

LED 607 LEGISLATIVE STYLE, SYNTAX AND EXPRESSION



NATIONAL OPEN UNIVERSITY OF NIGERIA

**COURSE
GUIDE**

**LED 607
LEGISLATIVE STYLE, SYNTAX & EXPRESSION**

Adapted From: Commonwealth of Learning

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Introduction

LED: 607 lay the foundation of legislative drafting skills. It is concerned with the basic question of how to compose individual legislative sentences and how to apply a good style.

In the Course, Introduction to Legislative Drafting (LED: 601), we saw that Commonwealth practice in this regard tends to follow similar conventions that have their origins in 19th century English practice. In that Course too, we considered the objectives that drafters should have in mind in composing legislation.

In Modules 1 to 3 of this course, we concentrate on how to select and express individual sentence components so as to produce legislative sentences that are consistent with those conventions. We pay particular attention to sound legislative syntax, including punctuation, and how to avoid errors and poor practices in expression that may put your drafts into question.

In Module 4 we work at questions of style, that is, how to choose forms of expression which enable you to achieve the various drafting objectives most successfully. In the subsequent Courses we look at ways of linking these together and structuring them to produce a complete and coherent legislative document.

Course Aim

This Course is designed to enable you to develop an approach to writing legislative sentences with which you are comfortable and that suits your preferred way of working.

Course Objectives

By the end of this Course, you should be able to:

- (i) Apply the basic principles of legislative syntax and expression to the writing of legislative sentences;
- (ii) Comply with standard drafting conventions when punctuating legislative sentences;
- (iii) Compose simple legislative sentences that are unambiguous and free from common errors of expression;
- (iv) Convert simple instructions into legislative sentences that are comprehensive and clear;
- (v) Apply a range of stylistic devices in composing legislation that will contribute to its effectiveness and clarity;

- (vi) Begin to develop a drafting style within the conventions prevailing in Nigeria.

Working through this Course

To complete this Course, you are advised to read the study units, read recommended books and other materials provided by NOUN. Each unit contains Self Assessment Exercises, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course, there is a final examination. The course should take you about 18 weeks to complete. You will find all the components of the course listed below. You need to allocate your time to each unit in order to complete the course successfully and on time.

Course Materials

The major components of the course are:

1. Course guide
2. Study units
3. Textbooks
4. Assignment File
5. Presentation schedule

Study Units

We deal with this Course in 17 (seventeen) study units compressed into 4 (four) Modules as follows:

MODULE 1

Unit 1	How to compose legislative sentences
Unit 2	Types of legislative sentences
Unit 3	The principal subject
Unit 4	The principal predicate
Unit 5	Choosing the appropriate Auxiliary
Unit 6	Predicate modifiers & Context clauses

MODULE 2

Unit 1	Punctuating Legislation I
Unit 2	Punctuating Legislation II
Unit 3	Use of Capital Letters

MODULE 3

- Unit 1 What can go wrong with subjects?
- Unit 2 What can go wrong with verbs?
- Unit 3 What can go wrong with modifiers?

MODULE 4

- Unit 1 General Considerations
- Unit 2 Developing a good legislative style
- Unit 3 How to make legislation more comprehensible & concise
- Unit 4 How to make legislation complete, consistent & certain
- Unit 5 Should we draft in a gender-neutral style?

Each study unit consists of one week's work and includes specific objectives; directions for study, reading material and Self Assessment Exercises (SAEs). Together with Tutor Marked Assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the Course.

We have included a large number of Example and Self Assessment Exercises (SAEs). These have been selected to bring out features of central importance. You will gain immeasurably by giving ample time to the SAEs, and by comparing your efforts with the relevant Answer Box and then drawing the lessons from the exercise. We do not expect you to come up with answers that are identical with ours. These exercises provide an opportunity to put in practice what has been described in the text and then *evaluating* your performance. This will not only tell you whether you have fully grasped the particular technique, but it will serve to confirm it. If you are not happy with your effort, ask yourself what was missing; then rework the passage in the text and revise your exercise to take account of the approach demonstrated in the answer.

You may find it helpful to read the text of a unit fairly quickly before working the examples and exercises. This will give you a general overview of the whole topic, which may make it easier to see how individual aspects relate to each other. If you break off study of a Unit before it is completed, in the next study session remind yourself of the matters you have already worked on before you start on anything new, to maintain the continuity of learning.

Textbooks and References

Certain books have been recommended in the course. Each study unit provides a list of references. You should try to obtain one or two for your general reading.

Assessment

There are two aspects of the assessment of this course; the Tutor Marked Assignments and a written examination. In doing these assignments, you are expected to apply knowledge acquired during the Course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the *Assignment file*. The work that you submit to your tutor for assessment will count for 30% of your total score.

Tutor Marked Assignment (TMA)

There is a Tutor Marked Assignment at the end of every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best 3 performances will be used for assessment. The assignments carry 10% each.

When you have completed each assignment, send it together with a (Tutor Marked Assignment) form, to your tutor. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension.

Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The duration of the final examination for LED 607 – Legislative style, syntax & expression, is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self- assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your Self Assessment Exercises and Tutor Marked Assignments before the examination.

Course Score Distribution

The following table lays out how the actual course marking is broken down.

Assessment	Marks
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments, marked out of 10% Totaling 30%
Final examination	70% of overall course score
Total	100% of course score

Course Overview and Presentation Schedule

Module 1	Title of Work	Weeks Activity	Assessment (End of Unit)
	Course Guide		
Unit 1	How to compose legislative sentences	1	Assignment 1
2	Types of legislative sentences	1	Assignment 2
3	The principal subject	1	Assignment 3
4	The principal predicate	1	Assignment 4
5	Choosing the appropriate auxiliary	1	Assignment 5
6	Predicate modifiers & Context clauses	1	Assignment 6
Module 2 Unit			
1	Punctuating Legislation I	1	Assignment 7
2	Punctuating Legislation II	1	Assignment 8
3	Use of Capital Letters	1	Assignment 9
Module 3 Unit			
1	What can go wrong with subjects?	1	Assignment 10

2	What can go wrong with verbs?	1	Assignment 11
3	What can go wrong with modifiers?	1	Assignment 12
Module 4 Unit			
1	General Considerations	1	Assignment 13
2	Developing a good legislative style	1	Assignment 14
3	How to make legislation more comprehensible & concise	1	Assignment 15
4	How to make legislation complete, consistent & certain	1	Assignment 16
5	Should we draft in a gender-neutral style?	1	Assignment 17
	Revision	1	
	Examination	1	
	Total	18	

How to get the most from this Course

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, your study units provide exercises for you to do at appropriate times.

Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self Assessment Exercise as you come to it in the study unit. There will be examples given in the study units. Work through these when you have come to them.

Tutors and Tutorials

There are 12 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress, and on any difficulties you might encounter and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone or e-mail if you need help. Contact your tutor if:

1. You do not understand any part of the study units or the assigned readings;
2. You have difficulty with the self assessment exercises;
3. You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

Summary

This Course is premised on the assumption that you thoroughly master these Modules. You should allocate plenty of time to each Unit. They almost certainly contain many new ideas and at some points they will require your close concentration. You may find that you have to go over the ground of some parts more than once, even several times, in order to become conversant and then comfortable with what they require. Complete each Module before you move to the next.

The units in these modules are not distinct; treat them as each throwing light on each other and so be prepared to look back at matters already considered to see how the units inter-relate.

We wish you success with the Course and hope that you will find it both interesting and useful.

**MAIN
COURSE**

Course Code:	LED 607
Course Title:	Legislative Style, Syntax & Expression
Adapted From:	Commonwealth of Learning
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MODULE 1 HOW DO WE COMPOSE & EXPRESS LEGISLATIVE SENTENCES?

Unit 1	How to compose legislative sentences
Unit 2	Types of legislative sentences
Unit 3	The principal subject
Unit 4	The principal predicate
Unit 5	Choosing the appropriate auxiliary
Unit 6	Predicate modifiers & Context clauses

UNIT 1 HOW TO COMPOSE LEGISLATIVE SENTENCES

CONTENTS

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	How to begin the process of writing a legislative sentence
3.2	Guidelines to help us get started
3.3	The basic components of a legislative sentence
3.4	How to decide on the components of a legislative sentence
4.0	Conclusion
5.0	Summary
6.0	Tutor Marked Assignment (TMA)
7.0	References/Further Readings

1.0 INTRODUCTION

Trainee drafters are often puzzled how to begin writing a legislative sentence, especially as the same requirements can be provided for in more than one way. This Unit aims to help you get started on the task, in particular we suggest an approach for selecting the components.

In this unit, we are only concerned with writing individual sentences. We do not consider how to prepare for the drafting of the full instrument. That question involves wider issues (and is dealt with separately in the course on Legislative Structure.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Find a way to start on a legislative sentence that suits you; and
- (ii) Begin to develop a personal approach to writing legislative sentences.

You will find it helpful first to revisit the discussion about *Coode's principles of legislative syntax* considered in the course on *Introduction to Legislative Drafting* (LED: 601).

You should find it possible to complete this unit in one study session. The Unit asks you to think about the way you usually write formal documents and how you might adapt your present writing approach to legislation. Give careful thought to this. Your approach to legislative writing will be easier to develop if you are building on your present practices.

3.0 MAIN CONTENT

3.1 How to Begin the Process of Writing a Legislative Sentence

The question of how to start individual sentences is one to which experienced drafters rarely give thought, having long ago established a largely subconscious routine for themselves. Trainee drafters, on the other hand, often find difficulty in deciding what to write down first. For them, beginning involves a much more conscious effort.

Let us make two preliminary points:

(i) Every One Develops Their Own Personal Approach

Every drafter in due time discovers ways of getting started that most suit his or her personality. All this Course can do in this respect is to offer some guidelines to help you find the ways that best suit you. The more you write the more the problem of how to begin recedes. By analogy, you may recall that, when learning to ride a bicycle or to swim, the problem of how to start was pre-eminent in your mind - until you in fact were riding or swimming. After we have acquired the first basics, we give the matter very little further thought.

(ii) You Already Have a Personal Approach

You already have much experience in writing a wide range of sentences for other types of documents. Most people tend to see legislative drafting as a different form of writing with its own distinct syntax. In fact, it involves standard writing practices and follows standard rules of grammar. Yet, in comparison with most other forms, for example, the letters, memoranda, fiction, essays or monographs, legislative writing:

- is more formal, and
- is subject to more restrictive conventions.

You have already established a largely subconscious routine for yourself for getting started on sentences in a range of other documents. What you need to do on this Course is to work out how to incorporate into your present approach to writing the distinctive features and conventions that apply to legislative sentences.

3.2 Guidelines to Help Us Get Started

For any form of writing, there are four essential processes involved:

1. **knowing what you want to say ("analysis");**
2. **deciding how you want to express what you want to say ("design");**
3. **writing down what you have decided ("composition");**
4. **checking what you have written against your analysis and design ("scrutiny")**

When working on the *complete document*, different people approach these processes in different ways. For example:

- (i) some are very systematic, beginning each of these stages only when the previous one has been completed.
- (ii) others like to tackle the first three together, jotting down ideas for what needs to be said, how to say it and writing out some of what will appear in the first draft.
- (iii) yet others start writing at apparently random points, working on the other processes as they go along.

However, when writing *individual sentences*, we cannot proceed quite so freely.

Analysis first

We cannot really begin on a sentence until we have largely completed the process of analysis. Before we can write, we need to know what to write about. Whether a single sentence or a group of sentences is required and what you are to deal with in each sentence may, e.g.:

- (i) result from your earlier decisions about the detailed contents of the document, or
- (ii) may be suggested by the matter in a sentence which you have just completed.

We must have a clear idea of what we want to say in the particular sentence (or group of linked sentences) before we can write anything.

Then Design and Composition

Thereafter, our approach to design and composition may depend upon our personality. For example:

- (i) if by nature you are a *planner* (you like first to think out your way forward), you may prefer to work out (i.e. design), and make notes on, how to express that idea before you compose anything;
- (ii) if you are an *executive* (you like to dive in straight away), you may prefer to start at once on composition, trying different designs for the rule until you settle on one which meets the case satisfactorily;
- (iii) if you are a *conceptualist* (you like to work out key ideas before you begin), you may prefer to work out a central element of the sentence first, and then design and compose around that until the contents are fully provided.

No one approach is better than another. The best is the one that works for you. But whatever your preferred approach to design and composition, it must always take fully into account:

- (i) the basic principles of legislative expression; and
- (ii) the ways in which particular types of rules are written in Nigeria.

In other words, you must know how legislative sentences are conventionally written; this is the common ground upon which all approaches to design and composition must be built.

SELF ASSESSMENT EXERCISE 1

Take a few minutes to consider how *you* prefer to write difficult sentences. Do you plan, dive straight in or work out the key concepts first? Or have you some other approach? Make a note of your conclusions.

3.3 The Basic Components of a Legislative Sentence

The basic principles of legislative expression still bear the imprint of George Coode's recommendations. This is particularly true for legislative syntax (i.e. the grammatical principles upon which legislative sentences should be written). You can take a conscious lead from these principles in developing your start-up approach.

SELF ASSESSMENT EXERCISE 2

Remind yourself of the central elements of Coode's approach, and the subsequent development of them, by looking again at **Unit 5 of LED: 601** (*History and development of legislative drafting*).

You recall from our earlier analysis that most legislative sentences typically have:

- (i) **core components** (a legal person as *grammatical subject* and a *predicate* stating the main legal effect of the rule on the subject);
- (ii) **optional components** (typically, context clauses that establish the *circumstances* or *conditions* in which the rule in the sentence has its effect).

However, today greater use is made than in Coode's day of sentence expressed as a **declaration** of the law, rather than to direct the behaviour of persons. Such sentences enable you to *state* a legal proposition or principle, the purpose or application of a rule, the meaning of an expression, the consequences of behaviour, and the like. Unlike a Coode-style sentence, the subject is often not a legal person and the verb in the predicate does not contain an auxiliary that gives an instruction as to behaviour. Instead, typically, it uses a wider range of subjects, including inanimate subjects and the present tense to declare what the law *is* on a particular matter.

Example Box 1

(2) *Subsection (1) does not apply* where the person buys or attempts to buy intoxicating liquor at the request of a police officer who is acting in the course of duty.

(4) *A notice of cancellation of a licence has effect* as soon as it is served by an authorized officer on the licence holder.

(1) In this Act, *[the expression]* “public place” means a place to which the public or a section of the public has access, on payment or otherwise, as of right or with express or implied permission.

3.4 How to Decide On the Components of a Legislative Sentence

We need to ask ourselves a number of questions about the nature of the legal rule we are to write, the answers to which will point us towards the sentence components. When writing sentences that direct behaviour, Coode's analysis suggests a framework for these questions. The answers may help you carry out the task of composing the sentence, at least while you are in the initial stages of acquiring experience.

In thinking of the questions to ask, you may find the following verse a useful reminder:

*I keep six honest serving men.
(They taught me all I knew).
Their names are What and Why and When
And How and Where and Who.*

- Rudyard Kipling (1902).

The diagram on the following page shows how we may approach the task of deciding on the sentence components in 6 stages. This may suggest that the process is complex and protracted. That is rarely the case for long. But at this stage of your training, it may help to have a structured way to perform this task. It quickly becomes a routine and, in practice, is much less formal than this may suggest.

Stage 1: WHY?

Before you start writing, you must have a broad notion of what you want to say in the particular sentence. That requires a clear idea of what the rule in the sentence is to achieve. Asking oneself what a sentence on the

particular topic is to bring about, in the scheme of the Bill; helps establish what the sentence must cover.

- Be clear for what *purpose* this sentence is to be enacted.

Stage 2: WHO?

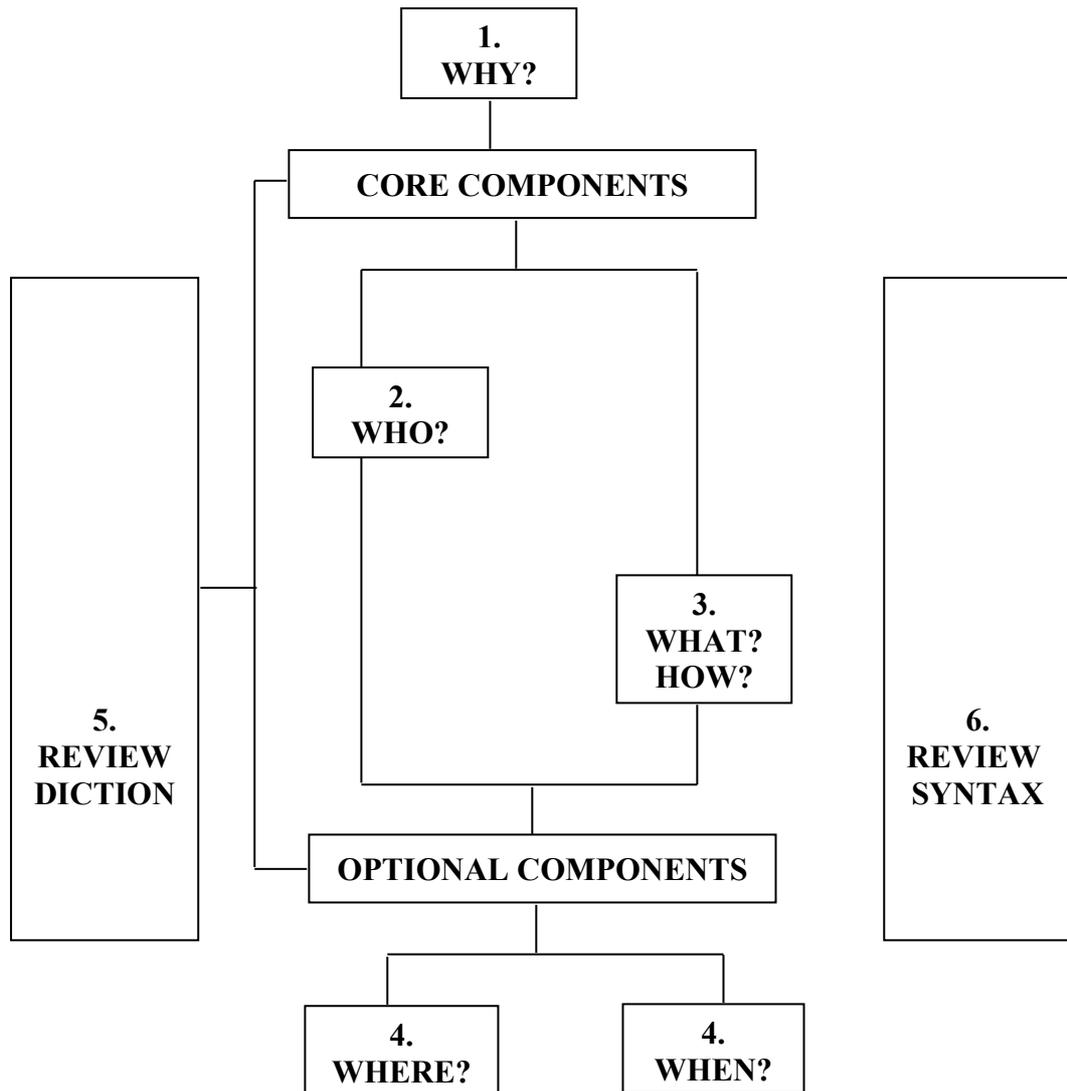
Typically, where the rule is directed to a legal person, that person, in the singular, should be the grammatical subject of the principal predicate. Where you are drafting a declaratory sentence, the thing that the sentence is about should be made the grammatical subject.

- Identify, in precise terms, the *legal person* who, or thing which, is to be the subject of the rule, and make that person or thing the grammatical subject of the principal predicate.

Stage 3: WHAT and HOW?

The principal predicate should state how the grammatical subject is to be affected by the rule, e.g. whether the legal person is to be vested with a right, power, privilege, duty, or liability and the nature of it. In such a case, this is expressed by a verb with the appropriate auxiliary (e.g. "shall" or "may"). Where the sentence is declaratory, choose a verb that states the legal effect required.

- Choose *a verb* for the principal predicate, with the correct *auxiliary*, if required, and any grammatical *object* that it controls, to state what is required of the subject or how the subject is affected by the rule.



Stage 4: WHERE and WHEN?

The principal predicate will usually be modified by a clause or phrases that place it in a particular context or fact situation. Circumstances that trigger off the rule should also be stated.

- Add *dependent clauses or phrases* that indicate the context in which the rule operates or the events that cause it to take effect.

You should also consider whether:

- there are any territorial limits to the rule or any qualifications to indicate the place or places where it is to have effect;

- (ii) the rule, or any elements in it, is to be subject to some requirement as to timing (e.g. whether it must be performed within, before or after a stated time or event).
- Add phrases that indicate any qualifications as to *place or time*. If these are detailed or significant, consider dealing with them in their own sentences.

Stage 5: REVIEW DICTION

If the legal rule is to be precise and exact, expressions you use must be precise and the modifiers you attach to them, in the principal predicate and in dependent clauses, must be exact.

- Revise the components of the sentence, by replacing, adding or removing nouns or modifiers until the rule is *accurately stated*.

Stage 6: REVIEW SYNTAX

Your initial word order in the sentence may obscure the communication of the rule or may produce ambiguities (e.g. uncertain modifiers).

- Reconsider the *word order* in the sentence, and re-arrange the components to produce the version which is easiest to read and fully intelligible and is without ambiguity.

Few drafters proceed consciously and systematically through these six stages. But all the matters covered in those stages need to be dealt with in the course of composition. However, as a drafting newcomer, you may find it helpful to follow the six stages more deliberately. The process becomes routine and automatic the more sentences you write. You can adapt them to your preferred approach to writing by deciding at which points they should be carried out.

- Keep these questions in mind when you scrutinise the contents of a draft sentence.

4.0 CONCLUSION

In conclusion, you have already established a largely subconscious routine for yourself for getting started on sentences in a range of other documents. What you need to do is to work out how to incorporate into your present approach to writing the distinctive features and conventions that apply to legislative sentences.

5.0 SUMMARY

In this unit, you have considered the process of writing legislative sentences and various guidelines. You should now have a better idea of what is involved in writing different kinds of legislative sentences and, in general terms, how you might go about the task. At this stage you can expect to have gained from this unit an initial working idea of how to get started. Be content for the moment if you have acquired a clearer impression of the *general* way you can begin to write a legislative sentence.

6.0 TUTOR MARKED ASSIGNMENT

An Act is being prepared permitting "citizen's arrests" (i.e. arrest by members of the public) for indictable offences (i.e. serious offences).

Write a simple legal rule, in one sentence, that requires those who arrest people on suspicion of committing an indictable offence to hand them over to the police. Follow the six stages systematically.

7.0 REFERENCES/FURTHER READINGS

Driedger E.A, (1976) *The Composition of Legislation; Legislative Forms & Precedents*, Ottawa: Dept of Justice.

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

UNIT 2 TYPES OF LEGISLATIVE SENTENCES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 How drafters write particular kinds of sentences
 - 3.2 Are there different ways to express the same rule?
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

The sentences in this unit demonstrate different kinds of legal rules; you will be asked to draft sentences of these kinds throughout the Course. You may find it helpful to note the differences between them, and to look back at the examples when you have need to write a sentence of a kind illustrated.

Another factor that makes starting easier is familiarity with the way other drafters write particular types of sentence. There are two aspects of this:

- (a) Drafters tackle particular types of rules in conventional ways. If you need to write any such rule, it is helpful to be aware of how other drafters have done it.
- (b) English is such a flexible language that it is perfectly possible to write the same rule in several different ways. It can be very helpful to be aware of alternative ways in which drafters may treat the same material.

Both aspects:

- (i) widen the choice of approach open to you;
- (ii) enable you to focus more quickly on the possible options for expressing a particular rule. Different approaches may be needed to achieve continuity with other sentences.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Make it a point of duty to read as much legislation as you can during your training; and
- (ii) Pay special attention to sentence treatment, as well as to the substance of the rule.

3.0 MAIN CONTENT

3.1 How Drafters Write Particular Kinds of Sentences

The following are examples of the way in which simple sentences can give effect to particular kinds of rules. Faced with the task of producing a rule for any of these purposes, you may find the precedent suggests a way to start. In each sentence the verb is highlighted; it is this which produces a distinctive result.

1. Conferring a right

A person employed in the public service of Nigeria *is entitled to receive* a pension as provided by law.

Note: the highlighted words are often replaced by "*shall receive*". This sentence uses terminology more commonly adopted to create a duty. But the sentence is not primarily concerned with the duty-bearer. The formula in the example puts the emphasis on the subject's claim to a pension that must be honoured.

2. Conferring a power

The President *may issue* a Proclamation of a State of Emergency in Nigeria, or in a part of Nigeria, by an instrument published in the *Gazette*.

3. Conferring permission

A person holding a driving license *may drive* in any part of Nigeria.

4. Conferring a privilege

The President *may not be proceeded against* in any court for any act done in the performance of the functions of the office of President or in a personal capacity during the term of office.

5. Imposing a duty

The President *shall transmit* copies of the instrument containing the Proclamation of a State of Emergency to the Senate President and the Speaker of the House of Representatives immediately after it is published under subsection (1).

Note: The importance of the duty emphasised by drafting as a command. Some jurisdictions use the word "must" rather than "shall".

6. Creating a liability

A person who fails to answer a witness summons *is liable to be proceeded against* for contempt of court.

Note: the highlighted words are often replaced by "may be proceeded against".

7. Creating an administrative requirement

An allegation that a public officer has contravened the Code of Conduct for Public Officers *is to be made* in writing to the Permanent Secretary of the Civil Service Commission.

Note: this rule, also creating a duty, directs persons as to the proper procedure; noncompliance is unlikely to have any automatic legal consequences. Again, "must" is an accepted alternative. Many jurisdictions still use "shall" rather than "is to".

8. Creating a prohibition

No person under the age of 16 years *shall take part in* any gaming, unless -

- (a) the gaming takes place in a private dwelling-house; and
- (b) the participation is with the permission of a parent or guardian of that person.

The sentences that follow are written in the declaratory form.

9. Creating an offence and penalty

A person who escapes from lawful custody, or assists another to escape, or to attempt to escape, from lawful custody, *commits* an offence and *is liable* to imprisonment for 7 years.

10. Declaring legal consequences

A person subject to air-force law who is assigned to serve on board a Nigerian Navy ship remains subject to air-force law.

11. Declaring legal effects

The presence or participation of a person not entitled to be present during, or to participate in, the proceedings of the Legislature *does not* invalidate those proceedings.

Note: this rule clarifies, rather than stipulates, the legal effects of the behaviour.

12. Providing a definition

In this Constitution, "sitting day" *means* a day on which Parliament actually meets.

13. Providing an explanation or interpretation

In this Act, discrimination *refers* to the treatment of different persons in different ways wholly or mainly because of their different races, places of origin, gender, political opinions or religious beliefs, with the consequence that one such person receives more favourable or less favourable treatment than another such person.

14. Stating purposes

The objects of this Part *are to protect* the fundamental rights and freedoms of everyone in Nigeria as set out in this Part, subject to the limitations on them as are prescribed by law that:

- (a) are designed primarily to protect the rights and freedoms of other persons; and
- (b) are reasonably justifiable in a democratic society.

15. Stating the application of rules

This Part *applies* to any person who holds an office in the public service of Nigeria.

16. Constituting a body

An office of Attorney-General *is established* by this section as an office in the public service of Nigeria.

17. Making a rhetorical statement

The Federal Republic of Nigeria *is* a Sovereign State governed by the principles of democracy, social justice and respect for human dignity.

The State of Nigeria *shall actively promote* a social order that secures the ideals of Freedom, Equality and Justice.

Note: statements of this kind, rarely found outside Constitutions and legislation of that kind, are likely to have more political than legal significance.

3.2 Are There Different Ways To Express The Same Rule?

It is often possible to state exactly the same rule in a variety of ways. Which to adopt is only partly a matter of personal style. But:

- (i) our choice should take account of the house-style;
- (ii) one mode may be better than another for emphasising a particular feature of the rule or to make it easier to connect the theme of the sentence with sentences that come before or after it. (The relationship of one sentence with other sentences is dealt with in the next Course (*Legislative structure*)).

Example Box 1 demonstrates how the same rule can be written in 5 different ways.

Example Box 1

1. Where a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in Nigeria.
2. A person from whose lawful custody another person escapes or is rescued may immediately pursue and arrest that person in any place in Nigeria.
3. A person may immediately pursue and arrest, in any place in Nigeria, a person who escapes or is rescued from his or her lawful custody.
4. A person having the lawful custody of another person may immediately pursue and arrest that person in any place in Nigeria if that person escapes or is rescued from that custody.
5. A person who escapes or is rescued from the lawful custody of another person may be immediately pursued and arrested by that person in any place in Nigeria.

4.0 CONCLUSION

In conclusion, simple sentences can give effect to particular kinds of rules. It is possible to state exactly the same rule in a variety of ways. Which to adopt is only partly a matter of personal style.

5.0 SUMMARY

In this unit, you have considered the types of legislative sentences. You should now be able to explain how drafters write particular kinds of sentences and the different ways of expressing the same rule.

6.0 TUTOR MARKED ASSIGNMENT

1. Complete the drafting project. This Drafting Project is in two Parts. Each Part requires you to draft one or more legislative sentences

PART 1

In this part you are asked to write a straight-forward legislative sentence on the following assumptions.

Background

1. The Criminal Procedure Code gives police officers powers to arrest persons without warrant in relation to specified categories of offences.
2. The interpretation section contains the following definition:

"arrestable offence" means an offence for which a police officer may arrest without a warrant.
3. The required way of dealing with those who commit a non-arrestable offence is to institute proceedings by complaint, on the basis of which a magistrate may issue a summons or a warrant for arrest.

Problem

4. To make a complaint against an offender, it is necessary to have personal information about that individual. But in many instances, proceedings cannot be instituted because the police officer involved has been refused such information by the offender.

Instructions

5. Draft a section that vests police officers with a power of arrest where such persons do not cooperate with an officer. You are not asked to provide for what happens *after* the arrest has been made, nor for the police officer to inform the arrested person of the reasons for the arrest.

(You may assume that is provided for under the Constitution).

Advice

6. First *analyse* the problem. The instructions give a general idea of what you will need to say, but they may not cover all the ground. Consider (as always with rules which restrict freedoms):
 - whether there should be any limits upon:
 - the circumstances in which this power may be used;

- the scope of the power;
 - in what respects the rule may require more detail in order to clarify, and give greater precision to, matters mentioned in the instructions;
 - whether there are additional situations arising out of the same circumstances when this power will be needed.
7. Secondly, sketch out the components of your legislative sentence, following the guidelines suggested earlier in **Unit 1**, to give effect to your analysis.
 8. Then, compose (and scrutinise) the first draft, following the principles of legislative expression.

PART 2

In this Part, you are asked to write and build upon the legislative sentence you completed in Part 1.

Instructions

1. You are asked to compose further provisions that are needed to follow up the rules in the sentence you have just drafted. These provisions are to contain the rules that state what must happen to a person arrested under this power.
2. In these provisions, you are asked to provide for the following:
 - if the required information is not obtained, the arrested person must be taken before a magistrate;
 - if the required information is obtained, the arrested person may not be kept in custody, but he or she must execute a bond before an appropriate police officer to appear before a magistrate, and may be asked also to give sureties;¹
 - if the bond is not executed or the sureties are not given, the arrested person must be taken before a magistrate.

¹ you may assume that there are already provisions dealing with the process for executing bonds and for the taking of sureties by the police.

Advice

3. First, complete the analysis of the instructions as before.

4. Secondly, decide how you intend to approach the task of composition and how the matters to be covered can be dealt with in the most concise way. For example -
 - will one sentence suffice or should there be more than one?
 - if there are to be several sentences, what matter should go in each?
5. Then, sketch out the components of your legislative sentence(s), following the guidelines suggested in **Unit 1**, to give effect to your analysis.
6. Last, compose (and scrutinise) the first draft, following the principles of legislative expression.
7. In composing your provisions, remember that they are to follow the first sentence you drafted for Part 1, and should therefore reflect the choice of terms used there.

7.0 REFERENCES/FURTHER READINGS

- Driedger E.A, (1976) *The Composition of Legislation; Legislative Forms & Precedents*, Ottawa: Dept of Justice.
- Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

UNIT 3 THE PRINCIPAL SUBJECT

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 How to select the grammatical subject of the sentence
 - 3.2 How to decide which legal person is to be the grammatical subject
 - 3.3 Factors that should influence the choice of terms for the subject
 - 3.4 How to express the subject
 - 3.5 How to choose the subject of declaratory sentences
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

In the remaining units of this module, we look in detail at ways of selecting and composing the components of legislative sentences, building on the first principles we outlined earlier on. We look at the three main components found in legislative sentences: the principal subject, the principal predicate and various kinds of sentence modifiers. The combination of these components produces the legislative sentence. The sentence components are treated separately to make their study easier. Of course, in composing a particular sentence, you cannot separate these features, as your decision in relation to one necessarily influences your decisions on the others.

In this unit, we focus on the principal subject. Typically, at the heart of a legislative sentence are a *principal subject* and a *principal predicate* which constitute the central elements of a legal rule. The subject is a *legal person*; it is that person's behaviour with which the rule is principally concerned. The predicate states how the behaviour or position of the legal subject is to be affected or makes a declaration about legal effects or consequences.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Apply the basic principles of legislative syntax and expression to the writing of legislative sentences; and
- (ii) Select, compose and combine the components of simple legislative sentences.

You may find it easier to break your study at the end of each part of this module, as there is much to be absorbed. If you do, remind yourself quickly of what you have learned in the earlier part before starting on the next.

This is one of the most important modules of the Course. Almost everything that you learn here will be called into use in your subsequent work. So give yourself ample time to master this material. Your later work will not only be made easier by having a sound grasp of the approaches and techniques examined, but it will enable you to make them part of your drafting routine. We do not expect that you will retain every item in your memory; be prepared to refer back to this unit when the occasion requires. But you should try to make yourself thoroughly conversant with every item and to have a clear understanding of what is called for.

3.0 MAIN CONTENT

3.1 How to Select the Grammatical Subject of the Sentence

The main body of rules in a Bill is concerned to influence human activity and affairs. So, the preponderant part has to be directed to those who have the *legal capability* to adjust their activities or affairs as the rules intend. In consequence:

- (i) the rules should be directed towards those whom the law recognises as having legal personality or standing, i.e. a *legal person*.
- (ii) we select from human beings, corporate bodies, statutory entities, and associations of persons recognised by law. Other living things, such as animals, should not be chosen, as they are not responsive to law.

- (iii) for each particular sentence we select the person, or class of persons, whose conduct or legal position is to be affected by its contents, to be the subject.

Typically the subject of a sentence is a *noun*, or a *pronoun*, that describes or refers to a precise legal person or class or classes of legal persons.

3.2 How to Decide Which Legal Person Is To Be the Grammatical Subject

Many legal rules simultaneously affect two categories of persons:

- (i) those upon whom they confer a benefit in the form of a right, power or privilege;
- (ii) those who can be affected by the exercise of another's right, power or privilege, by being made subject to a duty or a liability or a disability.

The rules can be written having either of these as the grammatical subject.

Example Box 1

The Minister may appoint such number of film censors as the Minister considers expedient.

Film censors are to be appointed in such numbers as the Minister considers expedient.

In the second version, the Minister's power of appointment has to be implied.

It is a matter of judgment in each case as to which to choose. But the following legal persons have a good claim to be made the grammatical subject of the sentence:

- (i) the person whose actions can be described in an active verb in the predicate.
- (ii) the person upon whom the responsibility for taking the action in the rule falls.
- (iii) the person who has the principal responsibility for the activity with which the sentence is concerned.
- (iv) the recipient of a new power or duty.

- (v) the person whose authority is created or extended.
- (vi) the persons whose activities are curtailed or regulated.

1. The Legal Person Whose Actions Can Be Described By An Active Verb

A sentence is generally more effective if expressed in the active, rather than in the passive. In a choice between two clearly identifiable legal persons, select as the subject the person whose required conduct can be written in the active voice.

Example Box 2

Compare the following. The second, in the active voice, is a more direct statement of the same rule.

Where a person is released on bail on the authority of a police officer, *the nearest magistrate shall be informed of the release by that police officer* as soon as reasonably practicable.

Where a person is released on bail on the authority of a police officer, *the police officer shall inform the nearest magistrate* of the release as soon as reasonably practicable.

2. The Legal Person upon Whom the Responsibility for Taking the Action in the Rule Falls.

The sensible focus of a sentence is the person who has to take the initiative under the rule.

Example Box 3

Compare the following. The second directs the rule to the person who will take the initiative in invoking it.

A person who is observed by a police officer committing a summary offence is liable to be arrested by the officer.

A police officer may arrest a person whom the officer observes committing a summary offence.

3. The Legal Person Who Has the Principal Responsibility for the Activity with Which the Sentence Is Concerned.

The person who has the function of dealing with matters of the kind mentioned in the sentence is likely to be a suitable subject.

Example Box 4

In a Bill that requires second-hand car dealers to hold a license, sentences concerned with the issue of the license should have the licensing authority as the grammatical subject.

4. The Recipient of a New Power or Duty.

If the aim of the sentence is to confer a function implementing an aspect of the legislative scheme, the person or persons who are to perform the function are likely to be the appropriate grammatical subject. It is generally unnecessary, and may not be possible, to identify the persons who may be affected sufficiently precisely for them to be made the grammatical subject.

Example Box 5

A rule conferring a power to search all aircraft landing in the country for drugs should be directed towards those who will use the power, rather than to the legal persons whose aircraft could be affected.

5. The Legal Persons Whose Authority Is Created Or Extended.

In provisions that determine the range and limits of the functions of specified persons or of those who derive their powers from them, sentences can be expected to focus on those persons, who should be considered as suitable grammatical subjects.

Example Box 6

A Bill regulating the prison system is concerned in the main with the extent and the exercise of the authority to detain individuals. Though the rules may be intended to protect those in detention, most sentences will be directed to the officials of the system whose functions are being regulated.

6. The Persons Whose Activities Are Curtailed Or Regulated.

Although the sentence may create a rule for the benefit of the general public or some class of persons, the grammatical subject should refer to those who have to govern their conduct by the rules, rather than the beneficiary of them.

Example Box 7

In a Prisons Bill, sentences prescribing the responsibilities of detainees will typically make those persons the grammatical subject.

Of course, these are guidelines only. Your decision as to the subject must be dictated by the needs of the particular sentence and the context of the sentences that surround it.

3.3 Factors That Should Influence the Choice of Terms for the Subject

In expressing the subject:

- 1) use terms that *precisely identify* the legal person comprising the subject;
- 2) typically, use the *singular*, so that the rule is seen to apply to each legal person. If the sentence has alternative subjects, each should be expressed in the singular.

Example Box 8

No trustee or receiver shall receive remuneration for providing a service under this Act.

- 3) bear in mind the *statutory context* in which the term is to be used. Since a legislative sentence is construed in the context of the language of the Act overall, and in particular the surrounding sentences:
 - (a) use the *same term* as you use elsewhere to express the *same class* of person;
 - (b) use a *different term* if you are referring to a *different class*;

- (c) if you need to indicate that your rule applies to precisely the same person as is referred to in a previous sentence, add appropriate linking words.

Example Box 9

(1) An executive officer ceases to hold office if convicted of an offence punishable by imprisonment for 12 months or more.

(2) An executive officer *ceasing to hold office under subsection (1)* is not entitled to receive superannuation under this Act.

The same result can be achieved by using the definite article for the subject of subsection (2):

(2) The executive officer is not entitled to receive superannuation under this Act.

- 4) bear in mind the *legal context* in which the term is to be used. The general law contains provisions that apply automatically to particular categories of legal persons. For example, it imposes privileges or disabilities upon certain classes of persons, as in the case of children in respect of the criminal prosecutions or the mentally incompetent in respect of certain kinds of civil transactions.

You need not choose a term for your subject specifically to exclude these persons from your sentence; that occurs by operation of law.

3.4 How to Express the Subject

Drafters express the subject in a wide variety of ways. The form of words that is most appropriate typically depends upon the *scope* of the rule. As you will have recognised, some of the following devices are interchangeable. Choose the term to describe the subject that best suits the structure of the sentence.

(i) A universal rule

In a sentence that applies to everyone, use:

- "a person";
- "any person", "each person", but *only if* emphasis is needed;
- "no person", in a negative rule, such as a prohibition.

Note: "person" is commonly given an extended meaning to cover non-human legal persons as well as individuals (cp. **Section 18(1) of Interpretation Act Cap. 192 LFN 1990**).

(ii) A rule directed to a class of persons

A sentence that applies to everyone belonging to a particular class of persons, typically, needs a precise noun (in many cases, one that has a recognised legal meaning).

Example Box 10

"court" (*an inanimate term used to refer to the judicial officers*);
 "Judge", "police officer", "owner", "trustee".

(iii) A Rule Directed To A Particular Office-Holder

In a sentence applying to a specific office-holder, use the title or name given to the office or to the body. Short labelling definition terms are frequently authorised by the Interpretation Act.

(iv) A Rule Applying To Limited Categories

In a sentence that applies to a *limited* group of persons, or to specific members of a class, who share a common characteristic, use the relevant universal or class term with the addition of an appropriate modification.

Example Box 11

a *convicted* person (= **adjective** added)

a police officer *above the rank of inspector* (= **prepositional phrase** added)

a trustee *acting through an agent* (= **participial phrase** added)

a person *who owns a dog* (= **relative clause** added).

(v) A Rule Applying With Exceptions

In a sentence that applies to everyone, or to everyone in a class, *except for specific persons*, use the relevant universal or class term with the addition of the appropriate qualification.

Example Box 12

Any person *other than a public officer*
 A trustee, *except a trust corporation*

(vi) A Rule Containing the Legal Person in the Context Clause

If the principal clause applies to a person mentioned in an earlier context clause in the same sentence, consider using a *pronoun* to refer back. But:

- the legal person must be precisely identified in the context clause;
- the pronoun must relate back to that legal person without ambiguity.

Example Box 13

When, in the course of a trial, *the court* has reason to believe that the accused is of unsound mind so as to be incapable of making a defence, *it* shall hold an inquiry into that matter.

Two practices may simplify the expression of a subject:

- (a) using a term for which a definition is provided (either by the Interpretation legislation or in your Bill).
- (b) using an application provision to indicate a class of persons to which the Bill or section or Part does or does not apply.

These devices are dealt with in detail in another Course.

Example Box 14**definition:**

2. (1) A trustee who sells property of a unit trust scheme at a discount commits an offence.

(2) In this section, "trustee", in relation to a unit trust scheme, means the person holding the property in question on trust for the participants in the scheme.

application clause:

12. References in this Part to "second-hand dealer" are to be understood as explained in this section.

Sentences in that Part using "second-hand dealer" as the subject would be read as explained by this section.

3.5 How to Choose the Subject of Declaratory Sentences

We have seen examples of declaratory sentences where the subject is not a legal person, but an impersonal noun. Typically, these sentences make statements about the law, rather than prescribing rules that direct behaviour. The subject of the sentence is the matter to which the statement attaches legal effects or consequences. This may be a thing or a legal term or one referring to a statutory feature.

SELF ASSESSMENT EXERCISE 1

We saw some examples in **Examples 9 to 15** in **unit 2** of this **Module**. You may find it helpful to look quickly at those again.

So when you are composing a sentence to make a legal statement, choose as the main subject the principal matter to which the legal statement relates.

1. Legal Statements That Have General Effect

If the rule in the sentence has a general legal effect that is to be universally recognised, no particular persons are specially affected, and so no readily identifiable subject can be stated. Such provisions are commonly used for stipulating procedures that are to be followed or their legal consequences.

Example Box 15

An original certificate that is signed by the maker and that complies in other respects with this section may be used in a trial or enquiry as prima facie evidence of the facts and opinions stated in it.

(i) Where the legal person is obvious

An *action or activity* can be made the subject if:

- (a) it is already referred to in an earlier sentence;
- (b) it can only be performed by specific legal persons already referred to in earlier sentence.

This is a useful device for providing for continuity between sentences in the same section, without repeating too many words. But make sure that there is no ambiguity as the legal persons whose action or activity is referred to.

Example Box 16

(1) No person shall carry on the business of dealing in second-hand motor vehicles unless that person holds a licence issued under this Act.

(2) *An application for a licence* is to be made to the local government council for the area in which the applicant proposes to carry on the business.

The highlighted words connect the sentence with the preceding one, and avoid the repetition of the legal person comprising its subject.

(ii) Where the Proposition Has Universal Application

An *action or activity* may also be made the subject if it must or may be performed by *anyone* falling within the terms of the rule. This too may be used in a sentence that is one of a series of sentences (e.g. in a section), when the action or activity is elaborated upon in the other sentences. The full context removes doubt as to who may be affected by the sentence.

Example Box 17

Gaming is lawful if, and only if, it is conducted in accordance with the conditions specified in this Act.

This sentence lays the foundations for an Act that provides a complete set of conditions that determine when gaming is lawful. It is clearly of universal application, though later sentences impose conditions that determine when particular persons may rely upon the authorisation.

(iii) Interpretation Provisions

If the sentence contains statements that explain how written legal rules or expressions are to be used or construed, these statements too have universal force, and are not focused on particular persons. The subject is the term to which the definition relates.

Example Box 18

In this Act, [*the expression*] "animal" does not include a domesticated animal.

(iv) Application or Referential Provisions

If the sentence states cases to which specific parts of the written law are to be applied or are linked, the statements are of a formal nature intended to be given effect by whoever uses the legislation. The subject is the term used to refer to the relevant part.

Example Box 19

This Part applies only to legal practitioners not holding a current practising certificate.

4.0 CONCLUSION

In conclusion, a sentence is generally more effective when expressed in the active voice rather than the passive voice. The grammatical subject should refer to those who have to govern their conduct by the rules, rather than the beneficiary of them. Drafters express the subject in a variety of ways. The form of words that is most appropriate depends on the scope of the rule.

5.0 SUMMARY

In this unit, you have learnt about the principal subject in a legislative sentence. You should now be able to:

- (i) Select the grammatical subject of a sentence;
- (ii) Decide which legal person is to be the grammatical subject;
- (iii) Express the subject;
- (iv) Choose the subject of declaratory sentences; and
- (v) Determine factors that should influence the choice of terms for the subject.

6.0 TUTOR MARKED ASSIGNMENT

1. Are the subjects of the following sentences the most appropriate? If not, provide an improved version of the sentence.

1. No protected bird shall be hunted, killed or captured except by a person acting in accordance with a license issued by the Minister.
2. All sums accounted for in the Consolidated Fund must be kept in such bank or banks as the Minister directs.
3. A person registered by the Senior Education Officer as a teacher under this section shall be issued a certificate by the Senior Education Officer.
4. If a magistrate is satisfied on information on oath that a child is being cruelly treated, or neglected, by a relative or person having charge of the child, a police officer may be ordered to bring the child before the magistrate, or some other magistrate, to be examined under this Act.

7.0 REFERENCES/FURTHER READINGS

Interpretation Act, Cap.192 Laws of the Federation of Nigeria 1990.

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UNIT 4 THE PRINCIPAL PREDICATE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 How to decide on the principal predicate
 - 3.2 How to draft the principal predicate
 - 3.3 How to select the appropriate verb for the principal predicate
 - 3.4 Do we need an auxiliary in every principal predicate?
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

The principal predicate in the sentence states the effect of the rule upon the subject of the sentence. The verb in the predicate specifies that effect. Typically, that verb includes an auxiliary that indicates how the subject is affected. However, declaratory sentences contain statements rather than directions, so that auxiliaries are not needed. The predicate is commonly in an active voice to command the subject to do or not to do something or to give, or refuse, the subject authority to do something.

Example Box 1

No person under the age of 16 years *shall drive a motor vehicle*.

The magistrate's court, on a remand, *may admit the accused person to bail*.

Less commonly, the predicate may be written:

- (i) in the passive voice to state how the subject is affected by a requirement that is to be carried out by someone else;
- (ii) particularly in declaratory sentences, in the present tense to state a legal position or general legal consequences when specific action is taken.

Example Box 2

The person receiving a majority of the votes cast in the election *is elected*.

A person under the age of 16 years *may not be sentenced to imprisonment*.

Every magistrate *is* a commissioner of oaths.

A member of the council who is declared insolvent *ceases to hold office*.

This is the focus of this Unit.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Decide on the principal predicate;
- (ii) Draft the principal predicate;
- (iii) Select the appropriate verb for the principal predicate; and
- (iv) Decide when an auxiliary is needed in the principal predicate.

3.0 MAIN CONTENT**3.1 How to Decide On the Principal Predicate**

Consider in particular how the subject's behaviour is to be affected or whether a statement of the law is what is required. Decide on the purpose of the rule in the sentence.

- (i) **Is it to prescribe how a legal person, the subject of the sentence, is to be affected?**

Is the predicate to:

- (a) *command* the subject to do, or not do, something (with stated legal consequences for failure)
- (b) *empower, permit or enable* the subject to do something, not otherwise lawful
- (c) *deny the subject the legal authority* (i.e. *prohibit*) to do something

- (d) *entitle* the subject (*confer a right*) to something or to do something
 - (e) *qualify* (or *disqualify*) the subject for something
 - (f) impose on the subject some legal *disability or burden*, or remove one from the subject
 - (g) *give directions* to the subject to do, or how to do (or not do), something?
- (ii) Is it to make a declaratory statement as to some aspect of the law?**

Is the predicate to:

- (a) *declare legal effects or consequences*
- (b) *make a statement of law*
- (c) state *a principle* or *purpose*
- (d) *apply* the legislation to specified cases
- (e) *explain* a term or feature of the legislation?

Answers to these kinds of questions put you in a position:

- to select for the main verb the most suitable word or term to describe the action or activity;
- where needed, to choose the right auxiliary to accompany that verb.

3.2 How to Draft the Principal Predicate

Keep four considerations in mind:

- (i) statutes should *always be speaking*.
- (ii) sentences in the *active voice* are generally more effective.
- (iii) *several subject/predicates* in the same sentence are *confusing*.
- (iv) except in declaratory statements, the verb must include an *appropriate auxiliary*.

1. Statutes Should Always Be Speaking.

This presumption of interpretation is used by courts to apply to legislation in the present tense to circumstances as they happen rather than to those existing at the time when it was originally written. Drafters today do not write legislative sentences as if they prescribe:

- (a) *current* consequences for *past* actions or activities; or
- (b) *future* consequences for *future* actions or activities.

So, compose sentences to be read as applying to actions or activities as they occur from time to time. This consideration particularly affects dependent clauses which set the context in which the principal predicate operates. In particular, draft a *context* clause in the *present tense* when the requirements in the principal predicate are to take effect immediately the events described in the clause occur.

Example Box 3

We could write:

A person who *has driven* a motor vehicle without holding a valid driving licence *committed* [or *is guilty* of] an offence.

A person who *shall drive* a motor vehicle without holding a valid driving license *shall commit* [or *shall be guilty* of] an offence.

Today most drafters prefer to write:

A person who *drives* a motor vehicle without holding a valid driving licence *commits* [or *is guilty* of] an offence.

A sentence with a context clause typically uses a present tense in the clause:

If a police officer *finds* a person driving a motor vehicle without holding a valid driving license, the police officer *may arrest* that person without a warrant.

2. Sentences in the active voice are generally more effective.

Drafters generally prefer to write predicates following this word order:

- (1) the subject;
- (2) the verb;
- (3) the object.

This states *actively* what the subject is to do or not do. Sentences in which the order is (1) object; (2) verb; (3) subject (i.e. stating the effect on the subject *passively*) are less favoured. There are several reasons for this.

(a) The Active Is Much More Direct

The active gives prominence to what readers are looking for - the legal person who is responsible for taking action; the passive reverses the expected order. Further, the verb in the passive is more cumbersome, since an auxiliary verb (from the verb "to be") has to be added (e.g. "may *be* ordered").

(b) The Legal Person May Be Overlooked In a Passive Predicate

It is easy to miss out the person responsible for taking the action described in the verb. This cannot happen when the person is made the sentence subject. A passive sentence has to be clarified by adding in the person in an extra phrase beginning with "by".

Example Box 4

A person who is diagnosed as suffering from the illness *must be given* a copy of the diagnosis on request.

Who is to give the copy and to whom is the request to be made? A more precise draft is in the active -

The medical practitioner in attendance must give a copy of the diagnosis of the illness to the person diagnosed as suffering from it, on the request of that person.

(c) It Can Lead To Awkward Expressions

Drafters in the past have been led into using the passive in ways that are unnecessarily clumsy. A particular example is the false subject.

Example Box 5

In section 12(1), *there shall be added*, after the word "proceedings", the words "under section 125 of the Companies and Allied Matters Act".

The grammatical subject is "there". It is false as it has no substance. A simple command is shorter and more effective:

In section 12(1), after "proceedings", *add* "under section 125 of the Companies and Allied Matters Act".

That said, a passive can be useful, even preferable in certain circumstances:

- (i) if the sentence is to describe how a legal person is affected by action;
- (ii) where no particular legal person can be made the sentence subject or the actual agent does not matter;
- (iii) where it is clear who is the agent, often indicated by the preceding sentence;
- (iv) where the impact of the sentence will be clearer if a passive is used.

Example Box 6

A patient admitted to a mental health centre under this section *must be kept* there until he or she dies or is discharged in accordance with this Act.

Fertilizer imported into Nigeria without the written permission of the Minister for Agriculture *may be seized* by a quarantine officer and *disposed of* in accordance with the instructions of the Minister.

The expenses of carrying out the measures required by the Health Authority under this regulation *are to be borne by* the occupier of the premises.

3. Several subject/predicates in the same sentence are confusing.

Readers can be baffled by sentences that contain more than one subject when *each* of them is followed by its own predicate. If you need to

confer *distinct functions* on *different persons*, deal with each case in a new sentence.

Example Box 7

A police officer executing a warrant of arrest *must notify* its substance to the person to be arrested, and *a person arrested* under a warrant of arrest *must be taken* without unnecessary delay before a magistrate's court.

This sentence contains two distinct rules; the second appears to have wider application (i.e. extending to arrests made by other persons in addition to police officers). Separate sentences ensure that the second is not to be construed as limited to the first case.

On the other hand, confusion is unlikely if you use more than one predicate in a sentence for any of the following purposes:

- (i) to impose a series of distinct requirements on the *same* subject; or
- (ii) to impose a series of requirements on several subjects, when *all* the subjects are affected by *all* the requirements;
- (iii) in a compound sentence, to provide for two actions which are closely linked and arise in the same circumstances.

Example Box 8

12. A director, a manager and an employee of a company must:
 (a) provide information as required by this Act;
 (b) answer all written questions communicated under section 25; and
 (c) make available all company documents containing information
 that
 appears to be relevant to proceedings under this Act, whether
 requested or not.

A police officer executing a warrant of arrest *must notify* its substance to the person to be arrested; *the person must be taken* without unnecessary delay before a magistrate's court.

4. The auxiliary chosen must be appropriate.

The principal predicate contains the heart of the rule. The verb in the predicate describes the action that the legal person is to perform or not perform or that is, or is not, available to the person. In a declaratory sentence, the verb makes a statement. If the sentence is to give

directions about a legal person's behaviour, the nature of the action depends upon the auxiliary attached to the verb. Select the auxiliary to accompany the verb that produces this effect most convincingly. The auxiliaries most used are:

"shall" and "shall not"

"must" and "must not"

"may" and "may not".

Reserve these auxiliaries for use in the principal predicate only. They are then universally recognised as words of command and authorisation. This may be reinforced by the meanings attached by the Interpretation Act to "shall" and "may".

Example Box 9

(1) When in a written law the word "may" is used in conferring a power, that word is to be interpreted to imply that the power may be exercised or not, at discretion.

(2) When in a written law the word "shall" is used in conferring a function, that word is to be interpreted to mean that the function so conferred must be performed.

Drafters now recognise that these terms are not necessarily the most suitable for sentences that do not command or authorise. They are increasingly dispensing with an auxiliary or using other auxiliaries in the principal predicate *to state or declare a legal position or consequence*. The following are among those now in common use (as auxiliary to other verbs):

"is [not] liable to"

"is [not] entitled to"

"is [not] eligible to"

"is to"

"is not required to".

(We consider when to use these terms later in this Module).

3.3 How to Select the Appropriate Verb for the Principal Predicate

The verb sets out what is required of the subject of the sentence. So, start by deciding precisely what action or result is required and the way that the subject is to be affected. It may help to ask questions such as the following:

- (i) what kind of action or activity is needed in order to produce the desired result?
- (ii) does it involve one or a series of actions?
- (iii) is the action to be a continuing one?

Example Box 10

A police officer *may arrest and detain, without a warrant, a person* whom the officer reasonably suspects to have committed an indictable offence.

The predicate contains two powers; both are available at all times to police officers. The first, “arrest”, involves a single act; the second, “detain”, involves action of a continuing nature.

A police officer, to signify an arrest, *must touch or restrain the body of the person* being arrested, unless that person submits to the custody by word or by action.

This predicate describes, in the form of duties, how a police officer indicates the making of an arrest.

3.4 Do We Need An Auxiliary In Every Principal Predicate?

Auxiliaries are necessary in predicates that give directions as to behaviour. The choice of the auxiliary is particularly important in differentiating such directions. However, as we have seen, drafters today use the present tense of a verb in certain cases, rather than a verb with an auxiliary to:

- (i) state a legal consequence or effect; and
- (ii) declare a legal status.

These are cases where the rule *states* a legal *result* after some occurrence or action, or the legal *position* that is created by the rule. The language of command or permission is inappropriate for making a statement.

Example Box 11

A member of the Council *ceases to be a member* if convicted of an offence punishable by imprisonment.

A fund, to be known as the Motor Accidents Fund, *is established* by this Act.

The functions of the Benefits Authority *are* as prescribed in this section.

This section *has effect* despite the rules against hearsay.

4.0 CONCLUSION

In conclusion, draft in the active voice and in present tense. The law should be seen as always speaking. However the passive voice may be used in certain circumstances.

5.0 SUMMARY

In this unit, you have considered the principal predicate. You should now be able to:

- (i) Decide on and draft the principal predicate;
- (ii) Select the appropriate verb for the principal predicate;
- (iii) Decide whether an auxiliary is needed in every principal predicate.

6.0 TUTOR MARKED ASSIGNMENT

Do we need an auxiliary in every principal predicate? Explain using relevant examples.

7.0 REFERENCES/FURTHER READINGS

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UNIT 5 CHOOSING THE APPROPRIATE AUXILIARY

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1.0 INTRODUCTION

This unit contains a number of Self Assessment Exercises. Time spent both on completing them and then evaluating your answer in comparison with that provided will contribute to your understanding and ability to use particular drafting techniques. It also contains a number of examples. You will gain a good deal by careful study of the examples. Make sure that you understand precisely how they illustrate the point made in the accompanying text.

The choice of auxiliary is dictated by the type of action to be ascribed to the subject. Different auxiliaries prescribe different responses from the subject, and therefore have different impacts. Accordingly, different auxiliaries may be needed to provide for the following:

1. **a command (including a prohibition)**
2. **a power or permission**
3. **a competence**
4. **a right**
5. **a qualification or disqualification**
6. **a liability**
7. **a privilege**
8. **a direction.**

2.0 OBJECTIVE

By the end of this unit, you should be able to:

- (i) Choose the appropriate auxiliary when drafting.

3.0 MAIN CONTENT

3.1 How to Draft a Command

If your sentence is to oblige the subject to act or not to act, with some adverse legal consequence for failure, the predicate should create a categorical duty. Common law drafters conventionally use "*shall*" for this purpose. Recently, however, some jurisdictions have replaced this by "*must*".

(i) "shall" or "must"?

Driedger has argued that, strictly, "*shall*" *creates* a duty; "*must*" merely *asserts the existence* of a duty, though a provision using the term would almost certainly be construed by a court as the source of the obligation. For that reason, he advocated using "*must*" only if no penal consequences follow on a breach of the duty.

Example Box 1

Driedger gives the following examples of where "*must*" might be suitable:

The Members of the Board *must be appointed* by the Minister.

An agreement *must* contain the prescribed particulars.

These duties are sometimes referred to as "soft obligations", largely because they are not coupled with a legal sanction for non-compliance.

Alternative approaches to these cases are dealt with later in this Module.

This view is not universally held. The choice between "*shall*" and "*must*" has become a matter of differing house-styles. The terms are increasingly seen as interchangeable. At the same time, take care not to

use both in the same instrument, as this may suggest differences of meaning are intended.

SELF ASSESSMENT EXERCISE 1

Is "must" now a permitted alternative or a required replacement for "shall" in Nigeria? Or is "shall" still the term in favour to impose a categoric duty?

(ii) Prohibitions

If the duty is to refrain from acting in the prescribed way, under a threat of a penalty, most drafters use "*shall not*" (or "*must not*"). This conventionally is the strongest form of *prohibition*.

But cannot such a command equally well be given by using "*may not*"? Does this not deny a person the right to act?

Example Box 2

A person *may not carry on a business of dealing* in second-hand motor vehicles without a dealer's license.

On its face, this auxiliary has the same effect as a categoric duty. But strictly, the rule is *negating* or denying the *holding* of a power, permission or right, rather than commanding that the person refrain from doing the act. Accordingly "*may not*" is more useful to emphasise that some power, permission or right provided for by law is, in the particular case, withdrawn or legally blocked.

Example Box 3

(1) A trustee may apply to a Judge for directions with respect to the investment of trust funds.
 (2) A trustee of a trust established outside Nigeria *may not apply* under subsection (1).

(iii) Universal prohibition

If the sentence is to create a universal prohibition (i.e. one that affects everyone or everyone in a specific class), the conventional practice is to negative the person rather than the verb: "*No person shall*" This is

both more emphatic and, strictly, the correct converse of the rule that requires everyone to do something.

Example Box 4

Of the following, the first version makes the stronger impact:

No person shall drop litter in a public place.

A person shall not drop litter in a public place.

Can we not use "*no person must*" instead? In fact, this does not work in quite the same way. Strictly, it is a statement that no-one is *under an obligation to act* in the prescribed way. That is not the same as *commanding* persons *not to act* in that way.

Example Box 5

No person must walk on the grass in a public park.

This means that no one is under a *duty* to walk on the grass, although they *may* if they wish! This is precisely what is not required.

For these reasons, following the conventional practice:

- (i) introduce a universal prohibition by "*No person shall*".
- (ii) if you wish to use "must", adopt the following : "*A person must not*"
- (iii) if you wish to emphasise that a particular person is *not under an obligation* (e.g. but other persons are), use "*No police officer is required to*"

3.2 How to Draft a Power or Permission

In a sentence that gives the subject a power or permission to act or not to act, the predicate must *confer* the necessary authority. Although power and permission are distinct concepts, they are often dealt with by the same auxiliary "*may*".

(i) Powers

A power is an authority to do something that would otherwise be illegal or tortious or legally ineffectual. It states the type of action that the subject can legally choose to initiate or is permitted to take if deciding to act. Typically, in conferring a power four questions need to be asked and answered:

1. Is the power-holder to have a discretion to decide whether or not to exercise the power, or must the power be exercised when specified circumstances occur?
2. Are grounds to be specified that must be fulfilled before the power is exercised? If so, is the power-holder to have a discretion to decide whether those grounds are fulfilled?
3. Is the power -holder to have discretion to decide the means by which the power is to be exercised or are these to be specified?
4. Is the power to be coupled with a duty, e.g. as to how a discretion is to be exercised or as to conditions to be attached when a permission is granted? If so, what are the consequences if the duty is not complied with?

In conferring a power, drafters generally use "*may*" as the auxiliary.

Example Box 6

The Minister may make regulations for carrying this Act into effect.

The Minister has the legal authority to make regulations if and when necessary.

A power expressed in this way is usually taken to give the holder discretion as to whether or not to exercise it. It is not usually necessary to add words to confirm the discretion. However, it is sometimes necessary to couple a power with a duty to exercise it in prescribed circumstances. This can lead to problems of interpretation if "may" rather than "shall" is used.

Example Box 7

The Minister may issue a license on payment by the applicant of the prescribed fee.

Is the Minister under a *duty* to issue a license when the payment is made (i.e. does the applicant have a *right* to a license merely by paying the fee? If so, “shall” is the appropriate auxiliary. Or can Minister refuse the license even though payment is tendered (is the Minister to have a discretion)?

The simple use of “*may*” is not conclusive, since it can leave unclear whether the power is discretionary or whether its exercise is obligatory. The context in which the term is used may provide the answer. For example, if the holder has to make a judgment before exercising the power, it is clearly discretionary. At the same time, the courts will insist that the holder is under a duty to go through the process of making the judgment. A statement of the factors to be considered before exercising the power allows the courts to draw such a conclusion.

Example Box 8

The following rule gives councils a general authority to act in this way. But it is unclear whether councils are to have a power to issue permits *in their unfettered discretion*.

Every local government council *may issue parking permits* to owners of private motor vehicles who are resident in its area.

Can a council refuse permits if it thinks proper? Further provision is needed to set the framework within which the power is to be exercised.

If the power is to be exercised only when specified conditions exist, make clear whether those conditions are to be established objectively or whether the holder is to make a judgment in that respect. Similarly, if the way the power is to be put into effect is to be determined by the holder, make clear that this feature of the power is discretionary.

Example Box 9

The Registrar, *if satisfied* that a registered person is contravening any of the provisions of this Part, may serve that person with an enforcement notice requiring him or her to take such steps as are specified in the notice for complying with this Part.

The Registrar may arrange for the publication, *in such form and manner as the Registrar considers appropriate*, of such information about the operation of this Act *as may appear to him expedient* to give to the public.

In drafting a power:

- (a) use “may” as the standard auxiliary for cases where a person is authorised to act but need not do so, and especially where an element of discretion is involved;
- (b) if (but only if) there is any danger that a duty will be implied when that is not intended, add an appropriate modifier, e.g. "in the Minister's discretion"; "if the Minister considers expedient" or “thinks fit”; "if the officer is satisfied that there are grounds for doing so";
- (c) if a *duty* to act is intended, consider using "*shall*" or "*must*" in the predicate.

Complete Self Assessment Exercise 2. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 2

In the space provided, draft two versions of the sentence in **Example Box 7**:

1. To make clear that the applicant is entitled to the license on payment.
2. To make clear that the applicant is not entitled to the license on payment.

(ii) Permissions

Rules are often needed to regulate activities, previously uncontrolled, by giving permission for them to be carried on in the future, e.g. if prescribed conditions or requirements are met or complied with. This can be dealt with in two ways. By:

- (a) *permitting* the activity (using "*may*") *if* the prescribed circumstances are fulfilled;
- (b) *prohibiting* the activity (e.g. using "*shall not*") *unless* the prescribed circumstances are fulfilled.

Drafters generally prefer the second of these approaches (a "qualified prohibition") even though it uses a negative form to authorise a positive activity. Although a positive form is more quickly understood, the negative states categorically that permission is wholly dependent upon fulfilling the condition. If you use a positive form, make clear that fulfilling the condition is a pre-requisite of having permission.

Example Box 10

No person *shall carry on a business of dealing* in second-hand motor vehicles *unless* that person holds a dealer's license issued under this Act.

A person *must not carry on a business of dealing* in second-hand motor vehicles *unless* that person holds a dealer's license issued under this Act.

A person *may carry on a business of dealing* in second-hand motor vehicles *only if* that person holds a dealer's license issued under this Act.

(iii) Denial of authority

In a rule that *precludes* the subject from exercising a power or *denies* permission to act, the predicate must be drafted so as to withhold or withdraw the authority. Drafters generally achieve this by "*may not*". However, if you are seeking to prohibit behaviour rather than prevent the exercise of a power, it is sensible to use "*shall/must not*".

Example Box 11

12. An inspector may enter any premises at any time to inspect electrical installations, but *may not enter* a residence on a Sunday.

20. A person contravening any provision of this Act commits an offence.

Is the inspector under *a duty* not to enter on Sundays, in which case a breach can be punished under section 20? Or is the purpose of the auxiliary to *withhold the power* of entry (breach of which might give rise to civil consequences only)?

If the former, it is clearer to write:

..... but an inspector *shall not enter* a residence on a Sunday.

If the aim is just to deny the power of entry, it is clearer to write:

.....but an inspector has *no power to enter* a residence on a Sunday.

3.3 How to Draft a Competence

Legislation that, e.g. establishes a new body typically must state the competences of that body, i.e. its jurisdiction, responsibilities and functions (the general activities that enable it to carry out the purposes for which it was created).

(i) “May” to confer competence

Typically, this is done by using the auxiliary “may”.

Example Box 12

The Commission *may* investigate complaints about judges subordinate to the High Court.

This sentence both designates the Commission as the body to carry out this activity and authorises it to do so.

However, such a draft gives the impression of a power, making the decision to investigate a matter of discretion, when its purpose is to state an activity that the body is obliged to carry out. The extent to which the

body is to have discretion in performing the function is better dealt with as a distinct issue.

If the objective of the rule is to confer responsibility for a particular activity, more specific words can be used, especially if that involves a duty to act.

Example Box 13

The Commission *has the function* of investigating complaints about judges subordinate to the High Court.

A Magistrate court *has jurisdiction* to hear and determine actions founded on contract or tort where the debt, demand or damage does not exceed ₦50,000.00.

(ii) "Shall" to confer competence

Drafters in the past have also used "shall" to charge an authority with the responsibility for some activity. That auxiliary gives the impression of a legally enforceable duty to act when what is needed is to confer capacity to act with respect to the activity.

An acceptable alternative that gives a less categorical obligation is to use:

“is [are] to”
 “is [are]not to”
 “is competent”.

Example Box 14

Compare the two versions of each of the following sentences. The second removes any notion of compulsion in conferring competence to act:

1. The members of the Board *shall be* appointed by the Minister.
 The members of the Board *are to be* appointed by the Minister.
2. The Magistrate Court *shall* hear and adjudicate upon petitions for the dissolution of marriage.

The Magistrate Court *is competent to* hear and adjudicate upon petitions for the dissolution of marriage.

3.4 How to Draft a Right

If the rule is to confer a right on the subject, drafters conventionally achieve this by "*may*". Although this does not differentiate a right from a power, in most circumstances this is of little importance. A right to do things carries with it the power of action.

(i) Right to a benefit

But that may not be the case if you are conferring *a right to receive something or be benefited* in some respect. To write "*may receive*", for example, leaves quite uncertain whether there is some person who is under a *duty* to pay or merely whether the subject is capable of being made a beneficiary of another's *power*, if it is exercised. A need for such an approach can arise:

- (a) automatically on the happening of some stated event;
- (b) following the exercise of another's discretion.

In cases of this kind, a right is better conferred by:
"is entitled".

Example Box 15

Where a farm animal trespasses on land, the occupier of the land *may be paid compensation*, as prescribed, by the owner of the animal.

No doubt this would be construed as creating a right in the occupier, but it is better stated as:

..... is entitled to be paid compensation

Alternatively, the sentence could be drafted in the active voice to impose a *duty* to pay upon the owner of the animal, but that might not fit with a legislative context that is concentrating on the legal position of occupiers of land.

This formulation is particularly suited to cases where a right to a benefit is being conferred:

A child under the age of 2 years *is entitled to receive* free school education if the Social Welfare Officer considers that the parents of the child are unable to pay the costs of school education.



(ii) Disentitlement

Similarly, in a sentence that sets out to deny a particular class of person a right that is available to others, "*is not entitled*" is more effective than "*may not*".

Example Box 16

If the owner or occupier of land kills or injures a dog in the course of protecting a farm animal threatened by that dog, the owner of the dog *is not entitled to be paid compensation* for the death or injury.

3.5 How to Draft a Qualification/Disqualification

If the rule is to state that the subject is a *proper person* to perform a particular function, the predicate must declare the subject to be qualified. Conventionally, drafters again use "*may*". In practice, this rarely causes confusion with powers or rights. But a better auxiliary is:

"is eligible".

Example Box 17

The second version of the following is more explicit:

The following persons *may be appointed* directors of the corporation.....

The following persons *are eligible to be appointed* directors of the corporation

(i) Disqualifications

Similarly, in a sentence that excludes the subject, as an unsuitable person, from some benefit or performing some function, you can use "*is not eligible*" or "*is not qualified*" instead of "*may not*".

Complete Self Assessment Exercise 3. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 3

1. In the space provided, redraft the following sentence to emphasise that an appointment of a police officer to the office of justice of the peace cannot be made.

A police officer may not hold the office of justice of the peace.

3.6 How to Draft a Liability

If the rule is to make the subject legally vulnerable to specific actions by others, the predicate must declare the subject to be under a liability. Conventionally, drafters use the passive form "*may be*" or "*shall be liable to be*". But such a use of "*shall*" suggests some form of obligation, which is not the case. Those cases are better dealt with by:

"is liable to be".

Example Box 18

A person found trespassing on land belonging to the Railway Authority *is liable to be [may be] prosecuted*.

3.7 How to Draft a Privilege

If the purpose of the rule is to *prevent* the subject from being liable, the predicate must create a privilege (i.e. it must negative any liability to the action of others). Drafters sometimes use "*shall not be [liable]*". This implies a duty in unspecified persons not to act against the subject, when in fact the case is one of absence of power or competence. A preferable form is:

"is not liable to be" or "may not be".

Complete Self Assessment Exercise 4. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 4

Draft a rule that gives to those under 16 a privilege from prosecution under the Act in which the rule appears.

3.8 How to Draft a Direction

If the rule is to give the subject directions to do or not do something, or as to how to do something, the predicate must give an instruction to the subject. Drafters tend to use "*shall*" or "*shall not*" in these cases. But, again, this suggests that the subject is under some duty enforceable by a penalty. In many instances, that is not the aim of the sentence. Three types of direction can be distinguished, to which different auxiliaries are suited:

(i) Direction as to composition or persons to perform a function

The purpose of the sentence is to indicate how a body is to be composed or which person is the *competent authority*. As we have seen, you can use the present tense for this case, or "*must*", or "*is to*", or similar phrases.

Example Box 19

14. (1) The local government councils listed in the Schedule *are established* by this Act.
 (2) The councils *are to be [must be] composed* of the numbers of members as are respectively specified in that Schedule.

(ii) Direction as to how the subject is to perform a function

The purpose of the sentence is to indicate *how* the subject, having decided to exercise a power, is to proceed. To use "*shall*", as is often the practice, gives the impression that the subject is under a sanctionable duty to act in the particular way. This may be caught by a general penalty clause which provides punishments for contraventions of the Act. This is rarely required. Yet, to use "*may*" suggests that the process is discretionary, rather than one to be performed in the manner directed.

Consider using here "*is to*" or "*must*". Alternatively, convert the direction as to how to act into an adverbial phrase which modifies the verb stating the action itself.

Example Box 20

25.-(1) A prospector who, in the course of prospecting for minerals in accordance with section 21, discovers minerals in commercial quantities may apply for the grant of a mining license.

(2) The applicant *shall apply* to the Minister in the prescribed form within 2 months after discovering the minerals.

Subsection (2) intends that the set method of application should be followed, but “shall” creates a stronger form of obligation than is needed. An effective redraft would add the procedural direction as to how to apply to the words creating the power to apply.

Complete Self Assessment Exercise 5. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 5

In the space provided, redraft section 25 in **Example Box 20** to soften the imperative nature of the obligation in subsection (2).

(iii) General direction as to procedure

A sentence may prescribe the procedure to be followed in given circumstances. In many cases, the procedure is intended to be obligatory and some form of imperative language has to be used. Some drafters use “shall” or “must”. Some are using “is to” especially when setting out routine administrative procedures. However, from a legal standpoint, important factor is the consequences that flow from failure to observe the obligation. These can take a variety of forms. Non-compliance can have penal consequences or invalidate the procedure or render void the outcome to which the procedure was leading. Alternatively, the procedure may be no more than the administratively convenient way of taking a matter forward without any consequences flowing from non-compliance.

Such matters are not determined by the choice of auxiliary. You may prefer to use “*shall*” or “*must*” for former cases and “*is to*” for the latter.

Example Box 21

All summonses, warrants, orders, convictions, recognisances, and all other processes, whether civil or criminal, *must be issued or made, and be signed, by a magistrate or, if authorised by this Act, a justice of the peace.*

Proceedings before a magistrate's court *are to be instituted* either by the making of a complaint or, in the case of a person arrested without a warrant, by bringing the arrested person before the court.

Here the house-style should provide guidance. But do not expect the courts to treat these terms as conclusive. Courts generally decide these cases by taking account of such matters as the importance of the procedure in the legislative scheme, the interests that are affected, and who will be prejudiced by non-compliance, and to what extent.

If the consequences of non-compliance are important and those are unclear from the context, do not rely on the choice of auxiliary to make this distinction clear. State expressly what the consequences are. For example, does failure to follow a particular procedure invalidate the action or merely permit the person to whom the procedure is directed to disregard the action if they so wish (e.g. refuse to consider an application not made in the correct form)?

Example Box 22

No summons, warrant, order, conviction, recognisance, or other process, whether civil or criminal, *is valid unless issued or made, and signed, by a magistrate or, if authorised by this Act, by a justice of the peace.*

Unlike **Example Box 21**, this draft makes clear that non-compliance renders the processes void. Interpretation legislation commonly includes a provision which treats deviations from a prescribed *form* as not invalidating the form, unless it amounts to a substantial irregularity (cp. **Section 23 of the Interpretation Act**).

4.0 CONCLUSION

In conclusion, the choice of auxiliary is dictated by the type of action to be ascribed to the subject. Different auxiliaries prescribe different responses from the subject and therefore have different impacts.

5.0 SUMMARY

In this unit, you have learnt that different auxiliaries may be needed to provide for the following: a command, a power, a competence, a right, a qualification, a liability, a privilege and a direction.

6.0 TUTOR MARKED ASSIGNMENT

1. Redraft the following section so far as is necessary to improve the verbs:
 - (1) Subject to this section, a prospecting license shall cover such minerals as shall be specified in it.
 - (2) If the holder of a prospecting license, in the course of exercising powers under the license, shall discover a mineral that shall not be specified in the license, an application may be made to the Minister for an amendment of the license to include that mineral.
 - (3) An application for amendment under subsection (2) shall specify the mineral discovered, shall give particulars of the place and circumstances of the discovery, and there shall be appended to it a proposed programme of prospecting in connection with that mineral.
 - (4) The Minister may permit the amendment of the prospecting license to include the mineral.
 - (5) An amendment of a prospecting license shall not be permitted by the Minister if a mining license in respect of the mineral shall have been issued to another person for the area in which the mineral shall have been discovered.

7.0 REFERENCES/FURTHER READINGS

Interpretation Act, Cap.192 Laws of the Federation of Nigeria 1990.

Driedger E.A, (1976) *The Composition of Legislation; Legislative Forms & Precedents*, Ottawa: Dept of Justice.

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

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ANSWER TO SELF ASSESSMENT EXERCISE 2

1. The Minister must issue a license on payment by the applicant of the prescribed fee.

Or

A license must be issued by the Minister on payment of the prescribed fee.

2. The Minister, acting in his discretion, may issue a license on payment by the applicant of the prescribed fee.

Or

A license may be issued by the Minister in his discretion on payment by the applicant of the prescribed fee.

The second version may be preferred in each case, if the principal purpose of the section is to deal with the question of the applicant's entitlement. The first is better if the sentence is also concerned with the question of who has the authority to issue licenses.

ANSWER TO SELF ASSESSMENT EXERCISE 3

A police officer *is not eligible to hold* the office of justice of the peace.

ANSWER TO SELF ASSESSMENT EXERCISE 4

A person under the age of 16 *may not be [is not liable to be] prosecuted* for an offence under this Act.

The following alternative is widely used to create a more emphatic rule, although it implies that the subject has a *right* not to be prosecuted:

A person under the age of 16 *shall not be prosecuted* for an offence under this Act.

ANSWER TO SELF ASSESSMENT EXERCISE 5

25. A prospector who, in the course of prospecting for minerals in accordance with section 21, discovers minerals in commercial quantities may apply, *in the prescribed form, to the Minister, within 2 months after discovering the minerals*, for the grant of a mining license.

Alternatively:

25.-(1) A prospector who, in the course of prospecting for minerals in accordance with section 21, discovers minerals in commercial quantities may apply to the Minister for the grant of a mining license.

(2) *The application is to be made, in the prescribed form, within 2 months after the discovery of the minerals.*

The second version separates the entitlement to apply for a license from the procedure to be followed in making the application.

UNIT 6 PREDICATE MODIFIERS & CONTEXT CLAUSES

CONTENTS

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- 2.0 Objectives
- 3.0 Main Content
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 - 3.2 Context Clauses
 - 3.2.1 How to draft context clauses
 - 3.2.2 How to introduce a context clause
 - 3.2.3 Where to place a context clause
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

In this unit we consider predicate modifiers and context clauses. Few legal rules are intended to apply to all persons everywhere in the jurisdiction, at all times, and in all circumstances and under all conditions. So, most rules must be modified to restrict their operation to a particular context. Context clauses are subordinate clauses containing their own subject and predicate. It gives additional meaning to the principal clause by creating the context or legal setting in which that clause is to operate.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- (i) Explain how predicates are particularized;
- (ii) Describe how context clauses are introduced, placed and drafted.

3.0 MAIN CONTENT

3.1 Predicate Modifiers

Many legislative sentences must contain clauses or phrases or words, the function of which is to modify the main clause containing the principal subject and predicate for this purpose. The modification may be adjectival or adverbial.

There are two main ways in which this modification is typically done, by adding into the predicate one or more modifiers:

- (i) that *particularise* or *limit* the effect of the main clause or create *exceptions* to it;
- (ii) that determine the *fact situation* in which the main clause is to take effect (typically through *conditional or relative clauses*).

There is no fixed line between these two techniques; they can often be used interchangeably. Both are used to ensure that the sentence states precisely when the rule applies or does not apply.

Example Box 1

The following sentences use these means.

- **Unlimited sentence:**

A court may issue a warrant.

- **Adjectival modification:**

A court may issue a warrant *for the arrest of a person*.

(Not a warrant for any purpose, only for the purpose of arrest)

- **Modification by relative clause:**

A court may issue a warrant *for the arrest of a person who refuses to attend as a witness*.

(Not a warrant for the arrest of any person, only for a person who refuses to attend)

- **Adverbial modification:**

In response to a request by the State, a court may issue a warrant for the arrest of a person who refuses to attend as a witness.

(The court may not issue warrants whenever it likes; only in response to a State request)

- **Modification by conditional clause:**

A court may issue a warrant for the arrest of a person who refuses to attend as a witness *if the court is satisfied that the person's attendance is necessary*.

(The court may not issue warrants every time a witness refuses to attend, only if their attendance is necessary)

3.1.1 How Should We Particularise Predicates?

Predicates can be given their precise focus in a variety of ways. By adding:

- (i) *adjectives* (including adjectival phrases or clauses) to provide clearer descriptions of nouns;
- (ii) *adverbs* (including adverbial phrases or clauses) to provide clearer indication of how verbs take effect.

Limitations and exceptions are two forms of modifiers commonly required. Both restrict the ambit of the main clause in some way.

Limitations

Expressions added to the sentence to limit the effect of a subject/predicate need to be positioned in the sentence where they perform that function without the possibility of ambiguity. Complex rules may need several modifiers of this kind. If the modifiers are not well positioned, confusion may be added to complexity. Typically:

- (i) place an adjective (whether a single word or an expression) *as close as possible to the noun which it modifies*;
- (ii) place an adverb (whether a single word or an expression) *as close as possible to the verb which it modifies*.

This leads to the word order that is used in Standard English. Deviate from the standard order only if a different order is necessary to:

- (a) avoid ambiguity; or
- (b) enable all the necessary components to be contained within the sentence.

You will have noticed many legislative sentences in which the drafter has tied the adverb to the verb by inserting it between the auxiliary and the main verb. This practice (sometimes referred to as “embedding”) is rarely found outside legislation; in most cases it is not necessary. Only consider using this device if that is the only way to prevent uncertainty or ambiguity.

Example Box 2

Here is an example of an unnecessary, and ugly, embedding of modification:

An appointed member of the council shall, *on revocation of the appointment by the Minister, but without prejudice to re-appointment in accordance with this Act*, cease to be a member of the council.

In addition, this version conceals the fact that 2 different types of modification are present. The first modifies the verb, but the second limits the ambit of the entire rule. A better draft reads:

An appointed member of the council ceases to be a member *if the appointment is revoked by the Minister; but the person may be re-appointed in accordance with this Act*.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 1

Add the modifier "with the approval of the Minister" to the following sentence so that the approval has to be obtained before either action can be taken. Try the modifier at various points in the sentence; watch out for ambiguity that may result. Mark the insertion point by an arrow.

Subject to this Act, a local authority may undertake, or contribute such sums of money as it thinks fit towards, the establishment, erection, purchase or management of a centre for the disabled.

Exceptions

The purpose of an exception is to remove specified cases from the generality of the rule. These may be cases that are dealt with in other law. Exceptions modify the sentence through added words that exclude from the ambit of the rule the cases in which the rule is not to apply. You can achieve this:

- (i) by modifying the subject or the object or other nouns (to exclude persons or things), beginning the modifier with, e.g.:

"*other than*"; "*except*";

Example Box 3

Any member of a trade union, other than [except] a member under suspension, may apply to the court for a declaration under this section.

- (ii) by modifying the verb, especially in the principal predicate (to exclude cases which would otherwise be covered by it), beginning the modifier with, e.g.:
- "unless"*.

Drafters in the past also used provisos for this purpose. Today, most drafters no longer find a place for them. We will look at this in the Course, *Legislative structure*.

In composing an exception, take steps to provide that:

- (a) the principal predicate contains the new law; the exception provides for the situation that is being preserved or excluded;
- (b) the exception is concerned with the minority of cases; the principal predicate deals with the standard case.

A sentence that provides only for an exception may obscure the nature of the main rule, as that has to be deduced by implication. To draft in that way, you must be confident that no-one can be in doubt as to what that rule may be.

Example Box 4

A summons or a warrant may be issued and served on any day *except Sunday*.

A summons or a warrant may not be issued or served on a Sunday.

In the first example, both the general case and the exception are clear. In the second, the sentence is silent on the general case, though it is not too difficult to deduce it.

If a long exception is required to modify the whole sentence, consider converting it into an explanatory clause, with its own subject and predicate, at the end of the sentence and introduced by a conjunction such as "*but*" or "*however*". This brings out strongly the relationship between the rule and the exception.

If the exception is detailed or in any way complicated to understand, convert it into a separate sentence to follow, as a further subsection, that which contains the main rule. You may again need suitable linking words to indicate the relationship between the two propositions. (Linking of sentences is also considered in the Course on Legislative Structure, later).

Relative clauses

A relative clause may be used to modify any noun (or pronoun) that is a component of the subject or predicate. It is adjectival in that it defines qualities or activities of the noun to which it is attached, typically by a relative pronoun (e.g. “*who*”; “*whom*”; “*which*”; “*that*”).

Example Box 5

A mental health authority may transfer the guardianship of a patient *who is for the time being subject to the guardianship of a person* to another person with that other person’s consent.

A person *who fails to comply with an enforcement notice* commits an offence.

In drafting a relative clause:

- (i) make sure that the relative pronoun can only refer to the intended noun, and no other;
- (ii) do not attach to the same noun relative clauses of both types, i.e. one that describes qualities and another that defines an action, since they perform different functions.

Conditional clause

As the term implies, a conditional clause may be added to the predicate to state the conditions that must exist or be fulfilled before the action has effect. As a result they are used adverbially, to modify the verb.

Example Box 6

The mental health officer must inform the nearest relative in writing of his reasons *if the officer decides not to make an application under this section*.

A mental health officer may not make an application for admission of a patient to a mental health hospital *unless*:

(a) *requested to do so by a medical practitioner who is attending*

the patient; and

(b) *two medical recommendations have been made in accordance*

with subsection (2).

In these examples, the clause is incorporated into the main predicate to provide continuity in the way the proposition is expressed. However, such clauses are often positioned as a subordinate clause at the opening of the sentence.

3.2 Context Clauses

These clauses determine such matters as:

- (i) the fact situation in which the rule is to operate (e.g. the time, place, circumstances);
- (ii) the action taken by some person that triggers off the rule;
- (iii) a condition that is to be met before the rule can take effect.
- (iv) the event that brings the rule into operation;

Example Box 7**Fact situation:**

(1) *Where [or if] persons wish to marry*, one of the parties to the intended marriage must give notice in the prescribed form to the registrar of the Court in which the marriage is intended to take place.

Prior action:

(2) *When notice of an intended marriage is given under subsection (1)*, the registrar must cause the particulars of the notice to be entered into a register, to be called the "Register of Marriage Notices".

Condition:

(3) *If, at the end of 21 days after the date of the notice, the registrar has received no objection in writing to the intended marriage, the registrar must issue a licence in the prescribed form authorising the parties to marry.*

Event:

(4) *If the marriage is not solemnised within 3 months after the date of the notice, the notice and licence cease to have legal effect.*

3.2.1 How to Draft Context Clauses

These clauses too must have a subject and predicate, but the conventions concerning these components are more flexible than is the case for the principal clause.

The subject of a context clause

Unlike the principal clause, a context clause need not focus on specific legal persons. It is generally descriptive in content, and so it may relate to persons or things, activities or events. In consequence:

- (i) the grammatical subject may be a legal person or an animate or inanimate thing, or an action or activity (in the singular or plural);
- (ii) if the grammatical subject is a person, it may refer to the same person as is the legal subject of the sentence or to a different person.

Let the grammatical subject of your clause be dictated by what enables you best to describe the subject-matter. If you are following up an aspect of the *previous* sentence, the grammatical subject may be suggested by the contents of that sentence.

Example Box 8

13. *When a notice is given under section 12, the Registrar must file it and enter the particulars of it in the register kept for the purpose and shall post a copy of it in a conspicuous place in the registry.*

The context clause builds upon section 12, which laid down rules about the giving of notices. Its grammatical subject (a “notice”) relates back to matter in that section.

The verb in a context clause

It is in context clauses that we see most clearly the impact of the convention that *statutes are always speaking*. These clauses continuously describe the circumstances and conditions in which the rule operates. In consequence:

- (a) use the *present tense* if the verb describes a state of affairs that has to *coincide* with the operation of principal clause. This is by far the most typical case.
- (b) use the *present tense* too where the rule is to operate *immediately* once the circumstances described arise.

Example Box 9

If a person who is over the age of 21 years and resident outside Nigeria *wishes to marry in Nigeria*, he or she may apply to the Registrar for permission to marry by proxy.

The power to apply is available to any one who fulfils the requirements of the context clause, as soon as they arise, and continues as long as that clause continues to be fulfilled.

When a marriage *is solemnised by a registrar*, the registrar must enter immediately the particulars of the certificate of marriage in a register kept for the purpose (to be called the "Marriage Register").

Although the marriage is solemnised before the registrar can act, the duty to register arises as soon as the marriage has taken place.

- (c) use *past or present perfect* if you wish to emphasise that a state of affairs, or an action, must have occurred, or have been completed, before the principal clause can take effect. This is likely to be the case where the context clause:
 - (i) provides for the *happening of a single event*, rather than events of a kind that are likely to be frequently arising;
 - (ii) lays down a pre-condition that must be fully met *before* the rule can operate.

Example Box 10

When a marriage *was solemnised* outside Utopia, either party to the marriage may petition the High Court for dissolution of that marriage under this Act.

If a person *has been ordained* a minister of religion in the Anglican Church, the Minister may appoint that person to be a marriage officer in Utopia.

When drafting context clauses:

- (a) never use "*shall*" (either as a future tense or as a command) or "*may*" in a context clause. These should be confined to the principal predicate;
- (ii) as in a principal clause, prefer the active to the passive. At the same time, passives, with impersonal subjects, are a useful way to connect the sentence with a previous sentence (as in **Example Boxes 8 & 10**).

3.2.2 How to Introduce a Context Clause

The terms that drafters typically use to begin context clauses are:

"where" "when" "if".

These are especially favoured when the context clause is at the beginning of the sentence. But:

- (i) drafters tend to use these terms a little differently from the ways in which they are used in non-legislative writing;
- (ii) they are not always used in exactly the same way by all drafters;
- (iii) they are frequently used interchangeably.

Drafters have tended to use "where" in cases when "if" and "when" are more consistent with day-to-day use. In a number of jurisdictions, "if" is now used to begin both clauses that express the contingency that activates the main predicate (as in the past) and for clauses that describe recurrent or habitual circumstances in which the main predicate operates (in substitution for "where").

If you are writing a context clause, ask yourself which of three terms best introduces the matter in the clause. However, you must give due regard to the house-style.

SELF ASSESSMENT EXERCISE 2

Check your local practice from any drafting directive in use or from recent legislation.

Let us look at how these terms are conventionally used and when they might be used.

	Common practices	Better practice
"where"	to introduce circumstances that: <ul style="list-style-type: none"> - are likely to arise frequently; or - are of a continuing nature, or - describe the factual setting in which the rule operates. 	to introduce <ul style="list-style-type: none"> - an adverbial clause that refers to a physical place.
"when"	to introduce circumstances that: <ul style="list-style-type: none"> - are unlikely to arise frequently; or - can only occur on one occasion. 	to introduce an <i>event</i> or <i>action</i> : <ul style="list-style-type: none"> - when time or timing is a factor; or - about which greater certainty is required than is offered by "if".
"if"	<ul style="list-style-type: none"> - to describe a prior condition that triggers off the rule. 	to introduce: <ul style="list-style-type: none"> - a condition that is a prerequisite to the operation of the main predicate; or - a fact situation in which the main predicate is to operate.

SELF ASSESSMENT EXERCISE 3

In the spaces left in the following subsections, write in the word that seems most suited to introduce the clause.

(1) a party to an intended marriage is under the age of 21 years, the father or mother or, both are dead or absent from Nigeria, the guardian of the party must give consent to the marriage in writing.

(2) a person whose consent is required under subsection (1) refuses consent, the Registrar may dispense with consent he is satisfied that it is in the best interests of the party that the intended marriage takes place.

(3) the Registrar refuses to dispense with a consent, the party may make appeal against that refusal to a Judge.

Other terms are used to introduce context clauses, though usually where the clauses are placed later in the sentence, especially at the end. They include:

"unless"; "until"; "after"; "before"; "as soon as".

Drafters use these terms in the same way as in other forms of writing. Typically they introduce a full clause (with a subject and verb), but you may be able to use shortened versions.

Example Box 11

Shorter versions are achieved by leaving out the words in brackets.

The registrar must not issue the certificate of marriage *unless* [he is] satisfied that there is no legal impediment to the marriage.

The registrar must display the notice of intended marriage on a conspicuous notice board in the Registry *until* the certificate of marriage is issued or 3 months have elapsed *after* it is posted.

The registrar must not issue a certificate of marriage *before* notification [is made] under section 12.

The registrar must issue the certificate of marriage *as soon as* notification is given under section 13.

3.2.3 Where to Place a Context Clause

Many drafters still follow Coode's advice to place the context clauses at the very beginning of the sentence, i.e. before the principal clause. There are several benefits:

- (i) it indicates to the reader at once that the rule is not a universal rule;
- (ii) it allows readers to discover whether the context of the rule applies to their case before looking in depth at the entire sentence;
- (iii) it can be used to provide a link with an earlier sentence, by building upon information already known to the reader;
- (iv) it frequently conforms to the time frame of the rule, i.e. by putting a pre-condition before its consequences, or the circumstances that give rise to the rule before the rule.

Example Box 12

(2) *If a certificate of a marriage cannot be issued under subsection (1) by reason of the residence outside Nigeria of one of the parties,* a magistrate's court may dispense with the issue of the certificate of marriage and issue a license authorising the solemnisation of the marriage.

By looking at this clause, we see at once that it builds upon an earlier sentence, that the condition must happen before the rule can have effect, and that the rest of the sentence is relevant only if the clause applies.

But this sentence order may make the sentence unnecessarily difficult to understand, particularly if the context clause covers several alternatives or embraces both circumstances and conditions. Readers can find sentences that are “**front-loaded**” in this way difficult to work with. For example:

- (i) we may have to read the entire sentence, to find the core subject and predicate, before we can see the purpose of the context clause;

- (ii) we are asked to carry information forward in the memory until the rest of the sentence has been studied.

Example Box 13

12. If a marriage has been solemnised by a person who is not a marriage officer or if either of the parties to the marriage married under a false name or if the marriage has been solemnised without the authority of a certificate of marriage, the marriage is void.

The entire section has to be read, and the various alternatives thought about, before its full import is clear. (This would, of course, be eased by a helpful section note, e.g. "**Void marriages.**").

A sentence is easier to understand if it begins with the subject and predicate and then is followed by the modifying clause. Accordingly, drafters tend to avoid front-loading as the typical sentence order, unless they have a good reason, such as making a link with a preceding provision.

Accordingly, context clauses should occupy the place in the sentence that best contributes to communicating the rule. Choose a sentence order that leads to the most effective expression. So, for example:

- (i) a conditional clause may be more effective if it *follows* the main clause (this is usually the case when it is to begin with "*unless*");
- (ii) a series of conditional clauses (beginning with "*if*") can follow the main predicate in a series of paragraphs.

Complete Self Assessment Exercise 4. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 4

In the space provided, redraft the sentence in **Example Box 13**, so that the information in it is conveyed more effectively.

You may find it easier to settle the order of the sentence components if you use a different kind of modifier instead of a full context clause, as, for example:

- (i) a phrase introduced by a preposition;
- (ii) a relative clause introduced by a relative pronoun (e.g. "*who*", "*which*" or "*that*").

A context clause can often be easily converted into one of these forms, without change of meaning or loss of effect.

That said, you can give prominence to a context clause by putting it either at the beginning or at the end of the sentence. But bear in mind the draw-backs of front-loading. For example, do not be persuaded to transfer the essential elements of the principal clause to a front-loaded context clause to achieve that prominence. This was a common practice with offence provisions in the past. Consider rather whether the prominent position at the sentence start should be occupied by the main clause (the core subject and predicate) with the modifying clause "rear-loaded".

Example Box 14

If a person at a public gathering behaves in a noisy or disorderly manner or uses or distributes a document containing threatening, abusive or insulting words with intent to provoke a breach of the peace or by which a breach of the peace is likely to be occasioned, that person commits an offence and is liable to imprisonment for 12 months.

This draft requires the reader to wade through a detailed context clause containing the forbidden behaviour before finding out that it is that behaviour that is made a crime.

Complete Self Assessment Exercise 5. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 5

In the space provided, redraft the sentence in the **Example Box 14**, so that the behaviour that is made criminal is not contained in a context clause, and so that its provisions are more clearly displayed.

4.0 CONCLUSION

In conclusion, you will find that details fall more readily into place when you have had occasion to put techniques into practice a number of times. At this stage you need to be confident that you *understand* what you have examined and that you *can put that to use* in the proper places.

5.0 SUMMARY

In this unit you have been building your knowledge of how legislative sentences are to be constructed. You should now have a clear understanding of the way to approach the task and the questions that you need to consider. You have also been introduced to a range of techniques for expressing their components, in particular, the different forms of expression that different types of legal rules should be given.

Do not expect to be able to remember every detail of the matters just considered. You can always verify those when the need arises. If you need to refer back to the text to do so, accept that as the way to make the matter your own. Ask yourself whether you can *do* what is recommended when you need to, and that you can recognise when you need to use particular approaches. If you are uncertain on any topic, rework the relevant part of the text.

6.0 TUTOR MARKED ASSIGNMENT

1. Convert the context clauses in the following sentences (taken from earlier **Example Boxes**) into one or other of the forms suggested (i.e. phrases introduced by a preposition or a relative clause). Some consequential changes of wording are called for.
 1. When a marriage is solemnised by a registrar, the registrar shall enter immediately the particulars of the certificate of marriage in a register kept for the purpose (to be called the "Marriage Register").
 2. If a marriage was solemnised outside Nigeria, either party to the marriage may petition the High Court for dissolution of that marriage under this Act.
 3. When a person whose consent is required under subsection (1) refuses consent, the Registrar may dispense with consent if he is satisfied that it is in the best interests of the party that the intended marriage takes place.

7.0 REFERENCES/FURTHER READINGS

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

Thornton, G.C. (1996) *Legislative Drafting* 4th ed., London: Butterworths.

ANSWER TO SELF ASSESSMENT EXERCISE 1

Subject to this Act, a local authority may, *with the approval of the Minister*, undertake, or contribute such sums of money as it thinks fit towards, the establishment, erection, purchase or management of a centre for the disabled.

This is a case where embedding can be justified. In any other position, the modifier would not be seen to apply unambiguously to both verbs. An alternative, and more readable, version is:

Subject to this Act and with the approval of the Minister, a local authority may:

- (a) undertake; or
- (b) contribute such sums of money as it thinks fit towards,

The establishment, erection, purchase or management of a centre for the disabled.

ANSWER TO SELF ASSESSMENT EXERCISE 4

12. A marriage is void if:

- (a) it is solemnised:
 - (i) by a person who is not a marriage officer; or
 - (ii) without the authority of a certificate of marriage; or
- (b) either of the parties to the marriage marries under a false name.

Placing the context clauses *after* the main proposition, and paragraphing and rearranging them, improves the presentation. It also allows some reduction of words.

The principal verb is now in the present tense, since it states the legal consequence if any of the conditions is fulfilled.

ANSWER TO SELF ASSESSMENT EXERCISE 5

Two versions can be considered:

12. A person *who*, at a public gathering:

(a) behaves in a noisy or disorderly manner; or

(b) uses or distributes a document containing threatening, abusive or insulting words:

(i) with intent to provoke a breach of the peace; or

(ii) by which a breach of the peace is likely to be occasioned, commits an offence and is liable to imprisonment for 12 months.

12. A person commits an offence *who*, at a public gathering:

(a) behaves in a noisy or disorderly manner; or

(b) uses or distributes a document containing threatening, abusive or insulting words:

(i) with intent to provoke a breach of the peace; or

(ii) by which a breach of the peace is likely to be occasioned, and is liable to imprisonment for 12 months.

Of the two versions, the second is to be preferred. It brings together the principal subject and verb at the beginning of the sentence. Again, paragraphing considerably improves the presentation

MODULE 2 HOW DO WE PUNCTUATE LEGISLATION?

Unit 1	Punctuating Legislation I
Unit 2	Punctuating Legislation II
Unit 3	Use of Capital Letters

UNIT 1 PUNCTUATING LEGISLATION I

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1.0 INTRODUCTION

This unit deals with a minor but important feature of legislative syntax - punctuation of legislative sentences. We take punctuation very much for granted. It only becomes a matter of interest if it is poorly done. Although legislation does not have special punctuation, drafters are expected to follow conventions as to preferred usages for legislation, often dictated by the house-style.

2.0 OBJECTIVE

By the end of this unit, you should be able, when drafting legislation to:

- (i) Comply with standard drafting conventions followed in Nigeria in relation to punctuating legislative sentences.

Once you are familiar with what is standard practice, and why, you should readily recognise the places where punctuation is needed and the form it should take. Your aim is to make this second nature, so that you provide what is needed automatically without need for thought. But at this stage, and particularly in working this part of the Course, turn your attention *deliberately* to what is called for. Make it part of your mode of working to look at punctuation specifically. This unit is available for reference if you are unclear on any particular occasion.

3.0 MAIN CONTENT

3.1 The Function of Punctuation in Legislation

The role of punctuation in legislative instruments is the same as in any written document. It assists the reader to draw inferences about the intended meaning.

It has little importance in interpreting legislation. Judges have not always agreed about the extent to which they may take punctuation into account in interpreting legislation. However, in some jurisdictions, the Interpretation Act deals with the matter explicitly, usually by giving judges authority to take account of punctuation.

Example Box 1

The Interpretation Act provides:

3. (1) Punctuation forms part of an enactment, and regard shall be had to it accordingly in construing the enactment.

Even without such authority, no judge completely ignores punctuation. Its presence inevitably influences our reading. The sense of the sentence and its meaning are easier to discover because of the guidance provided by punctuation marks.

Punctuation is part of syntax. Its functions in a sentence are to:

- (i) reinforce the sentence structure; and

- (ii) make more apparent the way that the sentence components relate to each other.

However, we should not place too much reliance on punctuation for a number of reasons:

- (i) the rules and practices relating to its use are based on somewhat arbitrary conventions that may vary from place to place;
- (ii) practices continue to change, not least because of technological developments (e.g. word processing has made a number of marks more accessible);
- (iii) mistakes occur rather more easily and tend to be overlooked more frequently than other features of syntax (e.g. typographical and printers' errors and inadequate proofreading).

Judges on occasion call punctuation in aid to *support* a particular construction indicated by the syntax and by the general purpose of the provision itself. Less commonly, they have disregarded punctuation, e.g. because:

- (i) it has been used in an unconventional way; or
- (ii) other features of the sentence are stronger indicators of a meaning than can be derived from the sentence as punctuated.

Sound punctuation of a document facilitates reading it and, as a result, understanding its contents. Since legislative sentences may be complex in their content, any aid to accessing the structure and contents takes on particular importance. It is not surprising that good drafters take the task of punctuation seriously.

SELF ASSESSMENT EXERCISE 1

Read through the following two versions of the same sentence, one with, the other without, punctuation. Which is the easier to understand?

Where a court orders money to be paid by a convicted person as a fine or penalty or compensation costs or expenses or otherwise the money may be levied on his movable and immovable property as provided by this section but if that person shows sufficient movable property to satisfy the order his immovable property shall not be sold

Where a court orders money to be paid by a convicted person as a fine or penalty, or as compensation, costs or expenses, or otherwise, the money may be levied on his movable and immovable property, as provided by this section; but if that person shows sufficient movable property to satisfy the order, his immovable property shall not be sold.

The punctuation marks help us to see the individual components of the sentence and how they relate to each other and to the sentence as a whole.

3.2 Do Drafters Use Punctuation Differently From Other Writers?

As in the case of syntax generally, no rules for punctuation are exclusive to legislation. Good drafting calls for punctuation according to the same standard conventions that apply to all writing. At the same time, punctuation of legislation has a number of characteristic features.

These are the reasons:

- (i) legislation is formatted in a distinctive way (e.g. in the way it uses paragraphing); in response to this, drafters have adapted standard practices on punctuation to these formats;
- (ii) most jurisdictions develop house-styles concerning the places in which particular punctuation marks should be used, with a view to consistency, especially where alternative marks could properly be used for the same purpose;
- (iii) certain punctuation marks are almost never needed in legislation (e.g. exclamation marks(!), question marks(?) and slashes (/or \)).

Therefore:

- (i) when punctuation is called for, practices in general usage are followed;
- (ii) which punctuation mark is the appropriate one is often settled by the house style.

3.3 How to Approach the Punctuation of Legislation

Try to include punctuation automatically as you write. Follow what you do when you are writing other formal text, drawing from your general experience of writing. At the same time, accommodate the distinctive

requirements of legislative text. In consequence, make a practice of the following:

- (i) punctuate your sentences as you compose them in accordance with the standard conventions applied to writing in English;
- (ii) use punctuation as a means to clarify the sentence structure and the relationship of the sentence components;
- (iii) only use punctuation when it serves an identifiable purpose; unnecessary and, in particular, excessive punctuation is an obstruction to communication;
- (iv) if you have an ambiguity in syntax, don't rely on punctuation to resolve it;

Example Box 2

The police officer shall request the driver within 24 hours to produce his identity card and driving license. ↑ ↑

The squinting modifier “within 24 hours” does not cease to squint because a pair of commas has been added in the places indicated.

- (v) follow the house-style as to when particular punctuation marks are to be favoured over others;
- (vi) scrutinise your sentences to check that the punctuation is complete and correct.

3.4 How and When To Use Punctuation Marks

In this unit we consider the punctuation marks that drafters put to specific use or that need special attention in legislation. These are:

- **full stop** or "period" .
- **colon:**
- **dash -**
- **colon+dash :-**
- **semi-colon;**
- **brackets** or "parenthesis" () or []
- **comma,**
- **inverted commas** or "quotation marks" " " or ' '
- **hyphen** linking words -

In the following sections you will be asked to look at practice in Nigeria. For this you need access to copies of recent legislation.

3.5 How and When To Use A Full Stop

Full stops are needed:

- **to indicate the end of a sentence**
- **in abbreviations (but not acronyms)**

Example Box 3

The following abbreviations are used in some jurisdictions, although the full stops may be omitted:

a.m. p.m.
m. km.
U.N. (abbreviation for United Nations)

The following are examples of abbreviations used in footnotes and tables:

R.S.C. (for the Rules of the Supreme Court)
c. or Cap. (for a Chapter in the Revised Laws)
s. (in a section reference).

Where the abbreviation constitutes an acronym (i.e. initial letters pronounced as a word), full stops are typically omitted.

UNESCO (acronym for United Nations Educational, Scientific and Cultural Organisation)

- **(in some jurisdictions) after the section number at the start of the section or at the end of a section note (or side/shoulder note)**

SELF ASSESSMENT EXERCISE 2

Check, and note down in the spaces provided, the practice in Nigeria with respect to full stops for:

1. Section and subsection numbers
2. Section/side notes and Arrangements of Sections (where section notes are tabulated)

3.6 How and When to Use a Colon

A colon may be added at the end of a phrase to introduce a series of propositions that follow on that one phrase. It is itself a visual form of *introducer*. So, the colon is typically used to:

- (i) conclude the enacting formula in an Act
- (ii) conclude a phrase that ends with, e.g. "the following" or "as follows"
- (iii) introduce a series of paragraphs or a list of numbered items

Example Box 4

Enacted by the National Assembly of the Federal Republic of Nigeria:

↑

The Minister may make regulations for all or any of the following

↓

purposes:

- (a) prescribing anything that is required to be or may be prescribed under this Act;
- (b) the manner in which applications may be made under this Act;
- (c) the fees to be paid in respect of any matter or thing done under this Act;
- (d) the returns to be made in respect of fees collected under this Act;
- (e) the proper administration of this Act.

3.7 How and When to Use a Dash

The dash is the preferred alternative to the colon in many jurisdictions. There it is used for precisely the same purposes, except that it is rarely found by itself at the end of the enacting words. Like the colon, it is an introducer; it completes a line of text that would otherwise finish with white space. It has the merit of appearing to point forward, and is therefore a clearer introducer than the colon.

Unfortunately, in word-processing, whereas the colon attaches itself to the last word, a space is commonly inserted between the last word and the dash. As a result, when the text goes right to the end of the line, the dash is consigned, as an orphan, to the beginning of the next line. For that reason the colon is often preferred.

Example Box 5

The Minister may make regulations for all or any of the following purposes -

- (a) prescribing anything that is required to be or may be prescribed under this Act;
- (b) the manner in which applications may be made under this Act;
- (c) the fees to be paid in respect of any matter or thing done under this Act;
- (d) the returns to be made in respect of fees collected under this Act;
- (e) the proper administration of this Act.

The orphaned dash is illustrated.

3.8 How and When to Use a Colon + Dash

Some drafters say "Never!" There are several reasons for this advice.

- (i) such a punctuation mark is not used in other forms of writing;
- (ii) it combines two different marks, both performing precisely the same function. At the best, it can be seen as an emphasised form of introducer;
- (iii) there is no necessity for its use, as there are two well accepted alternatives.

Yet the colon+dash is still part of some house-styles. It may be unavoidable in enacting words, if the style including this punctuation has been enacted. But no strong case can be made for its use in other cases. It is unlikely that its disappearance would be noticed if one of the other forms is used instead.

SELF ASSESSMENT EXERCISE 3

Check, and note down in the spaces provided, whether, in Nigeria, the colon, the dash or the colon+dash is used for the following purposes:

1. at the end of the enacting formula:
2. after e.g. "as follows":
3. to introduce a series of paragraphs or a tabulation:

3.9 How and When to Use a Semi-Colon

Semi-colons are used, within a sentence, to separate text that deals with distinct but closely linked matter. It performs a similar function to a conjunction such as "and". Typically in legislation, the semi-colon is used to mark off separate but linked clauses or paragraphs.

(i) Linked clauses

Two legal propositions, each with its own subject and predicate, may be placed in the same sentence because their contents are closely connected. The technique is usually when the second proposition follows immediately from the first. The semi-colon suggests the link between the two, and that equivalent weight should be given to both propositions.

Example Box 6

A person aggrieved by the refusal of a license may appeal to the Minister; the Minister's decision is final.

↑

This presentation is an exception to the typical practice by which distinct propositions are to be treated in separate sentences. But the semi-colon can be used in this way to join in a single sentence two propositions:

- that are interdependent; and
- that are of no great length; and
- the second of which is legally *no* more important than the first.

In practice, this device is not widely used. Drafters generally prefer to use a conjunction or paragraphing or separate subsections.

(ii) **Linked paragraphs**

Legislative sentences commonly use semi-colons at the end of paragraphs or subparagraphs that are listed in tabular form. It indicates the co-ordination between the items in the paragraphs.

Example Box 7

If a person arrested or detained under this section is not tried:

- (a) in the case of a person who is in custody or is not entitled to bail, within 2 months from the date of arrest or detention; ← or
- (b) in the case of a person released on bail, within 3 months from the date of arrest or detention; ←

he or she shall be released either unconditionally or upon such conditions as are reasonably necessary to ensure appearance for trial at a later date.

Here is how the sentence was printed *originally*, when the Printer combined the last paragraph with the words that followed.

If a person arrested or detained under this section is not tried:

- (a) in the case of a person who is in custody or is not entitled to bail, within 2 months from the date of arrest or detention; or
- (b) in the case of a person released on bail, within 3 months from the date of arrest or detention, he or she shall be released either unconditionally or upon such conditions as are reasonably necessary to ensure appearance for trial at a later date.

Arguably, a semi-colon at the end of the second paragraph could have prevented the Printer treating the sentence as if that paragraph included the words that follow it (when in fact it should be outside paragraphing).

In the first of the examples in **Example Box 7** a semi-colon is used at the end of the last paragraph. However, in many jurisdictions, it is more common for a *comma* to be used there. This uses the mark as it is used in unparagraphed sentences, to indicate the end of the introductory subordinate clause. For that reason some drafters favour the semi-colon at that point.

Example Box 8

Here is another example where the comma caused the Printer serious uncertainty.

The Revised Laws shall be printed in the form of Booklets, a separate booklet being printed for:

- (a) the Constitution and any subsidiary legislation made thereunder;
- (b) each Act and the subsidiary legislation made thereunder;
- (c) each piece of foreign legislation applied to [Nigeria], *included in the Laws by virtue of section 4.* ↑

The highlighted words should have been placed outside the paragraphing, so as to apply to *each* paragraph. The intention was for booklets to be used only for the listed legislation that was included in the Revised Laws. In fact, section 4 permitted the Attorney-General to authorise *local* Acts and subsidiary legislation that were spent to be omitted from the revision. But as this section is printed these laws must be published, since the modifier is restricted to foreign laws.

Paragraphs are used not just to list or tabulate a series of items or alternatives. They may also be used to present the internal components of the sentence in a more readable form. For example, a context clause that contains several elements can be structured in paragraphs. In that case, a comma, rather than a semi-colon, at the end of each paragraph is the appropriate mark. The punctuation then is the same as in the sentence if it were not paragraphed.

Example Box 9

A police officer who: ↓

- (a) reasonably suspects a person of having committed a summary offence, and

(b) is unable to ascertain the name and address of that person, ←
may arrest that person and take him or her to the nearest police station.

This course is not universally followed. There is a case for treating all paragraphing as a form of listing, and for using semi-colons distinctively at the end of every paragraph.

SELF ASSESSMENT EXERCISE 4

In the spaces provided, note down whether in Nigeria a semi-colon or a comma is used:

1. at the end of the final paragraph of a series:

2. at the end of paragraphs which have been introduced to make the sentence easier to read and understand:

4.0 CONCLUSION

To conclude, Judges call punctuation in aid to support a particular construction indicated by the syntax and general purpose of the provision itself. Good drafting calls for punctuation according to the same standard conventions that apply to all writing.

5.0 SUMMARY

In this unit, you have worked out the principal ways in which certain punctuation marks are used in legislation, and the purposes they serve. You should now be more aware of this feature of legislative syntax and of the need to give it specific attention.

6.0 TUTOR MARKED ASSIGNMENT

The following sentence has not been punctuated.

- 1) Indicate on the text of the sentence where, and which, punctuation marks are required.
- 2) In the space provided, restructure the sentence, using paragraphs, where appropriate, to make it easier to read, and add any further punctuation required.

A person convicted of an offence under subsection (1) remains liable for the payment of property tax notwithstanding that he has paid a fine or served a sentence imposed upon conviction and the conviction does not affect bar prejudice or limit the power to bring civil proceedings for the recovery of property tax under section 83 nor does the conviction affect, bar, prejudice or limit the power to lay a further charge under subsection (1) for a separate offence of refusal or wilful neglect to pay the rate subsequent to the date of conviction

7.0 REFERENCES/FURTHER READINGS

Interpretation Act, Cap.192 Laws of the Federation of Nigeria 1990.

Driedger E.A, (1976) *The Composition of Legislation; Legislative Forms & Precedents*, Ottawa: Dept of Justice.

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

UNIT 2 PUNCTUATING LEGISLATION II

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 How and when to use brackets
 - 3.2 How and when to use commas
 - 3.3 How and when to use inverted commas
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- 4.0 Conclusion
- 5.0 Summary
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1.0 INTRODUCTION

This unit deals with other types of punctuation found in legislation. They include: brackets, commas, hyphens and apostrophes. This unit is written on the basis that you are familiar with the standard punctuation marks and when to use them for general purposes. But you may find it helpful to remind yourself of those matters by reading the appropriate section of a standard grammar manual.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Explain how and when brackets, commas, inverted commas, hyphens and apostrophes are used in legislation.

3.0 MAIN CONTENT

3.1 How and When to Use Brackets

Brackets (invariably in the form of rounded brackets when used in the text of the legislation) may be used to interpolate additional words into the text of legislation to:

- (i) add further information or an explanation; or
- (ii) provide an incidental clarification; or
- (iii) create a short definition.

Example Box 1

Further information:

Section 64 (*which provides for appeals to the Minister*) does not apply in respect of licenses issued under this section.

Clarification:

A person commits an offence who, with intent to extort a valuable thing from another person, publishes or threatens to publish a libel upon any other person (living or dead).

Definition:

An application may be made to a court by or on behalf of a person for whose benefit maintenance declaration has been made (in this section referred to as "the applicant") for an order under this Act against a person who is liable to maintain the applicant under that declaration (in this section referred to as "the defendant").

A parenthesis (bracketed words) adds secondary or incidental matter to a sentence that is already grammatically complete. In consequence:

- (i) the sentence must make grammatical sense when it is read without the words in brackets.
- (ii) do not use brackets around material that is legally essential.

Interpolated matter that is essential to the legal proposition is best marked by a pair of commas (which are used as an alternative to all the uses just described).

Example Box 2

Brackets instead of the commas would be unsuited to the following sentence (taken from **Example Box 1**). The matter is essential to the rule.

↓

A person commits an offence who, with intent to extort a valuable thing from another
 ↓
 person, publishes or threatens to publish a libel upon any other person (living or dead).

Brackets are also used for other purposes:

- (i) around numbers and letters that are assigned to subsections, paragraphs and subparagraphs;
- (ii) around the commencement date below the long title (often in the form of square brackets);
- (iii) in short titles, mostly drafted in broad terms, to indicate specific coverage of the Act.

3.2 How and When to Use Commas

The comma is the most difficult and misused punctuation mark. Its effect is to cause the reader to pause. In consequence, it can be used to encourage the reader to take pauses in the reading when that contributes to an understanding of the sentence structure. However:

- (i) don't use the comma to resolve uncertainties in syntax;
- (ii) don't use it excessively; it should always perform some worthwhile function in reinforcing the structure of the sentence.

Generally, a comma is used at the end of a complete clause or a self-contained phrase.

You will find the comma to be useful in the following cases:

- **After an Introductory element**

Sentences frequently begin with a proposition that stands apart from the provisions that follow. A comma points up where the proposition ends. Typical cases place a comma:

- (i) at the end of a context clause
- (ii) at the end of a limiting phrase.

Example Box 3

When the High Court decides a case on appeal, it shall certify its
 judgment or order to the court which made the order appealed from.

Except as provided in subsection (2), no prosecution is to be
 commenced without the written consent of the Attorney-General.

- **To divide a compound sentence**

A legislative sentence may be made up of two fully independent clauses joined by a conjunction (such as "and"). It is usual to put a comma at the end of the first clause, immediately before the conjunction.

Example Box 4

Where a surety to a recognisance dies before the recognisance is forfeited, the estate of the surety is discharged from all liability in that respect, but the party who gave the recognisance may be required to find a new surety.↑

A semi-colon can also be used, in place of the comma.

- **To separate items in a series**

A comma is used after *each* of the items in a series of three or more words, expressions or phrases. But if the last item is joined to the rest by a conjunction ("and" or "or"), the comma is typically omitted at that point.

Example Box 5

In this Act, "animal" means cow, goat, horse, pig or sheep.

- **To mark off interpolations**

As with brackets, commas can be used to enclose material that adds to or clarifies or explains some aspect of the sentence. Use them, in the form of two matching commas, in preference to brackets where the interpolated information is legally important.

Example Box 6

Example Box 8

↓	↓	↓	
A person who, without lawful authority, exports from Nigeria, or puts on board any ship for the purpose of being so exported, an aircraft or vehicle, commits an offence.			
			↑
↑			
The first pair of commas marks off an important interpolation.			
The second pair of commas is used to enclose the second of two expressions so that both are seen to be linked to the same object ("an aircraft or vehicle").			
The final comma, in strict grammar, is not essential. It comes at the end of a long clause that is a part of the sentence subject, since it modifies "person". So, the comma in fact divides the principal subject from the principal verb. But it does make the reading easier in this case. However, this might have been avoided by better sentence structure, in particular, by linking directly the main subject and the main predicate ("A person commit an offence....").			

When considering whether to use commas, bear two working practices in mind:

- (i) keep commas to the minimum necessary. Too many can interfere with the easy reading of the sentence and a ready understanding, just as much as too few;
- (ii) when reading through your drafts, ask yourself whether the commas you have used in fact perform a useful function. You may find that you can manage with rather fewer than you had originally supplied.

3.3 How and when to use inverted commas

Inverted commas or "quotation marks" are used for precise purposes in legislation. In most jurisdictions, they take the form of two pairs of marks (opening and closing), rather than a pair of single marks.

SELF ASSESSMENT EXERCISE 1

Look at a recent legislation that contains an interpretation section and also makes textual amendments. Note down, in the space provided, whether double or single quotation marks (or both) are used. If both, note down when.

Inverted commas are used to identify words or phrases that are to be subject to some legislative action. There are three main uses:

- **Around Definition Terms**

In definition sections or other interpretation provisions, an expression that is to be given a particular meaning or construction is identified by quotation marks.

Example Box 9

In this Act, "complaint" means a complaint made under section 25.

In this section, "sentence" includes an order or decision of a court consequent on a conviction for an offence or a finding of guilt in respect of an offence.

- **Around Names Assigned to Offices**

Sentences that create an office or institution commonly designate the official name which it is to bear. The sentence assigning that name can state the name within a pair of inverted commas.

Example Box 10

A commission is constituted by this Act to be called the "Judicial and Legal Service Commission of Nigeria".

- **Around Expressions That Are The Subject Of Textual Amendment**

Expressions that are to be repealed or amended or added are identified by inverted commas in the sentences that direct their repeal, amendment or addition.

Example Box 11

In section 12 of the Animal Diseases (Control) Act 1988, the words "Supreme Court or" are repealed.

In section 13 of the Animals Diseases (Control) Act 1988, the following new subsection is added:

"(3A) A person who interferes with a captive animal, or the enclosure in which a captive animal is held captive, commits an offence."

We look at the punctuation of sentences making textual amendments in another course.

3.4 How and When to Use Hyphens

Hyphens are used for two main purposes. To:

- (i) divide words, at the end of a line, that are too long to be completed on that line, and so must run on to the next;
- (ii) join two words together.

- **At the End of Line**

Hyphens splitting a word typically are inserted by printers when setting up the text or automatically by word-processing software. Legislative Counsel's responsibilities are to check the printed text to ensure that:

- (a) the hyphen is not used for one-syllable words;
- (b) the break in the word made by the hyphen does not make the word awkward to read;
- (c) the intended word is complete when the two parts are joined.

- **To Join Words**

In most instances, a dictionary will determine whether to use a hyphen or not for this purpose. A small number of cases have particular legislative relevance, when the usage may be dictated by the local house-style. These relate to:

- (a) fractions when stated as words (e.g. "two-fifths");
- (b) specific official titles (e.g. "Governor-General"; "Attorney-General"; "Vice-President");
- (c) specific legal words (e.g. "bye-law"; "court-"martial"; cross-examine"; "sublease").

3.5 How and When to Use Apostrophes

Apostrophes are not much needed in legislation. They are used widely in other documents to indicate contracted words and possessives, which are uncommon in legislation.

(i) Contracted words

The apostrophe indicates a missing letter (e.g. "doesn't" for "does not"). But as these colloquial forms are not appropriate for legislation, this is rarely needed. One such case where it is found is in "o'clock" (although this term has largely been replaced by "a.m." and "p.m.").

(ii) Possessives

The apostrophe is added with the letter "s" at the end of a word to indicate possession. In most legislation, possessives are typically shown by the words "of the". So, this mark is not much used. Two cases where you will need it are:

- (a) in descriptive phrases, such as "a dealer's licence", where no particular person is referred to;
- (b) where the expression refers to some item or matter belonging to a person already referred to in the same sentence.

Example Box 12

Illustrations of the two cases are:

A person aggrieved by an order under this section may appeal to the magistrate's court of the area in which the person resides.

↑

A person aggrieved by an order under this section may appeal to a Judge in chambers; the Judge's decision is final.

↑

Note that "it's" is a contraction of "it is", and is unsuitable for legislative drafting. That form is *not* the possessive form of "it"; the correct possessive form of "it" is "its" (i.e. *without an apostrophe*).

4.0 CONCLUSION

Since punctuation forms part of legislation, care must be taken in their use as wrongly used punctuations may result in ambiguity in legislation.

5.0 SUMMARY

In this unit, we have considered how to use punctuation in legislation. You should now be able to punctuate legislation properly. If any matter remains unclear (e.g. on the use of commas, which is perhaps the most tricky), rework the topic and look at how the matter is dealt with in the examples and in legislation.

6.0 TUTOR MARKED ASSIGNMENT

By inserting arrows at the relevant places, indicate where commas should be used in the following sentence.

Notwithstanding any provision of this Act if a person who would otherwise be liable to pay property tax to a council produces to the executive officer to that council or to a tax collector appointed by that council a valid receipt issued by or on behalf of another council in evidence that he has paid property tax levied by that other council for the current year being property tax which he is liable to pay under this Act he is not liable to pay property tax for that year to the first-mentioned council.

7.0 REFERENCES/FURTHER READINGS

- Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.
- Thornton, G.C. (1996) *Legislative Drafting* 4th ed., London: Butterworths.

UNIT 3 USE OF CAPITAL LETTERS

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 When to use capital letters
 - 3.2 When not to use capital letters
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1.0 INTRODUCTION

This unit is designed to heighten your awareness of drafting practices in Nigeria with respect to the use of capital letters. For that reason, we have provided a number of Exercises to encourage you to look at some legislation. It is easy to overlook this feature of drafting but you should work to make good practices part of your drafting routine. We have also provided examples, and Self Assessment Exercises, to bring these out.

2.0 OBJECTIVE

By the end of this unit, you should be able to:

- (i) Decide on when and when not to use capital letters in drafting legislation.

3.0 MAIN CONTENT

3.1 When to Use Capital Letters

Drafters use capital letters (“upper case”) largely in the same way as they are used in other types of documents. Again the house-style may indicate specific cases when capital cases should be used, typically as the initial letter of certain kinds of terms. Upper case is only rarely used for *all* the letters in words in legislative text.

- **As in Standard Usage**

Use capital letters:

- (i) for the initial letter of the first word of every new sentence;
- (ii) for the initial letters of a proper name, such as that of a person, place or country or a specific geographical area;
- (iii) for the initial letters of the title of a specific institution, company or society, or of a particular constitutional office;
- (iv) for initial letter of days of the week and months of the year and of the words naming holidays;
- (v) for abbreviations of the names of formal bodies and for acronyms made out of initial letters (e.g. "UNICEF").

In these cases, follow the same practice as you would for other documents.

- **Typical legislative uses**

Specific words, when used to refer to primary legislative instruments or their main divisions, consistently begin with a capital letter. Individual components of legislation typically have their initial letter in lower case.

Our house-style may require capital letters to be used in other circumstances in legal instruments, including for complete words, e.g. in headings. Check local practice.

SELF ASSESSMENT EXERCISE 1

In the spaces provided, indicate whether or not capital letters are used for the following purposes.

1. for all the letters of the words in the *long title* of an Act, or just to begin the principal words in the title, or in the same way as in the rest of the instrument:
2. for every letter in the words used in *headings* in an Act, or only for the initial letter of the principal words of headings, or in the same way as in the rest of the instrument:
3. for the first letter of the first word of a *paragraph*:
4. for the first letter of all terms for which *definitions* are provided in interpretation clauses:

- **For the name of an entity**

From time to time, you will need to establish or refer to an entity with or by its designated name. It is usual to begin both the words of the name and any shortened version of it with capital letters.

Example Box 1

In this Act:

"Authority" means the **Motor Accidents Authority** of Utopia established under Part 7:

"**Motor Accidents Fund**" means the fund by that name established under Part 8.

Note the lower case for "fund", which is used as a general class term.

However, many other words can begin with either an upper case letter or one in lower case. Which to use may be a matter of local practice. If you are uncertain, check the house style and follow that consistently, even where the practice appears to be unnecessary.

3.2 When Not To Use Capital Letters

Generally, don't use capital letters unless there is a positive reason or benefit from doing so. The lower case is the standard font for legislation as for other documents. In particular, it is used in legislative instruments for the following.

- **Typical legislative terms**

In most jurisdictions, words used to refer to provisions in legislative instruments and to types of secondary legislation consistently begin with lower case letters.

SELF ASSESSMENT EXERCISE 2

In the spaces provided, indicate whether or not in Nigeria lower case letters are used to begin the following words (disregard their use as part of a title).

clause:

order:

paragraph:

regulations:

rules:

rules of court:

section:

subsection:

subsidiary legislation:

- **words describing general classes**

In legislation, as elsewhere, many words used to refer to a general class begin with a lower case letter, even though the same words carry capital letters when used as part of a name.

Example Box 2

No **court**, other than the High **Court**, may hear an application under this section.

The Board is to consist of the **D**irector-General and 5 other **d**irectors.

However, some terms are treated as having such official standing that they always carry an initial capital letter. You can obtain guidance on most of these from the way the terms are presented in definitions in the Constitution and the Interpretation Act.

Example Box 3

No person shall be appointed a **M**inister of the **G**overnment unless qualified for election as a **m**ember of the **P**arliament.

SELF ASSESSMENT EXERCISE 3

In the spaces provided, indicate whether or not, in Nigeria, a lower case letter begins the following words when used to describe one of a **general class**.

board of directors:

chairman:

court:

director:

judge:

magistrate:

member [of Parliament]:

minister:

minister of religion: police officer: registrar:
--

4.0 CONCLUSION

To conclude, capital letters should be used properly in legislation in line with the house style.

5.0 SUMMARY

In this unit, you have learnt when and when not to use capital letters in drafting. In your future work on this Course, take time to check your use of punctuation and capital letters. If, for example, you find differences between your answers and those suggested, try to establish why, referring if necessary to the appropriate unit. However confident you feel you have become in this matter, *always* scrutinise your drafts to check whether you have followed best practice at every point. This routine has the benefit of drawing attention to weaknesses in other features of the syntax.

6.0 TUTOR MARKED ASSIGNMENT

1. How important is the use of capital letters in legislation?

7.0 REFERENCES/FURTHER READINGS

1999 Constitution of the Federal Republic of Nigeria.

Interpretation Act, Cap. 192 Laws of the Federation of Nigeria 1990.

MODULE 3 WHAT CAN GO WRONG IN LEGISLATIVE EXPRESSION?

Unit 1	What can go wrong with subjects?
Unit 2	What can go wrong with verbs?
Unit 3	What can go wrong with modifiers?

UNIT 1 WHAT CAN GO WRONG WITH SUBJECTS?

CONTENTS

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1.0 INTRODUCTION

In this course so far you have been looking at techniques for producing sound legislative sentences which clearly communicate their requirements to users. You will have noticed already a number of cases where you need to pay careful attention to syntax or grammar to avoid obscurity or ambiguity. In this Module, we concentrate on this type of case.

The English language is so flexible that we can compose meaningful sentences, yet they do not convey the precise results that we are seeking. In drafting legislative sentences, then, we need to be particularly careful

that they do not say something that we do not intend or that users can find different meanings from the one we set out to produce.

English language usage contributes to a number of drafting pitfalls. Even experienced drafters, working under pressure, are occasionally caught by them. In this Module, we identify the most common ones and work out ways in which you can avoid them. Some you have already come across in earlier Modules of this Course.

In this unit, we are principally concerned with pitfalls that affect grammatical subjects of sentences and of clauses. Some of these traps also occur in other parts of sentences in which nouns are used as objects, rather than subjects. We examine cases where drafting in the way indicated can lead to ambiguity or lack of clarity.

2.0 OBJECTIVES

By the end of this unit, you should be able, when drafting legislation to:

- (i) Detect the main kinds of drafting errors in connection with legislative syntax and expression;
- (ii) Compose simple legislative sentences that are unambiguous and free from common errors of expression.

You are likely to find this a demanding Module. In part, this is because we cover a wide range of cases; in part, it is because the cases examined have few thematic links with what comes before or afterwards in the text.

We suggest that you consider each of the cases in the subdivisions separately. Make yourself fully aware of the nature of the problem first and then work out the ways of dealing with it. For that purpose, we have included a considerable number of Exercises; these are designed in the main to allow you to offer a specific solution to a problem illustrated in the text. In studying this Module, then, you will gain most from completing the Exercises and evaluating your answer with that suggested, *before* you move to the next case.

Do not try to do too much in a single study session. You will gain most from reinforcing your understanding by going over the material on a particular case more than once. Your aim is to discover how the difficulty in question can arise and how it can be avoided. You may find it helpful to develop a checklist of the cases discussed and the methods of dealing with them.

3.0 MAIN CONTENT

3.1 Imprecise Linking Of Several Subjects

Rules that affect more than one class of subject must indicate the intended relationship between those subjects. Drafters avoid sentences which impose different rules on different classes of subject. But occasions arise when the *same* rule has to be applied to several subjects. Both "**and**" and "**or**" may be used to link the subjects in those cases:

- "**and**" implies that the linked cases are joined or combined in some way (usually described as *conjunctive*);
- "**or**" implies that the linked cases are in some way separated or alternatives (usually described as *disjunctive*).

Unfortunately, both conjunctions are potentially ambiguous:

"**and**" can be joint or joint and several. A *joint* "and" is used to refer to **all of a and b**. A *joint and several* "and" is used to refer to **a and b or any one of them**.

"**or**" can be inclusive or exclusive. An *inclusive* "or" is used when we wish to refer to **a or b or both**. An *exclusive* "or" is used to refer to **a or b, but not both**.

As a consequence, the *joint and several* "and" and the *inclusive* "or" are identical in effect, and either can be used for that case.

In most instances, the context makes clear whether all of several cases described are covered in the same way by the rule or whether the rule treats those cases as alternatives. The choice between the two is obvious, and should cause you no difficulty.

SELF ASSESSMENT EXERCISE 1

To show obvious uses of the conjunctions, write down a short sentence instructing a junior colleague to take a holiday of each of the following kinds.

- (a) to take the holiday on three named days next week:
- (b) to take a holiday on any *one* of three named days next week:

In **Self Assessment Exercise 1**, did you find yourself using the conjunctions in the following ways?

"and" when you listed the three days (i.e. the provisions apply to *all* the cases comprised in a group: “Take a holiday on Monday, Tuesday *and* Wednesday next week.”). This is an example of the *joint* “and”.

"or" when you gave a choice of mutually exclusive alternatives (i.e. to indicate that the provision applies specifically to *each case* in the group, rather than to the entire group: “Take a holiday on Monday, Tuesday *or* Wednesday next week.”).

This is an example of the *exclusive* “or”. However, in many instances, the choice between the two makes little difference in its final effect. It is possible to express a rule as applying collectively to *all* classes to which the rule relates or as applying *separately* to *each* of them.

Example Box 1

Both the following sentences have the same legal effect.

Every passenger, officer *or* member of the crew of a domestic aircraft

is subject to this Part.

Passengers, officers *and* members of the crew of a domestic aircraft are

subject to this Part.

In both, the result is that the rule applies to all three classes of subject. The first indicates each case in the singular as a set of alternatives. The second, which groups together all the classes, now expressed in the plural, is more likely to be used.

How should we use "and" and "or"?

● using "and"

Use **"and"** when you need to bring out the cumulative or joint nature of the link between the classes in the group, in particular in a:

- (i) clause that imposes a positive duty on *all* classes in the group to act *in concert* or *at the same time* or *in the same circumstances*;
- (ii) context clause describing circumstances that apply to *all* the classes in the group *at the same time* (especially where the classes are expressed in plural terms).

Example Box 2

The master of the ship *and* the quarantine officer shall sign the certificate of clearance.

Where the passengers, officers *and* members of the crew of a ship that is subject to quarantine are required to remain on board, no person shall come within 100 metres of the ship, except a quarantine officer.

- **using "or"**

Use "or" when you need to bring out the independent or alternative application of the rule to the classes to which the rule relates, in particular in a:

- (i) *prohibition* that applies to several subjects (e.g. "no mother or father shall....");
- (ii) clause that is likely to operate with respect to each of the named classes *at different times*;
- (iii) context clause that describes actions that may be performed *separately by any one of the classes*.

Example Box 3

No passenger, officer *or* member of the crew of a ship that is subject to quarantine shall leave the ship until permitted to do so by a quarantine officer.

A passenger, officer *or* member of the crew must be placed in isolation if appearing to a quarantine officer to be suffering from an infectious disease.

The quarantine officer shall not issue the certificate of clearance unless the master, owner *or* agent of the ship pays the costs of disinfecting the ship.

Complete Self Assessment Exercise 2. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 2

In the space, draft a sentence that imposes a duty on a ship's master and on all quarantine officers to ensure that passengers, officers and crew members do not leave the ship without permission of a quarantine officer.

- **Problem cases**

However, some cases need particular care.

- a) **Overlapping classes**

Some terms are capable of describing both a *class* of persons and a *characteristic* of a person. If two of these terms are linked by "and", it may be unclear whether two different classes of subject are intended or whether the one subject has the two characteristics.

Example Box 4

Every *wife and mother* is eligible to receive the benefit.

This is probably intended to require beneficiaries to have both characteristics, rather than to create two distinct classes of women.

The following are the alternative possibilities but are unambiguous:

Every *married woman who is a mother* is eligible to receive the benefit.

Every *woman who is a wife or a mother* is eligible to receive the grant.

If you are using descriptive class terms of this kind, make sure that:

- (i) two linked subjects cannot be interpreted as a single class with two characteristics;
 - (ii) two linked characteristics of one subject cannot be interpreted as two distinct subjects.
- b) Comprehensive classes**

If *all* or *some* or *any one* of a group of subjects are affected by the rule, you can generally use either "**and**" or "**or**". Typically, either conjunction works when the rule deals with a case that is constantly operating and so applies to the different subjects as their circumstances bring them within the ambit of the rule or if they choose to invoke it.

However, if the rule requires *a single action* to be taken in given circumstances, it is important to know which of the subjects is to take it. If the subjects are linked by "**and**", it suggests that *all* are to act collectively, although the grouping could also be construed as a *list* of those who can act. On the other hand, using "**or**" may imply that *only one*, or *any one*, or *more than one* but *not all*, may carry it out.

Example Box 5

When the charges payable under subsection (1) in connection with the quarantining of a ship are not paid within 30 days after the completion of the quarantine, proceedings may be brought against *the master, owner and agent of the ship* for the recovery of the charges in the manner provided in subsection (3).

Does this mean that all three, or any two, or only one of these subjects may be proceeded against? Substituting "or" for "and" makes it no clearer. Presumably it is intended that *all or any* may be proceeded against. If so, a redraft might read:

When the charges payable under subsection (1) in connection with the
 the
 quarantining of a ship are not paid within 30 days after the
 completion

of the quarantine, proceedings may be brought against *the master, owner and agent of the ship, or any of them*, for the recovery of the charges in the manner provided in subsection (2).

Some suggest that "**and/or**" is suited to this case; but drafters regard this as insufficiently precise to be of value. If a clause of this kind is to operate in relation to all, as well as to any, of the classes, (unless the context makes it clear):

- consider linking the terms with such words as "**both and**" or "**..... and, or each of them**" or "**..... and, or any of them**".

c) Inclusive classes

If *all* or *any* of a class may operate the rule when the occasion arises, link the subjects by "**and**"; this produces a list of the cases to which the rule applies.

However, here too, if the rule can be operated *only once* on any one occasion, you may need to make clear whether *only one* of the listed subjects can operate it on that occasion (although all are *entitled to* take that action), or whether it is intended that they are to act *together*. The intention may not be evident from a list linked by "and".

Example Box 6

Land that is to be sold under this Act may be purchased *by the tenant of the land and the owner of land that abuts it*.

Joint purchase is unlikely to be intended in this context. However, does this draft entitle each of the parties to purchase a *part* of the land, or may one or other of them buy the *entire* parcel?

If *all* the subjects are to participate *together* in relation to a specific activity, (unless the context makes it clear):

- consider linking the classes with "**both and**" or "**..... and jointly**" or "**..... and..... together**".

Example Box 7

Land that is to be sold under this Act may be purchased *jointly* by the tenant of the land *and* the owner of land that abuts it.

d) Exclusive classes

If *only one* in the group of subjects is to operate the rule *on any one occasion* (at which time the rule is fulfilled and cannot be invoked thereafter by another subject) a simple "**or**" may not be enough.

Example Box 8

Land that is to be sold under this Act may be purchased by *the tenant of the land or the owner of land that abuts it*.

Does this entitle one of the parties to purchase all the land to the exclusion of the other? Or is it stated this way to emphasize that these are the only possible purchasers to the exclusion of all others?

If only one of the subjects (and no others) can invoke the rule, (unless the context makes it clear):

- consider linking the classes with "**either or**".

Example Box 9

Land that is to be sold under this Act may be purchased *either* by the tenant of the land *or* by the owner of land that abuts it.

Note the repetition of "by" after "or", matching the "by" after "either". This too helps to point up the separation of the two subjects.

e) Classes acting jointly

If a clause is to provide for *joint action* or activities or to describe a *joint relationship* (e.g. ownership or occupation of property), a simple "**and**" again may not be enough in the particular context to convey this intention.

Example Box 10

Where *a trustee and a receiver* are vested with the power to execute the trust, their powers and discretions under this Act may not be delegated.

Is this intended to cover only a case where the power is shared? As drafted it could apply to cases where the two classes of subjects each have such a power.

If the action or activity is to be a shared one:

- consider adding a further expression such as "**joint**", "**jointly**" or "**together**".

3.2 Ambiguous modifying of subjects

Some sentences require a single subject to be modified by more than one adjective or adjectival clause. In sentences with several subjects, you may need to add modifiers to some or all of those subjects, to give greater precision to the class or classes covered. Again, the conjunctions "**and**" and "**or**" have to be used. So again, there are pitfalls to watch out for on that account.

a) Several modifiers for a single subject

When a single subject noun is modified by several adjectives linked by "**and**", it may be possible to argue that *one* subject with several characteristics is intended or, alternatively, that the provision has *several* subjects, each distinguished by its own adjective.

Example Box 11

Charitable and educational institutions must keep proper books of account with respect to their transactions.

There are three possible meanings of this phrase, each of which could be expressed less ambiguously:

- institutions that are both charitable and educational;
- charitable institutions and educational institutions;
- institutions that are [either] charitable or educational.

In this context, the second and third produce the same result.

By no means all pairs of adjectives give rise to this difficulty. In most contexts, there is no likelihood of ambiguity. But:

- check that pairs of adjectives do not give rise to uncertainty as to the number of subjects. If they do, set out the modifiers in a different way (as illustrated in the **Example Box 11**).

b) A single modifier with several subjects

If a single adjective precedes the noun describing the *first* of several subjects, it may be possible to argue that the adjective applies to that first subject only or alternatively that it extends to *all* the subjects. A similar difficulty arises with an adjectival phrase that follows the last of the subjects. Is it confined to the last subject or does it apply to all?

Example Box 12

A married man or woman may apply to adopt a female child.

A woman or man *who is married* may apply to adopt a female child.

Although the modifier is attached to a specific noun, it may be argued that in each case it is intended to apply to both (i.e. not only to "man", but also to "woman"). Unless the context makes the intention clear, this produces an ambiguity that must be resolved.

Accordingly, unless the context makes the intention clear:

- (i) if the adjective is to apply to *all* the subjects, *repeat it before each*.
- (ii) if the adjective links to *only one* subject, *re-order the subjects* so that the subject with the adjective comes last, or *repeat the article* of the subsequent subjects.

Example Box 13

The examples in the **Example Box 12** can be re-written as follows, if the adjective applies to both subjects:

A married man or *a married* woman may apply to adopt a female child.

If the adjective applies to one noun only (the more likely version), it can be drafted:

A woman or a *married* man may apply to adopt a female child.

A woman, *or a man who is married*, may apply to adopt a female child.

Complete Self Assessment Exercise 3. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 3

The following sentence suffers from several ambiguities through single modifiers and multiple nouns (here objects, not subjects). Rewrite the sentence to eliminate the ambiguities, producing a version for *each* of the different meanings you find (however unlikely they may seem).

The Council shall publish an Igbo newspaper or magazine concerned with Igbo culture and African affairs.

c) Several modifiers for several subjects

If several adjectives precede several subjects, it may be unclear whether they are intended to apply to the *first subject* only or to *all* of them. A similar difficulty arises where several adjectival phrases follow the last of the subjects.

Example Box 14

Charitable and educational institutions or societies must keep proper books of account with respect to their transactions.

The italicised phrase gives rise to three possible meanings, each of which can be expressed less ambiguously:

- all institutions and societies that are both charitable and educational;
- societies, charitable institutions and educational institutions;
- every institution or society that is either charitable or educational.

In cases of this kind:

- (i) if a pair of adjectives is intended to modify a single noun, check that as placed they cannot be construed as modifying other nouns in the group; if you intend to modify other nouns, check that your placement of the modifier produces that result.
- (ii) in choosing the placement of such modifiers, use the same devices illustrated in **Example Box 14**).

Complete Self Assessment Exercise 4. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 4

The following sentence suffers from serious ambiguity as a result of a double modifier followed by several nouns (not in this case, sentence subjects). In the space provided, rewrite the sentence so as to eliminate the ambiguities, producing a version for *each* of the different meanings you find.

The Minister may make annual grants to public and private hospitals
or
schools or research institutions.

d) Relative clauses as subject modifiers

We have already seen examples of a subject modified by a relative clause (one that begins with an expression such as "who" or "which" or "that"). Ambiguity can arise because these clauses can be used for two distinct purposes. To describe:

- (i) *qualities or characteristics* that a subject has to have to come within the rule;
- (ii) *actions or activities* that the subject is to do or enter upon to come within the rule.

Avoid linking *both* these types of relative clauses, one after the other, to the *same* subject. There are several reasons for this advice:

- (i) the clauses perform different functions that may not be immediately apparent to the reader;
- (ii) if they are linked by "**and**", there is an added implication that the clauses are intended to perform the same function in the sentence;
- (iii) they both do not modify precisely the same expression. The descriptive clause modifies the subject, but the action clause relates to the subject *as modified by the descriptive clause*.

Example Box 15

A person who *owns or keeps a dog*¹ **and** *who permits the dog to be at large* without a collar or a registration badge² commits an offence.

¹ a descriptive clause modifying "a person"

² an action clause applying to "a person who owns or keeps a dog".

The presence of "**and**" suggests that the act of ownership or keeping is an element in the behaviour that constitutes the offence. There is usually nothing criminal in owning or keeping a dog.

In cases of this kind, several alternatives are open to you:

- (i) *replace* the subject and descriptive *clause* by a suitable *noun* or by a noun modified by a suitable adjective;
- (ii) *convert* the descriptive *clause* into a descriptive *phrase* by turning the verb into an adjectival form;
- (iii) *replace the action clause by a context clause*, which then does not begin with "who".

Example Box 16

The examples in **Example Box 15** may be rewritten as:

An owner or keeper of a dog who permits the dog to be at large without a collar or a registration badge commits an offence.

A person owning or keeping a dog who permits the dog to be at large without a collar or a registration badge commits an offence.

A person who owns or keeps a dog commits an offence if he or she permits the dog to be at large without a collar or a registration badge.

e) Double relative clauses

If you use more than one relative clause to modify a subject (so that both perform the same grammatical function), take care that the second cannot be treated as modifying a noun in the first of the clauses instead of relating back to the subject noun.

Example Box 17

A police officer who has arrested a person *who is injured* during the arrest must notify the Commissioner of Police.

Who is required to be "injured", the police officer or the arrested person?

This Part applies to ships that are carrying goods *that are subject to quarantine*.

Is it "ships" or "goods" that are subject to quarantine?

In cases of this kind, avoid ambiguity in one of the following ways:

- (i) if both clauses apply to the subject, use "**and**" to link them;
- (ii) if the second applies to a noun in the first, reverse the order of the clauses (the problem may not arise in that case);
- (iii) convert one of the clauses into an adjectival or adverbial phrase.

Complete Self Assessment Exercise 5. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 5

In the spaces provided, redraft the two examples in **Example Box 17** so that -

- (1) both modifiers apply to "police officer";

- (2) the second modifier applies to "goods" only.

Consider also using *separate paragraphs* for each of the clauses. Paragraphing makes it easier to see the way in which the clauses relate to the subject.

Example Box 18

Contrast the following versions for the ease of reading:

A child who is under the age of 19 years and who is subject to a detention centre order and who is released from detention remains subject to a supervision license until reaching the age of 19 years.

A child under the age of 19 years who:
(a) is subject to a detention centre order, and
(b) is released from detention,
remains subject to a supervision license until reaching the age of 19 years.

3.3 Imprecise Use of Pronouns

Pronouns ("he", "she", "it", "they") are a short-hand way of repeating a noun that has been used earlier. They can be useful at times, not least as the grammatical subject of a principal clause when the subject has already been described in an earlier part of the sentence (e.g. in a context clause).

Example Box 19

The following is typical of the way a pronoun is used:

If the court finds *the accused person* guilty, or if on arraignment *he* pleads guilty, *he* shall be asked then, but not before, whether *he* has been convicted previously of the offences alleged in the indictment.

Drafters used this device rather sparingly, for two main reasons:

- (i) pronouns give rise to ambiguity if it is unclear as to which earlier noun they refer;
- (ii) some singular pronouns are seen as "gender specific" (i.e. "he" and "she"), and are considered unsuitable for rules that apply equally to women and men (and, often, to corporations too). (Gender-neutral drafting is dealt with in the next Module).

Example Box 20

The Director may act on behalf of the Minister if *he* is satisfied that the expenditure does not exceed ₦100, 000.00.

Does "he" refer to "Director" or "Minister"? What if either is a woman. This kind of ambiguity can be avoided by repeating the appropriate noun in place of the pronoun. Avoid excessive use of pronouns, and prefer gender neutral terms to reduce use of "he".

Example Box 21

As the following illustrates, a sentence such as that in **Example Box 19** may be rewritten to reduce the use of pronouns and using gender-neutral language.

An accused person who is found guilty by a court, or who on arraignment pleads guilty, must be asked then, but not before, whether *he or she* has been convicted previously of the offences alleged in the indictment.

Some pronoun forms ("**it**" and "**its**", "**they**", "**their**" and "**them**") can be used more frequently than in practice they are, especially in longer sentences, to avoid irritating repetitions of the same noun.

Example Box 22

When a court adjourns any proceedings, it shall notify all parties to *them* of the time and place when *they* are to be resumed.

But when using any pronoun:

- (i) make sure that it refers unambiguously to the correct noun;
- (ii) check that it is the correct pronoun (i.e. a plural pronoun for a noun in the plural, a singular for a noun in the singular);
- (iii) use the pronoun only to refer to a noun that you have used earlier in the same sentence.

Avoid using a pronoun to refer to a noun:

- (a) in a *different section* or subsection;
- (b) that comes *later in the sentence*.

Example Box 23

Where *he* is satisfied that an item of food intended for human consumption is unfit for that purpose, *an authorised medical officer* may seize it and order it to be destroyed.

The pronoun and the noun should change places.

4.0 CONCLUSION

To conclude, English language is so flexible that we can compose meaningful sentences without conveying our intention. We have to be careful in drafting legislative sentences so as to make our intention clear and avoid ambiguity.

5.0 SUMMARY

In this unit, you have learnt about what can go wrong with subjects of legislative sentences. You should now be able to precisely link several subjects, modify verbs unambiguously and use pronouns precisely.

6.0 TUTOR MARKED ASSIGNMENT

Shortly describe the ambiguity that can arise from the conjunctions in the following sentences. Draft a replacement for **each**, as necessary, to eliminate any ambiguities in the highlighted phrases.

1. Where a farm animal trespasses on cultivated land, the owner **or** the tenant of the land is entitled to compensation from the owner of the animal at the prescribed rate.
2. Where a motor vehicle is parked in contravention of these Regulations, the owner **or** the driver commits an offence.
3. If the notice of fumigation is not displayed in a house in accordance with regulation 6, the owner **and** occupier commit an offence.
4. If oil is discharged into the sea from a Utopian ship in contravention of this Act, the owner **and** the master commit an offence.
5. The master, owner **or** agent of a ship ordered into quarantine may pay to the Port Health Authority the charges incurred by the Authority in connection with the quarantine.

7.0 REFERENCES/FURTHER READINGS

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

Thornton, G.C. (1996) *Legislative Drafting* 4th ed., London: Butterworths.

ANSWER TO SELF ASSESSMENT EXERCISE 2

The master of a ship **and**¹ every² quarantine officer shall ensure that no passenger, officer **or**³ member of the crew leaves the ship without the permission of a quarantine officer.

Notes:

¹ The duty falls on both classes to act in the same circumstances.

² The rule is cast in the singular, but it needs to apply to all quarantine officers.

³ The rule affects each of these classes independently; the clause uses negative subjects.

Standing alone this sentence could give rise to operational uncertainty. If a person leaves the ship without permission, are all the listed persons in breach? A more effective provision might penalize any of these persons who knowingly or negligently enables or permits a person to leave the ship.

ANSWER TO SELF ASSESSMENT EXERCISE 3

The adjective "Igbo" modifies "newspaper", but does it apply also to "magazine"?

The phrase "concerned with Igbo culture and African affairs" modifies "magazine", but does it also apply to "newspaper"?

There are, then, 4 possible variations as a result of these dangling modifiers. Versions 3 & 4 are unlikely to have been intended.

1. The Council shall publish:
 - (a) an Igbo newspaper; or
 - (b) a magazine concerned with Igbo culture and African affairs.
2. The Council shall publish:
 - (a) an Igbo newspaper; or
 - (b) an Igbo magazine concerned with Igbo culture and African affairs.
3. The Council shall publish:
 - (a) an Igbo newspaper; or
 - (b) a magazine,concerned with Igbo culture and African affairs.
4. The Council shall publish:
 - (a) an Igbo newspaper; or
 - (b) an Igbo magazine, concerned with Igbo culture and African affairs.

Note the way paragraphing can be used to remove this kind of ambiguity.

ANSWER TO SELF ASSESSMENT EXERCISE 4

The expression "public or private" modifies "hospitals. But does it also modify "schools" and "research institutions"? There are three possible versions:

1. The Minister may make annual grants to:
 - (a) public and private hospitals; or
 - (b) schools; or
 - (c) research institutions.
2. The Minister may make annual grants to:
 - (a) public and private hospitals; or
 - (b) public and private schools; or
 - (c) research institutions.
3. The Minister may make annual grants to:
 - (a) public and private hospitals; or
 - (b) public and private schools; or
 - (c) public and private research institutions.

Notes:

1. Paragraphing and repeated modifiers are methods of avoiding ambiguity. In 3, rather than repeating the modifier in each paragraph, it could be placed at the end of the introductory

words. But to do so would visually split the adjectives from the nouns that they modify.

2. It could be argued that the use of “or” in these drafts may require the Minister to make grants to only one of the three classes. However, substituting “and” suggests that, if grants are to be made, it must be to all three classes. Unless the context makes clear, it may be sensible to start the section with the following formula:

The Minister may make annual grants *to all or any* of the following:.....

ANSWER TO SELF ASSESSMENT EXERCISE 5

- (1) A police officer who is injured *when arresting a person* must notify the Commissioner of Police.
- (2) This Part applies to ships that are carrying goods *subject to quarantine*.

UNIT 2 WHAT CAN GO WRONG WITH VERBS?

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Imprecise linking of several verbs
 - 3.2 Ambiguous modifying of verbs
 - 3.3 Ambiguous use of participles
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References

1.0 INTRODUCTION

In this unit, we look at some pitfalls that affect verbs in the principal or dependent clauses in sentences.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Link several verbs precisely;
- (ii) Modify verbs properly;
- (iii) Use participles accurately.

3.0 MAIN CONTENT

3.1 Imprecise Linking Of Several Verbs

You will often find it necessary to use two or more verbs in a clause. As with nouns, make clear whether they are intended to be:

- (i) cumulative (i.e. all the verbs are to be given effect);
- (ii) alternatives (i.e. one or some or all may be given effect).

Again, "**and**" or "**or**" are needed. In most cases, the choice presents little difficulty.

Example Box 1

1. A person commits an offence who *takes and drives away* a motor vehicle without the consent of its owner.

Both actions must be performed to constitute the offence. If "**or**" were used, only one action would be necessary to create an offence.

2. If a police officer suspects that an escaped prisoner is on private premises, the officer *may enter and search the premises and arrest* that person without a warrant.

This provision **lists** the powers available. In most circumstances, at least two of the powers will be used on any one occasion.

3. If a police officer suspects that a person is about to commit an offence involving damage to property, the officer *may arrest or restrain* that person, using all reasonable force, *or take such other action* as is likely to prevent the damage.

These powers are stated as *alternatives*, as it is likely that only one will be resorted to at a time. But presumably all actions could be taken on the same occasion; so, the same result could be achieved by using "**and**".

But in certain cases one or other of these conjunctions should be used:

- **Use "and":**
 - in principal predicates to link verbs that contain a series of actions *all* of which have to be performed;
 - in context clauses to link a series of verbs that describe circumstances and conditions *all* of which have to be met.

Example Box 2

The prosecution shall sum up the case against the accused person if:
(a) the evidence of the witnesses for the prosecution has been concluded; and
(b) the accused person declines to present evidence on his or her own behalf, *and* the court shall then call upon the accused person, or that person's representative, to address the court on that person's behalf.

- **Use "or":**
 - where the verbs deal with mutually exclusive cases (i.e. only one can be performed on any one occasion);
 - with "**either**", to emphasize that only one of the verbs can be invoked at a time.

Example Box 3

An item forfeited to the State under this Act is to be *either* destroyed
or
sold, at the discretion of the Commissioner of Police.

3.2 Ambiguous Modifying Of Verbs

The clearest way to modify verbs by adverbs or adverbial phrases is to place those modifiers *as close as possible to the verb*. This normally prevents any ambiguity as to whether they modify that verb or some other. If your sentence structure makes that impossible, place the adverb where there can be no doubt that its purpose is to modify the verb.

Watch out for ambiguities in the following:

- a) **A single modifier for several verbs**

In a clause that contains several verbs and a single adverb, make clear whether the adverb applies to the *nearest verb only* or to *all* of them.

Example Box 4

If an accident involving a motor vehicle causes damage to another motor vehicle, the driver of each motor vehicle must produce the certificate of insurance relating to it to the other driver and must provide a written account of the accident, *if requested by that other driver*.

Does the italicised modifier apply to both actions ("produce" and "provide") or only to the second?

In cases of this kind, resolve the ambiguity in one of the following ways:

- (i) if the modifier applies to *both* verbs, use a single auxiliary to govern both (e.g. "**must**") and placing the adverb immediately *before* or *after* the auxiliary, even though this results in splitting the auxiliary from the main verb;
- (ii) if it applies to *one* only, place that verb and modifier after the conjunction (e.g. "**and**");
- (iii) in either case, consider using separate paragraphs for each verb.

Example Box 5

These two approaches are illustrated by the following re-drafts of the sentence in **Example Box 4**

1. If an accident involving a motor vehicle causes damage to another motor vehicle, the driver of each motor vehicle, *if requested by that other driver*, must:

(a) produce the certificate of insurance relating to it to the other driver;

and

(b) provide a written account of the accident.

2. If an accident involving a motor vehicle causes damage to another motor vehicle, the driver of each motor vehicle must:

(a) produce the certificate of insurance relating to it to the other driver;

and

(b) *if requested by that other driver*, provide a written account of the

accident.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 1

In the spaces provided, redraft the following:

A person detained in quarantine who is not a member of the crew nor a passenger on the ship that is ordered into quarantine must pay to the Senior Medical Officer the cost of any food or medicines supplied to him, *if he is required to do so*.

1. to make the highlighted modifier apply to the verb (“pay” or “supplied”) that it is most likely to modify.
2. to make the modifier apply to *both* those verbs.

b) Ambiguously placed adverbs

Ambiguity arises if it is unclear as to which expression of several a modifier is intended to modify (sometimes described as a “dangling” modifier). It will also occur if the modifier can equally well modify the expression that precedes it and the one that follows it (sometimes described as a “squinting” modifier).

Although such ambiguities also are found with adjectives (see **Example Boxes 11 & 12 in Unit 1 of this module**), both these faults occur with respect to adverbs particularly. **Example Box 4** contained an example of the first kind.

Example Box 6

If the court is satisfied that relevant evidence may be given by a person who has not been summoned, it shall direct the Registrar *without delay* to summon that person as a witness.

Does the highlighted phrase modify "direct" or "summon". It squints. Depending upon the intention, the modifier should be placed either after “direct” or “summon”.

--

As in **Example Box 6**, this kind of ambiguity may arise where a main verb is followed by another form of a verb (e.g. an infinitive (as "to summon" in that example) or an adjective made from a verb - a "**participle**"). Does the adverb modify the main verb or the verb form that follows it?

In cases of this kind, use the same techniques suggested in relation to a single modifier for several verbs (in **a**) above).

Example Box 7

The tribunal *may grant permission* to an aggrieved person *to give evidence* to the tribunal, *in writing*.

Does the final phrase "in writing" modify "may grant permission" or "to give evidence"? Depending on the intention, the modifier should be placed either after "permission" or more probably after "evidence".

Complete Self Assessment Exercise 2. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 2

In the spaces provided, redraft the examples in **Example Boxes 6 & 7**.

1. In 6, make the modifier apply to the *first* verb.
2. In 6, make the modifier apply to the *second* verb *only*.

3.3 Ambiguous Use of Participles

English uses certain verb forms as adjectives. They are used as modifiers in relation to a person or class of persons, by describing actions being taken by them or in relation to them (e.g. "a person **possessing**"; "a person **accused**"). These are known as **participles** ("possessing" is a present participle; "accused" is a past participle).

It is easy to overlook the fact that these words still perform as verbs, e.g. by having objects. In most circumstances, no problems arise. But two cases need to be watched:

a) Using a past participle

A past participle can be used both as an adjective and as part of a verb. For example, "an **accused** person" describes a characteristic of the person; "if a person is **accused**" indicates action against the person. In most circumstances, though the same word is used, there is no confusion as to whether a verb or adjective is intended. Unfortunately, that is not always the case.

Example Box 8

No relief may be granted under this Act to a person who was *married* on 1 January 2004.

Is "married" intended to be an adjective which describes a person's *status* on the date or does it indicate the *act* of getting married on that date?

Fortunately, this is not a common problem. It can only arise if a participle is used after a word such as "is", and it can be construed as either an adjective or a verb. This is fairly rare. In any case, it may only be significant if, as in **Example Box 8**, there is a fixed date, when it becomes vital to establish whether the rule describes a state of affairs or indicates the taking of some action. In most instances, the distinction is not relevant.

But it can arise with important legal words such as "**imprisoned**", "**married**", "**dissolved**" (e.g. in relation to a marriage), "**divorced**", "**paid**" (in relation to a debt). In cases of this kind, you can prevent ambiguity by:

- (i) combining the participle with other words (e.g. modifiers) that bring out the intended use;
- (ii) replacing the participle by a different word or phrase that does not have this kind of ambiguity.

Complete Self Assessment Exercise 3. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 3

In the spaces provided, redraft the sentence in **Example Box 8**.

Compose a separate sentence for *each* of the alternative meanings.

1.

2.

b) Using a present participle

We commonly use the present participle to describe a person as in the act of doing something ("a person possessing an offensive weapon"). It is used as an alternative to a relative clause ("who possesses an offensive weapon"). It may be shorter; it needs no alteration when it modifies both singular and plural nouns at the same time and it is a useful way of avoiding double relative clauses. But it is easy to forget that it is a verb, and is therefore capable of linking with nouns (indicating an object) that follow in the sentence.

Example Box 9

A police officer may arrest, without warrant, a person whom the officer finds *carrying a weapon or any person* whom the officer suspects to be drunk.

Grammatically, "carrying" can extend to "weapon" and to "person". Although, legally, it would never be construed in that way, a sentence like this will cause much amusement at your expense!

When you use a present participle:

- (i) quickly check that its effect is not capable of extending beyond the intended cases;
- (ii) if it does, consider *paragraphing* to confine the effect of the participle to the intended case.

Complete Self Assessment Exercise 4. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 4

In the space provided, redraft the sentence in **Example Box 9**, to remove the ambiguity.

4.0 CONCLUSION

In conclusion, the clearest way to modify verbs by adverbs or adverbial phrases, is to place those modifiers as close as possible to the verb to avoid ambiguity.

5.0 SUMMARY

In this unit, you have learnt about what can go wrong with verbs in a legislative sentence. You should now be able to identify the pitfalls that affect verbs in the principal or dependent clauses of sentences.

6.0 TUTOR MARKED ASSIGNMENT

Explain how the wrong use of modifiers can lead to ambiguity in legislation. Give relevant examples.

7.0 REFERENCES/FURTHER READINGS

Cholij, M. (1999) *English Basics*, Cambridge: CUP.

Fowler, H.W & Winchester, S. (2002) *Fowler's Modern English Usage*, Oxford: OUP.

ANSWER TO SELF ASSESSMENT EXERCISE 1

1. A person detained in quarantine who is not a member of the crew nor a passenger on the ship that is ordered into quarantine must pay to the Senior Medical Officer, *if so required*, the cost of any food or medicines supplied to that person.

The modifier is more likely to relate to the matter of payment than supply. The redraft replaces the pronoun (that is masculine in form).

A person detained in quarantine who is not a member of the crew nor a passenger on the ship that is ordered into quarantine must pay to the Senior Medical Officer, *if so required*, the cost of any food or medicines *that the Senior Medical Officer was required to supply* to that person.

The modifier in its original adverbial form sits uncomfortably with “supplied”. The redraft converts it into an adjectival modifier.

ANSWER TO SELF ASSESSMENT EXERCISE 2

Where the court is satisfied that relevant evidence may be given by a person who has not been summoned, it shall, *without delay*, direct the Registrar to summon that person as a witness.

2. The tribunal *may grant permission* to an aggrieved person *to give evidence in writing* to the tribunal.

ANSWER TO SELF ASSESSMENT EXERCISE 3

1. Where a person was *a married person* on 1 January 1994, no relief may be granted under this Act.
2. Where a person's marriage *was solemnized* on 1 January 1994, no relief may be granted under this Act.

ANSWER TO SELF ASSESSMENT EXERCISE 4

A police officer may arrest, without warrant:

- (a) any person whom the officer finds carrying a weapon; or
- (b) any person whom the officer suspects of being drunk.

The phrase "any person whom" is repeated so that each paragraph is seen to deal with a separate class.

UNIT 3 WHAT CAN GO WRONG WITH MODIFIERS?

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Defective sentence modification
 - 3.2 Ambiguous prepositions
 - 3.3 Uncertain conjunctions
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

We have already seen a number of pitfalls in using modifiers that affect subjects and verbs. In this unit, we look at other kinds of modification that can go wrong.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Describe how defective sentences can be modified;
- (ii) Explain how prepositions could be used effectively;
- (iii) Explain how the words “and” and “or” could be used without creating ambiguity.

3.0 MAIN CONTENT

3.1 Defective Sentence Modification

The principal predicate can be modified by attaching clauses and phrases. Context clauses modify the main verb by settling the circumstances or conditions in which that predicate is to operate. Dependent clauses may be used, e.g. to create exceptions or limitations to the central proposition in the sentence. Components of the sentence can be modified by adding relative clauses or descriptive phrases. Again, take care that these features correctly perform their intended function

a) Context clauses that contain the central elements of the rule

Although we must look at the entire sentence to establish the content of the rule, readers have an expectation that the central elements will be contained in the principal predicate and that the context clause modifies the action described there. Accordingly, avoid using a context clause to stipulate all or most of the central elements of the rule. This is particularly the case for criminal provisions; the principal predicate should contain the main elements which the prosecution must prove.

Example Box 1

Where a person on board a ship subject to quarantine leaves the ship without receiving the permission of a quarantine officer, that person commits an offence.

All elements of the offence are contained in the context clause. A better draft reads:

A person who leaves a quarantined ship without the permission of a quarantine officer commits an offence.

In cases of this kind, it may be possible:

- (i) to eliminate a context clause altogether; or
- (ii) at least, to transfer to the principal predicate the description of the legal subject and the central elements of the action.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 1

In the spaces provided, redraft the following sentences:

1. When any food has been taken or obtained for analysis, no prosecution under this Act in respect thereof shall be instituted after the expiration of 6 months from the time when it was so taken or obtained.
2. When a person executing a search warrant has reasonable cause to believe that a prohibited drug found by him in any place, ship or vehicle is being kept, conveyed landed or sold in contravention of this Act, he may seize and detain the same until a court decides whether the same is liable to be forfeited or not.

b) Ambiguously placed clauses

Dependent clauses, in the same ways as adverbs and adjectives, can lead to ambiguity if they are incorrectly positioned in the sentence.

Example Box 2

The magistrate must conduct an enquiry into every fire that occurs in his district, and must produce a written report of his findings and must send a copy of the report to the Minister, *unless the Minister otherwise directs*.

Does the last clause modify the last action only, or the entire sentence?

In cases of this kind, the following are preferred alternatives:

- (i) select a *new position* for the dependent clause in the sentence so that it modifies only the intended expression;
- (ii) if you wish to confine the clause to part of the sentence only, consider using *paragraphing*.

Complete Self Assessment Exercise 2. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 2

In the space provided redraft the sentence in **Example Box 2**, so that the ambiguous clause applies to the entire sentence.

c) Ambiguously placed phrases

Phrases can also be misplaced, particularly where they are used as an alternative to a relative clause (one that begins with, e.g. "who", "which")

or "that"). Ambiguity can arise if the phrase is placed where it can modify one component of the sentence, when in fact it is intended to modify another.

Example Box 3

Subject to these Regulations, a dentist must not treat a patient *when suffering from or suspected of suffering from AIDS*.

The highlighted phrase leads to ambiguity. It can only modify a noun (though it begins with "when" as if setting the context), but is it "dentist" or "patient"?

In cases of this kind, the following alternatives can be used:

- (i) *re-arrange the word order* so that the phrase can only link with the part of the sentence to which it relates;
- (ii) replace the phrase with a *relative clause* beginning with a suitable pronoun (such as "who" or "which").

Complete Self Assessment Exercise 3. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 3

In the spaces provided, redraft the sentence in **Example Box 3** to provide two unambiguous versions, one for *each* of the possible meanings.

1.

2.

3.2 Ambiguous Prepositions

Phrases are often linked to other parts of a sentence by prepositions (such as "to", "by", "at"). They are necessary to fix time or place or some other relationship. Because we use them frequently, it is easy to overlook a number of possible pitfalls. Some Interpretation Acts contain provisions that direct how prepositions are to be approached when used in certain cases.

SELF ASSESSMENT EXERCISE 4

The **Interpretation Act** directs how certain expressions of time are to be construed thereby affecting prepositions used for that purpose. Check the Act for provisions having this effect in these and other cases.

a) Inherent ambiguity of some prepositions

We use the same preposition for several purposes. This can cause ambiguity:

- "**between**" [two numbers] does not include either of the numbers;
- "**less than**" [a number] does not include that number;
- "**more than**" [a number] does not include that number;
- "**over**" can mean "above", "across", "covering", or "more than";
- "**to**" can mean "in the direction of" (but not reaching) or "as far as" (just reaching, and thus the upper limit);
- "**with**" can mean "linked to", "possessing", "at the same time".

Typically, the context makes the use certain, but check for the possibility of ambiguity.

Example Box 4

1. Notice may be given to the master of the ship on any day *between* the day the ship reaches harbour *and* the day that it leaves harbour.

but, strictly, on neither of the specified days.
2. A person who receives *less than* ₦100, 000.00 may not apply; a person who receives *more than* ₦100, 000.00 must notify the Customs Department.

but this overlooks the case of the person who receives precisely ₦100,000.00

3. The dealer shall place the notice *over* the entrance door to the premises.

but presumably not so as to cover the door itself.

4. If an injury is inflicted by a person *with* an offensive weapon, the compensation is to be increased by 50 per cent.

is it enough to be in possession of such a weapon or must the weapon be used to inflict the injury?

5. Compensation *up to* ₦100, 000.00 may be awarded.

presumably it is intended that ₦100,000.00 precisely may be awarded.

When using prepositions in circumstances of this kind:

- (i) check that the prepositions are free of ambiguity in the context;
- (ii) replace ambiguous prepositions by different expressions.

b) A preposition following several expressions

Where a series of expressions is followed by a phrase beginning with a preposition, does the phrase attach to the last expression only or to all? It may be construed as attaching to all, although you only intend it to modify the last.

Example Box 5

The application is to be made to a Judge or a magistrate *in Lagos*.

Does the highlighted phrase apply to "Judge" as well as to "magistrate"?

In cases of this kind, you can prevent ambiguity in several ways:

- (i) if the phrase applies to the *last* expression only, *reverse the order* of the expressions or *repeat the preposition* (and article) before that expression;

- (ii) if the phrase applies to *both*, leave out the article before the later expressions;
- (iii) in *either* case, especially if the expressions are long, consider *paragraphing* them.

Complete Self Assessment Exercise 5. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 5

Redraft the sentence in **Example Box 5**, to remove the ambiguity. Provide a separate version for *each* of the two possible meanings.

1.

2.

c) A series of prepositions following an expression

A similar difficulty can arise where in a series of phrases each begins with a preposition. Do all the phrases attach to the same expression, or are the later ones linked to one of the preceding prepositional phrases?

Example Box 6

The owner *of* a second-hand dealer's business *in* Lagos must register that business under this Act.

Is it the business or the owner that must be in Lagos?

In cases of this kind, you can prevent ambiguity in the following ways;

- (i) replace one or other of the prepositional phrases with one not using a preposition;

- (ii) use instead an adjective or relative clause.

Complete Self Assessment Exercise 6. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 6

Redraft the sentence in **Example Box 6**, to remove the ambiguity. Provide a separate version for *each* of the possible meanings.

1.

2.

d) A preposition followed by a series of expressions

When a series of expressions follows a single phrase linked to it by a single preposition, the phrase could be taken to be connected to the *entire* phrase or the first of the expressions only.

Example Box 7

An application form must be accompanied by *three copies of* the plans of the proposed building, the original lease or documents of title and the names and addresses of all directors or partners.

Does the preposition "*of*" link "three copies" to all the types of information or merely to the plans?

In cases of this kind, you can prevent ambiguity in the following ways:

- (i) if the phrase applies to all cases, repeat the preposition before each of the expressions to which it connects;
- (ii) if it applies to the first only, reverse the order of the phrases so that only that one follows the preposition;
- (iii) again, consider using paragraphing.

Example Box 8

The following are improved alternatives to the example in **Example Box 7**:

An application form must be accompanied by three copies *of* the plans of the proposed building, *of* the original lease or documents of title and *of* the names and addresses of all directors or partners.

An application form must be accompanied by the original lease or documents of title and the names and addresses of all directors or partners and three copies of the plans of the proposed building.

An application form must be accompanied by:

- (a) three copies of the plans of the proposed building;
- (b) the original lease or documents of title; and
- (c) the names and addresses of all directors or partners.

Complete Self Assessment Exercise 7. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 7

1. The following sentence (from a Disabled Persons Bill) can be given a series of meanings because of ambiguities of the kinds that we have been looking at in this unit.
2. In the space provided, redraft the sentence to remove all the ambiguities. When considering the ambiguities, give effect to the most probable meaning in each case.

Local government councils and park authorities in Utopia City must provide seats and toilets for disabled persons in the parks for which they are responsible.

3.3 Uncertain Conjunctions

We have already dealt with some cases in which conjunctions can cause uncertainty. You should be aware of two other cases.

- **Using "and" followed by "or" (or vice versa)**

As we know, these conjunctions link expressions in different ways. So, using one after the other in the *same* sentence raises uncertainty as to which expressions are linked to which. For example, where "**or**" comes after "**and**", are the expressions following "or" linked to *all* the expressions joined by the "and", or only the *last* of them?

Example Box 9

The Registrar must notify the defendant *and* the defendant's lawyer *or* the defendant's agent.

Is "agent" meant to be an alternative to "lawyer" or to "defendant"? Put another way, must the Registrar always notify the defendant and also one of the other two?

In this kind of case, you can prevent ambiguity if you:

- (i) use *paragraphing*, so that the alternatives are set out in distinct paragraphs;
- (ii) change to a different form of expression, that makes the intended link clear.

Example Box 10

The example in **Example Box 9** could be expressed as:

The Registrar *must give notice to* the defendant, *and to* the defendant's lawyer or agent.

Similar considerations apply where "**and**" is used after "**or**".

- **Both "and" and "or" in a series of paragraphs**

It is surprisingly difficult to understand a sentence that contains a series of paragraphs some of which are linked together by "**and**" while others are linked together by "**or**".

Example Box 11

A person is eligible under this section if:

- (a) resident in Nigeria; *and*
- (b) married *or*
- (c) not less than 60 years of age; *and*
- (d) in receipt of a pension; *or*
- (e) physically handicapped.

It is not too easy to work out from this draft when a person is eligible:

In cases of this kind, *avoid using both types* of conjunction as links within the *same* series of paragraphs. Instead adopt one or other of the following techniques:

- (i) group the expressions that are alternative to each other within their own separate paragraph (linking them, *within* the paragraph, by "**or**" or "**either or**"), and then link the paragraphs by "**and**". Alternatively:
- (ii) group the expressions that are cumulative within their own separate paragraph (linking them by "**and**" or "**both and**"), and then link the paragraphs by "**or**".

Example Box 12

The sentence in **Example Box 11** is more effectively redrafted by the first method:

A person is eligible under this section if:

- (a) resident in Nigeria; *and*
- (b) *either* married *or* not less than 60 years of age; *and*
- (c) in receipt of a pension *or* physically handicapped.

Complete Self Assessment Exercise 8. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 8

Redraft the following sentence, in particular using paragraphs and appropriate conjunctions.

Where a magistrate has power to remand a person under this Act, the magistrate may remand that person into custody to be brought before the magistrate at a time to be fixed by the magistrate or remand that person on bail and take from him or her a recognisance, with or without sureties, or, instead of taking a recognisance, fix the amount of the recognisance and commit that person into custody until such time as the recognisance is taken by a prescribed person.

4.0 CONCLUSION

At this stage of your training, you need to pay particular attention to ensuring that your drafts do not contain faults of the kinds described. Scrutinize your work with that possibility in mind. As elsewhere, with experience, you will develop an instinctive awareness of when they might occur and will routinely adopt an initial draft that avoids them. This unit has been designed to help you begin to do this. You should set out to be able to say: "If I draft in that way I am likely to fall into the trap".

5.0 SUMMARY

This unit has been concerned with a range of problem cases related to legislative expression. You have probably found it hard-going. But you should now be in a position to recognise cases where a particular form of expression can cause ambiguity and uncertainty.

Matters examined in this Module will be relevant throughout this Course. Take particular care when undertaking a Drafting Project to check that your draft is free from these shortcomings. The principal function of a drafter is to prepare legislation that fully implements the

policy proposals. Faults of these kinds may spoil a draft that in dealing with substantive matters is otherwise sound. Set out to make the sound techniques described so much a part of your drafting approach that you avoid the errors as a matter of course.

The very fact of being aware of them goes a long way to ensuring that you avoid them when you are composing. But develop the habit of *scrutinising* your drafts, as a matter of routine, for these traps of grammar and syntax.

6.0 TUTOR MARKED ASSIGNMENT

Redraft the sentences in **Example Box 4** to remove the ambiguity. In 1 and 2, extend the rule to include the uncertain cases.

7.0 REFERENCES/FURTHER READINGS

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Interpretation Act, Cap. 192 Laws of the Federation of Nigeria, 1990.

ANSWER TO SELF ASSESSMENT EXERCISE 1

1. No prosecution shall be instituted under this Act in respect of food that has been taken or obtained for analysis after the expiration of 6 months from when it was taken nor obtained.

The context clause has been removed and its contents integrated into the principal predicate. This avoids using “when” in two different ways, and allows unnecessary words to be omitted.

2. A person executing a search warrant may seize and detain any prohibited drug that he or she:
 - (a) has found in any place, ship or vehicle; and
 - (b) has reasonable cause to believe is being kept, conveyed landed or sold in contravention of this Act, until a court decides whether the drug is liable to be forfeited.

Again the context clause has been removed and its contents made part of the main predicate. This course should be considered whenever the subject of the context clause and that of the main predicate are the same.

This approach, and paragraphing, makes it easier to draft a more direct statement of the power.

ANSWER TO SELF ASSESSMENT EXERCISE 2

The magistrate shall:

- (a) conduct an enquiry into every fire that occurs in his district; and
- (b) produce a written report of his findings; and
- (c) send a copy of the report to the Minister,

unless the Minister directs otherwise.

Paragraphing, and the separation of the modifier to its own line, makes apparent that the modifier applies to all cases.

The modifier could equally well be put in the first line (splitting the auxiliary from the various verbs). But placed at the end of the sentence, it is given prominence without splitting the verbs.

The slight rearrangement of the words in the clause (putting "otherwise" last) avoids a typical, and unnecessary, legalism.

ANSWER TO SELF ASSESSMENT EXERCISE 3

1. Subject to these Regulations, a dentist *who is suffering from, or is suspected of suffering from, AIDS* must not treat a patient.
2. Subject to these Regulations, a dentist must not treat a patient *who is suffering from, or is suspected of suffering from, AIDS.*

ANSWER TO SELF ASSESSMENT EXERCISE 5

1. The application is to be made to a Judge *or to a magistrate in Lagos*.

Reversing the order is not appropriate, as Judges are given priority over magistrates.

A repeated preposition is preferred.

2. The application is to be made to a Judge *or magistrate* in Lagos.

The omission of the indefinite article before “magistrate” indicates that the phrase from “a Judge” to its end must be treated as a whole.

ANSWER TO SELF ASSESSMENT EXERCISE 6

1. The owner of a second-hand dealer's business *who is [resides]* in Lagos must register that business under this Act.

2. The owner of a second-hand dealer's business *that is* in Lagos must register that business under this Act.

Relative clauses make the distinction effectively. In version 1, a clearer legal link, such a residence, is called for.

ANSWER TO SELF ASSESSMENT EXERCISE 7

Every local government council and every park authority in Utopia City¹ must provide, in each park for which it is responsible², both seats and toilets for disabled persons³.

Notes:

¹ The rule is likely to apply to local government councils that are outside Utopia. Drafting in the singular and the repetition of "every" link the prepositional phrase to the second expression only.

² Moving the prepositional phrase "in each park" to follow the verb removes any doubt that the facilities are to be provided only in parks.

³ "**both and**" remove doubts that both facilities are to be provided for disabled persons.

ANSWER TO SELF ASSESSMENT EXERCISE 8

A magistrate who has power to remand a person under this Act may:

- (a) remand that person into custody to be brought before the magistrate at a time to be fixed by the magistrate; *or*
- (b) remand that person on bail *and* take from him or her a recognisance, with or without sureties; *or*
- (c) instead of taking a recognisance, fix the amount of the recognisance *and* commit that person into custody until such time as the recognisance is taken by a prescribed person.

This layout makes the text more accessible. The context clause is unnecessary since its subject and that of the principal predicate are the same. The relationship between the different sentence components is now easier to understand than in the original.

MODULE 4 HOW CAN WE DEVELOP AN EFFECTIVE LEGISLATIVE STYLE?

- Unit 1 General Considerations
- Unit 2 Developing a good legislative style
- Unit 3 How we can make legislation more comprehensible & concise
- Unit 4 How we can make legislation complete, consistent & certain

Unit 5 How to draft in a gender-neutral style

UNIT 1 GENERAL CONSIDERATIONS

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 What we mean by legislative style
 - 3.2 How style standards are set for legislative drafters
 - 3.3 Why style is important
 - 3.4 How to decide what is good style
 - 3.5 The aim of plain language style
 - 3.6 Style practices that get in the way of communication
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

In the previous Modules of this course, we concentrated on legislative syntax - how legislative sentences should be composed, consistently with prevailing conventions on grammar and punctuation. In this module, we deal with legislative style - how legislation should be written so that it expresses its subject matter as effectively as possible.

Though syntax and style are independent concepts, in drafting we cannot treat them separately. How a sentence is composed and structured may significantly affect how well it expresses the subject matter. Drafters make most of their decisions about syntax and style together, as part of the same process.

2.0 OBJECTIVES

By the end of this unit, you should have laid the foundations for developing a personal drafting style within the conventions prevailing in Nigeria, and in particular, you should be able, in drafting legislation to:

- (i) Apply a range of stylistic devices in composing legislation that will contribute to its effectiveness and clarity;
- (ii) Describe how style standards are set for drafters;

- (iii) Put into effect the main practices that lead to a plain language style of drafting.

3.0 MAIN CONTENT

3.1 What We Mean By Legislative Style

In this context, style is about the way we express ideas in writing. Style is about making choices whether to express the subject matter in one way or another. As should now be clear to you, the same idea can be conveyed in a variety of ways.

Good style:

- (i) is concerned with the way we can communicate those ideas most effectively and efficiently;
- (ii) involves choosing that mode of expression most suited to the particular drafting task.

In all writing, each of us approaches the task of making style choices in our own way. Good writers develop a distinctive style, often to the point that their readers can recognise who wrote the text from the way in which it is written. Many writers, such as novelists, set and follow their own standards of literary style, which can be very personal. This is true for Legislative Counsel only to a limited extent. Experienced drafters have their preferred ways of expressing themselves in their drafts, mostly acquired through learning what has proved to be the most effective for them in the past.

Legislative drafters have much less freedom. Their work is constantly judged by those who use their legislative drafts. To a considerable extent, drafters must follow standards of style that respond to external expectations. Typically a body of standards has been collectively developed. It is only within those standards that they can exercise some freedom of choice. Consistency in this respect is an important consideration.

3.2 How Style Standards Are Set For Legislative Drafters

Drafters collectively are expected to work to the common body of standards, usually referred to as the "house-style". This develops in a variety of ways:

- (i) by following the style used in past legislation, in particular in the statute book;

- (ii) through a sharing of experience, particularly between senior and junior drafters in the process of training and working together;
- (iii) by following guidelines formulated by the senior drafters for the use of the drafting department.

Some jurisdictions produce a style manual and issue a set of guidance notes for this purpose. By contrast, in others, rapid and frequent changes of drafting personnel have made it difficult to maintain the desired consistency in style. In those countries in particular, individual drafters have little alternative than to set their own standards pragmatically (sometimes by trial and error). In Nigeria, each State's Ministry of Justice usually adopts a single house style.

Trainee drafters should avoid making style innovations of their own. But many style improvements are being made in countries with a wealth of drafting expertise. Though a trainee, you should be aware of them, even if they are not current practice in Nigeria.

This Module incorporates many of them. Most, we are sure, will prove to be uncontroversial. But expect to be challenged about others. In such a case, this Course should provide you with the reasons for following a particular practice (and the knowledge that they are followed without controversy elsewhere). On the other hand, your senior officers have the authority to dictate style requirements; it is your duty to follow the prevailing house-style if you are so directed.

3.3 Why Style Is Important

Style is concerned with choices about the words to be used in legislation and the way that they, and the sentences containing them, should be arranged and related to each other. So, style is involved when we ask the following kinds of questions:

- (i) What are the best words to express our requirements?
- (ii) What form should a sentence take to communicate its messages most effectively?
- (iii) How long or short should sentences and sections be?
- (iv) How detailed should provisions be?
- (v) Can we compose provisions in language that is in everyday use?

- (vi) What features will ensure that the document is as readable and accessible as possible?

As we have noted, syntax and style are inter-related. Because choices must be consistent with the conventions of syntax and grammar, it is inevitable that decisions on syntax matters influence style, and the other way round. From working with legislative syntax in **Modules 1 to 3**, you are already familiar with a considerable number of issues of style:

- (a) preference should be given to writing in the present tense;
- (b) the active voice is to be preferred to the passive;
- (c) a wider range of auxiliary verbs than "shall" and "may" should be used in the principal predicate of a sentence;
- (d) related words should be kept as close together as possible (e.g. subject and its modifier; subject and predicate; verb and its object);
- (e) a sentence should deal with a single idea only;
- (f) adverbial phrases should not be embedded between a verb and its auxiliary;
- (g) a conditional clause is frequently more effective towards the end, rather than at the beginning, of a sentence;
- (i) paragraphing within a sentence makes the component parts of a long sentence much clearer;
- (j) the same expression should be used for the same idea; a different expression should be used for a different idea;
- (k) sentences can be shortened by using definitions for terms used in them.

Of course, none of these propositions is a hard-and-fast rule. They are guidelines for making choices. Whether they are adopted or not in any particular case depend upon what we are trying to achieve.

3.4 How to Decide What Is Good Style

We must never lose sight of what we are there to do. Legislation is the medium for:

- (i) fixing requirements of law in a form that permits people to act with security, and
- (ii) communicating those requirements to persons affected by them or concerned in carrying them out.

So a *good legislative style* is one that contributes to the fulfillment of those tasks. It furthers the objectives for effective legislation. We are launched once more on the Seven C's of sound drafting!

SELF ASSESSMENT EXERCISE 1

Recite to yourself the Seven C's. You can remind yourself about these objectives and how they affect drafters, by reading again the course, Introduction to legislative Drafting (*Unit 5*).

A number of drafting practices still in use are inconsistent with these objectives. Many of the recent criticisms of drafting relate to questions of style. They are connected with a wider concern about poor intelligibility of legal documents generally, especially those intended to be used directly by the public and others with little knowledge of law.

In this unit, we identify examples of poor style and show you how they can be avoided. The action that can be taken is sometimes identified as using "plain language".

3.5 The Aim of the Plain Language Style

The essential aim of exponents of plain language is to simplify legislative writing by removing unnecessary obscurity and complexity, and generally to make laws as easy as possible to understand, even those that deal with complicated matters. Plain drafting is not concerned with producing "simple" rules (i.e. ones that overlook the complexity of the issues with which they deal). It is concerned with composing provisions, especially those concerned with complex ideas, in ways that enable users to understand what is entailed.

In many respects, the movement for plain language is a re-assertion of standards that were advocated and practiced by the pioneers of common law drafting (see the course on Introduction to legislative Drafting). Those who are committed to its objectives are determined to retain the

features of drafting that contribute to certainty, but to eliminate unnecessary practices that get in the way of easy communication.

3.6 Style Practices That Get In The Way Of Communication

We can identify a number of features of contemporary common law legislation that make it difficult for users to come to terms with the contents quickly.

(i) No statement of the underlying principles

Concentrating on the rights and obligations of the persons affected, without stating the underlying principle, may obscure the purposes for which they are conferred.

(ii) Unduly long legislative sentences

Sentences that run to many lines and use many tens of words are difficult to work with, especially when formatted as a single slab of text.

(iii) Compression of too many points into a single sentence

A sentence requires complex structures if it contains not only a statement of a rule but also the circumstances and conditions, and procedures, for its operation, as well as exceptions to it.

(iv) Absence of a logical organization of the legislative text

Readers find a document easier to use if it follows a logical sequence. Systematic structure reveals the thinking behind the legislation. Too often, legislation allocates materials that are closely related to widely separated parts of the statute.

(v) Deviation from standard syntax

Sentences that use an unnecessarily artificial word-order or that are inconsistent with usual grammatical practice defeat the expectations of the reader.

(vi) Excessive cross-referencing

Heavy use of cross-references to other statutory provisions (e.g. by citing the section reference) makes text difficult both to read and to understand, as they require readers to search out and piece together the two sets of provisions before they can be sure of the total effect of the provisions.

(vii) Superfluous words

Readers can be held back by text that uses more words than are strictly needed.

(viii) Archaic expressions

Similarly, users are distracted by old-fashioned terms that are only used by lawyers when there are satisfactory alternatives in common use.

(ix) Legalistic and pretentious expressions

Although alternative words in common use may be available, lawyers' jargon (including Latin terms) obstructs communication. It unnecessarily separates legal documents from other writings in common use.

(x) Common words or expressions used in unexpected ways

Readers may misunderstand a sentence that uses terms in general use in an unusual way (e.g. an artificial definition for a common term; provisions that "deem" an expression to cover circumstances that it normally does not).

(xi) Special concepts created solely for the ease of drafting

An unfamiliar concept introduced to make the drafting easier (e.g. because the matter is complex) may obscure the intent of the new rules. Readers have to work out what the concept entails before they can discover how it relates to the provisions in which it is used.

(xii) Insufficient use of formulae, maps and tables

Diagrams and numerical devices, commonly used in other text, are often easy to understand than words.

(xiii) Insufficient use of explanatory materials and guides

Examples, which can illustrate the purpose or operation of legal rules, are rarely incorporated into legislative text. Few aids are provided in the legislation to enable readers to find their way around legislation.

If we are to develop a good legislative style, we must adopt practices that provide answers to these kinds of criticisms.

4.0 CONCLUSION

In conclusion, the work of legislative drafters is constantly judged by those who use their legislative drafts. Drafters must therefore follow standards of style that respond to external expectations.

5.0 SUMMARY

In this unit, you have learnt about legislative style. You should now be able to:

- (i) Explain the importance of style and how to decide what good style is;
- (ii) Identify the aim of plain English style and style practices that get in the way of communication.

6.0 TUTOR MARKED ASSIGNMENT

1. (a) Explain the aim of the plain English style of drafting.
(b) Why is style important?

7.0 REFERENCES/FURTHER READINGS

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UNIT 2 DEVELOPING A GOOD LEGISLATIVE STYLE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content

- 3.1 How to improve communication
- 3.2 How to improve clarity
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1. How to improve communication	1) Create a logical structure and sequencing of production	
<p>This is a long and detailed document. Many of the aims of the module are familiar to you from earlier courses and you will find that easier if you draft your proposals near the end of the module, of drafting proposals that will be effective.</p>	2) Provide funding aids	
2. How to improve clarity	3) Use a clear layout and format	
<p>the devices described in this module will find that easier if you draft your proposals near the end of the module, of drafting proposals that will be effective.</p>	1) write directly	
<p>You are asked to consider the devices described in this module will find that easier if you draft your proposals near the end of the module, of drafting proposals that will be effective.</p>	2) avoid complex and elaborate expressions	
3. How to make legislation more comprehensible	3) avoid long sentences especially, if unparagraphed	
2.0 OBJECTIVES	4) limit the front-loading of sentences	
<p>In this unit, we look at the objectives of drafting in order to secure the objective that they principally aim to achieve (more than one objective).</p>	5) avoid normalization	
<p>By the end of this unit, you should be able to:</p>	6) avoid embedding	
<p>(i) Improve the clarity of legislation</p>	1) use purpose pointers and topic specifiers	
<p>(ii) Improve communication in legislation</p>	2) follow standard writing practices:	
<p>But we shall not re-examine the syntax. Others are merely a matter of style.</p>	(a) use the present tense and the active voice	
4. How to make legislation more concise	(b) avoid provisos and artificial concepts	
	3) use standard language:	
5. How to make legislation more effective	(a) avoid archaic words	
	(b) avoid foreign words	
	(c) avoid legalistic language	
	4) use formulae, diagrams, etc.	

6. How to make legislation consistent	1) ensure that a term carries the same meaning throughout
	2) provide definitions for key concepts
6. How to make legislation certain	1) use precise words exactly, suited to the case
	2) avoid over-vague expressions
	3) avoid ambiguity

3.0 MAIN CONTENT

3.1 How to Improve Communication

Communication is made easier if the readers, when first picking up the text, are helped to understand the overall structure of the Act, can find their way around the text quickly and are not put off by the way in which the text is set out on the page. So, you can improve communication with **a logical structure, finding aids and a clear layout and format.**

1) Create a logical overall structure

A logical structure for legislation is one that:

- (a) groups related provisions together;
- (b) arranges them in an order that makes sense to the reader, i.e. by making it easy to find, understand and refer to different aspects of the subject matter of the instrument.

Related provisions are those that deal with a common subject matter or contain concepts that inter-connect. The user expects to be able to find the requirements on any major feature of the legislative scheme without having to skip around the statute. In the mind of readers, as Professor Crabbe puts it (p.45), sequence implies connection.

An order makes sense when it follows a pattern that is familiar or if it has some obviously rational basis. The following are guidelines for settling the organisation of legislation:

- (i) primary (or basic) provisions come before those subsidiary provisions that develop or expand or depend upon them.
- (ii) in particular, general propositions come before a statement of exceptions to them.
- (iii) provisions of universal or general application come before those that deal only with specific or particular cases.

- (iv) provisions that create bodies come before those that govern their activities and the performance of their functions.
- (v) provisions that confer rights, duties, powers or privileges ("rules of substance") come before those that state how things are to be done ("rules of administration or procedure").
- (vi) provisions that will be frequently referred to come before those that will not be in regular use.
- (vii) permanent provisions come before those that will be in force or have application for only a limited time (e.g. during a transitional period).
- (viii) provisions affecting a series of related events or actions follow the chronological order in which those events or actions will occur.

We see how these ideas can be applied in the next course (*Legislative structure*).

2) Provide finding aids

Typically, legislation is short on editorial devices that make it easier for the reader to travel around the text or to pin down some feature of it that is of immediate interest. In long or complicated legislation particularly, the following aids are valuable:

- (i) an explanatory memorandum
- (ii) a table of contents (or "Arrangement of Sections")
- (iii) headings and section notes (side/shoulder notes).
- (iv) explanatory notes.

Here house-styles and local practice determine whether and when to employ these aids. We shall see how these ideas can be applied later.

3) Use a clear layout and format

Good layout can make legislation much easier to work with, when printed. The size and kind of the font, the range of fonts used, spacing between words and lines ("white space"), indents at beginning of lines,

and the use of italics or emboldened type to draw attention, significantly increase the ease with which we can read text.

Responsibility for these design features, as also for improving finding aids, usually rests with the Head of the Legal Drafting Department and the Government Printer. In many countries, changes are difficult to make for financial reasons. Yet progressive Drafting Offices are always considering ways to improve local practice within the resources available. But:

- (a) you must work with the layout and formatting that are current in Nigeria;
- (b) keep a note of ideas for improvement of layout as they occur to you, and take the opportunity to draw attention to these when an occasion arises.

One of the greatest obstacles to easy reading is to be faced with a lengthy slab of unbroken text. In this respect, certain devices should be part of your stock-in-trade. These enable you to introduce more "**white space**", by breaking the text up into much smaller packages. The following are steps that you can take to create more white space:

- (i) **shorter sentences**
- (ii) **more subsections**
- (iii) **paragraphing wherever possible**
- (iv) **indents** (from the left-hand margin) in more cases.

We look at these devices more fully in the course, Legislative Structure.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 1

--

Restructure the following section to make it easier to read. Consider whether the single sentence should be broken up into more than one sentence.

A person who sells, or offers or exposes for sale, as a feeding stuff, an article which contains an ingredient that is deleterious to livestock or has in his possession such an article, packed and prepared, for sale as a feeding stuff commits an offence unless he proves that he did not know, and with reasonable care could not have known, that the article contained a deleterious ingredient and, if he obtained the article from another person, that on demand by or on behalf of the prosecutor he gave all the information in his power about the person from whom he obtained it and as to any mark applied to the article when he obtained it:

Provided that proceedings for an offence under this section shall not be instituted unless the article has been sampled by an inspector in the prescribed manner on the premises on which it was sold or exposed or offered for sale or on which it was prepared for sale or consignment and the sample has been analysed in accordance with this Act.

3.2 How to Improve Clarity

To be clear a text must convey precisely what the writer intends without undue effort on the part of the reader. Unnecessary difficulties are created by legislation that uses complicated forms of expression or needlessly elaborate words, or tries to do too much in too short a space. So you can improve clarity by:

- **writing directly**
- **avoiding complex and elaborate expressions**
- **avoiding long sentences**
- **limit the front-loading of sentences**
- **avoiding nominalisation**
- **avoiding embedding.**

1) Write directly

Drafters are commonly accused of using roundabout ways of creating rules. Instead of coming directly to the point, the provisions work around the requirements, using more words than are strictly necessary to achieve the objectives. This approach is equivalent to entering a house by going by the side of the house, via the garden gate and through the back door, rather than straight into the front door. Writing directly can lead to economy in the number of words used and a less complicated structure (see Unit 3) *How to make legislation more concise*, below).

Example Box 1

Were it not for the section note, the objectives of the following section would be difficult to discover without close reading.

Search of persons.

50. If any customs officer is informed or has reason to suppose that any person on an aircraft or ship, or any person who has landed from an aircraft or ship, or any person whom the officer may suspect has received any goods from such person, is carrying or has any uncustomed or prohibited goods about his person, such officer may search such person; and if such person on being questioned by any customs officer as to whether he has any goods obtained outside Nigeria upon his person, or in his possession, or in his baggage, refuses to answer or denies having the same, and any such goods are discovered to be or to have been upon his person or in his possession, or in his baggage, such goods shall be forfeited.

The precise extent of the powers conferred and the circumstances in which they may be used (though simple enough) are evident only after study. They are lost in a thicket of words, which have been poorly organised. More direct drafting would have revealed a number of substantive defects in the powers conferred by the section.

Accordingly, ask yourself:

- have you adopted the most immediate way to achieve the aims of the provision?
- are any expressions superfluous or replaceable by more straightforward ones?
- can the provision be better structured to highlight the central elements?

Complete Self Assessment Exercise 2. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 2

Redraft the section in **Example Box 1** in a more direct way that brings out more prominently the powers that are conferred.

One feature to bear in mind:

- **Unnecessary negatives**

Unnecessary negatives can cause confusion. Readers are more comfortable with statements made in positive terms. Drafters commonly use the device of "**not unless**", not to prohibit behaviour but to state an essential pre-condition of behaviour. That can often be stated just as well by authorizing the behaviour "**only if**" the condition is met.

Example Box 2

This section *does not apply* to a company registered outside Nigeria *unless* it carries on business in Nigeria from a place of business in Nigeria.

This section *applies* to a company registered outside Nigeria *only if* it carries on business in Nigeria from a place of business in Nigeria.

But:

- (i) use the usual prohibition when the forbidden behaviour is to be the basis of a criminal offence;
- (ii) take care to use "only if" when the aim of the sentence is to lay down an essential pre-condition.

Bear in mind sometimes that negativeness can be conveyed by choosing words that carry a negative connotation rather than by negating the verb. In particular, some adjectives and adverbs may take on a negative form by the addition of the prefix "un" or "in", and some verbs imply inaction or omission that is equivalent to negating a verb describing positive action.

Example Box 3

Hearsay evidence is not admissible [*inadmissible*] in a criminal proceeding.

A person who does not [*fails to*] register under this section commits an offence.

- **Double negatives**

More serious difficulties may be experienced with double and triple negatives. Readers are frequently confused about what precisely is expected.

SELF ASSESSMENT EXERCISE 3

How quickly can you determine from the following two sections whether evidence as to family history in a previous statement can be adduced by the defense in a criminal proceeding?

17.-(1) Subject to this Act, in a proceeding, evidence of a previous statement is *not admissible* to prove the truth of the statement.

(2) Subsection (1) *does not prevent the admission* of the evidence tendered to establish, *not* the truth of a previous statement, but the fact that it was made.

28.-(1) Section 17(1) *does not apply* in relation to evidence of:

(a) the existence, nature or extent of a public or general right;

(b) family history or a family relationship; or

(c) reputation that a man and a woman cohabiting at a particular time were married to each other at that time.

(2) In a criminal proceeding, subsection (1) *does not apply* in relation to evidence adduced by the prosecution.

Unfortunately, drafters have to use some negatives in cases such as those just illustrated. They are needed to negative the effect of particular rules in particular cases; a rule stated in entirely positive terms may require a great deal of repetition and could go far further than is intended.

Example Box 4

More positive versions of the sections in **Self Assessment Exercise 3** would have to be on the following lines:

17. Subject to this Act, in a proceeding, evidence of a previous statement is *inadmissible* to prove the truth of the statement, but is *admissible* to prove the fact that the statement was made.

28.-(1) Despite section 17, in a proceeding, evidence of a previous statement is *admissible* to prove the truth of the statement, if it relates to:

- (a) the existence, nature or extent of a public or general right;
- (b) family history or a family relationship; or
- (c) reputation that a man and a woman cohabiting at a particular time were married to each other at that time.

(2) In a criminal proceeding, subsection (1) *does not apply* in relation to evidence adduced by the prosecution.

But two negatives do not always produce the right legal positive. A rule that requires persons *not* to behave in particular ways when they are subject to a *negative condition* is not the same as a rule that requires people *to* behave in those ways if they are *positively* subject to a condition.

Example Box 5

A person must not practise as a lawyer if he or she has not been admitted as a barrister and solicitor of the Supreme Court of Nigeria.

A person must practise as a lawyer if he or she has been admitted as a barrister and solicitor of the Supreme Court of Nigeria.

These do not mean the same.

A positive version of the first sentence (but one that loses the feature of prohibition) would have to read:

A person is entitled to practise as a lawyer if he or she has been admitted as a barrister and solicitor of the Supreme Court of Nigeria.

That said, wherever possible:

- (i) **prefer the positive** to the negative.
 - (ii) **avoid double and triple negatives.**
- 2) Avoid complex and elaborate expressions**

English has a vast vocabulary. It is often possible to find a word that exactly meets the case better than any other word, even though it may

not be one that is in everyday use. When a word is **precisely right**, use it.

Many words, or expressions are synonyms of each other (i.e. mean the same). Drafters are inclined to select those that are more formal sounding (which are usually longer), perhaps to give a more authoritative feel to the text. As a result, propositions are less direct in conveying their intention than they need be. This can take several forms (or, as some might say, "is likely to appear in a variety of manifestations"):

- a noun and verb is used instead of a simple verb
- a complicated, or wordy, verb-form is used instead of a simple one
- a descriptive verb is used instead of an action verb
- a long noun is used instead of a simple noun or even an adjective.

Example Box 6

Prefer a simple verb

"begins", rather than "commences"
 "cannot be", rather than "is incapable of being"
 "send", rather than "despatch" or "forward"
 "wishes to", rather than "is desirous of"

Prefer an action verb

"binds", rather than "is binding on"
 "if [he] does not appear", rather than "in default of appearance"

Prefer a simple noun or adjective

"end", rather than "expiration"
 "[is] complete", rather "[has reached] completion"

A particular shortcoming, nominalisation (using a verb and an abstract noun instead of a simple verb) is considered below.

In summary use:

- (i) **short words** in preference to long ones;
- (ii) **familiar word forms** in preference to those not commonly used;
- (iii) **simple verbs and nouns** in preference to longer or pretentious sounding ones;

- (iv) **action verbs** in preference to descriptive statements (which usually require some form of "is").

Turn to **Annex 1 to this Unit**. You will find a list of simple words and expressions that can be used instead of more elaborate ones in traditional use.

3) **Avoid Long Sentences**

Sentences become complicated if the drafter crams too much information into it. A particular case is the single sentence that states not only what must be done and how, but also when the rule applies, and the exceptions to it. Drafters are sometimes instructed to use this technique to restrict the room for amendment by the Legislature. The provisions are so tightly intertwined that particular aspects cannot be altered without breaking the entire structure.

As a result, if the principle of the rule is acceptable to the Legislature, none of the detail is likely to be disturbed. However, it is not a practice that contributes to clarity.

You can reduce complication in the following ways:

- (i) **limit each sentence to one thought;**
- (ii) if the procedural features of a rule, or the context in which it is to operate, or the exceptions to it, are detailed or themselves complex, **treat each in separate sentences in the same section;**
- (iii) highlight the sentence components by **paragraphing**.

We look further at how to structure and link sentences in the next course.

Complete Self Assessment Exercise 4. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 4

In the space provided, note down ways in which the following sentence could be redrafted to reduce its apparent complexity. For this exercise do *not* produce a redraft.

A settlement of property, not being a settlement made before and in consideration of marriage or made in favour of a purchaser or mortgagee in good faith and for valuable consideration or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of settlement, be void against the trustee in bankruptcy, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

We have already seen several examples where long sentences present problems for the user, especially if the text is densely packed. Such sentences make it difficult to discover the grammatical structure (and in particular the principal predicate) and to obtain a quick overview of the matters dealt with there. Introducing white space makes the provision appear less uninviting. This may be achieved in a number of ways:

- (i) dividing separate aspects of a legal proposition into separate sentences set as distinct subsections;
- (ii) keeping individual sentences as short as the subject matter permits;
- (iii) separating elements of longer sentences by paragraphing them.

These features too are examined fully in the Course, Legislative Structure.

4) Limit the front-loading of sentences

We introduced you to the idea of “front-loading” when discussing predicate modifiers earlier on (*How do we express legislative sentences*). We suggested there that complex sentences (i.e. those that contain both a main clause and one or more subordinate clauses) are easier to understand when the main clause comes *before* the modifying clause.

The same is true for a string of adjectives or lengthy clauses or phrases containing a detailed modifier.

Example Box 7

Where, in any civil proceedings by or against the Federal Government or in any proceedings in any court in connection with any arbitration to which the Federal Government is party, any order (including an order for costs) is made by any court in favour of any person against the Federal Government, the proper officer of the court must issue, at the request of the person, a certificate containing particulars of the order.

This draft front loads in two respects: first, by placing the context clause before the main noun and predicate and secondly, in that clause by placing a prepositional phrase *before* the noun and predicate to which it relates. This requires us to carry information forward before we can discover the nature of that relationship.

This can be redrafted without any front-loading:

The proper officer of the court must issue, at the request of a person, a certificate containing particulars of an order (including an order for costs) made by the court in favour of the person against the Federal Government in civil proceedings by or against the Federal Government or in proceedings in connection with an arbitration to which the Federal Government is party.

Front-loading (or, as some drafters prefer, “left-branching structures”) requires us to hold information in our memory as we move forward in the sentence to find out the later components to which it is linked. This may be an additional obstacle to prompt understanding if the subject-matter itself is complicated or unfamiliar to the typical reader. For that reason, drafters try to limit their use of front-loading, by moving modifying features to later in the sentence, often as its final provisions. It is worth remembering then that rear-loading (or “right-branching structures”) contribute to clarity, and may sometimes simplify the draft.

Example Box 8

During the taking in any application under this Act of any evidence which in the opinion, of the magistrate, is of an intimate or indecent character, the magistrate may, if he thinks it necessary in the interests of the administration of justice or of public decency, direct that all persons, not being members or officers of the court or parties to the case, or their solicitors and counsel or other persons directly concerned in the case, be excluded from the court during the taking of the evidence.

In addition to front-loading, this sentence breaks up natural phrases by other interpolated phrases (sometimes called “embedding” and discussed below). A much more accessible draft reads as follows:

A magistrate hearing an application under this Act may direct that all persons be excluded from the court who are not members or officers of the court or parties to the case, or their solicitors and counsel, or directly concerned in the case, during the taking of any evidence that, in the opinion, of the magistrate, is of an intimate or indecent character, if he or she thinks it necessary in the interests of the administration of justice or of public decency.

However, it can be helpful to begin a sentence with a context clause or a modifying phrase, e.g. To -

- (i) accommodate other modifications later in the sentence;
- (ii) highlight or contrast the context in which the provision is to take effect;
- (iii) make an effective link with a preceding provision.

Example Box 9**Ease of expression:**

(3) *Immediately after receiving the certificate*, the Registrar must register the name by which the child was baptized without any erasure of the original entry.

Highlighting a case:

9. *In the case of an illegitimate person whose birth has been duly registered*, the Registrar may authorize the re-registration of the birth at the joint request of the mother and the person acknowledging himself to be the father.

Linking:

16.-(1) The occupier of a dwelling in which a child is born must report the birth to the Registrar within 28 days after the birth, in default of notice by a parent under section 8.

(5) *If the birth occurs on board a vessel in a port or harbour in Nigeria or on the waters of Nigeria, the master of the vessel is under the same duty to report the birth, and is liable to the same penalties, as the occupier of a dwelling.*

5) Avoid Nominalisation

Nominalisation is the practice of using a phrase that includes an abstract noun instead of using a simple verb, e.g. “make an application” *rather than* “apply”. It is an over-used feature of bureaucratic writing, and very tempting. For example:

Although it may give a more formal and authoritative sound to sentences, it often causes loss of directness and obstructs ease of understanding.

This can be restated more clearly as:

Although it may make sentences sound more formal and authoritative, they are often less direct and easy to understand.

Example Box 10

The following are typical examples of nominalization:

enter into an agreement [to do]:	agree [to do]
bring [institute] an appeal:	appeal
make a claim:	claim
reach a conclusion:	conclude
give consideration to:	consider
cause a disturbance:	disturb
give notice:	notify
make provision for:	provide for
is in possession of:	possess
make a recommendation:	recommend

But sometimes we need to nominalise, e.g. because the noun itself is to have legal significance elsewhere or because in later provisions we need to refer back in precise terms to the same action.

Example Box 11

8. (1) The mother or father of a child must *give notice* to the Registrar of Births of the birth of the child within 28 days after the birth.

(2) *The notice* must contain the following particulars.....

11. If no *notice is given* under section 8 within 28 days after the birth of a child, the Registrar of Births may register the birth at the instance of a person present at the birth who *makes a sworn declaration* of the particulars required to be known concerning that birth.

6) Avoid Embedding

Embedding is the practice of inserting clauses or phrases between parts of speech that are typically linked closely. It conflicts with expectations about sentence structure that derive from standard patterns of expression.

Example Box 12

14. The Registrar *may*, at any time after the expiration of 12 months from the date of the birth of a child, at the instance of a person present at the birth or a person interested on behalf of the child, who makes a statutory declaration, to the best of his knowledge and belief, of the particulars required to be known concerning the birth, *register the birth* of the child according to the particulars of the declaration.

Phrases are embedded between the verb and its auxiliary and between a noun and its modifying prepositional phrase.

Embedding may occur where clauses or phrases are inserted between, e.g.

- (i) the subject noun and the verb
- (ii) the verb and its auxiliary
- (iii) the verb and its object
- (iv) a noun and a prepositional phrase that modifies it
- (v) a clause and its adverbial modifier.

Embedding makes sentences more difficult to read. Where possible, standard patterns of expression are to be preferred.

Example Box 13

(3) The Registrar *upon receipt of the certificate* must, *without any erasure of the original entry*, register *forthwith* the name by which the child was baptized.

This re-draft follows standard patterns more closely:

(3) Immediately after receiving the certificate, the Registrar must register the name by which the child was baptized without any erasure of the original entry.

However, embedding may be unavoidable in tightly structured sentences that contain a series of modifying words or phrases. It can also help to prevent ambiguity, i.e. by linking a modifier next to the expression it modifies.

Example Box 14

(2) The Registrar must require the officiating minister of religion to transmit a copy of the notice to the Registration Office, *as soon as practicable*.

The uncertainty as to which of the verbs the adverbial phrase modifies can be resolved with certainty by embedding the phrase.

(2) The Registrar must, *as soon as practicable*, require the officiating minister of religion to transmit a copy of the notice to the Registration Office.

(2) The Registrar must require the officiating minister of religion to transmit, *as soon as practicable*, a copy of the notice to the Registration Office.

ANNEX 1

SIMPLE WORDS AND EXPRESSIONS

<i>Traditional</i>	<i>Preferred</i>
apprehend	arrest
assistance	help
attain [<i>an age</i>]	reach
commence [ment]	begin[ning] (<i>except for</i>
<i>legislation</i>)	
[is] constituted [by]	consists of/comprises
despatch/forward/transmit	send/give
determine	fix/decide
exceeding/in excess of	more than/over
expiration/expiry	end
furnish	give/supply
implement/effectuate	carry out
initiate/institute [<i>proceedings</i>]	begin/start/bring
	[<i>proceedings</i>]
[of his own] motion	[on his own] initiative
necessitate	require
[<i>the day</i>] next succeeding	[<i>the day</i>] [<i>immediately</i>]
following	
otherwise than	except
the preceding [<i>day</i>]	the day before
prior to	before
retain	keep
subsequent to	after
sufficient/adequate	enough
terminate/termination	end/finish

4.0 CONCLUSION

To conclude, one of the greatest obstacles to easy reading is to be faced with a lengthy slab of unbroken text. Certain devices should be part of your stock-in-trade. Unnecessary negatives can cause confusion. More serious difficulties may be experienced with double negatives.

5.0 SUMMARY

In this unit, you have learnt how to develop a good legislative style. You should now be able to improve your communication and clarity of your draft in order to secure the seven C's.

6.0 TUTOR MARKED ASSIGNMENT

How can you improve communication?

7.0 REFERENCES/FURTHER READINGS

Crabbe VRAC, (1993) *Legislative Drafting*, London: Cavendish Publishing Ltd.

Dooman E. (1995) *Drafting*, ed. Macfarlane J., London: Cavendish Publishing Ltd.

Rylance P. (1994) *Legal Practice Handbook: Legal Writing and Drafting*, ed. King G.A. London: Blackstone Press Ltd.

ANSWER TO SELF ASSESSMENT EXERCISE 1

- (1) A person commits an offence who:
- (a) sells, or offers or exposes for sale¹, as a feeding stuff, an article that contains an ingredient deleterious to livestock; or
 - (b) possesses such an article packed and prepared for sale as a feeding stuff.
- (2) It is a defence to a prosecution under subsection (1)² that the person:
- (a) did not know, and with reasonable care could not have known, that the article contained a deleterious ingredient; and
 - (b) if he or she obtained the article from another person, gave all the information in his or her power, on demand by or on behalf of the prosecutor³:
 - (i) about the person from whom it was obtained; and
 - (ii) as to any mark applied to the article when it was obtained.⁴
- (3) Proceedings for an offence under this section may be instituted only if:
- (a) the article has been sampled by an inspector, in the prescribed manner, on the premises on which it was sold or exposed or offered for sale or on which it was prepared for sale or consignment⁵; and
 - (b) the sample has been analysed in accordance with this Act.

General notes:

The original section contains three distinct components (elements of the offence, special defences, and prerequisites to prosecutions). Each topic merits its own sentence, making three subsections. The proviso then disappears. Paragraphing (and its indenting) provides white space, as well as making the sentence structure more obvious.

Detailed notes:

¹ This phrase (which occurs twice) might have been replaced by "sell" and the term then defined in a separate subsection as including the other cases, had not "sell" been used in two other places in its usual, more restricted, meaning.

² As is often the case, extra words need to be supplied to link the sentence with the one preceding it.

³ This phrase needs to be moved in this version, as otherwise it is ambiguous.

⁴ Subparagraphs break up what would have been a paragraph of 3½ lines and 45 words. The passive avoids excessive use of "his or her".

⁵ This could be drafted with two subparagraphs, but that seems unnecessary as the entire paragraph is only 2½ lines long.

ANSWER TO SELF ASSESSMENT EXERCISE 2**Search of persons.**

50.-(1) A customs officer may search:

(a) the person¹ or baggage² of an individual¹ on or landing from³ an aircraft or ship whom the officer has reason to suppose⁴ is in possession⁵ of uncustomed or prohibited goods;

or

(b) the person or baggage⁶ of an individual whom the officer suspects has received any such⁷ goods from such⁷ an individual.

(2) Uncustomed or prohibited goods discovered in a search under subsection (1)⁸ are to be forfeited if the individual, after⁹ being questioned by a customs officer [before the search⁹] as to whether he or she possesses⁵ goods obtained outside Nigeria, has refused to answer or has denied any such⁷ possession.

Notes:

The original has been divided now into two subsections, dealing in the first with the power of search and the circumstances in which it may be conducted, and in the second, with certain consequences. Unlike the original, both sentences introduce the core idea (as expressed in the subject/predicate) at the beginning; both dispense with initial conditional clauses, enabling the proposition to be stated much more directly. The clearer presentation exposes the fact that certain issues have not been completely thought out (see below).

¹ The term “person” is used in two senses, referring to the individual and to the body. Different terms should be used to differentiate the cases.

² The original only authorizes search of the person, yet goes on to refer to goods discovered in baggage. Consistency is required.

³ This presentation avoids the repetition of the original; the cases now in paragraph (a) are very similar, but distinct from the case now in paragraph (b).

⁴ The original term has been retained, presumably as a lesser standard is intended than is the case under paragraph (b) - “suspects”. It surely covers the case of receiving information, which can then be omitted.

⁵ Again, consistency is needed in the description of the action. The original refers to “carrying” and “having” in reference to the search power, but introduces “possession” in relation to forfeiture. The latter

term is capable of covering all these cases, as well as those of having goods on the person and in baggage.

⁶ If goods can be forfeited when discovered in the baggage of any of the individuals who may be searched, the power to search baggage must be expressly conferred in all cases.

It is unclear whether the power in paragraph (b) is limited to other persons on, or landing from, ships and aircraft, or can be used more widely. The exact policy would have to be established.

⁷ This type of expression is appropriate to refer back to an earlier case where a noun has been modified, in order to confirm that the same modified case is intended.

⁸ This device not only links the consequence with the power, but also allows some reduction in words.

⁹ Arguably, a time sequence is needed. Presumably, the questioning must precede the discovery. Attention to detail is necessary since these provisions deal with matters to which Fundamental Freedoms provisions in the Constitution apply.

ANSWER TO SELF ASSESSMENT EXERCISE 4

General approach:

A re-draft should allocate the different cases to separate subsections. This has the advantage of making clear that the final exception applies only to the second case.

That is not immediately obvious in the original draft. Paragraphing makes the sentence components much clearer. The excluded cases can also be dealt with separately.

The sentence might be re-written as follows:

(1) A settlement of property is void against the trustee in bankruptcy if the settlor becomes bankrupt within 2¹ years after the date of the settlement.

(2) A settlement of property is void against the trustee in bankruptcy if the settlor becomes bankrupt at any subsequent time within 10¹ years after the date of settlement, unless the parties claiming under the settlement can prove that:

(a) at the time of making the settlement,² the settlor was able to pay all his debts without the aid of the property comprised in the settlement; and

(b) the interest of the settlor in the³ property passed to the trustee of the³ settlement on its⁴ execution.

(3) This section does not apply to a settlement:

- (a) made before and in consideration of marriage; or
(b) made in favour of a purchaser or mortgagee in good faith and for valuable consideration; or made on or for the wife or children of a settlor of property that has accrued to the settlor after marriage in right of his wife.

Detailed notes:

¹ Numbers are more striking than words.

² There is no need to split the verb if the adverbial phrase is repositioned.

³ "the" is the usual word, and is just as explicit as "such".

⁴ "its" is as accurate as the old-fashioned term "thereof".

UNIT 3 HOW TO MAKE LEGISLATION MORE COMPREHENSIBLE & CONCISE

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 How to make legislation more comprehensible
 - 3.2 How to make legislation more concise
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

In this unit, we concentrate on how to make your legislation more comprehensible and concise.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Explain how legislation could be made more comprehensible and concise.

3.0 MAIN CONTENT

3.1 How to Make Legislation More Comprehensible

Readers find text easier to understand if they have a general idea of what the text will be about before they start reading. They are also helped if the text is written without using unusual forms or language. So make your drafts more comprehensible by:

- (i) providing purpose pointers and topic specifiers**
- (ii) follow standard writing practices**
- (iii) using standard language**
- (iv) using formulae, diagrams and similar modes of communicating information.**

1) Provide purpose pointers and topic specifiers

It is easier for readers to understand the relationship between provisions and the detailed requirements of a series of rules if they have a mental framework for what they are about to read. As one drafter has put it, reading legislation without an overview, "it is like doing a jigsaw puzzle when you don't have the picture on the box". You can help create a picture by providing purpose pointers, content guides, headings and section notes.

(a) Purpose pointers

An objects or purpose clause is a provision that states the purposes which the Bill is designed to secure. These clauses also provide a particularly valuable introduction to a Part of a Bill, by setting out quite specifically the aims of the provisions in that group. Similarly, one may be used to apply to a single section, e.g. stating the purposes for which discretion in the section can be exercised. They may be called in aid if a problem of interpretation arises. We look at these more fully in another course.

(b) Content guides

Readers can be helped to find their way around legislation by providing a table that gathers together the section notes and headings at the start of the instrument. This gives an immediate picture of its organisation and general indications as to its content and coverage. Many jurisdictions confine this practice to sizable legislation, though it can be useful even in short instruments.

A device that can be considered for legislation that is complex and substantial is to legislate directions in the statute itself as to how the contents are organised and where to look for the important features. We see how these contents guides (or "road-maps") can be used in a later course.

(c) Headings and section notes

Short indicators of the subject matter in a piece of text can give the gist of the topic about to be examined. When carefully devised, they supply help in understanding what is about to be covered by groups of sentences and by sections. These include:

- (i) **headings** giving guidance as to the contents of Parts or other divisions;

- (ii) **section (side/shoulder) notes** describing the gist of the individual sections to which they are attached.

2) **Follow standard writing practices**

Readers find text easier to manage if they meet familiar ways of presenting information. We have already seen the value in following:

- standard conventions on syntax and grammar;
- the house-style on the way particular types of sentence should be drafted.

(a) **Use the present tense and the active voice**

We have already seen the advantages of expressing verbs to indicate that the provisions are always speaking. This accords with the reader's expectation and is in line with much of modern communication, both oral and written.

Similarly, the benefits of drafting in the active voice contribute to understanding. Not only does this identify out the actor before the action, so that we see quickly to whom the provision is directed, but it reminds the drafter of the importance of identifying in the text the person who is to perform the action.

There are two specific cases where drafters may be tempted to use devices that are not standard use: **provisos** and **artificial concepts**.

(b) **Avoid provisos**

Provisos have been much used in the past for two purposes. To:

- (i) create a particular **exception or qualification** to a general proposition, to which it is attached:
- (ii) **to expand, or elaborate upon**, the general proposition to which it is attached.

Example Box 1**exception**

5. A person must keep only in a warehouse or licensed building:

- (a) dangerous petroleum in a quantity exceeding 100 litres;
- (b) ordinary petroleum in a quantity exceeding 250 litres:

Provided that the Inspector may authorize a fit and proper person in writing to keep ordinary petroleum in a quantity that does not exceed 2500 litres in a store, shop or other building approved by the inspector.

expansion

12. A licensee who contravenes a condition of a license issued under this Act commits an offence and is liable to a fine of ₦50, 000.00, and may have the license forfeited:

Provided that in proceedings under this section, the quantity contained in a licensed machine is to be excluded from the computation of the quantity of petroleum that the licensee is authorized to have and use upon his or her premises.

As we shall see in the next course (*Legislative structures*), provisos have long been condemned as a source of confusion and unnecessary. The same results can be achieved by using conventional forms.

Example Box 2

5.-(1) A person must keep only in a warehouse or licensed building:

- (a) dangerous petroleum in a quantity exceeding 100 litres;
- (b) ordinary petroleum in a quantity exceeding 250 litres.

(2) *Despite subsection (1)*, the Inspector may authorize a fit and proper person in writing to keep ordinary petroleum in a quantity that does not exceed 2500 litres in a store, shop or other building approved by the inspector.

12.-(1) A licensee who contravenes a condition of a license issued under this Act commits an offence and is liable to a fine of ₦50, 000.00 and may have the license forfeited.

(2) In any proceedings under this section, the quantity contained in a licensed machine is to be excluded from the computation of the quantity of petroleum that the licensee is authorized to have and use upon his or her premises.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 1

Redraft the following section from a Sale of Poisons Act to replace the proviso.

3. This Act does not apply to patent medicines or homeopathic medicines or to any medicine supplied by a qualified medical practitioner to his patients or to any article forming part of the ingredients of any medicine dispensed or supplied by a chemist or druggist:

Provided that such medicine so supplied or dispensed shall be distinctly labeled with the name and address of the supplier or dispenser.

(c) Avoid Artificial Concepts

Drafters sometimes devise concepts (e.g. in the form of a definition) with the admirable objective of shortening or simplifying the text. It allows an expression to be used throughout the legislation to refer to an (often important) element of the legislative scheme. But if they take an artificial form, this device may operate at the expense of understanding. For the reader has to discover and then remember a meaning that the drafter has given to the idea that may not be conveyed by the expression used. A particular practice is to add the word "relevant" to a common word and then assign a special meaning to the phrase.

Example Box 3

(1) The Minister may provide, by regulations, for participation in *a relevant scheme*, on such terms as the Minister thinks fit, of persons who are

either:

(a) employees of the Board or of a joint subsidiary; or

(b) members of the Board or directors of a joint subsidiary.

(2) In subsection (1), "a relevant scheme" means a pension scheme maintained under section 24 of the Civil Aviation Act 1967.

Note: the italicised phrase can be replaced either by "a pension scheme maintained under section 24 of the Civil Aviation Act 1967" or by "a pension scheme" (which then becomes the term that is defined).

3) Use Standard Language

Lawyers generally have the reputation of unnecessarily using words that are not in common use, in particular, **archaic words**, **Latin or other foreign expressions** and **legalisms**. If your drafts are to be intelligible to as wide a group as possible, wherever practicable, **choose words in general use**.

(a) Avoid Archaic Words

Legal documents still contain too many expressions that date back to earlier times. They are particularly common as linking words. Modern writing has equivalents that are in common use or treats them as superfluous. Here are examples of archaic words used to make links with other parts of a statute that can readily be replaced by more up-to-date expressions.

Archaic linking words

<i>Archaic</i>	<i>Modern</i>
Aforesaid	the, that
afore-mentioned, above-mentioned	mentioned in [<i>specify where</i>]
herein, hereunder, hereinafter, hereinbefore	in, by, under [<i>this Act</i>], in [<i>specify where</i>]
hereby	<i>omit</i>
notwithstanding	despite
preceding/succeeding [<i>section</i>]	<i>specify</i> [<i>the section</i>]
pursuant to, in pursuance of, by virtue of	under
with reference to	about
the said	the
the same	that
save	except
therein, thereunder, thereof, thereat	in it, under it, of it, there
whatsoever	<i>omit</i>
whenever, wheresoever, whosoever	when, where, who
whereas	as, since

Other archaic words***Archaic***

Apparel
 [is] desirous
 forbear
 forthwith
 the like [*sum*]
 monies
 otherwise than
 situate
 suffer [*a person to*]
 utilize

Preferred

clothes
 wishes
 refrain
 at once, as soon as practicable
 the same [*sum*]
 money
 except
 situated
 permit, allow [*a person to*]
 use

Complete Self Assessment Exercise 2. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 2

In the space provided, redraft the following by replacing any archaic expressions with more appropriate ones.

28.-(1) Notwithstanding the preceding section and except as hereinafter provided in this Act, whosoever in pursuance of an agreement with another person shall corruptly accept a gift as reward for doing or forbearing to do an act in relation to the affairs of the aforesaid person shall commit an offence, and the same shall be liable to the penalty prescribed in the succeeding section.

(b) Avoid Latin and other Foreign Expressions

Lawyers are inclined to use Latin expressions even when there are satisfactory English alternatives. This gives the unfortunate impression that the text is only intended for lawyers. Even so, certain technical terms in Latin (mainly as names of writs) have been accepted into standard legal use. Unless these have been formally replaced by English terms, you should continue to use them in the appropriate setting. They

include caveat, certiorari, fieri facias, habeas corpus, in rem, in personam, mandamus, prima facie, subpoena. A number of others are also standard legal terms, though they are little used in legislation: actus reus, res judicata, mens rea, obiter dictum, ratio decidendi, stare decisis, sub judice, ultra vires. The trend is to use English language alternatives.

However, Latin terms should be replaced by their English equivalents in legislation. Those that have been used in the past in legislation include the following.

<i>Latin</i>	<i>English</i>
<i>ab initio</i>	from the start
<i>ad valorem</i>	according/in proportion to value
<i>bona fide</i>	in good faith, genuine
<i>de novo</i>	anew, again
<i>ejusdem generic</i>	of the same kind/class
<i>inter alia</i>	among other things/matters
<i>gratis/ex gratia</i>	free, without payment
<i>mutatis mutandis</i>	with the necessary modifications/ changes
<i>pari passu</i>	with equal treatment
<i>per annum</i>	a year, each year, annually
<i>proprio motu</i>	on [<i>his</i> or <i>her</i>] own initiative
<i>ex abundanti cautela</i>	from an excess of caution, for removing doubt, being doubly cautious

(c) Avoid Legalisms

Lawyers are also prone to use expressions that are part of their jargon though not technical legal terms. The equivalent words in common use are intelligible to both lawyer and non lawyer.

<i>Legalism</i>	<i>Standard</i>
action	civil proceeding
cesser	ending
chattel	goods, movable

demise	bequeath/transfer/rent (<i>whichever is the case</i>)
instrument	document (<i>unless this term is defined in the Interpretation Act</i>)
Purchaser	buyer
seised of	possessing
vendor	seller

A legalism that may mislead in legislation is "**deem**". It may mean "to consider" or "to conclude", as in the phrase ""as he deems fit". Alternatively, it may be used to create a legal fiction, that is to cause something to be treated *as if it were* something different for the purposes of a legal rule.

Example Box 4

For the purposes of this section, an unmarried woman *is deemed to be* a married woman if she has living with her a child of hers who is under the age of 5.

Drafters are inclined today to avoid the word altogether.

- (i) if you are creating a legal fiction (e.g. deeming a new situation legally to be something that it actually is not), use "**is to be regarded/treated**";
- (ii) if you are not using it for a legal fiction, use a word in common use such as "**thinks**", or "**considers**".

But take care when creating a legal fiction. For the effect is to apply legal rules to a case to which they would not otherwise apply. But what about those rules that ordinarily applies? Are these replaced or both sets of rules to apply?

Make clear in creating a legal fiction the extent to which the "deemed" rules replace those which ordinarily apply.

Example Box 5

A notice under this section *is to be treated* as unreasonably delayed if it is not sent within 14 days.

Is this the only type of "unreasonable delay" that can be considered? Or can other cases be put forward that otherwise fall within that term? Almost certainly the second is intended. A better draft reads:

A notice that is not sent under this section within 14 days is to be treated as unreasonably delayed.

Complete Self Assessment Exercise 3. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 3

In the spaces provided, replace the "deeming" provisions in the following sentences.

1. For the purposes of this section, a wife *is deemed to have* the domicile of her husband.

2. At the conclusion of the hearing the Judge must make such order as to costs *as he deems to be appropriate*.

A final word of warning. English has a number of words that sound very much the same, but have rather different meanings. A reader can be badly misled if you use an incorrect word. Some of the words that are commonly confused are set out in **Annex 2** at the end of this unit.

Quickly read through **Annex 2**. Are there any words there, especially ones which you regularly use, which you tend to confuse?

Refer to this Annex in the future if you have any doubts about a listed word.

4) Use formulae, diagrams, etc

Readers find visual representations of certain kinds of information easier to understand than words of description. These kinds of aid are not common in legislation, perhaps because of limited facilities of the Government Printer in the past. But they make complicated legislation much clearer. The following devices may be useful:

- (i) Formulae to show how e.g. tax or benefit calculations are to be made.

Example Box 6

Section 1 contains a complicated rule by which a grant for farm land is to be calculated. Section 2 states the same rule as a formula (which was probably how the Finance Ministry had originally worked it out!).

1.-(1) The level of grant is to be calculated by determining sixty per cent of the average income of the applicant that is attributable to the Use of the relevant land in the previous five tax years, less:

- (a) the average of so much of the income tax attributable to the relevant land over that period; and
- (b) the average cost of the seed and fertiliser used for the purpose of production on the relevant land over that period.

(2) The income tax attributable to the relevant land is to be that proportion of the total income tax payable in respect of the farm as

is

equivalent to the proportion that the relevant land has to the total area of the land comprised in the farm.

1. The level of grant is to be calculated in accordance with the following formula:

$$\frac{I - (t \times rla) - (cs + cf)}{5} - \left(\frac{tla}{5} \right)$$

where:

"I" = income attributable to the use of the relevant land over the previous 5 tax years;

"t" = income tax assessed as payable in respect of the farm over the previous 5 tax

years;
 "rla" = area of the relevant land;
 "tla" = total land area of the farm;
 "cs" = total cost of seed used for the purpose of production on the relevant land over
 the previous 5 tax years;
 "cf" = total cost of fertiliser used for the purpose of production on the relevant land
 over the previous 5 tax years.

- (ii) diagrams, e.g. in the form of flow charts, to show how a legislative scheme is intended to work;
- (iii) maps to indicate boundaries (e.g. for constituencies).

SELF ASSESSMENT EXERCISE 4

Take a quick look at the statute book; find out whether either of these techniques is in current use in Nigeria.

These techniques are needed only for legislation dealing with complicated matters and long Bills. You are unlikely to use them at the beginning of your drafting career.

3.2 How to Make Legislation More Concise

Long-windedness takes two forms in legislation:

- (i) compressing too many words into a single sentence;
- (ii) putting in a sentence words than are not needed.

We have already noted that good style avoids long sentences, using instead linked short sentences, each dealing with distinct items of information. Drafters tend to use too many words for two reasons:

- (i) the need to make absolutely sure that the intended meaning is not in doubt, and especially that particular cases are covered by the rule;
- (ii) a belief that more elaborately phrased expressions appear more authoritative.

Circumlocution, as this is sometimes termed, leads readers away from understanding. Good style in this respect requires that:

- (i) you express yourself in a **direct way with the minimum words necessary**;
- (ii) when **one word will do**, you do not use more.

In particular, avoid:

- **unnecessary detail**
- **superfluous words**
- **unnecessary reinforcement.**

1) **Avoid Unnecessary Detail**

Excessive detail was a common feature of 19th century legislation. Its influence is still seen in many collections of legislation.

Example Box 7

Any person who, by cruelly beating, ill-treating, over-driving, abusing, over-loading or torturing any animal, does any damage or injury to such animal or thereby causes any damage or injury to be done to any person or to any property shall, on conviction of such an offence, pay to the owner of such animal (if the offender is not the owner thereof) or to the person who sustains the damage or injury such sum of money by way of compensation, not exceeding the sum of five hundred naira, as is ascertained and determined by the magistrate by whom such person is convicted.

There are 3 main ways in which excessive detail can be reduced.

- (i) replace a string of words by a single expression that is then **defined** either in the interpretation section or in the section where it is used, if it is used only there.
- (ii) if the sentence repeats matter contained in an earlier section, a **cross-reference** may allow you to use fewer words, as well as to link the two sets of provisions.
- (iii) replace detailed provisions, particularly strings of words, by a single expression that uses general terms.

Example Box 8

This Act applies to premises where food for human consumption is sold to the public.

The general description of kinds of premises removes a need to itemise the many cases that are covered (from restaurants to supermarkets), similarly the description of the food. Yet both impose clearly understood limits.

Such broad "indeterminate" expressions as these catch the essence of the cases, instead of setting the cases out individually. It is easy to overlook particular cases or to fail to foresee new ones. This kind of expression prevents that. It puts the onus on users to decide whether their particular cases satisfy the description. If there is any dispute in a marginal case, the courts will decide. We look at other features of broad terms below.

But when using generalising expressions:

- (i) make sure that the description is wide enough to cover all intended cases, but not too wide as to catch unintended ones.
- (ii) give clear guidance to users as to its coverage; if you use *too generalised* terms, you lose precision and make recourse to the courts a necessity.

Complete Self Assessment Exercise 5. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 5

Redraft the sentence in **Example Box 7**, as directly and concisely as possible.

2) Avoid Superfluous Words

Always keep looking to use the minimum of words for the purpose. Superfluous words occur because drafters follow outdated practices or lack confidence in their language skills.

(i) Unnecessary Internal References

References to other provisions in the same Bill or the same legislative unit (e.g. section or subsection) can be made without additional words stating that the reference is to one *in the Bill* or *in the same legislative*

unit. The omission of such words may be authorised by the Interpretation Act, but such authority is not legally necessary.

Use expressions identifying an instrument (e.g. an Act or legislative instrument) or unit only when referring to *some other instrument* or *unit* than the one in which the expression is used (e.g. "of section 12 of the Animal Diseases Control Act").

Example Box 9

Subsection (1) *of this section* has effect without prejudice to *the provisions of* section 12 of this Act.

This can be expressed much more succinctly as:

Subsection (1) *does not affect* section 12.

(ii) Duplicating words

Lawyers have a habit of using phrases made up of two words that mean much the same. The explanation is found from English legal history. Early writings used both Latin/French and Anglo-Saxon; so expressions came to be used that contained equivalent words that had their roots in the two language sources. Today, one or other is usually enough. Those in most common legislative use are:

aid and abet	null and void
fit and proper	terms and conditions
just and reasonable	null and of no effect.

At the same time, give thought to whether twin terms differ in meaning. In such a case, use the term that is more general in effect.

(iii) False subjects

A clause contains a false subject if it begins with such a phrase as "there is" or "there are". Not only does this use unneeded words (because often the false subject must be followed by a relative clause), but it obscures the true subject of the clause.

Example Box 10

If *there is* a person *who* makes frivolous complaints, persistently and without reasonable grounds, about judicial officers, the Commission may declare the person to be a vexatious complainant.

The highlighted words can be omitted. However, a better draft reads:

The Commission may declare a person to be a vexatious complainant who makes frivolous complaints about judicial officers persistently and without reasonable grounds.

A number of expressions can be found in legislation with this shortcoming. You can replace all by more direct terms.

It is declared that	<i>omit</i>
It is lawful/unlawful	<i>state the subject and use "may"/"may not"</i>
It shall be the duty of	<i>state the subject and use "shall"/"must"</i>

(iv) Words Instead of Numerals

Older legislation used words rather than numerals to express numbers, presumably in the interests of certainty. In fact, numerals are more prominent and easier to register than words. They are also much shorter. Today most drafters use them in the body of their sentences for the following purposes (as well as for section numbering):

- units of measurement;
- dates (for the day and the year) and times;
- sums of money (including fines);
- length of imprisonment;
- ages;
- percentages and mathematical formulae;
- statistical data in tables and Schedules;
- fractions or decimals (e.g. "4¼"; "4.25").

On the other hand, numerals should not be used if they could be a source of confusion, as in the following cases:

- (a) when the numerical reference is used as a modifier: e.g. third party;

- (b) for ordinal numbers (except in dates): e.g. first, tenth;
- (c) for the month in a date: e.g. "1 January 1995" (*not* 1.1.1995)
- (d) when the number begins a section or subsection: e.g. (2) Two directors.....;
- (e) when two types of numbers come close together: e.g. 100 two-wheeled vehicles.....;
- (f) when fractions are used to describe proportions of e.g. membership: e.g. two-thirds of the members;
- (g) when "one" is used not as a numerical quantity: e.g. transfer from one to another.

3) **Avoid Unnecessary Reinforcement**

Legislation cannot express emphasis in the same way as other writings. Some drafters try to overcome this by using extra words to add a stress. We can mention two forms:

(i) **An expression instead of a word**

Lawyer's English is full of expressions that use a number of words to say something simple. In these cases, you can usually substitute a word for the expression without loss of effect.

<i>Expression</i>	<i>Word</i>
act in contravention	contravene
at the particular time	then
by means of	by
by reason of [the fact]	because
during such time as	while
if and when	if/when
in connection with	about
in relation to	to, of, for
in the event of/that	if
in the case to which	if
is without prejudice to	does not affect
notwithstanding anything to the contrary in	despite

preliminary/prior to	before
shall have the power	may
sufficient number of	enough

(ii) Words of Emphasis

Similarly, some drafters add words to give emphasis. Such words:

- (a) are often superfluous, as the section should make clear the extent of the application without the need for emphasis;
- (b) may cause a problem of interpretation as to their function.

Here are some examples:

Absolutely	fully
Completely	never
Excessively	utterly
Extremely	very

The following should also be used with care:

already/now: both express a point of time but is it calculated as at the time of enactment or the time of use or some other time? If you need to stress a particular time, it is usually better to indicate it specifically (e.g. "at the date this Act comes into force").

any/all/ Some drafters use these systematically before a noun to **each/every:** reinforce its universal application. They can be used, but

sparingly, to *emphasise* that universality. For almost all cases, a simple indefinite article ("a") is enough.

Use "**each**" or "**every**" only if you have a good reason to point up that a rule applies to *all* members of a class.

Example Box 11

1.-(1) *Any* person who keeps *any* place for the purpose of fighting or baiting *any* animal (whether of a domestic or wild nature) commits an offence and is liable to a fine of ₦500.00 for *each* day that the person keeps the place for such a purpose.

(2) *Every* person who receives money for the admission of *any* other person to *any* place kept for *any* of the purposes specified in subsection (1) is to be regarded as a person who keeps that place.

In subsection (1) "any" is not called for. A simple article produces the same effect in each case. In particular, in the third use, emphasis comes from the bracketed words. On the other hand, "each" does provide some needed stress.

In subsection (2), "every" is not required to show that all those meeting the description come within the rule. The first use of "any", with "other" can be replaced by "another".

The second use is superfluous; the third is necessary to singularise the case.

2. The owner must pay *all* reasonable expenses incurred by the Sheriff for *all* necessary food and water supplied to *any* animal impounded under this section; all such expenses are recoverable by summary proceedings.

There is no need to use "all" in any of these cases. No emphasis is required; "the" is enough. ("such" too is superfluous, and "any" can be replaced by "a").

ANNEX 2

WORDS COMMONLY CONFUSED

<i>adapt</i> : modify, make suitable	<i>adopt</i> : accept, approve
<i>adverse to</i> : opposed to [things]	<i>averse to</i> : disinclined to
<i>affect</i> : produce an <i>effect</i> on	<i>effect</i> : a result; <i>as a verb</i> : to bring about
<i>alternative</i> : one of two or more possible other; choices	<i>alternate</i> : (of two) one after the other; a substitute
<i>appraise</i> : to value or fix a price	<i>apprise</i> : to inform
<i>in common</i> : shared by two or more	<i>mutual</i> : shared reciprocally
<i>comprise</i> : to consist of; to be <i>composed of</i>	<i>compose</i> : to make up
<i>emigrate</i> : to migrate from	<i>immigrate</i> : to migrate to
<i>ensure</i> : to make certain	<i>insure</i> : to secure payment of money
<i>impinge</i> : to make an impact	<i>infringe</i> : to violate
<i>liable</i> : subject [to]	<i>likely</i> : expected [to]
<i>practical</i> : useful, designed or suited to be being put to use	<i>practicable</i> : feasible, capable of carried out
<i>prescribe</i> : to lay down [a rule]	<i>proscribe</i> : to prohibit
<i>principle</i> : a basic proposition (<i>noun</i>)	<i>principal</i> : main (<i>adjective</i>)
<i>sanction</i> : penalty	<i>sanction</i> : permission
<i>stationary</i> : not moving	<i>stationery</i> : materials for writing
<i>verbal</i> : comprised of words (written or spoken)	<i>oral</i> : spoken, not written

4.0 CONCLUSION

To conclude, readers find legislation easier to understand if they have a general idea of what the legislation is about before they start reading. Good style avoids long sentences, using instead linked short sentences.

5.0 SUMMARY

In this unit, you have learnt how to make legislation more comprehensible and concise. You should now be able to draft effectively.

6.0 TUTOR MARKED ASSIGNMENT

Redraft the example in **Example Box 11**, both to provide clear guidance as to the Registrar's duty in the matter and to make the sentence easier to work with.

7.0 REFERENCES/FURTHER READINGS

Dooman E. (1995) *Drafting*, ed. Macfarlane J., London: Cavendish Publishing Ltd.

Rylance P. (1994) *Legal Practice Handbook: Legal Writing and Drafting*, ed. King G.A. London: Blackstone Press Ltd.

Costanzo M. (1993) *Essential Legal Skills: Legal Writing*, ed. Macfarlane J., London: Cavendish Publishing Ltd.

ANSWER TO SELF ASSESSMENT EXERCISE 1

3. This Act does not apply:
 (a) to:
 (i) medicine supplied by a qualified medical practitioner to patients;
 or
 (ii) an article forming part of the ingredients of a medicine dispensed or supplied by a chemist or druggist; if the medicine is distinctly labelled with the name and address of the dispenser or supplier; or
 (b) to patent medicines or homeopathic medicines.

Notes:

The original does not make as clear as it should that the proviso does not attach to the first case. That is the purpose of the modifiers in the proviso. Paragraphing and reversing the order of their contents overcome this. The proviso is then converted into a condition attaching to the other cases.

An alternative way is:

3. This Act does not apply to:
 (a) patent medicines or homeopathic medicines; or
 (b) medicine supplied by a qualified medical practitioner to patients;
 or

(c) an article forming part of the ingredients of a medicine dispensed or supplied by a chemist or druggist, but the medicines referred to in paragraphs (b) and (c) must be distinctly labelled with the name and address of the dispenser or supplier.

ANSWER TO SELF ASSESSMENT EXERCISE 2

28.-(1) *Despite section 27 and except as provided in sections 30 to 35, a person commits an offence who, under an agreement with another person, corruptly accepts a gift as reward for doing or refraining from doing an act in relation to the affairs of that person and is liable to the penalty prescribed in section 29.*

Expressions replacing archaisms are indicated in italics.

Specific references are now made to other sections.

ANSWER TO SELF ASSESSMENT EXERCISE 3

1. For the purposes of this section, a wife is *to be treated [regarded] as having* the domicile of her husband.

2. At the conclusion of the hearing the Judge must make such order as to costs as the Judge *considers* appropriate.

ANSWER TO SELF ASSESSMENT EXERCISE 5

A person who, in committing an offence in relation to an animal under section [3] (*ill- treating animals*):

(a) injures that animal; or

(b) causes injury⁷ to a¹ person or damage⁷ to property;

is liable, on conviction, to pay compensation, to a maximum of ₦50, to the owner of the animal or the property or to the injured person as the convicting magistrate considers reasonable.

¹ A simple article is enough.

² The section is concerned with compensation; it does not create an offence. That must be done somewhere else in the Act. By linking the substance of the two sections, there is then no need to restate the proscribed behaviour.

³ There is no shorter alternative to this necessary phrase.

⁴ The linked section must be identified and its substance explained.

⁵ Here "injury" and "damage" cover the same cases.

⁶ There is no need to use the archaic "such".

⁷ Here "injury" is more appropriate for people, "damage" for property.

⁸ A duty arises only when liability is established.

⁹ There is no need to refer again to the offence.

¹⁰ To "pay a sum of money by way of compensation" is unnecessarily wordy.

¹¹ A shorter form using numbers is clearer.

¹² The section is unlikely to be construed as authorising owners of an animal to compensate themselves.

¹³ Re-arrangement permits some reduction in words.

¹⁴ This states the intention more directly than the duplicated terms of the original.

The section now runs to 62 words, instead of 101.

UNIT 4 HOW TO MAKE LEGISLATION COMPLETE, CONSISTENT & CERTAIN

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 How to make legislation complete
 - 3.2 How to make legislation consistent
 - 3.3 How to make legislation certain
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

This unit deals with how we can make legislation complete, consistent and certain.

2.0 OBJECTIVE

By the end of this unit, you should be able to:

- (i) Make legislation complete, consistent and certain.

3.0 MAIN CONTENT

3.1 How to Make Legislation Complete

Completeness is concerned with content rather more than style. Drafters have an overriding duty to ensure that their drafts cover the ground and meet the policy objectives. You must pursue style considerations consistently with that duty. In striving, e.g. for plain language, do not leave out any essential matter. Omitting superfluous words is one thing;

trying to produce simplicity by over-generalising or by leaving out words that are legally important creates rather than solves problems.

By merely stating what a person must *not* do in a certain situation you may not make clear exactly what that person is required *positively to do*. If you intend that a particular way of doing something must be followed, do not leave that to be implied. Completeness then may require you to use express provisions if different ones could be implied.

In two techniques in particular a choice of words or approach may affect the coverage of the legislation:

- (i) **Indicating the purposes of legislation**
- (ii) **Using broad terms.**

1) Indicate the Purposes of the Legislation

Legislation does not typically state its aims or the principles underlying its provisions. But they will have been well understood by the drafter, whose task is to give effect to them by a comprehensive set of rules governing the behaviour of those affected. Some indication of the reasons for the new legislation and the nature of the changes may be sometimes derived from any preamble and the long title, but the purposes behind it will usually be implicit. The legislation itself provides little explicit guidance in this respect to those responsible for its implementation. This may lead to unnecessary controversy, and problems of interpretation, about what particular provisions are intended to secure.

2) Use Broad Terms

Legislative Counsel regularly employ words or expressions that are variously termed "broad", "vague", "indeterminate", "general", "fuzzy" or "open-ended". These are terms that do not cover exact cases or circumstances or state precise details; they require the user to read those into a term by reference to the purpose and the context in which it is used. They are often used when a rule has to cover a range of circumstances too numerous to be particularized. The effect is to pass to those who apply the legislation the responsibility of deciding whether particular cases fall within the term. In consequence the Legislature in using the term leaves the application of this aspect of the legislative scheme to, e.g. the courts or administrators.

Example Box 1

The following are example of broad terms:

"food for human consumption"; "second-hand goods"; "accident"; "cruelty"; "immoral purposes"; "unnecessary noise"; "in the execution of his duty"; "in the vicinity [neighbourhood] of the National Assembly".

So, you can use indeterminate terms *deliberately* to pass the task of applying the rule to circumstances to others, including, in the case of dispute, the courts. This technique is particularly useful for setting general standards for conduct that can be adapted by the users to a wide range of unpredictable circumstances when it is not possible to offer more precise requirements. The best known of these perhaps is "**reasonable**", which leaves it to the judges in the last analysis to decide whether the conduct in a particular case is acceptable for the purposes of the legislation. As Thornton points out (*p.69*), this can result in "more humane laws and greater justice".

Example Box 2

Other broad terms used for this purpose include:

"as [the court] thinks fit/proper";
appropriate/

"as [the Board] believes
expedient"

"as [the Minister] considers just/equitable"
"fair"

"as soon as possible
"necessary"

"just/justified"
satisfied"

"if the judge is

"sufficient"

"suitable"

But by choosing an expression of this kind, you put the onus on the user to determine whether particular circumstances fit the statutory standard, with recourse to the courts if there is disagreement. As a consequence, use these terms only after deciding:

- (i) that the users should be given that degree of discretion;
- (ii) whether to include limitations or specific statutory guidance as to the criteria that should be applied in exercising the discretion.

In any case, make sure that the statutory context in which the standard is to operate states clearly its function and the ambit and purpose of its application. Indeterminate terms are a valuable tool for drafters since they preclude the need to provide unnecessary detail and allow legislation to be adapted to circumstances as they arise. However, they can introduce an element of undesirable vagueness. As we shall see

under the next objective, that carries a threat if precision is required - an issue that calls for your careful attention.

Example Box 3

Thornton (*p.70*) offers an example of an indeterminate term that gives insufficient guidance to the user as to how it is to be applied:

If a minor wishing to marry:

(a) has no parent or lawful guardian residing in Nigeria who is capable

of consenting to the marriage; or

(b) satisfies the Registrar that after diligent inquiry he or she cannot trace any such parent or guardian, the Registrar may give consent to the marriage in writing

if on inquiry the marriage appears to the Registrar to be proper, and that consent is as effectual as if the parent or guardian had consented.

The section gives no guidance, either expressly or from its context, as to the standard of propriety the Registrar must apply. Is the Registrar able to refuse on moral grounds? Is the Registrar to attempt to take the place of a parent who legally is able to refuse consent merely because he or she disapproves of the particular marriage? Or is the Registrar only to be concerned with whether the law on capacity to marry has been met?

3.2 How to Make Legislation Consistent

Consistency, like completeness, gives rise to problems of content more often than to issues of style. New legislation must fit with the existing body of law, so no substantive conflicts occur. This is a major consideration in the research and planning of legislation. However, good style calls for consistency in the wording and terminology. In particular, this means:

- (i) using the same expression to express the same meaning
- (ii) using definitions for key concepts

1) Use the Same Expression to Express the Same Meaning

In many forms of writing, writers are encouraged to make elegant variations, i.e. to look for different words and different ways of expressing the same idea, in order to retain the interest of the reader. In drafting legislation, avoid this practice in the interest of consistency. Readers need to know when the same person, object or circumstance is intended.

As a matter of routine:

- (a) use the same term or expression when it is necessary to convey the same meaning;
- (b) use the *same expression* for the *same concept*;
- (c) do not use the same expression for a *different concept*; use a *different expression*.

Example Box 4

In *Bell v Day* (1886) 2QLJ 180, a statute gave local authorities power to make bye-laws to “license” certain activities and to “regulate” others. The court held that the latter term could not be interpreted to authorize licensing. The use of different expressions was aimed to produce different legal results.

Your freedom to choose terms or expressions may be limited by the use to which those may have been put in other laws. Although, strictly, terms in a Bill are treated as distinct from those used in other legislation, many have distinctive legal connotations ("terms of art"), in particular because they refer to legal concepts. Those terms are presumed to be used consistently from one instrument to another.

When the context requires a term with a settled and distinctive legal meaning, choose that term. If the context might cause a term to be treated as a legal term when that is not appropriate, choose a different term.

Example Box 5

In *Fisher v Bell* [1960] 3 All E R 731, the following phrase, although used here in a criminal statute:

"sells or hires or offers for sale or hire",
was construed in the same way as in the law of contract. "Offer" does not include mere "invitations to treat", which are made when goods are put on display for sale. In consequence, drafters are obliged to use additional terms:

"sells or hires or offers, exposes or displays for sale or hire".

2) Use Definitions for Key Concepts

A definition establishes the meaning that must be applied whenever the defined expression is used in the instrument. In that way it guarantees consistency of usage. In particular, it can be used to reduce the possibility of ambiguity, as you can indicate the scope of the expression precisely. It is then a useful device for stipulating the content of key concepts that you deploy in your draft. It is particularly valuable for technical or specialist concepts. By choosing an appropriate term for the defined term, you can describe the concept in a shorthand manner, in the confident knowledge that its definition will provide the precision needed.

Example Box 6

19. In this Act, "wireless telegraphy" means the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for that purpose, of electromagnetic energy of a frequency not exceeding 3 million megacycles a second, being energy that either:

(a) serves for conveying messages, sound or visual images (whether the messages, sound or visual images are actually received by any person or not), or for actuating or controlling machinery or apparatus;

or

(b) is used in connection with the determination of position, bearing, or

distance, or for gaining information as to the presence, absence, position or motion of any object or of any objects of any class.

This kind of definition is likely to be relied upon, and incorporated by reference, for the purposes of other legislation in which the concept is required.

As we shall see in another course, definitions may also be used in other ways, for example to provide handy labels for lengthy expressions, for the sole purpose of avoiding unnecessary repetition. Acronyms can be used in a similar way.

Acronyms

Be ready to use an acronym (the initial capital letters of the words in an expression) instead of repeating the entire expression. Most readers are familiar with the practice. You can use it for in preference to:

- (i) the full expression when it is commonly referred to by an acronym; or
- (ii) a formal expression in the particular draft that can be converted into an acronym.

But always put the acronym in **capital letters** and **define** it.

Example Box 7

In this Act:
"CFCs" means chlorofluorocarbons";
"NOUN" means the National Open University of Nigeria.

3.3 How to Make Legislation Certain

Although certainty may be an objective, we must recognise that legislation can never be made certain. Not only is it impossible to foresee and provide for all the circumstances that may arise in connection with the subject-matter of the legislation, but language itself is inherently imprecise and can give rise to legitimate difference of opinion as to the intended meaning. Most words have fuzzy edges, i.e. the central core of meaning is well understood but the limits are less exact. It is the task of the drafter to reduce or at least control these factors both by the choice of terms and the careful formulation of the context in which they are used.

Considerations of style must accommodate or give way to the search for as much certainty as can reasonably be looked for in the particular matter. Precision in the choice of words and their context to settle as clear-cut provisions as possible is an overriding factor.

In particular, strive to:

- (i) use the **precise word or expression** required in the context
- (ii) avoid **over-vague expressions**
- (iii) avoid **ambiguity**.

1) Use the Precise Word Required

Precision in the choice of expressions must not be sacrificed. Your aim remains that of regulating as exactly as possible the particular matter in hand. This calls for a careful and considered choice of expressions that cover the foreseeable circumstances that fall within the ambit of the provision. So make sure that the expressions you use:

- (a) are not narrower or wider in effect than the rule requires;
- (b) in the context in which they are used, do not introduce imprecision or ambiguity as to their meaning or application.

Words do not have an independent existence; they acquire their meaning from the context in which they are used. It is not enough to find a suitable term. In choosing the most appropriate word or expression from the wide range available, be prepared to consider whether alternative terms might work better when used in a particular sentence.

The exact term may be dictated by the subject matter of the legislation. So:

- in dealing with **technical matters** (including technical legal topics), use the terms that are appropriate to the subject, even if those are specialist and not in common use.

Technical terms

Specialist legislation needs the correct specialist terminology. Except when dealing with legal matters, for this you generally have to rely upon your instructions and advice from those with technical knowledge. You should not attempt to find alternatives in more common use, as this will not convey the precision intended to those working the provisions.

Technical terms are needed not only in scientific or technological legislation (such as radio-communications and the measurement of radioactivity or water quality); they may also be required for most specialist fields which have developed their own terminology (for example, banking, insurance, as well as the law).

In these cases:

- (i) do not use a term that is capable of carrying technical connotations in the legislation if that is not your intention;
- (ii) make sure (by definitions, for example) that it is obvious to the reader that a particular word is used in a technical manner.

Legal terms

Certain broad terms are typically found in connection with legal concepts. Some are notoriously troublesome as they have come to be overlaid with judicial constructions that differ according to the subject matter in respect of which they are used. They have shifting elements as a result of legal decisions as to their meaning in different contexts.

Example Box 8

Among the many are "fraud"; "intentional"; "negligent"; "possession"; "public interest"; "public policy"; "recklessly".

In these cases:

- (i) take care to find out whether the term under consideration has been used in a similar context and whether the courts have consistently maintained a meaning then that is appropriate for the present case.
- (ii) if not, look for a different term or make the intended meaning of the term clear by additional words.

2) Avoid over-vagueness

We have seen that broad terms, carefully used, are a valuable device for drafters. However, as we have seen, many terms have fuzzy edges. Used without care they can introduce an unwelcome element of imprecision (i.e. they are too vague). Although it may be convenient to use them in a draft, particularly because they are in common use, they may lack the precision the legislation requires unless qualified in a more precise way by the context or other surrounding words.

SELF ASSESSMENT EXERCISE 1

Consider the range of possible meanings that can be given to the following words:

"building"; "child"; "day"; "family"; "goods"; "mother"; "vehicle".

These words are commonly used in legislation. But as Bennion (*p.240*) points out, such words often have a solid core of meaning, about which there is no doubt but surrounding that core is an area of uncertainty (he calls this the "**penumbra of doubt**").

Example Box 9

Bennion gives the example of "**vehicle**". That term obviously includes cars, buses, motor cycles, and lorries. But does it extend also to a horse-drawn cart, an army tank or a pedal bicycle? Even less certainly, does it extend to trains, derelict cars or wheelchairs used by the disabled? The precise coverage may differ from one piece of legislation to another, depending on its purpose.

Sound drafting requires you to use phrases whose penumbra of doubt is as small as possible. Otherwise they may introduce to great vagueness as to their application that is appropriate. This you can do, for example:

- (i) by the process of modification
- (ii) through definitions
- (iii) by making clear the statutory context in which the expression is used.

This involves a nice exercise of judgment in selecting and satisfactorily modifying the term. In so doing, try to keep the detail, and so the number of additional words, to a minimum.

Bennion also points out that terms may not retain a constant meaning but may change its meaning with the passage of time or according to the different cases to which they apply.

Example Box 10

Expressions such as "consent" or "accident" are unlikely to change their essential meaning, although they apply to a great range of circumstances.

But terms such as "cruelty", "disorderly house", "fit for human habitation", "moral", are likely to change meaning as standards and values, or circumstances to which they are applied, change.

In using particular terms, make yourself aware of the way that judges tend to interpret particular terms. But past judicial decisions on words with shifting meanings may not provide sound guidance as to the way in which they may be construed in future legislation. At the same time, deliberate use of terms of this kind may permit the courts and others who use the legislation to take account of changing circumstances.

In cases of this kind, if you need to avoid unwanted results:

- consider whether to stipulate how you are using a term in the Bill, e.g. by a definition, rather than merely relying upon past interpretation of the term in a different statutory context.

Avoid Relative Terms

Some words are too open-ended for legislative use, since they involve sliding standards or require individual assessments, on which a wide variety of different, and legitimate, views are possible. Many of these terms are relative; they implicitly require comparisons to be made with variable circumstances or conditions. So, they lack the degree of objective guidance that we look for in legislative rules. If you use these relative terms, you introduce a vagueness that a court cannot cure, since the terms are inherently imprecise.

Example Box 11

These relative terms include:

average	high	regular
cold	hot	several
excessive	large	slow
fast	low	small
few	many	usual
frequent	noisy	

As a result, in choosing terms:

- (a) make sure that you do not introduce unacceptable vagueness either in the words themselves or from the context in which they are used.
- (b) consider whether reliance on the following interpretation practices provide the required element of certainty:
 - (i) the expression is to be construed in the light of words used in association with them ("their colour may be derived from their context"- *noscitur a sociis*).
 - (ii) in an expression containing a series of specific words followed by a broad word, the broad word may be construed as restricted to matters of a similar character (the *ejusdem generis* rule).

Example Box 12

noscitur a sociis:

In the expression "riotous, violent or indecent behaviour in a church", the term "indecent" does not carry sexual overtones but refers to behaviour that creates a disturbance in a sacred place.

ejusdem generis:

a police officer may arrest without a warrant a person whom the officer finds in possession of a firearm, knife, bludgeon or *other offensive weapon*.

The highlighted phrase will be construed to cover only articles that have been made or adapted for causing injury. It does not extend to a piece of broken glass that is used in a fight.

We looked at these rules of interpretation in the course, Constitutional Perspective.

3) Avoid Ambiguity

Words or expressions that are capable of two or more meanings introduce serious uncertainty. In considering syntax, we saw a number of ways in which sentence construction can produce ambiguity (*syntactic* ambiguity). It may also arise from:

- (i) ambiguity in the word itself (*semantic* ambiguity)

- (ii) ambiguity arising from the context in which a word is used (*contextual* ambiguity).

Example Box 13

This simple sentence has ambiguities of all three kinds:

No person shall damage plants in a public park.

Syntactic ambiguity arises from the ambiguously placed modifier "in the public park". Does it apply to the plants or to the act of damaging?

Semantic ambiguity arises from "plant". Is this limited to items that have been put in the ground (e.g. flowers) or does it apply to items that have grown there without human intervention (e.g. trees)?

Contextual ambiguity arises from "plants in a public park". Does this apply to items carried into the park or only to those growing there?

Check that you have not opened the way to more than one intended construction:

- (a) by the term you select;
- (b) in using the term in the context created by surrounding words;
- (c) in the place it occupies in the syntax of the sentence.

4.0 CONCLUSION

To conclude, completeness is concerned with content rather than style. You have an overriding duty to ensure that your draft cover the ground and meet the policy objectives. Although certainty may be an objective, we must recognize that legislation can never be made certain. Consistency also gives rise to problems of content more often than style. New legislation must fit into the existing body of law, to avoid conflicts.

5.0 SUMMARY

In this unit, you have learnt how to make legislation complete, consistent and certain. You should now be able to put these into practice when drafting.

6.0 TUTOR MARKED ASSIGNMENT

1. How can you make your draft certain?

7.0 REFERENCES/FURTHER READINGS

Interpretation Act, Cap. 192 Laws of the Federation of Nigeria 1990.

Thornton, G.C. (1996) *Legislative Drafting* 4th ed., London: Butterworths.

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UNIT 5 SHOULD WE DRAFT IN A GENDER NEUTRAL STYLE?

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 How to draft in gender-neutral terms
 - 3.2 A footnote on style
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor Marked Assignment (TMA)
- 7.0 References/Further Readings

1.0 INTRODUCTION

In this unit, we look at the matter of gender-neutral drafting, which may be controversial in some jurisdictions. It is not our purpose to recommend that approach, rather to show how it can be put into effect since it is consistent with our practice. A good drafter should know how it is done, even though occasion to use it may not often arise. However, in the main this Course avoids more blatant forms of gender-specific drafting.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

- (i) Draft in a gender-neutral style;
- (ii) Put into effect the plain English style of drafting.

3.0 MAIN CONTENT

3.1 How to Draft In Gender-Neutral Terms

Interpretation legislation invariably states to the effect that:

words importing the masculine gender include the female gender.

In reliance on this kind of provision, the long-standing practice is to draft using the masculine gender.

Example Box 1

The Minister may delegate, by notice signed by *him* or on *his* behalf, to another person the performance of any function vested in *him* by this Act.

A number of jurisdictions (especially Nigeria) have adopted a policy of gender-neutral drafting. In others, this trend is more controversial.

The principal problem in drafting comes from pronouns used in respect of a person in the singular. These are limited to "he", "she" and "it", (in the possessive, "his", "hers" and "its"). In ordinary usage, their use is determined by whether the pronoun or adjective refers to a male person, to a female person, or to a thing. But drafting is typically concerned with classes of persons that include males, females and artificial persons, who are referred to in the *singular*. Standard pronouns are inadequate to deal with all three categories simultaneously.

English has evolved or adopted many words that are intended to point up gender differences, e.g. "actor" and "actress"; "author" and "authoress"; "waiter" and "waitress"; even "executor" and "executrix". Interestingly, the terms that relate to females only appear to be dying out, and gender-neutral terms are becoming standard usage.

In essence, gender-neutral drafting requires that we do not use male or female terms unless the substance calls for the distinction to be made. The following are ways in which this can be achieved:

- (i) prefer gender-neutral terms**
- (ii) repeat the noun instead of using a pronoun**

- (iii) prefer "he or she" (or "him or her", "his or hers")
- (iv) use plural, instead of singular, pronouns
- (v) omit offending possessive pronouns
- (vi) use a passive form
- (vii) restructure the sentence.

(i) Prefer Gender-Neutral terms

Many terms that have a male connotation can be replaced by gender-neutral terms. The dictionary or a thesaurus usually offers a perfectly satisfactory alternative. Here are some examples:

<i>Preferred term</i>	<i>Replaced term</i>
fisher	fisherman
head/head-teacher	headmaster/headmistress
human beings, or humanity	mankind
husbands and wives	men and their wives
legislative counsel or drafter	draftsman
lessor	landlord
police officer	policeman
postal worker	postman
reasonable person	reasonable man
sailor	seaman.

At the same time, take care with words that are unlikely to be readily accepted or may cause unnecessary irritation:

chairperson, or chair:	chairman
jury person (juror is better):	juryman
sportsperson (athlete is better):	sportsman.

(ii) Repeat nouns to avoid gender-specific pronouns

Rather than use "he" to refer to a person of either sex, consider repeating the noun to which the pronoun referred.

(iii) Prefer "he or she" to avoid gender-specific pronouns

The addition to "he" of "or she" removes the force of the criticism.

Example Box 2

The Minister may delegate, by notice signed by, or on behalf of, *the Minister* [rather than *him*], to another person the performance of any functions vested in *the Minister* [rather than *him*] by this Act.

A tenant may renew a lease if *he or she* gives the lessor notice and if *he or she* is not in arrears of rent.

Indeed, repetition of a noun may make for a clearer expression of the rule. On the other hand, if references are needed in the same sentence, repetition of the noun can lead to a proposition that is both inelegant and difficult to read. A mix of repeated nouns and combined pronouns is usually the appropriate solution for lengthy cases.

(iv) Use Plural, instead of singular, pronouns

Legislative sentences are typically written in the singular. Some jurisdictions, however, have begun to use plural pronouns ("they", "their" "them") to refer to singular indefinite persons (e.g. "a person"), though not to specified or identified persons.

Alternatively, a sentence can sometimes be written in the plural, e.g. where the rule provides for a group of persons, all of whom are in the same position and are intended to receive the same treatment.

Example Box 3

(2) A person who purchases alcohol for *their* own use or consumption is exempt from the levy under subsection (1).

Directors are entitled to receive bonus shares proportionate to *their* shareholdings.

Trustees are entitled to receive remuneration in respect of the performance of their duties.

(v) Omit or Replace the Possessive

A reference back to a noun may be obvious even without a possessive "his" or "hers". Alternatively (and perhaps better), consider substituting

"**the**" for "his". But make sure that this does not create ambiguity as to whether a link with the relevant noun has been achieved.

Example Box 4

The Registrar must enter in the register, in relation to every registered dentist:

- (a) the date of [*his*] registration; and
- (b) particulars of the qualifications in respect of which [*his*] registration was granted.

However,

The inspector must send a copy of *his* or *her* report with *its* recommendations.

Omission of the first possessive would remove the required emphasis on the inspector's responsibility, but an impersonal possessive in the second case does away with the need to repeat the double personal possessive.

(vi) Use a Passive Form

Repetition of a pronoun can sometimes be avoided by turning the sentence around so that the particular noun is no longer the subject of the sentence. But, as you know, a passive form creates a risk that the person upon whom the right, duty or power is conferred may be left unidentified. Avoiding those risks remains your overriding consideration.

(vii) Restructure the Sentence

A different sentence structure can usually be adopted if you have the objective of avoiding gender-specific language in mind when you start composing the sentence.

Example Box 5

1. When a lessor has prepared a statement of the grounds of complaint, *he* must send it to the lessee...., can be replaced by:

A statement of the grounds of complaint prepared by the lessor must be sent to the lessee [by the lessor].....

2. Where a person receives notice under this Act, he shall send a reply to the Minister ... can be replaced by:

A person receiving notice under this Act shall send a reply to the Minister...

3. The Minister must consider the report....and *he* must lay it before the National Assembly, can be replaced by:

*After considering the report....*the Minister must lay it before the National Assembly.

Unless directed to do so, don't adopt a rigid policy to avoid gender-specific language at all costs. Doing so may diminish the quality of your draft, especially if it then reads in an artificial and strained way. This contradicts other objectives. Some changes in style that gender-neutral drafting requires are to be encouraged, but not if they lead to ambiguity or less well expressed propositions.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

SELF ASSESSMENT EXERCISE 1

Redraft the following to give effect to the approaches recommended in this Section, and in particular, to a gender-neutral style.

5. Where any police officer meets or encounters on any highway or road or in any street, lane or alley or other public place of any town in Nigeria any person who has in his possession or whom he has just cause to suspect of having in his possession any old metals, it shall be lawful for such police officer, and he is hereby authorised and required, to demand from him an old metals certificate and in default of its being produced, to apprehend the person so offending against this Act and to take him with such articles to the nearest police station and to detain him in custody, until such time as he can be brought before a magistrate and the case be heard and determined.

3.2 A Footnote on Style

Three style features are frequently criticised in any writing:

- (i) splitting infinitives
- (ii) finishing a sentence with a preposition
- (iii) beginning a sentence with "And" or "But".

These are no longer as frowned upon as in the past. Today, all can be found in even quite formal documents. But should these be avoided in legislation?

(i) Can We Split Infinitives?

Most split infinitives (e.g. "to easily avoid") can and should be avoided, since they serve no purpose. Just as some drafters make a habit of putting an adverb between an auxiliary and a verb, so some writers make a habit of breaking up an infinitive in this way. But it often sounds awkward. In most cases, we can write without a split, by placing the adverb before or after the infinitive, instead of inside it - and that is the usual drafting style. So:

- (a) make it your practice to *avoid splitting an infinitive*, unless necessary to make the provision read less awkwardly;

- (b) do not hesitate to use a split infinitive if that is the surest way to *avoid ambiguity*, as for example, as with an ambiguous adverb.

Example Box 6

The following may be cases in which a split infinitive has value:

1. A person commits an offence, who encourages another person *to* ill-treat, abuse, torture or *cruelly treat* an animal.

The split is not apparent here; any other position for "cruelly" would be even more awkward.

2. The trustee shall require the tenant *to promptly pay* the rent.

The split removes any doubt as which verb "promptly" modifies; any other position leaves a doubt or reads awkwardly.

(ii) May we end a sentence with a preposition?

Most writers end sentences with prepositions when they need to. But in drafting formal legislative sentences, you are not likely to find any such need. Readers usually take particular notice of beginnings and ends of sentences. Finishing with a preposition creates a very weak sentence. Good writing practice is to *avoid finishing* your sentence *with a preposition*.

(iii) May we begin a sentence with "And" or "But"?

In the past, drafters have used neither word at the beginning of sentences. As each sentence is treated a separate legal proposition, linking them with these conjunctions, suggests that the propositions are not separate. For that reason, drafters do not use "*and*" to begin a section or subsection, as that implies a second element of the same proposition, the first of which is contained in the previous sentence.

Do *not* begin a legislative sentence with "*And*".

But some drafters are happy to use "But" in this way. At the beginning of a *subsection* that contains a qualification or exception, it points up that the subsection qualifies the contents of the subsection immediately before it. So it performs two valuable functions:

- (a) it links two connected, but distinct, propositions;

- (b) it indicates in a very direct way that the sentence contains a modification to what has just gone.

Consider using "But" to begin a *subsection* that introduces a modification to the subsection that immediately precedes it.

Example Box 7

- (1) A resolution under section 4 remains in force for the period specified in the resolution (which cannot to be more than 6 months).
(2) *But* a resolution may be extended on one occasion by a further resolution under section 4.

But take care when amending provisions that use this device. The addition of a new subsection (1A) in the example in **Example Box 7** might introduce doubts as to what subsection (2) now qualifies.

4.0 CONCLUSION

In conclusion, drafters develop preferred ways of approaching particular problems; we each have a personal style, although this should never be at odds with the house-style. This unit should have laid the foundations on which you can develop your personal drafting style within the conventions prevailing in Nigeria.

5.0 SUMMARY

In this unit, you have considered how to draft in gender-neutral terms and a general note on drafting style. You should now be able to put them into practice.

6.0 TUTOR MARKED ASSIGNMENT

How can you draft in gender-neutral terms?

7.0 REFERENCES/FURTHER READINGS

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Rylance P. (1994) *Legal Practice Handbook: Legal Writing and Drafting*, ed. King G.A. London: Blackstone Press Ltd.

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ANSWER TO SELF ASSESSMENT EXERCISE 1

5. A police officer, reasonably suspecting that a person on a public thoroughfare in a town in Nigeria has old metals with *him or her* must:
- (a) require *the* person to produce an old metals certificate; and
 - (b) if a certificate *is not produced*:
 - (i) arrest *the person* and take *him or her*, and the old metals⁶, to the nearest police station; and
 - (ii) detain *the person* in custody until a magistrate determines the case⁷.

Notes:

The terms highlighted replace gender-specific words by gender-neutral ones.

¹ Reasonable suspicion must also cover cases where the accused is *known* to be in possession.

² A broad term is preferred to a string of specific ones followed by a catch-all phrase.

An express requirement that the police officer must meet or encounter the accused adds unnecessary words.

³ This phrase, better than "has in his possession" or "possesses", conveys that the individual must actually have the old metals at the time.

⁴ The string of verbs in the original is misleading. In the final analysis, the police officer is put under a *duty*. This must imply the power and the lawful authority to act.

⁵ In the context, the passive does not obscure the person who is required to produce the certificate.

⁶ Repeating the original expression is preferable to introducing a new one "such articles".

⁷ The section does not *require* that the person to be brought before a magistrate and the case be heard. This must be provided for under other provisions. It is enough to refer to the last action, as this is the time until which the authority to detain continues.