COMMA ABUSE: A COMMA CAN CAUSE TROUBLE BY ITS ABSENCE, ITS PRESENCE, ITS INCORRECT PLACEMENT

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Introduction

Those of us who have been legal writing professors for many years have our special grammar peeves. My codirector of the Legal Skills program becomes annoyed with the overuse of nominalizations.1 Another legal writing instructor becomes agitated when she sees the it’s/in contraction/possessive pronoun spelling error.2 And yet another instructor becomes irritated with the overuse of the adverb clearly.3 When, in fact, nothing in the law is so clear. This article is about my trigger—comma abuse—commas strung about the text of student memos and briefs. My purpose is twofold: first, to explain and to illustrate the rules commonly “abused” by student writers; and second, to describe materials that can be effectively used to help students avoid these problems.

Comma Abuse and the Law

Punctuation affects the meaning of sentences, and clarity is an especially important concept for lawyers-in-training and lawyers in practice. Despite their size, this is no small matter—misplaced commas can result in litigation.4 Comma-induced ambiguities have been serious enough to require the use of courts to interpret statutes, pleadings, contracts, waiver forms read to an accused, trade agreements, and wills.5 Most punctuation marks have highly specialized functions, which, once learned and understood, make those marks easy to use. The comma, however, has the most complex uses and is the most common (and the most abused) punctuation mark.6

Correct Comma Usage

The comma is used to make the internal structure of the sentence clear. It does this in three ways: (1) by separating elements that might otherwise be ambiguous, confusing, and/or awkward; (2) by setting off interrupting constructions; and (3) by setting off an introductory phrase or adverbial clause preceding the main clause.7 Each of these uses of the comma is illustrated in the following examples. [To avoid confusion throughout this article “correct” examples are bolded and “incorrect” examples are italicized.]

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1 A nominalization is the process of turning adjectives, adverbs, and verbs into nouns. Lawyers love nominalizations. Though grammatically correct, using nominalizations can result in wordy and confusing construction. For clear explanations and examples, see Mary B. Ray & Jill J. Ramsfield, Legal Writing: Getting It Right and Getting It Written 111 (1987) and Richard Wydick, Plain English for Lawyers 23-25 (3d ed. 1994).

2 See Ray & Ramsfield, supra note 1, at 92.

3 Id. at 41.

4 A comma is a punctuation mark used to indicate pauses and to separate elements within a sentence. F.D. Hirsh Jr. et al., The Dictionary of Cultural Literacy 143 (1988).

5 For a discussion of the evolution of punctuation, see Wydick, supra note 1, at 77-80.

6 See Hélène S. Shapiro et al., Writing and Analysis in the Law 153 (2d ed. 1991). During a WESTLAW search, I retrieved 180 federal cases and 328 state cases in which commas were discussed by the court. Commas affected the interpretation of everything from statutes to ownership of certificates of deposit.

7 See, e.g., Fawell v. United States, 16 Cl. Ct. 700, 722 (1989), which concerned an action by professional hockey players for tax refunds. The court would not permit the punctuation in one paragraph of their players’ contract to control the meaning of the contract as a whole.

8 See, e.g., Egan v. Duckworth, 843 F.2d 1554, 1565 (7th Cir. 1988), which discussed the wording and comma placement in a waiver form, read to an accused, which was held constitutionally defective.

9 See, e.g., E.J. Petresemolo Co. v. United States, 1952 WL 6763 1-3 (Castr. Ct. 1952), a case in which it was argued that modifications to the Tariff Act of 1940, in which commas were omitted, excluded from the trade agreement only vegetables pickled by means of salt or brine or packed in salt or brine.

10 See, e.g., Scott v. Powell, 182 F.2d 75, 80 (D.C. Cir. 1950) in which commas in a will did not appear to have been placed there “by an authoritative perfectionist in the art of punctuation.”


12 Id. at 429.
• The most important use of the comma is to prevent ambiguity.\(^{13}\)

**Example ...** Is the following statement to or about Ms. Jones?

*Ms. Jones our client has been injured in an accident.*

It should be punctuated either:

*Ms. Jones, our client has been injured in an accident* [if the statement is directed to Ms. Jones]

**OR**

*Ms. Jones, our client, has been injured in an accident* [if the statement is about Ms. Jones]

**Example ...** Here’s another problem child.

*When the attorneys had finished arguing the case was set for trial.*

To indicate “the case” was not the object of “arguing,” the sentence should be punctuated as follows:

*When the attorneys had finished arguing, the case was set for trial.*

To avoid confusion, commas are also needed before the shorter coordinating conjunction (and, but, or, for, nor, yet, so) in a compound sentence (two independent clauses); between elements in a series; between elements in dates (e.g., *July 28, 1995*); addresses, and geographical place names; and for other miscellaneous uses, e.g., after closings and after informal salutations in letters, within large numerals (e.g., *1,000,000*), to separate direct quotations, and after the name and before the title (e.g., *Sara Jones, M.D.*). Using commas correctly in these situations will promote clarity and prevent ambiguity.

• Use a comma to set off interrupting words, phrases, and clauses. Interrupters are any constructions that come between a subject and verb, verb and object, or any two elements not normally separated in a sentence.\(^{14}\)

**Example ...**

*The defendant stated, in spite of evidence to the contrary, that the light at the intersection was green.*

**Example ...** Use commas around a nonrestrictive clause—a clause that gives information that is not essential to the sentence (if the clause or phrase were eliminated, the meaning of the sentence would not change).

*The plaintiff’s brother, who used to be a crossing guard in high school, was an eyewitness to the accident at the intersection.*

**Example ...** However, if the clause is restrictive—necessary to the meaning of the sentence—do not use commas.

*The defendant’s belief that the light at the intersection was red was contrary to eyewitness evidence.*

“That always introduces restrictive modifiers; ‘which’ and ‘who’ can be restrictive or nonrestrictive; ‘which’ cannot refer to persons.”\(^{15}\) Also use a comma to separate an appositive (a word or phrase that is grammatically equivalent to the noun or pronoun it identifies, e.g., *George Davis, the plaintiff and appellant in this matter,* ...); to set off nouns of address (*With all due respect, your honor,* ...); and to set off conjunctive adverbs (e.g., *therefore, however.*

• Commas are necessary after an introductory phrase or dependent clause and before the main clause.\(^{16}\)

**Example ...**

*Disappointed with the court’s ruling the defendant’s attorney filed an appeal.*

**Example ...**

*Disappointed with the court’s ruling, the defendant’s attorney filed an appeal.*

**Example ...** The comma may be omitted if the introductory phrase is short, and eliminating the comma causes no confusion.

In 1994 the judge ruled in his favor.

Too many commas can be more annoying than too few. Do not use a comma: (1) to set off a restrictive clause (see the example above); (2) before the coordinating conjunction (usually “and”) forming a compound subject, compound verb, or compound object; (3) or to excess. Do not be a slave to these rules—sometimes correct usage results in a choppy sentence; however, you should punctuate with care and follow the general rules of English usage.

\(^{13}\) Id. at 430. *See also, Mary Ray & Barbara Cox, Beyond the Basics* 39-40 (1991). Cox and Ray stress correct punctuation for clarity and readability. Ambiguous punctuation in a statute can make its meaning unclear. Cox and Ray’s example of the Hobbs Act illustrates how the misuse of punctuation can obscure the meaning of a statute.

\(^{14}\) See McCrimmon, *supra* note 11, at 432.


\(^{16}\) See McCrimmon, *supra* note 11, at 436.
The Best Teaching Sources

There are excellent sources for review of punctuation and grammar rules. The bible, and required reading for my first-year legal research and writing students, is Richard Wydick's Plain English for Lawyers. Its newly published third edition includes a chapter on grammar with an excellent review of the comma rules. My favorite reference handbook for law students, rated "highly recommended" on my syllabus, is Legal Writing: Getting It Right and Getting It Written, by Ray & Ramsfield. This text, too, has an excellent, succinct section on the use of commas. Another required text for our legal research and writing students is Shapo, Walter, and Fajans. Writing and Analysis in the Law. Appendix A reviews grammar and punctuation rules.

As a legal writing professor, although I do not believe it is my job to teach basic grammar and punctuation, I do review, in class, the most abused punctuation and grammar rules, with examples, after reading students' first memos. I focus on the specific problems I see every semester: using a comma before a shorter coordinating conjunction in a compound sentence, not before the "and" separating compound verbs; using commas to set off nonrestrictive and parenthetical elements, not restrictive phrases and clauses; using a comma after an introductory dependent clause; using commas to separate geographical place names and dates; and using commas to separate items in a series.

Many law students do know basic grammar and punctuation rules, and some students have challenged my placement of commas in their papers before the serial comma, the comma before the conjunction in a series. Though this is one comma that has seen rule revisions through the decades (and I've been at this for decades), various sources give varying rules. The general consensus this year is to separate the elements of a series with commas, but the comma before the conjunction joining the last element is optional. Wydick suggests omitting the comma before the conjunction in a series when the series is simple and commonly used (e.g., The American flag is red, white and blue.). However, if a sentence contains a series of three or more items joined by a conjunction, put commas after each item including before the "and" in the series. Most grammar and usage texts encourage the comma's use because a comma before the conjunction connecting the last element clarifies the number of elements you have in a series and their precise division.

William Safire in his New York Times column, "On Language," asked when the Clinton administration is going to adopt a comma policy. He suggests that by simply doing away with the serial comma, "the government could save space, time, and 12 billion commas ...." He believes the time is ripe for a comma cap.

Pedagogically, I believe it is our role as legal research and writing professors to teach foundational skills that include punctuation and grammar review as necessary. Writing can and does improve with review of the basics. Punctuation is a useful aid to interpreting the meaning of written language. Correct use of commas makes the reader's job easier, makes sentences clearer, and may affect meaning—and writers could avoid the placement of that million-dollar comma.

17. Wydick, supra note 1.
18. Id. at 82-87. Chapter 9 concludes with correct-the-punctuation exercises.
19. Ray & Ramsfield, supra note 1. If you have not reviewed this excellent text (and it's one of my favorite gifts for graduating law students), it is a desktop reference for legal writers. Its format is user-friendly—an alphabetized list of grammar and punctuation problems, technical questions (e.g., whether to use infer or imply), improvements for large-scale matters such as organization and tone—problems all writers face. For example, if you're trying to figure out how to punctuate a list, you can look under LISTS, STRUCTURE OF, SEMICOLONs, or COMMAS.
20. Id. at 43-45.
22. Id. at 283-294. Appendix A not only states the rules for comma, semicolon, colon, and apostrophe use, etc., but gives examples for each rule and exercises for review.
23. Wydick, supra note 1, at 85.
24. Id. at 84. This publication, Perspectives, in its author's guide and style sheet recommendations states: "In a series consisting of three or more elements, the elements are separated by commas. When a conjunction joins the last two elements in a series, a comma is used before the conjunction."
25. See Shapo et al., supra note 6, at 285.
27. Id.
28. There really is a case that discusses a "million-dollar comma". See United States v. Mattela, 605 F. Supp. 898, 903 (D. N.H. 1985). The court applied the CERCLA (Comprehensive Environmental Response, Compensation and Liability Act) statute, as written, on the assumption that Congress understood the full import of the grammatical placement of the "million-dollar" comma when drafting the statute. The case involved a claim against the Hazardous Substance Response Fund for cost reimbursement for hazardous waste removal and cleanup costs. The court discussed the construction of and interpretation of 42 U.S.C. § 9612(d) "with due respect for rules of grammar and punctuation."

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