

CLARITY

a movement for the simplification of legal English

NEWSLETTER

No 8: JANUARY 1988

ANNUAL MEETING

The replies to the questionnaire in the last Newsletter showed a preference for a meeting on Friday evening in London, with a buffet. This was arranged at The Law Society's Hall on September 25th.

John Walton reported on the activity since the last meeting. The newsletter had offered precedents and drafting ideas, acted as a vehicle for appeals for help from individual members, staged a drafting competition and reviewed the odd book; some members had themselves written books, as well as articles in legal journals. There was regular contact with other organisations, including the professional bodies. Our first drafting seminar had been a great success.

Following John's resignation, Ken Bulgin took over the chair and the vacancy in the working committee was filled by John Wilson, whose name, needing the minimum amendment on the word processors, was held the most suitable.

Professor Richard Wydick, a Californian teaching in England for a year, came, with his wife Judy, as guest speaker and was welcomed during the evening as our 400th member. He reported on the American plain English movement, not promoted by the present administration as under President Carter, but flourishing in commerce and law schools.

The discussion on the future of CLARITY stressed the importance of good drafting instruction in the training of lawyers. It was felt that we should arrange more and varied seminars. A proposal from the Plain English Campaign that we sponsor one of their trophies was approved, with a proviso for publicity for CLARITY and its aims.

Finally, John was thanked for founding CLARITY and for his work since.

WHITEHALL

Richard Luce, the Civil Service Minister, told the House of Commons on November 9th that his department was continuing its fight against incomprehensible forms and had made some progress in persuading government lawyers to reduce legal jargon.

Unnecessary forms were being abandoned and thousands of others revised, with the help of computers; six Plain English awards had been won in the last two years.

CLARITY wrote to Mr Luce inviting applications for membership but he hasn't yet replied.

JOHN WALTON STEPS DOWN

John announced his intention to resign in the last newsletter. As he put that issue together (though his name did not appear at the top) there was no expression of appreciation for the work he'd put in during the last four years.

The suggestion that lawyers cut the cackle was mooted by a surveyor in a 1983 letter to the Law Society's Gazette; John took it up, inviting anyone interested to contact him. There was an immediate response, though the writer of the original letter never joined.

In the five years since, John has been the prime mover, co-ordinating most of the activity. He has organised and chaired all the committee and annual meetings, corresponded with members and other organisations worldwide and contributed to, edited, printed and distributed the newsletter.

Without his hard work there would be no CLARITY and we wish him well on the promotion which has brought about his departure from the chair.

DRAFTING SEMINAR 1988

Clarity is organising another half-day seminar, at which the drafting of Conditions of Trading will be examined.

Trent Polytechnic, who hosted our seminar last year and dealt with administrative matters for us, have agreed to co-operate in the same way again, for which we are most grateful. They are organising a morning seminar on the relevant law and ours will follow in the afternoon. Each course will carry 4 points in the Law Society's continuing education scheme.

Both seminars will be held at the Strathdon Thistle Hotel, Derby Road, Nottingham on Wednesday, March 9th. The cost of ours will be £40 for members and £45 for others; Trent are charging £55 for the morning session and lunch will be an additional £7.

Trevor Aldridge, solicitor and Law Commissioner, and Carolyn Walton, a barrister, have kindly agreed to speak. Following last year's successful formula, we will split up into small groups after the talks to rework a specimen draft before coming together to compare results.

Brochures are enclosed. Applications should be in the 9th February but any vacancies left can of course be filled later.

K.N. Mallor

LETTERS TO THE EDITOR

I am carrying out a programme of research into legal language. My aims are:

- to identify the influences (both historical and current) on contemporary legal drafting
- to discover the immediate influences which lead to the draftsman's use of the traditional style
- to indicate the dangers in the use of traditional-style documents
- to point the way ahead.

If any reader has thoughts on these things, I should like to hear from him or her. All letters will be answered and an acknowledgement of the source will be given for any material used.

Richard Castle
3 St Andrew Street, Plymouth PL1 2AH

Thank you for the continued publication of the CLARITY newsletter.

I recently attended a Companies and Securities Workshop near Melbourne and as part of the proceedings received the enclosed papers. As the paper entitled "Plain English Drafting Initiative in Relation to Takeovers" explains, the Law Reform Commission of Victoria has been preparing a Report on Plain English and Legal Language and took as an example of how statutes can be improved the Companies (Acquisition of Shares) (Victoria) Code. This piece of legislation is one of seven identical codes in force in Australia by virtue of a Federal, State and Territory umbrella agreement under which the various jurisdictions agree to impose basically identical legislation. The Acquisition of Shares Code governs company takeovers and is a notoriously difficult piece of legislation to deal with. It was for that reason that it was chosen as an example of how Plain English drafting could improve statutory drafting.

Since the Workshop the Commission has delivered the Report, which is now available in printed version. I will ask them to forward to you a copy, with the final version of the redrafted Code and a drafting manual for Plain English and the Law.

Lawrence Iffla
Mallacott Stephen Jaques, Law Chambers, Cathedral Square, Perth 6000, Australia. (Fax 09 325 8322)

[The papers enclosed were of great interest, with many "before-and-after" comparisons, but far too long to circulate. However, I particularly liked this extract, which goes to the heart of the problem: "I am reminded of Rudolph Fleesch's creation, Judge Fiendish. Judge Fiendish was the personification of a perverse tendency, attributed to many judges, to misread the drafter's mind. In Fleesch's view, drafters write for Judge Fiendish rather than for a sympathetic audience. Fleesch's injunction was to forget about Judge Fiendish: 'Let's write so that no reasonable man will misinterpret what we're trying to say.'"]

Can anyone explain the point of these bracketed alterations to the original text? -

"3. The Tenant covenants with the Landlord ...

(4) To repair (substitute 'keep') the property (in good and substantial repair and condition throughout the term of this lease)

(6) To permit the Landlord to enter the Property to examine its condition and serve on the Tenant written details of any work to be done under this clause

(7) If the Tenant does not promptly (substitute 'within two months commencing to') carry out the work mentioned in (a written notice served by virtue of) clause 3(6) then to permit ..."

The lease was expressed to be made pursuant to the Leases Act 1845, so clause 3(4) as originally drafted was both more concise and more comprehensive than the amended version.

The amendments to clause 3(7) add nothing except extra words, unnecessary rigidity and (in some cases) a built-in delaying factor.

I don't suppose that my original draft was perfect, but the amendments did not improve it, and seem to me to be completely pointless; perhaps I am missing something, however, in which case please tell me! If not, then these are just a couple of minor examples of a common tendency for solicitors to tinker when there is no need: it can be so frustrating!

On the credit side, a Landlord's solicitor recently welcomed the brevity and clarity of a nine page underlease which I submitted for approval - and yet the headlease that he had prepared ran to over 30 pages. A possible convert to CLARITY, perhaps?

Justin Nelson

I have read with interest Newsletter No 7.

As to the recommended reading, I was surprised not to find a reference to "Put it in Writing" by John Whale, published by J.M. Dent & Sons Ltd. As you may know, the book is based on the series of articles which he wrote for the Sunday Times Magazine Section between September 1983 and April 1984. In addition to being instructive, the book is amusingly written; indeed, it makes excellent casual holiday reading.

I wonder whether you might care to run a competition for the drafting in modern English of a "par stirpes" substitution clause for inclusion in a will? *

With best wishes for the continued success of CLARITY. I am only sorry that I cannot manage either of the suggested dates for the AGM.

Michael Wingate-Saul
Letcher & Son, Market Place, Ringwood, Hampshire

[* Any ideas? - ed]

Herewith a trifle, not earth-shattering but an example of the need for CLARITY.

I sent a draft underlease to the solicitors for the prospective tenant. It followed the headlease closely in providing for the maintenance of the property. In particular it required the tenant to pay for the cost of redecoration after moving out if he left the place in a shambles.

Whilst agreeing in principle the other side said in a letter they would like a proviso. "We think it reasonable, therefore, that the landlord's surveyor should attend fourteen days prior to the expiration of the lease if so required and present his schedule forthwith."

Simple, I thought, and drafted this: "... provided the Landlord's Surveyor will on written request prepare a Schedule of Dilapidations two weeks prior to the expiration of the term." It may not be perfect but seemed to me to be adequate with perhaps minor amendment.

Not a bit of it. This is how it came back:

"2.6.7 ... Provided Always as a condition precedent hereto that the Landlord shall on the written request of the Tenant cause its Surveyor or other proper Agent to attend at the demised premises not less than one month prior to the end of the tenancy to examine the state and condition thereof and within fourteen days thereafter to serve a Schedule upon the Tenant of any defects and wants of repair and breaches of this subclause 2.6 there found and all works required by the Landlord to repair and make good such defects and wants of repair and breaches of covenant as aforesaid."

J.N. Stevenson
127 Bishops Mansions, Bishops Pk Road, London SW6

I recently sent a draft assignment of a Lease to a well-known, large London firm for approval. It came back revised in red. The revisions consisted solely of the deletion of all our punctuation.

Point made or, rather, unmade.

G.V. Bull
4 Bloomsbury Close, Woburn, Milton Keynes

[This idiocy does seem, happily, to be rare; most solicitors seem to prefer (or, at least, accept) punctuation if it is offered to them.]

May I suggest a wrinkle for wills?

I now leave out the addresses from the text and add after the signatures a "Schedule of addresses (not forming part of the will)". This identifies those involved but allows the testator, for the convenience of the executors, to make amendments without re-executing when executors or beneficiaries move house.

Does anyone see any problems?

Harry Eaglescup
St Clement, Imber Grove, Esher, Surrey

We are subscribers to CLARITY newsletter. We particularly tried to produce a clear insurance policy for the numerous housing associations insured in the Housing Associations Mutual Insurance Association which began this year.

I have pleasure in enclosing it and hope that you might think it worth a satisfactory remark, as it is so rarely that insurance policies are readable!

Michael B. Summerskill for Thomas Miller & Co
26 Creechurch Lane, London EC3A 5BA

[Again, the enclosure, at more than 20 pages, is far too long to include. May I suggest that anyone interested approach Michael Summerskill for a copy, though I must say that despite the improvements it is not light reading. - MA]

COMMERCIAL LEASES

There has been increasing pressure for the simplification of commercial leases.

A preliminary report by The Law Commission on the reform of landlord-and-tenant law noted that "There have been many complaints about the length of leases and about the difficulty of understanding their contents." It continued: "We consider it important that the parties should be able readily to understand the document... (which ideally) would be clear, succinct and comprehensive, yet not too lengthy to be daunting to ordinary property owners. Unfortunately, some of these objectives may turn out to be mutually incompatible."

How can a lease be both reasonably short and comprehensive?

One solution has been the use of key words, as in the little-used Leases Act 1845; however, unless the key words are annexed in a definitions section, so restoring the length, the document would not be comprehensible to the client. A second answer is the use of implied terms, familiar in short residential tenancies; again, the terms are not obvious to the lay reader. Standardisation would make leases simpler to lawyers but inflexible and no easier for their clients.

The Commissioners found "evidence that some leases are being drawn in simpler and more modern language, but the change appears to be slow."

Two articles promoting this change were published together in the Law Society's Gazette of 3rd June 1987. The first, by Harold Melzack, a surveyor, quoted a record length of 102 pages and asked lawyers to be concise, draft the lease in a logical sequence and, if possible, inspect the premises first. The second, by CLARITY's Nick Lear, blames verbosity on pressure from clients as well as shortage of time and fear of change.

A subsequent letter of support from another CLARITY member offered a short commercial lease precedent for £1 and produced 125 orders, although there are no reports of any being used.

The Law Commission is reviewing the substantive law as well as the form of leases. Law Com No. 162 is available from their secretary at 37 John Street, London W1LN 2 BQ for £4.50.

by Justin Nelson

CONVEYANCING WITHOUT COMPUTERS by Richard Castle published by Barry Rose Books (Kluwer Law Publishers) at £25.00.

This book comprises 66 pages of discussion, 130 pages of precedents and 25 pages of extracts from statutes. Its aim is to show solicitors how to modernise conveyancing procedures without relying on computers or word-processors.

Richard Castle does not pretend to have THE solution: he makes a number of suggestions from which the reader can pick the items that seem appropriate, ignoring those which do not suit him. These suggestions cover a wide range of topics, including checklists, letter layout, use of the telephone and document drafting.

The precedents are not included as an attempt to provide a comprehensive set of conveyancing precedents, but as a selection of examples showing how the principles espoused in the discussion section can be put into practice. In particular, the precedents show:

- (a) how to draft documents in such a way that a word-processor is not needed to speed production;
- (b) the variety of documents that can be drafted in such a way;
- (c) how to draft documents using modern language and clear construction.

The section relating to statutes quotes extracts from various Acts to demonstrate how much verbiage in many documents is simply redundant: s.61 of the Law of Property Act 1925 is a prime example, and the combined effect of ss. 9, 17, 19 and 23 of the Interpretation Act is extremely useful.

The book as a whole is interesting and thought provoking: although few will agree with all its suggestions, many solicitors will agree with much that is said. I hope that very many will actually put into practice some of the proposals. The underlying themes of the book should appeal to all members of CLARITY, and it can be thoroughly recommended.

THE BUSINESS GUIDE TO EFFECTIVE WRITING by J. A. Fletcher and D.F. Gowing published by Kogan Page (in association with the Institute of Chartered Accountants at £5.95 (97pp + 37pp appendices).

This book is designed to be a brief, practical introduction to "all aspects of writing". In the "Principles" section the authors deal with style, grammar, document layout, time management, technology and equipment, editing and the basic reasons for writing a document in the first place. Under "Particular Applications", reports, letters, memoranda, agendas and minutes are covered.

The success or failure of so small a book dealing with such a wide range cannot be judged in absolute terms. Inevitably, each topic will be covered too briefly to be exhaustive or authoritative, and for these qualities one needs to refer to the established standard works. However, Fletcher and Gowing have tried to provide a basic introduction to their subject in

a way that is neither over-simplified nor elliptical. The book is intended primarily for accountants, as is clear not only from the involvement of the ICA but also from the examples and reasoning used in the text.

I imagine that the book would provide an excellent introduction to the principles and practice of writing letters, reports, etc. for a trainee accountant, but I would hope that a trainee lawyer (and certainly a qualified lawyer) would already have read more substantial works (Gowers's "Complete Plain Words" and Fowler's "Modern English Usage", for instance). [I haven't - ed.]

Even so, Fletcher and Gowing's work has useful aspects. Reading it reminded me that I often misuse words such as "anticipate" and "approximate", and the book neatly summarises the ways to convert a sentence from the passive to the active. It also provides a pair of enjoyable red herrings: a reference to a couple of fascinating passages in Fowler and the reproduction of A.P. Herbert's clever castigation of "ult.", "inst." and "prox".

This is the sort of book that is read and enjoyed once, then neglected in favour of the standard authorities. If that is because, having given the reader a basic grounding, it has made itself redundant, then it is good value for money and will have performed its task well. However, I suspect that it has little to offer members of CLARITY, who will not need a re-introduction to something that occupies such a major part of their work. The book is aimed at people (specifically accountants) who need to write little but well; the sort of people for whom (according to the book) one typist can cope with the dictation produced by ten fee-earners - clearly, the book is not aimed at lawyers!

PRACTICAL LEASE PRECEDENTS by Trevor Aldridge published by Longman at £95.00 (looseleaf hardback: 782pp + 34pp index and word-processor operator's manual).

Let us now praise famous men!

Trevor Aldridge appears to have done what so many thought was impossible: he has produced a comprehensive selection of lease precedents using clear wording, common words and short clauses (so that the finished document can be understood by the non-lawyer), but has maintained a traditional format so as to avoid alienating the majority of lawyers. "Gone are the 'hereinafters', the 'hereby's' and the 'saids'. Landlords 'let' property rather than ' demise ' it, tenants have to 'repair' it instead of 'repair, uphold, amend, reinstate, restore and rebuild' it." Sometimes, where there is no suitable alternative, legal jargon is used, but this is the proper use of jargon and it is needed far less than the mere traditional draftsman would have us believe.

From the viewpoint of clarity, or, indeed, CLARITY, this book is well worth its purchase price for this quality alone, and I welcome it warmly (without necessarily accepting that it always uses the clearest wording - but then a lawyer is expected to qualify his opinions).

PUBLICITY

Apart from the refreshing clarity of the precedents, however, the book is innovative in two ways. First, by using standard terminology throughout (always 'Landlord', never 'Lessee'; always 'Property', never 'premises', 'demised premises', 'said fiat', etc) all the clauses are compatible with each other and additional clauses can easily be drafted to fit in with the rest of the document. Secondly, the book has been deliberately and painstakingly designed for use with a word-processor; individual clauses or whole precedents can easily be identified, a separate operator's manual is supplied, and the precedents can also be obtained on disk from the publishers.

A criticism often made by traditional draftsmen of new, clear clauses is that they may be of dubious efficacy as being untested in the courts. Quite apart from the logical response to this (that a simple, clear clause must be less open to misinterpretation than a long-winded, imprecise one), the argument cannot validly be raised against this work in the first place. An acknowledged authority on leasehold law, Trevor Aldridge's introductory notes outline the relevant law, referring to his other book, "Leasehold Law", for further treatment where appropriate.

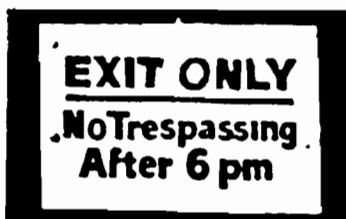
I thoroughly recommend this work to all CLARITY members; even if they rarely or never draft a lease, it will show them that CLARITY's aims are attainable. I am encouraged to see that the same author has published a companion work, "Practical Conveyancing Precedents" - watch this space!

In his article "The Quest for Brevity" in the "Solicitors' Journal" (17th July 1987) Richard Oerton favourably reviewed the 2nd edition of "Parker's Modern Wills Precedents".

James Kessler was much less flattering about "Practical Trust Precedents" by Underwood and others in his review in "The Law Society's Gazette" (9th September 1987).

Both reviewers are CLARITY members and wrote from that point of view.

IS THIS A LICENCE?



From an English farm in Pennsylvania

Readers may be interested in an article in the 4th September issue of The Law Magazine, giving sympathetic coverage of CLARITY and similar campaigners. It might, however, have been more tactful for the author to omit the example of gobbledegook emanating from our founder's legal department at Rugby Borough Council.

CONTACT BETWEEN MEMBERS

As few CLARITY members know each other we have tried to turn the last two annual meetings into social events by providing a meal.

The 1986 meeting, as usual on a Saturday morning in Rugby, was (for the first time) cancelled for lack of support.

Last year we canvassed views in the newsletter, offering choices between London and Rugby and between Friday evening and Saturday morning. Everyone who answered preferred London and most chose Friday. The meeting was arranged accordingly, with a buffet dinner. Although this was more successful it was still sparsely attended.

About 20 members came to the last seminar but does anyone have any other ideas?

ENDURING POWERS OF ATTORNEY

Any members preparing an enduring power will have been frustrated by the wordy and archaic precedent and the rule that it may not be altered.

The Law Society's Law Reform Committee is now looking at possible improvements and suggestions should be sent to C. Maggs at 113 Chancery Lane, London WC2A 1PL (LDE 56).

A SUGGESTED "PER STIRPES" FORM

(see page 2)

"A gift to a donee who dies before me (1) shall pass to (2) his children (3)."

(1) Or "who does not survive me by a month".

(2) Or, for a tenancy in common: "be shared by".

(3) By repeated operations of the clause later generations could benefit.

CAPTION COMPETITION

Seen on a suburban shingle:



Dr POSNER
SPECIALIST IN GENERAL MEDICINE

So other professions also think they know it all!

The legal aid logo is too good an image to be wasted and captions are invited. The one most enjoyed by the committee will be suitably rewarded.

DESPERATE EMPLOYERS CORNER

WELCOME TO NEW MEMBERS

Ray Anstis, Glover & Co, London W1
 Richard Barr, Dawbarns, Kings Lynn
 Richard Butler, Braby & Waller, London EC4
 Pauline Callow, Fourmat Publishing, London N1
 Marcus Cover, MacDonald Oates & Co, Winchester
 Harry Eaglesoup, Esher, Surrey
 Christopher Edwards, Titmuss Sainer & Webb, EC4
 Carolyn Haworth, Isle of Wight
 Rodarick Hursthouse, Dorset
 Susan Jeffreys, London N8
 David Kidney, Kenneth Wainwright & Co, Stafford
 I.T.G. Lambert, Grand Cayman
 John Lawton, Rugby Council
 Alan Mee, Leicester
 Adrian Pellman, Shinfield, Reading
 Mrs J.F.R. Quint, Charity Commission, London SW1
 Jonathan Sale, Punch, London EC4
 David Spalding, James James & Hatch, Clwyd
 Mrs J.M. Wakefield, Calvert Smiths, Richmond
 Colin Weeden, Stevenage
 Patrick Welsh, Chester-le-Street
 Richard Wydick, London NW8 (on loan)
 A.E.P. Zaleski, M.A. Moss & Co, London SW19

Justin Nelson's firm in Tenterden, Kent is offering up to £18,000 for a litigation solicitor. Please ring him for details at work (05806 2251) or at home (05806 5313).

Mark Adler is looking for a qualified all-round (civil) assistant so that he can devote more (or some) time to this newsletter and to foreign holidays. Potential partner under 35 preferred to stimulate idle dreams of early retirement. Please ring 01-979 0085 any time.

CONTRIBUTIONS

... both serious and light, including news of CLARITY members, would be welcomed by Mark Adler at the address below.

COMMITTEE

Ken Bulgin (Chairman)
 87 Hayes Rd, Bramley, Kent BR2 9AW: wk 740 7070

Katherine Mellor (Education)
 Elliott & Co, Centurion House, Deansgate, Manchester M3 3WT: wk 061-834 9933

Justin Nelson (Book reviews & good ideas)
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John Wilson (Publicity) ho 0532 732556
 c/o Richardson & Sweeney, 33 Manor Row, Bradford: wk 0274 733281

Mark Adler (Newsletter & membership list)
 35 Bridge Road, East Molesey, Surrey KT8 9ER: wk 01-979 0085: fax 01-941 0152