References

Kenneth A. Adams, *Legal Usage in Drafting Corporate Agreements* 110 (2001): “I try to avoid using *and/or* in my drafting and use instead *X or Y or both*, or, when more than three items are involved, *one or more of A, B, and C*.”

Mark Adler, *Clarity for Lawyers: Effective Legal Writing* 125 (2d ed. 2007): “A *and/or* B may be shorthand for *A or B or both* but the saving is trivial. Too often the expression is a lazy alternative for the drafter who has not considered which option is appropriate: (A and B) or (A or B or both) or (A or B but not both).”

Scott J. Burnham, *Analyzing and Drafting Contracts* 97 (3d ed. 2003): “[Suppose that], in a will, a testator leaves a bequest to ‘A and/or B.’ Who gets the bequest? A number of commercial cases have arisen in which the agreement specified that one party would deliver ‘A, B, and/or C’ or ‘A and/or B and/or C.’ The possible combinations are so boggling that it’s difficult to tell what was intended. On the other hand, a provision limiting liability ‘in the event of destruction in the Atlantic and/or Pacific’ states an impossibility when read with the conjunctive *and*. These provisions should be rewritten for clarity....The bottom line on *and/or*? Its use is usually sloppy and careless. When you must clarify a several *and* or an inclusive *or*, spell it out. *Don’t use and/or*”

Bryan A. Garner, *Legal Writing in Plain English* 112, 113 (2001): “Replace *and/or* wherever it appears.... About half the time, *and/or* really means *or*, about half the time it means *and*. All you have to do is examine the sentence closely and decide what you really mean.... The danger lurking behind *and/or* is that the adversarial reader can often give it a skewed reading.... Courts, by the way, have routinely had extremely unkind words for those who use *and/or*. Don’t give them cause for still more grumbling.”

Thomas R. Haggard, *Legal Drafting: Process, Techniques, and Exercises* 257 (2003): “Since both *and* and *or* are potentially ambiguous, combining them into one term only multiplies the ambiguity. Because of this and the term’s total lack of grace, *and/or* has been the subject of considerable judicial hostility.”

David Mellinkoff, *Legal Writing: Sense and Nonsense* 55 (1982): “The high failure rate of legal papers that depend on *and/or* for anything of importance should have long since eliminated it from the legal vocabulary.”

Editor’s note: Because space is limited this month, the winner of the February “nouners” contest will be announced in May.

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