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Litigation #20

What's at Issue?:
The Construction of the English Paragraph, Part II

Miss Grundy, our junior high English teacher, taught us that a paragraph must begin with a “topic sentence.” Its purpose is to inform the reader, right at the start, what the issue/point of the paragraph is meant to be. This worked well when we were young and had so relatively little to say; but as adults, it fails us badly. Not only are the issue and the point not always the same in sophisticated, professional prose, but the issue of a paragraph in a legal document can often not be stated in a single sentence. I will discuss “issue vs. point” in a later article. Here I will explore what the issue of a professional paragraph (legal, scientific, business – it matters not) is expected to be in terms of its shape and size.

Miss Grundy was right about one thing: Readers want to know what a paragraph will deal with as soon as possible. But a lawyer's stated issue often requires more than a single sentence to be adequately expressed.

Quite often – in some documents up to 50% of the time – the issue of the paragraph may require two sentences. Here are examples of how issues can easily take two sentences to state:

- Here is where we have come from. Now here is where we are going.
- You may have thought X. Actually, it's Y.
- Here is a general thought. Now here is the more specific thought within it that we will explore.

Occasionally – not often, but often enough to require our recognizing it – an issue may have to extend to three sentences:

- Here is where we have come from. It wasn't helpful enough to answer our question. So here is where we must go from there.
- You may have thought X. You may even have thought Y. Actually, it's Z.
- Here is a general thought. Here is a more narrow concern within that generality. Within that more narrow concern, here is the specific thought that we will explore here.

Is there such a thing as a four-sentence issue? No. I could write one easily enough:

- You may have thought X. You may even have thought Y. You might even imagine Z. Actually, it's Q.

I could write it; but my reader will not read it. When a reader finishes sentence #3 of a paragraph and has not yet perceived a coherent issue, the reader tends to give up hope. The rest of the paragraph is read – if at all – as a kind of fact-finding mission, with the hope that coherent sense will retroactively become apparent at the paragraph's end.

How and when do we, as readers, know how many sentences are involved in a given paragraph's issue? How? The issue has just ended when we sense we are beginning to read the resultant discussion. When? We can never know how long an issue is until we are convinced the issue is over. This is a complicated matter and a fluid experience, as we shall see.

Every first sentence of a paragraph *could* be its issue. Give me any sentence you wish: I can make it a one-sentence issue by writing the rest of that paragraph about your sentence. As a result of this

uncomfortable fact, a reader can never be sure a paragraph's first sentence is its issue until at the least the second sentence is well under way.

Here is the first sentence of the paragraph we shall be reading in slow motion:

1. The purpose of contract law is to create a legal existence and needed resolutions for joint undertakings to which parties have agreed.

If that indeed is the issue of the paragraph, what does the rest of paragraph go on to discuss? Answer: Anything this sentence has already brought to the table. "Legal existence"; "existence and resolution"; "parties' joint undertakings." If a discussion of any of these begins in the second sentence, we might well have a one-sentence issue here.

Here is the paragraph's second sentence:

2. It would seem, at first, that the business of this kind of law would simply be to enforce the agreement to which the parties had submitted themselves.

When I try to imagine how this might begin a discussion of the material in the first sentence, my head goes cloudy. Although it is not impossible for sentence #1 to be a one-sentence issue here, it is hard for me to imagine where we are going with this. On the other hand, the possibility of a two-sentence issue makes more sense. For example: The first sentence makes a general statement about contract law; and the second sentence suggests a more narrow focus on "the business" of contract law – enforcement. If it is a two-sentence issue, then the third sentence should begin a discussion of that "business."

Here is the third sentence:

3. It would seem, with equal surety, that in no way should a court “*make a contract*” for the parties.

This does not make good sense as the beginning of a discussion of the first two sentences combined. It speaks not of the “business” of the law, but rather of a kind of “non-business”: Courts *don’t* “make contracts.” It makes better sense to see this as the completion of a three-sentence issue. If the paragraph were to be about whether or not courts “make contracts” for the parties, the first three sentences would work nicely to prepare us for ensuing discussion.

That turns out to be the case. Watch the way in which the fourth through seventh sentences wind their way through the problems of oversimplifying the court’s role in ruling on contract cases, winding up eventually in the direct repudiation of the paragraph’s third sentence.

Sentence #4 leads us from the claims of its two predecessors to the limited topic of “interpretation”:

4. If both these seemings are true, the court’s only job would be that of interpretation: It would determine what the parties meant from what the parties said.

Sentence #5 tacks the powerful word “But” onto the previously oversimplified word “interpretation”:

5. But the act of interpretation is in no way a simple task: (1) “Words strain, crack, and sometimes break, under the burden, under the tension, slip, slide, perish, decay with imprecision, will not stay in place, will not stay still”¹; (2) people do not and cannot always (or ever) cover everything that is or might in the future be affected by the contract; and (3) there are legal limitations that cannot be exceeded by an agreement made by private parties.

The difficulties of “interpretation” having thus been established, sentence #6 can far more simply and concisely label the characteristics of “expression” that make interpretation so complex:

6. Therefore, the explicit expression of a contract can be, and often is, incomplete, ambiguous, and even incomprehensible.

Having begun from the three-sentence issue that raises the question of whether courts ever “make contracts” for the litigative parties, and having discussed the complexities of the act of interpretation, the author can use the final sentence to answer the question raised by the issue:

7. By the sheer difficulty of the act of interpretation in such cases, like it or not, courts are forced to “make a contract” for the parties.

I urge you to go back now and read the 7 sentences as a continuous, flowing paragraph. (Space prohibits my reproducing it here.) It makes sense, does it not? One could argue with individual details in any of the sentences; but we know what the author was trying to say.

Stating the issue up front is essential, because of a major expectation readers have about the shape and structure of paragraphs: Since they expect the issue to be articulated right at the start, they will read whatever comes first – whether “first” means one, two, or three sentences – as being the issue of the paragraph. To create an example of this, let’s revise sentence #4 as follows:

4. A court’s only job in adjudicating a contract dispute seems to be that of interpretation: It would determine what the parties meant from what the parties said.

Starting from this revised #4, read the sentences in the order: revised 4, 5, 6, 7, 1, 2, and 3. Don’t you feel lost in a forest, wandering without direction. If # 4 is the paragraph’s issue, it becomes a badly written

paragraph indeed.

Miss Grundy wasn't teaching law students. Legal issues, just like the issues of schoolchildren, need to be stated up front; but the legal ones can take one, two, or three sentences to get the job done. Somewhere in the back of your mind, remind yourself never to let the issue spill over into a fourth sentence. In rhetoric, four can seem a million.

1. T.S. Eliot, "Burnt Norton," V, ll.13-17