

## New Associates A Special Report

# The Write Way to Succeed

You don't have to be Strunk and White, but you do need good grammar.



BY KAREN F. CANDREVA

Now that you have graduated from law school and are embarking upon your career as a professional, it is an opportune time to inventory your strengths and weaknesses, particularly your communication skills. If the first impression you make on a partner or client is poor due to bad grammar, you may not get a second chance. But fear not, for you are not alone and help is at hand.

Simply put, if bar exams included an English grammar proficiency component, our profession would be well served. Given how fundamental the use of words is to the practice of law—drafting, interpreting, applying, and speaking—it is surprising how many of us converse and write less than impressively (or put more accurately, grammatically incorrectly).

This article is for those who were absent the various days of seventh-grade English class when certain grammar rules were (or should have been) taught. If you had a stellar attendance record but believe commas are properly inserted whenever you would take a breath if reading the text aloud, please read on.

This article will not make you fluent—or even conversant—in the lexicon of grammar, nor does it begin to explain concepts such as the predicate nominative, subordinate clauses, appositives, or participial phrases. What you will find below, however, are some tricks and shortcuts—a cheat sheet, if you will—to figuring out the correct words and punctuation to use with a respectable probability of success.

### 'I' VERSUS 'ME'

This is one of the most egregiously botched aspects of spoken English. In fact, so many people get this wrong so frequently that the correct usage often does not even sound right to many people. If you studied Latin, you know this is a matter of the nominative versus the objective case (and you probably don't need to read most of this article). But, again, this article is not about technical jargon or formal rules of construction.

Cheater's Rule #1: When the sentence refers to more than one person, drop the other person and restate the sentence (to yourself).

Example: *Do not hesitate to call Jane or \_\_\_\_.*

*Do not hesitate to call me.*

*Do not hesitate to call Jane or me.*

Example: *Should Jed or \_\_\_\_ contact the client?*

*Should I contact the client?*

*Should Jed or I contact the client?*

This cheat rule assumes you know how to state the second sentence in the examples above correctly. If you got either wrong, these tips may cause more harm than good.

Cheater's Rule #2: Finish the sentence.

Example: *You are a better public speaker than \_\_\_\_.*

*You are a better public speaker than she is.*

*You are a better public speaker than she.*

Example: *Paul knows Sarah better than \_\_\_\_.*

*Paul knows Sarah better than I do.*

*Paul knows Sarah better than Paul knows me.*

Correct usage depends on the intended meaning.

The second example demonstrates how a grammatical error can change the plain English meaning of a sentence to reflect something the drafter may not have intended. For this reason, it is safer to express the otherwise unstated word(s).

Cheater's Rule #3: Just accept the predicate nominative principle.

Example: *It is I.*

*This is she.*

*If I were he . . .*

If you think these sound pretentious or are concerned that others will think you are speaking incorrectly, then just avoid this sentence structure altogether (e.g., use "This is Mary" or "If I were John . . .").

### 'WHO' VERSUS 'WHOM'

This is another issue of nominative versus objective case, and grasping Cheater's Rules #1 and #2 will serve you well here.

Cheater's Rule #4: Convert the phrase into a question (if it isn't one already) and then answer it with a pronoun. If the answer is

“him,” use “whom”; if the answer is “he,” use “who.”

Example: \_\_\_\_ is the managing partner?

*He is the managing partner.*

*Who is the managing partner?*

Example: To \_\_\_\_ did she give her proxy?

*She gave her proxy to him.*

*To whom did she give her proxy?*

Example: Mr. Cheatum, \_\_\_\_ was the third witness to testify . . .

*Who was the third witness to testify? He was.*

*Mr. Cheatum, who was the third witness to testify.*

Cheater’s Rule #5: Following prepositions (e.g., to, of, about, from, for), use “whom” (even if you choose, for a good reason, to place the preposition at the end of the sentence).

Example: *Mary, about whom I wrote you last week, is here.*

Example: *To whom are you speaking?*

Example: *Whom did he shoot at?*

### ‘WHICH’ VERSUS ‘THAT’

In virtually every transactional document I read, the word “which” appears throughout inappropriately. Do not rely on your ear or your gut for this.

Cheater’s Rule #6: Understand and retain the following example (courtesy of Messieurs Strunk and White):

*The lawn mower that is broken is in the garage. The lawn mower, which is broken, is in the garage.*

In the first sentence, the phrase “that is broken” is necessary to identify which particular lawn mower is being discussed (the phrase is defining). Defining phrases use “that.”

In the second sentence, the phrase “which is broken” is informative but not essential with respect to the location of the lawn mower (the phrase is nondefining). Nondefining phrases use “which.”

Misuse of “that” and “which” can cloud the meaning of the text, and improper punctuation only compounds the problem.

For example, the sentence, “Seller acknowledges and agrees that it shall deliver to Purchaser at Closing all certificates of occupancy for the Property that Seller has in its possession,” is substantively different from the sentence, “Seller acknowledges and agrees that it shall deliver to Purchaser at Closing all certificates of occupancy for the Property, which Seller has in its possession.” In the former sentence, use of “that” is the equivalent of “if and to the extent in Seller’s possession,” and in the latter sentence, use of “which” is the equivalent of “which Seller acknowledges it has in its possession.”

### COMMAS AND SEMICOLONS

Mastering Cheater’s Rule #6 will take you a long way toward proper comma usage.

Cheater’s Rule #7: If you need the text (i.e., it is defining or restrictive), do not use commas to set off the phrase; if you do not need the text (it is nondefining or unrestrictive), use commas.

Example: *There are no actions, suits, or proceedings, including arbitration proceedings, pending.*

Example: *There are no leases, licenses, occupancy agreements, or tenancies affecting the Property other than set forth on Exhibit B.*

Cheater’s Rule #8: In a two-part sentence, take out the conjunction (and, but, as, because). If each of the two phrases could stand alone as a complete sentence, you need the comma; if both phrases cannot stand alone as complete sentences, do not use a comma.

Example: *I’m tired, and I want to go to bed.*

*(I’m tired. I want to go to bed.)*

Example: *I’m tired and want to go to bed.*

*(I’m tired. want to go to bed)*

Cheater’s Rule #9: Only use semicolons in the following two instances: in place of a period if the thoughts are closely connected, or to separate items in a list where commas would be confusing.

Example: *The site is not zoned for your intended use; you will need to apply for a variance.*

Example: *This Section 20.2 shall not apply to Tenant’s currently existing stores in Baltimore, Md.; Paris, Texas; New Mexico; or Australia.*

Cheater’s Rule #10: Commas (and periods) go inside quotation marks, and semicolons go outside.

Example: *The company changed its name from “Federal Express” to “FedEx.”*

Example: *In Section 3.1(a) after the phrase “on or before,” insert phrase “January 1, 2004, but not later than.”*

Example: *At the end of the first sentence, insert the phrase, “at Landlord’s discretion”; delete the rest of the paragraph.*

The rules of grammar presume the reader to be intelligent enough to determine from the context whether the punctuation is part of the quoted text or part of the overall sentence.

### THE SUBJUNCTIVE MOOD

Tevye the dairyman got it right when he sang “If I were a rich man . . .”

Cheater’s Rule #11: In “if” sentences that are hypothetical, use “were” instead of “was.” In “if” sentences that are not hypothetical (which is relatively rare), use “was.”

Example: *If I were three days older, I would have qualified for the next age bracket.*

Example: *If she was [actually] home at 10 p.m., how could she have seen the attack at the zoo?*

Cheater’s Rule #12: Don’t try to use the subjunctive mood in the present tense with “if” unless you want your writing to be archaic and stuffy.

Do not write: *If there be sufficient space in the directory . . .*

Instead, write: *If there is sufficient space in the directory . . .*

### THE OFTEN-ABUSED ‘SHALL’

If you have had the pleasure of reading legal documents that predate the computer age, you are familiar with the common use of the subjunctive mood in the present tense. Since then, phrases like “if there be” have evolved into phrases like “if there shall be.” Putting aside whether it is better to use “shall” or “will” and assuming for the moment that use of the word “shall” is and will remain an integral part of your drafting style, you should strive to use “shall” only when you really mean it. Ubiquity of misuse is not a good excuse for poor drafting.

Cheater’s Rule #13: Only use “shall” when you mean “must”; only use “shall not” when you mean “may not.”

Do not write: *If there shall not be sufficient insurance proceeds . . .*

Instead, write: *If Developer does not collect sufficient insurance proceeds . . .*

Do not write: *If Purchaser shall be in default . . .*

Instead, write: *If Purchaser is in default . . .*  
Do not write: *If Purchaser shall not be in default . . .*  
Instead, write: *If Purchaser is not in default . . .*  
Acceptable: *Seller shall promptly notify Purchaser of any change.*  
Acceptable: *Tenant shall not subdivide the demised premises without first . . .*

### THE SPLIT INFINITIVE

Although the general rule is that infinitives should not be split, it is—brace yourself—not verboten to split infinitives. Ideally, however, you should have an intelligent reason for doing it.

Cheater’s Rule #14: It’s okay to split an infinitive if doing so sounds significantly better or avoids ambiguity.

Do not write: *If Buyer timely fails to advise Seller . . .*

Acceptable: *If Buyer fails to timely advise Seller . . .*

Acceptable: *Landlord shall require any and all occupants in the Building to periodically inspect for termites.*

### SIMPLICITY

The following rule can improve your writing style (and effectiveness) dramatically.

Cheater’s Rule #15: Whenever possible—and in all cases when in doubt—state your thoughts as simply, clearly, and concisely as possible. Less is more.

### LAST BUT NOT LEAST

In the spirit of the aphorism “better to remain silent and be thought a fool than to speak and remove all doubt,” take the rule below to heart.

Cheater’s Rule #16: If you are going to make nonsubstantive revisions to someone else’s draft, do not make grammar edits unless you are certain your revisions are correct, lest you make a total buffalo of yourself.

---

*Karen F. Candreva is a New York-based partner in the real estate department of Arent Fox.*