

# SC LAWYER

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**Pitfalls in Using Joint  
Ownership in Probate**

# THE SCRIVENER

## English Test for Lawyers: Fall Semester 2021

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**1. What is the correct spelling of the coronavirus that has shut down courts, schools, and businesses around the world for the past two years.**

- (A) Covid-19
- (B) COVID-19
- (C) Covid 19

**ANSWER:**

(A) Covid-19 or (B) COVID-19

“COVID” is an acronym: “CO” stands for “corona”; “VI” for “virus”; “D” for “disease.” “19” is the year it was discovered. See [www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics](http://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics).

(B) is the spelling used by The Centers for Disease Control (CDC), the World Health Organization, the Modern Language Association’s *MLA Handbook*, *Chicago Manual of Style*, and *Merriam-Webster Dictionary*, and most courts. However, (A) is also used by other respected authorities and courts.

For legal purposes, (B) is the spelling used by most of the federal and state courts. See, e.g., *Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485, 2486 (2021) (“In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act to alleviate burdens caused by the burgeoning **COVID-19** pandemic.”); *United States v. Banks-Davis*, No. 21-6550, 2021 WL 4936206, at \*1 (4th Cir. Oct. 22, 2021) (citing another case as “holding that a prisoner’s appeal of the denial of a motion for compassionate release is moot upon the prisoner’s release when the prisoner requests release from prison solely based on health risks posed by **COVID-19**”); *United States v. Trammell*, No. 3:17-

1206-MGL-2, 2021 WL 4951279, at \*1 (D.S.C. Oct. 25, 2021) (“Pending before the Court is Defendant Neil Corey Trammell’s (Trammell) pro se motion to reduce his sentence due to the **COVID-19** pandemic.”); *Creswick v. Univ. of S.C.*, 434 S.C. 77, 862 S.E.2d 706, 708 (2021) (“Further, the Attorney General’s contention that construing Proviso 117.190 along with other provisos concerning **COVID-19** vaccinations and facemasks somehow evidences the legislative intent for Proviso 117.190 to prohibit universal mask mandates at state-funded colleges and universities is specious.”). But see *Matter of Rivers*, 434 S.C. 73, 862 S.E.2d 449, 450 (2021) (per curiam) (“Respondent recognizes that his concerns regarding **Covid-19** do not excuse his behavior and that his disruptive behavior reflected poorly on his professional judgment and temperament.”).

**2. Ray cannot go on vacation any time soon because his deadline to file a report to the legislature is coming down the \_\_\_\_.**

- (A) pike
- (B) pipe

**ANSWER:**

(A) pike

According to the website for dictionary *Merriam-Webster*, the correct expression is “coming down the pike,” meaning “in the course of events” or “in the future.” See Usage Notes, *Is It “Down the Pike” or “Down the Pipe”?*, [www.merriam-webster.com/words-at-play/down-the-pike-vs-down-the-pipe-idiom-usage](http://www.merriam-webster.com/words-at-play/down-the-pike-vs-down-the-pipe-idiom-usage). “Pike” comes from the word “turnpike,” which originally meant “toll road,” but later came to mean any road. When you say that Ray’s dead-

line is coming “down the pike,” that typically means it is coming soon.

Having said that, *Merriam-Webster* and other authorities recognize that people have used “coming down the pipe” enough that it is almost acceptable. “Almost acceptable” is not good enough for us, however, and in a Westlaw check of all federal and state courts, only one judge, in two different opinions, used the expression “coming down the pipe” to mean “coming soon.” See, e.g., *Xcaliber Int’l, Ltd. LLC v. Georgia ex rel. Carr*, 253 F. Supp. 3d 1220, 1236 (N.D. Ga. 2017) (“Xcaliber knew (or should have known) that changes in permitted investments might be coming down the pipe.”). Otherwise, courts only used the expression when quoting a witness or referring to liquid that was literally coming down a pipe.

**3. Although the plaintiff kept two car tires that were involved in the accident, she lost the tire \_\_\_\_\_ she alleged was defective.**

- (A) that
- (B) which

**ANSWER:**

(A) that

Here is a trick that works nine times out of ten: If a comma goes right after a noun being modified by a clause, use “which.” Otherwise use “that.”

And here is the technical explanation: When deciding whether to use “that” or “which” in this sentence, first determine if the word introduces a *restrictive* or *nonrestrictive* clause.

A *restrictive* clause defines the immediately preceding noun and (this is important) is essential to the sentence. In the example above,

the “immediately preceding noun” is “tire.” The clause is “that she alleged was defective.” If you remove the clause, you have removed the meaning of the sentence. For restrictive clauses, use “that” after the noun.

A nonrestrictive clause gives information about the immediately preceding noun, but is not essential to the basic meaning of the sentence. A nonrestrictive clause almost always follows a comma:

- William argued that his client was entitled to inspect the plaintiff’s files, which were being stored in a warehouse in West Columbia.

In this sentence, the clause “which were being stored in a warehouse in West Columbia” is not essential to the meaning of the sentence, which is that William wants those files. The clause tells us where the files are being stored, and although the clause gives some additional related information, it is not essential to your point.

**4. Defendant Baby Shark was at home on the afternoon of February 4, 2020. \_\_\_\_\_, Baby Shark should not have been arrested for running away from the crime scene in the Wal-Mart shopping Center.**

- (A) **As such**
- (B) **Therefore**
- (C) **Both answers are correct**

**ANSWER:**  
(B) Therefore

Scrivener has covered this one in the past, but apparently some people have not seen the rule, so here it is again: “As such” does not mean “therefore.” It means “in that status or capacity.”

- Mary Sharp is President of the South Carolina Bar. **As such**, she sets the agendas and all meetings for the Bar during her term.
- Mary was on a boat, with no cell service, at the Beaufort Water Festival when I called. **Therefore**, I could not reach her until today.

**5. What is the correct way to cite this South Carolina case in a brief filed in a South Carolina state court?**

- (A) **Micklash v. Lincoln, 863 S.E.2d 344 (S.C. Ct. App. 2021).**
- (B) **Micklash v. Lincoln, 434 S.C. 910, 863 S.E.2d 344 (Ct. App. 2021).**

**ANSWER:**

- (B) *Micklash v. Lincoln*, 434 S.C. 910, 863 S.E.2d 344 (Ct. App. 2021).

The issue is whether to use parallel cites for South Carolina cases in briefs filed in South Carolina state courts. South Carolina Appellate Court Rule 268(d), which provides guidance on citing appellate cases in briefs filed in state court cases, calls for parallel cites to both the South Carolina Reporter and South-eastern Reporter.

*The Bluebook*, in Rule 10.3.1 and Table T1, does not require parallel cites. Therefore, *The Bluebook* cite would be as follows: *Micklash v. Lincoln*, 863 S.E.2d 344 (S.C. Ct. App. 2021). However, *Bluebook* Rule 10.31 states that citations must follow a state court’s local rules—not the *Bluebook* rule—when submitting documents in that state’s court and specifically calls for practitioners to use parallel cites when prescribed by the state local rule.

**6. What is the decretal portion of a court order?**

- (A) The opening paragraph
- (B) The paragraph(s) setting forth the facts of the case
- (C) The paragraph(s) stating the legal authority upon which the order is based
- (D) The paragraph(s), usually found at the end of the order, stating exactly what the court is ordering

**ANSWER:**

- (D) The paragraph(s), usually found at the end of the order, stating exactly what the court is ordering

The decretal language in a court order “is the portion of a court’s judgment or order that officially

states (“decrees”) what the court is ordering.” Hon. Jon O. Newman, *Decretal Language – Last Words of An Appellate Decision*, 70:3 Brooklyn Law Review 727–38, 727 (2004). The decretal portion is usually the concluding paragraph and begins with language such as “It is hereby ordered, adjudged, and decreed that . . .” *Id.*; see also *Drive In Music Co. v. Killelte*, 213 F.3d 631 (4th Cir. 2000) (finding, among other things, that the trial court did not err by failing to include a party’s proposed language in the order’s decretal paragraph in a South Carolina case involving rights to the “I’m a Girl Watcher” songs); *Hunter Bros. Elec. Corp. v. James P. Baldwin, Inc.*, 293 S.C. 301, 301–02, 360 S.E.2d 306, 306 (1987) (holding that the trial judge was without authority to amend or modify its earlier order to include an award of attorney fees because the decretal paragraph in the earlier order did not award the fees and the term of court in which the order had been entered had expired); *Jacobs v. Serv. Merch. Co.*, 297 S.C. 123, 132, 375 S.E.2d 1, 6 (Ct. App. 1988) (noting that the trial court amended and clarified an earlier order by moving certain language from the body of the order to the decretal section).

Although all language in an order is important, the decretal language is the most important. Therefore, when preparing proposed orders, take extra care to ensure that the decretal paragraphs are clear, complete, and consistent with the remainder of the order.

**7. Either our new associates or partner Katie \_\_\_ responsible for ensuring that all hearings are covered during the holidays .**

- (A) **is**
- (B) **are**

**ANSWER:**

- (A) is

When subjects are joined by *or*, *neither . . . nor*, *either . . . or*, or *not only . . . but also*, the verb should agree with the subject nearest the verb. Here, Katie (singular) is the subject nearest the verb, so the verb must

also be singular. Yes, it just sounds wrong, so you may want to rearrange the sentence to say “Either Katie or the new associates are responsible” and avoid the issue.

### 8. What does it mean to lead someone down “the primrose path”?

- (A) Teach someone to reach a goal by trying to enjoy the task at hand
- (B) Convince someone else, through lies and half-truths, to help you with a scheme that you expect to benefit only you
- (C) Encourage someone to lead an easy life of pleasure, but one that will eventually lead to destruction

#### ANSWER:

(C) Encourage someone to lead an easy life of pleasure, but one that will eventually lead to destruction

This expression was coined by William Shakespeare and is first found in *Hamlet*, when Ophelia warns her brother Laertes not to preach to her about behaving herself while he is away at the university (which was well known for its students’ wild ways):

Do not, as some ungracious  
pastors do,  
Show me the steep and stormy  
way to heaven  
Whiles, like a puffed and reck-  
less libertine,  
Himself the **primrose path** of  
dalliance treads  
And recks not his own rede  
[does not follow his own advice].

*Hamlet* (Act 1, Scene 3, Lines 48–52). The meaning of the expression has changed somewhat since Shakespeare wrote it, but the result of being lead down a “primrose path” is the same: The easy path in life will likely lead to a bad result.

This rule also applies to your cases. Judges are no different from everyone else in that they do not like being led down a primrose path, which may result in the destruction of your case in the long

run. See, e.g., *United States v. Stricker*, 4 F.4th 624, 627 (8th Cir. 2021) (“The invited error doctrine has a different purpose. It prevents a defendant from leading the district court ‘down a primrose path’ and later, on appeal, profiting from the invited error.”); *State v. Masterson*, 469 P.3d 103 (Kan. Ct. App. 2020) (“The State was hardly led down the primrose path by Masterson. The State was well along that path before Masterson’s counsel said one word.”); *Pier 1 Cruise Experts v. Revelex Corp.*, 929 F.3d 1334, 1341 (11th Cir. 2019) (“Having led the district court down the primrose path—and, in doing so, having succeeded in knocking out one of [the plaintiff’s] three remaining claims—Revelex cannot now ask us to hold the district court in error for following.”).

### 9. Which dash is correct when setting off words, phrases, clauses, or short sentences that clarify or explain the remaining text of a sentence?

- (A) A hyphen (I have never seen a primrose—a small flower that cannot tolerate heat—since they do not grow well in South Carolina.)
- (B) An en-dash (I have never seen a primrose—a small flower that cannot tolerate heat—since they do not grow well in South Carolina.)
- (C) An em—dash (I have never seen a primrose—a small flower that cannot tolerate heat—since they do not grow well in South Carolina.)

#### ANSWER:

(C) An em—dash (Note that there are no spaces before or after an em dash.)

Dashes vary in length and function.

The shortest dash is a hyphen, which is used with combined words, prefixes, and numbers (such as two-year-old book, attorney-client privilege, African-American, and ex-husband).

An en dash is the width of the capital letter “N” and is primarily

used to show a range of numbers (such as pages 1–5, years 2018–2021).

An em dash is the width of a capital letter “M” and is used to set off words, phrases, or short sentences from the rest of the sentence, as in the example above.

### 10. The dog \_\_\_\_\_ around the truck with no reaction whatsoever. What is the past tense of “to slink”?

- (A) slinked
- (B) slank
- (C) slunk

#### ANSWER:

(C) slunk

Ah, those irregular verbs! The dog slunk around. See, e.g., *McCaskill v. Elliot*, 36 S.C.L. 196, 196 (S.C. App. L. 1850) (“[T]he son pulled off his saddle and scolded the dog, who **slunk** back and lay down by the saddle.”); *State v. Watson*, 135 So. 3d 693, 697 (La. Ct. App. 2013) (“Watson peered out into the hallway from the rear bedroom, made eye contact, **slunk** back into the room and shut the door.”). But see, e.g., *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d 1027, 1034 (9th Cir. 2009) ([T]he [Bureau] slinked away before the district court entered a judgment.); *Williams v. Dutton*, 400 F.2d 797, 799 (5th Cir. 1968) (“[T]he three car-thieves-turned-murderers slinked away in the night, leaving the lifeless bodies and the burning car.”).

In fairness to the “slinked” courts, two dictionaries allow its use for past tense (*Merriam-Webster* and *American Heritage*), but Bryan Garner in *Garner’s Modern American Usage* disapproves, stating that “slinked” and “slank” are substandard.

In conclusion, I hope that everyone made 100 on this year’s English test, that you stay off the primrose path, and that you make sure your subjects and verbs agree. Happy 2022!