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'Which' Is Often Incorrectly Used in Place of 'That'

Get the words straight to please the purists

By Kenneth F. Oettle

I found an old memo on sewage treatment capacity in which I used “which” instead of “that” in sentences like the following:

The consultants wrote the plan for allocating the sewage treatment capacity which will become available when the treatment plant expands.

The application for final approval required an engineering plan which is more refined than the plan submitted for tentative approval.

In the above examples, “which” should have been “that” because my intent was to differentiate an item from others of its kind. In the first sentence, the item is sewage treatment capacity — the specific capacity, and no other, that would become available when the sewage treatment plant expands. In the second sentence, the item is an engineering plan different from an engineering plan submitted earlier.

As used above, “which” or “that” is called a “relative pronoun.” You need not remember the term, but you should know when to use “that” rather than “which” as a relative pronoun because

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deviation from the preferred usage is likely to irritate finicky readers (who largely think of themselves as “well-educated” readers). Several judges have told me that finding a “which” where a “that” belongs is among their pet peeves.

Nobody has told me that finding “that” where “which” belongs is of any concern. From this I conclude that as a matter of prudence if nothing else, we should know how to use that and which.



MAKING
YOUR
POINT

A Guide to Persuasive Writing

As a novice brief writer, I used “that” as a relative pronoun because it sounded better. Then I noticed that a partner whose judgment I respected used “which” rather than “that.” Figuring to make a small stride forward in my legal writing, I began using which, just as I later fell briefly into the bad habit of using “commence” because (what else?) a good writer used it, and it sounded impressive.

After a couple years, I stumbled on the preferred usage of that and which, probably in Strunk and White’s *Elements of Style*, which says, “Careful writers, watchful for small conve-

niences, go *which*-hunting, remove the defining *whiches*, and by so doing improve their work.” (4th Ed. at 59). Almost immediately on learning the preferred usage, I became intolerant of the other, like a newly rich person suddenly looking down on a middle class neighbor.

With a history as an offender, maybe I should be more tolerant; but I can’t help myself. I wince when someone uses which where that is preferred. If I wince, others wince, too. That is why you should use the preferred form — so your readers, especially your less tolerant ones, don’t wince. As this column repeatedly advises, a reader’s discomfort interferes with your ability to persuade.¹

The oft-stated rule for using “that” and “which” as relative pronouns is that the clause should be introduced by “which,” preceded by a comma, if you can omit the clause “without materially changing the meaning of the sentence.” If you cannot omit the clause without materially changing the meaning of the sentence, then use “that” without a comma.

I do not find that explanation helpful. A lawyer should use words only if they add meaning. Otherwise, the words are just filler. If the words add meaning, then omitting them changes the meaning of the sentence, presumably materially, whether the words are preceded by “that” or by a comma and “which.”

The best I can do in terms of articulating a rule is to recommend using “that” when you wish to distinguish one item from others in the same category, as in “the appeal that was dismissed,” which tells the reader that other appeals were not dismissed. If you say “the

appeal, which was dismissed,” then the reader understands that you are speaking of only one appeal. If you say “the appeal which was dismissed,” the reader doesn’t know whether you can’t punctuate correctly or whether you mix up that and which.

Sometimes “which” is correct but mispunctuated. Consider the following:

Immediately after the closing,
Smith recorded the deed which
included covenants of seisin.

The which in the above sentence is correct — it shouldn’t be “that” — but it should be preceded by a comma. Grammatically, the which introduces a “nonrestrictive” or “nondefining” clause, meaning, essentially, that the clause merely describes what precedes it. It doesn’t set its antecedent apart from something similar, but different.

If the sentence had said that “Smith recorded the deed that included covenants of seisin,” then the deed he recorded — the one that included covenants of seisin — would be distinguished from some other deed. Above, only one deed is at issue.

Here is a similar example:

Most courts will admit this type of statement as an excited utterance which is an exception to the

hearsay rule.

“Which” is fine. Just place a comma after utterance.

Sometimes, neither which nor that is necessary, as in the following:

The factual scenarios which are to be framed as causes of action in the Amended Complaint arose as a result of newly discovered information.

The bacteria which are used in the sewage treatment process consume oxygen in the stream.

Forget about changing “which are” to “that are.” Just drop “which are,” leaving “The factual scenarios to be framed” and “The bacteria used.”

Another way to delete “which” is to use the “-ing” construction, as here:

Transfer of venue is limited to causes of action which arise under Title 11 in the United States Bankruptcy Code.

The procedural issue which has caused conflict among the Circuits is whether the school district bears the burden of proof at the administrative hearing.

Change the phrase “which arise” to “arising” and the phrase “which has caused conflict” to “causing conflict.”

Puzzler

How would you improve the following sentence?

The license application was rejected due to an insufficiency of information.

“Due to” is considered substandard. “Because of” is preferred. “Insufficient” is shorter and sharper than “an insufficiency of.”

The new version:

The license application was rejected because of insufficient information.

Footnote:

1. Some Internet commentators don’t fuss over that and which, but then they don’t have to write briefs for finicky (well-educated) judges. See www.wsu.edu/nbrains/errors (“I must confess that I do not myself observe the distinction between “that” and “which.”); and <http://andromeda.rutgers.edu/njlynch/writing> (“According to the more quibbling self-styled grammar experts, *that* is restrictive, while *which* is not.”). ■