

Legal Drafting:

20 Common Mistakes to Avoid

The errors that undermine contracts, pleadings, notices, and legal documents — with examples and corrections

Good legal drafting is not about flowery language or impressive vocabulary. It is about precision, clarity, and ensuring that what you write achieves its intended legal purpose without ambiguity. Whether you are drafting a contract, a legal notice, a pleading, or a client email, the same fundamental principles apply. The 20 mistakes in this guide are the most common — and most consequential — errors made by law students, junior lawyers, and even experienced practitioners.

Category A — Language and Clarity Errors (Errors 1–5)

1**X
WRONG**

The Party of the First Part shall hereinafter be referred to as the Vendor and shall undertake to deliver the goods to the Party of the Second Part...

**✓
RIGHT**

"Vendor" means ABC Pvt. Ltd. "Purchaser" means XYZ Pvt. Ltd.

Archaic phrases like 'Party of the First Part' or 'hereinafter' are relics of 19th-century drafting. Modern legal drafting uses plain, defined terms from the outset. Define your parties and key terms upfront in a Definitions clause, then use those defined terms consistently throughout.

💡 *Defined terms should always be capitalised when used (e.g., 'the Vendor shall deliver') to signal they carry a specific contractual meaning.*

Error 1 — Using archaic and verbose language instead of plain defined terms

2**X
WRONG**

The Vendor shall deliver the goods in a reasonable time and at a reasonable price...

**✓
RIGHT**

The Vendor shall deliver the Goods within 14 (fourteen) calendar days of the Order Date at the price specified in Schedule 1.

Vague words like 'reasonable', 'adequate', 'sufficient', and 'timely' are among the most litigated terms in contract law. They invite disputes because parties invariably have different views on what is 'reasonable'. Replace every vague qualifier with a specific, measurable standard.

💡 *Ask yourself: if this clause went to court, could a judge determine the exact obligation from the text alone? If not, it is too vague.*

Error 2 — Using vague qualifiers instead of specific, measurable standards

3

X
WRONG

The Vendor shall deliver the Goods and the Purchaser will pay the price within 30 days...

✓
RIGHT

The Vendor shall deliver the Goods within 14 days of the Order Date. The Purchaser shall pay the Purchase Price within 30 days of delivery.

Mixing 'shall' and 'will' in a legal document creates interpretive ambiguity. In legal drafting, 'shall' denotes a mandatory obligation, 'may' denotes a discretionary right, and 'will' is generally avoided. Use these words consistently and intentionally throughout every document.

💡 A useful rule: if the sentence imposes an obligation on a party, use 'shall'. If it confers a right or option, use 'may'. Never use 'will' for legal obligations.

Error 3 — Confusing 'shall', 'will', and 'may'

4

X
WRONG

The Vendor shall deliver the goods. They shall ensure quality. It shall be packed securely...

✓
RIGHT

The Vendor shall deliver the Goods. The Vendor shall ensure the Goods meet the Quality Standards. The Vendor shall ensure the Goods are packed securely.

Pronouns like 'they', 'it', 'he', and 'she' create dangerous ambiguity when multiple parties or subjects appear in a clause. In legal drafting, always repeat the defined term rather than use a pronoun. Clarity is more important than elegant prose.

💡 This error is especially common in indemnity clauses and liability provisions where the responsible party must be completely unambiguous.

Error 4 — Using ambiguous pronouns instead of repeating the defined term

5

X
WRONG

The Purchaser shall pay the price, i.e., the amount due for the goods, and also the taxes applicable on such goods, etc.

✓
RIGHT

The Purchaser shall pay: (a) the Purchase Price as specified in Schedule 1; and (b) all applicable taxes, including GST, as may be levied under applicable law.

Latin abbreviations like 'i.e.', 'e.g.', and 'etc.' are ambiguous and imprecise in legal documents. 'Etc.' in particular is never acceptable — it suggests open-ended obligations or lists that could be interpreted broadly or narrowly. Always enumerate specifically.

💡 'And/or' is another construction to avoid — it is logically ambiguous. Use 'and' or 'or' based on your intended meaning, or draft two separate sub-clauses.

Error 5 — Using 'etc.', 'i.e.', 'e.g.' and 'and/or' in operative clauses

Category B — Structure and Organisation Errors (Errors 6–10)

6

X
WRONG

Clause 5.3: The Vendor's liability shall not exceed INR 10,00,000. Clause 2.1: Defined terms include 'Liability Cap' meaning the maximum liability of the Vendor...

✓
RIGHT

Clause 1: Definitions. 'Liability Cap' means INR 10,00,000. Clause 8: Limitation of Liability. The Vendor's liability shall not exceed the Liability Cap.

Definitions must precede operative clauses. When a defined term is used before it is defined, the reader — and a court — cannot understand the obligation. Establish all key definitions in a dedicated Definitions clause at the top, then deploy them consistently throughout.

💡 For long agreements, consider a standalone Schedule of Definitions at the beginning. Cross-reference the Schedule in Clause 1 of the operative agreement.

Error 6 — Defining terms after they are already used in the document

7

Error 7 — Cramming multiple obligations into a single clause

- ▶ Each clause should contain one obligation, one right, or one condition — not several bundled together.
- ▶ A clause that says 'The Vendor shall deliver, install, test, and provide training for the Software within 30 days' creates enforcement problems if only some obligations are met.
- ▶ Break multi-obligation clauses into numbered sub-clauses: 7.1 (deliver), 7.2 (install), 7.3 (test), 7.4 (training) — each with its own timeline and condition.
- ▶ The one-obligation-per-clause rule also makes it easier to identify breaches and calculate damages.

💡 Courts interpret ambiguous multi-obligation clauses against the drafter. Clear sub-clauses protect your client.

8

X
WRONG

...as stated in Clause 4 above... / ...as provided in the relevant clause...

✓
RIGHT

...as provided in Clause 7.3 (Delivery Obligations)... / ...subject to Clause 12.1 (Force Majeure)...

Vague internal cross-references ('as stated above', 'the relevant clause', 'subject to applicable provisions') are meaningless in a commercial document. Always reference the exact clause number and, where helpful, the clause title. If clause numbers change during negotiation, update all cross-references before finalising.

💡 In long agreements, use a defined term for frequently referenced provisions: "'Force Majeure Clause' means Clause 12.1.' This makes targeted amendments faster and reduces errors.

Error 8 — Using vague internal cross-references

9

Error 9 — Inconsistent numbering, formatting, and defined term capitalisation

- ▶ Inconsistency in numbering (Clause 3, then 3a, then III) signals a poorly proofread document and can create enforceability arguments.
- ▶ Defined terms must be capitalised consistently throughout. 'Vendor' and 'vendor' in the same document create an argument that they refer to different things.

- ▶ Font, spacing, and indentation must be consistent — formatting errors suggest a document was assembled from multiple precedents without review.
- ▶ Before finalising any document, run a defined terms check: every word that appears capitalised should be defined somewhere; every defined term should be used consistently.

💡 Use MS Word's Find & Replace to check for inconsistencies in defined terms. A single unreplaced 'seller' in a contract defined to use 'Vendor' can create a dispute.

10 Error 10 — No recitals or poorly drafted recitals

- ▶ Recitals (the 'Whereas' clauses) provide the background and context for an agreement. Courts use them to interpret ambiguous operative clauses.
- ▶ Recitals should accurately describe the parties, the transaction, and the purpose of the agreement — not just copy-paste boilerplate.
- ▶ Never include obligations in recitals. Recitals provide context; obligations belong in operative clauses.
- ▶ Poorly drafted or inaccurate recitals can be used by an opposing party to argue a different interpretation of key operative terms.

💡 Indian courts have consistently held that recitals can assist in construing ambiguous operative clauses. Draft them carefully.

Category C — Contract-Specific Drafting Errors (Errors 11–15)

11

X
WRONG

Either Party may terminate this Agreement by giving notice to the other Party...

✓
RIGHT

Either Party may terminate this Agreement by giving not less than 30 (thirty) days' prior written notice to the other Party, delivered in accordance with Clause 15 (Notices).

Termination clauses without defined notice periods, notice methods, or cure periods are frequently litigated. A complete termination clause must specify: (a) the notice period, (b) the form of notice (written), (c) the delivery method, and (d) whether there is a cure period for remediable breaches.

💡 Distinguish between termination for convenience (either party, no fault required) and termination for cause (breach-triggered). They have different consequences for damages and surviving obligations.

Error 11 — Vague or incomplete termination clauses

12

X
WRONG

In the event of any dispute arising out of this Agreement, the parties shall resolve it amicably...

✓
RIGHT

Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996, by a sole arbitrator appointed by mutual consent. The seat of arbitration shall be New Delhi. The language of arbitration shall be English.

Dispute resolution clauses that say only 'resolve amicably' are legally unenforceable as standalone mechanisms. Every agreement needs a clearly specified: (a) mechanism (negotiation, mediation, arbitration, or litigation), (b) governing law, (c) jurisdiction or seat, and (d) number of arbitrators if arbitration is chosen.

For Indian contracts, specify the seat of arbitration carefully — it determines which High Court has supervisory jurisdiction over the arbitration.

Error 12 — Incomplete or unenforceable dispute resolution clauses

13 Error 13 — Omitting or poorly drafting the indemnity clause

- ▶ Indemnity clauses that are too broad ('indemnify against any and all losses whatsoever') may be unenforceable or read down by courts.
- ▶ Always specify: who indemnifies whom, against what category of loss, arising from which events, and subject to what cap (if any).
- ▶ Include a procedure clause: the indemnified party must notify promptly, give the indemnifier control of the defence, and not make admissions.
- ▶ In Indian law, indemnity under the Indian Contract Act, 1872 is narrower than common law indemnity — be explicit about the scope and include losses beyond those caused by the indemnifier's direct acts.

Consequential loss and indirect damages are typically excluded from indemnity — if you want them included, say so explicitly.

14

**X
WRONG**

This Agreement shall be governed by Indian law and disputes shall be subject to the jurisdiction of Indian courts...

**✓
RIGHT**

This Agreement shall be governed by and construed in accordance with the laws of India. The parties submit to the exclusive jurisdiction of the courts at Mumbai, Maharashtra.

Governing law and jurisdiction clauses must be specific. 'Indian courts' is not a jurisdiction — India has hundreds of courts. Specify the city and state. For multi-party or international agreements, also specify whether jurisdiction is exclusive or non-exclusive.

Exclusive jurisdiction clauses prevent parties from litigating elsewhere. Non-exclusive clauses allow either party to bring proceedings in any competent court — know which you are drafting.

Error 14 — Vague governing law and jurisdiction clauses

15 Error 15 — Using a precedent without reading or adapting it

- ▶ Copying a precedent agreement without reading it fully is one of the most common — and dangerous — drafting errors. Precedents are starting points, not finished products.
- ▶ Failing to remove inapplicable clauses (e.g., GDPR clauses in a domestic Indian agreement) creates confusion and may generate unintended obligations.
- ▶ Failing to update party names, addresses, dates, governing law, and jurisdiction throughout the entire document is embarrassingly common — and professionally damaging.
- ▶ Always run a search for placeholder text ('[INSERT]', 'TBD', 'XX') before sending a document to a client or counterparty.

A document sent to a client with the wrong party name, a previous client's name, or placeholder text left in is a serious professional error that undermines trust immediately.

Category D — Pleadings and Notices Errors (Errors 16–20)

16

Error 16 — Drafting a plaint or petition without establishing cause of action clearly

- ▶ Every plaint must establish the cause of action with particularity — who did what, when, where, and why it gives rise to a legal right to sue.
- ▶ Vague averments like 'the Defendant acted illegally and caused harm' are not a cause of action. Specify the act, the legal provision violated, and the resulting injury.
- ▶ In Indian civil procedure (CPC), the cause of action paragraph is fundamental — courts may return a plaint if the cause of action is not clearly stated.
- ▶ Separate facts from legal submissions — facts in the 'Facts' section, legal arguments in the 'Grounds' section.

💡 Under Order VII, Rule 1 of the CPC, the plaint must contain the facts constituting the cause of action and when it arose. Missing this invites rejection at the threshold.

17

X
WRONG

It is therefore humbly prayed that this Hon'ble Court may graciously deign to grant the relief of an injunction restraining the Respondent from the acts complained of, and such other reliefs as this Court in its wisdom may deem fit and proper...

✓
RIGHT

It is therefore prayed that this Hon'ble Court may be pleased to: (a) grant an ad interim ex parte injunction restraining Respondent No. 1 from alienating, encumbering, or transferring the suit property; and (b) pass any other order as this Court deems fit.

The prayer clause is arguably the most important part of any petition or application — yet it is routinely drafted with excessive flattery and vague language. Courts grant what is specifically prayed for. An imprecise prayer results in imprecise relief. Draft prayers in numbered sub-clauses with specific, actionable reliefs.

💡 Never rely solely on the omnibus 'such other relief as this Court deems fit' prayer. It will not substitute for a specific prayer that you forgot to include.

Error 17 — Vague and flowery prayer clauses in pleadings

18

X
WRONG

TAKE NOTICE that you have committed a breach and you are hereby called upon to remedy the same within a reasonable time failing which we shall take such legal action as we deem appropriate...

✓
RIGHT

TAKE NOTICE that on [date], you committed a breach of Agreement dated [date] by failing to deliver the Goods by the agreed delivery date of [date], in violation of Clause 5.1 thereof. You are hereby called upon to remedy the said breach within 15 (fifteen) days of receipt of this notice, failing which our client shall terminate the Agreement and initiate legal proceedings for recovery of damages.

A legal notice must contain: (a) identity of the sender and recipient, (b) specific facts giving rise to the claim, (c) the legal basis for the claim, (d) the specific remedy demanded, and (e) a clear deadline with consequences of non-compliance. Vague legal notices are often successfully challenged on the ground that they did not give the recipient adequate notice of the claim.

Under the Indian Contract Act and CPC, a valid legal notice can protect limitation periods and satisfy conditions precedent to filing suit. A defective notice can be used against your client.

Error 18 — Poorly drafted legal notices lacking specifics

19 Error 19 — Incorrect or missing citation of statutes and provisions

- ▶ Citing a statutory provision without checking its current form — whether it has been amended, repealed, or substituted — is a fundamental error.
- ▶ In India particularly, major statutes have undergone significant amendment: Companies Act 2013, IBC 2016, IT Act (2023 amendment), PMLA, and the new criminal law codes (BNSS, BNS, BSA) replacing the IPC, CrPC, and Evidence Act.
- ▶ Always cite: the full name of the statute, the year, and the specific section and sub-section. For rules and regulations, cite the parent Act under which they are made.
- ▶ In pleadings, incorrect statutory citations weaken your legal standing and suggest poor preparation to the court.

The Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and Bharatiya Sakshya Adhinyam, 2023 (BSA) replaced the IPC, CrPC, and Evidence Act from July 1, 2024. Always cite the applicable statute for the relevant period.

20 Error 20 — Not proofreading before submission or sending

- ▶ Spelling errors, wrong party names, incorrect dates, and broken sentence structure in a legal document signal carelessness — and in pleadings, can affect how a court perceives your client's case.
- ▶ Always proofread once for content (does this say what I intend?), once for language (is this grammatically correct?), and once for formatting (are numbering, defined terms, and cross-references consistent?).
- ▶ Check that all blanks, placeholders, and 'TBD' entries have been filled in.
- ▶ For pleadings: verify that all annexures are attached, properly marked, and correctly referred to in the body of the document.
- ▶ For contracts: check that the signature block names match the party names defined in the Agreement, and that dates, registered addresses, and company numbers are accurate.

Ask a colleague to review your draft with fresh eyes before it is filed or sent. You will always miss errors in your own work.

Quick-Reference: Pre-Submission Drafting Checklist

Run through this checklist before finalising any legal document — contract, pleading, notice, or memo.

- All parties are clearly identified and consistently named throughout

- All key terms are defined in a Definitions clause before first use
- 'Shall', 'may', and 'will' are used correctly and consistently
- No vague qualifiers — 'reasonable', 'adequate', 'timely' — without specific standards
- No Latin abbreviations, 'etc.', or 'and/or' in operative clauses
- All internal cross-references cite exact clause numbers and titles
- No ambiguous pronouns — defined terms are repeated where needed
- Each clause contains one obligation, right, or condition
- Termination clause specifies notice period, form, delivery, and cure period
- Dispute resolution clause names the mechanism, seat, law, and arbitrator count
- Governing law and jurisdiction are specific — city and state named
- No placeholder text ('[INSERT]', 'TBD', 'XX') remains in the document
- All statutory citations are accurate, current, and correctly formatted
- Prayer clause (if pleading) is specific, numbered, and actionable
- All annexures are attached, marked, and correctly referenced in the body
- Signature block names match the defined party names in the Agreement
- Document has been proofread for content, language, and formatting
- A second reviewer has checked the document before submission or sending

The Lawmento Drafting Principle

A well-drafted document does not need interpretation. It says exactly what it means, in plain language, with no room for the other side to argue something different. Every word is there because it needs to be. Every obligation is clear enough for a court to enforce. That is the standard to aim for — and avoiding these 20 mistakes is how you get there.

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