

Writing skills

10

INTRODUCTION

This chapter will outline the elements of good written English with particular emphasis on the way that language is used in academic legal writing. It does not aim to be a complete guide to English usage but a reflection of the issues that students tend to find difficult. You will find sections on language, grammar, and punctuation as well as practical guidance on matters such as selecting quotations and writing in a concise manner so as to keep within the word limit. The material covered in this chapter should be seen as the foundation upon which good essays are built and should be read in conjunction with the guidance provided on writing essays (chapter 12) and answering problem questions (chapter 14). Some of the issues covered will also be useful in terms of examinations but a more complete guide on writing answers in examinations can be found in chapter 15.

The ability to use language, orally and in writing, is one of the key 'tools of the trade' for a lawyer, so it is essential that you are able to use language correctly and prepare precise and accurate written documents. Many cases turn on the interpretation of a particular word or phrase so it is essential that you have the skills to appreciate the implications of the choice of particular words and that you are able to communicate the precise meaning of the law. On a more pragmatic level, you need good writing skills to demonstrate your understanding of the law to your lecturers in your coursework and examinations. This requires that you adopt the styles and conventions of language used in the law. It is a mistake to think that an essay that is accurate in terms of its legal content will succeed -irrespective of the language used to express the arguments or the way in which the essay is structured. Content is important but the way that a piece of writing is organized and expressed can be equally fundamental to its success or failure. You would not like this book if it were written in ungrammatical language so that you could not readily make sense of it or if it were so poorly structured that you could not locate the information that you needed. This means that you recognize the value of good writing skills so you should strive to ensure that your own work reaches the standards that you expect in the work of others.

LEARNING OUTCOMES

After studying this chapter, you should be able to:

- Make reasoned choices about the language and written style that you use in the preparation of coursework.
- Construct a grammatical sentence that uses words correctly and which communicates your meaning to the marker.

- Produce a polished piece of work that is free of common grammatical errors and which uses punctuation correctly.
- Create paragraphs that keep a strong focus on the question and which link to each other to produce a flowing line of argument.
- Select appropriate quotations to support your argument and integrate these effectively into your essay.
- Write within the word limit and produce a piece of work with flawless presentation.

10.1 Why are writing skills important?

In August 2008, a judge criticized the CPS solicitor who produced an indictment in a criminal case that was ‘littered with errors’ including five misspellings of the word ‘grievous’ and a reference to an offensive weapon ‘namely axe’ (rather than ‘namely an axe’).¹ Judge David Paget threw the indictment down, saying:

It’s quite disgraceful. This is supposed to be a centre of excellence. To have an indictment drawn up by some illiterate idiot is just not good enough.

If you think about it, a piece of writing that does not comply with the expected standards and conventions of correct written English suggests one of only two possibilities:

1. The writer cannot use the rules of language, grammar, and punctuation correctly (in which case, they lack sufficient ability in something that is fundamental to the study and practice of the law); or,
2. The writer cannot be bothered to correct the mistakes that they have made in their first draft (in which case, they lack the attention to detail and the awareness of the importance of language).

Neither of these is the impression that you want to give to lecturers who are marking your work, to potential employers considering your application, and to members of the profession if you enter into legal practice. As John Redwood MP commented on his blog:²

Many of the [people who have sent CVs for a job] have degrees. They send in CVs which start with similar paragraphs that they have been taught to write. They usually claim to be... brilliant communicators... The rest of the CV sometimes belies the standard phrases of the opening. Some are unable to write a sentence. There are usually spelling and typing errors – understandable in the rush of everyday communication but glaring in a considered and formal document like a CV. One example produced the following second sentence to the application: ‘I fill the experience I have gained in past employment will put me in good persian for this role’.

Unfortunately, some students seem to have gained the erroneous impression that it does not matter how language is used in their coursework (or applications for work placements and training contracts) provided the content is correct. This is not a position that is acceptable in

1. —, “‘Illiterate’ worker angers judge” *BBC News Online* (12 August 2008) <<http://news.bbc.co.uk/1/hi/england/london/7554857.stm>>.

2. Statement by J Redwood MP (Personal blog entry 12 June 2010) <<http://www.johnredwoodsdiary.com/?p=6410>>.

the law because ability to use language correctly and to express shades of meaning is vitally important, as the following example demonstrates.

A contractual dispute in Canada hinged on the presence of a single comma in one of the clauses.³ Rogers Communications entered into a contract with Aliant Inc involving the installation of cable onto utility poles across Canada. It was intended that the contract would run for an initial five year period and thereafter for renewable periods of five years. This meant that, at the very least, the contract would run for five years. However, the contract contained a clause which stipulated that the agreement:

shall continue in force for a period of five years from the date it is made, and thereafter for successive five year terms, unless and until terminated by one year prior notice in writing by either party.

The problem lies in the positioning of the second comma (after the words ‘successive five year terms’) as this means that the entire contract can be cancelled with one year’s notice. If you remove the comma and read the clause again, you will see that it then only gives the parties the right to cancel the contract with one year’s notice *after* the original five years has expired. This error in punctuation cost Rogers Communications \$2.13m.

As this example illustrates, precision in the use of language and the ability to use grammar and punctuation correctly is important as incorrect usage can alter the meaning of the words that you have used. Remember, it is not enough to write in a way that makes sense to you: what is more important is that your writing makes sense and communicates your precise meaning to the person reading it.

In pragmatic terms, during the course of your studies you will find that students who can write in a way that fits with the expectations and requirements of the lecturers will achieve greater success in their coursework. This is because you are assessed not solely on your legal knowledge but on your ability to write in a way that is in keeping with the formality and precision of language use within the legal profession.

10.2 Language



Practical exercise

Look at the two paragraphs which were written by the same student. Which one of these was (a) the introductory paragraph to an essay about the independence of the judiciary and (b) was a section from an email to his mother about his essay?

EXAMPLE A

I have to write this essay about the judiciary – you know, judges and the courts and all that. Basically, it is about whether the judiciary is independent enough. Why is it important that they are independent? Yeah, I don’t know but I guess that I will do by the end of the essay!


EXAMPLE B

Many commentators state that the independence of the judiciary is a fundamental safeguard against injustice within the legal system. The reasons given for the independence of the judiciary will be explored and a conclusion reached about whether the judiciary can be said to be truly independent.

Figure 10.1 Comparison of writing styles

3. —, ‘The case of the million-dollar comma’ *OUT-LAW News* (26 October 2006) <<http://www.out-law.com/page-7426>>.

Hopefully, you will have identified that Example A is the email and Example B is the introduction to the essay. Consider, though, what it was about the way that language is used that enabled you to reach this conclusion: after all, neither of the examples makes explicit reference to an essay or an email and both make largely the same points. If your answer is, as it should be, that Example A uses the informal language of conversation or email whereas Example B uses the more formal legalistic style of writing that is characteristic of an essay then you are already recognizing a very important point: there is a style of writing that is appropriate to an essay and other styles of writing which have their own roles but which should not be used in an essay.

 *Have a look at the Online Resource Centre where you will find various pieces of writing. Assess whether you think that they are written in a style that is appropriate for a piece of coursework. If you think that they are not appropriate, make some suggestions for amending the style so that it is more formal and academic and compare your answers with those provided.*

It is important that you adopt an appropriate level of formality in your written style. The best way to gauge the appropriate level is to read a good-quality textbook that is written in language that you understand and to emulate that style.

10.2.1 Too formal or too informal?

Some students err on the side of excessive formality, believing this to be appropriate to legal writing, peppering their writing with words such as 'hereinafter' and 'henceforth'. Whilst there is nothing wrong with this as such, there is an increasing move towards the use of plain English within the legal profession, so it can be preferable to use words which are more readily understood. Moreover, using unfamiliar words raises the possibility that they will be misused, which will detract from the polished and professional impression that you are striving to present with your writing.

More frequently, students adopt an informal approach that is conversational in nature and more suited to a diary or an email to friends than a piece of academic writing. For example, there is nothing wrong in grammatical terms with sentences such as '[h]aving talked about the meaning of x we now need to take a look at y ', but it is nonetheless rather chatty and informal for a piece of coursework.

Equally, the recent seepage of 'text-speak' into academic writing is a matter of concern. The language that is appropriate in informal communications between friends is not the sort of language that should be used in legal writing.

10.2.2 Appropriate legal writing style

As the examples in Figure 10.1 make clear, there is not a constant 'correct' style that can be applied to all forms of written communication. In essence, 'correct' means 'appropriate' so you should strive to develop a written style that is appropriate for communication in academic law, one that is relatively formal and which uses language in an accurate and precise manner. There are a few other matters that require particular consideration before the discussion of language is concluded.

10.2.2.1 Use of the first person

The grammatical person is a way of referring to the participant role of the speaker or the writer. Accordingly, when a person writes as 'I', they are writing in the first person. This is entirely

appropriate in informal communications and in other situations in which it is necessary to express a personal viewpoint but it is not appropriate in objective academic writing and tends not to be welcomed by lecturers. Some students, lacking a grasp of the complexities of English grammar, try to get around this prohibition on writing in the first person by switching to 'we' (first person plural), 'you' (second person singular or plural), or 'one' (third person neutral), not realising that they are equally unacceptable.

In addition to being an informal writing style, the first person also situates the writer as an authority within the piece of writing: in other words, it makes you the narrator of the essay so that you are expressing your own perspective and views when it would be more appropriate to present the views of writers, judges, and other experts. If you accept that it is never appropriate to write 'I think' or 'I would argue' in your essay, then you will never be tempted to express your own opinion on the state of the law and you will have to resort to repeating the views of more experienced writers and commentators.

If you are accustomed to writing in the first person and struggle to find a form of words to use, then Table 10.1 should give you some ideas for alternative phraseology to get you started.

Table 10.1 First person writing and objective alternatives

First Person	Objective Alternative
In this essay, I am going to outline the elements necessary to establish that a defendant is liable for negligence.	This essay will outline the elements necessary to establish that a defendant is liable for negligence.
Alternatively, one could argue that...	Alternatively, it could be argued that...
In conclusion, I do not see any need for reform in this area.	In conclusion, the majority of writers do not see a need for reform in this area.



Practical exercise

This is an aspect of academic writing that a great many students find difficult, especially if they have an educational background where informal writing was encouraged. Have a look at the following sentences and think about how you would reword them to create a more formal style of writing:

1. We have seen that the postal rule has been criticized by many academic commentators and that there is little judicial support for its continued use. I think that this indicates that the rule has no value in modern contract law and should be dismissed as an anachronism.
2. As the defendant did not suffer a loss of control that came from one of the qualifying triggers, I would conclude that he cannot rely on the defence of loss of control in the Coroners and Justice Act.
3. You could argue that the law in this area is outdated and should not be applied but one must appreciate that an old law is not necessarily a bad law.



You will find suggested answers on the Online Resource Centre together with an explanation of how the answers were reached.

10.2.2.2 Gender neutral language

It is accepted convention in legal writing to use the masculine word forms to encompass the feminine: Interpretation Act 1978 s 6. In other words, 'he' means 'he or she' and 'his' means 'his or hers'. Some academics frown upon this approach, believing that the prevalence of

male-orientated references is exclusionary and inappropriate. This is a matter of personal preference but do be aware of the need not to cause offence in your choice of language. It would be worth checking if your institution, department, or lecturer has any strong views on the subject and adapting your use of language accordingly.

10.2.2.3 Latin

In recent years, there has been a move away from the use of Latin words and phrases within the legal profession. Certain Latin legal terms have been renamed, for example, an order of *certiorari* is now known as a quashing order whilst an *ex parte* application has been renamed an application without notice.

However, there are areas of law in which the continued use of Latin is accepted; the conduct element of a crime is still known as the *actus reus*, for example, whilst it is accepted that phrases such as *res ipsa loquitur* are terms of art with an express legal meaning.

Be aware of the decline in the use of Latin and be sure to check both your textbooks and course materials for the appropriate approach to terminology. If you do have cause to use Latin words or phrases, remember that they should always be italicized.

10.2.2.4 Legal words

As you will become increasingly aware as your studies progress, many words in everyday usage also have particular legal meanings that differ significantly from their ordinary dictionary definitions: intention, consideration, assault, nuisance, appropriation, land, property, consent, and negligence, for example. As these words hold a particular legal significance, you should avoid using them in their ordinary sense within the subject area where they have a specialist meaning.

For example, if you write that ‘the defendant’s assault caused the victim’s death’, this could be confusing as it will not be clear to your lecturer whether you are using the word in the legal sense or whether you intend the word to have its everyday meaning (Figure 10.2).

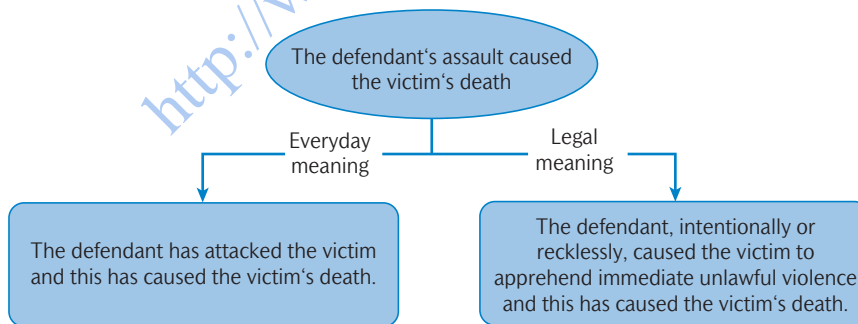


Figure 10.2 Everyday and legal meanings

To avoid any confusion, especially when it carries the risk that your lecturer will think that you misunderstand the law, it is advisable to find a synonym to use in place of any word that has a clear legal meaning.

10.2.2.5 Abbreviations

Some students are very keen to use abbreviations as a means of reducing the overall word count of their coursework but this can be a problem. Not only does the excessive use of

abbreviations make a piece of work read more like a set of notes than an essay, it can also be confusing if non-standard abbreviations are used. Look at the following example:



Practical exercise

Read the following extract of text from an essay and see if you can decipher its meaning despite the overuse of abbreviations.

One of the main factors thought to contribute to the tendency of J to return NG verdicts in RTiC is that both D and V are presenting very similar versions of the facts to J. The evidence of D and V may differ only in the smallest details so it becomes difficult for J, even with the guidance of J, to determine which version of the facts is the truth. In such situations, the correct course of action is for J to return a NG verdict as they are not sure of D's guilt BRD but this nonetheless impedes the SOA from achieving its purpose of improving conviction rates in RTiC.

Were you able to work out the subject matter of this writing? Which, if any, abbreviations did you recognize as standard ones used in law? Did you think it was appropriate to use these abbreviations in an essay? The meaning of the abbreviations is noted in the discussion that follows, which will also explain which sorts of abbreviations it is acceptable to use in a piece of coursework.

Some of the abbreviations in the extract are commonly used in law. It is usual for lecturers to refer to the defendant as 'D' and the victim as 'V' in handouts and on lecture slides. However, while such abbreviations will save you time when you are making notes, this does not mean that they should be used in an essay. Remember that your coursework will generally require a more formal written style so it may be sensible to write these words out in full. There are other commonly used abbreviations that you might find useful when taking notes but which should not really find their way into your essay:

- G and NG = guilty and not guilty
- DC, CA, HL and SC = Divisional Court, Court of Appeal, House of Lords, Supreme Court

You will also see that 'J' is used in the extract. If you found it difficult to work out its meaning, this is because it was used to represent three different things: the jury, the jurors and the judge. When 'J' is used as an abbreviation in law, it is not used to represent any of these words but is instead a shortened way of referring to the title of a senior judge: 'J' is an abbreviation for 'Mr Justice' so Mummery J refers to Mr Justice Mummery. It is acceptable to use abbreviations in your work to denote the title of a judge:

- Denning J = Mr Justice Denning
- Denning LJ = Lord Justice Denning
- Denning CJ = Lord Chief Justice Denning
- Denning MR = Lord Denning, Master of the Rolls

It is also common practice to abbreviate the names of some statutes. In the extract, the Sexual Offences Act 2003 was written as 'SOA'. It is acceptable to abbreviate statute names in this way provided that the statute is written in full the first time it is mentioned and the abbreviation noted in brackets, e.g. the Police and Criminal Evidence Act 1984 (PACE). It is also acceptable to abbreviate certain other things in this way, for example:

- Crown Prosecution Service (CPS)
- Director of Public Prosecutions (DPP)

- Attorney-General (A-G)
- Anti-social Behaviour Orders (ASBOs)

The extract above also uses some non-standard abbreviations. These are essentially abbreviations that the writer has invented in order to reduce the word count of their essay rather than established acronyms used in law. In the example, 'RTiC' is used in place of 'rape trials involving consent' and 'BRD' replaces 'beyond reasonable doubt'. Inventing abbreviations in this way makes life more difficult for your marker, who has to puzzle out what you mean, and may lead to a deduction in marks for poor written style.

10.3 Grammar and punctuation

Good writing is about more than just words on paper: the words need to be arranged in such a way that they make proper sense to the reader. It is grammar and punctuation that transform a collection of words into meaningful sentences that can be understood by the reader. This is a particularly important factor in legal education as the ability to communicate precise and accurate meaning is crucial, and correct grammar and punctuation are central to this. Without grammatical expression and grammatical accuracy, the meaning of words can change as the following two sentences demonstrate:

The panda eats, shoots and leaves (he has his dinner, kills another panda with his shotgun and moves on to a new territory); or,
 The panda eats shoots and leaves (the diet of the panda is shoots and leaves).⁴

If this seems like a trivial example, remember that the interpretation of statutory provisions can hinge on the meaning of one word or even on the positioning of punctuation; it is often said that Roger Casement was 'hanged on a comma', meaning that his execution was inevitable if he was convicted of the offence of which he was charged. His liability for this offence hinged upon the interpretation of the statute which was, in turn, contingent on the positioning of the comma. The importance of positioning of punctuation has already been seen in the Canadian contract example.

Unfortunately, not all students are able to construct a grammatical and well-punctuated essay by the time they arrive at university. This problem is compounded by the fact that many of these students will be unaware that there is any problem with their grammar and punctuation. You will find that the extent to which lecturers will (a) draw attention to grammatical deficiencies and (b) offer guidance on improvement varies enormously. Some lecturers will not mention problems at all, merely deducting marks for the lack of clarity of expression without giving any indication that there is a problem with grammar and/or punctuation. Some lecturers will comment that the grammar and/or punctuation in the essay was weak or could be strengthened but will not actually correct any inaccuracies. Finally, some lecturers will correct every inaccuracy and/or explain the correct approach on your essay so that you can understand the problem and how to rectify it. Although the first approach may seem very unhelpful, it is actually a throwback to the days when students that reached university were,

4. L Truss, *Eats, Shoots and Leaves: the Zero Tolerance Approach to Punctuation* (Profile Books Ltd, London 2003).

in general, better able to construct a grammatical essay and there was little need for lecturers to comment on this aspect of a student's work.

This is not the place to engage in a discussion of the perceived decline in educational standards or the response of university lecturers to this problem. The aim of this chapter is to emphasize the importance of good written skills such as grammar and punctuation and to provide a practical guide to strengthening these skills.

10.3.1 Spotting the problem

As discussed above, not all lecturers will point out the problem so you will need to be alert for the signs that there may be a problem with your grammar and/or punctuation.

Poor grades provide a good indication that *something* is wrong. If you are receiving marks that are lower than you would hope or expect (remembering to be realistic), then it may be that you are not expressing yourself with sufficient clarity or precision. Poor grammar and punctuation frequently result in a lack of clarity as the words that you have written simply do not do the job that you want them to do.

If your marks are less than you hoped, have a close look at the feedback that has been provided, both on the feedback sheet and the script itself. Are there any comments, however vague, about the quality of your written style? Comments on the script such as 'lacks clarity', 'poorly expressed', 'what does this mean?', or 'vague' can also indicate that the problem is not with your understanding of the law but with the way that it is expressed. Some lecturers will simply underline phrases that they cannot understand and put a question mark in the margin whilst others will correct errors so do keep a look out for changes that have been made on your essay by your lecturer.

Some feedback sheets have categories of skills that the lecturers can tick to indicate your level of competence. The categories used will obviously vary between institutions but there will usually be some that refer to the technical aspects of the construction of the essay as well as to the use of the law itself. Have a look at the feedback form when you receive it. Do any of the categories refer to written style generally or to grammar or punctuation in particular? Anything less than 'good' could indicate a problem as 'satisfactory' is another way of saying 'could be improved'.

10.3.2 Getting help

Once you are aware that there is a problem, finding sources of assistance with strengthening your grammar and punctuation should be straightforward. Even if they cannot help you themselves, your lecturer or your personal tutor will be able to point you towards sources of assistance, whether this is a specialist skills adviser in your department or a study skills or student support service elsewhere in the university. You should not hesitate to seek help if you (or the person marking your work) feel that it is necessary; many writing problems result from a lack of understanding of the correct way to go about things and these can be corrected very easily with a little specialist assistance. Although the rules of grammar may seem complex and impenetrable, once they have been explained to you clearly and you have examples of correct usage, you will probably find that it is not difficult to adjust your written style to take these rules into account.

An alternative source of assistance is one of the many works on correct English usage. These can be found in the library and are increasingly available online. You could, of course,

purchase a concise guide to English grammar and make reference to it as you write an essay.

A final, and frequently overlooked, source of guidance is the written work of others. Whether this is the work of your fellow students or the work of experienced academics in articles and textbooks, you should scrutinize the way that others write in order to gain experience of good writing practice. It is often the case that students who read a great deal have a better grasp of grammar and punctuation as they acquire an appreciation of the rules by virtue of encountering them more frequently in the writing of others. Ideally, you should aim to improve your written style on each piece of work that you submit and one really effective way of doing this is to evaluate the way that others write with a view to adopting examples of good practice that you encounter.

10.3.3 Varying approaches to grammar

One of the difficulties with choosing an appropriate approach to language is that there is a difference of opinion regarding the application of the rules. Some academics consider that particular rules of grammar are outdated or overly pedantic whilst others fear that failure to adhere to these rules is part of a larger picture of declining standards of literacy. This book does not intend to engage in that debate but rather to offer students advice on how to avoid falling foul of the debate.

It seems that those with a preference for traditional approaches to grammar are likely to take issue with its absence whereas it is unlikely that a lecturer with a more relaxed attitude is going to correct your work with a comment 'this is a technically correct approach to grammar but a little bit out-of-date!' For example, the paragraph below would offend a lecturer with traditional views about grammatical written English:

There may be a difference of opinion as to the relevance of certain rules of grammar in today's society. But, in order to ensure that nobody is offended by your writing, it is a sensible idea to adhere to the correct approach wherever possible.

However, if this paragraph was presented as a single sentence (using 'but' in the traditionally correct manner), it is unlikely that anybody would object. Lecturers who take a more progressive approach to grammar tend to believe that certain of the rules of grammar are unnecessary but they do not tend to intervene if students use them. This is because the modern view is not that the traditional approach is incorrect, just that it is outdated. This is contrary to the traditional viewpoint, which holds that the modern stance is inaccurate, hence should be corrected.

It is for this reason that it is advisable to take a formal approach to grammar wherever possible in order to avoid any question of incorrect usage.

10.3.4 Foundations of grammatical writing

Although there is not scope to provide a detailed explanation of the rules of grammar in this book, the following is a summary of some of the basic principles that you need to be able to put into practice if you want to produce a competent piece of writing in law.

10.3.4.1 Basic word types

It is a good idea to ensure that you are familiar with the terminology used to describe the construction of a grammatical sentence and that you understand what each of the words and phrases that you have written contributes to the final sentence.

Table 10.2 Basic word types

Term	Explanation	Example
Noun	A word which names a person, thing, or object. It is usually preceded by 'a', 'an', or 'the'. Proper nouns describe actual names of people and places. Only proper nouns start with capital letters irrespective of where they appear in the sentence.	The TRIAL took place before a JUDGE and a JURY . The APPEAL was heard by LORD JUSTICE BEARD in the HIGH COURT .
Pronoun	A word that is used in place of a noun to avoid repetition: he, she, it, him, her, it, we, they, them.	The defendant entered a plea when HE appeared in court. The jury did not look at HIM when THEY entered the court.
Adjective	A word that describes a noun.	The SERIOUS case was heard by a LENIENT judge.
Verb	A word that describes an action (doing something) or a state (being something). It changes tense to indicate when things happened.	The jury BELIEVED the defendant's version of events. The judge FROWNS at the jury as he THINKS that the defendant HAD LIED .
Adverb	A word that describes how an action is done. It describes how the action (verb) is carried out. Adverbs also explain when or where something happened.	The client listened CAREFULLY to the solicitor's advice when they met YESTERDAY .
Conjunction	A word that joins two part of a sentence together: because, and, but, so, or, when.	The solicitor hurried to court BECAUSE he was running late. The judge frowned at the solicitor WHEN he arrived.
Preposition	A word that links a noun, pronoun, or noun phrase to the rest of the sentence, usually in terms of space or time: to, with, in, through, by, under, at, for, from, of, under, over.	The defendant read a book DURING the trial. The jury searched FOR the truth OF the matter.
Article	A word that introduces the noun. It can be a definite article (<i>the</i> judge) or an indefinite article (<i>a</i> judge).	THE defendant wanted to hit A policeman (indefinite: he wants to hit any policeman) <i>or</i> THE defendant wanted to hit THE policeman after he was arrested (definite: he wants to hit a particular policeman).




Practical exercise

It will help you to construct more grammatical sentences if you become familiar with the types of words that comprise a sentence and how they relate to each other. Have a look at the following examples and use the explanations provided to identify what type of word has been emboldened in each sentence.

1. The **definition** of rape was expanded by the Sexual Offences Act 2003.
2. **Special** measures have been introduced to **protect** vulnerable witnesses.

3. **The** law was changed by statute in 1990 **but** these changes have not yet been implemented.

 You will find answers to these questions and many more exercises that will help you to test your ability to identify these different parts of a sentence on the Online Resource Centre.

10.3.4.2 Constructing a (grammatical) sentence

One lecturer recently told the story of how he wrote ‘not a sentence’ in several places on a student’s essay to draw attention to the ungrammatical use of language. The student returned the essay to him with a request that he reconsider the grade as the criticisms were not justified because ‘they were sentences. They started with capital letters and ended with full stops’. The lecturer amended his comments to read ‘not a grammatical sentence’ and returned the essay to the student with the grade unchanged.

This anecdote illustrates that there is much more to building a sentence than adhering to the conventions for starting (capital letter) and ending it (full stop): the words and punctuation that go in between are also vitally important.

A grammatical sentence can vary in length from a single word (‘Guilty!’ is a complete grammatical sentence) to thousands of words (there is a 4,391-word sentence in *Ulysses* by James Joyce).

Simple sentences have a subject (the defendant) and a verb (sobbed) or a subject (the defendant), a verb (sobbed), and an object (in court). An essay comprised solely of such short simple sentences has a rather bumpy and disjointed feel to it.

Murder is a common law offence. It is the most serious form of homicide. It carries a mandatory life sentence. The judge has no discretion in sentencing. Loss of control and diminished responsibility are defences to murder. They reduce murder to voluntary manslaughter. Any sentence can be imposed for voluntary manslaughter. The penalties range from an absolute discharge to life imprisonment.

There are two ways to create longer sentences from these short sentences.

1. **Compound sentences** join two simple sentences together using a conjunction such as ‘and’ or ‘but’. For example, ‘It is the most serious form of homicide AND it carries a mandatory life sentence’.
2. **Complex sentences** formed of a independent and a subordinate clause. An independent clause is one that can stand alone as a simple sentence whilst a subordinate clause is one that does not make sense alone and needs to be joined to another sentence. The subordinate clause can precede the independent clause (‘as the most serious form of homicide [subordinate clause], it carries a mandatory life sentence [independent clause]’ or it can follow the independent clause (loss of control and diminished responsibility are defences to murder [independent clause], which reduce liability to voluntary manslaughter [subordinate clause]).

Using these techniques, you can reformulate the eight simple sentences into a combination of compound and complex sentences to create a more flowing and mature piece of writing:

Murder is a common law offence. As the most serious form of homicide, it carries a mandatory life sentence thus the judge has no discretion in sentencing. Loss of control and diminished responsibility are defences to murder which reduce liability to voluntary manslaughter and can attract any sentence from an absolute discharge to life imprisonment.

You will notice that the rewritten form preserves the first simple sentence—‘murder is a common law offence’. Simple sentences can have more impact than longer sentences simply because they are short and therefore sometimes seem to ‘speak more loudly’ to the reader. A combination of short and simple sentences with longer compound and complex sentences creates a more lively piece of writing that is more interesting for the reader.

10.3.4.3 Avoiding common errors

The following are common problems with sentence construction that can be easily resolved. They are a good place to start if you want to strengthen your written style.

- **Do not start a sentence with a conjunction.** The role of conjunctions such as ‘and’, ‘but’, and ‘or’ is to join two clauses together into a compound sentence. This means that these should never be used to start a sentence. A good way to avoid problems is to make a list of conjunctions and check your work to make sure that you never use one at the beginning of a sentence.
- **Do not end a sentence with a preposition.** Try to remember that good spoken English and good written English are two different species of the same language. When speaking, you might say ‘I was told to find a case that I’d never heard of’ but it is not something that you should write. Try correcting this by rephrasing the sentence: ‘I had never heard of the case that I was told to find’.
- **Do not omit articles to defeat the word limit.** There are always some students who try to get around the word limit by taking every instance of ‘the’ out of their essay. This does reduce the word count but the ungrammatical essay that results will lose marks because it does not make sense. Never sacrifice the proper use of language in the interests of the word limit: rewrite sentences in a more concise manner.
- **Avoid illogical predication errors.** The word ‘when’ describes the time at which something happened and ‘where’ describes a location. However, students often use these words to introduce a definition or explanation: for example, ‘a fixed trust is *where* the beneficiaries and their interests are stipulated by the settlor’ or ‘a fixed trust is *when* the trustee has no discretion as to the extent of the beneficial interest or the identify of the beneficiaries’. This is known as an illogical predication error or a faulty equation and it can be corrected by rewording the sentence: ‘a fixed trust is *one in which* the beneficiaries and their interests are stipulated by the settlor’.
- **Avoid run-on sentences (also known as the comma splice).** This is a sentence made up of separate grammatical clauses that become ungrammatical due to the overuse of commas. For example, ‘serious cases are sent to Crown Court for trial, they are heard by a jury, composed of twelve ordinary people, selected at random from the public, who do not have legal training’. Check any long sentences that contain commas to make sure that you avoid this problem. Correct it by rewording the sentence. This example uses italics to emphasise the changes that have been made: ‘serious cases are sent to Crown Court for trial. They are heard by a jury, *which is* composed of twelve ordinary people *who are* selected at random from the public *and* who do not have legal training’.
- **Be careful with ‘who’ and ‘whom’.** ‘Who’ usually takes the place of a subject, and ‘whom’ generally replaces the direct object: ‘the judge who delivered the verdict’ and ‘the defendant to whom the verdict was delivered’.
- **Look out for sentence fragments.** These are sentences that do not work as complete grammatical sentences because some essential component of the sentence is missing. They tend to start with words such as who, which, or where or with words ending in -ing. For example,

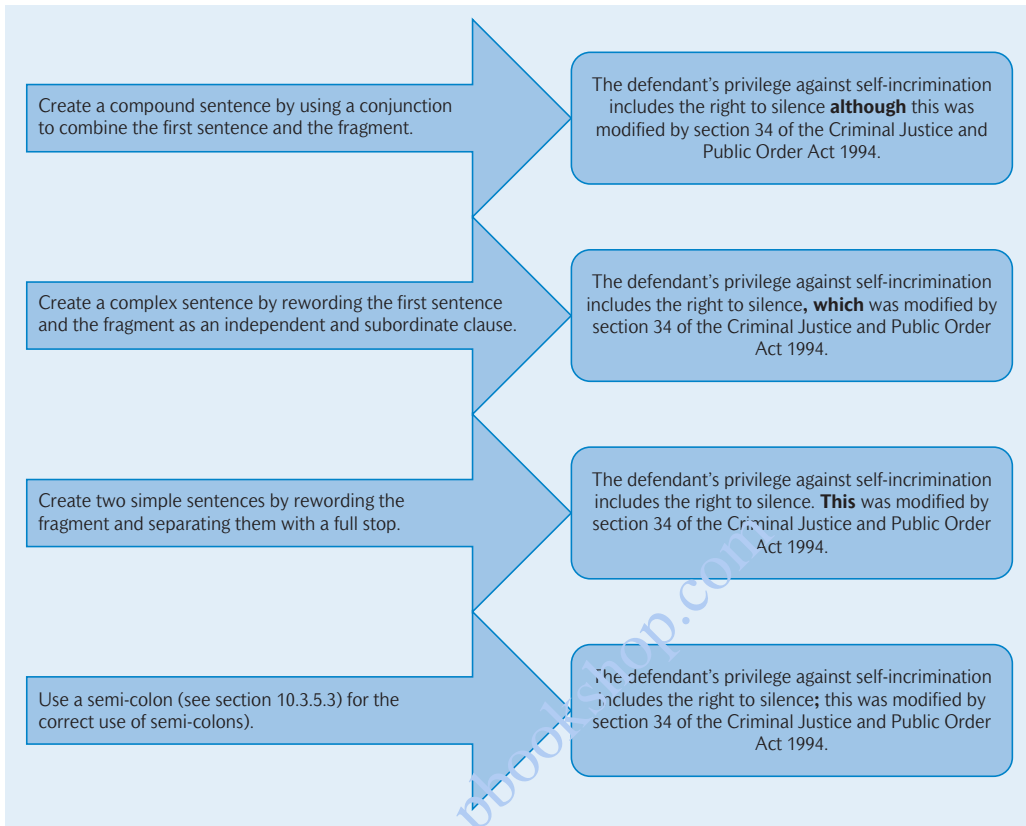


Figure 10.3 Sentence fragments

'the defendant's privilege against self-incrimination includes the right to silence. Which was modified by section 34 of the Criminal Justice and Public Order Act 1994'. This can be corrected in four ways as illustrated in Figure 10.3:

10.3.5 Punctuation

When people speak to each other, they use a range of devices to ensure that the intended meaning of the words is communicated to the listener. Think about the different meanings that you can convey in the single word 'hello': it can be spoken in a friendly tone as a greeting, shouted as a means of attracting attention, stated in a tone that conveys surprise or shock, or in a flat tone that indicates that the recipient is not liked or welcome, or it can carry an implied 'what do you want?' if it is said in a questioning tone of voice. In written language, it is not possible to convey different meanings by using tone, stress, or volume but punctuation, used correctly, can encode particular meaning into words to help the reader to extract the intended message.

Every written sentence is a combination of words and punctuation. The words and punctuation marks are selected by the writer as the best way to communicate the thoughts that are in the writer's head. In other words, when you write your coursework, you aim to capture your understanding of the law on paper using appropriate words and punctuation. If you want your meaning to be clear to the reader, you must use punctuation in the same way that they do or there is a risk that your meaning will be lost.

Even experienced writers struggle with the complexities of some rules of punctuation and there are areas of disagreement amongst experts about usage of punctuation in certain

situations but this does not mean that you can disregard certain basic rules. Your lecturers will expect you to attain a certain level of communicative competence that includes the ability to use punctuation correctly.

10.3.5.1 Ending a sentence

Most people know that a sentence ends with a full stop (.). It can also end with a question mark (?) or an exclamation mark (!). There is no other correct way to end a sentence so one of these pieces of punctuation should be at the end of every sentence that you produce.

The majority of sentences that you write in your coursework will end with a full stop. This is not a difficult rule to understand but it does become more complicated in three situations if you need to incorporate any of the following into your essay:

- References
- Quotations
- Questions

When you incorporate references into a sentence, you need to make a decision about whether to position the full stop before or after the reference, irrespective of whether you are using footnotes or in-text referencing. Have a look at the following paragraph. Can you see a problem in relation to the positioning of footnote references and full stops?

According to Dicey's traditional formulation of Parliamentary sovereignty, Parliament can make or unmake any law whatsoever and there is no competing body that can make law or set aside an Act of Parliament.¹ This principle, together with the rule of law and the separation of powers, is the cornerstone of the UK's unwritten constitution.²

As you can see, the reference at the end of the first sentence follows the full stop but the reference is before the full stop at the end of the second sentence. This inconsistent approach is not good. There is no hard and fast rule about whether references should be inside or outside punctuation so you need to pick one approach and stick to it throughout your answer. You should be aware that the most commonly-adopted approach is to place footnote references outside punctuation and that this is certainly what you must do if you are using OSCOLA as a referencing system (see chapter 11).

The position regarding quotations and full stops is also not complicated if you stop to think about the sentence as a whole. If the quotation is incorporated into one of your own sentences (as in the example below) then the full stop must appear outside the quotation marks to denote that the sentence in its entirety is at an end.

However, Ainsworth suggests that 'the traditional stance on sovereignty has not stood the test of time and the Dicean view cannot, in the face of the demands of Europe and the gentle erosion of the Human Rights Act 1998, be said to be correct in today's society'.³

If, however, the quotation is used alone without any of your words to introduce it then it is a complete sentence in its own right and the full stop should be inside the quotation marks as the example below demonstrates. You should, however, avoid using quotations as standalone sentences unless you are using them as block quotations in which case you do not need quotation marks so the issue of positioning the full stop will not arise.

However, some academic commentators believe that this view of sovereignty is no longer an accurate description of the position within the UK. 'The traditional stance on sovereignty has not stood the test of time and the Dicean view cannot, in the face of the demands of Europe and the gentle erosion of the Human Rights Act 1998, be said to be correct in today's society'.³

The key to success when asking a question and selecting the correct punctuation is to determine whether the question is a direct question or an indirect question:

- A direct question is one that is asked as if it were being spoken directly to someone: should the UK adopt the Euro as its currency? If a direct question is included in your essay, it does require a question mark at the end of the sentence.
- An indirect question is a statement that a particular question needs to be asked: it is necessary to consider whether the UK should adopt the Euro as its currency. In this case, the sentence should end with a full stop, not a question mark. This is because you are not actually asking a question but merely identifying a question that needs to be asked.

10.3.5.2 Commas

Of all the punctuation marks, the comma is probably the most frequently misused. The *Penguin Guide to Punctuation* suggests that this is because children are taught to use a comma in written language whenever they would pause when speaking, which is very misleading advice and tends to lead to commas being put into all sorts of unusual places in a sentence. There are actually only four uses for the comma:

Table 10.3 Uses for the comma

Use	Explanation	Example
Listing items.	The comma is used to separate words in a list so replaces the words 'and' or 'or' so that the sentence is less cumbersome.	1. 'The defendant was charged with theft and burglary and arson and resisting arrest' becomes 'the defendant was charged with theft, burglary, arson, and resisting arrest' 2. 'The defendant could be charged under section 18 or section 20 or section 47 depending on the seriousness of the victim's injuries' becomes 'the defendant could be charged under section 18, section 20, or section 47 depending on the seriousness of the victim's injuries'.
Joining two sentences together.	The comma links two separate sentences into a single sentence. It can only be used in this way if it is followed by a word that connects the two sentences together: but, and, or, while, yet. Other connecting words cannot be used after a comma so it is incorrect to join two sentences together with a comma if it is followed by any of these words: however, thus, therefore, hence, consequently, nevertheless.	Correct: 'The terms of the offer were unclear, and the claimant sought to argue that he was not bound by the contract.' Incorrect: 'The terms of the contract were unclear, therefore the claimant sought to argue that he was not bound by the contract'.
To allow words to be omitted from a sentence.	A comma can be used to show that words have been left out of a sentence if the missing words would be a direct repetition of words already used earlier in the sentence.	'Some members of the jury wanted to convict the defendant; others, to acquit him.' The use of the comma makes it unnecessary to repeat the words 'members of the jury wanted' a second time.

Table 10.3 (Cont.)

To mark the insertion of additional detail in a sentence that interrupts the main point.	The comma is used here to separate the additional comment from the main sentence. In this role, the comma is sometimes called a bracketing comma or an isolating comma to indicate its purpose in separating a minor part of the sentence from the major part. Check to see if you have used commas correctly for this purpose by removing the bracketed phrase: the sentence should still make grammatical sense without it. The minor part of the sentence can appear at the beginning, middle, or end of the sentence.	<p>Beginning 'Having discussed the jury selection process, it is necessary to move to consider the role of the jury in a criminal trial.'</p> <p>Middle 'The jury, composed of twelve ordinary men and women, are not equipped to hear complex fraud trials.'</p> <p>End 'Complex fraud trials usually last at least eight months, which places a great burden on the jury.'</p> <p>Do you see that the main sentence still makes sense without the words separated by the comma or commas?</p>
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10.3.5.3 Colons and semi-colons

There is often great confusion between these two types of punctuation. Both colons and semi-colons appear in the middle of sentences and they are similar in appearance so many students tend to use them interchangeably. This is a mistake because they have different roles to play in a sentence as the following diagrams demonstrate.

⋮

The colon is used to divide a sentence into a statement followed by elaboration on that statement. The part of the sentence that precedes the colon should be a complete sentence but that part that follows the colon need not be a complete sentence: it could be a single word and often takes the form of a list.

FOR EXAMPLE

There are three key constitutional principles that underpin the unwritten constitution: Parliamentary sovereignty, the separation of powers, and the rule of law.

Can you see that the words after the colon elaborate on the statement prior to the colon by identifying the relevant principles?

Figure 10.4 Role of the colon

;

The semi-colon is used to divide a sentence into two separate statements, each of which is a complete sentence in its own right and which could be separated with a full-stop or joined with a conjunction. The reason that the two sentences are joined with a semi-colon is to demonstrate the close link between them.

FOR EXAMPLE

Most countries have a written constitution which outlines the rights and responsibilities of the State and its citizens; the constitution of the UK is unwritten.

Can you see that the sentence could be divided into two using a full-stop in place of the semi-colon or the two parts could be joined by inserting the word 'but' in place of the semi-colon?

Figure 10.5 Role of the semi-colon

It might help you to ensure that you have a good grasp of the difference between colons and semi-colons and the job that they do in a sentence if you compare their operation with that of the full-stop in three sentences which are identical except for the differences in punctuation. See Table 10.4.

10.3.5.4 Apostrophes

One of the problems with the apostrophe is that it is so widely misused that it is easy to see all sorts of examples of its incorrect use: menus offer 'free pizza's for the under 12's' (two instances of incorrect use), shops advertise 'ladie's shoe's' (another two examples of misuse), and even museums have signs that state that the exhibit 'was used in the 1920's'. With all this misuse of the apostrophe in evidence, it is hardly surprising that students struggle to master the correct usage of this form of punctuation.

There are two situations in which you are likely to want to use an apostrophe:

- **Contractions.** An apostrophe is used to indicate that a word or words have been shortened by the omission of letters: shouldn't (should not), can't (cannot), he'll (he will), I've (I have), o'clock (of the clock).
- **Possession.** The apostrophe is used to indicate possession: the victim's injury, the judge's summing-up, the UK's role in the European Union.

Table 10.4 Full-stops, colons, and semi-colons

Punctuation	Example	Explanation
Full-stop	The judge directed the jury to find the defendant 'not guilty'. One of the jurors admitted to using a Ouija board in the jury room in an attempt to contact the dead victim during the murder trial to find out the identity of the murderer.	This is two separate sentences that make two separate statements of fact. By separating the sentences with a full-stop, you are suggesting that there is no relationship between them: they are just facts about the trial.
Semi-colon	The judge directed the jury to find the defendant 'not guilty'; one of the jurors admitted to using a Ouija board in the jury room in an attempt to contact the dead victim during the murder trial to find out the identity of the murderer.	The use of a semi-colon here suggests that the two statements are related in some way: perhaps the lack of evidence against the defendant caused the judge to direct to acquit and frustrated the juror so that he tried to find an alternative (spectral) source of evidence.
Colon	The judge directed the jury to find the defendant 'not guilty': one of the jurors admitted to using a Ouija board in the jury room in an attempt to contact the dead victim during the murder trial to find out the identity of the murderer.	The use of the colon indicates a causal relationship between the two sentences. Remember that the statement after the colon explains the statement that precedes the colon. Here, then, the judge has ordered that the defendant should be acquitted <i>because of</i> the use of the Ouija board by the juror.

One very easy way to reduce the problems posed by apostrophe use in your coursework is to make sure that you do not use contractions at all. These are informal forms of expression so should never be used in academic writing. Do not make the mistake of thinking that contractions are an easy way to cut back on words and fit your essay into the word limit: the marks

that you will lose for poor written style will be more than those you will gain in the few extra words that you save by using contractions.

Once you have ruled out the possibility of using contractions, the apostrophe should only make an appearance if you are using it to indicate possession. The secret of success here is to distinguish between possession and pluralization. Both of these involve the use of the letter 's' but only the former requires an apostrophe.

- **Possessive not plural:** the claimant's claim in negligence was dismissed by the court (there is one claimant and it is his claim so an apostrophe is needed).
- **Plural not possessive:** the claimants claimed damages in negligence (there are several claimants so the letter 's' is added to the word but the sentence refers to their actions rather than to possession so no apostrophe is needed).
- **Plural and possessive:** the claimants' claim was unsuccessful (there are several claimants so the 's' is added to change the word 'claimant' into its plural form. These claimants have a claim so an apostrophe is added after the plural 's' to indicate possession).

If you can get to grips with the distinction between plural and possessive word forms, you will be well on your way to mastering the use of the apostrophe. Take particular care when making reference to a period of years: many people write 'in the 1990's' as if it were possessive whereas it is actually a way of describing a collection of years so it is plural and should be expressed without the apostrophe as 'in the 1990s'.

One final problem concerns the word 'its' (in the possessive sense rather than as a contraction of 'it is'): the court delivered its judgment, Parliament determines its own procedural rules. Students often use an apostrophe here, writing 'its' as 'it's' to denote possession. However, this is not correct: 'its' is the abstract equivalent of 'his' or 'hers' and you would not consider using an apostrophe with those words. The simple way to avoid problems is to make sure that 'it's' (with an apostrophe) never appears in your academic writing: if you are using the apostrophe correctly then you are using the contraction for 'it is' and contractions are too informal for inclusion in academic writing but if you are using 'it's' as a possessive form then it is incorrect use of apostrophe so the word should be corrected so that it appears without punctuation.



Practical exercise

Have a look at the following passage of text and see if you can spot and correct the incorrect use of apostrophes.

In the 1980's, there was an increase of case law that examined the role of the trust in relation to domestic property ownership. It's role was of particular important in relation to spouse's who had not made a direct contribution to the properties purchase price. This was criticised as unduly harsh on spouses who's financial contribution has facilitated the property's purchase as it's too generous to husband's and wife's who had not paid towards the price of the property. Many argue that it isn't fair to give a beneficial share in property to a non-contributing spouse.

- You will find the answers and an explanation of them on the Online Resource Centre where you will also find other examples for you to use to improve your understanding of the correct use of the apostrophe.

10.4 Paragraphs

Paragraphs exist for the convenience of the reader. It is far easier to follow your argument if it is broken up into a series of separate points using paragraphs. Each paragraph should contain a separate idea which should flow from the paragraph before it and lead into the paragraph that follows after it.

Unlike sentences, there are no hard and fast rules about paragraph construction but it can be useful to use the following technique in helping you construct useful paragraphs that flow into each other and which link back to the question.

- **TOPIC.** The topic sentence announces the main focus of the paragraph.
- **EXPANSION.** The sentences that follow should explain the topic or elaborate upon it. There should be at least one sentence that elaborates on the topic and there is no maximum number although it is important that paragraphs do not become long and unwieldy: for instance, 700 words paragraphs are undesirable (especially in an essay with a 1,500-word limit). You should aim to have at least two on a single side of A4 if you are using double spacing. Paragraphs should also not be too short, otherwise you could end up with an essay that reads more like a set of notes or bullet points.
- **ILLUSTRATION.** You will usually want to provide an example to support the point that you have made or to demonstrate how a particular principle operates. Case law will often be a source of illustrations but there are a range of alternatives including hypothetical examples and points taken from articles, government reports, or newspapers.
- **LINK.** The paragraph should end either by leading into the paragraph that follows or by relating the content of the paragraph directly back to the question by, for example, explaining how the point made in the paragraph addresses the point raised by the question.

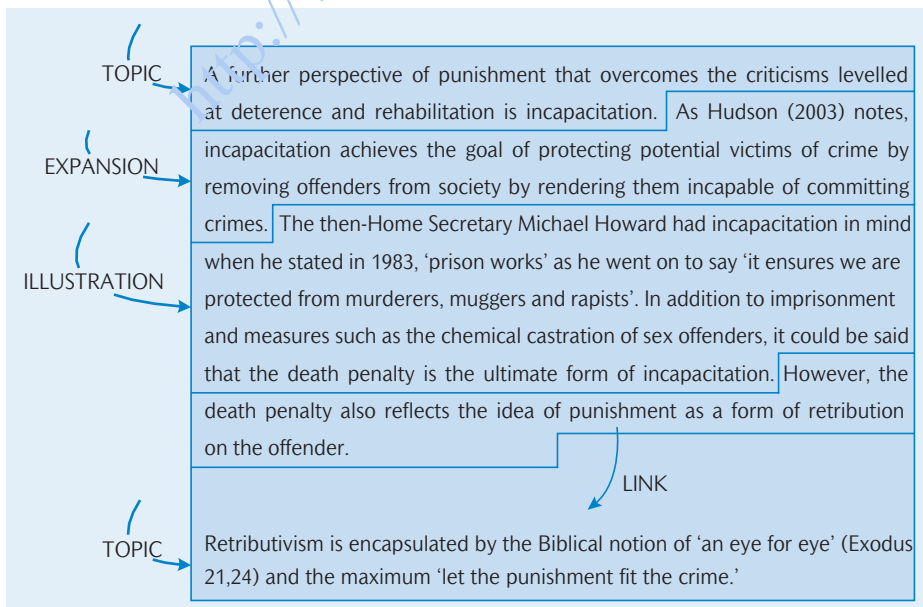


Figure 10.6 Paragraph construction

You will see in the example that there is an extra line space to separate the paragraphs. This makes it clear to the reader where one paragraph ends and the next paragraph begins. The alternative approach is to indent the first line of the new paragraph. Either approach is acceptable. Remember that the aim is to make the essay clear and easy for the marker to follow.

A final point to note is that the recent proliferation of primary and secondary paragraphing to denote the strength of the relationship between a paragraph and the one that follows it by varying the size of the gap between the paragraphs is nonsense and not something that would be acceptable in writing at university level. There are sentences and there are paragraphs. If a sentence is closely related to the previous sentence, it belongs in the same paragraph; if it is not closely related, it belongs in the following paragraph.

 You will find further examples of these rules and their application on the Online Resource Centre.

10.5 Using quotations

Quotations can add authority to your work as you are, in effect, using the words of someone with far more legal expertise than yourself to support your argument. They can also give you a form of words to describe something in a way that is far better than you would be able to explain it yourself.

Although the judicious use of quotations can really strengthen your argument and provide evidence of the breadth of your research, they can have a negative impact on your work if they are not used with care. Have a look at the extract taken from an essay on the role of equitable maxims in trusts as it demonstrates two of the most common problems that arise in relation to quotations in student essays.

A maxim is defined in the Oxford English Dictionary as a 'general truth or a rule of conduct expressed in a sentence' thus an equitable maxim is 'a general truth or rule of conduct about the operation of equity'.¹ 'The maxims are not rules to be construed like statutes, but rather a general basis around which much of equity formed'² and they can be said to be 'an attempt to formulate in short pithy phrases the key principles which underline the exercise of equitable jurisdiction'.³

¹ R Clements and A Abass, *Equity and Trusts: Text, Cases and Materials* (OUP 2008) 34.

² S Wilson, *Textbook on Trusts* (OUP 2005) 9.

³ R Pearce and J Stevens, *The Law of Trusts and Equitable Obligations* (3rd edn, Butterworths 2002).

There is heavy reliance on quotations in the extract: sixty-two out of the eighty-five words (about 73 per cent) were not written by the student and the overall impression given is that this is an essay that is made up of a series of joined together quotations. The problem that this raises can be seen clearly if you read the same extract with the quotations taken out.

A maxim is defined in the Oxford English Dictionary as a... thus an equitable maxim is... and they can be said to be...

As you can see, once the quotations are omitted, there is nothing in the words remaining that demonstrates the student's knowledge of the subject matter. As such, it would be difficult for the marker to award marks for the student's understanding of equitable maxims. Remember that you should use your own words to explain key concepts to show the marker that you

understand them or, alternatively, use a quotation and follow this with an explanation of your own.

The second problem with the extract is that it uses textbooks as a source of its quotations. Try to remember that textbook writers have gathered together all the relevant statutes, case law, academic commentary, and other source material and distilled it into a condensed and accessible explanation of the law to help students. As such, textbooks are explaining the law that can be found elsewhere or comments made about the law by experts. Ideally, you should use the textbook to give you an overview of the topic and then follow up the references or conduct your own research to find the law and comment upon it to use as the source material for your essays rather than relying on the explanations provided in textbooks. By quoting from cases and articles, you are demonstrating your research as well as supporting your work with authority so try to ensure you quote from these sources rather than textbooks wherever possible.

10.5.1 Presentation of quotations

The way to present a quotation within your work depends on the length of the quotation. Anything from a single word to a fragment of a sentence of about a line-and-a-half of text can be incorporated as part of your sentence whilst longer quotations and those that are complete sentences in their own right should be presented as block quotations.

An equitable maxim is a statement that sums up 'in short pithy phrases'¹ the principles and operation of equity.

In this example, a short quotation that captures part of the nature of an equitable maxim has been incorporated into the sentence. Note that the quotation appears within quotation marks and is accompanied by a reference that indicates the source of the material; both of these features are essential in order to ensure your work is referenced properly and to avoid any suspicion of plagiarism (see chapter 11 for more detail on these issues).

By contrast, a longer quotation is set apart from the main body of your essay and quotation marks should not be used: they are not needed as the indentation of the quotation separates it from your own work and indicates to the marker that it is a quotation. A reference must still be provided that acknowledges the source of the words.

An equitable maxim is a concise statement that captures one of the principles of equity. These maxims are not rules with the capacity to bind in future cases like principles of common law but are more like general guidelines that capture the central sentiments of equity. As Marshall explains:

Equitable maxims do not bind or control but guide and inform. They are a gentle reminder of the principles of fairness that permeate the system of equity. If they were to be harsh and unyielding, they would not serve the purpose that equity exists to achieve.¹

This reference to equitable maxims as a 'gentle reminder' highlights the relationship between equity and the 'harsh and unyielding' common law as equity originally operated as a separate system of law administered by different court in order to counteract any unfairness that arose due to the strict application of the common law.

Figure 10.7 Using quotations in an essay

This example also illustrates the practice of using single line spacing to present quotations as a further way of differentiating the words of others from the main text of the essay. This is a matter of preference: it is perfectly permissible to use the same spacing for quotations as you have used for the rest of the text.

See further section 10.7.1 on formatting.

10.5.2 Effective use of quotations

There is quite a skill to using quotations effectively. Too many students fail to realise this and, as a result, the quotations that are included in their essay serve to highlight this lack of skill so that the quotations actually weaken rather than strengthen their work. The following guidelines should help you to use quotations to good effect in your writing.

- **Introduce your quotations.** Irrespective of whether you are using a few words or several sentences of quoted material, you must blend it into your essay with words of introduction. This could be a simple identification of the author such as ‘As Jones argues “the remedial constructive trust offers little of value to the modern law of trusts” ’ or a more detailed approach that introduces the topic as well as its source: for example, ‘Jones argues that the constructive trust has little role to play in modern trust law, suggesting that “it is an exhausted anachronism that should be laid to rest and never revived” ’. It is very poor practice to have a quotation as a stand-alone sentence with no words of your own to introduce it.
- **Use an appropriate verb to situate the quotation.** You could introduce every quotation with the words ‘Keller says the postal rule is outdated’ or ‘Keller states the postal rule is outdated’ but ‘says’ and ‘states’ are neutral verbs that do not give the reader any clues as to how the quotation that follows fits into the rest of your essay. Think about the difference that it would make to introduce a quotation with the words ‘Keller alleges that the postal rule is outdated’. This implies that you will be disagreeing with this view in your essay; you would expect the quotation to be followed by ‘but’ and an argument in favour of the postal rule. Compare this with the impression given by the statement ‘Keller notes that the postal rule is outdated’. Take time to think about the role of the quotation in your essay and select a verb that is appropriate to that role. The following are some of the verbs that you could use.

says	observes	alleges	argues	thinks
states	notes	claims	asserts	remarks
comments	explains	suggests	affirms	adds

- **Discuss the quotation.** Remember that the purpose of a quotation is to support your own words, not to replace them. This means that you should make the quotation work for you by explaining its meaning or relevance rather than leaving it to speak for itself. If you look back at Figure 10.7, you will see that a good example of how Marshall’s quotation is discussed and key terms from it are used to develop the writer’s own argument. Whether you are using a quotation to illustrate a point or support your argument, it will only do this if you make it clear to the reader what its purpose is and how the quotation is relevant to your essay.
- **Avoid lengthy quotations.** Quotations are not a substitute for your own words. You should look for short phrases or a few sentences that make a point that you could not make in your own words or that is better expressed in the words of the original author. Try to capture a particular idea with a quotation but to explain its detail, significance, or operation in your

own words. Markers will not be impressed to read long quotations when what they want to read is your own explanation, interpretation, and evaluation of the law.

- **Incorporate quotations so that they make sense.** Used properly, quotations should blend in with your own words. This means that if you have a sentence that is part quotation and part your own words, the two should combine to make a complete grammatical sentence. You can take words out of a quotation to help with this provided you indicate that words are omitted by the use of ellipses (...) and you can add words that are not in the original quotation using square brackets. Square brackets can also be used to indicate a change from upper to lower case (or *vice versa*). For example, if you wish to take a fragment of a quotation and use it as a complete sentence, you will need to change the initial letter of the first word from lower to upper case as demonstrated in Figure 10.8.

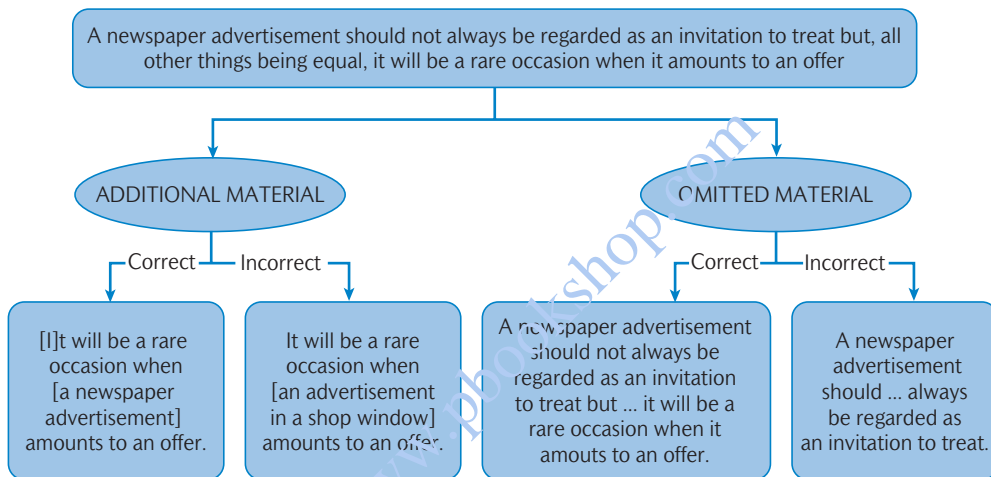


Figure 10.8 Adding and deleting words from quotations

10.6 Word limits

It is likely that most, if not all, of the coursework that you complete during your studies will have a word limit. Although students almost universally rail against word limits, protesting that they are too restrictive to enable them to answer questions properly or to enable them to say all that they want to say, essays and problem questions are carefully written to ensure that they will fit within the specified word limit. As such, it really is possible to write a good essay within the constraints of the word limit.

10.6.1 Why is the word limit a problem?

If you are struggling, consider whether any of the following are applicable:

- **Too much irrelevant information.** Check whether you have understood the question correctly and evaluate how relevant each point that you want to include in the essay is to the question. Have you gone off at a tangent? If you need to reduce your word count, look at every sentence and ask 'what does this add to my essay' in order to make sure that you are filtering out irrelevant material.

- **Too much descriptive detail.** Are you including lengthy explanations of the facts of cases when less, or even no, detail would suffice? One common problem is long descriptions of the facts of cases which add nothing to the answer and, in fact, interrupt the line of argument. Check each point for relevance and then experiment with the points remaining to see how you can reword them in fewer words.
- **Too long-winded in your written language.** Some people have an aptitude for concise expression whereas others use far more words than are necessary to express even the simplest of ideas. One of the most effective methods for reducing your word count without losing any material is to check every sentence to see if it can be reworded in fewer words; even one word taken out of each sentence will make a real difference to the overall word count. A common waste of words is saying 'in the case of *X*' rather than 'in *X*'. This uses three surplus words ('the case of') every time you refer to a case and these soon mount up throughout a piece of work.



Practical exercise

Bearing these points in mind, have a look at the paragraph below. It is the second paragraph in an essay that considers whether it is true that the law does not allow a trust to be established to benefit a purpose rather than an individual. Can you (1) remove any irrelevant material, (2) remove excessive descriptive detail, and (3) reword the paragraph so that it is more concise without losing its main points?

There are exceptions of situations that are exceptions to the rule against purpose trusts. Two situations in which a purpose trust can exist even though there are no identifiable human beneficiaries are the establishment of a purpose trust for the care of animals and a purpose trust that is dedicated to the erection and upkeep and maintenance of a monument. The use of a purpose trust to care for animals is illustrated in the case of *Pettingall v. Pettingall*.¹ In this case, the testator left the sum of £50 a year to the upkeep of his favourite black mare. This was held to be valid. In *Re Dean*,² a trust was upheld to maintain a horse and some hounds for fifty years provided that the animals lived that long. These cases demonstrate that purpose trusts can be valid if they are aimed at caring for particular animals. An illustration of a valid trust to maintain a monument can be seen in the case of *Mussett v. Bingle*³ where the testator left a sum of money to erect a monument in memory of his first wife. Also in the case of *Pirbright v. Salway*,⁴ the court upheld a trust to maintain a family burial enclosure and in *Re Hooper* the court upheld a trust to ensure that a vault was maintained in good condition. However, in the case of *Re Endacott*,⁵ the settlor left his residuary estate his local parish council for a particular purpose which was to provide a useful monument to him but this was held to be void because the court felt that the line of case law involving specific graves and monuments should not be extended. Although this case does demonstrate that not all trusts established to achieve a particular purpose will be valid, there is a fairly sizeable body of case law that does recognise there can be a trust for a purpose if that purpose is to erect a specific monument or maintain a particular burial plot. These examples demonstrate that there are some exceptions to the more general rule that a trust cannot exist for purpose but only for the benefit of human beneficiaries.



You will find a rewritten version of this paragraph on the Online Resource Centre with an explanation of the way that it was reduced from 361 to 110 words. You will also find other activities aimed at helping you to develop a more concise written style on the Online Resource Centre.

Alternatively, you may find that you have said everything you want to say and have not yet reached the word limit. This may be because you have an admirable concise written style and

that you have ensured that you have only included relevant material. Unfortunately, it is more likely to mean that you have:

- **Left out some relevant material.** If you are significantly short of the word limit, you have missed out something that should be included. Revisit the question and review your reading to see if there is something that you have overlooked.
- **Failed to provide sufficient detail.** This may arise because you have tried to keep description to a minimum and have gone too far and excluded some necessary explanation or because you have misjudged the complexity of a particular issue and provided only a simplistic explanation.

You will find more detailed advice on interpreting questions, selecting relevant material, and keeping a strong focus on the question in chapter 12.

10.6.2 Why stick to the word limit?

It is essential that you do adhere to the word limit, however challenging that may seem, as most institutions impose a penalty for failure to do so. This may be a deduction of marks or a refusal to read any words that go over the specified limit. Either type of penalty will reduce the mark that your work receives. In some institutions that have a cumulative deduction policy, i.e. a deduction of two marks for every ten words over the limit, an essay which was too far over the limit could end up with a mark that was lower than the pass mark once all the deductions have been taken into account.

Do not make the mistake of misstating the word limit—quoting that you have used 1,495 words in a 1,500 limit when you have really used 1,743—as this generally attracts an even more severe penalty, sometimes zero and a requirement that the coursework be repeated.

10.6.3 What counts towards the word limit?

Always check your department's regulations to determine how the word count is calculated. Some institutions exclude references to statute and case law from the word count, for example, so all statutory references and case citations can be deducted from the overall limit. This is likely to apply only to actual references rather than all discussion of case or statute law, so make sure that you make an accurate deduction. Equally, some departments will state that all references are included in the word count (which makes checking that you have made an accurate declaration of the word limit easier) whereas others exclude footnotes from the word count but specify that they must only be used to reference and not to introduce any additional text. There are many other potential policies on counting words that may arise at different institutions. This chapter does not aim to outline all the possibilities, rather just to orientate you to the existence of the different methods of counting words. It highlights the need to check the rules in order to ensure that you are adhering to the requirements of the word limit in force at your institution.

10.7 Presentation

Presentation of coursework, or how it looks on the page, is important. If you look at several pieces of work with identical content, you will probably find that you make instinctive

evaluations about their quality on the basis of their visual appearance (you will find some examples of good and bad presentation in the Online Resource Centre if you want to test this theory). A well-presented piece of work that complies with any institutional requirements with regard to font choice or formatting, for example, will create a good first impression with the marker. Whilst this may not necessarily contribute to the grade that the essay receives (unless your department awards marks for presentation), it cannot do any harm to ensure that the person marking your work feels favourably disposed towards it from the outset.

10.7.1 Formatting

If there is a house style with regard to presentation, use it even if you do not like the style chosen. Most people have a font style or pattern of layout that they favour but that is no reason not to adhere to the specifications that you have been given. Some departments even impose an automatic deduction of marks for failure to comply with the presentation requirements of assessed coursework, so it is always advisable to find out what the requirements are and follow them to the letter. In the absence of any specifications as to style, you may like to bear the following in mind when choosing how to present your work:

- **Font and font size:** choose a relatively straightforward font that is easy for the marker to read. It would generally be unnecessary to have a font size larger than 12-point in the main body of your text.
- **Line spacing:** double or one-and-a-half line spacing is advisable as it is easier to read in large quantities than single-spaced text. Moreover, wider line spacing ensures that your work covers more pages and gives the marker more space to write comments in the margin.
- **Margins:** as with line spacing, wide margins allow the marker space to write comments. The default settings should give sufficient space.
- **Paragraphing:** using a double space between paragraphs creates more 'white space' that makes the page easier on the marker's eye and gives additional space for comment.

Overall, these guidelines are aimed at ensuring that the page is not too crowded so that the words look squashed onto the page.

10.7.2 Statutes and cases

It is usual to use different formatting to ensure that statutory references and case names stand out from the bulk of the text. Your institution may have particular requirements in this respect but, if not, choose a style and stick to it throughout your essay. As with so many aspects of presentation, consistency is the key to success. If you decide to underline statute names, for example, make sure that you do this all the way through your essay rather than switching to bold on page 3 and then forgetting altogether on the final page.

It is usual to italicize case names but not the full citation.

For further information on referencing, see chapter 11.

10.7.3 Headings

This section addresses issues of the presentation of headings rather than their use in essays (which can be found in chapter 12). If you are using headings in your work, make sure that you use an appropriate and consistent approach to formatting them. For example, if you use two

levels of heading (main headings and subheadings), make sure that the style you use for the main heading is more prominent than that of the subheading and that you use the same style throughout your work. Finally, do make sure that something follows the heading; leaving a heading 'hanging' as the final words on the bottom of the page whilst the text follows on the next is not an effective approach to the use of headings.

10.7.4 Page numbers

It is useful to ensure that the pages of your work are numbered. If your marker drops your essay, it might be difficult to reorder them if they are not numbered. Equally, if you staple the pages in the incorrect order (it happens!) and they are not numbered, your lecturer may not realize that the pages are not in order and merely assume that the flow of your argument is not logical.

10.7.5 Capital letters

There is an unfortunate tendency amongst students to capitalize every word that seems significant, such as Judge, Court, Case, and Law, or any phrases that seem sufficiently important, for example, Rule of Law, *Actus Reus*, or Invitation to Treat. This is incorrect and should be avoided. The use of capital letters should be reserved for the word at the start of a sentence and proper nouns only.

10.7.6 Checking for errors

Although the aim is to allow the marker plenty of space to write comments, you really want to attract feedback about the content of your legal argument rather than technicalities of presentation, so do ensure that the spelling, grammar, and punctuation are correct. There are few things more disheartening for a student than the return of an essay that is covered in corrections, so avoid this by ensuring that you do not give the marker a great deal to correct. It should go without saying that the work should be meticulously checked for basic errors prior to submission, but far too many students submit work that looks suspiciously like a first draft in that it is peppered with the sorts of error that should have been corrected prior to submission.


The solution is to leave sufficient time prior to submission to check your essay thoroughly for accuracy. Use the spell check, making sure that it is set to UK English rather than US English (the spelling differs between the two) but remember that it cannot check for context. Accept that the spell check is not infallible (for instance, it will not catch errors such as statue/statute, trail/trial, electoral role/electoral roll) and proofread your essay yourself or, as it is often difficult to spot your own errors as you tend to read what you meant to write rather than what you have actually written, get a friend to check it for you.

One technique that can be particularly useful, even after you have strengthened your writing skills through years of study, is to compose a personalized checklist of potential problems. Everyone has some weakness in their writing style and it is easy to be blind to your own errors, so finding a way to remind yourself to take particular care over certain issues can be an excellent way of ensuring that you produce a polished and accurate piece of work. You could start with quite a general checklist in the early stages of your studies that reminds you to check such basics as spelling or the technicalities of presenting case names and citations correctly. As your written style strengthens, some of the basics will become second nature whilst other,

more specific problems, will inevitably emerge. For example, perhaps you find the distinction between plural and possessive 'its' confusing or you are unclear about the difference between 'affect' and 'effect'. Irrespective of the nature of your problem, your checklist can evolve to reflect this as you progress.

Check spelling and grammar	<input type="checkbox"/>	Are footnotes on the right page?	<input type="checkbox"/>
Check 'its' and 'it's'	<input type="checkbox"/>	References: complete and correct?	<input type="checkbox"/>
Does it look right on paper?	<input type="checkbox"/>	Underline statutes	<input type="checkbox"/>
Any hanging headings?	<input type="checkbox"/>	Italics for case names	<input type="checkbox"/>
Check use of capitals	<input type="checkbox"/>	Does it make sense?	<input type="checkbox"/>

Figure 10.9 Checklist

 This is just one example of the sorts of points that you could include on your checklist (Figure 10.9). You will find a downloadable template of this on the Online Resource Centre, with some suggestions of categories that you might like to use at the start but which can be altered to suit your own requirements.



CHAPTER SUMMARY

Language

- Strive for an appropriate level of formality in your written style; the approach used in good textbooks and articles will provide a useful example
- Avoid casual language such as text speak and the use of the first person
- Be alert for the conventions relating to gender-neutral language and the use of Latin
- Be aware that words that have legal and non-legal meanings, such as assault, can confuse the reader

Grammar and punctuation

- Take care to ensure that your work is grammatical as this contributes towards accuracy and precision
- Look for evidence that would suggest that there is a problem with your grammar and punctuation and ensure you seek appropriate assistance if it appears necessary
- Take note of the common problems that arise and strive to eliminate them from your writing

Quotations

- Incorporating quotations into your work can add strength to your arguments but you must ensure that you do not use a quotation out of context or misrepresent its meaning
- If you add or remove words or emphasis, this must be noted in the quotation or its reference as appropriate. Ensure that any changes do not alter the meaning of the quotation
- Do not overuse quotations. The bulk of your essay should be expressed in your words as opposed to merely joining together a string of quotations. Equally, do not use quotations, particularly from textbooks, to express concepts that could be expressed in your own words; your ability to explain legal concepts will attract more credit than your ability to select an appropriate quotation

Presentation

- Discover whether there are any mandatory requirements for the presentation of coursework and, if so, ensure that you adhere to them
- Ensure that you leave sufficient time prior to the deadline for submission to check your work thoroughly for presentational errors



FURTHER READING

- J Peck and M Coyle, *The Student's Guide to Writing: Grammar, Punctuation and Spelling* (Palgrave 1999)
A student-friendly guide to the essential matters of grammar, spelling, and punctuation written in an accessible manner.
- There is an electronic grammar course available online from the University of Ottawa at <<http://www.arts.uottawa.ca/writcent/hypergrammar/>>
- There is a good source of grammar tips available online at <<http://grammar.quickanddirtytips.com>>
- RL Trask, *The Penguin Guide to Punctuation* (Penguin 1997)
Provides clear definitions and guidance of each type of punctuation.