

Legal Writing and Drafting

ATP 103

Mugambi Laibuta

Effective Writing 2

Effective Paragraphs

- Helps writers organise writing.
- Helps readers see and understand the organisation of the writing.
- Helps writers stay in control of their writing.
- Helps readers absorb information in manageable bits.
- A matter of logic and organisation.
- It is also a matter of reader comfort and aesthetics.

Paragraph Patterns

- Paragraphs have a beginning, middle and end.
- Every paragraph needs a focus – there must be a point being made.
- Every paragraph also needs a shape – a way of moving the sentences to make a shape.
- There are two paragraph patterns – the hour glass paragraph and the V-shape paragraph

Paragraph Patterns

Hour glass paragraph

- Begins with a general statement about the topic. This may take one or more sentences.
- Paragraph then narrows to the specific support for that general statement.
- Paragraph concludes with a more general sentence or two about the topic

Paragraph Patterns

Hour glass paragraph



General Statement



Specific Support



General Statement

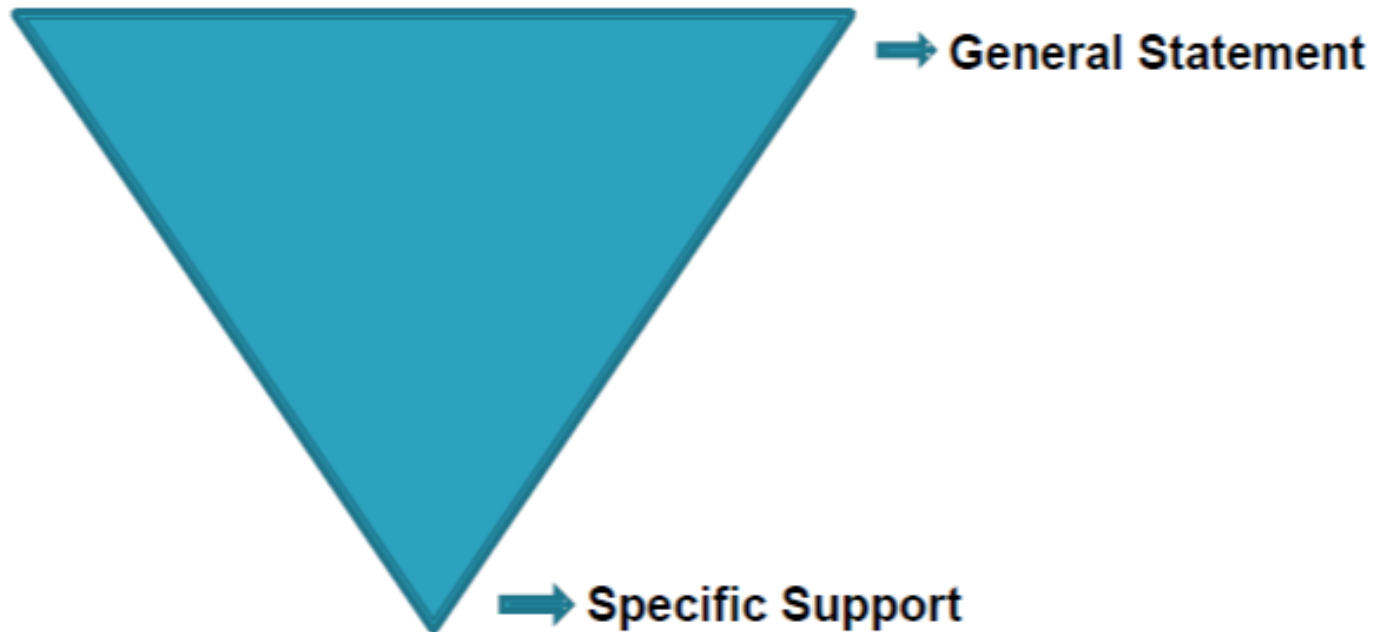
Paragraph Patterns

The V-shaped paragraph

- This is the most common type in legal writing.
- Begins with a general discussion of the topic then it narrows to specific support.

Paragraph Patterns

V-Shaped Paragraph



Paragraphs

- A paragraph must have its own topic – it must make a point.
- All elements of the paragraph must work together to make that point.
- When that happens – paragraph unity.
- Topic introduced at beginning of paragraph by topic sentence.
- It is then developed by supporting sentences
- The concluding sentence follows.

Paragraph Coherence

- Coherent paragraph – its elements must be connected in such a way that reader easily follows the ideas developed.
- Paragraph coherence can be achieved thro:
 - Using familiar organisational patterns.
 - Establishing and using key terms.
 - Using sentence structure and coherence devices

Organisational Patterns

- All readers expect certain patterns:
 - Cause/effect.
 - Problem/solution.
 - Chronological order.
 - Once a rule has been laid out, readers expect it to be applied.
 - They expect a court's holding to be followed by its rationale.
 - In legal opinions, the IRAC pattern is expected.
- Use of key words
- Logical connections between key words to make your point are crucial.

Sentence structure and coherence devices

- Coherence can be created through sentence structure and a number of coherence devices. The major devices are:
 - Dovetails – beginning a sentence with reference to the preceding sentence.
 - Parallelisms – Used to show which ideas should be considered together and which should be compared or contrasted

Topic and Concluding Sentences

- Many paragraphs have a topic and concluding sentence
- Some have one of the two
- Some have none

- Paragraph blocks



CONNECTORS



- A connector is a word that is used to join together words, phrases, clauses or sentences. Connectors are derived from:
- **Conjunctions:** and, but, although, if, or, because, since, therefore
Examples:
 - The project was a failure since the planning was faulty.
 - You will be forgiven if you promise not to repeat it.
- **Relative pronouns:** who, whom, whose, which, that, what
Examples:
 - That is what I meant.
 - She is the girl who lost both her parents.

- **Relative adverbs:** where, when, how, why

Examples:

This is the reason why she was late.

That is where the event took place.

- **Prepositions:** besides, for, after, before, since

Examples:

Besides Jack, Jill too is invited.

She has been upset since the accident.



The connectors express the following ideas:

- Place — I know the place where he was born.
- Time —
 - Look both ways before you cross the road.
 - She feeds the cow as soon as she gets up.
 - Dad was smiling as he came in.
 - I always brush my teeth after my meals.
 - Wait here until I get back.
 - Tim listens to music while he does his Mathematics.
 - You have grown since I last saw you.

- Addition —
 - It is cold and windy today.
 - She is not only pretty but also intelligent.
 - Ram as well as Sham is lazy.
 - Both Nita and Rita are twin sisters.
 - Besides her money, she lost her passport too.



- Contrast —

- I felt humiliated, but just walked away.
- She looked carefully, yet she slipped.
- Although she is ninety, she is active.

- Purpose —

- She worked hard so that she might emerge victorious.
- He is going abroad, therefore he is at the embassy.

- Comparison —
 - She is shorter than I am.
 - He is as tall as a giant.
- Cause and Result —
 - She lady is smiling because of the joke.
 - He went there since he had no option.

- Alternative —
 - Either Jack or Jill will go up the hill.
 - Neither Jane nor Jenny is fit for the job.
- Concession or Contrast —
 - Mary kept on walking although she felt very tired.
 - You are doing quite well, though I think you could try harder.
- Condition —
 - If it rains the match will be cancelled.
 - You will not pass your exams unless you work hard.



Bad Legal Writing



Phrases with no meaning

- "I would like to point out that Chester v. Morris was overruled"
 - "Chester v. Morris was overruled"
- "It has been determined that he was wearing his helmet."
 - "He was wearing his helmet."
- "Despite the fact that the defendant was drunk, he operated his bicycle carefully."
 - "Despite the defendant's drunkenness, he operated his bicycle carefully."

Double Negatives

- "not uncommon"
 - Common
- "failed to show inability"
 - Showed ability
- "not inappropriate"
 - Appropriate
- "not uncomplicated"
 - Complicated

Words used to avoid taking a position

- alleged
- maybe
- quite possibly
- at best/at least
- might be
- seems to
- appears to
- perhaps
- so-called
- implicates
- probably
- tends to

Useless Adverbs

- Chester v. Morris clearly held that bicyclists must adhere to the rules of the road.
 - Chester v. Morris held that bicyclists must adhere to the rules of the road.
- The fact that he was drunk is extremely important
 - The fact that he was drunk is important

Useless Adverbs

- The holding is very narrow.
 - The holding is narrow
- He was undoubtedly drunk.
 - He was drunk
- It is manifestly obvious that drunken bicyclists are dangerous.
 - It is obvious that drunken bicyclists are dangerous.

Redundancy

- "Cease and desist"
 - Stop
- "Give, devise and bequeath"
 - Give
- "Null and void "
 - Void

Nominalisation

- "reached a conclusion"
 - Concluded
- "involved in a collision"
 - Collided
- "take action"
 - Act



Legal Writing

Exercises



Ambiguity

- The policeman arrested a man in a green car with brown hair
- You will be lucky to get Bob to work for you
- I recommend Mary with no qualifications for the job.
- Waste no time hiring Patrick

Active Verbs

- It is important because passive verbs often make sentences longwinded, ambiguous, impersonal and boring.
- Active verbs make your writing simpler, less formal, clearer and more precise.
- When we use active verbs the agent (subject) comes before the verb and the object after the verb

Active Verbs

- Active Verb – John is playing the guitar
- Passive verb – The guitar was being played by John

Active Verbs

- It was agreed by the committee
- At the last meeting a report was made by the Secretary...
- This form should be signed and returned to me.
- The warning signs should have been put out by the cleaner.
- The assessment should have been written by you in ink.

Active Verbs

- The tests should have been finished by the engineers yesterday
- The fire alarm was set off today by the Health and Safety officer.
- The computer was not shut down correctly by the student
- The proxies solicited hereby for the Heartland Meeting may be revoked, subject to the procedures described herein, at any time up to and including the date of the Heartland Meeting.

Passive Verbs

- Use a passive verb to make a sentence less hostile.
 - “This bill hasn’t been paid”, rather than:
 - “You have not paid this bill”.
- Use a passive verb when you don’t know who the doer is.
 - “The computer was stolen last night.”
 - (We don’t know who stole it.)

Passive Verbs

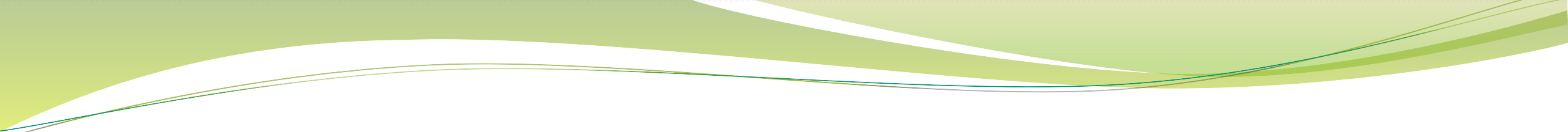
- Use a passive verb if it sounds better than using an active verb.
 - We normally write: “I was born in 1962”,
 - rather than: “My mother bore me in 1962”

Plain English Drafting

No person has been authorized to give any information or make any representation other than those contained or incorporated by reference in this joint proxy statement/prospectus, and, if given or made, such information or representation must not be relied upon as having been authorized

Superfluous words

- The following summary is intended only to highlight certain information contained elsewhere in this Prospectus
- Holders of the Class A and Class B-1 certificates will be entitled to receive on each Payment Date, to the extent monies are available therefore (but not more than the Class A Certificate Balance or Class B-1 Certificate Balance then outstanding), a distribution.

- 
- At this point in time immediately subsequent to the termination of the aforesaid altercation on the above described premises, the defendant-appellant removed himself from the aforementioned locus and repaired to a situs on the premises immediately adjacent thereto.
 - It behooves us to note that, prior to such accident, said plaintiff was domiciled with his wife.

Punctuations

- Woman: without her, man is nothing
- Woman, without her man is nothing

Punctuations

- Williams believes that “might makes right”.
- Smith said, “I am not going”, and stayed seated
- This office cannot accept your complaint, we have brought it before the appropriate Ministry.
- This office cannot accept your complaint, however we have brought it before the appropriate Ministry.