

Legal Writing and Drafting

ATP 103

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Plain English

- The expression “plain English” has been adopted by movements in the USA, the UK, Canada and Australia.
- In Canada they call it “plain language” because their laws are bilingual.
- There are different approaches, but the aim is the same: to simplify all official writing by removing unnecessary obscurity and complexity.
- Plain language is a variant of a national language recommended to authors and institutions producing texts for general public, so called “every citizen”/“wanjiku”.

Plain English

- Plain language text is to be understood by an everyman, irrespective of his/her education and knowledge at first reading.
- Use of straight forward language which conveys meaning clearly and simply

Plain English - UK

The Unfair Terms in Consumer Contracts Regulations 1999

Regulation 7 - (1) A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language.

Plain English - USA

The Plain Writing Act of 2010

- The Act calls for plain writing that is clear, concise, well-organized, and consistent with other best practices appropriate to the subject or field and intended audience.
- It encourages writers and communicators to avoid jargon, redundancy, ambiguity, and obscurity.

Plain English - USA

The Plain Writing Act of 2010

An Act To enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes.

Section 2. The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.

Plain English in Kenya

Consumer Protection Act –

Section 13 (2) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know –

(a) that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;

Plain English in Kenya

Consumer Protection Act

Section 87. (Disclosure of information)

(1) If a supplier is required to disclose information under this Act, the disclosure shall be **clear, comprehensible** and in accordance with the standards set under the Standards Act.

(2) If a supplier is required to deliver information to a consumer under this Act, the information must, in addition to satisfying the requirements in subsection (1), **be delivered in a form in which it can be understood by the consumer.**

Benefits of Plain Language

- improving public understanding of communications
- saving money and increasing efficiency
- reducing the need for public clarification
- reducing resources spent on enforcement
- increasing public understanding of forms and applications
- reducing the number of errors made and the time and effort required to fix them

Benefits of Plain Language

In short, clear and simple communication has several benefits for the reader:

- to find what they need,
- understand what they read, and
- and do what they need to the first time they read it.

Qualities of Plain English

- Simple
- Clear
- Lucid
- Correct
- Intelligible
- Accurate

Rules of PlainEnglish

1. Use short sentences:

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

Rules of Plain English

2. Use everyday English

AVOID LEGALESE

- 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.

Rules of Plain English

Legalese

- long, poorly structured, and full of unnecessary and incomprehensible language
- words like “heretofore,” “indemnification,” “warrant,” and “force majeure”;
- phrases like “notwithstanding anything to the contrary herein,” “subject to the foregoing,” and “including but in no way limited to”
- [The Case for Plain-Language Contracts – by Shawn Burton \(From The January–february 2018 Issue Harvard Business Review https://hbr.org/2018/01/the-case-for-plain-language-contracts \)](https://hbr.org/2018/01/the-case-for-plain-language-contracts)

Rules of Plain English

3. Prefer Active Verbs

- a subject (the person, group or thing doing the action);
- a verb (the action itself); and
- an object (the person, group or thing that the action is done to).

Rules of Plain English

3. Prefer Active Verbs

To give an example, in the sentence '**Peter watched the television**':

- the subject is Peter (he is doing the watching);
- the verb is watched; and
- the object is the television (it is being watched).

Rules of Plain English

3. Prefer Active Verbs

- With a passive sentence, the object becomes the subject and the subject becomes the object.
- The television (subject) was watched (verb) by Peter (object).

Rules of Plain English

4. Address the reader directly

- Use 'you' or 'we' or 'I'
- Be personal – eg. 'Mr. Shah, our recommendation is that you.....'

Rules of Plain English

5. Organise the information

- Put the important details early
- Place information in a logical order to help the reader locate the details they need

Rules of Plain English

6. Positive phrasing

- Plain language generally phrases statements positively: “do this” rather than “don’t do this”
- It is advisable to use negative phrasing for warnings: “don’t give this drug to anyone else”
- Negative language can be unclear and the meaning can be misinterpreted

Rules of Plain English

7. Avoid capitals

- When text is in capitals, it LOOKS LIKE YOU ARE SHOUTING!

Rules of Plain English

8. Avoid nominalization

- A nominalization is a type of abstract noun.
- In other words, it is the name of something that isn't a physical object, such as a process, technique or emotion.
- Nominalizations are formed from verbs.

Rules of Plain English

8. Avoid nominalization

The problem is that often they are used instead of the verbs they come from. And because they are merely the names of things, they sound as if nothing is actually happening in the sentence. Like passive verbs, too many of them make writing very dull and heavy-going

Example

There will be a stoppage of trains by drivers.

Drivers will stop the trains.

Rules of Plain English

9. Use appropriate layout