

THE PLAIN LANGUAGE MOVEMENT AND MODERN LEGAL DRAFTING

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Abstract: This paper aims to answer the question whether modern legal drafting is implementing the revolutionary changes argued for by the plain language movement and whether legal texts are made more user-friendly, particularly to their non-professional recipients. The paper discusses the main characteristics of modern legal drafting against the background of research conducted in 2011 and 2012 based on a broad selection of American consumer contracts. The interest centres on the successes rate of the plain language campaigners as well as the threats to their pursuit of plain legal drafting.

Key words: plain language, legal drafting, legal text, contract, plain legal drafting.

JĘZYK UPROSZCZONY A JĘZYK WSPÓŁCZESNYCH UMÓW KONSUMENCKICH

Abstrakt: Artykuł ma na celu odpowiedzieć na pytanie, w jakim stopniu zasady plain language movement są wdrażane przez autorów tekstów prawnych i prawniczych, aby uczynić współczesny język prawniczy bardziej zrozumiałym dla przeciętnego odbiorcy, nieposiadającego wiedzy prawniczej. Artykuł przedstawia szczegółową analizę wyników badań ilościowych przeprowadzonych w 2011 i 2012 na podstawie ponad 80 autentycznych tekstów angielskich umów konsumenckich.

Słowa kluczowe: język uproszczony, sporządzanie dokumentów prawnych, tekst prawny, tekst prawniczy, umowa, sporządzanie dokumentów prawnych językiem uproszczonym.

Introduction

For decades, legal language has been discussed not only by linguists but also by lawyers and legal theorists. They examined legal language not only from the perspective of the philosophy of language and logic but also text linguistics or sociolinguistics, which equipped researchers with knowledge sufficient to describe it thoroughly, concentrating not only on linguistic but also functional properties of legal language. The perception of legal language varies as Pieńkos (1999, 71) defines it as a "subsystem of ethnic language" similar to the language of experts, Gizbert-Studnicki (1986, 94) assumes that legal language may be defined as a register of language and Šarčević (1997, 9) states that there is no legal language but one should talk rather about legal languages as each and every legal system manifests its own legal language. However, the results give an input to further studies going beyond linguistics and covering such fields as psycholinguistics or sociolinguistics in order to see a legal text not only as a product but also as a linguistic tool used in communication not only within professional environment but also between professionals and laypersons. Although on the basis of legal regulations lawyers struggle

Legal Drafting In Plain Language

Helen Xanthaki



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Legal Writing in Plain English Bryan A. Garner, 2013-08-26 This easy to follow guide is useful both as a general course of instruction and as a targeted aid in solving particular legal writing problems Harvard Law Review Clear concise down to earth and powerful all too often legal writing embodies none of these qualities Its reputation for obscurity and needless legalese is widespread For more than twenty years Bryan A Garner s *Legal Writing in Plain English* has helped address this problem by providing lawyers judges paralegals law students and legal scholars with sound advice and practical tools for improving their written work The leading guide to clear writing in the field this indispensable volume encourages legal writers to challenge conventions and offers valuable insights into the writing process that will appeal to other professionals how to organize ideas create and refine prose and improve editing skills Accessible and witty *Legal Writing in Plain English* draws on real life writing samples that Garner has gathered through decades of teaching Trenchant advice covers all types of legal materials from analytical and persuasive writing to legal drafting and the book s principles are reinforced by sets of basic intermediate and advanced exercises in each section In this new edition Garner preserves the successful structure of the original while adjusting the content to make it even more classroom friendly He includes case examples from the past decade and addresses the widespread use of legal documents in electronic formats His book remains the standard guide for producing the jargon free language that clients demand and courts reward Those who are willing to approach the book systematically and to complete the exercises will see dramatic improvements in their writing Law Library Journal

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encourages legal writers to challenge conventions and offers valuable insights into the writing process how to organize ideas create and refine prose and improve editing skills Accessible and witty Legal Writing in Plain English draws on real life writing samples that Garner has gathered through decades of teaching experience Trenchant advice covers all types of legal materials from analytical and persuasive writing to legal drafting and the book s principles are reinforced by sets of basic intermediate and advanced exercises in each section For this third edition Garner has retained the structure of the previous versions with updates and new material throughout There are new sections on making your writing vivid and concrete and on using graphics to enhance your argument The coverage and examples of key topics such as achieving parallelism avoiding legalese writing effective openers and summaries and weaving quotations into your text have also been expanded And the sample legal documents and exercises have been updated while newly added checklists provide quick summaries of each section Altogether this new edition will be the most useful yet for legal professionals and students seeking to improve their prose

Modern Legal Drafting Peter Butt, Richard Castle, 2001-06-04 This clearly structured and well referenced book shows how and why traditional legal language has developed some of the peculiar characteristics that sometimes make legal documents inaccessible to the end users It examines recent reforms in the UK Australia New Zealand and North America and provides a critical examination of case law and the rules of interpretation Practical elements are also covered Detailed case studies illustrate how obtuse words and phrases can be reworked or removed Particularly useful is the step by step guide to drafting in the modern style using examples drawn from four types of legal documents leases company constitutions wills and conveyances Readers of this book will receive clear instructions on how to make their writing clearer and their legal documents more useful to clients and colleagues This book will benefit all law students and professionals

Legal Drafting in Plain Language Robert C. Dick, 1995 This is the third edition of Robert Dick s informative guide to drafting In this edition he emphasises that plain language in the use of legal documents is here to stay

Contract Drafting Lenné Eidson

Espenschied, 2010 Contract Drafting Powerful Prose in Transactional Practice presents an overview of the stages in the contract process and offers a comprehensive introduction to the substantive areas addressed in transactional documents In fourteen lessons readers will learn how to work from prior documents to produce effective and complete legal documents that protect the client s interests

The Impact of Plain Language on Legal English in the United Kingdom

Christopher Williams, 2022-08-23 This volume offers insights into the ways in which plain language has influenced the language of the law in the United Kingdom critically reflecting on its historical development and future directions The book opens with an overview of the theoretical frameworks underpinning plain language and a brief history of plain language initiatives as a foundation from which to outline ongoing debates on the opportunities and challenges of using plain language in the legal domain The volume details strands where plain language has had considerable impact thus far on legal English in the UK notably in legislative drafting but it also explores areas in which plain language has made fewer inroads such as the

language of court judgments and that of online terms and conditions The book looks ahead to unpack highly topical areas within the plain language debate including the question of design and visualisation and the ramifications of digitalisation contributing to ongoing conversations on the importance of plain language both in the UK and beyond This book will be of particular interest to students and scholars interested in the intersection of language and the law as well as related disciplinary areas such as applied linguistics and English for Specific Purposes

Plain Language for Lawyers Michele M. Asprey, 1991 Practical guide to writing in plain English written by a lawyer for lawyers Includes information on legal affectations lists of overused and problem words examples of clumsy grammatical structures a plain language vocabulary and a comprehensive index

Enhancing Legislative Drafting in the Commonwealth Helen Xanthaki, 2016-04-14 The quality of legislation within the Commonwealth is an essential element of democracy and the rule of law Although a neglected territory until recently the legislative drafting debate is at the forefront of academic and professional fora at a Commonwealth and at a national level This book brings to light the academic foundations of legislative quality and the many recent innovations deriving from Commonwealth jurisdictions This book was based on a special issue of the Commonwealth Law Bulletin

Drafting Legislation Constantin Stefanou, Helen Xanthaki, 2016-05-13 Drafting Legislation sets out to prove Sir William Dale's doctrine that the rules for drafting good quality legislation are the same in common and civil systems of law Legislative solutions can therefore serve the drafter the judge and the practitioner of any jurisdiction The book discusses the general issue of quality in legislation from the legislative process to the actual drafting interpretation and enforcement It also analyzes topics related to quality in legislation such as clarity precision and disambiguity plain language and gender neutral language and assesses whether Sir William's view of universality in the definition and elements of quality in legislation is right or not The volume is of critical interest to students and scholars of European law and the philosophy and theory of law

Drafting Legislation Helen Xanthaki, 2014-10-16 This book constitutes the first thorough academic analysis of legislative drafting By placing the study of legislation and its principles within the paradigm of Flyvberg's phronetic social sciences it offers a novel approach which breaks the tradition of unimaginative past descriptive reiterations of drafting conventions Instead of prescribing rules for legislation it sets out to identify efficacy as the main aim of the actors in the policy legislative and drafting processes and effectiveness as the main goal in the drafting of legislation Through the prism of effectiveness as synonymous with legislative quality the book explores the stages of the drafting process guides the reader through structure and sections in their logical sequence and introduces rules for drafting preliminary substantive and final provisions Special provisions comparative legislative drafting and training for drafters complete this thorough analysis of the drafting of legislation as a tool for regulation Instead of teaching the reader which drafting rules prevail the book explores the reasons why drafting rules have come about thus encouraging readers to understand what goal is served by each rule and how each rule applies The book is aimed at academics and practitioners who draft or use statutory law in the

common or civil law traditions **Handbook of Communication in the Legal Sphere** Jacqueline Visconti, 2018-09-24 This volume explores communication and its implications on interpretation vagueness multilingualism and multiculturalism It investigates cross cultural perspectives with original methods models and arguments emphasizing national EU and international perspectives Both traditional fields of investigations along with an emerging new field Legal Visual Studies are discussed Communication addresses the necessity of an ongoing interaction between jurilinguists and legal professionals This interaction requires persuasive convincing and acceptable reasons in justifying transparency visual analyses and dialogue with the relevant audience The book is divided into five complementary sections Professional Legal Communication Legal Language in a Multilingual and Multicultural Context Legal Communication in the Courtroom Laws on Language and Language Rights and Visualizing Legal Communication The book shows the diversity in the understanding and practicing of legal communication and paves the way to an interdisciplinary and cross cultural operation in our common understanding of legal communication This book is suitable for advanced students in Linguistics and Law and for academics and researchers working in the field of Language and Law and jurilinguists **Modern Statutory Interpretation** Jeffrey Barnes, Jacinta Dharmananda, Eamonn Moran, 2023-01-10 Modern Statutory Interpretation is an original clear coherent and research based account of contemporary Australian statutory interpretation It provides a comprehensive coverage of statutory interpretation law legislative drafting the parliamentary process the modern history of interpretation sources of doubt and interpretation techniques **The Ashgate Handbook of Legal Translation** Le Cheng, King Kui Sin, Wagner Anne, 2016-04-01 This volume investigates advances in the field of legal translation both from a theoretical and practical perspective with professional and academic insights from leading experts in the field Part I of the collection focuses on the exploration of legal translatability from a theoretical angle Covering fundamental issues such as equivalence in legal translation approaches to legal translation and the interaction between judicial interpretation and legal translation the authors offer contributions from philosophical rhetorical terminological and lexicographical perspectives Part II focuses on the analysis of legal translation from a practical perspective among different jurisdictions such as China the EU and Japan offering multiple and pluralistic viewpoints This book presents a collection of studies in legal translation which not only provide the latest international research findings among academics and practitioners but also furnish us with a new approach to and new insights into the phenomena and nature of legal translation and legal transfer The collection provides an invaluable reference for researchers practitioners academics and students specialising in law and legal translation philosophy sociology linguistics and semiotics

Legal Technique Christopher Enright, 2002 This title is no longer stocked by us It is now available directly from Christopher Enright cenrigh2@une.edu.au How should lawyers go about their tasks in working with law in making interpreting using reading and writing law Enright's book describes clear and simple techniques for working with law It explains why the technique is needed and what it achieves and then provides a model for doing it Each model consists of a

step by step guide for performing the relevant task Legal Technique is structured to be the textbook in an introductory law course where the techniques are described and intended for re use in later courses on substantive law where these techniques must be further taught and practised in the context of those subjects Legal Technique is accompanied by a free Legal Technique eWorkbook see Supplement containing materials questions and answers Included are exercises for working with statutes cases legal texts and for solving legal problems further exercises to practise approaches to common law and statutory law subjects generally and specific exercises for the subjects Introduction to Law Constitutional Law and Property Law

The Lawyer's Style Guide Peter Butt, 2021-02-25 Clarity and precision in legal writing are essential skills in the practice and study of law This book offers a straightforward practical guide to effective legal style from a world leading expert The book is thoughtfully structured to explain the elements of good legal writing and its most effective use It catalogues all aspects of legal style topic by topic phrase by phrase usage by usage It scrutinises them all suggesting improvements Its dictionary arrangement makes it easy to navigate Entries cover matters such as abbreviations acronyms active and passive voice brackets bullet points citation methods cross referencing fonts document design footnotes gender neutral language numbering systems plain legal language punctuation the use of Latin in law structures for legal advices and documents and techniques for editing and proofreading Also covered are many words and phrases that non lawyers find opaque and obscure the aim being to show that lawyers can usually substitute a plain English equivalent that captures the legal nuances of the legalese Other topics include ambiguity deeds definitions provisos recitals simplified outlines terms of art tone and the various principles of legal interpretation With an emphasis on technical effectiveness and understanding the book is required reading for all those engaged in the practice and study of law

A Dictionary of Modern Legal Usage Bryan A. Garner, 2001 A comprehensive guide to legal style and usage with practical advice on how to write clear jargon free legal prose Includes style tips as well as definitions

Negotiating and Drafting Contract Boilerplate Tina L. Stark, 2003 This resource serves to educate lawyers and business professionals on how to draft the many types of boilerplate provisions a legal term that refers to the standardized one size fits all provisions of a contract Each chapter tackles one of 20 provisions and analyzes why it is important the key legal and business issues raised and how to draft the provision to suit a particular transaction Such analysis not only helps readers better understand how to draft these provisions in their contracts but also helps them better understand the other party's process

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 $2 \text{ CO}_2(\text{g}) + \text{H}_2\text{O}(\text{g}) \rightarrow \text{C}_2\text{H}_2(\text{g}) + \frac{5}{2} \text{O}_2(\text{g}) \quad \Delta h = 94.5 \text{ kJ}$
 $\text{H}_2\text{O}(\text{g}) \rightarrow \text{H}_2(\text{g}) + \frac{1}{2} \text{O}_2(\text{g}) \quad \Delta h = 71.2 \text{ kJ}$
 $\text{C}_2\text{H}_6(\text{g}) + \frac{7}{2} \text{O}_2(\text{g}) \rightarrow 2 \text{ CO}_2(\text{g}) + 3 \text{ H}_2\text{O}(\text{g}) \quad \Delta h = 283 \text{ kJ}$
 $\text{C}_2\text{H}_6(\text{g})$

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 $\text{C}_2\text{H}_4(\text{g}) + 3 \text{ O}_2(\text{g}) \rightarrow 2 \text{ CO}_2(\text{g}) + 2 \text{ H}_2\text{O}(\text{l}) \quad \Delta h = 1411 \text{ kJ/mole}$
 $\text{C}_2\text{H}_6(\text{g}) + 7/2 \text{ O}_2(\text{g}) \rightarrow 2 \text{ CO}_2(\text{g}) + 3 \text{ H}_2\text{O}(\text{l}) \quad \Delta h = 1560 \text{ kJ/mole}$
 $\text{H}_2(\text{g}) + 1/2 \text{ O}_2(\text{g}) \rightarrow \text{H}_2\text{O}(\text{l}) \quad \Delta h = 285 \text{ kJ/mole}$

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values to determine the heat of reaction for the reaction C_2H_4

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web thus for reaction 9 2 in which 1 mole of H_2O and 1 mole of OH^- combine to form 2 moles of H_2O $\Delta H = -55.8 \text{ kJ}$ as shown note that the enthalpy change $\Delta H_{\text{products}} - \Delta H_{\text{reactants}}$ is positive if heat is absorbed that is if $\Delta H_{\text{products}} > \Delta H_{\text{reactants}}$

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