

THE UNIVERSITY OF QUEENSLAND

TC BEIRNE SCHOOL OF LAW

A GUIDE TO WRITING STYLE IN ASSIGNMENTS

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The Law School recognises that there are different styles which are suitable for legal writing and that it is impossible to set down a hard and fast rule for every occasion. Nevertheless, it is possible (and appropriate) to identify some basic standards to which all writing submitted for assessment should conform.

The purpose of this Guide is to provide students with general guidance as to the minimum standard of English expression expected of them and to alert them to a number of common pitfalls.

A. BASIC PRINCIPLES

1. Format

Consider the reader. Choose your format with the reader in mind.

Choose a font type and size for ease of reading. Times New Roman is the font generally used in University documents. Use a font size which is at least 11 pt, and line spacing of at least 1.5. This document is in Calibri 11 pt with 1.5 line spacing.

Margins should be a minimum of 25 mm all round. Left margins of 35-40 mm are helpful for markers.

Number the pages.

2. Grammar, Spelling and Syntax

Observe the general rules of English grammar, spelling and syntax. If you are unsure of any grammatical rules, you should refer to Michael Meehan and Graham Tulloch, *Grammar for Lawyers* (Butterworths, 2nd ed, 2007).

You should prefer standard British/Australian spelling to American spelling, e.g. 'organisation' not 'organization', but you should note the following exceptions:-

- Where an organisation has adopted a non-standard spelling as part of its official name, you should use that spelling, e.g. Australian Labor Party.
- Where the non-standard spelling appears in a quotation from the work of another author, use that author's spelling.

If you are unsure of the standard British/Australian spelling, you should consult H W Fowler, *Fowler's Modern English Usage* (Oxford University Press, 3rd revised ed, 2004).

Formal, precise modes of expression should be preferred to colloquial modes of expression. Contractions, abbreviations and slang should not be used.

Examples:-

INCORRECT – The plaintiff claimed compo.

CORRECT – The plaintiff commenced a claim for compensation.

INCORRECT – Since the defendant hadn't entered an appearance, the court entered judgment for the plaintiff.

CORRECT – Since the defendant had not entered an appearance, the court entered judgment in favour of the plaintiff.

3. Structure

Your choice of structure for a piece of legal writing must reflect the purpose of that piece of writing.

If you are asked to write an essay, you will be expected to produce a scholarly exposition which incorporates an argument which is supported by evidence. An essay will begin by stating a 'hypothesis' – a proposition to be tested – or, at the very least, a question or problem which is to be resolved. The process is 'dialectical' (as opposed to 'didactic' or 'descriptive') – that is, your writing must set out the steps in an argument which lead to the acceptance or rejection of the hypothesis or to the resolution of the question or problem. An essay should demonstrate analytical reflection on the issue at hand. Do not leave it up to the reader to assume you have thought critically about the subject matter – you need to articulate that logical process in written form. The dialectical process will normally involve presenting a thesis (a proposal), an anti-thesis (a counter-proposal or challenges to the ideas presented as thesis) and a synthesis (how can conflicting, or at least divergent, views be reconciled). This process would take up the main body of the essay, supported by an introduction and a conclusion.

Other types of legal writing include case notes and reports. These will generally be more descriptive in character, although a case note may have a critical or analytical aspect. Whatever type of writing you are doing, make sure that you organise the information and arguments in a logical way. Use structural devices, such as headings and sub-headings, to make the organisation clear.

4. Drafts

The final version of your assignment should be the last in a number of drafts.

Leave time for adequate proofreading and polishing. Read the final version carefully before submission. As well as looking for typographical errors, check for clarity of meaning in relation to each sentence and each paragraph. In particular, ask yourself whether each sentence and each paragraph is necessary in order to make the argument which you are making.

B. COMMON PITFALLS

5. Active Voice and Passive Voice

Lawyers should, as a general rule, write in *active voice* rather than *passive voice*. Passive voice involves referring to an action without referring to an acting subject. Passive sentence constructions are less precise than active constructions. When describing actions or obligations to perform an action, one should specify who performs the action or whom the law requires to perform the action.

Example:-

INCORRECT – Compensation must be paid to the victim.

CORRECT – The wrongdoer must pay compensation to the victim.

When the identity of the person who performs an action or who must perform an action is important, active voice must be used. It is particularly important that you use active voice when drafting contracts, trust deeds, wills and other documents which define people's rights and duties. There will be occasions when passive voice is acceptable. For example, 'unless the contrary is proved' could also be rendered as 'unless someone proves the contrary', but, if 'someone' could be anybody in the world, there is no compelling reason to prefer the active construction to the passive construction.

6. Non-parallel Sentence Structure

This problem arises when the writer is listing a number of items in a single sentence. Meehan and Tulloch suggest that you use parallel grammatical structures for the various items in the list.¹

¹ Michael Meehan and Graham Tulloch, *Grammar for Lawyers* (Butterworths, 2nd ed, 2007) 99.

Example:-

INCORRECT – In the event of a trustee’s insanity, illness, physical incapacity, an act of bankruptcy is committed or the trustee commits a criminal offence, the trustee may be removed from office and the remaining trustees may appoint a replacement trustee.

CORRECT – If any trustee commits a criminal offence, becomes insane, is unable to act as a trustee owing to illness or other physical incapacity or commits an act of bankruptcy, the remaining trustees may remove the trustee from office and appoint a replacement trustee.

We can see the problem with the first example when we attempt to rewrite it as a series of paragraphs:-In the event of a trustee’s –

- (a) insanity;
 - (b) illness;
 - (c) physical incapacity;
 - (d) an act of bankruptcy is committed; or
 - (e) the trustee commits a criminal offence,
- the trustee –
- (f) may be removed from office; and
 - (g) the remaining trustees may appoint a replacement trustee.

Each individual paragraph must form a grammatically complete sentence (or sub-clause) with the opening words of the sentence. Paragraphs (d) and (e) do not conform to the overall sentence structure which has been set by the opening words and paragraphs (a), (b) and (c). The second example complies with this requirement.

If any trustee -

- (a) commits a criminal offence;
 - (b) becomes insane;
 - (c) is unable to act as a trustee owing to illness or other physical incapacity; or
 - (d) commits an act of bankruptcy,
- the remaining trustees may –
- (e) remove the trustee from office; and
 - (f) appoint a replacement trustee.

Note that, where lettered or numbered paragraphs are used, they are to be separated from one another by semi-colons. Lettered or numbered paragraphs should be indented by one tab space from the margin.

7. Dangling Clauses

A dangling clause is a subordinate clause which 'does not apply grammatically to the person or thing it is meant to modify'.² Consider the following examples:-

- As Mary's only living relative, the entire estate passed to Henrietta.
- Having been found guilty of murder, a sentence of life imprisonment was imposed on him.

The subject of the main clause of the first sentence is 'the entire estate', but the subordinate clause refers to Henrietta. The subject of the main clause in the second sentence is 'a sentence of life imprisonment', but the sentence of life imprisonment has not been found guilty of murder. One could overcome the problem by reformulating the sentences in the following way:-

- As Mary's only living relative, Henrietta inherited the whole of Mary's estate.
- Having been found guilty of murder, the prisoner was sentenced to life imprisonment.

In these sentences, the subordinate clause refers to the subject of the main clause. An alternative course of action would be to reconstruct the sentence so that both the main and subordinate clauses have their own subject.³ In the case of the second example, this has the advantage of eliminating the use of passive voice, i.e.:-

- The jury having found the prisoner guilty of murder, the judge sentenced him to life imprisonment.

Of course, if there were more than one prisoner, one would be well-advised to repeat 'the prisoners' in the main clause (rather than use 'them') in order to avoid any suggestion that the jury were sentenced to life imprisonment.

² Ibid 100.

³ Ibid.

8. 'Such' as a Demonstrative Adjective or Pronoun

Meehan and Tulloch have observed that phrases such as 'such people', 'such beneficiaries' and 'such amounts' are ambiguous. They could refer either to the particular people, beneficiaries or amounts that were mentioned earlier in the document or people, beneficiaries or property of that kind.⁴ Where you intend the former meaning, you should use *this*, *that*, *these* and *those* as it is appropriate, e.g. 'this person', 'that party', 'these beneficiaries', 'those amounts'.

Example:-

- The trustees shall hold the trust fund upon trust for the children of the settlor who are alive at the date of this deed and, when the youngest of those children attains the age of 21 years, shall distribute the capital and income of that fund among those children in equal shares.

9. Split Infinitives

A split infinitive occurs where an adverb or adverbial phrase is placed between the particle 'to' and the remainder of the infinitive of the verb, e.g. 'to boldly go'. Adverbs include words such as 'not', 'never', 'always' and 'now'. The rationale which underlies the prohibition of split infinitives is that the infinitive of the verb is, for grammatical purposes, one word. The modern consensus appears to be that split infinitives are not *always* objectionable and are sometimes necessary in order to express certain subtleties.⁵ For example, there may be literary contexts in which it is necessary to distinguish between a person who decides '*not* to conform' and a person who decides 'to *not* conform'. That said, the use of split infinitives is often careless and unnecessary. You are well-advised to heed Meehan and Tulloch's advice that 'in professional legal contexts, it is best *not* to split'.⁶

Example:-

INCORRECT – It is the trustee's obligation to entirely distribute the trust fund among the eligible beneficiaries.

CORRECT – It is the trustee's obligation to distribute the trust fund entirely among the eligible beneficiaries.

⁴ Ibid 85.

⁵ Ibid 27.

⁶ Ibid (emphasis added).

You might note that one can avoid the problem of the placement of 'entirely' by rephrasing the sentence in this way:-

It is the trustee's obligation to distribute the entire trust fund among the eligible beneficiaries.

10. Incorrect Apostrophe Use

Apostrophes are used in English for two purposes:-

1. to indicate genitive or possessive case, e.g. *Law's Empire*; or
2. to indicate that the word is a contraction, e.g. can't, couldn't, won't.

The second use is not permitted in formal legal writing. You must use 'cannot', 'could not' or 'will not'.

In relation to genitive/possessive use, you should note the following matters:-

1. the genitive/possessive form of *it* is *its* (it's = it is);
2. the genitive/possessive form of a regular plural noun (i.e. plurals which end with the letter *s*) is to be produced by adding an apostrophe only;
3. the genitive/possessive form of a singular noun which ends with the letter *s* is to be produced by adding an apostrophe and the letter *s*.

The genitive/possessive form of a person's name which ends with the letter *s* is a difficult case. Since there does not appear to be a clear consensus on the issue, either of the following is permissible:-

- Birks' approach to the taxonomy of private law obligations ...
- Birks's approach to the taxonomy of private law obligations ...

11. Quotations

The *AGLC3* [1.5.1] states that quotations of three lines or less should be incorporated into the text and enclosed by single quotation marks. Quotations of more than three lines are to be single-spaced indented from the left margin and are not to be enclosed in quotation marks (i.e. a block quotation). This is a good rule of thumb, but the crucial matter is whether the quotation can be accommodated within the grammatical structure of the main text without any awkwardness of expression. If the quotation is a complete sentence, it may be appropriate to use the block quotation method, even though the length of the quotation is

three lines or less. Where the first word of a block quotation is not the first word of a sentence in the source (but the quotation forms a complete sentence), you should begin the quotation with a capital letter in square brackets.

Example:-

[A] sentence must have a principal clause containing a finite verb and, almost always, a subject. Dependent or subordinate clauses, even when they contain finite verbs, cannot stand alone as sentences.¹

...

¹Michael Meehan and Graham Tulloch, *Grammar for Lawyers* (Butterworths, 2nd ed, 2007) 96.

If you wish to shorten a long quotation by removing words from the middle of the quotation, you must use ellipses (...) to indicate the points at which words have been removed.

[A] sentence must have a principal clause which contains a finite verb and, almost always, a subject. Dependent or subordinate clauses ... cannot stand alone as sentences.¹

...

¹Michael Meehan and Graham Tulloch, *Grammar for Lawyers* (Butterworths, 2nd ed, 2007) 96.

When removing words from a quotation, you should take care not to misrepresent the author's emphasis or meaning.

12. Terms Easily Confused

Meehan and Tulloch have provided a list of commonly confused and misused terms.⁷ It suffices, for present purposes, to mention a few examples of confusion which occur frequently in legal writing.

- 'Affect' is a verb, e.g. 'How did the prevailing economic and political environment in nineteenth century England *affect* the development of the freedom of contract idea?'. 'Effect' is a noun, e.g. 'What was the *effect* of the prevailing economic and political environment in nineteenth century England upon the development of the freedom of contract idea?'

⁷ Ibid 93-96.

- ‘Alternate’ as an adjective refers to the fact that one thing alternates with another, e.g. ‘each alternate week’. ‘Alternative’, as a noun and as an adjective, refers to the existence of a choice between one thing or the other, e.g. ‘Mediation is an alternative to traditional dispute resolution in the courts of law, i.e. *alternative* dispute resolution.’
- ‘Counsel’ means an adviser or advisers (particularly a barrister or barristers) or the advice given by that person or those persons. It can be used as a verb to refer to the act of giving advice. ‘Council’ is a body of people who make decisions, e.g. the Brisbane City Council. It is always a noun.
- ‘Principal’ means the thing or person of primary importance, e.g. the head of a school, the person to whom a fiduciary owes fiduciary obligations, the sum of money which has been invested in contrast to the interest which has been earned upon that sum. ‘Principle’ refers to a proposition, usually of a legal or moral character, e.g. ‘John Rawls articulated the difference principle in *A Theory of Justice*.’

13. Words of Foreign Origin

The general rule is that words of foreign origin ought to be italicised. Of course, everyday English (including the everyday terminology of law and government) includes many words of foreign origin, e.g. Parliament, royal, ombudsman, smorgasbord, pizza, patio, siesta. Borrowed words such as these should not be italicised. They are accepted as part of ordinary, everyday English and do not necessarily have a purely English alternative which captures their precise meaning. For example, one would not use the purely Anglo-Saxon ‘kingly’ as a substitute for the French ‘royal’. These two words have different connotations.

Italicisation should be used for words or phrases of foreign origin which are used in academic and literary English but which are not accepted as part of the everyday English vocabulary. These words and phrases will, more often than not, have an English substitute, but the foreign word or phrase expresses the concept more succinctly or more euphoniously than any English alternative. Examples are *Schadenfreude* and *savoir faire*. Note that, when using German nouns, one should follow the German convention of capitalising the first letter of the word. Latin phrases such as *inter alia*, *a fortiori* and *mutatis mutandis* ought to be italicised. Whether those phrases or their English substitutes should be used in a particular situation is a matter for individual judgement. If you decide to use the Latin phrase, you must italicise it.

C. PLAGIARISM

Plagiarism is the use of another person's work without acknowledgement. The basic rules are as follows:-

- If you are quoting another author's work, the quotation must appear in quotation marks (single inverted commas) and must be accompanied by a footnote reference which includes a pinpoint reference. It is not sufficient merely to footnote the source.
- If you are paraphrasing another author's work – that is, you are summarising in your own words what another author has said – quotation marks are not required but you must insert a footnote reference to indicate the source of the idea.
- There are some rules of law which are so elementary and uncontroversial that any person who has any level of legal education is able to assert them without citing authority (e.g. A promise made in a deed is enforceable at common law, even though no consideration has been given for the promise.). If you are using your own words to state these propositions, there is no need to cite a source. Of course, if you are using a form of words taken from another source, that is a quotation, so it must appear in quotation marks and be accompanied by a footnote reference which includes a pinpoint reference.
- The University authorities regard plagiarism – including negligent and 'unconscious' plagiarism – as serious misconduct.