

Answers to practical exercises

Chapter 10: Writing skills

Page 217-218: Assessing writing styles

Have a look at the pieces of writing below and consider whether you think they are written in an appropriate style for a piece of law coursework. If you feel that there are problems, note how you would correct them.

Example 1

The Corporate Manslaughter and Corporate Homicide Act 2008 was introduced to sort out the problems with the common law. The main problem was that there was a problem with the common law because it was hard to get a conviction against organisations and this was a real problem with larger organisations. In fact, it is fair to say that the larger the organisation, the less likely it was that it would be convicted of manslaughter. It hardly seems fair that a person who has been killed as a result of an organisation's negligence will get a conviction if they were killed by a small company like Kite but not if they were killed by a big company like P&O Ferries.

What are the problems with the written style here?

The two main problems here are (1) quite casual language is used and (2) some of the phrases are rather cumbersome and hard to follow. It is also rather long-winded and repetitious at the beginning.

- Sort out the problems with the common law
- The main problem was that there was a problem with the common law
- Because it was hard to get a conviction
- This was a real problem
- In fact, it is fair to say
- It hardly seems fair
- Will get a conviction

There is also a problem in the final sentence with the references to case law as supporting examples that are not presented as if they were case law. This is more a question of presentation and adherence to legal convention than written style but it does overlap somewhat because the cases are introduced with 'like' which, again, is quite a casual approach.

However, despite the casual written style, the passage is nonetheless able to make its meaning clear. This is important. A piece of work that uses an inappropriate written style sometimes so lacking in clarity that it is impossible to work out what the words mean. In this passage, the writer's meaning is clear but there is still a need to polish up the written style because it is currently quite simplistic and would make a better impression on the marker if it were more written in a more formal style.

One way of improving the written style in this passage would be to reword each of the phrases identified above. There are several different ways that the phrases could be reworded and one set of suggestions is detailed in the table below:

Sort out the problems with the common law	Address the problems that existed with the common law
The main problem was that there was a problem with the common law	The main problem with the common law
Because it was hard to get a conviction	Concerned the difficulty of obtaining a conviction against organisations
This was a real problem	Particularly in relation to
In fact, it is fair to say	In fact,
It hardly seems fair	It seems unjust
A person who has been killed as a result of	A death arising from
Will get a conviction	Will result in a conviction
Like <i>Kite</i>	As in <i>Kite</i>

If you start to substitute in the new phrases, you soon find that there are other ways that the written style could be amended that may not have been apparent at the beginning when there were other, more obvious issues with the written style. For example, references to a person ‘being killed by’ an organisation’s negligence start to feel problematic and could be replaced by the more appropriate ‘death arising from’ an organisation’s negligence.

The Corporate Manslaughter and Corporate Homicide Act 2008 was introduced to address the problems that existed with the common law. The main problem with the common law concerned the difficulty of obtaining a conviction against organisations, particularly in relation to large organisations. In fact, the larger the organisation, the less likely it was that a conviction for manslaughter would result. It seems unjust that a death arising from an organisation’s negligence will result in conviction if the death was caused by a small company (as was the case in *R v Kite and OLL Ltd*)¹ but not if it were caused by a large organisation (for example, (*R v P&O European Ferries*) *Dover Ltd*).²

Of course, this is not the only way in which the passage could have been rewritten and you might have your own ideas. Hopefully, though, you will be able to see that the rewritten passage is an improvement on the original, even if you would have rewritten it differently yourself.

Example 2

In this essay, I have been asked to comment on the views of Laws LJ in *Thoburn v Sunderland City Council*.¹ I will do this by providing an outline of the facts of that case as a starting point for my essay. After that, I will identify the legal issues that are important to the case and explain what is meant by Parliamentary sovereignty and the doctrine of implied repeal. I will then talk about the way in which Laws deals with those issues and

outline his views on constitutional statutes. I will then reach a conclusion that will comment on whether his views have altered basic principles of constitutional law.

What are the problems with the written style here?

The key weakness here is the use of the first person. This is generally regarded as too informal for use in coursework. It is also considered to be too subjective for legal writing: in law, objectivity is a crucial component of a good argument and so to write from a personal viewpoint is not well received.

Students often try and get around the instruction to avoid use of the first person by adopting a variant of it, writing as 'one', 'we' or 'you'. These forms do not solve the problems so should also be avoided as a form of general practice; there are situations in which 'one' is appropriate but to use it as a substitute for 'I' all the way through an essay does not really work. That is not to say that it is always inappropriate to use 'you' and 'we' when writing. In *Legal Skills*, we (the authors) sometimes write to 'you' the reader and invite you to join with us on a particular point (using 'us' and 'we' in doing so). This is a deliberate choice so that our written style is informal and gives the impression that we are talking to you. However, it is not an approach we would use if we were writing an academic article for publication so please do not adopt our written style in *Legal Skills* as a model for your written style in your coursework.

Have a look at the rewritten paragraph.

The focus of this essay is the views expressed by Laws LJ in *Thoburn v Sunderland City Council*.¹ The facts of this case will be outlined in order to provide a context for the discussion and there will be an explanation of the central legal principles of Parliamentary sovereignty and the doctrine of implied repeal. The essay will assess how Laws LJ's assertion that there exists a separate category of 'constitutional statutes' impacts upon these core constitutional principles with a view to addressing the central question of whether this case has altered basic principles of constitutional law.

You will see that there are other changes other than the elimination of the word 'I'. This is because there is no way to substitute another word in place of 'I' that makes the passage make sense; it was necessary to rephrase the passage in which the word was used. This demonstrates that it is not the use of 'I' in isolation that creates a chatty and informal written style but that it is the choice of language that accompanies 'I' that makes a significant contribution. That is because people who are writing as 'I' tend to write in the way that they would speak and this leads to informal sentences that are perfect for oral communication but a little bit too simple and conversational for written communication.