

What is plain English?

It is a communication in plain language if its wording, structure and design are so clear that the intended audience can readily find what they need, understand what they find, and use that information. (International Plain Language Federation).

The Hon. Michael Kirby AC CMG's Ten Rules of Plain Language

The Hon. Michael Kirby AC CMG, who is a Patron of Clarity - an international association promoting plain legal language – has expressed the relationship between plain language and the lawyer well. At Plain (Plain Language Conference) 2009, Mr Kirby said, “It is not always easy for lawyers to write and speak plain language. For many of us, we need to be rescued from our “heretofores”, “whereas” and “party of the first part”. Desirably, the process has to start early in our lives. We have to learn in our childhood the beauty and elegance of simple expression. By the time we get to law school (and certainly when we ascend to a judicial bench or the professorial seat) it may be too late.” Let’s hope not!

Mr Kirby’s Ten Rules are:

1. Complex statements of facts and law should begin with a summary to let the reader know where he or she will be travelling;
2. Short sentences and shorter words should replace long;
3. The passive voice should generally be banished and replaced with active voice. This assumes that lawyers of today have learned what “active” and “passive” voice means. But it can be explained.
4. Words of connection should be at the beginning of sentences. Words of emphasis should generally be at the end.
5. Where there is a choice, the shorter word (ordinarily from a Germanic root) should be preferred to the longer word (ordinarily from the French language of the Norman Conqueror);
6. Sexist and obviously ambiguous language should be removed;
7. Vagueness is sometimes necessary in legal drafting. However, ambiguity should generally be tackled head on;
8. Those old potboilers “whereas”, “hereinunder”, “cognisant”, “requisite” should be deleted;
9. Layout is a technique of communication that matters. It can assist human understanding. As can headings and sub-headings; and

10. In legal texts that will cross borders, it will generally be necessary to be especially careful in the use of words. Mr. Keating found this when he used the word “recalcitrant” in describing the attitudes of the then Prime Minister of Malaysia. Seemingly, the word had a more pejorative meaning in Malay than in the English language.

Which would you rather read?

Before

Dear Mr Smith,

We refer to your letter of even date and confirm your instructions to commence proceedings forthwith.

In that regard please find enclosed a draft application and affidavit of yourself. Please peruse the documents carefully and advise us of any amendments that need to be made.

As soon as we receive your confirmation that the draft documents are to your satisfaction we will file the application in court. We also request that you return the executed client agreement at your earliest convenience and deposit the sum of \$1,000 into our trust account.

In the interim, if you have any queries, please do not hesitate to contact us.

After

Dear Mr Smith,

I have received your letter where you ask me to take your matter to court immediately.

I enclose the draft court documents. Please let me know if there is anything in the documents that you would like me to change. I will then file the documents in court.

Please send the signed client agreement to me when you can and deposit \$1,000 in the firm's trust account.

If you have any questions please contact me.

Source: Grace Lawson, Barrister, Plain English and Professionals, <http://www.gracelawson.com.au/wp-content/uploads/2015/04/plain-english-and-professionals.pdf>
