

THE LEGISLATIVE SENTENCE, LANGUAGE AND SYNTAX

Introduction

The legislative sentence is the means the drafter uses to translate policy into law.

In each sentence there must be:

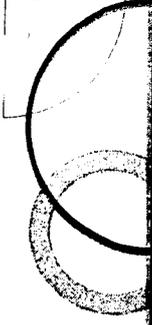
- the legal subject — the person to whom the law is to apply
- the legal action — the law which is to apply, and
- the circumstances in which the law is to apply.

- 
- The legislative sentence is an arrangement of words to express a command or state a prohibition. It confers a power or imposes an obligation.
 - It states:
 - *how*, the manner in which the law is to operate
 - *what*, the nature of the legal action
 - *when*, the conditions under which the law is to operate
 - *where* the circumstances in which the law will operate
 - *who*, the legal subject, the person given responsibility or on whom is placed an obligation or prohibition



A drafter should use-

- short familiar words and phrases
- short sentences which state only one thing
- use the same word to express one meaning
- consistent spelling
- the standard form language of the drafting office



A drafter should not use:

- archaic words such as said, same, aforesaid, before- mentioned, herein before- mentioned, whatever, whatsoever, whomsoever, and similar words
- Latin expressions.
- More words than necessary



Tense

- Laws are meant to be of continuing application and should be written in the present tense.
- This avoids complicated and awkward verb forms. The active voice should be used instead of the passive.



Example

Do not write:

The function of the board will be or will include or shall include.

Write:

The function of the board is..... or includes

Do not write:

A contravention of a provision of this Act shall be an offence

Write:

A contravention of a provision of this Act is an offence



Use of the passive voice should be avoided because:

- a sentence in the passive voice does not assign responsibility clearly
- the passive voice places the receiver of the action before the main person, and
- passive construction is confusing when used in legislation.



Exceptions where the passive voice may be used are:

- when the person to carry the act is unknown, unimportant or obvious. Example-The letters have been dispatched
- to avoid the use of gender specific language
(use gender - neutral)
- to put old or repeated information at the beginning of a sentence new information at the end of the sentence to stand out.



Shall

- The drafter should use “shall” to impose a duty or an obligation.
Example
A driver shall provide a licence on demand
- “Shall” should not be used to predict the future. Where the intention is to predict future action, the word to use is “will”
- A drafter should avoid the use of “shall” to confer a right.

Do not write:
You shall receive

Write:
You are entitled to

- 
- Do not use “shall’ to state a rule of law or how it applies. This creates a false imperative.

Examples

Do not write: *A person shall be eligible to apply for.....*

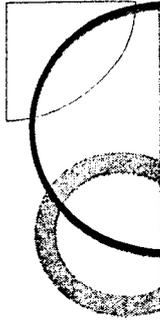
Write: *A person is eligible to apply for*

Do not write: *A person who commits an offence shall be liable*

Write *person who commits an offence is liable.....*

Do not write: *It shall be unlawful,*

Write: *it is unlawful.*



Any

- “Any’ means one or some.
- It is often misused in a legislative sentence when one person or thing is being referred to.
- It can often be replaced by “a”



Each

“Each” refers to two or more in a numerical context where there has been previous identification

Example

- There are ten attorneys in the Division
- Each is a lawyer ~~of~~ ten years standing



Every

- “Every” implies a class

Example

Every attorney is a lawyer

- The reference in this example is to each attorney of an identified class lawyers in the Attorney-General’s Department, the reference here is to the number.



All

The word 'all' is a spurious form of emphasis and should not be used,



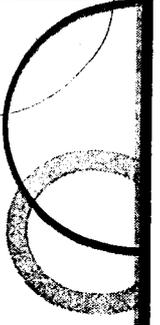
Such

- "Such" is misused in legislation and creates ambiguity.
- It should be substituted with the word "the", "a" or "that".



Same

- “Same” is used as a preceding noun or phrase in legal jargon and does not add to a legislative meaning.
- It should not be used as it creates ambiguity.
- The word “it” or “them” can be used as a substitute



And

- “And” is usually construed conjunctively and connotes togetherness
- A drafter should use “and” to connect two or more phrases, conditions or events, all of which must occur

Example

- The register includes;
 - a. each person who is seventy years or older;
 - b. each person who is permanently physically disabled;
and
 - c. each person who has been declared mentally incompetent



or

- “or” is construed disjunctively and suggests a choice between two or more options.
- A drafter should use “or” to connect two or more phrases events, conditions, when only one or more but not all need occur.

Example

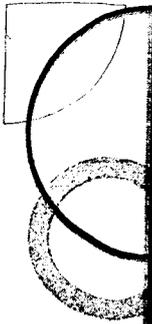
The register includes each person who

- a. Is seventy years or older, or
- b. Is permanently physically disabled, or
- c. has been declared mentally incompetent.



Warning!

- Never use “and/or”,
- rather use **“A or B or both”**.



A, An, The

- “A” is used as an indefinite article in legislative drafting to denote the singular, often as part of a general statement.
- “An” is used before a vowel.
- “The’ is used as the definite article, It is placed before a noun.

Example

- A citizen shall possess an identity card
- The citizen shall possess an identity card before applying for a passport
- The identity card must always be carried.
- An entity that is required to be licensed must submit an application to the Commissioner



Deem

- Deeming clauses should only be used to create a legal fiction.
- It may be used to provide for the retroactive operation of an Act.

Example

This Act is deemed to have come into force on the first day of January 2000.

- In order to avoid a legalism, “consider” or “thinks” can’ be used instead of “deem’ in situations where a legal fiction is not being created.

Example

A doctor shall be registered to practice medicine if the Registrar considers the doctor to be qualified.



Before and After

- “Before’ and “after’ exclude the specified day.
- “After” is better than “from” because “from” is equivocal.

Example.

After 13th March excludes March 13th.

From 13th *March* is debatable although 13th March is probably excluded,.

- The phrase “on” and ‘after” should be used when the specified day is to be included.

- **Example**

The phrase between 1st January and 1st *March* is ambiguous.
After 1st January and before 1st March is preferable.

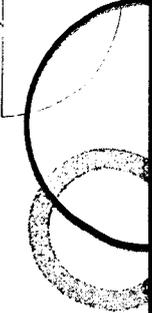


Where

- The use of the word “where” conveys a description of a factual situation

Example

where dogs are running at large.



When

- The use of “when” in legislative drafting is to indicate a single or rare concurrence of a contemplated event;

Example

When the fee has been paid

- The drafter may use “if” to state a condition in a legislative sentence.



Which and that.

- “Which” is non-restrictive, “that” is restrictive.
- If the insertion of a comma in the phrase does not change the meaning use “which”, otherwise use “that”.
- A nonrestrictive clause is one which can be omitted or placed between brackets without destroying the meaning and is set off by commas.

Example

Section 10 which was amended in 1956 was repealed in 1966.

- A non — restrictive clause goes not need to be set-off by commas.



Punctuation

- Punctuation is used by the drafter to assist the reader of the law to understand the text easily.
- There are general rules about punctuation as follows:



Punctuation rules

- Punctuate sparingly and with purpose- Unnecessary punctuation can be very distracting, the drafter should ensure that every punctuation mark must serve a purpose.
- Punctuate for structure and not for sound- A drafter should test every punctuation mark to see whether it assist in explaining the structure of the sentence.
- Be conventional- While most other forms of prose writing admit a measure of individuality legislative drafting does not. The drafter should adhere to the conventional use of punctuation marks.
- Be consistent- Inconsistency is the most common error in the area of punctuation. A haphazard use of punctuation marks, especially the comma can destroy the value of punctuation.

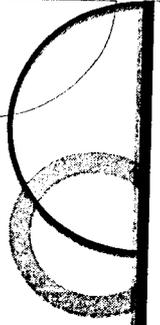


The comma

- A comma may be used to separate items in a series of words, phrases or clauses

Example

Livestock means cattle, horses, goats, sheep and pigs.



By, until, till

- Where action is to be taken by a stated date or until or till a date, action on that day is permitted. It is better to say “not later than” or “before”.

Apostrophes

Apostrophes are used

- to mark the singular and plural possessive terms.
- to separate long and independent clauses joined by co-ordinating conjunctions such as and, but, for, nor, or and so,
- to separate words or numbers in order to aid communication

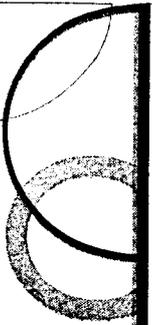
Example

- In 2005, one hundred chickens were sold.



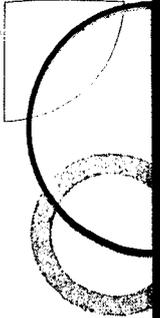
The colon

- A colon is placed after an expression that introduces a series of items



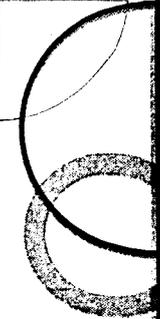
The semi-colon

- The function of the semi-colon is to show a relationship between elements of a sentence which a complete break into separate sentence may obscure.
- The semi-colon is also used to coordinate a series of paragraphs, subparagraphs or listed items.



Example

- The Commission shall be the co-ordinating agency for the enforcement of:
 - the Anti- Money Laundering Act, 2003 (Act 102);
 - the Proceeds of Crime Act, 1995 (Act 103);
 - the Miscellaneous Offences Act (Act 104); and
 - any other law or Regulations related to economic and financial crimes.



Hyphen

- The hyphen should generally only be used when the word's proper spelling includes a hyphen.
- The following are exceptions to this rule:
 - Hyphenate if the second element of the word is capitalized or a figure

Example

- Anti-Semitic
- Pre 1914
- They may also be used where reference is being made to important officials, statutory bodies or administrative bodies.
- The names of private organisations can be capitalized.
- A drafter should state a rule or category directly rather than ' the rule or category by stating its exceptions.

Example

- Do not write: All persons except those eighteen years or older
- Write: Each person under eighteen years of age

When exceptions are used, the rule or category should be stated first before the exception.

- Do not write. *Draftaria*, Transylvania must upgrade
- Write: Each state except *Draftaria* and Transylvania must upgrade.

The proviso

- Phrases with the words “provided that” should be avoided because they create ambiguity, they can often be removed or substituted by the word “if”,

Example

- Do not write: Provided that the fee is paid
- Write: if the fee is paid

Split infinitives

A split infinitive is a grammatical **construction** where a word phrase, usually an adverb or adverbial phrase occurs between the maker “to” - ‘ and bare infinitive form of the verb. In English, an infinitive verb fulfils the function a noun and is formed with ‘to’; for example, to take, to laugh and to be.

An example of a split infinitive is” to boldly go

- where no man has gone before”.
- *The infinitive is “to go” and it is split by the adverb “boldly”*



Example

- The courts intention
- Children television
- Farmers co-operative association
(plural)



Positive writing

- The drafter should write positively; if an idea can be expressed either positively or negatively, it should be expressed positively.

Example

- Do not write: the panel may not consider candidates other than those with second - class upper degrees
- Write: the panel will only consider candidate with second – class upper degrees

The use of several negatives in one sentence should not be used. A negative can be expressed in positive form such as:

- | | |
|----------------------------|---------|
| • Did not remember | forgot |
| • Left out | omitted |
| • Did not pay attention to | ignored |

Capitalization

- The drafter should use capital letters sparingly. Capital letters should be used for proper names.

Example

Ghana

Lesotho

- The use of capital letters should be restricted to cases where special attentions is drawn to particular circumstances.

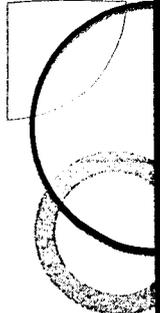
Example

Minister may by legislative instrument make regulation.

Example

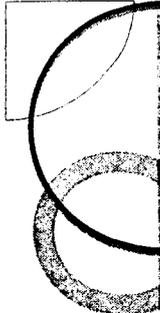
Do not write: Be sure to promptly attend to the clients...

Write: Be sure to attend promptly to the clients; or be . to attend to the clients promptly



Nouns: singular or plural

- The singular includes the plural and the plural in the singular. Use a singular noun instead of a plural noun. This will avoid the problem of whether the rule applied to each member of a class or to the class as a whole.



Example

- Do not write: The doctor will treat each patient suffering from typhoid fever malaria fever.
- Write: The doctor will treat each patient suffering from typhoid fever and each patient suffering from malaria fever.
- If the plural must be used in a compound word, the significant word takes the plural as shown below:

- 
- | | |
|----------------------------------|-----------|
| • Do not write: | Write: |
| • Attorney-generals :
general | Attorney |
| • Notary publics
public | notaries |
| • Director – generals
general | directors |



Abbreviations

- The drafter should avoid abbreviations and acronyms.



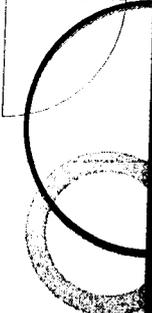
Example

- The acronym should be written in full as non-government organisation which can be shortened in the definition section to:
- “organisation” means a non-governmental organization



An exception is where the acronym has become familiar to the public.

- *Example*
- AIDS rather than acquired immune efficiency syndrome
DNA rather than deoxyribonucleic acid.



Couplets

- Where words have the same effect or the meaning of one word includes the other, the drafter should not use word pairs.



Do not write

Write:

- | | |
|------------------------|---------------------|
| • Order and direct: | order or direct |
| • Authorize and direct | authorize or direct |
| • Means and includes | means or includes |
| • each and every | each or every |
| • Null and void | Null or void |
| • Full and complete | full or complete |



Listing

- When listing membership of a body, use commas as the sentence is continuous. Use a colon at the end of introductory words and semi-colons at the end of each paragraph when listing objects and functions in tabular form. After the penultimate item, use “and” or “or” as appropriate.

-



Paragraphs.

- Short paragraphs improve the clarity of a provision. Each paragraph should deal with a single, topic. Lengthy, complex or technical provisions should be split into a series of related paragraphs.

-

Gender — neutral language

- The use of gender neutral language is best practice *in legislative drafting*, *The reflection of male dominance in the legislative sentence should be avoided.*

Examples of alternatives and the use of alternate words *generally can be found in Appendix 3*. Gender specific pronouns should not be used.

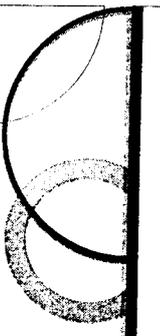
Example

- Do not write: An employee must wear his identification card
- Write: Employees must wear their identification cards
- Do not write: He must present his application to
- Write: Each application must be presented to
- Do not write: The supervisor or his representative must ins. ~~the~~ work done
- Write: The supervisor or the representative of the supervisor must inspect ^{inspect} the work done.
- Do not write: The director shall hold office until his successor~~y~~ appointed.
- Write: The director shall hold office until a successor is appointed.
- It is often necessary to repeat words to achieve non-sexist: engage where a
- Nominalization is placed with a verb form, for example.
- Do not write: a person who has stolen goods in his possession
- Write: A person who possesses stolen goods commits a crime.



Archaic words

- Legalese in archaic words should be avoided as it mystery “heretofore” or other similar words should not be used; a possible word “hereby” although the phrase “by this Act” can be used as institute.



Expressing numbers

- In legislation, numbers should be expressed in words to**** wrong figures can be typed accidentally if figures are used. In Schedules however, figures may be used.



Word economy

- Verbosity should be avoided and legal language should be as direct as possible.

-



Sections and subsections

- An Act of Parliament is divided into sections which contain one idea. If the sentence is long, it should be divided into subsections, when these are read together they should convey the same idea. Sections are numbered in Arabic numbers consecutively and subsections are also numbered consecutively but in brackets.
- Where the section subsection is long, it is best to divide it into paragraphs 1 to create a full sentence when read with the introductory words and possible including words. Paragraphs are numbered with lower case letters of the alphabet in bracket.
- Further sub-divisions of paragraphs are sub-paragraphs numbered with small L in numbers. The legislative sentences of a Constitution are called articles. The divisions are called clauses. In subsidiary legislation the sentences are referred as to regulations and the sub-divisions as sub-regulations.
- The family tree of sub-divisions be found in legislation is in Appendix 4.
- The numbering in. legislation takes this form:



Referential legislation

- Where reference is made in one legislation to another, it is important to ensure that the imported legislation fits in. There may be problems with the meaning of words where this has changed due to judicial precedent. In order to avoid the situation where reference is made to another enactment to determine meaning, the provision from the referred text should be repeated.



Uses of precedents

- Very few things are novel, the drafter can benefit from information ^{gained} from the laws of other jurisdictions, more especially with the access information communication technology has provided. This reference should however be handled ^{with} care since the circumstances in each country differ. It may be better to base a draft on precedent within the jurisdiction than to modify foreign legislation carelessly.