



# Reader Engagement: The Ignored Aspect of Good Legal Writing

## I. INTRODUCTION: WHY IS IT IMPORTANT TO ENGAGE THE READER?

What are the qualities attached to good legal writing? Most lawyers, academics and students would answer this question by highlighting qualities such as clarity, brevity, sound framework/structure etc. However, as Prof. Mark K. Osbeck points out, good writing, as opposed to merely competent writing, also engages the reader.<sup>1</sup>

It is very much possible that even though your writing is perfectly clear and concise, the reader wouldn't want to keep reading it, because it is not engaging. A guidance on the importance of engaging the reader can be found in the words of none other than the famous English jurist, Lord Denning:

*"No matter how sound your reasoning, if it is presented in a dull and turgid setting, your hearers—or your readers—will turn aside. They will not stop to listen. They will flick over the pages. But if it is presented in a lively and attractive setting, they will sit up and take notice. They will listen as if spellbound. They will read you with engrossment."*<sup>2</sup>

In very simple terms, legal writing that is engaging encourages the reader to engage with the material by agreeing with it, disagreeing with it, reconstituting it into the reader's own ideas, etc. In other words, writing that is engaging stimulates the reader's thinking. And it is this quality that separates truly good legal writing from merely competent legal writing.<sup>3</sup> It would be fair to state that a good writer should endeavour to leave some impact on the reader's mind with his/her writing and instigate the reader to think about the topic, besides providing one's own insights on the question/topic in concern. Further, engagement becomes even more important in terms of legal writing because legal writing most often deals with questions/issues which are of a complex nature.

Now that the importance of engaging the reader has been established, let us move on to some of the qualities that make legal writing engaging. While discussing these qualities, we will also look at some examples of texts that exhibit these qualities. These texts have been picked from judgments, drafts submitted by lawyers, scholarly articles etc.

## II. QUALITIES THAT MAKE LEGAL WRITING ENGAGING

### 1) Variety

*"If you wish to write well, you'll have to resist sounding like a machine. Or an old-fashioned pontificator. You'll have to learn to sound like the best version of yourself."*<sup>4</sup> - Bryan Garner

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<sup>1</sup> Osbeck, Mark, "What is "Good Legal Writing" and Why Does it Matter?" Drexel L. Rev. 4, no. 2 (2012): 417-66

<sup>2</sup> Lord Denning, "The Family Story" 216 (1981)

<sup>3</sup>Supra note 1

<sup>4</sup> Bryan A. Garner, "Garner on Language And Writing" 48 (2009)

The very first characteristic that defines engaging legal text is variety. Variety in terms of the words used, and the sentences framed. Legal text can be extremely dull and boring, if it lacks variety. Consider this comment by former Wisconsin Court of Appeals Chief Judge William Eich, wherein he says that, ““good legal writing does not sound like it was written by a lawyer.” The fundamental reason behind the comment can be attributed to the fact that most authors cultivate a haughty style in an effort to impress.

- Words

Authors must liven up the text by using words that are more expressive and display the intent behind the text. The point is to have a purpose for every word, and every word that you put it in a sentence with.<sup>5</sup>

**Examples:**

a. Secularism and fundamentalism are presented as **modern ideologies** that purvey **mutually exclusive rival** image of society.

b. Maintaining a **rational balance** between **secularity and religiosity**, accommodating religious sensitivities of the people to a **reasonable extent**, avoiding religion-based discrimination among the citizens, and endeavouring to put them on par regardless of religious affiliation, are the **basic features of religion-state relations** in India.

- Sentences

The most important thing to keep in mind with regard to sentence framing is: avoid monotony. Legal writers often fall into a rut of boring patterns. They write with the same sentence structure or length, over and over, all through their text.<sup>6</sup>

The debate regarding the use of long or short sentences is a never ending one. The reality is, the length of the sentence really depends upon the intent behind it. There are good reasons to combine two ideas in the same sentences: to compare, contrast, build on an idea, or emphasize similar points. Longer sentences make a more detailed point--a point that you want to explain or give some nuance and character. Other times, there are good reasons to write simple sentences that deliver a single idea.

That is the entire idea behind variety: Do not be mechanical in your approach. Gather your intent behind every word, every sentence you use.

Further, many a times two sentences may be joined as one. Apart from enhanced clarity and coherency, the trick also makes the text more engaging.

**Examples:**

a. The parliamentary control over delegated legislation should be a living continuity as a constitutional remedy. The fact that the delegation of legislative power has become too broad, by this fact, the judicial control has struck, giving way to desirability and necessity

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<sup>5</sup> [https://lawprofessors.typepad.com/appellate\\_advocacy/2019/05/want-people-to-actually-read-your-legal-writing-use-variety.html](https://lawprofessors.typepad.com/appellate_advocacy/2019/05/want-people-to-actually-read-your-legal-writing-use-variety.html)

<sup>6</sup> ibid

of parliamentary control. The parliamentary control in India is not very effective and needs to be strengthened as that in UK.;

- b. Very few statutes expressly make any provision how the rules have to be published in the official Gazette before they come into operation. the need for making detailed regulations to meet the expanding needs of a progressive Welfare State necessitated a good deal of delegated legislation in India. The Lok Sabha is unduly pressed by volume of work and time.

## 2) Tone

The voice and manner in which a research work is written is referred to as tone of the paper. It plays a significant role, owing to its implication of the author's perspective and/or stance towards an issue being addressed in the respective research article, and the language used, determining the reader engagement. In the context of legal writing, individuality is constrained to some extent by lawyers' notions of a professional tone and their desire for uniformity. A legal writer who projects an authentic voice while still maintaining a professional tone will produce a more engaging style of writing.

## 3) Humour

It is no surprising fact that humour and wit often make legal writing appealing and boisterous. Humour aids the author in breaking the monotone and seriousness; technical and convoluted topics can be understood easily if humour is deployed. Imagine you are writing about the grave topic of 'Personal Data Privacy'. Instead of portraying your opinion through stodgy, tedious statements like 'this Bill aims to limit the fundamental freedoms of citizens', you can instead throw in some zing. Your readers will be more appreciative if you instead use sentences such as 'this Bill is virile enough to put the Orwellian State to shame'!

Humour is not lost on judges either. Judge Alex Kozinski was a former justice of the Ninth Circuit Court of Appeals in the United States. He was popular for his witty statements and humorous judgments; once, in an administrative law case, he said, 'This is not maths, in law, as in life, two wrongs add up to two wrongs, nothing more'. A few years later, when a case was filed by disgruntled investors against stockbrokers that went bankrupt, Judge Kozinski noted, 'every market has its dreamers and its crooks and more often than not, they are one and the same'. Another time, while discussing the California tort law which included a recourse to damages if there was bad-faith denial of a contract, Judge Kozinski remarked it as 'Cloud Cuckooland'.

Just like Kozinski, Justice Gautam Patel of the Bombay High Court also employs wit in his writing. In early 2016, GoAir had an issue with Indigo airlines using the word 'Go' in their website address;

in fact, GoAir also had problem with Go in Google. Justice Patel authored the order in this case and [he wittily italicized go part of all words; a refrain throughout the order!](#) This is how it read;

“Mr. Jamsandekar’s immediate goal is to file a sur-sur-rejoinder. He says that there is new material introduced by Indigo in sur-rejoinder and he is going to show actual confusion”

Wouldn’t a layperson be more willing to read a funny and amusing piece rather than one sprinkled with excessive legal jargon and predictable active/passive text? Humour is the perfect tool to grasp attention; it makes the reader want to know more and indulge in entertaining language. It is best employed with analogues and rhetoric.

#### 4) Storytelling

Information is always consumed better when it is communicated by way of a compelling story. Outside of a purely academic setting, the law is inherently tied up with events in the lives of real people.<sup>7</sup> Storytelling enables the readers to actually relate to the writing, as it is very natural for people to relate better to human experiences, rather than legal principles. Readers will naturally appreciate the story as a means to reach conclusions. Stories persuade in ways that doctrinal arguments do not, and they may encourage greater probing for narrative truths.<sup>8</sup>

#### Example:

Read this beautiful abstract from a paper by Charles R. Lawrence III, titled “The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism”, 39 Stan. L. Rev. 317 (1987): -

“It is circle time in the five-year old group, and the teacher is reading us a book. As she reads, she passes the book around the circle so that each of us can see the illustrations. The book’s title is Little Black Sambo. Looking back, I remember only one part of the story, one illustration: Little Black Sambo is running around a stack of pancakes with a tiger chasing him. He is very black and has a minstrel’s white mouth. His hair is tied up in many pigtailed, each pigtail tied with a different color ribbon. I have seen the picture before the book reaches my place in the circle. I have heard the teacher read the “comical” text describing Sambo’s plight and have heard the laughter of my classmates. There is a knot in the pit of my stomach. I feel panic and shame. I do not have the words to articulate my feelings-words like “stereotype” and “stigma” that might help cathart the shame and place it outside of me where it began. But I am slowly realizing that, as the only black child in the circle, I have some kinship with the tragic

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<sup>7</sup> Osbeck, Mark, “What is “Good Legal Writing” and Why Does it Matter?” Drexel L. Rev. 4, no. 2 (2012): 417-66

<sup>8</sup> Levit, Nancy, Legal Storytelling: The Theory and the Practice - Reflective Writing Across the Curriculum (May 12, 2009). Journal of the Legal Writing Institute, Vol. 15, p. 259, 2009, Available at SSRN: <https://ssrn.com/abstract=1144797>

and ugly hero of this story-that my classmates are laughing at me as well as at him. I wish I could laugh along with my friends. I wish I could disappear.”<sup>9</sup>

### 5) Using Examples and Analogies

Any form of academic legal writing, barring a few inescapable and unavoidable technicalities, must be written in a manner such that it is widely understood by persons belonging to different fields of study or work. The use of examples and analogies in legal writing helps in the widening of the scope of understanding and readability of the same. This is especially true when a piece of academic legal writing deals with a highly technical aspect of the law. Let us first deal with the use of examples before deliberating upon the usage of analogies in legal writing.

Examples:

An example, in respect of legal writing, may be best defined as a parallel or closely similar case especially when serving as a precedent or model (Merriam Webster Online Dictionary). Examples, similar to illustrations, are generally found in statutes for facilitating the interpretation and understanding of statutory provisions. Apart from examples being used in statutes, they form an important element of legal writing as well. Use of examples in legal writing increases the ease of understanding complex legal concepts and/or terms mentioned in the same.

For instance, if an author intends to embark on a discussion of the concept of “*reasonable classification*”, under Article 14 of the Constitution, there may occasion a certain degree of difficulty in simplifying the said concept or putting across the manner in which it is employed in statutory provisions. For the purpose of removal of such difficulties, the author could refer to Section 11 of the Indian Contract Act, 1872. The said section states that a minor cannot enter into a contract. It classifies persons into adults and minors on the basis of age. More importantly, age has a relation to the object of the section i.e. the capacity to enter into a contract. In other words, the author could rely on the example of Section 11 of the Indian Contract Act, 1872 to simplify the understanding of an otherwise complicated concept of “*reasonable classification*”.

At times, landmark case laws may be cited by way of examples. Citing of case laws not only helps in the lucid explanation of legal arguments and propositions but also provides an idea as to how a certain legal concept has evolved over the years, mainly through judicial pronouncements. For instance, explaining the concept of “*transfer of absolute interest*” with respect to transfer for benefit of unborn child would become much easier if reliance is placed upon the landmark decision in *Girjesh Dutt v. Data Din*. The factual matrix involved in the matter coupled with the resultant decision of the Court, makes it easier for the reader to understand the above-mentioned concept of “*transfer of absolute interest*”.

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<sup>9</sup> Charles R. III Lawrence, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 (1987)

Thus, what follows from the afore-stated paragraphs is that examples help in bridging the gap between the thoughts of the author and their foolproof realization and understanding by the readers. Examples help in a lucid understanding of the subject-matter dealt with by an author in a

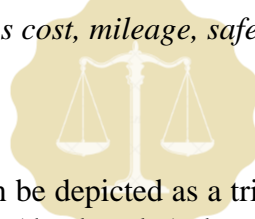
piece of legal writing; they simplify the legal concepts addressed by the author without effecting any major changes in the text.

Analogies:

Like examples, analogies help readers understand the principles better. Analogies instigate readers to think about the relative situation and develop perspectives. They work best in writings which aim to analyze a particular legal position and present some novel arguments in relation to the same. It is advisable to weave the analogy into the body of the argument.

The brief from *Alaska v. EPA* was written by Chief Justice Roberts, then just John Roberts, who suggested that deciding which technology is “best” for controlling air pollution under the Clean Air Act is sort of like . . . asking people to pick the “best” car:

*“Determining the “best” control technology is like asking different people to pick the “best” car. Mario Andretti may select a Ferrari; a college student may choose a Volkswagen Beetle; a family of six a mini-van. A Minnesotan’s choice will doubtless have four-wheel drive; a Floridian’s might well be a convertible. The choices would turn on how the decisionmaker weighed competing priorities such as cost, mileage, safety, cargo space, speed, handling, and so on.”*<sup>10</sup>



## 6) Rhetoric

Writing, including *legal* writing, can be depicted as a triangle. The author is the encoder who wishes to *pursue* or *inform* the reader (the decoder) about an issue, a problem or an event. Only when the reader can understand what the author wishes to say can there be a successful communication of his/her opinion. Consequently, for the reader to comprehend the idea, [the writer must identify and employ all means of persuasion \(popularly known as the rhetoric\) at his/her disposal](#). Aristotle was the principal architect of this ‘classical rhetoric’; it includes 3 essential modes of persuasion – *ethos*, *logos* and *pathos*.

[Ethos involves establishing credibility with the audience](#). This mode refers to the author (you). The first step to engage and persuade your readers is to establish *why* you are competent to write about the topic. Apart from your professional qualifications, *ethos* can be strengthened through your grammar, punctuation, tone and structure as well! Superior writing with little to no mistakes goes a long way in establishing your credibility and intelligence.

*Logos* involves persuasion through reason and logic; by using rational arguments. Arguably, for a lawyer, *logos* is the crux of your document. Rational arguments include using data and statistics to support your claim, reference to history or past events and a strong connection

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<sup>10</sup> <https://www.legalwritingpro.com/blog/that-reminds-me-examples-and-analogies/>

between the issue at hand and your opinion. An article with no nexus between the problem and the solution will not appeal to any audience. Rather, it will be deemed as poorly researched. Look at the two examples below;

**Example I:** The ban on TikTok by the Government of India is necessary and warranted. TikTok was corrupting the minds of young Indians as it was addictive and making them sympathetic to China.

**Example II:** The ban on TikTok by the Government of India is necessary and warranted. Numerous reports had noted that TikTok's parent company was vulnerable to security lapses, often at the expense of the personal data of Indian users.

Here, the first example lacks *logos*, a ban due an addictive nature of an application is illogical as the same could be argued for most social media. As for the second example, there is reliance on an authority and the conclusion about lapse in data protection is rationally linked to the ban of the application. Hence, that can be a more tenable argument.

Finally, [pathos is an appeal to emotions of the reader](#). Perhaps this is the one mode which is directly linked to a *persuasive* document rather than a mere *engaging* one. In legal writing, the authors can tap into the potential of *pathos* by using narrative myths, metaphors, native customs and moral beliefs. For instance, in [Whitney v. California](#), the United States court referred to the Founding Fathers of U.S as 'strong, courageous men' who ushered in an era of 'freedom', 'dignity', 'liberty' and 'democracy'. Such words evoke feelings of patriotism and civic duty and also tie together those who share the same heritage and political values.

But, in a legal document, *pathos* must be used judiciously. There should be no appeal to emotion at the expense of veracity of the information. The author should not leave out important facts and details or *misinform* events just so that the writing is persuasive. It also should be used proportionally; sometimes when the facts speak for itself, there may not be a need to over-indulge in *pathos*. For instance, if you are writing an article on the 'Migrant Labourers' Crisis during Covid-19', you may not need to explicitly appeal to the humanity and morality of Indians; the facts speak for themselves and they are in itself enough to stir emotions. In such cases, you can divert your writing to establish a stronger logical argument and strengthen your credibility by providing effective solutions.

It is necessary to use *ethos*, *pathos* and *logos* in the right quantity; according to the target audience and the subject-matter of the writing. Referring to the same example of TikTok as given above, Example I unnecessarily relied on *pathos*, by using strong words like 'corrupting the minds of Indians' and by possibly relying on the contentious India-China relationship. However, what was required in that argument was *not pathos*, rather *logos*; a rational argument with relevant authority. Thus, the author should always consider the topic, audience, context and purpose before deploying the rhetoric.

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# ABOUT TCLF

The Contemporary Law Forum is a student run, professionally supported blog established with the primary objective of promoting and publishing quality legal research on contemporary issues of law. TCLF further aims to act as a medium of discussion between multiple stakeholders of the legal industry through legal research and writing. With a guaranteed outreach across the diverse spectrum of the industry, the forum is an ideal place for the writing community to publish their thoughts on legal issues of contemporary relevance.

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