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Implementation of Plain English in Legal Writing

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Abstract

This article reviews the benefits of using Plain English in legal documents. Plain English is generally described as a reader-focused communication that provides information in a way that makes it easier for the reader to find, understand, and use the information.

Non-lawyers often have difficulty understanding traditional legal writing. Complex and lengthy sentences, redundancies, wordiness, archaic words and Latin phrases and are common

features of traditional legal writing. They tend, however, to inhibit comprehension and become barriers to understanding. To demonstrate how Plain English can improve legal writing, this article takes a step-by-step review of the movement to adopt Plain English, provides some definitions of it, and substantiates the importance of Plain English in legal drafting. Also, this article highlights Plain English movement and policy in Uzbekistan.

Keywords: Plain English, Legal Writing, Plain English Movement, Legalese

Introduction

Without considering the language level of the audience, most legal documents use a formal, prescriptive format. Since these documents have an impact on the lives of laypeople, the documents should be written so they focus on their audience and communicate with them in an effective manner. Understanding their rights and responsibilities, laypeople are expected to respond and take a more active role in matters that affect them.

Laypeople often complain that they cannot understand the documents written to provide information to them. They often find the traditional legal writing in documents such as mortgages, leases, statutes, consumer contracts. Non-lawyers might not be familiar with the meaning of the words such as “mitigating”, “domicile”, or “abutting” or they might experience difficulty reading long sentences including many subordinate clauses. It shows that there is a demand to make legal documents comprehensible to the audience.

Bast (1995; 2008) ^[1] claims that the criticisms towards legal writing about its impenetrability are well founded. These criticisms are especially related to “functional documents”, which Bast describes as documents written to be acted upon, such as jury instructions, contracts, and legislation. He posits that it is paramount that legal documents, particularly functional ones, be written in plain language, as “a reader cannot act on a document the reader cannot understand.”

My current article will review some views and opinions relevant to the implementation of Plain English in legal writing. The following sections will provide the definition, and importance of Plain English, and information about the movement of Plain English, this background information is important for understanding the comprehension problems that non-lawyers often encounter some problems with legal writing and the features plain language possesses that can help resolve these problems.

What is Plain English?

Although various definitions exist for plain language, which is also referred as plain English, no standardized, specific definition exist. In his book “The Use of Plain-Language Principles in Texas Litigation Formbooks”, Collins (2005) ^[4] refers to plain language as “effective communication” (431). Rather than defining it, Cutts (1995) ^[7], the author of “The Plain English Guide” describes plain language as: “the writing and setting out of essential information in a way that gives a co-operative, motivated person a good chance of understanding the document at first read, and in the same sense that the writer meant it to be understood.” Joseph Kimble (1998; 2000) ^[12] gives more precise definition: “Plain language has to do with clear and effective communication – nothing more or less.” Schiess (2003; 2004) ^[14] suggests that true plain English- English that non-legal majors can read and understand. He also adds plain English is a form of legal writing for the audience of non-lawyers. I define Plain English as a clear and straightforward language which is void of obscurity and inflated vocabulary.

In his article “Plain English Movement, the Plain English Movement: Panel discussion” Falsenfeld (1981) emphasizes his efforts to achieve plain English and based on his findings he suggests that plain English became clear during the early form-

drafting that using effective language was just one step in the procedure. In reality, there were three distinct steps that had to be taken in order to create plain English consumer contracts.

The first was an analysis of substance. It is obvious that a contract is rarely drafted exclusively for the particular transaction in which it is used. Lawyers frequently begin with forms that they either have in their files, have taken from a law book, or have bought from a printing firm. The conventional procedure is to add to these forms whatever is necessary for the current transaction. When it comes to writing, attorneys are better at addition than subtraction. Having more rather than less is simpler and safer. Longer forms are the consequence of the process, and longer forms are more difficult to read. In the first step, the Citibank Promissory Note was rewritten in stages, starting with a detailed examination of the form's content and a decision of what was actually required and what may be viewed as surplus in the specific transactions for which the form would be utilized. The process was not simple. It required the cooperation of businesspeople to confirm practical needs and lawyers to analyze legal implications. The challenging procedure, nonetheless, produced outcomes. The form could not have been simplified without eliminating well over half of it.

The next step in the exercise was language. However, the third was found as equally significant as the second. It was the design of a document. The document needed to be professionally designed in order to convey its meaning with the greatest impact. For this purpose, professionals were employed. The lawyers later concluded that design was in fact a common component of contract law. Many cases refused enforcement of contractual provisions, even well written, when buried in fine print or located in unlikely places. It may be that design has always been an element of contract law although it has not been so identified in the treatises.

Schiess cited that Professor Crump (2001; 2002) ^[6] sets up three models of plain English in the following terms (14):

- Plain English refers to brevity of expression.
- Plain English means that the expression should be as intelligible to an untutored but intelligent layperson as it is to a technician.
- Plain English means that legal writing should be interesting, dramatic, or even fun to read.

Nature of Plain English Movement

"Plain English Movement" commenced with one of the dominant events, consumer law, between 1975 and today in United States. For a long time lawyers have made countless efforts to understand the true nature of it. The first successful attempt to modify this and create legal documents, especially those used by consumers, in a way that is understandable by both the consumers who are bound by their terms and the legal professionals who draft them is known as the "plain English movement." Outside of the contractual sphere, Plain English has become well-known. Regulations have to be worded more clearly as a result of executive orders, both at the presidential and gubernatorial levels. Other agencies that are not governed by such Executive Orders have made voluntary efforts at great expense and with great outcomes (Falsenfield, 1981).

The start of the plain English movement may be roughly pinpointed. A plain English consumer promissory note was

first released on January 1, 1975, by Citibank of New York. The previous version, a lengthy and basically unreadable document, had several substantial sections removed, and the remaining verbiage had been cleaned up by a group of businessmen, attorneys, and language experts. Citibank was aware that it was making progress. A significant news conference where the form was unveiled was shown on television. A responsive chord was struck by the note. It attracted local, state, federal, and even foreign interest. Consumer activists especially welcomed it since they considered it as a significant advance in consumer communication. The memo was read into the Congressional Record on the Senate floor by Senator William Proxmire, the chairman of the Senate Banking Committee (Congressional Record, 1975) ^[5].

There is no doubt the Plain English Movement has led to advanced clarity in legal writing. However, some critics of the movement have argued that this comes with a cost. In essence, they claim that paying too much attention to the use of the ordinary terms at the exclusion of technical terms hinders the precise meaning of legal writing. They posit that ordinary terms can be vague and ambiguous, in particular, in the context of the transactional drafting, while technical legal terms can add increased precision (Crump, 2001; Stark, 1994; Hunt, 2002, Barnes, 2006) ^[6, 16, 10, 2].

Supporters of the Plain Language Movement claim that it is merely a myth that plain language is at odds with precision (Garner, 1995 ^[9]; Mellinkoff, 1983-1984 ^[13]; Kimble, 1998-2004; Schiess, 2003-2004 ^[14]). They argue that plain language is generally just as precise--and often more precise--than traditional legalese (Kimble, 1994-1995) ^[11]. And that may be true. No one can seriously dispute that a great number of "lawyerly" terms are mere jargon and add nothing to their plain-language equivalents.

The Importance of Plain English in Legal Writing

Mostly, laws are written in legalese, which is the formal and technical language of legal documents, as many common terms that are still in use were derived from French and Latin. However, legalese bring about some difficulties to fully understand the content of the legal documents. They are often long sentences trying to cover several points. Perhaps, this is because of a tradition of making each part of a bill or legal document only one sentence long. Some experience reveals that shorter sentences are more effective as each sentence deals with only one main point. In addition, some documents might contain redundant words, which is the next problem that make those documents complicated. In some cases, it can be risky, because unnecessary words may be interpreted in a way that the writer had not intended.

Using plain English does not necessarily mean writing everything in the style of a tabloid newspaper; rather it means writing documents in a way that can be appropriate for the audience. Considering who the law impacts and their level of topic knowledge, the language chosen in a law should be appropriate. Despite the claims that it is impossible to create laws understandable for everyone, it is not an impractical task to achieve. It is possible to draft documents in a way that most people can understand.

Some people argue that legal documents should be required to use plain English due to the difficulty of the legal jargon. The legal profession should at the very least make an effort to communicate in plain language in court proceedings, public forums, and legal documents. Everyone in society

should have easy access to all literature, whether it is in the legal, medical, or political fields (Barnes, Thompson & Brown, 2023) ^[3].

The policy of applying Plain English into specific areas is becoming prevalent in Uzbekistan. Several governmental institutions, corporate bodies and private companies have demand for candidates who can understand specific terms well and use them properly. The policy of teaching Plain Legal English, for instance, is being conducted efficiently at Tashkent State University of Law (TSUL). Foreign Languages Department of TSUL has created its own curriculum based on Legal English and is currently working on the project which aims to enable students to use Plain English in legal documents. To further improve students' legal writing skills using Plain English, several online and in-person classes conducted by foreign professionals and experts are being held. These efforts are believed to bring positive outcomes so as to contribute a share to the implementation of Plain English in legal sphere in Uzbekistan.

Conclusion

This article has reviewed some features of Plain English in legal writing. It has glanced at the nature of Plain English Movement, certain definitions suggested by some researchers, and the importance of it. From the discussed views, it is clear that readers judge a document to be well-written if the writing advances the readers' purpose in reading the document. In the case of legal readers, that purpose is to accumulate information that will help them make appropriate decisions. Therefore, good legal writing embracing plain English enables legal readers to obtain information from legal documents and to fully understand the content of them.

Above all, it is important to promote the use of Plain English as the best way to achieve effective communication. If the writer intends to communicate, the reader should not encounter any difficulty in understanding what he or she is reading.

Whether the writer of a legal document is writing to a layperson or to an attorney or judge, compound sentences containing numerous subordinate clauses and exceptions will be difficult for any reader to grasp. Readers often have a difficult time reading and processing unfamiliar vocabulary and information-laden sentences, especially sentences that contain numerous subordinate clauses with a complex sentence structure. Applying Plain English into legal drafting makes legal document easy to understand and it allows the reader to read document once to understand its meaning. There is no need for the reader to spend additional time re-reading a sentence that uses unfamiliar words or that contains numerous subordinate clauses.

Thus, Plain English will help communicate to laypeople their rights and obligations under a constitution, the opinions expressed by a court, the regulations included in a statute, and the terms and conditions in the contract (Tiersma, 2007) ^[17].

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