

SENTENCES & VOICE IN LEGAL WRITING

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The concept of “voice” in legal writing& drafting

- The term voice when applied to the subject-verb unit refers to the relationship of the subject to the action expressed in the verb.
- This concept is easier to understand in terms of the difference between the active and the passive voice in legal writing.
- A reader’s eyes automatically searches for “who did what to whom”(WDWTW).

ACTIVE AND PASSIVE VOICE

- A sentence comprises of three parts. These parts are the subject, verb and object. The subject is generally the person or the thing doing an action. The verb is the action. An object is a thing that the subject is doing the action to.
- By way of example, consider these two sentences:
 - a) The ball was kicked by the boy; and
 - b) The boy kicked the ball.
- Our first sentence is in the passive voice. The second one is in the active voice

ACTIVE AND PASSIVE VOICE

- Remember it this way: if you're active, you do things; if you're passive, things are done to you.
- In an active-voice construction, the subject performs an action (The court dismissed the appeal).
- In a passive-voice construction, an action is performed to the subject (The appeal was dismissed by the court)
- Other examples include:
 - i. The court granted the motion. (active voice--subject before action verb)
 - ii. The motion was granted by the court. (passive voice--subject after action verb)
 - iii. The motion was granted. (passive voice--subject missing)

Active Voice Advantages

- The active voice typically has four advantages over the passive:
 - i. It usually requires fewer words.
 - ii. It better reflects a chronologically ordered sequence (active: actor → action → recipient of action), as opposed to the reverse (passive: recipient of action → action → actor).
 - iii. It makes the reader's job easier because its syntax meets the English speaker's expectation that the subject of a sentence will perform the action of the verb.
 - iv. It makes the writing more vigorous and lively.

Passive Voice Disadvantages

- The Passive voice is wordier than the active voice. Moreover, use of passive verbs often creates ambiguity.
- Through the use of the active voice, the reader can tell who is doing what. With the passive voice, the writer can obscure the identity of the actor.
- The passive voice ruins the normal subject-verb order of a sentence, thus making it more difficult for readers to follow along.

Use of the Passive Voice

- Because passive voice is harder to understand and usually takes more words, you should generally use the active voice. However, you may sometimes choose to use passive voice, particularly in persuasive writing.
- Use passive voice in persuasive writing when you want to de-emphasize the actor or even conceal the actor's identity. For instance, if your client committed a crime, you might use passive voice to describe what happened.
- On the other hand, if your client is the victim, use active voice and active verbs to link the defendant to the crime. For example:
 - i. The Defendant slashed Mr. Roberts five times with a knife. (prosecution--active voice)
 - ii. Mr. Roberts was stabbed. (defence--passive voice)

Use of the Passive Voice

- You may also use passive voice when you do not know who the actor is, when the actor's identity is not important, or when you want to emphasize the action instead of the actor.
For example:
 - i. The governor was told that three prisoners escaped from the state prison. (it is not important who told the governor or we do not know)
 - ii. An experimental cancer surgery was performed yesterday for the first time. (the new surgery is more important than who performed it)
- Situations calling for passive construction are the exception, According to Garner, they account for no more than 15 to 20 percent of contexts in which the passive voice appears. Thus, the presumption is against use of the passive voice.

Exercises

Improve the following sentences by changing them to the active voice:

- A complaint was filed by the Union
- Your application will be denied by the Trial Judge
- Our conclusion is supported by the legislative history
- The trust had not been intended by the trustor to.....
- In 1998, only ten executives were covered by Article 12.
- Prospective investors are urged to consult their own tax advisers.
- The 2001 Plan is intended to facilitate key employees in earning a greater degree of ownership interest in the Company.

Action Verbs

- A verb that expresses something that a person, animal, object, or process in nature can do.
- Action verbs activate your sentences and bring your reading alive to the reader.
- The right use of active verbs allows you to create sentences that exude confidence, energy, and results. They are designed to engage the reader in a positive manner.

Action Verbs - Examples

- The Plaintiff was employed for a few years as a high school football coach in rural Kenya, but now **toils** in obscurity, entirely out of the coaching profession.
- The defendant **deployed** several tactics to distract others from the truth.
- The plaintiff's life was forever **fractured** by the defendant's misdeeds.
- The defendant's application should be dismissed as the evidence demonstrates that he **masterminded** the plan to steal the plaintiff's business.
- The defendant **injected** himself into the business relationship.
- The deal was **mangled** as a result of the defendant's incompetence.

Subject and Verbs

- It is crucial to arrange the elements of your sentences in a logical order.
- In seeking to understand a sentence, the reader's mind searches for the subject, the verb and the object. If those three key elements are set out in that order, close together and near the front of the sentence, then the reader will understand quickly.
- The subject is the actor in the sentence, while the object is the entity that is acted upon, or the receiver of the action, for example, in the sentence, "The defendant filed an application for summary judgment," defendant is the subject, filed is the verb, and application for summary judgment is the object.
- Lawyers however tend to leave wide gaps between the subject and the verb, and between the verb and the object, for example:

Subject and Verbs

“ A claim, which in the case of negligent misconduct shall not exceed Kshs 5000, and in the case of intentional misconduct shall not exceed Kshs 10,000, may be filed before the Occupational Director of Safety and Health by any injured party”

The remedy here is to insert a sentence so that it reads as follows:

“Any injured party may file a claim before the Occupational Director for Safety and Health. A claim must not exceed Kshs 5,000 for negligent misconduct or Kshs 10,000 for intentional misconduct”

Sentence Length

- The length of your sentences will determine the readability of your writing as much as any other quality. The rule here is simple – LESS IS MORE! Very long sentences can be intimidating and confusing.
- Consider 20 words per sentence a safe benchmark (although this is not a hard and fast rule) however don't focus on aiming for 20 words when you write. Instead, write naturally and only consider the length in retrospect when editing.
- Readability tests have shown that if a sentence is longer than 25 words, the reader starts to struggle to read and understand the sentence.

Sentence Length

- Typically, sentences can easily be broken down into smaller sentences without losing any meaning. A short, concrete sentence following a longer sentence can also be a great device for delivering a strong punch, e.g., “The court could have considered the constitutional issue. It did not.”
- In legal writing, short sentences can emphasize ideas. Therefore, reserve them for your most significant points. Short sentences are most powerful when nestled among longer ones – often at the end of a long paragraph – or when they stand alone as their own paragraphs.

Active v Passive Exercises

- The 2001 Plan is intended to facilitate key employees in earning a greater degree of ownership interest in the Company.
- The deceased was stabbed by the defendant
- The suspect was slammed against the car by the DCI agent
- The bomb was dropped on the target by the crew
- It was held that the statute was unconstitutional
- Last week I heard it argued by a Client that national insurance should cover all legal fees