School of Law
La Trobe University

The La Trobe Law
Short Guide to Clear Writing
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1. Introduction

Being able to write clearly and effectively is a vital legal skill. Lawyers use this skill almost every day, whether they are drafting a contract, writing a letter of advice to a client, or preparing an outline of submissions to the Court of Appeal. Law graduates need, therefore, to have a solid competency in clear and effective writing. Even if you do not become a lawyer or do not want to become a lawyer, the skill of writing clearly remains a valuable asset in many professions and types of work.

Unfortunately, many students enter law school with notable weaknesses in this area. Indeed, for many students, poor writing is the main problem holding them back from attaining higher grades. The good news is that, with effort and practice, virtually everyone can improve their writing. If you invest time in working on improving your writing, it will repay you.

This Short Guide to Clear Writing aims to help law students in this regard by providing some practical advice on how to write more clearly. It is intended to be a simple, concise guide that law students can actually use to improve their writing. It aims to help you achieve this goal by presenting some basic tips. Once you master the basic ideas behind clear writing, you will know when and how to adapt them and even diverge from them when appropriate. Of course, this guide is not only for students having particular difficulties. Those who already write well will find ideas here that will help them become even better writers.

Legal writing is infamous for its frequently complex sentence structure and obscure vocabulary. Unfortunately, many students seem to feel that they must emulate this if they are to ‘sound like a lawyer’. This is not true. Good legal writing is clear and effective, rather than ostentatious or rhetorical. Since the 1970s, the legal profession has made a concerted effort to promote the use of plain English in legal writing. This essentially means writing in ways that are clearer and simpler. This not only helps the legal writer to meet the needs of their audience; it also helps the legal writer to achieve their own purpose in writing to that audience. This Short Guide is intended to help law students develop their skills in clear, plain English early in their legal studies.

Please note that this Short Guide is only a generic guide to clear writing in law school. It is not a guide to the specific kinds of writing tasks that you will perform in your legal studies, such as legal problem solving, essay writing, legal drafting, writing law reform submissions, and so on. Also note that the advice in this guide is subject to any direction given by particular law teachers in their subjects. You need, therefore, to use this document with due caution.

This Short Guide is structured as follows. We start, in Section 2, by looking at what you need to know and do before you start writing. Section 3 then provides a series of practical tips on writing clear sentences. We examine what is involved in constructing a clear sentence and how to choose words to make your meaning clear. Then, in Section 4, we look at ways to connect your sentences together. Section 5 discusses the importance of structuring your document. The importance of reviewing and revising your document is discussed in Section 6. Section 7 concludes this Short Guide by providing a list of further resources.
2. Before You Start Writing

2.1 Know your role, audience and purpose in writing

In law school you will be asked to write various kinds of documents, including legal advices, academic essays, legislative provisions, law reform submissions, ministerial briefings, legal documents (such as contracts and wills), and so on. Before you start writing your document, it is vital that you understand three things: what role you are playing as the writer, who your audience is, and what your purpose is in writing to that audience. The more clearly you appreciate your role, your audience and your purpose, and how they interrelate, the better you will understand your task and be able to choose the most appropriate forms of language. Note that there is not just one form of legal writing. Different tasks may involve different styles of writing. In all tasks, however, it is crucial to write clearly and effectively.

Among the roles you might play as a writer in law school are solicitor, barrister, judge, public servant, law reform commissioner, representative of a professional organisation or a lobby group, legal academic or researcher, and private citizen. Among the audiences your writing tasks will address may be lawyers, clients, judges, government ministers, law reform commissioners, and the general public. In writing to your audiences, your purposes will include informing, persuading, and recommending. For example, when studying criminal law you may be asked to play the role of a first-year solicitor writing a memorandum to one of the partners of your firm, informing them of the strength of the prosecution case against your client, who has been charged with a criminal offence. How you write this will be different from how you, as a representative of a lobby group, would write a submission to the government urging the creation of supervised drug injecting centres.

2.2 Know your subject matter

Whenever you write in a particular role, to a particular person and for a particular purpose, you will also be writing about something. That is your subject matter. When you have a solid grasp of your subject matter, your next task is to write about that subject clearly and effectively in order to achieve your purpose. If you do not know what you are talking about, then clear writing will not hide your ignorance, and bad writing will only exacerbate your problem. At the same time, if you do have a sound grasp of your subject matter, then bad writing will most likely prevent you from conveying that to your audience.

There is, indeed, a direct connection between understanding a subject matter and being able to write clearly about it: it is easier to write clearly about a topic if you’re able to think clearly about it, and vice versa. So the process of writing (and revising your writing) about a topic will very often help you develop your understanding of the subject matter, and, in turn, as your understanding deepens, your writing on that topic should also improve.

2.3 Plan your document

Once you know your role, audience, purpose and subject matter, but before you actually start writing, you should take the time to plan your document. Planning involves identifying the key tasks your document will perform in order to achieve its overall purpose, and working out a suitable structure for your document. These are really two sides of the same coin: the different parts of the document should be identifiable mainly through the distinct tasks they perform. This means that when you plan your document, you should first work out your
document’s purpose, and then work out what are the most appropriate steps to take to achieve the purpose. Those steps can then form the main sections or parts of your document.

A plan helps you to ensure that all important topics are covered and that they are covered in a logical order. It can also help you to avoid repetition and to avoid writing too many words or too few. Good planning also shortens the time you will later need to spend on revising and editing your document.

Your document’s original structure is figured out as part of the planning stage. But be aware that your structure might change during the writing and editing processes. This does not mean that planning the structure at the beginning is pointless. The plan provides you with a starting point and an important guide for the writing process because it tells you where you are and where you are going at any point. If, on reflection, you decide to alter the original planned structure, that is usually a sign that you are improving the document. (See Section 6 below on reviewing and revising your document.)

3. Writing Clear Sentences

Once you have planned your document, it is time to start writing. What you will write will be sentences. Clear, well-written sentences are the foundation of good writing. This section provides advice on how to write clear sentences.

3.1 Constructing a clear sentence

Writing clearly starts with constructing clear sentences. A sentence is a basic unit of language that expresses a complete or self-contained thought. A clear sentence is one whose meaning is readily understood by its audience.

In English there are four basic types of sentence: declarative, imperative, interrogative and exclamative. A declarative sentence makes a statement, for example ‘The lawyer was rude to the judge’. An imperative sentence commands that something be done, for example ‘Stop smirking!’ An interrogative sentence asks a question, for example ‘Did that lawyer just smirk at the judge?’ Finally, an exclamative sentence expresses a sudden emotion, for example, ‘What a fool!’ (For further references on grammar, see Section 7 below.)

In this Short Guide, we will focus on declarative sentences, which do most of the work in legal writing. The key grammatical point to note here is that a declarative sentence has a subject and a predicate. In every declarative sentence, something is said to perform some action or to have some feature or attribute. The subject of the sentence is the thing that performs that action or has that feature. The predicate of the sentence is the action or feature that is attributed to the subject.

Here are some examples. In the sentence ‘The barrister smirked at the judge’, the subject is the barrister and the predicate tells us what the barrister did, namely that he or she smirked at the judge. In the sentence ‘The barrister is a rude buffoon’, the barrister is again the subject but the predicate now tells us what the barrister is or what feature he or she has, rather than what he or she did. In the sentence ‘The judge was smirked at by the barrister’, the judge is the subject (even though the judge does not perform the action of smirking) and the predicate tells us that the judge has the feature of having been smirked at.
This brief grammar lesson leads us to the first piece of practical advice about writing clear sentences.

(a)  Make your subject and predicate clear

A clearly written declarative sentence will enable the reader to know straight away what the subject of the sentence is and what is said about that subject. A good way to help you make these things clear is to formulate your sentence as an answer to two questions: what or who is the subject of your sentence and what is the key action or feature of that subject that you want to convey? So, if your answers are ‘the barrister’ and ‘he smirked at the judge’, you could write your sentence as ‘The barrister smirked at the judge’. If your answers are ‘the judge’ and ‘she was annoyed’, you could write your sentence as ‘The judge was annoyed’.

In this way, you can build your sentence from the basic building blocks of subject and predicate. In doing so, keep your main focus on the nouns, verbs and adjectives you will need to identify the subject and predicate. (If you are not familiar with these grammatical terms, you should consult some of the references listed in Section 7 of this Short Guide.)

Once you have made that core information clear, you may sometimes want to add further information to the sentence. For example, you might want to tell the reader that the barrister had arrived late to court. So you might add the following: ‘The barrister, who had arrived late to court, smirked at the judge’. Or you might want to add that the judge had already chastised the barrister and add some explanatory information, and so you might write ‘The judge had already chastised the barrister for his lateness and so was annoyed by his further rudeness’.

You might then want to put all of this information into one sentence, like so: ‘The barrister, who had arrived late to court and had already been chastised by the judge for his tardiness, smirked at her, so she was annoyed by his further rudeness’. However, as you can see, the longer and more complex your sentence becomes, the harder it is for your reader to follow. So be careful not to overload your sentence with extra words and clauses. This brings us to the next piece of practical advice.

(b)  Express just one main idea in each sentence

Your sentence will usually be much clearer if it expresses one main idea. This will often be a matter of the sentence having just one main subject and one main predicate. When you have made these clear, stop and think whether your sentence will be improved by adding more ideas to it. Very often, it will not. So add more information to your sentence only if the new information is integral to the main idea. If you have another, distinct idea to convey, then put it in a new sentence. Avoid piling up multiple ideas in the one sentence and then leaving it to your reader to sort out what you are trying to say.

Recall the example from above: ‘The barrister, who had arrived late to court and had already been chastised by the judge for his tardiness, smirked at her, so she was annoyed by his further rudeness’. This sentence is probably too complex, so it would be better to write it as two sentences, perhaps like this: ‘The barrister, who had arrived late to court, smirked at the judge. The judge had already chastised the barrister for his tardiness and so was annoyed by this further rudeness’.
(c) **Use short sentences**

Short sentences are usually much clearer than long ones. Keep your sentences short if you can do so without compromising the meaning of what you want to say. To help you write short sentences, be direct. Have a point and get to it. Add extra clauses only when necessary. This practice is closely connected to the value of expressing one main idea per sentence. If you express just one main idea in each sentence, then it will be easier to keep your sentences short.

Avoid trying to appear smart or more ‘lawyerly’ by using roundabout, longwinded ways of getting to your point. Unfortunately, there are many examples of legal writing by judges, lawyers and academics in which many long and complex sentences are used. Law students do need to be able to read such writing, but this is not what is expected or desired of students in their own writing. So, resist the temptation to mimic this verbose style. If the basic idea that you want to convey to your reader is that the cat sat on the mat, then just write ‘The cat sat on the mat’. It is not more ‘lawyerly’ to write something like, ‘With regard to the domesticated feline mammal, it can be stated, *inter alia*, that its postural relationship vis-à-vis the woven floor covering was one involving the placing of the lower part of its body upon the latter in a resting configuration.’

Of course, if every sentence in your document is no more than ten words long, your prose may risk appearing rather abrupt and disconnected. As a matter of style, it is usually desirable to have a mix of shorter, medium and longer sentences, so that your text flows more smoothly. A good test is to read your text aloud to hear how it flows. (This does not mean, however, that written text should read as a transcript of spoken words. If you write simply as you speak, your text will be very hard to read.) As you develop your writing skills and gain experience and confidence in constructing sentences, you will be better able to judge what sort of mix works best in the particular document you are writing.

(d) **Consider whether the active voice is better than the passive voice**

When a sentence is in what grammarians call the ‘active voice’, the subject of the sentence is the agent or performer of the main action. For example, in the sentence ‘The barrister smirked at the judge’, the barrister is the subject, smirking is the action, and it is the barrister who is doing the smirking. In the ‘passive voice’, the subject of the sentence is the recipient of the action or the person or thing affected by the action. For example, in the sentence ‘The judge was smirked at by the barrister’, the judge is the subject and he or she is the one who ‘receives’ the action of smirking.

The active voice is often (but not always) better to use than the passive voice. For example, ‘The junior solicitor lost the summons’ is clearer and more direct than ‘The summons was lost by the junior solicitor’ or even more vaguely ‘The summons was lost’. A feature of the passive voice that can create particular problems is that the agent of the action is not always stated (as in the second example just given), so the reader gets only half of the picture.

Sometimes, however, your purpose may in fact be best served by using the passive voice because it might be appropriate to put the sentence’s focus on the thing that is affected by the action. For example, in the sentence ‘The junior solicitor was sacked’ the subject is ‘the junior solicitor’ and he or she was on the receiving end of the action of sacking, but we are not told who did the sacking. But that may well be what the sentence’s author wanted, in order to put the focus on the junior solicitor and leaving it to the context to identify the agent (for example, ‘the senior partner’), who is not central to the story the author wants to tell. For
this reason, the passive voice is sometimes used by speakers or writers who want to avoid being identified as the agent responsible for the action.

(e) **Make sure each sentence is grammatically correct and properly punctuated**

Always review each sentence to, makes sure that it are grammatical correct and properly; punctuated. (Yes, that sentence contains examples of what not to do.)

Grammar is not a matter of linguistic snobbery or pedantry. It is a matter of the basic rules that enable words to be used together in ways that make sense. Having a good grasp of how to write a grammatical sentence is an essential foundation for clear writing. Of course, some rules of grammar are more fundamental than others, some rules change over time, and there are some purported rules (such as the rule against splitting infinitives or ending a sentence with a preposition) whose genuineness or value can be disputed. But there are some basic agreed points of grammar that it helps to know if you are to improve your writing.

The punctuation of your sentence should work hand in hand with its grammatical structure. Punctuation helps to show the internal structure of the sentence. Learn what the different punctuation marks are for and how to use them. Common problem areas in punctuation include semi-colons and apostrophes. Semi-colons (;) are not colons (:). Colons introduce what is to follow. Semi-colons have two main functions: they can be used to join independent clauses (i.e. sentences) to form one sentence; and they can be used to separate longer items in a list, especially one that has been introduced by a colon. Apostrophes should not be used to mark contractions where that introduces ambiguity. For example, it should be ‘Gerard stole cash from three ATMs’, not ‘Gerard stole cash from three ATM’s’.

See Section 7 for further references on grammar and punctuation.

3.2 Choosing words to make your meaning clear

Sentences are, of course, made up of words. The words you choose will profoundly affect the clarity of your sentence. Even if your sentence is short, contains one main idea and is perfectly grammatically correct, a poor choice of words can render it incomprehensible.

(a) **When simpler, shorter words and phrases will do the job, use them**

With respect to the issue of the optimum verbal form for effective communication, it is submitted that an overly extensive and conspicuously polysyllabic vocabulary whose contribution to the attempted communicative act would appear to be principally an increase in the likelihood of obscurantism is best decommissioned and substituted with terminology of a less complicated nature in those contexts where there is practicability attending upon such a strategy. Or: Long and complex words and phrases that obscure your meaning should be replaced with simpler and shorter words and phrases where possible.

As noted above, legal writing unfortunately contains many examples of needlessly complex and obscure vocabulary. Some students mistakenly believe they have to emulate this style if they are to ‘sound like a lawyer’. What often makes this worse is that students who do this often do a poor job of it in any case, so that what emerges is clumsy and ungrammatical as well as pretentious and unclear. It is much safer, especially for the beginning legal writer, to choose simpler and shorter words when they will do the job just as well. So it is best to avoid decorating your writing with supposedly lawyerly words and phrases, such as ‘hereunto’, ‘in the event that …’, ‘inter alia’ and so on.
Sometimes, of course, it is necessary to use certain technical words and phrases, such as ‘prima facie evidence’, ‘involuntary manslaughter’, ‘autrefois acquit’ or ‘testamentary trust’, which you should not replace with more familiar English words. But, apart from such instances, it is usually best to use simple and familiar words and phrases. As you learn more about the law, you will learn to recognise what is a technical legal term that does need to be used and what is not. You can also use a legal dictionary to help you identify technical terms.

(b) **Cut unnecessary words**

If a word is unnecessary, redundant or superfluous, it will probably be extraneously getting in the way of the essential and important words that are actually necessary. Delete such unnecessary words from your sentence.

(c) **Use words consistently**

Clarity needs consistency. The clear expression of fundamental principles requires consistent language. Also, some technical words need to be used consistently. While having a wide vocabulary to draw upon can be very useful, it will often be more helpful to your argument (and your reader) to be consistent where you are in fact referring to the same thing. Writing with style does not always mean having to think up different ways of saying the same thing.

(d) **Use appropriate words of qualification**

A common problem is the failure to properly qualify claims that are being made. For example, consider the sentence ‘Lawyers are greedy’. Is this sentence telling us that all lawyers are greedy? Some? Most? Many? By failing to qualify the claim, the sentence is unclear, even though grammatically it is very simple. Another example: ‘Greed causes ulcers’. Is this saying that greed always causes ulcers or just sometimes? Is it saying that greed is the only cause of ulcers or just a cause?

Often the sentence’s context will provide the missing information, but you should always check the context to see whether it really does provide the necessary clarification. If you are leaving too much to context and requiring your reader to do most of the work in sorting out your sentence’s meaning, then you will probably need to make the qualification explicit. Of course, try to avoid being verbose when you do so, but very often the right extra word of qualification saves your reader from having to work it out for themselves.

(e) **Use the first person pronoun when it is appropriate**

When writing in law school, should you ever use the first person pronoun (i.e. ‘I’, ‘me’, ‘mine’)? It all depends on what you are writing. Recall the importance of knowing your role, audience and purpose.

When you are writing as a lawyer, you are not writing as yourself. You are playing a professional role in which you will, ideally, write what any competent lawyer would write. So your identity should be in the background. However, this need not always mean that the first person singular pronoun must be banished. Read judges’ reasons for their decisions and you will often see them writing ‘I have …’ or ‘In my view …’. Still, when writing as a lawyer, it is generally best to keep the focus away from you and use ‘I’ and ‘my’ sparingly. So it will often be better to write things like ‘It is argued that …’ rather than ‘I argue that …’, or ‘The third section of this paper concerns …’ rather than ‘My third section concerns …’, or
‘It was found earlier that …’ rather than ‘I found earlier that …’. But at all times, ensure that your reader can tell straight away who is doing the arguing or suggesting, etc. Clarity remains the main goal.

The indirect, passive phrase ‘It is submitted that …’ or ‘it is argued that’ is standardly used by barristers when presenting arguments in court on behalf of clients. This is because the arguments are not necessarily what the lawyer personally believes (indeed it could be the complete opposite). Rather, it is the best argument that can be put on behalf of the client. However, when this formulation appears in other legal contexts or in academic writing, it can sound stilted and confusing. Some might think it is the badge of a true lawyer to say ‘it is submitted that …’ wherever possible, but if your reader has to stop and try to work out who is doing the submitting, then you are losing clarity.

If you are writing a standard academic essay, you are writing as yourself and presenting your ideas and arguments with the purpose of informing or persuading your audience. In such a situation it is quite acceptable (and usually clearest) to write naturally in the first person singular (‘I’, ‘my’, etc.). Some people worry that this will make their essay sound subjective, but it need not. A subjective essay is one that merely expresses the writer’s opinions and preferences, without substantiating their claims with supporting evidence or reasoned arguments. An academic essay aims to be objective in the sense that it seeks to persuade its audience by appealing to some common ground in the form of evidence and argument. It does not seek to persuade merely by the sincerity or passion with which it maintains its position. The presence of ‘I’, ‘my’, etc. does not prevent you from substantiating your claims; and the mere absence of ‘I’, ‘my’, etc. does not itself supply any substantiating evidence or argument. Nonetheless, in making your case, stick more closely to ‘I argue’, ‘I suggest’, ‘my definition’, etc., than to ‘I wish’, ‘I hate’, ‘my feeling’, etc. Your goal is still to persuade your audience, not to display your personality.

4. Connecting Your Sentences

Clear writing needs clear sentences, but your document needs to be more than a collection of clear sentences. There need to be relationships between your sentences if your writing is to make sense. So you need to choose your words carefully to show these relationships. There are many ways in which sentences can be related to each other. We identify some of them below. The key theme is the importance of using the right words to signal to the reader how a sentence relates to other sentences.

4.1 Elaborating meaning

When one sentence elaborates the preceding sentence, it expands upon, elucidates or explains the meaning of that sentence. That is, it re-states the meaning or part of the meaning of the preceding sentence in a different way. In other words, an elaborative sentence seeks to draw out and clarify the meaning of the sentence being elaborated upon. This can be helpful when you are discussing a difficult or dense subject that might need several descriptions in order for its meaning to become clearer. This kind of elaborative sentence can often be flagged by using introductory words such as ‘that is’, ‘in other words’, and so on. Such words can help the reader to appreciate what is going on. But such phrases can be overdone, so use them judiciously.
4.2 Providing examples

Examples often help to make your meaning clear. If you are presenting an example, say so. Imagine you are writing an essay on whether a compassionate motive should be a defence to murder. You might write as follows: ‘If a person intentionally kills another person, it is no defence in law that they did so on merciful grounds. For example, if a man is dying painfully from a disease and asks his wife to kill him to put him out of his misery, and she does so out of compassion for her husband, then she will still be guilty of murder’. Other phrases that flag examples include ‘A case in point is …’, ‘For instance …’, ‘This is illustrated by …’, etc.

4.3 Accumulating information

Often in a series of declarative sentences, each sentence will be adding a further, independent statement. So the effect of the series is an accumulation of distinct statements. This can be flagged using words and phrases, such as ‘moreover’, ‘furthermore’, ‘in addition’, etc. An example: ‘Capital punishment is a cruel and barbaric practice that no civilised nation should allow. Furthermore, capital punishment, rather than deterring potential criminals, merely vents the community’s anger. Moreover, it can lead to grave injustice where a person is put to death but later found to be innocent.’ However, such linguistic flags are not always necessary, and they can be overdone. Only use them if it is not clear that your sentences are accumulating discrete statements or items of information.

Even though the accumulative sentences are providing distinct items of information, it will usually still be possible and desirable to present them in a meaningful or logical order, rather than just randomly. For example, if you were describing the High Court building in Canberra, you wouldn’t just list its features randomly (e.g. ‘The High Court building in Canberra is square. It stands near a lake. It is asymmetrical. It has three court rooms. Its interior design is a bit dated now. It has a café.’). Instead, you might start with one aspect, such as the building’s location, and provide all the desired information about that aspect before moving on to another aspect, such as its structure.

4.4 Numbering your points

If you have, say, three arguments for your position that animals should be given legal rights, then it will probably be very helpful to your reader to say so. For example, ‘In this section I will present three arguments in favour of giving animals legal rights. First, animals’ sentience means that …. Second, animal rights follow from human duties toward animals …. Third, recognition of animal rights will increase the overall welfare of animals ….’. Here you are telling your reader to expect three arguments, and then you flag each argument as you get to it. This way you clearly deliver what was promised. Sometimes the flow of the arguments will make this flagging unnecessary, but do not be afraid that this sort of thing is prosaic or stating the obvious. Usually, it is very helpful to your reader.

4.5 Making a contrast

It can often help to clarify the meaning of our sentences by making contrasts. A contrast can help to explain or highlight the meaning of something by pointing out something different. Some examples:
• ‘It is a mistake to think each human right is perfectly compatible with every other human right. Nonetheless, many different human rights are mutually supportive of each other.’

• ‘Justice Donner supported a liberal interpretation of section 80 of the Constitution. Justice Blitzen, however, argued for a conservative interpretation. In contrast, Justice Rudolph held that section 80 was not relevant to the issue in the case.’

• ‘It is difficult to determine whether compulsory voting has improved Australian democracy. On the one hand, it seems very undemocratic to force people to vote. On the other hand, voting can be seen as a citizen’s civil duty and not merely their civil right’.

Contrasts like these can be seen as a particular kind of accumulation (see above). Extra information is being provided with each sentence, but the contrastive nature of the new information is being noted by use of words like ‘however’, ‘nonetheless’, etc.

4.6 Drawing an inference

A very important relationship between sentences is where one sentence follows logically from some of the preceding sentences. That is, a sentence might be the logical conclusion to be drawn from sentences which form the premises to that conclusion. Where one sentence follows logically from the preceding sentences, we can flag that by using words such as ‘therefore’, ‘thus’ or ‘it follows that …’, and similar.

It is important to be aware that some conclusions follow from their premises with certainty, while other conclusions are simply well-supported by their premises. For example, in the argument ‘All Victorian barristers are bound by the Victorian Bar’s rules of professional conduct. Anika is a Victorian barrister. Therefore, Anika is bound by the Victorian Bar’s rules of professional conduct’, the conclusion that Anika is bound by the Victorian Bar’s rules of professional conduct follows with logical certainty from the premises.

In contrast, in the argument ‘Only about 10 per cent of Victorian barristers are Queen’s Counsel. All we know about Anika is that she is a Victorian barrister. So it follows that she is probably not a Queen’s Counsel’, the conclusion is well-supported by the premises but it is not certain, and may yet prove to be false.

Note also that, while a conclusion might follow with certainty from the premises, if the premises themselves are not certain, then the conclusion will ultimately be no more certain than the premises. For example, in the example ‘All Victorian barristers have argumentative personalities. Anika is a Victorian barrister. Therefore, Anika has an argumentative personality’, the conclusion follows with certainty from the premises, but, because the first premise is highly likely to be false, the conclusion is ultimately not so certain.

When you draw an inference, be careful to note, at least to yourself, how strong the degree of logical support is. Sometimes, if it is important, you should also indicate to the reader what that level of support is. Other times, if it is not central to your discussion or is reasonably obvious, you can leave it to the reader to note.

Be careful not to overstate your case by claiming your conclusion follows with certainty when it does not, or is well-supported when it is not. If you try to present matters as certain when they are merely well-supported, it can actually undermine the persuasiveness of your
argument. A persuasive argument presents a realistic assessment of the strength of its conclusions. Also, avoid merely adding words like ‘thus’, ‘therefore’, ‘so’, etc. to your writing for rhetorical effect, to make it seem more logically integrated than it in fact is. Therefore, simply using such words will not create logical connections that are not actually there. (Yes, the ‘therefore’ at the start of that last sentence is an example of this sort of phantom logical connection.)

4.7 Justifying a statement

When an inference is drawn, the conclusion is supported by the preceding premises. It is also possible (and often desirable) to present things the other way around: present your conclusion first and then justify it by laying out the premises that support it.

For example, we could present the earlier argument about Anika’s professional obligations the other way around, like this: ‘Anika is bound by the Victorian Bar’s rules of professional conduct. This is because all Victorian barristers are bound by the Victorian Bar’s rules of professional conduct and Anika is a Victorian barrister’. Here we make the statement and then, by using the word ‘because’, flag that the words to follow will justify that statement.

‘Because’ is perhaps the most common term to use in these situations. Other appropriate terms include ‘as’ and ‘since’. For example, ‘Anika is bound by the Victorian Bar’s rules of professional conduct, as all Victorian barristers are bound by those rules and Anika is a Victorian barrister’. Or: ‘Anika is probably not a QC since only about 10 per cent of Victorian barristers are QCs and all we know about Anika is that she is a Victorian barrister’.

It is often a good idea to present your conclusion or main point first and then lay out your justification for it. Presenting all the premises first and drawing the conclusion at the end sometimes risks losing your reader’s attention, especially if the argument is a long one. If you let your reader know right at the start where you are heading, that can often help them follow your argument. This is called the ‘point first’ approach to presenting arguments. You tell your reader up-front what your key point is and then provide the detail that explains or justifies that point. This does not ‘spoil the story’ because in legal writing you are not writing a mystery novel in which ‘whodunnit’ is to be revealed only at the very end.

The ‘point first’ approach is often used by advocates in drafting submissions to courts. Here your audience (the judge) is busy, is professionally required not to sympathise with you, and wants to know quickly what your basic position is, so that they can start orienting themselves in the debate between the advocates appearing before them. If at any point the judge is not sure where you are headed, you are losing them. If you lose the judge’s attention and then their understanding, you run a grave risk of losing your case as well.

It can also be useful when drafting a legal advice to state your conclusion at the start and then tell the reader why that conclusion is justified, using key words such as ‘because’, ‘since’, and ‘as’. Many students, when writing legal advices, simply state the relevant legal test in general terms and then baldly state that the client satisfies (or does not satisfy) that test, with little or no reference to the material facts that support that conclusion.

Here is an example: ‘Intentional murder is defined as intentionally killing a human being by way of a conscious, voluntary and deliberate act, without lawful justification of excuse. Therefore, Jintana is guilty of murder.’ Here the writer is implying that the elements of the crime are met, but there is no reference to the particular facts which satisfy those elements. Writing in a ‘point first’ style and using terms such as ‘because’ can help you to connect the
law to the material facts of the case. In the murder case, we could write as follows: ‘Jintana is guilty of murder, because (i) she caused Kevin’s death, (ii) her actions were conscious, voluntary and deliberate, (iii) she intended to kill Kevin, and (iv) she acted without lawful justification or excuse, thus satisfying the four elements for intentional murder’.

4.8 Flagging a preliminary discussion

If certain ideas are preliminaries to making your main point, make that clear so that the reader knows that you are not yet making your main point but you are on your way to doing so. For example, ‘Before presenting the main arguments in favour of abolishing the right to the presumption of bail, it is first necessary to note briefly the origins of the presumption. The presumption was first identified in …’

4.9 Referring back to points already made

Sometimes in a document you will want to refer back to something you have already said. It usually helps to be explicit about this. Here is an example: ‘The office of Solicitor-General is independent of the government. However, as argued in section 2 above, the actions of the Attorney-General were seen as putting unreasonable fetters on the Solicitor-General.’ Another example: ‘The new Victorian provisions create an objective standard. However, as we saw earlier, the creation of an objective form of fault element in the New South Wales version of the offence led to difficulties.’ If you are repeating a point you have already made but do not convey to your reader that you know you are doing so, it can weaken your document’s sense of structure.

4.10 Summarising what you have said

A particular kind of referring back involves summarising earlier discussions. In longer documents it can sometimes help the reader if you provide brief summaries of where the discussion has got to at certain points. For example: ‘We have now completed a brief history of the jury trial. We saw that the jurors were first used in the 12th century as witnesses at trials rather than fact-finders. We also noted that it was only in later centuries that jurors came to be independent assessors of the evidence. We now move on to …’. Another variation of that example: ‘We have now surveyed the history of the jury trial. The main points noted were, first, that jurors initially served as witnesses and, second, that juries only slowly become fact-finders’. This sort of recapping can help reinforce your main points and keep your reader oriented as you move on to your next topic of discussion.

4.11 Signposting

It will most often help your reader if you provide some ‘signposts’ to help them keep track of where they are going while reading your document. Signposts are words and phrases at particular points that tell the reader what the document is doing or where it is going at those points. It is particularly important to be clear about changes in topic, so that your reader knows a change is being made. If you have finished discussing a topic or issue and are moving on to a new one, it will usually help if you flag this to your reader. Some examples:

- ‘Turning now to consider the question of whether supervised injecting centres should be established in Victoria, I will argue that …’.
- ‘The next aspect of the liberal account of religious freedom to be analysed is …’.
• ‘Having examined the background to the presumption of innocence, we now turn to survey …’.

4.12 Grouping connected sentences into paragraphs

A very important aspect of connecting sentences is grouping them into paragraphs. A paragraph is a group of sentences that deal with a particular topic or point. Moreover, those sentences work together to deal with that common point in an integrated way. Exactly how you decide what particular topics or points need distinct treatment in a separate paragraph is something to be worked out in each case; there is no fixed rule for this. You will need to think through what points you want to make and decide how best to present those points.

Paragraphs have two main purposes. First, they help to display the structure and logic of your document by identifying the distinct points and issues that you address. Second, they also give your reader a chance to catch their breath and orient themselves in relation to your text. There are few things more dispiriting to your reader than to open your document and be met with an unbroken wall of words. Even if you think your text does not need to be divided into paragraphs, stop to consider the happiness of your reader. Almost always, you will be able to find points at which you can provide a paragraph break for this benign purpose.

There is no fixed rule for how long a paragraph should be. Most paragraphs in legal and other non-fiction writing will be made up of at least several sentences. But this is not a fixed rule. Do not add an idle sentence just to avoid a single-sentence paragraph.

The opening sentence of your paragraph (often called a ‘topic sentence’) should usually introduce the topic to be explored or articulate the main point to be made. It does not have to do so explicitly (as in ‘the topic of this paragraph is whether barristers’ wigs should be abolished’) and in fact that would be rather odd. But your paragraph’s opening sentence should serve to introduce your reader to what is to come (e.g. ‘The debate about whether barristers’ wigs are an anachronism or a valuable link to tradition seems to recur every few years’) or let your reader know the position being taken (e.g. ‘Barristers’ wigs have become an embarrassing anachronism in a modern justice system’). The paragraph’s following sentences should then go further into the substance of your topic or point, perhaps explaining your position or noting the various views on the issue. Your paragraph’s concluding sentence should round things off. It does not, however, always need to contain the substantive conclusion to the paragraph’s argument.

4.13 Indicating who is saying what

When discussing or referring to other people’s ideas, be clear which ideas are theirs and which are yours. A common problem in student writing is lack of clarity about who is saying what. It is often not clear if the student, when presenting an idea, is presenting their own idea or expounding someone else’s idea.

If you refer to a particular author’s ideas and then go on to say something else, your reader needs to know whether that something else is that author’s point or whether you have moved on and are saying something of your own. Careful use of signposting words can make all the difference here.

For example, consider this short passage: ‘Danowski presents a detailed account of the nature of the legal profession. She argues that the fact that law is a profession means that it is
governed by ethical principles and that it is self-regulating and independent of government. The law is also a lucrative profession for some.’ Who is saying that the law is also a lucrative profession for some? Is it Danowski or is it the author of the passage? If the author is still expounding Danowski, that third sentence could have been re-written as ‘She further contends that the law is also a lucrative profession for some’. However, if the author is intending to introduce their own idea with that third sentence, then it could be re-written as ‘It can also be argued that the law is also a lucrative profession for some’ or, even more clearly, ‘In addition, though Danowski does not say so, the law is also a lucrative profession for some’.

By the way, this is not (yet) the same problem as plagiarism, because it does not appear that the student is trying to pass off someone else’s words or ideas as their own. But it can still lose you marks because it is unclear. You can also be missing out on marks because you are failing to show that you have original ideas.

Note also that merely providing a footnote does not say who says what. You still need a few well-chosen words in your main text to indicate who is saying what. Your footnote should then simply provide the source of the information.

5. Structuring Your Document

Your document should have a clear, logical structure. This section of this Short Guide provides a few pieces of general advice on how to give your document a clear, logical structure. The advice here can only be general, of course, because what a good, clear structure is will depend very much on the nature of your particular task.

Good document structure is a matter of how the different parts of the document work together to enable the document to achieve its goal. Each sentence in the document should be clearly constructed and the ways in which you connect your sentences should be clear. But there should also be a clear overall structure to your document as a whole.

A clear structure is one that is readily seen by the reader. Of course, it is possible that a structure could be clear but not very logical. But most of the time a clear structure is clear because it is logical — it makes sense for your document to proceed the way it does.

We noted earlier (in sub-section 2.3) the importance of planning your document. The planning stage involves working out a structure to start with. That working structure may well evolve as you write and revise your document. But that evolved, final version of your structure should be clear.

5.1 Where appropriate, divide your document into distinct sections

Good paragraphing is already well on the way to good overall structure. Beyond the paragraph, however, you can also organise your document into distinct parts or sections. (We will stick to the term ‘section’ here. There is no precise universal terminology for this sort of thing.) Almost every legal document can and should be divided into sections. These are the basic parts of your document and should correspond to the main basic tasks your document is to perform. Again, this is something that helps both you and your reader: you develop a clearer idea of what you are trying to do, and your reader gets a clearer idea of what they are reading.
As already noted, your document’s basic divisions into sections is something to be worked out in the planning stage. Of course, your original plan can evolve or be amended, but you should start writing your document with a planned sequence of sections, and your completed document should be comprised of a sequence of clearly identified sections.

When you start a new section, you can often be explicit about what you are doing (e.g. ‘In this section, I examine the main arguments for why the concept of law should be viewed as inescapably value-laden and not neutral.’). If you use headings (see sub-section 6.3 below), the heading titles can themselves provide useful information about what is to be found in the sections to follow.

Sections can be further sub-divided into sub-sections and even sub-sub-sections. (This Short Guide is itself an example of this.) It would be rare that you would need to sub-divide your document further. Do not go overboard with sub-division. It is possible for a document to be divided into too many sections and sub-sections, in the sense that the text and ideas become disjointed and under-developed.

If you are writing an honours thesis, it is best not to call your basic sections ‘chapters’. Books have chapters. An honours thesis is not a book. Honours theses are typically 10,000 words long, and are essentially the same sort of document as an academic journal article.

There is no simple formula for how a document should be structured, as there are many different kinds of documents. The old formula of ‘have an introduction, a main body, and a conclusion’ is not wrong, but it leaves open just how that main body is itself to be structured, and that will depend on the particular document you are writing.

An example of how to structure a document might help here. Imagine you are writing an essay in which your purpose is to persuade your reader that jury trials should be abolished. A possible structure could be: (i) introduction, (ii) history and rationale of the jury trial, (iii) current problems with the jury trial, (iv) why abolition of jury trials would solve those problems, (v) possible objections to abolition, (vi) responses to those objections, and (vii) conclusion. The main body consists of sections (ii) to (vi).

You can see the logic behind these sections. First, you provide relevant background information. Then you set up the problem to be solved and provide your solution to that problem. You show balance by considering objections to your position, but you are then able to rebut those objections and defend your position.

This is not, of course, a universal structure to apply indiscriminately. Moreover, this possible structure could well be varied in the final version. For example, you might find that it is more effective to combine sections (iii) and (iv) and propose the solution to the problem while explaining what the problem is. You might also find that it is more effective, and avoids repetition, to combine sections (v) and (vi), so that you respond to each objection as you present it. The key thing is that your reader should be able quickly to see, without having to look very hard, that this is indeed what you are doing.

For legal problem-solving assignments, a good structure is particularly important in ensuring that you cover all the relevant issues. Subject to more specific directions from your teacher, you might approach structuring your legal problem-solving task in three different ways, depending on the nature of the task. First, you might divide up your answer to fit the law. For example, you might provide a separate section for each element of a claim or charge. Second,
you might divide up your answer to fit the facts. For example, you might provide a separate section for each of the two people that have legal claims or for two properties that are in dispute. Third, you might divide up your answer chronologically. For example, you might have one section analysing the facts and the legal position at one point in time and another paragraph dealing with how that analysis changes because of a later event.

5.2 Introductions

Introductions are necessary in most, if not all, writing. The particular purpose of your introduction will depend on the purpose of your communication. But in most kinds of legal writing, a good introduction seeks to introduce the reader not just to the subject of the document but also to the document itself. It will orient the reader by letting the reader know what the document is about and what the document is doing in relation to that subject matter. An introduction is somewhat like the on-ramp of a motorway: it enables your reader to get up to speed so that they can make headway into the rest of the document.

In a professional context, such as writing a legal advice, it is common to put your conclusion in the introduction. This is because you are providing information as a service, and making the most important information easily accessible to your client is good service. On other occasions, the role of the introduction may be more about drawing the reader into the document and making them want to read the rest of what you wrote. For example, if you were writing to persuade someone that the law should be reformed your introduction could set the scene with a vivid illustration of problems with the current law.

Depending on the length and complexity of your document, it may be appropriate for your introduction to provide a short road map of the rest of the document, by briefly identifying the sections that are to come and what they do. (This Short Guide does this.) This makes the most important information easy to access by letting the reader know what is in store. You should, of course, make sure that your document does indeed go on to deliver what you have promised.

The length of a good introduction will vary. Most often it will be a matter of proportionality: the shorter the document, the shorter the introduction. If you are only writing a paragraph then the topic sentence of that paragraph will serve as an introduction. If you are writing a page of a few paragraphs, then you will only need a few sentences. If you are writing a 3,000-word piece then a few paragraphs will be enough.

5.3 Conclusions

It is important to know when to draw things to an end. It is also important to let your reader know that things have come to an end. Of course, if there are no more words to follow, that is often a physical sign to your reader that things have ended or at least petered out. But your text itself should indicate that things have not merely stopped but have reached their logical conclusion. This is particularly important when you are ending particular discussions within your document rather than ending the document as a whole. This helps your reader see the different sections of your document.

So, if you are delivering the conclusion to an argument or just ending your discussion of some issue, it will usually help your reader if you use words that clearly indicate this. Conclusions can be signposted in various ways. For example, ‘From the preceding arguments, it can be seen that Kwong’s position on the issue is the most plausible one’.
Another example: ‘In conclusion, it is clear that the most plausible position is that of Kwong’.

It will often be appropriate to have a distinct concluding section at the end of your document that tells your reader things have come to an end and, indeed, what that end is. But this may not always be necessary, especially where your document’s structure has made it clear that things have played out as you said they would in your introduction.

5.4 Make your structure clear to the reader

The final version of your document should have a clear and logical structure that is easily discernible to the reader. It should not only be clear what the document’s structure is; it should also be clear that the structure is appropriate to the document’s purpose and how each part of the document contributes to achieving its overall purpose. At any point while reading your document, your reader should be able to discern without much effort exactly how the current sentence, paragraph, and section of the document fits into the document’s overall structure.

Headings and sub-headings can be very useful in making your document’s structure clear. Do not be shy about using headings that expressly mark out distinct sections of your document. Headings and sub-headings will often help you when planning your document and help your reader to follow your structure. (There seems to be some rumour among students that good academic writing should not have headings. Perhaps some academic disciplines discourage the use of headings for reasons of their own. But, in law, good use of headings can be very helpful to your reader.)

The wording of your headings can be very useful. Avoid using generic headings like ‘Background’ or ‘Main Discussion’. The heading will usually work better if it describes the key content of the relevant section or communicates the section’s main idea. This allows you to make the flow of your document’s points or argument explicit even in the headings, which can be a great help to your reader. As a general rule, the first paragraph or first sentence following a heading should reflect the substance of the heading to say what the section is about.

If you are using more than one level of heading, be very clear which heading belongs to which level, either by numbering them or using different fonts, bold text, italics, etc. (Three levels of headings is usually a good maximum number.) The Australian Guide to Legal Citation (AGLC) sets out a particular format for headings. If the AGLC is set as the relevant citation guide to follow in your subject, you should also follow it for headings, unless you are advised otherwise. (Note that the present Short Guide to Clear Writing does not follow the AGLC.)

It is, of course, possible to have too many headings. Some students writing a short, 1500-word problem assignment provide a heading for every paragraph. This can weaken the cohesion of their paragraphs as the heading is used as a substitute for a topic sentence. It is almost never a good idea to have a separate section and heading for every single paragraph.

6. Reviewing and Revising Your Document

Once you have written your document, take the time to review and revise what you have written. This will not be just a matter of ‘polishing things up a bit’. It involves stepping back
and critically and rigorously reviewing and, where necessary, re-writing your text. Virtually all good writing involves re-writing. It is very rare for any writer to get things perfectly right (or even good enough) on the first attempt. A clear document should appear to have been effortlessly written. But to create such prose will usually require several stages of drafting.

A lot of student work suffers because of a failure to review and revise. For many students this will be due to problems with time management. So you should plan to include time for reviewing and revising your work. Some students also do not seem to be in the habit of reviewing and revising their work. If this applies to you, you should cultivate the habit. It will repay you.

When you review your work, primarily bear your reader in mind. That is, think how your readers will approach your text. Will they understand what you have written? Will they be persuaded by it? Try to avoid being content with having expressed yourself just how you want to express yourself. That will be important, but it is only half the story, because it may yet be that your reader will not understand or be sympathetic to how you see things. You need to aim at helping the reader to understand, and even to be persuaded by, what you say.

It can, of course, be difficult to critically review a document that you have become very familiar with. It can be hard to step back and detach yourself from your work. This can be because you have become emotionally attached to your creation. But it can also be because you have simply become too used to your text and your eye begins to ‘skate over’ things. But if you can give yourself that critical distance, and re-approach your text with an objective and critical eye, it will help you. If possible, it is best to give yourself a clear break between finishing a draft and then critically reviewing it, so that you can approach things with ‘fresh eyes’. In addition, reading your draft document aloud to yourself can be a useful way of forcing yourself to read every single word. It is also a handy way of picking up grammatical errors or inconsistencies (like changes in tense) and long sentences (which leave you breathless when read aloud).

In reviewing your work, pay attention to both the big picture and the details. That is, make sure the structure works and is clear, and that everything hangs together well. But also go through each sentence and make sure each one is grammatically correct and as clear as it can be. Of course, it is rare for all typographic errors to be spotted and expunged, but the moor of these you can correct before submitting your document, the beta. (Yes, that sentence contains examples of what to avoid. The words are correctly spelt but they are the wrong words in that sentence — and spell check will not pick that up.)

The revising process may itself need to be repeated, especially for longer documents. Be prepared to go through a number of distinct drafts. Of course, there must be a point at which you let go of your document. It is possible to keep on tinkering with a document with diminishing returns for your efforts. But too many students let their work go too early. So, err on the side of doing one too many revisions rather than one too few.

When reviewing and revising your document there are various things to look for. For long documents, it can often help to have different stages of revision — in the different stages you are looking for different things. Here is one approach to this sort of staged revision process. First, finalise the basic content of the conclusion and the introduction. Second, revise the draft to make sure your arguments do in fact establish the points you intend them to establish. Fill in logical gaps and remove repetition. Make sure your text addresses the audience it is intended to address. Third, revise your draft to ensure continuity. This is where you can provide appropriate flags and signposts. Fourth, revise your draft to make sure the paragraphs
and sections are clear. Fifth, revise your draft to ensure your grammar and punctuation are correct and your expression clear and engaging. Finally, revise your draft to make sure the referencing is correct, the bibliography provided (if required), and the document is in the required or appropriate format.

7. Further Resources

There are hundreds of books and other resources to help you improve your writing. The following are just a few.

Books on grammar and punctuation


Books on writing style (general)


Books on legal writing

- Paula Baron and Lilian Corbin, *Legal Writing: Academic and Professional Communication* (Oxford University Press, 2016)
- Ross, Hyams, Susan Campbell and Adrian Evans, *Practical Legal Skills*, 4th ed (Oxford University Press, 2014), Ch 5 ‘Writing and Drafting’
Online resources

- La Trobe University has an online module on writing at:
  http://latrobe.libguides.com/writing

Other resources


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