



Drafting Rules for Uniform Statutes & Regulations

Derived from the 2012
Uniform Law Commission Drafting Rules

Resources

- o Primary Source -
Uniform Law
Commission Drafting
Rules
- o Other Sources –
 - o U.S. Government
Printing Office Style
Manual
 - o The Bluebook
 - o Black's Law
Dictionary
 - o Garner's Dictionary of
Legal Usage
 - o Roget's Thesaurus
 - o Strunk & White's The
Elements of Style
 - o The Redbook – A
Manual on Legal Style
(Garner)
 - o Reading Law (Scalia
and Garner)

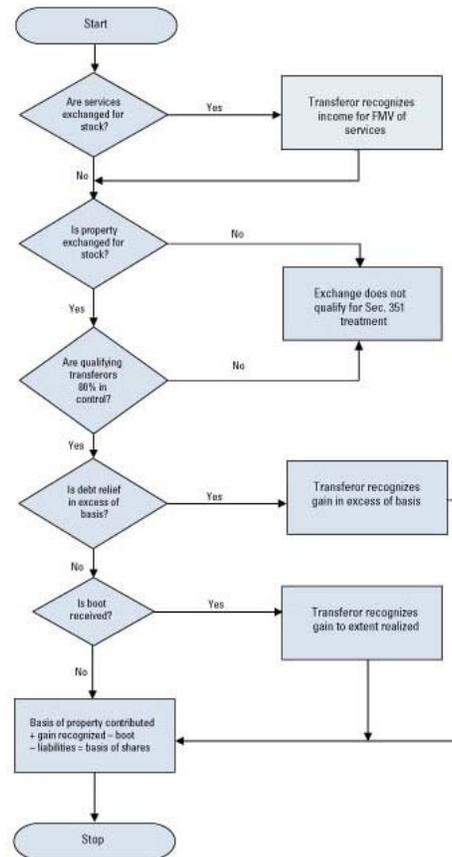


**DO AS WE SAY,
NOT AS WE DO.**

THE STANDARDS FOR DRAFTING ARE CONSTANTLY
EVOLVING AND LAWS OR MODEL STATUTES DRAFTED IN
THE PAST MAY NOT FOLLOW THE RULES AS CLOSELY.
(And we can always improve.)

Drafting Process Substance First

Exhibit 2: Determining basis in a Sec. 351 exchange



Statutory Drafting Process

- o Every document is different – but statutes and regulations are like contracts.
- o The point is to agree about substance, first, then draft.
- o If possible, keep the written record of the substantive discussion separate from the drafting of the actual statutory language.

Iterative Drafting Process

SUBSTANTIVE DECISION

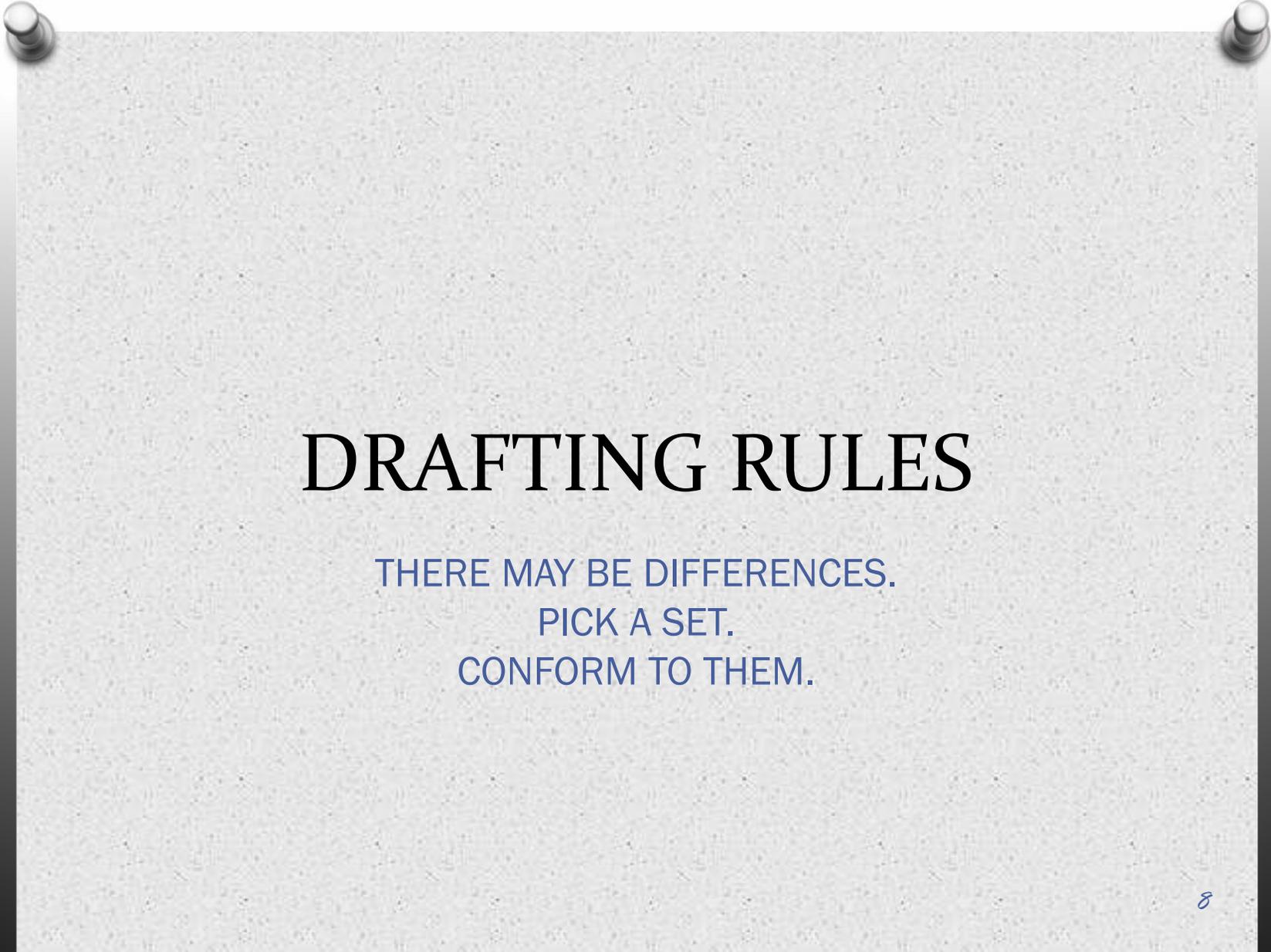
- o Issue
- o Results desired
- o Scope, limitations, exceptions, etc.
- o Application, imposition, rights, duties, time periods, etc.
- o Connections to existing law
- o Process issues
- o Revision of substance

DRAFTING STEP

- o Issue statement
- o Concept statement
- o General outline, or flowchart
- o Definitions, requirements, remedies, penalties, SOLs, deadlines, etc.
- o References, incorporation
- o Procedural provisions
- o Revision of wording

Drafting Process Conforming to Rules

- When drafting by committee, proposed text (or alternative texts) is necessary to facilitate discussion of the precise substance.
- After agreement on substance, it will be necessary to make “conforming” changes to the drafting rules before the text is final.
- Search or search and replace is a tool for this purpose.

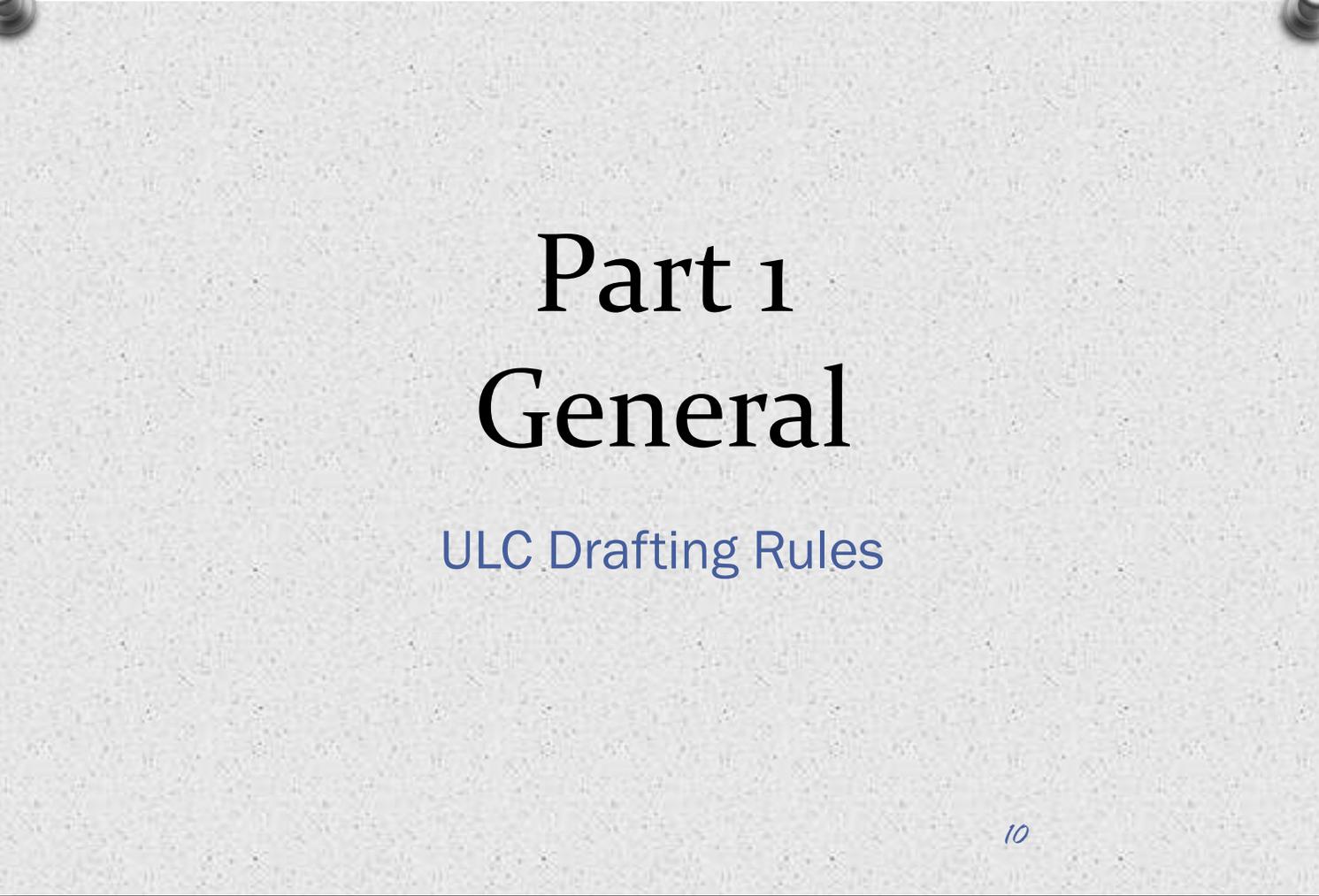


DRAFTING RULES

THERE MAY BE DIFFERENCES.
PICK A SET.
CONFORM TO THEM.

Uniform Law Commission

- o MTC generally uses the Uniform Law Commission Drafting Rules.
- o The ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.



Part 1 General

ULC Drafting Rules

Rule 101

Sentence Structure

- o Use short, simple sentences.
- o Use dependent clauses, parallel clauses, compound sentences, and other complex sentence structures sparingly.
- o Several short, simple sentences are preferable to one long sentence.

Example of Sentence Structure

Bad

(a) Application. A taxpayer claiming a credit under this section must annually file a complete application containing the information and documentation required by this section, including a schedule of the qualifying sales and payroll information for the employees claimed, and that application must be mailed to the department no later than the due date for the income tax return for the tax year for which the credit is claimed, without any extension.

Example of Sentence Structure

Better

(a) Application. To claim a credit under this section, a taxpayer must annually file a complete and timely application with the department. To be complete, the application must provide the documentation required by this section, including a schedule of qualifying sales and the payroll information for the employees claimed. To be timely, the application must be mailed to the department no later than the statutory due date for filing a tax return for the tax year for which the credit is claimed, without extension.

Example of Sentence Structure Alternative

(a) Application. To claim a credit under this section, a taxpayer must annually file an application with the department that:

(1) provides the documentation required by this section, including a schedule of qualifying sales and the payroll information for the employees claimed, and

(2) is mailed to the department no later the statutory due date for filing a tax return for the tax year for which the credit is claimed, without extension.

Comparison of Examples Sentence Length

- o 25 words is a good average
- o Examples:
 - o Bad – 1 sentence – 71 words
 - o Better – 3 sentences – longest is 34 words
 - o Alternative – 3 subdivisions – longest subdivision is 29 words

Tools for Sentence Structure

- o In Word – Settings – Options – Proofing – check “show readability statistics”
- o After proofing the document, and hitting “ok” on the final proofing prompt, a pop-up screen will appear with the number of words, number of sentences, average length of sentence, average length of words, and reading-level scores.

REMEMBER

THE ULC CONVENTION ALLOWS A SINGLE SUBDIVISION OF A STATUTE TO USE MULTIPLE SENTENCES. BUT AN ACCEPTABLE ALTERNATIVE IS TO BREAK UP THE SUBDIVISION INTO PARTS.

Rule 102

Subject of Sentence

- o If a sentence:
 - o imposes a duty, obligation, or prohibition or
 - o grants a power, right, or privilege,
- o The subject should be the person on which the duty (etc.) is imposed or to which a power (etc.) is granted (unless the subject is clear from the context).

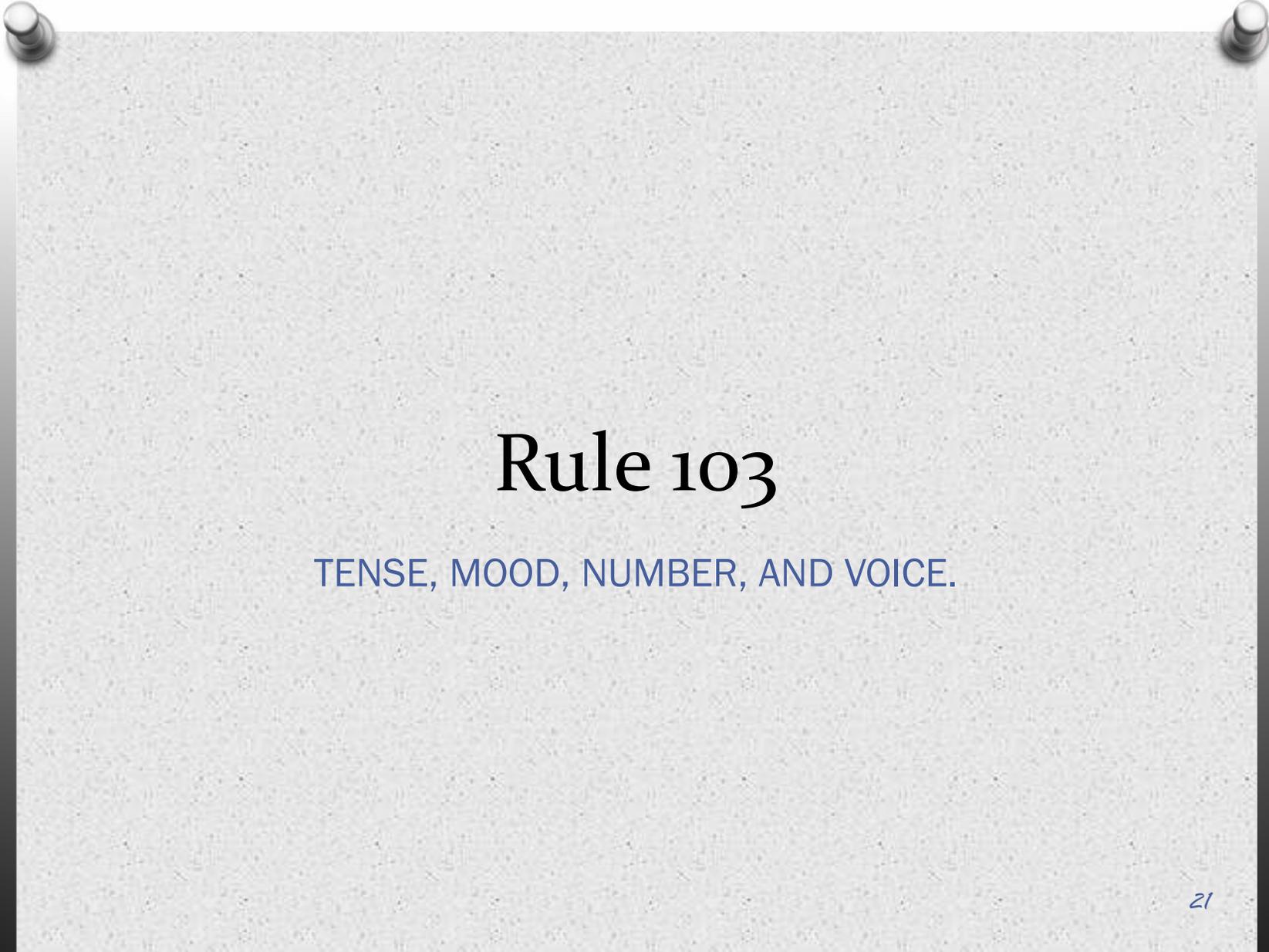
Example - Subject of Sentence

Bad & Better

- o **BAD** - *The right to obtain an accounting in the event of a refund of tax in an amount that is less than the amount claimed is hereby afforded to the taxpayer.*
- o **BETTER** - *A taxpayer that receives a refund of tax that is less than the amount claimed may obtain an accounting.*

REMEMBER

WHEN DESCRIBING A RIGHT OR DUTY –
START THE PROVISION WITH THE PERSON THAT HAS
THE RIGHT OR DUTY.



Rule 103

TENSE, MOOD, NUMBER, AND VOICE.

Rule 103 (a)

Tense

- o Present tense (is/are, etc.) – Default - used for operative provisions.
- o Past tense (was/were, etc.) and present perfect tense (have/has [verb]) – Exception – used to express conditions precedent.
- o Future tense or future perfect tense – **Wrong** - (will/shall [verb or verb phrase] or will have/shall have [verb or verb phrase]).

Examples Tense

NO

- A claim for credit that will be submitted no later than . . .
- A taxpayer that claims the credit shall be required to file a return.
- A deadline that shall have been extended . . .

YES

- A claim for credit that is submitted no later than . . .
- A taxpayer that claims the credit must file a return.
- A deadline that is extended . . .
- If the department has denied the claim, the taxpayer may appeal . . .

NEVER

A taxpayer that shall file a return showing tax due, without payment of the full amount, will be deemed to have complied with this provision.

ALWAYS

A taxpayer that files a return showing tax due, without payment of the full amount, is deemed to have complied with this provision.

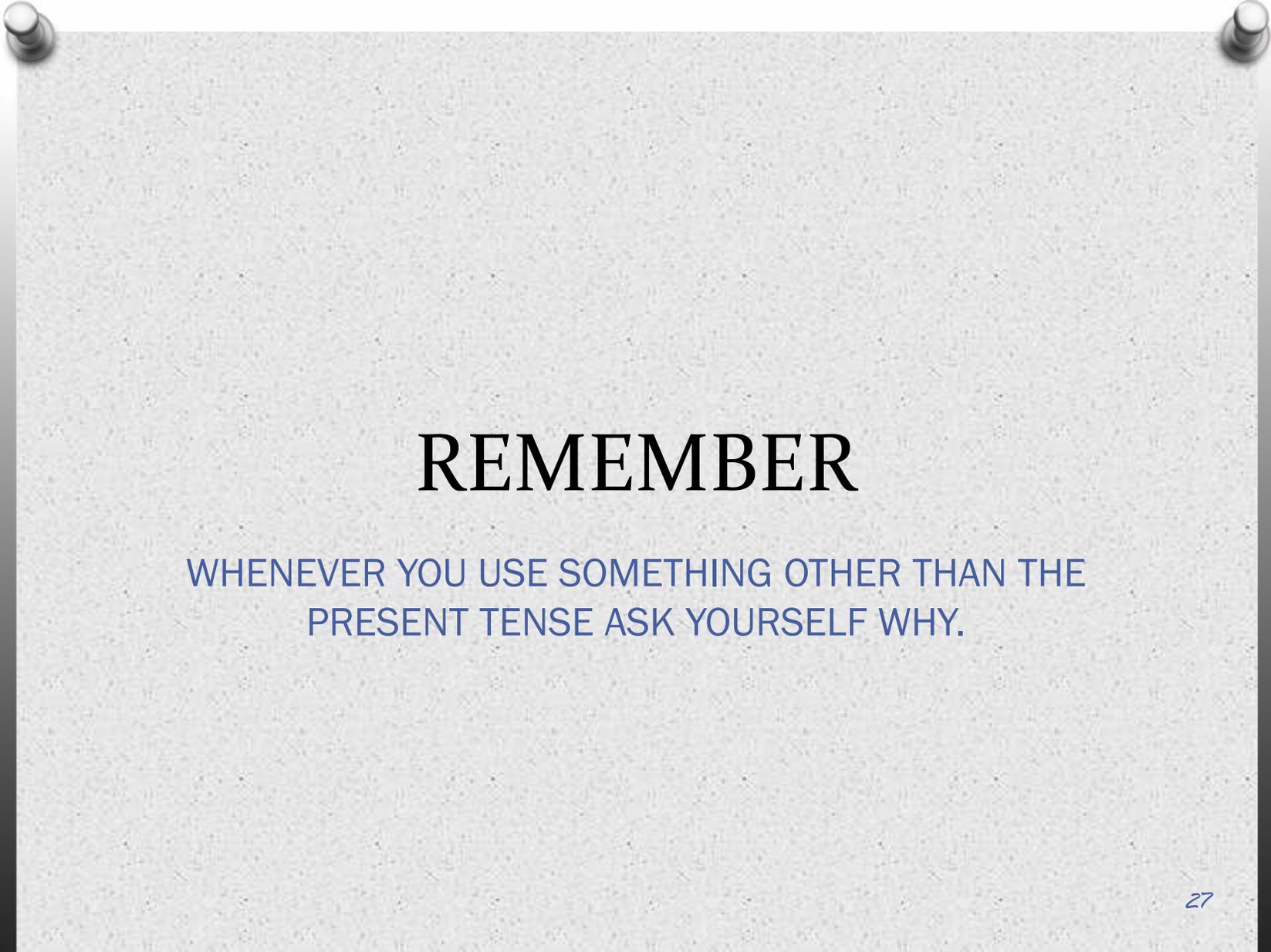
*NOTE

- o “Shall” has two uses – it may impose a duty or it may indicate future tense. (See Rule 203, also.) To quote the ULC Drafter’s Rules:
 - o “An act [of law] is regarded as speaking *in the present and constantly*. The use of ‘shall’ in imposing a duty or prohibition does not indicate the future tense. Even if an action is required on a specified future date, *the form of expression is in the present tense.*”

NO “Shall Be”*

- o The return shall be deemed timely if . . .
- o The taxpayer shall be entitled to file . . .
- o The amount of sales shall be determined under the rules of this section.
- o The return is deemed timely if . . .
- o The taxpayer may file . . .
- o The amount of sales is determined under the rules of this section.

* With rare exceptions.



REMEMBER

WHENEVER YOU USE SOMETHING OTHER THAN THE
PRESENT TENSE ASK YOURSELF WHY.

Rule 103 (b)

Mood

- o Use the indicative mood. Do not use the subjunctive mood.
- o DON'T SAY – *The notice is treated as if it were timely received.*
- o DO SAY – *The notice is treated as if it was timely received.*

Rule 103 (c)

Singular or Plural

- o Use the singular rather than the plural. The singular includes the plural and is simpler and clearer than the plural.
- o Use of the plural should be confined to collective action.

Examples

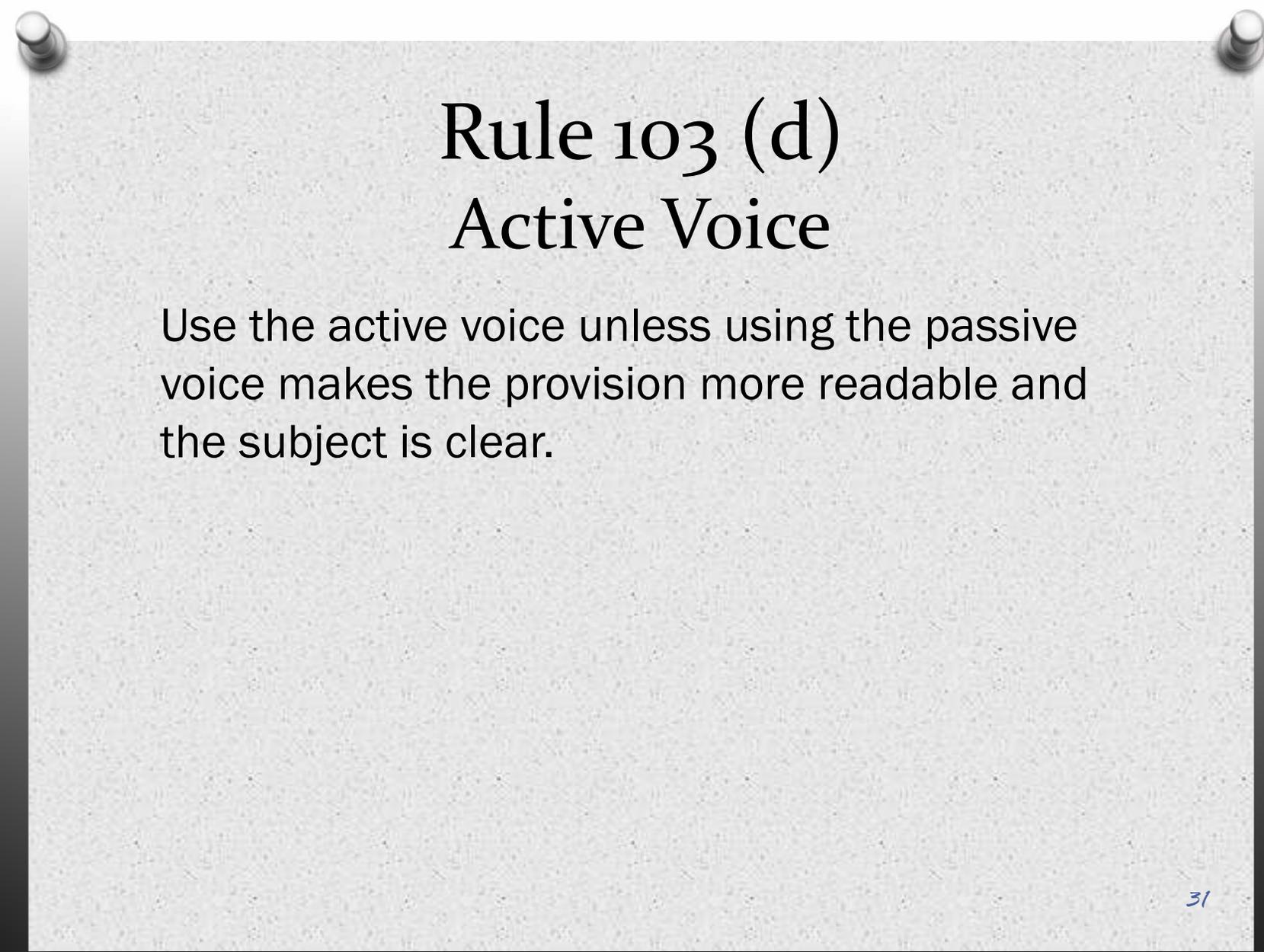
Singular and Plural

NO

- o *Directors may call for a vote.*
- o *To amend Bylaw II, each director must vote affirmatively.*

YES

- o *A director may call for a vote.*
- o *To amend Bylaw II, the vote of the directors must be unanimous.*



Rule 103 (d) Active Voice

Use the active voice unless using the passive voice makes the provision more readable and the subject is clear.

Example

Use Active Voice

- o DON'T SAY - *The fee required by this Section may be paid by the applicant or the applicant's representative.*
- o DO SAY - *An applicant or applicant's representative may pay the fee required by this Section.*

Exception

Use Passive Voice

- When the actor is uncertain or doesn't matter.
 - DON'T SAY – *The department, or an administrative hearing officer, or a court with jurisdiction over the matter may deny the refund if the taxpayer does not provide documentation.*
 - DO SAY – *The refund may be denied if the taxpayer does not provide documentation.*

REMEMBER

USE OF ANYTHING OTHER THAN PRESENT TENSE, THE INDICATIVE MOOD, THE SINGULAR, AND THE ACTIVE VOICE IS AN EXCEPTION.

RULE 104

Gender

Draft in a gender-neutral form unless the subject must be a member of a particular gender, such as the mother or father of a child. Do NOT use phrases such as “he or she”, “his or her”, or “himself or herself”. Instead, repeat the noun.

Examples

Gender Neutrality

- o Reasonable man – reasonable person
- o Workman – worker
- o Congressman – member of Congress
- o Foreman – supervisor or foreperson
- o Chairman – chair or chairperson
- o The Director . . . *he* – the director . . . *the director*

Rule 105

Consistency

(a) Be consistent in the use of particular language throughout an act.

- o Do NOT use the same word or phrase to convey different meanings.
- o Do NOT use different language to convey the same meaning.

(b) Be consistent in the arrangement of comparable provisions. Arrange sections containing similar material in the same way.

Examples

Consistency in Terms

NO

- o A seller must file a credit application to claim the credit under this section, and that claim must contain all necessary documentation.
- o A business that claims the credit must report any sales by the company for which that claim is taken.

YES

- o A seller must file a credit application to claim the credit under this section, and that application must contain all necessary documentation.
- o A business that claims the credit must report any sales by the business for which the credit is taken.



CRITICAL Consistency



- Sometimes – drafting rules go hand-in-hand with rules of statutory construction.
- One canon of statutory construction is that consistent meaning should be given to the same term when used within the same context and a different meaning should be given to a different term.

(Simple) Example – Consistent Structure

(a) A taxpayer may claim either a deduction or a credit.

(1) If claiming a deduction, the taxpayer must:

(A) provide a schedule listing qualifying expenditures; and

(B) deduct the qualifying expenditures on the current year tax return.

(2) If claiming a credit, the taxpayer must:

(A) provide a schedule showing that the credit has been computed in accordance with this section; and

(B) claim the credit on the current year tax return, up to the tax liability for that year.

RULE 106

Brevity

- o (a) Omit needless language.
- o (b) If a word has the same meaning as a phrase, use the word.
- o (c) Use the shortest sentence that conveys the intended meaning

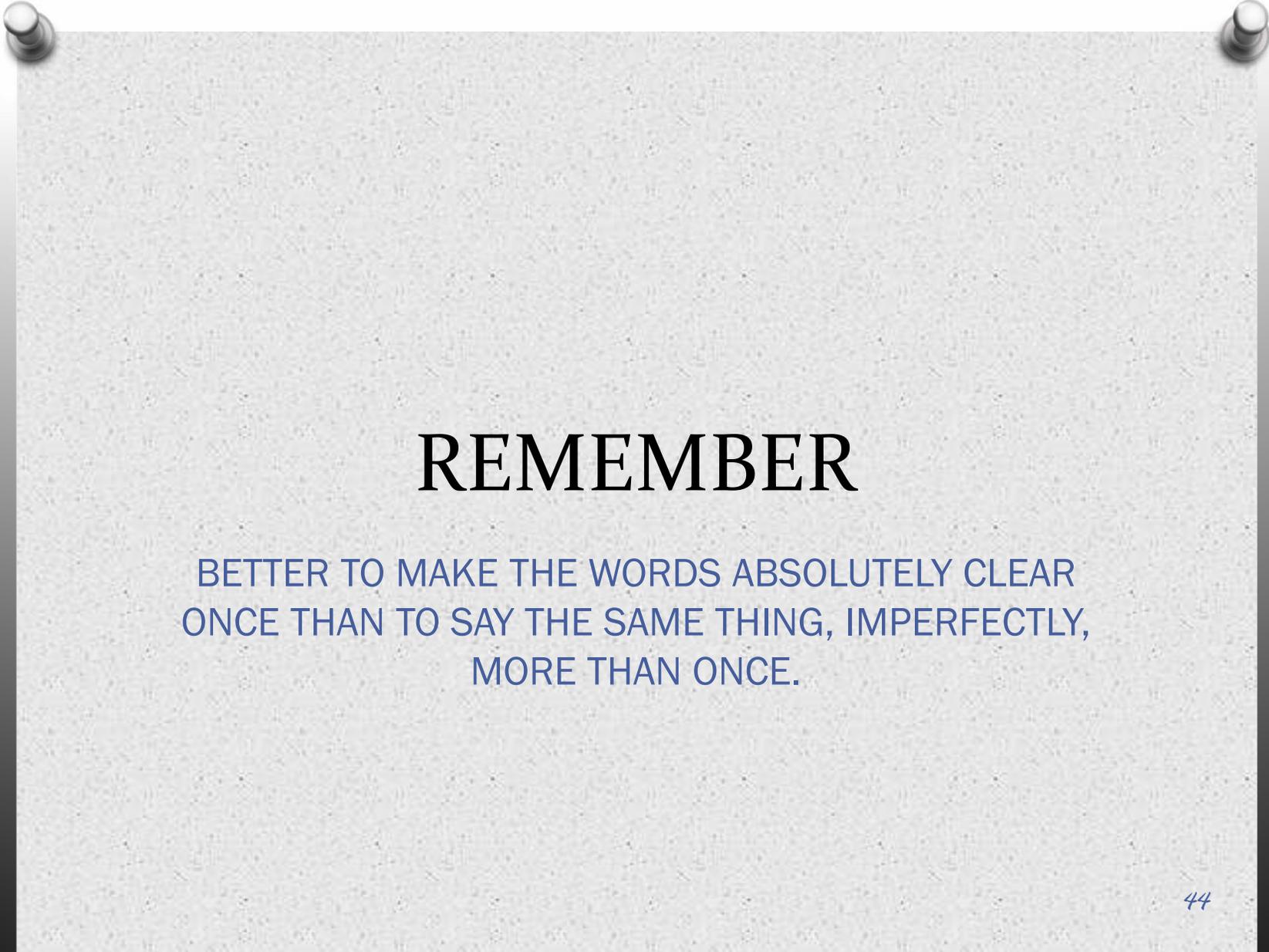
To Quote the ULC Rules:



“In construing an act, a court considers each word and tries to give it meaning. Unnecessary language is more likely to mislead than to make the meaning clear.”

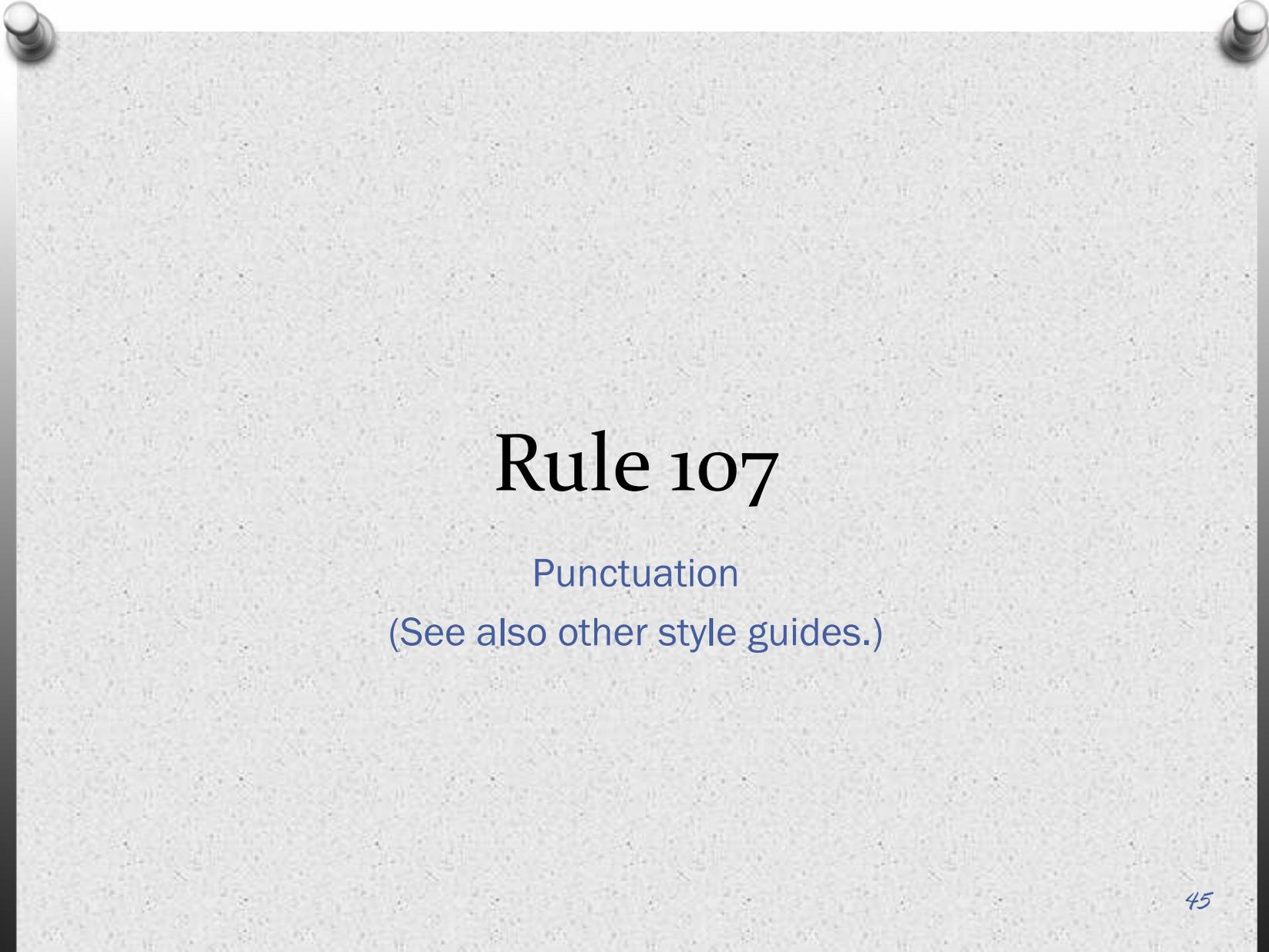
Example – Needless Words

- o *A taxpayer must provide the documentation required by this Section with the taxpayer's **timely filed return**, or the deduction claimed will be denied. Documentation submitted after the date on which a return is **due** will not be accepted.*
- o Assume the statutory deadline is March 1, but the taxpayer has an extension until April 1. If the taxpayer includes documentation with the return filed April 1, should the deduction be allowed?



REMEMBER

BETTER TO MAKE THE WORDS ABSOLUTELY CLEAR
ONCE THAN TO SAY THE SAME THING, IMPERFECTLY,
MORE THAN ONCE.



Rule 107

Punctuation

(See also other style guides.)

Rule 107 (a)

Punctuate Carefully

Consider rewriting a sentence if a change in punctuation might change its meaning.

- o COMPARE:

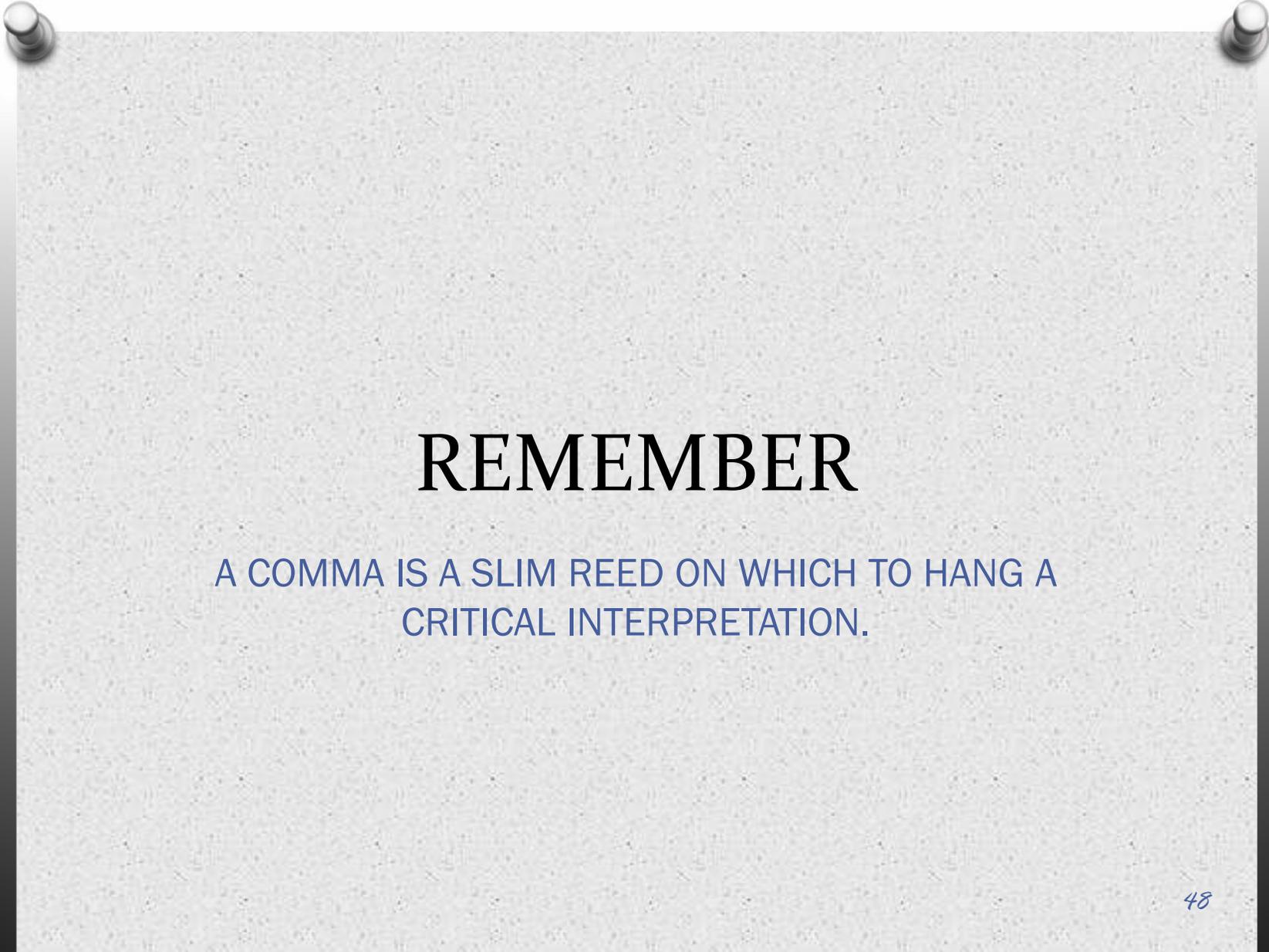
- o *Taxpayers selling over \$100,000 who must file by the end of the month may pay by check.*
- o *Taxpayers selling over \$100,000, who must file by the end of the month, may pay by check.*

Rule 107 (a)

Punctuate Carefully

- o BETTER:

- o *Taxpayers selling over \$100,000 must file by the end of the month. Those taxpayers who file by the end of the month may pay by check.*



REMEMBER

A COMMA IS A SLIM REED ON WHICH TO HANG A
CRITICAL INTERPRETATION.

Rule 107 (b) & (C)

Commas

(b) Use a comma followed by “or” to separate the last of a disjunctive series of three or more words, phrases, or clauses in a sentence.

(c) Use a comma followed by “and” to separate the last of a conjunctive series of three or more words, phrases, or clauses in a sentence.

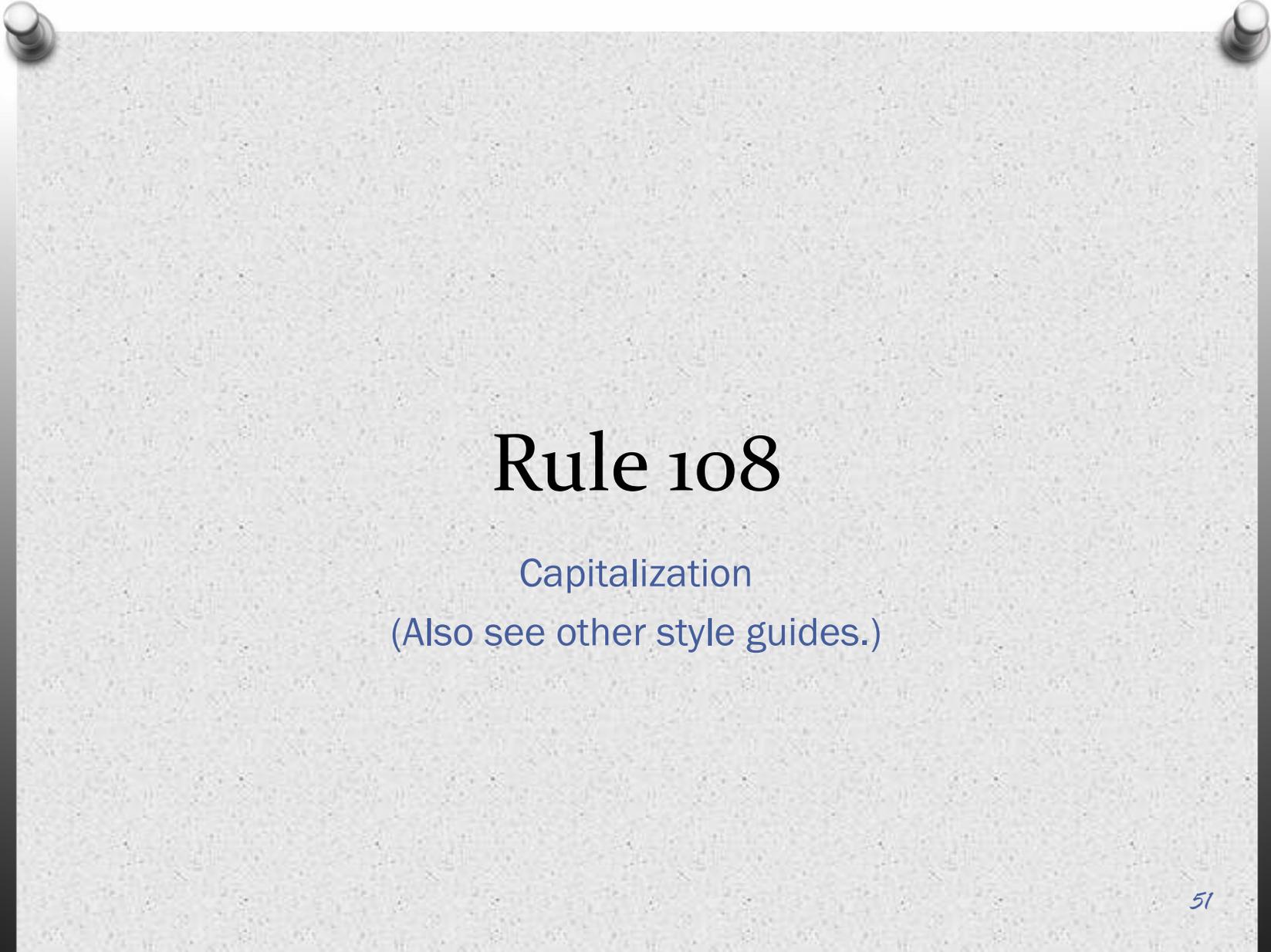
Rule 107 (d), (e), & (f)

Other Punctuation

(d) Use a colon to introduce a list of items.

(e) Do NOT use parentheses except to designate subdivisions of sections. (Brackets have a special significance. See Rule 407 and “Other” below.)

(f) In drafting an act, place a comma or period outside a close quotation mark unless an entire sentence is contained in quotation marks. Place a semicolon or colon outside a close quotation mark.



Rule 108

Capitalization

(Also see other style guides.)

Rule 108

Capitalization

- o This varies considerably.
- o The trend is toward not capitalizing.
- o Try to be consistent within the draft.

Rule 108 (a) & (b)

Capitalization

These ULC rules would have the drafter capitalize a reference to a specific article, part, or section, but not a subsection, paragraph, or subparagraph. But we tend to capitalize all specific references to any other provision of the draft:

- o Article IV.
- o Part 1.
- o Section 17
- o Subsection (c).
- o Paragraph (i)

Rule 108 (d) – (f)

Capitalization (cont'd)

(d) Do NOT capitalize the word “state” unless it is part of a proper noun – e.g., “Secretary of State”.

(e) Capitalize certain state bodies and offices , even without the name of the person: “Governor”, “Attorney General”, “Legislature”, “General Assembly”, etc.

(f) Capitalize “Internet”. Do not capitalize “website”.

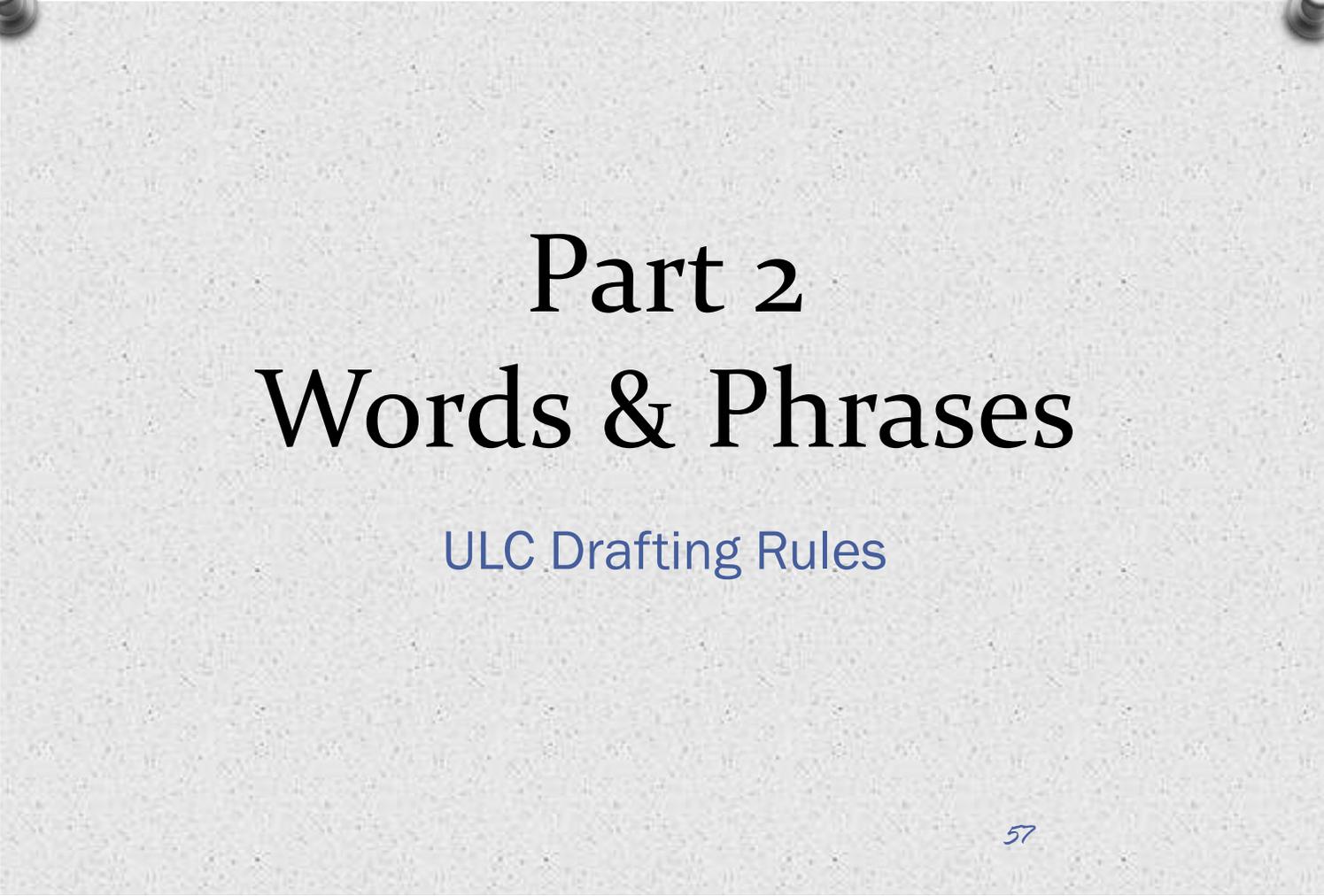
Capitalization – Other Rules

- o From the U.S. Government Printing Office Style Manual:
 - o The Constitution, President, Congress, and the U.S. Supreme Court:
 - o “the Constitution” but “constitutional”
 - o “the Congress” but “congressional”
 - o “the President” but “presidential”
 - o “the Court” (when referring to the Supreme Court)
 - o “the Chief Justice”
 - o “the Justices”
 - o With certain exceptions (most importantly, the official offices noted in the prior slide) capitalize titles when used with a person’s name, but not when used alone.
 - o RIGHT: Administrative Law Judge Williams . . .
 - o WRONG: If a hearing is conducted by an Administrative Law Judge
 - o Other:
 - o the Federal Government
 - o the President pro tempore
 - o the State’s attorney
 - o the Union

Rule 109

Numbers

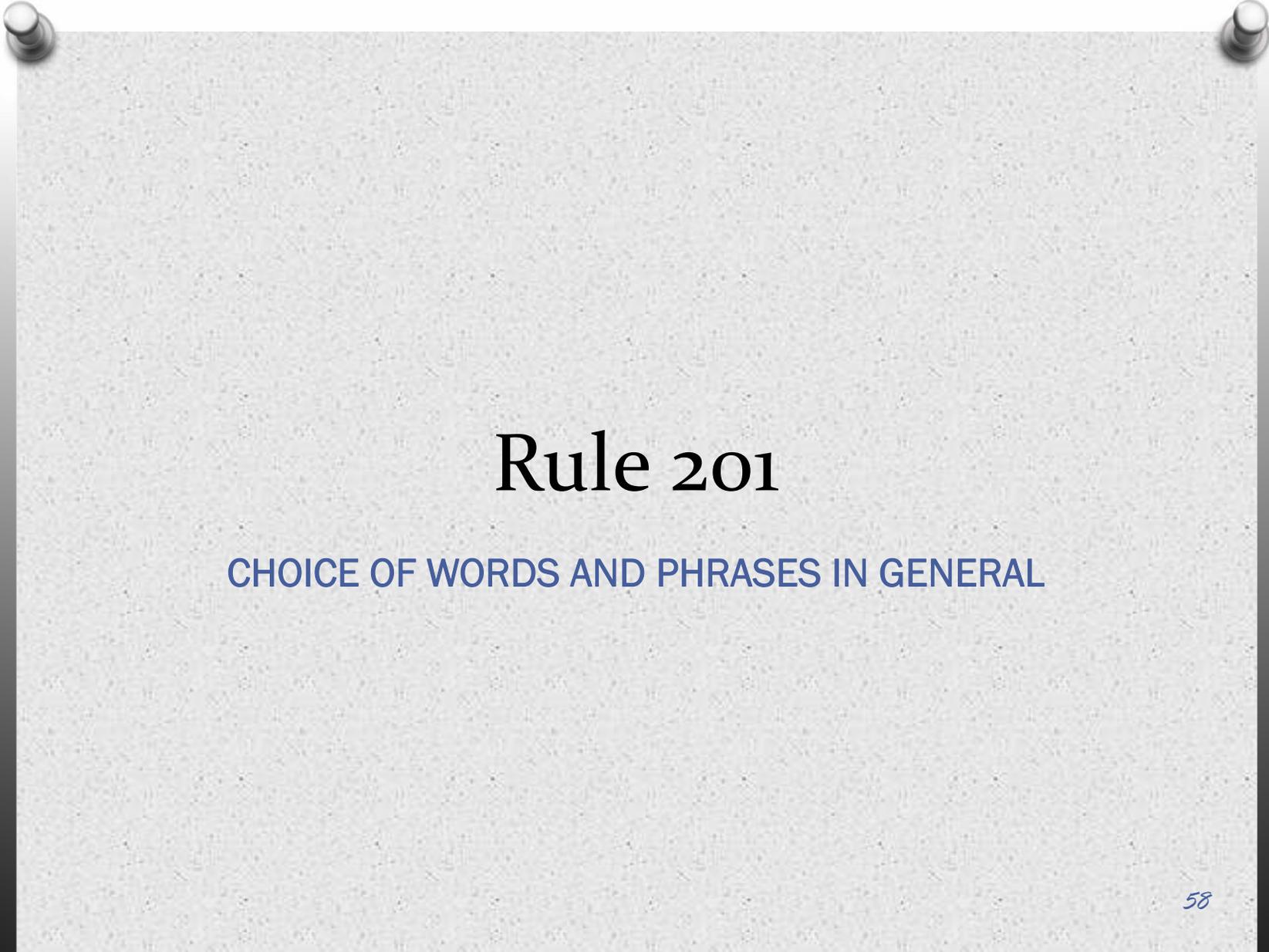
- (a) Use Arabic numbers for numbers over nine. Spell out numbers one through nine.
- (b) Do NOT follow the numbers one through nine with Arabic numbers in parentheses.
- (c) Use whole numbers unless there is a substantive reason to use a number with decimal fractions. Do NOT include zeros after a decimal point.
- (d) Avoid beginning a sentence with a number.



Part 2

Words & Phrases

ULC Drafting Rules



Rule 201

CHOICE OF WORDS AND PHRASES IN GENERAL

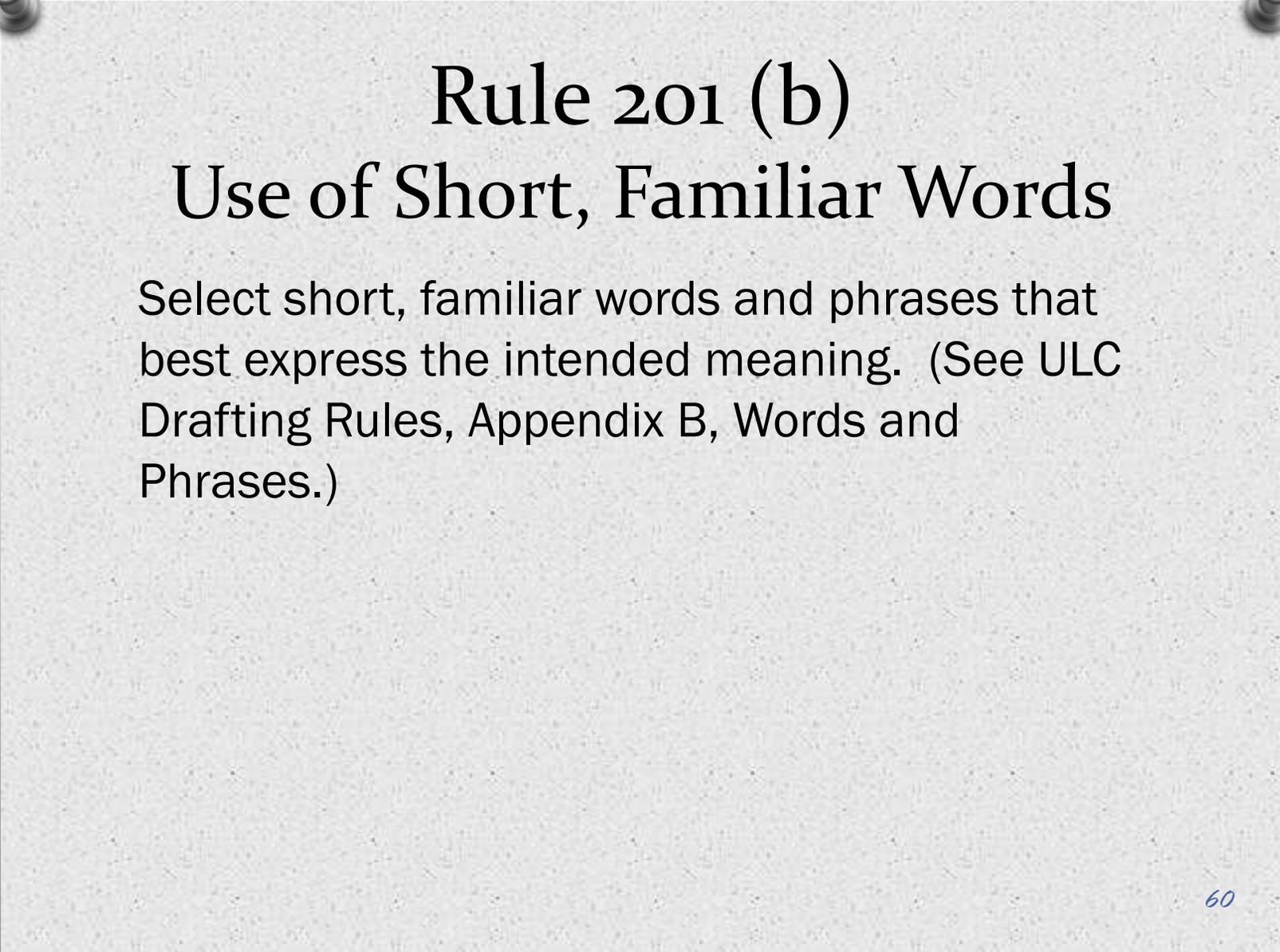
Rule 201 (a)

What NOT to Use

Do NOT use slang, contractions, abbreviations, legalese, acronyms, or colloquial expressions.

o Examples:

- o *Timeframe* (slang)
- o *Reg.* (abbreviation – use only in references)
- o *Arguendo* (legalese)
- o *Don't* (contraction)
- o *APA* (acronym)
- o *Take-home pay* (colloquial expression)



Rule 201 (b)

Use of Short, Familiar Words

Select short, familiar words and phrases that best express the intended meaning. (See ULC Drafting Rules, Appendix B, Words and Phrases.)

Examples

Use of Short, Familiar Words

BAD

- o Is entitled to*
- o Shall be required to*
- o In the event that*
- o During such time as*
- o Provided that*
- o Subsequent to*
- o Until such time as*
- o In the manner in which*
- o In order to*

BETTER

- o May*
- o Must*
- o If*
- o While*
- o But*
- o After*
- o Until*
- o How*
- o To*

More Examples

Use Short, Familiar Words

Avoid 'ion Words

- o *Reach a conclusion*
- o *Send a notification*
- o *Issue a certification*
- o *Complete an application*

Instead Say

- o *Conclude*
- o *Notify*
- o *Certify*
- o *Apply*

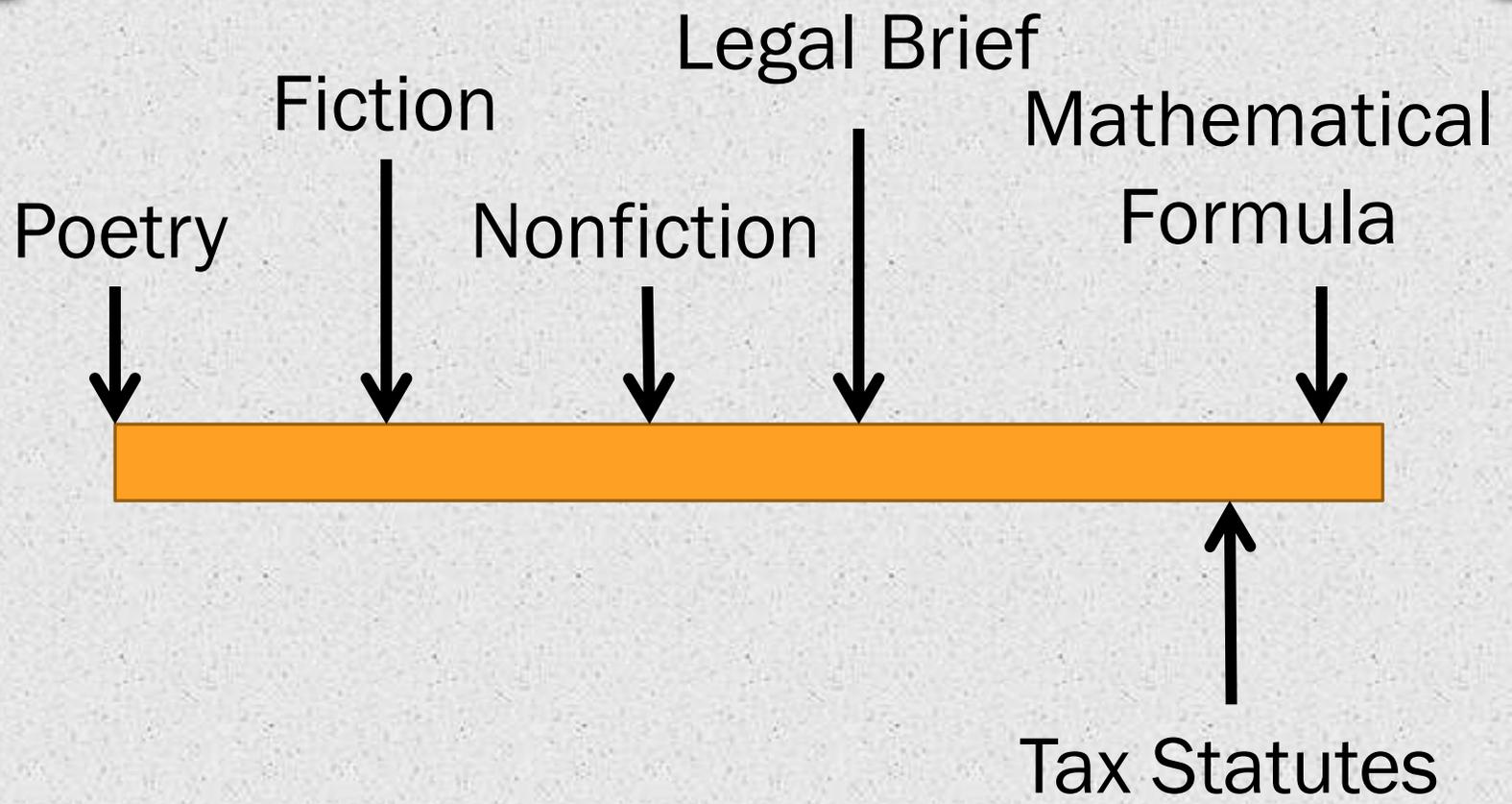
Rule 201 (c)

Do Not Use a Word and Its Synonym

o Example:

o *If a sale occurs within the month for which a credit claim is filed, it may be included in qualifying sales for that month even if the ~~transaction~~ sale is made on an installment basis.*

o The inclination to use a different word for the 3rd “sale” should be resisted.



Rule 201 (d)

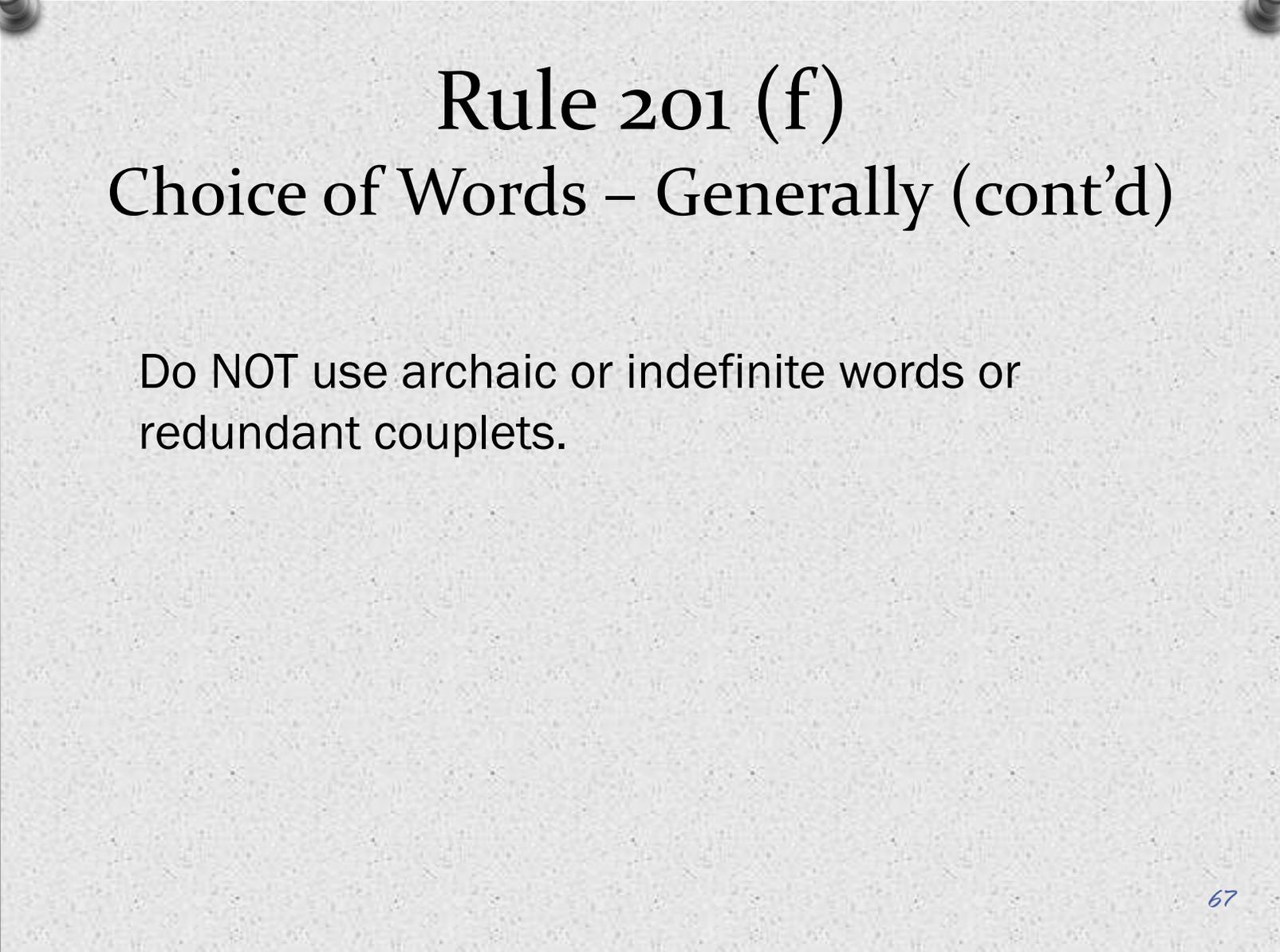
Use Pronoun Only When Clear

- o Use a pronoun only if its antecedent is unmistakable. Repeat the noun if there is a possibility of ambiguity as to the antecedent.
- o Example – *If the business provides a certificate, as required, to the financial institution within 30 days of the sale, it is entitled to claim the credit.*
- o Who is entitled?

Rule 201 (e)

Avoid Use of Possessive Nouns

- o A possessive noun may create ambiguity.
 - o *“The taxpayer’s claim”* may mean:
 - o A [nonspecific] claim of the [specific] taxpayer.
 - o A [specific] claim of a [nonspecific] taxpayer.
 - o Better to say – *“the claim of a taxpayer that has filed a timely protest . . .”* or *“the claim of any taxpayer to overpaid tax” . . .* Etc.



Rule 201 (f)

Choice of Words – Generally (cont'd)

Do NOT use archaic or indefinite words or redundant couplets.

Examples – Archaic Words

- o *Adduce*
- o *Aforementioned*
- o *By means of*
- o *Commence*
- o *Contrary to*
- o *Duly*
- o *Excepting*
- o *Expiration of [period]*
- o *Forthwith*
- o *Furnish*
- o *Henceforth*
- o *Hitherto*
- o *In accordance with*
- o *In order to*
- o *Indicate*
- o *Manner*
- o *Notwithstanding*
- o *Obtain*
- o *Render*
- o *Respecting*
- o *Set forth*
- o *Terminate*
- o *Transmit*
- o *Upon*
- o *Whatever*
- o *Whenever*

Examples – Indefinite Words

Word

Possible Meanings

- o Make Form, cause, compel, constitute
- o Hold Grasp, contain, secure, keep
- o Take Grasp, carry, bring, accept, perform
- o Keep Retain possession, maintain position, fulfill commitment
- o Direct Control, aim, give instruction

Examples – Redundant Couplets

- o *Null and void*
- o *Each and every*
- o *Full and complete*
- o *Over and above*
- o *If and when*
- o *Force and effect*

Rule 201 (g)

Any, Each, Every, All, & Some

- o **Do not** use “any”, “each”, “every”, “all”, or “some” if “a”, “an”, or “the” can be used with the same result.
- o **WRONG** – *Every [or each] taxpayer applying for a credit must provide all the documentation required under this section.*
- o **RIGHT** – *A taxpayer applying for a credit must provide the documentation required under this section.*

REMEMBER

OCASSIONAL, INCONSISTENT USE OF “ANY”, “EACH”, “EVERY”, OR “ALL”, SIMPLY MAKES IT LESS CLEAR WHAT IS MEANT WHEN THE WORDS *AREN'T* USED.

Rule 201 (h)

Do Not Use And/Or

- *WRONG - A claimant and/or beneficiary may apply.*
- *RIGHT - A claimant, a beneficiary, or both may apply.*

Rule 201 (i)

Deem ≠ Consider

- o Do not use “deem” to mean “consider”. Use “deem” only to state that something is to be treated as true even if contrary to fact.
- o RIGHT: *Delivery is considered to take place when possession is transferred to the purchaser.*
- o AND RIGHT: *If possession has not transferred to the purchaser, delivery is deemed to take place no later than 30 days after the sale.*

Rule 201 (j)

Do Not Use “The Provisions Of”

- o (j) Do NOT say “the provisions of” when referring to a [specific] numbered portion of an act.
 - o WRONG: *The provisions of Section (b) do not apply in a case of a taxpayer that ...*
- o Do say “the provisions” when not referring to a specific numbered portion.
 - o RIGHT: *The provisions limiting the time for the filing of a claim ...*

Rule 201 (k) and (l)

Use “A” or “An”, Then “The”

- Within a particular provision – use the indefinite article first, then the definite article when referring to the same thing.
 - *A taxpayer that files a claim If the taxpayer includes documentation . . .*
- In a series of singular nouns, use an article (“the”, “a”, or “an”) only before the first noun in the series. Use the indefinite article appropriate for the first noun in the series.

Rule 201 (m)

Avoid Auxiliary Verb – Main Verb Split

- o Avoid inserting a word or phrase between an auxiliary verb and its main verb.
- o DO NOT: *The taxpayer may, after 30 days, appeal the notice of assessment.*
- o DO: *After 30 days, the taxpayer may appeal the notice of assessment.*

Rule 201 (n) & (o)

No and Not

- o Avoid beginning a sentence with “No”.
- o In drafting a prohibition, use “not” with a verb to express what is prohibited.
- o Do not use “no” to modify the person against which the prohibition is directed.

Examples – No and Not

BAD

- o *No person may claim a credit more than once.*
- o *No claim will be granted after 60 days.*

BETTER

- o *A person may not claim a credit more than once.*
- o *After 60 days, a claim will not be granted.*

Rule 201 (p)

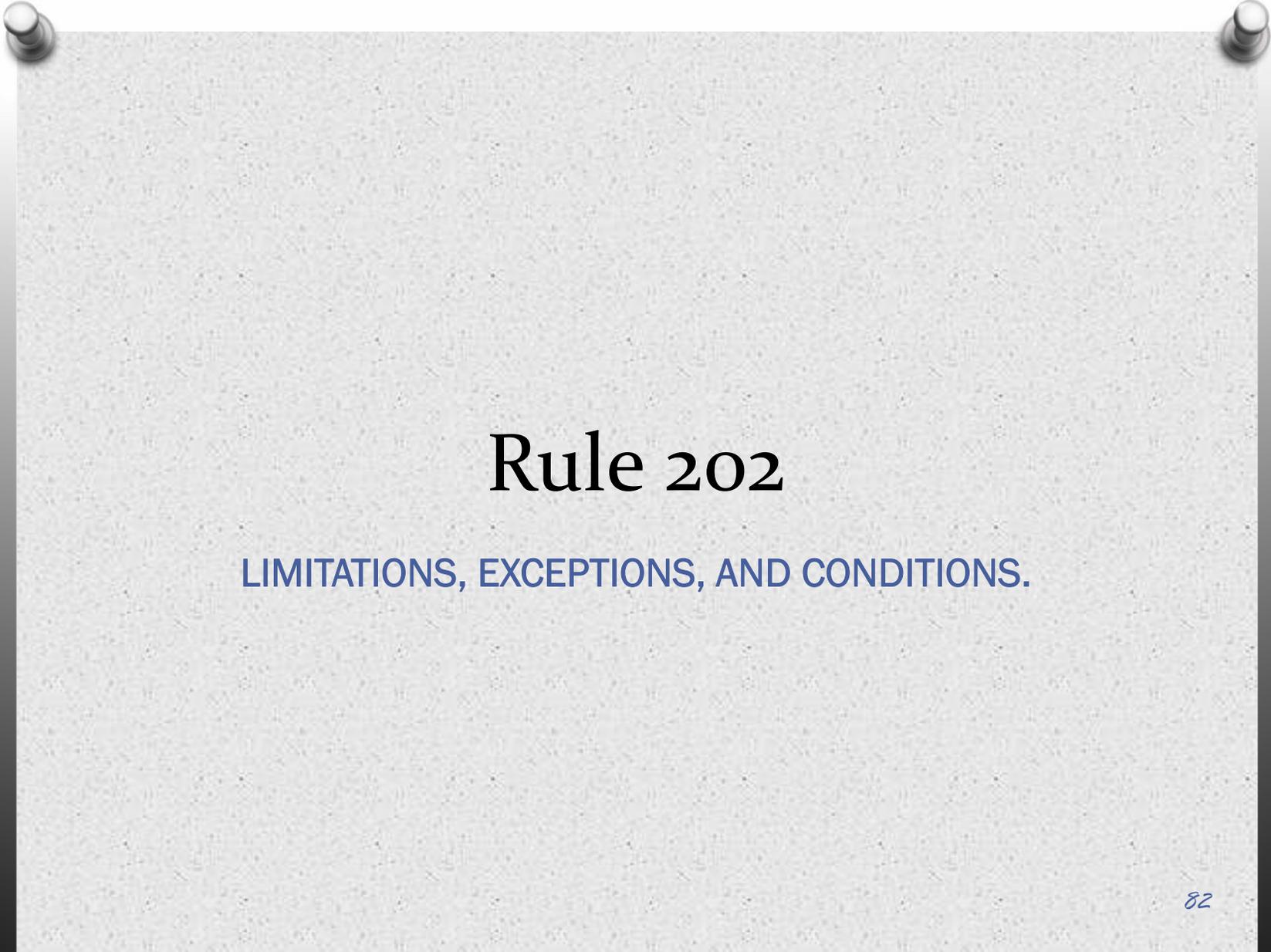
Do Not Use “Then” After “If”

- o Do not add the word “then” after the comma ending an “if” clause. The word “then” is superfluous.
- o But DO use of the word “then” to indicate a subsequent time.
 - o NOT OK – *If the department finds the claim unsubstantiated, then it will deny the claim.*
 - o OK – *The department will review the claim, then it will send a notice of approval or denial.*

Rule 201 (q)

Deadline or Range of Time

- o To express a range of time, use “not later than” or “at least”. Do not use “within” because this creates ambiguity as to whether the last day, or other unit of time, is included.
 - o NOT OK – *A claim must be filed within 60 days of the purchase transaction.*
 - o OK – *A claim must be filed not later than 60 days after the purchase transaction.*



Rule 202

LIMITATIONS, EXCEPTIONS, AND CONDITIONS.

Limitations, Exceptions, & Conditions

- o What would a tax statute be without them?
- o See § 1.704-1 (b)(1)(ii) (a) Generally. **Except** as otherwise provided in this section, the provisions of this paragraph are effective for partnership taxable **years beginning after** December 31, 1975. **However**, for partnership taxable years beginning after December 31, 1975, **but before** May 1, 1986, (January 1, 1987, **in the case of** allocations of nonrecourse deductions as defined in paragraph (b)(4)(iv)(a) of this section) an allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner that is not respected under this paragraph **nevertheless will be respected** under section 704(b) **if such allocation** has substantial economic effect **or is in accordance** with the partners' interests in the partnership as those terms have been interpreted **under the relevant case law**, the legislative history of section 210(d) of the Tax Reform Act of 1976, and the provisions of this paragraph in effect for partnership taxable years **beginning before** May 1, 1986.

Rule 202 (a)

Exceptions - At the Beginning

- o A limitation, exception, or condition should be placed at the beginning of the subordinated provision, so that it will be readily noticed.
- o EXAMPLE: *Except in the case an investment credit, a credit claim must be filed no later than one year after the qualifying expenditures.*

Rule 202 (b)

Exceptions – “Except as” / “Subject to”

- When an exception or condition is in a different provision – use “except as otherwise provided” to introduce the exception and “subject to the exception” to introduce a provision that is conditioned on another provision.

Example

Except as/Subject to

EXCEPT AS

(a) Except as otherwise provided in Subsection (b), the following requirements apply: . . .

(b) The requirements of Subsection (a) may be waived if all of the following conditions are met: . . .

SUBJECT TO

(a) To claim the credit, a taxpayer must timely file a report that lists the qualifying sales, as required by the department.

(b) Subject to Subsection (a), a taxpayer with qualifying sales exceeding \$10,000 may defer claiming the credit on any excess for one year.

Rule 202 (c)

Exceptions - Default Rules

- o If a provision states a default rule that is subordinate to a contrary provision in a contract, instrument, or similar document, reference to the document should be made at the beginning of the provision.
 - o NO - *A lease may be terminated after 60 days, unless it states a different termination date.*
 - o YES - *Unless a lease states a different termination date, it may be terminated after 60 days.*

Rule 202 (d)

Exceptions – No “Notwithstanding”

- Avoid using “notwithstanding” to express a limitation of a general provision of the same act.
 - WRONG – *(b) Notwithstanding Section (a), the taxpayer may . . .*
 - RIGHT – *(a) Except as provided in Section (b), a taxpayer must . . .*

Rule 202 (e) – (h)

“If”, “When”, “Whenever”, “Where”

- o (e) For a condition that may occur - use “if” to introduce the condition, not “when” or “where”.
- o (f) For a condition that will occur – use “when” to introduce the condition.
- o (g) For conditions that will occur more than once – use “whenever”.
- o (h) For a condition that references a particular time – use “when”. And for a condition that references a particular place or a set of circumstances – use “where”.

Examples:

“If”, “When”, “Whenever”, “Where”

- o *If a taxpayer files an amended return . . .*
- o *When the informal hearing is scheduled in the matter . . .*
- o *Whenever an employer withholds tax from an employee wages . . .*
- o *Where the location of the seller is outside the state . . .*
- o *Where the seller has no business locations or property within the state, but does have employees, . . .*

Rule 202 (i) – (j)

No “Provided That” or “Except That”

- o (i) Do not use “provided that”, “provided however that”, or a similar proviso.
- o (j) Use “but” instead of “except that”.

Rule 202 (k)

No Unnecessary Exceptions

- o (k) Negate only unintended and reasonably inferable implications of a provision of an act.
 - o What's the harm? (Besides taking up space.) An unnecessary exception may affect the meaning.
 - o Example: *An automatic extension will be granted upon a timely request, but in no case if the request is not timely.*
 - o This raises, but does not answer, the question of whether a non-automatic extension might be granted for untimely requests.)

Rule 202 (k)

Examples – **Unnecessary** Exceptions

- o Unless deceased or disabled, a resident taxpayer must annually file a tax return . . .*
- o Unless a corporation has been dissolved, . . . [same idea]*
- o A “resident individual” means . . . but does not include a business entity . . .*
- o If a zombie apocalypse occurs . . .*

Rule 203

USE OF “SHALL”, “MAY”, “MUST”, “MIGHT”, AND “CAN”.

Rule 203 (e)

Incorrect Use of “Shall” and “Must”

Skipping to this rule (e) first because it is so often violated:

- o Do NOT use “shall” or “must” to state a rule of law. Use the present tense. (See Rule 103.)

NOTE – this incorrect usage is very common in older statutes (including MTC models).

Examples from MTC Models

Incorrect Use of Shall

WHAT THE MODEL SAYS

- o *“This election shall remain in effect . . .”*
- o *“ . . . that entity shall be treated as a general partnership.”*
- o *In such cases, the deduction shall be prorated . . .*

WHAT IT SHOULD SAY

- o *This election remains in effect . . .*
- o *. . . that entity is treated as a general partnership.*
- o *In such cases, the deduction is prorated . . .*

RULE 203 (a) - (d)

Correct use of “SHALL” and “MUST”

- o (a) Use “shall” or “must” to express a duty, obligation, requirement, or condition precedent.
- o (b) Use “shall” if the verb it qualifies is a transitive verb in the active voice and the subject is animate.
- o (c) Use “must” if the verb is used to express a condition precedent.
- o (d) Use “must” if the verb it qualifies is in the passive voice or the subject is inanimate.

Examples

Use of “Shall” and “Must”

NO

- o *The director must notify the taxpayer . . .*
- o *A notice of assessment must be sent 30 days prior to an action to . . .*
- o *A notice shall provide the date by which . . .*

YES

- o *The director shall notify the taxpayer . . .*
- o *A notice of assessment shall be sent 30 days prior to an action to . . .*
- o *A notice must provide the date by which . . .*

Rule 203 (g) & (h)

Use of “MAY”, “MIGHT”, and “CAN”

- o (g) Do not use “might”. Use “may”.
- o (h) Do not use “can” as a substitute for “may”. Use “can” only in the sense of “is able to.”
- o Example (correct): *A taxpayer may report electronically if it can attach an electronic schedule of sales that conforms to required specifications.*

Rule 204

“May Not” & “Must Not”

- o (a) Use “may not” or “must not” to express a prohibition. Do NOT use “shall not”.
- o (b) Use “may not” if the verb it qualifies is a transitive verb in the active voice.
- o (c) Use “must not” if the verb it qualifies is an intransitive verb or a transitive verb in the passive voice.

Rule 204

“May Not” & “Must Not”

- o BAD Examples:
 - o *A taxpayer shall not accept an exemption certificate . . .*
 - o *A taxpayer must not accept an exemption certificate . . .*

- o BETTER Examples:
 - o *A taxpayer may not accept an exemption certificate . . .*
 - o *An exemption certificate must not be accepted if the purchaser . . .*

Rule 205 (a)

“Should” and “Ought”

- o (a) The word “should” is properly used to state a duty to take action or to have knowledge.
 - o EXAMPLE: *A taxpayer that knew or should have known that the sale was to a purchaser within the state . . .*
- o (b) Do not use “should” or “ought” instead of (the proper use of) “shall” or “must”.



Rule 206

REFERENCE TO ANTECEDENTS;
USE OF “WHICH” AND “THAT”

Rule 206 (a) – (d)

“Which” Versus “That”

- o (a) References to antecedents must be unambiguous. If the antecedent is not clear, the drafter should rewrite the sentence.
- o (b) Use “which” to introduce a nonrestrictive clause.
- o (c) Use “that” to introduce a restrictive clause that is intended to modify the nearer of two possible antecedents.
- o (d) Use “which” to introduce a restrictive clause that is intended to modify the remote, rather than the nearer, of two possible antecedents.

Rule 206 (e) & (f)

“Which” Versus “That” (cont’d)

- o (e) If the antecedent is a noun phrase containing two or more nouns, treat the noun phrase as a unit in applying Rule 206(d).
- o (f) In determining whether an antecedent is immediate or remote, an intervening phrase set off by commas generally may be ignored.

Rule 206

Nonrestrictive/Restrictive

NONRESTRICTIVE

- o *A claim, which the department may approve or deny . . .*
- o *The annual report, which the taxpayer shall file no later than . . .*

RESTRICTIVE

- o *A claim that the department has approved . . .*
- o *An annual report that has not been timely filed . . .*

Rule 206

Proximate/Remote

- o *A return filed by a business that claims a credit under Section (a)*
...
 - o “that claims a credit” modifies “business”
- o *A return filed by a business, which claims a credit under Section (a)...*
 - o “which claims a credit” modifies “return”
- o *A certificate accepted in good faith that is timely received...*
 - o “that is timely received” modifies “certificate accepted in good faith” (a noun phrase)
- o *A taxpayer, having a location in this state, that is assessed a penalty for failure to file...*
 - o “that is assessed” modifies “a taxpayer”

Rule 207

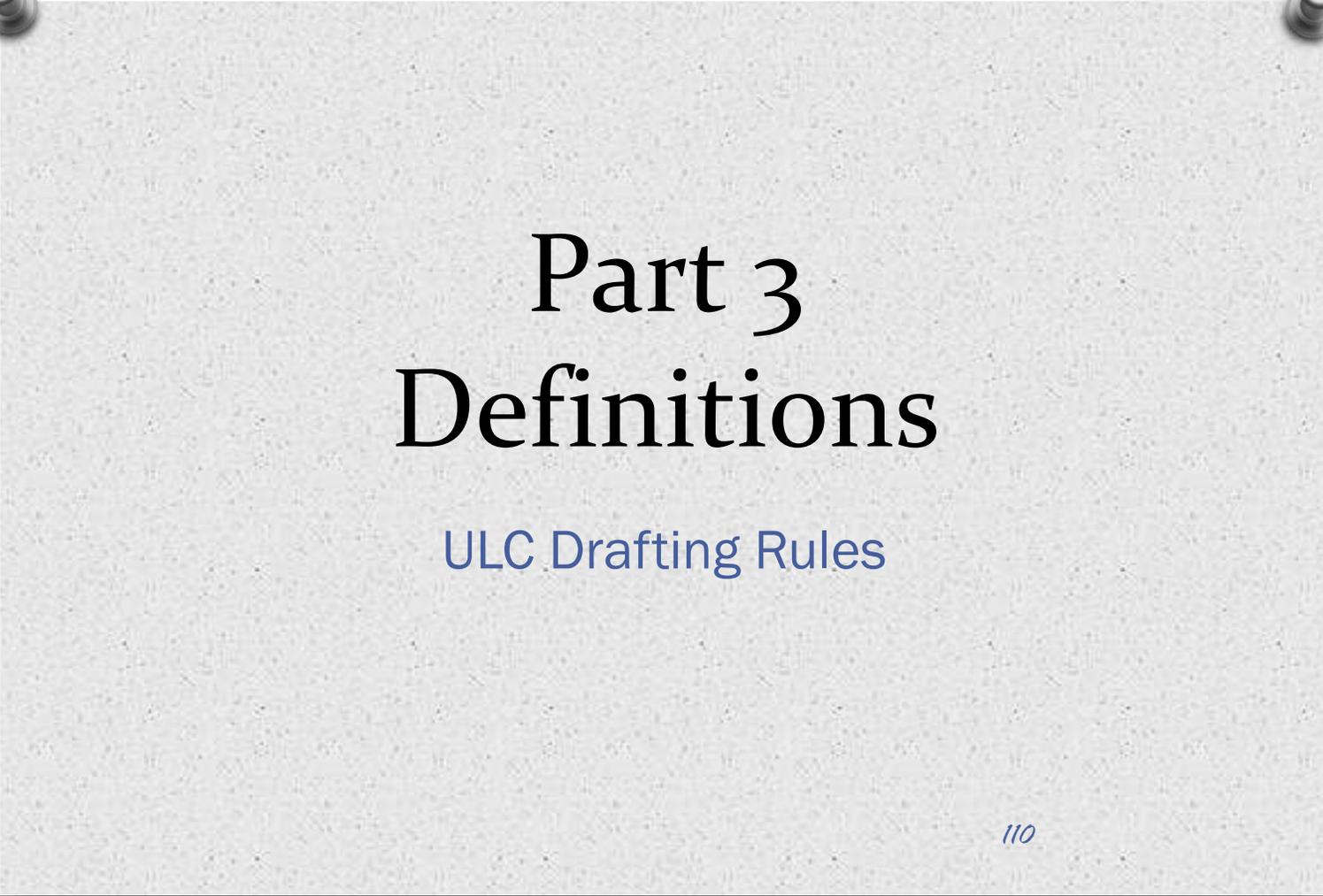
“Who”, “Whom”, & “Whose”

- o (a) Use “who” or “whom” only if the subject must be an individual. If there is a possibility that the subject may be a person other than an individual, such as a corporation or partnership, use “which” or “that”.
- o (b) Use “whose” as the possessive both for individuals and entities.

Rule 208

“Such”, “Said”, & “Aforesaid”

- o (a) Do not use “such”, “said”, or “aforesaid” as a substitute for “the”, “that”, “it”, “those”, “them”, or similar words.
 - o NO - *Such application must be in the form . . .*
 - o YES - *The [that] application must be in the form . . .*
- o (b) Use “such” to express “for example” or “of that kind”.
 - o *The director may request documentation to support a claim, such as invoices or receipts, . . .*
 - o *The tax court may order the parties to submit a list of witnesses, if it determines such an order is appropriate.*

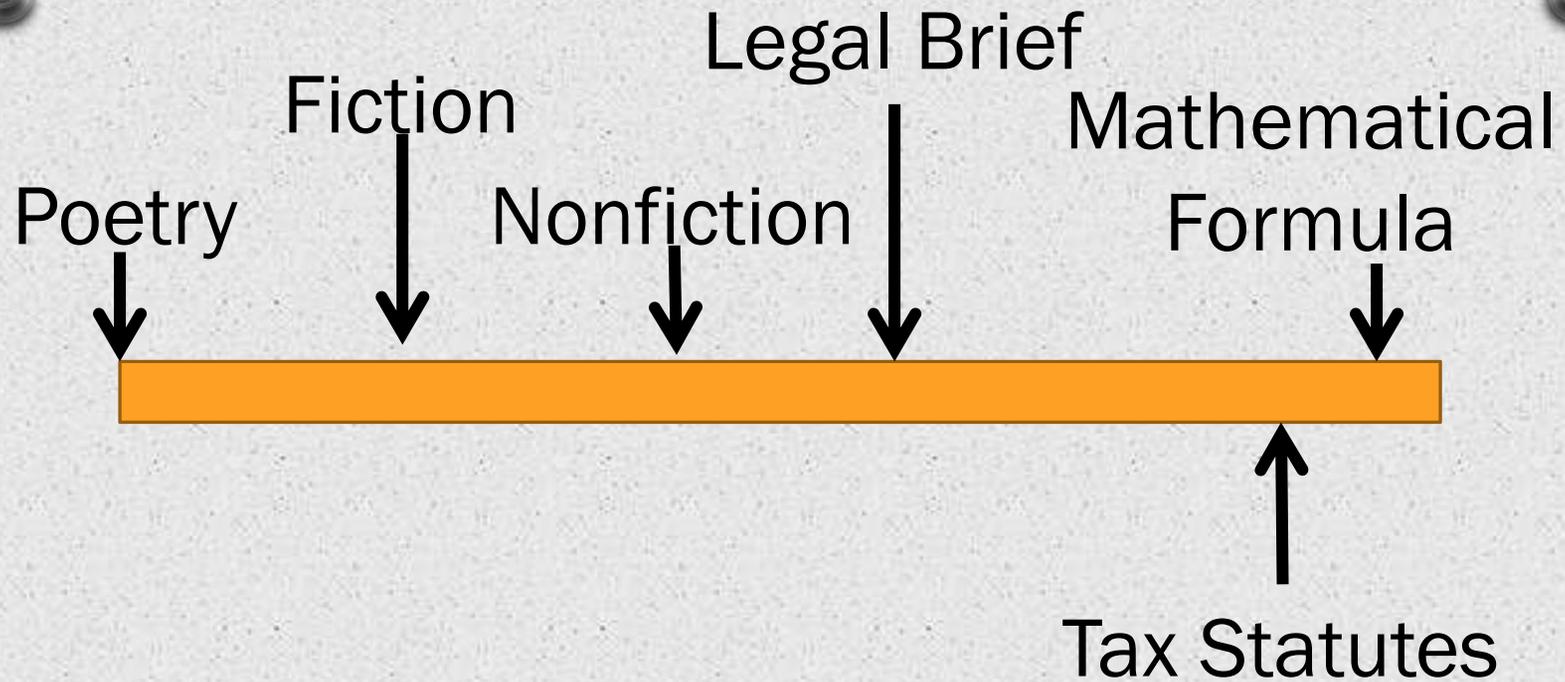


Part 3 Definitions

ULC Drafting Rules

Rule 301

Formulation of Definitions.



Remember this slide?

Definitions are like the X, Y, and Z of a mathematical formula.

Rule 301 (a)

When to Define a Term

Define a term, whether a single word or phrase, if:

- o the term has several different meanings and it is necessary to preclude any unintended construction of the act supported by a different meaning;
- o the term is used in a sense that is broader or narrower than its common usage;
- o use of the defined term avoids excessive repetition of a phrase and improves the clarity of the act.

Rule 301 (b) & (c)

Definitions That Are Exhaustive

(b) If a definition is intended to exhaust the meaning of a term, use “means”. Also, avoid using the term itself in the definitional language. There are two limited exceptions to this general rule:

- o If the defined term is used in a narrower sense than the ordinary meaning of the word, the word may be used in the definition.
 - o *“Day” means a calendar day.*
 - o *“Instrument” means a negotiable instrument.*
- o Part of a defined term consisting of more than one word may be used in the definition.
 - o *“Principal amount of the debt” means the amount of a debt at the time of an agreement.*

(c) If the meaning of a defined term, with more than one meaning, is exhaustive, end the series with “or”.

Rule 301 (d) & (f)

Definitions That Are Not Exhaustive

- o (d) If a definition is not intended to exhaust the meaning of a term but to give examples, use “includes”. If more than one item is listed, end the series with “and”.
- o (f) Do not follow the word “include[s][ing]” with the phrase “but not limited to”. The phrase is superfluous because the word “including” by itself states that the list is nonexclusive.

Rule 301 (e)

Expanding a Term Using “Include”

- o The meaning of a defined term may be expanded to embrace one or more additional meanings by using “includes” in the qualifying language.
- o If the definition embraces more than one additional meaning, end the series with “and”.

Examples

Expanding Meaning

- o Assume “wages” is defined in the act (“wages means . . .”), the following may be added to the definition:
 - o *The term includes gratuities received by an employee from patrons of the employer in the course of employment.*
- o Assume “wages” is not defined in the act, but “wages” as used in the act includes items not usually included in the term, the example would read:
 - o *“Wages” includes gratuities received by the employee from patrons of the employer in the course of employment.*

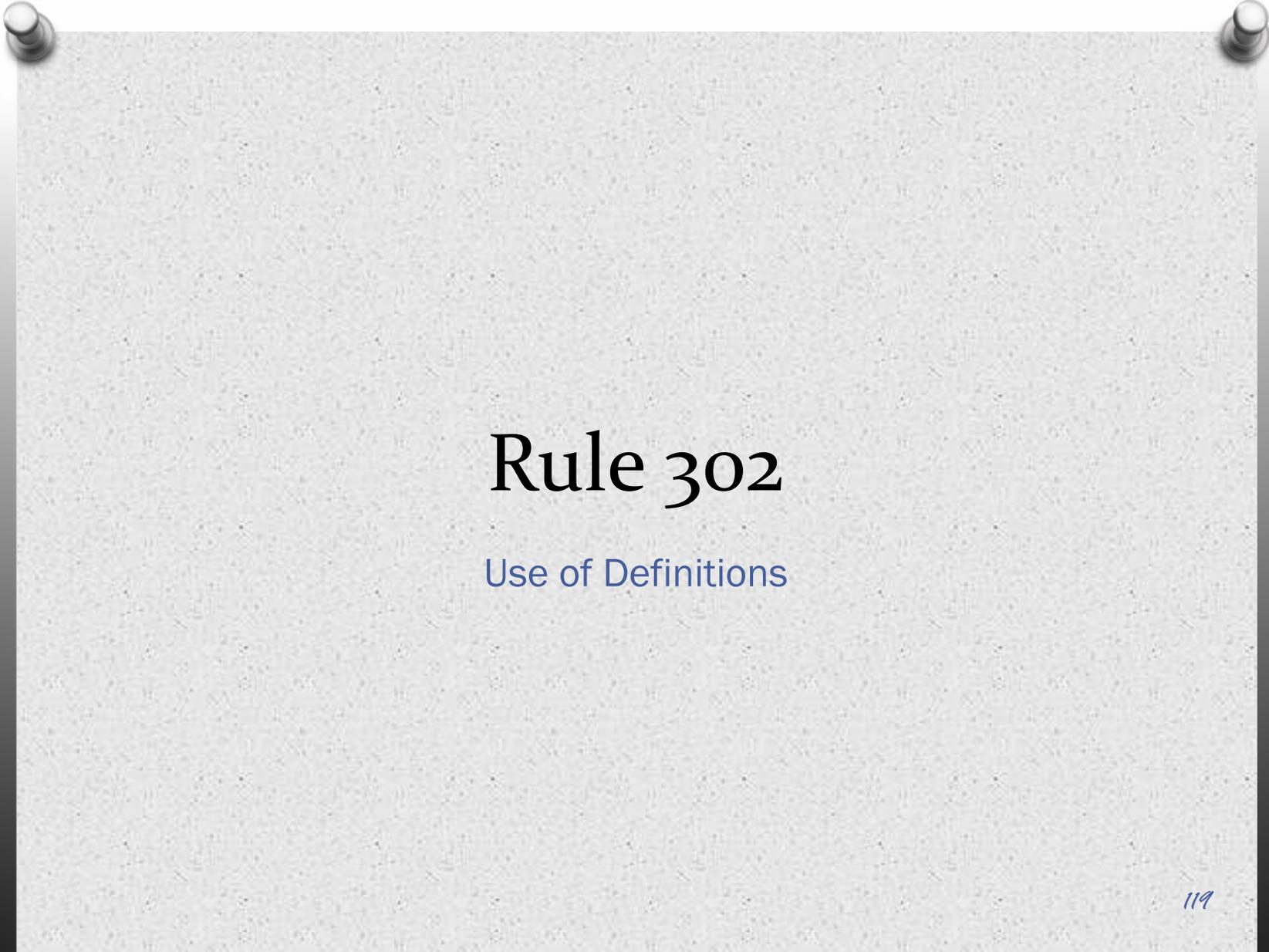
Rule 301 (g) & (h)

Narrowing Definitions

(g) The meaning of a defined term may be narrowed by adding a qualifying sentence.

(h) If a term is used in an act in a meaning different from the defined meaning, or is used in the act as more than one part of speech, a limitation to the definition should be added immediately after the term.

- o *“Jurisdiction”, used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.*
- o *“Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*



Rule 302

Use of Definitions

Rule 302 (a)

Treatment of Different Forms of Term

(a) Do not use the same definition for more than one form of a word. It is generally clear that a definition applies to other forms of the word. If necessary for clarity, add a sentence stating that the other form of the word has a corresponding meaning.

- o “Deduction” means the amount claimed under Subsection (1) as a reduction of reportable income. The term “deduct” has a corresponding meaning.

Rule 302 (b) & (c)

Careful Use of Defined Terms

(b) Do not use two defined terms to mean the same thing. Choose a single term. (See Rules 105(a) and 201(c).)

(c) Use the defined term in the act, not its definitional language.

- o For example, assume “certificate” is defined to include an amended or restated certificate. The text of the act should not use the phrase “a certificate or amended or restated certificate”, but rather, “a certificate”.

Rule 302 (d)

Careful Use of Defined Terms (cont'd)

(d) Do not use a defined term in the act in a sense that is inconsistent with the definition. For example, if “jurisdiction” is used in the sense of a political entity, avoid using the same word to mean the scope of power of a court. If this is unavoidable, qualify the definition. See Rule 301(h).

Rule 302 (e)

No Substantive Rules in Definitions

(e) Do not include substantive provisions in a definition.

- o WRONG:
 - o *“Timely filed claim” means a claim filed no later than the date provided in Subsection (b). However, the director may extend the date in Subsection (b) for no more than 30 days.*
 - o The extension provision should be in Subsection (b).

Rule 303 – Arrangement of Definitions

- o (a) Arrange all defined terms in alphabetical order and place them at the beginning of the act after the short title if they are used generally in the act. If a defined term is used only in a single section, part, or article, locate the definition at the beginning of the subdivision highest in rank in which the term is used.

OTHER

- o Brackets

- o Use brackets to indicate that the statutory drafters will have to insert state-specific information, references, etc.

- o Numbering of provisions

- o See our other models – AND – just make sure any internal references are clear. (States will almost certainly have to renumber.)

Other

- o Examples –
 - o We include examples within the provisions to which they relate, at the end of the particular provision that they illustrate – or if they are general examples – at the end of the series of provisions .