



50 Ways to Leave Your Ambiguity

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Roadmap

- ▶ Distinguishing between ambiguity and vagueness
- ▶ Causes of ambiguity
- ▶ Limiting Ambiguity
 - Specific redrafts
 - General drafting advice



Verbal Ambiguity

- ▶ Which of these two meanings should I choose?

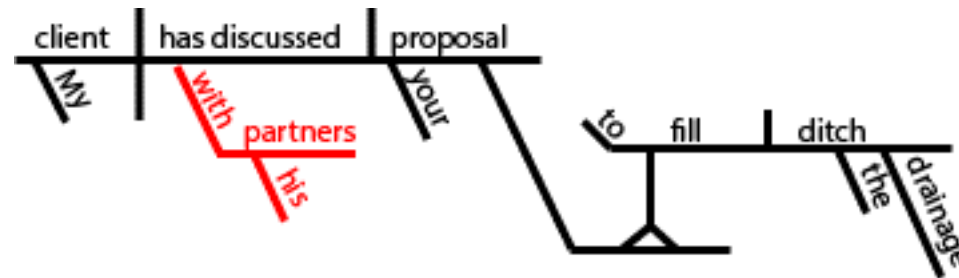
“She’s the mother of an infant daughter who works 12 hours a day.”

“Acme sells children’s apparel, footwear, and accessories.”

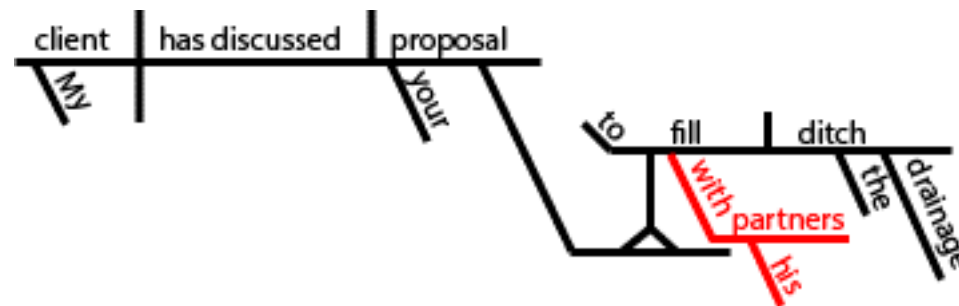


Ambiguity diagrammed

“My client has discussed your proposal to fill the drainage ditch with his partners.”



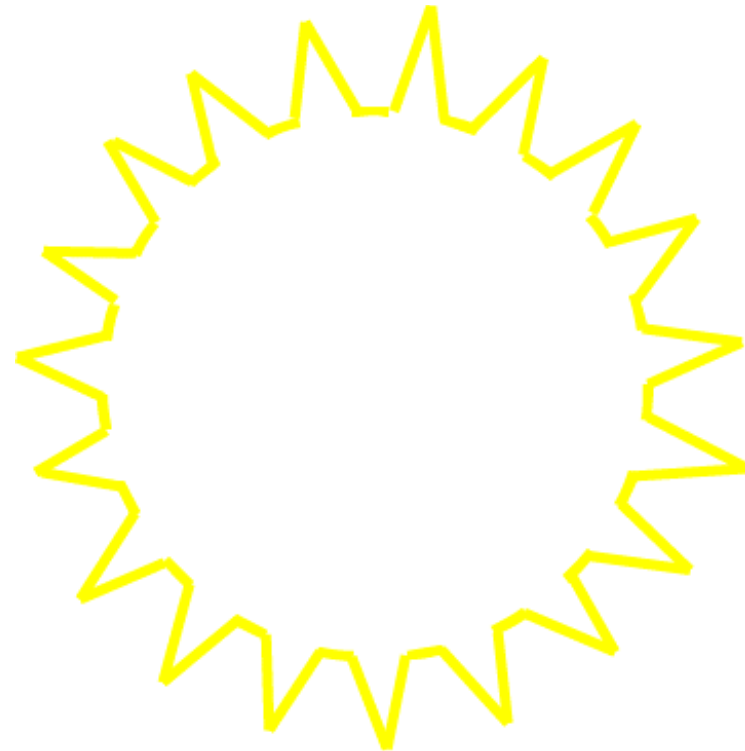
OR



Verbal Vagueness

- ▶ What are the boundaries of this word or phrase?
 - Boundaries can be too broad
 - They can also be porous

“must operate in a safe manner”



Addressing Ambiguity

- ▶ Common causes
- ▶ Difficulties in finding them
- ▶ Potential solutions

General Causes of Ambiguity

- ▶ Modifier placement
 - What does a phrase or clause modify?
 - Drainage ditch example
 - See 8.14 (a) in Revisor's Manual

- ▶ Modifying items in a series
 - Does the modifier apply to all?
 - "Negligent act, error, or omission"
 - See 8.14 (b) in Revisor's Manual

More General Ambiguities

▶ Ranges

- Are end points included?
- “Between the ages of 17 and 45”
- See 8.11 in Revisor’s Manual

▶ References, including pronouns

- What are we referring to?
- “She’s the mother of an infant daughter who works twelve hours a day.”

Limiting Ambiguity

- ▶ Active management
 - Lists
 - Repetition
 - Definitions
- ▶ Reducing chances
 - Good writing
 - Parallelism
 - Breaking up sentences

Modifiers and Series

- ▶ One subject, one modifier: it's clear what the modifier applies to.
- ▶ Two modifiers, one subject: it's not so clear.
 - “charitable and educational institutions”
- ▶ Two subjects, one modifier: also not clear.
 - “a duck, goose, or brant that is not on the endangered list”



Options for Multiple Modifiers

“charitable and educational institutions”

- ▶ If one subject must satisfy two requirements, include the word *both*.
 - “an institution that is both charitable and educational.”
 - For more than two, use “all”
- ▶ If the modifiers mean *two kinds of subjects*, repeat the article and use *or*.
 - “a charitable or an educational institution”

Options for Multiple Subjects

“a duck, goose, or brant that is not on the endangered list”

- ▶ First, determine what the modifier should apply to.
- ▶ If only one subject, move modifier in the list:
 - “a brant that is not on the endangered list, duck, or goose”
- ▶ If it should apply to all...

Lists

- ▶ Place the modifier as part of the list introduction.

“any of the following that is not on the endangered list:

a duck;

a goose; or

a brant.”

Use Vertical Lists

- ▶ Lists have these advantages:
 - They highlight levels of importance.
 - They help users understand the order in which things happen.
 - They help users see all steps in a process.
 - They add blank space for easy reading.
 - They're an ideal way to present items, conditions, and exceptions.
 - They're citable.

Repetition

- ▶ “a duck that is not on the endangered list, a goose that is not on the endangered list, or a brant that is not on the endangered list”
- ▶ This is a wordy option, so its use is limited
- ▶ However, it is very effective for the application of “not” to multiple subjects

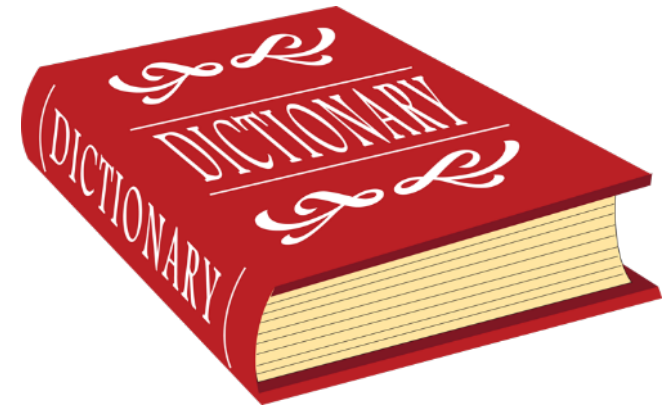
Definitions

“Unprotected waterfowl means any of the following that is not on the endangered list:

a duck;

a goose; or

a brant.”



Breaking up Sentences

- ▶ Shorter sentences create fewer opportunities for textual ambiguities
- ▶ “The duck, goose, or brant must not be on the endangered list.”

Direct and Simple - Basic Rules

- ▶ Draft in the present tense
 - Don't: "the commissioner will assign..."
 - Do: "the commissioner must assign..."
- ▶ Draft in the singular number
 - Don't: "all licensees must..."
 - Do: "a licensee must..."
- ▶ Draft in the active voice

Verb Voice

- ▶ Active (Actor – verb – direct object)
 - “Jim ate bacon.”
- ▶ Passive (Direct object – verb – actor)
 - “All the bacon was eaten.”
- ▶ Passive-Aggressive
 - “Thanks for not sharing any of the bacon. I hope it was delicious.”

Benefits to the Active Voice

- ▶ Active voice makes clear who has the duty.
- ▶ The passive voice can cause ambiguity.
- ▶ When both are written unambiguously, the active voice is shorter and more direct.

Editing for Shorter Sentences

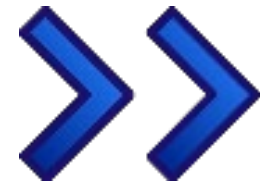
- ▶ Narrow the goal for each sentence (Conceptual editing)
- ▶ Cut unnecessary words (Grammatical editing)
 - Choose direct verbs
 - Identify noun strings
 - Review sentence structure

Narrowing the Goal

- ▶ Nonparallel phrases can often be separated into multiple sentences
 - Don't: "The commissioner shall, **in writing and with a copy to the commissioner of agriculture**, report to the legislature on..."
 - Do: "The commissioner shall report to the legislature on... The report must be in writing. The commissioner must provide a copy of the report to the commissioner of agriculture."

Choose the Most Direct Verb

- ▶ Verbs like “use”, “provide”, and “implement” often create needless words in a sentence.
- ▶ Look for the more direct verb:
 - “...the process to be used for providing oversight of...”
 - “...the process for overseeing...”
- ▶ Forms of “be” often signify a more direct verb exists
 - “...is applicable to...” becomes “...applies to...”



Identifying Verbs in Noun Strings

- ▶ To avoid noun strings like this:
 - “Underground mine worker safety protection procedures development”
- ▶ Identify the verbs that have been turned into nouns:
 - “protection” and “development”
- ▶ Rewrite the phrase:
 - “Developing safety procedures to protect underground mine workers” or
 - “Developing procedures to protect the safety of workers in underground mines”

Placing modifiers

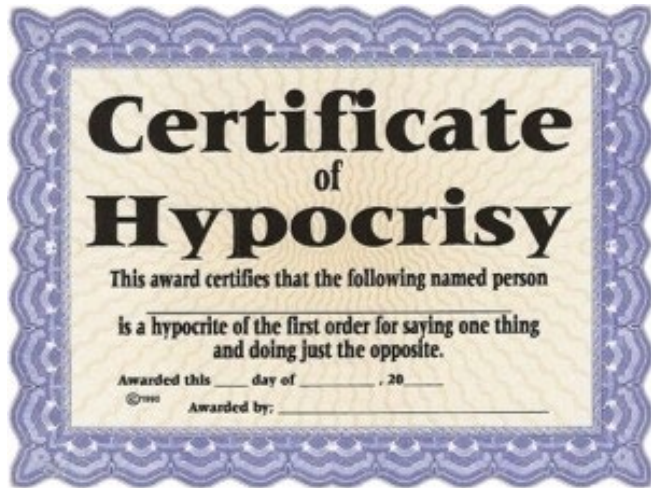
- ▶ Keep modifiers close to what they modify
- ▶ Move generally applicable modifiers to the front
 - Don't: "The closed charter school must transfer the student's educational records within ten business days of closure to the student's school district of residence..."
 - Do: "Within ten business days of closure, the charter school must transfer the student's education records to the student's school district of residence..."



Summary

Do	Don't
<p>Differentiate between ambiguity and vagueness</p> <p>Fix ambiguities when they are problematic</p> <p>Identify the goal of each sentence</p> <p>Peer review for an outside opinion</p>	<p>Make every sentence complex</p> <p>Draft in the passive without a reason</p> <p>Misplace your modifiers</p> <p>Rely on absurdity to resolve ambiguity</p>

...More What You'd Call...Guidelines



- ▶ Follow the rules...mostly
 - ▶ For every drafting rule or principle, there are countless legitimate (and important) exceptions that have legal consequences
- ▶ Remember the primary objective of drafting: to fully and accurately express the desired legal principle and/or policy objective

Drafting Resources

Revisor's Office Publications

- ▶ Bill Drafting Manual
<https://www.revisor.mn.gov/office/2013-Revisor-Manual.pdf>
- ▶ Minnesota Statutes, chapter 645
- ▶ Court Opinions Report
https://www.revisor.mn.gov/court_opinions/2022

External Resources

- ▶ *Legislative Drafter's Guidebook: A Practical Guide*, Tobias Dorsey
- ▶ *Legislative Drafting*, Reed Dickerson
- ▶ "Plain Language for Lawyers", Richard Wydick, *California Law Review* 66 (1978): 727-56
- ▶ *Reading Law: the Interpretation of Legal Texts*, Antonin Scalia & Bryan Garner
- ▶ *The Art of the Statute*, Jack Stark

Questions?

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