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Be Wary of the 'In Order to' or 'To' Construction

It is a common source of non sequiturs

By Kenneth F. Oettle

The need to recite what the law requires often leads to the “In order to” or “To” construction, as in, “In order to begin an action in Superior Court, one must file a complaint with the County Clerk.” When such a sentence is written correctly, it sets forth the task (“In order to [accomplish something ...]”) and then says what the person must do to accomplish the task. (Generally, you can delete “in order” as unnecessary, leaving just “to.”)

Sometimes, the “In order to” or “To” construction produces a non sequitur (grammatically, a “dangling modifier”), as in the following from an appellate brief:

In order to persuade a court to overturn the decision of an administrative agency, a heavy burden is placed on the appellant.

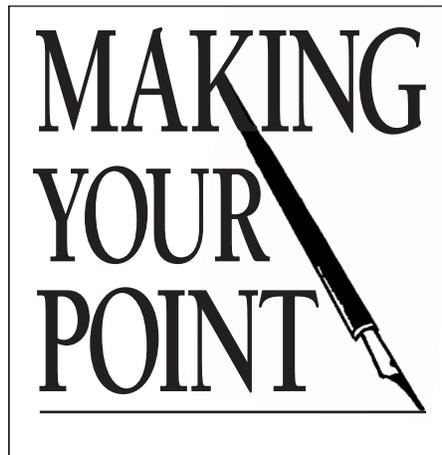
The opening of the sentence (“In order to persuade”) signals that the rest of the sentence will explain what an appellant has to do to persuade a court to overturn the decision of an administrative agency. The reader expects the appellant to be the actor in the continuing story.

But the actor in the second part of the

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sentence is not the appellant; it is the appellant’s burden. This appearance of an unexpected subject will frustrate the intended audience — appellate judges and law clerks. Even though these readers will ultimately comprehend the sentence because they know that the discretion of an administrative agency must be respected on appeal, they will initially balk at the grammar.

Why would someone write such a sentence?



The writer’s internal monologue probably went something like this: “The goal is to overturn the decision of an administrative agency, so I’ll begin with that to establish the context. Then I’ll acknowledge the heavy burden of persuading a court to overturn such a decision and thus cover both ideas in one sentence – the need to overturn agency decisions and the heavy burden that a challenger bears.”

Writers almost always have a reason for doing what does not work. They are, generally speaking, more insular than ignorant. Though they have a plan, it may not include the reader. Here, the

writer addressed both elements of his point but overlooked the reader’s likely reaction.

The sentence can be recast as follows:

To persuade a court to overturn the decision of an administrative agency, an appellant must overcome a presumption of validity.

Now the second part of the sentence fulfills the reader’s expectation. The appellant is the actor (“To persuade a court ... an appellant must overcome”).

The idea can also be conveyed without the “In order to” or “To” construction:

An appellant challenging the decision of an administrative agency bears a heavy burden.

The decisions of an administrative agency will not be overturned unless arbitrary and capricious.

The decisions of an administrative agency enjoy a presumption of validity.

In most instances, good alternatives are available. You just need to explore them.

A Second Example

The following use of the “In order to” construction appeared in a brief invoking the principle that statutes should not be interpreted in derogation of (as overriding) the common law:

In order to interpret the statute as defendant wishes,

the statute must override the common law.

Because the sentence opens with a statement that someone will have to do something to interpret the statute (“In order to interpret the statute”), the reader expects to be told what the person interpreting the statute must do. Instead, the reader is told what the statute must do — it must override the common law.

Presumably, the reader will deduce the meaning, but only after adjusting for the deviation from normal grammar. Because the deviation consumes time and energy unnecessarily, it erodes the reader’s patience and weakens the writer/reader relationship.

Dropping “In order to” or “To” is the best fix:

Defendant would have the statute override the common law.

Slightly more explicit is the following:

Defendant would interpret the statute to override the common law.

Keeping the “To” construction could result in this:

To interpret the statute as defendant wishes, one must override the common law.

This solution is imprecise because lawyers don’t override the common law; statutes do. A more accurate but longer formulation might be:

To interpret the statute as defendant wishes, one must view it as overriding the common law.

A Third Example

The following is from a gaming commission regulation:

In order to recover the cost of the licensing investigation, each application must be accompanied by a nonrefundable fee of \$3,000 per key employee.

The application isn’t seeking to recover the cost of the licensing investigation; the commission is. The sentence can be improved as follows, among other ways:

Version A: As a contribution toward the cost of the licensing investigation, a nonrefundable fee of \$3,000 per key employee must accompany each application.

Version B: To recover the cost of the licensing investigation, the commission requires that a nonrefundable fee of \$3,000 per key employee accompany each application.

In each version, the two parts of the

sentence match. In Version A, the fee in the second part of the sentence is the contribution in the first, and in Version B, the commission requires the fee to recover the cost.

Beginning sentences with “In order to” or “To” is tempting when describing legal requirements, but it may lead, as above, to non sequiturs. If you are about to use this construction, check for continuity and consider alternatives.

Puzzler

How would you combine the following sentences?

Answers to interrogatories and documents have been exchanged by the parties. Depositions of all employees have been taken.

Use the active voice and parallel verbs (“exchanged” and “deposed”) and make “interrogatory” an adjective. “Have” is optional.

The revised version: The parties have exchanged documents and interrogatory answers and have deposed all employees.

Alternate version: The parties have exchanged documents and interrogatory answers and deposed all employees.

Without “have”: The parties exchanged documents and interrogatory answers and deposed all employees. ■