

# SC LAWYER

THE MAGAZINE OF THE SOUTH CAROLINA BAR // SEPTEMBER 2021



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# THE SCRIVENER

## For Want of a Comma: Oxford Commas

By Scott Moïse

“Who gives a [hoot] about an Oxford comma?”

-*Oxford Comma*, Vampire Weekend (lyrics by Ezra Koenig) (XL Recordings 2008).

This column will be short and sweet, and it will be about a comma. It deserves its own column because, outside of deciding whether to put one or two spaces after the end of a sentence, use of Oxford commas (also known as serial commas) has caused more heated arguments between lawyers than almost any other writing issue in my lifetime.

### What is an Oxford comma?

An Oxford comma is the comma that is placed before the last conjunction in a list of three or more things.

- Chris was at the retreat with his best friends, Clara, and the Supreme Court justices.

Here, the Oxford comma comes before the conjunction “and” shows that Chris was with (1) his best friends and (2) Clara and (3) the Supreme Court justices.

Here is the sentence without an Oxford comma:

- Chris was at the retreat with his best friends, Clara and the Supreme Court justices.

Without the Oxford comma, this sentence makes it appear that Chris was with his best friends, who are (1) Clara and (2) the Supreme Court justices. But you just cannot be sure without the Oxford comma.

### Why is it called an “Oxford comma”?

The name refers to the Oxford

University Press (OUP), which was formed in 1478 and is the largest university press in the world. See *A Short History of Oxford University Press* (2021), [https://global.oup.com/about/oup\\_history/?cc=us](https://global.oup.com/about/oup_history/?cc=us). The OUP’s influential style guide requires use of the serial comma and notes that the rule has been in effect at the OUP for a century. See *New Hart’s Rules: The Oxford Style Guide* (2d ed., Oxford University Press 2014).

### What do writing experts say about using the Oxford comma?

As with the one-space-or-two-space question, writing authorities are divided, although in the legal writing world, the huge majority fall into the Pro-Oxford Comma Team: for example, Scrivener Emeritus Thomas R. Haggard; the late U.S. Supreme Court Justice Antonin Scalia; Bryan A. Garner; Ross Guberman; and Mignon Fogarty, also known as “Grammar Girl.” Adding to the parade are the many grammatical and stylistic guides that call for the Oxford comma, including William A. Sabin’s *The Gregg Reference Manual*, *The Chicago Manual of Style*, the Texas Law Review’s *Manual on Usage & Style*; and *The Redbook: A Manual on Legal Style*.

On the other side of the fence, the AP style guide—which was written for journalists, not lawyers—is the leading authority for omitting the Oxford comma. What Oxford comma opponents frequently overlook, though, is that the AP guide actually gives writers the discretion to use the Oxford comma in a series, except for what it terms “simple series,” which should not use the comma. See *The Associated Press Stylebook* 336 (55th ed. 2020–2022). However, “[i]f omitting a comma could lead to confu-

sion or misinterpretation, then use the comma.” *Id.* So even the AP rule is not absolute.

### What are the arguments in favor of using the Oxford comma?

The Oxford comma brings clarity to a sentence. Without the comma, readers must stop and dissect the sentence and still will not be sure how many people were with Chris at the retreat or whether Clara and the justices are his best friends.

Also, by always using the Oxford comma in a series of three or more elements, comma use will be consistent throughout the document and requires no extra time and thought by the writer or reader. In contrast, under the AP rule, the writer must first decide if the series is a simple one, which slows down the writing process. Also, determining whether a series is “simple” is highly subjective, so the rule will be interpreted and applied inconsistently. Finally, a legal document will likely have a mix of items in a series—some that use the Oxford comma under the AP rule and others that do not—causing more confusion.

### What are the arguments against using the Oxford comma?

My fellow lawyers, I have tried to have an open mind about this comma. I listened to the arguments against it, which can be boiled down to three:

- (1) They take up too much space.

I am not kidding. This is the number one rationale. Maybe this excuse had some justification back in the days before computers were invented (or, possibly, still today for newspapers and magazines), but that excuse for the legal profession

has gone the way of the Smith & Corona typewriter. If Oxford commas are the reason your brief is exceeding the local rule's word limit, the problem is more likely that the entire brief needs to be edited and trimmed. You cannot blame the commas.

(2) They clutter the page.

Here is the argument:

Mandatory, which is to say mindless, use of the Oxford comma also litters writing with clutter. Each needless comma is an excrescence. In the phrase, "Faith hope and love remain," appending a comma after "hope" would not clarify anything, but it would waste space and interrupt the flow of a beautiful passage.

Nathaniel Blake, *Why Using the Oxford Comma Is a Sign of Bad Writing*, *The Federalist* (<https://thefederalist.com/2019/10/01/why-using-the-oxford-comma-is-a-sign-of-bad-writing/>).

The full quote from 1 Corinthians 13:13 is: "And now these three remain: faith, hope, and love. But the greatest of these is love." With all due respect to Mr. Blake, the semicolon and comma in the original (which are needed) interrupt the flow of this admittedly beautiful passage far more than an extra comma, and the speck of space it takes up, would do.

(3) They are pretentious.

Mary Norris, a former *New Yorker* copy editor, described this argument in her best-selling memoir:

The serial comma is a pawn between town and gown. To call it the Oxford comma gives it a bit of class, a little snob appeal. Kids use it (or, rather, "reference" it) on their Twitter bios and their match.com profiles to show they have standards. Chances are that if you use the Oxford comma you brush the crumbs off your shirtfront before going out.

Mary Norris, *Between You & Me (Confessions of a Comma Queen)* 95 (2015). I am pretty sure that Ms. Norris was kidding around with this, but other Oxford-hating commentators have made similar arguments, so I wanted to mention it. If the name "Oxford" is what causes the alleged pretension, call it the "serial comma." Or if adding a comma is pretentious, then it is a small price to pay for clarity.

**Do South Carolina judges use Oxford commas?**

Yes, based on the most recent opinions that include sentences having three or more elements, Oxford commas are used by *every single judge* on the South Carolina Supreme Court, South Carolina Court of Appeals, United States District Court for the District Court of South Carolina, and the South Carolina judges on the Fourth Circuit Court of Appeals.

Judge Dennis W. Shedd, who serves on the Fourth Circuit Court of Appeals and formerly the South Carolina federal district court, is a

strong believer in the Oxford comma because he knows that it eliminates the questions and uncertainty that the lack of the comma may cause. Judge Shedd also teaches a popular class at the University of South Carolina School of Law, where he tells his students that if you want someone to do you a favor, make it easy on them to help you. As lawyers, we ask judges to do us a favor and grant the requests that we have brought before them. One way to make it easy on the judge to rule in our favor is by being precise and clear as to what the issue is and why the judge should grant our request. When a brief is ambiguous, judges should not have to guess what lawyers may be trying to convey. Oxford commas fall into that category because the lack of the commas is one small piece of the equation that may make your argument unclear.

Judge Shedd is not alone. Recently, a federal district court—calling itself a “fan” of the Oxford comma—found that a warranty provision in a contract was unclear for inconsistent use of the Oxford comma and conjunctions. *See, e.g., Sourceone, Inc. v. John Zink Co., LLC*, No. 3:19-CV-907, 2021 WL 1626256, at \*2 (E.D. Va. Apr. 27, 2021). In another case, use of the Oxford comma helped a judge in Illinois court to interpret a legislative Act. *See Oommen v. Glen Health & Home Mgmt. Inc.*, No. 1-19-0854, 2020 WL 6822702, at \*11 (Ill. App. Ct. 2020) (Griffin, J., concurring).

On similar grounds, the federal district court in Texas rejected the absence of an Oxford comma in the official name of the “Federal Bureau of Alcohol, Tobacco and Explosives”:

The Court takes issue with the lack of an Oxford comma after “Firearms” in the Bureau’s name. Oxford commas add clarity and cost nothing. For example, can the Bureau regulate firearms independently from explosives, or does the lack of a comma in between those two words indicate they can only be regulated when found together? These and

others are big problems tiny commas can solve.

*Lane v. United States*, No. 3:19-CV-01492-X, 2020 WL 1513470, at \*2 n.6 (N.D. Tex. Mar. 30, 2020). Exactly!

Be careful, however, because not every court feels the same way about Oxford commas. *See, e.g., Hatcher v. Hatcher*, 158 N.E.3d 326, 331 (Ill. App. Ct. 2020) (“Although the use of a serial comma can aid in interpretation, ‘caution should be exercised in utilizing it as a controlling interpretive tool for the reason that its use is entirely optional and not universal.’ ”); *Corder v. Ohio Edison Co.*, 166 N.E.3d 1180, 1189 n.1 (Ohio 2020) (citing *In re Enron Creditors Recovery Corp.*, 380 B.R. 307, 323 (S.D.N.Y. 2008) (“[T]he fact that the propriety of placing a comma at that point is hotly disputed means one cannot read anything at all into its absence—at least not without knowing where the draftsman learned his or her comma-lore.”).

#### **“For want of a comma, we have this case”: Oxford commas in the court**

Statutes are written by both lawyers and nonlawyers, but regardless of the author, statutes give rise to a lot of confusion. In a now-famous case, the court’s decision turned on the lack of an Oxford comma in a statute governing overtime pay for workers, costing the plaintiff workers \$5 million. *O’Connor v. Oakhurst Dairy*, 851 F.3d 69 (1st Cir. 2017) (“For want of a comma, we have this case.”); *see also Sullivan v. Abraham*, 488 S.W.3d 294, 299 (Tex. 2016) (“Although the use of the Oxford comma is not definitive, we agree that its use here together with the inclusion of the word “other” and the absence of the other comma . . . indicate the Legislature intended to limit the justice-and-equity modifier to other expenses.”).

Here in South Carolina, a missing comma in a statute also created ambiguity, requiring the court to analyze commas in the entire Act to clear up the confusion:

[The defendant] argues the

legislature did not intend to include corporations and partnerships as “entities,” relying on the lack of a comma between the penultimate item in a series (“trust”) and the conjunction (“or”). Although this convention violates the preferred usage, *see Thomas R. Haggard, Comma Sense*, S.C. Law., Sept./Oct. 1994, at 7, 9, we have carefully reviewed the Dealers Act and find the convention was used throughout. To hold otherwise would lead to an absurd result because trusts, unlike corporate entities, do not have officers and directors. The legislature would not have intended to extend controlling person liability to entities that do not have controlling persons.

*Rowe v. Hyatt*, 317 S.C. 172, 176, 452 S.E.2d 356, 358 (Ct. App. 1994), *rev’d on other grounds*, 321 S.C. 366, 468 S.E.2d 649 (1996). (Professor Haggard would like to emphasize that this reversal was on other grounds!)

#### **So, who gives a hoot about an Oxford comma?**

To answer Vampire Weekend’s question: everybody gives a hoot or at least they *should* give a hoot. Use the comma.