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TRENT SEMINAR 1989 - Wills

The seminar for this academic year will be held on Wednesday, 19th April at a Nottingham hotel to be arranged.

Trent's own course on the substantive law of wills, including the taxation element, will take up the morning. The speaker is John Thurston.

CLARITY's session, organised by Michael Arnheim, will follow in the afternoon. Dr Arnheim will give an introductory talk on the general principles of drafting before dealing in detail with the usual will clauses. He will interperse these with time for the delegates to prepare their own drafts for discussion.

The fees are £60 for the morning and £50 for the afternoon, or £100 for both. These are reduced for CLARITY members to £45 and £35 respectively but there is no further reduction for booking both. Lunch is included for those paying for both sessions.

Please apply, with a cheque, to:

The Office of External Relations
Trent Polytechnic
Burton Street
Nottingham NG1 4BU

Tel: 0602 418248 (extn 2482/2614)

INTERPRETATION ACT

Although Richard Castle points out in his letter (*issue 10, page 3*) that the Interpretation Act does not apply only to legislation, its scope is limited.

It extends to private documents only:

(A) To provide that references to time are to GMT; and

(B) To clarify certain references to other Acts of Parliament.

Some other statutes provide a useful but thin, piecemeal and rarely used definition service. The Leases Act 1845 stands out. S.61 of the Law of Property Act 1925 provides that in all instruments - formal legal documents (and do these include laymen's home-made documents intended to have legal effect?) - "month" means "calendar month", "person" includes a corporation, the singular includes the plural (and vice versa) and the masculine includes the feminine (and vice versa).

CLARITY is preparing an Interpretation of Private Documents Bill. Members are invited to submit further instances of existing provisions and fresh ideas, draft clauses and definitions to the Newsletter.

A progress report will appear in the next issue.

VACANCIES FOR ASSISTANT SOLICITORS

with partnership prospects
still exist in the firms of Mark Adler in
Surrey and Justin Nelson in Kent.

Applications from CLARITY members would
be especially welcome.

Details are available from the addresses at
the foot of the back page.

ANNUAL MEETING

20 - more than any previous year - came to the annual meeting and buffet supper on Friday, 7th October. All were members except Clive Baldon, on behalf of the Business Improvement Committee of The Law Society, and David Wolchover, a barrister whose wife had sent him. We were particularly pleased to see CLARITY's amiable founder, John Walton, and Robert Eagleson on his last night before flying home to Australia after a summer-long lecture tour of Europe.

Our thanks go to The Law Society for the use of their rooms and catering. The meal was well-presented and good value, an enjoyable setting for a reunion of those who knew each other and an introduction to the others. The oval table at which we then held the meeting was large enough for everyone to sit around, creating a more congenial atmosphere than the traditional top table with rows of facing chairs.

Review

Ken Bulgin opened the meeting with a review of the past year, sketching the achievements of the Trent drafting course, the experimental Kent local group, the course they planned at Canterbury, the foundation of the precedent library and the developments in publication of the Newsletter.

Finances

He apologised for the absence of prepared accounts, which he expected to circulate with the next issue of the Newsletter. However, he reported that after a low point in March, when reserves had fallen to £180, we now had more than £1,000 in the bank. After the June appeal about 120 members had sent subscriptions and the September reminder, published earlier in the week, had restarted the flow at a rate of about 5 per day. (That was a slight under-estimate, since some have also been sent to other committee members.)

The College of Law

Mike Petley then gave a short history of plain English at the College of Law, at which he has taught for 10 years.

The first development in that time was the introduction of the new finals in 1979, changing the emphasis from pure law to a more vocational training. At first, drafting was not taught as a discipline of its own; students were shown how to prepare different types of document as part of

their instruction in each academic field.

Specimen documents were provided and over the years had been steadily improved.

In 1985 the College had instigated a series of lectures on drafting, under the scheme for continuing education for the newly qualified. Again, plain English specimens were used as an aid.

In 1987 the College had set up a working party to consider the teaching of interviewing, negotiating and drafting skills. They had calculated that of some 360 hours of teaching to which each student was subjected, 24 had been devoted to drafting. This led to a proposal that drafting should be taught at the beginning of the course as a subject in its own right.

Chris Elgey of the Guildford branch of the College then took up the story.

This year a pilot course on drafting in plain English had been held for tutors, to test their reaction to the prospect of teaching it. Most of them approved. As a result it has been introduced into the 1988/89 Common Professional Exam course, the non-law graduates' first legal studies. Two half-day sessions had already been held, one on letter-writing, the other on more formal documents. They had been exceptionally well received by the students, who were eager for more. Some had produced better drafts than had the teachers on the pilot course, although one wretched candidate, after four weeks in the profession, had included 52 "said"s in three manuscript pages.

They were also planning three evening drafting seminars next summer for articled clerks and new solicitors.

The disheartening aspect was that many students were obliged by their principals in their first days in articles to abandon clear English in favour of the traditional house style. Moreover, some, particularly the borderline students, were not interested in - or felt they could not afford to spend time on - a skill which they did not think would help pass the exams.

Unfortunately, the universities were reluctant to teach good writing, as they thought this should have been done by the schools, although it was not. As a result, students reached the post-graduate stage without learning this important basic skill.

The recently published Marre Report recommended that student lawyers be taught to write clear and succinct English, both by the College and when articulated. The Law Society Review of Education referred to Marre and to the "concern that the standards of drafting and of general literacy possessed by many graduates are inadequate." The College was still preparing its response.

Finally, Chris thanked the CLARITY committee for suggesting improvements, most of which had been adopted, to a number of College specimen drafts.

Discussion

Ray Anstis thought that students would be glad of their College precedents when they went into articles. John Walton said that even if the plain English style was forbidden by their principals, they might revert to it as soon as they had the seniority to set their own standards. This had been his own experience. Meanwhile, perhaps a course on assertiveness?

Robert Eagleson asked whether courses could be run for senior solicitors; but there was difficulty attracting them. One suggestion was that it was presented as "How to Make your Articled Clerk into a Better Lawyer"; another that a fee of £500 should do the trick. Chris Elgey hoped that principals would come to the evening courses next year.

Mike Petley said it would be best to have the drafting course in the final College year, to catch the law graduates who by-passed the CPE, but there was a limit to how much could be included in a busy calendar.

He added that it was not altogether a good idea to hold exams in good drafting, because the time limit encouraged rushed and unfinished work. The reply was that the same criticism applied to traditional exam questions. (Alternatively, drafting ability could be tested with generous time limits.)

The discussion then turned to other topics.

It was suggested that CLARITY write a book of precedents for the commercial market. But would a publisher accept it, when revolutionary forms would attract few buyers? Some clear English precedents had already appeared; "Practical Commercial Precedents", for example, had some good things. (No-one pointed out that Trevor Aldridge had long been chipping away at the problem in his books, or that the classic Kelly's, now edited by another CLARITY member, had made substantial progress.) There

were so many legal publishers now that it should be possible to find one willing to take us on. Ken Bulgin said it was the problem of the chicken and egg, with the market expanding as familiarity made the new style more acceptable.

Another member made the point that someone in each practice should take the time to alter the precedents on the word processor so that clear English drafts would be available, without further effort, for the rest of the firm.

Clive Baldon reported that the Lay Observer's last report had recommended an improvement in drafting standards; that The Law Society was taking a positive attitude to clear drafting; and that the Business Improvement Committee wanted more articles on the subject, published both by us and by them. He had suggested a regular column but the Gazette had refused. The consensus at the meeting thought that was right and that 2 or 3 articles a year was enough.

Robert Eagleson made the point that although it was commonly accepted that clear English was good for the consumer, people forgot that it was also good for the profession. Tests in Australia had shown that lawyers could vet a document in plain English twice as fast as they could a traditional one. Not only could they read and understand it quicker, but they spent less time searching for non-existent traps. Even lawyers unused to it could draft faster in plain English. In one memorable example, a 345-word sentence, intricately constructed, had taken an immense time to compose because of the difficulty of orchestrating the parts without syntactic error. The same meaning could have been more easily expressed in sentences of digestible length, saving the need to translate the natural language of our thought into an artificial code.

Ken Bulgin thought there had been a great improvement in drafting standards in the last decade and that this had been most dramatic in the last year or two. The tide had turned. CLARITY was no longer a group of eccentrics but was now promoted by The Law Society, and its principles were widely adopted. This brought him to the next point.

Law Society recognition

Clive Baldon had suggested we might like to apply to The Law Society for recognition as a Special Interest Association. The main arguments for and against had been set out in the last Newsletter. The effect would be mainly cosmetic. The requirement that we write a constitution for the sake of form when we were managing perfectly well without one was unpopular. Opinions were divided between those who felt we should be seen

to be independent, as a ginger group, and those who believed we would make more progress amongst the traditionalists if seen to be associated with the governing body. With some reservations as to whether those present had a mandate to decide, the proposal that we apply to The Law Society was defeated by 16 votes to 4. The feeling was that the time might come, perhaps in a year or two, but that it had not yet done so. John Walton said that the question would not have arisen when CLARITY was founded and this showed remarkable progress in five years.

Another suggestion was that we approach a bank or other large commercial institution for sponsorship, offering our services in improving its documents in exchange for financial assistance so that we could employ a full-time worker. Passing mention was also made of The Plain English Campaign's sale of their "seal of approval".

Elections to the committee

Ken Bulgin said that there had always been five members of the committee at a time; the number seemed to work. This custom was the nearest we had to a constitution. The existing committee was thanked for its work (despite Ken's modest and discounted disclaimer of his own contribution) and the three members wishing to remain (him, Justin Nelson and Mark Adler) were unanimously re-elected. Michael Arnheim, a former academic who has just started in private practice at the bar, and Chris Elgey of the College of Law, volunteered to take over from Katharine Mellor and John Wilson, and were unanimously welcomed. The next committee meeting was set for 10th December.

Last minute suggestion

The committee was asked to consider inviting an eminent judge to stand as President, to lend prestige to the organisation. This had been mooted some years ago, when Lord Denning had been approached, but the question would be reopened. Meanwhile, a CLARITY member had resigned when appointed a county court registrar, because he did not think the two roles were compatible.

In closing

Robert Eagleson thanked us for an enjoyable last night in England. He said that many Australian lawyers stood behind us and relied on CLARITY for moral support (though it may be more accurate to say they were ahead of us, since plain drafting is widely accepted there). John Walton paid tribute to the support we had had from the Australian contingent, with whom he had been in constant touch when chairman. Ken Bulgin said that he had counted 40 or 50 foreign members - about 10% of the list - mainly in Australia, Hong Kong and America; many were university teachers and those influential in government.

The chairman, in line with CLARITY's traditional rejection of the usual pomposities of debate, did not formally close the meeting. "Right; that's it," he said, standing up. As the members began to disperse, Mark Adler told how a judge in Alabama signalled the luncheon adjournment; there they do not speculate over their half-moon glasses about whether it is a convenient moment. "OK," said the judge. "See y'all at 2 o'clock."

DRAFTING COMPETITION

You are invited to offer a redraft of this objects clause from the mem and arts of a management company:

To acquire, hold, manage, maintain, repair, renew and deal with certain land and all communal driveways, parking bays, lay-bys, yards, gardens, outbuildings, pathways, drains and gullies serving the twenty eight houses situate at and known collectively as Red Timbers, Shelf Road, Guildford in the County of Surrey, (hereinafter called "the property") and being land and amenities not from time to time adopted or otherwise maintainable at the public expense by any national, county or local authority and to ensure to such an extent as may be reasonable against damage or destruction to the property and against public liability risks arising therefrom and to pay all rates, taxes or other outgoings chargeable in connection therewith as might be levied in respect of amenities provided for all of the said twenty eight houses aforesaid and to make and enforce such regulations for the good management and conduct of the property as may from time to time seem appropriate and to employ such servants or agents as may seem necessary and in the event of the employment of any resident servant to provide such employee with such accommodation in or about the property as may seem appropriate either on a sole basis or in common with any other Company or association or body providing services to the owners of the houses on the property aforesaid and to enter into such contracts or agreements with the owners or occupiers of the said houses with a view to maintaining the liabilities of and providing the services rendered by the Company as may from time to time be prudent and desirable.

ALLUSIONS OF GRANDEUR

by Jeremy Holt

I have always been amused by the lack of clarity in letters between solicitors. That is to say that there is often a great disparity between the words used in a letter and their true meaning. Perhaps this has advantages in that meanings can be conveyed without being expressly stated. There follow certain examples that I have noticed in the last few months:

Expression in letter

We thank you for your letter dated ...

Your letter of ... is to hand.

We act for Mr Clark.

We acknowledge receipt of the draft lease, which we are perusing, and will revert back to you in due course.

We wait to hear from you as a matter of urgency.

We have the following further enquiries/ observations/requisitions ...

Our clients have reviewed the position.

We are told by our client that ...

Obviously ...

We refer to our telephone conversation this afternoon ...

You will be aware that ...

True meaning

I am not really thanking you. Your letter arrived with 23 other unwanted letters. "We acknowledge receipt of your letter dated ..." would be more truthful.

Oh dear! This letter is very likely to contain other appalling pompositives such as "Your letter of the 7th inst."

Not only are we Mr Clark's legal advisors but we also act in the theatrical sense - ie, we will feign outrage at any suggestion that you make that neither benefits Mr Clark nor flatters our own egos.

We cannot be bothered to deal with it now.

It took us six months to write this letter and now we are being chased by our client.

We are playing for time.

They have changed their minds.

Of course, what we are about to say is incredible but that's our client's story and we can't talk him out of it.

What we are about to say is not obvious but we hope to bludgeon you into agreement.

Only used where the writer has excellent typing facilities. A more seasoned performer, mindful of secretarial delays, would use the more cautious " We refer to our recent telephone conversation."

When followed by a statement of the law, this is intended to worry you. When followed by a statement of fact it has the same meaning as "obviously".

LETTERS

We shall not be moved ...

The argument that "shall" is always best replaced - usually by "must" or "will" - is fraught with dangers.

The non-Victorian position is that "shall" be used to create an obligation, and "may" a power. If the power is to be subject to a limitation one uses "must". Thus:

"A buyer may send requisitions..."

The buyer may of course send none and the seller rejoices. The next provision is:

"Where the buyer sends requisitions in pursuance of the provisions of the last preceding sub-clause, he must do so within..."

If the buyer does not send them in time, the seller again rejoices but he has no cause of action against the buyer (which the use of "shall" normally implies).

As drafting is a disciplined discipline, the use of "must" for "shall" calls for another word for "must". As yet the Victorians have not plugged this hole and others should be warned against falling into or down it.

Dr S. Robinson
University of Queensland
St Lucia, Brisbane 4067

Robert Eagleson replies:

Professor Robinson fails to recognise that his 'limitation on a power' is nothing but an obligation. To use his example, if a buyer wants to achieve or avoid certain results, he or she is directed (obliged) to satisfy certain conditions. There is then no need to invoke a different auxiliary for this case: we should use the same one as we use for other obligations.

Moreover the distinction

shall = obligation with penal consequences for breach

must = obligation without penal consequences for breach

seems an unnecessary and unwarranted imposition on writers. If penal consequences are involved, they should be - and usually are - stated explicitly. The task of the auxiliary is simply to express the sense of obligation.

How many general readers would interpret legal documents correctly if we applied the distinction Professor Robinson wants between "shall" and "must"? How many lawyers would cope? Indeed, how many use "shall" and "must" now along the lines he proposes?

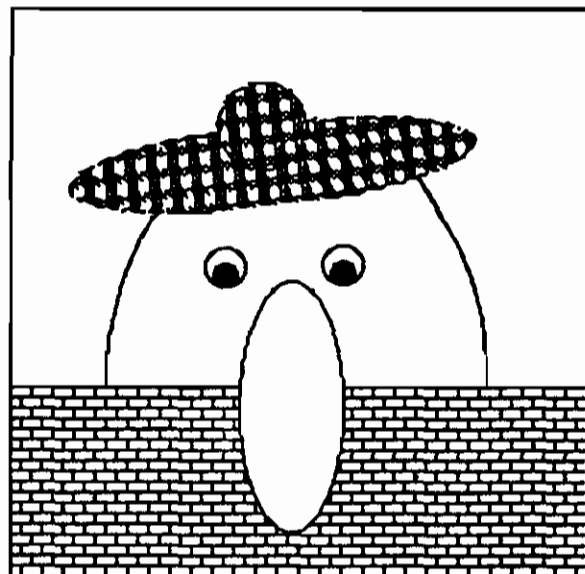
Authorities on drafting, including Professor Robinson himself, bemoan the failure of lawyers to use "shall" correctly. Strangely they never seem to consider that it might be "shall" itself that is the root of the problem. Its use to express obligation is archaic.

Drafting is a disciplined activity, but that does not mean imposing arbitrary rules or persisting with outmoded practices. There would seem to be a much better chance for achieving accuracy and comprehensibility if we followed the practices of good contemporary English and used "must" for all types of obligation.

Robert D. Eagleson
The University of Sydney, NSW 2006, Australia

This issue's Creative Waffle Award goes to a Surrey firm for:

"NOW THIS DEED WITNESSETH that it is hereby agreed as follows:"



What! No more letters?

PRECEDENT LIBRARY

The library is growing slowly and further contributions would be welcomed. Copies can be obtained, by members only, by sending s.a.e. and payment in favour of her firm to Katharine Mellor, Messrs Elliott & Co, Centurion House, Deansgate, Manchester M3 3WT (DX 14346 Manchester 1).

The complete list (with the new items in bold type) is:

Agency agreement	Katharine Mellor	
Commercial lease	Justin Nelson	£1.10
Commercial lease	Mark Adler	40p
Computer software licence	Justin Nelson	40p
Contract for sale of house	Mark Adler	10p
Enquiries before contract	Justin Nelson	-
General		50p
Additional:		-
Residential land		10p
Business land		10p
Business goodwill		40p
Existing leasehold		20p
Farmland		10p
Land subject to a tenancy		30p
Licensed premises		20p
New residential lease		20p
New business lease		10p
Sale under enduring power atty		10p
Res fhold (questionnaire to V)	Mark Adler	50p
Land Registry transfer		10p
Partnership deed	Brian Bowcock	
Personal reps' advert under s.27 TA 1925	Alan Macpherson	10p
Residential flat lease	Justin Nelson	90p
Requisitions on title	Justin Nelson	20p

MEMBERS

The breakdown of members who joined in 1988 or who have renewed their sub-scriptions (and for whom details are to hand) is:

	126
Solicitors	6
Barristers	6
Teachers	11
Legal execs, etc	11
Miscellaneous	—
	160

The proportion of solicitors is 76.75%.

CRIMINAL LAW CODE

Members may be interested in the proposed Criminal Law Code, which the draftsmen have tried to write as far as possible in plain English.

The work has been done by Professor Ian Dennis of UCL and two colleagues.

A first draft was published in 1984. A revised version has just been finished and should be available from HMSO before Easter.

COMMITTEE NEWS

The new committee met for the first time on 10th December.

Michael Arnheim has taken over from Katharine Mellor the arrangements for the Trent seminar.

Chris Elgey has taken from Justin Nelson the organisation of the Canterbury seminar with the University of Kent. This will be held in the academic year 1989/90 and no details are yet available.

With Chris Elgey now on the committee, Justin Nelson's role as liaison with the College of Law comes to an end.

From April 1st, Justin Nelson will take over the membership list from Mark Adler and the treasury from Ken Bulgin. With these two jobs split since John Walton resigned, membership applications and renewals have been sent randomly to the membership secretary or the treasurer, confusing both of them. This change, timed to coincide with the computerisation of Justin's firm, will be a great help. Meanwhile, he is looking into the possibility that CLARITY join the Document Exchange.

At the Annual Meeting there was a last-minute suggestion that an eminent judge be asked to be President of CLARITY but as there was no time to go into this properly it was left over till next year. However, the committee thought that it would be a pity to wait till next autumn for yet another discussion and have decided to take the initiative and approach a possible candidate. They also thought that "Patron" better described what we had in mind than "President".

The next committee meeting has been set for 21st January.

WELCOME TO NEW MEMBERS

Lee Beck, barrister's drafting asst, London NW
Julie Belvir, solicitor, LB Southwark
J.P. Cuerden, Nantwich
J.D. Dale, Congleton
Michael Freeman, solicitor, Hewitt Woollacott
Joan Macintosh, Lay Observer for Scotland
A.J.B. Monds, Clarke Willmott, Yeovil
John Norton, solicitor, Maidstone
D.C. Thorp, Chester
R.K. Walker, Biddle & Co, London
M.J. Whiteway, Beckenham

REFERRALS REGISTER

The committee is occasionally asked to recommend solicitors who use plain English but, without knowledge of individual practices, do not know whom to suggest.

Any member with a practising certificate willing to accept referrals should send his name, fields of work and telephone number to Mark Adler at the address on the back page.

There will be no suggestion of expertise beyond that of the average practitioner and no obligation to accept a client. The purpose is only to put laymen in touch with a CLARITY member who may be able to help them.

MEMBERSHIP RENEWALS

Of 425 members, only some 175 had joined in 1988 or had renewed their subscriptions in answer to the appeal in the last two issues.

Although this is a drastic step, the committee decided, in view of the cost of copying and postage, not to send this or future copies of the Newsletter to any who did not pay in answer to a final reminder. A polite circular to that effect was sent out as this goes to press.

It would be a great pity if nearly 60% of the members lapsed but if they have lost interest there seems little point in providing them with a free service. We hope that many will respond to this week's letter; a report of the outcome will appear in the next issue.

**CONTRIBUTIONS
to the Newsletter
would be welcomed
by the editor**

Our thanks to Nicholas McFarlane-Watts of the National Association of Sole Practitioners for the use of his laser printer for the master copy of this issue.

COMMITTEE

Ken Bulgin (Chairman and treasurer) 87 Hayes Road, Bromley, Kent BR2 9AE	01 740 7070 Fax: 01 749 2474
Justin Nelson (Kent local group, book reviews) 12 Rogersmead, Tenterden, Kent TN30 6LF	05806 2251 Fax: 05806 4256
Chris Elgey (Liaison with College of Law, Canterbury seminar) 24 Oakwood Road, St Johns, Woking GU21 1UU	0483 576711 Fax: 0483 574194
Michael Arnheim (Trent seminar) 7 Kings Bench Walk, Temple, London EC4	01 583 0404 Fax: 01 583 0950
Mark Adler (Newsletter, membership list, liaison with The Law Society) 35 Bridge Road, East Molesey, Surrey KT8 9ER	01 979 0085 Fax: 019 410 152