

# The Ambiguous *And* and *Or*

By Thomas Haggard

These simple and commonly used words are capable of enormous ambiguity. The legal writer must use them with caution, especially in drafted documents.

## And

The word *and* may be construed as meaning either jointly or severally. For example, if a will provides that *Bill and Mary shall receive \$1,000*, does this mean that Bill and Mary share \$1,000 jointly? Or does it mean that Bill and Mary each get \$1,000? The will should either say, *Bill and Mary shall receive \$1,000, to be shared jointly*, or say, *Bill and Mary shall each receive \$1,000*.

Ambiguity may also arise when the reader cannot determine from context whether *and* is intended to identify several different entities or to identify the traits of a single entity. This is especially true when modifiers are used in an *and* phrase. A document, for example, might refer to *charitable and educational institutions*. Does this refer to institutions that are both charitable and educational? Or does it refer to two entities, charitable institutions and educational institutions? If the drafter intends to refer to a single entity, this intent can usually be expressed by drafting in the singular. *A charita-*

*ble and educational institution* clearly refers to an institution that has both those traits. If two types of institutions are contemplated, this should be expressed as *charitable institutions and educational institutions*.

Similarly, an ordinance might provide that *every owner and operator of a taxicab shall report annually*. Does the ordinance apply to a single entity, someone possessing the traits of being both an owner and an operator? Or does it apply to two entities, persons who are owners and persons who are operators? Or does it possibly apply to all three entities?

Once aware of the ambiguity, the drafter can use a number of devices to avoid it. For example, identifying the entity or entities with a word that is different from the words used to describe the traits will often make the intent clear. This sentence identifies a single entity possessing multiple traits:

*A person who [entity] is both the owner and the operator of a taxicab [traits] shall report annually.*

In contrast, the following sentence identifies multiple entities, each possessing one or more traits:

*A person who [entity #1] is the owner of a taxicab [trait], who [entity #2] is the operator of a taxicab [trait], or who [entity #3] is both*

*the owner and operator of a taxicab [traits] shall report annually.*

These two examples also illustrate the rule that *and* is used to enumerate the traits of a single entity, while *or* is used to enumerate multiple entities. Many times, the same concept can be expressed either way. *The list includes entities A, B, and C* enumerates three classes of included entities; *the list includes each entity that is A, B, or C* enumerates a single class of entities possessing alternative qualifications.

## Or

The word *or* may be used in the inclusive sense, meaning *A or B, and possibly both*. Or it may be used in the exclusive sense, meaning *A or B, but not both*. *Or* is usually construed in its inclusive sense. In drafted documents, however, use *A or B, or both* to express inclusiveness and *either A or B, but not both* to express exclusiveness—if there is any real risk of ambiguity.

A related ambiguity exists when *or* is used to connect classes of entities from which a selection is to be made. For example, a contract might provide, *Seller shall ship 1,000 red or blue widgets*. If it is important to the buyer that all the widgets come from the same color class, then the contract should make that express by requiring the seller to ship *either 1,000 red or 1,000 blue widgets*. Otherwise, the seller might feel free to ship 500 of each color. ♦

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