Stay Active! (Part 1)

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Wow! That was one awful sentence—a real clunker. Do you know why? Look at it again:

It is essential that editing from passive to active voice be learned by writers, whether lawyers or nonlawyers.

Let’s dissect it a bit. Who is doing the action here? Who is learning? It’s writers, right? Yet you don’t see the actor—“writers”—until the end of the main clause of the sentence, after all the action words have come and gone. The sentence is just plain backwards. The actor is being done to, instead of doing.

You’ll hear writing experts refer to this as writing in the “passive voice” or using a “passive verb.” Whether you know the technical label or not, you want to avoid it because it tends to make your writing hard to read. You should also avoid it because, as many courts have observed, “[t]he passive voice can be ambiguous.” To avoid these pitfalls, lawyers should learn how to recognize passive voice and how to change it to active voice.

What is “active voice”?

Again, active voice means that the subject is “doing” the action in the verb instead of following the verb and being “done to.” But let’s keep it simple and think of active voice as the actor (or agent) doing the action.

That’s more vivid. We can look at the model of a typical sentence to illustrate this and to see the difference between active and passive voice:

Active = Actor (Subject) Action (Verb) Object
The attorney argued the motion.

Passive = Object Action (Verb) Actor (Subject)
The motion was argued by the attorney.

In practice, you probably won’t identify passive voice immediately as you’re reading a sentence. When it’s present, you’ll probably just read the sentence the first time and get the general feeling that it’s bad. Once you know it’s bad and you need to fix it, you can check for passive voice. You’ll be surprised how often passive-voice phrasing turns out to be the culprit in your clunky sentences.

Some before-and-after comparisons

Here are some examples of passive-voice writing and edits to make it active:

Passive: The argument was made by the hotel’s attorneys that the Commerce Clause could not be extended so far.
Active: The hotel’s attorneys argued that the Commerce Clause could not be extended so far.

In that sentence, the actors are the hotel’s attorneys. The action is arguing. Move them so that the actors are doing the action right at the beginning of the sentence:

Passive: The treatment was provided to Mr. Smith for two weeks by the hospital’s cardiac team.
Active: The hospital’s cardiac team treated Mr. Smith for two weeks.

Which style would you rather read over the course of a 20-page brief?

Sometimes the “actor” doing the action will be an inanimate thing rather than a person:

Passive: Recovery is prohibited by the statute if the injured person has not given timely notice to the insurer.
Active: The statute prohibits recovery if the injured person has not given timely notice to the insurer.

Transitions and introductory elements

Don’t forget that the active-voice preference does not mean that you must literally put the actor at the very beginning of every sentence. You shouldn’t hesitate to begin a

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“Plain Language” is a regular feature of the Michigan Bar Journal, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee. We seek to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain-English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901, or at kimblej@cooley.edu. For more information about plain English, see our website—www.michbar.org/generalinfo/plainenglish.
Active: The plaintiff must give notice to the EPA, the state agency, and the alleged violator at least 60 days before filing suit.

Why is it so important for lawyers to get into the habit of writing in the active voice and explicitly identifying the actor? Well, imagine if you drafted the following sentence in a commercial lease agreement for a big client:

All common areas must be maintained in good repair.

Hmmm . . . Who must maintain them? The lessor? The lessee? Isn’t that important? Crucial?

This flaw may seem obvious to you in this context (after all, you’re reading an article on avoiding the passive voice), but you’d be surprised how easy it is to lapse into the passive voice and omit the actor, especially if you dictate your documents.

And the consequences can be serious, as we’ll see next month.

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FOOTNOTE
1. See, e.g., Exxon Corp v Alaska, 34 P3d 786, 794 (Alaska 2001) and the cases cited within that opinion.