
I Give You this Orange – The Need for Lawyers to Rethink the Way They Write and Use Plain English

by Harpajan Singh

Introduction

Law is a profession of words¹ and writing is a tool of the lawyers' trade. Lawyers draft documents in the form of pleadings, sales and purchase agreements, wills, tenancy agreements and many more.

While some laypeople may stand in awe at the lawyers' mastery of the English language, many still are left perplexed by the lawyer's writing. This has to do with the way lawyers write. Take this example:

When an ordinary man wants to give an orange to another, he would merely say, "I give you this orange." But when a lawyer does it, he says it this way: "Know all men by these presents that I hereby give, grant, bargain, sell, release, convey, transfer, and quitclaim all my right title, interest, benefit, and use whatever in, of, and concerning this chattel, otherwise known as an orange, or citrus orantium, together with all the appurtenances thereto of skin, pulp, pip, rind, seeds, and juice for his own use and behalf, to himself and his heirs in fee simple forever, free from all liens, encumbrances, easements, limitations, restraints, or conditions whatsoever, any and all prior deeds, transfers or other documents whatsoever, now or anywhere made to the contrary notwithstanding, with full power to bite, cut, suck, or otherwise eat the said orange or to give away the same, with or without its skin, pulp, pip, rind, seeds, or juice."²

Legal language and the way lawyers write and speak has been a source of ridicule for a long time. The above satirical piece was written in 1835 by Arthur Symonds in his book *Mechanics of Law Making*. Even today the way lawyers write and speak is often a source of amusement if not bafflement. Take this lawyer joke:³



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After months of bickering, a divorce lawyer completes negotiations with the other side and calls his client with the good news.

"So what did you work out?" George asks the lawyer.

"Well, what it boils down to is that the party of the first part, to wit, George Smith, shall convey to the party of the second part and to her heirs and assigns forever fee simple to the matrimonial estate, including all property real and personal and all chattels appurtenant thereto."

"I don't get any of that," George muttered.

"That's right."

While there may be many reasons for legal writing, such as giving effect to the express wishes of the parties to a contractual agreement, nonetheless the key objective of legal writing is to communicate. Although the above are hypothetical examples, but they illustrate neatly the state of legal language which leaves much to be desired, a point aptly stated by Will Rogers when he said, "The minute you

¹ Myrna Oliver, 'David Mellinkoff: Attorney Advocated Plain English' (Los Angeles Times 4 January 2000) <<http://articles.latimes.com/2000/jan/04/news/mn-50558>> accessed 7 July 2016.

² Arthur Symonds, *The Mechanics of Law Making* (Schulze and Co 1835) 75.

³ Peter Tiersma, 'The Nature of Legal Language' (n.d.) <<http://www.languageandlaw.org/NATURE.HTM>> accessed 3 July 2016.

read something that you can't understand, you can almost be sure that it was drawn up by a lawyer.”⁴

Richard C Wydick, in his seminal work, *Plain English for Lawyers* observed that:

We lawyers cannot write plain English. We use eight words to say what could be said in two. We use old, arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is (1) wordy, (2) unclear, (3) pompous, and (4) dull.⁵

This article will firstly define what is plain English. It then considers the background to the plain English movement. It will then explain the benefits of plain English. Finally, it will suggest measures which can be employed to make legal writing more easily understandable.

The discussion in this article revolves around countries with a shared language and Common Law traditions. It is confined to legal writing by lawyers to non-lawyers although arguments about plain English also attach to statutory provisions and judicial language. Plain English and plain language is used interchangeably.

What is Plain English?

There are two aspects to plain English. The first relates to the form of the language and the second relates to style. In both the focus of plain English writing is the reader.

With regard to the form of the language, the Australian Law Reform Commission of Victoria in 1987 stated that plain English “...involves the use of plain, straightforward language... and conveys its meaning as clearly and simply as possible, without unnecessary pretension or embellishment. It is to be contrasted with convoluted, repetitive and prolix language.”⁶

Plain English is “...the opposite of gaudy, pretentious language.”⁷ It uses the “simplest, most straightforward way of expressing an idea.”⁸ The key is to avoid “fancy ones that have everyday replacements meaning precisely the same thing.”⁹ It is language “...with the needs of the reader foremost in mind.”¹⁰ Professor Robert Eagleson from Australia argues that in plain English, the writers “...let their audience concentrate on the message instead of being distracted by complicated language. They make sure that their audience understands the message easily.”¹¹

With regard to style, plain English requires:

“...improvements in the organisation of the material and the method by which it is presented. It requires that material is presented in a sequence which the audience would expect and which helps the audience absorb the information. It also requires the document’s design be as attractive as possible in order to assist readers to find their way through it.”¹²

These two aspects are the cornerstone of plain English.

Background to the Plain English Movement

Awareness about the need to make legal language accessible to the reader has been voiced as far back as the 16th century. King Edward VI is recorded as having commented: “I would wish that...the superfluous and tedious statutes were brought into one sum together, and made more plain and short, to the intent that men might better understand them.”¹³ Although His Majesty was referring to statutes, it nonetheless is equally applicable to legal writing in general.

Many scholars were also critical of legal language. Jeremy Bentham described the language of lawyers as “excrementitious matter” and “literary garbage.”¹⁴ John Adams criticised the “useless words” in the colonial charters.¹⁵ Thomas Jefferson complained in a letter written in 1817 about lawyers who had a habit of “...making every other word a ‘said’ or ‘aforesaid’ and saying

⁴ Will Rogers, ‘Plain English for Lawyers’ [1973] 59 ABA Journal 1343, 1431.

⁵ Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727.

⁶ Annetta Cheek, ‘Defining plain language’ (2010) 64 Clarity Journal <<http://www.clarity-international.net/clarity-journal/archives/>> accessed 1 July 2016 citing Law Reform Commission of Victoria, *Plain English and the Law*, (Report No 9 1987) para 57.

⁷ Bryan A Garner, *Legal Writing in Plain English A Text with Exercises* (2edn, The University of Chicago Press 2013) xiv.

⁸ Bryan A Garner, *Legal Writing in Plain English A Text with Exercises* (2edn, The University of Chicago Press 2013) xiv.

⁹ Bryan A Garner, *Legal Writing in Plain English A Text with Exercises* (2edn, The University of Chicago Press 2013) xiv.

¹⁰ Annetta Cheek, ‘Defining plain language’ (2010) 64 Clarity Journal <<http://www.clarity-international.net/clarity-journal/archives/>> accessed 1 July 2016 citing Michèle Asprey *Plain Language for Lawyers* (3edn, Federation Press 2003) 11-12.

¹¹ ‘Short Definition of Plain Language’ (Plain Language n.d.) <<http://www.plainlanguage.gov/whatisPL/definitions/eagleson.cfm>> accessed 1 July 2016.

¹² Annetta Cheek, ‘Defining plain language’ (2010) 64 Clarity Journal <<http://www.clarity-international.net/clarity-journal/archives/>> accessed 1 July 2016 citing Law Reform Commission of Victoria, *Plain English and the Law*, (Report No 9 1987) para 57.

¹³ HC Deb 03 November 1975 vol 899 cc114-91.

¹⁴ Peter Tiersma, ‘The Plain English Movement’ (n.d.) <<http://www.languageandlaw.org/PLAINENGLISH.HTM>> accessed 5 July 2016.

¹⁵ Peter Tiersma, ‘The Plain English Movement’ (n.d.) <<http://www.languageandlaw.org/PLAINENGLISH.HTM>> accessed 5 July 2016.

everything two or three times, so that nobody but we of the craft can untwist the diction and find out what it means.”¹⁶

Lawyers’ writing has been described as cultish, having a “...peculiar cant and jargon of their own, that no other mortal can understand.”¹⁷ Some scholars have sought to explain the basis of legal writing. Professor Lawrence M Friedman stated that “a specialized vocabulary reinforces the groups feelings of members...legal style and the vocabulary of lawyers...are indispensable for the cohesiveness and the prestige of the profession.”¹⁸ Professor Robert W Benson said that “strange style binds lawyers in their own eyes, into a fraternity.”¹⁹

The modern plain English movement did not really arise until the 1970s.²⁰ In 1963, David Mellinkoff published *The Language of the Law*, considered a pioneer definitive book on the uselessness of the way lawyers write. Before this, it had been commonly thought that legal writing was somehow different, and had to be different, than standard language in order to work its legal magic.²¹ And in 1978 Richard C Wydick, published *Plain English for Lawyers* in the California Law Review which was later published as a book. It is regarded as one of the best books on plain language. Both books prompted much discussion on the state of legal language.

The need for plain English has also been acknowledged by governments. In 1978 President Carter signed an executive order that required Federal regulations to be “as simple and clear as possible.”²² And the Clinton administration introduced an award, “No Gobbledygook” for federal employees who rewrote existing regulations

into a more understandable form for the layperson.²³ In 2010, President Barack Obama signed The Plain Writing Act of 2010 (Public Law 111-274), which requires government documents be written in “plain language”, defined as “writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.”²⁴

In the United Kingdom (“UK”) the plain English campaign got a start when a frustrated Liverpool woman shredded hundreds of unintelligible government forms in London.²⁵ And in 1999, under the Woolf Reforms, time-honoured legal terms were replaced with modern equivalents.²⁶ For example, a *subpoena* is now a *witness summons*, *writ* is now a *claim form* and *plaintiff* is now a *claimant*.

In Australia, the Law Reform Commission of Victoria produced its report *Plain English and the Law* in 1987 and argued that legal documents, and statute law in particular, should be written in a style called “*plain English*.”²⁷

Today, the plain English movement is a worldwide campaign. In the United States, the Center for Plain Language, a non-profit organisation helps government agencies and businesses write clearly.²⁸ In the UK, solicitor John Walton founded *Clarity*, a group of barristers and solicitors who were also “opposed to archaic, over-complicated legal language”. It publishes a biannual journal, *The Clarity Journal*, which is touted as a leading source of plain language news and research from across the globe.²⁹ Bar Associations too have adopted initiatives to promote plain English. The Canadian Bar Association provides instructions on plain English legal writing.³⁰ In Malaysia, the Securities Commission (“SC”)

¹⁶ John Pease, ‘Plain English: A solution for effective communication’ (ACLA National Conference, Coolum, Queensland, 7-9 November 2012) <<http://acla.acc.com/documents/item/1065>> accessed 5 July 2016.

¹⁷ Jonathan Swift, *Gulliver’s Travels* (Literary Touchstone Classics edn, Prestwick House 2005) 217.

¹⁸ Tom Goldstein and Jethro K Lieberman, *The Lawyer’s Guide to Writing Well* (3edn, Univ of California Press 2016) 20 citing Lawrence M Friedman, ‘Law and its Language’ (1964) 33 *George Washington L Rev* 563, 567-568.

¹⁹ Tom Goldstein and Jethro K Lieberman, *The Lawyer’s Guide to Writing Well* (3edn, Univ of California Press 2016) 20 citing Robert W Benson, ‘The End of Legalese: The Game Is Over’ (1984-1985) 13 *R L & Soc Change* 519,522.

²⁰ Peter Tiersma, ‘The Plain English Movement’ (n.d.) <<http://www.languageandlaw.org/PLAINENGLISH.HTM>> accessed 5 July 2016.

²¹ ‘Why Plain Legal Language Matters: An Interview with Richard Wydick, Legal Writing Scholar’ (Transcend 2012) <<http://transcend.net/library/html/WydickInterview.html>> accessed 22 May 2016.

²² Peter Tiersma, ‘The Plain English Movement’ (n.d.) <<http://www.languageandlaw.org/PLAINENGLISH.HTM>> accessed 5 July 2016.

²³ Joanne Locke, ‘A History of Plain Language in the United States Government’ (Plain Language n.d.) <<http://www.plainlanguage.gov/whatisPL/history/locke.cfm>> accessed 22 May 2016.

²⁴ Executive Office of the President (Office of Management and Budget 2016) <<https://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-15.pdf>> accessed 2 July 2016.

²⁵ Peter Tiersma, ‘The Plain English Movement’ (n.d.) <<http://www.languageandlaw.org/PLAINENGLISH.HTM>> accessed 5 July 2016.

²⁶ Peter Tiersma, ‘The Plain English Movement’ (n.d.) <<http://www.languageandlaw.org/PLAINENGLISH.HTM>> accessed 5 July 2016.

²⁷ John Pease, ‘Plain English: A solution for effective communication’ (ACLA National Conference, Coolum, Queensland, 7-9 November 2012) <<http://acla.acc.com/documents/item/1065>> accessed 5 July 2016.

²⁸ Center for Plain Language, ‘About the Center’ (Center for Plain Language n.d.) <<http://centerforplainlanguage.org/about-us/>> accessed 5 July 2016.

²⁹ Clarity, ‘About Us’ (Clarity n.d.) <<http://www.clarity-international.net/about/aboutus/>> accessed 5 July 2016.

³⁰ Cheryl M Stephens, ‘Plain Language Legal Writing: Part 1 - Writing as a Process’ (Canadian Bar Association 4 March 2014) <<https://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/Plain-Language-Legal-Writing-Part-1-%E2%80%93-Writing-as-a->> accessed 5 July 2016.

released a guide in 2005 to encourage the use of plain English in prospectuses.³¹

Benefits of Plain Language

There are many benefits to plain English. The three main benefits are: (1) It increases readability; (2) It results in efficiency; and (3) It can increase the profile of the legal firm.

Plain English makes legal documents easier to read. For example by using short sentences, readers can understand more than 90% of what they are reading.³² It also saves the time of the clients especially in a time-poor world where most business clients do not have the time to pore over and make sense of complex legal terminology.³³ Further, clients do not need to make queries as they understand the message. All this leads to an increased trust in clients. Clients know that they can approach lawyers for “practical and meaningful advice rather than being presented with a bunch of legal gobbledygook that may make no sense to them.”³⁴ It empowers clients as the lawyer is seen as “...an asset rather than a hurdle to doing business.”³⁵

Plain English can save time and money. It results in efficiency as organisations can reduce their documents. A UK government initiative in 1983 was estimated to have saved £9 million in printing and storage costs by scrapping, reviewing and improving forms.³⁶ Other examples include the United States Department of Veterans Affairs saving \$40,000 redrafting one standard letter into plain English.³⁷ British Telecom cut customer queries by 25% by using plain English.³⁸

Plain English also results in an increased profile for legal firms undertaking such initiatives. Some major law firms in Australia “have rewritten their precedents in plain language and have trained their lawyers in plain language skills.”³⁹ These firms see “...the clarity of their writing as a distinguishing feature of their business—something that gives them an edge, something that benefits their clients.”⁴⁰

For example, Craddock Murray Neumann, one of Australia’s leading migration practices, promotes itself as “Our lawyers will provide you with *clear plain language* advice about the likelihood that you will be granted a visa... and how long it is likely to take to receive a decision.”⁴¹

An audit by an Australian legal firm Phillips Fox in 2000 revealed that clients recognised and valued the clarity of the firm’s advice and documents, and its plain language rewriting services.⁴²

Therefore being able to communicate legal concepts to clients in plain English is “no longer a nice add-on, but a commercial necessity.”⁴³ By adopting a few basic suggestions, legal English can be made plain for the layperson.

Suggestion for Plain English – Avoid Wordiness

A major problem with much legal writing is wordiness – using several words when one will do. A lawyer can often improve his or her writing by considerably avoiding unnecessary words: instead of “conduct an examination of” use “examine”; instead of “provide a description of” use “describe”; instead of “submit an application” use “apply”; instead of “take into consideration” use “consider”.⁴⁴

³¹ Securities Commission Malaysia, ‘SC issues Plain Language Guide for Prospectuses’ (Securities Commission Malaysia 25 February 2005) <http://www.sc.com.my/post_archive/sc-issues-plain-language-guide-for-prospectuses/> accessed 2 July 2016.

³² Sara Vincent, ‘Sentence length: why 25 words is our limit’ (GovUK 4 August 2014) <<https://insidgovuk.blog.gov.uk/2014/08/04/sentence-length-why-25-words-is-our-limit/>> accessed 5 July 2016.

³³ Tania McAnearney, ‘Why you should kick the legalese habit’ (New Zealand Law Society n.d.) <<https://www.lawsociety.org.nz/practice-resources/the-business-of-law/practice-management-advice/why-you-should-kick-the-legal-galese-habit>> accessed 5 July 2016.

³⁴ Lawyers Weekly, ‘Plain sailing: lawyers favour keeping it simple over legalese and Latin’ (Lawyers Weekly 11 November 2009) <<http://www.lawyersweekly.com.au/news/5431-plain-sailing-lawyers-favour-keeping-it-simple-ove>> accessed 5 July 2016.

³⁵ Lawyers Weekly, ‘Plain sailing: lawyers favour keeping it simple over legalese and Latin’ (Lawyers Weekly 11 November 2009) <<http://www.lawyersweekly.com.au/news/5431-plain-sailing-lawyers-favour-keeping-it-simple-ove>> accessed 5 July 2016.

³⁶ John Pease, ‘Plain English: A solution for effective communication’ (ACLA National Conference, Coolum, Queensland, 7-9 November 2012) <<http://acla.acc.com/documents/item/1065>> accessed 5 July 2016.

³⁷ Judith Dwyer, *Communication for Business and the Professions: Strategies and Skills* (5edn, Pearson Higher Education 2012) 453.

³⁸ Judith Dwyer, *Communication for Business and the Professions: Strategies and Skills* (5edn, Pearson Higher Education 2012) 453.

³⁹ Christopher Balmford, ‘Plain Language: beyond a ‘movement’, repositioning clear communication in the minds of decision-makers’ (Plain Language n.d.) <<http://www.plainlanguage.gov/whatisPL/definitions/balmford.cfm>> accessed 1 July 2016.

⁴⁰ Christopher Balmford, ‘Plain Language: beyond a ‘movement’, repositioning clear communication in the minds of decision-makers’ (Plain Language n.d.) <<http://www.plainlanguage.gov/whatisPL/definitions/balmford.cfm>> accessed 1 July 2016.

⁴¹ ‘Why Choose Us’ (Craddock Murray Neumann 2016) <<http://www.immigrationlaw.com.au/why-choose-us>> accessed 1 July 2016 (emphasis added).

⁴² Christopher Balmford, ‘Plain Language: beyond a ‘movement’, repositioning clear communication in the minds of decision-makers’ (Plain Language n.d.) <<http://www.plainlanguage.gov/whatisPL/definitions/balmford.cfm>> accessed 5 July 2016.

⁴³ Lawyers Weekly, ‘Plain sailing: lawyers favour keeping it simple over legalese and Latin’ (Lawyers Weekly 11 November 2009) <<http://www.lawyersweekly.com.au/news/5431-plain-sailing-lawyers-favour-keeping-it-simple-ove>> accessed 5 July 2016.

⁴⁴ Bryan A Garner, *Legal Writing in Plain English A Text with Exercises* (2edn, The University of Chicago Press 2013) 39.

Suggestion for Plain English – Use Active Voice

Never use the passive where you can use the active.⁴⁵ Using the active voice makes “...writing stronger, briefer, and clearer.”⁴⁶ Active voice makes it clear who is supposed to do what. It eliminates ambiguity about responsibilities.⁴⁷ For example, instead of writing “the man was arrested by the police officer”, rewrite as “the police officer arrested the man”. The former is passive voice and the latter is active voice.⁴⁸ In the passive voice *the man* is the subject of the sentence but he is not performing the action of arresting. In the active voice *the police officer* is the subject of the sentence and is performing the action of arresting.⁴⁹

The active voice is not only more concise but also stronger. For example instead of writing “the reasons behind their decisions must be explained by judges” (passive voice), use “judges must explain the reasons behind their decisions” (active voice).⁵⁰

Suggestion for Plain English – Ditch Redundant Legal Phrases

Another lawyers’ jargon deemed redundant is the use of doublets and triplets. These have been described as one of the linguistic peculiarities of English legal language.⁵¹ Doublets are two synonyms used together while triplets are three synonyms used together.⁵² These abound in legal language. For example: give, devise, and bequeath; fit and proper; peace and quiet; will and testament; goods and chattels; keep and maintain.

This has its roots in old habits and traditions handed down over the centuries. Anglo-Saxons, Danish and Normans, settled in England at various times.⁵³ They brought their own language and in time different languages came to be used among the population in Britain. For example, the Anglo Saxons used Old English, Latin was used by the Church and French was used in the law courts.⁵⁴

Lawyers started using a word from each language, joined in a pair, to express a single meaning combined so that the people from these different language backgrounds could understand it.⁵⁵

Many doublets and triplets combined words of Old English/Germanic, Latin and Norman French origins.⁵⁶ For example: give, devise, and bequeath (Old English: Old French: Old English);⁵⁷ fit and proper (Old English: French);⁵⁸ peace and quiet (French: Latin);⁵⁹ will and testament (Old English: Latin).⁶⁰

Richard C Wydick referred to these as the lawyer’s tautology – a needless string of words with the same or nearly the same meaning. He suggested these be avoided where possible.⁶¹ For example the phrase *last will and testament* can be replaced by the single word *will*.⁶²

However some Latin legal phrases are terms of art and cannot be deleted,⁶³ for example the Latin phrase *res ipsa loquitur*.⁶⁴

⁴⁵ Carolyn Ford, ‘Beyond the law’ (Law Institute Victoria, 2016)

<<http://www.liv.asn.au/Staying-Informed/LIJ/LIJ/June-2016/Beyond-the-law>> accessed 1 July 2016.

⁴⁶ Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727, 747.

⁴⁷ ‘Use active voice’ (Plain Language n.d.) <<http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/writeActive.cfm>> accessed 7 July 2016.

⁴⁸ CUNY School of Law, ‘Grammar and Style’ (CUNY School of Law n.d.)

<<http://www.law.cuny.edu/legal-writing/students/grammar/active-passive-voice.html>> accessed 7 July 2016.

⁴⁹ CUNY School of Law, ‘Grammar and Style’ (CUNY School of Law n.d.)

<<http://www.law.cuny.edu/legal-writing/students/grammar/active-passive-voice.html>> accessed 7 July 2016.

⁵⁰ CUNY School of Law, ‘Grammar and Style’ (CUNY School of Law n.d.)

<<http://www.law.cuny.edu/legal-writing/students/grammar/active-passive-voice.html>> accessed 7 July 2016.

⁵¹ Luh Windiari, ‘Doublets and Triplets in English Legal Language’ (TranslationPapers Bali 26 November 2013)

<<https://translationpapersbali.com/2013/11/26/doublets-and-triplets-in-english-legal-language/>> accessed 3 July 2016.

⁵² Luh Windiari, ‘Doublets and Triplets in English Legal Language’ (TranslationPapers Bali 26 November 2013)

<<https://translationpapersbali.com/2013/11/26/doublets-and-triplets-in-english-legal-language/>> accessed 3 July 2016.

⁵³ Peter Tiersma, ‘The Origins of Legal Language’, in Lawrence Solan and Peter Tiersma (eds) *The Oxford Handbook of Language and Law* (Oxford University Press 2012).

⁵⁴ Peter Tiersma, ‘The Origins of Legal Language’, in Lawrence Solan and Peter Tiersma (eds) *The Oxford Handbook of Language and Law* (Oxford University Press 2012).

⁵⁵ Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727, 735.

⁵⁶ David Mellinkoff, *The Language of the Law* (Resource Publications 2004) 121.

⁵⁷ David Mellinkoff, *The Language of the Law* (Resource Publications 2004) 122.

⁵⁸ David Mellinkoff, *The Language of the Law* (Resource Publications 2004) 122.

⁵⁹ David Mellinkoff, *The Language of the Law* (Resource Publications 2004) 122.

⁶⁰ David Mellinkoff, *The Language of the Law* (Resource Publications 2004) 122.

⁶¹ Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727, 734.

⁶² Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727, 736.

⁶³ ‘Concise is nice! An aid for writing concisely’ (The Writing Center Georgetown University Law Center 2010)

<<https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/conciseisnice.pdf>> accessed 2 July 2016.

⁶⁴ Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727,739.

Suggestion for Plain English – Avoid Legalese

Legalese (also known as lawyerisms) are words such as *aforesaid, herein, hereof, hereinafter, hereunder, hereinbefore, aforesaid, wherein, whereon, whereas, therein, thereon and therefore*, referred to as old potboilers by Michael Kirby, a renowned Australian jurist and academic.⁶⁵ The use of the above words had much to do with the way documents were drafted.⁶⁶ Before the 16th century much legal drafting was handled by scribes who were paid by the word. If a scribe could use three words where one would do, he got three times as much money. These scribes therefore taught themselves to be as wordy as possible. In the era of Microsoft Word, this would not be necessary.⁶⁷ Professor Joseph Kimble, a noted scholar on legal writing, suggests avoiding such words and formalisms which give legal writing its musty smell.⁶⁸ It could be replaced with simpler words. For example: “henceforth” can be replaced by “from now on”; “thereupon” with “then” and “hitherto” with “until now”.⁶⁹

Suggestion for Plain Language – Use ‘Reader Friendly’ Style

The language of the law is full of long sentences which make legal writing hard to understand.⁷⁰ This habit started from several hundred years ago when “...English had no regular system of punctuation.”⁷¹ Richard C Wydick suggests an average length of below 25 words.⁷² Research by cognitive psychologist, George Miller, shows that short sentences aid comprehension.⁷³ Sentence length can be varied to improve readability.⁷⁴ Tabulation can be used to split up long sentences.⁷⁵

Joseph Kimble, a professor at Western Michigan University Cooley Law School chided legal writing as being “...poorly organized and poorly formatted. The information is not broken down into manageable parts

and subparts that are logically ordered for the readers and that use headings to guide them.”⁷⁶

This makes the document difficult to read. Generally readers are motivated to read materials that appear easy-to-read. This can be done by using subheadings, having short paragraphs of varying sizes and using white space to avoid the look of cramped dense text.⁷⁷

Conclusion

The above are only some ways to make legal language plain. In Malaysia, although the official language is Bahasa Malaysia,⁷⁸ nonetheless English is deeply rooted and used.⁷⁹ The Sultan of Perak, Sultan Nazrin Muizzuddin Shah reminded aspiring lawyers that “...the practice of law requires a good command of English”⁸⁰ and that “...English language continues to hold significance in legal practice.”⁸¹ Continued emphasis on English is needed.

Kathleen E Vinson suggests that:

Efforts to improve legal writing should not end after graduation from law school. As lawyers transition into practice and their legal analysis skills become more sophisticated throughout their career, lawyers need to make a professional, educational, and intellectual commitment to continue improving their writing skills beyond the classroom...legal employers and the entire legal profession must offer opportunities to continue this process of improvement throughout lawyers’ careers.⁸²

It is therefore imperative for lawyers to not only improve written legal language but to incorporate sound practices such as using plain English when communicating with clients.

⁶⁵ Michael Kirby, ‘Plain Concord Clarity’s Ten Commandments’ (Plain Language Conference, Sydney, 17 October 2009).

⁶⁶ Timothy Perrin, *Legal Writing from the Top Down: A New Approach to Better Writing for Lawyers* (2edn, Rose Cottage Books 1949) 7.

⁶⁷ Michael Kirby, ‘Plain Concord Clarity’s Ten Commandments’ (Plain Language Conference, Sydney, 17 October 2009).

⁶⁸ ‘Avoid legal, foreign, and technical jargon’ (Plain Language n.d.) <<http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/writeNoJargon.cfm>> accessed 7 July 2016.

⁶⁹ TransLegal, ‘Legalese’ (TransLegal n.d.) <<https://www.translegal.com/drafter/legalese>> accessed 7 July 2016.

⁷⁰ Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727, 741.

⁷¹ Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727, 747.

⁷² Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727, 743.

⁷³ Edwin Tanner, ‘Legal language and the non-law research student’ [2010] JALTA 77, 79 citing George Miller, ‘The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information’ (1956) 63 Psychological Review 81.

⁷⁴ Bryan A Garner, *Legal Writing in Plain English A Text with Exercises* (2edn, The University of Chicago Press 2013) 21.

⁷⁵ Richard C Wydick, ‘Plain English for Lawyers’ [1978] 66 (4) Cal. L. Rev. 727, 744.

⁷⁶ Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (Carolina Academic Press 2006) xii.

⁷⁷ Cheryl Stephens, *Plain Language Legal Writing* (Plain Language Wizardry Books 2008) 125.

⁷⁸ Article 152 of the Federal Constitution, read together with s 8 of the National Language Acts 1963/1967 (Act 32).

⁷⁹ Mohd Faisal b Hanapiah, ‘English Language and the language of development: a Malaysian perspective’ [2004] Jurnal Kemanusiaan 106, 114.

⁸⁰ Karen Arukesamy, ‘English proficiency pivotal for nation’s lawyers, says Sultan Nazrin’ (The Sun Daily 28 April 2016) <<http://www.thesundaily.my/news/1782940>> accessed 3 July 2016.

⁸¹ Karen Arukesamy, ‘English proficiency pivotal for nation’s lawyers, says Sultan Nazrin’ (The Sun Daily 28 April 2016) <<http://www.thesundaily.my/news/1782940>> accessed 3 July 2016.

⁸² Kathleen E Vinson, ‘Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge’ [2005] Touro Law Review 1, 5.