

How Modern Is Your Writing?

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Lawyers make their living with words. Most of us are justifiably proud of our writing skills and may even enjoy a spirited debate about the Oxford comma. But language evolves, and as writers, we should strive to keep pace with modern trends in writing. In this essay, we offer some tips for contemporary legal writing, including a discussion of which grammar “rules” have become outdated, suggestions for using inclusive language, and a take on modern pronouns.

Grammar Rules You Should Forget

As legal-writing professors, we are unapologetic grammar nerds. But a handful of grammar rules are outdated and therefore unnecessary to follow — or should even be flatly rejected — in modern writing.

Never Split an Infinitive

Bryan Garner calls the rule to never split an infinitive “a superstition that just won’t die.”¹ This rule was derived from Latin and, more specifically, from a time when Latin was considered to be a more elegant and scholarly language than English. In Latin, infinitives are usually one word, so they cannot be “split.” In English, an infinitive is two words, beginning with *to*, such as *to read*, *to eat*, or *to run*. Some authorities used to prescribe that another word should never come between *to* and the rest of the verb, “splitting” the infinitive.

¹ Bryan A. Garner, *The Redbook: A Manual on Legal Style* 195 (4th ed. 2018).

In many cases, however, splitting the infinitive will produce a more pleasing sentence. Compare the following two sentences:

1. “It was hard to completely follow the court’s reasoning” (grammatically “incorrect”).
2. “It was hard to follow completely the court’s reasoning.”

The first sentence is less awkward, even if it is technically “incorrect,” following the old rule. And would Captain Kirk’s line be nearly so famous had it been “To go boldly where no man has gone before”?

Never End a Sentence with a Preposition

“This is the type of arrant pedantry up with which I will not put.” This quote is often attributed to Winston Churchill, although whether he actually said it is debatable.² Regardless, it is an excellent illustration of the idea that “never end a sentence with a preposition” should not be a rigid rule. Even Strunk and White agree that this rule doesn’t need to be followed.³

Never Begin a Sentence with And or But

Your third-grade teacher probably told you that this was a rule. But the complexity of the sentences you are writing has increased from the third grade, when your teacher was (rightfully) worried about your writing: “I have a dog. And a cat. And a goldfish.” In modern legal writing, the occasional use of a sentence beginning with a conjunction can be powerful. Current Supreme

² June Casagrande, *A Word, Please: An erroneous rule up with which I will not put*, L.A. Times (Aug. 16, 2006), <https://www.latimes.com/socal/burbank-leader/news/tn-blr-xpm-2006-08-16-blr-aword16-story.html> [<https://perma.cc/3NWN-LPHZ>].

³ For a fuller discussion, see Wayne Schiess, *Splitting Infinitives, Ending with Prepositions, and Beginning with But*, Mich. Bar J., June 2015, at 46, 47.

Court Justices use this technique to great effect.⁴ For example, Justice Elena Kagan wrote: “But Marvel must have been pleased to learn of it.”⁵ And Chief Justice John Roberts said: “And the asserted reason for compromising the bright-line rule in the Act”⁶

One Space or Two After a Period?

This debate seems to have been largely settled, although judges and lawyers appear to be some of the last devotees of using two spaces after a period. Almost universally, modern authors agree that one space after a period is best.⁷

The Chicago Manual of Style started recommending one space in 1949, so this is not an especially “modern” trend.⁸

Who or Whom?

Some writers believe the correct use of *who* versus *whom* to still be a relevant rule; others have discarded it.⁹ We lean toward thinking that this is still a rule to follow, although not one of grave importance.

Here’s a tip: if you are unsure which is the correct word, try replacing it in the sentence with both *he* and *him*. If *he* is grammatically correct in the sentence, then *who* is correct. If *him* is correct,

⁴ Jill Barton, *Supreme Court Splits . . . on Grammar and Writing Style*, 17 *Scribes J. Legal Writing* 33, 37 (2016–2017); Ross Guberman, *Five Ways to Write like John Roberts*, *Legal Writing Pro* (2010), <https://online.fliphtml5.com/vxov/lvyg/#p=1> [<https://perma.cc/8EH2-QU2U>].

⁵ Barton, 17 *Scribes J. Legal Writing* at 37.

⁶ Guberman, *Legal Writing Pro* (2010), <https://online.fliphtml5.com/vxov/lvyg/#p=1> [<https://perma.cc/8EH2-QU2U>].

⁷ See, e.g., Matthew Butterick, *Typography for Lawyers* 41 (2d ed. 2018).

⁸ Russell Harper, *One Space or Two?*, *Chicago Manual of Style Shop Talk* (Mar. 24, 2020), <https://cmosshoptalk.com/2020/03/24/one-space-or-two/> [<https://perma.cc/N6ZE-SPG4>].

⁹ Megan Garber, *For Whom the Bell Tolls*, *The Atlantic* (Apr. 2013), <https://www.theatlantic.com/magazine/archive/2013/04/for-whom-the-bell-tolls/309266/>.

then use *whom*. For example, take the sentence “The client *who* / *whom* forgot the file called this morning.” We can test it by writing “He forgot the file” and “Him forgot the file.” Of course, *he* is correct here, so our sentence should be “The client who forgot the file called this morning.”

Is Irregardless a Word?

The *Merriam-Webster Dictionary* added *irregardless* in 1934, although it does note that the word is “nonstandard.”¹⁰ But this word/nonword has the same meaning as *regardless*, which we submit is a perfectly fine word and not one in need of replacement. We therefore recommend against using *irregardless* and instead continuing with *regardless*.

Inclusive Language

Gender-Neutral Language

For generations, the English language was significantly gendered. Generations of schoolchildren were taught that the masculine pronoun covered both men and women. Most writers and readers today do not agree, and it is easy to avoid using male-dominated terminology. Consider the list of simple changes below:

Instead of	Use
man, mankind	humanity, human race
manpower	personnel, staff, human resources
common man	average person, ordinary people
policeman	police officer
chairman	chair, chairperson
fireman	firefighter

¹⁰ James Doubek, *Regardless of What You Think, ‘Irregardless’ Is a Word*, NPR.com (July 7, 2020), <https://www.npr.org/2020/07/07/887649010/regardless-of-what-you-think-irregardless-is-a-word> [https://perma.cc/YW4Q-U4KF].

mailman	postal worker, mail carrier
foreman	supervisor

Avoid Words/Phrases with Offensive Origins

Many commonly used (or formerly commonly used) idioms have unfortunate racist origins. In most cases, the speakers using these phrases have no idea of the terms' backstories. Educating yourself can ensure that you do not inadvertently hurt or offend someone else. None of these phrases are essential, and all can be easily substituted. Some examples of terms with problematic origins that we recommend not using are *off the reservation*, *low man on the totem pole*, *Chinese wall*, *peanut gallery*,¹¹ *sell down the river*, *gyp*, and *lynch mob*.¹²

Avoid Ableist Language

Good legal writers avoid ableist terms, such as “the blind leading the blind” and “turn a deaf ear.”¹³ Such expressions imply that a blind person could never be a leader or a deaf person could never be open to other opinions. One should also avoid using mental-health diagnoses as slang, such as saying “my boss is bipolar” or “that’s my OCD showing.” This stigmatizes mental illness and is also highly inaccurate, showing a lack of understanding. Having

¹¹ Christopher Cicchiello, *These 11 Everyday Words and Phrases Have Racist and Offensive Backgrounds*, Today (July 24, 2020), <https://www.today.com/tmrw/everyday-words-phrases-racist-offensive-backgrounds-t187422> [https://perma.cc/UYF8-EADS].

¹² Scottie Andrew and Harmeet Kaur, *Everyday Words and Phrases That Have Racist Connotations*, Cable News Network (July 7, 2020), <https://www.cnn.com/2020/07/06/us/racism-words-phrases-slavery-trnd/index.html> [https://perma.cc/JH4P-5DPZ].

¹³ See Sara Nović, *The Harmful Ableist Language You Unknowingly Use*, Brit. Broad. Corp. (Apr. 5, 2021), <https://www.bbc.com/worklife/article/20210330-the-harmful-ableist-language-you-unknowingly-use> [https://perma.cc/6JXS-EVXS].

a mercurial personality is not a symptom of bipolar disorder, and preferring to keep a tidy desk is not a symptom of OCD.

It is possible that some reading this article will think: “Political correctness has gone too far! You can’t say anything anymore.” But we disagree. First, all these expressions are easily replaced by something with nonoffensive origins. Second, there is no need to berate yourself or others for using a term in the past. If you didn’t know, you didn’t know. Once you have been educated, however, it costs you nothing to use a nonoffensive replacement, and it might benefit other people quite a bit.

Pronouns

We give pronouns their own section here, although they also fall under the category of *inclusive language*. Pronouns have become a weighty topic in both grammarian circles and culture wars.

Gender-Neutral Pronouns

Contemporary issues regarding pronoun usage fall into two overlapping categories: gender-neutral pronouns and the use of *they* as a singular pronoun.

Although discussion of gender-neutral pronouns may feel recent, the concept dates back over one hundred years. In 1912, Chicago public-school superintendent Ella Flagg Young advocated for the pronouns *his’er*, *he’er*, and *him’er* to indicate both sexes.¹⁴ Although Young’s suggestions did not catch on, the English language already had a gender-neutral pronoun: *they*. Typically, *they* substitutes for a plural antecedent: “Although the students forgot their books, they were able to pass the test.” But the pronoun *they* (and its derivatives) can also be used as a singular pronoun when

¹⁴ Michael Waters, *Where Gender-Neutral Pronouns Come From*, *The Atlantic* (June 4, 2021), <https://www.theatlantic.com/culture/archive/2021/06/gender-neutral-pronouns-arent-new/619092/>.

gender is unknown: “Although the student forgot their book, they were able to pass the test.”

They as a Singular Pronoun

Some self-proclaimed grammar purists may bristle at the last sentence, insisting that a grammatically correct sentence should use a singular, gendered pronoun: “his or her book” and “he or she was able to pass the test.” But the singular *they* dates back to well before the twenty-first century, appearing as early as 1375.¹⁵ Popular news articles about gender-neutral pronouns often point out that both Shakespeare and Jane Austen used the singular *they* in their literary works. Indeed, insistence on using gender-specific pronouns — especially *he / him* — is a relatively new concept.

Bringing the singular *they* back into popular usage serves at least two worthwhile purposes. First, it can eliminate wordy and awkward sentence construction, especially when the gender of the antecedent pronoun is unknown. Compare “The passenger stowed his or her bags before finding his or her seat in the aircraft” with “The passenger stowed their bags before finding their seat in the aircraft.” Second, it allows for more gender-inclusive writing. For years, using a generic *he* to refer to both men and women was the norm. Although this has fallen out of fashion, writers struggle to find an acceptable substitute: *S/he*? Alternating *he* and *she*? Using only plural-antecedent nouns? The singular *they* provides a simple solution.

Preferred Pronouns

Of course, no discussion of gender-inclusive writing is complete without addressing preferred pronouns. The singular *they*,

¹⁵ Oxford English Dictionary, *They*, https://www.oed.com/dictionary/they_pron (last modified Dec. 2024) [<https://perma.cc/MH8Y-S44U>]. For a full discussion of the singular *they*, see Robert Anderson, *Reclaiming the Singular They in Legal Writing*, 19 *Legal Comm’n & Rhetoric: JALWD* 55 (2022).

in addition to indicating unknown gender, can also be the preferred pronoun of a person who declines to use masculine- and feminine-gendered pronouns. In this context, *they* could be used by a nonbinary person, an agender person, or a cis person who prefers not to use *he* or *she*. Other nongendered preferred pronouns have been proposed over the years; in addition to those advocated by Ella Flagg Young in 1912, candidates include *ze*, *xe*, and *sie*. Regardless of the particular word, if you strive to be inclusive in your writing, you should use a person's preferred pronouns.

Perhaps you're ready to embrace the singular *they* or other gender-neutral pronouns; perhaps you have been using them for years. In either instance, one caveat is to be careful to avoid ambiguity. For example, say that you are writing about two individuals, Ash and Tanner, who each use the pronouns *they* / *them*. If you write, "Ash and Tanner agreed they were not responsible for repaying the loan," it's unclear whether *they* refers to Ash, Tanner, or both. In this case, revising the sentence clears up the ambiguity: "Ash and Tanner agreed that Ash was not responsible for repaying the loan."

Conclusion

As professional grammar nerds, we realize that some of these changes may seem unnecessary or unsettling. But whether you agree or vigorously disagree with our examples above, we hope to encourage you to consider new ways of using language to be more clear, inclusive, and contemporary. As professional writers, lawyers are obligated to use language thoughtfully. By allowing your understanding of grammar rules and norms to evolve with the times, you will discover new ways to engage your readers and help your clients.