

New Jersey Law Journal

VOL. CLXXXVIII – NO. 3 – INDEX 196

APRIL 16, 2007

ESTABLISHED 1878

Arrange Conjunctions To Maintain the Flow

'Because although' is awkward because 'although' interrupts

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Case write-ups should begin with the holding to let the reader know immediately why the case is important. A more step-wise, chronological approach results in this tedious sequence: "Plaintiff argued X; defendant argued Y; the Court observed, the Court reasoned; the Court relied on; and (finally) the Court ruled."

Writers who begin case write-ups with the holding sometimes include in one sentence not only the holding ("The court ruled that the parties were bound") but also the argument that the court rejected to reach its holding ("...even though the plaintiff did not produce a writing"). Including the point, the counterpoint and the refutation of the counterpoint in one sentence can result in the awkward "because although" sequence, as in the following sentence written by counsel representing an employee in a wrongful termination suit:

The court found that the attorney-client privilege applied to e-mails between the former employee and his lawyer *because although* the e-mails were sent through the employer's computer network, no explicit internal policy overrode the attorney-client privilege.

The sentence consists of three ele-

ments:

1) What the court found (that the attorney-client privilege applied to e-mails).

2) What cuts against the privilege (that the e-mails from the employee to his lawyer were sent through the employer's computer network).

3) Why the court recognized the privilege anyway (because no explicit internal corporate policy overrode the privilege).

The attempt to begin the case summary with the holding and to include in one sentence not only the counterpoint but also the counter to the counterpoint led to trouble. After beginning with what the court found (that the privilege applied), the writer still had to acknowledge the coun-

terpoint (that the e-mails went through the network) and the refutation of the counterpoint (that no internal policy overrode).

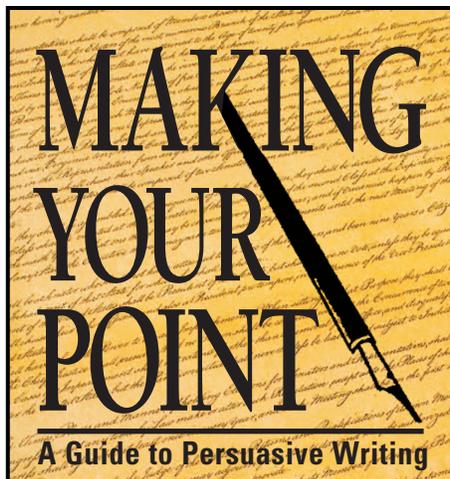
The writer tried to put it all together with the awkward sequence of "because although." Both words are subordinating conjunctions, that is, they tie a subordinate clause to the rest of the sentence.

Note: A subordinate clause has a subject and verb but can't stand alone as a complete sentence. Other subordinating conjunctions include: after, as, before, even if, if since, so, that, though, unless, when, whereas and while. Some can serve as other parts of speech, e.g., "after" can be used as an adverb ("followed after"), an adjective ("in after years"), or a preposition ("after lunch"), and "until" can be used as a preposition ("until morning"). See *Merriam Webster's Collegiate Dictionary* (11th Ed. 2004).

"Because" tells the reader that a reason is coming, but "although" immediately interrupts, signaling that before the writer will provide the "because," he will supply a qualifying factor. "Although" says, "Hold that thought." This jolts and creates work for the reader.

The writer rationalized that he didn't want to end the sentence with the fact of the e-mails passing through the company's computer network because that would give the fact a position of prominence and would appear to leave it, as the last word, unrefuted. Thus, the order of presentation seemed to call for the bad fact to come before the reason why the court was unmoved by it. That way, the court could appear to have considered and rejected this potential basis for deeming the privilege waived.

This logic is firm, but the premises behind it are not. The analysis ascribes too



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much weight to one factor (order of presentation) and not enough to another (the flow). The more important concern here is the flow. When readers stumble, whether from awkward phrasing or bad logic, they tend to doubt the substance of the argument. They know that the loss of flow is not necessarily a function of a weak argument — it could be a result of dubious grammar — but they may not stop to figure out which is the culprit.

The sample sentence can be improved in either of two ways. One way is to break it in two, presenting the holding without a “because” and then beginning the second sentence with “Although,” signaling that you are about to present a qualifying factor but also signaling that the factor was outweighed:

The court found that the attorney-client privilege applied to e-mails between the former employee and his lawyer. Although the e-mails were sent through the employer’s computer network, no explicit internal policy overrode the attorney-client privilege.

In the alternative, you can present the qualifying factor at the very beginning, retaining the one-sentence format:

Although the e-mails between the former employee and his lawyer were sent through the employer’s computer network, the court found that the attorney-client privilege applied because no internal company policy overrode the attorney-client privilege.

A phrase consisting of consecutive conjunctions (“because although”) violates

the rhetorical principle that a writer should meet the reader’s expectations. A reader seeing “because” expects a reason straight-away, but the insertion of “although” makes the reader wait.

A Second Example

In the following sentence, the writer wanted to say that a court refused to order monetary sanctions against the plaintiff for errors in an expert’s report because the court found no case in which such sanctions were imposed. The sentence read as follows:

The court refused to grant monetary sanctions against plaintiff *because although* the report of plaintiff’s expert contained errors, the court found no authority for imposing monetary sanctions by reason of an error in an expert’s report.

Again, the problem can be solved, and the reader’s expectations met, in either of two ways. One way is to drop “because” and begin a second sentence with “although”:

The court refused to grant monetary sanctions against plaintiff. Although plaintiff’s expert report contained errors, the court found no authority for imposing monetary sanctions by reason of an error in an expert’s report.

Another way is to move the qualifying factor to the beginning of a single sentence:

Although the report of plaintiff’s

expert contained errors, the court refused to order monetary sanctions because it found no authority for imposing sanctions by reason of an error in an expert’s report.

For extra credit, change “refused to order” to “denied” and shorten the ending by substituting “imposing them” for “imposing monetary sanctions by reason of an error in an expert report”:

Even though the report of plaintiff’s expert contained errors, the court denied monetary sanctions because it found no authority for imposing them.

Puzzler

Would you say a “conflict of laws issue” or “conflicts of law issue”?

Informally, your law school course was your “conflicts” class, and the relevant Restatement is the *Restatement, Second, Conflicts of Law*, but the official name of the law school course was “Conflict of Laws,” and *Black’s Law Dictionary* defines “conflict of laws,” not “conflicts of law.” Your issue is one of conflict (singular) between laws (plural) of different jurisdictions (plural). Therefore, speak of a “conflict of laws issue.”

On the other hand, if you have conflicts between or among the laws of several states on different issues, you can speak of conflicts of law. To sidestep the usage question altogether, refer to a “choice of law issue.” ■