

# The Scrivener: Modern Legal Writing



## Mooring Modifiers

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Readers can be lost at sea if your writing is foggy about what words or ideas are connected to others. Effective writing requires that every modifier be clearly moored to exactly what it is intended to describe, rather than some other word or idea. Free-floating modifiers risk conveying meaning that is, at best, ambiguous or, at worst, downright contrary to the drafter's intent.

In addition to their primary components of subject and predicate,<sup>1</sup> most sentences also contain secondary components called "modifiers." Modifiers can be a single word—such as an adjective or adverb—or they can be phrases or clauses that describe or define another modifier or one of the primary components.<sup>2</sup>

In the English language, the primary parts of a sentence have fairly fixed locations. However, the placement of modifiers is more flexible. Sophisticated writers manipulate the placement of modifiers within a sentence to emphasize some and de-emphasize others.<sup>3</sup> This shuffling of words must be done with care, however, because in English the order of words within a sentence can significantly affect the meaning.

*Example:* My client discussed your proposal to fill the drainage ditch with his partners.<sup>4</sup>

In several languages other than English, adjectives have endings to signal their relationship to the nouns they modify. For example, in French, adjectives vary to reflect the number and gender of the nouns:<sup>5</sup> *belle vague*<sup>6</sup> (beautiful wave); *beau bateau* (beautiful boat); *belles vagues* (beautiful waves); *beaux bateaux* (beautiful boats). Yet, in English, the adjective "beautiful" is the same whether it refers to a wave or boat, or a number of waves or boats. Without these signals within the modifiers themselves, English syntax is especially sensitive to misplaced modifiers.

### DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: [duvivier@spot.colorado.edu](mailto:duvivier@spot.colorado.edu).

### The Squinting Modifier

A modifier problem categorized as a "squinting modifier" involves an adjective or adverb that floats mid-sentence.<sup>7</sup> It is ambiguous because it can glide to the right or left and be read to modify terms either before or after it.

*Example:* When he misuses words *frequently* the problem cannot be corrected.

"Frequently" is the squinting modifier here because it is unclear whether it modifies his misuse of words or the frequency of correcting such a problem. The ambiguity can be remedied by rearranging the sentence, by adding a comma, or by choosing clearer wording. Here are some illustrations of solutions.

*Solutions:*

*Different order:* The problem cannot be corrected when he misuses words frequently.

*Use of a comma:* When he misuses words, frequently the problem cannot be corrected.

*Different wording:* When he misuses words in many of his briefs the problem cannot be corrected.

### The Dangling Modifier

A dangling modifier usually occurs at the beginning of a sentence. Confusion arises because the modifier is not tied to any specific word or idea in the sentence.

*Example 1:* To argue intent, the defendant must not be mentally incapacitated.

*Example 2:* Assuming *arguendo* that the defendant was mentally incapacitated, he could not have formed the necessary intent.

These sentences are unclear because we do not know who is doing the arguing or assuming. Generally, an introductory clause modifies the subject of the sentence that immediately follows the clause.<sup>8</sup> However, in Example 1, the plaintiff rather than the defendant would be the party arguing intent. Likewise, in Example 2, the mentally incapacitated defendant is not the one making any assumptions for the sake of argument.

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To correct the ambiguity, make sure these modifying clauses are connected to the subjects.

*Solution 1:* To argue intent, the plaintiff must show that the defendant was not mentally incapacitated.

*Solution 2:* Assuming *arguendo* that the defendant was mentally incapacitated, we can prove that he could not form the necessary intent.

## Only Only

The word "only" is an especially pesky modifier that often floats loose from its moorings. Notice how the different location of "only" provides at least eight different meanings in the following sentence.

*Examples:*

Only the mailman said he was bitten by our dog yesterday.

The only mailman said he was bitten by our dog yesterday.

The mailman only said he was bitten by our dog yesterday.

The mailman said only he was bitten by our dog yesterday.

The mailman said he only was bitten by our dog yesterday.

The mailman said he was bitten only by our dog yesterday.

The mailman said he was bitten by only our dog yesterday.

The mailman said he was bitten by our only dog yesterday.

The mailman said he was bitten by our dog only yesterday.

Often, the best solution is to place the word "only" directly in front of the word to which it is attached. But even this placement of "only" immediately before the word it describes can create confusion in situations where it also could potentially modify the word or phrase it follows.

*Example 1:* Lessee shall use the vessel only for recreation.

*Example 2:* Shares are sold to the public only by the parent corporation.

The word "only" precedes the words "for recreation" in Example 1, so by the standard rule it should apply to the phrase "for recreation." But because "only" is adjacent to the word "vessel" as well, some readers may interpret the sentence to mean that the restriction "only" applies to the vessel. Is the use of the vessel restricted to use only for recreation? Or is it only the vessel that Lessee can use? Similarly, in Example 2, can shares be sold only to the public? Or can they be sold only by the parent corporation?

If all writers and readers followed the rule of placing "only" immediately before the idea it modifies, there would be no confusion. But enough readers are uncertain of the proper loca-

tion of "only" that you, as the writer, may need to isolate it in the beginning or end of the sentence so that it is adjacent to only one potential reference.

*Solution 1:* Lessee shall use the vessel for recreation only.

*Solution 2:* Only the parent corporation sells shares to the public.<sup>9</sup>

## Conclusion

Highlight key ideas by arranging your sentences for focused emphasis, but in so doing, be careful not to leave modifiers ambiguously at sea. As a general rule, moor every modifier by placing each as close as possible to the word or idea it modifies. With mid-sentence squinting modifiers that could float off in either direction, reorder or reword your sentences to bind the modifiers to their intended reference. At the start of sentences, be sure that no loose introductory modifiers are dangling. Finally, make sure to anchor the word "only" directly before the word it is intended to modify. When this ambiguity is out of the way, your meaning can come sailing through.

## NOTES

1. The "predicate" is "[t]he part of a sentence or clause that expresses something about the subject, consisting of a verb and often including objects, modifiers, or complements of the verb." *The American Heritage Dictionary* 976 (Boston, MA: Houghton Mifflin Co., 2d college ed., 1985).

2. Shapo, *Writing and Analysis in the Law* 167 (Westbury, N.Y.: Foundation Press, 3d ed., 1995).

3. DuVivier, "Proper Words in Proper Places," 24 *The Colorado Lawyer* 27 (Jan. 1995).

4. Example from Wydick, *Plain English for Lawyers* 49 (Durham, N.C.: Carolina Academic Press, 4th ed., 1998).

5. Ancient Greek goes even further. The declension of both nouns and adjectives signifies a word's case or syntactic relationship in a sentence. Thus, by checking the ending or suffix, you could tell whether a word was the subject (subjective form), object (objective form), or a possessive (genitive form). Similarly, the adjective's endings would correspond to the case of the noun.

6. Both the English adjective "vague" (meaning not clearly expressed) and the French noun "la vague" (an ocean wave) come from the same Latin root: "vag(us)" (wandering).

7. Ray and Ramsfield, *Legal Writing: Getting It Right and Getting It Written* 170 (St. Paul, MN: West Publishing Co., 2d ed., 1993).

8. *Id.*

9. Examples from Wydick, *supra*, note 4 at 50.

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