



INTRODUCTION TO LEGAL WRITING - PART 2

LINDA ALUVALE

LINDAALUVALE@KSL.CO.KE

LEGALESE



- ▶ The Cambridge Dictionary defines legalese as “the language used by lawyers and in legal documents that is difficult for ordinary people to understand.”

CHARACTERISTICS OF LEGALESE

- ▶ Legalese is characterised by:
 - (i) Long sentences, often trying to cover several points
 - (ii) Verbiage (using more words than are necessary)
 - (iii) Too many double negatives
 - (iv) Being overly formal

LEGALESE EXAMPLES

- ▶ In witness whereof the parties hereunto have set their hands to these presents as a deed on the day month and year hereinbefore mentioned.

LEGALESE EXAMPLES

- ▶ In No Event Shall the Company or its Directors, Employees, Or Agents Be Liable To You Or Any Third Party For Any Direct, Indirect, Consequential, Exemplary, Incidental, Special Or Punitive Damages, Including Lost Profit, Lost Revenue, Loss Of Data Or Other Damages Arising From Your Use Of The Website Or Company Services, Even If the Company Has Been Advised Of The Possibility Of Such Damages.

CRITICISMS OF LEGALESE

- ▶ Documents containing legalese are drafted, read and interpreted almost exclusively by lawyers.
- ▶ It is very confusing, unclear, unnecessarily verbose and can hide very important information in difficult to read language.
- ▶ Clients therefore enter into legalese contracts without a complete understanding of their effect, choosing instead to trust the judgment of their lawyer.

PLAIN ENGLISH

- ▶ Plain English involves the use of 'plain and straightforward language which conveys its meaning as clearly and simply as possible without unnecessary pretension or embellishment' (Richard Wydick, *Plain English for Lawyers*)
- ▶ Plain English is the modern alternative to 'legalese', the old fashioned jargon language much loved by lawyers for centuries.

SHOULD WE DRAFT IN PLAIN ENGLISH?

- ▶ YES!!!
- ▶ It takes practice to write Plain English easily and fluently, and it involves ditching some bad habits that we have all acquired when writing in a legal context.
- ▶ Writing in plain English involves using the simplest and most straightforward language in the circumstances, not the simplest or most straightforward language available

DRAFTING IN PLAIN ENGLISH

- ▶ An advocate cannot sacrifice precision for simplicity, or clarity for the sake of shorter words. What you are drafting must fulfil its function. There are therefore times when technical terms are preferable to lay terms; when uncommon words carry precisely the meaning you want while commonplace ones do not; when a long sentence gives the right emphasis while a short simple one does not.
- ▶ The rule is to use simple language wherever possible but not at all costs. Learn to recognise legalise, avoid it whenever possible and substitute it with plain English instead.

CHARACTERISTICS OF PLAIN ENGLISH

- It is clear;
- It is simple to understand; Is appropriate and readily conveys its message to its audience. Draws on common, everyday language. It avoids obscure words when common ones will do;
- It is written in short sentences;
- It is structurally simple;

CHARACTERISTICS OF PLAIN ENGLISH

- Explains technical words in simple language;
- Attempts to interest readers and hold their attention;
- Relies heavily on simple sentence structures;
- Generally avoids passive voice;
- Is respectful of the reader.

GENDER NEUTRAL LANGUAGE



- ▶ Why adopt a gender-neutral language?
The use of masculine words to cover all people regardless of gender or sex is unnecessary, inaccurate and tends to reinforce historic gender stereotypes. In other words, gender-neutral writing is about clarity, inclusion and equality.

WHAT IS GENDER-NEUTRAL DRAFTING?

- ▶ In its broadest sense, gender-neutral drafting involves:
 - (I) Avoiding gender-specific pronouns and adjectives (such as “she/her/hers” or “he/him/his”)
 - (II) Avoiding nouns that may appear to assume that a person of a particular gender will do a particular job or perform a particular role (e.g, Chairman)

EXAMPLES

While some writers try to solve this problem by using the plural pronoun “they” or “their” in place of “he” or “him,” this solution is grammatically incorrect and thus inappropriate for formal writing.

Examples are:

A lawyer must diligently represent his client.

A lawyer must diligently represent their client.

MODERN ALTERNATIVES FOR ARCHAIC WORDS AND PHRASES

- ▶ Aforementioned
- ▶ Albeit that
- ▶ Hereinafter
- ▶ Hereinbefore
- ▶ The foregoing
- ▶ In the premises
- ▶ Save as aforesaid
- ▶ The matters aforesaid