

The Scrivener: Modern Legal Writing



The Common Comma: Part I



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The comma is the most frequently used punctuation mark. Unfortunately, the comma is also the most frequently *misused* mark.¹

Commas create a pause within the body of a sentence. The two main schools of thought on comma usage are (1) the situation-based school and (2) the rule-based school. The situation-based school believes commas are the “throw pillows of grammar”²: writers should insert a comma here or there in a sentence as the situation demands. In this way, writers can use commas to influence meaning, flow or emphasis.

In contrast, the rule-based approach is more traditional. Under this approach, established rules determine the placement of commas according to the construction of the sentence. Sometimes, these rules are critical for clarity and meaning. More often, the rules simply provide a standard to determine what readers expect.

The advantage of the rule-based approach is that readers should be less distracted by commas that seem out of place. The disadvantage of the rule-based approach is that there are so many rules, it is difficult to remember all of them. This column and the next will address the most common comma rules.

Comma Rules Affecting Clarity and Meaning

Rule 1: Use a comma to set off an introductory phrase or dependent clause from the subject of the sentence so readers can find the subject easily. (If the introductory phrase consists of only a few words, the comma may be omitted if the meaning remains clear.)

Example (dependent clause): If a court finds a contract is unconscionable, it may refuse to enforce it.³

Example (introductory phrase): To establish economic duress, plaintiff must show three elements.⁴

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

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Examples (short introduction): First, the court addressed duty or First the court addressed duty.

Rule 2: Use a comma to avoid misreading or confusion.

Confusing Example (without comma): While we were eating the dogs escaped.

Clear Example (with comma): While we were eating, the dogs escaped.⁵

Rule 3: Use a comma to set off nonrestrictive phrases or clauses. (This rule will be addressed in more depth in the next column.)

Comma Rules Readers Expect

Rule 4: Use a comma before a coordinating conjunction (and, but, or, nor, for, yet) that connects independent clauses in a compound sentence.

Example: The defendant [subject] expressed [verb] a desire to change his plea, but [coordinating conjunction] his attorney [new subject] advised [new verb] him not to do this.⁶

Rule 5: Use commas for dates and locations. (But do not use commas between the month and the year only or when the date is written before the name of the month.⁷)

Examples: The land in Roswell, New Mexico, was surveyed on October 4, 1991, and purchased less than a month later.⁸

Other correct forms: We drove on July 3, 1995.

We drove on 3 July 1995.

We drove during July 1995.

Rule 6: Use commas to separate words, phrases or clauses in a series when they are not joined by a conjunction.

Example: He must execute the affidavit, complete the brief⁹ and file both with the court this afternoon.

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Rule 7: Use a comma between two or more adjectives of equal weight (coordinate adjectives) that modify the same noun. (To test whether the adjectives are coordinate, see if the phrase still makes sense when the adjectives are reversed or when the word "and" is used instead of the comma.)

Example: A tough, hard-swinging youngster from New York's working-class lower East Side tonight punctured the bubble of England's Aubrey Philpott-Grimes.¹⁰ (Note that "working-class" modifies "lower East Side," so the adjectives are not of equal weight and no comma is placed between them.)

Rule 8: Use a comma to set off an interrupting or transitional phrase.

Examples: Most economists agree that, in terms of equity, this income should be taxed.¹¹
The case is, however, a sample from that system.¹²
The plaintiff, despite warnings from his friends, jumped off the embankment.¹³

Rule 9: Use a comma to set off a direct quote in quotation marks. (In legal writing, however, we often blend quoted terms directly into a sentence without interrupting punctuation.)¹⁴

Correct Example for Dialogue (with comma): The judge said, "She killed him."

Correct Examples for Integral Words (without commas): The judge said "killed," not "stabbed." or The judge said that "she killed him."

Rule 10: Use a comma to indicate more information follows at the end of a sentence, such as examples or explanations.

Example: Privileges fall into the category of exceptions to a general rule, the rule of disclosure.¹⁵

Rule 11: Use a comma to indicate the omission of words that might be understood from the context.

Example: My father had auburn hair; my brother, carrot red.

NOTES

1. Oates, Enquist and Kunsch, *The Legal Writing Handbook* 773 (Boston, MA: Little, Brown & Co., 1993); Tarshis, *Grammar for Smart People* 96 (New York, N.Y.: Pocket Books/Simon & Schuster, Inc., 1992).

2. Tarshis, *supra* note 1 at 93.

3. Example from Shapo, Walter and Fajans, 3rd ed., *Writing and Analysis in the Law* 339 (Westbury, N.Y.: Foundation Press, 1995).

4. *Id.*

5. Example from Faulk and Mehler, *The Elements of Legal Writing* 70 (New York, N.Y.: MacMillan, 1994).

6. Example from Ray and Ramsfield, 2d ed., *Legal Writing: Getting It Right and Getting It Written* 61 (St. Paul, Minn.: West Publishing, 1993).

7. See, e.g., Ray and Ramsfield, *supra* note 6 at 61; Neumann, 2d ed., *Legal Reasoning and Legal Writing* 394 (Boston, MA: Little, Brown & Co., 1994).

8. Example from Oates, Enquist and Kunsch, *supra* note 1 at 775.

9. Many writers, perhaps a majority, will use a comma—the serial comma—before the conjunction in a series. Use of this comma seems to be the conventional choice. See, e.g., Shapo, Walter and Fajans, *supra* note 3 at 340 ("a comma before the conjunction connecting the last element can clarify the number of units you have in the series and their proper division") and Ray and Ramsfield, *supra* note 6 at 62. In contrast, many newspapers and magazines, including *The Colorado Lawyer*, omit the serial comma. Its omission saves space and represents an example of "open punctuation." The concept of open punctuation—"using only as much punctuation as is necessary to make the meaning clear"—seems to be gaining acceptance. Oates, Enquist and Kunsch, *supra* note 1 at 777.

10. Example from Newman, *Sunday Punch*, quoted in *The New York Public Library, Writer's Guide to Style and Usage* 250 (New York, N.Y.: Harper-Collins Publishers, Inc., 1994).

11. Example from Ray and Ramsfield, *supra* note 6 at 60.

12. *Id.*

13. *Id.*

14. The Harvard Law Review Association, *The Bluebook, A Uniform System of Citation* 42-45 (Cambridge: Gannett House, 15th ed. 1991).

15. Example from Ray and Ramsfield, *supra*, note 6 at 61.



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