

Need For Plain English Language For Lawyers

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Abstract

Legal language is not easily comprehended by the public for whom laws are made to control and protect them. Language is constantly evolving with daily usage; legalese tends to use difficult terminology which a layperson cannot understand. Lawyers should use Plain English Language as it consists of content and format in a simplified way for making it comprehensible by the lay person. Plain Language conveys the ideas with the greatest possible clarity. Lawyers who have adopted plain English Language are providing better services to their clients.

Keywords:

Legalese, complex terminology, outdated grammar, plain English language, comprehensible, clear, precise, quicker, cheaper, straight forward.

The Plain English Approach to Legal Language:

Legalese was once defined as “the language of the lawyers that they would not otherwise use in ordinary communications but for the fact that they are lawyers.” (Robinson, 3) Linguists identify legalese as a distinctive dialect. Legal language is a block to communication with clients; it has made lawyers the butt of jokes for centuries. It has been conservative and somewhat static. It uses outdated grammar and sentence structure. Legal language tends to use too many words and unnecessary phrases. It uses improper or non standard punctuation, passive voice and awkward pronoun references. It suffers from the use of archaic vocabulary and excessive use of jargon and technical terms without the definition that the lay person requires. It needs to be no more formal than any other kind of modern business writing.

Almost all languages bear the traces of their past, but languages are continuously modified by the way they are used today. Legal language is also full of relics from past which everyday English has long left behind. Words are like 'aforesaid', 'herein', 'hereby', 'said', 'thereon', 'thereto', 'witnesseth' are commonly used in legal language but they are rarely used in modern English now-a-days. In other words, “legal language is wedded to the past and afraid of the future.” (Language on Trial 13)

The language of the law continues to hide the law from the public it controls and protects. Lawyers and law makers have deliberately excluded the public from the law by the use of unclear legal language. Legal language is a different language in order to show everyone, who reads it, that lawyers are different. For hundred of years, lawyers

continued to mix a peculiar version of French into their writings. A law was passed in 1731 requiring that lawyers must write in the English tongue and language only, and not only in Latin or French or any other tongue or language.”(David Mellin Koff, 133-4) There have been lawyers who have made a great deal of progress towards plain English in the last twenty years. Not only can plain English do the job of legal language rather it does it in twenty words fewer than it.

Legal English differs from Standard English in various ways. It employs a great deal of terminology that has a technical meaning and not familiar to a common man e.g. Waives, restrictive covenant, promissory estoppels, etc. In legal language many words and phrases are derived from French and Latin. There is a curious historical tendency in legal English to string together two or three words to convey what is usually a single legal concept for example, null and void, fit and paper, agree and covenant, etc. Almost complete lack of punctuation is one of the most unusual aspects of the old-fashioned legal drafting particularly in deeds and conveyances, but in modern legal language, punctuation is used to give clarification about meaning.

Whether you are signing a contract, communicating with your solicitor, making a will or looking into some particular legal problem, the ability to understand the law is a basic right and a basic need. Early in seventeenth century, although he was talking about translating the from French into English, one of the greatest writers of English law, Sir Edward Coke made the crucial point “I cannot conjecture that the general communication of these laws into the English tongue can work any inconvenience, but introduce great profit, seeking that ignorantia juris non excusat, ignorance of the law excuseth not.”(Edward Coke, xxxviii-xxxix)

Legal language is largely and sometimes dangerously misleading. It is costly and inefficient. On the other hand, plain English can perform the job of traditional legal language and also saves money. It is neither dull nor impressive. These are the practical reasons for making the language of the law plain English language.

It is quite difficult to decide that what should be done to the language of statutes and criminal codes. If we cannot express the criminal law in ordinary English, how can we expect citizens to obey the law? Rather than continuing to draft in a old fashioned legalistic writing style those lawyers willing to change evidence their creativity is at the heart of a talented and exceptional lawyer. Legalese continues because of habit, inertia, fear of change, the rote use of forms, notion of creativity and lack of skill. A related bonus of a plain language style is the potential for reducing mistakes. Lawyers, are better able to fulfill their client wishes. If a client wants a particular agreement written, the lawyer writing a plain language can work with the client on equal ground. The task of negotiating the document is therefore quicker and cheaper. Writing in

plain language, whether in a letter to a client, shows that you care about your client. Plain English improves the relationship between the lawyer and the client.

Words are the tools of the lawyers and how to use these tools effectively depends on one's through knowledge of the language. Sometimes lawyers can use simple language for a clear thought, while on the other hand legal certainty can be sought in complex and time- hollowed expressions. But, there is probably no single reform that would improve the image of lawyer more than to get them to speak plainly, directly and understandably. The challenge to those who oppose modernizing legal drafting is then apparent: "Why should the law of the language of yesterday? Why should legal language be subject to special rules locked in a unique linguistic code accessible only to those with the key?" (Butt and Castle, 174)

Different experts have given different definition of plain English language. According to Steinberg. "Plain language is a language that reflects the interests and needs of the reader and consumer rather than legal, bureaucratic, or technological interests of the writer or the organization that the writer represents." (Steinberg, 7). In 1982, British Government issued a white paper ordering the departments for the first time to count their forms, abolish unnecessary details and clarify in simple language. Proponents of plain language have also been active in Australia since 1976 and in Canada since 1988. Sweden, South Africa and New Zealand are some other countries which are making efforts for the use of plain language. Plain language aims at writing and setting out language so that the reader can understand it. D.Berry points out that "the goal of plain language movement is to produce language (particularly written in English) which is clear, straight-forward expression using only as many words as are necessary, and which avoids obscurity, inflated vocabulary and convoluted sentence construction." (Berry D, 48)

The plain language movement gained force as a part of the consumer Movement in 1970's. English as a legal language is lawyer's plain language which fulfills the purpose of glossary to legal terminology. If it is difficult for someone to express legal terms in English, what he has to do is simply look under the general heading to find the relevant meaning of that particular term. Plain language acknowledges that writing is a process and reading a psycholinguistic process. Plain language is stripped of unnecessary complexity, but not stripped of style. Plain language is consisting of content and format to create documents in a simplified way to make it readily understandable by the average person.

There are two variable factors which make successful communication of the content of a state: first factor is the comprehension skills of the individual receiver of the message and second is the intrinsic complexity and other characteristic of the subject matter of the message. There must

be a shared context of the both linguistic experience and social experience to avoid comprehension problems, since communication depends on an overlap linguistic experience of the sender and receiver of the message.

Plain language is the type of writing which can be understood at first reading by clients, lawyers and judges; it has legal binding but it is also logically organized, concise and clear. It follows the rules of Standard English Grammar. Plain language enables on average person to comprehend the document that bind them or state their rights. The foremost duty of law making body is to make laws and to communicate laws in such a way that can be easily comprehended by anybody. The style of plain language is professional yet appropriate to circumstances. It pays attention to format and design. The main goal is to convey ideas with the greatest possible clarity.

Statutes, bills, judicial opinions, contracts, deeds and wills profoundly affect our daily lives, but their language tends to be often nearly impossible to understand. It is the duty and responsibility of the lawyers to keep their clients reasonably informed about the proceeding of the case. Clients also want to be confident in the abilities of their lawyers. Some legal documents are written in such a way that not only the common man to whom they are directed but also skilled lawyers and judges have extreme difficulty in comprehending them. In those cases it is not the unfamiliarity with the subject matter or lack of technical knowledge which causes the problem rather it is the language and structure of document itself.

Plain English language can do the job of legal gobbledegook and can help to do the job better. Almost all legal writing is ruled over by one thing i.e. money. Does writing legal documents and letters in plain English cost more or less than writing in legalese? It is a well known fact that in any kind of profession time is money and in case of lawyers too, time is a precious commodity. Lawyers their clients on hour basis and counts to minute. Plain English is quicker to read and understand. A clear letter from a solicitor will save their clients valuable time and as well as money. Plain English improves the relationship between the writer and the reader. One Australian life insurance comments rightly: "The plain English trust deed is user-friendly and can be understood. This builds a sense of trust and openness. The new approach could not work with documents written in traditional legalese." (Warburton). On first June, 1998, the President of U.S.A, Bill Clinton, issued a memorandum to the heads of the U.S federal executive departments and agencies directing them to begin using "plain language" to make government "more responsive, accessible, and understandable in its communication with the public..... Plain language saves the government and the private sector time, effort and money." (Bill Clinton)

In short, clear written communication reduces legal and negotiating complications. English is widely spoken and understood that it has become the 'lingua franca' of the modern era. The plain English movement has not yet revolutionized English language legal writing but it is on its way to doing so. In view of growing importance of non- native speakers as a market for legal translation into English, plain English translation is not a good idea it may be the wave of future. Lawyers should use plain language because it rules except perhaps cutting excess words, greatly increased readability and understandability. Plain language is free of jargon and chosen with sensitivity to the needs and prior to knowledge of the intended reader. It is the appropriate and correct uses of vocabulary in well structured sentences, following establish rule of grammar. Plain English teaches how to be precise, concise and to the point.

Works Cited :

- Robinson, Drafting: It's a Substance and Teaching .25J.of Legal Education 516n.12 (1973) quoted in "A Brief for plain English Wills and Trust" Thomas S. Word , Jr. University of Richmond Law Review, Vol.14 Spring 198 No.3.
- Quoted in, "Language on Trial "The Plain English Guide to Legal writing, page 13.
- Records in English, 1731, quoted in David Mellin Koff, *The language of the Law*, pages 133-4.
- Sir Edward Coke, *Commentary upon Littleton xxxviii-xxxix Butler*, 19th ed. 1832.
- Peter Butt and Richard Castle, *Modern Legal Drafting: A guide to Using Clearer Language* 2001, p.174
- Steinberg, E; ed 1991. *Plain language: Principles and Practice*. Detroit, MI: Wayne State university Press, P.7
- Berry D., 1995 "Speakable Australian Acts." Information Design Journal 8 no.1:48
- John Warburton, OAMPS Ltd. , *Client of Philips Fox Solicitors*, Melbourne, Australia
- Clinton.Bill. 1998. "Memorandum for the heads of executive department and agencies." <http://www.plainlanguage.gov/what is plain language/gov.mandating memo.cfm>.



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Doodling

When does what you drive become more important than what drives you?

When does your accent become more important than what you are saying?

When does the need to turn a blind eye become more important than the need to see?

When does the need to laugh with others become more important than what you are laughing at?

When does how many boxes you have to live in become more important than whether you are actually living?

When does your celebration of life become more important than another's struggle for it?

When does what you have become more important than what you give?

When does what you can conveniently follow become more important than what you believe in?

When do others' standards become more important than your own?

When does the cover become more important than the book?

