection included only two witnesses. As aforementioned, damages will only be discussed subsequent to the court's ruling on these issues. Assuming, arguendo, a verdict in favor of the plaintiff is returned by the jury, it is likely the plaintiff will receive a substantial award of damages.

After

Plaintiff alleges that paramedics took her to the hospital where she underwent complicated surgery and obtained an infection due to negligence. The parties stipulated that the only issues in this case are the surgeon's negligence and the hospital staff's negligence. The trial should be short as, among other things, the plaintiff recalled there only being two witnesses. As previously stated, damages will only be discussed after this court's ruling on these issues. Assuming the jury returns a verdict in favor of the plaintiff, the damages will likely be substantial.