



## The Straight Scoop on the Passive Voice

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Writers are often advised to avoid the passive voice. But legal writers may wonder just what the passive voice is, whether it is always wrong, and how to change it to the active voice. Here's the straight scoop on those questions.

**Recognizing the passive voice.** The passive voice is a verb form with two identifying characteristics.

First, the subject of a passive verb is the receiver, not the doer, of the action, as in this example: "The dog was kicked." The reader understands that the dog was the receiver of the action—the kicking—and that the actor is not identified. That's why the voice is called *passive*. These less vivid examples might occur in legal writing:

- a. The brief was filed on time.
- b. The argument will be built on two theories.
- c. An incorrect analysis of the pending issue has been advanced herein.

In each example, the subject of the sentence is the receiver of the action, and the actor is not identified. Sentence *c* is a classic example of the awkward, abstruse writing that fuels so much criticism of lawyers.

Second, every passive verb contains at least two parts: a form of the verb *to be* (*be, is, am, are, was, were, or been*) and a past participle. Note that the verb in sentence *c* includes three words; two, *has* and *been*, are auxiliaries to the main verb, *advanced*. Even though it is a little more complex than *a*, example *c* does contain the elements of the passive voice: a form of the verb *to be* and a past participle, here formed by adding *-ed*, as with other regular English verbs. (Example *b* contains an irregular past participle, *built*.)

Don't be misled into thinking that

any verb containing a form of *to be* is passive. These sentences are in the active voice:

- d. The defendant's brief is persuasive.
- e. That statute was not in the code at the time of the crime.

Each of these sentences includes a form of *to be*, but neither includes the required past participle. And although the sentences express states of being instead of vivid actions like kicking, the subjects are not receivers but "actors" in a broad sense of the term. The verbs in these examples may be a bit bland, but they are not passive.

And do not confuse the past tense with the passive voice. Although example *e* is in the past tense, it is in the active voice.

**Problems with the passive voice.** The passive voice causes two problems. First, it tends to be vague, and vagueness is seldom a virtue in legal documents. Second, it's wordier. A writer who wants to identify an actor in a passive sentence must use a cumbersome prepositional phrase: *The brief was filed on time by James*. Contrast that with the more streamlined active version: *James filed the brief on time*. Using the active voice will often result in crisper sentences like this one.

**When the passive voice is appropriate.** The passive voice is not always wrong. It's a standard English form that appears in some venerable quotations: those who mourn *shall be comforted*; all men *are created* equal; a player struts and frets his hour upon the stage and then *is heard* no more. Whether to use the passive is a question of judgment. The following are some situations where an effective writer might choose the passive voice.

1. *The actor is unknown or unimportant.* A writer might state, "Five hundred briefs were filed with the court last month." Adding the vague *people* will not improve the sentence: "People filed five hundred briefs with the court last month." The addition actually weakens the sentence by introducing a vague noun and moving the important word *briefs* from the position of emphasis near the beginning. It's better to skip naming the unknown actors here.

2. *The writer wants to deflect attention from the actor.* A lawyer might write, "Then Smith was shot." This is effective where a client has been accused of the shooting but has not been positively identified. The passive deflects attention from the accused client.

3. *The passive voice will aid continuity.* The passive voice's structure can help link ideas:

f. The court held that a key element of the tort is intent. *Intent* was defined by the appellate courts in a succession of cases over the next five years.

Here, the passive structure puts the key word *intent* in the position of emphasis at the beginning of the second sentence, effectively linking it to the first one.

**Changing a verb from the passive to the active voice.** The first step in dealing with the passive voice is to determine whether a verb is active or passive, using the above guidelines. If it is passive, mentally change it into the active voice. To do this, identify the true actor and put that noun near the beginning of the sentence. For the sentence "The dog was kicked," if a child did the kicking, the active version would be "The child kicked the dog." The active version of example *c* above could be this leaner sentence: "The lawyer analyzed the issue incorrectly."

Then decide whether the new version is better—more direct, crisper, and less awkward. If it is, consider whether you have a good reason for using the passive voice. If you don't, make the change to the active voice.

Putting most of your verbs in the active voice will strengthen your writing. By the way, some of the verbs in this article (apart from the examples) are in the passive voice. You can determine whether they are effective. After all, the decision is ultimately a matter of judgment. 📌