

# Introduction to Legal Writing

- Words are the dominant tool of trade for lawyers.
- Nothing of consequence can be done without use of words.
- Most important skill that marks out a good lawyer – ability to communicate.
- Good choice of words + good piecing together = effective communication.

# Introduction to Legal Writing (contd.)

- A lawyer communicates effectively by using words well:
  - To explain something to a client – put it in a way that client understands.
  - To get information from a witness – frame question in the right way.
  - To make a point to the court – express it in the most telling (persuasive) way.

# Introduction to Legal Writing (contd.)

- All these involve skill in choice of words, order in which they are put and in structure of sentences, paragraphs and speeches.
- No difference between spoken word skills and written word skills: only the context changes.
- Different words may be used in writing than in speech.
- Sentence structure may change.

# Introduction to Legal Writing (contd.)

- ▶ The need for clarity and precision in what you say remains unchanged.
- ▶ In drafting, there is need for clarity and non-ambiguity in what you write.
- ▶ This exceeds what is required in any other context.

# Qualities of Good Writing

## 1. Making choices

- Everything in final version must be there because you intend it to be.
- Nothing should be in it by accident
- What you end up with should be exactly what you want.

# Qualities of Good Writing (contd.)

- ▶ Every word used should be there because you have chosen to use it and not any other.
- ▶ Sentences and paragraphs should be composed as you have designed them.
- ▶ You can only write well by making choices.
- ▶ Never simply write down the first thing that comes to mind without critical examination.

# Qualities of Good Writing (contd.)

## 2. Clarity

- ▶ Good writing = total clarity.
- ▶ Meaning should spring instantly from the words.
- ▶ Purpose of writing – to clarify that which would otherwise be unclear, e.g. A legal opinion.

# Qualities of Good Writing (contd.)

- Clarity of expression cannot be achieved without clarity of thought.
- If you are not clear in your mind what you want to say, you will not be any better in your writing.
- Don't write anything without first carefully thinking about it.
- All writing must be planned and thought through.



# Qualities of Good Writing (contd.)

## 3. Logical structure

- Clarity not only depends on choice of words and word order but also on the structure of what is being written.
- The whole piece of writing needs to be composed in a clear and coherent manner.
- This means the structure should be logical.

# Qualities of Good Writing (contd.)

- Whatever one wants to say can be broken into smaller pieces of content.
- You cannot make a point without explaining it.
- You cannot write an opinion without giving reasons for it. The process needs to be logical.
- Therefore, the reasons you give must lead to the conclusion you express.

# Qualities of Good Writing (contd.)

- The reasoning process is a series of small links in a logical chain.
- Each link must be placed in the right order and connected correctly to the other links.
- This involves *logical thought, logical explanation and logical structure* to what is written.
- Writing that has this structure is easy to read, is clear and compelling in its persuasiveness.

# Qualities of Good Writing (contd.)

## 4. Spelling

- Good writing should be free from spelling errors.
- Spelling errors make you look unprofessional.
- Take all reasonable steps to eliminate them.
- Of professional importance is to spell names correctly.

# Qualities of Good Writing (contd.)

## 5. Grammar

- Writing should be free from grammatical errors.
- The rules of grammar dictate *word form, word order and sentence structure*.
- Therefore, verbs must be in correct tense, adverbs in the correct place and sentences properly composed.

# Qualities of Good Writing (contd.)

- ▶ If this is not the case, the writing will be obscure.
- ▶ Writing cannot be clear if it is not grammatical.

## 6. Punctuation

- ▶ Good writing must be properly punctuated.

# Qualities of Good Writing (contd.)

- Punctuation is crucial to the meaning of a legal document.
- Take care to use full stops, commas, semicolons and colons properly and in the right places.
- The sense of a sentence can be destroyed by a comma in the wrong place or lack of one where it is needed.

# Qualities of Good Writing (contd.)

- A full stop in the wrong place can spoil the connection between two linked thoughts and result in a sentence with no main verb.
- Do not open a bracket and then fail to close it.
- Take care of punctuation when drafting.
- The choice of punctuation marks is just as important to drafting as is choice of words.



# Qualities of Good Writing (contd.)

## 7. Precision

- Everything written should say what the writer intends.
- Do not express your thoughts in a vague or generalized way.
- Words chosen must be chosen for the precise meaning.

# Qualities of Good Writing (contd.)

## 8. Non-ambiguity

- Words may be used which mean precisely what we intend, but which are capable of having another meaning if looked at in a different context.
- In legal writing, be aware of all the different contexts from which your words may be seen.

# Qualities of Good Writing (contd.)

## 9. Conciseness

- Good writing is concise.
- It should be succinct and straight to the point.
- Avoid repetition, long windedness or digression.
- Leave out that which is unnecessary or obstructs flow of meaning.

# Qualities of Good Writing (contd.)

- A good piece of writing should not be a word longer than it needs to. Beware of trying to be too concise.
- If what you are writing becomes a mere summary, that will not do. Clarity is more important than brevity.
- Ideas are at times more concisely expressed in 20 words than in 10.

# Qualities of Good Writing (contd.)

## 10. Completeness

- This is the quality that must be balanced with conciseness.
- Writing must express the writer's ideas completely.
- If it only partially expresses those ideas, it is incomplete.

# Qualities of Good Writing (contd.)

- If it does not express the writer's ideas fully – step by step – it is incomplete.
- Where to draw the line between completeness and conciseness is a matter of fine judgment.
- Always be aware of the balance that has to be achieved between the two in a good piece of writing.

# Qualities of Good Writing (contd.)

## 11. Elegance

- A good piece must be well written.
- Elegant writing comes with practice.
- Avoid clumsy phrases, tortuous constructions and jarring words.
- Elegance has to do with flow and rhythm.

# Plain English

- ▶ Simply means English that is clear and well written.
- ▶ Narrow meaning: an alternative to obscure legalistic jargon (legalese).
- ▶ Use of straight forward language which conveys meaning clearly and simply.



# Plain English

- ▶ The language of the law is complex.
- ▶ It is replete with technical terms and convolutions.
- ▶ These faults have over time been noted by judges, practising and academic lawyers.
- ▶ Move has been to simple and plain language.

# Plain English

- ▶ Legal language is largely unintelligible to most members of society.
- ▶ In many cases, obscurity arises from complexity of the law and its subject matter.
- ▶ In other cases, lawyers do not take care to communicate clearly with their audience.

# Plain English

## What is the problem with legal language?

- ▶ Many legal documents are lengthy, over-written, self-conscious and repetitive.
- ▶ They consist of lengthy sentences and involved sentence construction.
- ▶ They are poorly structured and designed.

# Plain English

- ▶ They suffer from elaborate and often unnecessary cross-referencing.
- ▶ They retain archaic phrases.
- ▶ They use supposedly technical terms, foreign words and phrases.
- ▶ They are unintelligible to the ordinary reader.

# Plain English

## What is being done to promote plain English?

- ▶ The legal establishment is becoming increasingly aware of the need to write in plain English.
- ▶ Increasingly, court orders, standard forms and regulations are being drafted in plain English.

# Plain English

- ▶ Major revolution in England: Civil Procedure Rules, 1998 – all drafted in plain English – specially designed to enable a lay person appear in person.
- ▶ Section 7, Unfair Terms in Consumer Contracts Regulations, 1999 – “a seller shall ensure that any written term of a contract is expressed in plain, intelligible language.

# Plain English

## Writing in plain English

- Aim is to write concisely and clearly so that the reader easily understands.
- What is plain English and the extent to which it is used depends on who the reader is.
- If the reader is another lawyer, legal terminology and words may be used.

# Plain English

- ▶ If the reader is a lay man, it is unwise to use legal jargon.
- ▶ If the readership is mixed, you will need to strike a balance.
- ▶ Most lawyers are not able to write plainly in their first draft. Why?



# Plain English

- The more one writes many drafts, the more one realises how writing can be made simpler and clearer.
- The more you clarify and simply your words, the more precise and clear the thought behind them gets – result: plain language.
- It takes longer to write plain English than it does legalese.

# Plain English

## Basic Rules of plain English

### 1. Use short sentences:

- ▶ Generally a sentence of 25 words or less is short.
- ▶ Try to write for the most part in short sentences.

# Plain English

- ▶ This is achieved by expressing only one thought in each sentence.
- ▶ Do not go out of the way to avoid long sentences where they are appropriate.
- ▶ Good and elegant writing requires that sentences vary in length rather than all having about same number of words.

# Plain English

## 2. Use correct grammar and punctuation:

- ▶ Use of bad grammar means lack of clarity.
- ▶ Always read through the sentences – try to phrase them as you would if speaking.
- ▶ Punctuation is important as meaning can be lost if not used properly.

# Plain English

- ▶ Punctuation is crucial to plain English since it is part of the structure and clarity of sentences.
- ▶ You can identify need for punctuation marks or need to remove them if you speak or think your sentence through aloud.

# Plain English

## 3. Use everyday English:

- There is a place for legal terminology and a time to avoid it.
- Jargon and technical terms should be avoided whenever possible.
- There are many and perfectly clear alternatives to jargon.

# Plain English

- ▶ Only occasionally is the technical term the only suitable word.
- ▶ Legalese at its worst uses obscure and archaic words not used in everyday English.
- ▶ There is no excuse for such obscurity or archaism in legal writing.

# Plain English

## 4. Use simple structures:

- Avoid putting an idea in a complicated way when it can be put in a simpler one.
- Everything you write at first attempt can be put more simply and in fewer words.
- Avoid compound structures which use three or four words to express a concept, double negatives and the passive voice.



# Plain English

- This is not an absolute rule. Occasionally they may carry some precision which the alternative does not.
- Avoid word-wasting idioms – “in the region of” (about); “the fact that it was raining” (since it was raining).
- Get rid of redundant words; (null and void...etc).

# Plain English

## 5. Use first and second person:

- ▶ It is generally clearer to use the terms “I” and “you” rather than the third person.
- ▶ In opinion writing however, certain formalities do not allow the use of the first or second person.

# Plain English

- ▶ But: never be impersonal when you can be personal.

## 6. Arrange words with care:

- ▶ A lot of poor English can be improved by simply changing the arrangement of words and phrases.

# Plain English

- ▶ When clauses are put in good order the meaning of a sentence becomes clearer.
- ▶ Always arrange your material in a way that the reader is assisted through it and it is easy to absorb.
- ▶ If the reader has to stop and re-read, then the work is not written in plain English.

# Plain English

## 7. Use a good layout:

- ▶ Although lawyers mostly write in conventional paragraphs, on occasions it may be wise to write in numbered paragraphs, clauses and sub-clauses.
- ▶ If these are well marked, they will be easier to read.

# Plain English

- ▶ Conventional paragraphs are also easier to read if they are numbered and sub-titled.
- ▶ Several short paragraphs are easier to read than a few long ones.