

LGST551 (Rev4) Legislative Expression

Detailed Syllabus

Module 1: The Basics

This Module is designed to provide essential background material. Module 2 is concerned with how to draft effective legislation.

Objectives of this Module

By the end of Module 1, you should be able to:

- Describe the nature of legislative drafting in the parliamentary tradition and how that tradition developed.
- Present an overall picture of why legislative texts take the form they do.

Studying this Module

Module 1 has three Sections:

1. What is legislative drafting all about?
2. What is legislation?
3. Why do we draft as we do in parliamentary systems?

This Module lays the foundation for learning how to draft legislative sentences, which is dealt with in Module 2.

Section 1: What Is Legislative Drafting All About?

This Section aims to give you a general background to legislative drafting and introduces the basic principles of legislative expression.

In addition, this Section includes suggestions on how to approach the task of drafting legislation. You should try to follow these suggestions when attempting the drafting exercises.

Section Objectives

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

- Explain what legislative drafting entails and how it is typically provided in parliamentary-based jurisdictions.
- Determine to whom particular types of legislation should be addressed.
- List the factors that influence the way legislation is expressed, especially in contrast with everyday communication.

Section Outline

This Section is organized as a series of questions.

1. LEGISLATIVE EXPRESSION
 - To whom should legislation be addressed?
 - How does legislative expression compare with other forms of communication?
 - What are the differences between legislative and non-legislative commands?
 - What more is needed to create legislative prohibitions?
 - How should we choose the right expression?

Section 2: What is Legislation?

This Section looks at

- the basic types and characteristics of legislation,
- the terms that are used to describe different kinds of legislative texts and their typical components, and
- the structure of primary legislation (usually known as Acts or statutes) and the texts used to enact them (Bills).

Section Objectives

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

- Describe the following in relation to your jurisdiction:
 - the various types of legislative texts and the terms used to describe them;
 - the conventional features and components of primary legislation (Bills and Acts); and
 - the conventions relating to the structure of Bills and Acts.
- Use the appropriate technical terms to describe the characteristic features of primary legislation and Bills.

Section Outline

This Section is divided into four subsections, organized as a series of questions.

1. TYPES OF LEGISLATION
 - What is legislation?

- What forms does primary legislation take?
- Which bodies have the power to make subsidiary legislation?
- What forms does subsidiary legislation take?
- 2. CLASSIFICATION OF PRIMARY LEGISLATION (BILL AND ACTS)
- 3. STRUCTURE AND FORMAT OF BILLS AND ACTS
 - What features appear in Acts?
 - What features appear only in Bills?
- 4. CONVENTIONAL ARRANGEMENT OF BILLS AND ACTS

Section 3: Why Do We Draft as We Do in Parliamentary Systems?

Drafting styles in jurisdictions based on the parliamentary system, like the common law itself, have their roots in the English legal system. Again, like the common law, legislative drafting has evolved over a long period of time and through the experience brought by legislative counsel working in many jurisdictions. Practices that are now taken for granted are often best explained by their historical origins. In learning how to go about the task today, it helps to understand the factors that have led to present practices.

We need to think critically about the way legislation is drafted to see where sensible improvements can be made to inherited drafting practices. If we are to do that, we must have a clear idea of the objectives we should be seeking to achieve whenever we are drafting a piece of legislation.

Section Objectives

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

- Describe the way legislative drafting developed and how that development has influenced the way that we draft today.
- Provide an overview of the principal characteristics of legislative drafting in parliamentary jurisdictions.
- Establish the principal objectives for which legislative counsel should work and the fundamental practices that are most likely to contribute to achieving them.

Section Outline

This Section is divided into four subsections, organized as a series of questions.

1. HISTORICAL DEVELOPMENT OF LEGISLATIVE DRAFTING
 - When did drafting begin?
 - How did drafting develop in the 19th century?
 - How did drafting develop in the 20th century?
2. THEORETICAL FOUNDATIONS OF LEGISLATIVE DRAFTING
 - What were the premises of Coode's approach?
 - What were Coode's components of a legislative sentence?
 - What were Coode's guidelines for forming sentences?

- How have later legislative counsel built on Coode's approach?
- 3. PRINCIPAL CHARACTERISTICS OF DRAFTING IN PARLIAMENTARY JURISDICTIONS
 - What are the principal characteristics of this form of drafting?
- 4. DRAFTING OBJECTIVES
 - How should drafting be oriented in the 21st century?
 - What do users expect from legal documents?
 - How can we meet these expectations? (*Seven Cs of Legislative Drafting*)
 - Are the *Seven Cs* equally important?
 - How can we achieve the *Seven Cs*? (*Seven Basic Drafting Practices*)

Module 2: Writing Legislative Sentences

These Sections lay the foundations of legislative drafting skills. They are concerned with grammar and how to write individual legislative sentences.

In Module 1, Section 3: Why Do We Draft as We Do in Parliamentary Systems?, we saw that drafting practice in parliamentary jurisdictions tends to follow similar conventions, which have their origins in 19th century English practice.

In these Sections, we begin with a review of grammar terminology and then concentrate on how to select and express individual sentence components in order to produce legislative sentences that are consistent with those conventions. Particular attention is paid to sound legislative syntax, including punctuation, and how to avoid errors and poor practices in expression.

Objectives of this Module

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

- Apply the basic principles of legislative syntax and expression for writing legislative sentences.
- Comply with standard drafting conventions when punctuating legislative sentences.
- Compose simple legislative sentences that are unambiguous and free of the common errors of expression.
- Convert simple instructions into legislative sentences that are comprehensive and clear.
- Apply a style in composing legislation that will contribute to its effectiveness and clarity.

Studying this Module

Module 2 has six sections:

1. What do we need to know about grammar?
2. What are the basics of writing legislative sentences?
3. How do we put together the components of legislative sentences?
4. How do we punctuate and capitalize legislation?

5. How can we develop good legislative style?
6. What can go wrong in legislative expression?

This course is premised on the assumption that you thoroughly master these Sections. They contain many new ideas that will require close concentration. Complete each Section before moving to the next.

These Sections are not distinct: treat them as throwing light on each other and be prepared to look back at matters already considered to see how the Sections interrelate.

Section 1: What Do We Need to Know About Grammar?

Legislative drafting, like any other form of official writing, must respect the standard conventions of grammar and usage. There is no special grammar for legislation. The way legislative sentences are structured and the way that words, expressions and parts of speech are used in them must reflect what is generally considered to be correct written English.

At the same time, as we saw in the previous Module, particular approaches have developed for writing legislative sentences. If we examine these approaches, we must use the accepted grammatical terminology to describe what is involved (e.g., noun, verb, adjective, adverb, subject, object, modifier and so on), and we must be familiar with how the concepts they refer to operate in a sentence.

These Materials assume you are already familiar with good grammar and that you write grammatical English. The purpose of this Section is to ensure that you are familiar with the grammatical terminology we use in these Materials; you might also discover that you need to do some preliminary work on the subject. This Section also draws attention to some common grammatical mistakes. At the end of this section are two appendices:

- Appendix 1: Grammar Checklist
- Appendix 2: List of Grammatical Terms and Usage

Section Objectives

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

- Explain the basic features of grammar and the terms used to refer to them.
- Avoid several common errors of grammar.

Section Outline

This Section is divided into three subsections, organized as a series of questions.

1. Why is grammar important for drafting?
2. What grammatical terms do we need to know?

3. What common grammatical mistakes should we watch for?

Section 2: What Are the Basics of Writing Legislative Sentences?

Inexperienced legislative counsel are often puzzled about how to write a legislative sentence, especially as the same requirements can be accommodated in more than one way. This Section aims to help you get started.

In this Section, we are only concerned with writing individual sentences. We do not consider how to prepare for the drafting of the full legislative text.

Section Objectives

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

- Develop an understanding of how to write a legislative sentence that accomplishes what it is supposed to do.
- Begin to develop your approach to writing legislative sentences.

Section Outline

This Section is divided into three subsections, organized as a series of questions.

1. STARTING TO WRITE
 - How should we begin the process of writing a legislative sentence?
 - Are there any guidelines to help us get started?
2. BASIC COMPONENTS OF LEGISLATIVE SENTENCES
 - What are the basic components of a legislative sentence?
 - How should we decide on the components of a legislative sentence?
3. TYPES OF LEGISLATIVE SENTENCES
 - How do legislative counsel write particular types of sentences?
 - Are there different ways to express the same provision?

Section 3: How Do We Put Together the Components of Legislative Sentences?

In this Section, we look in detail at ways of selecting and putting together the components of legislative sentences, building on the first principles outlined in Module 1, Section 3: Why Do We Draft as We Do in Parliamentary Systems? 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.

Section Objectives

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

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

Section Outline

This Section is divided into three subsections, organized as a series of questions.

1. PRINCIPAL SUBJECT
 - How do we select the grammatical subject of the sentence?
 - How do we decide which legal person will be the grammatical subject?
 - How should the principal subject be described?
 - How do we choose the subject of a declaratory sentence?
2. PRINCIPAL PREDICATE
 - How do we determine the principal predicate?
 - How should we write the principal predicate?
 - How should we select the appropriate verb for the principal predicate?
 - Is an auxiliary required in every principal predicate?
 - How do we choose the appropriate auxiliary?
3. PREDICATE MODIFIERS
 - How should we particularize predicates?
 - How should we write context clauses?

Section 4: How Do We Punctuate and Capitalize Legislation?

This Section deals with two minor but important features of legislative texts: punctuation and the capitalization of words.

We often 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, its features place special demands on punctuation, and legislative counsel are expected to follow conventions as to preferred usages for legislation, often dictated by the drafting practices in their jurisdiction. The same is true for capital letters.

Section Objectives

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

- Comply with standard drafting conventions in your jurisdiction related to punctuating legislative sentences and the use of capital letters.

Section Outline

This Section is divided into two subsections, organized as a series of questions.

1. PUNCTUATION
 - What is the function of punctuation in legislation?
 - Do legislative counsel use punctuation differently from other writers?
 - How should we approach the punctuation of legislation?
 - Punctuation marks
2. CAPITALIZATION
 - When do we use capital letters?
 - When should we not use capital letters?

Section 5: How Can We Develop Good Legislative Style?

In LGST 551, we have so far concentrated on legislative syntax: how legislative sentences should be composed consistently with prevailing conventions on grammar and punctuation. In this Section, 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 can significantly affect how well it expresses the subject matter. Legislative counsel make most of their decisions about syntax and style together, as part of the same process.

Section Objectives

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

- Lay the foundations for developing a personal drafting style within the conventions prevailing in your jurisdiction.
- Apply a range of stylistic devices when composing legislation that will contribute to its effectiveness and clarity.
- Put into effect the main practices that lead to a plain language style of drafting.
- Follow a gender-neutral style of drafting.

Section Outline

This Section is divided into four subsections, organized as a series of questions.

1. GENERAL CONSIDERATIONS
 - What do we mean by good legislative style?
 - How do we decide what is good style?
 - How are style standards set for legislative counsel?
 - Why is style important?

- What style practices get in the way of communication?
- What is the aim of the plain language style?
- 2. DEVELOPING GOOD LEGISLATIVE STYLE
 - How can we improve communication?
 - How can we improve clarity?
 - How can we make legislation more readable?
 - How can we make legislation more concise?
 - How can we make legislation more complete?
 - How can we make legislation more consistent?
 - How can we make legislation certain?
- 3. GENDER-NEUTRAL DRAFTING
 - How can we draft in gender-neutral terms?
- 4. SOME ADDITIONAL MATTERS OF STYLE
 - Can we split infinitives?
 - Can we end a sentence with a preposition?
 - Can we begin a sentence with “And” or “But”?

This section also includes two appendices:

- Appendix 1: Simple Words and Expressions
- Appendix 2: Commonly Confused Words

Section 6: What Can Go Wrong in Legislative Expression?

So far in this Module, you have looked at techniques for producing sound legislative sentences that clearly communicate their requirements to users. You will have already noticed several cases where you need to pay careful attention to syntax or grammar to avoid obscurity or ambiguity. In this Section, we concentrate on these cases.

In English, it is easy to compose meaningful sentences that do not convey their intended meaning. In drafting legislative sentences, we need to be particularly careful about this to ensure that users cannot find different meanings from the one we set out to produce.

English language usage contributes to a few drafting pitfalls. Even experienced legislative counsel, working under pressure, are occasionally caught by them. In this Section, we identify the most common ones and work out ways you can avoid them. You have already come across some of them in earlier Sections of this Module.

Section Objectives

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

- Detect the main kinds of drafting errors in connection with legislative syntax and expression.
- Compose simple legislative sentences that are unambiguous and free from common errors of expression.

Section Outline

This Section is divided into three subsections, subdivided as follows.

1. SUBJECTS
 - Imprecise linking of several subjects
 - Ambiguous modifiers of subjects
 - Imprecise use of pronouns
2. VERBS
 - Imprecise linking of several verbs
 - Ambiguous verb modifiers
 - Ambiguous participles
3. MODIFIERS
 - Defective sentence modification
 - Ambiguous prepositions
 - Uncertain conjunctions

Each subsection examines how drafting in the way indicated can lead to ambiguity or lack of clarity.