

CHAPTER 4: READING A BILL



To assess whether a bill will *serve the public interest* – and at what economic *and social* cost – you must *read and understand the bill on its face*.

This chapter aims to assist you in taking the first step: reading and understanding a bill. The next chapters suggest questions you should ask to determine whether a bill will likely serve the public interest.

A bill's printed pages *look different* from those of novels, magazines, or history and science texts. Most sentences begin with a number or letter. Some sentences seem to stop in the middle, followed by a new numbered subparagraph. They seem written in a strange language, with many almost unrecognizable words. Some appear so tangled that you can only try to puzzle them out.

ASK FOR CLARIFICATION

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As you examine a bill on its face, keep in mind three essential points:

1. For historical reasons, people used to believe that judges constituted the law's only important readers. Today, especially for development, transformatory law must change behaviors. Drafters must draft so that the people whose behaviors the law aims to change can read and understand what the bill says. If you do not understand a bill, neither will its addressees; the drafter has drafted it badly.
2. Do not listen to the drafter who says that, for 'legal' reasons, a bill requires hard-to-comprehend words or sentences. If drafters cannot explain a section in simple terms, they themselves probably do not know its meaning. *Nothing* in the law defies explanation in simple terms. If a bill's addressees could not readily understand it, send it back for redrafting.
3. Remember: Your constituency elected *you* – not the drafters. Government drafters should provide the information you need to exercise your legislative power wisely.

A law prescribes how a primary role occupant and designated implementing agency officials should behave (see the Model of the Legal System, p. 27). It consists of a series of **rules**. Each **legislative sentence** specifies what someone **must, may not or may do**.

You might think of a bill as an onion. To get at its core meaning, you must peel back layer after layer. To help you peel back those layers, this chapter explains

- A. Why drafters number practically every sentence, and formally organize a bill into Sections, Chapters, and Parts:
- B. Why most lawyers (including drafters) frequently use a strange dialect ('legalese');
- C. The meaning of a bill's 'technical' sections; that the individual, numbered sections -- each composed of a single narrow command, prohibition or permission — constitute the bill's basic building blocks; and
- D. In the context of the existing legal system, the bill's prescriptions of behaviors comprise the bill's substantive thrust: its legislative content.

A. A BILL'S FORMAL ELEMENTS



In a bill, numbers or letters denote titles, parts, divisions (or chapters), and sections.

A bill's numbering system identifies the separate commands that together make up that bill. Drafters number sections (articles) so that, in legislative debates or in court, lawmakers and judges can refer to particular ones. Drafters group sections that deal with a single issue into a Chapter, and Chapters that have some common attribute into a Part.

A bill's formal structure follows the form similar to that of any outline:

Part I

Bills everywhere follow that outline form, but different jurisdictions' drafting conventions assign different names to the outline's various levels. (The names of a bill's levels should conform to your country's practice.)

Chapter 1
Section 1
Section 2
Subsection (1)
Subsection (2)
Section 3
Chapter 2
Section 4
Section 5
Part II
Chapter 3
Section 6
Section 7



1. **"Sections"** (some jurisdictions call them Articles) constitute a bill's basic building blocks. A section should contain no more than one 'legislative' concept, that is, a *single* rule (see Section C below).
2. **"Chapter" (or "Division")**. Some jurisdictions call a group of sections within each part, 'Chapters,' while others use 'Divisions'. Most jurisdictions number chapters (or divisions) consecutively throughout a bill. Many simple bills include no level higher than chapters, and even simpler ones, no level higher than sections.
3. **"Part"**. Conventionally, usually numbered consecutively by a Roman numeral ("I" or "II"), Parts constitute a bill's largest divisions. If a bill contains a large number of parts, each of which might stand alone, you should consider whether its sponsors tried to resolve too many diverse problems in one law (called 'stuffing a bill,' see Chapter 5).
4. **"Title"**. Only a few jurisdictions use the word "Title" to mark a division in a single bill. Historically, law-makers published statutes in the order of the dates of their promulgation. Today, some jurisdictions **codify** their laws, putting them together in a single giant compilation. (Those who can put them in a computerized form). They insert each new law into that compilation, and use the label "Title" to cover all the laws concerning a particular subject, like "Education," "Transportation," or "Prisons."

Understanding the bill's numbering system should help you to peel back the bill's first layer. The language in which drafters expresses commands in each section may appear as a second impenetrable layer.

NAMES OF DIFFERENT LEVELS

B. THE LAW'S LANGUAGE

If in your country's drafters write bills so the ordinary person can understand them, move onto Section C below - and rejoice!

In most of the world, drafters write a strange, convoluted, unfathomable language. Some call it 'legalese'.

Complex legal words fall into two categories. Some reflect the requirements of law's specialized subject-matter. Others merely obscure plain meanings.

1. **Law's specialized vocabulary.** Like most professions, law sometimes requires elements of a specialized vocabulary. To illustrate: In different relationships, a person may promise to do something: To pay a debt, to complete a building pursuant to a contract, to deliver some promised goods. Another person may promise to perform if the first promisor does not. The **law of guarantees** uses specialized words for elements common to all those kinds of promises: 'Principal' means the debtor who promises to pay or to perform some other duty; 'surety' means a person who promises to pay the debt or perform the duty if the principal defaults. To understand some bills' specific subject-matter, you have to learn the relevant specialized vocabulary. ***If you do not understand the words used, ask!***
2. **'Legalese'.** Often, however, drafters use unnecessarily complicated words, and long, tortuous sentences. **Insist that they re-write them in plain language.**



AN EXAMPLE OF LEGALESE IN THE ENGLISH DRAFTING TRADITION

Read and weep.

From the Zambian Cooperative Societies statute:

"The minority or nonage of any person duly admitted as a member of any registered society shall not debar a person from executing any instrument or giving any acquittance necessary to be executed or given under this Ordinance or the rules made thereunder, and shall not be ground for invalidating or avoiding any contract entered into by any such person, whether as principal or as surety, [and that contract] shall be enforceable at law against such person notwithstanding his minority or nonage."

Translation: "A cooperative may enforce a contract between the cooperative and a cooperative member younger than the country's age of majority."

EXAMPLE

50 England, historical circumstances encouraged drafters to use legalese. Before England

established a central drafting office in 1869, ministers hired conveyancers to draft bills. Conveyancers (long paid by the word to write deeds and wills for landed interests) used the same language to draft bills. Central drafting office drafters adopted the same form and style. They taught it to drafters in the colonies, where obscure vocabulary and convoluted legalese gave colonial officials and judges broad discretion to rule pretty much as they wished. Unfortunately, not a few post-colonial and transitional government drafters still grant broad discretion by using hard-to-understand legalese.

If you recognize a bill's underlying pattern, however, you can understand it even when written in the densest legalese. To discover a bill's pattern, try to decode the words the drafter used to write it.

THOMAS JEFFERSON ON LEGALESE

Thomas Jefferson, one of the authors of the United States' Declaration of Independence and the United States' second President, wrote that those authors decided:

“to reform the style of the later British statutes and of our Acts of Assembly, which by their verbosity, their endless tautologies, their involutions of case within case and parenthesis within parenthesis, and their multiplied efforts at certainty, by *said*s and *aforesaid*s, by *ors* and *ands*, to make them more plain, do really render them more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves.”

EXAMPLE

A quick review of present U.S. drafting reveals that Jefferson and his colleagues failed to persuade all future U.S. drafters.

For many legalese words, drafters could find plain-language equivalents. At a dinner meal I said, “Those strawberries look delicious. Please pass the said strawberries,” my friends might well look at me with alarm. ‘The said strawberries’ here only means ‘those strawberries.’ Words like ‘said’, ‘such’, ‘heretofore’, ‘hereinabove’, ‘whereas’, or ‘provided that’, serve no function useful to the law.



In many *legalese* phrases – ‘to have and to hold’, ‘null and void’, ‘give, devise, bequeath, grant and bequest’, ‘building or structure’, ‘lot, tract or parcel of land’ – two words mean the same thing. The drafter could easily delete one.

If you do not understand a word in a bill, ask what it means. If, like ‘surety’ it constitutes a technical term, insist that the bill define it in lay terms. If a word like ‘said’ or ‘hereinbefore’ seems meaningless, insist that the drafter use plain English. If a bill includes redundant words or phrases, insist that the drafter use one or the other, not both.

3. Definitional clauses: Frequently, a statute begins with a section entitled ‘Definitions.’ In a long statute, the definition section may go on for pages.

DEFINITIONS: SOME EXAMPLES

"In this Act –

What purpose does this section serve?



"1. 'Television dealer' means a person who by way or trade or business

- (a) sells television sets by retail;
- (b) lets such sets on hire or by hire purchase;
- (c) arranges for such sets to be sold or let as aforesaid by another television dealer; or
- (d) holds himself out as willing to engage in any of the foregoing activities;

"2. 'animal' includes whales and other mammals living in the sea.

"3. 'vehicle' does not include a wheelchair."

Many people either

- (a) assume a slog



- (b) throw up their hands and retire — cursing the whole tribe of drafters.

A drafter might put a bill's definitions in one of two places in a bill:

1. List the definitions of key words alphabetically in a glossary at the beginning or end of the bill (preferably the end) so readers can look up the meanings of words as needed. Unfortunately, a

reader's failure to look up important words might lead to significant misunderstandings.

2. Stipulate an important word's definition in the text where that word first appears. Then, at the end of the bill, list those words alphabetically in a glossary, specifying the page numbers where the reader can find their definitions.

Make sure that, whenever a word or concept appears more than once in a bill the drafter always uses the same definition for it. Throughout the (fictional) bill in the previous example, for example, the word 'television dealer' should always have the meaning given it in the bill's definition section.

USING A DEFINITIONAL SECTION

Suppose Section 2 of a bill defines 'television dealer' as defined in the above example. Section 5(1) of the same bill reads as follows:

"5. Forwarding document of sale to National Tax Office.

"1. Upon request by the *television dealer*, the Department of Taxation shall supply to the *television dealer* a form that indicates the date of a sale or contract to sell a television set that the *television dealer* has entered upon, and the name and address of the purchaser."

The reader should substitute the definition set forth in example No. 1 on p. 52 wherever "television dealer" appears. *In Section 5, above, that would require repeating that lengthy definition in three places. By using the word as defined in the bill's definition section, the drafter avoids lengthy repetitions throughout the bill.*

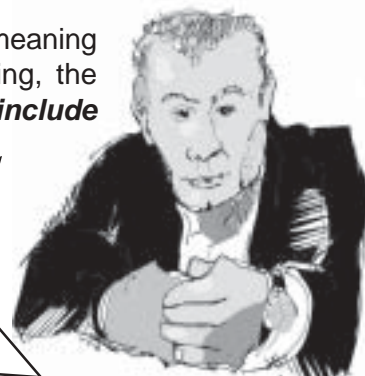
EXAMPLE

Bills include definitions for either of two reasons. First (as shown in the previous box) in some statutes, drafters must use many, sometimes even a long list, of words to describe a complex concept. Using the word(s) as defined in the bill's definitions section throughout the statute avoids tedious repetition and increases the bill's readability .

Second, a definition helps to avoid the vagueness inherent in every word (proper names excepted). Consider the word 'vehicle' in a municipal ordinance that states "A person may not drive a motor vehicle in a city park." Plainly, the ordinance prohibits a person from driving an automobile in a city park. Yet reasonable speakers of English could disagree as to whether the bill prohibited motor-driven wheelchairs. To avoid disagreement, a drafter could expressly define the word 'vehicles' to **exclude** 'wheelchairs.'

Occasionally, a drafter may intend a bill's reader to construe a word to include in its meaning items that, in ordinary language, that word might exclude. To avoid misunderstanding, the drafter should define the word in the bill, for example, by defining 'animals' **to include** whales and other sea mammals.

This section peeled back a second layer of confusion about a bill - that of language. The next peels back a third layer -- **that a bill prescribes specified social actors' behaviors.**



C. THE STRUCTURE OF A SECTION

As a bill's basic building block, a section constitutes a single rule, a **prescription**. Sometimes that prescription seems hidden behind a thicket of dense language. As you analyze a section's words, keep in mind that you need to identify the behaviors they prescribe. **With very few exceptions (usually less than 5 per cent) each section of a well-drawn bill commands, prohibits or permits a social actor to behave as it prescribes.** (Even the remaining 5 per cent constitutes commands, although of a peculiar sort; see Section D, below.) Always ask, does a section properly tell the reader, **Who? What? When? and Where?**



Who?

To answer the question, **'Who?'** look for the person whose behavior the section prescribes. A language expert would tell you to identify the sentence's **subject**. (Mistakenly using a passive voice, a drafter may fail to specify the rule's **subject**. Take a legislative sentence that states, "The accounts of the Small Claims Court shall be audited at least twice a year." Does it state **Who** will audit the accounts?) **If you cannot discover the subject of a sentence, insist that the drafter redraft it.**



What?

The question, **'What?'** tells you to look at how the sentence commands the person (the 'subject') to behave. A language expert would tell you to look at the sentence's **verb**. Does the section's prescription command, prohibit, or permit a subject to 'behave' as the verb indicates? For that, language experts would tell you to look at the section's **auxiliary verb**: by convention in English, drafters use **'shall'** (in some jurisdictions, 'must') for a command; **'may not'** (or 'shall not'), for a prohibition; and **'may'** for a permission. If a bill's section does not limit the prescription, it applies at all times and under all conditions.



Where and when?

Most sections do specify **where** and **when** the command, prohibition or permission goes into effect. A section may limit the behavior prescribed – the **When?** and **Where?** — by stating a **case**, a **condition**, or an **exception**.

1. A **case** modifies either
 - a **subject**: “An individual who has passed that individual’s eighteenth birthday may vote in a national election.” This sentence **limits** the **subject** to an individual **who has reached 18 years of age**.
 - a **verb**: “[Under specified circumstances, a person] may vote **by absentee ballot**.” This sentence limits the **verb, ‘to vote,’** to voting by an absentee ballot.
 - the **object** of the verb: “[Under specified circumstances] a person may cast **a paper ballot**.” This limits the **object** (the kind of ballot the voter may cast).
2. A **condition** states **what** must happen **before the rule comes into force**: “If an individual has passed that individual’s eighteenth birthday, that individual may vote in a national election.” (Usually the words **‘if’** or **‘where’** precede a condition.)
3. In the **exception**, the prescription states a general rule applying to the whole domain, and then carves a portion out of it – the **exception** – limiting the prescription to only that part of the whole domain not excepted. “Except when an individual’s eighteenth birthday has not passed, an individual may vote in a national election.” (Usually, the word **‘except’** precedes the ‘exception’.)

All three forms tell the reader the circumstances in which the permission granted (that is, to vote in a national election) comes into effect.

EXERCISE: DISENTANGLING A BADLY-DRAFTED SECTION

Use the four key questions — *Who? What? When? and Where?* – to unpack the following statute:

“ACT OF JULY 3, 1939 40 STAT. 850 (1031) [U.S.A.]

”Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Narcotics is authorized and empowered to pay to any person, from funds now or hereafter appropriated for the enforcement of the narcotic laws of the United States, for information concerning a violation of any narcotic law of the United States, resulting in a seizure of contraband narcotics, such sum or sum of money as he may deem appropriate, without reference to any moieties or rewards to which such person may otherwise be entitled by law: Provided, That all payments under authority of this Act to any informer in any foreign country shall be made only through an accredited consul or vice consul of the United States stationed in such country; and every such payment must be supported by a voucher with an accompanying certificate of the said consul and vice consul that the payment of the amount stated on the voucher has been made to the informer named, and at the place and time specified on said voucher.”

... is this English?



By identifying the who, what, where and when, you can explain what this horribly written statute means. Redrafted, it might read like this:

“(1) **Payment of reward.**

- (a) The Commissioner of Narcotics (***the who***) may pay a reward to a person who provides information concerning a violation of a United States narcotics law (***the what***).
- (b) The Commissioner may make that payment only if the information leads to a seizure of contraband narcotics.

[The remainder of the bill might specify the ***Where*** and the ***When***, that is, the ***limits*** on the powers granted to the Commissioner]

(2). **Amount of reward.** Without taking into consideration an award which some other law may allow to the person providing the information, the Commissioner may pay the reward mentioned in (1) in an amount that the Commissioner determines.

(3). **Payment made in a foreign country.**

- (a) If paid to a person in a foreign country, the Commissioner shall pay the reward mentioned in (1) through a United States consul or vice consul stationed in that country.
- (b) The Commissioner shall accompany the Commissioner’s report of a payment made pursuant to 3(a) with a certificate by the consul or vice consul that the consul or vice consul made that payment in the amount, to the person, and at the place and time stated in the report.

(4) **Source of funds.** The Commissioner shall pay an award pursuant to section 1 out of funds appropriated for the enforcement of the narcotic laws of the United States.”

Note: the bill makes no provision for accounting for rewards paid to informers in the United States — an omission that only becomes clear when one breaks the bill down into more manageable sections.



These four questions – the ***Who?*** the ***What ?*** and (where relevant) the ***Where?*** and the ***When?*** – focus attention on a section as a single prescription. Once you understand a bill's formal structure of sections, chapters and parts, and what the individual words and sentences mean on their face, the answers to these four questions will give you a grasp on the meanings of about 95 per cent of that bill's substantive commands.



AHA!

D. DISCOVERING THE BILL'S SUBSTANCE


After you have peeled back the layers of legalisms in which drafters couch their bill's commands, after you understand its various prescriptions and its 'technical' provisions, you should find it easier to **assess** the bill as an integrated whole. Its prescriptions may aim either to change an existing institutional structure, or, more rarely, to create a whole new institutional structure.

The bill's text gives you no direct information to enable you to determine whether or how the new law, once enacted, will function. To make an estimate of the bill's probable social consequences, you must understand the bill's substantive core, the central purpose and thrust of all its commands.

If, in the context of existing law, the relevant actors behave as the new law's rules prescribe, they will **create or change eight different kinds of interrelated institutional sub-systems** – an entire legislative system – embodied in the existing legal order.

A complete legislative scheme prescribes behaviors that institute eight subsystems. It consists of rules addressed to:

1. Primary role occupants.
2. Principal implementing agencies.
3. Sanctioning agencies.
4. Dispute-settlement agencies
5. Funding agencies.
6. Monitoring and evaluation agencies.
7. The agency that makes regulations under the law.
8. The personnel who keep the corpus of the law in order.



Whether the new law will prove effectively implemented and achieve its stated purposes depends on whether and how each of those sub-systems affects and becomes affected by the relevant actors' prescribed new behaviors.

A simple bill, like one prohibiting spitting on the sidewalk, may expressly address only one aspect of one sub-system (see example on page 58). When enacted, however, the new law will exist in the context of other laws that provide for the on-going operation of the other seven sub-systems. Assuming the other seven sub-systems function reasonably well, you can assess a simple bill on its face.

A large and complex bill (for example, a bill creating a new University or a new Agricultural Bank) may incorporate rules affecting all sub-systems.

HOW A BILL FITS INTO THE EXISTING LEGAL ORDER'S SUBSYSTEMS OF A LEGISLATIVE SCHEME

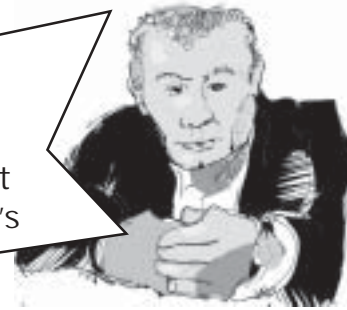
Consider a simple bill forbidding spitting on the sidewalk in urban areas. It contains only a few short sections.

- “1. [Short title]
2. Within the boundaries of an incorporated city, a person may not spit on the sidewalk.
3. A court shall convict a person of an offence whom after a hearing it finds violated section 2 and fine that person not more than \$50.”

This bill, on its face, only prescribes part of the behaviors of two subsystems – the primary role occupants and the sanctioning agency (see diagram, p. 27). It assumes that elsewhere in the body of law exist other rules addressed to the relevant actors in other subsystems. These implicit prescriptions include rules addressed to:

1. *The implementing agency.* The police, whom an existing Police Act usually commands to arrest a person they have reasonable ground to believe committed an offence (here, spitting on the sidewalk).
2. *The sanctioning agency.* The prosecutors and the judges for whom the existing Court Act and Criminal Procedures Act prescribe procedures for bringing an accused person to trial and deciding its outcome.
3. *The dispute-settlement agency.* Frequently (as here), the courts serve simultaneously as both the sanctioning agency and the dispute-settlement agency. Existing procedural laws prescribe how courts should hold criminal trials and settle disputes over guilt or innocence.
4. *Funding agencies* which, under existing budget and finance laws, provide funds for the police and the courts.
5. *Monitoring and evaluating agencies.* Existing law usually requires the elected legislature to oversee government's implementation of laws. The Chief of Police's annual report on the incidence of crime may list the number of people arrested for spitting on the sidewalk, an indication of whether the police enforce the new law.
6. *The rule-making agencies.* In many laws (particularly those that aim to transform an institution), some agency must make and promulgate detailed regulations. In complex legislative schemes, without detailed rules, the scheme will not work. Either in the bill proposing complex legislation, or elsewhere in the body of the law, authorization to make detailed rules must exist together with criteria and procedures for doing so (see Chapter 6).
7. *The people who keep the corpus of the law in order.* The bill's section 1 constitutes a command to those concerned with the law.

This manual's next chapters show how legislative theory provides a guide for asking the questions to assess whether a proposed bill will likely ensure that each of these subsystems contribute to the new law's effective implementation.



SUMMARY:

FIVE STEPS TO UNDERSTANDING A BILL

In short, to understand a bill, you should take five steps:

1. Outline the bill, following its numbering system for Sections, Chapters, and Parts. Fill in the Chapter and Part headings from the bill.
2. Read each section carefully. Make sure that you understand the words it uses. Don't let legalese upset you. Insist that the bill's sponsors and drafters explain each word with which you have difficulty.
3. Analyze each section by asking, **Who** does **What?** Under **what limits** or circumstances? **When?**
4. Disentangle the 'technical' sections by interpreting them as commands, especially to government officials about how to fit the bill into the existing body of law.
5. Complete the outline you started in step 1 by putting each of the commands related to one of the subsystems into a separate group. Where, as frequently happens, the bill says nothing about a whole subsystem, ask whether another law will work to provide for that function. (For example, in the absence of a specific dispute settlement system, ask, will your country's court system adequately settle disputes arising under this bill?)

Having completed those five steps, you should understand the bill well enough to decide whether it merits your support – that is, you are at last in position to assess the bill.

This manual's first chapters built a theoretical basis to enable you to understand a bill and the criteria for assessing it. This chapter has emphasized that you should ask more detailed questions about **who** the bill commands, prohibits or permits to **do what**; and the nature and consequences of the **limits** it imposes on those prescriptions. The remaining chapters provide a **methodology for assessing whether, in the public interest, the bill's substantive prescriptions will likely facilitate democratic social change.**



EXERCISES

1. Explain why **outlining** a bill constitutes the first step in assessing it.
2. You ask a drafter what a phrase in the bill means. He replies, “Don’t worry about it. That’s only technical language necessary to ensure the bill’s legality. You have to be a lawyer to understand that phrase.” How would you reply to the drafter?
3. “In a well-drawn bill, almost every sentence **commands, permits, or forbids.**” What does that proposition reveal about the nature of the law? Is it consistent with the proposition that almost every sentence in a bill must state **Who does What?** How might you use that proposition in asking questions about the meaning of a section of a bill?
4. Whether in the bill itself, or in other, existing applicable legislation, a complete legislative scheme’ contains some ‘technical’ provisions. Give some examples of these ‘technical’ provisions. Why does every legislative scheme include some of these?
5. “Whether contained in the bill before you or in other, existing legislation, a complete legislative scheme contains prescriptions addressed to eight sets of addressees.” Who constitute those eight sets of addressees? How might you use that information to help you to assess a bill?