

It Is What It Is

Writers sometimes get wordy because they won't just say that something is what it is (or was what it was). People sometimes have good reason to avoid being too concrete: instead of saying that weapons of mass destruction were in Iraq, some now say that they were considered to be in Iraq. Instead of saying that Saddam Hussein was an immediate threat to the security of the United States, our leaders now say that he was considered to be an immediate threat. So adding some fuzzy verbs around a form of the verb *is* can give the speaker or writer some weasel room. But when weasel room isn't needed, why cloud prose with fuzzy verbs around *is*? Consider these examples from Michigan appellate opinions:

- A case is considered “closely drawn” if a determination of the defendant’s guilt essentially comes down to a credibility contest between the defendant and her accomplice.

In this sentence, maybe the court used *is considered* to signal that it was applying a definition or a legal standard. But the use of quotation marks already signaled that the court was applying a definition. Why wasn't it enough to say that a case is “closely drawn” if the question of guilt comes down to a credibility contest?

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- It is considered improper for a prosecutor to denigrate the defense with intemperate and prejudicial remarks.

Why waffle on this one? Prosecutorial misconduct isn't considered improper; it is improper.

Look how much clearer these sentences are if *considered* and helping verbs are omitted:

- A finding is ~~considered to be~~ clearly erroneous if, after a review of the entire record, we are left with the firm and definite conviction that a mistake was made.
- The Court intimated that attempting to override deed restrictions by a change in zoning might be ~~considered~~ an unconstitutional impairment of contracts.
- To the extent that the prosecutor’s emphasis on the mother’s suffering ~~might be considered~~ [was] excessive, the trial court instructed the jury not to let sympathy affect its verdict.

Considered isn't the only culprit in the wordy trend against just being. Sometimes it's not considered to be something, but said to be something:

- A contract is ~~said to be~~ ambiguous when its words may reasonably be understood in different ways.
- Where a purchaser’s expectations in a sale are frustrated because the product he bought is not working properly, his remedy ~~is said to be~~ in contract alone, for he has suffered only “economic” losses.

In the two examples above, courts were stating rules, not discussing academic hearsay. Again, why waffle? The rules are what they are.

Variations of *define* can also lead to wordiness. Why say that something is defined as wordy when you can say simply that it is wordy? Why say that it fits the definition of wordy? Why say that it meets the definition of wordy? In either case, it just is. Here are more examples from Michigan courts:

- For instance, common law arson is ~~considered~~ a general intent crime despite the fact that it is ~~defined as~~ the willful or voluntary and malicious burning of the dwelling house of another. (This one is a double-whammy—both *considered* and *defined as*.)
- Malice is ~~defined as~~ the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful [sic] disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.
- An offer is ~~defined as~~ “the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.”
- Here, the first issue that we must address is whether defendant’s motel ~~meets the definition of~~ [is a] “transient facility.”
- We conclude that defendant’s facility no longer ~~meets the definition of~~ [is] a transient facility.
- There is no dispute that this incident ~~meets the definition of~~ [was a] “criminal act or omission” because Daniel pleaded guilty to the criminal charge of careless discharge of a firearm.
- The evidence supports the trial court’s determination that defendant Ket’s behavior fits ~~the definition of~~ [was] “predatory conduct.”

Adding some fuzzy verbs around a form of the verb *is* can give the speaker or writer some weasel room. But when weasel room isn't needed, why cloud prose with fuzzy verbs around *is*?

- Specifically, the prosecution contended that an investigative subpoena hearing fits the definition of [was] a “proceeding” under the prior inconsistent statement rule.

Some writers have an especially hard time stating what the question is. Look at these examples from Michigan cases:

- Thus, properly framed, the question ~~to be determined~~ is whether the official’s particular acts are within his or her executive authority.
- The question ~~to be determined~~, then, is whether the Legislature intended the

amendment to apply retroactively to the entire 1990 tax year.

- In CS & P, the issue ~~before this Court~~ was whether the trial court erred in ruling that the plaintiffs did not need to prove negligence as a predicate to establishing liability under the trespass-nuisance exception to governmental liability.
- The issue ~~before this court~~ is whether there was a sufficient factual basis for the trial court to accept defendant’s plea and convict him of unarmed robbery.

The question presented to a court is obviously before the court and is obviously there to be determined. We should dispense with these needless words; the issue is what it is.

If there is no reason to doubt something’s existence or to hedge about it, writers should tell it like it is. ♦

Brendan T. Beery is an assistant professor at the Thomas M. Cooley Law School, where he teaches Research & Writing and Advanced Writing. He graduated from Cooley in 1998, summa cum laude. He then served as a research attorney with the Michigan Court of Appeals and spent three years in private practice.

