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When Punctuation Sets Precedent: A Lesson for Companies, Everywhere

By Loraine M. DiSalvo

In the legal profession, precedent is a key pillar of litigation. Cases are almost always stronger when an attorney can establish precedent—a prior court decision or other proceeding that serves as authoritative support for a particular argument. Precedent comes in many forms, but rarely does it hinge on something as seemingly trivial as a comma.

In March, that's exactly what happened. You might have seen news articles about the "Oxford comma case," in which a Maine judge ruled in favor of a group of truckers suing for overtime. In this case, a single punctuation mark (technically, the lack thereof) formed the foundation for the plaintiffs' entire argument—and they won. Whether there may be another "Oxford comma case" buried in the annals of history we don't know, but you can be certain that this one has firmly established precedent, moving forward.

It's making companies everywhere rethink how they write their policies.

The Oxford comma, also known as the serial comma, is the final comma in a list of things. In a sentence, it goes right before a conjunction, such as "and," to connect a series. The Oxford comma has both fans and detractors, but in this particular case, failure to use it cost a trucking company a lot of money.

Here's the gist: This particular union's rules, under which the truckers were governed, state that workers do not receive overtime pay for "the canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of agricultural produce." The workers construed that to mean "packing for shipment or distribution," which meant that distribution itself was not a protected, listed activity.

Management at their company, Oakhurst Dairy, intended the phrase to describe not one work product, but two, with one being packing for shipment and the other being distribution. The judge sided with the workers, and some writer at the union is probably scurrying to update the rule book and remove the ambiguity, while the person who wrote it may be looking for a new job – all due to the absence of the serial comma.

I have always been a strong proponent of the Oxford comma. I believe everyone—and especially anyone with legal exposure or responsibilities—should use the Oxford comma. It is essential when a sentence is ambiguous, like the one that helped the truckers win their argument (and some back pay).



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Language is fluid, and in today's hurried, digital world, many writers feel they can take a less formal approach to their prose. I have seen news articles by reputable companies that read as if they were written by third graders. From my perspective, while many organizations may feel it's acceptable to publish less-than-flawless work, it's not acceptable for anyone in the legal profession.

Good, clear writing is essential to making persuasive arguments. The idea that a simple comma could make or break a case should be a wake-up call for everyone. Leave the careless writing and punctuation to the social bloggers. Our clients pay us to be consummate professionals, and we should work every day to earn their trust—Oxford comma included.