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Eliminate 'There Is' and 'There Are'

Directive phrases, useful in speech, are rarely needed in legal writing

By Kenneth F. Oettle

Oral communication uses the phrases “there is” and “there are” to good effect, not only in English but in other languages. For example, Spanish uses “hay” (pronounced “eye”) for “there is,” and French uses “il y a” (“ee-lee-ah”). These expressions are useful in conversation because, among other things, they temper the speed of the discourse, allowing both speaker and listener to gather their thoughts, and they soften its tone.

The legal writer, in contrast, has plenty of time to gather thoughts, and both writer and reader understand — and thus are not concerned with giving or taking offense — that the point will be made as directly as possible.

Consider the following:

There is no public interest which precludes the Court from ordering the injunctive relief XYZ Corp. has requested.

“There is” is excess. Just say, “No public interest precludes....” This saves three words: “There,” “is” and “which.” The “which” should have been “that,” anyway.

Similarly:

BAD: There is no evidence that

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supports their claim.

BETTER: No evidence supports their claim.

BAD: There is no provision in the settlement agreement that contemplates arbitration of subsequent disputes.

BETTER: No provision in the settlement agreement contemplates arbitration of subsequent disputes.

BAD: There are two measures of damages that have been deemed appro-



A Guide to Persuasive Writing

priate.

BETTER: Two measures of damages have been deemed appropriate.

BAD: There is only one case that has addressed that issue.

BETTER: Only one case has addressed that issue.

BAD: There is no causal link to indicate which products will be successful.

BETTER: No causal link indicates which products will be successful.

In conversation, there is or there are can also serve as a directive. For example, you say, “There are four apples on the table” to call attention to

the table and the apples. The listener looks at the table, and you have accomplished your purpose. The listener does not question where there is.

A reader, in contrast, has nowhere to look but the printed page. The reader’s natural response to a sentence beginning “There are” is to think, “Where are?” But the where has no physical point of reference in a brief, letter or memo. “There are” is just warm-up language to indicate that something exists. It wastes the reader’s time.

In many cases, there is and there are can simply be deleted with no loss of meaning, but sometimes you have to change the verb:

BAD: In a client-server network, there are normally file servers to which users can save documents.

BETTER: A client-server network normally includes file servers to which users can save documents.

Instead of just saying “there are” file servers in the network, say the network “includes” file servers. It’s stronger because it creates an image of the network encompassing (including) the servers.

Sometimes you can eliminate a “there” structure by reversing order. For example, “There are many ways to satisfy the minimum contacts requirement” becomes “Minimum contacts can be established in many ways.” Though the construction remains passive, you emphasize the key concept “many ways” by ending with it, and you no longer begin with the temporizing phrase “There are.”

Some writers eliminate “there are” by substituting “exist,” but this fix is usually weak, as in the following example:

BAD: The court reasoned that there was not enough proof of non-compliance in discovery to justify giving

plaintiff access to defendant's e-mail system.

HARDLY BETTER: The court reasoned that not enough proof of non-compliance in discovery existed to justify giving plaintiff access to defendant's e-mail system.

Rephrasing improves the sentence:

BETTER: The court reasoned that the shortfalls in defendants' responses were insufficient to justify giving plaintiff access to defendant's e-mail system.

To say that "there is" is never appropriate in legal writing would overstate the case. It could work, for example, as a softening device.

Suppose you wish to advise a client that a person who violates a regulation may suffer a criminal penalty. Maybe you don't want to alarm the client with the strong, active formulation, "Violation of the regulation is a criminal act." So you say, "There is a criminal penalty for violating the regulation," tempering

the message.

"There is/there are" is one of those usage flaws that just won't go away. It's too comfortable and too easy. No matter how many times I cross it out and even ask writers not to use it anymore, it comes back, like pantry moths or the clothes on a teenager's floor. Fortunately, deleting it is relatively easy. Look for opportunities to eliminate this unnecessary phrase from your writing.

Puzzler

How would you tighten and sharpen the following sentence?

The primary policy has liability limits of \$2 million per occurrence, \$4 million aggregate, and is subject to a \$100,000 self-insured retention.

The policy limits and the self-insured retention (the deductible) do not belong in a series of three because

they are different sets. Separate them.

For parallel construction, move "self-insured retention" ahead of the number \$100,000 just as "limits" precedes the coverage numbers. Drop "liability" and "subject to" as implicit and add "in the" in front of aggregate for a parallel to "per" in front of occurrence.

The revised version:

The primary policy has limits of \$2 million per occurrence and \$4 million in the aggregate and a self-insured retention of \$100,000.

The self-insured retention is a bit of a tack-on. If you don't need to place the coverage limits first for transitional purposes, begin with the self-insured retention so the two-part set ends the sentence.

Alternate version:

The primary policy has a self-insured retention of \$100,000 and limits of \$2 million per occurrence and \$4 million in the aggregate. ■