

CLARITY

a movement for the simplification of legal English

NEWSLETTER

NO 9: JUNE 1988



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DISCUSSIONS WITH THE LAW SOCIETY

CLARITY has been talking to The Law Society's Business Improvement Committee, which is looking into ways of improving solicitors' writing skills.

We submitted a short paper outlining our views and making various suggestions. We reported on the courses we have been running with Trent and asked for The Law Society's administrative and financial support so that we could spread them to other centres. We tentatively proposed collaboration in drafting an Interpretation Bill, extending the principle of the current Act (which applies only to legislation) to a range of private documents. We also asked The Society to put its authority behind us to spread the word and to encourage the timid.

The BIC seems enthusiastic: it proposes a campaign, both long- and short-term, for the use of clear English by lawyers. It recommends a series of articles in the Gazette, courses and perhaps the preparation of a booklet.

Various ideas were discussed at a recent meeting between the two groups and we hope to report more concrete developments in the next issue.

THE COLLEGE OF LAW

The nature and contents of legal education and training are currently under consideration. Much discussion centres on whether lawyers should be given specific training in skills like drafting, affective writing, interviewing, etc. It will be interesting to see what the Marre Committee has to say about it.

We hope that these discussions will lead to a revised scheme of training. Meanwhile, CLARITY is in informal contact with members of the staff of the College of Law and are helping to prepare documentation.

PRECEDENT LIBRARY

Katharine Mallor has agreed to maintain CLARITY a library of legal precedents submitted by members. Her address and a list of the documents so far available appear on the back page.

Please send her any concise, clear precedent of your own which may be of use to other members.

Future issues of the newsletter will contain a list of precedents added since the last issue, with a the copying fee (if available) based on length; the author's name will be given unless he or she prefers anonymity.

Katharine will supply copies on payment of the fee but she regrets that her firm's fax cannot be used, as it is in constant use.

This will be a voluntary service, not covered by insurance. The minimal charge, probably a little over 10p per page, is intended only to compensate for copying and handling. The precedents will be offered simply as suggestions and on the basis that the user will take full responsibility for ensuring that they are suitable for his purpose.

ANNUAL MEETING - 7.10.88

The annual meeting is to be held at The Law Society's Hall, 113 Chancery Lane, London WC2 at 7.30pm on Friday, 7th October.

There will be a light supper at 6.30. Last year we paid £10 per head for this, with wine extra at £4.35 a bottle; members were charged £7.50 all-in and the balance was paid from CLARITY funds.

At the time of going to press we have only just started the arrangements but this year's charge, probably about £10, should be known shortly. The meeting itself is of course free.

The provisional agenda is:

1. Apologies.
2. Report on the year by Ken Bulgin.
3. Presentation of accounts.
4. Election of chairman and committee.
5. A short talk.
6. General discussion of activities.

Last minute arrivals will be welcome (provided they are not hungry) but we need a fairly accurate idea of the numbers in order to arrange the room and food. If you are coming, therefore, please return the enclosed form to Mark Adler by the 30th July.

Previous meetings have been socially enjoyable as well as interesting and it is hoped that many of you will make the time to come. It would be a pleasure to put faces to the names on the membership list.

The seminar arranged jointly with Trent Polytechnic went according to plan, with about 25 delegates attending.

Specimen conditions of sale had been circulated in advance with a warning that delegates would be asked to draft clauses for the retention of title, terms of warranty and the exclusion of the seller's liability. Some had the help of a course given in the morning on the substantive law involved.

Ken Bulgin took the chair and introduced the speakers, Trevor Aldridge and Carolyn Walton, a barrister.

Trevor talked about general principles of drafting; Carolyn spoke more specifically about the drafting of terms of business.

The delegates then split into four groups, each led by a member of CLARITY's committee, to draft their clauses. There was a great deal of discussion and a lot of thought went into the drafts. Indeed, the general comment was that there was too much in the exercise for the time available and that it would have been worth spending much longer on it. Other delegates found drafting in committee very difficult.

After the tea-break a member of each group read out one of their drafts; this was then criticised by a panel comprising our two guest speakers and Victor Tonge and Robert Bradgate of Trent's law department.

The seminar closed with a general discussion.

We would like to thank most sincerely Trevor Aldridge and Carolyn Walton for their contributions and also Trent Polytechnic for their general enthusiasm, assistance and input, including a mention of the CLARITY link in their write-up in the New Law Journal. We would also like to welcome Carolyn, Victor (and, I believe, some of the delegates) as new members of CLARITY.

We are now hoping to establish the seminar as an annual event and discussions have already started with Trent about the subject for next year. The favoured topic is Wills, which should provide ample scope for study of the law and for the improvement of traditional drafting.

We also hope that the Law Society will continue to award the 4 points allocated this year under the continuing education scheme.

Katharine Mallor

WELCOME TO NEW MEMBERS

Michele Asprey, Mallesons Stephen Jacques, Sydney
David Elliott, New Zealand Law Commission
Department of Trade & Industry, London SW1
Hugh Fleming, London N2
Duncan Forbes, Crickhowell
Paul Gardner, Titmuss Sainer & Webb, London EC4
Keith Howell-Jones, Surbiton
Wendy Hurworth, Morden, Surrey
Clifford King, Julian Holy, London SW7
Joshua Leff, London N11
Stuart Plaskow, London NW5
A. St J. Price FCA, Cirencester
Chris Sparkes, Please let me know your address
Victor Tonge, Trent Polytechnic
Carolyn Walton, London WC1
Huwel Williams, Bromley
John Williams, Bell & Co, Chess, Surrey
Anne Winyard, Fisher Meredith, London SW6

This case ([1988] 1 All ER 449) concerned the following clause in a trust deed:

And the trustees shall stand possessed of the said messuages lands and hereditaments or the investments for the time being representing the same (hereinafter referred to as "the Settled Estate") Upon trust (1) to pay the rents profits and income arising or to arise therefrom to the Settlor during his life and (2) from and after his decease Upon trust to pay the income thereof to such of the Daughters as shall be living at the time of his decease and shall have attained or shall attain the age of twenty one years or marry under such age and the issue of any of the Daughters who may have predeceased the Settlor such issue taking their parents share only equally amongst them if more than one on their attaining the age of twenty one or marrying under such age in equal shares and so that the Daughters shall not have power to anticipate charge or incumber the same and (3) after the decease of each of the Daughters (a) Upon trust to pay transfer and divide such share unto and amongst one or more of the children or other issue of that said Daughter in such shares and proportions and subject to any conditions as she shall by Will or Codicil direct and appoint (b) And in default of any such directions and appointments and subject thereto and so far as the same shall not extend Upon trust to pay transfer and divide such share unto and amongst all the children or any child of such Daughters who shall attain the age of twenty one years or being a daughter marry under such age and if more than one in equal shares (c) And in case there shall be no such child who shall live to take a vested interest in such share Upon trust to pay transfer and divide such share equally amongst such of the Daughters as shall then be living and the issue of any of them who may be then dead such issue taking their parents share only on attaining the age of twenty one years or marrying under such age.

In the words of Sir Derys Buckley (obviously a master of the art of understatement):

These trusts are not happily expressed and require some analysis.

Analysis followed and, with a dash of judicial ingenuity, any suggestion that the perpetuity rule had been breached was neatly side-stepped.

This newsletter's competition is (A) to list the legal defects and ambiguities and (B) to redraft the clause in clear English.

John Wilson

The responses to competitions and requests for help have been surprisingly sparse. Don't be so shy! - ed.

BACK NUMBERS

of the newsletter are available from the editor for £1 each and s.a.s..

Help please: equity mortgage

Does anyone have (or know where I can find) a specimen equity mortgage? By this I mean one entitling the lender to a share in the value of the property when it is sold instead of the return of his capital with interest.

One local solicitor told me categorically that "it couldn't be done: a mortgage can only be used to secure a fixed capital sum, plus interest and costs"; when challenged, however, he was unable to come up with any authority or reasoning.

Another solicitor took the view that to demand a share of the value of the property would amount to a clog on the equity of redemption, but he has since changed his mind.

My own research indicates that, provided there is nothing unfair about the share to be mortgaged, an equity mortgage is perfectly possible and enforceable, but I have been unable to find a precedent or sample. I have drafted a straight-forward deed, which says that in exchange for X lending to Y 15% of the cost of buying the property, he will be entitled to 15% of the net sale proceeds: the deed defines the permitted deductions in order to calculate the net proceeds but includes no power of sale; as no interest is being paid, the borrower cannot default.* I am worried that the deed might be insufficient, however, and would like to be able to check it against someone else's ideas.

Can anyone help?

[* He could be in breach of covenants to repair or insure.]

Recitals

An item in the Property Law Bulletin (Vol 9 no 3) on the use of preambles made it clear that, although a preamble explaining the intention of the parties can be used to resolve an ambiguity in the document itself, no preamble, however clearly expressed, can override the clear meaning of the wording in the document.

So far, so good. The item then went on to explain "the full use of a recital" as being "a system for explaining to laymen the intention behind technically worded legal documents and for making complex arrangements clearer to someone

who picks up the document for the first time at a later date."

For instance, in a transfer of land to joint purchasers, the recitals could include a paragraph stating that the purchasers intend that, if one of them dies whilst they still own the property, the survivor should automatically become the sole beneficial owner. The body of the document could then transfer the property to the purchasers as beneficial joint tenants.

Should recitals be used in this way, producing a two-tier document: one part for the layman and the other for the lawyer? Should they be necessary? What would be the consequence (other than a successful claim for negligence) of a discrepancy between the two halves?

Does anyone have any views?

Joint and several indemnities

Is it necessary, where more than one person is entering into a covenant, to express it to be made "jointly and severally"? The point arose out of an exercise by the College of Law to re-draft their specimen documents.

Section 3 of the Civil Liability (Contribution) Act 1928 allows an action to be brought against one joint contractor, even if judgment has been obtained against another. Surely, therefore, joint covenants are automatically several?

On the other hand, there is a note in Chitty on Contracts (1, 1203) to the effect that the common law rule that all living joint contractors must be joined as defendants probably still applies, despite the Act. If so, a covenant should be expressly joint and several to maintain the covenantee's freedom of action.

Neither the National Conditions of Sale nor the Law Society's General Conditions contain this provision, so a special condition may be advisable.

To widen the topic slightly, does anyone have a favoured wording for an indemnity covenant?

Please send correspondence and ideas to me at 12 Rogersmead, Tenterden, Kent TN30 6LF for collating and onward transmission to the College of Law.

CAPTION COMPETITION

"I hear what you say - but I don't understand it".

"How can I take your advice if I don't understand it?"

"I know it's frustrating when lawyers use convoluted, turgid, jargon-filled language, but don't you think the Samaritans would be more appropriate than a Fixed Fee Interview?"

"I bet Smith and Jones don't get paid at legal aid rates"



GOBLEDEGOOK IN LOCAL GOVERNMENT

If you were to ask the average man where he thinks most unintelligible gobbledegook comes from he would probably put lawyers and local authorities high on his list. Until I returned to the private sector shortly after the AGM I was in both categories at once and from that position I offer a few paragraphs of reflections on the source of bad English in local government.

As lawyers, our first concern is to ensure that the documents we draft are legally effective and clear. English is always a secondary consideration. Much local government law is so drafted that the two aims are incompatible.

Most areas of law, despite constant piecemeal change, remain fairly stable over many years. Local government law, on the other hand, does not enjoy that advantage. The great power of the state, (local and otherwise) is mainly a post-war phenomenon and much of this law sits uneasily with the traditional ideas that have developed over many centuries.

The judges have found it difficult to reconcile them and tend to regard the new public sector law as an unwelcome intrusion into the established order of things. Accordingly, they have inclined to resolve conflicts by reference to the general principles of the old law, assuming that Parliament did not intend any changes unless they were clearly expressed in the legislation.

Enforcement notices under the planning acts, dating from 1947, are a clear example. A breach of planning control is not a criminal offence but disregard of a notice requiring it to stop is. The courts originally took the view that an enforcement notice was a matter of penal law and should therefore be construed narrowly in favour of the recipient; they supported the owner's traditional right to do as he wanted with his land against the more public-spirited intent of the planning legislation. Nowadays the bias is changing as the courts become more comfortable with the notions of public good implicit in the Acts. However, the position is by no means yet clear enough for any lawyer to predict with confidence a ruling on any particular point. Consequently he is forced to "overkill" to ensure that the notice has its desired effect. The resulting incomprehensibility of the average enforcement notice is, I regret to say, something we are just going to have to put up with for the time being.*

A more direct cause of gobbledegook is the prescription of badly drafted forms, which must be used verbatim. An example is that of the tree preservation order.

However, the trend is not all one way. When I used to prosecute for a local authority I was quite impressed by the standard form of summons (form 2) provided by the Magistrates Courts (Forms) Rules 1981; furthermore, it is provided by Rule 2(1) that that form, or a form "to the like effect" shall be used. Unfortunately, s.123 of the Magistrates Court Act 1980 provides in effect that nothing can be done if the wrong form is used.

Despite what I have said, in my experience most pressure for complicated English in local government came from the non-legal departments. On one occasion I was asked by Building Control to draft a notice under a certain section of the Building Act 1984; this section merely stated that the authority had to notify somebody of something. So I simply drafted a letter

notifying him of it. The reaction was unenthusiastic and I had a difficult job persuading the officers concerned that that the notice was valid without extensive reference to the Act and the Regulations. Traffic regulations are another example. At my authority it was heresy to say that a car must not park: the correct form was that "no person shall cause or permit any vehicle to wait at" the place in question. Admittedly, there is a slight difference between the two but nothing that could not be handled by a definitions clause.

John Wilson

LOCAL GROUPS

The Committee felt it would be a Good Thing (or, at least, a good experiment) to try to form local groups in CLARITY, to encourage direct participation by members, and to extend the benefits of the organisation.

We selected Kent as the guinea pig. Not for any particular reason, except that Justin Nelson, who lives and works in Kent, was willing to start things off. We circulated all members whose addresses were in Kent, inviting them to make contact if they were interested. Six replied.

Reactions have been encouraging: one member has offered back numbers of various periodicals that may be of use to us; we may soon have an article in the Newsletter on the potential for CLARITY in the field of litigation (sadly neglected by us at present); and, most important of all, a member offered to host the first local meeting.

This was held after work on the 5th May at the offices of Bradleys in Dover, courtesy of Robert Riddle. Two main proposals emerged for discussion at the committee meeting on 11th June:

A copy of the latest newsletter be circulated with a membership flyer in one or more areas of Kent (funds permitting);

A drafting course be held in Kent for those unable or reluctant to go to Nottingham (and the University of Kent at Canterbury have since expressed interest).

In the meantime, any member willing to start a group in another area will receive full support from the Committee.

Justin Nelson

SUBSCRIPTIONS

A £5 subscription was raised when CLARITY was founded in 1983. That first levy, reinforced by the payments of the steady stream of new members, brought in enough so that renewals were not needed.

However, with our activities increasing, money is now running low and a second subscription is called for.

Subject to ratification at the Annual Meeting, the committee is asking for a £5 renewal sub from all members who joined before 1988. Please send cheques in favour of CLARITY with the enclosed slip to Ken Bulgin at the address below.

KATHARINE RESIGNING

As the last page of the Newsletter was being putted up, news came from Katharine Mellor that she has reluctantly decided to stand down from the committee at the Annual Meeting this autumn.

Katharine has been on the committee since the beginning and has been responsible for the development of the CLARITY courses. She negotiated with various colleges before arrangements were made with Trent; she developed the format of the seminars, prepared the material, recruited the speakers and made each occasion a success.

She hopes to remain an active member of CLARITY and will continue to act as librarian of precedents.

Katharine's departure has been forced by the volume of work. She is a partner in Elliott & Co, a large Manchester practice, now with a growing London Branch. She is on the committee of the Association of Women Solicitors and, from July, the Vice-President of Manchester Law Society.

Her contributions at and between committee meetings will be missed and we hope that she will be able to stand again in the future.

Long Live the King

Meanwhile, would anyone willing to step into the breach please contact Ken. If there's more than one of you, there'll be an election at the meeting.

The committee usually meets informally every 2 or 3 months, on a Saturday morning from 10.30 till 1, at a convenient centre. Katharine has kindly offered us the continued use of her Holborn office.

Thanks are also due to my secretary Wendy Marworth, who has helped behind the scenes keeping the membership records, helping with the correspondence and single-handedly organising last year's meeting. She has recently started a legal executive course and is moving on to a more responsible job, at the same time joining Clarity herself.

Mark Adler

CLEAR ENGLISH IN THE EEC

Extracts from a press release from

CONSUMERS IN THE EUROPEAN COMMUNITY GROUP

The Day of Judgment will be close if the European Community has a hard in it, since sheep and goats are both classified as sheepmeat.

In Euro-Speak, rats are shell fruit, flowers are non-edible vegetables and cows are adult bovine animals (so are buffalo). And milk "shall mean exclusively the mammary secretion obtained from one or more milkings without either addition thereto or extraction therefrom".

A HOME-MADE WILL

Messrs Champion Miller & Honey were recently involved in a brief dispute arising under an accountant's home-made will, set out below. Although the drafting is by no means perfect, the style is commendably simple and a lesson to lawyers.

"Will of AB of

1. I revoke all previous wills.
2. I appoint CD of and EF of to be my executors.
3. I give to my husband GH the whole of my property.
4. If he does not survive me by 30 days the following shall apply:

I give the whole of my property to my executors as trustees. They are to sell everything not in the form of cash, but they may postpone the sale of anything as long as they like. After paying my debts, capital transfer tax, the expense of my funeral and of administering my estate, they are to divide what is left as follows:

(i) TWO THIRDS equally between IJ - my husband's nephew, KL and MN - my nieces;

(ii) Of the remaining THIRD, one half equally between my husband's three nephews, OP and QR and ST, the other half of this THIRD equally between my other nieces and nephews, (the names and locations of whom are known to my executors).

5. If any of the beneficiaries named in para 4(i) and (ii) above do not survive me, their share is to be given to the husband or wife of that beneficiary, if living. If not, this share to be equally divided between any living children thereof.

(Date and signatures)"

Solicitors for the wife of an un-named nephew challenged clause 5 with the argument that "named" meant "referred to". However, although the estate was substantial, they did not press the claim beyond correspondence. The exclusion of the unpopular in-law is a nice example of discretion but the skirmish is a warning against testamentary tact.

Justin Nelson

In support of the Community's "People's Europe" initiative, two UK consumer organisations launched a campaign in February to make EEC policies and proposals more easily understood.

European Research into Consumer Affairs (ERICA) is offering a £100 prize to anyone, especially a Euro-official, who comes up with the best explanation for the EEC's failure to use simple, straight-forward language in place of the present Obscuranto.

And in the European Parliament Dr Caroline Jackson is putting forward a resolution calling on the Community to adopt a policy of plain language in official communications, put someone in charge of it, and report back.

BOOK REVIEWS

by Justin Nelson

PRACTICAL CONVEYANCING PRECEDENTS by Trevor Aldridge, published by Longman at £25 (looseleaf hardback and word-processor operator's manual).

After my enthusiasm for "Practical Lease Precedents" by the same author and publisher (reviewed in Newsletter No. 8), I was depressed and disappointed by this work.

"Leases" was a comprehensive selection of lease precedents using clear wording, common words and short clauses, and was hailed by me as virtually a masterpiece; I was eager to see Trevor Aldridge give the same treatment to general conveyancing documents, but he has let me down.

There is no radical re-drafting of turgid conveyances, lengthy assignments or dreadful deeds: the first conveyance sets the scene, and starts:-

"THIS CONVEYANCE is made the day of
19 between:-

1. "The Vendor" "
2. "The Purchaser" "

WHEREAS the Vendor is seized of the property described below ("the property") for an estate in fee simple subject as mentioned below but otherwise free from incumbrances

AND WHEREAS the Vendor has agreed to sell the property to the Purchaser for a like estate for £ .

The only improvement seems to be the avoiding of '(hereinafter called "the Vendor" which expression shall where the context so admits include his successors in title)'. Yet so much more could have been attempted: the omission of both recitals for a start, since they are cumbersome, jargon-filled and unnecessary.

The work is a comprehensive collection of transfers, conveyances, assignments and contracts, and will no doubt be of great use to many conveyancers, particularly as it has been designed for use with a word-processor (and the library of clauses is available on disk from the publishers), and uses standard terms to enable extra clauses to be added easily.

As a CLARITY reviewer, however, my main concern is that Trevor Aldridge has not carried on the excellent work of "Leases", and for that reason (and that reason alone), I found the book uninteresting and even depressing.

THE BUSINESS GUIDE TO EFFECTIVE WRITING - a response

In the 8th CLARITY Newsletter, I reviewed the above work. John Fletcher, one of the authors, took exception to my main conclusion, that the book was aimed at people who need to write little but well, rather than people (like lawyers) who need to write much and well.

The resulting correspondence produced the following comments from John Fletcher:-

1. I do not agree ... that accountants rely upon the written word infrequently. I assure you they rely upon it all the time.

2. [The previous edition of the book] was purely for accountants. The revised edition, which you reviewed with a changed name, was meant for all business, professional and official people.

3. The average lawyer writes, in my experience, as badly as the average accountant or Civil Servant.

Overall, John Fletcher was disappointed that I took the view that his book, whilst meritorious, was too small and wide-ranging to replace the established authorities, such as Gowers and Fowler.

For my part, I maintain that, although interesting and useful, the work is limited in its scope, and I would be disappointed in any lawyer who relied purely upon this type of book for his language and style. Having said that, I fully accept that very many lawyers fall far short of the standards set by this book - I would not bother with CLARITY if I did not start from that position.

DEMOLISHING A SHIBBOLETH (?)

Sir Ernest Gowers, in "The Complete Plain Words" (Revised edition, 1986, page 6) gave as his view that the drafting of lawyers "is not to be judged by normal standards of good writing". Later, he claims that "legal diction ... is almost necessarily obscure".

I cannot accept that! Whilst I agree with virtually everything else that Gowers says, I cannot accept that lawyers have a special dispensation because of their particular problems. Anybody dealing with complex issues (philosophers, as an example) could plead the same excuse.

Gowers himself said (though referring to officials, not lawyers), "much of what they write has to be devoted to the almost impossible task of translating the language of the law, which is obscure that it may be unambiguous, into terms that are simple and yet free from ambiguity".

There are two nonsense here:-

1. for something to be "obscure that it may be unambiguous" is nonsense, and virtually self-contradictory.
2. if officials are expected to be able to "translate" into clear, unambiguous language, why cannot lawyers write the original in clear, unambiguous language?

We lawyers would do everyone a great service if we tried harder to write clearly and if we kept in mind Lord Denning's comment, "Lawyers try to cover every contingency, but in so doing they get lost in obscurity".

Perhaps I am wrong (after all, Gowers was far more expert on language than I will ever be); was Gowers wrong (on this point, at least)?

An acronym for CLARITY

Lawyers Against Waffle

LETTERS TO THE EDITOR

I believe I can provide the explanation asked for by Justin Nelson in Newsletter No 8. The majority of the words he placed in square brackets seem to be required.

In clause 3(4), a simple covenant "to repair the property" would not impose a continuing obligation on the tenant to keep the property in repair during the term of the lease. His only obligation would be to repair the property, presumably on taking possession. Thereafter, he could simply leave it. There is case law to support what is, I suggest, the right interpretation of this form of words. Perhaps the most convenient support for the proposition that an obligation to repair is not a continuing one is to be found in Woodfall at para 1-1420. Clearly the landlord will want the obligation to be a continuing one, as no doubt Justin Nelson intended it to be.

It is rather more doubtful whether the landlord needed to refer to good and substantial repair, but the authorities indicate that he may have done so. While many of the cases state that the words qualifying "repair" are not of importance, there is authority for the proposition that such words make clear the standard of repair which is required from the tenant. The authorities indicate that words such as "good and substantial repair" require the tenant to keep the premises in as good a state of repair as they were when he took possession, and that they should be inferred to have been in a tenable state at that time - see *Brown v. Trumper* (1858) 26 Beav 11. This is in contrast to, for example, a requirement to keep premises in tenable repair, by which is meant simply such repair as is sufficient to leave them in a state where they can reasonably be expected to be capable of being let to some subsequent tenant - see *Proudfoot v. Hart* (1890) 25 QBD 42. The subject is dealt with at Woodfall paras 1-1433/4.

Given that the covenants can only subsist during the term of the lease, I agree with Justin Nelson that the addition of the words "throughout the term of this lease" is unnecessary.

On clause 3(7), I suggest the omission of the words shown in brackets does not work. Clause 3(6) does not mention any works. All it mentions is the power to serve details of works which might be required. So that the thing reads properly, one must I suggest refer to the notice which specifies the works to be carried out.

The suggestion that the amendment in clause 3(7) results in a built-in delaying factor suggests that the landlord might be contemplating carrying out work himself notwithstanding that no written notice had been served on the tenant, since the works would only be those of the sort which might be referred to in a notice whether or not such notice had been served. That must be wrong. Clearly the tenant must be given due notice of what the landlord requires him to do, and a chance to do it.

I am all for brevity. The danger is that over-abbreviation may lead to ambiguities of interpretation which are at least as bad as the evil of verbosity.

Allison Curlov
Sherwood & Co, 3 Dean Farrar St, London SW1H 9EG

Thank you for sending me a copy of Allison Curlov's letter.

The lease was made pursuant to the Leases Act 1845; as a result, paragraphs 2 and 3 of Allison's letter are not appropriate - the Leases Act's definition of "to repair" covers all her points.

I cannot really accept that a reference to "the work mentioned in a written notice served by virtue of Clause 3(6)" is any less ambiguous than referring to "the work mentioned in Clause 3(6)", since the only type of work mentioned in that clause is the work that would be referred to in the notice. The two are one and the same and the extra words do not add anything. Clause 3(6) does refer to works: the works that should be carried out by the Tenant by virtue of Clause 3 of the Lease.

The built-in delaying factor in Clause 3(7) as amended is that the Tenant could (if he wished) not take any action for two months, and then begin to put in hand the necessary works. In the sub-clause as originally drawn, the work would have to be carried out "promptly", which might be sooner than two months or later, depending on the circumstances. The clause makes it quite clear that the Landlord cannot carry out the work unless the Tenant fails promptly to carry it out. I accept that it may be more explicit to say "if the Tenant does not promptly after service of a notice under Clause 3(6) carry out the work mentioned in that notice, then to permit..." but this is as far as I would go, and I feel that only Judge Flendish would find any ambiguity in the original wording!

Justin Nelson

The suggested per stirpes form

I thought (and still think) that the suggested wording is excellent. However, I showed a slightly modified wording ("A gift to a donee who dies before me shall be shared equally between his children") to several colleagues and all, without prompting, made the same objection: that the wording would only allow the children, not further issue, of a named beneficiary to benefit.

To me, this defies logic. A "one-stop" wording would be "A gift to a named donee ..."; the original wording is not restricted to named beneficiaries, and should therefore also operate if a beneficiary by virtue of the clause itself dies.

However, the unanimity of my colleagues makes me wonder. Is there an expert in the house?

Justin Nelson

Many leases contain a tenant's covenant to allow the landlord access to inspect "twice or oftener in every year".

Does this mean that on his first visit the landlord has to promise to return at least once in the course of that year?

Narry Eaglesoup
St Clement, Isbar Grove, Esher, Surrey

I wish to protest in the strongest possible terms at the fact that almost all the items in the CLARITY Newsletter are written by members of the committee - in particular by the ubiquitous Justin Nelson.

Why do you never publish any contributions from ordinary members? Surely it cannot be the case that no such contributions have been received, bearing in mind the idealism that led those members to join in the first place? I cannot believe that they have nothing to say, no criticisms or suggestions to offer, no anecdotes to tell; I can only conclude that the rumours of stringent censorship are to be believed.

No doubt you will not publish this letter: lack of space, perhaps?

Philip Mantly
(Disgusted, Turbridge Wells)

[Justin also submitted all four entries to the caption competition. - Ed]

Documents in the precedent library

Agency agreement	Katharine Mellor
Commercial lease	Justin Nelson
Commercial lease	Mark Adler
Computer software licence	Justin Nelson
Residential flat lease	Justin Nelson
Requisitions on title	Justin Nelson
Enquiries before contract	Justin Nelson
(A) General	
(B) Additional	
Residential property	
Business property	
Business goodwill	
Existing leasehold	
New residential lease	
New business lease	
Property subject to a tenancy	
Licensed premises	
Sale under enduring power of atty	
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Mark Adler

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