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# Do's, Don'ts & Maybes: Legal Writing Grammar—Part I

Gerald Lebovits



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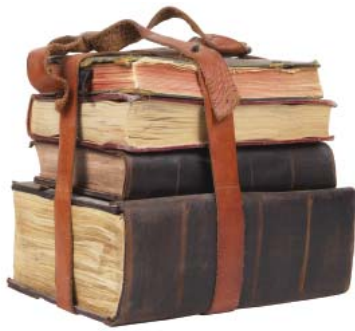
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# THE LEGAL WRITER

BY GERALD LEBOVITS



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## Do's, Don'ts, and Maybes: Legal Writing Grammar — Part I

In four of the last five columns, the Legal Writer discussed the things you should and shouldn't do in legal writing. We continue with 10 grammar issues and, in the next column, with 10 more. Studying these 20 grammar issues offers a framework to write comprehensible, intelligent documents. Good grammar is a good start, although good legal writing demands much more. Knowing grammar won't make you a good legal writer. But you're a poor legal writer if you don't know grammar.

Grammar is a system or set of rules that govern a language. English categorizes words into eight different parts of speech according to how the words function in a sentence: nouns, pronouns, verbs, adverbs, adjectives, conjunctions, interjections, and prepositions. Nouns refer to an event, idea, person, place, quality, substance, or thing. Pronouns are used in place of a noun. Verbs name an action, occurrence, or state of being. Adverbs modify verbs, adjectives, clauses, sentences, and other adverbs. Adverbs don't modify nouns. Adjectives modify nouns or pronouns. A conjunction connects two words, phrases, or clauses. An interjection shows strong emotion. A preposition links to another word in the sentence a noun or a pronoun following the preposition.

Here are the most common grammar errors — not the controversies; only the recognized, accepted errors — and how to fix them.

**1. Singular and plural nouns.** For most nouns, add "s" to form the plural. "Bat" becomes "bats." "Window" becomes "windows." "Book" becomes

"books." Add "es" if the noun ends in "s," "sh," "ch," or "x." "Dress" becomes "dresses." "Wish" becomes "wishes." "Church" becomes "churches." "Fox" becomes "foxes."

If the noun ends in a "y" and a consonant precedes the "y," change the "y" to "i" and add "es." "Baby" becomes "babies." "Beauty" becomes "beauties." If the noun ends in a "y" and a vowel precedes the "y," add an "s." "Alley" becomes "alleys." "Attorney" becomes "attorneys."

Pluralize most nouns ending in "f" by adding "s." "Brief" becomes "briefs." "Proof" becomes "proofs." "Roof" becomes "roofs." "Dwarf" becomes "dwarfs." *Exception:* Change some nouns ending in "f" or "fe" to "v" and add "es." "Elf" becomes "elves." "Knife" becomes "knives." "Leaf" becomes "leaves." "Life" becomes "lives." "Wolf" becomes "wolves."

If a name ends in "f," add an "s" to form the plural. "Mr. and Mrs. Wolf" becomes "the Wolfs."

To pluralize compound words, make the main word plural. "Attorney general" becomes "Attorneys general." "Court-martial" becomes "courts-martial." "Passerby" becomes "passersby." "Sister-in-law" becomes "sisters-in-law." Two exceptions: (1) if the compound word has no noun, add an "s" to the end of the word; (2) if the compound word ends in "ful," add an "s" at the end. Examples: "Dress-up" becomes "dress-ups." "Takeoff" becomes "takeoffs." "Teaspoonful" becomes "teaspoonfuls." "Cupful" becomes "cupfuls."

Some nouns change when they become plural. "Child" becomes "chil-

dren." "Foot" becomes "feet." "Goose" becomes "geese." "Man" becomes "men." "Mouse" becomes "mice." "Ox" becomes "oxen." "Person" becomes "people." "Tooth" becomes "teeth." "Woman" becomes "women."

Some nouns stay the same whether they're singular or plural. Example: "deer," "fish," "moose," "Portuguese," "series," "sheep," and "species."

Some words maintain their Latin or Greek form in the plural. "Nucleus" becomes "nuclei"; "syllabus" becomes "syllabi" ("syllabuses" is acceptable); "focus" becomes "foci"; "fungus" becomes "fungi"; "cactus" becomes "cacti" ("cactuses" is acceptable); "thesis" becomes "theses"; "crisis" becomes "crises"; "phenomenon" becomes "phenomena"; "index" becomes "indices" ("indexes" is acceptable); "appendix" becomes "appendices" ("appendixes" is acceptable); "criterion" becomes "criteria."

**A verbs must agree with its subject.**

If a noun ends in "ics" and refers to a body of knowledge, a science, or course of study, it's usually singular. Examples: "mathematics," "phonetics," and "semantics." If a noun ends in "ics" and refers to concrete activities, practices, or phenomena, it's usually plural. Examples: "athletics," "mechanics," and "acoustics." Sometimes whether nouns are singular or plural depends on their meaning. Example: "Acoustics is the study of sound." (Singular.) Or:

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"The courtroom's acoustics (acoustical qualities) are poor." (Plural.) *Example:* "Athletics (athletic training) isn't part of law school." (Singular.) *Or:* "Athletics (sports) are popular with sports attorneys." (Plural.) *Example:* "Politics affects every aspect of our lives." (Singular.) *Or:* "His politics (opinions) aren't going to affect our decision." (Plural.)

**2. Pronouns.** Pronouns substitute for nouns. Some common singular pronouns: "he," "her," "hers," "him," "his," "I," "it," "me," "mine," "my," and "she." Some common plural pronouns: "its," "our," "ours," "their," "theirs," "them," "they," "us," and "we." Some pronouns stay the same whether they're singular or plural: "you," "your," and "yours."

## Legal writers will object to you fusing participles.

Use reflexive and intensive pronouns only to refer back to a pronoun. Some common reflexive and intensive pronouns: "myself," "yourself," "yourselves," "ourselves," "herself," "himself," "themselves," and "itself." *Examples:* "I said that to myself." (Reflexive pronoun.) "I myself said that." (Intensive pronoun.) *Incorrect:* "The judge and me [or myself] went to the courtroom." It's not "me [or myself] went to the courtroom." It's "I went to the courtroom." *Therefore:* "The judge and I went to the courtroom."

Here's a tip when you write a sentence with two or more pronouns: Delete the first pronoun. Then ask whether the sentence reads with an "I," "me," "he," "him," "she," "her," "they," or "them." *Incorrect:* "She and him went to court." Delete "she." The sentence makes sense if you say "He went to court." *Therefore:* "She and he went to court." *Incorrect:* "He and them argued the motion." Delete "he." The

sentence makes sense if you say "They argued the motion." *Therefore:* "He and they argued the motion." *Incorrect:* "Mary and me went to court." In this example in which "Mary" replaces a pronoun, follow the same rule: Delete "Mary." The sentence makes sense if you say "I went to court." *Therefore:* "Mary and I went to court." *Incorrect:* "The judge played softball with Henry and I." The sentence doesn't make sense if you delete "Henry and." The sentence would be, incorrectly: "The judge played softball with I." *Therefore:* "The judge played softball with Henry and me."

Never use these nonstandard reflexive and intensive pronouns: "theirself," "theirselves," "themself," and "themselves."

Pronouns must agree with their antecedents in gender, person, and number. An antecedent is the noun to

which the pronoun refers. Example of a singular antecedent with a singular pronoun: "Jane [singular antecedent] alleges that XYZ Corp. violated *her* [singular, feminine pronoun] constitutional rights." Example of a plural antecedent with a plural pronoun: "Mary and Jane [plural antecedent] allege that XYZ Corp. violated *their* [plural pronoun] rights."

Indefinite pronouns don't refer to any specific person or thing. Here are some common indefinite pronouns: "all," "any," "anyone," "anybody," "anything," "each," "either," "everyone," "everybody," "everything," "little," "much," "neither," "nobody," "no one," "none," "nothing," "other," "one," "somebody," "someone," and "something." These indefinite pronouns are always singular. *Incorrect:* "Everyone has their price." *Becomes:* "Everyone has his price." To eliminate the sexist language, rewrite the sentence. *Correct:* "Everyone has a price."

*Incorrect:* "Someone used their pen to deface the judge's bench." *Becomes:* "Someone used his pen to deface the judge's bench." To eliminate the sexist language, change to "Someone used a pen to deface the judge's bench."

The "one" exception: "Attorney Able is one of those jurists who knows what he is doing." *Becomes:* "Attorney Able is one of those jurists who know what they are doing."

The "not one" exception: If "none" means "no one" or "not one," the verb is singular. If "none" refers to more than one person or thing, the verb is plural. *Examples:* "None of us [meaning *not one of us*] knows grammar." "None of the attorneys know how to write the brief."

A "pair" of exceptions: "A pair of socks" but "three pairs of socks."

"Both," "few," "many," "others," and "several" are always plural.

"All," "any," "more," "most," "none," and "some" are singular or plural depending on the noun or pronoun to which they refer. *Incorrect:* "All the attorneys eats lunch at Forlini." *Becomes:* "All the attorneys eat lunch at Forlini." *Incorrect:* "All the pizza in the judge's chambers are gone." *Becomes:* "All the pizza in the judge's chambers is gone."

Collective nouns in American usage take a singular verb. Some common collective nouns: "appellate court," "army," "assembly," "audience," "board," "committee," "couple," "crowd," "family," "jury," "majority," "number," and "team." *Incorrect:* "The jury was right. They decided correctly." *Becomes:* "The jury was right. It decided correctly." *Or:* "The jurors were right. They decided correctly." *Incorrect:* "The family won the case. They celebrated." *Becomes:* "The family won the case. It celebrated."

"We" versus "us." To determine when to use the pronouns "we" or "us," drop the noun or noun phrase before the pronoun. *Incorrect:* "Us attorneys can no longer tolerate the firm's policies." If you drop the noun "attorneys," the sentence wouldn't make sense: "Us can no longer toler-



ate the firm's policies." *Correct*: "We attorneys can no longer tolerate the firm's policies." If you drop the noun "attorneys," the sentence makes sense: "We can no longer tolerate the firm's policies." *Incorrect*: "The firm has given we paralegals no alternative." If you drop the noun "paralegals," the sentence wouldn't make sense: "The firm has given we no alternative." *Correct*: "The firm has given us paralegals no alternative." If you drop the noun, the sentence now makes sense: "The firm has given us no alternative."

**3. Fused Participles.** Fused participles occur when a writer fails to use a possessive form of a noun or pronoun to introduce a gerund. Use logic to solve fused-participle problems by eliminating miscues. Ask yourself where the reference and stress should be. *Incorrect*: "The People objected to the defendant leaving the courtroom a free man." The gerund "leaving" is fused into the noun "defendant." "Leaving" is the object of the preposition "to"; "leaving" doesn't modify the noun "defendant." In this sentence, the reader might incorrectly believe that the People objected to the defendant. *Therefore*: "The People objected to the notion that the defendant would leave the courtroom a free man." Or insert an apostrophe: "The People objected to the defendant's leaving the courtroom a free man."

Fused participles affect pronouns. *Incorrect*: "Do you mind us getting all these cases?" In this example, the writer didn't mean to write "Do you mind us?" But that's what the reader understands. *Becomes*: "Do you mind *our* getting all these cases?" *Incorrect*: "The police objected to them possessing contraband." In this example, the writer did not mean, "The police objected to *them*." *Becomes*: "The police objected to *their* possessing contraband." *Incorrect*: "My parole officer objected to me living alone." The writer did not mean to write, "My parole officer objected to *me* living." *Becomes*: "My parole officer objected to *my* living alone." *Incorrect*: "The judge feared the Constitution becoming a shield for lawlessness."

The writer did not mean to write, "The judge feared the Constitution." *Becomes*: "The judge feared that the Constitution would become a shield for lawlessness." Or: "The judge feared the Constitution's becoming a shield for lawlessness."

**4. Verb Tenses and Moods.** Verbs have six tenses: present, past, future, present perfect, past perfect, and future perfect. The last three tenses (present perfect, past perfect, and future perfect) are also known as the past participle form. The present refers to actions occurring when the writer is writing. The past refers to actions that occurred before the writer wrote. The future refers to actions that will occur after the writer writes. The present perfect refers to actions that began in the past and were completed before the present. Use the past perfect when one past action was completed before another past action began. Use the future perfect when an action that started in the past will end at a certain time in the future.

An example of the verb "talk" using the different tenses: "talk" (present); "talked" (past); "will talk" (future); "have talked" (present perfect); "had talked" (past perfect); and "will have talked" (future perfect).

Form the present perfect by using "have" or "has" before the past participle. Form the past perfect by adding "had" before the past participle. Form the future perfect by adding "will have" before the past participle.

Three moods exist in English: indicative, imperative, and subjunctive. Use the indicative for statements of facts or questions. Use the imperative for orders or commands. Use the subjunctive to express a wish, an idea contrary to fact, a requirement, or a suggestion or recommendation. *Examples of indicative mood*: "Julia researches in the library." "Sarah writes all day." *Examples of imperative mood*: "Be quiet." "Argue the motion." *Examples of subjunctive mood*: "She wishes her partner were here." "If John were more aggressive, he'd be a better attorney." "Ashley would have passed the bar

exam if she had studied harder." "The suspect acted as if he were guilty." "The judge requested Mrs. Doe's presence at the hearing."

**5. Irregular verbs.** For most verbs, form the past tense by adding a "d" or "ed" at the end of the verb. "Talk" becomes "talked." "Play" becomes "played." Other verbs are irregular. Irregular verbs change a vowel and add "n" or "en"; change a vowel and add "d" or "t"; or don't change at all.

To form the past participle, use a helping verb: "is," "are," "was," or "has been." Then add the principal part of the verb.

*Examples*: "Arise" (present tense) becomes "arose" (past tense) becomes "arisen" (past participle). "Bear" becomes "bore" becomes "born" or "borne." "Beat" becomes "beat" becomes "beaten." "Become" becomes "became" becomes "become." "Begin" becomes "began" becomes "begun." "Bite" becomes "bit" becomes "bitten." "Blow" becomes "blew" becomes "blown." "Break" becomes "broke" becomes "broken." "Choose" becomes "chose" becomes "chosen." "Come" becomes "came" becomes "come." "Do" becomes "did" becomes "done." "Draw" becomes "drew" becomes "drawn." "Drink" becomes "drank" becomes "drunk." "Drive" becomes "drove" becomes "driven." "Eat" becomes "ate" becomes "eaten." "Fall" becomes "fell" becomes "fallen." "Fly" becomes "flew" becomes "flown." "Forget" becomes "forgot" becomes "forgotten." "Forgive" becomes "forgave" becomes "forgiven." "Freeze" becomes "froze" becomes "frozen." "Get" becomes "got" becomes "gotten" or "got." "Give" becomes "gave" becomes "given." "Go" becomes "went" becomes "gone." "Grow" becomes "grew" becomes "grown." "Hide" becomes "hid" becomes "hidden." "Know" becomes "knew" becomes "known." "Lie" (horizontal position) becomes "lay" becomes "lain." "Ride" becomes "rode" becomes "ridden." "Ring" becomes "rang" becomes "rung." "Rise" becomes "rose" becomes "risen." "Run" becomes "ran" becomes "run." "See" becomes "saw" becomes "seen."

"Shake" becomes "shook" becomes "shaken." "Shrink" becomes "shrank" becomes "shrunken." "Sing" becomes "sang" becomes "sung." "Sink" becomes "sank" becomes "sunk." "Speak" becomes "spoke" becomes "spoken." "Spring" becomes "sprang" becomes "sprung." "Steal" becomes "stole" becomes "stolen." "Strive" becomes "strove" becomes "striven." "Swear" becomes "swore" becomes "sworn." "Swim" becomes "swam" becomes "swum." "Take" becomes "took" becomes "taken." "Tear" becomes "tore" becomes "torn." "Throw" becomes "threw" becomes "thrown." "Wake" becomes "woke" or "waked" becomes "woken" or "waked." "Wear" becomes "wore" becomes "worn." "Write" becomes "wrote" becomes "written."

Parallel structure  
is both intelligent  
and a necessity.

Some irregular verbs stay the same in the past tense and past participle. Examples: "Bend" becomes "bent" (past) becomes "bent" (past participle). "Bring" becomes "brought" in both forms. "Catch" becomes "caught." "Creep" becomes "crept." "Dig" becomes "dug." "Dive" becomes "dived" or "dove" becomes "dived." "Fight" becomes "fought." "Hold" becomes "held." "Kneel" becomes "knelt." "Lay" becomes "laid." "Lead" becomes "led." "Lie" (falsehood) becomes "lied." "Lose" becomes "lost." "Prove" becomes "proved" becomes "proved" or "proven." "Say" becomes "said." "Show" becomes "showed" becomes "showed" or "shown." "Teach" becomes "taught."

Some irregular verbs stay the same in the present, past, and past participle: "burst" and "hurt."

The trickiest verb in English is "to be." Here are the variations in the present: "I am," "you are," "he (or she or it) is," "we are," "you are," and "they are." Here are the variations in

the past: "I was," "you were," "he (or she or it) was," "we were," and "they were." The past participle: "I have been," "you have been," "he (or she or it) has been," "we have been," and "they have been."

**6. Gerunds.** A gerund is the subject or object of a verb, infinitive, or preposition that ends in "ing." Use gerunds to avoid nominalizations, or converting verbs to nouns. *Incorrect:* "The impeachment of his testimony will be difficult." *Becomes:* "Impeaching his testimony will be difficult."

A gerund error occurs when the gerund modifies the wrong word in the sentence. Solve a gerund error in one of three ways: (1) degerundize and place the verb after the subject; (2) bifurcate the sentence; or (3) subordinate. *Incorrect:* "The court granted the motion to suppress finding that the police lied." This sentence suggests that the motion to suppress found that the police lied. Here's a way to correct the sentence by degerundizing the verb after the subject: "The court found that the police lied and therefore granted the motion to suppress." You may also split the sentence into two: "The court found that the police lied. It therefore granted the motion to suppress." Another way to correct the sentence is to subordinate: "After finding that the police lied, the court granted the motion to suppress."

**7. Agreement.** A verb must agree in numbers with its subjects. *Incorrect:* "The color of the clouds are gray." *Becomes:* "The color of the clouds is gray." (Color is gray.) *Incorrect:* "The difference between Cardozo and Holmes, and between Frankfurter and Jackson, are striking." *Becomes:* "The difference between Cardozo and Holmes, and between Frankfurter and Jackson, is striking." (Difference is striking.) *Incorrect:* "Justice Jackson, as well as the hundreds of judges who emulate his writing style, rely on plain Anglo-Saxon English." *Becomes:* "Justice Jackson, as well as the hundreds of judges who emulate his writing style, relies on plain Anglo-Saxon English." (Justice Jackson relies.) Nothing in a

phrase contained in a subject affects the number of the verb that follows.

When you use "neither . . . nor," "either . . . or," or "not only . . . but also," make sure that the verb agrees with its nearest subject. When all the elements are singular, the verb should also be singular. When all the elements are plural, the verb should be plural. When the elements are different in number, the verb takes the number of the closer. *Incorrect:* "Neither the judge nor his court attorney are in chambers." *Becomes:* "Neither the judge nor his court attorney is in chambers." *Incorrect:* "Neither the judge nor his court attorneys was in chambers." *Becomes:* "Neither the judge nor his court attorneys were in chambers." *Incorrect:* "Neither the judges nor their court attorney were in chambers." *Becomes:* "Neither the judges nor their court attorney was in chambers." *Incorrect:* "Neither you nor I are in chambers." *Becomes:* "Neither you nor I am in chambers."

Multiple subjects modified by "each," "every," and "many" take a singular verb. *Correct:* "Every court attorney and every law clerk has been told to attend."

**8. Parallelism.** Sentences are parallel when nouns match nouns, verbs match verbs, gerunds match gerunds, and so on. *Incorrect:* "A rule that is both intelligent and a necessity." *Becomes:* "A rule both intelligent and necessary." *Incorrect:* "The rule is found in the cases, statutes, and in the contracts." *Becomes:* "The rule is found in the cases, statutes, and contracts." *Incorrect:* "No drinking, smoking or food." *Becomes:* "No drinking, smoking, or eating."

Parallelism requires that parallel coordinates form matching pairs: "although/nevertheless," "although/ yet," "as/as," "both/and," "either/or," "if/then," "just as/so," "neither/nor," "not/but," "not only/but also," and "whether/or." *Incorrect:* "Not only do I like landlord-tenant practice but also family law." *Becomes:* "Not only do I like landlord-tenant practice, but I also like family law." Or: "I like not only landlord-tenant practice but also

family law." Or, in the positive: "I like landlord-tenant practice and family law."

*Exceptions:* Use "neither . . . or," "not . . . or," or "not . . . nor" only if the first negative doesn't carry over to the second negative or for dramatic emphasis.

**9. Sentence Fragments.** A sentence fragment isn't a short sentence. It's a sentence that can't stand on its own, an incomplete sentence. A sentence fragment lacks a subject or a verb. *Example:* "The attorney questioning the witness." "Questioning" is a participle modifying "attorney." To create a complete sentence, change "questioning" from a participle to a main verb or add a main verb. *Becomes:* "The attorney questioned the witness." Or: "The attorney was questioning the witness."

Sometimes a fragment is a subordinate clause posing as a complete sentence. If you add "although," "when," or "until" in front of a main,

or independent, clause, the clause becomes a subordinate, or dependent, clause. *Example of a main clause:* "The attorney questions the witness." *Subordinate clause:* "When the attorney questions the witness." Attach subordinate clauses to main, or independent, clauses. *Example:* "When the attorney questions a witness [subordinate clause], the judge will interrupt the testimony [main clause]." Here's a list of other subordinating conjunctions: "after," "as," "as if," "as long as," "as soon as," "as though," "because," "before," "even if," "even though," "if," "if only," "in order that," "in that," "no matter how," "now that," "once," "provided," "rather than," "since," "so that," "than," "that," "though," "till," "unless," "whenever," "where," "whereas," "wherever," and "while."

*Exceptions:* Use sentence fragments for stylistic effect. *Examples:* "The rape victim had the courage to testify. More courage than most people would have had." "The witness's testimony was

consistent. Consistently false." Use sentence fragments for commands. *Examples:* "Stop!" "Evacuate the building!" "Get out!" Use sentence fragments as a transition. *Example:* "First, the facts. Second, the law." Use sentence fragments to negate: "The witness's testimony was honest. Not." Also use sentence fragments to answer questions: "Have you told us the truth? Probably not."

**10. "And" versus "To."** Don't use "and" to show causality or in an infinitive phrase. Use "to." *Incorrect:* "I went to the courthouse and got the judgment." *Becomes:* "I went to the courthouse to get the judgment." *Incorrect:* "Look and see whether the judge is on the bench." *Becomes:* "Look to see whether the judge is on the bench."

In the next issue, the Legal Writer will continue with a second set of 10 grammar issues. Following that column will be columns on punctuation and usage controversies. ■