CLARITY

A movement for the simplification of legal English
Patron: Lord Justice Staughton

No 15: December 1989

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ANNUAL MEETING 1990

The date and time will be announced in the March Newsletter. Meanwhile, if you would like to come, but are put off by the usual Friday evening arrangements, please let us know your preferences.

The press date for the

MARCH 1990 ISSUE

will be March 14th

A LOGO FOR CLARITY

Some years ago the Newsletter invited suggestions for a logo but the results were disappointing. Many members have joined since, so we float the idea again.

The design should be simple and apt.

Alexandra Marks suggests our name in child's building block; Justin Nelson, cobwebbed books or a parchment scroll; the quill pen has been taken by the Plain English Campaign.

Is there an artist in the house?

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NEWS

Conveyancing protocol

CLARITY has helped with the drafting of some of the documents in The Law Society's conveyancing protocol, due to take effect in March.

The protocol is intended to introduce and standardise improved conveyancing procedures.

Law Society's guide to the courts

The Law Society is considering the preparation of a booklet to explainthe court system to the public. CLARITY has offered help.

High Court forms

We plan to approach the rules committee of the Supreme Court early in the new year. We will offer specimen redrafts of commonly used forms and invite them to convert to plain English throughout.

National Consumer Council

Earlier this year the NCC published a paper "Making Good Solicitors" highlighting problems of communication between the profession and its clients.

They quoted the Benson Report of 1979, the Lay Observer's 1986 report, Appendix C of The Law Society's guide "The Professional Conduct of Solicitors" and this year's Green Paper. All these writers have drawn attention to the common problem of clients not understanding their solicitors. The NCC joined this chorus in calling on the profession to use plain English.

They welcomed the teaching of plain English by some teachers of the Finals Course but, although they mentioned CLARITY in passing, gave no indication that there existed practising solicitors using plain English.

This is disappointing but not altogether surprising. About 300 solicitors and a handful of barristers in England and Wales are members of CLARITY; others have been in the past but allowed their subscriptions to lapse. Altogether they represent a tiny proportion of lawyers. For all the support that exists for our aims, there is still a lot to do in persuading the profession to use plain English.

We are pleased to say that Tamara Goriely of the NCC has since joined CLARITY. In November she had an informal lunch meeting with Chris Elgey and Michael Arnheim, representing the committee, and Sue Eccleston, The Law Society's manager of post-admission training. She said that the NCC was particularly concerned with training solicitors to speak and write to their clients, and prepare documents, so that they were understood. We look forward to close co-operation with the NCC from now on. In particular:

> They are from time to time asked to comment on the design of county court forms, and will liaise with us before replying.
>
> They have had complaints about probate forms, with which we may be able to help.
>
> They want our help in preparing a booklet explaining to legally aided clients what rights they have to be heard on taxation where the statutory charge affects them. However, so far they have been unable to find a solicitor who admits to a knowledge of the rules of taxation.

Would volunteers please contact the Newsletter?

Annual CLARITY seminar

Some of our contacts at what was Trent Polytechnic before its reorganisation this year have moved to Leicester Polytechnic.

We have arranged with them that our joint 1989 will-drafting course will be repeated in 1990 at Leicester. They will supply two speakers in the morning on the substantive law and Michael Arnheim will speak for CLARITY after lunch .

We hope to publish details in the next issue.

RIPA lecture

For the second year running a CLARITY representative filled a half-day slot on plain English in a course on parliamentary drafting run by the Royal Institute of Public Administration.

The 11 delegates were public lawyers from a number of African and Far Eastern jurisdictions.

Law Society finals

The Law Society is considering proposals for

change to the Finals Course, including much greater emphasis on skills training.

Advising legally aided clients

We would like to offer to The Law Society for circulation a pro forma letter to go with legal aid application forms sent to clients for signature.

The solicitor submitting the application has to certify that he has explained:

how the statutory charge may affect the outcome of the case;

that the client has a duty to disclose a change of means or address;

that an increase in means may affect the client's contribution to costs; and

the effect of a legal aid or emergency certificate being revoked or discharged.

Suggestions are invited to cover these points and any others you think should be included.

Precedent library

Some of the documents submitted for the precedent library have not been drafted in English as plain as it might be.

Should these be rejected or edited (and if so by the author, one or more members of the committee or volunteer members)?

If altered, should they be returned to the author for approval?

We have so far published the authorship of each document, so subscribers can get to know whose precedents they like and whose they would rather avoid. Should this be continued? If so, how should we attribute documents edited other than by the authors?

It is important that neither authors, editors nor CLARITY as a group become liable for defects. CLARITY is uninsured. The precedents are effectively free and are offered as examples of drafting style rather than as authorities.

The committee hope to formulate a policy at their 20th January meeting and would welcome members' views.

Promotion drive

Earlier efforts to promote CLARITY by circulating local law societies and university law departments produced very disappointing results.

The committee decided at their October meeting to try a different tack, approaching a few individually, preferably through known or suspected sympathisers. We are beginning with our own universities and local societies and hope to report results in the next issue.

More generally, we are trying to recruit any individual thought to be sympathetic.

Would any member willing to try his hand at proselytisation please contact Mark Adler at the address on the front page?

Membership

We now have 325 members, although 80 of these are playing chicken with the treasurer. New members are arriving steadily but we are well short of the peak of 425 reached before we culled the 1988 non-renewals.

Alexandra Marks

We welcome Alexandra Marks to the committee.

She has been a member of CLARITY since 1983, when she responded to John Walton's initial letter in The Law Society's Gazette. She came to the first annual meeting but otherwise has not been active until now.

She was articled at Rowe & Maw, and has been a solicitor in Linklaters & Paines' Commercial Property Department since 1984.

She hopes to bring a "City solicitor's" perspective to the committee.

California

Thanks to Professor Richard Wydick for sending some press cuttings about plain English law in his home state, and elsewhere in America. These reported:

In 1987 the California bar conducted a survey; of those responding, 90% of the public and 91% of the bar favoured simpler legal documents.

Following that, the Board of Governors has unanimously passed a resolution pressing the 117,000 lawyers under its jurisdiction to simplify their professional language. Meanwhile, the State bar is rigorously reviewing its own documents.

Continued on page 11

ANNUAL MEETING
6th October 1989

Chairman's report

Ken Bulgin said that this had been a good year. The tide hds turned in our direction. The College of Law and The Law Society are swinging our way. The Joint Conditions of Sale for conveyancers will be a great improvement. Drafting has become a subject of interest, now widely taught. Parliamentary drafting has changed for the better - see, for example, the schedule to the Finance Act 1989.

Treasurer's report

An updated version of the accounts presented by Justin Nelson appears below.

John Adams suggested that we apply for charitable status, that we use a high interest cheque account and that we invite the use of direct debits to combat non-renewal of subscriptions.

(We have made enquiries of the Charity Commission. At first sight it seems unlikely that the advantages of registration would justify the inconvenience but a fuller report will appear in the next issue.

Justin Nelson has also checked the various types of account and is satisfied we're using the best, giving instant access and 8.3%.

New membership application forms with direct debit details are being printed at the same time as this Newsletter.)

Committee

Ken Bulgin indicated that he was stepping down from the chair and from the committee, as his work prevented him from devoting the time it needed. He nominated Mark Adler as chairman and Alexandra Marks was proposed for the committee. Both were elected unopposed. By arrangement, Mr Bulgin remained in the chair for the rest of the meeting.

Short talk by Professor John Adams

Queen Mary and Westfield College (as it has become since merger this autumn) has run an annual residential drafting course since 1984. JA thought this was the first in England. It brought together a number of people - JA, Roy Goode, Richard Castle, Trevor Aldridge - promoting the use of plain English in law.

It is interesting - and very marked - that over the years it has become much less of a missionary effort than it used to be. They used to have to overcome reluctance to accept plain English as effective. Generally commercial people are now drafting more crisply. But this does not apply to conveyancers - domestic or commercial. There is great enthusiasm for the new style, though only a small number of people are involved.

The Marre Commission got hold of the notion of "skills training", now all the rage. There had been a big debate about it the previous day at The Law Society. It is the "in thing". Legal drafting is part of it.

Even before this, the College of Law and Polytechnics had been persuaded to include at least one relatively modern partnership agreement in their course materials. Now they have more. No longer is there the feeling that the students' future principals would not accept clear style.

In 1982, as a result of the Rayner Report, Mrs Thatcher ordered a wholesale review of government forms. Forms Units were set up and set to with a will. Designers and experts were brought in to prepare new presentation. Many Forms Units started at the same time to look for simple English. Take, for example, the forms used if luggage went missing at an airport. They discovered that two out of three were wrongly completed, adding to the frustration of the claimants and significantly increasing the administrative costs. Reform reduced the error rate to less than 5% and saved hundreds of thousands of pounds a year in time. Now every civil service department has to report annually the number of forms it has replaced.

Robert Eagleson was approached for help by government lawyers when he was here. He referred it to JA. Much drafting work is done by medium level civil servants, many of whom realised the benefits of direct style. There is a directive on civil service drafting which would gladden the heart of any CLARITY member. For example, draftsmen should use active verbs rather than passive, enabling the reader to identify the actor, so resolving disputes before they arose; this clarified the substantive law as well as improving the style.

The more you pare away unnecessary words the

more you can concentrate on the issues. This is especially so when the "checklist" format is used instead of the unbroken block of text.

JA had just read that American law firms had been hiring experts to teach their lawyers to write in plain English. This was a lesson we should learn for 1992. Lawyers to whom ordinary English was a foreign language found our traditional style very difficult to cope with.

Some credit goes to CLARITY for the plain English movement.

Ken Bulgin thanked Professor Adams.

Any other business

Kathleen Bell asked if anyone had a plain English will precedent, as she did not like the counsel's drafts used by her firm. Arrangements were made to supply specimen clauses.

James Kessler, probate counsel, said that he tried not to be too revolutionary for fear of upsetting the solicitors instructing him. He recommended "Wills and Deeds of Variation", drafted in plain English by his former pupil-master Mark Herbert.

Kathleen Bell expressed concern about the provision for postal service in the Interpretation Bill. The post was too unreliable. More time was needed. Ken Bulgin said that the use of fax was now more common and should be available for service of documents. John Adams mentioned an old case in which a letter was posted at 3pm to someone who (the evidence showed) habitually worked till 7pm; it was conclusively presumed that he had been served the same day. Ken Bulgin suggested 4 working days as reasonable time for postal service. Andrew Clifton pointed out that in some areas post was just not arriving. John Adams suggested the use of the expression "the normal course of post", leaving it to the parties to prove the normal time for the areas involved. Ken Bulgin thought that the phrase "the normal course of post had become meaningless with falling standards.

Justin Nelson asked whether we should distribute a membership list with the Newsletter. John Walton had done this from time to time but as the list expanded we stopped as an economy. The general view was that it would be useful, especially if members' specialities were listed, and should be done once a year.

The experimental Kent local CLARITY group was in limbo. Justin Nelson planned a membership drive in the county for CLARITY but the initial interest of the University of Kent in a CLARITY-run course seemed to have waned.

However, John Adams was speaking in November at a drafting seminar organised by the Association of Surrey Law Societies.

James Kessler asked Professor Adams to explain in one minute was wrong with "shall". This was the answer:

> Richard Castle's PhD thesis devotes a whole chapter to the subject.
>
> "Shall" may be imperative but is also bound up with the future tense. Many people now prefer "must" as the imperative.
>
> The present tense is often better than the future. Eg: "The trustees hold the property on trust."
>
> "The chairman shall be a member of the committee" is ambiguous. Does it limit the candidates for the chair to members of the committee or does it appoint the chairman ex officio to the committee?

(Editorial afterthought: "must" suffers the same ambiguity.)

> Ken Bulgin said that "shall" was a legal buzz-word often used casually. The new drafting had reached some departments but not others.
>
> John Adams added that legislative draftsmen were tending not to use it but we tended to forget that this was not new: Sir Benjamin Cherry had omitted it from s.61 of the Law of Property Act 1925.
>
> Section 1 of the Torts (Interference with Goods Act) 1977 was admirably succinct: "Detinue is abolished." Unfortunately, the draftsman had relapsed, using "hereby" in section 12.
>
> As the new style spread it would be adopted unconsciously.

Thanks to the outgoing chairman

Mark Adler thanked Ken Bulgin on behalf of everyone for his contributions of time (and money) to CLARITY over the last five years - more than he admitted or was generally known.

(A fuller note of thanks was published in the September issue, when Ken's retirement was announced.)

LETTERS: THE INTERPRETATION BILL

Editorial replies, in this typeface, are inserted after the comments to which they relate. The editor apologises to contributors for breaking up their letters but this should be easier for readers than the clumsy cross-referencing used in earlier issues. Apologies also, where appropriate, for disagreeing.

We are going to try to finalise the draft for promotion before the next issue, unless there is sufficient new material to justify offering for comment in the next Newsletter. May we therefore please have any comments by the end of January? Meanwhile, thanks to all correspondents over recent months, whether their suggestions have been adopted or not, for their interest and trouble.

From A.J.L. Glover, Inco Alloys International
Holmer Road, Hereford, HR4 9SL

In clause 5(1), I suggest changing "any" to "the". I believe the present wording implies there are more than two genders.

This was intentional, to include the neuter for companies.

As regards Latin tags, I suspect that one of the main reasons for their survival is brevity. The legal ones should not be used on non-lawyers but some of the others are as much part of the English language as spaghetti.

Finally, I wonder if you have seen the new terms of business from British Telecom, which are worded in commendably plain English.

From R.M.C. Venables, Charity Commission
57 Haymarket, London SW1Y 4QX

I am sorry that you have not had my subscription sooner but I now return your form with my cheque so that we have that matter out of the way.

I am interested to see the draft Bill and had intended commenting on the earlier draft. Indeed, it was partly my attempt to organise my thoughts on that subject which delayed my sending the enclosed cheque sooner. To prevent the best being the enemy of the good, may I make three quick points? I speak from experience of having handled the legal aspects of a number of Government Bills.

First, cross-references to other provisions in the Bill should be to "section" rather than to "clause". For an example see clause 7 of the latest draft.

Agreed.

Secondly, section 10 is headed "Repeals" but the first half is more related to commencement than repeal. Again, the reference should be to section 61 of the Law of Property Act 1925.

It was worded this way because the clause replaced s.61. However, following his other point below, that has been changed.

Finally (for this round at least!) I notice that clause 5 does not allow for the possibility of a contrary intention being expressed or inferred. This leads me to question the retrospective effect of clause 10. While I accept that s. 61 is of fairly wide application, it applies only to instruments, which may not include letters, for instance. I have not researched the point, however.

Clause 1 is intended to meet Mr Venables' first point, by allowing a contrary intention to over-ride any provision of the Bill. However, his other point is well-founded: Mozley and Whiteley's Law Dictionnary defines "instrument" as "a deed, will, or other formal legal document in writing". We have altered clause 10 accordingly.

Having fired off these thoughts I shall now try reading your own commentary on the draft and will try to produce any further comments more quickly.

From Veronika Maddock
Hobart, Tasmania 7051, Australia

A copy of the latest CLARITY Newsletter has prompted me finally to put in writing my thoughts on the Interpretation of Documents Bill. As parliamentary counsel for 11 years, certain aspects of the Bill disturb me. Of course, matters such as headings, numbering, arrangement of clauses and paragraphs, the use of colons, semi-colons, dashes and capital letters, are all matters of personal preference or uniform "house style". I will not comment on those. However, here are a few of my thoughts on the general

arrangement of the Bill which you may care to consider:

Clauses 4 and 5, which appear under the heading of "Definitions", confuse the defining of the words with the interpretation of certain matters.

Clauses 4(2), 5(2), 5(6) and 5(7) all give the meaning of certain words and would be better grouped together under the heading "Definitions" as a new clause 4. Clause 3 could also be included under that heading as it defines "private text".

The words in brackets in the opening words of clause 8 should be included under this proposed clause 4 as a definition of conveyance e.g. - "Conveyance" means a conveyance under the Law of Property Act 1925.

Clauses 4(1), 5(3) to 5(5) and 5(8) to 5(12) would be better grouped together under the heading of "Interpretation" as a new clause 5. Under this heading could also be included clauses 8(c) and 8 (e), which are very similar to 5(9).

A minor matter of inconsistency - clause 5(6) uses "working day is", whereas clause 5(7) refers to "month means". Perhaps "is" should be changed to "means".

Clauses 4 and 5 have been separated because the first deals with the dating of the document as a whole whilst the second defines words used in the document.

We do not accept that there is confusion in these clauses between defining and interpreting. The "interpretations" are, logically, definitions. For instance, 5(3) is a convenient way of saying "'X' includes Xs and vice versa (listing all nouns and pronouns)".

Clause 3 is part of the "Application" section because it defines the scope of the Bill, rather than the use of words in documents to which the Bill applies. The same comment applies to the definition of "conveyance" in clause 8, except that the definition applies only to this clause and not to the whole Bill.

The scope of 8(c) has been deliberately restricted to LPA conveyances *. It is intended to avoid the need for the often-repeated phrase "Not to do or permit or suffer to be done...". But it would not be appropriate to all documents; for instance, a duty in a contract of employment not to work for a competitor would not be a duty to prevent others from doing so.

Nor is a duty to maintain, outside conveyancing, always a duty to decorate and repair. The editor's wife does not expect to be covered in three coats of good quality paint.

The wording of 5(6) comes from "Monday is a working day", which does not apply to 5(7).

On the matter of service of documents, it appears to me that clause 6 relates to how service is to be carried out and clause 7 relates to when service is effected. I would therefore prefer the opening words of clause 6 to read "Service of a document is carried out by" and those of clause 7 to be "Service of a document is effected, unless the contrary is shown".

We are not convinced that this change is necessary. The meaning is clearly understood in the original version, and we are not convinced that the style of the suggested replacement is better (though it is a perfectly good alternative).

A small matter of tense: why not write in clause 8(d)(ii) "to note" in place of the past tense "to have noted"? This would then match 8(d)(i) and (iii).

The words "if required" in clause 8(d)(ii) are confusing. Either it is a duty or it is not; how can it be a duty if required? And required by whom, or in what circumstances?

The wording was meant to reflect the need for the insured to ask his insurer to note the additional interests on the policy, if required by the mortgagee or the person to whom the duty is owed. We have reworded it to make this clearer.

From Tim Cox
100a Western Road, London E13 9NF

Clause 2: I see no need for the words "referring to this Act". As a matter of convention, subordinate legislation made in exercise of powers conferred by statute always refer to the enabling power. In fact, I question whether this clause is desirable at all. I think it was an American writer who said that all definitions were either unnecessary or misleading. I am inclined to agree with him.

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* S. 205 (ii) of the Law of Property Act 1925 provides: "Conveyance" includes a mortgage, charge, lease, assent, ... vesting instrument, ... release and every other assurance of property or of any interest (in it) by any instrument, except a will".

We take the first point and have deleted the offending words. However, we don't believe the American writer quoted by Mr Cox can have seen our definitions.

Clause 4: Like a number of the clauses in this Bill, this is an attempt to make two sentences into one. Again, I wonder whether it is necessary at all.

Clause 5: Why do you think the sub-clauses are "only part of a sentence"? I try to put only one thought into a sentence. To me, each sub-clause is a separate sentence.

Clauses 6/7: I see no reason to deal with "method" of delivery and "time" of delivery in separate sections. I suggest that clause 6 be changed to say:

> A document may be served as described in any of paragraphs (a) to (e) of this clause.
>
> (a) It may be delivered by hand. If it is delivered more than two hours before the end of the working day, it will be treated as served on delivery. Otherwise it will be treated as served on the next working day after delivery.
>
> (b) It may be served by ordinary, first class post. It will be treated as served on the second working day after the next collection from the postbox in which it is posted, unless the contrary is shown.
>
> Etc.

I suggest that it goes without saying that a letter must be properly addressed with postage pre-paid.

Clause 8(d): This could be re-written in proper sentences. I know nothing about conveyancing, so the following can probably be improved.

> (d) A duty to insure a structure requires the following:
>
> (i) The person concerned must obtain insurance cover against fire ... aircraft, things falling from aircraft, and for loss of rent exceeding £1,000 a year under any single letting.
>
> (ii) The insurance must cover [the full reinstatement value of] [all the costs of reinstating the structure], including... (etc).
>
> (iii) If required, the person concerned must ensure that the interests of the person to whom the duty is owed and that person's mortgagees are noted on the policy.
>
> Etc.

Many of Mr Cox's suggestions are reasonable alternatives but they are matters of taste and not necessarily improvements on the original. As we are now trying to complete the draft, we are restricting major changes to those of substance rather than form.

Our apologies to this issue's contributors for disagreeing so comprehensively. We didn't set out to do so.

NOTES ON CHANGES TO THE BILL

The main changes this issue are the additions to the conveyancing clause 8 and a new clause 9, dealing with wills. New or changed text is shown in bold type, and deletions by an asterisk.

In 8(d) we have changed "structure" to "premises", in case the former was not wide enough.

We have added rent abatement, reinstatement and arbitration clauses, which may need improving. We have not had time before going to press to check whether the costs provision in 8(h)(iii) is necessary, or whether it is implied in any case by the Arbitration Act.

The usual grant of the use of conduits has been omitted on the basis that it passes under s.62 LPA and that the vast majority of lawyers repeat the formula without knowing, or their clients knowing, to what it applies. But is a reservation needed for the landlord? Would someone like to suggest suitable wording?

Rights of support are not worth including in a lease, since the ground is covered (metaphorically) by the structural repairing covenant.

We have offered in clause 9 a few common will provisions, without venturing into the complex areas mentioned by James Kessler in his article on page 14.

INTERPRETATION OF PRIVATE DOCUMENTS BILL

A

BILL

To simplify the drafting of documents by establishing standard definitions.

The Queen, with the advice and consent of the Lords and Commons assembled in Parliament, enacts:

Application

1. This Act applies to all private text dated after _____ 19__ , unless a different intention is clear from the text or from external evidence.

2. The Lord Chancellor may publish*:

(1) Definitions which will apply to all private text dated more than three months after his publication, unless a different intention is clear from that text or from external evidence; and

(2) Wording which may be incorporated by reference into private text.

3. In this Act, "private text" means the wording of any document, however recorded, except Acts of Parliament and subordinate leglislation.

Definitions

4. (1) Text whose date is not apparent on the face of it is dated:

(a) If its wording is the prerogative of the sender, when it is transmitted to another person; and

(b) In any other case, when a binding agreement as to its wording is reached.

(2) "Today" means the date of the text.

5. (1) Words of one gender include any other gender;

(2) "Person" includes a corporation;

(3) Singular words include the plural and vice versa;

(4) The measurement of distance is in a straight, horizontal line;

(5) Subject to section 3 of the Summer Time Act 1972, a reference to time is to Greenwich Mean Time;

(6) "Working day" is any day other than Saturdays, Sundays and bank holidays and lasts from 9.30am to 5pm;

(7) "Month" means calendar month;

(8) A reference to an office-holder is a reference to the holder of that office for the time being;

(9) A duty imposed is to be performed, and a power conferred is exercisable, in each case from time to time;

(10) A reference to an Act of Parliament or to subordinate legislation is a reference to it as amended or re-enacted when the text is dated;

(11) A reference to a block of text by citing words or clause numbers at the beginning and end is a reference to the text including those words or clauses;

(12) A commitment by more than one person is joint and several.

Service of documents

6. Service of a document is effected by:

(a) Delivering it by hand;

(b) Posting it by ordinary post, properly addressed and with the first class postage pre-paid;

(c) Sending it properly addressed by recorded delivery or registered post;

(d) Lodging it properly addressed according to the rules of a document exchange of which the sender is a member and which is or is affiliated to an exchange of which the recipient is a member;

(e) Sending it by facsimile to the recipient's published number and receiving a satisfactory transmission report, with the original marked by the machine.

7. A document is taken to have been served, unless the contrary is shown:

(a) Under section 6(a) - by hand, on delivery, if more than two hours before the end of the working day, but otherwise on the next working day;

(b) Under section 6(b) - on the second working day after the next collection from the postbox;

(c) Under section 6(c) - on delivery at the address shown, whether accepted or not;

(d) Under section 6(d) - on the second working day after the next collection from the sender's exchange;

(e) Under section 6(e) - at the end of transmission, if more than two hours before the end of the working day, but otherwise on the next working day.

Conveyances

8. In any conveyance (as defined by the Law of Property Act 1925):

(a) The conveyance of part of a building, divided horizontally, includes only

the insides of the rooms, corridors and storage areas within the boundaries of that part, plaster on the walls, ceilings, internal walls which are not load-bearing, floorboards, doors, door frames, windows, window frames, shop fronts, and conduits which are inside the boundaries and serve that part of the building exclusively;

(b) Consent must be in writing and not unreasonably withheld;

(c) A duty not to do something includes a duty not to permit others to do it;

(d) A duty to insure premises is a duty:

(i) To insure (so far as cover is reasonably available)

against fire, explosion, storm, flood, ground movement, malicious damage, civil disorder and impact by vehicles, animals, aircraft and things falling from aircraft,

in its full reinstatement value, including all necessary professional fees and the removal of debris,

interests of that person and of his mortgagees;

(iii) To serve on the person to whom the duty is owed, as soon as they are received, copies of the policy and the receipts for the premiums;

(iv) To reinstate the premises;

(e) An obligation to insure against loss of rent implies that:

(i) The rent will abate whilst the premises are damaged by an insured risk, except to the extent that it cannot be recovered from the insurers because of the tenant's fault;

(ii) If any part of the premises remains usable , only a fair proportion of the rent will abate, having regard to the extent and nature of the damage;

(f) A duty to maintain is a duty to keep the property clean, tidy, repaired and decorated, in each case to a standard similar to that at the date of the conveyance but only so far as is reasonable given the age and class of the property;

(g) (i) A duty to reinstate premises is a duty to do so as quickly as reasonably practical, subject to reasonable modifications and to the consents required by law;

(ii) Any party to a tenancy or licence over land may give reasonable notice ending it if it appears likely that reinstatement work cannot be completed within the time recommended by the landlord's surveyor under subsection (d)(i);

(iii) If the premises cannot be reinstated, the proceeds of insurance will be divided between landlord and tenant in fair proportions.

(h) (i) There is implied a reference to arbitration of any dispute about (a) the interpretation of the conveyance or (b) the calculation of any sum payable under it;

(ii) If the parties cannot agree on the identity of the arbitrator, one is to be appointed by the senior available officer of the Royal Institute of Chartered Surveyors;

(iii) The costs of the arbitration will be in the arbitrator's discretion.

Wills

9. In any will:

(a) "Executor" includes "trustee";

(b) If a beneficiary does not survive the testator by a month his gift fails;

(c) A failed gift of part of the residue:

(i) Is divided between the beneficiary's children; or, if none,

(ii) Passes to the beneficiary's wife; or, if none,

(iii) Falls back into residue;

(d) Trustees have power to:

(i) Postpone the sale of any property;

(ii) Invest the proceeds as they think fit;

(iii) Insure without limit;

(iv) **Obtain expert advice;**

(v) **Apply capital for the benefit of a beneficiary under the age of 18 as if section 32 of the Trustee Act 1925 applied to the whole of his vested or presumptive share;**

(e) Any professional executor may be paid his or his firm's normal charges for anything done as executor;

(f) No other executor is to be liable for honest mistakes.

Repeals

10. * **Section 33 of the Wills Act 1837 and** section 61 of the Law of Property Act 1925 **are repealed.**

Jurisdiction

11. This Act does not extend to Scotland or Northern Ireland.

REFERRALS REGISTER

This list is open to any solicitor member willing to accept referrals of clients from other members. Please write to the Newsletter if you would like to be included.

Solicitor	Area	Telephone	Field
Richard Ablitt	Croydon	01-681 0139	General civil but not debt collection
Keith Howell-Jones	Kingston	01-549 5186	Co/commercial, comm'l lit, debt collection
Katharine Mellor	Manchester	061-834 9933	Company/commercial
Mr A.J.B.Monds	Yeovil	0935 23407	Company/commercial
David Pedley	Keighley	0535 32700	General but especially conservation, public enquiries and private prosecutions
Edmund Probert	Exeter	0392 411221	Commercial
Nicola Solomon	London EC4	01-353 0701	General litigation, copyright, media work
Ian Torrance	London	01-242 6154	General, but unusual litigation in particular

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NEWS: continued from page 2

The State Bar Report says that "statutes calling for the use of plain English in legal documents have been passed in fewer than a dozen states (although not in California)". The disappointment sounds odd to British ears, used to no such legislation.

The Los Angeles Times quotes a 1987 survey by Professor Robert Benson. He showed to appellate judges and their clerks briefs written in traditional and plain style respectively. Both preferred the plain ones, associating them with more "prestigious" firms and finding them more persuasive.

Professor Wydick's own book, "Plain English for Lawyers", is quoted by the LA Times as tracing the plain English movement back to the British Lord Chancellor of 1596. Tired of lawyers' prolixity, he ordered that a hole be cut through the centre of a 120-page document; next he directed that the author's head be stuffed through it, in which position both lawyer and his document were led around the court.

Emeritus UCLA professor David Mellinkoff wrote a book promoting clear legal English in 1963. Now books on on the subject abound; legal journals offer regular tips; lectures and seminars are unable to meet the demand. It is big business. A Chicago law firm charges $2,500 a week for tuition lasting up to 6 weeks.

Industry has also been involved. The March 1989 Newsletter of the Document Design Centre quotes success stories from Edison, Ford and Bell. For example, Southern Californian Edison sent with their bills a simplified insert asking for contributions to a fund and obtained 40% more than they had before.

Continued from page 13

SPECIMEN

Each quarter we will publish a short precedent for members (only) to use or amend at their discretion. CLARITY is not insured and accepts no liability, leaving it to members to check that the drafts are good for their purpose. The following issue will contain any criticism received, so you might think it prudent to wait 3 months before using the drafts. Contributions will be welcomed and will be added to the precedent library kept by Katharine Mellor.

Apart from Tim Cox's letter on page 13, there have been no comments about the specimen divorce petition published in September. Is this lethargy or approval?

LAND REGISTRY TRANSFER OF WHOLE

County and district:

Title number:

Property:

Date:

In consideration of £10,000, which the sellers have received,

Mary Lamb (formerly Jones) and Albert Lamb ("the sellers"), as beneficial owners transfer the property to Adam Smith and Eve Smith ("the buyers") as beneficial joint tenants.

The buyers indemnify the sellers against any future breach of a covenant affecting the property.

This transaction is not one of a series.

Signed, sealed and delivered) ..... LS

by the sellers in the presence of:) ..... LS

..... Witness' signature

..... printed name

..... and

..... address

Signed, sealed and delivered) ..... LS

by the buyers in the presence of:) ..... LS

..... Witness' signature

..... printed name

..... and

..... address

OTHER LETTERS

Cutting off the Tags: replies to Justin Nelson

From Katharine Mellor
Elliott & Co, Centurion House, Deansgate,
Manchester M3 3WT

I take one issue with Justin here. I know I was a classical scholar, but some of the phrases he quotes I think should be regarded in the nature of general educated "English" - e.g. "compos mentis" and "per annum". Most of the others would probably be used only in circumstances where (if not between lawyers) an explanation would be needed even if an English equivalent would be used - e.g. "jus accrescendi". Simply referring to a right of survivorship does not communicate the legal implications.

Another point is that the Latin phrases are all shorter and neater than the translation, except "per annum". A neat Latin phrase is suitable if understood. We should be sensible, not doctrinaire. To throw out Latinisms is to lose another bit of colour from our language and our life.

From Brian Bowcock
25 Barker St, Nantwich, Cheshire CW5 5EN

Ad hoc	For a particular purpose
Mutatis mutandis	With appropriate changes
Res ipsa loquitur	Self-explanatory

From Harry Eaglesoup
St Clement, Imber Grove, Esher, Surrey

Bona vacantia	Have a nice holiday

Other points

From Nick Lear
20 Hans Road, London SW3 1RT

Members who are also members of the Statute Law Society will have been invited to a "one-day colloquium" on 14th October to discuss topical questions of statute law. The Society boasts a number of the country's leading lawyers and parliamentary draftsmen among its members. Its objects include the making of improvements in the manner in which statutes are expressed "with a view to making the same more readily intelligible".

I found the word "colloquium" in the third dictionary I consulted. It seems to be a modern invention. I can see the objection to "seminar" and perhaps neither "conference" nor "discussion" quite gives the right flavour. CLARITY members will surely have an answer.

From Tim Cox
100a Western Road, London E13 9JF

Two points occur to me looking at the specimen divorce petition in the last issue.

The first is that it might read better to identify the respondent in the first paragraph by inserting "the respondent" before his name and adding the appropriate punctuation.

The second is that I prefer not to use pronouns to start a paragraph, even where (as here) there is no possibility of confusion. This applies to clause 8 as well as clause 2.

From Harry Eaglesoup
St Clement, Imber Grove, Esher, Surrey

Is it necessary to say "I certify that..."?

According The Law Society's Guide to Professional Conduct, any promise by a solicitor is an undertaking, without need of the words "I undertake that...". A promise can be made without saying "I promise that...". I can tell you something in a letter without saying "I am writing to tell you that..."

The act of promising or certifying is performed without an announcement that we are doing it.

So "This is an accurate copy" should do for a certified copy.

And see the proposed certificate for value on page 12..

NEWS: continued from page 11

The San Francisco Chronicle quotes a Washington survey which showed that complicated regulations were a factor in the failure of small businesses. There were two parts to the problem: there were too many rules, and they are difficult to understand. 99% of the 250 business owners had difficulty understanding the rules by which they were bound.

We have written to several of the lawyers quoted in these reports, inviting them to join CLARITY.

STANDARD CLAUSES FOR WILLS
by James Kessler

"The 20th Edition of the National Conditions of Sale shall be incorporated into this agreement."

The use of standard forms in domestic conveyancing is taken for granted, and how much easier is the life of the conveyancer in consequence. If every contract were separately negotiated on every point covered by standard conditions, then conveyancing would not take the stream-lined form which the public requires.

Could the concept of standard forms be imported from conveyancing documents to wills? If a standard form were produced, could a will draftsman simply provide:

> The National Will Clauses (1st edition) shall be incorporated into this Will.

Limitations of standard will clauses

Domestic freehold conveyancing may generally be a matter of routine, but every will requires individual examination. Family circumstances and testators' wishes vary widely.

For substantial estates (generally those in excess of £118,000) the tax position also needs careful consideration. Will drafting is one of the most important steps in personal tax planning, not only for inheritance tax, but also with a view to mitigation of income tax and capital gains tax. This is especially so since the attempts in the Finance Act 1989 to restrict hold-over relief on gifts.

Standard will clauses would do nothing to assist in all this. The author, as tax counsel, has no risk of writing himself out of a job. On the contrary, the standard form would come with a disclaimer and it does not relieve the draftsman from the responsibility of ensuring a will is appropriate to the financial and fiscal circumstances of the testator.

Nevertheless, at least part of the material of most wills (trustees' powers, etc) is routine and could be reduced into standard form, shortening wills, saving draftsman's time and perhaps avoiding mistakes. A standard form would act as a useful shorthand and checklist.

The idea is not a new one, and only expands on the example of s.179 of the Law of Property Act 1925 and the Statutory Will Forms 1925.

The creation of a standard form creates two sets of problems. First, what should be included; second, the drafting itself. In this article I consider only the first. Comments would be very welcome and in a later issue I will suggest some draft clauses.

Content of standard forms: the general approach

The standard forms must be suitable for inclusion in every will. This imposes some restrictions. In particular:

> (i) The standard form should not contain significant beneficial provisions. For example, although I favour a wide power of appointment exercisable by the trustees, that must be the responsibility of the will draftsman and not incorporated by standard form. However, the ubiquitous variations to ss. 31 and 32 of the Trustee Act 1925 (powers of maintenance and advancement) are relatively innocuous and would be included.
>
> (ii) Trustees' powers conferred by the standard form must be of a kind which has no tax implications. They should not prevent an interest in possession from arising, or the trust from qualifying as an "accumulation and maintenance" settlement under s.71 of the Inheritance Tax Act 1984. This would rule out, for instance, a power to apply income for the payment of life insurance premiums.

The following headings might be included:

<u>Trustees' powers (for the management of trust fund) to:</u>

Invest — Trade
Insure — Delegate
Borrow — Appropriate
Release powers
Lend to beneficiaries
Appoint foreign trustees
Administer trust property abroad
Allow beneficiaries to use trust property
Vest trust property in nominees
Pay parent or guardian of a minor
Pay expenditure out of capital instead of income.

<u>General trustees' powers</u>

Charge (and retain directors' fees)
Self-deal with trust property

Not to supervise companies held in trust (with general indemnity clause)

Administration of estate

Exclusion of rules of apportionment
Standard provision for receipt on behalf of a charity

I would be interested in comments on this selection - or any favourite forms used by CLARITY members.

My address is 24 Old Buildings, Lincolns Inn, London WC2A 3UJ (LDE 386).

The specimen clauses could be used more flexibly by listing alternatives; see, for example, the incorporation of covenants in a conveyance by s.76 LPA 1925, or the "Table A" system of the Companies Act. James Kessler considered this but preferred to keep to a single precedent to avoid the risk of error.

THE SIMPLIFICATION OF DEEDS
by Mark Adler

The Law of Property (Miscellaneous Provisions) Act 1989 provides three reforms.

When **section 1** comes into force - probably in the second half of next year - it will simplify the execution of deeds by individuals (but not companies):

Seals will no longer be needed and "sealed" will be omitted from the attestation.

It must be clear from the document that it is intended as a deed.

It must be signed in the presence of a witness and "delivered".

If it cannot be signed in the normal way, it must be signed at the direction and in the presence of the individual and two witnesses.

"Sign" includes making one's mark.

The rule that deeds must be written on paper or parchment is abolished, so deeds can now be written on any cows whose flanks have not been filled with cheques, wills or advertisement hoardings.

Where a solicitor or licensed conveyancer, or his agent or employee, purports to deliver a deed on behalf of his client, his authority to do so is conclusively presumed.

The annotator of "Current Law" argues that as delivery does not have to be physical (as in handing a conveyance to the purchaser) "but merely anything by which a party indicates that he regards the deed as binding on him", it may be delivered when he hands it to his solicitor before completion; although such delivery would be conditional on payment, the deed would, on compliance with the condition, take effect as from the date of the conditional delivery. I do not know if there is any authority on this point, but it seems wrong to me. If delivery is not the physical delivery to the buyer, it is certainly not the physical delivery to the seller's solicitor; no client regards a document as binding on him when he gives it to his solicitor, for convenience, to hold ready for completion.

The Act applies to all deeds and not just those relating to land. However, it is not retrospective. The abolition of seals is welcome but I would prefer to have seen the abolition of deeds altogether.

Section 2, which came into force on 27th September, abolishes s.40 of the Law of Property Act 1925.

Contracts for the sale of land can now only be made by incorporating all the terms (explicitly or by reference to some other document) in a single document which, or copies of which, must be signed by or on behalf of all parties. This seems to mean that a side letter which does not incorporate the main document, or an informal arrangement. invalidates the entire transaction. If so, this is a nasty trap.

The Act allows a few exceptions, notably auction sales and short leases, but for normal conveyancing the heading "subject to contract" is no longer necessary.

Section 3, which also came into force in September, is not a drafting provision but it is will be of interest to conveyancers to mention briefly that the rule in Bain v. Fothergill is abolished.

Chris Elgey thinks Current Law is right but has not had time to research it before we go to press.

PRECEDENT LIBRARY

Price increase: Katharine Mellor is sorry to announce that the price of precedents has risen from 10p to 15p a page, to contribute towards her firm's copying and administrative costs. The precedent library will still be uneconomical and Messrs Elliott & Co provide the service as a courtesy to CLARITY members. The new charges are set out below.

Copies can be obtained, by members only, by sending s.a.e. and payment in favour of her firm to Katharine Mellor at Centurion House, Deansgate, Manchester M3 3WT (DX 14346 Manchester 1).

Further contributions to the library would be welcomed. There is only one small addition this quarter, shown in bold type.

Disclaimer: The precedents are volunteered by members and by CLARITY, which is uninsured; neither receives payment. Messrs Elliotts keep and distribute the precedents at a loss as a favour to us. The documents are offered as examples of the plain English drafting style and it is for those using them to satisfy themselves that they fill the requirements of their clients. No liability can be accepted for any defects.

The current list is:

Agency agreement	Katharine Mellor	£1.35
Commercial lease	Justin Nelson	£1.80
Commercial lease	Mark Adler	.60
Computer software licence	Justin Nelson	.60
Contract for sale of house	Mark Adler	.15
Contracts for sale of house	Justin Nelson	.....
Registered		.30
Unregistered		.30
Contracts for sale of business		.....
Registered land		.60
Unregistered land		.60
Divorce petition	Mark Adler	.15
Enquiries before contract	Justin Nelson	.....
General		.75
Additional:		.....
Residential land		.15
Business goodwill		.45
Commercial land		.15
Existing leasehold		.30
Farmland		.15
Land subject to a tenancy		.45
Licensed premises		.30
New residential lease		.30
New business lease		.15
Sale under enduring power of attorney		.15
Res freehold (quesionnaire to V)	Mark Adler	.75
Res leasehold (quesionnaire to V)		.75
Land Registry transfer		.15
Partnership deed	Brian Bowcock	.90
Personal reps' advert under s.27 TA 1925	Alan Macpherson	.15
Personal reps' advert under s.27 TA 1925	**Mark Adler**	.15
Residential flat lease	Justin Nelson	£1.35
Requisitions on title		.30

CLARITY'S ACCOUNTS

CLARITY's financial position on 30th November was:

B/f 1.4.89		£1,239.92
Income		
New members	£418.00	
Renewals	£1,395.00	
Donations	£48.00	
Bank interest	£58.98	£1,919.98
		£3,159.90
Expenses		
Newsletter (Mar-Sep)	£968.35	
Annual meeting (net)	£154.37	£1,122.72
		£2,037.18

COMPUTER FIRM WANTS PRECEDENTS

Professional Productivity Solutions Ltd, a software company producing legal packages for the Macintosh range, has expressed an interest in using CLARITY precedents.

PPS is headed by solicitor Nicholas McFarlane-Watts, a CLARITY member, and uses plain English.

They have a client management system with conveyancing, debt collection and financial services packages. Probate, company formation and other fields will follow.

Members interested in the system or in supplying plain English precedents on licence should contact PPS at:
8 South Parade, Summertown, Oxford OX2 7JL
(DX: 40657 Summertown)
0865 311100

QMC DRAFTING COURSE
by Brian Bowcock

The Centre for Commercial Law Studies' (sixth) Annual Drafting Course at Cambridge in late September was an outstanding success, except in terms of the number who attended.

This should by now have attracted a wide following. It has a practical, stimulating approach and format, providing for comparative beginners and experts alike. CLARITY members Professors Adams and Goode and Richard Castle were the principal contributors. However, numbers were down, perhaps because of the spread of in-house facilities.

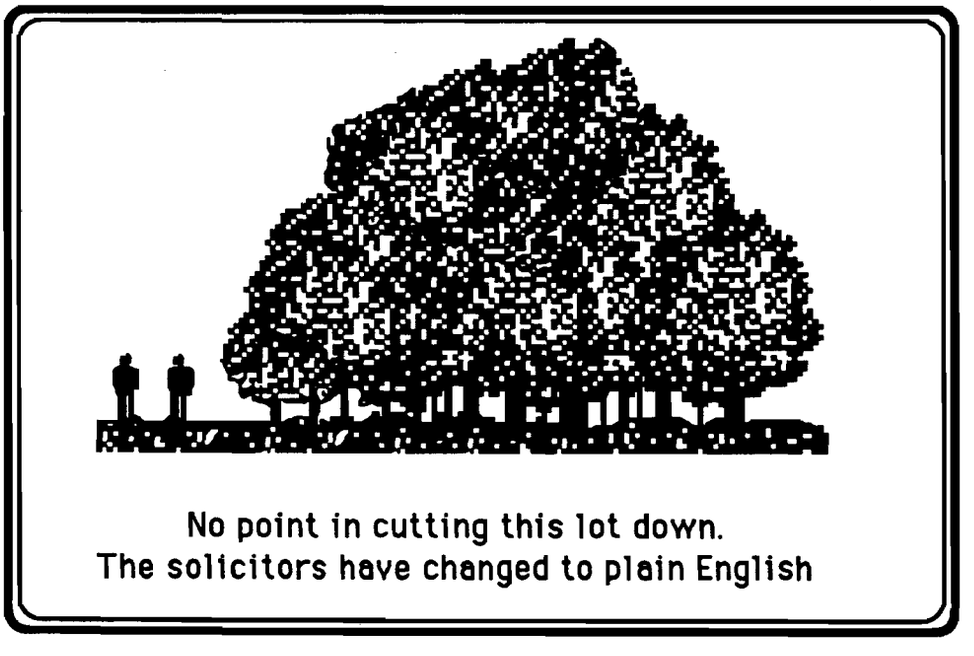
The speakers clearly explained the links between presenting, drafting and negotiating, and the great importance of plain English in all forms of communication.

Presentation was by lecture, exercise and discussion groups. There was also a memorable performance by CLARITY barrister Carolyn Walton in a wetsuit, playing the part of a solicitor who left everything to her articled clerk.

The Centre has a considerable range of other activities at an annual membership fee of £50, which must be an outstanding bargain. There is much common ground with CLARITY.

The Centre's address is:

Queen Mary & Westfield College
Mile End Road
London E1 4NS
(Tel: 01-975 5123)



WELCOME TO NEW MEMBERS

Geoffrey Palmer, Prime Minister, Parliament Buildings, Wellington, New Zealand

Anthony Bannister, articled clerk, London SE14
Francis Bennion, former parliamentary draftsman, now at Bodleian Law Library, Oxford
D. Giacon, solicitor, Penningtons, London WC2
Joy Hillyer, lecturer, College of Law, Guildford
Phillip Holliday, solicitor, Chislehurst
Sir Kenneth Keith, Deputy President of the Law Commission, New Zealand
Miss S. Lockwood, solicitor, Leicester City Council
Alan Lodge, solicitor, Varley Hibbs, Coventry
Richard Manchester, solicitor, Sanderstead
Caroline Maughan, law lecturer, London E7
Dr Thomas W. McKeown, communications consultant, Straight Talk Institute of Canada
Mrs M.A. Morgan, barrister, DSS Solicitors Office
Michael Parke, Commercial Property Development Manager, Harpenden, Herts
Christopher Tite, solicitor, Stephenson Harwood, London EC4
Sarah Tory, law student, Godalming, Surrey

BEST WISHES
to

Michael Arnheim, on joining Farrer & Co as Director of Training.

Katharine Mellor, on becoming the first woman President of Manchester Law Society.

Robert Venables, on his appointment as a Charity Commissioner.

DATA PROTECTION ACT 1984

Details supplied by members are kept on a word processor. They may be supplied to other members or interested non-members (although not for the purpose of mailing lists).

Please contact Justin Nelson if you object.

MEMBERSHIP LIST

The cost of distributing the membership list free to everyone is too high but copies can be obtained from Justin Nelson for 5 first class stamps and a stamped addressed envelope.

Please allow 28 days for delivery.

Sir Robin Day
(in a television interview with Ludovic Kennedy):

"She wrote to me 'Dear Mr Day' (as I then was)..."

SUBSCRIPTIONS

The committee hopes that members will use the new direct debit arrangements to pay future subscriptions. This should:

- save members the trouble of sending cheques;
- stop loss of membership caused by forgetfulness or inertia;
- reduce Justin Nelson's work vetting renewals; and
- save the trouble and expense of reminder letters.

Forms will be sent out with the renewal details in the June Newsletter.

Meanwhile, may we ask again for this year's subscription from the 80-odd members who have not yet paid it?