

Proficiency Test Review



Legal Writing Clinic
January 2016

Commas: Just Writing, pp. 211-230


- Rule 1: Commas before coordinating conjunctions joining two main clauses.
- Rule 2: Commas with introductory clauses
- Rule 4: Commas to set off nonrestrictive clauses
- Rule 9: Commas to set off phrases of contrast
- Rule 10: Commas in a series
- Rule 12: Commas with geographic locations and dates



Commas Rule 1: Use a comma before a coordinating conjunction joining two main clauses.

- Step 1: does the sentence contain a coordinating conjunction?
- For
- And
- Nor
- But
- Or
- Yet
- So

Note that “fanboys” memory clue.

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- Step 2: does the sentence have two or more main clauses?
 - A main clause
 - Has a subject and verb
 - Could be a sentence



□ Chart for rule 1:


□ Main clause , conj main clause.
□ (*sentence*) (*sentence*)

□ Ask yourself

- Is everything before conj. a main clause?
- Is everything after conj. a main clause?

Practice rule 1

- 1. Jones was initially represented by counsel but he moved for a court-appointed attorney.
- 1. Jones was initially represented by counsel, but he moved for a court-appointed attorney. (correct)


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- 2. The cocaine's wholesale value was \$17,000 and its street value was \$80,000.

 - 2. The cocaine's wholesale value was \$17,000, and its street value was \$80,000. (correct)

Do not assume that you should put a comma before every coordinating conjunction.

- 3. Smith demanded that the *Times* apologize and that it print a retraction.


- 3. Smith demanded that the *Times* apologize and that it print a retraction.
(correct as is)



Rule 2: Use a comma to set off long introductory phrases or clauses from the main clause.


□ Chart for rule 2:

long intro material , main clause.


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- What is a “long” introductory clause?
 - Four or more words is considered “long.”


Practice rule 2


- ❑ 4. Viewing the evidence in the light most favorable to the prosecution the trial court found the defendant guilty.
- ❑ 4. Viewing the evidence in the light most favorable to the prosecution, the trial court found the defendant guilty. (correct)

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- 5. In response to Lee's demand Brown followed him to the rear of the store.

 - 5. In response to Lee's demand, Brown followed him to the rear of the store.
(correct)

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- 6. Although the Seaview restaurant has thirty employees only two of them are women.
 - 6. Although the Seaview restaurant has thirty employees, only two of them are women. (correct)

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- Note that short introductory material (fewer than four words) is generally set off with a comma.
 - For example, use a comma after short prepositional phrases and transitions such as the following:
 - dates
 - case names
 - transitions

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- 7. In addition the trial court instructed the jury to disregard the response.

 - 7. In addition, the trial court instructed the jury to disregard the response.
(correct)



Rule 4: use a comma to set off nonrestrictive phrases and clauses.



□ restrictive=

- Restricts/limits/helps define what it modifies
- Does not use commas
- Introduced by who/whom/**that**



□ nonrestrictive=

- Does not restrict/limit/help define what it modifies
- Uses commas
- Introduced by who/whom/**which**

Practice rule 4

8. The juror who voted not guilty caused a hung jury.

(8 is correct as is.)

9. Juror Linda Mitchell who voted not guilty caused a hung jury.


9. Juror Linda Mitchell, who voted not guilty, caused a hung jury. (correct)

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- 10. A car that was speeding swerved to avoid the pedestrian.
 - *(10 is correct as is.)*
 - 11. The red SUV which was speeding swerved to avoid the pedestrian.
 - 11. The red SUV, which was speeding, swerved to avoid the pedestrian. (correct)

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- 12. The defendant's brother Jason will corroborate her testimony.
 - 12. The defendant's brother, Jason, will corroborate her testimony.
 - *If she has only one brother, it is nonrestrictive and takes commas.*
 - 12. The defendant's brother Jason will corroborate her testimony.
 - *If she has more than one brother, it is restrictive because it tells you which one, so no comma.*

Can you see the difference between these two sentences?

- Police officers must respect fences that are clear indications of a homeowner's desire for privacy.
- Police officers must respect fences, which are clear indications of a homeowner's desire for privacy.
- The first sentence means that police must respect only certain fences; the second sentence means that police must respect all fences.



Rule 9: use a comma to set off phrases of contrast
 (“not,” “but,” “yet”)

- 13. The defendant, not his neighbor, called 911.
- 14. The court must follow United States Supreme Court decisions, not a decision by the New Mexico Court of Appeals.


Rule 10: use commas between items in a series.

- Note that a series is 3 or more.
- Example:
 - red, white, and blue
- Commas are not used for pairs*
 - red and white

* (except for pairs of main clauses-comma rule 1).

Practice rule 10

- 15. The witness identified Roy in a photo montage in a lineup and at trial.
- 15. The witness identified Roy in a photo montage, in a lineup, and at trial.
(correct)

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- 16. The witness testified that she knew the defendant from work that she saw him in the parking lot and that she recognized his car when it left the lot.
 - 16. The witness testified that she knew the defendant from work, that she saw him in the parking lot, and that she recognized his car when it left the lot. (correct)



But never use a comma to separate the subject from the verb.

- ❑ 17. A pencil, a pad of paper, and a checkbook, were on the table.
- ❑ 17. A pencil, a pad of paper, and a checkbook were on the table. (correct)

Rule 12: use commas according to convention with dates, addresses, and geographical locations.

- 18. The plaintiff surveyed the land on May 2, 2002, and purchased it a month later.
- ***Note the comma after a full date when the sentence continues on. Note also that if there were no date, or if there were only a partial date (month and year, but no day), there would be no comma before the conjunction.***
- 19. The string of robberies began in San Diego, California, and ended in Salem, Oregon, in June 2002.
- ***Note the comma after a two-part geographical location when the sentence continues on. If this were a single geographical location ("San Diego" or "Oregon"), there would be no comma before the conjunction.***

□



Other punctuation: Just Writing pp. 230-244, 255-58


- Semicolons, colons, quotation marks, and apostrophes.



Semicolons Rule 1: Use a semicolon to separate main clauses not joined by a coordinating conjunction.

□ Chart:

□ main clause ; main clause.
□ (*sentence*) (*sentence*)

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- 20. The plaintiff is a Nevada resident; the defendant is a California resident.

 - 21. Officer Linn searched the car; he found cocaine and \$4,000.


Variation on semicolon rule 1: a transitional word or phrase may begin the second main clause.


- 22. The plaintiff is a Nevada resident; however, the defendant is a California resident.
- 23. Officer Linn searched the car incident to a valid stop; therefore, the evidence should be admitted.

Rule 2: use semicolons to separate items in a series if the items are long or have internal commas.

□ Chart:


□ _____ ; _____ ;
and _____ / _____ / _____


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- 24. The Montana court has applied these definitions to cases with the following fact patterns: the driver was asleep and intoxicated; the driver was positioned behind the wheel; the vehicle's motor was running; and the vehicle was parked.

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- 25. The prosecutor called the following witnesses: Maria Hastings, an advertising executive; Tyrone Hedges, an accountant; and Ijaz Habid, president of the company.

Practice with semicolons

- ❑ 26. The first two elements are satisfied the third element is not satisfied.
- ❑ 26. The first two elements are satisfied; the third element is not satisfied. (correct)
- ❑ 27. The first two elements are satisfied but the third element is not satisfied.
- ❑ 27. The first two elements are satisfied, but the third element is not satisfied. (correct)

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- 28. The first two elements are satisfied however the third element is not satisfied.
 - 28. The first two elements are satisfied; however, the third element is not satisfied. (correct)
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- 29. Remedies for abatement include abatement by warrant injunctions damages which are measured by the loss the plaintiff suffered or declaratory judgment.
 - 29. Remedies for abatement include abatement by warrant; injunctions; damages, which are measured by the loss the plaintiff suffered; or declaratory judgment. (correct)

Colons: Use a colon to introduce a list, quotation, or explanation.

- *Be sure that the part of the sentence that precedes the colon is grammatically complete. This essentially means that it could stand alone as a complete sentence.*
- Chart:
- *grammatically complete lead-in* : _____.



□ *Incorrect:*

□ 30. The subsections that do not apply are: 201, 201-1(3)(b), and 201-1(3)(d).

□ *Corrected:*

□ 30. The subsections that do not apply are 201, 201-1(3)(b), and 201-1(3)(d).

□ 30. The subsections that do not apply are the following: 201, 201-1(3)(b), and 201-1(3)(d).

Quotation Marks


- ❑ Commas and periods go inside closing quotation marks.
- ❑ Semicolons and colons go outside closing quotation marks.
- ❑ Dashes, question marks, and exclamation points go inside closing quotation marks when they are part of the quoted material and outside closing quotation marks when they are part of the sentence as a whole.

Single quotation marks

- If you want to quote something that already has quotation marks in it, use single quotation marks within the quoted passage. Otherwise, always use double quotation marks.
- 31. Citing *Brandenburg*, the court concluded, “The defendant incited imminent lawless action when he ‘stepped and prepared’ his audience for action.”

Practice with quotation marks

- ❑ 32. David's employer described him as a "street-smart youngster who knew what not to get involved with"
- ❑ 32. David's employer described him as a "street-smart youngster who knew what not to get involved with." (correct)
- ❑ 33. The jury could have arguably considered Wilson's insulting remarks to Harris as "unlawful" thereby depriving Harris of her self-defense.
- ❑ 33. The jury could have arguably considered Wilson's insulting remarks to Harris as "unlawful," thereby depriving Harris of her self-defense. (correct)

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- 34. Parole is a “variation on imprisonment” therefore, parole and its possible revocation are a continuing form of custody relating back to the criminal act.
 - 34. Parole is a “variation on imprisonment”; therefore, parole and its possible revocation are a continuing form of custody relating back to the criminal act. (correct)

Apostrophes

- As a general rule, to show possession,

- use 's for singular nouns
 - *defendant's attorney (one defendant)*
 - *The hotel's offices (one hotel)*

- use s' for plural nouns
 - *defendants' attorney (multiple defendants)*
 - *The hotels' offices (multiple hotels)*



□ Do not use the apostrophe with pronouns;
they are already possessive

□ *its* *ours* *whose* *yours*

□ it's is a contraction meaning "it is"




Grammar: Just Writing, pp. 190-210

- Parallelism, pronouns, and modifiers




Parallelism is similar grammatical form for coordinated elements.

- **Coordinated elements** are parts of the sentence joined by conjunctions (“and,” “but,” “or,” “nor,” “yet”)
- Coordinated elements can be pairs or a series


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- **Similar grammatical form** means a noun is matched to other nouns, a verb is matched to other verbs, prepositional phrases are matched to other prepositional phrases, and so on.


Examples


- 35. Lawyers, judges, and clients all want justice.
- 36. Attorneys must listen to clients, research issues, create arguments, and win cases.
- 37. Clients convey information over the phone, in person, and by mail.


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- To create the same grammatical form
 - match the introductory words (for example, “that”) OR
 - match the endings of key words

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- 38. The defendant conceded that she assaulted Coachman and that a trial would determine only the degree of the assault.
 - 39. The defendant claims that on the day of the murder he was at home alone washing his car, mowing his lawn, and bathing his dog.

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- ❑ 40. One factor governing the award of child support includes the cost of caring for, maintaining, and the education of the children.
 - ❑ 40. One factor governing the award of child support includes the cost of caring for, maintaining, and educating the children. (correct)

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- 41. The proposed transmission line is ugly, unsafe, and will endanger the environment.
 - 41. The proposed transmission line is ugly, unsafe, and dangerous to the environment. (correct)

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- 42. The voluminous record in this case contains substantial evidence regarding the sequence of events, the actions of the parties, and what was the condition of the intersection.

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- 43. The voluminous record in this case contains substantial evidence regarding the sequence of events, the actions of the parties, and the condition of the intersection. (correct)

Pronouns are substitutes for nouns.

- The noun a pronoun substitutes for is called its **Antecedent**.
- Antecedent: Mike Jones
- Pronouns: he, his, him

A pronoun must clearly refer to one antecedent.

- ❑ 44. Officer Robert O'Malley, who arrested Howard Davis, said he was drunk at the time.
- ❑ Possible corrections:
- ❑ 44. Officer Robert O'Malley, who arrested Howard Davis, said Davis was drunk at the time.
- ❑ 44. Officer Robert O'Malley was drunk when he arrested Howard Davis.



Rule 1: A pronoun must agree in number with its antecedent.

- Singular nouns require singular pronouns; plural nouns require plural pronouns.



□ *Incorrect:*

□ 45. A defendant may claim that their rights were violated.

□ *Corrected:*

□ 45. Defendants may claim that their rights were violated. OR

□ 45. A defendant may claim that his or her rights were violated.

Collective nouns like “court,” “jury,” “family,” “board” take singular pronouns.

❑ *Incorrect:*

❑ 46. The jury must not be misled about Lee’s credibility when they consider his testimony.

❑ *Correct:*

❑ 46. The jury must not be misled about Lee’s credibility when it considers his testimony.




□ *Incorrect:*

□ 47. After the court concludes the evidence is relevant, they can assess its probative value.

□ *Correct:*

□ 47. After the court concludes the evidence is relevant, it can assess its probative value.




Modifiers are words that limit or qualify the meaning of other words.

- Modifiers are usually adjectives or adverbs (or phrases acting as adjectives or adverbs).
- Note: adjectives modify nouns; adverbs modify adjectives or verbs



Keep modifiers as close as possible to the words they modify.

- *Note the difference in these sentences:*
- 48. The defendant owned a cabin with his brother in New Hampshire.
- 48. The defendant owned a cabin in New Hampshire with his brother.

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- 49. The test has three elements. The second element will only be in dispute.
 - 49. The test has three elements. Only the second element will be in dispute. (correct because “only” modifies “the second element,” not “be in dispute.”)

Make sure the words they modify are in the same sentence as the modifiers.

- ❑ **Dangling modifiers** do not have a word they are attached to in the sentence. They appear to be modifying the noun closest to them, which can create an unintended meaning.
- ❑ Dangling modifiers often (not always) come at the beginning of sentences and have an “ing” ending.
- ❑ *Chart for correct modifier:*
- ❑ “ing” modifier, [key noun]_____.



□ *Incorrect:*

□ 50. In applying the balancing test, whether the defendant testified at the prior trial must be considered.

□ *Correct:*

□ 50. In applying the balancing test, the court must consider whether the defendant testified at the prior trial.



□ *Incorrect:*

□ 51. While petitioning for a permit, zoning regulations for the area were changed.

□ *Corrected:*

□ 51. While petitioning for a permit, the mental institution learned that zoning regulations for the area were changed. OR

□ 51. While the mental institution was petitioning for a permit, zoning regulations for the area were changed.



Usage: Writing Tips


- Affect/effect
- Principal/principle
- Imply/infer
- It's/its
- Who/whom


Usage

- **affect** (verb) “to influence”
- **effect** (verb) “to bring about”
- **effect** (noun) “the result”

- 52. Crying will not affect the judge; a good argument is more likely to have the desired effect. (affect as a verb; effect as a noun)
- 52. The mediator successfully effected an agreement between the two brothers. (effect as a verb)

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- **principal** (adjective) “main” or “primary”
 - **principal** (noun) “main or head person”
 - **principle** (noun) “standard,” “rule,”
“doctrine”
 - 53. The principle of negligence is well founded in the law; the principal issue in this case is whether the defendant acted carelessly.

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- **imply** “to indicate, suggest, express indirectly”
 - **infer** “to deduce, conclude, gather”
 - Another way to look at this: You “imply” something when you are the communicator; you “infer” something when you are the recipient of the communication.
 - 54. The realtor implied that there was another buyer; my client inferred from the advertisement that the property had beach access.

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- **It's/Its.** The simple rule is as follows: if you mean "it is" or "it has," use "it's" with an apostrophe. Otherwise, always use "its."
 - 55. The defendant said, "Its true. I lied."
 - 55. The defendant said, "It's true. I lied." (or "It is true. I lied.") (correct)
 - 56. The president of the company explained it's accounting policies.
 - 56. The president of the company explained its accounting policies. (correct)

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- **Who/whom:** Use **who** in most subject positions; use **whom** in most object positions. Note: the subject is the person doing the action in the verb; the object is the person receiving the action.
 - Try turning the clause in which who or whom appears into a more straightforward sentence, and substitute a personal pronoun for who or whom. If the correct substituted pronoun would be “he,” “she,” or “they,” use **who**; if the substituted pronoun would be “him,” “her,” or “them,” use **whom**.
 - 57. The lawyer represented a man who he thought was guilty. (The lawyer thought **he** was guilty, so **who** is correct.)
 - 57. The man whom the lawyer represented was guilty. (The lawyer represented **him**, so **whom** is correct.)
 -

And one spelling word

- The correct spelling is **judgment**. Do not make the mistake of spelling it “judgement.”

Additional Resources

- ❑ Chapters 8 and 9 of *Just Writing* (and the glossary of usage in the back of the book) include further information and examples.
- ❑ OR you can review the Texas Law Review Manual on Usage & Style if you have it.
- ❑ Don't forget to review the writing tips and take the practice quizzes on TWEN.
- ❑ If you have any questions, please let me know.