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## CHAPTER 8

# General tips on legal writing

As the previous chapters have discussed, a good, first-class law essay presents clearly identified legal authority through sophisticated and well-organised legal arguments. Although the CLEO method of essay writing does not offer instruction on the content of the law, it provides you with an effective means of conveying your knowledge of the substance of the law and thus constitutes a substantive, rather than merely stylistic, writing tool.

However, as has been mentioned before, law is as much about style as it is about substance. How you say something affects how the reader or listener perceives your argument. People will make judgments about the quality and merit of your legal thinking based on elements that have nothing to do with the content of your writing. If you doubt this is the case, think about your most recent trip to the bookshop or library. When you're browsing for something to read, do you pick up the book that looks crisp and pristine, with clean, white pages and impeccable type, or do you naturally gravitate towards the one with a bent corner, faded printing and crooked lines? When you scan a newspaper rack, looking at headlines, do you trust the truthfulness of the publication that reads, 'Prez Sez, "We Want More!"' more or less than the one that reads, 'Union Leader Seeks Wage Increase'? Chances are, you will find the latter more persuasive and informative (though perhaps less colourful), not only because it uses longer words (more on that later), but because it appears to be more objective and uses proper spelling and grammar. You know that the first paper is misspelling the words 'President' and 'says' on purpose, but doubtless there have been other occasions when you have found errors in newspapers, books, letters or advertising materials. In all honesty, haven't you felt just the slightest bit smug when you discovered another person's mistake? A bit superior perhaps? Maybe a bit disdainful that the other person either didn't know better or didn't care enough to check his or her work?

If there is one thing you do not want to do as a lawyer, it is to make the reader of your work feel either superior to or disdainful of you. You want to appear clever, diligent and infallible: certainly not the kind of person who is likely to make a mistake on any level. Someone who is too harried or careless to check his or her spelling and grammar may very well be the kind of person who is too harried or careless to check that a case or statute is still good law. If your reader doesn't trust you, he or she may be more inclined to double-check or argue with points that might otherwise have passed muster. To avoid giving the impression of someone who is inclined to err, you need to make sure that your writing style is crisp and professional and that your use of language is correct at all times.

Unfortunately, many people – students as well as teachers, lawyers and other well-educated professionals – do not know what good writing or good grammar is. In many ways, law students cannot be blamed for not knowing the basic rules of grammar, since it is a common assumption that good writing 'just comes naturally' to some people and cannot be taught. In fact, nothing could be further from the truth. While not everyone can become a Nobel prize-winning author, almost everyone can improve his or her writing style by learning a few simple techniques. Therefore, this chapter will discuss the following points:

- (1) why it is important to have a good writing style;
- (2) why you need to learn the rules of good writing yourself;
- (3) why you should work to develop that style now; and
- (4) what constitutes good legal writing.

The chapter will conclude with a series of self-tests and exercises to help you overcome any problem areas.

## 8.1 The importance of good writing

There are two very good reasons for writing correctly. First, by so doing, you will advance your own career. Think about it. Your written work product is aimed toward a very small, very discriminating audience. Almost every time you set pen to paper (or fingers to keyboard), your professional reputation is on the line. For example:

- If you are a student, your work is going directly to tutors or examiners who will (1) write the job references and (2) award you the class markings that will affect your job prospects.
- If you are a solicitor, your work is going directly to a partner, a peer, a client, the court or your opposite number at another law firm.

- If you are a barrister, your work is going directly to the solicitor who hired you, to opposing counsel or to the court.
- If you are in business or working in a corporate legal department, your work is going to your superiors, your peers, other departments, solicitors or barristers you have hired, potential adversaries and possibly even the press.

In none of these cases do you want to look careless. Signing off on a piece of work that contains spelling or grammatical errors makes you look ill-informed at best, sloppy or incompetent at worst. Don't do it.

Good writing often goes unnoticed. It is a quality that is most appreciated in its absence. Seldom does someone say, 'well done, nothing misspelled in that memorandum' or 'fabulous use of commas!' However, fill that same piece of writing with typographical errors, misplaced modifiers and split infinitives, and just watch your reputation plummet.

It may very well be that none of your teachers has ever corrected your grammar, so you may be operating under the assumption that all is well. In fact, few people know what constitutes good writing and even fewer can list the rules of grammar by rote. Your teachers may not have felt qualified to identify misplaced antecedents (meaning the words to which words appearing later in the sentence refer) or give you tips about dependent and independent clauses. This is not to fault your teachers in any way: grammar is simply not taught these days, as you yourself are probably aware. Your teachers may also have been more concerned with the content of your writing than with your style. Again, this is not to fault your teachers but merely to note why you may not have been given the necessary instruction.

Now that you are reading for a degree in law, things have changed. Presentation is as important as substance. Your tutors, employers, opponents and clients may not know why your writing appears awkward or confusing, but they will subconsciously rate someone who has a strong writing style and who avoids errors as a better lawyer. People who are considered better lawyers get better jobs and better work.

The second reason why it is important for you to learn how to write well is so that you can do your job better. Poor writing is not just bad for you personally. It can be bad for your client and for your employer as well. Think of all the contract cases you have read during your years of study. How many of them have turned on the placement of a comma or the existence of a misspelled or misplaced word? You may have thought at the time that the judges were being rather nit-picky, but the English style of contract construction requires that kind of objective, analytical, linguistic analysis. Errors end up in court, and

you don't want to be the one explaining to your client or your supervisor how that error passed you by. 'My secretary typed it that way' is not an excuse. You are responsible for your work product and for overseeing the work product of those whose work you direct. In some instances, you may also be responsible for making sure that your client doesn't write anything that is legally problematic. As the contract cases you have read suggest, the term 'legally problematic' can include errors of style and grammar. You mustn't be afraid to correct your client's or your supervisor's language when necessary. However, to be able to carry out your job properly, you must know what constitutes good writing.

## 8.2 The need to learn the rules of grammar yourself

Lawyers, particularly those in the big City firms, are spoiled. Not only do they have lots of staff at their disposal – secretaries, word processors, junior solicitors and trainees – they have the most modern computer equipment at their fingertips. Surely, with all this backup, there is no need to learn the rules of grammar oneself?

Not true. First, if you don't know what constitutes good writing, why would you suppose someone junior to you would know any better? In any event, are you sure that those people will feel inclined to tell you of your errors? They might think it is easier or more polite to let the errors go by – after all, it's not their job to correct your writing. On the other hand, you may need to learn the rules of grammar because you will be starting your career at the bottom of the ladder and either need to check your own work yourself or check the work of those who are more senior to you and who allegedly don't have the time to write properly. Whether you're at the top or the bottom of the ladder, you need to know the difference between good and bad writing.

Second, good writing is not something that can be programmed into computer software. For example, a good spell-checking program can correct your spelling of 'there', 'they're' and 'their', but can't tell you whether you've used the right one in the right place. Grammar checkers may indicate when you have a sentence fragment, but that won't help if you don't know what a sentence fragment is and how to correct it. Many grammatical problems or stylistic errors slip past a computerised grammar program altogether. You cannot rely on a computer to pick up every human error (assuming that you have even remembered to run the spell and grammar check features before printing out the final draft of your document).

The other problem with relying on others or on computers to check your work is that you often run out of time to do justice to any

suggested revisions. Because most people know that an error can creep into their work at any point during the rewriting process, they often don't run the computer checking programs until the very last minute. Unfortunately, if lots of errors are found, you may not have time to correct them all. If you make fewer errors during the writing process, there will be fewer to correct at the last minute, thus improving the quality of your final product.

Therefore, it is up to you to learn how to write well. You cannot rely on others, nor can you rely on computers to check your work for you. You should seek feedback from other people and run a spell and grammar check on your computer by all means, but you shouldn't expect them to do the hard work for you. The hard work is yours alone.

### 8.3 The need to develop a good writing style now

You may admit that there are good reasons to develop a good writing style once you enter the professional world, but why work on acquiring it now? Haven't you enough to do, learning the substantive law? Quite simply, there's no time like the present to learn new skills. In fact, university and professional courses are the best time to work on your writing style, since you are not under the same kind of pressure that you will be under in professional practice. Pupillages and traineeships are notoriously difficult, and you will be constantly scrambling to learn new skills and satisfy the demands of your principals and pupil masters. Feedback on your work is even more rare than it is in the academic context. Time is at even more of a premium. Because it takes time and practice to acquire a good written style, you should start ingraining these habits into your routine now. Students are expected to make errors, since there is no other way to learn; professionals, however, are expected to have mastered these skills already and can damage their careers if they make too many basic mistakes.

As you consider how to prepare for life after university, consider this: for the most part, trainee solicitors and pupil barristers are considered to be professionals rather than students, despite the legal profession's claim that traineeships and pupillages are an extension of the learning process. Many trainees and pupils feel constantly under scrutiny, as if they are on a one- or two-year interview. Although one would hope that you would find your pupillage or traineeship educational, you will be highly focused on learning vocational skills rather than on the basics of legal writing. Those skills you should know already.

For those of you who are more mercenary, remember that people who have a good writing style get good marks on their university and vocational courses, and people who get good marks get good jobs.

Law is about persuasion as much as it is about content. The art of persuasion involves getting the reader on your side and demonstrating the ease and logic of your position. If you confuse the reader in any way or make it difficult for the reader to follow your thoughts, either through the introduction of difficult concepts, illogical structure or awkward language, you cannot communicate, let alone persuade.

## 8.4 The elements of a good legal writing style

Good writing consists of two basic elements. First, there are the mandatory elements of style: grammar, punctuation, spelling. You cannot consistently break mandatory rules and hope to be considered a good writer. Second, there are the discretionary elements of style: organisational structure, word choice, pacing. While there is a significant amount of variation in how one approaches discretionary aspects of style, deviating too far from the norm can be distracting and therefore undesirable. This is particularly true in legal writing, which is highly conventional. We will begin with a discussion of the mandatory elements of style before turning to the discretionary ones.

### 8.4.1 Mandatory elements of style

Good grammar is the key to good communication. While not everyone can enunciate the rules of grammar, people become confused when the rules are not followed. Grammar is often absorbed subliminally rather than taught formally, at least in the United Kingdom. Other nations take a more rigid approach to the acquisition of language and teach the rules of grammar from an early age. However, just because British schools don't focus on grammar doesn't mean that those rules don't exist or that they do not facilitate understanding.

Consider the following text, for example.

#### EXAMPLE

Ethan borrowed Andrew's coat and scarf one winter day, but didn't return it. He became quite angry when the holidays were coming and everyone left university to go home. He rang Ethan, but he had already gone, along with his things.

This example does not illustrate all possible grammatical errors, but it demonstrates how improper use of language both grates on one's nerves and leads to confusion. In the first sentence, you immediately

see that ‘it’ is incorrect. If the writer means both the coat and scarf, the word ‘them’ should be used. If the writer means either the coat or the scarf, then the item should be clearly identified by using the noun.

The second sentence contains a lack of clarity regarding what is meant by ‘he’. Because Ethan was the subject in the first sentence, one might think that ‘he’ means Ethan. However, ‘he’ might also refer to Andrew, who is the last person mentioned in the preceding sentence. From the context of the second and third sentences, it becomes apparent that ‘he’ is Andrew. The use of ‘his’ in the third sentence is equally confusing – it could mean that Ethan has left with Andrew’s things (meaning the coat and scarf, presumably) or that Ethan has left with Ethan’s things.

As this example shows, major misunderstandings can occur as a result of minor errors. Although most law students have a relatively strong intuitive grasp of the rules of grammar, many people can use a few tips regarding common problem areas. This chapter, therefore, will focus on those basic areas of concern. However, the following discussion is by no means comprehensive, and if you want more detailed instruction in English grammar, you can refer to one of the many books dedicated to that subject. Time spent studying the art of writing is never wasted.

We will now consider several basic problem areas concerning the following:

- parts of a sentence;
- constructing a sentence;
- subject-verb agreement;
- verbs and verb phrases; and
- punctuation.

#### a) *The building blocks: parts of a sentence*

To discuss the rules of grammar, we need a common vocabulary. Here are a few terms that you may know as well as a few that you may not.

**Noun** A person, place or thing

**Proper Noun** The actual name of the person, place or thing

**Pronoun** A reference to a proper or common noun, ie, ‘he’, ‘she’ or ‘it’

**Adjective** A word modifying (describing) a noun

**Verb** A word showing action

**Adverb** A word modifying (describing) a verb (an adverb usually ends in ‘-ly’ – for example, ‘slowly’ or ‘coldly’)

**Gerund** A verb form ending in ‘-ing’ that stands in for a noun – for example, ‘my understanding of the situation’ contains a gerund

**Preposition** A word that shows a relationship between a verb to a noun – for example, you walk *through* a door or *by* a door but generally not *under* or *into* a door

**Conjunction** A word that connects nouns – for example, ‘and’, ‘or’, ‘but’ and ‘since’

**Clause** A group of words acting together<sup>1</sup>

**Independent clause** A group of words that can stand alone as a sentence

**Dependent clause** A group of words that cannot stand alone as a sentence

These phrases will be supplemented and described in more detail as we progress through this chapter, but this provides a sufficient basis from which to start.

### b) *Constructing a sentence*

Simple sentences require a noun acting as a subject and a verb.

*John ran.*

(noun as subject) (verb)

Many sentences have a subject, a verb and an object, which is the thing the verb is acting upon.

*John threw the ball.*

(noun as subject) (verb) (noun as object)

As a lawyer, you will sometimes use these kinds of simple sentences – since they are very good for effect – but will often use more complex sentences. For example, you might write a sentence that has a dependent clause describing the way in which something is done (an adverbial clause) or describing one of the nouns in the sentence (an adjectival clause).

*Flicking his hair out of his eyes, John threw the ball.*

(adjectival clause describing subject), (subject) (verb) (object)

*John threw the ball, which was coming apart at the seams.*

(subject) (verb) (object), (adjectival clause describing object)

Notice how these adjectival clauses appear next to the nouns which they describe and are offset by commas. A descriptive, dependent word or phrase should be placed as close as possible to the word it modifies, as a general rule. The rule about commas is slightly more

#### WRITING TIP



*Good writers vary the length and complexity of their sentences for effect.*

#### WRITING TIP



*Put modifiers as close to the modified word or phrase as possible.*

<sup>1</sup> Some grammarians distinguish between phrases and clauses, but there is no need to do so for our purposes.

**RULE**

Use two commas when a clause describes an object or action. Do not use commas when the clause identifies the object or action.

confusing and will be discussed in more detail below. Generally, however, you use commas when the clause describes an aspect of the noun rather than helps to identify the noun. For example, when you say, ‘John threw the ball, which was coming apart at the seams’, you are describing the ball’s qualities. There is no question about which ball is under discussion, and you could delete the phrase without confusing the reader as to which ball was thrown. If you say, ‘John threw the ball which was coming apart at the seams’, however, you are not just describing the ball’s qualities. Instead, you are identifying the ball that John threw as compared to other possible balls (for example, if he had a selection of three and he threw the one coming apart at the seams, as opposed to the two new ones). Commas will be discussed at more length below, but you need to know the difference in the types of clauses.

Sometimes you can have two verbs both relating to the same subject. For example:

*John threw the ball and dodged the tackle.*

(subject) (verb) (object) (conjunction) (verb) (object)

Notice how this sentence is different from the following, which has two verbs and two subjects.

*John threw the ball, and Bob dodged the tackle.*

(subject) (verb) (object), (conjunction)<sup>2</sup> (subject) (verb) (object)

There is a comma between the two clauses in the second example because each clause can stand alone as its own sentence. The first example contained no comma, since that would improperly separate the subject of the sentence (John) from the second of the two verbs. In that sentence, the phrase ‘dodged the tackle’ cannot stand on its own apart from the subject, ‘John’.<sup>3</sup>

<sup>2</sup> Some students use commas correctly with the word ‘and’ but not with the word ‘but’. The rules are the same for both words. If you want the subject to apply to both verbs (the one preceding and the one following the conjunction), then do not use a comma. If you do not want or need the subject to apply to both verbs (ie when both clauses can stand independently on their own as sentences), you can split the sentence with a comma.

<sup>3</sup> There is one exception to the general rule that you should not separate a verb from its subject. If a comma is necessary to make the meaning clear, then you can insert one. For example, the comma in the sentence, ‘The contract allowed the defendant to deliver apples or oranges, and therefore was not breached upon delivery of oranges’, is technically incorrect. However, because the comma groups the term ‘apples or oranges’ visually, it helps the reader understand the meaning of the sentence and is therefore an exception to the general rule. Usually the ‘extra’ comma occurs (properly so) in sentences that have multiple conjunctions and need clarification.

Sometimes people realise that two clauses are independent and therefore can stand alone. Thinking they don't need an 'and', they simply slip in a comma as follows:

*John threw the ball, Bob dodged the tackle.*

This technique<sup>4</sup> leads to a *run-on sentence* – in other words, a sentence which continues on after its logical end. It would be better to use the 'and' that was used in the first example or simply use a full stop and start a new sentence.

*John threw the ball. Bob dodged the tackle.*

While the meaning in this example is relatively clear either way, due to the extreme simplicity of the sentence, think about a more complex example using legal terms:

*The contract between the parties does not provide for a modification in terms except by written agreement between the parties, no such written agreement exists here.*

Everything is correct except for the misuse of the comma. Replace it with a full stop or semicolon and all will be fine.

Sometimes you will experience the reverse problem – creating a sentence that is incomplete. Such partial sentences are called *sentence fragments* and lack a necessary element such as a subject, a verb or an object. For example, the following phrase lacks a subject:

*Threw the ball.*

(verb) (object)

While some types of sentences can have an implied subject (for example, the imperative tense, which commands an implied subject to do something – 'Throw the ball!'), most sentences require a subject. Other errors occur when you use a verb that requires an object to make sense. For example, the following sentence is incomplete:

*Susan met.*

(subject) (verb)

The verb 'to meet' requires an object to make sense – you must meet someone. Technically, this is the difference between a transitive verb (which is a verb which transfers its action to an object) and an intransitive verb (which can stand on its own). Some verbs can be both transitive and intransitive, depending on the circumstances. Check a

<sup>4</sup> You could classify this example as either a run-on sentence or a comma splice, which is discussed below.

dictionary if you're unsure whether the verb you're using requires an object or not.

Sentence fragments can be quite long and can thus look like proper sentences. However, a fragment is often introduced by a word, such as 'which' or 'that', which is normally used to introduce a descriptive clause. For example, the second sentence in the following excerpt is a fragment:

*Numerous errors exist in this contract, stemming from an improper application of the Sales of Goods Act. That resulted when the parties attempted to anticipate every possible circumstance. Instead, they should rely more on the Act.*

#### WRITING TIP



Be particularly careful when you begin a sentence with 'which' or 'that'.

It looks as if all the elements of a sentence exist – subject (parties), verb (anticipate), object (the rest of the sentence). However, the phrase cannot stand alone – in this case, the word 'that' is describing the improper application of the Act, rather than the numerous errors in the contract. To correct the error, the author needs to make that connection explicit, either by amending the fragment so that it can stand by itself (for example, saying, 'The improper application occurred when ...') or tacking it on to the previous sentence (for example, saying, '... Goods Act that resulted when the parties ...'). As it stands, the phrase is improper.

Of course, there are instances where you can begin a sentence with 'that' – for example, when 'that' refers to a noun or concept described in the previous sentence.

*Capital punishment is morally wrong. That has been accepted by jurists in many nations.*

'That' may also describe a noun acting as a subject.

*That party was dull.*

You may also begin a sentence with 'that', 'which' or a similar word if you then follow that dependent clause with the noun that it modifies or if the clause itself stands as a noun. For example:

*That reform is necessary is an idea whose time has come.*

Notice, however, that such phrases are awkward and wordy. You can write much more clearly and powerfully if you cut straight to the important point: 'reform is necessary' or 'reform is an idea whose time has come'.

#### c) Subject-verb agreement

Everyone knows how to conjugate a verb. For example, the verb 'to be' is conjugated 'I am', 'you are', 'he is', 'we are', 'they are'. In the abstract,

you would never try to say 'I are' or 'we am'. You know that when you have two subjects, you use a plural verb: for example, 'Joanna and Andy are outside'. When writing, however, you can sometimes become confused about how many subjects relate to the verb.

Often, the problem occurs when you have a descriptive phrase that ends in a noun with a different number than the noun which relates to the verb. Because the last noun is closest to the verb, you think that you should conjugate the verb according to what would be called for by the last noun. For example, you might want to write:

*A group of birds fly over the lake.*

Here you are conjugating 'fly' to correspond to the plural 'birds'. In fact, you should write:

*A group of birds flies over the lake.*

The noun 'group' is the subject of the sentence. You could take 'of birds' out of the sentence completely and say, 'A group flies over the lake.' You cannot say, 'A group fly over the lake.' 'Group' is a singular noun, 'fly' is a plural form of a verb. Of course, you could avoid the potential for confusion by saying, 'Birds fly over the lake'. What you cannot do is use the first example, since it violates the rule that the verb should match the subject in number.

Lots of confusion exists concerning collective nouns. For example, the words 'audience', 'team', 'staff' and 'council' describe groups but are themselves singular. You will therefore need to use a singular verb, no matter how many objects exist in any descriptive phrase that follows. Sometimes the convention as to whether a noun is singular or plural will depend on whether the speaker is using American or British English. If in doubt, change the sentence structure to avoid the problem. You may consider it a minor matter, but you don't want to run the risk of violating the one linguistic rule that your reader holds dear to his or her heart.

Another area of confusion involves sentences that use 'either/or' constructions or pronouns that appear to be of one number, but are classified as another. Just remember:

Either X or Y <sup>5</sup>	Requires singular verb
Neither A nor B <sup>6</sup>	Requires singular verb
Everyone	Requires singular verb
Anyone	Requires singular verb
No one (or none)	Requires singular verb

<sup>5</sup> Where X and Y are both singular nouns. If one noun is singular and one is plural, conjugate the verb to correspond with the noun which appears closest to the verb.

<sup>6</sup> Again, where A and B are both singular nouns. If one noun is singular and one is plural, conjugate the verb to correspond with the noun which appears closest to the verb.

#### WRITING TIP



*Often the easiest and best solution to a grammatical problem is simply to change the sentence structure.*

**WRITING TIP**

*Gender-neutral language is here to stay. Get used to using it correctly.*

The rise in the use of gender-neutral language can also lead to problems relating to subject-verb agreements. As you may know, the Lord Chancellor has supported the use of gender-neutral language in legal writing. This means avoiding ‘he’<sup>7</sup> as a generic pronoun and finding some other substitute – ‘he or she’, ‘she’, ‘one’ or using a plural. Problems arise when people try to use ‘they’ without making the rest of the sentence plural. For example, at one time, one would have written:

*A criminal is innocent until he is proven guilty.*

Modern versions might include ‘A criminal is innocent until she is proven guilty’, ‘A criminal is innocent until he or she is proven guilty’, or, avoiding the pronoun altogether, ‘A criminal is innocent until proven guilty.’ You might change the first noun to a plural form, thus requiring a change in the verb but allowing the neutral ‘they’ to be used: ‘Criminals are innocent until they are proven guilty.’ What you cannot say is: ‘A criminal is innocent until they are proven guilty.’ The error is quite obvious in this sentence, but there are other times when the disparity between the number of the first and second nouns is not quite so obvious. Watch out for it.

#### d) *Verbs and verb phrases*

Most people have no problems conjugating verbs once they get past a few minor subject-verb agreement problems. Sometimes verbs are in the past tense, sometimes they are in the present tense and sometimes they are in the future tense. What is confusing is when they are in the subjunctive. Most problems with the subjunctive arise with if-then constructions. Normally, you use the subjunctive when you have a situation involving an imaginary, doubtful or wished-for outcome. For example, you should write:

*If I had more money, I would travel the world.*

Normally you would conjugate the verb ‘to have’ as ‘have’ with the pronoun ‘I’. However, because the speaker here is not rich and is speaking about a hypothetical situation, the subjunctive is used. Compare this sort of situation with the following:

*If I have enough money, I will visit you next week.*

In this case, there is no doubt, or at least not the same kind of doubt – the visit will take place if and when the money is found. While you can have the subjunctive in sentences that do not use if-then phrases – for example, ‘Alex wished he were dead’ or ‘I wish I were rich’ (using the

<sup>7</sup> Also avoid ‘man’ as a so-called genderless noun.

subjective ‘were’ rather than the indicative ‘was’ to indicate that he’s not, in fact, dead and I am not, in fact, rich) – it is usually the if-then sentences that cause the most trouble, although they are the easiest to resolve once you know the rule.

Another problem associated with verbs involves verb phrases: infinitives, gerunds and participles. Most of you already know that you’re not supposed to split an infinitive, which is the basic ‘to do something’ form of the verb (‘to go’, ‘to sleep’, ‘to eat’), with another word, usually an adverb. No matter how much you like phrases such as ‘to boldly go where no man has gone before’ (the famous *Star Trek* introductory narrative), do not use them in legal writing. While the rule regarding split infinitives may be ignored by Americans and journalists, British lawyers must adhere to the traditional form, saying either ‘to go boldly’ or ‘boldly to go’.

The second issue with verb phrases involves gerunds, which are words ending in ‘-ing’. Although they may appear to be verbs, gerunds act as nouns. Therefore, you can use them as subjects or objects of sentences. For example:

*Running is beneficial to your health.*

The thing you need to remember with gerunds is that they need a possessive when they are preceded by nouns or pronouns.<sup>8</sup> Therefore, you should write:

*Father noted that Quentin’s driving skills were not up to par.*

*Jenny’s romantic happiness was furthered by her attending the ball.*

Finally, you may have heard the phrase ‘dangling participle’ at some point during your schooling. ‘Participle’ refers to the two verb forms known as the present participle (words ending in ‘-ing’, referred to in the discussion on gerunds) and the past participle (words ending in ‘-ed’ or the equivalent irregular form). Sometimes phrases beginning with a participle can be used to modify another word in the sentence. For example:

*Enjoying their cud, my sons watched the cows.*

*Rotten to the core, Eustace smelled the fragrant apples.*

In these two examples, the dependent clauses which begin the sentences are misplaced and are called dangling participles. As you recall from the discussion above, you should always put dependent, modifying

<sup>8</sup> Gerunds also act as a singular noun, not a plural noun. Conjugate your verbs accordingly. For example, ‘Driving in cities is frustrating.’

clauses as close to the words they modify as possible. These two sentences put the phrases containing the participles in the wrong place, thus altering the meaning of the sentences. If we put the participles in their proper place, all becomes clear.

*My sons watched the cows enjoying their cud.*

*Eustace smelled the fragrant apples, rotten to the core.*

Sometimes you will need to correct a misplaced modifying clause by including additional words or altering the sentence somewhat, but if you keep to the rule of putting modifiers as close to the word which they modify as possible, you will avoid most errors.

### e) Punctuation

A number of common errors fall under the heading of punctuation. While some of these errors may be more confusing to the reader than are others, all violate the technical rules of grammar.

#### Capitalisation

Capitalise only those words that appear at the beginning of sentences and proper nouns, ie formal names of people and places. For example, capitalise ‘Paris’ and ‘Oxfordshire’ but not ‘my neighbourhood’. Similarly, capitalise ‘Uncle Joe’ or ‘Mum’, but not ‘my mum’ or ‘my uncle’. A good rule of thumb is that if you have to put a possessive word (my, her, their) in front of a noun, it’s not a proper noun.<sup>9</sup>

Titles are another kind of word that are often wrongly capitalised. If a title is used as a common noun describing the position, rather than describing the person, then don’t capitalise it. For example:

*I interviewed the president of the company.*

*I interviewed President Smith of Acme Plumbing Company.*

Students commonly make similar errors with words like ‘court’ and ‘judge’. If you are identifying a particular court or judge by name, capitalise both words. If you are not naming someone in particular, don’t capitalise the term. For example:

*Timothy McMurtry was a judge in the District Court.*

*The courts are under-funded, according to prominent judges.*

*Interestingly, the Court of Appeal is not the highest court in the land.*

<sup>9</sup> You could say ‘my Uncle Joe’ if you were using ‘Uncle Joe’ as his name, but you would not say ‘my Uncle, Joe Smith,’ where the word ‘uncle’ described a relationship rather than a name. In that circumstance, you would say, ‘my uncle, Joe Smith’.

**WRITING TIP***Avoid random capitalisation.*

The point is, do not randomly capitalise nouns. Not only is it annoying and incorrect, it can cause problems in legal practice, where capitalised words are often used as defined terms. Reading a lot of contracts will start to confuse your eye, and you may start to think that terms like ‘net profit’ and ‘managing agent’ are always capitalised, just because you see them capitalised in the documents you read in your work. Don’t be fooled. Those terms would not be capitalised if they had not been defined in the contract. If you begin capitalising terms unnecessarily, you may be creating an ambiguity that could lead to litigation.

In the course of your studies, you may find that some law books or journals capitalise words such as ‘State’ in violation of the rules of grammar. The editors of those publications have made a decision to capitalise some words to indicate that they are being used as legal terms. While such capitalisation is unnecessary and technically incorrect, the convention is accepted by many people in academia. Nevertheless, you should try to avoid purely random capitalisation in your written work, for the reasons stated above.

If, for some reason, you are unclear about whether to capitalise something, do not try to hide your confusion by alternating between capitalising the term and not capitalising it. Be consistent. The only exception is if you are at one point discussing a term that is not being used as a proper noun – president, for example – and then go on to refer to President Smith. In that instance, you capitalise the word in one context but not the other, precisely because it is being used differently.

**Apostrophes**

Apostrophes either denote a possessive or stand in the place of a missing letter in a contraction. A possessive is a word that shows ownership. Not all possessives use an apostrophe – for example, ‘hers’, ‘his’ and ‘theirs’ do not – but most do. Usually, when you have a noun, such as the name of a person or of a company, you make that noun possessive by adding an apostrophe followed by an ‘s’.

*Irving’s car*

*Bumpstead Council’s land*

If a noun is plural, in many cases it will already end in ‘s’. In those cases, retain the ‘s’ of the plural but add an apostrophe after it.

*a student’s book* but *all the students’ book* (one book in both cases)

*a student’s books* but *all the students’ books* (many books in both cases)

The noun following the plural possessive may be singular or plural depending on the context: for example, if you have several poodles, all of whom shared one leash, you would have ‘the poodles’ leash’.<sup>10</sup>

Another common mistake concerning possessives involves proper names which end in ‘s’ and which need to be made into a possessive. In this case, you add an apostrophe and an ‘s’, rather than just an apostrophe.<sup>11</sup>

*Jones’s newspaper*

*Christopher Columbus’s ship*

This convention is waning in the popular media, however, and has almost disappeared in the United States, so you may not see the ‘s’ apostrophe ‘s’ even though grammarians insist on its correctness. Nevertheless, you should adhere to the traditional approach on the assumption that the law will be among the last fields to embrace linguistic change.

Apostrophes are also used to replace missing letters in contractions. A contraction is a shortened word that takes the place of two words. For example:

<i>do not</i>	becomes	<i>don’t</i>
<i>he would</i>	becomes	<i>he’d</i>
<i>I will</i>	becomes	<i>I’ll</i>

There are too many possible contractions to list here, but you understand the concept. The one exception to the rule involves the contraction and the possessive of ‘it’.

<i>it is</i>	becomes	<i>it’s</i>
<i>it (possessive)</i>	becomes	<i>its</i>

The error is common but quite confusing. Be sure that you do not mistake the two words.

There is also confusion about the contraction and possessive of ‘who’. Please note:

<sup>10</sup> Single and joint possession of single or joint items can be tricky. For example, ‘Hiram and Mary’s farms’ refers to several farms owned jointly by Hiram and Mary. ‘Hiram’s and Mary’s farms’ refers to separately owned farms. Seldom will you have to get into this kind of detail, so don’t worry about it too much. Remember, if a phrase sounds confusing or is too difficult to figure out, you can always change the sentence structure to avoid the problem altogether.

<sup>11</sup> The exception is when the penultimate syllable ends in an ‘s’, in which case use only an apostrophe to form the possessive singular: Jesus’ robe, Moses’ tablets, Ulysses’ journey, Onassis’ yacht.

<i>who's</i>	contraction – 'who is' or 'who was'
<i>whose</i>	possessive – something owned by 'who'

Finally, there are three words that sound alike but are spelled differently and mean different things.

<i>they're</i>	contraction – 'they are' or 'they were'
<i>their</i>	possessive – something owned by them
<i>there</i>	an adverb as to location or to indicate the general existence of an item ('there is' a thing or 'there are' things)

While we're on the subject of misspelled words, you should be aware of another group of words that often leads to confusion:

<i>to</i>	preposition (someone is going to a place) or part of an infinitive verb ('to play' or 'to dance')
<i>too</i>	meaning 'also'
<i>two</i>	a number

These may seem like minor errors to you, but they are technically incorrect. More importantly, such errors will drive certain readers mad and cause those readers to doubt your ability or motivation to avoid errors in the substance of the work.

### Commas, full stops, colons and semicolons

The subject of full stops is discussed briefly above, in the section concerning run-on sentences and sentence fragments. Basically, when a thought has been completed, you should use a full stop. To begin a new thought, begin a new sentence. While eighteenth- and nineteenth-century writers (both in and out of the law) used long, complex sentences with multiple phrases and clauses, the modern style favours shorter, crisper sentences. You may certainly use longer sentences for variety or effect, but never underestimate the power of short, simple prose. Your audience will appreciate your ability to communicate your ideas quickly and simply. If you make your readers work too hard, they may give up altogether.

The use of full stops is a mandatory rule of grammar to the extent that you must avoid run-on sentences and sentence fragments. Similarly, there are times when you must use commas to comply with grammatical rules, although there are other times when the use of commas becomes a matter of personal style.

People normally use commas to indicate a pause in the sentence, similar to a breathing space in oral communication. While this can be a good rule of thumb, it can lead you astray. For example, people may

attempt to use a comma to join two related but still separate thoughts, leading to a run-on sentence (also called a comma splice). The following example can be described as a run-on sentence or a comma splice, since the comma incorrectly joins two thoughts:

*The claimant ran to his car, he was attempting to escape.*

You should either replace the comma with a full stop, making two sentences, or add other words to make the second clause dependent in some way. Better sentence constructions would be:

*The claimant ran to his car as he attempted to escape.*

*The claimant, attempting to escape, ran to his car.*

*The claimant ran to his car in an attempt to escape.*

There are several proper uses of commas.

When you have a list of things or activities, separate them by commas. For example:

*Alice owned a bracelet, two watches[,] and six pairs of earrings.*

While you must use commas to identify the different elements, whether you include a comma before the ‘and’ is purely a matter of style. Most people do not use a comma in that situation, but it is correct to do so. Whichever approach you adopt, be sure to be consistent throughout your document – it is never correct to switch between the two styles.

You can also use commas to separate different activities.

*Duncan left his house, ran to the gym, lifted some weights[,] and returned home.*

Again, it is your decision as to whether to insert the final comma or not. Notice that each of the groups of words exist in parallel form, meaning that they are all past tense verbs constructed in a similar way. You would not want to mix different types of word groups or nouns. For example, the following grates on the ear and the eye:

*Melanie enjoys skiing, swimming and a good run.*

Instead, all the activities should be in a similar form:

*Melanie enjoys skiing, swimming and running.*

*Melanie likes to ski, swim and run.*

Any time you have a list or a comparison, be sure to use parallel forms.

Sometimes lawyers will construct long lists of activities or word phrases that contain commas within individual phrases. In those circumstances, you should consider the use of a semicolon, rather than a comma, to separate the different items. For example:

*The court requires the claimant to produce the following items: all personnel records, whether printed or electronic, relating to the defendant; all telephone logs mentioning the defendant by name; all daily calendars for the years 1995 to 2002, inclusive; and all reports produced by the defendant during his tenure at the company.*

Note that, in this case, you do include a semicolon before the ‘and’ preceding the final entry in the list. You should also use semicolons when you are listing a complex series of items by number. For example:

*The court requires the claimant to produce the following items: (i) all personnel records, whether printed or electronic, relating to the defendant; (ii) all telephone logs mentioning the defendant by name; (iii) all daily calendars for the years 1995 to 2002, inclusive; and (iv) all reports produced by the defendant during his tenure at the company.*

Shorter lists may use commas instead, but lawyers still tend to use semicolons.

*The claimant undertakes not to (i) sell, (ii) transfer or (iii) otherwise encumber the property in question until the lien has been paid.<sup>12</sup>*

When commas are used in this way, the convention about the final sequential comma holds true: use it as your style dictates, but be consistent.

You may notice that some older judges and lawyers do not use commas when listing a series of items or activities. This is a holdover from older days, when legal convention forbade the use of many types of internal punctuation. It used to be that courts would use internal punctuation to construe the terms of a document in a specific manner and lawyers attempted to evade that sort of construction by eliminating punctuation altogether. Such conventions have now largely disappeared, and you should follow the rules of grammar unless otherwise instructed by your employer.

### Parenthetical information

Parenthetical information is that which can be deleted from the sentence without destroying the sense of the phrase. Be careful, however – parenthetical information requires either two commas, one on either side of the phrase, or none at all. It is improper to use just one comma unless the sentence begins or ends where the second comma would be. For example:

<sup>12</sup> You can use or not use numbers in a series like this, as you wish.

### WRITING TIP



*Do not look to judicial opinions, particularly older opinions, as a guide to proper punctuation.*

*Hugh, a tall, striking man, entered the room.*

*The judge, surprisingly, ruled for the defendant.*

*The company, by and large, complied with the tax laws.*

*Of course, Frederick was busy washing the windows.*

*Law books, which are more expensive than other texts, can break a student's budget.*

In each of these examples, the phrase set off by commas can be eliminated without destroying the meaning of the sentence. Remember, however, that there are some phrases that do not merely describe a quality of a noun or verb but instead positively identify it. An identifying phrase should not be set off by commas. To take an earlier example, the following sentence includes a descriptive phrase that can be eliminated without damaging the sense of the sentence and therefore can be set aside by commas:

*John threw the ball, which was coming apart at the seams.*

If you wish to indicate that John picked one particular ball out of a selection of many, you would delete the comma, writing:

*John threw the ball which was coming apart at the seams.*

### **Introducing quotations**

Students often have many problems regarding the proper use of commas when introducing quotations and speech. Most people know the rule that commas should be used to introduce direct speech. While this rule is most often exemplified in fiction, it can be used in legal writing as well. For example:

*Lord Murray said, 'The duty of care was not established by the claimant.'*

Note that there is a comma introducing the sentence and that the quote, which is a sentence unto itself, begins with a capital letter. You could also say:

*Lord Murray disagreed with counsel, saying, 'The duty of care was not established by the claimant.'*

If you were only quoting part of Lord Murray's statement, you might write:

*Lord Murray said [that] the duty of care 'was not established.'*

Here the quoted phrase is not a complete sentence and thus cannot support an introductory comma. Note also that the use of 'that' is optional: the sentence makes sense with or without it. Some writers

prefer always to use ‘that’ in these sorts of cases, whereas other people are not so strict. Follow the style that is preferable to you, remembering that clarity is your ultimate aim.

Do not use a comma following ‘that’, even if the quotation that follows is a complete sentence. For example:

*Lord Murray said that ‘the duty of care was not established by the claimant.’*

The question is whether one should capitalise the first letter of the quoted material, assuming that the first word was capitalised in the original. There is never a need to capitalise the first letter of a quoted phrase following ‘that’, and generally you should not change any aspect of quoted material, including capitalisation and verb forms, unless you indicate the changes with square brackets. Therefore, if the first letter was capitalised in the original and the tense of the verb was something other than what you wanted, you should write:

*Lord Murray said that ‘[t]he duty of care [was] not established by the claimant.’*

By using the square brackets, you indicate that you have altered the original. While the changes are largely cosmetic, you must not take liberties with quoted material. Use ellipses (three full stops (...))<sup>13</sup> if you delete any text, even a single word. Be sure not to change the meaning of the quote through your amendments.

You may introduce direct quotations with a colon, although that convention is usually reserved for large blocks of material which are offset by indentations on both the left and right. In such cases, inverted commas are not used, since the colon and indentations signify that a quote follows. For example:

A long quotation, usually numbering fifty words or more, is offset by indentations on both sides. This is called a ‘block quotation’. Often the text is single, rather than double, spaced, and is introduced by a colon. If the quoted material begins in the middle of a sentence, the lead-in phrase may end in the word ‘that’, followed by a colon, despite the rule that quotations introduced by the word ‘that’ should not be preceded by a comma. Legal practitioners often italicise block quotations to set it off from the rest of the text. Some practitioners also italicise shorter quotations that appear in the text, although the question then arises whether single quoted words require italicisation or not.

<sup>13</sup> If your sentence ends with an ellipsis, use four full stops (three for the ellipsis and one for the full stop).

#### WRITING TIP



*Make your quotes word perfect. Alter nothing from the original, including the punctuation, without indicating the change.*

The text that follows a block quotation is either set flush left, if it continues the same thought, or is indented once, if it begins a new sentence.

Sometimes students ask whether to use single or double quotation marks (also called inverted commas). Typically, British usage has been to use single marks, with all punctuation (commas, full stops, question marks) showing outside the closing mark, unless that closing mark relates to the quoted material. For example:

*John asked, 'How do I get to the music shop?'*

*Do you think it was appropriate for counsel to say that 'the claimant was the wealthiest woman in Bedfordshire'?*

American writers often put punctuation inside the final quotation mark and use double quotation marks. However, some British writers and editors have begun to use double quotation marks where they once would have used single marks, so there may no longer be any national convention on this subject. The best solution is to use whichever form appeals most to you and the people reading your work. The key is to be consistent, whichever approach you use. However, you should note that when there is a quotation imbedded inside the material that you are quoting, you should change the number of marks to demonstrate what was said by the person you are quoting and what was said by another person. For example:

*Counsel stated that 'the witness heard Mrs Jones shouting, "Stop, thief!" when the defendant ran past the witness's shop carrying a woman's handbag.'*

Commas may be used in other circumstances as well as the ones listed above, but these are the three major problem areas. If you want to read more about the proper use of commas, consult one of the many books on grammar.

Students also tend to misuse colons and semicolons, but with less frequency, since both forms of punctuation are somewhat archaic. In addition to the uses noted above, a semicolon can be used to separate two full sentences that are closely linked in subject matter; in such cases, a semicolon falls somewhere between a comma and a full stop. Be sure that a proper sentence exists on either side of the semicolon, however, and do not capitalise the first word following the semicolon.

Colons can be used to separate two proper sentences, but are seldom used in this manner today. The link between the two sentences would be similar to a premise followed by a conclusion. For example:

*The claimant stated that there was a simple reason why he did not have the requisite mental state to commit the crime: he had been drugged at the time.*

However, such sentences are not often seen these days. Modern use of the colon is generally limited to the introduction of either a quotation (as described above) or a list of items. For example:

*The thief took everything of value from the house: the jewellery, the electronic equipment, the antique silver, everything.*

Remember, do not capitalise the first word following a colon.

Finally, try not to use dashes in any sort of formal legal writing. For the most part dashes – which can be used to offset parenthetical information as in this example – can and should be replaced with commas. If you use dashes, use them sparingly, since they tend to give an informal feeling to your writing.

### 8.4.2 Matters purely of style

Everyone's style is unique, but some written styles are more accessible and appropriate to legal writing than others. While it is difficult, and in many cases undesirable, to give up your own style of writing completely in favour of another approach, you can and should think about ways to improve your writing. Junior lawyers, in particular, need to be flexible in their writing style, since the senior lawyers with whom they work may have very strong ideas about how certain documents should be written. You may need to adapt your style to match that of the person with whom you are working.

It may be that you will be given conflicting instructions from the senior lawyers with whom you work. You probably have run across this phenomenon already at university and at school: one instructor tells you one thing while another instructor tells you the exact opposite. First, you need to distinguish whether the advice you have been given concerns mandatory rules of grammar (in which case, you need to do what is objectively right, regardless of what others say; remember, many people do not know the rules of grammar) or discretionary matters of style. Second, if the advice concerns a matter of style, you need to consider whether to follow that advice and to what extent. Sometimes you will need to make the change only once, for expediency's sake, on one particular assignment. Other times you may consider making a permanent change to your writing style. Remember, you can learn something from almost everyone – some lawyers are good at writing demand letters, others are better at writing memoranda of law, still others are better at writing fact summations. If you adopt the best

aspects of each person's writing style, you will be well on the way to becoming a better writer yourself.

Following are a number of suggestions on how to improve your writing. Adopt or discard these suggestions as you wish, realising that none of them reflects a mandatory rule that cannot be broken. For ease of discussion, the advice has been broken down into three major points:

- word choice;
- sentence structure; and
- formatting.

#### a) *Word choice*

Under the heading of 'word choice' lies a multitude of issues, including:

- beginning sentences with 'and' or 'but';
- ending sentences with prepositions;
- using gender-neutral language;
- using 'as' for 'since';
- using contractions and hyphens;
- spelling out numbers;
- using jargon, acronyms and 'legalisms', as opposed to terms of art;
- using passive, wordy or verbose language rather than simple, direct phrases; and
- differentiating advocacy from inflammatory prose.

We will deal with each of the points in turn.

(1) Some grammarians insist that it is technically correct to begin a sentence with 'and' or 'but'. However, many readers find such constructions sloppy or overly colloquial. If you feel you must begin a sentence with one of these words, do so with the understanding that you may put off at least part of your audience.

(2) Just as the beginning of a sentence can cause problems, so too can the end of a sentence. The major concern involves prepositions. While it is perfectly acceptable for novelists and journalists to end sentences with a preposition, lawyers do not have the same freedom. Legal writing remains much more formal than fiction and journalism. When you find yourself faced with a sentence that ends in a preposition, you have three possible solutions: (1) you can place the preposition earlier in the sentence; (2) you can find some phrase to tack onto the end of the sentence, thus embedding the preposition in text; or (3) you can rephrase the sentence to avoid the offending construction. For example:

*Samuel wondered whom<sup>14</sup> the letter was from.* (ending in preposition)

(1) *Samuel wondered from whom the letter was.*<sup>15</sup>

(2) *Samuel wondered whom the letter was from and glanced at the return address.*<sup>16</sup>

(3) *Samuel wondered who wrote the letter.*<sup>17</sup>

All of these techniques can work well, depending on the context. For example, while the first option sounds a bit too formal in the context of this simple sentence, it will often be acceptable in legal prose. Similarly, while the third sentence appears the best of the three options in this example, since it is the simplest and most direct construction, there will be times when you want to retain a passive verb form rather than shift to an active verb form.

(3) Certain problems associated with gender-neutral language have been discussed in earlier sections concerning subject-verb agreement. Basically, you should not use ‘them’ in reference to an antecedent noun when that noun is singular, even if you do so to avoid using the gender-specific ‘he’. However, you may question the use of gender-neutral language altogether, preferring to use the simpler and more traditional approach of using ‘he’ or ‘man’ to refer to all persons.

In the end, use of gender-neutral language is a matter of style rather than a mandatory grammatical rule. It is not incorrect to use ‘he’ to refer to all persons. Certainly most statutes use ‘he’ to refer to all persons. However, this convention may be changing, since the Lord Chancellor has recently come out in favour of gender-neutral language. It may be that use of the older style will soon be seen as anachronistic. However, as you decide which approach you will use, you should be aware that many people currently become irate upon seeing ‘he’ or ‘man’ to refer to all persons. If your aim is to avoid saying something that would make your reader disinclined towards you and your position, you should avoid gender-specific language.

<sup>14</sup> Note that the proper word here is ‘whom’, not ‘who’. Generally, you should use ‘whom’ whenever you could use the word ‘him’ (ie to him, from him) and ‘who’ whenever you should use ‘he’. It’s easier to remember this trick if you use male pronouns rather than female pronouns, since the male pronouns demonstrate the he/who, him/whom parallel most clearly.

<sup>15</sup> Although this may sound a bit formal, particularly in the context of this simple sentence, you quickly become used to phrases such as ‘from whom’, ‘to whom’, ‘of which’, etc.

<sup>16</sup> This example reads somewhat awkwardly due to the simple sentence construction, but that need not be the case in all circumstances. If tacking on an additional phrase does result in a wordy or unwieldy sentence, however, you should consider using one of the other techniques instead.

<sup>17</sup> This is perhaps the best option of the three, since it uses a more active and direct verb form rather than a passive verb form.

(4) It is quite common to see people use the word ‘as’ instead of the word ‘since’ or ‘because’. For example:

*As he was a plumber, repairing the drain was a simple task.*

While close inspection of the dictionary suggests that ‘as’ may be used in this way, some readers object strongly. Again, if your aim is to avoid alienating your readers, you may want to consider avoiding this type of construction, even if it is technically correct.

(5) Once upon a time, contractions were severely discouraged in legal writing. They were considered too sloppy and colloquial for the elevated practice of law, leading lawyers to avoid their use altogether. With the advent of the plain English movement in legal writing, lawyers are free to use less formality in their writing. The extent to which you use contractions in your writing is up to you, but be aware that legal writing still tends to be more formal than other types of communication.

Contractions refer to shortened words. However, hyphens can be used to extend the length of words, turning two words into one in order to show how the words relate to one another. These hyphenated words are called complex nouns or complex adjectives. The rules about hyphenation have changed. At one time, it was common to use hyphens to create longer words. For example, people used to write ‘decision-maker’ rather than ‘decision maker’, or ‘sun-dried tomato’ rather than ‘sun dried tomato’. Some words that used to be hyphenated have now become single words: for example, ‘life-like’ is now ‘lifelike’.

Although modern usage varies,<sup>18</sup> the general trend is to avoid hyphenation of distinct words except to avoid confusion. For example, there is a significant difference between the phrase ‘man eating tiger’ and ‘man-eating tiger’. Use your common sense and consult a dictionary if you run into trouble.

(6) The convention about spelling out numbers is little-known outside publishing circles, but many readers can sense an error, even if they cannot say what the rule is. In all cases, you should always spell out numbers zero through ten. Some grammarians say that you should spell out numbers zero through one hundred, but there is not as much consensus on that particular convention. Unless you have a long series of numbers, fractions (three-quarters, two-fifths, etc) and rankings (first, second, twenty-seventh) are best in spelled-out form.

However, if you refer to several different numbers in the course of a discussion, you should be consistent: either spell out all of the numbers or none of them. The choice of whether to spell out or write

<sup>18</sup> As is often the case, differences exist between American and British usage regarding spelling and hyphenation.

the number is up to you unless one of the numbers falls in the zero to ten range, in which case you should spell out all the numbers.

(7) The most difficult thing to contemplate in the abstract is the overall tone of your prose. For the most part, you should avoid excessive use of jargon or acronyms, unless those terms are universally used. You are all used to reading legal opinions that are so overburdened with acronyms and abbreviations that the text is virtually unreadable. The same is true of student essays. Excessive use of acronyms can become confusing or lessen the persuasive power of the work.

In any case, you must remember to define your terms before using an abbreviation. If, for example, you throw 'UCTA' into a tort essay without further explanation, it may take your reader a while to understand that you are referring to the Unfair Contract Terms Act 1977. Similarly, you can abbreviate party names in a problem question, but be sure to define them first. Avoid beginning a sentence with an abbreviation, particularly abbreviations such as 's' or 'ch', which relate to sections of a statute or document. For a more complete discussion of this point, see section 9.4, which addresses formatting conventions relating to professional practice.

The difference between legal jargon and terms of art can be difficult to define. There are some legal terms that cannot be properly translated into plain English. Some of these terms are in Latin – for example, *res ipsa loquitur* – whereas others are in English – for example, duty of care or *Wednesbury* reasonableness. You must be able to use these terms correctly and precisely if you wish to convey your meaning. Failure to use the proper legal terminology can lead an examiner to conclude that you simply don't know the correct language. Don't worry about repeating the term too much; if it is the correct term, use it whenever it is appropriate. While some writing instructors encourage students to use 'elegant variations' rather than repeat the same phrase over and over, legal writing is different in that too much variation in terms leads to confusion, particularly when you are, for example, describing a legal principle or a contractually defined term.

Legal jargon refers to the type of overused legalisms that really add nothing to the discussion. For example, referring to 'the aforementioned' or 'the *res* in question' is pompous and unnecessary. Just name whatever it is you are discussing. Including unnecessary Latin phrases also puts the reader off – for example, there really is no reason to use the terms '*qua*', '*ex ante*' or '*de novo*'. The difference between legal jargon and a proper term of art is whether the word or phrase carries a specific legal meaning or is part of a legal test. If the term has acquired this type of official legal value, then it is usually a term of art. It is difficult to describe a fee simple or a constructive trust except as legal concepts.

Fraud and misrepresentation are more difficult terms – they both carry purely legal meanings as well as popular meanings. You will want to be careful how you use those particular terms. If, however, the term is merely used by convention or tradition and does not carry a particular legal connotation – for example, ‘heretofore’ carries no legal meaning<sup>19</sup> – there’s no real need to use it. Use your judgment, and remember that just because you’ve seen the phrases used in reported opinions doesn’t mean that you should use them in your own work. Many of the cases you read are somewhat elderly, and legal writing has changed a lot in recent years. Similarly, not all judges can be considered good writers.

(8) Another misconception that students have is that hesitant or equivocal language is more objective and lawyerly than bold, unambiguous statements. Students will therefore litter their essays with terms such as ‘it would seem’ or ‘it appears to be the case that’. Avoid these and any other phrases that demonstrate uncertainty on behalf of the writer. You are the expert. These are your conclusions and arguments; don’t weaken them with seeming hesitance. If there is a split in the law or a debate about the wisdom of a particular course of action, then discuss both sides and offer your conclusion. Don’t characterise your conclusions before you state them. In the end, you may not be able to persuade your reader to your point of view, but if you don’t appear to believe in your own statements, the reader will be less likely to do so.

This is not to say that you should ignore real instances of uncertainty or cases which are too close to call definitively one way or another. There are times when you need to say that something ‘appears’ to be true or that one party will ‘most likely’ prevail. However, real splits in the authorities occur far less often than students think they do. Instead, students seem to believe that by appearing hesitant about their conclusions, they will hedge their bets and win more points in case they are wrong. In fact, your reader will not be fooled by this kind of language. Your conclusions are your conclusions; stand by them.

Students also precede many of their statements by the phrase ‘I believe’ or ‘I think’, occasionally tossing in a ‘this author believes’. This type of tip-off is unnecessary. The reader knows that your entire essay constitutes your own thoughts. The only time you might need to identify a thought or conclusion as your own is if the idea stands in close proximity to the report of another person’s beliefs.

<sup>19</sup> There are occasional exceptions. Some contracts use ‘heretofore’ as part of the formula introducing terms and conditions or a party’s warranties. For example, ‘it is heretofore agreed between the parties that ...’ While you should not introduce this kind of language into your essays, be aware that some practitioners you work with may require you to use these terms in formal documents. You would not need them, nor should you use them, in less formal documents such as correspondence.

**EXAMPLE**

Jones writes that the royal prerogative is an outdated concept that should be replaced with a written code outlining the executive power, whereas Littleton advises caution in any reform attempts. Jones's position is unrealistic, given the British animosity towards codifying large swathes of the law, whereas Littleton's view is too cautious. I would recommend an intermediate step, wherein reform would progress piecemeal by codifying individual aspects of the prerogative one bit at a time.

In the above example, the 'I would' sentence could be changed to 'A better solution would be to adopt an intermediate course, wherein (etc)', thus avoiding the use of 'I' altogether. However, this is one of the few examples where you can adopt the first person without weakening your argument.

You can also slow down your essay by using too many words. Try to cut down the numbers of words you use and use short, simple sentences. One practitioner, well known for his powerful written communication, advocated the KISS rule: Keep It Simple, Stupid. Don't try anything fancy. Just say what you have to say and move on. In fact, experienced examiners know that students often use passive, wordy prose when they don't really know what they're saying. Someone who is overflowing with things to say writes in a tight, energetic manner. If you find yourself becoming passive and wordy in your prose, stop. Do you really know what you're trying to say? If you don't, neither will your reader. Sort yourself out before continuing to write. A short essay that speaks directly to the question is often far better than a long, meandering discussion that never really gets to the point.

Often prose can be tightened up by using an active, rather than passive, voice, as described below. Also, instead of characterising something or some action by using the verb 'to be' plus a gerund (a verb acting as a noun) or an adjective, try using the gerund in its verb form or turning the adjective into an adverb. For example:

*Mark is advocating reform.*

*Mark advocates reform.*

*Jennifer was nervous when writing her examination.*

*Jennifer nervously wrote her examination.*

Essays also become wordy and vague when the writer spends too much time characterising an action or event rather than describing what occurred and why it is important. For example, a student may classify a particular case as 'radical' or 'ground-breaking'. These are empty phrases that add little to the discussion: unless those adjectives

**WRITING TIP**

*Show, don't tell, in your writing. Use strong verbs and examples instead of adjectives and adverbs.*

are immediately followed by the word ‘because’, you should eliminate them from your essay. Even worse is the word ‘interesting’, which has been so overused that it has lost its descriptive force completely. Your characterisation of the case, statute or event is not what is important: it is the content and/or impact of the case, statute or event. Move past vague, introductory language and say why you are discussing the matter. If you show your readers what you’re thinking, they will form the same conclusion that you have. If you do not show them what you’re thinking, they will not believe or understand your characterisations.

Sometimes passive language results when a writer uses a phrase that is accurate but that can be replaced by shorter words or phrases. For example, consider replacing the italicised words with the phrase following in bold:

*in order to, for the purpose of, with a view to*

Use **to**

*as a consequence, for the reason that, on account of, on the grounds that, in light of the fact that*

Use **because**

*in the event of, in case of*

Use **if**

*in spite of the fact that, irrespective of the fact that*

Use **although** or **even though**

*notwithstanding the fact that*

Use **even if**

*there can be little doubt that, it is indubitable that*

Use **clearly** or **undoubtedly**<sup>20</sup>

*until such a time that*

Use **until**

Other phrases can be deleted altogether without losing the sense of the sentence. For example:

*One should note that criminals often regret their actions.*

*Criminals regret their actions.*

<sup>20</sup> Be aware that many writers believe that the use of the word ‘clearly’ or ‘undoubtedly’ actually signals a fact or opinion that is anything but clear or undoubted. It is always better to show the reader something rather than tell the reader something. If the fact or opinion is clear or undoubted, demonstrate that with legal authority or a summation of the facts. Showing your reader how you have arrived at your conclusion is more powerful than merely assuring him or her that you are correct. Remember, your opponent is making precisely the same assurances in return.

*The fact was that Simon didn't want to go cycling that day.*

*Simon didn't want to go cycling that day.*

Common offenders of this rule are:

*one should note that*

*it is important to note that*

*the fact that*

*it is true that*

There may occasionally be times when you need or want to use these phrases to add emphasis or to alter the tempo of the paragraph. Use them sparingly, however.

Finally, some people think that unusual, literary or polysyllabic words impress readers and demonstrate greater erudition and knowledge. Not true. Often big words slow the pace or confuse the meaning. Remember KISS – Keep It Simple, Stupid. Don't use a long word if a short one will do just as well. You can be an effective writer without wearing out your thesaurus.

(9) Sometimes the issue is not that a student's prose is too deferential or wordy, it is that it is too one-sided. Strong language is fine as long as you do not exaggerate the claims that you can make on either the facts or the law. Learn to differentiate between advocacy and inflammatory prose. This is a problem that more often arises in professional practice, particularly if you are involved in litigation or dispute resolution, but sometimes students think that being persuasive means ignoring or belittling an opponent's argument. Instead, you should strive to make your case as persuasively as you can while still retaining some objectivity. If the other side has a valid point to make, you must acknowledge it. If you appear to be too one-sided, you will fail to persuade your reader. Readers tend to trust objective analysis more than one-sided rhetoric.

You need to be sure to address any gaps or weaknesses in your own arguments in addition to dealing with any valid points that can be raised by your opponent. You can persuade a reader to adopt your point of view by demonstrating how your argument is either more logical, more just or more in line with the authorities. Dismissing your opponent's argument out of hand or failing to address it at all carries no persuasive value. When offering advice to clients in professional practice, a lawyer must recognise points of weakness as well as points of strength. You need to do the same in your essays and examinations.

Another thing to look out for is excessive characterisation of positions, facts or legal arguments. As mentioned above, it adds very little to say that one of your points is 'devastating' or 'fatal' to your opponent if

#### WRITING TIP



*Don't overuse the thesaurus.  
Remember KISS.*

it is not, in fact, determinative. Similarly, describing a certain case as ‘radical’, without discussing why it constitutes such a sharp shift from the past, does not make your point. Showing your readers what you mean is much more persuasive than telling them your conclusions.

### b) *Sentence structure*

The previous subsection concentrated primarily on word-choice issues. However, the type of sentence structure you choose also affects your writing. The most common error lies in the excessive use of passive sentence construction. When you write in the active voice, the subject of the sentence acts. When you write in the passive voice, the subject of the sentence is acted upon. Compare the following sentences:

*Jane was treated by the doctor for influenza.* (passive)

*The doctor treated Jane for influenza.* (active)

*The roses were dug up by the neighbours’ dog.* (passive)

*The neighbours’ dog dug up the roses.* (active)

Generally, the active voice is more direct and engaging to the reader. It is the preferred voice in all sorts of prose. However, there are times when the passive voice should be used, particularly by lawyers. For example, if you do not know who did something or if you want to emphasise that the act was done, rather than that it was done by someone in particular, you may need to resort to the passive voice. For example:

*The flat was broken into at approximately 3:00 a.m.* (you don’t know by whom)

*The New Year was rung in with great frivolity.* (the emphasis is on the frivolity, not on the actors)

Unfortunately, the passive voice is often overused in legal writing. Students, and indeed many practising lawyers, operate under the mistaken assumption that the passive voice is more objective and lawyerly than the active voice. While the passive voice is one of the many tools available to a good writer, it should be used sparingly and only in suitable circumstances. The active voice will be more useful in most circumstances.

Another sentence construction that should be used sparingly is the rhetorical question. Although rhetorical questions can be effective in oral argument, they often fall flat in an essay or exam scenario because they conflict with the author’s primary purpose. Rhetorical questions are not meant to be answered: the purpose of a law essay, however, is to answer the question set. You see the dilemma. Avoid rhetorical questions as a stylistic device as a general rule.

### c) Formatting

Finally, it may help to include a few words about essay formats, meaning the mechanical production of your work. In most cases, you should be guided by your tutor and your own preferences. For example, some tutors prefer typed essays, whereas others do not care one way or another. You may find it easier to type your work, since you can revise it more easily than you can a handwritten essay, but you may also find it difficult to switch back to handwritten essays when it comes to time to take your examinations. If you have typed most of your written work during the term, be sure to practise a few handwritten essays before you take your examination.

Some tutors will feel strongly about whether you should single- or double-space your typed essays. Some will not care. There is no hard and fast rule. If you're concerned, ask your tutor.

You can use internal headings (outline numbers or text descriptions) if your argument is very complex or if you feel the need to help your reader follow your structure. Internal headings are often a good idea in long documents. For the most part, however, student essays are too short to need such internal organisation, but you should feel free to use headings if you wish. You should avoid bullet points, however. While bullet points are becoming more common in business and professional practice, they are inappropriate in a student essay which is being evaluated for its style as well as its content.

With the rise in word processing, many students go to great pains to italicise or underline case names and/or quotations and to include full case or statute citations in footnotes. Neither technique is absolutely necessary unless your instructor makes it a requirement. You can put case names in the text just as you would in a handwritten essay. Just be sure your references are clear. There is no need to switch font size or style for quotations, even though practitioners occasionally do so. The use of quotation marks (inverted commas) should be sufficient to indicate that you are citing an outside source. You should try to offset case names by underlining or italicising them, though.

The final point has to do with the visual layout of the paragraphs on the page. Most of you have read older decisions that seem to be one long paragraph. Nothing is more daunting than facing an unbroken page of type, and few things are harder to read. You all know that you should begin a new paragraph every time you begin a new idea, but there are times when you may end up with one very long paragraph. Even though the paragraph may be correct as a matter of grammar, you should consider breaking it up into two or more paragraphs as a matter of style and thus increasing the amount of white space on the page. Doing so will undoubtedly increase your reader's understanding



#### NOTE

If you do not already know how to touch-type (meaning typing without looking at the keys), consider taking a course during the holidays. Typing is an essential business skill for everyone these days.

#### WRITING TIP



*You don't need to use fancy fonts to indicate quoted material, but you must use quotation marks. An unattributed quote constitutes plagiarism!*

#### WRITING TIP



*Control the amount of white space on the page to help the reader's understanding.*

of your discussion and thereby increase the possibility of your receiving a higher mark.

When you begin a new paragraph, either skip a line (if you intend to place the first word flush against the left margin) or indent the first word one tab (usually five spaces). If you just use a hard return and then begin your next sentence flush left, it is difficult for the reader to see that you have begun a new paragraph, particularly if the last sentence of your previous paragraph runs close to the right margin. You may think this is a minor point, but if the purpose of writing is to communicate your ideas effectively to your reader, then you want to do everything possible to increase the reader's understanding. Breaking the text up into different paragraphs is one of the primary ways of facilitating communication in written prose, since a new paragraph signals a new idea. Don't lessen the effectiveness of your organisational structure by hiding the beginnings and endings of your paragraphs. Doing so will only confuse the reader and drop your marks.

The other formatting point concerns the end of sentences. Whenever you end a sentence, follow it with two spaces, not one. The additional white space helps your reader scan the page more easily and stops the text from looking too cramped.

## 8.5 Writing techniques: self-examination

You may wish to run through the following self-examination to see how well you know the mandatory and discretionary rules of writing. The answers may be found following the quiz.

### Part one

Select the correct answer from the options shown.

1. The contraction of 'it is' is:
  - a. its
  - b. it's
  - c. its'
2. The possessive of 'they' is:
  - a. there
  - b. they're
  - c. their
3. A sentence fragment can be described as:
  - a. a sentence without a verb
  - b. a sentence without a noun
  - c. a sentence without an object

- d. none of the above
  - e. all of the above
4. A comma splice results when:
- a. you use one comma instead of two to set off parenthetical information
  - b. you join two stand-alone sentences with a comma
  - c. you use a comma when you should use a semicolon
  - d. you introduce a quotation with the word 'that' followed by a comma
5. You should end a sentence with a preposition:
- a. sometimes
  - b. always
  - c. never
  - d. it depends
6. A dangling participle is incorrect because:
- a. a sentence should never end in a participle
  - b. it modifies the wrong part of the sentence
  - c. both (a) and (b)
  - d. neither (a) nor (b)
7. In legal writing, you should use contractions:
- a. sometimes
  - b. always
  - c. never
  - d. it depends
8. Which of the following numbers should be spelled out in text? (circle all that apply)
- a. 102
  - b. 7
  - c. 17
  - d. 1/2
  - e. 3/16
  - f. 3rd
  - g. 14th
  - h. 1,000,000
9. You may use a colon:
- a. to introduce a list of items
  - b. to introduce a quotation
  - c. both (a) and (b)
  - d. neither (a) nor (b)
10. Which of the following terms should be capitalised? (circle all that apply)
- a. President Fox of Mexico

- b. the President of Acme Food Co. Ltd.
  - c. Edith's Aunt
  - d. the Court of Appeal
  - e. the Local Court
  - f. the Agreement between Supply Co. and Builder's Co. (the 'Agreement')
  - g. a Legislative decision
11. You should use the passive voice:
- a. to sound more lawyerly
  - b. to draw attention to the person doing the action
  - c. to make your prose tighter and more energetic
  - d. to focus the reader's attention on the act itself
12. Use rhetorical questions only when:
- a. you are sure the reader knows the answer
  - b. you follow them with words such as 'because' or 'due to'
  - c. you want to emphasise a certain point
  - d. you need to speed up the pace of your writing
13. A block quotation does NOT:
- a. have fewer than 50 words
  - b. have quotation marks (inverted commas) at the beginning and end of the quoted material
  - c. have quoted material within the larger quote
  - d. have a colon as its introductory punctuation
14. The word 'its' is:
- a. the possessive of 'it'
  - b. the plural of 'it'
  - c. the contraction of 'it was' or 'it is'
  - d. 'its' is not a proper word
15. When altering a quotation, you should:
- a. indicate changed letters or words with parentheses ( )
  - b. indicate deleted words with ellipses (three full stops)
  - c. both (a) and (b)
  - d. neither (a) nor (b) – you should never alter a quotation
16. Parenthetical information can be:
- a. set off by two commas
  - b. set off by one comma
  - c. set off without a comma
  - d. none of the above
17. Which of the following is NOT correct?
- a. a group of squirrels eats
  - b. Mavis's apple cart

- c. the girls' book
  - d. a herd of horses drink
18. A good writer:
- a. never acknowledges the merits of an opposing argument
  - b. directs the reader's mind by characterising legal authority and arguments as 'strong' or 'persuasive'
  - c. uses the active voice when at all possible
  - d. uses lots of jargon to indicate an insider's knowledge of the law
19. An appropriate gender-neutral variation on 'he says' would be:
- a. one says
  - b. he or she says
  - c. people say
  - d. they says
  - e. (a) and (b) only
  - f. (a), (b) and (c) only
  - g. (a), (b) and (d) only
  - h. (b), (c) and (d) only
20. When you begin a new thought, you should:
- a. begin a new sentence
  - b. begin a new paragraph
  - c. use an appropriate transition sentence
  - d. all of the above

**ANSWERS**

- |      |                     |       |
|------|---------------------|-------|
| 1. b | 8. b, d, e, f, g, h | 15. b |
| 2. c | 9. c                | 16. a |
| 3. e | 10. a, d, f         | 17. d |
| 4. b | 11. d               | 18. c |
| 5. c | 12. b               | 19. f |
| 6. b | 13. b               | 20. d |
| 7. c | 14. a               |       |

## Part two

The following discussion of religious rights in the United Kingdom contains numerous errors. Numbered questions relate to different parts of the text. See if you can spot the errors and improve the language.

### TEXT

Because the United Kingdom does not have a single written constitution, it<sup>1</sup> addresses issues regarding religious rights piecemeal, rather than in a unified manner. Some jurists<sup>2</sup> believe that a country with an established faith must experience religious discrimination on some level, though others disagree. Certainly the Church of England enjoys protections and benefits not shared by other faiths, although in 1991 Purchas, LJ in the Court of Appeal stated that ‘no distinction between institutions of the Christian church and those of other major religions would now be generally acceptable.’<sup>3</sup> The veracity of the statement, however, is questionable in light of the Court of Appeal’s refusal to extend the law of blasphemy to cover non-Christian faiths in *R v Chief Metropolitan Stipendiary Magistrate*, ex parte *Choudhury* just a year before.<sup>4</sup>

The court in *Choudhury*<sup>5</sup> could decide as it<sup>6</sup> did because no specific prohibition on discrimination on the basis of religion existed in England and Wales until the passage of the Human Rights Act 1998. Prior to that time, practitioners and commentators had argued that the Race Relations Act 1976 could be used to address some types of religious discrimination, at least for those religions that were associated with distinctive racial groups, but courts were unpersuaded, the rationale being<sup>7</sup> that the Act was not intended to address purely religious discrimination.<sup>8</sup> Other jurists claimed that international instruments that have binding or influential power in the UK required the principle of non-discrimination on the basis of religion to be recognised explicitly at the domestic level.<sup>9</sup>

The only jurisdiction to address religious discrimination in the UK prior to the enactment of the Human Rights Act 1998 was Northern Ireland.<sup>10</sup> The history of sectarian strife in that region made it necessary to enact specific legislation, particularly in the area of employment, prohibiting discrimination on the basis of religion and making it a criminal offence to incite religious hatred.<sup>11</sup>

Despite these admonitions,<sup>12</sup> discrimination still exists, most visibly and most symbolically in the requirement that the monarch may not be or marry<sup>13</sup> a Roman Catholic. In addition, it was only twenty-five years ago<sup>14</sup> that the office of Lord Chancellor officially became open to Roman Catholics. Employment rates in Northern Ireland

### QUESTIONS

1. To what does the word ‘it’ refer? How might the sentence be improved?
2. Is the phrase ‘some jurists’ the best that can be used? How would you alter the text?
3. What is missing from this sentence?
4. What’s wrong with this sentence?
5. Is this phrase correct?
6. To what does the word ‘it’ refer? How might the sentence be improved?
7. What do you think of the phrase ‘the rationale being’?
8. What do you think of this sentence?
9. What’s missing from this sentence?
10. Why did the author choose to use this type of sentence construction? Does it work?
11. Is a citation to a specific statute necessary here?
12. Is there a problem with this phrase?
13. Is a comma necessary here?
14. Why did the author choose to use this type of sentence construction? Does it work?

show Catholic unemployment at approximately two and a half times that of Protestants.<sup>15</sup>

Immigration is another area where religious discrimination arises.<sup>16</sup> In *R v Home Department, ex parte Moon*, the Court<sup>17</sup> considered the Home Secretary's claim that he had denied Reverend<sup>18</sup> Sun Myung Moon, founder of the Unification Church (known commonly as the 'Moonies'), entry into the United Kingdom because:<sup>19</sup>

the Unification Church, even if recognised as a religious organisation by the Charity Commissioners,<sup>20</sup> acts to the detriment of the families to whom its members belonged [sic]<sup>21</sup>....<sup>22</sup> The Home Secretary considered the need to act in accordance with a wider obligation to respect freedom of expression and freedom of religion but has concluded that in view of the activities of the Unification Church and those of the Applicant as its head,<sup>23</sup> the exclusion is justified in the public interest.<sup>24</sup>

In the end, Sedley J ordered the Home Secretary to provide reasons for his<sup>25</sup> decision and allow Reverend Moon to respond, noting that 'it is precisely the unpopular applicant for whom the safeguards of due process are most relevant in a society which acknowledges the rule of law.'<sup>26</sup> However, the willingness and ability of the government to discriminate on the basis of religion, as demonstrated by this case, is disturbing.<sup>27</sup>

The UK's legal position regarding religious discrimination has changed, however, with the enactment of the Human Rights Act 1998. Although the applicability of the Act to private entities is indirect only,<sup>28</sup> parties involved in disputes in domestic courts<sup>29</sup> may now expressly rely on many of the provisions found in the European Convention, including its prohibition of discrimination on the basis of religion. In construing the various rights, courts are to take into account European decisions applying the European Convention.

15. Does 'Protestants' need an apostrophe? If so, where would you put it?
16. Why is this sentence here? Is it necessary?
17. Should this word be capitalised?
18. Should this word be capitalised?
19. Do you need a colon here?
20. Should this term be capitalised?
21. What does 'sic' mean and why is it included here?
22. Why are there four full stops here?
23. Is this comma correct?
24. Why are there no closing quotation marks (inverted commas)?
25. Shouldn't this be 'his or her'?
26. Should there be a case citation here?
27. Would you use the word 'disturbing' here?
28. What's missing here?
29. Should this be capitalised?

---

## ANSWERS

1. 'It' refers to 'constitution', not to 'United Kingdom', as the author intended. The author will need to rephrase the sentence so that the word 'it' refers to the proper antecedent.
2. It would be better to refer to specific jurists by name, rather than lump them together. The same is true of the word 'others' later in the sentence – the author should try to be specific when referring to commentators.
3. Referring to a specific judge by name demonstrates a very good facility with the materials, but the author has forgotten to name the case itself.

4. The beginning of the sentence ('The veracity of ... in light of') is technically correct but somewhat wordy. The author should be more direct.
5. Yes. Although the author is referring to a specific court, the word 'court' is not being used as part of a title or official designation.
6. 'It' refers to 'the court in *Choudhury*'. The phrase is correct and sufficiently succinct to stand as it is.
7. The term is technically correct, but perhaps a bit stilted. How might you improve it?
8. The sentence is long but technically correct. Still, it might be better, as a matter of discretion, to break it into two parts, one dealing with practitioners and commentators and the other dealing with the courts.
9. It would be helpful to know which jurists made the claim.
10. The author seems to have chosen this construction to emphasise that Northern Ireland's approach to religious rights is the exception to the general rule. It may also be that the construction was used to give the following sentence the proper antecedent ('that region').
11. A specific citation would be helpful but is not necessary, since the provisions are described with sufficient detail for this discussion.
12. It is unclear what the author means by 'these admonitions'.
13. No comma is needed here since both verbs ('be' and 'marry') refer to the same subject ('monarch').
14. This sentence does not technically use the passive voice, since something is not being done to someone else. The wordiness is suspect, however, although the author is probably using this sentence construction to demonstrate how recent the change in policy has been.
15. No apostrophe is needed, since the possessive element is shown by the sentence structure: 'that of Protestants'.
16. The sentence provides a transition from the previous paragraph and is necessary to indicate that a new example is now being discussed.
17. The word 'court' should not be capitalised here, since the word is not being used as part of a title or official designation.
18. The word 'reverend' should be capitalised, since it is part of a title.
19. A colon is necessary here to introduce the block quote that follows.
20. It is unclear from the quoted material whether the term had been defined earlier in the source material; however, since it is capitalised in the quotation, the author has properly retained the capitalisation.
21. The term 'sic' (sometimes italicised as *sic*) is the Latin for 'so' or 'thus', and is used to indicate an error that exists in the quoted material. In this case, the verb 'belonged' appears to be incorrectly conjugated, but the author properly chose to retain the error with the word 'sic' following to demonstrate that the error existed in the original.

22. The author has used four full stops to indicate the omission of some quoted material (three full stops) and the end of a sentence.
  23. The comma is technically incorrect; the sentence should either have no commas or two commas to indicate parenthetical information (one comma appearing here and the other appearing after the word 'that'). However, the error exists in the original material and is too minor to merit deletion (using an ellipsis for a single comma is unusual) or use of the word 'sic'.
  24. The author did not use quotation marks (inverted commas) because it is incorrect to do so with quote blocks.
  25. Although it is wise to use gender-neutral language, there is no need to do so when referring to a known person. Here, the Home Secretary was male and so can be referred to as 'he' even if his name is not used.
  26. There is no need for an additional case citation, since it is clear from context that the quote comes from the previously cited case.
  27. The characterisation of the government's actions as 'disturbing' is tricky. Some people would omit the phrase as unnecessary, whereas others would include it, since the basis for the author's conclusion has been made clear. This is one of those areas of discretion where there is no objectively right or wrong approach.
  28. It would be nice for the author to slip in a citation to the seminal case on indirect horizontal application (*Douglas v Hello!*), but it's not absolutely necessary.
  29. There is no need to capitalise the word 'courts' here, since the term is acting as a common noun.
- 

This concludes our discussion of general tips on legal writing. Although there is a lot of information contained in this chapter, it can all be simplified to two basic rules:

- (1) If you confuse your reader, you will not win top marks, no matter how brilliant you are.
- (2) If you can't figure out what the rules of grammar would require in a particular circumstance or if a certain phrase just looks odd, change the sentence structure. That's usually the best and fastest solution. There's no reason why you have to retain your original approach.

As mentioned before, there are numerous books on writing, including some concerning legal writing in particular, and you should feel free to consult them if you have further questions. At this point, however, we will turn to the question of how to adapt the CLEO method for use in legal practice.