

## ESSENTIALS OF A GOOD LEGAL WRITING

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### *Abstract*

*The ability to produce good legal writing is coveted not only in legal academia but also in legal profession. In the first part, the paper identifies what constitutes good legal writing by distilling the common characteristics of well written legal articles. The paper argues that well written legal articles are clear, concise, accurate, engaging and elegant and explains the importance of each of these criteria. In the second part the paper explains how to write articles that satisfy the criteria of being clear, concise, accurate, engaging and elegant. The paper argues that use of plain language, avoiding legalese, proper punctuation and grammar, clarity of thought, adequate and accurate research, proper organisation, brevity in expression and engaging with the audience is the key to good legal writing.*

**Keywords:** Legal Writing, Legal Research, Clear Writing, Plain Writing, Effective Legal Writing, Legal Article

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## INTRODUCTION

The importance of legal writing in the law profession cannot be over emphasised. Bryan Garner once said, “Writing is one of the two great skills that will advance your career in law. (The other is people skills).”<sup>1</sup> The purpose of different types of writing is different. A business letter may be written with intent to transact business. A newspaper article may be written for the purpose of information dissemination. A legal article too can be written for different purposes. It can be for creating public opinion. It can be descriptive such as compilation of cases. It can be persuasive such as articles arguing for reform. It can be analytical such as those, which examine the merits and demerits of a particular act.

A commonly accepted way to determine if a piece of writing is good is to evaluate its effectiveness. It is understood that if the writing is effective in serving its intended purpose, it is good legal writing. However, Mark Osbeck argues against this logic by pointing out that there may be various factors, which make writing effective without it being well written. He says for instance, “a brief that takes advantage of a judge's known predilections or prejudices can be an effective document, even though it is poorly written.”<sup>2</sup> He provides an alternate criterion for judging

a piece of legal writing. He explains the basic requirement of good legal writing in the following words:<sup>3</sup>

“The legal reader's purpose for reading the document is to extract information that will facilitate the reader's decision-making. And thus, the legal reader will regard a document as well written if and only if the writing facilitates that decision-making. Good legal writing, therefore, is best understood as writing that helps legal actors make decisions in the course of their professional duties.” This criterion is more effective in evaluating whether a legal article is well written as it encompasses the criteria of effectiveness without having the drawbacks of that system.

## GOOD LEGAL WRITING: THE PRODUCT

Before we begin to understand the essentials of good legal writing, it is important to understand what good legal writing looks like. There are certain characters common to well written legal articles. Well-written legal articles are clear, concise, accurate, engaging and elegant. All these characteristics are explored below.

### Clear

It is generally accepted that the chief hallmark of good legal writing is clarity.<sup>4</sup> Its

<sup>1</sup> Bryan A Garner, *Garner on Language and Writing*, 379 (American Bar Association, 2009).

<sup>2</sup> Mark Osbeck, “What is Good Legal Writing and

Why Does It Matter?” *DLR* 417 (2012).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Supra* n. 3.

importance is emphasised by Justice Benjamin Cardozo in the following words, “there can be little doubt that in matters of literary style the sovereign virtue for the judge is clearness.”<sup>5</sup> Clarity in legal writing is essential because it ensures that the message gets conveyed which is the primary requirement of communication. The emphasis given to clarity in legal writing in the current times can be seen from the following statement made by Brian Garner and Justice Antonin Scalia “Literary elegance, erudition, sophistication of expression--these and all other qualities must be sacrificed if they detract from clarity.”<sup>6</sup>

A reader’s purpose of reading legal writing is to understand what is being conveyed, and if the writing is not clear, irrespective of its other virtues, it cannot be adequately understood, thereby defeating its purpose. Thus the requirement of clarity is first and foremost for a good legal writing. In other words, for the reader to use legal writing, he must be able to comprehend it, before he can use it for decision making and therefore clarity in writing is paramount.

### Concise

Another characteristic feature of good legal writing is conciseness.<sup>7</sup> Strunk and White outline the requirement for conciseness, in the following words: “A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines, and a machine no unnecessary parts.”<sup>8</sup> Conciseness is more than just brevity.<sup>9</sup> It is brevity with efficiency. It means that the words convey the message without the use of excessive or too many additional words. According to Strunk, Jr. & White, “This requires not that the writer make all sentences short, or avoid all detail and treat subjects only in outline, but that every word tell.”<sup>10</sup> According to Osbek, “Concise writing conveys the writer's points succinctly, without superfluous words, and with an appropriate level of detail.”<sup>11</sup>

The reason why conciseness is a requirement of good legal writing has much to do with the fact that non-concise writing is often not as clear as concise writing. According to Elizabeth Fajans et al., “Roundabout, repetitive, and wordy sentences are difficult to understand.”<sup>12</sup> It can be understood that in concise writing, it is easier for the reader to grasp the central idea. Also concise writing is more interesting to read thus it engages the

<sup>5</sup> Benjamin N Cardozo, *Law and Literature* (Harcourt Brace and Company 1931).

<sup>6</sup> Antonin Scalia and Bryan Garner, *Making your case: The Art of Persuading Judges* 107 (Thomson West 2008).

<sup>7</sup> *Ibid.*

<sup>8</sup> William Strunk, and E.B. White, *The Elements of Style*, 23 (New York 1918).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Supra* n. 9.

<sup>11</sup> *Supra* n. 3.

<sup>12</sup> Elizabeth Fajans, *Writing for Law Practice* 163 (Foundation Press 2015).

reader, who may give up reading a piece, which is too long for him to understand, thereby defeating the entire purpose of writing. As succinctly put by Osbek, “the reader tends to lose interest having to slog through an unnecessarily long text in order to grasp the writer's meaning.”<sup>13</sup>

Conciseness is essential for legal writing as “reader of legal writing has no time to spare and either will resent inflated verbiage or will simply refuse to read it.”<sup>14</sup> Thus to ensure effective communication for decision making, the writing should be concise so that the reader is able to grasp all the information without having to either waste time or undergo excessive difficulty in understanding its meaning. Further writing should be concise so that the reader is not forced to make decision without taking the writing into account because it was too difficult to understand due to its verbose nature.

### **Accurate**

Well-written articles are accurate. The purpose of legal writing is to facilitate decision-making and unless the information provided is accurate and reliable it cannot assist in proper decision making. Thus it is highly imperative that good legal writing be accurate.

### **Engaging**

The reader will only read a piece of writing because he wants to, and if the writing is not engaging, he may not want to devote the effort of reading. The importance of engaging the reader in legal writing cannot be described better than by Lord Denning, when he writes<sup>15</sup>:

“No matter how sound your reasoning, if it is presented in a dull and turgid setting, your hearers--or your readers--will turn aside. They will not stop to listen. They will flick over the pages. But if it is presented in a lively and attractive setting, they will sit up and take notice. They will listen as if spellbound. They will read you with engrossment.”

The requirement that the writing be engaging arises out of the fact that if despite being accurate clear and concise, if a piece of writing is not engaging, the reader may not want to read it, thereby defeating the purpose of writing.

### **Elegant**

Finally the last essential of a good legal writing is elegance in legal writing. As per Joseph Williams<sup>16</sup>, “Anyone who can write clearly, concisely, and coherently should rejoice to achieve so much. But while most of us prefer bald clarity to the density of

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<sup>13</sup> Supra n. 3.

<sup>14</sup> Richard K. Neumann, *Legal Reasoning and Legal Writing* 217 (6th ed. 2009).

<sup>15</sup> Supra n. 2.

<sup>16</sup> Joseph M. Williams & Gregory G. Colomb, *Style: Lessons in Clarity and Grace* 141 (10th ed. 2010)

institutional prose, others feel that relentless simplicity can be dry, even arid. It has the spartan virtue of unsalted meat and potatoes, but such fare is rarely memorable. A flash of elegance can not only fix a thought in our minds, but give us a flicker of pleasure every time we recall it.”

However, the disclaimer here is that, the requirement of elegance must bow down to the utility of the document. In case of legal article, elegance should not take precedence over content. Elegance must not take precedence over practical considerations; such as cost and it must be kept in mind how much the article require elegance to be effective. This helps determine the amount of time spent in making the article elegant.

## **GOOD LEGAL WRITING: THE PROCESS**

In the previous section we have understood what good legal writing looks like, under this section let us understand how to achieve the objectives discussed in the previous section.

### **Listen to your inspirations**

Often we think of the best ideas for our legal writing while being engaged in something else. The key is to make note of it right then. Often when we sit to write an essay, we are unable to write anything significant. At such time, it is best to leave it for the time being

and come back to it when we have an idea, instead of wasting time staring at the computer screen.

Eminent judges have used this tactic as well. In guiding Justice Ross on how to tackle writing difficult briefs, Justice Simonett said that<sup>17</sup>

“When he had trouble writing through a difficult issue, he said it helped if he moved the issue to the back of his mind and focused instead on some unrelated intellectual concept, theory, or issue. Pondering other subjects helped him better frame the thorny question he had been working through. The collateral subjects rarely appeared in the piece, but he said they sharpened his thinking and improved the writing.”

### **Keep it simple**

The merits of writing in plain language are twofold; it makes the writing clear as well as engaging. In *Legal Writing in Plain English*, Bryan Garner gives a useful--albeit abstract--definition<sup>18</sup>:

“[Plain English] certainly shouldn't connote drab and dreary language. Actually, plain English is typically quite interesting to read. It's robust and direct--the opposite of gaudy, pretentious language. You achieve plain English when you use the simplest, most straightforward way of expressing an idea.

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<sup>17</sup> Kevin G. Ross, “A Few Lessons From The Master Craftsman: Justice John Simonett The Writer”, 39

WMLR 712 (2010).

<sup>18</sup> Supra n. 2.

You can still choose interesting words. But you'll avoid fancy ones that have everyday replacements meaning precisely the same thing.”

However, a word of caution is required here, in legal language sometimes there is a need for precision that can be achieved only by using legal jargon. In such cases, the rule outlined by Garner can be useful<sup>19</sup>,

“When you use distinctive technical or legal terms, consider whether the terms add any value beyond their ordinary-language equivalents. If not, use the ordinary term. If so, then consider the nature of the audience to determine whether the increased precision resulting from the technical term outweighs any loss of clarity that may result from using a term that may not be familiar to all members of the intended audience.”

Verbosity or fancy language does not impress a person who is unable to grasp your meaning. Instead, use words which convey your message adequately.

### **Organizing**

Before you begin to write, it is important to have a clear understanding of the structure of your piece. This helps ensure continuity of thought and helps avoid repetition. A proper research design helps in this. The most important parts of organising includes

writing your introduction and conclusion as well as proper use of headings and roadmaps.

### **Introduction**

Writing a proper introduction is the key to an effective piece of legal writing. The introduction is the first part of your writing that the reader sees and based on it decides whether to read further or not. Thus the Introduction must be informative and engaging. It must outline the research topic and the reader should be able to gather what the piece is about simply by reading the introduction.

### **Conclusion**

The conclusion must summarise the contents of the piece while restating the main points in brief. It can be used to present a cogent argument based on the analysis conducted in the preceding paragraphs of the article.

### **Headings**

Use of titles and headings effectively can help in engaging the reader as well as providing them a roadmap to the organisation of your article. If the title is not adequately precise the reader may have difficulty in identifying what you intend to write about. At the same time too precise a title may result in the audience losing interest. Headings and titles should be such that make the reader want to know more. Headings not only give context but

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<sup>19</sup> Supra n. 2.

also signal where a new sub topic begins. The reader needs break in digesting complex material therefore it is advisable to separate the parts—and subparts—into headings.<sup>20</sup>

### **Road map**

Make sure your writing has a road map. Make sure the reader knows what is coming next. Make your writing front-loaded by putting the important material up front. Since readers “understand new information in relation to what they already know, tell them a piece of new information that relates to their presumed knowledge and then, build on that information with each new piece you add.”<sup>21</sup> This ensures the reader has context, which helps him understand better.

### **Ensuring clarity**

Some points that need to be taken into account to ensure clarity are emphasis on coherence, as well as proper editing and proof reading.

### **Coherence**

To ensure clarity in writing, it is important to write coherently. Coherence can be ensured by making sure that each paragraph of the article flows from the previous one. It should be a logical progression of ideas.

### **Editing and proof reading**

It is important to edit and proof read an article for any grammatical or topological mistakes. An article that has grammatical or topological mistakes shows lack of work ethic on the part of the author. It reflects poorly on the level of dedication by the author and calls into question the quality of research. Do not rely only on the “spellcheck” or “grammarcheck” function blindly as it may lead to “some weird words and constructions as spellcheck can substitute wrong words—spelled correctly, but not what you mean”.<sup>22</sup>

### **Ensuring accuracy**

To ensure accuracy, the use of reliable sources and avoiding plagiarism, through proper citation is essential.

### **Use of Reliable Sources**

The sources which you rely on during your research ultimately determine the quality of the article. To ensure accuracy in legal writing it is important to have the facts correct, therefore using sources that are not authentic is not advisable. Using Wikipedia as a source must therefore be avoided, since anyone can modify information on Wikipedia, which calls its accuracy in question. Similarly information from blogs, especially

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<sup>20</sup> Mark Painter, “Legal Writing 201: 30 Suggestions To Improve Readability, Ohio First District Court Of Appeals, *available at*: [www.plainlanguagenetwork.org/](http://www.plainlanguagenetwork.org/)

legal /legalwriting .pdf Visited on 15th September 2013

<sup>21</sup> *Ibid.*

<sup>22</sup> *Supra* n. 21.

anonymous blogs must be avoided while writing a legal article.

### **Avoiding Plagiarism**

Plagiarism means using someone else's idea as your own without attributing it to the original author. Plagiarism goes against academic integrity and must be avoided at all costs. If you wish to use an idea from another author, make sure you cite it correctly. If using something verbatim, use quotes along with citation. However, it is not advisable to use too many quotes in an article; rather quotes should be used only when the message cannot be adequately conveyed without them.

If you have paraphrased an idea from another author, it is sufficient to cite it. One way to paraphrase is to summarise in your own words what you have understood from a particular article. This allows you to use the main ideas and also does not amount to plagiarism when adequately cited.

### **Engaging the reader**

While writing a legal article, it is very important to keep the intended audience in mind, as the tone of the article as well as the level of legal know how that can be presupposed on the part of the reader can both be understood from it. This knowledge helps in writing an article that is engaging for

the reader. The proper use of grammar and pronunciation rules ensures that the writing is easy to read and thus engaging. Some points that need to be taken into account here are that you can start sentences with "and" or "but." Using however to mean "and" or "but" is not a good practice.<sup>23</sup> Also you should always distinguish between "that" and "which". "Use "that" restrictively, and "which" non-restrictively."<sup>24</sup>

### **Use of active voice**

Active voice is easier to understand and unless there is a good reason to use passive voice to convey the meaning properly, avoid using it.<sup>25</sup>

### **Avoid repetition of words**

It is redundant to use two or three or four words in the place of one word ("devise and bequeath"; "grant, bargain, and sell"; "right, title, and interest"; "make, ordain, constitute, and appoint").<sup>26</sup>

### **Avoid unnecessary preambles**

They serve no purpose and often make the point weaker. "Some unnecessary preambles are:

- It is important to add that . . .
- It may be recalled that . . .
- In this regard it is of significance that . . .

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<sup>23</sup> Supra n. 21

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

- It is interesting to note that...<sup>27</sup>

### Avoid legalese

Use Latin phrases sparingly. Also, avoid words such as “hereinafter” and “aforesaid”.<sup>28</sup>

### Avoid Nominalizations

Normalizations occur when you turn verbs into nouns, and then add an extra verb to take the place of the one you converted. Instead of this you should just use the first verb.<sup>29</sup>

Some examples are

#### Incorrect

- a. "reached a conclusion"
- b. "granted a continuance"
- c. "involved in a collision"
- d. "take action"

#### Correct

- a. "concluded"
- b. "continued"
- c. "collided"
- d. "act"

### Avoid qualifying phrases

Do not use qualifying phrases in the middle of sentences. Try to avoid them and if it is

necessary to use them use them at the end of the sentence.

Some examples are

#### Incorrect

- a. "the court, although it limited its holding, held that a bicyclist must adhere to traffic rules"
- b. "the court has, although with limits, held that a bicyclist must adhere to traffic rules"
- c. "the court held, although with limits, that a bicyclist must adhere to traffic rules"<sup>30</sup>

#### Correct

- a. "the court held that a bicyclist must adhere to traffic rules, although it limited its holding ..."
- b. "the court held that a bicyclist must adhere to traffic rules"<sup>31</sup>

### Punctuations

Good punctuation helps avoid confusion. Some useful rules are identified below.

Avoid using a comma between a subject and its verb.<sup>32</sup> Use a comma between the last items in a series.<sup>33</sup> Use a comma before a quote when a phrase introduces the quote, but do not use a comma if the quote is

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Eugene Volokh and J. Alexander Tanford, *How To Write Good Legal Stuff* (2009).

<sup>30</sup> Eugene Volokh and J. Alexander Tanford, *How To Write Good Legal Stuff* (2009)

<sup>31</sup> *Ibid.*

<sup>32</sup> Alison Suthers and Michael Roberts, “Tips For Effective Punctuation In Legal Writing”, The Writing Center at GULC, 2005.

<sup>33</sup> *Ibid.*

integrated into a larger sentence.<sup>34</sup> Commas and periods always go inside of the closing quotation mark.<sup>35</sup> Avoid the use of informal contractions (e.g., “shouldn’t”) in formal legal writing.<sup>36</sup> Semicolons connect independent sentences that are logically closely related or work together as part of a larger idea.<sup>37</sup> Colons end a sentence that creates anticipation or suspense that the next sentence or phrase resolves.<sup>38</sup> Use the dash, parenthesis, and comma for degrees of emphasis, “A dash provides the greatest emphasis—it is a stronger break—next in degree is the parenthesis, then the comma.”<sup>39</sup> Hyphenate Phrasal Adjectives, the “reader is confused by nouns acting as adjectives, or two adjectives together modifying one noun, thus always hyphenate phrases like “wrongful-discharge suit,” or “public-policy exception.”<sup>40</sup>

## CONCLUSION

Legal writing is one of the key skills for lawyers and consequently due emphasis must be given to it, both in law schools as well as in the practice of the profession. A well written legal article helps in the decision making process of the person to whom it is communicated. A good legal writing must be clear, concise, accurate, engaging and elegant. To write a good legal article the writer must write in simple English, he must organise his article well, through the use of headings and roadmaps, all the while keeping his audience in mind. The writer must also keep the rules of grammar and punctuation in mind to produce good legal writing. The most important factor for producing a truly good piece of legal writing is the use of authentic and reliable sources and proper citation and footnoting.

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Supra* n. 21.

<sup>40</sup> *Supra* n. 21