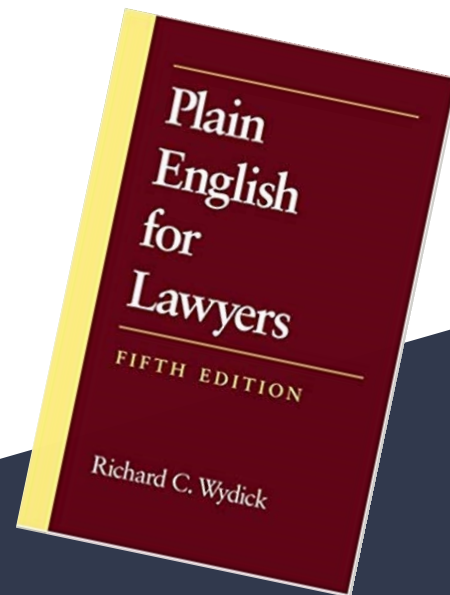


Plain English for Lawyers

A guide by Richard C. Wydick



Presented by the
Arizona Law Writing Center

What is the Writing Center?

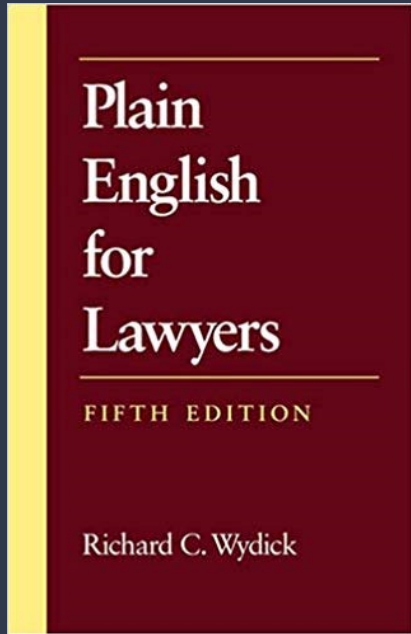
<https://arizonalawwritingcenter.arizona.edu/>

- A collaborative peer-tutoring service offered through the Writing Department
- Offer non-directive feedback and a non-judgmental work space
- Appointments offered Monday-Friday
- Work on memos, motions, substantial papers, and other legal writing

Writing Center fellows collaborate with you on:

- Writing skills and strategies
- Organization
- Clarity
- Persuasiveness
- Citations
- And more!

We do not proof-read or edit.
We do not give suggestions on content.



- “Good legal writing should not differ (without good reason) from ordinary, well written English.”
- Avoid legalese, or legal language.
RB 12.2(d)
- What are the characteristics of a well-written legal document?
 - Clear
 - Concise
 - Complete
 - Correct (law; facts; word choice)

Roadmap

Concise writing

Active voice (Clear)

- S-V-O (Subject-Verb-Object)

Nominalizations (Concise)


- Use base verbs

Word choice and avoid
language quirks (Correct)

Punctuation (Complete)

Concise Writing: clear, brief, and to the point

We're starting here because good legal writing is clear, brief, and to the point. This section will give you a taste of how to craft good legal writing, and each subsequent section will go in-depth on a specific area or issue.



Concise Writing: how to identify poor writing

Good writing tends to have more working words than glue words.

Working words carry the meaning of the sentence.

Glue words hold the sentence together.

You want more working words than glue words because glue words can distract from the more important working words

RB 12.2(c)

What's working and what's glue below?

The motion made by Martin seeking severance of his case from Charlie's case was granted by the court.

Concise Writing: how to fix poor writing

Working words: motion, Martin,
severance, from Charlie's case, granted

The court granted Martin's motion to
sever his case from Charlie's.



Concise Writing: clarity

The conclusion reached by the court
was that all stews are soups but not all
soups are stews. (18)


How can we fix this?



Concise Writing: clarity

The court concluded that stews are a type of soup. (10)

Why do you want to be clear?



Concise Writing: brevity

The defendant, however, did not tell the truth; rather, the defendant intentionally misled the court. (15)


How can we fix this?



Concise Writing: brevity

The defendant lied to the court. (6)

Why are short sentences a good thing?

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Concise Writing: get to the point

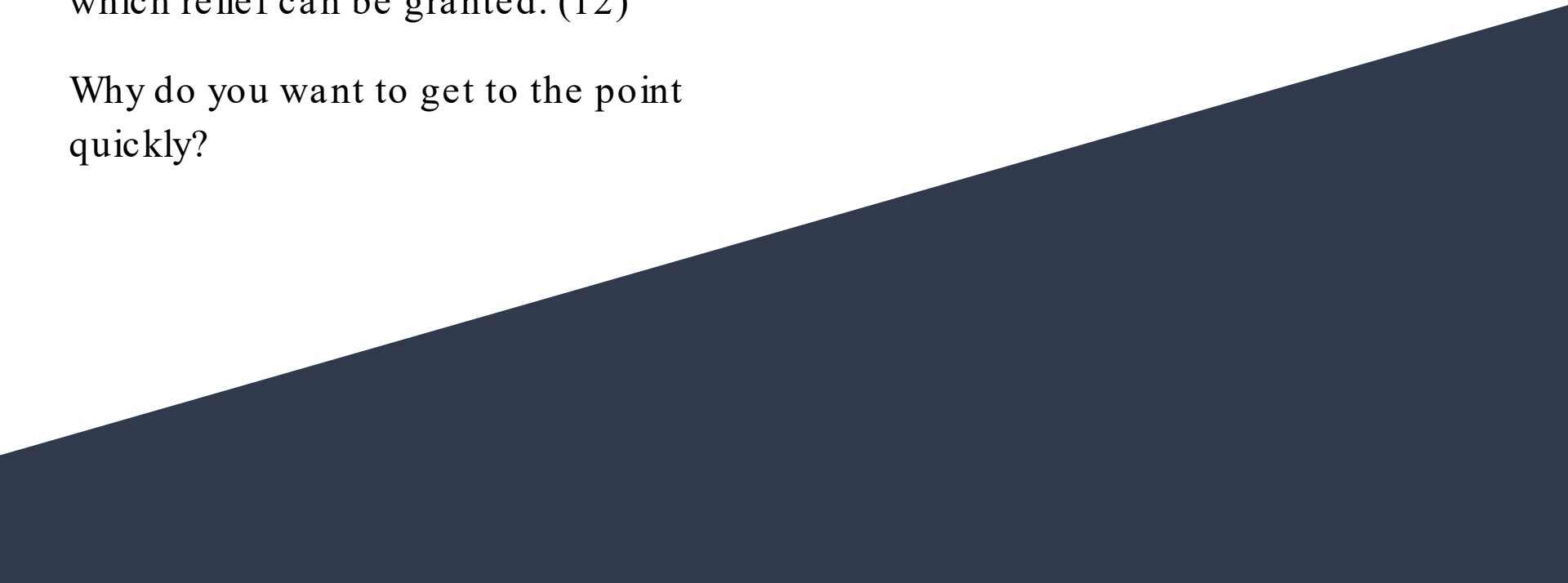
In all likelihood, and notwithstanding the fact that anything is possible, there is no relief available for the claim brought. (20)

How can we fix this?

Concise Writing: get to the point

Plaintiff failed to state a claim upon which relief can be granted. (12)


Why do you want to get to the point quickly?

A large, dark blue, abstract shape that starts as a thin line on the left and expands into a wide, curved band across the bottom right of the slide.

Professional Writing

How about the following?

The lower court found that the defendant was drunk and high (at the same time) during his arrest.



Professional Writing

How about the following?

The lower court found that the defendant was drunk and high (at the same time) during his arrest.

The trial court found that the defendant was intoxicated upon arrest.

Prefer the Active Voice!

- Takes fewer words
- Highlights the subject of the sentence
- Avoids ambiguity
- Active: the subject does the acting
- Passive: the subject is being acted upon

Active voice can be used in any tense

Active

John kicked the ball.

John kicks the ball.

John will kick the ball.

John has kicked the ball.

John had kicked the ball.

John will have kicked
the ball.

Passive

The ball was kicked by John.

The ball is kicked by John.

The ball will be kicked by John.

The ball has been kicked by
John.

The ball had been kicked by
John.

The ball will have been kicked
by John.

Examples

“A decision was reached to postpone the vote.”

→ Active?

→ The board decided to postpone the vote.

“It is believed by the candidate that a ceiling must be placed on the budget by Congress.”

→ Active?

→ The candidate believes that Congress must place a ceiling on the budget.



Ambiguity and “S-V-O” order

- If your goal is clarity or emphasis, it's best to clarify your subject and prefer the active voice

- BUT, sometimes we need passive voice or we may want to obscure the actor – e.g. defending a criminal defendant

- Also useful when:

- Thing is important and not who did it

- You do not know who did it

- You want subject to connect to preceding sentence

- To place strong element at end of sentence for emphasis

- To show detached abstraction

Subject + verb + object

(Usually) prefer sentence constructions
where the actor and the action are:

- Clearly stated
- Appear
 - close together
 - Beginning of sentence

“The hearing panel must, within 15 days following the termination of the hearing, or by the last day of the semester, whichever is earlier, file its findings and conclusions with the Vice-provost.”

Nominalizations

Noun form of a *verb*

 “State”

Vs.

“Make a statement”



- Avoid these!
- Create surplus words
- May contribute to passive voice

You can spot most of the common nominalizations by their endings:

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

Not all words with those endings are nominalizations. Further, not all nominalizations are bad. Sometimes you cannot avoid them. But do not overuse them; when you find one on your page, stop to see if you can make your sentence shorter and stronger by using a base verb instead.

Spot nominalizations by their endings

Exercise

An agent who comes into possession of property of the principal has a legal obligation to put the said property into use on behalf of the principal only, unless, of course, the principal gives approval to some other use.

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An agent who comes into possession of property of the principal has a legal obligation to put the said property into use on behalf of the principal only, unless, of course, the principal gives approval to some other use.

Revised...

An agent who possesses the principal's property must use the property on behalf of the principal only, unless, ~~of course~~, the principal approves some other use.

Recap: avoid nominalizations

- Use base verbs!
- Legal writing usually calls for us to convey action.
- Nominalizations obscure actions
- Unnecessarily abstract



Word Choice: what to avoid

- Compound Constructions
- Lawyerisms

RB 12.4 and 12.2(d)

Compound Constructions

A compound constructions occur when you use three or four words to do what one or two words can do.

E.g.,

for the reason that

at that point in time

in favor of

prior to/subsequent to

with a view to

because

then

for

before/after

to



because



*This is due to
the fact that*

Lawyerisms

Lawyerisms are words or phrases that are used to author sound more sophisticated or intelligent. Instead, they make the author sound pompous, annoying, and dumb. Use plain language! Unless the term really is a term of art

E.g.,

Aforementioned

Prior

Hereinafter

(Just don't. Don't do it.)

Notwithstanding

Despite

Res gestae

The background of the case

General Tips

Use strong words when being descriptive.

E.g.,

The defendant took advantage of people with little money and little intelligence.

Also, don't weaken your strong language. Own it.

E.g., catastrophic, not rather catastrophic

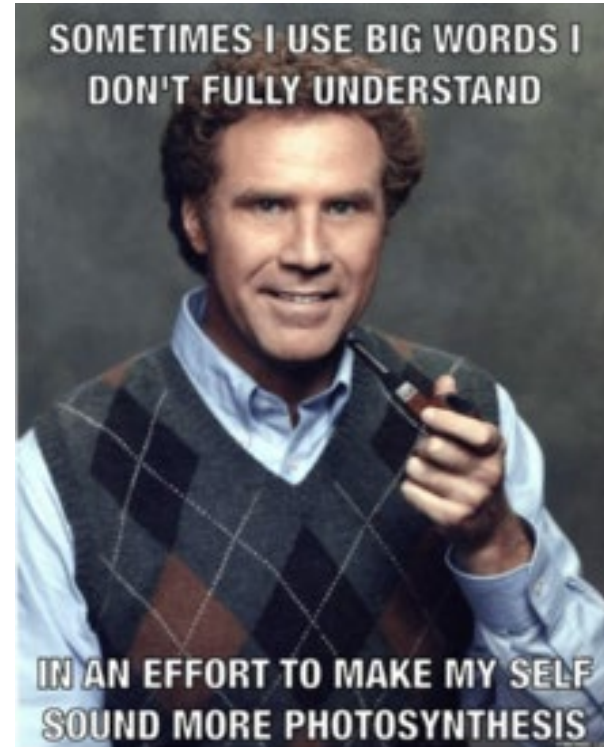
General Tips

Use positive terms.

The court does not consider x, y, and z.

Instead,

The court considers a, b, and c.



Punctuation

1

Use
punctuation
carefully and
purposefully

2

Follow the
rules of
common
usage

3

Refer to the
Redbook when
needed

Commas

Heritage is the janitorial company that serves Oak Valley, and Dr. Kuminik is an attending physician in Oak Valley's emergency room.

Comma needed?

But, no comma:

Ritija scratched the cat's head and rubbed his belly.

See Redbook 1.1 for more

Colons

- Use to introduce lists, quotations, or statements
 - Congress identified four factors: (1) ..(2) ...etc.
- If what follows colon is not a complete sentence, do not capitalize the first word
- See Redbook 1.2 for more

Semi- colons

Not a colon!

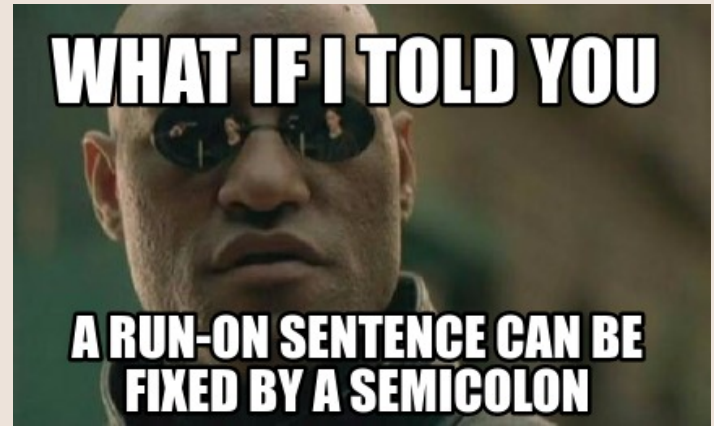
Use to separate independent clauses not joined by a conjunction

- Demeanor is typically a sum total of traits and appearance; change any one and you may change the witness's credibility.

Use to separate an independent clause if second clause begins with conjunctive adverb or transitional expression.

- It was almost quitting time; nevertheless, most workers planned to stay late to work on the project.

Redbook 1.15



Em - dash

Setting off words at beginning or end of sentence. Use an em-dash to separate an element that is placed at the beginning or at the end of a sentence to expand on or explain another part of the sentence. In this construction, the dash is similar in function to a colon (at the beginning) or parentheses (at the end), but more emphatic.

Ex. Paul McCartney—he was everybody's favorite.

Ex.: Principle—that's what's at stake here.

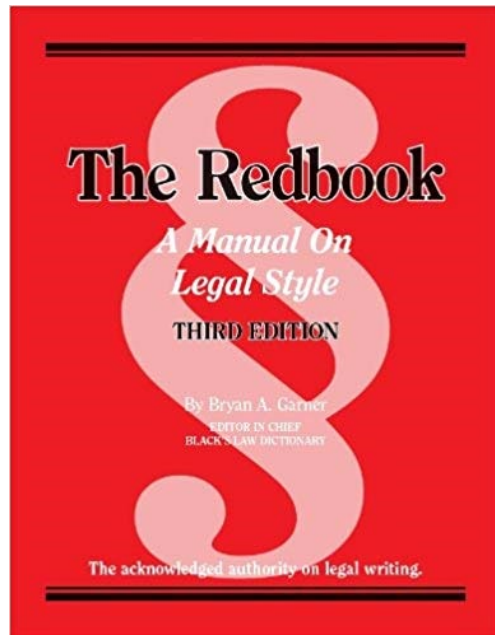
Ex.: The most common problem of extra-record evidence occurs when there are ex parte contacts—communications outside the hearing and off the record from an interested party to a decision-making official.

Em - dash

In midsentence. Use a pair of em-dashes instead of parentheses to set off important parenthetical matter—even an independent clause—inside the main sentence. While parentheses minimize what they enclose, em-dashes emphasize it. Don't use a comma, semicolon, or colon before or after an em-dash, even if one would be necessary without the interrupting matter.

Ex.: Because an assignment for the benefit of creditors places the debtor's property out of the reach of creditors—legal title passes to the assignee—it might seem that creditors would be able to void the assignment under a fraudulent-conveyance statute. (The comma that would have been required where the first em-dash appears is no longer necessary.)

Chapter 1!



Questions?

