



Just Capital

Like many in my generation, I learned many fundamental grammar and punctuation—not to mention civics—concepts from *Sesame Street* and *Schoolhouse Rock*. With that in mind, please permit this brief homage: This episode of “The Legal Word” is brought to you by reader request, by my legal-writing colleagues at Arizona Law, and by the letter S.¹

At first blush, it may seem there’s not much to write regarding capitalization. Capitalize proper nouns. Capitalize the first word in a sentence. Easy enough, right? As you’ll see, though, this topic may cause as much confusion and inconsistency as any (and not just because texting, Facebook, and other informal modes of communication have eroded our fidelity to the rules we learned as children).

Capitalization rules vary across languages and evolve over time. Anyone who has perused facsimiles of the original Declaration of Independence intuitively recognizes that.² Maddeningly enough, the rules also vary across style guides, but you can rely on a few basic principles. I’ll start with a few rules most helpful to legal writers, and then I’ll tackle some more general precepts.

Court

Bryan Garner advises to capitalize the word *court* when referring to the United States Supreme Court, the court you are addressing, or the highest court in the relevant jurisdiction. So, for example, if you filed a motion in Pima County Superior Court, you would capitalize *court* when writing “we ask this Court to dismiss,” when referring to the United States Supreme Court, or when referring to the Arizona Supreme Court.

My colleagues have alerted me, however, that both *The Bluebook* and *The ALWD Guide* disagree with Garner. Both prescribe capitalizing court only in the first two instances: when referring to the United States Supreme Court or to the court you are addressing.

My rule? Pick one option, and be consistent.

Argumentative Headings

Many of you may work in offices where your word-processing software provides custom macros that format your argumentative headings for you. Unless you are the person who customizes those macros—or unless you don’t have those macros—you may want to avert your eyes until the next section.

Probably because I worked in law offices that used these macros, I had always believed that the first-level heading in a brief—following Roman numeral I—should be in all caps, and that the second-level headings should be in initial caps. (Initial caps means that you capitalize the first letter in each word—except for mid-sentence articles, conjunctions, and prepositions.³)

Bryan Garner disagrees. Because an effective argumentative heading is usually a complete sentence, he advises capitalizing only the first word in that sentence, unless a word would be capitalized under some other rule.⁴ He extends this advice to all argumentative headings, including first-level ones. This makes sense. Frequent capitalization makes text harder to read. Your argumentative headings convey essential points; you want them to be easy to consume and digest.

Defined Terms

Where you create a defined term in a document—whether a contract, litigation materials, or another paper—capitalize that term. For example, in a contract, *seller* is often a defined term that refers to a particular person or entity. Define *seller* once and then capitalize it thereafter where you use it to signify that particular person or entity. Similarly, if George Smith is the defendant in your case, and you wish to refer to him throughout your pleading by that role, you would capitalize *defendant* (but not if you refer to him as “the defendant”). The Fair Debt Collection Practices Act can become “the Act.” The Legal Skills Competition Board can become “the Board.”

Vanity Capitalization

We’ve all read a motion or brief littered with arbitrary capitalization. Like any other device used for emphasis, capitalization loses impact with overuse. And resist using capitalization to convey mockery or sarcasm.

Common Capitalization Conundrums

- Lowercase seasons (e.g., I am really busy in the spring semester).
- Lowercase geographic directions unless they are part of a recognized regional term or proper name (e.g., the American South, South Tucson, but turn south when you reach the tractor).
- Capitalize holidays (e.g., Fourth of July, Diwali).
- Capitalize titles of statutes (e.g., Fair Credit Reporting Act).

The modern trend is toward less capitalization (also known as down-style). When in doubt, capitalize sparingly. Limit all caps or initial caps to short headings. Don’t overuse the emphatic capital or the snarky capital. And where you face conflicting rules, choose one, and be consistent.

endnotes

1. Yes. The letter S.
2. And an S no longer looks like an F.
3. Different sources disagree whether you capitalize prepositions longer than five letters.
4. Although most lawyers follow the initial-caps convention, as Garner puts it, “Commonness does not make it correct. It remains a mistake.”



Susie Salmon

Susie Salmon is Assistant Director of Legal Writing and Associate Clinical Professor of Law at The University of Arizona, James E. Rogers College of Law. Before joining Arizona Law, she spent nine years as a commercial litigator at large firms in Tucson and Los Angeles.