

Chapter 5

Effective Sentences

Effective sentence writing begins with the subject-verb unit. Those two key sentence positions should contain the crux of the sentence's message. If these two parts of the sentence are written well, then many of the other parts of the sentence will fall into place.


Consequently, our discussion of effective sentence writing begins with four points about the subject-verb unit: the use of active and passive voice, the use of concrete subjects, the use of action verbs, and the distance between subjects and verbs. The remainder of the chapter addresses points that concern the whole sentence: sentence length and emphasis.

§5.1 ACTIVE AND PASSIVE VOICE

The term "voice" when it is applied to the subject-verb unit refers to the relationship of the subject to the action expressed in the verb. This rather vague concept is easier to understand in terms of the difference between active and passive voice.

§5.1.1 Identifying Active and Passive Voice

In the active voice, the subject of the sentence is doing the action described by the verb.


The judge overruled the objection.
(subject) (verb) (direct object)

In the sentence above, the subject "judge" is doing the verb "overruled." Another way to look at it is to remember that in the active voice the subject is "active," or acting.

In the passive voice, the subject of the sentence is having the action of the verb done to it.

↖
The objection was overruled by the judge.

(subject)

(verb)

In this sentence, the subject “objection” is not doing the overruling; rather, the verb “was overruled” is being done to the subject. Another way to look at it is to remember that in the passive voice the subject is “passive.” It is not acting; it is acted upon.

Notice that in the passive voice the person or thing doing the verb is either mentioned in a prepositional phrase (“by the judge,” as in previous example) or omitted, as in the example below.

The objection was overruled.

(subject)

(verb)

Note that passive voice is different from past tense. Even though both concern the verb, past tense refers to the time of an action and passive voice refers to the relationship of an action to the subject of the sentence.

§5.1.2 Effective Use of Active Voice

Generally, the active voice is preferred over the passive voice for several reasons:

1. It is more concise.

EXAMPLES

The marshal left the summons.

(active voice — 5 words)

The summons was left by the marshal.

(passive voice — 7 words)

-
2. It uses a more vigorous verb.

EXAMPLES

The plaintiffs filed a complaint in the Superior Court of Chavez County, New Mexico.

(active voice — verb “filed” is crisp and vigorous)

A complaint was filed by the plaintiffs in the Superior Court of Chavez County, New Mexico.

(passive voice—verb “was filed” loses much of its vigor; the auxiliary verb “was” and the preposition “by” dilute the energy of “filed”)

-
3. It allows information to be processed more readily.

EXAMPLE

The defendant’s attorney must offer the deposition into evidence.

This active voice sentence is easy to process mentally. The reader can visualize the subject “defendant’s attorney” doing the verb “must offer” to the object “deposition” as quickly as the words are read. The sentence suggests a mini-drama that readers can visualize in their minds.

EXAMPLE

The deposition must be offered into evidence by the defendant’s attorney.

Although the information in this passive voice sentence is not difficult to process, readers must read the entire sentence before they can visualize the sentence in their minds. By the midpoint in the sentence, “The deposition must be introduced into evidence,” the action has begun, but it is being done by unseen hands. The “actor” in the mini-drama does not come in until the end of the sentence.

In both objective and persuasive legal writing, active voice is usually preferred when you want to make a point that someone or something performed a particular action. Active voice emphasizes who or what is responsible for committing an act.

EXAMPLES

The defendant embezzled over \$1 million.

(active voice—emphasizes that the defendant is responsible for the act)

Over \$1 million was embezzled by the defendant.

(passive voice—it is still clear that the defendant performed the act, but now the emphasis is on the amount of money)

Over \$1 million was embezzled.

(passive voice—doer of the action is either unknown or left unsaid; emphasis is on the amount of money)

§5.1.3 Effective Use of Passive Voice

Although it is true that active voice is generally preferable to passive voice, there are several situations in which passive voice is more effective.

1. Use passive voice when the person or thing performing the action is unknown or relatively unimportant.

EXAMPLES

A portion of the tape was erased.

The safe's hinges must be examined before the manufacturer's liability can be determined.

-
2. Use passive voice when it is undesirable to disclose the identity of the person or thing performing the action.

EXAMPLES

The plaintiff's retirement benefits were discontinued.

Toxic fumes were ventilated out of the plant between 2:00 and 3:00 a.m.

-
3. Use passive voice when the deed, rather than the doer, should be emphasized.

EXAMPLE

All four defendants were convicted of first degree murder.

4. Use passive voice when it allows the writer to keep the focus of the writing where it belongs, as in the following example from a paragraph about a mistake in a contract.

EXAMPLE

A mistake can also be attributed to Lakeland Elementary School for believing the price of the playground equipment included in-stallation.

5. Use passive voice when it provides a stronger link between preceding and subsequent sentences or clauses. See section 4.3 on dovetailing. This link is enhanced by moving the connecting ideas to the end of the first sentence (or clause) and then picking up on that point at the beginning of the second sentence (or clause).

Sentence 1

Sentence 2

connecting idea

connecting idea

EXAMPLE

Under the Revised Code of Washington, Title 62A, contracts for the sale of goods are regulated by the Uniform Commercial Code. The UCC outlines the requirements for a valid contract for the sale of goods and the various steps necessary to the contract's performance.

The first sentence uses passive voice so that "Uniform Commercial Code" will be at the end of the sentence. The second sentence begins with "The UCC" to provide a strong link between the sentences.

Sentence 1

Sentence 2

by the Uniform Commercial Code

The UCC

Draft: A decision was made by the district manager to eliminate all level four positions.
(subject) (verb)

Revised: The district manager decided to eliminate all level four
(subject) (verb)
positions.

Note that the preceding example illustrates a common problem in legal writing known as nominalization. Nominalization is the process of converting verbs into nouns (for example, “decide” → “decision”). The effect in the sentence is twofold: (1) the real action of the sentence is buried in a noun, making the sentence more ponderous and turgid, and (2) the verb becomes either a passive voice substitute or a “*to be*” verb substitute, making the sentence less energetic.

In many sentences, the real person or thing acting in the sentence has been buried in an abstraction or omitted altogether.

EXAMPLE

Draft: The awarding of damages will be left to judicial discretion.
(subject) (verb)

Revised: The judge will decide whether to award damages.
(subject) (verb)

Often the subject position in the sentence is taken up by an almost meaningless abstraction such as “nature of,” “kind of,” “type of,” “aspect of,” “factor of,” or “area of.” Notice how the sentence improves when these meaningless abstractions are omitted and real people and real things are placed in the subject position.

EXAMPLE

Draft: The nature of the defendant's argument was that he
(subject) (verb)
was "temporarily insane."

Revised: The defendant argued that he was “temporarily in-
(subject) (verb)
sane.”

Both the subject position and verb position are often taken up by the many weak subject-verb combinations that use the “it is _____ that” pattern.

It is important to note that
It is likely (unlikely) that
It is obvious (clear) that
It is essential that

To revise sentences with this weakness, look after the “that” for the real subject and verb.

EXAMPLES

Draft: It is obvious that the defendant was not read his rights.
(subject/verb)

Revised: The defendant was not read his rights.
(subject) (verb)

Draft: It is unlikely that the defendant will plead guilty.
(subject/verb)

Revised: The defendant probably will not plead guilty.
(subject) (verb)

§5.3 ACTION VERBS

Effective verbs show real action rather than vague action or state of being. To find the most effective verb for a sentence, ask yourself, “What is someone (or something) actually doing in the sentence?” Then place that action in the verb position.

Common Pitfalls to Avoid When Selecting a Verb

1. Avoid overusing a form of the verb “to be” (“am,” “are,” “is,” “was,” “were”) as a main verb. Use forms of the verb “to be” only as the main verb when the point of the sentence is that something exists.

EXAMPLES

Draft: The owner of the land is East Coast Properties, Inc.
(subject) (verb)

Revised: East Coast Properties, Inc. owns the land.
(subject) (verb)

Draft: There are four elements that must be proved to re-
(verb) (subject)
cover damages under the family car or purpose doctrine.

Revised: Four elements must be proved to recover damages
(subject) (verb)
under the family car or purpose doctrine.

Notice that the sentence openers "There is" or "There are" or "There was" or "There were" are weak unless the point of the sentence is that something exists. With these four sentence openers, the subject comes after the verb.

2. Avoid using vague verbs. Verbs such as "concerns," "involves," "deals (with)," and "reveals" tell the reader little about the real action in the sentence.

EXAMPLE

Draft: Swanson dealt with a sales contract that contained
(subject) (verb)
an open item and that was signed by a homebuilder and a couple who were prospective buyers of a home.

Revised: In Swanson, a homebuilder and a couple who were
(subject) (subject)
prospective buyers of a home signed a contract that
(verb)
contained an open item.

3. Avoid nominalization, that is, burying the real action in a noun, and avoid burying the action in an adjective.

EXAMPLE

Draft: The corporate officers had an informal meeting at an
(subject) (verb)
undisclosed location.

Revised: The corporate officers met informally at an undis-
(subject) (verb)
closed location.

§5.4 DISTANCE BETWEEN SUBJECTS AND VERBS

An effective sentence has its subject and verb close together. When they are close together, the reader can identify the subject-verb unit quickly and comprehend the entire sentence more easily. When they are separated by many intervening words, the reader will find it much more difficult to understand the sentence.

EXAMPLE

Draft: Information about Mutual Trust Bank's standard op-
(subject)
erating procedures and about how the contractor drew
up his loan application will be required by the court.
(verb)

Revised: The court will require information about Mutual Trust
(subject) (verb)
Bank's standard operating procedures and about how
the contractor drew up his loan application.

In some cases, the writer will have to rewrite one sentence as two sentences to keep the subjects and verbs close together.

EXAMPLE

Draft: A case in which a section 11-902 charge was dropped
(subject)
because the driver was found lying in the highway
near his truck shows that a driver's presence in the
(verb)
vehicle is a prerequisite for finding him guilty.

Revised: In one case, the court dismissed a section 11-902
(subject) (verb)
charge because the driver was found lying in the high-
way near his truck. The court reasoned that a driver's
(subject) (verb)
presence in a vehicle is a prerequisite to finding the
defendant guilty.

Another reason for keeping subjects and verbs close together is to reduce the chance that they will not agree in number. See section 8.4. In the following example, the writer has mistakenly made the verb agree with the singular noun “script” when the plural subject “quality and mutilation” requires the plural verb “are.”

EXAMPLE	SUBJECT AND VERB DO NOT AGREE
---------	-------------------------------

Inferior quality and mutilation of the musical play *Not Enough*
(subject)
Lovin' as a result of Skylark Productions' revisions of the script is
hard to establish. (verb)

Occasionally a writer must separate the subject and verb with quite a bit of information. In such cases, if the intervening information can be set off by punctuation, the reader will still be able to identify the subject-verb unit fairly easily.

EXAMPLE

The Lanham Trademark Act, a law primarily designed to prevent
(subject)
deceptive packaging of goods in interstate commerce, has been
(verb)
interpreted to include false attribution and distortion of literary and
artistic works.

Remember too that keeping subjects and verbs close together is desirable but not absolutely required. There will be times in legal writing when it is all but impossible to keep subjects and verbs close together.

§5.5 SENTENCE LENGTH

Whenever a legal writer asks “how long should my sentences be?” the only possible answer is “it depends.” Obviously sentence length is primarily governed by what you are trying to say. In addition, decisions on sentence length should be made based on two other factors: the reader and the context.

§5.5.1 The Reader

Effective sentence length is that which the reader can handle comfortably. Educated readers—judges, attorneys, some clients—can comfortably read somewhat longer sentences than the general public. Consequently, legal writers can usually write sentences for their readers that average about twenty-two words per sentence with only a rare sentence exceeding a thirty-five-word limit. For readers with less education, shorter sentences are usually more effective.

Notice how the overly long sentence in the following example creates a feeling in the reader of a mental overload. Several overly long sentences written one after another only compound this feeling.

EXAMPLE

The post-trial motion was supported by an affidavit by a juror that stated that a fellow juror discussed the case with a professional truck driver who was familiar with the accident scene and who told the juror that the accident could not have occurred as the plaintiff stated. (48 words)

There are several ways to revise overly long sentences so that they become more readable. One way is to break up the sentence into two or more separate sentences.

EXAMPLE

Revised:

The post-trial motion was supported by an affidavit by a juror. In his affidavit, the juror stated that a fellow juror discussed the case with a professional truck driver who was familiar with the accident scene. The truck driver told the juror that the accident could not have occurred as the plaintiff stated.

§5.5.1

Another way to revise an overly long sentence is to create manageable units of meaning within the sentence. A writer can do this by identifying structural components within the sentence, especially phrases and clauses, and setting them off with appropriate punctuation.

Notice how much more readable the following example becomes when, in Revision 1, the “if” clause is moved to the front of the sentence, where it can be set off from the rest of the sentence by a comma.

EXAMPLE

The Reynoldses will be responsible for both the attacks on the Halversons’ chickens and Mr. Halverson’s medical bills resulting from the dog bite if the plaintiff can show that the Reynoldses should have known of their dog’s viciousness. (38 words)

Revision 1:

If the plaintiff can show that the Reynoldses should have known of their dog’s viciousness, (15 words) then they will be responsible for both the attacks on the Halversons’ chickens and Mr. Halverson’s medical bills resulting from the dog bite. (23 words)

Other punctuation marks, such as the colon, can sometimes be added to create a break within a sentence.

EXAMPLE**Revision 2:**

If the plaintiff can show that the Reynoldses should have known of their dog’s viciousness, (15 words) then they will be responsible for the following: (8 words) the attacks on the Halversons’ chickens and Mr. Halverson’s medical bills resulting from the dog bite. (16 words)

This technique of arranging phrases and clauses so that they can be set off by punctuation is particularly helpful when writing issue statements.

EXAMPLE

Under New Hampshire law did the trial court commit prejudicial error by refusing plaintiffs' motion for a new trial because of jury misconduct when the motion was supported by a juror affidavit stating that another juror discussed the case with an alleged expert outside the trial context and then related the information to the entire jury?

In Revision 1, the writer has broken up this same information into more readable units by using a comma to set off the introductory phrase and a conjunction between two main clauses. See section 9.1, Rules 1 and 2.

EXAMPLE***Revision 1:***

Under New Hampshire law, (4 words) did the trial court commit prejudicial error by refusing plaintiffs' motion for a new trial because of jury misconduct when the motion was supported by a juror affidavit, (28 words) and that affidavit stated that another juror discussed the case with an alleged expert outside the trial context and then related the information to the entire jury? (27 words)

In Revision 2, the writer has used commas between a series of parallel clauses (here, the "when" clauses) to help break up the information into manageable units. See section 8.7. Even though the revised sentence is longer than the original, it is more readable because the reader gets the information in smaller, more manageable units.

EXAMPLE***Revision 2:***

Under New Hampshire law, (4 words) did the trial court commit prejudicial error when it refused plaintiffs' motion for a new trial because of jury misconduct, (20 words) when the motion was supported by a juror affidavit, (9 words) and when that affidavit stated that another juror discussed the case with an alleged expert outside the trial context and then related information to the entire jury? (27 words)

Another way to solve sentence length problems is to eliminate wordiness. See section 6.2.

§5.5.2 The Context

Earlier we said that decisions about sentence length should be based on both the reader and the context. Readers rarely see a sentence in isolation. Most sentences are preceded by other sentences and followed by other sentences. Consequently, how readers respond to the length of any given sentence depends, in part, on the sentences that surround it.

For example, a forty-word sentence that is unwieldy in one context may work in another. A short, snappy sentence that drives a point home in one paragraph may seem trite and unsophisticated in another. Even a steady diet of medium-length sentences is unappetizing. Such writing tends to be monotonous and bland.

When it comes to sentence length, then, consistency is not a virtue. Effective sentences vary in length.

The following example from a statement of facts shows how lack of variety in sentence length makes the writing less interesting to read.

EXAMPLE

On December 15, 1999, Officers Jack Morrison and Wayne Fiscis of the Phoenix Police Department searched Victor Ehrlich's apartment. (17 words) They had in their possession a valid search warrant for marijuana. (11 words) Marijuana was found in both the living room and the kitchen. (11 words) While searching the bedroom, Officer Morrison found a large manila envelope in one of the dresser drawers. (17 words) Photographs were protruding from the top of the envelope. (9 words) Morrison looked inside and found photographs of Ehrlich with three young girls sitting on his lap. (16 words) Ehrlich was wearing only boxer shorts, and the girls were nude from the waist up. (15 words) Considering the photographs to be perverse, Morrison showed them to Fiscis, who agreed that they looked suspicious. (17 words) They seized the photographs as well as the marijuana. (9 words) The defendant, Victor Ehrlich, has now contested this seizure. (9 words) He has made a motion to suppress the photographic evidence as the result of an unconstitutional seizure. (17 words)

The following revised version is more interesting to read because sentence length now ranges from six words in the shortest sentence to twenty-nine words in the longest.

EXAMPLE**Revised:**

On December 15, 1999, Officers Jack Morrison and Wayne Fiscis of the Phoenix Police Department searched Victor Ehrlich's apartment. (17 words) They had in their possession a valid search warrant for marijuana. (11 words) After finding marijuana in both the living room and the kitchen, they searched the bedroom, where Officer Morrison found a large manila envelope in one of the dresser drawers. (29 words) Seeing photographs protruding from the top of the envelope, Morrison looked inside and found photographs of Ehrlich with three young girls sitting on his lap. (25 words) Ehrlich was wearing only boxer shorts. (6 words) The girls were nude from the waist up. (8 words) Considering the photographs to be perverse, Morrison showed them to Fiscis, who agreed that they looked suspicious. (17 words) They seized the photographs as well as the marijuana. (9 words) The defendant, Victor Ehrlich, has now contested this seizure and has made a motion to suppress the photographic evidence as the result of an unconstitutional seizure. (26 words)

Part of what makes the revised version effective is its use of short sentences. The four short sentences were all used to highlight particularly significant facts.

§5.5.3 The Power of the Short Sentence

Used sparingly, short sentences can energize writing. Not only can they provide relief to readers who have just labored through several long sentences, they also tend to highlight the information they contain.

Note how in the following example the short sentence serves both as a welcome break after two fairly long sentences and as a way to emphasize the significant point that individuals in both cases were possibly motivated by a reward.

EXAMPLE

In two older decisions, *United States v. Snowadzki*, 723 F.2d 1427 (9th Cir. 1984), and *United States v. Black*, 767 F.2d 1334 (9th Cir. 1985), individuals conducting unlawful searches were considered to have acted as private parties, not as government agents. In both cases, the individuals obtained the documents unlawfully and then

turned them over to the government, which later submitted them as evidence at trial. In each instance, a reward was offered.

§5.6 EMPHASIS

Emphasis is a natural part of all writing. In objective writing, the writer uses emphasis to let the reader know where to focus his or her attention. In persuasive writing, emphasis allows the advocate to spotlight those points that favor the client and downplay those that hurt the client. It also allows the advocate to hammer home his or her theory of the case. In the previous section we saw how short sentences can be used to emphasize key points.

EXAMPLE

Original:

The defendant lied when she testified that she was in St. Paul, Minnesota, at the time of the robbery.

Revised:

The defendant testified that she was in St. Paul, Minnesota, at the time of the robbery. She lied.

Besides short sentences, emphasis can be achieved in several other ways:

- A. telling the reader what is important
- B. underlining (or italics or boldface)
- C. using positions of emphasis
- D. using punctuation to highlight a point
- E. using single-word emphasizees
- F. changing the normal order in a sentence
- G. repeating key words
- H. setting up a pattern (and sometimes breaking it)

Of all these strategies, the most common and least sophisticated are the first two: (A) simply telling the reader what is important and (B) underlining. Some writers consider these first two strategies too obvious and overused to be effective. Others feel that they can be effective if used selectively.

§5.6.1 Telling the Reader What Is Important

Sentence openers such as “it is important to note that” or “above all” alert the reader to the importance of the point that follows. Used rarely, these sentence openers can help the reader identify which points deserve heightened emphasis. Used frequently, these same sentence openers bog down the writing and make it wordy.

EXAMPLES

Above all, the court should consider the defendant's past record as a good husband, model father, and leader in the community.

It is important to note that the check was postdated.

Notice that the last example may be even more emphatic when revised into a short sentence: The check was postdated.

Expressions such as “especially,” “particularly,” and “most important” can work the same way when they are inserted right before the point to be emphasized.

EXAMPLE

The court should consider the defendant's past record as a good husband, model father, and, most important, leader in the community.

§5.6.2 Underlining

Underlining is undoubtedly the simplest and least sophisticated strategy for emphasis. It requires no restructuring of the sentence and little, if any, planning. If you do decide to use underlining for emphasis, be extremely selective.

EXAMPLE

The contract permits but does not require the tenant to add landscaping and similar outdoor improvements.
