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**Windstorms,  
Tornadoes,  
and Floods,  
Oh My!**

### Why Don't Lawyers Write Like People?

We lawyers do our work with words—often written words. We must be stylistic chameleons and craft our words for a number of different types of writing: documents, letters giving formal advice to clients, e-mails giving informal advice to clients, demand letters, opposing counsel communications, and formal transaction opinion letters. We may also prepare pleadings and briefs. Styles vary. But, in all styles, our meaning and intentions must be clear.

In documents, we use legalisms like “inter alia,” “per annum,” and “in witness whereof,” even though these phrases are no longer part of normal speech or nonlegal writing. See Mark A. Senn, *Writing Good, Legal Sense and More or Less*, 26 Prob. & Prop. 36, May/June 2012. When asked, we explain that these phrases are terms of art and are needed for precision. Generally, however, they show only that the document was cut and pasted from an old form.

At the other extreme, in e-mails, we feel free to say what we really feel, regardless of appropriateness for our audience. The e-mail's sender never knows who the audience will be now that “viral” means a communication that travels across the world, subjecting its sender to the ridicule of the masses—and potentially, the wrath of the court or jury. *Id.*

Standard grammar, punctuation, and word usage are very important. Misplaced commas may have significant substantive repercussions. A Canadian telecommunications company relied on the “rules of punctuation” in concluding that

a misplaced comma allowed the company to terminate a contract prematurely, thus saving approximately one million Canadian dollars. Ian Austen, *The Comma That Costs 1 Million Dollars (Canadian)*, N.Y. Times, Oct. 25, 2006. In that case, the contract for the use of utility poles contained the sentence: “This agreement shall be effective from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless and until terminated by one year prior notice in writing by either party.” Is the one-year termination right in effect during the entire term of the agreement, or does it simply give the parties the right to stop the agreement from renewing for an additional five-year term? That dispute pales in comparison to the multi-million dollar dispute involving ownership of the Los Angeles Dodgers. The Dodgers' dispute turned on whether the owner's marital property agreement used the word “exclusive” rather than “inclusive” in identifying his separate assets and whether an attorney's correction of this wording after document execution was effective. Bill Shaikin & Carla Hall, *Attorney Acknowledges Changing Key Word in Contested Property Agreement Between McCourts*, L.A. Times, Sept. 21, 2010.

But even standard grammar and usage change over time—or perhaps sometimes we learn them inaccurately. I was taught not to start a sentence with “and” or “but.” But Bryan Garner has now explained to me that “[i]t is rank superstition that this coordinating conjunction cannot properly begin a sentence. Bryan A. Garner, *A Dictionary of Modern Legal Usage* 55 (2d ed. 1995). H.W. Fowler calls an editor's statement that it is wrong to start a sentence with “but”

an “ungrammatical piece of nonsense,” and files this rule under “fetishes” and “superstitions.” *Fowler's Modern English Usage* 606 (2d ed. 1965). “However” also can, and sometimes should, begin a sentence—though William Strunk disagrees. Compare Ben Yagoda, *The Most Comma Mistakes*, N.Y. Times, May 21, 2012, with William Strunk Jr. & E.B. White, *The Elements of Style* 74 (2005). In any case, a sentence that starts with one of these conjunctions starts abruptly—and with some shock value. To preserve this useful jolting effect, “and,” “but,” and “however” should not be used to start a sentence so often that the reader grows jaded but should be saved to emphasize the addition or exception signaled by the initial “and,” “but,” or “however.”

Many new words do not describe the technology or equipment that we use every day. Who wants to be on the leading edge of word change? The financial whizzes that gave us “tranche” now use the word “monetize” as if it were made out of money (so to speak) and use it in a broader sense than the limited “put money into circulation” or “give fixed value as currency” meaning accepted by Garner. Garner, *Modern Legal Usage*, supra, at 546. Recently I saw the term “commoditize.” Is this an accepted word? Check with me in a few years on that one.

This column will explore our words and the circumstances in which we use them, rules of grammar that are misapplied or overlooked, silly legalisms, standard usages that make no sense, imprecise document drafting, overly precise informal communications, words that keep a lawyer out of trouble, new words and changing usages, and other issues with which we lawyers grapple each day when we write. ■

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