

SWEATING THE SMALL STUFF

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Over years of working with newly graduated lawyers to improve their writing, we have spent more time than we like to remember asking them to pay less attention to trivia such as passive voice and more to the big organizational and rhetorical issues they'd prefer to ignore. When associates show up with drafts in their hands, many of them say they're interested only in a few tips for writing jazzier sentences. Everything else, they have under control. As a result, we often have to begin coaching sessions by disabusing them of that blissful delusion. This requires forcing them to raise their noses higher than six inches above the page, so they can instead look at a draft from a distance at which its organizational and rhetorical problems become visible.

In this effort, our credibility sometimes suffers because we can't help becoming obsessive about some micro-level problems, ones so "small" that many writers have trouble seeing them even when we point them out. What upsets us about these problems, we have finally realized, is not the problems themselves. Truth be known, they are seldom fatal. Instead, what bothers us is the underlying attitude they suggest: A sentence is just a loose assemblage of words and, as long as each word ends up in roughly the right neighborhood, it doesn't much matter exactly where it goes. That's a sloppy and dangerous attitude, especially for lawyers. Instead, we try to tell them, writers should regard a sentence as a bridge: If it is to remain

standing while carrying substantial weight, each word has to fit into one and only one place. Of course, any sentence can be constructed in several ways. But, once you've chosen the best structure, each word should click precisely into its slot. In fact, so should each punctuation mark.

To drive this lesson home, we often seize on the following "micro" problems to make the larger point. Each involves the links between pieces of information.

A Misplaced Conjunction

This problem usually shows up when a writer lists a series of items (a, b, and c, for example), one of which is itself a multipart series (a, b-1 and b-2, and c). The danger is significant because it sometimes arises from conceptual sloppiness, not just stylistic clumsiness. The sentence below, from a memorandum of law in a discovery motion, is written as if it contains an "a, b, or c" series:

Before:

Megacorp objects to the Request because it is [a] overbroad, [b] unduly burdensome, and [c] asks for material which is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

It is written, in other words, as if three items follow the verb "is." In fact, only two follow "is"; the third follows another verb, "asks." To fix the syntax, then, the sentence should be revised to read:

Revision 1:

Megacorp objects to the Request because it [a] is [a-1] overbroad and [a-2] unduly burdensome, and [b] asks for material which is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

But this revision does not go far enough. While it solves the syntactical problem, it fails to cure the underlying conceptual fuzziness, which resulted from the rote repetition of a formulaic objection. Conceptually, into how many categories do Megacorp's objections fall? The answer depends on the specifics of the document request and Megacorp's tactics for opposing it. Is it objecting for three separate reasons? Or really for only two reasons, because the request's burdensomeness

arises from its overbroad scope? If the latter, then the sentence should read as follows:

Revision 2:

Megacorp objects to the Request because it is overbroad and therefore unduly burdensome, and because it asks for material which is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

The addition of “therefore” binds together the parts of the first objection; the repetition of “because it” more clearly separates the first from the second.

This problem is worth lingering over for two reasons. First, even good writers often have trouble spotting it. Second, it can sometimes lead to drastic consequences for a document’s organization, as the next example demonstrates.

Before:

Generally, the capital and surplus restrictions require that at least 60 percent of the minimum capital or surplus investments be made in obligations of the United States; any state; any of New York State’s counties, districts, or municipalities; or certain mortgage loans on property in New York.

Judging by the placement of “or,” this sentence lists four kinds of obligations: obligations of 1) the United States, 2) any state, 3) any of New York State’s counties, districts, or municipalities, or 4) certain mortgage loans on property in New York. But the fourth makes no sense—“obligations of certain mortgage loans”? Instead, these loans are obviously a different category of investment:

Revision 1:

Generally, the capital and surplus restrictions require that at least 60 percent of the minimum capital or surplus investments be made either in obligations of the United States; any state; *or* any of New York State’s counties, districts, or municipalities; *or* in certain mortgage loans on property in New York.

Revision 2:

Generally, the capital and surplus restrictions require that at least 60 percent of the minimum capital or surplus investments be made in either

- obligations of the United States, any state, or any of New York State’s counties, districts, or municipalities, or
- certain mortgage loans on property in New York.

A final example:

Before:

Rule 11f-6(c) is generally a basis for arguments *either* asserting that the proposal would require the registrant to violate its existing obligations or that the proposal’s objective is too broad.

After:

Rule 11f-6(c) is generally a basis for arguments asserting *either* that the proposal would require the registrant to violate its existing obligations or that the proposal’s objective is too broad.

A Misplaced “Only”

The word “only” is especially likely to float loose from its proper place:

Before:

To prove yourself, you only have to jump through the first two hoops

So far, this sentence means the victim has to jump through the hoops as an alternative to doing something else (say, signing a pledge to bill 3,000 hours a year). But the rest of the sentence says: “. . . not all six.” What the writer means, then, should have been expressed as:

After:

To prove yourself, you have to jump through only the first two hoops, not all six.

Unimaginative Punctuation

We assume, of course, that your students know all the rules of punctuation and never violate them. Even so, they probably miss opportunities to use punctuation more imaginatively, and in particular for two purposes: to change a sentence’s rhythm or to clarify its structure. (These two purposes often go hand in hand.)

For example:

Version 1:

To implement the proposal, Widget Corp. would have to change its source of raw material and therefore to breach existing contracts.

Version 2:

To implement the proposal, Widget Corp. would have to change its source of raw material, and therefore to breach existing contracts.

By rule, the final comma in Version 2 has no business being there. But it is helpful: Because it slows readers down a little, they land with a little more emphasis on the sentence's final words, which deserve that extra attention.

Another example, of a different kind:

Before:

Assume that one Megabank entity, for example, a nonbank subsidiary of the bank holding company, purchases a limited partnership interest in a real estate limited partnership while a second, affiliated Megabank entity, for example, a bank, makes a loan to the limited partnership.

After:

Assume that one Megabank entity (for example, a nonbank subsidiary of the bank holding company) purchases a limited partnership interest in a real estate limited partnership while a second, affiliated Megabank entity (for example, a bank) makes a loan to the limited partnership.

In the revision, the parentheses make it easier to see that the examples are, in fact, parentheticals, and to separate them out from the sentence's primary substance.

Lack of Parallelism

We know, we know: This problem should have been cured in eighth grade. But it shows up in drafts we read with disconcerting frequency. It most often arises when a writer fails to put parallel ideas into the same kind of grammatical container. The first may go into an independent clause, the second into a dependent clause, and so forth.

Before:

Courts have cited the following factors: 1) the assignment was contained in the granting clause of the mortgage; 2) the deed of trust was not explicit in stating that the creditor need not take possession or make demand before becoming entitled to the rents; and [here comes the problem] 3) the use of the words "as additional

security," "for the purpose of securing," or their equivalents.

For the sake of parallelism, the third item, like the first two, should be inside an independent clause, not a phrase:

After:

... and (3) the mortgage or deed of trust contained the words "as additional security," "for the purpose of securing," or their equivalents.

In addition to keeping the grammatical forms parallel, try to keep the wording as similar as possible:

Before:

The primary questions are: 1) whether the individual is a New York domiciliary, 2) if he has a permanent place of abode in New York, and 3) the number of days he is physically present in New York.

After:

The primary questions are whether: 1) the individual is a New York domiciliary, 2) he has a permanent place of abode in New York, and 3) he is physically present in New York for more than 180 days.

Here is a less obvious example of the problem:

Before:

The issue of good faith is most frequently raised in connection with a limited partnership debtor formed to invest in real property and which holds only one substantial asset.

This sentence could be reformed in several ways, based on substantive decisions about its content. Here are two possibilities:

Version 1:

The issue of good faith is most frequently raised in connection with a limited partnership debtor formed to invest in real property that holds only one substantial asset.

Version 2:

The issue of good faith is most frequently raised in connection with a limited partnership debtor that was formed to invest in real property and that holds only one substantial asset. [*The second "that" could be omitted, still leaving the*

.....

parallel structure of two verbs (“was formed” and “holds”) following the first “that.”]

The first version implies that we have already been discussing a real estate investment partnership, and are now adding “one substantial asset” as a feature of the partnership. The second indicates instead that we have been discussing a limited partnership to which we are now attributing two specific characteristics—investing in real estate and holding one substantial asset.

* * * *

As we said at the start, none of these problems is serious enough to lose sleep over. Even the ones that involve grammatical violations seldom prevent a reader from understanding what a sentence means. But if you can persuade writers to focus on problems of this scale, and to take them seriously, the result is a discipline that pays off in other ways: They begin to “see” sentences more precisely, not as haphazard assemblages of words, but as miracles of careful engineering designed to sustain a heavy logical weight.

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