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

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Our Children, Our Future

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THE LEGAL WRITER

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Do’s, Don’ts, and Maybes: Legal Writing Grammar — Part II

In the last column, the Legal Writer discussed 10 grammar issues. We continue with another 10.

11. The Run-on Sentence. A run-on sentence isn’t a long sentence. A run-on sentence is formed when (1) a conjunctive adverb separates two independent clauses (clauses that could serve as separate sentences) and a semicolon or a period doesn’t precede the adverb; (2) no punctuation separates two independent clauses; or (3) a comma splices two independent clauses.

Example 1 — the conjunctive adverb run-on: “Judge Doe wrote the opinion, however, he never read it to the litigants.” In this example, “however” is the conjunctive adverb separating two independent clauses, or clauses that could be a full sentence. Examples of conjunctive adverbs are “accordingly,” “again,” “also,” “anyway,” “besides,” “certainly,” “consequently,” “finally,” “for example,” “further,” “furthermore,” “hence,” “however,” “incidentally,” “indeed,” “instead,” “likewise,” “meanwhile,” “moreover,” “nevertheless,” “next,” “nonetheless,” “on the other hand,” “otherwise,” “rather,” “similarly,” “still,” “then,” “thereafter,” “therefore,” “thus,” and “undoubtedly.” In Example 1, no semicolon or period precedes the conjunctive adverb “however.” To fix this sentence, put a semicolon or a period between the independent clauses. If appropriate, include one of the conjunctive adverbs listed above. Becomes: “It’s cold in the courtroom; I should put on a jacket.” Or: “It’s cold in the courtroom. I should put on a jacket.” Or: “It’s cold in the courtroom; thus, I should put on a jacket.” Or: “It’s cold in the courtroom. Thus, I should put on a jacket.”

Example 3 — the comma-splice run-on: “He showed a courage when he jumped into the lake to save the baby.” “Courage” is a mass noun. Don’t use an article before a noncount noun or a mass noun: a noun that can’t be counted. Use “a” before a count noun: a noun that can be counted. Don’t use an article before a count noun: a noun that can’t be counted. Incorrect: “The witness asked for glass of water.” Correct: “The witness asked for a glass of water.” (Glasses can be counted.)

12. Articles. “A” and “an” are indefinite articles that refer to someone or something general. Use “a” and “an” to begin a noun phrase. Example: “A juror was disqualified for speaking with the press.” Use “a” or “an” as a subject complement. Example: “The attorney is an intelligent man.” “A” precedes a word that begins with the sound of a consonant, even if the word begins with a vowel, such as “eulogy.” “An” precedes a word that begins with a vowel sound, even if the word begins with a consonant. Use “an” before a silent “h”: “an heir.” Use “a” before an aspirated, or pronounced, “h”: “a historic occasion,” “a history book.” “The” is a definite article that refers to someone or something specific. “The” begins a noun phrase to refer to something already known to listeners or to assert the existence of something. Examples: “The courthouse is across the street.” “The shortest attorney in New York County was the most successful attorney.”

Use an article before a count noun: a noun that names something that can be counted. Don’t use an article before a noncount noun or a mass noun: a noun that can’t be counted. Incorrect: “My law clerk celebrated birthday yesterday.” Correct: “My law clerk celebrated a birthday yesterday.” (“Birthday” is a count noun.) Incorrect: “The witness asked for glass of water.” Correct: “The witness asked for a glass of water.”

13. Adverbs. Adverbs are words that modify a verb, an adjective, or
another adverb. Adverbs tell when, where, why, or under what conditions something happens or has happened. Most adverbs end in “ly.” Examples: “badly,” “completely,” “happily,” “lazily,” “quickly,” and “slowly.” You can’t rely on this rule to recognize adverbs; some adjectives end in “ly”: “friendly,” “lovely.”


Put the adverb next to the word it modifies. Incorrect: “It almost seems impossible to finish the brief by July.” Becomes: “It seems almost impossible to finish the brief by July.” Incorrect: “Don’t you ever remember writing the brief?” Becomes: “Don’t you ever remember writing the brief?” Incorrect: “He drove slow.” In this example, you want “slow” to modify the verb “drive.” To determine whether “slow” is correct, ask yourself: How did he drive? Slowly. Therefore: “He drove slowly.” Incorrect: “Use adverbs correctly.” Ask yourself: How should I use adverbs? Correctly. Therefore: “Use adverbs correctly.”

Put adverbs at the beginning of sentences for emphasis or when you want to qualify the entire sentence. Correct: “Fortunately, no one was in the courtroom when the ceiling fell down.”

14. Modifiers. Writers encounter four modifier problems: (1) misplaced modifiers; (2) squinting modifiers; (3) dangling modifiers; and (4) awkward separations.

A misplaced modifier occurs when you improperly separate a word, phrase, or clause from the word it describes. Some commonly misplaced words: “almost,” “even,” “exactly,” “hardly,” “just,” “merely,” “nearly,” “only,” “scarcely,” and “simply.” Example of a misplaced word: “She almost sold all her used law books at the garage sale.” The writer isn’t trying to say that “she almost sold all her used law books.” The writers means to say, “She sold almost all her law books at the garage sale.” Example of a misplaced phrase: “Throw your sister out the window the Bluebook.” The writer isn’t trying to say “Throw your sister out the window.” The writer means to say: “Throw the Bluebook to your sister.” Therefore: “Throw the Bluebook out the window to your sister.” Example: “She served punch to the attorneys in paper cups.” The writer isn’t trying to say that “the attorneys were in paper cups,” but that’s the effect. Therefore: “She served punch in paper cups to the attorneys.” Example of a misplaced clause: “She returned the car to the dealer that was defective.” This sentence suggests that the dealer, not the car, was defective. Therefore: “She returned the defective car to the dealer.” Example: “He remembered that he forgot his brief when he reached the courthouse.” This suggests that “he forgot his brief when he reached the courthouse.” This suggests that “he forgot his brief when he reached the courthouse.” Therefore: “When he reached the courthouse, he remembered that he forgot his brief.” Or: “He remembered when he reached the courthouse that he forgot his brief.”

A squinting modifier is a modifier that might refer to a preceding or a following word. Like a misplaced modifier, a squinting modifier creates confusion. Unlike a misplaced modifier, the adverb might function perfectly in the sentence structure but its meaning might be ambiguous. Example: “Eric told his daughter when the meeting was over he would play with her.” Is it that Eric spoke to his daughter when the meeting was over? Or that Eric told his daughter he would play with her after the meeting? Two correct versions: “Eric told his daughter he would play with her when the meeting was over.” Or: “When the meeting was over, Eric told his daughter that he would play with her.”

Where you position a squinting adverb (“almost,” “even,” “exactly,” “hardly,” “just,” “merely,” “nearly,” “only,” “scarcely,” “simply,” or “solely”) affects the sentence. Incorrect: “The court attorney only made one mistake.” Becomes: “The court attorney made only one mistake.” Examples: “She only nominated Matthew for partner.” (She didn’t vote for him.) “She nominated only Matthew for partner.” (She didn’t nominate anyone else.)

A modifier dangles when the noun or pronoun to which a phrase or clause refers is in the wrong place or missing. Sometimes the dangling modifier is at the beginning of the sentence. Sometimes it’s at the end. Example of a dangling participle: “Once edited and rearranged, Bill received an A+.” This suggests that “Bill” was edited and rearranged. Therefore: “Once he edited and rearranged his law-school paper, Bill received an A+.” Example of a dangling gerund: “After editing for an hour, the brief looked good.” This suggests that “the brief” was editing for an hour. Therefore: “After I edited the brief for an hour, the brief looked good.” Example of dangling infinitive: “To write a brief, a computer is needed for efficiency.” Because “a brief” is positioned next to “a computer,” the writer suggests that a computer can write a brief. Therefore: “For efficiency, a computer is needed to write a brief.”

Eric told his daughter he would play with her after the meeting? Two correct versions: “Eric told his daughter he would play with her when the meeting was over.” Or: “When the meeting was over, Eric told his daughter that he would play with her.”

Run-on sentences are hard to read, therefore, never use them.
old, my father taught me how to cross-examine my sister.”

An awkward separation creates confusion. Incorrect: “Many students have, by the time they finish law school, interned for a judge.” The sentence is confusing because the auxiliary verb “have” is separated from the main verb “interned.” Therefore: “By the time they finish law school, many students have interned for a judge.” Or: “Many students have interned for a judge by the time they finish law school.”

Misplaced prepositions lead to mis- cues. Make sure, for example, not to put the word “with” in the final position of a sentence. Incorrect: “The defendant robbed a bank with money.” In this example, the reader might wonder why the defendant didn’t use a gun.

15. Problem Words and Pairs. You can’t “bare” it when two words sound alike or when they’re spelled alike. Or is it “bear” it? Don’t let it “affect” you. Or is it “effect” you?

Use “accept” when you mean “take.” Use “except” when you mean “to leave out.” Example: “Please accept my apology.” Or: “Everyone except for Lawyer Lee went to court.” Use “affect” when you mean “to influence” or “a feeling or state.” Use “effect” when you mean “something resulting from another action” or “to come into being.” Example: “Mr. X, whose manner is affected, put his theory into effect. His theory had a profound effect. It affected many things.” Use “already” when you mean “before.” Use “all ready” when you mean “prepared.” Example: “She already left for court.” Or: “She was all ready to go to law school.” Use “all together” when you mean “everyone at once.” Use “altogether” when you mean “completely.” Example: “We jumped off the courthouse stairs all together.” Or: “Lawyer Lee is altogether lazy.” Use “bare” to mean “uncovered.” Use “bear” to mean “animal” or “endure.” Examples: “The baby’s head was bare.” “I saw the bear climb a tree.” “I can’t bear to sit in court.” Use “desert” to mean “leave behind” or “arid region.” Use “dessert” to mean “sweet.” Examples: “His partner deserted him in the hall.” “Bring plenty of water and a hat when you travel in the desert.” “I love decadent desserts.” Use “its” to show possession. Use “it’s” to mean “it is” or “it has.” Examples: “What is its color? It’s beige.” “It’s freezing in the courtroom.” Use “less” for things that can’t be counted or which can be counted, but only as a group, not individually. Use “fewer” for things that can be counted individually. Example: “Less sand; fewer grains of sand.” Use “loose” when you mean “unfastened.” Use “lose” when you mean “misplace.” Example: “My button is loose.” “I’ll lose my tie if I don’t fasten it.” Use “principal” when you mean “main” or “head of school.” Use “principle” when you mean “rule.” “The baby’s head was bare.” “I can’t bear the bear climb a tree.” “I saw the baby’s head was bare.” “I saw the bear climb a tree.” “I can’t bear to sit in court.” “I can’t bear the bear climb a tree.” “I saw the bear climb a tree.”

16. Who and Whom. It isn’t egre- gious to use “who” instead of “whom.” But it’s unforgivable to use “whom” instead of “who” to sound erudite.

Misusing words will effect your writing. Pick on the right idiom. Use adverbs correct.

17. The Sentence Extra. Eliminate the unnecessary “that” in a string of clauses. Incorrect: “The law clerk said that although she will draft the opinion, that no one will read it.” Correct: “The law clerk said that although she will draft the opinion, no one will read it.”

18. “That” Versus “Which.” “That” is a demonstrative pronoun. “Which” is an interrogative pronoun. Examples: “that brief”; “which brief?” “That” is restrictive or defining. “Which” introduces a restrictive clause: a clause necessary to the sentence’s meaning. “Which” isn’t restrictive or nondefining. “Which” introduces a nonrestrictive clause: a clause unnecessary to the sentence’s meaning. Use “that” to introduce essential information. Use “which” to define, add to, or limit

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information. Commas usually set off a clause beginning with “which.”

Here’s a tip: If the word or concept before the “that” or the “which” is one of several, use “that.” If the word or concept before the “that” or the “which” expresses a totality, use “which.” Example 1: “Judge Right must impose a sentence, which he doesn’t want to impose.” Example 2: “Judge Right must impose a sentence that he doesn’t want to impose.” Use “which” if Judge Right must impose but one sentence and doesn’t want to impose it. Use “that” if Judge Right, who has several sentences to impose, doesn’t want to impose only one of them.

Another tip: If you can drop the clause and still retain the meaning of the sentence, use “which.” If you can’t, use “that.” Example 1: “The trial exhibits that were damaged in the fire are my exhibits.” Example 2: “My trial exhibits, which were 8 x 10 inch color photographs, were damaged in the fire.” In Example 1, if you drop the “that” clause (“that were damaged”), the entire sentence would lose its meaning. In Example 2, if you drop the “which” clause (“which were 8 x 10 inch color photographs”), the sentence would make sense. The “which” clause in Example 2 adds information. In Example 1, the “that” clause defines the entire sentence and gives it meaning.

19. Comparisons. Use the comparative degree to compare two persons or things. Use the superlative degree when you want to compare more than two persons or things.

For some adjectives that have one syllable and some adjectives that have two syllables, form the comparative by adding “er” and form the superlative degree by adding “est.” Examples: “Fine” becomes “finer” or “finest.” “Friendly” becomes “friendlier” or “friendliest.”

For some two-syllable adjectives and most adjectives that have more than two syllables, form the comparative by adding “more” or “less.” For these adjectives, form the superlative by adding “most” or “least.” Examples: “The recent decision seemed more hopeful.” “Jack is the least competent attorney in the firm.” “As a litigator, he became most successful.”

Some adjectives have irregular comparative and superlative forms. Examples: “bad” (ill) becomes “worse” or “worst.” “Far” becomes “farther” (distance) or “farthest.” “Far” also becomes “further” or “furthest” (additional or distance). “Good” (well) becomes “better” or “best.” “Little” becomes “less,” “lesser,” or “littler” in the comparative form. “Little” becomes “least” or “littlest” in the superlative form. “Much” (many) becomes “more” or “most.”

20. The Right Idiom. An idiom is a phrase whose meaning is greater than the sum of its parts. Some incorrect idiomatic expressions in legal writing:

“Abide from a ruling” becomes “abide by a ruling.” “Accord to” becomes “accord with.” “Adverse against” becomes “adverse to.” “Angry at” becomes “angry with.” “Appeal at a court” becomes “appeal to a court.” “As regards” becomes “as regards.” “Authority about” becomes “authority on.” “Blame it on me” becomes “blame me for it.” “Centers around” becomes “revolves around” or “centers on,” “centers in,” or “centers at.” “Comply to” becomes “comply with.” “Contrast to” becomes “contrast with.” “Convicted for [or in] a crime” becomes “convicted of a crime.” “Correspond with,” as a comparison, becomes “correspond to.” You “correspond with” when you write a letter to someone. “Desirous to” becomes “desirous of.” “Dissent from this case” becomes “dissent in this case” or “dissent from the majority opinion.” “Equivalent with” becomes “equivalent to” or “equivalent of.” “Free of” becomes “free from.” “Graduated law school” becomes “graduated from law school” or “was graduated from law school.” “Identical to” becomes “identical with.” “In accordance to” becomes “in accordance with.” “Inadmissible for evidence” becomes “inadmissible into evidence” or “inadmissible for the purpose of impeachment.” “In search for” becomes “in search of.” “Insured from a loss” becomes “insured against loss” or “insurance on the property” or “insurance for the business.” “Plead the Fifth Amendment” becomes “take [or invoke] the Fifth Amendment.” “Prefer . . . over” becomes “prefer . . . to.” “Relation with” becomes “relation to.” “Relations to” becomes “relations with.” “Released from a debt” or “released into custody” or “released by the court.” “Stay for awhile” becomes “stay a while” or “stay for a while.” “Ties with” becomes “ties to.” “Warrant of eviction” becomes “warrant of eviction.”

In the next issue, the Legal Writer will discuss the do’s and don’ts of punctuation.

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