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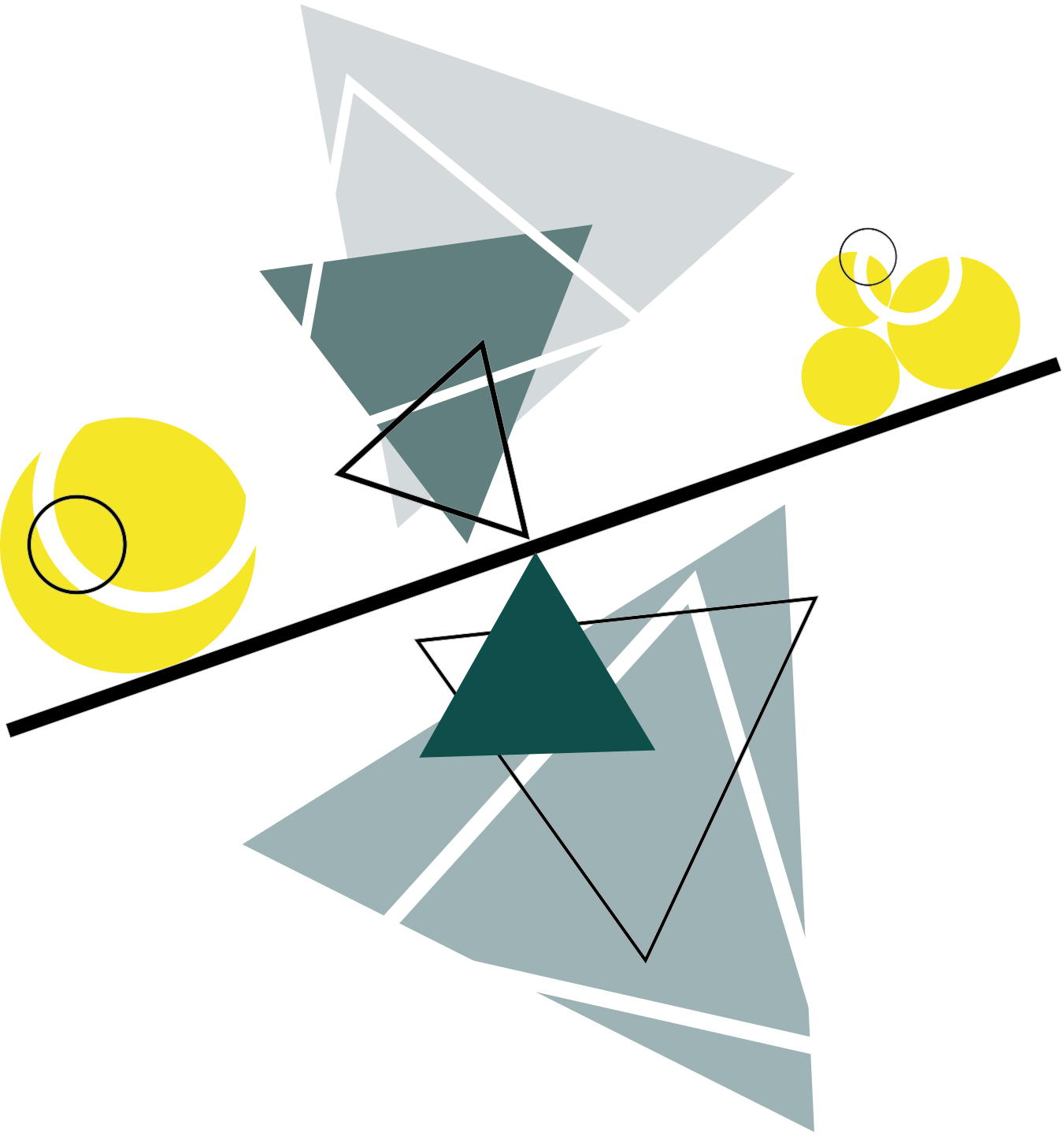

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Submissions
We encourage you to submit articles to be considered for publication in *Clarity*. Send submissions directly to the editor in chief at editor@clarity-international.org. Please limit submissions to no more than about 3,000 words.

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From the editor

Merel Elsinga

Merel is a plain language writer and editor with a background in Dutch law and a post-professional lingering passion for sailing and cooking. She found Canada's beautiful West Coast during her sailing career and has lived there since 2005. She has since graduated from the Simon Fraser University editing program and established her editing business. Merel is also the executive director for the Center for Plain Language, and an active member of Editors Canada.

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This is the first issue of *Clarity* with me in the role as its editor-in-chief. I had a fortunate start—we got so many responses to our call for before-and-after samples that we decided to publish two issues. It is wonderful to have such an engaged membership that helps us create interesting journals.

Our president Julie Clement offered to be the guest editor on these issues, and by doing so she passed on lots of useful information for future successful issues of *Clarity*. Thank you, Julie!

Our authors have supplied us with an interesting range of topics in which plain legal language makes a difference. Some authors prefer to work on the structure before they deal with the language. Others prefer to tackle clarifying the language before they improve the structure. They all have valid reasons and in these two issues of *Clarity* you can find out why.

In this issue we have:

- **Building contracts:** Both Naseem Ameer Ali and Peter Butt have written articles on improving clauses in building contracts. They have provided us with examples from contracts in New Zealand, Singapore, Malaysia, UK, and Hong Kong.
- **Bankruptcy rules (part 1):** Joe Kimble shares examples on how his team managed to clarify complex federal US rules despite being restricted by interwoven references to the Bankruptcy Code and extensive bankruptcy forms.
- **Debt recovery letters:** Hugo Sousa and Joana Fernandes describe how they achieved astounding results in debt collection when the Portuguese Small Claims National Office started to use their redesigned letter to address debtors.
- **Ballot questions:** Sean Isamu Johnson shows us the importance of testing clarified US ballot questions before using them.

Overview in a table

Consult the table in the back of this issue for a quick look at how some of the clauses from these articles were transformed.

Submit letters to the editor

Some of our articles may leave you with questions, others may give you inspiration you would like to share with us. We all grow from sharing and discussing, and we welcome your input. Be bold, act on your impulse and send me a note or a letter so we can all learn.

Submit an article

Do you have something more substantial to share with us? Have you reviewed a book on plain legal language? Have you done research? Have you interviewed a plain legal language expert, or would you like to? I've said it before—we need your help to create meaningful content. I would love to hear from you so we can share your submission with our members.

Become our next guest editor

You likely have noticed that *Clarity* has a different guest editor for each issue. Would you like to volunteer some of your time to review articles before they get published in our journal? You can be a guest editor for a future *Clarity* issue!

All you need is:

- a solid grasp of English
- a fair understanding of plain language principles
- experience in working with Word's Track Changes.

I'm happy to tell you more about this short-term role if you think you would like to take this on.

But first, get inspired by what this issue of *Clarity* has on offer for you.

Let's keep our communication going!

Merel Elsinga, *Canada/Netherlands*

Contents

From the president

Julie Clement is the president of Clarity and a member of the International Plain Language Federation and the Center for Plain Language boards. She is the Deputy Clerk at the Michigan Supreme Court and an instructor in Simon Fraser University's Plain Language Certificate program. Julie is a Distinguished Professor Emerita of the Western Michigan University Cooley Law School and served as editor in chief of *The Clarity Journal* for 14 years.

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Dear Clarity members,

I'm humbled and grateful to be elected for a third term. Thank you. Vice president Stéphanie Roy, and I are energized and ready to lead Clarity through the next two years.

More than a dozen years ago, Clarity worked with the Center for Plain Language and PLAIN to set mutual goals for our field. Defining plain language was the first goal. As a member of the International Plain Language Federation (IPLF), we continue to pursue the other goals we identified in Clarity 64.[1] We welcome the help of Dr. Neil James, who recently returned as the IPLF's chair. We also thank Vera Gergely, who served in that role for the past two years.

Plain language, including plain *legal* language and design, is finally reaching a tipping point. We expect to achieve a significant goal early this year: approval of ISO/FDIS 24495-1,[2] *Plain Language—Part 1: Governing principles and guidelines*, the world's first international standard for plain language.

Part 1 of the standard will be an amazing tool in our mission to promote plain legal language. So during the next two years, the Clarity Committee (our board) will work with members to (1) create a strategic plan for Clarity's future, and (2) help you and other plain-language advocates maximize the standard's reach.

Perhaps equally exciting for Clarity members is that ISO has approved a request to begin work on *Plain Language—Part 2: Plain legal writing and drafting*.[3]

While I'm excited about all that is happening in our field, we've also had to say, "Goodbye, and best wishes," to some long-time Clarity country representatives over the past several years. I'm deeply grateful for the years they spent serving Clarity. Thank you, Nicole Fernbach (Canada), Jenny Gracie (France), Helena Englund Hjalmarsson (Sweden), Kyal Hill (Japan), Miguel Martinho (Portugal), Aino Piehl (Finland), and Clive Wilson (Australia).

Of course, change is inevitable, so I'm looking forward to working with several new and many reappointed country representatives, as well as returning board members Joe Kimble, Annetta Cheek, and Christopher Balmford. I hope to use our website and journal to help you get to know your Clarity representatives and board a bit better.

Finally, I'm delighted to welcome our new editor in chief, Merel Elsinga. I met Merel through a course I teach in Simon Fraser University's Plain Language Certificate Program. Merel is a superstar, and she is already doing great things with the journal.

I hope you enjoy this issue of the journal and the next issue, which shares the same theme: before-and-after samples of legal writing.

With warmest regards,

1 https://www.clarity-international.org/wp-content/uploads/2020/07/Clarity-no-64-bookmarked1.pdf

2 https://www.iso.org/standard/78907.html

3 https://www.iso.org/standard/85774.html

Techniques in simplification

Peter Butt, *Australia*

Peter Butt is a former President of Clarity, and is Emeritus Professor of Law at the University of Sydney. He has written a number of books on legal drafting, including *Modern Legal Drafting* (first and second eds with Richard Castle; latest ed (3rd), Cambridge University Press, 2013) and *The Lawyer's Style Guide* (Hart UK, 2021). His other interest is land law, about which he has written a number of books. He has drafted land-law legislation for several jurisdictions, and has taught lawyers and law students the techniques of plain-language drafting for many years.

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'Before and after' techniques – an overview

Any exercise in redrafting complex legal clauses into plain English must focus on two main aspects: re-organization of material, and simplification of language. Both are necessary: mere re-organization is insufficient if the language remains tortured, and mere simplification is insufficient if the organization remains jumbled. Most plain-language proponents agree on this. But they sometimes differ over what to do first: re-organize or simplify? Few drafters can do both at the same time. So, some proponents first prune the legalese and then reorganize; others first reorganize and then prune the legalese. The destination is the same, but the journey differs.

Personally, I prefer to reorganize first, then prune the legalese. The following before-and-after illustration demonstrates this technique.

We start by breaking the text into 'sense-bites' (to use a term coined by my former co-author, Richard Castle). That divides the text into digestible portions, and lays bare the organization of ideas in the original. After that, we trim out the legalese, and make other linguistic changes to help clarify meaning. We should end up with a clause that is both well-structured **and** eminently readable—one that the intended audience can read and understand on a single run-through.

Original version

Let's take as our example a clause from a contract for a large-scale building project. (The example builds on a discussion in Peter Butt, *Modern Legal Drafting* (3rd ed, 2013, Cambridge University Press), [8.20] and following.) The players in the Hong Kong clause are (1) the developer (called 'the Employer'), (2) the project architect ('the Architect'), and (3) the head building contractor ('the Main Contractor'). The clause governs the Employer's rights to terminate the Main Contractor's services for various defaults.

Here is the original, in all its glorious legalese:

> If the Main Contractor shall make default in any one or more of the following respects, that is to say:
>
> (a) If he without reasonable cause wholly suspends the carrying out of the Works before completion thereof, [or]
>
> (b) If he fails to proceed regularly and diligently with the Works, or
>
> (c) If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected, or
>
> (d) If he fails to comply with the provisions of clause 17 of these Conditions,
>
> then the Architect may give to him a notice by registered post or recorded delivery specifying the default, and if the Main Contractor either shall continue such default for *fourteen* days after receipt of such notice or shall at any time

> thereafter repeat such default (whether previously repeated or not), then the Employer without prejudice to any other rights or remedies, may within *ten* days after such continuance or repetition by notice by registered post or recorded delivery forthwith determine the employment of the Main Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.
>
> [italics as per original; total words 205]

This exhibits all the worst elements of legalese. It is one long sentence; it uses noun forms where verbs would do (*make default*); it begins each subparagraph with a capital letter (though grammatically a continuation of a single sentence); it is replete with jargon (*provided that*, *without prejudice to*, *forthwith*); it uses *shall* in different senses; its use of *such* is ambiguous (because there are two possible referents); it contains unnecessary 'pairings' (*regularly and diligently*, *rights or remedies*, *materials or goods*). It also capitalises defined terms; and while there are other techniques for alerting the reader to defined terms (see, eg, Peter Butt, *The Lawyer's Style Guide* (Hart, 2021), pp 229–231), for the purposes of this exercise we will retain the capitalizations.

> Mere re-organization is insufficient if the language remains tortured, and mere simplification is insufficient if the organization remains jumbled.

Breaking into sense-bites

Our first task is to identify the main concepts. The drafting style used here—one long sentence of 'run-on' text—conceals them. However, they are easily uncovered. After that, we can begin to work on the finer points of language.

So, let's divide the single-sentence original into its component sense-bites. We will need to add a few linking words, but (at this stage) we will resist the temptation to prune the verbosity. Here is the result:

1. If the Main Contractor shall make default in any one or more of the following respects, that is to say:-
    a. If he without reasonable cause wholly suspends the carrying our of the Works before completion thereof, or
    b. If he fails to proceed regularly and diligently with the Works, or
    c. If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected, or
    d. If he fails to comply with the provisions of clause 17 of these Conditions,
2. then the Architect may give to him a notice by registered post or recorded delivery specifying the default,
3. and if the Main Contractor either shall continue such default for fourteen days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not),
4. then the Employer without prejudice to any other rights or remedies, may within ten days after such continuance or repetition by notice by registered post or recorded delivery forthwith determine the employment of the Main Contractor under this Contract,
5. provided that such notice shall not be given unreasonably or vexatiously.

So far, we have not changed a single word (apart from adding some linking words). But we have separated the ideas. Two aspects of the original are now immediately clearer:

- The central concept is in item 4—the Employer's right to terminate the Main Contractor's employment. The other items deal with the circumstances in which this can be done and some of the consequences.
- Termination requires certain steps to be taken, in a specified order.

Re-ordering the provisions

A well-drafted document puts the key ideas up-front. It also—where a transaction or course of action is to follow specified steps—guides the reader through those steps.

So, we now re-order the clause along the following lines (at this stage, still resisting the temptation to polish the prose). Notice that we start with a 'purpose' statement, and then set out the steps the players are to follow:

1. This clause sets out the circumstances in which the Employer may terminate the employment of the Main Contractor under this Contract.
2. First, the Main Contractor shall make default in any one or more of the following respects, that is to say:-
    a. If he without reasonable cause wholly suspends the carrying out of the Works before completion thereof, or
    b. If he fails to proceed regularly and diligently with the Works, or
    c. If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected, or
    d. If he fails to comply with the provisions of clause 17 of these Conditions.
3. Next, the Architect must give to him a notice by registered post or recorded delivery specifying the default.
4. Next, the Main Contractor must either continue such default for fourteen days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not).
5. Then, the Employer without prejudice to any other rights or remedies, may within ten days after such continuance or repetition by notice by registered post or recorded delivery forthwith determine the employment of the Main Contractor under this Contract.
6. Such notice shall not be given unreasonably or vexatiously.

Working on the language

Now we can start to polish the prose. Here are some of the things we can do:

- remove superfluous material
- substitute numbers for words
- trim wordiness
- remove jargon (eg, *such*)
- amend the gender-specific reference
- shorten by using possessives (rather than *of*)
- remove *shall*.

To demonstrate the process, in the next version I have shown deleted words and phrases in strike-out form, and shown substituted words and phrases in bold. At this stage, some material [which I have enclosed in square brackets] remains; in the final draft we will need to prune it or move it to a more logical place.

1. This clause sets out the circumstances in which the Employer may terminate the ~~employment of the Main Contractor~~ **Main Contractor's employment** under this Contract.
2. First, the Main Contractor ~~shall make default~~ **must have defaulted** in any ~~one or more~~ of the following ~~respects, that is to say:~~ **ways:**
    a. ~~If he without reasonable cause wholly suspends the carrying out of the Works before completion thereof,~~ **by wholly suspending the Works before their completion, without reasonable cause,** ~~or~~
    b. ~~If he fails to proceed regularly and diligently with the Works,~~ **by failing to proceed with the Works diligently**, ~~or~~
    c. ~~If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected,~~ **by refusing or persistently neglecting to comply with a written notice from the Architect requiring removal of defective work or improper materials, with the result that the Works are materially affected,** ~~or~~
    d. ~~If he fails to comply with the provisions of clause 17 of these Conditions~~ **by failing to comply with clause 17**.
3. Next, the Architect must give ~~to him~~ **the Main Contractor** a notice [by registered post or recorded delivery] specifying the default.
4. Next, the Main Contractor must either continue ~~such~~ **the** default for ~~*fourteen*~~ **14** days after ~~receipt of~~ **receiving** ~~such~~ **the** notice or ~~shall at any time thereafter repeat such default~~ **repeat it** (whether previously repeated or not).
5. If those circumstances are satisfied, then the Employer [without prejudice to any other rights or remedies], may within ~~*ten*~~ **10** days after ~~such~~ **the** continuance or repetition by notice [by registered post or recorded delivery] ~~forthwith~~ **immediately** determine ~~the employment of the Main Contractor under this Contract~~ **the Main Contractor's employment**.
6. The notice ~~shall not~~ **must not** be given unreasonably or vexatiously.

We can now hone the final version:

1. This clause sets out the circumstances in which the Employer may terminate the Main Contractor's employment under this Contract.
2. First, the Main Contractor must have defaulted in any of the following ways:
    a. by wholly suspending the Works before their completion, without reasonable cause,
    b. by failing to proceed with the Works diligently,
    c. by refusing or persistently neglecting to comply with a written notice from the Architect requiring removal of defective work or improper materials, with the result that the Works are materially affected,
    d. by failing to comply with clause 17.

3. Next, the Architect must give the Main Contractor a notice specifying the default.
4. Next, the Main Contractor must either continue the default for 14 days after receiving the notice, or repeat the default (whether previously repeated or not).
5. If those circumstances are satisfied, then the Employer may within 10 days after the continuance or repetition give notice immediately terminating the Main Contractor's employment.
6. The Employer's notice must not be given unreasonably or vexatiously.
7. A notice under this clause must be by registered post or recorded delivery.
8. The termination does not affect any other remedies the Employer may have.

[199 words]

Notice that we have simplified the tense constructions, by using the present tense in 3 and 4 (but not in 2, where the sense requires the past tense). Also, in 3 and 4 (and reflected in 6) we have preserved the concepts of *giving* notice and *receiving* notice—although that may produce some uncertainty, as the drafting implies that a notice is not given unless it is received (which may distinguish *giving* a notice from *serving* a notice, discussed in *Modern Legal Drafting*, [8.6]). We have also presumed that the drafter intended that only the *Employer's* notice must not be given unreasonably or vexatiously—saying nothing about the Architect's notice under subclause (3). Finally, the word count (199) is not much below the original (205). But the structure and content are now much easier to follow.

'Event of default' approach

We could also redraft the original by using an 'event of default' approach to control the content. This approach harks back to the traditional style of legal drafting, and can result in undue formality. However, it has the advantage of allowing ideas to be presented more directly, by shunting material to what is, in effect, a definition.

A redraft using that technique could follow this pattern:

1. The Employer may terminate the Main Contractor's employment under this Contract if:
    a. The Main Contractor commits an event of default, and
    b. The procedures set out in this clause are followed.
2. The Main Contractor commits an event of default by doing any of the following:
    a. wholly suspending the Works before their completion, without reasonable cause,
    b. failing to proceed with the Works diligently,
    c. refusing or persistently neglecting to comply with a written notice from the Architect requiring removal of defective work or improper materials, with the result that the Works are materially affected,
    d. failing to comply with clause 17.
3. Before the Employer can terminate:
    a. the Architect must give the Main Contractor a notice specifying the event of default, and
    b. the Main Contractor must, after receiving the notice:

i. continue the default for 14 days, or

ii. repeat the default (whether previously repeated or not).

4. The Employer may then, but only within 10 days of the continuance or repetition, give notice to the Main Contractor immediately terminating the Main Contractor's employment.
5. The Employer's notice must not be given unreasonably or vexatiously.
6. A notice under this clause must be by registered post or recorded delivery.
7. The termination does not affect any other remedies the Employer may have.

[218 words]

A variant of this last version would be to begin the clause with a definition of 'event of default'. In that form, the first two subclauses could read:

1. In this clause, an event of default occurs where the Main Contractor commits any of the following acts:
   a. wholly suspends the Works before their completion, without reasonable cause,
   b. fails to proceed with the Works diligently,
   c. refuses or persistently neglects to comply with a written notice from the Architect requiring removal of defective work or improper materials, with the result that the Works are materially affected,
   d. fails to comply with clause 17.
2. The Employer may terminate the Main Contractor's employment under this Contract if:
   a. The Main Contractor commits an event of default, and
   b. The procedures set out in this clause are followed.

But this draft regresses to a far more traditional form—starting with a definition and deferring the main idea to subclause 2. It would regress even further if we capitalised 'Event of Default', thus:

1. In this clause, 'Event of Default' means any of the following acts committed by the Main Contractor:
   a. wholly suspending the Works before their completion, without reasonable cause,
   b. failing to proceed with the Works diligently,
   c. refusing or persistently neglecting to comply with a written notice from the Architect requiring removal of defective work or improper materials, with the result that the Works are materially affected,
   d. failing to comply with clause 17.
2. The Employer may terminate the Main Contractor's employment under this Contract if:
   a. The Main Contractor commits an Event of Default, and
   b. The procedures set out in this clause are followed.

However, both of these 'event of default' approaches, while familiar to lawyers, re-introduce needless formality. I would shun them. For most readers, our first plain-language version remains the better redraft.

Construction contracts and blank cheques (checks) — then, now, and vision 2030

Naseem Ameer Ali, *New Zealand*

1 Prelude or lure

If you were asked: Do you sign blank cheques or checks? The answer is likely to range from *never* to *occasionally*. It is unlikely to be *yes* or *always*. And yet, in the construction industry, there is a comparable yes for projects of any value, whether USD10,000 or USD10 billion. Intrigued?

The Clarity Journal's simple and short 'instructions to authors', the clearest I have seen of any journal, suggests we start with a lure. This is my lure. Read on if you are intrigued.

Apart from a few punctuation consistency expectations, Clarity's instructions to authors does not impose any house style. This gives writers from all influences – American (checks), British (cheques), and others to share their style. This flexibility also encourages innovation.

I have written this paper in first-person writing style with numbered headings and short paragraphs. First person style may be considered sacrilegious in some traditional academic journals. But I hope my approach helps readers get my core message and join me with my Vision 2030 for construction contracts stated at the end of this paper—another lure to read to the end.

2 Two lessons from Einstein

Einstein, the famous scientist, contributed more than only to the sciences. He said, 'Make everything as simple as possible, but not simpler'. This advice is consistent with the worldwide move towards writing in plain language. The second part of Einstein's advice is particularly important when rewriting contracts from legalese into plain language.

3 The context - construction contracts

I write this paper in the context of construction contracts. Construction contracts are contracts between a client and a contractor or builder (I will use contractor in this paper) to build anything within the ***built*** environment such as a house, office, shopping mall, bridge, road, or railway, as opposed to the ***natural*** environment like the forest and jungle. Construction contracts also include subcontracts such as the contract between a contractor and specialist trade contractors like plumbers or electricians.

Naseem Ameer Ali PhD is a multidisciplinary construction professional with over 30 years of industry and academic experience in the UK, Malaysia, and New Zealand. He has academic qualifications in quantity surveying, architecture, construction law, and civil engineering and is professionally qualified as a Chartered Quantity Surveyor, Chartered Construction Manager, Adjudicator, Mediator, and Arbitrator. He is Past President of the Royal Institution of Surveyors Malaysia. He is now Associate Professor at Massey University New Zealand and Adjunct Professor at University of Science Malaysia and Taylor's University Malaysia. He teaches construction law and dispute resolution at Master's degree level where he emphasises plain legal language. His vision is for all construction contracts to be written or rewritten in plain language by 2030.

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4 Written and non-written contracts

Contracts (including construction contracts) may be written or done orally. Contracts can even be formed by conduct. For example, when you buy a Whittaker's bar of chocolate from a self-checkout retailer in New Zealand, there may well be no written contract, no spoken words, and possibly not even a printed receipt – if you are concerned about the environment. Under common law jurisdictions, they may all be legally binding contracts. There are exceptions, but I will skip the exceptions for now. Most would agree it is better to have written contracts so contracting parties know what they are signing up to.

> Make everything as simple as possible, but not simpler.
> ~Albert Einstein

A few questions: What if the parties don't understand what they are signing up to because the contract is written in complex language sometimes referred to as legalese? Should they sign the contract and worry about potential negative consequences later? Returning to the first question: should people sign blank cheques or checks? Should they seek legal advice before signing a contract or a blank cheque? Do we seek legal advice before signing a contract when renting a car?

5 Standard forms of construction contracts

In the construction industry in many jurisdictions, the core terms of contracts (such as payment terms, time obligations, quality obligations, termination, and dispute resolution provisions) are published as a standard form of contract that you can buy or access 'off the shelf' or online. The parties to the contract – the client, contractor, or subcontractor do not, in most projects, seek legal advice when using published standard forms of contracts. After all, published ***standard*** forms of contracts would have been 'tried and tested'. Construction professionals like engineers, architects, or quantity surveyors will prepare the complete contract and administer it.

6 Original and rewrites

Are current standard forms of construction contracts understood by the contract users? Going by the number of disputes, the answer is: not entirely. If they are, can they be plainer? They definitely can be plainer.

We should heed Einstein's advice and make them as simple or plain as possible. This paper demonstrates, using examples, clauses from construction contracts from various countries and my attempt at rewrites. I have particularly noted the second part of Einstein's advice not to overdo it so that the original legal intent is preserved. While most people would agree with the move to plainer legal writing, the second part of Einstein's advice can be contentious.

All words that are emphasised in the examples below are my own.

6.1 New Zealand

I will start with a simple clause headed 'contractor's representative' from the ubiquitous contract in New Zealand, where I am based: the Standards New Zealand's NZS 3910:2013 *Conditions of contract for building and civil engineering construction.*

Original

The Contractor shall provide all necessary supervision during the Contract. It shall have on the Site at all working times a competent representative who shall be one natural person only not being a body corporate or firm and whose name shall be notified to the Engineer in writing and who shall be authorised to receive on behalf of the Contractor any instructions from the Engineer or the Engineer's Representative.

[69 words in two sentences]

This basic clause breaches several plain language drafting guidelines, including:

(i) Avoid the word *shall,* which has more than eight meanings. One word with multiple meanings may be ambiguous leading to disputes.

(ii) Keep the average words per sentence to about 20.

(iii) Avoid excessive definitions, especially if a word already has a natural meaning. A 'named individual' is a natural person.

Here are some attempts at rewriting this clause.

Rewrite version 1

The Contractor must provide all necessary supervision during the Contract. The Contractor must inform the Engineer in writing with the name of their competent representative to be on site at all working times. The representative must be authorised to receive all instructions from the Engineer or Engineer's Representative.

[48 words in three sentences]

Rewrite version 2

The Contractor must provide all necessary supervision during the Contract. The Contractor must inform the Engineer in writing of a named individual competent representative who:

(i) must be on site at all working times, and

(ii) is authorised to receive all instructions from the Engineer or Engineer's Representative.

[48 words in four sentences]

Rewrite versions 1 and 2 have the same number of words and preserve the original intent but are about 30% shorter than the original and have shorter average number of words per sentence. Version 2 is clearer with lists, which is recommended in most plain legal writing guidelines.

Rewrite version 3

The Contractor must name, in writing, a competent representative authorised to supervise during working hours and to receive instructions from the Engineer or Engineer's Representative.

[25 words in one sentence]

Rewrite version 3 is a more significant transformation. It is over 60% shorter than the original. Conceptually it carries the gist of the original. Unless there are strong legal reasons why every part of the original needs to be preserved, version 3 is the best option.

6.2 Singapore

The most well-known private sector construction contract in Singapore is the Singapore Institute of Architects (SIA)'s building contract.

Here is a clause from an earlier edition that I had critiqued in the past.

Clause 1(2) - Original

> In this Contract or when used by the Architect the term "direction" *shall* mean an order of the Architect (as opposed to suggestions, recommendations or agreements with proposals made by the Contractor), compliance with which will not under the terms of the Contract entitle the Contractor to additional payment or compensation or to an increase in the Contract Sum, but which may in some cases result under the terms of the Contract in a reduction of the Contract Sum, whereas the term "instruction" *shall* mean an order of the Architect, compliance with which, while it may in some cases involve a reduction of the Contract Sum, will in principle entitle the Contractor in an appropriate case under the terms of the Contract to additional payment or compensation or to an increase in the Contract Sum.
>
> [135 words in one sentence]

The fact that the SIA themselves, after a long time, revised to the much-improved version below in 2016 shows there is a general preference for contracts to be plainer and to achieve this without losing original legal intent.

Renumbered Clause 1(3) – extracted from the 2016 revised edition

> In this Contract or when used by the Architect:
>
> (a) "Direction" *shall* mean an order of the Architect. It *shall* be differentiated from an "Instruction". It does not include suggestions, recommendation or agreements with proposals made by the Contractor. Compliance with a Direction *shall* not entitle the Contractor to additional payment or compensation or to an increase in the Contract Sum. It may in some cases result under the terms of the Contract in a reduction of the Contract Sum.
>
> (b) "Instruction" *shall* mean an order by the Architect, the compliance of which:
>
> (i) shall in some cases entitle the Contractor under the terms of the Contract to additional payment or compensation or increase in the Contract Sum; or
>
> (ii) may result in a reduction in the Contract Sum.
>
> (c) All orders given or confirmed in writing to the Contractor by the Architect *shall* be expressed by the Architect to be either "Architect's Directions" or "Architect's Instructions".
>
> [157 words in 8 sentences]

Note that the improvement includes good use of white space, listing, and the reduced average words per sentence from 135 to under 20. However, it still uses words like shall inconsistently. 'Direction shall mean …' can be replaced with 'direction means …'. And where the contract mandates something, using *must* is better than *shall*.

Although 15% longer, the 2016 version is better. Can this be improved further without losing legal intent?

See my rewrite below:

Rewritten Clause 1(3)

1(3) In this contract:

(a) Direction means an Architect's order for which the Contractor will not be entitled to additional payment or an increase in the Contract Sum.

(b) Instruction means an Architect's order, which in principle will entitle the Contractor in appropriate cases to additional payment or an increase in the Contract Sum.

(c) Both directions and instructions may in some cases result in a reduction in the Contract Sum.

[71 words in 4 sentences]

This is now nearly half the number of words of the original, uses a list for clearer presentation, avoids repetition, has an average number of words per sentence of well under 20, and does not use words which have multiple meanings like *shall*.

6.3 Malaysia

The following is a clause from the standard form of construction contract used by the Public Works Department (PWD) in Malaysian government projects.

Original

This Contract shall be deemed to be a Malaysian Contract and shall accordingly be construed according to the laws for the time being in force in Malaysia and the Malaysian Courts shall have exclusive jurisdiction to *hear* and *determine* all *actions* and *proceedings* arising out of this Contract and the Contractor hereby submits to the jurisdiction of the Malaysian Courts for the purposes of any such *actions* and *proceedings*.

[69 words in one sentence]

We could ask many questions of this clause, including the need to differentiate between hear and determine, and between actions and proceedings.

I have critiqued this clause in the past, but it remained for many years. PWD eventually revised the clause without losing legal intent to the improved version below. This shows there must be a general preference for contracts to be plainer.

This Contract shall be governed by and construed in accordance with the laws of Malaysia and the Parties irrevocably submit to the exclusive jurisdiction of the courts of Malaysia.

[29 words in one sentence]

The improvement is commendable - reducing the 69-word sentence to 29. And the two pairs *hear and determine,* and *actions and proceedings* have sensibly been removed.

Can this be further improved? See below:

Rewrite

Malaysian law applies to this contract.

[6 words]

The meaning is the same - in just six words. Enough said.

6.4 UK and Malaysia

It is critically important to define the design liability standard expected of contractors undertaking construction projects on a design-and-build basis. This is because in the absence of expressed design liability standards, the law, at least in most common law countries, would imply the impossible *fitness for purpose* or guarantee obligation for design. This would also mean the project may not be insurable. That is why many construction contracts in common law countries expressly reduce the design liability standards in design-and-build contracts from the default implied *fitness for purpose* to one of *reasonable skill and care*.

Unfortunately, this is often written in convoluted style. See the following clause from the well-known Joint Contracts Tribunal (JCT) contracts published in the UK. There is an identical version of the clause in the construction contract published by the Construction Industry Development Board Malaysia (CIDB 2000).

Original

> Insofar as the Contractor is responsible for the design of any part of the Works, he shall have in respect of Defects or insufficiency in such design the like liability to the Employer, whether under statute or otherwise, as would an architect, or as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the Employer, had supplied such design for or in connection with works to be carried out and completed by a contractor not being the supplier of the design.
>
> [100 words in one sentence]

This clause attempts to expressly provide the liability for design to be of *reasonable skill and care*. And yet the well-understood, legally clear phrase '*reasonable skill and care'* does not even appear within the 100 word-sentence. Instead, the clause is a convoluted plethora of 100 indirect words and phrases – a combination that simply means a *reasonable skill and care* standard.

The 100 words can be rewritten as:

Rewrite

> The Contractor owes a reasonable skill and care obligation for design as would a professional appointed independently.
>
> [17 words]

The rewrite is much shorter, written in a gender-neutral style, and uses well-established and well-understood legal terms of art - reasonable skill and care. Writing in plain language does not require established legal terms of art, of which there are very few in construction contracts, to be omitted.

6.5 A one-off clause on amendments

Standard forms of construction contracts are commonly amended – sometimes extensively. Here is one example of a typical 80-word amendment clause written in traditional style on how the parties may agree to change contract terms during a construction project.

Original

> No modification, amendment or waiver of any of the provisions of this Agreement shall be valid unless it is made in writing by way of supplementary agreement specifically referring to this Agreement and duly signed by the Parties or its duly authorised representatives. The provision in respect of such amendment,

variation or modification thereof shall be supplemental to and be read as an integral part of this Agreement which shall remain in full force and effect as between the Parties.

[80 words in two sentences]

Rewritten

No changes to any of these contract terms are valid unless the parties agree in writing.

[16 words]

It may be argued that the original is more specific with multiple words like *modification, amendment*, or *waiver*, with *potentially* slightly different meanings. However, the rewritten version will equally pick up the right to change contract terms through a written agreement between the parties. That is the intent of the original clause.

7 The importance of writing construction contracts in plain language

These 'before and after' examples from various construction contracts from the UK to the Antipodes (New Zealand) and other countries are only illustrative. They show legalese in construction contracts is omnipresent. The rewrites also show these clauses ***can*** be rewritten in modern plain language without losing legal intent. This heeds both parts of Einstein's advice.

Construction contracts must be written in plain language because the primary users of construction contracts – the client, contractor, subcontractor, and the person administering the contract, such as engineers, architects, or quantity surveyors, are typically not additionally legally qualified. None of them should be 'signing blank cheques or checks' which by analogy here means signing or administering a contract they don't understand. Doing so can lead to unwarranted disputes enriching those involved in dispute resolution at the expense of those involved in the core business of construction.

8 Vision 2030 and plain language drafting guidelines for the construction industry

8.1 Vision 2030

My Vision 2030 is:

> *All construction contracts are written or rewritten in modern plain language by 2030.*

8.2 Plain language drafting guidelines for the construction industry

To help facilitate the transformation of construction contracts, I have written a document called *Plain Language Drafting Guidelines for the Construction Industry.* This has a set of 20 plain language guidelines, which I consider to be non-controversial. I wrote this non-exclusive document and submitted it to the review and drafting committee of Standards New Zealand's NZS 3910:2013 *Conditions of contract for building and civil engineering construction,* of which I am a member. There is increasing awareness and acceptance of the importance of plain legal writing for construction contracts. For example, the Chair of the NZS 3910 drafting committee wrote in a progress update dated 30 September 2022:

> *The committee was asked to read and follow the plain language guidelines when holding the pen. When following these universally applicable language rules we will ensure that the revised NZS 3910 is easily understood by all users of the contract.*

As the committee operates on a consensus basis among the 25 expert committee members, it will be interesting to see the extent to which the final revised publication (expected second half of 2023) complies with the 20-point drafting guideline. Rudolf Flesch warned:

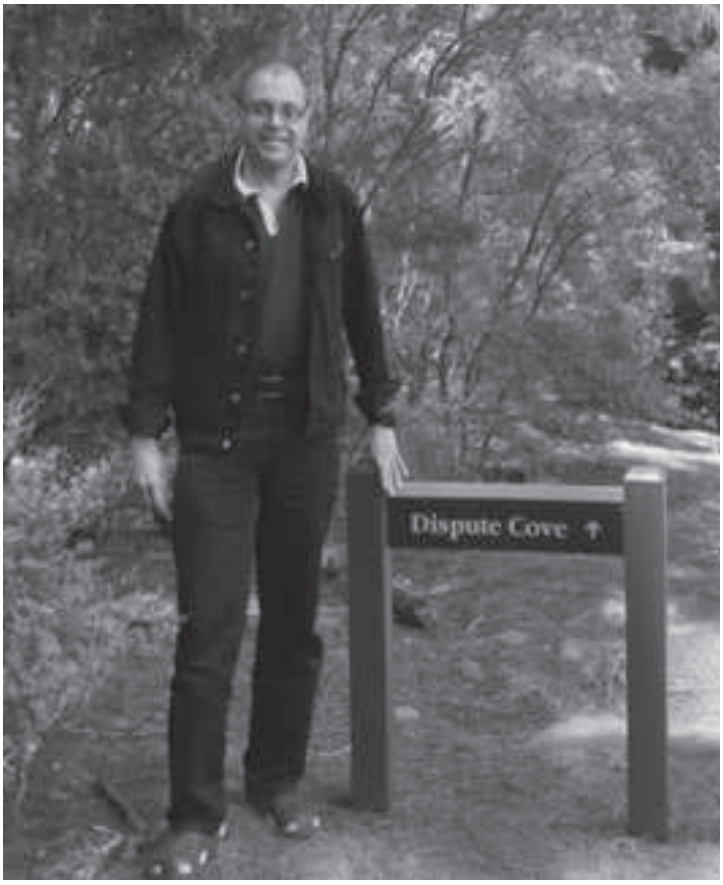
> *To kick the habit is extremely hard … If you want to write plain English, you'll have to learn how. You'll have to study it as if it were Spanish or French. It'll take much work and lots of practice until you've mastered the skill.*

The construction industry may need time to learn the 'new' language called *plain language*.

8.3 Example of a construction contract that complies with plain language principles

Meanwhile, you can access a sample of a published construction contract that complies with plain language principles - the *Standard Terms of Construction Contract for Renovation and Small Projects [STCC-RSP 2015].* This contract, published by the Construction Industry Development Board Malaysia, is accredited as a Clear English Standard document by the Plain Language Commission UK. Downloadable here.[1]

1 https://mro.massey.ac.nz/handle/10179/11488



It appears Nameer is no stranger to dispute.

Simplifying a judicial letter

Hugo Sousa and Joana Fernandes, *Portugal*

In Portugal, the Ministry of Justice has a small claims procedure to facilitate and speed up debt recovery. Every year, the Small Claims National Office sends thousands of letters related to this procedure to debtors. But until 2018, understanding them was not an easy task. Claro rewrote and redesigned this letter, leading to astonishing outcomes. The original letter and the simplified letter follow this article on page 23 and page 25, respectively.

What is this letter for? What were the consequences of not understanding it?

This letter is used in a small claims procedure that serves to collect debts of up to €15,000.

Very simply, it works like this:

1. The supposed creditor submits a claim to the Small Claims National Office, where they state the amount of the claim and the cause of that credit.
2. The Small Claims National Office sends a letter to the alleged debtor, asking:
   - to pay the debt, or
   - to oppose it if the debt was already paid or if it never existed to begin with.
3. If the alleged debtor remains silent, the claim will be declared enforceable. This allows the creditor to proceed with the attachment or seizure of bank accounts, wages or other earnings, or even the debtor's car or home.

The letter was confusing and difficult to understand. A lot of people ignored it and, because of it, had to deal with late payment interest, asset seizure, and court fees.

> The most important information was not highlighted and was on the last page.

Why was the letter so hard to understand?

The original letter[1] begins on page 23. It had the typical characteristics of an unclear document. It used complex language and legal expressions, such as "to deduce opposition" and "apposition of the executory formula".

But it also had other problems:

- The most important information was not highlighted and was on the last page.
- There was no way to distinguish between different types of information.
- Some information that could be very important was missing (for example, free legal support for citizens with low financial resources).

Hugo Sousa

Hugo is Head of Business Operations and senior consultant, specialized in clear communication and user research, at Claro. He is also a board member of Acesso Cultura, a Portuguese not-for-profit association that promotes access – physical, social and intellectual – to cultural participation.

He has led several simplification projects for clients in the public and private sectors, working with plain language and information redesign in written documents and digital platforms. In the juridic field, Hugo rewrote and redesigned court notices, created the structure and layout of the first plain language document to be included in the Portuguese legislation (it explains to violent crimes' victims its rights and duties), and simplified insurance and credit contracts and letters.

hugo.sousa@claro.pt

1 https://claro.pt/wp-content/uploads/2022/11/original_letter.pdf

Joana Fernandes

Joana is a Clarity Maker and trainer at Claro, and Clarity's country representative for Portugal. She also worked as a consultant for the Portuguese Ministry of Justice, leading the content production for its website.

She has managed several language simplification projects for Portuguese businesses and government agencies. Working with plain legal language, she wrote court notices, summaries of laws, drafted the first plain language document to be included in the Portuguese legislation (it explains to violent crimes' victims its rights and duties), and audited and simplified insurance letters. Joana also implemented in Portugal a Fair Trials' international project, writing an accessible letter of rights and training justice actors.

joana.fernandes@claro.pt

What was our approach?

To fix all the problems, we went through a 5-step process to make the document as clear as possible.

1. **We started by doing research** to understand the small claims procedure, the letter production systems, and the stakeholders' expectations.
2. **We mapped the letter structure**, to regroup and reorganize the information and to identify what could be missing.
3. **We improved the design**, to make it easier to read and highlight the most important information.
4. **We rewrote the contents**, using natural language, explaining technical-legal concepts, and anticipating readers' doubts or difficulties.
5. **We ran tests** with users to validate the understanding and usability of the new letter.

What was the solution?

The simplified letter[2] begins on page 25. The letter went from 1½ pages of complex language and legalese to 4 pages that explain in everyday language:

- the reason why someone is getting this letter,
- what would happen if they don't reply to it,
- how they could reply to oppose or pay the debt, and
- how they could get access to free legal support.

The results were astounding

At the end of two years of the new letter being in use, the numbers speak for themselves.

> The results were astounding: the number of granted requests [for free legal support] went up by 142%.

Voluntary payments went up 67 %

These are the people who recognize that this is a real debt they owe, and so they pay, avoiding late payment interest, asset seizure and court fees.

Requests for free legal support went up by 175 %

These are the people who want to oppose the debt and think they might be entitled to a free lawyer or to not pay legal fees. The number of granted requests went up by 142 %.

2 https://claro.pt/wp-content/uploads/2022/11/simplified_letter.pdf

The original letter, page 1 / A carta original, página 1

Apenas em caso de devolução desta correspondência remeter para:
Apartado 8291
EC CABO RUIVO
1803-001 LISBOA

Injunção .º [illegible]

Balcão Nacional de Injunções
Contactos directos:
Rua de Camões, 155
4049-074 Porto
Telef.: 220949310 a 19 Fax: 220949505 NIF: 600083551

Registo CTT: [illegible]

Exmo. Senhor [illegible]

LISBOA

Registado com P.D.

NOTIFICAÇÃO

Injunção nº: [illegible]	Refª: [illegible]	Data: **05-09-2016**
Requerente(s): [illegible]		
Mandatário(s): [illegible]		
Requerido(s): [illegible]		

Assunto: Notificação para pagamento ou oposição.

O requerente acima identificado apresentou no Balcão Nacional de Injunções um requerimento de injunção, onde Vª. Ex.ª figura como requerido (devedor), solicitando que lhe seja pago o montante de €895.91, correspondente à quantia pedida, acrescida da taxa de justiça por ele paga, conforme discriminação e causa a seguir indicadas:

Capital: 764.91 Juros de mora: 80.00 à taxa de: 0.00% desde
até à presente data; Outras quantias: 0.00 Taxa de Justiça paga: 51.00
Contrato de: Fornecimento de bens ou serviços
Data do contrato: 04-06-2014 Período a que se refere: 04-06-2014 a 03-02-2016
Exposição dos factos que fundamentam a pretensão:

1 - A ora Requerente, [illegible] é uma sociedade por quotas que se dedica à importação, exportação, comercialização, representação e distribuição de equipamentos de diagnóstico, laboratoriais, médicos e hospitalares, novas tecnologias e equipamentos informáticos, bem como, à prestação de serviços de assistência técnica e de marketing, formação, publicidade, organização de eventos e analises clinicas e genéticas.

2 - No âmbito da sua atividade comercial, a [illegible] vendeu à Requerida, [illegible] diversos materiais laboratoriais.

3 - Na sequência de tais fornecimentos, a Requerente emitiu as facturas, relativas a aquisições efectuadas pela Requerida de tiras de colesterol total, tiras de glicose e tiras de urina, infra indicadas:
- Factura FA 2014/301, emitida em 04-06-2014, com data de vencimento em 04-07-2014, no valor de € 359, 82 (trezentos e cinquenta e nove euros e oitenta e dois cêntimos);

Processado por computador Acto: Página: 1 de 2

The original letter, page 2 / A carta original, página 2

- Factura FA 2014/364, emitida em 11-07-2014, com data de vencimento em 10-08-2014, no valor de €235, 26 (duzentos e trinta e cinco euros e vinte e seis cêntimos);
- Factura FA 2014/482, emitida em 18-09-2014, com data de vencimento em 18-10-2014, no valor de € 112, 59 (cento e doze euros e cinquenta e nove cêntimos);
- Factura FA 2014/599, emitida em 04-11-2014, com data de vencimento em 04-12-2014, no valor de €57, 24 (cinquenta e sete euros e vinte e quatro cêntimos).

4 - Apresentadas a pagamento, as facturas não foram pagas na respectiva data de vencimento, nem posteriormente.

5 - Além do montante das facturas, a Requerente tem direito a haver da Requerida juros de mora, os quais, calculados desde o dia seguinte ao da data de vencimento das respectivas facturas, à taxa legal supletiva aplicável de 7, 15% até 31-12-2014, de 7, 05% de 01-01-2015 até 30-06-2015, de 7, 05% de 01-07-2015 até 31-12-2015 e de de 7, 05% a partir de 01-01-2016, perfazem o montante total de €80 (oitenta euros).

6 - Assim, a quantia em dívida pela Requerida à Requerente, na presente data (03/02/2016), ascende a €844, 91 (€764, 91+ € 80 de juros).

Fica, pois, por este meio notificado de que tem o prazo de 15 dias* para:
a) Pagar** ao requerente o montante por este solicitado; ou
b) Deduzir oposição a essa pretensão, caso em que o Balcão Nacional de Injunções remeterá os autos à distribuição no tribunal competente.
Faz-se notar, no entanto, que a dedução de oposição cuja falta de fundamento não deva ser ignorada por si determina a condenação - na sentença que vier a ser proferida na acção declarativa que se lhe seguir - em multa de valor igual ao dobro da taxa de justiça devida nessa acção.

Findo o referido prazo de 15 dias sem que tenha efectuado o pagamento do montante acima indicado ou deduzido oposição:
a) Será aposta fórmula executória no requerimento de injunção, tendo o requerente a faculdade de intentar contra si acção executiva; e
b) Passa ainda a dever juros de mora à taxa legal desde a data da apresentação do requerimento de injunção e juros à taxa de 5% ao ano a contar da data da aposição da fórmula executória.

O Escrivão-Auxiliar

[illegible]

* - O prazo acima indicado corre continuadamente a partir da data certificada pelo distribuidor postal, suspendendo-se, no entanto, durante as férias judiciais, que decorrem de 22 de Dezembro a 3 de Janeiro, do domingo de Ramos à segunda-feira de Páscoa e de 16 de Julho a 31 de Agosto. Se o prazo terminar em dia em que os tribunais estiverem encerrados, o seu termo transfere-se para o primeiro dia útil seguinte. ** - QUERENDO EFECTUAR O PAGAMENTO, DEVERÁ FAZÊ-LO AO REQUERENTE.

Processado por computador | Acto: | Página: 2 de 2

The simplified letter, page 1 / A carta simplificada, página 1

Secretaria Judicial
Balcão Nacional de Injunções

Apartado 8291, EC Cabo Ruivo, 1803-001 Lisboa
Apenas para uso dos CTT em caso de devolução.
Não envie correio para este apartado.

Injunção n.º 00000/00.0AAAAA
Data: 01-01-2022
Identificador Citius: 000 000 000 000
(Pode usar o identificador Citius para ver esta notificação online em www.citius.mj.pt)
Telefone: 220 949 310

Exma/o. Senhora/or
Nome da pessoa a quem se destina
Morada da pessoa a quem se destina
1234-567 – Localidade

O valor que lhe é exigido

Pagamento de uma dívida relativa a um contrato de fornecimento de bens e serviços

Dívida principal:..... **764,91 €**
Outras quantias:..... **00,00 €**
Taxa de justiça:..... **51,00 €**
Juros de mora:..... **80,00 €**

Valor exigido:..... 895,91 €

O pedido foi apresentado contra si por:
- Nome de quem apresentou o pedido

Porque está a receber esta notificação

Está a receber esta notificação porque esta secretaria judicial recebeu um pedido de injunção contra si. Poderá ter de pagar 764,91 € mais os juros pelo atraso e a taxa de justiça, o que soma um total de **895,91 €.**
Por isso, a sua resposta a esta notificação é muito importante.

Segundo o pedido de injunção apresentado contra si, não foram feitos pagamentos devidos por um contrato de prestação de bens e serviços feito em 04-06-2014 (Decreto-Lei n.º 62/2013, de 10 de maio).

A injunção é uma forma rápida de exigir o cumprimento de dívidas

Um pedido de injunção é um requerimento para cobrar uma dívida resultante de um contrato. Se a pessoa contra quem é feito o pedido não pagar nem responder opondo-se à injunção, pode ser pedida em tribunal a penhora dos seus bens ou rendimentos.

Conheça os fundamentos do pedido de injunção

Consulte a última página desta notificação para conhecer em detalhe o pedido que foi apresentado contra si. Caso considere não ter de pagar o valor que lhe é exigido, a sua resposta a esta notificação é muito importante.

Tem 15 dias para reagir ao pedido de injunção

No prazo de 15 dias após receber esta notificação, pode escolher:

- **pagar** 895,91 € diretamente a quem fez o pedido contra si; **ou**
- **responder-nos** indicando motivos para não ter a obrigação de pagar.

Ação executiva *é um processo judicial em que alguém com um título executivo pede ao tribunal que penhore os bens ou os rendimentos de outra pessoa para receber um pagamento.*

Título executivo *é um documento que permite avançar com a ação executiva para cobrar uma dívida. Por exemplo, um pedido de injunção pode tornar-se um título executivo.*

Oposição *é o nome que damos à sua resposta a esta notificação. A lei dá-lhe 15 dias para "deduzir oposição", ou seja, responder-nos indicando motivos para não ter de pagar.*

Saiba como pagar ou responder nas páginas seguintes

Tenha em atenção que os 15 dias para reagir ao pedido de injunção apresentado contra si começam a contar no dia a seguir à assinatura do aviso de receção desta notificação.

O que acontece se não fizer nada no prazo de 15 dias

Se não pagar nem responder dentro do prazo, o pedido de injunção vai ser suficiente para haver uma ação executiva em tribunal. Por causa dessa ação executiva contra si, os seus bens ou rendimentos podem vir a ser penhorados para pagar o valor que lhe é exigido.

Na ação executiva, o valor a pagar aumenta porque passa também a dever:

- juros pelo atraso no pagamento desde 03-02-2016
- juros de 5% desde a data em que a ação executiva seja possível
- as custas judiciais da ação executiva.

Pág. 1/4

The simplified letter, page 2 / A carta simplificada, página 2

O pedido contra si foi entregue por:

Nome do mandatário
Morada do mandatário
1234-567 – Localidade
Telefone: 210 000 000

Quer pagar o valor que lhe é exigido?
Pague diretamente a quem apresentou o pedido de injunção contra si. Evita ter outras despesas se pagar dentro do prazo de 15 dias.

Não envie o pagamento para esta secretaria judicial
O Balcão Nacional de Injunções não representa nenhuma das partes no processo. Por isso, esta secretaria não pode receber qualquer pagamento relativo à possível dívida.

Estes são os contactos para pagamento:

Nome do contacto 1
Morada do contacto 1
1234-567 Lisboa
Telefone: 210 000 000

Nome do contacto 1
Morada do contacto 1
1234-567 Lisboa
Telefone: 210 000 000

O que acontece se pagar?

- **Se pagar o valor que lhe é exigido**, o processo pode terminar.

Pode fazer-nos chegar a resposta por:

Correio ou em mão
Balcão Nacional de Injunções
Rua de Camões, n.º 155
4049-074 Porto

Fax
220 949 505

Para mais informações, ligue-nos nos dias úteis, das 9h00 às 12h30 e das 13h30 às 16h00:

Telefone
220 949 310

Quer responder a esta notificação?
Responda-nos no prazo de 15 dias, dizendo por que motivos considera não ter a obrigação de pagar o valor que lhe é exigido.

O que acontece se responder a esta notificação?

- **Se a resposta disser que considera não ter de pagar**, vamos enviar a sua resposta para o Tribunal Judicial da Comarca de Lisboa, onde vai ser analisada. Antes dessa análise, vai receber uma notificação para pagar 100 € de taxa de justiça. Depois de fazer esse pagamento, o seu processo vai ser decidido em tribunal por uma juíza ou juiz.

  Atenção: Se responder e o tribunal considerar que devia saber que os motivos que indicou não eram válidos, pode ser condenada/o a pagar uma multa de 200 €.

- **Se a resposta não disser que considera não ter de pagar**, pode haver uma ação e executiva contra si e os seus bens ou rendimentos podem vir a ser penhorados para pagar o valor que lhe é exigido.

Pág. 2/4

The simplified letter, page 3 / A carta simplificada, página 3

Para saber mais, contacte a Segurança Social:

Telefone
300 502 502 (chamada para a rede fixa)

Online
Antes de ligar, pode ir a www.seg-social.pt e:

- usar o simulador disponível em *Simulações -> Proteção Jurídica*
- consultar *Linha Segurança Social/ Atendimento automático -> Guias Práticos -> Proteção Jurídica*

Precisa de ajuda para responder?
A Segurança Social oferece apoio judiciário às pessoas que não têm meios para pagar as taxas de justiça ou o aconselhamento jurídico de que precisam. Na modalidade *"Nomeação e pagamento da compensação de patrono",* o apoio judiciário inclui os serviços de uma/um advogada/o ou solicitadora/or.

Se pensa ter direito a apoio judiciário, contacte rapidamente a Segurança Social para conhecer os seus direitos antes do fim do prazo de 15 dias.

O pedido de apoio judiciário pode interromper o seu prazo
Se escolher a modalidade *"Nomeação e pagamento da compensação de patrono"* e entregar o requerimento à Segurança Social antes do fim do prazo de 15 dias, o prazo interrompe-se.

Nesse caso, envie-nos uma cópia do requerimento que entregou à Segurança Social. É importante que essa cópia mostre a data em que fez o seu pedido de apoio judiciário, porque vamos suspender o processo de injunção até a Segurança Social tomar uma decisão.

O que acontece se pedir apoio judiciário?

- **Se pedir apoio judiciário e nos enviar uma cópia do requerimento**, o processo é suspenso até a Segurança Social decidir sobre o seu pedido de apoio com *"Nomeação e pagamento da compensação de patrono"*.

  Quando a Segurança Social tomar uma decisão sobre o seu pedido de apoio judiciário, tem um novo prazo de 15 dias para responder a esta notificação.

Por exemplo: se receber esta notificação num dia 1, o prazo de 15 dias começa a contar no dia 2 e termina no dia 16. O prazo continua a contar durante os fins de semana e feriados.

Tenha atenção ao calendário e a estas regras.

Como se contam os prazos
Os prazos que indicamos nesta notificação contam-se corridos, incluindo fins de semana e feriados. Se o prazo terminar num dia em que os serviços estejam fechados, pode entregar a sua resposta no dia útil seguinte.

A contagem dos prazos indicados só fica suspensa:

- entre 22 de dezembro e 3 de janeiro
- entre o domingo de Ramos e a segunda-feira de Páscoa
- entre 16 de julho e 31 de agosto.

A/O Oficial de Justiça,

xxxxxxxxxxxx

Conheça os fundamentos do pedido de injunção
Na página seguinte encontra os fundamentos do pedido apresentado contra si nesta secretaria judicial.
Se preferir, veja esta notificação online em www.citius.mj.pt colocando o número 000 000 000 000 no campo do *"Identificador"*.

Pág. 3/4

The simplified letter, page 4 / A carta simplificada, página 4

O que é alegado no pedido de injunção

Os fundamentos indicados contra si são os seguintes:

1 - A ora Requerente, xxxxxxxxxxxxxxxxxxxxxxxx, é uma sociedade por quotas que se dedica à importação, exportação, comercialização, representação e distribuição de equipamentos de diagnóstico, laboratoriais, médicos e hospitalares, novas tecnologias e equipamentos informáticos, bem como, à prestação de serviços de assistência técnica e de marketing, formação, publicidade, organização de eventos e analises clinicas e genéticas.

2 - No âmbito da sua atividade comercial, a xxxxxxxxxxxx vendeu à xxxxxxxxxxxxxxx, diversos materiais laboratoriais.

3 - Na sequência de tais fornecimentos, a Requerente emitiu as facturas, relativas a aquisições efectuadas pela Requerida de tiras de colesterol total, tiras de glicose e tiras de urina, infra indicadas:

- Factura FA xxxxx, emitida em 04-06-2014, com data de vencimento em 04-07-2014, no valor de €359,82 (trezentos e cinquenta e nove euros e oitenta e dois cêntimos);

- Factura FA xxxxx, emitida em 11-07-2014, com data de vencimento em 10-08-2014, no valor de €235,26 (duzentos e trinta e cinco euros e vinte e seis cêntimos);

- Factura FA xxxxxx, emitida em 18-09-2014, com data de vencimento em 18-10-2014, no valor de €112,59 (cento e doze euros e cinquenta e nove cêntimos);

- Factura FA xxxxxx, emitida em 04-11-2014, com data de vencimento em 04-12-2014, no valor de €57,24 (cinquenta e sete euros e vinte e quatro cêntimos).

4 - Apresentadas a pagamento, as facturas não foram pagas na respectiva data de vencimento, nem posteriormente.

5 - Além do montante das facturas, a Requerente tem direito a haver da Requerida juros de mora, os quais, calculados desde o dia seguinte ao da data de vencimento das respectivas facturas, à taxa legal supletiva aplicável de 7,15% até 31-12-2014, de 7,05% de 01-01-2015 até 30-06-2015, de 7,05% de 01-07-2015 até 31-12-2015 e de de 7,05% a partir de 01-01-2016, perfazem o montante total de €80 (oitenta euros).

6 - Assim, a quantia em dívida pela Requerida à Requerente, na presente data (03/02/2016), ascende a €844,91 (€764,91+ €80 de juros).

Pág. 4/4

Simplificar uma notificação judicial

Hugo Sousa e Joana Fernandes, *Portugal*

Em Portugal, o Ministério da Justiça tem um procedimento para facilitar e acelerar a cobrança de dívidas: a injunção. Todos os anos, o Balcão Nacional de Injunções envia aos devedores milhares de notificações relacionadas com este procedimento. Até 2018, entender estas cartas não era uma tarefa fácil. A Claro ajudou a simplificá-las, e os resultados foram surpreendentes.

Para que serve esta carta? O que acontece se não se responder

Esta carta é usada em processos para cobrar dívidas comerciais até 15.000 €.

De forma muito resumida, funciona assim:

1. Quem tem uma dívida para cobrar entrega um formulário no Balcão Nacional de Injunções, onde indica o valor da dívida e a razão pela qual existe.
2. O Balcão Nacional de Injunções envia uma carta à pessoa que foi indicada como devedora. Nessa carta, diz-se à pessoa que ela deve:
   - pagar a dívida, ou
   - defender-se, caso a dívida já tinha sido paga ou nunca tenha existido.
3. Se a pessoa indicada como devedora não reagir, considera-se que reconhece ter essa dívida e o valor pode ser executado. Isso permite ao credor pedir a penhora de contas bancárias, salários ou outros rendimentos, e até mesmo de bens do devedor.

A carta era confusa e difícil de compreender. Muitas pessoas não reagiam à carta e, por isso, acabavam por ter de pagar a dívida e lidar com juros de mora pelo atraso no pagamento, penhora de bens e custas judiciais.

> As informações mais importantes não eram destacadas e estavam na última página.

Por que era tão difícil entender a carta?

Consulte a carta original[1] na página 23. Tinha as características típicas de um documento pouco claro. Utilizava uma linguagem complexa e expressões jurídicas, como "deduzir oposição" e "aposição da fórmula executória". Mas também tinha outros problemas:

- As informações mais importantes não eram destacadas e estavam na última página.
- Não havia forma de distinguir os diferentes tipos de informação.
- Faltavam algumas informações que poderiam ser muito importantes (por exemplo, o apoio jurídico gratuito para cidadãos com poucos recursos financeiros).

Hugo Sousa

Hugo é Head of Business Operations e consultor sénior, especializado em comunicação clara e user research, na Claro. É também membro da direção da Acesso Cultura, uma associação portuguesa sem fins lucrativos que promove o acesso – físico, social e intelectual – à participação cultural.

Liderou diversos projetos de simplificação da comunicação para clientes dos setores público e privado. Na área jurídica, reescreveu e redesenhou notificações judiciais, criou conteúdos, estrutura e layout para o primeiro documento em linguagem simples a ser incluído na legislação portuguesa (o Estatuto de Vítima de Crime), e simplificou contratos e cartas na área do crédito e dos seguros.

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1 https://claro.pt/wp-content/uploads/2022/11/original_letter.pdf

Joana Fernandes

A **Joana** é Clarity Maker e formadora na Claro, especializada em linguagem clara jurídica. É representante nacional da Clarity em Portugal e até 2022 trabalhou como consultora freelance, produzindo conteúdos para o site do Ministério da Justiça.

Liderou vários projetos de simplificação de linguagem para empresas portuguesas e agências governamentais. Escreveu notificações judiciais e resumos de leis em linguagem clara, redigiu o primeiro documento em linguagem simples a ser incluído na legislação portuguesa (o Estatuto de Vítima de Crime) e auditou e simplificou cartas de seguradoras. Implementou em Portugal o projeto internacional Fair Trials, para formar em linguagem clara procuradores, juízes e advogados, e criar uma versão em linguagem clara do Termo de Constituição de Arguido.

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Qual foi a nossa abordagem?

Para tornar a notificação mais clara, passamos por estes 5 passos.

1. **Começamos por conhecer melhor** o procedimento de injunção, os sistemas de produção das notificações e as expectativas das partes interessadas.
2. **Mapeamos a estrutura das notificações** para reagrupar e reorganizar as informações, e identificar o que poderia estar em falta.
3. **Melhoramos o layout,** para facilitar a leitura e destacar as informações mais importantes.
4. **Reescrevemos o conteúdo**, em linguagem natural, explicando conceitos técnico-jurídicos e antecipando as dúvidas ou dificuldades de quem lê.
5. **Fizemos testes com utilizadores** para validar a compreensão e usabilidade da nova carta.

Qual foi o resultado?

Consulte a carta simplificada[2] na página 25. A carta passou de uma página e meia de linguagem complexa e jurídica para 4 páginas que explicam em linguagem do dia a dia:

- a razão pela qual foi enviada a carta
- o que acontece se não responder
- como pode responder para se opor ou pagar a dívida
- como pode ter acesso a apoio jurídico gratuito.

Os resultados foram surpreendentes

Dois anos depois de a nova notificação começar a ser enviada, os números falam por si.

> Os resultados foram surpreendentes: o número de pedidos atribuídos [de apoio jurídico] aumentou 142%.

O número de dívidas pagas de forma voluntária aumentou 67%

Estas são as pessoas que reconhecem que se trata de uma dívida que têm e que a pagam, evitando juros de mora, penhora de bens e custas judiciais.

Os pedidos de apoio jurídico gratuito aumentaram 175%

Estas são as pessoas que se querem opor à dívida mas, por falta de recursos financeiros, não podem pagar uma advogada ou advogado ou pagar as custas do tribunal. O número de apoios atribuídos aumentou 142%.

2 https://claro.pt/wp-content/uploads/2022/11/simplified_letter.pdf

Some examples from the proposed new federal rules of bankruptcy procedure (Part 1)

Joseph Kimble, *United States*

Professor Joseph Kimble taught legal writing for more than 30 years at Western Michigan University–Cooley Law School. He has published many articles on legal writing and written three books: *Lifting the Fog of Legalese*; *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law*; and *Seeing Through Legalese*.He is the longtime editor of the "Plain Language" column in the *Michigan Bar Journal* and a past president of Clarity. Since 1999, he has been a drafting consultant on all U.S. federal court rules. He has received several national and international awards for his work.

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In the U.S., the federal Advisory Committee on Bankruptcy Rules—within the Committee on Rules of Practice and Procedure—has been at work "restyling" (redrafting) those rules for clarity, consistency, and readability. I'm one of three drafting consultants on the project, along with Bryan A. Garner and Joseph Spaniol. The work should be completed this year, five years after it began, but final approval (barring any unexpected hitches) would not happen until 2024.

This is the fifth and last set of federal court rules to be redrafted over the last 25 years, following the appellate rules, criminal rules, civil rules, and evidence rules. The goal has always been to improve the rules without changing substantive meaning, and I believe we have achieved that goal: the restyled rules have been generally well received, and we have had to fix only a small number of inadvertent substantive changes during all that time. What's more, they were far outnumbered by the inconsistencies, uncertainties, and ambiguities that were uncovered in the redrafting process. My book *Seeing Through Legalese: More Essays on Plain Language* includes many, many before-and-after examples from the civil rules and evidence rules.

> [A]s I've grown older and marginally wiser, I've come to recognize that structural elements are every bit as important to clarity as linguistic elements.

The bankruptcy rules are a distinct challenge because they have to take into account the Bankruptcy Code itself and the extensive set of bankruptcy forms. For one thing, that means far more cross-references than we would like. It is tough work, requiring multiple drafts back and forth among the three consultants and then more drafts after review by the substantive experts—the reporters for the advisory committee and the committee members.

Despite the challenges, I hope you'll agree that the revised versions below (and in the next issue of *The Clarity Journal*) are dramatically improved. If you compare the wording, you should generally find more logical organization, shorter sentences, better sentence structure, the omission of unnecessary words, and so on. Individual changes may seem trivial, but they add up to a considerable gain in clarity.

Then, too, as I've grown older and marginally wiser, I've come to recognize that structural elements are every bit as important to clarity as linguistic elements. Notice, for instance, what a difference it makes to use more subparts, headings, and vertical lists. (They may make the rules look longer, but their text is invariably

shorter.) These are the kinds of changes that writers should be able to make in any of their documents—without great difficulty and to their readers' great benefit.

At any rate, you can look at these examples and judge for yourself. Of course, the revised versions could change in minor ways before final approval.

Rule 1003. Involuntary Petition	**Rule 1003. Involuntary Petition: Transferred Claims; Joining Other Creditors; Additional Time to Join**
(a) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.	**(a) Transferred Claims.** An entity that has transferred or acquired a claim for the purpose of commencing an involuntary case under Chapter 7 or Chapter 11 is not a qualified petitioner. A petitioner that has transferred or acquired a claim must attach to the petition and to any copy: (1) all documents evidencing the transfer, whether it was unconditional, for security, or otherwise; and (2) a signed statement that: (A) affirms that the claim was not transferred for the purpose of commencing the case; and (B) sets forth the consideration for the transfer and its terms.

Rule 1014. Dismissal and Change of Venue	**Rule 1014. Transferring a Case to Another District; Dismissing a Case Improperly Filed**
(a) [omitted]	**(a)** [omitted]
(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If petitions commencing cases under the Code or seeking recognition under chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, (2) a partnership and one or more of its general partners, (3) two or more general partners, or (4) a debtor and an affiliate, the court in the district in which the first-filed petition is pending may determine, in the interest of justice or for the convenience of the parties, the district or districts in which any of the cases should proceed. The court may so determine on motion and after a hearing, with notice to the following entities in the affected cases: the United States trustee, entities entitled to notice under Rule 2002(a), and other entities as the court directs. The court may order the parties to the later-filed cases not to proceed further until it makes the determination.	**(b) Petitions Involving the Same or Related Debtors Filed in Different Districts.** **(1)** ***Scope.*** This Rule 1014(b) applies if petitions commencing cases or seeking recognition under Chapter 15 are filed in different districts by, regarding, or against: (A) the same debtor; (B) a partnership and one or more of its general partners; (C) two or more general partners; or (D) a debtor and an affiliate. **(2)** ***Court Action.*** The court in the district in which the first petition is filed may determine the district or districts in which the cases should proceed in the interest of justice or for the convenience of the parties.* The court may do so on timely motion and after a hearing on notice to: • the United States trustee; • entities entitled to notice under Rule 2002(a); and • other entities as the court orders. **(3)** ***Later-Filed Petitions.*** The court may order the parties in a case commenced by a later-filed petition not to proceed further until the motion is decided.

*Better: *the parties' convenience*. But the other phrase is used in the Bankruptcy Code.

1015. Consolidation or Joint Administration of Cases Pending in Same Court	**Rule 1015. Consolidating or Jointly Administering Cases Pending in the Same District**
(a) [omitted]	**(a)** [omitted]
(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under § 522(6)(2) of the Code and the other has elected the exemptions under § 522(6)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).	**(b) Jointly Administering Cases Involving Related Debtors; Exemptions of Spouses; Protective Orders to Avoid Conflicts of Interest.** **(1)** ***In General.*** The court may order joint administration of the estates in a joint case or in two or more cases pending in the court if they are brought by or against: (A) spouses; (B) a partnership and one or more of its general partners; (C) two or more general partners; or (D) a debtor and an affiliate. **(2)** ***Potential Conflicts of Interest.*** Before issuing a joint-administration order, the court must consider how to protect the creditors of different estates against potential conflicts of interest. **(3)** ***Exemptions in Cases Involving Spouses.*** If spouses have filed separate petitions—with one electing exemptions under § 522(6)(2) and the other under § 522(b)(3)—and the court orders joint administration, that order must: (A) set a reasonable time for the debtors to elect the same exemptions; and (B) advise the debtors that if they fail to do so, they will be considered to have elected exemptions under § 522(b)(2).

Rule 2003. Meeting of Creditors or Equity Security Holders	**Rule 2003. Meeting of Creditors or Equity Security Holders***
(a) DATE AND PLACE. Except as otherwise provided in § 341(e) of the Code, in a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 40 days after the order for relief. In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.	**(a) Date and Place of the Meeting.** **(1)** ***Date*****.** Except as provided in § 341(e), the United States trustee must call a meeting of creditors to be held: (A) in a Chapter 7 or 11 case, no fewer than 21 days and no more than 40 days after the order for relief; (B) in a Chapter 12 case, no fewer than 21 days and no more than 35 days after the order for relief; or (C) in a Chapter 13 case, no fewer than 21 days and no more than 50 days after the order for relief. **(2)** ***Effect of a Motion or an Appeal*****.** The United States trustee may set a later date for the meeting if there is a motion to vacate the order for relief, an appeal from such an order, or a motion to dismiss the case. **(3)** ***Place; Possible Change in the Meeting Date*****.** The meeting may be held at a regular place for holding court. Or the United States trustee may designate any other place in the district that is convenient for the parties in interest. If the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside, the meeting may be held no more than 60 days after the order for relief.

*Could not be hyphenated. A defined term in the Bankruptcy Code.

Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest	**Rule 2015.3. Reporting Financial Information About Entities in Which a Chapter 11 Estate Holds a Substantial or Controlling Interest**
(a)–(b) [omitted]	**(a)–(b)** [omitted]
(c) PRESUMPTION OF SUBSTANTIAL OR CONTROLLING INTEREST; JUDICIAL DETERMINATION. For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest. Upon motion, the entity, any holder of an interest therein, the United States trustee, or any other party in interest may seek to rebut either presumption, and the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.	**(c) Presumption of a Substantial or Controlling Interest.** **(1)** ***When a Presumption Applies.*** Under this Rule 2015.3, the estate is presumed to have a substantial or controlling interest in an entity of which it controls or owns at least a 20% interest. Otherwise, the estate is presumed not to have a substantial or controlling interest. **(2)** ***Rebutting the Presumption.*** The entity, any holder of an interest in it, the United States trustee, or any other party in interest may move to rebut either presumption. After notice and a hearing, the court must determine whether the estate's interest in the entity is substantial or controlling.

This article originally appeared in the November 2020 Michigan Bar Journal.

Explaining ballot questions in plain language

Sean Isamu Johnson, *United States*

Sean Isamu Johnson is a designer, researcher, and plain language expert at the Center for Civic Design. His mission is to make voting easier and more accessible by designing better elections materials and systems. Sean's interdisciplinary approach draws from linguistics, psychology, visual design, information architecture, and usability testing. He also hosts webinars and coaching sessions for elections workers so they can learn to do this work themselves.

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When it comes to ballot questions, context is important. Voters bring different understandings of the questions—and different levels of civic literacy when they start to mark their ballot.

- How do we even the playing field by making sure that every voter has all the necessary context to vote confidently on ballot questions?
- How do we make sure that the context is relevant and easy to understand to the audience?

To answer these questions, we worked with the League of Women Voters of California on the Easy Voter Guide[1] (EVG). Since 1994, the League has worked with experts in adult literacy and plain language to produce EVGs. This resource provides useful, accessible, and nonpartisan voting information before every statewide election in California. The main feature of the EVG is plain language explanations of statewide ballot questions.

For the 2022 General Election, the Center for Civic Design did usability testing with ordinary voters and the plain language revisions that have long been part of the EVG process. The goal was to understand whether these ballot question explainers were clear and contained all the information a voter would need to help them decide how to vote.

Each ballot question explainer in the EVG has a consistent structure with 4 sections:

- A background section that provides context
- An explanation of what would happen if voters approved the question
- Arguments for and against the question
- A fiscal impact statement

Plain but not relevant

One of the ballot question explainers we tested was for Proposition 26, Legalize Sports Betting on American Indian Lands Initiative. This ballot question is about a simple topic that most Californians are familiar with—gambling at tribal casinos. But we still saw our testing participants struggle with understanding the explainer. The version we tested was prepared by a policy analyst and was carefully crafted to be legally accurate. The background section was just 2 sentences:

> "**The way it is now:** California law allows Native American tribes to operate casinos on tribal lands if the tribe, state, and federal government agree. But sports betting, roulette, and dice games are illegal throughout California, including in tribal casinos."

If Proposition 26 passes, it would expand the types of gambling games that could be played in tribal casinos. Is the context above the *right* context to give voters? Most participants understood the substance of these 2 sentences. There's no legalese,

1 https://easyvoterguide.org/

the sentences are pretty short, and all the clauses are simple and active. But as some participants kept reading, we began to see furrowed eyebrows. When we probed, we heard things like:

> "Is this a federal law? I don't think so. Why mention it then?"

So why were some participants confused?

It's because the phrase "if the tribe, state, and federal government agree" in the first sentence describes a legal requirement for operating a tribal casino, which isn't relevant to understanding the proposition. This legal requirement distracted some participants from making an important inference—that casinos run certain gambling games. This unstated inference is the most important part of this sentence, **not** the explicit legal requirement.

"There's no legalese, the sentences are pretty short, and all the clauses are simple and active. But as some participants kept reading, we began to see furrowed eyebrows."

The second sentence describes the types of games that are currently illegal—very relevant information to understanding the proposition. And the second sentence begins with "but", which is supposed to introduce an exception to the sentence before it. When some readers encountered the second sentence, they looked in the previous sentence to see what it referred to. The confusion came from the fact that the readers associated the second sentence with the red herring legal requirement instead of the unstated inference that casinos run certain gambling games.

So we rewrote it to say:

> "**The way it is now:** Tribal casinos in California can run poker, bingo, and other games. But sports betting, roulette, and dice games are illegal in tribal casinos and everywhere else in California."

Our new version immediately introduces the first piece of relevant context—what games are currently legal to play in tribal casinos. Then the second sentence introduces the exception—what games are currently **not** legal. The explainer then goes on to describe what would change if Proposition 26 passes. Our new version contains only relevant information, and each sentence or section sets up the reader to understand the next sentence or section.

Testing is part of the plain language process

At the Center for Civic Design, we've seen countless times how important it is to do usability testing. By putting voting materials in front of a diverse group of people and observing where they struggle, we can learn where the best practices and guidelines fall short. Even though our test version of the explainer followed common plain language best practices, people were still confused—this only became apparent through usability testing. Usability testing is one of the ways we discover the gaps in our assumptions and how we refine our approach to creating useful and usable voting materials.

Testing was a simple process. In 2 days, we visited 8 locations and were able to talk to 36 people. The feedback we heard helped us refine the language of the EVG ballot

question explainers—especially when confusion arose from something besides word choice or phrasing.

And the process continues. Next, the California Legislative Analyst's Office will review our new drafts for legal accuracy. Then finally, the whole EVG will be translated into Spanish, Chinese, Vietnamese, and Korean, so California's diverse voters can access clear and relevant information for the next election.

Before and after

Test version	Revised version
In-person Sports Betting in Tribal Casinos **The way it is now:** California law allows Native American tribes to operate casinos on tribal lands if the tribe, state, and federal government agree. But sports betting, roulette, and dice games are illegal throughout California, including in tribal casinos.	**In-person Sports Betting in Tribal Casinos** **The way it is now:** Tribal casinos in California can run poker, bingo, and other games. But sports betting, roulette, and dice games are illegal in tribal casinos and everywhere else in California.

Before and after
at a glance

We have gathered the "before" examples of this issue in the left column. In the column on the right you will find the "after": the author's preferred rewrite.

Original: Hong Kong

If the Main Contractor shall make default in any one or more of the following respects, that is to say:-

(a) If he without reasonable cause wholly suspends the carrying out of the Works before completion thereof, [or]

(b) If he fails to proceed regularly and diligently with the Works, or

(c) If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected, or

(d) If he fails to comply with the provisions of clause 17 of these Conditions,

then the Architect may give to him a notice by registered post or recorded delivery specifying the default, and if the Main Contractor either shall continue such default for fourteen days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not), then the Employer without prejudice to any other rights or remedies, may within ten days after such continuance or repetition by notice by registered post or recorded delivery forthwith determine the employment of the Main Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.

Butt:

1. This clause sets out the circumstances in which the Employer may terminate the Main Contractor's employment under this Contract.

2. First, the Main Contractor must have defaulted in any of the following ways:

a. by wholly suspending the Works before their completion, without reasonable cause,

b. by failing to proceed with the Works diligently,

c. by refusing or persistently neglecting to comply with a written notice from the Architect requiring removal of defective work or improper materials, with the result that the Works are materially affected,

d. by failing to comply with clause 17.

Next, the Architect must give the Main Contractor a notice specifying the default.

Next, the Main Contractor must either continue the default for 14 days after receiving the notice, or repeat the default (whether previously repeated or not).

If those circumstances are satisfied, then the Employer may within 10 days after the continuance or repetition give notice immediately terminating the Main Contractor's employment.

The Employer's notice must not be given unreasonably or vexatiously.

A notice under this clause must be by registered post or recorded delivery.

The termination does not affect any other remedies the Employer may have.

Before and after
at a glance

Original: New Zealand

The Contractor shall provide all necessary supervision during the Contract. It shall have on the Site at all working times a competent representative who shall be one natural person only not being a body corporate or firm and whose name shall be notified to the Engineer in writing and who shall be authorised to receive on behalf of the Contractor any instructions from the Engineer or the Engineer's Representative.

Ameer Ali:

The Contractor must name, in writing, a competent representative authorised to supervise during working hours and to receive instructions from the Engineer or Engineer's Representative.

Original: Singapore

In this Contract or when used by the Architect the term "direction" shall mean an order of the Architect (as opposed to suggestions, recommendations or agreements with proposals made by the Contractor), compliance with which will not under the terms of the Contract entitle the Contractor to additional payment or compensation or to an increase in the Contract Sum, but which may in some cases result under the terms of the Contract in a reduction of the Contract Sum, whereas the term "instruction" shall mean an order of the Architect, compliance with which, while it may in some cases involve a reduction of the Contract Sum, will in principle entitle the Contractor in an appropriate case under the terms of the Contract to additional payment or compensation or to an increase in the Contract Sum.

Ameer Ali:

1(3) In this contract:

(a) Direction means an Architect's order for which the Contractor will not be entitled to additional payment or an increase in the Contract Sum.

(b) Instruction means an Architect's order, which in principle will entitle the Contractor in appropriate cases to additional payment or an increase in the Contract Sum.

(c) Both directions and instructions may in some cases result in a reduction in the Contract Sum.

Original: Malaysia

This Contract shall be deemed to be a Malaysian Contract and shall accordingly be construed according to the laws for the time being in force in Malaysia and the Malaysian Courts shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this Contract and the Contractor hereby submits to the jurisdiction of the Malaysian Courts for the purposes of any such actions and proceedings.

Ameer Ali:

Malaysian law applies to this contract.

Before and after at a glance

Original: UK	Ameer Ali:
No modification, amendment or waiver of any of the provisions of this Agreement shall be valid unless it is made in writing by way of supplementary agreement specifically referring to this Agreement and duly signed by the Parties or its duly authorised representatives. The provision in respect of such amendment, variation or modification thereof shall be supplemental to and be read as an integral part of this Agreement which shall remain in full force and effect as between the Parties.	No changes to any of these contract terms are valid unless the parties agree in writing.
Original: USA	**Johnson:**
In-person Sports Betting in Tribal Casinos The way it is now: California law allows Native American tribes to operate casinos on tribal lands if the tribe, state, and federal government agree. But sports betting, roulette, and dice games are illegal throughout California, including in tribal casinos.	**In-person Sports Betting in Tribal Casinos** The way it is now: Tribal casinos in California can run poker, bingo, and other games. But sports betting, roulette, and dice games are illegal in tribal casinos and everywhere else in California.

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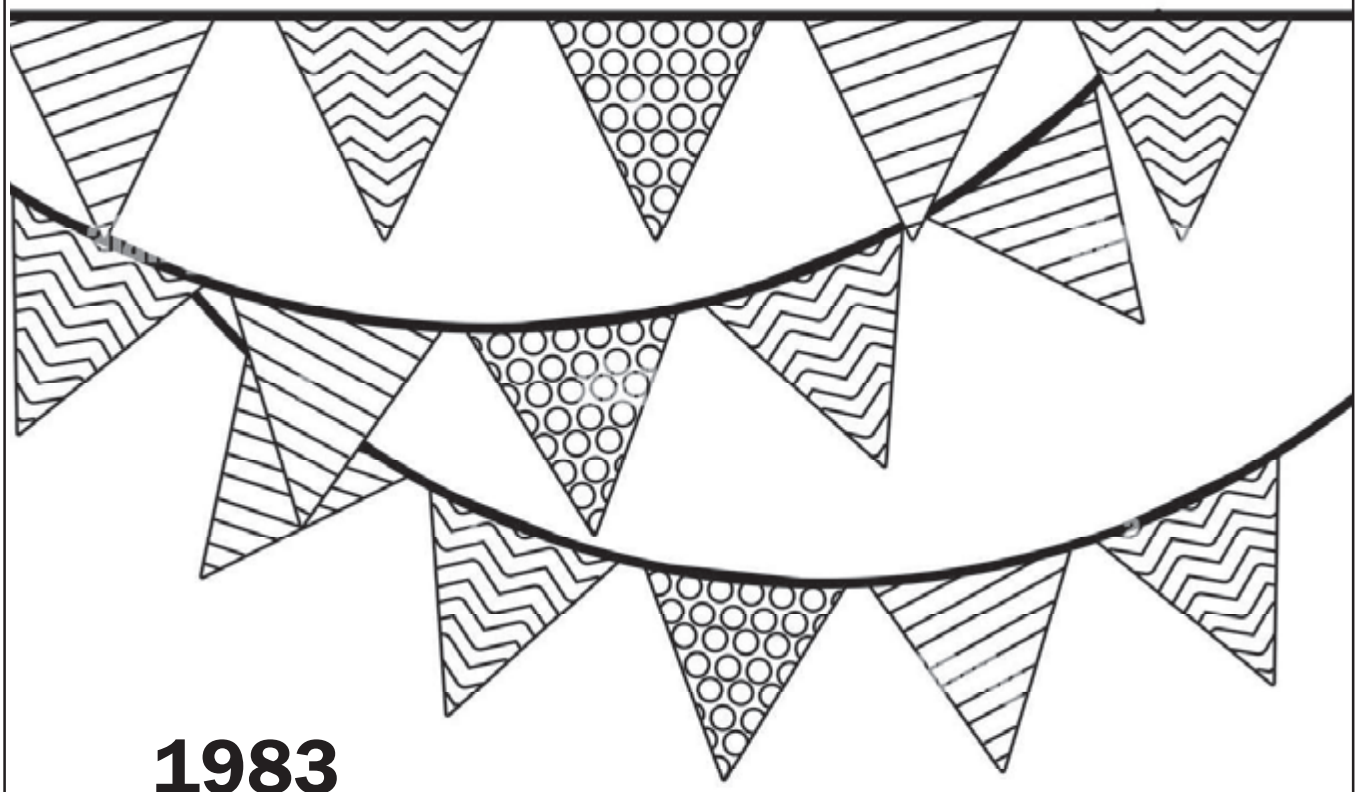

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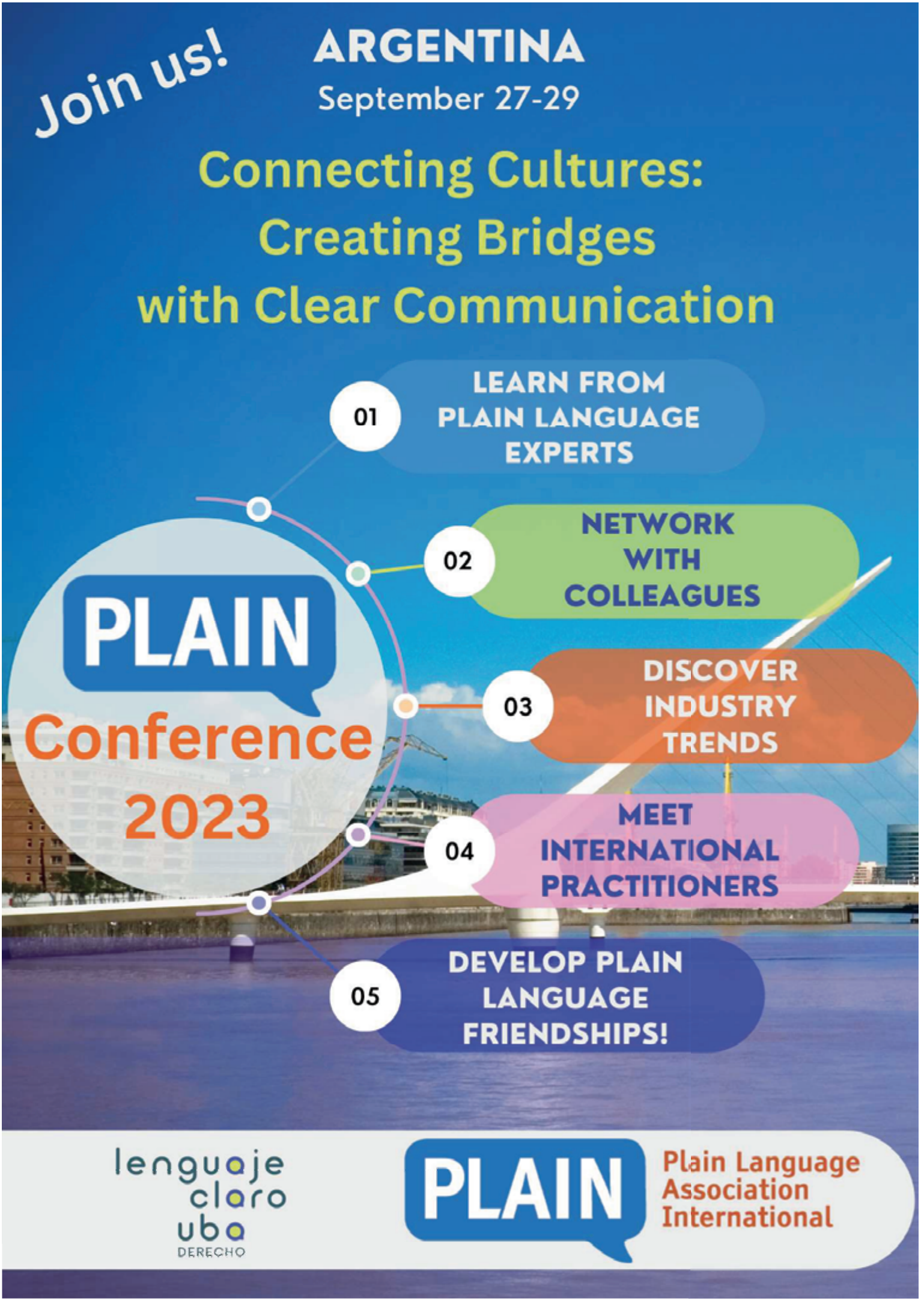
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